

# The Hierarchical Nature of Personal Prelatures

## A Study of the Foundational Charism of *Opus Dei* and its Canonical Configuration as Personal Prelature

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One of the greatest drawbacks in the science of Law is *legal positivism*: that mindset which puts the origin and foundation of Law not in the reality, of which the juridical order is just a matrix, but rather in the consistency of the written law itself and ultimately in the will of the human legislator. At bottom this is nothing else but the projection in the juridic science of an older error in philosophy, which is Cartesian immanentism or rationalism. It is a constant temptation for the thinking mind – like a recurring virus in the history of mankind – to confuse its thoughts with the reality that it is thinking about. The vaccine for such a virus is realism: simply put, to keep one's feet on the ground or even better said, one's eyes on reality.

This insight presents us with a hermeneutic key for understanding a juridic figure of quite recent development, a result as it were of a reality that is also of relatively recent genesis. I am referring to the figure of the Personal Prelature – first concep-

tualized by Vatican Council II and presently regulated by cc.294-297 of the Code of Canon Law – and the reality of *Opus Dei* (founded October 2, 1928), which was erected as the first (and to date still the only) Personal Prelature on November 28, 1982.

In effect – and advancing the conclusion that we hope to draw at the end of this discussion – it seems reasonable and realistic to try to understand the juridic figure of Personal Prelatures by keeping in sight the only Personal Prelature that has been erected to date, which is the Prelature of *Opus Dei*. In Part I of this study, we hope to show that what *Opus Dei* was from the beginning (the foundational charism) and its juridical configuration (as Personal Prelature) are not related merely in a pragmatic way. Rather, the Personal Prelature is the juridic configuration that adequately fits the reality of *Opus Dei* – accommodating the essential characteristics of what God wanted *Opus Dei* to be – and provides the most natural and direct channel for its expression and effective action. In the process, we hope to underscore the more important characteristics of this new juridic configuration. In Part II, we hope to clarify the common difficulties in the understanding of Personal Prelatures in general by looking at the case of *Opus Dei* in particular.

## I. THE JURIDIC ITINERARY OF *OPUS DEI*

### 1. The Foundational Charism: Message and Institution

In his accounts of October 2, 1928, St. Josemaría Escrivá de Balaguer – the Founder of *Opus Dei* – never deviated from a specific expression: he *saw Opus Dei*.<sup>1</sup> What does this singular and precise expression mean and imply?

What St. Josemaría experienced was *not simply an intellectual illumination* that infused in him a deep understanding of the call to

1. “Bajo la luz potente e inefable de la gracia se le mostró la Obra en su conjunto; «vi» es la palabra que usaba siempre al definir este hecho.” A. Vázquez de Prada, *El Fundador del Opus Dei (Vol. I): ¡Señor, que vea!* (3rd Ed.), Ed. Rialp, Madrid (1998), 293-298; *The Founder of Opus Dei (Vol. I): The Early Years* (English translation), Scepter Publishers, New Jersey (1997), 220. Cf. also P.Urbano, *El hombre de Villa Tevere: Los años romanos de Josemaría Escrivá*, Plaza & Janes Ed., S.A., Barcelona (1995), 400-401.

holiness in the middle of the world; but rather a concrete way of heeding that call, a *specific spirit that in his mind was already incarnate*. So clearly did he see it that, initially, he thought such a phenomenon already existed and he set out to look for it so as to enlist in it.<sup>2</sup> Not finding such a phenomenon, despite an exhaustive search not only in his native Spain but also through correspondence with other European countries, he understood that *God wanted him to incarnate that spirit and make it possible for many others to incarnate it* as well. These latter would be the ones called by God to assume the mission of spreading this spirit with their life and apostolate.

In this foundational grace, then, there existed an essential relation between the *message* that God was giving the Church through St. Josemaría and the *institution* that must incarnate it, preserve it and transmit it to others. This meant that the institution ought to be that very message made life, making it exist visibly and concretely. It also meant that the foundational grace was both a *call* and a *mission*: the vocation to incarnate a spirit, and the mission to spread it to others.<sup>3</sup>

What was the essence of the foundational message received by St. Josemaría on 2.X.1928? It was quite simply the truth – *old as the Gospel*

2. “Y con una falsa humildad, mientras trabajaba buscando las primeras almas, las primeras vocaciones, y las formaba, decía: hay demasiadas fundaciones, ¿para qué otras más? ¿acaso no encontraré en el mundo, hecho ya, esto que quiere el Señor? Si lo hay, mejor es ir allí, a ser soldado de filas, que no fundar, que puede ser soberbia.” J. Escrivá de Balaguer, *Apuntes*, n.1870, in A.Vázquez de Prada, *op.cit.*, 319; cf. (English translation) *op. cit.*, 240. See also, J.F.Coverdale, *Uncommon Faith: The Early Years of Opus Dei (1928-1943)*, Scepter, New York, 2002, 65.

3. A.Vázquez de Prada, *op. cit.*, 294; cf. (English translation) *op. cit.*, 221.

The German historian-journalist, Peter Berglar, expresses this point quite well: “If Escrivá had limited himself to putting his thoughts in writing, perhaps in a book he could have called *Secularity and Sanctity*, he would surely have achieved considerable fame as a theological and ascetical author (...) An *intriguing controversy* or a *noteworthy discussion* might have begun; but the true originality of *Opus Dei* would have been missed. It was only a corollary novelty to change the concession, ‘Even though you are a lay person, you can sanctify yourself’ to the challenge, ‘Because you are a lay person in the midst of the world, you can and should sanctify the world and sanctify yourself in the world.’ The real novelty consisted in joining arms with one’s neighbors, teaching them in a practical way – by one’s own life – how to be saints.” P.Berglar, *Opus Dei: Life and Works of its Founder, Josemaría Escrivá* (English trans.), Scepter Publishers, Princeton, N.J., 1994, 50.



and like the Gospel new, in the words of the Founder<sup>4</sup> – that ordinary Christians are called by God to holiness and apostolate in the middle of the world, in their professional work and in the fulfillment of their ordinary Christian duties, with the mission to sanctify the world from within. This implied four things, which in the ontological level are essential to understanding the nature of *Opus Dei*.<sup>5</sup>

1) *The universal call to holiness.* As St. Josemaría wrote in 1930: “We have come to say, with the humility of those who know themselves to be sinners and of little worth (...) but also with the faith of those who let themselves be guided by the hand of God, that sanctity is not something for a privileged few; that our Lord calls every one of us, that he expects love from everyone: from everyone, no matter where they are; from everyone, whatever might be their state in life, their profession, or their position. (...) It is not necessary to abandon one’s state in the world to seek God, if God does not give the soul a vocation to religious life, for every path of life can be the occasion of an encounter with God.”<sup>6</sup>

This implies the genuine feasibility of striving for holiness and doing apostolate in whatever circumstances a Christian may find himself in – circumstances, on the other hand, which we must not forget are allowed if not explicitly willed by God. In other words, the universality of the vocation to holiness does not only refer to *all men*, but also to *all the situations* that ordinary men find themselves in.

2) *Secularity.* More specifically, since the great majority of ordinary Christians are in the middle of the world, the universal call to holiness also entails discovering and recovering the divine meaning of all temporal realities making up ordinary human life – especially work, family and social life, and friendship. These temporal realities, far from being a distraction or an

4. A.Vázquez de Prada, *op.cit.*, 568; cf. (English translation) *op.cit.*, 438. See also, J.F.Coverdale, *op.cit.*, 62.

5. For a more extensive treatment of this matter, cf. F.Ocáriz, *Vocation to Opus Dei as a Vocation in the Church*, in P.Rodríguez, F.Ocáriz, J.L.Illanes, *Opus Dei in the Church*, Dublin, Four Courts Press, 1994, 77-120.

6. J. Escrivá de Balaguer, *Carta* 24.III.1930, in A.Vázquez de Prada, *op.cit.*, 300; (English translation) *op. cit.*, 225.

obstacle for contemplation, constitute – in the inspiration received by Escrivá – the proper *place* for the ordinary Christian to seek union with God.

As St. Josemaría wrote in 1930: “The extraordinary for us is the ordinary: the ordinary done with perfection. (...) In a word, making our ordinary life a continuous prayer.”<sup>7</sup>

3) *Fullness of Christian Life: Personal Holiness and Apostolate.* What this union with God entails is nothing more (and nothing less) than the full development of the potential of the baptismal vocation by the full application of the resources and means proper to Christian life. As St. Josemaría explains: “Within the framework of the universal call to holiness, members of *Opus Dei* receive in addition a special call to dedicate themselves, freely and responsibly, to look for holiness and carry out the apostolate in the middle of the world, committing themselves to live a particular spirituality and to receive a specific formation.”<sup>8</sup>

In sum, this implies a phenomenon allowing the full interplay of the *ministerial priesthood* of the ordained ministers – to whom Christ gave the power and the mandate to *feed his lambs* and to *feed his sheep* – and the *royal priesthood* of the ordinary faithful. In short, the institution that God was asking him to flesh out would necessarily involve both ordinary faithful and secular priests.

4) *Universal Projection.* In an interview published in 1966, St. Josemaría categorically affirmed: “Geographically, *Opus Dei* was born in Spain. But from the beginning its aim has been universal. And I myself

7. J. Escrivá de Balaguer, *Carta* 24.III.1930, n.12, in A.Vázquez de Prada, *op.cit.*, 301; (English translation), *op. cit.*, 226.

8. Interview with E.Zuppi & A.Fugardi published in *Osservatore della Domenica* (19 & 26.V.1968 and 2.VI.1968), in *Conversations with Monsignor Escrivá de Balaguer*, Little Hills Press, Sydney, 1993, n.61. The same is expressed in a similar interview with Peter Forbarth published in *Time Magazine* (15.IV.1967), also in *Conversations with Monsignor Escrivá de Balaguer*, n.41. This little book – a collection of eight interviews of St. Josemaría Escrivá by distinguished journalists and writers – is of singular interest in that it contains a distillate of his most profound thoughts regarding the different issues of society in general and the Church in particular, and above all regarding the essential aspects of the spirit of *Opus Dei*.

have lived in Rome for 26 years.”<sup>9</sup> A year later he would insist again: “From the first moment, the Work was universal, catholic. It was born not to solve the concrete problems facing Europe in the twenties, but to tell men and women of every country and of every condition, race, language, milieu and state in life (single, married, widowed or priest) that they can love and serve God without giving up their ordinary work, their family life and their normal social relations.”<sup>10</sup>

## 2. The Juridic Problem of *Opus Dei*

When he realized that the phenomenon he *saw* on Oct. 2, 1928 did not exist anywhere, St. Josemaría started working: incarnating it and leading others to incarnate it. Life had begun and was developing vigorously. Law had to follow.

Because the Church is a perfect society, it is also a juridic reality: all the elements in the Church – subjects, goods, relationships – are positivized and formalized in a set of juridic situations and juridic relations defined by Law. This inter-related system of situations and relations forms a juridic *matrix*, outside of which no ecclesial reality – no matter how ontologically consistent and relevant it may be – can really play an active part for long.

Hence, St. Josemaría soon found it necessary to fit *Opus Dei* – that precise reality that he *saw* by divine inspiration on 2.X.1928, and which since then he had tried his best to incarnate and taught others to incarnate – into that juridic matrix of the Church. As a consequence of the intimate relation between the message and the institution, the question of the juridic configuration for *Opus Dei* was far from trivial. However, it was not possible to find in the Canon Law in force at the time any juridic form that fitted faithfully the characteristics pointed out above. It was not a question of not knowing what the *Work of God* – or simply *the Work*, as the new phenomenon was soon to be called – was, but just the opposite. Precisely because St. Josemaría *saw* what exactly God wanted *Opus Dei* to be, he

9. Interview with Jacques Guillem-Brûlon published in *Le Figaro* (16.V.1966), in *Conversations with Monsignor Escrivá de Balaguer*, Little Hills Press, Sydney, 1993, n.37.

10. Interview with Peter Forbarth, *op.cit.*, in *Conversations with Monsignor Escrivá de Balaguer*, Little Hills Press, Sydney, 1993, n.32.

could not accept just any pre-existing juridic configuration that did not adequately accommodate that reality.

The duration and complexity of the canonical path of *Opus Dei* was a reflection of the heroic battle St. Josemaría – and his closest collaborator, Msgr. Alvaro del Portillo – waged *in defense of a charism*.<sup>11</sup> This entailed finding a juridic configuration that would, at the minimum, not be contradictory to the foundational message. Initially, this would be the most important requirement, but it would not be enough. The juridic configuration for *Opus Dei* would also have to take up its essential traits in the most authentic way possible, so as to favor their full vital development.

Summarizing then, the juridic configuration of *Opus Dei* must necessarily safeguard the following essential characteristics:

1) *Juridic Unity*: The divine origin, the unity of vocation and mission, and also the universality of *Opus Dei* called for an institutional configuration that would guarantee its juridic unity, by means of the unity of criterion for membership, of governing structure, of governance and of direction of all the members æboth laymen (and laywomen) and priestsæ in the whole world.

2) *Secularity*: The institutional mission of *Opus Dei* is to explicitly foster a full awareness of the consequences of one's baptismal vocation. Hence, its juridic configuration must be such that the way of establishing one's membership in *Opus Dei* would not alter in any way the ecclesial condition or civil condition of the faithful who were called by God to it. Put differently, the juridic bond engendered by membership in *Opus Dei* should not alter in any way the juridic bond that makes him or her a faithful of the Church of Christ; much less should it alter the bond that makes him or her a citizen of the state.

3) *Hierarchical Structure*: The intrinsic need for the cooperation of laity and priests in carrying out the mission of *Opus Dei* required a juridic configuration by which lay people and priests would belong to *Opus Dei* in a unity of vocation and mission, acting as lay people

11. For a more detailed study, see A.Fuenmayor, V.Gómez-Iglesias, J.L.Illanes, *The Canonical Path of Opus Dei: The History and Defense of a Charism* (Translated from Spanish original by W.H.Stetson), Scepter Publishers (New Jersey) & Midwest Theological Centrum (Chicago), 1994.



and as priests respectively as corresponds to their situation in the Church. In other words, the juridic configuration could not be just a form of association but would have to form part of the hierarchical structure of the Church.

### 3. The Auto-Structuring of the Church

To understand better the so-called *juridic problem of Opus Dei*, it is necessary to understand how the Church is structured in reality and in Law. In an insightful article, the theologian P. Rodríguez explains the social structuring of the Church – which he calls *congregation (congregatio)* – to follow two basic lines or types, which are the result of two phenomena of actuation of the baptized, under the impulse – we can never forget this point – of the Holy Spirit, who is the spirit of the Church as such.<sup>12</sup>

#### a. Hierarchical Structuring

The first type of congregation is what we may call the *hierarchical structuring*, which results from the interplay of the *common priesthood* and the *ministerial priesthood*. This is the original and essential congregation of Christ's faithful, which we find from the very first instant when the Church was constituted as such on Pentecost. The essential human protagonists originally are:

- A Bishop – a key person of Episcopal rank, who is the proper Pastor of a specific flock of the People of God that is the Church, or a *portio Populi Dei*. We cannot forget that it was to the Apostles – and in a special way to Peter – that Christ gave the mandate to

12. Ref. P. Rodríguez, "Sacerdocio ministerial y sacerdocio común en la estructura de la Iglesia," in *Romana*, 4 (1987), 175-176. The same author gives a more exhaustive treatment of this matter in P. Rodríguez, F. Ocariz, J. L. Illanes, *Opus Dei in the Church: An Ecclesiological Study of the Life and Apostolate of Opus Dei*, Scepter Publisher, New Jersey (1994), especially pp. 13-49. Cf. also J. Hervada, "Aspectos de la estructura jurídica del Opus Dei," in *Persona y Derecho, Suplemento Lex Nova de derechos fundamentales del fiel (Fidelium iura)*, 1 (1991), 301-322. A more recent study along the same lines is J.R. Villar, "La 'cooperación orgánica' del sacerdocio común y del sacerdocio ministerial en las Prelaturas Personales," in *Scripta Theologica*, 34 (2002/1), 45-75.

"to go, therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit, teaching them to observe all that I have commanded you" (Mt 28, 19-20).

– A *Presbyterium* – composed of ordained ministers (priests and/or deacons) who are the close collaborators of the Bishop in the pastoral care of the specific portion of the People of God. Together with the Bishop, they act out the ministerial priesthood in favor of the full development of the ordinary priesthood of the faithful.

– A *Coetus fidelium* – composed of the non-ordained (laity and possibly religious), whose common priesthood presupposes and is nourished by the ministry of the Bishop with his *Presbyterium*.

As Rodríguez explains, the Church, organically structured here on earth, is the priestly community consecrated by the Spirit – whom Christ sends from the Father – which is equipped with a structure, wherein the *common priesthood* and the *ministerial priesthood* are articulated in order to make of it (the Church) the Body of Christ. This structure is original, insofar as the two elements that compose it signify the most radical structural positions – albeit not the only ones – that are found in the Church. From such structure – Rodríguez continues – one theologically understands the different entities in which it has been manifested historically, both at the universal and at the particular level. This essential articulation in its turn distinguishes such entities from those other forms of Christian community wherein only one of the aforementioned elements – i.e., either the common priesthood or the ministerial priesthood – is theologically involved.<sup>13</sup>

This structuring is the Church's way of organizing itself so as to act out the *sacra potestas* that its Founder invested the Apostles with, in order to teach, sanctify and govern the faithful with authority (as Christ did). It is the foundation of the hierarchical jurisdictional circumscriptions, the fullness of which is the Particular Church, the paradigm of which is the Diocese.<sup>14</sup>

13. P. Rodríguez, *op. cit.*, 175-176.

14. This point can be illustrated by considering the gradual setting up of a hierarchical jurisdiction in a newly evangelized mission territory. Ordinarily, a new territory is evangelized by missionaries belonging to an associative grouping, precisely because in that territory no hierarchical structure exists yet. As the number of converts and that

### b. Associative Phenomena

The second line of congregation gives rise to the various *associative phenomena* and stems from the exercise by the faithful of their *right of association*, which is characterized by their respective personal conditions. Thus, there are groups of Christian laymen insofar as they are laymen, of Christian religious as religious, of Christian sacred ministers as ministers; and of course groups of Christian faithful insofar as they are faithful – i.e., in which the different categories (sacred ministers, laymen or religious) are implied under the common condition of *Christian faithful*.

This kind of grouping comes about *in* the Church already congregated by the minister of Apostolic succession, thus presupposing that prior grouping. In none of these groupings – as lay, priestly or religious groupings – is the mutual relation of common priesthood and ministerial priesthood the origin of their constitution as such congregation in the Church.<sup>15</sup>

At the time of the Second Vatican Council, the only juridic framework existing for the pastoral phenomenon of *Opus Dei* was either a hierarchical

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of clergy sent to minister to them increases, the newly evangelized territory may be constituted progressively into an *Apostolic Prefecture*, then into an *Apostolic Vicariate* or *Administration* (all phenomena of the jurisdiction of the Pope being exercised in the territory in a vicarious way). Later on, with the greater maturity of the Christian community and the increasing actualization of the potentialities of the Universal Church in that community, it may be erected into a *Territorial Prelature* (already a phenomenon of the exercise of proper power by the Prelate, who is no longer just a vicar of the Pope). Even if such territories were initially evangelized by members of religious orders (the common case, since precisely no secular jurisdiction exists in such territory yet), the coming about of the hierarchical jurisdiction is always the result of the dynamics of the inter-relation between the ministerial priesthood (of such religious clergy) and the common priesthood of the newly evangelized and baptized people.

15. *Associations of lay faithful* – e.g., Knights of Columbus, *Bukas Loob sa Dios*, Couples for Christ – may have priests as chaplains, consultants or even moderators; but the constitution of the group as such is not the result of the interplay between the common priesthood of the lay members and the ministerial priesthood of those priests.

*Religious orders* – e.g., Society of Jesus, Order of Preachers – are composed predominantly of religious sacred ministers and *lay* (non-ordained) brothers, and may even have non-religious Third Orders attached to them; but again the constitution of the group as such is the result of a purely associative phenomenon (even if stemming from a divine vocation to the religious life) – i.e., the free exercise of the right of association of individual faithful who perceive the calling to such religious life.

circumscription of the first type of congregation above, or an associative phenomenon of the second type of congregation above. The reality of *Opus Dei* simply did not fit well in any of the existing juridic moulds:

- None of the first type, since the hierarchical configurations then existing were conceived using territory as the exclusive practical criterion to delimit jurisdiction, and not allowing any of the faithful to belong to two jurisdictions at the same time. In contrast, the faithful of *Opus Dei* do not constitute a *portio populi Dei* distinct from other portions of the people of God, but rather remaining in the Particular Churches they belong to when they joined *Opus Dei*.
- None of the second type either, since *Opus Dei* was more than just an associative phenomenon, constituting as it were a congregation of the first type which is founded on the interplay of the ministerial and the ordinary priesthood of the faithful.

### 4. Ecclesiological Developments in Vatican Council II

The juridic problem of *Opus Dei* was closely related to the understanding of the Church, of its pastoral mission, of the Christian vocation and Christian life that was common at the time. This explains why when Alvaro del Portillo – then Secretary General of *Opus Dei* and closest collaborator of the Founder – presented himself at the Roman Curia to get pontifical approval for *Opus Dei* the first time in the mid 40s, he was told that he had “arrived a century too soon.”

But that very comment – note the “too soon”, which left the future open – also revealed the beginnings of a re-examination of ecclesiology that was going to mature in the Second Vatican Council, convoked by John XXIII not a century but barely two decades after that first curial meeting of del Portillo. Among the fruits of the profound ecclesiological reflection carried out by the Council, the following doctrines were especially relevant to the juridic problem of *Opus Dei*:

- The Church was viewed as the People of God of the New Covenant (cf. *Lumen Gentium*, n.9). Among other consequences, this brought with it the affirmation that the whole People of God has active participation in the mission of the Church, each one according to his own proper mode; active participation is not limited to the hierarchy.

- A deeper understanding of the distinction, complementarity and ordering to one another of the common or royal priesthood of all the faithful and the ministerial or hierarchical priesthood. This defines the “organically structured [character] of the priestly community (the Church) for the fulfillment of its mission” (cf. *Lumen Gentium*, nn.10-11).
- The renewal of the proclamation of the universal call to holiness (cf. *Lumen Gentium*, Chap.V). This would later be recognized as the core teaching of the Council.
- A vision of the world, of man and of earthly realities in the light of the divine plan of redemption and of the mission of the Church that is profoundly positive and committed (cf. *Gaudium et spes*).
- The affirmation that the secular character is the proper mode of the vocation and mission of the lay faithful. They are called to be saints and to sanctify the earthly realities with which their life is intertwined, acting as a leaven in society and carrying out a deep apostolic activity (cf. *Lumen gentium*, 31, 33 ff.; *Apostolicam actuositatem*).

## 5. Personal Prelatures in Vatican II

Flexibility of the norms regarding incardination of priests and the non-territorial criterion for ecclesiastical organization structures are just two of the Conciliar developments that contributed to the introduction of new forms of pastoral organization. In fact, the figure that would take shape in the Council with the name of *Personal Prelature* appeared for the first time within the project *De distributione cleri*, prepared by the preparatory Commission *De disciplina cleri et populi christiani* in January 1961.<sup>16</sup> As Fuenmayor *et al.* would point out, “the solutions proposed in this project consisted in making more flexible a figure already present in the hierarchical organization of the Church” – i.e., the prelature *nullius* (cf. CIC 1917, cc. 319-327) – adapting it so that, with or without its own territory, it be harmonically inserted in the pastoral life of the Church, in order to carry out special tasks. “This was – these authors affirmed – the

16. Cf. *Acta et documenta Concilio Oecumenico Vaticano II apparando, Series II, Vol.I., pars I*, Typis Polyglottis Vaticanis, 1965, 563-565.

point of reference (there was no other) when the word prelature was used in the documents.”<sup>17</sup> In other words, from the very beginning, the genesis of the figure of the Personal Prelature in the *mens legislatoris* was linked with the idea of the hierarchical organization of the Church.

This point is important for the proper understanding of n.10 of the Conciliar Decree *Presbyterorum ordinis*, on the life and ministry of priests, which would be the basis for the posterior establishment of the figure of the Personal Prelature:

“Where a real apostolic spirit requires it, not only should a better distribution of priests be brought about but *there should also be favored such peculiar pastoral works as are necessary in any region or nation anywhere on earth. To accomplish this purpose, there should be set up international seminaries, special personal dioceses or Personal Prelatures* and so forth, by means of which, according to their particular statutes and always saving the rights of bishops, priests may be trained and incardinated for the good of the whole Church” (emphasis added).

An attentive reading of the text reveals the essential reason – its *raison d’être* – for the setting up of a Personal Prelature:

1) *A real apostolic need, which is a peculiar pastoral work* – i.e., a peculiar care of souls, or *cura animarum extraordinaria* – over and above the ordinary pastoral work (*cura animarum ordinaria*) which is already provided by the specific Particular Church or Churches concerned.

In this regard, it is good to note that *peculiar* is in contrast to *ordinary* or *common* – i.e., it is relative. The point of reference is what is being given by the Particular Churches concerned, which can vary depending on a variety of factors. Thus, the concept of *peculiar pastoral work* implies a multitude of different possibilities, which means that Personal Prelatures would also enjoy a rich variety within the framework common to all of them.<sup>18</sup>

17. A.Fuenmayor *et al.*, *op.cit.*, 349 (Footnote 11). In relation to this, cf. also P.Lombardía and J.Hervada, *Sobre prelaturas personales*, in *Ius Canonicum*, 27 (1987), 11-76; J.Martínez-Torrón, *La configuración jurídica de las Prelaturas personales en el Concilio Vaticano II*, Pamplona, 1986.

18. J.Hervada, *Introducción al Libro II, P.I, t.IV: Prelaturas Personales*, in VV.AA. *Comentario Exegético al Código de Derecho Canónico* (3a ed. actualizada), Vol. II/1, EUNSA, Pamplona, 2002, 402.

2) *Not just a better distribution of priests* – since this would not, strictly speaking, constitute a peculiar pastoral work, but rather facilitate the *cura animarum ordinaria* in certain places or to specific groups of faithful who otherwise would be disadvantaged due to their lack of access to the sacred ministers.

In this regard, it is also good to note that for a better distribution of priests, there were existing juridic figures at the time of the Council – e.g., *Societies of Common Life* (cf. CIC 1917, cc. 673-681) – without necessitating the establishment of new ones. Besides, for a better distribution of the clergy, the Council Fathers called for a more flexible regulation of the institutions of incardination-excardination and adscription of clerics.<sup>19</sup>

3) *Which is trans-diocesan in scope*, since the peculiar pastoral work needs to be delivered “in any region or nation anywhere on earth.” This means that the delimitation of the circumscription of the Personal Prelature would not be territorial in character, but rather personal (i.e., those who need the peculiar pastoral attention).

## 6. Personal Prelatures in the Post-Conciliar Legislation

Less than a year after the end of the Council, Paul VI promulgated the *Motu proprio Ecclesiae sanctae* (6.VIII.1966) to put into effect the Conciliar decrees. The first part of this document is dedicated to the provisions contained in the Decrees *Christus Dominus* and *Presbyterorum ordinis*, and its n. 4 is interesting as it forms the immediate precursor of the canons that would subsequently regulate the figure of the *Personal Prelatures* in the Code of Canon Law. Following is an English translation of the full text:

Furthermore, in order to accomplish special pastoral or missionary tasks for various regions or social groups requiring special assist-

19. “For this reason priests of those dioceses which are blessed with greater abundance of vocations should be prepared gladly to offer themselves – with the permission or encouragement of their own ordinary – for the exercise of their ministry in countries or missions or tasks that are hampered by shortage of clergy. In addition, the rules about incardination and excardination should be revised in such a way that, while this ancient institution remains intact, it will answer better to the pastoral needs of today.” *Presbyterorum ordinis*, n.10.

ance, prelatures may usefully be established by the Holy See. These would consist of priests of the secular clergy specially trained and under the rule of a prelate of their own and governed by statutes of their own.

It would be the duty of such a prelate to erect and govern a seminary for the suitable training of students. He would have the right to incardinate such students under the title of service to the prelate and to promote them to Orders.

The prelate should show care for the spiritual life of those he promoted under the title mentioned above and for the continuance of their special formation and their particular ministry by making arrangements with the local ordinaries to whom they are sent. He should also make provision for suitable means of living either by such agreements as are mentioned above or out of resources of the prelate or by appropriate subsidies. He should also make provisions for those who through illness or other reasons are obliged to relinquish their post.

There is no reason why laymen, whether celibate or married, should not dedicate their professional service, through contracts with the prelate, to its works and enterprises.

Such prelatures shall not be erected without first hearing the views of the Episcopal conferences of the territory in which they will serve. In the exercise of their function care is to be shown that the rights of the local ordinaries are not infringed and that close relations are kept with the Episcopal conferences at all times.<sup>20</sup>

As shall become obvious below, the above text – whose unity cannot be questioned – was the immediate precursor of the canons that would come to regulate the figure of the Personal Prelature in the new Code of Canon Law. We shall reserve our comments below, for the corresponding canons in the new Codex.

## 7. Personal Prelatures in the Code of Canon Law of 1983

As is well known, when John XXIII announced his call for an ecumenical council in 1959, he also called for a revision of the Pio-

20. Paul VI, *Motu proprio Ecclesiae sanctae*, I, n.4, in AAS 58 (1966) 760-761.



Benedictine Code of Canon Law of 1917. This work took much longer than originally hoped for, but the new *Codex Iuris Canonici* was finally promulgated on 25.I.1983 by John Paul II. Personal Prelatures are defined and legally regulated by 4 canons comprising *Title IV* of Book II of the new Code.<sup>21</sup> These four canons are sufficiently brief to be reproduced here in full:

Can. 294. *Personal Prelatures may be established by the Apostolic See after consultation with the Episcopal Conferences concerned. They are composed of deacons and priests of the secular clergy. Their purpose is to promote an appropriate distribution of priests, or to carry out special pastoral or missionary enterprises in different regions or for different social groups.*

Can. 295, §1. *A Personal Prelature is governed by statutes laid down by the Apostolic See. It is presided over by a Prelate as its proper Ordinary. He has the right to establish a national or an international seminary, and to incardinate students and promote them to orders with the title of service of the prelature.*

§2. *The Prelate must provide both for the spiritual formation of those who are ordained with this title, and for their becoming support.*

Can. 296. *Lay people can dedicate themselves to the apostolic work of a Personal Prelature by way of agreements made with the prelature. The manner of this organic cooperation and the principal obligations and rights associated with it, are to be duly defined in the statutes.*

Can. 297. *The statutes are likewise to define the relationships of the prelature with the local Ordinaries in whose Particular Churches the prelature, with the prior consent of the diocesan Bishop, exercises or wishes to exercise its pastoral or missionary activity.*

Without being exhaustive, two observations can be made at this point regarding the above canons and the figure of Personal Prelatures that they regulate.

1) *A Basic Law for Personal Prelatures.* A first observation – after examining the above-cited dispositions of *Ecclesiae sanctae* – is that cc. 294-297 constitute something like a *Basic Law* for Personal

21. There is also explicit mention of them in cc. 265 and 266, §1.

Prelatures.<sup>22</sup> What we mean by this is that the juridic figure of Personal Prelature – as positivized and formalized in cc. 294-297 – is sufficiently generic, such that within the common denominator established by those canons, the individual Personal Prelatures can enjoy a varied numerator, each one determined by their own specific *statutes* that are given by the Holy See, as established by cc. 295, §1 and 297. Thus, it would be a great error to conceive an idea of Personal Prelatures and pretend to apply this idea indiscriminately to all of them.<sup>23</sup>

This point is important, since failure to appreciate it could not only lead – as in fact it has lead, as we shall see below – to false ideas about the only Personal Prelature erected so far (i.e., the Prelature of *Opus Dei*), but even worse perhaps unduly limit the possibilities for the Personal Prelatures that may be erected in the future.

2) *Unity of cc. 294-297.* Another observation – no less important than the first – is the need to consider cc. 294-297 in their totality: like four brush strokes, which complete the sketch of the Personal Prelature that the Code of Canon Law wants to draw. In the same way that one needs to consider cc. 1055-1165 (110 canons!) in order to have an integral concept of the Canon Law on Marriage, it is essential to consider cc. 294-297 in their totality to get a correct notion of the Canon Law on Personal Prelatures. This becomes clear, especially, when one compares them to the corresponding paragraphs of the *Motu proprio Ecclesiae sanctae*, I, n. 4 above. In effect, a comparison of the text of *Ecclesiae sanctae* with cc. 294-297 shows that the latter were extracted almost literally from the former. Thus, since the

22. “Su régimen jurídico – de acuerdo con el principio de subsidiaridad – se contiene en un número reducido de normas, que vienen a ser una *ley marco*, por cuanto, al fijar las características institucionales de estas Prelaturas, el legislador se ha limitado a establecer sus rasgos comunes.” A. de Fuenmayor, “La erección del *Opus Dei* en Prelatura Personal,” in *Ius Canonicum*, XXIII, no. 45 (1983), 21.

23. “Examinando las disposiciones de ES y del nuevo CIC al respecto, se deduce que las prelaturas personales constituyen lo que, por usar una terminología que ya se ha introducido entre los juristas, podríamos llamar tipos o figuras *cuadro* o *marco*. Con ello se quiere decir que, junto a unos rasgos comunes básicos, las prelaturas personales pueden ser muy diversas entre sí.” J. Hervada, in VV.AA. *Comentario Exegético al Código de Derecho Canónico* (3a ed. actualizada), Vol. II/1, EUNSA, Pamplona (2002), 404.

former obviously constituted a unity – the *raison d'être* and nature of Personal Prelatures – the four canons should also be dealt with as a unity.

This point cannot be overstressed, as the failure to appreciate this – and taking any of the four canons in isolation from the others – has also led to the more common misconceptions regarding the nature of the Personal Prelature, as we shall see further down.

3) *Two Kinds of Personal Prelatures*. A close look at c. 294 reveals an important deviation from the tenor of the corresponding texts of *Presbyterorum ordinis* and *Ecclesiae Sanctae* in what refers to the possible reasons for the erection of a Personal Prelature. “Their purpose – according to the canon – is to promote an appropriate distribution of priests, or to carry out special pastoral or missionary enterprises in different regions or for different social groups.” Thus, c. 294 provides for basically two kinds of Personal Prelatures:

- 1<sup>st</sup>: *those established to promote an appropriate distribution of priests; and*
- 2<sup>nd</sup>: *those established to carry out special pastoral or missionary enterprises in different regions or for different social groups.*

## 8. *Opus Dei* as a Personal Prelature

Pope John Paul II erected *Opus Dei* as a Personal Prelature – the first such institution to be erected – through the Bull *Ut sit*, dated 28.XI.1982, appointing Msgr. Alvaro del Portillo as its first Prelate. As the preceding Declaration by the Sacred Congregation for Bishops – announcing the erection of the Personal Prelature – pointed out, this juridic configuration fully accommodates the essential characteristics of *Opus Dei*, allowing them to be fully manifested and developed.<sup>24</sup>

24. Cf. S.C. for Bishops, *Declaratio de praelatura Sanctae Crucis et Operis Dei* (23.VIII.1982): “Simul vero, huiusmodi decisio Operis Dei confert ecclesialem ordinationem suo ipsius charismati fundationali atque germanae naturae sociali plene accommodatam, ita ut, dum problema eius institutionale apte solvit...” in *AAS*, LXXV (1983), pars I, 464.

In effect, the Personal Prelature – as legally typified in the aforementioned canons of the Codex – perfectly safeguards:

1) *Juridic Unity*, since it represents an ecclesiastical circumscription that is organically configured – with perfect articulation of priests and laymen (men and women) – with a Prelate as the visible source and foundation of the unity (communion) of that ecclesial community. Furthermore, the provision for *statutes* to be established (or given) for each Personal Prelature perfectly accommodates, in the case of *Opus Dei*, the vocational character necessary for membership therein, aside from the essential properties pertaining to the foundational charism of the whole institution.

2) *Universality*, since the extension of a Personal Prelature transcends the territorial criterion and – as in the case of *Opus Dei* – can even be international in scope. This fits perfectly the reality of *Opus Dei*, which from the start has always had a supra-diocesan projection.

3) *Full Secularity*, since both priests and laymen belong to a prelature as simple secular priests (cf. c. 294) and simple lay people (cf. c. 296), who fall under the secular jurisdiction of the Church. The Personal Prelature then has nothing to do with the institutes of consecrated life or societies of apostolic life. Again this fits the foundational charism of *Opus Dei*, which entailed the living out of the fullness of Christian life for the ordinary Christian.

4) *Hierarchical*, since the Personal Prelature is erected by the Supreme Authority of the Church – and is not simply an associative phenomenon – in order to provide pastoral care through the ministerial priesthood to a specific *coetus Populi Dei*, to enable the latter to live out to the full their own ordinary priesthood as *Christifideles*. In the case of *Opus Dei*, this entails the provision of a peculiar pastoral care to enable those who have received a special vocation to live out the fullness of Christian life in the middle of the world and in the exercise of their ordinary life and obligations so as to act as leaven for a similar mobilization of holiness in the Particular Churches to which they belong.

## II. MISCONCEPTIONS ABOUT PERSONAL PRELATURES IN GENERAL AND ABOUT *OPUS DEI* IN PARTICULAR

In the second half of this study, we shall tackle the difficulties that some people have had in understanding the nature of the Personal Prelature in general and of *Opus Dei* in particular. The difficulties all stem ultimately from a Pre-Vatican II ecclesiology and Pre-Vatican II canon law.<sup>25</sup> We can summarize them in three affirmations:

- 1) Personal Prelatures do not belong to the hierarchical structure of the Church, given their *legal locus* in the Code of Canon Law.
- 2) Personal Prelatures constitute an associative phenomenon, since its members are such by virtue of a free act of incorporation to the Prelature.
- 3) Personal Prelatures are composed basically of ordained ministers – priests and deacons – constituting as it were merely an administrative instrument for a better distribution of the clergy. Laymen who dedicate themselves to the apostolic work of the prelature do not really form part of it.<sup>26</sup>

25. This is the charitable way of putting it. In fact, many of the difficulties in understanding *Opus Dei* are due to long-standing and repeated calumnies which find their origin ultimately in what the Founder called the “contradiction of the good” – i.e., the opposition of some religious clerics dating back to the 1930s in Spain. Cf. A. Vázquez de Prada, *op.cit.*, Vol. II and III. A good antidote to these calumnious writings is W.J. West, *Opus Dei: Exploding a Myth*, Little Hills Press, Australia, 1987.

26. One of the most influential exponents of this thesis is G. Ghirlanda, who argues his position leaning heavily on the legal *locus* of Personal Prelatures in the Code of Canon Law – i.e., outside of Book II, Part II (*The Hierarchical Constitution of the Church*). Cf. G. Ghirlanda, “De differentia Prelaturam personalem inter et Ordinariatum militare seu castrensem,” in *Periodica*, 76 (1987), 228. This is a position shared by R. Pagé: “There is no doubt about the place where such prelatures are situated in the code: they cannot and should not be considered as jurisdictional entities belonging to the Church’s hierarchical constitution; rather, they are societal institutions or administrative entities established to promote a more equitable distribution of the clergy.” Cf. R. Pagé, commentary to c.293, in J.P. Beal-J.A. Coriden-T.J. Green (Ed.), *New Commentary on the Code of Canon Law*, Canon Law Society of America, New York, 2000.

## 9. Personal Prelatures in the Hierarchical Structure of the Church

### a. *The Legal Locus of Personal Prelatures in the Code of Canon Law.*

The *red herring* that has managed to mislead some canonists from realizing the hierarchical – vs. associative – nature of Personal Prelatures is the *legal locus* of such institutions in the Code of Canon Law. In effect, a close look at the outline of Book II (*The People of God*) of the Code reveals what may be considered as a curious *anomaly* as regards the systematic placement of the canons pertinent to Personal Prelatures:

#### BOOK II: THE PEOPLE OF GOD

##### Part I: The Christian Faithful

- Title I – *The Obligations and Rights of all the Christian Faithful*
- Title II – *The Obligations and Rights of the Lay Christian Faithful*
- Title III – *Sacred Ministers or Clerics*
- Title IV – *Personal Prelatures*
- Title V – *Associations of the Christian Faithful*

##### Part II: The Hierarchical Constitution of the Church

- Section I: *Supreme Church Authority*
- Section II: *Particular Churches and their Groupings*
  - Title I – *Particular Churches and the Authority established in them*
  - Title II – *Groupings of Particular Churches*
  - Title III – *The Internal Ordering of Particular Churches*

Without going into the convoluted *iter* of such a *locus* of Personal Prelatures in the new Code, we can at least make the following preliminary conclusions, based on such systematic placement:

- 1) The legislator appears to recognize that Personal Prelatures represent more than just an associative phenomenon – i.e., that they are not the result of the mere exercise of the right of association of the faithful; otherwise, they would have been placed under Part I, Title V.



2) However, the legislator (more specifically the Pontifical Commission for the Revision of the Code of Canon Law) seems to have *resisted* the conclusion – seemingly obvious from the foregoing discussion – that Personal Prelatures must then represent a phenomenon of the hierarchical structuring of the Church, and must therefore belong to Part II of Book II. The main difficulty encountered by the Plenary meeting of the aforementioned Commission in 1981 was that people took the Personal Prelature to be identical to the Particular Church instead of simply stating their similarity in some aspects.

In fact it is known that during the preparation of the Code, the actual cc. 294-297 (on *Personal Prelatures*) were situated in the Part of *De Ecclesiae constitutione hierarchica*. They remained there up until the final draft (*Schema novissimum*) of 25.III.1982, which was subjected to a final revision by the Supreme Pontiff himself, with the help of a handful of experts and in consultation with the pro-president of the Code Commission. It was in this last revision – prior to the promulgation of the Code on 25.I.1983 – that the aforementioned canons on Personal Prelatures were transposed to Part I of Book II (*De christifidelibus*). Furthermore, it is also known that such transposition was not in order to deny Personal Prelatures their character of hierarchical structures but in order not to totally identify them with Particular Churches.<sup>27</sup>

27. Cf. Pont. Council for Legislative Texts, *Acta et Documenta Pontificiae Commissionis Codici Iuris Canonici Recognoscendo, Congregatio plenaria diebus 20-29 octobris 1981 habita*, Typis Polyglottis Vaticanis 1991, p.379, note 6. An anecdotic note might be made at this point – only insofar as it might shed some light into the *mens legislatoris* behind the curious transposition – of an equally curious event that happened in 13.X.1979. In brief, two letters (dated 27.IV.1979 and 2.VI.1979) from then President General of *Opus Dei* (Msgr. Alvaro del Portillo) to the Prefect of the Congregation for Bishops, conveying a study entitled *Trasformazione dell'Opus Dei in Prelatura Personale*, “fell into the hands of someone who sent them to numerous bishops and to the media of various countries in an attempt at misrepresentation. By selective and manipulative quotations, the impression was given that *Opus Dei* desired to set itself up as an entity beyond any submission and accountability (a *parallel Church* was the term tossed around in the media). The object sought by this maneuver was doubtless to awaken the fears among bishops and some sectors of the media that *Opus Dei* with its erection as a Personal Prelature sought to obtain independence from diocesan bishops. It was hoped thus to sow obstacles in the path of its erection.” A.Fuenmayor *et al.*, *op.cit.*, 405. It is not difficult to imagine how such undertones could have influenced the last-minute attempt to belabor the point that Personal Prelatures are not Particular

We cannot agree more with the Code Commission's decision of not identifying Personal Prelatures with Particular Churches. However, we also need to point out that the Commission seems to have overlooked the possibility of an additional *Section III: Personal Prelatures*, but in *Part II of Book II (The Hierarchical Constitution of the Church)* precisely to accommodate an ecclesiastical circumscription which is not a Particular Church but which belongs to the hierarchical constitution of the Church nevertheless.<sup>28</sup> This in turn can be due to a common tendency to limit the notion of the first type of ecclesiastical congregation to Particular Churches and their equivalents. It is this reduction that we need to overcome.

### *b. The Usefulness of the Notion of Ecclesiastical Circumscriptions*

The juridical dimension of the relationship between the universal Church and the Particular Church is not manifested in a uniform juridical way in the various types of hierarchically structured communities. In fact – as some authors have pointed out – there is no canonical concept of the Particular Church, even if the CIC (in its effort to absorb the principal elements of Vatican II ecclesiology) uses the term (cf. cc. 368-374).<sup>29</sup>

To my mind, failure to grasp this fact is one of the biggest obstacles to the understanding of the nature of Personal Prelatures. In effect, a review of the literature opposing the hierarchical nature of Personal Prelatures – and the discussion prior to the final approval of the locus of the canons regarding Personal Prelatures in the present Code of Canon Law – reveals the objection as stemming not so much from the concept of hierarchical circumscriptions as such, as from the

Churches, by the aforementioned transposition of the canons relative to the former to where they are now.

28. Actually, if the revision were to be done today, such a potential *Section III* may even be better entitled: *Other Ecclesiastical Circumscriptions*, to include two or even three titles: *Title 1: Personal Prelatures*; *Title 2: Military Ordinariates*; *Title 3: Personal Apostolic Administrations*.
29. D.Cenalmor & J.Miras, *El Derecho de la Iglesia: Curso Básico de Derecho Canónico*, EUNSA, Pamplona, 2004, 272-273.

effort to show that Personal Prelatures are not Particular Churches (to which of course I most certainly agree).

As Arrieta points out, "the theological idea of *Particular Church* defines the *episcopal office* with the characteristics of the diocesan bishop in a way which is not valid for other structures. Therefore, in a juridic perspective, the more general concept of *ecclesiastical circumscription* has to be used."<sup>30</sup> This term, which appears only once in the CIC (c. 199, 4°), has been traditionally used in Canon Law and habitually also by the Holy See in connection with the erection, suppression or changes in structure of dioceses, prelatures, vicariates, etc.<sup>31</sup>

Following Viana, we can define it as a community of faithful – established in the ecclesiastical organization, according to diverse criteria of delimitation – the pastoral attention of which is entrusted to a capital office (either a bishop or a presbyter with Episcopal functions) with the cooperation of a proper presbyterium.<sup>32</sup>

The usefulness of the concept, from the canonical viewpoint, is its ability to encompass in a generic way the phenomenon of the congregation of faithful around capital offices – in effect the hierarchical structuring resulting from the interplay of the common priesthood and the ministerial priesthood – without necessarily limiting it to either the criterion of territoriality or to that of exclusivity of the faithful pertaining to it (in the sense of a *portio Populi Dei* which is

30. J.I. Arrieta, *Governance Structures within the Catholic Church*, Wilson & Lafleur, Montreal (2000), 54.

Cf. also, A.del Portillo, "Dinamicidad y funcionalidad de las estructuras personales," in *Ius Canonicum*, 9 (1969), 305 sq.

31. Aside from the frequent use of the term in the documents of erection and change of dioceses, prelatures, etc. published in *AAS*, cf. the general provisions in *Pastor Bonus*, art. 59 and 89. Cf. also *Annuario Pontificio* (1995), 1093 sq.

32. We differ from Viana, however, when he states: "Las circunscripciones eclesíásticas son comunidades de fieles – *porciones del Pueblo de Dios* – establecidas en la organización eclesíástica conforme a diversos ..." (italics mine), A.Viana, *Organización del gobierno en la Iglesia* (2nd Ed.), Pamplona, 1997, p.128. In effect, identifying the *community of faithful* with a *portio Populi Dei* would take us back to the unnecessary limitation of the concept of an *ecclesiastical circumscription* to a *Particular Church*, because only this has its own *portio Populi Dei*, distinct from other portions of the People of God.

distinct and excluded from all the other *portiones Populi Dei*), which is what happens in a Particular Church.<sup>33</sup>

### c. *The Proper Place of Personal Prelatures in the Hierarchical Structure of the Church*

With the aforementioned notion of ecclesiastical circumscriptions, we can then situate Personal Prelatures in the hierarchical structure of the Church in the following terms:

1) *They are similar to Particular Churches* in that they are ecclesiastical circumscriptions – i.e., hierarchical structures, formed by the interplay of the common priesthood of the faithful and the ministerial priesthood of clerics.<sup>34</sup> Thus, Personal Prelatures – and more specifically the Prelature of *Opus Dei* – are made up of both clerics (constituting the *presbyterium* of the prelature) and lay faithful (both men and women) who are all integrated in a juridic unity, each one fully participating in the ecclesial mission of the Prelature albeit in different ways, under the jurisdiction of a prelate as its *proper Pastor*.

2) *They differ from Particular Churches* basically in one or more of three aspects: Firstly in that the end of a Particular Church is the same as the Church, since the former is constituted *ad imaginem Ecclesiae universalis*.<sup>35</sup> In contrast, a Personal Prelature *ad peculiaris opera pastoralia*,<sup>36</sup> has as its proper mission only a peculiar determination of this general end of the Church.

33. An eminent canonist has proposed another terminology – *fundamental ecclesiastical corporations* – as synonymous with ecclesiastical circumscription, but based on a slightly different scheme of the congregation of the People of God. While I agree with his scheme for the most part (which in certain respects explains more neatly the structural *locus* of Personal Prelatures in the hierarchical structure of the Church), I differ when he – like Viana – identifies the community of faithful in such a fundamental ecclesiastical corporation with a *portio Populi Dei*, for the reason stated above. Cf. J.Hervada, *Pensamientos de un canonista en la hora presente*, Pamplona, 2004, 159-173.

34. Cf. J.I.Arrieta, "Chiesa particolare e circoscrizioni ecclesiastiche," in *Ius Ecclesiae*, 6 (1994) 3-40.

35. Vatican Council II, Const. *Lumen gentium*, n.23.

36. Cf. Vatican Council II, Decr. *Presbyterorum ordinis*, n. 10 and C.I.C., c. 294.

Secondly in that the lay faithful who form part of a Personal Prelature may continue being members of the Particular Church to which they belonged before their incorporation to the Prelature – i.e., they continue being *christifideles* of the *portio Populi Dei* that is the Particular Church. Furthermore, the faithful of the Prelature can change diocese – like the other faithful (of the Church) – e.g., by changing domicile. The Personal Prelature may not have its own *portio Populi Dei*<sup>37</sup> – in the technical sense that a Particular Church has one – but rather a congregation, which can be called a *coetus Populi Dei*<sup>38</sup> or *coetus fidelium*.<sup>39</sup> Thus, they are not Particular Churches.

Finally, we must keep in mind that any Particular Church is open to all faithful of the Universal Church, such that what is required to belong to the former is not more than what is required to belong to the latter. Thus, all the faithful fit in a diocese, even those who may differ from the others in some aspect, e.g., those who belong to a different rite. In contrast, to belong to a Personal Prelature implies a peculiar personal quality – specified in its Statutes – that precisely is the reason for the peculiar pastoral care that is the *raison d'être* of the Personal Prelature.

3) *They constitute a development of the self-organization of the pastoral action of the Church*, based on the supreme authority of the Pope, in order to carry out a specific pastoral work. In this, precisely, lies the usefulness of the notion of ecclesiastical circumscription – i.e., the Personal Prelature is simply an ecclesiastical circumscription but not a Particular Church in a strict sense, in the same way that Military Ordinariates (formerly configured as Military Vicariates) are ecclesiastical circumscriptions but not Particular Churches in the strict sense – even if they are usually referred to as such in the official

37. It is interesting to note that St. Josemaría never used the term *porción* (*portio*) to refer to *Opus Dei* in the Church, but rather a less technical and even colloquial term: *partecica* – i.e., a small part.

38. Cf. H. Legrand, *Un solo vescovo per città*, in VV.AA. *Chiese Locali e cattolicità. Atti del Colloquio Internazionale de Salamanca (2-7 aprile 1991)*, Bologne, 1994, 402-406.

39. This latter term is what P. Rodríguez employs and is taken from the preparatory *iter* of the C.I.C. 1983.

documents of the Holy See (e.g., “the military dioceses,” “military archdiocese.”)<sup>40</sup>

A Personal Prelature has as its proper mission a peculiar determination of the general finality of the Church. This peculiarity, in the case of the Prelature of *Opus Dei*, is such that the incorporation to the Prelature constitutes a response to a *divine vocation*, and brings with it a serious spiritual and apostolic commitment.<sup>41</sup> As is obvious, this cannot be a reason for assimilating the Personal Prelature to the so-called *states of perfection* – juridically configured as Institutes of consecrated life or Societies of apostolic life – since the universal call to holiness and a divine vocation are not prerogatives of a certain part of the disciples of Christ: there is no one on whom God does not have a particular design.<sup>42</sup>

## 10. Personal Prelatures are not Associative Phenomena

For some authors, the principal difficulty towards understanding the hierarchical nature of a Personal Prelature – and as a corollary that of having a bishop head it – has been precisely to consider that the voluntary character of the incorporation to the Prelature confers on the latter an associative – not hierarchical – character.<sup>43</sup>

Before meeting the above objection head-on, it is interesting to note – as some other canonists have pointed out – that to maintain that the Personal Prelature has an associative instead of a hierarchical character contradicts the significance that the notions of both *Prelature*

40. Cf. John Paul II, Apost. Const. *Spirituali militum curae*, 21.IV.1986. In this document, the term (and concept) of *Military Ordinariate* is used, and the latter is juridically equated to a diocese; however, it is well known that in the preparatory work for the new codification, these ecclesiastical circumscriptions were considered as exemplars of the future Personal Prelatures. Cf. *Codex Iuris Canonici: Schema anni 1980*, c. 337, §2.

41. *Codex Iuris particularis Praelaturae Sanctae Crucis et Operis Dei*, art. 6.

42. Cf. Vatican Council II, Const. *Lumen gentium*, nn. 11, 39-41; cf. also *Catechism of the Catholic Church*, n. 825.

43. Cf. W. Aymans, *Prälaturbischof-Militärbischof. Anmerkungen zu einer neueren Praxis des apostolischen Stuhles*, in VV.AA., *Plenitudo Legis Dilectio* (Tome in honor of B.W. Zubertowi), Lublin, 2000, 207-217.



and *Prelate* have had throughout all history.<sup>44</sup> In other words, it would imply that the Code Commission – and before them the Conciliar Fathers – employed the term *Personal Prelature* without knowing the multi-secular tradition behind the term *prelature*, which has never denoted anything of an associative nature.<sup>45</sup> On the contrary we have to recall that the Code of Canon Law itself provides a hermeneutic key for the proper understanding of the term *Personal Prelature*, when in c.6, §2 it established: *The canons of this Code insofar as they refer to the old law are to be assessed also in accord with canonical tradition.* As we have just pointed out, the term *prelature* has never denoted anything of an associative nature in canonical tradition.<sup>46</sup>

Answering the objection more directly, in the first place – as Ocariz points out – having *one* of the characteristics of the institutions of an associative nature is not a basis for affirming that Personal Prelatures do not have a hierarchical nature. This would be tantamount to affirming that the Roman Pontiff does not have the right to establish a hierarchic structure to which the faithful can freely incorporate themselves, and – as Ocariz concludes – there simply is no argument that can justify such an affirmation.<sup>47</sup> In fact, aside

44. Cf. G. dalla Torre, *Prelato e Prelatura*, in *Enciclopedia del Diritto*, XXXIV, Milan 1985, 973-981; J. Miras, “*Praelatus*: de Trento a la primera codificación”, EUNSA, Pamplona, 1998.

45. That the Personal Prelatures are institutions of a hierarchical nature is also affirmed by theologians, like H. Legrand, who holds that Personal Prelatures are neither Particular Churches nor associations (neither Institutes of Consecrated Life nor associations of faithful, nor institutions of incardination), but rather a third type of reality with jurisdiction *ad pecularia opera pastoralia*, which means that the Church makes a new application of the possibility of developing its own pastoral organization (cf. H. Legrand, *op. cit.*). Other theologians who also sustain a unilateral concept of the Particular Church acknowledge that the Personal Prelature is a hierarchical structure of the Church, as is the case of J.M. Tillard, *L'Eglise locale: Ecclésiologie de communion et catholicité*, Paris, 1995, pp. 280-281.

46. Cf. J. Miras, *Tradición y novedad en el concepto de prelatura*, in *El Opus Dei, Prelatura Personal: La Constitución Apostólica «Ut sit»*, Navarre, 2000, 98-123.

47. F. Ocariz, *Episcopado, Iglesia Particular y Prelatura Personal*, in *Communio et Sacramentum: En el 70 cumpleaños del Prof. Dr. Pedro Rodríguez*, Universidad de Navarra, Pamplona (2003), 629-641.

from the Personal Prelatures and military ordinariates, the Holy See has established a new type of personal ecclesiastical circumscription, which the faithful can join through an act of the will: this is the *Personal Apostolic Administration St. John Maria Vianney* that has been recently erected in Brazil.<sup>48</sup>

In the second place, we cannot forget that there are other types of hierarchical entities, to enter which, free acts of the will (posterior to baptism) are required, and not for this are they considered associative entities. One can think, for example, of the incorporation of faithful to the diocesan seminary, to the *ordo presbyterorum*, to a change of Ritual Church, to the possible voluntary incorporation to a Military Ordinariate, etc.<sup>49</sup>

In the third place, attributing to the Personal Prelature the nature of an associative entity, on the basis of one of the elements of the associative phenomena – i.e., voluntary inscription – disregards other essential elements. One of these, the initiative for erecting them, is particularly relevant from the ecclesiological viewpoint. In the case of Personal Prelatures, such initiative belongs exclusively to the Roman Pontiff, tied up with his function of determining the extension of the Episcopal jurisdictions and of establishing the relations that should exist between them, as he does by establishing the statutes of a Personal Prelature.<sup>50</sup> Thus, *a Personal Prelature is governed by*

48. Cf. AAS, 94 (2002) 305-308. Regarding the voluntary incorporation to the Prelature, insofar as it is *not* an obstacle to its having a truly hierarchical nature, from a juridical viewpoint, cf. G. lo Castro, *Le Prelature personali. Profili giuridici*, Giuffrè Editore, Milan, 1988 (2nd ed. 1999), 250-272. E. Baura, *Le attuali riflessioni della canonistica sulle Prelature personali*, in VV.AA., *Le Prelature personali nella normativa e nella vita della Chiesa*, CEDAM, Padua, 2002, especially pp. 49-51.

49. “Res non est nova in Ecclesiae iure quod quis relationem acquirat cum aliqua structura iurisdictionali non ex facto obiectivo, quale est domicilium, sed mediante actu voluntatis: id contingit, exempli gratia, quando quis militiam capessit voluntarius, et ita sub iurisdictione ponitur Ordinarii castrensis, vel quando clericus a propria Ecclesia particulari in aliam legitime transmigrat eiusdemque servitio addicitur.” J.L.Gutiérrez, “De Praelatura Personali iuxta leges eius constitutivas et Codicis Iuris Canonici normas,” in *Periodica*, 72 (1983), 71-111. Cf. cc. 112, §1 and 271.

50. Cf. Vatican Council II, Decr. *Christus Dominus*, n.8; C.I.C., c. 295, §1 and c. 297.

*statutes established by the Holy See* (c. 295, §1), in contrast to an association which is governed by statutes or norms that originate from the members themselves (c. 304, §1) and require only the *review* (c. 299, §3) or at most the *approval* (cc. 314 & 322) by the competent ecclesiastical authority.

Finally, we cannot forget that even if voluntary inscription – via contract – is the mode of incorporation to the Prelature of *Opus Dei*, it is not a constitutive element of the Personal Prelature in general. There could be other prelatures in the future, to which the faithful could belong *a iure*. We can think, for example, of the possibility of the erection of a personal prelature for Catholic migrant workers in the Middle East, to which – *a iure* – all the Catholic migrant workers in that territory would belong.<sup>51</sup>

# 11. Personal Prelatures are not Clerical Institutions: The Organic Participation of Lay Faithful in *Opus Dei*

Some canonists insist that the foregoing concept of Personal Prelatures represents an *interpretation* of cc. 294-297. There are other interpretations – they affirm – among which precisely is that which limits the concept of Personal Prelatures to that of c. 294: “*They are composed of deacons and priests of the secular clergy* (whose) purpose is to promote an appropriate distribution of priests, or to carry out special pastoral or missionary enterprises in different regions or for different social groups.” For these authors, the incorporation of lay faithful in the Personal Prelature represents only an accidental addition – i.e., to collaborate with the clerics according to the tenor of c. 296.<sup>52</sup>

51. Cf. A.Stankiewicz, *Le prelature personali e i fenomeni associativi*, in VV.AA., *Le prelature personali nella normativa e nella vita della Chiesa*, Padova, 2002, 137-163.

52. This is the position, for example, of W.Aymans: “Die Personalprälaten sind ein apostolischer Inkardinationsverband; deshalb können ihr nur Kleriker angehören. Gleichwohl kann sie sich Laien angliedern, die den spezifischen apostolischen Werken der Prälaten verbunden sind und institutionell daran mitwirken möchten (italics mine).” A few pages later, he insists: “Laien sind nicht Mitglieder der Personalprälaten, können sich aber vertraglich in Ausrichtung auf die apostolische Zielsetzung mit ihr verbinden,” W.Aymans-K.Mörsdorf, *Kanonisches Recht: Lehrbuch aufgrund des Codex Iuris Canonici, II*, Paderborn, 1997, 736-755, especially pp. 742 & 747. This is a position shared by R. Pagé:

In this regard lies the fundamental importance of a discourse given by the Roman Pontiff on March 17, 2001 to the participants of a Workshop on the Encyclical *Novo Millennio Ineunte*, organized by the Prelature of *Opus Dei* in Rome. John Paul II made a series of affirmations that – given his role as Supreme Legislator of the Canonical Order – constitute an authentic interpretation of cc. 294-297, as regards the nature of Personal Prelatures.<sup>53</sup>

## a. The Notion of Authentic Interpretation

Without delving too deeply into the question of the authentic interpretation of the law – i.e., tantamount to a full exegesis of cc. 16 & 14 of the Code – we need to clarify a point. Some canonists maintain that the term *authentic interpretation* should be limited to an act of the legislator given in the form of law.<sup>54</sup> To my mind, this is an undue reduction of the notion of authentic interpretation to only one of its forms and an impoverishment of c.16. In effect, the canon reads:

Can. 16 – §1. *The legislator authentically interprets laws as does the one to whom the same legislator has entrusted the power of authentically interpreting.*

“A Personal Prelature is in fact a clerical institution, particularly when we consider its members. But the lay faithful may also (*possunt*) consecrate themselves to the pastoral works of the prelature. (...) Even if the role of the lay faithful may be of great importance in a given prelature, they do not belong to its nature in the sense that Personal Prelatures could exist without the presence of lay associates,” R. Pagé, commentary to c. 296, in J.P. Beal-J.A. Coriden-T.J. Green (Ed.), *op. cit.*, 397. It seems he failed to see that just because according to his opinion there could be Personal Prelatures with clerics alone (*ordo*), it does not mean that the Holy See could not erect a Personal Prelature with clergy and laity (*ordo-plebs*) in an organic cooperation.

53. Cf. c. 16, §1.

54. This is the position taken by the Commentator of c.16 in J.Beal, J.Coriden, T. Green (Editors), *New Commentary on the Code of Canon Law*, The Canon Law Society of America, New York, 2000: “Interpretations not given in the form of law do not bind juridically. The pope often interprets laws by his comments on them in non-legislative texts, such as his allocutions to the Roman Rota. Although these interpretations have great doctrinal value, they are not authentic interpretations of the law” (p. 72).

§2. *An authentic interpretation put forth in the form of law has the same force as the law itself and must be promulgated. If it only declares the words of the law which are certain in themselves, it is retro-active; if it restricts or extends the law, or if it explains a doubtful law, it is not retroactive.*

§3. *An interpretation in the form of a judicial sentence or of an administrative act in a particular matter, however, does not have the force of law and only binds the persons for whom and affects the matters for which it was given.*

An attentive reading of c. 16, §2 should immediately make it clear that “an” authentic interpretation put forth in the form of law is only one form of putting an authentic interpretation. There are other forms – e.g., *in the form of a judicial sentence or of an administrative act in a particular matter* (§3, *in principio*) – which though not having the force of law (i.e., for the generality of cases and the generality of subjects), nevertheless does have juridic force and *binds the persons for whom and affects the matters for which it was given* (§3, *in fine*).

To affirm the contrary would not only make any non-legal pronouncement of the Supreme Legislator regarding laws or legislative texts ineffectual and useless, but would virtually empty the notion of authentic interpretation of any practical application except that which is put forth in the form of law (c. 16, §2). The very work of the Pontifical Council for the Interpretation of Legislative Texts (PCILT) would be rendered moot and academic, since its decisions are hardly put forward in the form of a law.<sup>55</sup>

Thus we have to affirm that the Supreme Legislator – either personally or through the Pontifical Council for the Interpretation of Legislative Texts – can and indeed makes authentic interpretations of legal norms.

55. In fact, from 1984 to 1989, this body was called the Pontifical Commission for the *Authentic Interpretation* of the Code of Canon Law (italics mine).

### *b. An Authentic Interpretation by the Supreme Legislator*

Such is the case of the aforementioned discourse delivered by John Paul II. The important text is at the very beginning of the papal address:

“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. Apost. Const. *Ut sit*, 28.XI.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 evangelizing efforts of each Particular Church, as envisaged by the Second Vatican Council in desiring the figure of Personal Prelatures.

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. Apost. Let. *Novo millennio ineunte*, n. 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.*, nn. 42-43).<sup>56</sup>

We can underline the following important affirmations by the Supreme Legislator in the above text:

1) The Personal Prelature of *Opus Dei* is an *organically structured* institution, composed of *priests and lay faithful, headed by their own Prelate*. This is a direct negation of the position of some canonists –

56. John Paul II, *Discourse* of 17.III.2001, in *L'Osservatore Romano* (18.III.2001) 6.



e.g., Aymans and Page – that Personal Prelatures are fundamentally composed of priests, to which laymen “may” only be incorporated as collaborators. In this text, the Supreme Legislator is expressly stating that both priests and laymen (and women) belong organically – as organs to a body, which means inseparably if that body is to continue living – to the Personal Prelature, and all of them are subject to their Prelate as their Proper Ordinary.

As Legrand observes, it is futile to conceive of the Personal Prelature as a way of organizing only the clergy for their better distribution, since the objective of the Personal Prelature is not a better distribution of the clergy (even if it may in fact contribute to it). This – he points out – is regulated satisfactorily, from the point of view of ecclesiology, by the greater flexibility in the laws regarding incardination (cc. 265-272).<sup>57</sup>

Rodríguez explicitates that a Personal Prelature is not the auto-organization of the *ordo clericalis*, but of the Church itself. The *coetus fidelium* entrusted to the pastoral care of the Prelate belongs to the very essence of the Personal Prelature, and this for a specific reason: to carry out a peculiar pastoral task.<sup>58</sup>

2) The *hierarchical nature of the Personal Prelature of Opus Dei*, aside from being categorically affirmed, is also implied by the organic convergence of priests and laymen – allusive of the inter-relation of the ministerial priesthood and the common priesthood. The power of the Prelate is thus ordained towards the moderation and regulation of the relation of faithful-sacred ministry in the prelature, so that this might fulfill its peculiar mission. Again this should settle the afore-

57. H. Legrand, *Un solo Obispo por ciudad: Tensiones en torno a la expresión de la catolicidad de la Iglesia desde el Vaticano II*, in H. Legrand-J. Manzanares-A. García y García, *Iglesias locales y catolicidad*, Salamanca, 1992, 522.

58. P. Rodríguez goes further: “El *coetus fidelium* lo es a los efectos de los *peculiaris opera pastoralia* de que se trata en cada caso (...), la presencia de fieles laicos en estas Prelaturas es algo inmanente al concepto mismo de Prelatura y a la razón de ser de las Prelaturas personales”. P. Rodríguez, *Iglesias particulares y Prelaturas personales*, Pamplona, 1986, 120-121.

mentioned question regarding the jurisdictional and hierarchical nature of Personal Prelatures, stemming from their *curious* location in the Code of Canon Law.

3) The *special mission of the Prelature converges with the evangelizing efforts of each Particular Church*, due to the simultaneous membership of the faithful in their own Particular Churches and in the Prelature. The Pope was careful to point out that this was actually envisaged by the Second Vatican Council in desiring the figure of Personal Prelatures. In other words, this characteristic is not peculiar to *Opus Dei*, but is rather essential to the figure of the Personal Prelature.

## CONCLUSION

The objection may be made that the above papal discourse was directed to faithful of the Prelature of *Opus Dei* in particular, and should not be applied indiscriminately to the generality of the figure of the Personal Prelature. While this is definitely true, the operative word is *indiscriminately* – i.e., the peculiarity of every Personal Prelature (as expressed in its proper *statutes*) should be respected. What is important is to determine which of the characteristics outlined by the Supreme Legislator in the text under consideration apply to the essence of the Personal Prelature – and should therefore be held as true and applicable to all Personal Prelatures – and which (if any) apply only to *Opus Dei*.

In this regard, the answer cannot be simpler: those characteristics outlined in what we can refer to as the *Basic Law for Personal Prelatures* (cc. 294-297) are applicable to them in general. On the other hand, one cannot disregard the fact that in the course of the life of the Church, the Personal Prelature has been normally considered among the hierarchical structures, as seen in – for example – the *Annuario Pontificio*, the Const. *Ecclesia in Urbe* (n. 40), *The Directory for the Ministry and Life of the Clergy* (n. 25) and (in the specific case of *Opus Dei*) the erection of the tribunal of the Prelature.

In any case, what should be considered anomalous is the position of those who generalize their ideas regarding Personal Prelatures, even

when such ideas run counter to the reality – both ontological and juridical – of the first and only existing Personal Prelature to date. In other words, while not everything affirmed about *Opus Dei* might be correctly affirmed of Personal Prelatures in general, conversely nothing should be affirmed of Personal Prelatures in general if such is contrary to the reality of *Opus Dei*.<sup>59</sup>

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59. "Por otra parte, la figura genérica de Prelatura personal es adecuada al *Opus Dei* ya que éste es una Prelatura de esta índole. Por lo tanto, tampoco cabe una interpretación de esa figura que distorsione o haga violencia a lo que es realmente el *Opus Dei*." J.Hervada, *Aspectos de la estructura jurídica del Opus Dei*, in *Documentación*, 36 (XII-1989), 2.