

A New Hierarchical Structure for New Pastoral Needs: Personal Prelatures*

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INTRODUCTION

Originally presented as a paper to a meeting of the Canon Law Society of Great Britain and Ireland, the text needed a serious revision in order to integrate in its considerations the juridical developments introduced by the Apostolic Constitution *Spirituali militum curae*.¹ This constitution completes the Code of Canon Law in relation with the spiritual care given to the armed forces² by establishing and regulating the now called Military Ordinariates. There are obvious relationships between these Ordinariates and personal prelatures as we will point out in this paper.

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¹*Spirituali militum curae* [hereafter abbreviated as *SMC*], April 21, 1986, first published in *L'Osservatore Romano*, May 5-6, 1986, p. 1, with a commentary by Card. Bernardin Gantin; English version in *L'Osservatore Romano* (Edition in English), June 2, 1986, p. 3 and 7.

For the official text: AAS, 78 (1986) 481-486. For specific commentaries of *SMC* see J. L. Gutiérrez, "De Ordinariatus Militaris Nova Constitutione," *Periodica* 76 (1987) 189-218; J. I. Arrieta, "El Ordinariato Castrense," *Ius Canonicum* 26 (1986) 731-748; D. Le Tourneau, "La nouvelle organisation de L'Ordinariat aux Armées," *Studia Canonica* 21 (1967) 37-66.

²Canon 569 CIC referred to special laws.

In canons 294-297, the new Code fixes the legal framework or general law for all personal prelatures. Via the generality of its terms, it sketches the main features of every personal prelature, delineating a hierarchical structure of great flexibility and rather wide scope. But this is just the frame, not the picture. The picture, that is the specificity of each personal prelature, is to be drawn by the Holy See in consultation with the Episcopal Conferences concerned. The general law is then to become specific in the statutes of each personal prelature. This has been the way the Holy See has taken in the case of the Prelature of the Holy Cross and *Opus Dei*, up to now the only personal prelature established as such; the Holy See has gone from the Code to the statutes of this Prelature.

In the case of the Military Ordinariates, as the legal framework of the code does not apply to them *stricto sensu*, the Holy See has chosen to regulate the species "Military Ordinariate," and then to sanction the statutes of each ordinariate.

It is then the Holy See which lays down and gives to each prelature its statutes, its law.

Besides certain aspects of the general law (as, for instance, the relationship between the prelature and the dioceses in whose territory the prelature will carry out its specific pastoral work), this law will include other aspects of the particular law of each prelature, that is, the juridical provisions that shape each prelature. Hence, the flexibility and wide scope of the general framework allows the primatial power to set up different ways of developing the hierarchical and constitutional organization of the Church, in a practical manner, according to the challenging pastoral needs of our times. This is the procedure followed by the Holy See in erecting the *Opus Dei* Prelature,³ as well as for the promulgation of the Apostolic Constitution *Spirituali militum curae*, as concrete applications of the legislation in force.

³See Ap. Const. *Ut sit*. Nov. 28, 1982; the Bull was executed by the Apostolic Nuncio in Italy on March 19, 1983, and promulgated in AAS 75 (May 20, 1983) 423-425 [An English translation of this Ap. Const. is included as an Appendix to this paper.] See also S. C. pro Episcopis, "Declaratio Praelaturae personales," in *L'Osservatore Romano* Nov. 28, 1982, and in AAS 75 (May 2, 1983) 464-478. English translation in *CLSG & I Newsletter*, n. 56, March 1983, 35-38, and also in *L'Osservatore Romano*, (Edition in English), Dec. 6, 1982; published also in this same edition Card. S. Baggio, "A Benefit for the Whole Church," and M. Costalunga, "The establishment of *Opus Dei* as a personal prelature." See also A. De Fuenmayor, "La erección del *Opus Dei* en Prelatura personal," *Ius Canonicum* 23 (1983) 9-55.

It is worth noting from the outset that personal prelatures, including military ordinariates that are really personal prelatures, are juridically comparable to dioceses: in both hierarchical structures (viz.: personal prelatures and dioceses) is to be found the elements - Pastor, clergy and lay faithful - as well as the relationships - *communio fidelium* and *communio hierarchica* - that are common to the particular hierarchical structures in the Church.

It seems appropriate for the purposes of this paper to present personal prelatures in three different dimensions. First of all, we will consider personal prelatures in their Ecclesial perspective. Our second step will be to study the nature of personal prelatures. Finally we will look at personal prelatures in action. This will permit us to move from the ecclesiological dimension, to the canonical-theological perspective and to the pastoral implications of personal prelatures.

I. PERSONAL PRELATURES IN ECCLESIAL PERSPECTIVE

Needless to say, personal prelatures are but one of the many fruits of the Second Vatican Council. The deepening of ecclesiology as well as the awareness of the new pastoral needs of our times pushed the Fathers of the Council to open new paths *de iure ecclesiastico* for the constitutional organization of the Church.⁴ Along with different manifestations of hierarchical communion such as the Synod of Bishops with his *presbyterium*, as the senate of priests, there are also hierarchical structures of service or *diakonia* to answer to specific pastoral needs for the common good of the whole Church: here we have special dioceses and personal prelatures.

The historical-juridical *iter* of personal prelatures is already well known,⁵ and the need does not exist to reiterate the establishment of

⁴See for instance the very appropriate perspective in M. O'Reilly, O.M.I., "Personal Prelatures and Ecclesial Communion," *Studia Canonica* 18 (1984) 439-456, at pp. 440-447.

⁵For a very complete study of the situation since the Code of 1917 as well as of the different drafts of the Conciliar documents and the revision of the Code leading to the final texts see J. Martínez-Torrón, *La configuración jurídica de las Prelaturas personales en el Concilio Vaticano II* (Pamplona: Eunsa, 1986) 344 pp. See also J. L. Gutiérrez, "De Praelatura Personali iuxta leges eius Constitutivas et Codicis Iuris canonici normas," *Periodica* 72 (1983) 71-111, at pp. 73-87; G. Lo Castor, "Le prelature personali per lo svolgimento de specifiche funzioni pastorali," *Il Diritto Ecclesiastico* 94 (1983) 85-146, at pp. 90-99; W. H. Stetson and J. Hervada, "Personal Prelatures from Vatican II to the New Code:

these prelatures in *Presbyterorum Ordinis*,⁶ or their juridical configuration in *Motu proprio Ecclesiae Sanctae*⁷ and the Apostolic Constitution *Regimini Ecclesiae Universae*.⁸ As for the evolution of the different drafts of the new Code, the canonical literature is rather comprehensive on this matter.⁹

From *Presbyterorum Ordinis* to the new Code the ecclesiological and, as a consequence, the canonical notion of personal prelatures has gone through a period of intellectual testing, ending up by the inclusion in the Code of the title on Personal Prelatures, canons 294-297, corresponding with very few changes, to the general law already established by *Ecclesiae Sanctae*.¹⁰

The juridical *iter* of personal prelatures from the collegial decision in the Second Vatican Council concerning the desirability of setting up such prelatures in some cases, to their final inclusion in the general law of the Church, demands some explanation. We can consider three particular entities, or progressive steps that appear to define an ecclesiological trend, and that will give us a better understanding of personal

An Hermeneutical Study of Canons 294-297," *THE JURIST* 45 (1985) 379-418; P. Lombardía and J. Hervada, "Sobre prelaturas personales," *Ius Canonicum* 27 (1987) 11-76, *spc.* 17-75. For a historical study of the situation before the Code of 1917 see J. Miras, *La noción canónica de "proelatus"* (Pamplona: Eunsa, 1987) 198 pp.

⁶*Presbyterorum Ordinis*, n. 10, translations from *Documents of Vatican II*, A. Flannery, O.P., editor, (Collegeville, Min.: The Liturgical Press, 1977) p. 882. [Hereafter reference will be made by the *incipit* of the official text, the paragraph number and the page to this translation]. See also *Ad Gentes*, n. 10, note 4, p. 837; and n. 27, note 13, p. 845.

⁷August 6, 1966, AAS 58 (1966) 757-787. The legal framework for personal prelatures is established in Part I, n. 4 of the *Motu proprio*, pp. 760-761, translation in Flannery, pp. 594-596. For a study of these provisions see Martínez-Torrón, (above, note 5) 293-307; Gutiérrez, (above, note 5) 87-97; Lo Castro, (above, note 5) 99-107; Stetson and Hervada, (above, note 5) *passim*.

⁸August 15, 1967, AAS 59 (1967) 885-928. The pertinent section is 49 & 1, p. 901, whereby the erection of "Prelaturas ad peculiaris opera pastoralia perficenda pro variis regionibus aut coetibus socialibus," as well as the appointment of the Prelates, is put under the jurisdiction of the Congregation for Bishops, in the same section as all the other hierarchical structures in the Church. It is to be noted that these prelatures are characterized by the footnotes referring to *PO*, 10 and *ES*, 1.4. And for a commentary see, Gutiérrez, (above, note 5) 96-97; and Martínez-Torrón, (above, note 5) 293-305.

⁹A critical study of the evolution of the different drafts of the new code is made by P. Rodríguez, *Particular Churches and Personal Prelatures*, (Dublin: Four Court Press, [1986] 41-74. See also Gutiérrez, (above, note 5) 104-108; Lo Castro, (above, note 5) 115-126; Stetson and Hervada, (note 5) 398-416; R. Navarro, "Las prelaturas personales en el Derecho Conciliar y Codicial," *Estudios Eclesiásticos* 59 (81984) 449-458.

¹⁰See *inter alia*, Gutiérrez, (above, note 5) 104-108 where the author makes a comparative analysis of both *ES* and the new Code, pointing out the small differences between both regulations.

prelatures seen in Ecclesial perspective. First we will consider the Petrine *diakonia* in favor of the common good, then pastoral needs and flexibility and finally the specific pastoral needs as a service to the Church.

1. The Petrine *diakonia* in favor of the common good

The *sollicitudo omnium ecclesiarum* (II Cor. 11, 28) has been, and continues to be, the cause of a variety of organizational structures of hierarchical nature created by ecclesiastical law to answer the needs of the common good of the whole Church. Personal prelatures are among the latest manifestations of the solicitude of the Universal Pastor for all the Churches in that such prelatures have a clear and firm aim: "The common good of the whole Church" (*PO*, 10).

The *proemium of Spirituali militum curae* also makes a clear reference to this service of the Roman Pontiff: "*Romani Pontifices, pro suo munere servitii seu diakonia.*" Hence the pastoral care of the Armed Forces and the provision of the appropriate hierarchical structure is a manifestation of this solicitude of the Universal Pastor of the Church.

The Petrine *diakonia* tends toward fostering the common good of the Church. Each action manifesting the solicitude for the needs of the Church, be it at the universal or at the particular level, is always a manifestation of this common good: the *salus animarum*. This appears clearly when, by the exercise of the primatial power, the Roman Pontiff, caring for all the churches, creates or establishes a hierarchical structure at the universal level.¹¹ But it is equally a contribution to the common good of the whole Church when the supreme authority, by the exercise of the same primatial power, establishes ways of organization of the hierarchical structures of the Church at the particular level, as the universal Church is also *Corpus Ecclesiarum* or *Communio Ecclesiarum*. The Code, reproducing Vatican II verbatim,¹² defines the particular Churches as those "in which and from which the one and only Catholic Church exists" (can. 368). It is evident that the hierarchical structures at the particular level do not benefit only the portion of the People of God entrusted to the local Bishop,¹³ but that they necessarily

¹¹See, for instance, Pius XII, Enc. *Fidei donum*, April 21, 1957, AAS 49 (1957) 237; Paul VI, M.P. *Sollicitudo omnium Ecclesiarum*, April 24, 1969, AAS (1969) 473-488.

¹²See *Lumen Gentium*, n. 23; see also *Christus Dominus*, n. 11.

¹³See Canon 369 CIC; see also A. M. Rouco Varela, "Iglesia Universal-Iglesia particular," *Ius Canonicum* 22 (1982) 221-239.

contribute to the common good of the whole Church, the *salus animarum*. They do so through the *communio Ecclesiarum*, the unity of the Mystical Body of Christ and the power entrusted by Christ to the Episcopal College headed by the Pope.

But it is also evident that the establishment of specialized hierarchical structures "to carry out special pastoral or missionary tasks" (can. 294) is another contribution to the common good of the whole Church.¹⁴ In fact, these special pastoral or missionary tasks are necessarily part of the total mission of the Church and as such they participate in the *communio Ecclesiarum*.¹⁵

2. Pastoral needs and Flexibility

The pastoral concern of the Fathers of the Second Vatican Council was very much directed towards the needs of our times. They were intent on discovering the signs of the times, and appropriate ways to respond to them. Regarding the pastoral care of souls, it goes without saying that the hierarchical structures of the local Churches do respond in an all-encompassing way to the general needs of the *salus animarum*. Nevertheless, the Council recognized that the "nature of apostolate" could demand the establishment of new structures, such as special dioceses or personal prelatures, that could have the necessary flexibility to adapt themselves to new needs and to answer properly the apostolic requirements of our times. In fact, the apostolic reasons mentioned generically in *Presbyterorum Ordinis* can vary greatly, so that the new demands of evangelization call for a flexible hierarchical tool in the hands of the supreme authority.

The special pastoral or missionary enterprises that can be entrusted to special dioceses or personal prelatures by the Apostolic See are difficult to enumerate. *Presbyterorum Ordinis*, *Ecclesiae Sanctae*, *Regimini Ecclesiae Universae* as well as other documents,¹⁶ and now the new Code and, to some extent, *Spirituali militum curae*, use this generic expression precisely so as not to limit the broad scope and flexibility of this new hierarchical structure.

¹⁴See *Presbyterorum Ordinis*, n. 10; *Spirituali militum curae*, *proemium*.

¹⁵See O'Reilly, (above, note 4).

¹⁶For instance S. C. pro Episcopis, *Inst. De pastoralis migratorum cura*, August 22, 1969, AAA (1969) 614-643, at n. 16 § 8, p. 621; S. C. pro Episcopis, *Directorium de Pastoralis ministerio Episcoporum Ecclesiae Imago*, Typis Poliglottis Vaticanis, 1973, n. 172.

The very life of the Church is what will point out the specific pastoral problem that will demand an answer from the supreme authority. In some cases the special situation of a *coetus fidelium* could require a pastoral care adapted to its circumstances. This is the case, for many centuries, of the former Military Vicariates.¹⁷ The Apostolic Constitution *Spirituali militum curae* place the new Military Ordinariates in the perspective of the "*peculiariora opera pastoralia perficienda*" not only in the *proemium* of the Constitution with reference to *Presbyterorum Ordinis*, n. 10, but also in article II, par. 3 of the same.¹⁸ Also possessing a personal jurisdiction are the Bishops ordained to care for their nationals in the diaspora. This is of more recent origin.¹⁹ Migrants could also require a specific pastoral care with a proper hierarchical personal structure.²⁰

But besides these cases of personal structures, special dioceses or personal prelatures established for the ordinary care of souls of special groups of people, the pastoral need could appear at the level of fostering some specific participation in the *salus animarum*, offered as a specialized service to the whole Church and more specifically to the dioceses

¹⁷See S. C. Cons., *Inst. Sollemne Semper*, April 26, 1951, AAS 43 (1951) 562-565; S. C. Cons., *Decr. De Sacrorum Liminum Visitatione a Vicariis castrensibus peragenda*, Feb. 26, 1959, AAS 61 (1959) 272-274. See decrees of erection: Canada: S. C. Cons., *Decr. Materna Ecclesiae*, Feb. 17, 1951, AAS 43 (1951) 477-479; Great-Britain: S. C. Cons., *Decr. Inexhausta caritate*, Nov. 21, 1953, AAS 46 (1954) 144-146; U.S.A.: S. C. Cons., *Decr. Mysticam Petri*, Sept. 8, 1957, AAS 49 (1957) 970-973. Since the times of Constantine the Church has had the concern for the spiritual care of soldiers (see Card. B. Gantin, "Per una più efficace cura spirituale dei militari," *L'Osservatore Romano*, May 5-8, p. 1). According to K. Bihlmeyer and H. Tütle, *Church History*, vol. II, transl. by J. E. Mills and F. J. Muller, (Paderborn: F. Schöningh, 1963) § 95, 2, p. 107, the German National Synod of the year 742 provided for the spiritual care of soldiers and placed the obligation on the Court *Cappellani*, the head Court-Chaplain was usually a bishop. And for a historical study of the situation of the spiritual care of the Armed Forces in Spain up to the Agreement between the Holy See and Spanish State of Jan. 3, 1979 (AAS 62 [1980] 47-51) see A. Mostaza, "Acuerdo entre el estado español y la Santa Sede sobre la asistencia religiosa a las Fuerzas Armadas y servicio militar de clérigos y religiosos de 3 de enero de 1979," *Ius Canonicum* 19 (1979) 343-414. See also M. García Castro, "Origen, desarrollo y vicisitudes de la jurisdicción eclesiástica castrense," *Revista española de Derecho canónico* 5 (1950) 601-621; D. Le Tourneau, "La juridiction cumulative de l'Ordinariat aux Armées," *Revue de droit canonique* 37 (1967) 171-214. O'Reilly, (above, note 5) 443-444.

¹⁸See also Card. Barnardin Gantin, (above, note 17) where he places the new Apostolic Constitution in historical perspective, and Gutiérrez, (above, note 1).

¹⁹See, for instance, appointment of Titular Bishops to whom is entrusted the pastoral care of Czech and Slovak Catholics, in AAS 75 (1983) 334.

²⁰See *Inst. De pastorali migratorum cura*, (above, note 16) n. 16 § 1 and 3, p. 621, where the setting up of personal prelatures for this purpose is foreseen.

which wish to receive this service.²¹ In this case, the Petrine ministry, *diakonia* to the whole Church, could be exercised - on his own - either by identifying the specific pastoral needs of fostering one particular dimension of evangelization, or by making his own a charismatic manifestation already existing in the life of the Church. In doing so, the Supreme Pontiff, after hearing the advice of the Conferences of Bishops concerned,²² may either create a personal prelature or change the juridical nature of an existing institution establishing it as a personal prelature.

It is obvious that flexibility and broad scope, always within the general parameters of the Code and the more specific ones of *Spirituali militum curae*, are fundamental characteristics of personal prelatures. On the one hand the needs of special groups of faithful can vary; even though some are well-known and foreseen, new circumstances can arise. On the other hand, the needs of a specialized evangelization will be evolving as our society moves rapidly from one period to another. Besides if we take into consideration that the supreme authority in the Church can put at the service of the whole Church an already existing charismatic entity or institution, it appears that to catalogue all eventual personal prelatures is an impossible task.

Surely, in setting up each personal prelature, the Holy See, and the Conferences of Bishops as well, have the responsibility of evaluating the extent to which the hierarchical structure of the personal prelature is required to answer these specific pastoral or apostolic needs for the good of the whole Church, and to what extent this new structure could offer a service to both the universal and local Church.

3. Specific pastoral needs and service to the Church

In an address to the Plenary Assembly of the Sacred Congregation for the Clergy, the Holy Father pointed to some developments concerning *Pastoral Care in Urban Parishes*. He then said that "First of all it is necessary to re-affirm the importance and the validity of the parish. [...] The Parish remains an institution that must be preserved as the

²¹This is the case of the first personal prelature established, the Prelature of the Holy Cross and Opus Dei, see Ap. Const. *Ut sit*, (above, note 2) *proemium*. And for the dimension of service and the role of the primatial power see A. De Fueumayor, "Primatial Power and Personal Prelatures," in M. Thériault and J. Thorn (eds.), *The New Code of Canon Law*, Proceedings of the 5th International Congress of Canon Law, Ottawa, August 19-25, 1984, (Ottawa: Saint-Paul University, 1986) 309-318, a Spanish version: "Potestad Primalcial y Prelaturas Personales," *Scripta Theologica* 16 (1984/3) 831-840.

²²Let it be pointed out that the setting up of new Military Ordinariates requires also, likewise for other personal prelatures, the previous consultation with the Conference of Bishops concerned: see *SMC*, art. I, par. 2.

normal and primary expression of the care of souls [. . .]. Without doubt it is not a self-sufficient reality in a pastoral programme adapted to the present needs: it must be perfected and integrated with many other forms."²³ Later on, in this same address John Paul II added: "It is therefore necessary that the parish be a community open to all the initiatives of religious irradiation and of local apostolate which do not or cannot have the parish as their point of departure. So it will have to remain open to collaboration with the neighbouring parishes and with the personal parishes. Those pertaining, for example, to the military, to the faithful of other rites, refugees, tourists."²⁴

Certainly, these words of the Holy Father are directed to the urban parishes, but it seems that, *mutatis mutandis*, the same kind of reflection could be made concerning the dioceses. Needless to say, the care of souls is normally and primarily entrusted to the traditional hierarchical structures in the Church. But the Second Vatican Council felt the need of setting up, *ratione apostolatus*, some new and more flexible hierarchical structures, namely special dioceses and personal prelatures.

It has always been a fact that special needs and circumstances of peoples demand special ways of caring for them. For this reason personal hierarchical structures were established or are foreseen, as has already been seen, for the military, migrants, tourists, refugees. These personal structures have always been considered as services both to the whole Church and to the dioceses where these needs may exist.

All these structures are answering the ordinary needs of the faithful in special circumstances who, to a certain extent, ask to be cared for. The fact is, however, that one of the main difficulties of today's evangelization is not so much the taking care of the faithful who want to be cared for, but the taking care precisely of all those persons who cannot be reached by the best of pastoral networks. It seems obvious that a good deal of pastoral concern is directed towards those who have broken their sacramental linkage with the Church. The many problems caused by the impact of secularization, that is, the deprivation of our society of any kind of Christian outlook in public affairs, in international

²³ John Paul II, "Address, to the Plenary Assembly of the Sacred Congregation for the Clergy," October 20, 1984, n. 3, in *L'Osservatore Romano*, (Edition in English) Dec. 3,

²⁴*Id.*, n. 6.

relationships, in the world of business, in the media, in academe, call for special attention.

It is clear that the Fathers of the Second Vatican Council wished to entrust the laity especially with the furthering of the mission of the Church in the world.²⁶ This task appears now in a juridical form in canon 225: "This obligation has a greater impelling force - says the end of § 1 - in those circumstances in which people can hear the Gospel and know Christ only through lay persons."²⁶

The proper preparation, the formation, the spiritual support that the laity needs to carry out this obligation demands, on the part of Church organization, not only effort, but also specific skills. The solicitude of the Church in this field of sanctifying the temporal order may require specific hierarchical structures in order to do so, as a service to the common good of the Church and eventually to the traditional structures. Since dioceses might not have the appropriate pastoral tools, the Holy See can set up personal prelatures with aims convergent to the *salus animarum*, precisely to take care of certain dimensions of evangelization, as a complementary support to dioceses.

The supreme authority in the Church, in the exercise of its primatial power, can intervene to foster the common good of the whole Church; in so doing the Pope has the right to promulgate laws and to impose guidelines with universal pastoral needs in view, always respecting the natural and divine-positive law. Within the framework of the above, however, when the Supreme authority in the Church establishes a personal prelate, *ratione apostolatus*, for the good of the whole Church, the Holy Father is not imposing this service on any diocese, nor can the personal prelate impose it. There is simply an offer of this service; in this perspective each diocesan bishop, as head of his local Church, has the right and the power to accept or reject such a service. And the provisions regulating personal prelatures, from the first draft of *Presbyterorum Ordinis* to the Code as well as *Spirituali militum curae*, have constantly emphasized and maintained the rights of the diocesan bishop in relation to the activities of any personal prelate in his diocese.

²⁶See, among other references, *Lumen Gentium*, nn. 31, 33; *Gaudium et Spes*, n. 43; *Apostolicam Actuositatem*, nn. 7, 16, 19, 24; *Ad Gentes*, n. 21; and *passim*.

²⁶See also can. 225 § 2.

But it is time to close these considerations concerning personal prelatures in ecclesial perspective, and to turn to the nature of this new hierarchical structure.

II. THE NATURE OF PERSONAL PRELATURES

It is normal for theologians and canonists to ask a multitude of questions about an entity, an institution recently created by the Church. The original discussion of personal prelatures arose during the Second Vatican Council because of an expanded vision of the universal need of priestly service. But the Council went further, clearly indicating the advisability of creating new hierarchical structures within the constitutional organization of the Church viz. special dioceses or personal prelatures.²⁷ This suggested form of organization at the constitutional level of the Church was regarded by the Fathers of the Council "as something new, something as yet juridically undefined."²⁸ Most of new or reshaped structures put forward by the Council were as well juridically undefined and had required the post-conciliar legislation, giving an authentic interpretation of the Constitutions and Decrees of the Council. This legislation did not focus on special dioceses, but established the juridical configuration of personal prelatures.²⁹

This juridical configuration points clearly to a hierarchical institution with obvious similarities to dioceses: a proper Pastor, incardinated presbyterium and faithful to be cared for by the Pastor and presbyterium. Thus finding there the manifestation of the *communio fidelium*, as well as the *communio hierarchica*, as prelatures are the fruit of the solicitude of the Holy Father in consultation with the Conferences of Bishops concerned. In the working sessions of the Commission for the revision of the Code there appears a constant effort to clearly identify personal prelatures as they were conceived by the second Vatican Council and interpreted by the post-conciliar legislation.³⁰

²⁷See *PO*, n. 10 and references above, note 5.

²⁸O'Reilly, (above, note 4) 444. See also P. G. Marcuzzi, S.D.B., "Le Prelature personali nel nuovo Codice di Diritto Canonico," in *Il nuovo Codice Di Diritto Canonico*, Roma, Università Lateranense, 1983, 129-138, on p. 129 he says that personal prelatures are the "novità più rilevanti e significative nel nuovo codice di Diritto Canonico."

²⁹See *Ecclesiae Sanctae*, Part I, n. 4; *Regimini Ecclesiae Universae*, n. 49 § 1; *De pastoralis migratorum cura*, n. 16 § 3; *Ecclesiae Imago*, n. 172.

³⁰See *Communications* 12 (1980) 275-282; 14 (1982) 201-204; 16 (1984) 158-160 and 187; 17 (1985) 91-92; these discussions of the work of the commission for the revision of the Code point to the identity of personal prelatures.

Looking at the juridical configuration of personal prelatures the Commission pointed out the important juridical similarities these prelatures have with dioceses, by reason of the constitutive elements of both, as well as by reason of the fact that both are part of the constitutional organization of the Church. It seems logical to consider that in the working stages the Commission, when using the expression "*in iure aequiparatur, nisi ex rei natura aut iuris praescripto aliud appareat*,"³¹ was limiting the equivalency between personal prelatures and particular Churches to the juridical and not to the theological notion of particular Churches. As a consequence, personal prelatures are a development, *de iure ecclesiastico*, of the hierarchical constitution of the Church. They are a secular jurisdictional structure whose nature is to collaborate in the pastoral task of the universal Church. They are at the same time jurisdictional structures of service to the particular Churches,³² created by the Supreme authority exercising his function as Pastor of the whole Church.³³

As a consequence, personal prelatures cannot be looked at from the perspective of associational phenomena in the Church. Personal prelatures, by their own nature, are ecclesiological - as well as juridically - totally different from associations in the Church.³⁴ There was no need to open up a new path for associations. What the Council did clarify was the natural right to associations of all faithful in the Church, whether of priests or lay people³⁵ and, as a consequence, what took place was a broadening at the concept of association and of the different procedures used to establish and organize them.

³¹*Communicationes* 12 (1980) 275.

³²For a study of this question see Rodríguez, (above, note 9) 121-132. See also P. Rodríguez and A. De Fuenmayor, "Sobre la naturaleza de las prelaturas personales y su inserción dentro de la estructura de la Iglesia," *Ius Canonicum*, 24 (1984) 9-47.

³³See *Christus Dominus*, n. 2; *Lumen gentium*, n. 18, 22 and Preliminary Explanatory note n. 3 and 4. And see De Fuenmayor, (above, note 21).

³⁴See Rodríguez, (above, note 9) 132-135; Stetson and Hervada, (above, note 5) 408-411; Lombardía and Hervada, (above, note 5) 15-17.

³⁵See *Presbyterorum Ordinis*, n. 8; *Apostolicam Actuositatem*, n. 19 and 24; A. Del Portillo, "Ius associationis et associationes fidelium iuxta Concilii Vaticani II doctrinam," *Ius Canonicum* 9 (1968) 5-28. See also, G. Onclin, "Principia generalia de fidelium associationibus," *Apollinaris* 36 (1963) 68-109; E. Caparros, "Les fidèles dans l'Eglise locale," in M. Thériault and J. Thorn (eds.), (above, note 21) 787-817, spec. 801-805 and 811-815.

Let us then proceed to underline the main features of the nature of personal prelatures by turning our attention to their juridical, hierarchical and pastoral cornerstone.

1. The juridical cornerstone: the general legal framework and the statutes laid down by the Holy See

The different possible configurations of personal prelatures are intrinsic to their very nature as desired by Vatican II in order to fulfill the needs of specific pastoral or missionary works. Furthermore, these specific needs are those which arise from the pastoral life of the Church, rather than from the imagination of scholars. Nevertheless the *iter* of the codification did refer to one specific pastoral need, the *cura animarum* of the faithful in the armed forces,³⁶ although in the end the military vicariates were not explicitly included in the Code. The legal framework of the now called Military Ordinariates (*Ordinariatus militares seu castrenses*) is set in the Apostolic Constitution *Spirituali militum curae*.

Hence the specific pastoral work entrusted to a personal prelature could be, as already mentioned,³⁷ either for the special *cura animarum* of a determined *coetus fidelium* (such as the military), or for a specific pastoral work, normally also addressed to a *coetus fidelium* (such as the Opus Dei Prelature). These two examples can help us to grasp the legal framework of the delimitation of the hierarchical jurisdiction entrusted to these structures in *bonum commune totius Ecclesiae*.³⁸

³⁶See *Schema Canonum Libri II: De Populo Dei*, 1977, can. 218 § 2; *Schema Codicis Iuris Canonici recognitum*, 1980, can. 337 § 2; The reference disappears in the *Schema novissimum*, 1982. For a study of these questions see Rodríguez, (above, note 9) 46-51, 56-57, 69-70.

³⁷See above, nn. 9-11. The eventual possibility of personal prelatures exclusively for the distribution of the clergy is not contemplated here, as for this aim other juridical solutions seem more effective and personal prelatures are not referred to in the context of distribution of the clergy: see Norms of the S.C. for the Clergy, March 25, 1980, AAS 72 (1980) 343-364.

³⁸Even if the Code has not included this sentence in the codal framework of personal prelatures, it is at the foundation of these new hierarchical structures as they were foreseen by the Second Vatican Council in *Presbyterorum Ordinis*, n. 10.

The general legal framework for all personal prelatures is to be found in Title IV of Part I of Book II, constituted by canons 294 to 297. They give the minimum requirements for the establishment of such prelatures. With the needed adaptations and specifications, this general framework of the Code is found in *Spirituali militum curae* juridically configuring the Military Ordinariates. It is worth noting that the draft of this Apostolic Constitution sent for consultation was referring to the former Military Vicariates as Military Prelatures (*De Praelaturis Militaribus*) and that even the *Relatio* accompanying this draft explained the reasons for retaining the use of Prelature over other possibilities, rejecting explicitly the use of Personal Diocese (*Diocesis personalis*) for theological reasons, and Military Ordinariate (*Ordinariatus castrensis*) for practical reasons.³⁹ In the end, for reasons unknown to this writer, a last minute change (or so it seems from the lack of accord between the masculine (*Ordinariatus*) and the rest of the sentence, still in accord with the feminine (*Praelaturae*) in the Latin typewritten text, (for instance in art. 1 of *SMC*) replaced the word *Praelaturae* for *Ordinariatus*, without changing fundamentally the content of the Apostolic Constitution.

Canon 294 gives a general description of the aims for which the prelatures are to be established, and recognizes the competent authority for such an establishment: the Apostolic See after consultation with the Episcopal Conferences concerned.⁴⁰ This same canon also stipulates that the clergy incardinated in these prelatures has to be secular; this does not exclude, obviously, as in dioceses, the possibility of having religious priests exercising their pastoral work in a personal prelature. For the Military Ordinariate however, there is the possibility of both secular and religious priests being part of the presbyterate of the Ordinariate (*SMC*, VI, 1).

Canon 295 underlines the need for a particular law for each prelature, as the Apostolic See has to establish⁴¹ the statutes to govern

³⁹See S.C. for Bishops, Letter of Card. B. Gantin, prot. N. 483/84, *Relatio de modo quo schema huius documenti confectum est*, I. *De nomine Praelaturae militaris*, 2-4. In this *Relatio* the point is made about the personal diocese for the Armed Forces in Spain established by Agreement with the Spanish State in 1979; see Mostaza, (above, note 17) 374-375.

⁴⁰*SMC* art. I, par. 2, is to the same effect. Such a consultation is required exclusively for the setting up of hierarchical structures in the Church: can. 372 § 2 and 431 § 3.

⁴¹These statutes or particular codes are a law of the Holy See. The Holy See does not establish the statutes, special codes or constitutions of associations. (See can. 299 § 3,

each one in order to complete the general framework given in the Code.⁴² Each prelature has its Prelate as its proper Ordinary. The jurisdiction of the Prelate will be determined by the statutes, and will of course depend on the different kinds of possible personal prelatures. But according to the general law, the Prelate, being the proper Ordinary, has the right to establish a seminary, to incardinate students and to promote them to orders with the title of service of the prelature, although for the Military Ordinariates the approval of the Holy See is required for doing so (SMC, VI, par. 3). These secular priests incardinated in a prelature will be under the jurisdiction as well as under the spiritual material care of the Head of the Prelature. As for the religious priests working for or being part of the presbyterate of a prelature they will certainly be under the jurisdiction of the Head of the Prelature; his responsibility for their spiritual and material care could eventually vary according to circumstances.

Canon 296 foresees the possibility of lay people dedicating themselves to the apostolic works of a personal prelature. The canon uses the expression *organic cooperation* of the laity incorporated into the prelature. This organic cooperation, as well as the reciprocal rights and duties, is to be defined by the statutes. It is also established that lay people can incorporate themselves by way of an agreement or contract. This agreement will normally be directly with the prelature; but in the case of the Military Ordinariates, the lay people could become also part of the ordinariate because of their relationship - contractual or other-

314 and 322 § 2 for associations of faithful; and can. 587 § § 2 and 4 and 595 for institutes of consecrated life). Statutes, special codes or constitutions of associations remain their own private law, they are not, nor can they become a law of the Holy See.

⁴²The same requirement exists for the Military Ordinariates, see art. II, par. 1, where it is said "*propriis reguntur statutis ab Apostolica Sedis conditis*"; the English translation published by *L'Osservatore Romano*, containing some inaccuracies, said "statutes issued by the Holy See." Art. XIII of the same Constitution enumerates the questions that should be dealt with in each of the statutes. The clause of the Ap. Const. determining the *vacatio legis* (fixed at July 21, 1986) also requires that each Military Ordinariate should submit to the Holy See its proper statutes within one year of that date. Unfortunately this clause, that was not in the previous draft of the Constitution, said: "[...] unusquisque ordinariatus castrensis statuta, ad normam Art. 1 redacta, intra tempus unius anni ab eodem die computanda, *recognitioni* Sancta Sedis subicienda sunt." The statutes cannot be at the same time *conditis* and *recognitis*. It is not just a matter of words, but of authority. Art. 1 of the Apostolic Constitution requires that the status be *conditis*, being then a law of the Holy See.

wise - with the Armed Forces.⁴³ It is then clear that the juridical relationship between the lay people and the prelature is by way of a contractual bond or compulsory military service and *not* by way of vows or other *sacra ligamina*. In prelatures where lay people are incorporated⁴⁴ the expression *organic cooperation*⁴⁵ means that they participate in the works of the prelature in their quality as lay people and not as helpers of the clergy or by participating in the hierarchical apostolate. But lay people can also relate to a personal prelature not only by being the beneficiaries of the pastoral care of the prelature, but also by assuming an active role in it, like it could be in eventual prelatures for migrants or the personal prelatures foreseen in *Ad Gentes*.

Finally, canon 297 gives a technical content to the clause *salvis iuribus Ordinariorum locorum*, which was present from the start in the Decree of the Council and in the post-conciliar legislation.⁴⁶ It does so by underlining the need to define, in the statutes or particular codes, the relationship of the prelature with the local Ordinary, but establishing as a minimum requirement⁴⁷ the need for the consent of the local

⁴³See *SMC*, proemium, art. par. 1; where it is contemplated both possibilities: the contractual one and the one related to the compulsory military service.

⁴⁴This is the case of the Opus Dei Prelature. The *Codex iuris particularis seu statuta Praelaturae Santa Crucis et Operis Dei*, Roma, 1982 [hereafter referred to as *CIP*] reads at n. 1: "§ 1. Opus Dei est Praelature personalis clericos et laicos simul complectens, ad peculiarem operam pastorem perficiendam sub regimine proprii Praelati (cfr. n. 125). § 2. Praelaturae presbyterium constituunt illi clerici qui ex eiusdem fidelibus laicis ad Ordines promoventur et eidem inordinantur; laicatus Praelaturae ab iis fidelibus efformatur qui, vocatione divina moti, vinculo iuridico *incorporationis* speciali ratione Praelaturae devinciuntur." N. 125 reads: "§ 1. Praelaturae regimen committitur Praelato, qui suis Vicariis et Consiliis adiuvatur iuxta normas iuris universalis et huius Codicis. § 2. Potestas regiminis qua gaudet Praelatus est plena in foro tum externo tum interno in sacerdotibus Praelaturae inordinatis; in laicos vero Praelaturae *incorporatos* haec potestas ea est tantum quae spectat finem peculiarem eiusdem Praelaturae." *SMC*, art. IV, 10 refers to "personas ad Ordinariatum *pertinentes*"; art IX indicates that lay faithful of the ordinariate needs to be cared for so that they could act "tamquam fermentum apostolicum" [emphasis added].

It is worth noting that in the Statutes of the Canadian Military Ordinariate, Military Chaplains, deacons and lay pastoral agents are contemplated in section 10 as "Sharing on the pastoral responsibilities of the Military Ordinary," while the lay faithful of the Ordinariate are simply placed under the jurisdiction of the Ordinary (see Sect. 17) rather than forming part of the Ordinariate. This terminology does not seem to reflect the larger scope of art. IV and IX of *SMC*.

⁴⁵See can. 208 where the word *cooperation* is also used. Referring to this canon, *SMC*, art. IX puts a heavy apostolic responsibility on lay faithful of the Ordinariate.

⁴⁶See *Presbyterorum ordinis*, n. 10; *Ecclesiae sanctae*, Part I, n. 4.

⁴⁷In the case of the Prelature of the Holy Cross and Opus Dei the Declaration *Praelaturae personales* (above, note 3) says in V, a): "the prior permission of the competent

Ordinary prior to the exercise of the pastoral or missionary activity of the prelatore within the diocese. Since the primatial power sets up personal prelatures for the common good of the whole Church and offers them as a service to the particular Churches, the consent of the diocesan bishop is required before such service is established in his particular Church.⁴⁸

The clause *salvis iuris Ordinariorum locorum* is not contained in *Spirituali militum curae*. Nevertheless the Apostolic Constitution does regulate the relationship between the Ordinariate and the particular Churches demanding a close bond of communion and cooperation in the pastoral action,⁴⁹ as well as organizing the appropriate priorities in the exercise of the jurisdiction of the Military Ordinary and his chaplains on the one hand and the diocesan bishop and the parish priests on the other, as both have jurisdiction over the same faithful on the same matters.⁵⁰

This general framework in the Code refers to the statutes laid down by the Holy See in three of four canons, since the aim of each personal prelatore will be the cause and the limit of the secular jurisdic-

diocesan bishop is required for the erection of each center of the prelatore. The diocesan bishop is informed regularly about the activities of those centers." Thus resuming n. 177 § 1 and 2 of *CIP* where it is said: "§ 1. Ut labor apostolicus Praelaturae in aliqua dioecesi incipiat, mediante canonica erectione primi Centri, ex quo exercei possit apostolatus collectivus, debet prius informari loci Ordinarius, cuius venia requiritur, melius scripto data. §2. Quoties laboris progressus aliorum Centrorum erectionem in dioecesi suadeat, procedendum semper est ad normam paragraphi praecedentis." As well as n. 174 § 1 and 2 where it is established: "§ 1. Universus labor apostolicus quem Praelatura, iuxta propriam naturam propriumque finem, exsequitur, ad bonum singularum Ecclesiarum localium confert, atque Praelatura debitas cum Auctoritate ecclesiastica territoriali relationes semper colit. § 2. Curet praeterea Praelatus ut, singulis in circumscriptionibus, Vicarius competens, per se vel per alios eiusdem Vicarii nomine, habituales relationes servet cum Episcopis in quorum dioecesibus Praelaturae christifidelis resideant, et praesertim ut frequenter colloquatur cum illis Episcopis locorum in quibus Opus Dei Centra erecta habet, [...]."

⁴⁸ See, above, n. 15.

⁴⁹ See *SMC*, art. II, par. 4. The latin text says "Inter ordinariatum militare et alias Ecclesias particulares" (the translation published in *L'Osservatore Romano* reads: "Between the Military Ordinary and the other local Churches). The word *alias* was not in the draft of the constitution, neither was the phrase "quique [the original typewritten Latin text used *quaeque*] dioecesibus iuridice assimilantur" in art. 1 of *SMC*. Obviously if the legislator has felt the convenience of considering the Military Ordinariate "juridically comparable of dioceses" (to use the translation published in *L'Osservatore Romano*) it is because they are not dioceses, and then the *alias* in art. II, par. 4 is a clear juridical contradiction.

⁵⁰ See *SMC*, art. par. 3, where the cumulative jurisdiction of the Military Ordinary and of the diocesan bishop is established, and art. V where the priority of one jurisdiction over the other is specified. See also Le Tourneau, (above, note 17).

tion of its Prelate. For the Military Ordinariates the aim and the general framework has been established with *Spirituali militum curae*. The *proemium* of this constitution indicates nevertheless: "Norms of this kind, [. . .] cannot be identical for all countries, [. . .]. It is opportune then that certain general norms be established which will be valid for all Military Ordinariates [. . .] to be later supplemented, in the context of the same general law, by statutes issued by the Holy See for each Ordinatee." And art. I, of the same constitution reiterates the need for such statutes, and specifically art. XIII gives a minimum framework of its content. In the dioceses, with the aim of all of them being the same,⁵¹ the Code covers this aspect, and the delimitation of the jurisdiction of the Ordinary is made by way of territory, or rite (or some similar reasons) and territory, in the appropriate Apostolic Constitution dealing with its establishment.

On the contrary, in the case of a personal prelature, the supreme authority in the Church determines the specific pastoral or missionary task to be entrusted to it in its statutes. These statutes, respecting the minimum requirements of the codal framework, fix, in accordance with its aim, the jurisdiction of the Ordinary of the prelature, the relationship with the local Ordinaries, and the specific manner in which the laity will cooperate organically in fulfilling the aim of the prelature. And, of course, in the case of the Military Ordinariates, the scope of each particular statute is reduced as many relevant aspects are already regulated for all of them in *Spirituali militum curae*.

The need for the Code of particular law for each prelature, besides being a requirement of the general legal framework, is also a very logical requirement. As in personal prelatures that we are not dealing with the general needs of the *cura animarum*, it is impossible to establish *in abstracto* more than the general codal framework. But just as the *ordinaria cura animarum* is specified and delimited by the intervention

⁵¹We are not dealing with the possible *special dioceses* contemplated, at the same time as personal prelatures, by *Presbyterorum Ordinis*, n. 10. Such special dioceses had never been the object of specific juridical configuration. One author has put forward that the Conciliar Fathers did not make any distinction between special dioceses and personal prelatures (see Lo Castro, (above, note 5) 91 at footnote 3). Another has maintained that there is a distinction, as the special dioceses differ both from normal dioceses mainly territorial and from personal prelatures. (See Gutiérrez, (above, note 7) 76-77). It seems that, in the opinion of this same author (Gutiérrez, (above, note 1) 214-216) Military Ordinariates could be special dioceses as foreseen by *PO*, n. 10. The New Code has not regulated dioceses on strictly personal grounds, even the ones foreseen as exceptional in can. 372 § 2 are always "in eodem territorio." See Le Tourneau, (above, note 1) 54-55; Arrieta, (above, note 1) 734-737.

of the Holy See in the special law establishing a diocese, so also the precise pastoral or missionary task of a personal prelature - be it the *cura animarum* of a specific group of people or other tasks - is specified and delimited by the special law, emanating from the Apostolic See, which constitutes the statutes of each one.

We have been referring to the Military Ordinariates as personal prelatures. It seems clear from the preceding developments that the genus personal prelature is a hierarchical structure with a more or less degree of equivalency or comparison to dioceses. The "*peculiaria opera pastoralia*" entrusted to each prelature gives to the Apostolic See the parameters to maintain the minimum of comparableness to dioceses required by the fact that both are jurisdictional structures; but also depending on these particular pastoral or missionary works the Apostolic See can consider it necessary to increase this minimum of likeness to dioceses and move to assimilate juridically personal prelatures to dioceses.

This is precisely what the Supreme legislator has done in relation with the Military Ordinariates, all of them will be governed by the same law, *Spirituali militum curae*, that is more specific than the general code framework. But when the legislator uses the clause "*diocesibus iuridice assimilantur*," as it does in *Spirituali militum curae*, he is clearly indicating his will to have a structure, in this case the Military Ordinarate, to be juridically considered like another, in this case the diocese, precisely because the Military Ordinarate is not a diocese. It would be superfluous to use the clause "*in iure assimilatur*" if both elements of the comparison are identical.⁵²

⁵²An author (G. Ghirlanda, "De differentia Praelaturam personalem inter et Ordinariatum militare seu castrensem," *Periodica* 76 (1987) 219-251) in a rather non-judicial way, since he avoids referring to some specific juridical texts, considered Military Ordinariates as personal particular Churches and personal prelatures as administrative bodies for the distribution of the clergy, excluding from them the lay people. We have already indicated a good number of reasons that cannot permit us to accept such an opinion. The change of label does not change necessarily the content or the nature of an institution. This happened in *SMC*, where the term Prelature was deleted and replaced for Ordinarate, without changing either the concept or the reality of such an hierarchical structure. If *SMC*, art. I has considered necessary to include the clause "*diocesibus iuridice assimilantur*" it is precisely because Military Ordinariates are not dioceses (see for the case of Spain, above, note 39). *SMC*, does refer explicitly to *PO*, n. 10, entrusting to the Military Ordinariates, as "*peculiaria opera pastoralia*," the *cura animarum* of the *coetus fidelium* formed by the armed forces. The jurisdiction of the Military Ordinary is cumulative with the one of the diocesan bishop (see *SMC*, art. IV, par. 3) and hence it is not possible to consider the *coetus fidelium* as the *populo Dei portio*.

Nevertheless, in spite of the general dispositions of *Spirituali militum curae* for Military Ordinariates, the same Constitution still requires,⁶⁸ as the Code does for all other personal prelatures, that each Military Ordinariate needs its own statutes issued by the Holy See to tailor down the specific aspect of each one of them.

2. The hierarchical cornerstone: their proper Ordinary

Canon 295 requires that each personal prelatore be "presided over by a Prelate as its proper Ordinary." This appears to be the hierarchical cornerstone of each personal prelatore. Reading canons 295 and 131 together, one must conclude that the Prelate of a personal prelatore has an ordinary and proper power of governance. His power of governance will be established and at the same time delimited by the statutes of the prelatore, whose aims contain the cause and the limits of this power. Hence the power of governance or the jurisdiction of the Prelate of a personal prelatore is by its own nature identical to the one possessed by all diocesan bishops and heads of other constitutional structures. Nevertheless, if we compare this power of governance with the one of the diocesan Bishop, it is evident that they could differ *ratione materiae*, although the matters will always be within the scope of the particular hierarchical structure. Even in the case of a power of governance over the same matter there always be a certain dimension of specialization or particularity in the way such a power is exercised by the Head of a personal prelatore.

The diocesan Bishop's power of governance is exercised over all the faithful domiciled within the boundaries of the territory of the diocese - or over all the faithful entrusted to his pastoral care by reason of rite or other similar reasons (can. 372 § 2) - for the *ordinaria cura animarum*, while the Prelate's power of governance is exercised over the faithful forming the specific *coetus fidelium* entrusted to him either for the *cura animarum* or for developing other special pastoral or missionary tasks. If the pastoral task entrusted to the Head of the Prelature is the *cura animarum* of a special group of people (military, migrants, etc.), then his jurisdiction will be identical in nature - over the same faithful for the same matters - to the one of the diocesan bishop but with the appropriate degree of specialization required by the specific situation of the *coetus fidelium*. The power of governance of both Ordinaries will be cumulative. But if the specific pastoral task is rather emphasize-

⁶⁸See *SMC, proemium*, art. 1, par. 1, art. XIII, and above, note 42.

ing some aspects of the teaching of the Church, then the jurisdiction of both Ordinaries will be different *ratione materiae* and their power of governance will be mixed, each one exercising a power of governance of the same nature, the specialization being in this case that their respective powers are over different matters; the overlapping of jurisdictions being then avoided.

It is possible that somebody looking at canon 134 and, reading it out of the context of the whole Code, might wish to conclude that the prelate of a personal prelate is not an Ordinary with a proper power of governance. But this way of reading the Code would not be in agreement with the normal and proper interpretation of a Code promulgated *per modum unius* and would forget what, in other codified jurisdictions, has been called the "effect of codification."⁵⁴ If we keep in mind this proper way of interpreting a Code, we must conclude that canon 134 is not a defining provision, with the meaning given to this term in common law jurisdictions. The role of a Code is not to make closed definitions. Canon 134 certainly contains an enumeration of Ordinaries both heading dioceses and possessing general ordinary executive power, but as the Code is a universal law, the normal way to interpret this canon is in the context of the whole Code. Canon 295 is part of the Code and establishes that the prelate of a personal prelate, as Head of a jurisdictional structure to some extent comparable to a diocese, is its proper Ordinary. Thus canon 295 completes the enumeration of canon 134.

Furthermore, the fact that 295 specifically states that the prelate is the *proper* Ordinary of the prelate emphasizes that the prelate's power of governance would normally, though not necessarily, be limited to the prelate to which he has been appointed the Ordinary. In the case of the prelate of *La Mission de France* or Prelature of Pontigny, the prelate is at the same time a bishop heading a diocese. In Military Ordinaries, even when they were called Vicariates before coming into force of *Spiritali militum curae*, the trend is to appoint, as head of the Ordinariate, as proper Ordinary, a bishop whose pastoral *munus* is exclusively the care of the armed forces.⁵⁵ The Apostolic Constitution *Spiritali militum curae* confirms the previous draft and establishes:

⁵⁴See, for instance A.-F. Bisson, "Effets de codification et interprétation," (1986) 17 *Revue générale de droit* 359-369.

⁵⁵This is the way the appointment has been made for the U.S.A., see AAS 77 (1985) 1090-1091. It is also the case in several other countries like England, France, Ecuador, Bolivia, and recently in Canada.

"Ut huic peculiari operi pastorali totis viribus incumbere possit, Ordinarius militaris pro norma ab aliis officiis animarum cura secumferentibus liber manebit, nisi peculiaria Nationis adiuncta aliud suadeat" (art. II, par. 3). The exceptional clause in the last sentence of this paragraph was not in the previous draft. It is nevertheless understandable that specific situations in some countries might not be in keeping with the general provision, as the exclusivity of the pastoral *munus* is not a juridical requirement to be a proper Ordinary.

The nature of the power of governance of the proper Ordinary of a personal prelature being the same as the one of a diocesan Bishop, it is normal that the provision of the office be made by the Holy See by one of the ways foreseen in canon 147. According to the ruling of *Regimini Ecclesiae Universae*,⁵⁶ the provision is to be taken care of by the Congregation for Bishops or the one for Evangelization of Peoples. In the case of the Opus Dei Prelature, according to the *Code of Particular Law of Opus Dei*, the provision is made by the Holy Father by confirmation of the results of a canonical election.⁵⁷ For the Military Ordinariates, art. II, par. 2 of *Spirituali militum curae*, in keeping with canon 147 establishes: *"Ordinarium militarem libere Summus Pontifex nominat, aut legitime designatum instituit vel confirmat."* Article XI of the same Apostolic Constitution establishes the dependence of the Military Ordinariates on the Sacred Congregation for Bishops or the Congregation for Evangelization of Peoples.

As personal prelatures are part of the hierarchical structures of the Church it does not seem appropriate to wonder whether they are clerical or lay structures. As a matter of fact, the foundation of each and every hierarchical structure is that in it appears as an essential constitutive element the relationship between the ministerial and the common priesthood. In the same manner that there is no reason to try to define the universal Church a diocese or a parish as a clerical or a lay structure, there is no reason to try to consider personal prelatures in this perspective.

Furthermore, *Ecclesiae Sanctae* clearly indicates that the fundamental purpose of a personal prelature is *the special pastoral or*

⁵⁶See sect. 49 § 1 and note 8.

⁵⁷See Ap. Const. *Ut sit*, VII; n. 130 § 1 of *CIP* reads: "Praelatus, qui interne Pater cuiusque officium est ad vitam, seligitur excluso compromisso a Congressu Generali electivo hunc in finem convocato; electio vero Romani Pontificis confirmatione indiget."

missionary task for various regions or social groups requiring special assistance. To a certain extent, the distribution of the clergy, mentioned in canon 294, does not appear as such in the pertinent provision of *Ecclesiae Sanctae*.⁵⁸ Of course the distribution of the clergy will be a necessary consequence, since clergy will be needed to care for these special pastoral or missionary tasks, and the prelatore itself will need its own presbyterium. But it does not appear that this distribution could be the primary aim of a personal prelatore.⁵⁹ As a matter of fact, a "better distribution" of the clergy is not done for the sake of a better distribution, but rather in order to care for pastoral tasks, be they general or specific. Besides the distribution of the clergy does not require the establishment of a hierarchical structure.⁶⁰

But it is time now to focus on the pastoral cornerstone.

3. The missionary cornerstone: the specific pastoral or missionary tasks

For a personal prelatore to be set up, a pastoral need must exist. What is more, this pastoral need has to be identified by the supreme authority in the Church, in consultation with the Conferences of Bishops concerned; and the answering of the need has to be beyond the normal reach of the dioceses and assimilated hierarchical structures. The aim of personal prelatores, then is precisely to offer a specific service to the universal and to the particular Churches.

Hence, the pastoral need which the primatial power answers by erecting a personal prelatore is of fundamental importance. This need, and the corresponding specific pastoral or missionary task entrusted to a particular personal prelatore will constitute the aim of such a

⁵⁸See Part I, n. 4; the distribution of the clergy is regulated in Part. I, nn. 1-3 of the same *Motu proprio*.

⁵⁹See *Communicationes* 12 (1980) p. 279; the then Secretary of the Commission, Arch. Castillo Lara, and the "Relatore", Msgr. Onclin, proposed to drop the expressions "cum proprio populo" or "sine populo" in relation to personal prelatores. Their reasons are in the first place that "un certo popolo, [...] sarà sempre necessario [...] (non sembrerebbe invece congrua una Prelatura composta da soli sacerdoti, oppure da sacerdoti ed alcuni pochi laici)"; in the second place that it is not appropriate to characterize the "popolo" as "proprio", under the exclusive power of governance of the prelate, as this power, could be cumulative or mixed, according to the statutes. See also Rodríguez, (above, note 32) 19-20; Gutiérrez, (above, note 5) 90-91; Lo Castro, (above, note 5) 102-107.

⁶⁰See the Norms of the S.C. for the Clergy, March 25, 1980, AAS 72 (1980) 343-364, dealing with the distribution of the clergy without making any reference to personal prelatores.

prelature. It will serve as the cornerstone for the power of governance of the prelate and it will also determine the degree of intensity of the relationship between the ministerial and the common priesthood in the prelature, as well as the more or less intense degree of comparableness with dioceses. Thus the importance of the statutes or Code of particular law of each prelature, because in it the Holy See will fix the specific pastoral task and, as a consequence, a number of other things: it will delimit the scope of the power of governance of the prelate; indicate the ways for the prelature to fulfill its services to the particular Churches, always respecting the rights of the diocesan bishop, and of its relationship to the Conferences of Bishops; establish the rights and obligations of the members of such a prelature, be they priests or lay people, and the manner in which each will co-operate in the fulfillment of the pastoral task.

Depending then on the aim of each personal prelature the scope of the power of governance of the prelate will vary.⁶¹ What seem obvious is that the jurisdiction of the prelate should be in agreement with the specific pastoral task entrusted to the prelature as a hierarchical structure and to the prelate as its proper Ordinary. It is thus very appropriate that the Code does not determine the material scope of this power of governance, leaving the determination to the Holy See with the collegial advice of the Conferences of Bishops. In this way the flexibility of the structure is maintained.

Hence the establishment of the specific pastoral or missionary task requires that the personal prelature thus set up be given the appropriate means to fulfill it. The statutes or Code of particular law of each prelature will then shape the prelature; in some cases the supreme authority could consider that a given personal prelature should be juridically equivalent to a diocese,⁶² and consequently give to its Ordinary a power of governance that will not differ, *ratione materiae*, from the power of the diocesan bishop, their jurisdiction being then cumulative. But in other cases, always taking into account the *peculiariora opera pastoralia*, the primatial power can consider that the prelate, although

⁶¹See *Communicationes*, 12 (1980) p. 279.

⁶²This is the decision the supreme authority has taken in the case of the Military Ordinariates. Art. I, par. 10 said: *Ordinariatus militares, [. . .], quique diocesibus iuridice assimilatur, sunt peculiare circumscriptiones ecclesiasticae, [. . .]*. Article II, par. 1, decided that as a general rule the Military Ordinary should be a Bishop, and article III makes him, *ipso iure*, a member of the Conference of Bishops of the country where the Ordinariate has its See.

having a power of governance that by its nature is analogous and equivalent - in different degrees - to that of the diocesan bishop, will entrust the prelate with a jurisdiction differing *ratione materiae* with that of the diocesan bishop. Their jurisdiction will then be mixed.⁶³

Of course, the statutes should also make the general law precise in its application to the relationship between the dioceses and the prelatures. And it seems that the regulation should be more specific or more detailed if the power of governance of both Ordinaries is cumulative, as both will exercise their jurisdiction over the same people and in the same matter. As in the case of all personal prelatures the jurisdiction of the Military Ordinary is personal, proper and ordinary.⁶⁴ Nevertheless, in this case the jurisdiction is *cumulative* with the diocesan bishop, and hence the Apostolic Constitution specifies these jurisdiction in article V, giving priority in some cases to the jurisdiction of the Military Ordinary.

Also the specific pastoral or missionary task will, via the statutes, determine the degree of intensity of the relationship between the ministerial and the common priesthood within each prelature. It seems fitting that the personal prelature be composed of priests and lay people.⁶⁵ The specific purpose of each prelature will be what determines the manner in which priests and lay persons participate in the universal mission of the Church. Lay people, besides being the beneficiaries of the specific pastoral task of the prelature, have also to collaborate in different ways in this very same task. The specific pastoral task could well be such that the prelature would be unable to fulfill it without the organic cooperation of the lay people. In this case they should be fully incorporated into such a prelature, being members of it, and under the jurisdiction of the prelate in all that concerns the aim of such a prelature.⁶⁶

⁶³ An author (Le Tourneau, (above, note 17) 206-207) makes the point that this type of jurisdiction should rather be called *juxtaposed* than *mixed*. As a matter of fact there is no possible *mixture* in this type of jurisdiction, but for clarity's sake, as it is the consecrated expression, we will use the less precise one.

⁶⁴ See *SMC*, art. IV.

⁶⁵ See above, n. 28 and note 59. It seems obvious from the teaching of Vatican II, authentically interpreted by *Ecclesiae Sanctae*, that lay people need to have an active position in personal prelatures, they cannot be just beneficiaries of the pastoral action of the prelature as was explicitly mentioned during the commission's work of revision (see quotation of Archb. Castillo Lara, above, note 59). Besides the supreme legislator has acted accordingly, see *CIP*, nn. 1 and 125, (above, note 44); *SMC*, art. IX. See also J. Hervada, "Aspetti della struttura giuridica dell'Opus Dei," *Il Diritto Ecclesiastico* 97 (1986) 410-430.

⁶⁶ This is the case of the Prelature of the Holy Cross and Opus Dei. In it, lay people and priests constitute a unity "at the same time organic and undivided - that is to say, as

In order to fulfill the pastoral task of the Military Ordinariate, *Spirituali militum curae* determines the way in which priests and laity will participate in it. As for the presbyterium of the Ordinariate, while keeping in mind the minimum requirements of canons 294 and 295 regarding the need for secular clergy and the right of the Military Ordinary to erect a seminary although with the approbation of the Holy See, (art. VI, par. 3), and to incardinate priests (art. V) the Constitution also permits the possibility of ascribing as well secular priests or priests belonging to institutes of consecrated life (art. VI, pars. 1-2). The mission of the laity in the Ordinariate is underlined in article IX; while article X determines which are the faithful who belong to the Military ordinariate and come under its jurisdiction.⁶⁷

Let us keep in mind, however, that the apostolic mission of the Church is neither clerical nor lay. The fulfillment of this mission will correspond to the clergy, as clerics, and to the laity as lay people, in the accomplishment of their part of the universal mission of the Church. Strictly speaking, we cannot talk about clerical or lay apostolate of lay people, within the unity of mission of the Church, as *Apostolicam Actuositatem* clearly emphasizes: "In the Church, there is diversity of ministry but unity of mission."⁶⁸

Thus the pastoral cornerstone is of fundamental importance. The specific pastoral or missionary enterprise is, at the same time, the touchstone for the power of governance of the prelate and for the manner in which clergy and laity will participate in such a pastoral task. This pastoral task, identified by the primatial power as a service to the universal Church and to the particular Churches, is the criterion of delimitation of the jurisdiction of this new hierarchical structure in the Church.

Let us turn, finally, to some considerations about personal prelatures in action.

an institution endowed with a unity of spirit, of aims, of government and of formation" (Ap. Const. *Ut sit*, (above, note 3) *proemium*). That is why they are incorporated into the Prelature (see S.C. for Bishops, Decl., "Praelaturae personales, (above, note 2) nn. II, b; III, b) and are under the jurisdiction of the Prelate (see Ap. Const. *Ut sit*, n. III; Decl. Praelaturae personales, no. III, b) and d), CIP, nn. 1 and 125, (above, note 44) see also Hervada (above, note 65), 722-428.

⁶⁷For the Canadian Military Ordinariate see remarks above, note 44.

⁶⁸*Apostolicam Actuositatem*, no. 2/2, p. 768.

III. PERSONAL PRELATURES IN ACTION

At the time of the original writing of this paper there was only one personal prelatore explicitly recognized as such: The Prelature of the Holy Cross and Opus Dei.⁶⁹ It was established as such on November 28, 1982 by the Apostolic Constitution *Ut sit*, even though the promulgation of the Constitution took place on March 19, 1983 by its execution by the Apostolic Nuncio in Italy, and on May 20, 1983 by its publication in *Acta Apostolicae Sedis*, both after the promulgation of the new Code. Since the Holy See has promulgated the Apostolic Constitution *Spirituali militum curae* setting up the law concerning Military Ordinariates, we have taken it into consideration in our preceding remarks. But the study of the Military Ordinariates, taking into account the statutes of each one of them could require a separate paper. We thus will concentrate these considerations on the Opus Dei prelatore, limiting ourselves to three aspects: the role of the primatial power and of collegiality; the role of the ministerial and the common priesthood; and finally, the service to the particular Churches.

1. The role of the primatial power and of collegiality

In the exercise of his *munus regendi* the Pope acts in favor of the common good of the whole Church. In contemplating the needs of the Church as well as charismatic developments, he could reach the conclusion that a particular existing charismatic institution in the Church would offer a better service to the Church being integrated into its constitutional organization, and then change the canonical status of such an institution, inserting it into the hierarchical structures of the Church, by setting it up as a personal prelatore, either on his own initiative or at the request of the institution. However, when the Pope considers it appropriate to exercise his primatial power in such a field, he acts also, as Head of the College of Bishops, and then he asks for the advice of the members of the College. "Personal prelatures may be established - reads canon 294 - by the Apostolic See after consultation with the Episcopal Conferences concerned."⁷⁰

⁶⁹For more lengthy studies see E. Caparros, "Une structure juridictionnelle issue de la préoccupation pastorale de Vatican II: les prélatres personnelles," *Studia Canonica*, 17 (1983), 487-531 at pp. 498-531; G. Lo Castro, "Un' istituzione giurisdizionale gerarchica della Chiesa. La Prelatura personale Opus Dei," *Il Diritto Ecclesiastico*, 96 (1985) 547-579; Hervada, (above, note 65).

⁷⁰This consultation was already required by *Ecclesiae Sanctae*, Part I, n. 4: "Such prelatures - reads the 5th paragraph - shall not be erected without first hearing the views of the episcopal conferences of the territory in which they will serve" (p. 595).

In establishing Opus Dei as a personal prelature collegiality played an important role at different levels. First of all the Ordinary Assembly of the Sacred Congregation for Bishops examined the matter on June 28, 1979. Then, after a lengthy study, the report of a technical committee, as well as the statutes of the prelature to be erected, were examined by a special committee of Cardinals appointed by the Supreme Pontiff. This committee submitted its views on September 26, 1981, and thereafter a note was sent by the Holy See to all the bishops of the countries where Opus Dei had erected centers, to inform them about the matter and to allow them to make observations.⁷¹ This note was sent to more than two thousand diocesan Bishops throughout the world:⁷² all the diocesan bishops of the countries where Opus Dei had at that time at least one center canonically erected, with the previous approval of the respective local Ordinaries. "Numerous replies from bishops manifested their satisfaction with the manner in which, in perfect harmony with the norms applying the Second Vatican Council, the desired solution to the institutional problem of Opus Dei was reached. There were also letters, though much fewer in number, which contained observations or requests for clarification. Following an attentive examination by the competent authority, they were all taken into account, and all requests for further explanations were satisfied."⁷³

The study of the possibility and the way to erect the first personal prelature took, according to Cardinal Baggio, "three and a half years of painstaking work."⁷⁴ "It is not surprising - commented the Prelate of Opus Dei - that the Holy See should have wished to proceed in a very sure and prudent fashion, since Opus Dei presents very new pastoral characteristics and it was a question of applying for the first time, a juridical formula which is also new in the general law of the Church."⁷⁵

⁷¹See Card. S. Baggio, then Prefect of the S.C. for Bishops, "A Benefit for the whole Church," *L'Osservatore Romano*, Nov. 28, 1982, and (Edition in English) January 17, 1983.

⁷²See M. Costalunga, Under Secretary of the S.C. for Bishops, "The establishment of Opus Dei as a personal prelature," *L'Osservatore Romano*, Nov. 28, 1982 and (Edition in English) January 17, 1983.

⁷³*Ibidem*. For further information see A. Del Portillo, interview with ABC, Madrid, Nov. 29, 1982, English translation in *Seeking God in the World*, (New Rochelle: Scepter Booklets, n. 137, 1982) 15-34, at pp. 26-28; and interview with P. Monni, in *L'Osservatore Romano*, March 25, 1983, English translation in *Meeting the Press*, (New Rochelle: Scepter Booklets, n. 143, 1984) 19-22, at pp. 19-20.

⁷⁴Above, note 71.

⁷⁵*Seeking God in the World*, (above, note 73) 27-28.

2. The role of the ministerial priesthood and of the common priesthood of the faithful

As has already been pointed out,⁷⁶ the aims of each personal prelature will determine the degree of intensity in which clergy and laity will participate in its specific pastoral task. In the case of the Opus Dei Prelature, its Prelate described the aims as follows:

With regard to the aims of the Prelature, a document of the Holy See describes them as "doubly pastoral," and goes on to say:

"In fact, the Prelate and his clergy carry out a particular pastoral work, in the service of the Prelature's lay people, who are clearly defined, while the whole Prelature, clergy and laity together, engage in a specific apostolate in the service of the universal Church and of the local Churches.

"There are, therefore, two fundamental aspects of the structure and purpose of the Prelature, which indicate its *raison d'être*, as well as its natural and specific position in the ensemble of the pastoral and evangelizing activity of the Church:

"a) the particular pastoral work, which the Prelate, with his clergy, undertake in assisting and sustaining the lay faithful incorporated into Opus Dei in the fulfilment of the specific ascetical, formative and apostolic commitments they have assumed, which are particularly demanding.

"b) the apostolate which the clergy and laity of the Prelature, inseparably united, carry out in helping to bring about - in all sectors of society - a deep consciousness of the universal call to sanctity and apostolate and, more specifically, of the sanctifying value of ordinary work."⁷⁷

It appears that, in the first personal prelature, the role of both the ministerial and the common priesthood is essential, to the extent that clergy and laity are constitutive elements of the Prelature Opus Dei. The Apostolic Constitution *Ut sit* reads: "Since Opus Dei has grown, with the help of divine grace, to the extent that it has spread and works

⁷⁶Above, n. 31.

⁷⁷*Seeking God in the World*, (above, note 73) 17.

in a large number of dioceses throughout the world, as an apostolic organism made up of priests and laity, both men and women, which is at the same time organic and undivided, that is to say, as an institution endowed with a unity of spirit, of aim, of government and of formation - it has become necessary to give it a juridical configuration which is suited to its specific characteristics.⁷⁸

Hence, to reach its aims, viz. the fostering of the universal call to sanctity and apostolate in the midst of the world, specifically through the sanctification of ordinary work, both priests incardinated in the Prelature and lay people incorporated into it need to work together and, at the same time, each one acts according to his or her participation in the unity of mission of the Church, according to each one's charism and role in the Church and in society.

3. The service to the dioceses

Each personal prelatore will carry out its specific pastoral work within the boundaries of dioceses. The jurisdiction of the prelatore being personal, it is obvious that its faithful, that is to say the priests incardinated into the prelatore and the lay people incorporated into it, will work, pray, involve themselves in social, cultural, sporting activities, etc. in the territory of each diocese.

In the case of the Opus Dei Prelature, lay people will remain under the power of governance of the diocesan bishop of his or her domicile or quasi-domicile in what the law lays down for all the ordinary faithful,⁷⁹ while being under the jurisdiction of the prelate in regard to what has to do with the aims of the prelatore.⁸⁰ The priests incardinated into the Opus Dei Prelature are under the power of governance of the Prelate.⁸¹ Nevertheless, all members of the Prelature - priest as well as lay people - must observe the territorial norms which refer to general directives of a doctrinal, liturgical and pastoral nature as well as the laws concerning public order. The priests must also observe the general discipline of the clergy.⁸² They should also obtain the ministerial faculties of the compe-

⁷⁸Ap. const. *Ut sit, proemium* (emphasis added).

⁷⁹See Decl. *Praelaturae Personales*, n. IV, c); *CIP*, n. 172 § 2 reads: "Ordinariis quoque locorum subiiciuntur [Praelaturae christifidelis] ad normam iuris universalis, eadem ratione ac ceteri catholici in propria dioecesi, iuxta praescripta huius Codicis".

⁸⁰See Decl. *Praelaturae Personales*, n. II, d) III, b); *CIP*, n. 125 § 2, (above, note 44).

⁸¹See Decl. *Praelaturae Personales*, n. III, b) and c); *CIP*, n. 125 § 2, (above, note 44).

⁸²See Decl. *Praelaturae Personales*, n. IV, a). The obligation to make these norms known to the faithful of the Prelature is imposed on the authorities of it by n. 176 of *CIP*,

petent territorial authority in order to exercise their ministry with people who do not form part of Opus Dei.⁸³

If the diocesan bishop wants to entrust to the Prelature or to a priest incardinated in it a diocesan pastoral task or ecclesiastical office, an agreement will be needed between both Ordinaries, the diocesan bishop and the Prelate of Opus Dei or his Regional Vicar.⁸⁴

As for the laity, their relationship with the diocesan bishop is not altered by their incorporation in the Opus Dei Prelature.⁸⁵ The ordinary spiritual care of these faithful is under the jurisdiction of the diocesan bishop, as for all the other faithful in the diocese.⁸⁶ The jurisdiction of the Prelate of Opus Dei is limited to that which refers to the specific aim of the Prelature, his power of governance being different, *ratione materiae*, to the one of the diocesan bishop.⁸⁷ It is worth noting, as does M. Costalunga, that "the fulfilment of the specific ascetic, formative and apostolic commitments which they [lay faithful] have freely undertaken, by means of the contract by which they dedicate themselves to the purpose of the Prelature [. . .] are, in themselves, outside of the competence of the local Ordinary."⁸⁸

Of course, as personal prelatures in general, and the Opus Dei Prelature in particular, are established by the Apostolic See as, particu-

that says: "Singulis in circumscriptionibus, auctoritates Praelaturae eurent ut eiusdem fideles bene cognoscant normas directivas pastorales a competenti ecclesiastica Auctoritate territoriali, nempe a Conferentia Episcopali, ab Episcopo dioecetano, etc., statutas, ut unusquisque, iuxta propria adiuncta personalia, familiaria et professionalia, eas ad effectum deducere et in ipsis cooperari valeat."

⁸³See Decl. *Praelaturae Personales*, n. IV, b). The faculties granted by the Prelate are limited, as per n. 50 § 3 CIP: "Haec facultas audiendi confessiones, quae ab Ordinario Praelaturae presbyteris quibuslibet conferri potest, extenditur ad omnes fideles Praelaturae atque Societatis Sacerdotalis Sanctae Crucis socios secundum tenorem ipsius concessionis, necnon ad illos omnes qui in Cantibus Operis Dei diu nocturne degunt."

⁸⁴See Decl. *Praelaturae Personales*, n. V, b). CIP, n. 51 § 1 reads: "Sacerdotes presbyterii Praelaturae munia et officia ecclesiastica quaelibet, etsi cum propria conditione et munere pastorali in Praelatura compatibilia, absque Praelati Operis Dei expressa venia admittere non valent." This is completed by CIP, n. 180 as follows: "Ad erigendas ecclesias Praelaturae vel, si res ferat, ad eidem committendas ecclesias in dioecesi iam existentes, fiat singulis in casibus opportuna conventio, ad normam iuris, inter Episcopum dioecesanum et Praelatum vel competentem Vicarium Regionalem. Iis in ecclesiis, una cum normis in unaquaque conventionem statutis, servabuntur dispositiones generales dioecesis ecclesiarum saecularium respicientes."

⁸⁵See Decl. *Praelaturae Personales*, n. II, b). See also CIP, n. 125 § 2, (above, note 44).

⁸⁶See Decl. *Praelaturae Personales*, n. III, a) and n. IV, c).

⁸⁷See Decl. *Praelaturae Personales*, n. III, a) and d).

⁸⁸Above, note 72.

larized structures - manifesting both the *communio fidelium* and the *communio hierarchica* - of the People of God acting in the different dioceses, the general law demands that the prior consent of the diocesan bishop be obtained before starting the exercise of the specific pastoral activity of a prelatute in the territory of a diocese.⁸⁹ This requirement in the case of Opus Dei, and following a wish of its founder,⁹⁰ has been extended still further, for the permission of the diocesan bishop is to be obtained for the erection of each center of the Prelature.⁹¹

What is the service that the Opus Dei Prelature could render to a diocese? A very similar question was put to Msgr. Del Portillo by Pietro Monni, from *L'Osservatore Romano*. Let us reproduce the answer of the Prelate of Opus Dei:

"I could not detail here all the concrete ways of this collaboration which the priests and laity of Opus Dei give to the pastoral work of the hundreds of dioceses in which we work.

To give a general idea, I would say that the principal way in which Opus Dei collaborates with diocesan pastoral work is, as I've already stated, by promoting personal sanctity among persons of all situations and walks of life. The laity of the prelatute perform this task fundamentally through their personal apostolate carried out in the ordinary work situations and family settings. Allow me to emphasize this point, which is essential to understand well the work that we carry out. The prelatute should be like leaven which dissolves itself in the mass. Because of this, ordinarily it does not act as a group but rather by means of the personal apostolate of the laity. Furthermore, this apostolate is carried out by each one in his own civil and secular setting, with the necessary freedom, with spontaneity and personal responsibility.

This personal and capillary apostolate, difficult to quantify, bears much fruit: from individual conversions, vocations for the priesthood, vocations for the evangelization and formation of Christian families, to the gradual improvement of the social structures in which these people work. Neither must we forget the educational and social undertakings which

⁸⁹See can. 297.

⁹⁰See A. Del Portillo, *Seeking God in the World*, (above, note 73) 21.

⁹¹See Decl. *Praelaturae Personales*, n. V, 2), and CIP, N. 177 & § 1 and 2, (above, note 47).

endow society with effective instruments of human development impregnated with a Christian spirit.

As Msgr. Escrivá, full of gratitude to God, used to put it, all these benefits and many more which I cannot now describe, remain in the local Churches and represent a very effective contribution to the diocesan pastoral work. Many bishops from all over the world have also understood it in this way and are very grateful for this help.⁹²

CONCLUDING REMARKS

In spite of the length of this paper many more things could be said about personal prelatures. But I will limit my concluding remarks to two points: one concerning the hierarchical nature of personal prelatures in the context of the flexibility required by the pastoral action in our times, and the other concerning the role of the statutes laid down by the Holy See for each personal prelate.

The study of personal prelatures, from the first drafts discussed during the Second Vatican Council to their final regulation in the new Code, points to a development, *de iure ecclesiastico*, of the constitutional organization of the Church and to the setting up of a hierarchical structure with fundamental juridical similarities with other hierarchical structures, namely the dioceses.

Nevertheless, when the proposed canons were discussed two consultors suggested that personal prelatures should be counted among the associations "*non potendo essere equiparate ad una chiesa particolare*."⁹³ This same fundamental idea has been repeated by some canonists in papers not dealing directly with personal prelatures.⁹⁴

The present paper, dealing directly with personal prelatures, indicates, with the agreement of an overwhelming majority of schol-

⁹²A. Del Portillo, *Meeting the Press*, (above, note 73) 21.

⁹³*Communications*, 12 (1980) p. 276.

⁹⁴W. Aymans, "Ecclesiological implications of the new legislation," *CLS of GB & I Newsletter*, Sept. 1982, 58-60, also in *Studia Canonica*, 17 (1983) 89-92, referring to the schema of the code. See also H. Schmitz, "Die Personalprälaturen," in J. List, H. Müller, H. Schmitz, *Handbuch des Katholischen Kirchenrechts*, (Regensburg: F. Pustet, 1983) 526-529; T. J. Green, "Persons and structures in the Church: Reflections on selected issues in Book II," *THE JURIST*, 45 (1985) 40-44, summarizing the same point of view.

ars,⁹⁶ that they are hierarchical structures forming part of the constitutional organization of the Church. As it has been pointed out, the pastoral needs of our times call for a flexibility in the hierarchical structures of the Church in order to offer through the Petrine *diakonia* a service to the particular Churches.

The aforementioned objection taken in absolute terms could mean that the only possibility of organizing the ecclesiastical pastoral structures is by the establishment of particular Churches. It seems clear that such a way of thinking is contrary to the historical constitutional organization of the Church *de iure ecclesiastico*. It cannot be accepted without imposing undue conditions on the content of the *munus regendi* of the Petrine ministry and putting obstacles in the way of ecclesiastical development in the service of pastoral needs.

Regarding matters of the law, the linkage between the general law - to be found in the Code - and the particular law of each personal prelate, are the statutes or Code of particular law. These statutes are also a manifestation of the *communio ecclesiarum*, for it is through the exercise of the primatial power that the Pope shows his solicitude for all the Churches, creating a hierarchical structure for the common good of the whole Church (*PO*, 10).

As the statutes are a law of the Holy See, a law that the Holy See will give to each personal prelate, they are the guarantee that nothing in them could be against the *communio hierarchica* in which the personal prelate is inserted. In this Code of particular law each

⁹⁶See, among others: V. F. [Fagiolo], "Praelature personali," in *Dizionario del Concilio Ecumenico Vaticano II*, (a cura di S. Garofalo, Roma: Unedi, 1969) 1660; J. I. Arrieta, (above, note 1) and "L'atto di erezione dell'Opus Dei in prelatura personale," *Apollinaris* 58 (1983) 89-114; T. Bertone, "Fedeli, laici, chierici e costituzione gerarchica," in *La normativa del nuovo Codice*, (a cura di E. Capellini, Brescia: 1983) 67-107, at pp. 84-85; E. Colegiovanni, "Incardinazione ed escardinazione nel nuovo codice di diritto canonico," *Monitor Ecclesiasticus* 109 (1984) 49-57; G. Dalla Torre, "Prelato e Prelatura," in *Enciclopedia del diritto*, vol. XXXIV, (Milano: Giuffrè ed., 1985) 973-981; J. Fornés, "El perfil jurídico de las prelaturas personales," *Monitor Ecclesiasticus* 108 (1983) 436-472; De Fuenmayor, (above, notes 3 and 21); Gutiérrez, (above, note 5) and "La Costituzione Apostolica *Ut sit* e la figura giuridica della prelatura personale" *Apollinaris* 57 (1984) 335-340; J. M. González Del Valle, "Zur neuen Rechtsfigur der Personalprälaten," *Oesterreichisches Archiv für Kirchenrecht*, 34, (1983/84) 131-140; Hervada, (above, note 65); Lo Castro, (above, notes 5 and 69); Lombarda and Hervada, (above, note 5); Le Tournieu (above, notes 1 and 17); Marcuzzi, (above, note 28); Martínez-Torrón, (above, note 5); Navarro, (above, note 9); O'Reilly, (above, note 4); Rodríguez, (above, note 9); Rodríguez, and De Fuenmayor, (above, note 32); L. Spinelli, "Riflessi canonistici di una nuova struttura pastorale," in *Raccolta di Scritti in onore di P. Fedele*, vol. I, (a cura di G. Barberini, Perugia: 1984), 591-612; Stetson and Hervada, (above, note 5).

diocesan bishop⁸⁶ will find the complete set of rules delineating the particular physiognomy of each personal prelatore.

Thus the primatial power, with the assistance of the College of Bishops, establishes a personal prelatore and gives to it its particular law, and thus it is the Roman Pontiff, acting as universal Pastor and Head of the Episcopal College who fixes in the statutes the aims, the scope at the pastoral task, as well as the means to fulfill it, that he thinks fitting as a service to the Universal Church and to the particular Churches for the common good of the whole Church (*PO*, n. 10).

In fact, it seems rather natural that the first personal prelatore, a hierarchical structure created by the Council, be established to foster the teachings of the same Council. Among those teachings, particular emphasis has been given to the role and mission of the laity in the Church⁸⁷ and to the universal call to sanctity.⁸⁸ This is precisely the specific pastoral work which, constituting the charism of Opus Dei from its foundation,⁸⁹ the Supreme Pontiff has made his own to entrust to a hierarchical structure by way of the juridical transformation of Opus Dei into a personal prelatore.

Hence the special pastoral task entrusted to the Prelature Opus Dei is not the constitution of an elite group of faithful in the Church, but rather to promote the concept that every one can and should answer the universal call to sanctity, sanctifying oneself in his or her ordinary work.

⁸⁶In the case of the Opus Dei Prelature, the bishops of all the dioceses where the Prelature carries out its special pastoral work have received a copy of the "Code of particular law of Opus Dei," as the Ap. Const. *Ut sit* calls the statutes; that is, the complete set of rules laid down by the Holy See for the Prelature. It is to be presumed that the statutes of each Military Ordinariate will also be in the hands of each diocesan bishop in which diocese the Ordinariate carries its pastoral tasks, even though the general legal framework is already established in *SMC*.

⁸⁷See *Lumen Gentium*, nn. 30-38; *Apostolicam Actuositatem*, n. 2 and *passim*.

⁸⁸See *Lumen Gentium*, nn. 39-42; *Apostolicam Actuositatem*, nn. 3-6.

⁸⁹In the preamble of the Ap. Const. *Ut sit*, John Paul II, writes: "From its beginnings, this Institution [Opus Dei] has in fact striven, not only to illuminate with new lights the mission of the laity in the Church and in society, but also to put it into practice; it has also endeavoured to put into practice the teaching of the universal call to sanctity, and to promote at all levels of society the sanctification of ordinary work, and by means of ordinary work." Addressing himself to members of Opus Dei, the Pope said on August 19, 1979: "Your institution has as its aim the sanctification of one's life, while remaining within the world at one's place of work and profession: to live the Gospel in the world, but in order to transform it, and to redeem it with one's personal love for Christ. This is truly a great ideal, which right from the beginning has anticipated the theology of the lay state, which is a characteristic mark of the Church of the Council." *L'Osservatore Romano*, (Edition in English) August 27, 1979.

APPENDIX

JOHN PAUL BISHOP

SERVANT OF THE SERVANTS OF GOD FOR A PERMANENT RECORD OF THE MATTER

With very great hope, the Church directs its attention and maternal care to Opus Dei, which — by divine inspiration — the Servant of God Josemaría Escrivá de Balaguer founded in Madrid on October 2, 1928, so that it may always be an apt and effective instrument of the salvific mission which the Church carries out for the life of the world.

From its beginnings, this Institution has in fact striven, not only to illuminate with new lights the mission of the laity in the Church and in society, but also to put it into practice; it has also endeavored to put into practice the teaching of the universal call to sanctity, and to promote at all levels of society the sanctification of ordinary work, and by means of ordinary work. Furthermore, through the Sacerdotal Society of the Holy Cross, it has helped diocesan priests to live this teaching, in the exercise of their sacred ministry.

Since Opus Dei has grown, with the help of divine grace, to the extent that it has spread and works in a large number of dioceses throughout the world, as an apostolic organism made up of priests and laity, both men and women, which is at the same time organic and undivided — that is to say, as an institution endowed with unity of spirit, of aims, of government and of formation — it has become necessary to give it a juridical configuration which is suited to its specific characteristics. It was the Founder of Opus Dei himself who, in 1962, in a humble and trusting petition, asked the Holy See to grant an appropriate ecclesial configuration to the Institution, bearing in mind its true nature and theological characteristic, and with a view to a greater apostolic effectiveness.

From the time when the Second Vatican Council introduced into the legislation of the Church, by means of the Decree *Presbyterorum*

Ordinis, n. 10 — which was made effective by the *Motu proprio Ecclesiae Sanctae*, I, n. 4 —, the figure of the personal Prelatures, to carry out specific pastoral activities, it was seen clearly that this juridical figure was perfectly suited to Opus Dei. Therefore, in 1969, Our Predecessor Paul VI, of beloved memory, graciously accepting the petition of the Servant of God Josemaría Escrivá de Balaguer, authorized him to convoke a special General Congress to begin, under his guidance, the study necessary for a transformation of Opus Dei, in keeping with its nature and with the norms of the Second Vatican Council.

We ourselves expressly ordered that this study should continue, and in 1979, We requested the Sacred Congregation for Bishops, which was the competent Congregation, by virtue of the matter involved, to examine the formal petition presented by Opus Dei, following a careful study of all the relevant facts and legal data.

In carrying out the task entrusted to it, the Congregation carefully examined the matter, taking into account the historical, and also juridical and pastoral aspects. Thus, having completely eliminated all doubts about the basis, and the possibility, and the specific manner of granting the petition, it became abundantly clear that the desired transformation of Opus Dei into a personal Prelature was opportune and useful.

Therefore, We, with the plenitude of Our apostolic power, having accepted the opinion which Our Venerable Brother the Most Eminent and Most Reverend Cardinal Prefect of the Sacred Congregation for Bishops had expressed to Us, and making good, in so far as it is necessary, the consent of those who have, or think they have some competence in this matter, command and desire the following to be put into practice.

I

Opus Dei is erected as a personal Prelature, international in ambit, with the name of the Holy Cross and Opus Dei, or, in abbreviated form, Opus Dei. The Clerical Society of the Holy Cross is erected as a clerical Association intrinsically united to the Prelature.

II

The Prelature is governed by the norms of general law, by those of this Constitution, and by its own Statues, which receive the name "Code of particular law of Opus Dei".

III

The jurisdiction of the personal Prelature extends to the clergy incardinated in it, and also — only in what refers to the fulfilment of the specific obligations undertaken through the juridical bond, by means of a contract with the Prelature — to the laity who dedicated themselves to the apostolic activities of the Prelature: both clergy and laity are under the authority of the Prelate in carrying out the pastoral task of the prelature, as established in the preceding article.

IV

The Ordinary of the Prelature Opus Dei is its Prelate, whose election, which has to be carried out as established in general and particular law, has to be confirmed by the Roman Pontiff.

V

The Prelature is under the Sacred Congregation for Bishops and will also deal directly with the other Congregations or Departments of the Roman Curia, according to the nature of the matter involved.

VI

Through the Sacred Congregation for Bishops, the Prelate will present to the Roman Pontiff, every five years, a report on the state of the Prelature, and on the development of its apostolic work.

VII

The central Government of the Prelature has its offices in Rome. The oratory of Our Lady of Peace, which is in the central offices of the Prelature, is erected as a prelatic church.

The Most Reverend Monsignor Alvaro del Portillo, canonically elected President General of Opus Dei on September 15, 1975, is

confirmed and is appointed Prelate of the personal Prelature of the Holy Cross and Opus Dei, which has been erected.

Finally, we designate the Venerable Brother Romolo Carboni, Titular Archbishop of Sidone and Apostolic Nuncio in Italy, for the opportune execution of all the above, and confer on him the necessary and opportune faculties, including that of subdelegating — in the matter in question — in any ecclesiastical dignitary, with the obligation of sending, as soon as possible, to the Sacred Congregation for Bishops, an authentic copy of the act which testifies to the fact that the mandate has been carried out.

All things to the contrary notwithstanding.

Given in Rome at Saint Peter's, on the 28th of November, 1982, the fifth of Our Pontificate.

Agustine Card. Casaroli.
Secretary of State

+ Sebastian Card. Baggio
Prefect of the Sacred Congregation for Bishops

Iosephus Del Ton, *Protonotary Apostolic*
Marcellus Rossetti, *Protonotary Apostolic*