

THE PRIMACY OF THE JURISDICTION OF THE
ROMAN PONTIFF: PASTOR AETERNUS AND THE
CONDITIONS FOR FULL ECCLESIASTICAL
COMMUNION WITH THE ROMAN SEE

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The Primacy of Jurisdiction of the Roman Pontiff
According to the First Vatican Council

Purpose: The aim of this brief working paper is to explain the teaching of the First Vatican Council on the primacy of jurisdiction of the Roman Pontiff. The reason for presenting a study of this topic is well explained by the recent Reflections and Suggestions Concerning Ecumenical Dialogue published by the Secretariat for Promoting Christian Unity.

In this dialogue, they recognize together that a certain communion exists between the Christian Communities; nevertheless, they are anxious not to conceal from one another the fact that in content, development and expression of the faith of the Churches there exist certain differences which must become the object of their dialogue, so that they may attain a more perfect communion.¹

Roman Catholics hold as dogma the primacy of the Roman Pontiff and his consequent universal jurisdiction and infallibility. Though the Second Vatican Council may have helped Roman Catholics to understand the position of the Sovereign Pontiff in a more profound way than that proposed at Vatican I, the role of the Sovereign Pontiff has not changed and the teaching of Vatican I has not been abandoned. Thus it is still pertinent to examine the teaching of Vatican I and it is incumbent on Roman Catholics to give an account of this article of their faith. Thus this brief working paper

is an attempt to express the meaning of the teaching of Vatican I on the primacy of jurisdiction of the Roman Pontiff.

Problems: In treating of the primacy of jurisdiction of the Roman Pontiff as taught by Vatican I three problems arise: (1) the comprehension of the technical language employed by the Council (2) the historical problem of determining the intent of the Council in what it was defining (3) the theological problem of understanding what the Council taught and the consequent task of translating that teaching into terms intelligible to the men of our day.

Method: To fulfill the purpose of the paper and grapple with the three problems indicated, the method chosen is that of a simple exposition of the text. The bishops gathered at the First Vatican Council voted on the dogmatic constitution Pastor Aeternus after the text was explained to them by a relator of the Deputatio de Fide. Thus if one seeks to understand the technical language of the text and the intent of the Council in teaching a doctrine, the relationes given to the assembled bishops immediately prior to their voting on the passage become the prime source for understanding what the very brief conciliar statements mean. In the case of the primacy of jurisdiction of the Roman Pontiff, the lengthy relationes of Bishop Frederick Zinelli,² the relator of the Deputatio de Fide for the third chapter of Pastor Aeternus, are the principal source for comprehending what the First

Vatican Council taught on this subject. Consequently the exposition of the text of the third chapter of Pastor Aeternus will be based on Bishop Zinelli's relationes.

Division: This working paper will be divided into two parts.

The first part will be an introduction and commentary on the text of Vatican I with an exposition of the third chapter of Pastor Aeternus. The second part will be a brief theological reflection which will attempt to translate the teaching of Vatican I in regard to the primacy of jurisdiction of the Roman Pontiff into a more contemporary theological context and comment upon it in the light of an ecumenical consideration of the office of bishop. An Appendix will seek to answer the following question. Granted oneness in the faith and the acceptance of diversity in theological understanding, liturgical practice, polity and spirituality, what ecclesiological conditions must the Roman see require of a sister Church for the restoration of full ecclesiastical communion between the sister Church and the Roman see?

Part I: The Text of Pastor Aeternus

Context: Before approaching an analysis of the third chapter of Pastor Aeternus, it would be helpful to review the first two chapters of the document. The Introduction contains the major theological themes of the entire document.

Father are one (see John 17:20 ff.). Therefore, just as he sent the apostles, whom he had chosen for himself out of the world, as he himself was sent by the Father (see John 20:21), so also he wished shepherds and teachers to be in his Church until the consummation of the world (see Matt. 28:20). Indeed, he placed St. Peter at the head of the other apostles that the episcopate might be one and undivided, and that the whole multitude of believers might be preserved in unity of faith and communion by means of a well-organized priesthood. He made Peter a perpetual principle of this twofold unity and a visible foundation, that on his strength an everlasting temple might be erected and on the firmness of his faith a Church might arise whose pinnacle was to reach into heaven. But the gates of hell, with a hatred that grows greater each day, are rising up everywhere against its divinely established foundation with the intention of overthrowing the Church, if this were possible. We, therefore, judge it necessary for the protection, the safety, and the increase of the Catholic flock to pronounce with the approval of the sacred council the true doctrine concerning the establishment, the perpetuity, and the nature of the sacred apostolic primacy. In this primacy all the efficacy and all the strength of the Church are placed. We judge it necessary to pronounce what all the faithful must believe in its regard and what they must hold according to the ancient and constant belief of the universal Church. Likewise We judge it necessary to proscribe with sentence of condemnation the contrary opinions so detrimental to the Lord's flock.³

Having reread the text of the Introduction, perhaps some observations might prove helpful. The paragraph does not explicitly contain a pyramidal view of the Church in which the Sovereign Pontiff possessing all power is at the pinnacle of the pyramid, the bishops beneath him, the clergy under the bishops and the laity at the bottom. The text could be patient of such an interpretation, but such a picture would have to be brought to the text and could not with facility be drawn from it. Rather the movement seems to be from Christ to Peter and

from Peter to the Church. What is stressed is the immobility, the immutability of the Christocentric principle and the centrality of the role which Peter plays in the whole economy of salvation through the centrality of his role in the Church. Why the bishops feel impelled "to pronounce what the faithful must believe" is the threat against the divinely established foundation of the Church, i.e., Peter's role as established by Christ. It is for this reason that the bishops can say that "In this primacy all the efficacy and all the strength of the Church are placed." The bishops are confessing their faith in how Christ's salvific will for the continuance of his saving mission is operative in the Church. They clearly believe that Peter is essential to that mission. They will express their clear conviction of the centrality of Peter's role by the term primacy of jurisdiction.

Chapter 1. The Establishment of the Apostolic Primacy in St. Peter

Against heretics and schismatics

We teach and declare, therefore, according to the testimony of the Gospel that the primacy of jurisdiction over the whole Church of God was immediately and directly promised to and conferred upon the blessed Apostle Peter by Christ the Lord. For to Simon, Christ had said, "Thou shalt be called Cephas" (John 1:42). Then, after Simon had acknowledged Christ with the confession, "Thou art the Christ, the Son of the living God" (Matt. 16:16), it was to Simon alone that the solemn words were spoken by the Lord: "Blessed art thou, Simon Bar-Jona, for flesh and blood has not revealed this to thee, but my Father in heaven. And I say to thee, thou art Peter, and upon this rock I will build my Church, and the gates of hell shall not prevail against it. And I will give thee the keys of the

kingdom of heaven; and whatever thou shalt bind on earth shall be bound in heaven, and whatever thou shalt loose on earth shall be loosed in heaven" (Matt. 16:17-19). And after his Resurrection, Jesus conferred upon Simon Peter alone the jurisdiction of supreme shepherd and ruler over his whole fold with the words, "Feed my lambs.... Feed my sheep" (John 21:15, 17). In open opposition to this very clear teaching of the Holy Scriptures, as it has always been understood by the Catholic Church, are the perverse opinions of those who wrongly explain the form of government established by Christ in his Church; either by denying that Peter alone in preference to the other apostles, either singly or as a group, was endowed by Christ with the true and proper primacy of jurisdiction; or by claiming that this same primacy was not given immediately and directly to St. Peter, but to the Church and through the Church to Peter as an agent of the Church.

Canon

Therefore, if anyone says that the blessed Apostle Peter was not constituted by Christ the Lord as the Prince of all the Apostles and the visible head of the whole Church militant, or that he received immediately and directly from Jesus Christ our Lord only a primacy of honor and not a true and proper primacy of jurisdiction: let him be anathema.⁴

Some reflections might be helpful to obviate difficulties that might arise with the text of chapter one. The Council is not teaching that the system of Roman ecclesiastical government as operative in 1870 was established by Christ and can be shown to have been so from Scripture. One might note that the Council has not yet described what the primacy of jurisdiction is. What the Council is doing in the first chapter of the dogmatic constitution Pastor Aeternus is to recount the bishop's understanding of Scripture to show that Jesus gave to Peter a special mission in the Church. We are once more faced with the

Christocentric principle: Christ chose Peter for a special role in the Church. Hence Peter's special role is not something which the Church conferred upon Peter but that Peter, by Christ's will brought to the Church. Thus Peter cannot possess only a primacy of honor which is of human creation but a special role (the primacy of jurisdiction) which is Peter's jure divino, i.e., by the establishment of Christ himself. Bishop Zinelli will take up this point in his first relatio when he explains the power and nature of the Primacy of the Roman Pontiff.⁵

The second chapter of Pastor Aeternus is little else but an extension of the Christocentric principle of the Introduction.

Chapter 2. The Continuation of St. Peter's Primacy in the Roman Pontiff

Now, what Christ the Lord, supreme shepherd and watchful guardian of the flock, established in the person of the blessed Apostle Peter for the perpetual safety and everlasting good of the Church must, by the will of the same, endure without interruption in the Church which was founded on the rock and which will remain firm until the end of the world. Indeed, "no one doubts, in fact, it is obvious to all ages that the holy and most Blessed Peter, Prince and head of the Apostles, the pillar of faith, and the foundation of the Catholic Church, received the keys of the kingdom from our Lord Jesus Christ, the savior and the redeemer of the human race; and even to this time and forever he lives," and governs, "and exercises judgment in his successors," the bishops of the holy Roman See, which he established and consecrated with his blood. Therefore, whoever succeeds Peter in this Chair holds Peter's primacy over the whole Church according to the plan of Christ himself. "Therefore, the dispositions made by Truth endure; and St. Peter still has the

rock-like strength that has been given to him, and he has not surrendered the helm of the Church with which he was entrusted." For this reason, "because of its greater sovereignty," it was always "necessary for every church, that is, the faithful who are everywhere, to be in agreement" with the Roman Church. The outcome of this will be that in this See, from which "the bonds of sacred communion" are imparted to all, the members will be joined as members under one head and thus coalesce into one compact body.

Canon

Therefore, if anyone says that it is not according to the institution of Christ our Lord himself, that is, by divine law, that St. Peter has perpetual successors in the primacy over the whole Church; or if anyone says that the Roman Pontiff is not the successor of St. Peter in the same primacy: let him be anathema.⁶

In regard to chapter two of Pastor Aeternus perhaps it would be helpful to indicate possible points of misinterpretation. It would be good to stress again that the method employed in the development of the dogmatic constitution is not an apologetic and historical one. From an historical point of view it is extremely difficult to establish that there is a constancy of consciousness on the part of the Roman Pontiffs themselves that they are successors to Peter's primacy. It is most difficult to establish historically that the primacy often accorded to the Roman See would actually be a primacy of jurisdiction even as Zinelli will explain the term in his relatio on Chapter III of Pastor Aeternus.⁷ Even the supportive text used here in Chapter II is taken from the address of Philip, the papal delegate at the Council of Ephesus, and it is most difficult to show on the basis of this text that Pope Celestine

believed himself possessed of a primacy of jurisdiction.⁸ Philip's address in the context of that Council was more a plea than a command. All that the bishops intend to do here in this second chapter of Pastor Aeternus is to indicate that early on in the history of the Church it was not an outrageous thing to appeal to the special role of Peter's successor in the Church to support an argument that Celestine's condemnation of Nestorius would be a good path for the bishops gathered in Council to follow. Dogmatically it is a strong point for it supports the Christocentric principle of the Introduction: Historically the problem of how to show that Peter's office is passed on to his successors in the See of Rome still remains a task for historians of today.

Chapter two develops the point of Peter's primacy. The primacy is denominated of the See of which Peter was Bishop. This is an extremely interesting point and Zinelli will treat of it in his relatio on chapter III.⁹ The point will come up again in Part II of this paper, but suffice it to say that it is felicitous. On the basis of chapter II one could suppose that the proper place to treat of Peter's role in redemption would be in a separate theological tract systematically to be examined after De Deo Redemptore and before De Ecclesia. But the two last sentences of the chapter put Peter as it were in situ, joined to a local church and not above or before the Church as a whole. Briefly put, Peter is first and foremost

a Bishop of a church, which in turn is an identifiable community with a mission towards the universal Church as a whole. But it is to be noted that it is because Peter is Bishop of that community, that that local church has the universal mission, not the other way around.

Chapter III: The Power and Nature of the Primacy of the Roman Pontiff

Before investigating the text of Chapter III of Pastor Aeternus, it would be well to recall certain points in regard to the intention of the First Vatican Council and the technical language that the bishops used to express their faith. It is true that the Council reaffirms the decree of the Council of Florence Laetentur coeli of 1439. But in the canon at the end of the third chapter of Pastor Aeternus the bishops in Council (1) interpret the quemadmodum clause (as is also contained) in the decree of Florence as explicative and not as limiting the Primacy¹⁰ and (2) condemn the position on papal authority taught by Joseph Valentine Eybel (1741-1805) and Peter Tamburini (1737-1827).¹¹ The technical language of this section is that of Roman canon law. The bishops are not maintaining that they are defining the categories of Roman canon law: But they are expressing their religious belief while using that idiom. It would be helpful to remember that in Roman canon law the word 'ordinary' when used of power in the phrase 'ordinary power' refers to undelegated power belong-

ing to an office (adnexa officio) and that the word 'immediate' refers to the exercise of power; meaning that the Pope's exercise of authority in any territory is not dependent upon its being granted to him by the local ordinary.¹² The main idea of the whole chapter occurs in the second paragraph where the jurisdiction of the Roman Pontiff is described as truly episcopal. What the entire section tries to describe is the episcopal oversight (the episcopo) of the Bishop of Rome in itself, vis a vis his fellow bishops, and the faithful.

Chapter 3. The Power and the Nature of the Primacy of the Roman Pontiff

Declaration of the primacy

Therefore, relying on the clear testimony of the Holy Scriptures and following the express and definite decrees of Our predecessors, the Roman Pontiffs, and of the general councils, We reaffirm the definition of the ecumenical Council of Florence. According to this definition all the faithful of Christ must believe "that the holy Apostolic See and the Roman Pontiff have the primacy over the whole world, and that the same Roman Pontiff is the successor of St. Peter, the Prince of the Apostles, and the true vicar of Christ, the head of the whole Church, the father and teacher of all Christians; and that to him, in the person of St. Peter, was given by our Lord Jesus Christ the full power of feeding, ruling, and governing the whole Church; as is also contained in the proceedings of the ecumenical councils and in the sacred canons."

Consequences that the Reformers deny

And so We teach and declare that, in the disposition of God, the Roman Church holds the pre-eminence of ordinary power over all the other churches; and that this power of jurisdiction of the Roman Pontiff, which is truly episcopal, is immediate. Regarding this jurisdiction, the shepherds of whatever rite and dignity and the faithful, individually and collectively, are

bound by a duty of hierarchical subjection and of sincere obedience; and this not only in matters that pertain to faith and morals, but also in matters that pertain to the discipline and government of the Church throughout the whole world. When, therefore, this bond of unity with the Roman Pontiff is guarded both in government (communio) and in the profession of the same faith, then the Church of Christ is one flock under one supreme shepherd. This is the doctrine of Catholic truth; and no one can deviate from this without losing his faith and his salvation.

The jurisdiction of the Roman Pontiff and the bishops

This power of the Supreme Pontiff is far from standing in the way of the power of ordinary and immediate episcopal jurisdiction by which the bishops who, under appointment of the Holy Spirit (see Acts 20:28), succeeded in the place of the apostles, feed and rule individually, as true shepherds, the particular flock assigned to them. Rather this latter power is asserted, confirmed, and vindicated by the same supreme and universal shepherd in the words of St. Gregory the Great: "My honor is the honor of the whole Church. My honor is the solid strength of my brothers. I am truly honored when due honor is paid to each and every one."

The right to deal freely with all the faithful

Furthermore, from his supreme power of governing the whole Church, the Roman Pontiff has the right of freely communicating with the shepherds and flocks of the whole Church in the exercise of his office so that they can be instructed and guided by him in the way of salvation. Hence, We condemn and disapprove the opinions of those who say that it can be licit to hinder the communication of the supreme head with the shepherds and flocks; or those who make this communication subject to the secular power in such a way that they claim whatever is decreed for the government of the Church by the Apostolic See or by its authority has no binding force unless it is confirmed by the placet of the secular power.

The right of recourse to the Roman Pontiff as supreme judge

And because, by the divine right of apostolic primacy, the Roman Pontiff is at the head of the whole

Church, We also teach and declare that he is the supreme judge of the faithful; and that one can have recourse to his judgment in all cases pertaining to ecclesiastical jurisdiction. We declare that the judgment of the Apostolic See, whose authority is unsurpassed, is not subject to review by anyone; nor is anyone allowed to pass judgment on its decision. Therefore, those who say that it is permitted to appeal to an ecumenical council from the decisions of the Roman Pontiff (as to an authority superior to the Roman Pontiff) are far from the straight path of truth.

Canon

And so, if anyone says that the Roman Pontiff has only the office of inspection or direction, but not the full and supreme power of jurisdiction over the whole Church, not only in matters that pertain to faith and morals, but also in matters that pertain to the discipline and government of the Church throughout the whole world; or if anyone says that he has only a more important part and not the complete fullness of this supreme power; or if anyone says that this power is not ordinary and immediate either over each and every church or over each and every shepherd and faithful member: let him be anathema.¹³

In order to understand the teaching of the Council in this chapter of Pastor Aeternus, it is necessary to appreciate the meaning of two terms: (1) potestas and (2) jurisdictio. Potestas does not refer here exclusively to sacramental power or the exercise of the power of the sacrament of order in its three traditional degrees. In this context jurisdictio also has a wider meaning than is normally associated with the canonical definition of this term. The meaning of these two terms in this context is derived from the adjectives modifying them and the technical sense attributed to them by Bishop Zinelli in his relationes.

The meaning of the term plena potestas (and its synonym

plenitudo potestatis) was determined quite early in the Council by Bishop Krementz, who later would become the Cardinal Archbishop of Cologne.

...notionem plenitudinis potestatis non esse petendam ex analogia potestatum terrestrium, vel ex arbitrariis et subtilioribus verborum explicationibus, in quibus quisque quod quaerit invenit, sed esse derivandam ex ipsa constitutione, quam Christus Dominus ecclesiae suae dedit, et regimen huius ecclesiae non posse adaequate comparari monarchiae vel absolutae vel temperatae, vel aristocratiae vel alii hujusmodi.¹⁴

From this general meaning of the term Zinelli determines that plena potestas as used in the Canon at the end of Chapter III excludes the restrictive sense of the quemadmodum clause of the decree of the Council of Florence, a sense often employed by the Gallicans against the Holy See.

Vos scitis...nomine Deputationis me sine ulla verborum ambiguitate declarasse verba plenam potestatem intelligenda esse in tota eorum amplitudine, perperam restricto sensu interpretari nonnullos clausulam quemadmodum etc., quae est in fine textus adducti concilii Florentini, et hoc patere evidenter ex contextu, ex vi phrasidis, ex argumentis historicis aliisque bene multis.¹⁵

The meaning of the term jurisdictio will be clarified by its three adjectival modifiers. It will be (1) ordinary power of jurisdiction (principatus ordinariae jurisdictionis); (2) truly episcopal (vere episcopalis); (3) immediate (immediata).

It is worth quoting Zinelli at length in the original Latin. In this section of his relatio the Bishop of Treviso is explaining why the Deputatio de Fide has denied Bishop Dupanloup's request to delete the adjectives episcopalis, ordinaria and immediata in treating of the jurisdiction of

the Supreme Pontiff.

Emendatio 14^a. Rmus auctor respuere vellet attributa episcopalis, ordinaria et immediata, quae enuntiantur de jurisdictione pontificia. Convenit haec emendatio cum aliis propositis ab aliquibus Rmis Patribus, quique diversas ob causas deletionem horum attributorum petunt. Alii timent ne laedatur per ipsa ius episcoporum, alii ne de Pontifice minus dicatur, quam par est; alii quia vident haec verba superflua. Priusquam de vocabulis dicamus, de re ipsa et conceptu videndum. Nam si in rei conceptu non convenimus, nec certe in sermone convenire poterimus.¹⁶

Zinelli states that the other bishops share Dupanloup's concern about the use of the terms episcopalis, ordinaria and immediata as adjectives describing pontifical jurisdiction. Some fear that these terms would deny their own episcopal rights; others fear that too little would be said of the Sovereign Pontiff. Hence Zinelli will clarify what each of the three terms means: "Nam si in rei conceptu non convenimus, nec certe in sermone convenire poterimus."

Bishop Zinelli begins with an explanation of the word episcopalis.

Incipiamus ab attributo episcopalis. Quaeritur igitur primo quae sit iurisdictio episcopalis. Episcopi est pascere gregem: nulla enim magis familiaris idea regiminis episcopalis in sacris litteris, in patrum operibus, in usu omnium christianorum, quam repraesentare episcopum veluti pastorem, qui pascit gregem. Pascit autem episcopus tam exercitio potestatis ordinis quam iurisdictionis. Nam exercitium potestatis ordinis non nisi in subditos potest licite habere locum. Episcopi igitur iurisdictio ad ea peragenda se extendit, quae necessaria sunt ut fideles vitam aeternam consequantur; ac proinde debet episcopus: 1° administrare sacramenta; 2° leges ferre ad bonum fidelium; 3° executioni ipsarum invigilare sive per seipsum sive per delegatos; 4° et proinde visitare dioecesim; 5° praedicare;

6° iudicare controversias; 7° punire sotes etc.
 Haec et similia comprehenduntur in verbo pascere.
 At haec episcopus non potest facere nisi sub dependen-
 dentia Pontificis summi. Haec autem dependentia
 non est nisi limitatio iurisdictionis episcopalis.¹⁷

Bishop Zinelli is describing episcopal jurisdiction. It is to be noted that he does this in biblical language in keeping with the point made earlier on in the Council by Bishop Krementz. "It is the duty of a bishop to pasture the flock." Zinelli lists seven functions of this duty. These functions do not denote a taxative list: Haec et similia comprehenduntur in verbo pascere. Up until this point Zinelli has treated the episcopal jurisdiction of any bishop. According to Zinelli a bishop cannot perform these duties except in a relation of dependence on the Sovereign Pontiff. At haec episcopus non potest facere nisi sub dependentia Pontificis summi. Furthermore, Zinelli maintains that this dependence is only a limitation of episcopal jurisdiction. The reason for this limitation is that individual bishops are to pasture their particular flocks but that Christ gave to Peter the duty of pasturing the whole flock.

Consideremus autem quaenam Iesus Christus attribuit apostolo Petro et ejus successoribus. Nonne in praemium triplicis declarationis amoris dedit illi munus pascendi gregem, scilicet agnos et oves? Cum hoc discrimine, quod episcopis datum est tantum pascere qui in eis est gregem, scilicet determinatas partes gregis illis commissas; Petro autem et successoribus eius datum est pascere omnem gregem, agnos et oves, simplices fideles nempe et episcopos, in suo regimine independenter ab aliis; dum contra episcopi pascunt semper, ut diximus, dependenter a Petro et Petri successore. En igitur successor Petri potest in toto orbe christiano omnia peragere

quae superius enuntiavimus, et proinde administrare sacramenta, leges ferre, invigilare etc., praedicare, iudicare controversias, punire sotes etc. Quaero igitur: potestne haec omnia peragere vere in toto orbe catholico? Qui contradiceret, innumeris obrueretur antiquitatis exemplis.¹⁸

Bishop Zinelli next raises the question of the title by which the Sovereign Pontiff exercises his episcopal jurisdiction. Zinelli forcefully rejects the idea that the Sovereign Pontiff exercises his episcopal jurisdiction over the whole Church because he is Patriarch of the West. (This would be tantamount to saying that the primacy of jurisdiction is of human origin and not de jure divino). Yet Zinelli carefully stresses that the power of jurisdiction which the Sovereign Pontiff exercises is specifically the same or of the same character as that of the bishops (eandem specie ac potestatem episcoporum).

Nec dicat aliquis, haec peregrisse Pontificem summum qua patriarcham occidentalem. Nam praeter exempla innumera huius iurisdictionis exercitii in Oriente, notum est privilegia patriarcharum, primatum et metropolitanorum esse positiva, et ex concessione Pontificis summi. Si igitur aliis patriarchis provenit a concessione summi Pontificis, consequitur in ipso privilegium esse ex institutione divina. Eadem igitur quoad speciem est episcopalis potestas episcoporum in singulis suis dioecesibus, et in Pontifice summo quoad omnes dioeceses, cum hoc discrimine quod in Pontifice summo est in sua plenitudine, in aliis restricta; in summo Pontifice independens, in episcopis dependens; in episcopis coarctata ad suas dioeceses, in Pontifice summo sine ulla limitatione loci, sed ad terminos terrae. Cum igitur convenire nos necesse sit, realiter potestatem summi Pontificis esse eandem specie ac potestatem episcoporum, quid vetat quominus utamur eodem vocabulo ad qualitatem enuntiandam iurisdictionis, quae exercetur per Pontifices et episcopos, et dicamus episcopalem potestatem in episcopis, et summam

Zinelli then defends the use of the word episcopalis to describe the jurisdiction of the Sovereign Pontiff against the charge that the use of such a word constitutes a theological novelty.

At dices, vocabulum novum non est necessarium. Prius observo potestatem episcopalem et potestatem pontificalem unum et idem esse. In episcopis dicitur pontificalis, in summo Pontifice, summa potestas pontificalis. Vocabulum episcopalis non est novum de summo Pontifice, qui se catholicae Ecclesiae episcopum subscribit. Humilitatis verba adhibita a Gregorio Magno aptissima tempore erant, ut retunderetur exemplo ambitio Constantinopolitani episcopi.

At rursus dicunt: nulla ratio; novi vocabuli introductio superflua est. Sed contra. Notum est, imo usitatissimum in Ecclesia, ut nova dogmatica vocabula adhibeantur, novis erroribus insurgentibus. Nostris temporibus reapse valde periculosa sententia aliquos invaluit, quae sustinet, summum Pontificem non posse in aliis dioecesibus a Romana diversis ea peragere, quae episcopus quilibet in sua propria, eo praetextu quod alias illorum iurisdictionem laederet: perniciosus error a Vaticano Concilio est configendus; et hoc optime faciet si sanciat sua auctoritate, potestatem summi Pontificis exercendam in qualibet dioecesi esse proprie episcopalem.²⁰

Zinelli then proceeds to explain the adjectives ordinaria and immediata. Ordinary in the context is used in the technical sense of Roman canon law. Ordinary is opposed to delegated. Ordinary power is that which one has by reason of an office or post. Delegated power is that which one has not by reason of an office or post but which one exercises in the name of another who has ordinary power.

At non solum excludunt attributum episcopalis, sed et adiectiva ordinaria et immediata. Etiam hic prius sensus vocabulorum inspiciendus. Apud omnes iurisconsultos aut iuris canonici doctores, apud omnia acta ecclesiastica dividitur potestas in ordinariam et delegatam. Omnes dicunt potestatem ordinariam,

quae alicui competit ratione muneris, delegatam, quae non competit alicui ratione muneris, sed nomine alterius exercetur, in quo est ordinaria. Explicato sensu vocabulorum, lis ut videtur Deputationi, finita est; nam potestas quae summo Pontifici tribuitur, nonne est in illo ratione muneris? Si est ratione muneris, est ordinaria. Immediata autem, quomodo distinguitur a mediata? Immediata est ea potestas, quae exerceri potest sine adhibito medio necessario, scilicet medio ad quod adhibendum tenemur.²¹

Immediate power is that which can be exercised without the use of a necessary intermediary. The Latin phrase, Immediata est ea potestas, quae exerceri potest sine adhibito medio necessario, scilicet medio ad quod adhibendum tenemur, could be easily misinterpreted if the terms used are not taken in context, that is, the technical language of the Roman canon law. The misinterpretation could arise from misunderstanding the word medium. Medium in this context refers to a person and not a mean or means. Zinelli is not saying that because the Pope's episcopal jurisdiction is immediate, the Sovereign Pontiff is not bound by the law. What Zinelli is saying is that the Pope may exercise his ordinary episcopal jurisdiction in a diocese other than Rome without being bound (*sine adhibito medio necessario*) to ask permission of the local ordinary. This becomes clear from the next section of Zinelli's relatio.

At Papa potestne omnia episcopalia quae enuntiavimus supra, exercere per se in omnibus dioecesibus, quin obligetur uti medio episcopi particularis ecclesiae? aut ipse necessario debet licentiam petere ab episcopo, ut ex. gr. sacramentum confirmationis impertiatur, aut confessionem excipiat a fidelibus? Quoties ab aliquo rmo oratore petitum fuit, num Papa indigeat hac licentia, risus in hoc consessu est excitatus,

credo etiam illorum, qui eliminationem vocis immediatae poposcerunt. Alia eloquentiori refutatione emendationis non indigemus. Maneant igitur haec adjuncta ordinariae, immediatae, episcopalis.²²

But would not the exercise of this papal episcopal jurisdiction be a cause of confusion in the Church and lessen the ordinary and immediate jurisdiction of the local bishop? Zinelli replies that papal episcopal jurisdiction and the jurisdiction of the local ordinary are not pares iurisdictiones with the clear implication being that the Pope's episcopal jurisdiction is superior. However the exercise of papal jurisdiction is to be employed only for the building up, not for the destruction of the (local) church.

Nulla modo autem turbemur, ne in regimine particularium ecclesiarum ex hac ordinaria, immediata, episcopali potestate concurrente cum illa, quae est propria episcopi unius aut alterius dioecesis, oriatur confusio. Confusio oriretur, si duae pares iurisdictiones concurrerent, minime quum altera alteri sit subordinata. Certe, si summus Pontifex, sicut habet ius peragendi quemcumque actum proprie episcopalem in quacumque dioecesi, se ut ita dicam multiplicaret, et quotidie, nulla habita ratione episcopi, ea quae ab hoc sapienter determinarentur, destrueret; uteretur non in aedificationem, sed in destructionem sua potestate; confusio oriretur in spirituali administratione. At quis nec per somnium quidem excogitare posset tam absurdam hypothesis? Acquiescant omnes igitur; et moderatione sanctae Sedis confisi, nullum dubium moveant auctoritatem sanctae Sedis praesidio futuram, non laesioni episcopalis potestatis.²³

Part II

Restatement: It would appear that the First Vatican Council, utilizing an implicit Christological principle, viz., Christ's salvific will is immutable, taught that Peter's role in the Church as prime bishop, a role given him by Christ himself, continues in Peter's successor, the Bishop of Rome. The role of prime bishop affirmed by the Council relies on the description of that position mentioned during or by various Councils: Philip's address at Ephesus in 431; Lyons II in 1245; Florence in 1439. The aim of the Council is not to affirm the description but to reassert that the role of Peter's successor in the Church is the same as that of Peter. Whatever power the Sovereign Pontiff possesses, he has by reason of his succession to Peter's office in the Church. Thus his power is not from men, but from Christ himself. His power is not a worldly power, but a power unto salvation which cannot be limited by men but only by Christ who does not cease to be the Pastor Aeternus of his believing flock.

Reflection: If this is the essence of the primacy of jurisdiction, then it would seem that as the role of bishop changes so too will the 'style' of exercise of the primacy of jurisdiction which is essentially episcopal in character. What is more important for ecumenical theology is not so much developments in collegiality but rather changes in the manner of how

a bishop actually 'rules' by pasturing his flock. To put the matter another way, how a bishop is a bishop is theologically more significant for developing ecumenical understanding of the primacy of jurisdiction than seeking to understand what a local bishop is vis a vis the prime bishop. Why is this so? The First Vatican Council does not define the essence of the primacy of jurisdiction. Despite its essentialist and legal language, the Council's answer to the question what is the nature of the primacy of jurisdiction of the Sovereign Pontiff is in terms of the example of Peter. The Council is actually answering the question of how the prime bishop is to be a bishop. The answer to that question is that he is to be Peter. This answer is quite theological and open. For the First Vatican Council asks a question of each successive age: How is a bishop to be a bishop now and how is the Prime Bishop to be Peter for the whole Church of today?

FOOTNOTES

1. Reflections and Suggestions Concerning Ecumenical Dialogue, NCCB, Washington, D.C. August 15, 1970, pp. 10-11.
2. Collectio Lacensis, VII, Friburgi Brisgoviae, 1890, pp. 346-72. There are two relationes. The first was given on July 5, 1870 and the second on July 11, 1870. The first dealt with 71 emendations submitted by the bishops and the second relatio dealt with an emendation in the canon at the end of chapter III of Pastor Aeternus. The Deputatio de Fide itself submitted this seventy-second emendation, viz., "aut eum habere tantum potiores partes, non verototam plenitudinem huius supremae potestatis." It was this emendation that the bishops refused to vote on during the 83rd General Congregation of July 5th because they did not have a printed text before them. On July 11th at the 84th General Congregation the bishops had the printed text and accepted the emendation proposed. Cf. Ibid., pp. 757-8.
3. The Latin original may be found in Henricus Denzinger and Adolfus Schönmetzer (Editors), Enchiridion Symbolorum, 33rd Edition, Herder, Friburgi Brisgoviae, 1965, 3050-64. The English translation here presented is taken from The Church Teaches, B. Herder Book Co., St. Louis, 1957, 201-11.
4. DS 3053-55; TCT 202-03.
5. Col. Lac. VII, 355. Zinelli's commentary on this 27th emendation there given follows: Emendatio 27^a. Queritur rmus emendator, quod in schemate nostro nihil dicatur de primatu honoris Romani Pontificis. At, pace rmi Domini, ex una parte in canone primo fit mentio primatus honoris: quare autem in canone potius quam in capite fiat mentio primatus honoris, ratio est clara. Primatus honoris est consequentia immediata et evidens primatus iurisdictionis; immo posset ac deberet rationabiliter asseri, nullo modo existere duos primatus, unum honoris, alium iurisdictionis. Nam concesso primatu iurisdictionis, possessori eius primarius honor debetur non ut diversus primatus, sed ut attributum primatus iurisdictionis, in quo includitur exigentia, ut ab aliis et prae aliis primas honoretur.
Distinctio duplicis primatus honoris et iurisdictionis originem ducit ab errore illorum, qui inficiabantur primatum iurisdictionis summi Pontificis, et ut se aliquo infelicissimo modo extricarent a locis Scripturae et

traditionis, concedebant primatum honoris: ac proinde in canone primo dicitur anathema iis, qui aiunt, b. Petrum honoris tantum, non autem verae propriaeque iurisdictionis primatum ab eodem Domino nostro Iesu Christo directe et immediate accepisse. Quum satis igitur provisum sit in canone per phrasim, primatum honoris, quum in primatu iurisdictionis, de quo in hoc capite, contineatur, quum canon, ubi configitur, sit proprius locus huius phrasim, emendationem sub numero 27° Deputatio de fide, laudans quam maxime scopum, quem sibi praefigit eius auctor, hoc loco non admittit.

6. DS 3056-58; TCT 204-05.
7. Col. Lac. VII, 350-52 in answer to emendation 23.
8. For Philip's address of July 11, 431, cf. E. Schwartz (Editor), Acta Conciliorum Oecumenicorum 1/ I/III, p. 106. For the context, cf. among others, Philip Hughes, The Church in Crisis, Hanover House, Garden City, 1960, p. 64.
9. Col. Lac. VII, 364-65. Quamvis dubitari non possit, quod Petrus ex revelatione divina ab Antiochia fuerit translatus ad Urbem, ut ait Innocentius III in Libro Secundo (PL 214, 761), et in Urbe sedem suam fixerit, in qua Dominus, ut ait idem Innocentius III, praeviderat martyrio coronandum...Here the Christocentric principle is extended to the locus, that is, Peter's transference by Christ's will from Antioch to Rome and his subsequent martyrdom there gives the place of Peter's martyrdom some sort of lasting salvific significance. The primacy, denominated of the Roman See seems first to have had conciliar approval at Lyons II in 1274. Cf. DS 861. This primacy is different from the order of patriarchates Cf. Col. Lac. VII, 350 in emendation 12 and 352 in emendation 14 and 365 in emendation 65 and 66.
10. Ibid., 348.
11. Ibid., 350 and cf. Gustave Thils, Primauté Pontificale et Prerogatives Episcopales, E. Warny, Louvain, 1961, pp. 16-20
12. Ibid., p. 76.
13. DS 3059-64; TCT 206-11.
14. Thils, Op. Cit., p. 73.
15. Col. Lac. VII, 370.

16. Ibid., 350.
17. Ibid., 351.
18. Ibid., and cf. the accord between Zinelli's relatio and Lumen Gentium Nos. 22 and 23 of Vatican Council II. Note especially the following from No. 23: "The individual bishops, who are placed in charge of particular churches, exercise their pastoral government over the portion of the people of God committed to their care, and not over other churches nor over the universal Church. But each of them, as a member of the episcopal college and a legitimate successor of the apostles, is obliged by Christ's decree and command to be solicitous for the whole Church. (NP) This solicitude, though it is not exercised by an act of jurisdiction, contributes immensely to the welfare of the universal Church."
Walter M. Abbott (Editor), The Documents of Vatican II, Guild Press, New York, 1966, pp. 44-5.
19. Col. Lac. VII, 351-52.
20. Ibid., 352.
21. Ibid.
22. Ibid.
23. Ibid., 353.

APPENDIX

A Speculative Excursus on the Conditions
for Full Ecclesiastical Communion with
the Roman See

Granted oneness in the faith and the acceptance of diversity in theological understanding, liturgical practice, polity and spirituality, what ecclesiological conditions must the Roman see require of a sister church for the restoration of full ecclesiastical communion between the sister church and the Roman see?

On July 5, 1870 Bishop Zinelli on behalf of the Deputatio de fide of Vatican Council I delivered to the bishops in council the first of two relationes (official replies) both of which elucidate the sense of the dogmatic constitution Pastor Aeternus. Seventy-two emendations to the text of the constitution and canons had been proposed by the Council Fathers. In the relatio of July 5, 1870 Zinelli, in order to clarify the sense of the text on which the bishops were to vote, commented on each of the emendations. Two emendations dealing with canon III point to the area of ecclesiastical communion between the Roman see and the Graeci, a general term used to indicate the Chalcedonian Orthodox churches of the East which were not in full, visible ecclesiastical communion with the Roman see. It is certain that the Graeci are sister churches of the Roman Catholic Church. How did Vatican Council I treat the sister churches in the

composition of Pastor aeternus seu De Ecclesia Christi?

In order to answer this question it is necessary to study the texts of the Council.

The canon in question reads as follows:

Si quis itaque dixerit, Romanum Pontificem habere tantummodo officium inspectionis vel directionis, non autem plenam et supremam potestatem iurisdictionis in universam Ecclesiam, non solum in rebus, quae ad fidem et mores, sed etiam in iis, quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent; aut eum habere tantum potiores partes, non vero totam plenitudinem huius supremae potestatis; aut hanc eius potestatem non esse ordinariam et immediatam sive in omnes ac singulas ecclesias sive in omnes et singulos pastores et fideles: anathema sit.¹

The pertinent part of emendation 63, part 4 is:

Tres Canones delendi sunt, quia quicumque Canon secum habet anathema, a quo abstinendum est propter Graecos, quos divisos dicimus, non haereticos: haereticos autem se ipsi sentient, si scient esse anathemate percussos. Nobis imitanda proponitur Patrum Tridentinorum prudentia, et sapiens oeconomia Concilii Florentini, quod decretum doctrinale de Primatu sine Canone et sine anathemate confecit.²

The text of emendation 65 is:

Canon III. praedictis conformiter exmittatur, secus, nisi praedicto modo totum schema reformetur, porta pro perpetuo claudetur, ne unquam Graeci ad unionem cum Romana Ecclesia redire possint.³

Zinelli's response to the fourth part of emendation 63 is:

Tres canones cum anathemate delendos ait emendator; quia si Graeci tantum se separaverint de facto a communione cum Ecclesia, essent tantum schismatici. At qui negant primatum iurisdictionis iuris divini sunt haeretici. Deputatio igitur de fide hanc emendationem non admittit.⁴

The Bishop of Treviso's reply to the sixty-fourth emendation is:

Emendationes sub numeris 65 et 66. Vellent rmi emendatores, ut canon tertius prorsus eliminetur, ne porta claudatur Graecis ad unionem. At contra, Ecclesia catholica principia revelata et in deposito contenta, cum negantur, debet fortiter proclamare. Graeci habent in operibus Patrum suorum testimonia evidentissima auctoritatis supremæ summi Pontificis; eorum Patres prerogativas Sedis apostolicæ luculenter recognoverunt. Cum tempus misericordiae advenerit, Deus movebit corda eorum: interim precemur pro ipsis, et veritatem impavide definiamus. Hanc emendationem Deputatio de fide non admittit.⁵

It is well known that the intention of the Council was to exclude from Roman Catholic theology the ecclesiological theories of von Hontheim, Eybel and Tamburini. There was no intention to alter the relationship between the Roman Catholic Church and the Graeci. Zinelli's reply is carefully worded. The Bishop does not say that the Graeci are heretics. What he does say is that those who deny (negant) the primacy of jurisdiction as of divine right are heretics. Nowhere does he explicitly say that the Graeci deny this. Zinelli asserts that, when they are denied (cum negantur), the Catholic Church ought forcefully to proclaim the principles which have been revealed and are contained in the deposit of faith. In the Roman Catholic Church von Hontheim, Eybel and Tamburini had denied the primacy of jurisdiction, juris divini, i.e., of being of direct institution by Christ and which the Church proclaimed as her understanding of the biblical revelation on the matter. The Roman Catholic Church was moving against Roman Catholics who misrepresented what the

faith of the Roman Catholic Church was. Furthermore, Zinelli stresses the fact that the Graeci have works of their own Fathers containing abundantly clear testimony concerning the supreme authority of the Summis Pontifex and that the Greek Fathers recognized very well the prerogatives of the Apostolic See. It is of great importance that Zinelli does not say that the primacy of jurisdiction juris divini can be shown to be in the tradition of the Graeci. What Zinelli does say, in effect, is that it is consonant with the tradition of the Graeci, intelligible to the Graeci. To expand Zinelli's thought and put the matter another way, if per impossibile, the Graeci had had the Gallican problem, they too would have had to explicitate something akin to the primacy of jurisdiction, juris divini, for the Church to remain faithful to the proclamation of the Gospel.

The phrase "Cum tempus misericordiae advenerit" may support this exegesis of the text. Apart from the biblical overtones of the phrase, it is probable that the Bishop of Treviso is translating into Latin the Italian idiom date tempo al. . . . Zinelli seems to be saying, "Give things time to mature and God will help them understand; meanwhile let us pray for them and fearlessly define the truth."

If this is the sense of Zinelli's comments, two principles could be deduced from them concerning the ecclesiological conditions that the Roman see must require of a sister church for

the restoration of full ecclesiastical communion between the sister church and the Roman see. First, the sister church must not deny the primacy of jurisdiction, juris divini. However, non-denial is not the equivalent of confessing the primacy of jurisdiction, juris divini. Confessing the primacy of jurisdiction, juris divini is not required. Second, the sister church must see the primacy of jurisdiction, juris divini as consonant with the Gospel and intelligible within the history of the Roman Catholic Church. The admission of these two principles is sufficient to establish oneness in the faith. However, the primacy of jurisdiction, juris divini is not only a dogma of the Roman Catholic Church and intelligible within the Christian experience of the Roman Catholic community but it is operative within that Church. To enter into full ecclesiastical communion with the Roman Catholic Church would require in addition to unity in the faith and full sacramental sharing some relationship of the sister church to the Roman see and its bishop.

The essence of the primacy of jurisdiction, juris divini is not taxatively confined to the juridico-theological concepts of ordinary, immediate, episcopal jurisdiction. It is capable of analogous verification.

If one believes that the autonomous churches of the Anglican Communion are sister churches of the Roman Catholic Church, then there exists in the West, as there certainly exists in the East,

a college of true bishops in the apostolic succession that exists without a visible relationship to the college of Roman bishops and its head, the Bishop of Rome. In the event of the restoration of full ecclesiastical communion between the Anglican Communion and the Roman Catholic Church it would not be necessary for the Anglican college of bishops to become members of the Roman college of bishops. Yet the primacy of jurisdiction, juris divini would require that the Bishop of Rome would be head of the Anglican college of bishops. How could this 'headship' be exercised?

Lumen Gentium of Vatican Council II understandably concentrates its analysis of collegiality on the relationship of the Roman college of bishops to the head of the college. Yet there is a deficiency in the third chapter of Lumen Gentium. In Lumen Gentium the college of bishops is treated as a distinct entity which is almost abstracted from the reality of the bishop and his see, diocese or local church. To conceive of Cardinal Manning and Bishop Rusack both being in the same episcopal college is an ecclesiological unreality. The Archdiocese of Los Angeles is not the Episcopal Diocese of Los Angeles. Though the geographic boundaries of both jurisdictions are coterminus, each jurisdiction represents a different local church.

If the episcopal colleges as such need not be joined, how will the Bishop of Rome exercise his function as head of both the Roman and Anglican colleges of bishops? What form of analogous

verification of the primacy of jurisdiction, juris divini would suffice to give reality to the relationship between the Roman See and its bishop and the sister church? One model based on contemporary social organization could be that of 'compulsory arbitration.' In the case of disputes between the Anglican Communion and the Roman Catholic Church or among the churches of the Anglican Communion or within them the Roman see and its bishop could provide the service of 'compulsory arbitration', i.e., not settling the dispute but providing the means to settle the dispute. The arbitration ought to be compulsory for two reasons. First, if the offended party cannot compel the offending party to a redress of the alleged grievance, the system of arbitration cannot really be of service. If the offending party is the more powerful one, he can successfully ignore arbitration. If the arbitration is compulsory it cannot be ignored. Thus both justice and practicality require that the arbitration be compulsory. Second, "compulsory arbitration" develops how the bishop of Rome is prime bishop in the Church in a manner consonant with the episcopal and pastoral character of the primacy of jurisdiction, juris divini. Though from the viewpoint of Roman Catholic doctrine the Bishop of Rome as prime bishop could decide or settle a dispute for the whole church, there is no necessity for him to exercise all the time what Roman Catholic dogma would consider to be all his rights. To provide the means to settle a dispute, the good offices of 'compulsory

arbitration', is a sufficient Petrine service to provide analogous verification for the primacy of jurisdiction, juris divini and 'headship' of the Anglican college of bishops.

FOOTNOTES TO APPENDIX:

1. DS 3064
2. Col. Lac. VII, 345
3. Ibid.
4. Ibid., 364
5. Ibid., 365

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