

THE JURIDICAL STATUS OF THE CLERGY

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The juridical status of clerics, more than reflecting the functions that the cleric is called to perform in the Church, is the juridical translation of the sacramental identity of clerics. This identity determines not only the mission, and therefore the functions proper to clerics, but also the way of presenting themselves in the Christian community and in civil society.

1. Introduction

In these pages we shall treat: first, the basis of the juridical status of the clergy; second, its main characteristics in the Code of Canon Law; and third, a classification of the different juridic subjective situations belonging to the clerical state will be suggested, in order to obtain a better understanding of the legal norms.

Before dealing with the foundation of the juridical status of sacred ministers, we need to recall briefly the main features of their regulation in the 1917 Code of Canon Law as well as the doctrinal developments achieved by the Second Council Vatican and by post-Conciliar documents.

2. The 1917 Code of Canon Law and the legal status of the Clergy

Taking into account Lombardía's important remarks on this topic, it can be said, on the one hand, that the juridical status of the clergy that emerges from the first Code of Canon Law corresponded to a vision of the Church that is divided in states¹, a vision which, after Vatican II, is no longer compatible with the juridical principle of equality among the faithful. On the other hand, in the juridical status of clerics were included rights, privileges, and duties that were common to all clerics, independent of the degree of Orders each cleric had received. From the simply tonsured faithful to the ordained priest, all clerics—in minor or major orders—had the same obligations (except for celibacy), and the same rights and privileges (cf. c.119 for the

¹ This mentality had these effects: "El *ordo clericorum* se transforma en el *status clericorum*, entendido el *status* con los rasgos característicos de la sociedad estamental; es decir, como una condición derivada de la pertenencia, estable y con cierta inamovilidad a una clase social, a la que corresponde una esfera jurídica determinada" (P. Lombardía, *Estatuto jurídico de los ministros sagrados en la actual legislación canónica*, in *Liber amicorum Monseigneur Onclin*, Glembox 1976, p.261). For some critical remarks on the use of this concept of *status*, cf. J. Hervada, *Persona, Derecho y justicia*, in *Idem, Vetera et nova*, Pamplona 1991, p.707-710, footnote 6; and J. Fornés, *La noción de status en el Derecho Canónico*, Pamplona 1975, p.322.

canon, c.120 for the *forum*, c.121 for exemption, and c.122 for the benefice).² This uniformity in the treatment of clerics raises a question if the issue is examined from the sacramental-dogmatic point of view: How is it that the cleric who has not received the sacrament of orders should be seen as juridically equal to those who have received it? Why is it that the simply tonsured person and the presbyter have the same juridical status? These questions however, even if legitimate, were not relevant practically, because all orders (minor and major) were steps in the way to reach a goal: the presbyterate. The orders were *de facto* considered transit orders and therefore the attention of the cleric, before being ordained as a priest, was centered not on the order he had just received and on the functions he was supposed to exercise, but on the order that was ahead of him.

This transitory nature of the orders was the basis of another characteristic of the old **Code**: the prototype of the cleric was the presbyter. Almost all the individual norms dealing with clerics referred to priests. These norms were more priest-centered than cleric-centered. This central position of the presbyter overshadowed the distinction between the different types of clerics and led to the fact that what properly belonged to the priest was attributed to all clerics, without considering that the constitutional distinction between the ministerial priesthood and the common priesthood does not correspond exactly to the distinction between clerics and non clerics.³

3. Clerics in the Second Vatican Council and the post-Conciliar documents: Doctrinal and juridical developments

a. Second Vatican Council

It is true that the ecclesiology of the last ecumenical council allowed the rediscovery of the fundamental concept of the Christian faithful. It is also true that the Second Vatican Council has contributed in a decisive way to the understanding of the priesthood and the episcopate. On the

² “Excepto el deber de guardar el celibato, que obligaba sólo a los que hubieran recibido órdenes mayores (cfr. c. 132), el contenido del *status clericalis* implica los mismos derechos, privilegios y obligaciones para todos los clérigos” (P. Lombardía, *Estatuto jurídico de los ministros sagrados en la actual legislación canónica*, cit., p.265).

³ “Como puede observarse, el *Codex* por las razones históricas aludidas, asumió la distinción de derecho divino entre sacerdocio común y sacerdocio ministerial, dotando *iure humano* a quienes participan del segundo de un estatuto jurídico propio que, en algunos aspectos, va más allá del alcance dogmático de la distinción e hizo extensible este estatuto jurídico a personas ó ministros inferiores, simples tonsuradosó que en manera alguna participan del sacerdocio ministerial” (P. Lombardía, *Estatuto jurídico de los ministros sagrados en la actual legislación canónica*, cit., p.264).

one hand, the sacramentality of the episcopate has been declared and this has fostered a more global vision of the sacrament of Orders.⁴ On the other hand, the doctrine of the dogmatic constitution *Lumen Gentium* and of the decree *Presbyterorum ordinis* has not only overcome inadequate understandings of the presbyter, but also presented the priest in a more complete way, i.e. in his relationship with Christ and with the *munera Christi*, in his relationship with his proper Bishop and with the other bishops, and finally in relationship to the other clerics and to the other faithful.⁵

With regard to deacons, the Second Vatican Council documents do not dedicate much space to them; however, it did clarify some key points. For example, thanks to the Council it is very clear now that deacons are ordained not for the priesthood but for the ministry.⁶ Furthermore, the Council made an important decision: it foresaw the possibility that the diaconate could become a stable Order in the Hierarchy and not only as a step towards priesthood.⁷

b) Further developments

Not only did these doctrinal elements influence the drafting of the norms dealing with the juridical status of the cleric. In the years following the Council, while the drafting process was going on, some norms and documents about clerics were published. In some instances these post-Conciliar documents authoritatively settled some doctrinal issues in which there was open

⁴ Cf. Vatican Council II, Const. *Lumen Gentium*, n.21. On this topic, see G. Philipps, *La Chiesa e il suo mistero. Storia, testo e commento alla 'Lumen Gentium'*, Milano 1975, pp. 219-225.

⁵ Cf. Vatican Council II, Const. *Lumen Gentium*, n. 28; Decr. *Presbyterorum Ordinis*, n. 4-9. About this complete vision of the presbyter, see A. Del Portillo, *On Priesthood*, Dublin 1974, p.33, where he underlines that the ritual and the missional views of the priesthood are both consequences of the same priestly worship.

⁶ Cf. Vatican Council II, Const. *Lumen Gentium*, n.29.

⁷ “Since, however, the laws and customs of the Latin Church in force today in many areas render it difficult to fulfill these functions, which are so extremely necessary for the life of the Church, it will be possible in the future to restore the diaconate as a proper and permanent rank of the hierarchy. But it pertains to the competent local episcopal conferences, of one kind or another, with the approval of the Supreme Pontiff, to decide whether and where it is opportune that such deacons be appointed. Should the Roman Pontiff think fit, it will be possible to confer the diaconal order even upon married men, provided they be of more mature age, and also on suitable young men, for whom, however, the law of celibacy must remain in force” (Vatican Council II, Const. *Lumen Gentium*, n.29, in A.P. Flannery (ed.), *Vatican Council II, The Conciliar and Post Conciliar Documents, Vol. 1*, New York (1998), p.387). See also Decr. *Ad gentes*, n.16, in *Vatican Council II, Vol. 1, cit.*, p.832-833 and Decr. *Orientalium ecclesiarum*, n.17, in *Vatican Council II, Vol. 1, cit.*, p.447.

debate; in other cases they allowed new perspectives or modified the elements of questions, so that completely new answers would be found.⁸

In relation to our topic some decisions were taken: in the Latin Church the non-sacramental orders were abolished⁹ and the way to the reinstatement of the diaconate as a permanent degree of the Sacrament of Orders was initiated.¹⁰

As result of this, the *concept of the cleric*—which would appear in the new Code—had to be essentially connected to the reception of the sacrament of Orders. Therefore, it needed to be narrower than the concept found in the former Code. Only those faithful who would receive the episcopate, the presbyterate and the diaconate could be considered clerics.¹¹

The admission of permanent deacons (both celibate and married)¹² also affected the juridical status of clerics, because the diaconate could no longer be treated as a transitory order, as it was before. Some of the faithful would be called by God to be deacons for life.¹³ This meant that the new norms had to regulate also the life of these sacred ministers. This task was especially needed for the case of married deacons, because their lives differed in many aspects

⁸ During the drafting of the Code of Canon Law, Paul VI promulgated some norms, which produced immediate changes in the texts prepared by the *Coetus "De Sacra Hierarchia"*. Among these documents see the Motu Proprio *Sacrum diaconatus ordinem* (18.VI.1967) and the Enc. *Sacerdotalis coelibatus* (24.VI.1967), in A. Flannery (ed.), *Vatican Council II, Vol. 2: More Postconciliar Documents*, New York 1982, pp.285-317, the M.P. *Ministeria quaedam* (15.VIII.1972), in *Vatican Council II, Vol. 1, cit.*, pp.427-432 ; and the M.P. *Ad pascendum* (15.VIII.1972), in *Vatican Council II, Vol. 1, cit.*, pp.433-440. See also the M.P. *Ecclesiae sanctae* (6.VIII.1966) nn 7-8, in *Vatican Council II, Vol. 1, cit.*, pp.595-597, and the final document of the Synod of Bishops, *Ultimis temporibus* (30.XI.1971), in *Vatican Council II, Vol. 2, cit.*, pp.672-694. In the latter document the resolution was taken to keep integrally the law of celibacy (cf. *ibid.* p.689). On how these documents affected the work of the new codification, cf. *Communicationes*, 18 (1986), p.111; 24 (1992), pp.278, 280, 305.

⁹ In the Latin Church the M.P. *Ministeria quaedam* abolished the major order of the *subdiaconate* and the minor orders became *ministries* (retaining only those of *lector* and *acolyte*). Cf. Paul VI, M.P. *Ministeria quaedam*, nn. II & IV, *cit.*, p.429.

¹⁰ The decision to establish the permanent diaconate was left to the Conferences of Bishops. Cf. Paul VI, M.P. *Sacrum diaconatus ordinem*, n.1.

¹¹ "First tonsure is no longer conferred. Entrance into the clerical state is joined to the diaconate" (Paul VI, M.P. *Ministeria quaedam*, n.I, *cit.*, p.429).

¹² Cf. Paul VI, M.P. *Sacrum diaconatus ordinem*, n.11.

¹³ In the M.P. *Ad pascendum* are found the requirements for the diaconal ordination and are indicated also some juridical consequences of the diaconate: the incorporation to the clerical state, the incardination, the obligation of celibacy for some permanent deacons, the marriage impediment of Orders also for those who were married deacons, and finally the obligation of the Liturgy of the Hours. Cf. Paul VI, M.P. *Ad pascendum*, nn. VI, VIII & IX, *cit.*, pp.439-440.

from the life of the priest and from that of the transitional deacons who were heading to the priesthood.¹⁴

4. The Foundation of the juridical status of the Clerics: the identity of the cleric

The new concept of the cleric emerging from the new Code had pointed out the relationship between the sacrament of Orders, the juridical status of clerics, and the content of this status. In fact, according to the Code of Canon Law, the juridical state of the cleric is acquired through the diaconal ordination: “By divine institution some among Christ’s faithful are, through the sacrament of Orders, marked with an indelible character and are thus constituted sacred ministers” (c.1008). From the moment a person becomes a deacon, he becomes a cleric. From that moment on, also, the person possesses all the rights and is bound by all the duties proper to clerics.

This inseparability between validly receiving the sacrament of Orders and having the juridical status of a cleric has a deep meaning. The link between these two elements is not based on the fact that the Legislator had to find a starting point for acquiring a new juridical status, but on the reality that the juridical status of clerics—i.e., the rights, duties that form its content—juridically reflect what the ordained faithful *is* in virtue of the sacrament of Orders.

What is a cleric? What is his mission in the Church? What is his relationship with other clerics? Let’s give answers to these questions, pointing out those elements that are more important from the juridical point of view.

According to the constant doctrine of the Church, and specifically the doctrine of the Decr. *Presbyterorum ordinis*, the Sacrament of Orders produces a special configuration with Christ through which those who are ordained share in the consecration of Christ and in his mission.

For the priest and the bishop, this configuration is a reference to Christ as *Priest*; they share in the Priesthood of Christ, in a special way, different from the other faithful, because they have the ministerial priesthood. Bishops have the highest degree of the priesthood; while those in the presbyterate have the priesthood in the subordinate degree to the episcopate. There is a new configuration with Christ that differs essentially from the configuration proper to the common priesthood.¹⁵ Through the sacrament of Orders “they receive the mission and faculties to act in the person of Christ the Head” in some specific fields.

¹⁴ To be a married faithful, with the natural rights and duties deriving from it (having a wife and children) affects deeply the life-style of these ministers, and also their spirituality. All this was new and provoked new problems that needed to be faced.

¹⁵ Cf. Vatican Council II, Const. *Lumen Gentium*, n.10. On the distinction between the common and the

The one who receives the sacrament of Orders as a deacon is not a priest, but is ordained for a ministry of service. His identification is with “Christ the Lord and Servant of all”.¹⁶ The deacon does not act “*in persona Christi Capitis*, but *in persona Christi Servitoris*”.¹⁷ The deacon receives in the sacrament the strength to dedicate himself “to the People of God, in conjunction with the bishop and his body of priests, in the service of the liturgy, of the Gospel and of works of charity.”¹⁸

Therefore, the sacrament of Orders produces an ontological transformation of the ordained person: after the ordination and forever, he is configured sacramentally with Christ-Priest or with Christ-Servant. The sacramental character makes it so that the ordained will always be ordained, so that his consecration to God can never disappear, and therefore that he will be a priest or a deacon forever.

This special consecration and configuration with Christ does not have as its finality the ordained person, as if it would benefit only him. This consecration is a gift for all the People of God, because the sacrament of Orders allows the faithful to share in the mission of Christ and grants the capacity to fulfill some functions regarding the *munera Christi*.¹⁹ To each degree of

ministerial priesthood and the relationship between them, cf. canonists such as E. Corecco, *Profili istituzionali dei movimenti nella Chiesa*, in M. Camisasca and M. Vitali (ed.), *I movimenti nella Chiesa negli anni '80*, Milano 1982, pp.203-234; D. Le Tourneau, *Le sacerdoce commun et son incidence sur les obligations et les droits des fidèles en général et des laïcs en particulier*, in *Revue de Droit Canonique*, 39 (1989), pp.155-194; and among theologians see A. Aranda, *El sacerdocio de Jesucristo en los ministros y en los fieles. Estudio teológico sobre la distinción “essentia et non gradu tantum”*, in AA.VV., *La formación de los sacerdotes en las circunstancias actuales. Simposio internacional de teología*, Pamplona 1990, pp.207-246; and A. Vanhoye, *Sacerdoce commun et sacerdoce ministériel. Distinctions et rapports*, in *Nouvelle revue Théologique*, 97 (1975), pp.193-207. Also worth noting is the doctrine contained in the first part (theological principles) of the recent document by the S.C. for the Clergy *et. al.*, *Instruction on certain questions regarding the collaboration of the non-ordained faithful in the sacred ministry of priest* (15.VIII.1997), Vatican City 1997, in *Origins*, 27 (1997-1998), pp.400-402.

¹⁶ S.C. for Catholic Education, *Basic norms for the formation of permanent deacons* (22.2.1998), n.5, in *Origins*, 28 (1998), p.182. “In virtue of ordination the deacon is truly called to act in conformity with Christ the Servant” (S.C. for the Clergy, *Directory for the ministry and life of permanent deacons* (22.II.1998), n.47, in *Origins*, 28 (1998), p.197).

¹⁷ “Deacons share in Christ’s mission and grace in a special way. The sacrament of Holy Orders marks them with an imprint (*character*) which cannot be removed and which configures them to Christ, who made himself the *deacon* or servant of all” (*Catechism of the Catholic Church*, with modifications from the *Editio typica*, New York 1997, n.1570).

¹⁸ Vatican Council II, Const. *Lumen Gentium*, n.29, *cit.* p.387.

¹⁹ The sacrament of Orders places the ordained faithful in a new position in the Church and in front of the faithful. “The priest is someone taken out from among the people of God, chosen and endowed with a special consecration who, because of the mission he has received, must live among and with the rest of men, understanding them, accompanying and guiding them on their journey; he acts on behalf of God

the sacrament correspond specific functions to which the ordained person is destined. The Bishop is called to fulfill the Episcopal functions: he is capable of administering *all* the sacraments (except the sacrament of marriage, because the ministers of the sacrament of marriage are those getting married²⁰) and he is normally called to govern a particular Church. The presbyters can also administer the same sacraments like the Bishops except the sacrament of Orders and are constituted irreplaceable collaborators of the Bishops. Finally, the deacons can perform some functions of service related to the ministry of the Bishop and of his presbyterium.²¹

Besides the personal effects of the sacrament, the distinction in levels of the Sacrament of orders produces in the ordained person the incorporation to the *Ordo clericorum* (and within it to the corresponding *ordo: episcoporum, presbyterorum* or *diaconorum* ²²), as well as the destination to the functions belonging to the *ordo* that has been received, and also the ability to perform those functions.²³ At the same time, the distinction in different grades allows the communal dimension of the sacred ministry to be understood, because the presbyteral functions are linked to the episcopal functions, so that the presbyter acts in communion with his Bishop, because he is a *cooperator* of the Bishop.²⁴ The deacons, for their part, perform functions of service related to the mission of the bishop and of his *presbyterium*.

who consecrated him and sent him out, just as Jesus Christ, the Son of God, willed to be like men in all things except sin” (A. Del Portillo, *On priesthood, cit.*, p.23).

²⁰ See, *Catechism of the Catholic Church*, n.1623 (new version).

²¹ S.C. for the Clergy, *Directory for the ministry and life of permanent deacons*, nn.22-38, *cit.*, pp.193-196.

²² For a wider treatment of the relationships between the sacrament of Orders, ministries, *ordines*, and for the distinction between what is ministerial and what is personal concerning the cleric, see, J. Hervada, *Elementos de Derecho Constitucional Canónico*, Pamplona 1987, pp.194-230. What Hervada says is essential for an adequate understanding of the juridical status of the cleric: “El llamado *ordo clericorum* es, en realidad, una organización, o más exactamente una estructura organizada que constituye el nervio central de la organización eclesial. Los ministerios son inseparables del *ordo*, que no debe concebirse como un simple conjunto o *coetus* de personas que, ulteriormente, son designadas para cubrir unos oficios o ministerios de la organización como algo disitinto del *ordo*. El *ordo episcoporum* es ya titular de una misión con unos colaboradores (el *ordo presbyterorum*) y unos auxiliares (el *ordo* de los diáconos)” (*Ibid.*, p.193).

²³ When studying the personal juridical status of clerics one has to be careful to distinguish between personal and institutional effects of the sacrament of Orders. On this distinction see P. Lombardía, *El estatuto personal en el ordenamiento canónico. Fundamentos doctrinales*, in *Escritos de Derecho Canónico*, Vol. II, Pamplona 1973, p. 41.

²⁴ “To achieve this purpose Christ, consecrated and sent by the Father, makes the Apostles and through them their successors, the bishops, sharers in his consecration and mission. This same consecration and mission are transmitted at a subordinate level to the presbyters, who can then fulfill this mission from

This complementarity of ministries demands that each cleric fulfills his mission *in* the Church and *for* the service of the Church. The sacred minister does not receive the sacrament of Orders for his own benefit, but to serve the Church. This makes understandable that, without obscuring the universal dimension of the cleric's mission, in the very moment in which a person is ordained deacon, he is incardinated, and through this incardination is usually determined the portion of the People of God, which the cleric will serve with his ministry.²⁵ Because incardination is always present, it manifests in a juridical way that every cleric should act in communion with other clerics, and especially with his bishop, and with the presbyterium and the other clerics of his particular Church.

Lastly, ordination does not produce only this hierarchical relationship of ministries and their complementarity. It also creates links of communion with the other faithful who have received the sacrament of Orders in the same level.²⁶ These are bonds of fraternity, which have various juridical manifestations.²⁷

5. Main characteristics of the juridical status of clerics

1. Reading the norms dealing with the juridical status of clerics in the new code mindful of the substantial doctrinal elements already treated, it can be concluded that these norms have the aim of reflecting and canonically protecting the identity of clerics—that is, men configured to Christ and consecrated to God.²⁸ At the same time, a more concrete finality of these norms is to

Jesus Christ as co-workers of the Order of bishops” (A. Del Portillo, *On priesthood, cit.*, p.21).

²⁵ Cf. c.266, §§1-2. About the close relationship between the conciliar doctrine on priests and the new concept of incardination, see J. Hervada, *La incardinación en la perspectiva conciliar*, in *Vetera et nova*, Vol. I, Pamplona 1991, pp.393-451; J. Herranz, *El nuevo concepto de incardinación*, in *Palabra* (agosto-septiembre 1966), pp.26-28; and J.M. Ribas, *Incardinación y distribución del clero*, Pamplona 1971, pp.208-223.

²⁶ With regard to the case of Bishops, see Vatican Council II, Const. *Lumen Gentium*, n.23. For the priest the following words of the Decr. *Presbyterorum Ordinis*, n.8 are relevant: “All priests, who are constituted in the order of priesthood by the sacrament of Order, are bound together by an intimate sacramental brotherhood” (p. 878). A similar relationship among deacons has been only recently underlined: “By virtue of their ordination, deacons are united to each other by a sacramental fraternity” (S.C. for the Clergy, *Directory for the ministry and life of permanent deacons*, n.6, *cit.*, p.192).

²⁷ Cf. J.I. Arrieta, *Governance structures within the Catholic Church*, Montreal 2000, pp.47-49; and *Idem.*, *Conferenze episcopali e vincolo di comunione*, in *Ius Ecclesiae*, 1 (1989), pp.3-22. See also L. Navarro, *Manifestazioni giuridiche della comunione fra i vescovi*, in *Ius Ecclesiae*, 3 (1991), pp.573-585.

²⁸ “La configuración ontológica con Jesucristo que lleva consigo la consagración sacramental, así como la misión sagrada a la que están destinados, son la razón de ser, el verdadero fundamento del específico estatuto jurídico de los clérigos establecido en el presente capítulo. Con él se pretende conformar, por un

allow the cleric to perform properly their ministry, the mission received from God, in communion with the Church.²⁹ The canonical norms that forbid or establish obligations are to be interpreted also in this light.

2. In virtue of the sacramental character, the ontological configuration with Christ is indelible, and therefore the juridical status of clerics is not *ad tempus*, but perpetual.³⁰ As a result of a valid ordination the life of the cleric will be regulated by special norms, determining obligations, functions, etc. These apply for all his life, and even into retirement. Notwithstanding this perpetuity of the clerical state it is foreseen that a cleric, as a penalty for grave crimes³¹, or because grave or especially grave reasons³², can lose his *status clericalis*.³³ With a loss of clerical status in this way, his life is not regulated anymore by the norms dealing with clerics. In these cases, however the substantial reality (he was validly ordained) will permit him,

lado, la vida de los clérigos, es decir, sus comportamientos personales, con la naturaleza sagrada de su ministerio, al mismo tiempo que se salvaguarda, por otro, canónicamente la identidad sacerdotal frente a las eventuales tentativas de secularización (...)” (T. Rincón, *Comentario al Título III, De los ministros sagrados o clérigos*, in *Comentario exegético al Código de Derecho Canónico*, Vol. II, Pamplona 1996, p. 211). Lombardía has also underlined the relationship between the juridical status of the cleric and the function of the cleric: “Los ministros sagrados, sin embargo, tienen una peculiar condición en el ordenamiento de la Iglesia. Entre sus fundamentos hay que aludir, en primer lugar, a su destino sacramental al desempeño de funciones sagradas órelacionadas con la proclamación y explicación oficial de la Palabra de Dios y la confección y administración de los sacramentosó, que postula de ellos un modo de vida congruente con la santidad de tales funciones” (P. Lombardía, *Sacerdocio*, in *Idem, Escritos de Derecho Canónico y de Derecho Eclesiástico del Estado*, Vol. IV, Pamplona 1991, p.48). Valdrini rightly affirms that the unifying criterion of all the norms regarding clerics is that these norms “sont volus comme expression et garantie de la spècificité du ministère sacrè dans l’èglise. Cette affirmation est capitale” (P. Valdrini, *Les ministres sacrès ou les clercs*, in *L’Annèe canonique*, 30 (1987), p.322. See also J.T. Martín de Agar, *A Handbook in Canon Law*, Montreal 1999, p.53-61.

²⁹ Because the cleric is destined through a sacrament to fulfill certain functions of service for the Church, the canonical norms include also some dispositions intended to render the cleric always available, open and ready to fulfill his ministerial service. See cc. 274, 283, 279.

³⁰ Rincón has also underlined that the personal *status* of the cleric “se funda en su consagración y misión sagradas, y (...) tiene, por ello, carácter estable y universal, cualquiera que sea el puesto que ocupe o el oficio concreto que desempeñe en la organización eclesiástica” (T. Rincón, *Comentario al Título III, De los ministros sagrados o clérigos*, *cit.*, p.208.

³¹ Cf. c. 290, 2°. These offenses are heresy, apostasy and schism (c.1364, §2); profaning the consecrated species (c.1367); physical force against the Roman Pontiff (c.1370, §1); to solicit during confession (c.1387); concubinage and other sins against the sixth commandment (cc.1394 & 1395). The dismissal from the clerical state is the strongest sanction that can be inflicted on a cleric. Because of its gravity the Code establishes that this sanction is reserved to a collegiate tribunal of three judges (cf. c.1425, §1, 2°).

³² Cf. c.290, 2°.

³³ Concerning the loss of the clerical state, cf. V. De Paolis, *Ammissio status clericalis*, in *Periodica*, 81 (1992), pp.251-282.

in those cases explicitly established by the law, to administer validly the sacrament of penance.³⁴ The priest who has lost the clerical status *continues to be* an ordained faithful, but as his new status is completely exceptional, he cannot exercise in the Church and at the service of souls the functions connected to the power of Orders.³⁵

3. The fact that the juridical status of clerics does not depend upon the actual exercise of functions received through the sacrament of Orders strengthens the connection between the ontological identity of sacred ministers and the stability of the juridical status of clerics. In the life of clerics many things can happen and there are occasions in which he does not have a juridical obligation to fulfill episcopal, presbyteral or diaconal functions³⁶, or times that he cannot exercise them. Nevertheless he will be always a cleric and his life will be always regulated by these norms. It is not even necessary to think only of extraordinary situations, such as the cleric that has been deprived of his office or has been punished with suspension. There are very ordinary situations that justify that a cleric has no ecclesiastical office, such as age, health, etc. An old priest, a retired bishop, a sick deacon will always be a priest, a bishop and a deacon, and therefore will continue to have the rights proper to their status, and will continue to avoid what is incompatible to their status. Of course it is true that not all canonical norms will be applied to them because some are fitting only for clerics with an office.³⁷

From what has been said it can be concluded that the personal juridical status of clerics is with them always, day and night and wherever they are. Therefore it is not legitimate to consider that a cleric exercises his rights and fulfills the canonical norms only during the time in which he performs some ministry. This would reflect a functionalistic view of his identity and ministry.³⁸

³⁴ See c.976.

³⁵ The juridical situation of the cleric who has attempted marriage and the situation of those clerics who have obtained the dispensation from celibacy are different. It has been recently recalled that a priest who has attempted marriage, except in danger of death “is not permitted in any way to exercise holy orders and especially not to celebrate the Eucharist”. Those priests who have obtained the dispensation of celibacy “are prohibited from exercising power of orders”. Their situation justifies that, except for the sacrament of penance in danger of death, no Christian faithful can legitimately ask them to exercise some ministry. Cf. P. Council for the Interpretation of Legislative Texts, *Declaration on Married Priests and Sacramental Ministry* (19.V.1997), nn.1 & 3, in *Origins*, 27 (1997), p.64.

³⁶ The juridical obligation to exercise the ministry is connected to an ecclesiastical office or to a legal norm. See J.I. Arrieta, *Governance structures within the Catholic Church*, *cit.*, pp.14-15.

³⁷ Cf. cc.274 & 281, §1.

³⁸ The Congregation for the Clergy has rightly given warning about the danger coming from a similar view: “Pastoral charity faces the danger, today especially, of being emptied of its meaning through so-called *functionalism*. It is not rare, in fact, to perceive, even in some priests, the influence of an erroneous mentality that reduces the ministerial priesthood to strictly functional aspects. To merely play

4. As in the 1917 Code, the model that has been taken into account in the drafting of the new Code is not the Bishop or the deacon, but the presbyter. This is in a certain sense logical because the permanent deacon (especially the married one) is still a novelty in Latin legislation. But there is also a deeper reason: the theological doctrine on the diaconate has not reached as advanced a development as the doctrine on the presbyterate, and therefore it is reasonable that in the new legislation there is not even a chapter or a title dedicated to deacons. The principal norm is a canon in which they are exempted from the obligations that are incompatible with their status. It was not the right time to prepare a specific set of norms for the diaconate.³⁹

5. As in other parts of the new code, the norms on rights and duties of clerics leave room for particular Law of Bishops conferences and of dioceses.⁴⁰ It was typical in the old code to regulate very concrete aspects, such as activities forbidden to clerics or the places where a cleric was forbidden to go.⁴¹ The new norms instead very often establish general principles, which are made more specific through particular norms. The particular legislator in fact should be better able to establish the modalities for fulfilling a duty or for exercising a right, by adapting them to the specific requirements of the diocese or of the country where the cleric serves with his ministry. Cultural, social and pastoral factors can affect aspects of the ministry. Clear examples can be found in the regulations given by Bishops Conferences concerning clerical attire, because different legitimate traditions and climatological factors justify various ways of dressing in different countries.⁴² Other differences can be found in the programs for ongoing formation because the needs also vary.⁴³

the role of the priest, carrying out a few services and ensuring completion of various tasks would make up the entire priestly existence. Such a reductive conception of the identity of the ministry of the priest risks pushing their lives towards an emptiness, an emptiness which often comes to be filled by lifestyles not consonant with their very ministry” (S.C. for the Clergy, *Directory on the ministry and life of priests*, 31.I.1994, n.44, Sherbrooke 1994, pp.44-45).

³⁹ Cf. c.288. The Directory for the ministry and life of permanent deacons has treated the question, underlying the faculty of the Bishop to apply these norms to permanent deacons. See S.C. for the Clergy, *Directory for the ministry and life of permanent deacons*, cit., n.12, and p.192. Cf. L. Navarro, *L'identità e la funzione dei diaconi permanenti. Nota alle Norme fondamentali per la formazione dei diaconi permanenti e al Direttorio per il ministero e la vita dei diaconi permanenti*, in *Ius Ecclesiae*, 10 (1998), pp.594-597.

⁴⁰ Among the canons that specifically refer to particular law, cf. cc.275 , 276, §2, 2°; 276, §2, 2°; 277, §3; 279, §2; 283; 284; 285 and 288. For the norms of the Episcopal Conferences see J.T. Martín de Agar, *Legislazione delle conferenze episcopali complementare al CIC*, Milano 1990.

⁴¹ Cf. cc.133, 138, 139, 140 of CIC 1917, where hunting, carrying weapons, to visit saloons, to practice medicine or surgery, to retain or visit certain women, etc. are forbidden. On these aspects in the former Code, cf. F. Falchi, *I chierici nel processo di formazione del codice pio-benedettino*, Padova 1987.

⁴²These differences have certain limits, as has been indicated by the S.C. for the Clergy: “The attire,

Because the Ordinary is familiar with the cleric's concrete circumstances, the Code of Canon Law gives to the proper Ordinary of the cleric the possibility to grant licenses to permit clerics to perform specific tasks from which they are normally forbidden (for instance commerce or business, the administration of goods belonging to lay people, the active participation in political parties or in the guidance of labor unions, etc. Cfr. cc. 285, 286, 287).

6. Classification of the juridical content of the clerical status

The content of the juridical status of clerics has a great variety: there are rights, duties, prohibitions, exhortations, etc. Its classification could be done according to different criteria, such as the subject of the norm (there are some canons for permanent deacons, e.g. c.288 (for married deacons, also c.281, §3), other canons are for priests (e.g., c.277), or the immediate basis of the norm (the sacrament of Orders or the incardination⁴⁴), as well as others. None of these

when it is not the cassock, must be different from the manner in which the laity dress, and conform to the dignity and sacredness of his ministry. The style and color should be established by the Episcopal Conference, always in agreement with the dispositions of the Universal Law. Because of their incoherence with the spirit of this discipline, contrary practices cannot be considered legitimate customs and should be removed by the competent authority" (S.C. for the Clergy, *Directory on the ministry and life of priests, cit.*, n.66, pp.70-71. About the value to attribute to these indications see Pont. Council for the Interpretation of Legislative Texts, *Clarifications Concerning the Value binding of Art. 66 of the Directory on the Ministry and Life of Priests* (22.X.1994), in *Sacrum Ministerium*, 1 (1995), pp.266-267. Some examples of these differences are: the Episcopal Conference of Australia, after noting that clerics need to be dressed in a way that identifies them as cleric, adds that "owing to different circumstances and climate in various areas of Australia, further determination of the matter of clerical dress is to be made by the diocesan bishop" (in E. Caparros, M. Thriault and J. Thorn (ed.), *Code of Canon Law Annotated*, Montreal 1993, p.1309). In the Philippines a variety based also on local traditions has been admitted: "The proper clerical attires approved by the Catholic Bishop's Conference of the Philippines are as follows: 1. Cassock or religious habit; 2. Clergyman's suit; 3. Trousers of dark one-tone color or white, and shirt of one-tone color, with clerical collar. The shirt may also be either *polo-barong* or *barong-Tagalog*, with a distinctive cross. The *polo-barong* or *barong-Tagalog* with a distinctive cross is clearly distinguished as a clerical attire and is accepted by the people as such, and sanctioned by the usage of the clerics" (*ibid.*, p. 1396). Finally in Malta, the Conference considers also the different seasons: "Quando non partecipa a celebrazioni liturgiche, in pubblico il sacerdote deve portare l'abito talare o il clergyman. Il clergyman è un vestito di colore nero o grigio scuro con camicia dello stesso colore e con il colletto clericale. In estate non è d'obbligo la giacca" (in J.T. Martín de Agar, *Legislazione delle conferenze episcopali complementare al CIC, cit.*, p.406).

⁴³ Cf. for instance United States National Conference of Catholic Bishops, *Program of Priestly Formation* (16.XII.1992), nn.549-572, Bishop's Conference of England and Wales, *The Charter for Priestly Formation* (1991), nn.138-141; Bishop's Conference of Scotland, *Norms for Priestly Formation in Scotland* (26.V.1992), Chapter 9, pp.58-64.

⁴⁴ Among the norms which can be more related to incardination, see cc.274, §1; 281 and 283. In these cases, through incardination are defined the subjects of the different juridical relationships. On this topic

criteria will be so rigid that a concrete norm could not be contemplated from a different perspective.

Nevertheless it can be useful to distinguish three kind of norms in the juridical status of clerics, according to what a cleric is to be and how he is to act appropriately in that role: a) the first group deals with the exercise of the ministry as a fundamental aspect of the cleric's mission; b) the second describes their life-style as intimately related to their identity; c) the third concerns the norms establishing areas of freedom and autonomy for the cleric.

a) The norms dealing with ministry are those in which emerges the relation of dependence between cleric and his Superior. Among these norms there are: the obligations of ministerial obedience of the cleric (cc.273, 274), the obligation of residence (c.283, §1) and the dispositions dealing with goods received because of the ministry (c.282, §2). These norms try to strengthen the link between the ministry of priests and deacons and their dependence on the proper Ordinary.⁴⁵

b) The cleric's life-style corresponds to his configuration with Christ, which is the main characteristic of the cleric. The indication of activities, which are alien to or are not fitting to the clerical state, are evidenced in this life-style (cfr. cc. 285; 286; 287, §2; 289, §1). The aim, however, is not only to avoid what can be harmful to the nature of the cleric. Some norms try to help the cleric to have in his daily life the essential elements of the typical virtues for his configuration with Christ, such as chastity, detachment from earthly goods, love for the poor and charity (cc. 277, 282 and 287). The cleric is asked to serve all the faithful, to be an instrument of unity between all; in one word he is asked to be a man of God. Thus he is reminded to strive for holiness. This same obligation is common to the other faithful, but to the cleric this holiness is especially required in virtue of another title, his ordination.⁴⁶ In this light all the recommendations dealing with the cleric's spiritual life make sense (c.276).⁴⁷

see J.I. Arrieta, *Governance structures within the Catholic Church*, cit., p.14.

⁴⁵ Also in this prospective, it is possible to see the authorizations and permissions that the cleric needs to obtain from the proper Ordinary to be able to fulfill certain activities or to be exonerated from some obligations. Cf. cc. 283, §1; 285, §4; 286, 287 and 289.

⁴⁶ "With the same clarity the Conciliar text also speaks of a *specific* vocation to holiness, or more precisely of a vocation based on the sacrament of holy orders—as a sacrament proper and specific of the priest—and thus involving a new consecration to God through ordination" (John Paul II, *Apost. Exhort. Pastores dabo vobis*, 25.III.1992, n.20. For the canonical dimensions of this document, see T. Rincón Pérez, *Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. Pastores dabo vobis*, in *Ius Canonicum*, 33 (1993), pp.315-378.

⁴⁷ The holiness of the sacred minister will have some effects in his ministry. The following words of the Council constitute a true call for reflection: "While it is possible for God's grace to carry out the work of salvation through unworthy ministers, yet God ordinarily prefers to show his wonders through those men

c) Concerning areas of autonomy: being a cleric, exercising pastoral ministry, and having a specific life-style, are realities that do not cancel all the areas of freedom and autonomy of the faithful. Not everything in the life of a cleric is placed under hierarchical dependence.

A sign of this can be found in c.278, in which the right to associate is established.⁴⁸ The legislator, having already established this right as proper to all faithful in c.215⁴⁹, has included it in the chapter where rights and obligations of clerics are treated, because in other moments of history there were doubts about the existence of such a right for a cleric. It was thought previously that to become a cleric meant to waive one's proper autonomy. Can. 278 constitutes a paradigm of the autonomy of secular clergy: they are free to have initiatives and to act in relation to their own spirituality, to their doctrinal formation, etc. while there are only two limits that are established: a) that the social activities should be in harmony with the clerical state, and b) that to be a member of an association cannot be an obstacle for the fulfillment of the ministry.⁵⁰ A cleric who respects these limits is completely free to associate, whether in the Church or in civil society.

Other areas of autonomy of the cleric have not been explicitly formulated in the Code; nevertheless there is no doubt of their existence. They correspond to the areas of freedom of the faithful.⁵¹ Among these are included the right to have one's own spirituality, the right to meet,

who are more submissive to the impulse and guidance of the Holy Spirit and who, because of their intimate union with Christ and their holiness of life, are able to say with St. Paul: *It is no longer I who live, but Christ who lives in me* (Gal. 2:20)" (Vatican Council II, Decr. *Presbyterorum Ordinis*, n.12, p. 886. Blessed Josemaría Escrivá, after quoting this Conciliar text, added: "I do not believe a priest can carry out an effective ministry unless he is a man of prayer" (Blessed Josemaría Escrivá, *Conversations with Monsignor Josemaría Escrivá*, Manila 1981, n.3, p.20. See also A. Del Portillo, *On priesthood*, cit., pp.27-28.

⁴⁸Concerning associations of clerics cf. R. Rodríguez Ocaña, *Las asociaciones de clérigos en la Iglesia*, Pamplona 1989. During the Council some Fathers desired a strong dependence of these associations on the Bishop. The response of the Commission was very clear: "Non potest negari Presbyteris id quod laicis, attenta dignitate naturae humanae, Concilium declaravit congruum, utpote iuri naturali consentaneum". Vatican Council II, *Schema Decreti De Ministerio et vita Presbyterorum*, settembre 1965, in *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, Vol. IV, pars VII, p.168.

⁴⁹ See L. Navarro, *Diritto di associazione ed associazioni di fedeli*, Milano 1991.

⁵⁰ Can.278, §3 reminds us that clerics have to refrain from establishing or joining associations not compatible with the clerical state or that can hinder the diligent fulfillment of the office entrusted to them. Also forbidden is any clerical association whose aim is to be a clerical trade union. This would reflect a wrong view of the bishop-cleric relationship. See. S.C. for the Clergy, Decl. *Quidam episcopi* (8.III.1982), in *Canon Law Digest*, Vol. 10, pp.15-18. See also J. Herranz, *Studi sulla nuova legislazione canonica*, Milano 1990, pp.277-293.

⁵¹ See J. Hervada, *Elementos de Derecho Constitucional Canónico*, cit., p.126-139.

and freedom in temporal affairs. From the relationship between the juridical status of clerics and the status of the faithful, it can be inferred that the cleric, generally speaking, has the same freedom and autonomy as other faithful. However there are some differences: the ways in which this freedom and autonomy appear need to be in harmony with the identity of the cleric and need to have as their main limits the demands of being a cleric.⁵²

In conclusion, it can be said that the juridical status of clerics, more than reflecting the functions that the cleric is called to perform in the Church, is the juridical translation of the sacramental identity of clerics. This identity determines not only the mission, and therefore the functions proper to clerics, but also the way of presenting themselves in the Christian community and in civil society. This lifestyle also allows clerics to properly fulfill their ministry. The exercise of his rights, and the fulfillment of his duties, having respect for prohibitions, and following the exhortations, all these are elements which will contribute to make the cleric always and everywhere what he already is in a sacramental way: ministers of Christ. The faithful have a right to find all these elements in their clerics.⁵³

⁵² With regards to the right to have one's own spirituality (c.214), "the right of every diocesan priest to plan his own spiritual life must be respected with great care, obviously in keeping with the characteristics of his own vocation and the obligations that derive from it" (S.C. for the Clergy, *Directory on the ministry and life of priests*, cit., n.88, p.90.

⁵³ Even if it is not formulated in the Code of Canon Law, there are not only juridical relationships between a cleric and his Ordinary or his Superior, but also between the cleric and the entire People of God and especially the Christian community he has to serve. This community has rights and duties with regard to the priest. This reality is explicitly stated by the Roman Pontiff in reference to ongoing formation: "Thus, permanent formation is a requirement of the priest's own faithfulness to his ministry, to his very being. It is love for Jesus Christ and fidelity to oneself. But it is also an act of love for the People of God, at whose service the priest is placed. Indeed, an act of true and proper justice: The priest owes it to God's people, whose fundamental *right* to receive the word of God, the sacraments and the service of charity, the original and irreplaceable content of the priest's own pastoral ministry, he is called to acknowledge and foster. Ongoing formation is necessary to ensure that the priest can properly respond to this right of the People of God" (John Paul II, Apost. Exhort. *Pastores dabo vobis*, n.70, cit. p.133. On the ongoing formation of clerics, see H. Guanzon, *The development and the juridical aspects of priestly permanent formation*, Roma 1995.