

THE CATHOLIC UNIVERSITY OF AMERICA

The Influence of the Second Vatican Council on the Function of Papal Legates.
Comparative Analysis of the 1917 and 1983 Codes of Canon Law and Selected Special Faculties.

A DISSERTATION

Submitted to the Faculty of the
School of Canon Law
Of The Catholic University of America
In Partial Fulfillment of the Requirements
For the Degree
Doctor of Canon Law

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2013

This dissertation by Dariusz J. Zielonka fulfills the dissertation requirement for the doctoral degree in canon law approved by Kurt Martens, J.C.D., as Director, and by Robert Kaslyn, S.J., J.C.D., and Sean Sheridan, T.O.R., J.C.D., J.D., as Readers.

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In memoriam:

Tadeusz and Alina Zielonka

My parents.

May they rest in peace.

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ACKNOWLEDGMENTS

Give thanks to the Lord, for he is good. His love endures forever. Give thanks to the God of gods.

His love endures forever. Give thanks to the Lord of lords: His love endures forever. (Ps. 136).

My heartfelt gratitude to His Excellency, the Most Reverend William E. Lori, Archbishop of Baltimore, who while in the Diocese of Bridgeport, entrusted me the task of canon law studies and for his continual encouragement and support!

My words of sincere appreciation to Professor Kurt Martens, J.C.D., my licentiate and doctoral director for his angelic patience and excellent guidance! To my readers:

Reverend Robert Kaslyn, S.J., J.C.D., Dean of the School of Canon Law and Reverend Sean Sheridan, T.O.R., J.C.D., J.D., Assistant Professor of the School of Canon Law for their invaluable input and suggestions.

Special thanks to Monsignor Thomas Green, J.C.D., Professor of the School of Canon Law and my diocesan brother for his advice and encouragement.

Special gratitude to my family who always motivated me to go on with the studies.

Dziękuję!

To each and every one who helped me along the way: may the Lord bless you in all you do!

INTRODUCTION

The historically rooted institution of the papal legate, similar to other offices in the Church, has experienced modifications and adaptations throughout the centuries. Various historical, cultural and ecclesiological conditions became the impetus for changes that were reflected in newer laws and faculties granted to papal envoys. One such stimulus for change was the discussion about the role of the papal legate at the Second Vatican Council. The laws and special delegated powers (faculties) pertaining to nuncios and apostolic delegates issued after the council reflect this change and set a new direction for papal legates.

The various functions of the papal legate are regulated by canon law and special faculties granted by the dicasteries of the Roman Curia. These laws and faculties have changed throughout the years. Hence, the main research of this dissertation can be summarized in the following three interconnected questions:

1. Is there any difference in the description and function of the papal legate between the canons of the 1917 Code of Canon Law and the 1983 Code of Canon Law?

2. What are the differences and what trends can we notice comparing these two codes?
3. Did the debates and documents of the Second Vatican Council have any influence on the office of papal legate?

The motivation for this dissertation is to examine and evaluate these questions in light of the 1917 Code of Canon Law, the conciliar and post-conciliar documents, and the 1983 Code of Canon Law. Such a comparative analysis of the three “legal periods” will allow us to see if and how the council affected the institute of the papal legate and clarify the differences between the 1917 and 1983 codes in this regard.

The method used in this dissertation is a historical-juridical comparative analysis of the two codes of canon law in light of the conciliar debates and documents as well as the 1969 motu proprio *Sollicitudo omnium Ecclesiarum*.¹

In chapter one we will briefly look at the historical development of the office of papal legate. However, the main focus of this chapter will be the examination of the 1917 Code of Canon Law in regards to papal legates: the office, their function and

¹ Paul VI, motu proprio *Sollicitudo omnium Ecclesiarum*, AAS 61 (1969) 475; English translation in *CLD* 7, 277-284.

responsibilities. The pertinent canons will be presented thematically, instead of the order of appearance in the code as to present more cohesive image.

Chapter two of this dissertation will scrutinize the topic of papal legates as it surfaced during the preparatory stages and discussions of the Second Vatican Council. It will also examine the effects of these discussions and interventions as reflected in the decree on bishops *Christus Dominus*.²

The goal of the third chapter will be to compare in detail and to analyze the 1917 Code of Canon Law, the 1969 motu proprio *Sollicitudo omnium Ecclesiarum*, the three revisions of the proposed new code and finally, the 1983 Code of Canon Law in their description of the office of papal legate. This analysis will allow us to see the tendencies and trends in legislation pertaining to nuncios and apostolic delegates. It will also allow us to capture the effects of the Second Vatican Council on the office of the papal legate.

² Vatican II, decree *Christus Dominus* 9, AAS 58 (1966), 673-701; English translation in *Vatican Council II: The Conciliar and Post Conciliar Documents*, ed. Austin Flannery, 2nd ed. (Northport, NY: Costello Publishing, 1996) 283-315.

Finally, the fourth chapter of the dissertation will also examine a selection of the indices of 'special faculties' granted to nuncios and apostolic delegates by various dicasteries of the Roman Curia from the promulgation of the 1917 code to the current time. Doing so will allow us to see further the changes affected by the council in various practical aspects of the office of papal legate.

Though a number of books have been written on the topic of papal nuncios and apostolic delegates, they do not take up the task of the above described analysis, concentrating mostly on only one chosen period in the legislative history of the Church. We hope that such in depth analysis will allow us to answer the main questions as stated above.

CHAPTER 1

Papal Legates in the 1917 Code of Canon Law

1.1. Introduction

The purpose of this chapter is to examine the institution of papal legates as described in the canons of the 1917 Code of Canon Law. These canons contain the notion of the legate's office, describe various kinds of papal legates, their privileges, obligations and priorities. These items for our consideration do not necessarily follow the numbering of the six canons (cc. 265-270) of the code. However, they are grouped topically, to present a more cohesive image.

In order to understand these canons better, this chapter begins with a brief historical introduction about papal legates in the history of the Catholic Church. Though not exhaustive, as this is not the main goal of this dissertation, it is a necessary prequel to allow the reader to understand the sources and history behind the first codification of the Church's law on papal legates. It will also allow us to capture certain trends in legislation and priorities pertaining to papal legates in the 1917 code.

1.2. A Brief Historical Overview of the Office of Papal Legates

1.2.1. Roman Republic

It should come as no surprise that the Roman Catholic Church was not the first institution that used legates; rather, this institution was already well established in the Roman Republic. According to Charles Anthon,¹ a legate could be a person who had one of the following three functions. First, a legate in the time of the Roman Republic served as an ambassador of a foreign state to the empire, and as such, he would be granted special privileges. The legates from provinces and states would receive a place to stay in Rome, or if the state was at war with Rome, they would be accommodated at a villa outside the city. Many expenses of the legates would be covered from the treasury of the Republic. In ordinary situations, during the month of February, the legates would be granted hearings before the Senate to present their cases. Moreover, independently of the status of the relationship between Rome and the foreign state, the

¹ Charles Anthon, *A Dictionary of Greek and Roman Antiquities*, ed. William Smith (New York: Harpers & Brothers, 1842) 575-576.

legates were afforded immunity: they were considered “as sacred and inviolable,”² as attested to in the Digest.³

The second category of legates were these who represented the Roman Republic to other states. Just as the legates to the Republic, these were to receive all needed support during their missions to the provinces from the countries they visit and from the Republic’s treasury. These legates were appointed by the Senate and it was considered as one of the highest honors. According to Dionysius, they “had the powers of a magistrate and the venerable character of a priest.”⁴ Their role can be compared to the modern international diplomats representing interests of their countries in other sovereignties.

² Ibid., 576.

³ Dig. 50.7.18 “Pomponius 37 ad q. muc. Si quis legatum hostium pulsasset, contra ius gentium id commissum esse existimatur, quia sancti habentur legati. et ideo si, cum legati apud nos essent gentis alicuius, bellum cum eis indictum sit, responsum est liberos eos manere: id enim iuri gentium convenit esse. itaque eum, qui legatum pulsasset, quintus mucius dedi hostibus, quorum erant legati, solitus est respondere. quem hostes si non recepissent, quaesitum est, an civis romanus maneret: quibusdam existimantibus manere, aliis contra, quia quem semel populus iussisset dedi, ex civitate expulsisse videretur, sicut faceret, cum aqua et igni interdiceret. in qua sententia videtur publius mucius fuisse. id autem maxime quaesitum est in hostilio mancino, quem numantini sibi deditum non acceperunt: de quo tamen lex postea lata est, ut esset civis romanus, et praeturam quoque gessisse dicitur.”

⁴ Anthon, 576.

Finally the third type of legate, as understood by ancient Romans, was a person assisting an imperial general, or in later times, governors of the provinces.⁵ Usually they derived from the military personnel that had been nominated by the Consul and approved by the Senate. Their main job was to assist their superiors in military or governmental tasks and offer advice. In the case of absence or illness of their superior, they would substitute for them at the post and hence gain the title *legatus pro praetore*. Since this function was very profitable and rather popular, a new variety of legates had developed: *legatus liberus*. He only fulfilled some honorary functions (with the proper income), but took on none of the responsibilities as mentioned before. Charles Anthon asserts that Cicero and Julius Caesar, seeing the futility of such a position, tried to eliminate it completely but were only successful in limiting the term to one or five years, respectively.⁶

Nevertheless, the function of a legate in ancient Rome was one of honor and respect. The general meaning of the title legate is “the one sent,” and as shown, it fits well the roles given to the office holders.

⁵ Ibid., 576.

⁶ Anthon, 576.

1.2.2. The First Papal Legates

In the process of establishing her presence in Rome and in the world, the Catholic Church was very careful to choose and incorporate the concepts and ideas of the antiquities. One of them was the above-mentioned notion of a legate. Though there appears to be no written evidence about the use of papal legates in the first three centuries, Claeys Bouuaert suggested that we perceive them as early as the council of Nicaea (325).⁷ Though the text of the council's canons do not use the term legate or its equivalent, one could deduct that Bishop Alexander fulfills the role of legate being sent by the council to the Church of Alexandrians from the letter:

Rejoicing then in these successes and in the common peace and harmony and in the cutting off of all heresy, welcome our fellow minister, your bishop Alexander, with all the greater honour and love. He has made us happy by his presence,

⁷ F. Claeys Bouuaert, "Légat du Pape," in *Dictionnaire de Droit Canonique*, ed. Raoul Naz (Paris: Librairie Letouzey et Ané, 1957) 6:373.

and despite his advanced age has undertaken such great labour in order that you may enjoy peace.⁸

The first time when a name had been attributed to a papal legate is found at the Council of Sardica (343 or 344, currently Sophia, Bulgaria). Canon 5 of the council deals with the issue of appeal by a bishop, accused of heresy by the neighboring bishops, to the Roman bishop. The appeal could be decided in two ways: by the Roman bishop delegating the bishops of the neighboring dioceses to hear the case again and present to him the evidence, or by the pontiff sending his legate: a presbyter *a latere* (from [the pope's] side) to judge the case locally:

But if he who asks to have his case reheard, shall by his entreaty move the Bishop of Rome to send a **presbyter *a latere*** [emphasis added] it shall be in the power of that bishop to do what he shall resolve and determine upon; and if he shall decide that some be sent, who shall be present and be judges with the bishops

⁸ Council of Nicaea, 325, "The Letter of the Synod in Nicaea to the Egyptians:" Norman Tanner, ed., *Decrees of the Ecumenical Councils* 2 vols. (Washington, D.C. and London: Sheed and Ward and Georgetown University Press, 1990) [hereafter Tanner] 1:19: "Χαίροντες ουν επι τοις κατορθώμασι, και τη της ειρήνης συμφωνία, και επι το πάσαν αίρεσιν εκκοπηναι, αποδέξασθε μεν μετα μείζονος τιμης και πλείονος αγάπης τον συλλειτουργον ήμων, ύμων δε επίσκοπον Αλέξανδρον, τον ενφράναντα ήμας εν τη παρουσία, και εν ταύτη τη ήλικία τοσουτον πονον υποσταντα υπερ του ειρηνην γενέσθαι και παρ' ύμιν."

invested with his authority by whom they were appointed, it shall be as he shall choose.⁹

From that time on, the notion of the legate or “the one sent” by the pope started to become a norm and necessity in the Church.

The time between the fifth and seventh century was marked with the presence of special envoys of the bishops of Rome to the imperial court in Constantinople. They were called *apocrisarii* - “the term refers to those who brought an answer - in Latin *responsales* or *responsores*.”¹⁰ One theory holds, according to Athanasius of Alexandria the *apostolicae sedis apocrisariis* were also present at the above-mentioned First Council of Nicaea in 325.¹¹ Unfortunately, since the source text is attributed to Pseudo-Isidore, its authenticity is questionable. Nonetheless, *apocrisarii* were referred to in other later documents and by canonists. Gratian used the term in his *Decretum* (C.1 q.7 c.4) in

⁹ *The Seven Ecumenical Councils of the Undivided Church, Vol XIV of Nicene and Post Nicene Fathers*, Henry R. Percival, ed., 2nd series, ed. Philip Schaff and Henry Wace, (repr. Edinburgh: T&T Clark; Grand Rapids MI: Wm. B. Eerdmans, 1988) 419.

¹⁰ Knut Walf, “The Nature of the Papal Legation: Delineation and Observations,” *The Jurist* 63 (2003) 85.

¹¹ Robert Charles Figueira, *The Canon Law of Medieval Papal Legation*, Ph.D. Dissertation (Ithaca, NY: Cornell University, 1980) 36. Reference: Paulus Hinschius, *Decretales Pseudo-Isidorianae et Capitula Angilramni* (Leipzig: Tauchnitz, 1863) 452: “...sed visum trecentis decem et octo ' patribus in praedicto sancto spiritu repletis concilio congregatis, et maxime iam dicto Alexandro et apostolicae sedis apocrisariis, ut decem capitula adunarentur aliis atque congruis in locis insererentur et ad formam LXX discipulorum vel totius orbis terrae linguarum...”

referring to the Second Council of Nicaea in regards to stipulations about reception of the heretics back to the church by the Orthodox as he wrote:

Archbishop Peter, along with Peter, priest and abbot of the monastery of St. Saba, both representing (*locum tenentibus*) Pope Adrian, and also Archbishop Tharasius of Constantinople, John and Thomas, apocrisiars of the apostolic sees in the East, and other bishops, came and sat together at Nicaea in Bithinia.¹²

Casimir-Arechange Emereau, after discussing the roles of *apocrisarii* in civil jurisdictions, reminded us about writings of Hincmar, Archbishop of Reims (806-882) pertaining to the ecclesial use of his institution.¹³ Maurice Prou who translated and annotated Hincmar's *De ordine palatii*¹⁴ commented that though Hincmar translated the title *apocrisarii* as arch-chaplain he meant it as the legate of the pope to the court. The name arch-chaplain was used frequently as the substitute in the French courts beginning with

¹² C.1 q.7 c.4: "Convenientibus apud Nicenam Bithiniae, et consedentibus Petro archiepiscopo, et Petro presbitero et abbate monasterii sancti Sabae, locum tenentibus Adriani papae, et Tharasio archiepiscopo Constantinopolitano, et Ioanne et Thoma apocrisariis apostolicarum sedium orientalium, et ceteris episcopis..." Translation: Figueira, 39.

¹³ Casimir-Arechange Emereau, "Apocrisarires et apocrisariat" in *Echos d'Orient* 107 (1914) 289-297.

¹⁴ Hincmar, *De ordine palati*, ed. & trans. Maurice Prou (Paris: F. Vieweg, 1884).

Drogo, bishop of Metz who was appointed as representative of Pope Sergius to the court of Charles the Bald.¹⁵

1.2.3. Papal Legation in the Middle Ages / Gratian

From the fourth to eleventh centuries the institution of *legati nati* was commonly in use.¹⁶ These were the papal representatives who dealt exclusively with ecclesiastical matters. They were established in a stable manner, attached to a major see, and charged with the role of assisting the pope in communication and enforcement of various church matters on the local level. The Middle Ages introduced some further distinctions.¹⁷ For example, a special representative of the pope, who was a cardinal with a wide array of

¹⁵ Ibid., 34: “Peut-être Hincmar a-t-il été amené à appliquer à l’archichapelain royal le titre qui jadis s’appliquait au légat du Saint-Siège à la cour des empereurs de Constantinople, par ce fait que sous le règne de Charles le Chauve, Drogon, évêque de Metz, d’abord archichapelain, fut plus tard désigné par le pape Sergius comme son vicaire en Gaule. De plus, l’archichapelain était l’intermédiaire entre le roi de France et le pape. Dans les textes carolingiens, diplômes et chroniques, l’archichapelain est le plus souvent dit capellanus, archicapellanus, palatii archicapellanus ou summus capellanus; on trouve exceptionnellement archipresbyter, Francia archipresbyter, sanctœ capellæ primicerius, primas capellanorum, protocapellanus.”

¹⁶ *The Catholic Encyclopedia. An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, ed. C. Herbermann (New York: The Universal Knowledge Foundation, Inc., 1913) 9:119.

¹⁷ *Dictionnaire*, 6:373.

powers granted to him, was called *legatus a latere* (literally “from the [pope’s] side”).¹⁸ Similar to him was the *legatus missus*, also sent as a special envoy of the pope, but he was not a member of the College of Cardinals. Both of these functions could be for a specific, short-term mission, or a longer (but not permanent) representation. These legates would be exempt from the local (civil and ecclesiastical) jurisdiction and be subjected directly to the Roman pontiff.¹⁹

Further studies on the topic of papal representatives were conducted in the High Middle Ages. Many canons in the writing of Gratian presented this institution but in rather disorganized fashion. However, subsequent collections like *Quinque Compilationes antiquae*, and particularly *Liber Extra* of Gregory IX, *pars* I, Title XXX, canons 1-10 *De officio legati* (X 1.30.1-10) present a more organized approach to the topic. Let us take a brief look at the canons of *Liber Extra*.

The first canon in this section deals with the appeal of the suffragan bishops of the Province of Canterbury who complained to Pope Alexander III that the Archbishop of Canterbury [Thomas Becket] heard the cases of their clergy without referring to them

¹⁸ Arthur Vermeersch, Joseph Creusen, *Epitome Iuris Canonici cum commentariis* (Paris: Desclée-De Brouwer, Brussels: L’Édition Universelle, 1937) 306. In their commentary they claim this title to be known from the XII century on.

¹⁹ Edward Szafrowski, *Podręcznik prawa kanonicznego* (Warszawa: Akademia Teologii Katolickiej, 1985) 64-69.

(suffragan bishops) at all.²⁰ As per existing law, the metropolitan could hear such clergy cases of other suffragan bishops only when they were presented to him as an appeal. In this instance however, the cases heard were not an appeal. The pope in his response reaffirmed the actions of the metropolitan on the basis that he was also the papal legate and that function allowed him to do so. Hence, in this canon we see a simple delineation of the legatine jurisdiction that was further discussed by decretalists. The legate had the right to judge the cases in his province, even those of the clergy in cases when their own bishop was not a legate.

²⁰ X 1.30.1: "Quum non ignoretis, venerabilem fratrem nostrum Cantuariensem archiepiscopum vobis non solum metropolitico, sed etiam legationis iure praeesse, mirabile satis est, quod quidam vestrum, sicut audivimus, asseverare praesumunt, quod idem archiepiscopus nullam causam de episcopatibus vestris sive metropoleos sive legationis iure debeat audire, nisi per appellationem ad ipsum deferatur. Sane licet forte idem archiepiscopus metropolitico iure audire non debeat causas de episcopatibus vestris, nisi per appellationem deferantur ad eum, legationis tamen obtentu universas causas de ipsis episcopatibus, quae per appellationem vel querimoniam aliquorum perveniunt ad suam audientiam, audire potest et debet, sicut qui in provincia sua vices nostras gerere comprobatur. Mandamus itaque et praecipimus, ut causas quae de episcopatibus vestris ad eundem archiepiscopum proferuntur, eius iudicio relinquatis nec quemlibet clericum vel laicum vestrae iurisdictionis deterrere vel impedire tentetis, quominus causam ad praefatum Archiepiscopum, si voluerit, possit transferre."

The next canon (X 1.30.2)²¹ presented legislation of Pope Celestine III who stated clearly that jurisdiction of the specially delegated papal judge-delegate supersedes that of the general jurisdiction of a legate. Apparently, very little distinction has been given to the institutions of the legates and judge-delegates and they were treated as the papal envoys with special tasks. The importance of this canon, however, lay in the fact that the special or specific delegation of the pope would supersede any general delegation within the same jurisdiction. Hence, some distinctions within the ranks of legates would be introduced as we will see later.²²

²¹ X 1.30.2: “Studuisti a nobis quaerere utrum de causa, quam alicui delegamus, alius, qui sit generalis in provincia legatus, vel ante cognitionem, vel postea cognoscere valeat, vel commissionis nostrae processum, quem iudici delegato transmittimus, taliter impedire. Hanc itaque dubitationem de animo tuo amputare volentes Respondemus, quod, quum mandatum speciale derogat generali, legatus commissionem alii vel aliis factam specialiter impedire non debet nec potest, unde, et si secundum formam expressam mandati nostri sententia iam fuerit promulgata, non poterit ipse legatus, nisi super hoc mandatum speciale receperit, eam quomodolibet irritare. Ipsam tamen, si rationabiliter lata fuerit, confirmare valebit et executioni mandare.”

²² See p. 22.

Canons three²³ and four²⁴ of this section presented the same case when the papal legate to Lucina in Sicily, Cardinal Cinthius, moved by his own will the bishop of Troia to the metropolitan see in Palermo. In addition, the legate rearranged the province degrading the Archdiocese of Palermo to a diocese and submitting it as the suffragan diocese to the Archdiocese of Messina. Pope Innocent III decreed that both actions were beyond the legate's powers as they are reserved to the pope himself. Nonetheless, the

²³ X 1.30.3: "Nisi specialis illa dilectio, quam ad personam tuam habuimus et habemus, iustum, immo iustissimum motum animi nostri temperaret, poena docente cognosceres, quantum in personam tuam excesseris, quantumcunquae in Romanam ecclesiam deliqueris, matrem tuam, quae quum te nutritur et exaltaverit, tu eam penitus sprevisse videris, qui spretis canonicis sanctionibus et consuetudine generali, motu proprio praesumpsisti, quod nec factum fuit, nec auditum, venerabilem fratrem nostrum Troianum episcopum regni Siciliae cancellarium praeter speciale mandatum nostrum de Troiana ecclesia ad Panormitanam de facto, quia de iure non potuisti, transferre."

²⁴ X 1.30.4: "Quod translationem ꝑ pontificis de Troiano episcopatu ad Panormitanam metropolim a te factam nolumus ratam habere, zelus utique non amaritudinis, sed rectitudinis nos induxit, quia, Licet in regno Siciliae generalis sit tibi commissa legatio, ad ea tamen sine speciali mandato nostro non debuisti manus extendere, quae in signum privilegii singularis sunt tantum summo Pontifici reservata. Tamen Et si quaedam ex his, quae de speciali concessione saepe fuere legatis indulta, ut illorum videlicet absolutio, qui propter sacrilegas manuum iniunctiones in clericos, incidunt in canonem promulgatae sententiae, videantur ex ipso legationis officio iam licere legatis, an existimas, quia vices nostras tanquam legato tibi commisimus exsequendas, quod Panormitanam ecclesiam posses subiicere Messanensi, ut illam praeficeres isti, concesso sibi privilegio primatiae? An putas, ex eadem causa tibi licere, duos episcopatus unire, vel unum dividere sine licentia speciali? Non ergo in eius odium, vel ad iniuriam tui reputes esse factum, sed ut privilegium Petri maneat inconcussum, quum et felicis memoriae Alexander Papa, praedecessor noster, quasi simile fecerit, obviando praesumptioni legati, quem in Hispaniam destinarat, volenti simile attentare."

pope agreed that the action of appointment of the bishop to Palermo was a good choice, though illegal as it was.²⁵ He graciously allowed this transfer to take effect.

Both canons presented a couple of important distinctions:

- The general legatine power was not sufficient for the cases reserved to the pope himself or the person he explicitly delegated for such purpose. Hence, a special mandate was required for such actions.
- Transferring bishops or rearranging of ecclesiastical provinces belonged to such restricted actions reserved to the pope himself.
- Though the actions of the legate were illegal, the pope had the right to reject them or approve them *post factum*. As we have seen in this case, both such decisions took place, as the pope approved transfer but rejected rearrangement of the province.

The fifth canon describes the situation of the diocese of Trani in Italy, which became vacant. The canons of the diocese elected their new bishop, which was questioned and investigated by the papal legate: the bishop of Portuo. After initial investigation the legate sent his findings to Pope Innocent III. However, the abbot of [Monte] Cassino complained to the pope that the legate continued his investigation [and judgement?] of the aforementioned election even after the messengers were sent to

²⁵ Figueira, 297.

the pope. The pope declared that the second or continued investigation by the legate was invalid.

This canon²⁶ illustrated clearly that the legate's power to judge a case ceased with the moment he signed the documents and sent the case to the pope. Similarly, appeal of the case to the pope would render a lower judge, even a legate, incapable of taking cognizance of it.

²⁶ X 1.30.5: "Licet Tranenses canonici ab initio dissensissent, tandem tamen omnes unanimiter consenserunt, dilectum filium G. fratrem Cassinensis abbatis in archiepiscopum eligentes, cuius electionem venerabilis frater noster Portuensis episcopus, tunc apostolicae sedis legatus, examinari praecepit, et examinationem redactam in scriptis fecit sigillis dilectorum filiorum archidiaconi et magistri Petrarchae muniri, cum suo quoque sigillo ad sedem apostolicam transmittendam. Literas quoque suas nobis pro dicto fratre Cassinensis abbatis deprecatorias destinavit, quas cum decreto electionis omnium canonicorum subscriptionibus roborato, nec non et literis suffraganeorum et populi, tres de canonicis Tranensis ecclesiae, ab universo capitulo destinati, nobis humiliter praesentarunt, petentes electionem canonicam de persona idonea celebratam auctoritate apostolica confirmari. Nos autem ad maiorem cautelam a praedictis canonicis in iuramentum recepimus, non a nobis exactum, sed ab ipsis oblatum, et factum electionis, sicut est et moris et iuris, examinavimus diligenter. Interim vero Nuncius praefati Cassinensis abbatis suas nobis literas praesentavit, gravem contra iam dictum legatum querimoniam continentes, quod, postquam electionem examinaverat, et eam ad nostrae deliberationis examen transtulerat, nunciis iam directis, iterum electionem eandem malitiose nimis examinare praesumpsit. Unde petebat per viros idoneos suspitione carentes de ipso facto diligenter inquiri. Quumque praefatus supervenisset episcopus, et ea, quae gesta sunt, intellexissemus ab ipso, De communi consilio fratrum nostrorum examinationem secundam, tanquam a non suo iudice factam, postquam negotium ad nostrum fuerat translatum examen, censuimus irritam et inanem."

The sixth canon²⁷ presented yet another situation when a papal legate granted a benefice connected to a church to a person without approval of the local hierarchy.

When the latter complained, the pope decreed that the legate's jurisdiction included the right to bestow the benefice without even consultation with the local hierarchy. Unlike canons X 1.30 3-4, this instance dealt with the issue of a vacant ecclesial benefice not the church itself. Even though the ordinary care of the benefice and the privilege to assign it belonged to Archdeacon Tulensis, his right was overruled by the decision of the legate, which he had the right to make according to his general jurisdiction.

²⁷ X 1.30.6: "Dilectus filius R. Metensis canonicus nobis humiliter intimavit, quod, quum venerabilis frater noster Praenestinus episcopus, apostolicae sedis legatus, ecclesiam sancti Trudonis ad resignationem proprii pastoris in manibus eius factam liberaliter contulisset eidem, dilectus filius B. Metensis archidiaconus, ad quem illius ecclesiae praesentatio pertinebat, asserens, quod eodem inconsulto conferri non potuit a legato, donationi eius minus rationabiliter se opponens, canonicum ipsum super eadem ecclesia indebite molestare praesumit. Quum igitur plus iuris habeat in concessione praelatus, quam in praesentatione patronus, nec praeiudicetur praelato, si quando per apostolicae sedis legatum eo inconsulto ecclesia concedatur, discretioni vestrae per apostolica scripta mandamus quatenus dictum archidiaconum, ut ab eius super hoc indebita molestatione desistat, monitione praemissa per censuram ecclesiasticam appellatione remota cogatis."

The following canon (X 1.30.7)²⁸ dealt with the 1199 interdict imposed by Pope Innocent III on King Philip Augustus of France via Cardinal Peter of Capua the papal legate. The king complained to the pope that the interdict was invalid as the legate was outside France and hence outside his jurisdiction. The pope responded that though the legate was outside France, he was still within his jurisdiction as it encompassed also neighboring provinces.

This important canon reaffirmed the geographical principle of legatine jurisdiction. Hence, it was required for the papal legate to be within his assigned geographical jurisdiction to perform his duties validly as well as to assume and to judge the cases from his province as the later commentators mentioned. Some exceptions to this rule were mentioned in X 1.30.9.

²⁸ X 1.30.7: “Novit ille, qui nihil ignorat, quod regiae sublimitati (Et infra:) Ex parte tua querimoniam accepimus, videlicet quod, quum tibi legatus esset certa ratione suspectus, post appellationem ad nos interpositam extra fines regni Francorum in terram tuam interdicti sententiam promulgavit. Qui etiam in animam tuam promiserunt et obtulerunt iurare, quod tu coram legatis et delegatis nostris super hoc negotio stabis iuri, et quod propter huiusmodi negotium nec per nos, nec per alium fueris ex parte nostra citatus, ut iuri pareres, praedictam petens sententiam recepta huiusmodi cautione relaxari. Ceterum ad ea, quae contra cardinalem obiecerant, et eis respondimus, et Tuae magnificentiae respondemus, quod etsi fines regni Francorum exierat, nondum tamen fuerat terminos suae legationis egressus, quum non solum in regno Francorum, sed in Viennensi, Lugdunensi et Bisuntinensi provinciis iniunctam sibi a nobis legationis sollicitudinem suscepisset.”

The eighth canon²⁹ contained the decision of Pope Gregory IX to the Patriarch of Jerusalem, who was also a papal legate, a title that was given to him on the merit of the importance of his residence. The patriarch wrote to the pope about the legate *de latere* sent to Jerusalem and unspecified decisions he made that were displeasing to the patriarch. Hence the issue was the conflict of jurisdiction. The pope responded that as long as the legate *de latere* was present in the patriarch's province, the patriarch's legatine powers were suspended. Here, similar to X 1.30.2, further distinctions between the legates were introduced with clear precedence given to the legates *de latere* over any other legates. Further discussions led to the distinction between the specially mandated powers as taking precedence over the generally delegated powers of the legates.

Canon nine³⁰ of the section continued to introduce further distinctions on the powers entrusted to different types of legates. The canon specifically zeroed in on those excommunicated for their violent actions against clerics. It stated that the legates who

²⁹ X 1.30.8: "Volentes (Et infra:) Fraternitati tuae legationis officium in provincia tua duximus committendum, ita tamen, quod, si legatum ad partes illas de latere nostro contigerit destinari, executionem ipsius officii, quamdiu legatus ipse ibi fuerit, pro sedis apostolicae reverentia omnino dimittas."

³⁰ X 1.30.9: "Excommunicatis pro iniectioe manuum violenta ecclesiae Romanae legati, qui de ipsius latere non mittuntur, extra provinciam sibi commissam, vel ibidem, si huiusmodi manuum iniectores illuc contingat aliunde accedere, et qui ecclesiarum suarum praetextu legationibus sibi vendicant dignitatem, etiam subditis, quamvis in provincia sua existentes, beneficium absolutionis impertiri non possunt, nisi de speciali gratia illis et istis amplius a sede apostolica concedatur."

are not *de latere* can only absolve those who committed such an offense in their provinces (jurisdictions) and who live there. The legates who had this title by the reason of their residence cannot absolve such persons. However a special grant of the pope might be assigned to them to have such capacity. Not mentioned specifically, but presumed here, were the legates *de latere* who could absolve such offenses within and outside their own jurisdictions. Hence in this regard, geographical limitation would not apply to them.

Based on this canon, three groups of legates have been identified as being present in the structures of the church of the time: the legates *de latere*, the second class who are 'not *de latere*,' for the lack of better nomenclature in the canons, and finally those who possess this title due to their residence or specific other title. This last group can be assessed as having the title 'legate' as almost an honorary one with very limited powers and privileges. Often this last group was also called *legati nati* (as mentioned before). Since their legatine title was connected to another title or residence, the pope did not have to bestow it individually each time, but rather it was automatically connected to these entities.

The final canon of this section³¹ presented the issue of cessation of legatine jurisdiction. It applied to two circumstances only:

- If the legate created statutes for the province, these laws were binding even if the legate departed from the territory.
- If the legate named some judges to a court case, but he departed from his jurisdiction before the parties were summoned to the case, these appointed judges lost their jurisdiction and could not take cognizance of the case.

Based on these canons, many glossators and other commentators of canon law continued to present further and nuanced distinctions pertaining to papal legates,³² thus creating a sophisticated legal system in this regard. Robert C. Figueira in his further analysis of the decretists' writings on papal representatives brings attention to a few important items.

These commentators reaffirmed legatine immunity, an idea that was borrowed from *ius gentium* and repeated by Hostiensis. As such, the legate must be free from any

³¹ X 1.30.10: "Nemini dubium esse volumus, quin legatorum sedis apostolicae statuta edita in provincia sibi commissa durent tanquam perpetua, licet eandem postmodum sint egressi; secus autem, si causas duxerint aliquibus delegandas, quum iurisdictio istorum exspiret, si ante illorum discessum horum citatio non praecessit."

³² Figueira, 368: Johannes, Innocent III, Innocent IV, Bernard of Parma, Hostiensis, Guido and Goffredus.

harm; should one inflict it on a legate, he would suffer automatic excommunication. Guido reminded that such a measure was put in place as the person of the legate is considered 'sacred'. On the other hand, the papal legate could not be judged by anyone else but the pope or the person delegated by him to that purpose.³³

The issue of the legatine insignia seemed to have some importance as well. Goffredus pointed out that the use of the insignia by the legate was strictly connected to the exercise of his office. He further indirectly suggested that the legates *de latere* can use their insignia inside and outside their own provinces. Other legates were limited to such use in their own provinces.³⁴

As mentioned before (x 1.30.3, 4, 9), some ecclesiastical actions/powers were strictly reserved to the pope himself. The list of about sixty of them in the form of a poem is presented by Goffredus. The origin of the poem is not well known. Some claim it is from Hostiensis, but others that Raymond of Peñafort already had a smaller version of it in his writings. As was illustrated in the canons above, the legates could have been delegated by the pope to perform these reserved tasks if he chose to do so.³⁵

³³ Figuera, 389-395.

³⁴ *Ibid.*, 380-382.

³⁵ *Ibid.*, 311-314.

Finally, Figueira³⁶ presented the list of eighteen points pertaining to legatine jurisdiction that all or most canonists of the time agreed upon. The most important ones are:

- Legates who were not *de latere* could have only voluntary jurisdiction over their own subjects while outside their provinces. They could however, delegate someone in the province to perform some of their tasks while they were away (except the ones requiring cognizance of a legal case).
- Any legate *de latere* in his own jurisdiction superseded any other legate present in his province.
- Statutes issued by the legate for his subjects bound only those in his province.
- Any interdict issued by a legate outside his province was invalid.

1.2.4. The First Permanent Papal Diplomatic Posts

The fifteenth century marked the introduction of permanent representations of the Holy See to states. The permanent papal legates to these places were called nuncios,

³⁶ *Ibid.*, 459-461.

hence their diplomatic posts soon were named nunciatures, a term that exists to our times. Historians disagree which of the two diplomatic posts was truly called a nunciature first: Spain (1450) or Venice (1500).³⁷ Nonetheless, the first five nunciatures were established in France, Spain, the German Empire, Poland and Venice,³⁸ followed soon after in Naples, Savoy, Florence, Switzerland, Graz, Cologne and Flanders.³⁹

After 1560 a hierarchy developed among the nunciatures. The “major” nunciatures were those of Madrid, Paris, and at the Imperial Court. The remainder were counted as “minor” nunciatures. Such distinctions, however, had no influence on the rights of the nuncios. Still, as a rule the nuncios of the “major” nunciatures were named cardinals after the expiration of their term of service. They were then called pronuncios. From the sixteenth century on, as *inter-nuncio* was the provisional head of a nunciature, and then later a legate in an autonomous region.⁴⁰

The tendency of the last hundred years to stress the legates’ diplomatic and political roles was addressed at the Council of Trent (1545-1563). In the bull of convocation of the council, Pope Paul III frequently recalled the function of nuncios and the legates *a latere* in the process of preparation for the council and peace-keeping in

³⁷ Walf, 86.

³⁸ Bernard Barbiche, *Bulla, Legatus, Nuntius. Études de diplomatique et de diplomatie pontificales (XIIIe-XVIIe siècle)* (Paris: École des Chartes, 2007) 185.

³⁹ Wernz seemed to differ on the order of establishment of the nunciatures, putting Poland in the later period, which was historically incorrect. Francisco X. Wernz, *Ius Canonicum* (Rome: Pontificia Universitas Gregoriana, 1928) 528.

⁴⁰ Walf, 87.

Europe.⁴¹ From the text it was clear that the legates *a latere* were chosen from the cardinals and used for very important tasks such as the opening of the council and presiding over the sessions. They were clearly considered highest in rank. In addition to them the pope also named in the document nuncios, as we have seen a rather recent invention, who were used for various diplomatic tasks.

However, the conciliar debates charged the papal legates with the task not only of being diplomats but also to focus on religious aspects and to promote the conciliar reforms.⁴² Their office was mentioned often in the conciliar documents especially as the ones in charge of overseeing the council proceedings and transmitting the results to the popes. Hence, their roles centered on the internal affairs of the Church.

At the Twenty-second Session in the *Decree Concerning Reform*, Chapter II *Who are to be Promoted to Cathedral Churches*, the council mentioned the legates in a different

⁴¹ Council of Trent, May 22, 1542, *Bulla indictionis Sacrosancti Oecumenici Concilii Tridentinii: Canons and Decrees of the Council of Trent*, ed. H.J. Schroeder (Saint Louis and London: B. Herder Book Co., 1941) [hereafter *CDT*] 282: "...ut ad colloquium inter se et nobiscum una conveniret; quorum quidem apud utrumque litteris, nunciis, et a latere nostro missis ex venerabilium fratrum nostrorum numero legatis...;" "...tres legatos summae virtutis ac auctoritatis a latere nostro de numero eorumdem venerabilium fratrum nostrorum S.R.E. cardinalium Vincentiam mittere..."

⁴² Bernard Barbiche, 187.

aspect. It required that the candidates for the office of the cathedral's shepherd should be taken from the legates, nuncios, and ordinaries of the place of neighboring dioceses.⁴³

At the Twenty-fourth Session, the council fathers raised the issue of non-overlapping jurisdiction of the legates and the local bishops, which was quite an innovative legislation and a result of complaints of the council fathers:

Legates also, even though *de latere*, nuncios, ecclesiastical governors, or others, shall not only not presume, by virtue of any powers whatsoever, to impede bishops in the causes aforesaid, or in any wise to take from them, or to disturb their jurisdiction, but they shall not even proceed against clerics, or other ecclesiastical persons, until the bishop has been first applied to, and has shown himself negligent; otherwise their proceedings and ordinances shall be of no force, and they shall be bound to make satisfaction to the parties for the damages which they have sustained.⁴⁴

⁴³ Council of Trent, Session 22, September 17, 1562, *CDT*, 425: "Quarum rerum instructio, si ejus notitia nulla aut recens in curia fuerit, a Sedis Apostolicae legatis seu nunciis provinciarum, aut ejus ordinario, eoque deficiente a vicinioribus ordinariis sumatur."

⁴⁴ Council of Trent, Session 24, November 11, 1563, *CDT*, 480: "Legati quoque, etiam de latere, nuncii, gubernatores ecclesiastici aut alii, quarumcumque facultatum vigore non solum episcopos in praedictis causis impedire, aut aliquo modo eorum jurisdictionem iis praeripere aut turbare non praesumant, sed net etiam contra clericos aliasve personas ecclesiasticas, nisi episcopo prius requisito, eore negligente, procedant. Alias eorum processus ordinationesve nullius momenti sint, atque ad damni satisfactionem pertibus illati teneantur." English translation: *The Council of Trent. The Canons and Decrees of the Sacred and Oecumenical Council of Trent*, ed. and trans. J. Waterworth (London: Dolman, 1848) 221.

In many ways, the Council of Trent was the first instance where the office of legate was fully showcased and noted for the role in preparation of the council in political and ecclesiastical realms, for the leadership and vigilance role at the council and for being a subject of the laws promulgated by the popes. At the same time the role of the diocesan bishop was well described and his jurisdiction safeguarded. Though it was not the first time, the Council of Trent frequently described the local ordinaries as delegates of the pope, signaling their special and permanent mission from the Roman pontiff to the local church.

1.2.5. Shaping of Modern Papal Legation

The seventeenth century marked a shift when the legates *a latere* were slowly being replaced: “not only do we witness the end of legations as the preferred mode of papal mediation, but the nunciatures, which replaced them, also undergo important changes.”⁴⁵ It can be noticed that the nuncios were chosen from the members of the episcopate or were promoted to it at the time of appointment to the diplomatic mission.

⁴⁵ Ibid., 181-182: “Non seulement on assiste alors à la fin des legations comme mode privilégié de médiations pontificales, mais les nonciatures elles-mêmes, qui les remplacent dans cette fonction, connaissent elles aussi des mutations importantes.”

Since the Council of Trent required a bishop to reside in his diocese, which would not be compatible with the mission of a nuncio, the Holy See began to appoint legates as bishops of the ancient and suppressed titular dioceses.

At the conclusion of the Napoleonic Wars, the Congress of Vienna on March 19, 1815, reached consensus about international diplomatic agreements and procedures. Robert J. Araujo and John A. Lucal highlight the three important points in their notes on the subject:

The first point is found in Article 1, which declared that there are three classes of diplomatic agents, and the first and highest level include “ambassadors, legates or nuncios.” Nuncios are those representatives of the Holy See who are permanent representatives of the pope vested with both political and ecclesiastical authority and accredited to the court or government of a sovereign State. The second point is taken from Article 2, which equates the status of nuncios with ambassadors. The third point comes from Article 4, which states that the precedence or rank given to diplomats based on the date of assuming official duties (usually involving the presentation of credentials) would not in any way prejudice the precedence accorded to papal representatives.⁴⁶

Though this arrangement could not be truly called worldwide, it certainly was a first major international agreement recognizing the presence of the Catholic Church in the diplomatic arena and granting her a privileged place.

During the process of the unification of Italy that began in 1860 the issue of the Papal States came to be a major point of conflict, which resulted in the loss of territory

⁴⁶ Robert J. Araujo and John A. Lucal, *Papal Diplomacy and the Quest for Peace* (Naples, FL: Sapientia Press of Ave Maria University, 2004) 14.

and temporalities by the Holy See. Nonetheless, the Italian government tried to propose the resolution with the so-called Law of Guarantees issued on May 13, 1871.⁴⁷

Here are some interesting points of this agreement proposed to the Holy See:

- The person of the Pope is holy and inviolable, and royal honors are to be paid to him.
- Italy will pay a yearly tax-free sum to the Holy See of 3,225,000 lire as indemnity for the loss of sovereignty and territory.
- The Pope will have free use of the Vatican and Lateran apostolic palaces, as well as of Castel Gandolfo. Those palaces are inalienable and free of taxes.
- The personal freedom of the cardinals is guaranteed during the vacancy of the See, and the government will make sure that the place of a conclave or an ecumenical council is free of external violation. The government will likewise ensure that the place of the conclave and of ecumenical councils will not be disturbed by external violence.
- Legates of foreign governments to the Pope will enjoy all privileges and immunities that diplomatic agents enjoy according to international law.⁴⁸

Pope Pius IX, defending the ownership of temporalities by the Church, refused the offer, allowing the tension to grow. The conflict, which has been widely discussed, became known as the Roman Question. In theory, lack of agreement meant that the Italian

⁴⁷ Kurt Martens, "The Position of the Holy See and Vatican City State in International Relations," *University of Detroit Mercy Law Review* 83 (2006) 732.

⁴⁸ *Ibid.*, 732-733.

government did not have any duty to acknowledge or guarantee immunity to any diplomatic representations to and of the Holy See. In practice, however, they were issuing special visas to the diplomats accredited with the Church in order to allow free travel within the borders of Italy.⁴⁹

Pope Leo XIII (1878 – 1903), the successor of Pope Pius IX, did not succeed in bringing the Roman Question to an end. However, his pontificate was characterized by a strong centralization of the Church's governance via use of the Congregations of the Roman Curia, often referred to as "the nerve center of the Church."⁵⁰ The Pope, a diplomat and a graduate of the Pontifical Ecclesiastical Academy, used the nuncios to frequently and directly intervene in the political-religious conflicts as well as to provide assistance to the clergy and faithful. He was also responsible for bringing to fruition the concordats with Portugal (1886), Montenegro (1886) and Colombia (1887), and for establishing diplomatic relations with Turkey, Japan and China. Later in his pontificate, a diplomatic shift could be perceived. The new nuncios appointed to the diplomatic posts were not necessarily graduates of the diplomatic school, but rather territorial bishops of Northern Italy (especially Veneto) drawn from the superiors of religious

⁴⁹ Gabriel Le Bras and Jean Gaudemet, *Le droit et les institutions de l'Église catholique latine de la fin du XVIII^e siècle à 1978* (Paris: Éditions Cujas, 1982) 369.

⁵⁰ *Ibid.*, 371: "le centre nerveux de l'Église."

orders. Some explained such change by the old age of the pontiff and the entrusting of the task of appointments to the Secretary of State Rafael Cardinal Merry Del Val and the Prefect of the Consistorial Congregation Gaetano Cardinal De Lai.⁵¹

In delayed response to the requests of the bishops made at the First Vatican Council,⁵² Pope Pius X (1903-1914), in his motu proprio *Arduum sane munus*⁵³ announced the beginning of the codification of the law of the Catholic Church. The work was to be carried out by the special commission, which, after reviewing the suggestions of the bishops around the world, would proceed with the task of collecting church laws into a code. In order to expedite the work, additional commissions and consultants were chosen. Special care of this project had been entrusted to Cardinal Pietro Gasparri.

[A]s the parts of the new Code gradually came together, the Supreme Pontiff Pius X ordered that the judgment of the Bishops of the whole Catholic world be sought, and likewise all Prelates of regular Orders who were among those typically called to an Ecumenical Council, and their thinking requested. And so there were sent to all these sorts both the first and second books of the Code, the third and the fourth, and finally the fifth, advising them to return them to the Apostolic See at a given time, adding to them any written observations that they judged opportune. In turn, after his Excellency Card. Gasparri had duly

⁵¹ Ibid., 372.

⁵² *Acta et Decreta Sacrorum Conciliorum Recentiorum. Collectio Lacensis*, Vol. 7, (Friburgi Brisodviae: Sumtibus Herder, 1892) 826.

⁵³ Pius X, motu proprio *Arduum sane munus*, March 19, 1904: ASS 36 (1903-1904) 549-551.

examined and organized them, they were forwarded to the specific Councils who investigated whether, with regard to the desires expressed by the Bishops, the canons should be amended.⁵⁴

After the death of Pope Pius X on August 20, 1914, his successor Pope Benedict XV sought to finalize the new code of canon law for the Catholic Church. He promulgated it on the feast of Pentecost, May 27, 1917 with the apostolic constitution *Providentissima Mater Ecclesia*,⁵⁵ which gained the force of law also on Pentecost a year after: May 19, 1918. The code included six canons devoted directly to the office and function of papal legate (cc. 265-270) and contained also other references to them in different parts of the code (e.g., cc. 420, 1557, 2343, etc.).

⁵⁴ Pietro Gasparri, *Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus / praefatione, fontium annotatione et indice analytico-alphabetico ab emo Petro Card. Gasparri auctus* (Rome: Typis Polyglottis Vaticanis, 1948). English translation from *The 1917 or Pio-Benedictine Code of Canon Law*, ed. Edward N. Peters (San Francisco: Ignatius Press, 2001) [hereafter *Peters*] 18.

⁵⁵ Benedict XV, apostolic constitution *Providentissima Mater Ecclesia*, May 27, 1917: *AAS* 9/2 (1917) 5-8.

1.2.6. Papal Legation in the Twentieth Century and Today

In general terms, the network of the papal diplomatic posts around the world grew largely in the twentieth century. After the Second World War, in 1945, the general number of the nunciatures was twenty nine. The number could have been larger, but suffered due to soviet-mandated break in diplomatic relations with the countries of the Eastern-block: Estonia, Lithuania, Latvia, Poland, Czechoslovakia (with nunciatures in Prague and Bratislava).⁵⁶ Antonio Filipazzi compared the numbers of all diplomatic posts according to consecutive pontificates. Hence, in 1958 the total number of diplomatic posts grew to forty-two. In 1963 that number increased by additional three to forty five. When Pope John Paul II was elected pope, the number of nunciatures and apostolic delegations was eighty-eight. In year 2002, the time of writing of his article, Filipazzi counted the total number of diplomatic posts as one hundred seventy three.⁵⁷

At the same time, papal diplomacy also developed a multilateral dimension in response to various needs of the Church present in the world. Since many diplomatic affairs no longer involved only direct relationship between two sovereignties, but had

⁵⁶ Antonio Filipazzi, "Le rappresentanze pontificie dalla fine della II Guerra Mondiale ad oggi. Dati circa lo sviluppo della loro rete (1945-2002)," *Ius Ecclesiae* 14 (2002) 715.

⁵⁷ Filipazzi, 747-748.

inter and multi-national aspects, the mode of operating had to be adjusted as well. Hence, the Holy See has been also represented in various structures of the United Nations Organization by sending its representatives or observers. With this, an important distinction has been raised by Vincenzo Buonomo,⁵⁸ that often the Church's representatives to such international organizations would be called representatives of the Holy See and not of the pope to indicate the central governing office and not a person. Such distinction may prove beneficial also in negotiations with the non-christian states that find this distinction easier to their sensibilities. It was also necessary for the cases where only state representatives were allowed to participate.

The papal and the Holy See representatives continue their work today on many levels: within the church, to particular sovereignties and on the international arena. The spectrum of their tasks is large: from internal affairs of the local churches to international peace keeping efforts and negotiations. However, there is only one goal behind this complex structure and activity of the papal diplomacy in the twenty-first century: to promote the development and freedom of the Church, and salvation of souls.

⁵⁸ Vincenzo Buonomo, "Brevi annotazioni sulla diplomazia multilaterale della Santa Sede," *Ius Ecclesiae* 19 (2007) 677.

1.3. The 1917 Code of Canon Law

The 1917 Code of Canon Law, as the first codification of the centuries' long legal tradition of the Catholic Church, attempted to synthesize all aspects of the Church's life. Though many would argue that such attempt could not be a successful venture by default, the fact remains that the canons of the code represent a fair spectrum of the Church's external life and activity. One of the elements on that spectrum is the diplomatic activity of the Holy See, and precisely, her agents: the papal legates. The institution of papal legates was treated in the 1917 Code of Canon Law in Book II "On Persons,"⁵⁹ title VII "On Supreme Power in the Church and Those Who Participate in It,"⁶⁰ chapter Five. There were only six short canons pertaining to the papal legates (cc. 265-270). It is worth mentioning that these canons were found after the section treating the Roman Curia and its congregations, tribunals and offices, but before the sections on metropolitans, patriarchs, and plenary and provincial councils. Such a location gave the reader the sense of importance attributed to these functionaries of the Roman pontiff.

⁵⁹ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (Rome: Typis Polyglottis Vaticanis, 1917) [hereafter 1917 CIC] v: *De Personis*.

⁶⁰ 1917 CIC vii: "De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes."

In addition to these six canons, papal legates were mentioned in a few other places, in respect to various special powers and faculties granted to them by the code itself.

The purpose of this section is to unravel the richness of the canons on papal legates and to study this institution with the help of legal and historical commentaries.

1.3.1. The Papal Right to Send Legation

The chapter on papal legates started with canon 265 and contained in it the declaration of the papal right to send his representatives everywhere: "It is the right of the Roman Pontiff, independent of civil power, to send into any part of the world Legates, with or without ecclesiastical jurisdiction."⁶¹ Clearly, this canon was based on the doctrine of the *societas perfecta* of the Church, which declared the Church's self-

⁶¹ 1917 *CIC* c. 265: "Romano Pontifici ius est, a civili potestate independens, in quamlibet mundi partem Legatos cum vel sine ecclesiastica iurisdictione mittendi." Peters, 113.

sufficiency in governing and independence from any civil authority.⁶² This comes as no surprise, as the code was written in the time of the open Roman Question, when the Holy See and the Italian government could not reach an agreement and recognize each other's sovereignty. Canon 265 established in law the pope's independence, which derived from divine law to govern the Church of Christ. The fact of choosing and sending legates, with or without jurisdiction, was a matter of ecclesiastical governance, which was exercised freely by the Roman pontiff. As Heriberto Jone⁶³ points out, canon 265 is an extension or particular application of canon 218 on the supreme power of the Roman pontiff:

C. 218 §1. The Roman Pontiff, the Successor in primacy to Blessed Peter, has not only a primacy of honor, but supreme and full power of jurisdiction over the

⁶² Camillo Tarquini, *Iuris Ecclesiastici Publici Institutiones* (Rome: Ex Typographia Polyglotta, 1888) 30-31: "Societatem perfectam eam esse diximus, quae est in se completa, adeoque media ad suum finem obtinendum sufficientia in semetipsa habet. Habet autem non modo cui realiter, verum etiam qui virtualiter eadem insunt; ita scilicet ut ab alia societate ea repetere proprio iure possit, neque illa facultatem habeat aut ea negandi, aut suo iudicio rem dirimendi. Contra si qua societas neque realiter, neque virtualiter media ad finem obtinendum necessaria in se habeat, sed in eorum oeconomia ab alia societate pendere cogatur, cui integrum sit ea negare, vel saltem iudicare, utrum praestari debeant, nec ne, ea profecto imperfecta dicenda est. Iam vero quae perfecta dicenda sit quaeve imperfecta, id duplici ex capite patere potest, vel ex eius natura, vel ex voluntate eius institutoris, in cuius scilicet potestate fuerit, eandem perfectam constituere; utroque autem sub respectu Ecclesiam Christi societatem perfectam habendam esse..."

⁶³ P. Heriberto Jone, *Commentarium in Codicem Iuris Canonici* (Bremen, Mainz, Munich, Osnabrück, Wuppertal and Würzburg: Officina Libraria F. Schönigh, 1950) 248.

universal Church both in those things that pertain to faith and morals, and in those things that affect the discipline and government of the Church spread throughout the whole world.

§2. This power is truly episcopal, ordinary, and immediate both over each and every church and over each and every pastor and faithful independent from any human authority.⁶⁴

The unofficial footnote to canon 265 pointed out two relevant documents authored by Pope Leo XIII. The first, the papal allocution *Summi pontificatus*⁶⁵ of August 20, 1880, dealt with the struggle between the government of Belgium and the Catholic hierarchy due to a proposed educational reform. The modified curriculum as proposed in the reformed program included notions and ideas contrary to the Catholic faith (e.g., theory of evolution). Hence, the reaction of the Belgian episcopate was rather stern, even to the point of threatening to ban Catholics from attending public schools. The Holy See, via diplomatic channels, tried to resolve the conflict, but did not succeed. Ultimately, the Belgian government expelled the papal nuncio Cardinal Nina and

⁶⁴ 1917 *CIC* c. 218: “§1. Romanus Pontifex, Beati Petri in primatu Successor, habet non solum primatum honoris, sed supremam et plenam potestatem iurisdictionis in universam Ecclesiam tum in rebus quae ad fidem et mores, tum in iis quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent. §2. Haec potestas est vere episcopalis, ordinaria et immediata tum in omnes et singulas ecclesias, tum in omnes et singulos pastores et fideles, a quavis humana auctoritate independens.”

⁶⁵ Leo XIII, allocution *Summi pontificatus*, August 20, 1880, in Pietro Gasparri, *Codicis iuris canonici fontes / cura emi Petri Card. Gasparri editi* (Rome: Typis Polyglottis Vaticanis, 1923-1939) 3:167-171; ASS 13 (1880) 49-55.

revoked its own representative to the Holy See Baron d'Anethan.⁶⁶ Such an action prompted the Holy Father to issue his allocution to Belgian bishops in which he condemned the anti-Catholic actions of the government and assured the right of Belgian Catholics to proper Catholic education and the pope's freedom to send and receive legations.⁶⁷

The second document pertaining to canon 265 of the 1917 code is the encyclical letter of Pope Leo XIII *Longinqua oceani* (January, 6 1895).⁶⁸ The letter addressed the issue of so-called Americanism in the United States pertaining to church-state separation. It further praised the resolutions of the then recent Third Council of Baltimore (1884) and reminded the faithful in the United States about the appointment

⁶⁶ An excellent commentary on the issue was published by an unacknowledged author in *The Dublin Review*, July – October vol. 4 (1880) 399-438.

⁶⁷ *Summi Pontificatus*, n. 8, 170: "Cumque ius potestatemque habeat Pontifex maximus Nuntios aut Legatos ad extras gentes, nominatim catholici nominis, earumque principes mittendi, de violato huiusmodi iure cum iis quos penes est culpa, expostulamus: eaque magis, quod eius iuris multo augustinus est in Romano Pontifice principium, cum ab amplissima auctoritate primatus, quem ille divinus obtinet in universam Ecclesiam, proficiscatur; quemadmodum et Pius VI gloriosae recordationis Pontifex declaravit his verbis: 'Ius est Romano Pontifici habendi aliquos, in dissitis praesertim locis, qui sui absentis repraesentent, qui iurisdictionem suam atque auctoritatem stabili delegatione collatam exercent, qui denique suas vices obeant; idque ex intima vi ac natura primatus, ex iuribus dotibusque cum primatu coniunctis, ex constanti Ecclesiae disciplina a primis usque saeculis deducta.' [*Resp. super Nuntiaturis Apost.*, cap. 8, sect. 2, n. 24].

⁶⁸ Leo XIII, encyclical letter *Longinqua oceani*, January 6, 1895: in Pietro Gasparri, *Codicis iuris canonici fontes / cura emi Petri Card. Gasparri editi*, 3:460-468; ASS 27 (1894-5) 387-399.

of the first apostolic delegate as the bridge between America and the Church universal.⁶⁹ Paragraph eleven of the letter deals in particular with the issue of the papal prerogative to send his legates:

For it has been, from earliest antiquity, the custom of the Roman Pontiffs in the exercise of the divinely bestowed gift of the primacy in the administration of the Church of Christ to send forth legates to Christian nations and peoples. And they did this, not by an adventitious but an inherent right. For "the Roman Pontiff, upon whom Christ has conferred ordinary and immediate jurisdiction, as well over all and singular churches, as over all and singular pastors and faithful, since he cannot personally visit the different regions and thus exercise the pastoral office over the flock entrusted to him, finds it necessary from time to time, in the discharge of the ministry imposed on him, to dispatch legates into different parts of the world, according as the need arises; who, supplying his place, may correct errors, make the rough ways plain, and administer to the people confided to their care increased means of salvation."⁷⁰

Such a statement in the document was intended to remind the somewhat new local church in America about it being a part of the universal Church under the leadership of

⁶⁹ The office of apostolic delegate is further discussed on page 65.

⁷⁰ Ibid., n.11: "Videlicet romani Pontifices, ob hanc causam quod rei christianae administrandae divinitus tenant principatum, suos peregre legatos ad gentes populosque christianos mittere vel ab ultima antiquitate consueverunt. Id autem non extrinsecus quaesito, sed nativo iure suo, quia romanus Pontifex, cui contulit Christus potestatem ordinariam et immediatam sive in omnes ac singulas Ecclesias, sive in omnes et singulos Pastores et fideles, cum personaliter singulas regiones circuire non possit, nec circa gregem sibi creditum curam pastoralis sollicitudinis exercere, necesse habet interdum ex debito impositae servitutis, suos ad diversas mundi partes, prout necessitates emergerint, destinare legatos, qui vices eius supplendo, errata corrigant, aspera in plana convertant et commissis sibi populis salutis incrementa ministrant," ASS 27 (1894-5) 393. English translation: www.vatican.va.

the pope, who exercises his supreme power over it. The sending of the Apostolic Delegate to the United States was to assure this connection between the churches and to encourage a proper understanding of the church-state relationship.

Another interesting document worth mentioning is the constitution *Super soliditate*⁷¹ of Pope Pius VI dated November 28, 1786. It is the pope's reply to a pamphlet published by an Austrian theologian Joseph Valentin Eybel (1741-1805) under the German title *Was ist der Papst?*⁷² and later translated into Latin *Quid est Papa?* Pius VI clearly condemns the idea that the pope is just one of the bishops in the Church without any particular distinction or privilege. The constitution assures that the pope is like Saint Peter, the Prince of the Apostles and has supreme authority to feed the flock. The Apostolic See with its primacy is the center that keeps the whole body of the Church, spread throughout the world, under one head for the sake of unity.⁷³ Though

⁷¹ Pius VI, constitution *Super soliditate*, November 28, 1786 in Pietro Gasparri, *Codicis iuris canonici fontes / cura emi Petri Card. Gasparri editi*, 2:663-671.

⁷² Joseph Valentin Eybel, *Was ist der Papst?* (Vienna: Joseph Edeln von Kurzbeck, 1782).

⁷³ *Super soliditate*, 663: "In hoc scilicet apostolicae cathedrae principatu firmum voluit Christus, constrictumque teneri unitatis vinculum, quo Ecclesia per universum mundum propaganda, ex membris quantumcumquedissis, mutua omnium in uno capite consociatione in unam corporis compagem coalescet fieretque adeo, ut huius vis potestatis non tantum ad primae Sedis amplitudinem, se et maxime ad corporis totius integritatem, in columitatemque valeret."

the constitution *Super soliditate* certainly reaffirmed the primacy, centrality and supreme power of the pope, it was probably not the best illustration for the specific notion conveyed in canon 265 about the papal right of legation to send a legate. It plays, however, an important role as it was written around the time of the conflict between Pope Pius VI and the Archbishops of Mainz, Cologne, Trier and Salzburg. Claeys Bouuaert and Simenon mentioned briefly this issue that took place in 1789⁷⁴ in the *Manuale Juris Canonici*.⁷⁵ *The Sacred Canons*⁷⁶ by Abbo and Hannan cites, as the source of information on this topic a book by Peter Baart *The Roman Court*.⁷⁷ The situation arose when the pope decided to send his permanent legate to Germany and establish the nunciature in Munich in 1785. The archbishops opposed the idea vigorously as a threat to their independence in administering their local churches and rendering judgments in

⁷⁴ Claeys Bouuaert and Simenon in their commentary dated this document to 1789. Abbo-Hannan's commentary (below) dated this event to 1787.

⁷⁵ F. Claeys Bouuaert and G. Simenon, *Manuale Juris Canonici* (Gand and Liège: Published by the Authors in Seminaries of Gand and Liège, 1939) 1:249: "Praerogativa mittendi legatos, etiam invitis regibus, a jure Decretalium jam vindicabatur. Jus mittendi nuntios stabiles, contra querelas metropolitanorum Germanorum, Pius VI a. 1789 proclamavit."

⁷⁶ John A. Abbo and Jerome D. Hannan, *The Sacred Canons. A Concise Presentation of the Current Disciplinary Norms of the Church*, (Saint Louis and London: B. Herder Book Co., 1960) 1:264-268.

⁷⁷ Peter A. Baart, *The Roman Court, or A Treatise on the Cardinals, Roman Congregations and Tribunals, Legates, Apostolic Vicars, Protonotaries, and Other Prelates of the Holy Roman Church* (Milwaukee: Hoffman Brothers Co., 1895) 281.

conflict cases. They also claimed that the pope needed to wait for an invitation from the local bishops before he could send his legate to their territory.⁷⁸ The pope defended his decision in a letter of November 14, 1789:⁷⁹

'The Roman Pontiff fulfills the apostolic duty of caring for the universal flock by delegating ecclesiastical men, either permanently or temporarily as he judges best, and ordering them to take his place in distant regions and there exercise the same jurisdiction which he himself if present would exercise.' Hence apostolic legates are sent to exercise the authority of the Sovereign Pontiff in as far as it is communicated to them. They are not sent to grasp and exercise the authority of local bishops. On the contrary, just as the ordinary jurisdiction of the Sovereign Pontiff and of the local bishop are concurrent and harmonious, so also must the authority of apostolic legates and the authority of local bishops mutually sustain each other.⁸⁰

Abbo and Hannan stated further:

The Pope declared that the Roman Pontiff has the right to send legates "by the very reason and nature of the primacy; by the constant practice of the Church even from the earliest ages; by the authority of ecclesiastical and civil laws, and by the common teaching of canonists and jurists."⁸¹

⁷⁸ Gino Paro, *The Right of Papal Legation*, JCD diss., (Washington, DC: The Catholic University of America, 1947) 138. *CLS*: 211.

⁷⁹ Udalricus Beste, *Introductio In Codicem* (Collegetown, MN: St. John's Abbey Press, 1946) 266.

⁸⁰ Baart, 281.

⁸¹ Abbo and Hannan, 1:267.

From these quotes it is rather clear that the pope used the occasion of the conflict to reassert his power over the universal Church and particularly to send his legates at will.

Two distinct authors Paro and Futie⁸² present a somewhat different approach to the exegesis of canon 265. They both perceive the reason for this canon as a result of a complex of historical events.

Paro places three erroneous theories as the direct predecessors of the papal pronouncements in regard to his right to legation, namely: the Regalist theory, the Gallican theory and episcopal Febronianism.⁸³

The Regalist theory was closely associated with Marsilius of Padua (1270 – 1342), also known as Patavinus, and his 1324 work *Defensor Pacis*.⁸⁴ The book was written at the time of the conflict between Louis IV, Emperor of the Holy Roman Empire and Pope Clement VI. Marsilius had a very clear idea that the pope should be deprived of the *plenitudo potestati* which he exercises over the Catholic Church. The pope and the

⁸² Richard Francis Futie, *A Canonical Look at the Apostolic Nunciature to the United States of America* (Rome: Pontificia Universitas Gregoriana, 1988).

⁸³ Paro, 136-137.

⁸⁴ Marsilius Patavinus, *Defensor pacis, sive adversus usurpatam Rom. Pontificis iurisdictionem* (Frankfurt: Officina Vignoniana, 1592).

legates were the enemies of King Louis, his officials, and his subjects.⁸⁵ As a consequence, Patavinus demanded that the institution of the papal legate be suppressed as well, as it was an extension of papal power.

The Gallican theory was represented by a French lawyer and scholar Pierre Pithou (1539-1596) who expressed his ideas in the book *Les Libertez de L'Église Gallicane*⁸⁶ (1594). These ideas were considered as the basis for the 1682 Declaration of the Clergy of France, the manifesto of Gallicanism. Among them were the notion that the pope needed permission of the king to send his legates to the royal court and the church of that country. The legates were required to receive the consent of the king to exercise their duties in France. The list of duties of the legate needed to be examined for any 'irregularities' (incompatibilities with the civil laws) by the Parlement of Paris, before they could be carried out by any legate in France. If such an examination would show that some of these duties were indeed 'irregular' or contrary to the ideas that Parlement would approve, the clergy and faithful were to be informed that they had no obligation

⁸⁵ Patavinus, 399: "...quantum unusquisque sanae mentis neque perversus affectu comprehendere potest , modernis temporibus processit et continuo procedit vacatus modernus Papa Romanus, cum suis ministris, quos legatos appellat, adversum saepedictum Ludovicum Romanorum regem: sic quoque adversus eiusdem vicarios et fideles subditos."

⁸⁶ Pierre Pithou, *Les Libertez de L'Église Gallicane, prouvées et commentées* (Lyon: Près du Cloître des RR.PP. Jacobins, 1771).

to follow the directives of the legate until such time as these duties were accordingly modified and approved. After many efforts on the part of the pope and the rest of the hierarchy the ideas of Gallicanism were abandoned and finally condemned as heresy at the First Vatican Council.⁸⁷ Nonetheless, the statement in canon 265 served as a clear reminder to all of the Church's position on the issue.

Both Gino Paro and Richard Francis Futie agree that Febronianism was one of the movements that challenged significantly the notion and understanding of papal rights, powers and sovereignty. The theory was authored by Johann Nikolaus von Hontheim (1701–1790), a historian and theologian from Trier. As a young man, he received an excellent education in both disciplines from universities in Trier, Leiden, Louvain, and the German College in Rome. After resigning as a professor of the University of Trier, he was eventually consecrated as an auxiliary bishop of Trier by the then archbishop Francis George von Schönborn. As a scholar, von Hontheim published many books about history and theology, but only one of them earned him ill fame. Under the pseudonym Justinius Febronius, he authored *De statu Ecclesiae et legitima potestate*

⁸⁷ Vatican I, constitution *Pastor aeternus*, ASS 6 (1870-1871) 40-48.

Romani Pontificis.⁸⁸ Though well intended as a work destined to create a philosophical bridge between persistently hostile German Protestants and Catholics, it actually introduced an error known as Febronianism. Von Hontheim was censured for his views presented in this book, and the censure was only removed after the publication of his retraction in 1781.

The ideas presented in *De statu Ecclesiae* were an application and interpretation of the philosophical thought of Baron Samuel von Pufendorf (1632-1694), who observed that within the realm of a state two major powers were at play: civil and religious. Since both of them were usually in conflict with each other, an agreement or compromise needed to be accomplished. Because the realm of religion is a spiritual matter it cannot possibly assume the form of a civil authority of a state or monarchy. Hence, as the civil power of a State is the only real power at play, the religion should take its proper place in society by submitting to civil power and thus all conflicts should be avoided.⁸⁹

Building on the philosophy of Pufendorf, Febronius proposed that the monarchical model of papal authority in the Church was a wrong idea. The local bishops should be granted full authority over their local churches without an

⁸⁸ Justinus Febronius, *De statu Ecclesiae et legitima potestate Romani Pontificis* (Trier: Bullioni apud Guillelmum Evrardi, 1763).

⁸⁹ Futie, 56.

intervention from the pope. Hence, as a consequence there was no need to send papal legates to the states or to establish diplomatic posts in various countries.⁹⁰ By the same token, the Catholic Church was deprived of its supreme and independent sovereignty, but seen as a 'college' or a body of people and not as a monarchy or a state.⁹¹

Though it was retracted, the theory of Febronius was wide-spread and well known. It was precisely this philosophical approach that became a basis for the aforementioned position of Eybel in his pamphlet *Was ist der Papst* or the conflict with German and Austrian bishops over establishing a nunciature in Munich in 1785.

In this historical research on the sources and motivations behind canon 265 of the 1917 Code of Canon Law we see from the above-mentioned examples that the independence and power of the papacy has been under attack for many centuries and from various sources. It is not surprising then, that the popes again and again had to

⁹⁰ *De statu Ecclesiae*, Cap. II §4, pp. 83-88; Cap. III §§1-4, pp. 128-141.

⁹¹ *Ibid.*, Cap I §5 n.3 p 21: "In nullo statu Monarchico subditi unquam dicti sunt fratres sui Regis, Principes una cum eis membrum Reipublicae. Naturale est Ecclesiae, etiam ex instituto Christi, coire in Corpus, seu Collegium; non ita in regnis Monarchicis (quorum paucissima habent Status) subditi cum Rege, tanquam commembro et consoldali suo Collegium faciunt, collegialiter deliberant, statuunt, et definiunt. Quare ex commissimis omnis iuris Collegialis notionibus ac regulis apte de Ecclesia tanquam corpore dicitur, quod major sit auctoritas Corporis, quam cuiusque membri, etiam primi; secus ac in regnis, in quibus, quantum ad admirationem publicam, et directionem universi, nihil de Collegio noscitur."

reassert their position and power in the universal Church. The first codification of the Church's law was yet another occasion to restate and cement the papal right and freedom to send a legation to civil states and to the local churches as well.

1.3.2. The Types of Papal Legates

After the initial canon 265 in this section, the 1917 code distinguished the five types of papal legates. Stephan Sipos divides them in two main categories: *legati missi* and *legati nati*. *Legati missi* are further divided into four subcategories: *legatus a latere*, *nuncio*, *internuncio* and *apostolic delegate*.⁹²

Canon 266 presented a special type of a legate called *legatus a latere* (translated literally: "legate from the [pope's] side") who represented the pope as an *alter ego*.

"They are called *Legates from the side*, those Cardinals who like *another self* are sent by the

⁹² Stephanus Sipos, *Enchiridion Iuris Canonici* (Rome: Orbis Catholicus – Herder, 1954) 180: "Legati sunt legati missi et nati. a) Legatorum missorum quatuor species numerantur: 1)Legati a latere ... 2)Nuntii ... 3)Internuntii... 4)Delegati Apostolici ... b)Legati nati..."

Roman Pontiff with this title, and such one can only do what was committed to him by the Roman Pontiff.”⁹³

Udalricus Beste defines them as those being honored with the title, because they are considered to be as if one body with the Supreme pontiff; they are appointed to more important tasks with proper solemnity.⁹⁴ Gino Paro⁹⁵ notes the comments of Karl Ruess that these legates were often called also *legati laterales* or, due to their very special duties and position, *legati specialissimi*.⁹⁶ These were chosen from among the College of Cardinals closely collaborating with the Roman pontiff and were only sent on special missions. Because of their cardinalatial dignity, they were considered highest in the rank of the legates’ hierarchy.⁹⁷ And though by default they were cardinals, some rare

⁹³ 1917 *CIC* c. 266: “Dicitur Legatus a latere Cardinalis qui a Summo Pontifice tanquam alter ego cum hoc titulo mittitur, et tantum potest, quantum ei a Summo Pontifice demandatum est.” Peters, 113.

⁹⁴ Beste, 353: “Legati a latere, ideo hoc nomine decorati, quia e numero cardinalium, qui lateri Pontificis haerere et unum corpus cum eo efficere censentur, quasi a latere assumuntur et ad negotia graviora expedienda vel ad repraesentandum Summum Pontificem in magna quandam sollemnitate deputantur.”

⁹⁵ *The Right of Papal Legation*, 93.

⁹⁶ Karl Ruess, *Die rechtliche Stellung der päpstlichen Legaten bis Bonifaz VIII* (Tübingen: Schönigh, 1912) 112.

⁹⁷ Gabriel Le Bras and Jean Gaudemet, *Le droit et les institutions de l’Église catholique latine de la fin du XVIII^e siècle à 1978* (Paris: Éditions Cujas, 1982) 369.

exceptions were possible when they were taken from the pope's family or even from other unrelated but trusted persons.⁹⁸

Their office was not considered as being set in a stable manner, in the sense that their missions were usually of a finite nature for a specific occasion or in a particular matter. The power vested in them was seen as an extension of the power of the pope himself. Hence, their jurisdiction expanded over the prelates, bishops, archbishops and even cardinals in the province to which they were sent.⁹⁹ They were able to impose and lift reserved censures, to grant indulgences, dispense from marriage impediments, confer and remove benefices, etc. The exercise of such powers by a *legate a latere* was not well received by the local bishops who saw the papal envoy as an intruder and

⁹⁸ Henry of Susa (Hostiensis), *Summa Aurea* (Venice, 1574): "intelligi potest de latere Papae missus etiam si non sit Cardinalis, sed et si de familia vel etiam sit extraneus, dum tamen mandatum ab eo recipiat viva voce ut si tetigerit fimbriam vestimenti eius quo ad hoc salvus sit et privilegiatus."

⁹⁹ Dominic Prümmer, *Manuale Iuris Canonici* (London and Saint Louis: Herder & Co., Typographi Editores Pontificii, 1922) 148: "Legati a latere dignitate et praerogativis eminent super omnes alios praelatos, episcopos, archiepiscopos, Cardinales in illis provinciis, ad quas mittuntur."

inhibitor of their own power over the church. It was not unheard of that the local hierarchy sometimes refused to receive such legates.¹⁰⁰

However, as extensive these powers might have been, there were also limitations imposed on the legates *a latere*:

The *legatus a latere* therefore does not enjoy *ex officio* such powers as that of translating bishops from one see to another, uniting or dividing dioceses, ordering a general council, granting exemptions, “*quae omnia in signum privilegii sunt tantum Summo Pontifici reservata*” [all of which are only a sign of privilege reserved to the Supreme Pontiff].¹⁰¹

Interestingly, Ethelred Taunton in his commentary on canon law mentioned that in addition to the legates *a latere* there were other legates that did not enjoy such a

¹⁰⁰ J. Wagner, ed., *Dictionnaire de Droit Canonique* (Paris: Hippolyte Walzer, 1901) 501: “Ainsi les légats a latere représentaient, dans le cercle de leur mission, le Pape même, et sauf de rares restrictions, exerçaient la plupart des droits réservés au Souverain Pontife. Ils absolvait des censures réservées, accordaient des indulgences, exerçaient la juridiction sur les exempts, dispensaient des empêchements de mariage, distribuaient des bénéfices, surtout les bénéfices qui étaient dévolus au Pape, confirmaient les archevêques et les évêques, etc. Tous ces pouvoirs n'étaient pas toujours énumérés dans ses instructions des légats; on se contentait de la formule générale *cum facultatibus solitis et consuetis*. Cependant, on se vit bientôt obligé par rapport aux légats a latere envoyés ultra montes, d'en venir à un autre procédé. L'exercice de ces grands pouvoirs fit naître de nombreux conflits avec les évêques. A mesure que le désaccord devint plus vif entre le pouvoir temporel et le pouvoir spirituel, les princes virent avec plus de défaveur les légats a latere, parce qu'ils se sentaient arrêtés par eux dans l'exercice de leurs prétendus droits sur les églises, et il arriva que, quelques légats s'étant d'ailleurs rendus coupables d'usurpation, les princes et les évêques unirent leurs intérêts, sous prétexte de l'intérêt national, et le pouvoir temporel refusa de recevoir les légats.”

¹⁰¹ Paro, 94.

privileged title, nonetheless they were furnished with the powers as described above. Regretfully, the author does not elaborate under which title they functioned in such a capacity.¹⁰²

Though many served in such a distinguished role throughout the centuries, we need to mention only a couple of them by name due to their particular role in the history of the Church. First, a Dominican from Italy, Cardinal Cajetan De Vio (1469-1534) served as a papal legate to Germany at the court of Emperor Maximilian and later to the Kingdom of Denmark. Both of these missions he fulfilled splendidly. Some historians, however, blame him for not averting the 'Protestant rebellion' when he was sent by Pope Leo X to receive an oath of obedience from Luther.¹⁰³ The second example of an important legate *a latere* is Cardinal Giovanni Battista Caprara (1733-1810), an Italian who served as a vice-legate to Ravenna, then as nuncio to Cologne, Lucerne and Vienna. His claim to fame was a successful negotiation of the 1801 Concordat between the Holy See and the French Republic headed by the First Consul Napoleon Bonaparte.¹⁰⁴

¹⁰² Ethelred Taunton, *The Law of the Church. A Cyclopaedia of Canon Law for English-Speaking Countries* (London and St Louis: Kegan Paul, Trench, Trübner & Co. Ltd., 1906) 396.

¹⁰³ Prümmer, 148.

¹⁰⁴ *Dictionnaire*, 6:374.

The next three types of legates mentioned in canon 267 are nuncio, internuncio and apostolic delegate. They also belong to the general group called *legati missi*.¹⁰⁵

Canon 267 §1 reads as follows:

Legates who are sent with the title of Nuncio or Internuncio:

- 1° Foster, according to the norms received from the Holy See, relations between the Apostolic See and the civil Governments within which the legation functions in a stable manner;
- 2° In the territories assigned to them, they must be vigilant about the state of the Church and inform the Roman Pontiff about it;
- 3° Beyond these two ordinary powers, they obtain other faculties that, however, are all delegated.¹⁰⁶

Nuncios and Internuncios were those legates who were permanently established as diplomats in various countries on behalf of the Roman pontiff. They had a double role as they represented the Holy See to the state (civil) governments and to the local

¹⁰⁵ P. Matthaeus Conte a Coronata, *Institutiones Iuris Canonici* (Milan: Marietti Editori Ltd., 1950) 418: "Legati missi – qui sunt Praelati a R. Pontifice missi cum aliqua sive ordinaria sive delegata iurisdictione in determinatam regionem vel provinciam."

¹⁰⁶ 1917 CIC c. 267 §1: "Legati qui mittuntur cum titulo Nuntii aut Internuntii:

1° Fovent, secundum normas a Sancta Sede receptas, relationes inter Sedem Apostolicam et civilia Gubernia apud quae legatione stabili funguntur; 2° In territorio sibi assignato advigilare debent in Ecclesiarum statum et Romanum Pontificem de eodem certiore reddere; 3° Praeter has duas ordinarias potestates, alias plerumque facultates obtinent quae tamen sunt omnes delegatae."

churches. Historically, nuncios replaced the thirteenth century *legati missi* (understood here as those sent only for a specific task and not as a permanent assignment) after the Council of Trent.¹⁰⁷ When the papacy returned to Rome after the Western Schism (1417), the favorite form of legation seemed to be *legati a latere* who out of necessity were assigned whole countries as their jurisdiction. Their main task was to renegotiate treaties and agreements allowing the local church to function and communicate well with the Holy See. Unfortunately, with the passing of time these legates tended to abuse their power and actually harm the unity of the church.¹⁰⁸ Hence, the popes decided to send someone with lesser powers who was not already busy with his own diocese and who could reside in his new jurisdiction. Such a change was gradual and required a multi-stage process. For example, Abbé P. Richard mentioned that in 1475 Sixtus IV appointed Nicolo di San Damiano bishop of Modena as nuncio to France with the title: *nuntius et orator, cum potestate legati a latere*.¹⁰⁹ The first resident nuncio, in our current understanding,¹¹⁰ was Archbishop Angelo Leonini who was appointed by Pope

¹⁰⁷ *The Catholic Encyclopedia. An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, ed. C. Herbermann (New York: The Universal Knowledge Foundation, Inc., 1913) 9:119.

¹⁰⁸ Paro, 111-112.

¹⁰⁹ Joseph Combet, *Louis XI et le Saint-Siège, 1461-1483* (Paris: Hachette, 1903) 108.

¹¹⁰ Please refer to opposing opinions about which state hosted the first nunciature as discussed on page 27.

Alexander VI on May 25, 1500 to the Republic of Venice.¹¹¹ Soon after other nunciatures were open in Naples, Savoy, and Florence.

The tasks of the nuncio were well defined and the style of the office reminded one of civil ambassadors. The nuncios had to be appointed by a special mandate of the pope and carry a document to prove that.¹¹² They had two functions: to serve as ambassadors to the local court or government and to support the local churches.

The nunciature during the reign of Leo X which perhaps most closely approximates the modern conception is the French Nunciature of Lodovico di Canossa, Bishop of Tricarico, during the years 1514-1517. Leaving Rome on May 20, 1514, he had first of all the task of making peace between Louis XII of France and Henry VIII of England. For some time he acted in conjunction with the Florentine ambassador, Franco Pandolfini, but soon the Pope instructed him to assume the title of nuncio apostolic in order to confer, to attend to and to deal with everything (*per conferire, intendere e trattare tutto*), that might be of advantage to the Holy See and the kingdom of France, and on him were conferred the powers of a *legatus a latere*. Thus we find united in the person of Lodovico di Canossa diplomatic and ecclesiastical functions: there is the office of representing the Pope with the sovereign, with temporal and spiritual faculties for all affairs,

¹¹¹ Paro, 117.

¹¹² Abbé P. Richard, "Origines de la nonciature de France. Nonces résidants avant Léon X, 1456-1511," *Revue des Questions Historiques* 78 (1905) 125: "Il fut maintenu dans ce poste moins, ce semble, par un acte officiel, décret ou mandat du souverain pontife, que par la suite des circonstances. Ce qui le prouverait, c'est que, sans le rappeler formellement, Sixte IV voulut lui adjoindre un agent à demeure, dont le caractère fût précisé par l'acte même qui l'établissait. Et le rapprochât des ambassadeurs politiques accrédités déjà dans la plupart des cours. Le pape réalisait ainsi un nouveau progrès, et faisait un pas de plus vers l'organisation des nonciatures."

together with authority over the hierarchy and faithful within the limits of a determined territory.¹¹³

With the pontificate of Gregory XIII (1572-1585) we notice yet another interesting development. The nunciatures were divided into two categories: 'the greater' and 'the lesser.' It was presumed that the bishop or archbishop who served at the nunciature classified as 'the greater' would eventually become a cardinal. Hence, many courts of Europe requested that such a diplomatic post would be established in their territories as a sign of privilege and distinction.

Papal diplomacy continued to flourish and develop. It particularly excelled during the time of the Peace of Westphalia (1648) with the treaties after the Thirty Years' War in the Holy Roman Empire and Eighty Years' War between Spain and Dutch Republic. Papal nuncios proved particularly effective negotiators between various European countries at that time. Nevertheless, soon after papal sovereignty was challenged by the afore-mentioned Febronianism, Gallicanism, rejection of the nunciature in Munich, and French Revolution.

At the conclusion of the Napoleonic Wars, the Congress of Vienna on March 19, 1815, promulgated international diplomatic agreements and procedures. Robert J.

¹¹³ Paro, 119.

Araujo and John A. Lucal highlight the three important points about the papal ambassadors as envisioned by the congress in their notes on the subject:

The first point is found in Article 1, which declared that there are three classes of diplomatic agents, and the first and highest level include “ambassadors, legates or nuncios.” Nuncios are those representatives of the Holy See who are permanent representatives of the pope vested with both political and ecclesiastical authority and accredited to the court or government of a sovereign State. The second point is taken from Article 2, which equates the status of nuncios with ambassadors. The third point comes from Article 4, which states that the precedence or rank given to diplomats based on the date of assuming official duties (usually involving the presentation of credentials) would not in any way prejudice the precedence accorded to papal representatives.¹¹⁴

Though this arrangement could not truly be called worldwide, it certainly was a first major international agreement recognizing the presence of the Catholic Church in the diplomatic arena and granting her a privileged place.

The next category of papal legates is the internuncio. Internuncios differed from nuncios in that they represented the Holy Father to the states that were of lesser importance or were non-Catholic.¹¹⁵ This distinction follows the centuries old tradition

¹¹⁴ Robert J. Araujo and John A. Lucal, *Papal Diplomacy and the Quest for Peace* (Naples, FL: Sapientia Press of Ave Maria University, 2004) 14.

¹¹⁵ *Dictionnaire*, 6:375. Also, Sipos, 180.

of establishing ‘the greater’ and ‘the lesser’ nunciatures. Hence, the main office holder in those diplomatic posts was called nuncio or internuncio, respectively.

Only in the seventeenth century did the term “internuntius” acquire the meaning of a second class diplomatic agent. It was the technical title of a representative of the House of Austria at the court of Constantinople, but this was a rather isolated case in civil diplomacy. It does not appear to have been much in use even by the Holy See. The apostolic representatives of lower rank were more frequently known by the generic names of diplomatic agents and commissaries. Ordinarily the secondary positions were given to ecclesiastics who were not bishops but protonotaries apostolic and auditors of the Tribunals of the Curia.¹¹⁶

Ethelred Taunton offers yet another interesting distinction between nuncios and internuncios claiming that the latter differed by the fact of residing somewhere else (not at the territory of their jurisdiction) or only acted provisionally.¹¹⁷

The *Dictionnaire de droit canonique*, following the 1951 *Annuario pontificio*, listed twenty-eight nunciatures, seven internunciatures and eight posts without representation (mostly due to the Communist occupation).¹¹⁸

Canon 267 §2 presented the final category of the *legati missi*, namely the apostolic delegate: “But those who are sent with the title Apostolic Delegate have only that

¹¹⁶ Paro, 128-129.

¹¹⁷ Taunton, 397.

¹¹⁸ *Dictionnaire*, 6:375.

ordinary power described in § 1, n. 2, besides those other faculties committed to them by the Holy See.”¹¹⁹ The major difference between an apostolic delegate and a nuncio or an internuncio was that the former did not serve as civil diplomats to the state governments; rather, their only mission was to the local churches. Thus, as mentioned in canon 267 §1, 2°, they exercised vigilance over the churches entrusted to them and reported about them to the Holy See. According to the decision of the Secretary of State on May 8, 1916, the apostolic delegates were under the direct supervision of the Sacred Congregation of the Consistory, the Congregation for the Oriental Churches, and the Sacred Congregation of Propaganda.¹²⁰

Apostolic delegates are, in the majority of cases, assigned to countries in which no regular hierarchy exists. Some are dependent on the Sacred Consistorial Congregation, others on the Sacred Congregation de Propaganda Fide, and others on the Sacred Congregation for the Oriental Church.¹²¹

¹¹⁹ 1917 *CIC* c. 267 §2: “Qui vero mittuntur cum titulo Delegati Apostolici unam habent ordinariam potestatem de qua in §1, n. 2, praeter alias facultates delegatas ipsis a Sancta Sede commissas.”

¹²⁰ Claeys Bouuaert, 6:375.

¹²¹ Fernando Della Rocca, *Manual of Canon Law* (Milwaukee: The Bruce Publishing Company, 1959) 197.

Taunton in his treatment of the subject of apostolic delegates listed many powers and faculties entrusted to them.¹²² However, he added the interesting detail that the apostolic delegate received his support usually from the Holy See directly (not a benefice). Moreover his official staff consisted of an auditor and a secretary who were appointed directly by the Holy See.¹²³

It is worth mentioning that the Roman pontiff had been represented in the Church in the United States by an apostolic delegate since the establishment of the mission in 1893 by Pope Leo XIII¹²⁴ until 1984. That year the government of the United States signed an agreement with the Holy See, and the exchange of diplomatic representatives was initiated. Since then, the papal legate in the United States serves in both the civil and ecclesial arenas, and his post became a nunciature.

The last type of papal legate listed in the 1917 Code of Canon Law, namely a titular legate or *legatus natus*,¹²⁵ was treated in canon 270: "Bishops who, by reason of their see, are decorated with the title of Apostolic Legate derive thereby no special

¹²² The topic of faculties granted to papal legates is discussed in greater detail in chapter four, page 257.

¹²³ Taunton, 35.

¹²⁴ *The Catholic Encyclopedia*, 9:120.

¹²⁵ Le Bras and Gaudemet, 370.

rights.”¹²⁶ The *legati nati* were the honorary titles attached to a particular See or place in recognition of a special merit or historical role in the Church. These titles did not have any jurisdiction attached to them; nor were they entitled to any privileges except the title itself, as the above-mentioned canon stated.

Legati nati are residential bishops in primatial sees to the incumbents of which in the past belonged extensive delegated powers in certain dioceses and provinces, enjoying at the present time, as a rule, no more than a title and a prerogative of honor.¹²⁷

An example of such a titular legate was the Archbishop of Avignon, a custom that was initiated after the papacy returned to Rome at the end of fourteenth century.

1.3.3. The Office of the Papal Legate: Ordinary and Delegated Powers, Jurisdiction

The 1917 Code of Canon Law endowed the office of the papal legate with certain powers that the code classified as either ordinary or delegated. Canon 267 on nuncios, internuncios and apostolic delegates described them as follows:

¹²⁶ 1917 *CIC* c. 270: “Episcopis qui, ratione sedis, titulo Legati Apostolici decorantur, nullum exinde competit speciale ius.” Peters, 115.

¹²⁷ Abbo-Hannan, 1:322.

Canon 267: §1: Legates who are sent with the title of Nuncio or Internuncio:

- 1° Foster, according to the norms received from the Holy See, relations between the Apostolic See and the civil Governments within which the legation functions in a stable manner;
- 2° In the territories assigned to them, they must be vigilant about the state of the Church and inform the Roman Pontiff about it;
- 3° Beyond these two ordinary powers, they obtain other faculties that, however, are all delegated.

§2: But those who are sent with the title Apostolic Delegate have only that ordinary power described in § 1, n. 2, besides those other faculties committed to them by the Holy See.¹²⁸

1.3.3.1. Ordinary Power

The listing of powers in this canon built on the concepts presented earlier in the code pertaining to ordinary and delegated powers. Canon 197 stated:

§1. Ordinary power of jurisdiction is that which is attached to an office by law; delegated [power is that which] is committed to a person.

¹²⁸ 1917 *CIC* c. 267 “§1: Legati qui mittuntur cum titulo Nuntii aut Internuntii: 1° Fovent, secundum normas a Sancta Sede receptas, relationes inter Sedem Apostolicam et civilia Gubernia apud quae legatione stabili funguntur; 2° In territorio sibi assignato advigilare debent in Ecclesiarum statum et Romanum Pontificem de eodem certiore reddere; 3° Praeter has duas ordinarias potestates, alias plerumque facultates obtinent quae tamen sunt omnes delegatae. §2: Qui vero mittuntur cum titulo Delegati Apostolici unam habent ordinariam potestatem de qua in §1, n. 2, praeter alijs facultates delegatas ipsis a Sancta Sede commissas.” Peters, 114.

§2. Ordinary power can be either proper or vicarious.¹²⁹

Vermeersch - Creusen provided a further important distinction pertaining to these powers.¹³⁰ They specified that in order to classify a power as ordinary two elements were required namely, an ecclesiastical office and the designation of power attached to this office by the law itself.¹³¹ This distinction however, did not specify what the code understood by the term “an ecclesiastical office.” Such a definition could be found in canon 145:

§1. Ecclesiastical office in the wide sense is any responsibility exercised legitimately for a spiritual end; in the strict sense, however, it is a divinely or ecclesiastically ordered responsibility, constituted in a stable manner, conferred according to the norms of the sacred canons, entailing at least some participation in ecclesiastical power, whether of orders or of jurisdiction.

¹²⁹ 1917 *CIC* c. 197: “§1. Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio; delegata, quae commissa est personae. §2. Potestas ordinaria potest esse sive propria sive vicaria.”

¹³⁰ Arthur Vermeersch and Joseph Creusen, *Epitome Iuris Canonici cum commentariis* (Paris: Desclée-De Brouwer and Brussels: L'Édition Universelle, 1937) 1:257-262.

¹³¹ *Ibid.*, 1: 259: “Ordinaria potestas his notis distinguitur: 1° annectitur seu stabiliter unitur officio stricte dicto seu muneri sacro de se in perpetuum erecto, v.g. officio Cardinalis, episcopi, Vicarii generalis, parochi, Superioris regularis, etc.; 2° haec connexio iure divino aut ecclesiastico, sive communi sive particulari, scripto aut consuetudinario existit [...].”

§2. In law, ecclesiastical office is taken in the strict sense, unless it appears otherwise from the context of the words.¹³²

If we apply the concepts expressed in this canon to the office of the papal legate, i.e., nuncio, internuncio or an apostolic delegate, it is not difficult to see that it was an ecclesiastically ordered responsibility that had been set forth in a stable manner for a spiritual end.¹³³ Hence, we can be certain that it was an ecclesiastical office. Further, according to canon 267 §1, 1° and 2°, as well as §2, there were certain powers attached to the office as specified by the code itself. Therefore, the two conditions for ordinary power mentioned by Vermeersch - Creusen were fulfilled, so the elements of canon 267

¹³² 1917 *CIC* c. 145: “§1. Officium ecclesiasticum lato sensu est quodlibet munus quod in spiritualem finem legitime exercetur; stricto autem sensu est munus ordinatione sive divina sive ecclesiastica stabiliter constitutum, ad normam sacrorum canonum conferendum, aliquam saltem secumferens participationem ecclesiasticae potestatis sive ordinis sive iurisdictionis. §2. In iure officium ecclesiasticum accipitur stricto sensu, nisi aliud ex contextu sermonis appareat.”

¹³³ Pius VI, *Responsio ad Metropolitanos Moguntinum, Trevirenses, Coloniensem, et Salisburgensem super Nunciaturis apostolicis* (Florence: Publisher unknown, 1790) 330: “[...] ita concedatis oportet, inesse eidem facultatem mittendi, et retinendi Nuncios stabili praeditos iurisdictione ad bonum fervendum, ad pascendum, et ad gubernandum, quae altera pars est iurium, atque officiorum Apostolici principatus; pars, inquam, quae nullis nec temporis, nec loci limitibus est circumscripta, quaeque si non magis, non minus certe, quam prima interest christianae reipublicae, ita ut, quicumque jus hoc Pontifici adimendum curet, is naturam, vimque Primatus, a Christo instituti, radicatus convellat, atque eduat;” 332: “[...] ac fovet indubia Pontificis iura retinendi Nuncios stabili iurisdictione pollentes.”

pertaining to the ordinary powers of the papal legates were in perfect harmony with the general notions of office in the 1917 code.

The above-mentioned canon 197 §2 stated further that the ordinary power could be either proper or vicarious. Vermeersch - Creusen explained these concepts.¹³⁴

Ordinary proper power was that which a person exercises in his own name (as the one who possessed the office). Ordinary vicarious power was that which a person exercised in the name of another. Though we will discuss later the issue of delegated power, our immediate question is this: what is the difference between ordinary vicarious power and delegated power? Geno Paro provides the answer:

There are, however, two classes of power of ordinary jurisdiction: one is exercised in one's own name, the other in the name of another. We can speak of ordinary power exercised in the name of another person without denoting delegated power. The reason is that the power of ordinary vicarial jurisdiction is joined to an office, while the power of delegated jurisdiction is entrusted to a person.¹³⁵

The role of a nuncio, internuncio, or an apostolic delegate was to represent the pope to local churches or civil jurisdictions (or both). The power they exercised in their

¹³⁴ *Epitome*, 1:216: "Potestas propria est quae a Superiore principaliter obtinetur et proprio nomine exercetur; vicaria quae exercetur quidem vi proprii officii, sed vice et nomine alterius."

¹³⁵ Paro, 166.

jurisdiction was ordinary, because it was attached to their office; but it was also vicarious, as they did not act in their own names but in the name of the Supreme pontiff.

As we have noted previously, canon 267 listed some of the ordinary powers pertaining to papal legates. For nuncios and internuncios, one of these powers was an obligation to foster good and proper relationships with the civil governments or jurisdictions. These legates assumed here a role similar to civil ambassadors in order to promote the interests of the local and universal Church among various national governments (c. 267 §1, 1°). Ordinary vicarious power was particularly evident when the papal legates negotiated agreements or concordats with the civil jurisdictions in the name of the Holy See.

Canon 267 §1, 2° applied to nuncios, internuncios and apostolic delegates. It charged them with an obligation of exercising vigilance over the Church within their jurisdiction and reporting about its state to the Roman pontiff. Ordinary vicarious power was particularly evident in this role when the papal legate had to correct or advise local ordinaries on any issues pertaining to the discipline of the Church on behalf of the Roman pontiff or the Roman Curia.

Though these ordinary powers mentioned above were the only ones listed in the 1917 code's chapter on papal legates, they were not the only ones present in the code.

Other canons also granted ordinary powers to the legates.

Canons 281¹³⁶ and 282¹³⁷ stated that a plenary council was to be convoked by a papal legate, who also had the duty to preside over it.

Canon 289¹³⁸ required the permission of the papal legate if those required to attend a plenary council desired to leave it for a just cause.

¹³⁶ 1917 *CIC* c. 281: "Ordinarii plurium provinciarum ecclesiasticarum in Concilium plenum convenire possunt, petita tamen venia a Romano Pontifice, qui suum Legatum designat ad Concilium convocandum eique praesidendum."

¹³⁷ 1917 *CIC* c. 282: "§1. Concilio plenario assistere debent cum suffragio deliberativo, praeter Legatum Apostolicum, Metropolitanam, Episcopi residentiales, qui, sui loco, mittere possunt Coadiutorem vel Auxiliarem Apostolici dioecesium Administratores, Abbates vel Praelati nullius, Vicarii Apostolici, Praefecti Apostolici, Vicarii Capitulares. §2. Etiam Episcopi titulares, in territorio degentes, si a Legato Pontificio, secundum receptas instructiones, ad Concilium vocentur, adesse debent habentque suffragium deliberativum, nisi in convocatione aliud expresse caveatur. §3. Alii ex utroque clero viri, forte ad Concilium invitati, suffragia non gaudent nisi consultivo."

¹³⁸ 1917 *CIC* c. 289: "Concilio plenario vel provinciali inchoato, nemini eorum qui interesse debent, licet discedere, nisi iustam ob causam a Legato Pontificio vel a Concilii provincialis Patribus probatam."

Canon 1397 §1¹³⁹ required all the faithful to exercise vigilance over books that might cause harm to the Church and to send such books to their local ordinaries, papal legates or the rectors of Catholic universities. It was the local ordinary's or the legate's right to indeed classify a book as harmful to the faithful and ban it from the readership.

Canon 1612 §2¹⁴⁰ gave the papal legate the power to settle controversies between tribunals if they did not have a superior tribunal over them, or if the superior tribunal was involved in the conflict as well.

1.3.3.2. Delegated Power

The second type of power mentioned in canon 197 §1 was delegated power. As the canon stated, this power was attached to the person instead of the office (ordinary power). Such power had to be given to a person by the superior for use in a specific

¹³⁹ 1917 *CIC* c. 1397: “§1. Omnium fidelium est, maxime clericorum et in dignitate ecclesiastica constitutorum eorumque qui doctrina praececellant, libros quos perniciosos iudicaverint, ad locorum Ordinarios aut ad Apostolicam Sedem deferre; id autem peculiari titulo pertinet ad Legatos Sanctae Sedis, locorum Ordinarios, atque Rectores Universitatum catholicarum.”

¹⁴⁰ 1917 *CIC* c. 1612: “§2. Quod si iudices, inter quos existit competentiae conflictus, subsint distinctis tribunalibus superioribus, controversiae definitio reservatur tribunali superiori illius iudicis, coram quo actio primo promota est; si non habeant tribunal superius, conflictus dirimatur vel a Legato Sanctae Sedis, si adsit, vel ab Apostolica Signatura.”

situation or in the general circumstances as described in the rescript granting such powers. Vermeersch - Creusen¹⁴¹ stated further that delegated power can be given to a person by a grant of the law or concession of the superior, or it can be given to the person because he holds a certain office or a dignity or *de industriam personae eis* (because of the particular 'talents' or 'resourcefulness' of a person). This second option for exercising power, however, should not be mistakenly viewed as being attached to the office, as was the case with ordinary vicarious power. The delegated power here was given to the person, because he holds an office, but it was not attached to the office by law.

Geno Paro offered a further distinction of delegated powers: general delegation or delegation *de industria personae*. This particular distinction played an important role in a consideration of the idea of subdelegation of delegated power.

They [delegated powers] can be either general, i.e., contained and embodied in general *Formulae* for all the Papal representatives depending on special circumstances of person, time and place. The variations are explained by *aequitas canonica*, and may be more or less frequent or extensive according to distance

¹⁴¹ *Epitome*, 1:259-260: "Delegata potestas est 'quae commissa est personae' (c. 197, §1). Potestas delegata potest committi cuidam personae: 1° sive iure sive concessione particulari Principis seu Ordinarii; [...] 2° sive ratione officii seu dignitatis sive ob industriam personae, (cum a Principe seu Ordinario conceditur)."

from Rome, development of the Church in a certain country or diversity of rite. Finally, faculties are sometimes delegated *de industria personae*. This may be done either in view of the mission he is performing, or in view of his particular merits, or as a personal favour. The delegated powers can therefore be granted *ratione officii* or *de industria personae*. This twofold aspect must be carefully considered especially in relation to subdelegation. Powers delegated by the Holy See can be subdelegated unless 1) this is expressly forbidden by the person delegating, or 2) they are granted *de industria personae*. To determine when subdelegation can be employed, or when account should be taken of the two exceptions is a question of practical interpretation which can generally be decided without difficulty from the tenor of the rescripts.¹⁴²

In the case of papal legates the delegating authority was the Roman pontiff directly or dicastery of the Roman Curia designated by the Roman pontiff for that purpose. The situation when the Roman pontiff delegated certain powers to his legate was clearly seen in the case of *legati a latere*. They were sent for a particular task or mission and necessary powers were delegated to them in order to accomplish the goal. Hence, these legates *a latere* had only delegated powers attached to them (*de industria personae*) unless they were also nuncios, internuncios or apostolic delegates in other jurisdictions.

On the other hand, various dicasteries of the Roman Curia endowed the papal legates with several faculties in order to expedite or influence their mission. These faculties, or delegated powers were to assist the legates in their mission on behalf of the

¹⁴² Paro, 166-167.

Roman pontiff. Collections of such delegated powers were issued by individual dicasteries or a few and were gathered together in a form of an index or list. And although such lists of faculties granted by dicasteries existed before the 1917 Code of Canon Law,¹⁴³ the first post-codal index of faculties that was published in 1919 with an appendix added in 1922¹⁴⁴ abrogated all previous documents in this regard. The *Index facultatum* was issued in the name of Pope Benedict XV and consisted of a collection of various delegated powers issued by the dicasteries for nuncios, internuncios and apostolic delegates working in their respective territories. This collection, as well as many other subsequent collections, was considered a private document; hence it was never published in the *Acta Apostolicae Sedis*. The most common source for this document in Latin is the above noted *Epitome Iuris Canonici*,¹⁴⁵ or in English the *Canon Law Digest*.¹⁴⁶ The document consisted of six chapters, which grouped the faculties in categories, and the 1922 appendix with the list of additional delegated powers.

¹⁴³ Ethelred Taunton, *The Law of the Church. A Cyclopaedia of Canon Law for English-Speaking Countries* (London and St Louis: Kegan Paul, Trench, Trübner & Co. Ltd., 1906) 33.

¹⁴⁴ Sacred Congregation of the Consistory, "Nuovo elenco delle facoltà dei Nunzi, Internunzi e dei Delegati Apostolici," *Il Monitore Ecclesiastico* 32 (1920) 137-146. English translation: *Faculties of Apostolic Delegates* [private], May 6, 1919, *CLD* 1:175.

¹⁴⁵ *Epitome*, 1:634-640.

¹⁴⁶ *CLD*, 1:175.

After a brief introduction, the first chapter described the general delegated powers of the legates. Among them were the faculties to visit diocesan entities, religious houses, monasteries and schools; to draw up civil documents on behalf of the Holy See; to confer benefices; to absolve most censures in the internal and external forum which were reserved to the Holy See; to dispense from irregularities to ordination; to diminish Mass obligations in certain circumstances; to punish those who wrongfully used their benefices; to absolve the unlawful and long term owners of ecclesiastical properties which were taken away from the Church by civil governments; to dispense from fast and abstinence; to grant permission to clergy and religious to anticipate the divine office; to dispense from the requirement of canonical degrees if needed; to grant permission to read forbidden books; to commute or dispense simple vows or oaths; to deal with property issues which surfaced in the internal forum (e.g., confessed stealing but without being caught); to mandate a person to be a delegated reporter of the crime of solicitation, and finally, to extend faculties, indulgences, and dispensations granted by the Holy See.

Chapter Two related to indulgences and allowed the legates to grant plenary or partial indulgences (a defined number of days off from Purgatory) in specific circumstances. Chapter Three related to issues of marriage. It listed faculties to grant dispensations from impedient and diriment impediments and to grant *sanatio in radice*.

Chapter Four was devoted to the issues pertaining to the other sacraments as well as sacred rites. Among these were the faculties to grant permission for a simple priest to confirm in specific circumstances and cases; to allow an infirm priest to celebrate Mass in private outside an oratory or church; to allow a priest to use a wig during the Mass; to use a portable altar for the Mass while traveling; to grant ill persons permission to receive Holy Communion once a week without proper Eucharistic fasting; to bless churches and bells if the ordinary had been informed and made no objection.

Chapter Five listed faculties pertaining to religious, their life in and out of the monastery and correction of abuses. Chapter Six listed special faculties or privileges that applied directly to the papal legates. We will mention them in detail later on.

Finally, the 1922 appendix added only a few points. The nuncio, internuncio or apostolic delegate, in the case of a *sede vacante* situation of a diocese in his jurisdiction, had the powers of the diocesan bishop. The legates could also expedite the process of alienation of ecclesiastical property if conditions warranted it. They could also permit illegitimate children to enter seminaries. Lastly, they could grant religious the powers to provide parish pastoral services to the faithful in their missionary territory.

After the 1919 and 1922 indices of faculties, other faculties and lists were published as well. For example, in 1928 the Sacred Oriental Congregation issued a decree pertaining to the transfer of the faithful between the rites and the role of papal

legates in the process.¹⁴⁷ In 1929 the Sacred Consistorial Congregation granted to the Apostolic Delegate to the United States a faculty to reduce the number of Masses *pro populo* in poor areas.¹⁴⁸

In 1947 the Apostolic Delegate to the United States Amleto Giovanni Cicognani¹⁴⁹ (1933-1959) informed the bishops in his territory about the extension of certain indulgences granted to them by the Holy See. In the same letter he informed the local hierarchy about additional faculties that were entrusted to him by the Sacred Congregation for Religious. Through them the legate was able to approve loans, purchases, and alienations of properties belonging to religious communities if the sum of the transaction was not greater than ‘a half a million gold dollars.’ He was also given the faculty to dispense from the Eucharistic fast those religious who for health reasons needed medicine or nourishment before the Mass. Finally, the apostolic delegate was given the ability to prolong or shorten postulancy in specific cases.

¹⁴⁷ Sacred Oriental Congregation, decree *Apostolic Permission to Transfer to Another Rite, to Be Secured Through Papal Legates*, December 6, 1928, CLD 1:85

¹⁴⁸ Sacred Consistorial Congregation, *Rescript Allowing Bishops in United States to Reduce the Number of Masses Pro Populo in Poor Parishes* [private], November 13, 1929, CLD 1:256.

¹⁴⁹ Amleto Giovanni Cicognani, *Extensions of Indult on Eucharistic Fast: New Faculties of Apostolic Delegate* [private], April 2, 1947, CLD 1:368-369.

From these examples we can see that the faculties granted to the papal legates were sometimes of universal application, that is to say, they applied to all legates of the Catholic Church. In other instances they were specifically tailored to the needs of the local church or missionary territory. In all of these cases they were delegated powers attached to the person holding the office of papal legate.

1.3.3.3. Jurisdiction

After discussing the ordinary and delegated powers of papal legates, we should briefly comment on the issue of jurisdiction. In canon 265,¹⁵⁰ which stated the right of the pope to send his representatives, the code made clear that the legate could be sent with or without jurisdiction. Such a distinction was necessary as some representatives of the pope were sent on short and specific missions without an intention to stay permanently in these territories (i.e., *legatus a latere*). Hence, territorial jurisdiction was not required for their task. On the other hand, permanent representatives to the local churches and civil governments had specific territory assigned to them as their

¹⁵⁰ 1917 *CIC* c. 265: “Romano Pontifici ius est, a civili potestate independens, in quamlibet mundi partem Legatos cum vel sine ecclesiastica iurisdictione mittendi.” Peters, 113.

jurisdiction. It was in this latter case, that a carefully crafted canon had been included in the code.

Canon 269 § 1. Legates shall leave to local Ordinaries the free exercise of their jurisdiction.¹⁵¹

From the different sources referred to in the *Fontes*¹⁵² pertaining to paragraph one of this canon it is obvious that the issue of the autonomy of the local ordinaries was not a fresh idea in the 1917 Code of Canon Law. Among these sources there was a reference to the documents of the Council of Trent session XXIV, which illustrates the point well:

In like manner, legates, also those *de latere*, nuncios, ecclesiastical governors and others, shall not only not presume by virtue of any authority whatsoever to hinder bishops in the aforesaid causes, or in any manner take away the exercise of or disturb their jurisdiction, but they shall not even proceed against clerics or other ecclesiastical persons until the bishop has first been approached and has proved himself negligent in the matter; otherwise their proceedings and

¹⁵¹ 1917 *CIC* c. 269: “§1. Legati Ordinariis locorum liberum suae iurisdictionis exercitium relinquunt.”

¹⁵² Pietro Gasparri, *Codicis iuris canonici fontes* / cura Emi Petri Card. Gasparri editi (Rome: Typis Polyglottis Vaticanis, 1923-1939); also 1917 *CIC* c. 269 §1, footnote 4.

decisions avail nothing and they shall be bound to make satisfaction to the parties for the damage sustained.¹⁵³

It is precisely because of various conflicts between the jurisdiction of the local ordinary and that of papal legate that this canon has been included in the 1917 Code of Canon Law. Somewhat similar 'dual' jurisdiction had been a subject of Pope Pius XII's allocution to the officials of the Roman Rota in 1945.¹⁵⁴ The pope's allocution was devoted to the dual jurisdictions of the civil and ecclesiastical societies: though independent and self sufficient (*societate perfectae*) their competency did overlap and interacted on many occasions. In many ways the jurisdiction of papal legates coexisted with the jurisdiction of local ordinaries both as independent entities and entities that interacted with each other frequently. Envoys' independence could be seen in the obligation of the papal legate to report about the state of the local church (c. 267 §1, 2°).

¹⁵³ Council of Trent, Session 24, November 11, 1563, *Decretum de reformatione*, cap. 20: *Conciliarum Oecumenicorum Decreta*, ed. & translation H.J. Schroeder (St. Louis and London: B. Herder Book Co., 1941) [hereafter COD] 212 and 480: "Legati quoque etiam de Latere, Nuntii, Gubernatores Ecclesiastici, aut alii quarumcumque facultatum vigore, non solum Episcopos in praedictis causis impedire, aut aliquomodo eorum jurisdictionem iis praeripere, aut turbare non praesumant; sed nec etiam contra Clericos, aliasve personas Ecclesiasticas, nisi Episcopo prius requisito, eoque negligente, procedant: alias eorum processus, ordinationesve nullius momenti sint atque ad damni satisfactionem partibus illati teneantur."

¹⁵⁴ Pius XII, allocution *Ad Praelatos Auditores ceterosque Officiales et Administros Tribunalis S. Romanae Rotae necnon eiusdem Tribunalis Advocatos et Procuratores*, October 2, 1945. AAS 37/12 (1945) 256-262.

On the other hand, canon 269 §1 gave the local ordinaries freedom to exercise their jurisdiction in their own territories. The issue arose when the two jurisdictions had to interact. Geno Paro stated:

Permanent papal legates certainly exercise some jurisdiction in the territory assigned to them. Their jurisdiction is a participation in the *potestas regiminis* of the Pope. Here again there is a subordination of power: the ordinary is not impeded in the exercise of his jurisdiction, and the rights of the legate are clearly set forth in his special faculties in regard to the exercise of jurisdiction. It is natural to expect that the papal legate should be granted some jurisdiction in matters reserved to the Pope; but this is altogether in order and does not injure the rights of the episcopate. Episcopal authority, therefore, suffers neither directly nor indirectly from the presence of papal legates.¹⁵⁵

This very correct interpretation of the overlapping jurisdictions was, in our opinion, the idea behind canon 269 §1. Unfortunately, praxis in the time after promulgation of the 1917 code showed many unresolved issues. A tangible proof of that was the fact of multiple interventions during the Second Vatican Council pertaining to that canon exactly. We will deal with this topic, however, in chapter two.

¹⁵⁵ Paro, 161.

1.3.4. The Office of the Papal Legate: Rights and Privileges

Though canon 269 §1 dealt with the issue of overlapping jurisdiction of the papal legate and the local ordinary, the rest of this canon stated two privileges or rights assigned by the code to the envoys.

Canon 269 § 2. Even if by chance they lack episcopal character, they take precedence over all Ordinaries who are not signed with cardinalatial dignity.

§ 3. If they are possessed of episcopal character they can, without the permission of the Ordinary, in all their churches, except the cathedral, bless the people and conduct divine offices, even in pontifical manner using also the throne and staff.¹⁵⁶

Paragraph two gave precedence to papal legates over local ordinaries, unless the latter were members of the College of Cardinals.¹⁵⁷ Such a privilege applied even to a legate who was not ordained a bishop. Although such a classification and placement in the hierarchical structure fit well the general premise of the 1917 code, which precisely systematized the organization and offices in the Church, it did not help to ease the

¹⁵⁶ 1917 *CIC* c. 268: “§2. Licet forte caractere episcopali careant, praecedunt tamen omnibus Ordinariis qui non sint cardinalitia dignitate insigniti. §3. Si caractere episcopali sint aucti, possunt sine Ordinariorum licentia in omnibus eorum ecclesiis, excepta cathedrali, populo benedicere et officia divina etiam in pontificalibus, adhibito quumque throno et baldachino, peragere.” Peters, 114.

¹⁵⁷ See the corresponding canon on privileges of cardinals: c. 239 §1, 1°.

feeling of distrust (c. 269 §1). Apparently some bishops felt being micromanaged by papal legate, as the discussions of the Second Vatican Council will show (see chapter two).

The last paragraph of this canon gave privileges to the legates to celebrate liturgical events using pontificalia in the cathedrals and other churches of their jurisdiction. Even though the canon did not demand that the legate inform the local ordinary of liturgical celebrations performed by him, many followed the custom of informing the diocesan bishop prior to the event.

Like the canons on ordinary powers given to the papal legate, other rights and privileges were also listed outside the special chapter on papal legates of the 1917 Code.

Canon 420 §1, 6° exempted those who were delegated as pontifical legates or were in actual service to the person of the Holy Father from the obligation of choir, but were still entitled to the benefits (e.g., a canon from Saint John Lateran Basilica who serves directly the papal camera or fulfills a legate's mission).

Canon 1557 §1, 3° established that the legates of the Apostolic See could be judged only by the Roman pontiff. However, canon 120 §2 seemed to allow the possibility of others judging the legates in the matters pertaining to their duties, if they

obtained permission of the Holy See. However, the legates could always invoke their privilege of the forum.

Canon 2341, also referring to canon 120, established penalties for those who would bring before a civil court a cardinal, papal legate or a major official of the Church. Other penalties were to be imposed on those who physically harmed a cardinal or a papal legate (c. 2343 §2) or attacked them verbally in publications (c. 2344).

In addition to these canons the rights and privileges of nuncios, internuncios and apostolic delegates were also included in various lists of faculties published after the 1917 code. The previously mentioned 1919 *Index facultatum*¹⁵⁸ included chapter six, which was devoted solely to the rights and privileges of the legates. They were:

- The nuncios, internuncios and apostolic delegates, in celebrating the divine office and Holy Masses, were allowed to follow the Roman liturgical calendar, instead of the liturgical calendar of the place of their jurisdiction. They could grant the same privilege to all the priests working at the diplomatic mission or subjected to them.
- By special grant of the Roman pontiff legates were allowed to reserve the Blessed Sacrament in the chapels of their residences. The same grant classified such chapels as

¹⁵⁸ See footnote 144.

public ones. Regular precautions on guarding the Eucharist involving perpetual light and custody of the key applied here.

- The legates were also granted the faculty to administer the Sacrament of Confirmation to anyone within the territory of their jurisdiction. And since many legates had to travel by sea to their appointed territories, that grant also included all those on the ships traveling with the legates to or from their assignments.
- Like the above grant, the legates were able to hear confession of anyone from the territory of their jurisdiction or traveling with them on the ship.
- The last privilege listed in the *Index* was applicable to the legates personally. It was the right to apply to themselves any indulgences that they had powers to grant to others as entitled by their office.

In addition to the above-mentioned rights of papal legates, nuncios and internuncios serving as diplomats of the Holy See were granted special honors after the 1815 Congress of Vienna.¹⁵⁹ In the three classes of diplomatic agents, the legates, ambassadors and nuncios were considered as having the highest rank; hence, nuncios and ambassadors were viewed as equivalent figures. Moreover, among all accredited ambassadors in a particular country nuncios took precedence and were called deans of

¹⁵⁹ *Papal Diplomacy and the Quest for Peace*, 14.

the diplomatic corps. This last honorary distinction became optional in subsequent diplomatic agreements, especially in the countries where the Catholic Church did not hold an esteemed position.

Lastly, in the announcement of the Secretariat of State on July 6, 1940 Pope Pius XII decreed that all papal representatives (nuncios, internuncios and apostolic delegates), while fulfilling their mission (*durante munere*), were accorded Vatican citizenship.¹⁶⁰ Hence, from that day forward, all papal legates have received Vatican diplomatic passports. This change occurred during World War II and intended to make travels of the Vatican agents easier and safer.

As we can see from the above lists of various privileges and rights, the papal legates received them not only for their own spiritual good but most of all to assist them in fulfilling their duties.

1.3.5. The Office of the Papal Legate: Vacancy of the Holy See, Cessation of the Office

¹⁶⁰ Secretariat of the State: "Il Santo Padre Pio XII, felicemente regnante, in data 6 luglio 1940 si è benignamente degnato di disporre che venga conferita la cittadinanza vaticana, *durante munere*, al personale delle Rappresentanze pontificie (Nunziature, Intemunziature, Delegazioni Apostoliche)," AAS 32 (1940) 383.

After considering various types of papal representatives (cc. 266 and 267), the code in canon 268 reaffirmed the stability of the office of papal legates, even at the time of a *sede vacante* situation. On the other hand, it explained the ways in which the legates ended their service:

Canon 268 § 1. The duties of Legates with all faculties committed to them do not expire with the vacancy of the Apostolic See, unless stated otherwise in the pontifical letters [appointing them].

§ 2. They do cease, however, upon completion of the mandate, upon their revocation once communicated, or upon resignation and acceptance by the Roman Pontiff.¹⁶¹

The first paragraph of this canon established the continuity of the office even when there is a vacancy of the Apostolic See. Such notion should be seen in the context of what we noted previously, that the papal legates enjoyed two kinds of powers: ordinary vicarious power and delegated powers (faculties). According to canon 208 ordinary power did not cease unless the office to which it was attached ceased to

¹⁶¹ 1917 *CIC* c. 268: “§1. Legatorum munus cum omnibus facultatibus eisdem commissis non exspirat vacante Sede Apostolica, nisi aliud in litteris pontificiis fuerit statutum. §2. Cessat autem, expleto mandato, revocatione eisdem intimata, renuntiatione a Romano Pontifice acceptata.” Peters, 114.

exist.¹⁶² On the other hand canon 207 §1 stated rules pertaining to cessation of the delegated powers.¹⁶³ Such powers did not cease when the one who granted them left the office, except the two cases referred to in canon 61.¹⁶⁴ These exceptions were the following: when the one granting delegated powers made some special provision limiting them to a particular time-frame or a person, or when the rescript granting such powers had not been communicated yet and thus executed. Hence, unless particular faculties granted to the nuncios, internuncios and apostolic delegates had limiting clauses in the rescript granting them, they and the office itself did not cease with the vacancy of the Holy See.

¹⁶² 1917 *CIC* c. 208: “Ad normam can. 183, §2, potestas ordinaria non exstinguitur resolutio iure concedentis officium cui adnexa est; sed cessat, amisso officio; silet, legitima appellatione interposita, nisi forte appellatio sit tantum in devolutivo, firmo praescripto can. 2264, 2284.”

¹⁶³ 1917 *CIC* c. 207: “§1. Potestas delegata exstinguitur, expleto mandato; elapso tempore aut exhausto numero casuum pro quo concessa fuit; cessante causa finali delegationis; revocatione delegantis delegato directe intimata aut renuntiatione delegati deleganti directe intimata et ab eodem acceptata; non autem resolutio iure delegantis, nisi in duobus casibus de quibus in can. 61.”

¹⁶⁴ 1917 *CIC* c. 61: “Per Apostolicae Sedis aut dioecesis vacationem nullum eiusdem Sedis Apostolicae aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat, aut rescriptum contineat potestatem alicui factam concedendi gratiam peculiaribus personis in eodem expressis, et res adhuc integra sit.”

The latter part of canon 268 dealt with the three modes by which the papal legate could lose his office:

- When the mandate or task entrusted to him had been fulfilled. This usually would apply only to legates *a latere* or a special envoy of the Roman pontiff as they were only assigned to a particular mission. Inherently, there was no permanence to their office (if we can call their mission as an office).
- When the Holy See had recalled the legate and such a decision had been communicated to him. Though other scenarios were not excluded, the most common situation would be a reassignment of the legate from one mission to another. One example of such a decision in our times was the recalling of Archbishop Celestino Migliore, former Permanent Observer of the Holy See to the United Nations in New York, and assigning him as the nuncio to Poland in July 2010.
- Finally, the legate could request the change, could retire, or resign from the office. Only acceptance by the Roman pontiff however, made such a request a reality. Such occasions usually occurred due to ill health or advanced age.

Thus the rules presented in canon 268 assured the stability of the ecclesiastical office entrusted to papal legates.

1.4. Conclusion

It would be fair to say that the 1917 Code of Canon Law was an attempt to codify centuries of legislation and church practice pertaining, among other things, to papal diplomacy and the legates. The main goal of the code was not to adapt the office of the papal legate to the demands of the Church in the modern world, but to clarify and simplify the past legislation in regard to that office. In many ways the 1917 code succeeded in doing just that. Canon 265 is a perfect example of how many laws and documents issued on the topic throughout the centuries were condensed in a few words of this canon. It summarized the principal idea of papal sovereignty in a short legal formula. Unfortunately, by the same token, it deprived the audience of the rich historical background to this idea, which this chapter attempted to highlight and communicate. Though the main principles of the office of papal legates were clearly stated in canons, they were by no means exhaustive in describing the office. As we have seen, many other canons of the code contained additional powers, rights and privileges that applied to nuncios, internuncios, and apostolic delegates. In addition to these canons, special faculties granted to the legates by the popes or dicasteries of the Roman Curia provided detailed ways in which the envoys exercised their office. These special faculties could have been general and applied to all the papal legates, or they could

have been specific to the territory or the person occupying the office, as it was shown in some examples pertaining to the Apostolic Delegate to the United States. Above all, the general notion of the stability of the office of papal representatives to the local churches and civil governments had been well defined in the canons.

One could conclude from the relatively few canons in the 1917 Code devoted to papal legates that the legislator was not particularly interested in this important office in the Church. However the analysis of them and other supporting documents communicates a different notion. As the representatives of the Roman pontiff, their role was instrumental in many cases; hence it is not surprising that frequent updates and modifications of their faculties kept them well equipped for their missions.

CHAPTER 2

The Second Vatican Council - The Time of Discussion and Change

2.1. Introduction

After the short historical overview of the role and function of the papal legates and the ecclesial law pertaining to them in the 1917 Code of Canon Law, this chapter examines their office in light of the debates of the Second Vatican Council. The Ante-Preparatory Stage of the Council accomplished collection of suggestions and observations offered by the bishops from around the world, some Catholic universities and the dicasteries of the Roman Curia on the topic of papal representatives. The next, Preparatory Stage of the Council was devoted to processing these *vota* and proposing initial drafts of the conciliar documents. Finally, the section on the Council sessions in this chapter will explore the discussions, stages of preparation and promulgation of the

decree on bishops *Christus Dominus*¹ which signaled the intention to introduce the post-conciliar changes in canon law pertaining to papal legates.²

2.2. Monsignor Giovanni Battista Montini

Before considering the debates of the Second Vatican Council, one event deserves special attention. On April 25, 1951, then Monsignor Giovanni Battista Montini, the future Pope Paul VI, delivered a discourse to the members and guests of the Pontifical Ecclesiastical Academy (*Pontificia Academia Ecclesiastica*) on the occasion of the two

¹ Vatican II, decree *Christus Dominus*, October 28, 1965: AAS 58 (1966) 673-696; English translation in *Vatican Council II: The Conciliar and Post Conciliar Documents*, ed. Austin Flannery, 2nd ed. (Northport, NY: Costello Publishing, 1996) 283-315 [hereafter Flannery].

² Mario Olivieri points out that though indirectly, the apostolic constitution *Regimini Ecclesiae Universae* mentions papal legates subjecting them to the Secretariat of State and the Council for Public Affairs of the Church: Mario Olivieri *Natura e funzioni dei Legati Pontifici nella storia e nel contesto ecclesiologico del Vaticano II* (Vatican City: Libreria Editrice Vaticana, 1982) 158: “La Costituzione Apostolica *Regimini Ecclesiae Universae* (1. 8. 1967), sulla riforma della Curia Romana, entrata in vigore il 10 marzo 1968, riguarda solo indirettamente i Legati della Sede Apostolica, nel senso cioè che assegna il compito di curare i rapporti con loro, alla Segreteria Papale e al Consiglio per gli Affari Pubblici della Chiesa. «Le delegazioni apostoliche - scrive Laiolo - continuano però a dipendere direttamente anche da altre Congregazioni romane, cioè alcune dalla Congregazione dei Vescovi, altre dalla Congregazione per le Chiese Orientali, e la maggior parte da quella per l'Evangelizzazione dei Popoli».”

hundred and fiftieth anniversary of the institution.³ What attracts our attention is the fact that in his discourse, the archbishop decided to forego the usual historical overview of the institution as could be expected. Rather, the focus of his discourse was the current state of the papal diplomacy, the need for reform, and the future tasks and role of the Academy in accomplishing these changes. His opening lines pointed out to the audience that diplomacy in general, and the Church's diplomacy in particular, was in crisis. As for the general factors, it is easy to note that the year 1951 marked transition from the post wartime situation to the grounding of the Communist presence in Europe. It is as if one evil had been replaced by another and the nations continued to be divided and at odds with each other. Hence, the sentiments of the speaker were well grounded. He then proceeded to describe the current state of papal diplomacy. It seemed as if papal diplomacy was frozen in time, with sixteenth and seventeenth centuries' forms, rites and procedures still being preserved and having more value than the essence of the diplomatic mission itself. He also noted that though the civil and ecclesiastical

³ Giovanni Battista Montini, *Discorso commemorativo tenuto da S. E. Rev.ma Mons. Giovanni Battista Montini Sostituto della Segreteria di Stato in occasione del 250' anniversario di fondazione della Pontificia Accademia Ecclesiastica nell'Aula magna della Cancelleria Apostolica* (Vatican City: Pontificia Accademia Ecclesiastica, 1951; http://www.vatican.va/roman_curia/pontifical_academies/acdeccles/documents/montini_it.htm, accessed April 2, 2013).

diplomacies have similar modes of operation, they have distinct goals as well. Moreover, there was a widespread general feeling that ecclesiastical diplomacy was far from truth, inflexible and did not reflect the reality. It seemed to favor political relationships with other states and entities, including those that could be harmful to the Church. He concluded that instead of supporting her, diplomacy ended up being a hindrance. These rather harsh words were addressed to the faculty and students of the very school that produced the church's diplomats. However, they seemed to be well founded, as the later debates of the Second Vatican Council on this topic voiced similar concerns.

The solution that Montini proposed is very much in the spirit that will be reflected later in his motu proprio *Sollicitudo omnium Ecclesiarum*. To begin with, he proposed the abandonment of the old forms of formalism, external facades that do not produce results. The form cannot be more important than the matter of the issue. The second change required a diplomat to actively search for the broader, universal formulas and solutions that could be accepted by many. They would bring mutual benefit, common interest and universal value. Such an approach would result in a diplomat who would promote harmony in the world, and participation in international organizations that seek similar interests and the common brotherhood of all.

To accomplish these tasks, the papal diplomats needed to be well prepared not only in developing their natural gifts, such as knowledge of languages, but also in dealing with problems and responding to them. They should have a well-formed historical sense by which they could better analyze their current tasks, but above all, to be able to foresee future difficulties and skillfully manage to avoid them. The Church's diplomats cannot be selfish or searching for their career, but rather have in their hearts the interests of the Church and the people whom they serve. They need to be enveloped in the virtue of charity and attitude of service, in deep knowledge of the countries, cultures and peoples to where they are sent. Above all, their ministry must be such that each of them could say: "I am Christ, I am the Church."⁴

This powerful discourse was well accepted and became an unofficial road map for the reform that took place during and after the council.

⁴ Ibid., "E sia nostra meta e nostro vanto il poter dire: Io sono Cristo, io sono la Chiesa."

2.3. Calling on the Council

Only three months after his election, on January 25, 1959, Blessed Pope John XXIII announced his intention to convene an ecumenical council. This was a surprise, as only a few close collaborators knew the pope's intention. When the senior staff of the Roma Curia dicasteries received the invitation to attend the papal Mass on that day, some cardinals chose not to attend, unaware of the major announcement planned at it. Giuseppe Alberigo demonstrates this attitude on the part of some senior staff by relating the words of Father Cipriano Vagaggini quoting perhaps Cardinal Fietta: "What sort of important thing could he say on such occasion? He will give an exhortation to the monks, nothing more."⁵

The reaction to the news about the new ecumenical council was mostly positive and very encouraging:

...the echoes awakened by his action were also much more far-reaching, extending to very different circles, social groups, and cultural strata, far beyond the usual confines of Roman Catholicism. Geographically, too, his action crossed the bounds of the usual Atlantic world of Europe and North America; the

⁵ Giuseppe Alberigo, *A Brief History of Vatican II*, translation Matthew Sherry (New York: Orbis Books, 2006) 6.

response was a first sign of the intercontinental importance that both John's pontificate and the Council were to have.⁶

Soon after the emotions of the news settled down, questions of the council's name, logistics and timing were raised. The pope established the Ante-Preparatory Commission to collect the input from bishops around the world on the topics to be discussed during the council. The pope also made clear that even though the First Vatican Council was never officially closed due to historical factors in 1870, he had no intention of completing the unfinished agenda of that council. Rather, he intended to have a completely new ecclesiastical event which he named the Second Vatican Council. After the Ante-Preparatory Commission finished its work collecting the *vota* from around the world and organizing them into more accessible formats, John XXIII established ten Preparatory Commissions and one Central Preparatory Commission. Their task was to prepare documents for discussion and ratification at the council.⁷

Let us examine now how the issue of the papal legates surfaced at these two preparatory periods of the Council.

⁶ Giuseppe Alberigo, "The Announcement of the Council From the Security of the Fortress to the Lure of the Quest," in *History of Vatican II*, ed. Giuseppe Alberigo (Maryknoll and Leuven: Orbis and Peeters, 1995) [hereafter *History*] 1:18.

⁷ John W. O'Malley, *What Happened at Vatican II* (Cambridge and London: The Belknap Press of Harvard University Press, 2008) 21.

2.4. The Ante-Preparatory Phase of the Council.

The first phase of the preparation for the Council began in May of 1959 with the appointment of the Ante-Preparatory Commission, whose President was Cardinal Domenico Tardini.⁸ The original idea of this commission was to send a questionnaire to the bishops around the world, as well as some superiors general of the clerical institutes, to collect their input on interest in clearly specified areas for possible discussions at the council and rather very limited space for indicating one's own interests and agenda for the conciliar debates. This proposal however, was quickly changed by Cardinal Tardini with the approval of John XXIII.⁹ Instead, a letter was sent requesting free submission of ideas, topics and agenda items that the bishops and superiors would like to see being discussed at the council. The letter signed by the Cardinal was sent on June 18, 1959¹⁰ and was addressed to 2598 bishops around the world. About seventy seven percent of the bishops and superiors responded to this

⁸ For more on the topic please see Carlo Felice Casula, "Il Cardinale Domenico Tardini" in *Le deuxième concilie du Vatican (1959-1965): Actes du colloque* (Rome: École française de Rome, 1989) 208-227.

⁹ *Ibid.*, 19.

¹⁰ Vincenzo Carbone, "Il Cardinale Domenico Tardini e la preparazione del Concilio Vaticano II," *Rivista di Storia della Chiesa in Italia* 45 (1991) 53-54. English translation: Étienne Fouilloux, "The Antepreparatory Phase the Slow Emergence from Inertia (January, 1959 - October 1962)," in *History*, 1:93-94.

request submitting their *vota* that varied in length from six lines to twenty seven pages.¹¹ A similar request was also sent to the dicasteries of the Roman Curia as well as to the Catholic and ecclesiastical institutions of higher learning in Rome and around the world. The response was overwhelming. It took from September 1959 to January 1960 to process and classify the issues and topics mentioned in the responses. Initially, a fifteen hundred page index was compiled which was further divided into eighteen sections.¹² Following the completion of the index, between February and April of 1959, a further synthesis was drafted based on geographical areas. The synthesis was replaced with the fifty four questions or topics which were divided into eleven sections. These questions were sent to the Preparatory Commission and thus concluded the work of the Ante-Preparatory Commission.¹³

Since the solicitation of the topics for the council allowed free input, the issues submitted by the College of Bishops, dicasteries and universities indeed varied in gravity and spectrum. In many ways they reflected the problems and issues close to the local churches around the world and items of more universal character like the threat of communism or requests for a further definition of the Marian dogma. In this mix of

¹¹ O'Malley, 19.

¹² *A Brief History of Vatican II*, 12.

¹³ *Ibid.*, 13.

ideas, suggestions about the function and role of papal legates surfaced rather frequently, especially in connection to the topics of Roman Curia and local bishops. The *Acta et Documenta Concilio Oecumenico Vaticano II Apparando (Antepreparatoria)*¹⁴ [hereafter: *ADA*] lists twenty four agenda items in its index of the episcopal submissions of the topics pertaining to the papal legates that were proposed to be addressed by the Council. In studying these interventions as well as by augmenting this information with additional input from the *ADA* volumes 2.1 - 2.7 we decided to group these interventions into six distinctive categories that emerged from our research. Such approach will allow us to see not only individual concerns of the bishops but also will help us to see them from a higher perspective of the major areas of interest.

2.4.1. Group A: The Issue of Internationalization

One of the rather frequent topics that surfaced during this phase of the council was the issue of internationalization of the central offices and functions in the Catholic Church. Some bishops voiced their concerns that the Roman Curia and other offices did not reflect truly the complexity of cultures and nations that were encompassed by the Catholic Church. By the same token, they felt not being well represented before the

¹⁴ Vatican Council II, *Acta et Documenta Concilio Oecumenico Vaticano II Apparando*, Series 1 (*Antepreparatoria*), Vol. 2.9 (*Indices*) (Vatican City: Typis Polyglottis Vaticanis, 1960) 389-391. Hereafter referred to as *ADA*.

Pope, and maybe even not understood in the context of their own customs and traditions. Here are the pertaining interventions as recorded on the pages of *ADA*:

1. *To show more universality of the Church in the college of nuncios.* This agenda item was presented by several bishops: Benjamin Cardinal De Arriba y Castro, Archbishop of Tarragona, Spain,¹⁵ Ludovicus Morel, Titular Archbishop of Aenus,¹⁶ Arthur Tabera

¹⁵ *ADA*, Vol. 2.2, 345: “Denique quoad Repraesentationes quas dicunt diplomaticas S. Sedis apud diversas nationes, audivi questus in eodem sensu.”

¹⁶ *ADA*, Vol. 2.1, 136: “Cum Ecclesia magis ac magis in omnibus regionibus stabilitur, nonne congruum est officiale diversi generis, praesertim Nuntios, Delegatos, Legates ... etc. e diversis etiam regionibus eligere? Item quoad innumera officia, a maiore ad minus, in dicasteriis Curiae Romanae, ne sint quasi unice unius nationis civibus reservata.”

Araoz of Albacete, Spain,¹⁷ Maximus IV Saigh, the Melkite Patriarch of Antioch on behalf of the Melkite Bishops.¹⁸

2. *To eloquently show the Pontifical diplomatic corps as composed of members from many Catholic nations of the universal Roman Church.* This agenda item, rather similar to the first one, was proposed by: the Bishops of the Rio Negro Province, Argentina,¹⁹ as

¹⁷ ADA, Vol. 2.2, 121: “Magis efficax fortasse foret universalizatio, ut ita dicam, Ecclesiae in suis Organis reprae entativi et rectoribus, quod est temporibus nostris maxime accommodatum. Mundus enim, ut perspicue animadvertitur, ad magnas unitates universales sensim procedit, in quibus « ad tutamen vocantur ea omnia quae in mundo latino-occidentali praestantia antiquitus fuerunt ». Quod desideratur a) in s. Collegio Cardinalitio, in quo omnes totius mundi communitates christianae repraesentandae essent; b) in Congregationibus Romanis; c) in Missionibus Diplomaticis.”

¹⁸ ADA, Vol. 2.4, 460: “*La représentation pontificale dans le monde*, qu'elle soit de caractère diplomatique ou simplement religieux, devrait être soumise à une révision sérieuse, de manière à éviter que les représentants pontificaux ne se transforment de fait en « sur-évêques » gouvernant, au nom du Pape, les diocèses du monde entier, et que leur choix ne soit pas plus ou moins réservé à une nation chrétienne au détriment des autres. Nous souhaiterions aussi que des Orientaux puissent être appelée à rendre de tels services à l'Église.”

¹⁹ ADA, Vol. 2.7, 243: “Corpus Diplomaticum Pontificium, sicut et Romanae Congregationes, componantur elementis seu personis plurimarum nationum catholicarum, ut melius et eloquentius demonstretur Universalitas Ecclesiae Romanae, et melius apprehendantur et solvantur quaedam problemata.”

well as Bishop Antony Reis and his Bishop Coadjutor Aloysius V. Sartori of the Diocese Santa Maria, Brazil.²⁰

3. *To consider having Nuncios from the Eastern Churches.* The issue was indicated by the aforementioned Maximus IV Saigh, the Melkite Patriarch of Antioch on behalf of the Melkite Bishops.²¹
4. *To internationalize the Roman Curia and to send many papal legates to all the nations so they can represent the Holy Father.* The *votum* was submitted by Bishop of Nice, Paul Rémond.²² The same idea was also voiced by Archbishop Frederic Melendro, S.J. of Anqing, China.²³

²⁰ ADA, Vol. 2.7, 245: “Administratio rerum Ecclesiae Universalis, quae fit per Sacras Congregationes, congruentius sese habere potest cum peculiaribus adiunctis nostri aevi. Exoptatur sensus maioris Catholicitatis in Officiis Congregationum necnon in Apostolicis Nuntiaturis. Enixe opera danda est ut ecclesiastici viri bene probati et indubie capaces, ab omnibus, etiam dissitis regionibus vel gentibus oriundi, illa munera exercent ne praeventia oriatur ecclesiasticorum fere unius gentis.”

²¹ See footnote 18.

²² ADA, Vol. 2.1, 355: “Inter Cardinales Sanctae Ecclesiae, in Sacris Congregationibus Romanis, Summus Pontifex constituit homines omnium gentium, colorum, nationum ut una secum laborent. Mittit in omnes populos multos nuntios ut cum omnibus in amicitia vivat et Pater Christianorum omnium gentium ubique repraesentetur.”

²³ ADA, Vol. 2.4, 476: “De Legatis Romani Pontificis. An catholicitas Ecclesiae postulet ut plures ex diversis nationibus eligantur?”

These interventions originated from three continents: Europe (Spain and France), South America (Argentina and Brazil) and Asia (China and Melkite Bishops of the Middle East). Clearly, the office of nuncio was given strict scrutiny by the bishops in the light of internationalization of all central offices of the Roman Curia and their offices. In my opinion, the Melkite bishops contributed most to this conversation, as they did not only point out the need to understand various cultures and backgrounds in general, but also proposed that some nuncios be taken from Eastern rites churches. Furthermore, these submissions made clear three points:

- dissatisfaction that the central offices were mostly given to Italians,
- lack of sensitivity to the local cultures, traditions and languages,
- sense of being misunderstood and misrepresented before the pope.

The discussions of the council proved further how important this issue has become to the bishops around the world.

2.4.2. Group B: The Relationship to the Local Hierarchy

The second grouping of the topics submitted to the commission pertained to the relationship between the local hierarchy and the papal representatives. From these opinions emerge a clear request to regulate in a more precise way the duties and obligations of both offices: the papal legates and the local bishops. They stress

particularly the need to mark clearly the spectrum of competence as to avoid any overlapping of the authority in specific situations, hence also to avoid conflicts.

5. *To clarify the theology pertaining to the bishop and to specify in its light the relationship between the bishops and the papal legates.* This request was written by a Maronite Bishop Anthony Abed of Tripoli, Lebanon.²⁴

6. *To describe better the relationship between the legates of the Holy See and the local hierarchy.* Though the previous point requested theological clarification of the relationship, this request seems to deal with the issue of jurisdiction and was proposed by Bishop Bernard J. Alfrink of Utrecht²⁵ as well as Archbishop Andrew Rohracher of Salzburg.²⁶

7. *The legates of the Roman pontiff should not interfere with the affairs of the local dioceses.*

This request for clarification of jurisdiction took a specific form of no-interference with the local churches. The two proponents were: Archbishop Joseph Cheikho of

²⁴ ADA, Vol. 2.4, 401: “Elaboratio completa theologiae Episcopatus, iuriumque eiusdem officii, ita ut iuste et clare pateant relationes episcopi residentialis cuiusquam erga Summum Pontificem et Sanctam Sedem in genere, at praesertim erga Patriarcham et Nuntium aliosque Legatos aut Episcopos forte vel permanentem in territorio.”

²⁵ ADA, Vol. 2.2, 511: “Optandum denique est, ut relatio, quae intercedit inter S. Sedis Nuntios atque Hierarchiam localem, clarius circumscribatur.”

²⁶ ADA, Vol. 2.1, 63: “Definitio iurium episcoporum residentialium comparate tum cum Curia Romana eiusque S. Congregationibus tum cum Nuntiis Apostolicis.”

the Chaldean Archdiocese of Tehran, Iran²⁷ and Maximus IV Saigh, the Melkite Patriarch of Antioch on behalf of the Melkite Bishops.²⁸

8. *To regulate the relationship between the nuncios and the bishop as to prevent any vague areas and uncertainty.* This point, somewhat an expansion of the previous item in this list was presented by Bishop Joseph E. Santos Ascarza of Valdivia, Chile.²⁹
9. *To remove authority of legates in small matters and add it to the competence of the bishops.* The proposal was authored by Bishop Anthony Ravagli, Coadjutor of Modigliana, Italy.³⁰
No further explanation was given to which matters exactly this rule would apply.
10. *To issue norms governing the episcopal conferences in individual countries and their relationship to the Holy See and the papal legates.* Bishop Laurence Castán Lacoma, Auxiliary of

²⁷ ADA, Vol. 2.4, 353: "Faire éviter l'ingérence des Représentants du St. Siège dans l'administration propre des différents diocèses de leur territoire."

²⁸ See footnote 18.

²⁹ ADA, Vol. 2.7, 378: "De Episcopis. De origine Dominica stabienda, secundum schemata prius in Concilio Vaticano parata, de eorumque potestate in dioecesibus ipsis commissis, necnon de natura vinculi existentis inter ipsos et Nuntios Apostolicos, et de Conferentiis Episcoporum sive provincialibus, sive nationalibus, sive, tandem, internationalibus (CELAM)."

³⁰ ADA, Vol. 2.3, 836: "Exstinctio aut coniunctio legatorum Missarum parvae entitatis, data Episcopis apta auctoritate."

Tarragona, Spain proposed this in his letter.³¹ Similar to that was also the idea presented by Bishop Raphaël Gonzáles Moralejo, Auxiliary of Valencia.³²

11. *That the Apostolic Delegates in the regions subjected to the care of the Sacred Congregation of the Propagation of the Faith have the same roles as in the countries subjected to the care of the Sacred Congregation of the Consistory and do not interfere with the pastoral work of the bishops, unless necessary or mandated by the Holy Father.* This notion was introduced by the Titular Bishop of Lagania Xavier Geeraerts.³³

The above mentioned requests came from three continents: Europe (Austria, Netherlands, Italy and Spain), Asia (Lebanon, Iran and Melkite Bishops of the Middle

³¹ ADA, Vol. 2.2, 426: “Lex pariter feratur de organizatione Episcoporum in singulis nationibus, in qua statuatur quinam sit primas ut alios convocet et praesit, indicentur «Episcopales commissiones» pro diversis negotiis, munera et iura Episcopi Secretarii Episcopatus exponantur ac relationes horum coetuum cum Nuntio ac Sede Apostolica clare explicentur.”

³² ADA, Vol 2.2, 435: “In Ecclesia, quae Romano Pontifice, Episcopis, sacerdotibus et laicis coalescit, oportet admodum statuere, qui locus signandus sit et finis: Cardinalibus, relate ad totam Ecclesiam; Nuntiis ac Apostolicis Delegatis, relate ad cuiusque nationis Episcopos; Patriarchis et Archiepiscopis, relate ad sui Patriarchatus vel Archidioecesis Episcopos.”

³³ ADA, Vol. 2.1, 151: “Ut Delegatus Apostolicus in regionibus S. C. de Propaganda Fide subiectis non se immisceat (nisi in casibus vere extraordinariis et ex mandata Summi Pontificis) quaestionibus spectantibus ad curam pastoralem episcoporum: iis enim satis providetur per curiam episcopalem et per conferentiam episcoporum. Munus Delegati Apostolici in regionibus S. C. de Prop. Fide subiectis theoretice et practice idem sit ac munus Nuntii vel Delegati Apostolici in regionibus S. C. Consistoriali subiectis.”

East) and South America (Chile). It seems that the issue of overlapping authority addressed by the Council of Trent³⁴ has not been yet resolved to the satisfaction of the local bishops. The requests of the local bishops varied from defining the theology of these offices and hence their relationship, to the practical aspects of the daily operations, finally, to the relationship of the papal legates to the whole episcopal conference. From these submissions it was clear that there were too many “gray areas” of canon law which caused unnecessary conflicts of jurisdiction between papal legates and local bishops. Hence, the local hierarchy urged the council to regulate the relationship between these two offices.

2.4.3. Group C: The Issue of Effective Communication

It was rather intriguing that the office of papal legate was criticized for the lack of efficient and accurate communication between the Holy See and the local churches. The next group of the submissions for the conciliar debates conveys precisely such sentiment.

³⁴ See p. 29.

12. *The legates should cooperate and communicate with the local hierarchy and not surprise it by political, ecclesiastical and personnel actions and reports referred to the Holy See. The complaint letter was sent by Bishop Isidor A. Oviedo Y Reyes of León, Nicaragua.*³⁵
13. *To ensure accurate and adequate communications between the legates and the Holy See in regards to the local churches, as to avoid any misconceptions and harmful actions. The point was delivered by Maronite Archbishop of Aleppo, Syria Francis Ayoub.*³⁶

³⁵ ADA, Vol. 2.6, 622: “Sanctae Sedis legatos, ut patet, simul ac uniuscuiusque nationis Hierarchia, strenue ac diligentissime in cognitione proprietatum civilium auctoritatum versari debere et iustum atque probum iudicium confidenter Sanctae Sedi referre, ne improvise manifestationibus invadatur politicis, neque homines vitae aperte doctrinae iudicioque Ecclesiae oppositae, distinctionibus ornentur ecclesiasticis.”

³⁶ ADA, Vol. 2.4, 449: “Un dialogue plus confiant et plus fréquent entre le Saint-Siège et la Hiérarchie locale; le Saint-Siège se croit suffisamment documenté parce que lui communiquent ses représentants officiels, et se dispense de demander les renseignements à la hiérarchie, mieux placée pour déchiffrer une situation, et donner un avis réaliste. Aussi, voit-on une disposition prise par un représentant officiel du Saint-Siège diamétralement contrefaite par son successeur immédiat. Aussi certaines mesures regrettables sont-elles prises par le Saint-Siège, au vu de la hiérarchie locale qui en souffre parce qu'elle voit qu'elles sont désavantageuses et pour la cause chrétienne et pour le Saint-Siège lui même.”

14. *The nuncios and apostolic delegates in African nations should coordinate flow of information and unified action protocols for the local ordinaries in difficult situations.* This suggestion was offered by the Apostolic Prefect to Fort Rosebery, Zambia, Bishop René Pailloux.³⁷
15. *To use the nuncios and apostolic delegates as a fast and secure venue by which the information is well distributed to the episcopal conferences or other regions of the world at the discretion of the Holy See.* This observation was proposed by the Nuncio to Austria, Archbishop John Dellepiane.³⁸

Due to slow communications from some of the nuncios and apostolic delegates of the time, a few African bishops felt that they were being neglected or uninformed about the latest developments in the Church in a timely manner. Others complained that the

³⁷ ADA, Vol. 2.5, 419: “Cum, hodiernis temporibus, multa dicantur de politicali independentia Afrorum populorum, et haec quaestio praesertim in hac particulari regione vulgo nuncupata «Centralis Africae Foederatione» haud parum cum difficili quaestione multi-racialis societatis connexa est, valde utile foret Ordinariis locorum si clarae normae ab Apostolici Delegatis et Provincialibus Hierarchiae Conferentiis proprio tempore datae fuerint. Imprimis si accuratae informationes de similibus quaestionum solutionibus in aliis Africae partibus Ordinariis locorum, ad eorum iudicium efformandum, dari possent. Superfluum non est hic statuere Apostolicam Delegationem de Mombasa nimis remotam apparere. Ex hoc casu, Ordinarii locorum aliquando nesciunt quid in difficillimis rebus facere debeant.”

³⁸ ADA, Vol. 2.1, 91: “Un mezzo pratico, rapido e sicuro per procurarsi questa certezza, potrebbe essere quello dei Rappresentanti Pontifici, Nunzi e Delegati Apostolici, che si trovano in loco e in contatto immediato coll'Episcopato delle varie regioni del mondo. Dalle informazioni che potranno fornire i Rappresentanti Pontifici, la Santa Sede potrà giudicare se un documento convenga a tutta la Chiesa o se invece non sia opportuno destinarlo ad una sola nazione o ad un continente.”

internal communications originating from the legates were inaccurate or imprecise due to lack of sensitivity to the local customs and hence caused unnecessary miscommunications and misconceptions. The African countries requested that the papal legate should also coordinate common efforts of the local hierarchy, a task that was effectively entrusted to the episcopal conferences. The submissions came from four continents: Europe (Austria), Africa (Zambia), Asia (Syria) and Central America (Nicaragua).

2.4.4. Group D: The Faculties Granted to the Legates

This group of submissions for the council represents more specific requests to augment the faculties of the papal legates already issued by the Apostolic See or various Congregations. These proposed faculties were meant to expedite and streamline some tasks of the legates that the local bishops considered particularly inefficient at the moment. Some of them however, represented a major change in the function of the nuncio or apostolic delegate.

16. *To create laws and faculties for the nuncios which do not focus on the civil responsibilities, but on being true mediators between the Holy See and the bishops. This important idea was proposed by the Bishops of the Rio Negro Province, Argentina.*³⁹
17. *Under the authority of the Apostolic Nuncio there should be constituted a visitor to dioceses, whose role it would be to monitor its activity and manage communications with the Holy See. The concept was proposed by Bishop Joseph Alves de Sa' Trindade of Montes Claros, Brazil.*⁴⁰
18. *To have the nuncios present at the episcopal conferences with a special vote and powers so as to preserve unity of the bishops of the nation. The promoters of this idea were: Bishop Joseph C. Rosenhammer, Apostolic Vicar for Chiquitos, Bolivia*⁴¹ *and Bishop Walmor Batù Wichrowski, an Auxiliary of the Diocese of Santos, Brazil.*⁴²

³⁹ ADA, Vol. 2.7, 243: "Declarare iura et facultates Nuntiorum Apostolicorum apud Episcopos singularum nationum, quia, reapse, non sunt meri legati Pontificis apud gubernium civile, sed veri mediatores inter S. Sedem et Episcopos."

⁴⁰ ADA, Vol. 2.7, 215: "Sub auctoritate Exc.mi Nuntii Apostolici apud quamque Nationem constituatur unus Visitor, qui munus habeat continuo videndi statum et activitates Cleri atque ipsius populi cum difficultatibus et possibilitatibus uniuscuiusque Dioecesis, itaque instructus Ordinario loci consilia secreta praebeat ut omnes in omnibus magis ac magis Petri Cathedrae consentiant."

⁴¹ ADA, Vol. 2.7, 123: "Ut in conferentiis episcopalibus Nuntius Apostolicus cum voce et voto et facultatibus specialibus constituatur ut unio operum nationalium magis foveatur."

⁴² ADA, Vol. 2.7, 331: "Ut Nuntii Apostolici, quod multi desiderant Episcopi maiore gaudeant auctoritate in nationibus, ac maioribus sint facultatibus praediti ut extemplo solvi possint quaestione solvendae."

19. *By law, the papal legates should be endowed with the same faculties as the local ordinaries.* This statement was sponsored by the Nuncio to the Dominican Republic Archbishop Linus Zanini.⁴³
20. *The nuncios should have a faculty to name an apostolic administrator in the dioceses with sede vacante, especially in urgent situations.* Archbishop Zanini, was also the initiator of this thought.⁴⁴
21. *To give ample powers to the apostolic delegates so they could establish and operate the Third Instance marriage courts in regions.* This very practical and specific proposal was submitted by Bishop Bernard Regno, Administrator Apostolic of the Diocese of Kandy, Sri Lanka.⁴⁵

This section of submissions is rather interesting due to the variety of proposed faculties given to papal legates. The first one was very important, in our opinion, as it brings to focus the true nature of the papal legates as the mediators between the Holy See and the

⁴³ ADA, Vol. 2.6, 668-9: "Ex iure Legati Romani Pontificis (Nuntii et Delegati Apostolici) praediti sint omnibus facultatibus quibus gaudent Locorum Ordinarii. Iidem vero supra dictis facultatibus utantur caute et urgente necessitate, sinentes potius earundem usum Ordinariis Locorum. Conveniens videtur facultatem ipsis concedere nominandi, in causis urgentioribus, Administratorem Apostolicum « sede vacante », obligatione facta informandi Sanctam Sedem."

⁴⁴ Ibid.

⁴⁵ ADA, Vol. 2.4, 55: "... It might help to have Regional Courts of Third (and further) Instance for the different area in the Church; and by delegating more ample powers to Delegates Apostolic, or even to the Metropolitan."

local churches, rather than civil diplomats. This issue will be later considered in the debates of the Second Vatican Council and reflected in the post-conciliar legislation.⁴⁶ On the other hand, some of the proposals of this group opposed proposals from the group considered previously: it urged that the nuncios would have all the faculties of the local bishops (deepening the problem of overlapping jurisdiction) and that they would have a decisive vote in the debates of the episcopal conferences (also overriding the authority of the local bishops). The proposals of this group came from three areas of the world: South America (Argentina, Brazil, Bolivia), Dominican Republic and Sri Lanka.

2.4.5. Group E: The Placement of the Diplomatic Posts

A good number of the African bishops conveyed a strong message requesting better distribution of papal legates on their continent. In addition, other *vota* brought an interesting point requesting a review of the locations of papal diplomatic posts considering a greater sensitivity to external conditions, both political and religious. Here are the submissions:

⁴⁶ See pp. 192, 236.

22. *The Apostolic Delegation in Mombasa is inconveniently far for reasonable accessibility.* This complaint was expressed by the Apostolic Prefect to Fort Rosebery, Zambia Bishop René Pailloux.⁴⁷
23. *It would seem very advantageous to have a nuncio or apostolic delegate in the countries of North Africa in order to address urgent cases for the people who live among Islamists.* This very practical request was suggested by Bishop George Mercier of Laghwat, Algeria.⁴⁸

⁴⁷ ADA, Vol. 2.5, 419: “Cum, hodiernis temporibus, multa dicantur de politici independientia Afrorum populorum, et haec quaestio praesertim in hac particulari regione vulgo nuncupata «Centralis Africae Foederatione» haud parum cum difficili quaestione multi-racialis societatis connexa est, valde utile foret Ordinariis locorum si clarae normae ab Apostolici Delegatis et Provincialibus Hierarchiae Conferentiis proprio tempore datae fuerint. Imprimis si accuratae informationes de similium quaestionum solutionibus in aliis Africae partibus Ordinariis locorum, ad eorum iudicium efformandum, dari possent. Superfluum non est hic statuere Apostolicam Delegationem de Mombasa nimis remotam apparere. Ex hoc casu, Ordinarii locorum aliquando nesciunt quid in difficillimis rebus facere debeant.”

⁴⁸ ADA, Vol. 2.5, 109: “Pour qu'une coordination de tous les efforts missionnaires devienne une réalité de Tunis à Rabat et d'Alger à Laghouat, en passant par Oran et Constantine, ne serait-il pas opportun, à défaut d'un Nonce Apostolique (ou d'un Délégué comme en Proche-Orient), qu'un des archevêques d'Afrique du Nord obtienne une part au moins de ces pouvoirs et puisse avoir mandat pour exposer à Rome, au nom de tous, les besoins d'un apostolat si difficile et si urgent? C'est la question qu'avait posée Sa Sainteté Jean XXIII, alors Nonce Apostolique à Paris, en 1950, en conclusion d'un voyage à travers l'Afrique du Nord. Il semble qu'une décision pourrait intervenir, qui ne mettrait pas l'accent sur l'aspect officiel de la nomination et ménagerait ainsi des susceptibilités qui peuvent se révéler très vives, tant de la part des milieux politiques que des milieux religieux musulmans.”

24. *There should be established a special Apostolic Delegation only for the nations of Eastern Africa.*

The notion quite similar to the previous point was offered by Bishop Frederic Hall of the Diocese Kisumu, Kenya.⁴⁹

25. *Agreeable relationships between the Holy See and some of the countries considered*

totalitarian, affect negatively the local church, when the people perceive the papal legates cooperating with such civil governments as something negative or even paralyzing to the church. Such strong words were delivered by Bishop Raymond Bogarin Argaña of Saint John the Baptist of the Missions, Paraguay.⁵⁰

It is rather clear that the African countries struggled with better access to papal nuncios and through them to the Holy See. It seems that the issues of general infrastructure available in these regions was a determining factor in creating a diplomatic post, rather than the true needs of the local churches. On the other hand, the intervention from Paraguay warned before sending a papal legate to countries with strong totalitarian

⁴⁹ ADA, Vol. 2.5, 252: "Humiliter petimus ut separata Delegatio Apostolica pro solis territoriis Africae orientalis instituat." "

⁵⁰ ADA, Vol. 2.7, 479: "Concordes relationes quas Sancta Sede conservare tenetur per eius Nuntiaturas erga Moderatores Nationum, prae ertim quum iidem sint totalitarii, dictatoriales vel tyrannici, vere torporem non raro inducunt, licet non ad doctrinam certe ad praxim rectioni quam Episcopi exercere debent in sua Dioecesi. Talia rerum adiuncta, quae infauste non raro eveniunt, apud fideles gravia scandala et detrimenta in his partibus attulerunt verae utilitati Ecclesiae." "

systems. Doing so not only gives an appearance of collaboration between the Church and such political systems, but could prove crippling for the local church which perceived such nuncios as collaborators to such political systems. These submissions came from two continents: Africa (Kenya, Zambia, Algeria) and South America (Paraguay).

2.4.6. Group F: The Other Issues

This final grouping of submissions collects other ideas submitted to the commission, which did not fit into any previous category. Hence, the spectrum of the issues here was rather wide. Let me present them in the order of submission:

26. *The nuncios should always possess the episcopal character.* Two submissions proposed the same notion: by Bishop Walmor Batù Wichrowski, an Auxiliary of the Diocese of Santos, Brazil⁵¹ and George de Jonghe D'Ardoye, Titular Bishop of Misthia.⁵²

⁵¹ ADA, Vol. 2.7, 331: "Ut Nuntii Apostolici, quod multi desiderant Episcopi maiore gaudeant auctoritate in nationibus, ac maioribus sint facultatibus praediti ut extemplo solvi possint quaestione solvendae."

⁵² ADA, Vol. 2.1, 153: "Ut Legati Summi Pontificis semper caractere episcopali ornentur: hoc mihi necessarium videtur ubique terrarum, sed praesertim in regionibus sub S. Congregatione pro Ecclesia Orientali constitutis. Ratio: Patriarchae Orientales aegre admittunt canonem 269 etiamsi Legati ornati sunt caractere episcopali."

27. *In choosing the Representatives, the Church should not only consider their diplomatic abilities, but above all their willingness to serve the Church over their own career.* This observation was submitted by Archbishop Joseph Cheikho of the Chaldean Archdiocese of Tehran, Iran.⁵³
28. *To simplify the residences of the nuncios and make them less ostentatious.* Submitted by Bishop Alfonse Höfer, Apostolic Vicar to the Diocese of Limón, Costa Rica.⁵⁴
29. *To rewrite the laws pertaining to papal legates.* This was a common notion proposed in the *vota* of the Italian bishops. The idea was not further specified, only signaled that a change was in order. Among the proponents were: Bishop Virginio Dondeo of Alife,⁵⁵ Raffaele Compelli Bishop of Cagliari and Sestu,⁵⁶ Francis Cogoni Bishop of Ozieri.⁵⁷

Though this group was somewhat eclectic in the content, these were very valuable ideas which indeed had been taken to consideration by the council. The Italian bishops stressed generally the need to rewrite the laws pertaining to the papal legates. They did not make

⁵³ ADA, Vol. 2.4, 353-354: “Dans le choix des Représentants, prendre en considération non seulement la capacité diplomatique de la personne; mais surtout et avant tout sa vertu et son désir de servir l’Église, avant de chercher à faire carrière propre.”

⁵⁴ ADA, Vol. 2.6, 534: “Nuntiorum residentiae simplicitate magis emineant quam amplitudine et repraesentationis specie.”

⁵⁵ ADA, Vol. 2.3, 37.

⁵⁶ ADA, Vol. 2.3, 131.

⁵⁷ ADA, Vol. 2.3, 489.

any specific suggestions as into what direction these changes of the laws should be taken. Furthermore, the idea that the nuncios and apostolic delegates should be endowed with episcopal character became reality. Also, the post-conciliar movement of simplification of episcopal residences and lifestyles had already a precursor in the petition to achieve the same result in reference to the residences of the nuncios. The idea behind this was to avoid appearance of opulence which was difficult to reconcile with the mission of the Church. Finally, the stress on the importance of the office in itself, which needed to be considered with highest of regards and priority. These petitions arrived from four areas of the world: Europe (Italy), Asia (Iran), Central America (Costa Rica), South America (Brazil).

2.4.7. Analysis of the Proposals

The overview of these proposed topics for the Second Vatican Council shows that the bishops around the world desired some changes to take place pertaining to the institution of the papal legates. Although the institution of representatives could hardly be called priority number one for the Council, it showed up rather frequently. Besides the local interests of various bishops (e.g., from Africa) the common themes were: theological and jurisdictional relationship between legates and the local churches; greater attention to ecclesiastical matters and lesser to diplomatic; greater internationalization of the diplomatic corps; better placements of the posts, more

effective communication; and the faculties that better correspond to the needs of the local bishops and churches.

2.4.8. Further Input

Cardinal Tardini, soliciting input for the Council, sent similar requests to the Congregations of the Roman Curia asking them to provide their input. Again, no form or structured letter was mailed out, rather a free input solicitation, so as not to limit or detract the ideas of the dicasterial personnel. Only three of these reports contained some thoughts pertaining to papal legates.

A rather interesting and bold report came from the Congregation for Extraordinary Ecclesiastical Affairs under the signature of Antonio Cardinal Samoré. The report showed an excellent knowledge of the international issues pertaining to the Church, the bishops and civil authorities. It devoted a good portion of attention to the place and role of national episcopal conferences, the fight against secularization of the society and the relationship between some major states and the Church. In regards to papal legates the report mentioned them in the context of necessary internationalization

of the Roman Curia.⁵⁸ They also appeared in discussion pertaining to more efficient communication between “headquarters” of the Church and the “provinces” by utilizing better the representatives of the Holy Father and the local episcopal conferences.⁵⁹

Father Acacius Coussa, the Assessor of the Congregation for the Oriental Churches answered the letter to Cardinal Tardini with a short and rather concise report. In it he suggested to describe better the relationship between the Supreme pontiff and episcopal conferences. The Assessor further suggested better clarification in regard to which capacity the episcopate, bishops, delegates and vicars represent the Holy Father.⁶⁰

The Sacred Congregation of the Consistory submitted its report signed by Marcello Cardinal Mimmi, Secretary. It contained two parts: the *vota* by the papal

⁵⁸ ADA, Vol. 3, 306: “Tra le considerazioni e richieste d'ordine generale, vengono, con abbastanza insistenza, sottolineate le seguenti: una maggiore «internazionalizzazione» della Curia; la richiesta di «internazionalizzazione» riguarda anche i Rappresentanti Pontifici.”

⁵⁹ ADA, Vol. 3, 307: “Per migliorare i contatti fra il Centro e la periferia della Chiesa, sembra che potrebbero essere utilmente studiati diversi sistemi, come, ad esempio, la scelta di consultori dalle diverse parti del mondo, una piu frequente richiesta di notizie alle Rappresentanze Pontificie, come pure la maniera di valorizzare, sempre sul piano consultivo le Conferenze Episcopali, ormai istituite in molte Nazioni.”

⁶⁰ ADA, Vol.3, 69: “Relazioni tra Somma Pontefice ed Episcopate: chiarirne la natura. Motivo: Giova molto, anzi sembra necessaria, perche non si creda che il Sommo Ponteficato assorbe praticamente l'Episcopato o fa dei Vescovi tanti delegati o vicari del Sommo Pontefice. In Oriente sarebbe « un capo » provvidenziale.”

legates from around the world and the ideas presented by the Congregation. In the first section the notion of papal legates showed up in conjunction with the idea of utilizing them better and more efficiently in collecting true data from their jurisdictions for use by the Central Statistics Office of the Holy See.⁶¹ The second part with the observations of the Congregation had many unique ideas, including the notion that the Holy Father should be elected by many bishops, not only the College of Cardinals. The bishop electors could be assembled as representatives of regions or jurisdictions and vote on behalf of the group.⁶² Another strong *votum* in this document was the urge to reform the current code of canon law to make it “less technical” and more apt to modern times.⁶³ In regard to papal legates the document presented two ideas. The first one was already signaled by the aforementioned bishops, namely that canon law should well define and regulate the relationship between the papal representatives and the local hierarchy.⁶⁴ The second was related to the first and suggested that the regulation of the

⁶¹ ADA, Vol. 3, 30: “Ufficio di Statistica Centrale, per raccogliere le statistiche ufficiali della Santa Sede, da prepararsi con metodo scientifico e particolare diligenza, con la collaborazione dei Rappresentanti Pontifici.”

⁶² Ibid., 37.

⁶³ Ibid., 36.

⁶⁴ Ibid., 37: “Fra diverse proposte riguardanti i Rappresentanti Pontifici e loro missione, alcuni Vescovi chiedono che anche nel C.I.C., siano chiarite e definite le relazioni tra i Rappresentanti Pontifici e la Gerarchia della Nazione presso la quale sono accreditati.”

relationship between legates and bishops should be resolved by simply updating the code and not spending much time on it at the council.⁶⁵

Finally, Cardinal Tardini requested that all Catholic universities and faculties in Rome as well as the major Catholic universities and faculties around the world supply their ideas for the council. Among them was the Catholic University of America in Washington, DC. The responses that were sent back varied in length and style, and reflected the specialty field(s) of each institution of higher learning. Three of these responses contained submissions pertaining to the institution of the papal legates.

The first response came from the Rector of the Pontifical University Urbaniana in Rome, Monsignor Salvatore Garofalo. In the short paragraph he suggested that the Fathers of the Council would clarify the role of nuncios and apostolic delegates in their diplomatic and ecclesiastical functions, their relationship to the local hierarchy, their spectrum of supervision in their jurisdictions and their administrative role as communication venues between the dioceses and the Holy See. Though the ideas were

⁶⁵ Ibid., 37: "Per quanto riguarda la S. Congregazione Concistoriale in questa delicata materia si fa rilevare che il Codice di Diritto Canonico, si mostra geloso custode dell'autorità dei Vescovi (d. can. 269, § 1), e quindi non si riterrebbe necessaria una ulteriore precisazione e tanto meno una trattazione nel Concilio."

not completely new as we have seen from the submissions of the bishops, the canonical issues pertaining to the papal legates were well highlighted and identified by him.⁶⁶

Another suggestion pertaining to the papal envoys came from the report of Father Antonio Piolanti, the Rector of the Lateran Pontifical University in Rome. In a few indirect statements he indicated a problem with the current state of the papal diplomatic service and the need for reform but not necessarily in the way it is done with the civil diplomatic posts.⁶⁷ Though this input was not as comprehensive as the previously mentioned university, it does signal the one-sided aspect of the papal legates' mission.

⁶⁶ *ADA*, Vol. 4.1.1, 474-475: "Cum problema coordinationis sit maximi momenti in qualibet hierarchia sive civili sive ecclesiastica, deberemus aliquantulum considerare hanc figuram, quam nescio an de facto et in praxi respondeat nunc canonibus codicis iuris. Relinquendo aspectum politicum Nuntii sive quatenus Legati Sanctae Sedis sint apud determinatum Statum et considerantes tantum, sive in Nuntiis sive in Delegatis Apostolicis, aspectum administrativum, quaerendum esset an sint tantum organum vigilantiae, et quidam vigilantia iam est una functio subordinationis hierarchicae, vel sunt verum organum coordinativum. Posset certo esse optimum organum coordinationis inter organa administrativa Curiae Romanae et ilia indolis nationalis quae nunc ubique surgunt, sed ista omnia deberent recte et perfecte determinari legibus, ne in confusionem et arbitrium incideretur, quod valde nocivum esset pacifico regimine Ecclesiae."

⁶⁷ *ADA*, Vol. 4.1.1, 225: "Legationes pontificiae, Nuntiaturae etc. deberent esse magis roboratae, etsi non sit necessarium sequi elephantiasim legationum civilium. Res est utique delicatissima ob relationes cum Guberniis civilibus et cum Hierarchia locali nationali, ob diffidentiam erga Repraesentantes Pontificios."

The final submission in this section came from the Catholic University of Paris. The faculty of Canon Law wrote a few chapters pertaining to various canonical matters. Chapter six was devoted to papal legates and it addressed only one issue. The problem noted was the fact that the papal envoy not only was not required to have cardinalatial dignity, but also he did not have to be a bishop. This situation could create some unexpected reactions with the Eastern rite Churches where the Patriarchs are considered cardinals and very close to the Holy Father himself. Hence, sending a legate who is not even a bishop could be offensive to the Patriarch and others in these churches. The university suggested that such a situation be remedied by sending to these churches only legates who are cardinals.⁶⁸ Though this report included only one suggestion, it is rather valuable as the topic was not raised before by any other consultative body at this stage of the council.

⁶⁸ ADA, Vol. 4.2, 517-518: "Le can. 215 § 1 de la même Constitution, en accordant aux envoyés du Saint-Siège, même depourvus de caractère épiscopal, préséance sur tous les hiérarques qui ne sont pas revêtus de la dignité cardinalice, peut inutilement choquer les orientaux pour qui le patriarche est le chef suprême, lequel à leurs yeux vient immédiatement après le pape. Il est préférable de réserver cette préséance vis-à-vis des patriarches orientaux aux légats qui sont cardinaux . On pourrait rédiger ainsi ce § 2: *Legati cardinalicia dignitate insigniti patriarchis praecedunt. Alii legati, licet caractere episcopali careant, hierarchis qui non sunt cardinalicia vel patriarchali, dignitate aucti, praecedunt.* La dignité cardinalice pourrait en effet être éventuellement accordée à un hiérarque oriental qui n'a pas le titre de patriarche, par exemple à un exarque; c'est pourquoi il apparait nécessaire de conserver la dernière incise."

2.5. The Preparatory Phase of the Council.

After collecting the submissions of the proposals for the conciliar discussions and creation of the aforementioned reports, the Ante-preparatory Commission completed its work. On November 13, 1960 in his address after a Mass in Byzantine Slavonic Rite,⁶⁹ John XXIII initiated the second stage of conciliar preparations and established ten Preparatory Commissions. These dealt with the following topics: doctrine, bishops, Oriental Churches, sacraments, clergy, religious, missions, lay apostolate, seminaries and liturgy.⁷⁰ In addition, there were also three secretariats: for Christian Unity, for media and communications and for technical and economic affairs of the council.⁷¹ Overall coordination of the preparatory efforts was entrusted to the Central Preparatory Commission headed by the pope himself with Cardinal Alfredo Ottaviani as chair and, then Archbishop, Pericle Felici as General Secretary. On December 19, 1960 Archbishop Felici transmitted to the Preparatory Commissions part of the questions that surfaced after the previous preparatory stage and requested that each commission discuss them

⁶⁹ Vatican Council II, *Acta et Documenta Concilio Oecumenico Vaticano II Apparando*, Series 2 (*Praeparatoria*), Vol. 1 (*Acta Summi Pontificis Ioannis XXIII*) (Vatican City: Typis Polyglottis Vaticanis, 1964) 32-41. Hereafter referred to as *ADP*.

⁷⁰ O'Malley, 168-9.

⁷¹ Joseph A. Komonchak, "The Struggle for the Council During the Preparation of Vatican II (1960-1962)," in *History*, 1:171.

and submit the results to the Central Preparatory Commission. The issue of papal legates was closely connected to discussions about the bishops and Roman Curia. Two commissions were involved with the topics directly: the Preparatory Theological Commission (Doctrine) and the Commission on Bishops and the Governance of Dioceses. The first one headed by Cardinal Ottaviani dealt only with theological/ doctrinal questions pertaining to the bishops; the other commissions were entrusted with the practical or pastoral issues mentioned by the Central Preparatory Commission. The Commission on Bishops, first headed by Marcello Cardinal Mimmi (died March 6, 1961) then by Paolo Cardinal Marella, prepared seven schemas which were later discussed at the Central Preparatory Commission. Schema number three dealt with the relationship between the bishops and the Roman Curia, the bishops' rights, faculties, privileges and other aspects that needed to be incorporated in the new code of canon law which was planned as a result of the Council.⁷²

After the discussion in the CPC [Central Preparatory Commission], these seven schemata were grouped into two texts, *De episcopis ac dioceseon regimine* and *De cura animarum*, to each of which were also joined material from the texts prepared by the commission on the discipline of the clergy.⁷³

⁷² Ibid.,1:181.

⁷³ Ibid., 1:184.

Let us now take a closer look at the debates of the Central Preparatory Commission in which the issue of the papal legates was discussed. On March 11, 1961 Archbishop Felici wrote to the members of the commission seven general questions pertaining to the council, of which the first one asked who should be invited to the council and have an active vote.⁷⁴ Because of the free input style of the question, the lists that were submitted by the membership of the commission varied extensively. A rather frequent answer to those submissions was that those mentioned in c. 267 of the 1917 Code of Canon Law (the nuncios, internuncios and the apostolic delegates) must be invited. Among the proponents of this notion were: Archbishop Peter Sigismondi, Secretary of the *Propaganda Fide* Congregation,⁷⁵ Latin Patriarch of Jerusalem Albert Gori,⁷⁶ Rev. Pietro Palladini, Secretary of the Congregation of the Council (made Archbishop in 1962)⁷⁷ and others. Further distinction was made that also those nuncios and apostolic delegates who do not possess episcopal character should be invited as well. This proposal was introduced by Archbishop Antony Samorè, Secretary of the

⁷⁴ *ADP*, Vol. 2.1., 21-22.

⁷⁵ *Ibid.*, 37: “Ita enim includuntur, paucis admodum exceptis, Officiales Maiores Curiae Romanae et Legati Romani Pontificis, de quibus in can. 267, qui omnes vi muneris specialem rerum ecclesiasticarum notitiam habent ...”

⁷⁶ *Ibid.*, 307.

⁷⁷ *Ibid.*, 55.

Congregation for the External Affairs of the Church.⁷⁸ Others in support of it were: Rev. Paul Philippe, O.P., Secretary of the Congregation for Religious,⁷⁹ Rev. Martino Giusti, Prefect of the Vatican Archives (appointed archbishop in 1984),⁸⁰ Clemens Cardinal Micara, Bishop of Veliterni, Albania,⁸¹ and others.

Julius Cardinal Döpfner, Archbishop of München and Freising, warned that the large number of papal legates would be an obstruction, not only because they represent various cultures and languages but also because of various technical aspects that would need to be overcome for the success of the Council.⁸²

All seven questions were discussed at the First Session of the General Secretariat in June 1961, however, no final decision had been made at that time on the “invitation list” for the Council.

The Fourth Session took place in February 1962 and discussed, among other issues, the schema on the relation between the bishops and the Congregations of the

⁷⁸ Ibid., 40: “I Rappresentanti Pontifici, dei quali è menzione nel can. 267, anche se non rivestiti di carattere vescovile.”

⁷⁹ Ibid., 57.

⁸⁰ Ibid., 96.

⁸¹ Ibid., 174.

⁸² Ibid., 295: “Si Legati Pontificii in Concilio plures essent (3-5-7) optimum foret non tantum quod in ipsis Occidens et Oriens sed etiam praecipue linguae repraesentarentur et insuper quod, prout possibile esset, etiam competentia technica pro diversis ipsius adspectibus.”

Roman Curia submitted by the Preparatory Commission on Bishops.⁸³ The issue of papal legates surfaced in discussion on quinquennial faculties granted to the bishops. The schema urged that the powers to grant faculties to the bishops be better distributed among various congregations and that in urgent cases nuncios and apostolic delegates should possess the power to grant them to the bishops temporarily.⁸⁴

However, Cardinal Marella, President of the Commission on Bishops, in light of the discussions pertaining to the episcopal conferences suggested that delegation of faculties to the bishops be granted to these conferences as to make the process easier.⁸⁵

Later, in discussions on particular faculties of the papal legates, Cardinal Gracias observed that in regard to the alienation of properties and assuming a debt by the

⁸³ *ADP*, Vol. 2.2, 541.

⁸⁴ *Ibid.*, 543: "Ut convenienter iura et facultates Episcoporum augeantur ac melius determinantur: 1) SS. Curiae Romanae Dicasteria, iuxta propriam competentiam, recognoscant indicem Facultatum Quinquennialium ita ut plures ex praedictis facultatibus stabiliter concedantur Episcopis, paucis gravioribus exceptis, quae Nuntiis vel Delegatis Apostolicis tribuendae sint vel ipsis Episcopis peculiarium nationum vel dioecesium ad tempus concedendae videantur."

⁸⁵ *Ibid.*, 563: "Pag. 7, II, 1, sermo est de facultatibus concessis Nuntiis et Delegatis Apostolicis. Cum secundum ea quae in Schemate dicta sunt de Conferentiis episcopalibus, illae iam statum iuridicum a S. Sede approbatum habiturae sint, fortasse quaeri potest nonne consultius esset illas Facultates sive plerasque sive omnes concedere Conferentiae Episcopali, quae de rebus immediate informata est?"

dioceses, it is better that the conference of bishops, not nuncios and apostolic delegates, set the criteria for these transactions with the approval of the Holy See.⁸⁶

The changes offered at the Fourth Session of the General Secretariat were slowly emerging from the current discipline of the 1917 Code of Canon Law. The idea of *quinquennial* faculties for the bishops (powers delegated to the bishops every five years by the Apostolic See) still existed but there was a clear movement to make them easily accessible to the bishops and more attuned to the needs of the local churches. The stress on being practical and efficient seemed to be strongly at play here.

The Fifth Session of the General Secretariat (March-April 1962) was a slight surprise, as the issue of papal legates was also discussed there, but it was introduced by the Preparatory Commission on Missions in the schema *De Regiminine Missionum*. The document devoted Article I, Section III: *De Visitoribus Apostolicis Permanentibus*, as the title suggests, to the papal envoys. The general notion of the text was not generally favorable to the institute of the papal visitor or legate. It claimed that often the persons sent to visit the missions do not have proper cultural, linguistic and customary

⁸⁶ Ibid., 569: "Puto propositionem in pag. 11, V, n. 3 contentam, quoad alienationem bonorum ecclesiasticorum et quoad debita contrahenda esse optimam; nempe ut Conventus Episcoporum uniuscuiusque nationis determmet fines, a Sancta Sede approbandas, intra quas unusquisque episcopus suas vires exercere valeat. Nam isti (Episcopi) melius istas res ponderare possunt potiusquam Delegati Apostolici vel Nuntii."

preparation, hence frequent misunderstandings between the local churches and the Congregation for the Propagation of the Faith. It suggested even that the Congregation cease sending permanent legates unless they are well chosen and prepared.⁸⁷ The point was further developed by the President of the Commission on Missions, Gregorio Pietro Cardinal Agagianian who stated that the new and developing churches need to gain some stability before a permanent visitor can be sent to them, otherwise the permanent presence of the Vatican observer can undermine the role and office of the local bishop. On the other hand, a visitor sent for a short time does not have a chance

⁸⁷ *ADP*, Vol. 2.3, 150-1: "Pro casibus specialibus, Sancta Sedes non desinit Visitatores mittere Apostolicos, ut verum alicuius dioecesis cognoscere possit statum simul et abusus forte ibi grassantes eradicare atque pro futuro opportunas suggerere vel praescribere normas. Ut fructuosa sit visitatio, neri debet a persona quae bene perspectum habet statum dioecesium: quod non facile obtinet praesertim in Missionibus cum propter diversitatem linguae, ingenii, morum et culturae populi visitandi, munus Visitoris Apostolici evaderet nimis gravosum. Insuper non desunt motiva ut raro tantum fiat visitatio: nam saepe populo et praesertim pastoribus animarum odiosa est et ipsi Visitori in grata... Rationibus allatis, pro singulis regionibus sub S. C. de Propaganda Fide constitutis, opportuna non videtur institutio Visitoris Apostolici permanentis, cum iam sint Legati qui vigilare debeant ad statum ecclesiarum, et de eadem certiore facere Romanum Pontificem.

Haec praxis sufficiens erit, dummodo Nuntii et Delegati Apostolici peculiari instructi sint disciplina pro munere apud nationem ad quam mittuntur. Quare Sancta Synodus decernit: Ne, pro regionibus a S. Congregatione de Propaganda Fide dependentibus, permanentes instituantur Visitatores Apostolici, sed maxima cum cura praeparentur Sanctae Sedis Legati."

to learn the customs and language of the local church and can easily misread it.⁸⁸ These rather brave words addressed by the commission and its president reflected the opinions of some non-European bishops which were submitted at the ante-preparatory stage.

At the same session, in discussion of the document on missions, Bishop Bernard took the opportunity to reinforce some points from the previous session asking that the tasks of the legates be well defined in regards to the administration of the local dioceses and political affairs, as to avoid any misunderstandings.⁸⁹ Though the timing of this intervention might have been better, nonetheless it shows the issue was essential in the eyes of some prelates.

⁸⁸ Ibid., 168: "Ratio propter quam Commissio de Missionibus hac de re loquitur, invenitur in serie I Actorum et Documentorum, vol. III, pag. 38, ubi S. Congregatio Consistorialis agit de instituendis visitatoribus permanentibus, et S. Congregatio videtur huic institutioni favere. Pro Missionibus vero institutio visitatorum Apostolicorum permanentium videtur non tam opportuna; nam brevi tempore quo versatur in aliqua regione, visitator non potest cognoscere condiciones locales et personales prorsus diversas, ita ut iudicium prudens vix dari possit. In omnibus fere Missionibus iam adsunt Legati S. Sedis, qui, si bene formati sunt, et diutius in eadem regione permanent, optime S. Sedem certiores facere possunt de statu Missionis. Clerus enim tandem et populus christianus putabunt proprium episcopum adhuc esse sub tutela et eius auctoritas exinde valde diminueretur."

⁸⁹ Ibid., 193: "Munus et iura Legati, sive sit Delegatus Apostolicus sive Nuntius, in ipsa administratione dioecesana et etiam in rebus politicis clare definiantur, ne oriatur controversia propter negotia difficiliora quae, deficiente diuturno rerum et personarum usu, non facile intelliguntur."

Certainly, the document submitted by the Commission on Missions signaled an important problem of cultural-linguistic misinterpretations but also suggested a partial solution by preparing adequately those who were to assume the role of papal legates to the missionary territories. Other solutions will transpire later at the debates of the Council itself.

2.6. The Council

John XXIII convoked the Second Vatican Council with his December 25, 1961 bull *Humanae salutis*.⁹⁰ The Council was opened on October 11, 1962 with a solemn reading of the pope's allocution *Gaudet Mater Ecclesia*⁹¹ reminding the fathers that its purpose was to witness to the fact of Christ being the center of history and life and to present this in the context of the contemporary world.⁹² The first working General Session took place only two days after and it was the shortest one of the Council as it took only about

⁹⁰ ADP, Vol.1, 132-143; AAS 54 (1962) 5-13.

⁹¹ Vatican Council II, *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, Vol. 1 (*Periodus prima*), pars 1 (Vatican City: Typis Polyglottis Vaticanis, 1970) [hereafter AS] 343.

⁹² Andrea Riccardi, "The Tumultuous Opening Days of the Council," in *History*, 2:15.

fifteen minutes.⁹³ The session was supposed to accomplish election of the membership to the Conciliar Commissions. However, the bishops decided against the vote at that time explaining that they did not know well the fathers of the Council to do so effectively.

The First Period of the Council (October 11 - December 12, 1962) had in total thirty six General Sessions (*congregationes generales*). This period proved to be challenging in many ways. To start with, the hopes of many that the Council could complete its work in only one period were soon abandoned.⁹⁴ Some issues with general 'mechanics' of the meeting were obvious (e.g., managing the large group of members and their interventions). In addition, the Council did not simply approved the previously prepared documents. As a matter of fact, two of the schemata were rejected in this period: *De Fontibus Revelationis* (explicitly) and *De Ecclesia* (implicitly) and were sent back to commissions to be rewritten completely.⁹⁵ At the end of this period, the pope recognizing some issues with the 'mechanics' of the meeting announced the establishing of the Coordinating Commission:

⁹³ Edward P. Hahnenberg, *A Concise Guide to the Documents of Vatican II* (Cincinnati: St. Anthony Messenger Press, 2007) 4.

⁹⁴ O'Malley, 152.

⁹⁵ See more: Hubert Jedin, *Die Geschäftsordnung des Konzils* (Freiburg: Herder, 1968) 622-3.

The new Coordinating Commission, announced on December 6, was to act as a kind of “super commission” (*commissio princeps*), whose task was to expedite the agenda, resolve conflicts among the heads of the commissions, and see that the documents responded to the aims of the council as laid out by John XXIII on October 11 in his opening allocution. Bishops pinned their hopes for progress on this body, which filled an essential gap in the council’s organization. Through the pope’s charter it had sufficient authority to make at least some of its decisions stick, and it entered energetically into its task. It was encumbered, of course, by conflicts within its own membership and other problems, but it proved effective, especially during this first inter-session.⁹⁶

After the First Period of the Council closed the work of the commissions continued. The Coordinating Commission gained popularity with the bishops as it reduced the number of schemas. Within two months (April-May, 1963) the revised texts of documents were sent to the fathers of the Council for their review and comments that were due in July that year. The *Acta Synodalia*⁹⁷ lists eleven of them pertaining to the following topics:

1. seminaries
2. Catholic schools
3. priests
4. the lay apostolate
5. bishops and dioceses

⁹⁶ O’Malley, 161.

⁹⁷ AS, Vol. 5.1:522.

6. pastoral care of the souls
7. religious life
8. the Eastern Churches
9. Revelation
10. the Church
11. ecumenism.

Jan Grootaers⁹⁸ notes that the list should also add the schema on the Blessed Virgin Mary. Later on in July, additional schemas: on marriage, and chapters three and four on the Church were sent.⁹⁹

The first conciliar comments pertaining to the office of papal legates were submitted precisely in this period. Though they are buried in the *Acta Synodalia* in volume 3 *pars* 3 due to the publisher's or the secretariat's omission, they belong to the timeline between the First and the Second Periods. The written comments (in French) came from Archbishop of Saigon Paul Nguyen-Van-Binh in response to the *Schema Decreti de Episcopis ac de dioecesium regimine* presented by the Commission on Bishops and the Governance of Dioceses.¹⁰⁰ His observations noted that the bishops are

⁹⁸ Jan Grootaers, "The Drama Continues Between the Acts. The 'Second Preparation' and its Opponents," in *History*, 2:493, footnote 342.

⁹⁹ *Ibid.*, 2:493.

¹⁰⁰ *AS*, Vol. 2.4: 364.

representatives of the Supreme pontiff and Christ and though completely under the authority of the pope, they enjoy some autonomy. This autonomy however is conflicted with the power of nuncios and apostolic delegates, whose role should be better defined in the canons. The legates should primarily serve as diplomatic representatives of the pontiff and provide him only with information about the local church. The faculties

granted to the legates should in no way interfere with the authority of the bishops in that country.¹⁰¹

The archbishop's comments clearly showed his idea of isolating the papal legates from interfering with the matters of the local churches / bishops and assigning to them a purely diplomatic function with the countries and governments to which they were

¹⁰¹ AS, Vol.3.3, 533-4: "Les Evêques ne sont pas seulement des délégués ou des représentants du Souverain Pontife. Ce qui est proprement confié à Pierre et à ses successeurs par le Christ c'est une autorité suprême de surveillance et de contrôle. Il doit veiller sur les Apôtres pour les maintenir dans la foi, redresser leurs déviations possibles en matière de doctrine et de discipline. Et à ce titre, son autorité ne peut pas être discutée: elle est vraiment fondée sur la volonté du Christ, tout comme celle des autres Apôtres.

C'est pourquoi, si l'on peut parler ainsi, les Evêques sont à la fois «autonomes» en leurs fonctions épiscopales et soumis à un pouvoir pontifical de direction, de conseil, de redressement et de coordination.

Ceci a besoin d'être nettement affirmé, bien qu'il soit difficile d'en préciser les points d'application en pratique.

Il semble que les rapports des Evêques d'un pays avec le Nonce, l'Internonce ou le Délégué Apostolique devraient être définis plus nettement en principe.

Le schéma n'en parle pas.

Il semble excessif que les Nonces ou les Délégués Apostoliques deviennent en fait comme des super-évêques. Les canons 267 à 270 auraient besoin d'être complétés.

267, 1, 10. Leur fonction est de soi uniquement diplomatique. Elle ne devrait pas changer de nature.

267, 1, 20. Il est prévu seulement une fonction de renseignements.

267, 1, 30. C'est ce paragraphe qui reste imprécis. Les facultés spéciales données par le Saint-Siège ne devraient pas être trop fréquentes, ni trop étendues. Il devrait être défini qu'aucune de ces facultés ne peut restreindre, en principe ou en fait, les pouvoirs qui découlent directement des fonctions et de l'autorité des Evêques du pays."

sent. Certainly, similar ideas were expressed previously during the preparatory stages of the council, but here they were well expressed linguistically and canonically.

The additional six *vota* of the bishops that pertained to papal legates as written submissions of that time period were printed in the *Acta Synodalia* in the Appendix of volume 2, *pars* 5. The first one belonged to Archbishop Maurice Baudoux of the Archdiocese Saint Boniface, Canada. He expressed the idea that the obligation of canon 281 of the 1917 Code of Canon Law requiring the papal legate to preside over the plenary council should be changed.¹⁰² Archbishop Paul Dalmais of the Archdiocese of Fort Lamy, Chad suggested a direct line of communication between a local diocese and the Holy See, as from his experience with the Apostolic Delegate in Lagos, the

¹⁰² *AS*, Vol. 2.4, 835: “N. B. In codice reformando supprimatur praescriptum can. 281: «petita tamen venia a Romano Pontifice, qui suum Legatum designat ad Concilium convocandum eique praesidendum.»”

communications take much longer via the legate's office.¹⁰³ This rather uncomplimentary submission was followed by the one from the Archbishop Joseph Descuffi of the Archdiocese of Izmir (Smirne), Turkey. In his opinion, bishops should have all the necessary faculties from the Holy See without the need for renewing them every five or ten years. Hence, the ministry of nuncios and apostolic delegates is no longer needed.¹⁰⁴ From his *votum* however, it is not completely clear if he meant that the ministry of the legates is not needed in this particular context only or in general.

¹⁰³ Ibid., 848: "Consuetudo recurrenti ad Congregationes Romanas pro aliquibus gravioribus facultatibus de quibus hie agitur, sic mutatur ut in casibus praedictis ad Nuntios seu Delegatos apostolicos recurrere sufficiat. Haec dicere velim. Haec mutatio in modo recurrenti mihi videtur non semper esse practicam seu opportunam. Experientia difficultatum communicationum per viam postalem aeream cum meo proprio legato Apostolico probat recursum ad Romam esse multo faciliorem et rapidiorem quam recursum ad Lagos (ubi est residentia exc.mi D. Delegati). Quando schemata huius Concilii nobis missa sunt per mediationem Delegationis Apostolicae in Lagos, tardius nobis pervenerunt, et ante primam sessionem liquando nobis omnino non pervenerunt. Si expedita essent directe a Roma, omnia tempore opportune nobis praesto fuissent. Peto quid significet iste modus recurrenti ad Delegatos, et quae sit in hac re, eorum potestas iurisdictionis."

¹⁰⁴ Ibid., 852: "Ut curiae romanae dicasteriis hucusque competentiae reservata fuerant - ad mentem schematis novi de episcopis pag. 28, linn. 1-10 de dioecesium regimine recognoscantur episcopis stabiliter et ipso iure, salvis causis maioribus S. Sedi reservatis, illae facultates « quinquennales » et « decennales » quae nunc sine necessitate ministerii Nuntiis aut Delegatis Apostolicis recensitae sunt. Quae directe et absolute Ordinariis quasi ex diffidentia, aut minori aestimatione non recognoscuntur? Episcopi Romani Pontificis esse collaboratores, plenitudine facultatum concessa, magis quam a reservatione et continuo recursum, grato animo recordabuntur. Unitas et caritas liberalitate et fiducia accrescunt."

Salomão Barbosa Ferraz, Titular Bishop of Eleutherna expressed a somewhat similar point of view. He argued that each bishop in his diocese is the pope's apostolic delegate by the faculties given to him by the Supreme pontiff.¹⁰⁵ Hence, there was no need for papal legates to interfere with the local churches.

The Titular Bishop of Cerasa, Andreas Jacq, requested that the legates sent to the missionary territories have knowledge of the local cultural customs and language. Moreover, they should remain within their own faculties in dealing with the exchange

¹⁰⁵ Ibid., 854: "Episcopus primas, auctoritatem veram et proprie dictam, per facultates a Summo Pontifice specialiter delegatas, tamquam sui immediatus «Delegatus Apostolicus» adderet supra ipsam suam ipsius iurisdictionem, quae ei competit supra suam propriam dioecesim. Hisce facultatibus praeditus, primas, seu Delegatus Apostolicus, quaestiones inter episcopos surgentes, ordinaria modo dirimere; actionem collectivam episcopatus nationalis dirigere et urgere; negotia maiora episcoporum solvere; concilium nationale, Summo Pontifice approbante, convocare et praesidere, et tandem tempore persecutionis, cum generatim episcoporum accessus, etiam scripto, ad romanam sedem prohibetur, maxima convenientia ne oriatur schisma, Ecclesias locales dirigere et inter sese unitas et Sanctae Sedi fideles servare, poterit."

between civil governments and the local churches and not interfere with the bishops.¹⁰⁶

The final voice in this period pertaining to papal legates came from the general *votum* of the Episcopal Conference of Indonesia. They mentioned only in general terms that the jurisdiction and relationship between papal legates and local ordinaries should be well described.¹⁰⁷

It is rather clear from these voices that the office of the papal legate, as it was before the Council, needed some modifications. It seems that many of the bishops noticed a gray area of canon law where the jurisdictions were not well defined and gave an opportunity for conflicts and misunderstanding.

¹⁰⁶ Ibid., 863: “Forsan consulto, praesertim in cap. III, nihil dicitur de Sanctae Sedis Delegato aut Nuntio in unaquaque natione. Opportunum autem videtur ut: 1) In seligendis legatis Sanctae Sedis pro territoriis missionalibus, ratio habeatur de cognitione quaestionum missionalium et culturae gentis ad quam mittuntur; 2) Delegati Apostolici (et Nuntii, salvo praescripto can. 267, S 1, 1°) tantum fruuntur potestate vigilandi modeste in statum Ecclesiarum in territoriis sibi commissis et de eo Romanum Pontificem certiozem reddendi; ideo facultates ipsis commissae coarctentur et stricte limitentur, ne Delegati locorum Ordinariorum suae iurisdictionis liberum exercitium impediunt et videantur super episcopum et etiam archiepiscopum residentialem dioecesim gubernare.”

¹⁰⁷ Ibid., 922: “i.e., Nuntiorum, Internuntiorum et Delegatorum Apostolicorum , eo modo ut ambitu potestatis Legatorum in suo campo accurate circumscripto, liberum exercitium suae iurisdictionis Ordinariis locorum as normam can. 269 §1 C.I.C. revera sit tutum.”

The work of the commissions was interrupted by the death of Pope John XXIII on June 3, 1963. By law, the Council itself was suspended and its future became uncertain. The election of his successor took place on June 21, 1963. The Holy Father Pope Paul VI, shortly after his election assured the world that the Council would continue and announced that the opening of the Second Period would take place on September 29 that year. At the same time the Supreme pontiff approved the five topics to be debated at the Second Period that fall:

1. the Church (chapters I-IV)
2. the Blessed Virgin Mary
3. the bishops
4. the lay apostolate
5. ecumenism.¹⁰⁸

The first spoken intervention pertaining to the legates at the Second Period of the Council happened during the forty-ninth General Session on October 16, 1963. It was delivered by Joachim Amman, titular bishop of *Panemouteichos* or *Petnelissensis*, on behalf of the missionary bishops. His comments were addressed within the discussion on the schema *De Ecclesia* presented by the Dogmatic Commission of the Council. He brought to attention four areas concerning papal representatives:

¹⁰⁸ Grootaers, 494.

1. It seems that the institutions of nuncio, internuncio and apostolic delegate, though very noble, in many ways emulate the secular diplomatic structures without highlighting the differences. The result of this is that the Church looks like yet another political or secular entity.¹⁰⁹
2. The next question he proposed pertained to whether the nuncios should be replaced by the local patriarchs, primates, bishops or members of the episcopal conferences. Such a move, he argued, would allow the Holy See to be better

¹⁰⁹ *AS*, Vol. 2.2: 607; “Pertinetne institutio Nuntiorum, Internuntiorum et Delegatorum Apostolicorum, quatenus sunt “repraesentantes diplomatici Sanctae Sedis”, ad illas traditiones “potissimas et venerabiles” quas transcendere minime liceat? Non paucis videtur illud institutum, prout imitatur instituta diplomatica potestatum saecularium, hodie potius pertinere ad illas “umbras”, quae hominibus nostrae aetatis veram faciem Ecclesiae abscondunt. Illud institutum “repraesentantium diplomaticorum” in plurimorum oculis reddit Ecclesiam Christi similem potestatibus saecularibus, et nonobstantibus declarationibus contrariis, permultos (etiam christifideles) facit credere Ecclesiam catholicam esse partem in uno alterove campo disceptationum politicarum et socialium.”

informed and to better understand the local culture, traditions, language and mindset, which sometimes was lacking in current papal representatives.¹¹⁰

3. He also asked if it would be beneficial to have laypersons fulfill this function.¹¹¹
4. Finally, his concern turned to the education of future diplomats of the Church, which need to be provided with proper biblical and theological training, even greater than that of the bishops.¹¹²

These questions were rather well discussed among the participants, but one issue emerged unresolved right away. If the nuncio were to be a member of the episcopal conference in a particular country or a region, would his jurisdiction clash or overlap

¹¹⁰ Ibid., “Nonne quaerere oportet, utrum advenerit tempus transferendi munera ecclesiastica-religiosa illorum “repraesentantium diplomaticorum” ad patriarchas, primates, episcopos, vel ad illos viros quos singulae conferentiae episcopales ad hoc elegerint? Huiusmodi viri cognoscerent multo intimius traditiones, culturam, linguam, mentem singularium regionum, et melius Romae - in ipso centro ac corde totius Ecclesiae - de conditionibus proprii territorii referre possent. Et minime negatur res vere extraordinarias posse requirere media extraordinaria. Quod autem pertinet ad tractandas illas multas quaestiones, quibus Ecclesia cum rebus saecularibus multifariam nectitur, hierarchia localis seu territorialis talia munera utilius committere posset egregiis, nempe viris peritis ex laicatu, i. e. confessoribus, sed non necessaria pontificibus.”

¹¹¹ Ibid.

¹¹² Ibid., “Cogimurne ulla auctoritate biblica vel theologica (aut experientia), ut putemus maiorem fiduciam ponendam esse in formatione recepta in schola diplomatica, quam in episcopis, quos Spiritus Sanctus posuit regere Ecclesiam Dei?”

with that of the local bishops?¹¹³ This concern was also shared by the aforementioned Archbishop of Saigon.

Valerian Cardinal Gracias, the Archbishop of Bombay, delivered his comments on the subject during the sixtieth General Session, which took place on November 5, 1963. The discussion pertained to the schema on the bishops. He brought to the attention of the Council Fathers the following points:

1. That the modern requirements of diplomatic service in embassies be properly reflected in education of the future envoys.
2. Since they serve great nations their education cannot be weak.
3. The members of the papal representation should not only know the European languages but also, if serving in the East, one of the oriental languages.
4. Before they are sent to their diplomatic posts, the legates should be aware of the culture, philosophy and customs of the place.

¹¹³ Mario Oliveri, *The Representatives. The Real Nature and Function of Papal Legates* (Saint Paul, MN: Wanderer Press, 1981) 27.

5. The diplomats should be appointed from the priests who know the social, economical and political issues of the region.¹¹⁴

His comments, though reflecting largely the concerns present in his own region, resonated with the global needs of the Church communities.

Alejandro Olalia, Bishop of Lipa, Philippines, representing the bishops of his country, stressed the need for proper laws, which would spell out the rights and

¹¹⁴ AS, Vol. 2.4: 449; “Si proponitur Romanam Curiam roborare, ut episcopis plus sit auxilii, puto idem, mutatis mutandis, etiam Legationibus Pontificiis applicari posse; et quidem propter hanc rationem, quia Romana Curia Sanctaque Sedes multum a relationibus ab illis factis dependent. Reformatio autem in melius hoc importabit:

1. Requisita moderna in Legationes condendo, et in diplomaticos pontificios instruendo, apte consideranda sunt.
2. Ii, quorum interest, nullatenus vacillare debent ediscere ex methodis, quae in servitio diplomatico magnarum nationum ..., adhibentur.
3. Oportet ut repraesentantes pontificii, modernis nationibus, speciatim in oriente, accreditati, necessario cognoscant non tantum nonnullas linguas Europae, verum etiam saltern unam ex illis, quae in oriente loquuntur.
4. Antequam in aliqua determinata regione mittuntur, oportet ut repraesentantes pontificii generalem quamdam ideam de philosophia, cultura, rationeque vitae populi huius regionis habeant.
5. Oportet etiam ut auxilio utantur sacerdotum, competentia et experientia praedictorum, qui in omni natione praesto sunt, quique optime in rebus quae ad educationem, scientiam socialem, oeconomiam, vitam politicam, incrementum populationis, etc. spectant, versantur ... Dixi.”

obligations of the legates of the Roman pontiff, as well as their relation (jurisdiction) to the local bishops, clergy and the faithful.¹¹⁵

At the sixty second General Session of the Council Archbishop Leonard Joseph Rodriguez Ballón of Arequipa, Peru presented his comments on two schemas: *De Episcopis ac de dioecesium regimine* and *De cura animarum*. He drew a parallel that since the Council intended to define the role and relationship of individual bishops to episcopal conferences and to the Roman Curia, it should also define the role and relationship of papal legates to local bishops and episcopal conferences.¹¹⁶

Another valuable intervention was submitted by Herculanus Van Der Burgt, Archbishop of Pontoniak, Indonesia during the sixty-second General Session on November 7, 1963. Most of his intervention was concerned with bringing up to date the structure and function of the Roman Curia. He particularly stressed the need for electing members from the wide international arena and not only from the Roman

¹¹⁵ Ibid., 489: Hoc magni momenti nobis videtur ut melius ac clarius definiatur eorum iura et official et sic firmiores stabiliantur vincula caritatis relationes inter Episcopos singuols et ipsos Legatos Romani Pontificis, in aedificationem tum cleri tum populi."

¹¹⁶ Ibid., 543-4: "Denique de relationibus episcoporum, vel singillatim, vel ut corpus sive collegium, cum Romano Pontifice, eiusque adiumentis gubernii, praecipue cum Congregationibus Curiae Romanae. Forsitan adumbrari possent etiam hoc loco munia Nuntiorum et Legatorum Apostolicorum. Neque de conciliis oecumenicis silendum."

sphere so the voice of all people would be heard. Finally, he requested that the same principles should be applied to the institutions of nuncio and internuncio.¹¹⁷

On the other hand, Aurelius del Pino Gomez, Bishop of the Diocese of Lleida, Spain in his comments expressed dissatisfaction with the schema *De Episcopos* suggesting that bishops from various nations should be nominated as consultants to Congregations of the Roman Curia. The bishop stated that such a role belongs to apostolic nuncios as they are specially selected for that purpose.¹¹⁸ This opinion seemed to be isolated from the other speakers who tended to diminish the faculties of the papal legates and increase the ones of the local bishops.

Archbishop Carol Humbert Rodriguez-Quirós of Saint Joseph, Costa Rica presented his observations at the sixty-third General Session, reaffirming once again the

¹¹⁷ Ibid., 593: "Etiam rogatur adaptatio Instituti Nuntiate, Internuntiate, etc., circumstantiis huius temporis sicut iam pluries et a pluribus dictum est."

¹¹⁸ Ibid., 592-3: "N. 5 schematis hec dicuntur: «(Episcopi in Ss. Congregationum consilium cooptandi). Nonnulli episcopi diversarum nationum, a conferentia episcopali nationali designandi, ab Apostolica Sede nominentur membra vel consultores Ss. Romanae Curiae Congregationum a quibus, statis temporibus, convocentur ad commune bonum magis promovendum et ad communia pericula efficacius avertenda». Haec non valde mihi placent. Dignius et efficacius esset si ipsa Sedes Apostolica per Nuntios Apostolicos inquireret qui sunt aptiores viri ad munera praedicta melius perfungenda et determinaret quo pacto viri electi in Curiae laboribus interventuri sunt."

need to redefine the relationship between the nuncios and the Roman Curia.¹¹⁹ In addition to his speech, three written opinions submitted after this General Session also pertained to papal legates. Bishop Albert Devoto of the Diocese of Goya, Argentina proposed that nuncios be selected from the bishops of that particular country. Moreover, they should only have the function of representing the Church to the local government.¹²⁰ Certainly, the clear message was to keep them away from interfering with the local bishops. The opposite view was expressed by Joseph Fady, Bishop of Lilongwe, Malawi who postulated that the apostolic delegates be both experts in pastoral care and possess diplomatic skills.¹²¹ However, Archbishop Frederic Melendro

¹¹⁹ Ibid., 645-6: "His praetermissis, perbreuiter nunc verbum faciam de vero loco ubi - meo humili iudicio - videtur stare vera difficultas in quaestione cap. 1, de relationibus inter episcopos et Ss. Romanae Curiae Congregationes; atque, ut conclusio, proponam magna cum reverentia, venerabilibus Patribus, ut addatur novae paragraphi ad idem caput, vel novum caput, ad hoc ut libertas plena episcopi in exercitio suae iurisdictionis in tuto ponatur, « asseratur, roboretur ac vindicetur » (sunt verba ipsius schematis), tractando explicite et omnino clare, de relationibus episcoporum cum Ordinibus religiosis, quoad exemptiones et privilegia, et quidem secundum novum ordinem a Concilio reformandum, et de relationibus episcoporum cum exc.mis Nuntiis Apostolicis, Supremis Guberniis nationum in universo mundo, a Romano Pontifice missis."

¹²⁰ Ibid., 666-7: "a) Optandum videtur ut Legatus Apostolicus, quo nexus communionis inter Sedem Apostolicam et singulas Ecclesias roboretur ac manifestetur, sit aliquis episcopus ex eadem natione a Sede Apostolica nominandus.
b) Optandum est ut Nuntii Apostolici munus sit tantum relationes inter Sedem Apostolicam et Civilia Gubernia fovere."

¹²¹ Ibid., 668-9: "circa delegatos apostolicos: sint viri periti in cura animarum non minus quam in diplomatia."

of Anqing, China called once more for adding a section to the document on bishops defining their relationship with apostolic delegates.¹²²

At the sixty-fourth General Session, Archbishop Michael Gonzi of the Archdiocese of Malta was the only one to mention nuncios and apostolic delegates. He reminded his audience about their roles in providing communication between the Holy See and the local diocese, particularly in the case of assigning a new coadjutor.¹²³ The next reference to papal legates is found at the sixty-fifth General Session by Bishop Michał Klepacz, Bishop of Łódź, Poland. His intervention reflected major points pertaining to the papal legates as they were shaped after the Council. The bishop mentioned the need for the legates to be well informed about local circumstances, and to work with episcopal conferences in facilitating the flow of information; to work with the civil government and to promote with episcopal conferences positive church-state

¹²² Ibid., 687: "Pag. 7. Post art. 5 nonne conveniens erit adiungere alium art. *de ratione inter episcopos et Delegatos Apostolicos?*"

¹²³ Ibid., 717-9: "Ceterum, cum hodie notitiae quaecumque facillime communicari valeant, cumque adsint in omnibus regionibus Nuntii et Delegati Apostolici, suprema Ecclesiae auctoritas absque difficultate certior fit de statu singularum dioecesium et, ubi id necessarium iudicetur, eligi potest coadiutor cum iure successionis, quin opus sit episcopum cogere ad renuntiationem dilectae dioecesi, ad eamque relinquendam pro qua omnes animi et corporis vires impendit."

relationships.¹²⁴ His points are particularly interesting knowing that Bishop Klepacz came from socialist Poland at that time, where the presence of the papal representative was not allowed by the civil government.

The next General Session included an intervention from Aloysius Alonso Muñozerro, Titular Archbishop of Sion. He devoted most of his intervention to the issue of episcopal conferences. In this context, however, he mentioned that the presence of the papal legate at an episcopal conference's meetings is required.¹²⁵

An interesting point was brought up by Archbishop Louis Cabrera Cruz of the Archdiocese Saint Louis Potosí, Mexico at the sixty-seventh General Session. In discussing the structures of episcopal conferences, and in particular of conflict resolution procedures within them, he offered that a court of bishops be established or

¹²⁴ AS, Vol. 2.5, 49-50: "...privilegium etiam fungendi de mandata Summi Pontificis munere quod Nuntiis vel Delegatis Apostolicis hodie communiter committitur. Quod tunc praesertim est maximi momenti, quando circumstantiae exigunt .. ut munere hoc fungatur quis qui rerum adiuncta melius cognoscit ... Addere iuvat tale munus praesidi conferentiae commissum optime congruere cum iis quae sub puncta 24 schematis dicuntur de decisionibus conferentiae ... quando agitur de rebus cum Gubernio civili tractandis ... Ibi enim supponi videtur nationalibus episcoporum conferentiis committi etiam ut ... relationes foveant inter Ecclesiam et civilia Gubernia, quando Summi Pontificis approbatio accedit."

¹²⁵ Ibid., 89: "His conventibus delegatus Papae vel Nuntius deberet adesse."

the matter be given to the nuncio or apostolic delegate for resolution.¹²⁶ Following this session, Antony de Castro Mayer, Bishop of Campos, Brazil presented his somewhat pessimistic observations in writing. In them, he warned against giving too much autonomy to national episcopal conferences as they may become independent and establish national churches. In such context, he mentioned nuncios and apostolic delegates via whom the conferences can be called into existence and could be briefly

¹²⁶ Ibid., 120-1: "Mihi videtur eo in fine quod expedita fiat gestatio dictaminis hisce in rebus divergentibus in conferentia episcopali, quando duae tertiae partes votorum non assequantur, ut stabiliatur aliqua norma suprema, seu instantia ultima quae difficultatem solvat - reservando consilio episcopali permanenti vulgo dictae «Comité episcopal», solutionem problematis, vel etiam Nuntio seu Delegate Apostolico, ut obtineatur in practica actionis norma segura."

suspended in case of difficulty.¹²⁷ Hence, he petitioned for greater powers and faculties to papal legates.

The Second Period of the Council ended with the Third Public Session on 4 December 1963. The issue of papal legates was often mentioned in the Second Period and the ideas pertaining to it were various and mostly agreeable: a reform is needed. Some level of general dissatisfaction with the current discipline of the Church in that regard was palpable. The discussions on the schemas pertaining to the Church, bishops and pastoral care gave good forum for these feelings to surface and be noted.

As the spring and summer of 1964 came, the work of the commissions continued on various texts. Since the schema on the bishops was discussed and partially voted on at the previous session the new version was prepared for further discussions and a vote

¹²⁷ Ibid., 288-9: "Alia, praeterea, inconvenientia praecavenda sunt, cum de conferentiis creandis agitur. Non enim ut res omnino absurda respuendum est periculum ne conferentiae possint interdum impedire liberum atque integrum exercitium iuris quod habet Sancta Sedes regendi directe et immediate omnes et singulos episcopos ac fideles. Hucusque medium ordinariurn quo S. Sedes episcopos diversarum nationum adit sunt Nuntii vel Delegati Apostolici. Creatis autem conferentiis episcoporum, quae modo a Nuntiis vel Delegatis Apostolicis peraguntur, breviter conferentiis transferentur. Iamvero, Nuntii et Delegati Apostolici a fidelibus quasi praesentia ipsius Romani Pontificis in propria natione considerantur, quod certo certius de verificabitur. Conferentiae potius ut tertium quoddam statuitur ab episcopis et a s. Sede distinctum. Inde pedetentim conferentia episcoporum uniuscuiusque nationis habebitur ut ipsius nationis suprema auctoritas Ecclesiae. His positis, potestne sine dubitatione affirmari nullum inde adesse periculum constitutionis alicuius Ecclesiae nationalis? Ratio dubitandi fortior fit cum consideratur quod facile audaciores - qui non ubicumque S. Sedi dociliores sunt - dominium in conferentiis arripere possunt."

by April 1964.¹²⁸ On September 18, after the debate on *Lumen Gentium*, the Fathers present at the Third Period of the Council began further discussion on the schema on the bishops which now received the title *De Episcoporum munere in Ecclesia* and was referred to as *Christus Dominus*.¹²⁹

One of the interventions submitted in writing at that time came from Marion Francis Forst, Bishop of Dodge City and was presented in English. Though he commented mostly on papal diplomacy, he touched the issues of papal legates as well:

2. Accordingly, there is no need for the Church's continued direct intervention on a political and secular level. If reasons can be alleged to justify the practice, the principle of "accepting the lesser evil" would warrant the Church's complete withdrawal from further involvement with civil governments whether by diplomatic representation; treaties; concordats or other political agreements. In our day such action seems to mar both the image as well as the work of the Church.

3. The continued use of bishops in the area of international diplomacy belittles the dignity and the office of the episcopacy. If there is justification for such representation the work should be done by laymen rather than by bishops or priests.

4. When episcopal representation is needed on a national basis, such action can well be the responsibility of the official national episcopal body or conference.¹³⁰

¹²⁸ Evangelista Villanova, "The Intersession (1963-1964)," in *History*, 3:350.

¹²⁹ O'Malley, 210.

¹³⁰ *AS*, Vol. 3.2, 407.

These opinions expressed here could not be qualified as the mainstream of the Council fathers and they came a bit too late in the discussion of the topic. According to the source, they were the last official comments proposed at the Council that pertained to the office of papal legate.

The fathers voted on the document on November 4-7, that year. Although the schema received very many corrections for chapters one and two, the general direction of the document was approved, pending the final vote the next fall.¹³¹ However, this approval did not come easily. At the vote of November 4, 1964 many fathers expressed the desire that the particular decisions and laws pertaining to the office of papal legate be also included in the final text of the document. That, however, was not done. Archbishop Pierre Veillot in his intervention assured the fathers that the reform of the

¹³¹ *Ibid.*, 211.

Roman Curia and the issues related to it, including the office of papal legate, would be mentioned only implicitly in the document and left to the post-conciliar legislation.¹³²

The Third Period ended with Public Session V on November 21, 1964.

2.7. The Decree *Christus Dominus*.

The fathers of the Council during the Fourth Period (September 14 - December 8, 1965) were not ready to approve the text of *Christus Dominus* without resolving some essential issues still pending. Gilles Routhier¹³³ lists three of them as very important: power of orders vs. jurisdiction of the bishops (why bishops needed faculties?)¹³⁴,

¹³² Ignatius Gordon, "De Curia Romana renovata. Renovatio «desiderata» et renovatio «facta» conferuntur," *Periodica* 58 (1969) 98-9: "Tamen Commissio existimavit nihil esse dicendum de Legatis in decreta, « quia proprium non est Concilii Oecumemici de quaestionibus particularibus agere », ideoque etiam alterum Schema de Legatis siluit. Sed in prima suffragatione, habita die 4 nov. 1964, plures Patres instabant ut votum de Legatis in decreta includeretur; quibus instantiis Commissio non amplius restitit: « Petentibus non paucis Patribus, refert Mons. P. Veuillot, ... expresse nunc affirmatur, quod implicite iam in textu habebatur, exoptatam Curiae reformationem respicere etiam Nuntios et Delegates Apostolicos. Quare adduntur verba: ' Exoptant pariter ut, ratione habita muneris pastoralis Episcoporum proprii, Legatorum Romani Pontificis officium pressius determinetur»."

¹³³ Gilles Routhier, "Finishing the Work Begun: the Trying Experience of the Fourth Period," in *History*, 5:177.

¹³⁴ See also Vermeesch and Creusen, *Epitome Iuris Canonici* (Brugis: Beyaert, 1933) 1:340-343.

episcopal conferences vs. exercising collegiality by the bishops (which would have precedence), and the final: relationship between nuncios and episcopal conferences (issues of jurisdiction). In many ways these issues needed to be also resolved on a theological level and were dependent on the results of the discussions on the schema *De Ecclesia*. In addition, some bishops experienced extra pressure as both Routhier¹³⁵ and Grootaers¹³⁶ claim that at that time of the Council many nunciatures (e.g., Germany, Belgium, Netherlands, United States) assumed the role of controlling the episcopal conferences in their jurisdictions. The modified text was presented to the Council fathers on September 16, 1965. During the one-hundred-thirty-seventh General Session on September 28 the schema was overwhelmingly approved with only fifty-four “no” votes.¹³⁷ While the voting on individual articles of the document continued, the pope sent the list of fourteen *modi* (points of concern for consideration) to the moderators of the discussion. Those points were considered carefully by Monsignor Willy Onclin, Cardinal Marella and other members of the committee. The detailed report sent back to the Holy Father apparently satisfied his concerns and most of the *modi* were dismissed.

¹³⁵ Ibid.

¹³⁶ Jan Grootaers, “L’enjeu de la quatrième session: l’après-Concile,” *De Maand* 8/7 (1965) 2.

¹³⁷ Routhier, 178.

The final vote on *Christus Dominus* took place on October 6, 1965 with only fourteen negative votes out of over two thousand voters.

On October 28, 1965, Pope Paul VI promulgated the conciliar decree on the Pastoral Office of the Bishops in the Church, *Christus Dominus*. Since the main purpose of the document was to present the renewed theology and ecclesiology pertaining to the office of bishop, the issue of papal legates was only acknowledged in it with a promise of future consideration. No practical instructions or statements were made in the document about the nuncios or apostolic delegates. However, there were three instances where the topic surfaces.

In article nine, the document treats the issue of the reform of the Roman Curia and, by association, the need to define the role of the papal legates:

In exercising his supreme, full, and immediate power in the universal Church, the Roman Pontiff makes use of the departments of the Roman Curia, which acts in his name and by his authority for the good of the churches and in the service of the sacred pastors. It is the earnest desire of the Fathers of the sacred Council that these departments, which have indeed rendered excellent service to the Roman Pontiff and the pastors of the Church, should be reorganized and modernized, should be more in keeping with the different regions and rites, especially in regard to their number, their names, their competence, their procedures and methods of coordination. It is hoped also that, in view of the

pastoral role proper to bishops, the functions of the legates of the Roman Pontiff should be more precisely determined.¹³⁸

The next chapter of the document refers to the issue of the internationalization of the Roman Curia, hence also the institution of the papal legates:

Furthermore, as these departments have been instituted for the good of the universal Church it is hoped that their members, officials and consultors, as well as the legates of the Roman Pontiff, may be chosen, as far as it is possible, on a more representative basis, so that the offices or the central agencies of the Church may have a truly universal spirit.¹³⁹

It is clear that the interventions of the council Fathers have been taken into consideration by the Holy Father, particularly in the area of internationalization of the office of papal delegates. It shows the concern of the Roman pontiff for the local

¹³⁸ Vatican II, *CD* 9; Flannery 568; "In exercenda suprema, plena et immediata potestate in universam Ecclesiam, Romanus Pontifex utitur Romanae Curiae Dicasteriis, quae proinde nomine et auctoritate illius munus suum expleant in bonum Ecclesiarum et in servitium Sacrorum Pastorum. Exoptant autem Sacrosancti Concilii Patres ut haec Dicasteria, quae quidem Romano Pontifici atque Ecclesiae Pastoribus eximium praebuerunt auxilium, novae ordinationi, necessitatibus temporum, regionum ac Rituum magis aptatae, subiciantur, praesertim quod spectat eorundem numerum, nomen, competentiam propriamque procedendi rationem, atque inter se laborum coordinationem. Exoptant pariter ut, ratione habita muneris pastoralis Episcoporum proprii, Legatorum Romani Pontificis officium pressius determinetur."

¹³⁹ *CD* 10, *AAS* 58 (1966), 677; Flannery, 568; "Praeterea cum eadem Dicasteria ad universalis Ecclesiae bonum sint constituta, optatur ut eorum Membra, Officiales et Consultores, necnon Legati Romani Pontificis, quantum fieri potest, ex diversis Ecclesiae regionibus magis assumantur, ita ut catholicae Ecclesiae officia seu organa centralia indolem vere universalem prae se ferant."

churches, but also it opens the possibility of a better understanding of the local communities and representing their concerns to the Holy Father.

The final mention of papal legates in this document is present in chapter thirty-eight, point two. It is a result of the conciliar interventions noted above, voicing a proposal that nuncios should be appointed from the membership of episcopal conferences. The document opposes this notion rather clearly:

Members of the episcopal conferences include all local ordinaries and auxiliary bishops and other titular bishops to whom the Apostolic See or the episcopal conferences have entrusted some special work. Other titular bishops and legates of the Roman Pontiff, in view of their special position in the region, are not *de jure* members of the conferences.¹⁴⁰

This provision was to guarantee the autonomy of the episcopal conferences, the same as the diocesan bishops, reflecting the principle of subsidiarity as presented at the council. On the other hand, placing papal legates in the somewhat “outside” position in relation to episcopal conferences would allow the protection of the autonomy of nuncios and

¹⁴⁰ CD 38 (2), AAS 58 (1966), 693; Flannery, 587; “Omnes Ordinarii locorum cuiuscumque ritus, Vicariis Generalibus exceptis, Coadiutores, Auxiliares alique Episcopi titulares peculiari munere vel ab Apostolica Sede vel ab Episcoporum Conferentiis demando fungentes ad Episcoporum Conferentiam pertinent. Ceteri Episcopi titulares necnon, ob singulare quod obeunt in territorio officium, Legati Romani Pontificis non sunt de iure membra Conferentiae.”

apostolic delegates to represent the Holy Father to them, and to report to the Apostolic See the proceedings of meetings in an independent manner.

It is obvious from these quotes that the matter of papal legates needed to be addressed separately in another document that would spell out in detail the competence, structure, rights and duties of the Church's diplomats. Nonetheless, *Christus Dominus* is an important step in that direction, a commitment to the reform of this institution.

2.8. Conclusion

The time of preparations and the Second Vatican Council itself have proven very important in shaping the future of the office of papal legate. Though it became very clear at the beginning of the council that it would not issue new particular laws, the general principles shaped during the debates and in conciliar documents influenced tremendously the office of legate. It was after the council when the new laws pertaining to this office were issued.

The *vota* of the bishops before the council and their interventions during the conciliar debates conveyed a clear message of the need for change. This message took different forms. From trying to patch inadequacies of the law with proposed new

faculties for the nuncios, to a theological redefinition of the role of a bishop and hence the papal legate in relation to him. In redefining the role of the bishop and his relation to the papal legate we can appreciate particularly the voice of Bishop Rivagli who urged that some of the powers given only to nuncios be also given to the local bishops to allow them to carry out freely their tasks. Archbishop Cheikho strongly urged that the issue of overlapping jurisdiction be resolved as to avoid conflicts. Furthermore, Bishop Rémond from Nice eloquently asked to internationalize the central offices of the Roman Curia, including papal legates, as to allow for better representation of various nations in the mission of the Church and also for better understanding of the local customs and traditions.

A very important point was brought up by the Bishops of Rio Negro Province, Argentina, who strongly suggested that the primary focus of the office of the papal legate be his mission to the local church rather than his diplomatic duties to the civil government. This point was later reflected in the changes effected by the post-conciliar legislation.

Though the Second Vatican Council did not produce a new canon law nor issued any document pertaining specifically to the papal legates, it pointed the direction of change it would like to accomplish. The submissions and interventions of the bishops around the world during the council helped to shape the new principles of the office of

the papal legate. Sharing the practical experience of how this office worked until that time in different areas of the world, how it related to the local churches, bishops and episcopal conferences was a very important feedback. Such solicitation of a world-wide input on the functioning of the office of the papal legate was accomplished for the first time ever during the council. Hence, the council's role in shaping the future of the office of the papal legate was invaluable.

CHAPTER 3

The 1917 Code of Canon Law, the 1969 Motu Proprio Sollicitudo omnium Ecclesiarum, the 1983 Code of Canon Law: A Comparison.

3.1. Introduction

This chapter is dedicated to a detailed comparison of the three essential documents of the Catholic Church that contain law pertaining to the office of papal legates: the 1917 Code of Canon Law, the 1969 motu proprio *Sollicitudo omnium Ecclesiarum* and the 1983 Code of Canon Law. The goal of this research is to juxtapose the contents of these documents in order to show whether or not the law contained in them was in any way affected by the debates of the Second Vatican Council. The methodology of this research will be a textual comparison of pertinent parts of these documents organized by topics or contents, rather than simple enumeration of the canons. In doing so, we intend to show any changes of the law against the backdrop of the desires and principles of the Second Vatican Council as they were presented in the previous chapter.

3.2. The Post-conciliar Documents: Paving the Way Towards the New Code.

Though the preparations for the ecumenical council began almost immediately, the preparations for drafting the new code were appropriately delayed to later. As a matter of fact, the pope waited until the first session of the council was concluded to establish on March 28, 1963 the Pontifical Commission for the Revision of the Code of Canon Law. The first president of the commission was Cardinal Pietro Ciriaci who held this office until his death in 1966. Cardinal Ciriaci decided to hold off the work of the commission until November 20, 1965 because he had seen how many pre-conciliar documents and schemata were changed by the debates of the council and often sent back for redrafting. The idea was to wait until the debates and the documents of the council were in place as to incorporate them into the code creating a unified approach to the theology and discipline of the church. In 1966 the presidency of the commission was entrusted to Cardinal Pericle Felici. In addition, ten sub-committees were created to study, review and develop new laws in various areas of canon law. The central committee of consultors under Cardinal Felici developed and published the new code

revision principles¹ that guided the work of all subcommittees. John Alesandro summarizes these principles in his introduction to the code:²

1. The Code must retain its juridic quality, though has evangelical and pastoral purpose.
2. The Code must improve the relationship between the laws pertaining to the external and internal fora reducing conflicts between respective laws.
3. Pastoral care should be the most preeminent characteristic of the Code.
4. The office of the bishop should be presented in positive law. The bishops should have faculties to dispense from general law, unless it has been reserved to the Apostolic See.
5. Implementation and safeguarding of the principle of subsidiarity.

¹ Latin text of the principles is found in *Communicationes* 2 (1969) 78-85.

² John A. Alesandro "General Introduction," in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden et al. (New York/Mahwah, NJ: Paulist Press, 1985) [hereafter *A Text and Commentary*] 5.

6. The law must provide necessary powers to the pope and the bishop as to allow them fulfillment of the obligations of the office.
7. The need to establish administrative recourse tribunals for safeguarding of subjective laws.
8. The primary determination of one's jurisdiction is a territory. In special circumstances a non-territorial jurisdiction is allowed.
9. Ecclesiastical penalties should be kept to minimum and their remission kept to the external forum.
10. The Code should be completely restructured as to allow it to reflect the mind and spirit of conciliar decrees.³

³ Similar principles were also used in the process of preparing the Eastern Code, see: Thomas J. Green, "Reflections on the Eastern Code Revision Process," *The Jurist* 51 (1991) 18-37.

Wishing to fulfill his conciliar promises, Pope Paul VI began to issue post-conciliar documents and new laws pertaining to various aspects of the Church's life. The first sign of reform in the realm of papal legates comes indirectly from the document on the reform of the Roman Curia published in 1967: *Regimini Ecclesiae Universae*. Obviously, the main concern of this apostolic constitution is to effect the changes in the *Curia Romana* that would reflect the desires and principles of the council. The papal legates are mentioned in the document twice: in chapters twenty-one and twenty-eight. Both of them deal with establishing direction over the papal diplomats and giving it to the two departments affected by the reform at that time: The Papal Secretariat of State and the Council for Public Affairs of the Church. Though the legates

are to work with all of the departments of the Roman Curia, these two would have the direct oversight and responsibility.⁴

On June 24, 1969, Pope Paul VI promulgated the motu proprio *Sollicitudo omnium Ecclesiarum*, which was the result of the conciliar debate on the institution of papal legates and incorporated the theological changes initiated by the council. The reception was positive, though some members of the media misrepresented or misunderstood it (e.g., *Le Monde*, May 9, 1970, p. vii).⁵ In his motu proprio *Sollicitudo omnium Ecclesiarum* the Holy Father fulfilled the desires of the council Fathers to enact reforms of the institutions of nuncios, internuncios, apostolic delegates and other envoys:

⁴ Paul VI, apostolic constitution *Regimini Ecclesiae Universae*, August 15, 1967: AAS 59 (1967) 895; English translation in *CLD* 6:324-357: “21. Ad Secretariam Status seu Papalem pertinet omnia expedire quae Summus Pontifex eidem commiserit; in ea incumbere quae ordinaria negotia attingunt extra competentiam propriam Dicasteriorum Romanae Curiae; rationes cum iisdem fovere, praeterea cum Episcopis, cum Legatis Sanctae Sedis, cum civilibus Guberniis eorumque Legatis, cum privatis personis, salva semper manente competentia S. Consilii pro Publicis Ecclesiae negotiis, et, quatenus opus fuerit, communi cum eodem sententia procedendo. 28. Huius S. Consilii est omnia agere quae cum civilibus Guberniis agenda sunt; insuper in ea negotia incumbere, quae eius examini subiciuntur a Summo Pontifice, praesertim ex illis quae cum legibus civilibus aliquid habent coniunctum; item fovere rationes diplomaticas cum Nationibus; agere quae ad Nuntiaturas, Internuntiaturas, Delegationes Apostolicas attinent, collatis consiliis cum Secretaria Status, quacum insuper arctioribus nexibus iungitur, quoties huius quoque competentiam materia pertractanda ingrediatur.”

⁵ Gabriel Le Bras and Jean Gaudemet, *Le droit et les institutions de l'Église catholique latine de la fin du XVIII^e siècle à 1978* (Paris: Éditions Cujas, 1982) 388.

We judge that by promulgating this document we fulfill the just hopes of Our Brothers in the Episcopate, which concern the function of Our legates sent to different countries and churches throughout the world. It is well understood that to the stream that flows to the center, as if to the heart of the Church there needs to coexist another stream that flows from the center to the furthest ends so it would reach each and every church, each and every shepherd and faithful, in that way so it signifies and points out to the treasure of truth, grace and unity, of which Christ Our Lord and Redeemer made us the guardian and steward.⁶

This landmark document, which in many ways reflected the conciliar desires and principles, but also the famous speech delivered by then Monsignor Montini,⁷ has become eventually the source of the 1983 Code of the Canon Law in regards to papal legates.

In the meantime, as the work of the thirteen subcommittees of the code revision committee continued, the ten initial documents called the *primae versiones* were issued,

⁶ Paul VI, motu proprio *Sollicitudo omnium Ecclesiarum*, June 24, 1969: AAS 61 (1969) 475; English translation in *CLD* 7:277-284 and *Catholic Mind* 67 (1969) 51-54: "Arbitramur ergo, ad haec quod attinet, Nos spem merito conceptam a Fratibus Nostris in Episcopatu implere, hasce Litteras edendo de muneribus Legatorum Nostrorum apud Ecclesias variis locis constitutas et apud Civitates, quae sunt in cunctis orbis partibus. Liquet enim motui ad centrum ac veluti ad cor Ecclesiae respondere opus esse alium motum, qui a medio ad extrema feratur atque quadam ratione omnes et singulas Ecclesias, cunctos et singulos Pastores ac fideles attingat, ita ut ille significetur et ostendatur thesaurus veritatis, gratiae et unitatis, cuius Christus Dominus ac Redemptor Nos effecit participes, custodes ac dispensatores." All subsequent English translations of this motu proprio will be taken from *CLD* unless otherwise indicated.

⁷ See p. 97.

containing sets of canons in different areas of the code. Peters lists them in chronological order:⁸

1. 1972 *Schema de Procedura administrativa* (twenty-six canons) prepared by the Coetus de Procedura administrativa.⁹

2. 1973 *Schema de Sanctionibus* (seventy-three canons) presented by the Coetus de Iure poenali.¹⁰

3. 1975 *Schema de Sacramentis* (three hundred sixty-eight canons) was coauthored by the Coetus de Sacramentis and the Coetus de Matrimonio.¹¹

⁸ Edward N. Peters, *Incrementa in Progressu 1983 Codicis Iuris Canonici* (Montréal: Wilson & Lafleur Ltée, 2005) [hereafter *Incrementa*] xiv.

⁹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum de procedura administrativa* (Vatican: Typis Polyglottis Vaticanis, 1972).

¹⁰ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema documenti quo disciplina sanctionum seu poenarium in Ecclesia Latina denuo ordinatur* (Vatican: Typis Polyglottis Vaticanis, 1973).

¹¹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema documenti pontificii quo disciplina canonica de Sacramentis recognoscitur* (Vatican: Typis Polyglottis Vaticanis, 1975).

4. 1976 *Schema de Processibus* (four hundred forty-nine canons) prepared by the Coetus de Processibus.¹²
5. 1977 *Schema de Normis generalibus* (one hundred eighty canons) was issued by the Coetus de Normis generalibus and the Coetus de Personis.¹³
6. 1977 *Schema de Populo Dei* (four hundred eight canons) was presented by the Coetus de Sacra Hierarchia and the Coetus de Laicis deque Associationibus fidelium.¹⁴
7. 1977 *Schema de Institutis vitae consecratae* (one hundred twenty-six canons) issued by the Coetus de Institutis Perfectionis.¹⁵

¹² Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum de modo procedendi pro tutela iurium seu de Processibus* (Vatican: Typis Polyglottis Vaticanis, 1976) [hereafter *De Processibus*].

¹³ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri I de Normis generalibus* (Vatican: Typis Polyglottis Vaticanis, 1977).

¹⁴ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri II de Populo Dei* (Vatican: Typis Polyglottis Vaticanis, 1977) [hereafter *De Populo Dei*].

¹⁵ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum de Institutis vitae consecratae per professionem consiliorum evangelicorum* (Vatican: Typis Polyglottis Vaticanis, 1977).

8. 1977 *Schema de Munere docendi* (eighty-five canons) was presented by the Coetus de Magisterio.¹⁶

9. 1977 *Schema de Locis et temporibus sacris* (seventy-two canons) presented by the Coetus de Locis et temporibus sacris.¹⁷

10. 1977 *Schema de Iure Patrimoniali* (fifty-seven canons) was published by the Coetus de Iure patrimoniali.¹⁸

Out of these ten documents only two pertained to the topic of papal legates, namely, *De Populo Dei* and *De Processibus*. The first of them contained most of the canons which were later incorporated in some form to the 1983 code's section on legates (cc. 174, 177, 178, 179, 180, 181, 182, 183, 184, 200 §2, 228 §3), the second document only referred to the legates in one canon which reserved to the pope the right to judge papal legates in specific matters (c. 5 §1, 3°).

¹⁶ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri III de Ecclesiae munere docendi* (Vatican: Typis Polyglottis Vaticanis, 1977).

¹⁷ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri IV de Ecclesiae numere sanctificandi, Pars II, de Locis et temporibus sacris deque cultu divino* (Vatican: Typis Polyglottis Vaticanis, 1977).

¹⁸ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri V de Iure Patrimoniali Ecclesiae* (Vatican: Typis Polyglottis Vaticanis, 1977).

On October 16, 1978, now Blessed Pope John Paul II was elected to the Chair of Saint Peter. It was under his pontificate when all the revisions of the *primae versiones* from world-wide consultations with the bishops, superiors general, Roman Curia and institutions of higher education were put together in one document called the *1980 Schema* (June 29, 1980).¹⁹ Doing so proved to be a difficult task as the separate parts were in need of coordination, gaps had to be filled in the areas not addressed by any particular Coetus. Because of these gaps, over one hundred canons had to be added to create a cohesive unit of the *1980 Schema*.²⁰ Although the pope thought originally about another world-wide consultation of the new schema, eventually he decided on adding fifteen new members to the committee representing major episcopal conferences around the world and entrusted the task to all of them. Their work and comments were

¹⁹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum* (Vatican City: Libreria Editrice Vaticana, 1980).

²⁰ *Incrementa*, xiv.

recorded into a new document called *Relatio*²¹ which was finished on July 16, 1981.²²

The section on papal legates (cc. 299-305) had comments from the following prelates:

1. Cardinal Francis König, Archbishop of Vienna - c. 299.
2. Cardinal Peter Palazzini, Prefect of the Sacred Congregation for Causes of the Saints - cc. 299, 305.
3. Cardinal Conrad Bafle, former Prefect of the Sacred Congregation for Causes of the Saints - cc. 300, 303.
4. Cardinal Stefan Wyszyński, Archbishop of Warsaw - c. 302.
5. Archbishop Joseph L. Bernardin, Archbishop of Cincinnati - c. 302.
6. Cardinal Ermenegildo Florit, Archbishop of Florence - cc. 304, 305.

Most of these comments had only linguistic and stylistic remarks about the text itself.

We will trace the particular changes of these canons later in comparing respective versions of the schemas.

²¹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema Codicis Iuris Canonici exhibitarum, cum responsionibus a Secretaria et Consultoribus datis* (Vatican City: Typis Polyglottis Vaticanis, 1981).

²² Alesandro, 7.

The important plenary session of the Code Revision Committee took place October 20-28, 1981.²³ During this very busy session hundreds of canons of the 1980 *Schema* were changed, replaced or removed all together. In addition, thirty-seven²⁴ canons of the *Lex Ecclesiae Fundamental* [LEF] were added to the draft. These LEF canons were an attempt to create a section of church law that would apply to all churches *sui iuris* of the Catholic Church, hence creating a common denominative shared by all the members. Thus changed, a new version of the code was presented to the pope on October 29, 1981. The commission however, continued to work on the code and presented the pope with yet another version on April 22, 1982, which received a new name: the 1982 *Schema (Novissimum)*.²⁵ From April until December 1982 Pope John Paul II studied the 1982 *Schema* with a small group of canonists. He made some changes to the final version and announced in December 1982 that he will promulgate

²³ Pontificium Consilium de Legum Textibus Interpretandis, *Acta et Documenta Pontificiae Commissionis Codici Iuris Canonici Recognoscendo. Congregatio Plenaria, Diebus 20-29 octobris 1981 habita* (Vatican City: Typis Polyglottis Vaticanis, 1991).

²⁴ John Alesandro in his General Introduction states that the number of the LEF canons inserted to the new schema was thirty-eight, p. 7.

²⁵ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Codex Iuris Canonici. Schema Novissimum post S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum* (Vatican City: Typis Polyglottis Vaticanis, 1982).

the new code shortly.²⁶ On January 25, 1983, an anniversary of the historic announcement of Pope John XXIII who initiated the code's revision process, Pope John Paul II promulgated the new (1983) code in his apostolic constitution *Sacrae disciplinae leges*.²⁷ The new code took effect on November 27, 1983.

When we compare the two codes and their intermittent versions, it is quite interesting to observe the changes in the sheer number of canons:

- 1917 Code - 2414 canons
- *Primae versiones* (combined) - 1844 canons
- 1980 *Schema* - 1728 canons
- 1982 *Schema* - 1776 canons
- 1983 Code - 1752 canons (on the day of promulgation).

Analogously to the 1917 code (cc. 265-270), the 1983 code devoted only six canons to the matter of papal legates (cc. 362-367). The 1983 Code of Canon Law mirrored, for the most part, the legal structure and content pertaining to the papal

²⁶ Alesandro, 7-8.

²⁷ John Paul II, apostolic constitution *Sacrae disciplinae leges*, January 25, 1983: AAS 75/2 (1983) vii-xiv.

legates as traced in the 1969 motu proprio *Sollicitudo omnium Ecclesiarum* [SOE].

However, some sections of the motu proprio were completely omitted in the code (i.e., section IX on the legate's jurisdiction over religious communities). Let us now compare the sections on papal legates of the two codes of canon law taking into consideration the 1969 motu proprio *Sollicitudo omnium Ecclesiarum*, the *Primae versiones* of the code, as well as the 1980 and the 1982 *Schemas*. As stated before, we will do it thematically, rather than making a simple comparison of canons. However, to make that task a bit easier we have developed a map of canons between these documents to assist the reader in understanding the analysis.

3.3. The Comparison

1917 Code	1969 SOE	1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 Code
c. 266	-	c. 174	c. 295	c. 357	c. 358
c. 265	III.1	c. 177	c. 299	c. 361	c. 362
-	I.2	c. 178, 180	c. 300	c. 362	c. 363 §1
-	II.1	c. 179	c. 301	c. 363	c. 363 §2

1917 Code	1969 SOE	1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 Code
-	IV.1	c. 182	c. 302	c. 364	c. 364
c. 267 §1, 2°	V.1	1°	1°	1°	1°
c. 269 §1	VII.1	2°	2°	2°	2°
-	VII, VIII.2	3°	3°	3°	3°
-	VI.1	-	4°	4°	4°
-	IV.2	4°	5°	5°	5°
-	IV.4	5°	6°	6°	6°
-	IV.3	-	-	7°	7°
-	IV.5	6°	7°	8°	8°
c. 267 §1, 1°	X.1, a, b	c. 181 §1 1°	c. 303 §1 1°	c. 365 §1 1°	c. 365 §1 1°
-	X.1, c	2°	2°	2°	2°
-	X.2	c. 181 §2	c. 303 §2	c. 365 §2	c. 365 §2
-	XII.1	c. 183 1°	c. 304 1°	c. 366 1°	c. 366 1°
c. 269 §3	XII.3	2°	2°	2°	2°
c. 268	III.2	c. 184	c. 305	c. 367	c. 367
c. 270	-	-	-	-	-

1917 Code	1969 SOE	1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 Code
-	VI.1,2	c. 228 §3	c. 344 §3	c. 377 §3	c. 377 §3
-	VIII.2	c. 200 §2	c. 325 §2	c.450 §2	c. 450 §2
c. 1557 §1, 3°	-	(<i>In Processibus</i>) c. 5 §1, 3°	c. 1357 §1, 3°	c. 1405 §1, 3°	c. 1405 §1, 3°

3.3.1. Papal Authority to Appoint Legates

Canon 362 of the 1983 Code of Canon Law opens the proper section on papal legates. It describes the innate and independent right of the Roman pontiff in the appointing, sending, transferring and recalling of his representatives:

The Roman Pontiff has the innate and independent right to appoint, send, transfer, and recall his own legates either to particular churches in various nations or regions or to states and public authorities. The norms of international

law are to be observed in what pertains to the mission and recall of legates appointed to states.²⁸

When we compare this canon with corresponding law of the 1917 code, we notice that the section on respecting international laws was added somewhere in the revision process. Canon 265 of the 1917 code read:

It is the right of the Roman Pontiff, independent of civil power, to send into any part of the world Legates, with or without ecclesiastical jurisdiction.²⁹

The addition of the clause pertaining to international laws took place already in

Sollicitudo omnium Ecclesiarum:

The Roman Pontiff has the natural and independent right freely to appoint, send, transfer and recall his representatives without prejudice to the norms of international law as regards the sending and recalling of constituted legates to

²⁸ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983) c. 362: “Romano Pontifici ius est nativum et independens Legatos suos nominandi ac mittendi sive ad Ecclesias particulares in variis nationibus vel regionibus, sive simul ad Civitates et ad publicas Auctoritates, itemque eos transferendi et revocandi, servatis quidem normis iuris internationalis, quod attinet ad missionem et revocationem Legatorum apud Res Publicas constitutorum.” English translation from *Code of Canon Law, Latin-English Edition: New English Translation* (Washington, DC: CLSA, 2012). All subsequent English translations of canons from this code will be taken from this source unless otherwise indicated.

²⁹ 1917 *CIC* c. 265: “Romano Pontifici ius est, a civili potestate independens, in quamlibet mundi partem Legatos cum vel sine ecclesiastica iurisdictione mittendi.” Peters, 113.

states.³⁰

Moreover, in the process of revising the code the change in priorities took place.

Though the 1917 code stressed the issue of papal representation to the states and civil authorities, the 1983 code reversed that principle giving more importance to the local churches rather than to civil states. The change happened between the 1977 *Populo Dei* and the 1980 *Schema*. A comparison between the original texts in Latin is interesting.

We have highlighted the changes.

³⁰ SOE, III 1: "Romano Pontifici ius nativum et independens competit Legatos suos libere nominandi, mittendi, transferendi et revocandi, servatis normis iuris internationalis, quod attinet ad missionem et revocationem Legatorum apud Res Publicas constitutorum;" English translation: "Canon 265 Papal Legates," *CLD* 7:278.

The 1977 <i>De Populo Dei</i> (pertinent section highlighted in red):	The 1980 Schema reversed the principle:	The 1982 Schema upheld the change of principle but reworded it slightly:
<p>Canon 177: <i>Romano Pontifici ius est nativum et independens ad societates politicas civiliaque gubernia atque ad Ecclesias in certa natione aut ditione ecclesiastica sitas Legates suos mittendi, sicut et eos nominandi, transferendi et revocandi, servatis quidem normis iuris internationalis, quod attinet ad missionem et revocationem Legatorum de quibus supra apud societates politicas constitutorum.</i></p>	<p>Canon 299: <i>Romano Pontifici ius est nativum et independens Legatos suos nominandi ac mittendi sive ad Ecclesias particulares in certa ditione ecclesiastica sive ad Civitates et ad publicas Auctoritates, itemque eos transferendi et revocandi, servatis quidem normis iuris internationalis, quod attinet ad missionem et revocationem Legatorum apud Res Publicas constitutorum.</i></p>	<p>Canon 361: <i>Romano Pontifici ius est natium et independens Legatos suos nominandi ac mittendi sive ad Ecclesias particulares in variis nationibus vel regionibus sive simul ad Civitates et ad publicas Auctoritates, itemque eos transferendi et revocandi, servatis quidem normis iuris internationalis, quod attinet ad missionem et revocationem Legatorum apud Res Publicas constitutorum.</i></p>

The above mentioned principle of priority of the local churches over civil states and governments, present already in *1980 Schema* and *1982 Schema*, is further featured in canon 363 §1 which does not have an equivalent in the 1917 Code. The canon reads:

To the legates of the Roman Pontiff is entrusted the office of representing the Roman Pontiff in a stable manner to particular churches or also to the states and public authorities to which they are sent.³¹

A very similar statement of the principle is found in *SOE I, 2*:

They exercise their papal legation either only to local churches or jointly to the churches and to states and civil governments.³²

Interestingly, even though the 1969 *motu proprio* had modified the principle in favor of the local churches, the revision process of the code did not follow it immediately.

Similarly to the revisions of canon 362 of the 1983 code, *Populo Dei* had it formulated giving priority to the civil states. Here are the Latin texts of the documents with the highlights of the relevant sections, noting especially the change in the *1980 Schema*:

³¹ Canon 363: “§1. Legatis Romani Pontificis officium committitur ipsius Romani Pontificis stabili modo gerendi personam apud Ecclesias particulares aut etiam apud Civitates et publicas Auctoritates, ad quas missi sunt.”

³² *SOE, I 2*: “Iidem pontificiam legationem exercent vel apud Ecclesias locales tantum, vel apud Ecclesias simul et Res Publicas atque civilia Gubernia.”

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>
Canon 178 §1: <i>Nomine Legatorum Romani Pontificis, in canonibus qui sequuntur, appellantur viri ecclesiastici quibus Romanus Pontifex officium committit suam stabili modo gerendi personam, in variis terrarum orbis nationibus societatisque politicis aut certis ditionibus ecclesiasticis.</i>	Canon 300 §1: <i>Nomine Legatorum Romani Pontificis in canonibus qui sequuntur, appellantur clerici quibus Romanus Pontifex officium committit suam stabili modo gerendi personam in certis ditionibus ecclesiasticis aut apud Civitates et publicas Auctoritates.</i>	Canon 362: <i>Legatis Romani Pontificis officium committitur ipsius Romani Pontificis stabili modo gerendi personam apud Ecclesias particulares aut etiam apud Civitates et publicas Auctoritates, ad quas missi sunt.</i>

Of these versions, it is clear that the 1982 *Schema* and 1983 code are very assertive and clear about the priorities of the papal legates, as being sent first of all to the local churches and then to the civil states and governments.

The insertion of the clause about respecting international laws came as the result of the 1961 Vienna Convention on Diplomatic Relations;³³ hence it was introduced in the subsequent documents, including 1969 *Sollicitudo omnium Ecclesiarum*.

³³ An interesting article about the Holy See's international relationships and its status was written by Matthew N. Bathon, "The Atypical International Status of the Holy See," *Vanderbilt Journal of Transnational Law* 34 (2001) 597-632.

To sum up, it is essential to note that the formulation of canons 362 and 363 §1 (1983 code) gives priority to the appointment of legates to the local churches and, as a secondary task, to the states. This shows a change from the 1917 code which happened between 1977 and 1980 revision versions of the code. Such a change was a result of the conciliar comments and discussions as described in Chapter Two. In addition, further interpretation of canon 362 gives the pope both the active (sending) and passive (receiving) right to legation in the realm of secular diplomacy.³⁴

3.3.2. Types of Papal Legates

The 1917 Code of Canon Law provided us with four different types of papal legates as described in canons 266 and 267:

Canon 266: They are called *Legates from the side* [*Legatus a latere*], those Cardinals who like *another self* are sent by the Roman Pontiff with this title, and such a one can only do what was committed to him by the Roman Pontiff.³⁵

³⁴ Charles D. Balvo, "Legates of the Roman Pontiff," in *New Commentary on the Code of Canon Law*, ed. John P. Beal et al. (New York/Mahwah, NJ: Paulist Press, 2000) [hereafter *New Commentary*] 491.

³⁵ 1917 *CIC* c. 266: "Dicitur Legatus a latere Cardinalis qui a Summo Pontifice tanquam alter ego cum hoc titulo mittitur, et tantum potest, quantum ei a Summo Pontifice demandatum est." Peters, 113.

Canon 267: §1: Legates who are sent with the title of Nuncio or Internuncio:

- 1° Foster, according to the norms received from the Holy See, relations between the Apostolic See and the civil Governments within which the legation functions in a stable manner;
- 2° In the territories assigned to them, they must be vigilant about the state of the Church and inform the Roman Pontiff about it;
- 3° Beyond these two ordinary powers, they obtain other faculties that, however, are all delegated.

§2: But those who are sent with the title Apostolic Delegate have only that ordinary power described in § 1, n. 2, besides those other faculties committed to them by the Holy See.³⁶

Both canons were devoted to presenting the title and describing the function of particular types of papal legate: *Legatus a latere*, nuncio, internuncio and apostolic delegate. Since we have analyzed these canons in detail in Chapter One, let us now look at how the list of types of papal legates compares to the 1969 motu proprio *Sollicitudo omnium Ecclesiarum*. The relevant material was found in Chapter I of the document:

1. By the term, papal legates, are here understood ecclesiastics, often endowed

³⁶ 1917 CIC c. 267 "§1: Legati qui mittuntur cum titulo Nuntii aut Internuntii: 1° Fovent, secundum normas a Sancta Sede receptas, relationes inter Sedem Apostolicam et civilia Gubernia apud quae legatione stabili funguntur; 2° In territorio sibi assignato advigilare debent in Ecclesiarum statum et Romanum Pontificem de eodem certiore reddere; 3° Praeter has duas ordinarias potestates, alias plerumque facultates obtinent quae tamen sunt omnes delegatae. §2: Qui vero mittuntur cum titulo Delegati Apostolici unam habent ordinariam potestatem de qua in §1, n. 2, praeter aliis facultates delegatas ipsis a Sancta Sede commissas." Peters, 114.

with the episcopal dignity, to whom the Roman Pontiff entrusts the office of representing him in a permanent manner in various nations or regions of the world.

2. They exercise their papal legation either only to local churches or jointly to the churches and to states and civil governments. Those who discharge their legation only to local churches are called apostolic delegates. On the other hand, if to this legation, which is of a religious and ecclesial nature, there is also added the function of promoting relations with states and civil governments, then the legates are given the special title of nuncio, pro-nuncio or internuncio according to whether they belong to the rank of "ambassador" with or without the right of acting as dean of the diplomatic corps, or are ranked as "extraordinary envoy and minister plenipotentiary."

3. Due to special circumstances of place or time, a papal legate may also be called by other titles such as, for example, "apostolic delegate and envoy of the Holy See to a government." It also happens that in a permanent but supplemental way the office of legate is not given to a papal legate but to a "regent" or to a "chargé d'affaires with credentials."³⁷

³⁷ SOE, I: "1. Nomine Legatorum Romani Pontificis hic appellantur viri ecclesiastici, plerumque Episcopali Ordine insignes, quibus Romanus Pontifex officium committit suam stabili modo gerendi personam in variis terrarum Orbis Nationibus vel Regionibus. 2. Iidem pontificiam legationem exercent vel apud Ecclesias locales tantum, vel apud Ecclesias simul et Res Publicas atque civilia Gubernia. Qui legatione funguntur tantum apud Ecclesias locales, vocantur Delegati Apostolici; si vero ad hanc legationem, indolis religiosae atque ecclesialis, accedit etiam munus publicas fovendi rationes cum Civitatibus et civilibus Guberniis, tunc Legati proprio titulo nuncupantur vel Nuntii, vel Pro Nuntii, vel Internuntii, prouti vel ad ordinem pertinent «Publicorum Legatorum» cum iure partes gerendi Decani in Legatorum coetu, vel hoc iure carent, vel recensentur inter «Legatos extraordinarios et Administros liberis cum mandatis». 3. Ob peculiaria adiuncta loci vel temporis, Legatus Pontificius aliis nominibus appellare potest, uti, verbi gratia, «Delegatus Apostolicus et Missus Sanctae Sedes ad Gubernium». Fit etiam ut, stabiliiter quidem, sed ad Legati munus supplendum, Legationi Pontificiae praeponatur «Regens», aut «Curam Agens ad Negotia publicis litteris instructus;» CLD 7:277-278.

With the help of the *motu proprio* we can distinguish then the following types of legates in the church:

- Apostolic Delegate. He represents the Roman pontiff to the local churches only and has no civil diplomatic functions.
- Nuncio. His function embraces both: the representation of the pope to the local churches and to the state or civil governments. As such, his civil status is equated with an ambassador. After the 1815 Congress of Vienna, in many Catholic countries he is also considered as dean of all diplomatic corps accredited with a particular state.
- Pro-nuncio. This distinction mentioned in the *motu proprio* is no longer being used. It described the function of nuncio, as mentioned above, with a notion that he is not the dean of the diplomatic corps in that particular country.
- Internuncio. Another dropped distinction. It signified the civil obligation of a papal legate similar to those of a nuncio, but in a country which did not yet establish official diplomatic relations with the Holy See, though it is in the process of doing so.
- Regens. The title mentioned in *Sollicitudo omnium Ecclesiarum* meant a cleric who was to replace a nuncio while he could not be present at his post. This title is no longer used and was replaced by *Chargé d'affaires*.

- *Chargé d'affaires*. It is usually a member of the staff of the papal diplomatic post that has been put in charge of a special task or to act in place of the nuncio (with limited powers) while he is absent from his post.

It is rather interesting that the 1969 motu proprio did not mention the centuries old title of papal envoy: *Legatus a latere*. The document hinted only that other titles (besides those which were listed above in the motu proprio) were also possible, leaving the issue open ended (SOE I, 3). On the other hand *Sollicitudo omnium Ecclesiarum* added a few titles as compared with the 1917 code: pro-nuncio, regens and *Chargé d'affaires*.

The 1983 Code of Canon Law, in general, does not name nor describe papal legates *per se* with one exception. Canon 363, which describes various functions of papal representatives, uses the generic title "papal legate" without making further distinction. However, in canon 358, the current code returned to the notion mentioned in canon 266 of the 1917 code naming special envoys of the pope: *legatus a latere*, something that was missing in the motu proprio, and added the title *missus specialis*:

Canon 358: A cardinal to whom the Roman Pontiff entrusts the function of representing him in some solemn celebration or among some group of persons as a legates *a latere*, that is, as his alter ego, as well as one to whom the Roman Pontiff entrusts the fulfillment of a certain pastoral function as his special envoy

(*missus specialis*) has competence only over those things which the Roman Pontiff commits to him.³⁸

This canon resembles partially canon 266 of the 1917 code. It refers to the two types of papal legates: a cardinal representing him as an alter ego, called *legatus a latere* who is commissioned by the Roman pontiff for a special task. The other is called the “special envoy” (*missus specialis*). The name of special envoy was not used in the 1917 code, rather, it was put to use after the summer of 1973 when Archbishop Enrici was given it for the first time.³⁹ In both cases, the functions of these legates are extended only to the tasks given to them and are presumed, in a sense, temporary (not a stable office).

Canon 358 of the current code was “reinstated” after the omission of *Sollicitudo omnium Ecclesiarum* in the revision process beginning with the 1977 *Populo Dei*. The revision versions do not vary much, only in a few words. However they are drastically different from the 1917 code. Here are the Latin language originals:

³⁸ Canon 358: “Cardinali, cui a Romano Pontifice hoc munus committitur ut in aliqua sollemni celebratione vel personarum coetu eius personam sustineat, uti Legatus a latere, scilicet tamquam eius alter ego, sicuti et illi cui adimplendum concreditur tamquam ipsius misso speciali certum munus pastorale, ea tantum competunt quae ab ipso Romano Pontifice eidem demandantur.”

³⁹ Le Bras and Gaudemet, 385.

1917 code	1977 <i>Populo Dei</i>	1980 Schema	1982 Schema	1983 code
Canon 266: <i>Dicitur Legatus a latere Cardinalis qui a Summo Pontifice tanquam alter ego cum hoc titulo mittitur, et tantum potest, quantum ei a Summo Pontifice demandatum est.</i>	Canon 174: <i>Cardinali cui a Romano Pontifice committitur ut in aliqua sollemni celebratione aliquove personarum coetu eius personamsustine at, uti Legatus a latere, scilicet tanquam eius alter ego,</i>	Canon 295: <i>Cardinali cui a Romano Pontifice committitur ut in aliqua sollemni celebratione aliquove personarum coetu eius personamsustin eat, uti Legatus a latere, scilicet tanquam eius alter ego,</i>	Canon 357: <i>Cardinali cui a Romano Pontifice hoc munus committitur ut in aliqua sollemni celebratione vel aliquove personarum coetu eius personam sustineat, uti Legatus a latere, scilicet tanquam eius alter ego,</i>	Canon 358: <i>Cardinali, cui a Romano Pontifice hoc munus committitur ut in aliqua sollemni celebratione vel personarum coetu eius personam sustineat, uti Legatus a latere, scilicet tanquam eius alter ego,</i>

1917 code	1977 <i>Populo Dei</i>	1980 Schema	1982 Schema	1983 code
	<i>sicuti et cui</i>	<i>sicuti et cui</i>	<i>sicuti et illi cui</i>	<i>sicuti et illi cui</i>
	<i>concreditur ut</i>	<i>concreditur ut</i>	<i>concreditur ut</i>	<i>adimplendum</i>
	<i>tanquam ipsius</i>	<i>tanquam ipsius</i>	<i>tanquam ipsius</i>	<i>concreditur</i>
	<i>missus specialis</i>	<i>missus specialis</i>	<i>missus specialis</i>	<i>tanquam ipsius</i>
	<i>certum munus</i>	<i>certum munus</i>	<i>certum munus</i>	<i>misso speciali</i>
	<i>pastorale</i>	<i>pastorale</i>	<i>pastorale</i>	<i>certum munus</i>
	<i>adimpleat, ea</i>	<i>adimpleat, ea</i>	<i>adimpleat, ea</i>	<i>pastorale, ea</i>
	<i>tantum</i>	<i>tantum</i>	<i>tantum</i>	<i>tantum</i>
	<i>competunt quae</i>	<i>competunt quae</i>	<i>competunt quae</i>	<i>competunt quae</i>
	<i>ipsi ab ipso</i>	<i>ipsi ab ipso</i>	<i>ipsi ab ipso</i>	<i>ab ipso Romano</i>
	<i>Romano</i>	<i>Romano</i>	<i>Romano</i>	<i>Pontifice eidem</i>
	<i>Pontifice</i>	<i>Pontifice</i>	<i>Pontifice eidem</i>	<i>demandantur.</i>
	<i>demandantur.</i>	<i>demandantur.</i>	<i>demandantur.</i>	

In addition to these titles and functions of papal legates, the *motu proprio* and the current code mention also additional types: papal delegates and observers. These were not mentioned in the 1917 Code of Canon Law. As *Sollicitudo omnium Ecclesiarum* stated in Chapter I, 1, nuncio and apostolic delegate are titles usually assigned to those who have episcopal ordination, and often hold the title of archbishop. However, both

Sollicitudo omnium Ecclesiarum and the current code envision these two positions of

papal envoys (delegates and observers) being entrusted to either clergy or laypersons:

SOE II, 1. Also representing the Holy See are ecclesiastics and laymen who, as heads or members, are part of a papal mission to international organizations or to conferences and congresses. These are called delegates or observers according to whether the Holy See is registered or not registered among the members of the respective international organization and whether it takes part in a conference with or without the right to vote.

2. Likewise representing the Holy See are those members of a papal legation who, because the head of the said legation is temporarily lacking or absent, takes his place with regard to the local church as well as to the civil government and who are called "charge d'affaires ad interim."⁴⁰

A similar text is contained in canon 363 §2 of the 1983 code:

Canon 363 §2: Those who are designated as delegates or observers in a pontifical mission at international councils or at conferences and meetings also represent the Apostolic See.⁴¹

⁴⁰ SOE, II: "1. Personam gerunt Sanctae Sedes ii quoque ecclesiastici et laici veri, qui, ut praepositi vel membra, in pontificiam Missionem cooptantur apud Consilia Internationalia, aut apud Conferentias et Congressus. Hi vocantur Delegati vel Observatores, prout Sancta Sedes recensetur aut non recensetur inter membra Consiliorum Internationalium, et partem habet in aliqua Conferentia cum aut sine iure suffragat. 2. Simeliter personam Sanctae Sedes gerunt membra illa Pontificiae Legationis quae, sive deest sive abest ad tempus eiusdem Legationis praepositus, eius vices supplent tum erga Ecclesiam localem, tum erga Civitatis Gubernium, appellanturque «Curam Agentes ad negotia ad interim»:» CLD 7:278.

⁴¹ Canon 363 §2: "Personam gerunt Apostolicae Sedis ii quoque, qui in pontificiam Missionem ut Delegati aut Observatores deputantur apud Consilia internationalia aut apud Conferentias et Conventus."

Yet again, the code does not provide the explanation of the terms in this regard, but only notes the distinction between them.

- Papal Delegate. It is the one who represents the Roman pontiff to an organization (usually an international one) of which the Holy See is a member and where the Holy See has the right to vote, according to the *motu proprio*. Praxis shows, however, that the most important factor in this distinction is the ability to vote.
- Papal Observer. It is an office similar to the delegate as above, but the Holy See does not have the right to vote, although it might be a member of an organization (i.e., honorary membership).

The process of revising canon 363 §2 shows clear tendency to make the language of the 1969 *motu proprio* more concise, in agreement with the general style of the new code.

Drastic changes can be observed between the *1980 Schema* and the *1982 Schema*. To allow a comparison between the versions, here are the original Latin texts:

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>Canon 179:</p> <p><i>Personam gerunt Sanctae Sedis ii quoque ecclesiastici et laici, qui, sive ut singuli sive ut praepositi alicuius Delegationis, in Pontificiam Missionem deputantur apud Consilia Internationalia, aut apud Conferentias et Congressus;</i></p>	<p>Canon 301:</p> <p><i>Personam gerunt Apostolicae Sedis ii quoque clericis et laici, qui, sive ut singuli sive ut praepositi alicui Delegacioni, in Pontificiam Missionem deputantur apud Consilia Internationalia, aut apud Conferentias et Conventus;</i></p>	<p>Canon 363:</p> <p><i>Personam gerunt Apostolicae Sedis ii quoque, [] qui [] in pontificiam Missionem [] ut Delegati aut Observatores deputantur apud Consilia internationalia aut apud Conferentias et Conventus</i></p>	<p>Canon 363 §2:</p> <p><i>Personam gerunt Apostolicae Sedis ii quoque, qui in pontificiam Missionem ut Delegati aut Observatores deputantur apud Consilia internationalia aut apud Conferentias et Conventus.</i></p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p><i>qui vocantur</i> <i>Delegati aut</i> <i>Observatores, prout</i> <i>Sancta Sedes inter</i> <i>membra</i> <i>Consiliorum</i> <i>Internationalium</i> <i>recensetur aut non,</i> <i>et partem habet in</i> <i>aliqua Conferentia</i> <i>cum aut sine iure</i> <i>suffragii; iisdem non</i> <i>applicantur</i> <i>praescripta</i> <i>canonum qui sub</i> <i>hoc titulo habentur.</i></p>	<p><i>qui vocantur</i> <i>Delegati aut</i> <i>Observatores, prout</i> <i>Sancta Sedes inter</i> <i>membra</i> <i>Consiliorum</i> <i>Internationalium</i> <i>recensetur aut non,</i> <i>et partem habet in</i> <i>aliqua Conferentia</i> <i>cum aut sine iure</i> <i>suffragii; iisdem non</i> <i>applicantur</i> <i>praescripta</i> <i>canonum qui in hoc</i> <i>capite habentur,</i> <i>quemadmodum non</i> <i>applicantur Missis</i> <i>Extraordinariis.</i></p>		

To sum up, the current code of canon law does not provide much on various types of papal legates, but rather presumes the reader's familiarity with the previous code and the 1969 motu proprio *Sollicitudo omnium Ecclesiarum*. It makes only four particular distinctions due to their absence in all previous documents:

- *Legatus a latere* - present in the 1917 code but omitted in *SOE*;
- Envoy - mentioned in the motu proprio but not defined in the current code;
- Papal Delegate - not mentioned in the 1917 Code;
- Papal Observer - not mentioned in the 1917 Code as well.

In many ways, *Sollicitudo omnium Ecclesiarum* fills the *lacuna* of the current code providing the distinctions between the types and job descriptions of the papal legates.

We may try to reason that such a choice made for the current code was motivated by the will to make it more time-resistant. For instance, as it was noted above, the title of internuncio, pro-nuncio and regent are no longer in use. Avoiding these specific titles made the current code more time independent.

There is another important difference. In the 1917 Code there was no provision for the lay papal envoy. This option developed after the Second Vatican Council and was reflected in the 1969 motu proprio. The International Committee for the History of

Art (C.I.H.A.) is an example where the papal representative is a lay person: Professor Antonio Paolucci.⁴²

3.3.3. The Legate's Responsibilities to the Local Churches

The 1917 Code of Canon Law devoted very little to describe the duties of the papal legates to the local churches. It does so only in one canon (267), in the context of the description of the duties of nuncios and internuncios:

Canon 267: §1: Legates who are sent with the title of Nuncio or Internuncio:

- 1° Foster, according to the norms received from the Holy See, relations between the Apostolic See and the civil Governments within which the legation functions in a stable manner;
- 2° In the territories assigned to them, they must be vigilant about the state of the Church and inform the Roman Pontiff about it;
- 3° Beyond these two ordinary powers, they obtain other faculties that, however, are all delegated.

§2: But those who are sent with the title Apostolic Delegate have only that ordinary power described in § 1, n. 2, besides those other faculties committed to them by the Holy See.⁴³

⁴² *Annuario Pontificio per l'anno 2012*, (Vatican: Libreria Editrice Vaticana, 2012), 1335.

⁴³ 1917 CIC c. 267 "§1: Legati qui mittuntur cum titulo Nuntii aut Internuntii: 1° Fovent, secundum normas a Sancta Sede receptas, relationes inter Sedem Apostolicam et civilia Gubernia apud quae legatione stabili funguntur; 2° In territorio sibi assignato advigilare debent in Ecclesiarum statum et Romanum Pontificem de eodem certiore reddere; 3° Praeter has duas ordinarias potestates, alias plerumque facultates obtinent quae tamen sunt omnes delegatae. §2: Qui vero mittuntur cum titulo Delegati Apostolici unam habent ordinariam potestatem de qua in §1, n. 2, praeter alix facultates delegatas ipsis a Sancta Sede commissas." Peters, 114.

It seems that the 1917 code left most of the instructions to sets of faculties and instructions that the nuncios, internuncios and apostolic delegates would receive from various offices of the Holy See. In contrast to such an approach the current code lists the duties of papal legates in much greater detail. As a matter of fact, the longest canon in this section on legates is canon 364, which primarily reflects the *motu proprio* and the conciliar teaching. It describes the duties and jurisdiction of the nuncio and apostolic delegate, always stressing his primary role as the sign of unity and care of the Holy Father for the local churches:

Canon 364: The principal function of a pontifical legate is daily to make stronger and more effective the bonds of unity which exist between the Apostolic See and particular churches. Therefore, it pertains to the pontifical legate for his own jurisdiction:

1° to send information to the Apostolic See concerning the conditions of particular churches and everything that touches the life of the Church and the good of souls;

2° to assist bishops by action and counsel while leaving intact the exercise of their legitimate power;

3° to foster close relations with the conference of bishops by offering it assistance in every way;

4° regarding the nomination of bishops, to transmit or propose to the Apostolic See the names of candidates and to instruct the informational process concerning those to be promoted, according to the norms given by the Apostolic See;

5° to strive to promote matters which pertain to the peace, progress, and cooperative effort of peoples;

6° to collaborate with bishops so that suitable relations are fostered between the Catholic Church and other Churches or ecclesial communities, and even non-Christian religions;

7° in associated action with bishops, to protect those things which pertain to the mission of the Church and the Apostolic See before the leaders of the state;

8° in addition, to exercise the faculties and to fulfill other mandates which the Apostolic See entrusts to him.⁴⁴

Canon 364, 1° expresses the duty of informing the Roman pontiff about the situation of the local church. This was also present in the canon 267 §1, 2° of the former code. *Sollicitudo omnium Ecclesiarum* mentions this in chapter V, 1:

⁴⁴ Canon 364: "Praecipuum munus Legati pontifici est ut firmiora et efficaciora in dies reddantur unitatis vincula, quae inter Apostolicam Sedem et Ecclesias particulares intercedunt. Ad pontificium ergo Legatum pertinet pro sua ditione:

1° ad Apostolicam Sedem notitias mittere de condicionibus in quibus versantur Ecclesiae particulares, deque omnibus quae ipsam vitam Ecclesiae et bonum animarum attingant; 2° Episcopis actione et consilio adesse, integro quidem manente eorundem legitimae potestatis exercitio; 3° crebras fovere relationes cum Episcoporum conferentia, eidem omnimodam operam praebendo; 4° ad nominationem Episcoporum quod attinet, nomina candidatorum Apostolicae Sedi transmittere vel proponere necnon processum informativum de promovendis instruere, secundum normas ab Apostolica Sede datas; 5° anniti ut promoveantur res quae ad progressum et consociatam populorum operam spectant; 6° operam conferre cum Episcopis, ut opportuna foveantur commercia inter Ecclesiam catholicam et alias Ecclesias vel communitates ecclesiales, immo et religiones non christianas; 7° ea quae pertinent ad Ecclesiae et Apostolicae Sedis missionem, consociata cum Episcopis actione, apud moderatores Civitatis tueri; 8° exercere praeterea facultates et cetera explere mandata quae ipsi ab Apostolica Sede committantur."

As part of his ordinary function the papal legate must regularly, truthfully and adequately inform the Apostolic See of the conditions of the church to which he has been sent and of all else which touches upon the very life of the Church and the good of souls.⁴⁵

This point was rather widely contested before and during the council. Many had seen it as the limitation the autonomy of the local ordinaries and the churches. The conciliar and papal teachings, however, see this as a concrete expression of unity and cooperation between the Holy See and the local churches, as well as an expression of care for the good of the souls.

Canon 364, 2° deals with the complaints of many council Fathers about “overlapping” jurisdiction of the nuncio and the local ordinary.⁴⁶ The canon presents it more in the form of service to the local church and not as a source of conflict. The previous code had a similar statement in canon 269 §1.⁴⁷ The *motu proprio* states:

With regard to relation with bishops to whom by divine mandate has been entrusted the care of souls in each diocese, the papal legate, while leaving to the bishops the complete exercise of their jurisdiction, must, in a spirit of fraternal cooperation, bring aid, give advice, and lend ready and generous efforts to

⁴⁵ SOE, V, 1: “Pontificius Legatus, pro suo ordinario munere, debet Apostolicam Sedem certo tempore, ex veritate et aequitate certiore facere de condicionibus in quibus versantur Ecclesiae ad quas missus est, deque omnibus illis quae ipsam vitam Ecclesiae et bonum animorum contingent;” *CLD* 7:279.

⁴⁶ See p. 110, number 7.

⁴⁷ 1917 *CIC* c. 268: “§1. Legati Ordinariis locorum liberum suae iurisdictionis exercitium relinquunt.” Legates shall leave to local Ordinaries the free exercise of their jurisdiction.

them.⁴⁸

Clearly the change of language from the previous notion of the legates as the overseers on behalf of the Roman pontiff to the language of service is the result of the conciliar debates and the pope's vision of this office.

Canon 364, 3°, similar to the previous point, has *Sollicitudo omnium Ecclesiarum* as the source of this legislation:

Regarding relations with episcopal conferences, the papal legate should be mindful that their responsibilities and tasks are of extreme importance and, as a result, he should foster close relations with them and proffer every possible help. Although he is not by law a member of the conference, nevertheless he shall attend the first meeting of each general session, without prejudice to the right of taking part in other meetings of the conference at the invitation of the bishops themselves or by express order of the Apostolic See. Moreover, in due time, the issue to be treated of in the session will be made known to him and a copy of the transactions will be sent him so that he himself will be informed on the matters

⁴⁸ SOE, VIII, 1: "Quod attinet ad rationes habendas cum Episcopis, quibus ex divino mandato animorum cura in singulis dioecesibus commissa est, Legatus Pontificius, integram relinquens Episcopis eorum iurisdictionis exercitium, iis opem ferre, consilia dare, prompte generoseque suam operam praestare debet, fraterno consociatae operae spiritu permotus;" *CLD* 7:281.

and he can transmit them to the Apostolic See.⁴⁹

The canon briefly mentions something about giving assistance to the conference of bishops. While Pope Paul VI's document is more detailed in describing this assistance in the form of participation in the General Sessions of episcopal conferences, communicating ideas and acts to the Holy See, as well as carrying out at the meetings special functions given to him by the pope. Again, the spirit of service or ministry is clearly evident in the language of these documents.

Canon 364, 4° reflects chapter VI of the motu proprio and assigns to the nuncio the task of assembling and transmitting the *turnus* to the Holy See. Although the motu proprio is more elaborate on this topic, and the new code includes canon 377 devoted just to that process, neither one of them is exhaustive. *Episcoporum delectum*⁵⁰ of March 25, 1972 is the reference point for these norms.

⁴⁹ SOE, VIII, 2: "Ad rationes cum Conferentiis Episcopalibus quod spectat, Legatus Pontificius meminerit earum munera et officia summa esse momenti, ac propterea crebras cum illis relations esse fovendas, et omnimodam opem praestandam. Quamvis ex iure membrum Conferentiae non sit, nihilominus ipse primo coetui cuiusvis sessionis generalis intererit, salvo iure participandi alios Conferentiae coetus ex ipsorum Episcoporum invitatione aut ex expresso Apostolicae Sedis mandato; praeterea ipsi notae fient tempore utili quaestiones in sessione tractandae, atque exemplar actorum mittetur, ut ipse de his certior reddatur eademque ad Apostolicam Sedem transmittat;" *CLD* 7:281.

⁵⁰ The Council for the Public Affairs of the Church, The Norms for Selection and Appointment of the Bishops *Episcoporum delectum*, March 25, 1972: *AAS* 64 (1972) 386-391.

Canon 364, 5° reflects on the general role of the papal legate to promote peace, progress, and cooperation. The wording of *Sollicitudo omnium Ecclesiarum* is as follows:

In addition, he functions as interpreter of the solicitude of the Roman Pontiff for the good of the country in which he exercises his mission. In a special way he must take to heart the questions which concern peace, progress and collaboration of peoples with the intent of promoting the spiritual, moral and economic good of the whole human family.⁵¹

Canon 364, 6° expresses the desire to foster inter-Christian and inter-faith dialogue. The *motu proprio* states:

Inasmuch as he represents the supreme shepherd of souls, the papal legate, in accord with the mandates and instructions he has received from the competent offices of the Apostolic See and in joint counsel with the bishops of the place where he is discharging his mission and, in eastern regions, with the patriarchs especially, should promote opportune relations between the Catholic Church and other Christian assemblies and should foster cordial dealings with non-Christian religions.⁵²

⁵¹ SOE, IV, 2: "Ipse praeterea quasi interpres fit sollicitudinis Romani Pontificis de bono Nationis, in qua legatione fungitur, eique peculiari modo corde esse oportet quaestiones ad pacem, ad progressum et ad consociatam populorum operam spectantes, eo quidem consilio, ut totius hominum familiae spirituale, morale atque oeconomicum bonum promoveatur;" *CLD* 7:279.

⁵² SOE, IV, 4: "Quatenus personam gerit Supremi Pastoris animorum, Legatus Pontificius, iuxta mandata et instructiones quae accipit a competentibus Apostolicae Sedis Officiis, et collatis consiliis cum Episcopis loci in quo munere suo fungitur, in regionibus quidem orientalibus praesertim cum Patriarchis, foveat opportuna commercia inter Catholicam Ecclesiam et alios coetus christianos, foveatque rationibus cantate innixis erga Religiones non christianas;" *CLD* 7:279.

Though there were some signs of change beforehand, such a statement would not have been well accepted before the Second Vatican Council. Cooperation with other churches seems to receive a practical dimension in the office of the papal legate.

Canon 364, 7° is a very practical reminder of the reality when the two documents were written: the spreading of Communism around the world and the fight for human freedom. Those conditions have changed in Europe but they apply to so many countries today where freedoms are being taken away and religion is not welcomed. The nuncio has a duty to support the local efforts in assuring protection to the Church and her children.

It also belongs to the papal legate, in concert with the bishops, to safeguard whatever pertains to the mission of the Church and of the Apostolic See with the authorities of the state where he exercises his office. Indeed, this responsibility also devolves upon those legates who have not been sent to rulers of state; they should, however, strive to foster beneficial relations with the civil rulers.⁵³

⁵³ SOE, IV, 3: "Pontificii Legati est etiam apud moderatores Civitatis, in qua officio suo fungitur, ea quae pertinent ad Ecclesiae et Apostolicae Sedis missionem, consociata cum Episcopis actione, tueri. Quod quidem munus spectat insuper ad illos Legatos, qui non sunt missi ad Civitatum moderatores: iidem igitur contendant fructuosas necessitudines cum civilibus moderatoribus fovere;" *CLD* 7:279.

Canon 364, 8° is a general statement that the nuncio is required to fulfill other tasks given to him by the Holy See. The *motu proprio* puts him directly under the Secretary of the State and the Prefect of the Council for Public Affairs.

The papal legate performs his manifold assignment under the direction of and in accord with the mandate of the Cardinal Secretary of State and of the Prefect of the Council for the Public Affairs of the Church to whom he must render an account of his performance of the mission entrusted to him by the Roman Pontiff.⁵⁴

That distinction is no longer applicable as *Pastor Bonus* (arts. 39-47)⁵⁵ merged both of these offices into one: the Secretariat of the State with two distinct sections and their proper roles in overseeing the work of the nuncios. Moreover, other lists of the additional faculties have been published. One of them is the 1986 *Index facultatum legatis pontificiis tributarum* where six different dicasteries of the Roman Curia listed the special faculties granted to the office of the nuncio.⁵⁶

⁵⁴ SOE, IV, 5: "Multiplici munere suo Pontificius Legatus fungitur sub ductu et iuxta mandata Cardinales Secretarii Status eiusdemque Praefecti Consilii pro publicis Ecclesiae negotiis, cui quidem directe rationem reddere debet de perfunctione muneris sibi a Romano Pontefice cullati;" *CLD* 7:279.

⁵⁵ John Paul II, apostolic constitution *Pastor Bonus*, June 28, 1988: *AAS* 80 (1988) 870-872; English translation C.C.F. Kelly et al., in *Code of Canon Law: Latin –English Edition. New English Translation* (Washington, DC: CLSA, 2012) 706-707.

⁵⁶ *Index facultatum legatis pontificiis tributarum* (Vatican: Typis Polyglottis Vaticanis, 1986).

The revision process of canon 364 is very interesting. Though the duties of the papal legate towards the local churches had been well defined in the 1969 motu proprio *Sollicitudo omnium Ecclesiarum* not all of them made their way into the 1983 code. Later in this section we will deal with the laws contained in the motu proprio but not included in the code, but for now we would like to mention the following. The 1977 *Populo Dei* (canon 182) only included six of the eight points of the 1983 code. Missing elements were 4° on the process of nominating bishops and transferring that information to the Holy See, and 7° on papal legates working closely with the local hierarchy to preserve the interests of the Church against any exterior influence, including that from civil governments. Number 4° appeared for the first time in the 1980 *Schema*, however number 7° was only inserted into the 1982 *Schema*. Furthermore, the 1982 *Schema* reordered completely the canon's preamble and the first two points. The following are the original texts of the canon in four revision steps:

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>Canon 182: <i>Ad munus ordinarium tum Nuntii vel Pro Nuntii tum Delegati Apostolici pertinet:</i></p>	<p>Canon 302: <i>Ad munus ordinarium Legati Pontifici pertinet:</i></p>	<p>Canon 364: <i>Praecipuum munus Legati Pontifici est ut firmiora et efficaciora in dies reddantur unitatis vincula, quae inter Apostolicam Sedem et Ecclesias particulares intercedunt. Ad pontificium ergo Legatum pertinet pro sua ditione:</i></p>	<p>Canon 364: <i>Praecipuum munus Legati pontifici est ut firmiora et efficaciora in dies reddantur unitatis vincula, quae inter Apostolicam Sedem et Ecclesias particulares intercedunt. Ad pontificium ergo Legatum pertinet pro sua ditione:</i></p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>1° operam dare ut tueatur quae ad Ecclesiae et Apostolicae Sedis pertinent missionem utque firmiora efficacioraque in dies reddantur unitatis vincula, quae eandem Apostolicam Sedem inter et Ecclesias in natione aut ditione ecclesiastica sitas intercedunt;</p>	<p>1° <i>tueri</i> operam dare ut tueatur quae ad Ecclesiae et Apostolicae Sedis pertinent missionem <i>et operam dare ut firmiora et efficaciosa</i> in dies reddantur unitatis vincula, quae <i>inter ipsam</i> Apostolicam Sedem et Ecclesias <i>particulares</i> intercedunt;</p>	<p>1° <i>Apostolicam Sedem edocere de conditionibus in quibus versantur Ecclesiae particulares, reque omnibus quae ipsam vitam Ecclesiae et bonum animarum attingunt;</i></p>	<p>1° <i>ad</i> Apostolicam Sedem <i>notitias mittere</i> de condicionibus in quibus versantur Ecclesiae particulares, deque omnibus quae ipsam vitam Ecclesiae et bonum animarum attingant;</p>

1977 <i>Populo Dei</i>	1980 Schema	1982 Schema	1983 code
<p>2° cognoscere condiciones in quibus versantur Ecclesiae ad quas missus est atque, sollicitudinis Summi Pontificis interpres, integrum quidem relinquens Episcoporum dioecesanorum potestatis regiminis exercitium, eorundem Episcoporum in bonum earum Ecclesiarum operam sustentare et fovere;</p>	<p>2° cognoscere condiciones in quibus versantur Ecclesiae ad quas missus est atque, sollicitudinis Summi Pontificis interpres, integrum quidem relinquens Episcoporum dioecesanorum <i>legitimae</i> potestatis regiminis exercitium, eorundem Episcoporum in bonum <i>earundem</i> Ecclesiarum operam sustentare et fovere;</p>	<p>2° <i>Episcopis actione et consilio adesse, integro quidem manente eorundem legitimae potestatis exercibus;</i></p>	<p>2° <i>Episcopis actione et consilio adesse, integro quidem manente eorundem legitimae potestatis exercitio;</i></p>

1977 <i>Populo Dei</i>	1980 Schema	1982 Schema	1983 code
<p>3° crebras fovere relationes cum Episcoporum Conferentia regionis ecclesiasticae, eidem omnimodam operam praebens;</p>	<p>3° crebras fovere relationes cum Episcoporum Conferentia regionis ecclesiasticae, eidem omnimodam operam praebens;</p>	<p>3° crebras fovere relationes cum Episcoporum Conferentia regionis ecclesiasticae, eidem omnimodam operam praebens;</p>	<p>3° crebras fovere relationes cum Episcoporum conferentia, eidem omnimodam operam <i>praebendo;</i></p>
<p>4° operam conferre ut promoveantur res quae ad pacem, ad progressum et consociatam populorum operam spectant;</p>	<p>4° <i>ad nominationem Episcoporum quod attinet processum informativum instruere, secundum normas ab Apostlica Sede datas;</i></p>	<p>4° ad nominationem Episcoporum quod attinet, <i>nomina candidatorum Apostolicae Sedi transmittere vel proponere necnon processum informativum de promovendis instruere, secundum normas ab Apostlica Sede datas;</i></p>	<p>4° ad nominationem Episcoporum quod attinet, nomina candidatorum Apostolicae Sedi transmittere vel proponere necnon processum informativum de promovendis instruere, secundum normas ab Apostolica Sede datas;</p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 <i>code</i>
<p><i>5° iuxta mandata et instructiones sibi data, atque collatis consiliis cum Episcopis locorum, in quibus munere suo fungitur, in regionibus quidem orientalibus praesertim cum Patriarchis, opportuna fovere commercia Ecclesiam Catholicam inter et alias christianas communitates, immo et religiones non christianas;</i></p>	<p><i>5° anniti ut promoveantur res quae ad pacem, ad progressum et consociatam populorum operam spectant;</i></p>	<p><i>5° anniti ut promoveantur res quae ad pacem, ad progressum et consociatam populorum operam spectant;</i></p>	<p><i>5° anniti ut promoveantur res quae ad progressum et consociatam populorum operam spectant;</i></p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 <i>code</i>
<p>6° <i>exercere facultates et explere mandata quae ipsi ab Apostolica Sede committuntur.</i></p>	<p>6° <i>iuxta mandata et instructiones sibi data, atque collatis consiliis cum Episcopis locorum, in quibus munere suo fungitur, opportuna fovere commercia inter Ecclesiam Catholicam et alias christianas communitates, immo et religiones non christianas;</i></p>	<p>6° <i>iuxta mandata et instructiones sibi datas, atque collatis consiliis cum Episcopis opportuna fovere commercia Ecclesiam catholicam et alias Ecclesias vel communitates ecclesiales, immo et religiones non christianas;</i></p>	<p>6° <i>operam conferre cum Episcopis, ut opportuna foveantur commercia inter Ecclesiam catholicam et alias Ecclesias vel communitates ecclesiales, immo et religiones non christianas;</i></p>
	<p>7° <i>exercere praeterea facultates et cetera explere mandata quae ipsi ab Apostolica Sede committuntur.</i></p>	<p>7° <i>ea quae pertinent ad Ecclesiae et Apostolicae Sedis missionem, consociata cum Episcopis actione, apud moderatores Civilitatis tueri;</i></p>	<p>7° <i>ea quae pertinent ad Ecclesiae et Apostolicae Sedis missionem, consociata cum Episcopis actione, apud moderatores Civitatis tueri;</i></p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
		<i>8° exercere praeterea facultates et cetera explere mandata quae ipsi ab Apostolica Sede committuntur.</i>	<i>8° exercere praeterea facultates et cetera explere mandata quae ipsi ab Apostolica Sede committantur.</i>

Canon 364 of the current code of canon law is in many ways the papal response to the voices of the conciliar Fathers requesting changes to the office of papal legates. This canon precedes the canon on the duties of the nuncio to the states. Hence, the priority of his duties to the local churches not only was well presented in the form of a rather detailed list, but received a place before other canons pertaining to the role of the legates. Though the list was considered carefully and adjusted during the revision process of the code, it does not contain all of the duties of the papal legates which were mentioned in the motu proprio *Sollicitudo omnium Ecclesiarum*. For example, section IX of the motu proprio on his interaction with the local conferences of religious did not make it into the code at all. One also can notice a major stress on cooperation between papal legates and the local bishops individually and in episcopal conferences. Although the legate represents the pope to the local churches, he is also staying united with the

bishop defending the interests of the Church on the local level against any exterior influences. The only function mentioned in the 1917 code that was reflected in canon 364, 1° of the 1983 code pertained to the legate's sending information about the local church to the Holy See. Though there were some voices opposing this idea at the Second Vatican Council, the canon was included in the current law adding pastoral wording to it: "everything that touches the life of the Church and the good of the souls." Most of all, this canon requires papal legates to be a sign of unity of the local church with the pope and the Holy See, something that was greatly missing in the previous code of canon law.

3.3.4. The Legate's Responsibilities to the States and Organizations

The 1917 Code of Canon Law, similarly to the previous section on the duties of the papal legate to the local churches, had very little description of the duties of the legate to the civil states and organizations. Again, it was contained in canon 267 §1, 1°:

- Canon 267: §1: Legates who are sent with the title of Nuncio or Internuncio:
- 1° Foster, according to the norms received from the Holy See, relations between the Apostolic See and the civil Governments within which the legation functions in a stable manner;
 - 2° In the territories assigned to them, they must be vigilant about the state of the Church and inform the Roman Pontiff about it;

- 3° Beyond these two ordinary powers, they obtain other faculties that, however, are all delegated.

§2: But those who are sent with the title Apostolic Delegate have only that ordinary power described in § 1, n. 2, besides those other faculties committed to them by the Holy See.⁵⁷

Unlike in the 1917 code where the functions of the nuncio toward the state were described first, the new code puts them after describing his role as assistant to the local churches. Canon 365 refers mostly to the international diplomatic protocols in this regard, stressing the following elements: the need to foster relationships with the state, the nuncio's role in drafting treaties and concordats, and the consultation with the local ordinaries. The *motu proprio* referred to these issues in chapter X:

1. Relations existing between the Church and the state are usually cultivated by the papal legate to whom has been entrusted the proper and special task of acting in the name of and with the authority of the Apostolic See:

- a) to promote and cultivate relations between the Apostolic See and the government of the nation in which he exercises his mission.
- b) to treat questions which concern relations between Church and state.

⁵⁷ 1917 *CIC* c. 267 "§1: Legati qui mittuntur cum titulo Nuntii aut Internuntii: 1° Fovent, secundum normas a Sancta Sede receptas, relationes inter Sedem Apostolicam et civilia Gubernia apud quae legatione stabili funguntur; 2° In territorio sibi assignato advigilare debent in Ecclesiarum statum et Romanum Pontificem de eodem certiore reddere; 3° Praeter has duas ordinarias potestates, alias plerumque facultates obtinent quae tamen sunt omnes delegatae. §2: Qui vero mittuntur cum titulo Delegati Apostolici unam habent ordinariam potestatem de qua in §1, n. 2, praeter alix facultates delegatas ipsis a Sancta Sede commissas." Peters, 114.

c) finally, to treat in a special way of stipulations which are called "modes of living" regarding agreements and concordats as well as regarding conventions which deal with matters pertinent to public law.

2. In expediting these matters, the papal legate will do well to seek out the opinion and advice of the bishops in the manner and to the degree that circumstances suggest and will keep them informed of developments in negotiations.⁵⁸

However, the 1969 document added a section on duties of the delegates and observers of the Holy See at the various organizations, something that the current code does not include:

1. Where the Holy See does not have a delegate or an observer at international organizations, it belongs to the papal legate to follow up diligently on the agenda programs drawn up by those organizations. Furthermore, he will take care to:

a) keep the Apostolic See regularly informed on these matters.

b) promote, after consultations with the bishops, beneficial collaboration between welfare and educational institutes established by the Church and similar institutes whether government supported or not.

c) support and promote the activities of Catholic international organizations.

⁵⁸ SOE, X: "1. Rationes, quae inter Ecclesiam et Civitatem intercedunt, foveantur regulariter a Pontificio Legato, cui munus proprium ac peculiare committitur agendi nomine et auctoritate Apostolicas Sedes: a) ut promoveat ac foveat necessitudines inter Apostolicam Sedem et Gubernium Nationis apud quam legationem suam exercet; b) ut quaestiones pertractet quae ad rationes inter Ecclesiam et Civitatem pertinent; c) ut, denique, peculiari modo tractet de stipulationibus quae «modus vivendi» appellantur, de pactis et concordatis, nec non de conventionibus, quae de negotiis agunt ad ius publicum pertinentibus. 2. In his negotiis expediendis, modo ac ratione, quae rerum adiuncta suadeant, Legatus Pontificius utiliter sententiam et consilium Episcoporum exquiret, eosque certiores faciet de negotiorum cursu." *CLD* 7:282.

2. Delegates and observers of the Holy See at international organizations should carry out the task entrusted to them after consultation with the papal legate of the country where they are stopping.⁵⁹

This section reflects the new approach spoken of by then Monsignor Montini in 1951, where the church actively seeks to establish the new grounds for the common good and promotion of justice in various and innovative ways. Hence, the document is yet another practical expression of such an attitude that began to emerge during and after the council.

The development of canon 365 of the current law gives us an additional insight into the process of reform initiated at the Second Vatican Council. The 1977 *Populo Dei* Schema addressed in this canon (181) nuncios and pro-nuncios. The 1980 *Schema* named in canon 303 nuncios, pro-nuncios and added internuncios. However, the 1982 *Schema* did away with naming the titles and addressed papal legates in general. In

⁵⁹ SOE, XI: "1. Ubi desit Delegatus vel Observator Sanctae Sedis apud Consilia Internationalia, Legati Pontificii est diligenter persequi agendorum negotiorum rationes ab iisdem Consiliis statutas. Ipsi praeterea curae erit: a) de his Apostolicam Sedem stans temporibus certiore facere; b) collatis consiliis cum Episcopis frugiferam mutuaque operam fovere inter Instituta ad auxilium et educationem spectantia ab Ecclesia condita ac cetera similia Instituta, sive his Gubernia intersunt sive non intersunt; c) navitatem Consiliorum Internationalium Catholicorum sustinere ac promovere. 2. Delegati et Observatores Sanctae Sedis apud Consilia Internationalia munus sibi concreditum absolvent, consiliis initis cum Legato Pontificio Nationis, in qua commorantur." *CLD* 7:282 - 283.

addition, there was a change between the 1980 *Schema* and the 1982 *Schema* in regards to the description of their jurisdiction. The 1980 *Schema*, similarly to the 1977 *Populo Dei* *Schema*, mentioned the duties of legates to states or nations they were sent to. The 1982 *Schema* and the current code, however, described their jurisdiction primarily to the local churches (canon 364) and secondarily their duties to states which they are to exercise according to the norms of international law. For our detailed comparison, here are the original Latin texts:

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
Canon 181: §1. <i>Firmo praescripto can. 182, Nuntii et Pro Nuntii in natione societateve politica apud quam legationem suam exercet munus est:</i>	Canon 303: §1. <i>Nuntii, Pro Nuntii et Internuntii in Civitate apud quam legationem suam exercet praeterea munus est:</i>	Canon 365: §1. <i>Legati pontificii, qui simul legationem apud Civitates iuxta iuris internationalis normas exercet, munus quoque peculiare est:</i>	Canon 365: §1. <i>Legati pontificii, qui simul legationem apud Civitates iuxta iuris internationalis normas exercet, munus quoque peculiare est:</i>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p><i>1° promovere et fovere necessitudines Apostolicam Sedem inter et gubernium eiusdem nationis societatisve politicae;</i></p>	<p><i>1° promovere et fovere necessitudines inter Apostolicam Sedem et Auctoritates Rei Publicae;</i></p>	<p><i>1° promovere et fovere necessitudines inter Apostolicam Sedem et Auctoritates Rei Publicae;</i></p>	<p><i>1° promovere et fovere necessitudines inter Apostolicam Sedem et Auctoritates Rei Publicae;</i></p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 <i>code</i>
<p>2° quaestiones pertractare quae ad relationes Ecclesiam inter et societatem politicam pertinent; et peculiari modo tractate de concordatis, de stipulationibus quae “modus vivendi” appellantur aliisque huiusmodi conventionibus quae negotia respiciunt ad relationes Ecclesiam inter et societatem politicam spectantia.</p>	<p>2° quaestiones pertractare quae ad relationes <i>inter</i> Ecclesiam et <i>Civitatem</i> pertinent; et peculiari modo <i>agere</i> de concordatis, de stipulationibus quae “modus vivendi” appellantur aliisque huiusmodi conventionibus <i>conficiendis et ad</i> <i>effectum deducendis.</i></p>	<p>2° quaestiones pertractare quae ad relationes inter Ecclesiam et Civitatem pertinent; et peculiari modo agere de concordatis aliisque huiusmodi conventionibus conficiendis et ad effectum deducendis.</p>	<p>2° quaestiones pertractare quae ad relationes inter Ecclesiam et Civitatem pertinent; et peculiari modo agere de concordatis aliisque huiusmodi conventionibus conficiendis et ad effectum deducendis.</p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>§2. <i>In negotiis de quibus in § 1 expediendis, prout rerum adiuncta id suadeant, Legatus Pontificius sententiam et consilium Episcoporum nationis aut ditionis ecclesiasticae exquirat, eosque de negotiorum cursu certiores faciat.</i></p>	<p>§2. <i>In negotiis de quibus in § 1 expediendis, prout rerum adiuncta id suadeant, Legatus Pontificius sententiam et consilium Episcoporum ditionis ecclesiasticae utiliter exquiret, eosque de negotiorum cursu certiores faciet.</i></p>	<p>§2. <i>In negotiis, de quibus in §1, expediendis, prout adiuncta suadeant, Legatus pontificius sententiam et consilium Episcoporum ditionis ecclesiasticae exquirere ne omittat, eosque de negotiorum cursu certiores faciat.</i></p>	<p>§2. <i>In negotiis, de quibus in §1, expediendis, prout adiuncta suadeant, Legatus pontificius sententiam et consilium Episcoporum ditionis ecclesiasticae exquirere ne omittat, eosque de negotiorum cursu certiores faciat.</i></p>

To sum up, canon 365 of the current code reflects a much greater aspect of the duties of papal legates to the civil states and organizations than it was defined in the 1917 code. For the most part, it reflects the law included in the 1969 *motu proprio*, but as shown above, not entirely. The revision process exhibited further adjustments. The 1977 *Populo Dei* Schema had still given priority to the role of the legate to civil authorities (canon 181) over the ones to the local churches (canon 182). This had been corrected with the 1980 *Schema* and remained as such in the current code. In addition, the 1961

Vienna Convention on Diplomatic Relations⁶⁰ in which the Holy See participated, was somewhat reflected in the laws of the 1969 *motu proprio*, as stated above. However, canon 365 of the 1982 *Schema* and the current law included an explicit reference to it in paragraph 1.

3.3.5. The Privileges of the Papal Legates

Canon 269 §§2 and 3⁶¹ of the 1917 Code of Canon Law included two privileges contained in the law pertaining to papal legates, namely:

1. taking precedence over the local hierarchy with the exception of the cardinals;
2. being able to celebrate Mass using pontificalia in all the churches within their jurisdiction without the permission of the local bishop, with the exception of cathedrals.

⁶⁰ Again, an interesting article about the Holy See's international relationships and its status was written by Matthew N. Bathon, "The Atypical International Status of the Holy See," *Vanderbilt Journal of Transnational Law* 34 (2001) 597-632.

⁶¹ 1917 *CIC* c. 269: "§2. Licet forte caractere episcopali careant, praecedunt tamen omnibus Ordinariis qui non sint cardinalitia dignitate insigniti. §3. Si caractere episcopali sint aucti, possunt sine Ordinariorum licentia in omnibus eorum ecclesiis, excepta cathedrali, populo benedicere et officia divina etiam in pontificalibus, adhibito quumque throno et baldachino, peragere." Peters, 114.

The 1983 Code of Canon Law deals with the privileges of the papal legate in canon 366. There are not too many of them. To begin with, his seat is exempt from the jurisdiction of the local ordinary (see: *SOE XII*, 1). In his jurisdiction (legation), the legate can celebrate all the sacraments freely except marriage, at which occasion the local ordinary has to be involved. The need to apprise the local ordinary in case of marriages was not mentioned in the 1917 code nor in *Sollicitudo omnium Ecclesiarum*. The legate can, however, celebrate liturgies using pontificalia anywhere in his jurisdiction, with the presumption that he will inform the local ordinary about it, if possible (*SOE XII*, 3; *CIC* 269 §3).

In addition to these privileges mentioned in canon 366, the *motu proprio* had a few more listed in chapter XII:

2. The papal legate can grant priests faculties to hear confessions in the chapel of his residence, to exercise their own faculties, and to perform there liturgical acts and sacred ceremonies but always in harmony with the norms prevailing in the territory and, if expedient, after having informed the ecclesiastical authority concerned.
4. Within the confines of his legation, the legate of the Roman Pontiff takes precedence over archbishops and bishops but not over members of the Sacred College nor patriarchs of the Oriental Churches whether they are in their own territory or are elsewhere performing sacred functions in their own rite.
5. The rights and privileges belonging to the person or to the seat of the papal legate have been granted with the intent that the legate, by a moderate and prudent use of them, will more clearly manifest the true character of his legation

and more easily and fully discharge his ministry.⁶²

The revision process of canon 366 shows a major change between 1977 *Populo Dei* Schema and the 1980 *Schema*. The first document included three paragraphs in that canon, including its own version of SOE XII, 2 noted just above, about the legate's faculties to perform acts of divine worship. That paragraph was taken out in the 1980 *Schema*. Furthermore, the 1980 *Schema* included also a clause about the legate's powers within his jurisdiction, but added an exception. This exception were marriage ceremonies, which were subject to the power of the local ordinary. Here are the original texts:

⁶² SOE, XII: "2. Legatus Pontificius in Oratorio suae sedis, potest sacerdotibus concedere facultatem excipiendi confessiones, facultates proprias exercere, ibique actus divini cultus et sacras caerimonias peragere, semper tamen congruenter cum normis in territorio vigentibus et, ubi expediat, certiore facta auctoritate ecclesiastica, cuius intersit. 4. Intra suae legationis fines, Legatus Romani Pontificis praecedit Archiepiscopos et Episcopos, non autem Sacri Collegii Membra, neque Patriarches Ecclesiarum Orientalium, vel in proprio territorio degentes, vel alibi sacra proprio ritu peragentes. 5. Iura et privilegia sive personae sive sedi Pontificii Legati inhaerentia eo consilio concessa sunt, ut ipse Legatus, iis moderate et prudenter utendo, propriam indolem suae legationis clarius manifestet et adimplendum sibi ministerium facilius perficiat." *CLD* 7:283.

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 <i>code</i>
<p>canon 183: <i>Ut Legatus officium suum aptius perficere valeat atque attenta peculiari sui muneris indole:</i></p>	<p>Canon 304: <i>Attenta peculiari Legati muneris indole:</i></p>	<p>Canon 366: <i>Attenta peculiari Legati muneris indole:</i></p>	<p>Canon 366: <i>Attenta peculiari Legati muneris indole</i></p>
<p>1° <i>Sedes Legationis Pontificiae a potestate regiminis Ordinarii loci exempta est;</i></p>	<p>1° <i>sedes Legationis Pontificiae a potestate regiminis Ordinarii loci exempta est, nisi agatur de matrimoniis celebrandis;</i></p>	<p>1° <i>sedes Legationis pontificiae a potestate regiminis Ordinarii loci exempta est, nisi agatur de matrimoniis celebrandis;</i></p>	<p>1° <i>sedes Legationis pontificiae a potestate regiminis Ordinarii loci exempta est, nisi agatur de matrimoniis celebrandis;</i></p>

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>2° <i>Legatus Pontificius in Sacello suae Sedis potest facultates proprias exercere ibique actus divini cultus et sacras caeremonias peragere, semper tamen congruenter cum normis in territorio vigentibus et, ubi expediat, certiore facta auctoritate ecclesiastica cuius intersit; [this section was eliminated in 1980 Schema]</i></p>			

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>3° Legato Pontificio <i>fas est, praemonitis, quantum fieri possit, locorum Ordinariis, in omnibus ecclesiis intra fines suae legationis populo benedicere et officia divina, etiam in pontificalibus, peragere.</i></p>	<p>2° Legato pontificio <i>fas est, praemonitis, quantum fieri possit, locorum Ordinariis, in omnibus ecclesiis suae legationis liturgicas celebrationes, etiam in pontificalibus, peragere.</i></p>	<p>2° Legato pontificio <i>fas est, praemonitis, quantum fieri potest, locorum Ordinariis, in omnibus ecclesiis suae legationis liturgicas celebrationes, etiam in pontificalibus, peragere.</i></p>	<p>2° Legato pontificio <i>fas est, praemonitis, quantum fieri potest, locorum Ordinariis, in omnibus ecclesiis suae legationis liturgicas celebrationes, etiam in pontificalibus, peragere.</i></p>

Moreover, Charles Balvo⁶³ reminds us of canon 1405 §1, 3°, which states that the pontifical legate can be judged by the Roman pontiff alone in cases involving spiritual matters and ecclesiastical law:

Canon 1405 §1. It is solely the right of the Roman Pontiff himself to judge in the cases mentioned in can. 1401: [...]

3° legates of the Apostolic See and, in penal cases, bishops.⁶⁴

⁶³ Balvo, 497.

⁶⁴ Canon 1405: “§1. Ipsius Romani Pontificis dumtaxat ius est iudicandi in causis de quibus in can. 1401: 3° Legatos Sedis Apostolicae, et in causis poenalibus Episcopos.”

The exceptions to this law are cases involving delicts reserved to the competence of the Congregation for the Doctrine of the Faith.⁶⁵ This canon was already present in the 1917 Code of Canon Law:

Canon 1557 §1: It belongs only to the Roman Pontiff to adjudicate: []
 3° Legates of the Apostolic See and , in criminal cases, Bishops, even titular ones.⁶⁶

The revision process did not change this section of canon 1405 much, with the exception of adding a clause to the preamble of paragraph 1, “the cases mentioned in canon 1401.” It also changed the wording for criminal cases from “criminalibus” in the 1976 *De Processibus* Schema and 1980 *Schema* to “causis poenalibus” in the 1982 *Schema* and the current code. Since these changes were minimal and the Latin texts of this canon in the 1917 and 1983 codes were already presented, we decided to forego the usual comparison of the revision versions.

In conclusion, both the 1917 and 1983 codes listed only two privileges of the papal legates. The 1917 code gave the papal legate, even if not a bishop, precedence over the local hierarchy with the exception of the cardinals present in his jurisdiction.

⁶⁵ John Paul II, motu proprio *Sacramentorum sanctitatis tutela*, April 30, 2001: AAS 93 (2001) 737-739. The norms were updated and approved by Benedict XVI on May 21, 2010: AAS 102 (2010) 419-430; English translation in *Origins* 44/10 (2010) 149-150.

⁶⁶ 1917 *CIC* c. 1557 §1: “Ipsius Romani Pontificis dumtaxat ius est iudicandi:[] 3° Legatos Sedis Apostolicae, et in criminalibus Episcopos, etiam titulares.” Peters, 521.

The SOE (XII, 4) had a similar canon, which was not included in the revision process and hence is not present in the current code. Also the 1917 code had a provision that the legates who possessed episcopal character were allowed to celebrate publicly in pontificalia in all the churches of their legation except cathedrals, without permission of the local ordinary. Similar law was included in the motu proprio (XII, 3) and the 1983 code (c. 366, 2°) but the reference to cathedral churches was removed. The 1983 code added exemption from the jurisdiction of the local ordinary, except in marriage cases. *Sollicitudo omnium Ecclesiarum* included a similar canon on exemption from the jurisdiction of the local hierarch (XII, 1), but failed to mention marriage cases. In addition, the motu proprio listed three above-mentioned privileges that did not make it to the final version of the code. Finally, the 1983 code repeats the penal law canon from the 1917 code giving the privilege / right to the papal legates to be judged in certain cases by the Supreme Pontiff alone.

3.3.6. Duration of the Legate's Office

The closing canon 367 of the section on papal legates of the 1983 Code of Canon Law describes the loss of office. It begins with the principle that, unlike the dicasteries

of the Roman Curia, the office of the legate does not cease with the vacancy of the Holy See. This is to assure the permanence of the Church's presence in the local communities and states. The loss of the office can happen in one of three ways:

- when the mandate of the legate has been fulfilled (the task has been accomplished),
- when he is recalled and notified about it by the Holy See,
- when his resignation has been accepted by the Roman pontiff.⁶⁷ Such resignation can happen due to request by the legate before the prescribed age, or at reaching his seventy-fifth birthday.

The age limit has been specified in the *motu proprio* which states in chapter III, 3,⁶⁸ that the legate loses his office at the age of seventy-five unless the Holy Father decides otherwise. It is rather obvious that vacancy of the office occurs also with the death of the legate.

⁶⁷ SOE, III, 2: The mission of papal legate does not cease when the Apostolic See falls vacant; it does cease, however, with the completion of his mandate, by revocation conveyed to him, by renunciation accepted by the Roman Pontiff; *CLD* 7:278, "Munus Legati Pontificii non expirat vacante Sede Apostolica; cessat autem expleto mandato, revocatione eidem intimata, renuntiatione a Romano Pontefice acceptata."

⁶⁸ SOE, III, 3: Without prejudice to a contrary prescription of the Supreme Pontiff, a papal legate is also affected by the norm set down in the general regulation of the Roman Curia whereby, that is, an office ceases at the age of 75; *CLD* 7:278, "Salvo contrario praescripto Summi Pontificis, pertinet etiam ad Pontificium Legatum norma statuta in Ordinatione Generali Romanae Curiae, qua scilicet ad septuagesimum quintum aetatis annum decernitur eius officium finem habere."

The 1917 code included a very similar canon:

Canon 268 § 1. The duties of Legates with all faculties committed to them do not expire with the vacancy of the Apostolic See, unless stated otherwise in the pontifical letters [appointing them].

§ 2. They do cease, however, upon completion of the mandate, upon their revocation once communicated, or upon resignation and acceptance by the Roman Pontiff. ⁶⁹

The revision process of this canon consisted only in the change of wording between the 1917 code version and the 1977 *Populo Dei* text of the canon which carried out unchanged to the 1983 code. The only additional legislation was included in the 1969 motu proprio *Sollicitudo omnium Ecclesiarum* (III, 3) which limited the legate's time in office to age 75 and subjected them to any current and future regulations applicable to the Roman Curia.

⁶⁹ 1917 *CIC* c. 268: "§1. Legatorum munus cum omnibus facultatibus eisdem commissis non exspirat vacante Sede Apostolica, nisi aliud in litteris pontificiis fuerit statutum. §2. Cessat autem, expleto mandato, revocatione eisdem intimata, renuntiatione a Romano Pontifice acceptata." Peters, 114.

3.3.7. The Role of Papal Legate in Appointment of New Bishops

Canon 377 §3 of the 1983 code is outside of the section devoted to papal legates and describes his role in the process of selecting a new bishop within his legation. This canon does not have a 1917 Code equivalent. However, the notion was described in the 1969 motu proprio Chapter VI (1 and 2):

1. Relative to the nomination of bishops and of other Ordinaries equivalent to bishops, the papal legate has the task of drawing up in usual form the informative process on candidates and also of proposing a list of the candidates or the individual names of suitable candidates to the competent departments of the Roman Curia. He should draw up an accurate report and also signify, in the presence of the Lord, his own opinion and vote as to which of the candidates seems to him best qualified.

2. In the discharge of this duty, the papal legate:

- a) will freely and discreetly seek out the opinion of ecclesiastics and also of prudent laymen who seem the best qualified to provide useful and trustworthy information. He should impose on them the obligation of secrecy which, as is evident, is demanded either by respect due those consulted and to those inquired about or by the very nature of this consultation.

- b) shall act in accord with the norms established by the Apostolic See regarding candidates for the episcopal ministry in the Church and shall bear in mind the competency of the episcopal conference.

c) shall respect legitimate privileges granted or acquired by law as well as any special procedure approved by the Apostolic See.⁷⁰

In comparison to this detailed description in the *motu proprio*, canon 377 §3 of the 1983 code is more concise:

Unless it is legitimately established otherwise, whenever a diocesan or coadjutor bishop must be appointed, as regards what is called the *ternus* to be proposed to the Apostolic See, the pontifical legate is to seek individually and to communicate to the Apostolic See together with his own opinion the suggestions of the metropolitan and suffragans of the province to which the diocese to be provided for belongs or with which it is joined in some grouping, and the suggestions of the president of the conference of bishops. The pontifical legate, moreover, is to hear some members of the college of consultors and cathedral chapter and, if he judges it expedient, is also to seek individually and in secret

⁷⁰ SOE, VI: "1. Quoad Episcoporum aliorumque Ordinariorum cum Episcopis aequiparatorum nominationem, Legati Pontificii officium est instruere, de more, processum informativum de promovendis, itemque indicem candidatorum vel singula nomina candidatorum idoneorum competentibus Dicasteriis Romanae Curiae proponere una cum accurata relatione, significatis coram Domino propria sententia ac voto, quis nempe ex candidates sibi magis idoneus videatur. 2. In hoc officio explendo Legatus Pontificius: a) libere ac debita cum cautela virus Ecclesiasticos, immo et prudentes Laicos sententiam rogabit, qui magis idonei videantur ad utiles fideque dignas notitias praebendas, iisdem officio iniuncto secreti servandi, quod iubent, uti patet, sive honor iis debitus qui consuluntur, vel de quibus consultatio fit, sive ipsa natura huius consultationis; b) aget iuxta normas ab Apostolica Sede statutas de proponendis ad episcopale ministerium in Ecclesia, et Conferentiae Episcopalis competentiam prae oculis habebit; c) servabit legitima privilegia concessa vel iure quaesita, nec non quemlibet specialem procedendi modum, ab Apostolica Sede approbatum." *CLD* 7:280.

the opinion of others from both the secular and non-secular clergy and from laity outstanding in wisdom.⁷¹

Both of these versions include essential elements: preparing the *terna* with the list of candidates, consultation with the hierarchy as well as clergy, religious and laity. The 1969 version goes further, reiterating the secrecy of the process, his interaction with the episcopal conference in this regard and acting according to established norms of the Apostolic See. The revision process of the code shows changes to this part of canon 377 in the first three editions. The changes pertained mostly to the wording of the canons with major re-working of this section of canon 377 in the 1982 *Schema*. The change included the requirement for the legate to specifically hear and transmit the opinion of the metropolitan and suffragans as well as some members of the college of consultors and cathedral chapter. The earlier version of this canon included a rather generic list of those to be consulted, including laity. Here are the original Latin texts for our comparison:

⁷¹ Canon 377 §3: “Nisi aliter legitime statutum fuerit, quoties nominandus est Episcopus dioecesanus aut Episcopus coadiutor, ad ternos, qui dicuntur, Apostolicae Sedi proponendos, pontificii Legati est singillatim requirere et cum ipsa Apostolica Sede communicare, una cum suo voto, quid suggerant Metropolita et Suffraganei provinciae, ad quam providenda dioecesis pertinet vel quacum in coetum convenit, necnon conferentiae Episcoporum praeses; pontificius Legatus, insuper, quosdam e collegio consultorum et capitulo cathedrali audiat et, si id expedire iudicaverit, sententiam quoque aliorum ex utroque clero necnon laicorum sapientia praestantium singillatim et secreto exquirat.”

1977 <i>Populo Dei</i>	1980 <i>Schema</i>	1982 <i>Schema</i>	1983 code
<p>Canon 228 §3: <i>Nisi aliter pro certis regionibus legitime provisum fuerit, quoties nominandus est Episcopus dioecesanus aut Episcopus coadiutor, Episcopi dioecesani provinciae ecclesiasticae in qua sita est dioecesis de qua agitur elenchum componant trium saltern virorum ecclesiasticorum qui ad hoc officium episcopate magis idonei videantur, illumque Apostolicae Sedi transmittant;</i></p>	<p>Canon 344 §3: <i>Nisi aliter pro certis regionibus legitime provisum fuerit, quoties nominandus est Episcopus dioecesanus aut Episcopus coadiutor, Episcopi dioecesani provinciae ecclesiasticae in qua sita est dioecesis de qua agitur, collatis consiliis, elenchum componant trium saltern candidatorum qui magis idonei videantur, illumque Apostolicae Sedi transmittant;</i></p>	<p>Canon 377: <i>Nisi aliter legitime statutum fuerit, quoties nominandus est Episcopus dioecesanus aut Episcopus coadiutor, ad ternos, qui dicuntur, Apostolicae Sedi proponendos, pontificii Legati est singillatim requirere et cum ipsa Apostolica Sede communicare, una cum suo voto, quid suggerant Metropolita et Suffraganei provinciae,</i></p>	<p>Canon 377 §3: <i>Nisi aliter legitime statutum fuerit, quoties nominandus est Episcopus dioecesanus aut Episcopus coadiutor, ad ternos, qui dicuntur, Apostolicae Sedi proponendos, pontificii Legati est singillatim requirere et cum ipsa Apostolica Sede communicare, una cum suo voto, quid suggerant Metropolita et Suffraganei provinciae,</i></p>

1977 <i>Populo Dei</i>	1980 Schema	1982 Schema	1983 code
<p>quem elenchum ut componant, Episcopi dioecesani provinciae, si id expedire iudicent, de necessitatibus dioecesis deque dotibus speciatis personae ad officium episcopate in ea dioecesi implendum requisitis certorum presbyterorum, et laicorum sapientia praestantium, secreto sententiam exquirere possunt.</p>	<p>quem elenchum ut componant, si id expedire iudicent, sententiam certorum clericorum et laicorum sapientia praestantium singillatim et secreto exquirere possunt.</p>	<p><i>ad quam providenda dioecesis pertinet vel quacum in coetum convenit, necnon conferentiae Episcoporum praeses; pontificius Legatus, insuper, quosdam e collegio consultorum et capitulo cathedrali audiat et, si id expedire iudicaverit, sententiam quoque aliorum ex utroque clero necnon laicorum sapientia praestantium singillatim et secreto exquirat.</i></p>	<p>ad quam providenda dioecesis pertinet vel quacum in coetum convenit, necnon conferentiae Episcoporum praeses; pontificius Legatus, insuper, quosdam e collegio consultorum et capitulo cathedrali audiat et, si id expedire iudicaverit, sententiam quoque aliorum ex utroque clero necnon laicorum sapientia praestantium singillatim et secreto exquirat.</p>

In conclusion, this section of the code pertaining to the duties of the papal legate in the process of selecting a new bishop within the territory of his jurisdiction was not present in the 1917 code. The 1969 *motu proprio* for the first time described this responsibility in Chapter VI. Though this section was written with an emphasis on his task of composing the *terna* and consulting with others, it did not include a specific list of those to be consulted. The revision process, beginning with the 1982 *Schema* required the papal legate to hear and transmit opinions of metropolitans, suffragans, some members of the college of consultors and the cathedral chapter. The legate could also seek opinions of other clergy, religious and laity in this regard. Due to the contents of this canon, it was placed in the section on bishops of the 1983 Code of Canon Law.

3.3.8. The Legate's Relation to the Conferences of Bishops

In describing the role of the papal legate to the local churches (canon 364, 3°) it was already signaled that he is required by law to foster relations with episcopal conferences and assisting them in every way. In light of some opinions of the conciliar Fathers, as it was mentioned in Chapter 2, the relationship of the papal legates to the conferences of bishops could be misinterpreted as if they were part of it or even leading

them in the debates and taking a decisive vote. The motu proprio *Sollicitudo omnium*

Ecclesiarum clarified this misconception in Chapter VIII, 2:

Regarding relations with episcopal conferences, the papal legate should be mindful that their responsibilities and tasks are of extreme importance and, as a result, he should foster close relations with them and proffer every possible help. Although he is not by law a member of the conference, nevertheless he shall attend the first meeting of each general session, without prejudice to the right of taking part in other meetings of the conference at the invitation of the bishops themselves or by express order of the Apostolic See. Moreover, in due time, the issue to be treated of in the session will be made known to him and a copy of the transactions will be sent him so that he himself will be informed on the matters and he can transmit them to the Apostolic See.⁷²

However, this clarification that papal legates are not by law members of the conferences seemed a bit hidden, buried in a variety of other descriptions. Hence, the current code in the section on conferences of bishops (canons 447-459) included a canon on membership. Canon 450 §2 clarifies the status of the papal legate towards the episcopal conference:

⁷² SOE, VIII, 2: “Ad rationes cum Conferentiis Episcopalibus quod spectat, Legatus Pontificius meminerit earum munera et officia summa esse momenti, ac propterea crebras cum illis relations esse fovendas, et omnimodam opem praestandam. Quamvis ex iure membrum Conferentiae non sit, nihilominus ipse primo coetui cuiusvis sessionis generalis intererit, salvo iure participandi alios Conferentiae coetus ex ipsorum Episcoporum invitatione aut ex expresso Apostolicae Sedis mandato; praeterea ipsi notae fient tempore utili quaestiones in sessione tractandae, atque exemplar actorum mittetur, ut ipse de his certior reddatur eademque ad Apostolicam Sedem transmittat.” *CLD* 7:281.

Other titular bishops and the legate of the Roman Pontiff are not by law members of a conference of bishops.⁷³

This canon does not have an equivalent in the 1917 Code of Canon Law. The revision process shows no alternation between versions. Though the perception of the canon can seem unimportant, this law fulfills a great role of clarifying the relationship between these two entities. It safeguards independence of either one and allows them to function in a cooperative way but without commingling interests, should it prove necessary.

Moreover, chapter VII of the motu proprio mentions the papal legate's cooperation with the episcopal conference in regard to erection, changing borders, and suppression of dioceses and provinces. It also charges the legate to have an independent opinion in this regard and to communicate it to the Holy See regardless of the local bishops:

While the rights of episcopal conferences to express wishes and suggestions regarding the erection, dismemberment and suppression of dioceses and of ecclesiastical provinces remain intact and without prejudice to the discipline of the Oriental Churches, the papal legate should himself promote study of these questions, if need be, and should indicate to the competent department of the

⁷³ Canon 450 §2: "Ceteri Episcopi titulares necnon Legatus Romani Pontificis non sunt de iure membra Episcoporum conferentiae."

Apostolic See what the episcopal conference proposes on the point as well as his own opinion.⁷⁴

This section of *Sollicitudo omnium Ecclesiarum* was never included in the code of canon law nor considered during the revision process. The 1983 Code of Canon Law is very clear that the creation and changes of dioceses and ecclesiastical provinces belong to the supreme authority (canons 373, 431 §3). Although the papal legates have their role in the process, the Supreme Legislator decided not to include this section of the *motu proprio* in the code to possibly avoid any confusion.

3.3.9. Supplementary Notes

The 1917 Code of Canon Law concluded the section on papal legates with canon 270:

Bishops who, by reason of their see, are decorated with the title of Apostolic Legate derive thereby no special right.⁷⁵

⁷⁴ SOE, VII: “Firmas manentibus partibus Conferentiarum Episcopaliū quoad expromenda vota et consilia de erectione, dismembratione et suppressione dioecesium vel provinciarum ecclesiasticarum, et salva Ecclesiarum Orientalium disciplina, Legatus Pontificius harum quaestionum studium, ubi opus sit, ipse promoveat et quid Conferentia Episcopalis de hac re proponat, una cum proprio voto, competenti Apostolicae Sedis Dicasterio significet.” *CLD* 7:280-281.

⁷⁵ 1917 *CIC* c. 270: “Episcopis qui, ratione sedis, titulo Legati Apostolici decorantur, nullum exinde competit speciale ius.” Peters, 115.

This canon was included in this section to distinguish papal legates sent by the pope on various missions from the honorary papal legates who receive such title by being local bishops of certain dioceses. We could call such bishops titular legates.

In addition to the canons of the 1983 code discussed above, the 1969 *motu proprio Sollicitudo omnium Ecclesiarum* includes a few interesting items as well. First of all, it expresses better the role of the legate as the two-way “communicator” between the Holy See and the local church:

The papal legate, on the one hand, makes known to the Apostolic See the suggestions and wishes of the bishops, clergy, religious and laity of his territory; and on the other hand, acts as interpreter of the Holy See's acts, documents, information and mandates to those whom they concern.⁷⁶

He is to seek the opinions of clergy, religious, and laypersons in his jurisdiction, but also to communicate documents and instructions from the Holy See.

⁷⁶ SOE, V, 2: “Legatus Pontificius, hinc quidem Apostolicae Sedi nuntiat Episcoporum, Cleri, Religiosorum laicorumque fidelium sui territorii consilia et vota; inde vero actorum, documentorum, notitiarum mandatorumque, quae ab Apostolica Sede procedunt, interpres fit apud illos ad quos eadem spectant.” *CLD* 7:279.

In addition, the new code does not mention much about the legate's role pertaining to religious communities in his jurisdiction; it seems as though the entire chapter IX of *Sollicitudo omnium Ecclesiarum* has been omitted.

Though these sections of the law seem to be legal "one-time-wonders," they need to be mentioned in this analysis to complete the picture of various laws pertaining to papal legates.

3.4. Conclusion

This chapter demonstrated that the 1983 Code of Canon Law, for the most part, is a reflection of the law pertaining to the office of papal legates as promulgated in the motu proprio *Sollicitudo omnium Ecclesiarum*. Both documents are very closely related and implement the thought of the Second Vatican Council in this area. Moreover, they univocally demonstrate some major changes in law in comparison to the 1917 code. These changes can be summarized as follows:

- The 1983 Code of Canon Law does not provide many definitions of terms, especially in the realm of types of papal legates (except canon 358). To clarify these, we need to look into the *motu proprio* or the previous code.
- Although the issue of autonomy of the local bishops was not a new one, the council and subsequent documents try to draw clearer lines to preserve the principle of subsidiarity.
- The role of the legates, especially nuncios and apostolic delegates, is seen in terms of service to the local conferences of bishops (c. 364, 3°) and stewardship oriented towards the local churches (c. 364, 7°).
- Even though the tasks of the legates as peace keepers and facilitators of the cooperation among the various ecclesial and political entities (c. 364, 5°) are not entirely new, they have a new understanding in light of the council as efforts in searching for the common good and justice.
- The post conciliar documents added also another task to the office of papal legates, namely to promote and facilitate the diverse ecumenical initiatives. Seen as the representatives of the Roman pontiff and incorporating the directives of the council, the papal legates are often on the front line of the Church's reaching out to other churches and ecclesial communities.

- Finally, and possibly the most noticeable change in the code, is the fact that the new legislation gives priority to the service to the local churches and bishops over the diplomatic efforts of the legates. It is seen not only in the wording of the canons but also in their location. The 1917 code in c. 267 §1 gave priority to the diplomatic activities over the local churches. The 1983 code presents the duties of the legate to the local church in canon 364 and later to the state in canon 365.

The changes described above were the response of the Holy See to various criticisms expressed at the Second Vatican Council towards the office of papal legate. Though there was no particular law issued at the council pertaining to the legates, the 1969 motu proprio *Sollicitudo omnium Ecclesiarum* fulfilled that task well. The changes were significant, as noted above. They reflected the new direction of the papal diplomatic service as it was influenced by the conciliar debates. Although thorough, the 1969 motu proprio was further adjusted to fit the needs of the new code of canon law. For example, although the priority of the legate's service to the local churches was well described in the canons of the motu proprio, the order in which it listed the legate's duties was mixed. The revision process of the code achieved greater clarity by combining all the duties of papal legates to the local churches and placing them in a canon antecedent to the one describing his duties to the states and civil organizations.

CHAPTER 4

Faculties Granted to Papal Legates

4.1. Introduction

Throughout the centuries the Holy See entrusted papal legates with various lists of particular faculties that they needed in order to fulfill tasks assigned to them. These lists could be general (applying to all papal legates), or particular applying only to certain geographical areas, countries, specific groups of persons. The list of general faculties was occasionally updated by a particular dicastery of the Roman Curia. However, a new list of general faculties would be constructed after a major step in the life of the Church such as the promulgation of a new code of canon law, implementation of new disciplinary rules, or a major council. The goal of this chapter is to compare specifically selected lists of such general faculties. Since these lists were rather complex and went through multiple changes, this examination will concentrate on four particular editions (years: 1920, 1963, 1974, 1986). Each of these versions represents a change after a major canonical or ecclesial event, or innovation, as it will be explained in the chapter. Hence, comparing these versions will allow the reader to observe the changes in the lists after these events.

4.2. The Lists of Faculties.

Soon after promulgation of the 1917 Code of Canon Law, a companion was developed in a form of a list of special faculties granted to papal legates.

Unfortunately, the publication was made only for internal use. However, we do have access to the reprint of the 1919 version of these faculties with its June 16, 1920

Addendum.¹ This list consists of fifty-five faculties given to papal legates with four additional norms placed in an addendum. The main section of the list is divided into six chapters:

- 2.1. General Faculties
- 2.2. Faculties Relating to Indulgences
- 2.3. Faculties Relating to Marriage
- 2.4. Faculties Related to Other Sacraments and Sacred Rites
- 2.5. Faculties Relating to Religious
- 2.6. Faculties for the Apostolic Nuncio, Internuncio or Delegate Personally.

¹ Arthur Vermeersch, Joseph Creusen, *Epitome Iuris Canonici cum commentariis* (Paris, Brussels: Desclée-De Brouwer, L'Édition Universelle, 1933) Appendix I:634-640. English version *CLD* 1:175-187.

Behind these sets of faculties stood the corresponding offices of the Roman Curia. We have chosen this list not only because of its availability but also as a starting point of comparison of faculties created soon after the 1917 Code of Canon Law.

The next list of faculties dates from 1963 and relates directly to the Second Vatican Council. Pope Paul VI issued on November 30, 1963 the motu proprio *Pastorale munus*² in which he granted a set of faculties to the bishops in order for them to be able to fulfill their ministry as envisioned by the council. It was a major church document that reflected changes in theology and discipline of the Church as achieved at the Council. It was also a mid-step between the Council and the new code of canon law promised by Blessed Pope John XXIII. Interestingly enough, these faculties, though granted to the bishops, were later included in the lists of the updated faculties for papal legates. Hence, we decided to include them in our comparison as a very interesting reference point.

The motu proprio contains two lists of faculties. The first one consists of thirty-three points and pertains to the residential bishops only, who could sub-delegate these powers to their coadjutors, auxiliary bishops or vicars general, unless stated otherwise.

² Paul VI, motu proprio *Pastorale munus*, November 30, 1963: *AAS* 56 (1964) 5-12; *CLD* 6:370-378.

The second list contained eight norms and applied to all the bishops, both titular and residential from the notice of their canonical appointment.

After promulgation of the motu proprio *Sollicitudo omnium Ecclesiarum*³ in 1969, the list of general faculties for papal legates was updated in 1974.⁴ Similar to the 1963 and 1968⁵ versions of the faculties, this 1974 list reaffirmed that all faculties granted to bishops in the motu proprio *Pastorale munus* apply equally to all legates of the Roman pontiff.⁶ The document was divided into six chapters containing thirty-six faculties:

1. Faculties from the motu proprio *Pastorale munus*
2. Faculties Pertaining to Sacraments
3. Faculties Pertaining to Holy Things (*res sacras*)
4. Faculties Pertaining to Offices and Ecclesiastical Goods
5. Faculties Pertaining to Religious

³ Paul VI, motu proprio *Sollicitudo omnium Ecclesiarum*, June 24, 1969: AAS 61 (1969) 475; English translation in *CLD* 7:277-284.

⁴ Paul VI, "Facultates legatis romani pontificis concessae," in *Enchiridion Vaticanum Supplementum* 1 (2000) 514-527.

⁵ Sacred Congregation for the Bishops, "Facultates nuntiorum, internuntiorum et delegatorum apostolicorum," in *Enchiridion Vaticanum* 3 (1999) 26-45.

⁶ 1974 *Facultates legatis romani pontificis concessae*, 1: "Legato Romani Pontificis conceduntur facultates omnes in litteris apostolicis *Pastorale munus* (d. 30 nov. 1963) contentae."

6. Other Faculties and Norms

Using this version of the list of faculties will allow us to trace changes affected in them by the Second Vatican Council and the 1969 *Sollicitudo omnium Ecclesiarum*.

Our final version of general faculties for the comparison comes from the 1986 edition of the *Index Facultatum Legatis Pontificiis tributarum* issued by the Congregation for Bishops.⁷ The *Index* was published soon after the promulgation of the 1983 Code of Canon Law and reflects canonical changes affected by it. There are only seventeen faculties listed from the following Congregations:

1. Congregation for the Doctrine of the Faith
2. Congregation for Bishops
3. Congregation for the Clergy
4. Congregation for Divine Worship and the Discipline of the Sacraments
5. Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
6. Apostolic Penitentiary

⁷ Congregation for Bishops, *Index Facultatum Legatis Pontificiis tributarum* (Vatican: Typis Polyglottis Vaticanis, 1986) 195-197.

In addition, there are six observations added to the document pertaining to sub-delegation of powers, taxes, vacancy of the office and the time when these faculties become available to papal legates.

4.3. The Comparison.

In order to more effectively compare these four editions of the lists of faculties we have prepared a table which will help us with mapping out the changes, tendencies and understanding of these faculties. Though the table is rather extensive, we hope it will prove a handy tool in grasping the differences between the four major editions. As a base of this comparison we used the 1920 list of faculties and each subsequent one is only noted when the changes were substantial. The four dates as marked in the header of each column correspond to the four versions of the documents as noted previously.

1920	1963	1974	1986
1. visit the diocesan entities, schools, monasteries, oratories etc.	-	see 21.	9

1920	1963	1974	1986
2. handle the final procedures of appointment of a new bishop	-	-	-
3. confer benefices	-	-	-
4. absolve the censures reserved in a simple manner to the Holy See	see 14: grant to priest the faculty of removal censures, except in cases <i>ad hominem</i> , reserved <i>specialissimo modo</i> to the Holy See, violation of secret of the Holy Office, priests and intended spouses attempting marriage. Also: see A4	1. 4.	-
5. dispense ordained from irregularities to benefices.	-	-	-
6. commute/reduce Mass obligations	11. 12.	1. 9.	5

1920	1963	1974	1986
7. apply to pious works penalties for wrongful enjoyment of benefices	-	-	-
8. impose penance on simoniacs / remove benefice	-	-	see 17.
9. absolve those who illegally hold church property	-	-	-
10. dispense from fast and abstinence	-	-	-
11. allow for anticipation of Matins and Lauds	-	-	-
12. commute the obligation of breviary	26	1	16
13. dispense from academic decree if required for a benefice	-	-	-
14. permit to keep forbidden books	-	-	-
15. dispense from private vows	-	14	12

1920	1963	1974	1986
16. dispense from an oath	-	15	13
17. remit or condone in internal forum illegal property owners	-	see 6.	see 15.
18. receive reports on crime of solicitation	-	5	1
19. extend for a short time expired faculties, indults and indulgences of the Holy See	1. to extend for a short time (no more than 1 month) rescripts and indults of the Holy See	1 28	2. to extend rescripts of the Apostolic See one time for no more than 3 months
20. grant plenary indulgence 6 times a year	-	-	-
21. grant papal benediction 3 times a year	-	29	14
22. grant plenary indulgences for 40 <i>Hours</i> devotions.	-	-	-
23. grant plenary indulgence to converting heretics	-	-	-

1920	1963	1974	1986
24. grant plenary indulgence on occasion of sacred missions	-	-	-
25. declare privileged altars	-	-	-
26. grand 200 day indulgence	-	-	-
27. delegate faculties for erection of the Way of the Cross with attached indulgence.	30. See A8.	1	-
28. grant that indulgences might be offered for the souls in purgatory	-	-	-
29. dispense from marriage impeding impediments	-	-	-
30. dispense from marriage diriment impediments except , affinity in direct line, orders and solemn religious profession	19. 20.	1. 12.	-
31. grant <i>sanatio in radice</i>	21. 22.	1. 13.	-

1920	1963	1974	1986
32. depute simple priests for confirmation	-	2	-
33. allow a low Mass to be said on Holy Thursday	-	-	-
34. issue an indult of private oratory for aged and ill priests	10	1	-
35. allow priest the use of wig	-	-	-
36. allow an open air Mass	7. see 9.	1	-
37. permit to celebrate Mass on ships	8	1	-
38. to do or delegate priest to consecrate the altar which lost its consecration	see 27.	1	-
39. allow Mass to be said after 3 AM	4. celebrate Mass at any hour, communion late in the evening. see A6.	1	-

1920	1963	1974	1986
40. allow with the consent of the local ordinary to celebrate 2-3 Requiem Masses in a church per week	-	-	-
41. allow a blind priests to say Masses of BVM or deceased with assistance of another priest.	5. 6.	1	-
42. allow sick persons in bed to receive Holy Communion without fasting once a week	-	-	-
43. allow patronal saint celebration in the church against the rules of the liturgical calendar	-	-	-
44. allow a simple priest to consecrate chalices and altar stones	-	-	-

1920	1963	1974	1986
45. bless bells and churches when ordinary does not object.	-	16	-
46. appoint proper remedies for abuses in religious communities	-	see 27.	10
47. dispense a want of dowry for those entering religious communities that require it.	-	-	-
48. grant to ordinaries faculty to place religious clergy in charge of a parish.	-	-	-
49. allow nuns to live outside the convent.	-	see 26.	-
50. in internal forum: allow religious to remain in the world when there is an occult case of invalid vows.	-	-	-

1920	1963	1974	1986
51. the papal legate is allowed to recite divine office according to the liturgical calendar of the Diocese of Rome	-	10	-
52. the papal legate can reserve Blessed Sacrament in his own chapel	A5.	1 see 11	-
53. the papal legate to confirm in his territory and during maritime trip.	-	3	8. (with consideration from the Local Ordinary)
54. the papal legate to hear confession of all in his territory and during maritime trip	compare A2, A3.	1	-
55. the papal legate to obtain for self the indulgences he has the power to grant to others.	-	-	-
<i>June 16, 1920 Addendum</i>			

1920	1963	1974	1986
a) in a vacant diocese: grant ordinary power of a bishop to Vicar Capitular or Administrator of the diocese.	-	18	3. to grant to a diocesan or apostolic administrator of a vacant diocese a faculty for an act of ordinary power of a diocesan bishop for single case in special circumstances.
b) allow alienation in urgent cases (up to 60 thousands Franks in Europe and 100 thousands Franks elsewhere).	32	1 see 23.	6. Allow in special circumstances alienation of property in value not greater than double of the maximum as per cc. 638 §3, 1292 §1, 2
c) permit illegitimate children to enter seminary	31	1	-
d) grant to a Superior of the missions in their territory faculties of a pastor	-	see 22.	-
-	2. permit priest to binate or trinate	1	7

1920	1963	1974	1986
-	3. above priest can drink something between Masses	1	-
-	13. grant to chaplains of hospitals and others to perform confirmations in danger of death in the absence of the pastor	1	-
-	15. dispense from underage ordinations if within 6 months	1	-
-	16. dispense sons of non-Catholic parents from impediment barring them from ordinations, providing parents remain in error.	1	-
-	17. dispense the ordained from irregularity or delict of defect so they can celebrate Mass and receive benefit.	1	-

1920	1963	1974	1986
-	18. allow ordination outside cathedral and on non-preferred days	1	-
-	23. move or dispense from interpellations of non-believing spouse	1	-
-	24. reduce obligation of chapter canons to recite office only on certain days of the week	1	-
-	25. assign canons to other ministries without privation of prebendary income	1	-
-	28. permit minor clerics, lay religious and lay women to do first washings of altar linens	1	-

1920	1963	1974	1986
-	29. grand faculties to religious communities having residence in the diocese	1	-
-	33. confirm the ordinary confessor of women religious even in his 5th term.	1	-
	<i>Addendum</i>		
-	A1. preach anywhere in the world unless local ordinary disapproves	1	-
-	A7. bless rosaries, scapulars, crosses, medals etc.	1	-
-	-	7. allow priest to concelebrate in a different rite	-
-	-	8. allow reservation of the Blessed Sacrament in a non-parochial church or non public oratory.	-

1920	1963	1974	1986
-	-	11. the papal legate's chapel is considered semi-public.	-
-	-	17. establish sodality of the BVM, or to delegate this faculty.	-
-	-	19. grant metropolitans the powers of jurisdiction before they receive pallium	-
-	-	20. allow the diocesan bishop to take possession of his diocese before arrival of the bulla with the assignment.	4. (providing the diocesan bishop is already consecrated).
-	-	24. allow entry to a religious institute of a different rite.	-
-	-	25 allow transfer from one religious institute to another.	-

1920	1963	1974	1986
-	-	30. impart partial indulgence to the faithful	-
-	-	31. administrators of the vacant nunciatures are given faculties of legates, unless they require episcopal character	II.
-	-	32. all faculties granted to legates are valid during duration of his office, even outside his residence	I.
-	-	33. indults granted by legate cannot be valid for more than 5 years.	-
-	-	34. the papal legate can demand a tax for granting favors, indulgences, etc.	see III. see IV. see V.

1920	1963	1974	1986
-	-	35. all faculties of this list are effective only when the legate receives the letter of appointment to the office.	VI.
-	-	36. in the territories of patriarchs, the legates cannot use faculties that are available to patriarchs, unless in urgent cases.	-
-	-	-	11. the papal legate to enter the cloistered monasteries of pontifical right for grave and just cause.

4.4. Analysis of Findings.

The comparison of the above lists of faculties given to papal legates presents us with an image of certain tendencies and changes affected by both the Second Vatican Council and the introduction of the 1983 Code of Canon Law. Looking only at the sheer number of faculties we notice the tendency of a reduction of these faculties given to nuncios and apostolic delegates. The 1919 version had fifty-five faculties, plus an additional four in the 1920 addendum. The 1974 list had only thirty-six faculties. One needs to mention that the 1974 list also added faculties of the bishops included in *Pastorale munus*, however we are discounting them here as they are not exclusively given to papal legates. Rather, the legates were given the same powers as the bishops. Finally, the 1986 list of faculties is the smallest of them all with only seventeen general faculties and six “observations.” Judging only from the numbers we notice that the scope of obligations of papal legates has diminished substantially. One could think that maybe the new code of canon law replaced a lot of these faculties. As we have seen in Chapter 3, this is not exactly true from the perspective of nuncios and apostolic delegates. Certainly the work of papal legates has been more defined in the 1983 code, but it does not refer to the powers given to legates in these faculties. Hence, we need to look deeper into these changes and tendencies.

4.4.1. From the 1920 List to the 1974 List.

Comparing these two lists (with the 1963 *Pastorale munus* in mind) it becomes clear that there are three major changes that were affected by the Second Vatican Council:

- Removal of unnecessary canons that pertained to things that ceased to exist
- Centralization of powers
- Implementation of the principle of subsidiarity.

4.4.1.1. Removal of the Unnecessary Canons / Faculties

Both, the conciliar and post-conciliar documents affected some major changes in institutions of the Catholic Church. One of them is the notion of the benefices, a concept that functioned in the church for centuries. There were different laws pertaining to vesting, removal and conflict resolution of benefices in the church. Hence, the 1917 Code of Canon Law had a number of canons pertaining to them. By the same token, the papal legates had certain faculties that helped to facilitate various administrative issues in regards to benefices. Hence, when the institution ceased to exist after the Second

Vatican Council, the need for these faculties ceased as well. The following faculties were not renewed/included in the 1963 and 1974 lists:

- 3 - conferring of the benefice
- 5 - dispensing from irregularities to obtain a benefice
- 7 - applying penalties for wrongful enjoyment of benefices
- 8 - removal of benefice from simoniacs (a version of this is present in the 1986 list in #17)
- 13 - dispense from requirement of academic decrees if needed for obtaining a benefice

In addition to the benefices, the concept of forbidden books also ceased to exist, hence the faculty was also removed (#14 - permit to keep forbidden books). Similarly, the concept of privileged altars (#25 - declare privileged altars), became obsolete.

The removal of the above mentioned faculties did not infringe on the powers entrusted to the papal legates. They only reflected the new realities in the church and were a result of an “update” to indicate the current discipline. Since the institution ceased to exist, the powers for their proper administration were no longer required.

4.4.1.2. The Centralization of Powers by the Roman Curia

The second tendency we can notice is the fact that some of the faculties were taken back from the papal legates and entrusted completely to the offices of the Roman Curia. We called that tendency: the centralization of powers by the Roman Curia.

For example, after the promulgation by Pope Paul VI of the apostolic constitution *Indulgentiarum doctrina*⁸ in 1967, new rules for the application of the indulgences were established. These rules applied to the universal Church, hence the mediation of papal legates was no longer necessary. In addition, all other inquiries and petitions in that regard are presently handled by the Apostolic Penitentiary and not by the legates themselves (though they may help in communicating them to the Apostolic Penitentiary sometimes). Such centralization of the discipline in that regard was possible by more efficient means of communication and was caused by the desire to unify the approach to the issue of indulgences throughout the Church.

Here is the list of removed faculties due to centralization of powers by Roman Curia:

- 20 - grant plenary indulgence six times a year
- 22 - grant plenary indulgence for participation in *40 Hours* devotion
- 23 - grant plenary indulgence to converting heretics

⁸ Paul VI, apostolic constitution *Indulgentiarum Doctrina*, January 1, 1967, AAS 59 (1967) 5-24; English translation in *CLD* 6:570-575.

- 24 - grant plenary indulgence on occasion of sacred missions
- 26 - grant 200 day indulgence
- 28 - allow indulgences to be offered for the souls in purgatory
- 47 - dispense from a want of dowry of those entering, if required by some congregations
- 50 - in internal forum: to allow religious to remain in the world in case of invalid vows
- 55 - faculty to grant to self an indulgence that he has the power to grant to others

One should note, however, that due to the changes in the discipline pertaining to indulgences, some particular instances for granting them ceased to exist (i.e., #23), nonetheless in general we can observe the movement towards centralization of powers.

4.4.1.3. The Principle of Subsidiarity.

The third tendency shown in comparison of the 1920 list to the 1974 list is the practical implementation of the two desires of the Second Vatican Council: subsidiarity and providing the ministers of the Church with powers necessary for the fulfillment of

their duties. The 1963 list of faculties given to bishops and later to nuncios embodies just that. As a result we notice that many faculties previously reserved to papal legates are now given to bishops. Hence, the mediation of nuncios and apostolic delegates has become unnecessary. Here are some examples of such faculties:

1920	1963	1974	
4	14, A4	1, 4	faculty to remove certain censures
6	11, 12	1, 9	commute / reduce Mass obligations
12	26	1	commute obligation of recitation of breviary
19	1	1, 28	extend for a brief time rescripts and indults of the Holy See
27	30, A8	1	delegate faculties to erection of the Way of the Cross with an attached indulgence
30	19, 20	1, 12	dispense from some marriage diriment impediments
31	21, 22	1, 13	grant <i>sanatio in radice</i>

There are fourteen faculties of the papal legates from the 1920 list that were given in 1963 to the residential bishops. Even though these faculties technically were not

withdrawn from papal legates, the use of them became rare as the local bishops would handle the issues on their own, in most cases.

To sum up, there are twenty-seven faculties in the 1920 list that were completely removed after the Second Vatican Council in the 1974 list. Fourteen faculties from the 1920 list were shared with the residential bishop as affected by *Pastorale munus*. The three tendencies that could be observed between these editions of the lists are:

1. elimination of faculties that became irrelevant (i.e., pertaining to benefices).
2. centralization of powers by the Roman Curia (i.e., discipline of indulgences).
3. application of principles of the Council which would grant necessary powers to bishops to allow them to fulfill their ministry entrusted to them, hence effectively eliminating the need to refer to papal legates in day-to-day operations.

4.4.2. From the 1974 List to the 1986 List.

The main factor that affected a change between these two lists was the promulgation of the 1983 Code of Canon Law. The new code included many faculties already given to the bishops in 1963 but changed others, effectively eliminating them

from the 1986 list. There are thirty-nine faculties present in the combined 1963 and 1974 lists that did not make to the 1986 index. Overwhelmingly, these faculties were removed from the 1986 list because they were given to bishops or religious superiors by law, or were generally provided for in the law. Here are some examples:

1963 / 1974	1983 CIC	1986
14, A4 / 1, 4	cc. 1354-5 on removal of censures	-
- / 26	c. 665 on allowing members of religious communities to live outside their convents	-
A5 / 1	c. 934, 2° a bishop can reserve the Blessed Sacrament in his own chapel	-

1963 / 1974	1983 CIC	1986
A2, A3 / 1	c. 967 §1 a bishop can hear confessions everywhere unless the diocesan bishop denied this in a particular case	-
3 / 1	c. 919 §2 a priest who celebrates more than one Mass may take some nourishment between them (regular fast rules suspended in this case)	-

There is only one faculty listed in the 1986 index that was never present before. In number 11, the nuncio or apostolic delegate is given the right to enter cloistered monasteries of pontifical right for a just cause and permit others to do so for a truly

grave and just cause.⁹ Also, the 1986 index in observations III, IV and V specified more precisely taxes that the papal legate can impose for granting favors and other services. Such faculty was already included in the 1974 list (#34), but now it added the possibility of dispensation from such tax due to poverty of the beneficiary (IV), and the need for the legate to transmit such collected tax to a proper dicastery (V).

To summarize, when considering the changes that took place between the 1974 and 1986 lists of faculties of papal legates, we note that the tendency to eliminate the number of these special powers continued. The main reason for such a reduction of faculties was the promulgation of the 1983 Code of Canon Law that included many of these faculties in the corresponding section on diocesan bishops and religious superiors.

⁹ Congregation for Bishops, *Index Facultatum Legatis Pontificiis tributarum* (Vatican: Typis Polyglottis Vaticanis, 1986) 196: "Di entrare, per giusta causa, dentro la clausura papale dei monasteri di monache che si trovano entro il territorio assegnato, e permettere, per giusta e grave causa, che altri vengano ammessi nella clausura e che le monache escano della stessa per il tempo veramente necessario."

4.5. Conclusion.

Examining selected lists of the faculties of the papal legates allowed us to observe the changes affected in the office of nuncio and of apostolic delegate by the Second Vatican Council and the 1983 Code of Canon Law. In previous chapters we noted the realignment of priorities of papal legates. Comparing various faculties of the legates however, resulted in a fuller image. We noted that between the 1917 and 1983 codes of canon law, the office of papal legate experienced a systematic reduction of various faculties granted to them. Such change was not only due to the elimination of certain entities in the church (i.e., benefices). Rather, the reduction of faculties occurred mostly due to the fact that many of the powers entrusted previously to the discretion of nuncios and apostolic delegates were given after the Council to bishops and religious superiors as tools necessary in their ministry in the Church. This transition is also a practical implication of the principle of subsidiarity as it was embraced by the reforms of the Second Vatican Council. In addition to these trends, some of the powers included in the 1920 list of faculties were reclaimed by the dicasteries of the Roman Curia. An example of such trend is the implementation of the new discipline pertaining to indulgences, where more active custody of them was reclaimed by the Apostolic Penitentiary. Our conclusion for the reasons of such action is two-fold:

- Easier and faster means of communication allow currently for a greater access to the Apostolic Penitentiary
- Centralization allows for uniform implementation of the discipline of indulgences in the Church.

Realizing that there are many other lists of faculties granted to papal legates, we have chosen these four (1920, 1963, 1974 and 1986) because they represent milestone steps in understanding the role of the nuncio and the apostolic delegate. Each one of them was issued after a major development in the life of the Church. We believe that the changes we observed here help significantly to shed new light on the development of the office of papal legate.

CONCLUSION

The examination of the office of papal legate and its historical development from the 1917 Code of Canon Law, the changes affected by the Second Vatican Council and the 1983 Code of Canon Law allow us to see distinctively various refinements and tendencies it has experienced. It presented us with an answer to the main question. Namely, there are clear and distinctive differences between the 1917 Code of Canon Law and the 1983 Code of Canon Law in their description and function of the papal legates. What are they?

The 1917 code tried to codify the centuries of legislation on the office of papal legates and put that in concise language in six canons. Canon 265 of that code is a perfect example of how such task has been accomplished. Doing so allowed the code to be relatively brief, but at the same time the richness and historical - legislative tradition behind it has been somewhat lost, unless one availed himself to study the *fontes* of the pertinent canons. Another effect of the brevity of the canons was the need to expand general canons through the faculties granted to the legates by publishing special lists in which the delegated powers for specific tasks have been granted. These faculties were divided into general and specific faculties (i.e., for a particular event, specific time-frame or particular region, country). Though one could be tempted to think that the

small number of canons pertaining to papal legates in the 1917 Code of Canon Law signified a lack of interest in that institution, historical data and many examples prove otherwise. Moreover, frequently updated lists of faculties prove that the work and influence of papal legates was crucial on many occasions and in various situations.

Although the publication of the 1917 Code of Canon law did not reshape the institution of papal envoys, but rather collected pertinent laws into one body of laws, soon it became clear that some changes were necessary. The opportunity came with the preparatory periods of the Second Vatican Council when many bishops from around the world voiced their disappointment in the current structures. Our research showed that the *vota* of the bishops before the council and their interventions during the debates tried to propose various patches to many inadequacies in the law and the faculties pertaining to nuncios and apostolic delegates. Others insisted on redefining the theological understanding of the role of bishops, and in conjunction with that, their relationship to papal envoys and the issue of overlapping jurisdiction so as to avoid conflicts. Other issues that surfaced were the need for internationalizing the central offices of the Roman Curia, including papal legates, to allow for a better representation of various nations in the mission of the Church and also for a better understanding of the local customs and traditions. The landmark change proposed by the Council that is well reflected in canons is the notion that the primary focus of the office of papal legate

be his mission to the local church rather than his diplomatic duties to the civil governments. The post-conciliar legislation reflected this point very vividly.

This observation gives the answer to our third question about the influence of the Second Vatican Council on the institution of the papal legate. Though it was clearly stated from the very beginning that the Second Vatican Council would not produce any particular laws pertinent to papal legates, it certainly marked the path of reform of that office. As we have seen, the numerous interventions prior and during the council were a strong indication that the office of papal representative as it was defined by the 1917 code had to be adopted to:

1. current demands of the Church;
2. various cultural and geographical environments in which they serve;
3. better cooperation with the local church / hierarchy, respecting each-other's relative autonomy.

The practical manifestation of the changes proposed by the council took place in the 1969 *motu proprio Sollicitudo omnium Ecclesiarum*, and later the 1983 Code of Canon Law. When we compare these two documents and related them to the 1917 code, we observed a number of changes which we would like to restate here:

- The 1983 Code of Canon Law does not provide many definitions of terms, especially in the realm of types of papal legates (except canon 358). To clarify these, we need to look into the *motu proprio* or the previous code.
- Although the issue of autonomy of the local bishops was not a new one, the council and subsequent documents try to draw clearer lines to preserve the principle of subsidiarity.
- The role of the legates, especially nuncios and apostolic delegates, is seen in terms of service to the local conferences of bishops (c. 364, 3°) and stewardship oriented towards the local churches (c. 364, 7°).
- Even though the tasks of the legates as peace keepers and facilitators of the cooperation among the various ecclesial and political entities (c. 364, 5°) are not entirely new, they have a new understanding in light of the council as efforts in searching for the common good and justice.
- The post conciliar documents added also another task to the office of papal legates, namely to promote and facilitate the diverse ecumenical initiatives. Seen as the representatives of the Roman pontiff and incorporating the directives of the council, the papal legates are often on the front line of the Church's reaching out to other churches and ecclesial communities.

- Finally, and possibly the most noticeable change in the codes, is the fact that the new legislation gives priority to the service to the local churches and bishops over the diplomatic efforts of the legates. It is seen not only in the wording of the canons but also in their location. Canon 267 §1 of the 1917 code gave priority to the diplomatic activities over the local churches. The 1983 code presents the duties of the legate to the local church in canon 364 and later to the state in canon 365.

However, the changes effected by the council did not stop with the code of canon law, but influenced further afore-mentioned indices of faculties for nuncios and apostolic delegates. We noted that between the 1917 and 1983 codes of canon law, the office of papal legates experienced a systematic reduction of various faculties granted to them. Such a change was chiefly due to elimination of certain entities in the church (i.e., benefices). However, further reduction of faculties occurred mostly due to the fact that many of the powers entrusted previously to the discretion of nuncios and apostolic delegates were given after the council to bishops and certain religious superiors as basic faculties necessary to fulfill their duties. We can also observe that this change was another practical implementation of the principle of subsidiarity as it was embraced by the reforms of the Second Vatican Council.

In addition to these trends, some of the powers included in the 1920 list of faculties were reclaimed by the dicasteries of the Roman Curia. An example of such trend is the implementation of the new discipline pertaining to indulgences, where more active custody of them was reclaimed by the Apostolic Penitentiary. Our conclusion for the reasons of such action is two-folded:

- Easier and faster means of communication allow currently for a greater access to the Apostolic Penitentiary;
- Centralization allows for uniform implementation of the discipline of indulgences in the Church.

The changes to the office of papal legate as described above are, in greater part, due to the interventions and debates during the Second Vatican Council. With such a mapped out path of reform, further changes unfolded as it is well attested to by the lists of faculties granted to nuncios and apostolic delegates. If we may summarize them all, we would state that the source of these adjustments is the basic notion of realigned priorities where the needs of the local church come first before any diplomatic responsibility of papal envoy. Out of such notion flows a proper relationship to the local bishop, the necessary faculties, care for peace-keeping efforts and ecumenical

movements. Unlike the previous codification, the 1983 code attempts to better respond to current and varied needs of the local churches around the world. Though it comes from the Supreme Legislator, we can clearly state that it is also a fruit of collaboration of the bishops from the whole world.

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