PERSONAL PRELATURES FROM VATICAN II TO THE NEW CODE: AN HERMENEUTICAL STUDY OF CANONS 294-297

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The 1983 code is not simply a revision of the earlier code. In the time between the first and the second codes profound cultural and social changes took place in human society, and the Church through the Second Vatican Council provided a pastoral vision for a renewal of ecclesial life to meet the needs of the new times. This design for renewal needs to be faithfully reflected in the law of the Church.

This objective has largely been accomplished with the new Code of Canon Law. Hopefully, contemporary canonists will be sufficiently aware of the relation between the documents of the Second Vatican Council and the new code to know how to interpret this body of legislation in the light of the council's teaching. The road traveled by the commission for the revision of the code has undoubtedly been strewn with scientific and technical difficulties, leaving more than a few doubts and differences of opinion unreconciled in its efforts to translate into legal language the teaching and wishes of the council that required it.

Among the new structures and institutions put forward by the Second Vatican Council are personal prelatures, which the code regulates in canons 294-297. The aim of this study is to offer a contribution to the understanding of these canons. We will examine the subject in five clearly defined steps: first, what was meant by "prelature" in pre-Vatican II canon law; second, what the council understood personal prelatures to be; third the work of the commission for the revision of the code through the 1977 draft of the book *de Populo Dei*; fourth, the preparation of the 1980 *Schema*; and lastly, the final stages of the elaboration of the text as we find it today in the code.

PRELATES AND PRELATURES PRIOR TO VATICAN II

The juridical figure of the personal prelature is something absolutely new. This was the general conviction of the fathers of the council, and

it was and is the common conviction of those who have written on this subject. The institution is something new because of its strictly personal, non-territorial nature, as well as for other characteristics that distinguish it from the other forms of prelatures which were known prior to the council.

The same is not true, however, of the juridical figure of prelates with personal jurisdiction. Canon 110 of the 1917 code described prelates as clerics, whether secular or religious, with ordinary jurisdiction in the external forum. At the same time only certain very concrete circumscriptions received the name of prelatures (the prelatures *nullius* of c. 319.) The jurisdiction for the military—the military vicar being a prelate—was called a vicariate when it received its definitive structure, especially after the publication of the instruction *Sollemne semper.*[1]

Even though the prelates mentioned in canon 110 were ordinarily called by another name (bishops, abbots, major superiors, etc.), nevertheless the specific name of prelate was not reserved exclusively for those who presided over a prelature *nullius.* Besides the case of the merely honorary prelates there were instances of prelates with personal jurisdiction such as the Prelate for Italian Refugees or the Prelate for Italian Immigrants.[2] These jurisdictions are non-specific and atypical. Similarly, in some countries residential bishops are commonly referred to as prelates in ordinary conversation. It is clear then that not every

[1] Sacred Consistorial Congregation, instruction *Sollemne semper,* April 26, 1951: *AAS* 43 (1951) 262-265. Before the regulation of the military vicariates the prelate of the *cappellani militum* was given various names, among them in some concordats that of military prelate. In general, however, the pastoral care of the military did not constitute a defined structure nor was mention made of military prelatures. The name *Vicario General Castrense* was common in Spain in the nineteenth century, and the military jurisdiction itself seems to have originated in Spain. Cf. M. Garcia Castro, "Origen, desarrollo y vicisitudes de la jurisdicción eclesiástica castrense," *Revista Española de Derecho Canónico* 5 (1950) 601 ff.; E. Jombart, "L'organization canonique de l'aumonerie militaire en France," *Revue de droit canonique* 3 (1953) 416 ff.; Ch. Lefebvre, "Le decret d'erection du Vicariat aux forces armées en France," *Revista Española de Derecho Canónico* 9 (1954) 429 ff.; F. A. Pugliese, *Storia e legislazione sulla cura pastorale alle Forze Armate* (Turin: Marietti, 1956). From 1952 to 1962 *Monitor Ecclesiasticus* published a series of commentaries on decrees erecting Military Vicariates in the Phillippines, Canada, Belgium, the United States, Holland, Argentina and Bolivia.

[2] Cf. Sacred Consistorial Congregation, decree *Considerando, AAS* 10 (1918) 415 ff.; idem, *Notificazione circa la costituzione di un Prelato per l'emigrazione italiana,* October 23, 1920: *AAS* 12 (1920) 534 ff. This office of prelate was supressed in 1952 with the promulgation of the apostolic constitution *Exsul familia.*

prelate presided over a prelature. In the context of the 1917 code the only prelatures were the prelatures *nullius.* In synthesis: the figure of a prelate with personal jurisdiction is not new, but the figure of a personal prelature is.[3]

In its first usage, which lasted many centuries, the term prelature did not signify the area of jurisdiction of a prelate but rather the rank of prelate achieved by a cleric.[4] Thus as it was said of someone ordained a bishop that he had attained the episcopacy, so it was said of a prelate that he had obtained a prelacy. By a transfer of language the word prelature came later to designate the area of jurisdiction of a prelate. However, this play on words became fixed only in the case of the prelates *nullius.* Thus, just as from speaking of abbots *nullius* people went on to speak of abbeys *nullius*, so in the case of the prelates *nullius* the territory over which they exercised jurisdiction came to be called a prelature *nullius.* This terminology was definitively fixed in the 1917 code so that the area of jurisdiction of a prelate of another kind—such as the Prelate for Italian Immigrants—was never referred to as a prelature.

The decretals and the 1917 code were based on a conception of the sacred hierarchy as a *series personarum*, so it was natural that the term prelature (or prelacy) should designate the rank of the person.[5] His area of jurisdiction could be quite different (diocese, abbey, church, etc.) and he received the corresponding name. The word prelature only came to designate the territory or area of jurisdiction in the single case in which there was no consolidated term for designating it, i.e., the prelature *nullius.* In light of this restricted use in law there can be no

[3] See on this subject: P. H. Hofmeister, *Mitra und Stab der wirklichen Prälaten ohne bischöfliches Charakter* (Stuttgart, 1928); E. von Kienitz, "Die Rechtstellung der gefreiten Aebte und Prälaten," *Theologie und Glaube* 25 (1933) 590-604; M. A. Benko, *The Abbot Nullius*, Canon Law Studies, 175 (Washington, 1943); L. Muller, "La notion canonique d'Abaye 'nullius,'" *Revue de droit canonique* 6 (1956) 115 ff.; P. H. Hofmeister, "Gefreite Aebtein und Prälaturen," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 50 (1964) 127-248. Although the new code says nothing about them, honorary prelates continue in accordance with the privileges, rules and traditions of the papal household. However, they fall outside of our study.

[4] "Praelatura enim est gradus honorificus cum jurisdictione in subditos. Est enim in re Communis." F. L. Ferraris, *Prompta Bibliotheca* (Bonn, 1758) 6: 166. A century later it is still used in this sense by De Angelis, *Praelectiones Iuris Canonici*, vol. 1 (Paris, 1877), p. 169.

[5] It is interesting in this regard to note that the well-known *Dictionnaire de Droit Canonique* of R. Naz includes the word "prélat," but not the word "prelature"; cf. vol. 7 (Paris, 1965), col. 175-177.

doubt that when the conciliar schemas spoke of prelatures the point of reference were the prelatures *nullius*, which were the only ones known by the name of prelature.

A closer look at this historical development is in order.

1. Historical Antecedents

Originally the word prelate was introduced to designate any ecclesiastic of a rank higher than other clerics.[6] This led to a great extension of the term which was even used in reference to pastors and archdeacons.[7] Soon, however, a distinction was made between this broad meaning of the word and its proper legal use. According to this usage a prelate was a cleric who had ordinary power of jurisdiction in the external forum.[8] Even then the variety of prelates was so great that scholars proceeded to classify them according to the extension of their authority. This was done in two ways.

First, a distinction was made between major prelates and lesser prelates. The major prelates were those who had the fullness of episcopal power (orders and jurisdiction). These were pope, primates, archbishops, and bishops. The lesser prelates were those who possessed episcopal powers to a greater or lesser degree granted by law.[9] The reference to the episcopal character of the powers came from the fact that the power of jurisdiction in which these prelates shared was the *potestas Ecclesiae* granted by Christ to the pope and bishops.[10] This public power could only be held by clerics not in episcopal orders to the degree it was granted them either by a bishop (as in the case of the vicar general or other vicars) or by the pope. Then there were lesser prelates which had arisen out of various types of exemption who

6 Ferraris, p. 166: "Praelati generatim dicuntur illi, qui aliis cum honore, et jurisdictione praeferuntur, seu praeficiuntur. Sic in re Communis."

7 Cf. F. Claeys-Bouuaert, s.v. "prelat," *DDC* 7: col. 176.

8 Abbas Panormitanus, *Secunda super Primo Decretalium Libro Commentaria, De officio ordinario, c. Cum ab ecclesiarum* (Lyons, 1531), fol. 111 v.

9 "Praelatus inferior dicitur ille qui non est Episcopus, sed est in aliqua dignitate inferiori constitutus, ac obtinuit a Sede Apostolica quaedam iura episcopalia, majora vel minora." Cardinal Petra, quoted by Bouix, *Tractatus de Episcopo* (Paris, 3rd ed. 1889) 1:552.

10 " . . . oportet animadvertere, nomine jurisdictionis in praesenti significari potestatem spiritualem ad claves Ecclesiae pertinentem, et consequenter a Christo Domino datam vel derivatam, medio Vicario suo, vel aliis Episcopis." F. Suarez, *Operis de religione pars secunda*, tract. VII, lib.II, cap. XVIII, n. 5 (in *Opera Omnia, ed nova a* C. Berton [Paris, 1959) 15: 218).

received this power from the pope.[11] However, they were not his vicars; their power was ordinary and proper, but shared *a iure* in virtue of a privilege.

Second, lesser prelates were divided into three categories according to their degree of exemption and of sharing in the power of jurisdiction. The first or lowest category was that of major religious superiors whose exemption was mainly passive. The second or middle category was made up of prelates whose jurisdiction was exempt in a given place (shrine, parish, etc.) within the territory of a diocese. The third category was that of prelates *nullius* who governed their own territory separated from any diocese. These were truly local ordinaries.[12]

Canonists of the nineteenth century had hardly anything new to add with respect to the subject of prelates. Their position can be summed up in a few brief points.

Repeating the earlier teaching, they understood lesser (as distinct from major) prelates to be clerics who were not bishops, were constituted in a lesser rank of dignity, and by privilege of the Holy See possessed certain episcopal powers to a greater or lesser degree.[13]

Lesser prelates possessed their power *a iure*, that is to say they had jurisdiction *participata a iure*. It was ordinary and proper.[14] It was not vicarious in the canonical meaning of this term, and it was quasi-episcopal.[15] It was called quasi-episcopal because of its episcopal nature, but without the extension of the power proper to residential bishops.

11 Quoting Cardinal Petra almost literally Bouix writes: "Optima ratione nuncupantur hi (qui non ex natura, sed privilegio obtinent quaedam episcopalia iura) Praelati inferiores, habita ratione ad gradum Episcoporum. Cum etenim potestas ordinis a charactere procedat, incommunicabilis est non Episcopis: sed jurisdictionis, hoc est jus episcopalis jurisdictionis, communicatur a Summo Pontifice, jurisdictionis ecclesiasticae fonte, istis inferioribus Praelatis." *De Episcopo*, p. 532.

12 See among others, Card. Petra, *Commentaria ad Constitutiones Apostolicas*, II (Roma, 1706), const. VI Alexandri III, sect. I, pp. 126 ff.; Benedictus XIV, *De Dioecesana* (Ferrariae, 1760), t. I, lib. II, cap. XI, p. 66.

13 See for example, G. Sebastianelli, *Praelectiones iuris canonici, De Personis* (Roma, 1896), p. 350; Z. Zitelli, *Apparatus seu Compendium Iuris Ecclesiastici*, 2nd ed., by F. Solieri, *Pars I, De personis* (Roma, 1907), p. 155.

14 Cf. M. Bargilliat, *Praelectiones iuris canonici*, 25th ed. (Paris, 1809), p. 592; L. Rivet, *Institutiones Iuris Ecclesiastici Privati*, vol. I (Roma, 1914), p. 401; A. Tilloy, *Traité theorique et practique de droit canonique*, vol. 1, (Paris, 1895), p. 225. In an explicit or implicit way the canonists of that time concur in this point.

15 This is common teaching. See, for example, Bargilliat and Sebastianelli, cited above; G. Spennati, *Istituzioni di diritto canonico universale*, 2nd printing (Naples,

Many authors recognized the classification of prelates into three categories as set forth above.[16] The third category, prelates *nullius*, were local ordinaries.[17] They had, with a few exceptions, the same rights and obligations as bishops.

The treatise *de prelatis inferioribus* was included within the treatment of the hierarchy of jurisdiction. The power of lesser prelates was considered a participation in the power of the Roman Pontiff granted by law.[18]

Nineteenth century canonists introduced into canon law the systematic method common to the jurists of the time. They divided their treatises into branches of the law. Prelates were included within the constitution (*Verfassung*) or constitutional law (*Verfassungsrecht* or *Ius Constitutionalis*) of the Church, while religious institutes and associations were included in the administration (*Verwaltung*) or administrative law (*Verwaltungsrecht* or *Ius Administrationis*).[19]

1886), pp. 124 ff.; H. J. Icard, *Praelectiones Iuris Canonici*, 7th ed., vol. 1 (Paris, 1893), p. 385; Gomez Salazar, p. 258; C. Lombardi, *Iuris Canonici Privati Institutiones*, 2nd ed., vol. 1 (Rome, 1901), pp. 288 ff.; Zitelli, p. 156; Rivet, p. 406; S. Aichner, *Compedium Iuris Canonici*; 8th ed. (Brussels, 1895), p. 403; Tilloy, p. 225.

[16] See for example F. X. Wernz, *Ius Decretalium*, t. 2, *Ius Constitutionis Ecclesiae Catholicae* (Rome, 1899), p. 1018. According to Wernz prelates *nullius* exercise full episcopal power of jurisdiction. Wernz mentions in a footnote a fourth category, that of the military vicars: "Quodammodo quartam quandam speciem Praelatorum inferiorum constituunt illi Vicarii castrenses sive Cappellani maiores quorundam exercituum, v.g. in Austria et Hispania, qui propriam quidem *quasidioecesim* a diocesibus Episcoporum *separatam non* habent, sed in personas sibi subiectas et a potestate Episcoporum exemptas *plena fere iurisdictione* episcopali potiuntur." Before and after him other authors wrote of military vicars and tried to include them in the second category. This variation in criteria is due to the fact that according to the differences of time and place the situation of the military chaplains was different. Nevertheless, Wernz' position in this matter was closer to the mark than that of those who tried to include them in the second category. It is clear that a personal structure did not fit in the mental schemes of these authors. In fact, as can be seen from the definition of Wernz, the military vicariates of the countries mentioned were of the same rank as the prelatures *nullius*. Today we would speak of the military vicariates as being personal prelatures.

[17] Cf. Zitelli, p. 156; Lombardi, pp. 288 ff. This point is not disputed by any author.

[18] Cf. Tilloy, p. 213. This writer, following the common teaching, asserts that those ecclesiastical persons who share to a certain degree in the papal jurisdiction are patriarchs, primates, metropolitan bishops, legates and lesser prelates. Among the latter vicars and prefects apostolic, and prelates and abbots *nullius* are included in the ranks of the hierarchy of jurisdiction as auxiliaries of the pope (cf. p. 223).

[19] Cf. Wernz; J. B. Saegmueller, *Lehrbuch des katholischen Kirchenrechts*, vol. 2 (Freiburg, 1902), pp. 350 ff.; Scherer, *Handbuch des Kirchenrechtes*, vol. 1 (Graz, 1886),

Thus from the time that this question began to be examined until just prior to the 1917 code the common teaching considered prelacy as a rank within the power of jurisdiction (quasi-episcopal) and belonging to the hierarchical constitution of the Church.

2. The 1917 Code

Canon 110 of the 1917 code repeats the usual definition of a prelate: a prelate *proprio nomine* is that cleric who has ordinary jurisdiction in the external forum. This canon was located in the first part of Book II, under the title *de clericis*, which indicates that prelates were seen from the point of view of the constitution of the Church, since according to c. 107 "by divine institution in the Church there are clerics distinct from laity, although not all clerics are of divine institution; both clerics and laity may be religious." This is the same as saying that the constitution of the Church is hierarchical. This hierarchical constitution is of divine law, but it allows for development by human law. One of the hierarchical juridical figures of man-made law is that of the prelate. Religious as such do not belong to the hierarchical constitution of the Church: they can be clerics or lay persons.

The first part of Book II was divided into two sections, one of which (*de clericis in specie*) dealt with the ecclesiastical hierarchy in two titles: supreme authority in the Church and those who share in it; and episcopal authority and those who share in it. Lesser prelates were studied in the first of these titles (Title VII, chapter X, cc. 319-329). Under this title the 1917 code spoke only of prelates *nullius*, subdivided into abbots and prelates *nullius* according to whether their church is abbatial or prelatic (c. 319). The code did not mention prelates of the second (middle) category nor did it use the word prelate in reference to those of the lowest category, leaving only the generic reference of c. 110.[20]

Canon 319 of the 1917 code used the word "prelature" to refer to the territory presided over by a prelate *nullius*. As a consequence of this,

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n. 76, pp. 422 ff.; P. Hinschius, *System des katholischen Kirchenrechts*, vol. 2 (Berlin 1878; photocopy edition, Graz, 1959), n. 96, pp. 343 ff.; E. Freidberg, *Lehrbuch des katholischen und evangelischen Kirchenrechts*, 2nd ed. (Leipzig, 1884), n. 72, pp. 140 ff.

[20] Authors writing after the 1917 code follow this line. See, for example, A. Toso, *Ad CIC commentaria minora*, vol. 2 (Rome, 1922), p. 142; E. F. Regatillo, *Institutiones Iuris Canonici*, vol. 1 (Santander, 1951), p. 313; Wernz-Vidal, *Ius Canonicum*, vol. 2, *De personis*, 3rd ed. (Rome, 1943), p. 710. They usually explain the absence of any mention of prelates of the second category saying that they are regulated by particular or special law.

when other kinds of prelates were made (for example the Prelate for Italian Refugees, and the Prelate for Italian Immigrants) the expression "to create a prelate" was used, while in the apostolic constitutions erecting territories *nullius* it was commonly said that a prelature was erected. In other words, prelatures were prelatures *nullius*.

Something new was introduced by the 1917 code (c. 323), namely the extension to all prelates *nullius* of the powers and rights of residential bishops in their own dioceses. Exception was made, however, of prelatures made up of fewer than three parishes. These were governed by their own statutes and their prelates could have or not have the rights and obligations of bishops, depending on their particular law (c. 319, §2).

Prelates constituted a rank of the ordinary ecclesiastical hierarchy with power participated *a iure* from the Roman Pontiff. This was the power of jurisdiction as defined in canon 196, and it was participation in this power in the external forum that made a cleric a prelate (c. 110).

Canon 198 established who were ordinaries. It distinguished between local ordinaries and simple ordinaries. Prelates *nullius* were placed in the first category. This was not due to the fact of the territoriality of their jurisdiction, but to the degree and extension of their jurisdiction.

Finally, it is interesting to point out that the 1917 code which so often spoke of exemption with respect to religious as well as of different places and institutions, did not use this word with respect to prelatures *nullius*. They had their own territory, separate from any diocese, but this was not termed exemption. A prelature *nullius* constituted an autonomous territorial reality. It had the same relation with the dioceses as the dioceses among themselves. By not speaking of exemption but of its own territory the 1917 code placed prelatures *nullius* under the same regulations as apostolic prefectures and vicariates since they were territories whose prelates had the same powers and the same obligations as residential bishops (cf. c. 294 of the 1917 code). At the same time all these figures, while not dioceses, were assimilated to them by the 1917 code in everything that had to do with the jurisdiction of the prelate: it was the same as that of residential diocesan bishops, unless the Holy See determined otherwise in particular cases. Another prelate considered by the law equivalent to a diocesan bishop (in conditions similar to those mentioned above) was the apostolic administrator constituted in a stable way (cf. cc. 314 and 315).[21]

[21] In addition the equivalency is established from the fact that all these prelates are local ordinaries.

After the promulgation of the 1917 code there was a transformation in the sense and meaning of prelatures *nullius*. Although more properly characterized by being a territory set apart rather than as being exempt, they still had the flavor of being something privileged and exempt. Generally they were small territories which belonged to a diocese and were separated from it by a papal privilege (particular law) in order to exempt the territory and the prelate from the jurisdiction of the diocesan bishop. The flavor of exemption was further due to the presumption *in iure fundata* in favor of the bishop, that in case of doubt about the existence of the prelatic title or its extension, the title and the pretended extension of jurisdiction did not exist and the burden of proof was on the prelate.

Later the juridical figure of the prelature *nullius* began to change its character and became truly an instrument in the pastoral organization of the Church. The fact is the Holy See began to use this figure to create ecclesiastical circumscriptions for different reasons in Catholic countries. Generally, it was to erect a mission territory without using the formula of the apostolic prefecture or vicariate. In these cases it was normally a question of dividing a diocese that could not be adequately taken care of because of the expanse of territory. Even then, some prelatures were as large as several dioceses in some countries.[22] With the passage of time and having fulfilled their evangelizing mission some of these prelatures became dioceses. In these cases it was not possible to speak of exemption even in the improper sense of the traditional prelatures *nullius*, nor did the term privilege apply.

These were non-exempt prelatures *nullius* with the autonomy common to dioceses, apostolic vicariates and prefectures whose proper law was not a privilege but particular law. Nearly all canonists realized this and no longer spoke of exemption. Wernz-Vidal was one of the first manuals to point out that given the direction they had taken prelatures *nullius* belonged to the normal life of the common law of the Church.[23]

Another use that was made of the prelature *nullius* was the erection as a prelature *nullius* of an interdiocesan body of priests in the *Mision de France*. Although quite different, it has great pastoral importance. This prelature was neither exempt nor the holder of a papal privilege; it had its own particular law composed of the Apostolic Constitution

[22] Cf. E. von Kienitz, "Die Rechtstellung der gefreiten Aebte und Prälaten," *Theologie und Glaube* 25 (1933) 590 ff.

[23] Cf. Wernz-Vidal 2:710.

Omnium ecclesiarum and the *Loi propre.*[24] A transformed version of these prelatures became Vatican II's point of departure for personal prelatures.

3. *Commentators on the 1917 Code*

In the period following the promulgation of the 1917 code canonists limited themselves to setting forth the fundamental points of the code with respect to the figure of prelates and prelatures *nullius.* In order not to be repetitious, only a few points of greater interest will be indicated.

Commentators still divided prelates into three categories which they considered to continue to exist even though some pointed out that only the prelates *nullius* belonged to the common law. They came to form part of the normal way of distributing or organizing the ecclesiastical hierarchy. While prelatures *nullius* were termed part of common law, religious were referred to in terms of special law. The idea of exemption as applied to prelatures *nullius* underwent a change of meaning to such a degree that in fact one can no longer speak of exemption in this regard.

The power of the prelates is understood as being quasi-episcopal (using this or another similar expression) and proper.[25] Nevertheless, some writers called it vicarious rather than proper in as much as it derived from the Roman Pontiff.[26]

Commentators unanimously considered prelatures *nullius* structures belonging to the ecclesiastical hierarchy. Thus, for example, Mörsdorf studied them in the section dealing with the constitution of the Church (*Kirchenverfassung*), while religious were treated in a different section

[24] *AAS* 46 (1954) 567-574. On the *Mision de France* see E. Jombart, "La reorganization actuel de la Mision de France," *Revue de Droit Canonique* 4 (1954) 420 ff.; J. Denis, "La Prelature nullius de la Mision de France," *L'Année Canonique* 3 (1954-1955) 27 ff.; J. Faupin, *La Mission de France, Histoire et Institution* (Tournai, 1960).

[25] Cf. M. Da Casola, p. 237; M. Falco, *Corso di diritto ecclesiastico*, 2nd ed., vol. 1 (Padova, 1933), p. 140; idem, *Introduzione allo studio del CIC* (Turin, 1925), p. 184; Toso, p. 144; Badii, p. 194; Blat, pp. 333 ff.; A. Conte a Coronata, *Institutiones Iuris Canonici*, vol. 1, 4th ed. (Turin, 1950), p. 456; A. Retzbach, *Das Recht der katholischen Kirche nach CIC* (Freiburg, 1963), p. 66; E. Eichmann, *Lehrbuch des Kirchenrechts*, vol. 1 (Paderborn, 1934), pp. 254 ff.; Regatillo, p. 314; D. M. Prümmer, *Manuale Iuris Canonici*, 3rd ed. (Freiburg, 1922), p. 159; A. Vermeersch-I. Creusen, *Epitome Iuris Canonici*, vol. 1, 7th ed. (Rome, 1949), p. 345; I. Chelodi, *Ius Canonicum de Personis*, 4th ed. (Venice, 1957), p. 314; K. Mörsdorf, *Lehrbuch des Kirchenrechts*, vol. 1 (Paderborn, 1964), n. 70; Del Giudice, *Instituzioni di diritto canonico*, 3rd ed. (Milan, 1936); idem, *Nozioni di diritto canonico*, 11th ed. (Milan, 1962).

[26] Cappello, p. 340; Della Rocca, *Diritto Canonico* (Padova, 1961), p. 221; F. M. Marchesi, *Summula Iuris Canonici*, vol. 1 (Alba, 1954), p. 190.

(*die klosterliche Verbande*) and associations were dealt with in still another category (*kirchliche Vereine*).[27] Those who followed a systematic method included them in the hierarchical organization of the Church. Such a method placed associations in another category.

In making comparisons between prelatures and dioceses[28] or between prelates and residential bishops[29] expressions such as *assimulantur, aequiparantur* (and even in some cases *plenissime aequiparantur*), *ad instar*, analogous, similar and other such words were used. In this sense Mörsdorf defined prelatures as "territorial corporations similar to a diocese" (*bistumsahnliche Gebietskorperschaften*).[30] This terminology later had a great influence on the work of the Commission for the Revision of the Code of Canon Law.

Overview of Personal Prelatures According to Vatican II

It will be helpful to begin by summarizing key developments resulting from Vatican II before examining the details. The road leading up to the decree *Presbyterorum ordinis* shows that a basic concern of both the bishops and some members of the Roman Curia was the distribution of the secular clergy.[31] However, under this heading two questions were mixed together for which the council fathers tried to find a solution: (a) the numerical and geographical distribution of clergy, for which new ways were needed to achieve a more equitable distribution of the secular clergy among the different territories of the world; and (b) the distribution of what could be called "specialized" secular clergy, i.e., setting apart certain priests necessary for covering the needs of a specialized pastoral ministry directed towards social groups which require different kinds of help.

[27] Book Two of the first volume of his *Lehrbuch* (*Personenrecht*) is divided thus: "Erster Teil, Die kirchliche Hirtenschaft, I. Abschnitt, Die kirchliche Hirtenschaft im Allgemein; II. Abschnitt, Die Kirchenverfassung" and within this, n. 70, "Die gefreiten Abte und Pralaten; Zweiter Teil, Die klosterlichen Verbande; Dritter Teil, Von den Laien, insbesondere den kirchlichen Vereinen." This corresponds to the 1964 edition published while Vatican II was in progress.

[28] Cf. Cappello, p. 338; Falco, p. 139.

[29] Cf. Toso, p. 147; Del Giudice, *Instituzioni*, p. 132; Cappello, p. 340; Della Roca, p. 321; Falco, *Corso*, p. 139; idem, *Introduzione*, p. 184; Vermeersch-Creusen, p. 345; Chelodi, p. 314.

[30] Lehrbuch, n. 70.

[31] For the evolution of the text of the decree *Presbyterorum ordinis*, see: A. Favale, "Genesi storico-dottrinale del paragrafo 28 di LG e di PO," in *I sacerdoti nello spirito del Vaticano II* (Turin, 1969), pp. 17 ff.; G. Caprile, *Il Concilio Vaticano II* (Rome, 1966-68).

Addressing itself to these needs *Presbyterorum ordinis*, called for the reform of the norms governing incardination and for the creation of structures such as international seminaries, special dioceses and personal prelatures to facilitate not only a more equitable distribution of clergy but also for carrying out specialized works of apostolate.

In 1966 Pope Paul VI carried out the wishes of the council by means of the motu proprio *Ecclesiae Sanctae*. In Part I, 4 he established a basic juridical statute for personal prelatures.[32] At the same time he added the possibility of including laymen and women in the work of these prelatures. The following year he also issued another document of great importance for the correct understanding of the nature of these new institutions, the apostolic constitution *Regimini Ecclesiae universae*.[33]

A long and difficult road had to be traveled from 1966 until the promulgation of the new code with respect to the juridical figure of personal prelatures. It required an exact and rigorous understanding of the mind of the council with regard to the nature and juridical statute of these prelatures. It is worth our taking a little time to study the teaching of the council on this subject, since it established the norm to be followed in later legislation and continues to be the norm for interpreting the legislation of the new code.

1. The Text of the Council on Personal Prelatures

Personal prelatures came up in the first schema *de distributione cleri* in 1961, during the preparatory phase of the council.[34] They were mentioned as an alternate form of territorial prelatures (*cum aut sine territorio*) erected to carry out a specialized pastoral ministry. There was a clear allusion to the prelature *nullius* the *Mision de France*.

The differences between personal prelatures and ordinary territorial prelatures in this document can be reduced to two things.

a. The manner of specifying the powers of the prelate. Since in each of the new prelatures the quasi-episcopal powers of the prelate could be different, in those whose purpose would be the carrying out of some specialized pastoral work the prelate should have those powers (*participata a iure* from the Roman Pontiff) fitting and necessary for the pastoral work to be engaged in.

b. Relation of prelature to people. In the case of personal prelatures not only would having its own people (separated from the diocese) not be of the essence of the prelature, but the people who were to be the object of the special pastoral care would not be separated from the diocese.

[32] *AAS* 58 (1966) 760-761.

[33] *AAS* 59 (1967) 901. N. 49 gives the Sacred Congregation for Bishops competency in all matters regarding personal prelatures and the appointment of their prelates.

[34] Cf. *Acta et Documenta Concilio Oecumenico Vaticano II apparando*, series II, 1/1: 564.

In 1963 the council fathers received the schema *de clericis* at the end of which there was included an *Exhortatio de distributione cleri* in which once again prelatures *cum vel sine territorio* were called for, but without reference to any particular institution except for a generic allusion (*exemplo usa recentium inceptorum*).[35] From this moment on the pastoral horizons of personal prelatures continued to widen until reaching their final definition. In the 1964 *Schema decreti de Sacerdotibus* the reference to prelatures *cum territorio* disappeared completely.[36]

Yet it is on the basis of the analogy with territorial prelatures (*nullius*, according to the 1917 code) that the nature and general principles of the juridical statute of personal prelatures were set forth in n. 10 of *Presbyterorum ordinis*. There are three requirements: *in bonum commune totius Ecclesiae, modis pro singulis inceptis statuendis*, and *salvis semper iuribus Ordinariorum locorum*.[37] Let us examine each of these.

a. The expression *in bonum commune totius Ecclesiae* must be understood in relation to the adjective *totius* which gives it a precise meaning. Every law should be directed to the common good of a given society, and canon law should be ordered to the common good of the Church. If the conciliar text had spoken only of the *bonum commune Ecclesiae* it would have added little or nothing to the meaning of the text; it would have been superfluous. The adjective *totius* gives it a specific meaning, namely that these personal prelatures put forward by the council are intimately bound to the universal Church. They are

[35] *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, 3/4: 844-845.

[36] Ibid., p. 848.

[37] With respect to personal prelatures the following articles are helpful: J. L. Gutierrez, "De praelatura personali iuxta leges eius constitutivas et Codicis Iuris Canonici normas," *Periodica* 72 (1983) 71 ff.; G. Lo Castro, "Le prelature personali per lo svolgimento di specifiche funzioni pastorali," *Il Diritto Ecclesiastico* (January-June 1983) 85 ff.; P. Rodriguez and A. Fuenmayor, "Sobre la naturaleza de las Prelaturas personales y su insercion dentro de la estructura de la Iglesia," *Ius Canonicum* 24 (1984) 9 ff.; R. Navarro, "Las prelaturas personales en el derecho conciliar y codicial," *Estudios Eclesiasticos* 59 (1984) 431 ff.

formal ways of organizing the pastoral work proper to that structure of the Church to which has been entrusted the common good *totius Ecclesiae*, that is to say the pope and the bishops (in what pertains to the hierarchical mission of the Church), and the people of God seen in its universal dimension as an active part of the *Ecclesia universa* (as it relates to the common priesthood of the faithful). In other words, personal prelatures are specific organizational forms of the ordinary hierarchy, or the composite hierarchy-laity.

b. The second requirement (*modis pro singulis inceptis statuendis*) refers the regulation of each personal prelature to the particular law of each one (what the new code, c. 295, §1, calls their statutes). This is because of the variety of prelatures that can be created. At the same time it implies that when dealing with this juridical figure in the common law the legislator should stick to the level of general principles, setting down only the characteristics common to all. As a result the juridical statute of each personal prelature will be made up of the norms of common law and the norms of the particular law given to it. In these cases we are not dealing with a law given to an individual entity nor with a privilege, as was the case with the prelatures *nullius* in the old law. As we have seen, under the 1917 code modern prelatures *nullius* evolved in the direction of having their own statutes. They were neither exempt nor in a position of privilege and were pastoral in purpose. Personal prelatures, with some characteristics in common and others different, have arisen from this development of the prelatures *nullius*.

c. The third requirement (*salvis semper iuribus Ordinariorum locorum*) presupposes that personal prelatures leave untouched the jurisdiction of the territorial ordinary of the places where they carry out their activity. This means that there is no exemption of any kind and that neither a part of the territory nor a part of the *populus christianorum* is withdrawn from the jurisdiction of the territorial ordinary. His jurisdiction is undiminished. Since both the territorial ordinary and the personal prelate are equally ordinaries, the relationship between them can be formulated in several different ways. Their jurisdiction can be cumulative; the jurisdiction of the prelate can cover matters that do not fall under the ordinary competence of a territorial ordinary; or there could be other formulas that the Holy See might determine (such as formal agreements between the two ordinaries).

2. The Image of Personal Prelatures as Drawn by Vatican II

The data and implications provided us by the conciliar text, taken together with the earlier common doctrine on prelatures, produce an "image" of this new figure at the beginning of the work of integrating it into the new code. A key element in this work of legislative workmanship is the motu proprio *Ecclesiae Sanctae* of Paul VI. Part I, n. 4 developed this figure still more and offers us an authentic interpretation of the conciliar text.

One of the characteristics that appears most clearly in the prelatures put forward by the council is their analogy with dioceses (particular churches). In the case of the territorial prelatures (formerly *nullius*) this analogy was quite clear. The only difference from a diocese was based on the fact that the prelate possessed his jurisdiction not by divine law but *a iure participata* from the Roman Pontiff. Territorial prelatures were similar to apostolic prefectures, vicariates and administrations in the fact that they all received their jurisdiction (by participation) from the Roman Pontiff, although this jurisdiction was ordinary in the case of the prelature and vicarious in other cases. All these institutions are considered juridical forms of the particular church by the 1983 code.

The differences between a diocese and personal prelatures *ad peculiaria opera pastoralia perficienda* are more salient since these prelatures are not particular churches, but rather a pastoral structure whose nature is quite different although with evident analogous similarities. In some cases, for example that of a personal prelature with the ordinary care of souls, the difference lies, both from a juridical and from a theological point of view, only in the fact that the jurisdiction is cumulative. In other cases the differences would be more obvious. However, it is important to point out that this variety does not affect in any way the fundamental nature of the prelature or of the prelate who presides over it. What is specific and essential to the prelate is his quasi-episcopal jurisdiction. Translated into present day terms this means that the elements that specify a prelature, namely the combination of bonds and juridical relations that go to make it up, are not something special; they are of the same nature as those that go to make up the Church as instituted by divine law and the forms legitimately established by man-made law. They are bonds that emanate from the constitution of the Church. Herein lies the analogy with the particular church. But the prelature does not have the extension or the inclusiveness proper to the particular church: it is not a particular church. Thus the difference. Let us examine this point more closely.

a. The prelate and priests of personal prelatures

The older canonists, as we saw, taught that the power of a prelate

with jurisdiction was *vere episcopalis*, although not as extensive as that of the diocesan bishop. The jurisdiction or *potestas clavium* (*potestas publica ecclesiae*) granted by Christ to the pope and the bishops is received by the prelate (whether a bishop or not) *a iure* from the Roman Pontiff. Clearly it is not proportionately so great as the power received *a iure divino* by diocesan bishops, but it is the same. In other words, it is the sole same jurisdiction but with a difference of areas of competence. In a wider sense the prelate shares *a iure* in the *cura animarum* or *munus pastorale* entrusted by Christ to the pope and the college of bishops to the extent indicated by the common law and the particular law (of each prelature) granted by the Holy See. It is an organ of the constitutional organization of the Church and of its *pastorale munus.*

Priests are bound to the prelate and to the personal prelature by incardination and the title of service of the prelature (a historical holdover that continues in c. 295 of the 1983 code).[38] The priests have bonds of priestly fraternity among themselves and of mutual cooperation with the prelate in carrying out the *munus pastorale* according to the sacrament they have received, which makes them sharers in the episcopal order.[39] They are bound to the prelature by the same bonds of subordination, coresponsibility and cooperation that bind priests incardinated in a diocese to one another and to their bishop. The priests of a personal prelature form a presbyterium which in its internal structure is the same as that of a diocese.

b. The lay faithful of personal prelatures

We will leave out of consideration personal prelatures whose purpose is merely that of achieving a better distribution of clergy. The relation of the laity (*populus christianorum*) to the personal prelature can take on various forms, although in no case are we dealing with a body of lay faithful separated from the diocese or withdrawn from the jurisdiction of the diocesan bishop. This is one of the essential characteristics of personal prelatures. If we examine the text of the council and that of Paul VI in *Ecclesiae Sanctae* it is clear that there can be two kinds of relation: the laity can be the recipients of the pastoral

[38] As authors have pointed out and as is shown by the new code incardination by itself is a bond of service. Therefore the title of ordination has lost its meaning. Cf. J. Herranz, "El nuevo concepto de incardinación," *Palabra*, 12-13 (1966) 26 ff.; also, E. Colagiovanni, "Incardinazione ed escardinazione nel nuovo Codice di Diritto Canonico," *Monitor Ecclesiasticus* 109 (1984) 49-57.

[39] Cf. *Lumen gentium*, 28; *Presbyterorum ordinis*, 7-9.

ministry of the prelature; or they can be active coparticipants in this pastoral work.

In the first case the prelature will carry out its pastoral work among the faithful subject to its jurisdiction according to different formulas of cooperation and relation worked out with the territorial ordinary. The specification and determination of who constitute the faithful over whom the prelate will exercise his pastoral mission should be defined *a iure* for each prelature according to its special pastoral mission. In some cases the criteria might be the special conditions or circumstances of the faithful, such as the case of a military vicariate erected as a personal prelature. In other cases it will be a particular pastoral need which is defined *a iure.* In still other cases, however, it might be a question of a set of criteria set forth by law which delineate the spheres of activity of these pastoral structures.

The faithful, as the beneficiaries of the pastoral ministry of the personal prelature, can be in one of two different situations vis-à-vis the prelature. In the first case, they are linked to the prelature in the same way they are linked to a diocese. For example, in the case of a personal prelature for the military all military personnel and their families would constitute its faithful in a manner similar to a diocese. In this case the faithful are bound *a iure* to the prelature and fall under the jurisdiction of the prelate the same as the faithful of a diocese, by the bond of *communio*. This *communio* is an organic structure that needs a juridical form. It implies subordination to the jurisdiction of the prelate, a relationship of mutuality between the ministerial priesthood and the common priesthood,[40] coresponsibility of all the faithful (prelate, clergy and laity) in working for the ends of the prelature, and bonds of Christian fraternity among all. In prelatures of this kind there is no bond other than that of the *communio ecclesiastica*, the same bonds that unite the clergy and laity of a diocese. They are a specific juridical form of the *communio* as an organic structure.

In the second case the faithful can enter into the orbit of the pastoral activity of a personal prelature without any bond to the prelature. In this case the bond is limited to the right of the faithful freely to use the means that the prelature makes available to them. Each of the faithful has a fundamental right freely to choose the pastoral helps he or she prefers (a right enshrined in canons 213 and 214 of the new code).

[40] E. Corecco, "Reflessione giuridico-instituzionale su sacerdozio comune e sacerdozio ministeriale," *Popolo di Dio e Sacerdozio* (Padova, 1983), pp. 80-129.

Thus, there is no bond other than those proper to the condition of being a member of the faithful.

In reflecting on the conciliar text we have examined the link between a personal prelature and its faithful from the point of view of the faithful being the beneficiaries of its pastoral work. But this is insufficient since the council itself highlighted the active role of the laity in the mission of the Church.[41] The Church is not just the hierarchy (bishops, priests and deacons) with the laity as the beneficiaries of hierarchical action, and subject to it. It is the entire people of God in which everyone, each according to his or her own proper state (clerical or lay) is co-responsible for the salvific mission of the Church. A diocese is a *portio populi Dei* which is a unified whole composed of bishop, clerics and laity all of whom are coresponsible for its mission. The same thing is true of territorial prelatures.

Is the case of personal prelatures different? The answer is clearly no. Except in the case of those that do not have a direct mission towards the faithful (i.e., those that are set up exclusively for the distribution of the clergy), there is no reason for viewing them as a clerical phenomenon.[42]

In the case in which the faithful are linked to a personal prelature with the ordinary care of souls the active participation of the laity is based on the bond of the *communio* which brings with it the coresponsibility of all faithful and the need to articulate the mutual responsibility of the ministerial priesthood and the common priesthood with a view to achieving the ends of the prelature. By its own nature a prelature of this kind is not a clerical structure but a unified whole composed of the binomial *clerus-plebs.*

In the case of prelatures of the second type (i.e., in which the faithful towards whom it is directed are not linked to it *ex iure*), nothing prevents the active incorporation of laypeople in such a way that by its own constitutional law the prelature would be a structure composed of the unified whole *clerus-plebs.* There indeed could be an ecclesial organization to which the Holy See might entrust a *munus pastorale* that would be carried out by this unified whole *clerus-plebs* (ministerial

[41] In the theological field the contributions of Philips, Congar, Sustar, Dabin and others are justly appreciated. In the field of canon law, which is what interests us here, we can mention A. Del Portillo, *Fideles et laics dans l'Eglise* (Paris, 1980).

[42] This is the fundamental mistake made by J. Manzanares in his article "De praelaturae personalis origine, natura et relatione cum iurisdictione ordinaria," *Periodica* 69 (1980) 387 ff.

priesthood and common priesthood) organically structured.[43] The universal Church (and also the particular church) by its constitution is a corpus (*Corpus Christi*) which is organically structured, in which all the members are active and coresponsible for its salvific end, each according to his or her own condition or state (i.e., the organic cooperation of the ministerial priesthood and the common priesthood).[44] Personal prelatures as put forward by the council belong to the constitution of the Church, although they are created by human law. Therefore, while there can be structures composed solely of clerics, there can also be structures based on the unified whole *clerus-plebs*, to which an *opus pastorale peculiare* may be entrusted. Since laypeople are coresponsible for the mission of the Church this holds true not only for the ordinary ways of ecclesial action but also for the special forms that this action may take, such as the personal prelatues put foward by Vatican II. There is no valid reason for thinking otherwise.

One point remains to be considered. Since this last type of prelature does not have its faithful linked to the prelature *ex iure*, how are they linked to it? First of all it is clear that the incorporation of lay people to the prelature in their capacity as active participants must be accomplished by a free act: some form of a declaration of intent. This is a juridical act that can be designated by the terms "agreement," "pact," or "contract," etc. This is one of the principal contributions of the motu proprio *Ecclesiae Sanctae* of Paul VI. This development applies the general teaching of the council on the mission of the laity to the new ecclesial form of the personal prelature.

However, this does not mean that the bond with the prelate and with the prelature is a juridical relation sustained by the will of the parties as though mutual rights and obligations flowed therefrom, as occurs in the case of voluntary associations. A prelature is a structure created by the Holy See. The prelate receives his jurisdiction (the *munus pastorale*) *ex iure* from the Holy See. Furthermore, the act of creation establishes the presbyterium and the bonds between priests and the prelate and between one another as well as with the laypeople. It also gives rise to and shapes the juridical position of the lay people and their

[43] This is the case of Opus Dei, the first personal prelature erected by the Holy See. In the apostolic constitution *Ut sit* by which the prelature was erected it is described 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 aims, of government and of formation." *AAS* 75 (1983) 432.

[44] Cf. *Lumen gentium*, 9 and 33; *Apostolicam actuositatem*, 2.

participation in the *munus pastorale* of the prelature. The whole juridical structure of the prelature is based on the common law of the Church and the particular law of each prelature, and not on the will of those who make it up. Since personal prelatures are forms of the constitutional structure of the Church created by human law, the bonds that constitute them are such as are proper to this constitutional structure, the *communio*. This is to be understood as the organic unity that comprises elements ranging from those arising from the bond of submission to the prelate to that of coresponsibility in relation to the specific end of the prelature. The bonds of the faithful incorporated to the prelature are of the same nature (although different in extension) as the bonds proper to other pastoral structures rooted in the constitution of the Church. These bonds are a particular juridical form of the *communio*.

The above rich canonical and conciliar patrimony weighed heavily on the code commission as it sought to incorporate the figure of the personal prelature into the future code. The problem was how to achieve a canonical regulation consonant with the character of a code that adequately expressed the will of the council as authentically interpreted by Paul VI in the motu proprio *Ecclesiae Sanctae* and the apostolic constitution *Regimini Ecclesiae universae*.

The Work of the Code Commission Through 1977

The Commission for the Revision of the Code of Canon Law divided the work of preparing the text of the new code among a series of study *coetus*. *Coetus* V (at first entitled *De clericis* and later *De Sacra Hierarchia*) was given the task of reworking most of the subject matter covered by Part I (*De clericis*) of Book II (*De personis*) of the 1917 code.[45]

In order to understand the direction *coetus* V took, the working plan that was followed by the commission should also be kept in mind. It should also be mentioned that some of the same subject matter was to be dealt with by the study group preparing the proposed *Lex Ecclesiae*

[45] Information on this can be found in *Communicationes* 1 (1969) 30; 3 (1971) 187 ff.; 4 (1972) 32 and 39. The *coetus* was composed of K. Mörsdorf (*relator*), P. Palazzini, C. M. Flusin, G. M. van Zuylen, H. Mazerat, R. Arrieta, J. d'Ercole, A. del Portillo, E. Eid, L. H. Pelzer, F. X. de Ayala, and G. Gallen. The dates of the various sessions are reported in the respective volumes.

Fundamentalis.[46] The starting point was the canons of the 1917 code, while the question of the systematization of the new legislative corpus was left until later.[47] The method was to rewrite some canons, to supress others, and to add new ones. Thus the 1983 code is new, but it was not created *ex novo*. Because of this certain of its elements continue to bear the imprint of the 1917 code.

Without pretending to be exhaustive we will point out some of the steps taken by the *coetus "De Sacra Hierarchia"* between 1966 and 1977 when the *Schema canonum Libri II, De populo Dei* was completed. We are interested here in the steps that deal with the evolution of the texts having to do with personal prelatures.

1. Incardination

The first topic in which the question of prelatures arose in any significant degree was that of incardination. In this regard the *coetus* had to keep several points in mind. First, incardination was to recover its original meaning of a title of service. As a consequence the new code speaks only of incardination and does not mention "title of ordination." Second, what the council called for in n. 10 of *Presbyterorum ordinis* had to be included. And third, non-religious clerical associations which had been granted the right to incardinate by the Holy See had to be included among the institutions with this faculty.[48]

The text as written was a correction of c. 111, §1. (Section 2 would become the following canon.) In this version the word *adscriptum* was replaced by incardination and a reference to personal prelatures and clerical associations which had been granted this right by the Holy See

[46] Cf. Paul VI, Allocutio, November 20, 1965: *AAS* 57 (1965) 988; also *Communicationes* 1 (1969) 41. The project of the *Lex Fundamentalis* was given to *coetus II*, composed of W. Onclin (*relator*), R. Bidagor, M. Brini, I. Ziade, A. M. Charue, N. Jubany, C. Colombo, Ch. Moller, K. Mörsdorf, D. Faltin, W. Bertrams, and P. Ciprotti. Cf. *Communicationes* 1 (1969) 29 ff.

[47] From the beginning a distinct *coetus* was planned to unify the work of the other *coetus*. This coetus (*De ordinatione systematica Codicis*) was made up of A. Stickler (*relator*), R. Bidagor, W. Onclin, S. Lourdusamy, C. M. Flusin, K. Mörsdorf, A. Dordett, F. McManus, O. Giacchi, P. Lombardia, and S. Kuttner. Cf. *Communicationes* 1 (1969) 29.

[48] Cf. *Communicationes* 3 (1971) 189-191; 6 (1974) 45. The first draft of these canons was done in the first session of the *coetus* which met October 24-28, 1966. Cf. *Communicationes* 6 (1974) 204. They were revised in the 13th session, April 9-14, 1973. Cf. ibid., p. 201.

was added.[49] Canon 111 of the 1917 code distinguished between two groups of entities with the faculty of incardinating: dioceses and assimilated circumscriptions on the one hand, and religious institutes on the other. The two groups were separated by the conjunction *vel.* In the drafts of the new code, even though particular church and personal prelature are considered to be distinct entities, they were equated in so far as both are jurisdictional structures of the ordinary hierarchy of the Church. They were distinguished and separated from the various kinds of clerical associations with the right of incardination. By a use of a combination of *vel* and *aut* this position was adopted by the final version of the 1983 code in c. 265, which reads: "aut alicui Ecclesiae particulari vel Praelaturae personali, aut alicui instituto vitae consecratae vel societati hac facultate praeditis." Through the alternating use of *aut* and *vel* together with the comma following the word *personali*, the two groups of entities with the right to incardinate are clearly differentiated: jurisdictional structures of the ordinary hierarchy which possess it by their very nature, and forms of clerical associations that may have the faculty granted to them by the Holy See.

At the beginning, nevertheless, it was thought preferable to adopt a somewhat different solution. This was to separate the canon into several sections. In the first section no special distinction was to be made between the different entities which had the faculty of incardinating. The distinctions were to be made in the subsequent sections.

Three sections were suggested: one to list the communities that are comprehended by the term particular church (the diocese and similar corporate bodies); another for personal prelatures; and still a third setting forth the rights of religious institutes and those clerical associations that possess the faculty to incardinate. This proposal reflected the common idea of making a distinction on the one hand between particular church and personal prelature, and on the other hand between them and the clerical associations with the right to incardinate. Nevertheless,

[49] Since *Presbyterorum ordinis* n. 10 speaks of "incardination" and "attach" (*addictio*) the members of the *coetus* opted to substitute *adscriptum* for *incardinatum* (a suggestion that eventually was not adopted), placing it after *oportet esse.* The outline of c. 265 was for all practical purposes fixed in this first session although its wording passed through several phases. By substituting *adscriptum* for *incardinatum* in the 1966 draft they were going back to using the term employed by c. 111 of the 1917 code, but with a different meaning. In the 1917 code *adscriptum* was used as a synonym for *incardinatum*, which was not used for reasons of Latin style, as can be seen from §2 of the same canon (*adscribitur seu, ut aiunt, "incardinatur"*). On the other hand, now by *adscriptum* is meant incardinated or attached.

it seemed better for the moment to leave the question of the right of incardination possessed by these clerical associations to the canons dealing specifically with these associations (which was being dealt with by another *coetus*), limiting the new sections to incardination in ordinary jurisdictional structures.[50]

The suggestion of adding two sections in order to distinguish between particular church and personal prelature made it necessary to establish what institutions were included in the first category and to give at least a summary discription of personal prelatures. Section 2 indicated that under the name of particular church were to be understood dioceses, prelatures and abbeys *nullius*, apostolic prefectures and vicariates, and apostolic administrations established in a stable manner. For section 2 the text of the *relator* was accepted as a working basis. This made a distinction between prelatures for the distribution of the clergy and prelatures for special pastoral work. The mind of the *coetus* was clear to the effect that a personal prelature is not a particular church. The text underwent further reworkings without, however, any substantial changes.

At this point a question was raised. In successive canons the phrase *Ecclesia particularis et praelatura personalis* was going to be repeated again and again (as it appears in canon 266, §1 of the 1983 code). The question was raised in the *coetus* whether there was some way to avoid this repetition. To achieve this there was a well known device of juridical technique: formal equivalency (*aequiparatio formalis*). When dealing with two distinct entities which are the same *in some aspects*, the law, when dealing with these aspects, mentions only one of the entities indicating that the other entity is considered the *equivalent* of the first in law. In Latin, phrases such as *aequiparatur, censeatur tamquam, habeatur pro* are used. This technique common in canon law was unanimously accepted and the wording of the draft of c. 11, §3 became:

> Ecclesiae particulari, in canonibus qui sequuntur, aequiparatur Praelatura personalis cui quidem competit sibi incardinare cle-

[50] In this same session the question of the moment in which incardination is accomplished was dealt with (c. 111, §2 in the 1917 code and c. 266 in the new code). In this connection it was rightly pointed out that in clerical religious institutes with the right of incardination the religious becomes a member of (is united to) the religious institute precisely as a religious by religious profession; he is not united to it as a cleric. He is united to it as a cleric by the reception of what makes one a cleric (i.e., enters the clerical state). Cf. *Communicationes* 3 (1971) 190.

> ricos qui mittantur ad servitium sacrum praestandum in aliqua Ecclesia particulari cleri inopia laborante aut destinentur ad peculiaria opera pastoralia vel missionalia perficienda pro variis regionibus aut coetibus socialibus, qui speciali indigent adiutorio.

It is obvious that it was a question of a juridical technique, at the moment limited to the canons on incardination.[51]

The content of these two sections later passed over to the canons dealing with ecclesial communities belonging to the constitution of the Church (ecclesiastical circumscriptions, in the language of the 1917 code). Thus they disappeared from their earlier place and the 1980 schema (the same as the final version of c. 265) contained only the first of the sections above.

2. Particular Churches and Personal Prelatures

The second session of the study group took place in 1967. At that time they began to examine the topic of ecclesiastical circumscriptions or divisions which in the 1917 code was found in the section *De clericis in specie.* The basic lines of the changes were discussed, leaving until later the drawing up of the first draft of new canons.

a. Implicit assumptions

There were some points of basic agreement which never became the subject of an exchange of opinions. They constituted the implicit basic assumptions from which the members of the *coetus* were working. In connection with our topic the following should be mentioned.

The task of the *coetus* was to move from *persons* (e.g., bishops) and territories (e.g., dioceses) to *communities* (e.g., particular church) as the central scheme of the hierarchical constitution of the Church. The communities in question were those that by divine and human law form part of the organizational structure of the Church rooted in its very constitution and consequently have at their core a hierarchical office (i.e., entities formed according to the binomial *clerus-plebs*, or hierarchical entities *sine proprio populo*). Dioceses and personal prelatures (as called for by *Presbyterorum ordinis* n. 10) are entities of this nature and therefore they fell under the competency of *coetus* V, "*De Sacra Hierarchia.*" This last point needs to be emphasized because it seems that there was common agreement among all the *coetus studiorum* and no other *coetus* dealt with this topic or sought to do so.

[51] Cf. *Communicationes* 15 (1984) 158 ff. and 187 ff.

Another point that was universally accepted was that the council had changed the meaning and importance of "territoriality" in describing the diocese as a *portio Populi Dei* entrusted to a bishop who was to be its shepherd, with the help of his presbyterate. Territory was no longer to be considered a *constitutive* (essential) element of the diocese but only a determinative element in so far as it may be determinative of the ecclesial community (the *portio*). For this reason a personal criterion for determining the ecclesial community could not be considered anomalous. Such a way of viewing the question corresponded perfectly to principle eight of the *Principia quae Codicis Iuris Canonici recognitionem dirigant* approved by the Synod of Bishops.[52]

A further point on which there seems to have been agreement from the beginning was methodology. The question was how to regulate in an uncomplicated way a variety of juridical figures: dioceses, prelatures, vicariates, etc. The 1917 code opted for giving substantive norms for each of these, producing a rather complicated body of legislation.[53] The *coetus* opted for a systematization that was much simpler and which was eventually incorporated into the 1983 code. According to this method each of these figures was defined within the general framework of the particular church; only the contents of the principal figure (the diocese) was regulated there, leaving the concrete content of the secondary figures to analogy with the norms for the principal figure. Clauses such as *nisi aliud constet, nisi ex rei natura aut iuris praescripto aliud appareat*, etc., together with other formula of assimilation or indication of equivalency were the technical tools available for the desired simplification.[54] In this way the implied content of these clauses was left to complementary legislation such as mission law. This method is typical of civil law systems of codification, and of the canon law as well. It did not intend a formal statement about the nature of each of these figures, such as whether they are particular churches or share in

[52] Cf. *Communcationes* 1 (1969) 84.

[53] Dioceses: cc. 329-468; vicariates and prefectures: cc. 293-311; apostolic administrations: cc. 312-318; prelatures: cc. 319-327. In addition, Paul VI in *Ecclesiae Sanctae* provided substantive juridical norms with regard to the personal prelatures called for by Vatican II.

[54] In passing note that these juridical tools of legislative simplification employed for a legal code whose normative language is Latin (a language that is noted for its effectiveness as an instrument for the concise expression of finely drawn distinctions) may not be immediately appreciated by those who must render the language with its precise meanings into other tongues, especially those that are not rooted in Latin.

some manner in the theological quality of particular church. This was the case even though there was unanimous agreement within the *coetus* that all these figures belonged to the hierarchical constitution of the Church. Doubts and vacillations on this point of theological and canonical doctrine were reflected in the course of the law-making process, during which a progressive clarification in this matter was achieved.

In formulating a plan for the various drafts of canons on particular churches and personal prelatures within the context of the hierarchical constitution of the Church, the starting point was the patrimony of the 1917 code and the careful consideration of what is implied in the texts of the decrees of Vatican II *Christus Dominus* and *Presbyterorum ordinis* and the complementary post-conciliar legislation, the motu proprio *Ecclesiae Sanctae* and the apostolic constitution *Regimini Ecclesiae universae*. For a proper understanding of the legislative process one should view the older ecclesiastical circumscriptions from a personalist perspective, in conjunction with the provisions and criteria of *Christus Dominus* with regard to providing pastoral care for special groups.

b. Two types of personal prelatures

With respect to personal prelatures this combination of elements led the *coetus* to propose their regulation under a double heading, as it were, which was expressed in the distinction between personal prelatures *cum proprio populo* and personal prelatures *sine populo proprio*. With this terminology it was possible to take into account what the council and its implementing legislation had accomplished, as well as the elements which had been added to the traditional figure of prelatures by applying to it the personal or corporative principle. A whole range of possible prelatures had to find their place within the new regulation. This is reflected, for example, in the appearance of military vicariates as a form of personal prelature.

Under the first heading, that of personal prelatures *cum proprio populo*, were to be regulated military vicariates and other personal prelatures that could be created by the Holy See (according to its judgment) for the ordinary pastoral care of the faithful of a certain language or nation or group of faithful united among themselves *alia ratione iure definita*. Personal prelatures which in conformity with *Ecclesiae Sanctae* I, 4 included a large group of laymen and women dedicated to the purposes of the prelature and over whom the prelate exercised jurisdiction, were also seen from this perspective. In addition, the older figure of the prelatures *nullius* now had to be redefined

in line with the personal or corporative principle. In an effort at legislative conciseness the possibility was seen of encompassing all these species under one canon dedicated to the prelatures *cum proprio populo* which was given a duplex definition: territorial prelatures (the former *nullius*), and the new kind of personal prelature.

Under the second heading, that of personal prelatures *sine populo*, were included the prelatures composed solely of clerics, whether for the distribution of the clergy or for carrying out special pastoral work.

What was the relation of these various prelatures to particular churches? At first the thought was to include the prelatures of the first type among the juridical figures of particular churches. They were seen as a type of particular church equivalent to a diocese, the latter being a particular Church *sensu pleno et perfecto*. The basis for the inclusion of prelatures among the particular churches was the presence in them of the three constitutive elements: prelate, presbyterate, and people. Thus the first drafts presented by the *coetus* spoke of particular churches as being *imprimis* the dioceses and *praeterea* the remaining figures.

Personal prelatures of the second type from the beginning were not considered to be a particular church. Nevertheless, the presence in them of a prelate and presbyterate, taken together with the fact that they belong to the hierarchical constitution of the Church, were the basis for using once again the technical device of formal equivalency (*in iure*).

In synthesis this is what the first drafts of canons made in 1967 contained. However, in the working session of March 1968 doubts were raised concerning whether apostolic vicariates and prefectures (leaving aside apostolic administrations) could be considered particular churches, even in an imperfect sense, since the communities are governed by their respective prelates *nomine Romani Pontificis*. The debate that followed gave rise to a new position with respect to the "ecclesiality" of the secondary figures. This was expressed in the draft of a canon which was accepted.[55] The distinction was no longer made that particular churches are *imprimis* the dioceses and *praeterea* the

[55] "§1. Ecclesiae particulares sunt certae Dei populi portiones, in quibus et ex quibus una et unica Ecclesia Christi exsistit, videlicet dioeceseos; quibus, nisi aliud constet, assimilantur Vicariatus Apostolicus et Praefecturua Apostolica, Praelatura et Abbatia cum proprio populo christiano atque Administratio Apostolica.

"§2. Ecclesiis particularibus in iure quoque aequiparatur, nisi ex rei natura aut iuris praescripto aiud appareat, Praelatura personalis de que in can. 111, §3."

other figures; only dioceses were mentioned. The other figures (among which were included personal prelatures *cum proprio populo*) were then assimilated to dioceses.

This draft, consequently, reserved the theological qualification of particular church to the diocese. The other figures were not presented in this sense as particular churches. However, since they retained a similarity to the diocese they could be assimilated to it *in iure*. Other personal prelatures which did not have a *proprius populus* continued to have only a partial equivalency.

The *Schema de Populo Dei* of 1977 (the first that was released for general consultation) gave a modified version of this draft canon.[56] The modifications were slight, but they implied a new position with respect to the ecclesiality of these figures. What it said was: (a) dioceses, apostolic vicariates and prefectures, and apostolic administrations *are* particular churches; (b) prelatures *cum proprio populo* are *not* particular churches but are assimilated to them (notice that *assimilantur*, which encompased all the other figures, is now *assimilatur*, which refers only to the prelatures and abbeys *cum proprio populo*); and (c) personal prelatures composed exclusively of clerics continue to be only partially equivalent to particular churches.

It is not worth the time to go into the question of the theological-canonical significance of these changes in the 1977 schema, particularly given the complexity of the theological nature of the particular church and the variety of opinions represented by the different positions. What should be pointed out, however, is that in every phase of the revision process there was a clear awareness of the fact that while personal prelatures and particular churches are conceptually different, their theological, pastoral and canonical nature allows them to be regulated in an analogous manner.

[56] *Schema canonum Libri II De populo Dei* (Vatican Press, 1977), p. 93. Canon 217. "§1. Ecclesiae particulares sunt certae Dei populi portiones, in quibus et ex quibus una et unica Ecclesia Christi exsistit, videlicet Dioeceseos, cui, nisi aliud constet, assimilatur Praelatura et Abbatia cum proprio populo christiano, Vicariatus Apostolicus et Praefecturua Apostolica atque Administratio Apostolica stabiliter erecta.

"§2. Ecclesiis particularibus in iure aequiparatur, nisi ex rei natura aut iuris praescripto aiud appareat, Praelatura personalis cui quidem competit clericos sibi incardinare qui mittantur ad servitium sacrum praestandum in aliqua Ecclesia particulari cleri inopia laborante aut desintentus ad percularia opera pastoralia vel missionalia perficienda pro variis regionibus aut coetibus socialibus, qui speciali indigent adiutorio."

The 1980 Schema

The *Schema de Populo Dei* was sent to the conferences of bishops and to other institutions which in turn sent their observations back to the commission for the revision of the code. These were examined by the study group *De Populo Dei* which was created for this purpose. The topic we are dealing with came up in the sixth study sesson, which took place March 10-15, 1980.[57] From the debates of this session came the draft text of the 1980 schema with respect to our topic.

1. Significant Changes

The debate produced significant changes, reflected in canons 335 and 337 of the 1980 schema. The two types of personal prelatures (*cum et sine proprio populo*) were reduced to a single formal reason (*ratio formalis*). This made it possible to establish with greater clarity the difference between them and particular churches.

The most decisive change was the decision to eliminate the term and category of prelatures *cum proprio populo*. From now on the only prelature assimilated to the diocese would be the territorial prelature, i.e., the first type of the prelatures *cum proprio populo* (the prelatures *nullius* of the 1917 code). Consequently, the two types of personal prelatures which until now had been dealt with differently (with a distinct regulation) could now be grouped together under the single formal reason of partial equivalency in law.

Although in the 1977 schema no personal prelature was considered *theologically* to be a particular church (although those *cum proprio populo* were assimilated to the diocese), in the 1980 schema all types of personal prelatures (from military vicariates to every kind of prelature for a special pastoral work) were considered pastoral structures of a hierarchical nature but not particular churches, nor were they assimilated to dioceses. They were merely considered *in law* to be the equivalent of particular churches for certain juridical effects. The juridical technique used to achieve this can be synthesized in three points.

[57] A report of the sessions was published in *Communicationes* 12 (1980) 278-282. The changes made in the text and the reasons for and against them can be seen there in detail. The meetings of the study group were presided over by Cardinal Felici, the president of the commission, and Bishop Castillo Lara, secretary of the commission. Consultors were: Archbishop Carli, Bishops van Zuylen and Gagnon, Revs. K. Mörsdorf, A. del Portillo, E. Eid, V. Bavdaz, W. Aymans, and P. Gismondi.

a. The phrase "statuta a Sancta Sede condita" (used in the motu proprio *Ecclesiae Sanctae*) was brought back. From these the special characteristics of each personal prelature could be indicated concretely and thus the area of jurisdiction of the prelate and his relations with the local ordinaries determined (c. 335, §2).

b. The phrase "etiam ad peculiaria opera pastoralia vel missionalia" used by the council and in *Ecclesiae Sanctae* was introduced into the definition of personal prelature in canon 337, §2.

c. The faithful of the personal prelature are called "portio populi Dei" not "*certa* populi Dei portio," the word "certa" being reserved for those portions of the people of God that *are* particular churches. Only the latter constitute absolutely autonomous communities of the faithful placed under the immediate and full jurisdiction of the diocesan bishop, while the faithful of personal prelatures are at the same time included in their respective "*certae* populi Dei portiones."

With respect to personal prelatures the result seems quite satisfactory. After a lengthy drafting process the 1980 schema came up finally with an adequate formulation of the two principal orienting criteria which had been operative from the beginning: personal prelatures are not particular churches; but because of their nature as hierarchical pastoral structures the best technique for their canonical regulation was that of considering them the equivalent *in law* of particular churches for *certain* effects, according to the formula *nisi ex rei natura aut iuris praescripto aliud appareat* used in c. 335, §2.

2. Debate over Personal Prelatures as Associations

During the debates of the *coetus* in 1980 two consultors raised the alternative of regulating personal prelatures as associations.[58] This suggestion was not favorably received. It signified a clear deviation from what had been established in the council and post-conciliar legislation, particularly the apostolic constitution *Regimini Ecclesiae universae* of August 15, 1967, n. 49, in which Paul VI placed these prelatures under the competency of the Sacred Congregation for Bishops. The position taken by the council and by Paul VI was clearly supported by the common doctrine with respect to the concept of prelate and prelature, as has been amply demonstrated in the first part of this study.

[58] W. Aymans maintained this position in an article published before the meeting of the *coetus* in 1980. Cf. "Der strukturelle Aufbau des Gottesvolkes," *Archiv für katholisches Kirchenrecht* 138 (1979) 21-47.

Nevertheless, it may be good to examine some of the points that these consultors raised. One has to do with the manner in which lay people are bound to the prelatures (i.e., by means of an agreement). Their argument was that people are incorporated to the local church by baptism, not by a free (voluntary) act, and thus personal prelatures would seem to be of an associative nature. Both consultors were following a line of reasoning as though personal prelatures were considered theologically to be particular churches in the 1977 schema, although such was not the case. Taken even from a theological point of view the reasoning was incorrect. Through baptism a person is incorporated into the universal Church, while it is domicile that determines to which particular (local) church the person belongs.

There were other weaknesses in the argument. For example, the office of prelate, as that of bishop, has to be conferred by the Roman Pontiff according to the general norms of law; in both cases the free acceptance of the person appointed is necessary. Clerics, both in particular churches and in prelatures, are bound to them by ordination (a free act) and by incardintion, which is as obligatory in one case as it is in the other and in both is produced automatically by the reception (freely) of the diaconate. The situation of lay people depends on the different kinds of prelature. In some the faithful may be assigned by law by means of an objective fact which is as free and as binding as residence in the territory of a diocese; e.g., the fact of being in the military in the case of possible personal prelatures for the military. There can also be prelatures with faithful bound to them in active cooperation by a juridical act—an agreement or contract, whether verbal or written. But this is true not only of personal prelatures; dioceses too can have faithful who commit themselves by means of an agreement to carry out apostolic services on its behalf, whether for a time or permanently. This was a real possibility even before Vatican II, which the council adopted expressly in *Apostolicam actuositatem*, 22.

Lay faithful attach themselves to personal prelatures as active members by means of a practical bond precisely because the manner of dedication and the service to be rendered by a lay person as an active member is *free*. There can only be a bond binding out of justice if there is a commitment of a juridical nature.

Another point made by the two consultors was that the particular church has the same end as the universal Church, while the end of personal prelatures consists in a special pastoral work. Two clarifications should be made. First, there are cases in which the "specialness"

of the pastoral and apostolic work of a personal prelature may be distinguishable from that of a territorial diocese not by reason of its extension but by reason of its type of organization (e.g., military vicariates) or by its pastoral method (e.g., a prelature whose purpose is to work using missionary methods in dechristianized regions of countries of long standing Catholic tradition).

Those personal prelatures whose purpose is limited to a part of the mission of the hierarchy (or of the composite hierarchy-laity) are *not* particular churches, as were none of the personal prelatures in the 1977 or 1980 schemas. But the crucial question, and the only really decisive one is whether given the supposition of the total division of the universal Church into particular churches, there can also exist for pastoral reasons other complementary structures which *sub Petro*, and duly safeguarding the legitimate rights of the local ordinaries, belong properly to the ordinary hierarchy (or rather the composite hierarchy-laity). There is no valid reason for saying no to this possibility. None was seen by the council fathers nor by the post-conciliar legislator. The mandate of Christ to the Apostles, and thus to the pope and bishops, is total and universal, without restrictions. The pope and the college of bishops have the task, using pastoral prudence, to determine the most fitting means to achieve the greatest pastoral effectiveness, without this being construed as an attack on the structural *ius divinum* of the particular churches.

An entity of an associative nature, just as any organization, has a clearly defined end which is its formal constitutive element. This end is not *total* because such an all-embracing purpose corresponds only to what in Aristotelian terminology are called "perfect societies." However, the fact that the end is partial is not what distinguishes an entity of an associative nature from one that belongs to public law. Public entities also can have partial ends; in fact with the exception of the state itself, all other public law entities such as schools, universities, health care facilities, the postal service, etc. have partial ends. It is only in the case of the Church that the phenomenon is found of a community (the particular church) whose ends coincide with those of the universal entity.

In the Church associative entities are distinguished from hierarchical-juridictional structures by the fact that the existence of the former depends on the will of the members of the association, while in the case of the latter their origin lies in the will of the Holy See. A further distinction follows from this, namely that the authority by which associations are governed is not hierarchical, even in the case of clerical religious institutes which have certain attributes of the power of jurisdiction.[59] Public structures of a hierarchical character are governed by the hierarchical power of jurisdiction in its various degrees.

To sum up, personal prelatures are not associations. They are public organizational structures whose origin is found in the ordinary hierarchy of the Church. They were called for by an ecumenical council and they received their first juridical regulation by means of a motu proprio of Paul VI. Each personal prelature owes its existence not to the will of its possible members, who do not have the power to give it birth, but to a constitutive act of the Holy See from which it also receives its statutes or particular law. This papal act is not an approval or *recognitio* of the actions of the members of an association, implying also the *approval* of their statutes and their erection as a moral person; rather, it is a truly creative act by which the prelature comes into existence and is endowed with its own particular law.

At the end of this period of the process of revising the code we can summarize the understanding of the commission with respect to personal prelatures. They were seen to be structures of the hierarchy or of the people of God, hierarchically organized, and although created by human law, are derived from and rooted in the divine constitution of the Church. The thesis which maintained that they are organizations of an associative nature was rejected. On this basis the *Schema Codicis Iuris Canonici* of 1980 was compiled with personal prelatures regulated under the canons dedicated to particular churches.[60]

The Final Stages

The schema was sent to the cardinal and bishop members of the commission, who in turn submitted a series of suggested changes which

[59] The distinction between the two kinds of authority was clearly established by Suarez with respect to religious institutes in order to distinguish what pertains to them as associative entities (religious institutes as such) and what has been added by the Holy See (which is *exemption*), and with it certain attributes of jurisdiction in the case of clerical religious institutes. Vatican II also recalled this distinction: "Status ergo, qui professione consiliorum evangelicorum constituitur, licet ad Ecclesiae structuram hierarchicam non spectet, ad eius tamen vitam et sanctitatem inconcusse pertinet." *Lumen gentium*, 44.

[60] *Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum* (Libreria Editrice Vaticana, 1980), cc. 335, 337-339.

were studied by the secretariat of the commission with the help of a number of experts. A report (*relatio*) of the suggested changes and the replies of the secretariat and its consultors was prepared and sent to the members of the commission who were to meet in plenary session in October 1981.[61]

1. 1981 Relatio

From the *relatio* it can be seen that a number of fathers indicated their agreement with the solution adopted by the study group with respect to personal prelatures; they understood the precise meaning of the formal equivalency. Another group of fathers, however, indicated their disagreement. From their comments it would seem that they did not understand the sense of the formal equivalency (*aequiparatio in iure*), and that they took it to be substantial equivalency; i.e., as though the schema said that personal prelatures are particular churches. In addition they were hung up on the same dilemma as the two consultors referred to earlier: if personal prelatures are not particular churches the only alternative is that they are associations. However, there is no support for this mental dilemma in the texts of the council or in the law of the Church. The latter is shown by the existence for many centuries of territories *cum clero et proprio populo* under the jurisdiction of prelates of the intermediate category. Furthermore, the genesis of *Presbyterorum ordinis*, 10 shows that personal prelatures are a new juridical figure, and that the term prelate has an unequivocal connotation of jurisdiction. It is a *tertium genus* which was not understood by those who took the contrary position.

This position was not accepted at the technical level and the *relatio* prepared by the secretariat and the consultors summarized the reasons that led them to retain the text as it stood. Basically this consisted in explaining once again that personal prelatures are not considered particular churches and are not even assimilated to them; but, as pastoral structures belonging to the hierarchical constitution of the Church they are regulated by the technical device of being equated to them *in law*. In order to achieve greater conceptual clarity in this sense the definition of personal prelature in canon 337, §2 was amended by replacing the phrase "portio Populi Dei" (which was used in the definition of the diocese and figures assimilated to it) with a new phrase, "christifidelium coetus."[62] This made it more apparent that they are not particular churches according to their substance. In fact in the description of the concept of diocese[63] (and so far as the law is concerned the figures assimilated to it—cf. c. 368) the expression *portio populi Dei* has to be understood in a strict and technical sense. It refers to a totally autonomous group of the faithful who are placed under the full jurisdiction of a diocesan bishop. According to this meaning one cannot strictly speak of a *portio populi Dei* in reference to personal prelatures, not even in the case of military vicariates, since the lay faithful who are part of a military vicariate or of a prelature continue belonging to the *portio populi Dei* of the territorial structure which corresponds to them by reason of their domicile.[64]

2. 1981 Plenary Session

The plenary session of the Commission for the Revision of the Code of Canon Law took place October 20-28, 1981. The record of this session has not yet been published. It should also be kept in mind that in the brief space of one week the fathers had to review the whole draft of the new code. The secretariat of the commission, with the help of

[61] Its complete title was: *Relatio completens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commisionis ad novissimum schema Codicis Iuris Canonici exhibitarum, cum responsionibus a Secretaria et Consultoribus datis* (Typis Polyglottis Vaticana, 1981). Publication of this *relatio* with the suggested changes and the replies, but omitting the names of the fathers who submitted them, began in *Communicationes*, vol. 14.

[62] Cf. *relatio*, p. 100; *Communicationes* 14 (1982) 202.

[63] Cf. particularly the decree *Christus Dominus*, 11.

[64] The jurisdiction of the military vicar and of the respective diocesan bishop is always cumulative. The apostolic constitution *Ut sit* by means of which the first personal prelature, Opus Dei, was erected states: "The jurisdiction of the personal Prelature extends to the clergy incardinated in it, and also—only in what refers to the fulfillment of the specific obligations undertaken through the juridical bond, by means of a contract with the Prelature—to the laity who dedicate themselves to the apostolic activities of the Prelature: both clergy and laity are under the Prelature in carrying out the pastoral task of the Prelature, as established in the preceding article." *AAS* 75 (1983) 424. In a similar vein the *declaratio* of the Sacred Congregation for Bishops, August 23, 1982, which was issued in conjunction with the erection of this first personal prelature indicates: "the laity incorporated in the Prelature Opus Dei continue to be faithful of the dioceses in which they have their domicile and are, therefore, under the jurisdiction of the diocesan bishop in what the law lays down for all the ordinary faithful." Ibid., p. 466. It should also be pointed out with respect to the effect of canon 7 of the new code, that the above mentioned apostolic constitution (November 28, 1982) *preceded* the promulgation of the new code (January 25, 1983), although it was promulgated by means of a public reading by the papal delegate on March 19, 1983, that is to say after the promulgation of the new code. Both the apostolic constitution and the *declaratio* were published in the same issue of *AAS* (May 2, 1983).

consultors who had prepared position papers sent to the members of the plenary earlier, decided to ask their opinion on six concrete questions which had been the subject of much debate. To these the members of the plenary added thirty-five more. This was done when the session had already begun and there was no time to ask the consultors for a study and for their opinion.[65] Because of the need to finish their work by a fixed date it was not possible for all the fathers to set forth before the assembly their opinion on each of the forty-one questions under discussion. Many of them had to limit themselves to providing the secretariat with the written text of what they wanted to say in the debate.

Among the questions discussed was that of personal prelatures because of the confusion arising from the failure to grasp the distinction between the use of the juridical technique of formal equivalency, and considering them substantially the same as particular churches. The shortness of time did not allow this matter to be clarified. The objections raised were the same ones that had been studied in the March meeting of the consultors, namely the possibility of belonging to a personal prelature by a free act of the will and the specific pastoral purpose of personal prelatures. As we have seen, the consultors, with two exceptions, had considered these objections to lack any foundation.[66] Free choice is accepted in the new code, for example, in the case of Catholic spouses belonging to different ritual Churches (c. 112, §§2-3); this freedom is also extended to their children. If this principle of freedom of choice is valid and has been peacefully accepted after long and serious study, it is difficult to see why it cannot be applied equally to the case of personal prelatures, hierarchical institutions with a specific pastoral purpose willed by the Second Vatican Council.

Since this confusion continued a possible solution was suggested by a member of the commission: change the title of Chapter I of Title II to "De Ecclesiis particularibus deque de Praelaturis personalibus;" remove the formal-juridical comparison to particular churches; and add a new canon in which the norms of the motu proprio *Ecclesiae Sanctae* would be substantially reproduced. The possibility was also raised, with certain hesitation, of introducing a new form of particular church of a personal character, namely the military vicariate. This second proposal would thus have attributed to military vicariates an assimilation of

[65] Cf. J. Herranz, "Genesis del nuevo cuerpo legislativo de la Iglesia," *Ius Canonicum* 23 (1983) 503.

[66] Cf. *Communicationes* 12 (1980) 276 ff.

particular churches which was not included in the 1980 schema. This eclectic solution showed clearly that in the plenary session the majority had understood formal-juridical equivalency to be substantial equivalency, which was not at all the mind of those who had drafted the text, as we have seen.

The adoption of this eclectic solution had a positive and a negative result. The highly positive result was that personal prelatures were properly considered pastoral structures of the hierarchical constitution of the Church. In this way the mind of the council was respected and the thesis of *consociatio* was clearly rejected. In terms of the *ius vetus* it recognized that the council had called for *prelatures*, that is, jurisdictional structures presided over by a prelate of the *suprema species*, not a prelate *infimae classis*. The latter is what the associationist thesis led to, watering down without foundation the obvious meaning of the word "prelature" just as the council had taken it from the *ius vigens* and from the canonical doctrine previous to it. The negative result was that the suppression of explicit reference to personal prelatures in other canons of the code undid the patient work of the experts who had sought to integrate this new figure into the total legislation of the code.

3. 1982 Schema and Papal Review

This proposal was substantially accepted and with a few slight changes (and without the figure of the military vicariate) it was included in the 1982 schema submitted to the pope.[67]

The pope submitted the 1982 schema to a commission of personal experts of his choice. There is no indication that any substantial change was made in the matter of personal prelatures.

The last and definitive stage in the long legislative process was a final review entrusted to a commission composed of Cardinals Casaroli, Jubany and Ratzinger, and Monsignor Fagiolo. The work of this commission had a significant effect on the question of personal prelatures. Once again it seems that the fear of the possible confusion

[67] *Codex Iuris Canonici. Schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum* (Typis Poliglottis Vaticanis, 1982). The systematic arrangement of the section *De ecclesiis particularibus deque eorundem coetibus* as as follows: *Titulus I. De Ecclesiis particularibus et de auctoritate in iisdem constituta. Titulus II. De Ecclesiarum particularium coetibus. Titulus III. De interna ordinatione Ecclesiarum particularium. Titulus IV. De praelaturis personalibus.* Title IV was made up of four canons (573-576).

between particular churches and personal prelatures was raised by someone. The supposed shadow cast by the systematic arrangement of the 1982 schema, which placed the title dealing with personal prelatures within the section on particular churches, led them to seek a different solution. For a moment it looked as though the position of those who wanted to treat them as associations was going to reassert itself. In the end, however, it was definitively rejected, since it would have been a clear deviation from the mind of the council. Nevertheless, the decision adopted was a bit surprising. While respecting the character of hierarchical structures of the people of God present in the four canons on personal prelatures, they are placed with their own title within Part I, *De christifidelibus* of Book II, *De Populo Dei.*

4. 1983 Code

In our view the placement of personal prelatures in the 1983 code lacks systematic precision. The proper place for personal prelatures is among the institutions belonging to the hierarchical constitution of the Church. This is because they represent a specific and special form in which the hierarchy and the people of God are organized, even though they differ theologically and canonically from particular churches. From this point of view the new code has not managed to reflect with technical precision and in a systematic way the true nature of personal prelatures.

In any case the systematic arrangement of a body of law is always something secondary. As is the case with legal definitions, if the norms that regulate a particular institution contradict the legal definition the substantive norms prevail and the definition fails. In the case at issue the final word goes to the four canons (cc. 294-297) which contain the essence of personal prelatures. This is taken from the legislation of Paul VI and expressed with the technique of substantive regulation, just as the earlier process of legislative revision had sought to express it with the technical device of equivalence in law (*aequiparatio in iure*).

A comprehensive study of the text also shows that the thesis of those who wanted to consider personal prelatures as associations is no longer tenable, and that the thesis of those who want to treat them as being exclusively clerical structures is foreign to the code. A simple reading of the canons refutes this thesis. The inclusion of personal prelatures in Part I *De Christifidelibus* after the titles dealing with the faithful (lay people and clerics) makes it clear that they are prelatic, hierarchical jurisdictional structures of the people of God. As a consequence they

are either a unified whole *clerus-plebs* (hierarchy-laity), or a body of clerics.

This is further confirmed by canon 296 which foresees the possibility of lay people participating in the apostolic work of these prelatures by means of some kind of agreement with the prelature. As has been pointed out,[68] this legal provision would be redundant if it referred solely to the possibility of lay people carrying out merely auxiliary tasks in a personal prelature, or for that matter in any other hierarchical structure. The scope of this norm should be measured in the light of what is meant by the expression *cooperatio organica* in canon 296. In the language of Vatican II and of the new code the word "cooperation" is used frequently as a synonym for the full participation of each person according to his or her own proper state, i.e., the cleric as cleric and the lay man or woman as laity.[69] The addition of the word *organica* tells us that this cooperation is a living relationship.[70] The figure of the personal prelature includes the possibility that not only clerics may be incorporated in it and form a part of it, but also lay people. The personal prelatures regulated in canons 294-297 are based on the *communio* and the hierarchical structure of the Church; they are created by the Holy See as ways in which the Church organizes itself; and they are governed by the prelatic jurisdiction received by participation *a iure* from the pope.

Finally, canons 294-297 contain significant precisions and developments which highlight the nature of these prelatures. The singular importance given to the statutes of each prelature in the new canons stands out. The statutes are no longer "approved" but "given" by the Holy See, which thus not only "creates" the prelature but gives each one its own particular configuration. Furthermore, the statutes are the technical means provided in the code by which the Roman Pontiff determines for each personal prelature the way in which its pastoral work is to be coordinated with that of the particular churches. Nor should we fail to insist upon the profoundly ecclesiological manner in which the conciliar teaching on the laity is received into law by characterizing the possible participation of lay people in the work of these prelatures as *organica cooperatio.*

[68] Cf. J. L. Gutierrez, pp. 92 ff.

[69] Canon 208 refers to the true equality of all the faithful "qua cuncte . . . ad aedificationem Corporis Christi cooperantur."

[70] Cf. *Christus Dominus*, 23. See also on this question J. L. Gutierrez, pp. 107-108.

All of this notwithstanding we can still regret that the deficiencies of the systematic arrangement of the new code with respect to personal prelatures may lead some commentators into error, as has already happened, when they approach canons 294-297 with a distorted perspective, and that they will not succeed in capturing the true characteristics of this new institution even though they are contained in the canons themselves. As noted at the beginning of this study, the whole hermeneutical study of the text of the new code must have as a fundamental principle the study of the texts of the council, not viewed in isolation from one another but in the larger context of the over-all lines of theological and canonical thought marked out by the Second Vatican Council, which the new code tries to reflect.