

THE INSTITUTE
OF CANONICAL POSSESSION
IN THE 1983 CODE OF CANON LAW*

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ABSTRACT: The Code mandates that a diocesan bishop takes canonical possession before he is capable of exercising the office to which he has been appointed. This research examined the institute of canonical possession as it particularly relates to the office of diocesan bishop. In the course of this study, the consequences of acts placed without canonical possession were outlined. The write up studied the legislative history of canon 382 to understand the mind of the legislator concerning whether canonical possession was an incapacitating law. The purposes of canonical possession were identified as the protection of communion with the Bishop of Rome. It was to ensure

ABSTRACT: Il Codice prevede che un vescovo diocesano possa detenere il possesso canonico prima che sia in grado di esercitare il compito per cui è stato nominato. Questa ricerca ha esaminato l'istituzione del possesso canonico in quanto essa si riferisce in modo particolare all'incarico del vescovo della diocesi. Durante lo studio, sono state sottolineate le conseguenze dei comportamenti tenuti senza il possesso canonico. Questo lavoro esamina la storia legislativa del canone 382 per capire l'idea originale del legislatore per quanto riguarda il possesso canonico se sia una legge incapacitante o no. Gli scopi del possesso canonico furono identificati nella protezione della comunione

* *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione et indice analytico-alphabetico auctus*, Vatican City State, Libreria editrice Vaticana, 1989, *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, CLSA, 1999 (=CIC/83).

Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus, Vatican City State, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, CLSA, 2001 (=CCEO).

Codex iuris canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus, Typis polyglottis Vaticanis, 1917, English translation E. N. PETERS editor, *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001. These three translations are used throughout this work.

that bishops who were to govern dioceses had been properly appointed by the Supreme Pontiff. This research concludes by recommending that canonical possession be done always in a liturgical ceremony where all the faithful are gathered. The recommendation of canon 382, §4 be given full juridical value by mandating it and not just mere recommendation as it is in the present Code. In this way the faithful will be able to take part as the bishop begins his governance of the diocese. This process will fulfill the purpose of proclaiming apostolic letter of appointment to the college of consultors and also allow the entire faithful to participate in the process to some extent.

KEY WORDS: Diocesan Bishops, College of Consultors, Canonical Possession.

con il Vescovo di Roma. Questo per assicurare che i vescovi che erano a capo delle diocesi venissero nominati correttamente dal Sommo Pontifice. Questa ricerca ha portato alla conclusione che il possesso canonico deve essere sempre conferito in una cerimonia liturgica nella quale tutti i fedeli sono radunati. Il consiglio del canone 382, §4 è che ad esso venga riconosciuto il completo valore giuridico con un mandato e non per una semplice raccomandazione come prevede l'attuale Codice. In questo modo i fedeli sarebbero in grado di partecipare nel momento in cui il vescovo inizia a dirigere la diocesi. È per questo che la lettera apostolica della nomina va letta davanti al collegio dei consultori e questa permette anche a tutti i fedeli di partecipare al processo in un certo modo.

PAROLE CHIAVE: Vescovo diocesano, collegio dei consultori, possesso canonico.

SUMMARY: 1. The Legislative History of Canon 382 of the 1983 Code of Canon Law. - 2. The Institute of Canonical Possession in the 1983 Code of Canon Law. - 3. The Effects of Canonical Possession. - 4. Conclusion.

INTRODUCTION

ECCLESIASTICAL offices are established for the spiritual good of the faithful. The established procedures for the right to acquire and exercise these offices are therefore of great consequence in a particular church. A candidate appointed to an ecclesiastical office will be required to fulfill the legal formalities in order to acquire the right to exercise the power of such an ecclesiastical office, especially when the law formally stipulates or mandates such formalities.

In order to exercise the rights that go with the acquisition of the ecclesias-

tical office¹ of a diocesan bishop,² canon law requires that a bishop should fulfil the formalities of taking canonical possession.³ Without canonical possession a diocesan bishop may have the right and privileges of the office and still be incapable of exercising the power of the office. The institute of canonical possession will be studied with a view to understand the purpose of the law that mandate a bishop to observe canonical possession in order to exercise the power of governance that goes with the office of diocesan bishop.

1. THE LEGISLATIVE HISTORY OF CANON 382 OF THE 1983 CODE OF CANON LAW

The legislative history of any legal document is essential to understanding the mindset of its legislator (c. 17).⁴ The 1983 Code passed through several stages before it was finally promulgated.⁵ The four major stages were: the 1972 to 1977 *primae versiones*, the 1980 *Schema*, the 1982 *Schema*, and finally the 1983 Code.⁶

¹ Canon 145 states: “§1. An ecclesiastical office is any function constituted in a stable manner by divine or ecclesiastical ordinance to be exercised for a spiritual purpose.

§2. The obligations and rights proper to individual ecclesiastical offices are defined either in the law by which the office is constituted or in the decree of the competent authority by which the office is at the same time constituted and conferred.”

The *CCEO* defines office in the Church in similar terms (c. 936, §§1-2). JOHN M. HUELS points out that, among other differences between the two codes, there is a difference in the wording of the *CCEO*: “A final difference between the two canons [*CIC*/83, c. 145 and *CCEO*, c. 936 §§1-2] is the phrase about the decree of the competent authority that *Simultaneously establishes and confers* an office, which is not found in the Eastern canon. This is not a mere editorial correction; the elimination of these words in the Eastern code marks a genuine and substantial difference from the Latin code, namely, the suppression of the possibility of creating offices with no objective stability. In the Eastern law, an office must first be created in the objective law before it is conferred on an individual; the two may not be done simultaneously” in *Towards Refining the Notion of ‘Office’ in Canon Law*, «The Jurist», 70 (2010), p. 419 (=HUELS, «The Notion of Office»).

² JOHN M. HUELS says: *The offices of pope, diocesan bishop, and member of the college of bishops are of divine law. All other offices in the Church are of ecclesiastical origin*, «The Notion of Office», p. 413.

³ The Code sometimes mentions explicitly that some formalities are required for validity of a juridical act (cc. 124 and 1108); at other times formalities may be required only for licity, such as a singular administrative act being in writing (c. 154, §3), and a curial act being signed and notarized (474), etc., see *CCEO*, c. 931.

⁴ EDWARD N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, Wilson & Lafleur Ltée, Montréal 2005, p. xi (= PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*).

⁵ For a critical analysis of the revision process for what is now Book V, see J. C. PÉRISSET, *Les biens temporels de l’Église*, Éditions Tardy, Paris 1966, pp. 17-27, 275-282.

⁶ See PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. xi.

JULIÁN HERRANZ notes: “Paul VI had already established that the Code Commission should solicit the opinion of the Pastors of the Church on each of the *schemata*. In a discourse to the College of Cardinals, he announced, ‘After approval of the guiding principles

Canon 334 of the 1917 *Code*⁷ reads:

§1. Residential Bishops are ordinary and immediate pastors in the dioceses committed to them.

§2. In the governance of the diocese, however, neither personally nor through others nor under any title can they involve themselves before they have first taken up possession canonically of the diocese; but if, before being designated for the episcopate, they have been appointed Vicars Capitulary, officials, or economes, these offices they may retain and exercise after designation [as Bishop].

§3. Residential Bishops take up canonical possession of a diocese immediately upon showing the apostolic letters personally or through a procurator to the Chapter of the cathedral church in that diocese in the presence of the secretary of the Chapter or chancellor of the Curia, who records the matter in the acts.⁸

and of the systematic arrangement of the new legislation, some *schemata* are already in final phase. Soon the examination by the Episcopate will begin.' Later he decided that the dicasteries of the Roman Curia, ecclesiastical universities and faculties, the union of Religious Superiors General and other institutions should also be consulted" in *Genesis and Development of the New Code of Canon Law*, in MARZOA, Á., J. MIRAS, and R. RODRÍGUEZ-OCAÑA (eds.), and E. CAPARROS (gen. ed. of English translation), *Exegetical Commentary on the Code of Canon Law*, vol. 1, Montréal, Wilson & Lafleur Ltée, 2004, p. 153 (=«ExComm»). The same author remarks: "Considering the high number of general and particular comments sent in by the bishops in spite of the relatively short time (six months for each consultation) given for studying and preparing the comments, the actual contribution of the universal Episcopate as a consultative body to the legislator was very important. [...] In effect, about 90% of the bishops on the five continents expressed their own opinions on the Code Commission's draft legislation either through their Conference of Bishops or by sending in their responses directly." in *ibid.*, p. 154.

⁷ English translation by Edward PETERS, CIC/1917: "§1. Residential Bishops are ordinary and immediate pastors in the dioceses committed to them.

§2. In the governance of the diocese, however, neither personally nor through others nor under any title can they involve themselves before they have first taken up possession canonically of the diocese; but if, before being designated for the episcopate, they have been appointed Vicars Capitulary, officials, or economes, these offices they may retain and exercise after designation [as Bishop].

§3. Residential Bishops take up canonical possession of a diocese immediately upon showing the apostolic letters personally or through a procurator to the Chapter of the cathedral church in that diocese in the presence of the secretary of the Chapter or chancellor of the Curia, who records the matter in the acts."

⁸ "§ 1. Episcopi residentiales sunt ordinarii et immediati pastores in dioecibus sibi commissis.

§ 2. In regimen tamen dioecesis neque per se neque per alios, nec ullo sub titulo sese ingerere possunt, nisi prius eiusdem dioecesis possessionem canonicè ceperint; sed si ante suam ad episcopatum designationem vicarii capitulares, officiales, oeconomii fuerint renuntiati, haec official etiam post designationem retinere et exercere possunt.

§ 3. Canonicam dioecesis possessionem capiunt Episcopi residentiales simul ac in ipsa dioecesi vel per se vel per procuratorem apostolicas litteras Capitulo ecclesiae cathedralis ostenderint, praesente secretario Capituli vel cancellario Curiae, qui rem in acta referat."

Among other things, this paper shall attempt to examine the 1977 *Schema*, 1980 *Schema* and the 1982 *Schema* as they relate to the institute of canonical possession stated in canon 334 of the 1917 Code. The various committees of the revision of the Code published ten individual sets of canons in specific areas of law.⁹ The *coetus* made a number of changes in the process of revising canon 334 of the 1917 Code. Let us briefly examine the changes made to the text of the canon and the reasons given for such amendments.¹⁰

Canon 234 in the 1977 *Schema*¹¹ reads¹²:

§1. One promoted to the office of bishop is not to assume the office entrusted to him by himself nor through another nor through any other title, unless he has taken canonical possession of the diocese, but if before his promotion to the office of the diocesan bishop, he has in the same diocese the office of diocesan administrator or financial officer, he retains the same responsibility and exercise that same office, unless otherwise specified by the competent authority, if he was an auxiliary bishop before in the same diocese, he retains the powers and faculties of vicar general or episcopal vicars according to the norm of can. 264, §2.

§ 2. Unless he is lawfully impeded, one who has been promoted to the office of diocesan Bishop, must take canonical possession of his diocese, within four months of receiving the apostolic letters and if already been consecrated a bishop, within two months from the receipt of the same .

§3. A bishop takes canonical possession of the diocese by himself or through a proxy, by showing the apostolic letter to the college of consultors mentioned in can. 316, or to the cathedral chapters, in the presence of the chancellor of the curia who makes a record of the fact, or in the cathedral church in the newly erected diocese with the clergy and the people present at the same time and with the most senior clergy recording the act.¹³

⁹ For the various versions of publications, see PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, p. xiv. A decade passed from the beginning of preparation of the first *schema* until the last was completed in July 1976. As each *schema* was prepared, the President of the Code Commission would send it to the Legislator, through the Office of the Secretary of State. The President would receive in return the responses, any observations and necessary explanations. If the draft was deemed ready, permission to submit it for examination to the Episcopate and other consultative bodies was also received. See «Communicationes», 9 (1977), pp. 62-79.

¹⁰ For details of the changes to the canon that relates to the doctrine of canonical possession see, «Communicationes», 12 (1980), pp. 293-296; see also PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, pp. 342-344.

¹¹ This canon was the revision of canon 1519 of the 1917 Code.

¹² Texts in italics indicate text in earlier version of a canon that was not accepted in the next version, and texts in bold indicate addition to the latter version. All the English translations of the Latin and Italian texts are mine unless otherwise indicated.

¹³ “§1. Episcopus promotus in exercitio officii sibi commissi, *neque per se neque per alios, nec ulo titulo, sese ingerere potest, nisi prius dioecesis canonicam possessionem ceperit; qui vero ante suam ad officium Episcopi dioecesanii promotionem, in eadem dioecesi Administrator*

The first thing to be noted here is that the title “residential bishop” is no longer used. The Council of Trent had used the term to underscore the requirement of bishops to be residence in their territory and not to leave the people entrusted to their care for a long time without proper provision for their governance.¹⁴ Dominique Le Tourneau explains the reasons for the change of terminology from “residential bishops” to “diocesan bishops”:

Diocesan bishops were previously called residential (c. 344 *CIC* 1917), in that they were obligated by law to personally reside in their diocese (c. 395 § 1). As dictated by the Council of Trent against the absenteeism of those bishops who limited themselves to receiving the ‘benefice’ of their office. However, Vatican II calls them diocesan (CD 11), and not without reason, given that all coadjutor and auxiliary bishops are also residential, but not diocesan¹⁵

Furthermore, we find that in the first paragraph of c. 234 of the 1977 *Schema* the *coetus* deleted the text “*neque per se neque per alios, nec ullo titulo*” and “*potest,*” and in §3 the following texts were also omitted “*de quo in can. 316 aut, ubi Capitulo cathedrali competat ius eligendi aut praesentandi Episcopum, Collegio consultorum una cum Capitulo cathedrali in unum collegium coadunatis.*” The reason given for these changes were stated in the minutes of the *coetus*: “The secretary prefers that the mention of the office of the *economus* be suppressed (par. 5) because the norm is too particular. With regards to the second part of § (item...), I also think that this norm can be suppressed, because, if the auxiliary bishop isn’t nominated successor to the see it is

diocesanus, officialis, oeconomus fuerit renuntiatus, haec official retinet et exercere potest; item, nisi aliud a competenti auctoritate statutum fuerit, qui ante promotionem suam Episcopus auxiliarius in eadem dioecese fuerit, potestates et facultates, quibus uti Vicarius generalis aut episcopalium, instructus fuit ad normam can. 264, §2, retinet et exercere potest.

“§2. Nisi legitimo detineatur impedimento, promotus ad officium Episcopi dioecesanum debet canonicam suae dioecesis possessionem capere, si non iam sit consecratus Episcopus intra quattuor menses a receptis apostolicis litteris, si iam sit consecratus intra duos menses ab eisdem receptis.

“§3. Canonicam dioecesis possessionem capit Episcopus, simul ac in ipsa dioecesi, per se vel per procuratorem, apostolicas litteras Collegio consultorum *de quo in can. 316 aut, ubi Capitulo cathedrali competat ius eligendi aut praesentandi Episcopum, Collegio consultorum una cum Capitulo cathedrali in unum collegium coadunatis* ostenderit, praesente {cancellario Curiae} qui rem in acta referat, aut, in diocesis noviter erectis simul ac clero populoque in ecclesia cathedrali praesenti earundem litterarum communicationem procuraverit, presbytero inter praesentes seniore act referente.” In PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, pp. 342-343.

¹⁴ NORMAN P. TANNER, (editor), *Decrees of the Ecumenical Councils*, vol. II, *Decree on the Residence of Bishops and others of the lower rank*, Sheed Ward and Georgetown University Press, Washington DC. 1990, Session 6, in pp. 681-683.

¹⁵ Dominique Le TOURNEAU, *Bishops in General*, «ExComm», vol. II/1, p. 751.

good that that he be retained, but if he is the designated successor, it is better that the solemn principle expressed in the first part of the paragraph be respected...”¹⁶ In other words, the changes reflected the desire to ensure that an auxiliary bishop retains executive power if he were to be appointed the diocesan bishop of the same diocese. What this also means is that if an auxiliary bishop were appointed a diocesan bishop in another diocese he does not possess the same executive power he has in the diocese to which he is assigned to as in his previous diocese before he has taken canonical possession. The purpose of the text is to respect the dignity of the office of the auxiliary bishop and still respect the canonical doctrine of possession before assuming the exercise of the office of a diocesan bishop.¹⁷ Thus one member of the *coetus* opined: “Of the same opinion was also a consultor that declared: It would almost be a reduction in respect to the auxiliary if he loses all his faculties, while the bishop elect, who hasn’t yet taken possession, maintains the office of diocesan administrator, or official of bursar.”¹⁸

1980 *Schema* canon 349 reads:

1. One promoted to the office of bishop *is not able* to exercise the same office entrusted to him, before he has taken canonical possession of the diocese, but he who before his promotion to the office of the diocesan bishop, in the same diocese had the office of diocesan administrator or finance officer retains the responsibility and he can exercise the same office, unless the provision has been made by the competent authority, he who before promotion has been auxiliary bishop in the same diocese, retains the powers and faculties as that of vicar generals or episcopal vicars, according to the norm of can. 264, §2.

§ 2. Unless he is lawfully impeded, one who has been promoted to the office of diocesan Bishop, must take canonical possession of his diocese, within four months of receiving the apostolic letters and if already been consecrated a bishop, within two months from the receipt of the same .

§ 3. A bishop takes canonical possession of the diocese, at the same time and, in the diocese itself, by himself, or through a proxy, by showing the apostolic letter to the college of consultors.¹⁹

¹⁶ “§1 Mons.Segretario preferisce che venga soppresso l’accenno all’ufficio dell’economista (5 riga), perché è una norma troppo particolare. Per quanto riguarda la 2 parte del § (item, nisi aliud ... et exercere potest), penso che si potrebbe sopprimere questa norma, perché, se il Vescovo ausiliario non è nominato successore nella sede è bene forse che ritenga quelle, ma se è designato successore è meglio che si rispetti il principio solennemente espresso nella prima parte del paragrafo”, «Communicationes», 12 (1980), p. 295.

¹⁷ See *CD*, no. 26.

¹⁸ “Dello stesso parere è anche un Consultore che dichiara: sarebbe quasi una diminuzione nei confronti dell’ Ausiliario se questo perdesse tutte le facoltà, mentre il Vescovo eletto, ma che non ha preso ancora possesso, potesse mantenere gli uffici di Amministratore diocesano, di ufficiale o di economista”, «Communicationes», 12 (1983), p. 295.

¹⁹ §1. Episcopus promotus in exercitio officii sibi commissi. sese ingerere **non valet**, nisi

The words *non valet* was added to the text. The intention of the *coetus* was to make it obvious that one promoted to the office of a diocesan bishop cannot place acts before he has taken canonical possession. But they also wanted to add the word *non valet* to show that this concerns lawfulness of the act and not its validity: “Six Consultors are in favor of the text. The following are approved emendations: a) delete ‘for neither by the title’ (-2 row); b) say ‘valid’ instead of ‘power’ (line 2), because it looks better that the prohibition is ‘for liceity’ and not ‘for validity.’”²⁰ At this point the prohibition of canonical possession affects only lawfulness of the act and not its validity.

The 1982 Schema reads:

§1. One promoted to the office of bishop cannot assume the exercise of the office before he has taken canonical possession of the diocese, but he is able to exercise the same offices which he already had in the same diocese at the time of promotion, without prejudice to the norm of can. 264, §2.

§ 2. Unless he is lawfully impeded, one who has been promoted to the office of diocesan Bishop, must take canonical possession of his diocese, within four months of receiving the apostolic letters and if already been consecrated a bishop, within two months from the receipt of the same.

§ 3. A bishop takes canonical possession of the diocese, at the same time and, in the diocese itself, by himself, or by proxy, by showing the apostolic letter to the College of Consultors.²¹

prius dioecesis canonicam possessionem cepit; qui vero ante suam ad officium Episcopi dioecisani promotionem, in eadem dioecesi Administrator dioecisanus, officialis, oeconomus fuerit renuntiatus, haec official retinet et exercere potest; item, nisi aliud a competenti auctoritate statutum fuerit, qui ante promotionem suam Episcopus auxiliarius in eadem dioecese fuerit, potestates et facultates, quibus uti Vicarius generalis aut episcopalium, instructus fuit ad normam can. 264, §2, retinet et exercere potest.

§2. Nisi legitimo detineatur impedimento, promotus ad officium Episcopi dioecisani debet canonicam suae dioecesis possessionem capere, si non iam sit consecratus Episcopus intra quattuor menses a receptis apostolicis litteris, si iam sit consecratus intra duos menses ab *eisdem* receptis.

§3. Canonicam dioecesis possessionem capit Episcopus, simul ac in ipsa dioecesi, per se vel per procuratorem, apostolicas litteras Collegio consultorum in PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, pp. 342-343.

²⁰ “Si vota: 6 Consultori sono favorevoli a che il testo rimanga.

Si approvano i seguenti emendamenti:

a) sopprimere “neque per se titulo” (1-2 riga);

b) dire “non valet” al posto di “potest” (2 riga), perché meglio appaia che la proibizione è “ad licietatem” e non “ad validitatem.” In *Communicationes*, 9/2 (1983), p. 295.

²¹ “§1. Episcopus promotus in *exercitium* officii sibi commissi sese ingerere **nequit, ante captam** dioecesis canonicam possessionem cepit; qui vero ante **ipsius** ad officium Episcopi dioecisani promotionem, in eadem dioecesi Administrator dioecisanus, officialis, oeconomus fuerit renuntiatus, haec official retinet et exercere potest; item, nisi aliud a competenti auctoritate statutum fuerit, qui ante promotionem suam Episcopus auxiliarius in eadem dioecese fuerit, potestates et fa-

There were major changes made to the previous text. The reference to auxiliary bishops and office of financial officer were rightly deleted because it was no longer relevant because of the addition of the phrase without prejudice to the office of auxiliary bishop referenced in the canon. Other words added are; *nequit, ante captam*. There is no reason given for the addition of these words. The words *ante captam* literary mean *before been capable*. *Captam* is a word that refers to capacity. Could this mean that the legislator intend to implicitly states that acts placed without canonical possession no longer affect only the lawfulness of the act but it also affects validity because it touches on capacity? Since there were no reasons given for the addition of these terms, it will be only reasonable to adhere to the canonical doctrine of the use of the word *captam* which we shall address later in this paper.

Canon 382 in the 1983 *Code of Canon Law* reads:

§1. One promoted as bishop cannot assume the exercise of the office entrusted to him before he has taken canonical possession of the diocese. Nevertheless, *he is able to exercise offices which he already had in the same diocese at the time of promotion, without prejudice to the prescript of can. 409, §2.*

§2. Unless he is prevented by a legitimate impediment, one promoted to the office of diocesan bishop must take canonical possession of his diocese within four months of receipt of the apostolic letter if he has not already been consecrated a bishop; if he has already been consecrated, within two months from receipt of this letter.

§3. A bishop takes canonical possession of a diocese when he personally or through a proxy has shown the apostolic letter in the same diocese to the college of consultors in the presence of the chancellor of the curia, who records the event. In newly erected dioceses, he takes canonical possession when he has seen to the communication of the same letter to the clergy and people present in the cathedral church, with the senior presbyter among those present recording the event.

§4. It is strongly recommended that the taking of canonical possession be done within a liturgical act in the cathedral church with the clergy and people gathered together.²²

cultates, quibus uti Vicarius generalis aut episcopalium, instructus fuit ad normam can. 264, §2, retinet et exercere potest.

“§2. Nisi legitimo detineatur impedimento, promotus ad officium Episcopi dioecesanum debet canonicam suae dioecesis possessionem capere, si non iam sit consecratus Episcopus intra quattuor menses a receptis apostolicis litteris, si iam sit consecratus intra duos menses ab *iisdem* receptis.

“§3. Canonicam dioecesis possessionem capit Episcopus, simul ac in ipsa dioecesi, per se vel per procuratorem, apostolicas litteras Collegio consultorum.” In PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, pp. 342-343.

²² “§1. Episcopus promotus in exercitio officii sibi commissi. sese ingerere non valet, nisi prius dioecesis canonicam possessionem; *exercere tamen valet officia, quae in eadem dioecesi tempore promotionis iam retinebat, firmiter prescripto can. 409, §2.*

The following phrase was added to the text “*exercere tamen valet officia, quae in eadem dioecesi tempore promotionis iam retinebat, firmo prescripto can. 409, §2*,” he is able to exercise offices which he already had in the same diocese at the time of promotion, without prejudice to the prescript of can. 409, §2” The purpose is to make it clear that even if a priest who had pastoral ministry in the diocese is appointed a bishop in the same diocese, he still cannot begin to exercise the office of bishop without canonical possession. In other words, familiarity with the functioning systems and knowledge of the diocese still does not give the bishop elect the ability to shepherd the people without canonical possession. It must not be misconstrued that the legislator primarily intends to show that only priests incardinated to the diocese or priests working in the diocese are the ones suitable for the office of bishop in the diocese. In fact canon 377, §2 makes it obvious that it is not the domicile or incardination of a priest that necessarily makes him suitable for consideration for the office of a diocesan bishop. The Roman Pontiff may freely appoint or confirm candidates for the episcopacy as he judges fit.²³

The entire paragraph four was added to the text. The recommendation that canonical possession be done within a liturgical act in the cathedral church is quite reasonable. The ceremonial of bishops and the present Roman Pontifical both provide norms for taking canonical possession within a liturgical celebration.²⁴ This recommendation helps to give canonical pos-

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“§3. Canonicam dioecesis possessionem capit Episcopus, simul ac in ipsa dioecesi, per se vel per procuratorem, apostolicas litteras Collegio consultorum.

“§4. *Valide commendatur ut captio canonicae possessionis cum actu liturgico in ecclesia cathedrali, {presente clero et populo, fiat.}* In PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, pp. 342-343.

²³ Canon 377, §2 stipulates: “At least every three years, bishops of an ecclesiastical province or, where circumstances suggest it, of a conference of bishops, are in common counsel and in secret to compose a list of presbyters, even including members of institutes of consecrated life, who are more suitable for the episcopate. They are to send it to the Apostolic See, without prejudice to the right of each bishop individually to make known to the Apostolic See the names of presbyters whom he considers worthy of and suited to the episcopal function.”

The corresponding CCEO canons 188, §2 and 189 states that an eparchial bishop takes canonical possession by legitimate enthronement itself during which the apostolic letter is publicly read. There is no provision for showing the letter to the college of eparchial consultors.

²⁴ *The Roman Rituals and Pontifical revised by the Decree of the Second Vatican Ecumenical Council and published by authority of Pope Paul VI and Pope John Paul II*, vol. 2, no. 14, Collegeville, A Pueblo Book, The Liturgical Press, Minnesota 1991, p. 89 (= *The Roman Pontifical*).

session a liturgical dignity without replacing the importance of episcopal consecration.²⁵ Furthermore, it also gives the entire faithful the opportunity to participate in the process of the assumption of office of their shepherd. This public process of taking canonical possession is not just a recommendation in the Eastern Code but a legal requirement.²⁶ Subsequent legislation in the Latin Code may also make this a binding legislation and not merely a recommendation as paragraph four now reflects.

2. THE INSTITUTE OF CANONICAL POSSESSION IN THE 1983 CODE OF CANON LAW

The Code requires canonical possession before a bishop can begin to exercise his office. We have already cited canon 382 in its entirety, so let us now analyze this canon.

2. 1. *Analysis of Canon 382*

The first paragraph of canon 382 states that a person promoted to the office of bishop cannot assume the exercise of the office before he has taken canonical possession of the diocese. Four important stages are required before a candidate designated as diocesan bishop can fully acquire the office. The first step is the canonical mission through which the Roman Pontiff entrusts a portion of the people of God to a presbyter or a bishop.²⁷ The second step is the profession of faith and the oath of fidelity to the apostolic see that the candidate must make before fully acquiring the office of a diocesan bishop.²⁸ The third step is the episcopal consecration through which the person receives the fullness of the sacrament of orders and formally becomes a member of the college of bishops.²⁹ The fourth step is the canonical possession that the candidate must observe before his is capable of exercising the office.³⁰

²⁵ See ALBERTO DE LA HERA, *Diocesan Bishops*, «ExComm», vol. II/1, pp. 783-784.

²⁶ See *CCEO*, cc. 188, §2 and 189.

²⁷ See c. 377, §1.; *CCEO*, c. 181 speaks of canonical election in accordance with the legislation for election. The Roman Pontiff confirms the election.

²⁸ Canon 380 states: "Before he takes canonical possession of his office, the one promoted is to make the profession of faith and take the oath of fidelity to the Apostolic See according to the formula approved by the Apostolic See." The corresponding *CCEO*, c. 187, §2 states that in addition to the profession of faith and promise of obedience to the Roman Pontiff, the candidate is also to promise obedience to the patriarch in those matters in which he is subject to the patriarch.

²⁹ Canon 379 stipulates: "Unless he is prevented by a legitimate impediment, whoever has been promoted to the episcopacy must receive episcopal consecration within three months from the receipt of the apostolic letter and before he takes possession of his office." *CCEO*, c. 188, §1 is the same with *CIC*/83.

³¹ See c. 382, §1.

Given the wordings of Canon 382, §1, there is no doubt that the legislator clearly prescribes that ordination and canonical mission are not enough for a diocesan bishop to start assuming the exercise of governance over the faithful in his jurisdiction. Canonical possession is required to enable the diocesan bishop start shepherding the diocese. Without canonical possession he cannot administer the diocese. The canon says the diocesan bishop “cannot become involved in the exercise of the office entrusted to him before he has taken canonical possession of the diocese.” The phrasing of the canon shows that it is an incapacitating law. This canon renders the diocesan bishop *inhabilis* to administer the diocese pending canonical possession.

2. 2. Canonical Possession and Incapacitating Law

The Code declares that there are laws which disqualify a person from placing an act. There are also laws which declare a person incapable of placing an act. Canon 10 states: “Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is unqualified.”³¹ Invalidating laws (*leges irritantes*) or disqualifying (incapacitating- *leges inhabilitantes*) determine the requirements of acts to be valid. The non-fulfilment of such act(s) or the lack of capacity of the person renders the expected results of the act null, that is, lacking legal existence.³²

One of the legal formalities to enable diocesan bishops exercise governance over the territory entrusted to them is the canonical possession. Acts that are placed contrary to disqualifying laws are not only null but non-existent, because the subject lacks the capacity to act.³³ This explains why such acts in law cannot be con-validated by a competent authority. While it is true that an invalid act can be con-validated by a competent authority, a non-existent act cannot be con-validated or sanated.³⁴ In other words, such acts are to be distinguished from voidable or rescindable acts.³⁵ A voidable act or rescindable act is valid but may be declared invalid by a competent authority.³⁶

Canon 382 says a diocesan bishop cannot assume exercise of the office of diocesan bishop before taking canonical possession. This is without prejudice to canon 409, §2 that grants auxiliary bishops the faculties to continue to exercise their power even when the see is vacant. Canon 382 §1 uses the

³¹ CCEO c. 1495 is the same with CIC/83, c. 10.

³² See JOHN M. HUELS, *Ecclesiastical Laws*, «Comm2», p. 62.

³³ See LUIGI CHIAPPETTA, *Il Codice di diritto canonico: commento giuridico-pastorale*, vol. 1, Libiri, seconda edizione accresciuta e aggiornata, Edizioni Dehoniane, Rome 1996, p. 50 (=CHIAPPETTA, 1996).

³⁵ See *ibid.*

³⁶ See *ibid.*

³⁷ Rescindable or voidable acts are mentioned in canons 125, §2, 126, 149, §2, 166, §2, 1451, §2, and 1739.

words *sese Ingerere nequit, ante captam diocesis canonical possessionem*. The use of these words is instructive in the proper interpretation of the text in Latin. The use of the Latin verb “*captam*” does not explicitly indicate whether his actions will be valid or not, if these acts are placed before canonical possession.

John M. Huels argues that certain words indicate explicit invalidating and disqualifying laws in canonical doctrine: “The law uses many explicit expressions pertaining to validity and capacity, notably *capax esse; dirinere; habere effectum, obtinere effectum or sortiri effectum; incapax; inhabilis; invalidus; nullus; valide; validitas; validus; vi carere; vim habere; vim non habere; and vitiare*.”³⁷ The canon under review uses the verb *captam* which is derived from the Latin noun *captus*, which could be translated to mean capacity.³⁸ Judging from the circumstances of the use of the words *ingerere nequit* “cannot assume” it is reasonable to conclude that canon 382, §1 is an incapacitating law.³⁹ One that not only render the acts of governance of a diocesan bishop who lack canonical possession invalid but also makes such acts not subject to sanation subsequently.⁴⁰ This explains why the requirement of taking canonical possession by a diocesan bishop is very important.⁴¹

³⁷ JOHN M. HUELS, *Ecclesiastical Laws*, «CLSA Comm2», p. 62.

³⁸ See LEO F. STELTEN, *Dictionary of Ecclesiastical Latin*, Peabody, Hendrickson Publishers, Massachusetts 2008, p. 36.

³⁹ The corresponding CCEO, c. 189, §3 does not use the word *captam*. It only states that the bishop may not involve himself the governance of the diocese prior to canonical possession. It will mean that the legislator does not intend to establish an incapacitating prohibition in the Eastern churches.

⁴⁰ JUAN I. ARRIETTA holds a contrary view when he argues that canon 382 is not an incapacitating law: “Of all those cases [cases requiring canonical possession of office] already indicated, the furthest reaching are the ones which deal with the diocesan bishop, both due to the attributions of authority derived from the valid attainment of office, and for the act that in § 1 of c. 382 establishes the prohibition against involvement in the exercise of an office before taking possession of that office. When it is understood that this canon contains an incapacitating norm, the invalidity of acts undertaken prior to the taking of possession comes as a natural consequence.

“This case has raised doubt regarding the doctrine, which in our judgment can be resolved by taking the meaning of the norm of c. 382 into account. Starting from the point that this canon does not establish in clear terms the invalidating nature of what it prescribes (cf. 10) and that its goal does not appear to be purely formal but that it attempts to guarantee proper governance in the case of a vacant see, one can affirm that, in this case, the formal act of taking of possession should not be considered an integral element of the canonical provision. Moreover it appears to be a juridical acts carried out in violation of c. 382 § 1, but that do not cause the nullification *ipso iure* of said acts.” In *The Provision of Ecclesiastical Offices*, «ExeComm», vol. 1, p. 903 (=ARRIETTA, *The Provision of Ecclesiastical Offices*).

⁴¹ See JOHN A. ABBO and JEROME D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. 1, B. Herder Book Co., Saint Louis 1952, p. 360.

2. 3. *The Place and Means of taking Canonical Possession*

The third paragraph of canon 382 explains that canonical possession is done by the proclamation of the apostolic letter of appointment to the college of consultors,⁴² with the chancellor recording the event.⁴³ The requirement of the presence of the college and the chancellor all indicate that the canonical possession is a curia act that is to take place in the diocese where the curia is located. When the person taking canonical possession is designated to be a diocesan bishop or a coadjutor, he may present the letter himself or through a proxy. But this presentation is to be done in the territory of the diocese that the bishop is to shepherd. In a newly created diocese, the canonical pos-

⁴² Canon 502 stipulates that a diocesan bishop constitute the college of consultors by choosing from members of the presbyteral council. The number should not be less than six and not more than twelve. Particular law will determine the manner in which the college is to function. Corresponding *CCEO*, c. 271 is similar to the *CIC/83*.

The Second Vatican Council decreed that among the cooperators of the bishop in the governance of the diocese is the college of consultors. See *CD*, no. 27. In a number of instances the Code requires a diocesan bishop to receive the counsel or consent of the college before he acts:

1. to appoint the diocesan finance officer (canon 494 §1);
2. to remove the diocesan finance officer during his or her five year term (canon 494 §2);
3. to place 'non-routine' acts of ordinary administration of diocesan ecclesiastical goods which are more important in light of the economic condition of the diocese (canon 1277).

The diocesan bishop must receive the consent of the college in order:

1. to place acts of extraordinary administration, as defined by the conference of bishops (canon 1277; the diocesan finance council must also give its consent);
2. to give permission to alienate goods of public juridic persons subject to his authority, and to alienate diocesan goods, which belong to the stable patrimony and whose value is beyond the minimum amount established by the conference of bishops (canon 1292 § 2; the diocesan finance council and 'those concerned' must also give their consent);
3. to give permission to administrators to perform any contractual transaction (other than alienation) which can worsen the patrimonial condition of a public juridic person subject to his authority, or to perform the transaction himself if it involves diocesan goods (canon 1295; the diocesan finance council and 'those concerned' must also give their consent; see canon 1292 § 2). See JOHN A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, The Society of Saint Paul/Alba House, New York 2009, pp. 108-109 (=RENKEN, *Church Property*,); JAMES PROVOST, *Presbyteral Councils and Colleges of Consultors: Current Law and Some Diocesan Statutes*, «CLSA Comm2», pp. 201-211; MARIANO LÓPEZ ALARCÓN, *La administración de los bienes eclesíasticos*, «Ius canonicum», 24 (1984), pp. 87-121; JORDAN HITE, *Church Law on Property and Contracts*, «The Jurist», 44 (1984), pp. 117-133; VELASIO DE PAOLIS, *I beni temporali nel Codice di diritto canonico*, «Monitor ecclesiasticus», 111 (186), pp. 9-30.

⁴³ This is in line with the prescribed function of chancellors in the curia; that is, taking care that acts of the curia are gathered, arranged and safeguarded in the archive (c. 482). The corresponding *CCEO*, c. 252, §1 is basically the same with *CIC/83*, but with the exception that chancellors in the Eastern Code is to be a priest or a deacon.

session is to be done in the cathedral with the most senior priest recording the event.⁴⁴ These are the essential elements of canonical possession.

First, it requires that the event takes place in the diocese to be governed, and secondly, it requires that the college of consultors be shown the letter of appointment, if it is not a new diocese. What is worth noting here is that the college of consultors are not expected to do anything other than their physical presence.⁴⁵ It does not require consent or disapproval of the letter of appointment. It is not a process of seeking the view or opinion of the college of consultors. It is just an informative process. So if the college of consultors upon seeing the letter of appointment decide to reject the bishop, their action does not impede the taking of canonical possession. The college lacks any legal capacity to impede the taking of canonical possession once they are convoked and the letter is presented to them.

How many of the college of consultors must be present before it can be adjudged that the law has been fulfilled? The canon does not stipulate the number. However, the statutes of the college of consultors may state the number. If the college of consultors does not have statutes, the canonical provision for an absolute majority in canon 119 could be used.⁴⁶ Could the bishop show the apostolic letter of appointment to the college of consultors via email or fax, or mail a photocopy of the letter of appointment to each of the consultors? Will this fulfill the legal requirement of taking canonical possession? The text of the canon seems to presume physical presence for the presentation of the letter of appointment. Canon 382, §3 states that the letter of appointment has to be presented in the presence of the chancellor of the curia and that the presentation must take place in the diocese. Besides, a further support for the argument of physical presence of the college at the presentation of the letter of appointment is the fact that the canon provides for an alternative way of presentation, namely, through a proxy. If physical presence was not required, the provision that a proxy could act on behalf of the bishop would be superfluous. Therefore, the use of electronic means of presentation or registered mail will not fulfill the essential requirement of physical presence. If there was no chancellor or if the chancellor was unavoidable absent, then any other member of the college of consultors could record the event.

⁴⁴ This is practical wisdom because a newly erected diocese lacks the existence of a college of consultors and diocesan curia or chancellor.

⁴⁵ It is perhaps one of the few instances in the Code where the mere observance of an act has serious canonical consequence. Another instance will be the two witnesses at the exchange of marriage consent (c. 1108). Although, it is pertinent to point out that the authoritative witness is not a mere observer unlike the other two witnesses. A person who assists at a marriage is present, asks for the manifestation of consent, and receives it in the name of the Church. This is much more active than the college of consultors in canon 382.

⁴⁶ See c. 19, see also, Javier OTADUY, *Ecclesiastical Laws*, «ExComm», vol. 1, pp. 346-364.

In the unlikely event that the college of consultors decides not to respond to convocation and they refuse to assemble so that the letter of appointment can be presented to them, then the bishop cannot fulfill the taking of canonical possession. As a result, he cannot assume the office he has been legitimately appointed to. If he places any act, the act will be non-existent by reason of lack of legal capacity because of lack of canonical possession.

This is to say that legally, the college of consultors may impede the taking of canonical possession and thereby declare a diocesan bishop incapable of fulfilling his office. It must be noted here that the intention of the legislator is not to see the college of consultors play this role of impeding the act of the Supreme legislator.⁴⁷ The principal role of the college of consultors in the process of canonical possession, as we have noted earlier, is to ensure that authentic letter of appointment is presented by the bishop. Perhaps some many argue that it appears to be a legal requirement that is now superfluous. The Vatican website readily communicates apostolic act of the Roman Pontiff almost on a daily basis. One such notification is the Pontifical act of appointment of bishops. The names, places and a short biography of appointees are published. So, it will appear that such an authentic public notification by the Apostolic See reduces the chances of having unknown persons usurp the office of the diocesan bishop, or having the civil authority impose a bishop that is not in communion with the Roman Pontiff on the faithful.

Furthermore, canonical possession is a merely ecclesiastical law, and like all such laws a just reason may suffice for the dispensation of such a law.⁴⁸ If a bishop is legitimately impeded, the competent authority may dispense from this requirement. The Apostolic See will be competent to delegate the apostolic nuncio or any other prelate to grant the dispensation.⁴⁹

3. THE EFFECTS OF CANONICAL POSSESSION

Canonical possession has a number of consequences in the life of the diocese. It enables a bishop to start exercising the power of the office. It also creates vacancy in the previous office of the bishop taking canonical possession. These effects or results of canonical possession are also important in the life of a diocese. Without canonical possession a bishop cannot assume the exercise of the office of a diocesan bishop. It means he cannot perform his role as shepherd of the diocese. Canon 375, §1 says by episcopal consecration bishops by divine institution succeed to the place of the apostles. §2 of

⁴⁷ Canon 1375 recommends a just penalty for those who impede the exercise of ecclesiastical authority.

⁴⁸ See cc. 85-93, see also, Eduardo BAURA, *Dispensations*, «ExComm», vol. 1, pp. 644-679

⁴⁹ See c. 87, §1, see *ibid.*, pp. 655-660.

the same canon state that episcopal consecration itself grants the bishop the function of sanctifying, teaching and governing.⁵⁰ These functions are always to be exercised in communion with the Roman Pontiff and the members of the college of bishops. One of the ways of acting in communion with the college of bishops and the head of the college is by observing the laws promulgated by the Supreme Pontiff or the college in union with the Pontiff.⁵¹ It is in this light that the stipulations of the Code of Canon Law should be seen. Observance of canon 382 becomes imperative for bishops to exercise the right of the office. In fact, the law provides more obligations for bishops to observe and ensure that the universal laws are respected.⁵²

Canon 391 explains some of the functions that are attached to the office of the diocesan bishop. He governs the diocese with legislative power by promulgating laws for the good of the faithful. A diocesan bishop exercises his judicial power by himself or as it is highly recommended through his judicial vicar and judges appointed according to the norms of law. The diocesan bishop exercises executive power by issuing general decrees which explain the laws and specific ways of how they are to be observed.⁵³ Instructions, which are directed to executors of the laws, may also be issued by a diocesan bishop.⁵⁴ The issuance of singular administrative acts, which is the most common way of exercising the executive power, can also be issued by a diocesan bishop.

For the purpose of clarity, we have decided to list some of the effects of canonical possessions below; in other words, upon taking canonical possession, a bishop will be able to perform the following acts (stated negatively, it will mean these are also the acts he is not capable of performing before canonical possession):

1. Bishop can assume the exercise of office of governance in the diocese
 - a. Bishop can govern the diocese
 - i. Bishop can promulgate laws for the diocese
 - ii. Bishop can judge marriage and other cases in the diocese
 - iii. Bishop can exercise executive power
 - Issue general executive decrees
 - Issues singular administrative acts: Appoint pastors, transfer and remove pastors,⁵⁵ appoint associate pastors, transfer associate pastors, appoint vicar

⁵⁰ There are no corresponding canons in the Eastern Code.

⁵¹ See cc. 205 and 212, §1. The Corresponding *CCEO*, cc. 8 and 15, §1 are basically the same.

⁵³ See c. 392, §1.

⁵⁴ See cc. 29-33, see also MARIÁ JOSÉ CIÁURRIZ, *General Decrees and Instructions*, «Ex-Comm», pp. 437-470.

⁵⁵ See c. 34, see *ibid.*, pp. 465-466.

⁵⁶ The procedures for the appointment, transfer and removal of pastors are always to be observed (cc. 190-191, 192-195 and 1740-1752). See SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, *Removal of a Parish Priest from Office: Decision coram Cacciavillan*, 28 June 2003, «Studies

- general, episcopal vicars, chancellor, financial officer, appoint members to the curia, establish presbyteral council, college of consultors, erect parishes, merger or suppress parishes, etc.
- b. Exercise the office of sanctifying
 - i. Ordain candidates of the diocese to the diaconate or priesthood⁵⁶
 - ii. Lawfully perform the sacrament of confirmation⁵⁷
 - iii. Celebrate *missa pro populo*⁵⁸
 - iv. Preside at any liturgical celebration in the diocese,⁵⁹ e.g., chrism Mass,⁶⁰ celebrate wedding within the diocese, etc.
 - c. Exercise the teaching office
 - i. Issue Catechism for the faithful as the primary teacher of the faith in the diocese⁶¹
 - ii. Preach at liturgical celebrations as the teacher of faith in the diocese⁶²
 - iii. Approve catechetical programs or establish catechetical programs in the diocese⁶³
 - iv. Grant a *mandatum* to professors in the seminary or ecclesiastical university in the diocese⁶⁴
 2. Previous ecclesiastical office of the bishop becomes vacant⁶⁵
 3. Diocesan Administrator loses his ecclesiastical office⁶⁶

in Church Law», 2 (2006), pp. 275-296; VICTOR D'SOUZA, *The Procedure for the Removal and Transfer of Pastors: Balancing the Rights*, «Studies in Church Law», 4 (2008), pp. 287-340; PAUL HAYWARD, *The Apostolic Signatura and Disputes Involving The Transfer of Parish Priests*, «Canon Law Society Newsletter», London, 104, (1995), pp. 24-32.

⁵⁶ See cc. 1010-1023.

⁵⁷ See cc. 882-888. See JAVIER GONZÁLEZ, *Valid Administration of the Sacrament of Confirmation by a Priest*, «Boletín Eclesiástico de Filipinas», 85 (2009), pp. 405-409; JOHN M. HUELS, *The Supply of the Faculty to Confirm in Common Error*, «Studia canonica», 40 (2006), pp. 293-348.

⁵⁸ See c. 388, see also, ALBERTO DE la HERA, *Diocesan Bishops*, «ExComm», vol. II/1, pp. 801-802.

⁵⁹ See LG, nos. 20-27, CD, no. 15; c. 835, §1, see also, ELOY TEJERO, *The Sanctifying Office of the Church*, «ExComm», vol. III/1, pp. 367-370. ⁶¹ See c. 389.

⁶² See c. 775, §1. On the teaching ministry of a diocesan bishop see also JAMES CORIDEN, *The Teaching Ministry of the Diocesan Bishop and its Collaborative Exercise*, «The Jurist», 68 (2008), pp. 382-407.

⁶³ See c. 763. On the prophetic mission of a diocesan bishop see JAN DYDUCH, *Apostolorum successores (= The participation of the bishops in the prophetic mission of the Church in the light of the Directory Apostolorum successores)*, «Annales Canonici», 2 (2006), pp. 3-15.

⁶⁴ See c. 775, see also JOSÉ A. FUENTES, *Catechetical Formation*, «ExComm», vol. III/1, pp. 117-120.

⁶⁵ See c. 812. For a study of an opinion on *mandatum* Robert J. KASLYN, *Role of College Of officials in Obtaining Faculty Mandatum*, in *Roman Replies and CLSA Advisory Opinions*, 2004, pp. 144-145.

⁶⁶ See c. 418, §1, see also, CARLOS SOLER, *The Vacant See*, «ExComm», vol. II/1, pp. 900-901.

⁶⁷ See c. 430, §1. For some reflection on the administration of a diocese *Sede Vacante* MANUEL MONSANTO, *If a Retiring Bishop is Appointed Apostolic Administrator of his own Diocese*,

4. Bishop can represent the diocese – contracts and sales of ecclesiastical goods may be performed by him⁶⁷
5. Exercise vigilance over the proper administration sacraments and of ecclesiastical goods of public juridic persons in the diocese⁶⁸
6. Coordinate the works of the apostolate in the diocese⁶⁹
7. Bound by the law of personal residence in the diocese⁷⁰
8. Participate in *ad limina* visits, councils, synods of bishops, conference of bishops⁷¹
9. Engage in a pastoral visitation of parishes in the diocese and religious institutes⁷²

What are his Powers while the Diocese is Sede Vacante?, «Boletín Eclesiástico de Filipinas», 82 (2006), pp. 689-700.

⁶⁷ See c. 393. This is a new canon, canon 1653, §1 of CIC/17 had prescribed that the local ordinary could represent the cathedral chapter and standing in trial for episcopal temporal goods. Canon 393 clearly makes the diocesan bishop to represent the public juridic person of the diocese in all affairs and not only during trials. Once a diocese is erected, it enjoys *ipso iure* public juridic personality (cc. 373 and 116). Canon 118 states that those persons recognized by universal law or statutes of the public as competent representative of public juridic persons act in the name of the public juridic person. Canon 393 is the universal law recognizing a diocesan bishop, who has taken canonical possession, as the competent representative of the public juridic person of the diocese. This means, he can enter contracts on behalf of the diocese with other parties (cc. 1290-1292); he can alienate ecclesiastical goods of the diocese, of course always observing the *ius* on alienation of stable patrimony; he can acquire temporal goods for the diocese (c. 1254, §1, and 1261, §2), he can administer and supervise the administration of goods of the diocese (c. 1276, §2 and 1279, §1), and can also designate stable patrimony of the diocese (c. 1295). For more detail see, VALENTÍN GÓMEZ-IGLESIAS, *Diocesan Bishops*, «ExComm», vol. II/1, p. 820; GAUTHIER, A., *Juridical Persons in the Code of Canon Law*, «Studia canonica», 25 (1991), pp. 77-92; FRANCIS G. MORRISSEY, *The Temporal Goods of the Diocesan Church*, «CLSA Comm2», pp. 24-36.

⁶⁸ See c. 392, §2. For more reading on the vigilance role of a diocesan bishop over ecclesiastical goods in his diocese, see, EDWIN N. OMOROGBE, *The Power of the Diocesan Bishop with Regard to the Administration of Ecclesiastical Goods of Public Juridic Persons subject to Him: An Analysis of Canon 1276, §2*, Ottawa, Saint Paul University, 2010. In this work the author concludes that the duty to protect ecclesiastical goods of the Church is rooted in the obligation to participate in the mission of the Church, see especially, *ibid.*, pp. 302-303.

⁶⁹ See c. 223, §2, regarding specific ways how a diocesan bishop may regulate rights of the faithful as it concerns common good of the society, see, DANIEL CENALMOR, *The Obligations and Rights of all Christ's Faithful*, «ExComm», II/1, p. 147. The Second Vatican Council describes what should be regarded as the common good of society, as conditions and of social living which enable people to develop their qualities fully and easily. In other words, the sum total of conditions that allows and enables human beings to realize their full potentials. See *DH*, no. 6 and *GS*, nos. 26 and 75.

⁷⁰ See c. 395, §1, see also, VALENTÍN GÓMEZ-IGLESIAS, *Diocesan Bishops*, «ExComm», vol. II/1, pp. 827-829. The obligation of personal residency of diocesan bishop has been traditionally binding on bishops and this can be found even in Decree of Gratian (C 7, q. 1, cc. 19-21, 25-26) and also in the Decretals of Gregory IX (x III, 4, 9).⁷² See c. 395, §2.

⁷¹ See c. 396. GÓMEZ-IGLESIAS holds that canonical doctrine regards the following as the purposes of pastoral visits of a diocesan bishop: a) to maintain the doctrine intact and ortho-

10. Official pastoral visitations to catholic institutes in the diocese, sacred places e.g., shrines in the diocese.⁷³

This list above is part of the function or duties attached to the office of a diocesan bishop, thus one who has not taken canonical possession is incapable of exercising them.⁷⁴

4. CONCLUSION

The institute of canonical possession, as reflected in the present Code, is one that affects the offices of the diocesan bishop and pastor of parishes. This paper mainly treated the institute as it relates to the office of the diocesan bishop. In the process of this study, we attempted to establish the specific determination of canon 382. The first paragraph of this canon prohibits diocesan bishops from assuming the exercise of their office unless they have taken canonical possession of their diocese. Canonical possession is established as a procedure that requires the bishop to show the apostolic letter of appointment to the college of consultors in the presence of the chancellor who records the event or in the case of a new diocese, to proclaim the apostolic letter of appointment in the liturgical celebration of the installation of the diocesan bishop.

As we have tried to show, laws do have their purposes and this must always be kept in view when analyzing any law.⁷⁵ The purpose of canon 382, §1 among other things is to verify and authenticate the apostolic letter of appointment of the bishop before he starts exercising power in the diocese. As the bishop-elect shows the letter of appointment to the college of consul-

dox; b) to protect good morals and correcting bad ones; c) to promote charity, piety and discipline among the people and the clergy; d) to foster the apostolate; and e) to establish that, in view of the circumstances, is good for the faith” in VALENTÍN GÓMEZ-IGLESIAS, *Diocesan Bishops*, «ExComm», vol. II/1, p. 832; see also *Communicationes*, 12 (1980), p. 305.

⁷³ See c. 397, see also, Valentín GÓMEZ-IGLESIAS, *Diocesan Bishops*, «ExComm», vol. II/1, pp. 833-835.

⁷⁴ Renken gives a list of what a bishop who has taken canonical possession is to do: “Very soon after he has taken canonical possession, the new diocesan must fulfill several important responsibilities identified in the Code:

1. to draw up a list of persons, listed in successive order, to govern the see should it become impeded, and to communicate the list to the metropolitan while the chancellor preserve it secretly in the diocese (c. 413 §1); the apostolic vicar and apostolic prefect must appoint a pro-vicar and a pro-prefect (c. 420)

2. to appoint at least one vicar general 9c. 475 § 1); the auxiliary bishops should be vicar general or at least episcopal vicars (c. 406)

3. to establish the presbyteral council within one year (c. 501 § 2)

4. to confirm the judicial vicar and the adjutant judicial vicars (c. 1420 § 5)” in *Particular Churches and the Authority Established in Them*, p. 102.

⁷⁵ See c. 17, CCEO, c. 1499.

tors, they view the document and perform no other function. Their opinion or decision is not required and, even if they express acceptance or rejects the appointment, it lacks any juridic force. The bishop will still have fulfilled the obligation to take canonical possession.

The strong recommendation of canon 382, §4 should be made binding. It should no longer be a *valde commendatur* strong recommendation, but a juridical requirement that is essential to the institute of canonical possession. The response to the doubts proposed to the Congregation for Divine Worship and the Discipline of the Sacraments in 2009 states that one already ordained a bishop simply takes canonical possession of his diocese by the proclamation of the apostolic letter and sitting on his cathedra chair. Although, the question that the congregation was responding to primarily concerns bishops transferred from another diocese or bishops who did not receive episcopal ordination in their cathedral churches, the inherent value of placing canonical possession within a liturgical ceremony is obvious in the reading of the response. Here the competent authority states the essential elements of canonical possession within a liturgical ceremony. "For the bishop essentially takes possession by reason of the proclamation of the apostolic letter and at the moment when the bishop sits in his cathedra."⁷⁶ Subsequent revision of the Code should extend this to all bishops who are to take canonical possession of their dioceses. The taking of canonical possession within a liturgical celebration will express more profoundly the service to the people of God that a bishop is called to.⁷⁷

⁷⁶ CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, *Responsa ad dubia proposita, On Having Over the Crozier to a Transferred Bishop*, «Notitiae», 46 (2009), nn. 11-12, p. 622; «Communicationes», 42 (2010), p. 62, English translation in RENKEN, *Particular Churches and the Authority Established in Them*, p. 326.

⁷⁷ The CCEO, c. 189, §1 already mandate public celebration of canonical possession.