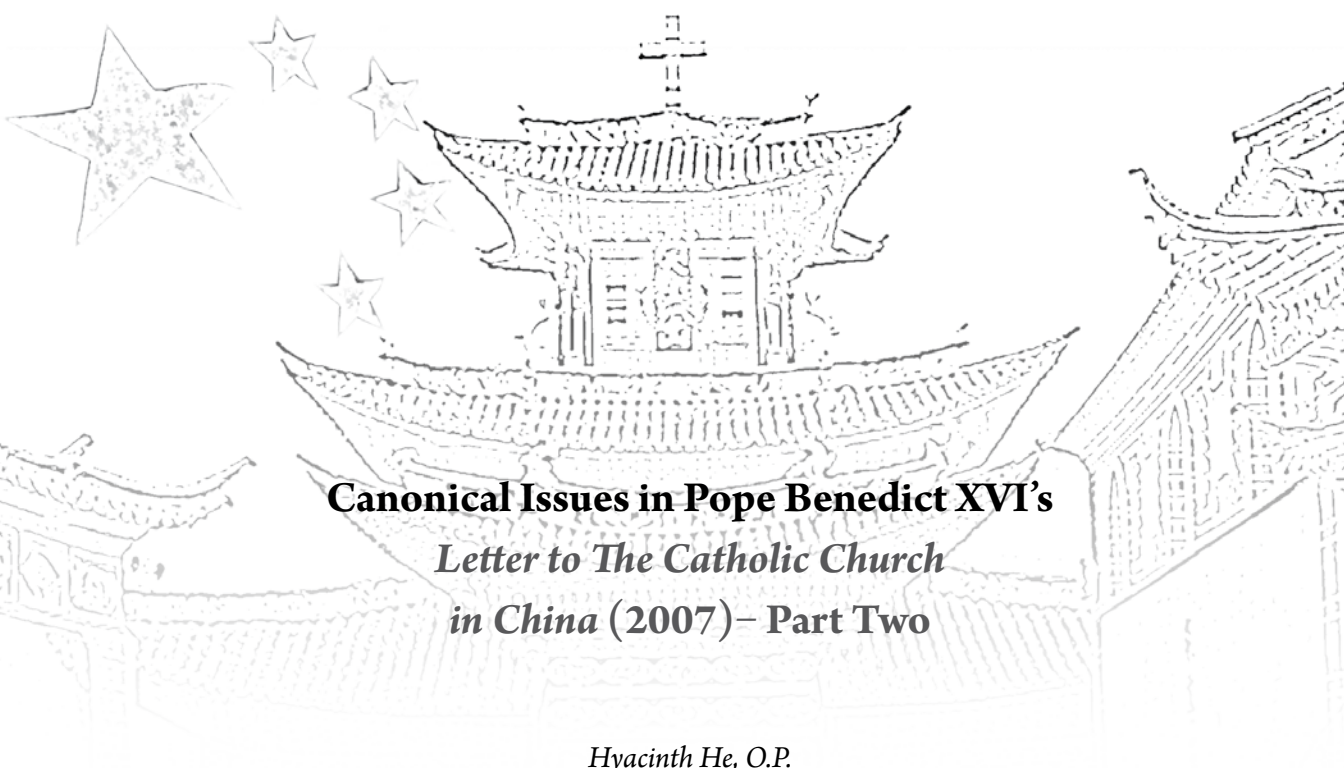




Canonical Issues in Pope Benedict XVI's *Letter to The Catholic Church in China* (2007)– Part Two

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A Review of the Main Issues mentioned in The *Letter* in the Light of The Church's Canonical Provisions

Pope Benedict XVI's Letter to the bishops, priests, consecrated persons and lay faithful of the Catholic Church in the People's Republic of China, issued in 2007, is primarily theological and pastoral in nature. However, it contains also some important canonical issues, such as, the (Chinese) state control over bishops and the so-called Bishops' Conference; the issue of the independence of the Catholic Church in China from political power, with the background of the open and underground groups; the appointment and ordination of Bishops; the formation of the clergy, the religious and the lay faithful; the work of evangelization; religious freedom and the continuous search for "dialogue" with the government, the impending review of ecclesiastical circumscriptions and provinces, the abolition of the extraordinary faculties or privileges conceded to date to the Church in China, etc. In the present study, these issues are systematically analyzed vis-à-vis the provisions of the Code of Canon Law and the current situation in China. The reader may find in these pages not only valid insights towards the solution of actual conflicts between the two polarized sides confronting the Catholic Church in China today – the so-called "open" and "underground" communities, but also some key elements to uncover hidden elements of the Letter and thus contribute to a better understanding of it.

Keywords: *Benedict XVI, Letter, Catholic Church In China, Canonical Issues, Bishops' Ordination*

After having offered an Overview of the *Letter of the Holy Father Pope Benedict XVI to the Bishops, Priests, Consecrated Persons and Lay Faithful of the Catholic Church in the People's Republic of China* [Letter] and having identified the issues tackled in it, we intend now to review the main topics anew but in the light of the Church's canonical provisions.

For practical reasons, the issues dealt with now will be regrouped under four heads, namely:

- A. Concerning individual Bishops;
- B. Concerning Episcopal Conferences;
- C. Concerning other aspects of Church's Life; and,
- D. Concerning Church's Relations *ad intra* and *ad extra* in China.

In each instance, the reference of the topics to canon law will be followed by another reference to the present-day situation in China, and completed by some personal analysis and commentary on them.

A. Concerning Individual Bishops

Canon 375 states that "Through the Holy Spirit who has been given to them, bishops are the successors of the apostles by divine institution; they are constituted pastors within the Church so that they are teachers of doctrine, priests of sacred worship, and ministers of governance."¹³⁵ This affirmation of the divine origin of the bishop's office had been already underlined in the 1917 Code of Canon Law, which stated: *Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis.*¹³⁶

Accordingly, bishops are successors of the Apostles by divine institution, and the nature of their office therefore is of divine origin. They are not "delegates" of the Roman Pontiff in the essential work (*munus*) they receive with their episcopal ordination of teaching, sanctifying and ruling the people committed to their care. Their power, however, can be exercised only when they are in hierarchical communion with the head of the college and its members, that is, under the authority of the Pope, and it can be limited in various ways.

The divine mission, which was committed by Christ to the apostles, and in which they were confirmed on the day of Pentecost (cf. Acts 2:1-26), was destined to

¹³⁵ Can. 375 - § 1. *Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri.*

¹³⁶ 1917 Code of Canon Law, can. 329 §1.

last until the end of the world (cf. Mt. 28:20). As successors of the Apostles, by virtue of their episcopal ordination and through hierarchical communion, the Bishops are the visible principles and the guarantee of unity in their own particular Churches.¹³⁷ The unity is an essential element in the Church, destined likewise to last until the end of the world. The Episcopate, therefore, is not an element of purely human and variable church law.

This teaching of the Church concerning the institution, permanence, nature and import of the sacred Primacy of the Roman Pontiff and the shepherding mission of the bishops as successors of the apostles is well expressed in the Vatican II's Dogmatic Constitution of the Church *Lumen Gentium*:

In order to shepherd the People of God and to increase its numbers without cease, Christ the Lord set up in his Church a variety of offices which aim at the good of the whole body... Jesus Christ, the eternal pastor, set up the holy Church by entrusting the apostles with their mission as he himself had been sent by the Father (cf. Jn. 20:21). He willed that their successors, the bishops namely, should be the shepherds in his Church until the end of the world. In order that the episcopate itself, however, might be one and undivided he put Peter at the head of the other apostles, and in him he set up a lasting and visible source and foundation of the unity both of faith and of communion.¹³⁸

The same Vatican document stresses that the fullness of the sacrament of Orders is conferred by Episcopal consecration; that fullness, namely, which both in the liturgical tradition of the Church and in the language of the Fathers of the Church is called the high priesthood, the acme of the sacred ministry. Episcopal consecration confers, together with the office of sanctifying, the duty also of teaching and ruling, which, however, of their very nature can be exercised only in hierarchical communion with the head and members of the college.¹³⁹

Having said these fundamental things about episcopacy, let us now deal with the three main issues concerning individual bishops dealt with in Pope Benedict's *Letter*, namely, *ordination*, *nomination*, and *functions* (*munera*),

1. Appointment and Ordination of Bishops

Since the Bishops' *munus pascendi* – which includes the *tria munera* of teaching, sanctifying and ruling – of their very nature can be exercised only in hierarchical communion with the Head (the Pope) and the members of the College of Bishops, it is no wonder that the Apostolic See follows the appointment and ordination of bishops everywhere in the world with special care.

¹³⁷ Cf. *Lumen Gentium*, n. 23.

¹³⁸ *Lumen Gentium*, n. 18.

¹³⁹ Cf. *Lumen Gentium*, n. 21.

The appointment of bishops is an element that touches the very heart of the life of the Church, inasmuch as its exercise by the Pope is the guarantee of the unity of the Church and of hierarchical communion. In fact, the Holy See desires to be completely free to appoint Bishops, and claims that right there where practical situations make it difficult or impossible. One of such examples is in present-day China; that is why on this issue, Benedict XVI's *Letter* unmistakably maintains the right and the duty of the Pope to appoint Bishops. This is a non-negotiable religious matter.

a. Prerogative of the Church

"The Supreme Pontiff freely appoints Bishops or confirms those lawfully elected."¹⁴⁰ Such is the categorical statement laid down by the church discipline in matters of appointment of Bishops. The statement reflects a century-old tradition that has its roots set in early years of the Church as seen in the gospel pages.

In fact, in a quick look to the gospel of Luke we see that the Lord Jesus, during his earthly pilgrimage, summoned his disciples and picked out twelve of them, whom He called "apostles;" Jesus made this choice after a night spent in prayer on the mountain (cf. Lk 6:12-13). The Gospel of Mark, for its part, appears to see in this action of Jesus a *sovereign act*,¹⁴¹ a constitutive act which gives an identity to those chosen ones: "He appointed Twelve" (Mk 3:14). The mystery of the election of the Twelve is thus disclosed: it was an *act of love*, freely willed by Jesus in intimate union with the Father and the Holy Spirit.¹⁴²

According to the teaching of the Ecumenical Council of Trent on the sacrament of Holy Orders, in the selection of bishops and priests the consent, call, or authority of the people or of any secular power or public authority are not necessary for the validity of the ordination. On the contrary, the Council decrees that all those who have been called and appointed merely by the people or by the secular power or ruler, or have arrogated these ministries to themselves on their own authority and thus undertaken to exercise these ministries, are not ministers of the Church but should be considered as thieves and robbers who have not entered through the door (cf. Jn. 10:1).¹⁴³

¹⁴⁰ Canon 377 §1.

¹⁴¹ Italics supplied.

¹⁴² Cf. John Paul II, Post-Synodal Apostolic Exhortation *Pastores Gregis* (16 October, 2003), n.6.

¹⁴³ Canon 7: "If anyone says... that the Orders conferred by them are void without the consent and call of the people or of the secular power; or says that those who have not been rightly ordained by ecclesiastical and canonical power and have not been sent, but come from some other source, are lawful ministers of the word and of the sacraments: let him be anathema. Canon 8: "If anyone says that bishops chosen by the authority of the Roman Pontiff are not legitimate and true bishops but a human invention: let him be anathema." Cf. John. F Clarkson, ed al, "Canons on Holy Orders of the Teachings of the Council of Trent," in *The Church Teachings*. Documents of the Church in English translation, Tan books and publishers, INC. Rockford, Illinois 6615, 1973, p. 331.

In the 1917 Code it was clearly stated that bishops are freely appointed by the Roman Pontiff: "*Eos [Episcopos] libere nominat Romanus Pontifex.*"¹⁴⁴ This legal text was later made more precise by the 1983 Code, which states that the Roman Pontiff freely appoints bishops "or confirms those lawfully elected:" "*Episcopi libere Summus Pontifex nominat, aut legitime electos confirmat.*"¹⁴⁵ It is worth noting that the latter text puts on the same footing appointment by the Pope and election by an ecclesial body.¹⁴⁶

This jurisdiction of the Roman Pontiff is characterized as truly *episcopal*, which comes with his being Bishop of Rome, and *immediate*, which is not subject to any intermediaries, whether civil or ecclesiastical. The Second Vatican Council stressed that the right of nominating and appointing bishops belongs properly, specially and of itself exclusively to *the competent ecclesiastical authority*... Since the apostolic office of bishops was instituted by Christ the Lord and is directed to a spiritual and supernatural end, the sacred Ecumenical Council asserts that the competent ecclesiastical authority has the proper, special, and, as of right, exclusive power to appoint and install bishops.¹⁴⁷

To protect this prerogative of the Church, Pope Pius XII issued in 1950 his encyclical letter *Ad Apostolorum principis*.¹⁴⁸ Also a statement of the Congregation for the Propagation of the Faith published in *L'Osservatore Romano* on April 26 of the same year provides that no one can lawfully confer Episcopal consecration unless he has received the mandate of the Apostolic See. If such consecration is done contrary to all right and law, being this offence considered a serious attack to the unity of the Church, an excommunication reserved *specialissimo modo* to the Apostolic See was established in which automatically incurred the consecrator and anyone who has received consecration irresponsibly conferred.¹⁴⁹ Pope Pius XII makes reference to

¹⁴⁴ 1917 Code of Canon Law, can. 329 §2. The Code only regularized an old practice of more than five centuries, as Cardinal Gasparri stated in the introduction to the Code.

¹⁴⁵ Canon 377 §1.

¹⁴⁶ Cf. Rene Metz, "Papal legates and the appointment of bishops," *The Jurist*, 52 (1992), pp. 262. This paragraph reaffirms the preeminent role of the Roman Pontiff in the designation of a bishop, which is the one of the most significant administrative acts in the life of the Church. The two procedures are considered regular and normal while in the 1917 Code election appeared as a concession or a privilege granted to an electoral college by supreme authority. To highlight the difference between the two procedures (cf 1917 Code of Canon Law, can. 329 §2) the legislator affirmed the unchallenged power of the Pope: *Eos libere, nominat Romanus Pontifex* (the Roman Pontiff freely appoints them.) In the following section (can. 329 §2) the Code alluded to a possible privilege which an electoral college might enjoy: *si cui collegio concessum sit ius eligendi Episcopum, servetur praescriptum can.321* ("If the right of electing a bishop has been granted to a college, the prescription of canon 321 is to be observed.")

¹⁴⁷ The decree on the Pastoral Office of Bishops in the Church, n. 20. Italics supplied.

¹⁴⁸ On July 29, 1958. In AAS 50 (1958) 601-614.

¹⁴⁹ Pius XII, Encyclical Letter on Communism and the Church in China *Ad Apostolorum principis*, nn.47-48. Cf. AAS 50 (1958) 601-614.

a decree of the Holy Office of April 9, 1951, which states: “A bishop of any rite or dignity whatever who confers Episcopal consecration on a cleric who has not been nominated by the Holy See, or expressly confirmed by the same, and also the person who received such consecration, even if impelled by grave fear, are subject *ipso facto* to excommunication reserved *specialissimo modo* to the Holy See.”¹⁵⁰

In China, this occurrence has repeatedly taken place since 1958, for in March of that year, some members of the Church in China, on their own, elected and ordained two priests as bishops without the Roman Pontiff’s approval.¹⁵¹ The above provision, therefore, was applicable, in spite of neither the Pope nor any Congregation declared that those individual involved incurred *latae sententiae* excommunication.¹⁵² This fact brings about a question: *What led to these illicit ordinations?* The answer may be found in history: By the mid-1950s many Chinese dioceses were without bishops; almost all foreign bishops and ordinaries had been expelled from the country. From 1950-1955, Rome appointed twenty-two Chinese bishops, but from about 1955 many of them were imprisoned. To remedy the situation, many dioceses elected Vicars Capitular or diocesan administrators, but by early 1958, 120 out of 145 dioceses (or prefectures apostolic) had no functioning diocesan bishop (or prefect apostolic). In 1957, more than 200 “branches” of the Catholic Patriotic Association¹⁵³ were set up in various parts of China. A general Assembly of the Association took place in Beijing from July 15 to August 2, 1957. It was attended by 241 “representatives” including ten bishops and 200 priests. In the course of the Assembly it was proposed that the Church in China selected and ordained bishops on its own initiative. The proposal was rejected. Moreover, some bishops, gathered in a special session to discuss the matter, expressed their unwillingness to ordain if asked to do so. The Assembly resolved to organize a pilgrimage group to Rome in order to inform the Holy See about the situation in China. But this was “discouraged” by the government and so was doomed to failure.¹⁵⁴ Later however, a compromise proposal was accepted: the Chinese hierarchy would elect bishops and present the names to Rome for approval.

¹⁵⁰ AAS 43 (1951) 217-218.

¹⁵¹ These two priests were Father Dong Guangqing, who was ordained as bishop of Hankou diocese, Hunan province, and Father Yuan WenHua, who was ordained as bishop of Wuchang diocese, in the same province. The Chinese Catholic Patriotic Association requests the Holy See’s approval but the Congregation for the propagations of the Faith turns down the request. cf. Lam, Anthony, *The Catholic Church in Present-Day China: Through Darkness and Light*. Hong Kong: Holy Spirit Study Centre, 1977, p. 37.

¹⁵² The report goes on to say that Propaganda Fide sent replies by telegram to the effect stating that the elections were void and the ordination illicit because bishops must be freely appointed by the Roman Pontiff.

¹⁵³ This Association, under an appearance of patriotism, seems to aim primarily at making Catholics gradually embrace the tenets of atheistic materialism, by which God Himself is denied and religious principles are rejected. Cf. Pius XII, *Ad Apostolorum Principis*, n. 11, June 29, 1958. AAS 50 (1958), 601-614.

¹⁵⁴ Geoffrey King, S.J. “The Catholic Church in China: A Canonical Evaluation”, *The Jurist* 49, 1989 pp. 71-72.

There was some confidence that the names would be acceptable to both Rome and the Chinese government.¹⁵⁵

Pope Benedict in his *Letter to the Catholic Church in China*, referring to the “most delicate problem” of episcopal ordinations without an apostolic mandate and to the related sanctions laid down in the Code of Canon Law to those who break it,¹⁵⁶ concludes that “such an ordination in fact inflicts a painful wound upon ecclesial communion and constitutes a grave violation of canonical discipline.”¹⁵⁷

b. The Intervention of the State

The religious policy of the Chinese government in the appointment of bishops is reflected in Article 7 of the *Management System for Catholic dioceses in China*, which states that “The election, ordination and taking office of a bishop is to be carried out according the order and method prescribed in ‘The Regulations for the Election and Ordination of Bishops of the Catholic Bishops Conference of the Catholic Church in China.’”¹⁵⁸

The general government rule is that the Catholic Church in China must implement a policy of autonomy: self-support, self-management and self-propagation whereby Chinese Catholics, cleric and lay, take charge of their own affairs, and no longer act contrary to the interests of their country.¹⁵⁹ The government must not allow rival forces from outside to use religion to infiltrate China. No organization, group or individual from outside China can interfere in China’s religious affairs. No foreign religious organization or individuals may set up religious organization, establish religious institutes and religious venues found religious schools or convert Chinese citizens to their beliefs, appoint clergy or engage in missionary activities.¹⁶⁰

Having in mind these regulations, Pope Benedict XVI does not hesitate to address the Chinese Catholics in this vein: “As all of you know, one of the most delicate problems in relations between the Holy See and the authorities of your country is the question of episcopal appointments.” He goes on showing understanding towards

¹⁵⁵ F. Belfiori, “*The Chinese Catholic Patriotic Association*” (unpublished transcript of a lecture, kindly made available to me by the author); Mark Fang Che-yong, “*The Catholic Church in China: The Present Situation and Future Prospects*,” in *Re-Thinking the Church’s Mission*, ed. Karl Rahner, *Concilium*, 13 (New York: Paulist Press, 1966), p. 65.

¹⁵⁶ The *Code of Canon Law*, in canon 1382, establishes that both the Bishop who without a pontifical mandate consecrates a person a Bishop, and the one who receives the consecration from him, incur a *latae sententiae* excommunication reserved to the Apostolic See.

¹⁵⁷ *Letter*, n. 9, par. 1.

¹⁵⁸ Cf. A.S.K. Lam, *The Catholic Church in Present-Day China. Through Darkness and Light*. The Holy Spirit Study Center, Hong Kong, 1997, p. 67. *Appendix VI*.

¹⁵⁹ Cf. Hong Kong, *Ta Kung Pao*, August 4, 1957 (Chinese).

¹⁶⁰ AA.VV, *Birds in the Cage, Freedom of Religious Belief in China*, published by Justice and Peace Commission of the Hong Kong Catholic Diocese, English edition, Hong Kong, 2004, p. 8.

it, but also reaffirming the tenets of the Church on this matter: “On the one hand, it is understandable that governmental authorities are attentive to the choice of those who will carry out the important role of leading and shepherding the local Catholic communities, given the social implications which – in China, as in the rest of the world – this function has in the civil sphere as well as the spiritual. On the other hand, the Holy See follows the appointment of Bishops with special care since this touches the very heart of the life of the Church, inasmuch as the appointment of Bishops by the Pope is the guarantee of the unity of the Church and of hierarchical communion.”¹⁶¹

In the *Letter*, it is clearly said that the intervention of the Church in appointing Bishops is not meddling into political internal affairs, but that the action remains within the strictly religious atmosphere: “It is not, therefore, a question of a political authority, unduly asserting itself in the internal affairs of a State and offending against its sovereignty.”¹⁶² Furthermore, it is seen as a constitutive element of the full exercise of the right to religious freedom.¹⁶³ The Holy See would desire to be completely free to appoint Bishops; therefore, considering the recent particular developments of the Church in China, the Pope trusts that “an accord can be reached with the Government so as to resolve certain questions regarding the choice of candidates for the episcopate, the publication of the appointment of Bishops, and the recognition – concerning civil effects where necessary – of the new Bishops on the part of the civil authorities.”¹⁶⁴

Throughout the centuries, and most especially since the fourteenth century, the Holy See has generally reserved to herself – with some exceptions or concessions, for example, by concordats – this important matter of the bishops’ nomination. Some governments were given the prerogative to present suitable candidates for Bishop, or some cathedral chapters to elect one and then submit to the Pope for confirmation.¹⁶⁵ Indeed the manner of nomination of Bishops in various countries along the centuries has been a subject matter sanctioned by concordats or bilateral Church-State agreements between the Holy See and the concerned countries. The purpose was to give the governments a more political say in this matter, while safeguarding the right of the Church rightly expressed in the Second Vatican Council formula: “The right of nomination and appointing bishops belongs properly, specially and of itself exclusively to the competent ecclesiastical authority.”¹⁶⁶ At certain times in

¹⁶¹ *Letter*, n. 9, par. 1.

¹⁶² *Letter*, n. 9, par. 2.

¹⁶³ Cf. Second Vatican Council, Declaration on Religious Liberty *Dignitatis Humanae*, 4.

¹⁶⁴ *Letter*, n. 9, par. 3.

¹⁶⁵ Cf. P. J. Lydon, *Ready Answers in Canon Law*, New York-Boston-Cincinnati-Chicago-San Francisco, Benziger Brothers, Inc., 1948, p. 79.

¹⁶⁶ Vatican II, *Christus Dominus*, n. 20.

history special privileges were granted to civil authorities in particular places, like for instance in some European countries...¹⁶⁷ The history of Church-State relations in this area is a complex one, but it is clear that there have been notable abuses by civil authorities that have impaired the integrity of the designation process. This accounts for the continuing Holy See effort to persuade civil authorities to waive their rights in this matter¹⁶⁸ and thereby enable this crucial legal-pastoral matter to be completely under church control.¹⁶⁹ The Second Vatican Council has clearly stated that "it is the desire of the sacred Council that for the future no rights or privileges be conceded to the civil authorities in regard to the election, nomination or presentation to bishoprics."¹⁷⁰

In China, since the communist party won the civil war and took over the entire mainland, and established new political power aimed at promoting atheism, and then all foreign missionaries were expelled from the country for the reason of being spies and counter-revolutionaries, the relationship between the Vatican and China practically ceased; the National Chinese Catholic Patriotic Association was established, the Catholic Church in China met the greatest suffering and challenge: many bishops, priests, sisters and lay persons were arrested throughout the country. The Chinese government's United Front¹⁷¹ policy attacked the major contradictions

¹⁶⁷ Cf. E. Caparrós et al. (eds.), *Code of Canon Law Annotated* (Latin-English Edition), Wilson and Lafleur Limitée, Montréal: 1993, p.300. As far as we know, only one head of state currently enjoys the right of designation bishops; all the others have renounced such a right at the invitation of Vatican II. It is the president of the French Republic, but his right concerns only 2 of the 93 dioceses in France in 1990: the diocese of Strasbourg and Metz. The right of appointment is based on the 1801 concordat, which remains operative in the two dioceses because of historical circumstances (Cf. Rene Metz, "Le président de la Republique francaise dernier et unique chef detat au monde qui nomme encore des eveques," *Revue des Sciences Religieuses* 60 (1986) 63-89). According to the concordat it is the president himself who has the right to designate the candidate, and if the candidate has the qualities required by church law, the Pope is bound to confer canonical institution on the candidate presented. Actually at present the appointment is made by common agreement or, to be more precise, the president of the Republic agrees to present to the pope for canonical institution the candidate the Holy See deems most suitable for the vacant see. For details of the appointments see Rene Metz, "Nominations et demission episcopales dans le diocese concordataire de Strasbourg de 1976 a 1895," *Archives de l'Eglise d'Alsace* 47 (1988) 183-276; idem, "Les nominations episcopales en France, et plus specialement dans les dioceses concordataires de Strasbourg et de Metz," *Revue de Droit Canonique* 8 (1958), 97-121; and "Papal legates and the appointment of bishops," *The Jurist*, 52 (1992), p. 272.

¹⁶⁸ Cf. *Gaudium et Spes*, n. 70; *Christus Dominus*, n. 20. The Council judged that the freedom of the Church and the spiritual good of the faithful could best be served by reaffirming the proper and exclusive right of ecclesiastical authority to appoint and install bishops and by curtailing the formal involvement of civil authorities. For that reason it invited civil leaders to renounce to traditional privileges in this regard.

¹⁶⁹ James A. Coriden et al. (eds.), *The Code of Canon Law, a text and commentary*, commissioned by the Canon Law Society of America, Paulist Press, New York/ Mahwah, 1985, p. 323.

¹⁷⁰ *Christus Dominus*, n. 20. The 1983 Code of Canon Law reaffirms the saying which deals with the involvement of civil authorities in the designation of bishops: "For the future, no rights or privileges of election, appointment, presentation or designation of Bishops are conceded to civil authorities" (can. 377 §5).

¹⁷¹ This is a popular front led by the CCP which managed by the United Front Work Department

existing with religious bodies. This policy enabled the government to gain total control over the Church. The instrument was the already mentioned “Three-Self Movement or Campaign” – self-supporting, self-governing and self-propagating.¹⁷²

After the establishment of the National Chinese Catholic Patriotic Association in 1957, the first meeting of the Chinese Catholics’ Patriotic Association was held in the same year on July 15, the session of the Patriotic Association adopted a policy of “Separation of Church and State” stating their position on relations with the Holy See in terms of absolute autonomy and independence.¹⁷³ And the Shanghai Catholic newspaper, *XinGe*, in an editorial of 28 February 1958, sounded the public call for the local election of bishops: “The Vatican, in order to sabotage our Church in China, has struck at patriotic priests and it continues in its desire to control the nominations of personnel. We can no longer have any illusion about the Vatican, and we ourselves must assure responsibility with regard to the problem of the bishops, we ourselves must elect and consecrate them.”¹⁷⁴ The government requested those who supported independent consecrations without the Pope’s approval, had to declare openly that they had broken off all relations with the Holy See; those who refused to accept government demands were immediately imprisoned.¹⁷⁵ Pius XII saw this independent selection of bishops by the Chinese as an attempt to put the Church under the control of men who would simply carry out government policies. And since the Pope was prevented from communicating with the Church in China as the Government did not want the Chinese Catholic Church have any contact with the Vatican, he was unable to obtain sufficient information about the candidates for him to make proper episcopal appointments.¹⁷⁶ Moreover, the telegrams asking for confirmation of those elected could easily be seen as presenting Rome with a *fait*

(中共中央统战部) of the Central Committee. The aim of its chief strategy was to keep close contact with the masses and attack small groups, and to keep relations with minor enemies but attack big ones. To the CCC, its task in applying theory was to cause division among Church groups.

¹⁷² *Self-supporting* means for the Church to finance itself independently through the donations of the faithful, and to refuse those foreign subsidies with political implications; *self-governing* means to get rid of Western control and customs, to have Chinese Catholics manage the Church, and for the Catholic Church to have its own system and laws, the establishment of a native hierarchy; and *self-propagating* means that the Catholic Church must use its own way to interpret the Bible, to evangelize and to get rid of the control of Western theology. Cf. AA.VV, *Birds in the Cage, Freedom of Religious Belief in China*, published by Justice and Peace Commission of the Hong Kong Catholic Diocese, English edition, Hong Kong, 2004, p.12.

¹⁷³ “The Catholic Church in China must implement a policy of autonomy and independence whereby Chinese Catholics, cleric and lay, take charge of their own affairs and no longer act contrary to the interests of their country...” Cf. Hong Kong, *Ta Kung Pao*, August 4, 1957, (Chinese).

¹⁷⁴ Cf. Gu Yulu. *The Chinese Catholic Church: Past and Present*. Shanghai Academy of Sciences, 1989, p. 137.

¹⁷⁵ Lam, Anthony, *The Catholic Church in Present-Day China: Through Darkness and Light*. Hong Kong: Holy Spirit Study Centre, 1977, p. 37.

¹⁷⁶ Wurth, Elmer, MM, & Maheu, Betty Ann, MM. (Ed), *Papal Documents Related to China 1937-2005*, Holy Spirit Study Centre, Hong Kong, 2006, p. 88. Cf. Geoffrey King, S.J. “The Catholic Church in China: A Canonical Evaluation,” *The Jurist* 49 (1989), p. 72.

accompli.¹⁷⁷ In his encyclical letter *Ad Apostolorum principis*, of June 29, 1958 Pius XII stated that those ordained without authorization “enjoy no powers of teaching or of jurisdiction since jurisdiction passes to bishops only through the Roman Pontiff.”¹⁷⁸

In 1980, the so-called Bishop Conference of Chinese Catholic Church was established. It has not been recognized by the Holy See for the “clandestine” Bishops – those not recognized by the Government but in communion with the Pope – are not part of it; it includes Bishops who are still illegitimate, and it is governed by statutes that contain elements incompatible with Catholic doctrine.¹⁷⁹ One of its tasks, as it appears in its constitution, is precisely “to examine and approve the election and ordination of diocesan bishops.”

The Chinese government will not lightly give up its control over the Church. In fact, the three documents passed in March 2003, namely the Joint Conference system;¹⁸⁰ “A management system for Catholic Diocese in China;”¹⁸¹ and “Work Regulations for the Catholic Patriotic Association”¹⁸² “do not simply call for “mutual

¹⁷⁷ This view is taken from L. Ladany, *Behold, the Catholic Church in China* (Hong Kong, 1984), p.10; and *The Catholic Church in China* (New York: Freedom House, 1987), pp. 23-26. Cf. Geoffrey King, S.J. “The Catholic Church in China: A Canonical Evaluation,” *The Jurist* 49 (1989), p. 72.

¹⁷⁸ Pius XII, *Ad Apostolorum principis*, of June 29, 1958, [AAS 50 (1958), pp. 601-614], n. 39. And a bit further the Pope states: “The power of jurisdiction which is conferred directly by divine right on the Supreme Pontiff comes to bishops by that same right, but only through the successor of Peter, to whom not only the faithful but also all bishops are bound to be constantly subject and to adhere both by the reverence of obedience and by the bond of unity” (n. 40). Cf. Geoffrey King, S.J. “The Catholic Church in China: A Canonical Evaluation,” *The Jurist* 49 (1989), p.72.

¹⁷⁹ Cf. Benedict XVI, *Letter*, n. 8, par. 14.

¹⁸⁰ The System for the Joint Conference of Chairpersons of the Chinese Catholic Patriotic Association and of the Bishops Conference of the Catholic Church in China mainly describes the formation and function of the Joint Conference and points out that matters discussed and passed by the Joint Conference must be reported for the records to the concerned Religious Affairs Departments of the State Council.

¹⁸¹ It involves areas such as the definition of dioceses’ boundaries; election, ordination and installation of bishops; pastoral duties; vacant Episcopal sees; appointment of vicars general and bishop’s representatives; formation and operation of the diocesan management committee; origin and function of priests council; as well as issues related to the bishop’s house, parish, parish priests, assistant parish priests, mass stipends, deans, Religious Women’s convents and the life of diocesan priests. Article 7 states: The election, ordination and taking of office of a bishop is to be carried out according to the order and method prescribed in “The Regulations for the Election and Ordination of Bishops of the Bishop Conference of Chinese Catholic Church.”

¹⁸² It is a document meant to standardize and systemize the work of the Chinese Catholic Patriotic Association (CCPA). From the outset, it states that the purpose of the CCPA is “to support the leadership of the Chinese Communist Party, to raise high the flag of love of country and love of the Church, to unite all the clergy and Catholics to uphold the dignity of the law, to support the interests of the people, to support unity among all ethnic groups, to support the unification of the country, to unswervingly implement the principle of the independent administration of the Church, to jointly manage church affairs in conjunction with church affairs organizations, to carry out a democratic running of the Church, and to conscientiously promote the adaptation of the Catholic Church to socialist society.” It also lists the requirements of the Patriotic Association workers, who must “support the leadership of the Chinese Communist Party, fervently love the socialist motherland, and conscientiously uphold the nation’s sovereignty and the Chinese Church’s sovereignty.” The workers

consultation with the Chinese Catholic Patriotic Association,” but also for a Joint Conference system with the Chinese Catholic Patriotic Association to “decide the most important affairs of the Chinese Catholic Church.”

Professor-Researcher Anthony Lam Sui-ki, commenting on the “management system,” says that nothing of it gives the Chinese Catholic Patriotic Association control over the diocese. He also notes that “mutual consultation with the Chinese Catholic Patriotic Association” means to place the latter in a position equal to that of the Church hierarchy. The “management system” not only infringes on the Pope’s authority to appoint bishops, but also on the erection, adjustment and cancellation of diocese and apostolic prefectures. It also directly erodes the power of the bishops.¹⁸³

c. Selection and Appointment of Bishops

The *motu proprio Ecclesiae Sanctae*, signed by Pope Paul VI on August 6, 1966, aimed at implementing the Second Vatican Council decrees, called for Episcopal conferences to annually prepare a list of *episcopabili* and forward it to Rome. The pertinent passage in the *motu proprio* reads as follows: “Episcopal conferences in accordance with the laws laid down by the Apostolic See, or yet to be laid down, shall after taking prudent counsel each year propose in secret to the Apostolic See the names of candidates among ecclesiastical persons to be promoted to the office of bishop in their territory.”¹⁸⁴

Three years later, on June 24, 1969, another *motu proprio*, *Sollicitudo omnium ecclesiarum*, would recall the role devolving upon the representative of the Holy See in the appointment of bishops.¹⁸⁵ The pontifical representative –who in various countries functions as nuncio, pro-nuncio, internuncio, or apostolic delegate¹⁸⁶– has dual role. According to the provisions of the *motu proprio*:

Relative to the nomination of bishops and other ordinaries equivalent to bishops, the papal legate has the task of drawing up in usual form the

must increase political study and “conscientiously study every policy, law and regulation” and “firmly uphold the policy of the independent administration of the Church and the principle of self-election and self-consecration of bishops.” These requirements manifest the political colors of the CCPA.

¹⁸³ AA.VV, *Birds in the Cage, Freedom of Religious Belief in China*, published by Justice and Peace Commission of the Hong Kong Catholic Diocese, English edition, Hong Kong, 2004, p. 17.

¹⁸⁴ AAS 58 (1966), p. 763. Austin Flannery (ed.), *Vatican II: The Conciliar and Postconciliar Documents*, vol. I, Northport, NY: Costello Publishing, 1982-1988, p. 597.

¹⁸⁵ AAS 61 (1969) 478-481. English translation in *Canon Law Digest [CLD]* 6: 277-284.

¹⁸⁶ In countries having diplomatic relations with the Holy See the papal representative is called a “nuncio” if he is *ex officio* the dean of the diplomatic corps; a “pro-nuncio” if he takes his rank among the diplomatic representatives according to the date of his appointment; or an “inter-nuncio” if he has the rank simply of an extraordinary envoy and minister plenipotentiary and not that of an ambassador. In countries with which the Holy See does not have diplomatic relations, the papal representative is called an “apostolic delegate.” On the subject of these titles see the *motu proprio Sollicitudo omnium Ecclesiarum* I, 1-2: AAS 61 (1969) 478; CLD 6: 277.

informative process on candidates and also of proposing a list of the candidates to the competent departments of the Roman Curia. He should draw up an accurate report and also signify... his own opinion and vote as to which of the candidates seems to him be qualified.¹⁸⁷

The last part of the phrase warrants special attention. The representative is asked to express not only his "opinion" but his "preference" for the most suitable candidate. Practically speaking it is the pontifical legate who in the final analysis is invited to propose the new bishop to Rome; that means that his role in the appointment of bishops is the determinative one, at least in most cases.¹⁸⁸

The same *motu proprio* indicates how the pontifical legate is to obtain information on the candidates: He can freely interview clerics and also lay persons who, in his opinion, are in a position to offer some useful information; but he must also "bear in mind the competency of the Episcopal conference and respect legitimate privileges granted or acquired by law as well as any special procedures approved by the Apostolic See."¹⁸⁹

In 1972, after a lengthy consultation, a document entitled "Norms for the selection of Candidates for the Episcopacy in the Latin Church" was published by the Vatican.¹⁹⁰ In it, a detailed system for preparing the list of candidates for episcopacy is offered. However, individual bishops are not prohibited from making known to Rome their names of *episcopabili* without having to go through this system for preparing the list of candidates; the document is explicit on this point: "Every bishop... can propose candidates directly to the Apostolic See."¹⁹¹ The representative of the Holy See is to elicit a "complete and detailed report on the state of the diocese and its needs" on the part to responsible persons in the diocese (vicar capitular, apostolic administrator, or the bishop personally). To that end a broad consultation is authorized among the secular clergy, the religious, and the laity. But what is important is the preparation of a *terna* (i.e., a list of the three most suitable candidates to occupy the vacant see), which is submitted to the competent Congregation in Rome. The determination of the *terna* is the task of the pontifical legate. The document reads: "Apart from cases legitimately exempted... before proposing the *ternae* to the Apostolic See, the Pontifical Representative has the task of requesting, individually, the suggestions of the metropolitan and suffragans of the province to which the vacant diocese belongs... as well as those of the president of the National Episcopal conference... the Pontifical Representative moreover will,

¹⁸⁷ Paul VI, *Sollicitudo omnium Ecclesiarum*, VI, 1: AAS 61 (1969) 481; CLD 6: 280.

¹⁸⁸ Rene Metz, "Papal legates and the appointment of bishops," *The Jurist*, 52, 1992, pp. 265.

¹⁸⁹ Paul VI, *Sollicitudo omnium Ecclesiarum*, VI, 1: AAS 61 (1969) 481; CLD 6: 280.

¹⁹⁰ *Normae de promovendis ad episcopale ministerium in Ecclesia Latina*, in AAS 64 (1972) 386-391. English translation in Canon Law Society of America, *Procedure for the Selection of Bishops in the United States* (CLSA, Procedure, Toledo, Ohio: CLSA, 1973)

¹⁹¹ *Normae*, II, 1: AAS 64 (1972) 387; CLSA, *Procedure*, 5.

as may be opportune, hear the opinions of some members of the cathedral chapter, or of the diocesan consultors, and of other members of the clergy, both secular and religious, especially members of the priests' council in existence while the diocese is still filled."¹⁹² If he judges it opportune, the pontifical legate can hear other members of the clergy (canons, diocesan consultors, members of presbyteral council, etc.) Furthermore, he is asked to express his preference (*cum voto suo*). This means that after gathering suggestions from different persons he is called to designate *de facto* the three candidates which seemed to him the most suitable for the vacant see to be filled and to present them in the order which he judges is most conformed to the respective capacities of each. Since the legate is responsible for "communicating to the Apostolic See" the proposals regarding the *terna*, he is not subject to any control on the part of local authorities; he is completely free in the definitive choice of candidates. This evidently demonstrates the importance of his role in the definitive selection of candidates. Although Rome is not bound by the *ternae*, the role of the legate will be determinative in most cases.¹⁹³

The 1983 Code of Canon Law translates into juridical formulations the provisions of both the 1969 *motu proprio Sollicitudo omnium Ecclesiarum* relative to the functions of legates and of the 1972 *Norms* relative to the selection of candidates for the episcopate. It is mainly done in the following two canons:

- (a) Canon 364, 4° restates the triple function of the pontifical legate, namely, to transmit to Rome the lists prepared by the assembled bishops, to propose himself the names of suitable candidates, and finally to conduct the informational investigation.¹⁹⁴ This canon confirms the fundamental and determinative role of the pontifical legate in the choice of bishops as had appeared in the 1969 *motu proprio*. Practically speaking all operations regarding the selection of candidates pass through him; he is the necessary link between the bishops and the Roman Curia; the possibility of individual bishops forwarding the names of candidates directly to the Holy See does not diminish the importance of his role.¹⁹⁵
- (b) Canon 377 §§2-3 substantially restates the provisions of the 1972 norms regarding the preparation of the lists of *episcopabili* and the proposal of the *terna*. In fact §2 states that, at least every three years, the bishops of each ecclesiastical province or, where circumstances require it, the Episcopal conference should draw up a list of priests suitable for the

¹⁹² *Normae*, XIII, 2: AAS 64 (1972); CLSA procedure, 7-8.

¹⁹³ Rene Metz, "Papal legates and the appointment of bishops," in *The Jurist*, 52 (1992), p. 268.

¹⁹⁴ Canon 364, §I 4°: "ad nominationem Episcoporum quod attinet, [legati pontificii munus quoque peculiar est] nomina candidatorum Apostolicae Sedi transmittere vel proponere necnon processum informativum de promovendis instruere, secundum normas ab Apostolica Sede datas."

¹⁹⁵ Rene Metz, "Papal legates and the appointment of bishops," *The Jurist*, 52 (1992), pp. 268-269.

episcopate.¹⁹⁶ A superficial reading of the text could lead on to believe that the bishops transmit their list to the Apostolic See individually...; but actually this paragraph envisions that the preparation of the list will be done “in common counsel and in secret.” One must read canon 377 in light of canon 364, 4° which makes the transmission of the lists one of the functions of the pontifical legate in Article 9 of the 1972 norms.¹⁹⁷ Canon 377 §3 restates article 9 of the 1972 norms regarding the *terna*; i.e., the list of three names to be presented to Rome when it is a question of filling a vacant see or appointing a coadjutor with the right of succession. That means, as we noted above in commenting on the pertinent passage in the 1972 norms, that in the final analysis the responsibility for the *terna* rests with the Legate, who is not subject to any control on the part of the local authorities whose suggestions he is obliged to elicit. Such is the general rule; in each country the Holy See engage in a broad consultation with the bishops who are called to prepare the lists of *episcopabili*. In this phase of the procedure the pontifical Legate essentially plays the role of an intermediary; he is responsible for transmitting to Rome the names of candidates chosen by the bishops. Nothing prevents his proposing candidates who are not on the Episcopal list or drawing Rome’s attention to one or other candidate who is on the list. But the role of the pontifical legate is a central one when one arrives at the stage of the process when provision must be made for the filling of a vacant see or the appointing of a coadjutor with the right of succession. The pontifical representative elicits and gathers the suggestions of the Episcopal authorities, the president of the Episcopal conference, and all other persons, clergy or laity, whose opinion he deems useful. Aided by such information he prepares the list of three names (*terna*) which seem to him to be the most suitable candidates to fill the vacant see; he forwards this list to Rome indicating his preference for a particular candidate. In a word, the pontifical legate closes the process without in principle anyone else being able to know what his definitive choice is.¹⁹⁸

¹⁹⁶ Canon 377 § 2: “Singulis saltem trienniis Episcopi provinciae ecclesiasticae vel, ubi adiuncta id suadeant, Episcoporum conferentiae, communi consilio et secreto elenchum componant presbyterorum etiam sodalium institutorum vitae consecratae, ad episcopatum aptiorum, eumque Apostolicae Sedi transmittant, firmo manente iure uniuscuiusque Episcopi Apostolicae Sedi nomina presbyterorum, quos episcopali munere dignos et idoneus putet, seorsim patefaciendi.” [The term “seorsim” is to be seen in the light of the term *directe* in the 1972 norms].

¹⁹⁷ Article 9 states: “The president of the meeting will send to the Apostolic See through the Pontifical Representative a complete copy of the minutes and the list of candidates.” AAS 64 (1972) 389; CLSA Procedure, 6.

¹⁹⁸ In saying this we envision the extreme hypothesis of the possibilities accorded the pontifical legate in law. In most cases the legate undoubtedly does not act in such a secret manner; he prepares the *terna* with the local authorities and in full agreement with them. Yet one must recognize the fact

In the particular situation of China, on the matter of the episcopacy, Pope Benedict XVI wrote in his *Letter*:

In recent years, for various reasons, you, my Brother Bishops, have encountered difficulties, since persons who are not 'ordained', and sometimes not even baptized, control and take decisions concerning important ecclesial questions, including the appointment of Bishops, in the name of various State agencies. Consequently, we have witnessed a demeaning of the Petrine and episcopal ministries by virtue of a vision of the Church according to which the Supreme Pontiff, the Bishops and the priests risk becoming *de facto* persons without office and without power. Yet in fact, as stated earlier, the Petrine and episcopal ministries are essential and integral elements of Catholic doctrine on the sacramental structure of the Church.¹⁹⁹

I am aware of the grave difficulties which you have to address in the aforementioned situation in order to remain faithful to Christ, to his Church and to the Successor of Peter.²⁰⁰

The Pope describes later how in this situation some of them, not wishing to be subjected to undue control exercised over the life of the Church, and eager to maintain total fidelity to the Successor of Peter and to Catholic doctrine, have felt themselves constrained to opt for clandestine consecration, whose condition is not a normal feature of the Church's life.²⁰¹ Other pastors however, under the pressure of particular circumstances, have consented to receive episcopal ordination without the pontifical mandate, but have subsequently asked to be received into communion with the Successor of Peter and with their other brothers in the episcopate;²⁰² a request that the Pope, considering the sincerity of their sentiments and the complexity of the situation, has granted them.

The context in which Benedict XVI addresses the question of bishop appointments is the context of unity of the episcopate, of which "the Roman Pontiff, as the Successor of Peter, is the perpetual and visible source and foundation."²⁰³ This is a central and inalienable aspect of the life, thought and essence of the Catholic Church. It is "indispensable, for the unity of the Church in individual nations, that every Bishop should be in communion with the other Bishops, and that all should be in visible and concrete communion with the Pope."²⁰⁴

that nothing prevents his following his own personal ideas, and in so doing he would act in a manner in strict conformity with the law. Cf. Rene Metz, "Papal legates and the appointment of bishops," *The Jurist*, 52, 1992, pp 270-271.

¹⁹⁹ *Letter*, n. 8, par. 2.

²⁰⁰ *Letter*, n. 8, par. 4.

²⁰¹ *Letter*, n. 8, par. 8.

²⁰² *Letter*, n. 8, par. 9.

²⁰³ *Letter*, n. 5.

²⁰⁴ *Ibid.*, n. 5.

d. Canonical freedom and requirements

The current Code of Canon Law lists down the qualities a suitable candidate for the episcopate must have. The following is the literal text:

To be a suitable candidate for the episcopate, a person must:

1° be outstanding in strong faith, good morals, piety, zeal for souls, wisdom, prudence and human virtues, and possess those other gifts which equip him to fulfill the office in question;

2° be held in good esteem;

3° be at least 35 years old;

4° be a priest ordained for at least five years;

5° hold a doctorate or at least a licentiate in sacred Scripture, theology or canon law, from an institute of higher studies approved by the Apostolic See, or at least be well versed in these disciplines.²⁰⁵

This quoted paragraph one of canon 378 largely restates the qualifications for the episcopate specified in canon 331 §1 of the 1917 Code of Canon Law,²⁰⁶ except for two notable differences, namely, there is no special reference to the legitimacy of the candidate but rather simply to his good reputation; and the minimum age for promotion to the episcopate is thirty-five rather than thirty. Canon 378, §1, 1° speaks in part of the talents that make a candidate suitable for a given episcopal office. This presupposes knowledge not simply of the particular qualifications of a candidate but also of the distinct needs of a given diocese in light of the diverse conditions of various dioceses even in the same country. Even if the present law does not explicitly call for such an examination of diocesan needs, it is still an extremely important concern, which can be met only through a serious effort to involve a fairly broad cross section of the people of God in a particular church. This might be expedited in connection with the quinquennial report which the bishop must make to the Holy See according to canon 399 § 1.

²⁰⁵ Canon 378 §1.

²⁰⁶ 1917 Code of Canon Law, can. 331 §1: "Ut quis idoneus habeatur, debet esse: 1°, Natus ex legitimo matrimonio, non autem legitimatus etiam per subsequens matrimonium; 2°, Annos natus saltem triginta; 3°, A quinquennio saltem in sacro presbyteratus ordine constitutus; 4°, Bonis moribus, pietate, animarum zelo prudentia, ceterisque dotibus praeditus, quae ipsum aptum efficiant ad gubernandam dioecesim de qua agitur; 5°, Laurea doctoris vel saltem licentia in sacra theologia aut iure canonico potius in athenaeo aliquo vel in Instituto Studiorum a Sancta Sede probatis, vel saltem earundem disciplinarum vere peritus; quod si ad religionem disciplinarum vere peritus; quod si ad religionem aliquam pertineat, a suis Superioribus maioribus vel similem titulum vel saltem verae peritiae testimonium habeat.

§2 Etiam electus, praesentatus vel quoquo modo ab illis designatus, qui privilegio a Sancto Sede concessio eligendi, praesentandi seu designandi gaudent, debet memoratis qualitatibus pollere.

Paragraph two (§2) of canon 378 is another example of the preeminent role of the Holy See in the designation process. It reads: *The definitive judgment on the suitability of the person to be promoted rests with the Apostolic See.* It largely restates canon 331 §3 of the 1917 Code regarding the judgment whether a particular candidate meets the legal requirements for the episcopal office.²⁰⁷ However, it modifies the 1917 Code in indicating that the Holy See²⁰⁸ expresses the “definitive” judgment, which implies that other judgments are also relevant during the process.

The statements of canon 379²⁰⁹ are also considered as a requirement for candidate for bishops; and canon 380, the profession of faith (loyalty oath) as well. The canon attempts to expedite the bishop-designate’s assumption of episcopal responsibilities by requiring his consecration normally within three months of his nomination and prior to his taking possession of office. This somewhat modifies canon 333 of the 1917 Code that required the bishop-designate to be consecrated within three months of his nomination and to go to the diocese for which he was appointed within four months. In requiring consecration prior to the taking possession of office,²¹⁰ the present canon reflects the Second Vatican Council emphasis on the significance of episcopal consecration for the conferral of the power of government.

One may also note canon 1013 on the necessity of a papal mandate for an episcopal consecration: “No Bishop is permitted to consecrate anyone as Bishop, unless it is first established that a pontifical mandate has been issued.” This principle was already stated in the 1917 Code of Canon Law: *Consecratio episcopalis reservatur Romano Pontifici ita ut nulli Episcopo liceat quemquam consecrare in Episcopum, nisi prius constet de pontificio mandato.*²¹¹ Likewise, the *Pontificale Romanum* (*De consecratione electi in episcopum*) prescribes that the consecrator must obtain beforehand a papal commission in the form of an Apostolic Letter (mandate), if he resides outside the Curia, or an oral commission by the Roman Pontiff if he is a cardinal. Canon 1382 is also relevant; it dictates a *latae sententiae* excommunication reserved to the Holy See on a bishop consecrating another bishop without a papal mandate, and on the one who receives the consecration from him. This sanction is an indication of the seriousness with which the legislator takes this legal violation. The exigencies of

²⁰⁷ 1917 CIC, canon 331 §3: “Iudicare num quis idoneus sit, an Apostolicam Sedem unice pertinet.”

²⁰⁸ When reference is made to the Holy See in the canons on the designation of bishops, it usually means the Sacred Congregation for Bishops unless one is dealing with the missionary churches when the competent congregation is the Sacred Congregation for the Evangelization of Peoples. However, if the selection of bishops involves negotiations with civil governments, the Council for the Public Affairs of the Church is competent.

²⁰⁹ Canon 379: “Unless prevented by a lawful reason, one who is promoted to the episcopate must receive Episcopal consecration within three months of receiving the apostolic letters, and in fact before he takes possession of his office.”

²¹⁰ Cf. *Lumen Gentium*, n. 21.

²¹¹ 1917 Code of Canon Law, can. 953.

ecclesial communion as understood by the legislator seem to underlie this twofold obligation of a profession of faith (c. 833, 3°) and an expression of loyalty to the Holy See on the part of the bishop-designate.²¹²

Speaking of qualities candidates for Bishops should have, Pope Benedict wrote in his *Letter*:

As to the choice of candidates for the episcopate ... I would like to remind you that they should be worthy priests, respected and loved by the faithful, models of life in the faith, and that they should possess a certain experience in the pastoral ministry, so that they are equipped to address the burdensome responsibility of a Pastor of the Church. Whenever it proves impossible within a diocese to find suitable candidates to occupy the episcopal see, the cooperation of Bishops in neighboring dioceses can help to identify suitable candidates.²¹³

2. Episcopal Office and Functions: *Munus pascendi*

In the name of Christ and with his authority, the Bishop teaches, sanctifies and governs the people to whom he is intimately united as a shepherd to his flock. There is interplay between the faithful and their Pastor and teacher, the Bishop. As a member of the people of God himself, the Bishop receives the deposit of faith that has been handed on. He in turn authoritatively presents that same faith, to which the whole people of God assent.²¹⁴

The Second Vatican Council's Dogmatic Constitution on the Church *Lumen Gentium* teaches that the *sacra potestas* or sacred power of bishops comes into existence by means of Episcopal consecration wherein they receive the fullness of priesthood. This sacred power has three *munera*, namely, sanctifying, teaching and governing and its exercise is stowed through a canonical mission or *missio canonica* in hierarchical communion with the Roman Pontiff and the other members of the College of Bishops.²¹⁵ The Episcopal consecration confers upon the bishop the office of teaching, sanctifying, and governing vis-à-vis Christ's own role as Teacher, Shepherd and High Priest. This highlights the pastoral dimension as one of the Episcopate's essential attributes, since it is ordered to build up the Church, the People of God. The bishop also acts *in persona Christi*, in the person of Christ.²¹⁶

²¹² James A. Coriden et al. (eds.), *The Code of Canon Law, a Text and Commentary*, commissioned by the Canon Law Society of America, Paulist Press, New York/ Mahwah, 1985, p. 324.

²¹³ *Letter*, n. 9, par. 4.

²¹⁴ Congregation for Bishops, *Apostolorum successores*, n.118.

²¹⁵ Cf. *Lumen Gentium*, n. 20.

²¹⁶ Cf. *Lumen Gentium*, n. 21. The Council, speaking of the office of Bishops, mentions the pastoral dimension as one of its essential attributes. In fact, the Episcopate is considered not only in the context of cult but also in the prophetic and pastoral ones, since it is a means ordered to build up the Church, the People of God.

This doctrine is translated into juridical terms by the Code of Canon Law, which has it at the very foundation of the canons on Bishops. Proof of it is seen already in the introductory canon 375, which masterly states that Bishops “are constituted Pastors in the Church, to be the teachers of doctrine, the priests of sacred worship and the ministers of governance.”²¹⁷ The canon continues in its following paragraph: “By their episcopal consecration, Bishops receive, together with the office of sanctifying, the offices also of teaching and of ruling, which however, by their nature, can be exercised only in hierarchical communion with the head of the College and its members.”²¹⁸

Thus the Bishops’ sacred power or *sacra potestas* is jointly displayed in the *tria munera* of teaching (*docendi*), sanctifying (*sanctificandi*) and governing (*regendi*), giving unity to the Bishops’ *munus pascendi*. “The ministries of teaching, sanctifying and governing are not separated areas, but are continually overlapping for the fulfillment of a single mission.”²¹⁹ We will briefly discuss each of these *tria munera* separately.

a. Munus docendi

Diocesan Bishops are the moderators of the ministry of the word in their dioceses. Referring to the exercise of this particular ministry of the word, the Code says it expressly: “For the particular Churches entrusted to them, that office is exercised by the individual Bishops, who are the moderators of the entire ministry of the word in their Churches.”²²⁰

This means that in the manifold activities of the faithful, including efforts that are not directly subject to the governing authority of a bishop, bishops should assist and encourage these various initiatives while at the same time ensuring that these initiatives are in fact guided by a Catholic spirit. The term “moderators” illustrates that Christ did not institute the office of bishop so that bishops alone should exercise the Church’s saving mission.²²¹

Each bishop, then, in his particular church, in submission to the supreme authority, exercises the mission of proclaiming the Gospel. Each bishop, subject only

²¹⁷ Canon 375 §1: *Episcopi... in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri.*

²¹⁸ §2: *Episcopi ipsa consecratione episcopali recipient cum munere sanctificandi munera quoque docendi et regendi, quae tamen natura sua non nisi in hierarchica communionem cum Collegii capite et membris exercere possunt.*

²¹⁹ J. L. Gutiérrez, “Commentary on canon 386,” in E. Caparrós, et al (ed), *Code of Canon Law Annotated*, 2nd edition, Wilson& Lafleur Limitée, Montreal, Canada, 2004, p. 332. Cf. also A. De la Hera, “Commentary to canon 386” in Angel Marzoa, et al., *Exegetical Commentary on the Code of Canon Law*, vol. II/1, Wilson& Lafleur, Montreal, Canada, 2004, p. 795.

²²⁰ Canon 756 §2.

²²¹ Cf. *Lumen Gentium*, n. 30.

to the supreme authority, has the basic duty to proclaim the Gospel to the people who have been entrusted to him.²²² At the same time, each bishop has the right and duty to supervise any other evangelizing efforts in the particular church. The Code of Canon Law also points out that each bishop may exercise this pastoral function jointly with other bishops so that several particular churches may thus be directed jointly.²²³ A bishop's work, incumbent upon him in his particular church by divine law, is different from the work incumbent upon him in groupings of bishops that are determined and limited by ecclesiastical law. It is their duty to ensure that the canonical prescriptions concerning the ministry of the Word are faithfully observed and that the whole Christian faith is correctly transmitted in their dioceses.²²⁴

This magisterial duty of the bishop obligates him to preach and to foster preaching. In fact, to preach the Gospel has pride of place in the bishop's pastoral ministry, as the Second Vatican Council explained.²²⁵ "By preaching everywhere the Gospel, welcomed and received under the influence of the Holy Spirit by those who hear it, the apostles gather together the universal Church."²²⁶ It repeatedly insists that the bishop's teaching office takes the Church's first concern. "In that way, then, with priests and deacons as helpers, the bishops received the charge of the community, presiding in God's stead over the flock of which they are the shepherds in that they are teachers of doctrine..."²²⁷ Besides preaching the Gospel, they are to give a special concern about catechetical instruction for everybody, namely, children, adolescents, young people and adults because it holds an important role in developing in the faithful a living, explicit and active faith, enlightened by doctrine. This instruction should be based on Holy Scripture, tradition, liturgy, and on the teaching authority and life of the church.²²⁸

Canon 756 §1, after saying that "the office of preaching the Gospel to the whole Church has been committed principally to the Roman Pontiff and to the College of Bishops," points out the specific responsibility of the supreme authority with respect to the proclamation of the Gospel which includes preaching, catechesis, and any other way of spreading Christian teaching. The Roman Pontiff exercises this responsibility with authority received from Christ, independent of any human authority.

²²² Cf. *Lumen Gentium*, n. 25; CD 12-14.

²²³ "Sometimes, however, in accordance with the law, a number of Bishops simultaneously carry out that office together in respect of a number of different Churches." (Canon 756 §2). Cf. Angel Marzoa, et. Ed. *Exegetical Commentary on the Code of Canon Law*, vol. III/1, Wilson & Lafleur Montreal, Canada, 2004, p. 60.

²²⁴ Cf. Canon 386.

²²⁵ Cf. *Lumen Gentium*, n. 25.

²²⁶ *Lumen Gentium*, n. 19.

²²⁷ Cf. *Lumen Gentium*, n. 20.

²²⁸ *Christus Dominus*, n. 14. Cf. canons 760-761.

However, it is very important to remember that the obligation of announcing the gospel is not just an individual task but that it belongs also “to the body of pastors,” as the Second Vatican Council put it: “The task of announcing the Gospel in the whole world belongs to the body of pastors, to whom, as a group, Christ gave a general injunction and imposed a general obligation ... Consequently, the bishops, each for his own part, in so far as the due performance of their own duty permits, are obliged to enter into collaboration with one another and with Peter’s successor, to whom, in a special way, the noble task of propagating the Christian name was entrusted.”²²⁹ It is only in this context of collegiality –as members of the College of Bishops in communion with the Roman Pontiff– that bishops exercise their office of preaching “as a truly collegial act” and enjoy the privilege infallibility.²³⁰

Hence the power of bishops cannot be exercised in an entirely autonomous or independent manner. Rather they must act in accord with the communion structures given by Christ to the Church: that is, in communion with the whole of the Episcopal body, and in submission to the one who is its head.”²³¹ Consequently, those bishops who teach in communion with the Roman Pontiff are to be revered by all the faithful “as teachers of the faith” endowed with the authority of Christ, to whom they represent, and are to be shown Christian obedience in what they prescribe “as rulers of the Church.”²³² In imitation of Christ, whose obedience unto death opened the way of freedom to the children of God,²³³ the Christian faithful are to obey their bishops when the latter act specifically in their role as Christ’s representatives. The bishops do this either when they teach formally, exercising the Church’s magisterium, or when they establish binding discipline as pastors of the Church.²³⁴

Canon 771 underlines the ecumenical and even interreligious concern of Pastors of souls, especially Bishops and parish priests, who “are to be solicitous that the word of God is preached to those also of the faithful who, because of the circumstances of their lives, cannot sufficiently avail themselves of the ordinary

²²⁹ *Lumen Gentium*, 23.

²³⁰ Canon 377, speaking of the College of bishops, states that “it exercises this same power by the united action of the Bishops dispersed throughout the world, when this action is as such proclaimed or freely accepted by the Roman Pontiff, so that it becomes a truly collegial act.” According to *Lumen Gentium* (n. 25), bishops, individually, do not enjoy the privilege of infallibility. Bishops, however, proclaim infallibly the doctrine of Christ when, even though dispersed throughout the world but preserving amongst themselves and with Peter’s successor the bond of communion, in their authoritative teaching concerning matters of faith and morals, they agree that a particular teaching is to be held definitively and absolutely. This is still more clearly when, assembled in an Ecumenical Council, they are, for the universal Church, teachers of and judges in matters of faith and morals, whose decisions must be adhered to with the loyal and obedient assent of faith.

²³¹ J. Herranz, “*The Personal Power of Governance of the Diocesan Bishop*,” *CLSA* (1987) 20.

²³² Cf. Canon 212 §1.

²³³ Cf. Vatican II, *Lumen Gentium*, 37.

²³⁴ Cf. James A. Coriden et al. (eds.), *The Code of Canon Law, a Text and Commentary*, p. 144.

pastoral care or are even totally deprived of it. They are also to take care that the good news of the Gospel reaches those living in their territory who are non-believers, since these too, no less than the faithful, must be included in the care of souls.²³⁵

According to Pope Benedict, this pastoral care of souls presupposes a profound priestly spirituality, a great love for God and for his People and an adequate on-going formation of Bishops and clergy. Therefore he makes some recommendations to the Chinese pastors, whose mission is developed in a particular ecclesial and sociopolitical situation: "The current ecclesial and sociopolitical situation renders ever more urgent the need to draw light and strength from the well-springs of priestly spirituality, which are God's love, the unconditional following of Christ, passion for proclamation of the Gospel, faithfulness to the Church and generous service of neighbor."²³⁶ He goes on saying that "young priests should follow the shining examples of Bishops and priests who, in the difficult years of the recent past, have testified to an unflinching love for the Church, even by the gift of their own lives for her and for Christ."²³⁷ And referring expressly to the Chinese reality, the Pope makes a call for a much needed ongoing formation: "In China too, as in the rest of the Church, the need for an adequate ongoing formation of the clergy is emerging."²³⁸

The ministry of the word is essentially related to the missionary vocation of the Church, which in present-day China peculiar challenges: "The Church, always and everywhere missionary, is called to proclaim and to bear witness to the Gospel. The Church in China must also sense in her heart the missionary ardour of her Founder and Teacher."²³⁹ And concludes quoting words of John Paul II, addressing pilgrims on the Mount of the Beatitudes in the Holy Year 2000: "For two-thousand years Christ's followers have carried out this mission. Now, at the dawn of the third millennium, *it is your turn.*" Indeed, "Now it is your turn, Chinese disciples of the Lord, to be courageous apostles of that Kingdom. I am sure that your response will be most generous."²⁴⁰

b. Munus sanctificandi

"By their Episcopal consecration, Bishops receive, together with *the office of sanctifying*..."²⁴¹ Bishops enjoy the fullness of the sacrament of Orders. Hence, as the principal stewards of the mysteries of God and having the responsibility for the

²³⁵ Cf. Canon 771.

²³⁶ Benedict XVI, *Letter*, n. 13, par.1. Cf. *Compendium*, n. 18.

²³⁷ *Letter*, n. 13, par. 1.

²³⁸ *Letter*, n.13, par. 3.

²³⁹ *Letter*, n.17, par. 1.

²⁴⁰ *Letter*, n.17, par. 3.

²⁴¹ Canon 375 §2.

liturgical life in the Church,²⁴² they should aim to make of one mind in prayers all who are entrusted to their care, to ensure their advancement in grace through the reception of the sacraments, and that they become faithful witnesses to the Lord.²⁴³

Canon 835 §1 describes the exercise of the sanctifying office by the diocesan bishop in his particular Church: “The sanctifying office is exercised principally by Bishops, who are the high priests, the principal dispensers of the mysteries of God and the moderators, promoters and guardians of the entire liturgical life in the Churches entrusted to their care.”

Bishops carry out their office in a special way in the sacred liturgy²⁴⁴ as they are in practice the high priests of their flock. Therefore all the faithful should hold in great esteem the liturgical life of the diocese centered around the bishop, especially in his cathedral church; they must be convinced that the preeminent manifestation of the Church is present in the full, active participation of all God’s holy people in these liturgical celebrations, especially in the same Eucharist, in a single prayer, on altar at which the bishop presides, surrounded by his college of presbyters and by his ministers. But because it is impossible for the diocesan bishop to preside over the whole flock in his church, he cannot do otherwise than establishing lesser groupings of the faithful. Among these are the parishes, set up locally under a pastor taking the place of the bishop, are the most important: in some manner they represent the visible Church established throughout the world.²⁴⁵

Liturgical actions are not private but are celebrations of the Church itself as the ‘sacrament of unity’, that is, the holy people united and ordered under the Bishops. Accordingly, they concern the whole body of the Church, making it known and influencing it. They affect individual members of the Church in ways that vary according to orders, role and actual participation.²⁴⁶ That is why as the moderator, the promoter and guardian of the entire liturgical life in the Church, the diocesan bishop has the function to control, promote, and protect the entire liturgical life of the Church for the unity of the Church.²⁴⁷ “Within the limits of his competence, it belongs to the diocesan Bishop to lay down for the Church entrusted to his care, liturgical regulations which are binding on all.”²⁴⁸

The Church carries out its sanctifying office by other means also, that is, by prayer, and by works of penance and charity... Local ordinaries are to ensure that the

²⁴² Cf. Vatican II, *Lumen Gentium*, n. 26.

²⁴³ Cf. Vatican II, *Christus Dominus*, n. 15.

²⁴⁴ Cf. Canon 834.

²⁴⁵ Vatican II, *Sacrosanctum Concilium*, nn. 41-42. The language is revised in part from Saint Ignatius of Antioch. Cf. J. Beal et al. (eds.), *New Commentary on the Code of Canon Law*, Theological Publication in India: Bangalore 2003, p. 1008.

²⁴⁶ Cf. Canon 837 §1.

²⁴⁷ Cf. Vatican II, *Christus Dominus*, n. 15.

²⁴⁸ Canon 838 §4.

prayers and the pious and sacred practices of the Christian people are in full harmony with the laws of the Church.²⁴⁹

In his *Letter* to the members of the Catholic Church in China, Pope Benedict XVI gave some guidelines regarding the celebration of the Mass and the administration of the other Sacraments with special reference to the canonical norms (cf canons 265-272) of the Church:

- (a) Regarding *the problem of concelebration of the Eucharist*, for example, he reminded Bishops and clergy that this presupposes, as conditions, profession of the same faith and hierarchical communion with the Pope and with the universal Church. "Therefore it is licit to concelebrate with Bishops and with priests who are in communion with the Pope, even if they are recognized by the civil authorities and maintain a relationship with entities desired by the State and extraneous to the structure of the Church, provided that this recognition and this relationship do not entail the denial of unrenounceable principles of the faith and of ecclesiastical communion."²⁵⁰
- (b) Concerning *Bishops whose consecrations took place without the pontifical mandate yet respecting the Catholic rite of episcopal ordination*, the Pope wrote that "the resulting problems must always be resolved in the light of the principles of Catholic doctrine. Their ordination is illegitimate but valid, just as priestly ordinations conferred by them are valid, and sacraments administered by such Bishops and priests are likewise valid. Therefore the faithful, taking this into account, where the Eucharistic celebration and the other sacraments are concerned, must, within the limits of the possible, seek Bishops and priests who are in communion with the Pope: nevertheless, where this cannot be achieved without grave inconvenience, they may, for the sake of their spiritual good, turn also to those who are not in communion with the Pope."²⁵¹
- (c) And regarding the obligation of priests to be incardinated in a diocese or Institute of Consecrated life and exercise their ministry in communion

²⁴⁹ Cf. Canon 839.

²⁵⁰ *Letter*, n.10 par. 4. Cf. *Compendium*, n. 14.

²⁵¹ *Letter*, n.10 par. 6. With regard to participation in the Mass and in the other sacraments in an officially registered church, the Holy Father distinguishes two cases. If the Bishop or the priest celebrant is in communion with the Pope, the faithful "should not hesitate" to receive the sacraments from him. If, on the contrary, the Bishop or priest celebrant is not in communion with the Pope, the faithful "may" receive communion and the other sacraments from him on two conditions: when they do not succeed in finding legitimate Pastors "without grave inconvenience to themselves," and yet they feel the need of the sacraments for their own spiritual good. In the second case, the final decision will be taken by the individual Catholic, taking into serious consideration the possibility indicated by the Holy Father. Cf. *Compendium*, n. 14, footnote 6.

with their bishops, the Pope reminded of the fact that “only for good reasons may a cleric exercise his ministry in another diocese, but always with the prior agreement of the two diocesan Bishops, that is, the Ordinary of the particular Church in which he is incardinated and the Ordinary of the particular Church for whose service he is destined.”²⁵²

c. Munus regendi

In his *Letter*, speaking of the Episcopate in China, Pope Benedict XVI briefly explains the nature and the *munus regendi* Bishops receive with their consecration. He wrote that Bishops, in order to be able to carry out their mission of building up the Church as a family of God and a place of mutual help, received with episcopal consecration three special offices: the *munus docendi*, the *munus sanctificandi* and the *munus regendi*, which all together constitute the *munus pascendi*. “In particular, the aim of the *munus regendi* is growth in ecclesial communion, that is, in building a community in agreement and listening to the Apostles’ teaching, the breaking of bread, prayer and fellowship. Closely linked to the offices of teaching and of sanctifying, that of governing – the *munus regendi* precisely – constitutes for the Bishop an authentic act of love for God and for one’s neighbour, which is expressed in pastoral charity.”²⁵³

As in the rest of the world, in China too, the Church is governed by Bishops who, through episcopal ordination conferred upon them by other validly ordained Bishops, have received, together with the sanctifying office, the offices of teaching and governing the people entrusted to them in their respective particular Churches, with a power that is conferred by God through the grace of the sacrament of Holy Orders. The office of governing (like the one of teaching), by its very nature can be exercised only in hierarchical communion with the head and members of the college of Bishops. In dealing with it we have to necessarily make recourse to the constitutional principles of the diocesan Bishop’s power of Governance with its threefold legislative, administrative and judicial division.

Canon 375 §1 states: “Through the Holy Spirit who has been given to them, Bishops are the successors of the apostles by divine institution; they are constituted pastors within the Church so that they are... ministers of governance,” endowed with *sacra potestas*. This sacred power, however, needs determination. It may either consist in the concession of a particular office or in the assignment of subjects. This is given according to fix norms approved by the supreme authority of the Church.”²⁵⁴

²⁵² *Letter*, n.10 par. 3. Cf. *Code of Canon Law*, cc. 265-272.

²⁵³ *Letter*, n.8, par. 7. Cf. Benedict XVI, *Address to new Bishops* (21 September 2006): AAS 98 (2006), p. 696.

²⁵⁴ Vatican II, *Unitatis Redintegratio*, n. 2.

“In the diocese entrusted to his care, the diocesan Bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office.”²⁵⁵ Actually, in any natural society which has jurisdiction, power is conferred on those who govern through an act which is exclusively juridical in nature. While in the Church, the bishop's power of governance – like that of teaching and sanctifying – is conferred ontologically on sacred pastors through Episcopal consecration, an act which is of a sacramental nature.²⁵⁶ This enables them to fulfill their demanding task of sustaining the people of God in the name of God.²⁵⁷ The office of governing (*munus regendi*) that the bishop receives ontologically by consecration becomes a juridical power *ad actum expeditum* by means of the mission or canonical determination from superior authority.²⁵⁸ But both the consecration through which he is incorporated in the Episcopal college and canonical mission received for governing a particular diocese are conferred on the person of the bishop.

Episcopal power is therefore a stable power, as the office attached to it is stable. And it is a full power (*potestas plena*), as it extends to all the realms of competence in which the diocesan pastor is required to be active – the mission as a teacher of the faith, as a dispenser of the sacraments and as a protector of a correct social order.

The power of the bishop is said to be *proper* because it is exercised in his own name and not in the name of another. This means that in their dioceses they are not vicars of the Roman Pontiff. In fact their power is not a participation in the power granted by God to Peter and his successors; it is instead a participation in the power that Christ conferred directly on the apostolic college and that is transmitted to the Episcopal college. This power is exercised by bishops, as the Apostles already did, “together and under the authority” of Peter, whose successor – the Roman Pontiff – “has supreme, full, immediate and universal ordinary power in the Church.”²⁵⁹ “This reinforces and defends the proper, ordinary and immediate power which the Bishops have in the particular Churches entrusted to their care.”²⁶⁰

The fullness of the diocesan bishop's power is configured also by the fact that it is an *immediate* power. That is, it can be exercised directly over the people and things which have been made subject to his jurisdiction. In other words, the power of the bishop can be activated at any moment without the necessity of any intermediary.²⁶¹

²⁵⁵ Canon. 381 §1.

²⁵⁶ Cf. Vatican II, *Lumen Gentium*, n. 21.

²⁵⁷ The bishops in fact “fulfill in an eminent and visible manner the role of Christ himself, the teacher, the Shepherd and the Pontiff and acts in his name.” Cf. Vatican II, *Lumen Gentium*, n. 21.

²⁵⁸ Cf. Vatican II, *Lumen Gentium*, n. 22-24.

²⁵⁹ Canon 331. Cf. Vatican II, *Christus Dominus*, n. 2.

²⁶⁰ Canon 333 §1.

²⁶¹ Cf. J. Herranz, “The Personal Power of Governance of the Diocesan Bishop,” *CLSA* (1987). 17-19.

The power of the diocesan bishop is the principle of communion (*communio*). This principle means above all that the functions (*munera*) conferred on all bishops by consecration “by their very nature can be exercised only when they are in hierarchical communion with the head of the College and its members.”²⁶² As this principle refers concretely to the diocesan bishops, it means that their power cannot be exercised in an entirely autonomous or independent manner. Rather they must act in accord with the *communio* structures given by Christ to the Church: that is, in communion with the whole of the Episcopal body, and in submission to the one who is its Head.²⁶³

“The diocesan Bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law.”²⁶⁴ This power of governance, “also called power of jurisdiction,” is something that the Church has “by divine institution”²⁶⁵ and which the diocesan Bishop exercises either personally or through someone else delegated by him:

- (a) In the diocese, the *legislative power* belongs solely to the person of the bishop; it cannot be validly delegated by him to another “unless the law explicitly provides otherwise,” as stated in canon 135 §2. Besides, this power “is to be exercised in the manner prescribed by law (*ad normam iuris*).”²⁶⁶ Therefore the diocesan Bishop is required, among other things, to listen, to advice or to ask the opinions of the competent diocesan bodies –especially the College of Consultors and the Presbyteral Council,²⁶⁷ whenever this is required by universal law. Besides, he is to listen to the opinion of the Episcopal council (if it exists) in questions of governance; and of the Pastoral Council in questions about pastoral and apostolic activities in the diocese.²⁶⁸ Yet the bishop cannot attribute to any of these mentioned consultative structures a deliberative or decision-making power for the making of laws, general decrees or other acts of a legislative character.²⁶⁹ Nor can the bishop attribute a legislative power to the diocesan Synod or to individuals of the diocesan Synod that have a deliberative vote, since the principle *the bishop is the only legislator* of canon 466 is valid also for the diocesan Synod [*potestatem*

²⁶² Canon 375 §2.

²⁶³ According to the Vatican II’s Constitution *Lumen Gentium* the exercise of Episcopal power “is ultimately regulated by the supreme authority of the Church,” and can be circumscribed “within certain limits, in view of advantage to the Church or to the faithful.” Vatican II, *Lumen Gentium*, n. 27.

²⁶⁴ Canon 391 §1.

²⁶⁵ Cf. Can. 129.

²⁶⁶ Can. 391 §2.

²⁶⁷ Cf. Can. 495 §1 and can. 502 §2.

²⁶⁸ Cf. Can. 511.

²⁶⁹ For instance, the approval of statutes which are subject to the norms of the law (cf. Can. 94 §3) or the approval or reprobation of a custom *contra ius* or *praeter ius* (cf. Canons 23 and 26).

*legislativam exercet ipse Episcopus sive in synodo diocesana sive extra eandem...*²⁷⁰

- (b) Regarding the *executive* and *judicial* power, it is evident from canon 391 §2²⁷¹ that the primary and personal entitlement of such power is the diocesan bishop himself. He exercises these other two functions of government either directly or through his vicars. In the latter case they act in the name of the only pastor of the diocese, who coordinates their activities²⁷² and for whose mind and intentions they always should respect.²⁷³ However the possibility of hierarchical recourse to the bishop against the decrees of authorities that are subject to him has been provided for in the 1983 Code of Canon Law,²⁷⁴ something which was not present in the preceding Code. The personal and complete character of bishop's power, however, does not constitute, not even at the level of executive functioning, an impediment or a limitation to the legitimate exercise of the personal charisms of the faithful. "If this were possible it would be a contradiction in the constitutional norms themselves of the divine law of the Church,"²⁷⁵ for the executive power is that authority to govern which bishops have in order to promote the common discipline of the church, to urge the faithful to observe all ecclesiastical laws, and to watch the observance of these so that there will be no abuses in the ecclesiastical discipline.²⁷⁶

B. Concerning Episcopal Conferences

The existing College of Catholic Bishops of China (*China Catholic Bishops' College*) is not recognized as an Episcopal conference by Pope Benedict XVI. The reasons or facts for it are mainly three, namely, (1) because the "clandestine" Bishops [i.e., those legitimately ordained and in communion with the Pope but not recognized by the Chinese Government] are not part of it; (2) because said College of [Chinese] Bishops includes Bishops who are still illegitimate [i.e., those who having received episcopal ordination without the papal mandate, have not asked for

²⁷⁰ Cf. *Communicationes*, n. 18 (1986), 146-147, 165.

²⁷¹ Canon 391§2: "The Bishop exercises legislative power himself. He exercises executive power either personally or through Vicars general or episcopal Vicars, in accordance with the law. He exercises judicial power either personally or through a judicial Vicar and judges, in accordance with the law."

²⁷² Cf. Canon 473.

²⁷³ Cf. Canon 480.

²⁷⁴ Cf. Can. 1734 §3, 1° §3: "The norms in §§1 and 2 do not apply: 1° in having recourse to the Bishop against decrees given by authorities who are subject to him; [...]"

²⁷⁵ Cf. J. Herranz, "The Personal Power of Governance of the Diocesan Bishop," *CLSA* (1987) pp. 24-26.

²⁷⁶ Canon 392.

or have not yet obtained, the necessary legitimation];²⁷⁷ and finally (3) because said College of Bishops is governed by statutes that contain elements incompatible with Catholic doctrine.²⁷⁸

Apart from this paragraph of Pope Benedict's *Letter* where those three reasons are mentioned to explain why the present College of Catholic Bishops of China cannot be recognized as an Episcopal conference by the Apostolic See, only on very few occasions the expression "Episcopal conference" appears in the *Letter*. Yet the issue is important, because Episcopal Conferences, being the assembly of the Bishops of a country or of a given territory,²⁷⁹ exercise together certain pastoral offices and promote the greater good which the Church offers to all people.²⁸⁰

"In individual nations," Pope Benedict writes, "all the legitimate Bishops constitute an Episcopal conference, governed according to its own statutes, which by the norms of canon law must be approved by the Apostolic See." The Pope goes on explaining the main traits (nature, meaning and purpose) of Episcopal Conferences: "Such an Episcopal conference expresses the fraternal communion of all the Bishops of a nation and treats the doctrinal and pastoral questions that are significant for the entire Catholic community of the country without, however, interfering in the exercise of the ordinary and immediate power of each Bishop in his own diocese. Moreover, every Episcopal conference maintains opportune and useful contacts with the civil authorities of the place, partly in order to favor cooperation between the Church and the State, but it is obvious that an Episcopal conference cannot be subjected to any civil authority in questions of faith and of living according to the faith (*fides et mores*, sacramental life), which are exclusively the competence of the Church."²⁸¹

Episcopal conferences have long existed as informal entities, but were first established as formal bodies by the Second Vatican Council²⁸² and implemented by Pope Paul VI's 1966 *M.P. Ecclesiae sanctae*.²⁸³ The nature of Episcopal conferences, and

²⁷⁷ The canonical status of this very small group of Bishops accurately described in the *Letter*: "... They are to be considered illegitimate, but validly ordained as long as it is certain that they have received ordination from validly ordained Bishops and that the Catholic rite of episcopal ordination has been respected." (*Letter*, n. 8, par. 12). Their inclusion in the in the College of Catholic Bishops of China is an important reason why the latter is not recognized by Pope Benedict XVI as a true Episcopal Conference.

²⁷⁸ Cf. *Letter*, n. 8, par. 14: "... The "clandestine" Bishops, those not recognized by the Government but in communion with the Pope, are not part of it; it includes Bishops who are still illegitimate, and it is governed by statutes that contain elements incompatible with Catholic doctrine." Cf. *Compendium of Pope Benedict XVI to Chinese Church*, May, 23, 2009, n. 12.

²⁷⁹ Episcopal Conferences are generally defined by geographic borders, with all the bishops in a given country belonging to the same Conference – which might also include neighboring countries.

²⁸⁰ Cf. Canon 447.

²⁸¹ Benedict XVI, *Letter*, n. 8, par. 13.

²⁸² Vatican II, *Christus Dominus*, 38.

²⁸³ Paul VI, *M.P., Ecclesiae Sanctae*. August 6, 1966: AAS 58 (1966), 757-787.

their magisterial authority in particular, was clarified in 1998 by Pope John Paul II's *M.P. Apostolos suos*.²⁸⁴ Still the operation, authority, and responsibilities of Episcopal conferences are currently governed by the 1983 Code of Canon Law, especially in canons 447-459.

1. Nature and Purpose of Episcopal Conferences

Episcopal conferences are permanent institutions, generally defined by geographic borders, with all the bishops in a given country or in a certain territory belonging to the same conference. Certain pastoral offices, tasks and authority are assigned to Episcopal conferences, which "by forms and means of apostolate suited to the circumstances of time and place," they are "to promote, in accordance with the law, that greater good which the Church offers to all people."²⁸⁵

This concept of the Bishops' Conference proposed by canon 447, taken almost word-for-word from the Second Vatican Council documents,²⁸⁶ underlines, first of all, the character of *permanence* of the Conferences, which distinguishes them from other institutions of a particular synodal character, like the Provincial and Plenary Councils.²⁸⁷ In fact, the Conferences not only meet periodically, but they are also endowed of permanent organizations to assure a stable coordination of pastoral activities as they have juridical personality *ipso iure*.²⁸⁸ Besides, the Bishops in the Conferences "jointly exercise their pastoral ministry." When the bishops of a territory jointly exercise certain pastoral functions for the good of their faithful, such joint exercise of the episcopal ministry is a concrete application of collegial spirit. On the other hand, this exercise of the episcopal ministry never takes on the collegial nature proper to the actions of the order of bishops as such, which alone holds the supreme power over all the Church," because "episcopal collegiality in the strict and proper sense belongs only to the entire College of Bishops, which as a theological subject is indivisible."²⁸⁹

The Episcopal conference, according to the mentioned canon 447, is "to promote, in accordance with the law, that greater good which the Church offers to all people." How does the Episcopal conference promote such 'greater good'? It does so in different ways, for instance, by the common testimony of the faith of the particular Churches; by exchange of experiences; by defending the freedom of the Church

²⁸⁴ Cf. Pope John Paul II's *M.P. Apostolos suos* (May 21: AAS 90 [1998], 641-658).

²⁸⁵ Canon 447.

²⁸⁶ Cf. Vatican II, *Christus Dominus*, 38, par. 1.

²⁸⁷ Cf. Canons 439-446.

²⁸⁸ Canon 449 §2: "An Episcopal Conference lawfully established has juridical personality by virtue of the law itself."

²⁸⁹ John Paul II, *M. P. Apostolos suos*, May 21, 1998. Cf. also A. Marzoa et al (ed.), *Exegetical Commentary on the Code of Canon Law*, Vol. II/1, 2004, Commentary to c. 447, p. 992.

against threats by civil authority and totalitarian governments; by safeguarding the distinction between the religious sphere and the temporal sphere; by fostering nationwide initiatives to be carried out –universities, the press, lay apostolate, social justice, formation of the clergy, missionary activity, etc.²⁹⁰ Other concrete ways to carry out its task are through the joint regulation of certain pastoral matters via general decrees, binding both the Bishops and the faithful of the territory; through the transmission of the doctrine of the Church in harmony with the particular character of a nation and circumstances of life of its Christian faithful; and through the coordination of individual efforts in apostolic and charitable fields at a national level.

Communion within the Episcopal conference is “the *raison d’être* and the prime purpose of every Episcopal conference,” in Pope John Paul II’s words.²⁹¹ Pope Pius XII had already said that “the constant exchange of contacts among bishops contributes a great deal to the fruitful and effective exercise of the pastoral office” since in this way they not only enrich one another in experience and knowledge of situations and problems, but also attain greater balance in pastoral government, avoiding the surprise of the faithful who often cannot understand why a certain line is followed in one diocese while a different or even opposite line is followed in another.”²⁹²

One important element to be considered regarding Episcopal conference is that they can assist the individual bishops of the Conference but that they cannot substitute for the authority which they individually possess. To start with, Bishops’ Conferences do not participate in the *teaching* authority of the College of Bishops although individual bishops do, as they are members of the Bishops’ College, which maintains unity with and under the Bishop of Rome, that is, the Pope. The Code of Canon Law makes it clear: “The Episcopal conference can make general decrees only in cases where the universal law has so prescribed or by special mandate of the Apostolic See...”²⁹³ and for those decrees validly to be enacted at a plenary meeting, “they must receive two thirds of the votes of those who belong to the Conference with a deliberative vote”; in addition, these decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated.”²⁹⁴ Moreover, once

²⁹⁰ T. Pazhayampallil, SDB, *A Commentary on the New Code of Canon Law*. KJC Publications, Bangalore, India, 1985, n. 318, pp. 304-305.

²⁹¹ Cf. *L’Osservatore Romano*, English edition, January 19, 1981, p. 11. This unity, in words of the Pope, requires from Bishops both the *collegialitas effectiva* and the *collegialitas affectiva* with the Successor of Peter and with all their brother Bishops throughout the world. It likewise requires a special manifestation of unity among the bishops of each Episcopal Conference.

²⁹² Pius XII, *Address to the Cardinals and Bishops*, 2 November 1954, cf. in Ochoa, X., *Leges Ecclesiae*, Vol. II, Rome, 1969, p. 3325.

²⁹³ Canon 455 §1.

²⁹⁴ Canon 455 §2: “For the decrees mentioned in §1 validly to be enacted at a plenary meeting, they must receive two thirds of the votes of those who belong to the Conference with a deliberative

promulgated and in force, local ordinaries can dispense from any of them on certain conditions.²⁹⁵

The role of the Episcopal conference has grown in importance in recent years. In manifold and fruitful ways, the Conference contributes to the realization and development of the spirit of collegiality among members of the same Episcopate and help Bishops to provide for the common good of particular Churches through agreed and well-coordinated policies. In the end, the task of the Episcopal conference is to assist the Bishops in their ministry, to the advantage of the whole People of God.

Regarding the *establishment, suppression or alteration* of Episcopal conferences the Code of Canon Law states that “it is for the supreme authority of the Church alone, after consultation with the Bishops concerned.”²⁹⁶ This exclusive competence of the Holy See – respectively to the Congregation for Bishops and to the Congregation for the Evangelization of Peoples – over the establishment, suppression and alteration of Bishops’ Conferences is justified by the importance that this institution assumes in the life of the particular churches and of the universal Church itself, decidedly superior to the importance of the ecclesiastical provinces for which an analogous provision is in effect.²⁹⁷ And as for the *acquisition of juridical personality*, “an Episcopal conference lawfully established has juridical personality by virtue of the law itself.”²⁹⁸

Applying these canonical provisions on Episcopal conferences with the so-called Catholic Bishops Conference of China – the existing “College of Catholic Bishops of China” – we may have further elements to understand why such body is not recognized as a true Episcopal conference by Pope Benedict XVI in his *Letter*:

- (a) First, concerning *its nature and juridical status*: The “Bishops’ Conference of the Catholic Church in China” was established in 1980, during a meeting of the Third National Convention of the Chinese Catholic Patriotic Association and the first meeting of the National Catholic Representatives Assembly.²⁹⁹ (Before those two meetings

vote. These decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated.” It appears then that Episcopal Conferences are more of administrative bodies than legislative ones (can. 557).

²⁹⁵ Cf. R. Page, *Particular Councils and Conferences of Bishops*, CLSA Proceeding, 1988, pp. 218-219.

²⁹⁶ Canon 449 §1.

²⁹⁷ Cf. G. Feliciani, Commentary to canon 449 §1, in A. Marzoa et al (ed.), *Exegetical Commentary on the Code of Canon Law*, Vol. II/1, 2004, p. 997.

²⁹⁸ Canon 449 §2. A lawfully established Conference, within the meaning of §1, has a juridical personality by law – a personality that, in light of the provisions of canon 116 §1, must be considered to be of public nature. This explicit recognition by the canonical legislator can provide in many cases a notable facility in obtaining recognition for civil purposes, according to the procedures envisioned by the legal systems of the different states. Cf. G. Feliciani, Commentary to canon 449 §2, in A. Marzoa et al (ed.), *Exegetical Commentary on the Code of Canon Law*, Vol. II/1, 2004, p. 998.

²⁹⁹ Cf. Anthony S.K. Lam, *The Catholic Church in Present-Day China. Through Darkness and Light*. The Holy Spirit Study Center, Hong Kong, 1997, p. 67.

there had been other Bishops' meetings,³⁰⁰ but they did not result in a Bishops' Conference.) It was on this occasion when the Chinese Catholic Patriotic Association (CCPA) relinquished its role as overseer of all Church concerns and gave the responsibility for doctrinal and pastoral matters over to the clergy and church leaders.³⁰¹ Thus the Bishops' Conference was born under the auspices of the Communist Party as "the leading national structure for church affairs of the Chinese Catholic Church"³⁰² and its members were all from the Official Church, formed also by non-Catholics.³⁰³ Originally, in the absence yet of its own Constitution, the Conference derived its juridical status from the constitution of the "Church Administrative Committee."³⁰⁴ But the Bishops' Conference soon became aware of the necessity to have its own constitution, independent of that of the Administrative Committee. Thus at its meeting in 1989, an *ad hoc* committee was set up to draft the new constitution, which was formally approved in September 1992.³⁰⁵ In the new constitution, the "Bishops' Conference of the Catholic Church in China"³⁰⁶ appears as "the leading national structure for church affairs of the Chinese Catholic Church."³⁰⁷ Based in Beijing,³⁰⁸ the Conference is accountable to the Chinese Catholic Representatives Congress, whose functions and powers are to formulate or revise the Constitution of the Conference, to evaluate its work, and to elect its officers. It dictates also the frequency of its meetings³⁰⁹ and eventually decides upon the termination of the Bishops' Conference "if deemed necessary."³¹⁰

- (b) Regarding its *purpose and functions*: The original purpose – and consequently the main function – of the "Bishops' Conference of

³⁰⁰ For instance, the one convened in 1924 by the Apostolic Delegate to China, Archbishop Celso Costantini, to promote the Chinese hierarchy.

³⁰¹ Cf. *The Catholic Church in China*, no. 1 (November 1980), pp.2-2. The CCPA, however, kept itself as overseer of the external affairs and Church-State relations.

³⁰² *Constitution of the Chinese Bishops' Conference*, art. 2. Cf A. Lam, *op.cit.*, Appendix V.

³⁰³ On the other hand, some members of the Underground Church did not agree with what the Chinese Catholic Patriotic Association did and consequently they did not join such Bishops' Conference.

³⁰⁴ Anthony Lam, *op. cit.*, p. 70

³⁰⁵ Like any typical constitution, it is quite brief and explicit. The 14 Articles contain succinct regulations on its name (art. 1), identity and purpose (art. 2), membership (art. 3), accountability (art. 4), organization and management (art. 5-7), competences (art. 8-11), headquarters (art. 12), and two final dispositions one concerning the termination of the Bishops' Conference (art. 13) and the other, regarding the approval of the Constitution (art.14).

³⁰⁶ Such is its official name, cf. *Constitution of the Chinese Bishops' Conference*, Art. 1.

³⁰⁷ *Constitution of the Chinese Bishops' Conference*, art. 2. Cf A. Lam, *op.cit.*, Appendix V.

³⁰⁸ Cf. *Constitution*, Art. 12.

³⁰⁹ Cf. *Constitution*, Art. 4.

³¹⁰ Cf. *Constitution*, Art. 13.

the Catholic Church in China" upon its establishment in 1980 was to take up responsibility for doctrinal and pastoral matters; in fact the Conference was created to assume the role as overseer of Church concerns. Now, according to Article 7 of the Administrative Committee Constitution, the main functions of the Bishops' Conference were: "to guard the deposit of faith, maintain church discipline, and share pastoral experience." In its Constitution the purpose is formulated thus:

"In accordance with the Bible and based on the traditional spirit of the one, holy, catholic and apostolic church, its purpose is to:

- Study and explain the doctrines to be believed and the rules to be observed in the church;
- Examine and approve the election and ordination of diocesan bishops;
- Establish pastoral guidelines;
- Organize and unite all the clergy and laity to observe the Constitution, laws, regulations and policies of the country;
- Implement the principles of independence, self-government and administration according to the situation in China;
- Represent the Chinese Catholic Church outside of China."³¹¹

While some of these functions, like "to examine and approve the election and ordination of diocesan bishops," sound a bit strange for going beyond the stated boundaries of doctrine and discipline to reach into the area of Episcopal selection – a prerogative far surpassing the authority of other Conferences – it is noticeable on the other hand the absence of some functions which would have seemed proper of the Episcopal conference, such as the formulation or revision of its own constitution, the evaluation of its own work reports, the discussion and adoption of some important resolutions, the election of its own officers, the determination of the frequency of meetings, etc. The fact is that these latter functions and powers are assigned in the Constitution of the Bishops' Conference of the Catholic Church in China to the Chinese Catholic Representatives Congress, under which the Bishops' Conference has been placed and to which, as we have already said, the Conference is accountable.

2. Membership and Internal Organization

The members of an Episcopal conference, by law, "all diocesan Bishops and those equivalent to them in law; all coadjutor Bishops, auxiliary Bishops and other

³¹¹ Cf. *Constitution*, Art. 13.

titular Bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Episcopal conference.”³¹² They have a deliberative or consultative vote in it, according to the provisions of the statutes of the Conference.³¹³

According to universal law, then, only diocesan Bishops, their equivalent in law and coadjutors have the right to a deliberative vote in Bishops’ Conference. It is for the statutes to determine the degree of participation in the Conference of auxiliary and other titular Bishops: they may be given a deliberative vote on some or all matters; or they may be given a consultative vote only on all matters. Notwithstanding any provision of the statutes, only those who have a deliberative vote by virtue of the universal law can vote validly in the making and alteration of the statutes.

Noticeably the criteria for the membership in the Episcopal conference are the Episcopal order, as determined by one’s membership in the College of Bishops, and Episcopal governance, as determined by one’s involvement in pastoral responsibility. Either of the two is a basis for entitlement to membership, but neither by itself suffices for automatic membership with full voting rights.³¹⁴

It is a fact that the 1983 Code of Canon Law made adaptations from the decrees of the Second Vatican Council; for example, from its document *Christus Dominus* on the membership of the Episcopal conference: This is evident because both documents (the Code and *Christus Dominus*) prescribe that all diocesan bishops are members of the Episcopal conference. However, the Code differs from *Christus Dominus* on the membership of Bishops of another rite, because in the former, bishops of another rite, by law, are not members of the Episcopal conference,³¹⁵ while in the latter, all diocesan bishops of whatever rite are members of an Episcopal conference.³¹⁶

Speaking of the internal organization, in the Episcopal conference there are *three major organizational elements* that are required by the Code of Canon Law, namely, the officers, composed of the President, Vice-president and general Secretary; the Permanent Council, which serves as an administrative and executive committee and the plenary meetings which are the meetings of the full Conference.³¹⁷

³¹² Cf. Canon 450 §1. The other titular Bishops (Bishops *emeriti*...) and the Legate of the Roman Pontiff are not by law members of the Bishops’ Conference (can. 450 §2).

³¹³ Canon 454 §1: “By virtue of the law diocesan Bishops, those equivalent to them in law and coadjutor Bishops have a deliberative vote in plenary meetings of the Episcopal Conference.” Canon 454 §2: “Auxiliary Bishops and other titular Bishops who belong to the Episcopal Conference have a deliberative or consultative vote according to the provisions of the statutes of the Conference. Only those mentioned in §1, however, have a deliberative vote in the making or changing of the statutes.”

³¹⁴ Cf. John B. Lee, *The Legislative Function of Episcopal Conferences and its Application to the Taiwanese Setting*, UST, Manila, 2004, p. 28.

³¹⁵ Cf. Canon 450 §1.

³¹⁶ Cf. Vatican II, *Christus Dominus*, n. 38, 2.

³¹⁷ Cf. Canons 452-454.

“Each Episcopal conference is to elect its president and determine who, in the lawful absence of the president, will exercise the function of vice-president. It is also to designate a general secretary, in accordance with the statutes.” “The president of the Conference or, when he is lawfully impeded, the vice-president, presides not only over the general meetings of the Conference but also over the permanent committee.”³¹⁸

- (a) *The President.* The principal responsibilities of the President by law are to preside over the plenary meetings of the Episcopal conference and over its Permanent Committee or executive board and to forward to the Apostolic See a report of the acts and a copy of any decrees from each plenary meeting.³¹⁹ The President, though he may have other responsibilities in keeping with the statutes, cannot act in the name of all the bishops unless it is a matter for which special competence has been given, or each and every bishop consents to it.³²⁰ In case where the President is impeded in performing his position the Vice-president or pro-president fills in for the President's place.
- (b) *The Secretary General.* The Secretary General performs three main responsibilities in the Episcopal conference, namely, he is to draw up reports or minutes of the Conference's plenary meetings and to distribute them to all the members of the Conference; he is to draft reports and studies on the projects of the Conference and on the implementation of the programs being conducted by the Conference; and he is to relay communications between Episcopal conferences.³²¹ The Secretary General provides vital staff services to the Episcopal conference.
- (c) *The Permanent Committee.* The Permanent Committee is composed of member bishops of the Conference. It serves as a board on which normally the officers of the Episcopal conference serve together with other members, whether ex officio or elected to it. The chair of the permanent committee is also the President of the Conference.³²² The task of the Permanent Committee is to supervise the preparation of plenary meetings, and can conduct other business on behalf of the Episcopal conference, but subject to the norms laid down in the statutes and the restriction of the Code of Canon Law. The Committee serves the permanency of the Episcopal conference as an institution.

³¹⁸ Canon 452.

³¹⁹ Cf. Canon 456.

³²⁰ Cf. Canon 455 §4.

³²¹ Cf. Canon 458.

³²² Cf. Canon 452 §2.

Referring this topic to the situation of the Catholic Church in China, the Fifth Chinese National Catholic Representatives Assembly in September 1992, elected new officers for the Bishops' Conference. The meeting also set up a new consultative body and the following six Committees under its control: The Church Administrative Committee – formerly on equal footing with the Bishops' Conference, now under the jurisdiction of the latter; the Seminary Education Committee; the Liturgy Committee; the Theological Study Committee; the Finance Development Committee; and the International Relationships Committee. As for the Conference's *membership and role*, Article 7 of the Constitution of the *Church Administrative Committee* states: "The Chinese Bishops' Conference consists of the Episcopal ordinaries of the different dioceses. Its role is to study and explain the doctrines of faith, to regulate Church discipline, to exchange pastoral experiences, and to promote relationships with the churches outside China. It should have a chairman, a number of vice-chairmen, and one secretary-general. These should be elected at the Bishops' Conference meeting."³²³ When the Bishops' Conference was established at the end of May 1980, there were 33 bishops-members; among them, were 29 bishops appointed by the Chinese Government and 4 bishops approved by Pope Pius XII, other five bishops consecrated by Pope Pius XII were not included in the list at that meeting.³²⁴ For this reason, the establishment of the Chinese Bishops Conference in 1980 is not yet recognized as such by the Holy See, for the clandestine Bishops – those not recognized by the Government but in communion with the Pope – were not part of it while on the other hand, its membership includes Bishops who are still illegitimate, and it is governed by statutes that contain elements incompatible with Catholic doctrine.³²⁵

3. Statutes of Episcopal Conferences

Since Episcopal conferences are juridical persons they need to have their own statutes, which shall define their purpose, constitution, government and operation.³²⁶

³²³ Cf. *The Catholic Church in China*, Vol.18, n. 1 March 30, 1987, p. 52.

³²⁴ The four bishops whose names were included in the list are following: Bishop Deng Jizhou, Sichuan province, Leshan diocese; Bishop Wang Xueming, inner Mongolia, Huhhot diocese; Bishop Duan Yinming, Sichuan province, Wanxian diocese; Bishop Han Tingbi, Shanxi province, Hong dong diocese. The five bishops who were not included in the list were the following: Bishop Gong Pinmei, of Shanghai diocese; Bishop Fan Xueyan, of Baoding diocese, Hebei province; Bishop Zhang Kexing, of Xiwanzi diocese, Hebei province; Bishop Zhou Weidao, of Fengxiang diocese, Shan'an province; and Bishop Deng Yiming, of Guangzhou diocese, Guangdong province. Cf. *The Catholic Church in China*, Vol.18, n. 1 March 30, 1987, p. 52.

³²⁵ Cf. Benedict XVI, *Letter to the Bishops, Priests, Consecrated persons and Lay Faithful of the Catholic Church in the People's Republic of China*, May 27, 2007. N. 8 §14. [Hereafter *Letter*]

³²⁶ Cf. Canon 117.

“Each Episcopal conference is to draw up its own statutes, to be reviewed by the Apostolic See. In these, among other things, arrangements for the plenary meetings of the Conference are to be set out, and provision is to be made for a permanent committee of Bishops, and a general secretary of the Conference, and for other offices and commissions by which, in the judgment of the Conference, its purpose can more effectively be achieved.”³²⁷

The statutes of each Bishops' Conference must cover the frequency and other arrangements for plenary meetings, whether ordinary or extraordinary³²⁸; the manner of electing the president, Vice-president and Secretary;³²⁹ the composition and meetings of the permanent committee, its relationship with the Plenary Committee,³³⁰ and the composition and roles of other commissions or offices. The statutes must indicate whether auxiliary and other titular Bishops have a deliberative or consultative vote³³¹; they must also determine the size of the majority required when not determined by law, and the manner of the promulgation of decisions.³³²

When the Chinese Bishops' Conference was established in Beijing in 1980 it did not have its own statutes or constitution. Seemingly, it derived its juridical status from the constitution of the “Church Administrative Committee.” The Bishops Conference soon became aware of the necessity to have its own constitution, independent of that of the Administrative Committee. Thus, at its meeting in 1989, an *ad hoc* committee was set up to draft the new constitution. In September 1992, the constitution of the Bishops Conference was formally approved.

There are three major differences between the Chinese Bishops' Conference and Bishops' Conferences in other parts of the world:

- (1) First, the source of authority for the Chinese Bishops' Conference is linked to the National Chinese Catholic Representatives Assembly. The Bishops' Conference is responsible to the National Assembly and this Assembly has the authority to deliberate and adopt the important resolutions and decisions of the Conference. This is, of course, a major difference between the Chinese Bishops' Conference and Bishops' Conferences in other parts of the world. In those Conferences the Bishops themselves have authority over their decisions, the resolutions they adopt, and the election of their own members. In the case of the Chinese Bishops' Conference, convening meetings and drawing up a membership list must first be studied and approved by the Standing Committees of the Bishops' Conference and the Patriotic Association.

³²⁷ Canon 451.

³²⁸ Canon 453.

³²⁹ Canon 452.

³³⁰ Canon 457.

³³¹ Canon 454.

³³² Canon 455 §2-3.

This fact seemingly contradicts what is claimed by the Chinese Bishops' Conference: that it alone enjoys leadership over the entire Chinese Church.

- (2) Second, the Constitution states that the Bishops' Conference has the responsibility of examining and approving the selection and consecration of diocesan bishops. This is totally at variance with the practice of other Bishops' Conferences which, although organized by the bishops themselves, do not override the authority of individual bishops. Furthermore, the jurisdiction for selecting and appointing bishops is a prerogative of the Pope himself. If the Chinese Bishops' Conference strictly exercises this prerogative, then its authority indeed far surpasses that of other conferences.
- (3) Finally, the constitutions of other Bishops Conferences throughout the world take effect only upon approval of the Pope. Furthermore, they cannot be amended without the approval of the Holy See.³³³ Nevertheless, Article 14 of the Constitution of the Chinese Bishops' Conference states that these norms have authority once they have been adopted by the National Catholic Representatives Assembly. This Assembly acts, then, in place of the Holy See. Viewing the present political situation, it is highly unlikely that these norms be sent to the Pope for his review and approval.³³⁴

4. Binding Authority of Episcopal Conferences

Since Episcopal conferences are intended to be instruments of mutual assistance for Bishops in fulfilling their pastoral responsibilities, the Apostolic See grants them the power to issue *binding norms* on certain matters, and to adopt *particular decisions*, which each Bishop should accept faithfully and apply in his diocese. The canonical provisions on the binding authority of Episcopal conferences make reference in particular to the decrees which the Conference may issue (kinds, voting requirements, recognition by the Apostolic See, promulgation, etc.) and to some other Conference's actions.

The legislative power of the Bishops' Conferences, according to the regulations of the Code of Canon Law, is exercised by the Bishops gathered in plenary assembly, a forum that allows them engage in collegial dialogue and exchange of ideas. In cases where the universal law has so prescribed or by special mandate of the Apostolic See, the Episcopal conference can make general decrees. These decrees,

³³³ Cf. Can. 451.

³³⁴ A. Lam, *The Catholic Church in Present-Day China: Through Darkness and Light*. Hong Kong: Holy Spirit Study Centre, 1977, pp. 72-73.

enacted at a plenary meeting, must receive two thirds of the votes of those who belong to Conference with a deliberative vote and must be reviewed by the Holy See (*recognitio*) before they are promulgated –in order to guarantee their conformity with universal canon law.³³⁵ The authority of the Conference to issue general decrees extends to those matters specified in common law or for which special authorization has been given by the Apostolic See. The general decrees issued by an Episcopal conference have the force of particular law for the territory represented by such Conference.³³⁶

Under certain conditions established by law, the Bishops assembled in the Episcopal conference also exercise a *doctrinal function*, since they are authoritative teachers and instructors in the faith for their people. In fulfilling this doctrinal role, especially when they have to address new questions or shed light on new problems emerging within society, the Bishops should be conscious of the limited scope of their pronouncements, inasmuch as their Magisterium is not universal, even though it is authoritative and official.

Individual diocesan Bishops enjoy their own autonomy, to the point that Episcopal conferences cannot require them by mandate to follow their decrees. However, there are also some limits to that autonomy. For instance, in those cases in which the Conference is to adopt a general executory decree,³³⁷ such decree is binding as to the specifications of how the law is to be observed. Moreover, if all the bishops unanimously agree to a position, it is in effect a position of the Conference that has binding force not as an imposition or restriction on the individual members but as an agreed-upon decision, which in virtue of that agreement has binding effect.³³⁸ This applies to actions taken by the president of an Episcopal conference on behalf of the members as well as to actions of all members.

In applying this to the reality of the Catholic Church in China we deem important to stress that the authority of the Conference extends only to those matters specified in common law or to those for which special authorization has been given by the Apostolic See. A reading of some directives issued by the Chine Bishops' "Conference"³³⁹, for instance, those of June 3, 1980 on "Decisions concerning the

³³⁵ Cf. Canon 455 §§1-2.

³³⁶ Cf. Canon 29.

³³⁷ Executory decrees are different from general legislative decrees, in accordance with canon 29: "General decrees, by which a competent legislator makes common provisions for a community capable of receiving a law, are true laws and are regulated by the provisions of the canons on laws."

³³⁸ Cf. John B. Lee, *The Legislative Function of Episcopal Conferences and its Application to the Taiwanese Setting*, UST, Manila, 2004, pp. 33-34.

³³⁹ The quotation marks are mine to indicate that the so-called "Chinese Episcopal Conference" actually is not a real Episcopal Conference in the way understood by the Code of Canon Law. Some facts attest to it: Although all the Bishops are listed in the "Chinese Episcopal Conference" they cannot hold any meeting unless convoked by the government. At the meetings convoked by the government it is, of course, the government that commands and gives order. Outside these, a lay person, one of

granting of faculties for administering the sacraments;” and again those of November 1986 (this time in conjunction with the Administrative Committee) entitled: “Some regulations concerning church affairs” – indicates that the authority of the Bishops Conference goes beyond its stated boundaries of doctrine and discipline to reach into the area of episcopal appointments and the curtailment of episcopal authority.³⁴⁰ In Article 3, paragraph four, of the direction on regulations, it is stated that a bishop who fails to abide by said regulations is to be ostracized and his authority and functions restored only after receiving approval from the Bishops Conference. Thus, here the authority of the Bishops’ Conference clearly supersedes that of the individual diocesan bishops.³⁴¹

C. Concerning Other Aspects of Church’s Life

The whole second part of Pope Benedict’s *Letter* is taken up with *Guidelines for Pastoral Life*, which include directives on the sacraments, governance of dioceses, parishes, Ecclesiastical provinces, Catholic communities, priests, vocations and religious formation, the lay faithful and the family, special privileges, etc. It is also our intent here to briefly go over these topics and analyze them in the light of the provisions of the Code of Canon Law.

1. Ecclesiastical Provinces and Parishes

Canon 431 §1 describes the canonical figure of the “ecclesiastical province” and gives account of its purpose and composition: “Neighboring particular Churches are to be grouped into ecclesiastical provinces, with a certain defined territory. The purpose of this grouping is to promote, according to the circumstances of persons and place, a common pastoral action of various neighboring dioceses, and the more closely to foster relations between diocesan Bishops.”

Ecclesiastical provinces are groups of neighboring dioceses which, while maintaining their territorial individuality, are subject to the authority of the

the vice-chairpersons of the Patriotic Association, controls the Church in the name of the “Bishops Conference.” In addition, the members of the “General Assembly of Catholic Representatives” include all the Bishops, many priests, religious sisters and lay representatives (chosen by what kind of election?), but the meeting is conducted by the lay person mentioned above. There are a great number of government officials present who practically preside over the meeting, etc., etc. Cf. Cardinal Joseph Zen, *An Aid for Reading the Holy Father’s Letter to the Church in China*, November 18, 2009 n. 8, par. 14.

³⁴⁰ One fact that attests to it: When Jin Luxian and Li Side were chosen as auxiliary bishops in December 1984, the Church in Shanghai applied for approval from both the Chinese Catholic Administrative Committee and the Chinese Bishops’ Conference. From this we surmise that the Bishops Conference attributes to itself the authority to approve the election of bishops.

³⁴¹ A. Lam, *The Catholic Church in Present-Day China: Through Darkness and Light*. Hong Kong: Holy Spirit Study Centre, 1977. pp. 71-72

metropolitan archbishop and the provincial council with regard to the powers expressly indicated by the law, particularly in canons 436 and 445. The general principle stated in canon 431 §2³⁴² restricting the existence of exempt dioceses (“immediately subject to the Holy See”) is applicable to both canonical institutions, that is, to ecclesiastical provinces and ecclesiastical regions.³⁴³ The establishment of both institutions is under the responsibility of the Congregation for Bishops,³⁴⁴ except for the territories under the Congregation for the Evangelization of People;³⁴⁵ with the peculiarity that while the establishment of ecclesiastical provinces is necessary, the establishment of the ecclesiastical region is rather optional, limited to those cases when it seemed “advantageous.”³⁴⁶ Besides, ecclesiastical provinces possess juridical personality *ipso iure* from the moment they are established, such is not the case with the regions.³⁴⁷

The canonical principles about ecclesiastical provinces are clearly stated in the Code of Canon Law. Their establishment, suppression or alteration belong *exclusively* to the supreme authority of the Church; quoting the words of canon 431 §3: “It is the exclusive prerogative of the supreme authority in the Church, after consulting the Bishops concerned, to establish, suppress or alter ecclesiastical provinces.” As regards their juridical personality, ecclesiastical provinces possess it *ipso iure* from the moment they are established, as it has already been said. Organs of government of the ecclesiastical provinces are the Provincial Council and the Metropolitan, which “have authority over the ecclesiastical province, in accordance with the law.”³⁴⁸ The assembly of the Bishops of an ecclesiastical province also exercises certain competences in it.³⁴⁹ An ecclesiastical province is presided over by a Metropolitan, “who is Archbishop in his own diocese,” and whose office “is linked to an episcopal see, determined or approved by the Roman Pontiff.”³⁵⁰ The Metropolitan does not have functions of direct government in the dioceses of the Province, but he must watch over the suffragan dioceses on matters of faith and

³⁴² Canon 431 §2: “From now onwards, as a rule, there are to be no exempt dioceses. Accordingly, individual dioceses and other particular Churches which exist within the territory of an ecclesiastical province, must be included in that ecclesiastical province.”

³⁴³ Cf. *Communicationes* 17 (1985), 97-98. E. Caparros, et al. (eds.), *Code of Canon Law Annotated*. Wilson and Lafleur Limitée, Montréal, Second Edition, 2004, p. 361.

³⁴⁴ Cf. *Pastor Bonus*, n. 76.

³⁴⁵ Cf. *Pastor Bonus*, n. 89.

³⁴⁶ Canon 433 §1: “*If it seems advantageous*, especially in countries where there are very many particular Churches, the Holy See can, on the proposal of the Episcopal Conference, join together neighboring provinces into ecclesiastical regions.” (Italics supplied)

³⁴⁷ Cf. Canon 433, §2.

³⁴⁸ Canon 432 §1.

³⁴⁹ For example, they can determine by decree, for the whole of the province, certain policies like for instance what offering is to be made for the celebration and application of Mass (can. 952 §1), taxes for certain acts of executive authority (can. 1264), etc.

³⁵⁰ Canon 435.

discipline and notify the Roman Pontiff if there be any abuses. He may intervene also in the appointment of a diocesan Administrator when a diocese is vacant and the college of consultors has not elected a diocesan Administrator within the time limit given in the law. The Metropolitan may be given special functions and power by the Apostolic See if circumstances require it.³⁵¹

In China there are now twenty-three civil provinces, five autonomous districts and four municipalities. The ecclesiastical Provinces are bordered as the civil provinces within which there are several dioceses. And some of the provinces have no Metropolitans. What is the thought of the Holy See regarding the delimitation of the borders of dioceses or provinces according to the new civil circumscriptions? Pope Benedict in his *Letter* said that “the Holy See is prepared to address the entire question of the circumscriptions and ecclesiastical provinces in an open and constructive dialogue with the Chinese Episcopate and – where opportune and helpful – with governmental authorities.”³⁵² The Pope had just acknowledged, in the same number, that “numerous administrative changes have taken place in the civil sphere during the last fifty years. This has also involved various ecclesiastical circumscriptions, which have been eliminated or regrouped or have been modified in their territorial configuration on the basis of the civil administrative circumscriptions.”³⁵³ It is in this regard that the Pope confirms the Holy See readiness to address the entire question of circumscriptions and ecclesiastical provinces.

Every particular Church must be divided into parishes. According to the Code of Canon Law, “A parish is a certain community of the faithful stably constituted within a particular Church, whose pastoral care, under the authority of the diocesan Bishop, is entrusted to a parish priest as its proper pastor.”³⁵⁴ The diocesan bishop alone can establish, suppress or alter parishes, after having heard the opinion of the council of priests.³⁵⁵ Normally parishes are *territorial*, that is, embrace all Christ’s faithful of a given territory; but there can be also *personal* parishes determined by reason of the rite, language, nationality, etc., of the faithful of a certain territory, or on some other

³⁵¹ Canon 436 §1 Within the suffragan dioceses, the Metropolitan is competent:

- 1° to see that faith and ecclesiastical discipline are carefully observed and to notify the Roman Pontiff if there be any abuses;
 - 2° for a reason approved beforehand by the Apostolic See, to conduct a canonical visitation if the suffragan Bishop has neglected it;
 - 3° to appoint a diocesan Administrator in accordance with can. 421 §2 and 425 §3.
- §2 Where circumstances require it, the Apostolic See can give the Metropolitan special functions and power, to be determined in particular law.
- §3 The Metropolitan has no other power of governance over suffragan dioceses. He can, however, celebrate sacred functions in all churches as if he were a Bishop in his own diocese, provided, if it is the cathedral church, the diocesan Bishop has been previously notified.

³⁵² *Letter*, n. 11.

³⁵³ *Letter*, n. 11.

³⁵⁴ Canon 515 §1.

³⁵⁵ Cf. Can. 515 §2.

basis.³⁵⁶ Once the parish has been established, it has juridical personality by virtue of the law itself;³⁵⁷ acting in the person of the parish in all juridical matters, is the parish priest.³⁵⁸ “The parish priest is the proper pastor of the parish entrusted to him. He exercises the pastoral care of the community entrusted to him under the authority of the diocesan Bishop, whose ministry of Christ he is called to share, so that for this community he may carry out the offices of teaching, sanctifying and ruling with the cooperation of other priests or deacons and with the assistance of lay members of Christ’s faithful, in accordance with the law.”³⁵⁹ Concretely, the law entrusts to him certain parish functions which others may not exercise without his authorization: baptisms, assistance at marriage, attention to the dying, funeral, the more solemn celebration of the Eucharist on Sundays and holy days of obligation, etc.³⁶⁰ Parish priests are freely appointed by the diocesan Bishop once they have determined their suitability; the appointment is normally made for a renewable period of six years. A parish priest ceases to hold office either by transfer, removal, resignation or by the lapse of time if he was appointed for a specified period of time.³⁶¹ When he has completed his seventy fifth year of age he is requested “to offer his resignation from office to the diocesan Bishop who, after considering the circumstances of person and place, is to decide whether to accept or defer it.”³⁶²

2. Priests

Speaking of priests to the Chinese priests, Pope Benedict has fatherly and deep words in his *Letter*; words that could be gathered around three points: First, after showing his predilection for them as well as his admiration because “in recent difficult situations have testified to an unfailing love for Christ and for the Church even by the gift of their own lives,”³⁶³ the Pope invites them “to draw light and strength from the well-springs of priestly spirituality.” Second, given the peculiar past and present situation of some priests in China, the Pope appeals to them to keep always

³⁵⁶ Canon 518. In China, up to this moment there are no personal parishes determined by rite, language or nationality, although in some parishes, like for instance in Beijing and Shanghai cities, there are Masses celebrated in different languages on Sundays.

³⁵⁷ “A lawfully established parish has juridical personality by virtue of the law itself” (Can. 515 §3).

³⁵⁸ Canon 532.

³⁵⁹ Canon 519.

³⁶⁰ Cf. Canon 530.

³⁶¹ Canon 538 §1 A parish priest ceases to hold office by removal or transfer effected by the diocesan Bishop in accordance with the law; by his personal resignation, for a just reason, which for validity requires that it be accepted by the diocesan Bishop; and by the lapse of time if, in accordance with the particular law mentioned in can. 522, he was appointed for a specified period of time.

³⁶² Canon 538 §3.

³⁶³ *Letter*, n. 13, par. 1: “How can I fail to recall, in this regard, as an encouragement for all, the shining examples of Bishops and priests who, in the difficult years of the recent past, have testified to an unfailing love for the Church, even by the gift of their own lives for her and for Christ?”

in communion with the Church.³⁶⁴ And third, he reminds them of the relevance of an adequate *ongoing formation*, particularly urgent today, among other things, because of the demands of the ‘new evangelization’; in this regard Pope Benedict quotes his predecessor’s words: “Ongoing formation of priests is an intrinsic requirement of the gift and sacramental ministry received; and it proves necessary in every age. It is particularly urgent today.”³⁶⁵

These thoughts are very much in line with the Second Vatican Council *Presbyterorum ordinis*, which deals thoroughly with the ministry and life of priests. At a point the document says that the spiritual gift which priests have received in their ordination does not prepare them merely for a limited and circumscribed mission, but “for the fullest, in fact the universal mission of salvation ‘to the end of the earth.’” The reason is because every priestly ministry shares in the fullness of the mission entrusted by Christ to the apostles. “... Priests, therefore, should recall that the solicitude of all the churches ought to be their intimate concern.”³⁶⁶ And in another passage, the same document states that “By the sacrament of Order priests are configured to Christ the priest as servants of the Head, so that as co-workers with the Episcopal order they may build up the Body of Christ, the Church” and in the pursue of interior renewal, of worldwide diffusion of the Gospel and of with the modern world, the Council strongly exhorts all priests “to strive always by the use of all suitable means commended by the Church towards that greater holiness that will make them daily more effective instruments for the service of all God’s people.”³⁶⁷

The obligations and rights of clerics are carefully provided in the Code of Canon Law, which devotes the whole chapter III of Book II, Part I (canons 273-289) to it. Important as they are, however, we do not deem necessary to bring them here at this point. It would suffice with saying that all priests have the duty to be knowledgeable and well versed on these canons in order to put them into practice.

Going back to the Chinese situation, it is sad to say that, from the 50s to the 90s of last century, almost half of the priests in China were not able to be academically well educated in their philosophical and theological studies. The main reason was the lack of text books and professors at that time. Besides, in order to address the urgent need for priests, they were provided just with short training programs in those years. So, the need for ongoing formation for the priests is very much and urgently needed in mainland China today, as Pope Benedict underlined in his *Letter*: “I realize that in China too, as in the rest of the Church, the need for an adequate ongoing formation of the clergy is emerging. Hence the invitation, addressed to you Bishops as leaders

³⁶⁴ *Letter*, n. 13, par. 2.

³⁶⁵ *Letter*, n. 13, par. 3. Cf. Card. Joseph Zen, *An aid for reading the Holy Father’s Letter to the Church in China*, November 18, 2009, n. 13.

³⁶⁶ Vatican II, *Presbyterorum Ordinis*, n. 10.

³⁶⁷ Vatican II, *Presbyterorum Ordinis*, n. 12.

of ecclesial communities, to think especially of the young clergy who are increasingly subject to new pastoral challenges, linked to the demands of the task of evangelizing a society as complex as present-day Chinese society.”³⁶⁸

Obviously, the need of formation does not refer exclusively to the intellectual or academic formation. It includes also the exercise of natural and supernatural virtues, devotions –especially to the Eucharist and to the Blessed Virgin Mary–, liturgical and personal prayer, love for the Church and for her Pastors, zeal for souls, study of the sacred and profane sciences, etc. This is not an easy task today with the precariousness of the means available, even if there is an undeniable flowering in the Church in China. “I am aware,” Pope Benedict XVI wrote, “that this flowering is accompanied, today, by not a few difficulties. The need therefore emerges both for more careful vocational discernment on the part of Church leaders, and for more in-depth education and instruction of aspirants to the priesthood and religious life. Notwithstanding the precariousness of the means available, for the future of the Church in China it will be necessary to take steps to ensure, on the one hand, particular attention in the care of vocations and, on the other hand, a more solid formation with regard to the human, spiritual, philosophical-theological and pastoral aspects, to be carried out in seminaries and religious institutes. In this regard, the formation for celibacy of candidates for the priesthood deserves particular mention. It is important that they learn to live and to esteem celibacy as a precious gift from God and as an eminently eschatological sign which bears witness to an undivided love for God and for his people, and configures the priest to Jesus Christ, Head and Bridegroom of the Church. This gift, in fact, in an outstanding way “expresses the priest’s service to the Church in and with the Lord” and has a prophetic value for today’s world.”³⁶⁹

On July 16, 2009 Pope Benedict also wrote that “In today’s world... the lives and activity of priests need to be distinguished by a determined witness to the Gospel.”³⁷⁰ Similarly, Cardinal Tarcisio Bertone, Secretary of the Vatican State, in his *Letter to all the Priests of the Catholic Church in the People’s Republic of China*, on November 10, 2009, wrote: “To face the present ecclesial and socio-political situation in which you are living, and to make progress on the path of reconciliation and dialogue, it is urgent for each of you to draw light and strength from the sources of priestly spirituality, which are the love of God and unconditional following of Christ.”³⁷¹

³⁶⁸ Benedict XVI, *Letter*, n.13.

³⁶⁹ Benedict XVI, *Letter*, n.14.

³⁷⁰ *Letter of His Holiness Pope Benedict XVI Proclaiming a Year for Priests on the 150th Anniversary of the “Dies Natalis” of the Cure of Ars*. July 16, 2009.

³⁷¹ Card. T. Bertone, *Letter to all the Priests of the Catholic Church in the People’s Republic of China*, November 10, 2009, n. 1.

3. Religious

“What is expected of the religious vocation in the present context of the Church in China?” Pope Benedict asks. He himself answers this question after having stated that the flowering of vocations to consecrated life in China is a sign of vitality and a reason for hope. What is expected of them can be summarized in two words namely, *witnessing* and *evangelization*.³⁷² But these two words imply a long process of formation, which poses a big challenge to the Church leaders; for while the emerging in recent times of many indigenous religious congregations offer indeed an indispensable contribution to catechesis and to parish life in all its forms, however, at the same time they bring new needs to be addressed, such as a careful vocational discernment, an in-depth education and instruction, formation for celibacy in the candidates for priesthood, etc.³⁷³

The contribution of the religious in the local Church is truly important. They do it mainly (a) *through the witness of their consecrated life*, as affirmed by canon 673: “The apostolate of all religious consists primarily in the witness of their consecrated life, which they are bound to foster through prayer and penance,” which can be called a mission of being, more than doing, although in reality one cannot exist without the other;³⁷⁴ (b) *through their works of apostolate*, enriching the Church through their presence in the places where they take care of people, in schools, or other places of education, hospitals, etc. “In the area of apostolate,” the Synod of Bishops in 2001 stated, “we can see members of institutes of consecrated life enriching the local churches, making more evident in them the gift of holiness and catholicity. Through many of their works and their presence in the places where they take care of people, in schools, or other places of education, hospitals, etc., consecrated persons show and realize the presence of the Church in the world of health, of education and integral growth of persons;” and (c) *through their presence as communities*: The presence of religious communities is more preferred than lone religious; in fact, from the canonical point of view, the title “The Apostolate of the Institutes” (chapter V; cann. 673-683) itself underlines that it deals with the mission of the Institutes rather than the activities of the individual religious. And *Vita consecrata* also underlines that “It is important to keep in mind that the Church entrusts the participation in the

³⁷² *Letter*, n.14, par. 4: “As for the religious vocation, in the present context of the Church in China it is necessary that its two dimensions be seen ever more clearly: namely, on the one hand, the witness of the charism of total consecration to Christ through the vows of chastity, poverty and obedience, and on the other hand, the response to the demand to proclaim the Gospel in the socio-historical circumstances of the country today.”

³⁷³ Benedict XVI, *Letter*, n.14, par. 1-4.

³⁷⁴ In the first apostolic exhortation of Pope John Paul II *Redemptionis donum*, he says, “Even though the many different apostolic works that you perform are extremely important, nevertheless the truly fundamental work of the apostolate remains always what (and at the same time who) you ARE in the Church” (*Redemptionis donum*, 15c).

mission of Christ to the institute as such. The presence of religious, even as a simple one, can be more helpful when it exists as a religious body, family and group.”³⁷⁵

On the other hand, the relationship between Bishops and the religious has not always been smooth. There exist some tensions. It is not uncommon that some Bishops express their regrets over difficulties in involving men and women religious in the diocesan apostolate because their Superiors too frequently change them or simply some religious do not conform to the diocesan pastoral program. At times, a certain institute appeals to the particular charism of its foundation and the Bishop appeals to the apostolic authority and pastoral responsibility. On the one hand the activities of religious institutes dedicated to apostolic works have great importance for the whole life of the Institute; on the other hand such activities are often a participation in the ministry of the Bishop of a local church. It is also observed that an excessive identification with such an apostolate, as happens in parishes entrusted to religious, can generate a loss of their own identity and fidelity to the spirituality and mission of the Institute.³⁷⁶

The Code of Canon Law speaks clearly of autonomy of religious institutes which local Ordinaries are bound to safeguard.³⁷⁷ Such autonomy encompasses the life and discipline of the institute in their totality. In the concrete, it extends to the charism of the congregation, the profession of evangelical counsels, the fraternal life in common, the formation of members, their rights and obligations, the internal structure and organization and even to its apostolate. For this reason, each congregation should preserve and nurture the integrity of its own patrimony, which in the light of canon 578, is intended to mean the *nature, purpose, spirit, character, and sound traditions* associated with the institute.

Autonomy, however, is not independence. Religious life is indeed a gift of the Spirit for the good of the Church and can never be understood independently from the life of the same Church. *Mutuae relationes*, quoting *Christus Dominus*, affirms that, “There is, then, an internal organization in religious institutes, which has its proper field of competency and a measure of real autonomy, even though in the Church this autonomy can never become independence.”³⁷⁸

It is then the duty of the Bishops and consecrated persons to find the balance. It is the serious responsibility of the members of the institutes not to disappoint the

³⁷⁵ *Vita Consecrata*, n. 92.

³⁷⁶ Cf. E. Ayuban - J. González, O.P., *Procedures and Formularies for Religious Institutes*, Canon Law Society of the Philippines, Manila, 2011, Introduction chapter V.

³⁷⁷ “A true autonomy of life, especially of governance, is recognized for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in can. 578” [...] “Local Ordinaries have the responsibility of preserving and safeguarding this autonomy” (Canon 586).

³⁷⁸ Vatican II, *Christus Dominus*, 35, 3-4.

legitimate desires of the Bishops, of the diocesan clergy and of the laity, as well as the members' transparent fidelity to their consecration through the profession of three evangelical counsels, the witness of fraternal communion and witness of their own goal in conformity with their own charism.³⁷⁹

It is clear that diocesan Bishops have some canonical rights and duties over the religious. Religious institutes, having been inserted in the universal Church, are subject to the Church's hierarchical structure in various levels of governance. By virtue of the vow of obedience, all religious must obey the Roman Pontiff as their Supreme Superior³⁸⁰ and to a large extent, to other competent ecclesiastical Superiors within the bounds of their faculties. The relationship between the religious and the diocesan Bishops arises principally because of the exercise of apostolate of the religious in the particular churches. After all, any diocesan Bishop possesses all the ordinary, proper and immediate power in the exercise of his pastoral ministry in the diocese entrusted to his care³⁸¹ and thus he has the general pastoral responsibility and oversight over all the faithful as regards to all teaching and preaching, and all sacramental and liturgical celebrations.³⁸²

Referring to the religious, the Decree *Christus Dominus* provided some fundamental principles "in order that the works of the apostolate may always be carried out harmoniously in the individual dioceses and that the unity of diocesan discipline be preserved intact:"³⁸³

- [1] Religious should at all times treat the bishops, as the successors of the apostles, with loyal respect and reverence. Moreover, whenever legitimately called upon to do apostolic work, they must carry out these duties in such a way as to be the auxiliaries of the bishop and subject to him. Furthermore, religious should comply promptly and faithfully with the requests or desires of the bishops when they are asked to undertake a greater share in the ministry of salvation. Due consideration should be given to the character of the particular institute and to its constitutions, which may, if necessary, be adapted for this purpose in accord with the principles of this decree of the Council. Especially in view of the urgent needs of souls and of the lack of diocesan clergy, those religious institutes which are not dedicated to a purely contemplative life may be called upon by the bishop to help in various pastoral ministries. The special character of each religious institute should be taken into

³⁷⁹ Cf. *Vita Consecrata*, n. 74e. Cf. E. Ayuban - J. González, O.P., *Procedures and Formularies for Religious Institutes*, Canon Law Society of the Philippines, Manila, 2011, Introduction chapter V.

³⁸⁰ Cf. Canon 590 §2.

³⁸¹ Cf. Canon 381 §1.

³⁸² Cf. Canons 383 §1; 386 §1; and 387.

³⁸³ Vatican II, *Christus Dominus*, n. 35.

consideration. Superiors should make every effort to cooperate, even taking responsibility for parishes on a temporary basis.

- [2] Religious who are engaged in the external apostolate should be inspired by the spirit of their own institute, should remain faithful to the observance of their rule, and should be obedient to their superiors. Bishops should not fail for their part to insist on this obligation.

- [3] The privilege of exemption whereby religious are reserved to the control of the Supreme Pontiff, or of some other ecclesiastical authority, and are exempted from the jurisdiction of bishops, relates primarily to the internal organization of their institutes. Its purpose is to ensure that everything is suitably and harmoniously arranged within them, and the perfection of the religious life promoted. The privilege also ensures that the Supreme Pontiff may employ these religious for the good of the universal Church, or that some other competent authority may do so for the good of the churches under its jurisdiction. This exemption, however, does not prevent religious being subject to the jurisdiction of the bishops in the individual diocese in accordance with the general law, insofar as is required for the performance of their pastoral duties and the proper care of souls.

- [4] All religious, whether exempt or non-exempt, are subject to the authority of the local ordinary in the following matters: public worship, without prejudice, however, to the diversity of rites; the care of souls; preaching to the people; the religious and moral education, catechetical instruction and liturgical formation of the faithful, especially of children. They are also subject to diocesan rules regarding the comportment proper to the clerical state and also the various activities relating to the exercise of their sacred apostolate. Catholic schools conducted by religious are also subject to the local ordinaries as regards their general policy and supervision without prejudice, however, to the right of the religious to manage them. Likewise, religious are obliged to observe all those prescriptions which Episcopal councils or conferences legitimately decreed as binding on all.

- [5] Organized cooperation should be encouraged between the various religious institutes and between them and the diocesan clergy. There should be the closest possible coordination of all apostolic works and activities. This will depend mainly on a supernatural attitude of heart and mind grounded on charity. It is the responsibility of the Apostolic See to foster this coordination in regard to the universal Church; it is

for each bishop to do so in his own diocese and for the patriarchs and episcopal synods and conferences in their territories. There should be consultations beforehand between bishops or Episcopal conferences and religious superiors or conferences of major superiors, with regard to apostolic activities to be undertaken by religious.

- [6] In order to promote harmonious and fruitful relations between the bishops and religious, the bishops and superiors should meet at regular intervals and as often as seems opportune to discuss business matters of general concern in their territory.

Pope Benedict XVI in his *Letter* affirms especially the “indispensable contribution” religious make to the local Church; but he is also aware of “not a few difficulties... The formation for celibacy of candidates for the priesthood deserves particular mention.”³⁸⁴ As for the religious vocation, it is necessary that its two dimensions be seen ever more clearly: “On the one hand, the witness of the charism of total consecration to Christ through the vows of chastity, poverty and obedience, and on the other hand, the response to the demand to proclaim the Gospel.”³⁸⁵

4. Lay Faithful

“In the most difficult periods of the recent history of the Catholic Church in China, the lay faithful, both as individuals and families and as members of spiritual and apostolic movements, have shown total fidelity to the Gospel, even paying a personal price for their faithfulness to Christ.”³⁸⁶ These are words of praise and of appreciation by the Holy Father Benedict XVI in his *Letter* to Chinese Catholics for the presence and action of the laity in the local Church.

The Pope goes on reminding the [Chinese] lay faithful of their call today to become “martyrs” [witnesses] and to remain the hope of the Church for the future: “My dear lay people, you are called, today too, to incarnate the Gospel in your lives and to bear witness to it by means of generous and effective service for the good of the people and for the development of the country: and you will accomplish this mission by living as honest citizens and by operating as active and responsible co-workers in spreading the word of God to those around you, in the country or in the city. You, who in recent times have been courageous witnesses of the faith, must remain the hope of the Church for the future! This demands from you an ever more engaged participation in all areas of Church life, in communion with your respective

³⁸⁴ *Letter*, n. 14.

³⁸⁵ *Letter*, n. 14, par. 4. Cf. Cardinal Joseph Zen, *An Aid for Reading the Holy Father's Letter to the Church in China*, November 18, 2009, n. 14.

³⁸⁶ *Letter*, n. 15, par. 1.

Pastors.”³⁸⁷ These words are rounded by an appeal to promote family values: “Since the future of humanity passes by way of the family, I consider it indispensable and urgent that lay people should promote family values and safeguard the needs of the family.”³⁸⁸

Regarding the Christian Initiation of Adults, and the missionary vocation of the laity, Pope Benedict urges pastors “to devote particular care to their Christian initiation via an appropriate and serious period of catechumenate aimed at helping them and preparing them to lead the life of Jesus’ disciples.”³⁸⁹ “Many adults,” he continues, “have not always been sufficiently initiated into the complete truth of the Christian life. It therefore seems necessary and urgent to offer them a solid and thorough Christian formation, in the shape of a post-baptismal catechumenate.”³⁹⁰ “The Church, always and everywhere missionary, is called to proclaim and to bear witness to the Gospel. The Church in China must also sense in her heart the missionary ardour of her Founder and Teacher.”³⁹¹

The Code of Canon Law sympathizes with these principles as it defines Christ’s faithful as “those who since they are incorporated into Christ through baptism, are constituted the people of God,” and henceforth “they participate in their own way in the priestly, prophetic and kingly office of Christ. They are called, each according to his or her particular condition, to exercise the mission which God entrusted to the Church to fulfill in the world.”³⁹² According to their own condition, all the faithful are active members of the Church, making a positive contribution to the spiritual enrichment of the Mystical Body and the very expansion of the Kingdom of God. At the same time, they are all “passive” subjects in that the baptismal character gives them a right to receive those things pertaining to divine worship and the means of salvation and sanctification, mostly the sacraments. Each of the lay faithful possesses some fundamental rights and obligations, enumerated in canons 208-223, plus some other “obligations and rights of the Lay members of Christ’s faithful” specific of the laity, listed down in canons 224-231. Among them, the obligation of the lay faithful to undertake the apostolate, which proceeds from their baptismal vocation, is a moral obligation rather than a juridical one.³⁹³

³⁸⁷ *Letter*, n. 15, par. 1.

³⁸⁸ *Letter*, n. 15, par. 2.

³⁸⁹ *Letter*, n. 16, par. 1.

³⁹⁰ *Letter*, n. 16, par. 3. Cf. *Compendium*, 21.

³⁹¹ *Letter*, n.17. Cf. *Compendium*, 22.

³⁹² Canon 204.

³⁹³ E. Caparrós, et al. (eds.), *Code of Canon Law Annotated* (Latin-English Edition), Wilson and Lafleur Limitée, Montréal, 1993, p.186. But by reason of their special vocation it belongs to the laity to see the kingdom of God by engaging in temporal affairs and directing them according to God’s will. Cf. Vatican II, *Lumen Gentium*, n. 31.

The decree *Apostolicam Actuositatem* of the Second Vatican Council, which is at the background of the above referred canons, adds some more particular details on the apostolate of the laity and speaks among other things of:

- (a) *The laity's active involvement in the Church communities*: "... The laity have an active part of their own in the life and action of the Church. Their action within the Church communities is so necessary that without it the apostolate of the pastors will frequently be unable to obtain its full effect. The laity should develop the habit of working in the parish in close union with their priests..." The laity however are not to confine their cooperation to the limits of the parish or diocese but to widen their horizon and extend it "to inter-parochial, inter-diocesan, national and international spheres;"³⁹⁴
- (b) *The spirituality of lay people*: It is a spirituality that takes its particular character from the circumstances of one's state in life (married and family life, celibacy, widowhood), from one's state of health and from one's professional and social activity. "Whatever the circumstances, each one has received suitable talents and these should be cultivated, as should also the personal gifts he has from the Holy Spirit. They should also hold in high esteem professional competence, family and civic sense, and the virtues related to social behaviour such as honesty, sense of justice, sincerity, courtesy, moral courage; without them there is no true Christian life."³⁹⁵ The distinctive mark however of laypeople –and henceforth of the lay spirituality– is their *secular* character, which takes form in the task of renewing the temporal order: "Laypeople ought to take on themselves *as their distinctive task this renewal of the temporal order*. Guided by the light of the Gospel and the mind of the Church, prompted by Christian love, they should act in this domain *in a direct way and in their own specific manner*;"³⁹⁶
- (c) *The apostolate of married persons and of families*, which has a special importance for both Church and civil society: "Christian couples are, for each other, for their children and for their relatives, cooperators of grace and witnesses of the faith. They are the first to pass on the faith to their children and to educate them in it. By word and example they form them to a Christian and apostolic life; they offer them wise guidance in the choice of vocation, and if they discover in them a sacred vocation

³⁹⁴ Vatican II, *Apostolicam Actuositatem*, n. 9.

³⁹⁵ Vatican II, *Apostolicam Actuositatem*, n. 4.

³⁹⁶ Vatican II, *Apostolicam Actuositatem*, n.7. (Italics supplied). In words of the Dogmatic Constitution *Lumen Gentium*, n. 31: "... By reason of their special vocation it belongs to the laity to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will."

they encourage it with all care. Go give clear proof in their own lives of the indissolubility and holiness of the marriage bond; to assert with vigour the right and duty of parents and guardians to give their children a Christian upbringing; to defend the dignity and legitimate autonomy of the family: this has always been the duty of married persons; today, however, it has become the most important aspect of their apostolate. The mission of being the primary vital cell of society has been given to the family by God himself. This mission will be accomplished if the family, by the mutual affection of its members and by family prayer, presents itself as a domestic sanctuary of the Church; if the whole family takes its part in the Church's liturgical worship; if, finally, it offers active hospitality, and practices justice and other good works for the benefit of all its brothers suffering from want;³⁹⁷

- (d) *The laity's apostolate at the national and international planes.* The field of the apostolate is vast; and it is there that the laity more than others are the channels of Christian wisdom. In their patriotism and in their fidelity to their civic duties Catholics will feel themselves bound to promote the true common good; they will make the weight of their convictions so influential that as a result civil authority will be justly exercised and laws will accord with the moral precepts and the common good.³⁹⁸

5. Revocation of Special Faculties and Pastoral Directives

The revocation of all faculties, special privileges and pastoral directives previously granted to underground Chinese Bishops and of the pastoral directives concerning them seems to be one of the key points of Pope Benedict XVI's *Letter*. In its number 18, the Pope announced expressly the revocation of faculties previously granted to the Chinese Church.³⁹⁹ "Considering in the first place some positive developments of the situation of the Church in China, and in the second place the increased opportunities and greater ease in communication, and finally the requests sent to Rome by various Bishops and priests, I hereby revoke all the faculties previously granted in order to address particular pastoral necessities that emerged in truly difficult times. [...] Let the same be applied to all directives of a pastoral nature, past and recent. The doctrinal principles that inspired them now find a new application in the directives contained herein."⁴⁰⁰ They were faculties and special

³⁹⁷ Vatican II, *Apostolicam Auctositatem*, n.11.

³⁹⁸ Vatican II, *Apostolicam Actuositatem*, n.14.

³⁹⁹ Faculties and special privileges regarding how the clergy could administer sacraments under difficult situations were granted to the China church – those given in 1978, 1981 and 1988 the most widely known – as church activities revived in China following the end of the Cultural Revolution (1966-76).

⁴⁰⁰ *Letter*, 18, par. 1-2.

privileges granted to the members of the clergy in order to address particular pastoral necessities that emerged in truly difficult times. The Pope explained that this decision came after “some positive developments” in the situation of the Catholic Church in China, “increased opportunities and greater ease in communications” between Rome, and “requests sent to Rome by various bishops and priests.”

The Code of Canon Law, which seldom offers definitions, provides a precise definition of privileges: “A privilege is a favor given by a special act for the benefit of certain persons, physical or juridical; it can be granted by the legislator, and by an executive authority to whom the legislator has given this power.”⁴⁰¹ The legislator considers privileges to be administrative acts. In fact the Code deals with privileges in canons 76-84, which are under Title IV (“Singular Administrative Acts”) of Book II. They are granted either by the legislator or by an executive authority to whom such authority has been granted. Privileges are presumed to be perpetual “unless the contrary is proved”⁴⁰² and thus normally they are not extinguished on the expiry of the authority of the person who granted them –except if it is expressly indicated.⁴⁰³ A privilege ceases by revocation on the part of the competent authority;⁴⁰⁴ “... on the expiry of the time for which it was granted...” and also “if in the judgment of the competent authority circumstances are so changed with the passage of time that it has become harmful, or that its use becomes unlawful.”⁴⁰⁵

In the light of these canonical provisions we can look at the faculties, special privileges and pastoral directives granted along the centuries by the Apostolic See to the [underground] members of the Catholic Church in China and inquire on the reasons that motivated such revocation: Had those faculties and special privileges become harmful or their use become unlawful with the change of time and circumstances? A senior researcher of the Hong Kong Diocese’s Holy Spirit Study Centre, Professor Anthony Lam Sui-ki, makes some comments on this regard: first of all he sees the new papal *Letter* as having the potential to help unify the Catholic Church in China; then, he remarks that when the faculties and special privileges were granted at the beginning, they were not known throughout the Church on the mainland; when the Holy See suspended them in late 1990s, the same problem recurred. “This created many controversies, and different church people have adopted different canonical and ecclesiastical bases to support their respective stances,” wrote Lam.⁴⁰⁶ In his view, a reference to the Code of Canon Law would have made Pope

⁴⁰¹ Canon 76 §1.

⁴⁰² Cf. Canon 78 §1.

⁴⁰³ “A privilege is not extinguished on the expiry of the authority of the person who granted it, unless it was given with the clause at our pleasure’ or another equivalent expression” (canon 81).

⁴⁰⁴ Cf. Canon 79. Such “revocation of an administrative act by another administrative act of the competent authority takes effect only from the moment at which the person to whom it was issued is lawfully notified” (can. 47).

⁴⁰⁵ Canon 83.

⁴⁰⁶ *UCANews*, Hong Kong, July 6, 2007.

Benedict's *Letter* clearer. He thinks that the phrase "in line with canon law" should have been added to the end of the last sentence of section 18, on the revocation of the previous directives: "The doctrinal principles that inspired them now find a new application in the directives contained herein."⁴⁰⁷

In 1988, the Congregation for the Evangelization of Peoples issued the influential "Eight-Point Directive on Dealings with China" which required that all *communicatio in sacris* (sacramental communion) be avoided with bishops and priests belonging to the Catholic Chinese Patriotic Association (CCPA), a government-approved structure to administer the "open" church in China. The directive pointed out that the CCPA in 1957 issued a proclamation saying the church "had broken all relationships with the Pope and the Holy See" and announced the church was to be "under the direct control of the government." It advised mainland Catholics to look for priests in communion with the Pope when they attended Mass and received the sacraments. Such directives have strengthened the growth of the underground Catholic communities. Many of them were still following those directives when Pope Benedict revoked them in his recent letter.⁴⁰⁸

The *Letter* revokes the special faculties granted in 1981 through a letter of Cardinal Agnello Rossi, the prefect of the Congregation for the Evangelization of Peoples. At that time the Holy See found it impossible to directly provide legitimate bishops loyal to the Holy See and therefore granted the loyal bishops within China the "very special faculties" to ordain bishops without previously informing the Holy See, because of the danger incurred in communicating with Rome. Clearly in an age of e-mail and cell phones, communication with Rome no longer presents an insurmountable problem, and so these special faculties are no longer necessary. The revocation of these faculties is not the same as the revocation of the Tomko points of 1988, which have been superseded by this letter. As the letter explicitly

⁴⁰⁷ A. Lam is the author of *The Catholic Church in Present-Day China through Darkness and Light*, published in 1994, which contains a chapter on the issue. In his book, Lam noted that when the church activities revive in late 1970s, not many China bishops were in communion with the Pope. When the Vatican's Congregation for the Evangelization of Peoples granted the faculties and special privileges in 1978, this provided a basis for the "underground" Church to develop. Many of these measures were granted as exceptions to canon law to handle the vacuum created when bishops or diocesan authorities were prevented from carrying out their pastoral duties. One example was allowing clergy to go beyond diocesan boundaries and administer sacraments to Catholics anywhere. Another exception allowed mainland bishops to ordain Catholic men as priests if they were firm in their faith, virtuous, willing to observe celibacy and loyal to the Pope. Formal theological education was not necessary. In 1981, Bishop Peter Joseph Fan Xueyan of Baoding in Hebei province secretly ordained three priests as bishops. With Holy See's acknowledgement, Bishop Fan and other bishops appointed by Pope Pius XII also privately ordained new bishops. From 1980 to 1993, it is believed that about 80 bishops were ordained secretly. These so-called underground bishops were not affiliated with government-approved "open" church organizations. Many of them interpreted Bishop Fan's faculties as applicable to all bishops appointed by Pope Pius XII.

⁴⁰⁸ *UCA News* 7/6/2007, Hong Kong.

says, the fundamental principles remain the same: Illegitimate ordination still incurs excommunication *latae sententiae* according to canon 1382. Bishops appointed by, or reconciled with, Rome are still fully valid and legitimate. Bishops appointed without papal mandate and not reconciled with Rome are still illegitimate: They administer the sacraments validly, but not legitimately. As has always been the case, Catholics may receive sacraments from them where they have no other option, just as they can from valid yet illegitimate Greek Orthodox clergy.⁴⁰⁹

The revocation then of the faculties, special privileges and pastoral directives granted to the Bishops and members of the clergy has been done by the Pope because the change of circumstances that with the passage of time have taken place so recommended it. They were faculties, special privileges and pastoral directives granted at a given moment in order to address particular pastoral necessities that emerged in truly difficult times. Pope Benedict explained that now this decision of revoking “all the faculties previously granted in order to address particular pastoral necessities that emerged in truly difficult times” came after “some positive developments” in the situation of the Catholic Church in China, “increased opportunities and greater ease in communications” between Rome, and “requests sent to Rome by various bishops and priests.”⁴¹⁰

D. Concerning Church’s Relations *Ad Intra* and *Ad Extra*

1. Communion within the universal Church

Christ, the one mediator, established and ever sustains here on earth his holy Church, the community of faith, hope and charity, as a visible organization which in the Creed we profess to be one, holy, catholic and apostolic. This Church, constituted and organized as a society in the present world, subsists in the Catholic Church, which is governed by the successor of Peter and by the bishops in communion with him.⁴¹¹

The Code of Canon Law on its part states that “This Church, established and ordered in this world as a society, subsists in the catholic Church, governed by the successor of Peter and the Bishops in communion with him.”⁴¹²

Pope Benedict’s *Letter* addressing to the “Beloved Catholic Church in China,” makes first the point that “in the Catholic Church which is in China, the universal Church is present, the Church of Christ, which in the Creed we acknowledge to be

⁴⁰⁹ Cf. <http://www.zenit.org/article-20020?l=english>.

⁴¹⁰ *Letter*, n. 18.

⁴¹¹ Cf. Vatican II, *Lumen Gentium*, n. 8.

⁴¹² Canon 204 §2.

one, holy, catholic and apostolic, that is to say, the universal community of the Lord's disciples."⁴¹³ Then he stresses the importance of communion between particular Churches in the universal Church and the roots of such communion, which are faith, sacraments (above all the Eucharist) and hierarchical communion: "As you know, the profound unity which binds together the particular Churches found in China, and which likewise places them in intimate communion with all the other particular Churches throughout the world, has its roots not only in the same faith and in a common Baptism, but above all in the Eucharist and in the episcopate. Likewise, the unity of the episcopate, of which 'the Roman Pontiff, as the Successor of Peter, is the perpetual and visible source and foundation',⁴¹⁴ continues down the centuries through the apostolic succession and is the foundation of the identity of the Church in every age with the Church built by Christ on Peter and on the other Apostles."⁴¹⁵ No one in the Church is a foreigner, but all are citizens of the same People, members of the same Mystical Body of Christ. "The whole of the Church which is in China is called to live and to manifest this unity in a richer spirituality of communion, so that, taking account of the complex concrete situations in which the Catholic community finds itself, she may also grow in a harmonious hierarchical communion."⁴¹⁶

The Holy See never declared that the Catholic Church in China is a Schism, though the Catholic Patriotic Association (CPA) in 1957 issued a proclamation saying the China Church had "broken all relationships with the Pope" and was to be "under the direct control of the government." Furthermore, the Vatican assures the Chinese Government that Chinese Catholics are all firmly behind the Pope and united with the Universal Church. Attempts by the government to establish an independent Church have failed.

In his *Letter*, Pope Benedict does not use the expressions "official Church" and "underground Church," but speaks only of the "Church in China," which he praises for her "faithfulness," as if to indicate that these expressions should belong to the past. Moreover, the statement refers with joy to "a surprising numerical growth of the ecclesial community which, in China as elsewhere, is called to bear witness to Christ." This is the kind of confirmation by Rome that both the very missionary-minded official and underground Chinese Church communities expected and deserve. It recommends to the Universal Church the admirable missionary spirit of the Chinese Church.⁴¹⁷

⁴¹³ *Letter*, n. 5.

⁴¹⁴ Second Vatican Council, Dogmatic Constitution on the Church *Lumen Gentium*, 23.

⁴¹⁵ Cf. Congregation for the Doctrine of the Faith, Letter to the Bishops of the Catholic Church on some aspects of the Church understood as Communion *Communio Notio* (28 May 1992), 11-14: AAS 85 (1993), 844-847.

⁴¹⁶ *Letter*, n. 5.

⁴¹⁷ See <http://www.usccb.net/church-updates>.

The reference to the divine constitution of the Church is the keynote of the statement: the Church is governed by bishops, the apostles' successors, in communion with Peter, their head. The Church in China instead is still subjected to the control of an association directed by a political party and manipulated by certain high official.⁴¹⁸ The *Letter* urges all the Chinese Church to maintain unity by recalling that the unity of the Church in individual nations necessitates that every bishop be in communion with every other bishop and that all, in their turn, are in visible and concrete communion with the Pope. "The whole of the Church which is in China is called to live and to manifest this unity in a richer spirituality of communion."⁴¹⁹ "The claim of some entities, desired by the state and extraneous to the structure of the Church, to place themselves above the bishops and to guide the life of the ecclesial community, does not correspond to Catholic doctrine," the Pope adds. "Communion and unity are essential and integral elements of the Catholic Church: Therefore the proposal for a Church that is 'independent' of the Holy See, in the religious sphere, is incompatible with Catholic doctrine."⁴²⁰

2. Ecclesial Communities and State Agencies

The Chinese government allows religious practice in the country only with recognized personnel and in places registered with the Religious Affairs Office and under the control of the Patriotic Association, whose statute provides for the creation of a national Church split from the Holy See.⁴²¹

In his *Letter*, under the title "Ecclesial communities and State agencies,"⁴²² the Holy Father, deals with the various causes of division in the Church community. He bluntly points out the role played by agencies, external to the Church, which have been imposed on the Catholic community. Recognition from these agencies is the criterion for declaring a community, a person, or a religious place legal and "official." This gives rise to divisions, suspicions and denunciations within the Christian community, and is an obvious cause of the painful situation of the Church in China today. Some entities imposed by the government on the Church but extraneous to the Church intend to place themselves above the Church and guide the Church, does not correspond to Catholic doctrine.

All this has caused division both among the clergy and among the lay faithful. It is a situation primarily dependent on factors external to the Church, but it has

⁴¹⁸ Gianni Criveller, *Waiting for the words of the Holy Father* [January 29, 2007], http://hsstudyc.org.hk/en/remarks/en_err_20070129.html.

⁴¹⁹ *Letter*, n. 5.

⁴²⁰ *Letter*, n. 8.

⁴²¹ Cf. Appendix: *Regulations Regarding the Management of Places for Religious Activity*, nn.2;12.

⁴²² Cf. *Letter*, n. 7.

seriously conditioned her progress, and it continues to be a weakness in the Church that causes concern.

Since the Church is apostolic, that is, “built on the foundation of the Apostles,” whose successors the bishops are, it is the bishops who, in communion with the Successor of Peter, have the right to teach and rule the Church.⁴²³ That is why Pope Benedict denounces the claim of those agencies of putting themselves above the Bishops and guiding the life of the ecclesial community as “extraneous to the structure of the Church” and “not in line with the Catholic doctrine”: “It is clear that the claim of some agencies, desired by the State and extraneous to the structure of the Church, to place themselves above the Bishops and to guide the life of the ecclesial community, does not correspond to Catholic doctrine, according to which the Church is ‘apostolic.’”⁴²⁴ He likewise goes on to say that the declared purpose of the afore-mentioned agencies to implement ‘the principles of independence and autonomy, self-management and democratic administration of the Church’⁴²⁵ are incompatible with Catholic doctrine, which from the time of the ancient Creeds professes the Church to be one, holy, catholic and apostolic. And so the Holy Father points out: “The preaching of the Gospel, catechesis and charitable activity, liturgical and cultic action, as well as all pastoral choices, are uniquely the competence of the Bishops. Therefore they cannot be subject to any external interference.”⁴²⁶

Given this difficult situation, not a few members of the Catholic community are asking whether recognition from the civil authorities – necessary in order to function publicly – somehow compromises communion with the universal Church. This is a painful dilemma for Pastors and faithful alike. What to do or what is the mind of the Church on this particular point? Pope Benedict makes a distinction on this point; in his view, “the requisite and courageous safeguarding of the deposit of faith and of sacramental and hierarchical communion is not of itself opposed to dialogue with the authorities concerning those aspects of the life of the ecclesial community that fall within the civil sphere. There would not be any particular difficulties with acceptance of the recognition granted by civil authorities *on condition that this does not entail the denial of unrenounceable principles of faith and of ecclesiastical communion.*”⁴²⁷

The problem, however, is that very often “in the process of recognition the intervention of certain bodies obliges the people involved to adopt attitudes, make gestures and undertake commitments that are contrary to the dictates of their conscience as Catholics. [...] “...in such varied conditions and circumstances it is

⁴²³ Cf. Vatican II, *Lumen Gentium*, nn.8, 21; can. 375 §2.

⁴²⁴ *Letter*, n. 7.

⁴²⁵ Cf. Appendix, *Statutes of the Chinese Catholic Patriotic Association*, 2004, art. 3.

⁴²⁶ *Letter*, n. 7.

⁴²⁷ *Letter*, n. 7. (Italics supplied)

difficult to determine the correct choice to be made.” For this reason the Holy See leaves the decision to the individual Bishops in consultation with their presbyterate, for they know best the local situation, the concrete possibilities of choice and the possible consequences within the diocesan community.⁴²⁸ In summary, can Bishops and priests from the underground community apply to the government for their recognition as Bishops and priests? In Pope’s *Letter* such possibility of applying to the government for recognition is not excluded⁴²⁹; only that two things are to be taken into account, namely, (a) the safeguarding of the deposit of faith and of sacramental and hierarchical communion; and (b) the *actual situation* in which ‘almost always’ certain bodies impose on the people involved the obligation to adopt attitudes, make gestures and undertake commitments that are contrary to the dictates of their conscience as Catholics.⁴³⁰ The final decision, however, is left to the individual Bishop in consultation with his presbyterate.⁴³¹

3. *Engagement in Respectful and Constructive Dialogue*

Addressing himself to the government of Beijing, Pope Benedict XVI in his *Letter* writes of the burdensome “situation of misunderstandings and incomprehension” which serves the interests of neither side; quotes the Second Vatican Council on the political community and the Church being autonomous

⁴²⁸ Still the Pope acknowledges that it could be that the final decision does not obtain the consensus of all the priests and faithful. It would be good then if Bishops and priests were to take every possible step to avoid giving rise to situations of scandal, seizing opportunities to form the consciences of the faithful, with particular attention to the weakest: all this should be lived out in communion and in fraternal understanding, avoiding judgments and mutual condemnations. [...] Every case, then, will have to be pondered individually, taking account of the circumstances.

⁴²⁹ Cf *Letter*, n. 7.

⁴³⁰ It should be noted that “to adopt attitudes, make gestures and undertake commitments” means to join the Patriotic Association; to support autonomy and self-management; to concelebrate with illegitimate Bishops. Since, according to the above mentioned “condition,” it is not permitted “to deny unrenounceable principles of faith and of ecclesiastic communion,” and not allowed “to adopt attitudes, make gesture and undertake commitments that are contrary to the dictates of their conscience as Catholics”; despite that fact that the government “almost always” demands it, Bishops and priests, in most cases, cannot accept nor apply to the government for recognition.

⁴³¹ The detail “having consulted his presbyterate” (Cf. *Letter*, n. 7) is of great importance because in doing so the Bishop will be able to make his decision with the help of the wisdom of his priests; it will then be easier to get the unanimous support of his priests in making his decision. However, the situations in the dioceses are very different. If the bishop and the priests, together, in one “clandestine community” are recognized by the Government, come out to operate in the open without being obliged to “adopt attitudes, make gestures and undertake commitments” contrary to their Catholic conscience, that would be very good. It would be even better, if all the priests “above-ground” turn to pledge loyalty to the “underground” bishops. But are there such fortunate cases? How many? What we hear is that even with the most sincere desire to subject themselves to the underground bishops, those priests in the above-ground community cannot practically do so, because the Government does not allow it. Cf. Card. Joseph Zen, *An Aid for Reading the Holy Father’s Letter to the Church in China*, n. 7, Nov. 18, 2009.

and independent of each other in their own fields⁴³²; and states that the Pope is not “a political authority, unduly asserting itself in the internal affairs of a State and offending against its sovereignty,”⁴³³ as he also reassures Beijing on a particularly sensitive issue: “the Catholic Church which is in China does not have a mission to change the structure or administration of the State; rather, her mission is to proclaim Christ to men and women.”⁴³⁴

The *Letter* is directed to the Church in China and deals with eminently religious questions, responding to precise queries which have been addressed for some time to the Holy See by Chinese Bishops and priests. It is not, therefore, a political document, nor, much less, an indictment of the government authorities, although it does not ignore the well-known difficulties which the Church in China must daily tackle. In the light of the “original plan” which Christ had for his Church and which he entrusted to the Apostles and their successors, the Bishops, the Pope takes into consideration various problems of the Church in China which emerged during the past fifty years. From this “plan” he also draws inspiration and formulates guidelines to tackle and resolve, in a spirit of communion and truth, the said problems. Pope Benedict XVI declares himself fully available and open to a serene and constructive dialogue with the civic authorities in order to find a solution to the various problems concerning the Catholic community, and to reach the desired normalization of relations between the Holy See and the Government of the People’s Republic of China, in the certainty that Catholics, by freely professing their faith and by giving generous witness of life, contribute also, as good citizens, to the good of the Chinese people. “I realize that the normalization of relations with the People’s Republic of China requires time and presupposes the good will of both parties. For its part, the Holy See always remains open to negotiations, so necessary if the difficulties of the present time are to be overcome.”⁴³⁵

As far as relations between the political community and the Church in China are concerned, Benedict XVI in a serene and respectful way recalls the Catholic doctrine, formulated anew by the Second Vatican Council: that the Church is not identified with any political community nor is she tied to any political system; that the political community and the Church are autonomous and independent of each other in their own fields; and that they are both at the service of the personal and social vocation of the same individuals.⁴³⁶ He then expresses the sincere hope

⁴³² Cf. Vatican II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 28, 76.

⁴³³ *Letter*, n. 9.

⁴³⁴ *Letter*, n. 4.

⁴³⁵ *Letter*, n. 4, par. 3.

⁴³⁶ “The Church, by reason of her role and competence, is not identified with any political community nor is she tied to any political system. She is at once the sign and the safeguard of the transcendental dimension of the human person” [...] “The political community and the Church are

“that concrete forms of communication and cooperation between the Holy See and the People’s Republic of China may soon be established”⁴³⁷ so as to be able to reach agreement on the appointment of Bishops, obtain the full exercise of the faith by Catholics as a result of respect for genuine religious freedom and arrive at the normalization of relations between the Holy See and the Beijing Government. “Once the misunderstandings of the past have been overcome, such a dialogue would make it possible for us to work together for the good of the Chinese People and for peace in the world.”⁴³⁸ Truly, in order to overcome the misunderstandings of the past, a constructive dialogue based upon “the fundamental principles of the Church’s divine constitution and religious freedom” is a must. No confrontation, but dialogue in truth!

This is the spirit of respect that underlines the canons of the Code of Canon Law as it states that they “do not abrogate, nor do they derogate from, *agreements entered into by the Apostolic See with nations or other civil entities*,” and that therefore those agreements continue in force.⁴³⁹ ■



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autonomous and independent of each other in their own fields. They are both at the service of the personal and social vocation of the same individuals, though under different titles. Their service will be more efficient and beneficial to all if both institutions develop better cooperation according to the circumstances of place and time” (Vatican II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 76).

⁴³⁷ *Letter*, n. 4.

⁴³⁸ *Letter*, n. 4, par. 3. Cf. John Paul II, *Message to the participants of the International Convention “Matteo Ricci: for a dialogue between China and the West”* (24 October 2001), 6 in *L’Osservatore Romano*, English edition, 31 October 2001, pp. 3-4. This matter has been recently clarified in the number 5 of the *Compendium* which deals with the Holy Father’s vision for a dialogue between the Holy See and the People’s Republic of China. The normalization of relations between both institutions requires time and presupposes the good will of both parties. The solution to existing problems cannot be pursued via an ongoing conflict with the legitimate civil authorities; at the same time, though, compliance with those authorities is not acceptable when they interfere unduly in matters regarding the faith and discipline of the Church (cf. *Letter*, n. 4, par. 7).

⁴³⁹ Canon 3: “The canons of the Code do not abrogate, nor do they derogate from, agreements entered into by the Apostolic See with nations or other civil entities. For this reason, these agreements continue in force as hitherto, notwithstanding any contrary provisions of this Code.”