

COLLABORATION AND COOPERATION BETWEEN THE CLERGY AND THE LAITY¹ IN THE PARISH, TRIBUNAL AND CHANCERY²

It is never the case that the lack of priests is a blessing for the laity³.

This citation highlights one of the important premises of this article: in outlining the importance of collaboration in ministry between the clergy and the laity⁴, I am not denigrating the priestly voca-

¹ Basing ourselves on canon 207, a lay person is anyone who is not a cleric, that is, not a deacon, presbyter, or bishop.

² This article is based on a presentation given at the annual meeting of the mid-west region of the Canon Law Society of America, Madison (WI), May 2000.

³ «An Explanatory Note» to CONGREGATION FOR THE CLERGY, Interdicasterial Instruction, 15 August 1997, «Some Questions Regarding Collaboration of the Non ordained Faithful in Priests' Sacred Ministry», *Origins* 27 (1997-1998) 409.

⁴ This is not the place to outline the different theories of how laity participate in the power of governance. Although some of the concepts in such theories may be used in this article, it is presumed that the reader will go to other resources for more information. See, for example, J. PROVOST, «The Participation of the Laity in the Governance of the Church», *Studia canonica* 17 (1983) 417-448; J.P. BEAL, «The Exercise of the Power of Governance by Lay People: the State of the Question», *The Jurist* 55 (1995) 1-92, especially his bibliographical references on page 2, note 3, for the «German school» pages 26-27, notes 81-83, for the «Roman school» pages 36-37, notes 112-114, for the «school of Navarre» page 42, note 136, and for a more recent trend page 85, note 290.

tion⁵. In fact, I hope to help arrive at a deeper understanding of why we must protect both ordained ministry and non-ordained ministry in the Church. I also hope to challenge our thinking about collaboration in ministry in the Church. If lay people have a certain capacity to cooperate or collaborate⁶ that is recognized in law, then the Church's understanding of the importance of that capacity must go beyond encouraging laity to help when there is a shortage of priests, and restricting them when there is not. Either lay collaboration is a good thing and should be encouraged; or it should not exist. It should not be promoted as a temporary measure.

My title speaks of collaboration. I wish to highlight one understanding of collaboration that will help focus this article: collaboration can be understood as «“the working together of all the baptized, each contributing specific, personal gifts” for the

⁵ In speaking of the collaboration of the laity with the clergy in ministry neither am I denigrating the vocation of the laity which is highlighted by both the Second Vatican Council and the 1983 Code, to imbue the temporal world with the spirit of the gospel, cf. LG 31, AA 2 and 5, AG 15; c. 225. Rather, I am highlighting a specific area of Church life where clergy and laity collaborate in ministry.

⁶ From my understanding of canon 129 and its implications, it will be clear that I align myself with the so-called «Roman school» of thought. J.P. BEAL, «The Exercise of the Power of Governance» (cf. nt. 4), 77 outlines the consequences of this understanding which is the central point of my article: «If lay people are not *habiles* to be entrusted with the power of governance, it makes little sense to say they can cooperate in its exercise».

good of the church»⁷. As Alphonse Borras notes, it is the Church who calls those faithful recognized as apt for a certain ministry. Engaging such people is not done simply because of everyone's baptismal co-responsibility. Rather it is done from the point of view of ministerial collaboration⁸. It is because of this ministerial collaboration that laity today partici-

⁷ NCCB COMMITTEE ON WOMEN, «Statement, 13 October 1998», *Origins* 28 (1998-1999) 357 (it is quoting the NCCB COMMITTEE ON THE LAITY, *Gifts Unfolding: The Lay Vocation Today With Questions for Tomorrow*, Washington [DC] 1990, 49).

⁸ There are many different understandings of collaboration. One example is T.M. MONROE, «Part I: The Rhetoric and Reality of Collaboration», in *CLSA Proceedings* 54 (1992), 148-149: «The notion of collaboration is connected for most people in ministerial settings to broader themes in theology and ecclesiology such as the priesthood of all the faithful, collegiality, subsidiarity, and consultation. On a general and abstract level, the term «collaborative ministry» suggests several things: 1) less rigid role definitions, especially those which allow women and laity to assume more responsibility than was traditionally permitted; 2) more decentralized structures and flexible staff relations; and, 3) participative decision making processes which include open and honest communication and feedback mechanisms.»

J.J. KOURY, «Part II: The Code and Collaboration: Recent Literature», in *CLSA Proceedings* 54 (1992), 165-166, explains, using the example of Catholic health care, that there are very different understandings of collaboration: «[...] a variety of meanings covering the spectrum from what might be called the minimalist approach, i.e., a strategy for survival (referring to mergers, takeovers, assets management and disposal, or simply «acting more smartly in tough times»), to the maximalist creative approach, i.e., a vision or charism».

In another article J.J. KOURY, «The Limits of Collaboration: The New Legal Language for the Laity», *Studia canonica*

pate closely in pastoral care (cf. AA 24f). Canon 228 highlights the point that qualified lay persons are capable of assuming ecclesiastical offices and functions. This participation takes different forms depending on the nature and needs of the ecclesial community concerned⁹. Even though the responsibility for full pastoral care belongs to the ministry of pastors, coming from the bishop and his authority, pastors alone cannot accomplish all the tasks inherent in pastoral care: other priests, deacons, and lay ministers participate in the pastoral care of these communities. The priest, deacon, or lay minister does not take the place of the pastor; rather, that person performs tasks which are indispensable for the building up of the Church and its mission in that place¹⁰.

If this is so, we must try to understand what that collaboration means. There are some *caveats*. As a recent Roman instruction warns:

it is necessary that all who are in any way involved in this collaboration exercise particular care to safeguard the

26 (1992) 435, notes: «The Code employs the term “collaboration” rarely, and with the limited sense of “cooperation”: novices are to “collaborate actively” with their directors (c. 652 §3) and teachers are to “collaborate closely” with parents (c. 796 §2). “Collaboration” is not used in the Code with the same sense of contemporary usage: clerics, religious and laity in close and active partnership, co-laboring in Church ministry, acting or working together, joint enterprise». It is in this latter sense that I will be using «collaboration».

⁹ Cf. A. BORRAS, «Les ministères laïcs fondements théologiques et figures canoniques», in *Des laïcs en responsabilité pastorale?*, Paris 1998, 117.

¹⁰ Cf. A. BORRAS, «Les ministères laïcs» (cf. nt. 9), 117-118.

nature and mission of sacred ministry and the vocation and secular character of the lay faithful. It must be remembered that *collaboration with* does not, in fact, mean *substitution for*¹¹.

As I mentioned above, I am not denigrating the «secular character» of the lay faithful. Rather, I am highlighting those times when laity collaborate in sacred ministry. Especially since the Second Vatican Council, we have seen an increase in collaborative ministry which is accomplished through the laity collaborating with the hierarchy for the good of the Church. Sharon Euart reminds us of three levels of activity accomplished by the hierarchy and the laity:

The council delineated different levels of relationship between lay activity in the apostolate and the hierarchy. Within activity in the temporal order, the role of the hierarchy is simply to teach the moral principles involved. But beyond temporal affairs there are apostolic endeavors freely established and regulated by the laity, not by the hierarchy, though the hierarchy may support such undertakings by praising and recommending them. Then, there are some forms of lay activity having an immediate spiritual purpose which the hierarchy may join more closely to its own apostolic functions but carefully maintaining the lay nature of the activity and the right of the laity to act on their own accord. Finally, the hierarchy may entrust to the laity some functions proper to its own apostolate (AA 24). It is in virtue of this latter form of cooperation in the apostolate of the hierarchy that laity can be entrusted with pastoral responsibilities for the care of souls¹².

¹¹ CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 399.

¹² S.A. EUART, «Parishes Without a Resident Pastor: Reflections on the Provisions and Conditions of Canon 517 §2 and Its Implications», *The Jurist* 54 (1994) 371.

It is this last form of cooperation that will be our focus. This cooperation can take place as part of the functions of sanctifying, teaching, and ruling. These functions belong to the ordained because of their baptism and ordination, but also all the baptized participate in these functions through their baptism.

However, even if laity are *habiles* to cooperate in the power of governance or in other priestly ministries, the caution always exists, in the 1983 Code and in the literature, that this cooperation takes place because of a shortage of clergy. As the recent Roman instruction states:

It must be noted with great satisfaction that in many particular churches the collaboration of the nonordained faithful in the pastoral ministry of the clergy has developed in a very positive fashion. It has borne an abundance of good fruits while at the same time being mindful of the boundaries established by the nature of the sacraments and of the diversity of charisms and ecclesiastical functions. It has also brought about bounteous and tangible results in situations of a shortage or scarcity of sacred ministers¹³.

It is this tension between the recognition of the capacity of the laity and the reality of the scarcity of ordained ministers that will be our focus. In studying this aspect, we will look at examples of laity cooperating and collaborating with sacred ministers in the parish, tribunal and chancery. In so doing, we will ask ourselves the following questions: 1) Where does the capacity of the laity to collaborate in sacred ministry come from? 2) How is this capacity recognized in the 1983 Code of Canon Law? 3) How do

¹³ CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 399.

we deal with the *caveat* that the laity cooperate mainly in order to fulfill a need due to a shortage of priests? In other words, can it ever be sufficient to say that laity are filling in for a shortage of clergy? What will happen when and if there is no longer a shortage of clergy? Will the laity then no longer be welcome to continue collaborating with the clergy? What will happen if the shortage of clergy, rather, gets steadily worse? Are the laity always to be seen as only «filling in» until better times return? 4) Must we not recognize the charisms and talents of the laity, participating in the sacred mission of the Church and being acknowledged as being capable of doing so? 5) Is it not this intrinsic capacity of the laity to collaborate that is the most important element in this discussion? If there is a capability, should it not be promoted and encouraged? Rather than only tolerated due to a shortage of priests? 6) Does this not lead us to ask that there be a renewed understanding of sacred ministry? If we look to the past, were not many things considered the province of the clergy which, now, in fact, are regularly understood as being the province of the non-ordained? This is not to say that the ordained cannot fulfill tasks that the laity normally fulfill, but it is to say that perhaps there should be more fluidity in the understanding of what tasks belong solely to the ordained and which do not.

We should be continually working toward a greater understanding between the laity and the clergy. Neither group is trying to «take over» the tasks of the other. Rather, we should be trying to determine how the pastoral needs of the faithful can be fulfilled, how to work out in practice this capacity of the laity to cooperate and collaborate. Rather than outlining

which tasks can only be fulfilled by clerics, or by priests, we should be trying to figure out how the pastoral tasks can be shared, recognizing the vocation and gifts of all who are fulfilling these tasks.

Although it may be true that the first openings for laity to fulfill roles traditionally held by clerics arose out of need, we are now at the point that we need to go beyond this. *Lumen gentium*, 35 noted that: some lay people may «supply some of the sacred offices (*sacra officia*) in so far as they can» when sacred ministers are lacking or impeded¹⁴. This has been happening for the past 35 years. It is time to consider the results.

It should also be noted that while there are tasks that must be fulfilled by the ordained, there are other tasks that are normally fulfilled by priests because of tradition or habit. There are many examples, for instance, priests in school as principals, in catechetical education, sacramental preparation, etc. where no one questioned the role they were fulfilling. When examining these tasks, we must ask whether they are exclusively reserved to priests, or whether we are merely accustomed to having priests fulfill them¹⁵. A recent article highlights this point:

It is necessary to look at the activity, not at the subject. It cannot be said that there is a ministry that is more relevant because it has been carried out by a cleric and that the ministry carried out by a lay person is of a lower order because it was only carried out by a lay person¹⁶.

¹⁴ Cf. J.P. BEAL, «The Exercise of the Power of Governance» (cf. nt. 4), 16.

¹⁵ Cf. A. BORRAS, «Les ministères laïcs» (cf. nt. 9), 96.

¹⁶ G. CASSANDRO, «Il Sacerdozio comune nella Chiesa del 2000», *Il Diritto ecclesiastico* 110 (1999) 385.

If the lay person is capable of fulfilling a task, then the fact that that task was fulfilled by a priest or a layperson is irrelevant. At the same time, we must keep in mind the following criticism:

We are conditioned by the individualist culture we inherited from the 16th century to think in terms of competition, power, efficiency, which means that we are in danger of setting ourselves up against one another instead of understanding that the very same services, when exercised by sacred ministers or by the faithful do not simply have the same meaning, because of the sacramental nature of the church¹⁷.

Here is another tension in this discussion. I am not advocating only efficiency. However, I am stating that if a lay person is capable of fulfilling a certain ministry then, yes, his or her ministry is as «good» as the ordained person's. We must attempt to walk the tightrope of remembering the sacramental nature of the church, and also remembering the importance of baptism and confirmation in the lives of the faithful. I am not trying to say that laity may do whatever they choose. There are some things that may only be done by an ordained minister. That is not the question here. Rather, the perspective I would like to explore is to examine those times when the law permits something to be done by a cleric or a lay person. If such is the case, then the value of the task must depend on how well done it was in itself, not in who accomplished it.

¹⁷ «An Explanatory Note» to CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 409.

If the lay person is capable, that is what matters. At the same time, we should also keep the following criticism in mind:

We are very sensitive to the demands of functionality and good organization, and might be inclined generously to entrust to others among the faithful anything which does not directly require *ad validitatem* powers of the priesthood. However, the ordained ministry of bishops, priests and deacons belongs to the very structure of the church. Which is the same as saying the image of the church. This image reaches beyond the categories of canonical validity. To attempt to resolve what are practical problems by pushing what is possible canonically to its very limits would not be to give a true image of the church¹⁸.

I would agree with this: we need to understand that ministry is more than what is accomplished in a very narrow sense; ministry is about relationships in a community. The sacred minister who is a pastor has a specific relationship both with Christ and with the community of the baptised. No ministry can be seen in isolation from the community which it is serving. Thus, the ordained minister has a specific relationship with this community, as does the non-ordained minister. I would argue that no ministry can exist in isolation so we cannot look only at the efficiency of the «work» (ministry) rather than the impact on the ecclesial community. However, at the same time, I would disagree with this last citation in the sense that I believe these categories of «canonical validity» are extremely important. We have only

¹⁸ «An Explanatory Note» to CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 409.

to look at history to realize that there are tasks that clerics were accustomed to do for centuries. The fact that clerics performed these tasks did not make them in and of themselves clerical (or priestly) tasks. It was over time that laity were given a share in some of these tasks and it became evident that some tasks were, in fact, the province of the laity, not the clergy. We have «pushed the boundaries» in the past and re-evaluated the meaning of the priesthood, and that, with the help of canonical categories, is what we must continue to do.

The central question that must be addressed is whether laity may perform tasks because of their baptism and competence, or whether they are merely supplying for a lack of priests. Perhaps at first glance such a distinction may seem overly black and white, or overly simplistic. In my opinion, it is not. Obviously, laity cannot perform tasks if they are not capable of doing so. As we will see, all the tasks in which the laity may cooperate are clearly outlined as being tasks for which laity are capable¹⁹. However, laity are often only permitted to perform such tasks because of a shortage of priests. What is being said

¹⁹ As J. BEYER, «Iudex laicus vir vel mulier», *Periodica* 75 (1986) 40 notes, that in order to correctly explain canon 129 §2, lay people are called «cooperators in this exercise of power»; but if they are not capable, they cannot be cooperators. He continues on page 41 noting that if clerics are capable of the exercise of the power of governance because of the gift of the Holy Spirit received in ordination, so too are lay persons capable of this exercise. It cannot be said that they are in themselves incapable of the exercise of this power. Therefore, they can enjoy delegated or transmitted power, if it is legitimately conceded.

here? There are times when it appears that laity are permitted to perform tasks almost on sufferance, as if those permitting them are only waiting until there are enough priests to return to fulfilling those tasks. This cannot be the case. A commonly heard criticism of the emerging work of the laity is that it is happening at the same time as a devaluation of what priestly ministry entails. The bishops of France illustrate an example:

Assemblies in the absence of priests have multiplied, with the risk of limiting the role of priests to acts of worship. This is especially true for funerals, marriages, baptisms, making priests often only available for Sunday eucharistic liturgies. The missions of evangelizing and animating communities seem to be more and more difficult to accomplish. And so we have appealed to the laity and we have tried to associate them with the pastoral task. Many difficulties have arisen and confused the clarity: on the one hand there is a reference to the common priesthood of the baptised and thus their legitimate participation in the life of the Church; on the other hand, the specific responsibility of the laity in evangelization and their necessary promotion in the people of God; finally, their desire to supply for the absence of priests in order to assure the survival of local communities²⁰.

While I understand the difficulty of having to deal with these thorny theological issues at the same time as we are dealing with a crisis in personnel, I can only emphasize my point that if clergy and laity are going to collaborate it can only be if we recognize that the promotion of the laity because of their baptism, because of

²⁰ BUREAU D'ÉTUDES DOCTRINALES DE LA CONFÉRENCE DES ÉVÊQUES DE FRANCE, Note théologique, 4 February 1993, «Les ministres ordonnées dans une Eglise-communion», *La Documentation Catholique* 90 (1993) 422.

the common priesthood of Christ, is appropriate in and of itself. It can never be appropriate to promote the ministry of the laity only to supply for a scarcity of priests. If there is a scarcity of priests, we need to re-evaluate the essentials of our faith and community life. Plugging the gap, as it were, by sending in warm bodies as a temporary measure will do nothing for the life of the Church unless we understand that we are dealing not only with a renewed understanding or even the discovery of the role of the laity in the life of the Church, but also a renewed understanding of the role of ordained ministry. As the document of the French Episcopal Conference notes: «The ministry which the Church considers undisputedly as one of «supplying for an absence» can be overturned from that understanding to become a «promotion» of the laity, or the normal exercise of the priesthood of the faithful»²¹.

1. Ministry of the baptized stemming from baptism and confirmation

The lay faithful are capable of performing certain tasks in the Church because of their baptism. Canon 228 further states that lay people have the capacity (*habiles*) for undertaking certain tasks:

§1. Qualified lay persons are capable of assuming from their sacred pastors those ecclesiastical offices and functions which they are able to exercise in accord with the prescriptions of law.

²¹ BUREAU D'ÉTUDES DOCTRINALES DE LA CONFÉRENCE DES ÉVÊQUES DE FRANCE, «Les ministres ordonnées dans une Église-communion» (cf. nt. 20), 422.

One author, commenting on canon 230 §3, notes that this canon is found in the section that highlights the rights and obligations of the lay faithful. In this sense, some tasks are assigned to laity that are not only a simple filling in for a scarcity of priests, but they orient the laity toward their «proper» tasks as members of the people of God. This presupposes an organic insertion of the lay faithful into the *munus sanctificandi* of the Church²². Other authors speak of the laity and their participation in the *munus regendi* and the *munus docendi*. However, when we examine the language of the Code, it rarely encourages the lay faithful to collaborate in the ministry of priests. Rather,

There is also a variety of terms for inclusion and «being invited in» (e.g., «admit,» «called,» «supply for,» «may share in»). Such provisions for inclusion, or provisions of necessary accommodation, are often accompanied by direct or indirect indications of the causes of change, or general phrases as «in special circumstances,» «in other particular cases,» or in cases of «necessity,» «scarcity,» and «usefulness.» This language of the revised Code reveals the cautious nature of these rules of inclusion²³.

2. Ministry of priests based on ordination

The 1997 Vatican Instruction outlines the ministry of priests and its characteristics:

²² Cf. C. ESPOSITO, «La partecipazione dei laici al “munus sanctificandi” della chiesa,» in G. GIUSTINIANO (ed.), *Ius et Munera. Studi di diritto canonico ed ecclesiastico in onore de Mons. Vincenzo Scancamarra*, Napoli 1997, 292.

²³ J.J. KOURY, «Part II: The Code and Collaboration» (cf. nt. 8), 70.

The characteristics which differentiate the ministerial priesthood of bishops and priests from the common priesthood of the faithful and consequently delineate the extent to which other members of the faithful cooperate with this ministry may be summarized in the following fashion:

- a) The ministerial priesthood is rooted in the apostolic succession and vested with *potestas sacra*, consisting of the faculty and the responsibility of acting in the person of Christ the head and the shepherd.
- b) It is a priesthood which renders its sacred ministers servants of Christ and of the church by means of authoritative proclamation of the word of God, the administration of the sacraments and the pastoral direction of the faithful²⁴.

The issue here is not to challenge the meaning of the ministerial priesthood. Rather, it is to explore the ways in which the laity are capable of collaborating somehow in that ministry.

3. Cooperation in the ministry of the bishop

It is important to recall that not only do laity cooperate in the sacred ministry, but so do priests and deacons. The ministry properly belongs to the bishops who are «constituted pastors within the Church so that they are teachers of doctrine, priests of sacred worship and ministers of governance» (c. 375 §1). Priests cooperate with the bishop, under his authority (see LG 28, PO 7, 15)²⁵. Presbyters are the bishops' «assistants and advisors» (c. 384: the

²⁴ CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 401.

²⁵ For more on this collaboration and Vatican II, see A. BORRAS, «Le ministère de présidence du curé: réflexions canoniques et pastorales», *Studia canonica* 27 (1993) 64-65.

Latin says *adiutores et consiliarios*). Pastors are «called to share» in the ministry of the bishop (c. 519: the Latin says *cuius in partem ministerii Christi vocatus est*). Priests are the «co-workers» of the bishop in the ministry of the Word (c. 757: the Latin is *cooperatores*). In the same way, all who cooperate in ministry in the parish cooperate with the pastor (c. 525).

As one author notes, lay people who receive a mission to exercise ministries normally reserved to ordained ministers become cooperators of the bishops, as priests and deacons are²⁶.

It is also clear that if a lay person or priest or deacon does collaborate in the sacred ministry, there must exist some external form of recognition of this person's ministry or office. No one, bishop, priest, or lay person, has the right to fulfill a function without first being asked to fulfill it and being given the mandate to do so, whether by office, or by delegation. Baptism and ordination prepare one for ministry but do not confer a ministry in themselves. That comes later with an office or delegation. It could be argued in some instances that a priest has more «right» than a lay person to fulfill certain tasks because they are normally considered to be part of the sacred ministry. However, even a priest must be considered to be apt and worthy of a certain ministry before he is given it. If a lay person is considered capable of fulfilling these tasks, it must be determined when that person is permitted to fulfill them

²⁶ Cf. N. PROVENCHER, «Un regard théologique sur nos pratiques ministérielles», *Studia canonica* 29 (1995) 368.

and when he or she is not. Normally, this would be made clear in the terms of office or the terms of the delegation received.

No one has the right to a specific ministry or office. The ministry in a diocese is entrusted to the diocesan bishop. Everyone else shares in that ministry somehow. A good example of this is found in the canons on preaching. Preaching belongs to bishops by right (c. 763: in Latin *Episcopis ius est*); that ministry is shared by priests and deacons as a faculty granted by the law (c.764: in Latin *facultas*); laity may be admitted to preach (c. 766: in Latin *admitti possunt*). In each of these cases, the person whose ministry it is to preach can limit or take away that ministry from someone who has the faculty or who is permitted to preach. Priests, deacons and laity do not enjoy the right to preach. Their ability may be restricted by the diocesan bishop. Even the diocesan bishop, in extreme cases, may have his right to preach limited or taken away by the Roman Pontiff²⁷. The point here is that no one enjoys a right to do anything in the Church independent of everyone else's rights. To emphasize, as some documents and authors do, that the laity cannot claim a «right» to preach, or a «right» to exercise any particular task in the Church, says very little. That is the case for all in ministry. What I would prefer to see emphasized is the possibility of laity preaching «if in certain circumstances it is *necessary* [...], if in

²⁷ See, for example, J. HUELS, «The Correction and Punishment of a Diocesan Bishop», *The Jurist* 49 (1989) 507-542.

particular cases it would be *useful*»²⁸. Alphonse Borras reminds us:

The distinction between the co-responsibility of everyone and the collaboration of some is capital. Very often, when we speak of laity, there is a kind of telescoping between the two types of «ministeriality»: the co-responsibility of «the whole ministerial Church» and the ministeriality *properly speaking* of some. We speak of people's right to collaboration when, in fact, by its nature – both for laity and for clerics – it is a *concession* from the competent ecclesiastical authority. Sometimes we ask for a recognition of co-responsibility which, in itself, does not require any sending-forth in mission or an ecclesial mandate in order for it to be done or even validated by the Church. Co-responsibility is imposed; collaboration is granted. All ministries, offices or functions are part of collaboration; they depend on a sending-forth or mission from the Church²⁹.

To return to another criticism that must be addressed: the recent Vatican Instruction also notes:

Therefore, since the exercise of the *munus docendi, sanctificandi et regendi* by the sacred minister constitutes the essence of pastoral ministry, the diverse functions proper to ordained ministers form an indivisible unity and cannot be understood if separated, one from the other. Rather they must be viewed in terms of mutual correspondence and complementarity. Only in some of these functions, and to a limited degree, may the nonordained faithful cooperate with their pastors should they be called to do so by the lawful authority and in accordance with the prescribed manner [...]

The exercise of such tasks does not make pastors of the lay faithful, in fact, a person is not a minister simply in per-

²⁸ CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 403; emphasis added in document.

²⁹ A. BORRAS, «Les ministères laïcs» (cf. nt. 9), 104, note 16.

forming a task, but through sacramental ordination. Only the sacrament of orders gives the ordained minister a particular participation in the office of Christ, the shepherd and head in his eternal priesthood. The task exercised in virtue of supply takes its legitimacy formally and immediately from the official deputation given by pastors as well as from its concrete exercise under the guidance of ecclesiastical authority³⁰.

My main objection would be that the laity cannot only be exercising tasks «in virtue of supply». If they are capable, there is more to the issue than that. I would argue that the ministry of the laity should be encouraged and supported, that it should not only be seen as a «filling in» for a scarcity of clergy. I would note, however, that I am not trying to «make pastors of the lay faithful». Rather we should be witnessing more and more how laity are working together with clergy for the building up of the Church, not as if

³⁰ CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 401.

See also, BUREAU D'ÉTUDES DOCTRINALES DE LA CONFÉRENCE DES ÉVÊQUES DE FRANCE, «Les ministres ordonnés dans une Église-communion» (cf. nt. 20), 425: «The fact of exercising a function does not make the lay person a pastor: in truth, what constitutes a minister is not the activity in itself but sacramental ordination. Only the sacrament of orders confers on the ordained minister a particular participation in the function of Christ, Head and Pastor, and in his eternal priesthood. The function exercised as a supply receives its legitimacy – formally and immediately – from the official delegation received from the pastors. In the concrete exercise of this function, the person fulfilling the task must submit to the direction of the ecclesiastical authority (*Christifideles laici*, 23). The lay person called to fill this position is not substituting for the pastor, even when he is participating in the exercise of the pastoral care, because this participation forms part of the ordained ministry».

they were in competition with one another. Nor am I saying that the ordained ministry is no longer required for the life of the Church. As is clear from the 1997 instruction: «[...] were a community to lack a priest, it would be deprived of the exercise and sacramental action of Christ, the head and pastor, which are essential for the very life of every ecclesial community»³¹. The instruction speaks of collaboration of the laity with the ministry of the church's pastors, citing *Christifideles laici*, 23:

«When necessity and expediency in the church require it, the pastors, according to established norms from universal law, can entrust to the lay faithful certain offices and roles that are connected to their pastoral ministry but do not require the character of orders.» In this way it is not one merely of assistance but of mutual enrichment of the common Christian vocation³².

The issue then is not to have laity fulfill tasks that require the character of orders, but rather to recognize that not every task fulfilled by a cleric requires the character of orders. A draft pastoral letter from Archbishop Rembert Weakland of Milwaukee in January 1991 emphasizes these points. He notes: «There are limits, however, to the work that priests can do as well as to the roles that the laity can perform. Some of those limits are theological, others are purely physical»³³. And he continues:

³¹ CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 402.

³² CONGREGATION FOR THE CLERGY, «Some Questions Regarding Collaboration» (cf. nt. 3), 402.

³³ R. WEAKLAND, 7 January 1991, Draft Pastoral Letter «Future Parishes and the Priesthood Shortage», *Origins* 20 (1990-1991) 537, #27.

We will have to continue to use more and more lay people and permanent deacons to assume ministries traditionally performed by the priests. Perhaps more of the baptismal preparations and those before marriage will have to be done by lay ministers, as is happening in some parishes. We are accustomed now to religious education coordinators and youth ministers, when at one time that work was always done by the priests, especially by the associate pastor. Such models will have to be enlarged with new lines of responsibilities to make sure that the priest is not overburdened with this supervision in a number of parishes³⁴.

A caution comes from the French bishops: we must be careful not to have only a functional understanding of the sacramental. The sacramental cannot be instrumentalised in the name of efficiency. Such a reduction would inevitably lead to attitudes concerning power and counter-powers. The episcopacy, the presbyterate and the diaconate in the Church refer to the power of Christ and to his service for the salvation of all, their end being the building up of the body and the mission of the Church. Sacred power is neither a privilege, nor an appropriation of the grace of God, because the minister is not ordained for himself but rather he is ordained to signify and communicate the call and the gift of God to his Church. In his name, the minister participates in the offering of Christ to his father, of which the Eucharist is the summit. By the tasks of teaching, sanctifying and governing, the minister encourages the full responsibility of the laity according to their vocation³⁵.

³⁴ R. WEAKLAND, «Future Parishes and the Priesthood Shortage» (cf. nt. 33), 538, #34 (5).

³⁵ BUREAU D'ÉTUDES DOCTRINALES DE LA CONFÉRENCE DES ÉVÊQUES DE FRANCE, «Les ministres ordonnés dans une Église-communion» (cf. nt. 20), 425.

I would add to this statement that we must re-examine our traditionally held understandings of what ministries belong specifically to the ordained and which may be exercised because of baptism. We need to challenge our understanding of ordination and baptism and how they prepare us for leadership and ministry in the Church. At this time when the numbers of priests are diminishing in North America and Europe we have a special privilege and duty to examine the life of the Church as we know it and to separate traditional divisions of labour from theological ones.

4. Ministry and baptism

As a recent report by the NCCB Lay Ministry Subcommittee states:

The whole church is missionary. All of the faithful, including the laity, by virtue of their baptism and confirmation, are given a share in Christ's priestly ministry. Such ministry is appropriate in its own right and should not be seen as a way of participating in the ministry of the ordained (cf. *Ad Gentes*, 2; *Lumen Gentium*, 31)³⁶.

The foundation of all ministry in the Church stems from baptism. In addition to baptism, there must be also a calling by the hierarchy in order to perform a public ministry in the Church. As we have seen, no one has the right to whatever task or ministry he or she chooses. As the NCCB Lay Ministry

³⁶ NCCB LAY MINISTRY SUBCOMMITTEE, November 1999, «Report», *Origins* 29 (1999-2000) 502, conclusion 5.

Subcommittee reminds us:

[...] lay ecclesial ministers [...] can be distinguished from the general body of all the lay faithful, not by reason of merit or rank, but by reason of a call to service made possible by certain gifts of the Holy Spirit, by the generous response of the person, and by an act of authorizing and sending by the proper ecclesiastical authority (cf. Lk 10,1)³⁷.

Another document highlights these aspects explaining that when lay people are associated with the exercise of pastoral care and the celebration of the sacraments (baptisms, marriages, as liturgical presiders), canon law underlines the necessity of a delegation from the diocesan bishop. Such a delegation is not merely an administrative control, but it is also a mission, a sending-forth, from the bishop: The bishop is acting from his apostolic function, namely, from the mission and sending-forth which he received from Christ. It is important to differentiate the tasks undertaken by the laity in the name of the common priesthood of the faithful and those which they fulfill in the name of a pastoral delegation.

5. Necessity and scarcity of priests

When laity are delegated to accomplish tasks, they receive such delegation because they are capable or able to receive it. As such, they do not only fulfill tasks to fill in for a scarcity of priests. They exercise such ministries because of an inherent capacity to do

³⁷ NCCB LAY MINISTRY SUBCOMMITTEE, «Report» (cf. nt. 36), 502, conclusion 8.

so. We must get away from always relying on laity to accomplish tasks only to supply for the scarcity of priests. If, tomorrow, there were enough priests to do everything, does that mean that laity would no longer be needed or valued in these positions or ministries? That cannot be. I hope, rather, that the experiences we are seeing lived out in the Church today would mean that there would be a renewed understanding of the roles of clergy and laity in the Church with regard to their collaboration and cooperation.

There is an ancient legal maxim: «Necessity has its own law» (*Regula Iuris*, no. 78: «In argumentum trahi nequent, quae propter necessitatem aliquando sunt concessa»). On the one hand this can be understood in the sense that when a concession is made out of necessity, it cannot serve as a legitimate precedent. On the other hand, the rule also implicitly recognizes that what is necessary can – must – also be granted, must be possible to grant³⁸.

Examples that interest us of such canons regarding cases of necessity are: c. 230 §3, 861 §2, 1421 §2, 766.

Canons regarding scarcity of clergy or lack of the ordinary minister: c. 230 §3, 517 §2, 1112 §1:

Although the expressions vary, the reality addressed is the same: a shortage of clergy. The problem of a lack of clergy is not completely new to the Church; at least two canons of the 1917 Code refer to a scarcity of priests: canon 297, on the scarcity of secular priests in certain mission areas, and canon 526, on scarcity of priests to serve as ordinary confessors of religious women. But these were limited cases³⁹.

³⁸ J.J. KOURY, «Necessity, Utility, Scarcity: Clues to the Origins of Laws and the Process of Lawmaking», *The Jurist* 49 (1989) 98.

³⁹ J.J. KOURY, «Necessity, Utility, Scarcity» (cf. nt. 38), 106.

Koury notes: «[...] while the code recognizes the lack of clergy as reality, its provisions seem to be only hesitant and temporary relief»⁴⁰. In another article, this author continues:

It seems unfortunate that the development of some ministries of the laity, in the legal language of the Code, results more from a sense of «clergy unavailable» rather than by consequence of a theologically grounded sense of vocation and ministry «in the Church»⁴¹.

As Alphonse Borras has stated:

All the ministries exercised by laity are not necessarily supply for the scarcity of priests. This way of speaking is tied to the ecclesial situation which is in the process of ending since it rested on a quasi-monopoly of priests. If, in fact, previously, priests did almost everything, the subsequent rarity of priests has necessitated that a good number of their tasks be accomplished by the laity. In fact, the laity fulfilled the tasks of the priests only in the sense that they succeeded the priests in undertaking these responsibilities. But it must be said that these tasks cannot have been in themselves tasks inherent in the ministry of pastoral and eucharistic presiding of priests⁴².

Borras continues, stating that in the above understanding, if people say that laity are merely fulfilling tasks to help deal with the scarcity of priests, it is a statement regarding the fact that priests used to fulfill such tasks in the past⁴³.

⁴⁰ J.J. KOURY, «Necessity, Utility, Scarcity» (cf. nt. 38), 107.

⁴¹ J.J. KOURY, «The Limits of Collaboration» (cf. nt. 8), 429.

⁴² A. BORRAS, «Les ministères laïcs» (cf. nt. 9), 112-113.

On page 30, note 84, Borras addresses a point that seems essential to this discussion and requires further study. He emphasizes the importance of the pastor as eucharistic *presider*, presider over the community. From there, the other ministries naturally evolve.

⁴³ Cf. A. BORRAS, «Les ministères laïcs» (cf. nt. 9), 113.

Before considering specific ministries, it is important to recall a few distinctions:

The majority of lay ecclesial ministers carry out duties and responsibilities that can be considered proper to the laity. Examples of these ministries might include music director, director of religious education, youth minister, social justice director, business manager, bereavement ministry coordinator and principal of a Catholic school. As with all qualified laypersons, some ecclesial ministers may be called to fulfill those ecclesiastical offices that are open to them (Canon 228). A small percentage of lay ecclesial ministers, however, serve in ministries that are proper to the ordained (cf. Canon 517 §2, on administering the pastoral life of a parish). A few positions, such as pastoral associate, sometimes combine responsibilities proper to the laity and responsibilities proper to the ordained⁴⁴.

Later the NCCB document states:

It is essential to maintain the distinction between those ecclesial ministries that are entrusted to the laity appropriately because of their baptismal call and those ministries, ordinarily reserved to the ordained, which are delegated to the laity by exception in case of need. That distinction should be recognized in the titles, rituals, and canonical and liturgical forms used for the installation of all ecclesial ministers⁴⁵.

6. The perception of the faithful

One theme that often arises when one reads about laity exercising ministries in the Church is the

⁴⁴ NCCB LAY MINISTRY SUBCOMMITTEE, «Report» (cf. nt. 36), 502, conclusion 10.

⁴⁵ NCCB LAY MINISTRY SUBCOMMITTEE, «Report» (cf. nt. 36), 508, conclusion 2.

question of whether the faithful will be confused by this; or rather, it is not so much whether the faithful will be confused, as whether the faithful will think that the celebration they just attended or the work that was just done for them, or the sacrament that was just celebrated, was «just as good» as the one that would have been done by a priest. Rather than saying that laity cannot exercise certain ministries because the faithful do not understand them, is this not more a question of educating the faithful? The fact is, if a member of the lay faithful is exercising an office, or is deputed to fulfill a certain function or to exercise a certain ministry, that person is accomplishing his or her task as well as if the task were being done by an ordained person. The fact of ordination does not make a person more able to fulfill functions in the Church. It is the fact of baptism which habilitates people to undertake certain tasks and if that person is legitimately undertaking these tasks, then the tasks are as validly, licitly, and expertly done by the lay person as by the cleric. The lay faithful should be educated to understand what is happening in parish and diocesan life today.

7. Concrete examples

In November 1995 the bishops of the United States issued «Called and Gifted for the Third Millennium», pastoral reflections on the laity. In it, they describe the experience of laity serving in parishes:

Recent research indicates that at least half of our parishes have lay people or vowed religious in pastoral staff positions. In some instances the daily pastoral leadership of a parish has been entrusted to a layperson in the absence of a

resident pastor. Indeed, the pastoral needs of this moment are being ably and generously served by many kinds of ecclesial lay ministers.

Lay ministry is a reality beyond the parish as well. Many church institutions, from colleges and school systems to marriage tribunals, from social services and health care providers to houses of formation, benefit from the expertise and dedication of Catholic women and men exercising their designated ministry. The church's mission is being carried forward and far by all these lay ministers who tirelessly serve the church and God's people [...]

Ecclesial lay ministers speak of their work, their services, as a calling, not merely a job. They believe God has called them to their ministry, and often the parish priest is the means of discerning the call⁴⁶.

Some examples of offices that require the power of orders and others that permit collaboration of the laity:

Those offices that require the power of orders include the offices of pastor (c. 521 §1), parochial administrator (c. 539), priests who serve as a team of pastors (c. 517 §1), vicar general and episcopal vicars (c. 478 §1), and judicial and adjutant judicial vicars (c. 1420 §4).

But examples of those ecclesiastical offices that no longer require the power of orders include chancellor (c. 482 §1), notary (c. 483 §1), diocesan finance officer (c. 494 §1), «mixed» teams (the canon refers to deacons and «some other person») who direct a parish, as long as there is a priest who is appointed supervisor and has the powers and faculties of a pastor (c. 517 §2), and other tribunal judges (c. 1421 §2)⁴⁷.

⁴⁶ U.S. BISHOPS, Pastoral Reflections, November 1995, «Called and Gifted for the Third Millenium», *Origins* 25 (1995-1996) 413.

⁴⁷ J.J. KOURY, «The Limits of Collaboration» (cf. nt. 8), *Studia canonica* 26 (1992) 420.

If we were to consider only the power of governance,

Here are places in the code where lay participation in the governing function of the Church is possible, and seemingly in virtue of office:

1. As members of consultative bodies (c. 228 §2), specifically at plenary and provincial councils (c. 443), the diocesan synod (c. 463), diocesan pastoral council (c. 512), parish councils (c. 536), the finance councils of the diocese (c. 492) and of the parish (c. 537), and other finance councils (c. 1280), councillors in religious institutes (c. 622) and members of general chapters (c. 631 §1 although here deliberative rather than consultative vote is involved).
2. Holding various administrative offices: diocesan chancellor (c. 483 §2), notary (c. 483 §2), fiscal officer or econome of a diocese (c. 494 §1) or of a religious institute (c. 636), general secretary of a conference of bishops (c. 451) and, according to some, papal legate (c. 363).
3. Holding executive offices as superiors in institutes of consecrated life (cc. 617, 717) or as novice director (c. 651).
4. Holding judicial offices: judge (c. 1421 §2), ponens (c. 1429), auditor (c. 1428), assessor (c. 1424), promotor of justice (c. 1435) and defender of the bond (c. 1435)⁴⁸.

If we expand this to other ministries we consider:

parish ministries

- * minister of baptism (cc. 230 §3; 861 §2)
- * eucharistic minister (cc. 230 §3; 910 §2; 911 §2)
- * official witness at weddings (c. 1112)
- * presider at funerals
- * presider at liturgies of the word in the absence of a priest (c. 517)
- * minister of sacramentals (c. 1168)
- * minister of the word (cc. 758-759; 766)
- * lector and acolyte (for lay men) (c. 230 §1)

⁴⁸ J. PROVOST, «The Participation of the Laity in the Governance of the Church» *Studia canonica* 17 (1983) 443.

Tribunal

- * judge (c. 1421 §2)
- * assessor (c. 1424)
- * defender of the bond/promotor of justice (c. 1435)
- * procurator/advocate (c. 1483)
- * notary/case instructor
- * auditor (c. 1428 §2)
- * tribunal director/coordinator

Chancery

- * member of finance council (c. 492)
- * diocesan finance officer (c. 494 §1)
- * chancellor (c. 482)
- * archivist

Rather than going into each, I would like to highlight certain examples in order to highlight the tension between permitting laity to fulfill certain tasks and protecting ordained ministry. The examples I will highlight are canons 517 §2, 230, and 1421 §2.

7.1 *Sunday assemblies in the absence of a priest (c. 517 §2)*

In these extraordinary circumstances, a lay person can be deputed to preside at these assemblies⁴⁹.

⁴⁹ Cf. CONGREGATION FOR DIVINE WORSHIP, 2 June 1988, «Directory for Sunday Celebrations in the Absence of a Priest», *Notitiae* 24 (1998) 379-392; *Origins* 18 (1988-1989) 301-307.

See also, NCCB BISHOPS' COMMITTEE ON THE LITURGY, *Gathered in Steadfast Faith: Statement on Sunday Worship in the Absence of a Priest*, Washington 1991.

The ultimate example of clergy – laity collaboration is the situation envisioned in canon 517 §2⁵⁰ of pastoral collaborator, parochial minister, lay administrator, parish leader, parish life coordinator, etc. This describes a particular situation that is large enough to be the sole topic of today's discussion. I will discuss it in passing, in order to deal with some of the other issues we are considering. It is only based on the experience of collaboration that we will be able to eventually understand what is meant by the collaboration permitted in canon 517, and only then will we know if this is an opening to collaborative ministry based on the laity's baptism and confirmation, or truly only something that is foreseen for those extraordinary times when there are not enough priests. If there were enough priests, would this kind of collaborative ministry die? Perhaps after years of pastoral experience and practice, we will come to understand that in order to be a vibrant, living Church, we need to work together and collaborate and recognize everyone's talents and gifts.

⁵⁰ For more on this position, see, for example, A. BORRAS, «Les autres possibilités d'attribution de la charge pastorale», in *Les communautés parissiales*, Paris 1996, 163-199; B.A. CUSAK – T.G. SULLIVAN, *Pastoral Care in Parishes without a Pastor: Applications of Canon 517 §2*, Washington 1995; S.A. EUART, «Parishes Without a Resident Pastor» (cf. nt. 12), 369-386; M. HUBER, «Ecclesiastical Financial Administrators», in K. MCKENNA – L. DI NARDO – J. POKUSA (eds.), *Church Finance Handbook*, Washington 1999, 120-124; J.A. RENKEN, «Parishes Without a Resident Pastor: Comments on Canon 517 §2», in *CLSA Proceedings* 50 (1988), 249-263.

As one author describes the situation:

Distinct from the *parochial administrator*, is the position envisioned when, due to a dearth of priests, the diocesan bishop would entrust a share in the exercise of the pastoral care of a parish to other «non-presbyteral» pastoral leadership. A deacon, male or female religious, lay person or a community of persons may provide for this pastoral leadership. In any case, the diocesan bishop is to appoint a priest with the powers and faculties of a pastor to supervise the pastoral care⁵¹.

The point that interests me here is that in this world in which we are living we are watching a dearth of the clergy happen before our eyes. It seems to me that the extraordinary situation outlined in canon 517, can only be properly understood with the passage of time and experience. In my opinion, the most important point to take away from this experience is that whatever people other than priests end up doing in parishes, it must be understood that they are there because of their talents and their calling. If they are only tolerated because of a scarcity of clergy, the Church will not grow from the situation. It is this very scarcity that is calling us to reassess the role of the laity in the Church and we need to arrive at an understanding of their participation in the Church that is based on their calling and ability as well as based on their baptism and confirmation.

7.2 *Lector and Acolyte (c. 230)*

Canon 230 §3 reads:

When the necessity of the Church warrants it and when ministers are lacking, lay persons, even if they are not lectors or acolytes, can also supply for certain of their offi-

⁵¹ M. HUBER, «Ecclesiastical Financial Administrators» (cf. nt. 50), 121.

ces, namely, to exercise the ministry of the word, to preside over liturgical prayers, to confer baptism, and to distribute Holy Communion in accord with the prescriptions of law.

It is important to note that the emphasis in this canon is that to supply for pastoral necessity, lay persons may fulfill certain offices or exercise certain ministries. The basic premise is that in order to do so, laity are capable because of their baptism and confirmation, as well as their suitability for the particular office or ministry.

One author highlights an important point:

What was seen to be the significance of *MQ* was that it declericalized lectors and acolytes by abolishing them as «minor orders» and reconstituting them as «ministries» in which lay men might be installed. They were not aspects of priestly ministry delegated in extraordinary situations to lay men⁵².

This is an excellent example of lay ministries yet it is rarely used because it is only open to lay men. This same author continues:

The ministries of acolyte and lector envisioned by *MQ* do exist, but they have in most places *de facto* become the new «minor orders» for priesthood candidates. Seminar-

⁵² J. GRONDELSKI, «Lay Ministries? A Quarter Century of *Ministeria Quaedam*,» *Irish Theological Quarterly* 63 (1998) 276-277.

In note 13, page 277, he continues: «As regards lectors and acolytes, the demand posed by *Christifideles Laici* to determine whether a particular ministry stems more properly from Orders or from Baptism and Confirmation seems *de facto* to have been made: it belongs to Orders. Why Pope Paul VI chose to abolish the lectorate and acolytate *as minor orders* then becomes somewhat unclear. Cf. Z.V. FOX, *New Ecclesial Ministry: Lay Professionals Serving the Church*, Kansas City (MO) 1997, 193-194».

ians are routinely installed in these ministries during the years of priestly preparation. This author knows of few dioceses, however, where laity are recruited, trained, and formally installed as lectors or acolytes in the manner *MQ* envisions⁵³.

What interests me here is that it is clear from *Ministeria quaedam* that lector and acolyte are lay ministries. However, they are rarely promoted as such. Partially there is the issue that they are not open to women. However, the main point here is that – it seems to me – they are still seen to be the province of the ordained. This is an issue for educating the faithful, for encouraging laity to fulfill tasks that are specifically theirs.

7.3 Judge

The norms of the 1917 code wiped away some longstanding customs that had permitted the exercise of power of governance by lay people in some places. For example, 170 years prior to the promulgation of the 1917 code it had been customary in the Diocese of Breslau to allow lay canonists to serve as judges, assessors and auditors in matrimonial cases and other non-penal contentious cases before ecclesiastical tribunals. The Bishop of Breslau inquired of the Congregation for the Council whether this centenary custom could continue despite canons 1574, 1575 and 1581 of the 1917 code, which reserved these tribunal roles to priests. The congregation responded that, since the functions of judge and auditor entail the exercise of jurisdiction and since «laymen are declared incapable of spiritual jurisdiction» by canon 118, the code had reprobated contrary customs that permitted lay people to serve in these roles⁵⁴.

⁵³ J. GRONDELSKI, «Lay Ministries?» (cf. nt. 52), 278-279.

⁵⁴ J.P. BEAL, «The Exercise of the Power of Governance» (cf. nt. 4), 7.

Thus there were no lay judges in the 1917 Code. Lay judges were not permitted until 1971 when Paul VI permitted lay men to form part of a college of judges and later the 1983 Code permitted both lay men and women to form part of a college.

In assessing this state of affairs, it is interesting to consider the reasons why laity were not permitted to be judges, and then why they were permitted. James Provost describes how lay judges were considered in one of the drafts of the Code:

in the formulation of canon 1425 lay judges are presented as a secondary option – «when it is necessary» they can be employed to form a collegiate tribunal; but otherwise, [this] opinion holds that judging pertains to clerics. This is the presupposition underlying commentaries on the 1983 code [...] Most [...] appear to presuppose the limitation of lay judges to serving on a collegiate tribunal⁵⁵.

What we must concentrate on here is whether judging is a function that pertains to the clerical state, or whether it is a function that can be accomplished by all the competent baptised?

Barbara Anne Cusak seems to express a different opinion:

Thus there does not seem to be any question that a lay judge exercises true jurisdiction when he or she acts. The lay judge is appointed to office in order to «cooperate» in the judicial exercise of jurisdiction of the chief judge, the bishop. This is, in my opinion, the locus of «cooperation» by the lay judge; he or she is a co-worker of the bishop as chief judge and it is with him that the lay judge cooperates in the power of governance. It is not a cooperation or share

⁵⁵ J.H. PROVOST, «Role of Lay Judges», *The Jurist* 45 (1985) 330.

in the jurisdictional power of the other judges who comprise the collegiate panel. Those other judges on the panel do not have the authority to appoint a judge. Therefore, it appears to me that it is in the act of appointment that the bishop invites the cooperation of the lay person in his jurisdiction⁵⁶.

One example that I would like to give regarding the tension between need (providing for a scarcity of priests) and actually doing the task properly is the tension found in the requirements for judges. Judges should be clerics (c. 1421 §1) who have a doctorate or a licentiate in canon law (c. 1421 §3). If the judges do not hold a doctorate or a licentiate in canon law, they may be dispensed from this requirement by the Holy See. If they are not clerics, lay people may be appointed in certain circumstances (c. 1421 §2). Discussion of this issue took place during the revision of the Code. There were some consultants who wanted the canon to state that the requirement for judges was for them to have the academic degrees or to be truly expert in canon law. As Jean Beyer noted commenting on this discussion, if lay judges were permitted who were required to have the proper

⁵⁶ B.A. CUSAK, «Power of Governance: Theoretical and Practical Considerations», in *CLSA Proceedings* 52 (1990), 194.

For more on collaborating in the bishop's judicial power, see, J. BEYER, «Iudex laicus vir vel mulier» *Periodica* 75 (1986) 31: «This power of the judge is ordinary but vicarious [...] From this it is clear that in this case we are dealing with sacred power. And this belongs to the bishop and in the exercise of which the judicial vicar and the other judges, even lay judges, collaborate [...]».

academic formation, both men and women, then this requirement would truly be fulfilled⁵⁷. And he cites the response from *Communicationes* which highlights that it is the importance of the task of judging that is at issue: the judge must have a good knowledge of canon law which he or she will gain from studying it⁵⁸.

Here we see the Code opting not for *who* fulfills the task but rather how well it is fulfilled. It is the expert in law that is important, not whether that person is cleric or lay.

Another point that is worth highlighting comes from the history of having lay judges. One author writing in 1968 noted:

The introduction of competent lay jurists, not only as advocates but as judges as well, could expedite matters that deserve prompt attention especially when the spiritual welfare of people is involved, contribute to the development of ecclesiastical jurisprudence, and help alleviate a possible backlog of cases⁵⁹.

The result of introducing lay judges was considered beneficial. It is interesting to compare this to the constant refrain of permitting laity to fulfill a task for spiritual good, because of a shortage of priests. The basic concept should only be that it would be beneficial for the Church for this task to

⁵⁷ Cf. J. BEYER, «Iudex laicus vir vel mulier» (cf. nt. 56), 31.

⁵⁸ Cf. J. BEYER, «Iudex laicus vir vel mulier» (cf. nt. 56), 32, where he is citing *Communicationes* 16 (1984) 55.

⁵⁹ P. FRATTIN, «Lay Judges in Ecclesiastical Tribunals», *The Jurist* 28 (1968) 177.

be fulfilled by laity. As this same author noted in 1968:

Ultimately, professional competence should be the only criterion in selecting tribunal officials, and no one should be disqualified on grounds of lack of clerical status or even on grounds of sex⁶⁰.

8. Conclusion

Laity have an important role to play in the ministry of the Church. The apostolate of the laity must be recognized for what it is. To think of it only as a replacement of priests when priests are scarce is to deny the baptismal calling given to each. We must carefully examine the Code and other documents and consider whether in themselves laity are capable of being given certain ministries. If so, then there should be no question of doing so only when clergy are scarce. Rather, priests and laity should be working together to serve the Church. As the NCCB Lay Ministry Committee recalls:

Lay ecclesial ministry and the ministry of the ordained complement each other within the dynamic *communio* of the church. They are not in competition. While the phenomenon of lay ecclesial ministry arose during a time of decline in priestly vocations in certain parts of the world, it should not be seen simply as an emergency response. Each expression of ministry is needed in its full dignity and strength if the church is to be fully alive in its communion

⁶⁰ P. FRATTIN, «Lay Judges in Ecclesiastical Tribunals» (cf. nt. 59), 184.

and mission (cf. *Lumen Gentium*, 10; *Christifideles Laici*, 20; *Ecclesia in America*, 39)⁶¹.

Another author adds to the discussion:

It must be said that the activities fulfilled by laity when there are no priests must not be considered only as activities fulfilled because of this lack. If a certain ministry is given to a lay person to fulfill, that lay person does so as a member of the baptized and as someone who is co-responsible, together with all the faithful, in the salvific mission of the Church. This means that the lay person assumes responsibility for what he is doing, and also that the Church must recognize that person as the person who is fulfilling the office fully and permanently, and not only as the person who is fulfilling the office because of a lack of priests⁶².

Some citations to conclude, first, a question that arose from the 1999 NCCB report on lay ministry, «How do we convince our people (perhaps priests) that lay ministry is not second-class ministry but a responsibility flowing from baptism?»⁶³. In the same vein Koury notes that there has been a:

remarkable evolution in the canonical understanding of the roles of the laity. But is it a real «breakthrough», or do these terms of inclusion imply another understanding altogether: that laity are *not partners, but only and temporarily substitutes*. There has indeed been a shift from exclusion to cautious inclusion of lay persons, but it reflects more a «supplying» for need, or necessity, or for the dearth of clergy, than an empowerment based on a recognized voca-

⁶¹ NCCB LAY MINISTRY SUBCOMMITTEE, «Report» (cf. nt. 36), 502, conclusion 13.

⁶² G. CASSANDRO, «Il Sacerdozio comune» (cf. nt. 16), 396-397.

⁶³ NCCB LAY MINISTRY SUBCOMMITTEE, «Report» (cf. nt. 36), 509.

tion in and for the building up of the Church. «Suppletory» seems to describe the current state of the question⁶⁴.

And another statement from Borrás, yet one which flows from this question: It is imperative to form priests in whom the aptitude to collaborate and the capacity to coordinate pastoral action are traits of the «new priests» of the coming millenium⁶⁵.

One final citation from Elizabeth McDonough:

[...] it appears at law and is probably also the case in day-to-day ecclesial reality, that there is almost no position, role, function, office or status in the Church that is open to laity which is *not* either heavily conditioned (cc. 204 §1; 208; 210; 216), carefully qualified (cc. 212 §3; 218); institutionally circumscribed (cc. 226 §2; 229 §1; 230), or hierarchically controlled (cc. 223 §2; 228)⁶⁶.

It is my contention that if the laity are merely considered «suppletory» in the ministry of the Church, we might as well return to a Church of their passive attendance. Either their role is active and their participation is valued for the gifts that they

⁶⁴ J.J. KOURY, «Part II: The Code and Collaboration» (cf. nt. 8), 182.

See also J.J. KOURY, «The Limits of Collaboration» (cf. nt. 8), 435-436.

⁶⁵ Cf. A. BORRÁS, «Les ministères laïcs» (cf. nt. 9), 119.

⁶⁶ E. McDONOUGH, «Laity and the Inner Working of the Church», *The Jurist* 47 (1987) 240-241. On page 241, note 26, she continues: «[...] at least some restrictions are engendered for laity *precisely* as laity and not merely in view of the office *in se*. The one exception, and a notable one at that, to the consistent and systematic limitation of lay activity by universal law seems to be the affirmed fundamental Christian right and duty of spreading the gospel, which is articulated broadly and clearly in c. 211 and further specified in c. 225».

bring to the community, or there is no point in encouraging their active participation in Church life. They will become disillusioned once they realize the encouragement to participate in the life of the Church for what it is: an empty promise⁶⁷.

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⁶⁷ The point of this article has been to highlight the incongruity of permitting lay collaboration and yet at the same time presuming that it is only to supply for a scarcity of priests. It has not been the object of this article to discover theological solutions to the situation from the point of view of the clergy. However, one article which attempts to do that and has some interesting ideas is A. BORRAS, «Le ministère de présidence du curé: réflexions canoniques et pastorales», *Studia canonica* 27 (1993) 59-76, especially at pages 73-76, where he speaks of the pastor as exercising a «ministry of presiding». In this context he believes that the pastor's ministry of presiding is the one that makes the parish community possible. The pastor creates a place wherein everyone takes his or her place, undertakes his or her tasks, gives his or her witness, fulfills his or her mission. It is the ministry of presiding that «authorizes this partnership» and makes it grow.