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OF  
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## FORWARD

The Canon Law Society of America annually publishes *CLSA Proceedings* to members and others in the canonical community from the major addresses and seminars presented at the annual convention. The request consistently existed over the years that publication take place as soon as possible after the convention. The proceedings of the sixty-third annual convention, October 8 – 11, 2001 at Albuquerque, New Mexico represent an attempt to meet that request.

In the collection of materials for this manuscript, I wish to express my gratitude to the presenters who provided their final texts in a most timely fashion. Each of the presenters in this volume of *CLSA Proceedings* performs many tasks in their day to day ministry in the Church; their contributions represent both their mastery of the material and skill in presenting their topic as well as a commitment to make their presentations available in written form.

Preparation of the texts for publication was facilitated this year by the submission of electronic versions of the presentations. In the preparation of texts, every attempt was made to maintain consistency by relying on both *The Chicago Manual of Style* and the style of previous issues of *CLSA Proceedings*.

Those who attended the Albuquerque convention will notice two seminar omissions in the written proceedings. Due to circumstances beyond CLSA control, the final text of “The Role of Canon Law and Civil Law in the Protection of Ecclesiastical Goods of Catholic Institutes” by Sr. Melanie DiPietro, SC will not be available until the Summer of 2002. The Reverend Michael P. Hilbert, S.J. choose not to submit a manuscript for his seminar “Recent Developments in Rotal Jurisprudence.”

I wish to also express my gratitude to Joy Harrell, project assistant at the Office of the Executive Coordinator who collated, formatted, and prepared the camera ready text of this year’s proceedings.

*CLSA Proceedings* 63 (2001) becomes an additional professional resource offered by the Canon Law Society of America. The text contains a high degree of consistency and accuracy which further scholarly research would confirm in individual instances. Additional copies of this volume may be found at CLSA PUBLICATIONS, P.O. Box 463, Annapolis Junction, MD 20701-0463.

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## ONE CHURCH, MANY CULTURES

REV. DREW CHRISTIANSEN, S.J.

My thanks for that welcome, and to Art Espelage who made the contact, and to Ann Rehrauer, who put in the first telephone call. As you know, Gus DiNoia and I are in a way exchanging positions. He is in the role of 'expert' now, laboring in Rome, and I am in his place giving the keynote because I was an expert at the Synod of America. Being a *peritus* for a synod is rather like being a graduate student. Most of the experts are there taking notes on specified themes during the various presentations of the bishops and auditors to help prepare the first document that goes out to the members of synod attempting to delineate the lines of thinking that have been developing during the first week or so of presentations.

In my case I also found myself pressed into unexpected service to do a fair amount of translation. I protested that the language I had indicated as my second language was French, not Spanish. Archbishop George, one of the secretaries of the synod replied, "Someone's decided you're going to be a translator. You are translating." So my weekends were given to translating, and just as I began to breathe a sigh of relief that I might get an afternoon off, I was seconded to the message committee to assist in their work. The only advantage to that was that the person who recruited me was Dennis Schnurr, then our general secretary, now the bishop of Duluth, and Dennis said to me, "Drew, as long as you're willing to do some drafting, I will do all the typing, all the copying, anything that needs to be done." So, for that week or so that we did the message, the general secretary was my assistant.

I hope that all of you will join in the discussion later. I do not come here with canonical expertise. I do not have even a sophisticated understanding of the theology of *Koinonia* which Gus DiNoia might have had in relation to some of the deeper issues of ecclesiology. But I do bring a firsthand experience of the synod and I hope that will help fill in some of the background, of the dynamics, and of unresolved questions that still stand before all the Church in America.

I have to say, too, that I come here with a bit of trepidation. I am used to questioning foreign ministers in my work for the bishops, meeting with presidents, and occasionally receiving a demarche from a minister of religion, but it puts me a little on my guard that I am addressing five hundred canonists. So I hope you'll be understanding.

## *Introductory: A Question of Geography*

In the beginning, and actually for some time on, there was a question, particularly among the English-speakers: Why is this the Synod for *America*? Our English language, and especially our American usage, talks of *the Americas*, not of *America* in the singular. Richard Neuhaus, in his book *Appointment in Rome*, which is a memoir of his time with us at the Synod, recalls running into my Jesuit brother, Tom Reese, who as you know has a slightly jaundiced view of some things, having written a book called *Inside the Vatican*. When asked about the synod's title, Tom quipped, "Well, they're just using old atlases in the Vatican."

As I learned later, as we worked with the experts and later with the message committee, the English language really has a different geography than the Romance languages. The French, and especially the Spanish, speak of one continent. What we call 'the Hemisphere,' they call *El Continente*. And when you try to talk about hemisphere, they say, "No, no, no. There's only east-west; there's no north-south" in terms of hemispheres. And so eventually the Anglicophones had to yield, and say, "Okay, we talk about America, plain and simple."

In *Ecclesia America*, no.5, the Holy Father wrote, "On the threshold of third Christian millennium, and at a time when ideological barriers have fallen, the Church feels absolutely duty-bound to bring into still deeper spiritual union the peoples who compose this great continent, and also to stir among these people a spirit of solidarity." He continues, "The decision to speak of America in the singular was an attempt to speak not only of the unity which is in some way already existent, but also to point to the closer bond which the peoples of the continent seek and which the Church fosters as part of her own mission."

The Holy Father then looked back to the 1992 general meeting of CELAM, at the time of the quincentennial, when he first proposed a single meeting to address, as he said, "Problems relating to justice and solidarity among all the nations of America." Later, in *Tertio Millennium Adveniente*, he called for a new evangelization, and went on to call for a discussion on issues of justice and of international economic relations in view of the enormous gap between north and south. Thus, even if the Holy Father made the new evangelization a parallel theme, and the regional synod format laid out several other topics, issues of justice and solidarity played an especially important role in the Synod for America.

### *'The Message:' Kingdom or Eternal Life?*

There is a similar format in each of the regional synods. The result is that some of the texts will read like uninspired theological boilerplate. At the same time there were some genuine differences of theological outlook among the synod fathers.

Some were resolved in the meeting, and some still remain to be resolved. One difference arose between those who placed heavy theological emphasis on communion and those who in keeping with the Holy Father's announced intentions took solidarity as a primary focus in the assembly. In part, this was a debate about whether the focus should be the inner life of the Church or about Christian service to the world. I would like to think of it as a debate about the two aspects of the Church as a sacrament, namely, as a sacrament of union with God on the one hand, and on the other a sacrament of the unity of the human family.

The same kind of difference was expressed, in eschatological terms, in the debate over the draft message. It is the only open exchange that takes place in the synod, and it is permitted for a very mundane, functional reason, namely, that Synod Office and selected bishops need time to count ballots to see who will belong to the post-Synodal commission. So while they are doing that, the bishops are allowed to debate the draft of the message. So the message gets thoroughly vented and everyone who wanted to speak and wanted to say something critical has an opportunity to do it. During that discussion, there was a small line of debate that became very important. What kind of language would the message use about the life of the Church and eschatology? Would we talk about 'the Kingdom of God,' as the draft did, or as Cardinal Ratzinger proposed, about life eternal? Ratzinger, had made a beautiful, almost lyric, intervention urging a mystical understanding of the Church as communion. Then Archbishop McCarrick,, who was not the chairman of the message committee but was after Montreal's Cardinal Turcotte the primary redactor of the message, was a vigorous defender of kingdom language. In the end, there was a compromise. Kingdom of God language indicated a certain seriousness about the Church's place in time.

A year later, the Apostolic Exhortation, *Ecclesia in America*, only alluded to the mystical vision of the Church with brief references to the parable of the vine and branches and to the mystical body. Those references, however, were preceded by a long quote from *Lumen Gentium*, which includes the definition of the Church as the sign and the instrument of the communion willed by God, begun in time and destined for completion in the fullness of the kingdom. Though not interchangeable, the two themes, that is, the themes of eternal life and the kingdom of God, are repeatedly mixed together. The Apostolic Exhortation never quite clearly distinguishes the terms or carefully relates them. The eschatological issue was one, it seemed, that surfaced only to submerge once again. After the briefest theological treatment, *Ecclesia in America's* chapter on communion moves rapidly on to specific issues of communion in the Church, and that's what I myself will do.

## The Faces of Communion in America

### *The Eastern Churches and Ecumenism*

Let me turn to those ecclesial issues that were part of the communion section. The first concerns the Churches of the East. One critical move was to highlight the inclusion of the Eastern Churches in America and their status in the universal church. Synod itself opened at a very tense moment for the Catholic-Orthodox relations. Just the week before in Washington, Patriarch Bartholomew had made some very unhelpful, even perhaps unfriendly, remarks about the Catholic Church at Catholic venues in the United States, including Georgetown University. In the first working session, one of the Eastern rite bishops from the U.S. made a very strong statement to counter Bartholomew.

Within a few days, Cardinal William Keeler, a steady and irenic ecumenist, in one of the Synods infrequent replies, offered a positive account of Catholic-Orthodox dialogue after the Vatican Council. He also spoke briefly of the difficulties for ecumenism brought on by the new freedom of the churches in eastern and central Europe, and gave an upbeat report on the visit of Patriarch Bartholomew to Baltimore. For its part, the Synod explored concrete steps for strengthening communion between the Roman and Eastern Catholic Churches, increasing the availability of bi-ritual clergy, sharing church buildings, holding mixed commissions on common problems, conducting catechesis and theological formation in the living tradition of the Christian East and shared membership in the Episcopal conferences.

Some of the deeper concerns of the Eastern churches, such as universal jurisdiction for patriarchs and clerical celibacy for Eastern rite clergy in the West were not addressed. The same issues were agitated quite vigorously a year and a half later at the First Congress of Patriarchs and Bishops of the Middle East in May 1999 in Fatqa, Lebanon. The Congress, conducted on the synodal model, provided a glimpse of the future of communion among the Eastern and Latin churches. I was also invited as an expert at that particular meeting and found it really quite amazing. At times some of the Eastern bishops could be very agitated about issues, especially topics like the universal jurisdiction of their patriarchs. Cardinal Schotte, who supervises the synods in Rome like a stern schoolmaster, was also present at Fatqa. To my amazement the cardinal would just sit there, in the midst of quite vigorous debate, and advise on issues of procedure and sometimes amuse people with stories. He showed an openness to the dialogue of the Eastern churches that was really quite remarkable.

I believe that part of Rome's support for the Congress was a clear effort, after *Ut Unum Sint*, to show that there are ways in which the Eastern churches, not just

those in communion with Rome, but the Orthodox churches and Apostolic churches as well, could find union with Rome in ways in which their own government could proceed without interference. It was really quite a remarkable development, and I think it will be interesting to see what springs from the Congress in the years ahead. The Council of Patriarchs will gradually be putting into place the work proposed by the Congress over the next several years.

### *Churches and Sects*

The assembly did deal though in broader terms with the wider ecumenism, particularly with Protestants, especially in No. 49. There the synod declared that between the Catholic Church and other Christian churches and ecclesial communities, there exists a drive toward communion rooted in the baptism which each administers. The Synod urged cooperation between Christians of different confessions in response to the cry of the poor by promotion of justice, by common prayer for unity, and by sharing the Word of God and the experience of faith in the living Christ. The kicker came in a distinction between Christian communities with which ecumenical relations can be established and sects, cults, and other pseudo-religious movements. This was an issue which divided some in North America from many Latin Americans, who by and large hold a fairly critical view of *las sectas*. There were, however, strong defending views about the sects as well. The president of the Council for Promoting Christian Unity, Cardinal Edward Cassidy, cautioned against fears of Protestant proselytizing, and urged care in using the term 'sect.' Particularly where Catholics are in the majority, he noted, they have an obligation to take the ecumenical initiative.

Father Richard John Neuhaus, a papal appointee as an auditor to the synod, rose to speak on his favorite theme, Evangelicals and Catholics Together. As you know, he is the moving force behind the program of that name. Proposing that in the work of evangelization Catholics and Evangelicals can accomplish more with one another rather than against one another, he drove to the heart of the matter. He declared, "According to *Lumen Gentium*, evangelicals are baptized and believe in Christ, and therefore are truly but imperfectly in communion with the Catholic Church." For that reason he argued we should permanently eliminate all references to sects. But in this matter, Neuhaus was a dissenter. The Apostolic Exhortation held to the requirement that sects be distinguished from churches.

Searching perhaps for future accommodation that would satisfy the various sides on this issue of the sects, Brother Jeffrey Gros, who is one of the associate directors of the Secretariat for Ecumenism and Inter-religious affairs of the United States Conference of Catholic Bishops, wrote recently that the recommendation of the Synod, for inter-conference dialogue about approaches to ecumenism is an important initiative that may shape the global ecumenical movement. Gros is

suggesting that those consultations among conferences may eventually address this issue of the sects and where the groups and movements so designated fit in relation to the churches in ecumenical dialogue.

### *Relations Among the Churches in America*

I shall pass over the question of the relations between the universal church and particular churches recently debated by Cardinal Kasper and Cardinal Ratzinger in the pages of *America*. I do want to comment on the issue of the improvement of relations within the churches of America. This is one of the few issues in which the real exchanges among the bishops, and one in which American bishops themselves lined up on various sides.

There were three models under discussion. One I call the maximal position. You can imagine a kind of super-CELAM, a Council of Episcopal Conferences for Latin America, the Caribbean, Canada, and the United States. The middle position projected an expansion of the practices of consultation now underway. One of its American supporters was Cardinal Bevelacqua of Philadelphia. He called for the establishment of several joint episcopal commissions addressing specific challenges, such as proselytizing or the crisis of families. He also was open to the evolution of such commissions into forums for addressing seemingly impractical problems. The third position preferred keeping collaboration to bishop-to-bishop and diocese-to-diocese relations. This was the platform of the late Cardinal John O'Connor of New York. In the end a stripped-down version of the intermediate position was adapted, building on the existing inter-American bishops council meetings. One of the fruits of this initiative is a conference on globalization to be jointly sponsored next January by CELAM, the Canadian Conference of Catholic Bishops and the United States Conference of Catholic Bishops.

I should note that the inter-American consultation of the bishops has not fully elaborated a formal mechanism for collaboration. Nonetheless, the leaders of the several conferences are working in a more intense and integrated fashion than they did in the past. I think you will see institutional developments in these arrangements over time.

### *The Parish: A Community of Communities*

Finally, let me note that even as the assembly recommended the revitalization of the parish, and this I think is really important to all of you as canonists, it took note of the growing diversity of the contemporary parish. Following Proposition 35, the Apostolic Exhortation proposed the one way to look on the parish is as a 'community of communities and movements.' The Exhortation goes on to say, "It seems timely, therefore, to form ecclesial communities and groups of a size that

allows for true human relationships.” The model of the parish as community of communities reflects the reality of many parishes in the U.S. I know particularly from my experience in California that this description characterizes many parishes in the Bay Area and in Los Angeles as well. But for others it will present a challenge. It certainly presents a challenge for the styles of pastoral leadership and approaches to priestly and ministerial formation.

### **Faces of Solidarity: Hospitality to Immigrants**

Let me turn now briefly to the issues of solidarity. In a sense this means turning from the Church as a sign and instrument of union with God to the Church as sacrament of unity of the human family. In keeping with your theme, One Church, Many People, I want to restrict myself to three people issues: migration, native peoples, and racism.

Migration may have been the issue in which the greatest learning and shift of positions took place. Many Latin American bishops arrived believing the primary problem with migration was lack of hospitality on the part of the Anglo Church. To begin with, many Latin bishops were surprised to learn how many U.S. bishops actually spoke Spanish and that a large percentage of the clergy and seminarians also spoke the language. As I said, I did not list Spanish as my second language, but I have some elementary Spanish to have had experienced an exceptional sense of collegiality. One night when I worked late, I came to dinner and found myself with a table of Cubans. Those of you who know Spanish know that the Cubans are the most difficult to understand, and after welcoming me in English, the conversation at the table went back to Spanish. And at one point the bishops began to mock one of their number for not being Cuban enough because he was a Chinese-Cuban whose ancestors had come to bring to build a railroad in Cuba at the turn of the century. I saw my opportunity, and so I said in my halting Spanish, “You know, he may not be Cuban enough for you, but his Spanish is more clear and distinct than yours.” Well, they all laughed, and after that we spoke broken English and broken Spanish.

Many Latin Americans did not understand how complex the pastoral problems are that impede the integration of migrants in the U.S. Church with immigrants coming from so many diverse Hispanic sub-cultures and searching for the kind of Catholicism they knew in their home-places. Neither did they realize the range of Catholic immigration to the United States. Bishop John Cummins’ intervention on the Asian immigration and the challenge of evangelization of unchurched Asians came as an eye opener to many. Many looked at themselves and said, “Wow, we have a lot of Asian immigrants too. We haven’t even thought of them, and the opportunities there evangelization.” So there began to be a real dialogue of points of view and experience.

Another issue that stirred a lot of discussion was the lack of pastoral accompaniment of Latin immigrants. Previous generations have brought priests with them. Likewise, today's Asian immigrants bring pastors with them in their communities, and the Vietnamese and Filipino communities supply vocations to meet their people's needs and more. For a time, the aula entertained a proposal for a Latin American version of the Society of St. James, the institute of diocesan priests founded by the late Cardinal Cushing of Boston dedicated to serving in Latin America. That idea did not make it to the final cut, but after the synod now Cardinal Oscar Rodriguez of Tegucigalpa Honduras, began his own program for training seminarians who would like to work with Latin immigrants in the United States. So even though there were ideas that did not make it through the propositions or at least through the post-Synodal Council, the synod seeded ideas that were acted on because their relevance was seen at the time of the meeting.

The Apostolic Exhortation for its part limited itself to calling for hospitality for migrants, respect for their cultural identity and cooperation between the dioceses from which immigrants come and the dioceses in which they settle. It is safe to say that the pastoral care of migrants is one area in which collaboration between the U.S. and Latin America, especially Mexico, will continue to grow.

### *Indigenous Peoples and African-Americans*

The pastoral concern which may have evoked the most passionate and eloquent interventions by members of the Synod was that of the indigenous peoples. They came from every region, Canada, Hispanic America, Brazil and the United States. The U.S. participants will probably never forget the scene of the Holy Father himself leading extended applause for Bishop Don Pelotte's speech. The Synod's Message to America called to mind the aboriginal and indigenous peoples of America who have suffered so much these past five centuries at the hands of the greedy and violent. The assembly in the message pledged to honor native cultures and support in preserving their native heritage. Those pledges were all that survived of a floor debate of the draft message which had attempted to respond to other demands of the indigenous peoples for defense of the human rights, preservation of their land, and respect for their environment.

The Apostolic Exhortation went further, however. It called for respecting the territories of indigenous peoples and the pacts that were made with them, and for satisfying their legitimate social health and cultural requirements. The Exhortation also asked, "How can we overlook the need for reconciliation between the indigenous peoples and the societies in which they're living?" It should be noted that this is the closest the Synod came to addressing issues of apology and request for forgiveness in keeping with the synodal theme of conversion and the Holy Father's exhortation to self-examination, confession, in *Tertio Millennio*

*Adventiente*. It is important to note that this was still two and a half years before the Day of Pardon in Lent of the Jubilee Year.

On the question of race, there was more reticence still, I am sorry to say. The Apostolic Exhortation spoke of ethnic prejudice and encouraged programs aimed at promoting understanding and reconciliation. That passage deals with Americans of African descent. It does not mention the historic sin of slavery. The message had addressed brothers and sisters of African heritage whose ancestors came to 'America' in 'bondage as slaves.' It added 'the wounds of those terrible centuries still sting the soul.' The avoidance of slavery, no doubt, reflected the outlook of some that racism is exclusively a North American problem. For me, that omission was an occasion of great disappointment. Perhaps it is one of those issues which inter-conference consultation can address in the not too distant future.

In his overview, I have attempted to relate the struggles of integration and inclusion faced by the Synod of America: efforts to integrate the Eastern churches, collaboration of the episcopal conferences, and re-visioning of the parish as the community of communities and even movements. I have also given account just now of efforts to integrate and reconcile of immigrants, indigenous peoples, and Americans of African descent. The size of the agenda is overwhelming. It is a reminder that we are a big Church, a very big Church.

### **The Gospel and Globalization**

You will note that I have not addressed the really enormous issue the pope had presented as a goal of the Synod, namely the gap between North and South. That is probably because the agenda as it appears in the Exhortation is so much larger than I can address here, and the issue of the gap itself is a vast one. It is partly also because topics like debt forgiveness and globalization deflect from understanding the depth of the gulf between North and South. Throughout his pontificate, Pope John Paul II has used the story of Lazarus and the rich man to underscore the gulf between rich and poor and the temptation to indifference to which the nations of the North can succumb.

The insidiousness of this temptation came home to me in a rather vivid way when I was a member of the Vatican delegation to the World Trade Organization (WTO) meeting in Seattle two years ago. I was reminded of it on the Friday after September 11th, when I read an article in the New York Times by an historian named Ronald Steele. Steele is usually a realist and a conservative. On that day, his argument was a radical one: We will not deal with terrorism until we can deal with the grievances that lie behind it. I thought immediately of John Paul II and his description of how we must deal with war at the beginning of a new millennium. The Holy Father, in *Centesimus annus* wrote, "Behind war lies long-term suffering

and grievances and injustices,” and then goes on to say what we need in place of war is a campaign for world development.

But let me get back to the WTO, and this is one last story. We were observers as members of the Vatican delegation. For that reason, we knew we would be walking the corridors. But when we walked the corridors in Seattle, we found we were walking with members of normal delegations, some of them very senior, from Third World countries, who were not permitted in the conference rooms where they were supposedly entitled to go. Their committees were never called to session. Well, if they were called to session, they were only rump sessions made up of the developed country representatives led by the U.S., the Europeans, the Japanese, and sometimes the Australians. The Third World delegates were locked out by the developed countries.

The first item of the developing countries' agenda had been to implement tariff preferences and quotas on imports of agricultural and textile products that had been agreed to ten years before in the Uruguay round of negotiations. There was no agreement two years ago, to go on with the implementation, and there is no planning to move ahead of it in preparation for the next WTO meeting later this fall. When I read Professor Steele's talk about the need to look at grievance, I said, "Ah, he's right. There is a deep, deep level of indifference at the heart of western policy." In this case what we thought was the cornerstone of U.S. policy in the nineties, namely, the liberalization of trade, was built on indifference to the poor. It was no liberalization of trade at all. It was trade differently managed to the benefit of the developed countries and to the exclusion of the developing countries. The gulf of indifference that the Holy Father's talked about is very real, and is at the heart of the way we Americans do business in the world. We have to address it.

A month after the attacks on New York and Washington, it is time to recognize that the ultimate challenge we all face is how we can resist the temptations of indifference, everything that makes for that gulf between North and South, and to find the means for Lazarus and the rich man, as Paul IV wrote, to sit down together at the one table of the Lord. As *Ecclesia in America* says, "The Church in America is called through greater integration among nations with helping to create an authentic globalized culture of solidarity." Thank you very much.

## MANY PEOPLES LIVING IN ONE CHURCH

MOST REV. DONALD PELOTTE, S.S.S.

Dear Friends, I am deeply honored to be invited to deliver one of the addresses for your annual Canon Law Society convention. Welcome to the Land of Enchantment. I trust you are loving or learning to adjust to our green and red chili. It does take time!

In view of what took place on September 11, it has been very difficult to prepare this talk. With the terrible terrorist attacks, thousands of our fellow citizens were buried under the rubble. And, since then, in many ways the rest of us have been buried under the rubble of words that followed. One commentator wrote: "It is hard to criticize such words; all of us utter trivial platitudes in moments when events simply exceed our capacity for reflection and insight."<sup>1</sup> In the midst of what humanity has and continues to experience, your convention's theme is all the more appropriate. I know that Fr. Drew Christiansen, S.J., who was with me at the Synod for America has addressed you on the theological principles of multiculturalism. Tomorrow, Fr. John Renken will talk about law in the 'Service of Many Peoples'. I was asked to address a few important pastoral dimensions of being Church in such a multicultural setting as I find in my diocese.

A little more background about myself. As you know my degree was in theology and not canon law. No doubt, I was being prepared by my province to work in formation and seminary education. In fact, I was formation director for the first few years of my priesthood. In 1978, six years after my ordination, I was elected Provincial Superior of my Province, which included all of the United States, England and Ireland, the Philippine Islands, East Africa and Vietnam. I was completing my third and final term as provincial when Pope John Paul II appointed me Coadjutor Bishop of Gallup in 1986. I assumed leadership of the Diocese in March of 1990.

I am now in my 16<sup>th</sup> year here in the Southwest. I am sure Pope John Paul was acknowledging my Native American ancestry when he called me to this new challenge. The Diocese of Gallup covers 55,000 square miles, including large

<sup>1</sup> Gilbert Meilaender. "After September 11." *Christian Century* (September 26-October 3, 2001) p. 7.

portions of the States of New Mexico and Arizona. Fifty-three percent of our Catholics are Native American, indigenous peoples from seven different tribes. While the second largest numbers are Hispanic, including many new immigrants coming from the South, there are thirty-two different ethnic groups in the Diocese. This makes us very poor financially, but very rich with so many cultural gifts from such a diversity of peoples. Surely you can see how this provides us with a great challenge as a local Church.

From the limited experience I have had thus far, I believe it is safe for me to make some observations about multiculturalism and more specifically about inculturation. I am convinced that there are things about culture and intercultural communication which can be learned, and that we need to learn if we hope to do effective ministering in a multicultural church. You know as well as I do that most people do not have much awareness of their cultures until they are confronted with cultural difference. In fact, when we are faced with another culture, our reaction often is based on anxiety and uncertainty about the “*other*” we meet. Thus, the absolutely critical importance of making intercultural communication training part of our priestly, diaconal, and lay ministry formation.

In the dining room of the Sioux Spiritual Center situated in the Diocese of Rapid City, South Dakota – the other Indian diocese in the United States, but primarily Lakota – there is a framed picture of an elderly, barefooted Native person standing on rocky ground sifting grain. The caption under the picture expresses an attitude, which must underlie our reflection and approach to culture. It says: “*Our first task in approaching another people, another culture, another religion, is to take off our shoes – for the land we are approaching is holy.*”

In May of 1999, just six months after our Holy Father issued the Post Synodal Apostolic Exhortation: “*Ecclesia in America*,” the Vatican’s Pontifical Council for Culture released an important document on the opportunities and challenges for a pastoral approach to culture. The document entitled: “*Towards a Pastoral Approach to Culture*,” was remarkable from my perspective as a bishop working with the indigenous cultures of our country. The document insists that – in its mission of proclaiming the Gospel to the world – the Church “*cannot avoid borrowing the elements of human culture or cultures. Though independent of cultures, the Gospel and evangelization are not necessarily incompatible with them; rather they are capable of permeating them all without becoming subject to any one of them.*” *Indeed, it is not possible to proclaim the gospel, it says, without “the language and culture of men.”*<sup>2</sup> The very faith of the Church’s evangelization is linked to a culture. The only cultural elements to be rejected are those that are

<sup>2</sup> Pontifical Council for Culture, “*Toward a Pastoral Approach to Culture*,” no. 4 (May 23, 1999).

“a source of sin and fruit of sin,” the document declares.<sup>3</sup>

Yes, the relationship between the gospel and culture must be “reciprocal.” In light of the gospel, the Church must constantly discern between the “values and counter-values in a given culture, so as to build on the former and vigorously combat the latter.”<sup>4</sup> Today it is quite rightly stressed that evangelization should be understood as a dialogue between “the Church in mission” and the peoples to whom it is sent.

In this context, the Pontifical Council’s document spoke about traditional cultures, like those with which I work in New Mexico and Arizona. It says “*The positive values enshrined in these traditional cultures, such as a sense of family, love and respect for life, veneration of ancestors, a sense of solidarity in community, respect for the chief and elders, are a solid basis for the inculturation of faith, whereby the Gospel penetrates the whole of culture and brings it to fruition.*”<sup>5</sup>

It should not be surprising to hear these words so carefully spelled out in a document of the Holy See. I believe that the document came as a direct result of the hard work of the 1997 Synod for America. For that meeting, fifteen of us from the National Conference of Bishops had been elected to represent the United States. With representatives from Canada, Central and South America, we gathered for an entire month with Pope John Paul II to share our concerns, hopes, anxieties and dreams for this hemisphere.

For me the Synod was a marvelous experience of collegiality and of what it means to be Church. The Synod was a difficult but profound experience of religious leaders journeying together in faith trying to set goals for our pastoral agenda for the future.

It was indeed moving and especially challenging to hear day after day, in the many speeches that were given – there were 266 of them, eight minutes apiece – to hear day after day the cry of the poor from all over the continent.

On the day I offered my own intervention – four other Bishops from Canada and South America pleaded on behalf of the Indian people. For example, the desperate position of the indigenous peoples of the Amazon was described by one bishop who was of German origin. Every year the region lost thousands of miles of forest destroyed by fire. The land was despoiled, rivers polluted by large

<sup>3</sup> Ibid.

<sup>4</sup> Ibid. no. 5.

<sup>5</sup> Ibid. no. 19.

landowners, woodcutters and gold diggers, and the Indians infected by imported diseases. Yet, the bishop said, the care for souls could not be separated from the firm defense of human rights.

I observed in my own intervention that everywhere on the continent it was the indigenous peoples who suffered the worst neglect and impoverishment. While many had been baptized, either in the early years of the colonization or since, the many remain ambivalent about Christianity. And, many others reject it completely. I tried to explain that justice must be the priority in regards to treaty rights, land and water rights, education, housing, health care, social services, training in jobs and the use of sacred lands. These are issues we face every day in Gallup and in the other dioceses of this area.

I concluded my intervention by saying that it was so very important to root the gospel in the indigenous culture. That is what we call inculturation. Thus I called dialogue between bishops and indigenous peoples an imperative and asserted that indigenous leaders, ordained and lay are the most essential factor for inculturation. Successful evangelization and re-evangelization demand that indigenous people take responsibility for catechesis. Finally, I highlighted the need for the inculturation of sacramental life, the liturgy and theology by those who minister to and with Native peoples.

As a matter of fact, in many ways these Synodal dreams of mine are already a reality in many of our dioceses in the Rocky Mountain region and in my diocese. We have a very strong Native American lay leadership formation program. Native married men are becoming permanent deacons and regularly, especially on our reservations, our Eucharistic liturgies and other sacramental celebrations include the use of native and cultural rituals and symbols. Our parish councils and our diocesan pastoral council are multicultural. A Navajo layman presently serves on the National Advisory Council. When we mandated the presence of parish pastoral councils throughout the diocese, we dialogued at length with our native people to devise a process of discernment and decision making which would be consistent with their cultural way of proceeding. From these efforts "Pastoral Advisory Circles" developed in many of the reservation parishes.

When the Spanish came with the Friars, they did what they only knew how to do; that was to impose a European way of life that was very foreign to the indigenous people of this hemisphere. So, not only did many lose a lot of their customs and traditions, but their languages, and in some way their whole purpose for living. Now they are beginning to regain all they lost and in a sense they are "*coming home again.*" I will explain what I mean by this in a few moments.

What is so wonderful about our efforts in our diocese in the last fifteen years

is how this was so powerfully affirmed by the Synod for America. Before the Synod ended, a closing message was addressed to the indigenous peoples of our continent. *“We open our hearts to you, the aboriginal and the indigenous people of the Americas, who have suffered so much these past five centuries at the hands of the greedy and the violent and who even today enjoy so little of the abundance of our lands. As we proclaim to you the gospel of Jesus Christ, we pledge ourselves to honor your culture and to support you in preserving your heritage.”*

It is clear that our interventions made a difference and our concerns were heeded. For in the post Synodal exhortation *“Ecclesia in America,”* which we all received in Mexico just after our liturgy with our Holy Father on January 23<sup>rd</sup>, we read this passage: *“If the Church in America, in fidelity to the gospel of Christ, intends to walk the path of solidarity, she must devote special attention to those ethnic groups which even today experience discrimination. Every attempt to marginalize indigenous peoples must be eliminated. This means, first of all, respecting their territories and the pacts made with them; likewise, efforts must be made to satisfy their legitimate social, health and cultural requirements. And how can we overlook the need for reconciliation between the indigenous peoples and the societies in which they are living? . . . In order to attain these goals it is essential to train competent pastoral workers capable of employing methods already legitimately ‘inculturated’ in catechesis and the liturgy, avoiding a syncretism, which gives only a partial account of true Christian Doctrine. Then too, it will be easier to provide a sufficient number of pastors to work with the Native peoples if efforts are made to promote priestly and religious vocations within the midst of these very people.”<sup>6</sup>*

Thank you for being patient and allow me to conclude this way. Often in our prayers from the Liturgy of the Hours, we recognize the Lord as the Lord of all tribes, nations, and peoples. We often forget that God was present to our indigenous peoples long before we brought them Christianity. But Christianity was able to bring them something rich: the person of Jesus Christ to deepen their spirituality and their way of living and many of our Native people, at least in the Southwest where I live, have no difficulty being Navajo and Catholic, or Apache and Catholic, or Laguna and Catholic.

God’s liberating power has many faces and we can see these faces with our own eyes and experience the liberation and healing these stories bring into our very flesh, into our concrete individual lives. The Native stories that I hear time after time, day after day, are like the stories of the gospel: stories of gift and consolation, of challenge and growth, of freedom and transformation, of healing and reconciliation.

<sup>6</sup> John Paul II, Post-Synodal Apostolic Exhortation in *“Ecclesia in America,”* (January 22, 1999, #64.)

During the celebration in 1992 of the 500<sup>th</sup> anniversary, when so many wanted a big party to celebrate the arrival of Columbus to this hemisphere, our Indian people found that very difficult. As a member of the preparatory commission of the Bishop's Conference I suggested that we not make it simply a celebration of our achievements in the encounter of our two cultures, but that we needed to recognize the dark shadows as well, and to focus as much on healing and reconciliation as on celebration. Fortunately, the text that we produced for the anniversary was entitled: "1992: *A time for Remembering, Reconciling and Recommitting Ourselves as a People.*"

"Coming home again!" So, during that 1992 event I had to practice what I preached. Accordingly, I asked the people of my diocese, in the individual parishes – the indigenous, Native peoples and the Spanish people – I asked them to meet regularly during that year and share their stories, their good stories and their bad stories, to share them together. That meant bringing together Indian and Spanish people, the two major cultures involved in the colonization. This was a profound experience of faith for all of us who participated in these gatherings. And on October 12<sup>th</sup>, of that year, at the Cathedral in Gallup we celebrated a marvelous Liturgy of Reconciliation.

I wanted to end by sharing a story that was written by a Laguna woman, because it expresses the hopes and dreams of so many who have suffered in attempting to be genuine followers of the way of Jesus. This is what she writes:

*"My people are a multitude of one. Many voices are within them. Many lives have they lived as various beings. They could have been a bear, a lion, an eagle, or even a rock, a river or a tree. Who knows? But all of these beings are within them. They can use them anytime they want.*

*On some days it's good to be a tree, looking out in all directions at once. On some days it's better to be a rock, saying nothing and blind to everything. On some days the only thing to do is fight fiercely like a lion.*

*Then too, there are reasons for being an eagle: when life becomes too hard, my people can fly away and see how small the earth really is, then they can laugh and they can come home again!"*

Dear Friends, I truly believe that since Vatican II all of the Church's difficult and often delicate work at seeing through and implementing the implications of inculturation has allowed the indigenous of our hemisphere to begin "*to come home again.*" Thank you. And thank you for what each of you has done personally and for what the Canon Law Society of America as a whole has done in helping to make this happen.

## LAW IN THE SERVICE OF CHURCH IN AMERICA

VERY REV. JOHN A. RENKEN

*Pope John Paul II, in his post-synodal exhortation Ecclesia in America, provides the basis for pastoral planning at the beginning of the third millennium for the Church in this hemisphere. The Church in America is called to a conversion which results in communio and leads to solidarity. Canonists assist the mission of the Church through structures and services which promote ecclesial communio. Renken's address will offer reflections on several such canonical structures and services: diocesan/eparchial structures of participation, pastoral planning, inter-American episcopal structures, greater rapport between the Latin Church and the several Eastern Churches, renewing parish life, and ministry to families.*

### *Introduction*

It is a great privilege for me to offer this closing address of the annual convention of the Canon Law Society of America. It is curious that I stand before you today. At the January 2000 meeting of our society's Board of Governors, we were discussing the theme and the agenda for this 2001 convention. The Convention Planning Committee had suggested the theme, *Ecclesia in America*: the focus of this first CLSA convention in the third millennium was to be Pope John Paul's post-synodal apostolic exhortation to the Church in the western hemisphere.

The BOG was delighted by this proposed theme and considered speakers to discuss the exhortation from three points of view: theological, pastoral, and canonical. I remember my own enthusiasm, and remarked that *Ecclesia in America* contains so much in which canonists would have great practical interest. My enthusiasm was perhaps too extreme. Hearing my encouragement, the BOG members rather spontaneously said, "You sound convinced. You give the canonical reflections." So, here I stand.

Before getting into specifically canonical remarks, I would recall the development and content of *Ecclesia in America*.

## *Ecclesia in America: Development*

On October 12, 1992, the 500th anniversary of the first evangelization of America, the Holy Father spoke at the opening of the Fourth General Assembly of the Latin American Bishops in Santo Domingo, and proposed a synodal meeting “with a view to increased cooperation between the different particular Churches” so that, as part of the new evangelization and an expression of episcopal communion, the pope and bishops might address “the problems relating to justice and solidarity among all the nations of America.”<sup>1</sup>

The pope reports in *Tertio millennio adveniente* that the bishops of Latin America and North America agreed on the importance of a “proposal for a *Synod for the Americas* on the problems of the new evangelization in both parts of the same continent, so different in origin and history, and on the issues of justice and of international economic relation, in view of the enormous gap between North and South.”<sup>2</sup>

As a result, the Holy Father established a presynodal council of the General Secretariat of the Synod of Bishops for the Special Assembly for America, composed primarily of American bishops.<sup>3</sup> After listening to the suggestions of the presynodal council, the pope chose a topic for the synod: “*Encounter With the Living Jesus Christ, the Way to Conversion, Communion and Solidarity in America*.”<sup>4</sup> The General Secretariat issued the *lineamenta*<sup>5</sup> followed by the *instrumentum laboris*.<sup>6</sup> The Synod took place at the Vatican on November 16 to December 12, 1997. *Ecclesia in America* is Pope John Paul II’s post-synodal apostolic exhortation, given in Mexico City on January 22, 1999.

In preparation for the Great Jubilee of the Year 2000, the Holy Father called for synods of each of the five continents: Africa (1994), America (1997), Asia (1998),

<sup>1</sup> Pope John Paul II, “Opening Address to Fourth General Conference of Latin American Episcopate” (October 12, 1992), *Origins* (October 22, 1992) 22 (1992-1993) 321, 323-332 at 328, n. 17. Quoted in Pope John Paul II, Post-synodal Apostolic Exhortation, *Ecclesia in America* [On the Encounter with the Living Jesus Christ: the Way to Conversion, Communion, and Solidarity in America], January 22, 1999, n. 2. Hereinafter, *EiA*.

<sup>2</sup> Pope John Paul II, Apostolic Letter, “As the Third Millennium Draws Near, *Tertio millennio adveniente*” (November 10, 1994), *Origins* (November 24, 1994) 24 (1994-1995), 401, 403-416, n. 38. Quoted in *Ecclesia in America*, n. 2. Hereinafter, *TMA*.

<sup>3</sup> General Secretariat of the Synod of Bishops, *Lineamenta*, “Encounter with the Living Jesus Christ: Way to Conversion, Communion and Solidarity,” *Origins* (August 15, 1996) 26 (1996-1997) 145, 147-164.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> General Secretariat of the Synod of Bishops, *Instrumentum laboris*, “Special Synod for America: The Working Paper,” *Origins* (September 11, 1997) 27 (1997-1998) 201, 203-221.

Oceania (1998), and Europe (1999). “The theme underlying them all is *evangelization*, or rather the new evangelization. . .”<sup>7</sup> This new evangelization is to be “new in ardor, methods, and expression.”<sup>8</sup>

The 1997 Synod discussed “America” in the singular as “an attempt to express not only the unity which in some way already exists, but also to point to that closer bond which the peoples of the continent seek and which the Church wishes to foster as part of her own mission, as she works to promote the communion of all in the Lord.”<sup>9</sup>

### *Ecclesia in America: Content*

The post-synodal exhortation begins by recalling various encounters with the living Jesus Christ in general (chapter 1) and encounters with Him in America in particular (chapter 2). The exhortation ends with an invitation to the Church in America to pursue our mission of the new evangelization (chapter 6). The core of the exhortation, by far the more lengthy section, speaks of three *paths*: the path of conversion (chapter 3), the path to communion (chapter 4), and the path to solidarity (chapter 5). These paths are interrelated: conversion leads to the awareness of communion with Christ and one another; this communion leads to the service of our neighbors; solidarity is thus the fruit of communion.<sup>10</sup>

### *Ecclesia in America: Basis for Pastoral Planning in the New Millennium*

*Ecclesia in America* is the result of a lengthy collaborative process involving countless persons.<sup>11</sup> It offers a *broad* “pastoral plan” for the Church in this hemisphere as we enter the third Christian millennium – or perhaps more precisely, it is the basis for *specific* pastoral planning in all the particular churches in

<sup>7</sup> *EiA*, n. 6, quoting *TMA*, n. 21.

<sup>8</sup> *EiA*, n. 6, quoting Pope John Paul II’s Address to the Assembly of CELAM at Port-au-Prince, March 9, 1983, III: AAS 75 (1983) 778.

<sup>9</sup> *EiA*, n. 5.

<sup>10</sup> *EiA*, n. 52.

<sup>11</sup> Cardinal Jan Schotte, CICM, General Secretary of the Synod of Bishops, wrote in the preface of the *lineamenta* for the Synod for America: “Therefore, the whole church in America is invited to participate: diocesan and religious priests, women and men religious, lay men and women, seminaries and faculties of theology, pastoral councils, Catholic movements and groups, parish communities and all church organizations. The more numerous the responses, the more complete and substantial will be the information for those who are responsible to draw up their official reports. This will likewise ensure the complete and substantial character of the text of the *instrumentum laboris*, the document which will be the center of attention and discussion at the special synod of the Synod of Bishops for

America.” In *Origins* 26 (1996) 147.

America. Just this year in *Novo millennio inuente*<sup>12</sup> (*NMI*, 29), the pope gave a direct invitation to each local church to create “a detailed pastoral plan.”

*Ecclesia in America* is addressed to the Church in this entire continent, north and south. It is addressed to very diverse cultures and peoples, including us in the United States. It is addressed to us canonists serving in the particular churches of this nation. Canonists certainly assist in pastoral planning within the diverse cultures of the particular churches of this hemisphere at the beginning of this third Christian millennium. We are privileged to bring the gift of the vision of canon law to the Church in America as, together with so many others, we weave the wisdom of *Ecclesia in America* into the fabric of our Catholic life. As we do this, in our role as canonists we assist the proclamation of the truth of the Gospel: we evangelize.<sup>13</sup> As we assist in the task of evangelization, we realize that we serve canon law among diverse peoples.<sup>14</sup> *Ecclesia in America* invites canonists to assist in the “new evangelization” of America and, thereby, to assist in bringing the Good News to people in the diverse cultures of this continent.

Cardinal Avery Dulles, S.J., once remarked that “John Paul II’s preferred category of ecclesiology is evidently that of communion.”<sup>15</sup> In *Ecclesia in*

<sup>12</sup> Pope John Paul II, Apostolic Letter, “At the Beginning of the Third Millennium, *Novo millennio inuente*” (January 6, 2001), *Origins* (January 18, 2001) 30 (2000-2001), 489, 491-508. Hereinafter, *NMI*.

<sup>13</sup> *EiA*, n. 66 gives a concise description of *evangelization*: “The basic task for which Jesus sends out his disciples is to proclaim the Good News, that is, *evangelization* (*Mk* 16:15-18).” The Holy Father continues: “As I have said on other occasions, the new and unique situation in which the world and the Church find themselves at the threshold of the Third Millennium, and the urgent needs which result, mean that the mission of evangelization calls for a new program which can be defined overall as a ‘new evangelization.’”

<sup>14</sup> Inculturation means bringing the Gospel to the diverse cultures; in this process, the truth of the Gospel remains immutable: “...it must not be forgotten that the Paschal Mystery of Christ, the supreme manifestation of the infinite God within the finitude of history, is the only valid point of reference for all of humanity on its pilgrimage in search of authentic unity and true peace.” (*EiA*, n. 70) The Pontifical Council for Culture enlightens further: “‘Today, as the Gospel gradually comes into contact with cultural worlds which once lay beyond Christian influence, there are new tasks of inculturation’ [Pope John Paul II, *Fides et ratio*, 72]. At the same time, some traditionally Christian cultures or cultures imbued with 1,000-year-old religious traditions are being shattered. Thus, it is not only a question of grafting the faith onto these cultures, but also of revitalizing a de-Christianized world whose only Christian references are of a cultural nature. On the threshold of the third millennium, the church throughout the world is faced with new cultural situations, new fields of evangelization.” Pontifical Council for Culture, “Toward a Pastoral Approach to Culture,” *Origins* (June 17, 1999) 29 (1999-2000) 65, 67-84 at 67, n. 1.

<sup>15</sup> Avery Dulles, “The Ecclesiology of John Paul II,” *Origins* (April 22, 1999) 28 (1998-1999) 759-763 at 759. We also recall the focused statement of the 1985 Extraordinary Synod of Bishops: “The ecclesiology of communion is the central and fundamental idea of the council’s documents. *Koinonia*/communion, founded in sacred scripture, have been held in great honor in the early church and in the Eastern churches to this day. Thus, much was done by the Second Vatican Council so that the Church as a communion might be understood and concretely incorporated into life.” 1985

*America*, the pope says that “This communion, present in the Church, must be made visible in concrete signs;” (*EiA*, 33) and in its fourth chapter, the chapter on the path to *communio*, the Holy Father refers to several ecclesiastical structures and services which will strengthen *communio* among America’s diverse peoples and cultures. To each of these we bring our canonical expertise. I select the following issues for some brief reflections:

- Diocesan/eparchial structures of participation (n. 36)
- Pastoral planning (n. 36)
- Inter-American episcopal structures (n. 37)
- Greater rapport between the Latin Church and several Eastern Churches (n. 38)
- Renewing parish life (n. 41)
- Ministry to families (n. 46)

Naturally, I realize others may select different topics from *Ecclesia in America* which have canonical significance, but I hope we will agree that my six choices are also valid selections. Of course, to these six issues others in the Church also bring their expertise, but the precise contribution of canonists cannot be ignored.

#### I. *Diocesan/Eparchial Structures of Participation (n. 36)*

*Communio* in the new millennium will be strengthened by diocesan structures of participation in the Church in America, and canonists can help.

*Ecclesia in America* recalls the teaching of *Lumen gentium*, 23, that each bishop “is the visible principle and foundation of the unity of his particular Church” who is “duty-bound to promote communion” within his diocese “so that the drive for a new evangelization in America may be more effective.” The bishop is to teach that the diocese is the visible expression of the Church’s communion. Pope John Paul II says, “Working in favor of this communion are the structures which the Second Vatican Council called for as a means of supporting the diocesan bishop’s work, and which post-conciliar legislation has spelled out in greater detail.” A footnote in the post-synodal exhortation identifies three such conciliar structures: the presbyteral council, the college of (eparchial) consultants, and diocesan/eparchial

Extraordinary Synod of Bishops, “Final Report,” *Origins* (December 19, 1985) 15 (1985-1986) 444-450 at 448. For reflections on the ecclesiology of *communio*, see: Joseph Cardinal Ratzinger, “The Ecclesiology of the Constitution on the Church, Vatican II, ‘Lumen Gentium,’” *L’Osservatore Romano*, Weekly English Edition 38 (1710) (September 19, 2001) 5-8. One also notes treatment on ecclesial *communio* in the concluding “Message to the People of God” by participants at the 2001 Synod of Bishops, which was taking place in Rome during this annual CLSA convention: Synod of Bishops, “Message to the People of God” *Origins* 31 (November 8, 2001) 31 (2001-2002) 367, 369-370, n. 16 et al.

pastoral council. “The spirit of participation and shared responsibility in the working of [such] diocesan structures will certainly be strengthened if the nature of the particular Church is better known and appreciated.”

The pope also takes up this theme in *Novo millennio ineunte* where he explains that *communio* must be cultivated and strengthened daily, and at every level in the structures of each Church’s life. There, relations between bishops, priests and deacons, between pastors and the entire People of God, between clergy and religious, between associations and ecclesial movements must all be clearly characterized by communion. He mentions the presbyteral council and the pastoral council as canonical structures of participation in which the spirituality of communion provides a soul. He also recalls some “ancient pastoral wisdom” about the consultative nature of these groups. I quote the complete reflections of Pope John Paul II:

. . . the structures of participation envisioned by canon law, such as *the council of priests and the pastoral council*, must be ever more highly valued. These of course are not governed by rules of parliamentary democracy, because they are consultative rather than deliberative; yet this does not mean that they are less meaningful or relevant. The theology and spirituality of communion encourage a fruitful dialogue between pastors and faithful: on the one hand uniting them *a priori* in all that is essential, and on the other leading them to pondered agreement in matters open to discussion.

To this end, we need to make our own the ancient pastoral wisdom which, without prejudice to their authority, encourages pastors to listen more widely to the entire People of God. Significant is St. Benedict’s reminder to the abbot of a monastery, inviting him to consult even the youngest members of the community: “By the Lord’s inspiration, it is often a younger person who knows what is best.” And St. Paulinus of Nola urges: “Let us listen to what all the faithful say, because in every one of them the Spirit of God breathes.

While the wisdom of the law, by providing precise rules for participation, attests to the hierarchial structure of the Church and averts any temptation to arbitrariness or unjustified claims, the spirituality of communion, by promoting a trust and openness wholly in accord with the dignity and responsibility of every member of the People of God, supplies institutional reality with a soul. (*NMI*, 45)

To the pope's vision about diocesan/eparchial structures of participation in the *Ecclesia in America*, canonists bring the gift of practical wisdom. Every canonist versed in the 1983 *Code of Canon Law* and the 1990 *Code of Canons of the Eastern Churches* is aware of the ecclesiology of Vatican Council II which underlies the canons. We recall that when he promulgated the 1983 code, Pope John Paul reflected that "the new Code which is promulgated today necessarily required the previous work of the council"<sup>16</sup> and when he promulgated the 1990 code he said that it "must be considered a new complement to the teachings proposed by the Second Vatican Council, and [a work] by which at last the canonical ordering of the entire Church is completed."<sup>17</sup>

We know the roles given to each structure within the particular church, and how these various structures work together for the common good. We say that "[t]he diocesan curia consists of those institutions and persons which assist the bishop in the governance of the whole diocese" (*CIC* c. 469) and we say that the eparchial curia "assists [the eparchial bishop] in the governance of the eparchy entrusted to him" (*CCEO* c. 243, §1). We can define readily the roles of the persons and institutions in the curia:

- the vicar general (*CIC* c. 475) or protosyncellus (*CCEO* c. 245)
- the episcopal vicars (*CIC* c. 476) or syncelli (*CCEO* c. 246)
- the chancellor and other notaries (*CIC* c. 482; *CCEO* cc. 252-253)
- the moderator of the curia (*CIC* c. 473, §§2-3)
- the episcopal council (*CIC* c. 473, §4)
- the tribunal (*CIC* c. 472; cf. cc. 1419-1437; *CCEO* c. 243 §2; cf. cc. 1086-1101)
- the diocesan/eparchial finance officer (*CIC* c. 494; *CCEO* c. 262)
- the diocesan/eparchial finance council (*CIC* cc. 492-493; *CCEO* c. 263).<sup>18</sup>

Particular law can establish other curial structures which serve the needs of the particular church (cf. *CIC* c. 469; *CCEO* c. 243, §3: "If it is necessary or useful for the eparchy the eparchial bishop can establish other offices in the eparchial curia.")<sup>19</sup>

<sup>16</sup> Pope John Paul II, apostolic constitution *Sacrae disciplinae legis* (January 25, 1983).

<sup>17</sup> Pope John Paul II, apostolic constitution *Sacri canones* (October 18, 1990). The pope adds that the canonical ordering of the entire Church is accomplished by the *Codex iuris canonici* and the apostolic constitution *Pastor bonus* (June 28, 1988) which is added to both codes.

<sup>18</sup> Sometimes the bishop must simply hear the advise of the financial council (see *CIC* cc. 1263; 1277; 1281, §2; 1305; 1310, §2; *CCEO* cc. 1049, §2; 1054, §2; cf., c. 263, §4); sometimes he must obtain its consent before he can act validly (see *CIC* cc. 1277; 1292, §1; 1295; *CCEO* cc. 1012; 1036, §1, 1°-2°).

<sup>19</sup> It seems that the group of pastors to be heard when the bishop wishes to remove or transfer a pastor (c. 1742, §1; 1745, 2°; 1750; *CCEO* cc. 1391, §1; 1394, 2°; 1399, §1) is also in the curia.

In addition to these curial entities, each particular church is gifted with structures of participation envisioned by Vatican Council II and mentioned in *Ecclesia in America* – the presbyteral council (*CIC* cc. 495-501; *CCEO* cc. 264-270), the college of consultors chosen from the presbyteral council (*CIC* c. 502; *CCEO* c. 271), and the pastoral council (*CIC* cc. 511-514; *CCEO* cc. 272-275).<sup>20</sup> The former two are required by law, and the third is available “to the extent that pastoral circumstances suggest it” (*CIC* c. 511; *CCEO* c. 272). These three structures of participation are not part of the diocesan curia, as the finance council is; rather, these are treated in both the *CIC* and the *CCEO* as structures within the particular churches but outside the curia.<sup>21</sup>

Each of these bodies has a unique purpose within the particular church, and canonists help to recall these unique *purposes*. We carefully avoid treating some or all of them as if they were virtually identical. Canonists also help to explain the

<sup>20</sup> The *CIC* expects that the presbyteral council and pastoral council reflect the diversity of the diocese (which indeed may be composed of peoples of diverse cultures): *CIC* c. 499 says the presbyteral council is to represent the *presbyterium* “taking into account especially the different ministries and various regions of the diocese;” and *CCEO* c. 268 says the presbyteral council’s composition is to take “into account especially the different ministries and the various districts of the eparchy.” *CIC* c. 512, §2 says the diocesan pastoral council is to “truly reflect the entire portion of the people of God . . . with consideration given to the different areas of the diocese, social conditions and professions...;” and *CCEO* c. 273, §2 legislates that the eparchial pastoral council is to represent “the Christian faithful of the eparchy with regard to the types of persons, associations and other endeavors.”

<sup>21</sup> Within the *Code of Canon Law*, Book II (The People of God), Part II (Hierarchical Constitution of the Church), Title III (Internal Ordering of Particular Churches), the following chapters are identified:

- Chapter I - The Diocesan Synod
- Chapter II - The Diocesan Curia (*This includes the canons on the finance council.*)
- Chapter III - The Presbyteral Council and the College of Consultors
- Chapter IV - Chapters of Canons
- Chapter V - The Pastoral Council
- Chapter VI - Parishes, Pastors, and Parochial Vicars
- Chapter VII - Vicars Forane
- Chapter VII - Rectors of Churches and Chaplains

Within the *Code of Canons of the Eastern Churches*, Title VII (Eparchies and Bishops) are the following chapters and articles:

- Chapter I - Bishops
- Chapter II - The Organs Assisting the Eparchial Bishop in Governing the Eparchy
  - Article I - The Eparchial Assembly
  - Article II - The Eparchial Curia
    - 1° The Protosyncellus and Syncelli
    - 2° The Chancellor; other Notaries and the Archives of the Eparchial Curia
    - 3° The Eparchial Finance Officer and Finance Council
  - Article III - The Presbyteral Council and the College of Eparchial Consultors
  - Article IV - The Pastoral Council
  - Article V - Protopresbyters
- Chapter III - Parishes, Pastors and Parochial Vicars
- Chapter IV - Rectors of Churches

*nature* of the operation of these bodies; generally, they may act in a consultative way, but sometimes the college of consultors (and also the finance council, which is part of the curia) acts in a deliberative way. Simply to regard all these bodies as the “diocesan/eparchial consultative bodies” is inaccurate and damaging – inaccurate, because sometimes the college of consultors (like the finance council) is deliberative; and damaging, because it tends to blur the distinct purpose of each body.

Canonists also voice the important role of consultation (reflecting an “ancient pastoral wisdom”) in decision-making within the hierarchical structure of the Church. And, obviously, we bring our canonical vantage to so much of the vast *subject matter* treated by these structures of participation and communion.

## II. *Pastoral Planning* (n. 36)

*Communio* in the new millennium will be strengthened by pastoral planning in the Church in America, and canonists can help.

Pope John Paul II recalls a *propositio* of the Special Synod of Bishops of America which invites each diocesan/eparchial bishop to implement a pastoral plan:

It is up to the Bishop, with the help of priests, deacons, religious and lay people to implement a coordinated pastoral plan, which is systematic and participatory, involving all the members of the Church and awakening in them a missionary consciousness.<sup>22</sup>

In *Novo millennio inuente*, Pope John Paul II asks each local church in the entire world to develop a pastoral plan. He says:

With its universal and indispensable provisions, the program of the Gospel must continue to take roots, as it has always done, in the life of the Church everywhere. It is *in the local churches* that the specific features of a detailed pastoral plan can be identified – goals and methods, formation and enrichment of the people involved, the search for the necessary resources – which will enable the proclamation of Christ to reach people, mold communities, and have a deep and incisive influence in bringing Gospel values to bear in society and culture.

<sup>22</sup> *Propositio* 43.

I therefore earnestly exhort the pastors of the particular churches, with the help of all sectors of God's people, confidently to plan the stages of the journey ahead, harmonizing the choices of each diocesan community with those of neighboring churches and of the universal Church. (*NMI*, 29)

He adds that this harmonization will be facilitated by the work of bishops in episcopal conferences and synods.

To the pope's vision about pastoral planning in the *Ecclesia in America*, canonists bring the gift of practical wisdom.

All of *Ecclesia in America* is the basis of significant pastoral planning. To weave the Holy Father's vision into the ordinary fabric of daily life within the Church in America, practical assistance will be offered by those structures of participation called pastoral councils. Pastoral planning is as ancient and new as the Church itself. From the very earliest days the Church has discerned practical ways to address the needs of the People of God, in the light of the Gospel and with pastoral wisdom. The work of pastoral planning belongs to the life of the Church in so many of all its dimensions. Yet, we recall that Vatican Council II invites the establishment of a body whose entire *raison d'être* is pastoral planning; we name that body the [diocesan/eparchial] *pastoral council* (*Christus Dominus*, 27). Post-conciliar sources confirm clearly that this pastoral council "investigates, considers, and proposes practical conclusions about those things which pertain to pastoral works in the diocese" (*CIC* c. 511; *CCEO* c. 272), and that pastoral councils with the same purpose may be found in parishes (see *CIC* c. 536; cf. *CCEO* c. 295).<sup>23</sup> This work of investigating, pondering, and then proposing conclusions can properly be termed *pastoral planning*.

The unique purpose of the pastoral council, then, is to do pastoral planning. Other groups will plan pastorally, but the pastoral council is that structure of participation within the particular church which has no purpose other than pastoral planning – often among diverse peoples of one particular Church. Canonists will continue to recall this. Canonists will also recall that the pastoral council does its pastoral planning in a consultative way, and that consultation reflects an "ancient pastoral wisdom" of Church governance. Beyond all this, canonists will lend great assistance to so much of the subject matter of the council's investigations, considerations, and practical conclusions.

<sup>23</sup> For a study of the historical development of legislation on the pastoral council and reflections on it, see John A. Renken, "Pastoral Councils: Pastoral Planning and Dialogue Among the People of God," *The Jurist* 53 (1993) 132-154.

### III. *Inter-American Episcopal Structures (n. 37)*

*Communio* in the new millennium will be strengthened by inter-American episcopal structures in the Church in America, and canonists can help.

*Ecclesia in America* recalls that “[t]he Special Assembly for America of the Synod of Bishops was the first ever to have gathered Bishops from the entire continent. . . .” It strengthened ecclesial *communio* and made clear the need for this *communio* to grow; indeed, it showed “clearly the value of a communion transcending individual Conferences of Bishops.” The Synod Fathers had underscored the importance of inter-American gatherings of bishops “as an expression of practical solidarity and a chance to study common challenges to evangelization in America.” Such episcopal gatherings have already been sponsored by some episcopal conferences of the various American countries.

Pope John Paul II offers practical directives on two kinds of episcopal structures for the Church in this hemisphere: inter-American *episcopal meetings*, and inter-American *study commissions* to address specific common concerns. About inter-American episcopal meetings, he says “[i]t would be helpful to specify more exactly the nature of these meetings, so that they may become a better expression of communion among all the Bishops.” He wants to clarify the *purpose* of these meetings. About the inter-American study commissions, he says “[b]eyond these more inclusive [inter-American episcopal] meetings, it could be useful, whenever circumstances require it, to establish special commissions to explore more deeply issues which concern America as a whole.” He wants special study commissions to address specific pastoral concerns common to the continent; certainly, the *purpose* of each such commission will also need to be clearly defined. To illustrate what these special commissions may do, the pope recalls five areas of common pastoral concern identified by the Synod Fathers themselves: “the sharing of information on pastoral matters, missionary collaboration, education, immigration and ecumenism.”

Beyond these more inclusive inter-American episcopal meetings and these inter-American special study commissions, Pope John Paul II urges bishops to encourage all the faithful to develop bonds of *communio* with other American local churches; quoting the Synod participants, he says this will be achieved “through education, the exchange of information, fraternal ties between parishes and dioceses, and projects involving cooperation and joint intervention in questions of greater importance, especially those affecting the poor.”

To the pope’s vision about inter-American episcopal structures in the *Ecclesia in America*, canonists bring the gift of practical wisdom.

As mentioned at the beginning of this presentation, Pope John Paul II had convoked Synods of Bishops for each of the five continents: Africa (1994), America (1997), Asia (1998), Oceania (1998), and Europe (1999). The theme underlying each of them is the new evangelization. Without doubt, the pope saw practical pastoral purpose in gathering bishop representatives of the five continents to address the spread of the Gospel. In *Ecclesia in America* he invites similar future gatherings whose exact purpose must be specified. These gatherings obviously would occur with periodic frequency, at the bidding of the bishops themselves, and would not replace the episcopal conferences in any way. The issues addressed would be those common to the entire Church in America. Structures for similar gatherings are in place in the other continents.<sup>24</sup>

Meetings among representatives of neighboring episcopal conferences is envisioned and recommended by Vatican Council II:

When special circumstances may call for it, the bishops of several nations, with the approval of the Apostolic See, will be able to set up one conference for all. Moreover, to promote and safeguard the greater good, contact between the episcopal conferences of different nations is to be cultivated. (*Christus Dominus*, 38)

Pope John Paul II, in his apostolic letter *Apostolos Suos*, mentions this statement from *Christus Dominus* when he says that “[t]he collegial spirit which inspired the establishment of episcopal conferences and guides their activity is also the reason why conferences of different countries should cooperate among themselves, as the Second Vatican Council recommended and the subsequent canonical legislation reaffirmed.”<sup>25</sup>

<sup>24</sup> For detailed discussions about supranational continental episcopal structures, see: Myriam Wijlens, “The Intermediate Level in the Roman Catholic Church: An Organizational or Ecclesiological Category?” in *Of All Times and of All Places, Protestants and Catholics on the Church Local and Universal*, eds. Leo J. Koffeman and Henk Witte, IIMO Research Publication, 56 (Zoetermeer: Meinema, 2001) 95-130; “Structures for Episcopal Leadership in Europe,” Lecture given at the Annual Convention of the Canon Law Society of Great Britain and Ireland, Gateshead, England, May 18, 2001 (Unpublished) 17 pp.

<sup>25</sup> Pope John Paul II, Apostolic Letter *motu proprio* “On the Theological and Juridical Nature of Episcopal Conferences, *Apostolos Suos*” (May 21, 1998), *Origins* (July 30, 1998) 28 (1998-1999) 152-158, n. 5. See also n. 33 which mentions the gatherings of neighboring episcopal conferences which existed at the time of the apostolic letter: “Cf., *Code of Canon Law*, canon 459, §1. Such cooperation has in fact been fostered by the International Meetings of Episcopal Conferences, the Consejo Episcopal Latinoamericano (C.E.L.A.M.), the Consilium Conferentiarum Episcopatum Europae (C.C.E.E.), the Secretariado Episcopal de América Central y Panamá (S.E.D.A.C.), the Commissio Episcopatum Communitatis Europaeae (COM.E.C.E.), the Association des Conférences Episcopales de l’Afrique Centrale (A.C.E.A.C.), the Association des Conférences Episcopales de la Région de l’Afrique Centrale (A.C.E.R.A.C.), the Symposium des Conférences Episcopales d’Afrique et de Madagascar (S.C.E.A.M.), the Inter-Regional Meeting of Bishops of Southern Africa (I.M.B.S.A.), the Southern

The *Code of Canon Law* also makes provision for such gatherings: “Relations between conferences of bishops, especially neighboring ones, are to be fostered in order to promote and protect the greater good.” (*CIC* c. 459, §1)<sup>26</sup> Within this hemisphere, such relations among episcopal conferences would promote dialogue and communication among all the Churches of America – beyond the particular churches of only one nation or of a small group of neighboring nations.

Throughout all this, canonists will bring their assistance to the bishops. We will help draft appropriate particular legislation to define all aspects of both the inter-American episcopal gatherings and the special study commissions: their purposes, relation to the Holy Father and the participating episcopal conferences, composition, leadership, frequency of meetings, etc. We will take care that these inter-American episcopal structures respect the legitimate role of the individual episcopal conferences, and that they provide the occasion for a *communio* transcending the conferences. Once the structures are in place, we will offer advise on so many of the individual issues addressed by the episcopal meetings and the special study commissions – issued identified by Pope John Paul II and by the participants of the Synod for America, and by their eventual successors in the apostolic office.

#### IV. *Greater Rapport Between the Latin Church and Several Eastern Churches* (n. 38)

*Communio* in the new millennium will be strengthened by greater rapport between the Latin Church and the several Eastern Churches in the Church in America, and canonists can help.

The Synod Fathers focused particular attention to the recent phenomenon of Eastern Catholic particular Churches, with their own hierarchy, flourishing in America; they proposed “concrete ways for the particular Churches of the Latin rite to offer fraternal assistance to the Eastern Catholic Churches throughout the continent.” Obvious examples are Latin rite priests (especially those with Eastern roots) offering liturgical assistance to Eastern communities, and these communities using Latin rite churches whenever appropriate. In addition, the Holy Father recounted three proposals offered by the participants of the Synod:

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African Catholic Bishops’ Conference (S.A.C.B.C.), the Conférences Episcopales de l’Afrique de l’Ouest Francophone (C.E.R.A.O.), the Association of the Episcopal Conferences of Anglophone West Africa (A.E.C.A.W.A.), the Association of Member Episcopal Conferences in Eastern Africa (A.M.E.C.E.A.), the Federation of Asian Bishops’ Conferences (F.A.B.C.), the Federation of Catholic Bishops’ Conferences of Oceania (F.C.B.C.O.) (Cf. *Annuario Pontificio 1998*, Vatican City 1998, pp. 1112-1115). Nevertheless, these institutions are not properly Episcopal Conferences.”

<sup>26</sup> No parallel canon exists in the *CCEO*.

- mixed commissions charged with studying common pastoral problems may be created both in episcopal conferences and in international agencies for cooperation among bishops;
- catechesis and theological formation for lay people and seminarians of the Latin Church may include knowledge of the living tradition of the Christian East;
- bishops of the Eastern Catholic Churches may participate in the various Latin episcopal conferences.<sup>27</sup>

The Pope envisions that this fraternal cooperation among the bishops will assist all the particular churches.

To the pope's vision about greater rapport between the Latin Church and the several Eastern Churches in the *Ecclesia in America*, canonists bring the gift of practical wisdom.

As canonists we may promote this spirit of collaboration among the Churches by becoming familiar ourselves with the spirit, tradition, and the practical content of both codes. I suppose all of us would wish to see more canon law taught to priests and other pastoral ministers of the Church. With this, and perhaps indeed to make our wish yet richer, we would hope canonists and all pastoral leaders would also be familiar with both codes which govern the universal church--together, of course, with the spiritual heritage on which this law is based.

I would imagine that many of us Latins gathered here are challenged to learn more about Eastern Churches and their law. We may be a little embarrassed, for example, when asked some very elementary questions about Eastern law: e.g., what are the five great Eastern rites (c. 28, §2)? What is the Eastern terminology for Latin parallel structures such as: local ordinary, vicar general, episcopal vicar, diocese, diocesan synod, deans, the sacrament of confirmation, etc.? What is the difference between an eparchy and an exarchy? What is meant by patriarchal church, major episcopal church, metropolitan church, other churches *sui iuris*—and what are examples of each church?

The Church in America is enriched with many particular churches of the Latin and Eastern traditions. New Eastern particular Churches continue to emerge (we will recall that July 1, 2001 a new eparchy was established: the St. Thomas Syro-Malibar Eparchy of Chicago). Our traditions do not merely co-exist: we live united, together, as complementary and enriching expressions of the one Church

<sup>27</sup> Bishops of the Eastern Catholic Churches, and those equivalent to eparchial bishops, belong to the United States Conference of Catholic Bishops. See USCCB *Statutes*, II, a), 1) and 3). In USCCB *Statutes, Bylaws, Handbook* (Washington, D.C.: USCC, 2001).

of Christ, as disciples living in practical and juridical *communio* with each other. Canonists, concerned as we are with ecclesial structures and right relationships, bring any number of gifts to this *communio*. We are canonists of the Catholic Church – not only of the Latin Church or one of the many Eastern Churches. Both the *Code of Canon Law* and the *Code of Canons of the Eastern Churches* (together with *Pastor Bonus*) comprise the one contemporary body of canon law – today’s *corpus iuris canonici*. Certainly, *Ecclesia in America* challenges us to know, and to know well, the entire body of universal legislation.

#### V. *Renewing Parish Life* (n. 41)

*Communio* in the new millennium will be strengthened by renewing parish life in the Church in America, and canonists can help.

*Ecclesia in America* says that “[t]he parish is a privileged place where the faithful concretely experience the Church. Today in America as elsewhere in the world the parish is facing certain difficulties in fulfilling its mission. The parish needs to be constantly renewed on the basis of the principle that ‘the parish must continue to be above all a Eucharistic community.’” All “‘parishes are called to be welcoming and fraternal, places of Christian initiation, of education in and celebration of the faith, open to the full range of charisms, services and ministries, organized in a communal and responsible way, capable of utilizing existing movements of the apostolate, attentive to the cultural diversity of the people, open to pastoral projects which go beyond the individual parish, and alert to the world in which they live.’”

Pope John Paul II comments that special attention must be given to parishes in large urban areas “where the difficulties are such that normal parish structures are inadequate and the opportunities for the apostolate are significantly reduced.” These urban parishes must be preserved. The pope does not call for splitting larger parishes into two or more smaller ones; instead, he suggests that one way of renewing these large urban parishes is “to consider the parish as a community of communities and movements . . . to form ecclesial communities and groups of a size that allows for true human relationships” within the parish. These intra-parochial groups make it possible to live *communio* more intensely; they make it easier to gather to hear the word of God, to reflect on human problems in light of that word, and to make responsible decisions inspired by the all-embracing love of Christ. “In this way, every parish, and especially city parishes, can promote nowadays a more person-centered evangelization and better cooperate with other social, educational and community work.”

The Holy Father adds that “[a] renewed parish needs the collaboration of lay people and therefore a director of pastoral activity and a pastor who is able to work

with others.” The pastor should be filled with a missionary spirit, which spirit should also distinguish American parishes and “which leads them to reach to those who are far away.”

To the pope’s vision about renewing parishes in the *Ecclesia in America*, canonists bring the gift of practical wisdom.

As *Ecclesia in America* invites us to work for the renewal of our parishes, all will recall that the parish is primarily a canonical structure. Canon law describes a parish and defines its perimeters (territorial or personal); it explains the function of the pastor (or his practical canonical equivalent), his relation to the other priests who lead and serve in the parish, and his responsibilities and rights (which, common sense tells us, he must exercise in collaboration with others); it recalls the proper purposes of parochial structures of participation (the two parish councils: finance and pastoral) and their relation to the pastor and the parish. Canonists bring our expertise when parishes are established, merged, or dissolved. We bring helpful insight to discussion about parish life when we remind that canon law proposes a preferred hierarchy in models of parish leadership. The ministry and office of pastor is central in every parish; therefore, every model of parish leadership necessarily involves a priest who, if he is not its pastor, at least has the powers and faculties of a pastor.<sup>28</sup> A parish should never be without the service of a pastor: if a parish is vacant or a pastor impeded, the diocesan bishop is to appoint as soon as possible a parochial administrator to take the pastor’s place (*CIC* c. 539; *CCEO* c. 298). Until the parochial administrator is in place, the (senior) parochial vicar governs the parish or, if there is no parochial vicar, the priest assigned to this function by particular law (*CIC* c. 541, §1; *CCEO* c. 300, §1 says the nearest pastor assumes interim pastoral care if there are no parochial vicars). A priest, serving as or as if a pastor, is essential for the life of every parish *all the time*.

<sup>28</sup> Pope John Paul II said on July 2, 1993 to a group of United States bishops during their *ad liminia* visit: “It is not a wise pastoral strategy to adopt plans which would assume as normal, let alone desirable, that a parish community be without a priest pastor. To interpret the decreased number of active priests – a situation which we pray will soon pass – as a providential sign that lay persons are to replace priests is irreconcilable with the mind of Christ and of the Church. The royal priesthood of the laity is never furthered by obscuring the ministerial priesthood of the ordained, which makes priests not only celebrants of the Eucharist, but also spiritual fathers, guides and teachers of the faithful entrusted to them.” *Origins* (July 15, 1993) 23 (1993-1994) 125. A similar thought is found in the 1997 Interdicasterial *Instruction*: “The ministerial priesthood is therefore necessary for a community to exist as ‘Church’: ‘The ordained priesthood ought not to be thought of as existing ... posterior to the ecclesial community, as if the Church could be imagined as already established without the priesthood.’ [John Paul II, Post-Synodal Exhortation *Pastores Dabo Vobis*, n. 16] Indeed, were a community to lack a priest, it would be deprived of the exercise and sacramental action of Christ, the Head and Pastor, which are essential for the very life of every ecclesial community.” Congregation for the Clergy, et al., *Instruction “On Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priests”* (August 15, 1997), *Origins* (November 27, 1997) 27 (1997-1998) 397, 399-409, n. 10.

The *Code of Canon Law* and the *Code of Canons of the Eastern Churches* expect (and prefer) that every parish have its proper *parochus* (*CIC* c. 526, §1, see cc. 515, §1, 519; *CCEO* c. 287, §1; see cc. 279, 281) to whom universal law gives stability in office.<sup>29</sup> When circumstances require it, the pastoral care of a parish may be entrusted to several priests *in solidum*, one of whom is to be the priests' moderator (*CIC* c. 517, §1; *CCEO* c. 287, §1). Because of a lack of priests or other circumstances, the care of several neighboring parishes can be entrusted to the same pastor (*CIC* c. 526, §1; *CCEO* c. 287, §1). In addition, the *Code of Canon Law* only provides that, where there is a lack of priests, the diocesan bishop can decide to entrust a participation in the exercise of parochial pastoral care to a deacon, a lay person, or a community of persons who are not priests; in this case he is to appoint a priest with the powers and faculties of a pastor to direct the pastoral care (*CIC* c. 517, §2).<sup>30</sup>

Canonists are a prophetic voice, likely offering a great challenge to some, when we explain that, unless they pertain to a personal parish,<sup>31</sup> the faithful belong to stable community which is called the territorial parish – practically and rightly understood to be “the Catholic Church in the neighborhood.” While certainly every Catholic is radically at home in every celebration of the Most Holy Eucharist,<sup>32</sup> a certain anomaly seems to occur when a person leaves his or her proper parish and worships regularly in a different parish – that is, in the church of another neighborhood. If everyone did the same, we would instead speak of “deliberate congregations” rather than the Catholic Church of each neighborhood, which we would no longer have. Canonists, aware of the delicacy but also the implication of all this, can bring significant insights into discussion about parish viability and membership – as all in the Church in America work in *communio* to renew parish life.

<sup>29</sup> “A pastor must possess stability in office and therefore is to be appointed for an indefinite period of time. The diocesan bishop can appoint him only for a specific period if the conference of bishops has permitted this by a decree.” (c. 522)

<sup>30</sup> A study of the history of the development of the arrangement envisioned in canon 517, §2 shows that the canon reflects the grassroots experience of the Church in America. Archbishop Castillo Lara explained to the *coetus De populo Dei*, which was seriously considering eliminating the arrangement from the draft of proposed law, the experience of women religious serving vicariates in Venezuela. His favorable intervention resulted in the possibility being retained in the draft. Any honest assessment of this same historical development from its beginning will show that this arrangement is meant to be extraordinary. It can take place only when, in the judgment of the diocesan bishop, there is a dearth of priests. It cannot be implemented otherwise. And even where the arrangement is implemented, a priest is assigned to direct (*moderare*) parish life. He has the powers and faculties of a *parochus*. *Communicationes* 13 (1981) 149.

<sup>31</sup> *Personal* parishes, which exist in both codes (*CIC* c. 518; *CCEO* c. 280, §1), are structures within a diocese/eparchy which may reflect the diverse cultures of the particular Church.

<sup>32</sup> See Congregation for the Doctrine of the Faith, “Some Aspects of the Church Understood as a Communion” *Origins* (June 25, 1992) 22 (1992-1993), 108-112, n. 11. The Eucharist is always a universal celebration: it is never the action of the celebrating community alone.

## VI. *Ministry to Families* (n. 46)

*Communio* in the new millennium will be strengthened by ministry to families in the Church in America, and canonists can help.

Pope John Paul II recounts that from the beginning of creation, God “definitively established the family” which, by the word of God, gradually becomes a “domestic church,” fruitful in human and Christian virtues – a sanctuary in which “life is born and is welcomed as God’s gift.” The source of vocations is found in the family, and Marian devotion keeps families united and prayerful with Mary, like the disciples before Pentecost.

“Many insidious forces are endangering the solidity” of the family in most American countries – among which are the increase in divorce, the spread of abortion, infanticide, the contraceptive mentality. In the face of this, the Church must reaffirm that the foundation of human life is the conjugal relationship between husband and wife which, between Christians, is a sacrament. To this end, the Holy Father makes several suggestions for the Church in America:

- A broad catechetical effort on the Christian ideal of conjugal communion and family life, including the spirituality of fatherhood and motherhood;
- Pastoral attention to the role of men as husbands and fathers, and to the responsibility they share with their wives for their marriage, the family, and the raising of their children;
- Serious preparation of young people for marriage, presenting Catholic teaching on the sacrament at the theological, anthropological, and spiritual levels;
- A constant increase of pastoral initiatives to families.

In addition, the families themselves, as the “domestic church,” must be settings where parents are the first heralds of the faith to their children; where time is set aside for prayer; where spiritual times are shared (e.g., family participation in Mass on Sundays and other holy days, in the sacrament of reconciliation, in common family prayer). In the midst of all this, children may discover a Church vocation and will learn that “family life is a way to realize the universal call to holiness.”

To the pope’s vision about ministry to families in the *Ecclesia in America*, canonists bring the gift of practical wisdom.

Much of our work as canonists is devoted to families – particularly, but by no means exclusively, our the ministry in the tribunal. No doubt there are countless other Catholics who bring their expertise to family ministry among the peoples of the diverse cultures of the *Ecclesia in America*. Yet, canonists too bring a valuable

contribution. All of us hope that ever greater dialogue and “connection” be made between the work of canonists and those of these several others. Canonists, for example, have nature-based and faith-based insights which would be part of any marriage preparation<sup>33</sup> and family ministry, insights dealing with such important issues as :

- the basic human capacity to consent to marriage
- the basic human capacity to assume the essential obligations of marriage
- the various notions on marital permanence which may render marriage consent invalid
- the required intention for a valid simple convalidation of marriage
- the mutual giving and receiving of the right to children which admits responsible parenting but not immoral exclusion of offspring
- the errors about marriage (and its essential properties, essential elements, and sacramentality) which may so determine one’s will that valid marriage consent does not occur
- the conditions which parties may attach to their consent which may not allow a true marriage ever to begin<sup>34</sup>

Aware of the fragility of so many marriages, even those of Catholics, canonists also urge practical means of continued support to families. And, of course, through our work in tribunals (always enhanced by further study, especially of the jurisprudence of the Roman Rota) we seek the truth of the status of persons in the Church who have experienced the trauma of marital breakdown and divorce.

### *Conclusion*

*Ecclesia in America* provides the basis for pastoral planning throughout the Church in this hemisphere at the beginning of the third Christian millennium, a *kairos* which will lead to where only God knows. The post-synodal exhortation is addressed to all Catholics in the particular Churches of America – including canonists who are concerned as we are with structures and services which promote ecclesial *communio*. We bring our gift of practical wisdom to the Holy Father’s vision. In so doing, we assist the work of the “new evangelization” as the Gospel is (re)proclaimed to the peoples of diverse peoples and cultures. I have offered brief canonical reflections six topics mentioned by Pope John Paul II. There are

<sup>33</sup> *CIC*, c. 1063 and *CCEO*, c. 783, essentially new universal legislation, concern the scope of marriage preparation.

<sup>34</sup> Canonists who work in tribunal ministry also add the wisdom of their experiences to the dialogue on the devastating effects of cohabitation upon marital stability and longevity. Canonists’ insights certainly compliment the studies about cohabitation conducted by others in the Church in America. See, for example: NCCB Committee on Marriage and Family, *Marriage Preparation and Cohabiting Couples: An Informal Report on New Realities and Pastoral Practices* (August, 1999).

countless other topics to which we can also bring our gifts.

It has been a tremendous privilege for me to have offered these reflections today. More than this, though, has been the great privilege to have served the Canon Law Society of America for the past five years on the Board of Governors and, especially, as our society's President last year. I will always be deeply, deeply grateful. Through the experience of these wonderful years I have come to appreciate the dedication of American canonists in ways I otherwise would never have imagined, likely in ways I otherwise would never have known.

My reflections have been given with great gratitude to our Holy Father who addressed the post-synodal apostolic exhortation to the Church in this hemisphere. I hope that, perhaps, they may further our common dedication and enthusiasm to bring the gift of canon law – the gift with which the Church has blessed us greatly – to strengthen *communio* among diverse peoples and cultures, both within our particular churches and throughout the entire *Ecclesia in America*.

Thank you, and God bless you!

## CANONICAL ISSUES IN DUE PROCESS

REV. THOMAS T. BRUNDAGE

In the post-synodal Apostolic Exhortation, *Ecclesia in America*, Pope John Paul II on several occasions stresses the proper and fair administration of justice, especially the protection of the rights of the poor, so a just and peaceful North, Central, and South America may come into existence. The Holy Father wrote "It is also the poor who are the first to suffer as a result of delays and inefficiency, by not being properly defended, because of structural deficiencies, especially when corruption affects the administration of justice itself."

In this presentation at the annual convention of the Canon Law Society of America, I would like the Holy Father's words to the people of the Americas to echo in our ears, however, with a slightly different emphasis, and that is, how can we overcome ecclesial "structural deficiencies" that prevent the proper administration of the justice within the church. In other words, what are some practical structures that move the church's theology and values pertaining to justice from the arena of theory to the arena of reality?

I will approach this presentation with a look to the past, namely, some historical background regarding how we got to where we are now in terms of practical structures for the vindication of ecclesiastical rights. I would then like to present the on-going developments in due process efforts in the archdiocese of Milwaukee since the conclusion of the administrative tribunal experiment. The heart of my presentation is to raise some of the canonical issues that presently face the church in North America, and finally conclude with some practical suggestions regarding all of our attempts at creating structures that provide just remedies in ecclesiastical disputes.

### *I. Historical background; How did we get to where we are now?*

For close to forty years the Canon Law Society of America has been studying issues surrounding the protection of rights of persons within the church. Our Canon Law Society has not studied the issues of rights in a vacuum from our surrounding culture, but as so often has happened in the history of our church, we have borrowed and exchanged ideas with our secular legal counterparts in attempts to not only make our church more just, but also to make our nation a better image

of the just society envisioned by our nation's Founders.

With regard to the protection of ecclesiastical rights, there have been several milestones that deserve mention. At the 1969 CLSA national convention in Hartford, Connecticut, a report, *On Due Process*, was presented to the membership of the CLSA and eventually was sent to the National Conference of Catholic Bishops, who adopted it for implementation by individual bishops in their respective dioceses. The following several years saw numerous diocese attempting to implement "due process plans," often using methods of mediation and arbitration.<sup>1</sup>

After the promulgation of the 1983 *Code of Canon Law*, and its scaling back of the concept of administrative tribunals from what had appeared in earlier schemata of the code, the CLSA decided to survey dioceses with respect to their experience with due process issues. A compilation was assembled and was published in 1987 with the title: *Due Process in the Dioceses of the United States, 1970-1985*.

Eventually a committee of the CLSA was appointed to work on procedures relating to due process efforts within dioceses which culminated in a 1991 report, titled: *Protection of Rights of Persons in the Church*.

In the Fall of 1993, a CLSA committee was appointed with the mandate:

- To establish pilot projects using the outline in the 1991 CLSA revised report, *Protection of Rights of Persons in the Church*;
- To provide for the training of personnel involved in the project;
- To study and evaluate the effectiveness of these methods of alternate dispute resolution in a particular diocese.

During the next five years, the committee established two phases for its work, first to offer procedures for test sites in conciliation, mediation, and arbitration, and secondly to establish test sites for administrative tribunals. For phase one of the project, the dioceses of Portland, Maine and Dallas, Texas were selected, and for phase two, the Archdioceses of St. Paul/Minneapolis and Milwaukee were chosen.

The three-year experiment with an administrative tribunal in the Archdiocese of Milwaukee extended from 1995-1998. It was the consensus of the participants in this experiment that the existence of such a structure as an administrative tribunal was a positive factor in helping to settle disputes with fairness as well as

<sup>1</sup> The Final Report of the Committee on the Experiment in Due Process in the Church, CLSA *Proceedings* 61 (1999) 137-159.

within reasonable time limits. Although there were only two trials<sup>2</sup> held in the archdiocese as part of the administrative tribunal experiment, the existence of such a body that would definitively end certain disputes and controversies, seemed to make disputants serious about settling issues at an earlier phase of a conflict.

The existence of the structure called an “administrative tribunal” for the years 1995-1998 made the due process efforts at earlier levels more effective in reaching solutions to conflicts.

The archdiocese’s due process efforts were structured as follows:

A conflict arises on a local level, usually in a parish. The parish, according to archdiocesan norm, should have a grievance committee in place to hear the matter and offer mediation to resolve the issue;

Should the issue not be resolved at step-one, the matter could then be appealed to the appropriate archdiocesan agency or department. Each agency and department is required to have a due process procedure and to exercise this procedure when legitimately called upon by disputants;

Should the appropriate archdiocesan agency or department be unable to resolve the issue, the case may be submitted to the archdiocesan due process office. This office carefully screens such petitions to verify that the earlier levels of conflict resolution had been appropriately applied and that the issue at hand is administrative recourse and not judicial recourse. In the event the case involves issues appropriate for judicial recourse, the matter is referred to the Metropolitan Tribunal of the Archdiocese;

Should step three fail to resolve the conflict, disputants could petition the administrative tribunal for a hearing. The coordinator of the due process office screens the issue similarly to step three. If the case is accepted for a hearing, each side is presented with a list of approved canonical advocates and judge(s) are appointed to hear the matter. After the facts of the conflict are reasonably clarified, a hearing is scheduled where the Oral Contentious Process (cc. 1656-1670) is employed. At the end of the administrative hearing, the judges render a judgement and if appropriate assess damages and costs;

Should either party feel aggrieved by the decision rendered in step

<sup>2</sup> Milwaukee A1/95, Wagner-Erickson v. Endejan; Milwaukee A1/96, Hughes v. Sturm.

four, either party either party could then appeal the issue to the archbishop, who would be provided with the relevant material from step four and the archbishop would render his own decision in the matter;

Should either party feel aggrieved by the decision of the archbishop, either party could appeal the issue to the relevant structure within the Holy See.

For more information on the results of experiment in Milwaukee, as well as the results of the experiments in the other participating dioceses, please see “The Final Report of the Committee on the Experiment in Due Process in the Church,” *CLSA Proceedings* 61 (1999) 137-159.

## *II. On-going Developments in Due Process Efforts in the Archdiocese of Milwaukee Since the Conclusion of the Administrative Tribunal Experiment*

In September, 1997, the Apostolic Signatura wrote to the Archbishop of Milwaukee requesting a copy of the norms of the administrative tribunal. The norms were immediately forwarded to the Signatura. In May of 1998, the archbishop received another letter from the Signatura asking three questions regarding the administrative tribunal. A subsequent visit to the Signatura by archdiocesan authorities resulted in a December 1998 letter from Archbishop Zenon Grocholewski, then the Prefect of the Apostolic Signatura. The content of this letter requested the archbishop to avoid using the term “administrative tribunal,” because it was the judgement of the Signatura that the structure employed in Milwaukee was not a true administrative tribunal. However, the conciliation processes employed by the archdiocese were praised by the Signatura, especially efforts that provide for a full investigation and hearing of issues so that just decisions may be made based upon the facts and the law (c. 1737-1739).

Subsequent to the letter from the Signatura, the Archdiocese of Milwaukee formally changed the title of the administrative tribunal to the Archdiocesan Court of Equity.

In the meantime, the due process efforts of the archdiocese have continued since the end of the administrative tribunal experiment and to date not a single case that had received a hearing from the Due Process Office has been taken to the civil courts. Also, since the end of the experiment, one case has been remanded from the Due Process Office to the Archdiocesan Court of Equity.<sup>3</sup>

<sup>3</sup> Milwaukee, A1/99, *Schneider v. The Board of Catholic Charities of the Archdiocese of Milwaukee*.

### *III. Canonical Issues in Due Process*

Having looked at where we have been, we can ask what are the issues facing the due process efforts of the church at this point in history? I would like to break this section into four parts:

#### A. Avoiding litigation, judicial or administrative:

Canon 17 clearly indicates that laws are to be understood in their text and context. As such, the placement of canons 1713-1716 regarding methods of avoiding trials has significance. These canons are placed within Part III of Book VII of the code and are found in the section entitled "certain special processes." "Matrimonial Processes" and "Cases for Declaring the Nullity of Sacred Ordination" form the first two titles of part III and "Methods of Avoiding Trials" is the third title and final title prior to Part IV of the code on "The Penal Process." The placement of the canons on avoiding trials could be construed as a suggestion to avoid trials using the ordinary contentious judicial process.<sup>4</sup>

Canons 1713-1716 then offer alternative solutions to such trials. Alternate dispute resolution (c. 1713), and different forms of arbitration (c. 1714-1716) are examples promoted by the code.

It should also be noted that in the introductory section of "The Method of Proceeding in Administrative Recourse and in the Removal of Pastors," canon 1733 also exhorts disputants to mediate a conflict by seeking "an equitable solution by common counsel, possibly using mediation and the efforts of wise persons to avoid or settle the controversy in a suitable way."

Living within a society as litigious as ours, it is difficult at times to get disputants to agree to a compromise. It can easily be conjectured today that the average American, Catholic or non-Catholic, has such sensitivity to his/her rights that the thought of somehow diminishing a personal right seems abhorrent. Often in disputes, the need to save face triumphs over the law and the facts of the issue at hand. To me, these are all signs of a society that does not necessarily share the principle of the common good as paramount when it comes to the application of rights, both personal and communal.

Getting disputants into the same room at the same time, carefully organizing the mediation so that there is a concentration first upon the facts of the contention, then

<sup>4</sup> Thomas Paprocki, *New Commentary on the Code of Canon Law*, New York: Paulist Press, 2000, p. 1803.

allowing the parties to express their fear and frustration, can often lead to a just solution and for some, a sense of closure.

In short, the best trial is the one that never happens. When disputants enter into a legal arena, civil or ecclesiastical, the cost of such actions usually makes victims of everyone involved.

## B. Careful Attention to the Type of Recourse (Administrative versus Judicial Recourse)

Canonists experienced in judicial trials are well aware of the cumbersome layers of law that surround such trials. In judicial trials, there are extensive mechanisms for the protection of rights of physical persons and juridic persons. Such laws have evolved through experience and history and while they may seem to be burdensome to apply, they exist for a purpose.

When faced with different avenues of recourse, especially choosing between administrative or judicial recourse, the temptation is to choose the process that is quickest and easiest. Fortunately, for the sake of the protection of rights of persons, physical and juridic, the canonist must follow the process which the type of controversy demands.

Canon 1400 clearly states the two paths by which recourse is pursued. Canon 1400 states:

- The object of a trial is the pursuit or vindication of the rights of physical or juridic persons, or the declaration of juridic facts;
- The imposition or declaration of a penalty for delicts;
- Nevertheless, controversies arising from an act of administrative power can be brought before the superior or an administrative Tribunal.

In other words, a judicial trial should be initiated if the object of controversy involves the vindication of rights, the declaration of juridic facts, and the imposition or declaration of penalties for ecclesiastical crimes.

With regard to the vindication of rights, an example of a case that could lend itself to a judicial trial would be that of a pastor incorrectly accusing a party of some misdeed resulting in the perceived loss of the reputation of the accused. The aggrieved person could initiate a judicial trial before a diocesan tribunal seeking redress with regard to the right to a good reputation as found in canon 220.

With regard to a declaration of juridic facts, the process of declaring a marriage invalid, so familiar to most of us, is a clear case of a declaration of a juridic fact.

In other words, such a judicial trial attempts to clarify whether two individuals had entered a valid marriage.

With regard to the imposition of penalties, the accusation of having committed an ecclesiastical crime (cc. 1364-1399) would be fitting matter for a judicial trial. This particular subject is of concern among many canonists with regard to the ecclesiastical processes involving persons accused of crimes. Since penal law is always to be strictly interpreted and applied (c. 18), care must be extended to all actions taken against accused members of the faithful before judicial proceedings have occurred. Various Roman authorities in recent years have expressed concern about administrative solutions and penalties being applied in cases that must be heard through penal judicial processes.

In penal law, it should be remembered that a penal process is not recourse at all. However, once the competent authority has decided what procedure to follow, judicial or administrative, recourse can be made against that decision of the competent authority.

With regard to recourse against acts of administrative power (c. 1400, §2), only those disputes that arise from acts of administrative power posited by an executive of the local church are to be considered for administrative recourse. Examples of such acts of administrative power would be a decree of a bishop ordering a renovation of a church within his diocese, a decree reducing or suppressing a parish, or the decision of a pastor to fire a parish employee.

In interpreting canon 1400, emphasis should be put on the word “only” in the sentence “controversies arising from an act of administrative power can be brought *only* before the superior or an administrative tribunal. In other words, there are controversies that cannot be brought before an ordinary tribunal for judicial recourse.

On the other hand, there are controversies that could be brought before an ordinary tribunal following judicial recourse but also could be brought before the superior in administrative recourse. This is the distinction between “acts of administration” rather than “acts of administrative power.” “Acts of administration” do not involve discretionary power on the part of the superior, whereas, “acts of administrative power” involve some discretionary decision-making on behalf of the administrator.

The classic example of the above distinction would be a claim by a Catholic school teacher that a Catholic school had violated the terms of his/her contract by not paying the salary stipulated in the contract. The teacher could present a case at the diocesan tribunal for violation of his/her rights for violating the contract. On

the other hand, the teacher could follow the administrative route and complain to the diocesan school office asking them to make the school respect the contract.

Careful attention must be paid to the nature of the dispute in question. Recourse against acts of administrative power must involve recourse against acts posited in the executive branch of the diocese. Recourse against legislative or judicial acts must follow other appeal structures.

If, indeed, the recourse is against acts of administrative power enacted by the use of executive power, then hierarchical recourse is entirely appropriate. The Code offers two paths for resolving such controversies namely, the case can be brought before the superior of the administrator or the case the case may be brought before an administrative tribunal.

### C. Due Process in Cases of Recourse Against Acts of Administrative Power

While the issue of erecting administrative tribunals seems to have resolved itself for the moment, the code does not restrict how a diocesan bishop may decide to hear cases of recourse against acts of administrative power. In fact, the code provides explicit permission for a bishop to establish a “council or office” should the conference of bishops not require that each diocese have such an office. Various models of such recourse have been tested in the United States, often under the auspices of the diocesan tribunal or a human resource department. Regardless of the department or agency that assumes responsibility for such recourse, it must always be kept in mind that the responsibility for ensuring the availability of such recourse is the chief executive authority of the diocese, namely the diocesan bishop.

Using whatever structure the diocesan bishop has erected for the purposes of hearing cases involving recourse against acts of administrative power, cases submitted to such bodies should always involve a complaint that some action, or inaction of a parochial or diocesan administrator or administrative body has violated or threatens to violate a right recognized in the law of the church<sup>5</sup> or in the Magisterial teachings of the church.

Addressing the Canon Law Society of America last year at its national Convention in Washington, D.C., Msgr. Joseph Punderson of the Signatura, pointed out that it “is important to remember that the decree refers primarily to the

<sup>5</sup> In the *Code of Canon Law*, see cc. 208-223 for “The Obligations and Rights of All the Christian Faithful,” cc. 224-231 for “The Obligations and Rights of the Lay Christian Faithful,” and cc. 273-289 for “The Obligations and Rights of Clerics.”

decision itself, not to the form in which it is expressed or communicated.”<sup>6</sup> In other words, should a decision be presented in a form other than a formal decree, it is may still be considered a decree for purposes of administrative recourse. Nevertheless, the decision must still be an individual administrative act as defined in canon 35.

The norms that govern recourse against administrative decrees offer precise and explicit directions for such recourse (cc. 1732-1739). Careful attention must be paid to the details of such recourse. For instance, before proposing recourse, the petitioner must seek revocation or emendation of the decree in writing from its author. This petition must be made within the peremptory time period of useful (*utilium*) days (cc. 1734, §2, 1737, §2). The term “useful” is defined in canon 201 and it is clear that the time period runs from the time that the aggrieved received the decree or was otherwise informed of the decision, not the time which the decree is dated or sent.

In due process cases, the careful documentation of the facts of the case is crucial. The importance of careful documentation not only relates to getting the facts correct so that a decision may be just, but also serves as a clear trail of information should the case later be appealed to a higher ecclesiastical authority or to the civil courts.

#### D. National Due Process Norms

As to the future due process efforts of the church in the United States, perhaps the time has arrived to look again at the provision in canon 1733, §2 of the *Code of Canon Law*, whereby the conference of bishops can determine that each diocese establish in a stable manner an office or council whose function is to seek and suggest equitable solutions according to the norms determined by the conference. The episcopal conference in the United States has in practice left the establishment of due process offices up to the diocesan bishop.

One could argue that the time is now opportune for national due process norms. Many dioceses have considerable experience and history with due process cases. Developing national norms likely would require the culling of the best due process practices into one set of norms thereby, at least theoretically, improving due process efforts for most dioceses. Furthermore, national norms would help the practical administration of justice throughout the church in the United States, as today some dioceses still do not have structured due process systems. Having dioceses, sometimes adjoining one another, one with extensive due process structures, the other having no or little due process structure, arguably creates an

<sup>6</sup> CLSA *Proceedings*, October 2-5 2000, p. 27.

inequality in the administration of justice (c. 221, §2).

Should national due process norms be developed, it should be noted that a *recognitio* of the Holy See would be required for their promulgation.

In the meantime, the USCCB Canonical Affairs Committee is working on republishing in a single volume previous documents of the bishop's conference, namely "*On Due Process*" and "*The Committee on Conciliation and Arbitration*."

#### *IV. Concluding Thoughts*

Having dealt with a relatively large number of due process cases over the past decade, I have several reflections on the cases that we have seen. I offer these thoughts as a connecting point between canon law and pastoral ministry.

A. Take every case seriously and always provide a path for appeal within the local church

In most cases we have seen, the petitioners sincerely feel they have been aggrieved by a decision, or non-decision, of a diocesan or parochial administrator. We have found consistently that parties are loath to take matters to the civil courts if the church provides avenues that could lead to the satisfactory conclusion of disputes. In fact, civil courts are often reluctant to insert themselves into internal church issues if the structures in place to resolve internal disputes of the church have not been employed.<sup>7</sup>

Often parties are simply seeking to have their opinion heard by the administrator who made a decision contrary to their wishes. Should a party not feel satisfied by the decision of the administrator, a due process office of a diocese would be wise to give a hearing to the concerns, no matter how frivolous it may seem at the time.<sup>8</sup> Not providing a hearing is an invitation to the disputants to take the matter to the civil courts.

In too many cases, issues have quickly moved from a parish dispute to the level of the diocese after a parish administrator has abruptly told a disputant that there is no appeal from their decision. Within the church structure, it is important to

<sup>7</sup> *Nodell Inv. Corp. v. City of Glendale*, 78 Wis.2d 416, 424-26, 254 N.W.2d 310, 315-16 (S.Ct. Wis.1977); *Ass'n of Career Employees v. Klauser*, 195 Wis.2d 602, 611, 536 N.W.2d 478, 484 (Ct.App.1995); *Dobrota v. Free Serbian Orthodox Church of St. Nicolas*, 191 Ariz. 120.952 P.2d 1190 (1998); *Munroe v. Morgan* WI-CS-1-570 N.W. 910 213 Wis. 2d 484 (Wis. App. 1997).

<sup>8</sup> Excerpt from *Munroe v. Morgan*: "With respect to Munroe's state-law claims, the law is well settled that exhaustion of administrative remedies is a prerequisite to filing suit when the administrative process offers adequate relief."

remember there is always an appeal in administrative matters to the superior of the person making the decision not satisfactory to the petitioner. In administrative matters, issues may be appealed to the Apostolic Signatura, or even the Roman Pontiff, whose decisions cannot be appealed (c. 333, §3).

#### B. Provide a level playing field for disputants

Pastors and other parochial and diocesan administrators are often viewed as being pawns of their hierarchical superiors. I have often sensed a cynicism among Catholics that the church preaches justice very well but is not always proficient at applying justice internally, especially with people employed by the church.

Whatever structure a bishop erects to hear cases of administrative recourse should be viewed as an objective body free to decide matters based on nothing other than the facts of the dispute and the relevant law. For new due process structures within dioceses, it may take a few notable cases to establish reputations as structures that are inherently objective and just.

While all diocesan due process efforts are accountable to the bishop of the diocese, it is helpful to have bishops who trust that the recommendations and decisions of their due process personnel are based upon accurate facts and the correct interpretation of the church's law with regard to those facts. Bishops who regularly disregard decisions of their own due process structures should realize that each time they disregard such decisions, the due process structure has less credibility as a structure that effectively promotes the just application of the law in the local church. While there is no question that a bishop has the authority to disregard decisions of his due process structures, it may be important to consider the wisdom of doing such.

#### C. Never forget that we are a church

The church, by its very nature, fosters peace and reconciliation. While all of us who are practitioners of canon law know that canon law by its nature is pastoral, it can be an occupational hazard to see issues and disputes in the church only through the lens of the law. Before there was canon law, there existed Jesus Christ, the Savior of humanity. Before there was canon law, there was the church, the Body of Christ. Canonists need to remind themselves constantly of these realities if their practice of law is to be a form of pastoral ministry.

Most due process issues are fundamentally human relationship and ecclesial issues prior to becoming canon law issues. People approach the church as a church and not as a legal entity. People seek a source of spirituality, a place where they are replenished by Word and Sacrament. In short, people expect the church to be

the church. When the church fails to act as church, but rather acts out of need to be legally and technically correct, then the church fails itself.

Due process efforts in the church need to listen to people's complaints (c. 212, §2), need to encourage abundant apologies (despite what civil attorneys may recommend), and at times accept the Cross of being misunderstood and maltreated, all the while seeking to serve one another in the ministry of reconciliation and peace.

## BISHOPS AND THE APOSTOLATES OF RELIGIOUS

REV. JAMES J. CONN, S.J.

### *Genesis of this Paper*

This paper was presented as a seminar at the 2001 annual convention of the Canon Law Society of America in Albuquerque. The object of this seminar was to examine the relationship between diocesan bishops and the apostolates of religious. There were two principal reasons why this author was selected to make the presentation. The first is that he was serving at the time on the convention planning committee and was a likely suspect for a paper on religious law. The second was that he was eager to reflect publicly on a topic other than, if not altogether different from, Catholic universities and ecclesiastical authority, previously the exclusive area of publication in canon law. In this published version of his presentation, the author takes the occasion to note that what follows is a longer and more detailed version of what was probably already too protracted and discursive a treatment of the topic for the convention context. He is hopeful, however, that the study of the pertinent documents that follows will be a useful resource for CLSA members and others.

There are many reasons for the timeliness of this topic, the scope and focus of which have changed since the conclusion of Vatican Council II. Early reflection on the Council assessed it as the diocesan bishop's council that decentralized the Church's government and, applying the principle of subsidiarity, gave belated attention to the status of the particular churches and their proper pastors. If the role of the diocesan bishop was enhanced, at least theoretically, at the expense of the Church's central government, it can also be asserted that the Council further strengthened the local bishop's position by attenuating the privileged status of the older religious orders, while in the process setting the stage for the 1983 *Code of Canon Law* to assure a greater equality among all religious institutes with respect to their autonomy of life, and to confer on superiors of all clerical institutes of pontifical right the power of jurisdiction over their members. It seems to have been the Council's objective that religious, both as individuals and as groups, should move from a position of isolation to integration with respect to the local church. That ideal is expressed in number 34 of the conciliar decree *Christus Dominus* (CD), whose translation follows in full:

34. Religious priests are by consecration assumed into the responsibilities of the presbyterate so as to become themselves the prudent cooperators of the episcopal order. Today they can be of even greater help to bishops in view of the greater needs of souls. Therefore, they can be said in a real sense to belong to the clergy of the diocese, inasmuch as they share in the care of souls and in carrying out works of the apostolate under the authority of the prelates. Other members of religious communities, both men and women, also belong in a special way to the diocesan family and offer great assistance to the sacred hierarchy. With the increasing demands of the apostolate, they can and should offer that assistance even more and more.<sup>1</sup>

Whether the tides have turned on decentralization over these past thirty-five years is a question on which reasonable observers may differ, but the relations between bishops and the religious working in their dioceses are perhaps another matter. It has been noted that the treatment of this relationship in *CD*, and later in *Ecclesiae Sanctae (ES)*, was based on the concern of many bishops with decreasing vocations to the diocesan clergy and the unavailability of religious priests to serve the ministerial needs of their local churches. Religious responded with equal concern that bishops were not appropriately sensitive to the special role of their institutes in the life of the Church. Greater conciliation would come with *Mutuae Relationes (MR)*, a document issued in 1978 by the Sacred Congregation for Religious and Secular Institutes in cooperation with the Sacred Congregation for Bishops.<sup>2</sup> Be that as it may, this observer's anecdotal experience is that the family spirit described in *CD* 34 has not been so successfully realized. Many religious, of course, feel very much a part of a diocesan family, or of even more than one of them. This is especially true of religious canonists who work in chanceries or on tribunals, or who serve as seminary professors, canonical consultants, or vicars for religious. These, however, are probably the exceptional cases. Similarly, the smaller the diocese and the smaller the religious institute, the better the chance of mutually informed and respectful relationships within the diocesan family and of the fruitful contribution and use of various gifts and service in apostolates coordinated by the diocesan bishop. Conversely, the larger the diocese and the larger the institute, the greater the chance that diocesan personnel will not know religious and that religious in turn will feel distanced and go their separate ways, relying on their own successful and satisfying ministries, often within the context of venerable and still vital institutional settings. That both bishops and religious live in two ecclesiological worlds has obscured both the Council's best

<sup>1</sup> Citations from the Council and early postconciliar documents are the translations of Austin Flannery, O.P., *The Vatican Collection*.

<sup>2</sup> Jean B. Beyer, S.J., *Le Droit de la Vie Consacrée: Instituts et Sociétés* (Paris: Tardy, 1988), p. 165.

objective and the subsequent legislation intended to institutionalize it. For this reason, it may be worth the effort to refresh our awareness of the current law and of the major themes that ground it.

The dissonance that in some quarters exists between bishops and religious in the United States suggests the need for conversion and reconciliation in the spirit of *Ecclesia in America*, the theme of the 2001 CLSA gathering. The diversity of traditions, gifts, and perspectives among religious today, like the cultural, ethnic, ritual, and linguistic diversity within the whole Church in America, has much to offer to the Church, but religious need to offer them to the Church's pastors and be willing to accept the leadership to which the Spirit has called bishops in the Church, an authority that extends in various ways to religious and their institutes as well.

Yet another reason to reexamine the relationship between bishops and the apostolate of religious is the increasingly complex nature of the traditional corporate ministry of religious institutes in such fields as health care, social service, and education at every level. Many such traditional and institutional apostolic works have been civilly separated from the local religious house. Others have taken on a new canonical status in the form of associations. In some cases governance structures have changed, with or without canonical formalities, with the result that the authority of religious superiors over such works has been diminished or eliminated. The long debate over the relationship between Catholic colleges and universities and ecclesiastical authority, whether or not it has been significantly settled by the particular law and subsequent guidelines of the USCCB, has had a "trickle-down" effect on secondary schools under the direction of religious institutes. A review of the relevant law may help those advising such schools of their rights and duties.

Still another complicating factor in the relationship between bishops and the apostolate of religious is the ever broadening diversity of work in which individual members of religious institutes engage. Some of these fields of endeavor, especially when carried on in a context other than that of a Church-sponsored entity, may appear to be largely secular, such as, for example, entertainment and the arts, various alternate forms of therapy, and the practice of law. Yet religious engage in such works with at least the license and often the "mission" of religious superiors. Superiors and subjects alike maintain that these endeavors are apostolic, that they are consistent with and even responsive to the patrimony of their institute, that they are spiritually motivated and directed, and that they promote the good of their human sisters and brothers, values of truth and justice, and ultimately the proclamation of the gospel and the salvation of souls. Bishops may not be so sure, but in any case, bishops and religious alike question the canonical – to say nothing of technical – qualifications of the hierarchy to regulate such activity. It is not

difficult to imagine situations of potential or actual conflict between a diocesan bishop and religious over corporate or individual works. Reflections on such situations will be taken up toward the end of the paper.

### *Context*

Any canonical consideration of religious and religious institutes calls for both concepts to be understood in their proper context. The code's treatment of both in Book II falls within the broader category of institutes of consecrated life, which also includes secular institutes. Religious institutes are those that are distinguished by their members' profession of public vows, by their life in common, and by a separation from the world that is determined by the institute's character and purpose (c. 607). Members of secular institutes profess the evangelical counsels by sacred bonds defined in the constitutions (c. 712), and the members, rather than the institutes themselves, "express and exercise their own consecration in apostolic activity" (c. 713, §1).<sup>3</sup> While secular institutes are included under canons 573-606, they are not considered here because they do not typically carry on a common external apostolate.

Societies of apostolic life, on the other hand, while they are treated in the same Part III of Book II, differ from institutes of consecrated life in that they do not necessarily profess the evangelical counsels, or, if they do, do so not through religious vows but through a bond determined in the constitutions (c. 731). Their very name, however, affirms that such societies exercise a common external apostolate. Their relationship with the diocesan bishop is determined by canon 738, which is similar to the parallel canon 678 for religious, and which further identifies canons 679-683 as also applicable to societies of apostolic life *mutatis mutandis*. In this paper, therefore, what is said about the relationship between bishops and the apostolates of religious institutes is applicable also to societies of apostolic life.

### *The Hierarchy and Consecrated Life in General*

Since consecrated life is dedicated to the building up of the Church and is in the Church a sign of the Kingdom of God (c. 573, §1), it is subject to the authority of the Church. The law identifies how the hierarchy exercises authority over institutes: by erecting them (cc. 573, §2; 579; 589); by generally interpreting the evangelical counsels, establishing stable forms of living by them, regulating their practice through laws, and caring for the growth of institutes (c. 576); by preserving and safeguarding an institute's just autonomy of life according to the

<sup>3</sup> Citations to the English text of the *Code of Canon Law* are to *Code of Canon Law: Latin-English Edition, New English Translation* (Washington, DC, CLSA, 1999).

patrimony (nature, purpose, spirit, and character [c. 578]) of each (c. 586, §2); and by approving constitutions and consenting to changes in them (c. 587, §2). While such general principles of hierarchical oversight do not specifically mention the apostolate of institutes, certainly the apostolic works to which an institute is committed belong to its patrimony and should be reflected in its constitutions. In approving the constitutions, ecclesiastical authority judges an institute's apostolic vision as sound and as part of the gift of the Spirit to the Church, a gift to be preserved, fostered, and promoted.

But to which ecclesiastical authority are institutes answerable? On the one hand, that authority which erects an institute and approves its constitutions is the authority to which it turns for provisions beyond the scope of the institute's internal governance structure (e.g., changes in the constitutions, supervision in certain matters of temporal administration, indults of departure and exclauration, confirmation of dismissal). Canon 589 accordingly distinguishes between diocesan institutes, those erected by a diocesan bishop after consultation with the Apostolic See, and pontifical institutes, those erected by the Apostolic See or subsequently approved by it after initial erection by a diocesan bishop.

#### *Institutes and Supreme Church Authority*

Yet canon 590, §1, affirms: "Inasmuch as institutes of consecrated life are dedicated in a special way to the service of God and of the whole Church, they are subject to the supreme authority of the Church in a special way." Moreover, §2 of the same canon similarly obliges individual members of institutes to obey "the Supreme Pontiff as their highest superior by reason of the sacred bond of obedience," a provision also contained in the 1917 code. *Lumen gentium* (LG) 44, in which §1 of the canon has its source, specifically points to the universal missionary character of all religious institutes "in keeping with the particular kind of religious life to which they are individually called, whether it be one of prayer or of active labor as well. . ." In a sense, therefore, all religious institutes, even those juridically of diocesan right, have a peculiar bond with the universal Church and its supreme authority. A practical provision implementing this special relationship is contained in canon 592 which calls for the supreme moderator of each institute to "send a brief report of the state and life of the institute to the Apostolic See, in a manner and at a time established by the latter." While the code elsewhere requests specific information only on the numbers of those leaving the institute (c. 704), circular letters were sent to superiors general in 1988 by the Congregation for Religious and Secular Institutes, as it was then called, establishing a protocol for these reports. They are to be sent every six years to begin after the next ordinary general chapter of the institute. The reports are to include the following: statistical data on the number of members, houses, parts or provinces; an assessment of how changes in the constitutions have been received and of

relations between superiors and members; information on vocation promotion, on obstacles to entry into consecrated life by young people, on early and continuing formation, its criteria and elements; the manner of fraternal life in community; communion with the Apostolic See and with the local bishop, especially with respect to the exercise of the apostolate and the liturgy, with the union of superiors general and the conferences of major superiors; the conformity to the charism of the institute of its work in pastoral activity and other works of the apostolate; economic matters; those problems that deserve special care, especially the ones that involve the life and apostolate of the institute and the separation of members; and, finally, other facts and issues that would reflect the institute's real situation and promote dialogue with the dicastery. It is worthy of note that the report is to be filed by all institutes, including those of diocesan right and that its scope embraces both internal issues of formation, governance, and community life, and external ones of relations with ecclesiastical authority and involvement in pastoral life and apostolic works. The stated purpose of the exercise is to enable the Apostolic See to carry out its mission of service more effectively and, by sharing the institutes' joys and sorrows, to offer pastoral assistance by appropriate interventions.<sup>4</sup>

In his 1996 Postsynodal Apostolic Exhortation *Vita consecrata* (VC) 47, John Paul II emphasized the special bond between consecrated persons and the Apostolic See:

Consecrated persons are called to be a leaven of communion at the service of the mission of the universal Church by the very fact that the manifold charisms of their respective institutes are granted by the Holy Spirit for the good of the entire Mystical Body, whose upbuilding they must serve (cf. 1 Cor 12:4-11). . . . This, precisely, is the scope of the particular bond of communion which the different institutes of consecrated life and the societies of apostolic life have with the Successor of Peter in his ministry of unity and missionary universality. . . . Down the centuries they have maintained strong bonds of communion with the Successors of Peter, who found in them a generous readiness to devote themselves to the Church's missionary activity with an availability which, when necessary, went as far as heroism. All this brings out the character of universality and communion proper to institutes of consecrated life and to societies of apostolic life.

<sup>4</sup> The French text of the circular letter can be found in Beyer, *Le Droit de la Vie Consacrée: Normes Communes*, pp. 202-03.

## Exemption

After its affirmation of this universal ecclesial consciousness that all institutes ought to have and the special obedience that all in consecrated life owe to the Roman Pontiff, the code goes on in canon 591 to address what seems to be a special status of certain religious institutes.

In order to provide better for the good of the institutes and the needs of the apostolate, the Supreme Pontiff, by reason of his primacy in the universal Church and with a view to common advantage, can exempt institutes of consecrated life from the governance of local ordinaries and subject them to himself alone or to another ecclesiastical authority.

This formulation is different from that of the 1917 code which in canon 488, 2°, simply defined an exempt *religio*, whether it was of solemn or simple vows, as one which had been withdrawn from the jurisdiction of the local ordinary. Its can. 615 further provided that regulars (members of orders with solemn vows) and their houses and churches were exempt from the jurisdiction of the local ordinary in matters not otherwise provided for in the law. Exemption, therefore, was not absolute, and those exceptional provisions were neither few nor insignificant. In their *Epitome*,<sup>5</sup> Vermeersch and Creusen culled from the 1917 code a large number of provisions involving exemption and categorized them as follows: what a local ordinary can do with relation to exempt religious (e.g., pontificate in their churches [c. 337, §1]); things to be left to the ordinary (e.g., the consecration of sacred places [c. 1155]); things which exempt religious must do at the command of the local ordinary (e.g., observe prescriptions concerning divine worship [c. 1261, §2]); things which exempt religious cannot do without the intervention or consent of the local ordinary (e.g., hear the confessions of the laity and religious women including novices [cc. 874 and 876]).<sup>6</sup>

These examples illustrate how under the 1917 code even exempt religious were subject to the bishop in those areas where he had pastoral responsibility, particularly the celebration of public worship and the care of souls. The exemption of regulars in the 1917 code simply precluded the involvement of the local bishop in matters that concerned the internal affairs of the order. In everyday life, exemption was not unlike the “just autonomy of life, especially of governance”

<sup>5</sup> A. Vermeersch, S.I. and I Creusen, S.I., *Epitome Iuris Canonici*, ed. 7, vol. I, (Paris, Bruxelles, 1954), no. 775, pp. 587-589.

<sup>6</sup> These lists are available in English in T. Lincoln Bouscaren, S.J. and Adam C. Ellis, S.J., *Canon Law: A Text and Commentary*, second revised edition (Milwaukee: The Bruce Publishing Company, 1951), pp. 293-95.

guaranteed by canon 586, §1, of the 1983 code. The problem was that the same degree of autonomy was not enjoyed equally by all religious. Only the clerical major superiors of the orders with solemn vows and certain privileged congregations (e.g., the Redemptorists and the Passionists) had the power of jurisdiction over their members. Other clerical institutes were at least immune from episcopal oversight with respect to how certain of the universal laws governing religious were being observed; canon 618, §2, 2°, of the 1917 code had given this right and duty to the local ordinary over lay institutes even of pontifical right.

By the time of the 1917 code, exempt orders had lost much of the truly privileged status that exemption had once afforded them. First established by papal authority as a means of protecting monasteries from the financial encroachments of certain bishops, it was subsequently a means by which the pope could provide the Church with sound preachers against heresy and with agents of ecclesial reform and missionary evangelization. Sent by him, they were also answerable to him. Reform of the Church's institutional structures, effected especially by conciliar action such as that of Trent, made the charismatic contribution of exempt religious less necessary. In fact, their activity itself became increasingly more institutionally based.

The inequality, at least among clerical institutes of pontifical right, in the 1917 code was rectified during the Vatican II years through a concession by the Holy See to superiors general of all clerical institutes of pontifical right of faculties previously enjoyed only by major superiors of exempt institutes.<sup>7</sup> This provision is reflected in canon 134, §1, of the 1983 code which acknowledges as ordinaries the major superiors of all clerical religious institutes of pontifical right. Such superiors enjoy at least the executive power of governance.

What, then, has become of exemption? The exemption described in canon 591 cites among its sources *LG* 45, *CD* 35, 3, and *MR* 8 and 22. *LG* 45 uses the very words that are later found in the canon, but almost immediately adds the following admonition: "The members of these institutes, in fulfilling their obligation to the Church due to their particular form of life, ought to show reverence and obedience to bishops according to the sacred canons. The bishops are owed this respect because of their pastoral authority in their own churches and because of the need of unity and harmony in the apostolate." This text may reflect an understandable episcopal skepticism about exemption especially in light of some of its historical manifestations.

*CD* attributed to local bishops extensive authority over the apostolic service of religious in their dioceses. The document seems to understand the exemption of

<sup>7</sup> Motu proprio *Cum adnotae*, 6 November 1964 (AAS 59:374ff.). See also *Canon Law Digest* 6:147ff.

*LG* 45 first in terms of the internal life of the institutes (what will later be termed “autonomy”) and then in view of the freedom of the Pope to send religious on mission:

35.3) The privilege of exemption, by which religious are called to the service of the supreme Pontiff or other ecclesiastical authority and withdrawn from the jurisdiction of bishops, refers chiefly to the internal order of their communities, so that in them all things may be properly coordinated and the growth and perfection of the religious common life promoted. These communities are also exempt so that the supreme Pontiff can dispose of them for the good of the universal Church and any other competent authority for the good of the churches under its own jurisdiction.

Paul VI’s 1966 Apostolic Letter *Ecclesiae Sanctae* (*ES*) implementing *CD* among other documents made no attempt as a juridical text to explain the nature of exemption but simply affirmed that all religious, including the exempt, were subject to the bishops in a wide range of specifically enumerated areas (*ES* 25, 26). In his 1971 Apostolic Exhortation *Evangelica Testificatio* (*ET*), Paul VI repeats in terms less juridical than those of *ES* the assertion of *CD* that exemption deals principally with internal issues:

This sharing in the Church’s mission, the Council insists, cannot take place without openness to collaboration in “her enterprises and objectives in such fields as the scriptural, liturgical, doctrinal, pastoral, ecumenical, missionary and social.” While anxious to take part in the pastoral activity of the whole, you will surely do so keeping in mind the particular character of each institute. And you will always recall that exemption applies chiefly to internal structure; it does not dispense you from submission to the jurisdiction of the bishops in charge, “insofar as the performance of their pastoral office and the right ordering of the care of souls require.”<sup>8</sup>

*MR*, originally styled “directives” but what the 1983 code would probably consider a general executory decree (c. 31) called for “a renewed awareness of exemption,” to be “really shared by the various collaborators in pastoral endeavor” to “promote greatly increased apostolic initiative and missionary zeal in every particular church” (*MR* 22). *MR* acknowledges the assertions of *LG* and *CD* on the prerogatives of bishops over religious in matters affecting the liturgical and apostolic life of the diocese, but sees in this renewed awareness of exemption a way to make the universal dimension of the exempt institute’s mission present in

<sup>8</sup> *ET* 50.

the particular churches:

Consequently exempt religious institutes, faithful to “their own proper characters and functions” (*PC*, 2, b), should cultivate above all special attachment to the Roman Pontiff and to the bishops, placing their liberty and apostolic availability at their disposal effectively and generously in conformity with religious obedience. Similarly, they should devote themselves with full awareness and zeal to the task of incarnating and manifesting in the diocese the specific witness and the genuine mission of their institute. Finally, they should always reanimate that apostolic sensitivity and initiative, which are characteristic of their consecration.<sup>9</sup>

Prof. Velasio De Paolis, C.S., has observed that, at least in this context of *MR*, exemption “is seen ever less as a privilege and therefore a withdrawal from the jurisdiction of the ordinary and ever more as a sphere of lawful autonomy for the protection of the patrimony and of the identity of the institute and for the service of the universal Church.”<sup>10</sup>

This new perspective on exemption is interesting. It reflects the historical reality of a shift from the privilege of a few institutes to the acknowledgment (not the concession) of a rightful autonomy of life and especially of governance of all institutes to one degree or other, and especially to all clerical institutes of pontifical right. It also focuses on the universal rather than particular character of all institutes of consecrated life. This perspective of their members has the potential to make the vision of the particular church less provincial and its availability for service beyond its limits all the more free. In the words of Pope John Paul II to institutes of consecrated life on the occasion of the publication of *Mutuae Relationes*, “Wherever you find yourselves in the world, you are, with your vocation, for the universal Church through your mission in a local church.”<sup>11</sup>

Two decades later, in *Vita Consecrata* (*VC*), John Paul II, recalling the history of the missionary labors of religious, identified both the source and the potential of their universal character:

Because of their supra-diocesan character, grounded in their special relation to the Petrine ministry, they are also at the service of

<sup>9</sup> (*MR* 22). Bishops certainly recognize and appreciate greatly the specific contribution with which these religious come to the assistance of the particular Churches and find in their exemption a certain expression of that pastoral concern which unites them intimately with the Roman Pontiff for the universal care of all people.

<sup>10</sup> Velasio DePaolis, *La vita consacrata nella chiesa* (Bologna: Edizione Dehoniane, 1991), p. 134.

<sup>11</sup> *Osservatore Romano*, 25 November 1978, p. 2.

cooperation among the particular Churches, since they can effectively promote an “exchange of gifts” among them, and thus contribute to an inculturation of the Gospel which purifies, strengthens and ennobles the treasures found in the cultures of all peoples. Today too, the flowering of vocations to the consecrated life in the younger Churches demonstrates the ability of the consecrated life to make present in Catholic unity the needs of different peoples and cultures.<sup>12</sup>

Edifying as this perspective may be, are we to conclude from a canonical perspective, as Prof. John Huels, O.S.M., has observed, that “the exemption of religious has become a concept devoid of juridical consequences, . . . a ghost from the past, a lifeless concept rather than the living reality it once was?”<sup>13</sup> In practical, everyday terms, one would be obliged to answer in the affirmative. Yet as Huels himself points out, there are certain privileges of regulars which have survived the code,<sup>14</sup> one of which will receive some mention at the conclusion of this paper. The institutes enjoying such surviving privileges are those that enjoyed them in the first place.

Beyond that, however, the fact must be addressed that while other canons of the 1983 code make specific provision safeguarding the rights of bishops with respect to the exercise of the apostolate, canon 591 does not mention the rights of bishops at all. It simply affirms at least the possibility of exemption of institutes from the governance of local ordinaries without the further qualifications of *LG* 45, *CD* 35, *ES* I: 25, 26 or *MR* 22. The text itself answers several questions. What authority exempts such institutes? The Supreme Pontiff, not the law (as the previous code privileged certain institutes by definition). By reason of what authority? By reason of the Supreme Pontiff’s primacy in the universal church. Toward what end? To better provide for the good of the institutes and the needs of the apostolate (which good and needs may not be otherwise provided for). With what in mind? The common advantage. With what governance provision? Submission of the institute to the Supreme Pontiff himself or to another ecclesiastical authority. Other questions are left unanswered and would depend on further specification by the Supreme Pontiff, for example, which institutes would be so exempt, from which ordinaries, in which matters, for how long, for which specific reasons.<sup>15</sup> Whether the *LG* 45 principle of exemption should have been reaffirmed in the code was apparently a matter of discussion. This primatial capacity seems to have been reasserted in canon 591 without the further qualifications because it could someday

<sup>12</sup> *VC* 47.

<sup>13</sup> John M. Huels, O.S.M., “The Demise of Religious Exemption,” *The Jurist* 54 (1994), p. 54.

<sup>14</sup> *Ibid.*, p. 52.

<sup>15</sup> See DePaolis, pp. 135-36.

be useful or even necessary as much from the point of view of ecclesiastical discipline as from that of doctrine.<sup>16</sup>

### *Autonomy*

If exemption is a historically evolving concept that remains somewhat ambiguous, it is easy to imagine how obscure the notion may be to non-specialists and how improperly it may be understood and used to justify or promote an independence from ecclesiastical authority which the Church's constitution and laws do not permit. While the exemption of religious is at least a canonical term of art that may be acknowledged as such by non-canonists, autonomy is less easily recognized to be one. In 1996 John Paul II called special attention to this misunderstanding and the abuses to which it can lead:

It is helpful to recall that, in coordinating their service to the universal Church with their service to the particular Churches, institutes may not invoke rightful autonomy, or even the exemption which a number of them enjoy, in order to justify choices which actually conflict with the demands of organic communion called for by a healthy ecclesial life. Instead, the pastoral initiatives of consecrated persons should be determined and carried out in cordial and open dialogue between bishops and superiors of the different institutes. Special attention by bishops to the vocation and mission of institutes, and respect by the latter for the ministry of bishops, with ready acceptance of their concrete pastoral directives for the life of the diocese: these are two intimately linked expressions of that one ecclesial charity by which all work to build up the organic communion – charismatic and at the same time hierarchically structured – of the whole People of God.<sup>17</sup>

It is worthy of note that *VC* here acknowledges some institutes as, in fact, exempt. Thus the reality of the institute of exemption, in spite of its obscurity of meaning and apparent poverty of juridical moment, was not suddenly transformed by the code into an exclusively hypothetical reality. At the same time, the document provides no further reference to it and so fails to illumine its obscurity.

From a technical standpoint, autonomy is a word and concept quite different from exemption, though in a broader context, – one, in fact, that some religious themselves inhabit – they are viewed as synonymous with each other and with independence. It is perhaps for this reason that autonomy was not much used in the

<sup>16</sup> Beyer, *Normes Communes*, p. 96.

<sup>17</sup> *VC* 49.

documents of Vatican II. It can be found principally in the Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes* (GS) and in the Decree on the Apostolate of the Laity, *Apostolicam actuositatem* (AA), and not without cautionary disclaimers. The former deals with the autonomy of earthly affairs, whereby created things and societies have their own laws and values with which the Creator has endowed them (GS 36); the rightful autonomy of man who enjoys the dignity of conscience and freedom of choice, though the notion that he is exempt from divine law is a false autonomy (GS 41); and an autonomy of culture, especially of the sciences (GS 59), though this should not descend to a terrestrial humanism that is contrary to religion (GS 56). The AA references concern the defense of the dignity and lawful autonomy of the family (AA 11) and the autonomy of the various organizations in which the faithful participate in the apostolic endeavors of evangelization and sanctification and in other charitable and social spheres (AA 26). The meaning of autonomy in these contexts seems clear. In each case the object possessed of autonomy is one that is endowed with certain constitutive characteristics which are not to be violated. An autonomous entity has, as the word suggests, its own laws that ought to be respected and observed. That is not to say that it may not itself be subject to laws outside itself.

Ten principles were submitted to and reviewed by the 1967 Synod of Bishops that would guide the new codification of the Church's law. One of them is of particular interest to the present discussion. It reads:

Careful attention is to be given to the greater application of the so-called principle of subsidiarity within the Church. It is a principle which is rooted in a higher one because the office of bishops with its attached powers is a reality of divine law. In virtue of this principle one may defend the appropriateness and even the necessity of providing for the welfare especially of individual institutes through particular laws and the recognition of a healthy autonomy for particular executive power while legislative unity and universal and general law are observed.<sup>18</sup>

This seems aptly to address in an analogous way how the autonomy of institutes of consecrated life is to be understood. Even though the Church governs these institutes with its laws, those laws leave ample room for their application to the varied situations in which those institutes find themselves based on their nature, purpose, spirit, and character.

Autonomy is first specifically attributed to institutes of consecrated life in *MR* 13c, one of the three documents identified as sources of canon 586, §1, which, it

<sup>18</sup> Preface of the Latin Edition of the 1983 *Code of Canon Law*, p. xxxvii.

may be recalled, acknowledges for individual institutes a “just autonomy of life, especially of governance.” The second source is *CD* 35, 3 which, as has been observed here already, addresses not autonomy but “the privilege of exemption” which, it says, “refers chiefly to the internal order of their communities.” Nor does the third source, *MR* 34, use the word, but, like the conciliar texts just surveyed, points out what autonomy is not, namely, independence:

It would be a serious mistake to make the two realities – religious life and ecclesial structures – independent one of the other, or to oppose one to the other as if they could subsist as two distinct entities, one charismatic, the other institutional. Both elements, namely, the spiritual gifts and the ecclesial structures, form one, even though complex reality (cf., *LG*, 8).

It would be equally erroneous to believe that consecrated life is not in part institutional. For through their constitutions, approved by ecclesiastical authority but inspired by their founders and determined by the institutes, the institutes’ patrimony is institutionalized.

*MR* 13c does use the word, three times in two sentences, as follows:

Institutes then have an internal organization all their own (cf., *CD*, 35:3) which has its proper field of competency and a right to autonomy even though in the Church this autonomy can never become independence (cf., *CD*, 35:3 and 4). The correct degree of such autonomy and the concrete determination of competency are contained in common law and in the Rules or Constitutions of each institute.

While this text reaffirms *CD* 35, 3’s view that the scope of autonomy (not “exemption” as in *CD*) is internal (not “chiefly” so as in *CD*), it looks to both common and proper law for its concrete specification. Included here are surely the 42 references in this Part III of Book II to the institutes’ constitutions and the 32 more to their proper law. Twelve years later, a document of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life entitled Directives on Formation in Religious Institutes, *Potissimum institutioni (PI)* specifically includes within the context of autonomy the program of religious formation and its duration (*PI* 95).

It is not until the synod on consecrated life that the notion of autonomy was given its clearest elucidation. The relevant passage of *VC* is number 48 on consecrated life and the particular church. The text begins by following the reasoning of *MR* 11 that the different institutes represent gifts by the Spirit to those

who founded them, and that the Church has a responsibility to preserve and promote these gifts in fidelity to the founding charisms:

The various ways of living the evangelical counsels are in fact the expression and fruit of spiritual gifts received by founders and foundresses. As such, they constitute an “experience of the Spirit, transmitted to their disciples to be lived, safeguarded, deepened and constantly developed by them, in harmony with the Body of Christ continually in the process of growth.” The identity of each institute is bound up with a particular spirituality and apostolate, which takes shape in a specific tradition marked by objective elements. For this reason the Church is concerned that institutes should grow and develop in accordance with the spirit of their founders and foundresses, and their own sound traditions.

*MR 11*, citing the varied typology of institutes (contemplative, monastic, dedicated to works of the apostolate) identified in *Perfectae caritatis (PC) 7-10*, affirmed that each type’s “distinctive character also involves a particular style of sanctification and apostolate which creates its particular tradition. . .” But *VC* goes one step further and specifically identifies an institute’s apostolate as part of its patrimony to be honored and safeguarded as such by means of the institute’s rightful autonomy.

Consequently, each institute is recognized as having a rightful autonomy, enabling it to follow its own discipline and to keep intact its spiritual and apostolic patrimony.

That an institute’s apostolate should enjoy the protection of this developing category of autonomy is justified by the Council’s teaching in *PC 8* which speaks of institutes that devote themselves to various apostolic tasks:

In these communities apostolic and charitable activity belongs to the very nature of the religious life, seeing that it is a holy service and a work characteristic of love, entrusted to them by the Church to be carried out in its name. Therefore, the whole religious life of their members should be inspired by an apostolic spirit and all their apostolic activity formed by the spirit of religion.

That passage would become the source of canon 675.

In this type of institute, therefore, there is a unity between its apostolic works and the many other identifiable elements of its patrimony: the way of observing the evangelical counsels; the ways of relating to God, to others, and to the world; the

traditional methods of prayer, discernment, and spiritual direction; the manner of administering temporalities; the legislative process and instruments; and the way of proceeding in governance, formation, and community living. These characteristics should be observable in the way that such institutes and their members preach the gospel, administer the sacraments, teach diverse disciplines at various levels, do scholarly research, deliver health care, give retreats and missions, engage in spiritual conversation, form diocesan clergy and lay ministers, carry on ecumenical efforts and interfaith dialogue, and even administer parishes.

Autonomy should not be understood as a privilege enjoyed by religious, granted or conceded to them as a favor and for their exclusive benefit. Autonomy is rather acknowledged, since it refers to the gift of the Spirit to the Church in and through the religious families. A local bishop, who belongs to the episcopal college and so shares in solicitude for the universal Church, has a duty to preserve and safeguard this autonomy (c. 586, §2). But just as autonomy is not only a benefit for the religious themselves, it does not belong uniquely to the universal Church. A bishop who helps to ensure an institute's rightful autonomy can thereby serve his particular church as well. In the words of VC 49:

It is the responsibility of local Ordinaries to preserve and safeguard this autonomy. Thus, bishops are asked to welcome and esteem the charisms of the consecrated life, and to give them a place in the pastoral plans of the diocese. . . . A diocese which lacked the consecrated life would not only be deprived of many spiritual gifts, of suitable places for people to seek God, of specific apostolic activities and pastoral approaches, but it would also risk a great weakening of that missionary spirit which is characteristic of the majority of institutes. There is a duty then to respond to the gift of the consecrated life which the Spirit awakens in the particular Churches, by welcoming it with generosity and thanksgiving.

### *Dependence on the Local Bishop*

The foregoing review of the notions of exemption and autonomy leads to the conclusion that religious institutes and their members are dependent on ecclesiastical authority in a variety of ways but that the hierarchy's power of governance over them has limits. Once the parameters of religious life have been established by the Church's common law and each institute's proper law that is subject to the approval of the hierarchy, the governance of institutes is in the hands of the institute's superiors, councils, and chapters as specified in common and proper law. In matters touching the observance of the evangelical counsels – the assignment of duties, spiritual formation, community discipline, and domestic living arrangements – there is no doubt that authority lies with the internal officials of the institute, just

as provision for such matters are left to proper law. No right-thinking bishop would reasonably seek to be involved in such matters.

In the unlikely event that he should, the law makes it clear that he would be acting beyond his competence. Bishops and religious alike would agree that autonomy in one sense of the word would apply in such matters. Less universal, however, would be the agreement about a local bishop's competence over the apostolic work in which religious institutes and their members are engaged. One reason for possible disagreement can be confusion, either naive or cultivated, over the meaning of such concepts as exemption or autonomy. The examination just conducted here of several pertinent documents should make it clear that these principles do not mean independence from ecclesiastical authority. The range of that authority's competence will vary depending on the matter being considered. Just as religious superiors are not dependent on bishops in the areas of religious discipline that the law entrusts to the former, so are religious institutes and their members most dependent on bishops in those areas that the law entrusts to their care. Canon 394, §1, provides:

A bishop is to foster various forms of the apostolate in the diocese and is to take care that the entire diocese or in its particular districts, all the works of the apostolate are coordinated under his direction, with due regard for the proper character of each.

This canon depends on *CD 17*, which goes on to specify, if not taxatively, what such works may be:

Thus the undertakings and organizations, whether their object be catechetical, missionary, charitable, social, family, educational, or any other pastoral end, will act together in harmony, and the unity of the diocese will be more closely demonstrated.

The common characteristic of these works is their pastoral end. Thus as the chief pastor of the diocese, the bishop is the coordinator of all works of the apostolate, even though each may have its own character (*indolis*), the same word used to describe part of an institute's patrimony in canon 578. An apostolate's character, therefore, provides a limit to the bishop's coordinating activity. Family life, catechetics, education, and health care all have a structural and methodological integrity that the bishop must learn, understand, and honor in his role of coordinating various enterprises of a single work and the different works among themselves which all contribute to the life of the local church.

It is noteworthy, too, that the bishop is to "foster" forms of the apostolate, but that he coordinates "works" of the apostolate. The distinction is similarly made in

canon 394, §2:

He (a bishop) is to insist upon the duty which binds the faithful to exercise the apostolate according to each one's condition and ability and is to exhort them to participate in and assist the various works of the apostolate according to the needs of place and time.

The term "apostolate" as applied to non-clergy is of relatively recent origin. The 1917 code spoke of the "ministry" or "sacred ministry" of the ordained and the "works" or "pious works" done by lay and clergy. Since bishops alone are the successors of the apostles, apostolate was once viewed as belonging uniquely to them, but with the emergence of lay institutes in the nineteenth century, and with the development of Catholic Action and other lay movements, Pius XI began to speak of the "lay apostolate," a notion further addressed by Pius XII in *Mystici Corporis*.<sup>19</sup> In addition to some references to the term in other Vatican II documents, the principal conciliar treatment of apostolate can be found in the Decree on the Apostolate of the Laity. An understanding of the term can be helpful to our reflections on the apostolate of religious and their institutes and its relationship to the authority of local bishops:

Apostolate is defined in AA 2 as "all activity of the Mystical Body directed to the attainment of" the goal of "spreading the kingdom of Christ throughout the earth for the glory of God the Father, to enable all men to share in his saving redemption, and that through them the whole world might enter into a relationship with Christ." The text goes on to say that the Church carries on the apostolate "in various ways through all her members. For the Christian vocation by its very nature is also a vocation to the apostolate." All Christians share in the one mission of the Church but through a diversity of ministry. The laity exercise an apostolate of evangelization and sanctification in virtue of their Christian initiation and "are assigned to the apostolate by the Lord himself."<sup>20</sup> Such an apostolate is as internal and personal as practicing the theological virtues of faith, hope, and charity that are given to each person as a gift of the Holy Spirit. Thus apostolate can consist in the testimony of living a Christian life and, especially for lay people, sanctifying the world through their grace-filled presence in it and in its activities.<sup>21</sup> Other fields of apostolic endeavor are more external ones: serving those in need, helping to make a better and more just society, and carrying on, in a manner appropriate to each person, the Church's mission of teaching, governing, and sanctifying.<sup>22</sup> The

<sup>19</sup> See Richard A. Hill, S.J., "The Apostolate of Institutes: Canons 673-683" in Jordan Hite, T.O.R., Sharon Holland, I.H.M., and Daniel Ward, O.S.B., eds., *A Handbook on Canons 573-746* (Collegeville, MN: The Liturgical Press, 1985), p. 197.

<sup>20</sup> AA 3.

<sup>21</sup> AA 3-7.

<sup>22</sup> AA 8-14.

text of AA further distinguishes lay apostolic activity between what is done as an individual and what is done in associations.<sup>23</sup>

Of particular interest for this consideration is the distinction made in AA 24 about the various ways in which lay apostolate can be related to the hierarchy:

Indeed, the lay apostolate admits of different types of relationships with the hierarchy in accordance with the various forms and objects of this apostolate. For in the Church there are many apostolic undertakings which are established by the free choice of the laity and regulated by their prudent judgment. The mission of the Church can be better accomplished in certain circumstances by undertakings of this kind, and therefore they are frequently praised or recommended by the hierarchy. No project, however, may claim the name "Catholic" unless it has obtained the consent of the lawful Church authority.

Some activities, it seems, can profit from a bit of distance from the hierarchy. This has been the position for many years of leaders of Catholic higher education in the U.S. and even of some bishops with respect to the apostolate of higher education.

While AA specifically addresses the lay apostolate, it mentions in various places how clergy and religious also can be involved in such endeavors.<sup>24</sup> The question can be asked whether the principles of "free choice" and "prudent judgment" mentioned in AA 24 can be applied also to religious and clergy who are engaged in such activities.

It might be suggested that canon 216 contributes toward an answer:

Since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition. Nevertheless, no undertaking is to claim the name Catholic without the consent of competent ecclesiastical authority.

Those arguing in favor of religious carrying on apostolates by their own undertaking might want to do so by noting the context of the canon among those of Book II, Part I, Title I, on "Obligations and Rights of All the Christian Faithful" rather than in Title II on those of "the Lay Christian Faithful." The more cautious,

<sup>23</sup> AA 15.

<sup>24</sup> E.g., AA 21, 23, 25.

the author among them, would be concerned with canon 216's qualifying phrase "according to their own state and condition." While AA 24 is noted as a source of canon 216, so is AA 25 which says:

Bishops, pastors of parishes and other priests of both branches of the clergy should keep in mind that the right and duty to exercise this apostolate is common to all the faithful, both clergy and laity, and that the laity also have their own roles in building up the Church.

It is not clear whether one such special role of the laity is that which admits of a less restrictive relationship with the hierarchy as AA 24 permits at least to them.

Before leaving AA 24, one should note a further distinction it makes between two different types of relationship between the lay apostolate and the apostolate of the hierarchy. Certain forms of the apostolate of the laity are given explicit recognition by the hierarchy, though in various ways.

In a first instance, the apostolate in question is not the bishops's own ministry, but it has "an immediately spiritual purpose" and, for the common good of the Church ecclesiastical authority selects and promotes it in a particular way:

Thus, making various dispositions of the apostolate according to circumstances, the hierarchy joins some particular form of it more closely with its own apostolic function. Yet the proper nature and distinctiveness of each apostolate must be preserved, and the laity must not be deprived of the possibility of acting on their own accord. In various Church documents this procedure of the hierarchy is called a mandate.

Various authors have employed this text to explain the nature of the mandate for teachers of theological disciplines called for by canon 812.<sup>25</sup> It could be reasonably asked which other works of the apostolate could be so categorized either now or in the future.

In the second instance the apostolate in question is clearly the hierarchy's own but for various reasons the laity are commissioned to carry them out:

<sup>25</sup> See Robert P. Deeley, *The Mandate for Those Who Teach Theology in Institutes of Higher Studies: An Interpretation of the Meaning of Canon 812 of the Code of Canon Law* (Rome Pontifical Gregorian University, 1986), pp. 29-50 and James J. Conn, S.J., *Catholic Universities in the United States and Ecclesiastical Authority*, *Analecta Gregoriana* 259 (Rome: Gregorian University Press, 1991), pp. 274f.

. . . the hierarchy entrusts to the laity certain functions which are more closely connected with pastoral duties, such as the teaching of Christian doctrine, certain liturgical actions and the care of souls. By virtue of this mission, the laity are fully subject to higher ecclesiastical control in the performance of this work.

This relationship can be found in canons 230, §2, on the general supplementary liturgical ministry of lay people; 517, §2, on the exercise of the pastoral care of a parish by lay people; 861, §2, on the lay minister of baptism, and 1112, §§1 and 2 on lay assistants at marriage. These citations roughly coincide with the categories of the care of souls and the exercise of divine worship.

Beyond these special categories, which require one or other positive act of ecclesiastical authority, the bishop's obligation of vigilance remains intact. This duty, addressed generally in canon 386, §2, is specified in AA 24 with respect to the lay apostolate:

As regards works and institutions in the temporal order, the role of the ecclesiastical hierarchy is to teach and authentically interpret the moral principles to be followed in temporal affairs. Furthermore, they have the right to judge, after careful consideration of all related matters and consultation with experts, whether or not such works and institutions conform to moral principles, and the right to decide what is required for the protection and promotion of values of the supernatural order.

This analysis of AA 24 suggests three levels of episcopal apostolic oversight: a rather large middle ground of episcopal solicitude for essentially lay activity; an area of those functions which, though entrusted to the laity, are by their nature hierarchical; and the more responsive duty of vigilance in matters of faith and morals which binds the bishop even with respect to the temporal order.

These distinctions are very useful to a consideration of lay apostolate, but to what degree can we attempt to apply them to the apostolate of religious institutes and to the apostolic work of their members? For an answer we must look to the canons that govern the Apostolate of Institutes, Chapter V of Title II on Religious Institutes. This chapter, though not all of its provisions, is new to the 1983 code, but its canons should not be mistaken as the only ones that bear upon the apostolate of religious and their institutes. Several others from the Common Norms (Title I) on Institutes of Consecrated Life, have already received ample attention. Three others from Title II's Chapter I on Religious Houses and Their Erection and Suppression both guarantee and limit the rights of diocesan bishops and religious institutes with respect to the exercise of the apostolate. Of these canon 609, §1, is

fundamental:

Houses of a religious institute are erected by the authority competent according to the constitutions, with the previous written consent of the diocesan bishop.

Since the canon is constitutive, the consent condition is necessary for the valid erection of a house. Without the consent of the diocesan bishop (not the local ordinary) a religious house cannot exist in a diocese and an institute cannot exercise a common apostolate there. In the event that the religious of a house in one diocese wished to carry on an apostolate in another diocese that had no house of the institute, they would have to be treated as travelers and their apostolic work regulated according to canon 681. If the non-resident religious were to be illegitimately exercising their apostolate in a diocese, the bishop could take any action, including penal action, that he could take against a traveler. He could also deny or restrict the confessional faculties of priests (c. 974).

The bishop's consent for the erection of a house can be conditioned, as canon 611 provides, and a bishop is bound by the consent of his predecessor. For it belongs not to the bishop, but to the institute's supreme moderator to suppress a house according to the norms of the constitutions (c. 616, §2). Nor does it seem that a bishop dissatisfied with a predecessor's consent could, for that reason alone, justifiably appeal to the extreme measure of canon 679 of preventing all religious of a given house from living in the diocese. Any invocation of that canon requires immediate referral of the matter to the Holy See.

A decree of consent would typically be granted in response to a petition from the superior whose competence to erect the house is determined in proper law usually the major superior specifying the purpose of the house. Such purposes could include activities strictly internal to the institute (formation, governance, care of the sick or aged of the institute); even so, episcopal consent is required. If the petition and consent recite very general activities (an arrangement typically preferred by the religious), subsequent changes in the activities of the house would not constitute a change contrary to the provisions of the consent decree. This is a matter that canon 612 addresses.

Canon 611 enumerates the consequences, some of them affecting an institute's apostolic work, of a bishop's consent for the erection of a house:

The consent of the diocesan bishop to erect a religious house of any institute entails the right:

1° to lead a life according to the character and proper purposes of the institute;

2° to exercise works proper to the institute according to the norm of law and without prejudice to the conditions attached to the consent;

3° for clerical institutes to have a church, without prejudice to the prescript of can. 1215, §3 and to perform sacred ministries, after the requirements of the law have been observed.

“(L)leading a life according to the character and purpose of the institute” has already been discussed in this paper, and how these elements of an institute’s patrimony (c. 578) enjoy a just autonomy (c. 586) has already been amply studied. The conclusion has been drawn that an institute’s apostolate and apostolic works are part of this protected patrimony.

The right to exercise works proper to an institute is enumerated separately in the canon first because “works proper to an institute” have a special meaning and the right to exercise them is conditioned by two factors: the norm of law and any conditions that the diocesan bishop placed on the erection of the house.

“Works proper to an institute” are defined in *ES* 28:

Religious should zealously promote those works proper or special to their own institute, that is, those which with the approval of the Apostolic See were undertaken either from the institute's very foundation or by reason of venerable traditions and then were defined and ordered by the institute's constitution and other particular laws, special consideration being given to the spiritual needs of the dioceses and maintaining fraternal concord with the diocesan clergy and with other institutes which perform similar works.

The point of the foregoing paragraph is to encourage religious not to abandon their traditional ministries. This same provision is made in canon 677, §1. The point of the subsequent paragraph of *ES* is to specify a characteristic of governance of certain works proper to the institute:

Works proper or special to the institute which are carried out in its own houses, even if these are rented, depend on the superiors of the institute who according to the constitutions rule and direct them. However, these works are also subject to the jurisdiction of the local Ordinary according to the norm of law.<sup>26</sup>

<sup>26</sup> *ES* 29 (1).

The key point is that works that are both proper to the institute and carried out in its own houses are directed by the institute's superiors, even though the law subjects them to the ordinary in certain matters. These works are contrasted to others that, though they are the institute's proper kind of work, do not belong to it (note the two meanings of "proper" here) but rather to the bishop who entrusts them to the institute:

Works which have been entrusted to the institute by the local Ordinary, however, even though they may be proper or special to it, are under the authority and direction of the same Ordinary, without prejudice, however, to the right of Religious superiors to exercise vigilance over the life of the members of the institute, and, in combination with the local Ordinary, over the fulfillment of duties committed to them.<sup>27</sup>

It is best, therefore, not to distinguish between works proper to the institute and those entrusted to it, since entrusted works can be proper to the institute. The distinction is between works that the institutes direct and those entrusted works that the bishop directs. A specific application of this distinction will be seen in canon 608 on schools which will perhaps provide a model for other enterprises.

The right to exercise proper works is conditioned by the norm of law. That law includes the constitutions that specify the works that are proper to the institute. It also includes universal law which designates those areas where religious are subject to the jurisdiction of the bishop in carrying out their apostolate or imposes further requirements for one or other activity. Canon 801, for example, provides:

Religious institutes whose proper mission is education, retaining their mission faithfully, are also to devote themselves to Catholic education through their schools, established with the consent of the diocesan bishop.

Thus, if consent for the establishment of a school was not contained in response to the petition for the erection of the house, further consent would have to be obtained. Finally, the right to exercise works proper to the institute would be subject to any particular law specifying how such works are to be carried out if they fall within areas subject to the bishop's jurisdiction.

Restrictions on the right to exercise works proper to the institute, if not already contained in law, can be included to a condition placed by the bishop in his consent for the erection of the house. Such conditions should not be so extensive as to

<sup>27</sup> *ES* 29 (2).

deprive the religious substantially of the apostolic dimension of their safeguarded autonomy. It would be better in such a case for the bishop simply to deny the consent or for the religious to refuse to erect the house. Just as a bishop cannot withdraw the consent given by a predecessor, he cannot restrict it by adding subsequent conditions. The religious relied on the consent originally given and their undertakings were made on the basis of it. Yet the bishop could conceivably remove restrictions placed on a predecessor's consent, since such removal would be intended to benefit the religious in the future.

The right of clerical religious institutes to have a church is conditioned by canon 1215, §3 that requires the further permission of the diocesan bishop to build a church in a certain and determined place. Their right to perform sacred ministries is effective only after the requirements of law in this regard have been fulfilled. This would include, for example, faculties to hear confessions, to confirm, and to assist at marriages.

Just as the bishop cannot withdraw his consent or add subsequent conditions to his own or a predecessor's consent to erect a religious house, so are religious precluded by canon 612 from changing the purpose of a house without the further consent of the diocesan bishop:

For a religious house to be converted to apostolic works different from those for which it was established, the consent of the diocesan bishop is required, but not if it concerns a change which refers only to internal governance and discipline, without prejudice to the laws of the foundation.

This provision is not new; it was contained in canon 497, §4 of the Pio-Benedictine Code. Whether further consent is required depends on how restrictive the petition and consent were. For example, "consent to erect a house for the purpose of the education of youth" could be broadly construed. But if consent were given "for the secondary education of boys," then further consent would be required for their elementary education or for coeducation. Consent is not required if the change affects internal governance alone, that is, if the house is placed under the authority of a different major superior, or if the purpose is changed from a house of studies to a community for infirm religious. Consent would be required, however, if the conversion were made from a retreat center to a provincial curia since the interests of the diocese, on the basis of which the original consent was given, are no longer being served under the new circumstances.

Returning now to the canons on the apostolates of institutes, one may observe that the chapter is divided into two parts: canons 673-677 on the apostolates themselves, and canons 678-683 on relations with the bishop. The 1983 title of the

chapter “On the Apostolate of Institutes and on Exercising Apostolic Works,” if a bit awkward, seems to capture better the two elements of the chapter. The earlier section has echoes of the prior discussion of autonomy. Canon 673 affirms that “the apostolate of all religious consists first of all in the witness of their consecrated life, which they are bound to foster by prayer and penance.” Here the hierarchy has only that competence discussed earlier of erecting the institutes and approving their laws. Nor can members of entirely contemplative institutes, whose “apostolic fruitfulness is hidden” . . . “be summoned to furnish assistance in the various pastoral ministries however much the need of the active apostolate urges it” (c. 674). Even *CD* 35.1, which speaks urgently of pastoral needs and strongly encourages religious institutes to be generous in this regard, does not include contemplatives in its appeal. To do so would be to violate their just autonomy of life.

Canon 675, which has been seen before in connection with the apostolate as part of an apostolic institute’s patrimony, affirms a unity of life and work; apostolate is not just an add-on. By consequence, §2 takes up the doctrine of *PC* 8 that apostolic activity both proceeds from and leads to union with God. In §3 the text affirms:

Apostolic action, to be exercised in the name and by the mandate of the Church, is to be carried out in the communion of the Church.

Because of the ecclesial character of consecrated life, every apostolic activity in religious institutes has an ecclesial dimension. As every work of the apostolate is done in the name of Christ by those consecrated to him, it is done also in the name of the Church, also by reasons of the institute’s status as a public juridic person. Canon 209 obliges all the Christian faithful to maintain communion; the public status of religious institutes and their members imposes this obligation on them *a fortiori*. Among the ways that religious act in communion with the Church is by having right relationships with her pastors who for their part extend to the institutes the mandate by erecting an institute, approving its constitutions, consenting to the erection of houses, and welcoming the influence of the religious’ apostolic presence.<sup>28</sup>

It is curious that the term “mandate” is used here. It is worth considering the possibility of it meaning here something like the explanation in *AA* 24. The hierarchy are acknowledging in the apostolate of religious something that belongs to the life of their institute. The mandate takes the form of the approval of the constitutions where the apostolic purpose of the institute is enshrined. The bishops associate the essentially ecclesial apostolate of such religious with their own

<sup>28</sup> See Beyer, *Institutes et Sociétés*, pp. 162-63, DePaolis, pp. 340-345, and Hill, pp. 201-203.

pastoral office while allowing the religious to safeguard the integrity of their apostolic vision and regulate it by its proper law. In this view the bishops are taking a more immediate interest in what belongs to the patrimony of religious because of the connection between the bishops' pastoral office and the religious' apostolic gifts. Even when the apostolic works of religious fall within the jurisdictional competence of the diocesan bishop, he will want to honor the authentic patrimonial character of an institute's apostolic vision that unites its spiritual charism to its work.

Canon 678 provides the central focus for the relationship between the apostolate of religious institutes and the bishop of the diocese in which they serve. Its text follows one paragraph at a time:

§ 1. Religious are subject to the power of bishops whom they are bound to follow with devoted submission and reverence in those matters which regard the care of souls, the public exercise of divine worship, and other works of the apostolate.

Here the 1998 translation is infelicitous for its lack of commas setting off an unrestrictive relative clause that expresses a separate idea, namely, the principle of *CD 35.1* that religious owe the bishops devoted respect and reverence because they are the successors of the apostles. They have this obligation always and everywhere, not just in the context of those areas where they are subject to his special authority: the care of souls, the public exercise of divine worship, and other works of the apostolate. *CD 35* gives the rationale for the authority of diocesan bishops over religious in these matters: "in order that the works of the apostolate be carried out harmoniously in individual dioceses and that the unity of diocesan discipline be preserved intact. . ."

As an area of the bishop's direct supervision, the care of souls is probably the most obvious. Answerable to him are those who hold pastoral office: vicars general and episcopal, parish priests, parochial vicars, rectors of churches, and chaplains. To these can be added other priests and deacons who, along with those holding pastoral office, exercise teaching, governing, and sanctifying functions in the Church. As these persons, whether they be secular or religious, are given the care of souls by the bishop, who is the first pastor of the diocese, so are they responsible to him for their stewardship in carrying it out. Clerical religious superiors, who have by reason of their office the care of souls of their fellow religious neither derive this responsibility from the bishop nor are responsible to him for it.

The public exercise of divine worship is a slightly more complicated category. Canon 834, §2 provides that public worship "takes place when it is carried out in

the name of the Church by persons legitimately designated and through acts approved by the authority of the Church.” Similarly, canon 837, §1 states that liturgical actions are not private actions but celebrations of the Church itself.” Finally, canon 838, §4 provides: “Within the limits of his competence, it pertains to the diocesan bishop in the Church entrusted to him to issue liturgical norms which bind everyone.” Such norms also bind religious, even in liturgical celebrations frequented exclusively by community members. This is true even though the bishop may visit only the “churches and oratories which the Christian faithful habitually attend” (c. 683, §1). The bishops’s competence is limited by universal law and by binding legislation of the episcopal conference. *CD* 35.4 provides that religious are bound by conference legislation intended for observance by all.

With the term “other works of the apostolate” canon 678, §1 neatly summarizes the more extensive enumeration of areas where religious are more directly subject to bishops contained in *CD* 35.4 which, to the care of souls and the public exercise of divine worship adds: “the sacred preaching intended for the people, the religious and moral education of the Christian faithful, especially of the children, catechetical instruction and liturgical formation. They are subject to the local ordinary also in what pertains to the decorum proper to the clerical state as well as in the various works which concern the exercise of the sacred apostolate.” *CD* adds some provision on schools which will be addressed in the context of forthcoming comments on canon 806. *CD* 35.5 further specifies its understanding of the apostolate when it adds: “There should also be a very close collaboration of all apostolic works and activities, which especially depend upon a supernatural attitude of hearts and minds rooted in and founded upon charity.” Sacred pastors are competent in their own respective dioceses to supervise apostolic coordination. To these *ES* 25 adds “social action prescribed or recommended by the local Ordinary” and “the public use of instruments of social communication.”

The code has probably simplified the list to assure that a longer one not appear to be taxative and to provide for future exigencies. But it seems clear from the context and from the examples given in *CD* and *ES* that the areas where the submission of religious to the authority of bishops is required are areas that the bishops themselves would consider within their competence, not matters that concern the internal activities of a religious community which are the province of superiors, formators, community administrators, spiritual directors, infirmarians, and the sisters and brothers who look after the temporal needs of a community. Nor would they include the work carried on by a monastery for its sustenance such as farming, craftsmanship, and food preparation for sale. Similar secular work carried on by non-monastic religious outside the religious house in offices or other workplaces to help earn a living for the community, though considered broadly apostolic by the religious themselves, would not fall within the bishop’s concern,

nor would other professional, artistic, or cultural activity through which some religious pursue their institute's broad apostolic ends. A prudent bishop would be likely to leave to competent religious superiors the determination of whether such works fell within the apostolic patrimony of the institute. The code itself acknowledges the possibility of religious doing apostolic work as individuals: canon 665, 1 provides for absence from the religious house for purposes of the apostolate; canon 671 allows a religious to accept functions or offices outside the institute with the permission of the competent superior. It is possible that certain secular activities would in a particular territory be considered unbecoming or foreign to the religious state. Canon 672 applies to religious *mutatis mutandis* the provisions of canon 285, §§1 and 2 precluding activities of clerics that are unbecoming or foreign to the clerical state. A bishop could issue particular legislation that would bind clergy and religious, though with perhaps different provisions for each state.

The analysis of canon 678 continues:

§ 2. In exercising an external apostolate, religious are also subject to their proper superiors and must remain faithful to the discipline of the institute. The bishops themselves are not to fail to urge this obligation if the case warrants it.

Religious are responsible in obedience to the superiors of their institutes not just in matters of religious and community discipline, nor only in work carried on within the religious house, but in the external apostolate as well, sharing competence, as it were, with the bishop. This does not mean simply that the superiors are to see to it that life and work are integrated, but are to provide that apostolic work, even though carried on under the authority of the bishop, is done within the apostolic patrimony of the institute. This value is significant enough that the canon calls upon the bishops to urge this obligation on religious if necessary.

Finally, canon 678 concludes:

§ 3. In organizing works of the apostolate of religious, diocesan bishops and religious superiors must proceed through mutual consultation.

The foregoing analysis has revealed not a few gray areas. Among them are: which "other works of the apostolate" carried on by religious are directly subject to the bishop's authority and which are not; what falls within the competence of the bishop and what belongs to the religious superior; which activities may fall within the unbecoming or foreign categories. Other questions may involve the corporate identity of an apostolate which may over time have become independent of a

religious institute or the common venture of more than one. There may also be areas of the apostolic work of religious that are being carried out on the margins of the Church's influence, on the cutting edge, or in a context not yet ripe for conventional pastoral ministry. Though a bishop may wish to leave such initiatives to the prudent judgment of the religious, he also wants to be informed and to offer support, along the lines of AA 24 considered above. All these areas are rich fare for consultation with religious superiors. Typically a bishop will want to consult with a major superior particularly because the lines of local authority may be unclear when the offices of local superior and institutional director have been separated. Such conversation could take place between more than one bishop and more than one institute's superior, or on a regional or episcopal conference and conference of major superiors level as recommended in *MR* 62-66.

A Bishop obviously has greater competence over works that he entrusts to religious and which are subject to his direction rather than theirs, even though the work is likely to be proper to their charism. Canon 681 deals with this subject as it does with the agreements that govern them. These issues will go without comment here since a seminar is planned on this topic at the 2002 convention. Similarly, the special rules for the conferral of ecclesiastical office on religious or their removal from them will not be considered here.

### *Special Provisions on Schools*

Women and men religious in the United States have had a long and rich tradition of devoting their apostolic lives to the work of Catholic schools. The code devotes significant attention to Catholic education and to schools in particular which provides a useful model for distinguishing the respective roles of bishops and religious institutes in exercising apostolic leadership. As was noted at the beginning of the paper, Catholic schools, especially secondary schools have become a focus of some confusion over these roles. A brief review of the provisions of the law could be useful here.

The pertinent canons can be found in Book III on the Church's Teaching Office, Title III on Catholic Education, Chapter I on Schools. After some initial canons on the respective rights and obligations of parents, the Church, and the state, canon 801 urges religious institutes whose mission is education to pursue it faithfully through schools which they establish with the consent of the diocesan bishop. Canon 803, §1 defines as a Catholic school any school which is directed by competent ecclesiastical authority or by a public ecclesiastical juridic person. Since a province or house of a religious institute is by law a public ecclesiastical juridic person (c. 634, §1), the schools they direct are Catholic schools and therefore subject to canonical legislation on Catholic schools. Similarly, if a bishop entrusts a school to religious but continues to direct it himself or through

a delegate (e.g., superintendent of schools, secretary for education), it too is a Catholic school. Since parishes are public ecclesiastical juridic persons, the schools they direct are also Catholic schools. It is unclear whether the situation typical today in the United States where a few religious women may serve in a parish school can be said to have the school entrusted to them. Such schools are directed by the parish priest through a principal who is often a lay Catholic. The existence of an agreement between the diocesan bishop and the competent superior of the institute as required by canon 681, §2, would suggest the existence of an entrustment; otherwise, the religious in the parochial school would be serving as agents of their institute under the direction of the parish priest, but typically bringing to their labor the gifts of an apostolic purpose in education that is proper to their institute.

Canon 803, §2 provides: “The instruction and education in a Catholic school must be grounded in the principles of Catholic doctrine; teachers are to be outstanding in correct doctrine and integrity of life.” Diocesan bishops could enact particular law setting policy to specify this principle with respect to the administration of schools and to criteria for the selection and retention of teachers, whether of religion or any other subject. If he were to do so, the particular law would bind even the schools established and directed by religious.

Canon 804 deals with Catholic religious instruction and education in any school whatsoever and affirms in §1 its subjection to the authority of the Church. The scope of the canon envisions all Catholic religious education even if, as in some countries, it is imparted in Catholic-oriented state schools or non-Catholic schools. The episcopal conference is competent to issue general norms and the diocesan bishop to regulate and supervise such religious education. Here too is a possible area for particular law governing such matters as religious-education curricula, books, and other teaching materials. If it were to be enacted, religious institutes would be bound to observe it, even in their own schools, that is, those that they direct. The topic of such law could be that of canon 804, §2, namely, that teachers of religion be “outstanding in correct doctrine, the witness of a Catholic life, and teaching skill.” Notice here the greater specificity than the requirement in the previous canon for all teachers.

Canon 805 provides:

For his own diocese, the local ordinary has the right to appoint or approve teachers of religion and even to remove them or demand that they be removed if a reason of religion or morals requires it.

This too applies to the schools of religious, although it seems that the practice has been relatively rare in the United States, so rare that when invoked, its

justification may be questioned. Yet the right of the ordinary is clear. A variety of models could be used in exercising the right. Notice that it is a right and not an obligation.

Canon 806 is especially relevant and is included here in full:

§ 1. The diocesan bishop has the right to watch over and visit the Catholic schools in his territory, even those which members of religious institutes have founded or direct. He also issues prescripts which pertain to the general regulation of Catholic schools; these prescripts are valid also for schools which these religious direct, without prejudice, however, to their autonomy regarding the internal direction of their schools.

§ 2. Directors of Catholic schools are to take care under the watchfulness of the local ordinary that the instruction that is given in them is at least as academically distinguished as that in the other schools in the area.

The provision concerning visitation in §1 repeats what canon 683 had provided concerning the works of religious:

§1. At the time of pastoral visitation and also in the case of necessity, the diocesan bishop, either personally or through another, can visit church and oratories which the Christian faithful habitually attend, schools, and other works of religion or charity, whether spiritual or temporal, entrusted to religious, but not schools which are open exclusively to the institute's own students.

§2. If by chance he has discovered abuses and the religious superior has been warned in vain, he himself can make provision on his own authority.

*CD 35.4* had already made the distinction contained in canon 806, §1, between the role of the bishop and that of religious in their schools:

Catholic schools conducted by religious are also subject to the authority of the local ordinaries for purposes of general policy-making and vigilance, but the right of religious to direct them remains intact.

*ES* 39.1 offers a useful identification of what pertains to the the general policy (*ordinatio generalis*) in Catholic schools which belongs to the bishop's competence:

According to the norm of No. 35, 4 of the Decree *Christus Dominus*, the right of Religious in regard to the direction of the schools remaining in effect, . . . the general policy of the Catholic school of Religious institutes involves the general distribution of all Catholic schools in a diocese, their common cooperation and supervision so that these schools no less than others may be adapted to pursue cultural and social aims.

Some areas where bishops can issue particular law with respect to Catholic schools have already been identified. Canon 806, §1 affirms the right to issue precepts and specifies their scope, namely, the general regulation of Catholic schools which is to be distinguished from internal direction (*moderamen internum*) which is the competence of religious if they in fact direct them, that is to say, if the schools are their own. This prerogative does not belong to those religious to whom the bishop entrusts schools. In such cases the internal direction remains with the bishop or his delegate who could, of course, be one of the religious to whom the school was entrusted.

What falls within each of the two categories is likely to remain a disputed issue for some time. Certainly the distribution of schools, and their maintenance of competitive standards through common cooperation and supervision (perhaps a kind of accreditation program) were issues identified in *ES*, but they are not taxative. Surely included are those areas which the preceding canons assign to the competence of ecclesiastical authority. But even in those areas of policy with respect to religious education, is it within the bishop's competence to determine the number of hours of religious instruction per day or per week? Could a certain methodology be prescribed? If so would it be violating a dimension of the patrimony of a religious institute whose founding documents and sound tradition may have an established form of pedagogy? Other elements of general regulation could negatively affect the rights of parents. Recruiting and admissions policies, for example, could infringe a parent's right of choice guaranteed in canon 793, §1. It will be interesting to observe how experience sorts out these areas of competence. This topic would be another that could occupy bishops and religious superiors in the dialogue.

The provision for visitation in canon 806, §1 raises an interesting, if not practically pressing question about the privilege of regulars in this regard. Canon 1382 of the 1917 code contained a provision on visitation very similar to that of canon 683, §1, and specifying that the schools of religious of whatever kind were

not exempt from it. Bouscaren and Ellis maintain that Leo XIII's 1881 Constitution *Romanos Pontifices* declared that the privilege communicated to regulars in 1874 exempting their secondary schools from episcopal visitation remained intact. They further argue that the privilege by reason of canon 4 survived the contrary provision of canon 1382 of the 1917 code.<sup>29</sup>

Professor James Coriden in his 1985 commentary<sup>30</sup> and Sister Sharon Euart in her 2000 commentary<sup>31</sup> on canon 806 both cite the Bouscaren and Ellis discussion but say that the privilege has not survived, citing also *CD 35.4*, but not arguing why the privilege is dead. The privilege does not concern the right of bishops to issue precepts that bind the schools of religious but rather the exemption of the schools of regulars from episcopal visitation. Canon 4 clearly provides that privileges granted by the Apostolic See remain intact if they are in use and have not been revoked, unless the canons of this code expressly revoke them. The privilege is in use, since bishops do not commonly visit the secondary schools of regulars. It was not revoked by *CD 35.4* which spoke not of visitation but the right of bishops to issue policy for all schools (which is not in dispute here), and there is no express revocation of the privilege in the 1983 code as there is of other contrary privileges. This paper maintains that the privilege remains intact.

Canon 806 may provide a helpful guide for bishops and religious to sort out their concurrent competence over "other works of the apostolate" among which Catholic schools could certainly be categorized, at least outside of their specifically religious dimension. Bishops should see to matters of policy and religious to the direction of their own apostolic works.

### *Conclusion*

This paper began with the concern that bishops and religious have not always had great success to establishing the cooperative relations envisioned by the Council. Presuming respect for the law and acknowledgment of its binding force on both sides, one can hope that knowledge of its provisions will help to clarify the relationship. But more is needed. Associations like the CLSA which bring together religious and diocesan officials and create among them bonds of understanding, respect, and friendship have made a great contribution to communion and can continue to do so. Efforts at the local level can do the same. Religious working in a diocese should receive the same information as is made

<sup>29</sup> Bouscaren and Ellis, p. 748.

<sup>30</sup> James A. Coriden in *The Code of Canon Law: A Text and Commentary*, James A. Coriden, Thomas J. Green and Donald E. Heintschel, eds. (Mahaw/New York: Paulist Press, 1985), pp. 569-570.

<sup>31</sup> Sharon A. Euart, R.S.M. in *New Commentary on the Code of Canon Law*, John P. Beal, James A. Coriden and Thomas J. Green, eds. (Mahaw/New York: Paulist Press, 2000), p. 960.

available to the diocesan clergy, and religious priests should be invited to meetings of the presbyterate and should accept them gladly. Other gatherings of religious women and men with the bishop and diocesan officials should be arranged to promote understanding. But perhaps most important of all is the obligation on both sides to cultivate a *novus habitus mentis*, to pray for and embrace a conversion of heart that can heal old wounds and open new doors to the exchange of the Spirit's gifts in common service to God's people.



**THE PASTORAL CARE OF MIGRANTS AND  
THE CODE OF CANONS OF THE EASTERN CHURCHES**

CHORBISHOP JOHN D. FARIS

*Always “Other”*

Before embarking on an examination of how the *Code of Canons of the Eastern Churches* treats the issue of the pastoral care of migrants, I would like to make an important clarification. It is erroneous to identify the Eastern Catholic Churches in this country (or, for that matter, any Eastern Church) as migrant churches. Given the fact that the immigration of faithful from Eastern Europe and the Middle East began during the nineteenth century, by now these communities rightly demand to be called “American.”<sup>1</sup>

It has been the unfortunate fate of the Eastern Catholic parishes in this country to be equated – incorrectly – with the ethnic parishes of the Latin Church, the Irish, Slovak, German, or Italian parishes. Just as the Irish and the Italians had their own parishes, the Lebanese Maronites and the Ukrainians had theirs. With the exception of the Ukrainian and Ruthenian Churches, the Eastern Catholic parishes were for decades subject to the jurisdiction of the local Latin bishops. It was presumed on the part of many (perhaps even the Holy See?) that these Ukrainian, Maronite, and Melkite Greek-Catholic parishes – like the ethnic parishes of the Latin Church – were all *ad hoc* arrangements and that the descendants of these immigrants would eventually be absorbed into the local Latin parishes.<sup>2</sup> It is not the intention of the Church that the Eastern Catholic communities meet this fate. Their survival depends on their ability to remain “other” and distinct. The American “melting pot” model is not the most fortuitous when dealing with the Eastern Catholic Churches.<sup>3</sup>

<sup>1</sup> Admittedly, as a result of successive waves of immigration, the Eastern Catholic Churches sometimes contain migrants among their faithful.

<sup>2</sup> At times, the Latin ethnic or national parishes became multi-ethnic and continued to flourish; in other situations, the parishes that remained restricted to a certain ethnic group themselves disappeared as the immigrants died and their descendants moved away.

<sup>3</sup> The Eastern Orthodox Churches have fared better in the United States because, unlike their Catholic counterparts, the Orthodox faithful do not so readily affiliate themselves with a Latin *Catholic* Church.

It is a long standing tradition of the Catholic Church, most recently articulated in the Eastern code, that Catholics not change affiliation with their churches *sui iuris* because of immigration.<sup>4</sup> In other words, just because an Armenian Catholic emigrated from Armenia to the United States, he or she would not be transfer membership to the Latin Catholic Church. Further, Vatican Council II urged a permanent ecclesial presence for Eastern Catholics outside the homeland,<sup>5</sup> a principle that was woven into the fabric of the Eastern code.<sup>6</sup> As a result of the establishment of numerous Eastern Catholic hierarchies in the United States, this country cannot canonically be identified as Latin territory.<sup>7</sup>

With this paper I do not intend to reiterate a program of pastoral care for Eastern Catholics; this has already been done.<sup>8</sup> Instead, I shall address the issue of the pastoral care of Eastern Catholic *immigrants* to the United States.<sup>9</sup> To define this methodology better, a few preliminary distinctions should be made.

- As I indicated above, it is important to note that not all Eastern Catholics are immigrants, nor are they of one ethnic background. To use my own example, I always explain that I am the descendant of early eighteenth-century German and Irish immigrants on my mother's side, and the fifth generation of Lebanese immigrants on my father's side of the family. I am only partially of Lebanese extraction, but fully a Maronite.
- The immigration of any one Eastern Catholic ethnic group or nationality did not take place as a single event, even one spreading over several years. Rather, it usually took place in waves. Again, to use the example of the Lebanese, there was an immigration at the turn of the century because of Ottoman oppression, and then World War I. Immigration re-commenced

<sup>4</sup> William Bassett, *The Determination of Rite* (Rome: Gregorian University Press, 1967), 139-239.

<sup>5</sup> "Steps should therefore be taken for the preservation and enlargement of all the individual churches throughout the world, and so parishes and their own hierarchy should be set up wherever the spiritual good of the faithful requires it." *Orientalium Ecclesiarum* n. 4.

<sup>6</sup> *CCEO* cc. 146-150 articulates the canonical relationship between the communities established outside the patriarchal territory with the patriarch and the synod.

<sup>7</sup> It is usually the case that a country is under the supervision of a single Vatican congregation. The United States, like India, has jurisdictions supervised either by the Congregation for Bishops or the Congregation for the Eastern Churches (with the eparchies or exarchies marked with a "\*" in the *Annuario Pontificio*).

<sup>8</sup> See Jobe Abbass, "Canonical Dispositions for the Care of Eastern Catholics outside their Territory," *Periodica* 86 (1997) 321-362; John Faris, "Canonical Issues in the Pastoral Care of Eastern Catholics," *Proceedings of the 53rd Annual Convention of the Canon Law Society of America* (Washington, DC: CLSA, 1991) 154-164; Michel Thériault, "Canonical Questions Brought about by the Presence of Eastern Catholics in Latin Areas in the Light of the *Codex Canonum Ecclesiarum Orientalium*," *Ius Ecclesiae* 3 (1991) 201-232.

<sup>9</sup> Sacred Congregation for Bishops, Instruction *De Pastoralis Migratorum Cura*, 22 August 1969, *Enchiridion Vaticanum* 3:1500-1605. See also S. M. Tomasi, "Pastoral and Canonical Innovations of Pastoralis Migratorum Cura," *The Jurist* 31 (1971) 332-341.

in the 1970's and 1980's because of the civil war in Lebanon.

Lastly, in treating issues of Eastern Catholic immigrants, it should be noted that some emigrations never take the faithful beyond the borders of their own nations. Syro-Malabar and Syro-Malankara faithful have emigrated from Kerala to all parts of India. In most countries such a transplant would not require very much of a cultural adaptation; but in India, it means learning a new language and accommodating to new cultural circumstances.<sup>10</sup> The two Eastern Catholic hierarchies in India have been struggling for years to be permitted to establish parishes and hierarchies for their faithful who have migrated, but they have regularly met with opposition from the Latin hierarchy.

### *Pastoral Solitude for Immigrants*

In its delineation of the rights and obligations of eparchial bishops, canon 192<sup>11</sup> indicates that the eparchial bishop is to show concern for all those entrusted to his pastoral care. Pastors are also mandated to show pastoral solicitude for various categories of persons, but, for the sake of simplicity, we shall restrict ourselves to the ministry of the bishop<sup>12</sup> Article 1 addresses circumstances which might marginalize Catholics; article 2 asserts that the eparchial bishop must foster an ecumenical spirit among these faithful; article 3 indicates that the eparchial bishop is to consider the non-baptized as committed to his care.

As indicated above, the first article of canon 192 calls for the bishop to show concern for *all the Christian faithful entrusted to his care*. The canon then delineates those factors that might be the cause of marginalization or neglect of certain Christian faithful:

Canon 192 – §1. In the exercise of his pastoral function, the eparchial bishop is to show that he is concerned for all the Christian faithful who are committed to his care, regardless of age, condition, nation or Church *sui iuris*. For those who live within the territory of his eparchy and those who are staying in it temporarily,

<sup>10</sup> See James Arampulickal, *The Pastoral Care of the Syro-Malabar Catholic Migrants* (Vadavathoor, India: Oriental Institute of Religious Studies India Publications, 1994).

<sup>11</sup> The counterpart of this canon in the 83CIC is c. 383, comprising four articles: The first article treats the pastoral care of persons regardless of age, condition or nationality; the second article urges the diocesan bishop to provide for the spiritual needs of “faithful of a different rite” (“[f]ideles diversi ritus”); article 3 calls for the bishop to act with kindness and charity toward those who are not in full communion with the Catholic Church and to foster ecumenism according to the principles of the Church; in the last article, the bishop is called to be a witness of the charity of Christ towards the non-baptized.

<sup>12</sup> CCEO c. 293 states that the pastor is to be mindful of his duties and solicitude for the Catholics and non-Catholics, for the baptized and the non-baptized, and for those who have distanced themselves from the sacraments or even abandoned the faith.

the bishop is to extend his apostolic spirit also to those who cannot sufficiently avail themselves of ordinary pastoral care due to their condition in life, as well as to those who are far from the practice of their religion.

This not a call for ecclesiastical “affirmative action,” that is, that the certain sectors of the faithful be treated with special concern; rather, this is a reminder that they not be overlooked or neglected. It will be useful to examine some of those factors that might result in marginalization. It should be noted that the category of *migrant* is not expressly mentioned in the canon. However, all these factors in some way touch the lives of migrants.

### *Age and Condition*

The categories of “age” and “condition” comprise a number of specific qualities relating to the pastoral needs.<sup>13</sup> With regard to “age,” the Church can take pride in its programs that provide spiritual, educational, and social programs for the youth. However, the elderly are sometimes neglected. Care of elderly immigrants is sometimes a very difficult task because of their special needs (e.g., language and cultural barriers). Bishops and pastors are urged to provide them adequate pastoral care.

With regard to “condition,” migrants are listed as a separate category in the *Directory on the Pastoral Ministry of Bishops*,<sup>14</sup> because of their particular needs, but among the migrant population other factors such as lack of education, unemployment, underemployment, psychological trauma, and social problems contribute in making the plight of the immigrant even more acute.<sup>15</sup> In caring for the immigrants, bishops and pastors will be called upon to address all these issues.

### *Nation*

As one would expect, the factor of nationality plays an important role in the pastoral care of migrants. The Orthodox Churches (perhaps excessively to their detriment) are national churches and their Eastern Catholic counterparts on occasion replicate their nationalistic and ethnic prejudices.

Nationality differences can arise because immigrants who belong to the same Church *sui iuris* might have migrated from different countries. Each of these

<sup>13</sup> See *Christus Dominus*, n. 44. The *Directorium de pastorali ministerio Episcoporum*, issued by the Sacred Congregation for Bishops, 22 February 1973, (*Enchiridion Vaticanum* 4:1226-1487) offers guidance in this area.

<sup>14</sup> Washington: USCC, 1974, n. 156.

<sup>15</sup> It is important to bear in mind always that in dealing with immigrants, we are dealing with persons who have been *traumatized* by something: war, poverty, oppression, or violence.

national groups brings prejudices and political differences (often imperceptible to an outsider) that give rise to parties and factions in the community. American-born bishops and pastors may not be aware of the sensibilities of the migrants, or they might initially discount or downplay the differences. However, the issues need to be addressed in order to avoid disputes and divisions within the community. Favoritism or ecclesiastical apartheid are to be avoided.<sup>16</sup>

Because Eastern Catholics are not all immigrants (some are American-born), they are *de facto*, of different nationalities. I would like to recall an incident that occurred several years ago in a coffee shop in New York. I was with a very bright medical student. I noticed that our waiter had an accent indicative of a native Arabophone. I mentioned this to my friend who did not want me to raise the subject with the waiter because he “didn’t want to deal with immigrants.” To me this seemed strange, since my friend was the grandson of immigrants. Nevertheless, his attitude towards immigrants is a common one among Eastern Catholics and, for this reason, American-born persons and immigrants may find it difficult to coalesce and cooperate.

The situation is not rare, that one “wave” of immigrants refuses to accept another “wave.” Because immigrants are traumatized, they easily become frightened of anyone who might pose a threat. In the secular world, established immigrants are resentful of new arrivals who will work for lower wages. In the Church, the established immigrants may have struggled and sacrificed to establish a parish church only to find that it is soon overrun by new arrivals who may want to do things differently.

Bishops and pastors, always susceptible to accusations of favoritism or prejudice, must be sensitive to these differences. Such sensitivity is reflected not only in their only immediate relations with lay persons, but also in curial and parochial appointments.

### *Enrollment in a Church sui iuris*

The Eastern code provides that a group of faithful lacking a bishop of their own could be entrusted to the pastoral care of the bishop of another Church *sui iuris*.<sup>17</sup> Quite often, it is a case of Eastern Catholics being entrusted to the pastoral care of a Latin bishop, but the possibility remains that an Eastern Catholic eparchial bishop

<sup>16</sup> The Ethiopian Church comprises faithful from both Ethiopia and Eritrea; the Maronite Church has faithful from both Lebanon and Syria. In both cases, the two nations are hostile to one another.

<sup>17</sup> *CCEO* cc. 207 and 916, §1.

could be entrusted with the pastoral care of faithful from other Churches *sui iuris*.<sup>18</sup> Both codes provide for the possibility of the creation of a parish,<sup>19</sup> designation of a priest<sup>20</sup> or the appointment of a syncellus / episcopal vicar<sup>21</sup> to respond the pastoral needs of the Eastern Catholic faithful.

### *Temporary Residents*

Although some immigrants depart from their homeland with a vow never to return, it is not rare for others to deny that they have come to a new home; for these, the new land is only a temporary refuge, not a new home. They intend to return to their homeland as soon as it becomes feasible. In its reference to persons “who live within the territory of his eparchy and those who are staying in it temporarily,” the Eastern code includes all those persons who reside in the eparchy temporarily, albeit that such a state of affairs may last for an extended period.

The temporary resident status has an impact on the pastoral care to be provided and on the overall parish life. In some cases, the migrants are barely legal, or illegal. Illegal persons are reluctant to “register” in the parish, thereby relegating themselves to anonymity. They might have difficulty in obtaining a marriage license and perhaps can enter only into a marriage that would not be recognized in the civil forum.<sup>22</sup> Such persons have difficulty in obtaining a job with compensation sufficient to support a family. Naturally, their financial support of the parish will be affected.

### *Inability to avail themselves of ordinary pastoral care*

For the second time in the same paragraph, the term “condition” is used, this time in the context of the phrase “those who cannot sufficiently avail themselves of ordinary pastoral care due to their condition in life.” The phrase refers to *Christus Dominus* n. 18, which mentions certain categories of persons who receive little or no benefit from the ordinary pastoral care provided in parishes: migrants, exiles, refugees, sailors and air force personnel, itinerants and tourists. The category could conceivably be expanded to include persons in relationships that morally prevent them from the reception of the Eucharist.

### *Non-practitioners of religion*

<sup>18</sup> For example, the Eparchy of Krievci (Croatia) was established to serve Serbian Orthodox, who had come into full communion with Rome. Eventually, Ruthenians from Slovakia, Ukrainians from Galicia, Slavic Macedonians and Romanians were incorporated into the Eparchy.

<sup>19</sup> CCEO c. 280, §1 / CIC c. 518.

<sup>20</sup> CCEO c. 678, §2 / CIC c. 383, §2.

<sup>21</sup> CCEO c. 246 / CIC c. 476.

<sup>22</sup> CCEO c. 789, 2°

In 1990, the churches of Eastern Europe emerged from the catacombs after approximately seven decades of atheistic, Communistic oppression. The great majority of the faithful, if they had been baptized at all, had only a meager understanding of their faith. For such people, religion is met with disdain or ignored. Clerics ordained during this period received minimal formation in the celebration of cult. The mid-twentieth century conciliar renewal is unknown to them.<sup>23</sup>

For these reasons, a significant portion of the immigrant population is non-practicing, and de facto requires an evangelization program.  
*Baptized Non-Catholics*

The above-mentioned conditions are for those Christian faithful who were members of a Catholic Church *sui iuris*, but the Eastern code calls for the pastoral concern of the eparchial bishop to extend beyond the bounds of the Catholic Church and treats these faithful in article 2 of the canon.<sup>24</sup>

Canon 192 – §2. The eparchial bishop is to see in a special way that all Christian faithful committed to his care foster unity among Christians according to principles approved by the Church.

It is quite common for communities originating in Eastern Europe or the Middle East to be comprised of Catholics and Orthodox. Not only do the immigrants bring with them the cultural treasures of the homeland, but also the prejudices and animosities. The eparchial bishop must extend a helping hand to these non-Catholic faithful without being accused of proselytism. The task is a delicate one since the faithful – both Orthodox and Catholics – will often gravitate to a church in which they are linguistically and culturally comfortable and overlook issues of ecclesiastical affiliation.

The eparchial bishop will be successful in achieving the balance if he endeavors to support the Orthodox hierarchy and clergy in the pastoral care of their faithful. This can be done in a variety of ways:

<sup>23</sup> Some facets of conciliar reform, e.g., ecumenism, would not be easily received and implemented in the Eastern European churches.

<sup>24</sup> Although it is of no great importance, the canons of the *CCEO* and the *83CIC* treat the pastoral care of baptized non-Catholics differently: While the *CCEO* calls for the eparchial bishop to foster an ecumenical spirit among those Christian faithful entrusted to his care (see text above), *83CIC* c. 383, §3 addresses the matter from perspective of the diocesan bishop's direct relationship with baptized non-Catholics and secondly, calls for him to foster ecumenism: ("He is to act with kindness and charity towards those who are not in full communion with the Catholic Church, fostering ecumenism as it is understood by the Church.")

- Catholic schools, hospitals and other similar institutions are to see that other Christians who attend the institutions or stay there have their own ministers and can receive the sacraments from them.<sup>25</sup>
- Eastern Catholics should cooperate with other Christians in matters of charitable works, works of social justice, defense of human rights, promotion of peace and civic occasions.<sup>26</sup> Though migrants come from the same nation, it is not rare for the community to be divided between the Orthodox and Catholic churches. There are certain causes and civic celebrations that can serve as occasions for fraternal encounter. In this area, precaution must be taken that any of these occasions do not devolve into the source of partisan political activity.
- If non-Catholic Christians lack a place in which divine worship can be celebrated with dignity, the eparchial bishop can grant permission for them to use a Catholic building, cemetery or church.<sup>27</sup> An even more radical approach would be for Catholic and Orthodox to construct, hold title, and share the use of church facilities. In the case of migrant populations, given the limited resources available to them, this might be a more practical approach.

### *Non-Baptized*

Non-baptized persons are also to be recipients of pastoral attention:

Canon 192 – §3. The eparchial bishop is to consider the non-baptized as being committed to him in the Lord and see that the love of Christ shines upon them from the witness of the Christian faithful living in ecclesiastical communion.

Again, because of the atheistic dictatorships under which many Eastern Churches suffered for decades, it is not rare that a person with a Catholic or Orthodox background be non-baptized. If it is their desire to receive baptism, they would become catechumens.<sup>28</sup> Even if they lack the faith and the desire to become Christians, it is still the obligation of the bishop and pastors to be concerned for their welfare and witness the love of Christ to them.

### *Establishment of Hierarchies and Parishes*

Eastern Catholic immigrants have the right “to worship God according to the

<sup>25</sup> CCEO c. 907.

<sup>26</sup> CCEO c. 908; see also c. 25, §1.

<sup>27</sup> CCEO c. 670, §2.

<sup>28</sup> CCEO c. 587. See also CCEO c. 9, §2.

prescriptions of their own Church *sui iuris*”<sup>29</sup> and “to receive assistance from the pastors of the Church from the spiritual goods of the Church, especially the word of God and the sacraments.”<sup>30</sup> Such rights impose a concomitant obligation on the hierarchy and clergy to provide ecclesial structures for worship, reception of the sacraments, and the preservation of their ritual patrimony.

The Council called for the establishment of parishes and hierarchies of the various Churches *sui iuris* wherever the spiritual good of the faithful requires it.<sup>31</sup> It should be noted that the justification for the establishment of parishes or hierarchies is not the expansion of the Church *sui iuris*, or the observance of any rite; rather, parishes and hierarchies are to be established if the spiritual good of the faithful requires it. Because of their understanding of the Church and religion, the faithful themselves may or may not be aware of this need.

Because the Catholic Church operates with the sluggishness typical of all bureaucracies, the hierarchies are often established not for the Eastern Catholic immigrants themselves, but for their offspring. It was usually left to the communities themselves, with varying degrees of support from the local Latin bishop, to establish a parish and bring a priest from the homeland to serve them. The small immigrant parishes, under the care of a foreign-born priest, remained the regular state of affairs for decades.

When inquiries are made as to the spiritual necessity of the appointment a bishop of their own Church *sui iuris*, the clergy and laity usually respond that the appointment of a bishop would impose an unnecessary financial hardship on the community. If a bishop is eventually appointed, he arrives to find communities and pastors who have functioned under the benevolent neglect of the local Latin bishops. The struggle for control ensues.

### *Clerics and Ministers*

The provision of competent ministers is probably the key to success in serving the needs of immigrants. It is also the greatest challenge that bishops face. The vocation crisis of the American Catholic Church is only one factor in the complex

<sup>29</sup> See *CCEO* c. 17.

<sup>30</sup> See *CCEO* c. 16.

<sup>31</sup> “Steps should therefore be taken for the preservation and enlargement of all the Churches *sui iuris* throughout the world, and so parishes and their own hierarchy should be set up wherever the spiritual good of the faithful requires it.” (*Orientalium Ecclesiarum* n. 4). In the United States, ordinariates were at first appointed for the Ukrainians and Ruthenians in 1913. Later, bishops were appointed for the Maronites (1966), the Melkites (1966), the Armenians (1981), the Chaldeans (1982), the Romanians (1987), the Syrians (1995), the Syro-Malabars (2001). An Apostolic Visitor for North America and Europe for the Syro-Malankarans was appointed in 2001.

matter of preparing priests to serve in the Eastern Catholic Churches in the United States.

A bishop of an Eastern Catholic Church serving in the United States must provide his faithful with priests who know their own Church *sui iuris*, its rite (liturgy, spirituality, history, music, iconography and hagiography), the language(s) of the people, and who possesses pastoral and administrative skills apt for the needs in America.

On the one hand, the bishop can bring candidates or priests from the homeland to serve in the American parishes. This was the case at the time of the immigration and has increasingly becoming the norm with the shortage of priests in this country. Naturally, these priests bring with them many qualities that well serve the community: they know the language, the culture, the mentality of the people and (in uneven degrees) the rite. On the negative side, the priests are usually not well-trained in pastoral care, since ministry in many countries was for a long time restricted to cult. The priest may also have a difficult time in learning English, adapting himself to the American mentality and milieu, and administering the parish in accordance with standard American practice.

The other possibility is for the bishop to educate candidates for the priesthood who are born in this country. As noted above, such candidates are indeed “rare birds.” The positive aspect of such an arrangement is that the young men already know English and possess an American mentality. On the negative side, American-born candidates may not understand, or may be condescending to the immigrants they are called to serve. A priest’s knowledge of, or ability to learn the language of the immigrants may be limited. In the matter of rites, an American-born candidate can learn what is needed, but there is always the danger that his liturgical approach will be weak or syncretic (Latinizing). There is also the danger that he may become over-zealous, desiring a “purity” of the rite non-existent even in the homeland.

Pastoral formation of such candidates requires that they be instructed in catechesis, homiletics, liturgy, parochial administration, ecumenism, social apostolate, social communications, psychology and pastoral sociology.<sup>32</sup> This is not an easy task and perhaps can only be achieved partially in the best of circumstances.

Unfortunately, some of the bishops who are most desirous of educating American-born candidates ordain hastily, in desperation, many young men who are unsuitable for the priesthood.

<sup>32</sup> CCEO c. 352, §§2-3.

## *Bonds with Hierarchy in the Homeland*

With regard to the pastoral care of immigrants of whatever nationality or ethnic group who belong to the Latin Church, hierarchical bonds with the homeland are of no immediate concern to bishops and pastors in the United States. A local Latin bishop would not be very interested in seeing that his Irish-born parishioners maintain contact with their bishop in County Cork. In the case of Eastern Catholics, the maintenance of such a bond is canonically required and pastorally beneficial.

The bonds between the Eastern Catholic faithful residing outside the patriarchal territory and the hierarchy are juridical in that the faithful are members of that Church *sui iuris*,<sup>33</sup> but are not jurisdictional since the hierarchies established outside the patriarchal territory are (with the exception of liturgical matters) subject to the Roman Pontiff and not the patriarch and synod.<sup>34</sup>

These juridical bonds are maintained in various ways:

- The Eastern code calls for eparchial bishops “to foster relations with the higher authority of that Church.”<sup>35</sup>
- The eparchial bishops who are established outside the patriarchal, major archiepiscopal, or metropolitan territory are to send a copy of the quinquennial report (required to be sent to the Apostolic See) to be sent to the patriarch, major archbishop or metropolitan.<sup>36</sup>
- Eparchial bishops and diocesan bishops<sup>37</sup> are to inform the Apostolic See about the status and needs of Eastern Catholic faithful committed to their care.<sup>38</sup>

If an eparchial (or diocesan) bishop has been entrusted with the pastoral care of the faithful of another Church *sui iuris*, he is to formulate a plan of action in consultation with the patriarch. Since neither the faithful nor the bishop are subject to the authority of the patriarch, the bishop acts on his own authority and submits a report of this activity to the Apostolic See. If the patriarch is opposed to the

<sup>33</sup> See *CCEO* cc. 29, 30, 33-35, 38.

<sup>34</sup> See *CCEO* cc. 146-150.

<sup>35</sup> *CCEO* c. 193, §1.

<sup>36</sup> *CCEO* c. 206, §2.

<sup>37</sup> The language of *CCEO* c. 207 is faulty (*Episcopus eparchialis cuiuscumque Ecclesiae sui iuris, etiam Ecclesiae latinae*) in that there are no eparchial bishops in the Latin Church. In a like manner, when *CCEO* c. 193 treats eparchial bishops to whom Christian faithful of another Church *sui iuris* have been entrusted, it is most likely that these bishops will be *diocesan bishops*.

<sup>38</sup> *CCEO* c. 207.

action of the bishop, he can submit his protest to the Apostolic See.<sup>39</sup>

The burden of maintenance of bonds with the hierarchy in the homeland also rests with the patriarch who has the right and obligation to seek appropriate information regarding the faithful who live outside the territory of his Church; he may do this through a visitation, or messenger sent by him, with the consent of the Apostolic See.<sup>40</sup> After examining the visitation report with the synod of bishops, the patriarch can recommend a course of action to be taken by the Apostolic See.<sup>41</sup> A visitation might also be the occasion for the patriarch to request a “temporary special law” (*ius speciale ad tempus*) with regard to the pastoral care of faithful residing outside the territory.<sup>42</sup>

### *Liturgical Texts*

The Eastern code refers to the responsibility of the eparchial bishop as the “moderator, promoter and guardian of the entire liturgical life in the eparchy committed to him.”<sup>43</sup> In any eparchy, this is never a small task; however, in the eparchies established outside the homeland the task becomes enormous because of language. The opinions that follow are not universally held, but it is my opinion that a primary responsibility of the eparchial bishops in this country is to provide accurate and attractive English adaptations of the liturgical texts of their churches. The need for English texts might not be immediately apparent because the immigrants will naturally desire the liturgical life to be celebrated in the language of the homeland; but, if some accommodation is not made for the needs of the children of the newly-arrived immigrants (who go to school and socialize in an English-speaking milieu) the second generation will wander away from the church and return – perhaps – only for special occasions.

To assist him in this enormous task, the eparchial bishop should establish a liturgical commission. While the Eastern Code mandates the establishment of liturgical commissions for patriarchal and major archiepiscopal churches,<sup>44</sup> and alludes to the responsibility of the council of hierarchs to provide for the proper observation of their own rite,<sup>45</sup> no mention is made of liturgical commissions at the

<sup>39</sup> *CCEO* c. 193, §3.

<sup>40</sup> *CCEO* c. 148, §1. A patriarch or major archbishop could make such a visitation personally without the permission of the Apostolic See.

<sup>41</sup> *CCEO* c. 148, §3.

<sup>42</sup> See 10 November 1988 letter of Pope John Paul II to Archbishop Cassidy published in *Nuntia* 29 (1989) 27 and the 27 October 1990 address of Pope John Paul II in presenting the *CCEO* to the Synodal Fathers published in the weekly English edition of *L'Osservatore Romano* (5 November 1990) 5.

<sup>43</sup> *CCEO* c. 199, §1.

<sup>44</sup> *CCEO* cc. 114, §1 and 124.

<sup>45</sup> *CCEO* c. 169.

eparchial level. The approval of translations of liturgical texts, after review by the Apostolic See, is reserved to the patriarch or major archbishop with the consent of the synod of bishops, or the metropolitan with the consent of the council of hierarchs.<sup>46</sup>

### *Parochial Structures*

Beyond the Herculean task of enabling two different immigrant populations to coalesce, cooperate, and support each other, Eastern Catholic parishes are often faced with the polarity of American-born and foreign-born parishioners.

As stated earlier, Eastern Catholic parishes often comprise different “waves” of immigrants and the resulting situations are often surprising. In the past, our conception of the parish population was that of elderly immigrants and their American-born offspring. Today, the elderly immigrants have passed away and their American-born offspring are now the elders of the parish. Political turmoil in Eastern Europe and the Middle East have propelled another wave of immigrants to this country. Some Eastern Catholic parishes are now comprised of elderly American-born parishioners and younger immigrants. The two groups make very different demands on the pastor and can come to resent each other.

The American-born are confronted with foreigners, who often come in numbers, who threaten to “take over” the parish. Because the immigrants are unable to provide financial support of the parish – because they are trying to establish themselves in this new country – the American-born resent that they are obliged to “foot the bill” for the entire parish.

Often, immigrants look to the parish not only for spiritual nourishment, but also think of the parish as a cultural and linguistic refuge. It is the one place where there is a possibility to replicate the life of the homeland. They want liturgies, catechesis, and social activities to be in the language of the homeland. In many cases, the American-born, who have completely lost the language or have only a meager comprehension of it, want everything in English. Division within the parish community results; at times, one of the groups abandons the parish.

There is no magic wand to resolve the difficulties that pastors of these parishes confront, but the Eastern code does provide certain basic tools to assist them.

### *Social Assistance Programs*

In the case of the Latin Church, social assistance programs are generally treated

<sup>46</sup> CCEO c. 657, §2.

within the context of diocesan pastoral programs; but, in the case of the Eastern Catholic eparchies and exarchies, with communities dispersed throughout the country, it is not usually practical to have social assistance programs at the eparchial level. It might be possible for the eparchial bishops to cooperate with the Latin diocesan bishops or other Eastern Catholic bishops to establish and maintain social assistance programs.<sup>47</sup>

However, the task usually falls on the pastors. At the beginning of this presentation, I made note that all immigrants are traumatized. Such a condition makes them very needy and often demanding. Sometimes they never even make these needs known; on other occasions, they are constantly approaching the parish priest for help with the immigration office, finding a job or an apartment, getting their children in schools, and even outright financial aid. Such demands can try the patience of the most compassionate of pastors, but we must remember that in their homelands, the faithful were accustomed to approaching the Church for assistance with all these matters.

### *Parish Councils*

Christian faithful have the right to make known their needs, especially their spiritual needs and their spiritual desires, to the pastors of the Church.<sup>48</sup> In a like manner, according to their own competency and role, Christian faithful also have the right, and sometimes the obligation, to express their views to their pastors in matters relating to the good of the Church.<sup>49</sup> At the parish level, one forum for dialogue is the parish council. The Eastern code, because of the diversity of situations, relegates the issue to the realm of particular law, and simply calls for the establishment of appropriate councils in the parish to deal with pastoral and financial matters.<sup>50</sup>

Beyond the fundamental obligation of pastors to create councils that reflect the demographic makeup of the parish, involvement of immigrants in parish councils can be beneficial in numerous ways:

- The co-mingling of foreign-born and American-born Christian faithful will serve to familiarize each of them with the other's mentality and understanding of the Church. Such collaboration will require adaptation and compromise on the part of both groups.

<sup>47</sup> CCEO c. 202.

<sup>48</sup> C. 15, §2.

<sup>49</sup> Canon 15 §3.

<sup>50</sup> CCEO c. 295.

- It will empower the immigrant who is often marginalized and disenfranchised in most facets of society.
- The presence of immigrants in councils will serve as a living (admittedly sometimes irritating) bond with the church in the homeland.

### *Conclusion*

The post-September 11 America, in self-defense, is very much tempted to close its doors to the “other.” If this occurs, then the desires of those who wish us harm will have been achieved. We will be fearful, isolated, denying ourselves our greatest natural resource: various shades of fresh faces bringing with them new gifts.



## ERROR

REV. MSGR. JAMES GRAHAM

Error can invalidate marriage if it is about:

- Marriage itself, its essential elements or properties (c. 1099).
- Person one is marrying [mistaken identity] (c. 1097, §1).
- Quality of the person one is marrying (cc. 1097-1098).

### *Error iuris*

Over the last fifteen or twenty years *error iuris* or error which determines the will has been emerging as an autonomous *caput nullitatis*. While there is general agreement that error regarding the essential elements or properties of marriage which moves the will renders the marriage null, there is debate among canonists regarding the specific way in which nullity comes about.

Some canonists argue that an error about the indissolubility of marriage, for example, would lead the person in error to partial simulation, thus the ground of nullity would be an intention against permanence.

Others maintain that the error leads to the placing of a *conditio sine qua non* and the marriage would then be null as a result of conditioned consent.

However, there are Rotal Judges (Stankiewicz, Pompedda and Sable, among others) who maintain that such error constitutes a *caput nullitatis* in and of itself. Supposing that the person is in error concerning the indissolubility of marriage their argument would be as follows. The person's experience, education and milieu all present marriage to him/her as something that is dissoluble. Therefore, in willing marriage he/she can only will a dissoluble marriage. This is not simulation because the contractant in his/her mind is not excluding something they believe to be a part of marriage. It is not condition because he/she is not marrying on the condition that it be dissolved if it proves to be unhappy. They simply marry believing that marriage is not necessarily permanent. It may turn out to be but does not necessarily have to be.

The pertinent canons are 126 and 1099.

Canon 126: An act placed because of ignorance or error *concerning an element*

*which constitutes its substance* or amounts to a condition *sine qua non* is invalid; otherwise it is valid, unless the law makes some other provision. However, an act placed out of ignorance or error can be the occasion for a recissory action in accord with the norm of law.

Note that the canon says ignorance or error. They are two different things. Ignorance is a lack of knowledge. In the case of error, on the other hand, a person has knowledge, but that knowledge is incorrect.

Canon 1099 applies canon 126 to marriage: Error concerning the unity, indissolubility or sacramental dignity of matrimony does not vitiate consent *so long as it does not determine the will*.

Canon 1099 specifies what elements of marriage are to be considered as emanating from *the substance of marriage* (unity, indissolubility and sacramental dignity) and it also tells us under what circumstances such error brings about nullity, namely, when *it determines the will*. It is often the second part of this proposition that is most difficult to prove. Monsignor Stankiewicz in a decision dated April 25, 1991 states that it must be proven that the error passes from being merely speculative and “brings about a practico-practical judgment which proposes to the will an erroneous object to be chosen in such a way that the will certainly and infallibly chooses that object. . .”

The basis of such error is seen to be rooted in the rank secularism (*laicismus*) so rampant in the modern world. In many instances it is so prevalent that it affects even those who have been educated in the faith leading many of them to reject the Church and its teachings. In fact, cases involving apostates provide a very strong basis for this *caput*. In our own culture so many erroneous notions of marriage are put forth, not only in novels and films, but in works that purport to be “professional” that it seems unlikely that anyone could escape this influence. Having said that, the ecclesiastical judge cannot presume that just because people have been exposed to such erroneous notions, or even taught them, that they necessarily accept them. Even in the case of one who accepts, for instance, the dissolubility of marriage, it is still possible for that person to intend *this marriage* to be permanent. In fact, what *error iuris* is saying is that the contractant is so imbued with an erroneous concept of marriage that he/she cannot intend marriage at all except in this erroneous way.

Coram Stankiewicz deals with just such a situation. The case originated in a predominantly Catholic country. The male petitioner is a practicing Catholic. The female respondent while baptized Catholic was not raised in the faith. In fact, her situation was quite the opposite. The respondent’s parents were divorced. She described her father as religiously indifferent. Her mother with whom she lived

after the divorce, however, had rejected religion. Both the respondent and her mother testify to this fact. Both also state that they were opposed to a religious ceremony, and the respondent agreed to it only because the petitioner said that he would not marry her unless they married in the Church.

The respondent goes on to say that she never believed that marriage was permanent. She says that there was divorce in her family and divorce was accepted in her family. She views marriage as a social convention that can be dissolved by the spouses if it proves unhappy or even if it begins happily but becomes unhappy. The respondent believes that marriage only endures so long as both parties continue to be in love with each other and happy. If the marriage fails, one finds another with whom to be happy.

The respondent's mother confirms this testimony and says that these are her beliefs, and this is what she raised her daughter to believe.

A further proof of the respondent's fundamental rejection of the Church and its teaching is the fact that she adamantly refuses the baptism of the child conceived during the period of cohabitation (only a few months).

As a result of her upbringing, then, the respondent views marriage as a contract that exists only so long as the contractants want it to exist. This is the only view of marriage accepted by the respondent. It is the only kind of marriage she can will.

In his *in iure*, Monsignor Stankiewicz notes: "Although no special degree of personal faith is required in those who have rejected the Catholic faith when they arrange for a valid ecclesial celebration of marriage (see c. 1071, §1, 4° and §2), there *is* required a right intention on their part, that is to say, the intention of accepting marriage according to the will of God and of doing that which the Church intends when it celebrates the marriage of baptized people."<sup>1</sup>

The Reverend Judge goes on to delineate Catholic teaching regarding the minister of the sacrament of marriage who must have as a *minimum* a virtual implicit intention. Moreover, the faith of the minister is never required for the valid conferral of sacraments. He then remarks that it seems unusual that more appears to be required of the contractants as recipients than as ministers of the sacrament. He goes on to say that even on the part of the nonbelieving spouse a minimum of disposition is necessary to have a right intention of accepting "the conjugal covenant instituted by the creator."<sup>2</sup> He proposes that there must also be

<sup>1</sup> See c. 1125, 3°.

<sup>2</sup> Stankiewicz, 25 April 1991.

some vestige of faith if one is to be bound in a union of “*indissoluble love and unconditional fidelity*.” Quoting the Holy Father he maintains that this is so because such consent “really involves, even if not in a fully conscious way, an attitude of profound obedience to the will of God, an attitude which cannot exist without God’s grace.”<sup>3</sup>

The sentence continues: “For a person who firmly adheres to systematic atheism and rejects any dependence on God, it is difficult to form a right intention, that is to say, the intention of entering a true marriage with at least the implicit intention of doing what the Church does, since, apart from the repudiation of the sacramental dignity, the idea of an indissoluble bond restricting personal freedom will also be extremely repugnant.”<sup>4</sup>

This last point about the restriction of personal freedom is important for us. In the American culture which prizes individual freedom so highly this notion of freedom can easily give rise to the acceptance of dissoluble marriage. It is not so much a case of rejecting what the Church says as it is a case of accepting what the culture says. When we ask people if they *intended* their marriage to be permanent, they will almost always say “yes.” In point of fact, most of them *hoped* that their marriage would be permanent, but, knew if it proved unhappy that divorce was the solution. Moreover, almost everyone, if not everyone, who seeks divorce in our country believes it gives them the right to remarry. How often have you heard otherwise very good Catholics say that they think the Church should accept divorce and he/she may add that the Church is behind the times in failing to do so. This often comes up when one of their children is involved in a failed marriage.

Much in this same vein Monsignor Stankiewicz states: “When however baptized spouses with little or no faith are so imbued with errors about the indissolubility of the bond that based on the dictates of their erroneous conscience, they cannot act other than in accord with what their mind is telling them to do, then they are truly functioning out of an invincible error that presents to the will only a dissoluble marriage, and in this case, it can be said that the error is truly leading the will to consent to a dissoluble marriage and is determining the will to choose only that kind of marriage.”<sup>5</sup>

In such cases, says the Rotal Judge, the error which determines the will involves “a state of certitude regarding the acceptance of divorce”<sup>6</sup> along with a firmness of mind and an exclusion of the fear of being wrong. For this reason, the

<sup>3</sup> John Paul II, apostolic exhortation, *Familiaris Consortio*, (November 22, 1981).

<sup>4</sup> *Ibid.*

<sup>5</sup> Stankiewicz, 25 April 1991.

<sup>6</sup> *Ibid.*

contractant does not simulate because the will does not exclude permanence but wills marriage as the mind has determined it to be, namely, dissoluble. Monsignor Stankiewicz says that what the person actually wills is a “pseudo-marriage.”<sup>7</sup> He continues: “Since the internal consent of the mind is always presumed to be in conformity with the words or signs used in celebrating marriage (c. 1101, §1), both the determination of the will by an error that sees marriage as dissoluble and the exclusion of indissolubility caused by error about this property of marriage, must be clearly proved in the judicial forum.”<sup>8</sup> He offers as proofs both judicial and extrajudicial confessions, proximate and remote causes of simulation which demonstrate “the transition of the error into the will, and also the antecedent, concomitant and subsequent circumstances that make apparent the internal will of the contractant and its determination by certain facts.”<sup>9</sup>

As to the circumstances mentioned in the last paragraph the Rota has stated with regard to simulation cases that a person’s intentions can be garnered from their actions. The same would seem to apply in these types of cases where we are also trying to determine what the party in error thought/believed and willed.

### *Error of Person*

This really is self evident. Canon 1097, §1 states “Error concerning the person renders marriage invalid.”<sup>10</sup> Therefore, if the person with whom one exchanges consent is not the person the other party believes him/her to be then the marriage is null. This could possibly be a problem in areas where there still exist arranged marriages between parties who have never previously met. In our own culture, it would seem that such a situation could only occur where identical twins were involved or when marriage by proxy is employed.

### *Error about a Quality of a Person*

In the second paragraph of canon 1097 we read: “Error concerning the quality of a person, even if such error is the cause of the contract, does not invalidate matrimony unless this quality was directly and principally intended.” The wording in this is changed somewhat from that of the 1917 code which said that error of quality did not invalidate unless it “*redounded*” to error of person. In most cases it appears that it was also joined with *dolus* amounting to what the present code calls fraud.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> See c. 1097, §1

For the most part the Rotal Judges seem to view *error redundans* and error directly and principally intended as amounting to the same thing.<sup>11</sup>

The quality in question must be important, at least subjectively. While the notion of subjectivity seems to open a rather large door the Holy Father states quite clearly in his 1993 allocution to the Rota that the qualities directly and principally intended are not to be “frivolous or trivial.”<sup>12</sup> Moreover, the Rotal Auditors themselves frequently quote this admonition of Pope John Paul II in their sentences. Nevertheless, something which is of great subjective importance and which could have a negative impact on marital life for a given person, could objectively appear rather unimportant.

The best proof in these cases is a complete break in the marriage once the error is discovered. However, proof can also be had from less serious disruptions in married life. In one case before the Philadelphia Tribunal which was adjudicated on error of quality, the couple remained together for about a year after the discovery of the error. However, very convincing evidence was given by the witnesses who were unaware of the grounds. All of the witnesses brought forward were able to testify that there had been a noticeable cooling in the marriage at a given point. One witness said that when you would go to the couple's house you could just feel the tension. When the witnesses were questioned as to when this change became obvious, it coincided with the time given by the petitioner as to the discovery of the quality directly and principally intended.

The jurisprudence explains that the quality in question needs to become the object of the will. This is what is meant by directly intended. In fact, the quality must be as important, if not more important, than the person himself/herself.

In a decision *coram* Stankiewicz 22 July 1993,<sup>13</sup> an affirmative decision was rendered wherein the respondent who had purported to be an upright man and faithful Church member turned out to hold a leadership role in a subversive guerilla faction. The marriage of less than one year ended when the petitioner discovered the truth.

In a similar case in Philadelphia, the male respondent had made claims such as those made by the respondent in *coram* Stankiewicz cited above. Again, cohabitation lasted less than a year. The separation occurred when the petitioner picked up a telephone extension and accidentally overheard one of the respondent's business calls. It turned out that he was a “hit man” for organized crime. The

<sup>11</sup> Medonça, Augustine, *Rotal Anthology*, (CLSA, 1992) pp.114-120.

<sup>12</sup> Pope John Paul II, allocution, January 30, 1993, in AAS 85, (1993) pp. 1256-1260.

<sup>13</sup> *SRR Dec.*, 85 (1993) pp. 590 - 600.

petitioner immediately left, returned to her parents home and there was no reconciliation.

The petitioners in both the *coram* Stankiewicz and the Philadelphia case said that had they known the truth they would have never married. Given the fact that in both cases the petitioners separated immediately upon learning the truth their claims were considered well founded.

In both of these cases the women petitioners were looking for upstanding, faithful Catholic men. Positively, that was a quality that they intended directly. Also, in both of these cases not only were the respondents lacking the positive or good quality, but both also possessed a quality that was detrimental to marital life and about which the petitioners were ignorant prior to marriage. Therefore, these qualities were *implicitly* excluded by these petitioners. In other words, they would not marry men who had such negative qualities.

Monsignor Stankiewicz states, "It is certain, therefore, that the petitioner's error before the marriage regarding the husband's membership in a seditious faction, was the reason for the contract – as she herself says – 'I would not have married him if I had known about it'."

In an article on error published privately (through the Philadelphia Tribunal) Father Augustine Mendonça of the Canon Law Faculty of St. Paul's University, Ottawa, Canada examines a series of Rotal decisions based on error of quality. Among the qualities on which the cases were based are: marital status, social status, political affiliation (our friend, the guerilla), age, physical health, mental health, virginity and procreative capacity.

Recently, some cases in the United States involving homosexuals have been based on error. The reasoning is that a heterosexual person intends directly and principally to marry another heterosexual person. In such cases, discovery of the partner's homosexuality almost always leads to a profound break in marital life and, most frequently, to immediate separation. In those cases where the homosexual partner admits to his or her sexual orientation, this ground is acceptable to them. They can see the argument that a heterosexual wants to marry another heterosexual. It also eliminates the difficulty associated with using the *caput* of incapacity.

### *Fraud*

Canon 1098: "A person contracts invalidly who enters marriage deceived by fraud, perpetrated to obtain consent, concerning some quality of the other party

which of its very nature can seriously disturb the partnership of conjugal life.”<sup>14</sup>

In cases adjudicated under the 1917 code this notion of *dolus* was almost always associated with error of quality. The present code makes it an autonomous ground.

In contradistinction to the provisions of canon 1097, §2 fraud renders the marriage invalid precisely because *it is the reason for the marriage*.

Fraud can be perpetrated either positively or negatively. A person can pretend to be something he/she is not. On the other hand a person can simply withhold information that he/she knows would result in the other party refusing to marry.

Fraud can also be perpetrated by a third party. For instance, a person’s parents may know something that the person himself/herself does not. The parents may fear or even know that if this information – perhaps about some hereditary disease – were made known there would be no marriage.

It is important to note the requirement of the law that the quality must *of its very nature* be one that can *seriously* disturb the partnership of conjugal life. Therefore, this canon does not allow for quite the subjectivity that canon 1097, §2 does. That is not to say that to a certain degree the quality cannot be subjective. Nevertheless, if it is subjective it must still of its very nature, the fact that *it exists*, disturb marital harmony.

Father Lawrence Wrenn presents a case on fraud adjudicated in the regional Tribunal of Lazio - Romana.<sup>15</sup> The sentence states: “It is not therefore any kind of fraud that invalidates marriage but only that fraud which possesses the conditions set down in the canon: namely, that the contracting party makes an erroneous judgment which is the cause of a consent that would not otherwise have been given; that the judgment concerns a quality of the other party which by its very nature can seriously disturb conjugal life; and finally that the fraud be perpetrated in order to obtain consent.”<sup>16</sup>

“When these conditions are cumulatively verified, the marriage cannot be valid, and the declaration of nullity should be founded on clear and certain proofs about the mind of the deceived party. . .”

<sup>14</sup> See c. 1098.

<sup>15</sup> Lawrence Wrenn, *Law Sections* (CLSA, 1994).

<sup>16</sup> The sentence, *coram* Venturelli of January 9, 1989 was originally published in *La Giurisprudenza dei Tribunali Ecclesiastici Italiani*, (Vatican, 1989, pp. 236-238).

“Finally, in order to declare the nullity of a marriage, the existence of these conditions should have unequivocally predated the marriage; otherwise they would have no juridic relevance.”

In summary then, fraud alone is not enough: the fraud must concern a quality that is *in se* detrimental to marital life; and that fraud must be the cause of the consent being given.

*Caution*

Error in any of its configurations is not a really common ground of nullity. It also requires a rather careful instruction of the case both to surface it and to prove it. I should think that if our annual reports suddenly began to blossom with error cases, it would probably be a good indication that we are not properly understanding the *caput*.



## USE OF THE COMPUTER AND INTERNET RESOURCES FOR CANON LAW

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REV. MICKEY MARTINEZ, SJ, MRS. JACQUELINE RAPP, MR. PETER VERE

*Increasingly, the growth of the Internet is proving an invaluable resource in outreach, communication, and research in the practical work of Tribunals and Chanceries. This session is intended to offer the basic vocabulary and insights necessary to address Internet security, publishing, and the creative uses of the Internet in canonical work. Hands-on, on-line examples will assist participants to bring their needs and new ideas back to the IS and IT personnel they work with. Guidance from the Old Millennium*

Just a few days ago we quietly celebrated the anniversary of a pivotal moment in modern history. It was on October 6, 1889 that Thomas Edison showed the very first motion picture. Since then every social, cultural, and educational institution has wrestled with its own interaction with, and use of, the means of social communication. It took more than forty years, until June 29, 1936, for the universal church to feel the pressure to directly address the issues that the newest forms of mass communication had raised. In the encyclical letter *Vigilanti cura*, written by Pope Pius XI and directed primarily at the bishops of the United States, the church's point of view was first delineated:

[Our] considerations take on greater seriousness from the fact that the cinema speaks not to individuals but to multitudes, and that it does so in circumstances of time and place and surroundings which are most apt to arouse unusual enthusiasm for the good as well as for the bad and to conduce to that collective exaltation which, as experience teaches us, may assume the most morbid forms.

Some would say that there is an eerie consistency among all forms of social communications, or mass communications. That is, that among and amidst the masses or the society, there are individuals that are apt to be affected or motivated by the messages placed before them.

On May 27, 1989, on the occasion of World Communications Day, Pope John Paul II issued a challenge to us all in the form of the document "The Church Must Learn to Cope with Computer Culture." In that statement, the Pope offered this observation:

[The Fathers of the Second Vatican Council] saw the Church as being in the very midst of human progress, sharing the experiences of the rest of humanity, seeking to understand them and to interpret them in the light of faith. It was for God's faithful people to make creative use of the new discoveries and technologies for the benefit of humanity and the fulfillment of God's plan for the world...

With the advent of computer telecommunications and what (in a very interesting choice of phases) are known as computer participation systems, the Church is offered further means for fulfilling her mission. Methods of facilitating communication and dialogue among her own members can strengthen the bonds of unity between them. Immediate access to information makes it possible for her to deepen her dialogue with the contemporary world.

In the new "computer culture" the Church can more readily inform the world of her beliefs and explain the reasons for her stance on any given issue or event. (emphasis added)

The very existence of the Church's *Code of Canon Law*, its offering of processes and procedures that uphold structures of organizations, and most importantly, ideals of justice and equity, indicates that we have something to offer the faithful. We have information that should be offered and we have interactions that should be facilitated. While our efforts may not seem so broad, nor so universal, our small piece need not be overlooked.

It falls to [to the young] to search out ways in which the new systems of data conservation and exchange can be used to assist in promoting greater universal justice, greater respect for human rights, a healthy development for all individuals and peoples, and the freedoms essential for a fully human life.

To begin our considerations on this generally non-Canonical subject, let us take some guidance from our colleagues to the north. In March of 1995, the Canadian Conference of Catholic Bishops issued a *Statement on the Information Highway*. In it, there are three touchstone criteria that should guide all considerations of the use of these newest technological tools. And let it be re-iterated, the internet is a tool in some ways no different from the first electric typewriters, copiers, and fax machines, and in great ways very different.

The Canadian Bishops rightly remind us of the following three points:

1. The information highway by its very nature is focused on the user. Thus it has the potential to nourish community

spirit, foster worldwide cultural exchange, and promote respect and cooperation among people. It can also transform understanding and knowledge as well as organizations and society itself.

The use of the Internet should seek to achieve the dual mission of not only making our lives easier, but making the lives of the faithful more informed of, and involved with, the canonical issues that rightly affect them.

2. The right to information is first and foremost the right to complete and objective information, and thus also the right to have access to information sources.

As so many of us have learned, the faithful no longer need to take us at our word. The homiletic skills of neighboring priests are easily compared. The responses to questions, whether general or specific, are often open to second opinions. Now, the internet means that there can be not only second opinions, but as many as thirty or forty. While our work will still be local, if we answer a question, a web-surfer needs only a few minutes to see what answers are posted on websites, diocesan or private, well made or poorly designed, around the world.

3. The right of each citizen to privacy should be constantly monitored. In the widest sense, the right to privacy is the right of everyone to "being left alone. It means protecting an individual's personal and private life from intrusion or exposure to the public view."

## **Strategies for a New Millennium: Why the Internet Should be a Tool!**

### *A. What is it?*

The Internet is made up of millions of computers linked together around the world in such a way that information can be sent from any computer to any other 24 hours a day. These computers can be in homes, schools, universities, government departments, or businesses small and large. They can be any type of computer and be single personal computers or workstations on a school or a company network. The internet is often described as 'a network of networks' because all the smaller networks of organizations are linked together into the one giant network called the internet. All computers are pretty much equal once connected to the Internet, the only difference will be the speed of the connection which is dependent on your Internet Service Provider and your own modem.

### *B. Who uses it?*

Two Hundred and twenty-five million Americans have some degree of regular access to the internet. The average age of the regular, adult user of the internet is thirty-seven years. 87% of regular adult users of the internet have at least some college education. 60% of internet users transact some shopping, banking or business on the internet. Looking to the future – 75% of 20-25 year old transact business on the internet. Not surprisingly, 82% of 13-19 have, or would, transact business on the internet.

### *C. Why use it?*

People are coming to realize that there are so many things that they can do and participate in once connected to the internet. They include using a range of services to communicate and share information quickly and inexpensively with tens of millions of people, both young and old and from diverse cultures around the world. For example:

- Keep in touch and send things to colleagues and friends using electronic mail, internet telephone, keyboard chat and video conferencing;
- Tap into thousands of databases, libraries and newsgroups around the world to gather information on any topics of interest for work or recreation. The information can be in the form of text, pictures or even video material;
- Stay up to date with news, sports, weather and any current affairs around the world with information updated daily, hourly or instantly.

### **E-Mail & Websites - New Tools of the Trade**

In sum, the internet is popular, and for many reasons. But for the canonist there are two principal ways in which the internet can be used. These are the now almost ubiquitous tools of e-mail and the website. A quick overview of the usefulness of these tools may be helpful, as well as a brief look at some of the choices and difficulties encountered in making use of them.

E-mail is already a proven tool in much of the business world, and can easily become so in the chancery, tribunal, diocesan, or parish offices. Institutional e-mail has a number of advantages, for it makes some kinds of communication both easy and efficient. “Addresses” such as [chancery@yourdiocese.org](mailto:chancery@yourdiocese.org) or [tribunal@yourdiocese.org](mailto:tribunal@yourdiocese.org) offer the public easy-to-remember ways to contact those offices; an example of this kind is [tribunal@dioceseofmonterey.org](mailto:tribunal@dioceseofmonterey.org). This kind of addressing scheme also has its advantages for the diocesan office: e-mail sent to these “generic” addresses can be automatically forwarded to the individual – perhaps a canonist or experienced secretary – who is best suited to “forward” the

individual inquiry or complaint to the proper person. As we will show later, e-mail has already become a popular way for canonists – especially those without access to quality library facilities – to consult each other, solicit answers and advice, and even do modest research.

Another advantage of e-mail is the possibility of sending a computer file along with it, as an “attachment.” This offers a number of advantages over “fax” communications, the most significant of which is the quality of the hard-copy which is then printed and a more sure way to deliver the material to an individual addressee at a particular location. A number of chanceries already circulate the minutes of administrative meetings this way, for example. Tribunal personnel can share drafts of decisions, collaborate in the formation of questionnaires, read depositions which have been submitted in a similar fashion. Even handwritten evidence can be scanned into a digitized computer file for circulation among judges, assessors, advocates, and defenders of the bond. Parochial and school financial and statistical reports can be sent into diocesan offices, which can in turn keep parishes and schools informed by e-mailed “newsletters” and the like. The possibilities, given the usefulness, seem almost limitless.

To be sure, there are some concerns about e-mail, especially as regards security and propriety. Yet the implementation of a proper institutional e-mail system at the diocesan or parochial level is vastly preferable to the use of a hodgepodge of personal systems. Institutionally-implemented systems can provide more than just a standardized system and technical support. They can also provide monitored and filtered e-mail, that is, e-mail that is open to the vigilance of supervisors, and whose content is scanned automatically, before reception, for computer viruses or even for inappropriate subject-matter. In such a situation, liability and problems for the church would be less than in those places where individual church employees can use – or must use – less secure means to send and receive e-mail.

The use of the “world wide web” is also increasing for the official church. Institutional websites also can enhance ministry that is broadly and properly canonical.

Clarity of purpose is the first concern in designing and posting a website. The simplest site seeks merely to be informational, giving names, addresses, and other basic descriptions and information about the services offered. For example, the Diocese of Erie offers this kind of website ([www.eriercd.org/marriage.asp](http://www.eriercd.org/marriage.asp)). A popular and helpful way of providing information over the world wide web is to post information in the form of answers to “Frequently Asked Questions” – so much so that “FAQ” is a bit of jargon even new internet users learn quickly (the Diocesan Tribunal of Pittsburgh is just one of many which offers such informational listings of FAQ’s, at [www.diopitt.org/admserv/ot1.htm](http://www.diopitt.org/admserv/ot1.htm)).

This kind of merely “informational” website can be supplemented by the addition of downloadable forms, usually in a standard format. In this way, persons wishing to file a case with the tribunal or submit a request to a parish for a baptismal certificate, for example, can be given this opportunity in a convenient way. The Archdiocese of Milwaukee (at the address [www.archmil.org/resources/resourcelet2.asp?RecID=485&GroupID=58](http://www.archmil.org/resources/resourcelet2.asp?RecID=485&GroupID=58)) and the Diocese of Oakland (at <http://www.oakdiocese.org/publications.htm>) both offer this kind of service.

More complex websites permit persons using them to actually do something: file an application, order a product, make a payment, get a personalized answer while online, etc. The Diocese of Shreveport makes it easy for persons to submit applications to its ministry formation programs or purchase textbooks in this way (at <http://www.grecoinstitute.org>).

Another type of website, which a diocese or other church institution could provide, would be one that is not accessible to everyone who uses the internet. A “private” website of this kind, which is accessible only from a limited location – such as computers in the tribunal office suite only – or only by authorized users who possess the proper passwords, is known as an “intranet.” This kind of site naturally provides heightened security for its users, but also may be designed to give certain people – but not the general public – additional resources. Many companies use their own intranets to offer employees practical advantages – such as larger “storage space” for purposes of backup or archiving of older documents – or more mundane “bulletin boards” for internal news and the posting of schedules and the like.

Of course, for the canonist or church administrator to begin to utilize the internet to its full potential is not always easy. Only the most rudimentary, “informational” websites can be set up and maintained by a volunteer or hobbyist, for instance. More complex websites and e-mail systems need to be set up and maintained by experts. There are generally two sorts of expertise that are needed: technicians and designers. Technical experts first of all set up and maintain the hardware: computers which are “always on” and hooked up to the internet, usually over dedicated cables which provide much faster access than a telephone line. These technicians also have to install and manage the software as well; those complex computer programs that manage the trillions of bits of digitized signals that make the computers useful. Chief among these are the basic operating systems, e-mail server programs, antivirus programs, firewalls, and filters. Computers used in educational settings, especially, need to be protected from unwanted and inappropriate content being accidentally accessed, while all computer systems need to be safeguarded against damage from malicious outside hackers and the occasional disgruntled employee.

Yet, beyond the mere technical aspects are the aesthetic ones. A website that is attractive, easy-to-use, and genuinely helpful will be accessed as needed by computer users, and gives the message that the church is trying to help; one that is not will be ignored, and this sends the message that the church does not care or does not know what it's doing. For these reasons, it is imperative that persons skilled in artistic and web design be involved in the setting up of any church website.

Sometimes, given the resources available, it may be possible for the diocese or parish to "outsource" both its technical and design work. Sometimes, the diocesan newspaper or other office may have persons on staff who can provide at least the basic design work for less cost. But make no mistake: the establishment of useful computer resources for the diocese or other ecclesiastical institution is an important decision which demands the commitment of significant resources of time and money. The Archdiocese of Denver's superb but complex site ([www.archden.org](http://www.archden.org)), for example, certainly was not put together by amateurs!

This brings us to the last bit of expertise needed: communicating with the other experts. Someone in the diocesan or parochial structure will need to be familiar enough with various computer concepts so as to work effectively with the technicians and designers. At the very least, websites need to be "proofread" for accuracy of information and proper "ecclesial language." Decisions have to be made regarding standards; for example, types of e-mail programs used, formats for shared files, development of internal policies and norms regarding computer use, consistency of design and terminology, etc., are all issues that need to be addressed. The advice of the institution's civil legal counsel regarding confidentiality and liability issues is often of use. Typically, at the administrative level, interdepartmental cooperation is the key.

## **Security Issues**

Given that we have a very strong interest, both canonical and ethical, to maintain the privacy of those who interact with us, we have a concomitant responsibility to pay attention to the security of any means that we utilize for the assembly and movement of acts. In days past, a locked door and a locked file cabinet or vault was sufficient. We need not be paranoid, but we need to be astute to the fact that if we use modern electronic tools, these precautions of the past are no longer sufficient.

Consider that any number of random third parties can access a case file sitting on the desk in your office. Sometimes that access is perfectly legitimate, such as when an advocate or auditor needs to answer the questions of a calling petitioner. But, sometimes the access is not legitimate, like a cleaning lady wanting to read the

soap opera details of a case. Again, we cannot be paranoid, but we need to take reasonable precautions to avoid accidental dissemination of information. Or, we have to be prepared to deal with rather motivated respondents. The risks that are there, whether nefarious or accidental, mean that policies need to be in place that guide all involved personnel on how to use your system.

### **What Do You Need to Ask IT Professionals About?**

First, ask about encryption programs. Even if your system is an intranet (remember that the system is not entirely closed to unauthorized persons, or more open PC's), or an extranet, just like an internet, information that goes back and forth over any system is not be perfectly secure. The program that is most common is related to work done at MIT. It is called PGP. It comes in freeware formats, but a purchased system often affords fewer bugs. I can't tell you perfectly how it works. But, when used, it prevents unabashed self-interest.

#### *Canon Law Discussion group Frequently Asked Questions (FAQ's)*

### **What is the purpose of this group?**

The Canon Law discussion group is a confidential venue for a respectful, open dialog on the contemporary issues in the application of canonical norms and procedures in the Roman Catholic Church today. It allows degreed canonists to seek out the experience and counsel of other canonists. It allows new ideas to be reflected on, critiqued, and developed in light of a broad spectrum of opinions and views. Most importantly, in light of the above, it is an indirect resource (both timely and free of charge) to ever diocese and institution where a member canonist serves.

The issues covered by this group are as broad as the issues that will arise in any chancery, tribunal, parish, or church institution. In areas that are somewhat "speculative" or reflect tensions among canonists and others, the group is intended to be private, respectful, and internal. In areas that are common, even mundane, postings on the group have tremendous "pass on" value for ordinaries, superiors, etc.

### **How many subscribers do we have?**

At present there are over 700 subscribers worldwide. The "pass on" reach of certain postings is tremendous, yet unable to account for.

## **What kind of subscribers do we have on the group?**

Membership in the group is limited to professional canonists, full time professionals in tribunal or chancery work, canon law students, and ordinaries with responsibilities in areas of significant canonical import. Non-canonist academics or diocesan officials are considered individually by the discussion group owners. Membership is at the sole discretion of the owners and moderators of the group.

## **Where do our subscribers reside?**

Being an English-speaking group, subscribers are primarily from the United States and Canada. There is significant participation from the UK, Ireland, Australia and New Zealand. Multi-lingual members participate from throughout Europe and Latin America. In many cases the discussion group is one of the few, or only, resource that is readily available to canonists in India, western Siberia, and various parts of Africa and Asia.

## **How active is the subscriber group?**

Message activity varies by the issues being discussed and the time of year. On average there are five-to-ten messages a day following two or three active threads.

## **Can I avoid having these messages fill up my e-mail account?**

Certainly! Our host server, Yahoo Groups affords you three different types of delivery options, depending upon your needs. These delivery options are as follows:

- Individual emails (each message is sent to your email address)
- Daily Digest (a summary, with links, of all the days messages is sent to your email address)
- No Mail/Web Only (Nothing is sent to you, you can read all messages only through the Yahoo Groups website)

Read on for further questions for instructions on accessing the YahooGroups website.

## **How important is this group to our subscribers?**

Certainly that is very objective, but it is logical to assume from the breadth and depth of the discussion that it is very important. With canon law being a relatively small field in both number and concentration of professionals, the discussion group provides an invaluable opportunity to interact and share with fellow canonists beyond the times of conventions.

## **Could subscribers get along without it?**

Certainly canonists got along before the discussion group was developed, but the benefits now are profound. Canonists are now able to expand their input and expertise beyond primarily matrimonial law, and support the church's own desire to protect the rights of the faithful in areas of due process.

## **Is this group officially or unofficially the means of communication for any regional, national, or international institution or organization?**

While it is not an official resource for any group or organization, this group is given consistent mention in the materials of the Canon Law Society of America. It is likely that the Canon Law Societies in other countries and regions have at least mentioned its availability to their memberships.

Ordinarily, the "owner/moderator" of the group to contact is:

Rev. Paul B. R. Hartmann  
Metropolitan Tribunal  
P. O. Box 07912  
Milwaukee, WI 53207-0912  
Phone: 414-769-3312  
Fax: 414-769-3310  
[hartmannp@archmil.org](mailto:hartmannp@archmil.org)

Additionally, there is a small group of 5 or 6 other canonists who serve to determine membership standards, technical questions, and questions that could be regarded as "policy" for the discussion group.

## **How do I join?**

After reading this FAQ, if you want to join, you need to send an e-mail message from your on-line account (where you want the messages to be received) to: ([hartmannp@archmil.org](mailto:hartmannp@archmil.org)).

Be sure to include your name, degree and school, and present canonical position(s). If you are a clergy or religious, please indicate your institute, or diocese.

A short time later you will either be notified of your acceptance into the group or asked to provide additional information. If you experience any problems, just message the group owner personally and we will try to rectify things.

## **After I join, how would I register with Yahoo Groups in order to access past messages, or the library of files and links?**

Start up your web-browser and go to <http://groups.yahoo.com>. On the left of your screen, you will see, highlighted in blue, the heading "Sign In." Underneath this heading, look for the sub-heading "eGroup members – Link your accounts to a Yahoo ID here" and click on it. On your left, you will see two possibilities highlighted in gray. The second possibility is "Don't have a password? Forgot your password?" Enter the email address to which you're subscribed to the canon law group in the second possibility. Hit the continue button.

Yahoo! will send an authorization code to the email address you entered, wait for it, but keep the window open. This authorization code should be a five digit number, and come from an email address like [notify@yahoogroups.com](mailto:notify@yahoogroups.com). The subject of the email will be "Authorization code." When the authorization code arrives, enter it into the window and hit the 'continue' button. If you accidentally closed the window, along with the authorization code Yahoo! will provide an URL ([http:// \[address\]](http://[address])) to reopen it.

If you already have a Yahoo! ID, look for the "just sign in" heading hi-lighted in gray and simply sign in. If you do not have Yahoo! ID, hit the gray button that says "Register for a Yahoo! ID now!" Fill out the form carefully, and write down both your ID and password someplace for reference. When you are finished filling out the form, hit the gray button at the bottom that says "Submit This Form." If nobody has previously chosen your Yahoo! ID, then you're done and can access the canon law group from the web anytime. Otherwise, it will tell you your requested Yahoo! ID is already taken, and suggests some other ones. In the second scenario, just keep trying until you find a Yahoo! ID you like that is not already taken.

## **What are the various ways in which I can receive messages? What if I go away on vacation?**

Any member who has registered with the website (see above) can access messages from the web. The best thing for vacationers who want to avoid an avalanche of messages on their return should reset their delivery option to "no mail/web only". Similarly, any member who wishes to have all of the previous days' emails gathered together and sent out as one email should set their account to the "Digest" option.

To do so, simply go back to <http://www.yahoogroups.com> and look for the heading on the left that says "Sign In". Underneath it you will find another listing that says: "Registered users," "Sign in!"

Click on this listing, and enter your email address and password when prompted. Then hit the gray “sign in” button. Once you have signed back in, hit the “canonlaw” listing under the “My Groups” heading on the right. This will take you to a new screen, where you will find listed on the right a button that says “Edit My Membership.” Click on this button. This option menu will allow you to chose between individual emails, daily digest, no mail/ web only, or unsubscribe. Simply highlight the delivery option of your preference, and hit the “Save Changes” button either above or below the column. You should now only receive email from the canon law YahooGroup according to your preferred delivery option.

### **How do I post from the internet?**

While signed in, you can post a message by hitting the “Post” listing on your left. This will take you to a new screen where you may enter your subject, followed by your message. When you are finished, simply hit the “preview” button below to preview your message, or the “send” button to send the message to the list. If you preview your message first, make sure you follow through by hitting the “send” button after you are finished previewing and editing your message.

### **How do I access the messages/archives from the internet?**

Again, once you are signed in (see above), simply hit the “Messages” listing on the left. This will bring you to the last thirty messages. To access previous messages, simply hit “previous” on the blue, highlighted strip along the top. To search for specific information, look for the gray “Search Archive” button on the left, and enter the keywords for your search in the box on the left of this button. Then press the “Search Archive” button and wait.

### **What are the Bookmarks and how do I access them?**

The bookmarks are internet links to outside resources that may be of interest to canonists. To access them, simply sign in if you are not already signed in, go to the canonlaw list, and hit the “Bookmarks” listing on the left. A list of bookmarks will come up, and you can click on the bookmark of interest.

### **What are the Files and how do I access them?**

The files are documents on the canonlaw Yahoo Group that may be of interest to canonists. To access them, simply sign in if you are not already signed in, go to the canonlaw list, and hit the “Files” listing on the right. A list of files will come up, and you can click on the file of interest.

## **Can membership in the group ever refused or revoked?**

Since the purpose of this group is to assist those whose primary ministry is in the area of canon law, a decision may be made not to accept an application if the individual is not involved full time in canon law, a student in a recognized canonical faculty, or does not possess a degree or office related to significant work in canon law.

Also, since the purpose of this group is to share information and to seek out the opinions of others who are expert in the area of canon law, members who are deemed to make postings that hinder the good order of the group may be removed. Some examples of how such posting might be evaluated include, but are not limited to:

- inappropriately promoting one's personal agenda
- inappropriately seeking profit or gain through postings
- failure to exercise professional courtesy
- misuse of information or resources gained from the group
- poor management of one's own posting to the detriment of the group

In most cases this would not be done without first communicating directly with the individual in question in an attempt to resolve any problem of this nature. But it must be reiterated, this a private group, not associated with any society or organization, where membership is at the total discretion of the owners.

### **The First, Best Use of the Internet: Search Engines & Locators**

#### *A. Canonical Responsibility to Find the Respondent*

Canon 221 is very clear that one of the foundation rights of all of the people of God is to be able to protect and defend his or her rights in the church. This is commonly called the "right of defense." There are ten specific rights in the code relating to this right of defense, and it is clear that any violation of these rights means irremediable nullity to a sentence produced by a tribunal.

The first, and obviously most foundational, right of defense is the right to be cited (cc. 1507-1512; 1686). This right leaves the corresponding duty to the tribunals to be sure that the respondent is cited. Clearly, in order for the respondent to be cited, he or she must be found.

Back in 1984, Robert McGuckin stated in his article, "The Rights of the Respondent" (*SC* 18 [1984] 457-481) that "Extraordinary efforts do not have to be made to locate the respondent, what one would regard as a minimal effort (place

of work, address of parents, telephone directory), would seem to be demanded in natural justice.”

Use of the internet to find respondents (or witnesses for that matter) may have seemed an “extraordinary effort” back when Fr. McGuckin wrote this in 1984, but given the technological climate of 2001, this is no longer so.

### *B. Using the Internet to Find Respondents*

Specifically, the Metropolitan Tribunal of the Archdiocese of Louisville (of which I am a part) has been using the internet to find respondents for over a year now, with great success. The ability to clear out older files, by determining if one party or another is deceased, has been greatly aided by using the internet as well.

There are two types of websites that can be used for the location of individuals. There are free sites and those that require some form of payment. Granted, most tribunals would probably prefer to use the free sites, but know, as the old adage goes, you get what you pay for.

The easiest way to access the majority of the free sites is through one entitled The Ultimate White Pages. It will give you the opportunity to search the majority of the free search engines with a certain amount of specificity. Also free are the websites that allow for death checks ([www.ssdi.genealogy.rootsweb.com](http://www.ssdi.genealogy.rootsweb.com) and [ancestry.com](http://ancestry.com)). These can be most helpful, especially when you are dealing with older parties.

Ideally, you would want to have two things: 1) a social security number and 2) the financial ability to use the sites that require payment. The two places that give the best results for the money, are 1-800-USsearch ([ww2.1800ussearch.com](http://ww2.1800ussearch.com)) and Find A Friend ([www.findafriend.com](http://www.findafriend.com)). The Find a Friend site is very good for SSN searches and for searches where you are trying to find a woman by maiden name and birth date. The 1-800-USsearch is a good basic instant search, however, it is not always good for locating women if you do not know the current married name.

### *C. Documenting Efforts for the Acts*

It is most important that any attempt to find the respondent via the internet be clearly documented for the acts of the case. A simple document drawn up stating that “the following respondent has been attempted to be found using the following methods,” including a list of the methods used and an attachment of the print-outs of the search results given by the websites would be sufficient. The document should be attested to by the person(s) who did the search(s).

## **Conclusions**

In closing, let us recall those significant lines at the beginning of the 1963 decree of the Second Vatican Council in which the church expressed its openness to and acceptance of the means of social communication:

By divine favor, especially in modern times, human genius has produced from natural materials astonishing inventions in the field of technology. Some of these have extraordinary bearing on the human spirit, since they open up new and highly effective means of communication for all kinds of information, ideas and directives....

The church welcomes and watches such inventions with special concern. Chief among them are those which by their very nature can reach and influence not only individual people, but the masses themselves, even the whole of society.

## **Special Endnote**

During this presentation at the CLSA Convention in Albuquerque, NM, real-time access to the internet allowed for the presentation of clear examples, and “hands-on” experience. The screens, and visual aspects of this presentation could not be effectively recreated here.



## MINISTRY TO THE SICK AND DYING IN VIEW OF THE SHORTAGE OF PRIESTS

REV. JOHN HUELS, O.S.M.

For validity, canon law requires that the minister of the sacrament of the anointing of the sick be a priest (c. 1003, §1). However, in many areas, local churches lack sufficient priests to celebrate the sacrament of the anointing of the sick every time that an individual member of the faithful requests it. Since this sacrament gives grace, helps the sick to endure their suffering, and facilitates physical healing when this is good for the individual's soul,<sup>1</sup> it is understandable that many bishops, pastors, and others want the Church to allow deacons, and perhaps even lay ministers, to be extraordinary ministers of the sacrament. However, this raises the question: Is it possible for the Church to change its discipline on the valid minister of the anointing of the sick, or is the canon law on the proper minister of the anointing of the sick rooted in the divine law, which no one can change?

In this paper, I will address the theological and canonical issues related to this question and offer some pastoral suggestions for the Church's ministry to the faithful who are sick or dying in places where sufficient priests are lacking for this ministry. The talk has three parts and some concluding remarks. In the first part, I consider whether the Church's teaching on the proper minister of the sacrament of anointing of the sick is open to change, or whether a priest alone is the valid minister in virtue of the divine law. This will require a brief survey of the history of the sacrament and a consideration of the teaching of the Council of Trent. In the second part, I consider the current canon law and the recent attitude of the Holy See regarding the minister of the anointing of the sick, and conclude with a description of the liturgical rites for the sick and dying. In the third part, I briefly examine a pastoral problem that I think lies behind much of the discussion on the anointing of the sick. I call it the "myth of the last rites." In my conclusion, I offer specific suggestions for the pastoral care of sick and dying persons in an era when

<sup>1</sup> *Pastoral Care of the Sick: Rites of Anointing and Viaticum* (New York: Catholic Book Publishing Co., 1983) 6. See also *Catechism of the Catholic Church* 1352.

deacons and lay persons increasingly are more available for this ministry than priests are.

Some matters introduced in this presentation, most notably the liturgical and pastoral considerations, are developed more extensively in a volume soon to be published.<sup>2</sup> It will contain the papers given at a May 2001 international symposium on the sacrament of the anointing of the sick, sponsored by the National Association of Catholic Chaplains. I am indebted to the NACC for its permission to include certain excerpts from that paper in this presentation.

### *I. The Minister of the Anointing of the Sick*

The aim of this first part of the talk is to consider whether the Church can change the discipline limiting the minister of the anointing of the sick to priests alone. I will address this by giving a historical overview of church practice, doctrine, and canon law from the ancient Church to the present. I will first briefly survey the history of the minister of the sacrament up to Trent. I will then give the doctrine of Trent on this issue to see whether it sheds any light on our investigation.

#### *Historical Overview*

Our historical overview begins with the New Testament. The scriptural foundations for the sacrament of the anointing of the sick are Mark 6:12-13 and James 5:14-15. St. Mark wrote: "... [the Twelve] went off, preaching the need of repentance. They expelled many demons, anointed the sick with oil, and worked many cures."<sup>3</sup> St. James wrote: "Are there any sick persons among you? They should ask for the presbyters of the Church. They in turn are to pray over them, anointing them with oil in the Name [of the Lord]. This prayer uttered in faith will reclaim those who are ill, and the Lord will restore them to health. If they have committed any sins, forgiveness will be theirs."

<sup>2</sup> The proposed title for the book is *Understanding the Sacrament of the Anointing of the Sick*, ed. Genevieve Glen (Collegeville: Liturgical Press, 2002). Its publication is projected for October 2002. The title of my essay is "Ministers and Rites for the Sick and Dying: Canon Law and Pastoral Options." The other contributions to the volume are Susan K. Wood, "The Paschal Mystery: The Intersection of Ecclesiology and Sacramental Theology in the Care of the Sick;" Kevin W. Irwin, "The Development of Sacramental Doctrine in the Church;" Michael Drumm, "The Practice of Anointing and the Development of Doctrine;" Peter E. Fink, "Anointing of the Sick and the Forgiveness of Sin;" and Genevieve Glen, "Going Forth in the Power of the Spirit: The Responsibility of the Faithful, the Theologian, and the Magisterium."

<sup>3</sup> Translations are from *The New American Bible* (Nashville: Thomas Nelson, 1971).

The ministers of the sacrament in the passage from Mark are the twelve apostles. In James, they are presbyters. But, who are the presbyters in the community addressed by St. James? Are they the same as the priests ordained in later ages? It is generally accepted today by scholars that the Church's ministries evolved in the early Church, and various local churches at first had different types of ministries.<sup>4</sup> The New Testament mentions a variety of ministries and orders: apostles, prophets, teachers, evangelists, widows, virgins, deacons and deaconesses, presbyters and bishops. Those ministries still in use, particularly deacons, presbyters, and bishops, were not structured in the ancient Church the same way as they are today. Some communities were headed by a presbyter, others by a bishop. By the second century, bishops headed every local church, and the evidence suggests that at this time only the bishop was the celebrant of the liturgical rites. The presbyters were the elders of the community who advised the bishop; their liturgical functions were minimal.<sup>5</sup> Only in the latter part of the third century is there evidence of presbyters beginning to exercise cultic functions at the request of the bishop.

Apart from the text of James, there is not much evidence in the first four centuries about the anointing the sick. What evidence there is suggests that the people could take the blessed oil home and anoint themselves, or even drink the oil for its salutary benefit.<sup>6</sup> Some later authors understood this to mean that this blessed oil was used as a sacramental, not as a sacrament, because the sacrament requires the ministry of a priest. However, this distinction certainly was not made at this early date, since the seven sacraments were first clearly distinguished from sacramentals only by the Scholastic theologians of the high Middle Ages,<sup>7</sup> and they were officially determined only in 1439 at the Council of Florence.<sup>8</sup> More likely, the early Church did not consider the *act* of anointing as the sacrament. Instead, the *oil* blessed by the bishop was itself the sacrament. This would be similar to the consecrated bread and wine being the sacrament itself, not the act of administering it. This theory about the blessed oil being the sacrament was still known in the

<sup>4</sup> See Edward Schillebeeckx, *Ministry: Leadership in the Community of Jesus Christ* (New York: Crossroad, 1986) 5-37; Nathan Mitchell, *Mission and Ministry: History and Theology in the Sacrament of Order* (Wilmington: Michael Glazier, 1982) 94-199; Kenan B. Osborne, *Priesthood: A History of the Ordained Ministry in the Roman Catholic Church* (New York/Mahwah: Paulist Press, 1988) 41-129.

<sup>5</sup> Daniel Donovan, "Priest," in *The New Dictionary of Theology*, ed. Joseph A. Komonchak, Mary Collins and Dermot A. Lane (Wilmington: Michael Glazier, 1987) 798-801.

<sup>6</sup> Charles W. Gusmer, *And You Visited Me: Sacramental Ministry to the Sick and Dying* (New York: Pueblo, 1984) 11-21.

<sup>7</sup> Peter E. Fink, "Sacramental Theology After Vatican II," *The New Dictionary of Sacramental Worship*, ed. *idem* (Collegeville: Liturgical Press, 1990) 1107-1109.

<sup>8</sup> Decree for the Armenians, November 22, Council of Florence, Pope Eugenius IV. Bull *Exsultate Domine*; Denzinger-Schönmetzer, *Enchiridion Symbolorum, definitionum et declarationum de rebus fidei et morum* (1965) (DS) 1309-1328.

Middle Ages and was even expressed at the Council of Trent.<sup>9</sup> However, the dominant view that became the standard and official teaching of the Church is that the sacrament is the liturgical rite of anointing with oil, not the oil itself. The oil is the matter of the sacrament, not the entire sacrament. Still, the evidence seems persuasive that this was a later development and not the understanding of the early Church, which regarded the oil blessed by the bishop as the sacrament, while the anointing required no particular minister or liturgical rite.

Beginning in the fifth century, many documents attest to the anointing of the sick. The most important of these is a letter of Pope Innocent I to Decentius, bishop of Gubbio, in 416. Pope Innocent makes five points about the anointing of the sick at the time: he says it is the same anointing as that of the epistle of James; he calls it a sacrament (as understood in his day); he says a bishop must bless the oil; he acknowledges that the faithful may anoint themselves or others with this oil; and, he presumes that this oil is for those who are sick. He says nothing of those who are dying, though he does not explicitly exclude them.

The fourth point is of greatest interest to us presently. After quoting James 5:14-15, Pope Innocent writes that this passage must be understood as permitting not only priests but all Christians to use the oil for anointing themselves or those close to them.<sup>10</sup> Later theologians attempted to reinterpret this statement of Pope Innocent.<sup>11</sup> Some said that the verb in reference to lay anointing should be understood in the passive voice, not the active voice, that is, not that the faithful anoint themselves or those close to them, but that they and their families may *be* anointed by priests. The problem with this interpretation is that the verb is not in the passive voice but in the active voice. A second attempt of later apologists to reinterpret Innocent I's letter was to use the distinction between a sacrament and a sacramental. When the priest anoints, they said, it is a sacrament; when the lay person anoints, it is a sacramental. This is also a problem because this distinction was not known in Innocent's day. For him, it was a sacrament, and it appears the blessed oil itself was the sacrament, not the act of administering it. This view is

<sup>9</sup> See John L. Ziegler, *Let Them Anoint the Sick* (Collegeville: Liturgical Press, 1987) 125-126.

<sup>10</sup> Epistola XXV, ad Decentium, cap. VII, §11; DS 216: "Quod non est dubium fidelibus aegrotantibus accipi vel intelligi debere, qui sancto oleo chrismatis perungi possunt, quod ab episcopo confectum, *non solum sacerdotibus, sed et omnibus uti Christianis licet in sua aut in suorum necessitate ungendum*" [emphasis mine].

Bernhard Poschmann says of this letter: "The decretal became a basic document for the late Roman and early medieval period. It was incorporated in the most important canonical collections, and so became the starting-point for theological discussion of the sacrament." See *Penance and Anointing of the Sick*, trans. and rev. by Francis Courtney (Montreal: Palm Publishers, 1964) 240.

<sup>11</sup> Citations are given in Ziegler, pp. 41-46.

confirmed by the fact that there is abundant evidence of rites of blessing the oil in the early centuries, but not for the application of the oil itself.<sup>12</sup>

Other documents also witness to the practice of lay anointings in the early Church. Theologian John Ziegler concludes in his study on the minister of the anointing that there is “overwhelming evidence to support the fact that lay anointing continued in the Church as an accepted practice up to the Carolingian Reform.”<sup>13</sup> This leads to the next historical development and the next question of our inquiry: Why were lay people excluded from administering the sacrament of the anointing of the sick during the Carolingian period?

The Carolingian period was the one-hundred-year span between 740 and 840. During this period, the Frankish kings and emperors sought to unify discipline throughout their broad realm, and this included ecclesiastical discipline. One way of accomplishing this goal of unity was to have greater uniformity in liturgical practice. Confining pastoral care and liturgical celebration to priests was a way of assuring greater uniformity in pastoral practice. Also, by this time, the sacrament came to be celebrated at the end of life, at least in part because people delayed the sacrament of penance to the end of their life since it was available only once and they wanted to avoid the severe penances that were meted out. Since a priest was needed for the sacrament of penance, and since it was required that the faithful be reconciled before being anointed, celebrating the anointing at the same time as deathbed penance was a logical development.<sup>14</sup> In fact, the rituals of the Carolingian period include the anointing as part of the rite for deathbed penance.

At this time, we see that texts referring to the sacrament of the anointing restrict its administration to priests. For example, Hincmar, archbishop of Rheims in the ninth century, wrote: “If the priest himself visits the sick, let him anoint them with holy oil and communicate them himself, not through anyone else.”<sup>15</sup> The fact that Hincmar had to say this suggests that persons other than priests had been anointing the sick and giving them holy communion. This is an indication of the transition underway during the Carolingian period. In this period, we also find authors quoting the letter of Innocent I, but they change his use of the active voice to the passive voice so that the faithful are *being* anointed by priests rather than anointing

<sup>12</sup> See Antoine Chavasse, *Étude sur l'onction des infirmes dans l'Église latine du III<sup>e</sup> au XI<sup>e</sup> siècle*, vol. I: *Au III<sup>e</sup> siècle à la réforme carolingienne* (Lyon: Faculté de théologie de Lyon, 1942). See also *The Oil of Gladness: Anointing in the Christian Tradition*, ed. Martin Dudley and Geoffrey Rowell (Collegeville: Liturgical Press, 1993).

<sup>13</sup> Ziegler, p. 57.

<sup>14</sup> See Jennifer Glen, “Pastoral Care of the Sick,” in *The New Dictionary of Sacramental Worship*, pp. 1174-1176; and Gusmer, pp. 25-28.

<sup>15</sup> *Capitula synodica data presbyteris*, cap. 10; J. P. Migne, ed., *Patrologia Latina* (Paris: 1841-1855) (PL) 125: 779.

themselves.<sup>16</sup> Perhaps it is more than coincidental that the Pseudo-Isidorian decretals, the great forgeries that became part of canon law for centuries, were written in the same area at about the same time (c. 850).

From the ninth century onward, administration of the sacrament of the anointing of the sick was restricted to priests. Extreme unction, as the sacrament became known, was determined to be one of the seven sacraments, and its minister was the priest. However, the words of Pope Innocent I in the fifth century were not entirely forgotten. For example, Thomas Waldensis, in the fifteenth century (d. 1430), interpreted Pope Innocent's mention of lay anointing to mean that lay persons can only anoint in extreme necessity where the supply of priests is altogether lacking.<sup>17</sup> In effect, he was saying that they could be extraordinary ministers of the sacrament.

The Decree for the Armenians of the Council of Florence, promulgated in 1439, treated all seven sacraments and contained a paragraph on extreme unction. It said that the minister of the sacrament is a priest.<sup>18</sup> It was not a doctrinal definition but a statement of the Church's accepted practice. This is clear from the context. The text spoke of *seven* anointings on the seven senses, but today there are only two anointings, and it gave as the sacramental form a formula different from the one used today. Since the divine law cannot change, it cannot be said that Florence was declaring matters of the divine law, other than that extreme unction is one of the seven sacraments. The principal importance of this decree from Florence, historically, is that the theologians and fathers at Trent frequently cited it, and Trent is the key doctrinal source for the minister of the sacrament.

### *The Council of Trent*

The Council of Trent, in its fourth canon on extreme unction from the fourteenth session in 1551, upheld the Church's practice of the priest being the proper minister of this sacrament. The canon states: "If anyone shall say that the presbyters of the Church – who, as blessed James exhorts, are to be brought to anoint the sick—are not priests ordained by a bishop but are the elders in any community, and if they say, therefore, that the proper minister of extreme unction is not solely a priest, *anathema sit*."<sup>19</sup> In other words, the presbyters of James 5:14-15 are not just lay men – the elders of the community – but they are priests

<sup>16</sup> For citations, see Ziegler, p. 67.

<sup>17</sup> Thomas Waldensis, *De sacramento Extremae Untionis, De sacramentis*, cap. 163-164 (Venice: Typis Antonii Bassanensii, 1758) 942; cited in Ziegler, p. 78.

<sup>18</sup> DS 1325.

<sup>19</sup> Translation mine. Trent, November 25, 1551, D. de paenit. et unct. extr.; DS 1719.

ordained by a bishop. If anyone has the audacity to contradict this, let him or her be *anathema*, that is, excommunicated.

The question before us is whether this is a solemnly defined dogma of the faith, or a definitive teaching even if not divine revelation, or whether it is a teaching that is not definitive. First, we need to recall that the theologians and fathers at Trent were aware that the canons they were formulating should be assigned differing degrees of doctrinal value. Not all the canons had the same doctrinal weight. Bishop Bongiovanni of Cambrai, for example, said at Trent: “Not all positions are to be condemned in the same way, for some are heretical, others scandalous, some are rash, some false and lying, some presumptuous, some impious and blasphemous.”<sup>20</sup> Girolamo Bononi, bishop of Syracuse, similarly argued that all erroneous teachings must be condemned “not in the same way but according to their qualities as some erroneous, false, blasphemous, impious, heretical, etc.”<sup>21</sup> Therefore, we cannot presume, simply because something was condemned at Trent, that its opposite is a positive doctrine of the faith. It might be divine revelation or a doctrine connected to it,<sup>22</sup> but it might be something quite different and much less weighty, like a reaffirmation of the Church’s practice against a presumptuous or impious attack. Trent condemned the offensive teachings of the Reformation, whether they were contrary to doctrines of the divine law or whether they were contrary to teachings, laws, and customs of ecclesiastical, human origin.

The implicit heresy behind all such false or presumptuous teachings, of whatever doctrinal weight, is the accusation by the Protestant reformers that the Church was acting erroneously, contrary to the Scriptures, and that it lacked the authority to do what it was doing. Common to all the canons at Trent is the condemnation of those who would deny the Church’s rightful authority as given by Christ. Thus, all such teachings were worthy of condemnation because they were disseminated in a spirit of rebellion against legitimate church authority. All the canons of Trent begin, “If anyone shall say....” The canons were directed to those who say and teach and preach and write against the Church’s teachings and practices. The purpose of the Tridentine canons was to condemn the reformers. Not all the canons were intended to be ranked as truths that must be believed as divinely revealed dogma (c. 750, §1) or definitive teaching “required to safeguard reverently and to expound faithfully the same deposit of faith” (c. 750, §2). Some canons at

<sup>20</sup> *Concilium Tridentinum: Diariorum, actorum, epistolarum, tractatum nova collectio* (Freiburg im Breisgau, 1901 ff.) 301 (hereafter *Concilium Tridentinum*); translation in Ziegler, pp. 137-138.

<sup>21</sup> *Concilium Tridentinum*, p. 304; Ziegler, p. 138.

<sup>22</sup> See Congregation for the Doctrine of the Faith, *Nota doctrinalis Professionis fidei formulam extremam enucleans*, June 29, 1998, AAS 90 (1998) 542-541; *Origins* 28 (1998) 116-119. See also Francis A. Sullivan, “The Secondary Object of Infallibility,” *Theological Studies* 54 (1993) 536-550.

Trent surely do express truths of divine revelation or truths connected to it, but others do not.

What of Trent's canon four on the minister of extreme unction? Is this a dogma of divine revelation or a definitive teaching connected to divine revelation that the Church has no power to change? Or, does this canon express the Church's understanding and teaching and practice of the sacrament, which was and remains legitimate, but which the Church has the power to change? I think there are reasons that could lead the magisterium to conclude that Trent's teaching on the proper minister of the sacrament is not *ius divinum*. Some theologians, who have studied the issue in depth, hold that Trent did not absolutely exclude deacons, and possibly even lay persons, from administering the sacrament of the anointing of the sick.<sup>23</sup> The Tridentine canon says that the priest alone is the proper minister of the sacrament, but it does not state that this teaching must be held in virtue of divine law, as it did in other canons, even some canons enacted at the same session of the council.<sup>24</sup> The canons of Trent were intended to refute the errors of the Protestant reformers, not to present a positive and systematic treatment of Catholic doctrine. In this context, the canon could rightly be understood as upholding the practice of the Church and excommunicating those who would say the Church was acting erroneously by restricting the administration of the sacrament to priests. That is not the same as saying that it is a truth of the faith revealed by God that only priests may anoint, or that the Church has definitively taught that it lacks the power to change its discipline on this matter.

<sup>23</sup> A comprehensive study of this issue is that of John J. Ziegler. One of Ziegler's conclusions is that "the contents of the Tridentine canon should not be accepted as having been 'divinely revealed' and taught as such by the Church" (p. 150). Among other theologians who hold a similar view are Jean-Charles Didier, "L'Onction des malades dans la théologie contemporaine," *La Maison-Dieu*, no. 113 (1973) 57-80, esp. pp. 74-75; *idem*, "Sur le ministre de l'Onction des malades," *L'Ami du Clergé* 74 (1964) 488-492; Philippe Rouillard, "Le ministre du sacrement de l'Onction des malades," *Nouvelle Revue théologique* 101 (1979) 394-402, esp. p. 400; David N. Power, "The Sacrament of the Anointing: Open Questions," in *The Pastoral Care of the Sick*, ed. Mary Collins and David N. Power, *Concilium* 1991, no. 2 (Philadelphia: Trinity Press International, 1991) 95-107, esp. pp. 98-100.

<sup>24</sup> Sess. XIV, November 25, 1551. These include canons on penance and extreme unction. See DS 1701-1719. Even when Trent explicitly stated a matter was *ius divinum*, it is possible that it did not always mean that the teaching was divinely revealed, since Trent's understanding of *ius divinum* was broader than ours today. See, e.g., Hubert Jedin, "La nécessité de la confession privée selon le concile de Trente," *Maison-Dieu* 104 (197) 88-115; Pierre-Marie Gy, "Le précepte de la confession annuelle et la nécessité de la confession," *Revue des Sciences philosophiques et théologiques* 63 (1979) 529-547; Piet Fransen, "Réflexions sur l'anathème au concile de Trente," *Ephemerides theologicae Lovanienses* 29 (1953) 657-672; and *idem*, *Die Formel "si quis dixerit ecclesiam errare" auf der 24. Sitzung des Trienter Konzils* (Freiburg: Herder, 1951).

## II. Current Law and Official Rites

In Part II, we will first look at the current law and the viewpoint of the Roman Curia today regarding the minister of the anointing of the sick. We will then seek to understand the reason given by the Holy See for limiting the minister of anointing of the sick to priests, namely, the connection of this sacrament to the forgiveness of sins and the worthy reception of the holy Eucharist. We will conclude this section with a brief consideration of the diverse liturgical rites for the sick and dying in the contemporary Latin church.

### *Current Law and Recent Documents*

The 1917 *Code of Canon Law* is the proximate source for the current canon law on the minister of the anointing. Canon 938, §1 of the 1917 code said that every priest and only a priest validly administers the sacrament of extreme unction. While revising this first code in the 1970s, some consultors favored eliminating the word “validly” (*valide*). Some also wanted to drop the words “every” (*omnis*) and “only” (*solus*) before “priest.” They argued that it was not historically sustainable to say that only a priest could validly anoint, given the practice of the Church for the first eight centuries when lay persons could anoint themselves and others.<sup>25</sup> They also noted that the word “validly” is not used in the liturgical law of *Pastoral Care of the Sick*;<sup>26</sup> that it was not used at Trent, which spoke of the “proper” minister;<sup>27</sup> and that the German bishops [and other bishops and conferences] had requested that deacons be permitted to anoint the sick.<sup>28</sup> Despite these arguments, the norm of the 1917 code was retained, becoming canon 1003, §1 of the 1983 code: “Every priest and only a priest validly administers the anointing of the sick.” Therefore, for the validity of the sacrament, it must be administered by a presbyter or a bishop.

We know from canon 841 that the supreme authority of the Church, the pope or the college of bishops, may change a requirement for the validity of a sacrament. However, the supreme authority could not change such a law if it were based on a doctrine that the solemn magisterium or the ordinary and universal magisterium had proposed as divinely revealed or, even if it had not been proposed as divinely revealed, if the supreme magisterium of the Church had declared that it is a matter of faith that must be held definitively.<sup>29</sup> If the law requiring a priest to be the

<sup>25</sup> See Philippe Rouillard, “The Anointing of the Sick in the West,” in *Handbook for Liturgical Studies*, vol. 4: *Sacraments and Sacramentals*, ed. Anscar J. Chupungco (Collegeville: Liturgical Press, 2000) 171-190.

<sup>26</sup> *Ordo Unctionis infirmorum*, no. 16: “Minister proprius Unctionis infirmorum est solus sacerdos.”

<sup>27</sup> *Communicationes* 15 (1983) 215.

<sup>28</sup> *Communicationes* 9 (1977) 342-343. The 1977 draft of the canon did not contain the words *omnis* and *valide*: “Unctionis infirmorum (sacramenti) minister proprius est solus sacerdos.”

<sup>29</sup> See c. 750 and note 22 above.

minister of anointing of the sick is not rooted in such a definitive doctrine, the pope or an ecumenical council could change it to allow deacons, and perhaps even lay persons, to anoint when priests are lacking.

In surveying a dozen commentaries on the 1983 code, I only found two authors who address this issue, and both suggest that the requirement of a priest for valid administration is reformable, i.e., it is not divine law. Klaus Lüdicke, in the *Münsterischer Kommentar*, says that canon 1003, §1 is a juridical rule, not a dogmatic determination.<sup>30</sup> Frederick R. McManus, in the recently published commentary of the Canon Law Society of America, asserts that, while Trent condemned the view that lay persons could administer the sacrament, the council did not say whether this was for validity or liceity. McManus adds that Trent said nothing about whether deacons could anoint.<sup>31</sup>

I think that the fourth canon on extreme unction from Trent, which restricts the administration of the sacrament to priests alone, is a requirement for validity. Trent uses the words, “the priest alone” (*solus sacerdos*). In the canonical tradition, the word *solus* (alone, sole, only) indicates validity when used in a context of this kind.<sup>32</sup> However, the question, whether this is a doctrine that must be definitively held, is distinct from the law that a priest is necessary for validity.

I believe a pope or an ecumenical council could reexamine the issue and conclude that the Church has the power to change its practice. However, it is unlikely that this will be addressed anytime soon, since the Holy See has rejected requests from bishops for the faculty to permit deacons to anoint and considers the matter closed.<sup>33</sup> This conviction is expressed in two recent documents. The first of these was the 1997 Instruction on Certain Questions Regarding the Collaboration of the Lay Faithful in the Ministry of Priests, which emanated from the Congregation for the Clergy but was also signed by seven other dicasteries and approved *in forma specifica* by the pope. The Instruction states:

With regard to the administration of this sacrament [of the anointing of the sick], canon law reiterates the theologically certain doctrine

<sup>30</sup> *Münsterischer Kommentar zum Codex Iuris Canonici*, ed. Klaus Lüdicke (Essen: Ludgerus, 1991), vol. 4, at c. 1003, p. 1.

<sup>31</sup> “The Sacrament of the Anointing of the Sick,” in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green (New York/Mahwah, NJ: Paulist Press, 2000) 1186.

<sup>32</sup> See, e.g., cc. 339, §1; 352, §1; 454, §2; 462, §1; and 514, §1.

<sup>33</sup> In addition to the German bishops, the Bishops’ Committee on the Permanent Diaconate of the National Conference of Catholic Bishops of the USA petitioned the Holy See for the faculty to allow deacons to anoint. See Ziegler, p. 1. I was told by a Canadian bishop that the Canadian Conference of Catholic Bishops made the same request more than once.

and the custom of the Church of many centuries that regards the priest as its only valid minister.... It must also be affirmed that the reservation of the ministry of anointing to the priest is related to the connection of this sacrament to the forgiveness of sins and the worthy reception of the holy Eucharist. In no way can another person act as ordinary or extraordinary minister of the sacrament, for such constitutes simulation of the sacrament.<sup>34</sup>

A similar statement is found in the 1998 *Directory for the Ministry and Life of Permanent Deacons* of the Congregation for the Clergy: "It is defined doctrine that the administration of the sacrament of the anointing of the sick is reserved to bishops and presbyters since this sacrament involves the forgiveness of sins and the worthy reception of the holy Eucharist; however, the pastoral care of the sick may be entrusted to deacons."<sup>35</sup>

These statements appear in juridical texts, which do not settle matters of doctrine. Ultimately, only the supreme magisterium could resolve the issue definitively. However, the two documents of 1997 and 1998 strongly affirm the conviction of the Holy See at this time that the question is closed. Accordingly, as required by canon 752, the Catholic faithful are to give a religious submission (*obsequium*) of the intellect and will to the Church's teaching and avoid whatever is contrary to it. Still, we need to understand exactly what it is to which we are giving *obsequium*, so the texts bear closer examination.

### *The Connection Between Anointing and the Forgiveness of Sins*

In explaining the reasons for limiting the minister of the sacrament to priests, the two documents pay little notice of the pertinent texts from the Epistle of James (5:14-15) and the Council of Trent, which are only cited in the footnotes. Instead, these documents attend more to another reason, the connection of the anointing of the sick to the forgiveness of sins and the worthy reception of holy Communion. What is this connection? Does it mean that lay persons and deacons cannot administer the sacrament because the forgiveness of sins is an effect of the sacrament of anointing, and only priests can forgive sins? This is a position that some Catholic theologians and bishops have held since the Middle Ages,<sup>36</sup> but it is unconvincing. If only priests could administer sacraments that forgive sins, then

<sup>34</sup> Congregation for the Clergy et al., *Ecclesiae de mysterio*, August 15, 1997, AAS 89 (1997) 852-877, article 9, §2, p. 872. The Vatican English version appears in *Origins* 27 (1997-1998) 397, 399-409.

<sup>35</sup> February 22, 1998, no. 34. The Directory is published in a volume with two documents: Congregation for Catholic Education and Congregation for the Clergy, *Basic Norms for the Formation of Permanent Deacons*, and the *Directory for the Ministry and Life of Permanent Deacons* (Vatican City: Libreria Editrice Vaticana, 1998).

<sup>36</sup> Ziegler, p. 84.

deacons and lay persons could not validly baptize either, since baptism takes away all sins.

Moreover, the sacramental form for the anointing is much different from that of penance. The priest says: “Through this holy anointing may the Lord in his love and mercy help you with the grace of the Holy Spirit. May the Lord who frees you from sin save you and raise you up.”<sup>37</sup> The priest is not declaring that he is absolving the sick person from sins, but he is invoking the Lord to save this person being anointed; it is the Lord, not the priest, who frees the faithful from sin. Surely, this is an invocation that the supreme authority of the Church could allow any believer to make without infringing on a power of priestly order. Thus, it is unlikely that the Congregation for the Clergy means that the priest forgives sins in the anointing of the sick in the same way as in the sacrament of penance.

I believe the connection of the anointing of the sick to the forgiveness of sins means something else. First, we should consider again that the Congregation for the Clergy does not speak only of the connection of the anointing of the sick to the forgiveness of sins, but it also mentions the worthy reception of holy Communion. This is the key to understanding the meaning. We see here an implicit reference to the standard teaching of theologians and canonists that a person must be in the state of grace to receive the sacraments of both the Eucharist and the anointing of the sick. Consequently, the law limiting the minister of the anointing of the sick to the priest alone is closely connected to the relationship among the three sacraments of penance, anointing of the sick, and the Eucharist. Since only a priest can hear confessions and grant absolution, the restriction on the administration of the anointing to priests is pastorally necessary to allow persons in grave sin an opportunity to confess before being anointed and receiving the Eucharist.

The Council of Trent taught that confessing all grave sins in the sacrament of penance is necessary, by the divine law.<sup>38</sup> This doctrine is the basis for canon 960 of the *Code of Canon Law*: “Individual and integral confession and absolution constitute the only ordinary means by which a member of the faithful conscious of grave sin is reconciled with God and the Church. Only physical or moral impossibility excuses from confession of this type; in such a case reconciliation can be obtained by other means.” One of these other means is the third rite of penance, the rite of reconciliation of several penitents with a general confession and general absolution. Like the first two rites, this third rite of reconciliation demands the presence of a priest-confessor. The other exceptional means for obtaining pardon

<sup>37</sup> *Pastoral Care of the Sick*, no. 124. The text of *Ordo unctionis* states: “*Per istam sanctam Unctionem et suam piissimam misericordiam, adiuvet te Dominus gratia Spiritus Sancti; ut a peccatis liberatum te salvet atque propitius allevet.*”

<sup>38</sup> Sess. XIV, November 25, 1551, D. de poenit. et unct. extr., c. 7; DS 1707.

from grave sins, indicated in canon 916, does not require a confessor. Those who are unable to confess grave sins in individual confession are to make an act of perfect contrition, including the resolution to confess all grave sins in the sacrament of penance as soon as possible.

The Holy See evidently has a pastoral reason, besides the teaching of Trent, for maintaining that only a priest validly administers the sacrament of the anointing of the sick. Those who wish to receive this sacrament ordinarily must confess their grave sins first. Since only a priest can celebrate the sacrament of penance, it follows that the presence of the priest may be necessary before a person can worthily receive the anointing of the sick. However, this is not a doctrinal reason for limiting the anointing of the sick to priests alone. The state of grace is also required for the worthy reception of Communion, yet deacons and deputed lay persons may administer this sacrament, even as Viaticum. In the absence of a priest, the faithful may worthily receive holy Communion by making an act of perfect contrition and resolving to confess their grave sins later. The same could be done before receiving the anointing of the sick if a deacon or lay person could administer it.

Therefore, I think that it is not a doctrinal reason, but a pastoral one, that only a priest may celebrate the sacrament of the anointing of the sick, due to the connection between the anointing and the forgiveness of sins. The principal doctrinal reason is the fourth canon on extreme unction from the Council of Trent. Theological investigations must continue to focus on this canon.

The question of the proper minister of the anointing of the sick may continue to be pursued in prudent, scholarly investigation with due submission of intellect and will to the Church's magisterium. However, no one should base their pastoral practice on the expectation that there will be a change in the law anytime soon. Consequently, I think that the appropriate strategy for pastoral practice now should be to use fully the ritual possibilities for the pastoral care of the sick and dying that already exist, and to re-examine our approach to this ministry in view of the worsening shortage of priests to see whether we are involving deacons and lay ministers most effectively.

### *Rites for the Sick and Dying*

It is important to recall that there are several official rites for the pastoral care of the sick and dying, only one of which requires a priest, namely, the anointing of the sick. Deacons and lay ministers can celebrate all the others. The rites are found in *Pastoral Care of the Sick: Rites of Anointing and Viaticum* and the *Book of Blessings*. For those who are sick, there are liturgical celebrations for visits to a sick adult, visits to a sick child, Holy Communion of the sick, anointing of sick,

blessing of sick adults, and blessing of sick children. For the dying, the ritual has two rites in ordinary circumstances, the celebration of Viaticum and the Commendation of the Dying.

Besides these rites, in some places the Church observes the ancient custom of using blessed oil as a sacramental. As a sacramental, any cleric or deputed lay minister can anoint the sick, or the sick can anoint themselves. This custom remains legitimate, as recognized in the 1997 Instruction on Certain Questions Regarding the Collaboration of the Lay Faithful in the Ministry of Priests.<sup>39</sup> Moreover, when blessed oil is used as a sacramental, the restrictions of canon law, regarding who may be anointed and when it may be repeated, do not apply (cc. 998, 1004-1007). The sacramental can be used for the benefit of Catholics and non-Catholics; for those who lack the use of reason, including infants; for those who are sick but not seriously ill; for those who obstinately persist in manifest serious sin, including persons who have been excommunicated or interdicted; and it can be repeated daily, if desired.

A lack of priests need not result in a lack of liturgical and pastoral ministrations to the sick and dying, especially not to the dying. Anointing of the sick is not a sacrament of the dying; it is only administered to dying persons in exceptional circumstances.<sup>40</sup> The sacrament for the dying is holy Viaticum. According to the

<sup>39</sup> *Ecclesiae de mysterio*, article 9, §1, p. 872. When blessed oil is used as part of a prayer or rite of blessing for the sick, care must be taken to avoid any confusion with the sacrament of the anointing of the sick, which may be celebrated only by a priest. The 1997 Instruction addressed this point:

In using sacramentals, the non-ordained faithful should ensure that these are in no way regarded as sacraments whose administration is proper and exclusive to the bishop and the presbyter. Since they are not priests, in no instance may the non-ordained perform anointings either with the oil of the sick or with any unblessed oil.

The text and context indicate that deacons and lay ministers may anoint the sick with oil blessed as a sacramental, but not with unblessed oil or with the oil blessed by the bishop for the sacrament of anointing of the sick. The English translation supplied by the Vatican has a mistake in this passage, since it says that those who are not priests may not bless with the oil of the sick or “any other oil.” The promulgated Latin text states that they may not use any *unblessed* oil (*neque oleo non benedicto*). Deacons and lay ministers may not use unblessed oil since this might lead sick persons into thinking they are receiving a sacramental when they are not.

A partially corrected translation of this document is given in William H. Woestman, *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law* (Ottawa: Faculty of Canon Law, St. Paul University, 1999) 281-305. I have addressed some of the translation problems in my study, “Interpreting an Instruction Approved *in forma specifica*,” *Studia canonica* 32 (1998) 5-46. For example, the English text says the “non-ordained” may not anoint with oil for the sacrament of the anointing of the sick, where the Latin says *qui non sunt sacerdotes*. The English is incorrect because, if taken literally, it would mean that deacons, who are ordained, could anoint.

<sup>40</sup> The final chapter of *Pastoral Care of the Sick* consists of rites exclusively for exceptional circumstances, “when there is a genuine necessity, for example, when sudden illness or an accident or some other cause has placed one of the faithful in the proximate or immediate danger of death” (PCS 232). There are three rites in this chapter. The first is the continuous rite of penance, anointing, and

liturgical laws, the sacraments of penance and anointing of the sick ordinarily should be celebrated before death is imminent; exceptionally, they may be celebrated just before Viaticum is given.<sup>41</sup> The ritual makes it clear that the anointing of the sick is not to be considered a part of the Church's normal rites for the dying. Only in the final chapter of *Pastoral Care of the Sick* is anointing found among the rites for *exceptional* circumstances. The ritual puts it plainly: "If death is imminent, it should be remembered that Viaticum rather than anointing is the sacrament for the dying" (PCS 174). Again, it says: "The sacrament of the anointing of the sick should be celebrated at the beginning of a serious illness. Viaticum, celebrated when death is close, will then be better understood as the last sacrament of Christian life" (PCS 175). With this in mind, let us continue now with Part III of our investigation.

### *III. The Myth of the "Last Rites"*

The Church possesses a rich variety of sacraments and sacramentals intended for the spiritual comfort and pastoral care of sick and dying persons. Priests, deacons, and lay ministers deputed for this ministry may celebrate all these rites, except the anointing of the sick, which requires a priest. The shortage of priests does not excuse dioceses and parishes from the obligation to see that an adequate number of persons are engaged in this necessary ministry.<sup>42</sup> The rites are there, and deacons and lay ministers must be trained to use them. This is especially true of the ministry to dying persons. During a lengthy illness, finding a priest to celebrate penance and the anointing of the sick is usually possible, but often a priest is unavailable when a person is dying. However, in the popular Catholic imagination,

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Viaticum. The sacrament of penance is celebrated if the dying person so wishes (PCS 237, 241). Confirmation may also be celebrated if there is time and the person has not been confirmed.

The second rite is for emergencies when death is imminent and there is no time for the continuous rite. If the dying person wishes, the sacrament of penance is celebrated. If the situation is extreme, anointing is omitted and Viaticum is given immediately. The person may be anointed after Viaticum if he or she is still alive, although this is optional. It is then fitting to say the prayers for the commendation of the dying and, after death, the prayers for the dead.

The third rite is Christian Initiation for the Dying. If a person wishes baptism before death, this rite may be used if there is not time to use the full rite of the RCIA (PCS 275). If the person has the use of reason, which is presumed in law to be attained at the age of seven, he or she must be conscious during the rite and able to hear and answer the questions. Confirmation immediately follows baptism, if a priest is the minister and he has the chrism. Viaticum is given following confirmation, or following baptism if a deacon or lay person is minister. Children below the age of seven are also confirmed following baptism (PCS 280; cc. 889, 891). They may be given Viaticum if they can distinguish the body of Christ from ordinary food and receive Communion reverently (c. 913, §2).

<sup>41</sup> Although the anointing of the sick is not intended primarily as a rite for the dying, the *Catechism* says that, if a priest is available, and if there is time before death to celebrate the rite of anointing, dying persons should be anointed, even if they were anointed earlier in the illness. See *Catechism of the Catholic Church* 1523.

<sup>42</sup> See cc. 383, §1; 387; 394; 528, §2; 529, §1; 530, 3<sup>o</sup>; 911; 986; 1001; 1003.

this is precisely the time when a priest is most wanted. Most of us trained in theology and canon law realize that this desire for a priest for the anointing at the last moments of life is no longer warranted today, in view of the revised liturgical rites and the renewed theology of anointing of the sick and holy Viaticum. In examining the liturgical laws governing these rites, we clearly see that Viaticum, not the anointing of the sick, is the last sacrament of Christian life, and the commendation for the dying is the final sacramental. However, despite the passage of nearly thirty years since the reform of the major rites for the sick, the mistaken notion persists that the anointing of the sick is the last rite of the Church. Lurking behind this notion is, what may be called, “the myth of the last rites.”

Although Viaticum is the last sacrament of the Church, it is difficult to overcome the strongly rooted idea in Catholic culture that the anointing of the sick is the last sacrament celebrated just before death or at the point of death. The persistence of this idea is partly due to this very practice for many centuries, in keeping with a theology of the sacrament that regarded it as the extreme, or last, unction (*unctio extrema*). However, the reasons for this persistence lie deeper than historical memory and practice. They lie, I believe, in a deep-seated Catholic myth – the belief that, if a person is anointed just before death, he or she will go straight to heaven. This belief has no foundation in the doctrine of the Church. In both the epistle of James and the Church’s teaching, anointing is connected to the forgiveness of sins,<sup>43</sup> but the Church has never taught that anointing alone is a “free ticket” to heaven.

Scholastic theology had two dominant views on the forgiveness of sins by extreme unction. The Dominican School (Albert the Great and Thomas Aquinas) held that anointing took away the “remnants” (*reliquiae*) of sins, which Thomas described as the spiritual failings of a person left because of actual or original sin. The Franciscan school (Bonaventure and Scotus) held that the sacrament remitted venial sins.<sup>44</sup> Thus, the theological traditions that informed the fathers at the Council of Trent had no claim that extreme unction could remit mortal sin. On the contrary, the Council of Trent taught that, in virtue of the divine law, each mortal sin committed after baptism must be confessed in individual confession.<sup>45</sup> Only physical or moral impossibility excuses from an individual and integral confession of grave sins (c. 960). Neither church doctrine nor mainstream Catholic theology has ever held that anointing remits grave sins without contrition (at least imperfect

<sup>43</sup> James 5:15; Trent (1551) DS 1717; *Catechism of the Catholic Church* 1520.

<sup>44</sup> Gusmer, p. 31. On the “remnants of sin,” see Giorgio Gozzelino, “Annotazioni teologiche sulla Unzione degli infermi,” in *Il Sacramento dei malati*, Quaderni di Rivista Liturgica (Leuman [Tornino]: Elle Di Ci, 1975) 75-85, esp. pp. 78-79.

<sup>45</sup> DS 1707. Trent spoke of “mortal” sins, but current canon law speaks of *peccata gravia* (“grave” or “serious” sins). “Mortal” and “grave” are equivalent.

contrition, according to some authors, called attrition).<sup>46</sup> Instead, the common teaching of theologians and canonists is that the recipient of the anointing of the sick must be in the state of grace. Accordingly, canon law forbids a priest from anointing “those who persevere obstinately in manifest, grave sin” (c. 1007). If anointing could remit the sins of the unrepentant, one would expect the law to say that the anointing of the sick is especially necessary for those who persist obstinately in manifest, grave sin.

Jesus called people to faith, repentance, and conversion of heart. Christian discipleship requires a response of faith and commitment from each individual. The sacraments and all Christian worship proceed from faith and are based on faith (c. 836). Vatican II taught that faith and conversion are necessary before coming to the celebration of liturgical rites, and that the rites cannot produce their full effects unless the faithful have the proper dispositions: “that their minds be attuned to their voices, and that they cooperate with heavenly grace lest they receive it in vain.”<sup>47</sup> With specific reference to the rites for the sick and dying, *Pastoral Care of the Sick* states: “Above all, this faith must be made actual both in the minister of the sacrament and, even more importantly, in the recipient. The sick person will be saved by personal faith and the faith of the Church . . .” (PCS 7).

The sacrament for the remission of grave sins committed after baptism is penance. Persons in danger of death are not excused from individual and integral confession unless it is physically or morally impossible to confess their sins. Given the importance of sacramental reconciliation, canon law grants the faculty to all priests to hear the confession of Christians in danger of death, even laicized priests and those who have lost their faculty by administrative removal or penal privation.<sup>48</sup> The law does not give the faculty to such priests to celebrate the anointing of the sick. Although the law says that every priest has the faculty of *validly* administering the sacrament of the sick (c. 1003, §1), priests who are laicized or under censure may not *licitly* do so.<sup>49</sup> A 1997 declaration of the

<sup>46</sup> See P.J. Toner, “Extreme Unction,” *The Catholic Encyclopedia*, ed. Charles G. Herberman et al. (New York: Robert Appleton, 1917) 727-728. Perfect contrition is motivated by love of God. Attrition is repentance for some other motive, such as fear of hell. Attrition suffices for the forgiveness of sins by the sacraments of baptism, penance, and possibly the anointing of the sick, but perfect contrition is required apart from these sacraments.

<sup>47</sup> *Sacrosanctum Concilium* 9, 11. The quote is from no. 11.

<sup>48</sup> See cc. 976, 844; *Code of Canons of the Eastern Churches, Orientalium Ecclesiarum*, (Pope Paul VI, November 21, 1964) cc. 725, 671.

<sup>49</sup> See cc. 1331-1333; 1394, §1; 1044, §1, 3°. The standard rescript of laicization says that the laicized priest is excluded from the exercise of the sacred ministry, except for hearing confessions in danger of death. The competent ordinary can grant a dispensation to allow him to be an acolyte, a lector, or a minister of holy Communion, but not to administer the anointing of the sick. See *Roman Replies and CLSA Advisory Opinions 2001*, ed. F. Stephen Pedone and James I. Donlon (Washington: CLSA, 2001) 14-22.

Pontifical Council for the Interpretation of Legislative Texts clarified that, not only does the laicized or censured priest act illicitly in celebrating the sacraments and sacramentals, but the faithful themselves may not lawfully request the sacraments and sacramentals from such priests, except for the sacrament of penance in danger of death.<sup>50</sup>

When it is physically or morally impossible to confess one's grave sins, the faithful must make an act of perfect contrition before receiving the anointing of the sick or holy Communion. This means that they are to express their sorrow for their sins and desire for forgiveness to God, motivated by love of God. Included in perfect contrition is the intention to confess grave sins later, if there is an opportunity (c. 916).

With these ideas in mind, I will conclude this talk with some pastoral suggestions to address the myth of the last rites and other issues related to the pastoral care of the sick and dying. I want to focus on ways that local churches can respond to the spiritual needs of the faithful who are ill in an era when the availability of priests is steadily diminishing.

### *Conclusions and Pastoral Suggestions*

The historical evidence strongly supports the conclusion that, during the first eight centuries, the Church did not limit the anointing of the sick to priests alone; all Christians could do it. In the Carolingian period, pastoral ministry was unified and centered on the parish priest; from this time forward only a priest could anoint the sick. The Council of Trent accepted this practice as normative and taught that the priest alone is the proper minister of the sacrament. This teaching of Trent continues to be the basis for the law of the Church today. The supreme authority of the Church has never formally declared that the Tridentine teaching is a divinely revealed dogma of the faith or a secondary doctrine that must be definitively held. So, the Church has the power to reexamine this issue. However, this is not likely to occur anytime soon. In recent years the Holy See has made it clear that it does not intend to consider the question.

Although it seems unlikely that the supreme authority will be reviewing this matter in the near future, barring an ecumenical council, we should not conclude that the pastoral care of sick and dying persons will be neglected due to the shortage of priests. The Church has several liturgical rites that comprise a vital part of its pastoral care of the sick and dying. A deacon or lay minister, as well as a priest, may preside at all these rites, except penance and the anointing of the sick. The problem is not the lack of sacraments and sacramentals that deacons and lay

<sup>50</sup> Declaration *Atteso che*, May 19, 1997, AAS 90 (1998) 63-64; *Origins* 27 (1997) 64.

ministers can administer to the sick and dying. The problem is the persistent myth holding that a priest must be summoned when a person is dying to administer the anointing of the sick, since this guarantees the dying person, who is often unconscious or too weak to confess, a “direct flight” to heaven. It remains a serious pastoral challenge to help the faithful to see that their contrition for grave sins is absolutely necessary for salvation; the anointing of the sick is not. Considering these realities, I offer three pastoral suggestions.

The first suggestion is directed to those involved in Christian formation. Considerable effort is necessary to dispel the myth of the last rites. People need to be taught, as the popes have urged for centuries, not to wait too long for the sacrament. The optimal time, clearly stated in the law, is at the beginning of the serious illness, not at the end of life.<sup>51</sup>

My second suggestion is directed to all involved in the pastoral ministry at the level of the parish or diocese. It would be very beneficial if, in every deanery or region of a diocese, communal celebrations of the anointing of sick could be held regularly, with different parishes hosting the celebration each time. In that way, people who fall gravely ill will generally have an opportunity to receive this sacrament before they are hospitalized and become too sick to benefit fully from the sacrament.

My final suggestions relate to the sacrament of penance, which is necessary for obtaining pardon from grave sins, unless physical or moral impossibility excuses (c. 960). In danger of death, it is far more important to one’s salvation that a priest is present to hear the dying person’s confession than to anoint the person with oil. A pastoral practice that resorts to the indiscriminate anointing of the dying without attending to the state of their soul smacks of magic and superstition, and is alien to the true Catholic tradition. If the pastor or other priest in charge of pastoral care is unavailable for the confession of a dying person, canonists and pastors must do a better job of instructing the faithful, especially the personnel in Catholic hospitals and nursing homes, of the alternatives that the law provides for this situation.

First, it may be possible to call on the services of a priest who is retired, laicized, or one who has lost his faculties by administrative removal or by a canonical penalty. All validly ordained priests have the faculty by law to hear the confessions and remit any censures of a person in danger of death. In fact, canon 986, §2 says that they have the *obligation* to hear the confession of a person in

<sup>51</sup> See c. 1004, §1. *Pastoral Care of the Sick*, no. 13 states: “In public and private catechesis, the faithful should be educated to ask for the sacrament of anointing and, as soon as the right time comes, to receive it with full faith and devotion. They should not follow the wrongful practice of delaying the reception of the sacrament. All who care for the sick should be taught the meaning and purpose of the sacrament.”

danger of death. Second, if no priest is available, deacons and lay ministers who cooperate in the pastoral care of the faithful must be prepared to help dying persons to make an act of perfect contrition.<sup>52</sup>

In several parts of the world, including Europe, North America, and Oceania, the shortage of priests will continue to worsen, as more priests retire and are not replaced by an equal number of newly ordained priests. As a result, the local churches must take the necessary steps to see that deacons and lay ministers have the necessary formation for the important ministry of the pastoral care of the sick and dying. For, it is through the presence of the Church's ministers, and their celebration of the official rites of the Church, that Christ himself is present to the suffering faithful to bring them comfort and strength and healing grace at the time they need him most.

<sup>52</sup> When physical or moral impossibility excuses from confessing grave sins, the person is to make an act of perfect contrition, which includes the intention to confess as soon as possible. See c. 916; cf. also cc. 960 and 988, §1.

## ELEMENTS OF A GOOD JUDICIAL SENTENCE

REV. JOHN G. JOHNSON

Neither the 1983 *Code of Canon Law (CIC)*, nor the *Code of Canons of the Eastern Churches (CCEO)* contain a definition of *sententia*.<sup>1</sup> Although the task of defining terms belongs more properly to commentators than to the legislator, it would be difficult to propose a more authoritative expositor than Cardinal Gasparri, the architect of the 1917 code. Canon 1868, §1 of his masterpiece defined the *sententia* as “*Legitima pronuntiatio qua iudex causam a ligantibus propositam et iudiciali modo pertractatam definit.*”

Like any good Aristotelian definition, this one begins by classifying its subject. The sentence belongs to the genus “*legitima pronuntiatio.*” *Pronuntiatio* derives from the verb *nuntiare*, to announce, to declare, to report. Hence, the sentence is some kind of formal declaration.<sup>2</sup> The adjective *legitima* (from *lex*, law) indicates that the declaration occurs within the world of law. It will be governed by certain legal formalities. These formalities are summarized in the definition’s subordinate clause and specified in greater detail in *CIC*, canons 1607-1614 (*CCEO* cc. 1291-1296).

The efficient cause of the sentence is the *iudex*. Various officials might be involved in the legal resolution of a dispute – a mediator or conciliator, an arbitrator, a referee. Although these officials might prepare and issue more or less binding findings of fact or law, their pronouncements would not constitute a *sententia*. Only a judge issues a sentence.

<sup>1</sup> Pompedda suggests that c. 1607 of the 1983 code (*CCEO* c. 1290) does define the sentence, but “in a more oblique fashion” than the 1917 code. Mario F. Pompedda, “Decision-Sentence in Marriage Trials: of the Concept and Principles for Rendering an Ecclesiastical Sentence,” *Quaderni de Studio Rotale* 5 (1990) 74. The canon reads: “When a case has been handled in a judicial manner, if it is the principal case, the judge decides it through the definitive sentence; if an incidental case, through an interlocutory sentence....” From this one might deduce that a sentence embodies the judge’s decision in a case processed judicially.

<sup>2</sup> To announce, to declare, or to report entails imparting some kind of information to an audience. The sentence must therefore be some kind of communication. Near its end this discussion will consider some implications of the sentence as a vehicle for communication.

There are several senses in which the sentence comes from the judge. In the first place, the sentence expresses the judge's conclusions about the case. The sentence contains his or her reflections on the law applicable to the case and his or her evaluation of the evidence presented during the investigation of the case. The judge is the person who officially brings the controversy to an end. His or her decision binds the parties with respect to the subject matter of their litigation.<sup>3</sup> Because the sentence expresses his or her understanding of the issues and his or her determination of what must be done,<sup>4</sup> the judge must be the source of the sentence. Moreover, the canons require the judge to draft as well as issue the sentence. *CIC* canon 1610, §1 (*CCEO* c. 1293, §1) insists, "If there is only one judge, he will write the sentence himself." In cases of multi-judge panels, the task of drafting the sentence falls to the *ponens*, who bases her argument on the consensus achieved by the majority and whose work is subject to the modifications suggested by his or her colleagues.<sup>5</sup> Finally, *CIC* canon 1613, §4 (*CCEO* c. 1295, §4) prescribes that the judge must sign the sentence. If the judge fails to sign the sentence, it is remedially invalid (*CIC*, c. 1622, 3°; *CCEO* 1304, §1, 3°). In the mind of the legislator, the sentence is definitely the handiwork of the judge.

The context within which the judge issues the sentence is a judicial trial: a case has been litigated before the judge in a judicial fashion. Coronata observes, "A case is said to be handled in a judicial manner if it is handled in a contradictory and according to the norms prescribed for judicial procedure."<sup>6</sup> A presumption of death case, which is regulated by administrative procedure, would therefore not result in

<sup>3</sup> Cf. c. 16, §3. Della Rocca speaks of the sentence as the means whereby "the judge imposes upon the parties the solution reached in the quarrel." Fernando Della Rocca, *Canonical Procedure: Philosophical-Juridic Study of Book IV of the Code of Canon Law*, trans. Msgr. John D. Fitzgerald (Milwaukee: Bruce Publishing, 1961), p. 275. Throughout, this presentation will rely heavily on commentators on the 1917 code. The treatments of the sentence in the two Codes are virtually identical, and the comments of the older scholars therefore remain apposite. Moreover, the classical commentaries are often more thorough than their successors.

<sup>4</sup> Cf. on this question P. Matthaëus Conte a Coronata, *Institutiones Iuris Canonici Volumen III De Processibus* (Rome: Marietti, 1948), p. 302. Likewise Carmelo de Diego-Lora, "Titulus VII De iudicis pronuntiationibus," in *Code of Canon Law Annotated*, E. Caparros, M. Theriault, and J. Thom, eds. (Montreal: Wilson & Lafleur Limitee, 1993), p. 994: "The sentence ... not only contains a judgement of reason, but also an order of the will, proper to the judicial function, rendering the sentence binding and even executory if it contains a pronouncement sentencing a party to give, do, or abstain from doing something."

<sup>5</sup> *CIC*, c. 1610, §2 (= *CCEO* c. 1293, §2): "In a collegiate tribunal, it is for the *ponens* or *relator* to write the sentence, selecting the reasons from those the individual judges brought forth during the discussion, unless a majority of the judges have already determined the reasons to be presented. The sentence must then be submitted for the approval of the individual judges."

<sup>6</sup> Coronata, III, 302.

a sentence. But a sentence is the proper vehicle for deciding cases investigated by documentary procedure<sup>7</sup> or governed by the rules for the oral contentious process.<sup>8</sup>

The function of the sentence is *causam ... definire*. The English *define* may not translate the verb precisely. The act by which the judge *defines* the conflict between the parties – by which he or she expresses in legal language the nature of the dispute between them – is the *contestatio litis*. Indeed, canon 1513, §1 (cf., *CCEO* c. 1195, §1) uses the verb *definire* in describing the *contestatio*: this occurs “*cum per iudicis decretum controversiae termini ... definiuntur*”: “when the terms of the controversy ... are defined through the judge’s decree.” The formulation of the doubt reduces the terms of the controversy to a question which the judge should be able to answer at the end of the trial. The sentence, by contrast, contains his or her authoritative response to that question. Hence, the sentence does not so much *define* the controversy as *bring an end to it*.<sup>9</sup>

According to classical commentators, a sentence has certain internal qualities. Irrespective of the formalities the law may require, the sentence should have certain characteristics in order to be a sentence. “First of all, the sentence should be just, i.e., should be in conformity both with the laws and with the rights of the litigants.”<sup>10</sup> If a judge issues a sentence substantially in violation of the law, it may be invalid as well as unjust,<sup>11</sup> and in certain circumstances it may be *manifestly* unjust.<sup>12</sup> An unjust sentence can be overturned by an appellate court; an invalid sentence can be declared invalid; and a manifestly unjust sentence can be set aside by the *restitutio in integrum*.

In the second place, the sentence should respond to the petition.<sup>13</sup> Pompedda points out “that the canonical trial is a process informed from its inception by an initiative of another.”<sup>14</sup> No valid sentence can be issued unless someone presented a proper petition (*CIC* c. 1620, 4°; *CCEO* c. 1303, §1, 4°). Once a petition has come to trial, however, the judge is obliged to respond fully to it. Pompedda continues:

<sup>7</sup> Cf. *CIC*, c. 1686: “...the judicial vicar or a judge designated by him can declare the nullity of a marriage *by sentence*.....” *CCEO* c. 1372, §1.

<sup>8</sup> Cf. *CIC*, c. 1668, §1: “... which prevents a proper pronouncement *of the sentence*”; “...the dispositive part *of the sentence* is to be read at once....” *CCEO* c. 1345, §1.

<sup>9</sup> This does not imply that no recourse against a sentence is possible; but the direct object of the recourse is the correction or annulment or (in the case of the *restitutio in integrum*) setting aside of the sentence.

<sup>10</sup> P. Francisco Xav. Wernz and P. Petrus Vidal, *Ius Canonicum Tomus VI De Processibus* (Rome: Gregorian, 1927), p. 539. Similarly Coronata, III, 304.

<sup>11</sup> See *CIC* cc. 1620-1621; *CCEO* cc. 1303-1304.

<sup>12</sup> See *CIC* c. 1645; *CCEO* c. 1326.

<sup>13</sup> Wernz-Vidal, VI, 540; A. Vermeersch and J. Creusen, *Epitome Iuris Canonici Tomus III* (Rome: H. Dessain, 1946), p. 110.

<sup>14</sup> Pompedda, p. 80.

...the judge must pronounce sentence over the totality of the matter under adjudication in the doubt as it is concorded. He must never pronounce *infra petita partium*. On the other hand ... the judge can never settle the case outside what has been asked by the parties (“*extra petita partium*”) nor can the judge resolve the matter beyond the controversy as it is established in the “*concordatio dubii*” (“*ultra petita partium*”) ... In general, therefore, and by way of principle, the sentence must correspond with the judicial petition (that is the “*libellus*”) according to the formula established beforehand by the judge in setting the doubt or doubts to be resolved.<sup>15</sup>

Next, the sentence should be *certain*.<sup>16</sup> It cannot bring the controversy to an end unless it contains a clear conclusion about the matter in dispute. *CIC* canon 1608, §1 prescribes that “the judge must have moral certitude about the matter to be decided” before she can issue any sentence (*CCEO* c. 1291, §1). No one has dealt more masterfully with the meaning of *moral certitude* than Pope Pius XII:

Between the two extremes of absolute certainty and quasi-certainty or probability is ... *moral certainty*... It is characterized on the positive side by the exclusion of well-founded or reasonable doubt, and in this respect it is essentially distinguished from the quasi-certainty which has been mentioned; on the negative side, it does admit the absolute possibility of the contrary, and in this it differs from absolute certainty. The certainty of which we are now speaking is necessary and sufficient for the rendering of a judgement, even though in the particular case it would be possible either directly or indirectly to reach absolute certainty.<sup>17</sup>

In describing such certainty as *necessary* for the issuing of the sentence, the pontiff implies what Pope John Paul II later made explicit: “no judge may pass sentence in favour of the nullity of a marriage if he has not first acquired the moral certainty of the existence of this nullity. Probability alone is not enough to decide a case...”<sup>18</sup> On the other hand, in describing such certainty as *sufficient* for the

<sup>15</sup> *Ibid.*, p. 83.

<sup>16</sup> Wernz-Vidal, p. 541.

<sup>17</sup> Pope Pius XII, Allocation to the Sacred Roman Rota, 1 October 1942, from William H. Woestman, ed., *Papal Allocutions to the Roman Rota 1939-1994* (Ottawa, Ontario: St. Paul University, 1994), pp. 18-19. Unless otherwise noted, all citations from papal allocutions to the Rota will be from this source; and they will be referenced as follows: Name of Pontiff, date of allocution, Woestman, p.

<sup>18</sup> Cited from Zenon Grocholewski, “Moral Certainty as the Interpretative Key of Procedural Norms,” *Canon Law Society of Great Britain and Ireland Newsletter* 121 (March, 2000) 36. Woestman, p. 162.

issuing of the sentence, the pontiff implies that “No ecclesiastical tribunal has the right or the power to demand more than this.”<sup>19</sup>

If one argues that the sentence must be *certain*, one confronts the question, “What is a judge to do if he or she cannot achieve certitude about the matter in dispute?” Pompedda acknowledges, “There are times when a judge reaches an impasse in a case in the course of the instruction or at the end of the discussion. Sometimes that impasse can be resolved, in other cases, even after legitimate efforts have been made, the impasse remains and moral certitude cannot be had.”<sup>20</sup> The eminent jurist encourages judges in this situation to ensure that their instruction of the case has been complete. The judge enjoys “the right and indeed the obligation to ‘*supplere*’ the proofs in order to avoid an unjust sentence... It would be a negligence of the judge were he not to investigate obvious elements or potential proofs which could afford a basis for moral certitude in the case.”<sup>21</sup> After a painstaking investigation of the case and a conscientious evaluation of all the available evidence, however, a judge who remains in doubt is obliged by *CIC* canon 1608, §4 (*CCEO* c. 1291, §1) “to pronounce that the right of the petitioner is not established.” Because “Marriage possesses the favor of the law” (c. 1060; *CCEO* c. 779), in marriage cases a judge who remains in doubt about the validity of the marriage must rule, “*non constat de nullitate matrimonii*.”

A final internal characteristic of the sentence is that it be *motivated*, “that is, that it contain reasons and motives, both in fact and in law, which support the dispositive part of the sentence.”<sup>22</sup> Della Rocca observes that the sentence “is composed of mutually integrating logical and imperative elements. In the logical phase, the judge gives an account of the results of the search for truth to which he has been obliged by the judicial request; in the imperative part ... the judge imposes upon the parties the solution reached in the quarrel.”<sup>23</sup> The solution the judge seeks to impose upon the parties will appear more or less just depending on the adequacy of his explanation of the reasons that gave rise to it.

In addition to possessing these internal qualities, the sentence is governed by external solemnities.<sup>24</sup> In other words, the sentence has a structure prescribed by

<sup>19</sup> Grochowski, p. 40.

<sup>20</sup> Pompedda, pp. 93-94.

<sup>21</sup> *Ibid.*, p. 94.

<sup>22</sup> Wernz-Vidal, VI, 542.

<sup>23</sup> Della Rocca, p. 275. Similarly Coronata, III, 302: “The sentence consists of two elements, an act of the intellect and an act of the will. The intellect perceives the facts and the law and compares them with each other in order to recognize truth and justice. The will correctly defines the recognized truth and authoritatively promulgates it to the parties.” Pompedda (p. 80) appears to cite this passage from memory.

<sup>24</sup> The term comes from Wernz-Vidal, VI, 543. Vermeersch-Creusen, III, 110, prefers “external form.”

the canons.<sup>25</sup> It begins with the invocation of God's Name (*CIC* c. 1612, §1; *CCEO* c. 1295, §1).<sup>26</sup> Although, as Coronata has noted,<sup>27</sup> this formality is hardly required for validity, it does remind the Court that its business tends, if sometimes only indirectly, towards the glory of God and the salvation of souls (cf. *CIC* c. 1752). The sentence next must identify the participants in the action: the judge or the tribunal, the petitioner(s), the respondent(s), the procurator(s), the promoter of justice (if he or she participated in the trial); and, the defender of the bond (if he or she participated in the trial) (*CIC* c. 1612, §1; *CCEO* c. 1295, §1). The canon requires that the sentence specify the domiciles of the parties and their procurators. It makes no such requirement for the judge, the promoter, or the defender. One presumes that their official connection with the tribunal sufficiently identifies them.<sup>28</sup>

Following this preliminary material the sentence contains three larger sections which will be discussed in more detail below.<sup>29</sup> The first "must briefly relate the facts together with the conclusions of the parties and the formula of the doubts" (*CIC* c. 1612, §2; *CCEO* c. 1295, §2). The second "must set forth the reasons or motives in law... on which the dispositive part of the sentence is based" (*CIC* c. 1611, 3°; *CCEO* c. 1294, 3°). The third "must set forth the reasons or motives...

<sup>25</sup> See the table in Appendix I for the legally-prescribed outline of the sentence.

<sup>26</sup> Cox notes that "The college of judges meets in the context of prayer, beginning with an invocation of the divine name." Craig A. Cox, "Part II The Contentious Trial [c. 1501-1670]," in *New Commentary on the Code of Canon Law*, John P. Beal, James A. Coriden, and Thomas J. Green, eds. (New York and Mahwah, N.J.: Paulist Press, 2000), p. 1718.

<sup>27</sup> Coronata, III, 314.

<sup>28</sup> The following excerpt from an unpublished decision *coram* Monier of 23 November 2000 provides a Rotal example of the introductory section of a sentence: "In the Name of God. With Pope John Paul II governing the Holy Church, in the twenty-third year of his Supreme Pontificate, on 23 November 2000 the Reverend Fathers Kenneth Boccafola, Daniel Faltin, and Mauritius Monier, who also was Ponens, Auditors of the Turnus, in a case concerning the nullity of marriage [originating in] Lakeside, between:

- Mr. John Smith, the husband plaintiff, a Catholic, born on 9 November 19\_\_ in the city of Lakeside and having a domicile at 2xx5 Bridgewater Road, Poshville, Midwest, USA, legitimately represented through his ex officio Advocate, Mr. Solomon Wiseman, a Rotal Advocate; and
- Ms. Sally Brown, the wife respondent, also a Catholic, born on 7 January 19\_\_ in the same city of Lakeside and residing at 6xx1 Summitview Drive, Newton, Midwest, USA, [who was] legitimately cited;
- with Reverend Father Demetrius Solon, a Defender of the Bond at Our August Tribunal, intervening and debating [the case], and Mr. Daniel Webster, specially appointed for this case,

handed down the following definitive sentence in the third stage of jurisdiction."

<sup>29</sup> These three large sections, according to Wrenn, constitute "the *expositive* part of the sentence." Lawrence G. Wrenn, "Book VII Processes (cc. 1400-1752)," in *The Code of Canon Law: A Text and Commentary*, James A. Coriden, Thomas J. Green, and Donald E. Heintschel, eds. (New York and Mahwah, N.J.: Paulist Press, 1985), p. 995.

in fact on which the dispositive part of the sentence is based” (*CIC* c. 1611, 3°; *CCEO* c. 1294, 3°). Together the second and third sections make clear the reasoning that led the judge to her conclusion.<sup>30</sup>

Next comes what the canons term “the dispositive part of the sentence” (*CIC* c. 1613, §3; *CCEO* c. 1295, §3). This part of the sentence must definitively “decide the controversy deliberated before the tribunal with an appropriate response given to the individual doubts” (*CIC* c. 1610, 1°; *CCEO* c. 1294, 1°). “If multiple grounds are at issue, the sentence must respond to each of the questions.”<sup>31</sup> “This means ... that the judge must pronounce on the whole of the object of the litigation (never *infra petita partium*) exactly as defined in the petitions of the parties; but, on the other hand, it limits the decision of the judge since he or she may not add to (*extra petita partium*) nor decide beyond (*ultra petita partium*) the issues to which he is bound by the parties.”<sup>32</sup> “Failure to respond to the terms of the controversy may lead to the irremediable nullity of the sentence” (*CIC* c. 1620, 8°).<sup>33</sup>

The concluding section of the sentence must also address two related issues. In the first place, it must “determine what obligations have arisen for the parties from the trial and how they must be fulfilled” (*CIC* c. 1610, 2°; *CCEO* c. 1294, 2°).<sup>34</sup> “Since the sentence is a juridic act,” Cox observes, “it must clarify for the parties the consequences of the decision.”<sup>35</sup> This might therefore be the place in which the court imposes a prohibition on future marriage.<sup>36</sup> In the second place, the concluding section of the sentence must “Make a determination about judicial expenses” (*CIC* c. 1610, §4; *CCEO* c. 1294, 4°). Cox explains:

Normally, the particular law or policies of each tribunal would establish a standard schedule of fees and who is responsible for them.... Even if a policy is in place, the sentence must apply that

<sup>30</sup> Cf. Wernz-Vidal, VI, 544: “*Motiva seu principia iuridica sive generalia sive specialia, in quibus innittitur pars dispositiva, et probationes quibus constat de facto cui applicanda decisio....*”

<sup>31</sup> Cox, p. 1720.

<sup>32</sup> Diego-Lora, p. 998. Pompedita (p. 84) raises the question, “If at the moment of judgement, once all the acts have been examined and the defenses presented to that point have been made, it seems to the judge that the doubt was not formulated correctly (i.e., the ‘*caput nullitatis*’ was not well formulated) and another ground out to be added, what must the judge do, what can he do?” He concludes that the judge can correct the misformulation. He does not, however, indicate the necessary procedure.

<sup>33</sup> Cox, p. 1720.

<sup>34</sup> As examples Sister Marcella Ryan suggests “determining the handing over of property from one person to another, [or] determining the duties of the spouses toward their children in a marriage which has been declared invalid.” Sister Marcella Ryan, S.C., “Title VII The Pronouncements of the Judge,” in *The Canon Law Letter & Spirit*, Gerard Sheehy, Ralph Brown, Donald Kelly, and Aidan McGrath, eds. (Collegeville, Minnesota: The Liturgical Press, 1995).

<sup>35</sup> Cox, p. 1720.

<sup>36</sup> So Ryan, p. 908.

policy by specifying costs and addressing questions such as any additional expenses that were incurred. It also must reduce costs or provide gratuitous assistance for those parties unable to pay.<sup>37</sup>

In the United States of America, church courts do not enjoy the luxury of imposing financial obligations on people unwilling to assume them. In practice, the “determination about judicial expenses” will most likely involve a recognition that the petitioner or his/her parish has expressed a willingness to pay the expenses of the trial or a waiving of the court costs.

The sentence ends with certain formalities: a specification of the date on which and the place in which it was issued; the signatures of the judges; and the signature of the notary (*CIC* c. 1613, §4; *CCEO* c. 1295, §4). The sentence is remedially null if it lacks the specification of date and place (*CIC* c. 1622, 4°; *CCEO* c. 1304, §1, 4°) or any required signature (*CIC* c. 1622, 3°; *CCEO* c. 1304, §1, 3°).

Such is the legally-prescribed outline of the sentence. The discussion now turns to a closer scrutiny of the middle three sections, the Facts, Law, and Argument sections.

### *The Facts*

According to *CIC* canon 1613, §2 (*CCEO* c. 1295, §2), the first major section of the sentence “must briefly relate the facts together with the conclusions of the parties and the formula of the doubts [*formula dubiorum*].” This section provides the context within which the reader can understand the judge’s argument and conclusions. Doheny notes that “This brief and dispassionate narration . . . should carefully avoid stating anything that would seem to favor either party.”<sup>38</sup> Cox observes,

The content of the “Facts Section” will vary depending on the nature of the case at issue. . . in a marriage nullity case, the relevant facts would include information such as the date and place of the exchange of consent, the length of the common life, whether children were born of the union, and similar information.<sup>39</sup>

According to Bishop Jukes:

<sup>37</sup> Cox, p. 1721.

<sup>38</sup> William J. Doheny, *Canonical Procedure in Matrimonial Cases I Formal Judicial Procedure* (Milwaukee: Bruce Publishing, 1948), p. 485.

<sup>39</sup> Cox, p. 1721.

... this section of the Sentence needs always to include the names, religion and dates of birth of the parties concerned. The date when they first met and the date of their marriage together with the names and dates of births of any children. The time when the union started to disintegrate should be shown, together, of course, with the dates of any civil action of divorce. These essential details should be followed by indicating who has introduced the claim and the headings of nullity under which the claim is being made.... Added to it should only be those elements from the lives of the parties which are thought to be particularly significant in responding to the particular claims or heading which are under consideration.... Every effort should be made to avoid inserting nicely turned phrases from the evidence or simple subjective descriptions of friction or difficulties inside the marriage itself... It would be right at this point to insert as well whether the Respondent in the case has for some reason or other not been brought into the judgement because of a lack of address or knowledge of present address or whereabouts.<sup>40</sup>

For purposes of comparison I have abstracted facts sections from Rotal sentences<sup>41</sup> issued by five contemporary Auditors – Boccafolo,<sup>42</sup> Stankiewicz,<sup>43</sup> Burke,<sup>44</sup> Faltin,<sup>45</sup> and Turnaturi.<sup>46</sup> These sections differ somewhat in length and detail; but as the commentators have noted, Rotal Auditors almost always include certain elements in their sentences:

- 29) The identification of the parties, often in terms of
  - a) Age
  - b) Religious affiliation
  - c) Background, and
  - d) Domicile;
- 30) Some information on the courtship, especially
  - a) Its length and
  - b) Any unusual circumstances;
- 31) The date and place of the wedding;
- 32) Some general information about the common life, especially

<sup>40</sup> The Most Reverend John Jukes, "The Quality of Sentences," *Canon Law Society of Great Britain and Ireland Newsletter* 81 (March, 1990) 19-20.

<sup>41</sup> See the table in Appendix II for the texts of these facts sections.

<sup>42</sup> C. Boccafolo, 13 December 1989, *The Jurist* 51 (1991) 183-226.

<sup>43</sup> C. Stankiewicz, 15 December 1992, *Studia canonica* 29 (1995) 515-531.

<sup>44</sup> C. Burke, 14 December 1995, *Studia canonica* 32 (1998) 239-252.

<sup>45</sup> C. Faltin, 8 October 1997, *Studia canonica* 32 (1998) 524-527.

<sup>46</sup> C. Turnaturi, 5 March 1998, *Monitor Ecclesiasticus* 124 (1991) 52-109.

- a) Its length,
- b) Its happiness, and
- c) The number of children;
- 33) Some general information about the couple's problems, especially
  - a) Their timing,
  - b) Their nature, and
  - c) The parties' attempts to solve them;
- 34) The date and place of the civil divorce;
- 35) Information concerning the processing of the case, especially
  - a) The date of the petition,
  - b) The title of competence,
  - c) The involvement of the parties and their advocates,
  - d) Any unusual circumstances, and
  - e) The date and contents of the formulation of the doubt.

The information contained in this section is often a matter of public record. It might also include the facts both parties freely admit.<sup>47</sup> If the parties disagree about some salient fact, the proper place for the judge to resolve their dispute would appear to be the argument section, not the facts section. Nevertheless, the judge might mention the disagreement in the facts section if the fact in question were essential to the resolution of the doubt. *CIC* canon 1613 also specifies that the facts section should include “the conclusions of the parties.” Commentators seem disinclined to offer a definition of the word *conclusion* in this context. Coronata appears to understand “the conclusions of the parties” as the claims of the petitioner and the counter-claims or exceptions of the respondent.<sup>48</sup> I tentatively identify these “conclusions” as whatever assertions the parties make that provide the necessary background for the formulation of the doubt.

### *The Law*

The canons<sup>49</sup> treat as a single entity that part of the sentence in which is “set forth the reasons or [*seu*] motives in law and in fact”<sup>50</sup> for the decision the court hands down.<sup>51</sup> Rotal models, however, divide this part of the sentence into a law section and an argument section. In support of this division one might cite Doheny:

<sup>47</sup> See Wernz-Vidal, VI, 543.

<sup>48</sup> Coronata, III, 314.

<sup>49</sup> 1983 *CIC* c. 1612, §3: “The dispositive part of the sentence follows the above, preceded by the reasons on which it is based.” *CCEO* c. 1295, §3: “Following these points is the dispositive section of the sentence preceded by the reasons on which it is based.” 1917 *CIC* c. 1874, §4: “*Hisce subsequatur pars dispositiva sententiae, praemissis rationibus quibus innitur.*”

<sup>50</sup> 1983 *CIC* c. 1610, 3°; *CCEO* c. 1294, 3°; 1917 *CIC* c. 1873, 3°.

<sup>51</sup> Wrenn calls this complex section “the *expositive* part of the sentence.” Wrenn, “Book VII Processes,” p. 995.

[The facts section] is followed by a clear statement of the law in the case usually entitled: *Quod ad ius spectat* or simply: *In iure*. This in turn is followed by the most important part which is ordinarily entitled: *Ad factum quod attinet* or simply: *In facto*.<sup>52</sup>

The function of the law section was described by Pope John Paul II in his 1992 Allocation to the Sacred Roman Rota:

If the work of judging consists in bringing the law to bear on reality, and thus of actuating concretely the intention of the abstract norm – limited, however, to the cases brought to judgment – certainly the judge is called to a delicate intermediary task in bringing together the legal system and those governed by it. The abstract majesty of the law – even canon law-would remain a value divorced from concrete reality in which human beings in general and the faithful in particular live and act, if the norm itself were not related to those for whom it has been established.<sup>53</sup>

The pontiff sees the judge mediating between the abstract law and the concrete situations in which individual human beings live and act. To appreciate the necessity of this function one must wander somewhat afield. Aquinas argues that law envisages, not an individual situation, but general cases:

Whatever is for an end should be proportionate to that end. Now the end of the law is the common good.... Hence human laws should be proportionate to the common good. Now the common good comprises many things. Wherefore law should take account of many things, as to persons, as to matters, and as to times. Because the community of the state is composed of many persons; and its good is procured by many actions; nor is it established to endure for only a short time, but to last for all time by the citizens succeeding one another....<sup>54</sup>

Of course, Aquinas is aware that “in human acts no general proposition can be so certain as not to fail in some individual cases.”<sup>55</sup> He accordingly observes,

<sup>52</sup> Doheny, p. 485.

<sup>53</sup> Pope John Paul II, 1992 Allocation to the Sacred Roman Rota, Woestman, p. 221.

<sup>54</sup> Thomas Aquinas, *Summa Theologica*, I-II, q. 96, a. 1, c. Excerpts are cited from *St. Thomas Aquinas on Law and Justice* (New York: The Classics of Liberty Library, 1996).

<sup>55</sup> *S. T.*, I-II, q. 96, a. 1, obj. 3.

It happens often that the observance of some point of law conduces to the common weal in the majority of instances, and yet, in some cases, is very hurtful. Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. Wherefore if a case arises wherein the observance of that law would be hurtful to the general welfare, it should not be observed.<sup>56</sup>

No man is so wise [he continues] as to be able to take account of every single case; wherefore he is not able sufficiently to express in words all those things that are suitable for the end he has in view. And even if a lawgiver was able to take all the cases into consideration, he ought not to mention them all, in order to avoid confusion: but should frame the law according to that which is of most common occurrence.<sup>57</sup>

Here Thomas is explicitly addressing situations in which observance of the law might be harmful. His argument, however, has broader implications. No legislator can foresee every possible contingency. Individual situations differ randomly from the general situation the legislator has in mind when he formulates a norm of action. These random differences vary in significance. In certain situations some differences are so significant that the people responsible for implementing the law in those situations should not observe the letter of the law; but in all situations they need to consider these differences when determining how best to observe the law.

Although espousing different philosophical premises, H. L. A. Hart makes very similar arguments. “In any large group,” he begins,

general rules, standards, and principles must be the main instrument of social control, and not particular directions given to each individual separately. If it were not possible to communicate general standards of conduct, which multitudes of individuals could understand, without further direction, as requiring from them certain conduct when occasion arose, nothing that we now recognize as law could exist.<sup>58</sup>

If a law is reasonably well drafted, the person charged with applying it “has only to recognize instances of clear verbal terms, to ‘subsume’ particular facts under

<sup>56</sup> *S. T.*, I-II, q. 96, a. 6, c.

<sup>57</sup> *S. T.*, I-II, q. 96, a. 6, *ad* 3.

<sup>58</sup> H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1994), p. 125.

general classificatory heads and draw a simple syllogistic conclusion.”<sup>59</sup> But matters are not always so simple. Hart imagines a law prohibiting the use of vehicles in a park. It might be fairly simple to appreciate that the law applies to automobiles. It might be more difficult to determine whether it applies to bicycles, roller skates, or a radio-controlled airplane. Hart explains,

It is a feature of the human predicament (and so of the legislative one) that we labour under two connected handicaps whenever we seek to regulate, unambiguously and in advance, some sphere of conduct by means of general standards to be used without further official direction on particular occasion. The first handicap is our relative ignorance of fact: the second is our relative indeterminacy of aim. If the world in which we live were characterized only by a finite number of features, and these together with all the modes in which they could combine were known to us, then provision could be made in advance for every possibility.... Plainly this world is not our world; human legislators can have no such knowledge of all the possible combinations of circumstances which the future may bring. This inability to anticipate brings with it a relative indeterminacy of aim. When we are bold enough to frame some general rule of conduct (e.g., a rule that no vehicle may be taken into the park), the language used in this context fixes necessary conditions which anything must satisfy if it is to be within its scope.... We have initially settled the question that peace and quiet in the park is to be maintained at the cost, at any rate, of the exclusion of [some] things. On the other hand, until we have put the general aim of peace in the park into conjunction with those cases which we did not, or perhaps could not, initially envisage (perhaps a toy motor-car electrically propelled) our aim is, in this direction, indeterminate. We have not settled, because we have not anticipated, the question which will be raised by the unenvisaged case when it occurs...<sup>60</sup>

Hart agrees with Aquinas that laws prescribe for general situations, not individual cases; and he is somewhat more emphatic that no law can ever provide for absolutely every individual case to which it might apply. As the pope indicated in our specific context, someone must therefore make the practical determination about the applicability of a general law to a specific case. That is what judges do in deciding cases.

<sup>59</sup> *Ibid.*, p. 125.

<sup>60</sup> *Ibid.*, pp. 128-129.

In the Law Section the judge derives from the general rules found in the canons and in the jurisprudence of the Rota a norm of action enabling him to decide the case being litigated before him. There may be cases in which the law appears so clear and its application appears so straightforward that the judge needs to do no more than cite the relevant canons. For example, *CIC* canon 1086, §1 prescribes, “A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and has not defected from it by a formal act and the other of whom is not baptized, is invalid.” Demonstrating the invalidity of a marriage on grounds of disparity of cult would require only four items: proving that Titius was baptized into the Catholic Faith; proving that Bertha, a devout Moslem, was never baptized; proving that Titius did not abandon the Catholic Church “by a formal act”; and proving that no one granted a dispensation from the impediment. But specific cases can get murky. Suppose Titius was baptized in a Catholic Church, but only because his Orthodox parents could not find an Orthodox Church. Was he baptized into the Catholic Faith?<sup>61</sup> Or suppose some questions arose about the sufficiency of the evidence proving Bertha’s non-baptism. Or suppose Titius’s parents had had a fight with their pastor and had left the Church and became Jehovah’s Witnesses when Titius was a toddler. Did he defect from the Church by a formal act?<sup>62</sup> Or suppose the impediment came to light only “after everything [had] already been prepared for the wedding” (*CIC* c. 1080, §1) and there was a question whether the priest had the faculties to dispense. The more unusual the situation, the more care the judge must exercise in discovering what the law says and how the law applies to the specific case.

Pompedda’s analysis of the concept of the judicial sentence invokes the civil law conviction that the function of the court is “to *ascertain* what is the concrete intent of the law and to actuate it, that is, to turn it into action.”<sup>63</sup> This analysis conceives the work of the judge as deducing from the text of the law and from relevant jurisprudence a norm already, although perhaps implicitly, contained within them. An alternate analysis might take more seriously the possibility that situations can emerge which the legislator did not envisage and possibly could not

<sup>61</sup> The example may seem far-fetched, but I recall a similar case. Under circumstances that never emerged, Claudia had contracted a civil marriage with Caius, who was both a drinking alcoholic and vigorously anti-Catholic. He grudgingly allowed her to approach a Catholic priest about having their daughter baptized. The priests whom she approached refused to baptize the child until the parents convalidated their marriage. Caius would not consider doing so. In desperation, Claudia approached an Episcopal priest who baptized the child. Claudia clearly wanted her daughter to be baptized into the Catholic Church. The minister may or may not have wanted to baptize her into the Episcopal Church (he may have intended simply to baptize her generically). Whose desire prevailed? Was the daughter Catholic or not?

<sup>62</sup> For a discussion of the difficulties judges face when ascertaining what it means to “defect from the Catholic Church by a formal act,” see Pedro Lopez-Gallo, “Formal Defection from the Catholic Church,” *Canon Law Society of Great Britain and Ireland Newsletter* 122, 30-39, especially 34-36.

<sup>63</sup> Pompedda, p. 76. The cardinal is relying on the work of G. Chiovenda on civil procedural law.

have envisaged. From the principles evident in the law the judge would fashion a new norm guiding his decision of the instant case.<sup>64</sup> Either approach views the law section of the sentence as articulating what norm or norms determine the decision of the case and how that norm or those norms derive from the canons and the jurisprudence guiding their application.

The norms the law section will make explicit can respond to two distinguishable but related questions. From the judge's point of view, the *substantive* question might be phrased as follows: What must the court ascertain before it can declare a marriage invalid on this ground? From the petitioner's point of view, the same question might be phrased: What must the petitioner prove before the Court can declare a marriage invalid on this ground? From the judge's point of view, the *procedural* question might be phrased: How can the court ascertain this? From the petitioner's point of view the procedural question might be phrased: How can the petitioner prove this? The substantive question concerns the nature of marriage as that is understood within the world of canon law. The procedural question concerns the way in which the court can come to certainty with respect to a particular issue.

Shortly we will consider in the context of the argument section the judge's analysis of the evidence in a particular case. It is sufficient to note at this point that the codes contain canons to guide the judge in this work.<sup>65</sup> If certain of these canons are especially pertinent to the decision of a given case, the judge will want to cite and explain them in the law section. *A fortiori*, if a judge attributes to a certain category of evidence more or less importance than the canons appear to prescribe, she will want to explain in the law section the legal principles that justify or require this course of action.<sup>66</sup> In the argument section, in turn, the judge would show how those principles have a bearing on the case.

### *The Argument*

The third major section of the sentence, which Doheny considers "the most important part ... is ordinarily entitled ... *In fact*. In this part the relation between the law and the facts is clearly demonstrated in an orderly and logical manner proofs from witnesses and documents are stated; extrajudicial confessions and

<sup>64</sup> One might argue that this approach is mandated by c. 19 (*CCEO* c. 1501).

<sup>65</sup> Title XXV, Article V of the *Code of Canons of the Eastern Churches* and Book VII, Title IV of the *Code of Canon Law*.

<sup>66</sup> For example, c. 1536, §2 (*CCEO* c. 1217, §2), while recognizing that the statements of the parties in a marriage case do constitute proof, directs the judge not to regard them as *full* proof. However, there are circumstances in which a judge might be strongly convinced of the truth of what one of the parties says (e.g., a person with a well-deserved reputation for truthfulness provides the evidence when he knows he is dying).

judicial depositions are examined and evaluated; presumptions and indications of proof are analyzed and either accepted or rejected.”<sup>67</sup> That may seem a tall order, and the drafting of this part of the sentence can be by far the most difficult.

As I have already suggested, the judge can minimize the difficulty by carefully drafting the law section. In that section, the judge either locates or formulates the legal norm guiding the decision of the case. His or her statement of the norm can provide a kind of template for organizing the discussion of the evidence. Reduced to its essence, the law section functions as the major premise of a syllogism: “A person lacking these specific qualities cannot elicit valid consent,” for example; or “A person in such and such a situation cannot elicit valid consent”; or “A relationship with these specific qualities cannot be a valid marriage.” The *in fact* or argument section then demonstrates that this person lacked, or did not lack, the specific qualities, that this person was, or was not, in the specific situation, that the relationship under discussion had or did not have the specific qualities. The law section will highlight for the judge what is relevant in the evidence and will spare her the task of scrutinizing what is not.

For an illustration, I turn to an area of jurisprudence with which I have some acquaintance. *CIC* canon 1098 prescribes, “Whoever enters marriage deceived by fraud, perpetrated in order to obtain consent, concerning some quality of the other party, which [quality] of its very nature has the power to disturb the conjugal life greatly, contracts invalidly.” The canon, new to the 1983 code, prescribes that a person cannot marry validly in certain circumstances. First of all, he or she must be in error; otherwise, he or she has not been successfully deceived. The object of the error must be a quality of his or her intended spouse. That quality must be such that its presence or its absence can gravely disrupt the common life. The error into which he or she has fallen cannot be self-induced; someone else must have led him or her into the error. Finally, the person who deceived him or her must have acted with the intention of inducing him or her to enter the marriage.

This list of circumstances, immediately evident in the canon, already provides an outline of a potential argument section. But this is a new canon. The legislator himself indicates that courts must work out the implications of the various elements.<sup>68</sup> Does the canon apply to marriages contracted before the 1983 code came into force? What does the canon mean by *aliquam alterius partis qualitatem*? What kinds of qualities can disrupt the common life *suapte natura*? How energetic must the deceiving party be? Must he or she tell lies about the quality, or is it sufficient that he deliberately conceals it? In the light of his or her investigation of a particular case, a judge will discover that the answers to only

<sup>67</sup> Doheny, p. 485.

<sup>68</sup> Pope John Paul II, 26 January 1984 Allocution to the Sacred Roman Rota, Woestman, p. 185.

some of these questions are germane. His or her formulation of the applicable law will focus on them. Consequently, he or she will organize his or her discussion of the evidence in the light of her answers to those particular questions. Having accurately identified the applicable law, he or she should find it easier to marshal the proven facts that demonstrate its applicability.

In this section the judge actively engages the evidence. Bishop Jukes warns that his or her argument should “not be simple recitation of the earlier facts in the case” but “a logical demonstration ... [indicating] how the evidence sustains the claim or, as the case may be, [is] insufficient to bring about ... moral certitude ... over the claim.”<sup>69</sup> The argument shows how the judge came to be certain or why the judge remains uncertain of the invalidity of the marriage.

CIC canon 1608, §2 (CCEO c. 1291, §2) requires that “The judge ... derive this certitude from the acts and the proofs.” The canon limits the sources of information the judge may employ in reaching his or her conclusion. In issuing a sentence, the judge is acting as a public person. Hence, information he or she possesses purely as a private person cannot have a bearing on the decision.<sup>70</sup> The evidence contained in the acts (including any evidence that might have been gathered during a supplementary, post-conclusion investigation<sup>71</sup>) will have been published to the parties and their advocates<sup>72</sup> so that all parties can take note of it in arguing their positions. If a judge were to rely on evidence not contained in the Acts, she would risk depriving the parties of their legitimate right of defense.<sup>73</sup>

The general rule is that the judge must evaluate the proofs *ex sua conscientia*, in the light of his or her own conscience.<sup>74</sup> There is a qualification: the judge must also take into account “the prescripts of law concerning the efficacy of certain proofs.” The technical term for the kind of proof for which the law itself prescribes specific weight is *legal proof*. Grocholewski briefly makes two

<sup>69</sup> Jukes, p. 21. Similarly Lynda Robitaille (“Evaluating Proofs: Is It Becoming a Lost Art?” *The Jurist* 57 [1997] 541): “An example of a poorly reasoned sentence would be for the judge to recapitulate all the evidence presented in the case in the *in factio* section of the sentence without explaining what the evidence means or without constructing an arguments from the facts presented.”

<sup>70</sup> See, for example, Vermeersch-Creusen, III, 109: “*Quia iudex tamquam persona publica sententiam fert, non ex scientia sui privata, sed ex actis et probatis tantum iudicare debet. ...*” The authors allude to questions that exercised classical commentators and moralists: in a criminal case, may a judge condemn the accused if the evidence proves him guilty and the judge, on the basis of private information, knows him to be innocent? May a judge acquit the accused if the evidence proves him innocent and the judge, on the basis of private information, knows him to be guilty? See also Wernz-Vidal, VI, 538; Coronata, III, 307.

<sup>71</sup> Cf., CIC c. 1600, §3 (CCEO c. 1283, §3).

<sup>72</sup> CIC c. 1598 (CCEO c. 1281).

<sup>73</sup> Cf. Pompedda, p. 85.

<sup>74</sup> CIC c. 1608, §3 (CCEO c. 1291, §3).

important observations about this institute in canon law. The jurist notes, in the first place, that “the principle of legal proofs is much more restricted in canonical processes than in processes conducted according to the civil law.”<sup>75</sup> Here one assumes that he is adverting to Continental Civil Law rather than Anglo-American Common law. Certainly the list of legal proofs in the *Code of Canon Law* is not of epic proportions.<sup>76</sup>

- 1) What the law presumes does not need proving (*CIC* c. 1526, §2, 1°; *CCEO* c. 1207, §2, 1°; cf. also *CIC* c. 1585; *CCEO* c. 1266).
- 2) What both parties admit does not need proving (*CIC* c. 1526, §2, 2°; *CCEO* c. 1207, §2, 2°).
- 3) In purely private cases, what one party confesses does not need proving (*CIC* c. 1536, §2; *CCEO* c. 1217, §1).
- 4) In cases involving the public good a completely uncorroborated statement by the parties cannot constitute full proof (*CIC* c. 1536, §2; *CCEO* c. 1217, §2).
- 5) A coerced confession has no probative value (*CIC* c. 1538; *CCEO* c. 1219).
- 6) A confession made in ignorance has no probative value (*CIC* c. 1538; *CCEO* c. 1219).
- 7) Public documents prove what they directly and principally assert (*CIC* c. 1541; *CCEO* c. 1222).
- 8) No document has probative value unless (a) it is an original or authentic copy and (b) it is deposited in the tribunal so that all concerned persons can examine it (*CIC* c. 1544; *CCEO* c. 1225).
- 9) The testimony of a single *testis qualificatus* concerning matters done *ex officio* constitutes full proof (*CIC* c. 1573; *CCEO* c. 1254).
- 10) Conversely, the testimony of a single witness who is not a *testis qualificatus* testifying about matters done *ex officio* “cannot constitute full proof” (*CCEO* c. 1254; *CIC* c. 1573).

Grochowski’s second observation is no less important. Within the context of the *Code of Canon Law*, “It must be kept in mind that legal proofs are exceptions to the law (cf. c. 608, §3) and therefore must be interpreted strictly (c. 18).”<sup>77</sup> The canons do not comprise a periodic table, listing the specific gravity of each category of evidence. The canons impose on the judge the obligation of weighing the evidence and assessing its worth. The bald recital of what each witness said is

<sup>75</sup> Grochowski, p. 46.

<sup>76</sup> The following list is not exhaustive, but one hopes it includes most of the major instances. There are other instances of canons advising the Court to evaluate certain kinds evidence (cf., for example, *CIC* c. 1537 [*CCEO* c. 1218], *CIC* c. 1579 [*CEC* c. 1260]); but these do not specify the weight the judge must assign to it.

<sup>77</sup> Grochowski, p. 46.

no more an argument than the picture of a circle intersected by a line is a geometric demonstration. The judge must analyze the data to discern in them the underlying truth that gives them coherence.

Constraints of time prevent this presentation from considering in any detail how a judge might analyze the various kinds of proof typically offered in a marriage case. I therefore restrict my discussion to some comments on three important kinds of evidence: the report of the expert, the statements of the parties, and the testimony of knowledgeable witnesses.

One form of evidence many judges treat with great respect, not to say deference, is the report of the psychological expert. Cormac Burke comments sourly on one “decision in first instance” which “rests totally on a court expert’s opinion, given in 1989 from a simple reading of the acts, without any examination of the parties...” The only contribution of the judge,” he continues, “is a single paragraph....”<sup>78</sup> The sentence which provoked Burke’s ire may be an extreme example, but tribunal ministers do encounter decisions in which the judge reasons more or less baldly, “The expert advises the court that ‘X’ suffers from a personality disorder; therefore, ‘X’ was incapable of marriage.” Rotal auditors, by contrast, are not exactly awe-struck by expertise. Another *turnus* complained:

The Petitioner’s advocate most certainly disparaged the reputation and authority of ecclesiastical tribunals when he wrote, “but the judge cannot, in violation of law and logic, substitute for expertise with his own medical ignorance.” He should have abstained from scribbling these harmful words all the more because he was tossing them at the judges of the Tribunal of the Vicariate of Rome, that is to say, of the Supreme Pontiff himself, who is by divine institution the bishop of the Diocese of Rome. Besides, the accusation of ignorance must be retaliated against the Advocate, who seems not to have held in view what should be the roles of the judge and what should be the roles of the expert in law. For it is [the duty] of the judge to weigh not only what conclusions concerning the efficacy of the elicited matrimonial consent should be derived from the facts approved by the experts, but also whether the approval is supported by firm arguments.<sup>79</sup>

<sup>78</sup> C. Burke, 29 April 1993, *Studia canonica* 28 (1994) 247-248. In this section the presentation will rely heavily on the opinions of Cormac Burke because the English texts of his sentences are so readily available.

<sup>79</sup> C. De Jorio, 25 April 1979, *S.R.R. Decisiones* 81 (1979) 207.

Against the advocate's contention that a favorable report from an expert made an affirmative decision a foregone conclusion the Rota rejoined that the judge still shouldered the obligation of evaluating that report, of determining how reliable it was and what it implied about the validity of the marriage. Burke elsewhere voices the same argument in more detail:

In the case of a plea of consensual incapacity, what the ecclesiastical judge seeks in an expert opinion, if he sees the need for one, is not a simple diagnostic classification. He is looking for a concrete professional judgement, if it can be given. He wants a specific diagnosis covering: 1) the possible presence in the subject, at the time of the wedding, of a psychic anomaly; 2) its nature; 3) its gravity; 4) its effects on a person's capacities and decisions; 5) the scientific proofs or arguments justifying the expert conclusions: direct examination of the subject, clinical records, psychological tests, indications drawn from a simple reading of the acts, etc.

The judge's interest must center on the last three points (3-5), for it is these – subjected to proper judicial evaluation – that can assist him in maturing his judgement. A Court is not substantially helped by being informed that a person suffers from some sort of “psychic disorder”; everyone does. Church law is quite clear: only an anomaly that is *grave*, certain to have been *present at the moment of consent*, and incapacitating in regard to the *essential obligations of marriage*, can prove consensual incapacity.<sup>80</sup>

An expert's report greatly assists the judge in reaching moral certitude about a party's capacity for marriage, but the presence of even a very good report does not dispense the judge from the responsibility of scrutinizing the method the expert employed in reaching his or her conclusions and of determining whether those conclusions are in harmony with the acts of the case.

In the first place, the judge would probably wish to take note of the basis for the expert's report. Sometimes the expert bases his or her report on the written record, without having the opportunity of interviewing or testing either party.<sup>81</sup> Sometimes

<sup>80</sup> C. Burke, 25 November 1993, *Studia canonica* 29 (1995) 246.

<sup>81</sup> See, for example, c. Burke, 29 April 1993, p. 247; c. Burke, 25 November 1993, p. 250. The Auditor does not have a high opinion of such reports: “A special problem facing tribunals are the weight to be given to a psychiatric or psychological opinion, based exclusively on a reading of the acts, without any interview of the party or parties or without any tests. From a medical or psychiatric viewpoint, the value of such an opinion, completely lacking in clinical support, is quite limited.” Burke, 29 April 1993, p. 245. But he does not advert to the fact that the *peritiores* consulted by the Rota would seldom have personal access to the parties in cases originating in Australia, Chad, or the United States.

the expert bases his or her report on interviews with and even testing of one or both parties.<sup>82</sup> All else being equal, “greater scientific value attaches to an opinion based on a personal examination of the party or parties, and prudently referred to the moment of the examination, than to opinions formed simply from a reading of the acts, without any examination of the persons.”<sup>83</sup> But the judge must bear in mind that the results of psychological tests and a clinical interview many years after a marriage might not cast much light on the psychological state of the party at the time of the marriage. Finally, psychologists or psychiatrists who actually treated the parties occasionally submit expert opinions. All else being equal, their opinions tend to be very weighty indeed.<sup>84</sup>

Especially if the work of the expert is new to the court, the judge may need to take cognizance of the philosophical presuppositions underlying the expert’s opinion.<sup>85</sup> If an expert is convinced that human beings are predetermined by their pasts or their subconscious needs, he or she might too readily conclude that even slight emotional difficulties would render a person incapable of freely choosing marriage.

The judge will also want to compare the expert’s account of the parties with what is known about them from the other evidence in the acts of the case. Burke maintains,

The soundness of an expert opinion normally appears from the fact that it is corroborated by the balance of the other evidence present in the acts. When an opinion is unsupported by the acts or in contradiction with them, a judge can seldom be justified in accepting the *peritia*.<sup>86</sup>

When an expert opinion is supported by the overall evaluation of the rest of the acts, powerful grounds are created for its positive acceptance in the judicial determination of the case.... On the other hand, a *peritia* unsupported by the acts is to be questioned; while

<sup>82</sup> See, for example, c. Burke, 15 October 1992, *Studia canonica* 27 (1993) 485.

<sup>83</sup> So Burke, 25 November 1993, p. 252. On the other hand, one might consult an unpublished decision c. Serrano of 9 November 1998, in which the *turnus* preferred the opinion of the *peritior*, who did not have any personal contact with either party, to the opinion of the first-instance *peritus*, who interviewed and tested the Petitioner.

<sup>84</sup> See c. Burke, 27 October 1994, *Studia canonica* 30 (1995) 551.

<sup>85</sup> See Pope John Paul II, Allocution to the Sacred Roman Rota of 5 February 1987, Woestmann, pp. 192-194.

<sup>86</sup> C. Burke, 15 October 1992, p. 482.

one in contradiction with what clearly emerges from the other elements of the acts, is almost always to be rejected.<sup>87</sup>

These remarks are not intended to suggest that the judge is more knowledgeable about human behavior, much less about clinical psychology, than are the experts the tribunal has selected to assist its work. If a judge felt constrained to reach a conclusion at variance with the contents of an expert's report, he or she would undoubtedly take pains to explain why the expert's findings did not justify a different conclusion. My point is that a judge who bases his or her conclusion primarily on an expert's report is no less obliged to take pains to explain why the expert's findings justified his or her conclusion.

A form of evidence even more difficult to evaluate is found in the statements of the parties. Article 117 of *Provida Mater*<sup>88</sup> enjoined the judge not to regard the declarations of the parties as reliable evidence.<sup>89</sup> The *ius vigens* (*CIC* c. 1536, §2; *CCEO* c. 1217, §2), by contrast, allows the judge to determine the evidentiary weight of the declarations and confessions of the parties. The legislator warns, however, that, unlike the testimony of a single qualified witness (*CIC* c. 1573; *CCEO* c. 1254), the parties' *uncorroborated* declarations cannot constitute full proof.<sup>90</sup>

The law accordingly imposes on the judge the responsibility of studying carefully what the parties say in order to determine how much constitutes evidence and how reliable and strong that evidence is. A case decided *coram* Serrano on grounds of an allegation of exclusion of the *bonum sacramenti* provides a good example of this kind of scrutiny. Serrano writes,

The fathers find posited in the Acts first of all something which is beyond any doubt – the great credibility of the Plaintiff which everybody acknowledges with one voice and [which] the Instructor himself considers verified. The Respondent, [although] bitterly fighting against the annulment, admits [that her former husband is honest].... The same sort of description, which the priest gives, seems accurate... Nor can one legitimately object that this latest qualified witness about [the plaintiff's] credibility is too recent: for,

<sup>87</sup> C. Burke, 29 April 1993, p. 244.

<sup>88</sup> See Doheny, pp. 282-283.

<sup>89</sup> Doheny (p. 345) concludes, "The general principle is that the judicial depositions of the consorts do not of themselves constitute proof against the validity of marriage. They may or may not be a source of corroborative evidence."

<sup>90</sup> The canon here reverses the former legal situation. Doheny (see previous footnote) conceded that the parties' statements *might* corroborate other elements of proof. The canon envisages "*alia...elementa*" of the acts corroborating the parties' statements.

if once rooted, the veracity of a person remains always afterwards in the subject: [Moreover] the documents and circumstances of the whole case lead to the same assessment of the man.<sup>91</sup>

The auditor here relies on a human presumption (namely, that a *habit* of truthfulness, once acquired, is likely to persist) and on the plaintiff's reputation for honesty *even with his estranged wife* in concluding that the Plaintiff testified truly about his broken marriage. Similarly in a case involving conditional consent<sup>92</sup> the Rota viewed the Plaintiff's testimony as reliable because documents confirmed his account and because all the witnesses gave him high marks for honesty. Having established the reliability of one or both parties, the Rota was then free to use their declarations as important proof of the invalidity of the impugned marriages.

Another important kind of evidence consists in the testimony of witnesses. Here the judge can avoid two extremes. The first involves drafting a lucid description of the parties and their situations without citing any references. The analysis might be interesting and well written, but it can leave the reader unconvinced. "If matters are as the court declares," he might think, "the conclusion does follow; but how do I know that the court is reporting the evidence accurately?" The opposite extreme involves parroting the witnesses' remarks without analyzing them: "Witness 'A' says 'X'; witness 'B' says 'Y'; witness 'C' says 'Z'." This approach leaves the reader wondering, "So what?"

A better approach involves selectively citing relevant testimony and explaining why the court accepts it and how it impels the court to its conclusion. This kind of analysis appears in almost every Rotal sentence. Two examples should suffice. A decision issued *coram* Felici on 24 April 1956 involved allegations of simulation. The parents had pressured the parties to undergo a ceremony of marriage in the Catholic Church. The Rota was especially impressed with the testimony of the respondent's mother:

Finally, to pass over the other witnesses, who have certainly reached the same conclusion, it is, without any doubt or hesitation, better for us to examine the deposition of the Respondent's mother who not only advised this kind of marriage but vehemently urged it. The mother was afraid lest her son, in the celebration of the marriage, would give consent only externally, "given that he appeared nervous and annoyed": and indeed after a certain time she heard from her son "that he had consented to participate in this ceremony to please

<sup>91</sup> C. Serrano, 24 February 1978, *S.R.R. Decisiones* 70 (1978) 84-85. The present active participle *pugnans* modifying the Respondent appears to have adversative sense.

<sup>92</sup> Also c. Serrano, 14 July 1978, *S.R.R. Decisiones* 70 (1978) 385-386.

me, but that he had not wanted to marry...” The mother testifies further that it really irked her son to be called married...: that she never saw her son wearing his wedding ring, that she saw him seriously disrespecting his wife and not acknowledging her as [his spouse] before others....<sup>93</sup>

The Rota treated this testimony almost like a confession. Most people strive to appear sensible, especially to authority figures. The mother of this respondent, a devout Catholic, revealed herself to church officials as having behaved foolishly indeed. Everything she observed in her son’s behavior at the time told her that he would not take his marriage vows seriously. She nonetheless nagged him into expressing those vows in the church. Her testimony revealed both herself and her son in a very bad light. She would not have given it unless it was true.

A second example can be briefer. In a case decided *coram* Serrano on 2 June 1989 the *turnus*, before discussing the contents of a witness’s statement, explains why they trust it: “[Titius] stands out among the witnesses because of his qualified knowledge of circumstances and his frequent interaction with the petitioner and his family.”<sup>94</sup> The witness was an intimate friend of the Petitioner and his family. He was therefore well situated to observe the incidents the Rota considers most relevant to the resolution of the doubt. They accept his information because he was in a position to know whereof he spoke.

The judge’s exposition of his or her reasons for believing or not believing a witness does not require lengthy exposition. It can appear in a preliminary remark or a relative clause. Nor does the articulation of the conclusion the judge draws from a particular piece of testimony need to be verbose. It does need to be clear and to the point. The discussion of each piece of testimony will then link with what precedes and what follows, and the reader will discern the chain of reasoning leading ineluctably to the court’s final conclusion.

### *Concluding Reflections*

This presentation began by categorizing the sentence as a kind of formal pronouncement. Because every pronouncement is a form of communication, the presentation ends with a brief reflection on how viewing the sentence as a vehicle of communication might influence the drafting process.

The most obvious, and in some ways most important audience the sentence addresses consists of the parties, the people who have a stake in the outcome of the

<sup>93</sup> C. Felici, 24 April 1956, *S.R.R. Decisiones* 48 (1956) 406.

<sup>94</sup> C. Serrano, 2 June 1989, *Monitor Ecclesiasticus* 25 (1990) 304.

process.<sup>95</sup> The function of the sentence is *causam definire*, to put an end to a controversy. In a different time the ecclesiastical judge might have enjoyed the power to enforce his decision upon even the most recalcitrant of parties. In this time and in this place the only authority the judge wields is moral. The parties will acknowledge the sentence as correct and just only to the extent that they understand it. Pompedda urges the judge

...to offer to the parties the demonstrations by which [she] has arrived with moral certitude at an understanding of the question. In other words, [the sentence] presents his understandings of the case and of his decision as it conforms to the truth of the matter, that is, with justice itself. To the extent that through the motivation the parties know the logical progression by which the judge has arrived at the formation of moral certitude on the object under controversy, the parties are able to form for themselves a certitude or trust regarding the justice of the decision rendered.

It might be salutary, from time to time, for every judge to read one of his or her sentences with the following questions in mind: "If I were receiving this sentence rather than handing it down, would it make sense to me? After reading it, would I be convinced that the judge had reached the truth and done justice to my cause?" Especially in contentious cases, it is not always possible for the judge to *satisfy* everyone; but it ought not to be impossible to convince everyone that the judge has intelligently and fairly considered all of the evidence and has arrived at a rational decision. There will always be people who would consider just only a decision that conformed in every respect with their expectations, but many others are intellectually humble enough to admit that what they want at any given time might not be right. It is these people whom the judge most wishes to persuade of the correctness of his decision.

A second audience the sentence addresses consists of the officers of the appellate court: a defender of the bond and three judges. Bishop Jukes points out how difficult it is for a second instance court to ratify a First Instance decision that is not clearly and cogently argued.<sup>96</sup> The defender and judges in second instance will want to assure themselves that the first instance judge has correctly understood the law, that he has not misread it, has not misconstrued it, has not overlooked applicable jurisprudence. They will want to ascertain that the judge has prudently pondered the evidence, considering without bias how strong and how significant each element of the proof is. They will want to follow the chain of reasoning that

<sup>95</sup> The codes guarantee the right of this audience to read the definitive sentence: *CIC* cc. 1614-1615; *CCEO* cc. 1297-1298.

<sup>96</sup> See Jukes, p. 19.

leads (or at least *should* lead) to the conclusion. It might again be helpful for every judge to read his or her sentence with the following questions in mind: “After reading this sentence, would I be inclined to ratify it? Or does the sentence raise further questions that need answering before I could vote to do so? If my reasoning raises further questions, how can I answer them?”

A final audience some sentences address consists of the larger canonical community, jurists who might find the resolution of this particular case helpful in guiding their decisions in similar cases. Most tribunal ministers avidly devour published Rotal sentences and unusual decisions handed down by other courts. Other judges might have already formulated apt solutions to problems new to us. Other jurists might have discovered fresh approaches to the canons or more sophisticated tools for weighing certain kind of sentences. By studying the work of other tribunal ministers, we can sharpen our own skills and broaden our databases.

By the same token, we occasionally encounter peculiar cases that might be of interest to our colleagues. When drafting a sentence in such a case, we might more carefully highlight its unusual features and make explicit all of the assumptions guiding our approach to them. The Rota is by nature an appellate court. Odd cases come before it only after they have been adjudicated before first instance courts like the ones most of us staff. We can sometimes learn a great deal about them from each other while we wait eagerly for future Rotal guidance.

**COMMUNICATION IN SACRIS: AN EFFORT TO  
EXPRESS THE UNITY OF CHRISTIANS OR  
SIMPLY AN EXERCISE IN POLITENESS?**

REV. AIDAN MCGRATH, O.F.M.

*The context*

*“Between the Catholic Church and the other Christian Churches and Ecclesial Communities there exists a drive towards communion rooted in the Baptism which each administers. It is a drive nourished by prayer, dialogue and joint action.”<sup>1</sup>*

These words, taken from *Ecclesia in America*, provide the wider context in which I wish to address the topic of *communicatio in sacris*. I cannot speak to you as an American or of the situation as it relates to Church life in the United States. As I understand it, problems and difficulties associated with *communicatio in sacris* differ significantly from one part of this country to another. Instead, I hope to share with you some reflections on matters related to *communicatio in sacris* on the other side of the Atlantic, bearing in mind the canonical issues arising therefrom and considering the canonical implications of decisions taken and norms established. By doing so, I hope to strike some chords with the experience of those present.

As well as the overall context of the Convention’s major theme, *Ecclesia in America: One Church, Many Peoples*, I feel the need also to highlight my own particular, personal perspective. I am a native of Northern Ireland. Two years ago, I returned to live in Northern Ireland, in Belfast. In many ways, the situation had improved over the years. Nothing prepared me for the reality of living in North Belfast. The area is almost totally polarised: every three to four hundred yards – without exaggeration – the loyalties suddenly change. On one side of an invisible, and sometimes inexplicable line, everyone is Nationalist/Republican; on the other side, everyone is Loyalist. This means, of course, that the divide is also largely religious: Catholics on one side and Protestants on the other. My living in that situation will inevitably colour the contents of the paper; so, too, will the fact that I write about *communicatio in sacris*, not as a participant or active advocate, but

<sup>1</sup> *Ecclesia in America* n. 49.

very much as a spectator. However, I shall do my best to present the material in an objective manner.

### *A Sort of Prologue*

On 7<sup>th</sup> December 1997, the President of Ireland, Mrs Mary McAleese, received Holy Communion in the Cathedral of the Most Holy Trinity in Dublin. This made instant headlines in the newspapers and on television and radio: Mrs McAleese is a Catholic; the Cathedral of the Most Holy Trinity, otherwise known as Christchurch, is a cathedral of the Church of Ireland, one of the Provinces of the Anglican Communion. Within days, her action was being considered by commentators of all kinds. Some praised her for an act of inclusiveness;<sup>2</sup> others criticised her for ignoring the rules of the Church concerning the reception of Holy Communion in other Churches;<sup>3</sup> some said that they did not know what all the fuss was about. As time went on, the tone of several of the commentaries became more polemical and the language used by those engaged became more intemperate.<sup>4</sup> In an effort to explain why he could not praise the President for her action, the Archbishop of Dublin explained that the reception of Holy Communion by Catholics in non-Catholic Churches suggested a unity among Christians that was a “sham.”<sup>5</sup> This

<sup>2</sup> “Father Austin Flannery said last night that, while Mrs McAleese may not be covered by the letter of Catholic Church law in taking Communion as Christ Church, ‘she could claim to be following its spirit.’ He pointed out that the Catholic and Anglican Churches had come closer since Vatican II, and the 1993 Catholic *Directory* on Ecumenism allowed members of the church receive Communion from a non-Roman Catholic Church in restricted circumstances. These would include danger of death, but ‘it does leave the door open to “other cases” where there could be “grave and pressing need”,’ he said. He recalled an old scholastic tag from pre-conciliar days, *favorabilia sunt amplianda*, meaning that rulings which are favourable should have their scope extended. He said he would see Mrs McAleese ‘as operating within that spirit.’ He expected she believed there was good reason to receive Communion in Christ Church, ‘and that the Eucharist was valid’” (P. McGarry and T. Judge, “Faul accuses McAleese of canon law breach,” *The Irish Times*, 9<sup>th</sup> December 1997, 4).

<sup>3</sup> “The Dungannon priest, Monsignor Denis Faul, has said no Catholic can receive Communion in a Protestant Church, and that the law applies in the same way to ‘the Pope in Rome and President Mary McAleese as much as it does to Paddy and Biddy Murphy’” (Ibid.).

<sup>4</sup> “But for weeks after, her decision has been subjected to scrutiny and criticism in every form of media. One of the mildest was to call her a ‘candy floss’ president. A Maynooth professor accused her of raising two fingers to her bishops – hardly an appropriate metaphor for a philosopher, certainly not an image to be used in discussing the Sacred Mysteries. Monsignor Dennis Faul implied the Eucharist in Protestant churches amounted to a ‘free for all.’ The words bandied around by others included heretic and heresy” (*The Church of Ireland Gazette*, 16<sup>th</sup> January 1998, 2).

<sup>5</sup> The Archbishop’s comment involving the use of the word “sham” was made on national radio. A few days later, he explained that he intended to use the word in its dictionary definition “anything which is not what it appears to be – since this is the problem when Catholics take Communion in other churches with which they are not fully united” (P. McGarry, “Ecumenism at stake over communion issue – Connell,” *The Irish Times*, 19<sup>th</sup> December 1997, 1). He took up the issue a few days later in an interview and apologised for any hurt he may have caused members of the Church of Ireland by his remarks: “I’m very sorry for the offence. If it will help, you can put that in. I blame that offence very much on the way *The Irish Times* put its headline: ‘Taking Church of Communion a sham, says

term was then dissected by those who claimed the Archbishop had referred to the Church of Ireland Eucharist as a sham.<sup>6</sup> And so the controversy spiralled for some weeks. Eventually, it was consigned to the archives.

But the theological and canonical issue of *communicatio in sacris* had become a major national issue. It produced a host of home-grown theologians and canon lawyers from all Christian traditions. All of a sudden, a seemingly harmless piece of ecclesiastical discipline took on enormous proportions which had the potential for a very serious problem for Church and State.

### *Communicatio in sacris*: doctrine and law

At the outset there is a need to find an adequate English translation for the Latin term. It has been rendered in different ways in the translation of various documents: “participation in sacred rites”<sup>7</sup>; “participation in religious rites”<sup>8</sup>; “worship in common”;<sup>9</sup> “mutual or common sharing in sacred things.”<sup>10</sup> For the purpose of this seminar, I prefer to use the expression “sacramental sharing.” The immediate origins of current practices are found in the teaching of the Second Vatican Council:

- *Unitatis redintegratio* states: “Yet worship in common (*communicatio in sacris*) is not to be considered as a means to be used indiscriminately for the restoration of unity among Christians. There are two main principles upon which the practice of such common worship depends: first, that of the unity of the Church which ought to be expressed; and second, that of the sharing in the means of grace” (n. 8). And again: “These Churches (i.e. the Eastern Churches), although separated from us, yet possess true sacraments, above all – by apostolic succession – the priesthood and the Eucharist, whereby they are still joined to us in closest intimacy. Therefore some worship in common

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Archbishop: That was very bad” (P. McGarry, “Priest backs president over decision on Communion,” *The Irish Times*, 23<sup>rd</sup> December 1997, 6). His explanation and apology were accepted by several leading figures in the Church of Ireland.

<sup>6</sup> “But the most hurtful comments came from the Roman Catholic Archbishop of Dublin, Dr. Desmond Connell, who first said it was a sham for a Roman Catholic to take Communion in the Church of Ireland, then tried to explain away his use of the word sham, went on to criticise the negative reaction, and tried to blame the reporter and sub-editors who had handled the news. Finally, only after many days had passed, he expressed sorrow if, and only if, he had caused any hurt” (*The Church of Ireland Gazette*, 16<sup>th</sup> January 1998, 2).

<sup>7</sup> C. 1365 in *CLSA* translation.

<sup>8</sup> C. 1365 in *CLSG&I* translation.

<sup>9</sup> UR 8 in A. Flannery, ed., *Vatican Council II: The conciliar and post-conciliar documents*, (Dublin: Dominican Publications, 1975) 461.

<sup>10</sup> E.g. in *OE* 26; 29, in A. Flannery, op cit., 450; 451.

(*communicatio in sacris*), given suitable circumstances and the approval of Church authority, is not merely possible but is encouraged” (n. 15).

- *Orientalium Ecclesiarum* states: “A mutual sharing in sacred things (*communicatio in sacris*), which runs counter to the unity of the Church, or which involves formal adhesion to error or the danger of aberration in the faith, of scandal and of indifferentism, is forbidden by the law of God” (n. 26). However, “where the need of salvation and the spiritual good of souls are prime considerations” (n. 26), “Eastern Christians who are separated in good faith from the Catholic Church, if they are rightly disposed and make such request of their own accord, may be given the Sacraments of Penance, the Eucharist and the Anointing of the Sick. Moreover, Catholics also may ask for those same sacraments from non-Catholic ministers in whose church there are valid sacraments ....” (n. 27). “This more relaxed regulation concerning common sharing in sacred things (*communicatio in sacris*) with our brethren of the separated Eastern Churches is entrusted to the watchfulness and control of local ordinaries” (n. 29).

In the years following the Council, the Holy See issued several documents which aimed at regulating the manner and circumstances of *communicatio in sacris*, not only with members of the separated Eastern Churches but with other Christians not in full communion with the Catholic Church.<sup>11</sup> The most recent of these is a revised version of the *1967 Ecumenical Directory*, published in 1993.<sup>12</sup> On the subject of *communicatio in sacris*, the *1993 Ecumenical Directory* has this to say:

“Whenever necessity requires or a genuine spiritual advantage suggests, and provided that the danger of error or indifferentism is

<sup>11</sup> These include the following documents issued by the Secretariat for the Promotion of the Unity of Christians: *Directorium ad ea quae a Concilio Vaticano Secundo de re oecumenica promulgata sunt exsequenda*, Pars Prima, 14 May 1967, *Acta Apostolicae Sedis* 59(1967), 574-592, published in English in A. Flannery, ed., *Vatican Council II: The Conciliar and Post-Conciliar Documents*, (Dominican Publications, Dublin: 1975), 483-501 (referred to as the *1967 Ecumenical Directory*); *Déclaration sur la position de l'Église Catholique en matière d'Eucharistie commune entre chrétiens de diverses confessions*, 7 January 1970, *Acta Apostolicae Sedis* 62(1970), 184-188, published in English in Flannery, ed., op cit., 502-507 (the document is referred to as *Dans ces derniers temps*); *Instructio de peculiaribus casibus admittendi alios christianos ad communionem eucharisticam in Ecclesia Catholica*, 1 June 1972, *Acta Apostolicae Sedis* 64(1972), 518-525, published in English in Flannery, ed., op cit., 554-559 (referred to as *In quibus rerum circumstantiis*); *Nota su alcune interpretazioni della 'Istruzione sui casi particolari di ammissione di altri cristiani alla comunione eucaristica nella Chiesa Cattolica'*, *Acta Apostolicae Sedis* 65 (1973), 616-619, published in English in Flannery, ed., op cit., 560-563 (referred to as *Dopo la pubblicazione*).

<sup>12</sup> Pontifical Council for the Promotion of the Unity of Christians, *Directoire pour l'application des principes et des normes sur l'oecuménisme*, *Acta Apostolicae Sedis* 85(1993), 1039-1118 (referred to as the *1993 Ecumenical Directory*). The English translation is to be found in *Origins* Vol. 23, n. 9, 129-160.

avoided, it is lawful for any Catholic for whom it is physically or morally impossible to approach a Catholic minister, to receive the sacraments of penance, Eucharist and anointing of the sick from a minister of an Eastern Church” (n. 123).

“Catholic ministers may lawfully administer the sacraments of penance, Eucharist and the anointing of the sick to members of the Eastern Churches, who ask for these sacraments of their own free will and are properly disposed” (n. 125).

“In case of danger of death, Catholic ministers may administer these sacraments when the conditions given below (n. 131) are present. In other cases, it is strongly recommended that the diocesan Bishop, taking into account any norms which may have been established for this matter by the Episcopal Conference or by the Synods of Eastern Catholic Churches, establish general norms for judging situations of grave and pressing need and for verifying the conditions mentioned below (n. 131). In accord with Canon Law, these general norms are to be established only after consultation with at least the local competent authority of the other interested Church or ecclesial Community. Catholic ministers will judge individual cases and administer these sacraments only in accord with these established norms, where they exist. Otherwise they will judge according to the norms of this *Directory*” (n. 130).

“The conditions under which a Catholic minister may administer the sacraments of the Eucharist, of penance and of the anointing of the sick to a baptized person who may be found in the circumstances given above (n. 130) are that the person be unable to have recourse for the sacrament desired to a minister of his or her own Church or ecclesial Community, ask for the sacrament of his or her own initiative, manifest Catholic faith in this sacrament and be properly disposed” (n. 131).

“On the basis of the Catholic doctrine concerning the sacraments and their validity, a Catholic who finds himself or herself in the circumstances mentioned above (nn. 130 and 131) may ask for these sacraments only from a minister in whose Church these sacraments are valid or from one who is known to be validly ordained according to the Catholic teaching on ordination” (n. 132).

The *1993 Ecumenical Directory* maintains a clear distinction between the separated Eastern Churches and other Churches and ecclesial communities not in

full communion with the Catholic Church. This distinction has significant practical implications. The actual general norms contained in the *Directory* contain little that is new. Canon 844 of the 1983 code states:

§2 Whenever necessity requires or a genuine spiritual advantage commends it, and provided the danger of error or indifferentism is avoided, Christ's faithful for whom it is physically or morally impossible to approach a catholic minister, may lawfully receive the sacraments of penance, the Eucharist and anointing of the sick from non-catholic ministers in whose Churches these sacraments are valid.

§3 Catholic ministers may lawfully administer the sacraments of penance, the Eucharist and anointing of the sick to members of the eastern Churches not in full communion with the catholic Church, if they spontaneously ask for them and are properly disposed. The same applies to members of other Churches which the Apostolic See judges to be in the same position as the aforesaid eastern Churches so far as the sacraments are concerned.

§4 If there is a danger of death or if, in the judgement of the diocesan Bishop or of the Bishops' Conference, there is some other grave and pressing need, catholic ministers may lawfully administer these same sacraments to other christians not in full communion with the catholic Church, who cannot approach a minister of their own community and who spontaneously ask for them, provided that they demonstrate the catholic faith in respect of these sacraments and are properly disposed.

The same norms are repeated in more or less the same terms in canon 671 of the 1990 *Code of Canons of the Eastern Churches*.

### *The Need for more Specific Norms*

According to both the codes and to the *1993 Ecumenical Directory*,<sup>13</sup> the diocesan Bishop or the Conference of Bishops can establish more precise general norms to govern sacramental sharing. Some Bishops' Conferences chose to do so in the wake of the promulgation of the 1983 code. Other Conferences waited until after the publication of the *1993 Ecumenical Directory*. Many of the general norms published in this way are extremely general and do not clarify the circumstances in which sacramental sharing is permitted. In Ireland, no such general norms were published for fifteen years after the promulgation of the code. Thus, all matters related to *communicatio in sacris* were regulated by canon 844 and the relevant

<sup>13</sup> *CIC* c. 844, §5; *CCEO* c. 671, §5; *1993 Ecumenical Directory* n. 130.

sections of the Ecumenical *Directory*. Consequently, when the President received Holy Communion in Christ Church Cathedral, all kinds of people were able to cite documents in support of their position on the matter, interpreting the universal norms either in favour of what she did or in such a way that made it clear she had strayed outside the law.

Controversies of this kind are not new to Irish public life: “when Douglas Hyde, a member of the Church of Ireland, became President in 1939, the Government enquired of Archbishop Byrne of Dublin ‘whether it would be proper, from the point of view of the Catholic Church, that a Catholic Aide-de-camp should be present in attendance on the President in a non-Catholic Church,’ and received the categorical answer: ‘It would not be proper; particularly in this country where the danger of a grave scandal would be always present.’ And when President Hyde died in 1949 the Catholic members of the Cabinet sat in their cars outside St Patrick’s (Church of Ireland) Cathedral in Dublin during the funeral service and joined the procession only when it left the Cathedral.”<sup>14</sup>

Of course, aside from the highly publicised incidents involving the Head of State, the issue of *communicatio in sacris* affects many other people in Ireland on a regular basis. In Northern Ireland, for example, an increasing number of young people in the past three decades have married outside their own community; in the Republic of Ireland, the small – and decreasing – number of Christians not in communion with the Catholic Church find themselves as partners in mixed or inter-Church marriages. In both places, the practice of the faith remains relatively high and the differences between the parties is highlighted when they participate together in the Eucharist. During the past four decades, there have been several concerted efforts to bring Christians of different traditions together. Notable examples include the Irish School of Ecumenics, the Columbanus Community of Reconciliation, the Corrymeela Community, the Glencree Community. As well as these stable institutions, there are frequent summer schools, seminars, and gatherings at which Christians of all denominations participate. The ongoing sectarian violence in Northern Ireland has brought many Christians together to pray and worship, demonstrating respect for traditions other than their own. Such groups inevitably feel the pain of division when they seek to celebrate the Eucharist. They see the Eucharist as a natural part of their being together, and they understand that there are different views and practices in each community which they respect – but they experience the pain.

The storm over President McAleese receiving Holy Communion in the Church of Ireland had just about settled when, on 30<sup>th</sup> September 1998, an unprecedented event took place: the three Bishops’ Conferences of Britain and Ireland published

<sup>14</sup> M. Hurley, *Christian Unity: an ecumenical second spring?* (Dublin: Veritas, 1998), 27.

a joint teaching document on the Eucharist, *One Bread One Body*. The problems raised by the action of the President emerged once again, this time with an even sharper edge. To say that the document was received with less than equanimity would be something of an understatement.

Showing that journalists do not forget, *The Irish Times* on 1<sup>st</sup> October 1998 carried the headline: "Still 'sham' if Catholics take Eucharist outside." The Religious Affairs correspondent wrote: "There can be little doubt but that the *One Bread One Body* document issued by the Bishops' Conferences of these islands yesterday will anger many people, and not just members of the Reformation Churches. Whereas it gives a clear and simple exposition of the Catholic understanding of the Eucharist and its central significance for members of the Church, ... it is in the main nothing more than a restatement of the rather legalistic traditional Vatican position."<sup>15</sup> Other journalists wrote in a similarly negative vein.<sup>16</sup>

A much more measured and thoughtful response was given the following day by the Church of Ireland Bishop of Meath and Kildare, Richard Clarke. He wrote: "From the perspective of membership of the Church of Ireland, it would be all too easy to comment on the recent document *One Bread One Body* in a tone of sad

<sup>15</sup> Patsy McGarry, in *The Irish Times*, 1<sup>st</sup> October 1998, 4. He went on to point out that the Bishops had apologised for the contribution of the Catholic Church to the continued divisions among Christians in Britain and Ireland. But he criticised them for not following through the logic of the apology. For this reason, he argued, they maintained the situation whereby the President of Ireland (a Roman Catholic) and the First Minister of Northern Ireland (a Presbyterian), had they so wished, could not have received Communion together, for example, in the Church of Ireland Cathedral in Belfast. He added: "but surely we, the people of these islands, had a right to expect a more ecumenical document on this divisive issue, considering what have been the shocking consequences of division in the churches for all of us. At a time when the politicians in these islands have made superhuman efforts to understand and overcome the bitter divisions of our people, so frequently underscored by religion, surely we have a right to demand that our churches work with greater urgency towards overcoming their differences."

<sup>16</sup> For example, a few days later, another journalist focused on the document: "Yesterday in a suburban church, a 43 year-old Roman Catholic priest, with one natural daughter somewhere in Latin America and a tendency to drink and drive, refused to administer communion to a 30-year-old man whom he knew to have been baptised into the Church of Ireland. This morning, the same man telephoned the local parish priest to complain about what happened when he went to church with his Roman Catholic partner. The parish priest backed up his curate, and then explained that the man's partner may not take communion in the Church of Ireland either. In defence, he quoted *One Body, One Bread*, a pamphlet published by the bishops of these islands five days ago. In fact, the situation outlined above is fictional, and any resemblance to real life entirely coincidental. Most 30-year-old men spend Sundays on entirely different pursuits: nor is the fictional priest a representative character, despite current stereotypes. But under a canon law which allows the separation of the private and the clerical lives of individual priests, it remains possible". She went on to state: "Just as fractured communities in Ireland are trying to live the meaning of the phrase "Love your neighbour as yourself," the first principle of Christianity and Roman Catholicism, the Roman Catholic bishops of the two islands choose to issue a public reminder about why such love must remain conditional. And they want to underline it too" (Medb Ruane, "Bishops risk widening gap between religions", *The Irish Times* 5<sup>th</sup> October 1998, 12).

despair and with a rueful question looming behind every word: ‘Has the ecumenical movement done anything of value for the Body of Christ in these islands?’ It would be easy . . . and utterly faithless. For we have no choice but to move on in the quest for the unity which is not only Christ’s will, but his command to us.’<sup>17</sup> He fixed his attention on those aspects of the document which might bring comfort to those in his Church dedicated to dialogue. First of all, he was pleased to find the repeated use of the documents of the Anglican Roman Catholic International Commission (ARCIC), “not simply to emphasise a degree of convergence between Anglicans and Roman Catholics but also to illuminate various points of Eucharistic doctrine.” He was happy to see that the ARCIC documents feature in *One Bread One Body* “as a witness to the convergence that does exist, whether or not that is being as readily admitted as it should be in this new document.”

The second point of comfort which he notes is that “it is good to see that there are now exceptions to be made in the rule that no members of other churches may ever receive the sacrament at a Roman Catholic Eucharist. Whether or not it is clutching at ecumenical straws is hard to know, but it appears that a door is at least being cautiously unlocked, even at official level.” What he sees as a step forward is considered in its overall context, as he makes clear: “It is of course sad that another door is being firmly slammed shut and bolted – the possibility that Roman Catholics should on occasion accept an invitation to receive Communion, as a welcome guest at a Eucharist of a different tradition. I say this as one who is not in favour of a headlong plunge into a careless inter-Communion, which does indeed ignore differences of doctrinal emphasis and of ecclesiology.” The reason for his sadness is that “the Eucharist is a mystery, as the document reminds us, but it is a mystery of Christ’s love and his giving. It cannot be a mystery of our defining. Nor can the Eucharist be the property of any one ecclesial community.”<sup>18</sup>

A week later, a response to some of the critical voices was given by the Auxiliary Bishop of Down and Connor, the Most Reverend Anthony Farquhar, one of those who helped prepare the document. He pointed out that many of the comments issued by other Churches had highlighted both positive and negative aspects of the document. He repudiated suggestions that the document ought not to have been published because of delicate negotiations then under way in Northern Ireland and that those who do not favour sacramental sharing are automatically anti-ecumenical. As someone who has ministered all his life in Northern Ireland and who is committed to ecumenical dialogue, the Bishop rejected the criticism of the journalists quoted above.<sup>19</sup> Referring to the peace process in Northern Ireland,

<sup>17</sup> Bishop Richard Clarke, “Quest for unity must continue,” *The Irish Times* 6<sup>th</sup> October 1998, 14.

<sup>18</sup> *Ibid.*

<sup>19</sup> Bishop Anthony Farquhar, “Document intended to promote understanding,” *The Irish Times*, 13<sup>th</sup> October 1998, 14.

he remarked: “If we are to learn anything from the peace process in the context of this document it is that the more we strive to understand and to cope with sincerely – held differences the greater will be our contribution to reconciliation. Genuine pluralism is not about melting – down genuine convictions. It is about sharing and discussing them honestly and openly with others in a spirit of genuine dialogue.”<sup>20</sup>

Such a statement, of course, did not end the criticism of the document. Writing early the following year, the moral theologian, Enda McDonagh, made some very critical comments on the Bishops’ document. He said: “members of other churches with a basic belief in the Eucharist as instituted by Jesus Christ should be invited and encouraged to participate in the Catholic Eucharist.”<sup>21</sup> He added: “generosity in sharing with those from other Churches who wish to receive communion in the Catholic Church, for example, has many gospel analogies in Jesus’ feeding of the multitudes and his fellowship meals with the excluded.” Indeed, “in conventional theological terms it recognises these Christians’ basic membership of the Body of Christ and so of Christ’s Church and their faith in the one Lord and in his presence in this celebration.” In particular, the timing of the document was singled out for comment: “the first major inter-island Catholic Church document to emerge in the aftermath of the Good Friday Peace Agreement should have been a reinforcement of the process had it not been so restrictive of practices already developing and so inevitably offensive to “sister” Churches.” He went on: “In a situation where political settlement within Northern Ireland and between Ireland and Britain was and is still so delicately poised and where the Churches have always been part of the problem, more generous practical directives or a patient and silent waiting upon the working of the Spirit among all God’s people would have been more Gospel-like.”<sup>22</sup> In criticising the contents and timing of the document Fr McDonagh called for a “conversion to other Churches” in the sense of an openness to other traditions, something which could be expressed in an inter-Church celebration of baptism and a wider sharing of the Eucharist.

Clearly, the document issued by the three Bishops’ Conferences had touched a nerve in many people. So what was in it? What was causing so many people to become so passionate? Was it really as negative as it was being portrayed? It is sad to say, but the document itself is one of those which is often criticised, but little read.

<sup>20</sup> Ibid.

<sup>21</sup> Enda McDonagh, “Invite and encourage – a millennial proposal for sharing the Eucharist,” *The Furrow* 50 (1999), 18.

<sup>22</sup> Ibid.

## *One Bread One Body: A Presentation*

The document itself is something unique. It was issued by the three Bishops' Conferences in Britain and Ireland: the Bishops' Conferences of Scotland, of Ireland, and of England and Wales. It is the fruit of several years of collaboration. Its full title provides a useful summary of the contents: *One Bread One Body: a teaching document on the Eucharist in the life of the Church, and the establishment of general norms on sacramental sharing*. In the foreword, the presidents of the three Conferences explain that they have produced the document "as a way of reaffirming the place of the Mass at the very centre of our Catholic life" in the hope that "it will help all Catholics to a greater understanding of the Mass, and of the Presence of Christ in the Blessed Sacrament."<sup>23</sup> In addition, the document is also addressed "to our fellow Christians, with the hope that it will help to clarify what the Catholic Church believes about the Eucharist."<sup>24</sup> It is very obviously a teaching document, addressed to Catholics and to Christians of other traditions. Yet, as the title makes clear, the document also establishes general norms. The presidents have this to say: "At the end of this document we present our general norms on sacramental sharing between Catholics and other Christians in our countries. These can only be understood and appreciated in the light of the teaching on the Eucharist which is the main part of our document."<sup>25</sup> The document runs to some seventy-nine printed pages, of which seventeen are devoted to the norms and a commentary. Thus, to dismiss this as nothing but a restatement of the "traditional Vatican legalistic response," as one of the journalists did, is grossly unjust and misleading.

The document itself contains one hundred and twenty one numbered paragraphs, divided into four quite distinct parts in which different issues are addressed:

### *Introduction*

From the outset, the Bishops are aware of their role of preserving and deepening the unity of the Church and they are quick to emphasise the fundamental centrality of the Eucharist to the quest for genuine unity: "There can be no full unity among Christians that does not embrace unity in the Eucharist, and no full unity in the Eucharist without a shared understanding of all that the Eucharist contains and signifies" (n. 2). In presenting this document, the bishops are aware of the ecumenical situation in their own countries: "Catholics and other Christians live side by side, as communities of faith, praying and working together, and also as individuals, especially when united in marriage" (n. 5). They affirm: "Most

<sup>23</sup> *One Bread One Body*, p. 5.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

Christians in our countries are now conscious of being ‘not strangers but pilgrims’, aware of our divisions and yet ever more committed to finding a way forward together” (n. 6). The Bishops stress that “Christians are one band of pilgrims, but continued disunity obscures God’s invitation to all humanity to share his life, and makes the Gospel harder to proclaim” (n. 7). The opening paragraphs of the document cannot be construed to be in any way triumphalistic or exclusive. Instead, the Bishops make it clear that they see themselves, alongside other Christians of different traditions, as pilgrims, and they ask pardon from those other Christians “for any responsibility we have for the continued dividedness of Christ’s disciples in our countries. We recognise our failures in love and compassion, in the search for truth and justice” (n. 7).

In the light of this background and approach, the Bishops explain the two-fold purpose of the document: “Our first purpose ... is to re-affirm and to share with others our Catholic faith in the mystery of the Eucharist;” “our second purpose, on the foundation of our Church’s doctrinal principles and current discipline, is to establish the norms to govern sharing of these sacraments between Catholics and other Christians in our countries” (n. 8). By saying this, the Bishops make it clear that they are not acting in bad faith or out of some kind of hidden agenda, but out of fidelity to the doctrine and practice of the Church.

### *Our Catholic Faith*

This chapter, which represents a compendium of Catholic belief, presents Christ the Saviour as the source and centre of all communion (nn. 11-14). It explores the role of the Church as the Sacrament of Salvation and the role which the sacraments themselves have in the Church’s mission, as well as the relationship between the Catholic Church and other Christians, the concepts of full and partial communion (nn. 15-22). The bulk of this chapter, and the principal focus of the document, is on the Eucharist. The Bishops consider the Eucharist and the Word of God, the Eucharist as the Memorial of Christ’s sacrifice, the Eucharist and the presence of Christ, and the relationship between Holy Communion and full communion (nn. 23-67). Finally, they present the Church’s teaching on the sacraments of Reconciliation and Anointing of the Sick (nn. 68-75). The sources used in this presentation of Catholic belief include *Lumen Gentium*, *Unitatis Redintegratio*, *The Catechism of the Catholic Church*, the Apostolic Letter *Dies Domini*, the Encyclical *Ut unum sint*, as well as several documents emanating from the Anglican Roman Catholic International Commission (ARCIC) and from the Joint Commission for Dialogue between the Roman Catholic Church and the

World Methodist Council.<sup>26</sup> The Bishops have not repeated earlier doctrinal statements about the Eucharist and the other sacraments; rather they have sought to express Catholic teaching in a much more contemporary and, dare I say it, ecumenical context.

### *Together Yet Divided*

Not content with simply issuing a short summary of Catholic doctrine, the Bishops also wish to reflect upon the lived reality of Christians who share so much yet remain divided. Using Paul's image of the human body as an image of the Church, they consider the pain of division between Christians: "We are called to be one, and we seek together more urgently than ever before to be one band of pilgrims, united in faith and in love, in holiness and in mission. This makes us feel even more strongly the pain of our divisions, above all at the Eucharist when we are unable to share together as one Body the one Bread of Life" (n. 76). This pain is experienced in a particular way by those Christians in inter-Church marriages. The Bishops consider their plight within the wider context of the concept of a partial and still incomplete communion. They highlight the difficulties such couples encounter as they try to give expression to the degree of unity which they have already achieved in marriage. However, the Bishops make it clear throughout this section that, as a rule, it will not be possible for families in mixed marriages to receive Holy Communion together. For them, "a Christian family is indeed a 'domestic church,' but an inter-Church family is a sharply focused image of Christians as they are in reality, united in many ways in Christ and yet still not fully at-one in faith" (n. 86).

In addition to inter-Church families, the Bishops also address a group of people for whom the question of communion within the Church is a delicate and painful reality, the divorced and re-married. They urge pastors to respond as fully and warmly as they can to these people: "All people who find themselves excluded from complete participation in the sacraments, for whatever reason, must be supported as fully as possible in their faith and spiritual life" (n. 88).

The final part of this chapter deals with the concept of "spiritual need," something the Bishops view as both personal and ecclesial. Conscious of the responsibility of the Church to respond to the spiritual needs of Christians, they identify a principle to guide such a response: "The general principle remains that

<sup>26</sup> The opening line of n. 40 reads: "The Risen Lord in person calls together his Church and presides invisibly over the Eucharist as our Head and great High Priest." Interestingly, the footnote for this does not indicate a document of the magisterium, but a document from another inter-church dialogue. It reads: "cf. Report of the Anglican-Methodist International Commission, *Sharing in the Apostolic Communion* (1996), no. 90: 'the Risen Christ is the true president at each celebration of the Eucharist'."

sharing fully the sacramental life of the Catholic Church is acceptable only among “those who share its oneness in faith, worship and ecclesial life” (n. 89). However, they are aware that the Second Vatican Council identified two principles governing sacramental sharing: a witness to the unity of the Church, and a sharing in the means of grace. The Bishops say: “it is tempting to allow one principle to dominate the other, either to exclude sacramental sharing all together, or to allow a great deal of such sharing. Catholic teaching insists that the two basic principles must always be taken into account together. They are complementary” (n. 90). So they begin to sketch the fundamental concept of “spiritual need” which would permit access to the sacraments to Christians who did not belong to the Catholic Church. In doing so, they emphasise that a spiritual need is always “something deeply personal, but never private” (n. 92). They go on to state: “Whatever exceptional sharing may be possible, only the full reconciliation of Christians can make normal the full sharing together of the Sacrament of Unity” (n. 93).

### *General Norms*

Having outlined the doctrinal principles governing the role of the Bishop, the Catholic faith concerning the sacraments, and the spiritual need of the faithful, the Bishops now present the norms which will regulate the sharing of the sacraments. It is this part of the document which is of direct interest to the canonist; and it is this part which drew the sharpest criticism. The actual norms are prefaced by seven paragraphs of an introduction which repeat some of the general concerns already raised earlier in the document. The Bishops make it clear that their norms rest upon the foundation of regulations issued by the Holy See at various times since 1967. They understand that there is a need to address the issue and establish proper norms to ensure an even-handed and equitable approach. They point out that many other Christian communities invite all those in good standing with their own Church to come forward to receive Communion; they refer to the fact that some Catholic priests have done something similar on occasion. But they stress again and again that sacramental sharing between Catholics and other Christians not in full communion with them will always be, of its nature, something exceptional. The Bishops conclude the introduction by saying, “For the doctrinal reasons which run through this document, our starting-point is the canon that ‘Catholic ministers may lawfully administer the sacraments only to Catholic members of Christ’s faithful, who equally may lawfully receive them only from Catholic ministers.’<sup>27</sup> Exceptions to this are allowed by the same canon, and it is to those that our norms are addressed” (n. 101).

There are four norms, grouped in two pairs. The basis of the distinction has to do with whether or not the Christians involved belong to the Eastern Churches not

<sup>27</sup> *CIC* c. 844, §1; *CCEO* c. 671, §1.

in full communion with Rome. The first norm of each pair deals with the admission of these other Christians to the sacraments in the Catholic Church; the second has to do with the access of Catholics to the sacraments of the other Churches. Not surprisingly, there is a marked difference between the two sets of norms.

*Communicatio in sacris with Christians from Eastern Churches: Norm on the admission of Christians from Eastern Churches*

Catholic ministers may lawfully admit to Holy Communion, and to the sacraments of Reconciliation and the Anointing of the Sick, members of the Eastern Churches not in full communion with the Catholic Church, if they spontaneously ask for these sacraments and are properly disposed” (n. 102).

This text is a verbatim repetition of the CLSGB&I translation of canon 844, §3. The norm of law permits Catholic ministers to admit to three sacraments members of those Eastern Churches not in full communion with the Catholic Church. The three sacraments specified are the Eucharist, Reconciliation and Anointing of the Sick. These may be understood as the sacraments of ordinary Christian living; they are the sacraments which sustain the ordinary everyday life of Christians. Not included are the sacraments of Baptism, Confirmation, Ordination, and Marriage. These four sacraments each have lifelong canonical consequences and their reception is regulated amply elsewhere.

Permission is given to admit “members of Christian Churches not in full communion.” The commentary following the norm does not identify them more specifically but makes a broad reference to the close bonds of communion shared with them: “between the Catholic Church and the Eastern Churches not in full communion with it, there is a very close communion in matters of faith. Pope Paul VI spoke of there being, ‘an almost total communion’”(n. 103). In their comment on the norm, the Bishops make clear by quoting from the Second Vatican Council, that the rationale for permitting such access to the sacraments in the Catholic Church is that “these Eastern Churches ‘possess true sacraments, above all – by apostolic succession – the priesthood and the Eucharist, whereby they are still linked with us in closest intimacy’”<sup>28</sup> (n. 103). For this reason, “these fundamental bonds of faith, sacraments and ministry allow the Catholic Church to permit and even recommend some sharing in liturgical worship, even the Eucharist, with these Churches, ‘given suitable circumstances and the approval of the Church authority’”<sup>29</sup> (ibid.).

<sup>28</sup> *Unitatis Redintegratio* 15.

<sup>29</sup> *Ibid.*

Under the norm given by the Bishops, Christians from these Churches may approach a Catholic minister for the three sacraments mentioned under two conditions: “if they spontaneously ask,”<sup>30</sup> “and are properly disposed.” The person competent to decide whether or not the sacraments are to be administered is the minister: it is that minister who must make a judgement concerning the proper disposition of the individual who spontaneously makes the request.

*Norm on Catholics approaching ministers of the Eastern Churches*

Whenever necessity requires or a genuine spiritual advantage commends it, and provided that the danger of error or indifferentism is avoided, it is lawful for any Catholic for whom it is physically or morally impossible to approach a Catholic minister, to receive Holy Communion, or the sacraments of Reconciliation and Anointing of the Sick, from a minister of an Eastern Church not in full communion with the Catholic Church (n. 104).

The text is a verbatim repetition of the norm contained in the *1993 Ecumenical Directory* n. 123. It is lawful for any Catholic to approach ministers of those same Eastern Churches not in full communion in order to receive the same three sacraments. Since these norms regulate exceptions to the general principle, this practice is qualified carefully. Thus, Catholics may approach a minister of an Eastern Church: when necessity requires it; when a genuine spiritual advantage commends it; when it is morally or physically impossible to approach a Catholic minister; or, when it is morally or physically impossible to approach a Catholic minister; provided there is no danger of error or indifferentism. The person competent to decide whether or not the required conditions have been verified in these cases is the person who wishes to receive the sacrament. However, the Bishops, in their commentary, repeat the admonition of the *1993 Ecumenical Directory*<sup>31</sup> by pointing out that “it is very important that Catholics carefully respect the discipline of those Churches which may not allow such sacramental sharing” (n. 105).

It must be observed that the text of the first two norms contains nothing new. Given the demographic situation of the Church in Great Britain and Ireland, the Bishops point out that “it is comparatively rare for Catholics in our countries to seek to share in the sacraments of the Eastern Churches” (n. 105). On the other hand, there is a much greater likelihood of Eastern Christians seeking to receive the sacraments from Catholic ministers since the hierarchical structures of those

<sup>30</sup> The CLSA translation of c. 844, §3 says: “of their own accord.”

<sup>31</sup> *1993 Ecumenical Directory*, n. 123.

Churches are not always adequate to provide for a small number of the faithful scattered throughout the territory.

*Communicatio in sacris with Christians from other Churches and ecclesial communities*

The question of sharing the sacraments with other Christians is a much more real and actual problem in Britain and Ireland. The vast majority of Christians in those countries belong to Churches and ecclesial communities which are not Eastern Churches and are not in full communion with the Catholic Church. The major faith communities include the following:

- three Provinces of the Anglican Communion account for the vast majority of Christians in Britain – the Church of England, the Church in Wales and the Scottish Episcopal Church;
- the Church of Scotland is the established Church in Scotland and is Presbyterian;
- the Church of Ireland is a Province of the Anglican Communion in the whole island of Ireland and accounts for some 350,000 members (275,000 in Northern Ireland and 75,000 in the Republic);
- the Presbyterian Church in Ireland has some 300,000 members, mostly in Northern Ireland, making it the largest Protestant Church there.
- in addition, there are other communities, such as the Methodist Church, the Baptist Union, the United Reformed Church, etc.

In identifying these other Christian faith communities, it is very important to remember how they describe themselves. Many regard themselves as “Churches” and use that name. However, the criteria for such a description in some of their cases do not conform to the teaching contained in *Dominus Iesus*.<sup>32</sup>

*Norm on the admission of Christians from other Christian faith communities*

Admission to Holy Communion and to the sacraments of Reconciliation and Anointing of the Sick may be given to baptised Christians of other faith communities if there is a danger of death, or if there is some other grave and pressing need. This may at times include those who ask to receive them on a unique occasion for joy or for sorrow in the life of a family or an individual. It is for the diocesan

<sup>32</sup> “On the other hand, the ecclesial communities which have not preserved the valid Episcopate and the genuine and integral substance of the Eucharistic mystery, are not Churches in the proper sense; however, those who are baptised in these communities are, by Baptism, incorporated in Christ and thus are in a certain communion, albeit imperfect, with the Church” (*Dominus Iesus* n. 17).

bishop or his delegate to judge the gravity of the need and the exceptional nature of the situation. The conditions of Canon Law must always be fulfilled. The exceptional nature and purpose of the permission should be made clear, and appropriate preparation should be made for the reception of the sacrament” (n. 106).

This text is the most original of the norms. The accompanying commentary runs to seven pages (nn. 107-115). According to the norm, the same three sacraments mentioned earlier may be given to baptised Christians of other faith communities in two distinct sets of circumstances:

*In danger of death*

Insofar as it refers to those in danger of death, the norm is based upon canon 844, §4 and the 1993 *Ecumenical Directory* n. 130. Where this is verified, in accordance with the universal law of the Church, the individual must not be in a position to approach his or her own minister, must ask spontaneously, must demonstrate Catholic faith in the sacraments, and must be properly disposed. It will be for the Catholic minister to weigh up all the circumstances before proceeding to administer the sacrament.

*In some other grave and pressing need*

The norm concerning “some other grave and pressing need” is much more fraught with difficulties. Once again, the norm is a direct reference to canon 844, §4 and, in particular, to the translation of it made by the Canon Law Society of Great Britain and Ireland. John Huels has pointed out that this translation may be seen to depart from the Latin text of the code: “the Latin phrase in can. 844, §4 is *alia urgeat gravis necessitas*. The additional adjective ‘pressing,’ in the CLSGBI translation is based on what in the Latin is actually a verb, *urgeat*... The translation, ‘grave and pressing need’ intensifies the gravity of the need beyond what a more grammatically faithful translation of the law requires... English-speaking canonists and bishops need to be aware that, with this translation, they too might be susceptible to understanding the *gravis necessitas* of canon 844, §4 in a more restrictive way than is conveyed by the Latin.”<sup>33</sup> He highlights the fact that the 1993 *Directory* uses similar language in its original French, making it much more restrictive than the code. But he stresses that it is the code which is normative,

<sup>33</sup> J. M. Huels, “A policy on canon 844, §4 for Canadian dioceses,” *Studia Canonica* 34(2000), 96-97.

not the *Directory*.<sup>34</sup> The present norm seeks to identify further what might constitute such a grave and pressing need.

In their commentary, the Bishops highlight the development of the concept of “grave and pressing need.” The *1967 Ecumenical Directory* had permitted access to the sacraments to those “in danger of death or in urgent need (during persecution, in prisons).”<sup>35</sup> A later document in 1972, seeking to explain the norm of the *Directory*, expanded this somewhat: “Apart from danger of death, the *Directory* mentions two examples, people in prison and those suffering persecution, but it then speaks of ‘other cases of such urgent necessity.’ Such cases are not confined to situations of suffering and danger. Christians may find themselves in grave spiritual necessity and with no chance of recourse to their own community. For example, ....it can happen much more often than before that non-Catholic Christians are scattered in Catholic regions. They are often deprived of the help of their own communion and unable to get in touch with it except at great trouble and expense...”<sup>36</sup> According to the Bishops, “the Church’s law requires the need to be both grave *and* pressing. Such a need is more than a passing desire, or something arising simply from the sadness of feeling left out in a particular celebration” (n. 108).

Yet, even in the norm itself, the Bishops expand the understanding of “grave and pressing need;” they state: “this may at times include” Christians of other faith communities who ask to receive the sacraments “on a unique occasion for joy or sorrow in the life of a family or an individual.” In their commentary, they seek to explain further: “What do we mean by a ‘unique occasion’ in the life of a family or an individual? We are thinking of an occasion which of its nature is unrepeatable, a ‘one-off’ situation at a given moment which will not come again. This may well be associated with the most significant moments of a person’s life, for example, at the moments of Christian initiation (Baptism, Confirmation, First Communion), Marriage, Ordination and death” (n. 109). In the light of this explanation, Christians of other traditions participating in such unique occasions may be admitted to the sacraments of Eucharist, Reconciliation and Anointing of the Sick.

<sup>34</sup> J. M. Huels, “A policy on canon 844, §4 for Canadian dioceses,” 98. Interestingly, the most recent translation of the canon by the Canon Law Society of America responds exactly to the issue raised by Huels: “If the danger of death is present or if, in the judgement of the diocesan bishop or conference of bishops, *some other grave necessity urges it*, Catholic ministers administer these sacraments licitly also to other Christians not having full communion with the Catholic Church....”

<sup>35</sup> *1967 Ecumenical Directory*, n. 55.

<sup>36</sup> *In quibus rerum circumstantiis*, VI.

These unique occasions have a particular relevance to those people living in mixed or inter-Church marriages and the Bishops address this directly in the commentary. First of all, they consider the needs of those taking part in weddings where one of the parties is a Catholic and the other is a member of a Christian faith community not in full communion with the Catholic Church. They provide broad guidelines of what the minister needs to bear in mind on such occasions (n. 110).<sup>37</sup> Following the 1993 *Directory*, they focus on the bride and groom: they point out that the non-Catholic spouse is still not in full communion, but that the couple is now in a new relationship to the Catholic Church. Even though both parties, on this occasion, may be admitted to Holy Communion, “it is not envisaged that this be extended to relatives and other guests not in full communion with the Catholic Church” (n. 111).

The Bishops’ commentary also focuses on the other unique occasions of joy or sorrow. It must be said that the Bishops appear to refer only to the reception of Holy Communion on such occasions, not to the other sacraments mentioned in the norm. Earlier in the commentary, they had made it clear that “the norms we establish apply to individual cases rather than categories of situations... Each individual case in which admission is sought must be examined on its own merits” (n. 107). With this in mind, the Bishops address the issue of what those other occasions might be: “these are situations in which there may be an objectively grave and pressing spiritual need for a person to receive Holy Communion. We give examples of such circumstances, without in any way intending to suggest categories of situations in which admission to the sacrament would be generally granted. The admission of a particular individual on one such unique occasion does not mean that another individual would necessarily be admitted in a similar situation” (n. 112).

The circumstances in which reception of Holy Communion might be possible are easily identified: “Requests to be admitted to Holy Communion may come from the parent of a child to be baptised during Mass, or receiving First Holy Communion or Confirmation; the parent or wife of someone being ordained; the intimate family of the deceased at a Funeral Mass; ...” (n. 112). The situations outlined here clearly fit the description given by the Bishops of “unique occasions” of joy and sorrow. However, the possibility of access to Holy Communion is not restricted to the specific occasions mentioned. The Bishops explain: “Christians who cannot easily approach a minister of their own community, such as those

<sup>37</sup> “In our countries, the bishops have given consent to the celebration of such a marriage within Mass, when it seems appropriate to the couple and to the presiding Catholic minister. If a large number of people belonging to different Christian traditions is to be present, the fact that they cannot receive Holy Communion needs to be considered. They should, however, be invited to participate in every other way they can, and the priest or deacon should encourage them to do so” (n. 110).

confined to an institution of some kind..." (n. 112). But they point out that this will always be very exceptional since "most hospitals and prisons in our countries have Anglican, Presbyterian, Church of Scotland and Free Church chaplains who minister there on a regular basis." It could be argued here that the Bishops make a concession in the text of the norm, and render it inoperable by what they say in the commentary. Given the demography of Britain and Ireland, it is much easier to envisage a person making such a request in an institution within the Republic of Ireland than elsewhere, given the fact that the number of Christians not in full communion with the Catholic Church is so relatively small.<sup>38</sup>

All the situations presented by the Bishops in their commentary concern the reception of Holy Communion. Yet the norm includes the sacraments of Reconciliation and Anointing of the Sick, as they point out in the commentary: "there may be occasions when it is admission to the sacraments of Reconciliation and Anointing of the Sick which is the most grave and pressing spiritual need, due in part to the absence of such sacramental rites in some faith communities" (n. 112). It is nowhere stated, but it would appear that the reception of these sacraments is not understood to be associated with the unique occasions of joy and sorrow outlined earlier; rather, the request for either of these sacraments would arise from a deeply felt need on the part of the individual, although one might imagine a scenario where such a Christian might request the sacrament of Reconciliation before a funeral, or request the Anointing of the Sick where other Catholic members of the same family were receiving the sacrament.

According to the norm, "it is for the diocesan Bishop or his delegate to judge the gravity of the need and the exceptional nature of the situation," except, of course, in danger of death. In their commentary, the Bishops provide an insight into the process which they foresee preceding a request and the giving of permission: "When an individual Christian decides, after prayer and reflection, that he or she should approach the local priest about their circumstances, the latter must also make a discernment about whether this should be brought to the local bishop or his delegate for a decision. A Catholic priest may not make such a decision himself unless duly delegated by his bishop" (n. 113). This comment reinforces what the Bishops had to say earlier concerning the practice in some other Churches of inviting all in good standing to come forward to receive Communion: "some Catholic priests have acted outside the prescribed norms and invited other Christians to receive Communion, on occasion even issuing an open invitation" (n. 98). The Bishops make it clear that such a practice does not respect the process of discernment which must take place before such an exceptional event, a process

<sup>38</sup> The Catholic population of Ireland is 4,044,839 out of a total population of 5,000,000; the Catholic population of England and Wales is 4,155,262 out of a total population of c. 55,000,000; the Catholic population of Scotland is 730,000 out of a total of 5,100,000.

which involves both the Christian individual and the priest or other Catholic minister. Nothing, it would seem, is left to chance. Unlike the norm permitting members of separated Eastern Churches to share in the sacraments, there is no mention of “spontaneity” and the commentary makes it clear that spontaneity is not favoured either on the part of the recipient or on the part of the minister.

In addition to considering the extraordinary nature of the circumstances involved, the Bishops also reflect on the four conditions required by canon 844 §4 for the lawful reception of the sacraments by Christians not in full communion:

- That the person be unable to approach a minister of his or her own community for the sacrament desired...

The Bishops make it clear that such impossibility of access will be very rare in Britain and Ireland. This is particularly true of England, where the Church of England is very much part of the fabric of society. Members of other faith communities there might well find it easier to approach an Anglican minister for the sacraments rather than a Catholic priest or other minister. Even in Ireland, where the likelihood of there being no minister available in the immediate vicinity, the distances are not so great as to render access physically impossible. However, the Bishops point out that the impossibility might well arise out of the nature of the occasion, e.g. a funeral in a Catholic Church.<sup>39</sup>

- That the person greatly desire to receive the sacrament, and ask to receive it of his or her own initiative...

It is the individual who must seek the sacrament without any invitation. The Bishops wish to prohibit any general or specific invitations issued by priests and other Catholic ministers. Rather, there should be time given to a proper process of discernment and preparation. This requirement is a delicate matter since many other Christians are familiar with an invitation issued at the time of Communion in their own churches for all Christians in good standing with their own community to come forward.

- That the person manifest Catholic faith in the sacrament desired...

The Bishop or his delegate must be satisfied that the faith of the individual seeking the sacrament is in conformity with the teaching of the Catholic Church.

<sup>39</sup>“The 1993 *Directory* for Ecumenism employs a broad interpretation of the inability to go to a minister of one’s community in its provisions governing the reception of holy communion by the non-Catholic party of a mixed marriage at the wedding Mass and on exceptional occasions during the marriage” (J. M. Huels, art cit., 106).

A distinction is drawn by the Bishops in their commentary between a desire for the Eucharist, even a commitment to the Eucharist, and an understanding of the Eucharist which is in conformity with Catholic teaching.<sup>40</sup> While it might not be very difficult to find someone whose faith in the Eucharist is in harmony with the Catholic Church's teaching, it will be much more difficult to find such faith in the sacraments of Reconciliation and Anointing of the Sick: while some other Christian faith communities recognise the practices, they do not always acknowledge their sacramental status. In their list of questions for the assistance of the minister in determining whether or not the norm may be applied in a given case, the Bishops include a broad criterion for determining the matter of "Catholic faith:" "Is there sufficient faith in the sacrament desired? That is, does the person believe in general terms what the Catholic Church believes, and certainly not deny the essentials of Catholic belief in the particular sacrament?" (n. 115).<sup>41</sup>

- That the person be properly disposed...

A proper disposition for the reception of the sacraments is required even of Catholics. The Bishops point out that there are some Catholics unable to approach the sacraments because of being "in a state of grave sin or in an irregular marital situation." Christians from other faith communities who find themselves in a similar situation will also find themselves unable to receive Holy Communion. This is not any attempt to discriminate against individuals. Rather, the Bishops make their thinking clear: "the Eucharist is an awesome and holy gift of God to his Church: it should be approached with reverence and great care as we seek to welcome the living Lord into the temple of our lives."

<sup>40</sup> Commenting on canon 844, §4, J. M. Huels remarks: "It is not necessary that the person have a detailed knowledge of the sacramental theology of the sacrament in question. For example, in reference to the reception of the Eucharist, it would suffice that the person believes the consecrated bread and wine is spiritual food, the body and blood of the Lord... For the anointing of the sick, it would be sufficient that he or she believe that the sacrament is a spiritual means of promoting healing and comfort and, if necessary, the forgiveness of sins... For penance, it would be sufficient that the person believes that the priest is able to absolve from sins this brings reconciliation with God and the Church" J. M. Huels, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry* (Chicago: Franciscan Herald Press, 1986) 308.

<sup>41</sup> Simple questions of that kind elicit the necessary information. The norm of law "should not be interpreted to mean that the non-Catholic persons in question need precise 'knowledge' of Catholic doctrine. It suffices for them to answer in the affirmative to the question: 'Do you believe that what the Catholic Church teaches about the Eucharist is true?' The issue is not how much knowledge the persons have, but whether their *faith* is in conformity to that of the Catholic Church's" (J. M. Huels, op cit., 308). Some Bishops' Conferences have gone further and sought an explicit manifestation of Catholic faith in the sacraments before a Christian not in full communion can receive: "la Conferencia Episcopal argentina requiere que 'antes de administrar los mencionados sacramentos se pedirá, a ser posible, una manifestación explícita de la fe católica respecto a los mismos" J. T. Martín de Agar, "Canon 844", in *Comentario exegetico al Código de Derecho Canónico*, Vol. III/1, (Pamplona, EUNSA, 1997, 433).

This norm and its commentary stress again and again that the permission for other Christians to receive the sacraments from a Catholic minister is *exceptional*, i.e., it cannot become an alternative norm.<sup>42</sup> Moreover, a period of time prior to reception is implied since “appropriate preparation” should be made before the sacrament is received. This whole matter is one of the utmost delicacy and the Bishops draw the attention of priests to their responsibility: “Catholic priests should treat with kindness and sensitivity other Christians who seek admission to these sacraments, welcoming them with pastoral love even when their request cannot be granted. Asking a few simple questions can help to discern the situation in each individual case” (n. 115). The Bishops then provide a list of questions to assist with the discernment.<sup>43</sup> “Such careful discernment is very important, as the sacraments should not be denied to those whom the present law of the Church allows to receive them.”

Overall, therefore, the norm on sacramental sharing by Christians not in full communion with the Catholic Church is quite clear: it is not absolutely prohibited, nor is it the subject of an open invitation. The Bishops make it clear that their concern in the whole matter is to cater for the real needs of people while preserving the necessary respect for the sacred mysteries.

*Norm on Catholics approaching ministers of other Churches and ecclesial communities*

Whenever necessity requires or a genuine spiritual advantage commends it, and provided the danger of error or indifferentism is avoided, Christ’s faithful for whom it is physically or morally impossible to approach a Catholic minister may lawfully receive Holy Communion, and the sacraments of Reconciliation and Anointing of the Sick, from ministers in other faith communities whose sacraments are accepted as valid by the Catholic Church (n. 116).

<sup>42</sup> “It must also be noted that the Instruction speaks of particular cases, which are to be examined individually. Hence a general regulation cannot be issued which makes a category out of an exceptional case, nor is it possible to legitimise on the basis of *epikeia* by turning this latter into a general rule” (*Dopo la pubblicazione*, n. 6).

<sup>43</sup> “What is the nature of the person’s spiritual need? Are all of the necessary conditions fulfilled? What special circumstances prevent the person from approaching a minister of his or her own community? What is unique about this particular moment or occasion? Is there sufficient faith in the sacrament desired? That is, does the person believe in general terms what the Catholic Church believes, and certainly not deny the essentials of Catholic belief in the particular sacrament? Is he or she properly disposed, a person not in a state of serious or scandalous sin and ready to approach the sacrament with humility and reverence? Is he or she open to the growth of visible unity among Christians?” (n. 115).

The wording of this norm is very similar to that of the norm concerning Catholics approaching ministers of the Eastern Churches. Catholics may receive the three sacraments of Eucharist, Reconciliation, and Anointing of the Sick from ministers of other Churches or ecclesial communities in a qualified manner: when necessity requires it; or when a genuine spiritual advantage commends it; when it is morally or physically impossible to approach a Catholic minister; provided there is no danger of error or indifferentism.

However, the approach of Catholics to such ministers is subject to a most important condition, i.e. that the sacraments of those faith communities “are accepted as valid by the Catholic Church.”

In their commentary, the Bishops come straight to the point: “Whereas in the case of the Eastern Churches, it is lawful for Catholics to receive the sacraments in such situations from a minister of an Eastern Church, this is not the case with those Christian communities which find their roots in the Reformation” (n. 117). They then quote from the *1993 Ecumenical Directory* to show that Catholics can receive sacraments in those situations “only from a minister in whose Church these sacraments are valid and from one who is known to be validly ordained according to the Catholic teaching on ordination.”<sup>44</sup> Not surprisingly, perhaps, the Bishops move on to address specifically the case of Anglican orders: “for historical and theological reasons, there are special difficulties with regard to Anglican orders. These remain unresolved in spite of what some see as a change of circumstances in the twentieth century, for example through achievement of reaching some important agreement between Catholics and Anglicans on the nature of ordained ministry.”<sup>45</sup> In the commentary, the Bishops show that they are aware of a

<sup>44</sup> *1993 Ecumenical Directory*, n. 132. The Bishops do not quote accurately from the *Directory*. The original French text read: “... un catholique ... ne peut demander ces sacrements qu’à un ministre d’une Église dont les sacrements sont valides ou à un ministre qui, selon la doctrine catholique de l’ordination, est reconnu comme validement ordonné.” The official English translation echoes this: “a Catholic ... may ask for these sacraments only from a minister in whose Church these sacraments are valid or from one who is known to be validly ordained according to the Catholic teaching on ordination.” From the text of the *Directory*, it is clear that the sacraments in question may be requested and received – all else being equal – from an individual minister who is validly ordained according to the teaching of the Catholic Church, even though the community to which the minister belongs might not have valid sacraments. In addition to those ordained priests in the Catholic Church now ministering within the Anglican Communion, one can recall the number of clerics from other Churches and ecclesial communities who, over the years, have sought to have their individual ordinations “validated” in various ways. Cf., P. Anson, *Bishops at large: Some autocephalous churches of the past hundred years and their founders* (London: Faber and Faber, 1964). The Bishops in *One Bread One Bread* appear to have taken a very different stand.

<sup>45</sup> In her presentation to the CLSA Convention in Orlando in 1998, Dr Margaret O’Gara considered that “a new context has emerged in which to re-evaluate *Apostolicae Curae*. This new context has three elements: 1) a re-evaluation of the historical data surrounding the judgement made by *Apostolicae Curae*; 2) developments in Roman Catholic theology of ordained ministry and the liturgy of the

distinction between the Anglican Communion and the Churches of the Reformation, especially in relation to the question of orders, and they state that they are “very much aware that this is a sensitive question, and one which can be a source of hurt to ministers of communities with whom we seek to work as friends in the name of Christ.”

Nevertheless, this does not mean that Catholics can approach an Anglican minister in the same way as he or she might approach a minister of one of the Eastern Churches: “we have to say to members of the Catholic community in our countries that it is not permissible for Catholics to receive Holy Communion, or the sacraments of Reconciliation and Anointing of the Sick, from ministers of the Anglican Communion (the Church of England, the Church of Ireland, the Church in Wales, the Scottish Episcopal Church), the Church of Scotland or of other faith communities rooted in the Reformation.” As far as the Bishops are concerned the special position of the Anglican Communion makes no difference on the practical level; it is considered to be among those faith communities rooted in the Reformation. Consequently, “exceptional sacramental sharing between the Catholic Church and these faith communities cannot be reciprocal, whereas this is sometimes a real possibility with the Eastern Churches not in full communion with the Catholic Church.”<sup>46</sup>

To sum up, according to the norms issued in *One Bread One Body*:

- Christians from Eastern Churches not in full communion with the Catholic Church can receive the three sacraments from Catholic ministers if they ask of their own initiative and are properly disposed;
- Catholics can receive the same three sacraments from ministers of one of the Eastern Churches not in full communion with the Catholic Church in case of necessity, for a genuine spiritual advantage, where there is no danger of error, etc. and where access to their own minister is impossible;
- Christians from other Churches and ecclesial communities not in full communion with the Catholic Church can receive those sacraments in danger of death

sacrament of orders; 3) ecumenical agreements on the ordained ministry...” M. O’Gara, “*Apostolicae Curae* after a century: Anglican orders in light of recent ecumenical dialogue on ordained ministry in the Church,” in *CLSA Proceedings* 60(1998), 15. In her presentation, she was cognisant of the fact that the judgement on Anglican orders had been included by Cardinal Ratzinger and Archbishop Bertone in their commentary on *Ad Tuendam fidem* as among those matters which have been definitively proposed by the Church (*ibid.*, 3). The Bishops, in *One Bread One Body*, adopt the position of the Congregation for the Doctrine of the Faith.

<sup>46</sup> The Bishops maintain the logic of their quotation from the *1993 Ecumenical Directory* and do not examine the question of Catholics receiving the sacraments from an individual minister of another Church or ecclesial community whom they know to be validly ordained in accordance with the teaching of the Catholic Church, e.g. from an Anglican priest who had been ordained originally in the Catholic Church.

and in other special circumstances where the diocesan Bishop or his delegate judges it appropriate;

- Catholics, in case of necessity, for a genuine spiritual advantage, where there is no danger of error, etc. and where access to their own minister is impossible, may lawfully request the sacraments from a minister of another faith community only if that same community's sacraments are accepted as valid. This excludes the Anglican Communion, the Church of Scotland, the Methodist Church, the Free Churches, etc.

The document may be seen as an honest effort to adopt a common approach to the question of sacramental sharing or *communicatio in sacris* within Britain and Ireland. It is clear from the text that the Bishops are aware of the delicate nature of the issues involved. They have sought to walk a fine line between absolute prohibition and limited sacramental sharing. In the end, the norms contain nothing radically new or surprising. But the response to the document, especially to the norms contained in it, was very strong and, in the main, very negative.

### *Some initial reactions*

Apart from the negative reaction which was published in the newspapers, the responses to *One Bread One Body* tended to be very short and very critical. They lamented what was seen as the intransigence of the Catholic Bishops and their refusal to permit a wider access of Christians not in full communion to the sacraments of the Catholic Church and the complete prohibition on the access of Catholics to the sacraments of other Christian communities not in full communion.

One of the more interesting responses to the document came from the Church of Ireland Bishop, Richard Clarke, a year after the publication of the document. He begins his remarks by noting that nothing had changed *de iure* in the document concerning the Catholic view of Anglican orders and sacraments. According to him, there had been widespread albeit "subliminal" acceptance of the fact that Anglicans and Catholics "both involved in what was at heart the same thing when they celebrated the Eucharist."<sup>47</sup> The Bishops' document had come as a blow to that kind of thinking. He laments how it made many Catholics self-conscious about sharing in the Anglican Eucharist and points out that this has had an unfortunate effect on inter-Church marriages. The Bishop expresses sadness that the logic of ARCIC was not followed through in the norms contained in *One Bread One Body*.

However, he says that the year following the document's publication had helped him to see the whole issue in a different perspective. He claims that the document began as the work of the Bishops Conference of England and Wales

<sup>47</sup> R. Clarke, "One Body ... One Year," in *Search* 22(1999) 2, 117.

alone; the other Conferences came to the work much later. Bearing this in mind, he observes: "Although it does not solve some of the difficulties created by the document, the fact that *One Bread One Body* was not written with an Irish context uppermost in view is worth knowing. There are a number of important differences between Ireland and England. The first is that in Ireland, even if the situation is changing rapidly, the proportion of practising Christians (of all traditions and within the total population) would be significantly higher than in England. This means that any community (and particularly a rural community) will have a degree of *commonality* in religious practice of some kind. The tone of *One Bread One Body* will therefore have a far greater effect on this kind of community, than in places where any religious practice is very much a minority pursuit. The situation in Ireland also differs from England very markedly in that the Roman Catholic Church here in Ireland is very much the majority rather than a minority in the totality of religious traditions and faiths. The effects of *One Bread One Body* are inevitably very different where the Christian traditions other than Roman Catholic constitute, in the island as a whole, a small minority in comparison. And so, in the Irish situation, the smaller Christian traditions inevitably feel that *One Bread One Body* treats them as less worthy of serious consideration. Reading the document in the light of its original intended context – a setting very different than Ireland – unquestionably softens the effect."<sup>48</sup> He seems to suggest that the Bishops of Ireland would not have produced such a restrictive document had it been written purely for the Irish context.

Even more interesting than his observation on the provenance of the document is the information which he produces about the process of its composition: "it has also been established in inter-church dialogue that the *practical* instruction on communion and inter-communion (which are at the conclusion of *One Bread One Body*) was the first part of the work to be completed, and that the more free-flowing and constructive discourse on the Eucharist itself, which forms the opening chapters of the document, actually followed later. This accounts for a number of the more unsatisfactory aspects of the document. It was commented upon by many, both inside and outside the Roman Catholic Church in Ireland, that there seemed to be some kind of dislocation between the devotional opening sections of *One Bread One Body*, and the two final sections which seemed to be different in tone and were concerned almost entirely with a justification for the strictness of the regulations. In effect there are indeed two documents, the second one conceptually pre-dating the first. This greatly effects any 'reading' of the document and goes some way in accounting for the apparently illogical use of the ARCIC documents. There is much in the first part of the document that could form a basis for genuine

<sup>48</sup> *Ibid.*, 119.

dialogue, although it has to be said that the same cannot be said for the second part.”<sup>49</sup>

Bishop Clarke says he learned of this in inter-church dialogue. If this is an accurate account of what really happened in the preparation of the document, it does have an impact on how it ought to be read. However, I think the Bishop may be drawing too clear a distinction between the “devotional opening sections” and the regulations or norms. Nevertheless, he is heartened by his discoveries: “The interval of a year has enabled all involved to read the document with a little more subtlety than was possible in the excitement of its publication. There are undoubtedly places where the language is less rigid and more nuanced than it might have been, and where space is being made, probably intentionally, for a breadth of interpretation.”<sup>50</sup> For him, all hope of sacramental sharing is not yet lost.

He continues by reminding his Church of Ireland colleagues that, until recently, their own Church had similarly strict rules prohibiting other Christians from participating fully in the Eucharist. And he makes an interesting and, I think, a valid distinction: “It is therefore, I believe, essential in this context that we begin to see a very clear distinction between *inter-communion* and *eucharistic hospitality*. The former, inter-communion, always seems to suggest a rather careless laissez-faire indifferentism. On the other hand the latter, eucharistic hospitality, recognises that ‘spiritual nourishment is always ‘ecclesial;’ it involves the visible community’ (as *One Bread One Body* puts the matter so clearly...). At some stage in our quest for Christian unity, we must all be brought to the point where we truly recognise that the Eucharist is not *ours* but Christ’s, and that the invitation to receive the sacrament is ultimately his invitation not ours, while continuing to grasp that the Eucharist exists within the context of a *visible community*, and that the Church is not yet that single visible community. Eucharistic hospitality, where a Christian community welcomes a visitor of another community – as a welcome guest – to receive the Holy Communion seems to accept *without a fudge* the realities both of non-ownership of the Eucharist, and of different traditions and understandings of the Eucharist. It should be emphasised that it is grossly unfair and discourteous to issue an invitation to communion in such a way that those who do not feel that in conscience they may receive communion in a Church of Ireland Eucharist are led to believe that they are somehow thereby behaving badly. But equally, it is totally unacceptable to suggest (as seems to be done in *One Bread One Body*....) that the

<sup>49</sup> Ibid., 119.

<sup>50</sup> Ibid., 119-120.

reformed churches should actively *discourage* Roman Catholics from receiving Communion in their churches.”<sup>51</sup>

Yet, in spite of his more hopeful reading of *One Bread One Body*, the Bishop is not at all happy with some of the contents of that document. He takes issue with the underlying doctrine of the Real Presence;<sup>52</sup> he wonders “if in the midst of our rule making and word games, we refuse to acknowledge that great multitude of people on the edges of belonging and of belief, we are denying the Christ who called the Church into being;” and he appeals to Saint Justin who “suggested that

<sup>51</sup> *Ibid.*, 120-121. The Bishop may well have a point here. If the Catholic Bishops are anxious that there be mutual respect for the doctrine and discipline of each Church, they must acknowledge that the Anglican practice of inviting to Holy Communion all present in good standing with their own Church is part of that Church’s doctrine and discipline and that the invitation is issued in good faith and not out of any disrespect for Catholic doctrine and discipline.

<sup>52</sup> He puts forth an excellent summary of the Anglican understanding of the Real Presence: “The traditional catechism makes it very clear that Anglicans believe that in addition to the outward physicality of bread and wine, the body and blood of Christ is by the grace of God also given spiritually but definitively through Communion. A Zwinglian understanding of the Holy Communion as an action in symbol alone is openly disavowed by Anglicanism. Where Anglicans do certainly draw the line is in over-defining what God does in the Eucharist, but that is not the same thing as denying his autonomous and effectual action in and through the sacraments. We have been foolishly reluctant to emphasise this latter point. The Anglican view with regard to the presence of Christ in the Eucharist has probably never been better put than in that famous passage from Bramhall’s *Answer to M. de la Milletière*:

We rest in the Words of Christ, This is My Body, leaving the manner to him who made the Sacrament. We know it is Sacramental, and therefore efficacious, because God was never wanting to His own ordinances where man did not set a bar against himself; but whether it be corporeally or spiritually (I mean not only after the manner of a Spirit, but in a spiritual sense); whether it be in the soul only, or in the Host also; and if in the Host, whether by Consubstantiation or Transubstantiation; whether by Production, or Adduction, or Conservation, or Assumption, or by whatsoever other way bold and blind men dare conjecture; we determine not. “*Motum sentimus, Modum nescimus, Praesentiam credimus.*”

This was the belief of the Primitive Church, this was the Faith of the ancient Fathers, who were never acquainted with these modern questions *de modo*, which edify not, but expose Christian religion to contempt. We know what to think and what to say with probability, modesty, and submission, in the Schools; but we dare neither screw up the question to such a height, nor dictate our opinions to others so magisterially as Articles of Faith.

I believe with utter conviction that Bramhall’s understanding would contribute enormously to any discussion on Eucharistic presence” (*Ibid.*, 121). John Bramhall (1594-1661) was Church of Ireland Bishop of Derry and later Archbishop of Armagh.

His presentation of the Anglican theology of the Eucharist would not persuade all Anglicans. Writing earlier this year, the Vicar of St Stephen’s Church of England parish in Lewisham said: “Anglicans have long agreed to differ about the very basics of sacramental theology. Almost every position in the wider ecumenical spectrum, from Zwinglian receptionism to transubstantiation, has been (and still is) found in the Church of England. One party has its monstrances and the other party feeds the leftovers to the birds,” G. Kirk, “Sacraments à la carte,” *The Irish Catholic*, (29 March 2001, 13). This is a highly polemical piece but it does indicate that there is no uniformly agreed or unequivocal official Anglican position on the doctrine of the Real Presence.

there should be three conditions for participation at the Eucharist – orthodoxy, baptism and right living. Baptism no longer presents a problem – that former shibboleth at least has been surmounted. I presume that the authors of *One Bread One Body* would recognise that there are those who are ‘right living’ in the ranks of the other churches (although it is strange and far from reassuring that *right living* no longer carries the weight it once did in the eucharistic discipline of either of our churches).” In his view, if the Churches are indeed growing together “*orthodoxy* can be made less juridical and more dialogical, pastoral and devotional.”

### *The response of the Church of England to One Bread One Body*

The most lengthy and comprehensive response to the Catholic Bishops came from the House of Bishops of the Church of England which was published early in 2001. This twenty-three page document was entitled: *The Eucharist: sacrament of unity – an occasional paper of the House of Bishops of the Church of England*. It contained a foreword by the Archbishops of Canterbury and York which locates the paper in the context of an invitation contained in *One Bread One Body*: “the Bishops invited ecumenical partners to study the document and to respond. We have taken up that invitation in the statement that follows”. At the outset, they make it clear that “there is a great deal in the eucharistic theology of *One Bread One Body* that we warmly endorse... However, we do not draw the same conclusions as the Bishops’ Conferences do with regard to eucharistic sharing, including eucharistic hospitality. We take issue with the discipline that the bishops of the Roman Catholic Church in these islands are seeking to apply. We find it to be hurtful and unhelpful.”<sup>53</sup>

The study paper is divided into four distinct sections:

- Introduction (nn. 1-4);
- Affirmations (nn. 5-28);
- Reservations (nn. 29-50);
- Conclusion (n. 51).

#### *Introduction*

In the Introduction, the House of Bishops makes it clear that it is grateful for the opportunity presented by the publication of *One Bread One Body* to offer a response to the teaching presented by the three Catholic Bishops’ Conferences (nn. 1-2). They state: “it seems appropriate to us that it should be the House of Bishops, as the body within the General Synod (which also includes laity and clergy)

<sup>53</sup> *The Eucharist: sacrament of unity – an occasional paper of the House of Bishops of the Church of England* (London: Church House Publishing, 2001) Foreword, vii-viii.

particularly charged with oversight of doctrine and worship, that makes the Church of England's response to this teaching document" (n. 4). They do so in the "spirit of fraternal openness and charity" with which the Catholic Bishops offered *One Bread One Body*.

### *Affirmations*

The principal focus of *The Eucharist: Sacrament of Unity* is theological rather than juridical. Nevertheless, the points they make from a theological point of view have serious repercussions in the canonical domain. Their first response is to welcome *One Bread One Body*, particularly its use of agreed ecumenical texts. This suggests, they say, that "we are able to affirm a great deal of the eucharistic theology of this document and find little that we cannot accept" (n. 5). They remind their readers: "As the *Final Report* of ARCIC suggests, Anglicans and Roman Catholics can share a common eucharistic faith." Yet it is clear that there are serious differences: "however, while we generally endorse the eucharistic theology of OBOB, we draw somewhat different conclusions at some points to those set out in the 'General Norms' for eucharistic sharing, and also dispute some of the perceptions of Anglicanism that are presupposed in OBOB."

The Bishops then present several points from *One Bread One Body* which they affirm (nn. 9-27). These include: the special responsibility of the episcopate for doctrine, unity and the integrity of the sacraments (n. 9); the vital and central place of the Eucharist in the life and worship of the Church (n. 10); the theological framework provided by the theology of *koinonia* (n. 11); the centrality of the ministry of the Word as well as that of the Sacraments to Christian life and worship (n. 16); the affirmation that the Eucharist is 'the action of the whole Church' and that it is, therefore, 'the people of God ... the worshipping community' that celebrates the Eucharist (n. 17). To demonstrate how well based their affirmation of all these points is, the Bishops refer extensively to sources from their own Anglican theological and liturgical tradition.

They conclude this section by stating: "Furthermore, we welcome the ecumenical sensitivity in certain areas of this statement, its striving for common ground. When the Eucharist is rightly spoken of as a sacramental sacrifice, the emphasis is on the eucharistic sacrifice of the thanksgiving, prayer, worship, gifts and self-dedication of Christians in union with the one, full, perfect and sufficient atoning sacrifice of Christ" (n. 28). It is clear that the response of the Church of England Bishops is considered and measured; it is not a knee-jerk reaction in any sense.

## *Reservations*

But, as they had indicated at the very outset, the Bishops have serious reservations about some of the content of *One Bread One Body*. They do not attempt to state these as objections but the divergence between the two points of view is patent. In particular, they challenge the Catholic perception of the Eucharist and the status of other Christian communities. As becomes very clear when reading this document, the major difficulties seem to arise when the same terminology is used to mean something very different.

## *Transubstantiation*

They begin with the question of the Real Presence: “there is a difficulty for ecumenical convergence in eucharistic doctrine over the rather specific and tightly drawn way in which the presence of Christ in the Eucharist is defined in this document” (n. 29). While they believe in the real presence of Christ in the Eucharist, the Church of England Bishops state: “our divines have consistently been loath to speculate as to the mode of that presence and have been content to reverence the mystery”. For them, it is sufficient to affirm that “the body and blood of Christ are truly present, distributed and received under the forms of bread and wine.”<sup>54</sup>

## *The Church of England: its origin and status*

Their next reservation has to do with the status of the Church of England. They state: “the Church of England is not correctly referred to as one of those ‘Christian communities rooted in the Reformation.’ The Church of England traces its origins back to the beginnings of Christianity in England and is continuous with the Church of the Apostles and Fathers. The particular churches of the Anglican Communion belong to the one holy catholic and apostolic Church of Christ, reformed and renewed at the Reformation (though not, of course, only then)” (n. 30). The inclusion of the Anglican Communion by *One Bread One Body* among the communities rooted in the Reformation is repudiated in the strongest of terms, and the Bishops state that “Anglicans look for clarification of the unresolved ambiguities in the official stance of the Roman Catholic Church towards various ‘ecclesial communities,’ as Vatican II calls them” (n. 30).

This leads the Church of England Bishops to address the issue of Anglican orders: “a further major stumbling block is the view, adopted in the document, of

<sup>54</sup> Conversations between the British and Irish Anglican Churches and the Nordic and Baltic Lutheran Churches, *The Porvoo Common Statement 1992*, Council for Christian Unity of the General Synod of the Church of England, London 1993, n. 32h.

the defectiveness ('lack of validity') of Anglican orders and consequently of Anglican celebrations of the Eucharist" (n. 32). In their view, "the term 'validity' needs considerable unpacking," (n. 33) and they refer to their own document *Apostolicity and Succession* in which they set out their "understanding of the apostolicity of the Church's ordained ministry and its relation to the transmission of ministerial orders."<sup>55</sup> Without any ambiguity, they state: "Anglicans do not accept the arguments of *Apostolicae curae* and the deduction made in the official teaching of the Roman Catholic Church that Anglican celebrations of the Eucharist lack the fullness of the means of salvation that are claimed for the Roman Catholic Church because they have 'not retained' (in a sense that is not specified here or in Vatican II) 'the authentic and full reality of the eucharistic mystery'."

As a result, they find "the ban on Roman Catholics receiving communion at Anglican celebrations of the Eucharist, even in the most exceptional circumstances, an ecumenical, theological and pastoral affront" (n. 34). The Bishops also take issue "with the general Roman Catholic bar on non-Roman Catholics receiving Holy Communion at Eucharists celebrated in the Roman Catholic Church" (n. 34). Nor do they understand or accept the exceptions given to that norm: "they are baffled by the rule that an individual who is allowed to receive on a special occasion may not do so thereafter." This is a theme to which the Church of England Bishops return later in their critique.

### *Ecumenical method*

At this point, they wish to make it clear that they "do not believe that eucharistic communion should be reserved for the end point of unity already achieved between separated churches" (n. 35). They believe that "the unity in the Body of Christ brought about by baptism calls for further expression or realisation in the Eucharist before this ultimate point is reached." In support of their position, they cite *Unitatis Redintegratio* n. 8: "we agree with the Council that *communicatio in sacris* should not be 'used indiscriminately for the restoration of unity among Christians' and that such common worship should both 'signify the unity of the Church' and 'provide a sharing in the means of grace.' However, while insisting that 'the fact that it should signify unity generally (*plerumque*)' rules out *communicatio in sacris*, the Council adds: 'Yet the gaining of a needed grace sometimes (*quandoque*) commends it'" (n. 36). Elsewhere, curiously, the Catholic

<sup>55</sup> "The use of the concept of 'invalidity' with respect to the sacraments of other Christians is highly problematic in ecumenical discourse. In ordinary parlance, to say that the Eucharist of Protestants is invalid conveys the notion that it is null and void and completely inefficacious... Since God's grace can be effective by means of Protestant liturgies and sacraments, to call them invalid is not just ecumenically offensive, it also does not convey the theological reality of what is occurring through their sacraments, even from the viewpoint of Catholic doctrine and canon law" (J. M. Huels, art cit., 107).

Bishops are criticised for identifying different sets of circumstances where sacramental sharing might take place.<sup>56</sup>

To show that their critique is based on positive principles as well as a negative reaction, the Bishops describe their own ecumenical method which has been pursued by the Church of England. It is “that of seeking full visible unity by clearly defined and mutually agreed stages. This approach suggests that various degrees of real communion, grounded in baptism, may appropriately be expressed by degrees of eucharistic sharing. The degrees of eucharistic sharing we have in mind are: first, mutual eucharistic hospitality; then the participation of ministers, excluding presidency or concelebration, in each other’s churches’ eucharistic services (as provided for in our ecumenical canons and ecumenical agreements); finally, full interchangeability of ministries as part of full visible unity” (n. 37).

### *The Catholic Faith*

Another major reservation which the Church of England has is related to the requirement “that communicants should manifest Catholic faith with regard to the Eucharist and that their action should express visible communion with the Catholic Church” (n. 38). They state: “we are concerned that too much weight is being placed on the sacramental intention of the communicant (rather than of the Church) and we believe that pastoral and theological difficulties could arise if this approach were generally applied to the recipients of the sacraments.” The focus of their dissatisfaction with the norm of *One Bread One Body* has to do with the concept of “Catholic faith.” The Bishops are at pains to point out that Anglicans see themselves very much as “members of the One Holy Catholic and Apostolic Church of Christ, through faith and baptism” (n. 40). From this, it is clear that “Anglicans understand the term ‘Catholic’ in a different sense to the one apparently intended in this document (i.e., *One Bread One Body*)” (n. 39). Indeed, “Anglicans have consistently recognised all those who have been baptised with water in the name of the Holy Trinity as members of the Catholic Church.” The Bishops go on to emphasise Anglican belief in the Eucharist as central to the life of Christians; they “believe that they have retained the full integrity of the eucharistic mystery” (n. 41).

They wonder how this “Catholic faith” should be measured or tested. They are sensitive to the distinction which they attribute to Pope John XXIII “between the substance or deposit of faith and the various ways in which it is expressed in

<sup>56</sup> “They also find confusing the qualifications set to this prohibition by the permission given for it in exceptional or unique circumstances” (*The Eucharist: Sacrament of Unity* n. 34). Surely what the Catholic Bishops are doing is establishing guidelines to prevent the use of *communicatio in sacris* indiscriminately as a means towards Christian unity.

diverse contexts” (n. 46). They say that “Anglicans would be unwilling to press lay people for an explicit form of doctrinal assent with regard to eucharistic theology. They would be inclined to say that communicants manifest the Catholic faith concerning the Eucharist when they identify themselves with the faith of the Church by their active participation in the liturgy, including reciting the Niceno-Constantinopolitan Creed (or the Apostles’ Creed), and by the assent that they make through congregational acclamations and the various Amens said by the people – not least at the end of the Eucharistic Prayer and at the moment of actual reception of the sacred elements. Anglicans would wish to ask: Is not that enough?” (n. 47).

### *Inter-Church marriages*

The pastoral discipline set out in *One Bread One Body* for partners in an inter-Church marriage comes in for some strong comment. The Bishops state that in such a situation “there is a double bond of unity in Christ” between the partners “through baptism and through marriage.” But, in their view, “that twofold sacramental bond seems to be nullified when communion together at the Eucharist is forbidden” (n. 42). They assert that “the discipline defended in *One Bread One Body* does not really face the issue raised by a community of Christians of different traditions who nevertheless constitute a Christian community in themselves, such as the ‘domestic church’ of the family and the community that exists in many ecumenical institutions and through local ecumenical commitments.” Referring to the exception to the norm of eucharistic sharing, the Anglican Bishops note “that the interpretation of the norm on the admission of Christians of other ecclesial communities to communion does not consider that there may be unique occasions for joy and sorrow in the life of institutions and communities” (n. 43).

As a solution to the question of joint worship by partners in a mixed marriage, the House of Bishops rejects the suggestion in *One Bread One Body* that a blessing, understood as a ‘spiritual communion’ is sufficient for the party who is not a member of the Roman Catholic Church. For them, “a blessing is normally appropriate for catechumens and penitents, rather than for those who are regarded by their own churches as spiritually prepared to receive Holy Communion” (n. 45).

### *The Catholic Church*

They also address the question of being in communion with the Catholic Church: “Anglicans wholeheartedly affirm the principle at stake here: the inseparable connection between sacramental and ecclesial communion” (n. 48). Their reservation on this point is radical: “Anglicans understand the term ‘Catholic Church’ in a broader and more inclusive sense than the sense that is operative in *One Bread One Body*.... Anglicans rejoice that in the Eucharist they are brought

into closer communion, not only with the Lord and with fellow worshippers, but with the whole Church, made up on earth of local churches, those that are episcopally ordered (as Anglicans believe all churches should be), being led by their bishops. Again, Anglicans would wish to ask: Is not that enough?" (n. 48). It is clear that at the root of many of their reservations lies the manner in which the Catholic Church uses that name for itself. For the House of Bishops, this colours much of the doctrine and discipline contained in *One Bread One Body*.

The final reservation, closely linked to what has been said already is what the Church of England Bishops believe to be the fact that "the two criteria are not applied to the Eastern Churches in the way that they are to the churches of the Anglican Communion. Reciprocal eucharistic hospitality between the Roman Catholic Church and the Eastern Churches is permitted, in spite of the latter not being in communion with the Pope and not accepting the doctrine of transubstantiation, though they do, of course, like Anglicans, believe in the doctrine of the real presence" (n. 49). From this it is clear once again that the Church of England sees itself as utterly distinct from the other ecclesial communities rooted in the Reformation and the Bishops conclude by remarking: "we would therefore be interested in exploring issues of ecumenical consistency in this connection."

To sum up, the principal reservations expressed by the Church of England Bishops appear to be the following:

- an unease at the identification of the Roman Catholic Church with the One Holy Catholic and Apostolic Church of Christ;
- an unease – to put it mildly – at the insistence by the Catholic Church that Anglican orders are invalid;
- an unease at the precise nature of the doctrine concerning the Eucharist contained in *One Bread One Body*: it presumes a uniformity of eucharistic theology to which the Anglican Communion cannot subscribe;
- an unease at the disciplinary conclusions drawn by the Catholic Bishops from the teaching set forth in *One Bread One Body*;
- a lack of satisfaction at the different treatment given to members of the Eastern Churches not in full communion with the Catholic Church.

It must be reiterated that these reservations are expressed in a context which is more than positive and the Bishops conclude their response by stating: "the present response is offered as further confirmation of what we see as genuine substantial agreement and as a contribution to the same patient search for full visible unity. We look forward to continuing the dialogue on this and related issues" (n. 51).

*Towards a conclusion: A canonical consideration or two*

In this narrative, I have sought to present some elements of the ongoing search for *communicatio in sacris* or sacramental sharing between the Catholic Church and other Churches and ecclesial communities not in full communion with the Catholic Church. The principal elements of this search are contained in the document *One Bread One Body* and the Church of England response *The Eucharist: Sacrament of Unity*.

What are Catholics, particularly canonists, to make of the norms contained in *One Bread One Body*? First and foremost, it is necessary to consider the juridical nature of the norms. They have not been promulgated by the Bishops' Conferences involved, nor have they received the *recognitio* of the Holy See as required by canon 455, §2. So the norms cannot be regarded as laws in the strict sense. So what are they? It is clear, from even a cursory examination, that three of the four norms are largely a repetition or re-working of the text of canon 844 or the 1993 *Ecumenical Directory*. The commentary to these three norms provides a more precise context in which to read and interpret what is already the law of the Church.

Insofar as there is anything new in the norms, it is to be found in the first of the two norms dealing with those Churches and ecclesial communities not in full communion with the Catholic Church who are not separated Churches of the East. This is the norm which caused most of the controversy; this is the norm to which the Bishops devoted most of their attention in the commentary. Yet, even here, the Bishops' Conferences did not make law. Rather, they sought to fulfil the role given to them by canon 844, §4. They are expressing their judgement as to what constitutes a "grave and pressing need" outside of the danger of death for the lawful administration of the sacraments to Christians not in full communion with the Catholic Church. Each diocesan Bishop remains free to promulgate laws within his own diocese concerning sacramental sharing. *One Bread One Body* gives an insight into how the Bishops of Britain and Ireland understand the issues to be addressed in such laws. Although it is nowhere stated, it would appear that the norms in this document have a status similar to that of the Canadian Bishops' *Policy on cases of serious need in which the sacraments of Penance, Eucharist and Anointing of the Sick may be administered to Anglicans and baptised Protestant Christians*, i.e., "the approval of the Permanent Council (of the Canadian Conference of Catholic Bishops) granted no juridical authority to the Policy, but only permitted its distribution to the diocesan bishops."<sup>57</sup> By issuing the teaching document containing the four general norms, the Bishops Conferences have given the faithful a clear statement of their understanding of what is involved in *communicatio in sacris*.

<sup>57</sup> J. M. Huels, "A policy on canon 844, §4 for Canadian dioceses," 91, footnote 1.

It must be said that the document is a remarkable work of collaboration between three Bishops' Conferences. I believe it is an honest effort to address some very serious issues facing the Catholic Church not just in Britain and Ireland but throughout the world. I believe the issues raised about the pain of separation experienced by those working together for the unity of Christians and the pain experienced by inter-Church families is very real and has echoes in many different countries. But, I also believe that the document fails on the practical level to provide an adequate response to the realities involved.

There is an underlying presumption that a common approach to all matters relating to sacramental sharing is possible; but, the actual situation which obtains within the three Bishops' Conferences is very different: in England and Wales, the Catholic Church constitutes a small minority within a territory where the Church of England is the Established Church; in Scotland, the situation is somewhat similar, except that the Church of Scotland is not Anglican but Presbyterian; in Ireland, there are two very differing situations – in the Republic of Ireland, the Catholic Church constitutes a very large majority (over 95% of the population), while in Northern Ireland, it constitutes a sizeable minority (47% of the population) with a history of having suffered discrimination. To believe that the same two general norms<sup>58</sup> can be applied to such utterly diverse realities is, I believe, excessively optimistic. It would not be surprising to find that, as they are stated, the norms will be honoured more in their breach than in their observance.

A further complication arises out of the fact that the norms themselves are part of a much larger document. The text of the norms is short and is based on the text of canon 844 and the *1993 Ecumenical Directory*. But they are accompanied in the document by lengthy commentaries. On a juridical level, it would be easy to distinguish these comments from the text of the norm and to point out that these additional remarks do not have any juridical force. But they do give a very clear insight into the mind of the Bishops. Whatever debate there might be on a juridical level about the relationship between the actual norm and the commentary, psychologically, the document has been read and accepted as a unit. No distinction is made between the different parts of the document and the Bishops have been portrayed as closing doors to dialogue and nailing them shut. That was not their intention, but that is how the document has been perceived, by others and by Catholics. One wonders what would have happened if the Bishops had simply promulgated the text of the norms and let practice develop before issuing more detailed instructions.

<sup>58</sup> I am focusing here solely on the pair of norms which relate to Churches and ecclesial communities other than the separated Churches of the East.

## *The broader perspective*

In this presentation, I have sought to give some idea of how sacramental sharing is being dealt within Britain and Ireland, with a particular emphasis on the situation in Northern Ireland. *One Bread One Body* and *The Eucharist: Sacrament of Unity* are two major events in the life of Christianity. Two major protagonists in the quest for the unity of Christians have set forth their position on matters which lie at the very essence of Christian living. In particular, the norms contained in *One Bread One Body* set forth very precise parameters for *communicatio in sacris* with members of various Churches and ecclesial communities not in full communion with the Catholic Church. *The Eucharist: Sacrament of Unity* criticises not only the norms but some of the underlying doctrine and theology, noting that part of the Catholic Bishops' document are not at all friendly towards the Anglican Communion. The two documents and the comment which they generated bear witness to the fact that the overall atmosphere which prevails in Britain and Ireland does not appear to be very favourable to an unrestricted form of sacramental sharing between the Catholic Church and the major Christian faith communities.

On an official level, the relationship between the Catholic Church and the various Provinces of the Anglican Communion found in Britain and Ireland is warm and friendly. For this reason, many experience the inability to share in the sacraments as a cause of great personal pain and sadness; that much is clear from many of the responses made to *One Bread One Body*. On another level, that of the partners in inter-Church marriages, the pain and sadness take on another dimension, particularly if both partners are committed to their faith and membership of their own Church. But on a more widespread level, I would suggest that sacramental sharing as a regular feature of life in Britain and Ireland is not really an issue at all. This is particularly the case in Northern Ireland. Apart from the genuine sorrow experienced by the relatively small number of dedicated participants in inter-Church dialogue, it is difficult to see the role of *communicatio in sacris* in a society where resolutions are still regularly passed by one community against another,<sup>59</sup> where churches of all traditions are deliberately destroyed by members of other churches, where what one community regard as religious processions are prevented by the other, where families are intimidated out of their

<sup>59</sup> An example of such resolutions is the following: "As Orange Brethren, we are proud of our Protestant Reformed Evangelical Faith. It is Personal – Faith in Jesus Christ as Lord and Saviour; Biblical – The source of our beliefs; and Practical – It directs and Guides our thinking and actions.

While deploring the misuse of "Protestant" as a secular, social and political term, we are most concerned by the weakening of Protestantism, especially by those who fail to stand fast in their Faith.

We regret the conduct of those Protestant Clergy and Laity who are less concerned with the promotion of the Faith of their own particular denominations, than with the ecumenism which brings them into close relations with Roman Catholic Clergy and Laity...." (The First Resolution for the celebration of the Twelfth of July 2000, *Banbridge Chronicle* 6<sup>th</sup> July 2000, 3).

homes because they live in a “mixed” area, where little school girls have to run the gauntlet of hatred just to go to school, where complete polarisation is the norm.

To consider a widening of sacramental sharing as a solution to the difficulties of this kind is, I believe, not only naïve, but premature. A great deal of work needs to take place in our divided society before *communicatio in sacris* becomes anything like a real part of the equation: human development, community development, communication skills, basic social skills, all need to be in place before doctrinal and practical differences between Churches can be examined on a wider scale. Of course, for some living in the situation, this will not be a sufficient response. The two radical positions concerning *communicatio in sacris* are well known: it is an expression of full communion achieved and must not be used as a means to achieving that end; it is a means of furthering the communion which already exists and leads everyone to work towards the ultimate goal. *One Bread One Body* and *The Eucharist: Sacrament of Unity* have not resolved all the issues. However, they have identified ever more clearly the points of convergence and divergence between the Catholic Church and the Anglican Communion. In the context of a real dialogue between Christians, such clarity can only be of benefit. To fudge over the differences revealed in this recent exchange would only be an exercise in politeness and, ultimately, would not, I believe, advance the cause of Christian unity.

#### *A sort of epilogue*

When I began this study, I read around all I could find on the topic *communicatio in sacris*. It soon became evident to me that, in a seminar of this kind, I could never scratch the surface of all the major issues. The more I read, the more it became obvious to me how enormously vast and rich is the whole area of inter-Church dialogue and the quest for unity of Christians. The sheer scale of the subject terrified me. Then I began to focus on the situation nearer home. As I read around that and concentrated my attention on the two documents, I found that I had an experience similar to that of Ebenezer Scrooge in *A Christmas Carol* when the third phantom “shrunk, collapsed and dwindled down into a bed-post.” I hope this presentation of how I see the issue in Britain and Ireland is of assistance to you during this Convention when we consider the overall theme of “*Ecclesia in America: One Church, Many Peoples.*”

I do not want to leave you, however, with the impression that all is bleak in ecumenical relations in Ireland. I should like to finish by quoting someone regarded as the doyen of ecumenism in Ireland, Michael Hurley. He was writing just prior to the appearance of *One Bread One Body*:

Churches committed to the promotion of Christian unity, Churches in process of uniting cannot be optimistic, carried along by success, 'hoping with hope,' as it were. Their experience will be characterised rather by much disappointment and failure; they will not, however, lose hope on that account but go on 'hoping against hope.' Newman's words when he delivered his famous sermon on 'The Second Spring' at the first synod of the new English Catholic hierarchy at Oscott on 13 July 1852 may be only too relevant. The second spring of the ecumenical movement may, like the second spring of the Catholic Church in England,

'turn out to be an English spring, an uncertain, anxious time of hope and fear, of joy and suffering, – of bright promise and budding hopes, yet withal, of keen blasts, and cold showers, and sudden storms.'<sup>60</sup>

Anyone who knows Britain and Ireland will know that an Irish spring is similarly unpredictable!

<sup>60</sup> M. Hurley, *op cit.*, 7.

## CANONICAL MINISTRY TO MIGRANTS

MOST REV. RICARDO RAMÍREZ, C.S.B.  
SR. CATHERINE DARCY, R.S.M.

### *I. Introduction*

Words from Pope John Paul II's apostolic exhortation *Ecclesia in America* seem to provide a fitting introduction to a seminar concerning ministry to migrants:

...the synod fathers recall that 'the Church in America must be a vigilant advocate, defending against any unjust restriction the natural right of individual persons to move freely within their own nation and from one nation to another. Attention must be called to the rights of migrants and their families and to respect for their human dignity, even in cases of nonlegal immigration.' Migrants should be met with a hospitable and welcoming attitude which can encourage them to become part of the Church's life, always with due regard for their freedom and their specific cultural identity.<sup>1</sup>

Not only the Church universal but also the United States Catholic Bishops, in their recent statement *Welcoming the Stranger Among Us: Unity in Diversity*, have spoken powerfully concerning the promotion of human rights for immigrant persons.<sup>2</sup> I suspect that Pope John Paul II as well as many of our Catholic bishops would be quite pleased with the city council of this year's CLSA convention city for recently declaring the City of Albuquerque to be an Immigrant Friendly City. The Albuquerque City Council's resolution, which was signed into law on January 12, 2001, makes equally available to employed immigrants, documented or not, a host of city services and programs that are available to United States

<sup>1</sup> John Paul II, Apostolic Exhortation, *Ecclesia in America*, January 22, 1999 as taken from English translation in *Origins* 20: 27(February 4, 1999) 565, 567-592 at 586.

<sup>2</sup> United States Catholic Bishops, *Welcoming the Stranger Among Us: Unity in Diversity*, (Washington, D.C., United States Catholic Conference, Inc., 2000).

citizens living in Albuquerque.<sup>3</sup> The resolution supports and encourages that employed undocumented persons have reasonable access to health care, credit, driver's licenses, insurance, education and all public services. The measure also establishes an Immigrant Resource Program and provides for its funding. While many of us applaud such efforts, we may also need to look at ourselves to see just how immigrant friendly we are in the Church. The 1971 World Synod of Catholic Bishops document entitled *Justice in the World* recognizes that "anyone who ventures to speak to people about justice must first be just in their eyes. Hence we must undertake an examination of the modes of acting and of the possessions and lifestyle found within the Church herself."<sup>4</sup> We then need to ask: What kind of access do baptized immigrants have the spiritual goods of the Church, especially the Word of God and the sacraments? Do we truly believe that no one in the Church should be marginalized? Are we an immigrant friendly Church?

We know that in order to understand a provision in canon law, we need first to consider the context of that law. Usually by context we mean how the text relates to other statements of law. Today, however, we are also going to consider the context meaning the lives of immigrants, most specifically Hispanic immigrants. Often because their lives have been shattered by political turmoil, governmental repression or by poverty many immigrants experience a deep sense of confusion, uprootedness and hopelessness. If they are in our nation undocumented, they probably live in terror. Bishop Ramírez will share insights he has gained from his many years of working closely with our most newly arrived brothers and sisters.

Following Bishop Ramírez's presentation, I will then present some reflections on two of the most troublesome situations to which we have been asked to respond in our diocesan offices located in Las Cruces. Essentially both these situations involve marriage for the immigrant. The first one we will consider will be getting out of marriage, so to speak. That is, the question concerning gaining competence to accept a petition for a decree of invalidity for a person who was married in their nation of origin and whose former spouse remains in that other nation as well. Secondly, we will consider the options available to an undocumented person who is in a process of attempting to regularize his or her immigration status and needing to avoid a civil marriage status getting married in the Church.

Bishop Ramírez will then provide his response to these pastoral situations and

<sup>3</sup> Fourteenth Council of the City of Albuquerque, Council Bill, no. R-151.

<sup>4</sup> World Synod of Catholic Bishops, *Justice in the World*, November 30, 1971, as taken from English translation in Synod of Bishops, *The Ministerial Priesthood and Justice in the World*, (Washington, D.C., National Conference of Catholic Bishops, 1982) 40.

also provide a concluding statement. Then comes what we feel will be the most valuable part of this seminar: the discussion. Purposely, we have focused the content of this seminar more narrowly than the advertisement suggested in hopes that we can provide for a quality exchange among all of us as participants. We look to you and your canonical experience to offer your insights that can help us all respond more justly and effectively to immigrants as many of them are poor and for them the Church has declared, many times over, it has a preferential option.

## *II. The Pastoral Context of Ministry to Immigrants*

It is my turn to welcome you to the state of New Mexico. I hope you have given yourselves time to enjoy the unique beauty of this part of the world. Some may even have a chance to travel to the southern part of the state and enjoy the charm of our Diocese of Las Cruces, where you will enjoy the unblemished sunny skies of our Indian summer, the white sands between Las Cruces and Alamogordo and the beauty underground at the Carlsbad Caverns. In our part of the state, you can delight in God's creation above the ground, on the ground and under the ground!

I am here to express the concerns that other border bishops and border canonists have regarding the pastoral needs of immigrants. I very much suspect that many other dioceses in this country which serve immigrants are equally concerned with some of the issues we will present today.

At the outset of my remarks, I would like to express my admiration and gratitude to you canonists for your pastoral approach to the law. Over the years of close collaboration with those who work in my tribunal, I have become aware that you are among the most pastoral persons working in the Church.

The pastoral context to which I am referring is articulated, first of all, in the Second Vatican Council, in post-conciliar statements, in the Holy Father's post-synodal document, *Ecclesia in America*, and in the latest U.S. Catholic Bishops statement on immigrants, *Welcoming the Stranger Among Us: Unity in Diversity*. I would also like to repeat excerpts of relevant interventions made at the Synod for America, in which I had the privilege to participate.

In the New Norms on the Pastoral Care of Emigrants, Pope Paul VI cites the Council's *Decree on the Pastoral Office of Bishops* (n. 18):

...the Ecumenical Council recommended special solicitude for the faithful *who, because of their condition of life, cannot sufficiently make use of the common ordinary pastoral care or are completely*

*cut off from it as are very many migrants, exiles and refugees, it earnestly exhorted the episcopal conferences, particularly the national ones, to study carefully the more pressing problems confronting those mentioned above and, through common agreement and united efforts, to look to and to promote the spiritual care of those people by suitable means and institutions.*<sup>5</sup>

Pastoral care must relate to people at *their* point of need and pastoral assistance must take into account the *total* human needs of migrants. The document encourages considerable flexibility on the part of dioceses in responding to the needs of immigrant peoples.<sup>6</sup>

In *Ecclesia in America*, John Paul II writes that “The goal of the Church is to ensure that no one is marginalized.... Concern for those most in need springs from a decision to love the poor in a special manner.... By her lifestyle, her priorities, her words, and her actions, she [the Church] must testify that she is in communion and solidarity with them.”<sup>7</sup>

The U.S. bishops approved a statement on immigrants November, 2000. In its strong language it says:

... immigrants ... call us out of our unawareness to a conversion of mind and heart through which we are able to offer a genuine and suitable welcome, to share together as brothers and sisters at the same table...<sup>8</sup> ...We bishops must confess, as well, that recent immigrants have not always encountered welcome in the Church. Today immigrants of all sorts too often face prejudice within the Church. At times their legitimate desire to worship in their own language, according to their own traditions, has not been satisfied.<sup>9</sup> We bishops commit ourselves with renewed energy to display a spirit of welcome, and we encourage all those involved in ministry to share in that spirit.<sup>10</sup>

<sup>5</sup> Paul IV, *Motu proprio, Pastoralis migratorum cura* (New Norms on the Pastoral Care of Emigrants), August 15, 1969, from English translation found in *Canon Law Digest* 7: 188-191 at 189.

<sup>6</sup> Gerald A. Arbuckle, “Migrants and Pastoral Care,” *The Jurist* 46(1986) 461.

<sup>7</sup> John Paul II, 584.

<sup>8</sup> United States Catholic Bishops, 4.

<sup>9</sup> *Ibid.*, 23.

<sup>10</sup> *Ibid.*, 41.

Intervention after intervention at the Synod for America called for greater *communion, solidarity, collaboration, dialogue* and *unity* in order to confront the plight of the poor in the hemisphere, and in particular, that of the immigrant. Of note was the intervention by Bishop Raymundo Peña of Brownsville, Texas, who addressed border issues. He said:

The ecclesial life is developing on the border between Mexico and the United States can be a microcosmic model for our plan, given the fact that it does not only divide two nations, but also serves as the place of encounter for North America and Latin America, the first and third worlds and clearly divergent cultures. How we face the challenges on the border can help us face the same challenges throughout the continent.... The collegial collaboration that is developing between the particular Churches of the border can serve as a model for the collaboration between Latin America and North America that the signs of the times demands.<sup>11</sup>

In the *Message* of the Synodal Fathers, we find the following words, "To you, immigrants who find yourselves unwelcome in the lands where you have moved, we send words of encouragement. The Church has walked alongside generations of migrants in the march for a better life, and she will not cease to stand by you with every kind of service."<sup>12</sup>

The presence of immigrants in our country is obviously not limited to our U.S. – Mexican border areas. Hispanics from every Latin American country are in every one of our dioceses. Mexican immigrants reside now in areas far from the border. I am told that over 50 percent of the Catholics in the Archdiocese of Atlanta are Mexicans. And these are usually Catholic.

The Catholic Church is profoundly important for the Latino immigrant. The Church is symbolic of their place of origin; it reminds them of whom and what they left behind. It is the place where they are affirmed by God and where they are reminded of their God-given dignity. They find their authentic identity in the Church.

Immigrants are usually very self-motivated, hard-working and bring their strong

<sup>11</sup> Synod of Bishops, "Special Assembly for America: Encounter with the Living Jesus Christ, the Way to Conversion, Communion and Solidarity in America," Summary, Tenth General Congregation, November 22, 1997, [00138-02.02] [00126].

<sup>12</sup> Synod of Bishops, *Message of the Special Assembly for America*, December 11, 1997, no. 19.

family values. Many risk their lives to enter this country and are willing to face the dangers of the desert and the hazards of the ocean. The children of those who do make it, either legally or not, become high achievers and learn the English language very quickly. Immigrants are often the best their country of origin produces.

The U.S. bishops point out that some immigrants and refugees enjoy the sanction and support of the U.S. government, while others have been denied attention and systematically deported, and some have been subjected to humiliating incarceration under deplorable conditions. Disparities in treatment, complicated and drawn-out asylum procedures, and long waits for service, contribute to the already difficult process of adjustment that individuals and families in flight have to face.<sup>13</sup>

We are all familiar with the economic, housing and language difficulties that immigrants face. To this can be added the negative stereotyping and outright discrimination. Today the anti-immigrant spirit in our country is very real. The Statue of Liberty does not welcome everyone equally.

In a talk given earlier this year to Hispanic liturgists, I made the following remarks:

In another time, when marriages and families were more stable, canon law did not affect Hispanic people's religious lives as it might today. Now there are probably as many divorces and re-marriages among Hispanics as there are among other groups in the United States. For remarried people to participate fully in the liturgical and sacramental life of the Church, certain canonical conditions have to be met. I am, of course, referring to the process leading to the declaration of nullity, more commonly known as an annulment. This canonical process is probably very strange and new to many of our people. Many may have the impression that annulments are for the rich, the powerful and those with influence in the Church. Many find it an almost impossible process because of the paperwork and what might be perceived as intrusion into their private lives by strangers. Those who have never married and are simply living together and who would like to receive the sacraments might find diocesan and parish policies which they may not have had in their native lands. Some will find it difficult to obtain the documents and paperwork from remote villages and will not meet the requirements

<sup>13</sup> United States Catholic Bishops, 10.

of those who interpret Church law in a strict manner. The temptation for these will be simply to keep on living the way they are and deprive of the full liturgical life of the Church or leave the Catholic Church altogether.<sup>14</sup>

We bishops are in need of help from you, the canonists, to make real the welcome the Church promises to everyone. We call on you to help us find ways to serve those immigrants who hunger for the sacramental life of the Church but who find legal barriers, both in civil law and canon law, when they wish to marry or when they seek a declaration of nullity. I do not think it is fair nor just to simply say, “I’m sorry, but we cannot help you.” We must do all we can to serve them through all our diocesan institutions, and departments and offices, including our tribunals.

In the spirit of *Ecclesia in America* discussion and dialogue are necessary between the United States and Canadian canonists on one side with those of our neighbors to the south. I close this section with the words of one of the synodal fathers. Referring to our responsibility to serve immigrants, Archbishop Pavanello of Brazil proposed “that we organize a joint missionary effort so that the faithful perceive that we love them and look after them with tenderness and concern.”<sup>15</sup>

### III. *Several Canonical Challenges*

For those of us working in tribunals one of our most daunting challenges can be found in attempting to serve a person seeking a decree of invalidity for a marriage which occurred in another nation and for which the former spouse remains in that or some nation other than the United States of America. We realize that when immigrant persons come to the Church seeking justice, that is, seeking the vindication of certain rights. These rights include: the right to be treated with dignity and respect, the natural right to marry, the right to participate in the Church’s sacramental life and the right to vindicate and defend their rights in a Church court of law with all the procedural rights afforded in such a court.<sup>16</sup> While the prevailing Church law is very deliberate in extending the rights of respondents

<sup>14</sup> Ricardo Ramírez, “Envisioning Hispanic Liturgy: Challenges for the *Instituto* at the Beginning of the Millennium,” *Instituto de Liturgia Hispana* Board Meeting, February 23, 2001.

<sup>15</sup> Synod of Bishops, “Special Assembly for America: Encounter with the Living Jesus Christ, the Way to Conversion, Communion and Solidarity in America,” Summary, Ninth General Congregation, 22.11.1997, [00121-02.04] [00110].

<sup>16</sup> Craig A. Cox, *Procedural Changes in Formal Marriage Nullity Cases from 1917 to the 1983 Code: Analysis, Critique and Possible Alternatives*, JCD Dissertation, Catholic University of America, 317 - 319.

and rightly so, we also know that petitioners, those seeking decrees of invalidity also have rights and “to favor one party against another is to deny justice.”<sup>17</sup> We know too that the petitioner is not some abstract entity. Rather, the petitioner is a real, live human being who may well feel that he or she has no where to turn but to the Church. What happens when immigrant persons, who perhaps had to flee their nations of origin in order to escape political tyranny or merely to feed their family, walk into our office seeking a decree of invalidity.

We turn to canon 1673 of the 1983 *Code of Canon Law* to see what possibilities for competency exist. The first two provisions of canon 1673, the place of marriage and the domicile of the respondent, will refer this individual back to his or her nation of origin. Often these forums involve places where diocesan tribunals are for all practical purposes not functioning. Ricardo Garcia, in his 2001 licentiate thesis entitled *Obtaining Consent and Establishing Competence for Marriage Nullity Cases Involving Hispanic Immigrants who Live in the United States*, provides us with some recent statistics in this regard, especially for Mexico, Central and South America.<sup>18</sup> One of the bleakest pictures involves Honduras, a nation of 3.8 million Catholics. The year 1997 saw 12 cases pending at the beginning of the year, 7 cases introduced and only 2 cases were closed. How can it be said that these tribunals are morally available to petitioners?<sup>19</sup> Furthermore, these immigrants may have little if any discretionary funds beyond providing for the most basic of necessities. Often the persons about whom we are speaking may lack the skills needed to work the tribunal system in this country not to mention dealing with one across international lines. Even if the tribunal in the immigrant’s nation of origin is operative and efficient, it may well be asking the impossible to have that an immigrant, of limited literary skills and with little or no financial means, to access it.

The third provision in canon 1673 provides that the domicile of the petitioner provide a forum for marriage cases. Here we know that such a provision will only be valid if the respondent’s judicial consents (after hearing the respondent) and that

<sup>17</sup> *Ibid.*, 337.

<sup>18</sup> For example, in Mexico a nation of 89 million Catholics, at the beginning of 1997, there were 2,174 cases pending in Mexican tribunals. During that year a total of 893 were introduced and only 594 were decided by judicial sentence. See Ricardo Garcia, *Obtaining Consent and Establishing Competence for Marriage Nullity Cases Involving Hispanic Immigrants Who Live in the United States*, JCL Dissertation, Catholic University of America, 2001, 32-33.

<sup>19</sup> John Hesch distinguishes between legitimate/theoretical availability and moral availability of fora. See John B. Hesch, “Competence of Tribunal When a Respondent’s Whereabouts Remain Unknown,” *Roman Replies and CLSA Advisory Opinions*, ed. Kevin Vann et al., (Washington, D.C.: Canon Law Society of America)1994, 150.

both parties need to live within the same episcopal conference. Therefore, this provision does not help in the scenario we have described.

### *The Forum of Proofs*

The fourth provision, the forum of proofs, may indeed hold some possibility. Canon 1673, 4° reads: In cases concerning the invalidity of marriage which are not reserved to the Apostolic See, the following [is] competent: the tribunal of the place which in fact most of the proofs are to be collected, provided that consent is given by the judicial vicar of the domicile of the respondent, who is first to ask if the respondent has any exceptions to make. In looking at this possibility, we need to consider a 1989 declaration put forth by the Supreme Tribunal of the Apostolic Signatura.<sup>20</sup>

This declaration put forth a number of conditions on the use of the forum of proofs.<sup>21</sup> For our purposes today, these conditions include: the respondent's judicial vicar's consent; and the judicial vicar's consultation with the respondent. Both need to be positively established. This consent cannot be presumed from lack of response. This step should take place prior to the joinder of issues and the citing of the parties. In addition, the forum of proofs must take into account all the proofs, not only those offered by the petitioner. Not only considered is the number but also the quality or weight of the proofs. The greater part of the proofs is to be found not only in the same nation but in the same place. While some would contend that the same place is the diocese, that does not seem to be clear either in the canon or in the 1989 declaration. The Signatura's declaration does make clear that the respondent's judicial vicar as well as the respondent, for the sake of exercising his or her right of defense, enjoy the right to receive or collect all pertinent information necessary to reach a duly informed opinion. They have a right to know what proofs have been put forward. These requests cannot be considered a sign of distrust. Rather, such requests are entirely legitimate because it pertains to the judicial vicar of the respondent to grant the needed consent only if it appears to him that the requesting tribunal is, in fact, the forum of proofs.

It seems that this 1989 declaration is an attempt to close the gaps and ensure that perceived abuses, the likes of which occurred during the application of the American Procedural Norms and even after the application of the prevailing law,

<sup>20</sup> Archille Silvestrini, "Declaratio – De foro plearumque probationum," April 27, 1989: *Acta Apostolicae Sedis* (1989) 892-894 (as cited in Garcia). For an English translation of the declaration, see Frans Daneels, "The 'Forum of the Most Proofs.'" *The Jurist* 50 (1990) 289-309.

<sup>21</sup> *Ibid.*

would no longer occur.<sup>22</sup> For some, at least the compelling question is: How can we be certain which tribunal is the forum of proofs prior to the investigation? John O'Rourke suggests: "Concretely this means that the testimony supporting the case would have to be known before the trial began and would have to be such that one was well on the way to forming a judgement before the trial began."<sup>23</sup> And yet, the consent of the respondent's judicial vicar needs to be sought and obtained prior to the joinder of issues and citing of the parties, i.e., prior to the investigation.

### *Respondent's Whereabouts Unknown*

Another provision which may offer us some possibility is what we can do when a respondent's whereabouts are truly unknown. Canon 1409, §2 provides that a person whose domicile, quasi-domicile and residence are truly unknown can be brought to trial in the forum of the petitioner provided no other legitimate forum is available. Therefore, in the case where an immigrant to the United States does not know the whereabouts of the former spouse and when the tribunal of the place of marriage is truly inaccessible to the petitioner, then it follows that the petitioner could petition in a tribunal located in this country. Ricardo Garcia suggests that an exhaustive investigation should precede any declaration that a respondent's whereabouts are truly unknown.<sup>24</sup> He suggests that the Apostolic Signatura recommends that a search would include "seeking appropriate information from the pastor of the parish where the parties last lived, from friends at the time of the marriage, by writing once again to the [family] of the respondent and by questioning witnesses about the matter during the process."<sup>25</sup> Garcia points out that "after a diligent investigation, if it is impossible to locate a respondent, the law allows a tribunal to claim competence in certain circumstances."<sup>26</sup> Even though a

<sup>22</sup> For a discussion on some of the perceived abuses which led to the 1989 Declaration, see Daneels, 290-295.

<sup>23</sup> John J. O'Rourke, "The Competent Forum for Marriage Cases," *The Jurist* 54 (1994)234.

<sup>24</sup> Garcia, 54.

<sup>25</sup> *Ibid.*, 52.

<sup>26</sup> *Ibid.*, 54. Here the well-utilized 1973 decree of the Apostolic Signatura comes into play. In this decree the Apostolic Signatura was responding to a regional tribunal requesting prorogation. Here the Apostolic Signatura makes it clear that the law provided the regional tribunal with the ability to act on its own behalf. The Apostolic Signatura reasons that because an extensive investigation had been conducted it was determined properly that it was impossible to contract the respondent's ordinary. However, the Signatura further reasons the fundamental reason for the requirement of contacting the judicial vicar of the respondent was more to safeguard the public interest than to further the rights of the respondent. In addition, both the defender of the bond and the promoter of justice had been consulted. Supreme Signaturae Apostolicae Tribunal, Decretum, "De foro competenti in causa nullitatis matrimonii, April 6, 1973, *Periodica* 62 (1973)590. English translation in *Canon Law Digest* 11:350-351 or *The Jurist* 44 (1984)245-246.

rigorous process of investigation and consultation needs to precede any declaration concerning the unknown whereabouts of a respondent, this provision may prove helpful in, at least, some cases.

### *Prorogation of Competency*

Yet another possibility that might enable United States tribunal to work on the case of another nation is to request the Apostolic Signatura for prorogation of competence. Garcia cites a number of examples where the Apostolic Signatura granted such a request regarding cases from Vietnam.<sup>27</sup> He points out that the requests which receive an affirmative response from the Apostolic See were those in which the petition demonstrated the impossibility of adjudicating the case in the petitioner's nation of origin, that the petitioner desired to exercise his or her right to bring the case to a Church court of law and that the rights of the respondent would be safeguarded.<sup>28</sup> These then are the three criteria which should be used to evaluate an individual case to decide whether or not the case merits prorogation of competence by the Apostolic Signatura.<sup>29</sup>

In order for the Apostolic Signatura to respond positively to requests for prorogation, the tribunal requesting prorogation needs to demonstrate that the former spouse will have a reasonable opportunity to participate.<sup>30</sup> Furthermore, to assure that these requests are not made without due cause, most recently the

<sup>27</sup> Garcia, 36-43.

<sup>28</sup> *Ibid.*, 60. Garcia further suggests that "The request for prorogation is usually not granted by the Signatura unless the following has been adhered to by the requesting tribunal: the respondent has been heard or a serious effort has been made to locate him or her; the judicial vicar of the respondent has been contacted and his opinion has been obtained; and the advantage of the right of defense has been given to the respondent." *Ibid.*, 58.

<sup>29</sup> *Ibid.*, 60.

<sup>30</sup> *Ibid.*, 58-59. Garcia also provides a listing of the information that should be included in requests for prorogation of competency: "Information concerning the petitioner (e.g. name, address, baptism status, his personal reasons for seeking a declaration of nullity for his marriage); Information concerning the petitioner's former marriage (date of wedding, place and diocese of contract, the spouse's name, address (if known), duration of the marriage, date of separation and divorce, number of children that were born of the marriage, status of the children and if child support is being followed); Information concerning the reasons requesting the rescript (a summary of the pastoral situation concerning Hispanic immigrants, the reasons why an extension of competence would benefit the petitioner and bring no harm to the respondent, the tribunal situation in the Latin American diocese in question and the financial burden that would be placed on the petitioner); Information of any correspondence or contact with the respondent's judicial vicar; The safeguards that will be taken to insure the respondent's rights are protected and his/her ability to participate in process; List of possible witnesses, their relationship to the couple and relative weight of their testimony." *Ibid.*, 59.

Apostolic Signatura has been requiring a favorable *votum* of the petitioner's bishop.

### *Promoter of Justice*

Finally, there is another possibility which has been put forward by one of my colleagues in Las Cruces. That is the use of the promoter of justice. Canon 1674 provides that the promoter of justice is qualified to challenge the validity of marriage in cases where the nullity has already become public if the convalidation of the marriage is not possible or expedient. In cases where the tribunal has been stymied in its attempts to gain competency to do a particular case, we have, at times, attempted to use the promoter of justice to challenge the validity of a marriage. Because of the response of our tribunal of second instance, we have discontinued this adaptation until the situation is resolved. However, here is the possible way of proceeding. The promoter of justice then becomes the petitioner. The person living in our diocese becomes the respondent. The actual respondent becomes a co-respondent who is given the opportunity to exercise the rights of the respondent. We then proceed on the basis of canon 1673, 2°, domicile of the respondent.

We understand that this innovative use of the promoter of justice departs from the ordinary principle of territoriality which is used not only in questions of competency for marriage cases but throughout the code. However, we do want to recognize that territoriality is a principle from which the code, itself, sometimes departs. An example here would be the establishment of personal parishes for a number of groupings among which are migrants. In his commentary of canon 518 in the new CLSA commentary, John Renken points out that the post-Vatican II instruction, entitled *On the Pastoral Care of Migrants*, recommended that in order to serve them adequately, personal parishes be established to serve immigrants who use the same language.<sup>31</sup> The use of the promoter of justice may be the non-territorial provision we need to serve adequately some migrants seeking decrees of invalidity. While this innovative use of the promoter of justice may be seen as beyond the law, even its suggestion provides yet another indication of the tremendous level of frustration experienced in small dioceses with limited resources when it comes to establishing competency in some of these cases.

<sup>31</sup> John A. Renken, "Parish, Pastors and Parochial Vicars," in *New Commentary on the Code of Canon Law*, ed., John P. Beal et al., (New York, Paulist Press, 2000) 689.

## *A Matter of Relative Incompetency*

John Hesch suggests that even if the court errs in its conclusion and the court is not competent, we are only dealing with relative incompetence, not absolute incompetence.<sup>32</sup> We know that a definitive sentence suffers from a defect of irremediable nullity if it was rendered by an absolutely incompetent judge.<sup>33</sup> We also know that marriage cases of absolute incompetence are few and far between. The only realistic example is where the highest civil official of a state or a nation brought forward a case and it was judged by anyone other than the Roman Pontiff or his delegate.<sup>34</sup> Except in extraordinarily rare circumstances, we are only dealing with relative incompetency in our tribunals. Hesch, then, concludes that because a tribunal is only relatively incompetent, in no way does an error in a court declaring it is competent nullify the tribunal processes. We may then want to ask: “What is the big deal?”

Another viewpoint suggests that even though the 1983 *Code of Canon Law* has by design limited the instances of invalidating laws, we cannot conclude that anything that does not result in invalidity is not important.<sup>35</sup> We need to recall a number of basic principles that govern the judicial work in the Church.<sup>36</sup> These include that the court needs to be connected with the controversy which in effect justifies the intervention of the court in the controversy, thus making it easier to arrive at the truth. A second principle would be that the person who is called into court should not be placed at an unfair disadvantage. We also need to be realistic that indeed in some of the cases before us, there may well be a former spouse and perhaps children who were left behind destitute in the nation of origin. Justice demands that whenever possible that the respondent participate in the tribunal process to the fullest extent provided by law. Even though the 1983 *Code of Canon Law* does not assign irremediable nullity to a case of relative incapacity, that does not mean that relative incapacity is not to be taken seriously. In fact, according to canon 1457, §1, judges can be punished for declaring themselves competent and accepting cases without a basis in law. To be sure, we need to weigh carefully all the possible canonical options and values involved in these problematic situations

<sup>32</sup> Hesch, 149.

<sup>33</sup> C. 1620.

<sup>34</sup> C. 1405.

<sup>35</sup> Among the principles which governed the formulation of the 1983 was one which directed that the number of invalidating laws be minimized. The third principle establishes that “...the Code should be reluctant to establish laws which render juridic acts null and void...” John Alesandro, “General Introduction,” in *The Code of Canon Law: A Text and Commentary*, ed. James Coriden, et. al., (New York, Paulist Press) 1985, 6.

<sup>36</sup> Unofficial consultation with Joseph Punderson, Defender of the Bond, Apostolic Signatura.

but cases should be extraordinarily rare and probably non-existent in which one is denied of his or her day in court. Perhaps there are times when, *regrettably*, we submit to relative incompetency rather than deprive one of justice all together.

### *Marriage for Certain Immigrants*

Canon 1071, §1, 2°, provides that except in cases of necessity, a person is not to assist, without permission of the local ordinary at a marriage which cannot be recognized or celebrated according to civil law. This reference, which is found under the title on marriage in chapter 1“Pastoral care and those things which much precede the celebration of marriage,” is only one of a number of instances in the 1983 code where Church law supports and encourages compliance with civil law.<sup>37</sup> In New Mexico as in some but not all other states, civil law requires that:

All persons authorized to solemnize marriage shall require the parties contemplating marriage to produce a license signed and sealed by the county clerk authorizing the said marriage.(NMSA, 1978 §40-1-40)

Equally clear are the penalties for one who is authorized to “perform the marriage ceremony” but does so in a way that does not comply with civil requirements. Such persons will be:

...guilty of a misdemeanor and upon conviction be fined a sum of not less than fifty dollars [\$50.00] nor more than one hundred dollars [\$100.00], or by imprisonment in the county jail for not less than ten days nor more than sixty days or by both fine and imprisonment, in the discretion of the court. (NMSA 1978 §40-1-19).

In a border diocese, such as the Diocese of Las Cruces, there are cases where compliance with the civil law on marriage presents a problem. Specifically, unmarried persons who are in the process of regularizing their immigration status in connection with their parents’ status jeopardize that process if they marry civilly.

Up to this point the stance of our diocese has been to conform to the prevailing civil law and discourage the celebration of marriage without adherence to the civil law requirements. We have proceeded in this way for several reasons. First of all, we recognize that civil society has the right to set some regulatory norms on the

<sup>37</sup> C. 22.

exercise of religious freedom.<sup>38</sup> This recognition which was articulated in the Second Vatican Council's declaration on religious freedom, *Dignitatis humanae*, comes about because of the Church's desire to contribute to the enhancement of the public order.<sup>39</sup> Secondly, we want to be assured that the civil effects of marriage are achieved. We know that these effects provide protections for both spouses as well as the children of such a union. Thirdly, we comply with prevailing civil law because we wish to avoid compromising the position of the Church with civil authorities. Simply put, we do not want to place ourselves in an antagonistic position with civil authorities. For the common good of both the Catholic community as well as the broader civic community, we desire to work in concordance rather than in discordance.

### *Marriages Secretly Celebrated*

The question which arises often concerns the celebration of marriage secretly, that is, without a civil license. These secret ceremonies are held in order to avoid a person jeopardizing his or her immigration process. Clearly one who officiates at such a marriage, at least in New Mexico, would be subject to prosecution for non-compliance with civil law. Canon 1130 makes clear that it is only for a serious and urgent reason that the local ordinary can permit a marriage to be celebrated secretly. The diocesan bishop then needs to judge if the seriousness of the situation is such that the detrimental effects achieved by a public celebration, or no celebration at all, are sufficiently offset by the good achieved in a secret celebration. Because of such direct involvement, the bishop may also be subject to prosecution for non-observance of civil law requirements regarding marriage in his jurisdiction. Similarly, one must take seriously any allowance of the secret celebration of a marriage and the corresponding obligation of secrecy. Canon 1131, 2° binds all who know about the marriage to secrecy. One of the reasons for not permitting a marriage to be celebrated secretly is because of the likelihood that the marriage will not remain secret. In some ways this is especially true in our border region. Marriage in Mexican families is not celebrated with a whisper, but with mariachis.

### *Extraordinary Form for Marriage*

Canon 1116, §1 provides that if a duly authorized officiant for marriage cannot be present or approached without grave inconvenience, then under certain

<sup>38</sup> Brendan Considine, *The Relevance of the Law Of California to Preparing a Marriage in the Roman Catholic Church*, JCL Dissertation, Catholic University of America, 1986, 6.

<sup>39</sup> *Ibid.*

circumstances, the man and woman wishing to contract a valid and licit marriage can do so before witnesses alone. The circumstance required is danger of death or the perception that this condition will continue for at least a month. Unlike the marriage secretly celebrated, this provision “in certain urgent circumstances honors the natural right to marry while preserving the public character of marriage.”<sup>40</sup> Traditionally “grave inconvenience” has included not only physical but moral inconvenience. A number of replies from the code commission on the parallel canon of the 1917 *Code of Canon Law* upheld that inconvenience includes situations in which a Church officiant is prohibited by civil law from officiating at such a marriage.<sup>41</sup> Concerning this, Brendan Considine concludes:

Clearly, the jurisprudential tradition of the Church recognizes circumstances in which the right of an individual to marry takes precedence over the Church’s concern for cooperation and harmony with canon law.<sup>42</sup>

Unlike a marriage celebrated secretly, this provision does not require any intervention by the diocesan bishop. While prudence would dictate that discretion be used in publicizing such a celebration, the same kind of secrecy as with marriage celebrated secretly does not apply. Also while some Church minister or ministers would have been involved in the marriage preparation for the couple and for the witness, their involvement would be less direct than if they conducted the ceremony. In fact, the provision mentioned in the second paragraph of canon 1116, that the presence of some priest or deacon, unauthorized to officiate, be present at the ceremony, probably should not be fulfilled. If anyone else, on the part of the Church, is present at the ceremony, it should be someone who is not authorized to assist at marriages. Unlike the marriage celebrated secretly, the marriage can and should be recorded in the normal fashion.

With both the marriage celebrated secretly and the extraordinary form for marriage, thorough and deliberate marriage preparation needs to precede the marriage celebration. Couples who marry without the benefit of civil recognition need to understand clearly the risk they are taking for themselves and any children born of the union. This point cannot receive enough consideration. So, let me rephrase: Church ministers as well as the man and woman desiring marriage need to weigh carefully the risks involved in being married in the Church without

<sup>40</sup> John P. Beal, “Marriage,” *The New Commentary on the Code of Canon Law* ed., John P. Beal et al., (New York, Paulist Press, 2000) 1334.

<sup>41</sup> Considine, 9-10.

<sup>42</sup> *Ibid.*, p. 10.

achieving the civil effects of marriage. After Bishop Ramirez presents some concluding comments, we will return to some of this content for some discussion.<sup>43</sup>

#### *IV. Future Possibilities*

We have been dealing with the issue of competency not only in the Diocese of Las Cruces but in the Province of Santa Fe as well. Several months ago a suggestion from the judicial vicars of the Province was to seek the concession of an indult from the Signatura to do the cases from Mexico. The judicial vicars suggested this because they felt that because Mexican tribunals are not functioning in some of the dioceses, an indult would enable them to accept the cases in question. The bishops of the province decided not to seek an indult for the time being, agreeing that the request would not meet with a favorable response at this time and indeed, it might be seen as an imperialistic maneuver. However, we did agree to pursue some other channels, such as, consultation with the Office for Canonical Affairs of the United States Catholic Conference of Bishops, the Canon Law Society of America, and insofar as possible, making contacts with the bishops and tribunal staffs in Mexico. Also, the suggestion was made that our Province work with our neighbors directly to the south, and that they submit a joint proposal.

A number of contacts have already been made that indicate a willingness on the part of either Mexican bishops or tribunal staffs to collaborate. The tribunal staff of the Diocese of Las Cruces visited the tribunal in the Diocese of Ciudad Juárez just several weeks ago and received a very warm welcome and an indication of a desire to collaborate. It seems that the building of relationships may well be pivotal to the whole issue of gaining competence to work on such cases. Perhaps those in the border dioceses could take on the responsibility to cultivate these relationships.

<sup>43</sup> The discussion which followed both sessions of this seminar centered on questions concerning the marriage of persons who are in the process of seeking to regularize their immigration status. Several expressed that of far greater concern than of a bishop, priest or deacon breaking the law is the concern of the relinquishing of the civil effects of marriage by the couple involved. Careful analysis is needed. At the business meeting, the CLSA resolved to fund an indepth canonical and civil study of the issues involved. Resolution 5: Ecclesiastical Marriages for Undocumented Persons and Those Seeking to Regularize Their Immigration Status. Be it resolved that the Board of Governors establish a task force, composed of experts in family law, immigration law, constitutional law, canon law and pastoral ministry, to address issues related to ecclesiastical marriages for undocumented persons and persons seeking to regularize their status when those marriages cannot be recognized or celebrated according to the norm of civil law, name to: 1) identify and examine basic human rights issues, such as the right to marry; 2) identify and examine legal and pastoral issues; 3) prepare a legal and canonical analysis; 4) prepare a pastoral guide; 5) propose action to be taken by the CLSA. Be it further resolved that the task force be in consultation with the USCCB and other appropriate organizations. Be it further resolved that the task force make recommendations to the membership at the 2003 Convention.

*Ecclesia in America* tells us that “no one in the Church is to be marginalized.”<sup>44</sup> Certainly, for persons seeking a declaration of nullity or a sacramental marriage, we need to find ways to make this conviction a reality.

<sup>44</sup> John Paul II, 583.

## **ANOINTING OF THE SICK: THEOLOGICAL ISSUES**

SR. SUSAN K. WOODS, S.C.L.

In the Roman Catholic imagination we may often picture the seven sacraments as lined up in a row according to a sequence that parallels the stages of human and Christian life. This obscures the interconnection between the various sacraments, and the fact that some sacraments, namely baptism and Eucharist, are more foundational to the Christian life than the other sacraments. When we do group the sacraments, as the Catechism does, the sacrament of the sick is identified as a sacrament of healing along with the sacrament of penance. We need to correct the strong association of the anointing of the sick with the sacrament of penance by retrieving a more foundational association with the sacraments of initiation—baptism, confirmation, and Eucharist.

A theology of baptism situates sickness on a continuum between birth and death. Within this continuum healing is a prophetic symbol of the anticipated final eschatological restored integrity of the person in both body and soul. Association with baptism also shifts the forgiveness of sin in the anointing from the forensic model in the sacrament of penance to the medicinal model of healing associated with the interior regeneration of baptism. Healing, both bodily and spiritual, is effected through the faith-filled prayer and medicinal anointing. The forgiveness of sin, associated with the very act of anointing, does not then require the capability of a priest for absolution. This opens up the possibilities for a minister of anointing other than an ordained priest. I will conclude by examining various ministerial possibilities in the light of the sacramental theology presented in this essay.

### *Anointing and Penance*

Sacraments speak to us through their symbols, and different sacraments evoke different images and families of metaphors. For instance, the sacrament of penance has a predominant forensic metaphor of the tribunal and the proclamation of forgiveness. The imagery of death and birth encompasses baptism. The more organic image of the body is intrinsic to the Eucharist. When the sacrament of the sick is associated primarily with penance, its connection with baptism and Eucharist is weakened. This connection with penance has also influenced the

minister of the sacrament, the priest.

The connection of the sacrament of the sick with penance has a long history. It connects physical healing with spiritual healing, a connection present in one of the foundational biblical texts for this sacrament:

Are any among you suffering? They should pray. Are any cheerful? They should sing songs of praise. Are any among you sick? They should call for the elders of the church and have them pray over them, anointing them with oil in the name of the Lord. The prayer of faith will save the sick, and the Lord will raise them up, and anyone who has committed sins will be forgiven. Therefore confess your sins to one another, and pray for one another, so that you may be healed. (James 5: 13-15)

The other foundational text is Mark 6:13: “They cast out many demons, and anointed with oil many who were sick and cured them.” This text, although it does not speak specifically of the forgiveness of sin, associates illness and demonic possession, illness of the body and illness of the soul, in the same text.

The connection between the sacrament of the sick and penance, as well as the association of the anointing of the sick with a “last anointing” of the dying, was also strengthened through the practice of public penance in the patristic period. For example, toward the middle of the third century, a period of rapid development in the practice of public penance, Origen cites this text from James as a seventh means of overcoming sin – in addition to baptism, martyrdom, almsgiving, forgiveness (of offenses), zeal, and love of God.<sup>1</sup> For Origen, penance included personal repentance and confession to a priest, with these actions then being ratified by the laying on of hands and an anointing with oil, both of these being done by priests.

Cyprian decreed that apostates should be admitted to communion only through the mediation of priests and only on their deathbeds. The rigors of public penance led to the practice of postponing penance until death. Anointing was likewise postponed and was, in fact, named “extreme unction,” that is, last anointing. The history of how the practice of anointing the sick became associated with the deathbed has strong associations with this history of penance. Innocent I, in the

<sup>1</sup> Elie Méliá, “The Sacrament of the Anointing of the Sick: Its Historical Development and Current Practice,” in *Temple of the Holy Spirit: Sickness and Death of the Christian in the Liturgy. The 21<sup>st</sup> Liturgical Conference Saint-Serge*, trans. by Matthew J. O’Connell (New York: Pueblo Publishing Company, 1975) 136-137.

year 416, also juxtaposes instruction on public penance and the anointing of the sick in his letter to Bishop Decentius of Gubbio.<sup>2</sup> The Fathers of the Council of Trent saw anointing as “the culmination not only of penance but of the whole Christian life which itself ought to be a continual penance.”<sup>3</sup>

### *Anointing and Baptism and Eucharist*

This connection of the anointing of the sick with the sacrament of penance can potentially obscure a more direct connection with baptism and Eucharist. Both baptism and Eucharist essentially celebrate the same mystery, for when all is said and done, there is really only one Christian mystery, the mystery of Christ dead and risen. Both sacraments recall the death of the Lord. Both baptism and Eucharist are sacraments of reconciliation. Both are sacraments of communion with the Church. Both are sacraments of the body, both the body of Christ and the body of the Church.

We enter the Church through baptism and are transformed into the ecclesial body of Christ in the Eucharist. For instance, the second epiclesis in the fourth eucharistic prayer reads: “Lord, look upon this sacrifice which you have given to your Church; and, by your Holy Spirit gather all who share this one bread and one cup into the one body of Christ, a living sacrifice of praise.” In short, “the font and the table are the twin pillars of the Church’s sacramental system to which all the other sacraments are related.”<sup>4</sup> They are both sacraments that constitute the Church. The introductory rite of anointing may actually begin with a reference to baptism since, if it seems desirable, the priest may sprinkle the sick person and those present with holy water. One of the possible prayers accompanying this action may be: “Let this water call to mind our baptism into Christ, who by his death and resurrection has redeemed us.”<sup>5</sup>

When the anointing of the sick is seen in the light of these foundational sacraments, we interpret the meaning of illness in the light of Christ’s death and reconnect the experience of the individual with the life of the church. The connection between anointing and the paschal mystery celebrated in baptism and Eucharist is evident in the rite’s exhortation that the minister “encourage the sick

<sup>2</sup> The translation and Latin text are in Gerald Ellart, S. J., “How Fifth-Century Rome Administered Sacraments: St. Innocent I Advises and Umbrian Bishop,” *Theological Studies* 9 (1948) 3-19. Pertinent sections are #10-11.

<sup>3</sup> DS 1694.

<sup>4</sup> Charles W. Gusmer, *And You Visted Me: Sacramental Ministry to the Sick and the Dying* revised edition (New York: Pueblo Press, 1989) 187.

<sup>5</sup> Pastoral Care of the Sick, #116.

person to offer his or her suffering in union with Christ and to join in prayer for the Church and the world.”<sup>6</sup> Readings chosen for communion of the sick or the anointing are chosen to “help those present to reach a deeper understanding of the mystery of human suffering in relation to the paschal mystery of Christ.”<sup>7</sup>

The text from James associates anointing with the forgiveness of sin. However, even this connects anointing with baptism, for reconciliation was the “second plank” thrown to a drowning person who had seriously sinned after baptism. Baptism is the primary sacrament of reconciliation, of course, for it gives us a share in sanctifying grace and removes us from a state of original sin.<sup>8</sup> The Eucharist is also a sacrament of reconciliation because it is a sacrament of the unity of the Church. Reconciliation is none other than the restoration of unity with Christ and the Church. The reconciliation experienced in baptism and the Eucharist occurs through a participation in the death of Christ.

Both baptism and the Eucharist are foundational sacraments in the Church because they celebrate this mystery with references to different scripture passages and different clusters of symbolism. In the theology of Romans 6:3-11 those of us who are baptized into Christ Jesus were baptized into his death. We are buried with him by baptism into death so that just as Christ was raised from the dead, so we too might walk in newness of life. In the theology of 1 Cor 11: 26 we proclaim the Lord’s death until he comes as often as we eat the bread and drink the cup.

### *Salvation and Healing*

A number of metaphors in Christian theology express very similar meanings: salvation, redemption, and justification. “Salvation” is based on a medicinal metaphor, for the etymological root of the word is *salus*, which means “health” in Latin. This is also related to the English word “salve,” the ointment we apply to wounds to heal them. In other words, to be saved is to be made whole or healthy. St. Augustine described the effect of grace on a person as ‘healing a wound from the inside.’ The effect of grace on a person is interior renewal in which a person is not just pronounced righteous in the sight of God in spite of sin, but is actually made healthy. The distinction between these two metaphors for salvation became important in the 16th century controversy between Protestants and Roman Catholics over the doctrine of justification.

<sup>6</sup> Pastoral Care of the Sick, #56.

<sup>7</sup> Pastoral Care of the Sick, #72, 100.

<sup>8</sup> However, only the rite of baptism for infants mentions original sin, for it is presumed that an adult who has attained reason and has made a moral decision in good faith has received sanctifying grace.

“Redemption,” on the other hand, is an economic metaphor. We are redeemed when we are “bought back” from being under the power of a captor. The early theories of atonement envisioned Christ as a victor who, being both human and divine, paid more by his death than was owed to Satan, thus releasing us from the bondage brought about by sin. Similarly, Anselm’s theory of satisfaction falls under the category. He described Christ as the only one who could pay Adam’s debt because only a person equal to the person offended could offer satisfaction for an offense.

Finally, “justification” is based on a legal or forensic metaphor. We are declared righteous before God and thus are brought into a right relationship with God. Protestant theology of justification in the 16th century held that this did not necessarily involve the interior renewal of a person, resulting in the Protestant teaching of *simul justus et peccator*, which meant that a person was simultaneously justified and a sinner. The sacrament of reconciliation is based on this forensic understanding where the priest pronounces words of absolution and pardon. In Roman Catholic theology, however, absolution does really remove sin and a person is restored to baptismal integrity. There may be nuances of difference between salvation, redemption, and justification, but the ultimate effect is the same, namely, union with God that leads to everlasting life.

The association of anointing with the forgiveness of sin, despite its long history with the sacrament of reconciliation, belongs more to the metaphor system surrounding the word “salvation” than to the forensic metaphor of “justification,” although both are juxtaposed in Jesus’ ministry. For example, in Mt 9:2-8 Jesus says: “For which is easier to say, ‘Your sins are forgiven,’ or to say, ‘Stand up and walk’?”<sup>9</sup> In his ministry physical healing signifies spiritual healing and forgiveness of sin.

Salvation also has strong baptismal connotations since baptism stresses renewal, new creation, and new birth. The forgiveness of sin associated with anointing, particularly in the absence of auricular confession, is integral to a healing extended holistically to the spirit as well as the body. This is strongly related to baptism and its position as the primary sacrament of regeneration and reconciliation. The Gospels reflect a holistic view of the human person. Jesus heals the whole person, both physical illness and spiritual sin. The physiological, psychological, and transcendent dimensions of the human person are a unified whole.

<sup>9</sup> Also Mk 2:3-12 and Lk 5:20ff.

At times, the theology of the anointing of the sick has not respected this unity, speaking of two effects of the sacrament: the forgiveness of sins and some kind of bodily effect. There is but one subject of this sacrament, the whole person, and but one effect, which is brought about “when the physical and spiritual work in and through each other.”<sup>10</sup> The sacrament is for the sick, and sickness is experienced throughout the body and spirit. As modern science tells us, when we are sick in spirit, we experience symptoms in our body. Conversely, the ills of our body affect us psychologically and spiritually. We become depressed, isolated from our friends and family, and turned in on ourselves. Charles Gusmer expresses the effect of the sacrament well: “The effects of anointing touch the religious situation of the sick person: the threat to his salvation posed by religious powerlessness and weakness of soul, as well as the temptation and burden to his faith and trust. The sick person shall be ‘raised up’ from this weakness and saved from the threat that sickness constitutes to his salvation.”<sup>11</sup>

However, another body is injured in our illness, the ecclesial body. The General Introduction to the rite states: “If one member suffers in the Body of Christ, which is the Church, all members suffer with that member (1 Corinthians 12:26).”<sup>12</sup> The Introduction to the Anointing of the Sick reiterates the same point: “All who are united in the bond of a common baptism and a common faith are joined together in the body of Christ since what happens to one member affects all. The sacrament of anointing effectively expresses the share that each one has in the sufferings of others.”<sup>13</sup>

We use bodily metaphors to speak of the church as the “mystical body of Christ.” Paul’s First Letter to the Corinthians 12:12-27 tells us that we are the body of Christ and individually members of it, each with our own role within it. The sick members of the ecclesial body are in a state of liminality with respect to the body. On the one hand, they manifest the weakness of the ecclesial body through their inability to fully participate in communal life. On the other hand, they exercise a prophetic function by visibly witnessing to the paschal life to which we are all called. They witness to the decline of physical function and the eschatological hope of new life grounded in the sacramental experience of baptism and Eucharist. Our baptism is a participation in the dying and rising of Christ.

<sup>10</sup> James L. Empereur, S. J., *Prophetic Anointing: God’s Call to the Sick, the Elderly, and the Dying* Message of the Sacraments 7 (Wilmington, Delaware: Michael Glazier, 1982) 94.

<sup>11</sup> Charles Gusmer, “Liturgical Traditions of Christian Illness: Rites of the Sick,” *Worship* 46 (1972) 531.

<sup>12</sup> Pastoral Care of the Sick, General Introduction, #52. See also *Lumen gentium*, 7.

<sup>13</sup> Pastoral Care of the Sick, #98.

Through baptism we become members of the church, the mystical body of Christ. It symbolizes at once death and new life. The Eucharist is a memorial of the death of the Lord Jesus until he comes (1 Cor 11:26). In the Eucharist we commune, not only with the body of the risen Lord, but with the body of all those who likewise commune. In the words of Paul, "Because there is one bread, we who are many are one body, for we all partake of the one bread" (1 Cor 10:17). All these sacraments are sacraments of the body. When we anoint the body of a sick person, we anoint not only that individual, but also the ecclesial body of Christ. When a person is sick, she or he is not only an individual who is sick, but that person manifests the paschal mystery of sickness (even if it is not unto death) that belongs to the ecclesial body of Christ.

### *Sickness and Death*

Pendulums swing and the theology of the sacrament of the sick is no exception. From the scholastic period in the Middle Ages and the Council of Trent in the sixteenth century, up until the first revision of the sacrament in 1972 and its subsequent expansion and adaptation in the English text approved by the National Conference of Catholic Bishops on November 18, 1982, and confirmed by the Sacred Congregation for the Sacraments and Divine Worship on December 11, 1982,<sup>14</sup> the emphasis in the sacrament was on the dying, and it was called "extreme unction," or last anointing. The arrival of the priest became associated with death, and his arrival meant that there was no longer any hope for recovery. There were times in the history of the sacrament when very few people received the 'last anointing.' The ritual penance of the sick was considered to be equivalent to the classical ancient penance. If the sick person recovered, the life-long penitential demands such as the prohibition of marital relations were in effect. Just as penance was deferred to the last possible moment, so too was anointing.

Anointing acquired an eschatological meaning when it was associated with the dying. Viewed eschatologically, anointing takes on a prophetic meaning, an "anointing to glory." Theologians such as Aloys Grillmeier interpreted anointing as "the sacrament of resurrection" and as "the Christian fulfillment of the whole man." In James Empereur's opinion, "to compare anointing to baptism, as Grillmeier does, makes it a sacrament of initiation into the heavenly Church."<sup>15</sup> That, in his opinion, along with strong eschatological interpretations, enforced the

<sup>14</sup> On December 22, 1982, the National Conference of Catholic Bishops received the decree of the Sacred Congregation for the Divine Worship, dated December 11, 1982, confirming the approval of *Pastoral Care of the Sick: Rites of Anointing and Viaticum*. The First Sunday of Advent, November 27, 1983 was the effective date for implementing the revised ritual.

<sup>15</sup> Empereur, 74.

indefensible viewpoint that anointing is a sacrament primarily for the dying. According to Empereur:

A resurrection-centered view of death inevitably understands the act of dying of a Christian in a community context. Christian death is a eucharistic action. The community celebrates the passing over of one of its members by giving thanks for the life of that person. The Christian consciousness intuitively has come to the conclusion that eucharist-viaticum is more appropriately the sacrament of the dying than is anointing.<sup>16</sup>

However, can we associate viaticum with Eucharist and disassociate anointing from any eucharistic or baptismal interpretation? This does not seem possible given that communal anointing most frequently occurs in the context of a Sunday Eucharist in many parishes today. Anointing is a profoundly eschatological action that connects our experience of sickness with the hope of wholeness. The wholeness in question is not only our own individual health, but, as we will see, the wholeness of the body of Christ, the Church.

In the revision of the sacrament after Vatican II, the sacrament of anointing was placed in the context of the pastoral ministry to the sick. Danger of death was no longer a condition for reception of the sacrament. The seriously sick, either from illness and old age, are proper recipients of the sacrament. Repetitions of anointing are permitted if the sickness becomes progressively worse. Care was taken to distinguish the sacrament of anointing of the sick from viaticum, the sacrament for the dying. The order of ministry to the dying was adjusted so that anointing precedes viaticum rather than following it, thereby correcting a misalignment that had existed since the 13th century.

It is time for the pendulum to find a center. Certainly viaticum is for the dying, and anointing is for the sick. It was necessary to retrieve an emphasis on anointing for the sick in order both to return to the original meaning of anointing as healing the sick, and to correct the abuses and malformations that had occurred through the emphasis on the dying. However, we cannot drive a wedge too firmly between sickness and death, for they are inevitably a continuum revealing the mortality of the body. Baptism contains within it symbolism of womb and tomb, birth and death. Through baptism we are crucified with Christ, and, in addition to being a new birth in Christ, baptism is the first step in Christian dying.<sup>17</sup> In the Eucharist

<sup>16</sup> Ibid.

<sup>17</sup> Karl Rahner, *On the Theology of Death* (New York: Herder and Herder, 1961) 83.

we proclaim the death and resurrection of the Lord in the acclamation: “Christ has died. Christ is risen. Christ will come again.” We are born only inevitably to die. If the resurrection of Christ gives us hope for eternal life, we only arrive at that life through death. Sickness is but one moment on that continuum, one reminder that on this earth we have no secure dwelling place.

Anointing is for the wholeness of the person, body and soul, but, as our experience of aging tells us, decline is inevitable in spite of recovery from illness. Lasting health is eschatological, even though we are grateful for any reprieves we may receive on the journey. Let us anoint the sick. Let us not wait until the deathbed. But let us also not fall into the optimistic denial of our time that youth is eternal and that miracle drugs or restorations to health by sacramental anointing alter our inevitable march to death. Karl Rahner notes: “For the Bible and for faith, sickness is not merely a bodily process, but a road toward death as well. Sickness is an imminent death.”<sup>18</sup> Rahner says that sickness presents us with a decision between salvation and damnation at a time when, because we are sick, we are least able to make it. It is thus fitting that the grace to assist us at this time achieve sacramental visibility. The liturgical rite infers as much because it directs that the proper subject of the sacrament are “those of the faithful whose health is seriously (*periculose*) impaired by sickness or old age.”<sup>19</sup> The person is not necessarily at the point of death, but is also not just any infirm person. The person is one who begins to be in danger of death.

### *Prophetic Symbol*

The model of sacramental causality, that is, the model according to how sacraments “work” or achieve their effect, has been primarily that of instrumental efficient causality. According to this view, God alone is the primary agent who causes the effects of the sacraments, and the sacramental rite is a secondary cause, a sort of tool which produces an effect. The analogy is that of an instrument of art. An artist produces a painting through the instrumentality of a paintbrush. Instrumentality focuses on the effect produced, rather than on the sign of the sacrament and what it means. The scholastics of the Middle Ages largely viewed sacraments through the lens of instrumental causality and the effect of the

<sup>18</sup> *Ibid.*, 85.

<sup>19</sup> The translator interprets *periculose* as follows: The word *periculose* has been carefully studied and rendered as “seriously,” rather than as “gravely,” “dangerously,” or “seriously.” Such a rendering will serve to avoid restrictions upon the celebration of the sacrament. On the one hand, the sacrament may and should be given to anyone whose health is seriously impaired; on the other hand, it may not be given indiscriminately or to any person whose health is not seriously impaired. Note to General Introduction, #8.

sacrament on the person anointed, physical healing and forgiveness of sin. A rather simplistic view of instrumental causality that focuses on the effect of physical healing could look at anointing as another form of alternative medicine, one more way to possibly achieve the intended result of restoration to health. Here the focus is on production of a spiritual or physical effect rather than meaning. This can eclipse the paschal character of suffering, or the relationship between restored health and final eschatological bodily integrity.

However, symbolic mediation is an alternative model of causality whereby sacraments cause their effects by signifying. Within this view of the sacrament, anointing of the sick is a prophetic symbol that interprets our suffering in the light of the paschal mystery. As a prophetic symbol, anointing recalls our anointing at confirmation, which empowers us to witness to our faith. In the sacrament of anointing of the sick the ill person witnesses to faith in the death and resurrection of Christ in which we all share. Prophetic actions are also symbolic actions that participate in the reality they symbolize.<sup>20</sup> Through the prophetic action of anointing the sick person participates in the paschal mystery. Any restoration of bodily health is itself a symbol of eschatological restored bodily integrity.

This restoration does not just foretell eschatological salvation, but the restoration is itself salvation proleptically received.<sup>21</sup> Recall that the etymological meaning of salvation is health. In other words, the return to bodily health is a foretaste of the bodily and spiritual integrity that we will experience when all is restored in Christ. The Pastoral Constitution of the Church in the Modern World describes this transformation and restoration this way: "Then death will have been defeated, the daughters and sons of God will be raised up in Christ, and what was sown in weakness and corruption will put on incorruptibility; love and the work of love will abide, and the whole of creation which God created for our sake will be freed from its bondage to decay."<sup>22</sup> Or, to look at it another way, our experience of bodily health is a sign of that salvation which transcends the body.

### *Anointing: An Act of the Church*

When a theology of anointing of the sick is linked to a theology of baptism and Eucharist we discover its ecclesial dimensions. Charles Gusmer has commented: "It is not exaggeration to say that anointing of the sick has been the most

<sup>20</sup> For an interpretation of sacraments as prophetic symbols see Michael G. Lawler, *Symbol and Sacrament: A Contemporary Sacramental Theology* (New York: Paulist Press, 1987).

<sup>21</sup> *Ibid.*, 160.

<sup>22</sup> Pastoral Constitution on the Church in the Modern World, 39.

misunderstood (fatalism associated with “last rites”), most unliturgical (minimalism in celebration) and most uncommunal (one-on-one encounter with priest) of all the seven sacraments of the Church.”<sup>23</sup> The revised rite makes an effort to correct this and incorporates a theology of the Church in the ministry to the sick.

The sick person is saved, not by the physical act of anointing, but by faith. The General Introduction states that they are saved not only by their personal faith, but also by “the faith of the Church, which looks back to the death and resurrection of Christ, the source of the sacrament’s power (see James 5:15), and looks ahead to the future kingdom that is pledged in the sacrament.”<sup>24</sup> This is a fine example of the power of the communion of saints and evidence that in the matter of salvation the stronger members can help the weaker members. We are saved individually insofar as each person “counts,” is touched sacramentally, and bears personal responsibility for her or his response to God through Christ in the power of the Spirit. However, we are not saved individualistically. We do not go to God alone, but with the assistance and in the company of a faith community.

The Second Vatican Council stressed the ecclesial dimension of all the sacraments. The Constitution on the Sacred Liturgy reminds us that “liturgical events are not private actions but celebrations of the church, which is ‘the sacrament of unity,’ the holy people drawn into an ordered whole under the bishops. Therefore these celebrations are for the whole body which is the church, making this whole body visible and having effects on it; in a different kind of way, they touch the individual members of the church in ways related to their differences of ranks, of roles and of levels of participation.”<sup>25</sup> Communal celebrations of the sacraments are normative.

The rite of anointing is no exception. Thomas Talley notes that presbyters are summoned, not as healers or even as priests, but as representatives of the community.<sup>26</sup> Their primary function is not to heal, for that is the function of the sacrament, but as representatives of the community their function is “to protect the sick member from dereliction and separation from the ecclesial body.”<sup>27</sup> In his view sickness brings a separation and loss of community which is, at the phenomenal level, a sort of excommunication. In a comparable way of thinking, David Power

<sup>23</sup> Charles Gusmer, “Sick, Communal Anointing of the” in *The New Dictionary of Sacramental Worship*, ed. by Peter E. Fink, S.J. (Collegeville: Michael Glazier, The Liturgical Press, 1990) 1162.

<sup>24</sup> Pastoral Care of the Sick, General Introduction, #7.

<sup>25</sup> Constitution on the Sacred Liturgy, #26.

<sup>26</sup> Thomas Talley, “Healing: Sacrament or Charism?” *Worship* 46 (1972) 523.

<sup>27</sup> *Ibid.*

views anointing as restoring a person to the church and to participation in its worship.<sup>28</sup> Moreover, the sick person is not necessarily restored to the community as a healthy person, but is restored as a symbol of “Christ’s passage through weakness and death to life.”<sup>29</sup> Anointing thus serves the sick person in that person’s relationship to the ecclesial community. It also serves the community through the sick person witness to its own paschal life in Christ.

The text of the rite emphasizes the community aspect of the sacrament of anointing, stating that “all baptized Christians share in this ministry of mutual charity within the Body of Christ by doing all that they can to help the sick return to health, by showing love for the sick, and by celebrating the sacraments.”<sup>30</sup> This ministry is the common responsibility of all Christians.<sup>31</sup> In visits to the sick, the minister of communion manifests the faith and charity, the concern and support, of the whole community toward those who cannot be present at the Eucharist.<sup>32</sup> The priest who anoints also ministers on behalf of the whole community.<sup>33</sup> The gesture of the laying on of hands indicates that this particular person is the subject of the Church’s prayer of faith.<sup>34</sup> The entire Church is made present in the community of people gathered for the anointing.<sup>35</sup>

### *The Minister of Anointing*

A burning question in the pastoral care of the sick today concerns the minister of the sacrament. Prior to the ninth century, there were a variety of anointings. Some were lay anointings and some were clerical. Since sacramental theology was rather fluid at this point in history, however, we perhaps ask for too much precision when we try to determine which anointings were what we identify as a sacrament today, and which were what we currently identify as sacramentals. We do know that the Carolingian reform in the ninth century restricted anointing to priests and prohibited the administration of viaticum or the giving of the blessed oil to lay people. Today, a minister other than a priest or deacon can give viaticum, the

<sup>28</sup> David N. Power, O. M. I., “Let the Sick Man Call,” *Heythrop Journal* 19 (1978) 261.

<sup>29</sup> *Ibid.*, 264.

<sup>30</sup> Pastoral Care of the Sick, General Introduction, #33.

<sup>31</sup> Pastoral Care of the Sick, General Introduction, #43.

<sup>32</sup> Pastoral Care of the Sick, #73.

<sup>33</sup> Pastoral Care of the Sick, #98.

<sup>34</sup> Pastoral Care of the Sick, #106.

<sup>35</sup> Pastoral Care of the Sick, #105.

sacrament of the dying.<sup>36</sup>

The ecclesial nature of the sacrament also has a strong bearing on who should anoint, for whoever anoints officially represents the Church. This introduces a theology of ordained ministry as representative of the Church as well as of Christ as well as a theology of lay ministry arising from baptism.

The question of who may be the minister of this sacrament is one that needs much more discussion. Rather than delineate only one particular position, I will lay out issues and possibilities here in terms of an underlying theology for anointing by a priest, deacon, or laypersons.

*Position #1: Anointing by a Priest*

What we need to sort out is whether an ordained priest anoints, because precisely as ordained he officially represents the Church, or because the sacrament is associated with the forgiveness of sin. From the ninth century, the minister of the sacrament has been exclusively clerical because of the association with the forgiveness of sin. The practice of anointing was folded in with the practice of final reconciliation. However, as I have pointed out, baptism and the Eucharist are also sacraments of reconciliation. The administration of neither is restricted to clerics in all instances. It is possible to envision the sacrament of anointing as salvific, that is, healing in both a spiritual and bodily dimension that is distinguishable from a forensic declaration of pardon.

However, it is important not to lose the representative function of ordained ministry. The ordained priest represents not only Christ, but the Church. In the Epistle of James, elders anointed because they represented the Church. Anointing by an ordained representative of the Church demonstrates that anointing is not just the ministry of one Christian to another, but the ministry of the Church.

Another factor bearing on priestly anointing is the fourth canon concerning the sacrament of last anointing of the fourteenth session of the Council of Trent, which says:

If anyone says that the presbyters of the church who, as blesses James enjoins, should be brought in to anoint the sick person, are not priests who have been ordained by a bishop but the elders in any

<sup>36</sup> See the instruction in #211 in the ritual for viaticum outside Mass, which says "A minister who is not a priest or deacon invokes God's blessing and makes the sign of the cross on himself or herself..."

community; and that on that account the proper minister of last anointing is not exclusively a priest: let him be anathema.<sup>37</sup>

In interpreting this canon, we must keep a number of points in mind. First, this canon intends to refute two specific positions of the reformers. The first concerns their interpretation of James: “The minister of extreme unction is not the priest alone; the presbyters of the Church whom blessed James instructed are to be brought in to anoint the sick are not the priests ordained by the bishop, but those who are older in any community (CT, p. 240). The second refers to sacramental ministry more generally, namely that “all Christians of either sex have equal power in administering the Word and sacraments.”<sup>38</sup>

These positions resulted from the reformer’s objection to the Church’s emphasis on its official ministry as a sacrificial priesthood to the detriment of the priesthood of all believers; however, the latter does not entirely accurately represent Luther’s position insofar as he did presume an ordained ministry. This gets into questions of sacramental power in relationship to jurisdiction, which we need not examine any further here than to note that the phrase “power of the minister” is somewhat ambiguous and may simply refer to “authorization.” As Ziegler points out, it is not clear whether the Council means that not all Christians have the power of jurisdiction to administer the sacraments, or whether not all Christians have that power without which there would be no sacrament? Or did Trent intend both meanings?<sup>39</sup> We can affirm with certitude, however, that Trent upheld the “authority of the Church to determine the ministers of Word and sacraments, thereby teaching that only those so designated by the Church can perform these tasks.”<sup>40</sup>

An interesting note on this canon is that it designates priests as the “proper minister” of last anointing. Ziegler notes that the draft of the canon approved by the bishops did not contain the qualifier “proper,” and that the Acts do not note the source of this insertion or the reason why it was added.<sup>41</sup> Its insertion does seem to point to the possibility that someone other than priest might be designated as a minister of anointing.

<sup>37</sup> *Decrees of the Ecumenical Councils*. Volume II. Ed. Norman P. Tanner (Washington, DC: Georgetown University Press, 1995).

<sup>38</sup> CT 5, p. 836. Cited by John J. Ziegler, *Let Them Anoint the Sick* (Collegeville: The Liturgical Press, 1987) 117.

<sup>39</sup> *Ibid.*, 118.

<sup>40</sup> *Ibid.*, 119.

<sup>41</sup> *Ibid.*, 143.

A final point regarding Trent's canon on the priest as the proper minister of anointing is that Trent could only define the minister of the sacrament within the context of ministry as it was practiced and known at that time. Permanent deacons did not exist at the time of Trent, so this canon cannot be read as necessarily prohibiting diaconal anointing. It therefore seems theologically possible that the supreme teaching authority of the Church could allow for a minister of anointing who is other than a priest.

*Position #2: Anointing by a Deacon*

A deacon, because ordained, can officially represent the church in his sacramental ministry. A deacon functions as such when he witnesses marriages and presides at baptisms. Diaconal anointing also fits the concept of diaconal service. A good analogy would be health care workers who tend the bodies of patients, bathe bodies, change dressings, and administer salve to wounds.

Since, in the case of diaconal anointing, the forgiveness of sin associated with anointing is comparable to the reconciliation accomplished in baptism or Eucharist, it is a by-product of the wholistic healing signified and effected by the symbol of anointing. A deacon would not be assuming the role of confessor, and this cannot be seen as an extension of the sacrament of penance. Forgiveness of sin in this instance is a by-product of anointing, a healing action, not a forensic action of pardon. It is associated with the matter of the sacrament, the oil, and the sacramental action of anointing, not the minister of the sacrament. This concept of comprehensive healing is present in a fourth-century prayer for the blessing of oil of Sarapion of Thmuis:

We call upon you who has all authority and power, the Saviour of all people, Father of our Lord and Saviour Jesus Christ. And we pray that you send forth a healing power of the only-begotten upon this oil, that it may become for those who are anointed with it, or partake of these your created elements, for a throwing off of every disease and every sickness ... for good graee and forgiveness of sins, for a medicine of life and salvation, for health and wholeness of soul, body and spirit and for complete bodily health and strength...<sup>42</sup>

<sup>42</sup> *The Sacramentary of Sarapion of Thmuis: A Text for Students*, Intro., trans. and Commentary by R. J. S. Barrett-Lennard, Alcuin/GROW Liturgical Study 25 (Bramcote, Nottingham: Grove Books, Ltd. 1993) 47-49.

Certainly, this does not preclude that during a prior visit by a priest, the persons anointed were also offered the opportunity for sacramental confession. Even when a priest is the minister of anointing, the rite for anointing recommends that the sacrament of penance be received during a previous visit.<sup>43</sup>

Discussion of anointing by deacons needs to take into account that the permanent diaconate did not exist during the period of church history when anointing was reserved to priests. The permanent diaconate disappeared by the tenth century almost everywhere in the West, and was only restored after Vatican II. In the earlier period, it would not have been a diaconal function either when deacons served the bishop and administered the material goods of the Church. However, both the presbyteral and the diaconal offices have evolved and changed throughout history. The issue is not whether or not deacons ever anointed in the past, but rather, whether a theology of ministry attributes representational abilities to ordained clergy as integral to what it means to be ordained. Our theology of the diaconate is just now evolving, and the question of diaconal anointing is a new one in the Church. It is complex, involving both our theology of the diaconate and our theology of anointing.

### *Position #3: Anointing by a Lay Minister*

In an anointing by a lay minister, the layperson does not officially represent the Church, such representation being accomplished by ordination. It could possibly be argued that the ecclesial dimension of the sacrament is present through the blessing by the bishop, although this seems not to be as direct as the presence of an official representative of the Church.

Anointing by a layperson is frequently compared with administration of the Eucharist by an extraordinary minister of communion. Just as a priest consecrates the Eucharist which is then distributed by a layperson, it is argued that a bishop blesses the oil which is then likewise distributed by a layperson. The blessing by the bishop represents the larger context of the church in which anointing, even in the most individual circumstances, occurs. The question here is whether blessed oil is itself a sacrament to be administered, or whether the act of anointing is the sacrament. The analogy between the Eucharist and anointing breaks down at this very point. The oil in a flask is not itself the sacrament which is then simply distributed.

However, even here, there is historical ambiguity. For instance, Pope Innocent's

<sup>43</sup> Pastoral Care of the Sick, #113.

letter to Decentius, Bishop of Gubbio, in 416, instructs "...if the bishop deems it proper that he should visit someone in person, surely he whose office it is to confect the chrism can both bless and anoint with chrism. But he cannot pour it on penitents since it is a kind of sacrament. And how can it be deemed proper to grant one kind of sacrament to those who are denied the rest of the sacraments?"<sup>44</sup> This text seems to attribute sacramentality to the oil itself. Furthermore, this same text says that all Christians may use the oil for anointing, for themselves or for others: "Now there is no doubt that these words can be understood of the faithful who are sick, and who can be anointed with the holy oil of chrism, which has been confected by the bishop, and which not only priests, but all Christians may use for anointing, for themselves or for others."<sup>45</sup> Other patristic texts attest to the practice of lay anointing.<sup>46</sup> Generally speaking, this broader understanding of who may anoint continued through the eighth century in churches influenced by the Roman tradition. The administration of the sacrament was increasingly reserved to clerics as the time of anointing shifted to the deathbed and became associated with final penance.

In assessing whether or not the blessed oil is the sacrament or the blessed oil in combination with the act of anointing, it is important to remember that our present understanding of sacramental theology, in terms of the matter and form of the sacrament and their number, did not exist in the patristic period. Sacramental theology was much more fluid then than it is today.

### *Conclusion*

Bringing anointing into a closer connection with baptism and the Eucharist, rather than penance, shifts the theology of anointing in a number of ways. First, a theology of baptism situates sickness on a continuum between birth and death. Within this continuum healing is a symbol of the anticipated final eschatological restored integrity of the body. The integrity of the physical body also corresponds to the completed *totus Christus*, the ecclesial body, which the Eucharist signifies.

Association with baptism also shifts the forgiveness of sin in the anointing from the forensic model in the sacrament of penance to the medicinal model of healing, associated with the interior regeneration of baptism. Healing, both bodily and

<sup>44</sup> *La lettre du Pape Innocent 1er à Décentius de Gubbio*. Trans. and commentary by Robert Cabié (Louvain, 1973) 30-32. Cited by Lizette Larson-Miller in "Rites for the Sick and Funerals," *Liturgical Ministry* 7 (Winter, 1998) 25.

<sup>45</sup> *Ibid.*

<sup>46</sup> See, for example, the *Canons of Hippolytus*, a fifth-century Egyptian codification of practices; Caesarius of Arles, 6<sup>th</sup> c., *Sermon* 184, 5. Cited in Larson-Miller, 25.

spiritual, is effected through the faith-filled prayer and medicinal anointing. The forgiveness of sin associated with the very act of anointing does not then require the capability of a priest for absolution.

This opens up the possibilities for ministers of anointing other than an ordained priest. Assessment of these various possibilities requires that we be clear in how we understand a distinction between lay and ordained ministry as officially representative of the Church or not. Deacons could represent the church in non-sacerdotal sacramental ministry.

We must also be clear about whether the blessed oil for the sick is itself sacramental, or whether the action of anointing is sacramental. The latter position represents current sacramental theology, but advocates of lay anointing either are presuming the administration of the sacrament by lay persons, or are assuming that the oil itself is the sacrament, the sacramentality having been conferred by the blessing of the bishop. This is not always clear in conversations about lay anointing.

Finally, in assessing who is the appropriate minister of the sacrament of the sick, we need to keep in mind the ecclesial meaning of the sacrament and avoid at all costs an overly individualistic approach to it. The Church, acting in the name of Christ, is the primary minister of the sacrament. When the Church anoints a sick person, it anoints a member of its own body. Anointing is about the restoration to baptismal integrity of the whole body which will be definitively achieved when all is restored in Christ.

# APPENDIX: HISTORY OF THE ANOINTING OF THE SICK

	<i>First Four Centuries</i>	<i>Innocent I to Carolingian Reform 5<sup>th</sup>-8<sup>th</sup> c.</i>	<i>Carolingian Reform to Middle Ages</i>	<i>Middle Ages to Sixteenth Century</i>
<i>Selected Significant Texts</i> <i>Or Authors</i>	Mk 6:13, Ja 5:14-15, Apostolic Tradition, Sacramentary of Serapion	Letter of Pope Innocent I to Decentius, March 10, 416, Sermons of Caesarius, bishop of Arles (d. 543), Venerable Bede's (d. 735) commentary on James	<i>Poenitentiale</i> , Bk I, ch 15 of Egbert, archbishop of York (732-767), <i>General Capitulary</i> of Charles the Great of 769-771.	Hugh of St. Victor, Peter Lombard, Thomas Aquinas, Albert the Great, Alexander of Hales, Bonaventure
<i>Liturgical Notes</i>	Blessing of oil by bishop, no ritual for application	Blessing of oil reserved to the bishop. Rituals of application cannot be dated earlier than 8 <sup>th</sup> c.	Two exceptions to oil being blessed by bishop: Ambrosian rite and Greek <i>Euchologion</i> provide for blessing by priest prior to anointing.	Latin rites: bishop blesses oil; some Oriental orders retain priest's blessing
<i>Effect of Anointing</i>	Principally spiritual with frequent allusions to spiritual effects.	Corporal and spiritual effects, forgiveness of sin specified in several instances	Change of emphasis to the spiritual effect, esp. remission of sin	Spiritual effect primary, given to seriously ill in danger of death
<i>Who Anoints</i>	Priests and others	Bishop, priests and laity, and self-anointing	One or several priests. No references to lay anointing	Priest, because grace given & done in the person of Church
<i>When</i>	Whenever sick; Council of Nicea, can 13, stipulates viaticum as sac of dying	Variety of infirmities and demonic possession; nowhere defined as preparation for death	"Deathbed penance" prevalent. Anointing was joined w/ viaticum & became sac. of dying.	Preparation for death, anointing conferred after viaticum

# APPENDIX: HISTORY OF THE ANOINTING OF THE SICK

*First Four Centuries*

*Innocent I to Carolingian Reform, 5<sup>th</sup>-8<sup>th</sup> c.*

*Carolingian Reform to Middle Ages*

*Middle Ages to Sixteenth Century*

*Theological/ Historical Notes*

Cannot distinguish between use of oil as a sacrament and a sacramental because a definition of sacrament not firmly fixed at this period. Consecrated oil was self-administered in the same way as the eucharist was self-administered at home (Apostolic Tradition)

Evidently the oil rather than the anointing was considered sacramental. Anointing of the sick was not regarded at this time as a rite of the dying. Recipient of sac. Need not be capable of signing. No suggestion that children or mentally ill people were excluded. Penitents not anointed because they are not admitted to sac. other than penance. Bede allows the laity use of consecrated oil, but reserves forgiveness of sin to confession to a priest.

Disciplinary reforms of this period correct priestly abuses and negligences. Prohibitions against giving blessed oil to non-priests and their administration of viaticum. Until 12<sup>th</sup> c the most usual order was penance, anointing, viaticum. Anointing was considered the completion of penance. Widespread disuse of the sacrament was due in part to the practice of remunerating the priest. Also the confusion of unction with public penance led to mistaken notion that it carried obligations for conduct, apparel, and sexual abstinence for the rest of one's life. The term "extreme unction," first used in the 10<sup>th</sup> or 11<sup>th</sup> c., becomes frequent from end of 12<sup>th</sup> c.

Disputed questions: the determination of the spiritual effect, what sins were remitted, at what point in the illness anointing should be given, how often it could be received, and whether it should be given to the unconscious, mentally ill, or children.

# APPENDIX: HISTORY OF THE ANOINTING OF THE SICK

Trent, Nov. 16, 1551

Today

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<i>Selected Significant Texts or Authors</i>	Fourteenth session, 3 chapters, 4 canons Catechism of the Council of Trent	Sacrament of the Anointing of the Sick, Apostolic Constitution, Paul VI (Nov. 30, 1972)
<i>Liturgical Rites</i>	<i>Rituale Romanum</i> (1614) Sequence: penance, viaticum, anointing	<i>Editio typica of Ordo Unionis Infirmorum eorumque pastoralis curae</i> (1972) English translation confirmed December 11, 1982. Sequence: penance, anointing, viaticum
<i>Effect of Anointing</i>	Remits sins and remains of sin. Raises up and strengthens the soul by eliciting great trust in the divine mercy. At times restores bodily health when expedient for salvation.	Same effects as given by Trent, cited in Paul VI's Apostolic Constitution
<i>Who Anoints</i>	Ordained bishops or priests	Ordained bishop or priest. Bishops or priests who has the faculty blesses the oil, in case of necessity, any priest.
<i>When</i>	The sick, especially to those who are so dangerously ill that they seem near death.	As soon as health is seriously impaired by sickness or old age and before surgery. Repeatable during same illness.

# APPENDIX: HISTORY OF THE ANOINTING OF THE SICK

## *Theological/ Historical Notes*

Extreme unction is a sacrament instituted by Christ and announced by James. It has an enduring salvific meaning in terms of conferring grace, remitting sins, and comforting the sick. The rite and practice of the sacrament correspond with the scriptural precedent in James. The presbyters in James are priests ordained by a bishop, not the elders in any community. It is the completion of penance and Christian life.

The rite and its introduction stress the ecclesial dimension of anointing.

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OFFICERS' REPORTS

**PRESIDENTIAL REPORT**

REV. MSGR. ROBERT P. DEELEY

This year of serving as President of the Society has been rich in experience and challenge. I appreciate the trust you have placed in me. In this account I will report on the activities of the year.

2000 CONVENTION RESOLUTIONS

In the course of the annual business meeting of the society in Arlington, VA four resolutions were approved by the membership.

The *First Resolution* addressed the Scholarship Fund:

*Be it resolved that* up to \$50,000 be moved from the General Operations Investment Fund to the Scholarship Fund so that the amount of the Fund is increased to a projected market value of \$300,000 as of December 31, 2000, and *Be it further resolved that* there be an annual awarding of scholarships of a sum up to 5% of the total market value of the Scholarship Fund as determined by the value of the fund on December 31<sup>st</sup> immediately preceding the January Board of Governors' meeting. The amount of distribution is to be monitored by the Board of Governors lest the Fund's total value be harmed by such a distribution in a given year."

The Treasurer, Sr. Margaret Stallmeyer instructed Congress Asset Management, manager of the funds to transfer \$40,000 in order to reach the agreed aggregate sum. For technical reasons the transaction did not occur before December 31<sup>st</sup>. It was, however, completed in as timely a manner as possible. Unfortunately there were no candidates for the scholarship this year who met the established criteria. The membership of the society will be encouraged at the business meeting to make known the larger amount of the award of the scholarship to potential students of canon law.

The *Second Resolution* addressed membership dues:

*Be it resolved that* at the annual pre-Convention meeting the Executive Coordinator of the CLSA recommend to the Board of governors, to waive,

partially or entirely, the payment of the annual dues for hardship cases. This waiver is to be applied for by an individual on a biannual basis. The Executive Coordinator is to report to the Board of Governors on the petitions for the waiver without mentioning the name(s) of the individual(s) making this application. The Board of Governors will develop and publish guidelines, which would reflect the concern for financial need, for the use of the waiver.

*Be it further resolved that Article IV, 4 of the Constitution be changed to read: an active, associate or student member whose dues have not been waived by the Board of Governors shall forfeit membership in the Society by failing to pay the annual dues for two consecutive years' to reflect this policy."*

At the January meeting of the Board of Governors the subcommittee charged with preparing the guidelines for the waiver presented its proposal. The proposal was accepted and a request was made that the guidelines be published in the Newsletter. The BOG will review any applications in October.

The *Third Resolution* approved acknowledged the Jubilee Year:

*"Be it resolved that in celebration of the Great Year of Jubilee, the Board of Governors is empowered to subsidize, in the 2000-2001 fiscal year, activities to assist canonists from developing nations. This will be funded from up to 5% of the market value of the Operating Investment Fund of the Canon Law Society of America."*

The Board of Governors contributed the remaining copies of the 1990 translation of the *Code of Canons of the Eastern Churches* to CNEWA through the helpful offices of Msgr. John Faris. The contribution of these 750 texts will enhance the canonical education of seminarians in India and other developing nations. We also responded positively to a request from Rev. Modesto Perez for support in accepting an invitation of the Cuban Bishops to lecture there on canon law. We are also working with Modesto in seeking a way to distribute copies of the Spanish edition of *Code, Community and Ministry* to canonists in the Caribbean and Latin America.

The *Fourth Resolution* approved honored the memory of some outstanding deceased members of the Society:

*"Be it resolved that the Canon Law Society of America express to the families and (arch)dioceses or religious communities of Monsignor Donald Heintschel, Fathers Bertram Griffin, Richard Hill, S.J., and James Provost the Society's profound gratitude for their extraordinary contributions made to our profession*

and extend our assurance of continuing prayer.

*Be it further resolved that the Canon Law Society of America make a \$5000 gift to the CLSA Scholarship Fund in their memory.”*

The President sent letters of condolence to the bishops of these priests as well as to the Jesuit Provincial of the California Province. Similar letters were also sent to the surviving family members informing them of the donation and the promise of prayers. The transfer of funds was done by Sister Margaret Stallmeyer, our treasurer.

#### COMMITTEES

Each year the President replaces a number of committee members. In doing that I sought counsel from the Board of Governors. We also carefully reviewed the forms collected at the convention in which members offered their own services or put forth the name of qualified persons. The work of the society is done in these committees and projects. I am sure I speak for all of us in expressing thanks to those who serve on them. I am grateful to Rev. Kevin McKenna, our Vice-President who, during the course of the year, kept in touch with the committees and kept the BOG apprized of progress and questions. Kevin has carried out that task admirably.

#### PUBLICATIONS

This year has seen the publication of two works reflective of the contribution the Canon Law Society of America makes to canonical scholarship. The *Procedural Handbook for Institutes of Consecrated Life & Societies of Apostolic Life* has been published and distributed. A number of people have worked hard on this project for a significant period of time. It is a valuable addition to the series of Handbooks we have been issuing. Before the Convention the printing and distribution of the *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation* will take place. This important and welcome project will contain many of the same features as the new edition of the translation of the *Code of Canon Law*. The next year will see the publication of the *Festschrift, The Art of the Good and Equitable* in honor of Rev. Lawrence Wrenn. A letter has been sent out giving the opportunity for canonists to include their names in this volume as a tribute to Larry. Msgr. Fred Easton, the editor of the publication, is pleased with the response for articles. The Parish Viability Committee will be holding a hearing at the Albuquerque convention to discuss the draft of the self-evaluation instrument they are preparing. They hope that will be published next year. Other projects that will

result in publications continued to see progress this year. They include the and the *Annotated Bibliography* as well as *Canon Law Digest XII*. The Board of Governors has also initiated discussion on two new handbooks. One will address questions concerning lay ministries in the Church, the other tribunal procedure.

#### MEETINGS AND VISITS

During the course of the year the Board of Governors met four times. The first meeting followed the convention in Arlington, VA (October 5-6, 2000), the next in Daytona Beach, Florida (January 25-28, 2001). The third was in Peoria, IL (April 26-29, 2001) and the last in Albuquerque, New Mexico prior to the convention (October 7-8, 2001).

On April 26, 2001, Rev. Art Espelage, OFM, Executive Coordinator of the CLSA and I had the honor of a visit with His Excellency, Archbishop Gabriel Montalvo at the Apostolic Nunciature in Washington, DC. The Archbishop was most cordial. Our conversation provided opportunity to speak of the projects of the society. Archbishop Montalvo spoke of his pleasure in being at our convention in 2000. He expressed a continuing interest in the work of our society, and its publications. The visit was an occasion to honor our communion in the Church.

I represented the CLSA at several regional canon law conferences: the Conference of Chancery and Tribunal Officials of the Provinces of New Orleans and Mobile in Jackson, Mississippi (November 28-30, 2000), the Western Regional Canon Law Convention in Reno, Nevada (March 5-7, 2001), the Texas Catholic Conference, Department of Judicial Vicars Meeting in San Antonio, Texas (March 13-14, 2001), the Midwest Canon Law Convention in Peoria, Illinois (April 23-25, 2001), and the Oklahoma Provincial Tribunal Workshop in Little Rock, Arkansas (August 7-8, 2001). I asked Rev. Kevin McKenna, our Vice-President to represent the society at the Northwest Regional Canon Law Meeting in Spokane, Washington (April 23-26, 2001). Unfortunately neither of us was able to attend the Eastern Regional Conference of Canonists in Callicoon, New York (May 8-9, 2001).

I also represented the society at three international conventions. The Canadian Canon Law Society Convention was held in Ottawa (October 16-19, 2000). Coming shortly after our own convention it was an opportunity to participate in some interesting canonical discussions. I was warmly welcomed by Rev. Pasquale Stilla, Acting President and Sister Margery Gallagher, SC, Secretary. As I offered my greetings to the gathering I also expressed in your name our sorrow at the loss of their president, Dr. Michel Thériault. Rev. Pierre Allard, SM was elected as the new president of the Canadian Canon Law Society. We will have the pleasure of welcoming him to Albuquerque, NM. The Canon Law Society of Great Britain and

Ireland held its convention in Gateshead, near Newcastle in England (May-14-18, 2001). Rev. Aidan McGrath, OFM, who was completing his six-year presidential term welcomed me graciously, and with his committee presented a very interesting and diverse program. Rev. John Conneely, a priest of the Archdiocese of Westminster was chosen as the new president. He too will join us in Albuquerque. The third international meeting was the Annual Convention of the Canon Law Society of Australia and New Zealand held this year in Adelaide (September 24-27, 2001). Very Rev. Robert McGuckin, President, promises an experience of spring down under with an engaging program on a number of canonical issues.

During this year I visited the two faculties of canon law in North America. Rev. Roch Pagé, Dean of the Faculty of Canon Law at Saint Paul University warmly welcomed me to speak of the work of the CLSA to the students at his university February 12, 2001. There I also was invited to give the annual Glasmacher Lecture on the same day. On March 26, 2001 Rev. John Beal, Chair of the Faculty of Canon Law at The Catholic University of America in Washington, DC, invited me to give a lecture to the students of his faculty. I also had the opportunity to answer questions of the students concerning the CLSA. In both faculties the topic of my lecture was "*One Juridic Person: Genesis, Theory, Experience: Covenant Health Systems as a Canonical Reality.*"

#### CONVENTION PLANNING

In reporting to you on the activities of the year I consider it important to inform you as well that we have entered into an arrangement with Nix and Associates of St. Louis, MO. This company specializes in arranging and supervising meetings such as our convention. We inquired concerning different firms, and consulted with people who had worked with such companies. In doing the research we decided that we would enter an agreement with a company that will charge us a set fee. The cost of the management company is not, then, hidden in the charges for rooms or meeting spaces at convention hotels. Nix & Associates suggests that there will be substantial savings in room rate and other amenities because of their purchasing power and relationship with the hotel industry. They enter negotiation with hotels with a stronger position because of their ability to commit a number of conventions to a particular location. It has been their experience that most of their clients are realizing savings of ten to thirty percent, after their fee. In conducting our research of Nix we found organizations similar to us in size and mission among their clients. Nix & Associates will be assisting us at our Albuquerque convention. The contracts for that convention were already negotiated but the company will assist where it can. Moving forward they will be more involved. The Board of Governors is pleased with the possibilities opened to us with this new arrangement. We hope it will allow us to continue to improve our experiences with this essential part of

the mission of our society, the annual convention, in the most cost-effective way.

#### OFFICE OF THE EXECUTIVE COORDINATOR

In the course of this year, Rev. Art Espelage, OFM, our Executive Coordinator has been doing a very professional job for the CLSA. I have been grateful for his communication and his insight on the many issues we have handled. He has been a great support for me. Art will complete three years as our Coordinator this year. He freely admits in his evaluation that he continues to learn about his position. I believe we are fortunate to have his services. The work he has done on advertising and preparing the publications of this year indicate that, as he becomes ever more familiar with the responsibilities of his position we will find his service more and more valuable. At our Transition Meeting (August 1-3, 2001) held in Quincy, MA, the City of Presidents, Art once again showed Kevin McKenna and me his importance to the society as he assisted us in preparing for the convention and the next year. Art is well assisted in managing the office of Executive Coordinator by his secretary, Mrs. Jennifer Miller. We are grateful as well for her service. During these days we keep her and her husband Chris in our prayers as they await the birth of their second child.

#### CONCLUSION

I opened this report by remarking that the year has been a privilege and a challenge. The privilege, of course, has been the experience I have had with you, the membership around the country, and indeed the world. In each gathering I attended I found myself with canonists seeking to deepen an understanding of the law of the Church so that the work you do with the people of the Church is enhanced. Serving as your President has been a wonderful experience of the communion of the Church in America. I am grateful to all of you who welcomed me to meetings, showed hospitality, or agreed to continue the work of the society on a committee or project. The Society is richly blessed in its dedicated membership.

The challenge of the presidency has been the fact that I also serve as Pastor of St. Ann Church in Wollaston, a part of Quincy, Massachusetts. The work of the CLSA has often taken me away from the parish. I take this opportunity to express my thanks to the staff and people of St. Ann's. They could not have been more supportive or helpful during this time. I am grateful for the kindness they have shown me. I could not have served as president without their patient forbearance. I am grateful as well for the support I have received from his Eminence, Bernard Cardinal Law, Archbishop of Boston and Bishop William Murphy, now the Bishop of Rockville Centre, but formerly Vicar General and Moderator of the Curia in Boston. Both of them encouraged me to accept nomination for president and

offered their assistance whenever requested. Their support has been invaluable.

As I close this report I do it with a word of thanks to those who have worked most closely with me both as Vice-President and this year as President. I am particularly grateful for the wisdom and insight of Father Art Espelage, OFM, our Executive Coordinator. Though Art was relatively new at the job when we began he was always there to help when needed. I have served with wonderful people on the Board of Governors. I am grateful to them for their collaboration these years. We have worked well together to accomplish the mission of the CLSA. In the process we have enjoyed each other's company. In particular I am grateful to Father John Renken, our past president, and Father Kevin McKenna, vice-president/president elect. Both are examples of what we strive to be as members of a learned society in the church: intelligent, insightful and pastoral. They have been valued collaborators in furthering the mission of the society. Working with them has been an enormous support.

As I submit this report, then, I end by thanking you all for the support you have given me and the valuable work of the Canon Law Society of America. I pray that the Lord might sustain us in the work we each do to serve the communion of the Church.



## **REPORT OF THE TREASURER**

**SR. MARGARET A. STALLMEYER, C.D.P.**

I am pleased to present the financial report for fiscal year 2000-2001 and the budget for 2001-2002. The reports are the culmination of the work of many individuals. I would like to publicly thank Reverend Arthur Espelage and his administrative assistant, Mrs. Jennifer Miller. They are responsible for the day to day management of the society's funds and carry out this responsibility with professionalism and expertise.

I would also like to recognize Mr. Joseph Godbout, CPA for his professional assistance, the Board of Governors, especially its president Msgr. Robert Deeley, for their guidance and insights and the budget and investment committees for their wisdom and oversight. The generosity of each of these individuals as well as their commitment to the Canon Law Society were an inspiration to me as well as evidence of the health of the Society.

The first report consists of the end of the year audit report including the auditor's opinion that the financial statements "present fairly, in all material respects, the financial position of the Canon Law Society of America." The first two pages of the report present the consolidated statement of financial position. It consists of all assets and liabilities as of June 30, 2001 of the Canon Law Society. Compared to the previous year, the total net assets of the Society decreased by approximately \$80,000. This is primarily accounted for by realized and unrealized loss on the investments. While such a loss is of concern, the activity of the society's portfolios reflects what is occurring in the market and is not the result of the policies of the investment manager.

Of particular note is the fact that this year, as a result of marketing on the part of the executive coordinator with pre-publication sale of new books, the Society was able to publish two texts without withdrawing funds from investments. This pre-publication strategy has relieved the cash flow problem that had been experienced over the past years.

The budget for next year with a comparison of the 2000-2001 budget and actual figures comprises the second half of the report. The first page of the budget report is a summary showing projected income expenses and the bottom line for each fund. With the possible exception of the convention, the Society anticipates breaking even during this current fiscal year. The pages, which follow the overview, give a detailed breakdown of sources of income and anticipated expenses for each fund.

As I complete my term, I wish to express my gratitude to each of you for this opportunity to serve the Canon Law Society in the role of treasurer. It has been both challenge and blessing. May God's spirit continue to guide our mission.

PART II  
AUDITOR'S REVIEW AND EOY ACCOUNT  
PART I  
INDEPENDENT AUDITOR'S REPORT

To the Board of Governors  
and Executive Coordinator  
Canon Law Society of America  
Washington, D.C.

I have audited the accompanying statement of financial position of Canon Law Society of America (a District of Columbia not-for-profit professional association) as of June 30, 2001, and the related statements of activities and changes in net assets and cash flows and the accompanying schedules for the year then ended. These financial statements are the responsibility of the management of Canon Law Society of America. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for my opinion.

In my opinion, the financial statements and schedules referred to above present fairly, in all material respects, the financial position of Canon Law Society of America at June 30, 2001, and the changes in its net assets and its cash flows for the year then ended in conformity with generally accepted accounting principles.

The June 30, 2000 financial statements were reviewed by me, and my report thereon, dated August 15, 2000, stated I was not aware of any material modifications that should be made to those statements for them to be in conformity with generally accepted accounting principles.

However, a review is substantially less in scope than an audit and does not provide a basis for the expression of an opinion on the financial statements taken as a whole.

JOSEPH E. GODBOUT  
Certified Public Accountant  
Silver Spring, Maryland  
August 30, 2001

**CANON LAW SOCIETY OF AMERICA  
STATEMENTS OF FINANCIAL POSITION**

June 30, 2001  
with comparative figures for June 30, 2000

	<b>ASSETS</b>	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
<i>Current Assets:</i>			
Cash and cash equivalents		\$102,982	\$ 85,751
Accounts receivable-book sales		6,211	11,377
Royalties receivable		3,859	3,177
Accounts receivable-dues		400	600
Accrued interest receivable		1,354	1,150
Miscellaneous receivables		2,127	841
Current inventory of books and publications, at cost (Note 3)		15,974	21,759
Prepaid postage		1,240	685
Prepaid insurance		341	319
Prepaid book costs (Note 6)		12,9143	2,113
Prepaid expenses, other		<u>609</u>	<u>11,005</u>
Total Current Assets		148,011	168,777
<i>Non-current Assets:</i>			
Furniture and equipment, at cost, less accumulated depreciation of \$14,474 (\$24,612 at June 30, 2000)		10,173	11,852
Long-term inventory of books and publications, at cost (Note 3)		138,334	121,543
Investments (cost \$181,378 - \$206,477 at 6/30/00), at market value (Note 4)		216,876	286,155
Investments (cost \$243,727 - \$208,337 at 6/30/00), at market value, temporarily restricted in Scholarship Fund (Note 5)		<u>268,008</u>	<u>256,309</u>
Total Non-current Assets		<u>633,391</u>	<u>675,859</u>
Total Assets		<u><u>\$781,402</u></u>	<u><u>\$844,636</u></u>

## LIABILITIES AND NET ASSETS

	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
<i>Current Liabilities:</i>		
Accounts Payable	\$ 17,375	\$ 24,607
Royalties payable	8,616	4,241
Deferred revenue - book sales	22,316	-0-
Deferred revenue - convention	34,838	26,640
Deferred revenue - membership dues	2,625	625
Deferred revenue - royalties	<u>-0-</u>	<u>15,000</u>
Total Current Liabilities	85,770	71,113
<i>Net Assets: (Statement-page 11)</i>		
Unrestricted		
Board designated restricted reserve fund (Note 8)	55,412	55,412
Board designated for special projects (Note 9)	75,082	78,757
Other unrestricted	<u>297,130</u>	<u>383,045</u>
Total unrestricted	<u>427,624</u>	<u>517,214</u>
Temporarily restricted-scholarship fund	<u>268,008</u>	<u>256,309</u>
Permanently restricted	<u>NONE</u>	<u>NONE</u>
Total Net Assets (Statement-page 7)	<u>695,632</u>	<u>773,523</u>
Total Liabilities and Net Assets	<u>\$781,402</u>	<u>\$844,636</u>

The accompanying notes are an integral part of these financial statements.

**CANON LAW SOCIETY OF AMERICA**

**STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS**

for the year ended June 30, 2001

with comparative figures for the year ended June 30, 2000

	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
Changes in unrestricted net assets:		
Revenues and Gains:		
Membership dues	\$154,710	\$154,344
Investment income (Note 13)	7,956	10,304
Net realized gain/(loss) on sale of investments (Note 13)	(26,694)	(14,139)
Net unrealized gain on appreciation of investments (Note 13)	(10,601)	39,515
Sales of publications and books	138,832	258,209
Royalties	39,618	8,531
Convention and pre-convention workshops fees	93,582	85,995
Other income	<u>1,775</u>	<u>3,018</u>
 Total unrestricted revenues and gains	 399,178	 545,777
Net assets released from restrictions:		
Satisfaction of scholarship restrictions	<u>8,049</u>	<u>7,094</u>
 Total unrestricted revenues, gains, and other support	 <u>407,227</u>	 <u>552,871</u>
Expenses:		
Program services (Schedules-pages 8 & 9)	376,773	371,731
Supporting services (Schedule-page 10)	<u>120,044</u>	<u>127,511</u>
 Total expenses	 <u>496,817</u>	 <u>499,242</u>
 Increase/(decrease) in unrestricted net assets	 <u>(89,590)</u>	 <u>53,629</u>

	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
Changes in temporarily restricted net assets:		
Contributions to the scholarship fund	\$ 12,161	\$ 13,124
One time transfer from general operations	41,351	-0-
Income on long-term investments (Note 13)	8,168	6,648
Net realized gain/(loss) on sale of investments (Note 13)	(30,824)	(4,523)
Net unrealized gain on appreciation of investments (Note 13)	(11,108)	25,187
Net assets released from restriction (Page 9)	<u>(8,049)</u>	<u>(7,094)</u>
 Increase (decrease) in temporarily restricted net assets	 <u>11,699</u>	 <u>33,342</u>
 Changes in permanently restricted net assets:	 NONE	 NONE
 <b>INCREASE/(DECREASE) IN NET ASSETS</b>	 (77,891)	 86,971
 Net Assets at Beginning of Year	 773,523	 686,552
Net Assets at End of Year	<u>\$695,632</u>	<u>\$773,523</u>

The accompanying notes are an integral part of these financial statements.

**CANON LAW SOCIETY OF AMERICA**  
**SCHEDULES OF PROGRAM SERVICES**

**for the year ended June 30, 2001**

**with comparative figures for the year ended June 30, 2000**

	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
<i>Publications</i>		
Cost of publications	\$58,523	\$ 45,051
Loss on inventory reduction	4,079	9,000
Executive expenses	48,800	47,043
Royalty expense	4,375	17,417
Depreciation	2,740	2,909
Bad debts(7,589)8,373		
Advertising	15,635	42,388
PMDS	<u>50,483</u>	<u>48,995</u>
Total Publication Expenses	<u>177,046</u>	<u>221,176</u>
<i>Convention and Pre-convention Workshops</i>		
Honoraria	3,400	5,600
Food service	38,137	25,770
Travel	325	1,218
Printing	7,502	12,085
Lodging	5,095	-0-
Freight	27	570
Other	1,263	1,210
Postage	2,015	2,173
Convention Chair	-0-	3,487
Liturgy	3,295	2,276
Pre convention expenses <sup>1</sup>	2,079	14,947
Supplies	1,034	8,678
Convention planning	2,165	1,330
CUA Day	<u>6,946</u>	<u>-0-</u>
Total Convention and Pre-convention Workshops	<u>93,283</u>	<u>79,344</u>

The accompanying notes are an integral part of these financial statements.

*Projects*

Commentary Committee	-0-	7,612
Gift to Scholarship Fund	2,500	2,500
CIC Project	-0-	1,664
Canon Law Digest - Vol. 12	119	836
Consecrated Life	1,340	65
Temporal goods handbook	-0-	208
Use of Third Form	53	376
Experiment in Due Process	-0-	296
CCEO Translation	1,290	686
Canonical Education	1,790	155
Advisory Opinions	-0-	311
CIC Reception	-0-	7,587
Other	<u>61</u>	<u>29</u>
Total Projects Expenses	<u>7,153</u>	<u>22,325</u>

*Membership services*

Postage	14,550	1,934
Printing	15,616	15,221
Newsletter	<u>14,352</u>	<u>12,407</u>
Total Membership Services	<u>44,518</u>	<u>29,562</u>

*Committees*

Nominations	4,643	2,789
Marriage research	-0-	172
Electronic Media	-0-	693
Civil and Canon Law	-0-	13
Parish Viability	492	-0-
BOG designated committees	<u>238</u>	<u>370</u>
Total Committees	<u>5,373</u>	<u>4,037</u>

Visit to Holy See -0- 8,193

One Time Contribution - Scholarship Fund 41,351 -0-

*Scholarship Fund*

Scholarships paid	5,000	5,000
Scholarship expenses	<u>3,049</u>	<u>2,094</u>
Total Scholarship Fund	<u>8,049</u>	<u>7,094</u>

Total Program Services \$376,773 \$371,731

**CANON LAW SOCIETY OF AMERICA**  
**SCHEDULES OF SUPPORTING SERVICES**

**for the year ended June 30, 2001**

**with comparative figures for the year ended June 30, 2000**

	June 30, <u>2001</u> (Audited)	June 30, <u>2000</u> (Unaudited)
Board of Governors		
Rental housing	\$13,000	\$ 12,094
Travel	6,868	10,506
Food service	6,761	7,258
Other expenses	988	1,848
President	7,800	9,799
Vice President	853	989
Treasurer	1,981	1,440
Secretary	-0-	-0-
Executive Coordinator Office	79,164	80,014
Depreciation expense	<u>2,629</u>	<u>3,563</u>
 Total Supporting Service	 <u><u>\$120,044</u></u>	 <u><u>\$127,511</u></u>

The accompanying notes are an integral part of these financial statements.

**CANON LAW SOCIETY OF AMERICA**

**STATEMENT OF CHANGES IN NET ASSETS BY FUND**

**for the year ended June 30, 2001**

	<b>Special Projects Fund</b>	<b>Restricted Reserve Fund</b>	<b>Scholar- ship Fund</b>	<b>Other Unrest- ricted</b>	<b>Total</b>
Balance, July 1, 2000	\$ 78,757	\$55,412	\$256,309	\$383,045	\$773,523
Add: Increases					
Membership dues				154,710	
Investment income	351		8,168	7,605	16,124
Sales of publications	138,832				138,832
Royalties	39,618				39,618
Convention, workshops				93,582	93,582
Other income	1,723			52	1,775
One time transfer to scholarship fund			41,351		41,351
Contributions			12,161		12,161
	180,524	0-	61,680	255,949	498,153
Less: Decreases					
Publication expenses	(177,046)				(177,046)
Convention, workshops				(93,283)	(93,283)
Projects expenses	(7,153)				(7,153)
Membership services, committees and other			(8,049)	(49,891)	(57,940)
Supporting services				(120,044)	(120,044)
Losses on investments			(41,932)	(37,295)	(79,227)
One time transfer to scholarship fund				(41,351)	(41,351)
	(184,199)	-0-	(49,981)	(341,864)	(576,044)
Balance, June 30, 2001	\$ 75,082	\$55,412	\$268,008	\$297,130	\$695,632

The accompanying notes are an integral part of these financial statements.

**CANON LAW SOCIETY OF AMERICA**

**STATEMENTS OF CASH FLOWS**

**for the year ended June 30, 2001**

**with comparative figures for the year ended June 30, 2000**

	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
Cash Flows From Operating Activities:		
Membership dues	\$156,935	\$154,544
Publications and book sales	173,526	248,661
Convention and workshops	101,780	112,635
Royalties	23,936	17,249
Investment income	7,752	10,645
Other income	<u>2,374</u>	<u>3,018</u>
	466,303	546,752
Less: Cash paid to suppliers and employees	<u>(436,015)</u>	<u>573,664</u>
Net Cash From/(Used In) Operations	<u>30,288</u>	<u>(26,912)</u>
Cash Flows From Investing Activities:		
Purchase of furniture and equipment	(3,691)	(794)
Purchase of investments	(48,006)	49,942)
Proceeds from sales of investments	<u>38,640</u>	<u>115,401</u>
Net Cash From/(Used In) Investing Activities	<u>(13,057)</u>	<u>64,665</u>
Cash Flows From Financing Activities:	<u>NONE</u>	<u>NONE</u>
Increase/(Decrease) During Year	17,231	37,753
Cash and Cash Equivalents at Beginning of Year	<u>85,751</u>	<u>47,998</u>
Cash and Cash Equivalents at End of Year	<u>\$102,982</u>	<u>\$ 85,751</u>

	June 30, 2001 (Audited)	June 30, 2000 (Unaudited)
--	-------------------------------	---------------------------------

Reconciliation of Increase/(Decrease) in Net Assets to  
Net Cash Provided By/(Used In) Operating Activities:

Increase/(decrease) in Net Assets (Statement-page 7)	\$(77,891)	\$86,971
Adjustments to Reconcile:		
Depreciation	5,369	6,472
Gains/losses on long-term investments	79,227	(46,040)
Contributions to the scholarship fund	(12,161)	(13,124)
Investment income - scholarship fund	(8,168)	(6,648)
Loss on inventory reduction	4,079	9,000
Bad debts	(7,589)	8,373
(Increase)/decrease in accounts receivable - book sales	12,755	(9,548)
(Increase)/decrease in royalties receivable	(682)	1,218
(Increase)/decrease in accounts receivable - dues	200	200
(Increase)/decrease in accrued interest receivable	(204)	341
(Increase)/decrease in miscellaneous receivables	(1,286)	454
(Increase)/decrease in inventory of books	(15,085)	(98,967)
(Increase)/decrease in prepaid postage	(555)	2,786
(Increase)/decrease in prepaid insurance	(22)	(3)
(Increase)/decrease in prepaid book costs	19,199	(9,674)
(Increase)/decrease in prepaid expenses, other	10,396	(3,858)
Increase/(decrease) in accounts payable	(7,232)	4,437
Increase/(decrease) in royalties payable	4,375	(536)
Increase/(decrease) in deferred revenue - book sales	22,316	-0-
Increase/(decrease) in deferred revenue - convention	8,198	2,664
Increase/(decrease) in deferred revenue - membership dues	2,000	-0-
Increase/(decrease) in deferred revenue - royalties	(15,000)	7,500
Expenses paid from scholarship fund	<u>8,049</u>	<u>7,094</u>
Net Cash From/(Used In) Operations	<u>\$30,288</u>	<u>\$(26,912)</u>

The accompanying notes to are an integral part of these financial statements.

# CANON LAW SOCIETY OF AMERICA

## NOTES TO FINANCIAL STATEMENTS

June 30, 2001

and

June 30, 2000

### **Note 1. Summary of Significant Accounting Policies**

This summary of significant accounting policies of Canon Law Society of America (CLSA), a nonprofit organization, is presented to assist in understanding the financial statements. The financial statements and notes are representations of the organization's management, who is responsible for their integrity and objectivity. These accounting policies conform to generally accepted accounting principles and have been consistently applied in the preparation of the financial statements.

#### *Accounting Basis*

CLSA prepares its financial statements on the accrual basis of accounting; that is, income is recognized when earned and expenses are recognized when the obligation is incurred.

#### *Accounts Receivable - Books and Publications*

Books and publication receivables are considered uncollectible if not collected within 120 days after sale.

#### *Accounts Receivable - Dues*

Dues are billed to members at the beginning of each fiscal year (July 1). CLSA records dues income on the basis of dues actually collected. Dues not collected by the issue date of the annual report are considered uncollectible and are written off.

#### *Deferred Revenue*

Membership dues, book sales, workshop and convention registrations collected in advance have been included in deferred revenue in the accompanying balance sheets under current liabilities. This deferred revenue is all recognizable within one year.

#### *Inventory of Books and Publications*

The inventory of books and publications is valued at cost, on the first-in, first out method. CLSA carries a 5 year supply of some books and publications. Because of this long-term supply, there is the possibility that part of the inventory will

become obsolete and never be sold. The inventory has been separated on the balance sheet between the estimated current portion which management believes will be sold in the next twelve months and the estimated long-term portion which management expects will be sold in the remaining four years as detailed in Note 3.

The write off for obsolete inventory for the fiscal year ended June 30, 2001 was \$4,079, and June 30, 2000 was \$9,000.

*Capitalization and Depreciation Policy*

Expenditures for fixed assets of \$300 or more per item are capitalized and depreciated using the straight-line method over the estimated useful lives of the assets of five years. Depreciation is computed for six months on assets additions during the year. Fully depreciation assets and their related reserves are removed from the accounts. Repairs are expensed as incurred.

Fixed assets additions during 1999-2001 were:

	<u>2000-2001</u>		<u>1999-2000</u>
Notebook computer	\$2,641	Office chair	\$419
Draperies	<u>1,050</u>	Electrical wiring	<u>375</u>
	<u>\$3,691</u>		<u>\$794</u>

Depreciation expense for the years ended June 30, 2001 and June 30, 2000, was \$5,369 and \$6,472, respectively.

*Investments*

Investments are carried at their fair market value on the balance sheet date. Gain or loss on investments during the year is measured by the difference between the sales price or the fair market value at the end of the year and their cost if acquired during the year or their fair market value at the end of the preceding year.

*Restricted Funds*

Restricted funds are recorded as either temporarily or permanently restricted in the net assets. Temporarily restricted gifts are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions when the stipulated restriction is accomplished.

*Board Designated Net Assets*

The Board has designated that part of the unrestricted net assets be set aside for special purposes as described in Notes 8 & 9 below.

### *Expenses for Convention and Workshops*

Expenses for the convention and workshops have been charged with direct costs only, and do not include overhead costs which may be associated with these functions.

### *Income Taxes*

CLSA is a nonprofit organization exempt from federal income taxes under Section 501 (c) (3) of the Internal Revenue Code, and contributions to it are deductible by donors for income tax purposes. The organization is also exempt from state income taxes.

### *Cash Equivalents*

For purposes of the statement of cash flows, CLSA considers only highly liquid investments with an original maturity of three months or less at the time of purchase to be cash equivalents.

### *Current Assets and Current Liabilities*

Current assets and current liabilities are those items expected to be or which may be realized or liquidated during the next twelve-month period.

### *Fund Accounting*

CLSA uses fund accounting because this method allows the organization to readily keep track of the various monies under its control and the purposes of those funds.

### *Use of Estimates*

The preparation of financial statements in conformity with generally accepted accounting principles requires the use of management estimates and assumptions. Accordingly, actual results may differ from those estimates.

## **Note 2. Organization**

The Canon Law Society of America (CLSA) is a national, not-for-profit, professional association, established in November, 1939 in Washington, DC to promote canonical and pastoral approaches to significant issues within the Roman Catholic Church. In addition to a publication service, CLSA convenes an annual convention and other symposia to promote a better understanding of church law and its pastoral applications. Major sources of gross income are from membership dues (36%), sales of publications and books (42%) and annual convention (22%).

## **Note 3. Inventory**

Total inventory at June 30, 2001, at cost, was \$154,308 (\$143,302 at June 30,

2000) of which \$15,974 (\$21,759 at June 30, 2000) is reported on the statement of financial position under current assets as the estimated portion of the inventory which management believes will be sold in the coming fiscal year. The balance of the inventory of \$138,334 (\$121,543 at June 30, 2000) is reported under non-current assets. Three recent publications make up 71% of this long-term portion.

**Note 4. Investments-Canon Law Society**

These investments are subject to market risks, and their values fluctuate daily. They are held in a Schwab Institutional account as follows:

	<u>2001</u>		<u>2000</u>	
	Cost	Value	Cost	Value
Stocks	\$105,699	\$140,510	\$110,332	\$193,334
Corporate bonds	60,668	60,973	81,134	77,844
Government bonds	<u>15,011</u>	<u>15,393</u>	<u>15,011</u>	<u>14,977</u>
	<u>\$181,378</u>	<u>\$216,876</u>	<u>\$206,477</u>	<u>\$286,155</u>

**Note 5. Investments-Scholarship Fund**

These investments are subject to market risks, and their values fluctuate daily. They are held in a Schwab Institutional account restricted for use by the Scholarship Fund as follows:

	<u>2001</u>		<u>2000</u>	
	Cost	Value	Cost	Value
Cash	\$ 12,098	12,098	\$ 11,929	\$ 11,929
Stocks	114,585	137,191	97,585	147,708
Corporate bonds	55,379	55,623	35,375	34,034
Government bonds	59,969	61,400	60,516	59,706
Pledge receivable	25	25	2,500	2,500
Accrued interest	2,021	2,021	1,589	1,589
Less: Accounts payable	<u>(350)</u>	<u>(350)</u>	<u>(1,157)</u>	<u>(1,157)</u>
	<u>\$243,727</u>	<u>\$268,008</u>	<u>\$208,337</u>	<u>\$256,309</u>

**Note 6. Deferred Income-Royalties**

Prepaid book costs of \$12,914 (\$32,113 at 6/30/00) represent expenditures to date for several publications. These costs will be expensed as these books are published

and sold.

**Note 7. Operating Lease Payable-Xerox**

The organization leased a new copier with a 5 year lease payable to Xerox beginning on June 1, 1999. The lease is \$528.20 per month and includes supplies and maintenance up to 8,000 copies per month.

Because this lease includes supplies and maintenance as a major part of the monthly payments, it is considered an operating lease, even though there is an option to purchase the copier at the end of the lease. The following is a schedule by years of future minimum lease payments under this lease:

Year Ended:

June 30, 2002	\$6,338
June 30, 2003	6,338
June 30, 2004 (11 months)	<u>5,810</u>
	\$18,486

**Note 8. Restricted Reserve Account**

The Board has designated \$55,412 as a Restricted Reserve Account to be set aside for future purposes. The income of this Restricted Reserve Account, formerly the Quasi-Endowment Fund, is to be used for operations.

**Note 9. Publications Sales**

The Board of Governors has also voted to use the net income from sales of publications and books to fund Special Projects.

The changes in Board Designated For Special Projects are as follows:

	<u>6/30/01</u>	<u>6/30/00</u>
Balance, beginning of year	\$78,757	\$52,726
Add: Publication income	138,832	258,209
Royalty income	39,618	8,531
Other income	2,074	2,792
Less: Publication expenses	(177,046)	(221,176)
Projects expenses	7,153	22,325
Balance, end of year	<u>\$75,082</u>	<u>\$78,757</u>

**Note 10. Annual Meeting Site Reservation Agreements**

The organization has reserved hotel space for future annual meetings. The terms of these reservation agreements provide that a fee will be assessed to CLSA if the reservation is canceled due to a site change, within a specified period prior to the meeting dates.

**Note 11. Operating Lease - Mail Machine**

The organization is leasing a shipping system from Pitney Bowes under an operating lease. This lease is for a period of 63 months beginning on December 5, 1996 and its terms call for annual lease payments of \$4,056. The organization does not have an option to purchase this system at the end of this lease, therefore, this lease is considered an operating lease and the lease payments are expensed as paid. This lease was bought out in July 2001 for \$3,068.

**Note 12. Retirement Benefits**

The organization contributed \$1,229 toward the retirement of the Executive Coordinator during the fiscal year ended June 30, 2001 and \$1,229 during the fiscal year ended June 30, 2000.

**Note 13. Investment Income**

The elements of investment income are as follows:

	<u>6/30/01</u>	<u>6/30/00</u>
Interest and dividend income	\$1,444	\$595
Interest earned on checking accounts	6,512	9,709
Dividends and interest on investments held by Schwab Institutional	<u>\$7,956</u>	<u>\$10,304</u>
Net realized gains/(loss) on investments		
Realized loss on investments sold by Schwab Institutional	<u>\$(26,694)</u>	<u>\$(14,139)</u>
Net unrealized gains/(loss) on investments		
Unrealized gains/(loss) on investments held by Schwab Institutional	<u>\$(10,601)</u>	<u>\$39,515</u>

Dividends and gains/(loss) on long-term investment-Temporarily  
Restricted Scholarship Fund

Interest and dividend income

Interest and dividends earned on investments held by Schwab Institutional	<u>\$8,168</u>	<u>\$6,648</u>
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Net realized gains/(loss) on investments

Realized loss-investments held by Schwab Institutional	<u>\$(30,824)</u>	<u>\$(4,523)</u>
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Net unrealized gains/(loss) on investments

Unrealized gains on investments held by Schwab Institutional	<u>\$(11,108)</u>	<u>\$25,187</u>
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PART III

**BUDGET SUMMARY**  
**Canon Law Society of America**  
**FY JULY 1, 2001 – JUNE 30, 2002**

I. GENERAL OPERATIONS

Income	\$ 196,125.00
Expenses	<u>\$ 194,435.00</u>
Excess (Deficit)	\$ 1,690.00

II. PUBLICATIONS

Income	\$ 245,645.00
Expenses	<u>\$ 240,285.00</u>
Excess (Deficit)	\$ 5,360.00

III. CONVENTION

Income	\$ 89,065.00
Expenses	<u>\$ 94,215.00</u>
Excess (Deficit)	(\$ 5,180.00)

IV. CLSA SCHOLARSHIP

Income	\$ 14,900.00
Expenses	<u>\$ 14,830.00</u>
Excess (Deficit)	\$ 70.00

**BUDGET SUMMARY**  
**Canon Law Society of America**  
**FY JULY 1, 2001 – JUNE 30, 2002**

**INCOME**

	Budget FY 00.01	6 month FY 00.01	Budget FY01.02
<b>I. GENERAL OPERATIONS</b>			
Dues Income	\$155,000.00	\$85,912.50	\$161,575.00
New Dues			\$8,000.00
Interest Income/Checking	\$180.00	\$153.15	\$550.00
Investment Income/Charles Schwab	\$17,360.00	\$3,115.53	\$6,000.00
<b>TOTAL</b>	<b>\$172,540.00</b>	<b>\$89,181.18</b>	<b>\$176,125.00</b>
Transfer from Publications			\$20,000.00
			<b>\$196,125.00</b>
<b>II. PUBLICATIONS</b>			
Publication Sales	\$250,000.00	\$53,526.98	\$230,000.00
Xerox Sales	\$1,000.00	\$913.20	\$1,620.00
Royalty Income	\$35,270.00	\$24,458.76	\$13,925.00
Interest Income/Checking	\$180.00	\$29.75	\$100.00
<b>TOTAL</b>	<b>\$286,450.00</b>	<b>\$78,928.69</b>	<b>\$245,645.00</b>
<b>III. CONVENTION</b>			
Pre-Convention Fees	\$17,000.00	\$11,510.00	\$14,400.00
Convention Fees	\$73,625.00	\$81,275.00	\$74,250.00
Interest Income/Checking	\$180.00	\$320.39	\$415.00
<b>TOTAL</b>	<b>\$90,805.00</b>	<b>\$93,105.39</b>	<b>\$ 89,065.00</b>
<b>IV. CLSA SCHOLARSHIP</b>			
Member Contributions	\$6,000.00	\$4,180.88	\$4,000.00
CLSA Publication Contribution	\$2,500.00	\$2,500.00	\$2,500.00
Investment Income	\$8,120.00	\$3,501.44	\$ 8,400.00
<b>TOTAL</b>	<b>\$16,620.00</b>	<b>\$10,182.32</b>	<b>\$14,900.00</b>

**BUDGET SUMMARY  
GENERAL OPERATIONS  
Canon Law Society of America  
FY JULY 1, 2001 – JUNE 30, 2002**

**EXPENSES**

**Office of the Executive Coordinator**

	Budget FY 00.01	6 month FY 00.01	Budget FY 01.02
Staff Salaries	\$48,000.00	\$25,255.29	\$49,750.00
Staff Benefits	\$10,500.00	\$4,613.19	\$ 7,910.00
Temporary Secretarial Help			\$ 6,000.00
Executive Coordinator Travel	\$ 2,500.00	\$198.00	\$2,000.00
Executive Coordinator			
Continuing Education	\$1,000.00	\$ -	\$1,000.00
Office Supplies	\$1,200.00	\$892.77	\$1,230.00
Insurance	\$1,600.00	\$1,364.00	\$1,465.00
CUA Parking Fees	\$600.00	\$576.00	\$900.00
Books & Subscriptions	\$ 650.00	\$ 178.50	\$650.00
Hospitality	\$750.00	\$ -	\$750.00
Computer Consultants	\$3,600.00	\$1,122.92	\$2,200.00
Accountant	\$ 4,250.00	\$ 2,997.50	\$4,750.00
Bookkeeper			\$8,000.00
Telephone	\$800.00	\$566.01	\$695.00
Postage	\$600.00	\$144.24	\$600.00
Xerox Copier Lease	\$ 3,180.00	\$ 2,167.99	\$3,240.00
Credit Card Terminal	\$680.00	\$ 1,576.83	\$1,500.00
Bank Service Charges	\$470.00	\$225.70	\$900.00
Capital Expense			\$2,150.00
Membership Services	\$34,000.00	\$11,023.82	\$35,100.00
SUB-TOTAL	\$114,380.00	\$52,872.76	\$ 130,790.00

**BUDGET SUMMARY**  
**GENERAL OPERATIONS**  
**Canon Law Society of America**  
**FY JULY 1, 2001 – JUNE 30, 2002**

	<b>EXPENSES</b>		
	Budget FY 00.01	6 month FY 00.01	Budget FY 01.02
<b>Board of Governors</b>			
Housing	\$13,000.00	\$ 5,081.33	\$13,400.00
Travel	\$11,000.00	\$ 1,176.05	\$11,330.00
Food	\$ 8,000.00	\$ 2,232.41	\$8,240.00
Supplies	\$850.00	\$256.80	\$555.00
Postage			\$300.00
Telephone			
SUB-TOTAL	\$32,850.00	\$ 8,746.59	\$33,825.00
President	\$ 9,000.00	\$ 3,364.11	\$9,000.00
Vice President	\$ 1,000.00	\$624.94	\$1,200.00
Treasurer	\$ 2,250.00	\$345.20	\$2,250.00
SUB-TOTAL	\$12,250.00	\$ 4,334.25	12,450.00
Rome Trip	\$ -		\$10,000.00
SUB TOTAL	\$45,100.00	\$13,080.84	56,275.00
<b>Committees</b>			
BOG Designated Committees	\$ 3,000.00	\$-	\$1,500.00
Nominations	\$ 2,525.00	\$-	\$3,000.00
Resolutions	\$170.00	\$-	\$170.00
Advisory Opinions	\$150.00	\$ 56.00	\$150.00
Civil and Canon Law	\$500.00	\$-	\$250.00
Consecrated Life		\$-	\$-
Electronic Media	\$ 1,000.00	\$-	\$500.00
Investment Review	\$-	\$-	\$-
Marriage Research	\$500.00	\$-	\$500.00
Roman Replies	\$150.00	\$-	\$150.00
<i>Ex Corde Ecclesiae</i>	\$500.00	\$-	\$250.00
Canonical Advocacy Study	\$150.00	\$-	\$150.00
Parish Viability	\$ 1,000.00	\$-	\$500.00
Selection of Bishops	\$250.00	\$-	\$250.00
SUB TOTAL	\$10,400.00	\$ 56.00	7,370.00
<b>TOTAL OPERATIONS</b>	<b>\$169,880.00</b>	<b>\$66,009.60</b>	<b>\$ 194,435.00</b>

**BUDGET SUMMARY**  
**PUBLICATIONS**  
**Canon Law Society of America**  
**FY JULY 1, 2001 – JUNE 30, 2002**

**EXPENSES**

	Budget FY 00.01	6 month FY 00.01	Budget FY 01.02
Staff Salaries	\$24,700.00	\$10,799.00	\$25,680.00
Staff Benefits	\$ 5,125.00	\$ 1,501.49	\$3,360.00
Student Assistants	\$ 2,000.00	\$-	\$1,750.00
Publication Travel	\$ 1,250.00	\$291.87	\$2,870.00
Accountant	\$ 4,250.00	\$ 2,997.50	\$4,750.00
BookKeeper			\$12,250.00
Capital Expenses	\$ 3,500.00	\$ 2,641.00	\$2,500.00
Telephone	\$950.00	\$129.08	\$695.00
Pitney Bowes	\$ 6,135.00	\$ 2,259.35	\$3,820.00
Xerox Copier Lease	\$ 3,180.00	\$ 1,068.00	\$3,240.00
General Office Supplies	\$800.00	\$-	\$535.00
Publication Corr. Postage	\$480.00	\$210.59	\$2,180.00
Publication Advert. Printing	\$20,000.00	\$ 9,315.00	\$9,540.00
Publication Advertising Postage		\$679.02	\$5,690.00
Electronic Media	\$ 1,650.00	\$549.50	\$1,415.00
Credit Card Terminal Novus	\$880.00	\$713.66	\$1,180.00
Royalties/CIC	\$13,000.00	\$ 2,064.63	\$4,200.00
Royalties/CCEO	\$400.00	\$208.00	\$4,420.00
Royalties/Selected Issues	\$ 2,000.00	\$385.56	\$750.00
Bank Service Charges	\$720.00	\$166.15	\$360.00
PMDS — Outsourcing	\$60,000.00	\$17,562.38	\$51,550.00
Publications Printing	\$61,300.00		\$69,550.00
Scholarship Fund Contribution	\$ 2,500.00	\$ 2,500.00	\$2,500.00
SUB TOTAL	\$214,820.00	\$56,041.78	\$ 214,785.00

**BUDGET SUMMARY  
PUBLICATIONS  
Canon Law Society of America  
FY JULY 1, 2001 – JUNE 30, 2002**

	Budget FY 00.01	6 month FY 00.01	Budget FY 01.02
<b>Projects</b>			
Comm. on Canon Law Digest	\$1,500.00	\$119.44	\$750.00
Pastoral Responses in Irregular Marriages	\$500.00		\$-
American Jurisprudence	\$ 1,000.00	\$-	\$500.00
Consecrated Life Handbook	\$ 1,000.00	\$ 5.73	\$-
Third Form of Penance	\$500.00	\$ 53.01	\$-
Handbook on Parish Life	\$ 1,000.00	\$-	\$-
CCEO Revision	\$ 2,000.00	\$536.54	\$-
CLSA Bibliography	\$250.00	\$-	\$250.00
Publications Committee <i>Festschrift</i>			\$500.00
New Projects	\$ 3,000.00		\$3,000.00
Sacramental Law Handbook	\$ 1,000.00		\$-
SUB-TOTAL	\$11,750.00	\$714.72	\$5,500.00
Transfer to General Operations			\$20,000.00
<b>TOTAL PUBLICATIONS</b>	<b>\$226,570.00</b>	<b>\$56,756.50</b>	<b>\$ 240,285.00</b>

**BUDGET SUMMARY  
CONVENTION  
Canon Law Society of America  
FY JULY 1, 2001 – JUNE 30, 2002**

	Budget 00.01	6 month 00.01	Budget 01.02
<b>Pre-convention</b>			
Food	\$ 7,000.00	\$ 5,167.50	\$5,200.00
Honoraria	\$ 3,000.00	\$ 3,400.00	\$3,000.00
Lodging	\$ 2,500.00	\$416.00	\$1,760.00
Postage	\$150.00	\$ 22.86	\$50.00
Freight	\$150.00	\$176.53	\$200.00
Travel	\$100.00	\$ 65.00	\$400.00
Printing	\$ 1,260.00	\$657.90	\$1,525.00
Supplies & Telephone		\$-	\$55.00
Telephone		\$-	\$100.00
Liturgy		\$100.00	\$200.00
Audio Visuals		\$ 2,130.00	\$1,780.00
Sub-total	\$14,160.00	\$12,135.79	\$14,270.00
<b>Convention</b>			
Food	\$34,000.00	\$37,995.59	\$36,000.00
Freight	\$100.00	\$-	\$600.00
Honoraria	\$ 5,100.00	\$ 3,400.00	\$3,900.00
Lodging	\$ 4,400.00	\$ 5,094.55	\$1,550.00
Telephone	\$500.00	\$299.53	\$350.00
Postage	\$ 2,500.00	\$ 2,014.50	\$2,650.00
Supplies	\$ 4,000.00	\$ 4,603.80	\$5,095.00
Printing	\$ 8,800.00	\$ 7,502.22	\$9,200.00
Travel	\$ 1,400.00	\$324.71	\$1,500.00
Liturgy	\$ 2,300.00	\$ 3,294.65	\$2,550.00
Buses — CUA	\$ 4,750.00	\$ 6,946.00	\$-
Audio Visuals		\$ 6,429.82	\$7,000.00
SUB-TOTAL	\$67,850.00	\$77,905.37	\$70,395.00
Convention Chairperson	\$ 3,000.00	\$-	\$3,000.00
Assistant Convention Chair	\$ 1,500.00	\$-	\$1,500.00
Convention Planning Comm.	\$ 2,150.00	\$ 2,038.45	\$3,500.00
Rome 2005	\$500.00	\$ 0.77	\$500.00
Bank Service Charges	\$250.00	\$125.10	\$250.00
Credit Card Charges			\$800.00
SUB-TOTAL	\$ 7,400.00	\$ 2,164.32	\$9,550.00
<b>TOTAL CONVENTION</b>	<b>\$89,410.00</b>	<b>\$92,205.48</b>	<b>\$94,215.00</b>

**BUDGET SUMMARY  
 CLSA SCHOLARSHIP  
 Canon Law Society of America  
 FY JULY 1, 2001 – JUNE 30, 2002**

**EXPENSES**

	Budget FY 00.01	6 month FY 00.01	Budget FY 01.02
Award	\$ 5,000.00	\$-	\$12,000.00
Postage	\$800.00	\$ 1,218.56	\$1,200.00
Printing	\$150.00	\$342.00	\$130.00
Committee Expenses	\$300.00	\$-	\$300.00
Bank/Investment Fees	\$600.00	\$667.66	\$1,200.00
<b>TOTAL SCHOLARSHIP</b>	<b>\$6,850.00</b>	<b>\$2,228.22</b>	<b>\$14,830.00</b>

# REPORT OF THE EXECUTIVE COORDINATOR

REV. ARTHUR J. ESPELAGE, O.F.M.

## INTRODUCTION:

In the twelve months since the last annual meeting of the Society, many different and exciting tasks took place at the Office of the Executive Coordinator. Balancing time among the general operations of the Society along with the needs of CLSA Publications, Convention planning and the CLSA Scholarship was at times a challenge. As I begin this report, I wish to acknowledge and thank the Board of Governors, especially our President Monsignor Robert P. Deeley and our Treasurer, Sister Margaret Stallmeyer, CDP, for their advice and counsel over the past year. Our Society's leadership provided oversight and directions which enhanced the activities of the Executive's Office. I also wish to thank those members of the Society with whom this office came into contact with over the year. Our membership is truly thoughtful, kind and considerate in treatment of me and the staff at the Executive's Office.

As I noted above, the activities of the Executive Coordinator are varied and extensive. Management can become a problem, but two of our office goals for this past year were to be available to the membership and to schedule our activities. The second goal was achieved by the creation of a daily planner schedule. The schedule allowed us to maximize our time and energy. With respect to our first goal, members, we made an effort to respond to every e-mail and telephone inquiry as soon as possible and to follow up with further action where needed. I believe that we fulfilled both goals the best that we could.

The following items provide a little more depth to the activities undertaken by the Executive Coordinator on behalf of the Society.

### 1. MEMBERSHIP:

The start of the last fiscal year launched a number of improvements to enhance the office decor and indirectly membership services. A new electric line and air conditioner were installed to keep the computer network cooler. Similarly, new light weight drapes blocked the windows from the afternoon sun. Catholic University of America Archives lent the Society a number of paintings for the walls to improve the office environment and provide space for visitors.

Recruitment and retention of membership remained goals of the Executive's

activities this past year. In general, the Society gained more new members than we lost through resignation or death. We remember those members who passed away since the last annual meeting: Reverend Gerald W. Bombardier; Reverend Gerard T. La Cerra; Reverend Thomas Sheehan, CSSR; Dr. Michel Thériault; Monsignor Norman Bolduc; Reverend Patrick R Swendrowski; Mr. Vince D. McGraw; Monsignor Joseph M. Whalen; Monsignor Charles A. Kekumano; Bishop James T. McHugh; Monsignor Francis A. Cowgill; Reverend Frank Aresta SCJ; Reverend George Lacey; Reverend Joseph P. Mullin, SM; Reverend Kevin Scanlan, SMA, and Sr. Jean Iffath, OSU.

Approximately one hundred (100) new members joined the Society since the last annual meeting while a lesser number resigned due to changes in ministry or retirement. You will notice that a listing of the newest members appears in each issue of the *CLSA Newsletter*. Reviewing the application forms of these new members convinces me that we are attracting dedicated and talented people to our membership roles. Our present membership role shows 1748 active, associate, and student members. In January 2001, Mrs. Jennifer Miller, Administrative Assistant to the Society, and Mr. Albert M. Hayes, a Catholic University of America student worker, compiled, edited and produced the Society's *Membership Directory 2001* which was sent to members. As members inform us of changes, updates of the directory will be mailed with issues of the *CLSA Newsletter*.

The quarterly *CLSA Newsletter* remains a staple for informing members of items of interest. Items of special interest and announcements are always welcome from members. If you would like to offer entries for inclusion in the *CLSA Newsletter* for 2001 - 2002 should submit materials by Fridays of the first week of November 2001; the first week of February 2002; the first week of June 2002; and the first week of September 2002. Members may also find updates on our web page: [www.clsa.org](http://www.clsa.org). To send an entry, please contact the Executive's Office at [coordinator@clsa.org](mailto:coordinator@clsa.org) or [adminassist@clsa.org](mailto:adminassist@clsa.org). One item added to the web this year is a list of all individual seminars and addresses contained in *CLSA Proceedings 1985 - 2001*. The Executive's Office is always interested in suggestions from members to update and enhance the Society's web page.

In response to the April 2001 request of the Board of Governors, forty-three (44) members registered their names and areas of practice on our new *CLSA Referral List*. The material is presently being catalogued on the computer according to state, area of practice, and personal information. This renewed service by the Society should greatly facilitate filling requests that come to the Executive Coordinator for canonists to advise individuals as well as dioceses and institutes of consecrated life and society of apostolic life. While I have not kept an exact count of requests, I have four or five inquiries a month.

## 2. ACTIVITIES OF THE EXECUTIVE COORDINATOR'S OFFICE:

A major activity of the Executive's Office in November - December of 2000 was the preparation of the *CLSA Proceedings 2000*. I feel deeply grateful to the contributors who sent their seminar presentations in early and quickly proofread the materials prior to publication. As a result of electronic submissions by presenters and careful time management, the *CLSA Proceedings 2000* were shipped to members in January 2001. The early project completion fulfills a long stated desire of members to have presentations of the conventions available in written form as soon as possible after the convention. Plans are already underway to expedite the publication of *CLSA Proceedings 2001* which we hope to ship in January 2002.

January and February activities of the Executive's Office focused on mailing requests for tribunal statistics from dioceses in the United States as well as mailing second dues notices to those members who had failed to pay their annual dues in July. As a result of suggestions from tribunals during this year's request, some adjustments will be added to next year's request. Also in January, the Executive's Office transferred twenty-one boxes of materials to our archives at the University of Notre Dame, South Bend, Indiana. (For more information on our holdings at the archives, contact [archives@ndu.edu](mailto:archives@ndu.edu).) The new year also required time and attention to prepare the materials for the January Board of Governors' meeting and the Budget Committee meeting. This year the Executive's Office attempted something new by becoming an exhibitor at the Legal Resource Center for Religious Meeting in Kansas City. The goal of the venture was to increase the visibility of the CLSA among other learned societies as well as disseminate information on membership and publications by the Society. The value of this activity continues to be monitored and two ventures are planned for the next fiscal year. April and May activities at the Executive's office focused on preliminary preparations for the Albuquerque Convention, the April Board of Governors' Meeting and normal correspondence. From May 14-17, 2001, I attended the annual general meeting of the Canon Law Society of Great Britain and Ireland which was held this year in Northumbria at Gateshead England near Newcastle upon Tyne. June until September activities in the Executive's office focused on closing out the fiscal year, preparing the dues notices for 2001-2002, working with the Society's accountant for the yearly audit preparing for the October annual meeting of the society and two Boards of Governors' Meetings.

As for the immediate future, I wish to inform the members the Mrs. Miller will be taking maternity leave as she and her husband Christopher expect the birth of their second child sometime during the week of our convention. While Jennifer will be on maternity leave, I secured part time secretarial help to work on *CLSA Proceedings 2001*. Also, joining the Executive Office on a part-time basis as

bookkeeper is Mrs. Kay Winner. Kay retired from Catholic University last year and likes to keep busy. I believe that our bookkeeping will do that, and we are pleased to have her with us.

### 3. CLSA PUBLICATIONS:

I wish to report to the members on three aspects of CLSA Publications: new works, production and some distribution topics. With respect to the first item, I wish to announce that one long term dream of the Society is now complete. The revised English Translation of the *Code of Canons of the Eastern Churches* is printed and available for distribution. I wish to publicly thank Chorbishop John Faris, the Reverend Jobe J. Abbass, OFM Conv. and the Reverend W. Becket Soule, OP for their dedicated efforts to make this project a reality. The Society should also be deeply grateful to Kachergis Book Design of Pittsboro, North Carolina, who worked with us to create a volume which compliments well with the Society's new English translation of the *Code of Canon Law Latin-English Edition*.

I also wish to acknowledge and thank the editors of the *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*: Reverend Michael Joyce, CM.; Sr. Catherine Darcy, RSM; Reverend Robert Jaslyn, SJ and Sr. Margaret Sullivan CSJ. This latest handbook addition to CLSA Publications became available to the general public in July 2001. A final text for this calendar year of 2001 will be *CLSA Advisory Opinions (1993-2000)* which went to the indexer in September. Members will receive a pre-publication information through a brochure as the project nears completion.

The increased number of new texts coming from CLSA Publications from a two full time staff and part time member contributors – editors suggest some general information may be in order for members. The old constants of “time, talent, and money” remain a method to approach what at times becomes complex. Each new text requires a tremendous amount of expended time for creation, evaluation, preparation of the text, and actual production. “Out sourcing” many of these tasks enhance the time line and definitely contribute to preparation of texts by talented professionals. I myself marvel at the giants who preceded me in this office. Amid their other activities, their donated services prepared and edited texts for printing and distribution out of the storeroom next to the Executive Coordinator's Office. The number of new ventures by the Society and the new texts coming to CLSA Publications makes this old method impossible to maintain. This reality brings us to the third constant: money. Over the last five years cost for materials in the printing industry have skyrocketed and out sourcing increases production costs. I reported of Governors my recommendation to the Board that our texts continue

to be priced as low as possible as we provide a ministry to the entire Catholic Church. Nonetheless, costs for new books must meet production costs and provide for storage and distribution.

With respect to distribution, CLSA Publications shipped 906 orders during the 2000-2001 fiscal year. (When orders were shipped from the Executive Coordinator's Office, we averaged about 400 orders a year.) Today, most orders with CLSA Publications are received, processed and shipped within forty-eight (48) hours. All shipments are through United Parcel Service or a customer-designated carrier so that shipments can be traced if they do not arrive on time. This past year CLSA Publications shipped to nations in Europe, Africa, Australia, Latin America, and the Far East. Given the distances involved and problems with shipping, it became necessary that all international orders be prepaid and all orders under a specific amount are prepaid. Likewise, it is necessary to ship our books throughout the United States in a way that is traceable so that we are sure of receipt of merchandise. The Society out sources distribution with PMDS in Annapolis Junction, Maryland. This professional mail distribution service provides us with the key components of storage and distribution. Obviously the growth of CLSA Publications increases the complexity of storage and distribution. Oversight of PMDS adds a further dimension as well as a number of complexities to the duties of the Executive Coordinator, but I continue to work to facilitate distribution of books and keep costs as low as possible.

I also wish to report to the members that CLSA Publications engaged in missionary ventures this past year. We were able to secure funding to distribute six hundred (600) copies of the older translation of the *Code of Canons of the Eastern Churches* to seminaries in India. Likewise, discussions continue about providing copies of *Código, Comunidad, Ministerio* to Spanish-speaking countries in the Caribbean and Latin America.

#### 4. CONVENTIONS:

Every annual convention has many individuals who work behind the scenes to prepare and make the meeting a success, and the 2001 CLSA Annual Convention at the Hyatt Albuquerque, New Mexico is no exception. As Executive Coordinator, I would like to thank a number of people. Reverend Robert H. Williams of Detroit, Michigan, served as chair of the Convention Planning Committee for Albuquerque, and Sr. Ann Rerhauer, OSF took care of much of the convention planning correspondence. The Executive's Office thanks Ms. Patricia Dugan and Mrs. Rita Joyce for their work as General Convention Chair. Similarly, I wish to thank Fathers Jerry M. Sherba and James R. Bonke for the services that they rendered the Liturgy Committee. I would like to express my gratitude to the local

arrangement's committee under the leadership of the Reverend Jerome A. Plotowski and Father Kevin Niehoff, OP with Mrs. Ledia Apodoca; Mrs. Helen Wells and Miss Juliana Jaramillo.

This year I wish to also add a note of special thanks to Ms. Kristi McClung and the staff of Nix & Associates who serve as convention coordinators to the Society. Their expertise and help between April and October greatly facilitated the "nuts and bolts" of implementing the convention program.

Plans for our next convention in Cincinnati, Ohio convention, 2002, appear to move forward. Sr. Ann Rehrauer, OSF provided the BOG with the Committees ideas for our meeting in Cincinnati.

#### 5. SCHOLARSHIP:

I would also like to report my appreciation to the membership for the work completed by Barbara Ann Bettwy and the Scholarship Committee for the Advent 2000 appeal. The Executive's Office collated and mailed out the materials for the First Sunday of Advent. Throughout the year, we continue to process the gifts of members who contribute to this very worthy cause of the Society.

Plans go forward for the production of a *festschrift* in honor of Lawrence G. Wrenn. Under the most able editorship of Monsignor Frederick C. Easton of the Archdiocese of Indianapolis, the papers for *The Art of the Good and Equitable* are being received and edited. Letters went out in September 2001 announcing the project and soliciting names for a Table of Congratulations. Proceeds from the *festschrift* will go to the CLSA Scholarship Fund.

#### CONCLUSION:

The last twelve months passed with a rapidity that surprises me when I review my calender book. I remain happy and honored to serve the members and the Board of Governors of the Canon Law Society of America. Personally, I also appreciate the visits of members and committee chairs who visit the office while in Washington as well as the cards, letters and e-mails which arrive throughout the year. Your kind treatment of myself and our staff makes the tasks of the Executive's Office most enjoyable.

My goals for the upcoming year are to continue to do the very best that I can to serve as your Executive Coordinator. I wish to continue to improve the efficiency

of the Executive's office with respect to general operations. As a part of that aspect of my duties, I wish to continue to build up membership numbers and increase the visibility of our Society among other learned societies in the United States. Another goal will be to bring to production a number of new books which are at various stages of preparation. Lastly, I hope to continue to learn and improve in the administration of CLSA Publications.

As a final item, I would like to share a conviction that I developed during my time as Executive Coordinator. I remain awed and impressed by the wide scope of canonical activities which occupy the time and talents of our members. Our Society greatly contributes to the life and activities of the Catholic Church in our own nation and in other parts of the world. My contacts with members convince me of their talent and great generosity. These observations convince me that the Canon Law Society truly attempts to make the words of Romans 8:2 live: "in Christ Jesus the life-giving law of the Spirit has set you free from the law of sin and death." Thank you for the opportunity to serve as Executive Coordinator. Should my report spark any additional questions or interests, please contact me.



## COMMITTEE REPORTS

### CONSTITUTIONAL COMMITTEES

Committee:	<b>Budget</b>
Constituted:	CLSA Constitution, Article X
Charge:	To prepare the annual budget of the CLSA
Membership:	Sr. Margaret A. Stallmeyer, CDP Rev. F. Stephen Pedone Rev. Kevin McKenna ( <i>ex officio</i> )

#### Annual Report

The budget committee, assisted by Rev. Art Espelage and Mrs. Jennifer Miller, met on Thursday, February 22 to review the budget for 2001-2002. The committee was presented with a preliminary budget and supporting documents that had been prepared by the Executive Coordinator. This preliminary preparation was very well done and gave the committee an excellent starting point.

After discussion and adjustments, the committee was prepared to present the budget to the Board of Governors. It was approved with minor modifications at their April meeting. The final budget for the fiscal year is published in the treasurer's section of "Reports 2001."

Committee:	<b>Convention Planning</b>
Constituted:	CLSA Constitution, Article X
Charge:	Above all to work of the attainment of the purpose of the Society set forth in Article II of the Constitution; To submit to the Board of Governors for approval the names of speakers and topics for discussion at the annual general meeting; To initiate or cooperate in all research projects of the Society such as seminars, symposia and special studies relative to research and discussion, and to recommend to the Board of Governors honoraria for participants in these studies as well as

for speakers at the annual general meeting;  
To cooperation with the Executive Coordinator in arranging for  
all publications of the Society.

Membership: Sr. Ann Rehrauer, OSF, Chairperson  
Rev. James Conn, S.J.  
Rev. David Berberian  
Rev. Arthur J. Espelage, O.F.M. (*ex officio*)  
Very Rev. John A. Renken (*ex officio*)

### Annual Report

The Convention Planning Committee met from October 25-26, 2000 at St. Mary's Continuing Education Center in Baltimore, Maryland. The primary work of the Committee at that meeting was:

- 1) to review the critiques of the October 2000 meeting in Arlington, VA.,
- 2) to finalize the plans for the convention in Albuquerque, New Mexico,
- 3) to offer suggestions for the Albuquerque pre-convention workshops
- 4) to prepare a suggested outline for the Cincinnati Convention in 2002.

The Committee began reviewed the report of the critiques of the Arlington meeting prepared by the office staff. At the time of the Committee meeting, 110 responses had been received and compiled. Most of the people who responded (88) were regular attendees of the annual convention. The Committee members focused attention on the comments regarding speakers and schedule. There were a few comments about the limited number of seminar offerings because of the travel and schedule unique to the Arlington convention and setting. For the most part, the speakers and the choice of topics received positive ratings.

Of the suggestions offered for topics and speakers, the suggestions on intercommunion, *communio* (as part of the keynote), consent and error, sentence composition, and Catholic health care issues are being addressed at the Albuquerque convention. The area of lay ministry, *comunio* (as part of a major address), sources of liturgical law, Catholic institutions and sponsorship, and concerns surrounding the shortage of priest are topics being suggested by the Committee for the Cincinnati convention.

After reviewing the critiques, the members turned their attention to the modifications for the 2001 convention suggested by the Board of Governors at their January 2000 meeting and offered suggestions for the Pre-convention workshops and speakers in Albuquerque.

Concerning preparations for the 2002 Convention:

The Committee then turned its attention to plans for the 2002 Convention in Cincinnati.

In light of a previous resolution by Reverend James Coriden, and the timeliness of the topic, the Committee suggested a meeting focused on the complementary roles of clergy and laity in the Church, focusing on the area of lay ministry as a partnership for the future. In their design, the Committee members were cognizant of the convention critiques and suggestions, the discussions and resolutions at the last business meeting, the need to balance tribunal topics and the concerns of other constituents, and the talent available in the local area.

#### COLLEAGUES IN SERVICE: CLERGY AND LAITY IN THE CHURCH

The theme chosen for the 2002 Convention is *Colleagues in Service: Clergy and Laity in the Church*. The call to ministry is rooted in our baptism and is given by God for the up building of the Kingdom. Some of the People of God are called to ordained ministry, some are called to ministry in the market place and home and some are called to ecclesial lay ministry. Focusing on the aspects of collaboration and cooperation among the various ministries in the Church, the convention will examine the canonical issues and complementary roles of laity and clergy today and the ways in which these ministries and ministers support one another.

*Keynote Address:* Theological Foundations for the Complementary Roles of Clergy and Laity in the Documents of the Second Vatican Council – Archbishop Daniel Pilarczyk

*Major Address:* Lay Ministry and Complementarity: A reflection by two lay people on how the clergy complement their ministry – speakers still to be confirmed

*Major Address:* Clergy and Complementarity: A reflection by a cleric on how laity complement his ministry – speaker still to be confirmed

#### *Seminars*

Privilege of the Faith Cases – Monsignor Frederick Easton

An Introduction to Sources of Liturgical Law and Liturgical Documents – Sister Ann F. Rehrauer, OSF

Women in Diocesan and Parish Leadership – Sister Lynn Jarrell,  
OSU & Reverend Daniel Ward, OSB

The Parish as Employer – Ms. Linda Budney

Parishes Entrusted to the Care of Religious – Monsignor Alexander Palmieri

Highlights from The McGrath Thesis – Reverend Daniel C. Conlin

Clergy and Laity: Highlights of the Eastern Code – Reverend David Motiuk

Cooperation between Clerics and the Diocesan Bishop – speaker  
still to be confirmed

The Relationship of Public and Private Worship – Reverend John Foster

Two Workshops (one tribunal topic) to be determined by the Board  
of Governors

#### SEMINAR SCHEDULE

*Tuesday 9:00 - 10:30 a.m.*

The Cooperation of Clerics and the Diocesan Bishop – Presenter to be confirmed

Privilege of the Faith Cases – Monsignor Frederick Easton

Sources of Liturgical Law and Liturgical Documents – Sr. Ann Rehrauer

Women in Diocesan and Parish Leadership – Sr. Lynn Jarrell, OSU & Reverend  
Daniel Ward, OSB

*Tuesday 11:00 - 12:30*

The Parish as Employer – Ms. Linda Budney

Parishes Entrusted to the Care of Religious – Monsignor Alexander Palmieri

The McGrath Thesis and issues related to sponsorship–Reverend Daniel C. Conlin

Tribunal Workshop Topic – specific topic and presenter still to be confirmed

*Tuesday 2:30-4:00*

Clergy and Laity: Highlights of the Eastern Code – Reverend David Motiuk

Women in Diocesan and Pastoral Leadership – Sister Lynn Jarrell and Reverend Daniel Ward (repeat of Tuesday morning)

Workshop Determined by the BOG

The Relationship of Public and Private Worship – Reverend John Foster

*Wednesday 2:30-4:00 p.m.*

Liturgical Law and Sources – Sister Ann Rehrauer (repeat)

Workshop determined by the BOG (repeat)

Privilege of the Faith Cases – Msgr. Frederick Easton (repeat)

Cooperation of Clergy and the Diocesan Bishop (repeat)

Committee:       **Nominations**

Constituted:      CLSA Constitution, Article X

Charge:            The functions of the Committee on Membership and Nominations are:

To submit to the active members, at least one month prior to the date of election, the names of nominees as provided for in Article IX of the Constitution;

To propose for approval of the Board of Governors applicants for active membership under Article III, no. 2 of the Constitution, and to propose to the Board of Governors for honorary membership in the Society those who, in its opinion, qualify according to Article III;

To formulate and recommend to the Board of Governors plans for maintaining and increasing the membership of the Society.

Membership: Rev. Msgr. Michael Cariglio, Chairperson  
Rev. Msgr. Nevin Klinger  
Sr. Francine Quillin, PBVM  
Very Rev. John A. Renken (*ex officio*)

### Annual Report

The Nomination Committee met in Miami, Florida, from March 12 through March 14, 2001. Lists of possible candidates were compiled from: (1) recommendations submitted to the Committee from the membership at large; (2) potential candidates identified by the work of prior Nominations Committees; (3) suggestions offered by the Board of Governors; and (4) candidates surfaced in discussions of the members of the Nominations Committee.

In identifying prospective nominees, attention was given first and foremost to selecting those who would offer sound leadership of the Society. At the same time, the Committee was conscious that the mission of the CLSA is enhanced when its officers bring a diversity of gifts, backgrounds, and expertise to their service. Thus, the Committee strove to develop a slate of candidates that reflects the rich diversity of the membership, e.g. the vital participation of women and men religious as well as lay persons.

The following slate of candidates was forwarded to the Board of Governors for presentation to the members at the 2001 Convention of the Society in Albuquerque, New Mexico.

#### *Office of Vice-President/President Elect:*

Reverend Lawrence J. O'Keefe (Diocese of Gallup)  
Reverend Daniel A. Smilanic (Archdiocese of Chicago)

#### *Office of Treasurer:*

Monsignor Alex J. Palmieri (Archdiocese of Philadelphia)  
Mr. Nicholas P. Cafardi (Diocese of Pittsburgh)

#### *Office of Consultor:*

Reverend J. Scott Duarte (Diocese of Richmond)  
Reverend Lawrence Jurack (Diocese of Cleveland)  
Reverend Michael Souckar (Archdiocese of Miami)  
Brother Patrick Shea, O.F.M. (Diocese of Springfield in Illinois)  
Reverend Daniel P. Whelton (Diocese of Santa Rose in California)  
Miss Linda L. Weigel (Archdiocese of Portland in Oregon)

Committee: **Professional Responsibility**

Constituted: *Code of Professional Responsibility*, canon 9c(i), d(i)

Charge: The three senior consultants of the Canon Law Society of America's Board of Governors constitute a standing Committee on Professional Responsibility. The committee shall receive complaints of any party aggrieved with respect to provisions of the *Code of Professional Responsibility*, to make an initial finding that the complaint is not frivolous; and in the event that a majority of the committee considers the complaint to be serious in character, to refer the matter to the hearing officers.

Membership: Rev. Thomas T. Brundage  
Rev. Msgr. Mark Bartchak  
Rev. Daniel A. Smilanic

#### Annual Report

There have been no complaints submitted to this committee. Furthermore, there have been no inquiries with regard to possible complaints brought to the attention of the chair.

Committee: **Resolutions**

Constituted: CLSA Constitution, Article X

Charge: The functions of the Committee on Resolutions are:

To solicit, develop and draft proposed resolutions which will express the concerns of the Canon Law Society of America;

To consult with the membership at large and, in particular with the Board of Governors, the standing and ad hoc committees of the Society, and the organizers of the convention;

To formulate resolutions on given points in response to requests of the members of the Society;

To compose differences in the formulation of similar proposals and to revise all proposals so that the meaning of each is clear;

To encourage resolutions which authentically express in a positive way the activities and concerns of the Society.

Membership: Ms. Barbara Anne Cusack, Chairperson  
Rev. Kelly M. Vandehey  
Rev. Edward F. McGrath

### Annual Report

The three members of the Resolutions Committee consulted by means of conference calls several times throughout the past year. The activity of the Resolutions Committee at the 2000 Arlington Convention was reviewed and discussed. This discussion led to consideration of ways to improve the Annual Business Meeting discussion of resolutions. Specific recommendations regarding these proposed improvements submitted to the BOG.

The Resolutions Committee updated a six-year history of resolutions to help the Committee members evaluate the effectiveness of different types of resolutions and study what support is necessary to fulfill the mandate of passed resolutions. The Committee requested of the BOG that this report be made available to the membership.

At the time this report was submitted to the Executive Coordinator's office, no resolutions had been proposed to and received by the Committee.

## ON-GOING COMMITTEES

- Committee:**       **Advisory Opinions**
- Constituted:**     44th Annual Meeting, 1982
- Charge:**           To issue advisory opinions on the meaning of the canons of the revised code after its promulgation. Such opinions are to provide non-official interpretations in response to requests for them.
- Membership:**     Rev. James I. Donlon, Editor  
                          Sr. Ann Keevan, C.S.J., Associate Editor  
                          Sr. Mary Ann Hayes, C.S.J., Associate Editor

### Annual Report

The Committee on Advisory Opinions facilitated the work of soliciting opinions from the membership of the Canon Law Society of America in response to any inquiries which were received. Additionally, the Committee sought from the members of the Society opinions which they may have already rendered to diocesan officials or religious institutes. Each inquiry was sent to one or more canonist(s) for opinions. This procedure was generally successful despite the busy schedules of the various members contacted by the Committee. Once the opinions were received by the Committee, they were prepared for publication in the CLSA volume entitled *Roman Replies and CLSA Advisory Opinions*.

The Committee continues to meet with success in its endeavor to expand the pool of canonists participating in this annual endeavor. As in the past few years, contributions have been submitted from canonists from Europe, Australia and New Zealand, and Canada, as well as member of the Canon Law Society of America. Hopefully this international involvement broadens the scope and depth of opinions being presented our readership. The Committee continues in its efforts to recruit new contributors, especially newer members of the CLSA.

On-going efforts continue to be made in inviting more members of the CLSA to be involved in this annual endeavor, by submitting opinions either in response to queries received by the Committee or by offering for publications opinions/advice already offered to others (e.g., bishops, diocesan officials, religious institutes, etc.). Hopefully, as a result of this effort, the publication will continue to reflect the thinking and scholarship of a broad spectrum of the CLSA membership on various canonical issues and thinking, and the type of questions and

concerns being addressed within the various dioceses and religious communities.

Members are cordially invited to be a part of this on-going project in any of the following fashions:

- (1) Volunteering to be a part of the pool of canonists who may be asked to develop questions in response to inquiries received by the Committee. Those willing to be a part of this pool should note their areas of expertise and interest. An effort is made to forward questions to those canonists with an expertise and/or interest in the general area dealt with by the inquiry.
- (2) Sending in inquiries in need of a written canonical opinion to be published in the annual journal.
- (3) Submitting canonical opinions developed during the course of the year as a result of requests received within one's place of ministry, so that these opinions may be published in the annual journal. (The Committee carefully edits these opinions so as to remove any reference to specific people or places. Confidentiality is always maintained.)

The Committee's most pressing need from the membership and from other individuals continues to be the gathering of inquiries for opinions. Once the Committee has received inquiries, there is usually little difficulty in locating one or more canonist(s) expert in the subject matter willing to render an opinion. Thus the Committee on Advisory Opinions reiterates its call to the membership and others to forward inquiries for future publications. Those having questions to suggest (or even just areas of concerns) may submit the inquiries to either the editor or the associate editor of *CLSA Advisory Opinions*.

This year's project, in the estimation of the Committee, has been a successful one. As one will see upon examining the volume, numerous questions and/or opinions were freely forwarded to the Committee. Indeed this year's edition of *CLSA Advisory Opinions* contains more than fifty entries, making it one of the most extensive volumes to date.

Those canonists contacted by the Committee were nearly uniformly willing and anxious to assist. Those few canonists unable to assist were unable to do so only as the result of other pressing ministerial responsibilities. These members almost always indicated to assist in the future when other demands might be less and also offered recommendations as to other canonists expert in the field of the inquiry. An impressive response was received from the annual extensive mailing, early in the calendar year, to canonists in which assistance was sought. In particular the

Committee was very pleased with the number of opinions freely forwarded from the members of the Society. The current volume contains a broad spectrum of questions and canonical issues. It hopefully will be a volume that proves to be both informative and valuable to the membership of the CLSA and others who use it.

Finally, the Committee on Advisory Opinions expresses its continuing gratitude to the members of the Canon Law Society of America and those other individuals who submitted inquiries during this past year. We are especially appreciative of those members of the Society who gave so generously of their time and talent in rendering opinions for publication. It is only as a result of the generosity of these many individuals that *CLSA Advisory Opinions* continues to be the valuable tool that so many people find it to be.

As with submission of questions or opinions, the Committee welcomes any other recommendations or suggestions.

Committee:       **Editorial Board for the Collection of American Jurisprudence**

Constituted:     By the Board of Governors pursuant to Resolution seven at the 56<sup>th</sup> Annual Convention of the CLSA (Atlanta, Georgia, 1994)

Charge:           To publish regularly (no less than tri-annually) a collection of selected marriage nullity decisions issued by various tribunals throughout the United States.

Membership:     Rev. Msgr. John Alesandro, Chairperson  
                      Sr. Victoria Vondenberger, R.S.M.  
                      Rev. Msgr. William Varvaro  
                      Rev. Msgr. James Cuneo

#### Annual Report

Initially, the editorial board's task of collecting well-crafted sentences caused an immediate delay. Over two years sixty-five sentences were gathered. After a review of each sentence by at least two committee members, thirty-three were accepted for publication.

The thirty-three sentences were reviewed again and put into a uniform format. This again proved to be more time-consuming than anticipated. To assist in bring this project to completion, Father Robert Morrissey of the Rockville Centre Tribunal offered his services in examining the final text of the publication. One of

the main concerns is to make certain that all material is thoroughly sanitized of any references to actual persons. The manuscript of sentences should be ready for publication this fall provided that it meets with the approval of the Board of Governors and the executive coordinator.

Despite the long time needed to organize this first attempt at a publication of sentences, the Committee is of the opinion that the sampling will be valuable and that, once the process and format are found acceptable, subsequent publications will not be subject to such great delays.

Committee: ***Canon Law Digest – Vol. 12 +***  
Constituted: Board of Governors, 1998  
Charge: To prepare volumes 12 and beyond of the *Canon Law Digest*.  
Membership: Sr. Dominica Brennan, O.P., Chairperson  
Rev. Thomas Ferguson  
Rev. Francis G. Morrissey, O.M.I.

#### Annual Report

This year, the primary activity of the Committee has been focused on completing the preparation of Volume XII: content-review, editing, formatting, etc. The committee met in Arlington during the convention, as well as via e-mail and telephone.

As a result of conversations with the Vice-President and the Executive Coordinator, it has been agreed that final formatting and indexing for CLD will be outsourced.

A tentative time-line for publication of Volume XII and subsequent volumes has been developed. The plan is for Volume XII to be available by the Fall of 2002.

Committee: **Civil and Canon Law**  
Constituted: 47th Annual Meeting, 1985  
Charge: Identify those norms of the code which require the Church to defer to secular law;  
Clarify the effects of secular law on canon law in various states and local jurisdictions;

Identify those issues, organizations, resources, publications, and personnel to facilitate communications between canon and secular law;

Identify possible areas of cooperation between canon and secular law.

Membership: · Rev. Gregory Bittner  
Ms. Diane Barr  
Rev. Joseph Tagg, III

### Annual Report

The Committee communicated via teleconference and e-mail throughout the year. It offered updated reports to the Board of Governors at their January and April meetings. In consultation with the Board of Governors the Committee was mandated to pursue the following projects:

Provide a disclaimer that could be used in future CLSA publications.

Prepare a guidebook on marriage laws of the various states.

Contact the authors of *Confidentiality in the United States: A Legal and Canonical Study* and pursue an updated version of the study.

Find a method and vehicle to disseminate timely reports on civil-canon law topics to the membership on a regular basis.

The committee responds to these mandated requests in the following report.

The disclaimer that was requested has been composed and reviewed by the committee and is submitted to the Board for its consideration and review.

### DISCLAIMER

The contents of this publication are written for Canon Law Professionals in their capacity as Canon Lawyers. The views and opinions expressed in this publication are those of the individual authors and do not necessarily represent the views of the Canon Law Society of America (CLSA), its Board of Governors, staff or members. The CLSA does not endorse (alternative, “take a position on”) the views or opinions expressed by the individual authors. The publisher and authors specifically disclaim any liability, loss or risk, personal or otherwise, which is incurred as a consequence, directly or indirectly, of the

use and application of any of the contents of this publication.

In exploring the content for the state marriage law guidebook the Committee came upon a website that provided virtually all of the information that would be pertinent for canon lawyers. The website entitled Legal Information Institute at [www.law.cornell.edu/topics/marriage](http://www.law.cornell.edu/topics/marriage) provides a simple and complete state by state comparison of marriage laws as well as divorce laws of all the states. It also links you directly to the specific state statutes on marriage and divorce. The Committee feels that it would be redundant to write a state marriage law guidebook and proposes to the Board to write an article for the Newsletter explaining the site and how to navigate it. The advantage of the website is that it is routinely updated and therefore will be a current compilation of marriage laws provided in a format that no guidebook could duplicate for simplicity and timeliness.

Authors of the study CONFIDENTIALITY IN THE UNITED STATES: A Legal and Canonical Study have been contacted and they have begun to respond to the Committee's request to update the study. The Committee should have a census of the opinions of the authors on how to proceed with an updated version by the October 2001 CLSA Convention and BOG meeting.

The Committee has not yet formulated an approach for a periodical update on civil-canon law issues.

The Committee proposed a seminar at a future Convention on the topic Difficult Parishioners: A Canonical and Civil Response. The Board has not responded to this request at this time.

- Committee:       **Electronic Media**
- Constituted:     Board of Governors, 1995
- Charge:           To explore and develop ways that the CLSA can make use of electronic media.
- Membership:     Very Rev. Paul Counce, Chairperson  
                    Rev. Paul B.R. Hartmann  
                    Rev. Arthur J. Espelage, O.F.M. (*ex officio*)

## Annual Report

The Committee has been in contact by e-mail when necessary throughout the year. The Committee's ongoing projects include:

The CLSA website (<http://www.clsa.org>) continues in operation; the only modifications on it are the regular additions of the *Newsletter* when it is published, and various canonical "news briefs" as these are brought to Paul Counce's attention. A redesign of the site is planned for the coming year. Exploration of a tighter integration between the CLSA Executive Coordinator's office and website publication is advised, with the possibility of outsourcing the website's design and maintenance considered.

The private internet discussion group <http://groups.yahoo.com/group/canonlaw> hosted by Yahoo! continues. Subscribers have grown in number to 680 persons worldwide. To subscribe, canonists should send an e-mail of application to [hartmannp@archmil.org](mailto:hartmannp@archmil.org)

Father Bill Woestman has published a CD-ROM of canonical and related texts (e.g., *Canon Law Abstracts* as well as ecclesiastical texts in various translations), which contains the CLSA's revised English translation of *The Code of Canon Law*. It is available for US\$50.00 from the Faculty of Canon Law at St. Paul University, 223 Main Street, Ottawa, ON K1S 1C4, Canada.

Paul Hartmann is coordinating a formal convention seminar focusing on internet resources for canonists, this to be presented at the 2001 convention in Albuquerque, NM. He is consulting with a number of "computer literate" canonists in developing the theme and format of the presentation.

Committee:       **Investment Review**

Membership:     Sr. Margaret A. Stallmeyer, C.D.P., Chairperson (*ex officio*)  
                    Rev. John P. McDonagh

## Annual Report

The committee met via conference call in March and by e-mail in July to review the annual and six month reports of both investment funds. We looked at the types of holdings we have in light of our social responsibility policy, our asset allocation, the annual and cumulative performance of the portfolios and the cost of managing

the funds. There was no reason for concern in any of the areas reviewed. The committee recognized that the size of the portfolios does not give the opportunity for the degree of diversification larger portfolios allow. We commend our managers for their performance.

Committee: **Marriage Research**

Constituted: 1978

Charge: From 1984 Convention:

To identify specific areas of marriage research;

To identify scholars who have done or will do research in those particular areas and who will produce manuscripts for publication;

To facilitate the publication of this research either in the CLSA-sponsored publication *Marriage Studies* or in other scholarly or professional journals.

Membership: Rev. Mr. Gerald Jorgensen, Chairperson  
Ms. M. Margaret Gillett  
Rev. John P. Donovan  
Rev. Msgr. Ronald Gainer

#### Annual Report

Throughout this past year the Marriage Research Committee worked to fulfill its charge by continuing efforts toward the publication of a resource document tentatively entitled *Sources for Law Sections for the Adjudication of Marriage Cases*. The project has evolved during the past four years, with the previous committee accomplishing substantial work. At present the Committee has identified for the development of a specific resource section 18 different grounds that might reasonably be joined as the *caput nullitatis* or *dubium* for a marriage case. Fifteen different canonists have been involved and remain involved in the development of the various grounds, with some canonists working conjointly and others working individually. After reviewing the initial drafts, the Committee developed a more consistent, common format for each resource section. The contributors are completing the review of their contributions in light of the new format and editing their contributions consistent with the format, as well as updating their contributions if important, relevant information has become available since their original submission. The Committee is most grateful to all the contributors and the obvious work that they have put into this worthy and

potentially beneficial endeavor. Finally, the Committee addressed in greater detail the publication and distribution of a final work product. The Committee endorsed the concept that hard copy be published and distributed, most likely in some type of binder or notebook fashion, as well as in an electronic or digital format. Furthermore, the Committee anticipates the project to be ongoing with regularly scheduled individual updates being made available. The Committee hopes to have a final draft of the document ready for review by the CLSA Publications Committee by May 2002, with a final draft copy ready for publication by October 2002.

In addition, the Committee continued to endorse the concept that the annual convention program include at least one program specific to marriage issues, whether jurisprudence or other issues, and that, at least biannually, a pre-convention workshop address marriage issues. The 2001 Convention will include both a pre-convention workshop and a convention program on marriage matters. As future pre-convention workshops, the Committee suggested the following topics: “Hot-Spots” in Tribunal Practice: Theory and Practice; Substantial Flaws in the Decisions of US Tribunals as Explicated in Rotal Decisions since 1990. For future convention programs, the following topics were suggested: an update on the proposed Vatican instruction on marriage nullity cases; the relationship between the *CIC* and the *CCEO* for marriage nullity cases. The Committee continues to solicit from the CLSA membership other ideas for pre-convention workshops and for convention programs. Not only topic suggestions but also possible presenters are also welcomed. Suggestions should be communicated directly to any committee member.

Finally, the Committee considered possibly undertaking a survey of tribunals in the United States and Canada concerning tribunal efforts to educate clergy and other parish ministers in their dioceses regarding canonical issues that need to be addressed in the pre-nuptial investigation and preparation of couples. Although the Committee thought such a survey would be a worthy project, it decided to defer any major new projects, unless otherwise directed by the Board of Governors, until the completion of the “Sources” project.

Committee:        **Publications**

Constituted:     Board of Governors, 2000

Charge:            To assist editors and authors of publications and other materials being developed on behalf of the Society;  
To have immediate oversight of the works during the course of the preparation, seeing to it that they conform to language use, editorial and other publications guidelines established by the Society;

To make appropriate recommendations to the Board of Governors concerning the projects under its supervision.

Membership: Rev. Modesto Perez, Chairperson  
Rev. Randolph Calvo  
Sr. Joyce Hoben, S.N.D.  
Rev. Arthur Espelage, O.F.M. (*ex officio*)

### Annual Report

Despite the many on-going publications projects of the Society, the Publications committee has not received any significant assignments during this past year. The following is a list of some of the things we are working on:

The committee on Marriage Law had a number of contributors develop “*In Iure*” sections for the nullity grounds. The materials are somewhat uneven, reflecting different formats and degrees of scholarship in their preparation. We will be discussing some specific ideas and will make recommendation to the BOG for its post-convention meeting in Albuquerque with regard to how best to approach the good work done and how it can be most advantageously utilized. One suggestion coming from the Marriage Committee itself was to simply make the law sections available to the CLSA membership in the form of a diskette that would be made readily available to those who requested it. Most of us in the committee like the idea. But, we will be having a “conference call” meeting in the next couple of weeks to discuss what things need to be done: e.g., have similar fonts and styles; have the authors of the sections identified; determine who will be in charge of distribution; suggest who will see to it that the material is regularly “updated”, etc. In addition, the BOG will need to determine whether any fee will be charged for this distribution.

The Civil-Canon Law Committee just submitted to us a “DISCLAIMER” that the BOG requested them to formulate for possible inclusion in all CLSA Publications. Greg Bittner, the Chair wants our Committee’s input on it. We hope to discuss this matter during our conference call meeting. But, our committee has a question for the BOG: As we understand it, matters are to be brought to the Publications Committee for its consideration by the BOG. This protocol was observed in the case of the “*Feschrift*” in honor of Larry Wrenn. This does not appear to have happened in the case of the marriage “*In Iure*” or the “disclaimer”. Though it is not a great big problem now – it could be in the future, if we assume

that the BOG, as a body, referred the task to us when it did not! I believe that the BOG needs to establish a definite protocol to determine who has the authority and by whom and what means publications related matters are to be referred to the Publications Committee in the future.

The Executive Director of the CLSA and the BOG has already been receiving reports from Msgr. Fred Easton concerning the progress of the “*Feschrift*” in honor of Larry Wrenn. But, the latest report to us indicates that all the articles have been turned-in and they are presently being formatted. It is to be formally presented in a celebration in Larry’s honor in October 2002. So far, the committee has seen only the “Table of Contents” and list of authors, but we have not seen any of the submitted materials. Will the BOG want us to review and make recommendations on the “*Feschrift*” once the present work being done is completed – or shall it review it on its own and give final approval to Msgr. Easton’s fine editing work during one of the BOG’s regularly scheduled meetings? There seems to be some confusion here also with regard to which work is going to be supervised directly by the Executive Coordinator and/or the BOG and which work the Publications Committee will be asked to oversee.

The Committee is engaged in an on-going review of existing CLSA publications policies and guidelines. We hope to create a brief compilation of this to be given to all authors/editors at the beginning of a project. We will be discussing this matter in our conference call meeting and at a meeting planned during the Albuquerque convention. It is my hope, as Chair, that we will be able to submit a report/proposal to the BOG for a decision on the CLSA publications policies and guidelines for authors and editors during its winter meeting.

We would like to thank the BOG for this opportunity given to all the members of the Publications Committee to serve the Society. We hope to be of greater service in the future, as other matters are brought before us.

**Committee: Roman Replies**

**Constituted: Board of Governors, October 1980**

**Charge: To collect and publish recent responses from various Roman dicasteries which would be of wide interest to CLSA members.**

**Membership: Rev. F. Stephen Pedone, Editor  
Sr. Rose McDermott, S.S.J., Associate Editor**

## Annual Report

While the actual report to the membership is the volume itself, the Preliminary report is presented for the Board of Governors and *Proceedings*.

The Committee is most grateful to all who responded, especially those who Provided material for publication. Several letters were again received from diocesan officials indicating they had nothing to present for publication. Some noted how important this publication is in their ministry and they look forward to its publication every year. The Committee encourages the membership to continue to provide these replies from the Holy See because of the benefit and assistance they provide.

There are thirteen entries slated for publication this year. As before, the entries will be arranged according to the canons of the *Code of Canon Law*.

Conformity of Particular and Universal Law (c. 281, §1); Retention of Documents Relative to Dispensed Priests (c. 290); Revised Laicization Rescript (c. 292); Readmission to Active Priestly Ministry (c. 293); Lay Brother Permitted to be a Local Superior in Clerical Religious Institute (c. 588, §2); All Perpetually Professed Members/Capitulars in the General Chapter (c. 631, §1); Admission of Former Anglican Priest to a Religious Order (c. 656, §2); Complimentary Legislation Concerning Recording the Baptism of Adopted Children (c. 877, §3); Complimentary Legislation Concerning the Confessional (c. 964, §2); Complimentary Legislation Concerning Things to be Observed in Preparation of a Couple for Marriage (c. 1067); Relationship of Tribunals of First and Second Instance (c. 1438, 1°); Conformity of Sentence (c. 1682, §2); What Happens When Only One of Multiple Grounds is Ratified (c. 1682, §2).

The Committee extends its gratitude to the National Conference of Catholic Bishops, the Congregation for Divine Worship and Discipline of the Sacraments, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, the Pontifical Council for the Interpretation of Legislative Texts, and the Supreme Tribunal of the Apostolic Signatura for their support and assistance.

**Committee: Scholarship Fund**

**Constituted:** Board of Governors, 1987

**Charge:** To conserve, invest, and disburse the monies of the Scholarship Fund according to the criteria established by the CLSA;  
To establish for approval by the Board of Governors the process for selecting recipients of the scholarship.

**Membership:** Ms. Barbara Bettwy, Chairperson

Rev. Daniel Pilon  
Rev. Joseph L. Tagg, III  
Sr. Margaret A. Stallmeyer, C.D.P. (*ex officio*)

## Annual Report

The annual Scholarship Appeal was conducted by a letter to the membership of the CLSA in Advent of 2000. From that appeal, \$6,805.88 was raised.

On May 16, 2001, Reverend Arthur Espelage, Executive Coordinator of the CLSA, mailed to all the committee members a packet of information on the scholarship applicants for this year's award. There were two applicants for the committee's consideration; however, both applicants were ineligible for the award. One applicant was a priest from Uganda who has already earned the JCL and is planning to study for the JCD. The other person was a priest from Ghana, West Africa who is planning to begin his JCL studies at Catholic University of America, Washington in Fall 2001. According to the criteria requirements for eligibility for the scholarship, applicants must be pursuing the JCL, be citizens of the United States, and be committed to five years of canonical service in the United States upon completion of the degree. Since there were no applicants who were eligible for the scholarship award, no award will be given this year. This decision was made in consultation with the President, Rev. Msgr. Robert Deeley, Vice President, Rev. Kevin McKenna and Executive Coordinator, Rev. Arthur Espelage of the CLSA. The Chair wrote letters to the two applicants informing them of this decision.

On July 13, 2001, the Scholarship Committee met via a conference call that was previously established an agreed upon. Reverend Daniel Pilon from Fargo, Sister Margaret Stallmeyer, CDP from Melbourne, Kentucky, Reverend Joseph Tagg from Memphis, and Myself from Erie were all present on the call. The purpose of the meeting was to discuss the issues presented by the lack of eligible applicants for this year's award.

As a result of this discussion, the committee recommended that the section that describes the amount of the award be rewritten to reflect the changes made following the 2000 CLSA Convention. Members of the committee believe that more persons would be motivated to apply for the scholarship if they were aware that the amount has doubled from \$5,000.00 for two years of study to approximately \$5,000.00 per year for each of the two years. The amount is presently based on 5% of the value of the scholarship fund rather than a fixed amount. Some minor changes in other sections of the brochure have also been recommended for consideration.

The committee also discussed the need to better publicize the availability of the scholarship and possible methods of doing so. Suggestions included: utilizing the CLSA Newsletter to better inform members about the award, making a short

presentation at the Business Meeting of the 2001 Convention, sending scholarship brochures to all tribunals and diocesan offices in the United States, and making announcements in national newsletters and periodicals. The committee will meet on Tuesday, October 9, 2001 at the annual convention in Albuquerque to further discuss these issues.

This report is offered to the Office of the Executive Coordinator in preparation for the 2001 CLSA Convention.

Committee:       **Translation of Legislative Texts**

Constituted:     2000

Charge:           To translate the new norms of the Roman Rota and to undertake the translation of other legislative texts at the direction of the Board of Governors, with appropriate authorization and permission of the Apostolic See.

Membership:     Very Rev. John A. Renken

Annual Report

(The committee submitted no report.)

## PROJECTS

- Committee: ***Annotated Bibliography 1981 – 1995***
- Constituted: Board of Governors, 1996
- Charge: To make a bibliography of the writings of the CLSA members from 1981-1995.
- Membership: Rev. Mark Mealey, O.S.F.S.

### Annual Report

The committee has sent mailing to CLSA members who have contributed articles or presented workshops on canon law topics for a brief two or three sentence abstract of their work(s). For those unable to respond to the first request, two reminders have been sent. To date forty-nine members have not responded.

- Committee: **Canonical Advocacy Study Committee**
- Constituted: Board of Governors, 1996
- Charge: To initiate and carry on a study to develop recommendations for the facilitation of informal canonical advocacy throughout the United States as a means of accomplishing the equitable resolution of disputes outside the formal processes.
- Membership: Rev. Gregory Ingels, Chairperson  
Rev. Msgr. Craig Cox  
Sr. Sandra Makowski, S.S.M.N.  
Rev. Kenneth Schwanger

### Annual Report

The committee is preparing to undertake a study of the means by which the facilitation of advocacy can be provided for. This study will include four areas:

#### The Creation of a Registry of Advocates

This phase of the study will consider whether it would be appropriate for the CLSA to sponsor such a registry recognizing that it should not be misconstrued as

an endorsement of any individual. Likewise, the issue of the CLSA's responsibility should an individual be dissatisfied with the canonical advice received must be made completely clear. Also to be considered is whether such a registry can or should be associated with the USCCB Committee of Canonical Affairs to avoid any misconceptions about the goals and purposes of such a registry. Finally, the question of the qualifications an individual must possess to be placed in the registry must be determined.

### The Sharing of Information between Advocates

This phase of the study will consider methods by which canonists serving as advocates might share their experiences with one another with due regard for the requirements of confidentiality. Two possible methods suggest themselves and are under consideration: the scheduling of a meeting at the annual convention of the CLSA; or the use of a dedicated internet discussion group specifically for registered advocates.

### The Training and Mentoring of Canonists

This phase of the study will consider the feasibility of utilizing workshops or other means of providing training and mentoring of canonists interested in undertaking advocacy.

### Fees and Reimbursement

This phase of the study will consider the sensitive area of compensating advocates for their services and reimbursing them for their expenses.

This study will be undertaken through the use of a questionnaire to the membership and to the (Arch)dioceses in the United States.

Committee: **Eastern Canon Law**

Constituted: 46th Annual Meeting, 1984

Charge: To serve CLSA as a resource body in the area of Eastern canon law and inter-ritual matters, and to aid the CLSA membership in understanding the Eastern Catholic Churches.

Membership: Rev. Richard Whetstone, Chairperson  
Rev. George D. Gallaro  
Rev. Frank Marini

## Annual Report

Phase two of the *Handbook on Comparative Sacramental Discipline*, the revision requested by the BOG, will be sent to Fr. Frank Marini, editor of the project, who will then submit it to the BOG, after his phase of the project is complete.

The committee continues to be a resource to the CLSA on projects concerning Eastern Canon Law.

Committee: ***Ex Corde Ecclesiae Application***

Constituted: Board of Governors, 1999

Charge: To formulate and suggest to the appropriate office or committee of the NCCB measures toward the resolution of remaining issues and the completion of remaining portions of the Application norms. [The task force will report to the membership of the Society at an appropriate time.]

Membership: Rev. James Conn, S.J., Chairperson  
Very Rev. David M. O'Connell, C.M.  
Rev. Msgr. Robert P. Deeley

## Annual Report

Committee chair, James Conn, upon the recommendation of CLSA past president John Renken, was appointed in August 2000 by Archbishop Daniel Pilarczyk to serve as one of four consultants to his USCCB Ad hoc Committee on the Mandatum

This committee drafted a document entitled "Guidelines Concerning the Academic Mandatum in Catholic Universities." The document was approved at the June 2001 USCCB general meeting in Atlanta.

One feature of the Guidelines that may be of special interest to the CLSA is its provision that: "In the resolutions of disputes about the withholding or withdrawal of the mandatum, it is important for both parties to have competent canonical and theological counsel" (6, 2).

Although the USCCB committee's work has been completed, the CLSA

committee members are at the disposition of the Society to follow any further direction it may have.

Committee: *Festschrift*

Constituted: 2000

Charge: To publish a *festschrift* of canonical writings in honor of the Reverend Lawrence Wrenn.

Membership: Rev. Msgr. Frederick Easton

#### Annual Report

At its 61st Annual Convention, the members of the Canon Law Society of America approved the following resolution:

Be it resolved that the Canon Law Society of America, as an expression of its appreciation, gratitude, and esteem for his contribution to its publications, shall commission a *festschrift* in honor of Lawrence G. Wrenn.

At the meeting of the Board of Governors following this convention, the Board appointed Fred C. Easton as the General Editor to see to the completion of this resolution.

Pursuant to this charge, this general editor has determined the *festschrift* will focus on areas of canonical interest for which Lawrence Wrenn has made notable contributions: judicial procedure, jurisprudence, both procedural and substantive, as it applies to marriage cases, and the development and interpretation of law. It is envisioned that each contribution would likely be about 15-20 pages in length, manuscript form. Some topics would likely need a little more and a little greater length. Invited contributors are being asked to submit their manuscripts by March 1, 2001.

Shortly before this report was drafted, eleven persons have been asked to contribute articles. Two of them have immediately responded in the affirmative.

It is the hope of this general editor that a publication may be available by the time of the annual convention in 2001 or, at least, that it may be announced that the publication announcement is near.

Committee: **Parish Life Handbook**

Constituted: Board of Governors, 1996

Charge: Top design, identify authors, and edit a ready-reference handbook on parish life for cleric and parishioner.

Membership: Rev. Rony Jenkins, Chairperson  
Rev. David-Marie Jaeger, O.F.M.  
Sr. Esther Dunegan, I.W.B.S.  
Rev. Stephen Zigrang

Annual Report

*(The Committee submitted no report.)*

Committee: **Parish Viability**

Constituted: Board of Governors, 1999

Charge: To develop criteria for the viability of parishes. To draft or assemble a set of standards, i.e., both canonical requirements and pastoral expectations, for parish communities and the ministries within them. The criteria or standards are to be suitable to assess the health and effectiveness of parishes. The task force is to complete its work in two years time, and present its report, both in published form and in a convention seminar, to the membership of the Society.

Membership: Rev. R. Daniel Conlon, Chairperson  
Rev. Msgr. Ricardo E. Bass  
Mrs. Siobhan M. Verbeek

Annual Report

During the second year of work on this project, the members of the committee identified numerous standards in the Church's legislation which govern the constitution and ministry of parishes. As was decided earlier, these standards were grouped into four sections: teaching, sanctifications, service and administration. Through correspondence, telephone conferences and one meeting the members edited and refined their work. One critical decision they made was to limit the material to that which is found in the Church's two current codes of canon law.

Initially standards from other official documents were considered. However, because there are so many pertinent documents issued over the past thirty-five years (which would make for an unwieldy parish evaluation instrument), and yet very few of these documents were issued as *lex* (whose inclusion alone would skew the instrument), only the codes were used as sources. Finally, an introduction was written.

The evaluation instrument now exists in unpublished form. Copies of the draft are being made available to members of the Society. A hearing on the draft is scheduled for the second day of the 2001 convention. The committee will consider the reactions and suggestions of those who attend the hearing and make adjustments to the draft. It will then submit a final draft to the Board of Governors by the end of 2001, unless more extensive revision is required.

- Committee:       **Revision of the English Translation of the *Code of Canons of the Eastern Churches***
- Constituted:     Board of Governors, October 1995
- Charge:           To prepare a revised translation of the *Code of Canons of Eastern Churches*
- Membership:     Chorbishop John Faris, Chairperson  
                    Rev. Jobe J. Abbass, O.F.M.

#### Annual Report

In 1992, the Canons Law Society of America prepared a translation of the *Codex Canonum Ecclesiarum Orientalium*, promulgated in 1990. The translation was prepared rather rapidly in order to fulfill an immediate need. Subsequently, recommendations were made regarding an improvement of the text. In 1995, the Board of Governors considered it appropriate to undertake a revision of the translation as has been done for the *Codex Iuris Canonici*.

The Committee met in May, 1999 and completed its revised translation. After an additional proofreading of the text, it was submitted to the Executive Coordinator in December, 1999. A final review of the proofs was completed in May, 2001.

The translation is currently at the printer. Pre-publication material has been sent and the response is positive. The revised translation is expected to be published in October, 2001 the tenth anniversary of the acquisition of force of law of the *Codex Canonum Ecclesiarum Orientalium*.

The CLSA had an inventory of approximately 700 copies of the first transla-

tion. The CLSA donated 600 copies to CNEWA (Catholic Near East Welfare Association) for distribution in India and Ukraine.

**Committee: Rome 2005 Convention**

**Constituted:** Board of Governors, 1999

**Charge:** To coordinate and oversee all aspects of the CLSA annual convention in Rome in 2005.

**Membership:** Very Rev. Lawrence A. DiNardo, Chairperson  
Rev. Msgr. Frederick C. Easton  
Rev. Msgr. Nevin Klinger  
Rev. Modesto Perez  
Sr. Francine Quillin, P.B.V.M.  
Very Rev. John A. Renken  
Sr. Nancy Reynolds, S.P.  
Rev. Arthur J. Espelage, O.F.M. (*ex officio*)

#### Annual Report

The Committee continues its charge of preparing for the Annual Convention to be held in Rome in the year 2005. The Committee met at the 2000 Annual Convention in Arlington, Virginia. The Committee established to sub-committees to work on two aspects of the Convention. A sub-committee, headed by John Renken, was established to develop a proposed program for the Convention. A sub-committee, headed by Modesto Perez, was established to develop a proposed program for arrangements. This would include transportation (both to Rome and in Rome) and hotel arrangements. In addition, the Board of Governors has employed Nix and Associates to assist in future convention planning.

The Committee will meet at the 2001 Annual Convention to review the proposals and submit them to the Board of Governors for discussion and approval. Following approval, the Committee hopes to report to the membership through the *Newsletter* the preparations that are being made for the Rome 2005 Convention.

**Committee: Selection of Bishops**

**Constituted:** Board of Governors, 1987

**Charge:** To study the actual process for the appointment of bishops and make recommendations for its possible betterment.

Membership: Mr. Michael Ritty, Chair  
Rev. James A. Coriden  
Sr. Marilyn R. Vassallo, CSJ

Annual Report

The committee has held a number of phone conversations and a planning meeting in July, 2001 to identify the needs demanded by this mandate and to begin outlining the steps necessary to complete the study.

The initial stage to be undertaken by the committee will be the gathering of all previously published information available regarding the historical selection of bishops. This stage is expected to be completed by January, 2002. The committee will then begin gathering information available regarding the current processes for selecting bishops. This data, both current and historical, should then allow the committee to offer suggestions and recommendations for the possible betterment of these processes.

CONVENTION

Committee: **Convention Chairperson**

Membership: Ms. Patricia M. Dugan  
Mrs. Rita F. Joyce

Annual Report

*(The Committee submitted no report.)*

Committee: **Convention Liturgies**

Constituted: Board of Governors, 1990

Charge: Plan the convention liturgies and prayer services

Membership: Very Rev. Gerard M. Sherba, Chairperson  
Rev. Jerome A. Plokowski  
Rev. James Bonke  
Rev. Joseph Binzer

Annual Report

In June, Jim Bonke, the Chairperson designate for this Committee, and myself

traveled to Albuquerque. The purpose of this trip was to meet with the Tribunal Staff, the Archdiocesan Office of Worship, the staff of the Church where the Convention Liturgy will take place and the hotel in order to make arrangements. It has been a good experience to meet face to face with those who are involved on the local level to prepare in advance for the upcoming Convention.

During the meeting with the Archdiocesan Office of Worship, we met with Dolly Sokol, Director; Angela Flores, Administrative Assistant and musician Steve Herrera to plan the music and the liturgies for the Convention.

It is to be noted that costs concerning preparing the Convention liturgies have escalated due to the fact that in preparing the worship aids it cannot be taken for granted that these will be done *gratis*. For example, this year, given the small Office of Worship of the Archdiocese of Santa Fe, the cost would have been \$16/hour for approximately 21 hours of work to prepare the aid. Furthermore, the honorarium for the local musician prepared by Steve Herrera himself, would have been nearly \$700 for assisting at all the liturgies.

Thus, in order to keep within the confines of the budget, (1) Sister Francine Quillin and myself will play the music for the Sunday, Monday, Tuesday and Thursday morning Eucharistic liturgies; (2) Steve Herrera will play music for the “main” liturgies [Monday Opening Prayer Service; Wednesday Eucharistic Liturgy at Saint Mary’s Church and the Thursday Morning Prayer/Installation of Officers]; (3) since my staff at Cathedral is larger than that of the Archdiocese of Santa Fe’s Office of Worship and preparing such aids is commonplace, they will prepare the worship aid to be sent to the Executive Coordinator’s Office which will duplicate them for the Convention packet; (4) separate worship programs will be prepared for the Sunday and Monday Eucharistic liturgies, since these take place before the Convention actually begins on Monday afternoon.

The Committee will contact a presider for the Sunday morning Eucharistic liturgy so he can be prepared; those who will take part in the other liturgies will be contacted during the course of the Convention, as in the past.

It has truly been an honor to serve the CLSA as Chairperson of this Committee for the past nearly five years.



# FIRST INSTANCE TRIBUNAL STATISTICS 2000

Arch-Diocese	Cases Presented	Cases Accepted	Cases Decided	Mixed Marriages	N-Cal.	Pet. Renounced	Abated	Ligamen	Other Decisions	Lack of Form	R/NC Cases
Albany	259		227	90	137	12	39	3		185	
Alexandria	72	72	14	4	2	2	44				
Allentown	327	313	223	74	43	2	68	1	2	137	
Altoona-Johnstown	121	113	120	39	26	4		2		4	
Amarillo	74	71	94	20	34	4	2	4		29	
Anchorage	41	40	30	7	16			3		31	
Arlington	337	327	24	76	34	2	7	16		343	
Atlanta	464	298	248	83	83	19	19	26		245	
Baton Rouge	144	155	187	34	35	5	22	14	4	150	
Beaumont	113	105	66	30	35	4	14	14		89	
Belleville	137	137	164	43	52	5	17	18		55	
Biloxi	79	63	78	22	24	2	8	12		140	
Birmingham	105	94	74	13	37	2	4	17		84	
Bismarck	81	81	79	34	21	3	2	2		51	
Boise	176	176	197	41	76	5	17	19	3	120	
Boston	514	514	429	28	12	20	52	2	2	506	
Bridgeport	140	113	113				9	1	1	104	
Brooklyn	326	328	318	52	10	6	3			371	
Brownsville	110	109	89	7		1	27	1	1	132	
Buffalo	195	195	182	41	14	1		11		199	1
Burlington	98	83	92				10				
Camden	156	107	130	42	11	3	29	1	2		
Charleston	86	80	67	19	32	9	3	14		94	
Charlotte	187	133	104	33	38	17	12	21		94	
Cheyenne	102	102	96	25	36	8	15	13		84	
Cincinnati	574	574	546	163	181	22	14	31		326	
Cleveland	623	618	558			20	46	21		463	
Colorado Springs	83	80	70	18	15	2	1	8		96	
Corpus Christi	359	359	97	10	14		4	7		178	



**FIRST INSTANCE STATISTICS 2000**

Arch-Diocese	Cases Presented	Cases Accepted	Cases Decided	Mixed Marriages	N-Cat.	Pet. Renounced	Abated	Ligamen	Other Decisions	Lack of Form	R/NC Cases
Crookston	42	42	74	20	26	1	2			22	
Dallas	323	318	251	73	82	3	33	35	5	65	
Davenport	139	139	92	36	16		3	14		64	
Des Moines	118	114	126	39	38	1	3	6	1	74	
Detroit	889	876	753				85	13	15	668	
Dodge City	79	63	58	14	19	1	2	5		32	
Dubuque	370	370	311	93	89	7	46	3	1	115	
Duluth	85	47	40	15	11	6		1		46	
El Paso	94	94	82	11	4		7	2	1	134	
Erie	205	199	199	61	52	2	4	9		134	
Evansville	124	118	89	25	29	13		6	1	58	
Fairbanks	21	16	10	3			5			16	
Fall River	101	101	85			8	17	1		128	
Fargo	134	134	78	25	27	2		3	1	58	
Fort Wayne-S Bend	155	155						15		128	
Fort Worth	259	259	255	62	98	2	2	24	1	249	
Fresno	221	219	182	20	21	3	20	5	5	219	
Gallup	27	18	29	11	4	5	6	3		58	
Galveston-Houston	404	374	524	130	134	25	46	16		83	
Gary	268	141	181	39	27		6	14	3	81	
Gaylord	113	104	55	16	12	3	6	3		73	
Grand Rapids	222	221	238				7	12	1	147	
Great Falls-Bilings	39	39	30	8	7	2	19	6		46	
Greensburg	205	205	123	39	22	1		8		76	
Harrisburg	281	281	292	88	97	15	20	12	140		
Hartford	283	253	204			57	14	1		226	
Honolulu	94	94	105	25	19	4	15	3	3	100	
Houma-Thibodaux	47	22	29	4			1	1		107	

**FIRST INSTANCE STATISTICS 2000**

Arch-Diocese	Priv. Faith	Paul. Faith	2 <sup>nd</sup> Inst. Recvd	2nd Inst. Decided	Total Expenses	Amount Fees	Amount of Deficit/Subs	Canonists		Indulted		Advocate		Staff	
								Full	Part	Full	Part	Full	Part	Full	Part
Crookston		1			\$ 58,477	\$ 15,550	\$ 42,927	3		2		1		1	
Dallas		2			\$ 262,393	\$ 113,635	\$ 148,758	1	7				40	4	3
Davenport	19	3			\$ 146,354	\$ 34,460	\$ 111,894	1	1	1	1	1	1	1	1
Des Moines		7			\$ 96,221	\$ 43,09	\$ 53,129	7		6	1	9	1	1	1
Detroit	2	8	1009	976	\$ 18,625	\$ 24,400		10	10	1	1	5		10	
Dodge City		2			\$ 59,117	\$ 3,950	\$ 55,167	1	2			6		1	
Dubuque		6			\$ 221,627	\$ 97,895	\$ 123,731	1	4			1		2	1
Duluth	1				\$ 43,358	\$ 2,925		1	1			1			
El Paso					\$ 107,642	\$ 30,015	\$ (76,627)	1		8		2	5	2	2
Erie	2	1			\$ 318,154	\$ 57,626	\$ 260,528	3	4			2	1	2	2
Evansville	6	1			\$ 220,130	\$ 35,213	\$ 184,917	3	1	4				2	
Fairbanks						\$ 1,975		2	2	1	1		17	2	1
Fall River	2	2						1	7	3	3		12	2	1
Fargo	1				\$ 121,862	\$ 36,290	\$ 85,982	1	2	8		1	3	1	1
Fort Wayne-S Bend	13	4				\$ 65,847		2				10		2	5
Fort Worth		5			\$ 274,158	\$ 87,663	\$ 186,495	2	2	1	1	3		1	2
Fresno		4	121	121				3		4		3		2	
Gallup	2					\$ 3,675		1	1						1
Galveston-Houston		5			\$ 353,628	\$ 168,193	\$ 185,435	3	8	4			11	4	1
Gary		3			\$ 199,471	\$ 50,334	\$ 149,137	1	4			3	2	2	2
Gaylord					\$ 100,569			3		2		3	1	1	
Grand Rapids		7			\$ 171,550		\$ 171,550	1	3	2	2		2	2	2
Great Falls-Billings	2	1			\$ 75,109	\$ 5,345	\$ 69,764	2				1		1	
Greensburg		3			\$ 132,528	\$ 38,330	\$ 94,198	1	3			1	2		
Harrisburg					\$ 245,136	\$ 115,000	\$ 130,136	3	1	2	1	1	3	1	3
Hartford	4				\$ 328,481	\$ 40,686	\$ 287,795	3	2				14	3	
Honolulu		3			\$ 172,738	\$ 30,925	\$ 141,813	2	2	2	2			2	2
Houma-Thibodaux		2			\$ 79,919	\$ 10,540	\$ (69,379)	1						6	

**FIRST INSTANCE STATISTICS 2000**

	Cases Presented	Cases Accepted	Cases Decided	Mixed Marriages	N-Cat.	Pet. Renounced	Abated	Ligamen	Other Decisions	Lack of Form	R/NC Cases
Arch-Diocese Indianapolis	172	156	131	40	27	10	9	31	1		
Jefferson City	188	129	148	47	46	1	26	17		100	
Joliet	573	311	343					13	11	234	
Kansas City, KS	675	540	492	160	98	8	94	18		206	
Kan City-St. Joseph	249	242	287	93	80	16	26	41		147	
La Crosse	293	269	269	66	50	14	7	7		121	
Las Cruces	94	94	58	7	4	2	3	1		69	
Las Vegas	105	93	80	20	20	2	10	5		159	
Lafayette	270	270	146			5	2	8		181	
Lafayette - in -IN	217	133	112			3	5	20	1	88	
Lansing	328	326	282	82	71	2	11	40	3	177	
Lexington	86	86	115	44	47		7	7		43	
Lincoln	49	41	32	15	17	7	6	4		31	
Little Rock	125	118	81	31	35	7	21	25		80	
Los Angeles	763	728	545	111	88	15	14	24	1	955	
Louisville	241	241	165	57	27			16	3	3	
Madison	138	180	150	54	19	8	6	5		92	
Manchester	291	291	182			3	1	1		186	
Marquette	90	83	66	22	7			1		46	
Metuchen	216	213	183	29	17	2	19	2	1	148	
Military Services	241	241	76	16	41	7	7	14		207	
Milwaukee	491	516	483	162	110	4	63	5	1	301	1
Mobile	105	105	109	31	50	6	6	11		38	
Monterey	69	69	48	14	4	1	6	2		63	
Nashville	245	245	204	62	104	6	11	25	1	28	
New Orleans	301	247	247			6		13		301	
New Ulm	70	70	65	32	7	2	2	3		25	
New York	545	545	510	71	22	2	5	8	3	495	
Newark	365	321	321			1	40	3		3	

FIRST INSTANCE STATISTICS 2000

	Arch-Diocese	Priv. Faith	Paul. Priv.	2 <sup>nd</sup> Inst. Recvd	2nd Inst. Decided	Total Expenses	Amount Fees	Amount of Deficit/Subs	Canonists		Indulted		Advocate		Staff	
									Full	Part	Full	Part	Full	Part	Full	Part
Indianapolis	41	6				\$ 413,933	\$ 71,882	\$ 342,051	2	5	1	7	4	2	4	
Jefferson City	2	4				\$ 119,707			1	1	1	7		1	1	
Joliet						\$ 492,750	\$ 42,821	\$ 412,750	2	1			2	5	1	
Kansas City, KS	4					\$ 134,000	\$ 78,000	\$ 56,000	1	2			2	8	1	2
Kansas City-St. Joseph	11					\$ 196,500	\$ 59,000	\$ 137,500	2	2			2		1	
La Crosse						\$ 209,575	\$ 102,005	\$ 107,570	2	1			1	1	3	1
Las Cruces	1					\$ 86,333	\$ 24,282	\$ 62,051		4	8		2	57	1	
Las Vegas	14								1	3			3	1	1	
Lafayette				108	97	\$ 197,799	\$ 63,651	\$ 134,148	1	4		6		1		
Lafayette - in - IN	23	2		178	185				1	2	2		2	1		
Lansing	22					\$ 297,301	\$ 70,100	\$ 227,201	2	3	1	2	8	1	1	
Lexington	1	1				\$ 112,189		\$ 112,189	2	4	7		9	2		
Lincoln	3								2	3			16	1		
Little Rock	22	3				\$ 860,822	\$ 78,901	\$ 781,921	1	10	4	4	15	1	1	
Los Angeles	29	16				\$ 244,533	\$ 32,055	\$ 22,528	2	2	11	3	6	6	8	
Louisville	18	7		184	169	\$ 189,000	\$ 41,470	\$ 147,530	3	3		1	2	58	3	
Madison						\$ 149,375	\$ 74,520	\$ 74,855	1	3			1	11	3	1
Manchester	3					\$ 68,523	\$ 21,831	\$ 46,692	3	3	1		3	1		
Marquette	1					\$ 299,221	\$ 92,297	\$ 206,924	3	3			3	2		
Metuchen	1			148												
Military Services	7					\$ 148,732	\$ 81,240	\$ 67,491	1	11			3	1		
Milwaukee				738	737	\$ 559,000	\$ 185,000	\$ 414,000	4	10	1	1	2	2	4	1
Mobile	2					\$ 93,835	\$ 11,150	\$ 82,685	2	2	2		1	2		
Monterey	3	2				\$ 110,986	\$ 32,550	\$ 78,436	3	3	4	4	1	2	1	
Nashville	3	2				\$ 213,456		\$ 213,456	3	3	2	3	2	2	1	
New Orleans	5	2				\$ 315,257	\$ 137,660	\$ 177,597	2	4	6	6	1	3	2	1
New Ulm						\$ 111,630	\$ 3,000	\$ 108,630	1	3	2	2	5	1		
New York	7	9				\$ 856,425	\$ 350,000	\$ 506,425	7	5	1	4	4	10	14	5
Newark	1					\$ 373,826	\$ 134,715	\$ 239,111	1	12	2	5	5	13	4	

**FIRST INSTANCE TRIBUNAL STATISTICS 2000**

	Cases Presented	Cases Accepted	Cases Decided	Mixed Marriages	N-Cat.	Pet. Renounced	Abated	Ligamen	Other Decisions	Lack of Form	R/NC Cases
Arch-Diocese											
Norwich	160	112	112	24	14			1	2	87	
Oakland	206	169	115	31	23	9	4	10	5	226	
Ogdensburg	126	126	89	23	8	34	3		75		
Oklahoma City	240	232	206	37	124	6	28	1		152	
Orlando	484	484	385	108	109	34	35	36		447	
Our L. of Lebanon	23	22	21	8	4			1		12	
Owensboro	97	88	70	22	22	6	5	15	3		
Palm Beach	239	223	249	64	55	5	15	12	12	108	
Paterson	142	142	113	28	9	21	15			148	
Pensa.-Tallahassee	101	101	119			6		11		91	
Phoenix	301	295	237	64	43	88	21	40	2	369	
Pittsburgh	629	416	356	74	59	2	12	9	4	301	
Portland in Oregon	288	272	259	81	99	1	1	27		196	
Providence	237	1841	193				4	3		190	
Pueblo	51	45	33	9	4	3	5	2		71	
Raleigh	329	236	106	20	48	2	5	36		169	
Rapid City	43	43	43	9	14	2	3	6		33	
Reno	505	50	39	16	4		5	12		63	
Richmond	316	262	285	91	109	7	13	25	1	251	
Rochester		324	327			8	33	3		165	
Rockford	331	311	310	64	92	4	13	7		195	
Sacramento	220	220	242			33	34	24		216	
Saginaw	210	210	194	55	39			11	2	96	
St. Augustine	217	217	221	53	83	23		46		182	
St. Cloud	176	175	184	40	22	8	7	7		83	
St. Josephat	22	20	7	2			2	1		12	
St. Louis	589	566	468			10	40	44	1	339	
St. Paul/Minn.	594	380	434	185	70	3	7	16		281	
St. Petersburg	364		351			15	26	65		315	

**FIRST INSTANCE TRIBUNAL STATISTICS 2000**

Arch-Diocese	Priv. Faith	Paul. Priv.	2 <sup>nd</sup> Inst. Recvd	2nd Inst. Decided	Total Expenses	Amount Fees	Amount of Deficit/Subs	Canonists		Indulted		Advocate		Staff	
								Full	Part	Full	Part	Full	Part	Full	Part
Norwich	1	1	109	109	\$ 322,662	\$ 119,575	\$ 203,087	1	4	8	2	8	1	1	
Oakland	1	6	393	393	\$ 99,461	\$ 39,326	\$ 60,035	1	2	1	1	5	3	1	
Ogdensburg	6	1						1	2	2		10	2		
Oklahoma City								1	3	2		4	1	1	
Orlando					\$ 273,465	\$ 79,707	\$ 193,758	2	4	1	1	1	4	4	
Our Lady of Lebanon					\$ 8,625	\$ 7,825	\$ (900)	2	2	1	1	2	2	1	
Owensboro	10	5			\$ 102,466	\$ 12,285	\$ (90,181)	2	2	1	1	20	2		
Palm Beach	7	4						2	6	2		45	2	2	
Paterson	2	1			\$ 164,694	\$ 91,040	\$ 73,654	3	2	2		4	2		
Pensacola-Tallahassee															
Phoenix	2	14			\$ 360,462	\$ 143,766	\$ 216,696	3	1	2	2	3	3		
Pittsburgh		8			\$ 460,061	\$ 216,649	\$ 243,412	5	3	4	12	1	1		
Portland in Oregon		13	450	417	\$ 234,806	\$ 56,647	\$ 178,159	1	1	1	1	2	2	1	
Providence	3	2			\$ 390,999	\$ 106,301	\$ 284,698	3	2	2		1	4		
Pueblo					\$ 84,626	\$ 7,358	\$ 77,268	1	1	1	4	9	1	1	
Raleigh		3			\$ 144,631	\$ 43,905	\$ 100,726	3	1	1	1	55	2	1	
Rapid City					\$ 47,218	\$ 13,075	\$ (34,143)	1	1	1	1	6	1		
Reno		6			\$ 76,868	\$ 20,415	\$ 56,453	1	2	2	4	4	1		
Richmond		1			\$ 354,195	\$ 149,282	\$ 354,195	8	8	4	4	1	4		
Rochester	3				\$ 434,368	\$ 149,282	\$ 285,086	3	3	1	5	2	3		
Rockford					\$ 411,603	\$ 121,951	\$ 289,651	4	4	1	2	3	3		
Sacramento	4	6			\$ 340,539	\$ 93,800	\$ 244,773	2	6	6	6	3	3		
Saginaw		4			\$ 85,035	\$ 85,035	\$ 85,035	5	5	1	1	3	2		
St. Augustine					\$ 144,705	\$ 73,256	\$ 144,705	1	2	1	1	3	2		
St. Cloud	2	2			\$ 167,611	\$ 60,632	\$ 106,979	1	6	8	3	3	2		
St. Josephat					\$ 950	\$ 3,125		3	3						
St. Louis	10	11			\$ 353,401	\$ 228,332	\$ 125,069	3	3	1	6	2	3		
St. Paul/Minneapolis		4			\$ 382,720	\$ 208,360	\$ 174,360	3	3	1	6	3	1	3	1
St. Petersburg					\$ 327,000	\$ 70,084	\$ 256,916	3	3	1	1	6	3	1	

**FIRST INSTANCE TRIBUNAL STATISTICS 2000**

	Cases Presented	Cases Accepted	Cases Decided	Mixed Marriages	N-Cat.	Pet. Renounced	Abated	Ligamen	Other Decisions	Lack of Form	R/NC Cases
Arch-Diocese Salt Lake City	120	115	102	20	46	10	3	16		96	
San Angelo	78	78	74	22	6	1	4	4	6	95	
San Antonio	451	289	245	73	59	8	4	10		13	
San Bernardino	229	175	93	22	23	6	35	4		224	
San Francisco	239	237	246	45	23	1	15	13	10	210	
San Jose	287	267	170	38	34		1	8		225	
Santa Rosa	60	60	67	17	11	3	1	8		73	
Savannah	136	79	108	34	32	7	3	18		60	
Scranton	370	370	367	76	55	1	31	2	1	165	
Seattle	426	425	387			1	5	51	3	340	
Shreveport	140	140	73	13	31	1	3	14		64	
Sioux City	145	135	11	29	32	7	4	5		64	
Sioux Falls	116	116	136	57	39	3	3	11		57	
Spokane	118	118	100	24	42		8	18	6	88	
Springfield, IL	233	232	224	53	66	5		21		139	
Springfield, MA	286	286	301	62	32		41	6		156	
Spring-C Girardeau	168	163	186	45	80	8	22	11	3	70	
Stebenville	100	82	90	52	22		4	5		4	
Stockton	107	105	75			2		4		86	
Superior	99	99	96	70	26			5		62	
Trenton	223	223	185	89	33	30	7	1	1	256	
Tucson	141	100	51	1	1	16	13	1	1	172	
Tulsa	109	108	70	46	24	1	13	28		82	
Tyler	110	96	53	9	34	1		6		5	
Van Nuys	3	2	2	2					6	4	
Victoria	81	81	71	18	21			3		64	
Wheel.-Charleston	161	161	126	48	73	1	12	22		79	
Wichita	321	321	258	70	120	9	17	25		124	
Wilmington	131	131	100	26	28	1	1	1		108	

Arch-Diocese	Priv. Paul.		2 <sup>nd</sup> Inst.		Total		Amount		Amount of		Canonists		Indulted		Advocate		Staff	
	Faith	Priv.	Recvd	Decided	Expenses	Fees	Deficit/Subs	Full	Part	Full	Part	Full	Part	Full	Part	Full	Part	
Salt Lake City	1	5			\$ 75,040	\$ 18,185	\$ 56,855	1	1	3	2	1	1					
San Angelo					\$ 68,331	\$ 10,125	\$ 58,206	4	4	4	51	1	1					
San Antonio	1	1			\$ 272,689	\$ 143,767	\$ 135,992	1	2	11	1	2	5					
San Bernardino	1	1			\$ 277,000	\$ 30,000	\$ 247,000	2	3	4	6	3	3					
San Francisco	16	3			\$ 410,000	\$ 93,661	\$ 30,000	4	3	4	2	3	1					
San Jose			214	210	\$ 310,480	\$ 72,595	\$ 237,885	4	1	1	4	1	1					
Santa Rosa					\$ 83,642	\$ 23,888	\$ 59,754	1	1	4	1	5	1					
Savannah		2			\$ 134,142	\$ 23,565	\$ 110,577	1	2	1	1	1	1					
Scranton					\$ 237,361	\$ 145,253	\$ 9,207	2	6	1	4	3	1					
Seattle		16	555	555	\$ 489,556	\$ 181,555	\$ 308,001	4	5	3	8	3	3					
Shreveport	1	1			\$ 96,020	\$ 33,423	\$ 30,000	1	2	4	5	2	2					
Sioux City					\$ 64,766	\$ 30,010	\$ 91,675	1	4	1	4	6	1					
Sioux Falls		5			\$ 116,357	\$ 9,500	\$ 46,951	1	1	4	4	1	1					
Spokane		3			\$ 56,457	\$ 75,780	\$ 82,838	1	3	4	1	1	1					
Springfield, IL	6	5			\$ 158,618	\$ 75,780	\$ 82,838	1	3	4	1	1	1					
Springfield, MA	1		498	497	\$ 215,901	\$ 62,945	\$ 152,956	4	4	1	6	3	1					
Springfield-C. Girardeau					\$ 135,789	\$ 24,480	\$ 111,309	2	1	1	3	1	2					
Steubenville					\$ 67,448	\$ 17,565	\$ 49,883	1	5	6	4	1	1					
Stockton	3				\$ 121,113	\$ 40,282	\$ 80,831	1	5	1	4	1	1					
Superior					\$ 111,287	\$ 18,665	\$ (92,622)	3	3	2	1	1	4					
Trenton	1	3	164	171	\$ 321,467	\$ 123,500	\$ 197,967	2	2	2	7	15	2					
Tucson	2	1			\$ 104,510	\$ 35,452	\$ 69,058	1	1	7	2	2	4					
Tulsa		6			\$ 86,700	\$ 86,700	\$ 86,700	3	3	2	3	1	1					
Tyler		3	2	2	\$ 27,700	\$ 15,532	\$ 12,167	2	2	1	2	1	1					
Van Nuys					\$ 3,000	\$ 100	\$ 4,200	4	4	3	3	1	1					
Victoria					\$ 75,018	\$ 19,689	\$ 55,328	2	2	11	4	4	1					
Wheeling-Charleston	11				\$ 105,000	\$ 98,000	\$ 7,000	2	3	5	5	1	1					
Wichita	7			492	\$ 253,696	\$ 50,680	\$ 203,016	3	1	2	26	2	2					
Wilmington								1	6	1	30	1	1					

**FIRST INSTANCE TRIBUNAL STATISTICS 2000**

	Cases Presented		Cases Accepted		Cases Decided		Mixed Marriages		N-Cat.		Pet. Renounced		Abated		<i>Ligamen</i>		Other Decisions		Lack of Form		R/NC Cases		
Arch-Diocese Winona	139	178	139	155	1107	170	33	37	3	36	2	2	14	1	109	49							
Worcester	148	205	148	190	131	162	48	39	3	67	14	14	14	2	141								

	Priv. Paul. Faith		2 <sup>nd</sup> Inst. Decided		Total Expenses		Amount Fees		Amount of Deficit/Subs		Canonists		Indulted		Advocate		Staff							
Arch-Diocese Winona	2	9	5				\$ 264,949	\$ 53,426	\$ 211,523	1	3	3	2	2	3	3	6	3	1					
Worcester																								
Yakima																								
Youngstown							\$ 253,472	\$ 34,215	\$ 219,267	1	6	1	6	1	3	3	1	3	1					







## MINUTES

### CANON LAW SOCIETY OF AMERICA SIXTY THIRD ANNUAL CONVENTION

Hyatt Regency Albuquerque  
Albuquerque, New Mexico  
8-11 October, 2001

**THEME:** *ECCLESIA IN AMERICA: ONE CHURCH, MANY PEOPLES*

#### **Monday, 8 October, 2001**

##### Call to Order and Opening Prayer

President Robert Deeley called the Sixty Third Annual Convention of the Canon Law Society to order at 4:00 p.m. on Monday, 8 October, 2001 at the Hyatt Regency Albuquerque Hotel. Evening prayer was then prayed by all participants.

##### Opening of the General Session

President Deeley then welcomed all participants to the “Land of Enchantment,” and introduced Archbishop Michael Sheehan of the Archdiocese of Santa Fe who likewise welcomed us.

President Deeley then acknowledged a number of special guests at the convention: the presidents of the faculties of canon law in North America and the presidents of canon law societies in Canada, Great Britain and Ireland, Australia and New Zealand.

President Deeley also announced that the new translation of the Code of Canons for the Eastern Churches (*CCEO*) had been published by CLSA and was in the process of being distributed. He thanked all of those who worked on this new translation, and presented the members of the Committee with plaques.

President Deeley then introduced Michael Coriglio, Chair of the Nominations Committee, who submitted the names that have been placed in nomination for the Board of Governors of the CLSA. For the office of Vice-President/President Elect, the nominees were Lawrence O’Keefe and Daniel Smilanic. For the office of Treasurer, the nominees were Nicholas Cafardi and Alex Palmieri. For the office

of consultant, the nominees were John Scott Duarte, Lawrence Jurcak, Patrick Shea, Michael Souckar, Linda Weigel, and Daniel Whelton.

President Deeley then introduced Art Espelage, the Executive Coordinator of the Canon Law Society of America who would also act as press officer for the convention, directing any and all representatives of the media present at the convention to contact him. He then invited the General Convention Chair, Ms. Patricia Dugan, to address the assembly. She offered points of practical assistance for the participants in the convention.

President Deeley then formally presented the theme of the convention, and introduced the keynote speaker, Drew Christiansen, substituting for Anthony DiNoia, who had been named as a *peritus* to the Synod of Bishops currently meeting in Rome. Father Christiansen then presented his address on, "One Church, Many Cultures."

A reception followed.

## **Tuesday, 9 October, 2001**

7:30 am – 8:00 am MASS

### SPECIAL EVENTS:

8:00 am – 8:45 am      New Members' Breakfast  
                                 Black and Hispanic Concerns Caucus

9:00 am – 10:30 am SEMINARS:

A. *Recent Developments in Rotal Jurisprudence*  
*Rev. Michael P. Hilbert, SJ*

A look at significant sentences of the past 12 months, with a specific attention to cases originating in the United States.

B. *Canonical Ministry to Migrants*  
*Most Rev. Ricardo Ramírez, CSB*  
*Sister Catherine Darcy, RSM*

"The goal of the church is to ensure that no one is marginalized" (*Ecclesia in America*, no.58). This seminar will explore a number of challenges as related to the pastoral/canonical ministry to the immigrant (both undocumented and otherwise)

population, especially the Hispanic immigrant population, in the United States. Issues such as the liturgical needs of the newly arrived, marriages secretly celebrated, competency in nullity processes, sacramental preparation, acquisition of sacramental records, and the availability of liturgical books in needed languages will be explored.

*C. Anointing of the Sick – Theological Issues*

*Sr. Susan K. Woods, SCL*

There is a need to correct the strong association of the anointing of the sick with the sacrament of penance by retrieving a more foundational association with the sacraments of initiation-baptism, confirmation, and Eucharist. A theology of baptism situates sickness on a continuum between birth and death. Within this continuum healing is a prophetic symbol of the anticipated final eschatological restored integrity of the body. This integrity of the physical body also corresponds to the completed *totus Christus*, the ecclesial body, which the Eucharist signifies. Association with baptism also shift the forgiveness of sin in the anointing from the forensic model in the sacrament of penance or the medicinal model of healing associated with the interior regeneration of baptism.

*D. Canonical Issues in Due Process*

*Rev. Thomas T. Brundage*

This seminar will explore the future of the church's due process efforts in light of the completion of the CLSA's experiment with administrative tribunals. Specifically, different models of administrative and judicial recourse will be explored along with their canonical implications.

**SEMINARS:**

11:00 am – 12:30 pm

*A. The Role of Canon Law and Civil Law in the Protection of Ecclesiastical Goods of Catholic Institutes*

*Sr. Melanie DiPietro, SC*

This seminar is intended to provide a practical checklist for canonists who are asked to review civil documents for health, education and social service corporations. The discussion and check list will address free-standing corporation, joint ventures and "co-sponsored" arrangements. The seminar will include a brief status report on the Faith Based initiatives and the issues and ramifications for Roman Catholics.

B. *Communicatio in Sacris*: an Effort to Express the Unity of Christians or Simply an Exercise in Politeness?

*Rev. Aidan McGrath, OFM*

Common worship or *communicatio in sacris* is seen by some Christians as a means towards the unity of all Christians; by others it is understood to be the goal of a journey which has begun. This seminar will seek to explore some issues – canonical and practical – which can arise when seeking to engage in *communicatio in sacris* with other Christians of different traditions in a situation of deep division, great suspicion, and often intense hostility.

C. *Ministry to the Sick and Dying in View of the Shortage of Priests*

*Rev. John Huels, OSM*

After considering whether only priests may administer the anointing of the sick in virtue of the divine law, the seminar surveys the various rites of the Church, both sacraments and sacramentals, for its sick and dying members. Several pastoral suggestions are offered for the ministry in parishes and dioceses as well as Catholic health care institutions.

D. *Canonical Issues in Due Process (continuation)*

*Rev. Thomas T. Brundage*

SPECIAL EVENTS:

12:30 pm – 1:30 pm

A. Open Hearing: Parish Viability Committee

In response to a convention resolution, a self-evaluation instrument for parish viability has been drafted by a committee of the CLSA. The committee would like to receive comments about the draft from the Society membership. These comments can be used for refining the document.

1:00 pm – 1:45 pm      Women's Concerns Caucus

2:30 pm – 4:00 pm      SEMINARS:

A. Elements of a Good Judicial Sentence

*Rev. John Johnson*

An overview of what the canons and Rotal models prescribe for judicial sentences.

B. Canonical Ministry to Migrants (repeat)

*Most Rev. Ricardo Ramírez, CSB*

*Sister Catherine Darcy, RSM*

C. *Communicatio in Sacris* (repeat)

*Rev. Aidan McGrath, OFM*

D. Error

*Rev. Msgr. James Graham*

The presentation will focus mainly on “Error that Moves the Will,” which the Rota now calls “Legal Error.” We will also discuss Error of Quality of a Person and Fraud.

4:00 pm – 6:00 pm BUDGET REPORT AND OPEN HEARING ON RESOLUTIONS

6:00 pm – 7:00 pm ALUMNI RECEPTIONS: The Catholic University of America  
Saint Paul University  
Rome, Italy Universities  
Louvain University

**Wednesday, 10 October, 2001**

7:30 am – 8:30 am SPECIAL EVENTS:

Past Presidents’ Breakfast

Eastern Canonists Caucus

Lay Canonists Caucus

9:15 am – 10:45 am MAJOR ADDRESS:

Many Peoples Living in One Church

*Most Rev. Donald Pelotte, SSS*

Using the example of one diocese, the speaker will describe his own efforts at implementing *Ecclesia in America* from a pastoral perspective dealing with issues relating to reconciliation between cultures, and inculturated lay-ministry formation programs and culturally sensitive leadership/governance styles.

11:00 am – 12:15 pm SIXTY-THIRD ANNUAL BUSINESS MEETING

1. *Call to Order and Prayer*

The meeting was called to order at 11:08 by President Robert Deeley, who then called upon Sister Peggy Sullivan of the Sisters of St. Joseph of Boston to offer the opening prayer. He then called on James Bonke to discuss arrangements for the liturgy later in the day, and invited Patricia Dugan to come forward to discuss the arrangements for the banquet and for the afternoon sessions.

## 2. *Appointments and Rules*

Ann Rehrauer was appointed parliamentarian and the rules for participation in the business meeting were reviewed. In particular, President Deeley highlighted Article 5.3, which allows associate members to address the assembly if so moved. It was so moved and so passed. President Deeley then called upon CLSA Secretary Patrick Lagges to read the minutes of the last business meeting, unless there was a proposal to accept the minutes as published in *Reports*. It was so moved and so passed.

## 3. *Election of New Officers*

Michael Cariglio, Chair of Nominations Committee, came forward to place the names into nomination for the various offices of the Canon Law Society of America. He also explained the difficulty of getting candidates to run for office, and kindly requested members of the CLSA to use the nomination sheets that were in the convention packets to indicate future leadership for the Society.

The nominees were presented as:

### OFFICE OF VICE PRESIDENT/PRESIDENT ELECT

Lawrence O'Keefe  
Daniel Smilanic

*The floor was opened for further nominations, and, with no other nominations forthcoming, the nominations were considered closed.*

### OFFICE OF TREASURER

Nicholas Cafardi  
Alex Palmieri

*The floor was opened for further nominations, and, with no other nominations forthcoming, the nominations were considered closed.*

### OFFICE OF CONSULTOR

John Scott Duarte  
Lawrence Jurcak

Patrick Shea  
Michael Souckar  
Linda L. Weigel  
Daniel Whelton

*The floor was opened for further nominations, and, with no other nominations forthcoming, the nominations were considered closed*

The Chair then reviewed the rules for voting, and asked the voting members of the Society to mark their ballots. The ballots were then collected and the scrutineers attended to their task.

#### 4. *Reports*

President Deeley pointed to the fact that his President's Report could be found in the *Reports* booklet that all participants received with their convention packet. However, he entertained questions about the Report. Catherine Darcy expressed thanks to the Board of Governors for implementing the resolutions from the last meeting. She expressed hope that the incoming Board of Governors would take the spirit that was behind these proposals and make it their own in reaching across international boundaries.

President Deeley also called attention to the fact that reports of the activities of CLSA committees could also be found in the *Reports* in the booklet, and entertained questions about these reports. Bill Varvaro commented on the Electronic Media Committee, suggesting that in working on future issues of CLD the work be published on CD-ROM since this would help in research. He indicated that this was particularly true in light of fact that Canon Law Abstracts is now on CD-ROM.

Barbara Bettwy was then invited to speak on behalf of Scholarship Committee. She reported that no scholarship was awarded this year because no qualified applicants were found. She also indicated that the Committee members found this puzzling in light of need for qualified canonists. She pointed to three things that the members of the CLSA need to keep in mind concerning the Scholarship Fund: (1) The amount of the scholarship had been increased to 5% of the total in fund, so that total of scholarship now is more than \$10,000. (2) The larger the fund is, the more scholarship money is available. She therefore encouraged members to support the Fund. (3) The proceeds from the *Festschrift* in honor of Larry Wrenn will go to the Scholarship Fund.

## 5. *Treasurer's Report*

Margaret Stallmeyer was introduced and presented her report. She highlighted the following: On pp. 13-14, there is a statement of the financial position of the CLSA in relation to last year: The total assets declined by nearly \$78,000 due to loss on investment. On p. 13, the value of scholarship fund increased by \$12,000, while the operating fund loss was \$41,000. Margaret also reported that because of the aggressive pre-publication marketing by the Executive Coordinator's office, the religious handbook has paid for itself already. She also called attention to the fact that the second half of the report (pp. 30-37 in *Reports*) is the budget. She pointed out, however, that on pp. 30-35, the middle column should read "6-months" rather than "actual."

## 6. *Resolutions*

President Deeley indicated the rules for entertaining resolutions from the floor. There were no rules. He then invited the Resolutions Committee to come forward to present the resolutions. Barbara Anne Cusack called attention to the longitudinal study of past resolutions that was printed in *Reports*. She also reported that at present there was another resolution presented that appeared to be more a suggestion for an administrative action for the Executive Coordinator. The Executive Coordinator had already accepted the suggestion, so the proposer of the Resolution withdrew it.

### **Resolution 1**

Title: Reverend James H. Provost Memorial Lecture

Proposed by: Board of Governors

*Be it resolved* that the membership of the Canon Law Society express support for this effort by contributing the requested \$5,000 to the fund to endow the James H. Provost Memorial Lecture, an annual event at The Catholic University of America.

*DISCUSSION:* The Resolutions Committee moved the adoption of this resolution. John Beal spoke on behalf of resolution on behalf of Jim's former students. He reported that to date, \$70,000 has been collected for this Fund. Asked for friendly amendment to the "whereas" clause that would indicate "with a minimum amount of \$50,000," since this is the minimum amount necessary to endow a lecture. Kevin McKenna reported that that Board of Governors had received the request from the students, and decided to bring it to the whole body so that they could show their support.

A motion was made and seconded to accept the resolution. It passed by voice vote with apparent unanimity.

*There was no change in the proposal as presented, since the “whereas clause” does not appear in the final version.*

### **Resolution 2**

Title: Application of the Principle of Subsidiarity

Proposed by: James A. Coriden

*Be it resolved* that the membership recommend to the Board of Governors that it provide a seminar at the 2002 or, at the latest, the 2003 Convention to address how this principle of subsidiarity is understood by the bishops and curial officials and in what ways it has or has not been manifested. The seminar should address the canonical principle of subsidiarity and the substantive and procedural ways it has or has not been or could be implemented

*DISCUSSION:* The Resolutions Committee moved the adoption of this resolution. Jim Coriden urged colleagues to support the resolution, since, although the principle stands on its own without our support, its application needs to be studied. Mark Bartchak spoke in favor of the resolution and urged that it be adopted as a theme for convention in future. Tom Green also spoke in favor of the resolution, calling attention to article in the *Jurist* on the topic. Paul Golden spoke in support of resolution, but proposed a friendly amendment: in second to last line, he suggested that the words “or has not” be deleted, so that resolution reads, “substantive and procedural ways it has been or could be implemented.” The author agreed to the friendly amendment, and the Resolutions Committee agreed.

A motion was made and seconded to accept the Resolution as amended. It passed with voice vote with apparent unanimity.

The final resolution reads:

*Be it resolved* that the membership recommend to the Board of Governors that it provide a seminar at the 2002 or, at the latest, the 2003 Convention to address how this principle of subsidiarity is understood by the bishops and curial officials and in what ways it has or has not been manifested. The seminar should address the canonical principle of subsidiarity and the substantive and procedural ways it has been or could be implemented.

### **Resolution 3**

Title: Committee on Consecrated Life and Societies of Apostolic Life

Proposed by: Ann Rehrauer, M. Dominica Brennan, Kevin Niehoff, Eileen Jaramillo, Daniel Ward, Lynn Jarrell, Nancy Reynolds.

*Be it resolved* that the BOG be directed to re-constitute a Committee on Consecrated Life and Societies of Apostolic Life no later than February 2002 and direct the newly constituted committee to submit to the BOG for approval a mandate for the Committee on Institutes of Consecrated Life and Societies of Apostolic Life by the 2002 Spring Board meeting;

*Be it further resolved* that by the 2002 CLSA Convention, the Committee on Institutes of Consecrated Life and Societies of Apostolic Life propose to the BOG specific tasks or studies to be undertaken for the next five years.

*DISCUSSION:* The Resolutions Committee moved the adoption of this resolution. Dominica Brennan spoke in favor of resolution, expressing concern because the present committee saw that they were listed as an “on-going project.” She believed there was need for ongoing work on a more permanent basis, that there was need for research on topics, and that the independence of the CLSA would allow for greater discussion of various topics. Art Espelage spoke in support, indicating that the CLSA is presently making outreach projects to various groups that deal with religious. Rose McDermott also spoke in favor of resolution, but proposed that the whereas clause also include “Institutes of Consecrated Life” rather than just “religious institutes.” John Faris pointed out that in *Reports* it is listed as an ongoing committee, but in the table of contents was listed as a Task Force. Ann Keegan spoke in favor of the Committee being a standing committee since there is a need for resources, a need for education of the CLSA, and the authority of the CLSA that is recognized by religious. Dan Conlon pointed out that at the hearing the proposers seemed to be saying that this would not be an ongoing committee, but would last for a period of five years. Dominica Brennan replied that they were asking that it be an ongoing committee. Dan then proposed a friendly amendment: He suggested that in the first “be it resolved clause” it be stipulated, “as an ongoing committee,” after “Consecrated Life and Societies of Apostolic Life.” The proposers accepted the friendly amendment, and the proposal was so changed.

*At this point Michael Cariglio was called to the podium to announce results of the election:*

*Vice President/President Elect*

A total of 296 votes were cast, with 149 needed for election

Lawrence O’Keefe, 166

Daniel Smilanic 128

Abstentions, 2

Lawrence O’Keefe was therefore elected Vice President/President Elect

### *Treasurer*

A total of 294 votes were cast, with 148 needed for election.

Nicholas Cafardi, 129

Alex Palmieri, 157

8 abstentions

Alex Palmieri was therefore elected Treasurer

### *Consultor*

A total of 296 votes were cast, with 149 needed for election

John Scott Duarte, 90

Lawrence Jurcak, 135

Patrick Shea, 182

Michael Souckar, 138

Linda Weigel, 198

Daniel Whelton, 99

Patrick Shea and Linda Weigel were therefore elected, with a run-off election needing to be held between Lawrence Jurcak and Michael Souckar.

Members were instructed to mark their ballots for the run-off election. The ballots were gathered and the scrutineers retired to count the ballots.

*After the announcement of the results of the election and the casting of ballots in the run-off election for consultor, we returned to the discussion on Resolution 3.*

Linda Welbig spoke in favor of the resolution, but felt that there is a difficulty with the committee itself articulating the mandate. She suggested that the last part of the first “be it resolved” clause be dropped, after “February 2002.” The presenters accepted this as a friendly amendment. Bill Varvaro asked chair to express to the group the importance of the mandate to the committee, which he then described himself. Catherine Darcy suggested a friendly amendment, adding “Institutes of” before “Consecrated Life” in the first “be it resolved clause.” This was acceptable to the proposers.

A motion was made and seconded to accept the resolution as amended. It passed on voice vote with apparent unanimity.

The final version of the resolution read:

*Be it resolved* that the BOG be directed to re-constitute a Committee on Institutes of Consecrated Life and Societies of Apostolic Life as an ongoing committee no later than February 2002;

*Be it further resolved* that by the 2002 CLSA Convention, the Committee on Institutes of Consecrated Life and Societies of Apostolic Life propose to the BOG specific tasks or studies to be undertaken for the next five years.

#### **Resolution 4**

Title: Catholic – Muslim Dialogue on Legal Tradition

Proposed by: Randolph Calvo, Harmon Skillin, Lynn Jarrell, Bill Varvaro, Dan Ward, Dominica Brennan, Nancy Reynolds, Jim Coriden

*Be it resolved* that the Canon Law Society of America initiate and commit itself to a dialogue with legal experts in Islamic legal traditions to promote understanding and respect for our respective legal systems as part of the understanding of our faiths;

*Be it further resolved* that the Board of Governors appoint members to initiate and participate in the dialogue;

*Be it further resolved* that the Canon Law Society be receptive to further actions which may result from this dialogue, e.g., studies, seminars, publications, symposium, reports, etc.;

*Be it further resolved* that an annual report of the progress of the dialogue be made to the Society in the Convention packets and that the participants share with the membership the fruits of the dialogue at the 2004 Convention.

*DISCUSSION:* The Resolutions Committee moved the adoption of this resolution. Randy Calvo spoke on behalf of authors of resolution, urging its adoption. Greg Bittner spoke in opposition to the resolution because of the first whereas clause, which mentions the terrorist act of September 11, 2001. He suggested that the resolution should have a broader focus. He also objected to the fact that there are no specific points for this dialog and because the other monotheistic religion is not included. John Huels also spoke in opposition, stating that the resolution as written was too vague. He voiced the opinion that he would rather have the Board of Governors arrange for a presentation on Islamic law at a future convention. Bill Varvaro spoke in favor of the resolution and explained that the intent behind the resolution was to get the CLSA to talk about the issues of Islamic law which are now being discussed among other professional societies.

The discussion was again suspended to announce results of election

312 ballots were cast, with 157 votes needed for election.  
Lawrence Jurcak, 180

Michael Souckar, 126 votes  
Abstentions, 4  
Invalid ballots, 2  
Lawrence Jurcak was therefore elected as Consultant.

After the announcement of the results of the election, the discussion on Resolution 4 continued.

Daniel Ward spoke in favor of resolution from his perspective of experience with other religious dialogs, stating his belief that the resolution is open enough to allow for the development of dialog. Craig Cox also supported, agreeing that there is sufficient focus in the resolution for the purpose of dialog. Art Espelage agreed with Greg Bittner and asked for a vote by the orange voting cards. Brian O’Laughlin spoke in support of the resolution. Harmon Skillin spoke in favor of the resolution, stating that the events of September 11 provided us with the opportunity to enter into a world that is different from ours and gave us the opportunity to see the purity of the religion the terrorists are hiding behind. He also believed that it was important to do enter into dialog because of our history with the people of Islam. Melanie DiPietro made 3 points: (1) the question should not be whether to dialog or not dialog, but how to structure such a dialog; (2) we should begin with neutrality, and therefore should include Judaism in our dialog; (3) the first “whereas” clause validated the violence of September 11, and should be dropped. Jerry Doyle did not speak against resolution, but questioned the clause “be it further resolved that the Canon Law Society be receptive to further actions which may result from this dialogue, e.g., studies, seminars, publications, symposium, reports, etc.”, since we cannot on how the CLSA will view something in the future. He proposed an amendment that this “be it resolved” clause be eliminated. His proposal was seconded. *DISCUSSION ON THE AMENDMENT:* Lynn Jarrell said that the proposers used the term “receptive” in the legal sense – as in “reception of law,” and did not intend to commit the CLSA to future action. There was a call to question, after which a vote was taken in which the amendment was defeated. *DISCUSSION ON THE RESOLUTION:* A reminder was made that it was proposed that the first “whereas” clause, referring to September 11 be struck from the resolution. The proposers accepted this as a friendly amendment. Jim Coriden spoke strongly in favor of the resolution as amended. Greg Bittner proposed that the CLSA instead offer something on a comparison between monotheistic religious law systems with the possibility of a future dialog. Andrew Vaccari from Brooklyn spoke in favor of the resolution, stating that most members have familiarity with Jewish legal tradition. Bishop Michael from Nigeria spoke in favor of engaging in dialog, but also shared his experience in dealing with Muslims in Nigeria. John Huels proposed an amendment: “be it resolved that the Board of Governors of the Canon Law Society of America take into consideration

all discussion [at this business meeting], as well as the present proposal, and plan one concrete session or more at next year's convention. Be it further resolved that Board of Governors, if it seems fitting, make a new proposal at next year's convention." The proposers did not accept this as a friendly amendment. However, the amendment was seconded. *DISCUSSION ON AMENDMENT*: John Porter spoke in favor of amendment, stating that the subject is so vast that the Society needs to discuss it in a careful manner. Marilyn DiSalvo also spoke in favor of amendment, stating that if we move into dialog with no preparation, we will not be prepared to move into dialog. Rick Conason also spoke in favor of amendment, stating that due to the many different Islamic groups it would be premature to enter into a dialog with one of them. He also agreed that Judaism ought to be included in any dialog. Randy Calvo mentioned that the Committee knows people with expertise in Muslim law and others with expertise in dialog with Muslims, and stated that the resolution does not preclude that there would be study beforehand. Bill Varvaro spoke against amendment because of the second "be it resolved" clause. Lynn Jarrell spoke against amendment, also stating that there is no attempt to exclude Jewish law, since the Muslim-Catholic dialog may open a way to enter a similar dialog regarding Jewish law. Pete Vere spoke in favor of amendment, since his studies have confirmed that Islam is vast religion and a one year dialog cannot do justice to the vastness of the religion. Diane Barr spoke in support of the amendment, stating that the membership at large needs basic information. There was a call to question on the amendment, a vote count determined to be warranted. The vote on the amendment was: Yes: 149 votes. No 53 votes. The amendment therefore carried. *DISCUSSION ON THE RESOLUTION AS AMENDED*: There was an immediate call to question. The resolution as amended passed on voice vote.

Therefore, the final version of the resolution is:

*Be it resolved* that the Board of Governors take into consideration all the discussion on this proposal on a Catholic-Muslim Dialog on Legal Tradition and plan one or more concrete sessions on this topic at next year's convention;

*Be it further resolved* that the Board of Governors, if it seems fitting, make a new proposal on this topic at next year's convention.

### **Resolution 5**

Title: Ecclesiastical Marriages for Undocumented Persons and Those Seeking to Regularize their Immigration Status

Proposed by: Ricardo Garcia, Carmen Gonzalez, Meg Romano-Hogan, Catherine Darcy, Daniel Ward, Manuel Viera, Cora Marie Billings

*Be It Resolved* that the Board of Governors establish a task force, composed of experts in family law, immigration law, canon law and pastoral ministry, to address issues related to ecclesiastical marriages for undocumented persons and persons seeking to regularize their immigration status when those marriages cannot be recognized or celebrated according to the norm of civil law, namely to:

- 1) identify and examine the issues such as the right to marry
- 2) identify and examine legal and pastoral issues
- 3) prepare a legal analysis
- 4) prepare a pastoral guide
- 5) propose actions to be taken by the CLSA

*Be it further resolved* that the task force be in consultation with the USCCB and other appropriate organizations *Be it further resolved* that the task force make recommendations to the membership at the 2003 Convention.

*DISCUSSION:* The Resolutions Committees moved the adoption of this resolution. Ricardo Garcia from Brownsville spoke in favor of the resolution, pointing out that the foreign born population of the United States now numbers 28.4 million people, with 7 million coming from Mexico alone. Jacqueline Rapp also spoke in favor of the resolution. Phil Brown of St. Mary's Seminary, proposed that the "be it resolved" clause which includes the phrase "experts in family law, immigration law, canon law and pastoral ministry," also include "constitutional law." The proposers accepted this as a friendly amendment. Craig Cox of LA commended the authors for bringing this issue to the attention of the Society. But he also proposed friendly amendment, to change the phrase "the right to marry" to read "identify and examine the basic human rights issues, such as the right to marry." This was acceptable to the proposers and was adopted as a friendly amendment. Paul Counce proposed friendly amendment to the "whereas" clause which suggests that the current governmental policies "cause these persons not to seek civil marriage licenses" be changed to read, "which likely encourage these people not to seek..." This was acceptable to the proposers of the resolution. He also suggested a friendly amendment, so that "and canonical" is added to nn. 3 and 4. This was also acceptable to the proposers of the resolution and was so adopted. Vic De La Cruz offered a friendly amendment that the family law experts also be experts in different cultures. The proposers did not accept this as a friendly amendment, since they did not see this as a cultural issue. As there was no second to the amendment, it was not adopted.

There was a motion, which was seconded, to accept the resolution as amended. It passed on voice vote with apparent unanimity.

Therefore, the final version of the proposal is:

*Be It Resolved* that the Board of Governors establish a task force, composed of experts in family law, immigration law, constitutional law, canon law and pastoral ministry, to address issues related to ecclesiastical marriages for undocumented persons and persons seeking to regularize their immigration status when those marriages cannot be recognized or celebrated according to the norm of civil law, namely to:

- 1) identify and examine basic human rights issues, such as the right to marry
- 2) identify and examine legal and pastoral issues
- 3) prepare a legal and canonical analysis
- 4) prepare a canonical and pastoral guide
- 5) propose actions to be taken by the CLSA

*Be it further resolved* that the task force be in consultation with the USCCB and other appropriate organizations

*Be it further resolved* that the task force make recommendations to the membership at the 2003 Convention.

7. *Old Business*

There was no old business.

8. *New Business*

There was no new business.

9. *Closing*

There was, however, a motion to adjourn, which was heartily approved by the membership. Final announcements were made as Vice-President Kevin McKenna asked to meet with the newly elected officers and consultants after the meeting. The meeting was declared adjourned at 1:06 p.m.

*The convention seminars continued.*

2:30 pm – 4:00 pm      SEMINARS:

A. Recent Developments in Rotal Jurisprudence (repeat)

*Rev. Michael P. Hilbert, SJ*

B. Bishops and the Apostolates of Religious

*Rev. James J. Conn, SJ*

This seminar will discuss the relationship between a diocesan bishop and the apostolates of religious institutes and of individual religious. The central focus will be on canon 675 (on ecclesial communion); 678 (on the authority of bishops over certain activities of religious); and 806 (on bishops and the schools of religious). Canons 520 (on religious and parishes); 586 (on autonomy of life); 611-612 (bishops and religious houses); and 682 (on religious and ecclesiastical offices) will also be considered. Due attention will be given to pertinent conciliar and postconciliar documents including *Mutuae Relationes*, *Ex corde Ecclesiae*, and *Vita Consecrata*.

C. Eastern Canon Law Issues and Immigrants

*Chorbishop John D. Faris*

While it is common place to speak of the cultural diversity of the Catholic Church in America, the ecclesial of this Church must also be taken into account. The integration of ethnic groups has been an on-going challenge for America Catholicism, but the arrival of Eastern Catholics at the turn of the last century gave rise to an entirely new set of problems since these persons brought with them not only different cultures; they were members of different Churches *sui iuris*. The presentation will explore the canonical issues relating to the pastoral care of these immigrants and their descendants.

D. Use of the Computer and Internet Resources for Canon Law

*Rev. Paul Hartmann,*

*Rev. Lucian Martines, SJ;*

*Rev. Paul Counce;*

*Rev. Greg Ingels;*

*Mr. Pete Vere*

Increasingly, the growth of the Internet is proving an invaluable resource in outreach, communication, and research in the practical work of Tribunals and Chanceries. This session is intended to offer the basic vocabulary and insights necessary to address Internet security, publishing, and the creative uses of the Internet in canonical work. Hands-on, on-line examples will assist participants to bring their needs and new ideas back to the IS and IT personnel they work with.

- 5:15 pm – 6:30 pm      CONVENTION MASS AT IMMACULATE CONCEPTION CHURCH
- 6:45 pm – 7:30 pm      CONVENTION RECEPTION
- 7:30 pm – 9:00 pm      CONVENTION BANQUET AND PRESENTATION OF THE “ROLE OF LAW” AWARD

After dinner, President Robert Deeley presented the Role of Law Award to Ellsworth Kneal, to the great approval of those in attendance. Monsignor Kneal spoke of the virtues and the elements that are necessary in the process of judging.

**Thursday, 11 October, 2001**

- 7:30 am – 8:00 am      MASS
- 8:30 am – 9:00 am      CONVENTION PRAYER SERVICE: INSTALLATION OF OFFICERS
- 9:00 am – 10:30 am     MAJOR ADDRESS:

Law in the Service of Church in America  
 Very Rev. John A. Renken

Pope John Paul, in his post-synodal exhortation *Ecclesia in America*, provides the basis for pastoral planning at the beginning of the third millennium for the Church in this hemisphere. The Church in America is called to a conversion which results in *communio* and leads to solidarity. Canonists assist the mission of the Church through structures and services which promote ecclesial *communio*. This address will offer reflections on several such canonical structures and services: diocesan councils, pastoral planning, inter-diocesan (pan-American) rapport, relations among the Latin and Eastern churches, parish life, and ministry to families.

At the end of John Renken’s address, newly installed President Kevin McKenna thanked all presenters and participants, and entertained a motion for adjournment. It was so moved and so passed, by unanimous voice vote.

Respectfully submitted 25 October, 2001,

Patrick R. Lagges  
 Secretary

## HOMILY

MOST REV. MICHAEL SHEEHAN, J.C.D.  
ARCHBISHOP OF SANT FE

October 10, 2001

*Justice Tempered by Mercy*

### *Introduction*

It is a joy, dear brothers and sisters, to welcome the Canon Law Society of America to the Archdiocese of Santa Fe. Please know of my deep appreciation for you who work with the law of the Church in such a faithful and effective way.

Today the first reading tells us about Jonah. God wanted Jonah to give the Ninevites an opportunity to repent and to renew their spiritual lives. Jonah was not happy about preaching repentance to the People of Ninevah. He considered them evil, living immoral lives and he wanted nothing to do with them. But God directed him to go and preach repentance to the people, nonetheless. As a result, the king and all the people of Ninevah repented of their sinfulness, put on sack cloth and ashes, fasted, prayed, and they were saved from the destruction otherwise planned for them. This passage shows that there is no limit to God's compassion and love. God teaches Jonah that *justice must be tempered by mercy*.

### *Your Role*

Dear friends, as a Bishop of the Church, I see your role to be just that. Justice must be tempered by mercy in your ministry. You are called to know the law of the Church. To know her norms and understand them well. You are also called to apply these laws and norms with mercy. As canonists you have many opportunities to bring a pastoral kindness to your canonical work. Justice must be tempered by mercy.

It is important to see your work as *truly pastoral*. Many of you are judicial vicars or officials of the matrimonial tribunals of the dioceses of the nation. There is a temptation to see this work as routine, legalistic, and impersonal. But I believe this work is in reality very pastoral. Even smaller tribunals, in effect, can return an entire parish to the sacramental life of the Church! Several hundred marriage cases, completed with affirmative decisions in the dioceses, means several hundred couples can return to the Eucharistic table, together with their children and be active members of the Church in every way. This is a remarkable contribution to the health of the local church!

The process of a marriage case can also have a most healing effect on a couple. They see what went wrong with the first effort at marriage so that the new marriage will be successful and lasting. They can have closure on the previous marriage when it is shown to have been invalid and focus on the future. I see this work of you, tribunal officials, as intensely pastoral. To return an active Catholic to the Sacramental practice of our Church is evangelization. It is most pleasing to God.

Many of you are chancellors of dioceses or vicar generals or diocesan officials of some sort. I urge you to see your canonical work as truly a pastoral ministry. Tempering the justice of the law with mercy. Look for the pastoral implications of your work. Bring a kindness and a patience to the legal aspects of diocesan life. Be hospitable and fair to those you must meet in your work.

Those of you who teach as professor must help students see the pastoral dimension of the legal framework of the Church, whether you are teaching in a university or at a seminary or in houses of formation, you have a tremendous opportunity to instill in your students an awareness that justice must be tempered by mercy.

### *Closing*

When we have a burning desire *for the salvation of souls* it is easier to temper justice with mercy. Just as God directed Jonah to preach repentance in the spiritual life to the Ninevites, the Lord wants us to work for the salvation of the souls entrusted to us.

The spiritual welfare of our people must be central to the life of a canonist. Perhaps salvation of souls is an old-fashioned term and yet I think it expresses very well the reality that we must have in our ministry.

I think that our lives as canonists are enhanced when we have a *deep love for our Catholic faith*, a deep love for the Church, will all of her wrinkles and human imperfections, our Catholic church has the fullness of the teachings of Jesus. It is one holy, Catholic, and apostolic. Church gives us life here on earth and companionship with one another. Our Church leads us to the eternal life that awaits us.

I take this opportunity to thank you members of the Canon Law Society of America for our incredible contribution to the life of the Church. Your dedicated service – to your bishops, to those coming to your tribunals for decisions, to your colleagues – is a great treasure to the Church. May the Lord Jesus help you to see your canonical ministry as truly pastoral and intensely pleasing to God. May the justice, mercy, and peace of the Lord be with you always!

## CITATION ROLE OF LAW AWARD

REV. MSGR. ROBERT DEELEY

In a recent Newsletter I mentioned that the documents guiding the work of the society are the Constitution and Bylaws. Though the work of the Society has changed through the years, those documents outline the tasks assigned to each of the offices and committees. The Board of Governors is given a particularly pleasant task in those documents. It is charged with choosing a member of the Canon Law Society of America to receive the Role of Law Award. The award, of course, is given to a canonist who has been outstanding in the work of canon law. The Bylaws assist the Board in choosing a candidate by specifying the criteria to be used in the selection:

- Embodiment of a pastoral attitude;
- Commitment to study and research;
- Participation in development of law;
- Response to needs with practical assistance; and
- Facilitation of dialogue and the interchange of ideas both within the CLSA and with other groups.

At this convention of the CLSA, embarking as we are on the Third Great Christian Millennium we honor a person who has served our Society and the Church with great distinction for a good part of the last century of the last Millennium. He was born in 1917 and ordained a priest in 1944 after earning a B.A. at St. Louis University in 1938. In the ensuing 57 years of priesthood he has manifested the qualities we seek in the one we honor with the Role of Law Award.

He began his work in canon law in the Tribunal in the 50's. Later he was sent to study for his licentiate at The Catholic University America. He received that degree in 1960. Very soon thereafter he was fulfilling the responsibility of Officialis of his Metropolitan Tribunal. In 1965 he received his doctorate in canon law at the Pontifical University of St. Thomas Aquinas (the Angelicum) in Rome. His doctoral studies thus gave him opportunity to witness in Rome the concluding year of the Second Vatican Council. His broad interests are reflected in the topic of his doctoral dissertation which dealt with the canonical prohibition of priests being medical doctors. Since he had himself considered medicine as a profession he was interested in pursuing the study.

Very early on in his canonical profession our honoree began teaching canon law in the seminary of his diocese fulfilling that role for 22 years. His commitment to study and research is also manifested in his years as visiting assistant professor at The Catholic University of America and St. Paul University at Ottawa in Canada. His contribution to the work of the CLSA has been immense in its continuity

through many years. Most recently he served on the committee which worked on the document published last year, *Goals for the Canonical Education of Church Ministers*. He served on the Board of Governors from 1980-1983. During the years of implementation of the new *CIC* he was on the faculty of seven of the workshops held around the country. Through the years he has served on a number of committees including resolutions and one studying laicization questions. His most recent convention seminar, in 1996, addressed questions concerning the mentally impaired and marriage. He was a contributor to the *Commentary on the Code of Canon Law* published by the CLSA in 1985. He also contributed to other publications including *Matrimonial Jurisprudence*.

His status as a *peritus* in law was acknowledged by the Church when he was appointed to serve on the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law by Pope John Paul II. He served in that serious responsibility from 1985-1990, crucial years in applying the new *Code of Canon Law* to the life of the Church.

After retiring as a faculty member from St. Paul Seminary in St. Paul, Minnesota in 1982 our honoree continued to offer distinguished service to the Church. Here he combined two of the principal criteria of the Role of Law award. His choice of work embodied a pastoral attitude while responding to a very practical need in the life of the Church. He has spent these years assisting in parishes which have need of help. He has chosen to do this in places where tribunals, particularly in new dioceses, are also challenged for assistance. Armed with the insight on the world he gains from his daily *New York Times*, he has preached the word, celebrated the sacraments, and distributed justice in his tribunal work. His life work in retirement as throughout his priesthood truly is about the "salvation of souls."

Those of us who have enjoyed his steady presence at the CLSA conventions know him personally as he is described by his colleagues in Minnesota, a man who "enhances every social gathering with his characteristic wit and urbane collegiality". As we begin a new Millennium, we can learn much from those who have shown us the way in the pursuit of law as a pastoral tool for the furthering of communion and the good of people. Our honoree can certainly be counted among that number.

With respect and appreciation it is my honor to present in the name of the members of the Canon Law Society of America the 2001 Role of Law Award to Reverend Monsignor Ellsworth Kneal, priest of the Archdiocese of St. Paul-Minneapolis.

## RESPONSE ROLE OF LAW AWARD

REV. ELLSWORTH KNEAL

I should say that a funny thing happened to me on my way to this forum. It had to do with the 1992 convention, held in Boston, that some of you may recall. It was indeed memorable – on the banks of the Charles, across from Harvard, there was MIT, and so on.

Shortly before the banquet was to begin, a distinguished member of our own Archdiocesan Curia came charging across to me in the banquet hall, asking if congratulations were in order, even beforehand. Why? Was I not to be named the recipient of the Role of Law award?

I was aghast – that this nice guy, whose judgment you and I both admire, would have such a wild and genuinely improbable idea. It was embarrassing, amusing, and wacky.

But, four minutes later, and quite independently, another colleague charged over to the table: ‘Any special reason why he should stay for the banquet?’ (He had relatives in Boston, with whom he was going to have dinner)? Same incredulous disclaimer.

Therefore, when the call came from your distinguished President a few months ago, there were two immediate reactions on my part: the CLSA urgently needs a new Board of Governors; and that should I walk in the shoes of the likes of Orsy and Provost and Wrenn and Stephan Kuettner, and of Kennedy and Green and McManus and Holland and Morrissey – and I could go on and on with that list of those magic names that you know so well.

That’s *not* a taxative list. For the benefit of you who may be visitors, or newly minted-canonists in our Society, ‘taxative’ is a technical term. It means a total list. In contemporary terms, the whole enchilada. Or more recently, the ‘Full Monty.’

So I say again, my sincere gratitude – these are very genuine and well- founded protestations of unworthiness. I thank you all.

Let me say here a word in the format of our annual Conventions. In past times, the format was always that of a series of non-overlapping “seminars,” on explicit subjects, and of a single sort of keynote address, presented by the Distinguished Recipient of the Role of Law Award. That would be a major, lengthy, technical, learned canonical exploration – elaborately footnoted, with historical antecedents, and intricate quotation, to the point of something occasionally approaching anesthesia.

Well, let me reassure you. Let me follow the more recent format of a sort of condensed reflection, in an area of perhaps personal experience and expertise.

You are a sophisticated and discerning group. And I would like to speak specifically to what I assume is a significant portion of you; namely, to those

devoted to the challenges, and rewards, of tribunal procedure. And to an area of law, interpretation of law, in fact, which is *not*, as I see it, touched upon in the law, as you now know it. But, an area which, Your Honors, I feel you employ every time you approach a decision and a sentence in a marriage case.

The two codes with which we are most familiar – the older one and the current one – have indeed similar rules for the interpretation of law and, I would add, of, quote, ‘legal texts’. But what about the interpretation of the *facts* adduced in the evidence before you, Your Honors? Facts surrounding a vivid, harrowing, transparently truthful account of a marital disharmony, emotional distortion, perhaps sexual variation, in the attempted conjugal commitment of these two people before you?

On the wall of our Tribunal, I once put up a little four-word reflection, drawn out of a medieval manuscript, of what we were about. It’s in a virtually foreign language; but a diller. What is your Tribunal? “A *theatrum iustitiae et veritatis*,” An “arena of justice and truth.”

Given *this* set of facts – the hatred, the violence, the dependency, the deviation, the pathological self-aggrandizement – how do *you* interpret *them*, under the grid of law and jurisprudence that you know so well? How do you know what you should do, in this case, as a Judge? Not procedurally – “what do I do next,” but rather, substantively, “what *does* this mean?” In short, how do you judge?

Your Honors, let me confess that I was personally tempted toward, well, not plagiarism, but let us say, reverent utilization of available expertise. I was tempted to steal, without consulting him at all, some earlier reflections on interpretation of *law*, by that bashful, retiring, laconic figure of Jim Coriden. They were presented by him and with same minor additional reflections by me, in Jim Provost’s little handbook of the CLSA on the Interpretation of Law, from 1983.

How, Your Honors, are you to achieve a decision in this harrowing marital history before you? To what extent does *this* history fit within our accepted and/or actual jurisprudence? How, Your Honors, do you decide? How do you Sentence? Let me suggest, with a deferential bow to Dr. Coriden, four brief rules, my favorites drawn from among the eighteen *very* perceptive and ingenious guidelines that he offers, and then add a fifth of my own, which are really the heart of this unforgettable presentation.

*My number one*, and the second of his eighteen, is, “*Be Prudent*.” In a very deep sense, that is the actual heart of your judicial discernment, grasping all the context and subcontext of what has come before you. That *never* means being wary, or hesitant, or deliberate, or narrow-visioned, or heaven help us, “safe.” Quite the opposite, it’s the queen of all judicial qualities – the virtue by which you see things truly in their entirety, and you thus direct your practical reason in a particular situation.

Secondly, and this his seventh, remember always, with caution and with courage, that “custom is the best interpreter of law.” I say that is a *very* dangerous,

deceptive and even seductive principle. I won't take the occasion to examine this closely, as I have elsewhere, but you've got to distinguish carefully what *kind* of law, and for that matter, what *kind* of custom: contrary to law, outside the law, according to the law? Each has an answer. But walk into your courtrooms handling that one as the fragile eggshell which it is, to aid you in applying the law.

Thirdly, Dr. Coriden's fifteenth, dig for, and discern, and as we say in our circles of 'sharing,' break open the *intent and purpose* of the *law*. More accurately: discern so far as you can, deliberately placing yourself, if you can, in the canonical and social shoes of the lawgiver, "the mind of the lawgiver." It will take collateral reading, and library drudgery perhaps, to discern this purpose – in history, and in human experience; if you're lucky, you could *ask* the lawgiver his or her intent. At the bottom one, it is evidently deeply critical.

And fourthly, be mindful, in your indecision perhaps, of what has been called "canonical equity." The concept is subtle, nuanced, and sometimes obscure. It encompasses two ideas: one from Roman law, that is, of seeing that the ideal of justice is actually realized in practice, and the other, from Christian sources, of justice tempered with mercy, softening the rigor of the law under the influence of charity. Maturity, whether psychological or canonical or judicial, is, I think, the capacity to live comfortably with contradiction and paradox and pluralism personally, and judicially.

So now let me presume to add in conclusion a last, and I believe the most significant principle. The so-called older law stated that interpretation is to be sought in, quote, "parallel places in the law." The current law *now* states by implication a crucial extension. You *may* appeal now, expressly, simply to, quote, "Parallel places!" That opens up a whole new hunting ground. In arriving at a responsible decision, these "parallel places" now may be indeed, I submit, all the subtle intuitions you yourself have derived, from your own *many* decisions in cases and perhaps a series of facts almost miraculously parallel to the case now before you. Just two weeks ago, I saw that called, in a significant medical-spiritual setting, a "clinical hunch."

How many times have you not been struck with the fashion in which phrases are repeated before you in evidence, that are almost verbatim, absolutely independent, and redolent of the "odor of truthfulness." In that other language, again, the "*fumus boni iuris*."

You just *know*, Your Honor, that it's right. Quote: "I thought if I showed him what true love was, he would change." Or, quote, to a future mother-in-law, "I told her; there will never be any grandchildren in *this* marriage." Or, quote, "he spent the money I needed for our children's milk and for the rent, at the casino, and it was all gone." Or, quote, "he cried, and said he would change, and it would never happen again, and I believed him."

So hence I would propose that you may take it is a legitimate principle of interpretation, that you *may* appeal to your own intuition, drawn from your now

wide experience, of all these distortions of humanity, and their narration, that have been before you.

In short, you re probably right. You cannot document those intuitions or perceptions. Like many intuitions, you can't even instance them. But you are probably right. Your pastoral instincts are the distillation of all your years upon the bench, and of all your exposure to this invaluable narration of the textures of marital life and disharmony, that walk through your Tribunal doors each afternoon. Trust them, I say. Trust your pastoral judgments.

And trust, finally, this expression of my appreciation to you, at this opportunity to say all this to you. You have, I don't have to tell *you* again, one the most fascinating jobs in the world. And I thank you.

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