

The Pastor in Canon Law

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I was fifteen years ordained, and I was a man on the run. I had a comfortable office job; I had a great assignment in a local motherhouse; I could do weekend supply work and enhance my salary. The last thing I wanted to be was a pastor.

But one can only run so far. Eventually the bishop caught up with me, asked me to be a pastor, and let me know that it would be in my best interests if I were to agree.

I agreed to take on the role: certainly with a lot of apprehension; also with a lot of ambivalence. After all: ordination was what mattered. I could celebrate Mass, could absolve and anoint, could counsel and preach, could lecture and write—and I could do these things without the added burden of being a pastor. Why should I take on the task of pastoring—where worries about leaky roofs and issues over unhappy staff members would get in the way of my “priesting”?

Funny: I just didn't get it. I thought that I was supposed to do the same things I'd always done since ordination, and now add the burdens of overseeing fiscal administration and facilities management. I really didn't get what it meant to be a pastor.

It was the community that taught me to be a pastor. They taught me about pastoring by permitting me – by requiring me to pastor them. They taught me that pastoring is not just adding administrative duties to a fully filled-in priesthood. They taught me that, for a diocesan priest, pastoring is the final cause of presbyteral ministry.

What I was taught by my flock in my first parish, what I have continued to learn from my flock in my present parish is that I am asked –I am required-- by my parishioners to be a community leader.

If truth be told, I'm not much of a leader—at least in terms of Alexander the Great leadership or Bill Clinton leadership. I like to hide out in my tent, to insulate myself with a wall of books, to pretend that everything will come out ok if I just don't pay too much attention to the problems.

But since I am a pastor, a leader I must be. And, as daunting, as perilous as this appears when I survey my native talents and proclivities, it has wound up being both possible and pleasurable – not because of me, but because of vocation, because of grace, because of communion.

It is possible and pleasurable because of vocation. I get to thinking that I'm like Isaiah or Amos: “hey boss, I'm not up to it.” And then, like Isaiah or Amos, I get the “cut the crap” response—not only from the Lord in prayer, but from the people of God in practice.

It is possible and pleasurable because of grace. The “cut the crap” response is warranted not because of my talents, but because of God’s graciousness. Moreover, the graciousness of God is shown forth and made present in the graciousness of the people I pastor.

It is possible and pleasurable because of communion. This is really significant. My parish is not a free-standing entity: it does not stand alone. And I don’t stand alone either. My parish is, by legal definition, a “community of the Christian faithful” within that portion of the people of God which is my diocese. It is connected intimately to the local diocesan church, and makes it present within the community’s structure and life. Here’s how Canon 515§1 defines a parish:

A parish is a specific community of the Christian faithful, stably constituted in a particular church (i.e., a diocese) whose pastoral care is entrusted to a parochus as its proper pastor, under the authority of the diocesan bishop.

--so: by theology and by canon law, a parish is not free-standing: it is hooked up to a diocese:

- it is within a diocese,
- it is subject to the authority of the bishop of the diocese.

And what is a diocese, in legal terms? Here’s what Canon 369 puts it:

A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.

The parish, which exists within the diocese, is, etymologically, an extended household. *Oikia* is the Greek term for household; a par-oikia is an extended household. And the *parochus*—that’s the official title for pastors—is the householder.

- It is as a householder that the *parochus* exercises his leadership
- It is as a householder that the *parochus* connects the parish to the diocese.
- Finally: it is as a householder that the *parochus*, a member of the *presbyterium*, cooperates with the diocesan bishop in pastoring the diocesan flock.

The parish is not a congregational church; it is a part of the Church Catholic. As such, it is in communion: with other parishes, with the bishop and above all with the diocese, in which and from which the one, holy catholic and apostolic church is truly present and operative.

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How does this communion-thing work at the level of the the parish, the diocese, the universal church?

The best place to start, I think, is with the NEP—prefatory explanatory note—which the Council Fathers issued at the end of the Dogmatic Constitution on the Church, *Lumen Gentium*, and which explain the theology underlying sections 21ff of the conciliar decree.

The NEP takes for granted that by a common baptism and faith all Christians share in the life of Christ and participate in his tasks –*munus* or, in the plural, *munera* in Latin. These tasks have been lumped together first by protestant theologians and now by the Council and Code as the *munus docendi*, the *munus sanctificandi*, and the *munus regendi*—the teaching task, the sanctifying task, the ruling task. **Note, please, that these are Christ’s tasks, not the base-line tasks of the Church or of members of the Church.** Our task is to proclaim and witness to Christ; and in doing this, we get to share in –to be partakers of—his three *munera*.

Whereas the Church and members of the Church partake in these *munera*, the college of bishops partakes in these *munera* in a special way. Listen to what paragraph 2 of the NEP has to say:

A person becomes a member of the College by virtue of Episcopal consecration and hierarchical communion with the head of the college and its members.

In consecration there is given an ontological participation in sacred functions (*munera sacra*). The word *functions*, rather than *powers* is employed since this latter word could be understood as *ready to go into action*. **But: for such ready power to be obtained, it needs canonical or juridical determination by hierarchical authority. This determination of power can [happen in a number of ways. One of these ways is to be appointed diocesan bishop].**

It is clear that this *communion* is where it begins: communion with head and members of all who are part of the Episcopal College. Moreover, the NEP says, communion has been in the life of the Church, according to circumstances of times, before it was, so to speak, codified in law.

The paragraph goes on to say: “*Communion* is not a certain vague feeling but an organic reality, which demands a juridical form.”

So: let’s put this all together.

When a bishop takes possession of a diocese:

- he already partakes in the *munera sacra* by virtue of consecration and communion with the college
- he receives *potestas sacra* by virtue of his canonical mission to his diocesan office

→ and: as we discover in Canon 381, he has all the ordinary, proper and immediate power which is required for the exercise of his pastoral *munus*.

Members of the presbyterate who are in communion with their bishop and with the church get to share in the *munera sacra* by virtue of their ordination.

And they get to share in the *potestas sacra*—the ready-to-go dimension of putting the *munera* into action-- in one of two ways:

- by legitimate concession (like the granting of faculties)
- by office.

When we were ordained and, probably right after the ceremony, were given diocesan faculties in the so-called *pagella*, we had a share in the bishop's *potestas sacra*. When we become *parochi*, though, we receive *potestas sacra* not by virtue of specific concession, but by virtue of our office.

In the office of *parochus*, we priests share in a special way in the *munera sacra*. By virtue of the office, we share also in the *potestas sacra*.

--we are called upon to teach

-- we are called upon to make present and visible the bishop, who makes present and visible the saving action of Christ

--we are called upon to exercise administrative power in our parishes as good householders, making the work of the local church and of the Church Catholic operative and present in our household.

Just in case you think I'm making this up—consider the way Canon 519 describes the *parochus*:

The parochus is the proper pastor of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for that same community he carries out the functions of teaching, sanctifying, and governing. . . .

What I would like to do now is to rehearse some of the details in the canon law, which (a) speak to how we receive office, (b) specify how we take office, and (c) stipulate how we are to serve in office.

A. First, how we receive office— and some variations

Canon 523 stipulates that the diocesan bishop – not the diocesan administrator or apostolic administrator until the see is vacant for one year—appoints the *parochus* (cf

Canon 525). This is not just because of a fear of innovation when the see is vacant: it's also because, theologically, the *parochus* partakes in the *munera Christi* of the diocesan bishop.

Canon 526 stipulates that one physical person is to be appointed *parochus* of one parish. Sometimes, though, circumstances require a massaging of this general rule. There are four varieties of massage:

1. one pastor is appointed for more than one parish (526§1)
2. **when circumstances require it**, a number of priests are given pastoral care *in solidum*—although there is one presbyter who is appointed the moderator of the group (Can 517§1). This “moderator” directs the joint action of the group, is the person who directs the juridic person of the parish, and is the one who is answerable to the bishop.
3. **when there is a shortage of priests** the diocesan bishop can decide that – listen to the language –*participation* in the pastoral care of a parish is to be entrusted to a deacon, to another person who is not a priest, or to a community of persons. **When the bishop decides to do this, he must still appoint some priest who has the powers and faculties of a *parochus*** –which is to say, who participates in the bishop's share in the *munera Christi* and in the *potestas sacra*. This priest is to direct the pastoral care of the parish, although he does not have the title “*parochus*.” *The deacon, or other person or community participates in the exercise of pastoral care. These persons do not direct, coordinate, moderate or govern the parish: these functions belong to the appointed priest alone.*
4. the bishop may entrust the pastoral care of a particular parish to a religious community—perpetually or for a period of time. The community will select a *parochus*, and the bishop will confirm that selection. Unlike the way it was in the 1917 Code, a religious community as community cannot be named *parochus*: only a physical person who is a member of that community can be so named.

Second: How we take office (canon 527)

When we become pastors, we need to do two things:

First: we make a profession of faith and take an oath of loyalty, according to the requirement of Canon 833.6 --although failure to do so does not affect the validity of our tenure of office.

Next: we take possession of the office: the Latin here is “*possessionem capire*” in a ceremony before the Ordinary of the Place (bishop , Vicar General, Episcopal Vicar) or a priest delegated by one of these.

Sometimes it is just impossible to take possession of a parish – the months after Katrina might be a good example. In such a case, one of the Ordinaries must dispense from the requirement of *captio* and the fact of this dispensation must be made known to the parish. This notification “replaces the taking possession.”

Please note the following:

1. taking possession is required for a priest to hold the office of *parochus*
2. if, within a time-limit set by the bishop, a *parochus* does not take possession of the parish, the parish may be declared vacant.
3. “installation” is done to mufflers by Midas and to diswashers by Sears. Pastors are not “installed”: they *take possession* of their office.

Third, how we are to serve in office

- Here I wish to speak briefly about the pastor as householder, and as minister of word and sacrament
- Then I want to speak about the autonomy of the pastor as the one who directs the life of the parish
- Finally I want to speak about the requirement of the pastor to collaborate in ministry.

A. the *parochus* as householder and minister

- The *parochus* is a householder. As such, he needs to have a residence within his parish (Canon 533)
- As a householder, he is required to celebrate a Mass for the people of his parish (or parishes) on each Sunday and holy day of obligation. (534)
- As a householder he is required to keep parish records, especially sacramental records, and to maintain the parish seal that testifies to the authenticity of facts and acts. (535)

More than just a householder, the *parochus* is minister of word and sacrament. **Canon 528** offers an exhortation on how a *parochus* is to be a minister of the *munus docendi* and the *munus sanctificandi*.

Canon 530 lists functions of ministry that are “especially entrusted” to the *parochus*. In the 1917 Code, these were functions to which the *parochus* had “by right”: by the rules of 1917, a pastor could demand the stole fee that another priest had received for the baptism of one of his parishioners. In the Revised Code these functions are not his “by right”—he has no claim to fees or income attached to the celebration of baptism, for example. These functions are *entrusted* to him to be exercised by him as a good householder of the family of God.

Canon 529§2, significantly, specifies three things:

1. that a *parochus* is to collaborate with the lay members of the Christian faithful by “fostering their associations for the purposes of religion”
2. that he is to be in communion with bishop and *presbyterium* – and

3. **that he is to so work that the faithful have concern for parochial communion, consider themselves members of the diocese and of the Church Universal, and participate in and sustain efforts to promote this same communion. THIS IS TO SAY: A PAROCHUS MUST WORK AT MAKING HIS PARISH SOMETHING OTHER THAN A FREE-STANDING COMMUNITARIAN CHURCH. He is a householder: but his household is part of a larger ecclesial neighborhood.**

B. The Autonomy of the Parochus

Canon 532 is very important. It stipulates that, despite the requirement for ecclesiastical communion, the parochus “*personam gerit*” –moves the juridic person of the parish in all its juridic affairs.

Compare this to Canon 393: in all the juridic affairs of the diocese the bishop “*personam gerit*” –moves the juridic person of the diocese.

--this is to say that, in functions of the *potestas regiminis*, the *parochus* – not the bishop – directs the parish.

The bishop can have **oversight**; his permission can be required for the spending of money or the sale of property. But it is the *parochus* who is the CEO of the parish or parishes in which he holds office.

As I read the law, the bishop, as he exercises oversight, can issue specific “instructions” – an “instruction” is an individual administrative act addressed to persons with executive power by a person with legislative power. The purpose of an instruction is to “clarify the precepts of laws and provide a system for executing and observing these laws. (canon 1276. See Canon 34)

But this instruction, which clarifies a law, cannot tell a pastor precisely how or where his money is to be spent or invested; he cannot require that the pastor put all of his surplus money into a diocesan account (canon 1276).

Also as I read the law, the bishop or his delegate cannot be the one who hires and fires parish personnel. Although a number of dioceses do this, I think that it is a tad outside the law to require that parochial school principals be interviewed and hired by a diocesan school superintendent (regional schools and their personnel is an altogether different issue). (see Canons 803.1, 806)

→**Note, though, the bishop or his vicars do have the right to name, to approve, and even to remove teachers of religion in Catholic schools. (canon 804.2)**

C. Mandated Collaboration by the *Parochus*

It is important to emphasize that the *parochus* does not exercise his role of CEO, of office-holder, of householder, on his own. He needs assistance. Moreover, as a member

of Christ's faithful himself, he needs to co-opt other members of Christ's faithful to make the parish household a vibrant actuation of Christian communion. And who are the others that he needs to enlist in the life and work of the parish? Canon 519 puts it this way: he is to work for

the "cooperation" of other presbyters or deacons and the "assistance" of lay members of the Christian faithful, according to the norm of law.

Since most of us pastors won't be seeing or having assistant priests or parochial vicars or special parochial administrators or even resident priests, and since we have all learned to honor one another's priesthood and to rely on one another's cooperation, I will direct some remarks to the assistance of lay members of the Christian faithful, as this assistance is discussed in ecclesiastical law.

- The cooperation of the lay members of the Christian faithful is what makes parishes work
- This cooperation is found in the day-to-day functioning of the parish –with parish secretaries, parish catechetical directors, parish business managers, pastoral associates.
- It is particularly the case in parishes which share a pastor with one or more others;
- It is most particularly the case in which the pastoral care of a parish has been entrusted not only to a non-priest, but to a non-cleric.

I want to make two points about the cooperation of the lay members of the Christian faithful:

1. In two cases the law gives groups of them particular cachet.
2. In all cases the law hems them in, specifying what sorts of powers they can have and what sorts of titles they can assume.

1. Two Lay Groups with Cachet

These are, of course, (a) the parish finance council and (b) the parish pastoral council.

A. The Finance Council is an absolute requirement. Here is how Canon 537 puts it:

In each parish there is to be a finance council which is governed, in addition to universal law, by norms issued by the diocesan bishop and in which the Christian faithful, selected according to these same norms, are to assist the pastor in the administration of the goods of the parish, without prejudice to the prescript of can. 532 [i.e., that the parochus is the one who moves the person of the parish].

--this prescription is a specific application to the parish of the general rule of Canon 1280 about the administration of the temporal goods of all juridic persons.

A couple of points on this:

1. most dioceses are remiss in issuing norms for the parish council for financial affairs.
2. the role of the council is consultative. There is nothing in the universal law that requires a *parochus* to consult with the finance council for the validity of his action. But there is no reason why a diocesan bishop cannot issue particular law, requiring consultation with the finance committee for the validity of the action of the *parochus* in certain financial affairs. (cf canon 127)
3. the council's role is to assist the *parochus*. To assure that their work is auxiliary and that the council does not operate independently of the *parochus*, the Holy See, in a general decree of 1997, stipulated that the pastor needs to be present for the validity of the *acta*—the proceedings of the council.
4. according to the general norm of Canon 1280, the council must have at least two members. Moreover, these members are to be members of Christ's faithful. According to the prescription of Canon 204, this means that the members need to be baptized Christians; according to Canon 96, to be a claimant of rights in the church—to possess juridic personality in the church, if you will—these members of Christ's faithful need to be in ecclesiastical communion. Canon 205 stipulates the elements for ecclesiastical communion: it requires being joined to the visible structure of the Catholic Church by bonds of faith-profession, sacraments, and ecclesiastical governance.
 - This means that Bernadette Rabinowitz's husband Morrie—even though he is a CPA and loyal to the parish—cannot be a **member** of the council (although he can be present at all the meetings as an advisor, and give his input).
 - This means that Brian McLeish, a good Presbyterian, cannot be a member (although he also can sit in on the meetings as an advisor)

B. The parish pastoral council, unlike the finance council, is not an unconditional requirement of law.

- A pastoral council is required only after the diocesan bishop: (1) has consulted with the presbyteral council, and (2) judges the existence of a pastoral council “opportune”
- If the bishop has so decided and *has so decreed*, then a pastoral council is to be established in each and every parish

--it is to be made up of the Christian faithful – baptized Christians who are in ecclesiastical communion with the Catholic Church. These persons need not be members of the Latin Church: they can be members of any church *sui iuris*.

--also included in its membership are “those who share in the pastoral care by virtue of their office in the parish: i.e., parochial vicars, deacons, pastoral associates, catechetical and liturgical directors

--it has a consultative vote only, and its purpose is to “assist in fostering pastoral activity.”

--the *parochus* presides at its meetings. The 1997 Instruction from the Holy See that we alluded to above stipulates that if the *parochus* does not preside, or if the council has assembled against his wishes, then any deliberations or decisions are null and void.

Please note that the *parochus* is not a **member** of either council: the council and the *parochus* are distinct; the *parochus* presides at the meetings (which can be chaired by another). In view of this, the title “President of the parish council” belongs to the *parochus*, not to the chairman or the executive secretary or whatever other title is given to the one who runs the meeting.

2. The Law Hems the Laity In

Now we get to what might be perceived as the bad side of the good news: it is that Instruction from the Holy See which we have referred to in discussing the two advisory councils in the parish.

The Instruction is entitled *Concerning Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priests*

- This instruction is “inter-dicasterial”: it has been signed by the heads and the secretaries of six curial congregations and two secretariats
- This instruction was approved by JPII *in forma specifica*—which gives it specific importance: it is in the form of an instruction, but is given the weight of a *lex*—a law.

The document has a series of theological principles and practical provisions. It may be characterized as the result of a strict reading of the NEP and LG 21-29, and of Canon 129, which stipulates that those in sacred orders are qualified (*habiles*) for the power of governance whereas lay members of Christ’s faithful can “cooperate” in the exercise of this same power according to the norm of law.

The instruction’s introduction and statement of premise sets the tone for what is to follow:

In this great field of complementary activity, whether considering the specifically spiritual and religious, or the consecratio mundi, there exists a more restricted area namely, the sacred ministry of the clergy. In this ministry the lay faithful, men or women and non-ordained members of Institutes of Consecrated Life and Societies of Apostolic Life, are called to assist. The Second Vatican Ecumenical Council refers particularly to this when it teaches: "The hierarchy entrusts the laity with certain charges more closely

connected with the duties of pastors: in the teaching of Christian doctrine, for example, in certain liturgical actions in the care of souls".(11)

Since these tasks are most closely linked to the duties of pastors, (which office requires reception of the sacrament of Orders), it is necessary that all who are in any way involved in this collaboration, exercise particular care to safeguard the 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."

The theological principles in the Instruction are grouped under four headings:

1. those that concern the common priesthood of the faithful and the ministerial priesthood
2. the unity and diversity of ministerial functions
3. the indispensability of the ordained ministry
4. the collaboration of the non-ordained faithful in pastoral ministry.

The Instruction then offers practical provisions in eleven different areas. In each of these areas the Instruction notes that the role of the *parochus* as the participant in the *munera sacra* and the *potestas sacra* is primary; the roles of the non-ordained in ministerial functions and in leadership roles are always secondary and auxiliary. I have made copies of this instruction available for you. You may pick up a copy after our session.

Twenty five years ago I was a guy on the run: away from pastoral leadership, away from the office of *parochus*, away from a good comprehension of how the office of pastor enables me to share in a special way in the *munera sacra* of Christ. Over the past twenty five years I've learned to settle in and to settle down: as an officeholder, as a householder, as a stakeholder in bringing the presence and the power of the kingdom of our God and of his Christ into the history which the Father of Jesus has invited me to co-create.

David I. Fulton