

AUTHORIZATION FOR LAY ECCLESIAL MINISTERS A CANONICAL REFLECTION

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Introduction

The role of the laity in the ministry of the Church has become more clear and more needed since the close of the Second Vatican Council. Our bishops have discussed, debated and written about the ministry of the laity. They have encouraged lay people to prepare themselves and to accept certain positions in the public ministry of the Church.

Out of all this prayer and discussion between Bishops and the laity, we now have a term for members of the faithful who assume leadership roles in the Church: lay ecclesial ministers. I have been asked to offer some canonical reflections on the authorization of these ministers.

The Nature and Function of Canon Law

I think it is appropriate at the beginning to say a few words about the nature and purpose of canon law in the Church. It has been said that canon law is the practical expression of the Church's understanding of itself. In formulating the law, the Church translates her theological, liturgical and spiritual teachings into norms and behaviors so that the traditions and life of the People of God can be seen and ordered. Law, then, functions as a witness to the faith, charisma and charity of the Church.¹

There are two fundamental types of norms in our law. Some norms describe the basic structure of the Church's organization, for example, the offices of the papacy and the episcopate and the various organizations in a diocese or a parish. Other norms regulate the life of the Church and her members, for example, the requirements to confer and to receive sacraments.

Canon law can never be separated from the mystery of the Church as the People of God and as the visible sign of Christ's presence in the world. Perhaps the best illustration of this connection is seen in the action of Pope John XXIII. He announced the revision of the Code of Canon Law in 1959 at the same time that he convoked the Second Vatican Council. However he said the revision process would not begin until the Council was completed because the law must be based on and fully reflect the new theology that was to be formulated at the Council.

Canon law serves several important purposes in the life of the Church: it aids the Church in achieving its goal of the salvation of people; it organizes and gives structure to the church's beliefs and teachings; through good order and harmony, it provides the Church with stability; it declares rights and duties of members and those in authority; it protects the rights of members through clear

¹ "On the contrary, its (the Code of Canon Law) purpose is rather to create such an order in the ecclesial society that, while assigning the primacy to love, grace and charisms, it at the same time renders their organic development easier in the life of the both the ecclesial society and the individual persons who belong to it." John Paul II, Apostolic Constitution, *Sacrae disciplinae leges*, January 25, 1983, The Code of Canon Law, Washington, D.C.: The Canon Law Society of America, 1999, xxix.

processes; and it delineates the competency of those who exercise authority.

Authorization in *Co-Workers*

In *Co-Workers in the Vineyard of the Lord*, the American Bishops spoke extensively about authorization for lay ecclesial ministry.² In place of a strict definition of a lay ecclesial minister, this document describes these men and women by the characteristics of their service. The first characteristic is authorization by the appropriate authority to serve publicly in the local church. Authorization orders and organizes lay ecclesiastical ministry so that these public ministers might be effective in accomplishing the mission of the Church. Rather than describing authorization as a single administrative act, the Bishops emphasized that it is a process by which church authority gives certain responsibilities to ecclesial ministers. The process consists of three parts: certification, the appointment or commissioning and the announcement of such an appointment to the wider community. In this reflection, I will be addressing the canonical implications of the appointment or commissioning of these ministers.

Role of the Bishop in Canon Law

Following the teaching of Vatican II,³ canon law stipulates that by ordination, the diocesan bishop possesses the power to carry out the pastoral function in the local church.⁴ He cannot exercise this power before he is appointed to his office and has taken canonical possession of the diocese.⁵ As the pastor of the diocese, the bishop exercises the three-fold *munera* of teaching, sanctifying and governing. These powers come from the office to which the Bishop is appointed. They are not delegated by someone else.⁶ The bishop is responsible for maintaining communion with the apostolic tradition and fostering communion within his own diocese. The local ordinary is to foster a close relationship with his priests. He is to be solicitous for their needs and listen to them as assistants and counselors.⁷ The Code also reminds the diocesan bishop of his duty to promote, in every way possible, the holiness of the Christian faithful according to the proper vocation of each.⁸ Finally, one of the canons mandates that the bishop is to foster various forms of the apostolate in the diocese and to see to it that all works of the apostolate of the diocese are coordinated under his direction.⁹

The Role of the Parish Pastor

Each diocese is divided into parishes that are communities of the Christian faithful. A parish is a defined group of people, stably established, whose pastoral care is entrusted to a pastor under the

² Cf. *Origins*, vol. 35 (December 1, 2005): 422-424.

³ *Lumen Gentium*, nn.24 and 27.

⁴ Canon 381, §1.

⁵ Canon 382.

⁶ “A diocesan bishop in the diocese entrusted to him has all the ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority.” Canon 381, §1.

⁷ Canon 384.

⁸ Canon 387.

⁹ Canon 394, §1.

direction of the local bishop. Parishes are usually territorial, that is, the members of the parish live within certain geographical boundaries. However, parishes could also be personal so that membership is based on language, nationality, connection with a college or university or other such personal characteristics.¹⁰

The pastor of a parish must be a priest. He is appointed to the ecclesiastical office and is empowered by the law itself to carry out the three-fold functions of sanctifying, teaching and governing this portion of the people of God. The law recognizes the special relationship between pastor and parishioners so that no other priest, without the pastor's authorization, may administer sacraments such as baptism and marriage or carry out administrative functions involving dispersal of parish funds. As long as the pastor holds this office, the bishop may not appoint someone else to that office, even if the pastor is sick or called away for long periods of time.

As the bishop needs the pastors to assist in the pastoral care of the diocese, so the pastor needs others to assist him in the pastoral care of the people. Possibly the bishop might appoint another priest to the parish as a parochial vicar. Even with a vicar, the pastor needs others to assist him. He has the authority to appoint qualified lay people to various ministries such as pastoral associates, directors of faith formation, youth ministers, school principals and a variety of liturgical roles. These ministers function under the direction of the pastor and enable him to accomplish the mission of the parish.

Because the pastor functions under the direction of the bishop, it would be appropriate for the bishop to establish diocesan norms concerning the qualifications for each pastoral function and the bishop might require that the candidates for certain jobs, e.g. school principal, be vetted by the staff in the corresponding diocesan department.

Lay ecclesial ministers are called and prepared to accept various tasks and functions beyond the service rendered by all the baptized. Some of these ministries or functions (*munera*) are involved in the actual governance of the Church. Among these functions some are called ecclesiastical offices.

Ecclesiastical Office

The code defines an ecclesiastical office as “any function constituted in a stable manner by divine or ecclesiastical ordinance to be exercised for a spiritual purpose.”¹¹ It should be noted first that ecclesiastical offices are abstract realities. They are organizational units depicting certain important functions in the life of the church. The law demands that an office be stable; meaning, that the function will continue for some time beyond the tenure of a particular person holding the office at the moment. An office is for a spiritual purpose. Finally, offices in the church are established by divine law, such as the office of the Roman Pontiff and of the Bishop or by ecclesiastical law, such as the office of pastor and diocesan finance officer.

The law is to delineate the personal qualifications and professional competencies required for each office. A person acquires an ecclesiastical office by valid canonical provision. While the law allows several methods of conferring an ecclesiastical office, the most common is appointment by the appropriate authority, usually the bishop.

We are most familiar with offices that are reserved to ordained priests, such as a pastor, a vicar

¹⁰ Canon 518.

¹¹ Canon 145, §1.

general, an Episcopal vicar, and a judicial vicar. However, there are a number of ecclesiastical offices in the universal law of the church that are open to the laity. Some examples are: a judge,¹² an auditor,¹³ the diocesan finance officer,¹⁴ the chancellor in a diocese,¹⁵ the person who is not a priest who exercises the pastoral care of a parish,¹⁶ and superiors and chapters of lay institutes of consecrated life.¹⁷

There are several norms concerning the conveying of a canonical office that directly apply to lay ecclesial ministers. For example, the provision of every office must be made in writing.¹⁸ The office is not validly conferred unless it is in writing, signed by the competent authority and notarized by the chancellor or another notary of the diocesan curia. The letter of appointment should indicate whether the office is conferred for a specific term or is indefinite. For some offices, the Code of Canon Law determines the term of office as it does in the case of the finance officer of a diocese. This office which could be held by a lay person must be conferred by the local ordinary for a five year term.¹⁹

An ecclesiastical office may be lost in a number of ways.²⁰ The most common ways are by the completion of the assigned tenure, by reaching the age determined in law, by resignation and by removal. For the most part, those holding an ecclesiastical office can only be removed from that office for a grave cause. The removal from certain offices can only be done for a grave cause and with a procedure specified in the law. Such applies to the finance officer of a diocese and to a pastor.²¹

Laity and the Power of Governance

Lay ecclesial ministers might rightly ask whether the ministry they perform is an exercise of the power of governance in the Church. This has certainly been a much-debated question at the time of the Council and the debate has continued after the revision of the Code in 1983. One might expect that the revised Code would have answered this question once and for all. Not so. This is a good example of law waiting until the theological discussions have clarified the issue before a norm is made.

1. Historical Background For many centuries the Church taught that it possessed two distinct powers: the power of orders and the power of jurisdiction. The power of orders was conferred by the sacrament of Holy Orders and the power of jurisdiction was conferred by canonical mission. While distinct, these two powers were considered to be closely related such that the power of jurisdiction was mostly conferred only on those who had received the power of orders.

The 1917 Code of Canon Law explicitly mandated that only clerics are the subjects of these two

¹² Canon 1421, §2. A bishop may appoint a lay person as judge when permitted by the Conference of Bishops.

¹³ Canon 1428, §2.

¹⁴ Canon 494.

¹⁵ Canon 482.

¹⁶ Canon 517, §2.

¹⁷ Canon 596.

¹⁸ Canon 156.

¹⁹ Canon 494, §2.

²⁰ Canon 184, §1.

²¹ Canon 494, §2 and canons 1740-1747.

powers.²² In fact, however, the 1917 Code itself as well as particular law in some regions allowed laity to exercise the power of jurisdiction. The fact that the Church restricted jurisdiction to clerics alone indicated that ordination was not a divine law prerequisite for jurisdiction because at that time one became a cleric by tonsure and not by the sacrament of Holy Orders. Nevertheless it was commonly understood by canonists that public ecclesiastical functions exercised by lay people were non-jurisdictional but acts of ministry or mere administration.²³

2. The Teaching of Vatican II The Council documents used the term “jurisdiction” only sparingly. They more frequently used “power” or “sacred power.” Depending on the context these terms could mean the power of orders or the power of jurisdiction or both powers in one person. In the *Dogmatic Constitution on the Church*, the Council Fathers taught that the ministerial priest possesses this sacred power by which “he forms and governs the priestly people.”²⁴ Although the common priesthood and the ministerial priesthood are interrelated, they remain essentially different.

The Council also addressed the nature of the episcopacy. By episcopal consecration, the fullness of Orders is conferred. The Council clarified what powers are conferred by episcopal ordination:

Episcopal consecration confers, together with the office of sanctifying, the offices also of teaching and ruling, which, however, of their very nature can be exercised only in hierarchical communion with the head and members of the college.²⁵

Lumen Gentium did not make clear that these functions (*munera*) conferred in ordination needed the canonical or juridical determination before they can be considered powers “ready for action.” Pope Paul VI clarified this matter in what is called the Preliminary Explanatory Note.²⁶ This shed light on the meaning of “canonical mission” that was spoken of in *Lumen Gentium*, n. 24. It is through the canonical mission that all sacred power is exercised in communion with the Supreme Pontiff and the college of bishops.

In describing the role of the diocesan bishop, the Council taught that these bishops have proper, ordinary and immediate power but its exercise is ultimately controlled by the supreme authority of the Church.

In virtue of this power bishops have a sacred right and a duty before the Lord of legislating for and of passing judgment on their subjects, as well as for regulating everything that concerns the good order of divine worship and of the apostolate.²⁷

The Council taught that priests are cooperators of the Episcopal college and, together with the bishop, form one presbyterate. Priests have a share in the ministerial priesthood, the unique office of

²² 1917 CIC, canon 118.

²³ J. Beal, “The Exercise of the Power of Governance by Lay People: State of the Question,” *The Jurist* 55 (1995): 7.

²⁴ *Lumen Gentium*, n. 10.

²⁵ *Ibid*, n.21.

²⁶ *Nota Explicativa Praevia*, November 16, 1964, n. 2.

²⁷ *Lumen Gentium*, n. 27.

Christ, and sanctify and govern that portion of the people of God assigned to them under the authority of the bishop.²⁸

Current Legislation It is clear that bishops and priests exercise the power of jurisdiction or governance when they are appointed to ecclesiastical offices. Is this the same for lay ministers? The Church's law seems to say no. It mandates that:

Only clerics can obtain offices for whose exercise the power of orders or the power of ecclesiastical governance is required.²⁹

However, there are offices in the Code that involve the exercise of the power of governance that are available to members of the laity. Such would be a diocesan judge, a diocesan finance officer and a lay superior of a religious institute.

The discussion about whether lay people exercise the power of governance in the Church continues.³⁰ Those who hold that lay people cannot exercise jurisdiction say that the powers of orders and jurisdiction are so intimately connected that only the ordained can exercise them. Those who hold that lay people can be delegated to exercise jurisdiction hold that these two powers, while indeed connected, are distinct and governance can be shared with the laity. There seems to be some solid support for this second opinion in the Code itself.

§1. Those who have received sacred orders are qualified, according to the norm of the precepts of the law, for the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction.

§2. Lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law.³¹

Upon closer study, however, this canon does not resolve the dispute. This canon affirms that clerics are capable (*habiles*) of exercising the power of governance but it does not say they are the only ones capable. The second paragraph clearly is a compromise between the two canonical theories. In one of the early drafts of the revised law, this paragraph concerning the laity used the term *habiles* also. But in the end, the text was changed to the current wording "can cooperate in the exercise of this same power..."

What does it mean to cooperate in the exercise of this power? I agree with professor Provost when he describes a cooperator as a co-worker with another who is the principal agent.³² Examples of this

²⁸ Ibid, n. 28.

²⁹ Canon 274, §1.

³⁰ For a summary of the debate, see J.Beal, "Lay People and Church Governance: Oxymoron or Opportunity" in *Together in God's Service: Toward a Theology of Ecclesial Lay Ministry*, Washington, D.C., USCCB,1998: 113-116.

³¹ Canon 129.

³² J. Provost, "The Participation of the Laity in the Governance of the Church," *Studia Canonica* 17 (1983): 434.

kind of cooperation in our Code are: the parochial vicar (assistant pastor) cooperates with a pastor³³ and the bishop cooperates with the Pope in a variety of ways.³⁴ Being a co-worker rather than the principal agent does not mean that one does not exercise the power that is necessary to perform the ministry. This is a true exercise of governance, not merely a semblance of it.³⁵

Application of Canonical Authorization: Entrusting a Parish to a Lay Person

The above canonical principles can be clarified in the example of entrusting a parish to a lay person according to canon 517, §2. What a local bishop realizes that he does not have sufficient priests to assign as pastors to parishes in his diocese, he is allowed to entrust the pastoral care of a particular parish to a deacon or a lay person or persons. For our example, let us say that there is a woman in the diocese who has been properly prepared through academic courses and by years of experience for such a ministry. She, of course, may not take this ecclesiastical office on herself nor may a neighboring pastor appoint her to this function. Only the diocesan bishop may authorize this woman to serve the people as the parish director or coordinator. The bishop will also appoint a priest to supervise the pastoral care of the parish. This priest will have the faculties of a pastor (e.g. to witness marriages, to confirm adults in certain circumstances) but he will not be the pastor of the parish. This parish has no one installed in the office of pastor. It is possible that yet another priest, perhaps one who is retired, will be assigned to celebrate the sacraments on a regular basis. The bishop should make the appointment of this parish director in writing with beginning and ending dates. The job description should be clear and the method of evaluation should be spelled out. There should also be a letter of the various faculties that she has been given to carry out the ministry entrusted to her, e.g. liturgical celebrations of the Word including preaching, baptism in special circumstances, giving certain blessings, celebrating certain funeral rites, as well as others.³⁶

Changes in the Code of Canon Law

After reviewing the canons on the exercise of the power of governance by lay people, I think that some changes are in order when the Code is again revised. These changes would either bring the text into harmony with the reality of lay ministerial practice or would embody accepted theological understanding of the role of laity in the Church.

Professor James Coriden has suggested some changes in three canons that are pertinent to our topic.³⁷

³³ Canon 545, §1.

³⁴ Canon 334.

³⁵ B. Cusack, "Power of Governance: Theoretical and Practical Considerations," *Canon Law Society of America Proceedings* 52 (1990): 193.

³⁶ For examples of such faculties, cf. J. Huels, *Empowerment for Ministry*, Mahwah, New Jersey, Paulist Press, 2003: 175-170.

³⁷ J. Coriden, "Lay Persons and the Power of Governance," *The Jurist* 59 (1999): 245.

Current Text

Lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law.
(Canon 129, §2)

Only clerics can obtain offices for whose exercise the power of orders and the power of ecclesiastical governance is required.
(Canon 274, §1)

In a diocese, the bishop is to appoint diocesan judges, who are to be clerics.
(Canon 1421, §1)

Suggested Text

Lay members of the Christian faithful are also qualified (*habiles*) for the power of governance according to the norm of law.

Only clerics can obtain offices for whose exercise the power of orders is required.

In a diocese, the bishop is to appoint diocesan judges, who are to be priests, deacons, or other members of the Christian faithful.

Conclusion

The authorization required for lay ecclesial ministers is in accord with the role of the bishop as the supervisor of all ministry in the diocese, ensures the good order of the church, and highlights the unique service undertaken by these women and men. As this ministry continues to expand, there will undoubtedly be new challenges to address but also new graces for the building up of the people of God.

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