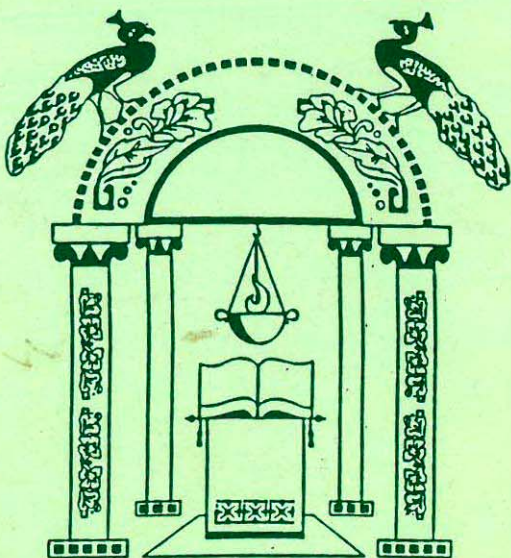


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**RECIPROCAL RIGHTS
AND OBLIGATIONS**

by
John Kochuthundil

A Study of
RECIPROCAL RIGHTS
AND OBLIGATIONS
of the Eparchial Bishop and Presbyters
in the Light of the *Code of Canons of*
the Eastern Churches

by

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Rome, 22.01.1997

JOHN KOCHUTHUNDIL

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FOREWORD

The present work is a competent and informed discussion of a topic that is of great pastoral value. The author has had some years of experience working as a priest in the Siro-Malankara Eparchy of Trivandrum, India, before coming to Rome for his canonical studies, and clearly this experience has brought home to him the pastoral importance of the *presbyterium*. In one of the guidelines laid down for the revision of the canon law for the eastern Churches, it was laid down that “**the pastoral character**” of the Church’s law should be kept in mind.” (*Nuntia* 3, pp. 20-21)

Bishop and priests have to work together harmoniously. While it is true that this harmonious working together is not something that can be achieved by law, the law can help by providing clarity about rights and duties that have to be respected. There are in fact a variety of functions of canon law: to protect the Church’s dogmatic tradition, to provide structures for efficient administration, to provide for due process, and so on. One of these functions is to delineate a series of rights and duties of the faithful, since this is one way of ensuring that these rights are protected and the duties carried out.

The subject of this study is of particular pastoral value. People today feel strongly that their rights should be respected by all authorities - whether State authority or Church authority. So, providing a clear and comprehensive account of these rights will serve a very useful purpose in the Church. It is equally helpful to give a clear account of the mutual obligations of bishops and presbyters. This volume provides a good practical guide as well as an incentive for discussion of this subject in the Church.

So, I congratulate the author on having produced a competent piece of canonical research which is of pastoral as well as academic value.

Campion Hall
29 June 1998

CLARENCE GALLAGHER, S.J.

PREFACE

The Second Vatican Council has initiated a new process of understanding the Church by bringing to the limelight some of the basic and sacramental dimensions of this great mystery. Among other points, the priestly ministry in the Church has been the subject of deep reflection and elaborate discussions. In accordance with the ancient tradition of the Church, the ministerial priesthood is exercised in the Church on different levels, traditionally known and specified as Major and Minor Orders. While each of these Orders has its specific role and goal, all these ministries are united and coordinated in the Sacrament of Priesthood, the fulness of which is found in the Episcopacy. Hence, Episcopacy remains the central point of reference of the priestly ministry in the Church. Thus, a clear understanding and awareness of the collaboration and mutual relationship of the Bishop and other ministers are crucial and important for the effectiveness and fruitfulness of the priestly ministry in the Church.

I am pleased to learn that the Reverend Father John Kochuthundil of the Archdiocese of Trivandrum of the Malankara Catholic Church has done a serious study on this subject, and is publishing a book entitled *A Study of Reciprocal Rights and Obligations of the Eparchial Bishop and Presbyters*. This book is the result of a research study for securing a Doctor's degree in Canon Law, which amply indicates the nature and worth of it. Though it is a canonical study by its nature, the Theological and pastoral import cannot be overlooked.

Those who have received the Sacrament of the Order of the Priesthood are born from Christ's *one and eternal* Priesthood. They are born in the grace and strength of the new and eternal Covenant sealed by the redeeming sacrifice of Christ's Body and Blood. Ordained ministers should esteem communion in love and unity as the very essence of their life and vocation and as the basis of their Christian and human identity. The sacramental or ministerial Priesthood calls for a special commitment of all the energies of soul and body to the divine vocation which requires a special

Preface

consciousness of one's vocation of service (*diakonia*) in the Church and the society at large.

The Church is the sign and instrument of unity, which is to be built up in the world and among all people (*LG 1*). In the Church, by divine providence, those who are chosen and ordained are the visible signs and promoters of unity. In an eparchy, with the Bishop as its head and its supreme pastor, it is around him that the unity of the presbyters and the faithful should be built concretely. Moreover, the communion of presbyters with one another and with the eparchial Bishop is a basic condition for union within the People of God as a whole.

The communion of ordained ministers finds its origin in the fulness of the Priesthood of Jesus Christ. This communion is not merely an external one, but is likewise sacramental in its nature. An eparchial Bishop is never alone since he finds himself living in a dynamic communion with the Pope and his other brother Bishops of the world, with the *presbyterium* and the People of God in general, and that of his eparchy in particular. The Bishops as successors of the Apostles, and the presbyters as the collaborators of the Bishops, exercise the ministry of Jesus Christ, the Eternal Priest.

This research work of the Reverend Father John Kochuthundil is useful to help Bishops and presbyters to become more aware of their own status in the Mystical Body of Christ and of their obligations toward each other. This awareness would certainly help the ministers of the Church to enhance the spiritual enrichment of the People of God. I express my deep appreciation to the author for this excellent treatise, and to Saint Maron Publications for this special initiative to publish the same. I trust this book will serve as a guideline to the Bishops and presbyters who are engaged in the mission of Jesus Christ through their ministry in the Church.

July 27, 1998
Trivandrum

MOST REVEREND CYRIL MAR BASELIOS
Metropolitan Archbishop of Trivandrum

ABBREVIATIONS

AAS:	<i>Acta Apostolicae Sedis</i>
Ant :	Synodus Antiochena
Apost. c:	Apostolic Canon
Apost. const:	Apostolic Constitution
Apost. Exh:	Apostolic Exhortation
Appll:	<i>Appollinaris</i>
art.:	article
c & cc.:	canon, canons
cap.:	caput
Carth.:	Synodus Carthaginensis
CCSL:	<i>Corpus Christianorum Seria Latina</i>
Cf.:	confer
Chalc.:	Concilium Chalcedonense
Chap.:	Chapter
CICO:	Codex Iuris Canonici Orientalis
CLSA:	Canon Law Society of America
CLSGBI:	Canon Law Society of Great Britain & Ireland
CLST:	The Canon Law Society Trust
Comm.:	<i>Communicationes</i>
Conc.:	<i>Concilium</i>
Constnt IV.:	Synodus Constantinopolitanum IV
CSEL:	<i>Corpus Scriptorum Ecclesiasticorum Latinorum</i>
DMLP:	Directory on the Ministry and Life of Priests
DPMB:	Directory on the Pastoral Ministry of Bishops
ed. & eds.:	Editor, edition, editors
Ency.:	Encyclical
Ep. ad Eph.:	Epistola ad Ephesios

Abbreviations

Ep. ad Magn.:	Epistola ad Magnesios
Ep. ad Phila.:	Epistola ad Philadelphenses
Ep. ad Poly.:	Epistola ad Polycarpum
Ep. ad Smyrn.:	Epistola ad Smyrnaeos
Ep. ad Trall.:	Epistola ad Trallesios
ET:	English Translation
EV:	<i>Enchiridion Vaticanum (Documenti ufficiali della Santa Sede)</i>
Gang.:	Synodus Gangrensis
Hist. Eccl.:	<i>Historie Ecclésiastique</i>
Jur.:	<i>The Jurist</i>
Laod.:	Synodus Laodicensis
LEF:	Lex Ecclesiae Fundamentalis
Litt. Apost.:	Litterae Apostoloicae
LT:	Latin Translation
m.p.:	motu proprio
n. & nos.:	number, numbers
NCCB:	National Conference of Catholic Bishops
Nic. I:	Concilium Nicaenum I
Nic. II:	Concilium Nicaenum II
NT:	New Testament
PCCICOR:	Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo
PCCICR:	Pontificae Commissionis Codici Iuris Canonici Recognoscendo
PG:	<i>Patrologia Graeca</i>
PIO:	Pontificium Institutum Orientale
PL:	<i>Patrologia Latina.</i>
Sard.:	Synodus Sardicensis
SCan.:	<i>Studia Canonica</i>

Abbreviations

SCCHEO:	Schema Canonum de Constitutione Hierarchica Ecclesiarum Orientalium.
SCE:	Sacra Congregatio pro Episcopis
SCICO:	Schema Codicis Iuris Canonica Orientalis
SE:	Synodus Episcoporum
sess.:	sessio
Tit.:	Titulus
trans.:	Translation, translated
Trid.:	Concilium Tridentinum
VJTR:	<i>Vidyajyoti Journal of Theological Reflection</i>
vol. & vols.:	volume, volumes

GENERAL INTRODUCTION

No one has the right to receive the sacrament of Holy Orders. Indeed no one claims this office for himself, but is called to it by God.¹ "Anyone who thinks he recognizes the signs of God's call to the ordained ministry must humbly submit his desire to the authority of the Church, who has the responsibility and right to call someone to receive orders. Like every grace this sacrament can be received only as an unmerited gift".²

"The Son of man came not to be served but to serve, and to give his life as a ransom for many" (Mt. 20 : 28). "I chose you and appointed you that you should go and bear fruit..." (Jn. 15:16).

These words of Jesus, the Supreme Pastor and the Eternal Priest, have been the key inspiration for choosing the theme: "Reciprocal rights and Obligations of the Eparchial Bishop and Presbyters". Being fully conscious of its importance, the Code³ affirmed with clarity, the rights and obligations of the eparchial bishop and presbyters in the formulations of its canons.

It is true that in an eparchy, the presbyters relate closely to the eparchial bishop. The whole contemporary structure of the eparchy could not function without a close relationship between the eparchial bishop and presbyters especially with regard to parish activities, curial offices, education, and other administrative functions where the eparchial bishop has to exercise an immediate authority whenever it is needed.

The Second Vatican Council stated that bishops have legitimately handed on the office of their ministry in varying degrees to various subjects in the Church and in that way the divinely instituted ecclesiastical ministry is exercised in different orders by those who,⁴ right from ancient times, are called bishops, presbyters and deacons.

¹ Cf. Heb. 5:4.

² CCC 1577-1578.

³ The use of expressions 'the Code' in this work always means CCEO and "the Latin Code" means CIC 1983. If it is not evident from the context, the use of abbreviations c. or cc. signifies canon or canons respectively from CCEO.

⁴ LG 28.

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The sharing of the bishop's obligations and responsibilities with his presbyters has varied according to the needs of the times.

The effectiveness of the pastoral ministry of the eparchial bishop and presbyters largely depends on the genuine understanding of their reciprocal rights and obligations. This in turn helps them to collaborate and co-operate in their pastoral ministry in the eparchy. Experience testifies that the urgent need of this pastoral collaboration and co-operation are ever more pressing.

Within his own eparchy, the bishop is the bond and guarantee of unity. This ideal was admirably summed up by the early bishops in the Church. For instance, for St. Cyprian, the Church is a people united to its High Priest and gathered around its Shepherd.⁵ St. Ignatius states that "it is proper for one to act in agreement with the mind of the bishop, and this one should do. Of course, your *presbyterium* is a credit to God, for it harmonizes with the bishop as completely as the strings of a harp. This is why in the symphony of your concord and love the praises of Jesus Christ are sung".⁶ The unity envisioned by St. Ignatius, far from being monolithic, is likened to musical or cosmic harmony.

The Code has mentioned, the rights and obligations of the members of the Church in general, and in accordance with each one's special call to the ecclesiastical ministry in particular, under different titles. It is this, the reciprocal rights and obligations of the eparchial bishop and presbyters, which this work deals with. This study will be limited only to the important juridico-pastoral aspect of the reciprocal rights and obligations of the eparchial bishop and presbyters, in so far as the presbyters are the eparchial bishop's co-workers, his adjutants and advisers in the pastoral ministry.

This work will explore, especially in the light of the Code and the documents of the Second Vatican Council, the ecclesial, sacramental, canonical and other pastoral foundations that bind the eparchial bishop and presbyters into the one *presbyterium*. The precise scope of this study, therefore is to highlight and at the same time emphasize the reciprocal rights and obligations of both parties in a simple and systematic way, so that by constantly returning to the foundations of this bond, they may never stop striving for an ever deeper

⁵ CYPRIAN, *Epistola LXIX*, PL IV, 406: «Ecclesia plebs sacerdoti adunata et pastori suo adhaerens».

⁶ IGNATIUS, *Epistola ad Eph.* 4:1. PG V, 735: «...nam memorabile presbyterium, dignum Deo, ita est coaptatum episcopo, ut chordae citharae: ita colligati consensu et concordi charitate, cuius est dux et custos Jesus Christus».

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collaboration and co-operation in their pastoral ministry in the eparchy. A healthy respect for mutual rights and obligations is one canonical way of highlighting the dignity and importance of this level of the Church's existence.

The study will be based mainly on the documents of the Second Vatican Council - particularly the Dogmatic Constitution on the Church (*LG*), the Decree on the Pastoral Office of Bishops in the Church (*CD*) and the Decree on the Ministry and Life of Priests (*PO*), the Sacred Canons and Traditions, the Code of Canon Law (1917), and the *motu proprio Cleri sanctitati* and the *motu proprio Ecclesiae sanctae* and the Code of Canon Law (1983).

In the Decree on Priestly Formation it is stated that in the exposition of canon law attention must be paid to the mystery of the Church, according to the dogmatic constitution "On the Church" promulgated by the Council.⁷ Therefore, the ecclesiastical bond between the eparchial bishop and presbyters and its relation with their reciprocal rights and obligations is examined in this thesis. In order to attain this task, a descriptive methodology will be used.

This work is divided into four Chapters followed by a general conclusion. The first Chapter is divided into two parts. The first part treats three aspects of the issue: (i) main sources and their impacts on the Code, (ii) basic notion of right, obligation, eparchy and pastoral ministry, and (iii) subjects of rights and obligations: the eparchial bishop and presbyters. The second part discusses the image of the eparchial bishop and presbyters from various sources, for instance, from the letters of St. Ignatius of Antioch, the Sacred canons, the *motu proprio Cleri sanctitati* and the Code, so that we may have a clear understanding of both bishop and presbyter. The main purpose of this Chapter is to explore and understand more deeply some of the basic notions and concepts of both eparchial bishop and presbyters concerning their reciprocal rights and obligations.

Chapter two deals with the foundations of the rights and obligations of the eparchial bishop and presbyters. Between the eparchial bishop and presbyters there exists a bond, having its own foundations, which is distinct from any other. Moreover, their rights and obligations are oriented to a special goal and they have a clear and extensive influence in the pastoral ministry of the eparchy and of the entire Church. This is further treated in this Chapter. This Chapter

⁷ OT 16.

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provides a deeper vision of our theme and will function as a basis for the whole study.

In Chapter three, reciprocal rights and obligations of the eparchial bishop and presbyters as specified in the Code will be dealt with. In virtue of his special powers (c. 178), the eparchial bishop has a sacred authority over all his subjects in all matters necessary for their salvation. This sacred authority is realized in the spirit of service through the exercise of his threefold pastoral functions: teaching, sanctifying and governing. Since the eparchial presbyters have been ordained as his collaborators, advisers and helpers and have been made sharers in the same priesthood of Jesus Christ, among his subjects, they remain in the first place. Hence, both the eparchial bishop and presbyters have this threefold mission of teaching, sanctifying and governing, which is fundamentally related to their call and state of life. Accordingly, there will be three parts in this Chapter, each will take the title of one of these missions, i.e., teaching sanctifying and governing respectively. Under each title we will systematically list major rights and obligation of both parties respectively.

An analysis of structures and offices in the eparchy for the fulfillment of these rights and obligations is taken up in the fourth Chapter. The eparchial bishop's pastoral mission in the eparchy is assisted by his presbyters through different structures and offices. The Code legislates for different structures (the eparchial curia, the presbyteral council, the college of the eparchial consultors, the pastoral council), and for different offices (the protopresbyter, the parish priest, the judicial vicar, the defender of the bond etc.,). To fulfill his mission in the eparchy, the bishop functions with the help of these structures and offices, which at the same time call for the presence, co-operation and collaboration of his presbyters. The special purpose of this Chapter is to highlight such structures and offices especially in relation to the eparchial bishop's and the eparchial presbyters' reciprocal rights and obligations and the implementation of the same.

It is hoped that this study might help both eparchial bishops and presbyters to pause and ponder seriously over their attitude towards their reciprocal rights and obligations, because they are co-workers who share the same priesthood and mission of Jesus Christ. And, hopefully, this work will stimulate them to strive for a better understanding of each other through a fraternal relationship with one another, and finally foster greater fraternity, friendship and understanding among themselves.

CHAPTER ONE

SOURCES, BASIC NOTIONS, SUBJECTS AND IMAGES

INTRODUCTION

The Church, the Mystical Body of Jesus Christ, is constituted and established as a visible community in the world. It is a highly organised community of faith. Fundamentally the Church is a community joined together by the bond of sacraments and ultimately aims for the salvation of all. In order to carry out this salvific mission and to shepherd the flock, Jesus Christ instituted in the Church a variety of offices which strive for the good of the whole body. The holders of these offices are endowed with a sacred power for the service of their brethren. As St. Paul says, "And His gifts were that some should be apostles, some prophets, some evangelists, some pastors and some teachers, for the equipment of the saints, for the work of ministry, for the building up of the body of Christ" (Eph. 4:11-12).

Jesus Christ, the Good Shepherd (Jn. 10:14), entrusted to the apostles the ministry of shepherding the flock and that in turn, is divinely entrusted to their successors, the bishops. Bishops exercise this mission of shepherding the flock with the collaboration and co-operation of other sacred ministers (*LG* 7, 10, 13) especially presbyters. This shepherding activity of the sacred hierarchy is carried out in the Church according to the principle of unity of government and diversity of offices and duties, along with the concern to be of mutual assistance to accomplish the ultimate task, the salvific mission (*LG* 28; *CD* 25-35). Thus, in order to carry out this task properly and fruitfully, and to guarantee mutual collaboration and co-operation between bishops and presbyters the Code has issued several norms in the form of rights and obligations.

The present study calls for a rediscovery of the ecclesial and canonical perspective on the reciprocal rights and obligations

of the eparchial bishop¹ and eparchial priests.² For a fruitful pastoral ministry in the Church they must have a better understanding of their mutual rights and obligations. Hence, the main purpose in this Chapter is to understand more deeply some of the basic notions and concepts concerning their reciprocal rights and obligations. There will be two parts in this Chapter: the first part will describe the main sources and their impacts on the Code, basic notions and the subjects of our theme; and the second part will analyse the image of the eparchial bishop and eparchial presbyters from various sources.

PART ONE

MAIN SOURCES, BASIC NOTIONS, AND SUBJECTS

1. Main Sources

The canons of the Code were not created out of nothing, but arise from a legal tradition. Pope Paul VI, in his allocution to the members of the *PCCICOR* on March 18, 1974, said that it was to be a fundamental principle in the codification of the Code that indeed any renewal must always manifest coherency and concordance with sound tradition, so that the new norms do not appear as an extraneous body displaced in the ecclesiastical framework, but as spontaneously blossoming out of already existent norms.³ Canon 2 states that the canons of the Code, in which, for the most part, the ancient law of the Eastern Churches received or adapted, are to be assessed mainly according to that law.⁴ Of course, there are several canonical and other sources

¹CCEO is using the term «episcopus eparchialis» (c. 178) instead of «episcopi residentialis» (CIC 1917 c. 334 § 1; *CS* c. 397) and «episcopo dioecesano» (*CD* 11; *DPMB* 42; CIC 1983 c. 381 § 1). We will be treating the same subject in detail below in this chapter.

²"On the term «clerici dioecesani», which is provisional, it was observed that «eparchiales» may be preferable for "dioecesani", but without determining whether one is more oriental than the other". NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 14. There is no mention of the term "eparchial presbyters" or "eparchial priests" in the Code. The terms "eparchial bishop" and "eparchial presbyter" expresses a better harmony and uniformity. Hence, in this work, we will be using the term "eparchial presbyters" instead of 'diocesan priests'.

³«Allocutio SS. Patris Pauli VI»: *Nuntia* 1 (1975) 6.

⁴ CCEO c. 2: «Canones Codicis, in quibus plerumque ius antiquum

which have influenced the Code in its formulation, especially with regard to the theme - of rights and obligations. So, before entering into the topic, it is important to have a general view of those sources which are essential to our study.

1.1. Sacred Canons and Traditions

The canons of the Code, for the most part are the ancient law of the Eastern Churches received or adapted. In order to provide for a continuity of the ecclesiastical legal system, the ancient laws and also traditions of the Eastern Churches have been taken and accommodated for the contemporary circumstances of the Church. Thus, the Code is to be understood as a logical, natural development in the evolution of the ecclesiastical legal system. In other words those ancient laws and traditions are the main sources of the Code.

Hence, the sacred canons of the Apostles or the Apostolic Fathers, the canons of the first seven ecumenical Councils and of local synods and the canons from our holy Fathers; and the venerable traditions of different ancient Churches (for instance of Alexandria, Antioch, Armenia, Chaldea and Constantinople) are major sources in the codification of the Code.⁵ "The legal heritage of the Oriental Churches is to a great extent founded on the these ancient canons that are to be met with in most all Oriental collections and on common traditions,"⁶ and are even proposed as one of the "Guidelines" for the codification. Here in this work by «sacri canones» is meant all the canonical legislations as they are confirmed in canon 2 of the council of Trullo (691-692) and in canon 1 of Nicea II (787).⁷

Ecclesiarum orientalium recipitur vel accommodatur, praecipue ex illo iure aestimandi sunt».

⁵ Cf. JOHN PAUL II, Apost. Const. *Sacri canones*, AAS 82 (1990) 1033.

⁶ "Guidelines for the Revision of the Code"; Nuntia 3 (1976) 18; AAS 82 (1990) 1057. We will be discussing those sources mentioned above in our work whenever deemed relevant.

⁷ Cf. SALACHAS, «Sacri canones», 2; SALACHAS, «La normativa del concillio Trullano» 24-27; ZUZEK, "Common Canons", 21-56. Though the ecumenicity of the council of Trullo was a moot point at some point in history, there is hardly any room for such an apprehension.

Trullo c. 2: «Hoc quoque huic sanctae synodo optime maximeque placuit, ut ab hinc deinceps ad animarum medelam et morborum curationem firmi securique

1.2. The Code of Canon Law (1917)

Even though the CIC 1917 did not list the rights and obligations of Christian faithful, it did list the rights and obligations of certain groups, within the Church, particularly clerics (cc. 118-144), religious (cc. 592-631) and various office holders. However these rights and obligations were seen as intermingled with privileges. This in fact may be a clue to understand how this Code viewed rights as such. Under an absolutist monarchical system of government, rights were considered a concession of the sovereign, and in that sense they were privileges granted to certain persons. Nineteenth-century political theory had given prominence to the rights as based on one's own social class rather than one's individual significance. As a result the canonical tradition, especially the 1917 Code, reflected the experience of the Church during that period.⁸

1.3. Code of Oriental Canon Law

In order to understand and assess the theme of our concern properly as mentioned in the Code, we have to see it in its historical setting. The previous Oriental code is called *Codex Iuris Canonici Orientalis* (CICO).⁹ CICO, as part by part (as *motu proprio*) promulgated by Pope Pius XII. They are the following:

- (i) *Crebrae allatae* (CA): On 22 February 1949, the canons on the sacrament of marriage were promulgated and were to take effect on 2 May 1949.¹⁰

maneant, qui a sanctis et beatis patribus qui nos praecesserunt, suscepti ac confirmati atque adeo nobis traditi sunt sanctorum et gloriosorum apostolorum nomine LXXXV canones. et per ipsum in eo in quo offendit, medelam suscipiens». JOANNOU, *Discipline generlae*, Fascicolo IX, I, 120-125.

Nic. II, c. 1: «...divinos canones amplectabiliter in pectore recondimus, et integram illorum praeceptionem ac immobilem tenemus: tam scilicet illorum qui ab almīs et laudabilissimis apostolis sancti Spiritus tubis editi sunt, quam eorum qui a sex sanctis et universalibus sinodis.....et audivit ineffabilia verba». See Chal. c. 1; Apost. c. 85.

⁸ Cf. PROVOST, "The People of God", 134.

⁹ This abbreviation CICO does not stand for a single volume but it refers to the above four *motu proprio*s.

¹⁰ *AAS* 41 (1949) 89-119.

(ii) *Sollicitudinem nostram* (SN): On 6 January 1950, the canons on trials were promulgated and were to take effect on 6 January 1951.¹¹

(iii) *Postquam apostolicis* (PA): On 9 February 1952, the canons on religious, temporal goods and the meaning of words were promulgated and were to take effect on 21 November 1952.¹²

(iv) *Cleri sanctitati* (CS): On 2 June 1957 promulgated the canons on Eastern rites and on persons which would take effect on 25 March 1958.¹³

CICO was not a complete code. On the other hand the Code is the completion, updating and replacement of this previous Oriental Code, CICO.¹⁴ The motu proprio *Cleri sanctitati* did mention different rights and privileges of clerics (cc. 53-59), obligations of clerics (cc. 60-67) and the motu proprio *Postquam apostolicis* treated the obligations and privileges of religious (cc. 135 -181).

1.4. The Second Vatican Council

There is no doubt that the teaching of the Second Vatican Council has greatly enlightened the Catholic Church as a whole, especially her vision of hierarchy, human dignity and the rights and obligations of each and every member of the Church. The Dogmatic Constitution on the Church, the Decrees on the Pastoral Ministry of Bishops in the Church and on the Ministry and Life of the Priests etc., have emerged in the Code when the subjects of - rights and obligations of eparchial bishop and eparchial priests are dealt with.¹⁵ According to James Provost, as a result of this

¹¹ *AAS* 42 (1950) 5-120.

¹² *AAS* 44 (1952) 65-150.

¹³ *AAS* 49 (1957) 433-603.

¹⁴ Cf. NEDUNGATT, *The Spirit of the Eastern Code*, 35.

¹⁵ When promulgating CIC 1983, Pope John Paul II said that, "The instrument, such as the Code is, fully accords with the nature of the Church, particularly as presented in the authentic teaching of the Second Vatican Council seen as a whole, and especially in its ecclesiological doctrine. In fact, in a certain sense, this new Code can be viewed as a great effort to translate the conciliar ecclesiological teachings into canonical terms". JOHN PAUL II, *Apost. Const. Sacrae disciplinae leges*, *AAS* 75 (1983) xi.

Council "the basic paradigm of the Church as a sovereign state, i.e., the paradigm on which the 1917 Code was based, was shifted to a more biblical and theological understanding of the Church as the people of God".¹⁶ In fact, the Code strove for the translation of the Conciliar teachings into canonical terms.

1.5. The Motu Proprio *Ecclesiae Sanctae*

Now that the Second Vatican Council is over, the government of the Church requires the framing of new norms and the setting up of new organisms, which would meet the needs of the time. In order to prepare definite norms for the implementation of the Council's decrees, Commissions were established. These Commissions had prepared their conclusions and recommendations and presented them to the Holy Father, Pope Paul VI. After examining the Commissions' conclusions and recommendations attentively, the Pope promulgated the post-conciliar legislation, the «*Ecclesiae sanctae*». It was promulgated on an experimental basis because (i) it had treated with matters of discipline, from which many more suggestions would come in the light of experience; and (ii) a special commission had already begun the reform and emendation of the Code of Canon Law. Moreover, the motu proprio is promulgated for the implementation of the following decrees: *Christus dominus*, *Presbyterorum ordinis*, *Perfectae caritatis* and *Ad gentes divinitatus*.¹⁷

With regard to the rights and obligations of eparchial bishop and the eparchial presbyters, there are several mentions in this motu *proprio Ecclesiae sanctae I*. For instance it develops certain legislative norms concerning the distribution of clergy (n. 3), encouragement of study and pastoral science (n. 7), equitable remuneration and social insurance for presbyters (n. 8),

It is reasonable to think that, in part, the study of this theme in Canon Law was influenced by the Declaration of Human Rights (1948). For detailed knowledge see LARA, "Some General Reflections"; 10. "Lex Ecclesiae Fundamentalism (LEF), a postconciliar project to codify a set of more fundamental canons intended to be common to both the future Codes, was later abandoned, though some of the canons from the final draft have been incorporated in both CIC 1983 and CCEO". NEDUNGATT, *The Spirit of the Eastern Code*, 33. See «De Lege Ecclesiae Fundamentalism»: *Comm.* 1 (1969) 114-115.

¹⁶ PROVOST, "The People of God", 134. See *LG* 32.

¹⁷ *ES I*, Introduction: *AAS* 58 (1966) 757-758.

presbyteral council (n. 15), vicar forane (n. 19) and removal, transfer and resignation of parish priests (n. 20, 1).

1.6. The Code of Canon Law (1983)

Within the Church, individual members possess explicit rights and obligations. In promulgating the CIC 1983 Pope John Paul II identified several reasons for Canon Law in the Church and among these he listed safeguarding and defining the rights of each person in the Church. In the words of the Pope,

Since the Church is established in the form of a social and visible unit, it needs rules, so that its hierarchical and organic structure may be visible; ... that the mutual relationships of Christ's faithful are reconciled in justice based on charity, with rights of each safeguarded and defined...¹⁸

It was in CIC 1983, in which the rights and obligations of the members of the Church in general and in particular first occur and are articulated and it was a celebrated innovation.¹⁹ In relation to our theme, the titles, "The Obligations and Rights of the Clerics" (cc. 73-289), "the Obligations and Rights of Institutes and of their Members" (662-672) etc.,²⁰ are very important.

¹⁸ «Cum ad modum etiam socialis visibilisque compaginis sit constituta, ipsa normis indiget, ut eius hierarchica et organica structura adspectabilis fiat,ut secundum iustitiam in caritate innixam mutuae christifidelium necessitudines componantur, singulorum iuribus in tuto positae atque definitae,»: JOHN PAUL II, Apost. Const. *Sacrae disciplinae leges*, AAS 82 (1990) xiii.

¹⁹ Cf. FARIS, *Eastern Catholic Churches*, 118; «È una solenne dichiarazione dei loro obblighi e diritti fondamentali, formulati per la prima volta in modo organico...» CHIAPPETTA, *Il Codice di diritto*, 273.

In the revision of the Latin Code there were four relevant (altogether ten) "Principles of Revision" listed: (i) With regard to the juridic nature of the Code, it said that the new Code should define and safeguard the rights and obligations of each person in regard to others and society. (ii) To foster pastoral care, the new Code should call for the rights and obligations that come within the juridic organisations of the Church to be suited to its supernatural end. (iii) The protection of the rights of persons should be based on natural law and divine positive law and on what follows in light of the social condition that person have in the Church. (iv) There should be adequate provisions for safeguarding and vindicating subjective rights in the Church. «Principia quae codicis recognitionem dirgant»: *Comm. I* (1969) 77-83.

²⁰ In the Code the canons pertaining to the rights and obligations of the eparchial bishops are formulated under a special title, "the Rights and Obligations of Eparchial Bishops" (*De iuribus Episcoporum eparchialium*, Tit. VII, Art. 11, cc.

1.7. The Code of Canons of the Eastern Churches

The Code was promulgated twenty-five years after the Second Vatican Council and seven years after the Code of Canon Law for the Latin Church. As mentioned above, the Code has its solid foundation on the Conciliar documents, especially for its theological and ecclesiological visions. In order to maintain co-ordination in the revision and the codification of the canons in the Code, a definite and clear policy was established in the form of a set of Guidelines approved by the first Plenary Assembly of PCCICOR in 1974.²¹ In the Preamble of the Guidelines of the Code, it is clearly stated, that one of the most effective ways of implementing the updating (*aggiornamento*) of the Church, as desired by the Second Vatican Council is the revision of the Code of Oriental Canon law carried out in accordance with the principles and spirit of the same Council.²²

"These 'Guidelines' had their model in the 'Principles of Revision of CIC', but were far from being a carbon copy of the latter".²³ Among the ten subtitles of the Guidelines, the Juridical Nature of the CICO, Pastoral Character of the CICO, the Principle of Subsidiarity in the CICO and Canons "de processibus" are having particular importance for our study.²⁴

To maintain the juridical nature of the Code it is recommended by the "Guidelines" to establish and define the rights and duties of individuals towards one another and towards society.

To safeguard the pastoral character of the Code it is stated that special care must be taken in the formulation of laws so that the new Code reflect a concern not only for justice but also for that

190-211). On the other hand in CIC 1983 we do not see a title like this, but the relevant concepts with regard to this theme are expressed in canons 375-402.

²¹ "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 18-24. For the discussions on the "Guidelines" see «Proposta del 1973 della Facolta' di Diritto Canonico del PIO»: *Nuntia* 26 (1988) 100-113; «Lavori della Prima Assemblea Plenaria»: *Nuntia* 30 (1990) 14-88.

²² "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 18.

²³ NEDUNGATT, *The Spirit of the Eastern Code*, 39.

²⁴ "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 18-24. The other subtitles in the "Guidelines" are the following: Preamble, A single Code for the oriental Churches, Oriental Character of the CICO, Ecumenical Character of the CICO, Rites and Particular Churches, The Laity and Canons "De Delictis".

wise equity which is the fruit of understanding of charity. The canonical norms, therefore should not impose obligations when instructions, exhortations, suggestions and similar acts are enough to attain the purpose of the law. In consideration of the principle of Subsidiarity it said that the bishop should not do that which others in the eparchy are in a position to carry out. On the contrary, he should be careful to respect the legitimate competence of others, grant his co-operators the requisite faculties of which they are in need, and support the rightful initiatives both of individuals and of groups. In Canons "de processibus" it is explained that there should be provisions in the Code for vindicating or defending ones own rights.²⁵

The entire Code can be construed as a delineation of the rights and obligations of the members of the Church. There are a number of canons in the Code, that implicitly or explicitly treat the topic of our concern, reciprocal rights and obligations of eparchial bishops and eparchial presbyters in the various realms of their pastoral ministry. Under the titles "the Rights and Obligations of Eparchial Bishops" (cc. 90-211) and "the Rights and Obligations of Clerics" (cc. 367-393) we can see even a general listing.²⁶ In order to limit our study, which will only treat those canons in the Code which consider the reciprocal rights and obligations of the eparchial bishop and the eparchial presbyters in the field of their pastoral ministry

In this context, it is also essential to understand some of the basic notions, for instance, the notion of rights, the notion of obligations, the mutual relationship between rights and obligations, the notion of eparchy and the notion of the pastoral ministry.

2. Basic Notions

2.1. The Notion of Right

In the Roman juridical language, *ius* has various meanings. For instance: right; justice; law and also the whole body of law.²⁷

²⁵ "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 20-24.

²⁶ The phrase "rights and obligations" repeated in the Code as a whole, of course in different contexts, at least 31 times.

²⁷ Cf. CAMBELL, *Black's Law Dictionary*, 1325. See also REID,

In its broadest sense, the term *ius* embraces the whole of the law, the laws (*iura populi romani*), without regard to the source from which they emanate.²⁸ "*Ius*, in appropriate circumstances, might mean right order or the doing of justice, a system of law such as the *ius commune* of the Church, or a particular legal or statutory provision".²⁹

A study of the term *ius* in its *abstract* and *concrete* sense is also relevant. In the abstract sense the term *ius* means justice, ethical correctness, or consonance with the rules of law or the principles of morals. According to this sense, it answers to one meaning of the Latin *ius*, and serves to indicate law in the *abstract*, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. In the *concrete* sense and taken as a noun, the term means a power, privilege, faculty or demand, inherent in one person and incident upon another.³⁰

Rights are defined generally as "powers of free action". And the primal rights pertaining to men are enjoyed by human beings purely as such, being grounded in personality, and existing antecedent to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juridical content, a "right" is well defined as "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others."³¹

As an adjective, the term "right" signifies just, morally correct, consonant with ethical principles or rules of positive law. Hence it is the opposite of wrong, unjust and illegal.³² Furthermore, the use of the term in the objective sense as "the law"

"Thirteenth-Century Canon law Rights", 295-342.

²⁸ Cf. BERGER, *Encyclopedic Dictionary*, 525. "The word *ius* occurs with extreme frequency in decretist and decretalist writings and carries a wide range of meanings. Johannes Monachus, for instance, writing in the fourteenth century, was able to identify "over twenty-five definitions" of this word". REID, "Thirteenth-Century Canon law Rights", 299.

²⁹ REID, "Thirteenth-Century Canon law Rights", 306-307.

³⁰ Cf. CABELL, *Black's Law Dictionary*, 1324.

³¹ CABELL, *Black's Law Dictionary*, 1324.

³² Cf. CABELL, *Black's Law Dictionary*, 1324.

ius is applied to indicate the subjective right or rights (*iura*) of an individual, as the right to do something in a certain legal situation, to acquire a thing or to dispose of it, to claim something from another.³³ *Ius* can also be interpreted as a reality, that which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense "right" has the force of "claim".³⁴

For the medieval philosophers *ius* could be understood in three dimensions. In the objective dimension it stood for what is just, what must be or can be demanded. The efficient dimension referred *ius* to a law or norm for action. In a subjective sense, *ius* meant an inviolable moral faculty of doing, omitting, or demanding something.³⁵

There are two kinds of rights: active right and passive right. In the work of modern analytical philosophers, such as Lyons, an active right is the right to do something, and in contrast to this a passive right is the right to receive something from someone else.³⁶

The so called 'personal rights' are also significant in this context. Generally it may be said to mean the right of personal security, comprising of those of life, limb, body, health, reputation and the right of personal liberty.³⁷ According to Pope John Paul II, the basis of man's individual and social rights are unquestionably based on the dignity of the human person. It is in this dignity of the person that human rights find their immediate source and it is respect for this dignity that gives birth to their effective protection.³⁸ Pope John XXIII explained this as follows:

Any well regulated and profitable association of men in society demands the acceptance of one fundamental principle: that each individual is truly a

³³ Cf. BERGER, *Encyclopedic Dictionary*, 525. «*Facultas moralis inviolabilis ad aliquid faciendum, obtinendum vel omittendum*». Right, in its subjective meaning refer to an inviolable moral faculty to do, obtain or omit something. SUAREZ, *Tractatus de*, 1, 1, c. 2, n. 5.

³⁴ Cf. CABELL, *Black's Law Dictionary*, 1324.

³⁵ Cf. OTTAVIANI, *Institutiones*, 1:1.

³⁶ Cf. REID, "Thirteenth-Century Canon Law Rights", 307.

³⁷ Cf. CABELL, *Black's Law Dictionary*, 1325.

³⁸ JOHN PAUL II, *Declarazione universale iurium: AAS* 71 (1979) 121-122.

person. As such he has rights and duties which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable and therefore altogether inalienable.³⁹

Hence, it is proper to say that, every human person possesses rights that no society can disregard. In the Code, by baptism a human person becomes the subject of rights which belong to the members of the faithful. These rights are inherent, intrinsic to being Christian and they are prior to the determination of positive law. Besides these rights in the Church there are also rights determined by one's own state of life or possession of office.

Hence in this work when we employ the term right we understand it as the rights of an individual who enjoys a special state of life and office in the Church. It is thus the right to do something in a certain legal situation, to acquire a thing or to dispose of it; to claim from another.

2.2. The Notion of Obligation

'Obligation' a generic word, derived from the Latin substantive "*obligatio*", having many, wide, and varied meanings, according to the context in which it is used. It is that which a person is bound to do or forebear, any duty imposed by law, promise, contract, relations of society, courtesy, kindness etc.⁴⁰

The word 'obligation' etymologically relates particularly to the "binding force" (*ligare*, to bind) of promissory or quasi-promissory commitments. In various modern languages, as in English, obligations to other persons, deriving from particular roles, arrangements, or relationships, remain the principal cases signified by the word.⁴¹

³⁹ JOHN XIII, *Pacem in terris* art. 3: «Porro in quovis humano convictu, quem bene compositum et commodum esse velimus, illud principium pro fundamento ponendum est, omnem hominem personae induere proprietatem; hoc est, naturam esse, intelligentiam et voluntatis libertate praeditam; atque adeo, ipsum per se iura et officia habere, a sua ipsius natura directo et una simul profluentia. Quae propterea, ut generalia et inviolabilia sunt, ita mancipari nullo modo possunt». *AAS* 55 (1963) 259; JOHN PAUL II, *Declaratione universalis iurium: AAS* 71 (1979) 121-123.

⁴⁰ Cf. CAMELL, *Black's Law Dictionary*, 1074.

⁴¹ Cf. FINNIS, *Natural Law*, 297; "In Roman law, a legal bond which obliges the performance of something in accordance with the law of the land. It

The definition of *obligatio* in the legal field, in Justinian's *Institutes* which obviously goes back to a classical writing, says: "obligatio is a legal tie (*vinculum*) by which we are forcibly bound (*adstringimur*) to pay a certain thing (*alicuius solvendae rei*) according to the laws of our nation.... The substance of obligatio consists in binding (*obstringere*) another person to give us (*dare*) something, to do (*facere*) or to perform (*praestare*) something".⁴²

For many eminent thinkers (for instance Immanuel Kant, Henri Bergson etc.), the notion of "duty" or "obligation" is fundamental in moral teaching.⁴³ But here it should be noted that "duty" and "obligation", although very closely related terms are not synonymous. On the other hand, they are, the twin facets of one and the same reality - "duty" indicating the objective reality (to be realised and put into execution) and "obligation" being the necessity in which one's freedom finds itself when it comes face to face with this reality. "Duty" is what one bound to do by moral or legal obligation. The very term "obligation" (*ob-ligare*) signifies the state of being bound or enveloped by some constraint or necessity or force limiting the scope of free activity or perhaps orienting and safeguarding it. Of course, one arrives at much the same notion by examining the word duty, which came into English from the French through Anglo-French (*dû, due t e*) and ultimately from the Latin *debere*, which itself is composed of *de* and *habere* meaning to have something from another, to be in possession of something that in reality belongs to another.⁴⁴

corresponded nearly to our word contract. The legal relation existing between two certain persons where by one (the creditor) is authorised to demand of the other (the debtor) a certain performance which has money value. In this sense *obligatio* signifies not only the duty of the debtor, but also the right of the creditor. The fact establishing such claim and debt, as also the instrument evidencing it, is termed "obligation". CABBELL, *Black's Law Dictionary*, 1073.

⁴² BERGER, *Encyclopedic Dictionary*, 603.

⁴³ Based on his doctrine of the categorical imperative, Kant proposed his theory of duty for duty's sake. Bergson had a moral theory built around a double source of moral obligation; namely social pressure and personal attraction in love and friendship. Cf. WILLIAMS, "Obligation", 614.

⁴⁴ Cf. WILLIAMS, "Obligation", 614-615.

In this study, we are using the term "obligation" both in the sense of a legal obligation imposed by canon law (any duty imposed by canon law) and a moral force which binds the members of the Church. The fulfilment of the duty by one of the members in the Church generally aims for the common good of the Church and at the same time it helps one to lead a true Christian life. For instance, it is said in the Code (c. 371 § 1) the presbyters are to accept and faithfully carry out every office, ministry, or function committed to them by the competent authority. The fulfilment of these obligations by the presbyters is primarily oriented to the good of the Church and that in turn helps the presbyters to be true sons of the Church and also to be faithful to their special call and mission in the Church.

2.3. Rights and Obligations

Which comes first rights or obligations? It is a disputed question and there are different answers for and against. In fact, it is not our scope to enter into these disputes. On the other hand, we will be mentioning some of the arguments for a better understanding of both concepts of rights and obligations and their mutual relationship.

CIC 1917 and the motu proprio *Cleri sanctitati* used the formula of "Rights and Privileges of Clerics".⁴⁵ In the broad sense by privilege it is meant that a special prerogative granted by common law to a person or class of persons (e.g. clerical privileges, privileges of minors, etc.). In the strict sense a privilege is a provision of the legislator granting a special favour, of somewhat permanent character, or the favour thus granted.⁴⁶

The Code used the word order: rights and then obligations (*ius et obligatio*), while on the contrary the 1983 Latin Code used

⁴⁵ CIC 1917 used "De iuribus et privilegiis clericorum" (Cf. *Liber secundus*, Tit. II, cc. 118-123 and «De obligationibus clericorum» (Cf. *Liber secundus*, Tit. III, cc. 124-144). The same order we could see in *CS* Tit. III, Caput II, cc. 53-59 and Tit. III, Caput III, cc. 60-87.

It is also to be noted that there were four privileges mentioned in the *CS*: (i) *privilegium canonis* (c. 54) (ii) *privilegium fori* (c. 55) (iii) *privilegium immunitatis* (c. 56) (iv) *privilegium competentis* (c. 57).

⁴⁶ Cf. AYRINHAC, *General Legislation*, 165.

the formula: of obligations and then rights (*obligatio et ius*).⁴⁷ Based on these diverse formulas we can derive views and opinions.

CIC 1983 gives more importance for obligations and rights of the clerics than privileges.⁴⁸ The traditional but outmoded privileges as mentioned in the *motu proprio Cleri sanctitati* no longer find a place in the Code also.⁴⁹

Dr. Gutiérrez says that it might have been more apt to say *obligations* and *rights*, rather than *rights* and *obligations*; for what is genetically first is the moral element rather than the juridical, which pertains to the moral and not vice versa. The main argument he presents is that the morality comes before law, and law is based on morality. That means, in morality first the obligations arise and then the corresponding rights to fulfil the obligations. Thus he concludes that there are no rights that are not grounded in corresponding obligations. So, if no moral and juridical obligation or if a moral and legal obligation existed or was impossible, no right could be coherently formulated. More over, this mode of expression "*obligations and rights*" transcribes better graphically and literally, such an axiom rather than its homologous "*rights and obligations*", even though this sounds better to the people.⁵⁰

The author Pèter Erdö states that even though it is logical, the order "*obligations and rights*" seems contrary to that of so many civil legislations, in which rights are spoken of first and obligations are later. Some scholars explain this difference by the diversity of cultural models that are the foundation of different legislations. For instance, starting more or less consciously from the idea of natural law and illuminism, one arrives at the logical precedence of rights. Keeping in mind however the call of God that unites the Church, and considering the laws in the Church as necessary, enabling the individual to carry out his proper vocation, the logical precedence of obligations seems evident. Cardinal

⁴⁷ CCEO Tit. VII, Caput I, Art. II, *De iuribus et obligationibus Episcoporum eparchialium*, cc. 190-211; Tit. X, Caput III, *De iuribus et obligationibus clericorum*, cc. 367-393; CIC 1983 Liber II, Pars I, Tit. III, Caput III, *De clericorum obligationibus et iuribus*, cc. 273-289.

⁴⁸ Cf. BERTONE, «Obblighi e diritti», 59.

⁴⁹ Cf. NEDUNGATT, "On Clerics in General": *Nuntia* 3 (1976) 62.

⁵⁰ Cf. GUTIÉRREZ, "The Clergy in the Latin", 123, 126-127.

Newman confirms the priority of the obligations of conscience with respect to its rights, and according to him "conscience has rights, because it has obligations".⁵¹

Here in this context, it would be relevant to note the mutual relationship between right and obligation. For every right there is a corresponding obligation and vice versa. They are in a way two sides of the same coin. The right of the individual is correlated to the obligation that others have to respect it. However, at times even the individual himself has an obligation to exercise his own right. It is not a facultative right but a right-obligation.⁵²

There are three traditions with regard to rights and these will have great impact on the understanding of the list of rights in the Code. (i) Rights can be understood as a sphere of free choice in which one is at liberty to act or not (e.g. to organise or join an association. c. 391). (ii) The individual is not an isolated actor but a member of society. To exercise true liberty the individual may require that society supply for deficiencies in his individual resources. This approach considers right as entitlements (presbyters right to receive assistance from bishop to foster their spiritual and intellectual life. c. 192 § 4). (iii) Rights are not merely claims one can make for isolated freedoms. They are not only entitlements that one can demand from society. On the other hand they entail an interaction between individual and society, located in the concept of the common good. This approach to rights emphasises the social responsibility that is integral to a right (in the exercise of their rights all the faithful must take account of the common good of the Church. c. 26).⁵³

The obligation of the individual is linked with the right of others to require the fulfilment of the obligation. At the same time, the individual obligation implies the right to be able to fulfil the

⁵¹ Cf. ERDŐ, "Cardinal John Henry Newman's", 131.

⁵² Cf. LARA, "Some General Reflections", 21.

⁵³ The first approach was in the line with the United States Bill of Rights or the French Declaration of the Rights of Man and the second approach underlines the United Nation's Universal Declaration of Human Rights. Cf. PROVOST, "The People of God", 136.

obligation. Frequently there is a simultaneity of these two juridical situations as expressed in the Code.

We can also say, rights give rise to obligations. In other words, one person's right produces a corresponding obligation in others which they must respect. Also, when one has an obligation to provide something for others, those others have a right to that service (e.g. the presbyters have a right to obtain an office from the bishop and that in turn becomes the bishop's obligation to supply him with an office. c. 371 § 1). Similarly when the common good calls for one to exercise a right, then there is an obligation to do so.⁵⁴

2.4. The Notion of Eparchy

The term "eparchy" is originated from the Greek word *eparchia* (επαρχια). *Epi* (επι) means 'over' and *archo* (αρχω) means 'to rule'. It was a term employed in Byzantine civil law to designate a subdivision of a civil diocese. Like the terms *province* and *diocese* came to be employed in ecclesiastical administration, so too was the term "eparchy" adopted by the Church.⁵⁵

The term "diocese" was used in the Roman Law as an administrative unit. *Dioecesis* signifies the union of several provinces. Through emperor Diocletian's reform (284-305) the whole Roman Empire was divided into dioceses, which in turn were divided into several *provinciae* and the governor of a *dioecesis*, to whom the governors of the pertinent provinces were subordinate, was the vicarius. Three or four dioceses were joined into a *praefectura* under a *praefectus praetorio*.⁵⁶ The Christian communities headed by a bishop, were actually at first only single parishes but later they had dependent communities, and subsequently, emancipated ones. They started the form of eparchies with a number of parishes, headed by priests.⁵⁷ According to G. Nedungatt,

⁵⁴ Cf. PROVOST, "The People of God", 138. For further study see LARA, "Some General Reflections", 21-22; LOBO, *Church and Social*, 84.

⁵⁵ Cf. FARIS, *Eastern Catholic Churches*, 405.

⁵⁶ Cf. BERGER, *Encyclopedic Dictionary*, 437.

⁵⁷ Cf. POSPISHIL, *Eastern Catholic Church Law*, 206.

These divisions supplied the model and the terminology for the Church. However, the territorial divisions over which bishops presided did not correspond to the political divisions either into dioceses or into provinces. Hence the terminological usage in the Church could oscillate. In the Latin West it settled down on *diocesis* and in the Greek East on *eparchia*. The word *diocesis* (from Greek, *dia* + *oikésis*, from *oikos* = house keeping, government) had been borrowed by Latin and become a Latin word in common secular usage to designate the jurisdiction or the district of a governor; so, dioceses. On the contrary, the East gradually settled down on *eparchia* (from *epi* + *arché* = rule over, district ruled by a governor), which was never borrowed by Latin, since it already had *provincia*.⁵⁸

The Council Decree *Christus dominus* has well defined the notion of an eparchy in a new ecclesiological and theological perspective.⁵⁹ Based on these new dimensions, the Code clearly defines the notion of eparchy and it runs as follows :

An eparchy is a portion of the people of God, which is entrusted to a bishop to be nurtured by him, with the co-operation of the presbyterium, in such a way that adhering to its pastor and gathered by him through the gospel and the Eucharist in the Holy Spirit, it constitutes a particular Church, in which the one, holy, catholic and apostolic Church of Christ truly exists and is operative.⁶⁰

⁵⁸ NEDUNGATT, *The Spirit of the Eastern Code*, 250. CCEO is to be noted for its flavour of oriental (Greek) vocabulary, for instance "eparchy", "hierarch" etc.,.

⁵⁹ CD 11: «*Dioecesis est Populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda conceditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una sancta catholica et apostolica Christi Ecclesia*».

Presbyterium is not an English word but we will be using it as a technical term in our work in reference to the collective body of presbyters.

⁶⁰ CCEO c. 177 § 1: «*Eparchia est populi Dei portio, quae Episcopo cum*

To indicate "diocese", the canon uses the Greek term "eparchia". In the ancient canonical norms this term was employed to indicate an ecclesiastical province under a metropolitan, and only in a later period was this term used to indicate a "local Church" under a bishop.⁶¹ In the ancient tradition of the Church, episcopal ministry is necessary for a perfect unit of the Church and the parish *per se* lacks the immediate presence of the episcopal ministry and consequently the fullness of the sacramental ministry.⁶² According to the Orthodox concept, the "local Church", a Eucharistic assembly under the presidency of the

cooperatione presbyterii pascenda concreditur ita, ut Pastori suo adhaerens et ab eo per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una, sancta, catholica et apostolica Christi Ecclesia». ET is indebted to NEDUNGATT, *A Companion to the Eastern*, 62.

Instead of *eparchy* CIC used the term *diocese* (cc. 368-369). «Il Concilio Vaticano II (CD 3, 11, 23, 28; LG 23, 27, 45; AG 6, 19, 20; SC 13) e il Codice per la Chiesa Latina per indicare le diocesi e altre circoscrizioni ecclesiastiche usano sempre il termine "Chiesa particolare». Cf. RUINI, «Il vescovo», 227. The term *Ecclesia particularis* (particular Church), was employed in the Code, to designate an eparchy and its juridic counterparts only after a prolonged discussion by the PCCICOR. Some of them preferred the use of the term *ecclesia particularis* in the Code to signify an ecclesial grouping of several eparchies. They did base their arguments on two Conciliar Documents, *OE* and *LG*. The pertaining texts are given below :

OE 2: «Sancta et catholica Ecclesia, quae est corpus Christi mysticum, constant ex fidelibus, qui eadem fide, iisdem sacramentis et eodem regimine in Spiritu Sancto organice uniantur, quique in varios coetus hierarchia iunctos coalescentes, particulares Ecclesias seu ritus constituunt».

LG 13: «Inde etiam in ecclesiastica communione legitime adsunt ecclesiae particulares, propriis traditionibus fruentes, integro manente primatu Petri cathedrae, quae universo caritatis coetui praesidet ut particularia, nedum unitati noceant, ei potius inserviant».

For the ET of the Second Vatican Council we will be depending upon TANNER, *Decrees of the Ecumenical Councils*, vols. 1&11.

The term *ecclesia localis* was also considered since it is a traditional usage among the Eastern Churches and is quite common among the Orthodox Church. In spite of this, the term is incompatible with the Conciliar notion of "the portion of the people of God" (CD 11) which does not have direct connection with geographic factors («La nuova revisione della seconda parte dello SCCHEO»: *Nuntia* 23 (1986) 4). Likewise, the term *ecclesia singularis* was employed in the drafts but it was later dropped in favour of *ecclesia particularis*. ZUZEK, «Canons de Episcopis»: *Nuntia* 9 (1979) 5-6; NEDUNGATT, «Ecclesia Universalis, Particularis, Singularis»: *Nuntia* 2 (1976) 75-87; See *Comm.* 9 (1977) 297-299).

⁶¹ Cf. SALACHAS, «Istituzione di diritto canonico», 209. See Nic. I, cc. 4-6; Ant. c. 9. For instance Nic. I, c. 4 reads as follows: «Episcoporum convenit maxime quidem ab omnibus qui in provincia episcopis ordinari.... Firmatis autem eorum, quae geruntur per unamquamque provinciam, metropolitano tribuatur episcopo».

The LT of the ancient canons will be from JOANNOU, *Discipline Générale Antique IIe-IXes & IVe - IXes*, Fascicolo IX, I.

⁶² Cf. NEDUNGATT, «Ecclesia Universalis, Particularis, Singularis»: *Nuntia* 2 (1976) 79.

bishop, is the Church in its fullness possessing all *the notae ecclesiae*. It is true that the parish is also a Eucharistic community but according to the general understanding in Orthodox theology, a "local Church" is guaranteed by the eparchial bishop and not by the presbyter; the "local Church" as an entity with full ecclesiological status is the eparchy and not the parish.⁶³

We have already seen the definition of an eparchy in the Code c. 177 § 1. Likewise in the Latin Code, the notion of a "diocese" in canon 368 doesn't differ in its meaning in relation to the term "eparchy". To indicate the "eparchy" and the "portion of the people of God which is entrusted for pastoral care to a bishop", the Apostolic Constitution *Pastor bonus* used the terms "diocese" and "diocesan bishops" respectively.⁶⁴

The terms 'eparchy' and 'diocese' mean exactly the same thing. As stated above, an eparchy is a "portion of the people of God".

These faithful are not only considered as a group of people, joined by some common interest, as members of a commercial society or those of a sporting society, nor as an association of believers united by bonds of charity: common interests and reciprocal charity are not enough to constitute an eparchy, there is something more, and it is the action of the Bishop: with an act of the competent ecclesiastical authority these faithful are entrusted to the pastoral care of a Bishop, assisted by his presbyterate, and to actualise the eparchy their adhesion to the proper Bishop is necessary, it is that

⁶³ Cf. ZIZIOULAS, *Being as Communion*, 247, 251; SCHMEMANN, «La notion de primauté», 129. For further study on this theme see HOLTZMAN, "Eucharistic Ecclesiology", 67-88.

⁶⁴ *PB* 64 § 1, 81 etc. "However, where *Pastor bonus* concerns the universal Church, the choice of the expressions "dioceses" and "diocesan bishops" used in the Latin Church does not seem to accommodate the Eastern canonical tradition and terminology that speak of eparchies and eparchial bishops". ABBASS, "Pastor bonus and the Eastern", 589-590.

which unites them and constitutes them in community, in Church.⁶⁵

Also it is to be noted that, an eparchy according to its very nature is a juridical person⁶⁶ and the eparchial bishop represents the eparchy in all its juridical affairs.⁶⁷ The bishop is immediately given prominence as its constituent part and one cannot conceive of an eparchy without a bishop. The bishop is the source and foundation of unity within the eparchy. He gathers the faithful into one community of faithful through the gospel and the Eucharist and those who are called together by him become bound in the Holy Spirit.

The eparchial community in this way becomes a Church. One is not speaking of an image of the universal Church, of a copy of it, of a reduction of it, but one is truly speaking of the one, holy, Catholic and apostolic Church of Christ. It is not an autonomous Church, because it is inserted into the universal Church through its Bishop, but it is a true Church, and for this reason it is called a particular Church.⁶⁸

The Second Vatican Council document *Lumen gentium* states that "just as, by the Lord's decree, St. Peter and the other apostles constitute one apostolic college, so in a similar way the Roman Pontiff, Peter's successor, and the bishops, successors of the apostles, are joined together".⁶⁹ Therefore the bishop of an eparchy is in communion with the Roman Pontiff. This guarantees the inclusion of the eparchy in the Catholic Church. By means of communion with the bishop and with other particular churches, the faithful are in communion with the entire Church. Hence, this

⁶⁵ BROGI, "Norms on Eparchies", 108.

⁶⁶ CCEO c. 921. About *de personis iuridicis* (juridical persons) see CCEO cc. 920-930.

⁶⁷ CCEO c. 190: «In omnibus negotiis iuridicis eparchiae Episcopus eparchialis eiusdem personam gerit».

⁶⁸ BROGI, "Norms on Eparchies", 109.

⁶⁹ LG 22: «Sicut, statuente domino, sanctus Petrus et ceteri apostoli unum collegium apostolicum constituunt, pari ratione Romanus pontifex, successor Petri, et episcopi, successores apostolorum, inter se coniunguntur».

definition of the eparchy as given in the canon presents it as a particular realisation of the mystery of the Church, and by the same token posits a clear relation between it and the entire Church. It is in keeping with this vision that the eparchial bishop and the presbyters, through their collaboration in the pastoral ministry in the eparchy, are expected to show concern not only for the portion of God's people but for the whole Church. This in fact, expresses the theological unity of the Church and priesthood, and also the co-operation which exists between bishops and presbyters.⁷⁰

An eparchy is considered as the fundamental ecclesial unit. Because it has all the ecclesial elements such as the bishop, presbyters, faithful, the sacraments - especially the Holy Eucharist, - the proclamation of the Word and the Holy Spirit. It is, in fact, only a portion of the people of God, but at the same time it is a perfect community in itself.

2.5. The Notion of Pastoral Ministry

The entire People of God share in the prophetic, priestly and royal offices of Jesus Christ. But some individuals in the Church are consecrated in a new way and participate in the priesthood of Christ in such a manner that they exercise the sacred ministry to further the glory of God and foster the divine life in their brothers.⁷¹

The ministerial priesthood, being a special call and vocation, has its own special mission i.e., mission of sanctifying, teaching and governing. The eparchial bishop and the eparchial presbyters are under the obligation of this threefold mission, in order to fulfil their vocation in the eparchy and in the Church as a whole. Of course, there exists a hierarchical gradation in the participation and exercise of this threefold mission. Even though there exists such a gradation, their ministry in the eparchy is ultimately aimed at the salvation of all (cc. 289 § 1, 727 etc.). More over, this ministerial action of the sacred hierarchy in the Church (and of others) is carried out according to the principle of unity of government and diversity of offices and responsibilities,

⁷⁰ Cf. POWER, *Ministers of Christ*, 143.

⁷¹ Cf. DPMB 5; LG 13; PO 2.

along with the concern to be of mutual assistance and to accomplish a task.⁷²

The rights and obligations of the eparchial Bishop and the eparchial presbyters in the Code are ordered according to the nature and mission of the Church. The Church is sacred by her very nature. As long as it is a community, her structures and institutions manifest a juridical character but at the same time these structures and institutions exist in the Church for the purpose of promoting the supernatural life of the people of God. The promotion of this supernatural life is accomplished through the pastoral ministry. Yet it is necessary that the rights and obligations in the Code be in harmony with the realisation of this pastoral ministry and ultimately the attainment of this supernatural end by all human being.

Here it is relevant to note that, in the drafting of the Code, it was approved by the First Plenary Assembly of the Commission on March 18-23, 1974 that the "pastoral character" of the Code be one of its "Guidelines". The Commission states that the Code must be such as to encourage pastors to practice justice and equity with discretion and intelligence. "The canonical norms, therefore should not impose obligations when instructions, exhortations, suggestions and similar acts by which communion among faithful is fostered, are sufficient for the better attainment of the Church's purpose".⁷³

3. Subjects of Rights and Obligations

3.1. Subjects in General

Every human being possesses rights that no society can ignore.⁷⁴ In law, a person is someone who is capable of having rights and of being subject to duties and responsibilities.⁷⁵ Civil societies have formulated "bills of rights" for their citizens as early as the eighteenth century. In the Church, one is incorporated into it

⁷² DPMB 6; LG 28; CD 25-35.

⁷³ "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 20-21.

⁷⁴ Cf. BOWEN, "Person, Juridical", 171.

⁷⁵ *The New Encyclopaedia Britannica VII*, "Person", 891.

by baptism and is constituted a person with duties and rights.⁷⁶ Thus in the Church, each and every person has his/her rights and obligations in accordance with their status in the Church.

The Christian faithful are those who are incorporated into Christ through the sacrament of baptism, have been constituted the people of God, and participate in their own way in the priestly, prophetic and royal functions of Christ. They are called, each according to his or her condition, to exercise the mission which God has entrusted to the Church to fulfil in the world.⁷⁷ Therefore, by baptism, all the members of the Church belong to Christ's faithful and there exists an essential equality among them. "While there is an essential equality among all the baptised, the rights and obligations differ and are commensurate to the age, location, state in life, (i.e., lay, religious, or sacred minister) and juridical status (free from any canonical sanctions) of the individual".⁷⁸ It shows that, in the Church there exists among the faithful a fundamental equality with regard to dignity and activity, but there also exists a diversity in these in accordance with each one's conditions and functions. For instance, the sacred ministers, because of their special call and consecration have a special state of life in the Church and also possess special offices.

⁷⁶ CIC 1983 c. 96: «Baptismo homo Ecclesiae Christi incorporatur et in eadem constituitur persona, cum officiis et iuribus quae christianis...».

⁷⁷ CCEO c. 7 § 1: «Christifideles sunt, qui per baptismum Christo incorporati in populum Dei sunt constituti atque hac ratione muneris Christi sacerdotalis, prophetici et regalis suo modo participes secundum suam cuiusque condicionem ad missionem exercendam vocantur, quam Deus Ecclesiae in mundo implendam concedit». See *LG* 3; CIC 1983 c. 207 § 1.

⁷⁸ FARIS, *Eastern Catholic Churches*, 118-119. CIC 1983 is divided into seven books. To establish the fundamental equality among all the members of the Church, this Code formulated the canons of *De Christifidelibus* (Pars I, Tit. I-II), *De Ministris Sacris seu Clericis* (Pars I, Tit. III), *De Ecclesiae Constitutione Hierarchia etc.*, under the main title *De Populo Dei* (Liber II, Pars I-III).

To avoid the risk of undue generalisation and the theological difficulties, CCEO's main division is not into books. It is following the classical Byzantine models such as the Nomocanon of XIV Titles and the Syntagma of John Scholasticus, of Fifty Titles. Hence, the Code treated all the said subjects under separate titles: *De Christifidelibus Eorumque Omnium Iuribus et Obligationibus* (Tit. I); *De Eparchis et de Episcopis* (Tit. VI); *De Clericis* (Tit. X) etc.. Cf. «L'ordine sistematico dello Schema»: *Nuntia* 26 (1989) 17-99.

3.2. Clerics

The Christian community from its very beginning had ministers, who were called by different names, elders, supervisors and deacons, as is found in the Acts of the Apostles (15: 2-6) and in the Pauline letters (Phil. 1: 1; I Tim 3:1; Tit 1:7-9). Here it is relevant to note the canonical change in the understanding of clerics today. The tables given below will be helpful to have a general vision in this regard.⁷⁹

According to CIC 1917 canon 107 there are three great classes of persons in the Church: the clergy, the lay people and the religious. The distinction between the clergy and the lay people is of divine institution, inasmuch as Jesus Christ established in the Church a distinct hierarchy and priesthood, leaving the power of teaching, sanctifying, and governing not to all Christian faithful, but to a few chosen ones, who thus form a divinely constituted body. However, by virtue of her own authority the Church has confided a share in those special powers to some men; these also belong to clergy, but not by divine institution (for instance, clerics who have received only tonsure). But here it is to be noted that both clerics and lay persons may dedicate themselves to a life of perfection by the three vows of poverty, chastity, and obedience; these are the religious who, although they belong to either the clergy or lay people, may nevertheless be considered as forming a distinct class because of their distinct rights and obligations.⁸⁰

Canon 107 of CIC 1917 is different from the canon 207 § 1 of CIC 1983. There is an addition of two phrases in the latter «inter christifideles» and «ministri sacri». Also in the latter, the description of religious is given in a separate paragraph (- § 2). With the addition of "sacred minister" there is effected a shift in

⁷⁹CIC 1917 c. 107 «Ex divina institutione sunt in Ecclesia clerici a laicis distincti, licet non omnes clerici sint divinae institutionis; utriusque autem possunt esse religiosi».

CS c. 38 § 1, 2° «Clerici ex divina institutione a laicis distinguuntur».

CIC 1983 c. 207 § 1 «Ex divina institutione, inter christifideles sunt in Ecclesia ministri sacri, qui in iure et clerici vocantur, ceteri autem et laici nuncupantur».

CCEO c. 323 § 2 «Ratione sacrae ordinationis clerici ex divina institutione a ceteris christifidelibus distinguuntur».

⁸⁰ Cf. AYRINHAC, *General Legislation*, 232-233.

the foundation for the distinction among the Christian faithful. It is no longer the status as clerics, obtained through tonsure (CIC 1917 c. 108 § 1) that distinguishes cleric from laity, on the contrary it is Holy Orders that does so. Thus the distinction had acquired a sacramental basis rather than a juridical determination.⁸¹

Cleri sanctitati canon 38 § 1, 2° says that by divine institution the clerics are distinct from the laity.⁸² The sources sighted for this canons are the Council of Trent sess. XXIII, de ordine, c. 4 and Clement's Letter *Propter subitas*. The conception of the Christian faithful according to *Cleri sanctitati* is bipartite: clerics and laity.

Cleri sanctitati canon 38 § 1 reads as follows: "Those who have been assigned to the divine ministry by the sacred *rite* established in their own discipline are called clerics". Here Tonsure is not explicitly mentioned. The Oriental Churches do not have it as a form of reception into the clergy: "The genuine tradition of the East knew no rite of reception into the clergy which was not at the same time an order".⁸³

The Code defines clerics as follows:

c. 323 § 1. Clerics, who are also called sacred ministers, are Christian faithful who, chosen by the competent ecclesiastical authority, are deputed through a gift of the Holy Spirit received in sacred ordination to be ministers of the Church participating in the mission and power of Christ, the Pastor.⁸⁴

⁸¹ PROVOST, "The People of God" 131.

In CIC 1917 c. 108 § 1 stated that it was with tonsure that one acquires the status as cleric, and there was no ordination required. "Tonsure was not an order but rite by which one was set apart for sacred ministry and became a cleric.". "Orders are never lost (order is a "character" sacrament - cf CIC 1983 c. 1008)". PROVOST, "The People of God" 131. This canon was not found in the corresponding previous Oriental legislation CS(c. 38).

⁸² CS c. 38 § 1, 2. The "coetus de Clericis et Magisterio ecclesiastico" eliminated this canon because of its obvious generalization. NEDUNGATT, "On Clerics in General": *Nuntia* 3 (1976) 57.

⁸³ POSPISHIL, *The Law on Persons*, 55.

⁸⁴ CCEO c. 323 § 1: Clerici, qui etiam ministri sacri vocantur, sunt christifideles, qui ab auctoritate competenti ecclesiastica electi per donum Spiritus Sancti

Today the term "clerics" in ecumenical circles is not much in vogue. The preference seem to go for "ministers". But the «Coetus de Clericis et de Magisterio Ecclesiastico» has retained the term *clerici* for its long established roots in Christian tradition.⁸⁵

Here it is relevant to note that, in the Code there are two major division among clerics: major and minor (cc. 326-327). Bishops, presbyters and deacons are constituting the "major order" (c. 325) and *Subdiaconi, acolythi*, and *lectores-cantores* constitute the "minor orders" (c. 327).⁸⁶

The *Coetus* had proposed for the first paragraph of this canon not to use the word "character". Besides the words "are deputed through a gift of the Holy spirit to be ministers of the Church" refer not only to the sacramental grace but also to all the factors specified in the canon 738 (of the Schema). Also the *Coetus* stated, it is not possible to take the formulation of CIC 1983 c. 207 § 1, because it is totally alien to the Oriental mentality.⁸⁷

in sacra ordinatione receptum deputantur, ut in Christi Pastoris missione et potestate partem habentes Ecclesiae sint ministri. See CS c. 38 § 1; PO 2; LG 10.

⁸⁵ NEDUNGATT, "On Clerics in General": *Nuntia* 3 (1976) 55.

⁸⁶ NEDUNGATT, "On Clerics in General": *Nuntia* 3 (1976) 56, c. § 4. See POSPISHIL, *The Law on Persons*, 56.

"The divine institution of the deacon has been a much mooted point". NEDUNGATT, "On Clerics in General": *Nuntia* 3 (1976) 58. Vatican II has avoided such a specific qualification with regard to the deacons and similarly the m. p. on the diaconate, «Ad pascendum» is silent on this point: *AAS* 64 (1972) 534-540.

⁸⁷ CIC 1983 c. 1008 follows the methodology of CIC 1917 c. 948 and articulates the theology of the sacrament of orders, for instance it's divine institution, the indelible character etc., GILBERT, "Orders", 716

«Le osservazioni dei Membri della Commissione»: *Nuntia* 28 (1989) 59, c. 321: "... anche in questo caso non conviene usare la parola «charecter» ed inoltre, si ritiene che la «deputatio per donum Spiritus Sancti, ut sint Ecclesiae ministri» non si riferisce solo alla grazia sacramentale, ma anche a tutto ciò che è specificato nel can. 738».

Schema c. 738: «Per sacramentalem ordinationem ab Episcopo peractam Spiritus Sancti operante virtute ministri sacri constituuntur, qui munere et potestate a Christo Domino Apostolis suis concreditus adaugentur et in variis gradibus fruuntur Evangelium annuntiandi, populum Dei pascendi et sanctificandi». «SCICO»: *Nuntia* 24-25 (1987) 136, c. 738. In the new Code it is exactly the same, only the number is changed to 743.

«Le osservazioni dei Membri della Commissione»: *Nuntia* 28 (1989) 59, c. 321: «Non si può prendere la formulazione del can. 207 § 1 del CIC, totalmente aliena dalla mentalità orientale: ciò significherebbe una grave ed indebita latinizzazione del CICO. Si veda al riguardo *Nuntia* 21 pp. 6-8».

Commenting on paragraph two, Zuzek says that the term "laity" does not imply the whole "Christian faithful" and at the same time the term "clerics" does not imply all the "sacred ministers". The word «clericus» has also given in the Code the same meaning as is had in CIC 1983 c. 207 § 1. In fact the CIC 1983 c. 207 § 1 did not contain a definition for «clericus». On the other hand in the Code 323 § 1 gives a clear definition of «clericus». The term «clericus» is totally independent from the "distinction by divine institution" between sacred ministers and those who are not (*Il termine «clericus» è del tutto indipendente dalla «distinctio ex divina institutione» tra «ministri sacri» e coloro che non sono tali*). To affirm the distinction is also very important. For this Zuzek proposes, it would be better to write simply «*ministri sacri ex divina institutione a ceteris christifidelibus distiguuntur*» or «*Episcopi, presbyteri et diaconi ex divina institutione a ceteris christifidelibus distiguuntur*».⁸⁸

So according to the Code, the distinction between clerics and laity is by divine institution (*ex divina institutione*). However, the sacred ordination of cleric is a major factor in the Code. In other words the distinction between the cleric and the Christian faithful is by divine right but at the same time it pertains to their sacred order.

Before the great development of Monasticism towards the end of the third century, the sacred canons made reference only to clerics and laity and not to the monks. But in the Code we could see a tripartition "christian faithful", "clerics" and "religious".

Generally, the sacred canons refer only to clerics and laity namely, to 'two groups'. However, after the great development of Monasticism towards the end of the third century, in various canons of the Council of Chalcedon (a. 451), Trullo (a. 691), and Nicea II (a. 787) a tripartite division of the faithful into clerics, monks, and laity is mentioned. But it is difficult to say precisely when such a tripartition was constituted that it later on appears to have

⁸⁸ Cf. ZUZEK, "Bipartizione o tripartizione", 86.

become the common mentality of the Orientals to separate the monks also from category of the laity.⁸⁹

The clerics, who are also called the sacred ministers are constituted in various degrees and participate in diverse ways in the one divinely instituted ecclesiastical ministry of the Church. In virtue of their sacred ordination they are distinguished as bishops, presbyters and deacons (major orders). Besides them, there are other categories such as religious clerics and minor clerics (*clerici minores*, those who have minor orders).

3.2.1. Bishops and Presbyters as Subjects

By reason of their sacred ordination, bishops and presbyters have a different state of life in the Church. They become subjects endowed with certain special rights and obligations, which pertains to them because of their sacred orders and special offices in the Church and are oriented towards the fulfilment of some sacred ministry in the Church.

Both the bishops and presbyters have different offices and functions in the Church. For instance, the Code mentions of eparchial bishops (c. 178), titular bishops (c. 170), auxiliary bishops (c. 212 § 1), coadjutor bishops (cc. 212 §1 - 213), bishops of the patriarchal curia (c. 87) and resigned or retired bishops (cc. 210 -211). Likewise there are eparchial presbyters (c.

⁸⁹ «I 'sacri canones' orientali in genere fanno riferimento ai chierici e ai laici, cioè ai 'duo genere'. Tuttavia dopo il grande sviluppo del monachesimo dalla fine del secolo III in diversi canoni di concili di Calcedonia (a. 451), di Trullo (a. 6891) e di Nicea II (a. 787) si fa cenno alla tripartizione dei fedeli in chierici, monachi e laici. È però difficile precisare quando tale tripartizione costituì quello che in seguito sembra essere diventata la commune 'mentalità orientale', aliena dall'includere nella categoria 'laici' anche i 'monaci'». ZUZEK, "Bipartizione o tripartizione" 64, 88. See VARGHESE, *The Laity and Cooperation*, 18.

The members of the male and female monasteries, all the female religious and those who are not deacons or priests (in the Latin Church terminology they are called 'lay-brothers) are considered having a status joined to a consecration, which does not permit in any way to use the term "laity" for them. «Schema canonum de laicis de christifidelium»: *Nuntia* 21 (1985) 6. So the "indoles a-saecularis" effected by their consecration to God is identified with the status of religious life. Hence the non-clerical religious are not called laity. But according to the Latin tradition this is not acceptable, which considers all the female religious and those who are not priests juridically as laity (CIC 1983 c. 207 § 2). On the contrary for the Orientals it is quiet acceptable. «Schema canonum de laicis de christifidelium»: *Nuntia* 21 (1985) 7; «Schema canonum de clericis»: *Nuntia* 20 (1985) 60; *LG* 31.

279), religious presbyters (c. 413) etc.,. Precisely, the eparchial bishop and eparchial presbyters are our subjects of study.

3.2.1.1. The Eparchial bishop

Canon 178 of the Code gives us a clear picture of an eparchial bishop. The canon reads as follows:

The eparchial Bishop, to whom the eparchy has been entrusted to be pastured in his own name, governs it as the vicar and legate of Christ. The power, which he exercises personally in the name of Christ, is proper, ordinary, and immediate, although its exercise is ultimately regulated by the supreme authority of the Church and can be restricted within certain limits in view of the benefit of the Church or of Christ's faithful.⁹⁰

The Dogmatic Constitution on the Church (27) and the Decree on the Pastoral Ministry of Bishops in the Church (8) are the two main sources of this canon. Those two texts from the documents are given below :

The bishops govern the Churches entrusted to them as vicars and legates of Christ, by counsel, persuasion and example and indeed also by authority and sacred power which they make use of only to build up their flocks in truth and holiness⁹¹

⁹⁰ CCEO c. 178: «Episcopus eparchialis, cui scilicet eparchia nomine proprio pascenda concredita est, eam ut vicarius et legatus Christi regit, potestas, qua ipse nomine Christi personaliter fungitur, est propria, ordinaria et immediata, etsi suprema Ecclesiae auctoritate exercitium eiusdem potestatis ultimatum regitur et certis limitibus intuitu utilitatis Ecclesiae vel christifidelium circumscribi potest». See Apost. cc. 34, 39; Ant. c. 9; Trid., sess. XXIII, *De ordine*, cap. 4, c. 8.

According to CS c. 392 § 1, the bishops are the successors of the apostles and are placed by divine law over the individual Churches. Instead of «episcopus eparchialis» it used «episcopi» and for «eparchia» it used «ecclesiis praeficiuntur». CS c. 397 § 1 described, resident bishops as ordinary and immediate pastors in the eparchies committed to them. Instead of «episcopus eparchialis» it used episcopi «residentialis». But for «dioceses» it used the word «eparchias».

⁹¹ LG 27: «Episcopi Ecclesias particulares sibi commissas ut vicarii et legati Christi regunt, consiliis, suasionibus, exemplis, verum etiam auctoritate et sacra potestate, qua quidem nonnisi ad gregem suum in veritate et sanctitate aedificandum

As the successors of the apostles, the bishops in the dioceses entrusted to them possess as of right all the ordinary power necessary for the exercise of their pastoral office. This power belongs to them as bishops and rest in their own hands⁹²

Instead of terms like "hierarch" or "local hierarch" as used in the Code, we will be using the term "eparchial bishop" (or simply "bishop") in this work.⁹³ By this term we mean a bishop who has proper, immediate and ordinary jurisdiction in a particular eparchy. He is an individual bishop to whom the care of the eparchy, the care of a flock, is committed. For shepherding the eparchy he has different powers and at the same time he is under the Supreme authority of the Church (CD 11). In order to fulfil the pastoral ministry entrusted to him in the eparchy he has certain rights and obligations.

3.2.1.2. Eparchial Presbyters

As in the case of an eparchial bishop we cannot find a particular canon in the Code which defines the notion of the eparchial presbyter as such. But it is to be noted that the clerical state was connected with a definite community or parish; clerics did not as a rule transfer from one parish to another.⁹⁴ And in the Code it is stated that "every cleric must be ascribed" and subject to a definite ecclesiastical superior.⁹⁵ This ascription on the one

utuntur....».

⁹² CD 8a: «Episcopis. ut Apostolorum successoribus, in dioecibus ipsis commissis per se omnis competit potestas ordinaria, propria ac immediata, quae ad exercitium eorum muneris pastoralis requiritur....».

⁹³ CCEO used many times the words "hierarch" (*hierarcha*) and "local hierarch" (*hierarcha loci*). The term "hierarch" (ordinary in CIC 1983 c. 134 § 1) is applied for superiors with episcopal or quasi-episcopal authority: Pope, patriarch, major archbishop, metropolitan, bishop, major superiors in institutes of consecrated life who have ordinary power of governance, as well as one who for a time succeed them in governance in accordance with the law. "Local hierarchs" (local ordinary in CIC 1983 c. 134 § 2) are the eparchial bishop, the exarch, the apostolic administrator, the protosyncellus and syncellus and in accordance with the law those who succeed them in their absence in governance. However, patriarch, major archbishop, metropolitan who is a head of a Church sui iuris, are local hierarchs only with respect to their own eparchies which they govern. CCEO c. 984.

⁹⁴ Nic. I, c. 15 prohibits clerics who transfer from one city to another and c. 16 prohibits clerics removing from their own Church in which they were promoted. For further information see WOOD, "Priestly Identity", 119.

⁹⁵ CCEO c. 357; CS c. 52. For further details see cc. 358--366. It does not

hand is a protection for the cleric's office; and, on the other hand, the Church to be able to count on their services.⁹⁶ At the same time this is an explicit prohibition for clerics being unattached or in an itinerant status at any time.⁹⁷

By ascription, a presbyter is incorporated into the eparchy. He thus becomes a part and parcel of the eparchy and its juridical structure. He obtains the incorporation in a particular eparchy either through the reception of sacred orders (c. 358) or by a lawful transfer from some other eparchy or religious or other institutions which have the right to ascribe him (cc. 359-361, 357 etc.), into the new one. In short an eparchial presbyter is one who has been ascribed into a particular eparchy according to the norms of law.

In an eparchy, these presbyters together with the bishop form a communion of all the presbyters (*presbyterium*). This communion of presbyters include all the presbyters who are active in the pastoral mission of the eparchy (c. 281, 276), the religious presbyters who are fully or partially engaged in the pastoral activities of the eparchy (cc. 238 § 1, 9°, 282, 284 § 2, 301 § 3, 477, 480), presbyters who are resigned from the active pastoral ministry due to health or other reasons (c. 297), presbyters who are married and active or are not active in the pastoral activities of the eparchy (cc. 192 § 5, 285 § 2, 373-375), presbyters who are ascribed in one eparchy or *sui iuris* Church but for the time being are engaged in the pastoral ministry of another according to the norms of law (cc. 360 § 1, 193 § 2), those presbyters who are sent for works of evangelization outside the eparchial territory by their eparchs (cc. 361, 393), and likewise those who are sent by their eparchs for higher studies to some other places other than the eparchial territory (c. 366).

The Conciliar Document *Presbyterorum ordinis* is concerned particularly with those presbyters who are actively

mean that a presbyter is prohibited to transfer from one eparchy to another. We will be see more about this topic in the second Chapter.

⁹⁶ Cf. POSPISHIL, *Eastern Catholic Church Law*, 280.

⁹⁷ About the "alien cleric" (*alienum clericum*) and their ascription there is explicit reference in the Code. CCEO c. 366; CS c. 51.

engaged in the pastoral ministry, in one way or another. It is also to be noted that *Christus dominus* holds a very clear distinction between the eparchial presbyterium and the clergy of the eparchy; such a distinction is not found in *Lumen gentium*. According to *Christus dominus* the eparchial presbyterium is made up of eparchial presbyters ascribed into the eparchy, and the clergy of the eparchy, including religious presbyters working in the eparchy.⁹⁸

In order to limit our study here we will treat the rights and obligations of the eparchial presbyters only. Moreover, we will be considering the rights and obligations of the presbyters only in relation with their eparchial bishop and their pastoral ministry in the eparchy. Thus, it is not under our scope to describe the rights and obligations of "the clergy of the eparchy", which also includes religious presbyters working in the eparchy.

PART TWO

IMAGES OF BISHOP AND PRESBYTERS

4. The Image of the Bishop

From the legal and the theological traditions of the Church, one finds several images of a bishop. These images, no doubt, will be helpful to understand their special status, significant role, irrefutable rights and above all their tremendous obligations in the Church and towards the Church. To find out the image of a bishop we will divide this section of our study as follows: (i) an etymological analysis of the term "bishop", (ii) images of a bishop seen in the letters of St. Ignatius of Antioch (+107)⁹⁹, (iii) the image of a bishop as expressed in the ancient canons¹⁰⁰, (iv) the

⁹⁸ Cf. POWER, *Ministers of Christ*, 147, 143. See CD 28, 34; CATTANEO, «Das Presbyterium», 66.

⁹⁹ In the patristic teachings there were several mentions with regard to bishops and presbyters. To limit our study, we will consider only the seven letters of Ignatius of Antioch because of their extensive and theologically rich treatises on bishops and presbyters. But in the footnote we will mention some of the relevant teachings of Clement of Rome and Hippolytus of Rome.

¹⁰⁰ Here we will consider mainly the Apostolic Canons, Canons of the Seven Ecumenical Councils, and Canons of the Particular Synods. At the same time there were several images of bishop depicted in the ancient canons. In order to limit our study only some of the prominent figures among them will be mentioned. We will treat the figures of the presbyter in the same manner.

image of a bishop as depicted in the *motu proprio Cleri sanctitati* (v) the image of bishops as mentioned in the Second Vatican Council and (vi) the image of a bishop as seen in the Code.

4.1. Etymological Perspective

The term 'bishop' in Greek is *episkopos* (ἐπίσκοπος). *Επι* means 'over' and *σκοπειν* means 'looking', hence, the word *episkopos* (ἐπίσκοπος) means "overseer" or "supervisor". *Episkopos* (ἐπίσκοπος) can be, therefore, any one functioning as an overseer of some sort, for instance, governor, policeman, community official etc.,¹⁰¹

The term *episkopos* (ἐπίσκοπος) is used in the New Testament, and on one occasion it is applied to Jesus himself (I Pet 2:25). It is also used in a general manner for the overseers of the Christian community (Phil 1:1) and further to designate in a technical sense the office of bishop (I Tim 3:1; Tit 1:7-9). Hence, the word *episkopos* (ἐπίσκοπος) expresses the various faces of bishop.¹⁰²

4.2. St. Ignatius of Antioch (+107)

The images of a bishop as the head of the flock, as the head of a college of presbyters etc., were well established in the early centuries. We obtain from St. Ignatius of Antioch's letters a vivid picture of the hierarchical dignity and prestige accorded to a bishop in the midst of his flock. It was a kind of monarchical episcopate that reigned over the communities-the bishop surrounded by his presbyters and deacons.¹⁰³ The following are some of the major figures of bishop described in his letters.

¹⁰¹ Cf. KASPER, "A New Dogmatic", 14.

¹⁰² Cf. FARIS, *Eastern Catholic Churches*, 400. In the *Didache* the head of the communities are called "episcopi". (Whether these episcopi were simple priests or bishops is not clear). They should be men who are an honour to the Lord, of gentle disposition, not attached to money, honest and well-tryed, because they are for rendering sacred service of the 'prophets' and 'teachers' to the folk. (*Constituite igitur vobis episcopos et diaconos dignos dominio, viros mites, non pecuniae cupidos, veraces et probatos; vobis enim ministrant et ipsi ministerium prophetarum et magistrorum, Didache 15.1*). COLOMBO, *Patrum Apostolicorum*, 25; TOSTI, *La «Didache»*, 57.

¹⁰³ Cf. QUASTEN, *Patrology* vol. 1, 66.

There are many instances in his letters that present the bishop as a leader. It is said all must follow the lead of the bishop.¹⁰⁴ All are called to be submissive to him¹⁰⁵ and to oppose him is the same as being unyielding to God himself.¹⁰⁶ One should look up to him as to the Lord himself.¹⁰⁷

He is a person worthy of being obeyed by others and that should be done with undivided mind.¹⁰⁸ Jesus Christ is the bishop of all mankind. For the honour of Jesus who has deigned- it is proper to obey the bishop without any hypocrisy. As in the case of submission, if some one disobeys him, the visible, he tries to overreach God who is invisible¹⁰⁹ rather one should give heed to the bishop.¹¹⁰

The image of bishop as reverential is noted in the letters as well. One should "fear" and "revere" the bishop even if he is silent or retired¹¹¹ because he is presiding in the place of God.¹¹² It is also not fitting to take advantage of the bishop's youth. Because he

104 IGNATIUS, *Ep. ad Smyrn.* 8: 1: PG V, 854: "Omnes episcopum sequimini, ut Christus Jesus Patrem; ..." . HIPPOLYTUS c. 3 "... make him shepherd your people,.... make his life higher than all of his people". BRADSHAW, *The Canons of Hippolytus*, 12; BOTTE, *La Tradition Apostolique*, 27-28.

105 IGNATIUS, *Ep. ad Eph.* 2: 2: PG V, 754: "... ut subjecti episcopo....per omnia sanctificati sitis". See IGNATIUS, *Ep. ad Magn.* 13: 2: PG V, 758.

106 IGNATIUS, *Ep. ad Eph.* 5: 3: PG V, 735: «Enitimini, charissimi, subjecti esse episcopo et presbyteris».

107 IGNATIUS, *Ep. ad Eph.* 6: 1: PG V, 758: «Episcopum igitur manifestum est quod aspicere oporteat ut ipsum Dominum, cum Domino assistat».

108 IGNATIUS, *Ep. ad Eph.* 20: 2: PG V, 755: «...obedientes episcopo et presbytero, mente indivulsa,». See IGNATIUS, *Ep. ad Trall.* 13: 2: PG V, 799.

109 IGNATIUS, *Ep. ad Magn.* 3: 1-2: PG V, 758: «Decet itaque et vos obedire episcopo vestro, et in nullo illi refragari; terribile namque est tali contradicere; nec enim aliquis hunc fallit qui videtur, sed invisibilem illudit, eum qui non potest a quoquam illudi». See IGNATIUS, *Ep. ad Trall.* 2:1. PG V, 778.

110 IGNATIUS, *Ep. ad Phila.* 7: 1: PG V, 832-833: «Episcopo attendite,». See IGNATIUS, *Ep. ad Polycarpum* 6. PG V, 867.

111 IGNATIUS, *Ep. ad Eph.* 6:1: PG V, 758: «Quanto itaque taciturniorem videritis episcopum, tanto magis eum revereamini». A bishop's quiet and retiring manner should not encourage taking advantage of it. He represents the "the master of the household". So reverence is due to him. Cf. KLEIST, *The Epistles of St. Clement*, 122. "Let the bishop be chosen by all the people, and let him be without reproach": HIPPOLYTUS, c. 2: BOTTE, *La Tradition Apostolique*, 26-27; BRADSHAW, *The Canons of Hippolytus*, 11.

112 IGNATIUS, *Ep. ad Magn.* 6: PG V, 763: «... hortor ut studeatis in Dei concordia omnia agere; episcopo praesidente, Dei loco». See IGNATIUS, *Ep. ad Smyrn* 9: 1. PG V, 854.

embodies the authority of God the Father or as type of the Father and thus he is worthy of every sign of respect.¹¹³

The bishops, though appointed throughout the vast, wide earth, represent for their part the mind of Jesus Christ.¹¹⁴ It is proper for all the subjects to act in agreement with the mind of the bishop.¹¹⁵ His mediation in prayer has much more efficacy than that of others.¹¹⁶ He holds the supreme office in the Church community. This is not by his own efforts or by men's doing, or for personal glory, but he holds it by the love of God.¹¹⁷

Furthermore, he is depicted as a figure of unity and sanctity.¹¹⁸ Nor must one undertake anything without the bishop.¹¹⁹ If some one does anything apart from the bishop he has

¹¹³ IGNATIUS, *Ep. ad Magn.* 3: 1: PG V, 758: «Sed et vos decet non contemnere aetatem episcopi; verum iuxta Dei Patris arbitrium, omnem impertiri illi reverentiam, quemadmodum novi facere....». IGNATIUS, *Ep. ad Trall.* 3: 1: PG V, 779: «... ut episcopum typis Dei Patris omnium est».

¹¹⁴ IGNATIUS, *Ep. ad. Eph.* 3: 2: PG V, 734: «Igitur et nos oportet vivere iuxta sententiam Dei in Christo, et aemulari ut Paulus: Imitatores enim mei, inquit, estote, sicut et ego Christi». According to James Kleist, St. Ignatius means of course, the bishops appointed "the world over, even including those at the farthest ends. Cf. KLEIST, *The Epistles of St. Clement*, 121. For preaching both in the country and in the towns, the apostles appointed their first fruits, when they had tested them by the Spirit, to be bishops and deacons for the future believers. As it is written in the book of Isaiah (LXX 60:17), "I will appoint their bishops in righteousness". Cf. CLEMENT 1, *Epistola 1 ad Corinthios*, 42: 4: PG 1, 291-292.

¹¹⁵ IGNATIUS, *Ep. ad. Eph.* 4: 1: PG V, 734: «Unde et decet vos concurrere in sententiam episcopi, qui secundum Deum vos pascit; quod et ipsi facitis, edocti a Spiritu».

¹¹⁶ IGNATIUS, *Ep. ad. Eph.* 5: 2: PG V, 735: «Si enim unius atque alterius precatio tantam habet virtutem, ut Christum inter illos statuatur; quanto plus episcopi et totius Ecclesiae oratio consona, ascendens ad Deum». About the 'intermediary status' of bishop see HIPPOLYTUS, c. 3: BRADSHAW, *The Canons of Hippolytus*, 12; BOTTE, *La Tradition Apostolique*, 27-28.

¹¹⁷ IGNATIUS, *Ep. ad Phila.* 1: 1: PG V, 819: «Conspecto vestro episcopo, cognovi quod non a seipso neque per homines dignus habitus fuit ut susciperet ministerium ad communem utilitatem pertinens: nec per inanem gloriam, sed in charitate». To avoid strifes over the bishop's office, the apostles gave this office a permanent character. Cf. CLEMENT 1, *Epistola 1 ad Corinthios*, 44:2: PG 1, 295: The flock should pray for him as follows: "O God, behold him you have prepared for us". HIPPOLYTUS, c. 2: BRADSHAW, *The Canons of Hippolytus*, 11; BOTTE, *La Tradition Apostolique*, 26-27.

¹¹⁸ IGNATIUS, *Ep. ad Magn.* 6: PG V, 763: «Nihil sit in vobis, quod possit vos dirimere; sed uniamini episcopo, subjecti Deo per ipsum Christo». See IGNATIUS, *Ep. ad Phila.* in the salutation. PG V, 818: "Accept his prayers and his offerings which he will offer you day and night. the episcopate, a merciful spirit, and the authority to forgive sins;". HIPPOLYTUS, c. 3: BRADSHAW, *The Canons of Hippolytus*, 12; BOTTE, *La Tradition Apostolique*, 27-28.

¹¹⁹ IGNATIUS, *Ep. ad Magn.* 7: 1: PG V, 763: «Non possum enim, inquit,

no pure conscience.¹²⁰ He is the principal celebrant of the Eucharist and he has the power to depute others instead of him for this celebration. Where he is, there let the people be, just as where Jesus Christ is, there is the Catholic Church. Without his authorisation baptisms, agapes, etc., are not licit.¹²¹ The altar of bishop is the center of the unity of the diocese.¹²² In short, the figure of bishop, with such dignity and supernatural eminence that we see in the letters of St. Ignatius are really remarkable.

4.3. Sacred Canons

4.3.1. Bishop's Image as Divine

The word *bishop* is primarily and properly applied in sacred Scripture to God, who supervises and oversees all things in the universe (Job 20: 29 {LXX}; I Pet. 2: 25). Secondly and by grace this noun is applied to those who have been designated by God (Num. 4: 16; Ezek 3: 17). After the day of Pentecost, the apostles were called, bishops or overseers. Thus in canon 14 of the Fourth Council of Constantinople (869-870) it is said that bishops who are called by divine grace, since they bear the image and likeness of the holy hierarchies in heaven, that is of the angels, in accordance with what is clearly an hierarchical dignity of function, should be held as worthy of all honour on the part of all. They should keep their spiritual dignity and honour and should render to everyone his due.¹²³

facere a meipso quidquam: sic et vos sine episcopo». . See IGNATIUS, *Ep. ad Trall.* 2: 2 (PG V, 778-779); IGNATIUS, *Ep. ad Phila.* 7: 2: PG V, 832-833; IGNATIUS, *Ep. ad Smyrn.* 8: 1-2: PG V, 654: "For to the high priest the proper services have been given,....". CLEMENT 1, *Epistola 1 ad Corinthios*, 40:5; 41:3-4: PG 1, 287, 290-291. See HOLMES, *The Apostolic Fathers*, 50.

¹²⁰ IGNATIUS, *Ep. ad Trall.* 7: 2: PG V, 786: «... qui sine episcopi et presbyteris et diaconis quidpiam agit; atque ejusmodi inquinatam habet conscientiam et infideli deterior est». See IGNATIUS, *Ep. ad Smyrn.* 9: 1: PG V, 854.

¹²¹ IGNATIUS, *Ep. ad Smyrn.* 8: 2: PG V, 854: «Rata eucharistia habeatur illa, quae sub episcopo fuerit, vel cui ipse concesserit ubi comparuerit episcopus, ibi et multitudo sit; quemadmodum ubi Christus,.... Non licet sine episcopo, neque baptizare, neque offerre, neque sacrificium sit quodcumque agitis».

¹²² IGNATIUS, *Ep. ad Phila.* 5: 4: PG V, 835: «Unum altare sicut unus episcopus». Cf. IGNATIUS, *Ep. ad Magn.* 7: PG V, 763.

¹²³ Constant. IV, c. 14: «Eos qui a divina gratia ad episcopale advocantur officium, tamquam imaginem et figuram ferentes sanctorum caelestium hierarchiarum, id est angelorum, secundum hierarchicum plane gradum et morem, omni honore dignos ab omnibus principibus et subditis sancimus haberi.... sed secundum congruentiam spiritalis

4.3.2. Bishop's Image as a Superior

On the subject of the ordination of presbyters and bishops, Anacletus, the bishop of Rome, says that according to the Apostle what is lesser is blessed by what is superior. In the case of a presbyter, being the ordination of a lesser being (Heb. 7:7), one bishop alone suffices, because of his admittedly being superior to and ranking above a presbyter. But in the case of the ordination of a bishop, who is of the same order and rank, and not inferior or lesser, one bishop alone does not suffice. In order, therefore, that a superior may bless an inferior, so a bishop must be ordained by two or three bishops. This certainly affirms the figure of a bishop as having "superior rank".¹²⁴

The superiority of the bishop over presbyters and his range of authority are affirmed also in other instances. It is positively not permitted to ordain a bishop for a village or petty town where there is no need for a bishop when even one single presbyter is sufficient there.¹²⁵ A bishop is called a prelate, as the ruler of presbyters, and hierarch, and as ruler of the sacred things.¹²⁶

4.3.3. Bishop as Shepherd

The bishop, as a shepherd, is entrusted with the care of the people of God and of whom will be required the account of their souls. He has the authority over the flock entrusted to him and responsibility towards them.¹²⁷ A bishop who has been ordained should not refuse the office and the care of the people.¹²⁸ In other

dignitatis, ac honoris sui, reddere quidem omnibus debita». This council is designated as the eighth ecumenical council by the western canonists. It is not found in any canonical collection of the Byzantines. According to modern scholars this was included in the list of the ecumenical council only after the eleventh century. Cf. TANNER, *Decrees of the Ecumenical Councils*, 157.

¹²⁴ Apost. c. 1: «Episcopus aut tribus episcopis ordinetur...». Carth. c. 13: «Ut non liceat episcopum nisi a plurimis ordinari, sed ni necessitas fuerit vel a tribus ordinetur episcopis». See also Carth. 49.

¹²⁵ Sard. c. 6: «Licentia vero danda non est ordinandi episcopum aut in vico aliquo aut in modica civitate cui sufficit presbiter, quia non est necesse ibi episcopum fieri, ne villiscat nomen episcopi et auctoritas....». See Laod. c. 57; C. 9, D. 1XX.

¹²⁶ Cf. NICOLAIDES, *The Rudder*, 98.

¹²⁷ Apost. c. 39: «Presbyteri et diaconi praeter episcoporum consilia nihil agere pertemptent. Nam domini populus ipsi commissus est, et pro animabus eorum hic redditurus est rationem».

¹²⁸ Apost. c. 36: «Si quis episcopus non susceperit officium et curam populi

words, if any one, having received the ordination of a bishop and having been called to "rule" the people, he must undertake that ministry. If he is refusing to undertake that office and ministry let him be removed from communion.¹²⁹ So, he must be aware of this special vocation and its obligations (ICor. 7:24). This shows the serious obligation on the part of the bishop to take care of the flocks entrusted to his care.

The bishop is a teacher and it is his daily duty to teach his clergy and the people, the faith, doctrines and works of piety. In any situation he should not neglect his subjects.¹³⁰ Furthermore, he has greater responsibility with regard to the observance of the canons and he should have thorough knowledge of the psalter, so that he may admonish and instruct the clergy who are subjected to him. He is a teacher who should teach the people entrusted to his care. And if this mind be not set, and even glad, so to work and teach, the metropolitan should not ordain him to the office of the bishop.¹³¹

4.3.4. Bishop as Head

The bishop is the head of the eparchy. He should not leave his own eparchy because there exists a mystical relationship

sibi commissam, hic communione privetur, quousque oboedientiam commodans adqueat; similiter autem et presbiter et diaconus. Si vero perrexerit nec receptus fuerit, non pro sua sententia sed pro malitia populi, ipse quidem maneat episcopus, clerici vero civitatis communione priventur,.....non fuerunt.». See Ant. c. 17. The word *bishop* is defined by Emperors Leo as follows: a bishop is a supervisor and care taker of all souls that come to Church, especially in his eparchy (province), possessing executive power, of a presbyter, deacon, reader, cantor, and monk. It is the peculiar nature of a bishop to be condescending to humbler men, but to disdain the haughty. He is to incur danger for the protection of his flock, and to make their worries his own grief. Cf. NICOLAIDES, *The Rudder*, 3.

¹²⁹ Ant. c. 17: «Si quis episcopus manus inpositionem episcopatus acceperit et praeesse populo constitutus ministerium subire neglexerit nec adqueverit ire ad ecclesiam sibi commissam, hunc oportet communione privari, donec susceperit coactus officium aut certe de eo aliquid integra decreverit eiusdem provinciae synodus sacerdotium». See C. vij, D. XCII.

¹³⁰ Apost. c. 58: «Episcopus desidiosus circa clerum factus vel populum, et minime docens ipsos pietatem, separetur; vel si desidiae perseveret degradetur». See Trullo (692) c. 19.

¹³¹ Nic. II, c. 2: «.... omnes quidem Christianos hoc servare saluberrimum est; sed praecipue hos, qui hierarchicam consecuti fuerint dignitatem. Unde definimus, omnem qui ad episcopatus provehendus est gradum, modis omnibus psalterium nosse; ut ex hoc etiam omnis clericus qui sub eo fuerit, ita moneatur et imbuatur. atque secundum dei mandata conversari et docere populum sibi commissum».

between him and the eparchy to which he had been ordained. If he does so there must be sufficient reasons (not because of greed or ambition) and should be in obedience to the judgement of other bishops.¹³² The Apostolic canon affirms the fact that the bishop should not be motivated by greed or by his own preferences to leave his own eparchy.

The eparchial bishop has the care of all the temporal goods in the eparchy. He must administer it as under the eyes of God.¹³³ He is the manager or the administrator, in the place of God, in the eparchy and also the "single head" in one city.¹³⁴

4.3.5. Spiritual Image of Bishop

Because of the reception of the holy order a bishop is not allowed to get himself involved in worldly affairs. He is to devote his time to the divine service. He must not undertake worldly cares.¹³⁵ He should not dress himself like "men of the world".¹³⁶ This acknowledges the fact that the bishop is a person who is set apart from the world for leading a life other than that of the world.

He is the partaker of communion when the oblation is offered.¹³⁷ He should be aware of this so as to prepare himself beforehand to partake in it worthily. The spiritual image of a

¹³² Apost. c. 14: «Episcopo non licere alienam parochiam propria relictā pervadere, licet cogatur a plurimis, nisi forte quis eum rationalibus causa conpellat, tamquam qui possit ibidem constitutis plus lucri conferre et in causa relegionis aliquid profecto prospicere, et hoc non a semetipso praesumat; sed multorum episcoporum iudicio et supplicatione maxima perficiat». See Nic. I, c. 15; Ant. c. 21; Sard. c. 1; Carth. cc. 48, 71; C. xix, D. VII.

¹³³ Apost. c. 38: «Omnium negotiorum ecclesiasticorum curam episcopus habeat, et ea velut deo contemplante dispenset. Nec ei liceat ex his aliquid omnino contingere aut parentibus propriis, quae dei sunt, condonare; quod si pauperes sunt tamquam pauperibus subministret, ne eorum occasione ecclesiae negotia depraedentur». See Ant. c. 25.

¹³⁴ Nic. I, c. 8: «... ne in una civitate duo episcopi probentur existere».

¹³⁵ Apost. c. 6: «Si qui episcopus... sanctam paschae diem ante vernale aequinoctium cum Iudaeis celebraverit, deponatur».

¹³⁶ Nic. II, c. 16: «... Eos ergo episcopos... qui se fulgidis et calaris vestibus orant, emendari oportet; ...». See Gang. (340) c. 12.

¹³⁷ Apost. c. 8: «Si quis episcopus ... facta oblatione non communicaverit, aut causam dicat, et si rationalis fuerit, veniam consequatur Aut si non dixerit, communione privetur, tamquam qui populo causa laesionis existerit suspicionem faciens de eo qui sacrificavit, quod non recte obtulerit».

bishop and his intimate relation with the oblation is indicated by this canon.

4.4. Motu Proprio Cleri Sanctitati

According to the motu proprio *Cleri sanctitati* clerics are by divine institution distinguished from the lay people. Those who have been assigned to the divine ministry by the "sacred rite" are called clerics. Clerics are not all of the same rank. Among them there exist a hierarchical gradation. The ecclesiastical hierarchy of orders is composed by divine institution of bishops, presbyters and "ministers". The hierarchy of jurisdiction is composed of the Supreme Pontificate and the subordinate episcopate; by the ecclesiastical institution also other degrees have been added¹³⁸. Therefore, the bishop holds a higher rank in the ecclesiastical hierarchy than the presbyters. He is empowered with several powers over his presbyters.

In its treatment of the obligations of clerics, the motu proprio *Cleri sanctitati* states that the hierarchs should be mindful that they are "fathers", not "lords", and they shall therefore treat the clergy with fatherly affection.¹³⁹ The image of bishop as a "lord" was also prevalent in the history of the Church. For instance the Western Church was profoundly influenced by the intrusion of elements of the Teutonic mentality into the ecclesiastical organisation, especially in the empires established by the Franks in France and the Langobards in Italy. Bishops acquired a feudal status and became important vassals of the emperors. Thus the concept of the lord bishops and prelates evolved. The aristocracy, and even the sons of emperors, entered into the ecclesiastical hierarchy for other than religious considerations. On the contrary the East did not exalt the status of its ecclesiastical leaders in the civil sphere to such heights and the bishops stayed closer to the ideal of the monasteries from which they were exclusively chosen.

¹³⁸ CS c. 38 § 1. 1°: «Qui divinis ministeriis, per sacrum ritum in propria disciplina receptum, mancipati sunt, clerici dicuntur; ex Ecclesiae autem institutione alii quoque gradus accessere».

¹³⁹ CS c. 63: «Meminerint autem Hierarchae se esse patres, non dominos; paterno idcirco affectu clericos prosequantur».

Canon 63 of *Cleri sanctitati* reminds the bishops that they should not forget the fact that they are fathers not lords.¹⁴⁰

The *motu proprio Cleri sanctitati* defines the bishops as follows: "the bishops are the successors of the apostles and are placed by divine law over the individual Churches, which they govern with ordinary power under the authority of the Roman Pontiff".¹⁴¹

4.5. The Image of Bishop in the Second Vatican Council

In the documents of the Second Vatican Council we see various images of bishop.¹⁴² For instance: he is depicted as "a successor of Apostles"¹⁴³, as "a pastor and shepherd"¹⁴⁴, as "a father"¹⁴⁵, as "a brother"¹⁴⁶, as "a friend"¹⁴⁷, as "the visible principle and foundation of unity in the eparchy"¹⁴⁸, as "vicars and legates of Christ"¹⁴⁹, as "the head of *presbyterium*"¹⁵⁰ and as "a person who is respected and obeyed by his presbyters"¹⁵¹ etc.,.

4.6. The Image of Bishop in the Code

Besides the above mentioned sources, the figure of an eparchial bishop as depicted in the Code were greatly influenced by the Documents of the Second Vatican Council. The Code did translate those theological and ecclesiological dimensions into the form of laws. Here our intention is to investigate the important concepts of the eparchial bishop mentioned in the Code.

¹⁴⁰ POSPISHIL, *The Law on Persons*, 65-66.

¹⁴¹ CS c. 392 § 1: «Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur, quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis». See CIC 1917 c. 329 § 1; LG 18, 24, 28; CD 2, 4, 6, 8a. ET is taken from POSPISHIL, *The Law of Persons*, 175.

¹⁴² In order to limit our study we will be highlighting only the major images of both subjects. For this we will consult only LG; CD and PO.

¹⁴³ LG 18, 24, 28; CD 2, 4, 6, 8.

¹⁴⁴ LG 18, 20, 21, 24, 27, 28; CD 2, 4, 15, 16.

¹⁴⁵ LG 28; CD 16.

¹⁴⁶ PO 7.

¹⁴⁷ LG 28; CD 16; PO 7.

¹⁴⁸ LG 23.

¹⁴⁹ LG 27.

¹⁵⁰ LG 28; CD 28; PO 8.

¹⁵¹ PO 7.

4.6.1. Bishop as a Consecrated Person

The eparchial bishop is distinguished from the Christian faithful by his sacred ordination and consecration. It is by divine institution that he is distinguished from the rest.¹⁵² But at the same time by virtue of the sacred ordination itself, clerics among themselves are distinguished as bishops, presbyters and deacons.¹⁵³

However, bishops have a higher degree of the order than presbyters and deacons and are consecrated to be the ministers of the Church.

4.6.2. Bishop as True Pastor and Shepherd

An eparchial bishop is a "pastor" and "shepherd" of the people of God.¹⁵⁴ He participates in the power and mission of Jesus Christ, the Pastor. This participation of an eparchial bishop in the power and mission of Jesus Christ essentially presupposes his three principal functions: teaching, sanctifying, governing. Essentially these three principal missions form all the other images of an eparchial bishop.

As a teacher he firmly safeguards the integrity and unity of faith among the faithful.¹⁵⁵ Being a sanctifier he is bound to give an example of holiness in charity and humility and simplicity of life. He is the principal dispenser of the mysteries of God.¹⁵⁶ He is to celebrate the Divine Liturgy frequently for the People of God.¹⁵⁷

¹⁵² CCEO c. 323; CS c. 38; LG 10, 11; PO 2.

¹⁵³ CCEO c. 325; CS c. 38 § 3; LG 28. Bishops have the fullness of priesthood. LG 21, 26; CD 15; PO 7.

¹⁵⁴ Cf. CCEO cc. 177 § 1, 178, 192. According to the Vatican II, bishops are pastors selected to shepherd the Lord's flock and servants of Christ and stewards of the mysteries of God in whom our Lord Jesus Christ, the supreme High Priest, is present. LG 18, 20, 21, 24, 27, 28; CD 2, 4, 8, 15, 16; I Cor. 4:1. Also this shepherd figure is constituted of different qualities: knowing, serving, caring, love and compassion etc., LG 27; CD 16; Lk. 22: 26-27.

¹⁵⁵ CCEO c. 196 § 1: «Veritates fidei credendas et moribus applicandas Episcopus eparchialis christifidelibus proponere et illustrare tenetur...». § 2: «Integritatem et unitatem fidei Episcopus eparchialis firmiter tuetur». See CS c. 400 § 1. Bishops as heralds of the faith and teachers of the true faith are expressed in LG 24, 25; CD 12-14.

¹⁵⁶ CCEO c. 197: «Episcopus eparchialis, cum memor sit se obligatione teneri exemplum sanctitatis praebendi in caritate, humilitate et vitae simplicitate... cum sit praecipuus mysteriorum Dei dispensator...». See CD 15.

¹⁵⁷ CCEO c. 198: «Divinam Liturgiam pro populo eparchiae sibi concreditaie Episcopus eparchialis frequenter celebret». See CS c. 404.

He is the moderator, promoter, and guardian of liturgical life in the eparchy and he must be vigilant that it be fostered properly.¹⁵⁸ Above all he is bound to be present in the eparchy to give constant support and care to his people.¹⁵⁹

4.6.3. Bishop as Vicar and Legate of Christ

He is a "vicar and legate of Christ". He governs and pastures the eparchy entrusted to him for shepherding in his own name. The power he exercises personally in the name of Christ is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority.¹⁶⁰

4.6.4. Bishop as a Reputable Person

For the election of an eligible episcopal candidate the Code insists upon certain qualities. For instance he should be outstanding in solid faith; have good morals, piety, zeal for souls, prudence; he should be held in good esteem and not bound by marriage; he is at least thirty-five years of age and is ordained presbyter for at least five years; who holds a doctorate or licentiate in some sacred science or at least be well versed in it.¹⁶¹ These qualities are of course, mentioned for an episcopal candidate, but at

¹⁵⁸ CCEO c. 199 § 1: «Episcopus eparchialis utpote totius vitae liturgicae in eparchia sibi concredita moderator, promotor atque custos vigilet, ut illa quam maxime foveatur atque secundum praescripta necnon legitimas consuetudines propriae Ecclesiae sui iuris ordinetur». See CS c. 401; LG 26; CD 15.

SC 41: «Episcopus ut sacerdos magnus sui gregis habendus est, a quo vita suorum fidelium in Christo quodammodo derivatur et pendet».

¹⁵⁹ CCEO c. 204 § 1: «Episcopus eparchialis..., obligatione tenetur in eparchia propria residendi». See CS c. 403. This is not an absolute principle but there are other provisions (ad limina visit CCEO c. 208 etc.). Of course the spirit of the canon is this.

¹⁶⁰ Cf. CCEO c. 178, 323 § 1; See LG 27.

¹⁶¹ CCEO c. 180 reads as follows: «Ut quis idoneus ad episcopatum habeatur, requiritur, ut sit: 1° firma fide, bonis moribus, pietate, animarum zelo et prudentia praestans; 2° bona existimatione gaudens; 3° vinculo matrimonii non ligatus; 4° annos natus saltem triginta quinque; 5° a quinquennio saltem in ordine presbyteratus constitutus; 6° in aliqua scientia sacra doctor vel licentiatius vel saltem peritus». See CS c. 394; ZUZEK, «Canons de Episcopis»: *Nuntia*, 9 (1979) 8.

CIC 1983 c. 378 does not mention the 3° point in the above canon. With regard to the point 4° in the canon 180 in the CCEO, if it is necessary, it is dispensable and the patriarch could give dispensations in virtue of canons 1538 and 1539 of CCEO. CS c. 394 deals also with the legitimacy of birth which is omitted in the CCEO and instead of that added the point 2°. Also in CS the age requirement of the candidate for episcopate is at least thirty, on the other hand, it is thirty five in the new Code.

the same time in their true spirit, they are indispensable qualities expected from a bishop.

4.6.5. Bishop as a Unifying Person

As we have seen above one cannot conceive of an eparchy without a bishop; the bishop is the head of the eparchy. By an act of the competent ecclesiastical authority a portion of the faithful are entrusted to the pastoral care of a bishop. In order to fulfil this task he works with the co-operation of his presbyters. The people are gathered by him in the Holy Spirit, in the name of Christ, with the Gospel and the Eucharist. In short the bishop in the eparchy unites everybody together.¹⁶² Further more, with his legislative, executive and judicial powers he governs the eparchy entrusted to his care.¹⁶³ Being the central figure, he acts in the person of the eparchy in all its juridical affairs.¹⁶⁴

4.6.6. Bishop as a Friend

The eparchial bishop is to have a special concern for the presbyters, he is to listen them as his advisers and helpers, safeguard their rights, ensure that they fulfil their obligations proper to their state and pay attention to their spiritual, social and material needs.¹⁶⁵ These are in essence true qualities of a friend which the bishop should be.

5. The Image of Presbyter

As we have formulated the view of the bishop, the same principle will be applicable with regard to presbyters too. As in the case of a bishop, the views of the presbyter pictured in the legal and theological traditions of the Church, will be helpful, no doubt, to understand their particular place, vital role, undeniable rights

¹⁶² CCEO c. 177 § 1; *LG* 27.

¹⁶³ CCEO c. 191 § 1: «Episcopi eparchialis est eparchiam sibi concreditam cum potestate legislativa, executiva et iudiciali regere». See *CS* c. 399.

¹⁶⁴ CCEO c. 190. See *CS* c. 398; *LG* 27. An eparchy is expressly established as a juridic person according to CCEO c. 921 § 2.

¹⁶⁵ CCEO c. 192 § 4: «Episcopus eparchialis speciali sollicitudine prosequatur presbyteros, quos tamquam adiutores et consiliarios, audiat, eorum iura tueatur et curet, ut obligationes suo statui proprias impleant eisdemque praesto sint media et institutiones, quibus ad vitam spiritualem et intellectualem fovendam egent». This canon is absent in *CS*.

and above all their great obligations in the Church and for the Church. The following will be our main concern in this regard: (i) an etymological understanding of the term "presbyter", (ii) views of the presbyter seen in the letters of St. Ignatius of Antioch (+107) (iii) the views of the presbyter expressed in the ancient canons (iv) views of the presbyter depicted in the *motu proprio Cleri sanctitati* (v) views of the presbyter mentioned in the Second Vatican Council and (vi) the views of the presbyter seen in the Code.

5.1. Etymological Perspective

In the early Christian communities and in the Christian writings up to the end of the second century, the ministers were also called "elders" or "counsellors". In the Jewish world, the term "presbyter" (= elder) has acquired a more technical meaning. It refers to people empowered to exercise authority in the community.¹⁶⁶ In the Greek language the word is *presbyteros* (πρεσβυτερος).¹⁶⁷ For instance, in time "elders" (πρεσβυτεροι = presbyteroi) join the apostles (Acts. 11:30; 15 : 2-23; 16:4); and, just as at the beginning of Acts, Peter appears with the college of eleven other apostles, so towards the end (Acts. 21:18) we find James surrounded by a college of presbyters.¹⁶⁸ Also there are other terms used instead of "presbyter". The Latin terms "*sacerdos*" means "a priest" or "priestess" originated from the word "*sacer*" means "sacred, holy or consecrated", and "*clericus*" means "a clergy man" or "priest".¹⁶⁹ The term cleric for one of the sacred ministers of the Church was used from the very early times. It is derived from the Greek word *kleros* (κληρος), which means lot, that which is assigned by lot, portion, share etc.,¹⁷⁰ It was thus

¹⁶⁶ GALOT, *Theology of the Priesthood*, 169.

¹⁶⁷ Cf. CONGAR, *Priest*, 76.

¹⁶⁸ Cf. WAGNER, "The Bishop in the Eastern Orthodox Theology", 32.

¹⁶⁹ LEWIS & SHORT, *A Latin Dictionary*, 1610-1611, 1441. The terms *clericus* and *sacerdos* are more generic in its content. The Code is using the word "clericus" in general for bishops, presbyters and deacons. Cf. CCEO c. 325. To designate "priest" CCEO is using the word "presbyteros". Cf. CCEO c. 325. The same word was employed also in CIC 1917 c. 108 § 3; CS c. 38 § 3. According CIC 1983 c. 1009 § 1 the orders are the episcopate, the priesthood (*presbyteratus*) and the diaconate. See LG 28, 29; PO 1. According to the author Hastings, the term *presbyteros* has more pastoral significance. Cf. HASTINGS, *Modern*, 145.

¹⁷⁰ Cf. BAUER, *A Greek-English Lexicon*, 435.

used in the sense that the share of the cleric will be God.¹⁷¹ A "cleric" can also be called a "sacred minister" (cc. 743,323). This etymological analysis demonstrates a clear view of the presbyter.

5.2. St. Ignatius of Antioch (+107)

As in the case of bishops, Ignatius also had several treaties with regard to presbyters too. For instance Ignatius treated the presbyterium as a credit to its name, as a credit to God. *Presbyterium* harmonises with the bishop as completely as the strings with a harp.¹⁷² As bishops they also embody the authority of God the Father and thus they are worthy for every mark of respect.¹⁷³

They are in the Church as God's high Council and as the Apostolic College.¹⁷⁴ In other words they function as the counsels to Apostles¹⁷⁵ and they represent the Apostles of Jesus Christ.¹⁷⁶ They are also leaders as apostles¹⁷⁷ and the people are called to be submissive to the presbyterate.¹⁷⁸ To oppose them means to

171 Cf. POSPISHIL, *Eastern Catholic Church law*, 280.

172 IGNATIUS, *Ep. ad Eph.* 4:1: PG V, 735: Original text see "General Introduction" foote no. 6.

173 IGNATIUS, *Ep. ad Magn.* 3:1: PG V, 758. «... verum juxta Dei Patris arbitrium, omnem impertiri illi reverentiam, quemadmodum novi facere sanctos presbyteros...». HIPPOLYTUS c. 4. The presbyter is equal to the bishop in everything except the seat and ordination. To a presbyter it is not given the power to ordain. Cf. BRADSHAW, *The Canons of Hippolytus*, 14.

174 IGNATIUS, *Ep. ad Trall.* 3:1: PG V, 779: «... presbyteri vero, sicut concessus Dei, et conjunctio apostolorum Christi».

175 IGNATIUS, *Ep. ad Magn.* 6: PG V, 763: «... presbyteris loco senatus apostolici...».

176 IGNATIUS, *Ep. ad Trall.* 2: 2: PG V, 778-789: «... sed et presbyterio subjecti, ut apostolis Jesu Christi spei nostrae». CLEMENT I, *Epistola 1 ad Corinthios*, 40:5: PG 1, 280, 290: To the preists, the apostles has been assigned the proper office. See HOLMES, *The Apostolic Fathers*, 50.

177 IGNATIUS, *Ep. ad Smyrn.* 8:1: PG V, 854: «Omnes episcopum sequimini, ut Christus Jesus Patrem; prebyterium autem, sicut apostolos». CLEMENT I, *Epistola 1 ad Corinthios*, 54:2: PG 1, 290. Here it is stated that only let the flock of Christ be at peace with its duly appointed presbyters. Cf. HOLMES, *The Apostolic Fathers*, 58.

178 IGNATIUS, *Ep. ad Eph.* 2:2: PG V, 754: «... ut subjecti episcopo et presbyterio per omnia sanctificati sitis». Clement I states, "You, therefore, who laid the foundation of the revolt, must submit to the presbyters and accept discipline leading to repentance, bending the knees of your heart". HOLMES, *The Apostolic Fathers*, 60. See CLEMENT I, *Epistola 1 ad Corinthios*, 57:1: PG 1, 323.

oppose God himself.¹⁷⁹ They are worthy to be obeyed by the people and that should be done with undivided mind.¹⁸⁰

It is instructed by Ignatius that no one must undertake anything without presbyters.¹⁸¹ If some one does anything apart from presbyters he has no pure conscience.¹⁸² Rather he exhorted to give heed to the presbyter.¹⁸³ In relation to the bishop it is said they are persons called to give comfort to the bishop in honour of the Father and Jesus Christ and the apostles.¹⁸⁴ They are assistants to the bishops.¹⁸⁵ These are the major views of presbyters depicted by St. Ignatius that demonstrate their important roles in the Church.

5.3. Sacred Canons

5.3.1. Presbyter as a True Pastor

It is ordained by the apostle that, if any one, having received the ordination of a presbyter and called to rule the people, he must undertake that ministry. If he refuses to undertake that office and ministry let him be removed from communion.¹⁸⁶ If he

¹⁷⁹ IGNATIUS, *Ep. ad Eph.* 5:3: PG V, 735: «Enitimni, charissimi, subjecti esse et presbyteris».

¹⁸⁰ IGNATIUS, *Ep. ad Eph.* 20:2: PG V, 755: «.... obedientes presbyterio, mente indivulsa; frangentes panem unum,...».

¹⁸¹ IGNATIUS, *Ep. ad Magn.* 7:1: PG V, 763: «Non possum enim, inquit, facere a meipso quidquam: sic et vos sine....nec presbyteris».

¹⁸² IGNATIUS, *Ep. ad Trall.* 7:2: PG V, 786: «.... qui sine et presbyteris quidpiam agit; atque ejusmodi iniquitatum habet conscientiam et infideli deterior est».

¹⁸³ IGNATIUS, *Ep. ad Phila.* 7:1: PG V, 834: «Episcopo attendite, et presbytero....».

¹⁸⁴ IGNATIUS, *Ep. ad Trall.* 12:2: PG V, 799: «Decet enim et praecipue presbyteros, refocillare episcopum in honorem Patris ...».

¹⁸⁵ IGNATIUS, *Ep. ad Phila.* in the salutation: «... unum sunt cum episcopo, presbyteris... designatis». PG V, 818. HIPOLYTUS c. 9: "If a presbyter goes to live in a foreign place and the clergy of that place accept him, the bishop of his see is to be questioned, for fear that he is freeing for some other reasons". After a careful examination he should be accepted and given a double honour. BRADSHAW, *The Canons of Hippolytus*, 16. HIPOLYTUS c. 21: Further in this canon we could see the figure of a presbyter as a man of prayer. The presbyters are exhorted to assemble each day at the Church for this task. In canon 37 it is stated that the presbyters are to join the bishop in offering of the mysteries. Cf. BRADSHAW, *The Canons of Hippolytus*, 26, 34.

¹⁸⁶ Apost. c. 36: « commissam, hic communione privetur, quousque oboedietiam commodans adquiescat; similiter autem et presbiter ». See Ant. c. 17.

neglects the office of teaching the people let him be punished.¹⁸⁷ Also, he should not leave or abandon his own parish and go into another. That means if a presbyter is leaving or forsaking all together the parish entrusted to his care with out permission of the bishop he must be punished.¹⁸⁸

5.3.2. Spiritual Image of a Presbyter

The oblation is the central part of priestly spirituality and through which a presbyter grows into the perfection of his spiritual image. Thus, the apostles ordained that a presbyter should not fail to partake of communion when the oblation has been offered.¹⁸⁹

A presbyter is a consecrated person and thus he must not participate in anything that which is unworthy to his status.¹⁹⁰ It is prohibited to presbyters to hire possessions, engage in business and occupy themselves in worldly engagements with a secular purpose.¹⁹¹ A presbyter should not array himself in splendid cloths and other luxurious worldly comforts because it is against the nature of priestly life.¹⁹²

5.3.3. Presbyter as a Co-operator and a Dependent

It is said in the apostolic canon that the presbyter be ordained by a single bishop.¹⁹³ A presbyter receives ordination

¹⁸⁷ Apost. c. 58.: «.... presbyter desidiosus circa clerum factus vel populum, et ninime docens ipsos pietatem, separetur; vel si desidia perseveret degradetur».

¹⁸⁸ Apost. c. 15: «Si quis presbiter relinquens propriam paroeciam pregat ad alienam, et omnino demigrans praeter episcopi sui conscientiam in aliena paroecia commoretur, huc ulterius ministrare non patimur, praecipue si vocatus ab episcopo redire contempserit in sua inquietudine perseverans; verum tamen tamquam laicus ibi communicet». See Chalc. c. 5; Sard. c. 3.

¹⁸⁹ Apost. c. 8: «Si quis presbiter facta... oblatione non communicaverit, aut causam dicat, et si rationabilis fuerit, veniam consequatur Aut si non dixerit, communione privetur, tamquam qui populo causa laesionis existerit suspicionem faciens de eo qui sacrificavit, quod non recte obtulerit».

¹⁹⁰ Laod. c. 55: «Quod non oporteat sacerdotes collatis vel commissionibus convivere caelebrare hoc autem nec laicis posse congruere». See Trullo (692) 9, 10, 34, 51.

¹⁹¹ Chalc. c. 3: «Pervenit ad sanctum synodum, quod quidam qui in clero videntur allecti, propter lurca turpia conductores alienarum possessionum fiant et saecularia negotia sub cura sua suscipiant, dei quidem ministerium parvipidentes, saecularium vero discurrantes domos, propter avaritiam patrimoniorum sollicitudines assumentes».

¹⁹² Nic. II, c. 16: «.... Eos ergo....clericos qui se fulgidis et calaris vestibus orant, emendari oportet....». Gang. c. 12.

¹⁹³ Apost. c. 2: «Presbiter ab uno episcopo ordinetur».

through the consecrated hands of a bishop. However, it is affirmed that a clergyman, whoever he may be, should not insult a presbyter,¹⁹⁴ because they are the functioning hands of the bishop who governs the eparchy. The honour due to them is not in the grade of bishop.¹⁹⁵ And if a presbyter does not help the bishop in the necessities of the Church and does not cooperate with him when he wishes to lift them up to a higher position, that presbyter shall lose what he already has.¹⁹⁶

Presbyters are not allowed to leave their eparchy and go into another without the knowledge of the bishop.¹⁹⁷ They should not dispose ecclesiastical property without seeking the consent of the bishop.¹⁹⁸

5.4. Motu Proprio Cleri Sanctitati

As we have described above, among the "clerics", there exist a hierarchical gradation (*Non sunt omnes in eodem gradu, sed inter ecclesiastica hierarchia est in qua alii aliis subordinantur*). The ecclesiastical hierarchy of orders is composed by divine institution of bishops, presbyters and "ministers" (c. 38). Therefore, in the ecclesiastical hierarchy, the presbyters hold a lower rank than the bishops.

According to this previous legislation every cleric must belong either to an eparchy (by ascription) or some religious institute or to a patriarchate itself.¹⁹⁹ Hence, the image of a presbyter was always attached to some of these structures and for their service he was promoted.

¹⁹⁴ Apost. c. 56: «Si quis clericus iniuriam fecerit presbytero, separetur».

¹⁹⁵ Cf. NICOLAIDES, *The Rudder*, 99.

¹⁹⁶ Carth. c. 31: «Item placuit, ut quicumque clerici ... pro necessitatibus ecclesiarum non obtemperaverint episcopis suis volentibus eos ad honorem ampliorem in sua ecclesia promovere, nec illic ministrent in gradu suo, unde recedere noluerint».

¹⁹⁷ Nic. II, c. 10: «Quoniam quidam clericorum parvipendentes canonicam constitutionem, relinquunt parochiam propriam deponatur». See Nic. I, cc. 15, 16 also prohibits unlawful transfer.

¹⁹⁸ Carth. c. 33: «Item placuit ut presbyteri, ubi sunt constituti, nescientibus episcopis suis,».

¹⁹⁹ CS c. 44: «Quemlibet clericum oportet esse alicui eparchiae, firmo can. 52».

Presbyters must live an interior and exterior life higher than the lay people and it is the responsibility of the eparchial bishop (local hierarchy) to see that whether they are fulfilling it faithfully or not (cc. 60-61). Presbyters are under the special obligation to show respect and obedience to their own eparchial bishop (hierarchy, c. 63). As often, and as long as the Church requires it, in the judgement of the eparchial bishop (proper hierarchy), the presbyters are obliged (exempted if there is a legitimate impediment) to carry out the duty faithfully with which they are entrusted by the bishop (c. 64).

Presbyters' personal life style, for example ecclesiastical garb, hair style, wearing of beard, use of ring etc., are also come under the supervision of the eparchial bishop (c. 77).

Cleri sanctitati canons 53-59 mentioned certain rights and privileges of clerics" (de iuribus et privilegiis clericorum). Here the rights recognised to them partake of the nature of favours or privileges. Their privileges imply rights or a moral power of doing, exacting, or obtaining certain things. Presbyters (clerics in general) have a right to special respect and reverence (c. 54), a right to ecclesiastical benefices and pensions c. 59), they enjoy the privilege of a special court (c. 55) etc.,. The so-called privilege of the *motu proprio* is less privilege than the protection extended by the Church to the person of clerics against injuries which are violation of their rights.²⁰⁰

5.5. The Image of Presbyter in the Second Vatican Council

The Second Vatican Council states that presbyters share with bishops the one identical priesthood and ministry of Christ.²⁰¹

They are ministers promoted to the service of Christ the teacher, priest, and king.²⁰² They are depicted also as "pastors"²⁰³, "sons", "brothers" and "friends"²⁰⁴, "indispensable helpers and advisers of the bishop"²⁰⁵, "prudent co-operators of the episcopal order and its

²⁰⁰ AYRINHAC, *General Legislation*, 248.

²⁰¹ PO 7.

²⁰² PO 1.

²⁰³ LG 28; PO 3.

²⁰⁴ LG 28; CD 16; PO 7.

²⁰⁵ LG 18, 28; PO 7.

instrument and help"²⁰⁶ and " a person bound by the virtue of obedience to the bishop".²⁰⁷ More over the image of presbyters "as members of a presbyterium headed by a bishop"²⁰⁸ is also pictured in the Council documents.

5.6. The Image of Presbyter in the Code

5.6.1. Presbyter as One Ordained

A presbyter is also called a sacred minister. He is a member of the Christian faithful, chosen by the competent ecclesiastical authority, deputed through the gift of the Holy Spirit and received in sacred ordination to be a minister of the Church participating in the mission and power of Jesus Christ. In virtue of their sacred ordination the presbyters are distinguished from the other Christian faithful by divine institution.²⁰⁹ At the same time, in reality, this sacred ordination unites the presbyter with the bishop.

5.6.2. Presbyter as a Pastor and a Shepherd

The concept of eparchial presbyters as pastors and shepherds are very prominent in the Code. It is true that the "pastor" notion remains one of the major views of a presbyter, however, in all perspectives, it is the pivotal or the key notion. That means practically all other notions of the presbyter in some way or other, evolve from this particular notion.²¹⁰

As the eparchial Bishop, presbyters also participate in the power and mission of Jesus Christ, the Supreme Pastor. This participation in the power and mission of Jesus Christ presupposes three basic functions of presbyters: teaching, sanctifying and governing.²¹¹

²⁰⁶ *LG* 28; *CD* 28.

²⁰⁷ *CD* 28; *PO* 14.

²⁰⁸ *LG* 28; *CD* 28; *PO* 8.

²⁰⁹ *CCEO* c. 323.

²¹⁰ Cf. *CCEO* c. 281 § 1; *LG* 28; *PO* 3.

²¹¹ *CCEO* c. 743: «... qui munere et potestate a Christo Domino Apostolis suis concreditibus adaugentur et in variis gradibus fruuntur Evangelium annuntiandi, populum Dei pascendi et sanctificandi». See *CCEO* c. 289; *LG* 11; *PO* 1, 2, 4, 6. *PO* 1 says that, through sacred ordination priests are promoted to the service of Christ the Teacher, Priest and King.

As they proclaim of the Kingdom of God they are called preachers.²¹² They are persons called to perfection and are consecrated to God. They should become suitable instruments of Christ and exemplary models of the flock.²¹³ Also as ministers of reconciliation they should work for peace, unity, and harmony based on justice.²¹⁴

The qualifications mentioned in the Code for the pastors, in general, are also essential factors in forming their character. For instance they must be of good morals, sound doctrine and zealous for souls, endowed with prudence and other virtues.²¹⁵

5.6.3. Presbyter as a Collaborator

Being pastors and shepherds they are the foremost "collaborators" of the eparchial Bishop.²¹⁶ This idea of collaboration has its foundation in *Lumen gentium*; where it states that the presbyters are prudent co-operators, supporters and mouthpieces of the bishop.²¹⁷ In relation to their bishop, presbyters are helpers and advisers.²¹⁸

5.6.4. Presbyter as a Subject

The head of the eparchy is the eparchial bishop. He is also the head of the presbyterium. He is the supreme pastor in the eparchy and all presbyters are subjected under his paternal care. The Code in canon 370 describes how presbyters are bound by a special obligation to show reverence and obedience to the eparchial bishop. This expresses the fact that presbyters are subject to their

²¹² Cf. CCEO c. 367; *PO* 20

²¹³ Cf. CCEO c. 368; *CS* c. 60; *PO* 4, 12.

²¹⁴ Cf. CCEO c. 384 § 1.

²¹⁵ CCEO c. 285 § 1: «... oportet sit bonis moribus, sana doctrina, animarum zelo, prudentia ceterisque virtutibus et dotibus praeditus,.... ». See *CS* cc. 493, 500 § 2; *CD* 31. The second paragraph of CCEO c. 285 goes further and says if the presbyter is married, good morals are required in his wife and his children who live with him.

²¹⁶ CCEO 281 § 1: «...cooperatori Episcopi eparchialis...». See *LG* 28; *CD* 15, 28, 30; *PO* 2, 4, 12.

²¹⁷ *LG* 28: «Presbyteri, ordinis Episcopalis providi cooperatores eiusque adiutorium et organum, ad Populo Dei inserviendum vocati, ». See *ODDI*, "Prolusione", 6.

²¹⁸ CCEO c. 192 § 4.

bishop and they must be obedient to him and must show due reverence to him.²¹⁹

5.6.5. An Image Attached to the Eparchy

Because of the ascription, eparchial presbyters are joined to their eparchy and, also to their parish if they are assigned to one. Positively it means that they must be there in the eparchy or in the parish for fulfilling of the threefold pastoral missions entrusted to them.²²⁰ An alien presbyter could not fulfil his missions properly and faithfully.

5.6.6. Presbyter as a Mature and Dignified Person

The requirements proposed in the Code for the candidates to be licitly ordained also indicates the qualities expected of them. For instance, good morals and physical and psychological qualities in keeping with the reception of the sacred order, the age prescribed by law, due knowledge and other qualities prescribed in particular law.²²¹

CONCLUSION

The above considered elements, for instance: the main sources and their impacts on the Code in relation to our theme; notion of rights, obligations, pastoral ministry and eparchy, a description on the true subjects of reciprocal rights and obligations etc., are fundamental to the proceeding chapters. The views of the bishop and presbyters, as seen from the several sources above, express their reciprocal nature and differences.

The significance of the relationship between the eparchial bishop and eparchial presbyters and their pastoral collaboration

²¹⁹ Cf. *CS* cc. 63, 64. They respect their Bishop and stand by him in sincere charity and obedience. *CD* 28; *PO* 7.

²²⁰ Cf. *CCEO* cc. 357, 386 § 1, 292. These canon doesn't take away the right of holiday, on the other hands there are other provisions mentioned in the Code. We will be treating later about this.

²²¹ *CCEO* c. 758 § 1, 2°, 3°, 4°: «... mores atque qualitates physicae et psychicae ordini sacro suscipiendo congruentes; aetas iure praecripta; debita scientia; ...». See *CIC* 1983 c. 1029. To receive sacred orders one must be free from the impediments mentioned in canon *CCEO* c. 762. The age limit prescribed by the law is twenty-four years and provision for an older age can be given in particular legislation. *CCEO* c. 759; *CIC* 1983 c. 1031.

were clearly discussed at the Second Vatican Council. The main issues in this regard were in connection with the mystery of orders and the threefold missions of teaching, sanctifying and governing-of bishops and presbyters in their pastoral ministry.

Although a direct mention of both images "friend- brother" and "father-son" of the bishop as expressed in the Conciliar documents are omitted in the Code, by envisaging the spirit of the Council documents, the Code formulated its canons. For instance canon 192 § 4 reads as follows: "The eparchial bishop is to have special concern for the presbyters, he is to listen to them as his helpers and advisers, safeguard their rights and ensure that they fulfil the obligations proper to their state. He is to see that the means and institutions they need to foster their spiritual and intellectual life are available to them".

In this work it would be significant to note that the image of the bishop and the presbyters as "friends-brothers" will be given more emphasis than "father-son" or other images as mentioned above. However, these views of bishops and presbyters are very important in relation to their reciprocal rights and obligations.

CHAPTER TWO

FOUNDATIONS, PRINCIPLES AND NATURE

INTRODUCTION

The eparchial bishop and eparchial presbyters have a relationship, which is distinct from any other, having its own foundations and specific nature. Their rights and obligations are related to each other and at the same time are oriented to a special goal. They have a clear and extensive influence in the pastoral ministry of the eparchy and of the entire Church.

In this Chapter, we will try to treat the major foundations of reciprocal rights and obligations of eparchial bishops and eparchial presbyters. The nature and objectives of their reciprocal rights and obligations also will be treated. Such a study will clarify our theme and at the same time will function as a basis for our study.

1. FOUNDATIONS OF RIGHTS AND OBLIGATIONS

To understand the reciprocal rights and obligations of the eparchial bishop and eparchial presbyters there are many fundamental aspects which have to be taken into account. Among them, the theological, sacramental, ecclesiastical and canonical basis are important. An understanding of these elements are essential and relevant to this study because these factors will fasten the proceeding Chapters together.¹

1.1. Common Foundations

Holy Orders brings with it the obligations and rights proper to the order, as well as the rights and obligations which pertains to the status of being a cleric. But the reception of the Sacred Orders does not abrogate the rights and obligations which a Christian

¹ In order to limit our study we do not treat them elaborately but try to mention only the pertinent elements that are relevant to our theme.

Foundations, Principles and Nature

faithful has in virtue of human dignity and of the sacrament of baptism. To understand the rights of the eparchial bishop and eparchial presbyters, therefore, a more broad perspective must be taken than just the specifics which pertain to the clerical state.

There are several factors that are common to eparchial bishop and eparchial presbyters and that in turn are related to their rights and obligations. These will be analyzed in terms of their sources- in natural law, theology, sacraments, missions etc.

Certainly, in general, these foundations are important more from a theological point of view than immediately from a canonical one. Yet the canonical and also the practical dimensions have to be substantiated through theological categories, and further, those determinations either for, or against depend on theological foundations. Canon Law should not be seen as an area of study isolated from theology.²

This is clearly stated by Pope John Paul II, at the promulgation of the CIC 1983: "canonical laws by their very nature demand observance. For this reason, the greatest care has been taken that during the long preparation of the Code there should be an accurate expression of the norms and that they should depend upon a sound juridical, canonical and 'theological' foundation".³

² Örsy says that, "History tells us that the legal rules in the church were born from theology: values discovered by faith became the object of legal norms" For this a typical example he proposes is that of the sacraments. Further he says "theology provides the community with an overall vision and definition of Christian values, while canon law provides norms of action for the appropriation of those values which are meant to serve the common good". Also, "...without the integration of the theological elements, no authentic legal interpretation can arise". ÖRSY, *Theology and Canon Law*, 103-104. Some aspects in this Chapter are of theological in their contents, hence, theological language is used.

³ «Demum canonicae leges suapte natura observantiam exigunt; qua de causa quam maxima diligentia adhibita est, ut in diuturna Codicis praeparatione, accurata fieret normarum expressio eademque in solido iuridico, canonico ac theologico fundamento inniterentur». JOHN PAUL II, *Sacrae disciplinae*, AAS 75, pars II (1983) xiii.

1.1.1. Theological Foundation

God, who alone is the Holy One and who alone can make holy, wished to gather people somewhat as his companions and helpers to give humble service to his sanctifying mission.⁴ Therefore, in the realization of the salvific plan, the basis of action and the spring of grace is God. Thus it is extremely difficult to understand the spirit of rights and obligations of bishops and presbyters in the Church unless one goes beyond its external and visible organization to fix one's mind on this theological foundation.

In the bishops, assisted by the presbyters, there is present in the midst of believers, Jesus Christ, the supreme high priest. Through bishops fatherly office (I Cor. 4:15) Jesus Christ incorporates new members into his body. Through bishops wisdom and prudence, He directs and governs the people. Thus bishops are shepherds of the Lord's flock and are servants of Christ and dispensers of the mysteries of God (I Cor. 4:1). To them is entrusted the duty of proclaiming the Gospel of the grace of God (Rom. 15:16; Acts 20:24) and promoting the Spirit of justice in glory (2 Cor. 3:8-9).⁵ So through their persons and ministry Jesus is present among the people.

The divinely instituted ministry is exercised in the Church in different orders: episcopal, presbyteral and diaconal. "And one does not take the honor upon himself, but he is called by God, just as Aaron was" (Heb. 5:4). The selection and call of the bishop and the presbyter is of divine origin. Through their sacred orders and

⁴ *PO* 5: «Deus, qui solus Sanctus et Sanctificator est, voluit quasi socios et adiutores sibi assumere homines qui operi sanctificationis humiliter inserviant».

⁵ *LG* 21: «In Episcopis, igitur, quibus presbyteri assistunt, adest in medio credentium Dominus Iesus Christus, Pontifex Summus. Sedens enim ad dexteram Dei Patris, non deest a suorum congregatione pontificium. Hi pastores ad pascendum dominicum gregem electi, ministri Christi sunt et dispensatores mysteriorum Dei....».

mission they receive a special grace from the Holy Spirit.⁶ In other words both bishops and presbyters are called by God. The Holy Trinity is the basis of their union. Hence the source is one and the same. Due to this divine union there exists a bond between them and this bond is ultimately of divine origin. This is a bond of two parties, emerging from the same source.

1.1.2. Sacramental Foundations

The theological aspects of the mutual rights and obligations of the eparchial bishop and presbyters are related to sacraments. By the reception of a sacrament one becomes subject to certain rights and obligations that pertain to the sacrament. Thus it is important to consider the sacraments of baptism, chrismation, eucharist and sacred orders, which have a special relevance in this study.

1.1.2.1. Baptism, Chrismation and Eucharist

The sacrament of baptism is the basis of the whole Christian life, the gateway to life in the Spirit⁷ and the door which gives access to the other sacraments.⁸ Through the reception of baptism, there exists a fundamental and essential unity among all the Christian faithful. Those who are incorporated into the Church by the sacrament of baptism have their own rights and obligations.

In the canon 675 § 2 of the Code it is stated that only by the reception of baptism a person is made capable to receive the other sacraments.⁹ Since incorporation in the life of the Church is a fundamental consequence of the reception of the sacrament of baptism, maintenance of that incorporation is a fundamental obligation which embraces and qualifies all other obligations.

⁶ Cf. FAGIOLO, *La spiritualità*, XVII.

⁷ Cf. Council of Florence : DS 1314. The word baptism came from the Greek word «baptizein» means to 'plunge', 'immerse' etc., CCC 1214.

⁸ Cf. CCC 1213.

⁹ CCEO c. 675 § 2: «Tantummodo baptismo in re suscepto homo fit capax certorum sacramentorum».

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According to the teachings of the Church Baptism, Chrismation with holy Myron and Divine Eucharist are sacraments of Christian initiation. These are the foundations and the common vocation of all Christ's disciples, a vocation to holiness and to the mission of evangelizing the world and they confer the graces needed for the life according to the Spirit during this life as pilgrims on the march towards the homeland.¹⁰ Basically, these sacraments unite both the bishops and the presbyters and every one in the Church and thus forms a community of Christian faithful.

In virtue of these sacraments of Christian initiation, Christian faithful enjoy a variety of rights and assume a number of obligations. The obligations are also sources of rights.¹¹ The Code summarizes some of these as follows:¹² obligation towards the faith (c. 10), rights to have fundamental equality (c. 11), obligations toward communion with the Church (c. 12), obligation to live a holy life (c. 13), obligation to spread the gospel message (c. 14), to obey the church leaders (c. 15 § 1), to express their spiritual needs and desires to pastors of the church and to express their opinion about matters which pertain to the good of the Church (c. 15 §§ 2-3), right to receive spiritual assistance (c. 16), right to worship God according the prescriptions of their Church *sui iuris* (c. 17), right to have associations and assembly (c. 18), right to promote or to sustain apostolic action (c. 19), right to receive a Christian education (c. 20), lawful freedom of enquiry in sacred science (c. 21), right to be free from any kind of coercion in choosing a state of life (c. 22), right to have reputation and privacy (c. 23), right to vindicate one's right in the competent

¹⁰ Cf. CCC 1533.

¹¹ "If a person has the obligation, for example, to maintain communion with the Church, that person also has the right that this communion not be taken away except for just cause and with due process. If one is obligated to live a holy life, one also has a right to do this". Cf. PROVOST, "Effects of Incardination", 40.

¹² See CCEO, Titulus I, *De Christifidelibus eorumque Omnium Iuribus et Obligationibus*, cc. 1-26.

church court (c. 24 § 1), right to be judged in accord with prescriptions of law applied with equity, and to be punished only in accord with the norm of law (c. 24 §§ 2-3), obligation to support the Church (c. 25 § 1), obligation to promote social justice and charity (c. 25 § 2), and obligation to exercise rights with respect to the common good of the Church.

The eparchial bishop and eparchial presbyters, being baptized Christians, their baptismal dignity continues to give rise to rights and obligations from which they are not exempted by their clerical state. For instance as with all the faithful of the Church, they are to maintain communion with the Church, live holy lives etc.,. Of course, there is a stronger urgency for them to fulfil these obligations because of their ministerial role in the Church.¹³

1.1.2.2. The Sacrament of Holy Orders

In general Holy Orders is the sacrament through which the mission entrusted by Jesus Christ to his apostles continues to be exercised in the Church until the end of time. In this sacrament of ministry there are mainly three degrees: episcopate, presbyterate and diaconate.¹⁴

The term *order* in Roman antiquity designated an established civil body, especially a governing body. *Ordinatio* signifies incorporation into an *ordo*. Also, in the Church, there are established bodies which Tradition, not without a basis in Sacred Scripture (cf. Heb. 5:6; 7:11; Ps. 110:4), has called since ancient times *taxeis* (τάξεις) or *ordines*. The liturgy speaks of the *ordo episcoporum*, the *ordo presbyterorum*, the *ordo diaconorum*. Other

¹³ Cf. PROVOST, "Effects of Incardination", 40.

¹⁴ CCEO c. 325; CCC 1536.

In the first Schema of the Code it was called *De Sacramento Sacerdotii* «Schema canonum de cultu divino»: *Nuntia* 10 (1980) 32. In order to include also the deacons, this title was not sufficient. So the name *De sacra ordinatione* was adopted.

«La prima proposta riguarda la rubrica, che fa difficoltà in quanto nei canoni che seguono si parla anche del diaconato. Si accetta e si cambia la rubrica con *De sacra ordinatione*». «*Denua recognitio dello schema*»: *Nuntia* 15 (1982) 44.

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groups also receive the name of ordo: Catechumens, virgins, spouses, widows etc.,¹⁵

As we saw in the first Chapter there are three major degrees in the sacrament of Holy Orders. "The divinely instituted ecclesiastical ministry is exercised in different degrees by those who even from ancient times have been called bishops, priests and deacons".¹⁶

Integration into one of these bodies in the Church was accomplished by a rite called *ordinatio*, a religious and a liturgical act which was a consecration, a blessing or a sacrament. Today the word '*ordination*' is reserved for the sacramental act which integrates a man into the order of bishops, presbyters, or deacons, and goes beyond a simple *election, designation, delegation* or *institution* by the community, for it confers a gift of the Holy spirit that permits the exercise of a 'sacred power' (*sacra potestas* LG 10) which come only from Christ himself through his Church. Ordination is also called *consecratio*, for it is a setting apart and an investiture by Christ himself for his Church. *The laying on of hands* by the bishop, with the

¹⁵ Cf. CCC 1537.

¹⁶ LG 28; CCEO cc. 325-327.

In the first Chapter we mentioned about the major and minor orders. "The term "minister" and "ministry" are now used in the Latin Church for services performed also by members of the laity, of which many have no connection with the celebration of divine services" POSPISHIL, *Eastern Catholic Church Law*, 271.

CCC 1554 states, "Catholic doctrine and, expressed in the liturgy, the Magisterium and the constant practice of the Church, recognizes that there are two degrees of ministerial participation in the priesthood of Christ: the episcopacy and the presbyterate. The diaconate is intended to help and serve them. For this reason the term *sacerdos* in current usage denotes bishops and priests but not deacons. Yet the Catholic doctrine teaches that the degrees of priestly participation (*episcopate* and *presbyterate*) and the degree of service (*diaconate*) are all three conferred by a sacramental act called 'ordination', that is, by the sacrament of Holy Orders".

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consecratory prayer, constitutes the visible sign of this ordination.¹⁷

The sacrament of Holy Orders confers to the bishop presbyters and deacons a particular mission in the Church and it serves to build up the people of God. Those who receive the sacrament of Holy Orders are consecrated in Christ's name "to feed the Church by the word and grace of God" (LG 11b).¹⁸ Also it is right to say that the ministerial priesthood is a means by which Christ unceasingly builds up and leads the Church and for that reason it is transmitted by its own sacrament, the sacrament of Holy Orders.¹⁹ Moreover it is by the virtue of Holy Orders, the presbyters, act *in persona Christi Capitis*.²⁰ Pope Pius XII proclaimed this as follows:

It is the same priest, Christ Jesus, whose sacred person his minister truly represents. Now the minister, by reason of the sacerdotal consecration which he has received, is truly made like to the high priest and possess the authority to act in the power and place of the person of Christ himself (*virtute ac persona ipsius Christi*).²¹

As a juridical status in the Church, ordained ministry carries with it a complexity of rights and obligations - the status of a "cleric". Bishops, presbyters and deacons thus bound by various rights and obligations, including the obligation to show reverence and obedience to the pope and their ordinary (c. 370), the right to have an office in the Church (c. 371 § 1), and to undertake and

¹⁷ CCC 1538. CIC 1983 uses the title *De ordine (Liber IV, Titulus VI)*. On the other hand CCEO uses the title *De sacra ordinatione (Titulus XVI, Caput VI)*.

¹⁸ Cf. CCC 1534-1535.

¹⁹ Cf. CCC 1547.

²⁰ LG 10, 28; SC 33; CD 11; PO 2, 6

²¹ PIUS XII, Enc. *Mediator Dei*: AAS 39 (1947) 548.

fulfil the office entrusted to them by the competent authority (371 § 2) etc.,.

1.1.2.3. **Episcopal Consecration**

In order to fulfil the great tasks entrusted to them the apostles were enriched by Jesus with a special outpouring of the Holy Spirit (Acts. 1: 8, 2:4; Jn. 20: 22-23). The apostles in their turn, by the imposition of hands passed on the spiritual gift to their helpers and associates (I Tm. 4:14; 2 Tm. 1: 1-7), and this has been handed down to the bishops in episcopal consecration. Thus it is right to say that God who calls and consecrates the bishops (LG 21). The Apostolic Constitution states,

A bishop blesses, but he is not blessed by anybody; he ordains, he imposes his hands, he offers, he receives blessings from the bishops, but never from the presbyters....A presbyter blesses, but is not blessed; he receives blessing from the bishop and from his co-priest; so also he imparts it to his fellow presbyters; he imposes his hands but he does not ordain.²²

The *motu proprio Cleri sanctitati* canon 396 § 2 reads as follows: "Having received episcopal consecration, the bishop obtains episcopal powers and the right to receive the income from the episcopal estate (*mensa episcopalis*)".²³ According to the

²² FUNK, *Didascalia et Constitutiones Apostolorum*, Libro VIII, 28, 2-3: «Episcopus benedicit, non benedicitur; manus imponit, ordinat, offerit; benedictionem ab episcopis accipit, a presbyteris vero nequaquam. ... Presbyter benedicit, non benedicitur; benedictionem recipit ab episcopo et compresbytero, eamque pariter compresbytero dat; manus imponit, non ordinat; ...».

²³ However, he could take possession of the eparchy before his consecration, because only in that case would the consecration itself confer upon him powers. If he has not entered into his office, he would obtain by consecration only radical jurisdiction of which he could make use only after having taken possession of the eparchy. POSPISHIL, *The Law on Persons*, 177.

traditional Oriental mentality the episcopal consecration makes the candidate a bishop with due powers.²⁴

The Fathers of the Second Vatican Council declared clearly that the status and dignity of the bishops in the Church. The most significant advance in the doctrinal teaching of the Council lies in the statement that the episcopate is a sacrament. It intended to put an end to the debate concerning the sacramentality of the episcopate as an order distinct from the presbyterate. It took a clear stand in favour of the sacramentality of the episcopal consecration as such.²⁵

The Dogmatic Constitution on the Church describes the theological dimensions of the episcopacy and the decree on the Pastoral Office of Bishops in the Church explains the various forms of this ministry. Both Constitutions place the episcopacy as the epitome of the ministerial priesthood and considered

²⁴ An attentive study of the liturgical rite of consecration of the bishops reveals that it is in the consecration itself that the bishops receive the necessary powers for their function as pastors in the Church. For instance the following is an ancient prayer in the consecration rite: "The divine grace, which ever heals weakness and makes up what is lacking, elects., the beloved priest of God, as bishop of the town of N., which God guards. Therefore let us pray for him, so that the grace of the Most Holy Spirit may come upon him". Cf. DUPREY, "The Synodal Structure (note 66)", 176-177.

²⁵ Cf. GALOT, *Theology of the Priesthood*, 183; HENDRIKS, "On the Sacramentality of the Episcopal Consecration", 231-239.

The majority of traditional theological opinion considers episcopate, priesthood and diaconate to be sacraments. But a great number of theologians have adhered to the doctrine of Peter Lombard (*Magister sententiarum*), St. Thomas, Aquinas, St. Albertus Magnus, St. Bonaventure, Scotus etc. that the episcopate is not a sacrament, but a dignity, an office conferred by a liturgical ceremony, that is to say, by a sacramental. The council of Trid. (sess. XXIII, c. 6) did not wish to define the question whether the episcopate is a sacrament, nor whether the superiority of bishops over priests in divine law etc.,. CIC 1917 c. 108 § 3 also did not give any explicit mention in this regard. see REEPER, "Relation of Priesthood to Episcopate", 346; HENDRIKS, "On the Sacramentality of the Episcopal Consecration", 231-239.

Jerome and a whole series of medieval writers, culminating in the scholastics, made another approach more common. The presbyterate was taken as the analogate of the priesthood, because the presbyter has the power to consecrate the body and the blood of Christ. The bishop, however, is the successor of the apostles, because he holds a position of authority in the Church. This approach separates order from the jurisdiction and the eucharist from the other functions of the ministry. Cf. POWER, *Ministers of Christ*, 163.

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presbyterate to be a sharing in the priesthood and ministry which the bishops possess as successor of the apostles.²⁶

Lumen gentium 20 deals with the historical continuation of the apostolic office in the institution of the episcopate and with the divine right of the episcopacy in the Church. "Therefore the synod teaches that by divine institution the bishops have succeeded to the place of the apostles, as shepherds of the church: and the one who hears them hears Christ but whoever rejects them rejects Christ and him who sends Christ (Lk. 10:16)".²⁷ Article 28 of the same Constitution states that the divinely instituted office bestowed on the apostles by Christ was transmitted by them "to different persons in varying degrees" (*munus divinitus institutum, vario gradu, variis subjectis*).²⁸

The second section of the article 20 of *Lumen gentium* contains the teachings on the sacramental nature of episcopal consecration. "The synod teaches, that the fullness of the sacrament of orders is conferred by episcopal consecration; and this, both by liturgical custom of the church and the voice of the holy fathers, is undoubtedly called the supreme priesthood, the highest point of the ministry".²⁹ Here the episcopate is not

²⁶ Cf. POWER, *Ministers of Christ*, 163. This manner of considering the pastoral ministry was made popular in the third century (e.g. Hippolytus, Cyprian). This concept equates apostolic succession with the transmission of powers and functions from apostles to bishops.

²⁷ LG 20: «Proinde docet Sacra Synodus Episcopos ex divina institutione in locum Apostolorum successisse, tamquam Ecclesiae pastores, quos qui audit, Christum audit qui vero spernit, Christum spernit et cum qui Christum misit (cf. Lc. 10:16)». About bishops apostolic succession see Conc. Trid. *De sacr. Ordinis*, cap. 4: D. 960 (1768).

This statement clearly does not intend to be an *ex cathedra* definition. It merely says that the council or synod "teaches" this (docet). It is thus a less forcible expression. Cf. RAHNER, "The Hierarchical Structure of the Church", 190.

²⁸ Cf. GRILLMEIER, "The Hierarchical Structure of the Church", 218-223.

²⁹ LG 21: «Docet autem Sancta Synodus episcopali consecratione plenitudinem conferri sacramenti Ordinis, quae nimirum et liturgica Ecclesiae consuetudine et voce Sanctorum Patrum summum sacerdotium, sacri ministerii summa nuncupatur». See Conc. Trid. *De sacramento Ordinis*: D. 960 (1768).

In the Apostolic Tradition (c. 3) the primacy of priesthood is attributed to the

regarded in light of (simple) priesthood but envisaged in itself as the full priesthood in all regard, while the ordinary priesthood is to be explained as a limited share of the full priesthood: episcopal consecration is the primary and comprehensive instance of the sacramental ordination to office. This makes it easier to understand why the consecration of bishop is valid without previous priestly ordination.³⁰

Lumen gentium 21 deals with the nature of the office of the individual bishop and of its sacramental basis, and uses the pattern of the threefold office to describe its character. But this definition of the content is to be read in the light of the assertion that Christ himself is present and active in the bishops who are his ministers. Christ's active presence in the bishops, though *sui generis*, is not to be understood as exclusive to them. It is primarily (*imprimis*) through their ministry that he acts.³¹ Therefore, the Council states clearly and definitively the sacramentality of the episcopal consecration. The bishop is not just a presbyter with greater power of governance. Through sacramental consecration he receives the fullness of the power of orders and that is a permanent inalienable gift and it involves the power to sanctify, teach and govern.³²

Bishop : «...qu'il pousse votre saint troupeau et qu'il exerce sans reproche votre souverain sacerdoce, ...». Apostolic Tradition c 3, BOTTE (ed.), *La Tradition*, 29; BRADSHAW, *The Canons of Hippolytus*, 12.

³⁰ Cf. RAHNER, "The Hierarchical Structure of the Church", 193. Here no mention is made of the opinion of the theologians of the Middle Ages who contested the sacramental nature of episcopal consecration by approaching the matter from the opposite angle.

³¹ Cf. RAHNER, "The Hierarchical Structure of the Church", 192.

³² *LG* 21-22. For further study see CARTER, "Bishop-Priest-Laity Relationship", 149. «... in Occidente è prevalso da lungo tempo il concetto giuridico del vescovo in quanto preposto ad una parte determinata della Chiesa universale, mentre sembra che l'Oriente abbia conservato maggiormente il senso della natura spirituale e sacramentale della funzione episcopale, data al vescovo con l'atto stesso della consacrazione». STROTMANN, «Il vescovo nella tradizione orientale» 384.

Hendrik's opinion is that the phrase "fullness" (*LG* 21) denotes that it is not something entirely different from the ordinary ordination to the priesthood. Cf. HENDRIKS, "On the Sacramentality of the Episcopal Consecration", 232-233.

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Christus dominus takes up the above said teaching, for its consideration. But it develops the theme under the dynamic pastoral aspect. It accompanies the bishop, step by step, in the concrete exercise of his threefold ministry. The very pastorality of the bishop's activity necessarily calls for others' help. The document states that for bishops enjoy the fullness of the sacrament of orders and priests depend on them in the use of their power. These too have been ordained true priests of the new testament to be prudent assistants of the episcopal order.³³

Having the scope of determining the pastoral office of the bishop and the pastoral aspect in the person of the bishop, *Christus dominus* recalls the major ideas mentioned in the *Lumen gentium*. In *Presbyterorum ordinis*, the elements which were said as indispensable in *Lumen gentium* and *Christus dominus*, were not changed. The whole decree offers a clear way of continuity and development of the traditional spirituality, while opening new possibilities of adaptations on the pastoral and juridical levels. Based on the Council teaching Sullivan states: "... bishops have inherited the apostolic ministry of pastoral leadership with a fullness that others have not, so that the relationship between bishops and priests is analogous to the relationship, as far as their ministry is concerned, between the apostles and the *episkopoi* and *presbyteroi* of the New Testament".³⁴

The Code states in canon 188 § 1 that unless prevented by lawful impediment, a person who is to be promoted to the

³³ CD 15 : «Episcopi enim plenitudine Sacramenti Ordinis gaudent et ab ipsis in exercenda sua potestate pendent tum presbyteri, qui quidem, ut Ordinis episcopalis providi sint cooperatores, et ipsi consecrati sunt veri Novi Testamenti sacerdotes....».

It is surprising that the co-operation of the priests is mentioned in this article only in connection with sanctification; and even there it only stated that the priests depend for their authority on the bishops (*ab ipsis*). The plural does not make it clear that the priests do not depend on the bishops, but on their eparchial or possibly on a superior who has not been consecrated a bishop. Cf. MÖRSORF, "Decree on the Bishop's Pastoral Ministry in the Church" 232.

³⁴ SULLIVAN, *Magisterium*, 41.

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episcopate must receive episcopal ordination within the stipulated time.³⁵ The episcopal consecration is reserved in the Code to the Roman Pontiff, patriarchs, major archbishops, and metropolitans (c. 745), or a bishop delegated by the patriarch or major archbishop (cc. 86 § 1, 2 and 159, 1). Moreover the episcopal consecration is conferred by three bishops except in the case of extreme necessity (c. 746).³⁶

Unlike the previous Oriental Legislation *Cleri sanctitati*, the Code makes no reference to the acquisition of episcopal powers in virtue of the reception of episcopal consecration. This was in conformity with the initial decision of the *Coetus* not to make any precise statements regarding the juridical effects of the episcopal consecration.³⁷ In the Code the eparchial bishop acquires the office (*possessionem canonicam*) with enthronement, when he is permitted to enter into the affairs of the eparchy (c. 189 § 1).³⁸

³⁵ CCEO c. 188 § 1; See CS c. 396. Here it is to be noted that CCEO does not indicate what sanctions might be imposed if the ordination is not carried out within the designated period.

Chalc. c. 25: «... placuit sanctae synodo, intra tres menses ordinationes episcoporum celebrari, nisi forte necessitas inexcusabilis praeparet tempus dilationis extendi:....». "If a candidate did not receive or report to the eparchy within the required time, the patriarch could deprive him of his office. The particular law of the Armenians, Copts and Maronites adopted this norm...". FARIS, *Eastern Catholic Churches*, 431; For further study see COUSSA, *Epitome*, 1: 304.

³⁶ See Carth. c. 13, 49.

³⁷ «Réduire au maximum les définitions et ne pas donner de précisions théologiques sur l'effet de la consécration épiscopale». ZUZEK, "Canons de Episcopis": Nuntia 9 (1979) 4. The prescriptions among the various Eastern Catholic Churches were not universal in this matter. «*Praescriptiones et usus non sunt uniformes hac in re*». COUSSA, *Epitome*, 1: 304, n. 451.

³⁸ CCEO c. 189: «*Possessionem canonicam eparchiae capit Episcopus eparchialis ipsa inthronizatione legitime peracta, in qua publice litterae apostolicae vel patriarchales de provisione canonica leguntur*». See CS c. 397. But there are exceptions. An ordained bishop acquires certain rights prior to his enthronement. For example he can participate in the synod of bishops (c. 102 § 1); he has the right to preach everywhere in the world unless it is prohibited by the eparchial bishop (c. 607 § 1), he can administer the sacrament of penance validly and licitly everywhere unless he is prohibited for doing so by the eparchial bishop (c. 722 § 2).

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Above all, it is the Holy Spirit himself who calls and consecrates a person to be a bishop. He acquires several rights and obligations specific to his order when he is consecrated as bishop, and particularly when he is entrusted an eparchy. These rights and obligations include all the powers needed to govern the people of God entrusted to their care (c. 191), special concern for the eparchial presbyters (c. 192 § 4) etc.,³⁹

1.1.2.4. Ordination

Christ, has through his apostles made their successors, the bishops, share in his consecration and mission; and these have legitimately handed on the office of their ministry in varying degrees to various subjects in the Church.⁴⁰ "The bishops' office of service was delegated to priests in a subordinate capacity, of service was delegated to priests in a subordinate capacity, men ordained into the presbyteral order were to be collaborators with the episcopal order in carrying out the apostolic mission entrusted to them by Christ".⁴¹ Through the sacramental ordination conferred upon the presbyter by the bishop, a sacramental union is formed between them and, moreover, a specific ontological bond is established which unites the presbyter to Christ.⁴²

Lumen gentium 28, especially the first section, might be entitled "the priest and Christ". Here the sanctification and mission

³⁹ CCEO, Titulus VII, Art. II, *De Iuribus et Obligationibus Episcoporum Eparchialium*, cc. 190-211. For a detailed listing and analysis in this regard see Chapter Three.

⁴⁰ LG 28: «Christus, quem Pater sanctificavit et misti in mundum (cf. Io. 10, 36), consecrationis missionisque suae per Apostolos suos, eorum successores, videlicet Episcopos participes effecit, qui munus ministerii sui, vario gradu, variis subiectis in Ecclesia legitime tradiderunt. Sic ministerium ecclesiasticum divinitus institutum diversis ordinibus exercetur ab illis qui iam ab antiquo Episcopi, Presbyteri, Diaconi vocantur». See CCC 1562.

⁴¹ PO 2: «... episcopos, quorum munus ministerii subordinato gradu, presbyteris traditum est, ut in ordine presbyteratus constituti, ad rite explendam missionem apostolicam a Christo concreditam, ordinis episcopalis essent cooperatores».

⁴² DMLP 2.

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of Jesus are applied in turn in different senses to the general priesthood of all the faithful and to the special office of the consecrated priests, and in both they are present and active. At first this special priesthood existed in the fullness and unity of all gifts and missions in the apostles. Hence from them it passed on-insofar as it did not imply the personal and non-transmissible characteristics and graces of the Twelve - to the successors of the apostles, the bishops, in the measure necessary for the salvation of the mankind. The episcopate, specially when it is considered as a collegiate unity, possess the fullness and original unity of priesthood founded by Christ. On the basis of this unity and fullness the Council envisages the various orders (*ordines*) of the priesthood, episcopacy, "priesthood" and diaconate.⁴³

The position of priests in this triad is that they do not possess the highest degree of the priesthood (*pontificatus*). The precise nature of this restriction is not described, but it is not confined to the fact that priests are dependent on the bishops in the 'exercise' of their power. For number 26 in *Lumen gentium* affirms that the bishop, in contrast to priests, is "distinguished by the fullness of the sacrament of Orders", which express itself in the threefold office of teaching, sanctifying and governing, all three aspects being seen in their unity. But priests share in these three powers in such a way that the consecrated priesthood is truly realised in them and their title of priest is used in no merely metaphorical sense. And this is in virtue of their ordination, a fully sacramental act, which impresses on them the image of Christ, the high priest, the prototype of the New Testament priesthood.⁴⁴

⁴³ LG 28: «Presbyteri, quamvis pontificatus apicem non habeant et in exercenda sua potestate ab Episcopis pendeant, cum eis tamen sacerdotali honore conjuncti sunt, et vi sacramenti Ordinis, ad imaginem Christi, summi atque aeterni Sacerdotis (cf. Hebr. 5: 1-10, 7 : 24, 9 :11-28), ad». Cf. GRILLMEIER, "The Hierarchical Structure of the Church", 221.

⁴⁴ Cf. GRILLMEIER, "The Hierarchical Structure of the Church", 221; WOOD, "Priestly Identity", 112.

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"The ministerial or hierarchical priesthood of bishops and priests, and the common priesthood of all the faithful participate, 'each in its own proper way, in the one priesthood of Christ'.⁴⁵ The capability to perform functions, which the presbyters receives at the ordination, is ontologically the same for the presbyters as for the bishop, but with the presbyters the actual exercise of the power is more or less fettered, while in the bishop it is unfettered.⁴⁶

For the episcopal candidate canon 180, 5 of the Code expressly states that he must be a ordained presbyter for at least five years (*a quinquennio saltem in ordine presbyteratus constitutus*). This is exactly same as the canon in the previous legislation of the *motu proprio Cleri sanctitati* (c. 394 § 1, 4).⁴⁷

Canon 743 of the Code reads as follows, "Through the sacramental ordination performed by the bishop, sacred ministers are constituted through the working of the power of the Holy Spirit; and they are accredited with and they share in varying degrees in the task and the power entrusted to his apostles by Christ the Lord to announce the gospel, to shepherd and sanctify the people of God".⁴⁸ Canon 323 § 1 says that presbyters are deputed through a gift of the Holy Spirit received in sacred

⁴⁵ CCC 1547.

⁴⁶ REEPER, "Relation of Priesthood to Episcopate", 349.

⁴⁷ It is relevant here to note that when Eastern Christian communities began to reunite themselves with Rome, the law at time stipulated that only monks could become bishops, a practice which was confirmed, for example, with the Ukrainian Synod of Zamost (1720). BILANYCH, *Synodus Zamostiana*, 84; See FARIS, *Eastern Catholics Churches*, 417. Episcopal candidates from the secular clergy first had to receive the monastic habit and then make monastic profession. This was accepted requirement and a practice in the beginning, since secular celibate clergy were so few. But when their numbers increased, the requirement was dispensed on an individual basis and eventually abolished in the *Synod of Lviv* (1891). FARIS, *Eastern Catholics Churches*, 417.

⁴⁸ CCEO c. 743: «Per sacramentalem ordinationem ab Episcopo peractam Spiritus Sancti operante virtute ministri sacri constituuntur, qui munere et potestate a Christo Domino Apostolis suis concreditus adaugentur et in variis gradibus fruuntur Evangelium annuntiandi, populum Dei pascendi et sanctificandi». For this canon there is no parallel in CS.

ordination to be ministers of the Church.⁴⁹ According to Cardinal Fagiolo, the gift of the Holy Spirit shared by the bishop with a presbyter through the sacred ordination is not a simple favour personally granted to him, on the contrary it is the supernatural and permanent cause which constitutes him the bishop, the successor of the apostles and shepherd in the Church and therefore makes the presbyter consecrated and assigned to feed the people of God.⁵⁰

"In fact, through sacramental Ordination, he (presbyter) develops special bonds with *the Pope, the Episcopal Body, his own bishop, other priests and the lay faithful*".⁵¹ Both bishops and presbyters are participating in the priesthood of the eternal priest, Jesus Christ, through the reception of priestly ordination.⁵² Thus there is a unity among them in sacerdotal dignity. It is an essential factor that unites them and binds them together.

1.1.3. Special Mission

After the example of Jesus Christ, bishops and presbyters are called to be pastors in the Church. Both are given the mission to preach the gospel, to nourish the faithful, and to celebrate divine Liturgy and worship. Hence both participate in the same pastoral mission, but the bishops to a fuller degree. Both certainly derive their mission from the Good Shepherd, Jesus Christ, who knows, feeds and guides the sheep (Jn. 10:1; Lk. 15: 3-6).⁵³ They

⁴⁹ CS c. 38 § 1, 1 says that those who have been assigned to the divine ministry by the sacred rite established in their own discipline are called clerics.

⁵⁰ Cf. FAGIOLO, *La spiritualità*, XVII.

⁵¹ DMLP 21.

⁵² «...che il sacerdozio, in ogni suo grado, e quindi sia nei vescovi sia nei presbyteri, è una partecipazione del sacerdozio di Christo ... è l'unico Sommo Sacerdote della nuova ed eterna Alleanza. ... Il termine presbiterato è, ai fini del presente studio, preso nella sua accezione originaria, propria, circoscritto al sacerdozio ministeriale, comprendente cioè il sacerdozio dei vescovi ed il sacerdozio dei presbiteri...». FAGIOLO, *La spiritualità*, XI.

⁵³ Cf. CEP, *Pastoral Guide*, 5; *PB Introductio: AAS* (1988) 841.

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participate, in their own way, in the same ministry of the Supreme Pastor, Jesus Christ.

As we have mentioned above, in the person of bishop, therefore, assisted by his presbyters, Jesus Christ is present among the faithful (LG 21). The bishops undertake along with their fellow-workers, the presbyters, the special missions entrusted to them (LG 20).

Canon 177 § 1 of the Code repeats the same teaching, about the mission of bishops, as expressed in CIC 1983 canon 369. The bishop should carry out this pastoral mission (*pascenda concreditur*) in the eparchy with the co-operation of *presbyterium*. In previous Oriental legislation *Cleri sanctitati*, this norm is absent.

According to *Cleri sanctitati* canon 397 resident (eparchial) bishops are ordinary and immediate pastors of the eparchies entrusted to their care. Canon 178 of the new Code says that the eparchy is entrusted to the bishop to 'shepherd' (*pascendi concredita*) in his own name.

With regard to presbyters, the Code states that by their sacred ordination they participate in the mission and power of Christ, the Pastor (*Christi Pastoris missione et potestate partem habentes Ecclesiae sint ministri*).⁵⁴ Canon 743 affirms that they share in varying degrees in the task and the power entrusted to his apostles by Christ the Lord to announce the gospel, to shepherd and sanctify the people of God.⁵⁵ Here the basis of this participation is their ordination. Thus one can say that they participate in Christ's work permanently and efficaciously.⁵⁶

⁵⁴ CCEO c. 323 § 1. CS c. 38 § 1 lacks this aspect. "In Holy Ordination itself, the missionary dimension is ontologically present". DMLP 7.

⁵⁵ The sources of this canon are Trid., sess. XXIII, *De ordine*; LG 10; PO 2.

⁵⁶ WUERL, *The Priesthood*, 22, 79.

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Thus the presbyters participate in such a way and measure that they are subordinate to the Bishops. They are thus, dependent on them in the exercise of their power which they have obtained through the sacred ordination. The reason for this dependence is well founded not in an exterior manner but in the interior nature of priesthood itself.⁵⁷ As a consequence, there arises a subordination in the exercise of sacerdotal power received through the sacred ordination. The exercise of the office of teacher, of sanctifier and of ruler by presbyters is to be carried out under the direction of the bishop and also in communion with him.

The rights and obligations between bishop and presbyters are founded on a spirit of faith, but it grows and expresses itself in an atmosphere of mutual trust, esteem and practical co-operation, with respect for each other's *role*.⁵⁸ In other words, in the Church, both share in the pastoral mission of Jesus Christ, albeit in different degrees or grades.

The nature and mission of the episcopacy is closely related to and cannot be considered but in close relationship with that of the Church. "The things which, according to the will of its Author and Foundation, constitute and define the nature and mission of the Church also determine the nature and mission of the episcopal office".⁵⁹ All presbyters, whether eparchial or religious, share and exercise with the bishop the one priesthood of Christ. They are constituted providential co-operators of the episcopal order. Therefore, in the Church there is a common pastoral ground between bishop and presbyters.

1.1.3.1. Mission in the Eparchy

Both the eparchial bishop and the eparchial presbyters are specially constituted for common service in the eparchy. They

⁵⁷ Cf. RAMBALDI, «Vescovo e presbytero», 213-220.

⁵⁸ Cf. CEP, *Pastoral Guide*, 5 d.

⁵⁹ Cf. DPMB, 1.

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have been ordained for and appointed in an eparchy in which they are to render their collaboration in pastoral ministry by mutual assistance, understanding, charity, communion etc.,⁶⁰ Both are particularly deputed for the common service in the eparchy and therefore their primary obligation is to their own eparchy.

1.1.3.2. Universal Mission

Primarily, the eparchial bishop and the eparchial presbyters are called to fulfil the pastoral mission in their own eparchy. This doesn't mean that they are called only for a particular eparchy, rather this is a call for the entire Church. This points to their universal mission. Moreover the task of announcing the Good News to the whole world belongs to the whole body of pastors.⁶¹ The bishops, each for his own part, in so far as the due performance of their own duty permits, are obliged take up this mission (*LG* 23). This does mean that the presbyters should be ready to go out or be sent by their eparchs, to collaborate in charity with Churches that are in greater need, especially in those areas that have been only partly evangelised.⁶²

The Code clearly says that the clerics, whatever their condition, are to care in their heart for all of the Churches. They are therefore to serve the entire Church. Wherever there is great necessity; let them show willingness especially with the permission of their own eparchial bishop or superior, to exercise their ministry in the missions or in regions labouring under a shortage of clergy.⁶³

⁶⁰ This doesn't deny or degrade the universal mission of the Church. On the other hand it is to stress that their primary obligation is towards the eparchy to which they are intimately related.

⁶¹ *LG* 23: «Cura Evangelium ubique terrarum annuntiandi ad corpus Pastorum pertinent, quibus omnibus in commune.... Unde singuli Episcopi, quantum propria eorum perfunctio muneris sinit, in laborum societatem venire tenentur inter se ...».

⁶² Cf. *CD* 6; *PO* 10.

⁶³ CCEO c. 393: «Clericis, cuiuscumque sunt condicionis, cordi sit

1.1.4. Legal Foundations

Besides the theological, sacramental and pastoral foundations there are legal foundations also in this regard. The natural law, the ecclesiastical laws and the power of governance will be the main considerations under this aspect.

1.1.4.1. Natural Law

The Code recognises a number of rights enjoyed by the Christian faithful which are rooted in human dignity, for instance: the right to form associations (cc. 18, 391); right to assemble (c. 18); right to be free from any kind of coercion in choosing a state of life (c. 22); the right to have a good reputation (c. 23); and the right to have personal privacy (c. 23).

As with any right, the exercise of these rights must always be considered with a view to the common good (c. 26). Likewise, any restriction on these rights requires a cause proportionate to the right being restricted. It is stated in the council document *Dignitatis humanae*.

The common good of the society is made up of those conditions of social living which enable people to develop their own qualities most fully and easily. It consists chiefly in the safeguarding of the rights and duties of the human person.⁶⁴

The eparchial bishop and the eparchial presbyters do not cease being human; their dignity continues to give rise to the rights

sollicitudo omnium Ecclesiarum et ideo se ad inserviendum, ubicumque urget necessitas, promptos exhibeant et praesertim permittente vel exhortante proprio Episcopo eparchiali vel Superiore ad suum ministerium in missionibus vel regionibus clericorum penuria laborantibus exercendum».

⁶⁴ DG 6: «Cum societatis commune bonum, quod est summa earum vitae socialis condicium, quibus homines suam ipsorum perfectionem possunt plenius atque expeditius consequi, maxime in humanae personae servatis iuribus et officiis consistat». See JOHN XXIII, Ency. *Mater et magistra*, 15 May 1961: AAS 53 (1961) 517; GS 74. PROVOST, "Effects of Incardination", 39.

listed above. Given their public status in the society, appropriate obligation and responsibility is called for in the implementation of their rights.⁶⁵

1.1.4.2. Ecclesiastical Laws

Jesus Christ, established and ever sustains here on earth his holy Church, the community of faith, hope and charity, as a visible organisation.⁶⁶ The Church is at once a spiritual community and at the same time a visibly organised body of faithful. This Church, from its visible dimension is constituted and organised as a society in this world and it is governed by the successor of Peter and the bishops in communion with him.⁶⁷ This visible human community needs rules to maintain its external order and to promote peace among all.

By ecclesiastical laws we mean here the legal constitutions of the Church. There is "common law" (*ius commune*) and "particular law" (*ius particulare*).

c. 1493 § 1: The term "common law" in this Code signifies besides the laws and lawful customs of the entire Church also the laws and lawful customs common to all Eastern Churches.

§ 2: The term "particular law" designates all laws, lawful customs, statutes and other norms of law

⁶⁵ Cf. PROVOST, "Effects of Incardination", 39.

⁶⁶ LG 7: «...Christus Ecclesiam suam sanctam, fidei, spei et caritatis communitatem his in terris ut compaginem visibilem constituit et indesinentur sustentat...».

⁶⁷ CCEO c. 7 § 2: «Hac Ecclesia in hoc mundo ut societas constituta et ordinata subsistit in Ecclesia catholica a successore Petri et Episcopis in communionem cum eo gubernata».

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which are not common to the entire Church nor to all the Eastern Churches.⁶⁸

Pope John Paul II, at the time of the promulgation of the Latin Code said as follows:

It is sufficiently clear that the purpose of the Code is not in any way to replace faith, grace, charisms and above all charity in the life of the Church or of Christ's faithful. On the contrary, the Code rather looks towards the achievement of order in the ecclesiastical society, such that while attributing a primacy to love, grace and the charisms, it facilitates at the same time an orderly development in the life both of the ecclesial society and of the individual persons who belong to it.⁶⁹

⁶⁸ CCEO 1493 § 1: «Nomine iuris communis in hoc Codice veniunt praeter leges et legitimas consuetudines universae Ecclesiae etiam leges et legitimae consuetudines omnibus Ecclesiis orientalibus communes.

§ 2: Nomine vero iuris particularis veniunt omnes, legitimae consuetudines, statuta aliaeque iuris nomine, quae nec universae Ecclesiae nec omnibus Ecclesiis orientalibus communes sunt».

The canon mentions two subjects of law, namely "the entire Church" and "all the Eastern Churches" together as a whole. Since, however, the entire Church contains all the Eastern Churches, the laws to the latter are included logically in the expression "the laws of the entire Church". Also, "the entire Church" renders literally "Ecclesia universa", which is not the same as the "universal Church" or "Ecclesia universalis". This latter term had in fact been used in the draft prior to SCICO 1986, where it was replaced by "Ecclesia universa" (see «Schema canonum de normis generalibus»: *Nuntia* 13 (1981) 45, c. 129; «Nuova revisione dello *Schema Canonum de normis generalibus*»: *Nuntia* 18 (1984) 77), as had been done for CIC 1983. Cf. NEDÜNGATT, *A Companion to the Eastern*, 343. About customs see CCEO cc. 1506-1509.

⁶⁹ «Quae cum ita sint, satis apparet finem Codicis minime illum esse, ut in vita Ecclesiae christifidelium fides, gratia, charismata ac praesertim caritas substituantur. Ex contrario, Codex eo potius spectat, ut talem gignat ordinem in ecclesiali societate, qui, praecipuas tribuens partes amori, gratiae atque charismati, eodem tempore faciliorem reddat ordinatam eorum progressionem in vita sive ecclesialis societatis, sive etiam singulorum hominum, qui ad illam pertinent». JOHN PAUL II, *Sacrae disciplinae*, AAS 75, pars II (1983) xi. The same idea we could see in the Apostolic Constitution *Sacri canones*, AAS 82 (1990) 1033-1044. ET is taken from *The Code of Canon Law*, prepared by the CLSGBI, London, 1988, xiii.

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In the same Apostolic Constitution the Pope also stated that as one of the Church's fundamental legislative document, and because it is based on the juridical and legislative heritage of revelation and tradition, these laws must be regarded as an essential instrument for the preservation of right order, both in individual and social life in the Church's zeal. Also it is necessary since, the Church is established in the form of a social and visible unit. The Church needs rules, so that her hierarchical and organic structure may be visible; that her exercise of the threefold powers may be properly ordered and that the mutual relationship of Christ's faithful are reconciled in justice based on charity, with the rights of each safeguarded and defined. Above all, these canonical norms by their very nature demand observance.⁷⁰

As part of this ecclesial society, the laws of the Church are for both the bishops and presbyters (c. 1490). On the one hand they are obligatory and on the other hand they facilitate an orderly structure and atmosphere for practising their rights and obligations in the eparchy.

1.1.4.3. Power of Governance

It is true that there has been no other issue which has attracted so much attention in the theological and canonical circles in the post-conciliar period than the question of power of governance in the Church, its nature and source.⁷¹ We do not intend to provide a detailed study on the different positions in this regard. What matters to us is the participation of bishops and presbyters in this power and the unity of their participation.

⁷⁰ Cf. JOHN PAUL II, *Sacrae disciplinae*, AAS 75, Pars II (1983) xi-xiv.

⁷¹ McDONOUGH, "Laity and Inner Working", 231: "Gallons of ink and reams of paper have been expended - not to mention the amount of time and energy that we have been consumed - in debating the questions related to potestas, sacra potestas and potestas regiminis since Vatican II". see also VARGHESE, *The Laity and their Cooperation*, 76.

1.1.4.3.1. Power and its Meaning

The Greek word *exousia* (ἐξουσία) is translated as *potestas* in Latin. In English it is known as power or authority.⁷² In the Church, the notion of power or authority deserves special relevance and meaning especially in relation to the NT context. Jesus, the source of power in the Church, before his ascension into heaven, told his disciples "*All authority* (*exousia*) in heaven and earth has been given to me. Go, therefore, and make disciples of all nations, baptising them,... teaching them to observe all that I have commanded you" (Mt. 28: 18-20). St. Paul uses this term *exousia* to refer to the authority. It is an authority he received from the Lord himself to govern the community and to build it up (2 Cor. 10:8; 13:10). He uses this same authority to appoint persons (elders) to lead the community and to hold certain offices in the Church (Acts. 14: 23).⁷³

The term "power" in a civil society generally means political power, where as in the Church it means the right and obligation to feed and serve the flock.⁷⁴ The Second Vatican Council used the term in the sense of "service" as conferred by Jesus to his apostles and his successors (LG 21; Lk. 22:24-27). So, in the Church power is not a "dignity" or "honour" but on the contrary a "service".⁷⁵

⁷² LIDDEL & SCOTT, *A Greek-English Lexicon*, see 'exousia'

⁷³ Cf. D'ERCOLE, «Il contributo di san Paolo», 292; see also VARGHESE, *The Laity and their Cooperation*, 77.

⁷⁴ Cf. ÖRSY, "Towards a Theological Concept of Canon Law", 16. «Potestà, dunque, che trae fonte legittimativa, e conseguenti derivazioni, da quanto possa esprimere, con le sue salde radici bibliche ed evangeliche, l'immagine metaforica del buon pastore che ama il suo gregge...». SARACENI, «Problematica della potestas pastoralis», 98.

⁷⁵ «In effetti la potestà non è direttamente nella Chiesa una "dignitas" o un "onore", ma è essenzialmente un servizio ...». According to the same author the foundations of the above said three functions in the Church are based from the words of Jesus himself: "I am the truth, I am the Life and I am the way" (Jn. 14:6). Christo è la Verità, e la Chiesa ha il compito di portare al mondo il suo messaggio di salvezza. Christo la *Vita*, e la Chiesa ha la missione di trasmetterne la grazia attraverso i

1.1.4.3.2. Power and Governance

"Authority and governance in the Church is a form of shepherding undertaken by the bishop in imitation of the Good Shepherd. Governance exists for service and is not a form of dominance".⁷⁶ The term for this ministry that had been used in the Latin legal tradition, common in the CIC 1917 is *regimen*. Although this word is generally translated as "governance", the original intention was to describe "shepherding". The verb from which *regimen* is derived is *regere* and it means to direct, to guide, to govern, to administer etc..⁷⁷ Etymologically it is derived from the Greek word *poimainein* (ποιμαίνειν) meaning to herd, to tend, to lead, to pasture, to guide, to rule etc..⁷⁸ *Regimen* is used in Vatican II to refer several times to a "spiritual governance" of bishops.⁷⁹

In the Code the possession of sacred orders qualifies men to undertake the task of governance in the Church. This is a power which was earlier called *jurisdiction* and in both CIC 1983 (Titulus VIII, *De potestate regiminis*, cc. 129-144) and the Code (Titulus XXI, *De potestate regiminis*, cc. 979-995) called power of

sacramenti. Christo è la Via, e la Chiesa ha la missione di guidicare il Popolo di Dio nel cammino verso la Patria celeste. I tre poteri o funzioni affidati alla Chiesa, rispodono ai tre aspetti messianic del Cristo stesso: Maestro: *munus docendi*; Pontefice: *munus sanctificandi*; Pastore: *munus pascendi*. (LG 21) CHIAPPETTA, *Prontuario*, 923.

⁷⁶ On the biblical roots (especially in Ezekiel) of shepherding see ZIMMERLI, *Ezekiel 2*; HEMP, «Das Hirtenmotiv im alten testament», 7-20; and for a critical analysis with regard to the hierarchical power see CONGAR, *Power and Poverty in the Church*.

⁷⁷ CASSELL'S, *A Latin Dictionary*, see "rego".

⁷⁸ BAUER, *A Greek-English Lexicon*, see "ποιμαίνειν". In the Latin Vulgate there several examples. «Spiritus Sanctus posuit episcopos regere (poimainein) Ecclesiam (Acts 20:28); regat (poimanei) populum» (Mt. 2: 6). See also Jn 21: 16; 1 Pt 5: 2 etc..

⁷⁹ LG 14, 22, 23, 27; CD 3, 4, 23, 25, 27; OE 2, 1; PO 7. See FAHEY, "Diocesan Governance", 130.

governance.⁸⁰ The reason proposed for this change of terms by the Commission is as follows:

In the first canon of this title it was deemed wiser not to recede from the concepts of power of jurisdiction «*fori externi vel interni*» which are found in the present canon law. However the Consultors of the Commission preferred the «*potestas regiminis*» to the word «*potestas iurisdictionis*», because the former goes better with the triple «*munera*» of the Church, namely the distinction of the duty of governing from the duties of teaching and sanctifying, about which the Dogmatic Constitution «*Lumen gentium*» of Second Vatican dealt admirably.⁸¹

⁸⁰ In CS the title used is *De potestate ordinarria et delegata*, (Caput V, cc. 138-154) The word "jurisdiction" is used actually only once in the sense of «*regimen*» in the CIC 1983. (129 §1) In all other instances (1417 § 2, 1469 § 1, 1512 n.3) it designate the competence or power of the judge. Cf. CHIAPPETTA, *Prontuario*, 923.

«La potestà di governo (*potestas regiminis*) è detta anche potestà di giurisdizione (*potestas iurisdictionis*). Le due espressioni sono equivalenti e si trovano nella legislazione precedente (can. 196 +), ma, mentre nel Codice pio-benedittino il termine "iurisdiction" è quello normale, il nuovo Codice preferisce parlare di "potestas regiminis", un termine più esatto, in quanto la "iurisdiction" nel diritto civile odierno (come già in quel romano) serve propriamente ad indicare l'esercizio del potere giudiziario (cfr. *Communicationes*, a. 1977, p. 234, tit. V; cfr. anche art. 1 del Codice Italiano di Procedura Civile». CHIAPPETTA, *Prontuario*, 923.

«In forza poi della organizzazione concreta, datale dal fondatore Gesù Cristo stesso, vale a dire quella gerarchica con i noti gradi di primato universale e di episcopato vi è nella Chiesa un potere di governo ecclesiastico anche per diritto divino positivo». STICKLER, «La "potestas regiminis" visione teologica», 400.

⁸¹ «In huius tituli canone primo a conceptibus potestatis iurisdictionis fori externi vel interni, qui in iure vigenti habentur, visum est non recedendum. Consultores Commissionis tamen technicis vocibus «*potestas iurisdictionis*» alias voces, nempe «*potestas regiminis*» praetulerunt, quippe quae magis congruant distinctioni trium munerum in Ecclesia, muneris scilicet regendi, a muneribus docendi ac sanctificandi distinctio, de quibus Constitutio dogmatica «*Lumen gentium*» Concilii Vaticani II, praeclare agit». «*Schema canonum de normis generalibus*»: *Nuntia* 13 (1981) 7.

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Moreover, in the Code, it is said that this power exists in the Church by divine institution.⁸² It is founded on the sacred power, the power of Jesus Christ, hence the source is divine.⁸³

There are three divisions of the power of governance: legislative, executive and judicial.⁸⁴ According to the Code this power of governance can be exercised either in the *external forum* (publicly in front of the Church) or in the *internal forum* whether sacramental (the action posed by this satisfying needs of individual conscience, but acknowledgement in the external forum has to be procured separately) or non-sacramental (when the action can be revealed under certain conditions).⁸⁵

⁸² CCEO c. 979 § 1: «Potestatis regiminis, quae ex divina institutione est in Ecclesia, ad normam iuris habiles sunt, qui in ordine sacro sunt constituti». This canon reflects CIC c. 129 § 1 and c. 118 of the 1917 Code. In the latter the power of governance is also called the power of jurisdiction. It says that only clerics can obtain the power either of orders or of ecclesiastical jurisdiction as well as ecclesiastical benefices and pension. CIC 1917 c. 118.

⁸³ Cf. CHIAPPETTA, *Prontuario*, 923. For further detailed study with regard to this theme see STICKLER, «La "potestas regiminis" visione teologica», 397-410.

⁸⁴ CCEO c. 985 § 1: «Potestas regiminis distinguitur in legislativam, exsecutivam et iudicalem».

⁸⁵ CCEO c. 980 § 1: «Potestas regiminis alia est fori externi, alia fori interni sive sacramentalis sive non sacramentalis».

-§ 2: «Si potestas regiminis exercetur pro solo foro intero, effectus, quos eius exercitium natum est habere pro foro externo, in hoc foro non recognoscuntur, nisi quatenus id determinatis pro casibus iure statutur».

In CS c. 138 and in the draft of the new Code there were two phrases "etiam iurisdictionis vocata» and «seu conscientiae». One of the Consulting Organs of the Code insisted to avoid these two phrases from the new canon. The reasons proposed by them are the following; «(1) per quanto riguarda la giurisdizione, va osservato che il concetto tradizionale della *potestas iurisdictionis* non si identifica completamente, anzi è più ampio, con quello della *potestas regiminis* di cui tratta questa sezione, perchè include anche la competenza canonica che nello *ius condendum* si chiama semplicemente *facultas* (p.e. *facultas audiendi confessiones non appartiene alla potestas regiminis*); (2) quanto al *forum internum*, va segnalato che esso certamente è *forum iuridicum*, ma in quanto tale non si può semplicemente, con un «seu», equiparare al *forum conscientiae*». «Nuova revisione dello Schema Canonum de normis generalibus»: *Nuntia* 18 (1984) 42.

In the Church there are *ordinary* and *delegated* powers. The ordinary power of governance is that which goes with a given office by law itself. This can be either *proper ordinary power* (if it exercised by the office holder in his own name i.e. Pope, bishop, pastor etc.) or *vicarious ordinary power* (if it exercised in virtue of an office but in the name of another i.e. *protosyncellus*, *syncellus* etc.). The *delegated* power is that which power granted to a person other than by the office holder (to bless a particular marriage).⁸⁶

There are also *habitual faculties*. It is a power granted by the superior authority. It follows the rules of delegated power. If the faculty is granted to a hierarch it passes to his successor, unless it was granted because of some personal qualifications of the recipient, or the superior authority has said so.⁸⁷

1.1.4.3.3. The Eparchial Bishop and the Power of Governance

As we seen above this *authority* (to hold offices and exercise power) is imparted to the successors of the Apostles in order to govern and build up the Church community. In the Church *exousia* is vested to the episcopate. St. Cyprian affirms this fact by saying that the "the bishop (is) in the Church and the Church (is) in the bishop".⁸⁸ In the Directory on the Pastoral Ministry of Bishops it is stated that the bishop enjoys true authority

⁸⁶ CCEO c. 981 § 1: «Potestas regiminis ordinaria ea est, quae ipso iure alicui officio adnectitur; delegata, quae ipsi personae non mediante officio conceditur.

-§ 2. Potestas regiminis ordinaria potest esse sive propria sive vicaria».

⁸⁷ CCEO c. 982 § 1: «Facultates habituales reguntur praescriptis de potestate delegata.

-§ 2. Facultas habitualis vero Hierarchae concessa, nisi in eius concessione aliter cautum est aut electa est industria personae, non perimitur resolutio iure Hierarchae, cui concessa est, sed transit ad quemvis Hierarcham, qui ei in regimine succedit».

See CS cc. 139; For further study see POSPISHIL, *Eastern Catholic Church Law*, 684-686.

⁸⁸ CYPRIAN, *Epistola*, 69:8; *PL* 4, 406: «Plebs sacerdoti adunata et pastori suo grex adhaerens. Unde scire debes episcopum in Ecclesia esse et Ecclesiam in episcopo». For further study see DUPUY, "Verso una teologia dell'episcopato», 23-67; CONGAR, *L'episcopato e la chiesa universale*.

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over the presbyters since the bishops are successors of the Apostles (LG 20) and continue in their place the mission they received.⁸⁹

According to an Orthodox point of view, the bishop's authority is not limited to certain given fields of the Church's life. It is exercised in the teaching of doctrine which it authenticates as the common doctrine of the Church in conformity with the apostolic tradition. His authority is also asserted in the administration of the sacraments and in his pastoral office. Episcopal authority is present everywhere and every moment of the Church's life in order to fulfil the effects of all in every realm.⁹⁰

In *Lumen gentium* 21 it is stated that "the episcopal consecration, along with the office of the sanctifying, confers also the offices of teaching and governing..."⁹¹ *Lumen gentium* 27 states that "the bishops govern the churches entrusted to them as vicars and legates of Christ, by counsel, persuasion and example

⁸⁹ Cf. DPMB 32.

⁹⁰ Cf. MÉLIA, "An Orthodox Point of View", 108.

⁹¹ This statement which was already adumbrated in the draft of 10 November 1962, n. 11, and was fully debated at the Council by the Theological Commission, undoubtedly represents an advance on the ordinary theology of the schools. The justifiable distinction between the power of Orders (*potestas ordinis*) and the power of jurisdiction (*potestas jurisdictionis*) was ordinarily taken into mean that the power of Orders came from sacramental ordination while the power of jurisdiction came exclusively and ultimately from the canonical mission (*missio canonica*) from the Pope or some other possessor of pre-eminent powers. But this view did not show very clearly the intrinsic unity of the two powers and hence the ultimate oneness of their nature. Thus the Constitution, using the pattern of the three offices (*munus*), affirms that all three are conferred by consecration itself. Cf. RAHNER, "The Hierarchical Structure of the Church", 193-194.

"Another important result, as regards the ordination of bishop, is that canonical election and consecration are enough to constitute him a bishop of the Church for which he is consecrated. He has, by his very ordination, the three powers necessary for his function, so that there is no need, or even room, for a 'canonical mission' which would be added to the election-and-ordination performed in the communion of the Church so as to complete the latter for the sake of the exercise of function". DUPREY, "The Synodal Structure", 176.

indeed also by authority and sacred power which they make use of only to build up their flock".⁹²

The episcopal power which canon 178 of the Code describes as *proper, ordinary* and *immediate* is a unified exercise of authority to be used for the welfare of their community. And as we saw above in the canon 191 that this one power is divided into three spheres of governmental activity (legislative, executive and judicial) and determines the possible delegation of these spheres of activity in accordance with certain norms.⁹³

The first sphere mentioned in the Code is legislative. It refers to the issuance of laws and precepts for the people of God under his care in accordance with the norms of law. Legislators at a level inferior to the supreme authority cannot delegate legislative power unless express provision for such delegation is made in the common law (c. 985 § 2). It is to be noted that there is no such provision mentioned in the Code. Therefore the eparchial bishop must exercise this power personally. Of course it does not mean that the eparchial bishop must be absolutely self-reliant in this regard. He can have informal consultations, seek assistance of certain institutions like the presbyteral council cc. 264, 269 § 2; or the college of eparchial consultors c. 271 § 3. These institutions are established in the Church in order to assist him. Moreover, his legislative authority, in fact the entirety of his authority over the presbyters and the faithful, cannot be properly considered except in terms of service to and in *collaboration* with them.

⁹² LG 27. See also CCEO cc. 190-195.

⁹³ In consideration of the possible encroachment on the authority of the eparchial bishop by intermediary authorities like patriarchs, major archbishops, metropolitans, synod of bishops and council of hierarchs, at the outset of the revision of these canons, the PCCICOR adopted the principle that those episcopal powers delineated in LG 27 must remain intact with the supreme authority of the Church enjoying the exclusive competence to restrict those powers. «SCCHEO»: *Nuntia* 19 (1984) 15; FARIS *Eastern Catholic Churches*, 437.

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The second sphere, the executive power is the administration of laws of the Church in the exercise of the eparchial bishop's office. He can exercise this power personally or delegate it to the *protosyncellus* (c. 245), and the *syncellus* (c.246) or to any one he wishes to in accord with law.

The third sphere, judicial power, the eparchial bishop can exercise personally. But this power is usually exercised vicariously by the *judicial vicar* (c. 1086 § 1) and judges (c. 1087).⁹⁴

1.1.4.3.4. Eparchial Presbyters and the Power of Governance

As persons who share in the same priesthood of our Lord, the presbyters are considered to be close co-operators of the bishop in the threefold mission received from the Lord.⁹⁵ The representative function of the ministry is not limited to the liturgy, but it is intimately related to the leadership and that in turn to the above three spheres of power.⁹⁶

The eparchial presbyters may also enjoy the power of governance. For instance, the Code explicitly says in canon 979 § 1 that those who have been constituted in sacred orders are, in accordance with the norms of law, capable of the power of governance. which exists in the Church's divine institution.

Here the distinction between 'capable of the power of governance' and 'can cooperate in the exercise of the power of

⁹⁴ CCEO c. 985 § 2. «Potestas legislativa exercenda est modo iure praescripto et ea, quam in Ecclesia habet legislator infra supremam Ecclesiae auctoritatem, delegari valide non potest, nisi aliter iure communi cavetur; a legislatore inferiore lex iuri superiori contraria valide ferri non potest».

-§ 3: «Potestas iudicialis, quam habent iudices aut collegia iudicialia, exercenda est modo iure praescripto et delegari valide non potest nisi ad actus cuius decreto aut sententiae praeparatorios perficiendos». See CS cc. 399 § 1; FARIS *Eastern Catholic Churches*, 438-440.

⁹⁵ PO 7, 8; CD 11, 15; URRUTIA, "Delegation of the Executive Power of Governance", 348.

⁹⁶ Cf. WOOD, "Priestly Identity", 115.

governance' calls for our special attention. The Code explicitly says that the Christian faithful 'can cooperate in the exercise of the power of governance' in accordance with the norm of law (c. 979 § 2). The former refers to the potentiality and possibility to have it, while the latter refers only to a mere assistance in it.

The possession of sacred orders is indispensable in certain offices for instance ordination, celebration of the divine liturgy, sacrament of reconciliation etc.,. This can never be delegated to lay persons. The faithful can cooperate in the exercise of this power in accordance with the norm of law (c. 979).⁹⁷

In other words, according to the Code, the possession of sacred orders qualifies men to exercise governance in the Church. There are certain offices in the Church, for the exercise of which requires sacred orders. Only ordained persons may be able to obtain certain kinds of offices which are exclusively reserved to the ordained (bishop c. 178, chancellor c. 252 § 1, and parish priest c. 279).⁹⁸

⁹⁷ Those who have received the sacred order are capable of the above said powers.. According to STICKLER, «... i soggetti attivi di questo potere cioè le persone abili ad averlo sono coloro che hanno ricevuto l'ordine sacro». STICKLER, «La "potestas regiminis" visione teologica», 400.

CCEO and the CIC 1983 certainly goes beyond the 1917 Code in accepting explicitly that the lay people may exercise the governmental powers. For instance patriarchal fiscal officer (CCEO c. 122 § 1. In the Schema on the Hierarchy of the Oriental Churches this office was then reserved to the clerics as it was in CS. «SCCHEO»: *Nuntia* 19 (1984) c. 93 § 2, 2.: "oeconomus patriarchalis munus clericum... committatur". But the in the denia recognition of SCHEO one of the proposal was to admit also the lay persons to this office. «La nuova revisione dello Schema canonum de constitutione hierachia»: *Nuntia* 22 (1986) 89, c. 93; eparchial fiscal officer (CCEO c. 262 § 1) etc.,. For further study with regard to laity and their participation in the governmental activities of the Church see VARGHESE, *Laity and their Cooperation*, 1-307.

CIC 1983 used the same word for three powers «munus» (function, office, service). Thus *munera docendi, munera sanctificandi et regendi* (cc. 375 § 2; 519, 1108 etc.)

⁹⁸ Cf. RICCARDO, *Bishop-Priest*, 26.

The sacred order is requiring for the following offices. To be a member of the presbyteral council (CCEO 264); to be a protopresbyter (CCEO c. 276; CS c. 483); to be a member of the college of eparchial consultors (CCEO c. 271 § 4; CS c. 458-463);

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Precisely, in the eparchy, the bishop enjoys enormous power in the legislative, executive and judicial spheres. But in order to concretise or to exercise these powers in the eparchy entrusted to his care he should have the co-operation from presbyters. He can fulfil this need either by way of informal consultations (legislative) or by seeking real assistance from them (executive and judicial).

2. PARTICULAR FOUNDATIONS

As we have mentioned above there are several common foundations for the rights and obligations of eparchial bishops and eparchial presbyters. Aside from these there are some particular basis in this regard. By particular basis we mean those which are not common, but are related to their rights and obligations. Among the particular factors the following are the major ones.

2.1. Bishop and Eparchy

In the Decretals of Gregory IX it is stated that the episcopate is a mystical wedding between the bishop and his eparchy.⁹⁹ Bishop in the theology of St. Cyprian, concretised the congregation, was looked upon as united to it by a bond as indissoluble as that of marriage.¹⁰⁰ This is undoubtedly an important factor. It brings to us the deep symbolism of a human wedding; the comparison between natural and spiritual bonds. To emphasise the point of indissolubility of the union it uses the close

to be a protosyncellus or syncellus (CCEO c. 247 § 2; CS c. 433 § 1-§2); to be judicial vicar or an adjutant judicial vicar (CCEO c. 1086 § 4) etc.,.

⁹⁹ C. 2 X, *de translatione episcopi*, 1, 7, nn. 8-18: «Quum ergo fortius sit spirituale vinculum quam carnale, dubitari non debet, quin omnipotens Deus spirituale coniugium, quod est inter episcopum et ecclesiam suo tamen iudicio reservaverit dissolvendum, qui dissolutionem etiam carnalis coniugii, quod est inter virum et feminam, suo tantum iudicio reservaverit, praecipiens, ut quos Deus conjunxit, homo non separet. ...».

¹⁰⁰ Cf. KIRK, *The Apostolic Ministry*, 275.

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natural bond and in turn illustrates the holy intimacy between the bishop and the eparchy.

As in the tradition of the Church, both oriental and occidental, only the episcopal eparchy is considered as the basic unit of the Church. Episcopal ministry is necessary for a perfect unit of the Church. Thus the parish *per se* lacks the immediate presence of the episcopal ministry and consequently the fullness of sacramental ministry. Moreover, the apostolicity is guaranteed by the bishop and not by the presbyter, because bishops are the successors of the apostles and they connect their 'particular Churches' with the apostolic tradition and faith.¹⁰¹

The general understanding of the early Church was certainly very strong concerning the relation between eparchy and bishop. This is an outcome of the spiritual and mystical understanding of episcopacy. Thus they were generally against the "translation" (= taken into or transfer) of a bishop from one eparchy to another for various reasons (I Nic. c. 15).¹⁰²

¹⁰¹ Cf. PALLATH, "Liturgy Makes the Church", 75.

¹⁰² Nic. I, c. 15: «Propter multam perturbationem et seditiones quae fiunt placuit consuetudinem omnimodis amputari, quae praeter regulam in quibusdam patribus videtur admissa: ita ut de civitate ad civitatem non episcopus, non presbyter, non diaconus trasferatur. ...». See Chalco. cc. 5, 10, 20; Carth. c. 54; Nic. II, cc. 10, 15. On account of the great disturbance and the factions which are caused, it is decreed in the first ecumenical Council, (Nic. I, c. 15) that neither bishop nor presbyter nor deacon shall transfer from city to city.

According to Hefele the "translation" of a bishop, priest, or deacon from one church or parish to another church or parish, had already been forbidden in the primitive Church. Nevertheless, many "translations" were taking place, and even at the council of Nicea several eminent men were present who had left their bishoprics to take others. (For instance Eusebius, bishop of Nicomedia, had been bishop Berytus; Eustathius, bishop of Antioch, had been bishop Berrhoœa in Syria). Thus the council thought the necessity to forbid future translations, and declared them invalid. The main reason of this prohibition was found in the irregularities and disputes occasioned by such translation of places; but even if such practical difficulties had not arisen, the whole doctrinal idea, so to speak, of the relationship between a cleric and the Church to which he had been ordained, namely, the contracting of a mystical marriage between them, would oppose to any translation or change. In 341 in the Synod of Antioch (c. 21) the decision of I Nicea, was renewed again.

But the interest of the Church often rendered it necessary to make exceptions

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The Apostolic canon 15, on the contrary, does not forbid the practice of "translation" absolutely, but allows it for just cause.¹⁰³ According to some, the Nicean canon does not prohibit the transfer of bishops, but forbids bishops to move themselves i.e., the thing prohibited is "transmigration" and not "translation" - the 'going' not the 'being taken' to another see. For many centuries this was the practice of both East and West.¹⁰⁴

For Balsamon there are three kinds of transferences: because of ones special ability the council transfers one from a small to bigger eparchy in order to make use of his service; when one eparchy has been laid low by the Barbarians and is transferred to a vacant one; and when a bishop either having or lacking a see 'goes' to another one which is vacant, on his own proper authority. The third kind is punishable (decreed by Council of Sardica).¹⁰⁵

In the West, Cardinal Bellarmine disapproved the prevailing custom of *translations* and protested against it to his master, Pope Clement VIII, reminding him that they were contrary to the canons and contrary to the usage of the Ancient Church, except in case of necessity and of great gain to the

(e.g., In the case of St. Chrysostom). The exceptions increased after holding of the council of Nicea, so that in 328, St. Gregory of Nazianzum considered this law among those which had long been abrogated by custom. But it was more strictly observed in the Latin Church. Pope Damscus even declared himself decidedly in favour of the Nicean decree. Cf. PERCIVAL, *The Seven Ecumenical Councils*, 32-33.

¹⁰³ Also the canons of some provincial councils especially the 3rd and 4th Council of Carthage, it is clear that despite of the conciliar or papal prohibitions, translations did take place. They even invoked the aid of the secular power for this. Cf. PERCIVAL, *The Seven Ecumenical Councils*, 33.

¹⁰⁴ Cf. PERCIVAL, *The Seven Ecumenical Councils*, 33-34: "Roman catholic writers have tried to prove that translations, at least to the chief sees, required papal consent, but Thomassinus, considering the case of St. Meletius having translated St. Gregory of Nazianzum to Constantinople, admits that in so doing he "would have followed the example of many bishops of the first ages, when usage had not yet reserved translations to the first see of the Church". For further study in this regard see THOMASSIN, *Ancienne et nouvelle*, Livre II, Chap. XXIX, 460-471.

¹⁰⁵ PG 137, 282-283.

Church. The pope entirely agreed with these wise observations, and promised that he would himself make, and would urge princes to make, translations only "with difficulty".¹⁰⁶

In the formulation of the Code this concept of the relationship between the bishop and the eparchy has been given due importance. Because of the drastic changes in the world and as a result in the Church, the Code is not against the transference of a bishop (cc. 965, 972-973), but it tried to maintain the basic spiritual concept of the early Church. For instance as we have seen in the first Chapter, based on *Christus dominus* 11a, canon 177 of the Code defines the eparchy in which the bishop is immediately prominent as its completing part. One cannot conceive of an eparchy without a bishop. In the constituting of an eparchy, aside from other factors, there must be a bishop. It is up to the competent ecclesiastical authority to appoint him. The bishop unites all the "portion of the people" into a community and constitutes all elements in it for its common end.¹⁰⁷ In short he has a position in the eparchy as its center of unity, head, co-ordinator of the apostolate and the like.

2.1.1. Center of Unity

In the care of the eparchy, Christ has placed the bishop as the visible sign of unity. He stands in a spousal relationship with respect to his community, representing Christ, the divine Spouse.¹⁰⁸ The *episcopos* or the bishop is the guardian and guarantor of all the unity in the whole ministry of the eparchy.¹⁰⁹

106 PERCIVAL, *The Seven Ecumenical Councils*, 35.

107 Cf. BROGI, "Norms on Eparchies", 109.

108 JOHN PAUL II, «Ad Bangaladesiae episcopos limina»: *AAS* 85 (1995)

68.

109 KIRK, *The Apostolic Ministry*, 12.

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The eparchial bishop being the leader of a sacramental community, is to be a principle of unity in catalysing the ministerial recourses of the eparchy in service to the world.¹¹⁰ The Conciliar Document says, "In any community of the altar, under the sacred ministry of the bishop, there is made manifest a symbol of that charity and "unity of the mystical body without which there can be no salvation".¹¹¹ Thus, the bishop is the visible source of unity in his eparchy. He represents his own eparchy in the entire Church (*LG* 23). He represents the eparchy in all its juridical affairs.¹¹² Hence, in order to maintain this unity in the eparchy, the bishop must have rights over his presbyters, and at the same time he has more obligations too.

2.1.2. Head of the Body

In the eparchy entrusted to his care, the power, which the bishop exercises personally in the name of Christ, is proper, ordinary and immediate. However, its exercise is ultimately regulated by the supreme authority of the Church and can be restricted within certain limits in view of the benefit to the Church or to Christ's faithful (c. 178). Because of this power he has a sacred right and a duty before the Lord of legislating for and of passing judgement on their subjects, as well as regulating everything that concerns the good order of divine worship and of the apostolate. Also in the pastoral field he exercises the power which he possess in his own right and is called, in the true sense of the term, the prelate of the people whom he governs (*LG* 27). That indicates the eparchial bishop is the head of the eparchy. By this fact, all the faithful including presbyters are his subjects and

110 Cf. GREEN, "The Diocesan Bishop", 326.

111 *LG* 26a: «In quavis altaris communitate, sub episcopi sacri ministerio, exhibetur symbolum illius caritatis et "unitatis corporis mystici, sine qua non potest esse salus».

112 *CCEO* c. 190.

being a leader he has several rights over them and at the same time he has many obligations towards them.

2.1.3. Co-ordinator

As described in the first Chapter the eparchial bishop is in charge of all the faithful in his eparchy. He is the shepherd and thus he teaches, sanctifies and governs his people (LG 20).¹¹³ The Decree on the Pastoral Office of Bishops in the Church states that "the various forms of the apostolate should be encouraged. Close collaboration and the co-ordination of all the apostolic works under the direction of the bishop should be promoted in the diocese as a whole or in parts of it".¹¹⁴ In the Directory on the Pastoral Ministry of Bishops it is stated that the eparchial bishop considers it his duty not only to stir up, encourage and increase the energies within his eparchy but also to weld them together so as to avoid harmful scattering and useless duplications as well as destructive dissensions, while at the same time always preserving the lawful rights and liberty of the faithful.¹¹⁵ Also it is to be noted that the eparchial bishop is to regulate and co-ordinate effectively the apostolic activities in his eparchy. He should know all those who are involved in this task especially his presbyters (CD 23).

Being the central figure of the eparchy, the bishop gathers the people of God through the gospel and the Eucharist in the Holy Spirit (c. 177; CD 11). The eparchy has been entrusted to him to be shepherded in his own name. He governs it as the vicar and legate of Christ (c. 178). And it is his duty to foster various forms

¹¹³ «Il Vescovo diocesano è il pastore di tutti i fedeli e di tutte le comunità nell'ambito della diocesi...». COCCOPALMERIO, "Note sul concetto di ufficio", 69.

¹¹⁴ CD 17: «Variae foveantur apostolatus rationes atque in universa dioecesi, vel in eiusdem peculiaribus regionibus, omnium operum apostolatus, sub moderamine Episcopi, coordinatio atque intima coniunctio,». See CCEO c. 415 § 1.

¹¹⁵ DPMB 97: «Suum esse officium ducit Episcopus vires quae in dioecesi operantur non solum stimulare, animare et augere sed etiam inter se componere, ut damnosae vitentur dispersiones, vel inutiles duplicationes vel deletrices discordiae, servatis tamen semper legitimis iuribus ac libertate fidelium».

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of the apostolate in his eparchy (c. 203 § 1). He is the co-ordinator of the different apostolates and as well as all the pastoral activities in the eparchy.

2.1.4. Promoter of *Presbyterium*

"The priests constitute one priesthood with their Bishop; they are pledged to serve the local Church, sharing the mission of the Bishop and his priestly charge in their own way. This is really what is meant by the presbyteral communion".¹¹⁶ The bishop sees to it that the presbyters of his eparchy constitute one *presbyterium* in the Church in union with him and in union with one another by the bond of the Sacrament of Orders and through the various obligations that have been entrusted to each.¹¹⁷ The presbyters, as collaborators of the episcopal order, form with their bishop a sole *presbyterium* and participate, in an ancillary degree, in the only priesthood of Christ.¹¹⁸

According to Schillebeeckx in the Eastern Orthodox ecclesiology the emphasis is placed above all on the collegial leadership of bishop with his *presbyterium* or college of priests in the local church, which is the point of departure for every ecclesiology.¹¹⁹

¹¹⁶ CARTER, "Bishop-Priest-laity Relationship", 154.

¹¹⁷ Cf. DPMB 109a; LG 28, CD 28, PO 7, 8.

¹¹⁸ Cf. PDV 17; AG 19; DMLP 13. The presbyter is, in fact inserted into the Ordo Presbyterium. DMLP 25.

¹¹⁹ Cf. SCHILLEBEECKX, "Editorial" 8. Moreover he says "The collegial leadership of the local community is expressed in the relationship between the bishop and his college of priests, but the practice that has been current since the ninth century and the law that has been in force since the end of the sixteenth century, according to which priest have to make a promise, a vow or an oath of obedience to their bishop (at the time of their ordination as subdeacons), go back to a feudal social custom. Collegial collaboration between priests in conjunction with, subject to, the guidance of their bishops was given an actual social form in a kind of feudal oath made by the priest to his "liege lord", the bishop. Clearly, non-theological structures play a part in the actual relationship between the priest and his bishop. The question therefore arises as to how a more democratic leadership can be brought about in the Church in a situation in which social relationships have changed to the extent that absolute power structures have either

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We saw in the first Chapter how the bishops, the presbyters and the *presbyterium* as presented in the Letters of Ignatius of Antioch. There we saw a strong and intimate bond with mystical overtones between the bishop and presbyterium.¹²⁰ Based on the same Haarsma says,

This relationship is not one of equality: the *presbyterium* is subject to the bishop as the apostles were to the Lord. On the other hand they share in the bishop's authority so that the community owes the same obedience to both. The college of presbyters is the bishop's senate and shares with him the responsibility for the well-being of the ecclesial community. Bishop and *presbyterium* are therefore two-in-one, inseparable and invisible, as the strings of the zither form one whole with the instrument itself (Eph. 4.1). The obedience of presbyters and the authority of the bishop are lifted on to the level of a higher unity of love by a supernatural bond. This common bond with the bishop is at the same time the principle of unity among the members of the *presbyterium*.¹²¹

In short the Sacrament of Orders binds them together in the same *presbyterium* whose head is the bishop. He is the head because he is invested with the fullness of the Sacrament of Orders and he is the steward of the grace of the supreme priesthood. And in a concrete sense this *presbyterium* and its headship is a continual realisation of communion between the bishop and the presbyters as both are members of the one and the same presbyterate. Thus, in

disappeared or are at least sharply criticised, without any disobedience to Christ, the one Lord of the Church, or any lack of fidelity towards the apostolic office. *Concilium* 8 (1972) vol. 1, 9-10.

¹²⁰ Cf. HAARSMA, "The Presbyterium", 32.

¹²¹ HAARSMA, "The Presbyterium", 32.

an eparchy, all the presbyters together form one single body of presbyters, the *presbyterium*, which necessarily includes the person of the bishop who possesses the fullness of priesthood.

2.2. Presbyters and Ascription

Since adequate pastoral care requires an appropriate measure of mutual knowledge (Jn. 10:14), which can be gained only over a period of time, the spiritual growth of the people would suffer without a stable ministry. The eparchial bishop, the one ultimately responsible for providing the pastoral care in the eparchy, must also rely upon the more or less permanent attachment of the presbyters of the eparchy. If the presbyters could freely or arbitrarily move from eparchy to eparchy, the control of the eparchial bishop would be severely weakened. Also, an effective check on ambition and avariciousness would vanish if the presbyters could hire themselves out to the highest bidder. Likewise, in the protection of eparchial rights does the Church at large find the fixed attachment of the presbyter (the clergy) advantageous.¹²²

Every presbyter, on being ordained must have a canonical title. As a rule, he is ordained for the service of the Church.¹²³ According to Souckar,

There are three effects of the reception of the sacrament of orders which are pertinent here: the indelible character of the sacrament of orders, incardination, and entrance into the clerical state. ...

¹²² Cf. LYNCH, "Historical Notes: The Clergy and the Diocese", 7.

¹²³ Despite this fact, the Decretals mention presbyters ordained without having a canonical title, and monks ordained priests but barred from taking charge of souls. C. 13 X, *de aetate et qualitate* and c. 37, VI, *de praebendis et dignitatibus* 111, 4. Not in the same sense, but we can say a presbyter contracts a spiritual ties with a particular parish and, once a parish priest, he is give on the pastoral care of the souls.

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In the case of diocesan clergy this same ordination incardicates the cleric into a particular diocese.¹²⁴

The word 'ascribere' means "to write in, add in writing, to enrol, put on an official list" etc..¹²⁵ "The term '*adscribere*' or '*ascribere*' means to 'enter in a list, to enrol' or to enlist as a member in a group or category".¹²⁶ It is a general term, and is used in CIC 1917 and *Cleri sanctitati* variously. For instance in CIC 1917 it is used "*damnatae sectae adscripti*" (c. 693 § 1), joining associations of the faithful (cc. 693 § 3; 696 § 1), like "*tertio Ordini adscribere*" (cc. 703 §2; 704, 705). In *Cleri sanctitati* we find «baptizari illi ritui adscriptus habeatur cujus caeremoniis baptizari debuit» (c. 6 § 2), here *ritus* means *communitas fidelium* or a Particular Church. It is to be noted that CS keeps the same term *adscriptio* for the specific case of clerics being ascribed as a cleric in an eparchy (cc. 44-52). Although CIC 1917 uses special terms in this context, *incardinatio* and its opposite *excardinatio*, it also includes *doecesi vel religioni adscriptus* (c. 111 § 1). Also it is under the title I "*De clericorum adscriptione alicui dioecesi*" that CIC 1917 places together the canons on incardination and excardination (111-117).¹²⁷ The new Latin Code uses both terms in its title: "The ascription or incardination of clerics" (*de clericorum adscriptione seu incardinatione* cc. 265-272).

¹²⁴ SOUCKAR, "Return to Ministry", 606-607.

¹²⁵ Cf. CASSELL'S, *A Latin Dictionary*, 60-61. The Latin Code used technical terms like "incardinatio" and "excardinatio" (cc. 265-272). Instead of that, "ascriptio" and "dimissio" (= ascription and dismissal) are used in CCEO (cc. 357-366). These two terms, "incardinatio" and "excardinatio", though useful, are avoided in the CS (44-52) as well as in the new Schema for CCEO, since they were felt to be proper to western canon law, that is, as terms though the discipline is common to both East and West and goes back to the earliest centuries (cf. Apost. cc. 14, 15, 16; Nic. I, cc. 15,16). The revision of the CS canons follows closely to the norms and thinking of the Second Vatican Council with its special concern for pastoral service (CD 6; PO 10; ES I, nn. 3-4). NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 7.

¹²⁶ NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 7.

¹²⁷ NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 7.

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The Code has not adopted the terms "*incardinatio*" and "*excardinatio*", since these were felt to be typically Latin terms, and as a consequence the Code has to use several words like "*ascriptio ut clericus*" and "*dimissio ab eparchia.....*" as the equivalents of the single terms used in CIC 1983.¹²⁸

Canon 15 of Nicea I is likewise applicable to presbyters, because it is decreed that neither bishop nor *presbyter* shall transfer from city to city. Canon 16 of the same council repeats the same prohibition as in the previous canon. It states that no clergy recklessly removed from their own Church, ought by any means to be received by another Church, but that every constraint should be applied to restore them.¹²⁹ According to Balsamon, it seemed right that the clergy should have no power to move from city to city and to change their canonical residence without a dimissorial letter from the bishop who ordained them.¹³⁰

¹²⁸ NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 7; NEDUNGATT, *A Companion to the Eastern*, 121. "To incardinate" in its first usage at the time Gregory the Great (590-604), means to transfer a cleric from the church of his ordination to another church. Cf. LYNCH, "Historical Notes: The Clergy and the Diocese", 6.

From 12 to 18 centuries the term "incardinate" did not appear in official documents, such as Decretals of Gregory IX or the canons of the Council of Trent. Widespread of this term along with its correlative "excardination" began only in the latter part of the 19th century, when the Roman Curia adopted it to signify the permanent attachment of a cleric to a new diocese after transfer from another. Cf. McBRIDE, *Incardination and Excardination of Seculars*, 10. Instead *incardination* and *excardination* the terms *cooptare* and *incorporare* were used throughout most of the 19th century. Cf. LYNCH, "Historical Notes: The Clergy and the Diocese", 6.

¹²⁹ Nic. I, c. 16: «Quicumque temere ac periculose neque timorem Dei prae oculis habentes nec agnoscentes ecclesiasticam regulam discedunt ab ecclesia presbyteri aut diaconi vel quicumque sub regula modis omnibus adprobantur, huiusmodi nequaquam debent in alia ecclesia recipi, sed omnem necessitatem convenit illis inferri, ut ad suas paroecias revertantur, aut si non fecerint oportet eos communione privari.....».

See also Apost. cc. 15, 16.
¹³⁰ PG 137, 286.

Also presbyters (clerics) were ordained not for the eparchy at large but for a specific charge. Canon 6 of the Council of Chalcedon decreed that no one whether presbyter or deacon or any one at all who belongs to the ecclesiastical order, is to be ordained unless specially affiliated to a city or village church or to a martyr's shrine or to a monastery. The second part of the same legislation went so far as to declare that "ordinations of those ordained absolutely is null (akuros) and that they can function

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The Second Vatican Council dealt in several documents with the presbyter's relationship to the eparchy. *Christus dominus* noted that eparchial presbyters, "being ascribed (incardinated) or appointed to a particular church, they devote themselves fully to the service of that church for the purpose of feeding one section of the flock of the Lord". The decree continued, "in this way they perform one priestly body and one family, whose father is the bishop".¹³¹ *Presbyterorum ordinis* state that the presbyters share the episcopal ministry which is conferred on them by the sacrament of order and the canonical mission (n. 7).

However, the Council exhorts that the bishops and presbyters must be solicitous not only for their own churches but also for those parts of the world in which the word of God has not yet been proclaimed or in which, especially on account of the scarcity of presbyters, the faithful are in danger of falling away from the obligations of the Christian life or even of losing the faith itself. Both the eparchial bishop and the presbyters have special obligations in this regard (*CD* 6; *PO* 10).

Almost immediately after the Council, in August 1966, Pope Paul VI implemented some of its decrees through the *motu proprio Ecclesiae sanctae*. There are certain regulations that secure a suitable distribution of the clergy of their own territory and those of coming to it from abroad in this *motu proprio*.¹³²

The Code clearly states in canon 357 § 1 that 'every cleric' must be ascribed as cleric either in an eparchy or an exarchy or some other institute, society or association that has obtained the

nowhere to the disgrace of the one who ordained them. A presbyter, then, was not ordained in general but to a specific title (*titulus ordinationis*). For further study see Lateran III (1179), c. 5; Trid. (1562), cc. 6; 18 etc.,.

A "title" in the CIC 1917 Code signified both a place of service and a source of sustenance; and incardination only a place of service (c. 111 § 2).

¹³¹ *CD* 28: «...quippe qui, ecclesiae particulari incardianti vel addicti,cuius pater est episcopus».

¹³² *ES* 1, nn.2-5.

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right to ascribe.¹³³ Normally it is through the diaconal ordination that a person is ascribed as a cleric in the eparchy for whose service he is ordained.¹³⁴

Canon 357 § 1 of the Code prohibits a cleric from being unattached or in an itinerant status at any time. That clerics 'are the public servants in the Church' is the true spirit behind this canon. No one should be inducted into the clerical state except for the necessity or utility of the Church.¹³⁵ If clerics were permitted to roam about at will, the spiritual needs of the people of God could not be properly provided.¹³⁶

Ascription is the canonical title of service, a bond of incorporation into an eparchy or similar entities, which cannot be broken except as provided by law. A bishop is not permitted to dismiss a presbyter ascribed into his eparchy without a process of

¹³³ CCEO c. 357 § 1: «Quilibet clericus debet esse ut clericus ascriptus aut alicui eparchiae aut exarchiae aut». In this canon, CS c. 44 and 52 have been revised; the latter canon but makes room for the discipline of Particular Churches like the Armenian and the Syrians, for whom clerical ascription can be not only to the eparchy but to the Particular Churches as such (§ 2). NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 8.

¹³⁴ CCEO c. 358: «Per ordinationem diaconalem aliquis ut clericus ascribitur eparchiae, pro cuius servitio ordianatur,». The same canon further state an exception, «nisi ad normam iuris particularis propriae Ecclesiae sui iuris eidem eparchiae iam ascriptus est».

"If, as is now proposed, the future Code should restrict itself to those in Major Orders (Cf. *Nuntia* 3 (1976) 56 and 60), clerical ascription should take place, vi juris communis, through ordination to the diaconate. And this would leave to the Particular Churches the competence regarding legislation on the ascription of the Minor Clergy: either not to ascribe them till the diaconate (this would imply leaving the Minor Clergy as 'vagi', meaning not ascribed to any eparchy as clerics) or to ascribe them through the first Minor Orders, not probably however through tonsure alone apart from a Minor Order, as this practice is not according to genuine Oriental tradition; and here Vatican II decree about to return to pristine discipline (Ecc. Orient. n. 6) would surely be applicable". NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 8.

¹³⁵ Cf. LYNCH, "Inscription or Incardination", 191. "Private devotion, honour and convenience are not sufficient justification for ordination as they had been up until the Council of Trent". Cf. LYNCH, "Inscription or Incardination", 191.

¹³⁶ The Church knows well from the experience of the past, ambition and avarice can lure the clergy away from poor areas to more affluent ones. Cf. LYNCH, "Inscription or Incardination", 191.

dismissal. A presbyter, on the other hand, unless legitimately released, remains subject to the eparchial bishop, no matter where he goes or what employment he undertakes. A new affiliation must occur only concomitantly with any separation, since a presbyter may never be unattached or independent of ecclesiastical authority (cc. 359-360).¹³⁷ Hence, it is a presupposed fact with regard to eparchial presbyters that they were or must be already ascribed into one eparchy.¹³⁸

It does not mean any transfer from the ascribed eparchy is forbidden. One can reasonably transfer according to the norm of law (c. 359). For a higher motive, for example the evangelization of the whole world, the Code indicates that a transfer from the eparchy of ascription or a move to another should not be denied by the bishop (cc. 361, 90 § 2).¹³⁹

2.2.1. Effects of Ascription

The ecclesiastical discipline which attaches presbyters (clergy) permanently to an eparchy has maintained remarkably constant throughout the centuries. Once ordained for an eparchy, the presbyters are not permitted to transfer elsewhere without the permission of the eparchial bishop. Presbyters unilaterally abandoning their eparchy of ordination forfeit the right to function in the ministry. The ministry has meaning only in ecclesial context. Thus this ecclesial relationship whereby a presbyter is bound to his eparchy is known as technically as "ascription".¹⁴⁰

¹³⁷ Cf. LYNCH, "Inscription or Incardination", 193.

¹³⁸ CCEO c. 364 reads as follows: «Ascriptio clerici alicui eparchiae non cessat nisi alteri eparchiae valida ascriptione vel amissione status clericalis». See CS c. 50. See further understanding COLAGIOVANNI, «Incardinazione ed escardinazione», 49-57.

¹³⁹ Pope Paul VI through the m.p. *ES 1* (*AAS* 58 {1966} 757-758), on the implementation of the decrees *CD*, *PO* and *PC* had given some instructions with regard to the transfer. This is in order to secure, taking account of the needs of the various Churches a, more suitable distribution of the clergy. See nn. 3, 1-5.

¹⁴⁰ Cf. LYNCH, "Historical Notes: The Clergy and the Diocese", 26.

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It is due to this ascription of a presbyter in a particular eparchy that there arises a unity, and above all a juridical relationship between the eparchial bishop and the presbyter. It is therefore, distinguished from the ontological sacramental relationship (of divine law) which flows from the reception of the Sacrament of Orders but on the other hand it is an ecclesiastical bond. In other words ascription constitutes an authentic juridical bond. But this bond also has spiritual value, since from it springs "the rapport with the bishop in the sole presbyterate, sharing in the ecclesial solicitude, in dedication to the care of the flocks in specific historical conditions and settings".¹⁴¹

Each priest, through canonical incardination vows himself definitely to the service of ministry in a particular church, in the service of a particular bishop. And all the priests of each particular church "make a single priesthood with their bishop". Thus the priesthood is in itself a definite form of priestly fellowship: the presbyteral communion, the communion of all the priests in the diocesan mission. Each priest receives from his bishop the final canonical definition of his mission, by being placed, generally in the midst of an "individual local community " of the faithful.¹⁴²

The law of ascription has, by and large, worked to the advantage of the eparchy and the Church as a whole. It has given stability to the ministry and ensured the on going service to the people of God. At the same time, the authority of the eparchial bishop is safeguarded in that the presbyters may not on impulse leave the eparchy in search of a more congenial ministry.¹⁴³ Of

¹⁴¹ Cf. DMLP 26; RICCARDO, *Bishop-Priest*, 42.

¹⁴² URRESTI, "The Ontology of Communion", 8.

¹⁴³ Cf. LYNCH, "Historical Notes: The Clergy and the Diocese", 26.

course, this does not mean that there is no scope or provision for the missionary needs of the Church.

The legal status of being a "cleric" is constituted by those rights and obligations specified in law which are designed to support ordained ministries in the Church. There is a unique relationship which exists between an ordained minister, in the context of our study between presbyter, and his eparchy of ascription. He is thus bound to obedience, service, and a personal life style established by the Church as a support to this ministry. The eparchy of ascription is bound to provide training, spiritual support, and financial support to his presbyters. While there is no explicit contract, the canonical system is such that in exchange for the dedication of his life the presbyter is assured the spiritual and material supports he needs to live and to minister.¹⁴⁴ Hence by the ascription, not only is the presbyter bound to the eparchy, but the eparchy is bound to the presbyter responsible for his support.

Thus, by ascription the presbyters are incorporated into the eparchy. By this the presbyters establish a spiritual and juridical relationship with the eparchy, for whose service they are ordained, and with their bishop. Ascription, being a permanent bond, both the parties acquire rights and obligations.¹⁴⁵

2.3. Presbyters and Obedience

As we have seen already the bond between eparchial bishop and presbyters arises from the theological, sacramental and canonical foundations. Presbyters' obedience to their bishop emanates fundamentally from their sacerdotal dignity and canonical mission entrusted to them in the Church. However, in between the eparchial bishop and the presbyters there exists an

144 PROVOST, "Ecclesiological and Canonical Principles of Incardination" 31.

145 In the next Chapter we will list those rights and obligations. See CCEO cc. 362 § 2, 190, 367-393 etc.,.

element of fraternal co-operation. Their relationship is reciprocal: the presbyters must respect the rights and obligations of their bishop and above all his dignity in fraternal charity and the bishop must respect the rights and obligations of their presbyters and above all their dignity in fraternal charity. Further more the presbyters must show honour, reverence and obedience to their bishop.

The discussion about the obedience of the presbyters to the bishop has been a matter of concern in all circles of the Church. On the one hand there is a tendency to over emphasise the authority of the bishop. On the other hand there is a tendency to stamp it in terms of "structural domination", "repression" and so on.¹⁴⁶ Hence it is relevant to have an idea with regard to the obedience due the bishop in general and that of the presbyters in particular.

2.3.1. Obedience to the Bishop

In the sacred canons there are several mentions with regard to priestly obedience toward their bishop. In the Apostolic canon 31 it is stated that if the presbyter, despising his own bishop, shall collect a separate congregation, and erect another altar, not having any grounds for condemning the bishop with regard to religion or justice, let the presbyter be deposed. The bishop, however may do this after three admonitions.¹⁴⁷ Number 39 of the Apostolic canon speaks that the presbyters should not do anything without the sanction of the bishop. The reason is that it is the bishop who is entrusted with the people of God and of him will be required the account of their souls.¹⁴⁸ And in canon 55 it is further affirmed

¹⁴⁶ Cf. MÜLLER, "Obedience to the Bishop", 79.

¹⁴⁷ Apost. c. 31: «Si quis presbyter contemnes episcopum proprium extra collegerit et altare aliud erexerit et aliquid aliud fecerit, nihil habens, in quo reprehendat episcopum in causa pietatis et iustitiae..... secundum et tertiam obsecrationem episcopi convenit».

¹⁴⁸ Apost. c. 39: «Presbyteripraeter episcoporum consilia nihil agere pertemptent. Nam domini populus ipsi commissus est, et pro animabus eorum hic

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that if the presbyter insults the bishop, he may be deposed, because it is said that "you shall not speak evil of the ruler of your people".¹⁴⁹

A meaningful question here is: "what has 'obedience of the presbyters' to do with a bishop's exercise of authority in his eparchy"? In order to understand this we can start from the Pseudo-Dionysian theory of illumination: as the highest vehicle of the Spirit, the bishop has a duty to "enlighten" all his subordinates, so that in general there can be no safer or soother path for a cleric or a layman than obedience to his bishop.¹⁵⁰

In the West this idea has a predominantly legal stamp. The holder of an office is regarded as having the prerogative of leadership; as a result of this legal position' there is a duty of unconditional obedience to a legitimate incumbent. In both cases there is duty of obedience derived directly and formally from the bishop's supernatural "title".¹⁵¹

The idea on "structures of domination" in the Church is also an important element to be noted here. The bishop-presbyters relationship includes a shade of "non-theological" quasi-feudal remnants. Hence it is not surprising that one may misunderstand the concept of obedience towards the bishop with a negative interpretation of the bishop's claim to obedience.¹⁵²

redditurus est rationem».

¹⁴⁹ Apost. c. 55: «Si quis clericus iniuriam episcopo faciat iniuste, degradetur "principem enim populi tui non male dices"». Laod c. 56: Presbyters may not enter and take their seats in the bema before the entrance of the bishop. See also Carth. c. 31.

¹⁵⁰ Cf. MÜLLER, "Obedience to the Bishop", 80. This idea is found as early as the third century in the *Didache*. See *Didache*, chap. 15: JOURNEL, *Enchiridion Patristicum*, 4; QUASTEN, *Patrology*, 33-34.

¹⁵¹ MÜLLER, "Obedience to the Bishop", 80.

¹⁵² Cf. MÜLLER, "Obedience to the Bishop", 81.

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But here in this work our task is to find out the true spirit and meaning of obedience to the bishop. For instance if an eparchy is to be "alive", and if it has an appropriate structure, of which the office of the eparchial bishop is part, it is clear that much of this "life" depends on the bishop's directives and on the "obedience" of the members of the Church especially of the presbyters. Hence the relevance of the bishop in the eparchy and the significance of the stock phrase "the bishop is the Church". The bishop is therefore undoubtedly an accountable leader of the Church.¹⁵³ And on this ground the eparchial bishop is to fulfil the role of leader of a fraternal community. The function, "governing" here means more than giving orders. The bishop should see that in his eparchy every element of the eparchial organisation functions. It is therefore indispensable on the part of the presbyters to obey their bishop, in order that the eparchial governance may function smoothly.

2.3.2. Obedience of Presbyters

The presbyters are part of a complex organism in which they have a special ministry and mission to fulfil. While sharing the same priesthood and the mission of the bishop they are necessary co-operators of bishops. On their part, the obedience becomes a commitment or submission to the will of God. It is an essential obligation on their part to be fulfilled towards their bishop. Thus those who commit themselves totally to the life of the eparchial Church play their part as an obedient subject. But when we speak of the obedience of the presbyters towards their bishop we mean the canonical obedience.

2.3.2.1. Canonical Obedience

Obedience is a virtue which prompts an individual to do the will of a superior. An individual is free to act differently. For a

¹⁵³ Cf. MÜLLER, "Obedience to the Bishop", 83-84.

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believer the motivation of such a virtue is supernatural, i.e., done for the love of God and neighbour.¹⁵⁴ The obedience which the presbyter owes to the bishop is canonical obedience and is restricted to those matters determined by common and particular laws.¹⁵⁵ Moreover it is determined by several factors; the clerical status, office and also the extent of the episcopal powers over one subject. The bishop can enforce the common laws of the Church over his presbyters and the presbyters are bound by these laws, according to their state of life.¹⁵⁶

The bishop and the presbyters have a collective responsibility in the eparchy. They have a shared responsibility to advance the cause of the Church. (*LG* 28, *PO* 15). "To serve the Church as an ordained minister carries with its serious implications. Prominent among them are obedience to Church authority and personal exemplarity of life".¹⁵⁷ In other words the obedience of presbyters to their bishop is a key element of the bishop's governmental function in the Church. The presbyters are bound themselves to obey the legitimate directions and to fulfil the assignments given to them (c. 371 § 2). And in this sense the obedience of the presbyters can also be taken to mean a subjection to the authority of the bishop because the bishop is the one who enforces the common (cc. 367-392) and particular laws regarding the clerical discipline in the eparchy. Canon 1446 of the Code says

¹⁵⁴ Cf. FARIS, *Eastern Catholic Churches*, 256.

¹⁵⁵ This is different from the religious obedience. It is also owed to a religious superior. But it arises from a vow or some other commitment made upon joining a community. It is more extensive than that of the canonical obedience of the presbyters because the former embraces all stages of the member's life.

Religious obedience is owed to religious superior arising out of a vow (c. 410) and has no limitation, except those found in the statutes of each institute of consecrated life. In *PC* 14 religious obedience is understood as leading to freedom, maturity, human dignity and respect of persons. It is directed towards serving God by following the example of Christ.

¹⁵⁶ This obedience does not mean that one cannot use one's openness and common sense in certain matters. But once the bishop made a decision, the presbyters have to obey it.

¹⁵⁷ CORIDEN, *An Introduction*, 62.

that one who disobeys one's hierarch's lawful order or prohibition, must be punished after warning.

2.3.2.2. Presbyters' Promise of Obedience

In the liturgical ceremony of ordination to the priesthood we see the promise of obedience to the bishop (oath of allegiance): *Promittis mihi et successoribus meis reverentiam et oboedientiam? Promitto.* This ritual is found first recorded at the end of the thirteenth century. It was officially adopted by Rome in 1596, goes back, as Jugmann has shown, to an old High German "priest's oath" of ninth century, which made the priest a kind of vassal to the bishop, and bound him in particular to remain in the bishop's service and not to move to another eparchy. In a time when it was common for bishops to be involved in politics, such an oath of allegiance of presbyters to the bishop became necessary. As early as the ninth century, we find synods objecting to the oath's being interpreted as setting up a feudal relationship. Here it is important to note that the complex historical inheritance of the priest-bishop relationship contains not only mystical and theological components, but also elements connected with civil and even with political laws.¹⁵⁸

The promise of obedience is a Liturgical ceremony existing in all the Church both Western and Eastern. Prior to sacred ordination, the candidate is required to make a promise of

¹⁵⁸ Cf. MÜLLER, "Obedience to the Bishop", 80-81.

It was Boniface who on November 30, 722, was consecrated a bishop by Pope Gregory II. He took the promise of obedience which the suffragan bishops of the Roman province made to the Pope. The first ordination rites to contain promises of obedience for both bishops and presbyters are found in the Romano-Germanic Pontifical of the tenth century. Cf. STRIEDER, *The Promise of Obedience*, 4-5. For further study see SCHNEIDER, *Obedience to the Bishop*, 1-328.

On the first Thursday of his pontificate, Pope John Paul II invited presbyters of the *universal presbyterate* to renew the promises made at ordination in order to promote unity in the *presbyterium*. *Holy Thursday Letter to Bishops*, April 8, 1979: *AAS* 71 (1979) 392.

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obedience to the bishop in those matters in which he is subjected to the authority of the bishop. In fact, this promise promotes the ongoing relationship between the presbyters and their bishop

Like Christ's, the presbyter's obedience express the will of God which is made manifest to the presbyter through his legitimate Superiors. The virtue of obedience, intrinsically required by the sacrament and by the hierarchical structure of the Church, is clearly thus promised by the presbyter, first in the liturgy of diaconal ordination, and then in priestly ordination (DMLP 61).

In the Code there is no direct mention of this promise of obedience. It mentions only a written declaration on the part of the candidate. For a candidate to the presbyterate to be licitly ordained, he must submit to the proper eparchial bishop a declaration signed in his own hand, in which he attests that he will of his own accord and freely receive the sacred order and accept the obligations attached to it and that he will devote himself perpetually to the ecclesiastical ministry, requesting at the same time that he be admitted to receive the sacred order (c. 761). However it did not mention about the promise of obedience as now used in the Liturgical ritual.

Here the point emphasised is the free will and maturity of the candidate to take up the faith commitment. In fact, for the Church the need is not so much to ask obedience of its ministers (in reality which is essential for the governance of the Church), but to declare their willingness for service in the Church. The promise of obedience is relational, dynamic and reciprocal. That means it demands an active role on the part of both the one making the promise and the one to whom the promise is made. It shapes the lives of both parties. In other words the one making the promise should understand what it means to follow Christ and the one to

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whom the promise is made should understand what it means to lead and build up the body of Christ.¹⁵⁹

Here the question is whether the bishop can impose any obligation to his presbyters on the basis of their promise of obedience. In relation with this theme the author Müller states as follows:

We may say, firstly, that it is wrong to start positivistically from the promise and say : "The promise was made, therefore the priest is in such and such a relationship to the bishop. When a particular interpretation of the promise cannot be related to the real or desirable situation it should be abandoned. On such grounds the promise was at very early date freed from its association with feudal obligations.

Finally, we should remember that priests are "the bishop's presbyterium" from a sociological viewpoint too. Functionally, they relate more closely to him. The whole contemporary structure of the diocese could not function without a much closer functional relation between the priests and bishop than between the bishop and the ordinary layman. In matters of education, appointments, and church activity, the bishop must be able to exercise an immediate authority. At the same time the relaxation of social relations within the Church means that in questions of ordinary life, such as dress, individual life-style and political or social activity, the priest increasingly feels in the same position with regard to the bishop as any other member of the diocese. In this area it would only

¹⁵⁹ Cf. STRIEDER, *The Promise of Obedience*, 167-168.

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be an unnecessary exercise of legal and moral authority if a bishop tried to enforce and outdated interpretation of the duty of obedience.¹⁶⁰

This practical interpretation of presbyters' obedience does not mean that the concept is secularised, and that the eparchial bishop relates to the presbyters more as, say, a logical government official. Sociological theory must make sociological sense. But as a whole it is taken up into the sphere of faith, where the Church is the Body of Christ and every ecclesial encounter is an encounter with Christ. This really means that the basic law of love, unity and peace must govern every relationship on both sides, eparchial bishop and the presbyters, and that, objectively, the building up of the Body of Christ remains the unchanging common goal.¹⁶¹

The Decree on the Pastoral Ministry and Life of Priests states as follows:

Priests for their part, bearing in mind the fullness of the sacrament of order given to bishop, should respect in them the authority of Christ the supreme shepherd. They should, therefore, be loyal to their own bishop with true love and obedience. Such obedience on the part of the priests is permeated with a spirit of co-operation, and is founded on that very sharing in the episcopal ministry which is conferred on them through the sacrament of order and their canonical mission.¹⁶²

¹⁶⁰ MÜLLER, "Obedience to the Bishop", 86.

¹⁶¹ Cf. MÜLLER, "Obedience to the Bishop", 86.

¹⁶² *PO* 7: «Presbyteri autem, ante oculos habentes plenitudinem sacramenti ordinis qua episcopi gaudent, in ipsis revereantur auctoritatem Christi supremi Pastoris. Suo igitur episcopo sincera caritate et oboedientia adhaereant. Quae sacerdotalis oboedientia, cooperationis spiritu perfusa, fundatur in ipsa participatione ordinis et missionem canonicam confertur». See also *PO* 14-15.

In fact, presbyters are co-operators with the bishop in his mission. In the same decree number 15, obedience is placed in the context of hierarchical communion and is understood as leading to a more mature freedom for those who serve.

Cleri sanctitati canon 63 states, all "clerics", but "chiefly" presbyters, are under the special obligation to show respect and obedience to their own hierarchs.¹⁶³ In canon 370 of the Code it is stated that clerics are bound by a special obligation to show reverence and obedience to the Roman Pontiff, the patriarch and the eparchial bishop. The word "chiefly" as seen in the *Cleri sanctitati* is omitted in the new Code and the canon generally states that all 'clerics' are bound by this obedience and reverence.¹⁶⁴ And the Code, reflecting the conciliar teaching (*PO 7*), treats the theme of "special obligation" (*speciali obligatione*). This is to distinguish and specify the particular obligation of the presbyters over and above the other faithful in the Church.

3. PRINCIPLES AND DIMENSIONS

3.1. The Principle of Subsidiarity

The principle of Subsidiarity, an important development in the realm of the Church, is an out come of the secular society¹⁶⁵ and it plays an important role in the government of the Church. It is a principle that consists in allowing or enabling the individual or the lower organs of society, according to their own initiative and condition, to do, with authenticity and integrity, all they can do in the existing context. In this, the role of the superior figure or

¹⁶³ CS c. 63: «Omnes clericī, praesertim vero presbyteri, speciali obligatione tenentur suo quisque Hierarchae reverentiam et obedientiam exhibendi.....». Instead of the word bishop CS used the word hierarch.

¹⁶⁴ CCEO c. 370: «Clerici speciali obligatione tenentur Romano Pontifici, Patriarchae et Episcopo. eparchiali reverentiam et oboedientiam exhibendi».

¹⁶⁵ According to John Finnis this principle is one important development of the Aristotelian political science, drawing on but going well beyond Aristotle's critique of Plato's communism. Cf. FINNIS, *Natural Law*, 159.

organs is to help individuals or the 'lower' units when necessary, empowering or enabling them to fulfil their tasks by themselves.¹⁶⁶ This principle rules the actions of the society, first of all, by non-interference with the activities of the individuals or lesser societies when these have the capacity to fulfil the proper task by themselves and secondly, by assistance to the individuals or lesser societies when these are not by themselves capable of fulfilling those particular tasks.¹⁶⁷

3.1.1. Teachings of the Church

The principle of Subsidiarity has been popularised by recent Popes under the name of Subsidiary Function or Subsidiarity. Pope Pius XI referred to it as such in his encyclical letter on the social order, *Quadragesimo anno*, stating that it is wrong to withdraw from the individuals what they can accomplish by their own ability and effort and entrust it to a group. It is an injury and at the same time a serious evil and a disturbance of right order to assign to a larger body or for higher communities to arrogate to themselves functions which can be performed efficiently by smaller and lower communities. Of its very nature the real aim of all social activity should be to help (*subsidium affere*) members of a social body, and never to destroy or absorb them.¹⁶⁸

¹⁶⁶ FINNIS, *Natural Law*, 146-147, 169; PALLATH, *The Synod of Bishops*, 74.

¹⁶⁷ For Beyer this principle regulates the relationship between the citizens and the state, limiting the competence of the state or a society to a subsidiary level, to accomplish only those things which the individuals or the lower organs are incapable of doing. Cf. BEYER, «Principio di sussidiarietà», 319-320. This is described as a social metaphysical principle in BERTRAMS, «De principio subsidiaritatis in iure canonico», 3-65. For further study see UTZ, *Das Subsidiaritätsprinzip*, Hiedelberg, 1953.

¹⁶⁸ PIUS XI, *Quadragesimo anno*, 79: *AAS* 23 (1931) 203: «... sicut quae a singularibus hominibus proprio Marte et propria industria possunt perferri, nefas est eisdem eripere et communitati demandare, ita quae a minoribus et inferioribus communitatibus effici praestarique possunt, ea ad maiorem et altiorem societatem avocare iniuria est simulque grave damnum ac recti ordinis perturbatio; cum socialis quaevis opere vi naturae sua socialis debeat, numquam vero eadem destruere et absorbere». See FINNIS, *Natural Law*, 159.

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Pope Pius XII affirmed this principle which was proposed by his predecessor, in an address given in a consistory in 1946, by stating that the same principle as in the case of individuals, applies equally to smaller and inferior communities and also larger and superior communities. By its very nature the true aim of all social activity should be to help its members and never to destroy or absorb them. These are, rather truly enlightening words which apply to social life and also for the life of the Church, without prejudice to the hierarchical structure.¹⁶⁹

The documents of the Second Vatican Council especially in *Gravissimum educationis* and *Gaudium et spes* mentioned this principle. But it is to be noted that these comments were made in the context of civil society.¹⁷⁰

Pope Paul VI in his opening homily at the end of the Extraordinary Synod in 1969 accepted this principle of Subsidiarity in its basic sense. But the Pope stressed that this principle cannot in any way be confused with the demand for that "pluralism" which would do harm to the faith, the moral law and the principal forms of sacramental, liturgical and canonical

¹⁶⁹ PIUS XII, «La elevatezza», *AAS* 38 (1946) 144-145: «...parole veramente luminose, che volgono per la vita sociale in tutti i suoi gradi, ed anche per la vita della Chiesa, senza pregiudizio della sua struttura gerarchica».

In, 1957, while speaking on Subsidiarity of the laity in the Church for the consecration of the world, the same Pope Pius XII again mentioned this principle. PIUS XII, «Quelques aspects fondamentaux»: *AAS* 49 (1957) 926-927.

Pope John XXIII had mentioned this principle in his encyclical *Mater et magistra*, II: *AAS* 53 (1961) 413 and also in *Pacem in terris*, IV: *AAS* 55 (1963) 294.

¹⁷⁰ *GE* 3, 6; *GS* 86. Of course the Fathers of the Council had invoked this principle in the Council during discussions about bishops and the eparchial government. Cf. *Acta synodalia sacrosancti concilii oecumenici* II, 4, 454, 639-640. More details about this see KOMONCHAK, "Subsidiarity in the Church", 309-313; KARRER, "Il principio di sussidiarietà nella Chiesa", 589-615.

After Vatican II, in 1967, the Synod of Bishops discussed the applicability of the principle of subsidiarity in the Church and voted for its application in the Latin Code. In the voting, the results were 128 *placet*, 58 *placet iuxta modum*, and 1 *non placet*. Cf. CAPRILE, *Il sinodo dei vescovi* 1969, 136.

discipline, forms whose purpose it is to preserve unity in the whole Church.¹⁷¹

In the Directory on the Pastoral Ministry of Bishops it is affirmed that "The bishop takes care that he does not ordinarily take upon himself what can well be done by others; rather, he carefully respects the legitimate competencies of others and also gives his co-workers the powers they need and favours the just initiatives of individual believers and of groups".¹⁷² In one of his addresses to the Roman Curia on 28 June 1986, Pope John Paul II exhorted that any employment of the principle of Subsidiarity in the life of the Church must be made without prejudice to the hierarchical structure of the Church and to the nature and exercise of the primacy of the Roman Pontiff.¹⁷³

3.1.2. In the Legal Sphere

In the revision of the Latin Code the principle of Subsidiarity was proposed as one of its guidelines. For instance in the fifth guideline it is stated that the principle of Subsidiarity should be more broadly applied to the Church legislation in order to strengthen the bond between the exercising authority and those subject to the authority.¹⁷⁴

During the formulation of the Code the principle of Subsidiarity was given due consideration. As a result, in the

¹⁷¹ *AAS* 51 (1969) 719, 729. «...Neque memorata norma ulla refutabitur negatione siquidem alterum principium, cui a "pluralismo" nomen, ita praeferri oportebit, ut neque fidem offendant, quae ipsum recipere nequit, neque generalem Ecclesiae disciplinam ...»

¹⁷² «Episcopus curat, ne quod ab aliis bene peragi potest, ordinarie sibi faciendum assumat, sed e contrario legitimas aliorum competencias diligenter observat, facultates quoque, quibus opus sit, cooperantibus tribuit et iustis fidelium, sive singulorum sive consociatorum, inceptis favet». *DPMB* 96: *EV* vol.4, 1328.

¹⁷³ Cf. *CAPRILE, Il sinodo straordinario* 1969, 470-471.

¹⁷⁴ Cf. «Principae quae codicis iuris canonici recognitionem dirignat»: *Comm.* 2 (1969) 80-81; See *ALESANDRO, "General Introduction"* 6; For the application of the principle in different canons see *BEYER, «Principio di sussidiarietà»*, 322-335.

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"Guidelines for the Revision of the Code of Oriental Canon Law", which were approved at the First Plenary Assembly of the Commission of the 18-23 March 1974, greater emphasis was given to this principle. The commission proposed the following factors for a more effective and extensive application of this principle.

1. Thanks to their traditional structure within the One Church of Christ, the Oriental Churches have, to a certain extent, adhered to the principle of Subsidiarity all through the ages, even if without explicit reference to it.

For a more extensive and more effective application of this principle, the following criteria must be borne in mind.

2. The new Code should limit itself to the codification of the discipline common to all the Oriental Churches, leaving to the competent authorities of these Churches the power to regulate by particular law all other matters not reserved to the Holy See.

3. That which the individual bishops are empowered to do in their respective dioceses should not be withdrawn from them, since their "power, which they exercise personally in Christ's name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful" (*LG 27*).

4. In the same manner, also, it must be borne in mind that, ordinarily, the bishop should not do that which others in his diocese are in a position to carry

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out, on the contrary, he should be careful to respect the legitimate competence of others, grant his co-operators the requisite faculties of which they are in need, and support the rightful initiatives both of individuals and of groups.

5. In particular, norms governing the Presbyteral Council should be drawn up, for this is an institution made necessary by the special hierarchical communion of the priestly order and the episcopate. Furthermore, the Oriental Code should take into consideration the great usefulness of Pastoral Councils in which the diocesan community can organically prepare the pastoral programme and implement it in an efficacious manner (*CD 27; PO 7*).¹⁷⁵

As from the above details it is very clear that the Church has highlighted the importance of this principle without prejudice to her hierarchical structure and mystical sacramental nature. What is more important in our context is its extensive application in the Code. Thus it became the duty of the faithful as a whole to carry out the proposed precepts in the Code with sincere hearts and good will.¹⁷⁶ So the eparchial bishop, being the head of the pastoral activity in the eparchy and the head of the *presbyterium*, takes care that he does not ordinarily take upon himself what can well be done by presbyters; rather, he carefully respects the legitimate competencies of presbyters because they are his co-workers. He should give them the necessary powers they need and favours them in their just initiatives. At the same time, the presbyters in their turn, should be aware of this principle and especially their role

¹⁷⁵ "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 21-22. This principle has greatly influenced in the formulation of the canons of the CCEO in all its sections, especially with regard to particular law. Cf. ZUZEK, "Particular Law", 44.

¹⁷⁶ JOHN PAUL II, *Apost. Const. Sacri canones*: AAS 82 (1990) 1044.

regarding it in the Church. Therefore they should be mindful of their obligation towards the Church, and use their abilities, initiatives etc., according to this principle.

3.2. Co-operation

"Co-operation" is one the fundamental dimensions with regard to the rights and obligations of the eparchial bishop and presbyters. Without co-operation it is extremely difficult to practice one's rights and obligations. Thus the understanding of rights and obligations is necessarily connected with a dimension of mutual assistance or co-operation.

In the Second Vatican Council we see mention of this particular dimension in several places. The following are some of the instances: presbyters are prudent co-operators of the episcopal order and its instrument and help (*LG 28*); presbyters are ordained to be prudent co-operators or assistants of the episcopal order (*CD 28, 15*); they are co-workers of the episcopal order (*PO 2*); it is the first task of presbyters as co-workers of the bishop to preach the Gospel of God to all men (*PO 4*); they are indispensable helpers of the bishop (*PO 7*); the obedience of presbyters towards their bishop is permeated with a spirit of co-operation (*PO 7*); close union between presbyters and bishop is needed all the more today (*PO 7*) etc.,.

The Code clearly says "the eparchy entrusted to a bishop is to be nurtured by him, with the co-operation of the *presbyterium*" (c. 177). Thus the *presbyterium* together with its head, shares the work of salvation and thus forms a unity among its members in Christian charity.

As we saw, the presbyters basically share with the bishops the one identical priesthood and ministry of Christ. This very unity of presbyters' in sacerdotal dignity and mission requires their union with the order of bishops. In other words presbyters are called to be co-operators with their bishop. This co-operation should be

spiritual and hierarchical, and entails certain peculiarities, such as recognising in the bishop the authority of Jesus Christ, the Supreme Pastor; accepting with respect and love his role as head of the eparchial community; and actively collaborating with him, in apostolic obedience. On the part of bishops, they should consider their presbyters as "brothers and friends"; they should know them personally, visit them frequently and take to heart their material and spiritual welfare.¹⁷⁷ Thus, such co-operation should unite the rights and obligations of bishop and priests in an eparchy together, because ultimately they aim at the good of the entire eparchial community.

3.3. Personal Dimension

As we saw, the idea of *presbyterium* and the principles of communion and Subsidiarity etc. perfect the bishop-presbyter relationship and that in turn helps them to have a deep awareness of their rights and obligations in the field of pastoral ministry. But above all, this is not a relationship between institutions or juridical structures, but between human persons. Ultimately it is a question that touches two persons: bishop-presbyter. So what is of value here is more the personal dimension than the institutional, for instance, dialogue, interpersonal meetings, listening, caring, gatherings, mutual understanding and the like.

The degree, extent and various levels of this personal dimension, cannot be fully and perfectly formulated in law. The concrete expression of living relationship are far more complex and demanding and they require greater attention and personal commitment than legal formulations can offer.

¹⁷⁷ Cf. *PO* 7; *LG* 28. Further study see LEGAULT, «La nouveauté des perspectives», 217.

4. NATURE OF RIGHTS AND OBLIGATIONS

The rights and obligations of the eparchial bishop and eparchial presbyters have its own specific nature. Through a close analysis of the above mentioned factors and principles in relating to our theme, we formulate the following aspects.

4.1. Reciprocal

As described above, the source of the call to the clerical state is God alone. Because of their fundamental union in Sacred Orders, the rights and obligations of the bishop and presbyters have a spiritual and sacramental nature. Although there is a sacramental gradation between bishop and presbyter, their rights and obligations are mutually related. This mutual relationship of their rights and obligations in itself is the expression of the pastoral nature of their office as pastors of souls.¹⁷⁸ Here the idea is not "participation" but rather a common responsibility for preaching the Gospel (cc. 196, 608, 367), celebrating Liturgy (c. 198, 199 § 1, 667), pastoral guidance (cc. 178, 203, 368) etc.,.

However, in between the eparchial bishop and the presbyters there exists an element of fraternal co-operation. Hence their relationship is also reciprocal. This reciprocal nature of their relationship demands an action from both, bishop and presbyters that something is given and received in return. The eparchial bishop has certain rights and obligations towards his presbyters and likewise the eparchial presbyters have certain rights and obligations towards their bishop. Both the bishop and presbyters must respect these reciprocal rights and obligations.

4. 2. Unity and Diversity

There is a fundamental equality of all believers preceding all types of structural differentiations within the community:

¹⁷⁸ Cf. RICCARDO, *Bishop-Priest*, 23.

baptism, destiny, Lord, missions etc.,¹⁷⁹ As for every Christian faithful, there exists a fundamental dignity and equality between the bishop and presbyters. Each contributes to and co-operates in the building up of the Body of Christ (c. 11). Each has the right to be treated with respect due to equal members of the eparchial family. But, the same equality transcends the very real difference between them. That means each has the right to be treated with the respect due to his status or office in the Church.¹⁸⁰ All the more, the bishop and presbyters have the right and obligation to remain in active communion with each other.

4.3. Interdependent

The Dogmatic Constitution on the Church explains that the presbyters depend on their bishop in the exercise of their proper power. Under his authority the presbyters teach, sanctify and govern the portion of the flock assigned to their care (*LG* 28). At the same time, in order to fulfil his mission in the eparchy, the bishop requires the co-operation and assistance of his presbyters. Therefore the rights and obligations of the bishop and presbyters in an eparchy are interdependent.

From a sociological point of view they are interdependent regarding their functions. This may be said to be a functional interdependence and, so to speak, a functional relationship. The eparchial structures, for instance different offices, pastoral works etc., could not function without this interdependence.¹⁸¹

¹⁷⁹ Cf. GREEN, "The Diocesan Bishop", 332.

¹⁸⁰ Cf. CORIDEN, "The Vindication of the Parish Rights", 25.

According to Haarsma, the distinction between bishop and presbyter should not be seen so much in a difference of spiritual power but rather in the difference of the level and extent of its exercise. For instance the same function which the presbyter fulfils for a limited group, at a specific place or in a special field, is fulfilled by the bishop for a larger group or a larger region. This means the distinction is therefore more quantitative than qualitative, although the former will imply the latter to a certain extent. Cf. HAARSMA, "The Presbyterium", 35.

¹⁸¹ MÜLLER, "Obedience to the Bishop", 86.

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It is well stated in *Presbyterorum ordinis* that the priestly ministry, being the ministry of the Church itself, can only be fulfilled in the hierarchical union of the whole body of the Church. Hence their special call, mission and pastoral charity urges the presbyters to act with their bishop. Within this communion and obedience they should act and dedicate their own will to the service of God and their fellow Christians. Also, they should accept and carry out in a spirit of faith the commands and suggestions of their bishop.¹⁸² In other words it is the presbyter who makes the bishop present in the individual local communities of the faithful.¹⁸³

In the Code canon 192 § 4 states that the bishop is to have special concern for the presbyters and further he is to listen to them as his helpers and advisers. At the same time the Code c. 370 states that the presbyters are bound by a special obligation to show reverence and obedience to their eparchial bishop. Both canons are complementary and express their interdependence. This interdependence can also mean the provision of support to or reception of assistance from each other.

It is a fact that the presbyters are dependent on the eparchial bishop in many ways. But here we should not disregard or forget the fact that the bishop is also a dependent person, of course in a special way, to his presbyters. To co-ordinate pastoral work and apostolates in the eparchy, the presbyters are indispensable to bishops. He cannot do everything by himself in the eparchy without the assistance of the presbyters. He needs their prudent co-operation, support and advice (*LG* 28). In short, both of them must articulate interrelationship within the community or eparchy so as to reflect the values of fundamental equality and functional diversity in realising the Church's mission.

¹⁸² *PO* 15: «Ministerium autem sacerdotale, cum sit ministerium ipsius Ecclesiae, non nisi in communi hierarchia totius corporis adimpleri potest.».

¹⁸³ *PDV* 16; *DMLP* 13.

4. 4. Goal Oriented

The sacred and basically structured nature of the Church as a community manifests that the juridical character as well as all the offices in the Church exist for the purpose of promoting the supernatural life. The juridical structure of the Church, with the laws and precepts, rights and obligations, which flow from it, must be in accord with the supernatural end of the Church. It is true that not all the norms in the Code are aimed directly towards a supernatural goal or directly at promoting pastoral care. But we cannot deny the fact that the supernatural determinations and aspirations distinguish the laws of the Church from human or profane laws.¹⁸⁴

By her very nature the Church is missionary (*AG* 2). All the faithful in the Church have the right and obligation to spread the divine message of salvation to all over the world (c. 14). The rights and obligations of bishop and presbyters as mentioned in the Code have definite purpose, which is the salvation of all (cc. 289 § 1, 727, 1397, 1519 § 1).

4. 5. Service (*Diaconia*)

The authority of the bishop is not a dictatorship or domineering, rather it should be understood and practised in the form of service.¹⁸⁵ Thus Pope John Paul II said "The task of the shepherds or pastors of the people of God; was indeed to be that service "which is called very expressly in Sacred Scripture *diaconia* or ministry".¹⁸⁶

¹⁸⁴ Cf. RICCARDO, *Bishop-Priest*, 59.

¹⁸⁵ Cf. RICCARDO, *Bishop-Priest*, 15-16.

¹⁸⁶ *PB Introductio* : AAS (1988) 841: «... ut Ecclesia, Dei Populus, constitueretur atque eiusmodi Populi sui Pastorum munus esset revera servitium, quod "in Sacris Litteris 'diaconia' seu ministerium significanter nuncupatur». Acts 1:17-25; 21:19; Rom 11:13; I Tim 1:12; *LG* 21a.

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The National Consultation on Evangelization held under the auspices of the Catholic Bishop's Conference of India discussed as follows:

Bishops and priests should see their role as pastors and leaders. In this context, imperial titles such as 'Excellency', 'Eminence', 'Grace', 'Lord' etc. should be dropped.¹⁸⁷

The power and authority which the eparchial bishop enjoys with regard to presbyters is always of a pastoral and vicarious nature. This is entirely different from the power and authority of human societies, since humble and brotherly service is proposed as the fundamental rule for its exercise (Mt. 20:26). Furthermore, its exercise calls for kindness and courtesy, patience and compassion, and at the same time a need to be strong and firm in making just decisions.¹⁸⁸

As explained above, the motivation of the rights and obligations of the bishop and the presbyters is nothing but *love*. That is a communion in love. So the authority or hierarchical dignities do not implement the power as in the civil legislation but on the other hand they are established in the Church in order to do service (*diaconia*) for others and to each other. The principle is "not to be served but to serve" (Mt. 20: 28). "All authority is exercised in the spirit of service, as *amoris officium*".¹⁸⁹ Canon 327 of the Code affirms that the ministers are constituted in the Church for the service of the people of God (*ad populum Dei servitum*).¹⁹⁰ This same "service" is the spirit of rights and obligations in the Code.

¹⁸⁷ *Paths of Mission in India Today*, Resolution no. 47, (4- 9, January 1994), 19; KOODAPUZHA, "The Ministers in the Church", 19.

¹⁸⁸ Cf. DPMB, 32-34.

¹⁸⁹ DMLP 16; DPMB 32-34.

¹⁹⁰ For further understanding see CCEO cc. 346 § 2, 7^o (Students are to be educated according to the mind of the Church and its service ... mutual cooperation ...),

4.6. Hierarchical

Chapter III of the Constitution on the Church takes up as its general theme one which is obviously indispensable in Catholic ecclesiology, is "the hierarchical constitution of the Church". "This order is deliberate, since in the order of the history of salvation and objectively the nature of the Church is prior to its organisation, though it never existed in fact without this constitution".¹⁹¹

As a fact the ministerial priesthood is necessarily ordered one for the other, because each in its own way participates in the only priesthood of Christ and on the other hand, they are essentially different and are hierarchically structured.¹⁹² "This structure is rightly called 'hierarchical', since it consists of a gradation of 'sacred powers', which is what the notion of the hierarchy entails".¹⁹³ The ministry of governing the Church is divinely entrusted to bishops and is exercised by them (*LG* 18-22). They do this with the collaboration of the other sacred ministers (*LG* 7, 10, 13). The relationship between bishop and presbyters can also be called hierachical.¹⁹⁴ Canon 324 of the Code expressly states that clerics are bound together by hierarchical communion. They who are constituted in various degrees, bishops, presbyters and deacons (c. 325), and participate in diverse ways in the one ecclesiastical ministry of divine origin.¹⁹⁵

368, 358, 366 § 1, 4°, 748 § 1, 1021 § 1 etc.,.

¹⁹¹ Cf. RAHNER, "The Hierarchical Structure of the Church", 186.

¹⁹² Cf. DMLP 6, 24. For further study see FAGIOLO, *La spiritualità*, X, XIX-XX.

¹⁹³ GALOT, *Theology of the Priesthood*, 77.

¹⁹⁴ Cf. HAARSMA, "The Presbyterium", 32. The council of Trent for various reasons, did not define explicitly that this hierarchical superiority was of divine institution. VALES, *Bishops and Presbyter*, 6. For further study see GILLMANN, *Zur Lehre der Scholastik*.

¹⁹⁵ CCEO c. 324: «Clerici inter se communione hierarchica iuncti et in variis gradibus constituti unum ministerium ecclesiasticum divinitus institutum diversimode participant».

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Presbyters are not the successors of the apostles, as bishops are, but they are co-operators and helpers of the bishop. The power of the presbyter is lower in rank than that of the bishop, not in the sense that the priestly functions are of another category, but in the sense that the power of the presbyter is dependent upon the bishop as well the use of it as in its extent: i.e., as well as in the pastoral and the juridical affairs.¹⁹⁶

In the eparchy, according to order of the sacramental orders, the bishop enjoys a more considerable autonomy of action and hierarchical dignity than the presbyters. The bishop is the ordinary minister of all the sacraments. Hence between the bishop and presbyters there exists a hierarchical order in the Church. The presbyters are subordinate to the bishops. The rights and obligation of both subjects are ordered according to this hierarchical structure.

4.7. Binding

The ecclesiastical laws in general bind those who are subject to them (cc. 1490- 1491). These laws by their nature are obligatory. If they are not obligatory they have no force of law (*vim iuris obtinere potest*). Normally the ecclesiastical laws begin to oblige after three months have passed from the date set down on that issue of the *Acta* (c. 1489). So the bishops and the presbyters are on the one hand under the protection and guidance of the Code and on the other hand are obliged to know and practice the norms and bound by its regulations.

4.8. Defensible

We are living in a civil society where we can see an increased sensitivity for the defence of the rights of people. "It is a maxim of the civil law, normally quoted by the unsuccessful party,

¹⁹⁶ Cf. REEPER, "Relation of Priesthood to Episcopate", 348-349.

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that some one has stolen justice and hidden it in the law".¹⁹⁷ As in civil society also in the Church we can see now an increased sensitivity for defending one's own rights.

The faithful, can legitimately vindicate and defend their rights which they enjoy in the Church before a competent ecclesial tribunal, in accordance with the norms, of law (c. 24 § 1). According to Bishop Grocholewski this right has an undeniable theological basis insofar as they are correlative to each one's obligations and that in turn are oriented toward fulfilling God's Will. The proclamation of rights in the Church would be empty if adequate defence of these rights were not possible.¹⁹⁸

In the Church, laws are to foster justice and order. Justice has something to do with one's relationship and dealings with other people; it is 'inter-subjective' or interpersonal. Also, there is a question of justice and injustice only where there is a plurality of individuals and some practical questions concerning their situation and /or interactions *vis-à-vis* each other.¹⁹⁹ In relation to our theme this personal dimension is very clear and thus the possibility of the denial of rights and disregarding the obligations cannot be ignored.

The "Guidelines" which were approved at the First Plenary Assembly of the Commission for the Revision of the Code states as follows:

That the administration of justice be perfectly proportioned to the real state of things, to the conditions of the individuals involved and of the

¹⁹⁷ MAIDA, "Canon Law and Pastoral Experience", 1.

¹⁹⁸ Cf. GROCHOLEWSKI, "Theological Aspects of the Judicial", 552-554.

¹⁹⁹ Cf. FINNIS, *Natural Law*, 161-162. Certainly, by a kind of metaphorical extension, we can speak of 'doing oneself justice' (e.g. by performing well in a game or examination, not necessarily competitive): here we preserve the element of other-directedness by implicitly relating the subject and his actual performance as they should be.

ecclesiastical society..... There must be a formal declaration to the effect that in Canon Law the principle of legal protection is to be applied in an impartial fashion to superiors and subjects alike, so that all suspicion of arbitrariness in the ecclesiastical administration may be removed. This end can be achieved only if a system of appeals is wisely established by law, where by any one who has reason to believe his rights have been violated in the lower instance, is able to obtain redress in the higher. From this derives the necessity of ordering an administrative tribunal according to grade and kind, so that the defence of rights may be provided with their own canonical procedure to be duly followed by the authorities of different grades of competence.²⁰⁰

It is not enough for the Code to acknowledge the rights of the eparchial bishop and eparchial presbyters. It must also provide them the means to seek a vindication and defense of those rights from the Church. Thus there are provisions in the Code for vindicating one's own rights. Any one who feels that his/her rights have been infringed have the right to seek redress in a competent judicial or administrative forum of the Church. In the Church everybody have the right to defend themselves.

5. OBJECTIVES OF RIGHTS AND OBLIGATION

There are several objectives for the reciprocal rights and obligations of the eparchial bishop and presbyters and ultimately they point to the fruitful pastoral ministry in the eparchy. The important objectives are the following: promotion of justice and

²⁰⁰ "Guidelines for the Revision of the Code": *Nuntia* 3 (1976) 23-24. The Commission did not forget to say aloud the excellence of the old Code, the m. p. *Sollicitudinem nostram* in this regard.

order, co-operation and collaboration, mutual relationship, effective eparchial administration, unified pastoral ministry, and unified action in evangelization and true response to the missionary call of the Church.

5.1. Promotion of Justice and Order

Rights and Obligations in the civil constitution focused on the promotion of justice and peace.²⁰¹ In the Church, the formulation of the rights and obligations of bishop and presbyters intend the same purpose. In other word by these norms, in the eparchy there will be an order, there will be an awareness of existence of such elements and its obligation. That in turn promote justice and peace between bishop and presbyters and among the eparchial community.

5.2. Co-operation and Collaboration

As we have seen above, in different aspects, the bishop's rights and obligations are related to those of the presbyters. The call and mission of both parties show interdependence. Moreover in an eparchy presbyters are the close collaborators of the bishop.²⁰²

With out the co-operation and collaboration between the eparchial bishop and his presbyters, in the Church, it would be impossible to attain the ultimate mission and goal envisioned by their ministerial priesthood, the salvation of all. In order to have better co-operation and collaboration in various activities in the eparchy and in the entire Church, there are explicit provisions in the Code for rights and obligations of the eparchial bishop and presbyters.

²⁰¹ Cf. PROVOST, "The People of God", 135.

²⁰² CCEO c. 177 § 1; LG 28; CD 15; PO 7.

5.3. Fostering Relationship

According to Örsy "relationship" is an abstraction: in reality no such entity exists by itself. There are only persons or things related to each other.²⁰³ Thus terms "relation" and "relationship" mean the aggregate of the connections and modes of connections, by which one person is brought into contact with another. Besides the juridical aspect, there is a personal dimension in the rights and obligations between the bishop and the presbyters. Even though they are part of the hierarchical structure in the Church, and have their special roles to play, their relationship is basically personal. To foster their relationship the Code, based on Council Documents mentions several rights and obligations (cc. 192 § 4, 370 etc.). So the purpose of these legal terms are to encourage a hierarchical communion between them and as a result a fruitful pastoral ministry in the eparchy.

5.4. Effective Governance and Mission

Canon 191 § 1 of the Code states, "the eparchial bishop governs the eparchy entrusted to him with legislative, executive and judicial power". There are also different offices in the eparchy, for instance the office of the parish priest, protosyncellus, syncellus, etc.. The eparchial bishop alone cannot fulfil all these tasks. In order to fulfil these tasks he needs capable assistance. Thus the presbyters share in these tasks and exercise them according to the instructions of the bishop (CD 15). This assistance is on the one hand their right and on the other hand their obligation.

Eparchial bishop and presbyters are called and consecrated to carry on the pastoral ministry of Jesus, the Pastor. Their priesthood is the same priesthood of Jesus Christ, the eternal Priest.

²⁰³ Cf. ÖRSY, *Theology and Canon Law*, 161.

²⁰⁴ Cf. PINHEIRO, "Bishop Religious Relationship", 229.

Hence this pastoral mission binds them together as intimate collaborators which originate from Christ himself.²⁰⁵ For a successful pastoral ministry in the eparchy they must be united in spirit and action. Unless they are conscious of their rights and obligations toward each other, the pastoral ministry in the eparchy will not be successful.

5.5. Fruitful Evangelization

Inasmuch as pastoral leadership of the eparchial bishop and the eparchial presbyters is meant to build up the community, it is closely linked to evangelization and worship. It is through the exercise of all priestly functions that the community comes to be formed.²⁰⁶

The people of God is made one, in the first place by the word of God.²⁰⁷ The task of preaching this word was first taken up by the apostles and they in turn sent forth their successors to do the same.²⁰⁸ Of course, it is true that the entire Church has been called to proclaim the word of God.²⁰⁹ In this regard Pope Paul VI taught:

It is therefore by the will of Christ that the successor of Peter is endowed with the pre-eminent responsibility of teaching revealed truth. The Second Vatican council has declared that 'Christ's mandate to preach the gospel to the whole creation (cfr. Mk 16:15) is directed primarily to the bishops with Peter and in subordination to Peter.'²¹⁰

²⁰⁵ Cf. RICCARDO, *Bishop-Priest*, 35. About the pastoral ministry as such we explained in the previous chapter.

²⁰⁶ Cf. GALOT, *Theology of the Priesthood*, 141.

²⁰⁷ Cf. I Pet. 1:23; Acts. 6:7; PO 4.

²⁰⁸ Cf. EN 66.

²⁰⁹ Cf. EN 66.

²¹⁰ EN 67: «Christi itaque voluntate, Petri Successor praeceminenti munere

The Pope continued his teaching by saying that in union with the successor of Peter, the bishops, as the successors of the apostles, by virtue of their episcopal consecration are endowed with the authority to teach the revealed truths in the Church. They are constituted teachers of the faith in the Church. Associated with them in the ministry of evangelization and sharing in their power by a special title are those who by their priestly ordination 'act in the person of Christ', as educators of the people of God in faith, as heralds of the living Word and as ministers of the Eucharist and other sacraments. Hence it is more incumbent on all pastors to enkindle in themselves a full appreciation of this obligation. "To preach the gospel of God" is the purpose behind all priestly actions. This is what distinguishes the priestly ministry, which gives a unity to those innumerable tasks which occupy priests' attention throughout their lives and which finally gives a special character to all their work.²¹¹

Hence in fact it is the primary task of bishops and the presbyters as their co-workers to carry out the works of evangelization. To take up this mission successfully, both must be aware of their reciprocal rights and obligations and obligation.

5.6. Response to the Missionary Call

It is practically impossible for the bishop to fulfil this universal mandate unless his presbyters share his point of view and enthusiasm. Presbyters hardly may be sent to a distant country unless they understand and appreciate the need for their presence

docendae veritatis revelatae auctus est. Concilium Vaticanum II, pronuntians Christi mandatum praedicandi Evangelium omni creature (cfr. Mc 16:15), cum Petro et sub Petro, Episcopos primo et immediate afficit». See AG 38; AAS 58 (1966) 985.

²¹¹ EN 68: «Cum Successore Petri coniuncti, Episcopi, Apostolorum successores, vi episcopalis ordinationis, potestatem suscipiunt veritates revelatas in Ecclesia docendi. Cum Episcopis in ministerium evangelizationis consociantur, huius potestatis ex peculiari titulo participes, ii qui per sacerdotalem ordinationem personam Christi gerunt, qua educatores Populi Dei in fide, divini Verbi praecones, similique Eucharistiae ceterorumque Sacramentorum administri. ».

and service. Nor can bishops, alone, with all the good will in the world even hope to promote vocations for the missions, or make possible the generosity of the faithful to help the impoverished countries or the missionary activities of the Church, unless their presbyters are on fire with the same zeal and the same apostolic urge. But presbyters cannot, in all justice, be expected to have this breadth of view unless they have been in close and personal communication with their Bishops, and unless, through dialogue and mutual study and investigation, the needs of the Church are made known to them. Otherwise the good will of the bishops to exercise actions on a universal level may remain sterile when confronted by an uninterested and bewildered clergy.²¹²

Therefore the eparchial bishop and the presbyters being sharers in this universal mission of the Church, are bound to each other by this common mission (c. 393). Consequently, there is a mutual understanding of their rights and obligations towards each other and the aim of an efficacious missionary activity in the Church.²¹³

CONCLUSION

With regard to membership status in the Church, all are equal. In the Second Vatican Council the Church is viewed as one harmonious body. This radical equality summons the individual members of the Church to engage themselves personally in the life of the Church according to their own status and function. But at the same time this principle equality must be integrated with the reality that the Church was constituted by Jesus Christ as a

²¹² Cf. CARTER, "Bishop-Priest-Laity Relationship", 152-153.

²¹³ For further study about this missionary aspect see *PDI* 16; *DPMB* 7; *DMLP* 14-16.

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hierarchical society. It is he who instituted the priesthood and he realised in his own self the model of that priesthood.²¹⁴

Even though there is a hierarchical difference between bishop and presbyters, both are ultimately participating or sharing from the same font, the priesthood of Jesus Christ. Hence as we have seen above there are so many common factors that unite them and that unity in turn influences their rights and obligations in the Church. Their nature and the objectives as described above also play a prime role in our study.

Because of their appointment or ascription in an eparchy presbyters have a primary role in the care of souls. They must be wholly dedicated in service (mission) to the care of a particular section of the Lord's flock and form accordingly one priestly body and one family of which the bishop is the head.

Presbyters, being bishop's co-workers, must be regarded as sons and friends just as Jesus Christ called his disciples no longer servants but friends (*LG* 28). They have "joint responsibility" to advance the cause of the Church.

In short, both eparchial bishop and eparchial presbyters have been specially chosen from among the faithful and received sacred orders for a definite purpose i.e., to be shepherds of the flocks of the Lord. They are called to undertake this special mission not in an isolated manner but in a co-operative mode. Presbyters in so far as partners, helpers, and advisers of the eparchial bishop in their pastoral activities, and the eparchial bishop, in turn, is their head and at the same time their brother and friend.

²¹⁴ Cf. GALOT, *Theology of the Priesthood*, 23, 77.

CHAPTER THREE

RECIPROCAL RIGHTS AND OBLIGATIONS OF THE EPARCHIAL BISHOP AND PRESBYTERS IN THE CODE

INTRODUCTION

The Code has clearly mentioned, under special titles and in other ways, several of the rights and obligations of the eparchial bishop and eparchial presbyters. Of course, as we have mentioned in the first Chapter, the rights of the eparchial bishop in relation to his eparchial presbyters and *vice versa* cannot be perfectly understood unless they are considered in connection with their mutual obligations, they are, in other words mutual and complementary.

In the second Chapter we have described different theological, pastoral and canonical foundations, for instance sacred orders, governing powers etc., which necessarily affect and modify the rights and obligations of both parties. Both the eparchial bishop and the presbyters have a diversity of capacities and functions in the eparchy.

In virtue of his special powers, as mentioned in the Code (c. 178), the eparchial bishop has a sacred authority over all his subjects in all matters necessary for their salvation. This authority is realized in the spirit of service through the exercise of his threefold pastoral functions: teaching, sanctifying and governing. Since the eparchial presbyters have been ordained as his collaborators and have been made sharers in the same priesthood of Jesus Christ, among his subjects, the presbyters stand in the first place. However, both the eparchial bishop and the eparchial presbyters have this threefold mission which is essentially related to their call and state of life.

1. THE THREEFOLD PASTORAL MISSION

The Second Vatican Council identified a triple mission given by Christ to the Church: teaching, sanctifying and governing. This mission corresponds to the triple office of Christ as a priest, prophet and king (LG 9, 17). The Code reflects this triple division.

Chapter Three of *Lumen gentium* is entitled, "the Hierarchical Structure of the Church, with Special Reference to the Episcopate" (*De constitutione hierarchica ecclesiae et in specie de episcopatu*). Number 25 of the Constitution describes the threefold ministry of teaching, sanctifying and governing which it had already named as the pastoral functions of bishops in the Church. Number 20 of the Constitution describes bishops as 'teachers of doctrine, priests of sacred worship, and ministers of government'. Further in number 21 it is stated:

Episcopal consecration, along with the office of sanctifying, confers also the offices of teaching and governing For it is clear from tradition - a tradition expressed especially in the liturgical rites and in the usage of the church both eastern and western - that through the imposition of hands and the words of consecration the grace of the holy Spirit is so conferred, and the sacred character is imprinted, that bishops in an eminent and visible way take on the functions of Christ the teacher, shepherd and pontiff and act in his person.¹

¹ LG 21: «Episcopalis autem consecratio, cum munere sanctificandi munera quoque confert docenti et regendi,.... Ex traditione enim, quae praesertim liturgicis ritibus et ecclesiae tum orientis tum occidentis usu declaratur, perspicuum est manuum impositione et verbis consecrationis gratiam Spiritus sancti ita conferri et characterem ita imprimi, ut episcopi, eminenti ac adspectabili modo, ipsius Christi magistri, pastoris et pontificis partes sustineant et in eius persona agant». For further study see SULLIVAN, *Magisterium*, 52-54.

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Bishops are consecrated within the Church so that they are teachers of doctrine, priests of sacred worship and ministers of governance. They receive these threefold offices or functions along with their consecration and canonical mission. Hence, primarily the mandate of Christ to teach, to sanctify and to govern the people, belong to the bishops. They have to carry out these offices in communion with their head, and with the college of bishops. But in order to carry out these threefold missions, the bishops need the co-operation of others, especially the presbyters.

The Apostolic Tradition belongs to the literary genre of Church Orders which record laws for church organization and conduct of worship. It contains a prayer used for priestly ordination. When a candidate to priesthood is ordained, the bishop shall lay his hands on his head, the presbyters also touching him, and the bishop should pray like this:

God and Father of our Lord Jesus Christ, look upon this your servant, and impart the spirit of grace and counsel of the presbyterate, that he may help and govern your people with pure heart; just as you looked upon your chosen people, and commanded Moses to choose presbyters whom you filled with your spirit and granted to your servant. And now, Lord grant the spirit of your grace to be preserved unflinching in us, and make us worthy to minister to you in faith and in simplicity of heart, praising you through your child Christ Jesus; through whom be glory and power to you with the holy Spirit, in the holy Church, both now and to the ages of ages.
Amen.²

² «Cum autem praesbyter ordinatur inponat manum super caput eius episcopus, contingentibus etiam praesbyteris, et dicat secundum ea quae praedicta sunt, sicut praediximus super episcopum, orans et dicens: Deus et pater domini nostri Iesu Christi, respice super servum tuum istum et impartire spiritum gratiae et consilii, praesbyteris ut

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This prayer stresses the corporate character of *presbyterium*³ and it defines the presbyters' mission: to govern and teach the people of God. Also, here the presbyters are likened to the seventy elders whom God commanded Moses to select and to impart to them the Spirit for guidance of His people Israel.

A part of the prayer for the coming of the Holy Spirit, now in use, in the sacred Ordination liturgy of the Syro -Malankara Catholic Church reads as follows:

(The bishop lays his hands upon the candidate and says it aloud).

O Lord, in every generation, you choose whom you please for your holy services. Select him, your servant, for the priesthood. Give him the grace to remain in unblemish deeds and firm faith. Lord, let him be the celebrant of the Gospel of your Kingdom and make him worthy to remain at your sanctuary and holy altar so that he may offer holy sacrifices, spiritual offerings and he may renew the people of God with the baptism of re-birth. Through this laying on of hands strengthen him to show your eternal light to everybody and to do good deeds to establish and enrich the Church in the world.⁴

adiuvet et gubernet plebem tuam in corde mundo sicuti respexisti super populum electionis tuae et praecipisti Moysi ut elegeret praesbyteros quos replesti de spiritu tuo quod tu donasti famulo tuo. Et nunc, domine, praesta indeficienter conservari in nobis spiritum gratiae tuae et dignos effice ut credentes tibi ministremus in simplicitate cordis laudantes te per puerum tuum Christum Iesum per quem tibi gloria et virtus patri et filio cum spiritu sancto in sancta ecclesia et nunc et in saecula saeculorum. Amen». BOTTE, *La Tradition Apostolique*, 37-38. ET is from CUMING, *Hippolitus: A Text for Students*, 12.

³ Cf. LYNCH, "Co-responsibility in the First Five Centuries", 22.

⁴ Sacred Ordination (*Malaylam*), 6-7. Original See *The Book of the Pontifical Rites which are performed in the Holy Syrian Church of Antioch*, based on the Old and Perfect Manuscripts in the Monastery of the Lady of Salvation in Sherf in Lebanon (*Western Syriac*), 130-131.

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Through the sacramental ordination conferred by the imposition of hands and the consecratory prayers of the bishop, "a specific ontological bond which unites the presbyter to Christ, the High Priest and Good Shepherd" is established.⁵

Through sacred ordination and the mission which they receive from the bishop, presbyters are promoted to the service of Christ the Teacher, Priest and King; they are given a share in his ministry, through which the Church here on earth is continuing her ministry of salvation (*PO* 1). In the *Lex Ecclesiae Fundamentalis* it is stated that clerics, who by the sacred ordination configure Christ in a particular manner are destined to carry out the divine ministries of teaching, sanctifying and governing of the People of God, in the name of Christ and under his authority.⁶

After the Bishop, the term "pastor" can only be attributed in a proper and univocal sense to the priest by virtue of the ministerial priesthood received with the Ordination. The attribute "pastoral", in fact, refers both to the *potestas docendi et sanctificandi*, and to the *potestas regendi*.⁷

The presbyters are consecrated as true priests of the New Testament so that they may be prudent co-operators of the episcopal order (*CD* 15). They too, exercise the ministry of Christ and act in his name. In the eparchy, the presbyters are the bishop's close collaborators in fulfilling these three functions (*CD* 11).

⁵ DMLP 2; PDV 11.

⁶ *LEF* c. 27: «Ecclesiae ministri, quippe qui ordinatione sacra Christo Domino peculiari ratione configurentur et ad divina ministeria mancipentur, in nomine et auctoritate Christi docendo, sanctificando et regendo, Populum Dei ita pascunt ut ministracionibus et charismatibus recognitis,....»

⁷ DMLP 19; See also JOHN PAUL II, *Address to the Participants of the International Symposium on "The Priest Today"*, 29 May, 1993. *Address to the Participants of the International Symposium "Ius in vita et in missione Ecclesia"* 25 April 1993.

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Being collaborators with the episcopal order, presbyters participate also in the office and authority by which Christ maintains, sanctifies and rules his mystical Body. Of course, as co-operators in the episcopal order, presbyters depend on their bishop in the exercise of their proper power. However, they are necessary collaborators and counsellors in the ministry of teaching, sanctifying and governing for they have received the gift of the Holy Spirit, at their sacred ordination.

The Code is very clear with regard to this threefold mission of the eparchial bishop and presbyters. It states that the eparchial bishop is the true shepherd in the eparchy. He shepherds the eparchy in his own name and governs it as the vicar and legate of Christ (c. 178). Through the sacrament of ordination, performed by the bishop, the presbyters share in varying degrees in the task and the power entrusted to his apostles by Christ the Lord to announce the gospel (teaching), to shepherd (governing) and sanctify the people of God (c. 743).

As we have seen above the Second Vatican Council greatly emphasised this three fold pastoral ministry. The Code restated the conciliar teachings that sacred orders confer the offices of teaching, sanctifying and governing. Each mission calls for certain reciprocal rights and obligations between the eparchial bishop and the eparchial presbyters. Since the three fold pastoral ministry is fundamental to the eparchial bishop and presbyters, we will list their reciprocal rights and obligations under these three major functions.⁸

⁸ Here the scope is mainly to find out and to list the major rights and obligations of both parties from the Code. In order to limit the topic we will try to avoid a detailed study, unless it is needed.

PART ONE

THE TEACHING MISSION

In his encyclical *Redemptor hominis* Pope John Paul II states that in the light of the doctrine of the Second Vatican Council, the Church appears before us as a social subject with the responsibility of divine truth. The sense of responsibility for the truth is one of the essential meeting points of the Church in each person, and is also one of the fundamental requirements that determine vocation in the community of the Church.⁹

The triple mission, teaching, sanctifying and governing, reflects the increased emphasis placed on the word of God which was central to the vision of the Second Vatican Council, especially in the Dogmatic Constitution *Dei Verbum* on Divine Revelation.¹⁰ The responsibility of the Church towards the word of God is described in various ways under different aspects, the role of the *magisterium*, preaching the word of God, teaching, catechetical instructions, evangelization activities, the use and means of communication media (cc. 595-666) etc.,¹¹

The eparchial bishop is the true teacher of faith in the community entrusted to his care. He is chosen to preach the Good News of God (Rom. 1:1), to defend it (Phil. 1:16) and to proclaim

⁹ JOHN PAUL II, Ency. *Redemptor hominis* 19, 04 -03-1979: AAS 71 (1979) 305-306.

¹⁰ See SHEEHY, *The Canon Law Letter & Spirit*, 415.

¹¹ In the Codification, the SCICO has preferred the title "De magisterio ecclesiastico" rather than adopt "De Ecclesiae munere docendi". This is for the following reasons: (i) Since the pattern *tria munera* (*docendi, sanctificandi, regendi*) could hardly be applied systematically throughout the Code with success. So it seemed better not to mutilate this triad by adopting only one or two of them (*munus docendi & munus sanctificandi*). (ii) Secondly, too neat a distinction between *munus docendi* and *munus sanctificandi* seemed to involve a questionable way of emptying the ministry of the word of its inbuilt sanctifying power, germane to a genuine theology of the Word. (iii). The juridical term "magisterium ecclesiasticum", used in CIC 1917 (cc. 1323 § 1, 1366 § 1) as well as in the *textus initialis* was not felt to be outdated so as to need to be replaced by a new term. Moreover no better title was proposed, and so the present title has been retained, in its traditional canonical sense. Cf. NEDUNGATT, "The Teaching Function of the Church", 45.

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it without shame (Rom. 1:16). He is the authentic teacher of his sheep, the witness of faith, the guardian and judge of what pertains to faith and morals.¹²

1. RIGHTS OF THE EPARCHIAL BISHOP

1.1. To Supervise the Proclamation of the Word of God

The office of teaching in the name of the Church is the exclusive competence of the bishop. In the Council decree it is stated that "among the principal duties of bishops, the preaching of the Gospel is pre-eminent".¹³ But this function of teaching is shared, according to law, by those who have been made collaborators by sacred orders (for instance presbyters) as well as by those who have received the mandate to teach though not promoted to sacred orders. Canon 596 of the Code states :

The office of teaching in the name of the Church belongs only to bishops; but that function is shared, according to the norm of law, both by those who have been made collaborators of the bishops by sacred orders and by those who, though not in sacred orders, have received the mandate to teach.¹⁴

Also, the Code states that clerics have, as their first obligation, to announce the kingdom of God to all and to make manifest the love of God toward all humanity in the ministry of the Word, and sacraments, and even by his own life (cc. 367, 607-626). Again canon 608 of the Code mentions that bishops, presbyters and deacons being the ordained ministers, have as their

¹² DPMB 55.

¹³ LG 25: «Inter praecipua episcoporum munera eminet praedicatio evangelii». See Trid., *De reform.*, sess. V, c. 2, n. 9 and sess. XXIV c. 4.

¹⁴ CCEO c. 596: «In nomine Ecclesiae docendi munus solis Episcopis competit; in eodem tamen munere partem habent ad normam iuris sive ii, qui Episcoporum per ordinem sacrum effecti sunt cooperatores, sive ii, qui in ordine sacro non constituti mandatum docendi receperunt».

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foremost duty the ministry of the word of God which is exercised according to the norm of law.

In order to prevent abuses, the eparchial bishop must exercise vigilance over the ministry of the word of God. The Code states that "the eparchial bishop is to be vigilant lest abuses creep into ecclesiastical discipline, especially in the ministry of the word of God....".¹⁵

The eparchial bishop is bound to present and explain to Christ's faithful the truths of the faith which are to be believed and applied to the mores; he himself is to preach frequently. He is also to ensure that the prescriptions of the law concerning the ministry of the word of God be carefully observed, especially those about the homily and catechetical formation, so that the whole of Christian doctrine is handed on to all. He is to firmly safeguard the integrity and unity of faith (c. 196 § 1, 2).

Therefore the eparchial bishop has the right (and obligation) to defend the integrity and unity of the faith. He is to preach personally and also to oversee the teaching of the word of God in his eparchy (c. 197 § 1, § 2). It is up to him to determine both the standards whereby a presbyter (or deacon) be admitted to the office of preaching, and the programme for such preaching.¹⁶ He can also issue norms for a special series of sacred preaching at suitable times for the spiritual renewal of the faithful (c. 615).

The eparchial bishop has pastoral authority in his own eparchy, and therefore, must direct all the activities required for the exercise of the ministry of the word of God. Hence, the Code clearly states that the eparchial bishop is to supervise the preaching

¹⁵ CCEO c. 201 § 2: «Vigilet Episcopus eparchialis, ne abusus in disciplinam ecclesiasticam irrepant praesertim circa verbi Dei ministerium, celebrationem sacramentorum et sacramentalium, cultum Dei et Sanctorum, executionem piarum voluntatum.»

¹⁶ Cf. SHEEHY, *The Canon Law Letter & Spirit*, 427.

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of the word of God in his territory, in keeping with the common law and the particular law of his Church *sui iuris*.

1.2. To Warn and Impose Penalties

The eparchial bishop is to warn the presbyters, with regard to faith and morals when these are in danger. So the Code states that "it pertains to bishops to promote authoritatively, to guard and conscientiously to defend the integrity and unity of faith and good morals, even reprobating, according to need, opinions that are contrary to them or warning about those things that can endanger them".¹⁷ When a presbyter denies a truth which must be believed with divine and Catholic faith, or he calls it into doubt, or he totally repudiates the Christian faith, the appropriate penalty must be applied but only after due warning (c. 1436 § 1).

If a presbyter professes a doctrine that has been condemned as erroneous by the Roman Pontiff or the College of Bishops exercising the authentic *magisterium*, and does not retract it, before applying a penalty, he must be legitimately warned (c. 1436 § 2).

1.3. To Forbid a Presbyter to Preach

If there are just causes the eparchial bishop can forbid a presbyter from preaching the word of God. For instance if one presbyter is not preaching according to the teaching of the Church it is the right and at the same time the obligation of the eparchial bishop to forbid the presbyter from continuing to preach. Against the decree of the eparchial bishop (local hierarch) forbidding a presbyter to preach, the latter is entitled to make recourse; however, the effect of the decree is not suspended during recourse (*in devolutivo*), but must be resolved without delay.¹⁸

¹⁷ CCEO c. 605: «Ad Episcopos praesertim in Synodis vel Consiliiis coadunatos, singulariter vero ad Sedem Apostolicam pertinet integritatem et unitatem fidei bonosque mores auctoritative promovere, custodire et religiose defendere, etiam reprobando, quatenus opus est, sententias, quae eisdem contrariae sunt, vel monendo de eis, quae eadem in discrimen ponere possunt.»

¹⁸ CCEO c. 613: «Contra decretum Hierarchiae, quo quis prohibetur

1.4. To Expect 'Religious *Obsequium*'

As we have seen above *Lumen gentium* 20 and 25 speaks of the threefold ministry of bishops, it names the role of teacher in the first place. For instance *Lumen gentium* 25 begins with a description of the teaching function of bishops in their own eparchy.¹⁹

Among the principal tasks of bishops the preaching of the gospel is pre-eminent. For the bishops are the heralds of the faith who bring new disciples of Christ. They are authentic teachers, that is, teachers endowed with the authority of Christ, who preach to the people entrusted to them the faith to be believed and put into practice. ...The bishops when they are teaching in communion with the Roman Pontiff, are to be respected by all as witnesses to the divine and catholic truth; and the faithful ought to concur with their bishop's judgement concerning faith and morals which he delivers in the name of Christ, and they are to adhere to this with a religious assent (submission) of the mind.²⁰

The *magisterium* in the Church can be (usually is) exercised on several levels. Accordingly, the doctrine proclaimed can be infallibly defined, or it can be brought close to such definition, or it can be opinion stated with some force but still subject to correction, or it can be a tentative approach to the solution of a problem, etc.,. Undoubtedly, the *obsequium* must

praedicare, datur recursus in devolutivo tantum, qui sine mora definiendus est».

¹⁹ SULLIVAN, *Magisterium*, 53.

²⁰ LG 25: «Inter praecipua episcoporum munera eminet praedicatio evangelii. Episcopi enim sunt fidei praecones, qui novos discipulos ad Christum adducunt, et doctores authentici seu auctoritate Christi praediti, qui populo sibi commisso fidem credendam et moribus applicandam praedicant..... Episcopi in communionem cum Romano pontifice docentes ab omnibus tamquam divinae et catholicae veritatis testes venerandi sunt; fideles autem in sui episcopi sententiam de fide et moribus nomine Christi prolatam concurrere, eique religioso animi obsequio adhaerere debent».

vary accordingly. Hence a purely legal interpretation would lead us inevitably into a fixed position: whenever there is a magisterial voice, submission is required. On the other hand, theology will tell us that whenever the magisterium speaks, the subject matter ought to be weighed and *obsequium* is given in an appropriate measure. This *obsequium* could be an act of obedience of faith or an act of respectful critical assessment, which in its turn may be a contribution to the development of doctrine.²¹

The word *obsequium* means a ready and respectful allegiance; a submission; a loyal and obedient assent etc.,. The phrase *religioso animi obsequio* means with religious *obsequium* of the mind.²²

Bishops, as heralds and teachers, are endowed with the authority of Christ. The ministry of the word of God is their right.

They are to fulfil this obligation personally by frequent preaching to the faithful entrusted to their pastoral care. They should explain to them the truth of the faith and its application to their lives.

Canon 3 of the SCICO²³ took a wide sweep and set the teaching function of bishops in its rightful place. The following elements were under discussion: All people have the human right to communicate their ideas, not excluding those on God and religion. Besides, through the sacraments of baptism and chrismation Christians share in the prophetic or teaching function of Christ. Each Christian faithful may therefore teach, but only

²¹ Cf. ŌRSY, *Theology and Canon Law*, 112-113.

²² Cf. NEDUNGATT, *A Companion to the Eastern Code*, 164.

²³ «Nuntium salutis aliis communicare uniuscuiusque est christifidelis, utpote Baptismo consecrati et chrismatione Sacti Myri firmati, pro sua cuiusque competentia; in nomine in nomine autem Ecclesiae docendi munus solis Episcopis competit; in eodem tamen munere partem habent ad normam iuris sive qui Episcoporum per ordinem sacrum effecti sunt cooperatores vel adiutores, sive qui ordine sacro non aucti mandatum docendi receperunt». NEDUNGATT, "The Schema de Magisterio Ecclesiastico": *Nuntia* 10 (1980) 67; For further study see NEDUNGATT, "The Teaching Function of the Church", 39-60; NEDUNGATT, «Magisterio ecclesiastico nei due codici», 313-328. SCICO c. 3 has later become c. 593 of the SCICO, though some what transformed. and finally in the new Code c. 596.

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«*proprio nomine*», not «*in nomine ecclesiae*». «*In nomine ecclesiae*» requires a mission received from the Church. The bishops have this mission *per se* by their consecration and only they may teach in the name of the Church. Others have a share in this mission either through their Ordination (presbyters, deacons) or through special mandate (e.g. catechists). "This is also magisterium, though not engaging the Church, whether universal or particular, officially (it is not *authenticum*)".²⁴

Hence canon 596 of the Code states that the office of teaching in the name of the Church belongs only to bishops; but that function is shared, according to the norm of law, both by those who have been made collaborators of the bishops by sacred orders and by those who, though not in sacred orders, have received the mandate to teach.²⁵ The spirit and life of this canon is coming from *Lumen gentium* 25. The Dogmatic Constitution on Divine Revelation (*DV* 10) further states that "as they hold, practice and witness to the heritage of the faith, bishops and faithful display a unique harmony".

The bishops are the authentic teachers of the Church. The mode of teaching by the bishops can be individually or synodally. Canon 600 of the Code reads:

Whether they teach individually, or gathered together in synods or in particular councils, bishops in communion with the head and members of the College, while not infallible in their teaching, are the authentic instructors and teachers of the faith for the faithful entrusted to their care. The faithful are bound to adhere with religious *obsequium* of mind to the authentic magisterium of their bishops.²⁶

²⁴ Cf. NEDUNGATT, "The Teaching Function of the Church", 48; For further study see NEDUNGATT, «Magisterio ecclesiastico nei due codici», 313-328.

²⁵ CCEO c. 596; *LG* 25.

²⁶ CCEO c. 600: «Episcopi, qui sunt in communione cum Collegii capite et

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The bishops are entitled to a 'religious submission' or 'religious respect' by their faithful and in our context by their presbyters. Thus the Code, especially in canon 600, describes the appropriate response of the faithful to the teachings of the bishops. Of course this is a general guideline which incorporates a healthy respect for acceptance of sound teachings of the bishop. In short the eparchial bishop is entitled to a 'religious submission' or 'religious respect' by his presbyters.

1.5. To Allowing Presbyters to Write in Journals which attack the Faith

The Christian faithful may not write in journals which are accustomed to attack openly the Catholic religion or good morals. Hence in the Code it is stated that unless there is a just and reasonable cause, no member of the Christian faithful may write in newspapers, magazines or periodicals which are accustomed to attack openly the Catholic religion or good morals; clerics (and members of religious institutes) moreover need the permission.²⁷ This approval can be obtained either from the author's own eparchial bishop or from the hierarch of the place of publication, or finally from a superior authority having executive power over these persons or places (c. 662).

1.6. To Give an *Imprimatur*

In the Code it is recommended that all writings whatever which explain the faith or morals of the Church have at least ecclesiastical permission, without prejudice to the prescriptions of

membris, sive singuli sive in Synodis aut in Conciliis particularibus congregati, etsi infallibilitate in docendo non pollent, christifidelium suae curae commissorum authentici sunt fidei doctores et magistri; cui magisterio authentico suorum Episcoporum christifideles religioso animi obsequio adhaerere tenentur.»

²⁷ CCEO 660: «In diariis, foliis aut libellis periodicis, qui religionem catholicam aut bonos mores manifesto impetere solent, ne quid scribant christifideles nisi iusta et rationabili de causa; clerici autem et sodales institutorum religiosorum insuper non nisi de licentia eorum, de quibus in can. 662». See also *Ecclesiae pastorum* 5 § 2, CIC 1917 c. 1386.

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institutes of consecrated life, which require more²⁸. For instance, catechisms and other writings intended for catechetical instruction in schools of whatever kind and grade, and their translations, need ecclesiastical approval. The same norm is to be applied also to other books dealing with faith and morals, if they are used as textbooks for catechetical instruction (c. 658 § 1, § 2).

This ecclesiastical permission, expressed only with the word *imprimatur* means that the work is free from errors regarding Catholic faith and morals. The approval granted by competent authority shows that the text is accepted by the Church or that the work is in accordance with the authentic doctrine of the Church. If a work is in addition praised or blessed by the eparchial bishop or superior authority means that it expresses well the authentic doctrine of the Church and therefore is to be recommended.²⁹

The *imprimatur* or permission or approval to publish books may be granted, unless expressly stated otherwise in the law, either by the author's own eparchial bishop or by the hierarch of the place of publication, or finally by a superior authority having executive power over these persons or places (c. 662 § 1).

The *imprimatur* granted by the eparchial bishop shows that the text is accepted by the Church. But here it is to be noted that before giving the *imprimatur* the bishop is bound to examine the work in accordance with the authentic doctrine of the Church.

²⁸ CCEO 659 «Commendatur, ut scripta quaelibet, quae fidem catholicam aut mores illustrant, saltem licentia ecclesiastica munita sint, salvis praescriptis institutorum vitae consecratae, quae plus exigunt».

²⁹ CCEO c. 661 § 1: «Licentia ecclesiastica cum solo verbo *imprimatur* expressa significat opus ab erroribus circa fidem catholicam et mores esse immune.

§ 2. Approbatio vero ab auctoritate competenti concessa ostendit textum ab Ecclesia acceptum aut opus doctrinae authenticae Ecclesiae consonum esse.

§ 3. Si opus insuper ab Episcopo eparchiali vel ab auctoritate superiore laudatum vel benedictum est, hoc significat illud doctrinam authenticam Ecclesiae bene exprimere ideoque commendandum esse». See NEDUNGATT, "The Schema de Magisterio Ecclesiastico": *Nuntia* 10 (1980) 80.

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Moreover it is to be noted that permission to publish a work or its approval, praise, or blessing is valid only for the original text, but not for new editions or translations. In case of editions of the Sacred Scriptures or other books requiring ecclesiastical approval by law, the approval lawfully granted by one hierarch of the place is not enough for its use in another eparchy, but the explicit consent of the hierarch of that eparchy is required (c. 663).

In such a situation the eparchial bishop may abide by the judgement about books given by censors selected from the list drawn up by the synod of bishops of the patriarchal Church, or the council of hierarchs, or he may rely on others, according to his discretion; also a special commission of censors may be set up for the local hierarch, the synod of bishops of the patriarchal Church, or the council of hierarchs to consult. At the same time the censors must give their opinion in writing; if it is favourable, the hierarch may grant permission or approval, according to his discretion, expressly in his own name; otherwise he must inform the author of the reasons for the refusal (c. 664 § 1, § 3).

But in the case of liturgical texts the approval, after prior review of the Apostolic See, is reserved in patriarchal Churches to the patriarch with the consent of the synod of bishops of the patriarchal Church, in metropolitan Churches *sui iuris* to the metropolitan with the consent of the council of hierarchs; in other Churches this right rests exclusively with the Apostolic See, and, within the limits set by it, to bishops and to their lawfully constituted assemblies. The same authorities are also competent to approve the translations of these books meant for liturgical use, after sending a report to the Apostolic See in the case of patriarchal Churches and metropolitan Churches *sui iuris*. In order to reprint liturgical books or their translations into another language or even parts thereof, if intended for liturgical use, it is required and suffices to establish their correspondence with the approved edition by an attestation of the eparchial bishop (c. 657; OE 23).

2. OBLIGATIONS OF THE EPARCHIAL BISHOP

2.1. To Promote and Defend the Faith

Each individual bishop, as the herald and doctor of faith, has the right and obligation to preach the Gospel and defend the faith. In fulfilling his mission, the bishop receives help from the presbyters, who as his collaborators, who have the primary duty to announce the Gospel to the people entrusted to their care. This is particularly true for the parish priests and those who have the care of souls.

As the guardian and moderator of faith and morals in his eparchy the eparchial bishop has the obligation to defend the integrity and unity of the faith. In the Eastern Churches, there are a variety of expressions of faith, the most important among them is the medium of sacred liturgy. It is the responsibility of the eparchial bishop that the deposit of faith is preserved and fostered, while at the same time manifesting the catholicity of the Church through its comprehension of a legitimate variety of expressions.³⁰

It is the bishops' responsibility, particularly when gathered in synods and councils, and in a unique way of the Apostolic See, to promote, preserve and conscientiously to defend the integrity and unity of faith and good morals. They should disapprove if need be, opinions that are contrary to faith and good morals. They should warn those who are endangering faith and morals (c. 605).³¹

Therefore, the eparchial bishop has a serious obligation in relation to his presbyters and all other faithful to defend the faith and teachings of the Church. In order to promote the teaching mission of the Church he has to organise the ministry of the word of God, homily, catechetical programmes, social communication

³⁰ CCEO c. 604; *OE* 5-6, 22.

³¹ For that the eparchial bishop is to see that all written material or other media which deal with faith and morals are submitted to his judgment (cc. 651-666).

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activities etc., so that presbyters may be able to practice their teaching office fruitfully.

2.2. To Supervise the Teaching given by Presbyters

Presbyters are to enjoy the faculty of preaching (c. 610). Oversight of presbyters in their exercise of the ministry of the word of God and especially homilies is a responsibility assigned to the eparchial bishop³². Being the moderator of the teaching of faith and morals, the eparchial bishop has the obligation to correct errors and even supervise presbyters' proclamation of the word of God, homilies, catechetical programmes, social communication activities, etc.,.

2.3. To Designate a Presbyter for Evangelization

The Church is, by its very nature missionary (AG 21). The element of evangelization is part and parcel of the Church's pastoral mission. According to *Lumen gentium* 33 it is an obligation for all members of the Church to proclaim the Gospel message, each person according to his or her life situation.

The Code states that the Church, following the mandate of Christ to evangelise all peoples, and moved by the grace and charity of the Holy Spirit, recognises herself to be totally missionary. This should be so done that, preserving the integrity of faith and morals, the Gospel can be expressed in the culture of individual peoples; namely, in catechetics, their own liturgical rites, in sacred art, in particular law, and, in short, the whole ecclesial life (c. 584).

Thus the evangelization of nations is the duty of all members of the Church. Therefore, each of the Churches *sui iuris* is to continually see that, through suitably prepared preachers sent by the competent authority according to the norms of the common

³² CCEO c. 609: «Verbi Dei praedicationem moderari in suo territorio competit Episcopo eparchiali firmo iure communi».

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law, the Gospel is preached in the whole world under the guidance of the Roman Pontiff (c. 585 § 1). Likewise, in the individual eparchies a presbyter is to be designated in order to organise and effectively promote endeavours on behalf of the missions (c. 585 § 3).³³

3. RIGHTS OF EPARCHIAL PRESBYTERS

3.1. To Act as Teachers of the Faith

Although the office of teaching in the name of the Church is an exclusive competence of the bishops, the presbyters, being their collaborators,³⁴ and having the sacred orders, share in the teaching mission.

The presbyters are the bishop's assistants in the ministry of teaching. Among presbyters a place of special prominence belongs to the parish priests. According to the Code canon 289 § 1, in carrying out the function of teaching, the parish priest is bound by the obligation of preaching the word of God to all the Christian faithful so that they may grow in faith, hope and charity rooted in Christ and that the Christian community may render that witness of love which the Lord commanded. They are also to lead the Christian faithful to full knowledge of the mysteries of salvation by catechetical formation accommodated to the age of each one. In doing this the parish priests can seek the assistance of others, for instance religious and laity.

Presbyters being the pastors and teachers, shall take earnest care that amidst the varieties of doctrinal enunciations in various churches or cultures the same sense of faith is preserved and transmitted, so that the integrity and unity of faith suffers no harm (c. 604). Therefore, the teaching mission is an inherent right of

³³ *ES* III, 4, established that a presbyter must be assigned in every eparchy to promote missionary initiatives; he is to be a member of the eparchial pastoral council.

³⁴ CCEO c. 596.

the presbyters which they have received through their sacred ordination. No one can take away this right from a presbyter unless there is a just cause.

3.2. To Use their Faculty to Preach

The ministry of presbyters in relation to the word of God is described in the Second Vatican Council as being in particular 'an application of the eternal truth of the Gospel to the concrete circumstances of life' (LG 29). "It is the immediate means by which most people hear the message of the Gospel and have it explained to their lives".³⁵ Thus the faculty of preaching is granted to them by the law itself and may be exercised with the presumed permission of the parish priest, rector, superior etc., of the Church.

The presbyters who are co-operators of the eparchial bishop and share the same priesthood with him, have as their own proper role (*proprium*) or peculiar prerogative to preach the Gospel. And all presbyters, especially those to whom the care of souls has been assigned are bound to this grave responsibility and joyful duty on behalf of their people.³⁶

Canon 4 in the Schema of *De divini verbi ministerio*³⁷ the *ius* of the bishops with regard to the preaching of the word of God has been extended to «ubique terrarum». ³⁸ According to the second paragraph of this canon, presbyters do not have the same

³⁵ Cf. SHEEHY; *The Canon Law Letter & Spirit*, 421.

³⁶ Cf. CORIDEN, "The Teaching Office of the Church", 550.

³⁷ SCICO c. 3: «§ 1. Episcopis omnes valent verbum Dei ubique terrarum praedicare, non exceptis ecclesiis quomodocumque exemptis, nisi loci Hierarcha expresse renuerit.

- § 2. Presbyteri facultas est praedicandi quo legitime mittuntur vel invitantur.

- § 3. Eadem facultate praedicandi gaudent etiam diaconi, nisi ius particulare aliud stauerit.

- § 4. In extraordinariis adiunctis, maxime ad supplendam penuriam clericorum ceteris quoque christifidelibus concedi potest ab Hierarcha loci facultas praedicandi etiam in ecclesia.». Previously it is stated in *Nuntia* 3 (1976) 75, c. 8 § 1, 1.

³⁸ The *ius* of bishops in this regard has been extended to «ubique terrarum» by Pope Paul VI through *Pastorale munus*, II, n. 1.

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extensive right or faculty, but need a legitimate *missio* (sending) or invitation. This *missio* may be attached to an office, as to that of a parish priest or others who have «cura animarum» or the simple office of preaching. This question about presbyters engaged the Study Group in a prolonged discussion and it is as follows:

Should they be deemed to have *de jure* the «*facultas praedicandi ex ipsa sacra ordinatione*», as they have to celebrate the Eucharistic Liturgy? Or should they be held to get a special faculty to preach, as for absolving sins in the sacrament of penance? Now, the Second Vatican Council has so to say revealed the ministry of preaching, placing it in an integral relationship with the ministry of the sacraments, especially the Eucharistic Liturgy. «*Verbi praedicatio requiritur ad ipsum ministerium sacramentorum*» (*Presbyterorum ordinis* 4; on homily, see further the Constitution on the Liturgy *Sacrosanctum Concilium* 24, 52, 53). If so, it would seem that whosoever may celebrate the Divine Liturgy may also be deemed to have the faculty to preach as well. This logic seems to justify the custom of some Churches (like the Malabar Church) not to require priests to get a special faculty to preach. In fact it must be presumed that a priest is qualified to fulfil at least his «*primum*» or «*praecipuum munus*» (...) as priests, namely the ministry of the word otherwise he ought not have been ordained at all. Of course the exercise of the ministry of the word, like any other form of apostolate, must remain subject to the moderation of the local Hierarchy. But for this it would be enough for the local Hierarchy to intervene in case of abuse. In this way, the hierarchical moderation of the spoken word and of the written

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word (cf. following section on the norms of publication of books) would be more like.³⁹

According to the Code the presbyters have the faculty to preach where they are legitimately sent or invited.⁴⁰ Although presbyters have the faculty to preach by virtue of their canonical status, they may, nevertheless, be required to obtain permission to preach in circumstances, other than those determined by particular law.⁴¹

This faculty for preaching is given to them by the common law of the Church in virtue of their sacramental ordination. Canon 611 states:

By virtue of their office, all who have been entrusted with the care of souls have the faculty to preach, they can also invite any priest or without prejudice to can. 610, § 3, any deacon to preach to those committed to their care, unless these are legitimately prohibited.

As an integral part of the Divine Liturgy, the parish priests have the obligation to give a homily especially on Sundays and feast days and unless there is a just cause it should not be omitted. It is his personal responsibility and he cannot habitually entrust another to fulfil it unless he has been given the permission to do so by the eparchial bishop (local hierarch; c. 614 § 3).

³⁹ NEDUNGATT, "The Schema *de Magisterio Ecclesiastico*": *Nuntia* 10 (1980) 73-74. "As a bishop member of the Group put it, "we should rather encourage our priests to preach than put a bridle in their mouth". *Nuntia* 10 (1980) 74.

⁴⁰ CCEO c. 610 § 2: «Presbyteri facultate praediti sunt praedicandi ibi, quo legitime mittuntur vel invitantur».

⁴¹ Under the CIC 1917 Code (cc. 1337-1338) presbyters and deacons required a specific faculty to preach, to be granted by the Local Ordinary or by the competent religious Superior.

4. OBLIGATIONS OF EPARCHIAL PRESBYTERS

4.1. The Obligation of 'Religious *Obsequium*'

Presbyters are the closest co-teachers of the eparchial bishop with whom and under whose direction they are to teach the Good News. Canon 10 of the Code reads as follows:

Clinging to the word of God and adhering to the living authentic *magisterium* of the Church, Christ's faithful are bound to maintain integrally the faith, which was preserved and transmitted at a great price by their forefathers, and to profess it openly as well as to acquire a greater practical understanding of it and to make it fruitful in works of charity.⁴²

Of course it is the responsibility of the Church as a whole to practice this, but the presbyters being the teachers of the faith have a special obligation to submit themselves faithfully to the teaching of the magisterium. Being the teachers of the Church they are to be faithful to the teachings of the Church. Beyond this responsibility of adhering to the authentic, living magisterium, it is the responsibility of the presbyters to deepen their personal understanding of the faith and to give witness to the same.

Canon 600 of the Code describes the ordinary teaching authority of bishops and the appropriate attitude of the faithful toward it. They are thereby entitled to a religious submission or religious respect by their faithful when they teach. Hence presbyters, being the ordained ministers and sharers of the teaching ministry in the Church are bound to show a faithful submission to the authentic teachings of their eparchial bishop.

⁴² According to canon 599 of the Code even if no assent of faith is required, a religious submission' of intellect and will is to be given to any doctrine which either the Roman Pontiff or the College of bishops, exercising their authentic magisterium, declare upon a matter of faith or morals, even though they do not intend to proclaim that doctrine by definitive act.

4.2. To Obtain Permission before Writing in Journals which attack the Faith

Canon 660 of the Code expressly states that unless there is a just and reasonable cause, the members of the Christian faithful may not write in newspapers, magazines or periodicals which are accustomed to attack openly the Catholic religion or good morals, moreover presbyters need permission of the eparchial bishop.

Here the word "permission" has a different connotation than that of the granting of permission inherent in the *imprimatur*. In this case, the object of the permission is not the content of what is to be published. Therefore, it does not involve the *nihil obstat* of the censor. Its object is the simple fact of co-operating with those who openly and customarily attack the Catholic Church, or morals and faith. Hence, permission should be requested even though the object of the co-operation is not a question of faith or morals.⁴³

PART TWO

THE SANCTIFYING MISSION

The sacraments are visible and efficacious signs through which the mysteries of Christ are communicated. St. John Chrysostom says that sacrament is a mystery because we don't see everything we believe. We see one thing and believe another thing.⁴⁴ Through the administration of sacraments and sacramentals the eparchial bishop and his presbyters are fulfilling their sanctifying mission in the Church.

Bishops are the principal dispensers of the mysteries of God, just as they are the governors, promoters, and guardians of the entire liturgical life in the eparchy, committed to their pastoral

⁴³ THORN, *Code of Canon Law Annotated*, 539.

⁴⁴ «Alioquin vero mysterium vocatur, quia non quae videmus credimus, sed alia videmus, alia credimus». CHRYSOSTOM, *Homily on 1 Cor. 7: 1*: PG LXI, 55.

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care. Therefore, the Council states that "devoted to prayer and the ministry of the word" (Acts 6:4), they must make a real effort to bring about that all those who have been entrusted to their care are of one in mind and in prayer and grow in grace through the reception of the sacraments becoming faithful witnesses to the Lord. Bishops, as those who lead others to perfection, should be diligent in fostering holiness among their presbyters and to all according to the special vocation of each (CD 15; LG 26). However, the presbyters too have been ordained to be prudent assistants of the episcopal order.

1. RIGHTS OF THE EPARCHIAL BISHOP

1.1. To Issue a Letter of Recommendation for Celebrating Eucharist outside the Eparchy

A presbyter may be going outside his eparchial territory, where he is not known by anybody and in order to celebrate the Holy Eucharist there he is to present a letter from his eparchial bishop. Therefore the Code states that a presbyter who is a stranger is not to be admitted to the celebration of the Divine Liturgy, unless he shows the rector of the church a letter of recommendation from his own eparchial bishop, is satisfied in some other way about his honesty. Moreover, the eparchial bishop is free to make more specific norms concerning this matter which are to be observed by all presbyters, even those who are exempt in any way.⁴⁵ Thus, it is the right of the eparchial bishop, to give presbyters the recommendation letter so that they may celebrate the divine liturgy elsewhere.

⁴⁵ CCEO c. 703 § 1: «Sacerdos extraneus ad celebrandam Divinam Liturgiam non admittatur, nisi rectori ecclesiae litteras commendatitias sui Hierarchae exhibet aut alio modo ipsi rectori de eius probitate satis constat.

§ 2: Integrum est Episcopo eparchiali hac de re normas magis determinatas ferre ab omnibus sacerdotibus, etiam quomodocumque exemptis, servandas».

1.2. To Grant the Confessional Faculty

Only a presbyter is the minister of the sacrament of penance (c. 722 § 1). As it is stated in the Code, all bishops can *ipso iure* administer the sacrament of penance throughout the world, unless with regard to licity, the eparchial bishop opposes it expressly (c. 722 § 2). But for a presbyter "to act validly", he must besides possess the faculty to administer the sacrament of penance. This faculty is conferred either *ipso iure* or by a special grant made by the eparchial bishop or the competent authority.⁴⁶

Canon 722 § 4 of the Code further stated that presbyters who have the faculty to administer the sacrament of penance by virtue of their office (e.g. parish priest) or by virtue of a grant of the eparchial bishop (or local hierarch) in which they are ascribed or in which they have domicile, can validly administer the sacrament of penance anywhere to any Christian faithful. Therefore, the eparchial bishop has the authority to grant to a presbyter who is ascribed in his eparchy or who has a domicile in his eparchy, the faculty to hear confessions *ubique terrarum*.⁴⁷ It is prohibited only when an eparchial bishop in a special case expressly opposes it. This faculty is used licitly when the norms of the eparchial bishop are observed and with his presumed permission.⁴⁸

⁴⁶ CCEO c. 722 § 3: «Presbyteri vero ut valide agant, debent praeterea esse praediti facultate sacramentum paenitentiae ministrandi, quae facultas confertur sive ipso iure sive speciali collatione ab auctoritate competenti facta».

⁴⁷ «Le ossevizioni dei Membri della Commissione allo «SCICO» e le risposte del «Coetus de expansione observationum»: Nuntia 28 (1989) 96.

⁴⁸ CCEO c. 722 § 4: «Presbyteri, qui facultate sacramentum paenitentiae ministrandi praediti sunt vi officii vel vi collationis Hierarchae loci eparchiae, cui ascripti sunt aut in qua domicilium habent, sacramentum paenitentiae valide ministrare possunt ubique terrarum quibuslibet christifidelibus, nisi quis Hierarcha loci in casu speciali expresse renuit; eadem facultate licite utuntur servatis normis ab Episcopo eparchiali latis necnon de licentia saltem praesumpta rectoris ecclesiae vel, si de domo instituti vitae consecratae agitur, Superioris».

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In virtue of their office and within the limits of their territory, the parish priest too and any other who takes the place of the parish priest, is endowed with the faculty to administer the sacrament of penance.⁴⁹

Canon 724 § 1 of the Code also mentions a special faculty. The eparchial bishop is competent to confer on any presbyter by a special grant the faculty of administering the sacrament of penance to any of the Christian faithful (*quibuslibet christifidelibus*).⁵⁰ If a presbyter has received such a faculty from another eparchial bishop, he does not need to receive it again elsewhere and may exercise it everywhere.

1.4. To Revoke the Confessional Faculty

As a general principle the faculty to administer the sacrament of penance should not be revoked from a presbyter except for a serious reason.⁵¹ But the eparchial bishop has also the power to revoke the confessional faculty from a given presbyter. For instance in the Code it is said that if the faculty to administer the sacrament of penance, granted by the bishop (or hierarchy) mentioned in canon 722, § 4 is revoked, the presbyter loses it everywhere. If it is revoked by another competent authority, the presbyter loses it only within the territory of the one who revokes it. Apart from revocation, the faculty mentioned in canon 722 § 4

In danger of death any presbyter can validly and licitly absolve any penitents from any sins, even if another presbyter is present who is endowed with the faculty to administer the sacrament of penance (c. 725).

⁴⁹ CCEO c. 723 § 1: «Vi officii pro sua quisque dicione facultate sacramentum paenitentiae ministrandi praeditus est praeter Hierarcham loci etiam parochus aliusque, qui loco parochi est».

⁵⁰ CCEO c. 724 § 1: «Soli Hierarchae loci competit facultatem sacramentum paenitentiae quibuslibet christifidelibus ministrandi speciali collatione conferre presbyteris quibuscumque».

⁵¹ CCEO c. 726 § 1: «Facultas sacramentum paenitentiae ministrandi ne revocetur nisi gravi de causa».

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ceases, by the loss of office, of ascription in another eparchy or of loss of domicile.⁵²

There was a proposal to substitute the clause *revocation of the faculty by another competent authority with prohibition of the exercise of the faculty* since another authority cannot revoke the faculty granted by an authority. It was not accepted on the reason that a superior authority can revoke the faculty.⁵³

1.5. To Reserve the Faculty to Absolve Certain Sins

In some cases, in order to provide for the salvation of souls it may be appropriate to restrict the faculty to absolve from sins and reserve it to a determined authority. This, however, cannot be done without the consent of the Synod of Bishops of the Patriarchal Church or of the Council of Hierarchs or of the Apostolic See (c. 727).

A presbyter, even though endowed with the necessary confessional faculty, is restricted in the act of absolution. The absolution of certain sins are reserved to the Apostolic See or the eparchial bishop. For example, direct violation of the sacramental seal; the absolution of an accomplice in a sin against chastity are reserved to the Apostolic See and to absolve from the sin of procuring a completed abortion is reserved to the eparchial bishop.⁵⁴

52 CCEO c. 726 § 2: «Revocata facultate sacramentum paenitentiae ministrandi collata ab Hierarcha, de quo in can. 722, § 4, presbyter eandem amittit ubique terrarum; revocata autem ab alia auctoritate competenti eandem amittit in ditione revocantis tantum».

- § 3: «Praeterquam revocatione facultas sacramentum paenitentiae ministrandi, de qua in can. 722, § 4, cessat amissione officii, ascriptionis eparchiae vel domicilii».

53 «*Demua recognitio dello schema*»: *Nuntia* 15 (1982) 39. It reads: «Si parla della *proibizione dell'esercizio* della facoltà, non di *revocazione*, perchè un'altra autorità non può revocare la facoltà ottenuta».

54 CCEO c. 728 § 2: «Episcopo eparchiali vero reservatur absolvere a peccato procurationis abortus effectu secuto».

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The reservation of absolution is suspended in the following occasions: (i) if a sick person cannot leave the house or if a spouse confess such a sin in order to celebrate marriage; (ii) if, in the judgement of the confessor, the faculty cannot be requested from the competent authority without a severe inconvenience to the penitent and without danger of violation of the sacramental seal; (iii) outside the territorial boundaries in which the authority who makes the reservation exercises power (c. 729).⁵⁵

2. OBLIGATIONS OF THE EPARCHIAL BISHOP

2.1. Not to Deny Unjustly the Rights of Presbyters to Administer the Sacraments

It is the sacred right of the presbyters to administer the sacraments: Baptism, Chrismation, Penance, Divine Liturgy,

There is the tradition of reserving the absolution of certain sins according to CIC 1983 and in the deliberations of the particular synods (e.g. Synod of Diamper etc.). CCEO eliminated the concept of *poenae latae sententiae*. «*Schema canonum de sanctionibus poenalibus in Ecclesia nella nuova revisione*»: *Nuntia* 20 (1985) 8-9.

But in the matter of Papal election there is an exception in this regard. The recently promulgated Apostolic Constitution *Universi dominici gregis* art. 58 reads as follows: «Qui electioni quoquo modo, ad normam n.46 huius constitutionis, deservunt, quique directe vel indirecte secretum violare quomodolibet poterunt - sive per verba, sive per scripta, per signa, aliasve per quasvis rationes - omnio violationem huiusmodi vitare debent, sub poena excommunicationis latae sententiae, Sedi Apostolicae reservate». Further art. 81 states that «Cardinales electores praetera abstineant ab omnibus pactionibus, conventionibus, promissionibus aliisque quibusvis obligationibus, quibus astringi possint ad suffragium cuidam vel quibusdam dandum aut rescusandum. Quae omnia, si reapse intervenerint, etiam iure iurando adiecto, decernimus ea nulla et irrita esse, neque eadem observandi obligatione quemquam teneri; facientes contra iam nunc poena excommunicationis latae sententiae innodamus. Vetari tamen non intellegimus, ne per tempus sedis vacantis de electione sententiae invicem communicentur». JOHN PAUL II, Ap. Const. *Universi dominici gregis*: *AAS* 88 (1996) 330, 339.

According to CIC 1983 c. 1398 a person who actually procures an abortion incurs a *latae sententiae* excommunication. But CCEO c. 1450 § 2 prescribes that one who procured abortion effectively is to be punished with major excommunication. But it is *ferendae sententiae*. We know that only after giving remission to *latae sententiae*, the sin can be absolved. In CIC remission from *latae sententiae* (caused from procuring abortion) is reserved; in CCEO absolution from the sin of abortion is reserved.

⁵⁵ CCEO c. 729. In such a situation the faculty to confess may become the right of the presbyter.

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Anointing of the sick and Marriage. Without grave reason the eparchial bishop should not prohibit them from this sacred obligation, while on the other hand he should help them to fulfil it properly, since this mission is aimed at the good of the people of God.⁵⁶ It is unjust because such denial is even the denial of the right of the Christian faithful themselves. They can even legitimately vindicate and defend their rights (c. 24 § 1). The Apostolic Constitution clearly mentions duties of bishops and presbyters,

But we do not permit neither the other clerics, namely readers, cantors, door-keepers, or acolytes to baptise, but only bishops, priests and deacons.

An we do not permit presbyters to ordain deacons, deaconesses, readers, acolytes, cantors, or door-keepers, that belongs only to bishops.⁵⁷

According to the tradition of the Eastern Churches, chrismation with holy myron is administered by a presbyter either in conjunction with baptism or separately.⁵⁸ All presbyters of

⁵⁶ The Code and authors list the following causes for restricting a presbyter in the Celebration of the Eucharist: censures (interdict, suspension etc.), expiatory penalties, irregularities or other impediments, loss of the clerical state and prohibition by a legitimate authority, Cf WOESTMAN, "Restricting the Right to Celebrate the Eucharist", 157.

⁵⁷ METZGER, *Les Constitutions Apostoliques*, Livre III, 11, 1,3: «Mais nous ne permettons pas non plus aux autres clerics de baptiser, qu'ils soient lecteurs, chantres, portiers ou servants, mais seulement aux évêques et aux presbytres, aidés par les diacres.....Et nous ne permettons pas aux presbytres d'ordonner des diacres,.....cela revient aux seul évêques;...»

About deacons it states as follows: "A deacon does not bless, does not give blessings; but he receives blessings from bishop and from presbyter; he does not baptise, nor offers; he however, when the bishop or the presbyter offers, gives to the people, not as a presbyter, but as one serving the presbyters". FUNK, *Didascalia et Constitutiones Apostolorum*, Libro VIII, 28, 4.

⁵⁸ CCEO c. 694: «Ex Ecclesiarum orientalium traditione chrismatio sancti myri sive coniunctim cum baptismo sive separatim ministratur a presbytero».

It is to be noted that the Oriental Tradition prohibits presbyters to consecrate the chrism but not to administer it. The reason for the fact that the presbyter also can administer the sacrament of holy Myron as ordinary minister is not only juridical, as he is endowed by the law contained in the Code, but also is theological. The theological

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Eastern rite can confer this sacrament validly on all the faithful of any rite, including Latin rite. For licity, however, they must follow what is laid down by their common and particular law.⁵⁹ The understanding of many for a long time was that the Eastern presbyters could validly administer the sacrament since the faculty was granted by the bishop. The Second Vatican Council states:

The practice concerning the minister of confirmation, which has been in force from the earliest times in the Eastern Churches is to be fully restored. Thus priests can confer this sacrament, using chrism blessed by a patriarch or a bishop.⁶⁰

CIC 1983 canon 882 describes that the ordinary minister of the sacrament is a bishop. However, a presbyter also can validly confer this sacrament if he has the faculty to do so. Following the discipline of the Latin Church, some Eastern Churches began to consider the bishop as the ordinary minister of this sacrament.⁶¹

reason of the consecration of the myron by the bishop, the myron which the presbyter uses in the administration of the sacrament, safeguards the theology of the bishop as the "original" minister of the holy Myron, without reference to the juridical terminologies of CIC 1983, i.e., reference to the bishop as the ordinary minister of the sacrament, and reference to the presbyters as equipped with the faculty of universal right or for a special concession. Cf. SALACHAS, *L'iniziazione cristiana*, 113.

⁵⁹ OE 14: «Presbyteri omnes orientales hoc sacramentum,.... valide conferre possunt omnibus fidelibus cuiusvis ritus, latino haud excluso, servatis ad liceitatem praescriptis iuris tum communis tum particularis»

⁶⁰ OE 13: «Disciplina de ministro s. chrismatis inde ab antiquissimis temporibus apud orientales vigens plene instauretur. Idcirco presbyteri hoc sacramentum conferre valent, adhibito chrismate a patriarcha vel episcopo benedicto».

«Naturalmente, se all'atto del battesimo partecipa il vescovo, anche in forma non ufficiale, è lui deve conferire l'unzione con il S. Myron, mentre il sacerdote recita le altre preghiere». MARUSYN, «L'unzione col santo myron»: *Nuntia* 2 (1976) 15-16. See also SALACHAS, *L'iniziazione cristiana*, 111.

⁶¹ MARUSYN, «L'unzione col santo myron»: *Nuntia* 2 (1976) 15-16; SALACHAS, *L'iniziazione cristiana*, 111

«È da notare che tutti i sacerdoti di rito bizantino cresimano sempre ed ovunque, meno qualche rara comunità. Ciò viene seguito anche dai sacerdoti di rito alessandrino e di rito caldeo, però a quelli di rito malabarese l'uso di cresimare è stato proibito dal Sinodo di Diàmper del 1599.; questo Sinodo però mai stato confermato dalla Santa Sede Romana. Nel rito antiocheno, composto da tre elementi entici, presso i Siri ed i Malankaresi cresimano i sacerdoti, mentre presso i Maroniti il conferimento della

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It is true that the council of Trent called the bishop the *ordinary minister*.⁶² But the Second Vatican Council says "the bishop, marked with the fullness of the sacrament of order, is 'the steward of the grace of the supreme priesthood'... they are the original ministers of confirmation...". That means it substituted the word *ordinarius* with *originarius* to qualify the bishop.⁶³ The term «originarius» as used in the Council document *Lumen gentium* clearly takes with it a profound theology and also it is in relation to the constant Oriental Tradition.⁶⁴ But this change in the Second Vatican Council has not persuaded the Latin Church to admit a presbyter as an ordinary minister of this sacrament.

The presbyters, in virtue of their ordination are capable of administering this sacrament. The obligation to use the chrism consecrated by the bishop derives from the fact that he is the steward of the grace of the supreme priesthood.⁶⁵ A presbyter exercises his ministry only in communion with the bishop.⁶⁶

2.2. To Grant the Confessional Faculty

According to canon 722 § 4 of the Code presbyters who have the faculty to administer the sacrament of penance by virtue of their office or by virtue of a grant of the eparchial bishop of the eparchy to which they are ascribed or in which they have domicile can validly administer the sacrament of penance anywhere to any Christian faithful unless some eparchial bishop in a special case expressly opposes it. By virtue of office, the parish priest and any

eresiama è riservato al vescovo non in virtù del rito antico, ma bensì di una proibizione fatta per la prima volta da Innocenzo III...». MARUSYN, «L'unzione col santo myron»: *Nuntia* 2 (1976) 16.

⁶² Trid, Sess. VII, decr. *de sacr. canones de s. confirmationis*, c. 3: «Si quis dixerit, sanctae confirmationis ordianrium ministrum non esse solum episcopum, sed quemvis simplicem sacerdotem».

⁶³ LG 26: «...Ipsi sunt ministri originarii confirmationis, ...».

⁶⁴ MARUSYN, «L'unzione col santo myron»: *Nuntia* 2 (1976) 16; SALACHAS, *L'iniziazione cristiana*, 112.

⁶⁵ LG 26.

⁶⁶ Cf. SALACHAS, *L'iniziazione cristiana*, 113.

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other presbyters who takes the place of the parish priest are endowed with the faculty of administering the sacrament of penance. The criterion followed by the legislator consists in granting the universal faculty to whoever has it in his own territory.⁶⁷

2.3. To Foster the Presbyters' Spiritual Life

It is recommended that a genuine collaboration be established between the eparchial bishop and presbyters in striving to imitate the priesthood of Jesus and his pastoral missions. The eparchial bishop is responsible for providing his presbyters the necessary means to foster their spiritual life. Canon 368 § 2 of the Code states that presbyters are to attach great importance to spiritual direction and to take time for spiritual retreats at the times established according to the prescriptions of the particular law. Thus it is the responsibility of the eparchial bishop to make such provisions in the particular law of the eparchy so that the presbyters may foster their spiritual life.

2.4. To Supervise the Presbyters' Liturgical Commemoration

The eparchial bishop must be commemorated by presbyters (by all clerics) in the Divine Liturgy and in the Liturgy of the hours, according to the prescriptions of the liturgical books. Moreover he is to see to it that this is faithfully done by the other

⁶⁷ Similarly, by virtue of office every superior of a religious institute or of a society of common life in the manner of religious of pontifical or patriarchal law, if he is a presbyter, is endowed with the faculty to administer the sacrament of penance, but only to the members of his own institute and also to those who live in his house day and night. In order that he may be able to have universal faculty, he should get it by special concession from the hierarch of the place to which he is ascribed or where he has his domicile. He can confer on any presbyter the faculty to hear the confession of the members of his institute and those who live in his house day and night. It is to be noted that in order that the superior of a religious institute or a society of common life in the manner of religious of pontifical or patriarchal right can confer the faculty only if he has the executive power of governance. Executive power of governance can be had only by those who are in sacred orders. c. 979 § 1.

clerics who are serving in the eparchy.⁶⁸ If a presbyter deliberately omits the commemoration of the eparchial bishop (hierarchy) in the Divine Liturgy and in the liturgy of the hours as prescribed by law, and does not change his mind, though lawfully warned, is to be punished with a suitable penalty, not excluding major excommunication (c. 1438).

3. RIGHTS OF EPARCHIAL PRESBYTERS

3.1. To Have a Letter of Recommendation

A Catholic presbyter may celebrate the divine Liturgy on the altar of any Catholic Church (c. 705 § 1). A presbyter who is not known must present a recommendation, called *celebret*, from his bishop (Religious Priests from his superior), or establish his identification in another suitable manner. The eparchial bishop is free to establish precise norms regulating the admission of such presbyters.⁶⁹

The Apostolic canons clearly state that no foreign presbyters may be received without commendatory letters, and when they are produced let the persons be examined, and if they be preachers of godliness let them be received. In the council of Chalcedon it is said that the strange and unknown clergymen without letters of commendatory from their own bishop, were absolutely prohibited from officiating in another city.⁷⁰

In order to celebrate the Divine Liturgy in a place other than his proper eparchy, he should present a recommendation letter

⁶⁸ CCEO c. 209 § 1: «... et curare, ut a ceteris clericis eparchiae fideliter fiat.

- § 2. Episcopus eparchialis commemorandus est ab omnibus clericis in Divina Liturgia et in laudibus divinis secundum praescripta librorum liturgicorum».

⁶⁹ CCEO c. 703 §§ 1, 2.

⁷⁰ Apost. c. 33: «Nullus ...peregrinorum aut presbyterorum...sine commendaticis suscipiatur epistulis, et cum scripta detulerint, discutiantur intentius...». Chalc. c. 13: «Peregrinos clericos et lectores in alia civitate praeter commendaticias litteras sui episcopi nusquam penitus ministrare debere».

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from his bishop and moreover it is the right of the presbyter to acquire such a letter from his eparchial bishop.

3.2. To Receive Offerings (Stipends)

The Divine Liturgy is a communal worship and therefore celebrated only when the community gathered together, i.e., Sundays and other feast days. It was only in the Middle Ages permitted in the Latin Church to celebrate with increased frequency. Then it became a right of every presbyters to celebrate every day. This development was strengthened by the fact that the presbyter was permitted to accept for each Eucharist a stipend from a donor in exchange for offering the liturgy for the donor's intention. That became a means of support for the presbyter. It was taken over from the Latin Church by the Eastern Catholic Churches.⁷¹

The stipends which are given to the presbyters for celebrating the Holy Eucharist for the intention of the individual faithful are relevant still today. In some countries the presbyters take care of their livelihood by means of this income. It is a most ancient custom in the Church.⁷²

The Code clearly allows the presbyter to accept offerings for the celebration of the Divine Liturgy for the intentions which the faithful make. Canon 715 of the Code reads:

- § 1. It is lawful for priests to receive the offerings which Christ's faithful, following a custom approved by the Church, give for celebrating the Divine Liturgy for their intentions.
- § 2. It is also permissible, if it is thus established by lawful custom, to receive offerings for the

⁷¹ Cf. POSPISHIL, *Eastern Catholic Church Law*, 405.

⁷² Cf. POSPISHIL, *Eastern Catholic Church Law*, 405.

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Liturgy of the Presanctified and for commemorations in the Divine Liturgy.⁷³

It was also permissible in the Eastern Churches to accept offerings for the celebration services other than the Holy Eucharist, for e.g. prayer services for the dead. But at the same time the canon 716 exhorts the presbyter that even without any offering individual presbyters are to celebrate readily the Divine Liturgy for the intentions of Christ's faithful, especially of the needy.

The Code speaks of the offering for the Liturgy of the *Presanctified* and it is relevant to give a small description in this regard. For instance,

The Liturgy of the *Presanctified Gifts* has been now also revived in the Latin Church. Because normal week days were without a divine liturgy, a custom arose in the East to celebrate on Wednesdays, Fridays and a few other days of Lent a Eucharistic prayer service without the sacrifice itself, and distribute the holy communion which had been preserved from the foregoing Sunday. As for other non-eucharistic services, also for the Liturgy of the Presanctified Gifts, a stipend may be accepted in exchange⁷⁴ for offering it for the intention of the donor.

If the presbyters accept offerings for the Divine Liturgy from the Christian faithful of another Church *sui iuris*, presbyters are bound by the grave obligation of observing the norms of that Church, unless it is established otherwise by the donor (c. 717).

⁷³ CCEO c. 715 § 1: «Sacerdotibus licet oblationes recipere, quas christifideles secundum probatum Ecclesiae morem pro celebratione Divinae Liturgiae ad proprias intentiones ipsis offerunt.

-§ 2: Licet etiam, si ita fert legitima consuetudo, oblationes recipere pro Liturgia Praesanctificatorum et pro commemorationibus in Divina Liturgia».

⁷⁴ POSPISHIL, *Eastern Catholic Church Law*, 406.

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All stipends and the intentions must be entered into a register of the same which is subject to the bishop's inspection.

3.3. To Have the Confessional Faculty

Canon 722 § 1 of the Code says that "only the priest is the minister of the sacrament of penance". The first schema of this canon was: *Sacramentum poenitentiae administratur, virtute sacerdotalis gratiae ab Episcopo vel presbytero*.⁷⁵ Later it was changed into:*virtute ordinationis sacerdotalis*.⁷⁶ The basic idea is that the presbyter is the minister of the sacrament of penance.⁷⁷

For a presbyter to hear confession validly of any faithful *ubique terrarum*, he must have, besides the sacred ordination, the faculty conferred *ipso iure* (strictly means by virtue of office e.g. parish priest) or by a special grant made by competent authority. In the Code it is stated:

For presbyters to act validly, they must besides possess the faculty to administer the sacrament of penance; such faculty is conferred either by the law itself or by a special grant made by competent authority.⁷⁸

But there are exceptions. For instance any presbyter can validly and licitly absolve from any sins any penitents who are in danger of death, even if another presbyter is present who is endowed with the faculty to administer the sacrament of penance

⁷⁵ Cf. FERRARI, "I canoni sulla Penitenza e sull'Unzione": *Nuntia* 6 (1978) 62, c. 3.

⁷⁶ Cf. «*Denua recognitio dello schema dei canoni sul Culto divino e Sacramenti*»: *Nuntia* 15 (1982) 37: «Si accetta, cambiandola con *ordinationis* perchè più esatto».

⁷⁷ Cf. FERRARI, "I canoni sulla Penitenza e sull'Unzione..": *Nuntia* 6 (1978) 56-57: «La confessione individuale e integra di tutti i peccati commessi dopo il battesimo, da farsi al sacerdote, è l'unico modo, ordinarmente, per ottenere la remissione. Questa è tradizione costante in Oriente come in Occidente, documentata da tutta una serie di scritti patristici provenienti da tutte le più grandi Chiese antiche, da Roma come da Costantinopoli, da Alessandria come da Antiochia».

⁷⁸ CCEO c. 722 § 3.

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(c. 725). Any presbyter may absolve, validly and licitly, from any sin or censure any penitent in danger of death, even an accomplice in a sin against chastity (c. 730). It should be borne in mind that an excommunicated presbyter is not allowed to administer sacraments (c. 1434 § 1), but where there is a danger of death situation this prohibition is suspended.

In danger of death any presbyter may absolve from any sin, whether reserved or not. "In urgent necessity any priest endowed with the faculty of administering the sacrament of penance has to administer this sacrament, but in danger of death also any other priest (c. 735 § 2).

4. OBLIGATIONS OF EPARCHIAL PRESBYTERS

4.1. To Follow the Bishop's Instructions on Liturgical Celebrations

Though presbyters have received this sacred right of administering the Divine Liturgy through their sacred ordination, for its proper exercise, they are bound to obey the instructions of the principal dispenser of the divine mysteries in the eparchy. Since the bishop is the principal dispenser of the mysteries of God, the presbyters as his close co-operators must obey him in order to preserve the liturgical worship and the sacramental mission of the Church without defect. In other words they are bound to the instructions of their eparchial bishop and prescriptions of the liturgical text as approved by the proper authority (cc. 656 § 1, 707 § 1).

In an eparchy, the bishop is the responsible person in liturgical matters. But it is to be noted that presbyters, especially the parish priests, who have daily contact with the people of God must acquire an ever-growing understanding of rites and to observe them as perfectly as possible (c. 40 § 2).

4.2. To Obtain Permission from the Eparchial Bishop to Celebrate the Eucharist in a non-Catholic Church

The presbyters are also bound to ask permission from the eparchial bishop if they are in need of celebrating the Eucharist in a non-Catholic Church (c. 705 § 2).⁷⁹ If a presbyter were to celebrate in a non-Catholic Church, for instance in connection with the blessing of a marriage, he would need the necessary permission of the eparchial bishop (local hierarch).

4.3. To Take Spiritual Direction and make a Retreat

Presbyters are to attach great importance to spiritual direction and to take time for spiritual retreats at the times established according to the prescriptions of the particular law (c. 369 § 2). Of course this obligation seems to be a more personal one but at the same time it touches their relationship with the eparchial bishop. Because it is he who is responsible for arranging such things and he who has the right to see whether they are fulfilling their duties properly or not (c. 192 § 4).

In the Conciliar documents it is stated that the bishops must look after their presbyters'-spiritual, intellectual and material well-being- so that they may be able to live a life of holiness and piety, and to fulfil their ministry faithfully and with spiritual profit. In order to acquire these aspects of their lives the eparchial bishop should give his support to courses of study and arrange special conferences, in which presbyters from time to time can meet together for undertaking a longer period of spiritual exercises for the renewal of their spiritual life and also for acquiring a deeper knowledge of ecclesiastical studies, especially sacred scripture and

⁷⁹ CCEO c. 705 § 2: «Ut sacerdos Divinam Liturgiam in ecclesia acatholicorum celebrare possit, licentia eget Hierarchae loci».

Several eparchies permit presbyters to celebrate the Divine Liturgy in any suitable place, such as in the homes of their faithful, whenever this is indicated, for instance for pastoral reasons. The retired presbyters receive permission to celebrate in their living rooms when access to a Catholic Church is not possible. Cf. POSPISHIL, *Eastern Catholic Church Law*, 397.

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theology, the more important social questions and new approaches to pastoral ministry. Moreover, the document adds that with sympathetic understanding and practical help they should take care of presbyters who are in danger of any kind or who have failed in some way (CD 16). In *Presbyterorum ordinis* it is stated that presbyters should gladly set time aside for spiritual retreats and should hold spiritual direction in high regard.⁸⁰ Therefore it is their obligation to attach great importance to spiritual direction and to take time for spiritual retreats according to the prescription of the particular law.

The specifications as given in the *CS* are omitted in this new formulation of canon 369 § 2 of the Code. The latter left more details to particular laws. *Cleri Sanctitati* on the other hand very well affirms that "all secular presbyters must at least every third year make a retreat for a length of time to be specified by their Hierarchy, in a pious or religious house designated by them. No one shall be exempted, except in a particular case, for a just reason and with the explicit permission of the same Hierarchy".⁸¹ There has been introduced a significant distinction in this previous canon. Instead of using the general term «clerici» it did employ «presbyteri», a term applicable only for presbyters.

4.4. To Commemorate the Eparchial Bishop in the Liturgy

The liturgical commemoration of the hierarchs figures prominently in all Eastern liturgies as a public sign of communion with him. The eparchial bishop must be commemorated by the presbyters in the Divine Liturgy and in the Liturgy of the hours, according to the prescriptions of the liturgical books. He should be commemorated in all places subject to his authority (c. 209 §

⁸⁰ *PO* 18: «Ad suum ministerium recessui spirituali libenter vacent atque directionem spiritualem magni habeant».

⁸¹ *CS* c. 62 § 1: «Omnes presbyteri saeculares debent tertio saltem quoque anno recollectioni spirituali, per tempus a proprio Hierarcha determinandum, in pia aliqua religiosave domo ab eodem designata vacare; neque ab iis quisquam eximatur, nisi in casu singulari, iusta de causa ac de expressa eiusdem Hierarchae licentia».

2).⁸² The Code further states that one who deliberately omits the commemoration of the Eparchial bishop (hierarchy) in the Divine Liturgy and in the Liturgy of the hours as prescribed by law, and does not change his mind, though lawfully warned, is to be punished with a suitable penalty, not excluding major excommunication.⁸³

PART THREE

THE GOVERNING MISSION

The eparchial bishop, as vicar and legate of Christ, governs the eparchy assigned to him by his counsels, exhortations and example. But above all he governs the eparchy by the authority and sacred power which he exclusively exercises for the spiritual development of the people of God in truth and holiness. This power, which he exercises personally in the name of Christ, is proper, ordinary and immediate. Of course in its exercise the eparchial bishop is under the control of the supreme authority, the Roman Pontiff. In virtue of this power the eparchial bishop has a sacred right and obligation before the Lord, of legislating for and passing judgement, on his subjects.

Presbyters through their sacred Ordination have received the power of governing. Being close collaborators of the eparchial bishop in the mission of governing the eparchy they have certain reciprocal rights and obligations.

⁸² CCEO c. 209 § 2: «Episcopus eparchialis commemorandus est ab omnibus clericis in Divina Liturgia et in laudibus divinis secundum praescripta librorum liturgicorum».

⁸³ CCEO c. 1438: «Qui consulto omittit commemorationem Hierarchae in Divina Liturgia et in laudibus divinis iure praescriptam, si legitime monitus non respiscit, congrua poena puniatur non exclusa excommunicatione maiore».

1. RIGHTS OF THE EPARCHIAL BISHOP

1.1. To Issue a Letter of Ascription or Dismissal

Every cleric, as we have seen in the first and second Chapters, must be ascribed into an eparchy or into similar institutions (c. 357). Once a presbyter is ascribed into an eparchy, he is permanently attached to that eparchy unless according to the norms of law released through a due process of dismissal (*dimissione*). Even then, the dismissal will take effect only concomitantly with the new ascription. In other words the ascription of a presbyter to one eparchy does not cease except by valid ascription to another eparchy or by loss of his clerical state.⁸⁴

For an ascription and dismissal, the Code prescribes that the presbyter must obtain from his eparchial bishop a dismissal letter signed by him, and a letter of ascription signed by the eparchial bishop of the eparchy in which he wishes to be ascribed and these letters are needed for validity.⁸⁵ It is exclusively the right of the respective eparchial bishops to issue such letters of ascription and dismissal.

⁸⁴ CCEO c. 364. There can be different forms in which ascription and dismissal take effect. For instance: (i) an ascription and dismissal effected lawfully for a determined period of time (c. 360 § 1); (ii) five years after a lawful move a presbyter is ascribed *ipso iure* in the host eparchy. But it is only after this desire of his was manifested in writing to both eparchial bishops, it was not objected to by either of them in writing within four months (c. 360 § 2). See *ES* 1, 3 § 5. About the ascription and dismissal of the religious clerics see cc. 428, 488 § 1, 494 § 2, 545 § 2, 560 § 2, 565, 579.

⁸⁵ CCEO c. 359: «Ut clericus alicui eparchiae iam ascriptus ad aliam eparchiam valide transire possit, a suo Episcopo eparchiali obtinere debet litteras dimissionis ab eodem subscriptas et pariter ab Episcopo eparchiali eparchiae, cui ascribi desiderat, litteras ascriptionis ab eodem subscriptas». *CS* c. 47 affirmed the same. See *Nic.* 1, 15-16; *Chacl.* 5, 10, 20, *Cart. cc.* 54, 90. *Nic.* II, 10, 15. In the second Chapter we had mentioned about the ascription elaborately.

Balsamon speaks of this dimissorial letter. In order to change their canonical residence, according to him, the presbyters need the dimissorial letter from the bishop who ordained them. *PG* 137, 286.

1.2. To Release and Recall Presbyters

The Council documents explicitly mentioned about the spiritual need of the people especially on account of the scarcity and better distribution of the presbyters. The Council affirmed that it is the responsibility of the bishop to do so (CD 6). In the Code, it is stated that unless there is a true need in his own eparchy or Church *sui iuris*, a presbyter who is solicitous about the universal Church, chiefly for the sake of 'evangelization' can change his ascription (c. 361).⁸⁶

The eparchial bishop has the right to release presbyters for a determined period of time to another eparchy. This can be renewed many times (c. 360 § 1; *ESI*, 3 § 5). Such presbyters retain their original ascription and upon their return they enjoy all the rights which they would have had if they had exercised the sacred ministry there (c. 362 § 2; *ESI*, 3 § 4).

For a notable time the bishop has the right to allow presbyters to depart from the eparchy. In this case, 'the notable time' means more than the period determined by the particular law of one's Church, if there is any.⁸⁷ The eparchial bishop is

⁸⁶ "In CCEO, the term "evangelization" is used only in the sense of the evangelization of the gentiles, that is, of non-Christians. The extended meaning of evangelization (practically embracing all pastoral activity in the light of the gospel) as propounded in Pauls VI's «*Evangelii Nuntiandi*», NÉDUNGATT, *A Companion to Eastern*, 123.

⁸⁷ CCEO c. 386 § 1: «Clerici, etsi officium residentiale non habent, a sua tamen eparchia per notabile tempus iure particulari determinandum sine licentia saltem praesumpta Hierarchae loci proprii ne discedant». We will treat the same theme later in detail when we speak about presbyters.

CS c. 84 demands the permission for an absence «*per tempus non breve*». In the new formulation of the canon it is used «*notabile tempus*». The period of time seems thereby to be shortened.

The clarity on the legislator's intent has not increased in the latter. Cf. POSPISHIL, *The Law on the Persons*, 74. CIC 1917 c. 143, CIC 1983 c. 283 § 1 also used «*notabile tempus*».

According to CS c. 85, permission to reside outside Oriental regions can be granted to the presbyters by their bishop. But the length of time is fixed for "not longer than six months". This canon is absent in the new Code for various reasons. According

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competent to lay down particular laws concerning the length of time beyond which his permission is to be asked. In the formulation of the particular law the bishop should take into account the presbyter's right to holidays in each year (c. 392).

For a just reason a presbyter can be recalled from another eparchy by his own eparchial bishop. Likewise he can be returned by the hosting bishop observing the agreement made as well as equity.⁸⁸ Here there are two dimensions to be noted. The eparchial bishop has the right and at the same time responsibility to send the presbyters for this noble cause, so also, for a just reason, he has the right to recall his presbyter, who has volunteered in another. The right to recall a lawfully migrated presbyter belongs to the proper eparchial bishop. The reason is that there has been no change in the ascription.

1.3. To Receive Reverence and Obedience

Presbyters for their part, bearing in mind the fullness of the sacrament of order conferred on bishops, should respect in them the authority of Christ the supreme shepherd. Therefore, they should be loyal to their own eparchial bishop with true love and obedience. Such obedience on the part of presbyters is permeated with a spirit of co-operation, and is found on that very sharing in the episcopal ministry which is conferred on them through the

to the second paragraph of the same canon, for over six months of residence, a presbyter needs the permission from a higher authority than the bishop (Apostolic See). Also the application of the canon was only to the non - Oriental regions. *PA* c. 303 § 1, 2 defines Oriental regions as "all places, although not contained in an eparchy, province, archiepiscopal, or patriarchate, where the Oriental Rite was observed since ancient times". So that means if it is in the Oriental regions there is no limitation of time.

⁸⁸ CCEO c. 362 § 1: «Iusta de causa clericus ex transmigracione revocari potest a proprio Episcopo eparchiali vel remitti ab Episcopo eparchiali hospite conventionibus initis necnon aequitate servatis». For further study see "Directives for Collaboration among Local Churches and in Particular for a Better Distribution of the Clergy" published by the SCC 25 March 1980: *AAS* 72 (1980) 343-364. *CS* c. 86 further says "the hierarch of the other eparchy can for a just reason revoke the permission to continue residence in his territory, except if he has conferred a benefice on the cleric".

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sacrament of ordination and their canonical mission (PO 7). Thus, the Code states that the presbyters are bound by a special obligation to show reverence and obedience to the eparchial bishop.⁸⁹

1.4. To Exercise Supervision over Presbyters Staying Outside the Eparchy

Eparchial presbyters may reside in other places for different motives, for instance, for pursuing higher studies, for teaching or for other similar purposes. Those presbyters who are residing outside their own eparchy are subject to the eparchial bishop in those matters which regard the obligations of their state of life. If they desire to reside there for a lengthy time, they are to inform the local hierarch without delay.⁹⁰

1.5. To Give Permission to Post Bond

In the Code, the presbyters are forbidden to post bond, even from their own goods, unless they have consulted their own eparchial bishop.⁹¹ That means without the due consultation with the eparchial bishop, presbyters are not to assume financial responsibility for the affairs of others. They must have an authorisation from the eparchial bishop to post such bonds for which they are accountable.

The Decree *Presbyterorum ordinis* states, "they could not be servants of Christ, if they did not witness to and make available

⁸⁹ CCEO c. 370: «Clerici speciali obligatione tenentur et Episcopo eparchiali reverentiam et oboedientiam exhibendi». See CS c. 63.

⁹⁰ CCEO 386 § 2: «Clericus, qui extra propriam eparchiam commoratur, Episcopo eparchiali loci in eis, quae eiusdem clerici status obligationes respiciunt, subditus est; si ibi per tempus non breve commoraturus est, Hierarcham loci sine mora certiozem faciat». See CS c. 87.

⁹¹ CCEO c. 385 § 3: «A fideiubendo, etiam de bonis propriis, clericus prohibetur nisi consulto proprio Episcopo eparchiali vel, si casus fert, Superiore maiore». See CS c. 78. In the CIC 1983 there are some explicit prohibitions. e.g. administration of goods belonging to lay people, to hold secular offices which are accountable (such as in a savings bank, a cooperative bank etc.), to sign promissory notes see c. 285 § 4.

a life other than earthly one; nor could they serve people if they remained aloof from the conditions of their lives. Their very ministry makes a special claim that they should not conform to this world; but at the same time it demands that they should live in this world among its people...".⁹² Of course that itself is the spirit of the canon too. Therefore the eparchial bishop is free to judge the situation and he may allow the presbyter to post bond or not.

1.6. To Allow Presbyters to Engage in Business or Trade

The presbyters are forbidden to exercise by themselves or through another any business or trade whether for their own benefit or for that of another. But with the necessary permission of the authority defined by particular law or by the Apostolic See presbyters may engage in business and trade.⁹³ In the case of the former, in an eparchy, the authority to grant such permission would be the eparchial bishop. In the particular law, the nature, time and place etc., can be defined.

The Council of Chalcedon (c. 3) clearly decreed that the bishop, presbyters etc., shall not hire possessions, or engage in business, or occupy himself in worldly engagements, unless he shall be called by the law to the guardianship of minors, from

⁹² PO 3: «Ministri Christi esse non possent nisi alius vitae quam terrenae testes essent est dispensatores, sed neque hominibus inservire valerent si ab eorum vita condicionibusque alieni remanerent. Ipsum eorum ministerium speciali titulo exigit ne huic saeculo sese conforment».

⁹³ CCEO c. 385 § 2: «Prohibentur clerici per se vel per alios negotiationem aut mercaturam exercere sive in propriam sive in aliorum utilitatem nisi de licentia auctoritatis iure particulari propriae Ecclesiae sui iuris determinatae aut Sedis Apostolicae». see CS c. 83.

In the m. p. *De Episcoporum muneribus* (Paul VI in 1966) it is reserved to the Apostolic See any dispensation for a cleric "to practice business or commerce, personally or through others, for their own advantage or that of others. Cf. BOUSCAREN, *Canon Law Digest*, 398.

Apost. c. 44 " It is prohibited to both bishop and presbyter (also deacon) take usury from those who borrow of him. The tone is more of the secularity of motive (that of gaining money) than the secular employment and the former is condemned by the councils. Nic. I, c. 17 again Laod c.4; Carth. cc. 5, 16; Nic. II, c. 15.

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which there is no escape; or unless the bishop of the city shall commit to him the care of ecclesiastical business, or of unprovided orphans or widows and of persons who stand especially in need of the Church's help. If somebody transgresses this decree he is subject to ecclesiastical penalties.⁹⁴

1.7. To Judge Presbyters' Involvement in Politics

According to the Code presbyters are not to have an active part in political parties nor in the supervision of labour unions.⁹⁵ But they will be able to do so only when it is necessary to protect the rights of the Church or to promote the common good and when the competent ecclesiastical authority judges it to be thus. Here the competent authorities mentioned are the eparchial bishop, the patriarch or of another authority.

1.8. To Permit Presbyters to Join the Military Service

Since military service is less appropriate for those in the clerical state, presbyters are not to take it up voluntarily except by permission of their eparchial bishop. Presbyters are to make use of exemption from exercising public functions and offices alien to their clerical state as well as military service granted in their favour by civil laws, agreements or customs.⁹⁶

⁹⁴ Chalc. c. 3: «Pervenit ad sanctam synodum, quod quidam qui in clero videntur allecti, propter lucra turpia conductores alienarum possessionum fiant et saecularia negotia sub cura sua suscipiant, Dei quidem ministerium parvipendentes, saecularium vero discurrantes domos, propter avaritiam patrimoniorum sollicitudines assumentes....».

According to Bright the cases excepted, the undertaking of secular business was made ecclesiastically penal. "Yet this is not to be construed as forbidding presbyters (clerics) to work at trades either (1) when Church funds were insufficient, or (2) in order to have more to bestow in alms, or (3) as an example of industry and humility". Cf. PERCIVAL, *The Seven Ecumenical*, 270.

⁹⁵ CCEO c. 384 § 2: «In factionibus politicis atque in moderandis consociationibus syndicalibus activam partem ne habeant, nisi iudicio Episcopi eparchialis vel iure particulari ita ferente Patriarchae aut alterius auctoritatis iura Ecclesiae tuenda aut bonum commune promovendum id requirunt». CIC 1983 c. 287 § 2 does not specify the competent ecclesiastical authority to judge the necessity.

⁹⁶ CCEO c. 383, 2°: «cum servitium militare statui clericali minus congruat,

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These offices (for instance military service) are not evil in itself but when we compare them with the dignity of the clerical state, they are foreign to it. It is hardly consistent with the clerical state. Thus, if it is needed, it is the eparchial bishop who has the right to grant such permission. Even then as we have seen according to the third paragraph of the same canon it is strongly recommended to use the exemptions.

In the Apostolic canons priestly office together with military service is prohibited. The spirit of this decree was "for the things of Caesar belong to Caesar, and those of God to God". The decree imposes punishment on the cleric who takes military service with deposition from the clerical office.⁹⁷

1.9. To Exercise Certain Rights over the Presbyteral Association

There are public and private associations in the Church. The public associations which are erected by competent ecclesiastical authority, or approved by the decree of the same authority, are juridical persons in the Church (c. 573 § 1). Private associations are other associations, that are praised or recommended by ecclesiastical authority. Private associations are not recognised in the Church, unless their statutes are reviewed by competent authority. They are regulated only by particular law of the Church *sui iuris* (c. 573 § 2).

Even though the Christian faithful are free to form and to govern associations (c. 18), the competent ecclesiastical authority

illud ne capessant voluntarii nisi de sui Hierarchae licentia;

3^o: utantur exceptionibus, quas ab exercendis muneribus et officiis publicis a statu clericali alienis necnon servitio militari in eorum favorem concedunt leges civiles aut conventiones vel consuetudines». CS c. 82 § 1 further states that they shall in no way contribute to internal wars and perturbations of the public order. CS c. 56 says all clerics are immune from military service and from duties and public offices that are alien to the clerical state.

⁹⁷ Apost. c. 83: «Episcopum aut presbyterum autmilitiis perseverantem adque agere ambo volentem, optinere romanum principatum et sacerdotalem gubernare, degradare oportet, "quae enim sunt caesaris caesari, quae sunt dei deo».

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alone has the right to erect such associations of Christ's faithful which set out to teach Christian doctrine in the name of the Church or to promote public worship or which aim at other ends whose pursuit by their nature is reserved to the same ecclesiastical authority (c. 574). However, in the eparchy the competent authority for erecting or approving eparchial associations of Christ's faithful, for associations and their confederations is the eparchial bishop, unless their erection has been reserved to others by apostolic or patriarchal privilege (c. 575 § 1, 1°). But for the erection of any branch of any non-eparchial association, the written consent of the eparchial bishop is required (c. 575 § 2).

The full right of the presbyters, to associate with others for pursuing the ends suitable to the clerical state is judged by the bishop. It is the right of the eparchial bishop or it belongs to him to judge authentically this suitability (c. 391).

If a presbyteral association is planned according to the norms of the Church the eparchial bishop is to approve that association (cc. 573-574). However, this association is subject to the vigilance of the eparchial bishop. Hence, the eparchial bishop is to see that the integrity of faith and morals is preserved in such associations, and to watch lest abuse should creep into ecclesiastical discipline (c. 577 § 1).

1.10. To Enforce and Issue Norms

To enforce the common law in an eparchy is the right and responsibility of the bishop. This is true with regard to the clerical disciplines (cc. 367-392). But he is to be mindful of that his commands must be in conformity with the spirit of the law. He cannot command anything which is prohibited in the common law. For instance if someone is unwilling to receive ordination he cannot be forced to do so, neither should he be forbidden if he is worthy according to the norm of law (c.756). Also the bishop cannot prohibit what the Code clearly permits. For example, he

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cannot give an order to his presbyters not to accept offerings for the celebration (c. 715 § 1).

The eparchial bishop may issue certain particular norms for his eparchy for the good of the eparchial community. In his relationship with his presbyters the following are some instances mentioned in the Code:

(a) to issue norms with regard to the spiritual retreat of presbyters.⁹⁸

(b) to establish suitable means to assist clerics, celibate as well as married to shine forth in the splendour of chastity.⁹⁹

(c) to make particular laws for clerics in order to celebrate the Liturgy of the hours.¹⁰⁰

⁹⁸ CCEO c. 369 § 2: «Directionem spiritualem magni faciant et statutis temporibus secundum iuris particularis praescripta recessibus spiritualibus vacent».

CS c. 62 § 1 gives more discretion to the eparchial bishop in this regard, for instance to fix time and duration of retreat, to specify the place and to give exemptions for a just reason. On the contrary in the new formulation of the same canon these options are left to the particular laws.

⁹⁹ CCEO c. 374: «Clerici caelibes et coniugati castitatis decore elucere debent; iuris particularis est statuere opportuna media ad hunc finem assequendum adhibenda». CS cc. 73-74 give some details in this regard. For instance, if some one sins against chastity he shall be punished according to the norms; clerics shall take care not to have in their houses, nor to visit in any way, woman who could give reason for suspicion etc. CS c. 74 § 3 left this responsibility of decision solely upon the local hierarch.

For instance Nic. I, canon 3 forbids all clergy to have a *subintroducta* dwelling with them, except only a mother, or sister, or such persons beyond all suspicion. Further reference see Nic. II, c. 18, Basilius c. 69, 88.

¹⁰⁰ CCEO c. 377: «Omnes clerici laudes divinas celebrare debent secundum ius particulare propriae Ecclesiae sui iuris».

According to the previous Oriental legislation (CS c. 76), this obligation begins from the order of subdiaconate. Those who have lost their clerical state are not obliged. But in the Code it is used «omnes clerici ...debent» (all clerics must).

According to OE 22: «Clerici et religiosi orientales celebrent iuxta propriae disciplinae praescripta et traditiones laudes divinas, quae inde ab antiqua aetate magno in honore fuerunt apud omnes ecclesias orientales».

In the Synod of Laod. c. 18 it is mentioned: "The same service of prayers is to be said always both at noon and at vespers".

PO 13: «In officio divino recitando, vocem praebent ecclesiae...». As they

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(d) Make particular law for clerics to celebrate the Divine Liturgy: The Code says that according to the norm of the particular law clerics are to celebrate the Divine Liturgy frequently, especially on Sundays and holy days of obligation; indeed daily celebration is eagerly encouraged.¹⁰¹

The Council of Trent in canon 14 states, "the bishop is to see that they (presbyters) celebrate mass at least on Sundays and solemn feasts, and if they have the care of souls as often as their responsibilities require".¹⁰² In the Second Vatican Council it is stated that "in the mystery of the Eucharistic sacrifice, in which priests fulfil their highest office, the work of our redemption is carried out; and so they are strongly urged to celebrate daily, for even if the faithful cannot be present this is an act of Christ and of the Church".¹⁰³

(e) The presbyters are to abstain completely from all those things unbecoming to their state, according to the norms determined in detail by particular law, and also to avoid those things which are alien to it. Therefore, the eparchial bishop has the right to formulate certain norms in this regard.¹⁰⁴

The law forbids the presbyters to undertake certain activities, although not evil in themselves, are unbecoming to the priestly state of life because they are "set apart for the Gospel of God (Rom. 1:1; PO 3). As a general norm, in the *motu proprio Cleri Sanctitati* it is stated that the presbyters should not practice

recite the divine office they give a voice to the Church.

¹⁰¹ CCEO c. 378: «Divinam Liturgiam clerici frequenter ad normam iuris particularis celebrent praesertim diebus dominicis et festis de praecepto; immo enixe commendatur celebratio cotidiana».

¹⁰² Trid. sess. XXIII, c. 14: «Curet episcopus, ut ii saltem diebus dominicis et festis solemnibus, si autem curam habuerint animarum, tam frequenter...».

¹⁰³ PO 13: «In mysterio sacrificii eucharistici,eius celebratio cotidiana ...». Further PO 18 treats about its importance.

¹⁰⁴ CCEO c. 382: «Abstineant prorsus clerici ab eis omnibus, quae statum eorum secundum normas iure particulari pressius determinatas dedecent, et etiam evitent ea, quae ab eo aliena sunt».

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unbecoming arts, should not play games of chance for money, should not carry weapons unless there is a justified cause for fear, should not indulge in excessive hunting, never participate in clamorous hunting, should not visit taverns and other similar places without necessity or for any good reason approved by the hierarch.¹⁰⁵ The *motu proprio* continues in canon 80 § 1 that clerics should avoid things which although not unbecoming, are nevertheless alien to the clerical state; and they shall not attend performances, dances and shows which are unbecoming to their state. They should avoid public theatre where their presence would cause scandal (c. 81).¹⁰⁶

(f) Canon 384 § 2 states that presbyters are not to have an active part in political parties nor in the supervision of labour unions unless, in the judgement of the eparchial bishop or, if a particular law so states, of the patriarch or of another authority, the need to protect the rights of the Church or to promote the common good requires it.

(g) Presbyters are forbidden to exercise by themselves or through another any business or trade whether for their own benefit or for that of another. But they may engage in these things with the permission of the authority defined by particular law (c. 385 § 2).

(h) Presbyters, even if they do not have a residential office, nevertheless are not to leave their eparchy for a notable period of time determined by particular law without the permission, at least

¹⁰⁵ CS c. 79: «Clerici ab iis omnibus quae statum suum dedecent, prorsus absteinant: indecoras artes ne exercent; aleatoriis ludis, pecunia exposita, ne vacent; arma ne gement, nisi quando iusta timendi causa subsit; venationi ne indulgeant, clamorosam autem nunquam exercent; tabernas aliaque similia loca sine necessitate aut ulla iusta causa ab Hierarcha loci probata ne ingrediantur».

¹⁰⁶ Apost. c. 42: "If a presbyter is addicted to dice or drinking, if he did not give it up he must be deposed". Laodicea c. 24 prohibits all clerics from entering in a tavern. Canon 24 of the same synod prohibits clerics (even lay), who are invited to a love feast, may take away their portions, for this is to cast reproach on the ecclesiastical order. For further study see Laod. cc. 54-55, Carth. cc. 16, 40; Nic. II, c. 22.

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presumed, of their eparchial bishop. That signifies a *sui iuris* Church may fix a time limit in this regard through its particular law (c. 386 § 1).

(i) With regard to presbyters' attire there is no special mention in the common law but on the other hand the Code left it to the discretion of the particular law of each Church *sui iuris*.¹⁰⁷ *Cleri Sanctitati* canon 77 § 1 clearly states that the clerics should wear a becoming ecclesiastical garb in accordance with the legitimate customs of the region and with the rules defined by the local hierarchy.¹⁰⁸

(j) It is up to the eparchial bishop to decide whether to accept or defer the resignation of a presbyter from office. If he accepts the resignation due to various reasons, he is to provide for the suitable support and housing of the resigned presbyter. In order to provide for the resigned presbyters, the eparchial bishop is to formulate particular laws accordingly (e.g. c. 297 § 2).

(k) Particular laws for the support of presbyters is described in the Code. Thus it states that each eparchy, in accordance with the particular law of its Church *sui iuris*, is to have a special fund which collects goods and offerings for the purpose of providing appropriately for the fitting and fundamentally equal support of all the clerics who serve the eparchy, unless they are otherwise cared for (c. 1021 § 1).

(l) Where there is as yet no properly organised system of insurance, social security and health welfare for the clergy, the particular law of each Church *sui iuris* is to provide for the erection

¹⁰⁷ CCEO c. 387: «Quod ad vestis habitum clericorum spectat, ius particulare servetur».

¹⁰⁸ CS c. 77 § 1: «Clerici ecclesiasticum habitum decentem induant, eumque conformem cum legitimis locorum consuetudinibus et Hierarchae loci praescriptis;...». Nic. II, c. 16 "bishops and clerics who array themselves in gay and showy clothing ought to correct themselves, and if they do not amend they ought to be subjected to punishment".

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of institutes that safeguard these benefits under the vigilance of the eparchial bishop (local hierarch, c. 1021 § 2).

(m) Presbyters have the right to be provided for themselves as well as for their families, if they are married, suitable pension funds, social security as well as health benefits, in order that this right can be put in to effect. Moreover presbyters are also bound by an obligation on their part to contribute to the fund according to the norm of the particular law (c. 390 § 2).¹⁰⁹

The *motu proprio Cleri sanctitati* mentions even a list of persons and organs responsible in the eparchy for contribution of the fund, the bishop's endowment or bishops mensa, each eparchial consultor, parish priests, parochial vicars etc., and if the eparchial statutes state so, all other clergy ascribed to the eparchy.¹¹⁰

(n) Presbyters have a right to take annual vacation. The proper period of time of vacation is to be determined by the particular law.¹¹¹

1.11. To Transfer, and Exercise the Right of Removal and Privation

Besides other cases (for instance, by the lapse of a determined time, by reaching the age, by resignation) by removal, by transfer and by privation presbyters may lose their office (c. 965). In these instances the eparchial bishop must observe certain procedures as proposed in the Code.¹¹²

¹⁰⁹ CCEO c. 390 § 2: «Item ius habent, ut sui suaeque familiae, si coniugati sunt, congruenti praeventivae et securitati sociali necnon assistentiae sanitariae provideatur; ut hoc ius ad effectum deduci possit, obligatione tenentur clerici instituto, de quo in can. 1021, § 2, ad normam iuris particularis pro sua parte conferre».

¹¹⁰ CS c. 59 § 2: «Ad hanc pecuniae summam constituendam et augendam conferre debent domus seu mensa episcopalis, paroeciae vel quasi-paroeciae, singuli eparchiales consultores, parochi, vicarii paroeciales et, si statuta eparchialia ita ferant, ceteri clerici eparchiae adscripti».

¹¹¹ CCEO c. 392: «Ius clericorum est ad debitum quotannis feriarum tempus iure particulari determinandum».

¹¹² CCEO c. 1388: "In the removal or transfer of parish priests, canons.

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Here it is relevant noting that a *transfer* is done for a different reason than *removal*. In the case of a *transfer*, the pastor is ministering well, and the eparchial bishop wants him to assume another office which requires his particular skills and qualities. But in the case of a *removal*, the parish priest's ministry is found to be detrimental or ineffective. These distinct concepts give rise to distinct procedures, and thus an eparchial bishop would not use the procedure of transfer when his intention is to remove.¹¹³

1.11.1. Transfer

There are two canons in the Code which provide the basic principles for the transfer of an incumbent to another office. Canon 972 stipulates that a transfer can be effected only by the one who has the right of providing for the office which is being lost as well as for the office which is being conferred. If a transfer is to be made against the will of the presbyter who holds the office, a grave cause is required and the procedure prescribed by law is to be observed with due regard for the right to bring forward arguments against the transfer. For a transfer to have effect, it must be communicated in writing.

Canon 973 addresses very practical concerns with clarity: (i) when the former office is vacated, and (ii) how the presbyter is compensated in the interim. In the case of a transfer of a presbyter, his former office becomes vacant by the taking of canonical possession of the other office, unless it is provided otherwise by law or is prescribed differently by the competent authority. The presbyter transferred receives the remuneration attached to the former office until the moment of taking canonical possession of the other office.

1389-1400 are to be observed, unless a different procedure is laid down by the particular law approved by the Apostolic See".

¹¹³ Cf. PARIZEK, "Ecclesiastical Office", 119.

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When offices other than the parish priest, for instance curial, judicial, and pastoral offices, are involved, the manner of effecting a transfer conforms to the prescriptions of canons 972 and 973. However, the eparchial bishop will first assess the measure of stability attached to the office from which he intends to transfer the presbyter. For those offices assigned at the instance of the eparchial bishop's prudent discretion, from which the bishop usually can remove the incumbents for just cause. The transfer process proceeds simply in accord with these two canons. When a non-pastoral office with greater stability is in question, it is appropriate for the eparchial bishop to observe the steps as outlined in the canonical process for the transfer of a parish priest. The manner of transferring a parish priest from his pastoral office to another is succinctly indicated by canons 1397 to 1400.¹¹⁴ These norms include the right to take recourse against the transfer. In cases for transfer of unwilling incumbents of non-pastoral offices, eventual recourse is governed by canons 996 to 1006.¹¹⁵

1.11.2. Removal

There are four canons in the Code (974-977) which provide basic norms to be observed in the process of removing presbyter from office. An incumbent may be removed from office either *by a decree* lawfully issued by the competent authority, eparchial bishop or *by the law itself*.

The following are removed from office *by the law itself*: (i) one who has lost the clerical state; (ii) one who has publicly abandoned the Catholic faith or has defected from communion with the Catholic Church; and (iii) a cleric who has attempted marriage, even a civil one.

In the first case, the loss of the clerical state must be determined according to the proper canonical procedures. The loss

¹¹⁴ For further details see Chapter four.

¹¹⁵ Cf. PARIZEK, "Ecclesiastical Office", 118.

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of office in the second and third cases can be enforced only if the fact causing the loss is established by the competent authority (c. 974). That means the competent authority must establish the fact from certain evidence and declare by decree that the office in question is vacant by reason of the law itself. Also the decree is to be dated, signed, and notarised. Only after this can such authority proceed to the provision of the office.¹¹⁶

Unless it is provided otherwise in law, no presbyter can be removed from an office conferred for an indefinite period of time except for a *grave reason* and observing the manner prescribed in law. The same principle applies to the removal of a presbyter from office before the expiry of the term, if the office was conferred for a determined period of time (c. 975 § 1).¹¹⁷ Thus the first part of this canon instructs the eparchial bishop to determine a grave reason and to follow legally determined procedures. For example, the Code provides examples of grave causes for which the eparchial bishop may remove a parish priest, and the special procedures must be followed (see cc. 1389 - 1396).

Canon 975 § 2 provides instruction on the manner of removal from offices which were conferred by the competent authority according to his prudent discretion. That means if in accordance with the prescriptions of law an office has been conferred upon a presbyter at the prudent discretion of the eparchial bishop, that presbyter can be removed from it for a reason considered just by the same authority, with due regard for equity (c. 975 § 2). In such cases the eparchial bishop needs only what he decides is just cause.

No procedure is prescribed by the Code for the removal of the following persons from their offices: protosyncellus, syncellus, parochial vicar etc.,. For example, the eparchial bishop enjoys

¹¹⁶ Cf. PARIZEK, "Ecclesiastical Office", 121.

¹¹⁷ CS c. 134.

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absolute discretion in the appointing and the removing of the protosyncellus, provided that natural and canonical equity is observed. To remove a parochial vicar, there is required only a just reason.¹¹⁸

Although no specific procedure is mentioned in some cases, this does not mean that there is no procedure at all. Also the procedure for removal is not simply a matter of the eparchial bishop informing the presbyter of his removal. The removal is to be enacted and communicated by an individual decree. Such kind of enactment will be governed by canons 1517-1520 of the Code. Therefore, the eparchial bishop needs accurate information for determining a just cause for the removal; he is also to hear those whose rights can be injured by the removal; and in the decree itself he must disclose his reasons for the removal, at least in summary form.¹¹⁹ In any case of removal from the office, the action must be communicated in writing (c. 974 § 2).

When the eparchial bishop's decree removes the presbyter from an office on which that presbyter's livelihood depends, the same authority is to see to it that the presbyter's livelihood is secure for an appropriate time, unless this has been otherwise provided (c. 977).

1.11.3. Privation

Distinct from the manner of removal from office, the Code provides another means of losing office - by privation (c. 978). *Privation* is a removal from office as a penalty. The eparchial bishop can deprive a presbyter of a particular office. But this can be inflicted only as a penalty for an offense (c. 978).¹²⁰

¹¹⁸ Cf. PARIZEK, "Ecclesiastical Office", 122.

¹¹⁹ Particular law may also provide causes and prescribe procedures for the removal of presbyters from office. But it should not contradict the common law, and are to be applied in situations not covered by the Code. Cf. PARIZEK, "Ecclesiastical Office", 122.

¹²⁰ The rules on privation follow the procedures set forth in penal law.

1.12. To Impose Ecclesiastical Penalties

As the eparchial judge and the custodian of justice in the eparchy, the eparchial bishop has the right to impose ecclesiastical penalties on his presbyters. This can be understood as the bishop's ministry of justice and pastoral charity.

Circumstances surrounding alleged misconduct by the presbyter may necessitate a formal and canonical examination. The purpose of such formal and canonical examination is to determine whether it is necessary or appropriate to apply penalties or other canonical remedies in the specific case under investigation. Canon 24 § 3 of the Code envisions such a possibility: "Christ's faithful have the right not to be punished with canonical penalties except in accordance with the norm of law". Ecclesiastical penalties, therefore, cannot be imposed on a presbyter apart from a proper canonical process. Canons 1468-1487 provides the basic process used in conducting penal investigations and making the necessary determinations.¹²¹

Extra-canonical investigations, whether conducted by civil authorities or by an attorney, insurance carrier or other private agency operating on behalf of the Church, cannot be utilised in a prior investigation except under the direction of an ordinary whose responsibility it is to see that all requirements of canon law are observed.¹²²

¹²¹ For further study see INGELS, "Processes which Govern the Application of Penalties", 207- 229.

¹²² INGELS, "Processes which Govern the Application of Penalties", 207.

The CIC 1917, canons 2186-2194, did provide a process which permit an ordinary to impose the penalty of suspension on a cleric for the commission of an occult crime solely on the basis of the ordinary's "informed conscience". Utilising this process, the penalty of suspension could be imposed with no prior warning and with no explanation other than the fact that the ordinary was acting "from an informed conscience". Cf. INGELS, "Processes which Govern the Application of Penalties", 207.

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Any presbyter accused of misconduct, whether public or occult, is entitled to the right of having his accusation examined in an ecclesiastical forum which will provide him with an opportunity of being informed of the accusations which have been made against him and of responding to them.

Penal procedure in the Code includes three separate and distinct stages: First *the prior investigation* (cc. 1468-1470), involves a preliminary investigation of facts and circumstances of an alleged offense and considers the imputability of the person who has been accused of misconduct. This is to determine whether an offense has actually occurred and whether or not the accused can be held responsible for the offense. The second stage is *the development of the process* (cc. 1471-1482). This provides the accused with an opportunity of responding to the allegations and determines whether or not an ecclesiastical penalty is to be applied. The third stage is *the action for reparation of damages* (cc. 1483-1485). This provides an injured party with the right of seeking repair of any damages which have been sustained due to an offense.¹²³

Penal sanctions are provided in the Code in canons 1401-1467. For example, a presbyter who denies a truth which must be believed with divine and catholic faith, or who calls it into doubt, or who totally repudiates the Christian faith, and does not retract it after having been legitimately warned, is to be punished as a heretic or an apostate with a major excommunication. Moreover he can be punished with other penalties, not excluding deposition.¹²⁴ So the eparchial bishop has every right to implement the penal sanctions on his presbyters in accordance with the norms.

¹²³ See INGELS, "Processes which Govern the Application of Penalties", 207-208.

¹²⁴ CCEO c. 1436 § 1: «Qui aliquam veritatem fide divina et catholica credendam denegat vel eam in dubium ponit aut fidem christianam ex toto repudiat et legitime monitus non respiscit, ut haereticus aut apostata excommunicatione maiore puniatur, clericus praeterea aliis poenis puniri potest non exclusa depositione».

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After sufficient investigation has been made, it rests with the eparchial bishop to decide if the proofs warrant a penal process and indicate whether judicial or administrative procedure is to be followed. Some cases are without foundation and they do not warrant a penal trial. But in some other instances, though a process may be warranted and there may be sufficient evidence of an ecclesiastical offense, such a process may not be expedient. The common good of the ecclesial community and especially the offender might better be ensured by some other extra-judicial measure rather than a penal process. At the same time the eparchial bishop has the right to revoke or change his decision whenever it appears to him from the new facts and circumstances, that a different decision is called for. In order to avoid a pointless trial, he has the right to make a decision about the question of damages with the consent of parties.¹²⁵ If the eparchial bishop deems it prudent he can consult with others in order to make a decision (c. 1469 § 3). Also he has the right to make a decree for opening and disclosing of an investigation (c. 1470).

The eparchial bishop is to revoke or change a decision authorising penal procedure against a presbyter if such a change is warranted (c. 1469 § 2). He may have received new facts and circumstances and based on them he can revoke or even can change his decision. If such a situation arises he has an obligation to revoke or change the decision according to the situation. But before deciding anything upon the matter he is to hear the one who is accused and the promoter of justice. Also, if he deems it prudent, he should hear two judges or others expert in law. The eparchial bishop is also to consider whether, in order to avoid a pointless trial, it is expedient that either he or the investigator

¹²⁵ CCEO c. 1469 § 1: «Firmis cann. 1403 et 1411, si investigatio satis instructa esse videtur, decimat Hierarcha, num procedura in poenis irrogandis promovenda sit, et, si affirmative decedit, utrum per iudicium poenale an per decretum extra iudicium agendum sit.

§ 2. Hierarcha decisionem suam revocet vel mutet, quoties ex novis factis et circumstantiis aliud sibi decernendum videtur». See *SN* cc. 516 § 1, 520 §§ 1-2.

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equitably make a decision about the question of damages with the consent of the parties (c. 1469 § 3)

1.13. To Approve a Prohibition or Injunction Against Presbyters

In the penal sanctions the eparchial bishop has the right to approve certain prohibitions and also certain injunctions. He may forbid a presbyter to stay in a certain place or territory or give him an injunction to stay in a certain place or territory. Moreover, to impose an injunction to stay in a certain place or territory, the consent of the eparchial bishop (local hierarch) is required, unless it is in a plurieparchial house for the penance and rehabilitation of clerics.¹²⁶

1.14. To Remit Declared Penalty Established by Law

When it is not reserved¹²⁷ the eparchial bishop who conducts the trial of penal process, or the hierarch who inflicted or declared it, or the eparchial bishop of the place where the accused lives after consulting the penalising eparchial bishop, is

¹²⁶ CCEO c. 1429 § 1: «Prohibitio commorandi in certo loco vel territorio tantum clericos vel religiosos vel sodales societatis vitae communis ad instar religiosorum afficere potest, praescriptio vero commorandi in certo loco vel territorio nonnisi clericos eparchiae ascriptos salvo iure institutorum vitae consecratae.

§ 2. Ut praescriptio commorandi in certo loco vel territorio irrogetur, requiritur consensus Hierarchae loci, nisi agitur vel de domo instituti vitae consecratae iuris pontificii vel patriarchalis, quo in casu requiritur consensus Superioris competentis, vel de domo clericis plurium eparchiarum paenitentibus vel emendandis destinata».

Chalc. c. 23: "It has come to the hearing of the holy synod that certain clergymen and monks, having no authority from their own bishop, and some times, indeed, while under sentence of excommunication by him, betake themselves to the imperial Constantinople, and remain there for a long time, raising disturbances and troubling the ecclesiastical state, and turning men's houses upside down. Therefore the holy Synod determined that such persons be first notified by the Advocate....to depart from the imperial city, if they shall shamelessly continue in the same practices, they shall be expelled even against their will, and return to their own places".

¹²⁷ For instance a penalty imposed by the Apostolic See can be remitted only by the Apostolic See, unless it is delegated (c. 1420 § 3). Roman Pontiff, the synod of bishops of the patriarchal Church or of the major archiepiscopal Church can, because of grave circumstances, enact laws and reserve the remission of penalties to the patriarch or to the major archbishop (c. 1423 § 1).

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empowered with the right to remit declared penalty established by law.¹²⁸ If the penalty has been established towards a presbyter in virtue of a particular law or a penal precept other than that of a superior authority, it can be remitted by both the eparchial bishop of residence of the offender or the eparchial bishop who inflicted or declared the penalty. The Code says that the said norms of remitting penalty apply also in respect to penalties imposed in virtue of a particular law or a penal precept. Unless otherwise the particular law of a Church *sui iuris* provides there can be change in this regard (c. 1420 § 2).¹²⁹

1.15. To Grant Rights and Clerical Dignities

According to the Tradition, the eparchial bishop may grant certain rights and insignia to his presbyters. Various Eastern Churches know several degrees of distinctions in this regard, for example chor-bishop, archimandrite, chor-episcopa, protosyncellus syncellus, etc.¹³⁰

The various systems of honorific dignities and titles that existed in the Eastern Catholic Church's tradition are not

128 CCEO c. 1420 § 1: «Poenam vi iuris communis irrogatam remittere potest:

1° Hierarcha, qui iudicium poenale promovit vel decreto poenam irrogavit;

2° Hierarcha loci, ubi reus actu commoratur, consulto vero Hierarcha, de quo in n. 1».

In the ancient canons the right of the bishop in this regard is well affirmed. For instance in the Synod of Antioch it is decided that if any has been excommunicated by his own bishop, let him not be received by others until he has either been restored by his own bishop or the synod may decide. Anti. c. 6: «Si quis presbyter.... episcopum contempnens proprium se ab ecclesia segregavit et seorsum collegit atque altare statuit et commonenti episcopo non adqueverit nec consentire vel oboedire voluerit semel et iterum convocanti, hic damnetur omnimodis nec ultra remedium consequatur, quia suam recipere non potest dignitatem.....». For further study see Apost. cc. 12, 32; Carth 9; Trid. sess. XIV, de ref. c.1.

129 CCEO c. 1420 § 2: «Hae normae valent etiam circa poenas vi iuris particularis vel praecepti poenalis irrogatis, nisi aliter iure particulari Ecclesiae sui iuris cavetur».

130 See CS cc. 41-42. For further study see POSPISHIL, *The Law on Persons*, 56-60.

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specifically treated in the Code. However the, Code left the matter to particular laws. Canon 194 of the Code reads as follows: "the eparchial bishop can confer dignities upon clerics subject to him, others excluded, according to the norm of the particular law of their own Church *sui iuris*."¹³¹ Therefore according to this canon the eparchial bishop can confer an honorific title on a presbyter subject to him. The clause "according to the norm of the particular law of their own Church *sui iuris*" further qualifies the freedom of the eparchial bishop in this regard. In relation to the patriarchal Church, while the patriarch can make use of any titles employed in his own patriarchal Church (c. 89 § 3), the eparchial bishop might be permitted to confer only certain titles. And these dignities are conferred through a liturgical act comparable to the conferral of the minor orders (c. 327) and are considered to have perpetual character. Exceptions in this regard are the protosyncellus and syncellus who, during their tenure of office, have the right of the insignia immediately inferior to the episcopal dignity (c. 250) even though the insignia have not been conferred through a liturgical act.¹³²

Presbyters to whom have been granted rights and insignia, which are connected to dignities conferred upon them cannot use them outside the place where the authority who granted the dignity exercises his authority or upon the granting of the same dignity written consent was given to use them with no exception, or unless they accompany the authority who had granted the dignity or represent him or have obtained the consent of the eparchial bishop (c. 388).¹³³

¹³¹ CCEO c. 194: «Episcopus eparchialis dignitates clericis sibi subditis ceteris exclusis conferre potest ad normam tamen iuris particularis propriae Ecclesiae sui iuris».

The provision of CS canon 42 § 1, that a patriarch or bishop could confer an honorific title on a member of another jurisdiction or even autonomous Church (not Latin Church) is not found in the Code.

¹³² Cf. FARIS, *Eastern Catholic Churches*, 448-449.

¹³³ CCEO c. 388: «Clerici iuribus et insignibus, quae adnexa sunt

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It is an Eastern Tradition to confer dignities on presbyters (clerics) in a liturgical rite in the form of a sacramental. Honorific expressions of the dignity like colour of cassock, pectoral cross, special headgear etc., had been worn always and everywhere. As it says in canon 388 rights and insignia attached to an honorific dignity can be used only in certain circumstances: (i) if the presbyter is in the territorial jurisdiction of the bishop who conferred the title; (ii) if the presbyter is in the jurisdiction of the authority who gave consent to the conferral of the title; (iii) if the presbyter is accompanying or representing the person who conferred the title; and (iv) if the presbyter has obtained the consent of the local hierarch to make use of the rights and insignia.

Also it is to be noted that a presbyter who has lost an office because of age or resignation, can be honoured by the eparchial bishop with the title of *emeritus*. Canon 965 § 4 states that "the title of emeritus (*titulus emeriti*) can be conferred upon the person who loses an office by reason of age determined by law or by a resignation which has been accepted".

1.16. To Procure from Presbyters the Acceptance of Assignments

There are several reasons for the expectation that a presbyter should accept assignments. Presbyters are bishop's co-operators and he has the right to give them any offices in the eparchy. The presbyters already for their part must be obedient and must show reverence to the bishop (c. 370).

Besides this, for a candidate to the order of presbyterate to be licitly ordained, he must submit to the proper eparchial bishop a declaration signed in his own hand, in which he attests that he will of his own accord and freely receive the sacred order and accept

dignitatibus sibi collatis, uti non possunt extra loca, ubi suam potestatem exercet auctoritas, quae dignitatem concessit vel ad eiusdem dignitatis concessionem nihil excipiens scripto consensit, aut nisi auctoritatem, quae dignitatem concessit, comitantur vel eiusdem personam gerunt aut nisi consensum Hierarchae loci obtinuerunt».

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the obligations attached to it and that he will devote himself perpetually to the ecclesiastical ministry, requesting at the same time that he be admitted to receive the sacred order (c. 761). Therefore, they are obliged to canonical obedience.

In the same way presbyters also have the right to obtain from their eparchial bishop, after the requirements of the law have been satisfied, an office, a ministry or a function to be exercised in the service of the Church, and the bishop can expect from them to accept and faithfully carry out every office, ministry or function committed to them by him whenever, in his judgement, the needs of the Church require it (c. 371 § 2).

1.17. To Allow Presbyters to Depart from the Eparchy for a Notable Time

Presbyters, even if they do not have a residential office, nevertheless are not to leave their eparchy for a notable period of time determined by particular law without the permission, at least presumed, of the eparchial bishop. In other words the eparchial bishop has the authority to permit a presbyter to depart from the eparchy for a notable time. Even though the presbyter resides outside the eparchy, he is subject to the eparchial bishop in those matters which regard to the obligations of his state of life (c. 386).

1.18. To Regulate the Exercise of Presbyters' Rights

The eparchial bishop has the competence to regulate, in view of the common good, the exercise of the rights which are proper to presbyters (c. 26 § 2).¹³⁴ The term used in the canon is "ecclesial authority". Being the head of the eparchy the eparchial bishop has the right and authority to look after the common good of the eparchy and to regulate the exercise of presbyters.

¹³⁴ CCEO c. 26 § 2: «Auctoritati ecclesiasticae competit intuitu boni communis exercitium iurium, quae christifidelibus sunt propria, moderari».

2. OBLIGATIONS OF THE EPARCHIAL BISHOP

2.1. To Have a Special Concern Towards Presbyters

To understand the special concern of the eparchial bishop towards his presbyters we should go through canon 192 § 4 of the Code. There it is said that "the eparchial bishop is to attend to presbyters with special concern" (*episcopus eparchialis speciali sollicitudine prosequatur presbyteros*). Dealing with the bishop's relation to presbyters, the canon brings out the indispensable role played by presbyters, who are bishop's prudent co-operators, in assisting the eparchial bishop to fulfil his various pastoral missions (LG 28). As "sons" and "friends" of the eparchial bishop (CD 16), they are entitled to his special solicitude. Because of their communion in the same priesthood and ministry, eparchial bishop should regard presbyters as his 'brothers and friends' (PO 7). Therefore the eparchial bishop should attend them with special concern. This concern can be expressed in different ways, for example by way of hearing them, attending to their needs, admitting their rights, giving timely correction to them etc.,.

2.2. To Listen to Presbyters

The Code states that the eparchial bishop should "listen to presbyters as assistants and advisers (*quos tamquam adiutores et consiliarios audiat* c. 192 § 4). In carrying out his threefold mission: teaching, sanctifying and governing, the bishop is called upon to have in mind that he needs helpers and advisers, especially presbyters. Therefore, he should be glad to listen and even to consult them (LG 28). Certainly, this does not rule out the eparchial bishop's right to act with freedom, to make such laws and regulations as consciousness of their obligations, duty and of the principles of the government of the Church will suggest.¹³⁵

¹³⁵ *ESI, Introduction; LG 27.*

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The eparchial bishop should listen to the opinions and suggestions offered by the presbyters (*PO* 7). The dialogue between him and the presbyters can be informal discussions. This also can be institutionalised in the form of *Presbyteral council* (cc. 264-270).¹³⁶

2.3. To Safeguard the Rights of Presbyters

As we said in the first Chapter, in addition to the rights which the presbyters share with all the faithful (cc. 7-26) they are also endowed with other rights and obligations (cc. 367-393). It is the duty of the eparchial bishop as presented in the canon 192 § 4 to defend the rights of the presbyters. He is "to protect their rights".

Presbyters have rights in the eparchy. For example they have the right to associate with others in pursuit of goals acceptable with their priestly state of life. (c. 391); right to a reasonable period of vacation. etc.,. The eparchial bishop should respect presbyters' rights and as much as possible try to protect them. In other words he should not prohibit or deter them from using their rights. He himself should not be a hindrance for them in this regard unless there is serious reason. Likewise he should help them in order to vindicate their rights if they are violated in any way.

2.4. To Ensure the Fulfilment of Presbyters' Obligations

The eparchial bishop is to ensure that the presbyters are fulfilling the obligations proper to their state. It is his obligation to watch over them. That means he is to "ensure that they fulfil the obligations proper to their state" (*curet, ut obligationes suo statui proprias impleant eisdemque praesto sint: c. 192 § 4*). Oversight of the presbyters' fulfilment of their obligations encompasses more than a concern for the observance of regulations; the eparchial bishop is

¹³⁶ When we deal with the *Presbyteral council* in the final Chapter of this work we will treat this in detail.

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to see to it that the presbyters are provided with those means and institutions they need in order to carry out their responsibilities. Moreover the eparchial bishop is to kindle in the presbyters a zeal for the apostolate.

2.5. To Provide Means for the Spiritual and Intellectual Growth of Presbyters

As we have noted earlier in order to carry out their obligations faithfully and fruitfully proper to their state presbyters must be provided the means to do so. The Code states, "he (eparchial bishop) is to see that the means and institutions which they need to foster their spiritual and intellectual life are made available to them" (*media et institutiones, quibus ad vitam spiritualem et intellectualem fovendam egent. c. 192 § 4*).

That means, in the life of the presbyters, their spiritual and intellectual growth is given major importance. The eparchial bishop should provide the presbyters with enough literature, lectures, and periodic conferences which will nurture the spiritual, pastoral and intellectual life of the presbyters. He is also to provide continuing education courses and conferences for presbyters in view of enhancing and enriching their theological-pastoral knowledge. He should make it possible for them to acquire knowledge in profane sciences especially those which are intimately connected with the sacred sciences (cc. 278 § 2, 1°, 372 § 3).¹³⁷

In the Apostolic Letter *Ecclesiae sanctae* bishops are reminded of their responsibility to support an ongoing spiritual and intellectual development of presbyters. They, either individually or in collaboration with other bishops, shall arrange that all the presbyters, even if they are actually serving in the ministry, shall follow a course of pastoral lectures for a year after ordination and shall at intervals attend other lectures. These will provide them

¹³⁷ CS c. 65 § 1, 3.

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with the opportunity of acquiring a fuller knowledge of pastoral matters, of the science of theology, of moral theology and of liturgy, of strengthening their life by communicating their apostolic experience with one another. The Letter also states that the eparchial bishop should see to it that, one or more presbyters known for their studies and virtues shall be chosen as directors of studies to promote and direct these obligation (*ES* 1, 7).

Not only is the eparchial bishop to provide for the needs of his presbyters in a general manner, but he also should know his presbyters as individuals in order to know their abilities, circumstances and problems. Such a personal knowledge can only be partially attained through general gatherings; individual meetings between the eparchial bishop and the presbyters are of crucial importance.

2.6. To Ensure Financial Support for the Presbyters and their Families

The eparchial bishop has an obligation for the material well-being of his presbyters. It is to be noted that this obligation is not restricted to presbyters alone but it is extended also to their families if they are married. The pertinent canon reads:

The eparchial bishop is to see to it that provisions are made according to the norm of law for the clerics and, if they are married, for their families, in the matter of suitable means of livelihood, of suitable insurance and social security as well as health welfare.¹³⁸

Corresponding to the office or functions entrusted to them, presbyters have the right to a just compensation and if they are married this should be taken into consideration (c. 390 § 1).

¹³⁸ CCEO c. 192 § 5. «Curet Episcopus eparchialis, ut clericorum eorumque familiae, si coniugati sunt, congruae sustentationi atque congruenti praeventivae et securitati sociali necnon assistentiae sanitariae ad normam iuris provideatur».

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Hence, the presbyters and their families have the right to suitable pensions, social security and health assistance (c. 390 § 2). The eparchial bishop should make provisions according to the situation of the presbyter in the matter of suitable means of livelihood, of suitable insurance and social security as well as health welfare.

According to the Code each eparchy, in accordance with the particular law of its Church *sui iuris*, is to have a special fund which collects goods and offerings for the purpose of providing appropriately for the fitting and fundamentally equal support of presbyters who serve the eparchy, unless they are otherwise cared for. Where there is as yet no properly organised system of insurance, social security and health welfare for the clergy, the particular law of each Church *sui iuris* is to provide for the erection of institutes that safeguard these benefits under the vigilance of the eparchial bishop (c. 1021 § 1 § 2). So unless it has been provided otherwise, for instance by civil law, the eparchial bishop is to establish a special fund in accordance with the particular law of the Church *sui iuris* in order to support the presbyters and their families (c. 1021 § 1).¹³⁹

The eparchial bishop also must respect the presbyters right to social assistance and provide for their needs in time of illness, incapacity or old age (c. 390 § 2). A special fund is to be established by the eparchial bishop in his eparchy in order to support resigned presbyters (c. 1021 § 1-2).¹⁴⁰

Cleri sanctitati canon 59 remains in the first place an obligation of the eparchial bishop and of certain clerics and juridical persons (*conferre debent*) to support the presbyters. Therefore it states that "the Hierarch shall see to it (*curet*

¹³⁹ *ES* 1, 8: "... The remuneration of the clergy shall be first of all on the same scale for all in identical circumstances, taking account of the nature of the office and of the conditions of time and place. The living should be sufficient to permit clerics a decent sustenance and to enable them to assist the poor. ..."

¹⁴⁰ For further study in this regard see HESCH, "The 1987 NCCB Norms for Priests and the Third Age", 387-408.

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Hierarcha) that a sum of money is set aside in his eparchy for granting pensions, in order to support pastors and other secular clerics of the eparchy who have become incapable of discharging their duties on account of impaired health. The following must contribute for the establishment and increase of this fund: the bishop's endowment or bishop's mensa, the parishes and quasi-parishes, each eparchial consultor, pastors, parish vicars, and if the eparchial statutes state so, all other clergy ascribed to the eparchy.¹⁴¹

2.7. To Give Presbyters an Office, Ministry or Function

In the Code it is stated that presbyters have the right to obtain from their eparchial bishop an office, ministry or function to be exercised in the service of the Church (c. 371 § 1). In order to be promoted to an office, the presbyter must be suitable, that is, endowed with those qualities which are required by law. If the presbyter promoted to the office lacks the required qualities, the provision is null if this is provided in the law; otherwise it is valid, but it can be rescinded by a decree of the competent authority which must act observing equity (c. 940).

Through sacramental ordination presbyters are assigned to fulfil the threefold ministry: teaching, sanctifying and governing. They are ordained for the service of the Church and according to the Council documents they are "prudent co-operators" of the episcopal order. In an eparchy they are close collaborators of the eparchial bishop. So it is an obligation of the eparchial bishop, after the requirements of law have been satisfied, to assign to his presbyters an office, a ministry or a function to be exercised in the service of the Church.

¹⁴¹ Cf. NEDUNGATT, "More Canons on Clerics in General": *Nuntia* 7 (1978) 16.

PO 21: This common fund should in the first instance be supplied by the offerings of the faithful, but also from other sources to be legally established: «Quae etiam massa communis imprimis constituatur oportet ex bonis a fidelium oblationibus, sed ex aliis quoque fontibus, iure determinandis. provenientibus».

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2.8. To Foster a Common Life among Celibate Presbyters

The Code proposes that praiseworthy common life among the celibate presbyters is to be fostered, in so far as possible, so that they may be mutually helped in cultivating the spiritual and intellectual life and may be able to co-operate more fittingly in the ministry (c. 376). It is to be understood that the duty of the eparchial bishop, being the head of presbyters, is to foster a certain common way of life among his presbyters.

2.9. To Express His Mind Regarding Ascription

With the passage of five years after the legitimate move the presbyter is by the law itself enrolled in the host eparchy if he has made such a request in writing to both eparchial bishops and neither bishop expresses opposition in writing within four months.¹⁴² As an obligation on his part this expression of his mind is to be done within four months of the presbyter's request.

2.10. To Grant a Licit Transfer in Ascription or a Move to Another Eparchy

The eparchial bishop should not deny presbyters' legitimate and reasonable transfer in ascription or move to another eparchy. The Code states that if a presbyter who is solicitous about the universal Church, chiefly for the sake of evangelization, is not to be denied request for a transfer in ascription or a move to another eparchy labouring under a severe shortage of clergy. That is a just reason according to the law. But of course above all, here the bishop has the obligation to provide for the needs of his own eparchy before anything else. When there is a true need in his own eparchy or Church *sui iuris* he may deny this permission.¹⁴³

¹⁴² CCEO c. 360 § 2: «Quinquennio elapso post legitimam transmigrationem clericus ipso iure eparchiae hospiti ascribitur, si huic voluntati eius utrique Episcopo eparchiali scripto manifestatae neuter intra quattuor menses scripto contradixit».

¹⁴³ CCEO c. 361: «Clerico praesertim evangelizationis causa universae Ecclesiae sollicito transitus vel transmigratio in aliam eparchiam gravi clericorum

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Therefore, the eparchial bishop is obliged to grant a transfer to another eparchy for a presbyter when there is a legitimate cause. This permission should not be denied by the eparchial bishop unless there are serious reasons. In giving a permission the bishop should have just causes such as the advantage of the Church or the good of the presbyters themselves.¹⁴⁴

However, if the particular law of the Church *sui iuris* so prescribes, it is also required for the licit transfer to an eparchy of another Church *sui iuris* for the eparchial bishop releasing the presbyter to obtain the consent of the authority determined by the same particular law.¹⁴⁵

2.11. To Observe Agreements made as well as Equity

As we have mentioned above for a just reason a presbyter can be recalled from the other eparchy by his own eparchial bishop or returned by the hosting eparchial bishop. In recalling presbyters who have migrated, the eparchial bishop is to observe the agreements made as well as equity with the hosted eparchial bishop (c. 362).

2.12. To Provide Support for a Removed or Penalized Presbyter

If it is not *ipso iure* but by a decree of the eparchial bishop that a presbyter is removed from an office on which that person's livelihood depends, the same bishop is to see to it that the person's

penuria laborantem, dummodo sit ad ministeria ibi peragenda paratus atque aptus, ne denegetur nisi ob veram necessitatem propriae eparchiae vel Ecclesiae sui iuris».

¹⁴⁴ CCEO c. 365 § 1: «Ad licitum transitum vel transmigrationem requiruntur iustae causae, quales sunt Ecclesiae utilitas vel bonum ipsius clerici; licentia autem ne denegetur nisi exstantibus gravibus causis».

¹⁴⁵ CCEO c. 365 § 2: «Iure particulari Ecclesiae sui iuris ita ferente ad licitum transitum ad eparchiam alterius Ecclesiae sui iuris requiritur etiam, ut Episcopus eparchialis clericum dimittens consensum auctoritatis ab eodem iure particulari determinatae obtineat».

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livelihood is secure for an appropriate time, unless this has been otherwise provided.¹⁴⁶

Also the eparchial bishop is to provide appropriate support for a penalized presbyter unless dismissed, and to provide for the dismissed presbyter in the best way if he is truly needy. The eparchial bishop is to take into account his vested right to insurance and social security as well as health insurance (c. 1410).

2.13. To Give Warning and Make Use of Other Penal Options

According to the Code the bishop has the power to impose a penalty if any presbyter is truly found guilty. But before imposing the penalty he is bound to warn the presbyter. Canon 1407 § 1 of the Code states that, with regard to penal cases, if, in the judgement of the eparchial bishop who can inflict a penalty, the nature of the offense permits it, the penalty cannot be imposed unless the offender has been warned at least once in advance to desist from the offense, with adequate time given for reconsideration. In the same canon paragraph 3 says that the penal warning mentioned in canon 1406 § 2 suffices for the imposition of the penalty.¹⁴⁷ Canon 1406 § 2 reads as follows: "a warning containing the threat of penalties by which the hierarch sanctions a non-penal law in individual cases, is equivalent to a penal precept".¹⁴⁸

146 CCEO c. 977: «Si quis non quidem ipso iure, sed per decretum auctoritatis competentis amovetur ab officio, quo eiusdem subsistentiae providetur, eadem auctoritas curet, ut ipsius subsistentiae per congruum tempus prospiciatur, nisi aliter provisum est».

147 CCEO 1407 § 1: «Si iudicio Hierarchae, qui poenam irrogare potest, natura delicti id patitur, poena irrogari non potest, nisi delinquens antea semel saltem monitus est, ut a delicto desisteret, dato congruo ad resipiscentiam tempore.

§ 3. Monitio poenalis vero, de qua in can. 1406, § 2, sufficiens est, ut poena irrogari possit».

148 CCEO c. 1406 § 2: «Monitio cum comminatione poenarum, qua Hierarcha legem non poenalem in casibus singularibus urget, praecepto poenali aequiparatur».

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There are several instances in the Code where the eparchial bishop has an obligation to give warning. The following are some of the examples:

(a) It pertains to the bishops (especially as they are gathered in synods or councils, but in a unique way to the Apostolic See), to promote authoritatively, to guard and conscientiously to defend the integrity and unity of faith and good morals, even reprobating, according to need, opinions that are contrary to them or warning about those things that can endanger them (c. 605). Therefore, the eparchial bishop is to warn the presbyters when their faith and morals are in danger.

(b) If a presbyter denies a truth which must be believed with divine and Catholic faith, or he calls it into doubt, or he totally repudiates the Christian faith, the appropriate penalty must be given to him but only after due warning that he may retract from it (c. 1436 § 1).

(c) If a presbyter professes a doctrine that has been condemned as erroneous by the Roman Pontiff or the college of bishops exercising the authentic magisterium, and does not retract it, before giving him appropriate penalty, he must be legitimately warned.¹⁴⁹

(d) If a presbyter evades subjection to the supreme authority of the Church or communion with Christ's faithful

The Apostolic canon 15 speaks that if a presbyter leave his parish without permission from his own bishop before punishing him his own bishop should exhort him to return and canon 31 further states if a presbyter without the consent of the bishop collect a separate congregation and erects another altar, let the bishop deposing him but after a first, second and third admonition. The synod Antioch (c. 5) speaks also of this admonition. Nice. II, 18 speaks of rebuke.

¹⁴⁹ CCEO c. 1436 § 2: «Praeter hos casus, qui sustinet doctrinam, quae a Romano Pontifice vel Collegio Episcoporum magisterium authenticum exercentibus ut erronea damnata est, nec legitime monitus respiscit, congrua poena puniatur».

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subject to it and, before punishing him he must be lawfully warned.¹⁵⁰

(e) When presbyters are gravely neglecting or violating the parochial duties which are entrusted to them, the eparchial bishop before removing such presbyters from their office, must be warned (c. 1390, 4°).

(f) If a presbyter who deliberately omits the commemoration of the hierarch in the Divine Liturgy and in the liturgy of the hours as prescribed by law, must be punished after lawful warning.¹⁵¹

(g) A presbyter who disobeys his hierarch's lawful order or prohibition, must be punished after warning.¹⁵²

(h) A presbyter who abuses the power given by privilege is to be warned by the eparchial bishop.¹⁵³

Moreover, the bishop is endowed with the right to use other pastoral measures or penal remedies when the accused is acquitted or when no penalty is imposed even if the person is guilty of a Church offense. The Code, and even the Guiding principles (as we have mentioned earlier), insists that when it is possible other than penal trials and penalties, other pastoral measures or remedies should be used in order to retract a person from evil doing, for instance mediation, council and other corrective measures.

¹⁵⁰ CCEO c. 1437: «Qui subiectionem supremae Ecclesiae auctoritati aut communionem cum christifidelibus eidem subiectis detrectat et legitime monitus oboedientiam non praestat, ut schismaticus excommunicatione maiore puniatur».

¹⁵¹ CCEO c. 1438: «Qui consulto omittit commemorationem Hierarchae in Divina Liturgia et in laudibus divinis iure praescriptam, si legitime monitus non respiscit, congrua poena puniatur non exclusa excommunicatione maiore».

¹⁵² CCEO c. 1446: «Qui proprio Hierarchae legitime praecipienti vel prohibenti non obtemperat et post monitionem in inoboedientia persistit, ut delinquens congrua poena puniatur».

¹⁵³ CCEO c. 1535: «Qui abutitur potestate sibi ex privilegio data, ab Hierarcha moneatur;...».

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It is implied in the law that as far as possible contentions should be avoided and that the person feeling injured by a decree should seek some equitable solution with the author of the decree. Perhaps this can be through mediation or through a revocation or emendation of the decree or through a just compensation or some other suitable means. This should be encouraged by the eparchial bishop before receiving the recourse.¹⁵⁴

2.14. To Impose Penalties according to Proper Canonical Process

Canon 24 § § 2, 3 states that if the Christian faithful are summoned to trial by the competent authority, they have the right to be judged according to the provisions of the law, to be applied with equity. They have the right not to be punished with canonical penalties except in accordance with the norm of law. To this goal, the ecclesiastical forum is empowered to examine such questions in accord with norms, prescriptions and procedures which the law has established. The purpose of such process is to determine whether it is necessary or appropriate to apply penalties or other canonical remedies in the specific case under consideration.

Only those are subject to penalties who have violated a penal law or a penal precept, either by deliberate action or by seriously culpable omission of due diligence, or by seriously culpable ignorance of the law or precept (c. 1414 § 1). Thus, a special protection is accorded to them insofar as canonical penalties can be imposed only if prescribed by law. In other words, if a presbyter is alleged of a misconduct, ecclesiastical penalties cannot be imposed on him apart from a proper canonical

¹⁵⁴ CCEO c. 998 § 1: «Valde optandum est, ut, si quis gravatum se decreto putat, non fiat inter ipsum et decreti auctorem contentio, sed inter eos de aequa solutione quaerenda tractetur, gravibus quoque hominibus ad mediationem vel studium forte adhibitum ita, ut per voluntariam decreti emendationem vel per iustam compensationem vel per aliam idoneam viam controversia dirimatur.

§ 2: De his auctoritas superior partes hortetur, antequam recursum recipit».

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process. Ultimately the eparchial bishop is responsible in this regard.

2.15. To Make a Canonical Visitation

The eparchial bishop is bound to make canonical visitations. The scope of this canonical visitation encompasses persons for instance presbyters, laity, religious who works in the eparchy: associations and institutions: for instance parishes, shrines, charitable centers etc., things: for instance sacred vessels, altars, vestments, pious wills etc., and places: for instance Churches, oratories, cemeteries etc.,.

A canonical visitation not only fulfils an administrative requirement of oversight but also satisfies a personal necessity for the eparchial bishop to maintain contact with presbyters. For this reason, it is a responsibility which the eparchial bishop must personally carry out unless he is lawfully impeded (age, number of persons or parishes). If he is unable to do it he can delegate this task to the coadjutor bishop, the auxiliary bishop, the protosyncellus and the syncellus etc.,. If he fails to do the visitation, the metropolitan is to conduct it (cc. 133 § 1, 5°; 159), if it is patriarchal territory the patriarch can make the visitation (c. 83 § 2).

2.16. To Submit Resignation

As we saw in the second Chapter it is an ancient tradition of the Church that the bishop was wedded to his Church. This tradition gave rise to canonical norms which forbade bishops from transferring one particular church to another. But, the Second Vatican Council earnestly requested that they submit their resignation on account of advanced age or for any other grave reason which would impede them in the exercise of their office. They were asked to do so either on their own initiative or upon the request of the competent authority. The *motu proprio Ecclesiae sanctae* states:

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...all diocesan bishops and others equiparated with them in law are earnestly requested voluntarily to submit their resignation not later than the completion of their seventy-fifth year to the competent authority, who will examine the circumstances of each case and make suitable provision.¹⁵⁵

Based on the above teachings of the Council, the Code stated that an eparchial bishop who has completed his seventy-fifth year of age or who, due to ill health or some other grave reasons (which could impede him in the fulfilment of his responsibilities), has become unsuited to fulfil his office, is requested to submit his resignation from office. The resignation by the eparchial bishop is to be submitted to the patriarch in case of an eparchial bishop exercising power within the territorial boundaries of a patriarchal Church; in other cases, it is to be submitted to the Roman Pontiff; besides, if the bishop belongs to a patriarchal Church, it is to be notified to the patriarch as early as possible. To accept this resignation the patriarch needs the consent of the permanent synod, unless a request for resignation was made previously by the synod of bishops of the patriarchal Church.¹⁵⁶

¹⁵⁵ ES 1, 11.

¹⁵⁶ CCEO c. 210 § 1: «Episcopus eparchialis, qui septuagesimum quintum annum aetatis explevit aut ob infirmam valetudinem aliave gravi de causa officio suo implendo minus aptus evasit, rogatur, ut renuntiationem ab officio exhibeat.

§ 2. Renuntiatio ab officio Episcopi eparchialis exhibenda est Patriarchae, si de Episcopo eparchiali intra fines territorii Ecclesiae patriarchalis potestatem suam exercente agitur; in ceteris casibus renuntiatio Romano Pontifici exhibenda est et praeterea, si Episcopus ad Ecclesiam patriarchalem pertinet, Patriarchae quam primum notificanda.

§ 3. Ad acceptationem renuntiationis Patriarcha indiget consensu Synodi permanentis, nisi praecessit invitatio ad renuntiandum a Synodo Episcoporum Ecclesiae patriarchalis facta».

The earnest request for the resignation of the eparchial bishop at the age of 75 is an innovation that caused some discussion in the Codification. See «*SCCCEO*»: *Nuntia* 19 (1984) 60, c. 180 § 2.

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An eparchial bishop whose resignation from office has been accepted, acquires the title bishop *emeritus* of the eparchy he governed. He can continue to reside in the same eparchy, unless in certain cases owing to special circumstances it is provided otherwise by the Apostolic See or, if it has to do with an eparchy within the territorial boundaries of a patriarchal Church, by the patriarch with the consent of the synod of bishops of the patriarchal Church. The synod of bishops of the patriarchal Church or council of hierarchs must see to it that provision is made for the suitable and worthy upkeep of the bishop *emeritus*, bearing in mind the primary obligation which falls on the eparchy he served (c. 211).

3. RIGHTS OF EPARCHIAL PRESBYTERS

3.1. To Obtain an Ordination Certificate

To obtain a certificate of ordination is a right of the presbyter. The ordaining bishop, normally the eparchial bishop, is to give an authentic certificate of ordination to each ordinandee. For those who are ordained with dimissorial letters from their bishop, the certificate should be submitted to their own eparchial bishop so that the sacred ordination can be recorded in the register. This register should be kept in the archive.¹⁵⁷

3.2. To Have an Office in the Eparchy

According to the Code an office in the Church is any function constituted in a stable manner by the Lord himself or by competent authority to be exercised for a spiritual purpose. The rights and the obligations proper to each office are defined by the law whereby the office is constituted or by the decree of the competent authority. It is for the authority which has the prerogative to constitute an office, to modify or suppress it as well,

¹⁵⁷ CCEO c. 774 § 2: «Singulis ordinatis det Episcopus ordinans authenticum sacrae ordinationis susceptae testimonium; qui, si ab Episcopo cum litteris dimissoriis ordinati sunt, illud proprio Episcopo eparchiali vel Superiori maiori exhibeant pro sacrae ordinationis adnotatione in speciali libro in archivo asservando».

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and to see to its canonical provision, unless the law expressly establishes otherwise or it is clear from the nature of the matter (c. 936).¹⁵⁸

Canon 936 § 1 describes how offices are constituted: by divine institution or by competent authority. The Petrine office and the office of the bishop are cited as examples of divine law constitution. On the other hand there are many offices which have been constituted by the competent ecclesiastical authority. For instance protosyncellus, syncellus, chancellor, finance officer, parish priest, parochial vicars protopresbyter, judicial vicar, advocate, defender of the bond, promoter of justice, notary etc.. Often the rights and obligations proper to the office are defined in the law by which the office is constituted. Some of the canons also suggest the qualifications needed for the office holder, the manner in which the assignment is made, and length of service (see cc. 937-964).

Moreover according to the Code an office cannot be validly obtained without canonical provision (c. 938). The provision of an ecclesiastical office is effected in several ways: (i) by its being freely conferred by the competent authority; (ii) if there was an election, by its confirmation, or if the election does not need confirmation, by its acceptance on the part of the one elected; and (iii) if there was postulation, by its admission (c. 939).

Besides the offices cited in the Code other offices can also be constituted. For instance heads of diocesan departments, school administrators, family counsellors etc.. These offices may be

¹⁵⁸ In the former legislation, *PA* c. 305 § 1, an office in the strict sense entailed some participation or sharing in ecclesiastical power, whether of orders or of jurisdiction. See also CIC 1917 c. 145 § 1. The new definition of office was derived from the Second Vatican Council's decree *PO* 20 and builds upon the provision of the Constitution on the Church *LG* 33, where it is stated that lay persons might be deputed by the hierarchy for certain offices to be carried out for spiritual purposes. For further study see PARIZEK, "Ecclesiastical Office", 109-128; COCCOPALMERIO, «Note sul concetto di ufficio», 60-73.

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created and regulated by particular law or by the decree of the eparchial bishop.

Canon 371 § 1 declares that the presbyters have the right to obtain from their eparchial bishop, after the requirements of law have been satisfied, an office, a ministry or a function to be exercised in the service of the Church.¹⁵⁹ Hence, every presbyter when physically and mentally capable has the right to exercise his orders, unless barred by law.

3.3. To Have Decent Maintenance

The Code states that one who sets up an office must make sure that the means required for its fulfilment are available and that the just remuneration of those who carry out the office is provided for. The particular law of each Church *sui iuris* is to determine in greater detail how these requirements are to be put in to effect, unless provision has already been made for certain matters by common law (c. 937).

The eparchial bishop has the right and authority, within the limits of common law and as set by the particular law of his own Church *sui iuris*, to determine the amount of fees for the various acts of the power of governance (c. 1013).

Presbyters have the right to a suitable sustenance and to receive a just remuneration for carrying out the office or the function committed to them. Moreover in the case of married presbyters, the remuneration must be adequate for the maintenance of their family, unless this has been otherwise sufficiently provided.

Presbyters and their families, if they are married, have the right to be provided with suitable pension funds, social security as well as health benefits. In order that this right can be put into

¹⁵⁹ CCEO c. 371 § 1: «Ius habent clerici obtinendi a proprio Episcopo eparchiali praemissis iure requisitis aliquod officium, ministerium vel munus in servitium Ecclesiae exercendum».

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effect, presbyters are bound by an obligation on their part to contribute to the fund for instance to insurance, social security and health welfare for the clergy (c. 1021 § 2), according to the norm of the particular law.¹⁶⁰

As we have mentioned above, canon 59 of the *motu proprio Cleri sanctitati* mentions the right of decent maintenance and remuneration, is an obligation of the eparchial bishop (*curet hierarcha*). In the revised canon 390 of the Code it is strictly a right of the clergy for decent maintenance and therefore for just wages, economic security, etc.,. In the case of the married clergy in particular, their "family wage" is relative in the sense that it should suffice for the maintenance of the family, either by itself or together with other income.¹⁶¹

In this regard, the eparchial bishop is responsible to draw up suitable particular laws. Also he is to make due provisions for the adequate support for those who hold or have held any office in the eparchy, in the service of God. In doing so, the conditions of different places and times as well as the nature of the office held, must be taken into account, and the remuneration of each should be fundamentally the same for all living in the same circumstances (*PO* 20-21).

The Apostolic Letter *Ecclesiae sanctae* 1, 8 mentions that the remuneration of the clerics shall be first of all on the same scale for all in identical situations, taking into account the nature of the office and the conditions of time and place. The living should be

¹⁶⁰ CCEO c. 390 § 1: «Clerici ius habent ad congruam sustentationem et ideo pro implendo eis commisso officio vel munere iustam remunerationem percipiendi, quae, si agitur de clericis coniugatis, consulere debet etiam eorum familiae sustentandae, nisi aliter iam sufficienter provisum est». See also CCEO c. 390 § 2.

¹⁶¹ Cf. NEDUNGATT, "More Canons on Clerics in General", *Nuntia* 7 (1978) 16. "In order that right of «honest sustentatio» may not remain a dead letter, common measures have to be adopted under the responsibility of the hierarchy. Group IV has therefore recommended to the Coetus de Sacra Hierarchia to formulate a canon, based on *ES* 1, n. 8 to the following effect..." *Nuntia* 7 (1978), footnote no. 1, 16.

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sufficient to permit clerics a decent sustenance and to enable them to assist the poor.

3.4. To Have an Annual Vacation

Presbyters are entitled to have annual vacations for a proper period of time to be determined by the particular law (c. 392). For instance one month is allowed for parish priests and parochial vicars (cc. 292 § 2, 302 § 4).

The *Coetus de Clericis et de Magistero Ecclesiastico* (8-19 November 1976) said that (in the schema 28 *novus*) while it is left to the particular law to determine the time for an annual holiday to be made available to clerics, the right itself is independent of such determination, and may not be reduced to nothing or to practically nothing by particular law.¹⁶² *Presbyterorum ordinis* states that "further, priests' remuneration should be enough to allow sufficient time every year for the holiday they deserve; and bishop must ensure that they are able to get away for this time".¹⁶³

3.5. To Form an Association

Presbyters have the right to form associations and to hold meetings which serve charitable and pious purposes or which promote the Christian vocation throughout the world. Of course, as we have seen above, in order to form such associations they must have the approval from their eparchial bishop and more over they will be under his constant vigilance (cc. 573-583).

It is to be noted that as canon 391 states, it is the full right of the presbyters, to associate with others for pursuing the ends

¹⁶² C. 28 (novus) *Jus eorum est ad debitum quotannis feriarum tempus, jure particulari determinandum*. Cf. NEDUNGATT, "More Canons on Clerics in General", *Nuntia* 7 (1978) 16. For further study about leaves of absence of the eparchial clergy, see BEAL, "Leaves of Absence", 142-177.

¹⁶³ PO 20: «Haec remuneratio insuper talis sit, quae presbyteris permittat quotannis debitum et sufficiens habere feriarum tempus, quod quidem, ut presbyteri habere valeant, episcopi curare debent.»

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suitable to the clerical state.¹⁶⁴ But it is up to the eparchial bishop to judge the authenticity concerning the suitability. Presbyters must seek the judgement of the eparchial bishop before joining with such associations. The *Coetus de Clericis et de Magistero Ecclesiastico* (8-19 November 1976) discussed on the schema (can. 27 novus) «*Integrum est clericis sese cum aliis consociare ad fines consequendos statui clericali congruentes, competit autem Hierarchae de hac congruentia authentice iudicare*» as follows:

The general human right of association, common also to all the faithful, is reaffirmed here, defining at the same time its canonical limits with regard to clerics: the scope of the association should be in harmony with the clerical state. The Hierarch cannot take away this right, but he can in a given instance judge authentically whether the scope of a particular association, including only clerics or also others, fits or not the above requirement, and so he may allow or forbid his clerics joining in it.¹⁶⁵

But this right to form an association is not absolute. In other words no Catholic can participate in an association which has goals contrary to the teachings of the Church (c. 1448 § 2). Presbyters are further restricted in their involvement in political parties or trade unions, unless in the judgement of the competent ecclesial authority, it serves the common good (c. 384 § 2).

3.6. To Maintain their Reputation and Privacy

According to canon 23 of the Code, no one may unlawfully harm the good reputation of a person, or violate the right of any

¹⁶⁴ CCEO c. 391: «*Integrum est clericis firmo can. 578 § 3 se cum aliis consociare ad fines consequendos statui clericali congruentes; competit autem Episcopo eparchiali de hac congruentia authentice iudicare*».

¹⁶⁵ Cf. NEDUNGATT, "More Canons on Clerics in General", *Nuntia* 7 (1978) 16. In the same it is discussed that the canon is far from implying prior hierarchical censorship of clerical associations, which was proposed by a member but was rejected by the Group.

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person to protect his or her privacy.¹⁶⁶ Though a presbyter has committed an act which would merit a bad reputation, the eparchial bishop has no right to damage his good name. A bad reputation might result as the consequence of a judicial procedure or infliction of a penalty. But this would be lawful and perhaps unavoidable. But even after a presbyter has been accused and convicted, it is appropriate for the eparchial bishop not to divulge the information beyond those who have the right and obligation to know.

The right to privacy is the right to non-interference in one's personal life. This right is always balanced by the concerns for the common good. Common good can sometimes supersede the right to privacy. When there is an interference of common good the eparchial bishop can interfere in the private life of presbyters (c. 26).

Canon 382 of the Code states that presbyters are to abstain completely from all those things unbecoming to their state of life. They have to avoid all those things which are alien to the priestly life. In canon 192 § 4 it is mentioned that the eparchial bishop is to see that presbyters correctly fulfil their obligations proper to their state.

The private matters are not subject to episcopal supervision. With regard to the personal appearance of presbyters, the authority of the bishop is limited to enforce the attire through the help of the particular law.¹⁶⁷

On the other hand the previous legislation *Cleri sanctitati* (c. 77 § 1) describes a series of items in this regard. For instance, it is stated that the presbyters hair style and beard are regulated according to the local customs and norms of the local hierarch.

¹⁶⁶ CCEO c. 23: «Nemini licet bonam famam, qua quis gaudet, illegitime laedere nec ius ullius personae ad propriam intimitatem tuendam violare».

¹⁶⁷ The CIC 1917 had mentioned many other interesting prohibitions. For example, simple hair style (c. 136 § 1); and the prohibition of clerics wearing rings (c. 136 § 2).

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Moreover, the presbyters shall not use a ring unless it is permitted to them either by common or particular law or by a privilege.¹⁶⁸

3.7. To Appeal and to Make Recourse

Because of human frailty, the Church authorities may act in ways that are unfair and unjust, or may fail to act in situations where they are bound to do so. To respond to such situations, the Code recognises the right of the injured parties to vindicate and defend their right before a competent ecclesiastical court (c. 24 § 1). This right pertains to all the Christian faithful, including presbyters.¹⁶⁹

A distinction is made in the Code between seeking recourse in administrative actions and lodging an appeal in judicial actions. In both recourse and appeal, the Code provides certain procedures so that a party who feels aggrieved by a decision or decree of an authority can seek redress. For instance the norms for pursuing an appeal in judicial matters are clearly described in the Code in canons 1309-1321; and the norms for pursuing a recourse against the decrees or other singular administrative acts which are performed by any lawful power in the Church in the external forum outside of a trial, (with the exception of those issued by the Roman Pontiff or an ecumenical council) are spelled out in canons 996-1006.¹⁷⁰

If a presbyter who is dissatisfied or feels injured with the decree or decision of the eparchial bishop or a sentence made by

¹⁶⁸ "Only in extreme cases in which there is danger of genuine scandal or in which serious consternation can be anticipated may the bishop impose canonical obedience on a cleric to modify his appearance". LYNCH, "Inscription or Incardination", 202. See SHEEHAN, *The Obligation of Respect and Obedience of Clerics*, 113.

¹⁶⁹ See COX, "General Principles Governing all Administrative Process", 63.

¹⁷⁰ The nature and the limits of our work do not permit a detailed discussion of the procedures. Because of the specialized nature of process, anyone interested in pursuing an appeal or recourse would do well to seek the assistance of a qualified canonical advocate.

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him, there exists in the Church a possibility of recourse or appeal to the superior authority in accordance with the norms of law.¹⁷¹

3.8. To Vindicate and Defend their Rights

As we have seen above, Christ's faithful can lawfully vindicate and defend their rights in the Church, in the competent ecclesiastical forum in accordance with the norm of law.

The Code has well affirmed the rights of the Christian faithful and clerics and it also provides with the means to seek a vindication and defense of those rights from the person concerned or from the Church. Presbyters, who feel that their rights have been infringed, have the right to seek redress in a competent judicial or administrative forum of the Church and to defend themselves when summoned before Church authorities, to be judged according to the norm of law.

4. OBLIGATIONS OF EPARCHIAL PRESBYTERS

4.1. To Show Obedience and Reverence

Canon 370 of the Code states that clerics are bound by a special obligation to show reverence and obedience to the

¹⁷¹ According to Canon 1006 of the Code, recourse against the administrative decrees of a patriarch is made, even in the case of decrees concerning the eparchy of the patriarch or of a decree by which the patriarch decides a recourse, to a special group of bishops that is to be constituted in accordance with the norm of particular law, unless the question is deferred to the Apostolic See. Against the decision of said group there is no further recourse, except the referral to the Roman Pontiff in person.

A recourse against the decision of a bishop is directed to the patriarch, who will be empowered to issue a decision himself, or with the advice or consent of the permanent synod or of the entire synod of bishops, this depends upon the nature of the matter to be decided. Likewise, the metropolitan head of the Church *sui iuris* has the same rights in this respect as the patriarch. Against a decision issued by the metropolitan, perhaps with his council of bishops, he can settle the issue. A recourse is also possible to the Congregation for the Oriental Churches.

Against the sentence of a judge, there is the possibility of an appeal to the next higher court. Against a decree of the protosyncellus or a syncellus recourse is made to the eparchial bishop (c. 997). A recourse is always possible to the Roman Pontiff (c. 1059).

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eparchial bishop. Even though we have discussed this above it should be stressed that the first and foremost of all the obligations of the presbyters towards their bishop are obedience and reverence.

Presbyters, before their ordination, must sign an application - in which they declare that they will be observing all the obligations attached to that state of life which they are going to receive (c. 761).

The obedience which the presbyters are to show toward their bishop find expression in the customary signs of respect shown toward a person because of his office or dignity which are acceptable and expected to be shown according to the time and circumstances. The fact of reverence of presbyters toward their bishop is very closely connected with their obedience to him. The reception of the sacrament of orders requires a spirit of genuine respect and co-operation on the part of the presbyters toward their bishop. How do they have to express this reverence? It can be expressed in different ways, for instance externally through customary signs of respect and deference in recognition of a persons' dignity or authority.¹⁷²

4.2. To Accept and Carry Out Offices

Presbyters are called for the service of the Church. It is their primary duty to fulfil the mission entrusted to them. The Code clearly tells the presbyters that they are to accept and faithfully carry out every office, ministry or function committed to

¹⁷² According to Lynch, the practice of kissing a bishop's ring while dropping to one knee has practically died out in the Western Tradition. Even in titles of address, a simple style has emerged in some countries like the USA. The more formal usages, such as "Your Excellency" or "Your Eminence" are gradually being replaced by "Bishop", "Archbishop" and so on. Cf. LYNCH, "Inscription or Incardination", 201.

The special character of the presbyteral reverence (as differentiated from the well-educated laity) is to be found rather in the type of obedience rendered. It is more than in the exterior gestures. Cf. LYNCH, "Inscription or Incardination", 201.

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them by the eparchial bishop whenever, in the judgement of this same authority, the needs of the Church require it.¹⁷³

The fact of ascription and the commitment to serve the eparchy play a significant role in this regard. From these elements there flows a canonical obedience and an obligation to accept and faithfully carry out an assignment given to them by the eparchial bishop.¹⁷⁴ They have to make use of their sacred orders for the service of the people.

The eparchial bishop may assign different offices (parish priest, protopresbyter, chaplain to hospitals, seminary rector and teacher etc.) to presbyters. Thus they are bound to undertake those offices assigned to them by their bishop.

According to *Cleri Sanctitati* canon 64, "clerics are obliged, except for a legitimate impediment, faithfully to carry out the duty with which they are charged by the Hierarchy".¹⁷⁵ Presbyter with a legitimate impediment (poor health, whether physical or psychological, as well as bodily defect or advanced age, etc.) cannot be forced to accept an assignment which he cannot fulfil. It is up to the eparchial bishop to make a judgement on the validity of the impediment. On the other hand in the Code, there is no mention of the «*legitimum impedimentum*».

4.3. To Acquire an Ongoing Formation

After completing the formation which is required for sacred orders, presbyters are expected to have continued interest in sacred sciences. Indeed they are to take measures to acquire a more profound and updated knowledge and make use of the formative

¹⁷³ CCEO c. 371 § 2: «Suscipiendum est clericis ac fideliter implendum omne officium, ministerium vel munus ab auctoritate competenti eis commissum, quandocumque id de eiusdem auctoritatis iudicio necessitates Ecclesiae exigunt».

¹⁷⁴ BOUSCAREN, *Canon Law: A Text and Commentary*, 107.

¹⁷⁵ CS c. 64: «Quoties et quandiu id, iudicio proprii Hierarchae, exigat Ecclesiae necessitas, clericis, nisi legitimum impedimentum excuset, suscipiendum est ac fideliter implendum munus quod ipsis fuerit ab eodem commissum».

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courses approved by their own eparchial bishop. They are to attend conferences which the eparchial bishop has judged suitable for promoting the sacred sciences and pastoral matters. Also, they are not to neglect to acquire for themselves as much knowledge of profane sciences, especially those sciences connected more intimately with the sacred sciences, such as those known to the civilised people.¹⁷⁶

The post-synod exhortation *Pastores dabo vobis* treated about the permanent formation of clergy and brought forward reasons for, the meaning of, means to employ in, and the different dimensions concerning the ongoing formation of presbyters (*PDV*

176 CCEO c. 372 § 1: «Institutione, quae ad ordines sacros requiritur, peracta in scientias sacras incumbere ne desinant clerici, immo profundiorum et ad diem accommodatam earundem cognitionem et usum acquirere satagant per cursus formativos a proprio Hierarcha approbatos.

- § 2. Frequentent quoque collationes, quas Hierarcha opportunas iudicavit ad scientias sacras et res pasorales promovendas.

- § 3. Scientiarum profanarum quoque, earum praesertim, quae cum scientiis sacris artius cohaereant, talem sibi copiam comparare ne neglegant, qualem excultos homines habere decet».

Several conciliar documents of the Second Vatican Council give emphasis on the permanent formation of the clergy. For instance, *OT* stressed the importance of continuing priestly training after the completion of the seminary formation (n. 22). *PO* 19 treats the subject as follows: (i) presbyters are urged to study scripture as the primary source of sacred knowledge; (ii) they are to understand the tradition of the Church as seen in the teachings of councils and popes; and (iii) they are to keep abreast of the developments of secular culture. Besides these, in order to facilitate study, the same decree suggested various means, e.g., courses, congresses, the establishment of centers designed for pastoral studies, the founding of libraries and the proper direction of studies by suitable persons.

The Congregation for the Clergy issued a circular letter on November 4, 1969, mentioning in more detail the continuing education and formation of clergy, especially junior clergy. *CC, De permanenti cleri institutione; AAS* 62 (1970) 123-124. *ES* 1, 7 states that it is the duty of the bishop to encourage the study of pastoral science. The Congregation for Catholic Education in January 1970 published *Ratio Fundamentalibus Institutionis Sacerdotalis* that included a section (nn. 100-101) on post-seminary training: *AAS* 62 (1970) 382-383.

“Formation of presbyters in the circumstances of the present day” was chosen as the theme of the Synod of Bishops in 1990, which dedicated certain parts of its discussion on the permanent formation of presbyters.

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70-81). For instance it states that the ongoing formation of presbyters calls for a fuller development in its human aspect, a constant renovation and deepening of the spiritual dimension, a continual updating and subtending the intellectual aspect with theological, scriptural, and modern profane sciences as well as the magisterial teaching and Tradition, and a steady adaptation and modernisation of the pastoral prospect (PDV 72). This formation can best be achieved only when it is carried out in relation to the presbyter's presence in the Church as *mysterium, communio, and missio*, and in particular in and with his own presbyterate in union with his bishop (PDV 73 -74).

4.4. To Stay in their Residential Office

Presbyters are rightfully entitled to due and sufficient periods of vacation in every year according to the norms of the particular law. Apart from this, presbyters are not permitted to leave their residential office for a notable period of time without at least the presumed permission of their bishop.¹⁷⁷

The previous oriental legislation *Cleri Sanctitati* states that presbyters, even though they have no benefice or office requiring residence, are forbidden to be absent from their eparchy even for a brief period of time without at least the presumed permission of their eparchial bishop (c. 84).¹⁷⁸

The reason behind this is that they are ordained for the good of the eparchy and its pastoral care. The unduly prolonged absence of a presbyter will surely risk the loss of spiritual benefits to that portion of the people who are entrusted to his care. This

¹⁷⁷ CCEO c. 386 § 1: «Clerici, etsi officium residentiale non habent, a sua tamen eparchia per notabile tempus iure particulari determinandum sine licentia saltem praesumpta Hierarchae loci proprii ne discedant».

¹⁷⁸ As we have seen above, the Apostolic Canon 15 prohibits the presbyter to leave his parish and go to another, having entirely forsaken his own and making his abode in another without the permission of his bishop. The same prohibition we could see in different council decisions, for instance: Nic. I c. 16; Ant. c. 16; Laod. c. 42; Nic. II c. 10, etc.,.

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calls for a genuine collaboration inspired by a sense of pastoral zeal, between the eparchial presbyters and their bishops, for the good of the entire eparchy. Presbyters are expected to have an assignment or at least to be at the disposition of the eparchial bishop in order to organise his eparchial pastoral mission.

4.5. To Lend their Service even Outside the Eparchy

With the encouragement of the eparchial bishop presbyters should spare their service where the shortage of the clergy is occurred. So the Code affirms that clerics, whatever their state of life, are to show willingness to serve wherever there is great necessity, and especially with the permission or exhortation of the proper eparchial bishop or to exercise their ministry in the missions or regions labouring under a shortage of clerics (c. 393).¹⁷⁹

4.6. To Submit their Resignation

According to the Code anyone who is capable of acting responsibly can resign from an office for a just cause (c. 967). But a resignation made as a result of grave fear unjustly inflicted, or of deceit, or of substantial error, or of simony, is *ipso iure* null (c. 968). Therefore, if there is just cause, for instance ill-health, completion of seventy-fifth year (parish priest c. 297 § 2) or some other grave reasons, the presbyter is requested to submit the resignation to his eparchial bishop.

There are certain procedures to follow in order to submit a valid resignation. For instance it must be made, in writing or in the presence of two witnesses, to the authority who is competent for the canonical provision of the office. Unless acceptance is needed, it takes effect immediately (c. 969). A resignation which needs acceptance takes effect after the acceptance of the resignation has been intimated to the person resigning. If the acceptance of the

¹⁷⁹ CCEO c. 393.

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resignation has not been intimated within three months to the person resigning, the resignation lacks all effect (c. 970 § 1).

The acceptance or rejection of the resignation is based on the just and proportionate cause. Therefore the competent authority is not to accept a resignation which is not based on a just and proportionate cause. However, the person who resigns can revoke his resignation. But this is possible only before its acceptance has been intimated (c. 970 - § 2, 3). Moreover, the person who has resigned from an office can obtain the same office with another title (c. 971).

CONCLUSION

As we have seen in the second Chapter, by incorporation through baptism, each human being is constituted a member of the Church, vested with rights and obligations. The point of diversity that exists among the faithful because of each one's state of life and functions in the Church is also another factor. The status of the eparchial bishop and presbyters, by reason of their consecration to be ministers of the Church, are diversified from the rest of the Church. Thus they are entitled to have certain particular rights and obligations beyond those of the faithful.

In the exercise of the teaching authority by the eparchial bishop, preaching the word of God takes pride of place (*LG* 25, *DPMB* 55). In addition to preaching the word of God, there is a more formal teaching role which calls the eparchial bishop to preserve and protect the true faith. This obligation is commonly perceived as a defensive one, but it is understood more properly in a positive and productive way, namely as the transmission of the authentic gospel of Christ. However, the teaching right and responsibility of the eparchial bishop is specifically a pastoral one,

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grounded on his role as leader who serves the unity and growth of faith of the ecclesial community.¹⁸⁰

Although the eparchial bishop is the preserver and protector of the true faith in the eparchy the presbyters are also entrusted with the teaching mission. By the sacrament of orders presbyters are fashioned in the image of Christ, the priest, and co-workers with the bishop. It is their primary duty to preach the word of God.

In the eparchy, the sanctifying ministry is primarily entrusted to the bishop. He holds the fullness of the high-priesthood of Christ. He is the principal dispenser of mysteries. Therefore, the eparchial bishop has certain rights and obligations in the sanctifying mission in relation to his presbyters.

The eparchial presbyters, by reason of their sacred ordination, participate in the same priesthood of Christ. They are made his ministers and are assigned under the authority of the bishop to celebrate the divine liturgy and sanctify the people of God. Hence they have certain rights and obligations in the sanctifying ministry towards their eparchial bishop.

In his governing mission, the eparchial bishop has several rights and obligations in relation to his presbyters. As we have mentioned already the eparchial bishop is endowed with legislative, executive and judicial powers. Therefore, we have described the important rights of the eparchial bishop in this regard and in relation with his presbyters.

Presbyters are co-operators of the eparchial bishop. By their ordination and ascription they dedicate themselves to serve the eparchy under the guidance of the bishop. Like the eparchial bishop they are endowed with the triple mission in the Church: teaching, sanctifying and governing.

¹⁸⁰ Cf. NCCB, *A Manual for Bishops*, 21.

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The Code views the presbyters as persons having more "obligation" than "rights". The majority of the clerical discipline in the Code are more oriented to this aspect of "obligations" than "rights".

As we have treated in the second Chapter, in the Church, the power and authority is meant for "service" (*diakonia*). The rights of those holding the office in the eparchy can appropriately be understood in terms of "obligational rights" or "responsible rights", rights, on the part of those who exercise them, which necessarily presuppose and imply a grave obligation or responsibility.

CHAPTER FOUR

STRUCTURES AND OFFICES IN THE EPARCHY FOR THE FULFILMENT OF RECIPROCAL RIGHTS AND OBLIGATIONS

INTRODUCTION

As we have seen in the first Chapter "the eparchy is a portion of the people of God entrusted to the pastoral care of a bishop". He gathers his faithful in the name of Christ, with the Gospel and the Eucharist. In his pastoral mission in the eparchy the eparchial bishop is assisted by his presbyterate through different structures and offices¹. The Code mentions about different structures and offices. The purpose of this Chapter is to highlight such structures and offices especially in their relation to the reciprocal rights and obligations of the eparchial bishop and eparchial presbyters.

In the eparchy there are several structures, the eparchial curia, the presbyteral council, the college of the eparchial consultors, the pastoral council; and offices: protopresbyter, parish priest, judicial vicar, defender of the bond etc.,. In order to fulfil his mission in the eparchy, the eparchial bishop functions with the help of these structures and offices, which at the same time calls for the presence, co-operation and collaboration of his presbyters.

¹ In *PO 20* it is stated that "the actual *office* which sacred ministers fulfil should be regarded as of primary importance. Hence the so-called system of benefices should be abandoned, or at least reformed in such a way that the beneficiary dimension, that is, the right to revenue attached to an endowed office, be treated as secondary, and the primary place in law be given to the ecclesiastical office itself: this is to be understood henceforth as any office which is permanently conferred and is to be carried out for a spiritual purpose"

"In the new concept of *officium* no special stress is given to the potestas ordinis nor to the potestas iurisdictionis. However, this does not mean that these two powers are not so strictly connected with many ecclesiastical offices that they can be conferred to those who are not ordained as priests. In an Oriental parish laymen, religious, and deacons, exercise parochial ministerial activities, but the parish priest is always an ordained priest". SINAL, "The Schema of the *Canons De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protopresbyteris*» *Nuntia* 9 (1979) 62-63.

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Hence, these structures and offices help both the parties to practice their reciprocal rights and obligations.

1. The Eparchial Assembly (*Conventus Eparchialis*)

The *eparchial assembly*² is one of the structures treated in the Code that helps the eparchial bishop in the governance of the eparchy especially in those things with regard to the special needs or advantage of the eparchy (c. 235). The assembly provides the eparchial bishop with a forum to present his own proposals and serves as a center from which pastoral initiatives can emanate to the entire eparchy.

It is the exclusive right of the eparchial bishop to convoke the eparchial assembly, to preside over it personally or through another, to transfer, prorogue, suspend, or dissolve it (c. 237 § 1).³ Indeed, he may delegate someone to preside over it.

The *motu proprio Cleri sanctitati* stated that the maximum interim period between the convocation of the eparchial assemblies is to be ten years. In the new Code there is no mention of such a period of time but the matter is left to the discretion of the eparchial bishop who is required to consult the presbyteral council prior to the convocation of the assembly.⁴

² The Code used the title *conventus eparchialis*. On the other hand the CIC 1984 used the title *synodus diocesana* (c. 460). The latter would be inappropriate to use in the Code for this institution because the use of the term *synod* is reserved to an assembly of bishops which collectively exercises a power of governance.

Since only bishops have legislative power (CCEO cc. 191 § 1, 241; CS cc. 422-428), especially when they gathered together, a gathering of the eparchial clergy and other members cannot be an ecclesiastical synod in the meaning of Eastern tradition. It is because of this the Code named this assembly *conventus eparchialis*. ZUZEK, «*Canons de Episcopis*»: *Nuntia* 9 (1979) 46; ZUZEK, «*Canons De Synodo Patriarchalis et De Conventu Patriarchali*»: *Nuntia* 7 (1978) 23.

³ CS c. 423 § 1, seemed to indicate that the syncellus could convoke and preside over this assembly with a special mandate.

⁴ CCEO c. 236. CS c. 422 § 1: "an eparchial convocation shall be convened at least every ten years".

About this issue the study group in 11 October 1985 discussed and decided as follows: «In seno al gruppo di studio sono sorte altre difficoltà relative soprattutto all' discrepanza tra la disciplina di questo canone e quella del can. 461 del CIC in cui la determinazione del periodo di tempo per convocazione del Sinodo diocesano, che è

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The list of those who must be convoked is as follows: the coadjutor bishop; the auxiliary bishops, the protosyncellus or syncelli, the judicial vicar, the eparchial finance officer, the eparchial consultants, the rector of the eparchial major seminary, the protopresbyters, a parish priest and substitute from each district elected by those currently entrusted with the care of souls (that means allowing for each district to be represented by at least two presbyters, the protopresbyter and a parish priest); the presbyteral council, some delegates of the pastoral council; some deacons elected according to the norms of particular law, superiors of autonomous monasteries and some superiors of institutes of consecrated life with houses in the eparchy (whose number and manner of election are to be determined by particular law) and lay people who are elected by the pastoral council if it exists or designated in another manner determined by the eparchial bishop. Besides these, the eparchial bishop is also free to invite other Catholics who need not be members of his Church *sui iuris* and also non-Catholics to participate in the assembly as observers.⁵

The eparchial assembly being a collective body of the eparchy and because of its pastoral significance, those who are obliged to participate in it cannot send a substitute (proxy).⁶ The

l'equivalente del «conventus eparchialis» del CICO, è lasciata alla discrezione del Vesovo diocesano. Inoltre non vi è alcun obbligo di informare al più presto le autorità superiori circa la convocazione di esso. La questione è stata dibattuta.....con il risultato che il gruppo di studio è stato concorde nel ribadire che la figura del Vescovo eparchiale delle Chiese orientali non deve defferire da quella del Vescovo della Chiesa latina in ciò che riguarda la «potestas» con la quale «regit» l'eparchia che gli è affidata. Pertanto deciso di ridurre il canone al seguente, improntato al can. 461 § 1 del CIC. *Conventus eparchialis convocetur quoties, iudicio Episcopi eparchialis et consulto Consilio presbyterali, adiuncta id suadeant*. «La nuova revisione della seconda parte dello SCCHEO»: *Nuntia* 23 (1986) 51-52.

⁵ CCEO c. 238. In the former legislation of CS c. 424, the participation in the eparchial assembly was restricted to clergy only. This has been changed in the new Code. «Plusieurs modifications doivent être notées pour le can. 50 du schéma par rapport au can. 424 du CS. Comme on le verra ci dessous, le plus important de ce changement concerne l'admission des laïques dans le Conventus eparchialis». ZUZEK, «Canons de *Episcopis*»: *Nuntia* 9 (1979) 46.

⁶ CCEO c. 239. According to CS c. 425 § 2 "those who are negligent can be compelled and punished by the bishop with just penalties". «Cette dernière modification a été motivé de la sort: «il ne convient pas que le fait d'être absente au Conventus

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common law provides for the election of substitutes for the parish priests (also applicable for deacons, certain religious superiors, delegates from the pastoral council) in the districts of the eparchy (c. 238 § 1, 6°). A person could be legitimately excused from attending the assembly because of ill-health, professional concerns, or pastoral obligations. But in these cases he/she must notify the eparchial bishop of the excuse.

In the assembly the participants can pose questions. But as said in the Code the eparchial bishop is to determine the matters to be treated or discussed in the assembly. For this purpose, if necessary, he can appoint commissions in order to prepare matters to be treated at the assembly. The material prepared by the commissions, and the agenda are to be forwarded to the members of the assembly before convocation. All the proposed issues are to be submitted to free discussion in the sessions of this assembly (c. 240).

Since the eparchial bishop is the sole legislator in the eparchy, he is the only participant in the assembly who has a deliberative vote. All other participants have only a consultative vote.⁷ Only the eparchial bishop can sign the acts of the assembly (c. 241). If needed he can give the acts the force of law immediately or can provide for a *vacatio legis* in order for the entire eparchy to be informed of new legislation (c. 1489 § 2). Communicating the acts of the assembly to the concerned authority is the obligation of the eparchial bishop (c. 242).

implique un delictum ecclesiasticum fixé par le ius commune même. Si cela était nécessaire, l'évêque peut toujours recourir à la faculté de rappeler à leur devoir les membres du Conventus éventuellement absents, employant s'il le faut, une monitio canonica cum comminatione poenae, i.e. un praeceptum poenale préalable au délit». ZUZEK, «Canons de *Episcopis*»: *Nuntia* 9 (1979) 46.

⁷ It does not mean that their suggestions can be simply disregarded by the eparchial bishop if they do not concur with his own, since suggestions and opinions expressed in a forum can acquire a certain importance of their own still lacking the obligatory juridical force.

2. The Eparchial Curia (*Curia Eparchialis*)

According to the Council document *Christus dominus* (27) the eparchial curia directs the administration of the eparchy and co-ordinates the various aspects of pastoral activity in the eparchy under the supervision and direction of the eparchial bishop. In the Directory on the Pastoral Ministry of Bishops it is stated that "the curia therefore, ought to be the means for studying, planning and carrying through the pastoral program which the bishop weighs and ponders together with his councils".⁸ It is the arm of the eparchial bishop.⁹

The appointment to any office of the eparchial curia is reserved to the eparchial bishop alone because they are to be his close collaborators. Neither the protosyncellus nor the syncelli can make such curial appointments without special mandate.¹⁰ The prescriptions of common law and of the particular law are to be observed in the canonical provision of offices (c. 244).

According to canon 243 § 1 of the Code the eparchial bishop is to establish an eparchial curia. The proper functioning of the eparchial curia needs the nomination of several officials by the eparchial bishop,¹¹ for instance: the protosyncellus, syncellus, the judicial vicar, eparchial finance officer, finance council, chancellor, eparchial judges, promoter of justice and defender of the bond, notaries and other persons who are assigned by the eparchial bishop for the proper functioning of the curia.¹²

⁸ DPMB 200.

⁹ Cf. BROGI, "Norms on Eparchies and Bishops", 116.

¹⁰ CCEO c. 987.

¹¹ If it is needed, if the eparchy is a smaller one, some of the following offices can be brought together in one person. In a very large eparchy each office should have a distinct person for itself. And if it is necessary, some of them could be helped by other dependent personnel. Cf. BROGI, "Norms on Eparchies and Bishops", 115.

¹² CCEO c. 243 § 2. The eparchial curia is not designated as a juridical person in common law. The council for financial affairs is the only council mentioned as part of the eparchial curia. But it does not exclude the possibility of incorporating other offices or councils. It is to be noted that unlike CIC 1983 c. 473 § 2, the Code is silent on the office of moderator of the curia. But this does not prevent the eparchial bishop to

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All who are admitted in to an office in the curia must make a promise to carry out the office faithfully and to observe secrecy within the limits and according to the manner determined by the law or by the eparchial bishop (c. 244 § 2, 1°, 2°).

2.1. Protosyncellus and Syncellus (*Protosyncellus et Syncelli*)

The eparchial bishop exercises executive power either personally or through a protosyncellus or syncelli.¹³ They should have the maximum confidence of the bishop. The origin of the office of the syncellus can be traced to very early times. Monks who were designated bishops used to take a companion with them. This companion who shared a cell or apartment with the bishop (thus the term *συνγκελλος*), would naturally acquire a great deal of influence in the local church because of his proximity to the bishop.¹⁴

The protosyncellus can be considered as a counterpart of the vicar general in the Latin Church and syncellus of the episcopal vicar.¹⁵ The *motu proprio Cleri sanctitati* recommended the

create such an office according to the provision in § 3. Although they co-operate closely with the eparchial bishop in the governance of the eparchy, the presbyteral council, the college of eparchial consultors and the pastoral council are not considered as part of the eparchial curia. Instead, the eparchial curia is viewed as having the responsibility of implementing those programmes elaborate in these councils. For further discussions on these issues see ZUZEK, «*Canons de Episcopis*»; *Nuntia* 9 (1979) 34-36.

¹³ CCEO cc. 191 § 2.

¹⁴ Cf. POSPISHIL, *The Law on Persons*, 187; FARIS, *Eastern Catholic Churches*, 516.

¹⁵ The terminology used in *CD 27* is followed by CIC. Accordingly CCEO's protosyncellus is equal to *vicar general* of the CIC and syncellus with the *episcopal vicar*.

The discussions of the *Coetus* on these terminological change in the Code is as follows: «L'ont sait que dans le *ius vigens* des Orientaux Catholiques le mot Syncellus : équivaut au terme *Vicarius generalis* dans le Code de droit canon de l'Eglise Latine. Le charge de Vicaire général, qui *potestate ordinaria... Episcopum in universae eparchiae regimine adiuvat*, (...), est bien définie dans le Décret conciliaire *Christus Dominus* n. 27 où elle est nettement différencié e de celle di Vicaire épiscopal qui est honoré du même pouvoir mais seulement in *determinata diocesi parte*. Ces deux formes juridiques se retrouvent dans les pratique des Eglises Orientales depuis des temps très anciens, bien que les pouvoirs qui leur sont conférés (ordinaires, délégués, vicaires) sont conçus très différemment selon les cas. Les termes de *Syncellus et Protosyncellus*, d'origine nettement monastique (cf. *Fonti*, serie II, n. X, p. 472 rubrique *Protosyncellus*) et byzantine mais

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appointment of a syncellus if the proper governance of the eparchy demanded it.¹⁶ The Code now requires that a protosyncellus be appointed for every eparchy (c. 245). It is an obligation of the eparchial bishop.¹⁷ There should be only one protosyncellus. The protosyncellus is not endowed with all the powers of the eparchial bishop. Legislative power is exercised by the eparchial bishop personally¹⁸ and it cannot be delegated.¹⁹ In the matter of executive power the protosyncellus shares same power as the eparchial bishop. Accordingly we can say that in itself there is a duplication of the same authority in an eparchy. But the common law and the eparchial bishop can regulate the power of the protosyncellus. Similarly a special mandate of the eparchial bishop is required for validity for certain acts of the protosyncellus.²⁰ Judicial power is exercised by the eparchial bishop personally or through the judicial vicar and judges.²¹ The judicial vicar and the protosyncellus cannot be the same person unless the smallness of the eparchy or the small number of cases suggests otherwise.²²

adoptés plus tard par les traditions alexandrine, antiochéenne et chaldéenne, indiquent le Vicaire qui a reçu l'exercice de quelques pouvoirs au nom de l'évêque ou du Patriarche. Le GM a donc proposé d'utiliser dorénavant en un sens étroitement juridique (même si le mot *proto* étymologiquement, suppose plusieurs *Syncelli*, ce qui ne peut pas advenir dans les eparchies mineurs) le mot *Protosyncellus* pour désigner le *Vicarius generalis* et le terme de *Syncellus* pour indiquer le *Vicarius episcopalis*. Cette terminologie évidemment devra être introduite dans tous les schémas du futur CICO...». ZUZEK, «*Canons de Episcopis*»: *Nuntia* 9 (1979) 40-41; «*La nuova revisione della seconda parte dello SCCHEO*»: *Nuntia* 23 (1986) 56-57.

¹⁶ CS can. 431 § 1. The term protosyncellus is not found in CS. The syncellus fulfilled the role of either vicar general, exercising ordinary power throughout the eparchy (CS c. 432 § 1), or episcopal vicar, exercising ordinary power over a specific group of faithful (CS c. 432 § 4, 1^o). According to CS c. 432 § 3, more than one syncellus could be appointed in an eparchy if the size of the eparchy or other factors warrant it.

¹⁷ «....Après une discussion à ce propos le Coetus s'est en effet prononcé en faveur de caractère obligatoire de cette norme...». ZUZEK, «*Canons de Episcopis*»: *Nuntia* 9 (1979) 341; «*SCCHEO*»: *Nuntia* 19 (1984) 17.

¹⁸ CCEO c. 191 § 2.

¹⁹ CCEO c. 985 § 2.

²⁰ CCEO c. 987.

²¹ CCEO c. 191 § 2.

²² CCEO c. 1086 § 1.

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As *Christus dominus* 27 exhorts, if an eparchy requires, one or more syncelli can be appointed by the eparchial bishop for good government (c. 246).²³ They may be appointed for different areas of ministry: institutions of academic studies, pastoral care of the members of another Church *sui iuris*, catechetical formation etc.²⁴ They have the same power as the protosyncellus, but in a way their power is limited since they are given a certain section of ministry in the eparchy. However, in their proper section they enjoy the power of the protosyncellus.

"The protosyncellus is the person in whom the eparchial bishop places his complete trust".²⁵ Since the protosyncellus and the syncelli are to be the closest collaborators of the eparchial bishop, the bishop should be completely free in their appointment and removal (c. 247 § 1). The eparchial bishop need not consult with any person or body before appointing them.²⁶ Regarding the removal, no procedure is prescribed in the Code, however, always conforming to principles of 'justice and equity' and 'the right of a person to a good reputation'.²⁷

A person to be appointed protosyncellus or syncellus should possess certain qualifications (c. 247 § 2):

- (1) He should be a presbyter.
- (2) He is to be a celibate presbyter, unless the particular law of their Church *sui iuris* has established otherwise.²⁸

²³ CIC 1983 c. 475 § 2 permits for the appointment of more than one vicar general for a diocese.

²⁴ «SCCHEO»: *Nuntia* 19 (1984) 17: «Syncellus non in tota eparchia, sed tantummodo in determinata eius parte aut certo negotiorum genere ea gaudet potestate quam ius commune Protosyncello (Vicario generale) tribuit».

²⁵ BROGI, "Norms on Eparchies and Bishops", 114.

²⁶ The only exception is that he is obliged to appoint the coadjutor bishop and the auxiliary bishop as the protosyncellus. If there are more than one auxiliary bishops, he is to appoint one the protosyncellus and the others syncelli. Likewise, they cannot be removed from office by the eparchial bishop (CCEO c. 215).

²⁷ CCEO cc. 975 § 2 & 23.

²⁸ CS c. 433 states that "the syncellus shall be a celibate priest of the secular clergy".

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(3) It is recommended that the protosyncellus or syncellus be a presbyter ascribed to the eparchy in which he is to serve. But the possibility of taking from another eparchy or even from another Church *sui iuris* is not excluded.

(4) At least thirty years of age.

(5) He should have a doctorate or licentiate in some sacred science or be expert in it.

(6) He should be a person of sound doctrine, uprightness, and prudence and should have practical experience in handling matters.

As a disqualification the canon states that a person related to the eparchial bishop by blood up to the fourth degree inclusively should not be committed to these offices (c. 247 § 3; first cousin or nephew).

The protosyncellus and syncelli have administrative or executive power, not legislative or judicial. They enjoy the same executive power as the eparchial bishop within the limit of the office conferred to them. Their authority can be restricted by the eparchial bishop by reserving certain matters to himself or to others. The law prescribes certain actions which are under the exclusive competence of the eparchial bishop. But he can authorise them to perform the reserved administrative functions through a special mandate. If the protosyncellus or syncelli does anything without the special mandate, while the common or the particular law of the Church *sui iuris* demands the same, he acts invalidly.²⁹

The protosyncellus and syncellus enjoy the habitual faculties conceded to the eparchial bishop and can execute the rescripts of the Apostolic See and of the patriarch unless other

²⁹ CCEO c. 987. CS stated that the syncellus (also protosyncellus) acts with ordinary power even in those matters that require a special mandate. CS c. 434 § 2.

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arrangements have been made or the eparchial bishop was chosen to execute the rescript because of personal qualities (248 § 2).

The protosyncellus and the syncelli have a special obligation. They must report to the eparchial bishop on the principal matters for instance with regard to the betterment and growth of the eparchy that are to be treated and which have been treated. They are never to act contrary to the will and mind of the eparchial bishop (c. 249). If a favour was denied by the eparchial bishop, they cannot validly grant it (c. 1530 § 1). The need for unified leadership of the eparchy is the spirit of this norm.

The dependence of the protosyncellus and syncelli on the eparchial bishop includes the possibility of the eparchial bishop to restrict and limit their powers. The eparchial bishop can therefore reserve to himself and take away from the competency of the protosyncellus or syncelli some acts (for instance, the granting of marriage dispensations etc.,).

As their right, the Code states that during their tenure in office, protosyncellus or syncelli enjoy all the rights and privileges immediately subordinate to the episcopal dignity (c. 250).

Since the protosyncellus and the syncelli act as an *alter ego* of the eparchial bishop, they lose office as soon as the eparchial bishop loses the office.³⁰ Besides, if the protosyncellus and

³⁰ There is an exception in the case when the protosyncellus is an auxiliary bishop: in this case, the bishop maintains his assignment, but in virtue of common law and not dependent upon the administrator of a vacant eparchy (c. 224). Cf. BROGI, "Norms on Eparchies and Bishops", 114; «La nuova revisione della seconda parte dello SCCHEO»: *Nuntia* 23 (1986) 40; *CD* 26; *ES* 1, 13.

If the patriarchal see becomes vacant, the eparchy of the patriarch (c. 101) also becomes vacant. But in that case, the senior bishop among the bishops of the patriarchal curia or, if there are none, of the permanent synod, assumes the office of the administrator of the patriarchal church and administrator of the eparchy of the patriarch (c. 129). Hence never leaving the eparchy of the patriarch without an administrator. In such a situation the presbyter who holds the said office of the protosyncellus or syncellus retain their position and powers in accordance with canon 247.

In eparchies situated inside the patriarchal territory, presbyters who hold the

syncellus were appointed for a certain period of time, they lose the office upon expiration of the term. However, the loss of office does not occur automatically by the lapse of time, but only when they are intimated of the loss of office.³¹

The protosyncellus and the syncellus can resign from the office for a just cause.³² The resignation must be made in writing or in the presence of two witnesses and takes effect when the eparchial bishop intimates to the person resigning the acceptance of the resignation.³³

The eparchial bishop is free to remove the protosyncellus or syncelli from office keeping due justice and equity and they should be informed of the removal in writing.³⁴

A presbyter or bishop who has lost the clerical state, has publicly abandoned the Catholic faith or has defected from communion with the Catholic Church or who has attempted marriage, even a civil one³⁵ is removed from office *ipso iure*.

2.2. Chancellor (*Cancellarius*) and Notary (*Notarius*)

Chancellor in the eparchial curia is freely appointed by the eparchial bishop. However, the eparchial bishop is obliged to appoint a chancellor and who should organise the official acts in the curia.

office of protosyncellus or syncellus retain their office until the eparchial administrator (see c. 220, 3^o) takes canonical possession of the office.

The protosyncellus and syncellus who are ordained bishops or who are constituted in the eparchy of the patriarch do not lose office *sede vacante*. The eparchial administrator cannot make any modification in their office because they continue in office *ex iure* (c. 251 § 2).

³¹ CCEO c. 965 § 3.

³² CCEO c. 967.

³³ CCEO c. 970 § 1.

³⁴ CCEO c. 974 § 2. The eparchial bishop is not free to remove the coadjutor bishop from the office of the protosyncellus (c. 215 § 1). He can remove an auxiliary bishop from the office of the protosyncellus, but he must be appointed at least to the office of a syncellus (c. 215 § 2).

³⁵ CCEO c. 976 § 1: «Ipso iure ab officio amovetur: 1^o qui statum clericalem amisit».

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His principal responsibility is to see that the acts of the curia are drawn up, dispatched and are filed safely in the archives of the eparchial curia. The particular law of the eparchy can determine his other responsibilities. However, the eparchial bishop is free to define the other functions of the office in accord with the specific needs of the curia. Unless the particular law determines otherwise, the principal obligations of chancellor are the collection, arrangement and preservation of the acts of the curia. To sum up it is up to the eparchial bishop and the chancellor to elaborate the most appropriate system for the archives of the eparchy.³⁶

The archive of the eparchial curia is to be locked and the key must be kept by the eparchial bishop and the chancellor; no one is permitted to enter into it without the permission of the eparchial bishop alone or the protosyncellus along with the chancellor (c. 257 § 1).

Only a presbyter or deacon can be appointed to the office of chancellor. The chancellor is *ipso iure* a notary of the eparchial curia. As he is notary, he should be of unblemished reputation and above suspicion.³⁷ It is to be noted that in cases which could involve the reputation of a cleric the notary should be a presbyter. Such cases include the removal or transfer of a parish priest, laicalization process of a priest or deacon and the imposition of a

³⁶ CCEO c. 252. The canon does not give the definition of the acts of the curia and the mode and duration of conserving each document. The former legislation spoke of chronological preservation. But such directive is not seen in the present Code. These things are to be determined by the particular law.

³⁷ CCEO c. 253 § 2. *CS* c. 439 it is stated that "chancellor must be a priest". According to CIC 1983 c. 483 § 2 the chancellor (and notaries) must be of unblemished reputation and above suspicion. In cases which could involve the reputation of a priest, the notary must be a priest.

In the Codification of CCEO there was a discussion about the above issue. Some members said it could be left for the formulation of particular law. Some others remarked it is an office involving «potestas ordinis». Finally it is agreed to formulate the schema as follows: «In qualibet curia constituatur Cancellarius qui sit presbyter vel diaconus». ZUZEK, «*Canons de Episcopis*»: *Nuntia* 9 (1979) 47. Further «in canone 224 (schema), de dotibus Cancellari Curiae agente, requiritur, ut Cancellarius <presbyter vel diaconus> sit, quod pluribus Consultoribus initio non placuit (...), sed, canone denuo mense Novembris 1979 recognitio, fere unanimiter acceptum est». «*SCCHEO*»: *Nuntia* 19 (1984) 17.

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penalty on a cleric. CIC 1983 does not specify that the chancellor should be a deacon or priest. Therefore, a lay person of either sex can be appointed a chancellor. However in cases which involve the reputation of a priest, the notary must be a priest.³⁸

The common law provides the possibility of appointing a vice-chancellor. Nothing is mentioned in the Code that he should be a presbyter or deacon. Therefore a lay person of either sex can be appointed. Since the vice-chancellor being *ipso iure* a notary, he or she should be of unblemished reputation and above suspicion (c. 252 § 3). His duty is to assist the chancellor.

Notaries are qualified witnesses in the curial office. In addition to the chancellor and vice-chancellor who are by law itself notaries of the eparchial curia, the eparchial bishop can appoint other notaries. The documents which are signed by a notary are ecclesiastical public documents with all the accompanying effects, especially in trials.³⁹

With regard to their personality the Code states that they must be of good character and above reproach. It is to be specially noted that a presbyter must be the notary in cases in where the reputation of a cleric can be called into question.⁴⁰

Common law prescribes the presence of the chancellor during certain judicial procedures: to make a record of the enthronement of the eparchial bishop⁴¹ and when the coadjutor bishop or auxiliary bishop presents his letter of canonical provision.⁴² The presence of a notary is essential at every hearing

³⁸ CIC 1983 c. 482 § 1; CIC 1983 c. 483 § 2: «Cancellarius et notarii debent esse integrae fama et omni suspicione maiores; in causis, quibus fama sacerdotis in discrimen vocari possit, notarius debet esse sacerdos».

³⁹ CCEO c 1221 § 1.

⁴⁰ CS c. 440 § 3 says that if there is dearth of clerics, notaries can be appointed from among laymen. However, the notary in criminal matters of clerics must be a presbyter.

⁴¹ CCEO c. 189 § 2.

⁴² CCEO c. 214 § 4.

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of the trial and the acts are considered null unless signed by the notary.⁴³

At the completion of a trial documents which belong to private individuals must be returned but a copy of them is to be retained. The chancellor and notaries are forbidden to furnish a copy of judicial acts and of documents which have been acquired for the process without a mandate from the judge.⁴⁴

Chancellor, vice-chancellor and notary can be freely removed from the office by the eparchial bishop. However the eparchial administrator cannot remove them except with the consent of the college of eparchial consultors (c. 255).

2.3. The Eparchial Financial Administrator (*Oeconomus Eparchialis*) and Finance Committee (*Consilium a Rebus Oeconomicis*)

According to the Oriental tradition a special, permanent office of the eparchial *onomus* existed from the very early days of the Church. Canon 26 of the Council of Chalcedon required each bishop to appoint an *onomus* who is to have the actual management of the temporal goods belonging to the eparchy, although he is under the authority of the eparchial bishop.⁴⁵

⁴³ CCEO c. 1101 § 1.

⁴⁴ CCEO c. 1133 §§ 1, 2.

⁴⁵ Chalce. c. 26: «Quoniam quibusdam ecclesiis, ut rumore conperimus, praeter oeconomus, episcopi facultates ecclesiasticas tractant,....divinis constitutionibus subiacebit». See also Nic. 11 c. 11; CS c. 438 §§ 1 & 2, 1°; PA c. 262 §§ 1 & 2, 1°.

«Il faut également noter que l'institution de l'économe eparchial appartient à plus ancienne tradition orientale, comme l'atteste le can. 26 du Concile de Chalcédoine et le can. 11 du Concile II de Nicée». ZUZEK, «Canons de *Episcopis*»: *Nuntia* 9 (1979) 47.

In the Oriental legislations a special, permanent office of eparchial *onome* existed from the very early days of the Church, dating back to the fourth century at least, i.e., to the time after the persecutions, when it became possible to own publicly real estate. A law of the Emperor Honorius and Arcadius, enacted in 398, states the office of the eparchial *onome* as if it were existing everywhere. Cf. POSPISHIL, *The Law on Persons*, 191. The CIC 1917 did not mention the figure of the *onomus* in a *sede plena* i.e., (when the see is occupied) see c. 432.

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In conformity with the early tradition of the Church, as stated in the Acts of the Apostles, the *economus* was ordinarily a deacon. This institution also conforms to the apostolic tradition insofar as it relieves the eparchial bishop of temporal responsibility and make him free to fulfil his spiritual and pastoral responsibilities (Acts 6:2).

The Church, to fulfil her mission in the world, must also need the use of the temporal goods. The Second Vatican Council states:

Seeing that the Lord as their 'portion and their inheritance (Nm. 18:20), priests should make use of temporal goods only for those purposes to which they legitimately be applied by the teaching of Christ the Lord and by the discipline of the Church .

What is in the technical sense church property should be managed by priests, as its nature requires, according to church law and as far as possible with the help of expert laity.⁴⁶

Two bodies which assist the eparchial bishop in the administration of the temporal goods of the eparchy are: (i) the eparchial financial administrator; and (ii) the finance committee (c. 262).

2.3.1. The Eparchial Financial Administrator

The appointment of the eparchial financial administrator is the free choice of the eparchial bishop. However he is bound to consult previously the college of eparchial consultors and the finance council (c. 262 § 1). This consultation is so important that if the eparchial bishop neglects to do it, or if he does not

⁴⁶ PO 17: «Sacerdotes enim, quippe quorum Dominus sit "pars et hereditas" (Nm 18, 20), bonis temporalibus uti debent tantummodo eos in fines, ad quos iuxta Christi domini doctrinam ecclesiaeque ordinationem eadem destinari licet.

Bona ecclesiastica proprie dicta, secundum rei naturam, ad normam legum ecclesiasticarum, sacerdotes, adiuvantibus quatenus fieri possit peritis laicis...».

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follow the procedure required by law, the appointment of the financial administrator is invalid.⁴⁷ If the eparchial bishop fails to appoint one eparchial financial administrator, the metropolitan, after warning the eparchial bishop, has the right to make the appointment (c. 133 § 1, 6°).

Canon 262 § 1 states that the candidate for this office is to be a Christian faithful (*christifidelis*) capable of administering the goods of the Church, expert in economic matters and distinguished for honesty. Hence the candidate can be either a cleric or a lay person of either sex with skill and honesty (c. 940 § 1).⁴⁸

47 For further details about consultation see CCEO c. 934: § 1. If it is determined in the law that in order to perform a juridical act an authority needs the consent or the counsel of a group of persons, that group must be convoked according to the norm of can. 948, unless particular law provides otherwise for cases specified in that law and requiring only that counsel be sought. For the juridical act to be valid it is required that the consent of an absolute majority of those present be obtained or that the counsel of all be sought, without prejudice to § 2, n. 3.

§ 2. If it is determined in the law that in order to perform a juridical act an authority needs the consent or the counsel of certain persons as individuals:

1° if consent is required, the juridical act is invalid in case the authority does not seek the consent of those persons or acts contrary to their wish, even of a single person;

2° if counsel is required, the juridical act is invalid in case the authority does not consult those persons;

3° although not at all obliged to accede to their counsel, even if it be unanimous, the authority is nevertheless not to depart from their counsel, especially if it is unanimous, unless there is, in his or her own judgment, an overriding reason.

§ 3. The authority which needs the consent or the counsel has the duty to provide those whose consent or counsel is required with the necessary information and to ensure absolutely their freedom of expression.

§ 4. All whose consent or counsel is required are obliged to offer their opinion sincerely and to observe secrecy, an obligation which can be insisted upon by the authority". See CIC 1983 c. 127.

48 Chalce. c. 26 describes that the econome should be from among its own "clergy". CS c. 438 § 2, 1° states that the econome must possess the qualifications which are required of the patriarchal econome.

CS c. 298 § 2, 2° states that the patriarchal econome shall be committed to a trustworthy, diligent "cleric".

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The appointment of the office of the financial administrator is made for a determined period of time determined by the particular law and at the end of the prescribed term the eparchial bishop can renew the mandate for another term if he wishes. For removing the eparchial financial administrator before the expiry of the prescribed time or mandate, the eparchial bishop must once again consult the college of eparchial consultors as well as the finance committee.⁴⁹

The eparchial financial administrator can resign from office by submitting his resignation in writing to the eparchial bishop or making his intention known to the eparchial bishop in the presence of two witness. It is to be noted that no acceptance is required in order for the resignation to become effective (c. 969). In a vacant eparchial see, if the financial administrator wishes to resign, he is to present his resignation to the patriarch if the patriarch appointed him. Otherwise, it can be presented to the college of consultors. Here also no acceptance is necessary in order for the resignation to become effective. If the administrator should arbitrarily abandon the position, he/she is responsible for any harm caused to the Church and is bound to make restitution.⁵⁰

The eparchial bishop is primarily responsible for the temporal goods of the eparchy (c. 1022 § 1). The Code mentions several responsibilities of the financial administrator. It is his duty to administer the temporal goods of the eparchy according to the provisions of common law (cc. 1007-1054), particular law, and the

«Durant le *Coetus* de janvier 1977, deux consultants ont soutenu la motion visant à insérer à cet endroit : *oeconomus sive clericus sive laicus sit*, comme requise par la nécessaire adaption du Code aux temps contemporains et étant donné que ni le Concile de Chalcédoine ni le CS n'exigent que l'économe doive être un prêtre ou un diacre, mais seulement *clericus* (cf. *Nuntia* 3 p. 56). Le futur CICO ne devrait donc pas trancher la question différemment ». ZUZEK, «*Canons de Episcopis*»: *Nuntia* 9 (1979) 48. CS c. 298 § 2, 2° and CIC 1983 c. 492 § 3 specifies that the *oeconomus* should not be a relative of the eparchial bishop. The Code does not expressly state this.

⁴⁹ CCEO c. 262 § 2.

⁵⁰ CCEO c. 1033.

policy and instructions of the eparchial bishop (c. 1022 § 1). He is to supervise the administration of the ecclesiastical goods in the whole eparchy, to provide for their preservation, safety and increase, to supplement for the negligence of local administrators and to administer by himself the goods which lack an administrator designated by the law. However he must account for his administration to the eparchial bishop every year and as often as requested by the eparchial bishop. Only the eparchial bishop has the right to request a report from the financial administrator. The eparchial bishop is to examine the accounts presented by the financial administrator through the finance committee.⁵¹

2.3.2. Finance Committee

The finance committee is a body which assists the eparchial bishop in the administration of the temporal goods of the eparchy. This is a collegial body, which assists the eparchial bishop in the formulation of eparchial financial policy and general oversee of the administration of the temporal goods of the eparchy.

The eparchial bishop is bound to establish a finance committee. It is the only committee which is part of the eparchial curia in virtue of the common law (c. 243 § 2). Ex officio, the eparchial bishop is the president of this committee.⁵² The financial administrator of the eparchy is an ex officio member of that same committee.⁵³ The qualifications for the members of this committee prescribed by the Code are capability and, if possible experts in civil law. The candidates thus can be either clerics or lay persons. No other qualifications or status is specifically mentioned. Those

⁵¹ CCEO c. 262 § 3 & § 4.

⁵² Unlike CIC 1983 c. 492 § 1, nothing is mentioned of a delegate of the eparchial bishop presiding over the finance committee. For further study see FARRELLY, "The Diocesan Finance Council", 149-166.

⁵³ CIC 1983 c. 492 does not mention the participation of the finance officer in the council of economic affairs.

No mention is made regarding the number of persons to be included in the council, nor is the question of a term of office treated; such matters are relegated to the particular law.

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who are related to the eparchial bishop up to the fourth degree inclusive of consanguinity or affinity are excluded from membership on the finance committee. The eparchial bishop enjoys the right to appoint members to this committee with the consultation of the college of consultors and the eparchial bishop is not required to have the approval of the college of consultors.⁵⁴

The finance committee, being a part of the eparchial curia, is obliged to make a promise to fulfil their responsibility faithfully and to observe the required secrecy (c. 244 § 2).

The committee has primarily a consultative function in the eparchy (c. 263 § 1). But there are also occasions in which it has a deliberative voice and in such case its vote binds the eparchial bishop. For instance if the value of the ecclesiastical goods proposed for alienation falls between the minimum and the maximum amount fixed by the synod of bishops of the patriarchal Church or by the Apostolic See, the consent is required: of the eparchial bishop, who needs in each case the consent of the finance council and the college of eparchial consultors for the goods of juridical persons subject to the eparchial bishop.⁵⁵

In certain cases, the eparchial bishop is obliged to consult the finance committee. For instance transactions of greater importance relating to the temporal goods of the eparchy are not left to the absolute discretion of the eparchial bishop alone. Likewise if the eparchial bishop wishes to remove the finance officer prior to the expiration of the term of office, the finance committee and college of consultors must be consulted (c. 262 § 2).

⁵⁴ CCEO c. 263. CIC 1983 c. 492 does not bound the eparchial bishop to consult with anyone prior to the appointment of the committee.

⁵⁵ CCEO c. 1036 § 1, 2°.

"Whenever the law establishes that the eparchial bishop needs the consent of the college of the eparchial consultors, it is sufficient for the patriarch, in the matters of the eparchy which he himself governs, that he consult this college". CCEO c. 271 § 6.

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In order to support the needs of the eparchy, the eparchial bishop has the right, with the consent of the finance committee, to impose tax on all juridical persons subject to him (c. 1012 § 1). If the eparchial bishop desires to alienate property within the minimum and maximum limits set either by the synod of bishops of the patriarchal Church or the Apostolic See, the consent of the finance council and the college of consultors is required (c. 1036 § 1, 1°).

It is the obligation of this committee to prepare an annual budget for the eparchy and approve the financial report prepared by the financial administrator (c. 264 § 4) of the pervious year. The collaboration and co-operation of this committee would also be beneficial to the eparchial bishop in the preparation of norms to be observed in the eparchy regarding the administration of the temporal goods (c. 1022 § 2).

2.4. Judicial Vicar (*Vicarius Judicialis*)

The ecclesiastical tribunals function through several officers. Judicial vicar, according to CIC 1917 called *officialis*⁵⁶, sometimes referred to as the 'chief judge'⁵⁷ who represents the eparchial bishop, but constitutes with the eparchial bishop one tribunal. He is one of the curial officers. The eparchial bishop is bound to appoint a judicial vicar with ordinary judicial power, distinct from the protosyncellus, unless the smallness of the eparchy or the small number of cases suggest otherwise. The judicial vicar cannot judge cases which the eparchial bishop has reserved to himself. He can be given assistants whose title is adjutant judicial vicars.⁵⁸

⁵⁶ CIC 1917 c. 1573 § 1-5. On the other hand the previous Oriental legislation *SN* (c. 40 §1) used the word «*Vicarium iudiciale*». «Le texte de *SN* can. 40 est maintenu avec certaines modification plutôt rédactionnelles, selon la ligne suivie par la Commission pour le C.I.C qui, d'autre part, a suivi précisément le *SN* can. 40, en changeant le terme *Officialis* en *Vicarius judicialis*». YOUSSEF, «Le canons de *processibus*»: *Nuntia* 5 (1977) 22.

⁵⁷ WRENN, "Processes", 954.

⁵⁸ CCEO c. 1086 § 1: «*Episcopus eparchialis tenetur Vicarium iudiciale*

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Regarding the qualifications, the Code proposes that both the judicial vicar and the adjutant judicial vicars must be presbyters of unimpaired reputation, holding doctorates or at least licentiates in canon law, known for prudence and zeal for justice and not less than thirty years of age.⁵⁹

The judicial vicar and the adjutant judicial vicars should be appointed for a definite period of time. If this prescribed time elapses during the vacancy of the eparchial see, they cannot be removed, but remain in office until the new eparchial bishop provides for the matter. But it is to be noted that if the judicial vicar is appointed by the eparchial administrator, when the new eparchial bishop takes office, he needs to be confirmed (c. 1088).

Unless the eparchial bishop in his prudence decides a different procedure to be more appropriate, the judicial vicar can designate judges and compose the collegiate tribunal (c. 1090) where the judicial vicar or the adjutant judicial vicar presides. He should then assign one of the collegiate judges as the *ponens*, unless he wishes to fulfil this function by himself (c. 1091 §§ 1, 2).

2.5. Eparchial Judges (*Iudices*)

In the eparchy the eparchial bishop is to appoint eparchial judges, who are to be clerics (presbyters or deacons). They are to be of unimpaired reputation, and possess doctorates, or at least licentiates, in canon law, and be known for prudence and zeal for

constituere cum potestate iudiciali ordinaria a Protosyncello distinctum, nisi parvitas eparchiae aut paucitas causarum aliud suadet». See also §§ 2-3.

⁵⁹ CCEO C. 1086 § 4. There was a discussion on the need of a 'doctorate in canon law'. «Le canon a été discuté le 7 Juin 1977. La discussion était surtout centrée sur la question si oui ou non il fallait introduire parmi les conditions requises pour être juge la qualité de Doctor in iure canonico, en substituant les mots in iure *canonico periti*. Tout bien considéré, le Coetus est d'avis de retenir la substance de *SN* can. 41, toutefois en réservant en principe aux Evêques du lieu la nomination de ces juges, laissant au Droit particulier de réserver cette nomination au *Conventus Eparchialis*». YOUSSEF, «Le canons de *processibus*»: *Nuntia* 5 (1977) 22-23. The possibility of appointing lay persons to this office was also discussed.

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justice.⁶⁰ They can also be chosen from other eparchies and from other *sui iuris* Churches (c. 1102).

As in the case of the judicial vicar and the adjutant judicial vicar judges are to be appointed for a definite period of time. If this period of time elapses during the vacancy of the eparchial see, they cannot be removed, but remain in office until the new eparchial bishop provides for the matter (c. 1088 § 1 § 2).

2.6. Promoter of Justice (*Promotor Iustitiae*)

The promoter of justice, or prosecuting attorney is another member of the eparchial curia. A promoter of justice is to be appointed in the eparchy by the eparchial bishop for penal cases, and for contentious cases in which the public good may be at stake.

He is bound by the obligation to safeguard the public good.⁶¹ The public good is involved either when the eparchial bishop decides it is (as, for example, when a quarrel between two presbyters over the possession of an office is judged to have become sufficiently public as to have scandalised the whole eparchy), or when the law says it is (for instance see c. 1376; Canon 1382 states that in cases involving the separation of spouses, the promoter of justice must always intervene.) or when the matter is obviously public (for instance highly publicised matter involving well-known people).⁶²

In contentious cases it is for the eparchial bishop to judge whether the public good is at stake or not, unless the intervention

⁶⁰ CCEO c. 1087 § 1: «In eparchia nominentur ab Episcopo eparchiali iudices eparchiales, qui sint clerici». According to the second paragraph of the same canon the patriarch, having consulted the permanent synod, or the metropolitan who presides over a metropolitan Church *sui iuris*, having consulted the two eparchial bishops senior by episcopal ordination, can permit other members of the Christian faithful to be appointed judges; when it is necessary, one of them can be employed to form a collegiate tribunal; in other cases, the matter is to be referred to the Apostolic See. It is after the Second Vatican Council, interest spread in permitting lay persons as well as clerics to function as judges.

⁶¹ CCEO c. 1094: «Ad causas contentiosas, in quibus bonum publicum in discrimen vocari potest, et ad causas poenales constituatur in eparchia promotor iustitiae, qui obligatione tenetur providendi bono publico».

⁶² WRENN, "Processes", 957.

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of the promoter of justice is prescribed by law or it is clearly necessary from the nature of things. If the promoter of justice has intervened in an earlier instance of a trial, such intervention is presumed to be necessary in a subsequent instance (c. 1095). Moreover, the cases in which the presence of the promoter of justice is required, the acts are null if they are not cited. It does not apply if, although not cited, they were in fact present or, having examined the acts, were able, at least before the sentence, to fulfil their role (c. 1097).

It is up to the eparchial bishop to nominate the promoter of justice. The candidate is to be a member of the Christian faithful of good repute, with a doctorate or at least licentiate in canon law, and esteemed for prudence and zeal for justice. So either clerics or lay persons can be appointed by the eparchial bishop to this office (c. 1099).

Canon 1100 states that same person can hold the office of the promoter of justice and the defender of the bond but not in the same case. The promoter of justice can be removed by the eparchial bishop for a just cause.

2.7. Defender of the Bond (*Defensor Vinculi*)

The Code states that a defender of the bond is to be appointed in the eparchy for cases concerning the nullity of sacred ordination and the nullity or dissolution of marriage. The defender of the bond is bound by obligation to present and expound all that can reasonably be argued against nullity or dissolution.⁶³ As in the case of the promoter of justice, in cases in which the presence of the defender of the bond is required, the acts are null if they were not cited. At least it is enough that they were in fact present or, having examined the acts, were able, at least before the sentence, to fulfil their role (c. 1097).

⁶³ CCEO c. 1096: «Ad causas, in quibus agitur de nullitate sacrae ordinationis aut de nullitate vel solutione matrimonii, constituatur in eparchia defensor vinculi, qui obligatione tenetur proponendi et exponendi omnia, quae rationabiliter adduci possunt adversus nullitatem vel solutionem».

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The eparchial bishop nominates the Defender of the Bond. The candidate is to be a member of the Christian faithful (either clerics or lay) of good repute, with a doctorate or at least licentiate in canon law, and esteemed for prudence and zeal for justice (c. 1099). The same person can hold the office of the defender of the bond and the promoter of justice but not in the same case. He can be removed by the eparchial bishop for a just cause (c. 1100).

3. The Presbyteral Council (*Consilium Presbyterale*)

The eparchial bishop and all the presbyters participate in the same priesthood of Christ. All the more, in the eparchy, the presbyters are co-workers of the eparchial bishop. The Second Vatican Council asks the bishop to create a 'council' or 'senate' of the presbyters:

There should be set up, in a way appropriate to modern circumstances and needs, a council or senate of priests, with a constitution and rules to be determined by law, to represent the priests of the diocese and to give effective help to the bishop, by their advice, in the running of it.⁶⁴

Through a presbyteral council the presbyters share the pastoral leadership of the eparchial bishop in the eparchy, and of which the bishop is also a member, linked by ties which are sacramental, fraternal and amicable. "The institution of this structure on the level of the universal Church came about in 1966, with the *motu proprio Ecclesiae sanctae*, issued by Pope Paul VI for the execution of the conciliar documents (1, 15-17, in execution of *PO 7*); now dealt with canon 264-270".⁶⁵

⁶⁴ *PO 7*: «Ut vero id ad effectum deducatur, habeatur, modo hodiernis adiunctis ac necessitatibus accomodato, forma ac normis iure determinandis, coetus seu senatus sacerdotum, presbyterium repraesentantium, qui episcopum in regimine dioeceseos suis consiliiis efficaciter adiuvere possit ».

⁶⁵ Cf. BROGI, "Norms on Eparchies and Bishops", 116.

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To sum up the presbyteral council helps the eparchial bishop to govern the eparchy entrusted to his pastoral care. With the co-operation of the presbyteral council⁶⁶ he governs the eparchy. This council is a way of participation of the presbyterate in the government of the eparchy.

Lumen gentium 28 speaks of the presbyters as the co-operators of the episcopal college. They with their bishop constitute one *presbyterium*. The presbyteral council institutionalises their co-operation and strengthens their relationship. It further allows the presbyters to participate on a regular basis in the episcopal ministry to the people of God.⁶⁷

The eparchial bishop must establish a presbyteral council in his eparchy.⁶⁸ If the eparchial see is vacant the presbyteral council ceases and its functions are fulfilled by the college of eparchial consultors. Within a year from taking canonical possession of the eparchy, the eparchial bishop must establish a new presbyteral council.⁶⁹

According to canon 265 of the Code the presbyteral council is to have its own statutes⁷⁰ approved by the eparchial bishop. It conforms to the provisions of common law and particular law if

⁶⁶ CD 11; CCEO c. 177.

⁶⁷ Prior to the Second Vatican Council, two bodies were helped the eparchial bishop in a consultative role: the college of consultors (*CS* cc. 458-463) and, in some Eastern Catholic churches, the cathedral chapter of canons (*CS* c. 464-466). The latter is not treated in the Code. The Second Vatican Council authorised a timely reform of these institutions (*PO* 7; *CD* 27, *ES* 1, 15-17). This new institution of presbyteral council, which comprehends the membership the College of consultors. For further study see also *Ultimis temporibus*, November 30, 1971, and the circular letter *Presbyteri sacra* of April 11, 1970, from the Congregation for the Clergy. ZUZEK, «*Canons de Episcopis*»: *Nuntia* 9 (1979) 50.

⁶⁸ CCEO c. 264: «In eparchia constitui debet consilium presbyterale, scilicet coetus sacerdotum presbyterium repraesentans, qui Episcopum eparchialem suo consilio ad normam iuris adiuvet in eis, quae ad necessitates operis pastoralis et bonum eparchiae spectant».

⁶⁹ CCEO c. 270 § 2.

⁷⁰ The Code does not provide a definition of the term "statutes". According to CIC 1983 c. 94 § 1: "Statutes in the proper sense are ordinances which are established in aggregates of persons or things according to the norms of law and by which their purpose, constitution, government and operation are defined".

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established. The statutes should include provisions for the election and appointment of members, officers (secretary, committees etc.,) the voting rights of presbyters ascribed and those not ascribed in the eparchy, the method of election etc.,.

The presbyteral council as a *coetus sacerdotum*, represents the presbyterate of the eparchy. This council is made up of a certain number of presbyters and also bishops, if there happen to be titular bishops in the eparchy. According to the Code the following norms are to be observed in setting up the structure of a presbyteral council:

1° a suitable portion of the members are to be elected by the presbyters themselves according to the norm of the particular law of the respective Church *sui iuris*;

2° some presbyters, according to the norm of the statutes, must be *ex-officio* members, that is, belong to the council in virtue of the offices they hold;

3° the eparchial bishop can freely appoint some members.⁷¹

Therefore, there are several categories in this council. For instance members elected by the presbyters of the eparchy (according to the particular law)⁷²; other presbyters, according to the norms of the statutes, must be *ex-officio* members in virtue of their offices (protosyncellus, syncellus, cathedral rector, seminary

71 CCEO c. 266: «Circa constitutionem consilii presbyteralis haec serventur:

1° congrua pars membrorum ad normam iuris particularis propriae Ecclesiae sui iuris eligatur a sacerdotibus ipsis;

2° aliquot sacerdotes ad normam statutorum esse debent membra nata, qui scilicet ratione officii sibi demandati ad consilium pertinent;

3° Episcopo eparchiali integrum est aliquot membra libere nominare».

72 In the Code it is stated only "suitable portion". It changes according to the number of presbyters in each eparchy. Religious, deacons and lay persons are excluded from its membership. CCEO c. 264. "According to CIC 1983 c. 497, 1° about half of the members of the diocese could be elected.

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rectors, chancellor and protopresbyters); and members who are freely appointed by the eparchial bishop.

All presbyters ascribed in the eparchy have the right to elect and be elected. Presbyters who fulfil some *munus* or functions (*officium* is used in CIC 1983 c. 498 § 1, 2) and who have a domicile or quasi-domicile⁷³ have the same right. Presbyters who have a domicile or quasi-domicile in an eparchy can be accorded an active or passive voice of election by the statutes. Since the fundamental role of the presbyteral council is that of representation of the presbyters of the entire eparchy, it should include various ministries and districts of the eparchy.⁷⁴

The eparchial bishop has the right to convoke the council; to preside over the meetings (need not always personally but he can delegate someone if needed); to determine the questions to be treated by it; and to receive proposals from members. In other words, the presbyteral council is prohibited from acting independently of the head of the presbyteral college, the eparchial bishop. He alone can divulge or publish those acts which have been done in the council (c. 269 § 1, 3).

The major scope of this council is to assist the eparchial bishop in accordance with the norm of law. It is a body of presbyters representing the entire presbyterate in the eparchy, that offers the eparchial bishop advice regarding the pastoral needs and welfare of the eparchy. Therefore the eparchial bishop is to consult the presbyteral council in matters of greater importance. The following are certain matters which require the counsel of the presbyteral council before he can act: convocation of an eparchial assembly (c. 236); establishment and modification or suppression of protopresbyteral districts (c. 276 § 2); establishment of personal parishes (c. 280 § 1); establishment, modification or suppression of a parish (c. 280 § 2); establishment of a parish in

⁷³ CIC 1983 c. 498 § 1, 2^o requires neither a domicile nor a quasi-domicile, but only that presbyter dwell in the diocese (*qui in dioecesi commorantes*).

⁷⁴ CCEO cc. 267-268.

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a church belonging to a religious institute or a society of the common life in the manner of religious (c. 282 § 1); formulating norms regarding offerings of the faithful given to the parish and clergy (c. 291); and conversion of a church building to secular use (c. 873 § 2). Besides these, prior to the removal of a parish priest, the eparchial bishop is to consult with two parish priests and these parish priests should be from the group of parish priests stably selected for this by the presbyteral council (c. 1391 § 1).

The members of the presbyteral council are to be designated for a term determined in the statutes so that the whole council or part of it may be renewed within a five year period. But as we have mentioned when the eparchial see is vacant the council ceases and its function will be taken over by the college of eparchial consultors. Further, under certain conditions, the eparchial bishop himself can dissolve the council. For instance if the council does not fulfil its obligations or if it has abused its power, he can dissolve it according to the norms of the law (c. 270).

The eparchial bishop is not only to establish a presbyteral council, but he is also obliged to allow for its active function in the eparchy. This council is not to be misconstrued simply as "an association of priests" for the purpose of fraternal support; rather it is assigned by law for a specific function to perform in the administration of the eparchy.⁷⁵

Here it is to be specially noted that the presbyteral council is not an expression of the right of association of the presbyters in the eparchy, and even less can it be understood according to the views of a syndicalistic nature which claim interests of parties foreign to the ecclesial community.⁷⁶

⁷⁵ Cf. FARIS, *Eastern Catholic Churches*, 542.

⁷⁶ PO 7; DMLP 17.

4. The College of Eparchial Consultors (*Collegium Consultorum Eparchialium*)

The college of eparchial consultors is an institution closely aligned with the presbyteral council, but at the same time it has its own differences and way of functioning.⁷⁷ The eparchial bishop must constitute a college of eparchial consultors, choosing from among the members of the presbyteral council whose functions are determined by the common and particular laws.⁷⁸ If the presbyteral council ceases to exist for whatever reason, the eparchial consultors fulfil its function (c. 270 § 2).

This college of consultors can be constituted only of presbyters and bishops. Its minimum number is six and maximum is twelve. This minimum number of members of the college affects the validity of the actions of the college. If the number of members falls below six, the eparchial bishop is bound to appoint the needed number of members in order to restore its quorum. A college, if it is not constituted validly, acts invalidly (c. 271 § 3).

The duration of the term of office of the college is determined by the common law for five years (in *Cleri Sanctitati* c. 462 § 2 it is ten years). This term seems to be applicable to the college as a whole, i.e., the whole membership ceases after five years (c. 271 § 2).

This college must be constituted of persons who, at the time of appointment, are members of the presbyteral council (c. 271 § 4) either elected by the presbyters or appointed by the eparchial bishop. The appointment to this college of consultors is up to the discretion of the eparchial bishop. Of course, if he

⁷⁷ "It is significant that the 1983 Code assigns a far greater role to the college of consultors than did the previous law, despite the post-Vatican II introduction of the senate of priests or presbyteral council to dioceses through out the world. It would be a mistake, however, to identify the new college of consultors with the diocesan consultors who existed under the pervious law". HANNON, "Diocesan Consultors", 148.

⁷⁸ CCEO c. 271 § 1: « Episcopus eparchialis constituere debet collegium consultorum eparchialium, cui competunt munera iure determinata ». See CS cc. 458-463. It recommends certain qualities for the members of the college: piety, personality, learning, prudence etc.,.

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desires, he can seek the opinion of others such as the presbyteral council in making such decisions. It is the eparchial bishop who presides over the college of eparchial consultors.⁷⁹

Consultation with the eparchial consultors by the eparchial bishop is required prior to the appointment of members to the finance council (c. 263 § 1) and prior to the removal of the eparchial finance officer during the term of office (c. 262 § 2).

Consent of the consultors is needed in cases of alienation of a sum within the minimum and maximum amounts determined by the synod of bishops of the patriarchal church or the Apostolic See (c. 1036 § 1, 1°, 2°).

5. The Pastoral Council (*Consilium Pastorale*)

The Second Vatican Council give importance to the participation of lay persons in the life and governance of the Church. The Council states,

It is much to be desired that in every diocese there should be established its own pastoral council. The diocesan bishop himself should preside over it; and specially selected clergy, religious and laity should play their part in it. The function of this council will be to examine those matters affecting pastoral

⁷⁹ CCEO 271 § 5: "...when the eparchial see is vacant or impeded, it is presided over by the one who, in the interim, holds the place of the eparchial bishop or, if none has been designated, by the priest of the college itself who is senior by sacred ordination".

If the case of a vacancy of the episcopal see comes outside territory of the Patriarch, or Major archiepiscopal churches and in other Churches *sui iuris*, the College of the eparchial consultors has several serious duties. For instance, "The college assumes in fact the immediate control of eparchy rendered vacant, as long as there is not at least one auxiliary Bishop; however, the college must proceed toward an election of an eparchial administrator within eight days, and it accepts his possible resignation; it elects if necessary, the steward of a vacant eparchy and it is the competent organ to accept his resignation; it elects as well the administrator of an impeded see, if there happened to be no priest previously designated by the eparchial bishop (cc. 221, 2°, 3°; 231 § 1; 232 § § 1-3; 233 § § 1&2)". BROGI, "Norms on Eparchies and Bishops", 117.

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activities, to assess them and put forward practical conclusions about them.⁸⁰

In order to achieve better co-ordination, the bishop should set up a pastoral council, as far as this is feasible, in which clerics, religious and lay people should have part through selected delegates.⁸¹

Based on the teachings of the Council, the *motu proprio Ecclesiae sanctae* proposes certain regulations for the pastoral council:

The work of the pastoral council is to examine and consider all that relates to pastoral work and to offer practical conclusions on these matters, so that the life and activity of the people of God may be brought into greater conformity with the Gospel. The pastoral council enjoys only a consultative voice and that may be established in different ways ... The bishop may convene it whenever he considers it advisable... Clerics, religious and laity, specially delegated by the bishop, take part in the work of the pastoral council...⁸²

From the above Church teachings we can summarise the following elements: This council is envisioned as a co-operating body with the eparchial bishop in an advisory capacity; it

⁸⁰ CD 27: «Valde optandum est ut in unaquaque dioecesi peculiare instituaturs consilium pastorale, cui episcopus dioecesanus ipse praesit et in quo clerici, religiosi et laici, specialiter delecti, partes habeant. Huius consilii erit, ea quae ad pastoralia opera spectant investigare, perpendere atque de eis practicas expromere conclusiones».

⁸¹ AG 30: «Ad meliorem coordinationem, episcopus constituat in quantum fieri potest consilium pastorale, in quo clerici, religiosi et laici per delegatos selectos partem habeant».

⁸² ES 1, nn. 16-17. For further study see the November 30 report of the 1971 Synod of Bishops, *Unitatis temporibus*, 11, 3; Congregation for the Clergy, circular letter *De Consiliis Pastoralibus* January 25, 1973; DPMB 204; RENKEN, "Pastoral Councils: Pastoral Planning and Dialogue Among the People of God", 134. ZUZEK, «Canons de Episcopis»: *Nuntia* 9 (1979) 53-54.

In the Code there are only four canons (cc. 272-275) pertaining to the pastoral council which are quite general and thus leave more room for the particular law.

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represents a cross-section of the life of the eparchy; it comprises clergy, religious and laity; it is a standing body; and it is assigned to the pastoral life of the eparchy.

According to the Code the institution of the pastoral council in the eparchy depends upon the free judgement of the eparchial bishop. Its constitution is recommended, not obligatory. If the pastoral circumstances of the eparchy require such a council, the eparchial bishop is to establish the same. Only the eparchial bishop can establish the pastoral council. It is to function under his authority.⁸³ It is convoked and presided over by the eparchial bishop and it is his exclusive right. It is to him reserved the faculty to officially publish the decisions of the council (c. 275).

The pastoral council should have a representative nature of the whole activity of the eparchy. It has a consultative vote only and primarily it is a consultative body. Therefore, the eparchial bishop is not canonically obliged to follow the decisions of the council.⁸⁴ It is constituted of bishops, presbyters and deacons, religious or members of religious societies of common life in the manner of religious, and laity designated in a manner determined by the eparchial bishop. No one is to be designated to this council except those of Christ's faithful who are outstanding in firm faith, good morals and prudence. Along with these Christ's faithful, if it is suitable, the eparchial bishop can invite others also to the pastoral council, even if they are of another Church *sui iuris*. In short, the council is to be so established that, in so far as possible, it represents the Christian faithful of the eparchy in regard to the types of persons, associations and other endeavours (c. 273).

⁸³ CCEO c. 272: «In eparchia, si adiuncta pastoralia id suadent, constituatur consilium pastorale, cuius est sub auctoritate Episcopi eparchialis ea, quae ad opera pastoralia in eparchia spectant, investigare, perpendere atque de eis conclusiones practicas proponere».

⁸⁴ At the same time the eparchial bishop cannot discount the proposals and suggestions of the pastoral council, especially if it is a unanimous opinion. See Congregation for the Clergy, Circular letter *De Consiliis Pastoralibus*, January 25, 1973, 8, 2.

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The pastoral council is to be provided with statues by the eparchial bishop. The council ceases to exist as soon as the eparchial see becomes vacant.⁸⁵

6. The Protopresbyter (*Protopresbyter*)

For a fruitful administration of the eparchy and because of the need for intermediate pastoral co-ordination in the eparchy, there arose the need for an intermediary supervisory authority between the eparchial bishop and the parish priests. The result was the assignment of persons like *chorbishop* (a figure originally endowed with episcopal character, who was attached to the bishop of the city); *archpriest* (the priest who supervised the clergy of the city); and *periodeut* (a representative of the city bishop who circulated throughout the eparchy) an later the *protopresbyter*. What evolved in the Eastern Churches is the protopresbyter as head of the protopresbyterate.⁸⁶

⁸⁵ Unlike the CIC 1983 c. 514 § 2, the Code does not stipulate that this council must be convoked at least once a year. Such things are left to the formation of particular law.

⁸⁶ In the beginning, christianity was a religion of cities and towns, while the heathen held themselves in the village (*pagus*) for a long time. Latter thus earned the name *pagans*. For divine services and the administration of the sacraments, Christians went to the nearby town or city, where there was church, and where perhaps several presbyters were residing. Of these presbyters the chief was the *episcopus* (superintendent, inspector). Later when smaller communities formed outside the city or town, presbyters were ordained for them, who however lacked the power of ordaining others. They were under the supervision of the urban bishop. This urban bishop often exercised his authority thorough *Chorbishop*, a name derived from the Greek *chora* (country). The institution of such country bishops began in the 2nd century and lasted till the end of the 8th century.

Another way in which a bishop could supervise his parishes was to charge the chief presbyter of his cathedral church, the *archpriest*, with the supervision of the clergy in the city. On the other hand for the country parishes a circulating delegate, the *periodeut* was appointed. The *periodeut* remained as an institution among the Syrian Churches like Maronites and Chaldeans.

The temporal administration of the property of the eparchy was entrusted to the chief deacon of the eparchy, the archdeacon. He was often charged also with the

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In exercising this care of souls, parish priests and their assistant priests should so fulfil their office of teaching, sanctifying and directing that the faithful and parish communities may really feel that they are members of the diocese and of the whole universal church. To this end they should cooperate with other parish priests and with priests who exercise a pastoral function in the area (such as vicars forane or deans) or are engaged in tasks extending over several parishes. In this way pastoral care in the diocese will not lack unity and will be made more efficient.⁸⁷

The motu proprio *Ecclesiae sanctae* further states:

(1) Amongst those who assist the bishop of the diocese in a more intimate manner are those priests who exercise a pastoral duty of a supraparochial nature. Included in this class are vicars forane, also called archpriests, deans and, in the Eastern Church, proto-presbyters. To this office priests shall be appointed outstanding for learning and for apostolic zeal who through the necessary powers conferred on them by the bishop will promote and direct common pastoral activity in the district assigned to them.

supervision of the clergy, especially when he was an ordained priest, retaining-oddly enough - the title of archdeacon. The dignity is preserved among the Copts, Maronites and Chaldeans. Among the Byzantines, the duties of delegated supervision of the clergy were mostly entrusted to a parish priest with the title of *protohiereus*, *protopresbyter*, *protopapas*, or *protopopa*, an even *hegoumenos*. Cf. POSPISHIL, *The Law on Persons*, 207-209; FARIS, *Eastern Catholic Churches*, 561-562.

In the Latin Church, the vicar forane, dean or archpriest are the counterpart of the protopresbyter.

⁸⁷ CD 30, 1: «In hac autem cura gerenda parochi,revera se sentiant. Quapropter cum aliis parochis collaborent necnon cum sacerdotibus, qui munus pastorale in territorio exercent (uti sunt e.g. vicari foranei, decani), vel operibus indolisreddatur».

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For this reason the office is not attached to any particular parish.

(2) Vicars forane, archpriests or deans shall be established for a period of time to be determined by special law; they may, however, be removed at any time by the bishop. The bishop of the diocese should hear views whenever there is question of nominating, transferring or removing parish priests in the territory over which they preside.⁸⁸

The motu proprio *Cleri Sanctitati* stated that the eparchial bishop shall divide his territory into districts consisting of several parishes, which are known under the name of protopresbyterates. If such a division seems impossible due to some reasons, the eparchial bishop shall seek the advice of either the Apostolic See or the Patriarch or the Archbishop.⁸⁹

First the decree *Christus dominus* (n. 29) speaks about presbyters, to whom is given munus indolis supra-paroecialis and who are *proximiores episcopi cooperatores* and then about the parish priests who are *praecipua ratione episcopi cooperatores*. The same order is also followed by the motu proprio *Ecclesiae sanctae* (n. 19). There we see the *proximiores cooperatores memorandi sunt Vicarii Foranei, qui etiam dicuntur Archpresbyteri seu Decani et apud Orientales Protopresbyteri*.⁹⁰

The members of the Study Group thought that the protopresbyter, although having some power supra-parochiale, is not an immediate superior of parish priests, parochial vicars, and rectors of churches. His authority is rather restricted to the *ius*

⁸⁸ ES 1, 19, 1-2.

⁸⁹ CS c. 161. DPMB n. 184 mentioned that a vicariate could be organised not only according to the criterion territory, but other criteria such as ritual membership or pastoral functions. See also CS cc. 483-488.

Laod. c. 57 states that "bishops must not be appointed in villages or country districts, but visitors....".

⁹⁰ SINAL, "The Schema of the Canons De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protopresbyteris": *Nuntia* 9 (1979) 85.

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vigilantiae. Besides, he is an animator and co-ordinator of pastoral activities in all parishes or single churches, directed by rectors, of his district.⁹¹

According to the Code the protopresbyteral district is composed only of parishes. They are to be established according to the pastoral needs of the eparchy. It is the exclusive competence of the eparchial bishop to establish, modify and suppress such districts with the consultation of the presbyteral council.⁹²

The protopresbyter is a presbyter who is placed in charge of such a district to discharge there in the name of the eparchial bishop the functions determined by law (c. 276 § 1). The Protopresbyter's office, without prejudice to the particular law of the respective Church *sui iuris*, must not be joined in a stable manner to the office of the parish priest of any particular parish. The eparchial bishop, having heard, if he sees it opportune, the parish priests and parochial vicars of the district in question, is to appoint as protopresbyter, a presbyter who is outstanding in doctrine and apostolic initiative especially among the parish priests. Particular law can require other qualifications (c. 277 § 1).

The power of this presbyter is ordinary, that is attached to a particular office in virtue of the law itself. This power is vicarious insofar as the protopresbyter is acting in the name of the eparchial bishop. The appointment of the protopresbyter is the exclusive competence of the eparchial bishop. While this appointment is totally left to the discretion of the eparchial bishop, it is recommended that he consult with the parish priests and parochial vicars of the proper district prior to the action. Moreover a protopresbyter is to be appointed for a term determined by the

⁹¹ SINAL, "The Schema of the Canons *De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protopresbyteris*": *Nuntia* 9 (1979) 85.

⁹² CCEO. c. 276 § 1. The CIC 1983 c. 553 § does not describe the composition of a *vicariate* and thus perhaps allows for the *vicariate* to comprise non-parochial institutions.

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particular law. Besides for a just cause the eparchial bishop can remove a protopresbyter from his office (c. 277 §§ 2, 3).

As one of his duties, along with the tasks of pastoral co-operation, he must represent the charity and the care of the eparchial bishop for the dignity of worship and for the spiritual, cultural and also material needs of his clergy.⁹³ In other words all the rights and obligations attached to this office are basically of the eparchial bishop. In a protopresbyterial district, the bishop through the protopresbyter fulfils his responsibilities. Besides the powers and faculties bestowed upon him by the particular law the following are the major responsibilities of a protopresbyter in the proper district: (i) to co-ordinate and promote common pastoral actions; (ii) see to it that clerics lead a life in harmony with their own state of life and diligently fulfil their obligation; (iii) to give assistance to clerics and their families; (iv) diligently to look after the liturgical life in the district; (v) to supervise the temporal goods of the district etc., (c. 278).⁹⁴

At the same time, the protopresbyter himself should be a good example, show positive leadership and be helpful to the clerics who are in difficulties. While it is the responsibility of the eparchial bishop to formulate programs in the sacred sciences and pastoral matters, it is the responsibility of the protopresbyter to see that the presbyters attend the gatherings scheduled for the presbyteral district. Moreover he should be a support for their intellectual, spiritual and moral life.

The protopresbyter is to see that clerics and their families, if they are married, who are sick, ill or dying are provided with

⁹³ Cf. BROGI, "Norms on Eparchies and Bishops", 118.

⁹⁴ The Consultors realising that in the Churches in which this institution of the protopresbyter is traditional, e.g., in the Russian Church, the particular law about the means at the disposal of the Protopresbyter, even though often not written but customary, is well established, thought it is unnecessary to insert a specific canon about these means in the CICO. Thus the matter is left to the particular law, be it eparchial or formulated by legislative power of oriental synods. SINAL, "The Schema of the Canons *De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protopresbyteris*": *Nuntia* 9 (1979) 88.

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needful spiritual and material assistance. He is to assist in the arrangement for the funerals of the clerics. At the time of the illness or on the occasion of death of a parish priest, he is to see that books, documents, sacred furnishings etc. belonging to the church are not lost. Also he is bound by the obligation of visiting the parishes according to the determinations made by the eparchial bishop (c. 278 § 2). The manner and frequency of visits will be decided by the eparchial bishop.

In the Code there are some other instances mentioned about the protopresbyter. He should be called to participate in the eparchial assembly (c. 238 § 1, 5°), and he is to preside at the election of a presbyter (and substitute) who will represent the protopresbyteral district at the eparchial assembly (c. 238 § 1, 6°). If it is necessary the eparchial bishop can conduct his canonical visit through the protopresbyter (c. 205 § 1).

7. The Parish Priest (*Parochus*)

In the first centuries of the Church, the bishop took direct charge of all the faithful committed to his care. The bishop personally presided over all sacred functions. As the numbers of the faithful increased, however, it became necessary for the bishops to share his responsibility and obligations with other members of the clergy. Conciliar legislation of the fourth century indicates that by that time chapels and oratories created in rural areas and in villages had begun to enjoy a certain independence. Some of these chapels became known as baptismal churches because the presbyter in charge had the right to administer solemn baptism. Thus, for the first time there was established a relationship between the faithful of definite locality and an individual church that was presided by a presbyter.⁹⁵ But it was not until the Council of Trent (1545-63) that the division of

⁹⁵ Cf. KELLY, "Pastor", 1075.

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dioceses into distinct parishes with proper parish priests was made universal.⁹⁶

In the Code there are several treaties with regard to the parish priest. While the eparchial bishop is the pastor of the eparchy, a portion of the people of God entrusted to his pastoral care, the parish priest is the proper pastor of a section of that portion of the faithful assigned to him by the eparchial bishop. The parish priest is vested with the responsibility to teach, to sanctify and to govern that particular section of the people of God under the pastoral direction of the eparchial bishop.

The eparchial presbyters, as we have described in the previous Chapters have a primary role in the care of souls. They have wholly dedicated their service to the care of a particular section of the Lord's flock. Comparing with any other office in the eparchy, the majority of the eparchial presbyters are directly involved in parish ministry. Hence the study of the rights and obligations of parish priests and parochial vicars in relation to their eparchial bishop becomes very essential.

A parish is a certain community of Christian faithful, stably established within an eparchy, the pastoral care of which is entrusted to a parish priest (c. 279). "It is through the parish that the faithful live out their insertion into the eparchy".⁹⁷ The people of God in the eparchy, do not have frequent direct relations with the eparchial bishop, but with the parish priest.

The parish priest is the presbyter to whom the care of a parochial community is given by the eparchial bishop.⁹⁸ He is the foremost collaborator of the eparchial bishop in the parish under

⁹⁶ Trent Sess. 24, *Decretum de reformatione*, c. 13.

⁹⁷ BROGI, "Norms on Eparchies and Bishops", 118.

⁹⁸ The Code does not provide any provisions to entrust the pastoral care of a parish to deacons or lay persons even like the extraordinary situation like shortage of presbyters. CIC 1983 c. 517 § 2, gives such a provision, at the same time in such a situation the bishop is to appoint some presbyters, who will be then the director of the pastoral care.

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the authority of the same eparchial bishop. A juridical person (c. 920) cannot validly be a parish priest.⁹⁹

The difference between the offices of the one (the eparchial bishop) and the other (the parish priest) become immediately evident: they both have pastoral care of a determined group of faithful, but where as the first has care of the eparchy in his own name and as vicar of Christ, the second besides the fact of receiving his proper office from the eparchial bishop and being subject to him according to the norms of the canons, has pastoral care of the parish in the name of the eparchial bishop (cf. cc. 178 and 281 § 1).¹⁰⁰

The parish priest is freely appointed by the eparchial bishop.¹⁰¹ The appointment of a parish priest is an act of great importance and falls within the exclusive competency of the eparchial bishop. The right of naming parish priests belongs solely to him. If the eparchy is vacant the eparchial administrator can do this but without any innovations (c. 286). The latter can appoint a parish priest only if the eparchy is vacant for more than a year. In this circumstance, the good of the faithful prevails over the right of the future eparchial bishop.¹⁰²

The parish priest is responsible for the religious and sacramental life of the community. The eparchial bishop is not to remove a parish priest from the partial or total care of certain groups, or buildings and places which are in the territory of the

⁹⁹ CCEO c. 281 § 1: «Parochus est presbyter, cui ut praecipuo cooperatori Episcopi eparchialis tamquam pastori proprio cura animarum committitur in determinata paroecia sub auctoritate eiusdem Episcopi eparchialis.

§ 2. Persona iuridica valide parochus esse non potest».

¹⁰⁰ BROGI, "Norms on Eparchies and Bishops", 118-119.

¹⁰¹ CCEO c. 284 § 1. A parish priest may belong either to the eparchial clergy or to the religious or also to a society of common life *ad instar religiosorum*; however a monk cannot as a rule receive the office of the parish priest (c. 480).

¹⁰² Cf. BROGI, "Norms on Eparchies and Bishops", 119.

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parish and are not exempt by law, except for a grave reason (c. 283). It is good that he be able to exercise his pastoral care over all members and places pertaining to that community.

The parish priest must enjoy a certain stability in his office, which helps him to know his flock and to have a stable relationship with it. In order to enable the eparchial bishop to provide more efficient care for the good of souls, the Second Vatican Council abolished any distinction between a 'removable' and an 'irremovable' parish priest (CS c. 494 § 2), on the other hand affirmed that the parish priest should enjoy a certain stability of office for the good of the parish and for the sake of canonical justice and natural equity.¹⁰³ The Code therefore proposes the principle that the appointment of a parish priest has no expiration (scadenza), but this principle does have exceptions. The exceptions are: (i) if the candidate for the parish priest agrees to an appointment for a definite period of time, the eparchial bishop can do so; (ii) the eparchial bishop can appoint a parish priest for a definite period if the college of eparchial consultors gives its consent and (iii) the particular law of the Church *sui iuris* can provide for the appointment of parish priests for a definite period.¹⁰⁴

¹⁰³ CD 31. "The Study Group on the one hand, wanted to abandon the concepts of *inamovibilis* and *amovibilis*, as requested by the Conciliar Decree *Christus Dominus* n. 31, but, on the other hand, it wanted to guarantee the stability of the office of the parish priests in their pastoral activity. The intention was to retain the *ius vigens* of the CS can. 494 § 1 (*stabiles in ea esse debent*) although with a slight change of the wording, that is, with *stabilitate gaudent*, but in such a manner to exclude the concepts of *inamovibilis* and *amovibilis* of the same canon of the CS (§§2-5)". SINAL, "The Schema of the Canons *De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protoperbyteris*": *Nuntia* 9 (1979) 68. Later it is decided: «Distinctio inter parochos amovibiles et inamovibiles ipso Concilio Vatican II (Decr. «Christus Dominus» n. 31) abrogata est, nec tamen hoc obstat quominus in can. 256 stabilitas officii parochi sustineatur, iis casibus exceptis qui ibidem expresse nominantur». «SCCHEO»: *Nuntia* 19 (1984) 18.

At the same time Study Group did consider that not to limit the authority and the sphere of action of the eparchial bishop. SINAL, "The Schema of the Canons *De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protoperbyteris*": *Nuntia* 9 (1979) 67-68.

¹⁰⁴ CEO c. c. 284 § 3; Cf. BROGI, "Norms on Eparchies and Bishops",

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The parish priest ceases from office by his resignation being accepted by the eparchial bishop, by expiration of term, removal or transfer.¹⁰⁵

With regard to the removal and transfer of parish priests the *motu proprio Ecclesiae sanctae* states:

(i) The bishop may, without prejudice to the existing law concerning religious, lawfully remove any parish priest from his parish whenever his ministry, even without grave fault on his part, suffers injury or is rendered ineffective by reason of any of the causes recognised in law or for some other similar reason in the judgement of the bishop, provided that the form of procedure laid down for irremovable parish priests (...) is followed....

(ii) Should the good of souls or the need or advantage of the Church require it, the bishop may transfer a parish priest from his parish.... If the parish priest should refuse to obey, in order that his transfer should be considered valid, the bishop should follow the procedure... (given in the Code).¹⁰⁶

The Decree on the Ministry and Life of Priests describes about the resignation:

However, those parish priests who, because of the increasing burden of age or for some other serious reason, are prevented from fulfilling their office with benefit to souls, are earnestly requested to resign office of their own accord or at the invitation

¹⁰⁵ CCEO c. 297 § 1: «Parochus ab officio cessat renuntiatione ab Episcopo eparchiali acceptata, elapso tempore determinato, amotione vel translatione».

¹⁰⁶ ES 1, 20, 1-2.

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of their bishop. It is up to the bishop to provide appropriate maintenance for those who retire.¹⁰⁷

The *motu proprio Ecclesiae sanctae* reinstated the teaching of the council by stating that,

In execution of prescription number 31 of the Decree *Christus dominus* all parish priests are requested voluntarily to submit their resignation to their own bishop not later than the completion of their seventy-fifth year. The bishop having considered all the circumstances of place and person shall decide whether to accept, or defer acceptance of the resignation. The bishop shall make appropriate provision for the living and residence of those who resign.¹⁰⁸

When a parish priest for some reason or other happens to be incapable of exercising his parish ministry, the eparchial bishop can remove him from office, or transfer him to another office. However here the eparchial bishop is obliged to observe the procedure established in canons 1388-1400.¹⁰⁹

The parish priest is invited to submit his resignation from the office at the completion of the 75th year of age. A resignation can be submitted to the eparchial bishop because he wishes to retire or is unable to fulfil his pastoral responsibilities. For validity, the resignation must be submitted to the eparchial bishop in writing or in the presence of two witnesses (c. 969). In order that this resignation become effective, it must be accepted by the eparchial bishop. The eparchial bishop is not obliged to accept the

¹⁰⁷ CD 31: «Parochi autem, qui ob ingravescentem aetatem aliamve gravem causam, ab officio rite et fructuose adimplendo impediuntur, enixe rogantur ut sua ipsi sponte, aut ab episcopo invitati, officii renuntiationem faciant. Episcopus renuntiantibus congruam sustentationem provideat».

¹⁰⁸ ES 1, 20, 3.

¹⁰⁹ If the parish priest desires to make recourse against the decree of the eparchial bishop, he does so to the Congregation for the Oriental Churches.

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resignation. When the eparchial bishop accepts the resignation, he is to provide an adequate and dignified retirement for the presbyter.¹¹⁰ A special fund is to be established by the eparchial bishop in the eparchy in order to support resigned presbyters (c. 1021 §§ 1, 2). However, after a resignation has been submitted and prior to its acceptance, it can be withdrawn at any time (c. 970).

Besides these, the eparchial bishop has the obligation to provide material support for parish priests who are dying and also for their families if they are married and to ensure that the personal property of the parish priest and that of the parish be accurately separated the demise of the parish priest, he should provide for a dignified funeral (c. 278 § 3).

Regarding the qualifications of a parish priest, primarily, he is to be a presbyter (c. 281 § 1). He should be a person of good morals, sound doctrine, zealous for souls, endowed with prudence and other virtues to fulfil the parochial ministry in a praiseworthy manner (c. 285 § 1). In evaluating the suitability of a married presbyter for a parish, the conduct of his family cannot be ignored. If so, it is accountable for the good morals of his wife and the children who live with him. After analysing all the factors, the eparchial bishop is to confer a vacant parish on the one whom he judges suitable without prejudice. In the evaluation of the candidates, he is to consult with the protopresbyter, and other persons especially clerics.¹¹¹

A parish priest is to have the parochial care of only one parish. However, the care of several neighbouring parishes can be entrusted to the same parish priest due to a dearth of presbyters or

¹¹⁰ CCEO c. 297 § 2: «Parochus expleto septuagesimo quinto aetatis anno rogatur, ut renuntiationem ab officio exhibeat Episcopo eparchiali, qui omnibus personae et loci inspectis adiunctis de eadem acceptanda aut differenda decernat; renuntiantis congruae sustentationi et habitationi ab Episcopo eparchiali providendum est attentis normis iuris particularis propriae Ecclesiae sui iuris». See also CD 31.

¹¹¹ CCEO c. 285.

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in other circumstances. But in the same parish there is to be only one parish priest. Nevertheless, if the particular law of the Church *sui iuris* allows it, a parish may be entrusted to several presbyters; the same particular law is to determine accurately the rights and obligations of the moderator, who directs the common action and reports on it to the eparchial bishop, and those of the other presbyters (c. 287).

The parish priest acquires the care of souls by canonical provision. Before that he is not allowed to exercise his office. The manner by which the presbyter takes canonical possession of the parish is determined by particular law (c. 288).

The power of the parish priest is ordinary and proper and he exercises this power not independently but in relation with the eparchial bishop. He does not create a parish community as an island separated from the eparchial community. Canon 289 states the three functions of the parish priest: teaching, sanctifying and governing.¹¹² This is followed by some norms on the duties reserved to pastors (c. 209).

The parish priest has certain obligations with regard to the finance of the parish. On the occasion of the administration of a sacrament or sacramental, the faithful can make a voluntary offering. It is the competency of the eparchial bishop to set limits on such offerings in accordance with the particular law of the Church *sui iuris* unless common law provides otherwise (c. 1013 §

¹¹² The proposed text (by the Relator) of this canon was very concise. The § 1 referred to *munus docendi*. The § 2 referred to *munus sanctificandi*. Both are mentioned in the Decree CD 30. After a quite long discussion, the Study Group decided to add to the canon a § 3, which refers to the *munus pastoris*, with which the same Decree also deals in the same place. The Study Group tried to formulate a rather concise canon yet in such a manner that the conciliar text will be retained with no substantial change or omission of anything important. This showed to be impossible, so it was agreed, as the best solution, to adopt the whole text of the Decree CD 30. SINAL, "The Schema of the Canons *De Paroeciis, de Vicariis paroecialibus, de Rectoribus ecclesiarum ac de Protopresbyteris*": *Nuntia* 9 (1979) 71-72.

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1). Unless the donor has clearly indicated that the voluntary offering is made with another intention, the money is to be deposited by the parish priest in the parish account. After consultation with the presbyteral council, the eparchial bishop is to approve norms for the allocation of offerings. In that allocation, the provision regarding the support and remuneration of the clergy are to be taken into account.¹¹³

In order for the parish priest to provide effective pastoral care for the faithful entrusted to his care, it is necessary that he be available to them. Therefore, he is bound by the obligation of residing in the presbytery. However, the eparchial bishop, for a just cause, can permit him to reside elsewhere so long as the parochial ministry suffers no harm from it. For that he is to formulate norms regarding the absence of a parish priest from a parish.¹¹⁴

Every presbyter has the right to an annual vacation (c. 392). The Code allows the same by stating that unless there is a grave reason to the contrary, the parish priest may each year be absent on holiday from his parish for a period not exceeding one month,¹¹⁵ continual or otherwise. The days which the parish priest

¹¹³ CCEO cc. 291, 390, 1021 § 1. In the formulation of canon 291, the Study Group wanted to leave out the concept of *iura stolae*, which are at present reserved to the parish priest, and introduce the concept of *massa paroeialis*. - of a common fund which will be instituted with the donations received by the presbyters who work in the parish. There was a long discussion about which kind of the donations should constitute the continuous contributions of priests to this fund. Lastly they decided that *omnes oblationes* have to be put together, with the exception of those of Mass stipends and those which are *plene voluntariae* and are given as a personal gift to a presbyter. Moreover, the important role of the eparchial bishop in establishing, with justice and equity, the amount of money due to each presbyter from this fund, is made evident in the canon. SINAL, "The Schema of the *Canons De Paroeiis, de Vicariis paroeialibus, de Rectoribus ecclesiarum ac de Protopresbyteris*": *Nuntia* 9 (1979) 73.

¹¹⁴ CCEO c. 292 § 2. The *Coetus* even recommends for the celibate clergy a common life. CCEO c. 376.

¹¹⁵ CCEO c. 1545 § 1. In law, a day means the span of time consisting of twenty-four continuous hours, and it begins at midnight. A week is a span of seven days;

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or the parochial vicar spends on his annual spiritual retreat (c. 369 § 2) are not reckoned with this vacation period. In addition to this they are entitled to attend the conferences that the eparchial bishop has deemed suitable for continuing formation in the sacred sciences and pastoral matters (c. 372 § 2). If the parish priests wishes to be absent from the parish beyond a week he is bound to inform the eparchial bishop. It is for the eparchial bishop to establish norms by which, during such absence, the care of the parish is provided for by a presbyter having the requisite powers and faculties.¹¹⁶

7.1. The Parochial Administrator (*Administrator Paroeciae*)

If a parish becomes vacant or impeded, the eparchial bishop has the right and obligation to appoint a parochial administrator who must be a presbyter (cc. 281 § 1; 299 § 1). This newly appointed presbyter has the rights and obligations of a parish priest. His position is provisory until permanent arrangements are made.

7.2. The Parochial Vicar (*Vicarius Paroecialis*)

With regard to the role of the parochial vicar, the Decree on the Ministry and Life of Priests states:

Curates, in their capacity as assistants of the parish priests, do outstanding active work daily in their

a month is a span of thirty days; and a year a period of three hundred and sixty-five days, unless it is stated that the month and the year are to be taken as in the calendar.

§ 2. If the time is continuous, the month and the year are always to be taken as in the calendar.

¹¹⁶ CCEO c. 292 § 2, § 3.

Canon 293 of the Code exhorts the parish priest to live an exemplary life. Canon 294 refers to the celebration of the Divine Liturgy. The parish council in the parish, which assists the parish priest in pastoral and economic affairs (c. 295). The function of a parish priest is above all pastoral, at the same time he also has administrative duties, for which he must register certain events, grant certificates must have an archive (c. 296).

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pastoral ministry under the authority of the parish priest.¹¹⁷

If he judges it is needful, the eparchial bishop can appoint one or more parochial vicars, who would help the parish priest according to the norms of the canons. For validity of the office of the parochial vicars, it must be filled by a presbyter (c. 940). They can be appointed either for the whole parish or for a specified part of the parish. The eparchial bishop freely names them. He freely nominates the parochial vicar after hearing the parish priest, unless he decides it more prudent to do otherwise (c. 301 §§ 1-3).¹¹⁸

Parochial vicars are to exercise the rights and obligations prescribed by the common and particular law as well as the letter of the eparchial bishop, and under the authority of the parish priest. As in the case of the parish priest the parochial vicar is bound by the obligation of residing in the parish according to the prescriptions of the eparchial bishop or lawful custom (c. 302 § 4). Unless there is a grave reason to the contrary, the parochial vicar may each year be absent on holiday from his parish for a period not exceeding one month, continual or otherwise. The days which the parochial vicar spends on his annual spiritual retreat (c. 369 § 2) are not reckoned with this vacation period. They are also entitled to attend the conferences that the eparchial bishop has deemed suitable for continuing formation in the sacred sciences and pastoral matters (c. 372 § 2). If the parochial vicar wishes to be absent from the parish beyond a week he is bound to inform the eparchial bishop (c. 302 § 3). The parochial vicar may be removed by the eparchial bishop for a just cause (c. 303).

¹¹⁷ CD 30.

¹¹⁸ CCEO c. 301 § 3. If it is a question of a member of a religious institute or society of common life in the manner of religious, c. 284, § 2 is to be observed.

7.3. Process of the Removal and the Transfer of a Parish Priest

In the Code, canons pertinent to the removal and transfer of parish priests are few in number, but basic principles and norms are there. Therefore, in the removal or transfer of parish priests, canons 1389-1400¹¹⁹ of the Code are to be observed, unless a different procedure is laid down by the particular law approved by the Apostolic See.¹²⁰

7.3.1. Canonical Process for the Removal of a Parish Priest

The process of removal is to be employed equally in the case of the parish priest who had been assigned to an indefinite period of time and in the case of the parish priest who had been

¹¹⁹ In the observation of one of the members of the Commission on the Schema, the contents of canon 1403 - 1415 of the proposed Schema are not practical and will create lot of problems in the parish administration. Therefore «La prassi consuetudinaria di ogni Chiesa «sui iuris» doverbbe essere il principio direttivo in materia. In qualche regione esiste una prassi al riguardo, la quale è bene radicata nella lunga traditione e consuetudine. Questa consuetudine sia considerata come «ius particolare» Pertanto si aggiunga a questi canoni il seguente testo: *Ubi ius particulare vel consuetudo viget de modo procedendi in amotione et translatione parochorum, hoc sequi debet non obstantius provisionibus cann. 1403-1415* (1 Membro). The «Coetus de expansione observationum» has given a negative reply: «i canoni sono necessari per la tutela dei diritti acquisiti dei paroci». And it is to be noted that «il can. 282 § 4 prevede che lo «particulare» può ammettere la nomina di parroci «ad tempus determinatum», ma qualora si debba procedere alla loro rimozione «durante munere», occorre in tutti i casi applicare la procedura prevista in questi canini». «Le osservazioni dei Membri della Commissione»: *Nuntia* 28 (1989) 135-136. Further discussion on the theme, see «Resoconto dei lavori dell'Assemblea»: *Nuntia* 29 (1989) 65-67.

¹²⁰ CCEO c. 1388.

During the formulation of canons on *De Modo Procedendi in Parochis Amovendis vel Transferendis* there was a discussion on the subject "removable" and "irremovable" parish priests. «Canones qui praesenti schemate proponuntur ea, quae a Vaticano II Concilio in Decreto «Christus Dominus» n. 31 statua sunt, adamussim servant. Distinctione inter parochos amovibiles et inamovibiles ab ipso Concilio abrogata, simplicior redditur modus procedendi in amotione et translatione parochorum...». «*Schema canonum de tutela iurium seu de processibus*»: *Nuntia* 14 (1982) 16.

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assigned to a term of office from which he is being removed prior to the expiration of that term. The competent authority for removal of a parish priest is the eparchial bishop, excluding protosyncellus unless he has received a special mandate (c. 987). The following are the special procedures:

7.3.1.1. Investigation and Discernment of a Just Cause

The eparchial bishop should conduct a preliminary investigation in order to determine whether or not there is probable grave cause for the removal of the parish priest. He may do this either personally or delegate someone else. In either case, the eparchial bishop should keep a written document, appropriately notarised, about the investigation. Moreover, this document is the first of several which will constitute the acts of the case, each of which is to be notarised and kept in order to protect the rights of all involved in the process. These documents are subject to review by the parish priest involved, especially when he prepares his defense or lodges an appeal.¹²¹

If the ministry of any parish priest, has for some reason, become harmful or at least ineffective, even though this occurs without any serious fault on his part, he may be removed from the parish by the eparchial bishop (c. 1389). The following are the principal reasons for which a parish priest can lawfully be removed from his parish: a manner of acting which causes grave harm or disturbance to ecclesiastical communion; ineptitude or permanent illness of mind or body, which makes him incapable of performing his functions in a useful way; the loss of his good name among upright and serious-minded parishioners, or aversion to him, when it can be foreseen that these factors will not quickly come to an end; grave neglect or violation of parochial duties which persists after a warning; and bad administration of temporal goods with

¹²¹ Even though the process of removal is not same as a penal process, the cautions expressed in c. 1468 in regard to the prior investigations before a penal trial are appropriate. See PARIZEK, "Ecclesiastical Office", 124.

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grave harm to the Church, when no other remedy can be found to eliminate this harm (c. 1390).¹²² But it is to be noted that in all these instances, the eparchial bishop needs concrete facts stated objectively.

Whatever the reasons suggesting removal, it is certainly appropriate that the eparchial bishop warn the parish priest of problematic behaviour or his deficiencies prior to invoking the canonical process. Moreover, the eparchial bishop will take care to provide remedial assistance to the presbyter if such assistance will likely enable him to overcome the deficiencies which point to a cause for removal. This assistance may take the form of an educational or formation programme to improve upon a necessary skill, or even assigning a parochial vicar to the parish to provide ministry in areas where the parish priest's skills are somewhat lacking.¹²³

7.3.1.2. Discussion

After discerning a probable cause for the removal of a parish priest, the eparchial bishop is to discuss the matter with two other parish priests from the group of parish priests stably selected for this by the presbyteral council, at the proposal of the eparchial bishop (c. 1391 § 1).¹²⁴ While the discussion is not at this point explicitly required for the validity of the process, it is prudent that the eparchial bishop allow his reasons to be scrutinised by the two parish priests indicated. The eparchial bishop should preserve a

¹²² Other grave reasons can be possibly identified.

¹²³ About warning we have already discussed in the third Chapter. See PARIZEK, "Ecclesiastical Office", 124.

¹²⁴ This process does not apply to parish priests who are members of a religious institute or a society of apostolic life. Because the parish priest who is a member of a religious institute or a society of common life in the manner of religious can be removed either at the discretion of the eparchial bishop after having notified the major superior or by the major superior after having notified the eparchial bishop, without the need of each other's consent. CCEO c. 1391 § 2.

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summary document of the consultation which will be another statement for the document of acts.

7.3.1.3. Paternal Persuasion and Resignation

Having verified the seriousness of the cause for removal with the two parish priests, and if subsequently the eparchial bishop decides that the removal must take place, he must, for 'validity', indicate to the parish priest the reason and the arguments, and persuade him in a 'fatherly manner' to resign the office within fifteen days (c. 1391 § 1).

If the parish priest has been persuaded sufficiently, he will submit his resignation. Thus the Code states that a resignation by a parish priest can be submitted conditionally provided that this can be legitimately accepted by the eparchial bishop and is actually accepted (c. 1392). If a resignation is proffered according to norms, the removal process ends, and the eparchial bishop will preserve a record to the effect that the parish priest's resignation has been accepted as the conclusion of the removal process.

7.3.1.4. Resistance of the Parish Priests

There are two types of resistances: passive and active. By passive resistance is meant the lack of response by the parish priest to the eparchial bishop's fatherly persuasion. Sometimes it may happen that the parish priest ignores it or may not have received the communication either oral or written. In any case, if the parish priest has not answered within the prescribed days, the eparchial bishop is to repeat the invitation extending the usable time for response. When the eparchial bishop is certain that the parish priest in question has received the second invitation and has not replied, even though not prevented from doing so by any impediment, or if the parish priest refuses to resign and gives no reasons for this, the eparchial bishop is to issue a decree of the said parish priest's removal (c. 1393 § 1).

By active resistance, the parish priest may express his opposition to the reason and arguments given for his removal from

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office. If his reasons are convincing with sufficient proof, the eparchial bishop may withdraw the removal procedure. These reasons must again be presented in a written form.¹²⁵

If the parish priest opposes the case put forward and the reasons given in it, but advances arguments which appear insufficient to the eparchial bishop, to act validly the eparchial bishop must: invite the parish priest to inspect the acts of the case and put together his objections in a written report, indeed produce contrary proofs if he has any (it is also his right); after this, complete the hearing of the case, and if this is necessary, weigh the matter with the same two parish priests mentioned in canon 1391 § 1, unless, because of some impossibility on their part, others are to be designated; and finally, decide whether or not the parish priest is to be removed, and without delay issue the appropriate decree. The final determination of this process is either to remove the parish priest, for which a decree is promptly issued, or to end the proceedings, which should also be noted in a document to be preserved (c. 1394).

7.3.1.5. The Decree and Its Effects

The decree of removal of the parish priest should contain a summary of the reasons for the removal, the names of the parish priests consulted, and whether or not the parish priest offered a response or rebuttal. According to the usual norms of decrees, the document is signed and notarised.¹²⁶ However, according to the norms of canons 996-1006, the parish priest has the right to recourse. While recourse against a decree of removal is pending, the eparchial bishop cannot appoint a new parish priest, but is to make provision in the meantime by way of a parish administrator (c. 1396 § 3).

¹²⁵ Cf. PARIZEK, "Ecclesiastical Office", 126. The law does not specify how much time the parish priest is allowed to prepare his opposition, but the eparchial bishop can establish a reasonable period.

¹²⁶ Cf. CCEO cc. 1510-1520.

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If the parish priest has been removed, the eparchial bishop is to ensure that he is either assigned to another office, if he is suitable for one, or is given a pension in so far as the case requires this and the circumstances permit (c. 1395).¹²⁷

The parish priest who has been removed must abstain from exercising the office of parish priest, make the parochial house free as soon as possible, and hand over everything pertaining to the parish to the person to whom the eparchial bishop has entrusted it. If he is sick and cannot be transferred elsewhere from the parochial house without inconvenience, the eparchial bishop is to leave him the use, even the exclusive use, of the parochial house for as long as this necessity lasts (c. 1396 §§ 1, 2).

7.3.2. Canonical Process for the Transfer of a Parish Priest

In the previous Chapter we have described the concept of transfer generally. Here the point of our discussion is the canonical procedure for the transfer of a parish priest which is indicated in canons 1397-1400.

The eparchial bishop is the competent authority who determines the transfer of a parish priest (c. 972). However, he is bound to follow the canonical procedure in this regard. The following are the essential steps in the transferring process. These norms can be applied equally to pastors assigned indefinitely and to pastors assigned for a term of office when the transfer is proposed prior to the expiration of the term specified.

7.3.2.1. Discernment

According to the Code, even if the parish priest governs his parish satisfactorily, if the good of souls or the necessity or advantage of the Church required he may be transferred from his parish to another or another office by the eparchial bishop (c.

¹²⁷ For a detailed study with regard to the effect of recourse see MENDONÇA, "The Effect of Recourse", 139-153.

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1397). It is the responsibility of the eparchial bishop to discern the reasons for the transfer of a parish priest.

7.3.2.2. Persuasion

The eparchial bishop is to propose the transfer to the parish priest in writing and persuade him to consent, for the love of God and of souls (*pro Dei atque animarum amore consentiat*, c. 1397).

Motives which are more specific and less pietistic may be helpful in this persuasion, especially since the proposed transfer compliments the parish priest's abilities which are needed elsewhere in the eparchy. As in the case of removal the proposal to transfer is to be written in order to preserve a record, which is necessary to have in the case of eventual recourse.¹²⁸

7.3.2.3. Resistance

The eparchial bishop must first insure that the parish priest has received the proposal of transfer.¹²⁹ If the parish priest accepts the proposal of the eparchial bishop, a decree of transfer will be issued. On the other hand if the parish priest does not intend to acquiesce to the eparchial bishop's advice and persuasion, he is to give his reasons in writing (c. 1398). Thus, the issue is entered into the act of the canonical process, which would be made available for review in the case of eventual recourse.

7.3.2.4. Discussion and Paternal Exhortations

If, despite the reasons put forward, the eparchial bishop judges that his proposition is not to be withdrawn, he is to weigh the reasons that which favour and oppose the transfer together with the two parish priests chosen in accordance with canon 1391, §1. If the eparchial bishop still considers that the transfer should be

¹²⁸ Cf. PARIZEK, "Ecclesiastical Office", 119.

¹²⁹ The use of certified mail with return signed receipt is adequate proof in this. The eparchial bishop also should verify that the parish priest has not been impeded from responding to the proposal within a stipulated time by him.

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proceeded, he has to renew his fatherly exhortations to the parish priest (c. 1399 § 1).

After this repeated invitation to the parish priest to accept the transfer, and if the parish priest still refuses and the eparchial bishop thinks that the transfer must be made, he is to issue a decree of transfer stating that the parish shall be vacant after the lapse of a determined time (c. 1399 § 2).

7.3.2.5. The Decree of Transfer and Its Effects

The office becomes vacant when the transferred parish priest takes possession of his new office. Until taking possession of the new office, his livelihood from the former office continues. If the pre-determined period of time has elapsed without result, the eparchial bishop is to declare the parish vacant (c. 1399 § 3). In this case, the provisions of canon 1396 apply, and equity are to be observed, which are reviewed above, in the case of the removal of a parish priest (c. 1400). As in the case of removal, in accordance with the norms of law, a recourse may be lodged against the decree of transfer by the parish priest.

8. Rectors of Churches (*Rectoribus Ecclesiarum*)

Some churches are not parishes, they are on the other hand called chapels. They are built for a certain group of people e.g. seminary, university, a pious association etc.,. It is sometimes associated with the house of an institute of consecrated life. Its care is entrusted to a rector.

According to the Code the rector of a church is a presbyter to whom is entrusted the care of some church which is neither a parochial church nor a church attached to a house of an institute of consecrated life.¹³⁰ He is freely appointed by the eparchial bishop safeguarding the eventual right of the religious superior to present a candidate (c. 305). The appointment of a presbyter as the rector

¹³⁰ CCEO c. 304: «Rector ecclesiae est presbyter, cui cura demandatur alicuius ecclesiae, quae nec paroecialis est nec adnexa domui instituti vitae consecratae».

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of a church is *ad validitatem* (c. 940). The eparchial bishop can remove the rector for a just cause (c. 310).

If the statutes of a foundation states so the rector can celebrate Divine Liturgy and divine praises as long as, in the judgement of the eparchial bishop, these are in no way prejudicial to the parochial ministry (c. 306 § 2). Also if the eparchial bishop thinks it advisable he can order the rector to celebrate sacred functions, even parochial ones when it is necessary (c. 307). Under the same authority and in accordance with the statutes and acquired rights the rector has several obligations, for example to see that Divine liturgy and divine praises are being celebrated according to the prescriptions of the liturgical books and laws, look after the ecclesiastical goods etc., (c. 309).

CONCLUSION

As we have discussed above there are several structures and offices in an eparchy. These are all intended to serve the people of God and point toward the pastoral mission in the eparchy. Through these institutions, the eparchial bishop and his presbyters practice the threefold mission, teaching, sanctifying and governing, entrusted to them.

Being the supreme pastor of the eparchy, the eparchial bishop is exclusively in charge of all these structures and offices. He is the head and has certain rights over the persons who execute these structures and offices. More than that he has the responsibility to organise in such way that these structures and offices function for the good of the eparchy and the Church as a whole. This responsibility also touches in turn the rights and obligations of persons who are working with him in these structures and offices.

Eparchial presbyters being co-operators and collaborators of the eparchial bishop execute these structures and offices with their bishop for the good of the eparchy and under the supervision

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and authority of the bishop. That does not mean they are mere labourers working for remuneration or other benefits. On the other hand they are responding to the special call they have received from Jesus Christ, with their bishop. Both are working for the same mission, for the same eparchy, for the same Church and ultimately for the same goal, that is, the salvation of all. Here the motivating principles are not 'power or benefits' rather 'service and charity'. Through 'service and charity' the eparchial bishop and eparchial presbyters together should manifest the true meaning of the *presbyterium*.

The presbyters who are part and parcel of these structures have certain rights and obligations attached to their office. According to the Code they have the right to obtain from their eparchial bishop, after the requirements of law have been satisfied, an office, a ministry or a function to be exercised in the service of the Church. At the same time they are to accept and faithfully carry out every office, ministry or function committed to them by the eparchial bishop whenever, in the judgment of this same authority, the needs of the Church require it (c. 371 § 1 § 2).

Therefore, both the eparchial bishop and the eparchial presbyters should support each other to enjoy their proper rights and to fulfil their mutual obligations attached to these structures and offices. They have to find out ways and means to safeguard and practice their rights and to promote their reciprocal obligations.

GENERAL CONCLUSION

At the General Conclusion of this study on the reciprocal rights and obligations of the eparchial bishop and presbyters, I would like to make a general synthesis of the study, an assessment of the Code together with some pastoral proposals.

1. A General Synthesis

In the above four Chapters, we have treated the following aspects: the prominent images of the bishop and presbyters as depicted in canonical and other sources; various foundations that form the true bond between the two subjects—the nature and objectives of their reciprocal rights and obligations; their major reciprocal rights and obligations as mentioned in the Code ; and the structures and offices in the eparchy for the fulfilment of these. The following are some basic concepts that deserve special attention in this work.

The eparchial bishop and presbyters have a bond, which is distinct from any other. It has its own foundation, nature, and purpose. Because of this bond, their rights and obligations are related to each other and together they have a clear and extensive influence in the pastoral ministry of the eparchy and of the entire Church. More over, it is impossible to understand the spirit of rights and obligations of bishops and presbyters in the Church unless one goes beyond its external and visible organisation to fix one's mind on its ecclesiastical, pastoral and canonical foundation.

Both the bishops and the presbyters are called by God. Their selection and call is of divine origin. Therefore the source is one and the same, because of this union, there exists an essential relationship between them.

All are equal in the Church, with regard to membership. This fundamental equality summons the individual members of the Church to engage themselves personally in the life of the Church according to their own ministerial call. This fundamental equality, however, must be integrated into the reality that the Church was

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constituted by Jesus Christ as a hierarchical society. He made the apostles and their successors, the bishops, sharers in his consecration and mission; and these have legitimately handed on the office of their ministry in varying degrees to various subjects in the Church. Accordingly, the divinely instituted ministry is exercised in the Church in different orders: episcopal, presbyteral and diaconal.

It is part of the doctrine of the faith that bishops are superior to presbyters. The latter do not have the same authority, rights and obligations as the former. Again it is part of the doctrine of the faith that by divine providence a hierarchy was instituted in the Church.

As a special call in the Church, ordained ministry carries with it a complexity of rights and obligations - the status of a "cleric". The reception of Holy Orders does not abrogate the rights and obligations which a Christian faithful has in virtue of human dignity and that which comes out of baptismal dignity. To understand the rights of the eparchial bishop and presbyters, therefore, a more broader and wider perspective must be taken than just the specifics which pertain to the clerical state.

The dogmatic Constitution on the Church and the decree on the Pastoral Office of Bishops in the Church places the episcopacy as the epitome of the ministerial priesthood and considers the presbyterate to be a sharing in the priesthood and ministry which the bishops as successors of the apostles pass on. The dogmatic Constitution on the Church teaches that "the fullness of the sacrament of orders is conferred by episcopal consecration; and this, both by the liturgical custom of the church and the voice of the fathers, is undoubtedly called the supreme priesthood, the highest point of the ministry" (*LG 21*). Therefore the bishop is not just a presbyter with greater power of governance. Through sacramental consecration he receives the fullness of the power of orders and that is a permanent inalienable gift and it involves the power to sanctify, teach and govern (*LG 21*). The decree on the

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Pastoral Ministry of Bishops develops the theme and states that bishops enjoy the fullness of the sacrament of orders and presbyters depend on them to exercise their power (CD 15).

Although there is a hierarchical gradation between the eparchial bishop and presbyters, they are in essence participating the same source, the priesthood of Jesus Christ. Through sacramental ordination conferred upon the presbyter by the bishop, a sacramental union is formed between them. Hence there is a unity between them in sacerdotal dignity and it is the fundamental factor that binds them together.

The eparchial presbyters are dependent on their eparchial bishop in the exercise of their power which they have obtained through sacred ordination. This dependence is well founded not in an exterior manner but in the interior structure of priesthood itself. Thus, the exercise of the office of teacher, of sanctifier and of ruler by presbyters is to be carried out under the direction of and in communion with the bishop.

After the model of Jesus Christ, bishops and presbyters are called to be pastors in the Church. Both are given the mission to preach the gospel, nourish the faithful, and celebrate divine worship. Hence both participate in the same pastoral mission, the bishops to a fuller degree. Both receive their mission from the Good Shepherd. The bishops' office of service was delegated to presbyters in a subordinate capacity. Thus they are to be collaborators with the episcopal order in carrying out the apostolic mission entrusted to them by Christ.

The rights and obligations of the eparchial bishop and presbyters are closely related to the threefold missions: teaching, sanctifying and governing.

The Church, as a visible human community, needs laws to maintain her external order and promote peace among all. She needs rules, common and particular, so that her exercise of the threefold powers may be properly ordered and that the mutual

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relationship of Christ's faithful are reconciled in justice based on charity, with the rights of each safeguarded and defined. As part of this ecclesial society, the laws of the Church are intended for both bishops and presbyters. These laws are obligatory and at the same time they facilitate an orderly structure and atmosphere for practicing their rights and obligations in the eparchy.

Besides these common foundations there are also particular foundations. The eparchial bishop unites the "portion of the people" into a community and constitutes all elements in it for its common end. He has a position in the eparchy as its center of unity and co-ordinator of the apostolate. He is the head of the *presbyterium*.

Likewise, every presbyter, on being ordained must have a canonical title. As a rule, he is ordained for the service of the Church. The Code clearly states that 'every cleric' must be ascribed as a cleric either in an eparchy or an exarchy or some other institute, society or association that has obtained the right to ascribe (c. 357 § 1). This ascription is the canonical title of service, a bond of incorporation into an eparchy or similar entities, which cannot be broken except as provided by law. Once ordained for an eparchy, the presbyters are not permitted to transfer elsewhere without the permission of the eparchial bishop. And it is due to this ascription of a presbyter in a particular eparchy that there arises a unity and a juridical relationship between the eparchial bishop and the presbyter.

The obedience of the presbyters towards their bishop is another important aspect. The obedience which the presbyter owes to the bishop is canonical obedience and it is restricted to those matters determined by the common or particular laws.

2. An Assessment of the Code

A notable feature of the Code is the elaboration of the rights and obligations of eparchial bishops and the clerics as a whole. They are norms filled with a pastoral spirit. They start from

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the conciliar presuppositions and aim at *salus animarum*. The possession and realisation of these rights and obligations on the part of both subjects are essential and meaningful. Their rights and obligations confirm and encourage their state of ministry to the service of the people of God.

Every human being has rights and obligations. The Code, by pronouncing the reciprocal rights and obligations of the eparchial bishop and presbyters reveals its respect for fundamental human dignity and its pastoral concern.

The Code views the eparchial bishop as the leader of the eparchial community. He is presented as a principle of unity in bringing together the priestly and other ministerial resources of the eparchy in the service of the Church (c. 177 § 1). Further, it emphasises the bishop's responsibility to foster the involvement of the presbyters and others in the governance of the eparchy. There is a renewed stress on the bishop as being involved in a network of relationship within the eparchy rather than being the somewhat isolated authority figure or a monarch out of touch with the dynamics of the particular eparchy entrusted to his care. Therefore, the Code reaffirms bishops' traditional position and status in the Church which, of course, emerges from a divine origin. The Code does not limit nor over estimate the power and authority of the bishop. At the same time the bishop enjoys the necessary discretionary power in his eparchy.

The Code does not lessen the status of the presbyters nor does it exaggerate their importance. For instance, it treats the bishop's relationship with his presbyters and brings out the indispensable role played by them: as "the bishop's prudent co-operators". The presbyters are thus helpers and advisers of the eparchial bishop to help him provide the best of service to the people of God entrusted to him (cc. 192, 370; *LG* 28). This, of course, is not meant to restrict the universality of priestly ministry. In fact the universal mission is realised in a determined area, in an eparchy.

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The Code of Canons of the Eastern Churches does not provide for any active role for the eparchial presbyters in the process of selecting the eparchial bishop. For instance, for the appointment of the metropolitan and of the bishops, the council of hierarchs is to compile for each case a list of at least three of the more suitable candidates and to send it to the Apostolic See, observing secrecy even toward the candidates. In order to compile the list, the members of the council of hierarchs, if they deem it advisable, can inquire of some presbyters or other Christian faithful who are outstanding in wisdom for their opinion about the needs of the Church and the special qualities of the candidate for episcopacy (c. 168 and with regard to the patriarchal church see c. 182 § 1).

From the Acts of the Apostles, and the Didache, from the testimony of St. Cyprian, St. Eusebius, St. Hippolytus, and St. Clement I, it is clear that in the early Church three voices were heard in the selection of a bishop: the people, the clergy and the neighbouring bishops.¹

¹ One of the most impressive manifestations of co-responsibility in the early Church was in the selection of bishops. The designation of Mathias (Acts 1:15-26), and of the Seven (Acts 6:2-4) by the general community specially calls for our attention.

Eusebius reports "the firm tradition" that the choice of Symeon to succeed James as bishop of Jerusalem (62 AD.) was by "unanimous vote of the apostles, disciples, and kinsmen of the Lord". «Après le martyre de Jacques et la destruction de Jérusalem qui arriva en ce temps-là, les apôtres et les disciples du Seigneur qui étaient encore en vie s'assemblèrent de partout, à ce que l'on raconte, et se réunirent aux parents du Seigneur selon la chair - un grand nombre d'entre eux, en effet, étaient alors encore en vie - et tous ensemble tinrent conseil pour examiner qui il fallait juger digne de la succession de Jacques: tous, d'une seule pensée, décidèrent que Siméon, fils de Clopas, qui est mentionné dans le livre de l'Évangile, était digne du siège de cette Église: il était, dit-on, cousin du Sauveur. Hégésippe raconte en effet que Clopas était le frère de Joseph». EUSÈBE, *Hist. Eccl. III*, XI, 118.

The First Epistle of Clement (96 AD.) reminded the Corinthian Church that the Apostles had established procedures for succession in leadership which involved the "consent of the whole church". «Et apostoli nostri cognoverunt per Dominum nostrum Jesum Christum, quod futura esset contentio de nomine episcopatus:constitutos itaque ab illis, vel deinceps ab aliis viris eximiis, consentiente universa Ecclesia; ...». CLEMENT I, *Epistula I ad Corinthios: PG I Caput, XLIV*, 296, 298.

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3. Certain Limiting Factors of the Code

By limit we mean the aspects that restrict the exercise of the reciprocal rights and obligations of bishop and eparchial presbyters. In the third Chapter we have listed the reciprocal rights and obligations of both subjects in detail and in the final Chapter we treated the structures and offices in the eparchy for the fulfilment of the same. Although there are several common factors that form a bond between bishop and presbyters, in the practical realm there are some limiting factors. The following is an analysis of the same.

True basic freedom is the characteristic of humanity. It is an exceptional sign of the divine image within man and woman.² "The blossoming of a free personality, which for every individual is a duty and a right, must be helped and not hindered by society".³ It is the obligation of the eparchial bishop to encourage Christian

The *Didache*, addressing the Syrian Church at large, purportedly on behalf of the Apostles, admonishes: "elect for yourselves bishops and deacons". «Eligite igitur vobis episcopos et diaconos dignos domino». *Didache* XV, 29.

St. Hippolytus states that «Qu'on ordonne comme évêque celui qui a été choisi par tout le peuple. Lorsqu'on aura prononcé son nom et qu'il aura été agréé par tous, le peuple se rassemblera, avec le collège des prêtres et les évêques qui sont présents, le dimanche. Du consentement de tous, que ceux-ci lui imposent les mains et que le college des prêtres se tienne là sans rien faire». HIPPOLYTUS, *La Tradition Apostolique*, 2, 26-27.

According to St. Cyprian, «Quod et ipsum videmus de diuina auctoritate descendere, ut sacerdos plebe praesente sub omnium oculis deligatur et dignus adque idoneus publico iudicio ac testimonio conprobetur, sicut in Numeris Dominus Moysi praecipit dicens : Coram omni Synagoga iubet Deus constitui sacerdotem, id est instruit et ostendit ordinationes sacerdotales non nisi sub populi adistentis conscientia fieri oportere, ut plebe praesente vel detegantur malorum crimina vel bonorum merita praedicentur et sit ordinatio iusta et legitima quae omnium suffragio et iudicio fuerit examinata»: CYPRIAN, *Epistle* 67, 4: CSEL 3, 738.

Further study see LEONE MAGNO, *Epistola*. X, 6: PL 54, 634; *Vita S. Cypriani* 5: PL 3, 1545; RYNNE, *Letters from Vatican City* (September 29 to December 4, 1963), 13-17; STOCKMEIER, "The Election of Bishops by Clergy and People in the Early Church", 3-9; GAUDET, "Bishops: From Election to Nomination", 10-15; GRANFIELD, "Episcopal Elections in Cyprian", 41 -45 etc.,.

² JOHN PAUL II, *Declaratione universalis iurium homines*: AAS 71 (1979) 123.

³ CDF, *Instruction on Christian Freedom and Liberation*, art. 32.

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freedom. Hence with regard to our theme, this idea of personal freedom is very important. But in the eparchial context, the bishop being the superior and the presbyters being inferior to him, the exercise of this personal freedom depends very much upon the discretion of the bishop.

Presbyters' canonical obedience is another factor. The obedience that a presbyter owes his bishop is called canonical obedience. It is also taken to mean subjection to the authority of the bishop to enforce the common law and the particular law regarding clerical discipline. Thus a presbyter is canonically obliged to his bishop. Here what matters to the presbyter with regard to the eparchial bishop, is more concerned with obligation than rights.

Of course the eparchial bishop is the principal authority in the eparchy. However, his commands must be in conformity with the spirit of the law. He cannot command anything prohibited by the common law. For instance he cannot prohibit what the Code clearly permits (e.g. to accept Holy Mass offerings 715-716).

Ordinary power pertains to an office and it cannot be restricted or removed by the person conferring such an office without amendment of the law itself. As an example a bishop cannot restrict or withdraw executive power belonging to the office of a parish priest by reason of the common law of the Church. But he can establish policies and guidelines for its exercise for the betterment of the eparchy.

The exercise of the rights and obligations of the bishop and the presbyter always occur in the context of society. Therefore, in exercising their rights and obligations they must take cognisance of the common good of the Church, the rights of other persons, and of their own obligations towards the other. Moreover, in order to provide for the proper exercise of individual rights, in an eparchy, it is the responsibility of the bishop to determine what must be done for the common good. So the common good often limits or

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regulates the exercise of rights (c. 26). No right is absolute in this context.

Above all this is a question of rights and obligations between two persons. Therefore the relationship between the bishop and presbyters is another determining factor with regard to the implementation of their reciprocal rights and obligations on account of their special call and appointment in the Church and their relationship is more spiritual and personal rather than juridical. Hence the concrete expression of their rights and obligations is limited according to personality or individuality. Personal commitment is more important than legal formulations.

4. Some Pastoral Proposals

The actual and true implementation of reciprocal rights and obligations necessarily depend upon mutual relationship and in practice situations of tension sometimes arise. Both may experience a sense of solitude any stage and in any situation. It may be due to special difficulties such as alienation, misunderstanding, deviations, abandonment, imprudence, personal limitations of character as well as that of others, calumnies, humiliations etc.,. In spite of all these situations there is ample room for improvement and growth on both sides. The following pastoral proposals take the form of some principles and means.

4.1. Supernatural Charity

Certainly there exists, between the eparchial bishop and his presbyters a special bond of juridical nature. It is necessary because it belongs to the social structure of the Church as willed by Jesus Christ, the founder of the Church. Supernatural charity must be the center of all administrative and juridical structures and offices in the Church. Further, in order to avoid shades of rigid legalism in the Church, supernatural charity must be focused and emphasised.

It does not mean that we deny or diminish the necessity and importance of the juridical and administrative role. On the other

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hand, while accepting its necessity and importance, we simply want to affirm that only in this love, the supernatural virtue, which is the substance of true friendship, the reciprocal rights of both the eparchial bishop and his presbyters may be able to be worked out effectively, and the effectiveness of their co-operated apostolate may be made concrete.

The rights and obligations of both parties should also be conformed to the charity of Christ. Pastoral charity makes the presbyters of one will with the bishop and renders apostolic work successful and thus the "presbyters harmonise with the bishop as the strings and harp" (St. Ignatius of Antioch).

4.2. Co-workers

In the division of the ecclesiastical hierarchy into bishop, presbyter and deacon, it is clear that bishop's position is superior to that of presbyters. By their sacred ordination, presbyters receive the dignity of being in the second order of the hierarchy. Although both are destined to different duties, "as co-operators of the episcopal order" and its instrument, presbyters are called to the service of the people of God and constitute along with their eparchial bishop one *presbyterium*.

The ministry of the eparchial bishop stands in continual need of the support of the members of the *presbyterium*. When he is sick or absent, the presbyters act for him; when he dies they maintain the continuity of the pastoral office until there is a new occupant for the bishop's chair. The *presbyterium* should support and supplement the bishop's ministry with advice and action.

It is in the person of the eparchial bishop, surrounded by his presbyters, Jesus Christ is present among the eparchial community. He, therefore, should regard his presbyters as "co-workers" in the ministry. Likewise, whatever a presbyter does in the eparchy, he does as one who is a co-worker ordained to assist the eparchial bishop. He is to exercise his rights and obligations in relation to

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his eparchial bishop while keeping in mind his true position in the eparchy.

If presbyters have the obligation to work and act as co-operators with their eparchial bishop, the latter has the corresponding obligation to accept them as co-operators and collaborators.

4.3. "Friend"- "Brother"

The "father-son" relationship (*LG 28; CD 16*), applied to the relationship between bishop and presbyters in the conciliar documents, seems less appropriate and less suitable in the context of our study. The "sons and friends" of *Lumen gentium* has become "brothers and friends" in *Presbyterorum ordinis* (n.7) and apart from being collaborators who must obey, they are now also "counsellors" to whom the bishop should "gladly listen" and with whom "he must discuss those matters which concern the necessities of pastoral work and welfare of the eparchy. Because of their communion in the same priesthood and ministry, the eparchial bishop should regard his presbyters as his "brothers and friends" (Jn. 15:15; *CD 16*).

Pope Paul VI states that toward his presbyters the bishop should show himself as a friend - brother -rather than as one who presides over them and acts as a judge- "being ready with kindness, understanding, pardon and help". He does what he can that they may also develop a corresponding friendship toward their bishop and to place full trust in him. In such a way however that the bond of lawful obedience is not only dissolved but is rather strengthened. Thus obedience itself will become more ready, more sincere and more secure.⁴

Pope John Paul II, in an instruction to the bishops, states that in fulfilling their pastoral responsibilities the bishops rightly look to their brother presbyters, their primary co-workers in the

⁴ DPMB 107; PAUL VI, Ency. *Sacerdotialis caelibatus*, 92, 93.

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sacred ministry. Just as Christ called his disciples "friends", (Jn. 15:15) so must bishops regard their presbyters. They should be ready to listen to their presbyters and cultivate an atmosphere of easy familiarity with them, thus facilitating the pastoral work of the entire eparchy.⁵

Since, the eparchial bishop is the superior authority in the eparchy it is appropriate to put more emphasis on him to create such a friendship and brotherhood. This does not, on the other hand, lessen the obligation on the part of presbyters in this regard.

4.4. Reverence and Obedience

For the bishop, to exercise his Apostolic authority in the eparchy, it is necessary that the presbyters recognise his authority, accept it and then reflect its effectiveness in active expressions of love, loyalty and obedience. They are to keep in mind the fullness of orders which their bishop enjoys and thus be attached to him with sincere reverence and obedience, inspired through and through by the spirit of co-operation based on the sharing of the episcopal ministry conferred on them by the sacrament of orders and the canonical mission.

If a bishop does not receive affirmation and support from his presbyters then, to a large extent he will be unable to exercise his authority. The eparchy will also suffer, because the presbyters who do not affirm and reflect the authority of the bishop call into question the source of their own authority. Of course, presbyters' vow of obedience does not increase the bishop's authority or power, but the vow enables the presbyter to exercise the authority and power of Christ in teaching and healing. Moreover, the love, reverence, loyalty and obedience of the presbyters toward their eparchial bishop will encourage him to be conscious of his obligations toward them and of their rights.

⁵ JOHN PAUL II, «Ad Bangaladesiae episcopos limina sacra visitantes»: AAS 87 (1995) 69.

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4.5. Principle of Subsidiarity

The principle of Subsidiarity cannot be overlooked when dealing with the reciprocal rights and obligations of eparchial bishop and eparchial presbyters. The eparchial bishop takes care that he does not ordinarily take upon himself what can well be done by a presbyter. In other words he should carefully respect the legitimate competencies of others and also give his presbyters the powers they need and favour just initiatives (DPMB 96).

With regard to the use of authority in the Church, the Second Vatican Council has also moved to reduce centralisation and put more stress on the application of the principle of Subsidiarity. This principle of Subsidiarity is applicable in the eparchy too. It promotes a better collaboration in the field of pastoral ministry.

The *presbyterium* shares in the charism and responsibility entrusted to the bishop. The special pastoral office of one man and the college of concelebrants, assistants and representatives of that one man are not mutually exclusive, but complementary.

The principle of Subsidiarity also implies that the bishop should respect the just initiatives of individuals and groups in the eparchy. For instance, the eparchial bishop is able to delegate freely his authority, especially in the administrative realm. Of course, in certain matters a special episcopal mandate is required (cc. 987-988). The bishop should take the legal options in the Code provided by syncelli in different areas (for instance temporalities, liturgy, ecumenism etc., cc. 246-247) of eparchial life. The options in the law can be seriously implemented only through a judicious use of vicars with appropriate accountability controls. By practising the principle of Subsidiarity the eparchial bishop is establishing and confirming the true place of his presbyters in the eparchy and also permitting them to fulfil their rights and obligations.

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4.6. Diaconal Principle

The bishop being the head of the eparchy, governs it with legislative, executive and judicial power. These powers are for the "service" of the people of God. In order to avoid excessive friction, which may arise between him and his presbyters, he should manifest by his life style that the authority is for the service of the people of God.

The bishop is the key figure to foster this principle of *diakonia* - both by his personal example and by his continual insistence to persons who are involved in the ministry. Certainly, this diaconal principle touches the presbyters as well. They have to see their offices, positions etc., in the eparchy as one of the best means to serve the people of God.

By accepting this criterion of service, both the bishop and presbyters can give more attention to their reciprocal obligations rather than to their rights. The fulfilment of ones own obligations towards the other naturally would help to promote the others' rights.

4.7. Protection of Rights and Promotion of Obligations

Today, people are more sensitive about their human dignity and protection of their rights. This contemporary ecclesial sensitivity suggests that a key dimension of episcopal ministry is seeing that adequate institutional means are available to protect human dignity and rights. Bishop is the person to provide the necessary institutional facilities in order to protect the rights of the faithful. It touches the presbyters in such a way that they recognise and accept the rights of the eparchial bishop over them.

The rights and obligations of both parties are mutually related. Therefore, efforts to protect rights must always accompany obligations.

However, without adequate means for the protection and promotion of these rights obligations, their listing would be

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meaningless. Their effectiveness requires an awareness of the rights and obligations at stake and the application of both theological and canonical principles for their protection.

4.8. Dialogue

As all faithful in the Church, the presbyters have the same right to express their needs and opinions about what is the good of the Church, particularly because of their training, experience and the role they play within the eparchy (c. 15 § 3)

True dialogue consists first of all in the listening and the mutual exchange or sharing of ideas. Both the Second Vatican Council and the Code exhort the eparchial bishop to listen to his presbyters (c. 192 § 4; *PO* 7). The presbyters are to show great reverence and obedience to their eparchial bishop (c. 370; *LG* 28). This points to the fact that both are to be prompt in dialogue with one another, always open to discuss with each other, and be ready to accept the prevailing thinking of the dialogue. Frequent contacts, the exercise of pastoral charity, and the fostering of mutual understanding are necessary means for effective dialogue.

4.9. Visits

Any human relationship will merely be a feigned one without mutual visits paid to the interested partners. Likewise, good relationship between the eparchial bishop and his presbyters must be fostered by frequent visits. These visits may be personal, formal or official. The pastoral visit of the eparchial bishop can be termed as a formal visit.

According to the Code the eparchial bishop is bound to a canonical visit either personally or through others, to the parishes and other institutions of the eparchy (c. 205 §§ 1, 2). This is one of the means of maintaining personal contact with clergy and other faithful so that he may know, direct and encourage them in the practice of the faith, their obligations and the Christian way of life.

During the visitation he can experience for himself and evaluate the real effectiveness of the structures and offices in the service of

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the protection and promotion of rights and obligations. It is a favourable opportunity for the eparchial bishop to praise, inspire and comfort presbyters and to see for himself any difficulties. It is a good occasion to touch the hearts of his brethren, and to strengthen and renew life forces that have deteriorated.

As we have discussed above that the pastoral visit is a canonical obligation. But it is correct to say that friendly visits between eparchial bishop and presbyters have an important role. The pastoral visit must take on new forms adapted to differing localities, and should have new concerns and methods that will be more useful in our times (DPMB 166). At times, the eparchial bishop's position as head, teacher and pastor is more warmly welcomed and felt with greater appreciation at his informal visits than in the formal canonical ones. The presbyters, on their part, should reciprocate these informal visits.

4.10. Ongoing Formation and Gatherings

The gathering of presbyters with the eparchial bishop deepens the disposition for co-operation in the building up of the mystical Body of Christ. A common annual retreat, days of recollection, refresher courses in canon law and other relevant subjects, other programmes etc., for the presbyters help to deepen and perfect the sense of co-responsibility for the whole eparchy and also the relevance and understanding of their reciprocal rights and obligations.

4.11. A Manual for Rights and Obligations

In 1973 the Sacred Congregation for Bishops published a "Directory on the Pastoral Ministry of Bishops". This is addressed only to the bishops of the Latin Church. Likewise in 1994, the Congregation for the Clergy published a "Directory on the Ministry and life of Priests". This also is directed to the priests of the Latin Church. Based on the Code, it may be helpful to formulate similar directories for bishops and presbyters in the Oriental Churches also. Moreover, a manual for the reciprocal

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rights and obligations of the eparchial bishop and presbyters could provide a practical and effective help for improving the pastoral ministry in the eparchy.

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