

world, and charity and understanding towards all mankind.

Two decades after its first steps, my thoughts go in first place to God, to thank him for the countless benefits that he has poured down on us and the abundant fruit that we have gathered up till now. Thanks also to our Lady, Sedes Sapientiae, to whose maternal care we have entrusted each of our steps. Thanks also to St. Josemaría, who, above all with his prayer, set down the foundations upon which the university has risen.

Thanks also to our Supreme Pontiff, John Paul II, whom we have seen spending himself day after day for the good of the Church without concern for himself. The Pope has so often expressed his concern for fostering a truly human culture and has followed with his fatherly gaze the development of our university since its birth.

I would also like to take this occasion to express my deep personal thanks and that of all involved in the University to Cardinal Jose Saraiva Martins, Prefect of the Congregation for the Causes of the Saints, who is present with us today, for the decisive role that he played as Secretary of the Congregation for Catholic Education, in granting the title of Pontifical University to our institution.

Looking to the future, we are all aware that we must persevere in our efforts to attain ever more fully the ends that characterize the university. To do so, we count on the help of God who will never fail us if, on our

part, we seek to respond with generosity.

Yesterday marked the end of the liturgical time of Christmas, and in our hearts there remain indelibly sculpted the figures from the nativity scene—with the Child Jesus, Mary Most Holy and St. Joseph at the center—who represent in an ineffable way God's love for us. Let us continue now on the path that the Holy Father John Paul II set for us when he dedicated this year to the Holy Eucharist: Jesus' sacrifice on the Cross is renewed each day on our altars *pro mundi vita*, for the life of the world. He is present in our midst and remains in the tabernacle so that we may turn to him with confidence and so that, knowing and loving him to the point of identifying ourselves with him, we may sanctify our ordinary work of seeking and transmitting the truth and learn to be witnesses to that truth at every moment in our lives, in order to bring all men and women his message of peace, truth and love.

Budapest February 7, 2005

*At the international symposium of
Canon Law, in the Peter Pázmány
Catholic University*

THE EXERCISE OF THE POWER OF GOVERNANCE IN PERSONAL PRELATURES

I warmly thank the rector of the university, Professor Gyorgy Fodor, and the president of the Institute of

Canon Law, Professor Géza Zuminetz, for their gracious invitation to participate in this conference dedicated to the so-called “territorial-personal jurisdictional circumscriptions.” This conference is one of many important international gatherings organized by this university.¹ The formulation of the topic, intentionally broad, permits us to consider here the diverse expressions of power and jurisdiction of a personal type that exist in the same territory, even though they deal with different manifestations of canonical legality, since each of them derives from entities of a different theological nature.

The organizers have asked me to consider the exercise of the power of governance in personal prelatures, and to transmit, using general categories, the juridical experience of the only personal prelature existing at this time, Opus Dei, to the extent that one can make this jump from the particular to the general. As you know already, these prelatures are ecclesiastical jurisdictions of a predominantly statutory configuration, in the sense that the few general norms provided in the Code of Canon Law allow the statutes, sanctioned by the Holy See for each of them, to configure, as pastoral needs dictate, very diverse prelatures, although all of them will logically possess the necessarily common elements foreseen by the Code.

I think it important, at the beginning of this presentation, to remind

you that the Second Vatican Council confronted with great pastoral sensitivity the most diverse questions about the nature, life and needs of the Church. The subject entrusted to me—the exercise of governing power in personal prelatures—can be understood precisely from this pastoral perspective so central to the Council. As we know, Vatican II presented a definition of particular Churches in which territorial factors played no role (cf. *Christus Dominus*, no. 11). In addition, it suggested the usefulness of establishing special dioceses or personal prelatures, international seminaries, and other institutions of this type, to carry out particular pastoral initiatives on behalf of different social groups (cf. *Presbyterorum Ordinis*, no. 10; *Ad Gentes*, no. 20, note 4, no. 27, note 28). The norms of the Code of Canon Law of 1983 bring together, in canons 294-297, these pastoral aspirations of the Council insofar as personal prelatures are concerned. I am sure that our Eastern Rite brethren understand very well this position about personal jurisdiction, since a great part of their canonical regulations fall within this framework, and we all are well aware of their constant service to the Church. Their presence here today is, also for me, a motive for joy.

From very early on, St. Josemaría Escrivá, through his constant prayer and mortification, sought a canonical figure of this type. The founder of

1. Cf. “Territorialità e personalità nel Diritto Canonico ed Ecclesiastico. Il Diritto canonico di fronte al Terzo millennio.” *Atti dell’XI Congresso Internazionale di Diritto Canonico e del XV Congresso Internazionale della Società per il Diritto delle Chiese Orientali*, Budapest, September 2-7, 2001, edited by Peter Erdö and Peter Szabó, Budapest 2002.

Opus Dei was sure that he would be heard by almighty God, through the intercession of our Lady. But it was only from heaven that he was able to see realized the appropriate canonical solution that he had so long desired for the theological and pastoral reality entrusted to him. The figure of the personal prelature as suggested by the Second Vatican Council had, in effect, been delineated in general terms in the canonical set up of the new Code. And in what refers specifically to Opus Dei, it had been configured by the Apostolic Constitution *Ut Sit* and by the particular statutes or "*Codex iuris particularis Operis Dei*," approved by this Apostolic Constitution. This juridical figure permitted Opus Dei to be fitted into the framework of canon law in a manner adequate to its proper nature, something that undoubtedly was for its own faithful, both priests and laity, and for many other people in the Church, a motive for thanksgiving to God and to the Church.²

In this conference, I will make reference to the elements that all personal prelatures necessarily share, within the specific framework of the subject proposed to me. Nevertheless, we will first need to look at some of the central characteristics of the type of structure we are considering here.

1. *Personal prelatures as part of the hierarchical structure of the Church: special characteristics and juridical experience*

As we know, personal prelatures represent a new figure in the Church, and therefore they have the special characteristics of any new institution.³

Personal prelatures, as such, were already present in the Second Vatican Council's decree *Presbyterorum Ordinis*, and were introduced into canonical law from the time of the first pontifical document making the conciliar decisions operative: the *motu proprio Ecclesiae Sanctae* (in no. 1, 4 of its first chapter).⁴ From this first document, personal prelatures are situated within the ambit of the hierarchical structure of the Church which, on the basis of an ecclesiastical jurisdiction of a personal type, seeks to provide a flexible instrument to meet specific pastoral needs of various types.

Departing from the territorial criteria which as a general rule the Latin Church makes use of to organize its own activities, the Church's history testifies to frequent recourse to personal structures in order to solve particular problems of various types. It is obviously not possible to provide a detailed historical record here, but I would like

2. On this question, see Amadeo de Fuenmayor, Valentin Gomez-Iglesias, José Luis Illanes, *The Canonical Path of Opus Dei: The History and Defense of a Charism*, Princeton 1994, pp. 389 ff.

3. For this topic see especially Pedro Rodríguez, *Iglesias particulares y prelaturas personales*, Pamplona 1985; José Luis Gutiérrez, "Le Prelature personali," in *Ius Ecclesiae* 1, 1989, pp. 467-491; Amadeo de Fuenmayor, *Escritos sobre Prelaturas personales*, Pamplona 1992; Gaetano Lo Castro, *Le prelature personali*, 2nd ed., Milan 1999; Valentin Gómez-Iglesias-Antonio Viana-Jorge Miras, *El Opus Dei, Prelatura personal. La constitución apostólica Ut sit*, Pamplona 2000.

4. Cf. *Ecclesiae Sanctae*, I. 4, of August 6, 1966, AAS 58 (1966) 757-787. The study of the new figure in this period has been carried out by Javier Martínez Torrón, *La configuración jurídica de las Prelaturas personales en el Concilio Vaticano II*, Pamplona 1986.

to recall in the present context, in line with a recent monograph,⁵ how a proposal to set up a personal diocesan jurisdiction in Hungary, directly subject to the Holy See, was taken under consideration by Pope Innocent III in the times of King Emerich, as far back as 1204. The reason was one of ecumenical unity, to provide a way of reuniting under a single bishop the churches and monasteries of the Eastern rite situated in the Kingdom of Hungary.

In our day, the indications of Vatican II and the post-Conciliar legislation on personal prelatures have been taken up into the 1983 Code of Canon Law in canons 294-297. This is not the moment to discuss how these canons of the Code have incorporated the Conciliar and post-Conciliar teaching. I would only like to point out that, in my judgment, the singularity of the figure and the uncertain use of ecclesiological categories, together with others of a technical and canonical nature, provoked some doubts in a Consultor just prior to the promulgation of the Code, during the final writing of the text.⁶ And this resulted in a questionable systematic insertion of personal prelatures that, even though it had a very restricted interpretive and substantial relevance, certainly

did not further, at least initially, a correct understanding of this figure.

This question has already been studied sufficiently,⁷ and it does not seem opportune to consider it in detail now. I think one can say, nevertheless, that the canonical experience of the Church in these more than twenty years since the promulgation of the Latin Code has contributed to correcting, at least in part, the initial misunderstandings, illuminating clearly the hierarchical nature of personal ecclesiastical circumscriptions, of personal prelatures. This is a category which (as also occurs in the case of military ordinariates, whose present norms are also of recent creation) is not included in the notion of a particular Church, understood from a strictly theological point of view.

Many elements of the canonical experience acquired during these years confirms this conception of the nature of personal prelatures. It is also a matter of uniform and indisputable experience,⁸ confirmed by various magisterial documents and norms of the Holy See which have emphasized specific aspects of the hierarchical dimension of personal prelatures,⁹ or which, as in the case of the *praxis curiae*,¹⁰ have contributed to

5. Cf. Orazio Condorelli, *Unum corpus, diversa capita. Modelli di organizzazione e cura pastorale per una 'varietas ecclesiarum' (secoli XI-XV)*, Rome 2002, especially pp. 130-132.

6. For this topic see, among others, Eduardo Baura, "Le attuali riflessioni della canonistica sulle Prelature personali," in *Le Prelature personali nella normativa e nella vita della Chiesa*, Padua 2002, pp. 15-53. For the critical discussion see Gaetano Lo Castro, "Le Prelature personali nell'esperienza giuridica e nel dibattito dottrinale dell'ultimo decennio," in *Studi in onore di P. Bellini I*, Catanzaro 1999, pp. 423-456.

7. A critical response to the erroneous consequences that could be derived from this can be found in Angela Maria Punzi Nicolò, *Libertà e autonomia negli enti della Chiesa*, Turin 1999, p. 205. On the value of the systemization in the code, see Josemaría González del Valle, "La sistemática del nuevo Código de derecho canónico," in *Ius Canonicum* 49, 1985, p. 13 ff.; Eduardo Molano, "Las opciones sistemáticas del CIC y el lugar de las estructuras jerárquicas de la Iglesia," in *Ius Canonicum* 66, 1993, p. 465 ff.

8. The activity regarding Concordats of the Holy See during this period, for example, has presented personal prelatures to the various states together with the other ecclesiastical circumscriptions—dioceses, apos-

bringing into focus the jurisdictional dimension of the personal ecclesiastical circumscriptions, of personal prelatures, with the interpretive authority that canon 19 attributes to such *praxis*.

It is also true that, beyond the problems linked to the evolution of the normative texts, the consolidation of the new juridical figure must necessarily be tested by the creation in the future of other—though not necessarily many—personal prelatures. Within the common framework of the hierarchical structure of the Church and respecting the few norms of the Code to which all circumscriptions of this type must necessarily adhere, there is room for a variety of tasks or pastoral needs for which this figure is foreseen. And therefore there is also room for a variety of statutes approved by the Apostolic See in function of the specific pastoral needs of each case, the

organizational possibilities which the Church can offer in such cases, and, finally, the scope involved (national, within a bishops' conference, or international). Beyond this variety, personal prelatures that in the future may be constituted by the Apostolic See must necessarily refer to the few common stable elements defined by canonical legislation, which it seems to me have already been acquired in these years, in light of the uniform *praxis* adopted by the Church.

These common elements can be viewed as similar, in substance, to those typical of any ecclesiastical circumscription. The prelature is made up of a community of faithful who, while remaining as members of their respective particular Churches, are also entrusted, under well defined perspectives, to a Pastor—the prelate of which canon 295 ¶ 1 of the CIC speaks—assisted by his

tolic vicariates, military ordinariates, etc.—as an expression of the hierarchical structure of the Church, with the natural consequence that the different States have conceded a substantially identical treatment to these institutions within their respective juridical systems, seconding the proposals of the Holy See (see, for example, art. 6 § 1 of the Concordat between the Holy See and the Republic of Poland, of July 28, 1993; art. 5 of Accord on Juridical Questions between the Holy See and the Republic of Croatia, of December 19, 1996; Additional Protocol of Accord between the Holy See and the Republic of Gabon on principles and on some juridical dispositions relative to their relations and their collaboration, of December 12, 1997; art. 5 of the Agreement between the Holy See and the Republic of Lithuania concerning juridical aspects of the relations between the Catholic Church and the State, of May 5, 2000).

9. I will cite only the Directory for the Ministry and Life of Priests, of 1994, which states that, in personal prelatures as in military ordinariates, there is a presbiterium in the proper sense around their respective Pastor, as occurs in particular Churches in the strictly theological sense (cf. Congregation for the Clergy, Directory for the Ministry and Life of Priests, of January 31, 1994, no. 25 and art. 22 § 2.5). More recently, the instruction *Erga Migrantes*, in considering canonical discipline with respect to pastoral attention to emigrants, has pointed to personal prelatures as hierarchical structures that might be useful for the pastoral care of this nucleus of faithful, in the case that specific circumstances would make this figure advisable (cf. Pontifical Council for Pastoral Care of Emigrants and Itinerants, Instruction *Erga Migrantes*, of May 3, 2004, no. 24).

10. This could be through the *Annuario Pontificio*, where all of the territorial and personal ecclesiastical circumscriptions are considered together (see *Annuario Pontificio* 2003, "Statistical Data on the Catholic Hierarchy," pp. 1063-1066), or through instruments such as those used to prepare the quinquennial reports on instruction *Erga Migrantes*, in considering canonical discipline with respect to pastoral attention to emigrants, has pointed to personal prelatures as hierarchical structures that might be useful for the pastoral care of this nucleus of faithful, in the case that specific circumstances would make this figure advisable (cf. Pontifical 10. This could be through the *Annuario Pontificio*, where all of the territorial and personal ecclesiastical circumscriptions are considered together (see *Annuario Pontificio* 2003, "Statistical Data on the Catholic Hierarchy," pp. 1063-1066), or through instruments such as those used to prepare the quinquennial reports on the the ad limina visits. (Cf. Congregation for the Bishops, *Formulario per la relazione quinquennale*, Ed. Vaticana, 1997); or through other similar ways.

own presbyterate. We here again encounter the common categories necessarily present in any ecclesiastical circumscription, whether territorial or personal: a *coetus fidelium* [community of faithful] entrusted to a Pastor, understanding in this context by “coetus” something that differs theologically from the *portio* or *pars Ecclesiae universalis*, which ecclesiological is usually individuated in a particular Church.

At the same time, it is necessary to affirm that the norms of the Code do not necessarily find a univocal application in the configuring of personal prelatures, since some of these norms (and I refer to the contents of canons 294–297) are in fact optional.¹¹

For example, the incardination of its own clergy envisioned by canon 295 ¶1, although existing in the first prelate that has been established, is not necessarily an essential element, since the possibility exists for prelatures without their own incardinated clergy, as might occur, and in fact does occur, in military ordinariates. The same could be said with respect to having its own seminary, the geographical ambit of the prelate’s activity, etc. The very incorporation of faithful to the prelate by means of the convention indicated in canon 296 solved, in the case of the first prelate established, the technical way of incorporating the lay faithful in the prelate and the way of establishing their relationship with the prelate. But this is just one possibility, and it might

eventually be replaced by other forms of incorporation. For example, in other possible cases, the determination of which faithful are entrusted to the pastoral care of the prelate—always maintaining their attachment to the diocese of their domicile—might be established by authority of the Apostolic See in the very act of establishing the prelate, as could occur in the case of a military ordinariate¹² or as has happened in the personal Apostolic Administration of Campos in Brazil.¹³

In synthesis, as one can see by a careful reading of the legal texts, only some of the structural elements pointed out in canons 294–297 for personal prelatures should be considered essential. Therefore, only some of the characteristics established in the case of the first of these personal prelatures, the Prelature of Opus Dei, are valid also for the prelatures that, for other pastoral purposes, may be created afterwards.

2. *The juridical nature of the power exercised in personal prelatures*

The framework traced up to this point allows us to identify the essential elements proper to personal prelatures and at the same time determine the context to which such prelatures belong, that of personal ecclesiastical circumscriptions. I think, in fact, that the notion of the particular Church should be used in a strictly theological context, and I will try to adhere to that principle in this discussion.

11. Cf. Juan Ignacio Arrieta, “Le Prelature personali e le loro relazioni con le strutture territoriali,” in *Il Diritto Ecclesiastico* 112, 2001, pp. 22–49; Giuseppe Comotti, “Somiglianze e diversità tra le Prelature personali ed altre circoscrizioni ecclesiastiche,” in *Le Prelature personali nella normativa e nella vita della Chiesa*, cit., pp. 81–114.

12. Cf. Apostolic Constitution *Spirituali Militum Curae*, art. I and X.

13. Cf. Decree of the Congregation for the Bishops, of January 18, 2002, AAS 94 (2002) 305–308.

Nevertheless, since personal prelatures belong to the ecclesiastical jurisdictions through which the Church organizes itself hierarchically as the People of God, this entails that the power of the one who is in charge of them, the Prelate, is necessarily a power of an episcopal nature, similar from this point of view to that of any other pastor who finds himself in charge of an ecclesiastical circumscription, whether a bishop or not. The latter situation is found, for example, in the case of some apostolic prefects and apostolic vicars or administrators, who nevertheless are pastors placed in charge of pastoral circumscriptions in the Church. This is to say that the jurisdiction exercised by all these pastors, including the personal prelate, is a case of the exercise of the *munus regendi* of directing and governing a community of the baptized, which can be also conferred, as centuries of Church history attest to, upon a priest with ecclesiastical jurisdiction. A quick consultation of the *Annuario Pontificio* would be enough to show this reality.¹⁴

Going beyond the strict limits that the structure of the Church requires (according to which neither the prelate nor other pastors of similar jurisdiction

necessarily have to be bishops), for reasons of consistency between the juridical dimension and the sacramental reality of the Church, and more specifically, in respect to personal prelatures, between the juridical dimension and the pastoral reality of the Church, the episcopal ordination of these prelates would seem to be appropriate, for the Apostolic See assigns to them, with their appointment to the office, a canonical mission and a flock¹⁵ over which they are to exercise the corresponding pastoral function.

And, in fact, this is what the Holy See has decided upon in the case of the two Prelates who have followed each other at the head of the only personal prelatore currently in existence.¹⁶

My predecessor, the Servant of God Alvaro del Portillo, whose cause of beatification has recently been introduced, was ordained as a bishop on January 6, 1991,¹⁷ as was the following Prelate on January 6, 1995.¹⁸ Relevant for what I will say later is a passage from the Papal Bull corresponding to the last of these two episcopal ordinations, which speaks explicitly of the flock¹⁹ entrusted to the pastoral care of the Prelate elevated to the status of bishop.

14. See the study of the various circumscriptions carried out by Juan Ignacio Arrieta, "Chiesa particolare e circoscrizioni ecclesiastiche," in *Ius Ecclesiae* 6, 1994, pp. 3 ff; Idem, "Le circoscrizioni personali," in *Fidelium Iura* 4, 1994, pp. 207-243.

15. See Fernando Ocáriz, "Episcopado, Iglesia particular y Prelatura personal," in J.R. Villar (ed.), *Iglesia, Ministerio episcopal y Ministerio petrino*, Rialp, Madrid 2004, pp. 179-190.; Valentin Gómez-Iglesias, "L'ordinazione episcopale del Prelato dell'Opus Dei," in *Ius Ecclesiae* 3, 1991, p. 251 ff.

16. On this question, see the observations of Velasio de Paolis, "Nota sul titolo di consacrazione episcopale," in *Ius Ecclesiae* 14, 2002, pp. 59-79.

17. See the text of the Papal Bull of appointment as bishop in *Romana* 7, 1991, p. 12.

18. See the text of the Papal Bull of appointment as bishop in *Romana* 11, 1995, pp. 14-15.

19. *Denique te, dilecte Fili, gregem tuum et omnes Christifideles committimus intercessioni Dei Genetricis Mariae et beati Iosephmariae Escrivá de Balaguer, ut omnibus significare valeas "opera maximi Dei"* (cf. 2 Mac 3, 36) (*ibid.*, p. 15).

In the office of prelate, therefore, an ecclesiastical power of an episcopal nature is exercised, which is defined in general terms and conferred on each prelate individually by the Apostolic See. This power corresponds to the ministry of a pastor in relation to a *coetus fidelium*. Properly speaking, such conferral represents a *missio canonica*, with the assigning of the faithful over whom the Prelate holds ecclesiastical jurisdiction in the sense indicated by the statutes, as is said in canon 296. I will return to this later on to delimit these ideas better, since, in my opinion, strictly speaking they should not be referred to in the same terms as in regard to a particular Church.

Therefore, in order to go more deeply into the canonical nature of the power exercised in personal prelatures, one needs to refer to the traditional canonical categories concerning ordinary and delegated power, as this has been synthesized since the earliest canonical codification and which has reached us through canons 129ff of the present Code. Likewise, as specific elements, aside from canons 294ff, we should also look at the juridical experience gained from the establishment of the first personal prelature. However, we should only do so to the extent that the general normative framework permits the transference of such data to a general context.

The first paragraph of canon 295 points out that “a personal prelature is governed by the statutes given to it by the Apostolic See and its government is conferred upon a prelate as its own Ordinary, to whom there corresponds the power of establishing a national or

international seminary, as well as of incardinating students and raising them to orders in title of service to the Prelature.” Together with other questions that I will take up again later, this norm points out with technical precision the nature of the power of the Prelate.

In that sense, and by reference to canon 131, which determines the typical categories of ecclesiastical power, it is said that, within the jurisdictional ambit of the Prelature, the Prelate possesses a power of *ordinary* government (that is to say, attached to the office of, presiding over, or heading the prelature itself) which is of a proper nature and not vicarious or exercised in the name of another, as for example occurs in the various mission ecclesiastical jurisdictions, such as apostolic vicariates, apostolic prefectures, etc., whose respective pastors exercise jurisdiction in the name of the Supreme Pontiff, as is carefully pointed out in canon 371.

The Prelate possesses then an ordinary power of his own in the ambit of the personal prelature and in the terms established for each prelature by their respective statutes. According to such statutes, the content of the power could vary from one prelature to another, as will be shown as follows, but the juridical nature of the power would remain the same in each case.

On this foundation, and in connection with canonical tradition, some authors maintains that the power of a personal prelate, as, for example, that of a military Ordinary, is in all cases a power “shared *a jure*” (shared from the primatial function), which must be distinguished from the strictly sacramen-

tal episcopal headship, which corresponds in the strict theological sense only to a diocesan bishop in reference to a particular Church.²⁰ The specificity of these personal jurisdictions brings with it, in effect, a particular type of relationship with the primatial function, something that no. 16 of the letter *Communione Notio*, from the Congregation for the Doctrine of the Faith, noted in 1992 in pointing out that, with the particular Churches, "there exist institutions and communities established by the Apostolic Authority for special pastoral tasks. These, as such, belong to the universal Church, although their members are also members of the particular Churches where they live and work."²¹

It would be interesting to stop and consider in more detail these considerations, but it is not possible to do this now. I would just like to say that, in line with such observations by the Congregation for the Doctrine of the Faith, some authors have held that personal prelatures, like military ordinariates, are in reality structures that belong theologically to the universal Church, while others (seeking to express the same intuition) have preferred to speak of structures complementary to the particular Churches.²² I think that in both cases the underlying vision calls for a distinction in ec-

clesiological terms between these realities and particular Churches, while specifying a particular theological bond of the aforesaid structures with the Successor of Peter and the Head of the episcopal college.

Another general characteristic of the power of the prelate derives from the fact that it is exercised in an ecclesiastical circumscription of a personal type. It is true that every relationship of jurisdiction, as shown by canon 136 regarding the executive power, is a hierarchical relationship among subjects that transcends territorial limits. But independently of this, the fact of being a matter of a personal jurisdiction means above all that it is not the territory, but the circumstances or condition of the persons themselves that determines who are the subjects included in the jurisdiction of the prelate and therefore in the corresponding community of the faithful. There must always be an objective and specified circumstance, since otherwise it would not be possible to identify with certainty the persons over whom the prelate exercises jurisdiction. We must not forget in any case (and this will be useful to us soon) that in territorial circumscriptions the territorial factor serves to delimit jurisdiction only with respect to the laity, because for the clergy a very different criterion is followed.

20. Once more I insist that I consider it important to specify the reference to the theological notion of particular Church in the strict sense, as it emerges from the Conciliar documents and the following magisterium, in order to emphasize the distinction from the generic use which is frequently made of the term.

21. Congregation for the Doctrine of the Faith, Letter *Communione Notio*, to the bishops of the Catholic Church on some aspects of the Church understood as communion, of May 28, 1992, AAS 86 (1993) 838-850; Fernando Ocáriz, "Unità e diversità nella comunione ecclesiale," in *L'Osservatore Romano*, June 21, 1992, p. 11; also see A. Cattaneo, "La priorità della Chiesa universale sulla Chiesa particolare," in *Antoniano* 77, 2002, pp. 503-539.

22. Cf. Javier Hervada, *Diritto costituzionale canonico*, Milan 1989, pp. 308 ff.; see also Angela Maria Punzi Nicolò, "Funzione e limiti del principio di territorialità," in *I principi per la revisione del Codice di diritto canonico*, J. Canosa (Ed.), Milan 2000, p. 558.

From the personal nature of the structure that we are now considering there also follows the fact that, in principle, the Prelate does not possess in any territory a jurisdiction that could come into conflict with those of the local ordinaries.

We should also note that the personal nature of these jurisdictions does not mean that in these cases some type of territorial jurisdiction is not possible. Regarding the military ordinaries, for example, it has been indicated that the personal jurisdiction is concurrent with that of the local bishop in the military camps and places for worship.²³ Analogically in the case of personal prelatures, a similar determination might also be made in the moment of their establishment or afterwards. Indeed, it seems difficult to reject canonically some ambit of territorial jurisdiction for the personal pastor, for example in the church established as the prelatic church, in the seat of its curia, in its own seminary, etc.

Therefore, the power of the personal prelate is that of an Ordinary;²⁴ and, insofar as Ordinary of a place, taking into account what has already been said, this condition is clear in those specific places in which the prelature has a territory and in what refers to his qualification as Ordinary of the place of incardination.²⁵

We find ourselves, therefore, facing a hierarchical structure whose pur-

pose is to take care of special pastoral needs, potentially very distinct from one another, with the consequent need to restrict as much as possible the common characteristics and to establish an elastic general framework which would permit each prelature to delineate itself by its statutes, modeling in them the faculties of each Prelatic office according to the needs of the case.²⁶

One should keep in mind that in personal prelatures the jurisdiction of the Prelate, especially over the lay faithful, can be very diverse, and therefore that this should be clearly specified in the statutes.

3. The exercise of the Prelate's power insofar as it refers to the content and the distinct components of the Prelature

Given the topic before us, another question that we should consider is the exercise of the power of the Prelate. This question can be considered in relation to at least two different problems that have to do with elements both of a theological nature and of a technical juridical nature. The first involves the content of the power of the prelate; the second, the nature of the relation of jurisdiction with respect to the subjects entrusted to the jurisdiction of the prelate.

In this case also we need to keep clearly in mind the functional nature of the figure of personal prelatures and, therefore, the potential diversity between

23. See art. V, Apostolic Const. *Spirituali Militum Curae*, of April 21, 1986, AAS 87 (1986) 481-486. On this topic, see Eduardo Baura, *Legislazione sugli ordinariati castrensi*, Milan 1992; José Luis Gutiérrez, "De Ordinarius militaris nova constitutione," in *Periodica* 76, 1987, pp. 219 ff.

24. This is established by can. 295 (which enables one to see the non-exhaustive nature of can. 134).

25. In this connection, see the full array of indications presented by canons 265, 266 and 967 §2. See also Ciro Tammaro, "Il Prelato come ordinario proprio della Prelatura personale," in *Antoniano* 77, 2002, pp. 575-583.

26. See Pedro Rodríguez, *Iglesias particulares y prelaturas personales*, pp. 178 ff.; Carlos José Errázuriz, "Circa l'equiparazione quale uso dell'analogia in diritto canonico," in *Ius Ecclesiae* 4, 1992, pp. 215-224.

one prelate and another in what concerns the content of the power of the prelate or the manner of his jurisdictional relationship with the subjects entrusted to his jurisdiction. It is not licit, as I have pointed out more than once, to extend to other future prelatures the juridical experience that we possess, limited to what is up to now the only personal prelate. In each case—it couldn't be otherwise—the specific pastoral circumstances will be what determine the configuring of each of the prelatures and the extension of the jurisdiction to be conferred upon the prelate.

In the case of Opus Dei, questions of concurrence with the jurisdiction of diocesan bishops have not arisen; but, given what I have just said, it is clear that this experience cannot be generalized. It seems reasonable to foresee that the pastoral needs which, in the future, might suggest the erection of new personal prelatures, will usually bring with them the need to delineate a certain sharing in the ordinary pastoral care of the faithful involved.

Reflecting for example, on the eventual need to resolve, by means of personal prelatures, problems of pastoral attention to certain categories of refugees, of nomads, of gypsies or of émigrés (above all in cases of transitory emigration to places without adequate pastoral structures), it is logical to consider an adequate jurisdiction by the prelate as necessary, similar to that reserved to military ordinariates by the Apostolic constitu-

tion *Spirituali Militum Curae*. Certainly, it should always be a matter of a cumulative jurisdiction with the diocesan bishop of the place, since a common characteristic of all the so-called complementary circumscriptions—personal prelatures and military ordinariates follow the same discipline on this point—is that the faithful belong simultaneously to the personal jurisdiction and to the diocesan territorial jurisdiction.

In every case, as also happens with the military ordinary, the power of the personal prelate has reference to the three ambits of governmental power mentioned by canon 135, that is, to legislative power (the power to issue laws or general decrees in matters of its particular competence), executive power and judicial power. Specifically, for the tribunal constituted in the Prelature of Opus Dei, the *Signatura Apostolica* has assigned, as court of second instance, the Tribunal of Appeals of the Vicariate of Rome, which is the same organ that acts as court of second instance for the tribunal of the Military Ordinate for Italy.²⁷

The second question mentioned earlier in regard to the exercise of the prelate's power refers to the jurisdictional relationship with the subjects who form part of the Prelature: the lay faithful incorporated into the prelate by formal agreement or in some other way, or the faithful assigned to the pastoral care of the prelate²⁸ and the clergy incardinated or, perhaps eventually, not incardinated but in any case

27. Cf. art. 40 Apostolic Const. *Ecclesia in Urbe*, of January 1, 1998, AAS 90 (1998) 177-193; see also art. 124, 4 Apostolic Const. *Pastor Bonus*, of June 28, 1988, AAS 80 (1988) 841-930. In this regard, cf. Joaquín Llobell, "I tribunali delle circoscrizioni personali latine," in *Il Diritto ecclesiastico* 113, 2002, pp. 147-176.

dedicated pastorally to the mission of the Prelature.

As one can see, the situations might be very diverse, for which reason it seems wise not to establish positions that are necessarily rigid, which soon might be obsolete, simply because we are dealing with an institution that was desired precisely to offer the elasticity needed to resolve very different kinds of pastoral problems. Therefore, it would be unrealistic to try to limit the possibilities of action on the part of those who might have such a task entrusted to them and the authority to carry it out.²⁹

Nevertheless, one thing which should necessarily be taken into consideration, and which seems rather to have been forgotten by some authors who have dealt with this topic, is that the juridical rule established in the Church to determine ecclesiastical jurisdiction in regard to the various categories of Catholic faithful (principally the laity and clergy) is very diverse. But this fact cannot be used to speak of distinct grades of membership. Among other things, this would go directly against that “true equality in dignity and action” proclaimed in canon 208, in line with no. 32 of the Dogmatic Constitution *Lumen Gentium*, which is one of the fundamental juridical situations of the baptized highlighted by the

Second Vatican Council. Let me explain this point more fully.

One of the theses held in this respect, on the basis of a reading of canon 294 that fails to take into account other data of canon law, beginning with the canons immediately following it, is that only the clergy, priests and deacons, mentioned in canon 294, belong to the personal prelature. The lay faithful who, by agreement with the prelature, as provided in canon 296, or in some other way, come to “cooperate organically” with it are not incorporated, according to this thesis, in the prelature itself, but are only some form of auxiliaries or coadjutors, in accordance with an external relationship model that is fairly frequent in associations of faithful allied to institutes of consecrated life. However, as regards personal prelatures, a view of this kind is absolutely mistaken. It shows no knowledge of the historical formation of the figure and is contradicted by its juridical experience, even if this is somewhat limited.

In general terms, we must keep in mind, as I have said, that the different types of jurisdictional relationship with the clergy and the lay faithful in no way justifies speaking of different degrees of membership.³⁰ One cannot say that diocesan priests belong to the diocesan

28. The jurisdiction of the Prelate with respect to the lay faithful is not limited to the possibility of the incorporation of faithful by means of a contract in conformity with canon 296. One must keep in mind the nature of the pastoral care that the Holy See has entrusted to the Prelature and, therefore, who the faithful are over whom it has jurisdiction. For example, there might be a personal prelature—as an experienced archbishop suggested some years ago—for the pastoral care of Gypsies within the sphere of a specific bishops’ conference. These Gypsies would be under the jurisdiction of the Prelate insofar as the statutes of the Prelature so determined for the fulfillment of its particular pastoral mission. The subjects of the pastoral care of the prelature, as occurs in the case of military personnel in the military ordinariates, would be faithful of the prelature without prejudice to their dependence on the diocesan bishop in their place of domicile.

29. This institutional elasticity has traditionally been emphasized by authors as a positive element characterizing the figure of the personal prelature: see, for example, Giuseppe Dalla Torre, “Le strutture personali e le finalità pastorali,” in *I principi per la revisione del Codice di diritto canonico*, pp. 580 ff.

Church more fully than the lay faithful do, in spite of the fact that the bond of incardination represents a relationship of hierarchical subjection which is much more intense and extensive than that which links the lay faithful to his own bishop by the baptismal relationship through the rules of domicile.

In the case of personal prelatures (and I think that what I will say is also true in good measure for the other so-called complementary circumscriptions), the clergy incardinated as indicated by canon 294 have a complete and exclusive jurisdictional relationship with the prelate which has the same intensity and extension as that established by any other regular clergy with their own diocese and bishop. It is not possible for clergy to maintain a double incardination, since incardination always has the same juridical content. The cleric incardinated in a prelate has, with respect to the prelate, the same total jurisdictional dependence that the cleric incardinated in a diocese has with respect to the diocesan bishop.

In the case of the lay faithful, in contrast, one can belong to two jurisdictions at the same time, as is also true of military ordinariates. This is not something recent. The possibility of this double dependence derives from canonical tradition, as is shown by the rules of domicile and quasi-domicile present in canon 107. The only novelty in this case is the fact that the dependence on the second jurisdiction is not determined by quasi-domicile, but by a circumstance which is personal in nature.

In addition, while the juridical consequences of incardination are uniformly the same in all cases (and the same can be said of the juridical relevance of quasi-domicile), in the case of complementary circumscriptions—personal prelatures and military ordinariates—the effects are specified by their respective statutes. More precisely, the fact that the bond of the lay faithful with the prelate is not the same as that of the clergy, or that which binds one to the diocese of domicile, does not authorize us to conclude that their link to the prelate is less than that of the clergy who are incardinated, or even that it is non-existent. This would be a reductive thesis both in relation to the postulates of equality proclaimed by and present in the Code, as well as in relation to the theological content given to the expression “*cooperatio organica*,” with which no. 10 of the same Conciliar constitution specified the relationship between the royal priesthood and the ministerial priesthood in the building up of the Church, an expression which was, significantly, included in canon 296 in relation to the incorporation of lay faithful in personal prelatures.

The juridical experience of the only currently existing prelate does not leave any room for doubt. No. III of the Apostolic Constitution *Ut Sit*, which established the Prelature of Opus Dei, says quite directly that “the jurisdiction of the personal Prelature [that is, of the Prelate], extends to the clergy incardinated in it, and also—only in what refers to the fulfillment of the specific obligations undertaken through the

30. For critical comments and positions, see the recent monograph by Ciro Tammaro, *La posizione giuridica dei fedeli laici nelle Prelature personali*, *Antonianum*, Rome 2004.

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 authority of the Prelate in carrying out the pastoral task of the Prelature as established in the preceding article.” I don’t see how one could reconcile this norm of the Apostolic Constitution with the idea that the lay faithful do not fully belong to the Prelature.

Finally, in regard to the specific case of Opus Dei, the Holy Father John Paul II has made explicit statements on more than one occasion. Specifically, in the course of an audience granted in March of 2001 to faithful of Opus Dei from all over the world, gathered in Rome to participate in a conference organized by the Prelature to consider the Letter *Novo Millennio Ineunte*, he expressed himself in these words: “You are here representing the components by which the Prelature is organically structured, that is, priests and lay faithful, men and women, headed by their own Prelate. This hierarchical nature of Opus Dei, established in the Apostolic Constitution by which I erected the Prelature (cf. Apostolic constitution *Ut Sit*, November 28, 1982), offers a starting point for pastoral considerations full of practical applications. First of all, I wish to emphasize that the membership of the lay faithful in their own particular Churches and in the Prelature, into which they are incorporated, enables the special mission of the Prelature to converge with the evangel-

izing efforts of each particular Church, as envisaged by the Second Vatican Council in desiring the figure of personal prelatures.” And the Pope continued: “The organic way that priests and laity work together is one of those privileged areas where pastoral activity will take life and be strengthened, activity marked by that ‘new energy’ (cf. Apostolic letter *Novo Millennio Ineunte*, no. 15) which has encouraged us all since the Great Jubilee. In this connection, we should recall the importance of that ‘spirituality of communion’ stressed by the Apostolic letter (cf. *ibid.*, nos. 42–43).”

I am going to finish. In this talk I have tried to point out some relevant parameters within which the exercise of the pastoral power of government in personal prelatures develops, considered in general terms. I have tried to do so by referring to the principal observations that authors have highlighted in regard to this canonical figure. I am convinced that, precisely because of the versatility that the statutes grant to personal prelatures, these will be in the future a splendid pastoral instrument at the service of evangelization and apostolate, so needed by the Church of the 21st century. I also think that the growing progress in the communion between faithful and pastors, stressed in recent documents of the papal magisterium, will increase esteem for a pastoral structure which has been suggested by the Second Vatican Council and which, like all the other structures in the Church, can have no other objective than the service of Christ’s Church.

31. John Paul II, address of March 17, 2001, in *L’Osservatore Romano*, March 18, 2001, p. 6.