

# THE CASE OF A DEMONSTRATION AGAINST THE BISHOP

## I — THE CASE

With the untimely demise of Msgr. Jacobo G. Soriano, early this year, a vacancy was produced in the parish of Tarlac, Tarlac. The appointment of a successor was in order. On March 9, 1970, the Bishop convened his Senate of Priests for the purpose and the majority vote fell on a certain priest. The Bishop, however, by-passed this candidate and appointed a different one. This action of the Bishop irked a number of priests — 13 in all — who organized a demonstration, on April 17, with cursillistas, holynamers, adorers and students. The Mayor of Tarlac granted his permission. Two organizing priests were seen leading the demonstration that paraded the streets of Tarlac with placards and ended up in the patio of the cathedral parish, apparently against the orders of the parish priest. There were placards with dirty words and personal insults to the Bishop. The demonstrators distributed a manifesto entitled "That Tarlac May Know" and signed "We, The Church." The manifesto follows a well-known pattern. It is all against the Bishop, whom they accuse of sheer lack of leadership — dedicated, responsible moral and social leadership — making him responsible, among other things, "for every drop of blood spilt, for every human life lost in this raging social class struggle" in the crime-ridden province of Tarlac. The manifesto also accuses the Bishop of "summary exercise of feudal power and authority... not according to the spirit and attitude of Vatican II... based and decided solely on the archaic Code of Canons," and ends asking the Bishop to resign immediately, "for the sake of Tarlac, the Faith and the Nation we all love, and in the name of charity." Of the original 13 signatories, 8 have backed out.

## II — QUERIES

1. — *Has the parish priest of Tarlac the right to deny the demonstrators the use of the patio adjacent to the cathedral church?*

2. — *Assuming that the demonstration was under the active leadership of priests, can the Bishop — after ascertaining who the priests were — punish them in any way? If so, what could be the heaviest punishment?*

3. — *Is the decision of the Senate of Priests, in matters of diocesan administration, so binding that the Bishop must perforce abide by it?*

4. — *Could this group of demonstrators validly ask the Bishop to resign?*

5. — *The manifesto is signed "We, The Church." If they are The Church, what are those of the clergy and laity who remain more or less loyal to the Bishop?*

III — IN POINT OF LAW<sup>1</sup>

1. — Vatican II put back into circulation an old venerable word: *presbyterium*. "Presbyters, provident cooperators . . . of the Episcopal Order . . . constitute one presbyterium with their Bishops"<sup>2</sup> "Evidently all the priests, diocesan and religious, partake of and exercise with the Bishop the one priesthood of Christ; hence they are the provident cooperators of the Episcopal Order. But in the care of souls the diocesan priests hold the principal role . . . for this reason they constitute one presbyterium and one family, whose father is the Bishop."<sup>3</sup>

2. — *Bishop-priests relations*. "The relations of the Bishop and his diocesan priests must be based principally on supernatural charity, in such a way that the union of the wills of the priests with the will of

<sup>1</sup> In this section an attempt is made to bring out the "spirit and the attitude" — and the teachings — of Vatican II and the Code of canon law on the case under study. Translation from the original Latin and italics are mine.

<sup>2</sup> *Lumen Gentium*, N. 28.

<sup>3</sup> *Christus Dominus*, N. 28.

the Bishop may render more fruitful their pastoral work. Therefore, in order that the service of the souls may be more effectively promoted, let the Bishop convene his priests, even in common, for a dialogue on pastoral affairs, not only as the case may arise, but also on stated occasions, as far as possible."<sup>4</sup> "Since today the whole mankind more and more coalesces into one unity — civic, economic, social — a fortiori is it necessary that priests avoid every risk of dispersion, working together with and under the leadership of the Bishop, in order that the whole mankind may be drawn into the unity of God's family."<sup>5</sup> Bishops "must always embrace their priests with special love, regarding them as sons and friends; and for that reason they should ever be willing to hear them and try to promote the pastoral work of the whole diocese in close association with them."<sup>6</sup> "Since the Church must come to a dialogue with the human society, wherein she lives, it is incumbent first of all on the Bishops to approach them and engage in dialogue with them. But these saving dialogues must be marked with a note of sincerity in words, together with meekness and humility, in order that truth be always joined with charity, understanding with love, because they are meant to foster friendship and should effect union of minds."<sup>7</sup>

Therefore, the duty of Bishops to listen to their priests and laity is mandatory by law, and high-handedness is condemned.

3. — The creation of the *Senate of Priests* is mandatory. "In relation to the Senate of Priests: There must be in each diocese, along the mode and form outlined by the Bishop, a *Consilium Presbyterale*, that is, an assembly or senate of priests, representing the presbyterium, who may effectively help the Bishop, with their advice, in the government of the diocese. The Bishop ought to hear, consult and dialogue with his priests in this assembly about the needs of the pastoral ministry and the best interests of the diocese."<sup>8</sup> This notion of the Senate of Priests checks in with the definition of a diocese given in *Christus Dominus*, N. 11: "A diocese is a portion of the People of God, entrusted to a Bishop

<sup>4</sup> *Ibid.*, N. 28.

<sup>5</sup> *Lumen Gentium*, N. 28.

<sup>6</sup> *Christus Dominus*, N. 16.

<sup>7</sup> *Christus Dominus*, N. 13.

<sup>8</sup> *Ecclesiae Sanctae* N. 15 § 1.

to be shepherded *with the cooperation of the presbyters*, in such a way that, united to its Pastor and by him gathered through the Gospel and the Eucharist in the Holy Spirit, it will constitute a particular Church, in which verily exists and works the One, Holy, Catholic and Apostolic Church of Christ."

4. — *The consultative vote.* "The Consilium Presbyterale enjoys only consultative vote."<sup>9</sup> The meaning and force of a consultative vote is clearly defined in *canon 105* of the Code: "Whenever the law states that the superior needs the *consent*, or the *consultation*, of some persons, the following rules obtain: if consent is required, the superior acts *invalidly* against the vote of those persons; if only consultation is demanded — by words like *de consilio consultorum, audito capitulo, parrocho etc.* — it is sufficient for the validity of the action that the superior consults these persons. Though he is not bound to follow their advice, he should nevertheless have great regard for the unanimous vote where several persons had to be consulted, and he should not without a very good reason go against their counsel."

I am of the opinion that, after Vatican II, the Senate of Priests is a *legal* institution whose rights and obligations in the government of the diocese are mandatory by law. Now it goes without saying that *the appointment of a parish priest* is one of the main functions of the government of the diocese. Hence, in my opinion, every Bishop has the strict duty in law to consult his Senate whenever a new Pastor is to be appointed. And the rule laid down in *canon 105* obtains here.

5. — But this duty of the Bishop to consult his Senate and follow its advice must be harmonized with the *freedom of choice* that the Code and Vatican II accord him in the appointment of parish priests. "The right to nominate and institute pastors belongs to the Ordinary of the place . . ."<sup>10</sup>

And, if in this same canon an exception is made in favor of the privilege of election, presentation etc., Vatican II is emphatic in abolishing them. "The good of the souls requires that the Bishop enjoy the proper freedom in conferring offices and benefices . . . fittingly and

<sup>9</sup> *Ecclesiae Sanctae* N. 15 § 3.

<sup>10</sup> *Canon 455* § 1.

equitably, to the best qualified clerics. . . . The customs and the rights to nominate, elect or present presbyters for parochial offices or benefices are hereby abrogated and revoked."<sup>11</sup> "Since the good of the souls is the sole reason for existence of the parochial office, in order that the Bishop may more freely and fittingly proceed to the provision of the parishes, let the right of presentation, nomination and reservation be suppressed."<sup>12</sup> "It is he (the Bishop) who must enjoy the necessary freedom in the provision of offices and benefices, so that he may more fittingly and equitably distribute the sacred ministries among his priests; therefore the rights and privileges that may impinge on this freedom are hereby suppressed."<sup>13</sup>

6. — How then are we to *harmonize* the Bishop's freedom of choice and his duty to abide by the Senate's decision? Here I am forced to review what the Code and Canonists say in regards to the appointment of and the qualifications required in a candidate for the parochial job.

- (a) The appointment implies *three steps*: *designation* of the person: by election, presentation, *concursum* etc.; the *conferral* of the title and parochial powers, called properly *institution*,; and the *induction* into office (*toma posesión*). Admittedly the most important and essential element is the institution, by a decree, which must needs be reserved personally to the Bishop; the other steps may be done by others empowered to do so by law.
- (b) Before issuing the decree of appointment, the Bishop must form a *judgement on the qualifications* of a given candidate, in order to screen out the best of candidates: "When trying to form a judgement on the worthiness of a priest to rule a certain parish, let the Bishop take into account, not only his learning, but also his piety, his apostolic zeal and *other gifts and qualities* which are required for the proper care of souls."<sup>14</sup> And *canon 459* has this more or less to say: the Bishop is bound in conscience to give the vacant parish to the priest

<sup>11</sup> *Ecclesiae Sanctae*, N. 18 § 1.

<sup>12</sup> *Christus Dominus*, N. 31.

<sup>13</sup> *Ibid.*, N. 28.

<sup>14</sup> *Ibid.*, N. 31.

whom he judges best qualified, without favoritism; in forming this judgement there must be considered, not only learning, but also all the other qualities required for the proper administration of the parish. Therefore, the Bishop must look up the *curriculum vitae* of the candidate, from the day he entered the seminary up to the present, as recorded in the file of the diocesan archive. More than that, the Bishop may think it prudent to gather further information, even secret, from outside sources; he must take into account the result of the examinations required by canon 130 § 2, and if needs be submit the candidate, to a final examination.

7. — *The question of loyalty to the Bishop* is, to my mind, one of the indispensable virtues of a priest candidate, especially for the cathedral parish. This loyalty is evidenced by the way the candidate has lived his promise of *reverence and obedience* made the day of ordination, and may be well implied in "other gifts and qualities" of *Christus Dominus*. "All clerics, but especially the priests, are under the special obligation to obey and respect their respective Ordinary."<sup>15</sup> Who can fail to see the importance of loyalty in the gentleman at the cathedral parish, so closed to the Bishop's residence?

8. — From these considerations the Bishop may well arrive at the conclusion that he has *powerful reasons to by-pass* the candidate presented by the Senate; and if he does, he is using his full right in law and does no injury to the rights of the Senate. No hard feelings please. In all fairness, the Bishop is in a better position than the Senate to pass judgement on the worthiness of a future parish priest.

9. — *The patio of the church*. Church property is *public* property, divided into *sacred* property<sup>16</sup> — churches, oratories, cemeteries — and *non-sacred* property. The patio of the church is non-sacred public property. Normally the patio is the way of access to the church. To enter the parish church people need no permission.<sup>17</sup>

<sup>15</sup> Canon 127.

<sup>16</sup> Cfr. canon 1154.

<sup>17</sup> Cfr. canon 1161.

"Sacred places are exempt from the jurisdiction of civil authority;"<sup>18</sup> hence non-sacred places are not exempted. The Bishop is the over-all administrator of the temporal goods of the diocese and must organize the administration according to law.<sup>19</sup> The parish priest, as *beneficiarius*, is the administrator of the temporal goods of his benefice;<sup>20</sup> but the patio is not part of the pastor's benefice: it is unproductive. The pastor must simply take care of the observance of public laws on hygiene, sanitation and beautification of the patio, and see to it that it is always ready for people to come to church, as individuals or in groups (pilgrimages — a gasoline station, a restaurant, a book shop etc. — these would be subject to the income tax law, and the civil government would be justified to slap a real estate tax on the whole area of the patio. Among the *funcions reserved* in canon 462 to the parish priest there is nothing to conclude for the right of the pastor to forbid the entrance of people into the patio. Nor do I find any other law granting such right.

10. — *Penalties*. "In penalties the milder interpretation is to be applied;"<sup>21</sup> a milder interpretation is one that tends to favor the alleged culprit. "Clerics conspiring against the authority of . . . their own Ordinary, and against his lawful orders, are to be punished with censures and deprived of their dignities, offices and benefices;"<sup>22</sup> to protest against the *lack of leadership* is not precisely to conspire against the authority of the superior. "If anyone, not precisely with actions, but with words, writings or in any other way, would cause a moral wrong to somebody or hurt his good name, not only can he be forced . . . to give due satisfaction and to repair the harm, but moreover he must be punished with penalties and penances, not excluding, where clerics are involved, and the case warrant it, suspension or removal from office and benefice."<sup>23</sup> This canon must be interpreted in the context of a demonstration with placards and the insults to the person must be clearly stated *ad pedem litterae*. Canon 2337 can hardly be considered here because of the clause "*ausus fuerit*."

<sup>18</sup> Canon 1160.

<sup>19</sup> Cfr. canons 1519, 1532, 1538 to 1539, 1541 to 1542.

<sup>20</sup> Cfr. canon 1476 § 1.

<sup>21</sup> Canon 2219 § 1.

<sup>22</sup> Canon 2331 § 2.

<sup>23</sup> Canon 2355.

*The mind of the Church*, before and after Vatican II, on the application of penal laws, is clear: a) we have *can. 2214 § 2*, repeating the admonition of the Council of Trent, from which it is evident that the Church does not favor the hasty and rash use of extreme penalties and censures, but reminds the Bishops to consider their subjects as sons and brothers, and to try as far as possible, by patience and kindness, to influence them to strive after virtue and to desist from vice. b) It is a *well known fact* that Vatican II has purposely avoided any mention of penalties.

*Yet penalties there must be*, as Pope Paul has declared on the occasion of the inauguration of the fiscal year of the Roman Rota; and we still have penal canons and laws which are still valid, above all canon 2222 § 1: "Though the law may not have any sanction attached to it, the lawful ecclesiastical superior can punish the transgression of the law with some just punishment, if perhaps scandal was given or the special gravity of the transgression calls for it. Otherwise the offender cannot be punished except he has been admonished and been threatened with the penalty of *latae* or *forendae sententiae* in case of transgression and nevertheless violated it." The *procedural laws* on criminal cases and on the removal of pastors are still valid and very complicated.<sup>24</sup>

11. — *The resignation of the Bishop*. "The episcopal see becomes vacant... by renunciation accepted by the Roman Pontiff."<sup>25</sup> "To be valid renunciation must be presented to the superior who can accept it, as a general rule."<sup>26</sup> "Superiors should not accept renunciation without a just and proportionate cause."<sup>27</sup> "Renunciation through grave unjust fear... is invalid *ipso facto*."<sup>28</sup> "Diocesan Bishops, if because of their advanced age or any other grave cause, become less competent to dispatch their duties, are earnestly requested to tender their resignation, either on their own initiative or when requested by competent authority."<sup>29</sup>

<sup>24</sup> Cfr. Canons 1933-1959; 2157-2161.

<sup>25</sup> Canon 130 § 1.

<sup>26</sup> Canon 187 § 1.

<sup>27</sup> Canon 189 § 1.

<sup>28</sup> Canon 185.

<sup>29</sup> *Christus Dominus*. N. 21.



12. — *WE, THE CHURCH*. Such has been the battle cry of all the self-appointed leaders of secessionist movements in the history of the Church, from Martin Luther and Calvin down to Aglipay and promoters of National Catholic Churches: in Cuba, in continental China and beyond the Iron Curtain. They protested and gained momentum through mass-psychology. Their common characteristic consists in the spirit or mentality of revolt against constituted authority and standing institutions. But, especially after Vatican II has defined the collegiality of Bishops, there cannot be a church — much less *THE CHURCH* — without the local Bishop and the loyalty of those who are in hierarchical communion with him. Suffice to recall the definition of diocese given in *Christus Dominus*, N, 11<sup>30</sup>

13. — *Demonstration and remonstrance*. “A demonstration is a public exhibition of sympathy, opposition etc., as a parade or mass meeting”; to remonstrate is “to present reasons in complaint, to plead in protest”<sup>31</sup>.

Now-a-days, the right to demonstrate is taken for granted, as a legitimate expression of the right to freedom of speech and of the press, to criticise constituted authority and existing structures, to dissent from the opinion of the authorities that be, to know all the truth etc., with a view to force changes and seek redress for abuses and injustices. All this, I say, is taken for granted, at least in the *City of Man*, in civil society, where authority comes *from below* and the government is of the people, for the people and by the people.

But can we say the same of the *City of God*, the Church of Christ, the religious society which is the Catholic Church? My considered opinion is NO. Because the Church of Christ is an entirely supernatural, theological, divine society, metaphysically different from civil society — as different as the ways of God are above the ways of man. The Catholic Church is the *mystical body of Christ*, with a social structure made up of the people of God. Therefore, in our approach to the Catholic Church we cannot use the same argumentation as when

<sup>30</sup> Cfr. supra n. 2.

<sup>31</sup> The American College Dictionary.

we envisage civil society and human structures: the exclusively human and humanistic approach is absolutely inadequate when applied to the City of God.

I admit that Vatican II, in its Pastoral Constitution on *the Church in the Modern World (Gaudium et Spes)*, teaches clearly that the Church lives in the world, and must come to a dialogue with the world—economic, political, social, cultural—and share its joys and sorrows; more than that, *Gaudium et Spes* is emphatic in acknowledging the sacred duty of respecting the dignity and freedom of the human person created to the image of God, and the world is also created by God—therefore good—and entrusted to man's creativeness and ingenuity. Hence human institutions and structures are all within the divine plan, and the Church must needs realize this and love this and go along with this.

But the *world* contemplated in *Gaudium et Spes* is the *City of Man*, as contradistinguished against the *City of God*, about which Vatican II gave us the dogmatic constitution on *the Church (Lumen Gentium)*, with its divinely hierarchical structure, where authority comes from above, for the eternal salvation of mankind. Vatican II also gave us the decree *On the Pastoral Ministry of the Bishops (Christus Dominus)*, where the theological principles of *Lumen Gentium* are implemented, and the *Motu proprio Ecclesiae Sanctae*, with which the Holy Father proposes to come forward and meet the new needs of the world of today and the new forms of apostolate outlined in the documents of the Council. I cannot resist quoting from the introductory paragraph: "The world of our time, which is deeply changed, needs the radiant light and longs for the ardour of supernatural charity".

In all these pronouncements of the magisterium there is not a hint at *equating* the City of God and the City of Man, there are no grounds to authorize the application of the same methodology to both societies. Under no circumstances does the Church countenance or permit demonstrations.

There is, however, a paragraph in *Lumen Gentium* (N. 37) which encourages the *right of remonstrance*: "Lay people... should manifest to their Pastors their needs and wishes, with that freedom and

trust which behoves children of God and brothers in Christ. In the measure of their knowledge, their competence and the prestige with which they are endowed, they have the right, and sometimes even the duty to open their mind on matters which affect the good of the Church. This should be done, if needs be, through associations *ad hoc* established by the Church — Senate of Priests, Parochial Council?—and always in truth, with fortitude and prudence, with reverence and charity towards those who, because of their sacred office, represent the person of Christ". But this right is a far cry from the right to demonstrate in the street and distribute subversive manifestoes.

#### IV—IN POINT OF FACT

1. — The *basic facts* in this case are: a) the by-passing by the Bishop of the candidate proposed by the Senate of Priests for the vacant post in the cathedral parish, b) the demonstration that followed and c) the distribution of the manifesto.

2. — The by-passing by the Bishop is perfectly justified by the *presumption* that he had powerful reasons to act against the consultative vote of the Senate of Priests. This presumption is born by the numerous texts quoted above, asserting his freedom of choice in the appointment of the new incumbent in the cathedral parish.

3. — The demonstration was simply the outburst of hurt feelings in a group of priests who, I think, share the modern mentality of those who are bent on equating the religious society which is the Catholic Church with civil society. But this is a *mistaken* mentality. It is the mentality of a *vocal minority*, contrary to the magisterium of the Church and to the opinion of the extra-large *silent majority* of Bishops, Episcopal Conferences and lay Catholic folk. There is an element of rebellious criticism and disobedience. Their organizers are banking on mob rule and mass psychology to give bent to their non-too-clear aspirations and pursuits in every demonstrations. But *there is no room for demonstrations* in the Church or against her constituted Authorities. I dare anybody to quote a single text from the numerous documents of Vatican II and post-Vatican pronouncements that would authorize

demonstrations in the bosom of the Catholic Church. Only the right to *remonstrate* is blessed by the magisterium.

4. — The manifesto smacks of a left-wing demagogic mentality, common to all such anonymous leaflets — though signed in the name of a group of self-appointed reformers — where religious issues are sadly mingled up with economic, social and patriotic issues. No serious-minded person would attach importance to such smut literature. Yet *scandal* — I would rather say, *admiration* — may ensue in the minds of well-meaning simple people; and this is to be lamented.

#### V. — ANSWER TO QUERIES

1. — The parish priest of Tarlac had no right to deny the demonstrators the use of the patio; nobody has given him such a right. Unless he acted on explicit orders from the Bishop.

2. — In my opinion there is no reason in meting out canonical sanctions to the leading priests of the demonstration. In the first place, they acted on the mentality of modern-time demonstrators, where nobody is ever held solely responsible; and this mentality, though mistaken, is an attenuating circumstance that may excuse from liability to punishment. Then, let us not forget the mind of the Church on the application of penal laws, especially after Vatican II. In my opinion, to start now the law-proceedings against the supposed culprits would produce more scandal and more bitterness than the demonstration and the manifesto. Besides, these law-suits are long and fastidious and hard to process.

I would rather suggest that the Bishop call a meeting of the irritated priests and try, in a fatherly and friendly manner, to convince them of the convenience of a mild form of retraction: a sort of forgive-and-forget: for the sake of peace and the good of everybody.

If and when the Bishop decides to punish them canonically, the heaviest punishment would be suspension and privation of office and benefice. But, again, I disadvise this.

3. — The decision of the Senate of Priests should weigh heavy on the conscience of the Bishop, but in no way is he bound by their consultative vote whenever he has strong reasons to act otherwise.

4. — Anybody can ask the Bishop to resign, but not validly, so as to force him to give up the office, except the Holy See. The demonstrators had no right to ask for the resignation, and gave no valid reasons therefore.

5. — The signatories of the manifesto most certainly are not the Church; they are rather — unconsciously, I am sure — the propounders of a secessionist movement. Those loyal to the Bishop are really the Church, and should renew their loyalty as often as possible, before God and in their conscience, and manifest it when opportunity arises. But never in a belligerent attitude: our God is the God of peace.

**Jose Ortea, O.P.**