

**PERSONAL ECCLESIASTICAL CIRCUMSCRIPTIONS.<sup>1</sup>**  
**The Personal Ordinariates for Faithful from the Anglican Communion**

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**SUMMARY:** I. PERSONAL ECCLESIASTICAL CIRCUMSCRIPTIONS: 1. Territorial and personal circumscriptions in the Church. 2. The nature of cumulative ecclesiastical jurisdiction. 3. Types of personal ecclesiastical circumscriptions: a) Personal prelatures; b) Military Ordinariates; c) Ritual Ordinariates; d) The Personal Apostolic Administration of Campos. II. THE PERSONAL ORDINARIATES FOR FAITHFUL FROM THE ANGLICAN COMMUNION.

## **I. PERSONAL ECCLESIASTICAL CIRCUMSCRIPTIONS**

### **1. Territorial and Personal Jurisdictions in the Church**

It was given in the Code of 1917 (cc.215 and 216) that ecclesiastical circumscriptions had to be organized along territorial criteria, even within the same diocese, to the point that a special apostolic indult was needed in order to constitute parishes for personal reasons, as for example the diversity of language or nationality of faithful living within the same territory (c.216, §3). Such territoriality in the ecclesiastical organization reflected what had been the common—albeit not unique—experience throughout the history of Church; but the Pio-Benedictine codification carried this principle to a degree of rigidity which was soon necessary to overcome.<sup>2</sup>

Other than some isolated cases between 1917 and 1939, wherein recourse was made to the constitution of personal jurisdictions<sup>3</sup>, it was above all during the pontificate of Pius XII that the limitations of the principle of territoriality—carried to extremes—to pastoral action became obvious.<sup>4</sup> It was during that papacy that the so-called military vicariates were regulated in a general manner for the first time, such that from being something exceptional they henceforth constituted a category of ecclesiastical circumscription typified by a general norm as a cumulative personal jurisdiction, albeit vicariate, since at the time the only foundation which could justify such a type of jurisdiction was the power of the Roman Pontiff.<sup>5</sup>

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<sup>1</sup> English translation of Spanish original by Jaime B. Achacoso.

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<sup>2</sup> A historical synthesis regarding the principle of territoriality in the ecclesiastical organization, with interesting bibliographical references, can be found in A. VIANA, **Derecho canónico territorial. Historia y doctrina del territorio diocesano**, Pamplona 2002, pp.21-130.

<sup>3</sup> For example, in 1918 the Holy See appointed a Prelate for the pastoral care of refugees in Italy (cf. S.CONSISTORIAL CONGREGATION, **Decree** of 3.IX.1918, in **AAS**, 10 [1918], pp.415-416). A prelate was also appointed, freed of other tasks and given episcopal rank, in order to coordinate the chaplains charged with the pastoral care of overseas Italians, with the power to transfer them or remove them altogether (cf. S.CONSISTORIAL CONGREGATION, **Notificazione** of 23.X.1920, in **AAS**, 12 [1920], pp.534-535).

<sup>4</sup> It is noteworthy that this Pope had made his doctoral thesis precisely on the personal character of ecclesiastical laws (cf. E. Pacelli, *La personalità et la territorialité des lois particulièrement dans le droit canon*, in **Ephemerides Iuris Canonici**, 1 [1945], pp.5-27).

<sup>5</sup> Cf. S.Consistorial Congregation, Instruction **Sollemne semper** of 23.IV.1951, in **AAS**, 43 [1951], pp.562-565. Prior to this Instruction, there were already 10 vicariates (regarding the history of this jurisdiction, cf. A. VIANA, **Territorialidad y personalidad en la organización eclesiástica. El caso de los ordinariatos militares**, Pamplona 1992, pp.17-64; J.I. GONZÁLEZ ERRÁZURIZ, **Iglesia y Fuerzas Armadas. Estudio canónico y jurídico sobre la asistencia espiritual a las Fuerzas Armadas en Chile**, Santiago de Chile [1994], pp.17-161; T. OLSEN, **Die Natur des Militärordinariats. Eine geschichtlich-juridische Untersuchung mit Blick auf die Apostolische Konstitution *Spirituali militum curae***, Berlin 1998, pp. 37-272). Posterior to **Sollemne semper** and before Vatican II nine vicariates were erected (for some old and recent data up to 1992, and for a study of the regulation of these jurisdictions, cf. E. BAURA, **Legislazione sugli ordinariati castrensi**, Milan 1992).

It was Pius XII who confronted in a direct and organic manner the question of the pastoral care of those faithful involved in the phenomenon of human mobility—immigrants principally but also sailors, nomads, refugees, circus performers, etc.—through the promulgation of the Constitution *Exsul Familia*, of 1.VIII.1952.<sup>6</sup> By virtue of this Constitution, the pastoral care for human mobility became organized on the basis of the presence of special chaplains—who know the language and mentality of the faithful and disposed to accompany them wherever they might be—who enjoyed special faculties granted by the Holy See, subject to the authority of the local Ordinary, and coordinated at the national level by organisms bereft of the power of jurisdiction. In other words, *Exsul Familia* fostered a peculiar pastoral care, thanks to the power of the Holy See which granted special faculties and gave it a certain unity of direction, but without making the necessary step that would permit a more effective pastoral coordination, since the national promoters and directors of such pastoral work lacked the power of jurisdiction, due to the will of the Legislator to respect the territorial system then in force in the old Code.<sup>7</sup>

With this state of affairs, it does not seem exaggerated to affirm that one of the greatest novelties that the Code of 1983 has given to Canon Law—fruit of an explicit will of the Second Vatican Council—has been the admission of the personal criterion in the ecclesiastical organization. In effect, the Ecumenical Council had considered it opportune to constitute some ecclesiastical offices, which could be attributed to bishops, in order to give unity of direction to some pastoral activities in favour of various dioceses<sup>8</sup>, and promoted a review of the institution incardination, not only for a better functional distribution of priests, but also in order to be able to carry out pastoral activities for different social groups, pointing out the usefulness of erecting international seminaries, peculiar dioceses or personal prelatures, and other institutions of such type.<sup>9</sup>

On this basis, the eighth of the guiding Principles for the elaboration of the post-conciliar Code, approved by the first Synod of Bishops in 1967, dealt precisely with the need to give greater flexibility to the territorial criterion in order to better orient the ecclesiastical organization to

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<sup>6</sup> In AAS, 44 (1952), pp. 649-704. Since the 19th Century XIX, due to industrialization, the phenomenon of human migration acquired noteworthy proportions, with important pastoral consequences. To guarantee due pastoral attention and avoid a disorderly movement of priests who may not always be moved by genuine apostolic zeal, the Holy See tended to centralize competencies over migrant chaplains and to rely on religious clergy, above all on those dedicated to missionary work with migrants. On this subject, one can consult a study that appeared in a volume useful for research on this matter, G. ROSOLI, *Alcune considerazioni storiche su S. Sede e fenomeno della mobilità umana*, in *Chiesa e mobilità umana. Documenti della Santa Sede dal 1883 al 1983*, G. Tassello - M. Favero (eds.), Pont. Commission for Pastoral Care of Migrants and Tourists, Rome 1985, pp.XIII-XXX; and with greater attention to the canonical aspects of the subject, V. DE PAOLIS, *Aspetti canonici del magistero della S. Sede sulla mobilità umana, ibid.*, pp.XXXI-XLIX. For more recent documentation, cf. the studies contained in the volume *Migraciones, Iglesia y Derecho: Actas del V Simposio del Instituto Martín de Azpilcueta sobre Movimientos migratorios y acción de la Iglesia. Aspectos sociales, religiosos y canónicos*, Jorge Otaduy – E. Tejero – A. Viana (eds.), Pamplona 2003.

<sup>7</sup> The Chaplains did not change incardination and were subject to the local Ordinaries, but they depended on the National Director in what was specific to their ministry, under the superior coordination by the S.Consistorial Congregation. Ultimately, the natural result of this type of organization was the institution of a personal jurisdiction which was cumulative with that of the local Ordinaries. It is significant that even in those years, some had proposed the constitution of an *international Ordinariate for the Apostolate of the Sea* (cf. G. FERRETTO, *L'Apostolato del Mare. Precedenti storici e ordinamento giuridico*, Pompei 1958, p.52), and a certain canonist had referred to the phenomenon that had been created in Italy with this apostolate (a bishop in charge, chaplains and sailors) as a *Personal Prelature* in fact, long before this expression had been legally coined (cf. L.M. DE BERNARDIS, *La giurisdizione ecclesiastica sulle navi*, in *Rivista del Diritto della Navigazione*, 6 [1940], pp.425-426). As regards the actual regulation of the Apostolate of the Sea, cf. E. BAURA, *The Church and the Maritime World: the «Motu Proprio «Stella Maris»*, in *People of the Sea: Co-workers with God in Creation*, Pontifical Council for the Pastoral Care of Migrants and Itinerant People (ed.), Vatican City 1998, pp.42-50. The organizational scheme of *Exsul Familia* is still present in the Episcopal Conferences (cf. PONTIFICAL COUNCIL FOR THE PASTORAL CARE OF MIGRANTS AND ITINERANT PEOPLE, Instruction *Erga migrantes Caritas Christi*, of 3.V.2004). For a commentary on this Instruction, cf. E. BAURA, *L'Istruzione «Erga Migrantes Caritas Christi». Profili giuridici*, in *People on the move*, 37 [2005], n.98, pp.97-107.

<sup>8</sup> Cf. Decr. *Christus Dominus*, nn.42-43.

<sup>9</sup> Cf. Decr. *Presbyterorum ordinis*, n.10.

confront the concrete pastoral needs that are arising.<sup>10</sup> This Principle has been summed up in the Preface of the new Code as follows: “The principle of territoriality in the exercise of ecclesiastical government is to be revised somewhat, for contemporary apostolic factors seem to recommend personal jurisdictional units. Therefore the new Code is to affirm the following principle: generally speaking the portions of the people of God to be governed are to be determined territorially; however, if it is advantageous, other factors can be admitted as criteria for determining a community of the faithful, at least along with territoriality.”<sup>11</sup>

Precisely in the years immediately posterior to Vatican Council II, theology tackled the question of the value of territory in the constitution of the Church.<sup>12</sup> Some theologians maintained that territory was a constitutive element of the particular Church. In effect, it was affirmed that the Church always has to be in a certain place, because the Eucharist demands the localization of a Christian community, which is formed around an altar<sup>13</sup> and that territoriality is the element that guarantees the note of catholicity in the particular Churches, since it impedes exclusivity, given that the particular Churches have to be open to all kinds of persons within its territory.<sup>14</sup> Together with this, it has been noted in theological circles that it is not possible that place be a constitutive element of the Church and that the essential element of a particular Church is personal—i.e., being a *portio Populi Dei*, as pointed out by the Decree **Christus Dominus**, n. 11 when defining the diocese.<sup>15</sup>

On the part of canon law, there has not been a lack of authors who have also seen in the element of territory something more than a merely external criterion for the delimitation of circumscriptions, among other reasons because the territory would be the element which manifests the openness towards the universal, which is proper of the particular Church.<sup>16</sup> In any case, what is more common is a realistic view that, at the face of the existence of personal ecclesiastical circumscriptions, conclude that it is not possible that territory be an essential element of the particular Church.<sup>17</sup> From this perspective, one sees territoriality as a fruit of the historicity of the Church, which tends to adjust itself to the way men organize themselves, but not as something essential to it.<sup>18</sup> In an effort to reflect on the essence of the Church, and based on the ecclesiology of Vatican II, it has been affirmed that what is essential to an ecclesiastical circumscription is the communitarian element, while the territory is just an extrinsic principle of delimitation.<sup>19</sup> In the same manner, it has been underlined that one should not confuse “place” with “territory”; the territory is a space where a public authority exercises a public action, while a place is the center of

<sup>10</sup> As regards the history of the redaction of this principle, cf. V. GÓMEZ-IGLESIAS, *El octavo principio directivo para la reforma del “Codex Iuris Canonici”: el “iter” de su formulación*, in *Fidelium Iura*, 11 [2001], pp.13-39.

<sup>11</sup> The complete text of the 10 Principles can be found in *Comunicaciones*, 1 [1969], pp.77-85.

<sup>12</sup> A study of the *status quaestionis* of the theology as regards this issue, with extensive bibliography, is A. CATTANEO, *La Chiesa locale. I fondamenti ecclesiológicos e la sua missione nella teologia postconciliare*, Vatican City 2003.

<sup>13</sup> Cf. K. RAHNER, *Sobre el episcopado*, in IDEM, *Escritos de Teología* (Spanish translation), VI, Madrid [1969], pp.384-385, albeit the same author admitted the impossibility of articulating the Church solely on the basis of territory (cf. *ibid.* p.376).

<sup>14</sup> Cf. H. LEGRAND, *La délimitation des diocèses*, in VV.AA., *La charge pastorale des Évêques. Décret “Christus Dominus”*, Paris 1966, pp.177-223, especially pp.211-213, and IDEM, *Un solo obispo por ciudad. Tensiones en torno a la expresión de la catolicidad de la Iglesia desde el Vaticano II*, in *Iglesias locales y catolicidad. Actas del Coloquio internacional de Salamanca 2-7 abril 1991*, H. Legrand - J. Manzanares - A. García y García (eds.), Salamanca 1992, pp.531 & 532.

<sup>15</sup> Cf. A. CATTANEO, *La Chiesa locale...*, *cit.* (note 11), pp.92-98 and the bibliography cited therein.

<sup>16</sup> Cf., W. AYMANS, *Kirchliches Verfassungsrecht und Vereinigungsrecht in der Kirche. Anmerkungen zu den revidierten Gesetzentwürfen des kanonischen Rechtes unter besonderer Berücksichtigung des Konzeptes der personalen Teilkirchen*, in *Österreichisches Archiv für Kirchenrecht*, 32 [1981], pp.79-100, especially pp.93-99.

<sup>17</sup> A documented synthesis of the theological and canonical doctrine regarding territoriality is found in A. VIANA, *Derecho canónico territorial...*, *cit.* (note 1), especially pp. 243-318.

<sup>18</sup> Cf. G. DALLA TORRE, *Le strutture personali e le finalità apostoliche*, in *I principi per la revisione del Codice di diritto canonico. La ricezione giuridica del Concilio Vaticano II*, J. Canosa (ed.), Milan 2000, pp.561-589.

<sup>19</sup> Cf. J. HERVADA, *Significado actual del principio de la territorialidad*, in *Fidelium Iura*, 2 [1992], pp.221-239.

localization of a concrete ecclesiastical action.<sup>20</sup> The fact that the Eucharist is necessarily celebrated in a place, in much the same way as all human activity, implies nothing more than the spatial conditioning of matter. Thus, personal circumscriptions also of necessity carry out their activities in a place, without this fact making them territorial or personal-territorial entities.

On the basis of the aforementioned conceptual canonical distinction between place and territory, I tend to think that territory is nothing more than an extrinsic and relative criterion for the delineation of a prelate's jurisdiction and the community that he governs, as the life of the Church itself has amply demonstrated; thus, it seems to me an exaggeration to draw ecclesiological consequences from the element of territory.<sup>21</sup> Territory and personal quality are determinant criteria that are often mixed: a territorial circumscription can have jurisdictional subdivisions based on personal criteria (e.g., the office of episcopal vicar for certain types of persons<sup>22</sup>), while personal jurisdictions can have territorial subdivisions (e.g., the personal prelature of Opus Dei is subdivided into Regions, Quasi-regions and Delegations; on the other hand, territorial circumscriptions also follow persons (it is enough to think of the relation of a priest with his diocese of incardination even when he is staying outside of it, or of the possibility of exercising executive power over those who are absent according to c.136, or in the binding force of certain particular norms even for those who are absent according to c.13, §2, 1<sup>o</sup>); personal circumscriptions can have territorial limits (e.g., within the geographical limits of a country)<sup>23</sup>. In fact, without leaving the canonical distinction between territory and place, it can be said that there are ecclesiastical circumscriptions that are both territorial and personal, like the case of Beirut (where within the same territory there exists five oriental and one apostolic vicariates) or that of the Apostolic Administration of Campos, as we shall see later.

It is natural that persons living within the same territory should form a single nation, even if there is no lack of examples of diverse peoples co-existing peacefully within the same territory. Thus, it is logical that the Church, which is a complex reality composed of human and divine elements<sup>24</sup>, is organized fundamentally on the basis of territory, without there being any dogmatic obstacle to its being organized on the basis of the different human groups that coexist in a given territory, as can be seen in the aforementioned paradigmatic case of Beirut.

## 2. The Nature of Cumulative Ecclesiastical Jurisdiction

On the bases of the foregoing considerations, I think that it can be said that the decisive factor in the circumscription of an entity is neither the territory nor the type of persons composing it, since—as previously mentioned—both criteria can be used simultaneously, and there seems to be

<sup>20</sup> Cf. A. VIANA, *Derecho canónico territorial...*, *cit.* (note 1), pp.302-304 and the bibliography cited therein.

<sup>21</sup> In this sense, cf. Javier OTADUY, *Territorialidad y personalidad son categorías jurídicas abiertas*, in *Ius Canonicum*, 42 [2002], pp.13-39 (also published in IDEM, *Fuentes, interpretación, personas. Estudios de Derecho canónico*, Pamplona 2002, pp.425-451).

<sup>22</sup> It is not strange that in a diocese there be a Vicar dedicated to a given category of persons. An extreme case was the constitution of an episcopal vicar within the territory of another diocese, tasked with the care of his proper clergy residing in this diocese (cf. ARCHBISHOP OF VALENCIA, Decree of 22.I.1995, appointing a personal episcopal vicar of the Archdiocese of Valencia for the priests residing in Rome, in *Boletín Oficial del Arzobispado de Valencia*, n.362 [January 1995], pp.22-24; also in *Ius Ecclesiae*, 8 [1996], p.383-384 and the commentary of this decree of H. FRANCESCHI, *A proposito della nomina di un vicario episcopale personale al di fuori del proprio territorio del Vescovo diocesano*, in *Ius Ecclesiae*, 8 [1996], pp.384-389).

<sup>23</sup> In the context of the oriental Churches, these considerations acquire special interest. Can 78, §2 of the Oriental Code establishes the principle that «potestas Patriarchae exerceri valide potest intra fines territorii Ecclesiae patriarchalis tantum», adding however that: «nisi aliter ex natura rei aut iure communi vel particulari a Romano Pontifice approbato constat». One has to add that it is easy to find such exceptions, precisely because a faithful of a ritual Church continues to pertain to that Church outside the territory where its corresponding hierarchy is established. Thus, e.g., c.829, §3 establishes that the Patriarch can bless a marriage «ubique terrarum» for as long as one of the spouses pertains to the Church which the former presides.

<sup>24</sup> Cf. VATICAN II, Const. *Lumen gentium*, n.8.

no substantial difference arising from the fact of having employed one or the other. To my mind, what has more theological and juridic relevance is the fact that the Church, once present and organized as a human group, can develop posteriorly in order to pastorally attend its faithful with greater efficacy, through the constitution of new pastoral tasks which in their turn create new communitarian entities which are delimited predominantly on the basis of the personal criterion.

In this regard, the very outline of the Decree *Christus Dominus* is quite expressive. Chapter I is dedicated to the role of the bishops with respect to the universal Church; Chapter II to the role of the bishops in relation to [with?] the particular Churches or dioceses; finally, Chapter III—entitled «*De Episcopis in commune plurium ecclesiarum bonum cooperantibus*»—contains a section which deals with the bishops who carry out an inter-diocesan function. In other words, after dealing with the position of the bishops relative to the universal Church and to the particular Churches, the conciliar decree returns to an aspect of the cooperation within the body of bishops, noting that the pastoral needs may demand the constitution of some organisms for the service of all or various dioceses within a given region or country, which can also be entrusted to the bishops<sup>25</sup>; in this context, the Council considered that the armed forces—with their special conditions of life—needed a special pastoral care, such that it stimulated the erection of what were then called military vicariates.<sup>26</sup>

Based on this conciliar decree, the subsequent development of the military jurisdiction serves to clarify the nature not only of the military ordinariates, but also of the other ecclesiastical circumscriptions that have the common characteristic of summing themselves to the numbers of particular Churches already in existence. Art.4 of the Apostolic Constitution *Spirituali militum curae*, issued by John Paul II on 21.IV.1986<sup>27</sup>, describes the power of the military Ordinary as personal, ordinary, proper and cumulative with that of the diocesan bishops. The novelty with respect to the law under Pius XII lies in constituting a jurisdiction that is proper instead of vicariate, which in its turn can be understood under the light of a conception of the episcopate that has hardly been considered: beyond the function that the bishops exercise in the Universal Church, even beyond the mission that they have in the particular Churches, it is opportune that there be interdiocesan episcopal functions for the pastoral good of the faithful, which needs special pastoral attention which pertains to various dioceses. Once the opportuneness of such functions (ecclesiastical offices), which can be entrusted to bishops, nothing stands in the way of their being constituted in a permanent way, and that the mission of fulfilling them be attributed to a proper Pastor, i.e., that he carried out his work with proper power of jurisdiction, without having to be based on the universal, direct and supreme power of jurisdiction of the Pope. By virtue of the power of the Roman Pontiff, such offices are constituted, but once instituted the Pope would not be the proper Pastor of such pastoral mission but rather whoever is appointed for them.

In any case, what I wanted to point out now is not so much the historical fact of having passed from a vicariate jurisdiction to a proper one, but rather that *Spirituali militum curae* contains various elements that help us understand what a cumulative jurisdiction is.<sup>28</sup> The expression *cumulative jurisdiction* was used for the first time in the erection of the Italian Military Ordinariate in 1940<sup>29</sup>, and the aforementioned Instruction *Sollemne semper* of 1951 applied it to all the military vicariates; but the actual Apostolic Constitution, in its art. 4, adds an interesting explanation when it affirms that the power of the military Ordinary is cumulative: «*nam personae ad Ordinariatum pertinentes esse pergunt fideles etiam illius Ecclesiae particularis cuius populi portionem ratione domicilii vel ritus efformant*» (italics mine). The jurisdiction is cumulative with

<sup>25</sup> Cf. VATICAN II, Decr. *Christus Dominus*, n.42.

<sup>26</sup> Cf. *ibid.*, n.43.

<sup>27</sup> Cf. *AAS*, 78 [1986], pp.481-486.

<sup>28</sup> As regards the history and concept of cumulative jurisdiction, cf. the documented study of C. SOLER, *Jurisdicción cumulativa*, in *Ius Canonicum*, 55 [1988], pp.131-180.

<sup>29</sup> Cf. *AAS*, 32 [1940], pp.280-281. This vicariate was called Ordinariate, a name which—as we observe—has subsequently been used for the other military Ordinariates (which has created some terminological problems, since this expression is not altogether euphonic in some countries) and other personal jurisdictions.

the local Ordinaries because such jurisdiction is over faithful who belong at the same time to the Ordinariate and to the Diocese—i.e., the double and simultaneous membership of the faithful to two ecclesiastical circumscriptions is the other side of the same coin of cumulative jurisdiction. In other words, over the same group of faithful, two jurisdictions are accumulated, which—as has been seen—does not imply a limitation of their freedom as faithful, but rather implies a right of choice for the faithful, who is free to receive the pastoral attention from the diocese where he resides or from the cumulative personal jurisdiction.<sup>30</sup>

It is important to point out that denoting a jurisdiction as cumulative does not imply any limitation of the power of the Ordinary over his circumscription. What is *cumulative* refers to the faithful, to whom is directed the pastoral care, but the jurisdiction of the military Ordinary is exclusive and not shared with the diocesan bishops. The latter have power of jurisdiction over the faithful of the Ordinariate, but not over the Ordinariate.<sup>31</sup> In the same way, we have to affirm that the presence of a cumulative jurisdiction does not take away anything from the diocesan Bishop, who continues being the sole Shepherd of his diocese, over which he has exclusive jurisdiction (what is not exclusive are the faithful).<sup>32</sup>

There are two other dispositions in *Spirituali militum curae* which are consequences of the phenomenon of cumulative jurisdiction. Art.7 juridically assimilates the military chaplains to the parish priests, and once again establishes the principle that their mission is cumulative with those of the parish priests (for the same reason that the jurisdiction of the military Ordinary is cumulative with that of the local Ordinary). Furthermore, Art. 5 disposes that in the military places, in the absence of the military Ordinary or chaplains, the diocesan Bishop and the parish priest act by proper right. The reason is clear: pastoral attention in such places corresponds to the military Ordinary and his chaplains, but in their absence the diocesan bishop and the parish priest act on proper right, because they too have pastoral responsibility over the same faithful.

The adjective *cumulative* refers to the jurisdiction of the military Ordinary, not to that of the diocesan bishops, although the fact is both jurisdictions fall on the same faithful. This is so, because the jurisdiction of the military Ordinary is added to that of the diocesan Bishop, not the other way around. It is the military Ordinariate which subsequently appears in the development of the ecclesiastical organization. A clear manifestation of this aspect of the nature of military Ordinariates (and other similar circumscriptions) is the fact that all the faithful of the Ordinariate are necessarily faithful of a diocese (while it cannot be said that the faithful of a diocese have to belong necessarily to any other ecclesiastical circumscription).

This characteristic has led a certain author to speak of “complementary structures” in order to refer to these circumscriptions and other phenomena distinct from the particular Churches.<sup>33</sup> The expression has the value of clearly manifesting that such circumscriptions are something added to

<sup>30</sup> Cf. C. SOLER, *Jurisdicción cumulativa*, cit. (note 27), p.137.

<sup>31</sup> Failure to take these distinctions into consideration explains the terminological vacillations that took place during the preparation of the Code. The Schema of 1977 talked of the Personal Prelatures *cum proprio populo* (among which were the hitherto military vicariates). When this expression was discarded, certain quarters concluded that the reason was to avoid its being confused the sense of having a “exclusive people”, and because it did not seem convenient to make the distinction between prelatures with its own people and those without, given that all prelatures must have a certain people (cf. **Communicaciones**, 12 [1980], p.279). For more on this subject, cf. A. VIANA, *Los ordinariatos militares en el contexto del Decreto “Presbyterorum ordinis” n.10*, in **Ius Canonicum**, 28 [1988], pp.735-736.

<sup>32</sup> Therefore, the principle sanctioned by Lateran Council IV and contained in the Decretals is not violated, which prohibited more than one head in each city or diocese (cf. X 1.31.14). The principle “*unum corpus diversa capita, quasi monstrum*” derives from the Council of Nicea, whose can. 8 (partially assumed in C.1 q.7 c.8) ends with the following rule (absent in the Decree): “*ne in una civitate duo episcopi probentur existere*” (cf. **Conciliorum Oecumenicorum Decreta**, G. Alberigo et.al. (eds.), Bologna 1991, p.10); for more information on and a juridic interpretation of this principle, and its historical application, *vid.* the documented study of O. CONDORELLI, **Unum corpus, diversa capita. Modelli di organizzazione e cura pastorale per una “varietas ecclesiarum” (secoli XI-XV)**, Rome 2002.

<sup>33</sup> Cf. J. HERVADA, **Elementos de Derecho Constitucional Canónico**, Pamplona 2001, p.297. Arrieta has proposed using the expression “subsidiary and complementary” (cf. J.I. ARRIETA, **Le circoscrizioni personali**, in **Fidelium iura**, 4 [1994], p.216).

the particular Churches formed in an initial moment of the ecclesiastical organization; however, it has the inconvenience—in my opinion—of being misunderstood as to imply that the particular Churches were incomplete until the creation of such entities. It is not easy to find an adequate expression in order to talk of this type of circumscriptions; perhaps one can speak of additional or cumulative circumscriptions (extending the use of this last term to apply not only to the jurisdiction but to the whole entity itself).

In any case, at the margin of the terminology used, it is interesting to underscore the phenomenon itself of the existence of missions and jurisdictions of an episcopal type relative to faithful belonging to diverse dioceses. This can only be understood in the light of the ecclesiology of the above-mentioned Decree *Christus Dominus* and the correlative constitutional principle of ecclesiastical organization, regarding the cooperation among the Pastors (since they all participate in the same finality consisting in the attainment of the *salus animarum*).<sup>34</sup> It corresponds to the legislator, guarantor of the *communio*, to regulate the exercise of jurisdictions, such that these serve the faithful in an orderly way, such as it has done for the military Ordinariates in the Apostolic Constitution *Spirituali militum curae* and in the Statutes of each Ordinariate. However, even if these juridic provisions are necessary, they should not end in conflict, as if their underlying principle were not one of cooperation but rather that of competence. In the case of the military Ordinariates, the pastoral care that is offered is complete (including the administration of Baptism, Confirmation, and solemnizing Marriage), such that *Spirituali militum curae* (Art.13, 6°) provides that the Statutes of each Ordinariate contain precise norms regarding the books of registry, according to the general laws and dispositions of the Episcopal Conferences. In other circumscriptions similar to the military Ordinariates, the pastoral activity may be more sectoral, for which these rules regarding the concurrence of jurisdictions are necessary, but the ecclesiological phenomenon of the personal circumscription added to the diocese is the same.<sup>35</sup>

It is important to point out that whether the jurisdiction is exclusive or cumulative, the faithful are at liberty to receive the greater part of the means of salvation from the Pastors that they deem opportune, as long as these are in communion with the Church. Only for some acts (e.g., celebration of marriage, determination of competent tribunal) would the juridic subjection to a specific jurisdiction be relevant.

To complete these considerations regarding the nature of cumulative jurisdiction, we need to point out that its presence means the convocation of a part of the Christian people, i.e., that the circumscriptions are neither just the jurisdiction of a Pastor, nor exclusively the clergy that collaborates with him, but also includes the faithful to whom the pastoral action is directed, since these latter are not mere passive subjects but rather form an integral part of the whole circumscription. Art. 9 of *Spirituali militum curae* contains an eloquent explanation along this line: citing c.208, it reminds the faithful that they should cooperate in the upbuilding of the Body of Christ, for which they ought to act as apostolic leaven among the other members of the armed forces.

In effect, one should not consider ecclesiastical circumscriptions—whether territorial or personal—mere jurisdictional structures, but should take into consideration their communitarian dimension. Even more, as regards the military ordinariates, it is interesting to point out that they have even been qualified by ecclesiastical authority as *particular Churches*, even if it does not seem

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<sup>34</sup> Cf. J. RATZINGER, *Chiesa universale e Chiesa particolare. Il compito del vescovo*, in IDEM, *La Chiesa. Una comunità sempre in cammino*, Cinisello Balsamo 1992, especially pp.68-74.

<sup>35</sup> Some canonists have talked of “mixed” jurisdiction (cf. D. CENALMOR – J. MIRAS, *El Derecho de la Iglesia. Curso básico de Derecho canónico*, Pamplona 2004, p.276), in order to explain those cases when there are more than one jurisdiction over the same subjects but where there is normally no matter over which there is a concurrence of more than one jurisdictions (as is the case with the Prelature of Opus Dei). In such cases, the nature of the jurisdiction of the Ordinary of the added circumscription is the same as that in the military Ordinariates, albeit the respective competencies may vary in extension. I find no inconvenience in calling the jurisdiction in these cases also *cumulative*, although not *concurrent*.

like such expression was used in a strictly theological sense.<sup>36</sup> In fact, there has not been a lack of authors who, from a theological viewpoint, have criticized this qualification as regards military Ordinariates.<sup>37</sup> Precisely because there is as yet no univocity in the use of the expression particular Church, not even on the part of the Magisterium and ecclesiastical legislation, I do not think it opportune at this time to go into this particular question.<sup>38</sup> However, this does not impede us from underscoring the ecclesial nature of these *additional* personal circumscriptions, while differentiating them—as has been proposed—from what would be *original* particular Churches.<sup>39</sup> That is to say, in these circumscriptions, there is a Pastor, helped by a presbyterium, to whom is entrusted a people, and in which are present the bonds of communion (*hierarchica* and *fidelium*) proper of the People of God, without forgetting that these *portiones Populi Dei* are composed of faithful who necessarily belong to an *original* particular Church.<sup>40</sup>

The characteristic of being something *added* explains why in these portions of the People of God, not all the elements found in the diocese may be found (e.g., consecrated life)<sup>41</sup>. In the same vein, taking this characteristic into account, the voluntary element needed to belong to these circumscriptions do not pose any problem.<sup>42</sup> Voluntariness, to be sure, is an essential element of all associative phenomenon, but is not exclusive to it. As experience has shown in some of these additional circumscriptions, voluntariness may be present also at the moment of choosing any

<sup>36</sup> Aside from the Apost. Const. *Spirituali militum curae*, which in its Art.2, §4 uses the expression “*inter Ordinariatum militare et alias Ecclesias particulares*” (emphasis is mine), John Paul II had referred on several occasions to the military Ordinariates as particular Churches (cf. Address to the participants of the Third International Congress of Military Ordinariates on 11.III.1994, in **La nuova evangelizzazione nel mondo militare. III° Convegno Internazionale degli Ordinariati Militari. 7-11 marzo**, Congregation for Bishops — Central Office for the Pastoral Coordination of Military Ordinariates (ed.), Vatican City 1994, pp.16-17 and *Discorso ai cappellani militari italiani*, 19.X.1995, in **L'Osservatore Romano**, 20.X.1995, p.5).

<sup>37</sup> Cf., e.g., H. LEGRAND, *Un solo obispo por ciudad...*, *cit.* (note 13), p.530.

<sup>38</sup> The Catechism of the Catholic Church (n.833) affirms that “the phrase *particular church*, which is first of all the diocese (or eparchy), refers to a community of the Christian faithful in communion of faith and sacraments with their bishop ordained in apostolic succession. Nevertheless, in other documents the expression *particular Church* is used in a different sense (cf., e.g., VATICANO II, Decr. *Orientalium Ecclesiarum*). It is significant that within the Code itself there are two distinct usages of this expression: in c.368 it is affirmed that particular Churches *are* the diocese and also other ecclesiastical circumscriptions enumerated therein, which—according to c.134,§1—are *equivalent* to particular Churches. Theological science can certainly contribute towards a terminological determination by the Magisterium; while doubtless desirable, this nevertheless cannot presume to acquire binding force. Regarding the different senses of the expression *particular Church*, cf. J.L. GUTIÉRREZ, *Las dimensiones particulares de la Iglesia*, in **Iglesia universal e iglesias particulares. IX Simposio Internacional de Teología**, Pamplona 1989, pp.251-272.

<sup>39</sup> Cf. A. VALLINI, *L'identità dell'Ordinariato Militare*, in **La nuova evangelizzazione...**, *cit.* (note 35), pp.39-69. On this subject, cf. also E. BAURA, *The Military Ordinariates From the Perspectives “Communio Ecclesiarum”*, in **Dieci anni dopo la promulgazione della Costituzione Apostolica Spirituali Militum Curae: Atti del Simposio Internazionale degli Ordinariati Militari, Buenos Aires 4-8 settembre 1996**, Congregation for Bishops — Central Office for the Pastoral Coordination of Military Ordinariates (ed.), Milan, pp.97-136.

<sup>40</sup> Although the conciliar Decree *Christus Dominus*, n.11 defines the diocese as a *portio Populi Dei*, I do not think that this expression needs be exclusive to the diocese, but is rather applicable to all ecclesiastical entities wherein the dimensions proper to the People of God can be found. These, in my opinion, exist when the elements of Pastor, presbyterium and faithful are present—insofar as there is truly an organic cooperation between the common priesthood and the ministerial priesthood—, even if the fullness of ecclesial life (i.e., totality of sacramental life, capacity to receive all kinds of charisms, etc.), characteristic of the diocese, may not be present. This notion of portion of the People of God is maintained by J. HERVADA, *Elementos...*, *cit.* (note 32), pp.285-288.

<sup>41</sup> On the note of *catholicity* applied to particular Churches, cf. the magisterial documents and the arguments of some theologians presented in A. CATTANEO, *La Chiesa locale...*, *cit.* (note 11), pp.174-189.

<sup>42</sup> On the voluntariness in ecclesiastical entities and its diverse roles in hierarchical ecclesiastical entities and in the associative entities, in a critical dialogue with the theory of Aymans, (cf. *supra*, note 15), *vid.* C.J. ERRÁZURIZ M., *La distinzione tra l'ambito della Chiesa in quanto tale e l'ambito associativo e le sue conseguenze sulla territorialità o personalità dei soggetti ecclesiali transpersonali*, in **Territoriality and Personality in Canon Law and Ecclesiastical Law: Proceedings of the 11<sup>th</sup> International Congress of Canon Law and of the 15<sup>th</sup> International Congress of the Society for the Law of the Eastern Churches. Budapest 2-7 September 2001**, P. Erdő – P. Szabó (eds.), Budapest 2002, pp.157-167. Cf. also J. MIRAS, *Objetividad de los criterios canónicos de delimitación de circunscripciones eclesíasticas*, *ibid.*, pp.478-488.



ecclesiastical circumscription; in contrast, it is not present at the moment of the establishment of such circumscription, which is not produced by virtue of the will of its members.

### 3. Types of personal ecclesiastical circumscriptions.

After considering the principal points which are at the foundation of personal ecclesiastical circumscriptions, we can briefly examine the different types of such circumscriptions existing actually in Canon Law.<sup>43</sup>

#### a) Personal Prelatures

The Code of Canon Law for the Latin Church, aside from the general disposition of c.372, §2—which admits, by way of exception, that the Holy See, after hearing the pertinent Episcopal Conference, can erect in the same territory “*Ecclesiae particulares ritu fidelium aliave simili ratione distinctae*” (which has led to the expression personal diocese<sup>44</sup>)—expressly regulates only the figure of the personal prelatures (cc.294-297).<sup>45</sup>

The personal prelatures have been the object of much attention on the part of those in charge of the material redaction of the Code, and later on the part of canonistic doctrine. It seems logical that a new figure, which responds to a new ecclesiological and pastoral vision of the ecclesiastical organization, has provoked some doubts at the moment of preparing the actual Code, since the codification technique requires the formulation of brief definitions and classification, which are difficult to elaborate in general, and much more so in the case of new juridic institutions.<sup>46</sup> Besides, the contemporaneous erection of the first personal prelature has created certain confusions in some people, for failing to capture the essence of the apostolic phenomenon of Opus Dei.<sup>47</sup> In this study, it is not possible to analyze in detail all the questions that have been raised by canonistic doctrine; hence, I will limit myself to make a quick sketch of some characteristics of this type of circumscription which, in my opinion, may be considered as certain.<sup>48</sup>

Almost textually reproducing the Motu Proprio *Ecclesiae Sanctae*<sup>49</sup>, which operationalized the indications of the conciliar Decree *Presbyterorum ordinis*, n.10, the Code gives some dispositions from which we can deduce certain characteristics of these entities. Can. 294 establishes that the Holy See, after having heard the Episcopal Conferences involved, can erect personal prelatures—for a better distribution of priests or to carry out peculiar pastoral or missionary tasks in favor of diverse regions or for diverse social groups—which shall be composed of priests and

<sup>43</sup> Regarding the types of ecclesiastical circumscriptions in general, a very thorough and useful study is that of J.I. ARRIETA, *Chiesa particolare e circoscrizioni ecclesiastiche*, in *Ius Ecclesiae*, 6 [1994], pp.3-40.

<sup>44</sup> Regarding personal dioceses and particularly regarding the discussions on the subject during Vatican II, cf. A. VIANA, *Derecho canónico territorial...*, *cit.* (note 1), pp.137-188. Cf. also J.I. ARRIETA, *Diritto dell'organizzazione ecclesiastica*, Milan 1997, pp.360-361.

<sup>45</sup> The Code for the Oriental Churches contemplates the possibility that the eparchy be “*territorialiter vel alia ratione circumscripta*”. Regarding personality in the oriental ecclesiastical organization, cf., P. GEFAELL, *Enti e Circoscrizioni meta-rituali nell'organizzazione ecclesiastica*, in *Ius Canonicum in Oriente et Occidente. Festschrift für Carl Gerold Fürst zum 70. Geburtstag*, H. Zapp – A. Weiß – S. Korta (eds.), Frankfurt 2003, pp.493–508.

<sup>46</sup> For more substantial and detailed bibliographies regarding the questions that arose during the elaboration of cc.294-297, and the principal pertinent doctrinal positions, *vid.* E. BAURA, *Le attuali riflessioni della canonistica sulle prelature personali. Suggestioni per un approfondimento realistico*, in *Le prelature personali nella normativa e nella vita della Chiesa*, Venezia. Scuola Grande di San Rocco, 25-26.VI.2001, S. Gherro (ed.), Padua 2002, pp.15-53.

<sup>47</sup> Cf. the different aspects dealt with in *Studies on the Prelature of Opus Dei. On the Twenty-Fifth Anniversary of the Apostolic Constitution Ut sit*, translated and edited by P. Hayward, Montreal 2009.

<sup>48</sup> A clear description of the Code's regulation of Personal Prelatures can be found in J. HERVADA, *sub Título IV Las prelaturas personales*, in *Comentario Exegético al Código de Derecho Canónico*, A. Marzoa - J. Miras - R. Rodríguez-Ocaña (eds.), Vol.I, Pamplona 2002<sup>3</sup>, pp.398-417 (*sub Title IV The Personal Prelatures*, in *Exegetical Commentary on the Code of Canon Law*, A. Marzoa - J. Miras - R. Rodríguez-Ocaña (eds.), Vol. II/1, Montreal-Chicago 2004, pp.413-435).

<sup>49</sup>Cf. PAUL VI, Motu proprio *Ecclesiae Sanctae*, 6.VIII.1966, I, 4 (AAS, 58 [1966], pp.760-761).

deacons of the secular clergy. The following canon clarifies that the regimen of each personal prelatore shall be determined by the statutes given by the Holy See at the moment of its erection, and establishes that personal prelatres are governed by a Prelate as proper Ordinary, expressly recognizing his faculty to erect a seminary and to promote its students to sacred orders, incardinating the ordained clerics for the service of the prelatre.<sup>50</sup> Can. 296 talks of the possibility that laypersons enter into a contract with the prelatre in order to dedicate themselves to the mission of the prelatre, being to cooperate organically with it. Finally, c.297 requires that the statutes of each prelatre define the relationship with the dioceses in which it works with the prior consent of the diocesan Bishop.

Personal prelatres are, therefore, governed by a Prelate with proper power. In the mission entrusted to him, the Prelate is helped by his presbyterium. Even if the Code does not expressly provide for it, I do not find any inconvenience in that there be priests (secular or religious) who collaborate with the Prelate without being incardinated to the prelatre. Those who are incardinated to the prelatre are, logically, of the secular clergy and they are incardinated to serve the mission of the prelatre.

Some authors have interpreted c.294, which affirms that the personal prelatre is composed of priests and deacons of the secular clergy, to mean that it is an entity composed solely of clerics. This interpretation would be reinforced by the fact that c.296 mentions the possibility that laypersons may cooperate organically with the prelatre, as if this cooperation might be a collaboration with a task which in itself were purely clerical.<sup>51</sup> Many authors have rejected this interpretation<sup>52</sup>, which besides is belied in the realm of positive Law by the fact that the personal Prelature of Opus Dei, which is the only one existing up to the moment, is composed of a Prelate, the presbyterium, and the faithful who have voluntarily incorporated to it.<sup>53</sup> The hypothesis that Opus Dei were in this point an exception to the Code's figure of a personal Prelature is unsustainable, because were this the case, the exception would become an essential constitutive

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<sup>50</sup> Can.295 talks of the possibility of incardinating the students of the seminary. Evidently, here we have to make a corrective interpretation: the clerics, who were former seminarians, could be incardinated.

<sup>51</sup> The autor who has sustained this thesis with most insistence is G. GHIRLANDA (cf. for example, *Natura delle prelatre personali e posizione dei laici*, in *Gregorianum*, 69 [1988], pp.299-314), who goes so far as to affirm that Prelatures are incardinating entities of an associative nature, given that belonging to it is always voluntary.

<sup>52</sup> **Authors from different eclesial and academic backgrounds have rejected this thesis. For example**, A.M. PUNZI NICOLÒ (*Libertà e autonomia negli enti della Chiesa*, Turin 1999, pp.205-206) has noted that the hypothesis considering Personal Prelatures as clerical entities supposes a restrictive and unreal vision; on the other hand, the impossibility of confusing Personal Prelatures with associative entities had been demonstrated by A. STANKIEWICZ (*Le prelatre personali e i fenomeni associativi, en Le prelatre personali nella normativa...*, *cit.* [note45], pp.137-163). Of great interest are the considerations proposed by D. JAEGER in his review of the aforementioned work *Le prelatre personali nella normativa e nella vita della Chiesa* (cf. note 45), in *Ius Ecclesiae*, 15 (2003), pp.497-507. As regards the Episcopal mission of the Prelate, cf. V. DE PAOLIS, *Nota sul titolo di consacrazione episcopale*, in *Ius Ecclesiae*, 14 (2002), pp.59-79. On the hierarichical nature of this type of entities, cf. J. ACHACOSO, *The Hierarchical Nature of Personal Prelatures*, in *Philippine Canonical Forum*, 7 (2005), pp.29-64.

<sup>53</sup> Cf. JOHN PAUL II, Apost.Const. *Ut sit*, of 28.XI.1982, in *AAS*, 75 (1983), pp.423-425. Cf. also *Codex Iuris Particularis seu Statuta Praelaturae Sanctae Crucis et Operis Dei* (the Statutes of the prelatre of Opus Dei), in A. DE FUENMAYOR – V. GÓMEZ-IGLESIAS – J.L. ILLANES, *The Canonical Path of Opus Dei: the History and Defense of a Charism*, translated by W.H. Stetson, Princeton 1994), Appendix n.73. In an Address of 17.III.2001, John Paul II affirmed: "...the components by which the Prelature is organically structured, that is, priests and lay faithful, men and women, with its own Prelate as head. This hierarchical nature of Opus Dei, established in the Apostolic Constitution with which I erected the Prelature (cf. Apostolic Const. *Ut Sit*, Nov. 28, 1982), offers a starting point for pastoral considerations that are rich in practical applications. In the first place, I wish to emphasize that the membership of the lay faithful in their own particular Church, and in the Prelature through their incorporation in it, means that the specific mission of the Prelature converges with the evangelizing efforts of each particular Church, just as the Second Vatican Council foresaw when it first envisaged Personal Prelatures" (in *Romana. Bulletin of the Prelature of the Holy Cross and Opus Dei*, n. 2, p.38; Original version in *L'Osservatore Romano*, 18.III.2001, p.6).

element of the entity, which would in fact convert it to another type of entity; such exception would constitute a serious legislative inconsistency.<sup>54</sup>

From a merely methodological standpoint, one has to start with the idea that it is not correct to admit an interpretation of personal Prelatures that would arrive at the conclusion that these entities are neither prelatures nor personal. In the context of canon law, the term *prelature* means a circumscription governed by a prelate; the adjective *personal* is added because the criterion for delimitation is not territorial but personal. Now then, this adjective would be senseless were there to be no people circumscribed by a personal criterion, a people composed of a community of faithful who cannot be considered as mere destinataries of the pastoral action of the prelate, but are rather living members of the Church and, consequently, of the prelate as well.<sup>55</sup>

I think that a possible source of the equivocation has been an exclusively literal Reading of c.294 (which affirms that the personal prelate is composed of priests and deacons of the secular clergy) in relation with the possibility (contemplated by c.296) that laypersons may cooperate organically through some agreement, such that one may arrive at a concept of the prelate as something which is essentially clerical, with which laypersons may cooperate. But this Reading, which presents serious ecclesiological problems (e.g., How is it possible that there be a group of diocesan priests who do not have the function of collaborating with a Bishop in the specific mission entrusted to it by the Church in favor of some faithful?), yields a notion of the personal prelate which is almost confused with that of a society of apostolic life. This in turn would imply confusing a development of the pastoral ecclesiastical organization pastoral with an initiative of clerics directed towards a specific finality which they can attain by associating themselves. We have to take note that the Code does not affirm only that personal prelatures are composed of priests and deacons, but rather that its more important disposition is that such priests and deacons be from the ranks of the secular clergy. We need to read the explanation contained in the Code, as c.6, §2 established, in relation with its immediate legislative precedent—i.e., the Code of 1917—which distinguished two types of prelatures: the secular and the religious (c.327, §1). Both had people: the *religious prelatures* were so called because they were composed of religious clergy, which did not mean that they did not have the normal Christian faithful (who were logically not religious). Now then, c.294—which comes from the *Motu Proprio Ecclesiae Sanctae* (promulgated during the life of the Pio-Benedictine Code)—in order to explain the new figure of personal prelatures, affirms that these are composed of secular clergy—i.e., that they are secular prelatures—and adds that they are personal because the people are circumscribed by a personal criterion. Furthermore, as is provided for in the *Spirituali militum curae* (Art.10, 4<sup>o</sup>) for the military Ordinariates, it is possible that faithful—who may already belong to the prelate or who may have relations with it through this way—enter into agreement with the Prelature in order to collaborate with it. However, these agreements are not an essential element of every personal prelate; what is essential is that there be faithful belonging to the personal Prelature, whether incorporated to it through some agreement, or through the determination of the Church authority in the act of erection of the circumscription.<sup>56</sup>

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<sup>54</sup> The prohibition against dispensing from so-called *constitutive laws* (c.86) is applicable also to the legislator, including the supreme legislator, since this is not any more a question of the *potestas* but of coherence. Constitutive laws are precisely those which have a virtual invalidating capacity, which makes any contrary act invalid (or non-existent, according to the conception of some authors): cf. A. BRESSAN, *De inexsistentia et nullitate actus iuridici in CIC*, in *Periodica*, 59 [1970], p.471; W. ONCLIN, *De requisitis ad actus iuridici existentiam et validitatem*, in *Studi in onore di Pietro Agostino d'Avack*, Vol.3, Milan 1976, p.405 and O. ROBLEDA, *La nulidad del acto jurídico*, Roma 1964, pp.208-211.

Regarding the impossibility of erecting the first Personal Prelature against the tenor of the Code's regulation, vid. the unassailable arguments of G. LO CASTRO, *Prelature personali. Profili giuridici*, Milano 1999<sup>2</sup>, *passim*.

<sup>55</sup> The finality of a better distribution of the secular clergy is not an alternative, but is rather complementary to the need to carry out peculiar pastoral tasks. Regarding this matter, cf. E. BAURA, *Le dimensioni "comunionali" delle giurisdizioni personali cumulative*, in *Territoriality and Personality...*, *cit.* (note 41), pp.427-439.

<sup>56</sup> In the case of the Prelature of Opus Dei, the people are the same who freely decide to carry out those agreements. This is a new phenomenon, but neither unique nor incompatible with the constitution of the Church. In fact, aside from the case of the Apostolic Administration of Campos, the personal Ordinariates projected for the faithful

In summary, personal Prelatures are personal circumscriptions which are added to the dioceses in order to attend to peculiar pastoral needs of faithful belonging to different dioceses, governed by a Prelate as its proper Ordinary, who is helped in his pastoral task by its own presbyterium.<sup>57</sup> The circumscription described by the Code is thus a model for other types of personal circumscriptions, which are added or *cumulated* to the particular (*primary*) Churches. Thus, after considering the figure of the personal Prelature, the examination of the other types of personal circumscriptions can be made faster.

### b) The Military Ordinariates

I do not think it is necessary to dwell much on this figure, since it has been used as a prototype of the cumulative jurisdiction—i.e., of personal circumscriptions which are added to the dioceses. It would be enough to briefly point out some characteristics, following the text of the Apostolic Constitution that regulates them.

According to Art.1, §1 of *Spirituali militum curae*, military Ordinariates are peculiar ecclesiastical circumscriptions juridically similar to the dioceses, which are governed (aside by the universal legislation) by statutes given by the Holy See, and which are erected—as mentioned in the *Proemio* of the Constitution—in order to meet the special pastoral needs of the faithful in the military arising from their peculiar conditions of life. They are governed by a proper Ordinary, who is normally a bishop, who—even if they may not be bishops—are assimilated to the diocesan Bishop, except when the nature of the matter or a dispositive law establishes the contrary (Art.2, §1). His power is proper, personal and cumulative (Art.4).

*Spirituali militum curae* enumerates the faithful who belong to the Ordinariate (members of the Armed Forces, their relatives, those who frequent the military centers, those who exercise some office in the Ordinariate with the permission of the Ordinary), aside from those who the Statutes may determine. As already mentioned, these faithful continue belonging to the dioceses where they reside.

The presbyterium of the Ordinariate is composed of the clerics incardinated to it and those (secular or religious) who carry out a task therein (Art.6). The military chaplains are assimilated to the parish priests (Art.7), except when the nature of the matter or the statutes warrant otherwise, which would mean that such chaplains are capacitated to administer the same sacraments as the parish priests, i.e., the cumulation of the jurisdiction of the military Ordinary with that of the diocesan Bishop is complete.

The similarities of the Ordinariates with the canonical figure of Personal Prelatures are[?] evident. In fact, during the initial stages of the elaboration of the New Code, the then military vicariates were considered as the prototype of personal prelatures. After doubts—regarding the theological and juridic nature of personal prelatures—arose in the last stage of the codification process, the legislator opted to exclude the military jurisdiction from the Code (thus avoiding putting the former in a specific framework), remitting itself to a posterior legislation for the

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coming from Anglicanism have the same criterion for the delimitation of the people. Regarding the manner of delimiting the people in the case of the prelature of Opus Dei, cf. G. COMOTTI, *Somiglianze e diversità tra le prelature personali ed altre circoscrizioni ecclesiastiche*, in *Le prelature personali nella normativa...*, cit. (note 45), pp.79-114, especially 107-112.

<sup>57</sup> Aside from the pastoral attention for the apostolic phenomenon of Opus Dei, the figure of the Personal Prelature has usually been thought of as a possible solution for the pastoral needs derived from human mobility (cf., for example, P.A. BONNET, *The fundamental duty-right of the migration faithful*, in *Migrazioni. Studi interdisciplinari*, Pontificia Commissione per la Pastorale delle Migrazioni e del Turismo [ed.], Centro Studi Emigrazioni, Rome 1985, Vol.1, p.209 and S. TOMASI, *La missione del Pontificio Consiglio alla luce di una inchiesta presso le Conferenze Episcopali – attese e proposte*, in *La missione del Pontificio Consiglio della Pastorale per i Migranti e gli Itineranti nel crescente fenomeno odierno della mobilità umana. Atti della XII Riunione Plenaria, Vaticano 19-21 Ottobre 1993*, Pontificio Consiglio della Pastorale per i Migranti e gli Itineranti [ed.], Vatican City, p.140). Cf. Also JOHN PAUL II, Apost.Exhort. *Ecclesia in America*, 22.I.1999 (AAS, 91 [1999], pp.737-815), n.65, Note 237 and IDEM, Apost.Exhort. *Ecclesia in Europa*, 28.VI.2003 (AAS, 95 [2003], pp.649-719), n.103, Note 166.

regulation of the military chaplains (c.569). Through this Instruction, a new type of ecclesiastical circumscription was thus created, denominated with an expression used in 1940 for the military jurisdiction in Italy, which has now been defined with greater precision than what would have been possible in the brief formulation of the Code.

This type of circumscription does not have to follow the requirement of c.297 for personal prelatures of securing the consent of the diocesan Bishop in order to exercise its activities, since the Ordinariates are erected normally after an agreement of an international character between the Holy See and the political authority of the respective country, such that the Church is obliged to carry out this peculiar pastoral work in all the territory of the country. On the other hand, taking into consideration the characteristics of the pastoral work with the military, the faculty to erect a seminary remains subject to the prior approval of the Holy See (Art.6, §3 of *Spirituali militum curae*). Aside from these small details of divergence, it is good to underscore the substantial identity between military Ordinariates and the figure of the Personal Prelature outlined in a general way in the Code, as a personal circumscription, added to already existing particular Churches, in order to carry out a special pastoral work.<sup>58</sup>

### c) Ritual Ordinariates

A kind of ecclesiastical circumscription, not foreseen in the Code or in any other general norm, is that of the *ritual* Ordinariates, i.e., Ordinariates set up to take care of the faithful belonging to the Oriental rite in countries where the corresponding oriental hierarchy does not exist.<sup>59</sup> Already at the time of the celebration of Vatican Council II, there were five Ordinariates of this type.

In these Ordinariates, the *cura animarum* of the faithful belonging to the Oriental rite in a given nation is entrusted to a Pastor of the Latin rite, who is invested with proper power of jurisdiction. This Ordinary would normally be *pro tempore* the Bishop of the national capital.

Since there is no general norm regarding this kind of Ordinariate, in order to define well their physiognomy one needs to consider the dispositions given for each one of them in their respective acts of erection. In my opinion, the difference that marks the essential distinction between some Ordinariates and others consists in that in some the jurisdiction is expressly stated as cumulative and norms are given for the coordination of the exercise of such power<sup>60</sup>; while in others the jurisdiction is expressly declared as exclusive.<sup>61</sup>

In the case of the Ordinariates with exclusive jurisdiction, the term Oriental eparchy is not used, since faithful from different ritual Churches can belong to them. Of course, exclusive jurisdiction does not mean that the faithful do not enjoy the freedom to participate in the life of the Latin Churches; hence, a relation of communion in fact could exist between these faithful and the dioceses.

### d) The Apostolic Administration of Campos

With a Decree of 18.I.2002, the S.C. for Bishops erected the Personal Apostolic Administration of S.John Maria Vianney of Campos (Brasil).<sup>62</sup> The erection was preceded by a "Pontifical Autographed Letter to the Brazilian Bishop Msgr. Licinio Rangel and the Union of St. John Maria Vianney," of 25.XII.2001, in which John Paul II sketched the principal provisions of the solution so that the schismatic traditionalist Bishop, the Union of priests and faithful who followed

<sup>58</sup> Cfr. J. ACHACOSO, *Los Vicariatos castrenses. (Su naturaleza en el pasado y en el presente)*, in *Excerpta e dissertationibus in iure canonico*, 5 (1987), pp. 173-244.

<sup>59</sup> Cfr. J.I. ARRIETA, *Chiesa particolare e circoscrizioni ecclesiastiche*, cit. (nt. 42), pp. 31-33.

<sup>60</sup> For example, in France (cf. S.C. FOR THE ORIENTAL CHURCHES, Decree 27.VII.1954 [AAS, 47 (1955), pp. 612-613]).

<sup>61</sup> For example, the Argentine Ordinariate (cf. S.C.FOR THE ORIENTAL CHURCHES, Decree 19.II. 1959 [AAS, 54 (1962), pp. 49-50]).

<sup>62</sup> AAS, 94 (2002), pp. 305-308.

him, could return to full communion with the Catholic Church.<sup>63</sup> In this letter, the Pope announced that an Apostolic Administration, of a personal character, but with territory in Campos, which would depend directly on the Holy See, and with a jurisdiction that is cumulative with the local Ordinary.

We are dealing with a circumscription, created in order to resolve a specific case, which does not correspond exactly to any of the types of personal circumscription that we have considered up to now.<sup>64</sup> The Code (c.371, §2) talks of Apostolic Administrations as portions of the People of God that, for especially serious reasons, are not erected as dioceses, but are entrusted to an Apostolic Administrator who should govern it in the name of the Supreme Pontiff. In the case of the Administration of Campos, the quality that differentiates it from the Code's figure is not so much the personal jurisdiction, but above all that such jurisdiction is cumulative.<sup>65</sup>

One of the elements of this circumscription that merit a closer study is the power of the Apostolic Administrator. Art.5 of the Decree from the S.C. for Bishops, very similar to Art.4 of the *Spirituali militum curae*, affirms that the Apostolic Administrator has jurisdiction which is personal, ordinary and cumulative. Nothing is said whether this power is proper or vicariate. Now, what is characteristic of an *Apostolic Administration* is that it is governed in the name of the Roman Pontiff (c.371, §2), but Art.4 of the Decree in question affirms that the entity is entrusted to an Apostolic Administrator «*sui veluti Ordinarii proprii*». Thus, the nature of the power—whether it is proper or vicariate—remains unclear, although what would be decisive is to determine the extent of the need for the consent of the Holy See for the governance of the circumscription.

The power is clearly defined as personal, albeit limited to the area of the diocese of Campos. In my opinion, it is correct to classify it as personal, since the primary criterion for its delimitation (in contrast to that of the diocesan Bishop of Campos) is personal, even if in this precise case it is correct to say that such jurisdiction is also territorial, given that it is confined to the territory of a single diocese.

The jurisdiction is cumulative, and in this the Decree of erection clearly follows the pattern of the Apostolic Constitution *Spirituali militum curae*. In effect, it is also explained in this case that the term *cumulativa* refers to the fact that the faithful continue to belong to the particular Church of Campos. Although the Decree of the S.C. for Bishops does not foresee it, I think that it is possible for faithful, who habitually reside in other dioceses, to incorporate themselves to this Administration, and such a case, they would belong to the diocese of domicile and to the Personal Administration of Campos, insofar as they enter into relations with it.

There are other aspects of the Apostolic Administration worthy of study (the composition of its clergy and its relationship with the diocesan clergy, the use of the liturgy of S.Pius V), but this goes beyond the limits of this study. In any case, it is good to point out the mode of determining the people of the Apostolic Administration. Art.9 establishes that—aside from those who receive

<sup>63</sup> AAS, 94 (2002), pp. 267-268.

<sup>64</sup> For a commentary on this ecclesiastical circumscription, cf. L. LANDETE CASAS, *La atención pastoral de los fieles tradicionalistas: garantías para su plena inserción en la comunión eclesial*, in *Fidelium Iura*, 11 [2001], pp.169-192 (with an interesting reference to the history of this circumscription); P. KRÄMER, *Die Personaladministration im Horizont des kirchlichen Verfassungsrechts*, in *Archiv für katholisches Kirchenrecht*, 172/1 (2003); pp.97-108; G. INCITTI, *Note sul decreto di erezione dell'Amministrazione apostolica personale S. Giovanni Maria Vianney*, in *Ius Ecclesiae*, 14 [2000], pp.851-860.

<sup>65</sup> For P. KRÄMER (*Die Personaladministration...*, *cit.* [nt. 63], p.102), this Administration is a particular Church, by the fact of its being classified as apostolic Administration (and c.368 includes this figure among particular Churches). It seems to me, in this case, that one could draw many conclusions regarding the essence of the entity starting from the *nomen iuris*. The same author (*ibid.*, p.105) excludes the possibility of it being a Personal Prelature, on the ground that this type of circumscription would be directed towards a special end of the Universal Church, despite the fact that there are elements that make the two figures similar to each other (proper Ordinary, right to erect a seminary and to incardinate, laypersons who are bound to cooperate). On my part, aside from thinking that the finality of Personal Prelatures should be determined better, I think that the difference between the two figures lies rather in the fact that the Administration of Campos is conceived precisely as an *Apostolic Administration*, which implies special and—in a certain sense—transitory circumstances, aside from the fact that it is limited to a single diocese.

baptism in it—forming part of the Apostolic Administration are those faithful who have manifested in writing the will to belong to that circumscription, such that it is necessary to keep a registry thereof (which would be decisive for the validity of marriage or for determining the competence of tribunals in the case that the Administrator erects one, according to Art.12). Even if such a hypothesis is not expressly foreseen, I think that such membership in the Administration can be cancelled if the interested party asks for it in writing, since the incorporation was likewise voluntary (respecting whatever rights of the Administration or of third parties there might be).

## II. THE CASE OF THE PERSONAL ORDINARIATES FOR FAITHFUL FROM THE ANGLICAN COMMUNITY

On 9.XI. 2009 was published Benedict XVI's Apostolic Constitution, *Anglicanorum coetibus*, dated 4.XI.2009, which provided for the erection of Personal Ordinariate for the faithful coming from the Anglican communion. At this writing, the Constitution had not yet been *promulgated* in the official bulletin *Acta Apostolicae Sedis*, as provided by c.8, §1. Hence, I shall be referring to the text that has been distributed in the vernaculars.

In the *Proemio* of the Apostolic Constitution and in its Art.2, mention was made of Complementary Norms issued by the Congregation for the Doctrine of the Faith. These Norms—approved in generic form by the Roman Pontiff—go beyond the content of an general executive decree, which are the type of norms that fall under the ordinary competence of this Dicastery; but given that they were expressly mentioned in the Constitution, it does not seem possible to doubt the validity of such Norms. This could be interpreted as a case of a delegation *a lege* of the legislative power in favor of the Congregation (even if the limits of the delegation are not clear). Hence, I shall take into account also those Norms when I comment on the new figure of the Personal Ordinariates.

As is well-known, the new legislation has come to answer the need of facilitating the full ecclesiastical communion of different groups of Anglicans. The Informative Note of the Congregation for the Doctrine of the Faith, regarding the new Apostolic Constitution and released 20.X.2009, clearly affirms that the projected norms responds to numerous petitions by groups of faithful. Up until now, aside from the individual reception to the Catholic Church, some Anglican groups have entered come to full communion with the Church while conserving in some way their identity and traditions, like the Anglican diocese of Amristar in India; in the United States, there exists the so-called *Pastoral Provision*, through which some Anglican parishes have passed into full communion by becoming personal parishes of the Catholic Church, the pastors of which were the same Anglican pastors they previously had.<sup>66</sup> Obviously, the anticipation of new adhesions demand a general normative provision.

I think that we need to underscore the ecumenical end of the new norms, since they offer the hermeneutic key towards a better understanding not only of some aspects that have been the object of interest on the part of public opinion (e.g., the admission of married priests), but also the characteristics of the projected Ordinariate. In effect, I think it is evident that the will of the Roman

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<sup>66</sup> Regarding the concrete case of Anglicans who have been incorporated to full communion in the Catholic Church, cf. the doctoral thesis, defended in the Pontifical University of the Holy Cross, of J.M. SHEEHAN, *A New Canonical Configuration for the "Pastoral Provision" for Former Episcopalians in the United States of America?*, Rome 2009.

Pontiff is to do whatever is possible in order to bring about the full communion of those faithful who desire it.<sup>67</sup>

*Anglicanorum coetibus* presents many points for consideration, since it regulates different aspects of the life of the communities that will be passing to full communion. We shall limit ourselves here with the study of the nature of the personal Ordinariates as ecclesiastical circumscriptions. Keeping in mind what has been previously discussed, it would be sufficient to underscore certain points, which to my mind are of greater importance in the context of a first reading. Without doubt, the doctrinal reflections that presumably will be published in the near future regarding this novel figure, shall enrich our knowledge regarding the nature of these Ordinariates.

The Apostolic Constitution starts by affirming that the Ordinariate are erected by and depends on the Congregation for the Doctrine of the Faith (Art.1, §1), except on those things that correspond to other Dicasteries *ratione materiae* (Art.2, §1). Putting aside the question of the new competence of the aforementioned Dicastery (which implies a noteworthy change in the organization of the Roman Curia, since a Dicastery erstwhile dedicated to doctrinal matters now becomes competent to erect and coordinate ecclesiastical circumscriptions), it is interesting to note how the dependence on the Holy See would be determined, keeping in mind that Art.5 of the Constitution qualifies the jurisdiction of the Ordinary as vicariate. The government of the Ordinariate will therefore be exercised in the name of the Roman Pontiff, who will be the one to sustain—with his power—the direction of the entity. The relations of the Ordinary with the Pope (and with the Holy See) are not exactly the same as those of the proper Ordinaries. The power of the Pope over these entities is not only that which corresponds to the papal primacy, but rather that corresponding to being the proper Pastor of the circumscription. Thus, the relationship of the Ordinariate with respect to the Holy See is a true dependence, and not a mere subordination to the supreme power of the Church.<sup>68</sup>

Art.1, §3 affirms that the Ordinariates are juridically assimilated to the diocese. In fact, the vicarious power of the Ordinary limits this assimilation to a great extent, such that this disposition has a lesser reach than the corresponding disposition of the Apostolic Constitution *Spirituali militum curae*. To be sure, such assimilation has the natural limitation of any juridic analogy: the nature of the case and the possible contrary dispositions, which in the case of the Ordinariate for the faithful coming from Anglicanism are noteworthy (the Ordinary may not necessarily be a bishop, there are some particular disposition regarding organs of government, etc.).<sup>69</sup>

Aside from qualifying the power of the Ordinary as ordinary, vicarious and personal, Art.5 of *Anglicanorum coetibus* disposes that it is exercised jointly[to follow the expression of the English version of the Ap. Cost.] with the diocesan Bishop in the cases foreseen by the *Complementary Norms*. And Art.8, §2 establishes that the parish priests of the Ordinariate exercise their ministry, in mutual pastoral help with the parish priests of the diocese in whose territory is found the personal parish of the Ordinariate. On its part, Art.3 of the *Complementary Norms* disposes that the Ordinary should keep close bonds of communion with the diocesan Bishop and coordinate his action with the pastoral plans of the diocese; Art.5, §2 of the same Norms establish that when the faithful of the Ordinariate collaborate in pastoral or charitable activities, whether

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<sup>67</sup> I think that this should be the prism through which the much commented norms regarding married clergy should be read (Art.6 of the *Apostolic Constitution* and Art.6 of the *Complementary Norms*), as well as—for example—the prerogatives of those who were erstwhile Anglican bishops (Art.11 of the *Complementary Norms*).

<sup>68</sup> On the nature of vicarious power, cf for example, A. VIANA, *Naturaleza canónica de la potestad vicaria de gobierno*, in *Ius Canonicum*, 28 (1988), pp. 99-130.

<sup>69</sup> Regarding juridic analogy, cf. C.J. ERRÁZURIZ, *Circa l'equiparazione quale uso dell'analogia in diritto canonico*, in *Ius Ecclesiae*, 4 (1992), pp. 215-224; and, specifically regarding the analogy between ecclesiastical circumscriptions, IDEM, *Ancora sull'equiparazione in diritto canonico: il caso delle prelature personali*, in *Ius Ecclesiae*, 5 (1993), pp.365-380.



diocesan or parrochial, they depend on the diocesan Bishop or on the parish priest of the territory—in which case, the latter’s power is exercised jointly with the Ordinary or the parish priest of the Ordinariate; and Art.14, §2 establishes that in the absence of a vicar, when the parish priest of the Ordinariate is absent, impeded or dies, the parish priest of the territory can exercise his faculties by way of supply.

From an examination of these dispositions, it is not easy to determine exactly what the expression “joint exercise of jurisdiction” means. The fact that the legislator has avoided the *nomen iuris* of cumulative jurisdiction, a term coined by canonical legislation with a precise meaning, reveals the *voluntas legis* of not pigeonholing these Ordinariates in the category of entities with cumulative jurisdiction. On the other hand, the mutual pastoral help among the parish priests, without further precision, as well as the need to take into account the pastoral plans of the diocese, do not seem to be more than a pastoral orientation as regards the need to adequately coordinate the action of both circumscriptions, without implying juridic consequences that would determine the nature of such jurisdiction.<sup>70</sup> As regards Art. 5, §2 of the *Complementary Norms*, we have to note that we are dealing with a disposition of a declarative character, given that if the faithful of the Ordinariate collaborate with either diocesan or parrochial activities of the diocese, it is clear that they would depend on the Bishop or parish priest of the territory (and, like any Catholic, can participate in them without the need of special permission).

We still have to interpret the scope of the suppletory role of the territorial parish priest. Comparing the disposition of Art.14, §2 of the *Complementary Norms* with Art. 5 of *Spirituali militum curae* regarding the jurisdiction of the diocesan Bishop in the so-called military places, we can see that the latter says that the Pastors act in a secondary manner, specifying that they do so by proper right (since the faithful of the Military Ordinariate are faithful of the diocese). In fact, to qualify as suppletory the action of the territorial parish priest seems to indicate that he is situated in the same position as the personal parish priest—i.e., that he acts through an extension of his mission, not by proper right but rather in the name (in supply) of the parish priest of the Ordinariate.

One may ask if the intention of the Holy See has always been and clearly to create an exclusive jurisdiction for the faithful coming from Anglicanism, in such a way that they do not form part of the diocese where they have their residence. Perhaps future singular acts of erection of Ordinariates may affirm the double subjection of the these faithful to the jurisdiction of the diocese and to that of the Ordinariate; however, looking at the recently published normative texts, it does not seem possible to affirm that the jurisdiction of these personal Ordinariate are cumulative with that of the local Ordinaries, or—more importantly—that the faithful of the Ordinariate pertain at the same time to the diocese in which they have their domicile. Naturally, nothing prevents that a faithful of the Ordinariate participates in fact in the pastoral life of the diocese; but by pertaining to the Ordinariate, they do not have exactly the same juridical position as the faithful of the diocese.<sup>71</sup>

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<sup>70</sup> I think it is significant that Art.8, §1 of the *Complementary Norms*, when it establishes that the priests of the Ordinariate may be elected members of the presbyteral council of the diocese in which territory they exercise their pastoral care for the faithful of the Ordinariate, cite c.498, §2, which refers to the possibility of the statutes of the presbyteral council may concede the right of election to priests who have their domicile or quasi-domicile in the diocese, instead of citing §1, 2, which refers to the right enjoyed *ipso iure* by the priests (secular or religious) not incardinated in the diocese but exercise a diócesis “*bonum aliquod officium exercent*”.

<sup>71</sup> The fundamental right, recognized in c.213, to receive from the sacred Pastors the means of salvation refers directly and principally, in the case of the faithful of the Ordinariate, to the Pastors of the Ordinariate (not of the diocese), even if—as established by c.383—the diocesan Bishop should be concerned about all the faithful (and all men) who are in his diocese. Since it does not seem possible to speak of a *sui iuris* Church of Anglican rite distinct from the Church of the Latin rite—even if liturgical peculiarities do exist—the faithful of the Ordinariate may also contract matrimony before a territorial parish priest, to the tenor of c.1109.

As regards the jurisdictional aspect, it must be pointed out that Art.12 of the Apostolic Constitution establishes that, unless the Ordinariate has its proper tribunal, the competent tribunal is that of the dioceses in which one of the parts may have his domicile. I think that this disposition does not aim to change the general norms regarding the

The aforementioned *Informative Note* of the Congregation for the Doctrine of the Faith affirmed that the Ordinariate would be similar to the Military Ordinariate.<sup>72</sup> In fact, the differences we have seen up to now regarding jurisdiction—which is vicarious and not cumulative—makes a considerable difference between these Ordinariate and the Military Ordinariate, even if both are personal circumscriptions. I think it would have been more precise to call them Personal Vicariates. One could think that perhaps the term vicariate was not used in order to avoid a possible misconception that the new circumscription were a temporary solution tending towards a future diocese, since c.371, §1 affirms that an apostolic vicariate is a portion of the People of God which for peculiar reasons has not yet been constituted as a diocese.

Keeping in mind that the Ordinariate for the faithful coming from Anglicanism do not pertain to that type of circumscriptions that are added to the existing particular Churches, but its jurisdiction rather is not cumulative with that of the local Ordinaries because its faithful do not pertain for all effects to the diocese wherein they reside, and keeping in mind that it possesses a particular liturgy according to Art.2 of the *Anglicanorum coetibus*, one might ask up to what point these Ordinariates do not constitute a ritual Church. Although the exclusive jurisdiction approximates these Ordinariates to the ritual Churches, one must not forget that they are ecclesiastical circumscriptions governed by an Ordinary in the name of the Roman Pontiff. On the other hand, in contrast to the ritual Oriental Churches *sui iuris*, the Anglican liturgy is very similar to the Latin one, from which it came. In any case, these Ordinariates have not been constituted as Churches *sui iuris* by the ecclesiastical authority.<sup>73</sup>

Since the faithful of the Ordinariate are subjected to the non-cumulative jurisdiction of the personal Ordinary, a matter of capital importance is the determination of who belongs to the Ordinariate. Art.9 of the Apostolic Constitution establishes that the faithful who come from Anglicanism and desire to form part of the Ordinariate have to manifest this will in writing. Art.5, §1 of the *Complementary Norms* dispose that after having made the profession of faith and, in its case after having received the sacraments of Christian initiation according to c.845, they have to be inscribed in the corresponding registry of the Ordinariate. This same paragraph likewise disposes that whoever had been previously baptized as a Catholic outside the Ordinariate may not be admitted as a member of the same, except when he/she is united to a family belonging to the Ordinariate.

These Ordinariates have a concrete finality: they are for the faithful coming from Anglican communities, to facilitate their full communion with the Catholic Church. In principle, therefore, other faithful are excluded. However, a voluntary act is necessary to incorporate oneself in these circumscriptions. Although a whole community, with its Pastor in its head, passes into full communion, each faithful therein can opt to join the Ordinariate or not, taking into account that if he decides to be a member of the Ordinariate, a positive act of the will—manifested in writing—is necessary. Nothing is said regarding minors; it would therefore be convenient that in the statutes

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competent forum; therefore, I think that they should be interpreted without making exceptions to the general norms (cf. cc.1408 sq. In any case, if the Ordinary had his own tribunal, there would be a change as to the competent forum which should be taken into account.

<sup>72</sup> The publication of the norms has been accompanied by a commentary by Ghirlanda. When documents of special transcendence or novelty—which need to be explained—are published, it is possible that the ecclesiastical authority would want some commentary, normally by somebody who has worked in the elaboration of such documents, even if such commentary obviously is bereft of any normative value. In this case, Ghirlanda, in comparing the Ordinariates with Personal Prelatures, would add an opinion, marginal to the subject of Ordinariates for Anglicans, affirming once more his personal interpretation regarding Personal Prelatures, which contradicts the opinion of many authors (cf. *supra*, note 51) and other normative data, as had been explained above.

<sup>73</sup> In order for a Church to be considered *sui iuris*, c. 27 of the Oriental Code requires that it be acknowledged as such by the supreme authority, expressly or tacitly. Regarding the concept of ritual Church, cf., for example, M. BROGI, *Le Chiese sui iuris nel Codex Canonum Ecclesiarum Orientalium*, in *Il Diritto Canonico Orientale nell'ordinamento ecclesiale*, K. Bharanikulangara (ed.), Vatican City, 1995, pp.49-75.

erecting such an entity, pertinent dispositions be established (e.g., what happens if one of the parents choose to belong to the Ordinariate and the other no, if a minor can incorporate to the Ordinariate upon reaching majority of age even if nobody in his family had opted to pertain to the Ordinariate, etc.).

Faithful who do not come from Anglicanism “ordinarily” cannot pertain to these Ordinariates. When an Ordinariate is erected, it would be good to clarify who may “extraordinarily” incorporate to it, under what conditions, and who the competent authority to decide would be. In any case, somebody baptized in the Catholic Church may be admitted if he is united to a family belonging to the Ordinariate; in this matter as well, it would be necessary, in the act of erection of every Ordinariate, to specify the degree of consanguinity which would permit incorporation to the Ordinariate.<sup>74</sup>

Finally, nothing is said regarding the possibility of leaving the Ordinariate. I think this legal gap should be interpreted in a sense in favor of freedom—saving whatever obligations of justice which may have been contracted with the Ordinariate—since there is no obligation whatsoever to belong to the Ordinariate. It seems logical to me to require that the act of leaving the Ordinariate be done also in writing. In any case, I think that even if the *Complementary Norms* do not say so, the registry annotations, both of inscription as well as cancellation, should be communicated to the corresponding diocese.

From these quick observations, one can conclude that the act of erection of each Ordinariate is important. Although *Anglicanorum coetibus* does not expressly state it, in my opinion some norms of statutory content (which may be included in the decree of erection itself) would be necessary, precisely regulating some extremes—e.g., relations with the diocese and, above all, the requirements for admission in the Ordinariate. In these dispositions, the general provisions delineated by the *Apostolic Constitution* and the *Complementary Norms* may be dovetailed into the specific reality of the place, and norms may be given that guarantee that the presence of the Ordinariate does not negatively affect the “public order” of the diocese due to its disciplinary peculiarities. Presumably, after the erection of the first Ordinariates, it would be possible to propose more—and more accurate—conclusions regarding its canonical characteristics.

— *Eduardo Baura*

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<sup>74</sup> The English text of Art.5, §1 of the *Complementary Norms* establish that baptized Catholics may form part of the Ordinariate if they are «members of a family» belonging to the Ordinariate, while the Italian text reads if they are «congiunti di famiglia».