

INCARDINATION AND THE UNIVERSAL DIMENSION OF THE PRIESTLY MINISTRY

1. Historical Overview of Incardination until the Code of 1917

Incardination, as we encounter it today in the Code, is a recent juridical profile, but it can be traced back to the earliest juridical sources. The evolution of the institute of incardination is entwined with the history of the title of ordination, the sustenance of clerics and the dismissorial letters¹. The title of ordination, by which a cleric was permanently attached to the service of a particular church or community in exchange for an income, emerged as the norm in the early Church and implied permanent ministry to a specific community or church which could only be changed with a canonical transfer. Initially, incardination referred only to the Church in which the cleric exercised his service and only indirectly to the diocese and the vigilance of the bishop. Alongside the title of ordination, "absolute ordinations" emerged where a cleric was ordained and not attached to the service of any particular

¹ J.B. RENGIFO, *La incardinación de los clérigos: Investigación histórico-jurídica*, Roma 1971; J.T. MCBRIDE, *Incardination and excardination: an historical synopsis and commentary*, Washington 1941.

community or church. These priests, often unscrupulous, moved from diocese to diocese. Numerous councils, most notably the Councils of Arles (314), Nicaea (325), and of Chalcedon (451), issued norms prohibiting the movement of clerics from one church to another and "absolute ordinations", establishing severe penalties for those who disobeyed. The presence of legislation concerning *litterae commendatitiae* and *litterae dimissoriae* reflected, however, some form of regulated movement of clergy. In reality, the movement of priests was so common that in 382 Gregory of Nazianus considered the prohibition abrogated because of contrary practice².

While councils and synods continued to insist on the principle *non admittuntur clerici acephali*, the reality was often far from perfect. Indeed, this was due in no small part to the Irish and Scottish missionary monks in Europe during the eighth century, probably unaware of the norms of Chalcedon and coming from a monastic Church. These monks felt no obligation of obedience to local bishops, only their superiors, and therefore travelled unimpeded from diocese to diocese, further undermining the discipline of attachment to one's diocese³.

By the eighth century there was a substantial change in the nature of the title of ordination due to the emergence of the benefice system and the growing number of clergy. The benefice system brought about a change of mentality. The assignment of a

² J. GAUDEMET, *Storia del Diritto Canonico: Ecclesia et Civitas*, Milan 1998, 89.

³ G. SARZI SARTORI, «L'incardinazione in una Chiesa particolare», *Quaderni di Diritto Ecclesiale* 15 (2002) 126-127.

title of ordination was directly aimed at concrete pastoral service in exchange for the remuneration attached to the benefice. Since the number of benefices was limited, bishops were often forced to ordain clerics without any benefice or title of ordination. The history of the Church shows that benefices were often the main reason for the movement of clerics, especially in search of the most lucrative, often at the expense of their clerical obligations. In trying to remedy the abuses of the benefice system, the Third Lateran Council (1179) and Alexander III accentuated the problem by establishing that if a cleric was ordained without a title, the bishop had to ensure his income or the cleric could live on his or his family's resources. This opened the road to "absolute ordinations", justified by the new title, *titulus patrimonii*. Hereafter, ordination and pastoral service separated. Absolute ordinations were juridically recognised and the title of ordination became only a source of income, a requirement for ordination to resolve the problem of his sustenance, without any corresponding obligation of service. Clerics with this title were free to move from one diocese to another since the title of patrimony did not tie a cleric to any specific service: *clerici vagi aut vagantes* became more numerous⁴.

The Council of Trent (sess. XXI, can. 2; sess. XXIII, can. 16) tried to reform the practice and stated that a cleric could be ordained for any title only if the bishop judged him useful or necessary for

⁴ C. VOGEL, «Titre d'ordination et lien du presbytre à la communauté locale dans l'Église ancienne», *La Maison-Dieu* 115 (1973) 70-85.

his diocese⁵. Any cleric who violated his obligation of residence was suspended from the exercise of sacred orders. By the Council of Trent, incardination had evolved from attachment to a certain place within a diocese to incardination or attachment to the diocese itself. This is not to be mistaken as a restoration of the original meaning of attachment for service. Furthermore, the legislation reflected the structure of the Church as being divided into self-contained territorial compartments and did not reflect any responsibility or care for the needs of other churches: the *sollicitudo omnium ecclesiarum* was relegated to second place. Session XXIV prohibited the accumulation of benefices and double incardination. The Tridentine norms were primarily disciplinary: *non admittuntur clerici acephali*.

The political and economic changes which followed the end of the *Ancien Régime* brought about a review of the discipline. The declining number of benefices and the practical impossibility of establishing, in the majority of cases, an effective and stable title of patrimony, induced the Roman Congregations and bishops to admit new titles of ordination not yet recognised in general law. The priest who exercised an office in the diocese was guaranteed a livelihood from his diocese as a whole instead of a church or foundation: *titulus servitii diocesani*. Bishops were able to insist that a priest remain in the diocese, but they also had to provide for the sustenance of the cleric. The incardination was a means of subordination of the cleric to the ecclesiastical authority

⁵ N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, II, Washington 1990, 729.

and the title was the source of his sustenance. In response to the increasing demand of bishops who were seeking a shorter method of acquiring new candidates for ordination by way of domicile, the Congregation of the Council issued the Decree *A primis*⁶. This decree formed the basis of the legislation concerning incardination and excardination in the Code of 1917.

The Code of 1917 substantially restated the existing discipline and confirmed the necessity of the title of ordination (can. 974 §1, 7°), which had to be perpetual, guarantee an adequate sustenance and incardinate the cleric to either a diocese or religious institute. In reality, the Code allowed ordination for a wide possibility of titles of ordination (*titulus servitii dioecesis, missionis, paupertatis, mensae communis*, etc.), but stated that with ordination a cleric is incardinated into the diocese. The conferral of a residential benefice attached a cleric in a perpetual and absolute way to the diocese of the Ordinary conferring the benefice (can. 114). While the possibility of excardination was foreseen, it was not favoured (cann. 112; 114-116). In fact, incardination was presented as perpetual and absolute, reinforced by an oath (can. 117, 3°). A cleric could be “virtually” excardinated by the acceptance of a residential benefice in another diocese.

However, it is worth noting can. 969 §1, which stated that no one may be ordained for the secular clergy who in the judgement of his own bishop was

⁶ THE SACRED CONGREGATION OF THE COUNCIL, The Decree *A primis* (20 July 1898), in P. GASPARRI (ed.), *Codicis iuris canonici fontes*, VI, Romae 1923-1932, 777, n. 4307.

not necessary or at least useful for the churches of the diocese. In other words, since priests were by then ordained not for any definitive church but the service of the diocese in general, the bishop had to take into account the general needs of the diocese, rather than those of an individual church. In §2 we read, however, that a bishop was not forbidden to promote one of his subjects to orders who later was destined for the service of another diocese after proper excardination and incardination. This exception to the rule laid down in the first paragraph was strongly minimalist: in ordaining a priest the bishop had to think exclusively of the necessity and usefulness of his own diocese. However, §2 did allow for some possibility of thinking of the needs of another diocese.

Social changes, emigration and the rapid expansion of the Church in Africa presented new missionary and pastoral challenges. These developments demanded a more mobile clergy, innovative juridical structures and a renewed theological awareness of bishops and priests of their responsibility for the *solicitude omnium ecclesiarum*. The documents and legislation issued by the Holy See in decades after the Code of 1917 tried to address these developments within the juridical framework of the Code. However, it was becoming increasingly clear that these were too restrictive and limited to cope with the new pastoral challenges. The first of these juridical innovations came with the establishment of the *Mission de France*⁷. The Encyclical Letter *Fidei*

⁷ *Mission de France* was a movement of diocesan priests dedicated to the evangelization of certain underprivileged areas

*Donum*⁸, however, initiated the theological renewal which would culminate in Vatican II and the revision of the legislation concerning incardination⁹. As a result of *Fidei Donum*, a priest on his own initiative could ask his bishop to allow him to serve on the missions for a specific period of time while remaining incardinated in his own diocese. This marked a

of France. Founded in 1941, it was established as a prelature nullius in 1954 by Pope Pius XII with the Apostolic Constitution *Omnium Ecclesiarum*. Cf. AAS 46 (1954) 567-574. The parish of Pontigny was established as a fictitious diocese. The prelate had the power to incardinate clerics and promote them to ordination with the title *Missionis Galliae*. The prelate could send a cleric to work in another diocese with the prior consent of the bishop of that diocese. Cf. H. DENIS, «La prelature “nullius” de la Mission de France», *L'Année Canonique* 3 (1954-1955) 27-35; ID., «La loi propre de la Mission de France», *L'Année Canonique* 4 (1956) 21-29.

⁸ PIUS XII, Encyclical Letter *Fidei Donum*, AAS 49 (1957) 225-248. The innovation contained in the Encyclical Letter *Fidei Donum* was the highlighting of the bishops' obligation and responsibility in the work of evangelization both inside and outside the diocese: «[...] It is an undoubted fact that it was to Peter alone and to his successors, the Roman Pontiffs, that Jesus entrusted the entirety of his flock: “Feed my lambs; feed my sheep”. But even though each bishop is pastor of that portion only of the Lord's flock entrusted to him, nevertheless as lawful successor of the Apostles by God's institution and commandment he is also responsible, together with the other bishops for the Apostolic task of the Church» (*Fidei Donum* II). In the Encyclical Pius broke more new ground by asking bishops to send zealous and experienced secular priests to the missions directly, by-passing the intervention of the Congregation *Propaganda Fidei*.

⁹ J. GARCÍA MARTÍN, «La Encíclica “Fidei Donum” de Pio XII y la dimension universal del servicio del presbítero secular», *Commentarium pro Religiosis et Missionariis* 79 (1998) 35-71.

turning point in canonical legislation which overcame the territorial dimension of priestly service and opened it to the needs of the whole Church. It loosened the inflexibility of the norms regulating the movement of priests and gave a priest a say in where he might feel he is being called by God to exercise his ministry in the service of the whole Church¹⁰.

2. Incardination in Conciliar and Post-Conciliar Documents

The word “*incardinatio*” appears only once in the conciliar texts of Vatican II, in the decree *Presbyterorum Ordinis* (= PO), while the verb “*incardinare*” is found in two places: once in PO 10 and in *Christus Dominus* (= CD) 28. These conciliar texts and subsequent magisterial documents highlight the universal dimension of a priest’s ministry, rooted in the sharing in his ministry and mission of the bishops. The underlining of the universal dimension of the priest’s ministry in the conciliar and post-conciliar documents would not only necessitate a revision of the legislation governing incardination and excardination in order to facilitate a more equitable distribution of priests and in order to respond to new pastoral challenges¹¹. The context for the reflection on the juridi-

¹⁰ J. GARCÍA MARTÍN, *L'azione missionaria della Chiesa nella legislazione canonica*, Roma 1993, 312-315.

¹¹ G. CANNIO, «La dimensione universale del ministero presbiterale», *Rivista del Clero Italiano* 69 (1988) 343-354; A. MIRALLES, «Ecclesialità del presbitero», *Annales Theologici* 2 (1988) 121-139.

cal institute of incardination in the conciliar and post-conciliar documents is the right of all the faithful «to receive in abundance the help of the spiritual goods of the Church, especially that of the Word of God and the sacraments from their pastors» (LG 37). This required initiatives and pastoral structures, adapted to the faithful and their circumstances which responded to their right, and to the principle that the salvation of souls is the ultimate criterion of every possible ecclesial organisation and juridical structure¹².

The universal dimension of the priest's ministry is rooted in the sacrament of orders itself and in his participation in the bishops' care of the whole Church. While not possessing the fullness of orders and notwithstanding the fact that they depend on the bishops in the exercise of their own proper power, priests, by virtue of their participation in the consecration and mission of Christ in sacred orders, exist and act in the name of the person of Christ proclaiming the Gospel to the world and in building up the Church in the name of the person of Christ, the Head and Shepherd (LG 28; PDV 15; TE 6-7)¹³. The priest is configured to Christ who is free from all spatial-temporal limitation. Before

¹² J.L. GUTIÉRREZ, «La visione conciliare dell'incardinatione. Incidenza sulla nuova legislazione canonica», Lecture given at the conference *L'istituto dell'incardinatione: Nature e prospettive*, Holy Cross Pontifical University, 14-15 April 2005.

¹³ For a more detailed treatment of the evolution of the text and questions relating to the difference between the bishop and a priest, cf. G. GHIRLANDA, «Episcopato e presbiterato nella *Lumen Gentium*», *Communio* (Italian edition) 59 (1981) 53-70; P. ERDÖ – J. GARCÍA-MARTÍN, «La missione come principio organizzativo della chiesa – un aspetto particolare: la missione

service to any particular community a priest must be deeply rooted in Christ. This gives rise to a universal spirituality of priests which transcends the Church in which he is incardinated. For the priest, service does not come from outside through incardination or the conferring of an ecclesiastical office or a pastoral assignment; these are only juridical instruments to regulate the ministry for which a priest is ordained. The priest must demonstrate «a love for the universal Church and that part of it entrusted to him with the deep love of a husband for his wife» (PDV 22-23). The priest is a gift of the Lord to the universal Church, even if it is a particular community which immediately benefits from his ministry, the dynamic of sacred order reflects the mutual immanence between the universal Church and the particular Church. The dedication to the Church which the sacrament of orders entails is not invisible or absolute, but is carried out in the particular Church. The ministry of a priest is not only a gift for the particular community since the goods to which his ministry is ordered are the goods of the whole Church. While the Gospel he preaches can illuminate the particular situation in which he ministers, it is the Word of God deposited in the whole Church. The sacraments he celebrates are the property and actions of the universal

dei presbiteri e dei vescovi», *Periodica* 78 (1989) 425-454; T. RINCÓN-PÉREZ, «Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. Pastores Dabo Vobis», *Jus Canonicum* 33 (1993) 315-378; M. BAFUINDINSONI, *Le munus regendi de l'évêque diocésain comme munus patris et pastoris selon le Concile Vatican II*, Tesi Gregoriana. DC 33, Roma 1999.

Church. Above all in the celebration of the Eucharist, the priest acts both *in persona Christi* and at the same time *in nomine totius Ecclesiae*, underlining the inseparability between the christological dimension and the universal dimension of the priest's ministry¹⁴.

In the exercise of the universal dimension of his priesthood a priest can only act *in nomine totius Ecclesiae* inasmuch as he is in communion with his bishop and the Church through the bond of incardination. This communion "opens" the universal dimension of the ministry of the priest: «together with their bishop, a unique sacerdotal college (*presbyterium*). [...] All priests, then, whether diocesan or religious, by reason of the sacrament of Orders and of ministry correspond to and cooperate with the body of the bishops and, according to their vocation and the grace that is given them, they serve the welfare of the whole Church» (LG 28). This doctrinal statement is echoed in post-conciliar documents (PDV 31; TE 22). The priest, similar to the bishop, has a twofold relationship with the Church. He belongs to the universal Church in an immediate way by ordination and secondly to the particular Church by incardination¹⁵.

One of the principal conciliar texts which mentions incardination is CD 28 in addressing the relationship between the bishop and his diocesan priests and the union of the diocesan priests among them-

¹⁴ G. SARZI SARTORI, «L'incardinazione in una Chiesa particolare», *Quaderni di diritto ecclesiale* 15 (2002) 132-139.

¹⁵ G. GHIRLANDA, «La dimensione universale della Chiesa particolare», *Quaderni di diritto ecclesiale* 9 (1996) 17.

selves. No vocation to sacred ministry or sacred orders exists in the abstract, but is exercised in a specific context and subject to some ecclesiastical authority. The diocesan clergy have «a primary role in the care of souls because, being incardinated in or appointed to a particular Church, they are wholly dedicated in its service to the care of a particular section of the Lord's flock, and accordingly form one priestly body» (CD 28). Incardination is not only a practical and necessary concretisation of ministry, but also a juridical relationship required by the very nature of priesthood itself, which requires hierarchical communion and co-operation with the bishops in a particular presbyterate. This communion with the bishop gives the priest's pastoral ministry an ecclesial and universal dimension. Although exercised in a specific and limited ambit, it is associated with the common work of building up the whole Church¹⁶. This applies equally to religious priests incardinated in their own institutes and non-incardinated priests working in a diocese (i.e. priests on loan who exercise their pastoral ministry in a diocese other than the diocese where are incardinated)¹⁷.

¹⁶ G. SARZI SARTORI, «Presbitero e consiglio presbiterale nelle fonti conciliari della disciplina canonica», *Quaderni di diritto ecclesiale* 8 (1995) 14-15.

¹⁷ There has been some discussion about what determines membership of the presbytery of the diocese. Any attempt to divide priests of a diocese into two classes, that is, in *sensu largo*, all secular and religious priests who work in a diocese, and in *sensu stricto*, only those who are incardinated belong to the presbytery, is contrary to the mind of the Council and the unity of the presbytery of a diocese. The presbytery finds the

Cooperation with the bishop of incardination is an essential element in the priestly spirituality, but it is distinctive of the diocesan priest, as poverty is distinctive of a Franciscan or preaching of a Dominican. The priest's «sharing in the bishop's ecclesial concern, and his devotion to the evangelical care of the People of God in the specific and contextual conditions of a particular Church are elements that must be taken into account in sketching the proper configuration of the priest and his spiritual life. In this sense, "incardination" cannot be confined to a purely juridical bond, but also involves a set of attitudes as well as spiritual and pastoral decisions which help to fill out the specific features of the priestly vocation» (PDV 31). Incardination is not an instrument that reinforces or favours ecclesial "particularisms", but a bond that is at the same time juridical, spiritual and pastoral which functions to facilitate the orderly

basis of its existence in the commission to serve whereby religious and priests "on loan", are drawn into the community of the presbytery, finding within it their spiritual home. The diversity of charisms, spiritualities, apostolates, far from impeding the unity of a presbytery, enrich it and make it more suitable to build up the Church in all its catholicity. The diocesan character is not the exclusive property of the secular priest but is also proper to religious priests, since the particular Church is the historical place where his consecrated life is lived out. The diocese constitutes a particular expression of the universal dimension of the priestly ministry. Cf. A. CATTANEO, *Il presbiterio della chiesa particolare*, Milano 1993, 161-162; J. GARCÍA MARTÍN, «También los religiosos presbíteros pertenecen al presbiterio diocesano» *Commentarium pro Religiosis et Missionariis* 74 (1993) 149-162; A. CELEGHIN, «De presbytero a novo Iuris Canonici Codice ad Vaticanum II Concilium: pro quadam explenda vel reficienda effigie», *Periodica* 78 (1989) 289-318.

exercise of the priest's pastoral charity ministry of a particular Church and working for its growth (cf. PDV 74). This was also reflected in the Directory *Tota Ecclesiae* (= TE) 14:

The membership of a particular Church, through incardination, must not enclose the priest in a restricted and particularistic mentality, but rather he should be open to the service of other churches, because each Church is the particular realisation of the only Church of Christ, such that the universal Church lives and fulfils her mission in and from the particular Churches in effective communion with her. Thus, all priests, must have a missionary heart and mind and be open to the needs of the Church and of the world.

Until the Council, the documents of the church spoke of the universal care of all the churches in relation to solely bishops. In PO 10 that universal responsibility was extended explicitly to all priests as cooperators of the bishops with whom they are associated in the care of all the churches. For that reason, priests in a diocese where there is an abundance of clerics, with the permission and encouragement of their bishop, should be ready to exercise their ministry in dioceses, regions and works which suffer from a shortage of priests. The Council was responding to the phenomenon where social relations were less determined by spatial dimensions. New professional and cultural interests undermined and diminished the traditional criteria of "belonging". New pastoral needs and ecclesial communities were emerging which did not conform to the traditional form of territorial ecclesial communities. In the light of this, the Council called for the reform of the notion of incardination which not only permitted a more equitable distribu-

tion and a greater mobility of priests, but also established new and more flexible pastoral structures with the faculty to incardinate and which facilitated a greater specialisation in pastoral structures and organisational forms of sacred ministry¹⁸.

This call was strongly reaffirmed in post-conciliar documents.

Membership and dedication to a particular Church does not limit the activity and life of the presbyterate to that Church: a restriction of this sort is not possible, given the very nature of the particular Church and of priestly ministry. [...] If the lives of priests are generously inspired by this missionary spirit, it will be easier to respond to that increasingly serious demand of the Church today which arises from the unequal distribution of clergy (PDV 32).

In the genesis of PO 10, we find not only a deeper theological understanding of incardination but also of the diocesan priest and the universal dimension of his mission. The priest himself was now responsible for a more equitable distribution of priests. It was no longer necessary for the Ordinary to invite him to exercise his ministry in another diocese which suffered from a shortage of priests. The priest could take the initiative with the permission of his bishop. The request for the revision of the norms of incardination was received by Paul VI in the M.p. *Ecclesiae Sanctae*¹⁹. The *motu*

¹⁸ M. RIVELLA, «Verso un'applicazione più aperta del principio dell'incardinazione?», *Quaderni di diritto ecclesiale* 15 (2002) 160-167.

¹⁹ PAUL VI, M. p. *Ecclesiae Sanctae*, AAS 58 (1966) 757-787. The m.p. established the norms for the implementation of

proprio confirmed and provided the necessary juridical framework for bishops and priests to exercise their care for the pastoral, missionary and spiritual needs of the whole Church. The primary aim of the new norms was to allow for greater flexibility in the movement of priests and to facilitate a more equitable distribution of priests. The priests' sense of responsibility for the needs of the whole Church was to be fostered in seminary training. Indeed, this missionary disposition was to be a sign by which a candidate's suitability to the priesthood might be verified. The new norms favoured the movement of priests, requiring a grave necessity to justify refusing a priest permission to leave his diocese in response to particular needs in another diocese²⁰. Bishops were to foster this universal concern among the faithful and the priests, for the participation of a diocese through the more equitable distribution of priests was a fundamental law of the life of the diocese and a sign of its vitality²¹.

the decrees *Christus Dominus*, *Presbyterorum Ordinis*, *Perfectae Caritatis* and *Ad Gentes*. The missionary and universal role of the bishops' pastoral office was echoed in the *proemio* of the *motu proprio*.

²⁰ J. GRECO, «De momento missionali litt. Motu Proprio D. "Ecclesiae Sanctae" Pauli VI (6 Aug. 1966)», *Periodica* 56 (1967) 428-455; ID., «La dinamica missionaria del Motu Proprio "Ecclesiae Sanctae"», *La Civiltà Cattolica* 118/II (1967) 552-562.

²¹ THE CONGREGATION FOR THE CLERGY, *Normae directivae "Postquam Apostoli" de mutua ecclesiarum particularium cooperatione promovenda ac praesertim de aptiore cleri distributione* (25 March 1980), AAS 72 (1980) 343-364.

3. Incardination in the Code of 1983

The reflections and recommendations of the conciliar documents on incardination and the universal dimension of the priest's ministry emerge in the canons of the Code of 1983. An increased number of ecclesiastical structures were given the faculty to incardinate: particular churches (cann. 368-371), personal prelatures (can. 295 §1), religious institutes, societies of apostolic life and secular institutes.

3.1 *Particular Churches*

A priest could be incardinated into a particular church which was not exclusively a territorial circumscription. The most notable example of this is the establishment of military dioceses (Apostolic Constitution *Spirituali Militum Curae*²²), which demonstrates the Legislator's capacity to create particular churches of a personal nature with the capacity to incardinate priests in order to respond to the pastoral and spiritual needs of specific groups of the faithful. A more recent example is the Personal Apostolic Administration of St. John Mary Vianney in the diocese of Campos, Brazil, established by Pope John Paul II in 2002, to accommodate priests and laity who wish to celebrate the Mass according to the Missal of Pius V.

²² JOHN PAUL II, Apostolic Consitution *Spirituali militum curae*, AAS 78 (1986) 481-486; J. BEYER, «La costituzione apostolica *Spirituali Militum Curae* a proposito degli ordinariati militari», *Quaderni di diritto ecclesiale* 1 (1988) 206-227; 2 (1989) 110-124.

3.2 *Personal Prelatures*

Where there is a lack of priests or a specific pastoral or spiritual need, a personal prelature – an administrative organ of a juridical nature – can be established with the capacity to incardinate clerics. The personal prelature envisioned by the Code is assimilated to a particular Church only in its capacity to incardinate clerics. The claim of any prelature to be a particular Church is to envisage a personal prelature which is distinct from that one foreseen in the Code of 1983²³.

3.3 *Societies of Apostolic Life*

Originally, missionary societies were seen as missionary organs of the diocese. The renewal of the missionary responsibility of the local Church in the conciliar documents has given fresh impetus to missionary institutes as means by which this responsibility is realised. The missionary society is an instrument of communion between the local and universal Churches through its origin and mission. Depending on the constitution of the society of apostolic life, some priest members are incardinated fully into the society while others are incardinated in their diocese of origin and at the same time being incorporated into the missionary society, giving rise

²³ A. CELEGHIN, «Prelature personale: problemi e dubbi», *Periodica* 82 (1993) 95-138; G. GHIRLANDA, «Natura delle prelature personali e posizioni dei laici», *Gregorianum* 69 (1988) 299-314; ID., «De differentia inter praelaturam personalem et ordinariatum militarem seu castrensem», *Periodica* 76 (1987) 219-314.

to what I would call “double incardination”. In the case of priests incorporated into the society and contemporaneously incardinated in their diocese, the society can be seen as an instrument which expresses the missionary responsibility and care of the local church for the universal church²⁴. However, in this case the incardination seems problematic, not creating the juridical bonds which the institute of incardination normally does. Instead of a *clericus acephalus* one is faced with a *clericus bicephalus*. This is analogous to the situation of the bishop who releases a priest for service in another diocese. The bishop transfers his responsibilities to the superior of the society by means of a contract. Despite the difficulties “double incardination” can cause in the internal life of a society, the unity and aims of a society are served by the deeper bonds created by the sacrament of orders and by a common obedience to the constitution of the society. Priests of a society, whether incardinated or incorporated, normally form a part of the presbyterate in a diocese in which they minister enriching it, and through it the universal Church, with the charism of the society²⁵.

²⁴ C. DUSTER, *The canonical status of members of Missionary Societies of Apostolic Life of Pontifical Right*, Rome 1994, 194-231. Other societies only allow for incardination in the society itself weakening the missionary consciousness of the local Church. Cf. *ibid.*, 232-236.

²⁵ S. HAERING, «L’incardinazione negli Istituti religiosi e nelle Società di Vita apostolica. Evoluzione storica della situazione dei chierici in queste entità», Lecture given at a Conference *L’istituto dell’incardinazione: Nature e prospettive*, at the Holy Cross Pontifical University, 14-15 April 2005.

3.4 *Secular Institutes*

The nature of a secular institute specifies a discreet form of consecration in the world and in the Church. The secular condition of a diocesan priest is lived in a consecrated way through the profession of the evangelical counsels according to the specific spirituality of the institute. Membership of the secular institute does not affect incardination in the diocese. However, the demands of the universal Church could make it useful or opportune to incardinate clerics in the institute rather than the particular Church. While incardination is the mark of secularity, incardination in the institute does not necessarily compromise the secularity of the priest. Lifestyle, not incardination, marks the secularity of the priest. Nevertheless, there is no escaping the comparison the Code makes between priests incardinated in a secular institute and religious priests in their relationship to a bishop. Incardination in a secular institute distinguishes the priest from the rest of the presbytery of the diocese and undermines the secular nature of the priest, removing him from the jurisdiction of the bishop in all things, which otherwise is considered an essential feature of the secular identity of the diocesan priest²⁶.

3.5 *Priests "on loan" (can. 271)*

The Code still requires that in order to confer lawfully the orders of priesthood or diaconate the

²⁶ J. BEYER, «Gli istituti secolari», *Vita Consecrata* 24 (1988) 510-524.

candidate, in the judgement of the bishop or the superior, must be considered beneficial to the ministry of the Church (can. 1025 §2). In the light of the unequal distribution of clergy, raised in PO 10, the necessity or usefulness of a candidate cannot be viewed only in reference to the bishop's own diocese, but in the context of the *communio ecclesiarum*. The judgement concerning usefulness or necessity of a candidate in a specific community should not obscure the reality of a greater need in other particular Churches which need incardinated priests or at least priests on loan. A consequence of the new interpretation of incardination is that while the juridical bond promotes stability in the exercise of ministry, this does not necessarily mean perpetuity, as foreseen in the previous Code. In this way, excardination and incardination in another particular Church or a priest going "on loan" to another diocese, is more readily admitted than the last Code, when there is a just cause. In fact, can. 257 §1 and the directive *Postquam Apostoli* (= PA)²⁷ state that the bishop is to direct the attention of those preparing for the priesthood to the universal dimension of their mission, and to their availability to serve outside their diocese (PA 4). The present Code recognises a right to excardination, which allows the cleric to have recourse against the refusal of an authority to grant it when this authority cites serious reasons (can. 270). Conversely, the usefulness and

²⁷ S.C. CONGREGATION FOR THE CLERGY, *Normae directivae Postquam Apostoli de mutua ecclesiarum particularium cooperatione promovenda ac praesertim de aptiore cleri distributione*, AAS 72 (1980) 343-364.

necessity of a cleric can be used to deny the excardination requested by a cleric. In the same way, can. 271 §1 recognises also that a priest may be denied permission to go "on loan" to another diocese. Any request to move from one diocese to another is best understood in the context of co-operation between the particular churches²⁸.

Another factor that must be taken into account by a superior is the vocational discernment of a priest. When a priest asks to move to another diocese or to enter a religious institute (or vice versa), the bishop must ensure that the priest is trying to respond more fully to his vocation and, therefore, the will of God. A priest may discover his true vocation only gradually over time. If a bishop or superior is satisfied that this is the case, he cannot refuse the transfer, as it is the right of the faithful to accept and adhere to the will of God and not to be impeded by anyone in doing so (can. 214). The most any superior can do is to ask a priest to postpone his transfer if he carries out a task that cannot be easily given to another person. If a bishop or superior refuses, the priest has a right of recourse²⁹.

4. Ecclesial Movements

Among the issues concerning ecclesial movements is that of specifying what an ecclesial move-

²⁸ P. PAVANELLO, «La condizione giuridica del chierico fuori della diocesi di incardinazione», *Quaderni di diritto ecclesiale* 15 (2002) 146-159.

²⁹ M. MULLANEY, *Incardination and the Universal Dimension of the Ministerial Priesthood*, Rome 2002, 183-186.

ment is. This is in part due to the novelty of the phenomenon of ecclesial movements which are still only evolving. Another reason is the great diversity of movements: the great variety of charisms, structures, etc. which characterise the movements. No one juridical or structural profile would fit all the movements. A feature of an ecclesial movement is that it embraces all the faithful: although movements are composed mostly of lay people, they can include priests and religious. The diversity of ecclesial movements is reflected in the different relationships they have with priests. In some, priests are an integral part of the movement; in others they are not. In some cases the exercise of sacred orders is intimately bound to the exercise of the charism and mission of the movement and in others it is not; clerics are essential to the government and structure of some movements. This is one difficulty in addressing the issue of incardination and ecclesial movements³⁰.

Priests have a right to belong to ecclesial movements (cann. 278, 298 §1). A priest's right to belong to an ecclesial movement does not conflict with his status as a priest or his belonging to any other juridical entity by virtue of incardination. A priest has a legitimate ambit of autonomy and personal freedom which is inscribed in the right to associate. This right can be exercised in relation to civil associations or

³⁰ J. BEYER, «Il movimento ecclesiale: questioni attuali», *Vita Consacrata* 26 (1990) 483-494; ID., «I movimenti nuovi nella chiesa», *Vita Consacrata* 27 (1991) 62-77; ID., «L'avvenire dei movimenti ecclesiali», *Quaderni di diritto ecclesiale* 11 (1998) 6-13.

ecclesiastical associations, provided that their ends are not alien to the clerical state or subtract them from the authority of the bishop or superior.

In some cases, movements may only require the presence of chaplains who are members of the movement and carry out a part of their ministry in the service of the members of the movement. Such priests would remain incardinated in their diocese or juridical entity and receive an appointment from their superior to minister to the members of the movement. This would involve no loss for the diocese, in fact, the spiritual growth of the movement would have a direct and beneficial enrichment of the particular Church. The bishop has a pastoral responsibility, in harmony with their charism, for all the members of his church. The bishop simply entrusts to some priests the responsibility for the spiritual care of the members of the movement and permits them to collaborate in the apostolic activity of the movement through the exercise of their priestly ministry.

For some movements, the priestly ministry is essential for the life of the movement. While the Code of 1983 does not have reference to ecclesial movements, they are approved as associations of the faithful. Although the preparatory schemas of the Code allowed for the possibility of associations having the faculty to incardinate clerics, this was not received in the new Code. The Eastern Code, however, in can. 579, under the title of associations of the faithful, permits a cleric to be incardinated into an association of the faithful which has received special permission from the Apostolic See; can. 357 §1 allows a cleric to be incardinated into an association which has received special permission from the

Apostolic See, or which is a patriarchal or metropolitan association (can. 575 §1, 2°).

Other solutions proposed include establishing societies of apostolic life and personal prelatures with the faculty to incardinate priests who can minister to the members of the ecclesial movement³¹. These solutions, however, would repeat the mistakes already made in the past of not being able to grasp a new form of life inspired by the Holy Spirit in the Church and coercing it into an already existing canonical form. Consequently, such solution would damage or lose a movement's original identity and fundamental character: in this case, undermining the unity of the movement as a structure of communion of all the faithful. This unity must receive the greatest canonical protection if it wishes to remain faithful to the charismatic inspiration of the movement. In the case of something like a society of apostolic life or institute of religious life being established to provide priests for a movement, the head of the movement would not have jurisdiction over the priests, as priests, of such entities.

For the moment the issue is avoided and priests can dedicate themselves to an ecclesial movement only through a certain accommodation. The cleric is incardinated into his own diocese or finds a benevolent bishop who is willing to incardinate him, but in both cases the priest is available to minister in the movement, through a written agreement between the bishop and the moderator of the movement. This is

³¹ A recent doctoral thesis proposed that ecclesial movements be recognised as a new form of consecrated life according to can. 605. Cf. M. CASEY, *Breaking from the Bud: New Forms of Consecrated Life*, Sydney 2001, 188-191.

not unlike the situation of a priest temporarily on loan to another diocese (can. 271). However, this agreement has no long-term juridical weight and depends on the goodwill of the bishop whose successor may not be as favourable to the movement.

A bishop's refusal to allow a priest permission to minister in an ecclesial movement or recalling a priest back to his diocese from the movement may be detrimental to the priest. The spiritual life of the priest and his service may only be as fruitful and effective in as much as they are in the service of the charism which the priest feels called to by God. An objection to granting an ecclesial movement the faculty to incardinate is the danger of creating a parallel church to the local Church. Others object to the granting of incardination because it goes against the constitution of the Church and is a return to the practice of absolute ordinations. However, if this were the case, religious institutes would not have the faculty to incardinate, which would be damaging to the apostolic and pastoral life of the Church. Only a narrow ecclesiological vision of the Church sees pastoral, apostolic and missionary action only in relation to diocesan priests incardinated in their local Church. The Holy Spirit gifts the Church with a variety of charisms and the life of the Church is not exhausted in the vocation of the diocesan priesthood or the lay state, but is also expressed the consecrated life. Given the relationship between the universal Church and the particular Church, that which contributes to the good of one, is also true for the other³².

³² S. RECCHI, «I movimenti ecclesiali e l'incardinazione dei sacerdoti membri», *Quaderni di diritto ecclesiale* 15 (2002) 168-176.

If the ecclesial movement is diocesan in character, the priest can be incardinated into the diocese to guarantee the bond between the movement and the local church. The priests serving in an ecclesial movement are members of the presbyterate of their diocese and must sincerely collaborate with it. The bishop must respect the charism of the movement allowing a priest to minister outside the diocese if this forms part of the charism of the movement (can. 271).

In my opinion, the best solution is to grant supra-diocesan and international movements the faculty to incardinate their own clergy. This would promote a better apostolic and missionary service for the whole Church. Incardination in the ecclesial movement would facilitate a better organisation of the priest's ministerial life and stabilize his interior life. The vocation of the priest would be better nourished if he were allowed to dedicate himself fully to the charism of the movement. However, it must be noted that such a development would also transform the associative nature of the movement into a hierarchical structure. The leader of the movement could no longer be a lay person because he or she would not be able to hold an office with the power of jurisdiction in the area of ecclesiastical ministry. In addition, the movement could no longer be private, but public.

Ecclesial movements have a new importance in the life of the Church. A proper legal framework is desirable and necessary to delineate their proper features and clarify their distinctiveness from other institutes and structures within the Church. However, giving ecclesial movements the faculty to incardinate may also bring about a change in the structure and nature of the movement. Given that more and more vocations are coming from the eccle-

sial movements in many parts of the European and Latin jurisdictions, these candidates have the right to receive the spiritual support of the movement in which they received their call to priesthood, and often once ordained it is a spiritual necessity to maintain their links with the movement. Inflexibility on the part of the particular church with respect to this membership could be damaging for the whole Church and the priests involved.

Conclusion

Although the juridical institute of incardination has had different juridical profiles during the long history of the Church, it has always ensured four fundamental objectives: (i) the avoidance of vagrant clergy; (ii) the assurance of an adequate income for clergy; (iii) the avoidance of the easy and unnecessary movement of clergy from one community to another; (iv) the regulation of ordinations in relation to the good of souls and the necessary supervision of clergy by a bishop or a superior. In achieving these objectives, the legislation governing incardination has demonstrated flexibility in adapting to the changing pastoral and social challenges of the time. The juridical profile of incardination, however, remained predominantly disciplinary. The theological reflections on the relationship between the bishop and priest in the documents of the Second Vatican Council and the recognition of the universal dimension of the ministerial priesthood must now be taken into account when sketching the proper profile of incardination, which can no longer be considered only as a juridical bond with disciplinary purposes.

Incardination continues to regulate the orderly exercise of a priest's ministry without undermining its universal dimension: whether to a concrete portion of the People of God in a particular Church or any specific group with a specific pastoral or spiritual need. Indeed, the flexibility and the theological dimensions of incardination enables it to ensure its fundamental objectives while also enabling priests to exercise their ministry in the service of any new charisms or gifts with which Holy Spirit enriches the life of the Church.

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