

The Selection of Bishops: Exploring Canonical Alternatives

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In this essay we will address an issue of church polity. While doctrinal disputes on questions related to justification, the *filioque* or sacramental theology have received more attention, it is the concrete questions of church polity which may constitute the greater obstacle to the achievement of full visible union among the Christian churches. With that in mind we will focus our attention on the concrete processes related to the selection of bishops. While this might seem a fairly secondary, administrative concern, in fact, the current procedures for the selection of bishops, insofar as they reinforce perceptions of the Catholic church as a monolithic, quasi-monarchical institution, play a highly symbolic role in ecumenical dialogue. A significant revision of these procedures might go a long way towards dispelling these perceptions.

We recognize, of course, that not all Christian churches acknowledge the need for an episcopate which succeeds to the authority of the college of apostles. On the other hand, the last two decades have seen a growing convergence in ecumenical dialogue toward affirming the value of such an episcopate. The influential Lima document, *Baptism, Eucharist and Ministry*, affirmed the importance of episcopal ministry and called for those Christian traditions without an episcopate to reconsider their position on

this question.¹ A revision of current canonical procedures within the Roman Catholic church, to the extent that they would clarify the nature of the episcopate as an apostolic service to the church, might help these traditions decide in favor of such an episcopate.

Our study will consist of three parts: (1) a historical survey of the diverse methods by which the churches within the Latin church *sui iuris* of the Roman Catholic communion have selected bishops; (2) an investigation of the perduring values reflected in this historical survey; (3) a proposal for a revision of current canonical procedures regarding the selection of bishops in the light of these values.

I. The Selection of Bishops: An Historical Sketch

History reveals a variety of ways by which bishops have been chosen in the church, both in the East and in the West. Here we shall focus on how bishops have been chosen in the West, specifically in the Latin Catholic church. Today most bishops in the Latin church are directly appointed by the pope, but that is a recent development. For most of the church's history, there was not a single way to select a bishop but a number of ways depending on the locale and the historical period. Due to this complexity, it is not possible here to give more than an overview of the more common ways in which

¹ *Baptism, Eucharist and Ministry*, Faith and Order Paper # 111 (Geneva: WCC, 1982), see especially #s 19-38.

bishops have been chosen, with an indication of the period in which these modes of selection predominated.²

A. Apostolic Church to 4th Century—Participation by the Whole Local Church

The ideal in the early centuries of Christianity was to have all the people of the local church involved in the selection of their bishop. St. Cyprian, 3rd century bishop of Carthage, wrote: “Moreover, we can see that divine authority is also the source for the practice whereby bishops are chosen in the presence of the laity and before the eyes of all, and they are judged as being suitable and worthy after public scrutiny and testimony.”³ We also find in Hippolytus’ early 3rd century *Apostolic Tradition*: “Let the bishop be ordained after he has been chosen by all the people; when he has been named and shall please all, let him, with the presbytery and such bishops as may be present, assemble with the people on Sunday. While all give their consent, the bishops shall lay hands upon him.”⁴

² The principal works consulted were: John Albert Eidenschink, *The Election of Bishops in the Letters of Gregory the Great* (Washington: Catholic University of America Canon Law Studies, no. 215, 1945); Jean Gaudemet et al., *Les elections dans l’Église latine des origines au XVI siècle* (Paris: Lanoré, 1979); Gaudemet, *L’Église dans l’empire romain (IV-V siècles)*, tome 3, *Histoire du droit des institutions de l’Église en Occident*, ed. Gabriel Le Bras (Paris: Sirey, n.d.); idem, *Église et cité: Histoire du droit canonique* (Paris: Cerf/Montchrestien, 1994); Imbart de la Tour, *Les élections épiscopales dans l’Église de France du IX au XII siècle*, (Paris: Hachette, 1891); Klaus Ganzer, *Papsttum und Bistumsbesetzungen in der Zeit von Gregor IX. bis Bonifaz VIII.* (Köln/Graz: Böhlau, 1968); Robert L. Benson, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton University, 1968); *The Choosing of Bishops*, ed. William W. Bassett (Hartford: Canon Law Society of America, 1971), especially: Thomas F. O’Meara, “Emergence and Decline of Popular Voice in the Selection of Bishops,” 21-32, and Robert F. Trisco, “The Variety of Procedures in Modern History,” 33-60.

³ *Epistle* 67, 4. For the ecclesiological presuppositions which framed Cyprian’s perspective, see Paul J. Fitzgerald, “A Model for Dialogue: Cyprian of Carthage on Ecclesial Discernment,” *Theological Studies* 59 (June, 1998): 236-53.

⁴ *Apostolic Tradition* 1, 2, 3.

It is not known exactly how and to what degree this ideal was everywhere accomplished. In some places, the people actually voted for the bishop;⁵ in other places they consented to a choice made by the neighboring bishops and the local clergy; in places some laity, but not all, were involved. This was the beginning of a long tradition for the people to acclaim the selection of the bishop, a kind of moral ratification of the choice. Unanimity was desirable because it strengthened the authority and prestige of the one elected. Even today a vestige of this popular election of the bishop exists in the assembly's assent to the choice of the bishop at his ordination.⁶

B. 4th to 6th Centuries—Growing Importance of the Bishops of the Province

A common pattern was the selection of the candidate by the people and the local clergy preceding the definitive choice by the bishops of the province; or the bishops would choose the candidate and he would be acclaimed by the local church. More and more, the direct involvement of the laity in the bishop's selection was limited to those who were powerful or influential; the clergy had the more important role in the selection process. Yet the laity as a whole could block consecration of the elected candidate by eliciting strong opposition. Pope Celestine I (422-32) would declare: "Let a bishop not

⁵ John E. Lynch, "Co-responsibility in the First Five Centuries: Presbyteral Colleges and the Election of Bishops," *The Jurist* 31 (1971) 39-41; Peter Stockmeier, "The Election of Bishops by Clergy and People in the Early Church," in *Concilium 137: Electing Our Own Bishops*, ed. Peter Huizing and Knut Walf (New York: Seabury, 1980) 3-8.

⁶ *Pontificale Romanum: De Ordinatione Episcopi, Presbyterorum et Diaconorum*, editio typica altera (Typis Polyglottis Vaticanis, 1990), no. 11a.

be imposed upon the people whom they do not want.”⁷ Pope Leo (440-61) would further insist: “He who has to preside over all must be elected by all.”⁸

The presence of all the bishops of the province at the consecration of the new bishop was obligatory except for grave reasons such as long distance. The fourth canon of the Council of Nicea in 325 required that, if all comprovincial bishops could not be present for the ordination of a bishop, there must be at least three of them present, and the absent bishops must consent in writing to the ordination; the metropolitan had to confirm the election.⁹ By the end of the fourth century, the role of the people was considerably reduced. Only notable persons, the powerful and influential, were being called to the election. They took the place of all the people.

C. 6th to 11th Centuries—Growing Interference of Secular Powers

In the sixth century the Merovingian kings intervened in elections and imposed their candidates. The fifth council of Orleans in 549 (c. 10) admitted that, besides election by the clergy, the king could appoint a bishop. In other places the electors of the bishop were mainly the clergy (often the dignitaries—canons, abbots, archdeacons, chorbishops), frequently with participation of key laity from the nobility, with confirmation by the metropolitan, comprovincial bishops, and the king. Beginning in the Carolingian period the election of a metropolitan was confirmed by the pope as well as

⁷ PL, 50:434.

⁸ PL 54: 634.

⁹ *Decrees of the Ecumenical Councils*, volume 1, ed. Norman P. Tanner (London: Sheed and Ward and Washington: Georgetown University, 1990), 7. Nicea decreed also that the bishop was to be elected by the comprovincial bishops and the election was to be confirmed by the metropolitan, but this did not greatly affect the West at this time where bishops continued to be chosen by the clergy and the people.

the ruler. The longstanding custom of the new archbishop requesting the pallium from the pope was widespread, but did not become mandatory until the end of the twelfth century.

By the tenth century bishoprics in many places had become feudal fiefdoms controlled by noble families; the local clergy and faithful had little or no say in the selection of their bishop. The kings and lords in different lands enjoyed various prerogatives in the selection of bishops, for example: the right to grant the authorization for the electoral body to proceed to elect; the right of confirmation of the election; the right to present the regalia symbolizing secular jurisdiction; the right to present the candidate for election or even the direct appointment of the bishop. The bishops of the province continued to be the consecrators of the bishop.

D. Mid 11th to Early 12th Centuries—Election by Representatives of the Clergy of the Diocese, Secular and Religious

A major goal of the reform program of Pope Gregory VII (1073-85) was to rid the church of the interference of secular powers in the selection of bishops. The reformers urged a return to the canonical sources that required election by the clergy and all the people, although the laity's role was now limited to affirming the choice of the clergy. During this brief period a wide cross-section of the clergy, secular and religious, participated in the election of the bishop. Due to the many conflicts that arose in having so many episcopal electors, this reform was short-lived.

E. 12th to 16th Centuries—Election by the Canons of the Cathedral Chapters or Papal Appointment

The Second Lateran Council in 1139 decreed that the right of election of a bishop was to be restricted to the canons of the cathedral chapter, but it also insisted that other clerics of the diocese must have a consultative voice and the right of consent.¹⁰ Toward the end of the twelfth century it was becoming common to restrict the electors to the cathedral canons without wider consultation. Abbeys and parishes were benefices subject to feudal lords, whereas the canons had autonomy and were seen to be more impartial. The Fourth Lateran Council of 1215 established election solely by the cathedral canons as the rule. It further stipulated that when the electoral college could not designate the new bishop within three months of the vacancy, its right would devolve to the metropolitan who was to choose the bishop or, in the case of the metropolitan, it devolved to the pope.¹¹

The twelfth and thirteenth centuries marked a time of frequent papal interventions in the selection of bishops, notably when the losing minority of electors would contest the election and appeal to Rome. In 1278 Pope Nicholas III decreed that the pope had the right of appointing a bishop in case of a contested election, transfer, resignation, suspension or degradation. In 1363 Urban V claimed the right to appoint all patriarchs, archbishops, bishops, abbots and abbesses. However, this claim was not accepted everywhere, and elections continued to be the rule in certain regions even as direct papal appointment had become the rule in others.

¹⁰ C. 28, *Decrees of the Ecumenical Councils*, 1: 203.

¹¹ C. 24, *Decrees of the Ecumenical Councils*, 1: 246.

In the thirteenth century more and more bishops began getting their election confirmed by the Holy See rather than by the metropolitan. Confirmation of episcopal appointments by the Holy See was not an innovation of the popes to enhance their own power and control, but was mainly due to factors which were by and large particular to the time. A chief reason for this change from the traditional practice of confirmation by the metropolitan was that some bishops wanted to free themselves from the authority of the metropolitan who was close by, while the pope in distant Rome would have less control over them. Some situations were reserved in law for confirmation to the pope, namely postulation, appeals of contested elections, and transfers from one bishopric to another. Sometimes the metropolitan see was itself vacant, or the metropolitan was under interdict; some bishops had no metropolitan and the dioceses were directly subject to the Holy See.

F. 16th to 19th Centuries—Appointment by Pope or Ruler

The Council of Trent intensively debated the issue of the selection of bishops, but no consensus could be achieved. Opinions varied along the spectrum ranging from the return to the ancient practice of the bishop's election by the people and the clergy to the appointment of bishops by the pope.¹² Ultimately the council, while respecting local customs on the selection of bishops, provided some directives for the investigation of candidates in the case of appointment by the pope.¹³ A key provision of the Tridentine

¹² See Jean Bernhard, "The Election of Bishops at the Council of Trent," *Concilium* 137, pp. 24-30.

¹³ Trent, session XXIV, reform decree, c. 1., *Decrees of the Ecumenical Councils*, 2: 759ff.

decree was making the provincial synod responsible for establishing the details of the process of investigating, examining, and attesting the suitability of episcopal candidates.

While the appointment of bishops by the pope, in accord with the procedures of Trent and the provincial synod, became the rule in many places, the kings of France, Spain, Portugal, Bavaria and Sicily continued to appoint bishops, and later also the presidents of some countries in South America and in Haiti. The pope reserved for himself the right of confirmation—the *institutio canonica*—which conferred episcopal jurisdiction. In some places, particularly in central Europe, bishops were elected by cathedral chapters, which election was confirmed by the pope. In other places the cathedral chapter or, as in Ireland, a larger body of clergy, elected a *terna* for presentation to the pope, from which he chose one to be bishop.

G. 20th Century—Free Appointment of Bishops by the Pope

The 1917 *Code of Canon Law* stated that the Roman Pontiff freely appoints bishops (c.329, §2). This was the first time that a general law of the Church asserted this blanket rule giving the pope such extensive power in the selection of bishops. Nevertheless, the first code acknowledged exceptions which existed by privilege or concordat, namely, the right of a *collegium* (such as a cathedral chapter) to elect the bishop (c.329, §3), and the rights of presentation or even designation of the bishop by a civil government (c.331, §2). The 1917 code also asserted the right of the Holy See to judge who was qualified (*idoneus*) to be bishop (c.331, §3). Anyone promoted to the episcopacy, also one elected, presented or designated by a civil government, needed the canonical provision, or institution, which was granted by the pope (c.332, §1). Before the

canonical institution, the candidate had to take the profession of faith and swear an oath of fidelity to the Holy See (c.332, §2).

The 1983 *Code of Canon Law* states that the pope freely appoints bishops or confirms those who have been elected. Although today the vast number of Latin Catholic bishops are directly appointed by the pope, some exceptions still exist, especially in Germany, Switzerland, and Austria where the cathedral chapters in a number of dioceses have the right to elect the bishop from a *terna* presented by the Holy See, elect the bishop outright, or present a *terna* to the pope for appointment.¹⁴ Papal confirmation of an elected bishop is necessary before the candidate can be ordained and/or take office. Echoing Vatican II,¹⁵ the code asserts that no rights and privileges of election, appointment, presentation, or designation of bishops are hereafter to be granted to civil authorities (c.377, §1). However, there are still a number of governments which by concordat or custom enjoy certain prerogatives in the selection of bishops, most frequently the right of consultation before the bishop's appointment by the pope.¹⁶ As in the 1917 code, the newly chosen bishop must make a profession of faith and swear an oath of fidelity (c.380), and there still is the rule that gives to the Holy See the right to judge the suitability of anyone promoted to the episcopacy, which right is now said to be

¹⁴ See Heinz Maritz, *Das Bischofswahlrecht in der Schweiz unter besonderer Berücksichtigung der Entwicklung im Bistum Basel nach der Reorganisation*, *Münchener theologische Studien, kanonistische Abteilung*, 36 (St. Ottilien: EOS, 1977); and Jean-Louis Harouel, "The Methods of Selecting Bishops Stipulated by Church-State Agreements in Force Today," *Concilium* 137, pp. 63-66.

¹⁵ *Christus Dominus*, 20.

¹⁶ See René Metz, "Innovation et anachronismes au sujet de la nomination des évêques dans de récentes conventions passées entre le Saint-Siège et divers États (1973-1984)," *Studia Canonica* 29 (1986) 197-218; and Joël-Benoît D'Onorio, *La nomination des évêques: Procédures canoniques et conventions diplomatiques* (Paris: Tardy, 1986).

“definitive” (c.378, §2). There are also provisions for surfacing the names of potential candidates for the episcopacy and the consultations that may be made as well as those that must be made by the pontifical legate before a diocesan bishop is appointed (c. 377. §§2-3).¹⁷

Although this historical sketch did not treat the Eastern churches, it may be noted here that, in the Catholic Eastern churches, the patriarch and the other bishops inside the territorial boundaries of the patriarchal churches, as well as the major archbishop of major archiepiscopal churches, are elected by the synod of the church *sui iuris* (*CCEO*, cc. 63-77, 153,181-7). Other bishops are appointed by the pope (*CCEO*, c.181, §2).¹⁸

II. The Enduring Values Reflected in the Tradition

Having briefly surveyed the history of the selection of bishops in the Latin church, it will be helpful now to identify the principal values that lay behind the predominant practices that have existed in history. By understanding the values protected by the various laws and customs through the centuries, we will be in a better position to suggest a reform of today’s canon law that would preserve those historical values that are still pertinent, reflect the ecclesiology of Vatican II, and foster conditions more favorable to the reunion of the Christian churches. The chief values that historically have been protected by church laws and customs governing the selection of bishops are: a) the theological integrity of the local church; b) the bishop’s fundamental relationship to

¹⁷ These provisions should be read in conjunction with a more extensive treatment of this matter in a 1972 document of the Council for the Public Affairs of the Church, *Episcoporum delectum*, March 25, 1972, AAS 64 (1972), 386-391; *CLD* 7:366-373.

¹⁸ See René Metz, “La désignation des évêques dans le droit actuel: étude comparative entre le Code latin de 1983 et le Code oriental de 1990,” *Studia Canonica* 27 (1993) 321-334.

the local church; c) participation by the representatives of the whole local church in the selection process; d) the application of the principle of subsidiarity in preserving diverse procedures for episcopal selections; e) the avoidance of interference from secular authorities in the selection of bishops; f) the selection of suitable candidates for the episcopacy; g) participation by the bishops of neighboring churches in the selection of bishops; h) the expeditious provision for a vacant see. Within the parameters of this project, each of these values can only be treated in a cursory fashion.

A. The Theological/Ecclesial Integrity of the Local Church

Contemporary biblical and early church scholarship has noted the significance of the biblical notion of *koinonia* in the life of the early church. Usually translated as “participation,” “fellowship,” or “communion,” *koinonia* described a twofold relationality or participation constituted by grace. First we might speak of a “vertical” fellowship in which, by faith, baptism and the work of the Spirit, we are drawn into communion with God through Christ (I Cor. 1:9; II Cor. 13:13). Yet this *koinonia* simultaneously established a “horizontal” communion which finds its most visible manifestation in the concrete life of the church. St. Paul’s whole ecclesiology presupposed the basic connection between communion with God and communion with one another realized in the life of the church. For Paul, to be baptized into Christ meant being baptized into Christ’s Body.¹⁹ This dual *koinonia* is found in the Johannine tradition as well: “What we have seen and heard we proclaim now to you, so that you too may have fellowship with us; for our fellowship is with the Father and with his Son,

¹⁹ Jerome Murphy O’Connor, “Eucharist and Community in I Corinthians,” in *Living Bread, Saving Cup*, ed. Kevin Seasoltz (Collegeville: The Liturgical Press, 1982), 4.

Jesus Christ (I John 1:3-4).” A third new testament tradition, found in the Acts of the Apostles, offers a similar perspective. There Pentecost is presented as the constitution of the church by the work of the Spirit. The Holy Spirit transforms a group of individuals into a communion of persons. Acts reminds us that this ecclesial communion is no human invention but is, rather, the work of the Holy Spirit.

In the church of the first few centuries, this simultaneity found its most profound sacramental expression in the celebration of the eucharist. In the proclamation of the Word and the breaking of the bread under the presidency of an apostolic minister, this gathered people celebrated their identity as a people whose lives were being conformed to Christ in the paschal mystery. No mere aggregate of individuals, they were Christ’s Body *in that place*. The nascent ecclesiology of communion gave an irreducible theological integrity to the local church which was preserved throughout much of the first millennium.²⁰ However, factors leading to the erosion of this view of the local church—a community which was truly the Body of Christ *in that place*—can be identified as early as the fifth century. Over time, the church was influenced by more political conceptions of community determined by civic boundaries and jurisdictions rather than sacramental celebrations. This shift was given new impetus by the eucharistic controversies of the ninth through twelfth centuries. During this period there was a regrettable contraction of eucharistic theology as the sense of Christ’s eucharistic

²⁰ For historical and systematic considerations of the theology of the local church see Emmanuel Lanne, “L’Église locale parmi les autres Églises locales,” *Irénikon* 43 (1970): 481-511; Henri de Lubac, *Les Églises particulières dans l’Église universelle* (Paris: Aubier, 1971); Wolfgang Beinert, “Die Kirche Christi als Lokalkirche,” *Una Sancta* 32 (1977): 114-29; Hervé Legrand, “La réalisation de l’église en un lieu,” in *Initiation à la pratique de la théologie*, vol. 3, edited by Bernard Lauret and François Refoulé (Paris: Cerf, 1993), 143-345; Jean-Marie R. Tillard, *L’Église locale: Ecclésiologie de communion et catholicité* (Paris: Cerf, 1995).

presence narrowed considerably. A preoccupation with questions regarding the real presence of the risen Lord in the eucharistic elements led to a neglect of the presence of Christ in the eucharistic community itself.²¹

It was, in fact, left to the Second Vatican Council to retrieve the eucharistic foundations of the local church in its Constitution on the Liturgy (SC # 41) and the Dogmatic Constitution on the Church (LG # 3, 11, 26), and to affirm that each local church was not just a sub-division of the universal church but was the concrete, historical realization of the universal church (LG # 23, 26). In article 11 of the Decree on the Pastoral Office of the Bishop, the council enumerated four constitutive elements for the local church: (1) the local church is constituted by the gifts of the Holy Spirit; (2) it is presided over by an apostolic minister; (3) it is nourished by the proclamation of the Word and (4) the celebration of the eucharist.²²

B. The Bishop's Fundamental Relationship to the Local Church

By the mid-second century these local churches were each presided over by a single bishop. Though the unquestioned leader of the community, the bishop's ministry was situated *within* the local church and not above or outside it. The relationship between bishop and community was often presented as a kind of "mystical" union. It was not uncommon to find marital imagery being employed to describe this relationship. Indeed, so profound was the bond between bishop and church that bishops were generally

²¹ Cf. Henri de Lubac, *Corpus Mysticum: L'eucharistie et l'Église au moyen âge* (Paris: Aubier, 1944).

²² Legrand, "La réalisation de l'église en un lieu," 159-71.

prohibited from being “translated” from one see to another.²³ Similarly, the ordination of one to the episcopate without a pastoral charge to a local community was strictly prohibited.²⁴

The bishop was acknowledged to possess particular responsibility as guardian of the apostolic faith. Yet these churches also understood themselves to be bearers of that same apostolic faith. There was no “ecclesiastical gnosticism”—as one sometimes finds even today—in which bishops were held to be in possession of some secret knowledge not accessible to all believers. Rather, the bishop functioned as custodian of the apostolic faith given to the whole church. His guardianship of the apostolic tradition also benefited from the community’s own witness to the apostolic faith.

As liturgical presider, the bishop was further bound to the local community. The bishop presided over the sacrament of ecclesial unity for it was in the celebration of the eucharist that the local church was constituted as Christ’s body. Consequently, pastoral leadership over a community and liturgical presidency seemed to have gone hand in hand.²⁵

This also explains the absence of auxiliary bishops in the early church. The appointment of auxiliary bishops would only have obscured the marital imagery and the bishop’s unique role of pastoral leadership within his church. The emergence of titular bishops—bishops who formally hold title to churches which in fact no longer exist and

²³ See canon 15 of the Council of Nicea and canon 5 of the Council of Chalcedon. Cf. Hamilton Hess, *The Canons of the Council of Sardica: A Landmark in the Early Development of Canon Law* (Oxford: Clarendon, 1958), 71-7.

²⁴ Cf. Canon 6 of the Council of Chalcedon.

who either serve as auxiliaries within a diocese or who hold administrative positions as diplomats, apostolic delegates or prelates in Roman congregations—actually emerged only in the twelfth century when the Turkish conquest of formally Christian lands forced bishops in those areas into exile. Rome continued to appoint bishops to these suppressed or lapsed churches and then assigned the bishops to assist in large dioceses elsewhere. In the sixteenth century this practice was expanded such that any bishop without a pastoral charge to a local church would be assigned one of these nonexistent sees.

It is difficult to reconcile this now common practice with the values inherent in the practice of the early church. Canonically, there is no real necessity for auxiliary bishops as nearly all the powers of the diocesan bishop can be delegated to a presbyter when the bishop needs assistance (the notable exception being the power to ordain). The elevation to the episcopate and assignment of a titular see to individuals serving in Roman congregations or in diplomatic posts is also both unnecessary and risks obscuring fundamental ecclesiological values. Elevating such individuals to the episcopate suggests that the episcopate has become an honorific rather than a service to a local community. The assignment of lapsed or suppressed sees also trivializes the vital relationship which ought to exist between bishop and community.

The attenuation of the bishop's relationship to the local church generally coincided with a gradual shift in the church's ecclesial self-consciousness. The bishop's integral relationship to his local church was obscured because the church moved away from its theological identity as a communion of eucharistic communions and became structured as a universal, corporate entity governed by a monarchical power. Pastoral

²⁵ Hervé Legrand, "The Presidency of the Eucharist according to the Ancient Tradition," *Worship*

leadership over a eucharistic community would be first distinguished and then separated from the “power to confect the eucharist.” This made it increasingly difficult to see leadership of a local church as integral to ordained ministry and it paved the way for the acceptance of absolute ordination—the ordination of ministers without reference to a local church. There are sound reasons, however, for seeing this shift, not as a legitimate theological development, but rather as a regrettable, though historically understandable, departure from an ecclesial value thought to be vital to the early church. Some vestige of this value is still retained in the contemporary practice of requiring auxiliaries, coadjutors and nuncios to at least hold a “titular see”—pastoral charge to a church which no longer exists. If this requirement points to the perduring value, the nonexistence of these sees is a testament to how little the value is being honored in church praxis.

C. Participation By Representatives of the Whole Local Church in the Selection of the Bishop

The previous two values, the theological reality of the local church and the bishop’s fundamental relationship to his church, together constituted the theological foundation for this third value. The testimony of the early church confirms a widespread conviction regarding the necessity of local participation in the selection of the bishop. For most of the church’s history, the laity as well as the clergy had a role in the episcopal selection process. In the ancient church the laity directly participated in the selection of their bishop. As the church grew, only the more important laypersons, wealthy or powerful persons, participated directly. In the Middle Ages kings and other noble persons were influential and often played the decisive role in the choice of bishop. By

the twelfth century, in reaction to abuses that resulted from control by secular rulers, episcopal elections began to be reserved more and more to the clergy of the diocese; the laity thenceforth were excluded from participation, except for some secular rulers who maintained their privileges. In today's canon law, the laity's role in the selection of bishop is reduced to selective consultation left to the discretion of the papal legate (c. 377, §3); this only barely acknowledges the longstanding ideal of participation by the clergy and laity in the choice of their bishop.

In an assessment of the development away from the participation of the local church in the appointment of the bishop, it is difficult to avoid the conclusion that political rather than theological factors were responsible for this development. The more ancient practice of local participation of the faithful would appear to have been grounded not in pragmatic political realities, as clearly was the case when their participation later diminished, but in a conviction regarding what would later be called the *sensus fidelium*.²⁶ This refers to the ancient belief, affirmed at Vatican II (LG#12), that the church as a whole, itself a recipient of God's Word, cannot err in matters of belief. If the faithful, through the exercise of the supernatural sense of the faith which they received at baptism, have a role to play in receiving God's Word and discerning God's will, then the church must not overlook the contributions of the faithful in the choice of church leadership. Consequently, any reform of canon law should attend to this value, which corresponds to the church's self-understanding as the "people of God." The universal canon law should

²⁶ See Gustave Thils, *Choisir les évêques? Élire le pape?* (Paris: Éditions J. Duculot, 1970); Patrick Granfield, "The Sensus Fidelium in Episcopal Selection," *Concilium* 137, 33-38; Edward Kilmartin, "Episcopal Election: The Right of the Laity," *ibid.*, 39-43.

seek to restore to the faithful a greater role in the selection process, at least by some mandatory consultation, in every kind of selection process that may be permitted.

D. The Application of the Principle of Subsidiarity in Preserving a Diversity of Methods of Episcopal Selection

There has never been a historical period in which there was only one way that bishops were chosen. Even in the Latin church today there are exceptions to the rule that the pope freely appoints the bishops. Diversity of practice is not disunity; it accurately reflects the diversity of the local churches that make up the one church. The universal law should allow local churches to decide for themselves the way they want to select their bishop from among the ways that have best served the church in history, excluding those that were abuses or are impractical today. This kind of decentralization of the episcopal selection process would witness to the other Christian churches and communities that the Catholic church is not an absolute monarchy with all powers flowing from the pope, but that its canon law recognizes and fosters a diversity of practices that are faithful to the best of its traditions.²⁷ The ultimate value here is not diversity for its own sake, but subsidiarity, the principle that higher levels of a society should not take on tasks and functions that can be accomplished better at lower levels.²⁸ This principle was first articulated in church documents by Pope Pius XI as part of the church's social teaching. However, his successor, Pope Pius XII, extended the sphere of

²⁷ See Giovanni Cereti, "The Ecumenical Importance of the Laity's Collaboration in the Choice of Bishops," *Concilium* 137, 48-53; and Groupe des Dombes, *Le Ministère épiscopal: Réflexions et propositions sur le ministère de vigilance et d'unité dans l'Église particulière* (Presse de Taizé, 1976), 45-46.

²⁸ Cf. Ad Leys, *Ecclesiological Impacts of the Principle of Subsidiarity*, trans. A. Van Santwood (Kampen: Kok, 1995).

application when he observed in 1946 that this principle, “valid for social life in all its grades” was valid “also for the life of the church without prejudice to its hierarchical structure.”²⁹ This requires that we transpose the socio-political principle into the ecclesiological framework determined by the integrity of the local church “in and out of which” the universal is manifested.³⁰ Within this ecclesial framework the principle of subsidiarity would dictate that only when the local church can no longer actualize within itself the means necessary for the fulfillment of its mission should the universal church intervene. In particular, regarding the selection of bishops, an application of the principle of subsidiarity would support any legitimate diversity of processes for the selection of bishops employed by local churches as long as they are in accord with the fulfillment of each church’s mission and do not constitute a breach in the communion of churches.

E. The Elimination of the Control or Undue Influence of Powerful Rulers Over the Process of the Selection of Bishops

In some places and times, it was considered normal for the king or other ruler to have a decisive or major role in the selection of bishops, such as making known his own candidate to the electors, directly appointing the bishops, or having the right to confirm those elected. From a wider historical perspective, however, this kind of influence was resisted by church authorities, canonists, and theologians; history reveals a fairly

²⁹ Pope Pius XII made this statement in an address to newly created cardinals, *AAS* 38 (1946): 144-5. He reaffirmed the ecclesial implications of the principle of subsidiarity in an address to the Second World Congress of the Lay Apostolate in 1957. Cf. *AAS* 49 (1957): 926-8.

³⁰ *Lumen gentium* # 23. Opponents of the application of subsidiarity to the life of the church, such as canonist Eugenio Corecco, generally do not attend sufficiently to the theological relationship between the local and the universal church and thus fail to recognize that the church as communion is always being realized within the specificity of the local churches. See Leys, 187ff.

consistent struggle from the Middle Ages up to the modern period, with varying results at different times and in different places, to wrest complete control of episcopal selection from civil authorities and subject it to the clergy alone. In the twentieth century the Latin church was finally successful in eliminating, with few exceptions, secular control of or influence on the process of choosing its bishops.

When secular rulers were able to exert substantial control over the local churches of their territories, it was useful for the church to have a strong papacy capable of resisting this influence; the assertion of papal rights over episcopal appointments was often an effective counter-measure against secular interference. This is not the situation today. With few exceptions, governments in a secularized world are not interested in interfering in the choice of religious leaders. The longstanding historical concern about undue lay influence in episcopal selection is not a realistic fear at this time in history, so it need not be a principal value for today's canon law. In the few countries where this may still be a concern, particular laws and concordats would be more effective in handling these situations than would be general provisions of universal law.

F. The Selection of Suitable Candidates for the Episcopacy

This value was maintained by church laws governing a variety of matters related to the selection of bishops, among them: the qualifications for the office of bishop; the appointment of a visitor by the metropolitan to oversee the election and ensure it was done lawfully; the necessity of the confirmation of the bishop's election by his comprovincial bishops and/or metropolitan and, in later centuries, by the pope; the consecration of the bishop by all the bishops of the province, or at least by three of them; the attempt to free episcopal appointments from the control of secular powers. From the

twelfth century papal interventions in episcopal elections became more frequent as a result of numerous appeals to Rome regarding the violation of the rules for eligibility, omission of canonical formalities, and electoral conflicts. The purpose of papal intervention was to protect the value of getting suitable candidates for the episcopacy, not because the popes wanted to increase their own power. Originally the interventions of the popes in the selection of bishops was an extraordinary phenomenon requested from within the local churches; it was a service to the local churches to assist them in obtaining capable and worthy bishops.

The core value behind the practice of papal appointment of bishops is that of supplying qualified and worthy bishops throughout the Church. Any reform of the universal law governing the selection of bishops today should uphold this core value. A key way to accomplish this is for the universal law to continue to establish basic qualifications for the episcopal office, which qualifications would have to be met by any candidate, no matter in what manner he were to be chosen. Other historical practices that support this value also should be maintained, such as the confirmation by higher authority of a bishop's election.

G. Participation by the Bishops of Neighboring Churches Having a Stake in each Local Episcopal Appointment

In the post-biblical period, *koinonia* came to describe not just the twofold communion of the believer with God and the local church gathered at the eucharistic *synaxis*, but also the spiritual relationship which obtained between eucharistic communities. Since wherever the eucharist was celebrated, there Christ's body was manifested in the community of believers, each eucharistic community was bound

together as each was the effective presence of the Lord *in that place*. As the ecumenist Jean Jacques von Allmen has put it, each local church “is wholly Church but it is not the whole Church.”³¹ The universal church was conceived, not as some universal superstructure within which each local church was only one part, but rather the whole church was understood as a communion of churches. Consequently, governance of these churches was undertaken by the bishops who, in their collegial relations with one another, were the symbolic embodiment of the communion of the churches. In the East, this is often referred to as the principle of *synodality*. Consequently we find, dating all the way back to the early third century, a conviction that the ordination of a local bishop must include the participation of neighboring bishops as a manifestation of the communion among the churches.

This communion was manifested, in particular, with the other churches of the province and with the patriarchal church of Rome. The Council of Nicea in 325 established that the election of the bishop must be confirmed by the metropolitan.³² This law was of longstanding duration in the history of the Church. In some places beginning in the fourth century the bishops of the province elected the bishops as well as consecrated him. The role of the people in this case was to affirm the election by joyous acclamation. The metropolitan’s election was itself confirmed by the pope since the Middle Ages.

In light of these deeply rooted practices, any reform of canon law on the selection of bishops in the Latin church must take into account the value of communion with other

³¹ Jean Jacques von Allmen, “L’Église locale parmi les autres églises locales,” *Irénikon* 43 (1970): 512.

local churches in the province and with the patriarchal see of Rome. The most enduring ways that this value has been upheld in the Catholic tradition have been the confirmation of a suffragan bishop's election by the metropolitan, of the metropolitan's by the bishop of Rome, and by the presence of the comprovincial bishops, or at least three bishops, at an episcopal consecration.³³

H. Expeditious Provision of a Vacant Episcopal Office

When the cathedral chapter or other elective body could not agree on a candidate for bishop, or where alleged irregularities took place, it became increasingly common in the twelfth and thirteenth centuries for the electors, or a minority group of them, to take recourse to higher authority (the metropolitan or pope) who would then provide for the office by direct appointment. Elections at times even led to violent conflict. There were long vacancies. To preclude the harm to the diocese caused by such a conflict and by a protracted vacant see, there arose the theory of devolution, meaning that the right of electors was lost for that election and the right to designate the bishop "devolved" from the electoral college to higher authority. The Fourth Lateran Council in 1215 stipulated that when the electoral college could not designate the new bishop within three months of the vacancy, its right devolved to the metropolitan who was to choose the bishop. If the metropolitan did not make use of this right, the devolution went to the pope.³⁴

³² C. 4, *Decrees of Ecumenical Councils*, 1: 7.

³³ This requirement still exists in canon law. See *Code of Canon Law*, c. 1014 and *De Ordinatione Episcopi, Presbyterorum et Diaconorum*, no. 16.

³⁴ C. 23, *Decrees of Ecumenical Councils*, 1: 246.

Above it was seen that the core value behind the historical evolution of direct papal appointment of bishops is that of providing qualified and capable bishops for the local churches. History also reveals a second value: it was a way of expeditiously providing a bishop for a vacant see when the usual process broke down. When a dispute arose among the episcopal electors in the local church, the intervention of higher authority was necessary to resolve it. In a reform of canon law today, similar provision must be made for the expeditious selection of the bishop within a specified period of time, and for the devolution of rights to higher authority in case of failure to elect or to present a *terna* within the required time limit.

III. Provision of Office of Diocesan Bishops: a Reform Proposal for a Return to the Tradition

The following is a proposal for a revision of the canon law of the Latin Catholic church regarding the selection of bishops.³⁵ It is not intended for the Eastern Catholic churches or any other church or ecclesial community that might seek union with Rome. Just as the Eastern Catholic churches have their own canon law and their own ways of selecting bishops, so also other denominations seeking full communion with Rome understandably would retain their own traditions, unless they agreed to modifications. The proposal is given in the form of canons as in the *Code of Canon Law*. The commentaries under the canons explain their meaning and identify the values that lie behind them. This section of canons could be titled, “On the Selection of Bishops.”

³⁵ For reasons developed above, this proposal will consider procedures for selecting only *diocesan* bishops and will presume the elimination of titular bishops and the return to the practice of the ancient church whereby there was only one bishop in every diocese.

Can. A, §1. As soon as possible after a vacancy occurs in the episcopal office, or during the bishop's 75th year, a visitor appointed by the metropolitan is to consult representatives of the presbyterate, diaconate, members of institutes of consecrated life and societies of apostolic life, and the laity of the diocese, and is to prepare a confidential report on the needs of the vacant see and the kind of episcopal leadership that would be most suitable.

§2. The visitor must consult the presbyteral council, the college of consultors or chapter of canons, the vicars general and episcopal, and the finance officer; other groups and persons are also to be consulted as required by particular law, such that representatives of all groups mentioned in #1 have a voice in the consultation process.

§3. The conference of bishops or a particular council should issue suitable provisions governing the visitor, the report, and the consultation process.

Can. B – Within two months from the date the vacancy occurred, the report is to be sent to the Apostolic Roman See³⁶ and, where applicable, also to each of the episcopal electors. Those who see the report are bound to complete secrecy.

There are four major values inspiring these two proposed canons: (1) the expeditious provision of the episcopal office; (2) the participation of representatives of the local church in the process of selecting the bishops; (3) the selection of worthy candidates for the episcopate and (4) subsidiarity.

³⁶ We have used the title "Apostolic Roman See" for the See of Rome rather than the current usage, "Apostolic See." The former better reflects the ecclesiological reality that there are other apostolic sees within the Catholic communion besides Rome.

1) Expeditious selection of the bishop is ensured by requiring that the consultation process begin immediately after a vacancy occurs, or even before it in the case of a bishop who is due to submit his resignation on the completion of his 75th year.³⁷ Moreover, the report must be completed within two months from the time of the vacancy. In the case of a bishop who is due to retire, there is ample time for the consultation process because it can begin twelve months before he submits his resignation, and the report is not due until two months after the resignation has been accepted. In the case of a see that is suddenly vacant, such as by the bishop's death, the process must be accelerated, but it still can be done within the allotted time. It would be up to particular law to take account of this situation, for example, by providing a means for a routine consultation of representatives of local churches every so often leading to the compilation of a list of priests who would be considered good candidates for the episcopacy. Also, a more abbreviated consultation process might be implemented in cases of a sudden vacancy.

2) The ancient tradition in the West was the selection of bishops by the clergy and the people; this was the ideal that survived, at least as an ideal, into the twelfth century. This proposal envisions the participation of the whole local church by means of a mandatory consultation of representatives of every group: priests and deacons, religious and laity. This consultation process would be required for the selection of *every* bishop, no matter by what method he were chosen or for whatever reason the see were vacant,

³⁷ For some specific suggestions for a consultation process within the diocese, see James H. Provost, "Selection of Bishops—Does Anyone Care?" *Chicago Studies* 18 (1979) 216-222.

whether by resignation, death, transfer, removal, or a penal deprivation of office.³⁸ The universal law itself would mandate consultations in every diocese with specific bodies and officials, namely, the diocesan presbyteral council, the college of consultors or chapter of canons,³⁹ the vicars general and episcopal, and the finance officer. Particular law would have to determine how the other consultations were to be done such that representatives of the whole local church, as indicated in §1, would be consulted.

3) The selection of worthy candidates for the episcopacy is the most important value. The proposed canons A and B seek to surface the names of worthy candidates through a consultation process that includes representatives of the whole local church who speak to the needs of the church and the kind of leadership required. The purpose of such consultation, ultimately, is to find the best priest available to become bishop and lead the diocese in the fulfillment of its mission.

In history the task of the visitor appointed by the metropolitan was to convoke and preside at the election of the bishop in the diocese.⁴⁰ Here the visitor's task is to prepare a report after making required consultations in the diocese. These confidential consultations, conducted by a visitor appointed by the metropolitan or senior suffragan,

³⁸ Provision of a vacant see after transfer, removal, and penal deprivation of office has been reserved to the pope since the thirteenth century. Here a more ancient practice is envisioned whereby provision of the vacant see after transfer, removal, or deprivation would still follow the usual process which, under the proposal, would be one of the ways given below in canon C. The power to transfer, remove, or deprive might well remain the exclusive prerogative of the pope in his capacity as patriarch of the Latin church.

³⁹ The presbyteral council is a body which represents the presbyters of the diocese (c. 495, §1). The college of consultors is a select group of six to twelve priests who have specific functions, among them, the election of a diocesan administrator (cc. 502, 413, 421). In some dioceses the chapter of canons has the responsibilities of the college of consultors (c. 502, §3).

⁴⁰ The visitor might also have the traditional function of supervising the election in the cases of bishops elected by the chapter of canons or presbyteral council, as below, if this were stipulated in particular law.

would be designed to get a full picture of the diocese, its present needs and future directions. Names of potential candidates for the vacant see could also be surfaced during this consultation, if this were desired. The concern for secrecy is mainly to protect the confidentiality of the consultation process so that everyone can speak openly, even recommending potential candidates whose names could not be disclosed publicly. The seriousness of the obligation of secrecy could be stressed by having electors take an oath, a standard church practice.

4) The value of subsidiarity is promoted by leaving to particular law the determination of most of the specific matters regarding the consultation process—those to be consulted, the qualifications of the visitor, the nature of the consultation process, the contents of the report, etc. Note there is a difference between §2 and §3 of canon A. The third paragraph specifies that norms governing the visitor, the report, and the consultation process may be promulgated by the conference of bishops or by a particular council, whether plenary or provincial.⁴¹ This envisions common norms for a country and/or province. The second paragraph speaks of particular law in general, which could include the law of the diocese, in reference to what groups and persons are to be consulted. This recognizes the fact that dioceses, even within the same province, may have different organizational structures depending on their size, customs, and preferences, and that there may be differences in the extent of consultations desired even within dioceses of the same province.

Can. C, §1. The ways of a choosing a bishop are:

⁴¹ A particular council may be either plenary, including representatives of all the particular churches belonging to the conference of bishops, or provincial, involving only the particular churches of the province. See cc. 439-446.

- 1° appointment by the patriarch of the Latin church,⁴² whether freely or from a *terna* drawn up by the bishops of the province or by the presbyteral council or chapter of canons;⁴³
- 2° election by the bishops who have a pastoral office in the province;⁴⁴
- 3° election by the presbyteral council or chapter of canons⁴⁵ under the presidency of a visitor appointed by the metropolitan;⁴⁶
- 4° another method chosen by the conference of bishops or plenary council, with the approval of the Apostolic Roman See.

§2. It is the competence of the conference of bishops or plenary council to choose one of the ways in §1 for the provision of the episcopal office, which must be the same in all the dioceses within the territory of the conference.⁴⁷

⁴² We have chosen the title “Patriarch of the Latin church” rather than “pope” in order to highlight the important distinction between the bishop of Rome’s papal prerogatives as shepherd of the whole Catholic communion and his particular role as patriarch of the Latin church. Since these procedures for the selection of bishops apply only to the Latin church, the involvement of the bishop of Rome would more properly be an exercise of his patriarchal ministry rather than his ministry as universal pastor of the whole Catholic communion.

⁴³ (1) Free appointment by the pope has been the dominant practice since the 1917 code. (2) Appointment from a list of names submitted by the bishops of the province is a method which recognizes the numerous ways in history that the bishops of the province have been influential or decisive in the selection of bishops. (3) The chapters of canons have played an important role since the Middle Ages, and do so even today in some places.

⁴⁴ Only active diocesan bishops in the province would have a vote; retired or inactive bishops would not. The major role played by the bishops of the province in the selection of bishops goes back at least to the early fourth century. For many centuries they would confirm the election of a bishop in the province and consecrate him bishop, and in some places and periods they actually elected the bishop. The bishops of the province still have a significant task in the current law in drawing up a list of names of priests who are *episcopabile* and sending it to the Holy See; they must also be consulted before a diocesan or coadjutor bishop is appointed to a see within the province (c. 377, §§ 2, 3).

⁴⁵ The election of the bishop by the chapter of canons dates back to at least the twelfth century, and it still exists in some places today. This proposed provision would allow the presbyteral council to be the electors. Formerly, the chapter of canons was considered the bishop’s senate (1917 code, c. 391, §1); this role is now that of the presbyteral council (1983 code, c. 495, §1).

⁴⁶ The appointment of a visitor by the metropolitan was an ancient and longstanding practice. Often the visitor was one of the suffragan bishops, but need not be. The precise qualifications of the visitor would be determined in particular law.

The chief values of this proposed canon are: (1) respect for the diversity of practices that existed in tradition; (2) subsidiarity; (3) the selection of worthy candidates for the episcopacy; and (4) the maintenance of communion among the Catholic churches of a province and nation with each other and with the Roman See.

1) As seen in the historical sketch above, only in the twentieth century has the Roman See secured nearly total control of the selection of bishops by direct appointment. This had not been the case in the previous nineteen centuries, and some few exceptions still remain today. The proposed canon C respects tradition by retrieving some of the dominant ways that bishops have been chosen in the history of the western church, in addition to appointment by the pope as patriarch of the Latin church. It restores to the bishops of the province and to the metropolitan the role and functions they exercised for many centuries, beginning at least with the first ecumenical Council of Nicea in 325. The proposed norm allows for chapters of canons to elect the bishop, also a longstanding practice going back at least to the Second Council of the Lateran in 1139, and still existing in some dioceses today. However, the proposal recognizes that most places in the world today do not have chapters of canons that form a senate of priests in the dioceses; this function has been taken over by the presbyteral council (c.495, §1).

A variety of ways for the selection of bishops has existed throughout history in the Roman Catholic church; this variety can also flourish once again by changes in the law as suggested here. Such changes would go a long way to reassuring other Christians that the Roman Catholic church is not a papal monarchy intolerant of diversity. Such

⁴⁷ In some countries there is not a uniform means for selecting bishops. This provision would allow a diversity of practices to continue in the same country where this is traditional. Otherwise, uniformity within each country would be the standard, although exceptions could be made with the approval of the Apostolic Roman See.

diversity would also be welcome within the Latin church itself, because it would promote other values, especially subsidiarity, inclusion of representatives of the whole local church in the selection process, and ultimately the selection of capable bishops respected by their people.⁴⁸

2) The value of subsidiarity is evidenced strongly in this proposed canon. The second paragraph permits the conference of bishops or a plenary council to choose one of the established ways that bishops will be selected for the local churches of the nation (or other territory of the conference). While a uniformity of practice within the same nation would generally be desirable, exceptions would be envisioned. Canon C, §1, n.4 permits the conference of bishops or a plenary council,⁴⁹ with the approval of the Roman See, to choose a mode of selecting bishops different from those established in the universal law. This could be another traditional method, such as election by a larger group of clergy in the diocese, or even something not found explicitly in the tradition. Exceptions would also be permitted for already existing privileges, acquired rights, agreements with states, and centenary or immemorial customs in keeping with standard canonical principles (cc. 3-5).

⁴⁸ An argument could be made from history that direct appointment of bishops by the pope has been the most successful way of ensuring competent bishops. However, such an argument would likely focus too much on the aberrations and abuses, rather than on the saintly bishops and doctors of the church chosen by their own people or elected by the clergy of the diocese or bishops of the province. Church law today no longer needs to respond to abuses that occurred mainly in the Middle Ages when bishoprics were wealthy benefices and seats of temporal power.

⁴⁹ Given the importance of the decision on the mode of episcopal election, it might better be made by a plenary council than by the conference of bishops. Only bishops participate in the episcopal conference, but many others have voice and a consultative vote in a plenary council (c. 443). A broader participation in making the decision would likely result in broader acceptance of it.

3) The value of selecting worthy candidates for the episcopacy is implicit in the canon, especially in leaving the choice of the mode of selection to particular law. This implies that the bishops of a nation are better able than a universal law to determine the optimal way in their own situation to get good bishops for the churches of their nation.

4) The value of communion is maintained in several ways in the proposed canon. The communion among the bishops of the province is seen in §1, nn. 1 and 2, and among the bishops of the nation in §1, n. 4 and §2. Communion with the bishops of local churches and the Roman Bishop is seen in §1, nn. 1 and 4.

Can. D, §1. Only priests incardinated or domiciled in a diocese within the territory of the province are eligible for election or for selection for the *terna*.

§2. [Other qualifications added here, as in canon 378, §1 of the 1983 code.]

Can. E –If a majority of the electors, or of those who have the right to present a *terna*, decide that an eligible and suitable candidate cannot be found, they are to notify the metropolitan who is to report this fact to the Apostolic Roman See so that the patriarch of the Latin church may freely appoint the bishop.

The value supported by these proposed canons is the selection of a person who is competent to be bishop. Only priests (presbyters and bishops) would be eligible. Although in the early centuries lay men, deacons, or a minor cleric were sometimes chosen, the longest tradition speaks for the eligibility only of priests. Priests ordinarily have significant experience in the teaching and sanctifying *munera*, and often also in the *munus* of governance, and so are better qualified to become bishops than deacons or lay people. To be elected or chosen for a *terna* to be presented to the pope, a priest must be incardinated in a diocese of the province or have a domicile there. (Those with domicile

but not incardinated are chiefly members of institutes of consecrated life and societies of apostolic life.) If the Roman patriarch freely appoints the bishop, his choice would not be limited to a priest of the province.

In a province with few priests, it might happen that none would be exceptionally suitable or willing to be bishop. In that case, those with the right to elect or present the *terna* may ask the Roman patriarch to appoint someone from outside the province. That is the rationale behind proposed canon E.

Can. F, §1. If the electors fail to elect the bishop within three months since the vacancy occurred, the patriarch of the Latin church freely appoints the bishop.

§2. If those who have the right to present the *terna* fail to present it to the Apostolic Roman See within three months since the vacancy occurred, the pope freely appoints the bishop.

This canon restores the practice of devolution which arose in the Middle Ages. The value behind it is the expeditious provision of the vacant see.

Can. G – The election of a suffragan bishop must be confirmed by the metropolitan; the election of the metropolitan must be confirmed by the patriarch of the Latin church alone.

The value seen in this proposed norm is that of communion among the bishops of the province, and of the bishops of the province (as symbolized in their metropolitan) with the bishop of Rome. The necessity of confirmation by the metropolitan of the suffragan's election is a tradition going back at least to Nicea in 325. The confirmation by the bishop of Rome of the metropolitan's election dates back to the Carolingian period. The provision for the metropolitan to request the pallium from the Roman

patriarch, as in canon 437, §1, would be contained in a separate section of canons on the metropolitan.

Can. H – Whenever the canons above refer to the metropolitan, the senior suffragan is intended in the case of a vacancy in the metropolitan see.

When the metropolitan see is vacant it is standard canonical practice to substitute the senior suffragan, namely, the diocesan bishop who has held his see the longest.⁵⁰

There is one exception to the rule proposed in canon H, namely that of proposed canon G: the Roman patriarch alone confirms the election of the metropolitan, not the senior suffragan.

IV. Conclusion

One of the most important advances evident in the teaching of the Second Vatican Council was its clear admission that the church was continually in need of reform and renewal.

Christ summons the Church, as she goes her pilgrim way, to that continual reformation which she always has need, insofar as she is a human institution here on earth. Consequently, if, in various times and circumstances, there have been deficiencies in moral conduct or in church discipline, or even in the way that church teaching has been formulated—to be carefully distinguished from the deposit of faith itself—these should be set right at the opportune moment and in the proper way (UR #6).

We believe that now is “the opportune moment.” The council again reminds us that as Catholics our primary duty in furthering the cause of ecumenism is “...to make a careful

⁵⁰ See cc. 421, §2; 425, §3; 501, §3.

and honest appraisal of whatever needs to be renewed and done in the catholic household itself, in order that its life may bear witness more clearly and more faithfully to the teachings and institutions which have been handed down from Christ through the apostles” (UR #4). This project constitutes our own modest contribution to that cause.