Civil recognition of the Prelature of Opus Dei

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PONTIFICAL UNIVERSITY OF THE HOLY CROSS, *Studies on the Prelature of Opus Dei*, **on the twenty-fifth anniversary of the Apostolic Constitution *Ut sit***, translated and edited by Paul Hayward, **Gratianus** Series, Montréal, Wilson & Lafleur Ltée, 2008 pp. 77–97.

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1. Introduction

From time to time the Church experiences an "irruption" of the Holy Spirit who, as Ratzinger the theologian put it, "always upsets human plans" and whose action "ceaselessly revitalizes and renews the Church's structure".[1] As Ratzinger went on to add, "this renewal hardly ever happens without pain and friction."

Scholars of Church law are well acquainted with the ongoing dialectic between charism and institution, which over the course of history has given rise to processes of transformation in the Church's juridical structure. They also know that from time to time the pressure of charism has been a powerful stimulus to the renewal of the historical structure of

1. J. RATZINGER, *Nuove irruzioni dello Spirito. I movimenti nella Chiesa* (Cinisello Balsamo, 2006), pp. 14 ff. This was a paper given at the World Congress of Ecclesial Movements, held in Rome on May 27–29, 1998. The proceedings were published in PONTIFICIUM CONSILIUM PRO LAICIS, *I movimenti nella Chiesa* (Vatican City, 1999). The English version of the paper, entitled "The Theological Locus of Ecclesial Movements", is available in *Communio* 25 (Fall 1999), pp. 480–504, at p. 481; also at <www.communio-icr.com/articles/PDF/ratzinger25-3.pdf>.

the institution, and has met with varying forms of resistance. Hence the pain and friction Ratzinger alluded to.

These resistances are understandable, given the constant temptation to separate or even set in opposition to one another what in reality cannot be separated, and even less be seen as conflicting, namely charism and institution. There can be no separation or conflict because it is precisely within the essential nucleus of the institutional structure of the Church that the sacramental ministry is to be found. As Ratzinger pointed out, "The sacrament that, significantly, bears the name *ordo* is, in the end, the sole permanent and binding structure that forms so to say the fixed organizational pattern of the Church and makes the Church an 'institution'."[2] These resistances, therefore, apart from being an understandable reflection of the human condition, act as a sort of "safety mechanism" safeguarding the organizational activity of the Spirit as He blows, and helping filter out non-authentic charisms and elements that would only lead to disorder.

For the legal scholar the history of the dialectic between charism and institution is of great interest—and not simply because of the way the normative and institutional aspects of canon law have evolved. It is always surprising to observe, to use the idea of Gabriel Le Bras, the changing form of the vehicle as it makes its way towards the fixed destination:[3] in other words, the transformations in the human constitution of the Church within the rigidity of the divine constitution.

It is also interesting to note how the pressure exerted by charism on the historical forms of institution has a disproportionate effect, going beyond the confines of the strictly canonical order into the secular sphere. Actually this should not be so surprising, since although the distinction between the two orders is based on the evangelical invitation to give to Cæsar

2. RATZINGER, *Nuove irruzioni dello Spirito*, p. 16; "The Theological Locus of Ecclesial Movements", p. 482.
3. Cf. G. LE BRAS, *La Chiesa del diritto. Introduzione allo studio delle istituzioni ecclesiastiche* (Bologna, 1976), p. 30.

what is Cæsar's and to God what is God's,[4] nevertheless the Church, as the People of God making its way through history,[5] finds herself in a situation of pilgrimage among the peoples of this earth. As the unknown author of the Letter to Diognetus stated, "Christians are indistinguishable from other men either by nationality, language or customs [...] follow[ing] the customs of whatever city they happen to be living in, whether it be Greek or foreign".[6]

In other words, even though the modern State, lay or secularized, may have thrown canon law out of the door of its legal system, little by little canon law has been making its way back in again through the window. This is due not only to the provisions of concordats:[7] in quite a number of cases modifications within canon law have also had an impact on secular legal orders and created pressure for change.

From this perspective the question of the establishment of Opus Dei as a personal prelature (the first and up to now the only concrete instance of a new canonical institution originating in Vatican II and governed by the 1983 Code) can be seen as exemplary. While it has obviously been the cause of innovations in the canonical order,[8] it has also had an influence on secular legal orders where it has asked that it be civilly recognized among the established juridical structures existing in the different countries.

4. Mt 22:15–22; Mk 12:13–17; Lk 20:20–26. In this connection, cf. G. DALLA TORRE, *La città sul monte. Contributo a una teoria canonistica delle relazioni fra Chiesa e comunità politica*, 3rd ed. (Rome, 2007).
5. Cf. Dogm. Const. *Lumen gentium*, n. 9.
6. *Letter to Diognetus*, 5 (Funk, 397).
7. G. LE BRAS, *La Chiesa del diritto*, pp. 248 ff.
8. There is a very extensive bibliography on personal prelatures: cf. G. DALLA TORRE, "Prelato e prelatura", in *Enciclopedia del diritto*, XXXIV (Milan, 1985), pp. 973 ff.; G. LO CASTRO, *Le prelature personali. Profili giuridici*, 2nd ed. (Milan, 1999); S. GHERRO (ed.), *Le prelature personali nella normativa e nella vita della Chiesa* (Padua, 2002). On the personal prelature of Opus Dei, cf. A. DE FUENMAYOR, V. GÓMEZ-IGLESIAS and J.L. ILLANES, *The Canonical Path of Opus Dei. The History and Defense of a Charism* (Princeton/Chicago, 1994).

2. Starting the procedure for recognition in State legal systems

The procedure for obtaining civil recognition for the Prelature of Opus Dei commenced very promptly indeed, considering the date of its establishment in canon law, which as we know took place with the promulgation of John Paul II's Apostolic Constitution *Ut sit* of November 28, 1982, published in *Acta Apostolicæ Sedis* on May 2, 1983.[9]

The first civil recognition of the Prelature was in 1984, in Portugal and some Latin-American States. In succeeding years there were numerous recognitions in Europe and the American continent.[10]

The brief period of time between the canonical establishment and the first civil recognitions should not cause surprise, for at least two reasons.

(i) In the first place there is the "physical" fact that a canonical juridical person normally needs civil recognition, or at least some sort of legal acknowledgment in the civil sphere, so as to be able to have juridical dealings within the State legal system. It should be remembered that although the spiritual and temporal orders are distinct, nevertheless religion, especially in its institutional aspects, still needs civil juridical regulation so that those aspects are properly catered for. As long as the religious dimension remains *in interiore homine* it falls outside the scope of juridical regulation; but when it has concrete external manifestations, above all in its associative and institutional forms, then not only does it have legal significance: it demands juridical regulation. It is wrong

9. *AAS* 75 [1983], pp. 423 ff.
10. By the end of 2005 the civil juridical personality of the personal prelature of Opus Dei had been recognized in Chile (1984), Colombia (1984), Ecuador (1984), Peru (1984), Portugal (1984), Bolivia (1985), Panama (1985), the United States (1988), Venezuela (1989), Italy (1990), Argentina (1992), Mexico (1993), the Czech Republic (1994), Trinidad and Tobago (1995), Uruguay (1995), France (1996), the Dominican Republic (1996), Guatemala (1997), Spain (1997), Poland (1998), Costa Rica (1999), Honduras (1999), El Salvador (2000), Panama (2000), Nicaragua (2001), Austria (2002), the Slovak Republic (2002), Puerto Rico (2003), and Belgium (2005).

to say, as in fact a recent decision of the *Corte di Cassazione* in Italy did say, that the Church's proper order is limited to the ambit of spiritual ministry—ignoring the fact that the exercise of such ministry is necessarily "incarnated" in legal acts and relationships which, as an expression of this ministerial activity, must be excluded from the State's proper order.[11]

As a social and public fact, religion falls within the scope of juridical regulation. Religious freedom itself, which is an individual, collective and institutional right, requires the State legal order to regulate the manner of its exercise.

(ii) The main reason why the rapid commencement of procedures to obtain civil recognition for Opus Dei should not come as a surprise is that in those countries where civil recognition was being sought for the Prelature, the institution founded by Saint Josemaria Escriva had already been present for some time in its former canonical configurations.

This also helps us grasp the primary and principal reason for the lack of civil recognition in other States, where the apostolic activity of the institution is still absent or has only recently begun, and at the present time has only limited and unstable external expression.

3. Types of civil recognition

Concerning times, procedures and juridical forms of civil recognition for the Prelature of Opus Dei, detailed information can be found in a recent publication which can be consulted for fuller particulars.[12]

Here I would like to dwell on certain specific juridical models that exist in different State orders and have been

11. The case decided by the *Corte di Cassazione*, April 9–21, 2003, n. 22516, concerned allegedly harmful electromagnetic waves emitted by Vatican Radio: cf. G. DALLA TORRE and C. MIRABELLI (eds.), *Radio Vaticana e ordinamento italiano* (Turin, 2005): the decision is published on pp. 124 ff.
12. M.M. MARTÍN (ed.), *Entidades eclesiásticas y derecho de los Estados. Actas del II Simposio Internacional de Derecho Concordatario* [Proceedings of the II International Symposium on Concordat Law]: Almeria, 9–11 noviembre, 2005 (Granada, 2006).

applied to the specific case of the Prelature. There are essentially three such models.

(i) The first is what we could call the concordat model. This is one whose essential characteristics are common to all concordat agreements between the Holy See and civil States, and which is substantially equivalent to a structure used for what are known within the State Legal System as "ecclesiastical bodies". However, the specific provisions and details may vary from one case to another, and at times do differ notably. This is due above all to the differing juridical traditions in different States, which in their turn reflect differing political conceptions of the State's relationship with the Church and with religion in general.

Another reason for such differences stems from the varying approaches adopted by the various State Legal System, which may (e.g., as a result of concordat agreements) be quite open to recognizing juridical entities originating in the canonical order. At one extreme this may entail civil recognition of all such entities in canon law; at the other extreme, recognition may be given to only a few such entities, such recognition being subject to legal limitations stemming from a variety of criteria. These criteria, which form a filter to State law's "reception" of canonical juridical persons, can also be quite varied: one criterion may be the State's "objective" response to the religious needs of the population; another, the strict interpretation given by the State to the aim of "religion and worship", with the result that other ends (e.g. health or social care, or education and teaching) are excluded, even though they may be regarded in canon law as being of a "religious" nature.

The differences in the various concordat provisions, especially in the area of civil recognition of canonical juridical persons, can at times be traced back to the historical period in which the concordats were drawn up, and consequently to the different canonical provisions then in force. In other words, concordat provisions reflect, among other things, the state of canon law and practice applicable to juridical persons

at the time when those provisions were drafted. It is noticeable how in the most recent concordats a clear distinction is drawn between the different kinds of juridical person *in Ecclesia* which doctrine has come to distinguish: juridical persons that are essentially "structural", and those that are "free";[13] this is reflected both in the procedures for obtaining recognition and in the corresponding legal provisions.

A good example of this is Italy where, by virtue of the accord revising the Lateran concordat of 1984, and above all the corresponding law n. 222 of 1985 on ecclesiastical entities and goods, a distinction is made between two classes of bodies: those that form part of the hierarchical constitution of the Church, in addition to religious institutes and seminaries; and other bodies, whether or not they have canonical juridical personality. The possession of a religious purpose, or a purpose connected with worship (an essential requirement for recognition as an ecclesiastical body), is recognized *ex lege* for the first class, while for the second class it has to be looked into in each case (art. 2 of law n. 222). As a result, recognition is virtually assured for the first class.

The Prelature of Opus Dei has been able to benefit from this distinction and thus obtain juridical personality in Italian law as a civilly recognized ecclesiastical body, since it forms part of the hierarchical constitution of the Church. Hence there is no need for the competent State authority to carry out a special study as to whether or not its aims relate to religion and worship.[14]

13. A.M. PUNZI NICOLÒ, *Gli enti nell'ordinamento canonico* (Padua, 1983); ID., *Libertà e autonomia negli enti della Chiesa* (Turin, 1999).

14. The opinion expressed by the Italian *Consiglio di Stato*, sess. I, September 26, 1990, n. 1032 on the recognition of the juridical personality of the personal prelature of Opus Dei states that personal prelatures, even though they are not expressly mentioned in the concordat legislation, "are to be considered proper elements of the hierarchical constitution of the Church", for which purpose "they should be treated as equivalent, at least in what concerns their civil recognition, to those bodies mentioned in the first paragraph of art. 2 of law n. 222 of 1985: that is, to those ecclesiastical bodies which are to be considered

(ii) The second model is that of ecclesiastical bodies as a special category, distinct from other civil juridical persons, and shaped unilaterally by State law.

Here we are involved with a very different model, an extremely powerful expression of the historical attitude of the State vis-à-vis religion; a model which therefore varies greatly in its origins and form according to the confessional position of the State and the historical events behind it.[15]

In practice this model, in cases where the State's approach is one of "positive laicity", may reflect an attitude of openness towards religious bodies, which are recognized in such a way as to respect their own structural and organizational principles within the framework of a basic acceptance of the public character of the Catholic Church and other religious communities, especially those rooted in the history of the nation. Such a situation exists in Germany and other central European legal systems (e.g. Switzerland and Austria), where the constitutional Charter makes provision for the juridical governance of religious communities and entities.[16]

There is however a variant of this model which reflects the *laïcité de combat* that has inspired certain cultures and legal orders, and adopts a restrictive and limiting attitude towards religious bodies. These latter are generally regarded as realities that have to be acknowledged (within certain limits) by the State Legal System, and therefore need to be legislated for,

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by law as having ends pertaining to religion or worship, without the need for the special case-by-case enquiry required for other kinds of body." Hence "regarding the ends of religion and worship, as a requisite quality for a 'civilly recognized ecclesiastical body', we must conclude that such element pertains by definition to personal prelatures canonically instituted as such, and that there is no need for enquiries or discretionary assessments on the part of the civil authority": cf. *Il diritto ecclesiastico*, [1994], II, pp. 141 ff.

15. On the powerful influence of history on laws concerning the juridical condition of the Church and its institutions in Europe, cf. I.C. IBÁN and S. FERRARI, *Derecho y religión en Europa Occidental* (Madrid, 1998).

16. Cf. G. ROBBERS, "Estado e Iglesia en la República Federal de Alemania", in G. ROBBERS (ed.), *Estado e Iglesia en la Unión Europea* (Baden Baden, 1996), pp. 57 ff.; cf. also R. POTZ, "Estado e Iglesia en Austria", in *ibid.*, pp. 231 ff.

but such legislation is based on a conception and approach corresponding more to the State Legal System itself than to the true identity which those bodies hold within the confessional order. In these cases, rather than a civil recognition of their canonical juridical personality, they are given the structure of a civil juridical body to which the rights and duties corresponding to the canonical body are attributed.

A typical example of this is the French Legal System,[17] especially after the 1905 law of separation, which suppressed all existing ecclesiastical bodies (*établissements publics des cultes*) and transferred their goods and legal rights and duties to the *associations cultuelles*: "confessional" organizations unilaterally created by the State legislator, which were accepted by the Protestant and Jewish religions but rejected by the Catholic Church as being incompatible with her hierarchical organization. It was precisely to safeguard the Church's hierarchical structure that in 1924, under a simplified accord reached between the Holy See and the French Republic and endorsed by the *Conseil d'État*, the *associations cultuelles* gave way to *associations diocésaines catholiques*: structures that were "internal" to the special French law on confessional bodies and intended to guarantee the identity of Catholic bodies insofar as these were an expression of the hierarchical constitution of the Church. In fact the situation in France is that elements of special law exist alongside vestiges of general law: thus, for example, canonical bodies of an associative nature (such as religious institutes) are subject to the 1901 general law on associations, and at the same time to specific regulations.[18]

In the case of the personal prelature of Opus Dei, the model of *associations diocésaines catholiques* has been utilized, along the lines of what had previously been decided for other

17. Cf. B. BASDEVANT and J. GAUDEMET, "Estado e Iglesia en Francia", in G. ROBBERS (ed.), *Estado e Iglesia en la Unión Europea*, pp. 119 ff.
18. For further information in this regard, cf. J.-P. DURAND, *La liberté des Congrégations religieuses en France*, 3 vols. (Paris, 1999).

canonical entities that were in some way comparable to ecclesiastical circumscriptions such as the *Prelature de la Mission de France* or the *Association du Vicariat aux Armées françaises*.[19]

(iii) Then there is the common law model. Here confessional bodies, including canonical juridical persons, are not given civil recognition as such, but the material reality underlying their juridical structure in the religious legal order can find recognition in one of the civil legal structures. Such structures have been created by the State legislator to resolve problems arising in connection with collective bodies or patrimonies set up for a particular purpose, such as the question of who exercises rights and duties and conducts legal affairs on their behalf. Sometimes case law has played an important role in resolving these questions, especially in common law legal systems.

Typical in this respect is the United States, whose legal system, as is well known, has developed largely through private law concepts worked out on the basis of a constant output of court decisions. These have focused mainly on elements affecting civil and criminal responsibility for the acts of juridical persons, and have looked at the responsibilities of administrators from the point of view of fiduciary relationships.[20] Under this model there is no legal distinction between public and private bodies, just as there is no clear distinction between associations and commercial societies, which both fall within the category of "corporations". One feature of this model is that its legal regulation can vary quite notably from State to State within the Federation, above all where individual States have introduced laws to supplement or correct case law, thereby setting the law in a new direction.

19. A precise reconstruction of the juridical status of the Prelature of Opus Dei in France can be found in D. LE TOURNEAU, "Le statut de la Prélature de l'Opus Dei en droit civil français", *L'année canonique*, 41 [1999], pp. 229 ff.
20. For general references in this regard, cf. F. ONIDA, *Uguaglianza e libertà religiosa nel separatismo statunitense* (Milan, 1970); ID. *Separatismo e libertà religiosa negli Stati Uniti. Dagli anni sessanta agli anni ottanta* (Milan, 1984).

In this connection it should be recalled that many North American States have, over the course of time, passed laws recognizing religious organizations in ways that differ from the recognition given to "not-for-profit corporations" in general. This has tended to occur above all in States with a longer history, where it has been necessary to protect the juridical status acquired in colonial times by the established Churches, and to safeguard these Churches' identity and forms of governance in the face of a tendency to standardize laws on not-for-profit corporations. The New York legislation is one example in this respect.

North American State legislation has created a variety of legal ways of identifying not-for-profit corporations with a specifically religious purpose, so as to be able to adjust the levels of obligations and controls applicable to those bodies. This approach reveals a certain distancing from the common law model, which as stated earlier forms the basis of general United States law.

The Prelature of Opus Dei was able to benefit from this, since in 1988 it obtained civil recognition on the basis of the laws in force in New York State, which were among the most advanced and most sensitive to the characteristics of ecclesiastical bodies. More specifically it was able to make use of the provision in Art. 2, Section 15 of the *Religious Corporation Law*, dealing with ecclesiastical structures of the various confessions within the territory of New York State, including the Catholic Church's diocesan ecclesiastical structures. On the basis of this provision, structural or governmental Church bodies such as dioceses or military ordinariates can obtain recognition.

The recognition of the Prelature as a "religious corporation" included recognition of the territory in which it operates, namely the regional circumscription for the United States, with its headquarters in New York. In other words legal force was given, by the legal system of the United States and specifically that of New York State, to what is stated in art. 126 of the *Codex iuris particularis Operis Dei*: "*Prælatura distribuitur in*

circumscriptiones regionales, quarum unamquamquam moderatur Vicarius, qui Consiliarius Regionalis appellatur, cuique respectiva Concilia assistunt" ["The Prelature is divided into regional circumscriptions, each governed by a Vicar who is called the Regional Counselor, assisted by his respective Councils"].[21]

A special though not totally exceptional case is that of Belgium, where the context is one of a tradition dating back to the Napoleonic era and characterized by a fiercely secularized culture. In order to obtain civil recognition, canonical entities need to come within the general description of an *association sans but lucratif*: a description which was in fact used for the recognition of Opus Dei.[22]

There are also cases such as that of Nicaragua where the Prelature receives *de facto* juridical recognition.[23]

4. Lessons from experience

The procedures followed in the different countries for obtaining civil juridical recognition for the personal prelature of Opus Dei have thus given rise to a number of issues that reflect the special considerations applicable—within the area of State recognitions in general—to the relationship between the canonical and State legal systems. While this relationship is one between sovereign and independent legal systems (following the definition contained in the first paragraph of Art. 7 of the Italian Constitution),[24] nevertheless if that relationship is not

21. Cf. *Codex iuris particularis Operis Dei*, in Appendix to A. DE FUENMAYOR, V. GÓMEZ-IGLESIAS and J.L. ILLANES, *The Canonical Path of Opus Dei*, pp. 610 ff. (art. 126 is on p. 633).
22. Cf. J.-P. SCHOUPPE, "Le statut de la Prélature de l'Opus Dei en droit civil belge", in M.M. MARTÍN (ed.), *Entidades eclesiásticas y derecho de los Estados*, pp. 705–717.
23. Cf. J. FORNÉS and J. FERRER ORTIZ, "La personalidad jurídica civil de las prelaturas personales en iberoamérica", in M.M. MARTÍN (ed.), *Entidades eclesiásticas y derecho de los Estados*, p. 407.
24. This in fact speaks of "orders" and not "legal systems", but those legal systems come into being precisely because the State and the Church are independent

given specific expression in the form of an agreement it can only partially (and not always easily) be classified as private international law.* Furthermore, deeply-rooted cultural and juridical traditions often make it impossible to bring this particular relationship within the international perspective normally applicable to such relationships.

Concerning the specific issues involved in the civil recognition of Opus Dei, there have often been additional difficulties arising out of the novelty of its canonical juridical structure, that of a personal prelature. State legislation in ecclesiastical matters—including more recent legislation and *a fortiori* that which goes further back in history—is very often shaped according to the traditional forms applicable to canonical juridical persons. Hence the difficulty, in some cases, for the administrative authority, and at times the legislator, to be certain as to how the new juridical figure relates to those structures that are already well-known and well-established in civil law.

The experience of these twenty-five years does raise some interesting issues, not only from the point of view of comparative law, but also, and I would say most importantly, from the point of view of general theory.

The first observation to make is that in many cases, in State provisions concerning Opus Dei, civil recognition of the canonical juridical person is granted by reference to religious freedom.[25] While accepting that such reference is not

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and sovereign in their own "order"—the temporal and spiritual orders respectively. Cf., in this respect, P. GISMONDI, *Lezioni di diritto ecclesiastico. Stato e confessioni religiose*, 3rd ed. (Milan, 1975), pp. 68 ff.

* Translator's note: in civil law countries, the term "private international law" refers to that branch of a country's internal legal system which determines the law applicable in situations crossing national boundaries and having a "foreign" element, normally known in Anglo-American parlance as "Conflicts of Law".

25. According to the case law of the European Court at Strasbourg, juridical personality constitutes an aspect of institutional religious freedom: cf. J.-P. SCHOUPPE, "La dimension collective et institutionnelle de la liberté religieuse à la lumière de quelques arrêts récents de la Cour européenne des droits de l'homme", *Revue trimestrielle des droits de l'homme*, [2005], pp. 622 ff.

impertinent (that is to say, while not denying that it is pertinent) it needs to be said that, rather than religious freedom, the important thing is *libertas Ecclesiæ*, which demands—in the precise words of the conciliar declaration *Dignitatis humanæ* (n. 13)—"that the Church should enjoy that full measure of freedom which her care for the salvation of men requires". This *libertas*, which Vatican II defines as "the fundamental principle in what concerns the relations between the Church and governments and the whole civil order"[26] and which is not to be confused with institutional religious freedom, demands among other things that the civil recognition of bodies forming part of the hierarchical structure of the Church should respect their identity, that is, their structure, purpose and manner of operating.[27]

Although the civil recognitions of the personal prelature of Opus Dei do not make formal reference to this canonical principle of *libertas Ecclesiæ*, it seems safe to say that this is in fact what has been followed in most cases. There are two things that indicate that this is so.

The first is that, whatever the system of recognition of ecclesiastical bodies in the individual State orders, in almost every case the way in which civil juridical personality has been attributed to the Prelature has been by means of juridical structures customarily used for bodies forming part of the Church's constitutional and hierarchical structure. Despite the difficulties that have sometimes been encountered in trying to fit the new canonical juridical figure of the personal prelature into traditional civil categories, the way in which recognition has been given has nearly always been in accordance with the substantive and procedural laws governing the recognition of ecclesiastical circumscriptions in each legal system.

26. Decl. *Dignitatis humanæ*, n. 13.
27. On the canonical principle of *libertas Ecclesiæ*, cf. L. SPINELLI, *Libertas Ecclesiæ. Lezioni di diritto canonico* (Milan, 1979).

The second indication that the State orders tend, in the main, to respect the canonical principle of *libertas Ecclesiæ* is linked to the first, and can be seen in the recognition of the public nature of the civil juridical person, the personal prelature of Opus Dei. This is less frequent than the first element, and is more evident in Iberian-American legal systems; nonetheless it shows how a body recognized in this way for civil purposes is treated not as just any juridical person *in Ecclesia*, but as one that is recognized by the civil order as (also) acting *jure imperii*, acknowledging the power it enjoys in the canonical order.

What has proved rather more problematic is the recognition of one particular characteristic of the Prelature, its international nature.

A look at the different provisions by which recognition has been given reveals a variety of solutions that clearly demonstrate the difficulty of fitting the new canonical figure into the traditional structures for civil ecclesiastical bodies.

These difficulties stem from several causes, some of which are actually of a canonical nature. One such cause is that the Code of Canon Law introduces a distinction between universal canonical juridical persons and international canonical juridical persons. It is true that this distinction is made in connection with public associations of the faithful (can. 312 § 1) for the purposes of determining the competent ecclesiastical authority for establishing such associations; it is also quite obvious that personal prelatures are different from public associations of the faithful. However, once the distinction between universal and international canonical juridical persons has been introduced, it takes on a general character which can then be applied to other public juridical persons.

The problem is that the distinction is not very clear, and opinion on it within the canon law world is divided. Some authors hold that the universal or international aspect refers to the territorial sphere in which the juridical person operates;

others consider that the distinction relates to the aim or purpose of the juridical person.[28]

Another canonical reason is that ecclesiastical circumscriptions of a personal nature have tended to be restricted to a specific territory—typical examples being military ordinariates or personal particular Churches established for specific national territories.

Nevertheless, perhaps the greatest difficulties come from within the State sphere.

In this regard it is sufficient to recall the long-standing wariness of States when faced with ecclesiastical circumscriptions situated in the territory of two or more countries, or with a diocesan clergy not wholly of the nationality of the State in which they are living. The history of concordats is full of clauses requiring the boundaries of dioceses to be within those of the State in question and the clergy of those dioceses to be citizens of that same State. Although this ancient wariness goes back a long way, it became more rigid around the time of the formation of the national States, on the principle that geopolitical boundaries should coincide with those of the nation (considered as a community of persons descending from a common stock and thus bound by their membership of a common ethnic group).[29] From the philosophical–political point of view this principle indicates that the relationship between citizen and foreigner is seen as being one of opposition between friend and enemy.

28. For Giorgio Feliciani, "the distinction between universal associations and international associations is explained by the observation that the activity of an association may concern several countries, without its thereby wishing to extend to the entire universal Church": G. FELICIANI, *Il popolo di Dio*, 3rd ed. (Bologna, 2003), p. 163, footnote 47. *Contra*: G. DALLA TORRE, commentary on can. 312, in P.V. PINTO (ed.), *Commento al codice di diritto canonico*, 2nd ed. (Vatican City, 2001), p. 185; G. DALLA TORRE, *Organizzazioni internazionali religiose*, in *Enciclopedia del diritto*, XXXI (Milan, 1981), pp. 432 ff.

29. See in this connection the delightful entry by V. CRISAFULLI and D. NOCILLA, "Nazione", in *Enciclopedia del diritto*, XXVII (Milan, 1977), pp. 787 ff.

The State's wariness regarding foreign clergy has also found expression, over the course of history, in internal reforms within the canonical system and even in the transformation of institutions of Church government at central level: we could mention, for example, the birth of the Roman Congregation *de Propaganda fide*.[30]

Clearly such wariness needs to be overcome in today's context of a globalized world, with groups of people constantly on the move and multiethnic populations, which mean that the "national State" is in decline even though the State structure may continue. History also teaches us that things do not happen simultaneously: first, changes occur in society; then come cultural awareness and popular feeling regarding those changes; finally, positive law and institutions are amended.

In view of this, it is understandable that a canonical juridical person having the nature of an ecclesiastical circumscription and an international character should encounter difficulties in obtaining civil recognition, and that a variety of solutions should have been adopted for granting recognition.

In some cases recognition has been given to the personal prelature of Opus Dei as such, fully respecting its structure and aims. This is what happened in Italy, where the decree issued by the President of the Republic on November 23, 1990 stated that "civil juridical personality is conferred on the Personal Prelature of the Holy Cross and Opus Dei, in short the Prelature of Opus Dei, with its headquarters in Rome".[31]

Obviously in this case the State, by granting civil recognition, showed that it had overcome the ancient wariness

30. G. DALLA TORRE, "L'istituto del Patronato e la Congregazione *De Propaganda fide*", *Archivio Giuridico*, Vol. CCXXXIII, fasc. I [2003], pp. 3 ff.

31. Cf. art. 1 of the decree, which appeared in *Gazzetta Ufficiale della Repubblica Italiana*, December 6, 1990, n. 285.

regarding ecclesiastical circumscriptions crossing national borders and developing in the territories of other States.[32]

On other occasions recognition has been given not to the Prelature as such in its entirety, but to a part of its internal organization, the Region,[33] a circumscriptional entity which has juridical personality "*ipso facto erectionis*",[34] and which for the purposes of civil recognition treats its own boundaries as coinciding with the territory of the State. Examples of this are Spain in 1997,[35] and prior to that, Argentina, where the decree issued by the President of the Republic on November 27, 1992, n. 2245, after making preliminary mention of the fact that public canonical juridical personality was held both by the Prelature and by the Argentinian Region of the Prelature, went on to grant recognition of the civil juridical personality of the latter (Art. 1).[36]

The recognition of the Region of the Prelature serves as a clear indication that the State order still operates within a juridical mindset that thinks and legislates only in terms of national entities, and is not prepared to contemplate an international reality.

In certain instances there have been quite extraordinary solutions, such as that adopted in Uruguay, where both the

32. However, the accord revising the 1984 Italian concordat, in the first paragraph of art. 3, states that "The Holy See undertakes not to include any part of Italian territory in a diocese whose episcopal see is in the territory of another State", and in the third paragraph of the same article it declares: "Except for the diocese of Rome and the suburbicarian dioceses, no ecclesiastics who are not Italian citizens will be appointed to the offices dealt with in this article". The ecclesiastical offices referred to are: diocesan Archbishops and Bishops and their coadjutors, Abbots and Prelates with territorial jurisdiction, parish priests and "holders of other ecclesiastical offices relevant for the State order". This provision, it will be noted, does not refer to personal prelatures, which in any event had only just been introduced by the canonical legislator at the time when the revision of the 1929 Italian concordat was signed (1984).
33. Cf. *Codex iuris particularis Operis Dei*, nn. 150 ff.
34. Cf. *Codex iuris particularis Operis Dei*, n. 154.
35. Cf. M. RODRÍGUEZ BLANCO and J. MANTECÓN SANCHO, "El reconocimiento jurídico de las regiones portuguesa y española de la Prelatura de la Santa Cruz y Opus Dei", in M.M. MARTÍN (ed.), *Entidades eclesiásticas y derecho de los Estados*, pp. 642 ff.
36. J. FORNÉS and J. FERRER ORTIZ, "La personalidad jurídica civil de las prelaturas personales en iberoamérica", in *ibid.*, p. 397.

Prelature of Opus Dei and the Uruguayan Region, with public juridical personality, were granted civil recognition as an international non-governmental non-profit making organization.[37]

5. Conclusions

In a small book on the Church, the theologian Ratzinger wrote that the *reformatio Ecclesiæ* "that is needed at all times does not consist in constantly remodeling 'our' Church according to our taste, or in inventing her ourselves, but in ceaselessly clearing away our subsidiary constructions to let in the pure light that comes from above and that is also the dawning of pure freedom".[38]

The fruit of this "dawning" is the constant creation of forms of ecclesiastical organization. What is remarkable is the extent to which changes in the Church's juridical structures produce effects elsewhere, and are not simply confined to the sphere of the canonical juridical order but also affect secular juridical orders. Historians of canon law are well aware that this is bound to be the case with canonical juridical persons which, as we have already said, also need to have a civil "garment" in order to operate effectively.

We have very clear confirmation of this in the specific case of the personal prelature of Opus Dei. A charism that eventually shaped the canonical order and led to a new configuration of the constitutional and hierarchical organization of the Church has proved so powerful that it has required alterations to its civil *status*. At global level this is still in the process of happening, but the foundations have been laid.

What has been achieved so far can serve as a valuable point of reference for other similar experiences in the future.

37. Cf. *ibid.*, p. 416.

38. J. RATZINGER, *La Chiesa. Una comunità sempre in cammino* (Cinisello Balsamo, 1991), pp. 100 ff; Eng. trans. "A Company in Constant Renewal", in *Called to Communion* (San Francisco, 1996), pp. 133–156; cf. p. 140.