

Excursus A : the *ius commissionis* and the diarchy

In Father Colin's time missions were administered under a juridical system that later was called the '*ius commissionis*', but that in fact had been in vigour since, in 1622, Gregorius XV founded the Sacred Congregation *De Propaganda Fide*, often referred to as 'Propaganda'.¹ Before that time missionary work in the newly discovered regions of the world had been the responsibility of the discoverers, in fact the kings of Portugal and Spain. Under the so-called '*ius patronatus*', these kings were responsible for the propagation of the faith and the organization of the Church in their territories. On nomination of the kings, Spanish and Portuguese residential bishops were appointed everywhere.

As far as religious orders were concerned, since medieval times they had always felt called to preach the Gospel wherever opportunities arose and where their zeal and initiative led them. Abbots and superiors general could send missionaries wherever no dioceses governed by Bishops had yet been established. They had full ecclesiastical powers over those territories and could delegate their powers to the religious whom they put in charge of the missions, as is nicely illustrated by the following quote from the Bulla *Alias felicitis recordationis* of Pope Leo X in 1521:

Superiors and their delegates can announce the word of God in the territories that have been assigned to them. They can preach to all people, hear the confessions of the faithful, administer the sacraments as is the custom in parishes, dispense from impediments, impose ecclesiastical punishments, and absolve from them, commute vows, administer confirmation and minor orders (where no bishop is available), give blessings that are reserved for bishops, buy, change and sell buildings, build, bless and reconcile churches and regulate divine worship.²

In the constitution *Licet debitum* of 1549, Paul III gave practically unlimited powers of this nature to the superior general of the Society of Jesus.³ The religious superiors at the head of such undertakings, e.g. St. Francis Xavier, were at the same time the ecclesiastical superiors of their missions.

With the erection of Propaganda the Holy See wanted to provide for territories outside the sphere of influence of Portugal and Spain. It also aimed at putting some order in the chaotic situations and the abuses following from the ancient arrangements. From that time on, precisely defined territories were entrusted to religious orders who were then invited to propose a member of the order to be appointed by the Holy See as the ecclesiastical superior. The way Bishop Pompallier was appointed was therefore an anomaly.

Alongside of the ecclesiastical superior stood the religious superior who had always been appointed by the superior general and who continued to be responsible for religious discipline. That Fr. Colin appointed Bishop Pompallier to be the religious superior, was equally anomalous, even more so because Pompallier was not a professed Marist himself.

¹ Bartoccetti, *Ius Constitutionale Missionum*, pp. 40 – 41, nrs 77 & 78.

² Poterant Superiores eorumque delegati in territoriis sibi destinatis verbum Dei proponere, omnibus praedicare, omnium fidelium confessiones audire, sacramenta paroecialia ministrare, ab impedimentis dispensare, censuras infligere, et ab iisdem absolvere, vota commutare, confirmationem administrare, et ordines minores conferre (in defectu Episcopis), benedictiones Episcopis reservatas dare, domos acquirere, mutare, alienare, ecclesias aedificare, benedicere, reconciliare, divinum cultum moderari. S. Masarei, *De Missionum Institutione ac de Relationibus inter Superiores Missionum ac Superiores Religiosos*, p. 54.

³ Masarei, *op. cit.* p. 55.

In a letter of 1 October 1836, Cardinal Franson, Prefect of the Sacred Congregation *de Propaganda Fide*, explained to Bishop Pompallier, that he was free to recruit non-Marists for the mission and confer offices upon them, provided “prefects and pro-vicars of the mission be chosen from among the members of the Society of Mary”.⁴

These ecclesiastical superiors acted not as residential bishops, but on behalf of, and under the supervision of, the ‘Apostolic See’, and hence were given the title of *vicar apostolic* if they were bishops, or *apostolic prefect*, if they were not. Missionaries, in the beginning, especially those trained in the Roman seminaries of Propaganda, and sent out under the new system were called *apostolic missionaries*. In line with the perspectives of the contra-reformation, this administrative system led to a gradual centralization of the church and to a more uniform church governance.⁵

The expectation was that under this structure of the so-called *diarchy*, the two superiors, belonging both to the same institute, would work harmoniously together, each within the sphere of his own responsibility. Often this was the case, but if conflicts did arise and were referred to the Holy See, Rome would usually back its own vicars.

After the restoration of the Jesuit order, in 1814, the policy was that Jesuit missionaries would, under the authority of their own superiors, be helpers of the bishops, just as they were in the home countries. Father Roothaan, superior general from 1828, who gave a new impulse to the Jesuit missionary endeavours everywhere, appointed his own religious superiors. He did not want Jesuits to be promoted to ecclesiastical superiors, and vigorously resisted attempts by Propaganda to appoint Jesuits in the many episcopal vacancies of the time. In the 1830’s the Jesuits attracted many candidates in France and the Jesuit Province of Lyon was established in 1836 under the provincial Fr. Maillard. In 1845, under heavy pressure of Pope Gregory XVI, Father Roothaan relented. In order to win his co-operation Propaganda proposed that he himself appoint the vicars apostolic to be at the same time religious superiors, which he did. This new arrangement lasted until 1880, when the double system of parallel governance was restored for the Jesuits.⁶

Father Libermann, reorganizing the missions of the Congregation of the Holy Spirit, initially thought of avoiding the complications of the so-called diarchical system by uniting in the Spiritan missions the two jurisdictions in the one person of the ecclesiastical superior, but in 1846 he changed his mind and insisted that the two jurisdictions be vested in two different persons. This remained also the general policy of most missionary institutes in the XIXth and XXth century, and of the Holy See itself.⁷

In 1929 Propaganda issued an *Instructio* by which the existing system was formally spelt out under the name of *Ius commissionis*. As had been mostly the case in the *Codex Iuris Canonici* of 1917, the *Instructio* did not represent new legislation, but a codification of existing law and jurisprudence.⁸

In the Society of Mary, continuing the policy of Fr. Colin, the vicars apostolic continued to be at the same time the religious superiors. When in 1896 the Province of Oceania was established the vicars apostolic were considered to be the vice-provincials in their respective vicariates. Only in 1952 did Superior General Father Alcime Cyr appoint in each of the apostolic vicariates religious superiors, distinct from the vicars apostolic.⁹

⁴ Wiltgen, op. cit., p. 130

⁵ Prudhomme, *Stratégie missionnaire du Saint-Siège sous Léon XIII*, p. 30, p. 296, p. 317, p. 322. The delimitation of the two powers was referred to and refined, notably by Benedict XIV in 1744 and by Leo XIII in 1881. Cf. Prudhomme, p. 330.

⁶ Otto, *Die Gründung der neuen Jesuitenmissionen*, p. 516f.

⁷ Koren, *The Spiritans*, p. 177.

⁸ *Instructio* of the S. C. *De Propaganda Fide*, 8 December 1929. AAS, 1930, pp. 111 – 115.

⁹ *Lettre du T.R.P. A.M. Cyr, s.g. de la Société de Marie à tous les religieux de la même Société*, N. 121 – VI, 3, 31, May 1952. The new arrangement went into effect on the 1 January 1953.