

## *The Catholic Church in China: A Canonical Evaluation*

by Geoffrey King, S.J.

This article first appeared in *The Jurist*, 49 (1989) 69-94. It is reprinted here with permission.

In May, 1988 I had an opportunity to meet with officials of China's Bureau of Religious Affairs in Beijing. In the course of the meeting I raised the issue of the freedom of Chinese Catholics to communicate with the Holy See and to give expression to their acceptance of the Roman primacy. The officials responded by citing two major grievances against the "Vatican"<sup>1</sup>--that it continues to maintain diplomatic recognition of the Taiwan government, and that it had excommunicated patriotic Chinese Catholics. When Cardinal Sin was in China he mentioned the word "communion" in the course of a conversation with some bishops. One of them immediately reacted--"I was excommunicated by Pius XII."



The presumption on the part of many outside China is that there has been a breach of communion between the Chinese Catholic Church and the rest of the Catholic Church. And inside China some members of the "underground" denounce the "patriotics" as excommunicated and refuse to share sacraments with them. At least until June, 1988, when Archbishop Lefebvre ordained bishops without approval from the Holy See, one could have been excused for thinking of Book VI *De Sanctionibus in Ecclesia* as one of the less pastorally relevant parts of the Code of Canon Law. In China, however, the issue of excommunication is a live one.

### **Illicit Ordination of Bishops**

The bishop speaking to Cardinal Sin was probably thinking

of the 1958 encyclical of Pius XII *Ad apostolorum principis*<sup>2</sup> and perhaps of a statement of the Congregation of the Propagation of the Faith published in *L'Osservatore Romano* on April 26 of the same year.<sup>3</sup> The content of these documents is worth careful examination.

In his encyclical Pius XII states categorically that no one can lawfully confer episcopal consecration unless he has received the mandate of the Holy See. He goes on:

Consequently, if consecration of this kind is being done contrary to all right and law, and by this crime the unity of the Church is being seriously attacked, an excommunication reserved *specialissimo modo* to the Apostolic See has been established which is automatically incurred by the consecrator and by anyone who has received consecration irresponsibly conferred.<sup>4</sup>

The Pope makes reference to a decree of the Holy Office of April 9, 1951, which states:

A Bishop of any rite or dignity whatever who confers episcopal consecration on a cleric who has not been nominated by the Holy See, or expressly confirmed by the same, and also the person who received such consecration, even if impelled by grave fear, are subject *ipso facto* to excommunication reserved *specialissimo modo* to the Holy See<sup>5</sup>

It will be noticed that the Pope does not declare that any individual has incurred this excommunication. A similar restraint is exercised in the Propaganda Fide statement of April 26. The statement mentions two bishops, Dong and Yuan, who were ordained in Hankou cathedral on April 13, and goes on to recall the right to appoint bishops in the Roman church, according to canon law, is reserved to the Roman Pontiff. It notes that a telegram was received in Rome on March 24 informing the Holy See that at a meeting of clergy on March 18 Fr. Dong had been elected bishop of Hankou. A second telegram two days later announced the election of Fr. Yuan as bishop of Wuchang. The statement goes on to say that Propaganda Fide sent replies by telegram to the effect that the elections were void because bishops must be freely appointed by the Roman Pontiff. The telegram called to the attention of the two priests the decree of the Holy office of 1951, and urged them not to consent to ordination.

Thus, neither the Pope nor the congregation declared any individual to have incurred the excommunication. Nor has any subsequent Pope done so. The only explicit decree of excom-

munication issued to a Chinese prelate was addressed to Li Weiguang. He was ordained as a bishop without Roman approval, but this was *after* his excommunication. He was excommunicated in February, 1952 because of his support for the expulsion of the papal internuncio Mgr. Riberi, and the order was made public in 1955.<sup>6</sup>

What led to these illicit ordinations? By the mid-1950s many Chinese dioceses were without a bishop. Almost all foreign bishops and other foreign ordinaries had been expelled from the country. From 1950 to 1955, Rome appointed twenty-two Chinese bishops. But from about 1955 many Chinese ordinaries were imprisoned. Many dioceses elected vicars capitular or diocesan administrators, but by early 1958, 120 out of 145 dioceses (or prefectures apostolic) had no functioning diocesan bishop (or prefect apostolic).

---

*Perhaps we will understand the Chinese situation better if we focus on the complexity of the factors which people had to weigh rather than simply on the different conclusions at which they finally arrived.*

---

During 1957 more than 200 "branches" of the Catholic Patriotic Associations were set up in various parts of China. A general assembly of the association took place in Beijing from July 15 to August 2, 1957. It was attended by 241 "representatives" including ten bishops and 200 priests. In the course of the assembly it was proposed that the church in China select and ordain bishops on its own initiative. The proposal was rejected. Moreover, some bishops, gathered in a special session to discuss the matter, expressed their unwillingness to ordain if asked to do so. The assembly resolved to organize a pilgrimage group to Rome in order to inform the Holy See about the situation in China, but this was "discouraged" by the government and so was doomed to failure. Later, however, a compromise proposal was accepted: the Chinese hierarchy would elect bishops and present the names to Rome for approval. There was some confidence that the names would be acceptable to both Rome and the Chinese government.<sup>7</sup>

From this there followed the exchange of telegrams with

Propaganda Fide. Some evidence, at least, suggests that the Roman reaction took most Chinese Catholics by surprise.<sup>8</sup>

The Roman stance is easy enough to understand. It is, and was, clear that the Chinese government was trying to exercise a large measure of control over the Church. Catholics had suffered imprisonment for resisting this control. Hence, Pius XII saw the independent selection of bishops as an attempt to put the Church under the control of men who simply carry out government policy. He added that because he was prevented from communication with the Church in China, he was unable to obtain sufficient information about candidates for him to make proper episcopal appointments.<sup>9</sup> The Pope also could very reasonably point out that the shortage of bishops was due in large part to the fact that legitimate and capable bishops had been imprisoned or expelled.<sup>10</sup> Moreover, the telegrams asking for confirmation of those elected could easily be seen as presenting Rome with a *fait accompli*.<sup>11</sup>

Such a reading of the situation by the Roman authorities was rendered almost inevitable by the highly centralized model of church authority taken for granted in Rome at the time. In his encyclical, for instance, Pius XII stated that those ordained without authorization "enjoy no powers of teaching or of jurisdiction since jurisdiction passes to bishops only through the Roman Pontiff,"<sup>12</sup> a theory of the source of episcopal jurisdiction that was to be rejected by Vatican Council II.<sup>3</sup>

The Vatican attitude is understandable, but the published documents are utterly intransigent. There is no hint of conciliation, no opening for compromise, no sympathy for Chinese Catholics in the dilemma with which they were faced. The idea that there can be conflict between being Catholic and being patriotic is dismissed--a position which is theoretically unassailable but which takes little account of the confused reality of China.<sup>14</sup> The distinction which some Chinese Catholics had attempted to make between obedience to the Pope in matters of faith and morals, on the one hand, and breaking off political and economic relations with the Vatican, on the other, is seen as an attempt to confine the teaching authority of the Church within a narrow scope, implying that Catholics may ignore the directives and teachings of the Holy See on social and economic matters.<sup>15</sup> Again the papal position makes perfect sense *sub specie aeternitatis*--the gospel cannot be "privatized"; it has

something to say about social relationships and social justice. No doubt, too, some Chinese Catholics under government pressure tended to stretch the meaning of the "political and economic relations with the Vatican." But all this is to focus on the weaknesses of the Chinese position rather than attempt a sympathetic understanding of a distinction that the Catholics were trying to make, precisely in an attempt to remain both Chinese and Catholic.

Hence, the Vatican attitude may be understandable, but so is that of the Chinese Catholics who supported the independent ordinations. With the great majority of dioceses vacant (for whatever reason) there was an urgent need to ordain new bishops. In a very difficult situation they did try to find ways of holding on to obedience to the Pope in matters of faith and morals and to acceptance of the Pope's right to appoint bishops. The distinctions drawn, the telegrams sent, are evidence of this. Their motives may have been mixed and their methods may have lacked diplomatic finesse, but that does not mean that they were engaging in mere window-dressing. When these (admittedly imperfect) attempts were rejected, it is not surprising that some Chinese Catholics felt that Rome had no understanding of their situation. The language of a statement such as the following may be too self-righteous and too much influenced by communist jargon, but the judgment it makes is far from groundless:

...we see clearly that the society in which the Holy See is situated and our society are not the same, and that Rome evidently has no means of comprehending our way of thinking and our feelings, and that it is not possible for them to understand our just course of action. The fact is that we cannot fail to recognize that the Holy See has differences with us in its political stance, that is, it takes a reactionary position in its treatment of the Church of the new China....The Holy See does not understand Chinese society; its political position limits its understanding; and the natural result is its opposition to our legitimate action....<sup>16</sup>

This attempt at a preliminary evaluation of the positions taken up in 1958 will, I hope, facilitate an analysis of the present state of affairs. Important new elements have been introduced into that state of affairs by the Code of Canon Law of 1983. In the first place, the code makes a crucial distinction between *latae sententiae* censures which have been *declared* and those which have not. Canon 1335 provides as follows: if a

*latae sententiae* censure has not been declared, the prohibition of the celebration of sacraments and sacramentals and of the exercise of the power of governance is suspended, whenever one of the faithful requests a sacrament or sacramental or an act of the power of governance. Moreover, for any just reason it is lawful to make such a request. For practical purposes, then, an undeclared *latae sententiae* censure has minimal public effect. And we have seen that no Chinese bishop has been declared excommunicated on the grounds of illicit ordination. Where the only bishop who can publicly exercise the episcopal office in a given diocese is one who has been ordained without Roman authorization, there is clearly a "just reason" for Catholics to approach him for the sacraments and for acts of governance.

In a limited sense, this solves the practical problems. But the more fundamental question, "Has the alleged excommunication been incurred?" remains important. It is important to the individual concerned; for "underground" Catholics, few of whom understand the nuances of declared and undeclared censures; and for the relations between China and the Holy See.

A second change introduced by the 1983 code is a modification of the terms of the Holy Office decree of 1951. The decree had taken the unusual step of declaring that the presence of grave fear (*metus gravis*) did not excuse from the penalty.<sup>17</sup> This clause is omitted by canon 1382 of the code.<sup>18</sup> Thus, in accord with the ordinary discipline embodied in canons 1323 and 1324, the presence of grave fear is now sufficient to excuse from the censure of canon 1382. Where does this leave those bishops who were illicitly ordained before November 27, 1983, the date on which the revised code took effect? It would seem that the new, less stringent, discipline applies also to them, since canon 1313 provides that if after the commission of a delict the law is changed, the more favorable law is to be applied. The 1917 code excluded censures from this provision, an exclusion omitted by the revised code.

Mention of "excuses" reminds us that a *latae sententiae* censure is "automatic" only in a qualified sense. The present code, like its predecessor, lays down the principle that no one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability (c.1321). Where there has been an external violation, imputability is presumed. But presumptions can be

overcome by contrary evidence.

The kind of evidence needed to overcome the presumption of imputability was discussed in two recent articles in *Studia Canonica*. Elizabeth McDonough pointed out a change introduced in the 1983 code. The earlier code required *proof* to the contrary. The new text is *nisi aliud appareat*.<sup>19</sup> She suggests that one can judge the magnitude of this change by imagining the effect that a similar change in canon 1060 (on the *favor iuris* with respect to marriage) would have on tribunal practice. But a question remains. *Nisi aliud appareat* demands less than proof, but how much less? There is a difference in English translation, after all, between "unless there is an appearance of its being otherwise" and "unless its being otherwise is apparent."

In his more extensive treatment of this question Michael Hughes argues that if a defendant raises the possibility that his or her external violation of the law is not imputable (and produces some reason to back the claim), then the onus is on the prosecutor or judge to rebut the possibility. Thus, argues Hughes, canon 1321 is compatible with the common law presumption of innocence.<sup>20</sup>

This is a more liberal view than that espoused by Velasio de Paolis, who demands that the case for non-imputability be probable.<sup>21</sup> I find Hughes' argument persuasive, but the case which I will present on behalf of the Chinese bishops seems to me to meet even the more stringent requirements of de Paolis.

The canons following 1321 indicate various ways in which imputability can be diminished or been removed entirely. Particularly relevant is canon 1324, which in par.1 lists, in effect, a number of causes which excuse from *latae sententiae* penalties.

A number of these "excusing causes" appear to be applicable to the Chinese situation. The most apparently relevant are those in 1324, par. 1, 5°: constraint by grave fear (even relatively grave) or necessity or *grave incommodum*. These now apply even where the offense is intrinsically evil or tends to cause harm to souls. Less directly applicable, but still relevant by a kind of analogy (a point to which I will return), are factors listed in 2° and 3°: lack of use of reason because of drunkenness or similar mental disturbance, and grave heat of passion (even if it does not totally impede mental deliberation and voluntary consent).

*Grave fear.*

It is probably simplistic to think of the ordinations in the late 1950s taking place under some immediate and direct threat from government authorities. Indeed, some of those involved in the ordinations showed themselves over the years able to resist threats of violence. But it does seem to be the case that at least many of the ordinations took place in situations of fear and great pressure. In part the pressure was "internal"--that which came from wishing to remain loyal both to China and to the Catholic Church. There was also great external pressure to "declare" one's loyalty to one's country. And all this was in a context of fear, of accusation, and sometimes of humiliation and imprisonment. Many confreres of these priests had been expelled or imprisoned. It was, moreover, the time of the Anti-Rightist campaign, a fierce reversal of the comparatively "liberal" policies of the brief Hundred Flowers period.

*Necessity and grave incommodum.*

Even more to the point are the categories of necessity and *grave incommodum*. We have seen that by 1958 there was a drastic shortage of active bishops in China. There was real and justified concern for the survival of the Church. After attempts at compromise had failed, some in China could reasonably judge that the only way to obtain bishops was to go ahead and ordain them without permission.

To understand this judgment it is necessary to put it in broader context. The broadest context is that of the self-understanding of the Chinese people. For over a century a nation which was the oldest continuing civilization on earth, which traditionally had seen itself as *Zhongguo*, the Central Kingdom, had been humiliated by the imperialist powers, had been conscious of its economic "underdevelopment," had suffered from political anarchy and from invasion by Japan. Vast numbers of Chinese (including many who had serious doubts about Communism) saw the revolution of 1949 as enabling China once again to "hold up its head" among the nations. Undoubtedly some Chinese Catholics shared these feelings, and they also saw the Holy See and foreign missionaries as being in some way connected with the imperialism that had humiliated China, and as acting unreasonably in their total opposition to an (admittedly far from perfect) Chinese Communist Party.<sup>22</sup>



Some of these feelings may appear to the outsider as more "justified" than others, but all of them were capable of shaping attitudes. One cannot, for instance, deny the fact that Christian missionaries had been able to reenter China in the nineteenth century on the coattails of imperialism, through the unequal treaties imposed on China at the end of the Opium Wars.<sup>23</sup> The treaties had also exempted foreigners in China from ordinary Chinese jurisdiction and set up a separate judicial system for them. Missionaries often took advantage of this (often for good motives), even demanding for Chinese Christians the "protection" of foreign consuls and courts. Christian hospitals, orphanages and other forms of social service made great contributions to China, but they remained part of a Christian sub-culture. Moreover, it is easy for even the best desire to help others to be tinged with paternalism, and it is even easier for it to be perceived as paternalistic. There was often tension and even enmity between the foreign missionaries and native Chinese priests (of course, there were also many deep friendships formed).<sup>24</sup> Indigenization, let alone inculturation, of the Church had been slow. Even though the prohibition of the "Chinese rites" had been revoked in 1939, two centuries of prohibition still rankled. That such grievances were not simply the product of a Chinese chauvinism is clear from the fact that one of the most vocal, and most influential critics of the slow pace of indigenization was the papal legate, Celso Constantini.<sup>25</sup> A Chinese hierarchy had been established only in 1946. The fact that the record in China was no worse than in most colonial and immediately-post-colonial societies did not necessarily make Chinese Catholics, especially some priests and intellectuals, any happier with their situation.

Some recent comments of a Chinese Jesuit living in Taiwan are not necessarily representative but they are not lightly to be dismissed. He writes that Chinese Catholics were for a long time treated as second-class believers, incapable of governing themselves. Consequently, even today many Jesuits remain, in the eyes of many Chinese intellectuals especially, descendants of those who humiliated their country.<sup>26</sup>

In another way, too, the Catholic Church could easily be identified with an antipatriotic stance. Many Catholic leaders had supported the Kuomintang. Before 1949 this could be seen as a progressive and nationalistic position. After 1949 it was the

opposite.<sup>27</sup> And of course it was a time when anti-Communist feeling in the Catholic world at large was at its height and when anti-Communist pronouncements were frequent in church teaching. From the Chinese perspective the Korean War reinforced the perception of Western countries as the enemy and of the Vatican as aligned with that enemy.

These feelings were further fueled by the activities of the internuncio, Mgr. Riberi, immediately after the Revolution. His actions and motives have been the subject of much dispute, and much is likely to remain obscure until the relevant Vatican archives are opened to scholars.<sup>28</sup> But it is clear that he took an uncompromising stand against Catholics' cooperating with the government. His opposition to the Three-Self Movement (the Church should be self-governing, self-supporting and self-propagating) among Catholics was absolute. He referred to it as a "schismatic" movement.<sup>29</sup> He threatened with excommunication any Catholic who supported his being expelled from China.<sup>30</sup>

What I have just presented is only one side of a complex picture. Only in passing have I mentioned the benefits which the Church brought to China, the foreigners who worked for the building of a genuinely Chinese church, the strong, even passionate, attachment of Chinese Catholics to the universal Church and to the person of the Pope. No doubt some of the negative feelings I have listed were the result of misunderstanding or partial understanding. But I am trying here to understand the mentality of significant numbers of Chinese Catholics in the 1950s, not to present a full and "objective" picture of the role of Rome and the missionaries.

From all this it seems to me very likely that many Chinese Catholics had conflicting thoughts and feelings about relations with the Holy See. In the event, some remained uncompromisingly loyal to Rome and suffered greatly as a result. Others adopted various degrees of compromise. But it would be surprising if the former never had any doubts or hesitations, and it is wrong, surely, to see the latter merely as cravenly capitulating to government pressure. One suspects that sometimes only a razor's edge separated the one choice from the other. Why the choice went the way it did depended no doubt on all sorts of personal factors. Probably many of us, when reflecting on our own experience, realize that we can give good reasons for

important choices that we make, but there are often good reasons on the other side, that a variety of semiconscious biases and instincts are involved, and that ultimately the reason for the choice remains partly mysterious. Perhaps we will understand the Chinese situation better if we focus on the complexity of factors which people had to weigh rather than simply on the different conclusions at which they finally arrived.

Those who concluded that Rome did not understand their situation seem to have taken a variety of attitudes to the requirement of a *mandatum apostolicum* for the ordination of a bishop. Some (at most a tiny minority) saw it as reason for a complete breach with Rome. Others, while not advocating a complete break, concluded that the requirement of the mandate was wrong; they became, as it were, conscientious objectors to the law.<sup>31</sup> Others, however, in effect exercised the virtue of *epikeia*. They did not challenge the general justice or reasonableness of the law, but saw it as inapplicable in their special circumstances.<sup>32</sup>

Each group saw it as necessary to go against the letter of the law. The first group arguably chose to excommunicate itself. But the second and third groups are surely "excused" from excommunication by their perception that their action was necessary (or at the very least a way of avoiding grave difficulties, *gravia incommoda*). To be excused from a *latae sententiae* penalty it is, moreover, enough that one thinks that there is present necessity or *grave incommodum*, even if one is in error (even in culpable error!) in so thinking (c. 1324, par. 1, 8°). It should be added that there is evidence that the decision to ordain or to be ordained was for many a decision made with misgiving and regret, but one that was seen as a painful necessity.<sup>33</sup>

So much for the "necessity" of the 1950's. What of more recent ordinations, especially those that have taken place since the revival of church life after 1978? The need to "replenish" the hierarchy continues to be a pressing one, especially given the age and state of health of most Chinese bishops. Obtaining Roman approval remains, if not absolutely impossible, certainly difficult in the extreme. So it can reasonably be argued that independent ordination, even if not an absolute necessity, is at least the only way of avoiding *grave incommodum*. Moreover, it is clear that some priests have consented to be ordained bishop in order to avoid having someone less suitable (and sometimes

someone less loyal to Rome) ordained.<sup>34</sup>

There is a further aspect of the Chinese context to be considered. Catholics there (like their compatriots) have been subjected to years of propaganda, of stringent control of news and information, and in varying degrees and especially before 1978 to processes of "thought reform."<sup>35</sup> The combined power of these forces cannot easily be underestimated. Studies of those subjected to "thought reform," for instance, have made it clear that many who began as strongly critical of the regime or of Communism emerged at least ambivalent or confused and sometimes "apparently converted."<sup>36</sup>

This manipulation of people's perceptions makes relevant, I believe, the categories of canon 1324, §1, 2° and 3°. 2° mentions lack of use of reason because of drunkenness or similar mental disturbance. The influence of drugs would seem an obvious example of the latter. But "thought reform" can disturb one's judgment with equal effectiveness. It would, of course, be extremely difficult to argue that in the case of episcopal ordinations the influence was such as to deprive those participating of all use of reason. A much stronger case, however, can be made for their diminished imputability because of the pressures and influences to which they were subjected. Turning to 3°, "grave heat of passion" may not in a literal sense have been present, but the circumstances may well have been such as to "impede deliberation of mind and consent of will."

The argument of the preceding paragraph may be restated as follows. Canon 1312 contains a basic principle--no penalty without grave imputability. Canon 1324 (and other canons) then list typical ways in which imputability may be diminished or removed. But the categories of canon 1324 cannot be taken as exhaustive, or at least they cannot be expected to cover such extreme situations as that of China since 1949. Imputability can be diminished in ways analogous to those listed in canon 1324. The possibilities for diminished imputability in a society as controlled as that of China are numerous indeed.

What I have tried to present is a case for the non-imputability of the external violation of the law on the part of Chinese bishops. We cannot, of course, know the deepest motives of those involved, a point very sensitively recognized by Pope John Paul II:

The course of history, shaped by human decisions, has been

such that for many years we have not been able to have contact with each other. Very little was known about you, your joys, your hopes and also your sufferings. Recently, however, from various parts of your immense land, information about you has reached me. But in those long years you have undoubtedly lived through other experiences which are still unknown, and at times you will have wondered in your conscience what was the right thing for you to do. For those who have never had such experiences it is difficult to appreciate fully such situations.<sup>37</sup>

Even so, the Chinese context and the statements of some of the Chinese bishops seem to me to provide not merely a possible, but even a probable case of non-imputability. Hence, the burden of proof falls on anyone who would assert that the action of any particular Chinese bishop is imputable.

It is difficult to go further and state categorically that the bishops have not incurred excommunication. But that is not because of anything peculiar to China, but because of the anomalous state of the law. It mixes public and private matters: we cannot know the deepest motives of those involved, but the law makes the public status of these persons dependent precisely on their motives. The presumption of imputability is intended as a way around this difficulty, but in the Chinese case it proves inadequate. We will return to this point later.

The argument which I have put does not necessarily condone the actions of the bishops involved in the illicit ordinations. At most I have argued that their motives were understandable and not unreasonable. It may well be that those who resisted government pressure, who still live in a precarious "underground" situation, have chosen the better part. One may disagree with the choice made by those who agreed to ordain or be ordained with government approval. But disagreeing with someone is very different from claiming that he or she has been excommunicated.

### **The Allegation of Schism**

Thus far I have considered the question of excommunication only in terms of the illicit ordination of bishops. But an argument might also be put for the applicability of canon 1364's excommunication of the *schismaticus*. Mgr. Riberi, after all, referred to a schismatic movement, and it has been common for

people outside China to speak of a "patriotic church," on the one hand, and on the other, a "faithful" or "underground" church.

Schism is defined in canon 751: the refusal of submission to the Roman Pontiff or of communion with the members of the Church subject to him. It should be noted immediately that since we are dealing with a law imposing a penalty, these terms must be interpreted strictly, that is, narrowly (c.18). Schism is complete withdrawal of allegiance or submission, not simply some criticism of authority.

There has been no formal declaration from the Holy See to the effect that the Chinese Church is in schism. John XXIII did refer once to the illicit ordinations as having "paved the way for a deplorable schism"<sup>38</sup> and later said "We have already told the world that a very painful schism is being prepared in China."<sup>39</sup> Both references appear to be to a potential schism rather than an actual one. Moreover, during the first session of Vatican II, a group of bishops who had lived in China presented advice to the Pope on the Chinese situation. It is reported that he told them that he would not use the word "schism" again when speaking of the Church in China.<sup>40</sup>

There are at least three grounds on which it might be alleged that schism has occurred in China--(1) the setting-up of the Catholic Patriotic Association is alleged to be the setting-up of a national church separated from Rome; (2) Chinese bishops and others have declared that their church is "autonomous" and have denounced Roman "interference"; (3) a promise made by bishops at their ordination alleged to involve a rejection of papal authority.

---

*It is not a total breach,  
not a schism,  
but divisions need to be healed.*

---

Documents from the Catholic Patriotic Association and statements of its officials reiterate that the association is not a church, but a "bridge" between church and state. For example, in June 1957, Dong Wenlung, the administrator of the diocese of Tsinan, referred to the association as "parallel to the Catholic Church...a separate organization...a political organization rather than a religious one."<sup>41</sup> At the July-August assembly in 1957,

one speaker stated, "The Patriotic Association is not an organization of the Catholic Church. It is an organization of the Catholic masses who love their country and love their religion."<sup>42</sup> More recently (in 1981) Shen Baozhi, chancellor of the Shanghai diocese, commented, "The Patriotic Association is not the Church. It is just an organization of Catholics banded together to show love of country. Its audience is the whole Catholic Church, all the Catholics. Our aim is to encourage love of country and support of the government among all the Catholics. We also want to explain to the Catholics the government's policy on freedom of religion."<sup>43</sup>

Since the reorganization of church government which took place in 1980, Chinese officials have been at pains to emphasize that doctrinal and liturgical matters are the province of the Bishops' Conference, not the association.<sup>44</sup>

The reality is certainly more confused than these statements might lead one to believe. In some places officials of the association exercise a great deal of control over church life, but in other places the existence of the association is little more than a formality which makes possible the public celebration of the sacraments. No doubt there are some officials and even a few Catholics who would be happy to have nothing to do with Rome. But, at worst, this means that there are some schismatic individuals and a church whose freedom is severely restricted by the government, not that there is a separate church.

Again, it is alleged that statements about the "autonomy" or "independence" of the Chinese church are evidence of the "refusal of submission" (*detrectatio*) of canon 751. But clearly there is a proper sense in which a local church is autonomous. Moreover, a Chinese bishop (Jin Luxian of Shanghai) who has made some of the most widely publicized calls for autonomy, has stated that he uses the term "autonomy" in the sense in which it is used at Vatican II.<sup>45</sup> He says, too, that he wants the church of Shanghai to be in communion with the Universal Church, and that of course he sees this as including communion with the bishop of Rome.<sup>46</sup> In this statement, Jin does not expressly acknowledge a Roman primacy, but he certainly does not deny it. There is no evidence here of *detrectatio subiectio-nis*.

Other statements object to "Vatican interference" in affairs of the Chinese church. Such statements are open to a variety of

interpretations:

1. They may be objecting to the recent practice of "secret" ordinations of bishops and priests. There can be disagreement with this practice on pragmatic grounds (e.g., serious lack of theological formation in those being ordained, fear of provoking a backlash from the government), which disagreement is entirely compatible with loyalty to the Holy See.

2. They may be disagreeing with current church discipline on the selection of bishops (as expressed in c. 377). Given the different ways in which bishops have been and are (legitimately) selected, such a disagreement with the discipline does not necessarily involve any rejection of church teaching on the primacy. These different ways will be discussed more fully later in this article.

3. The disagreement may go further and touch on part of church teaching. For example, it may stress the first part of *Lumen gentium*, (27) on the ordinary and immediate authority of bishops while neglecting the second part of the same paragraph on the regulation of the exercise of this power by the supreme authority of the Church. Or, the disagreement may appear to involve a rejection of primacy of jurisdiction on the part of the Pope. Even in this case one needs to look carefully at what is being rejected. It may be a certain way in which jurisdiction has been exercised, or a certain sense in which jurisdiction has been understood. Scholars whose communion with Rome has never been seriously questioned have debated the latter point, asking, for instance, whether Vatican I's disjunction of "primacy of jurisdiction" and "primacy of honor" is an adequate one.<sup>47</sup> Moreover, in the Chinese context, one needs to allow for confusion in the mind of the author between the Holy See as a "spiritual" authority and the Vatican as an entity in the world of international diplomacy.

4. Even if a statement cannot be given one of these "benign" interpretations (and it is difficult to find a statement which clearly cannot), it needs to be remembered that the author may have been acting under extreme pressure, and that there has been in China what appears to an outsider as a continuing policy of encouraging and even demanding a kind of "ritualistic criticism."

A final piece of evidence for schism comes from the ritual of episcopal ordination, in particular from one of the promises



that the bishop-elect is asked to make. We do not know exactly what formula has been used in each ordination, but one commonly-used text contains the following question: "Are you willing to be detached from all control of the Roman Curia, and to insist on the ecclesial principle of Independence, Autonomy and self-Government?"<sup>48</sup>

"Independence, Autonomy and Self-Government" have already been discussed. What, however, is to be made of "detachment from all control of the Roman Curia," which looks rather like *subiectionis Summo Pontifici...detrectatio*?

Not all the "illegitimate" bishops have taken this promise. When Jin was ordained as auxiliary bishop in Shanghai he apparently insisted that the question be omitted. There are reports of similar omissions at ordinations in more remote areas.<sup>49</sup> Another bishop omitted the word "all" when putting the question. But even the wording quoted above is open to "non-schismatic" interpretation. It is detachment not from the Pope, or from the Holy See, but from the Roman curia that is promised. This can be interpreted as an assertion of freedom from the bureaucracy of the Church or from its political dimension, not from the universal Church as such. It is easy enough to imagine, for instance, an American Catholic saying, "I'm perfectly loyal to the Pope, but I object to the control and interference of curial officials." No one would accuse him or her of schism. (It is reported that in some ordinations the term "Vatican"--an even clearer reference to the political dimension--has been substituted for "Roman Curia.") Some bishops have even declared under oath that they gave the promise an "exclusively political" meaning. Secondly, it is "control" that is rejected. This can be read as rejection of ways in which authority is exercised rather than of authority as such. The points made above about the different meanings of "interference" are again relevant here. Finally, it seems that the verb "to be detached" (*baitou*) has strong political connotations.<sup>50</sup>

For the sake of completeness, it should be added that another, more "damaging" form of promise has been reported: "to break off all relationship with imperialism and any control by the Pope of Rome." Even in this case, it is "control" that is rejected, not authority. More importantly, this sentence appears only in a handwritten version, and even the editor who published it has reservations about its authenticity.<sup>51</sup>

There are undoubtedly some deep divisions within the Chinese Catholic church, but there does not appear to be any conclusive evidence that the excommunication of canon 1364 has been incurred in China.

Given that there is some popular perception that a schism has occurred in China, there is something to be said for a public acknowledgment by the Holy See that no schism exists. This might also help avoid further deepening of divisions within China, because at present ill-founded accusations of schism are sometimes thrown around by some "underground" Catholics. On the other hand, it would be very difficult for the Holy See to declare that the alleged excommunication on the grounds of illicit ordination has not been incurred. For in this case there has been an "external violation." How can a public authority state that excommunication has been "excused from" by subjective factors? But the problem here is not with the Chinese Catholics but with the law, which mixes in problematic ways the internal and external fora.

### **The Adequacy of the Law on Excommunication**

Thus, the Chinese situation raises not only questions of pressing pastoral urgency, but questions concerning canonical theory and the adequacy of the present law. In particular, does not the Chinese example call into question the whole notion of the penalty *latae sententiae*? What is the sense of an "automatic" penalty, if its being "automatically" incurred is dependent on subjective factors, especially given the complexity of human motivation and decision-making? During the consultation process which led to the promulgation of the present code, many made this or similar points. Some cited the principles governing the revision of the code which were endorsed by the 1967 Synod of Bishops. Thus these commentators wanted to retain only *ferendae sententiae* penalties.<sup>52</sup> The text which emerged is a compromise. It retains the *latae sententiae*, but leaves them publicly ineffective until they have been "declared." An undeclared *latae sententiae* penalty remains for practical purposes in the forum of conscience. For instance, it is understood to affect the conscience of an excommunicated cleric but still allows him to celebrate the sacraments publicly and to exercise the power of governance. Given the legislation requiring imputability as a

condition for incurring the penalty, this forum seems a proper place: a confessor may well be the right person to help sort out motivation and imputability. In some cases this, the code's "compromise solution," may work well enough. But it encounters major difficulty when the person allegedly excommunicated is a public figure, especially one holding an important ecclesiastical office. This is the case *a fortiori* when we are dealing with a significant portion of a country's hierarchy. Does it make sense to leave the issue of their communion with the rest of the Church dependent on factors which are able to be judged at most by themselves and a confessor and perhaps, indeed, only by God?

The penalty *latae sententiae*, when it is declared, becomes effectively *ferendae sententiae*. Would it not be better, then, to have only the one category, that of *ferendae sententiae*? The "undeclared *latae sententiae*" could be left as what it effectively already is, a matter of conscience. Why complicate matters by calling it an excommunication?

Perhaps the problem goes deeper still and touches on the very meaning of excommunication. It is possible, for instance, to "resolve" our earlier difficulty by arguing that excommunication is not primarily concerned with the question of one's being in full communion with the Church. De Paolis has recently proposed a distinction between excommunication as a primarily juridical category, on the one hand, and not-being-in-full-communion (a theological category) on the other.<sup>53</sup> Such a distinction is consistent with a view of communion as admitting of degrees rather than an "all-or-nothing" category.

In a somewhat similar vein, Libero Gerosa has pointed to an ambivalence in the code.<sup>54</sup> The code's *de facto* treatment of *latae sententiae* penalties as the norm<sup>55</sup> suggests a view of excommunication as declaring the fact of a breach of communion. Such a view seems to have been endorsed by the present Pope in his first address to the Rota in 1979.<sup>56</sup> On the other hand, many of the code's detailed provisions imply a view of excommunication as punishment. The first view reflects a theology of communion, the second the notion of the Church as a perfect society with its *ius publicum ecclesiasticum*. Hence, the Church's whole penal discipline rests on uncertain foundations.

## **Toward Reconciliation**

Thus far the argument of this article has been apparently negative, arguing against the alleged excommunication of parts of the Church in China, questioning the adequacy of the discipline of excommunication. Removal of the allegation of excommunication would, however, be an immensely positive step on the road to reconciliation. Though there has been some breach of communion between China and the universal Church and breaches of communion among groups of Chinese Catholics. It is not a total breach, not a schism, but divisions need to be healed. What further steps need to be taken on the road to that reconciliation?

It is not possible here to deal with all of the steps. In particular, the question of diplomatic relations requires quite separate treatment. Central, however, to any reconciliation is agreement on a model of communion and of the Roman primacy within that communion. A more specifically canonical issue involved in such a model is the method of selection of bishops.

With regard to the understanding of communion and of the Roman primacy, John Paul II made an important overture in a 1982 letter calling for prayers for China.<sup>57</sup> (It is a sign of the difficulty of achieving reconciliation that this positive step was given an unjustifiably negative interpretation by some in China.) The Pope speaks of "the tie with Peter's See and with its apostolic ministry" as "the indispensable condition for participating in the union of the large Catholic family." Extremely significant, however, is the way in which he describes that union and his own place within it. It is a union of catholicity which is characterized as a receiving of the "abilities, resources and customs" of different peoples. "In virtue of this catholicity each part contributes its own gifts to other parts and to the whole Church, so that the whole and each of the parts are strengthened by the common sharing of all things...." Difference can mean not division but enriched unity. As to the primacy, the Pope makes no reference to papal primacy but each time to that of the "Chair of Peter" or the "Church of Rome."<sup>58</sup> Nor is the primacy expressed in terms of jurisdiction. Its task is (in the famous, if notoriously unclear, phrase of Ignatius of Antioch) that of "presiding in charity," or again "to unite brothers in truth and love," or of protecting "legitimate variety while at the same time

taking care that these differences do not hinder unity, but rather contribute to it."

Such language is in a different ecclesiological world from that of Pius XII's three encyclicals on China, which refer to the primacy as one of jurisdiction, and to the jurisdiction of bishops as "flowing" to them not directly but "through the Successor of St. Peter."<sup>59</sup> The picture of the primacy presented by John Paul is very similar to that which has found favor in dialogues between the Roman Catholic Church and the Orthodox, Lutheran and Anglican churches. Of course, many details need to be filled in, and some Roman practice is not easily reconciled with the picture. Even so, the Pope has offered a way forward.

One of the details needing to be filled in concerns the method of selection of bishops. The code's norm of free nomination by the Roman Pontiff (c. 377) is an ideal that will not be realized in China in any foreseeable future.

It is well-known, of course, that the code's norm is of recent vintage.<sup>60</sup> In the early centuries of the Church, election by clergy and people of the diocese was the usual practice. Intervention by the Pope did not become common until the fourteenth century and did not become the legal norm until the code of 1917. Thus, there is abundance of precedent for selection of bishops by the local church. One must, however, distinguish local selection from state interference in selection. The "Gregorian" reformers of the eleventh century pressed for election by clergy and people in order to counter the predominant influence of emperors and princes. In modern Europe the move from local to papal nomination was in part inspired by desire to escape from the control of secular rulers.

In China such secular control is precisely the problem. Local selection of bishops means in fact selection influenced (in varying degrees) by government officials. But the Church has a long history of accommodating its ideas in this matter in inescapable political realities. Even today, many secular governments are accorded (through a variety of concordats and *modi vivendi*) some say in episcopal selection.<sup>61</sup> The Prince of Monaco proposes three names to Rome; the French President nominates the bishops of Strasbourg and Metz (although this is a mere formality). Much less of a formality is the system of "prenotification" in effect in at least twelve countries. Rome consults the government of these countries before making an ap-

pointment. Only in the case of Venezuela does the government have a power of veto, but in the other cases any objection raised by the government is taken very seriously in Rome.

There is no doubt that any such *modus vivendi* that the Chinese government would find acceptable would leave the Holy See much less freedom than it would consider desirable. But it need not lead to the appointment of bishops who would be mere puppets of the government. At present many of the Chinese bishops are acceptable to both the Holy See and the government. Would not some compromise (*not* capitulation) be a fair price to pay for greater freedom for Chinese Catholics at present part of the underground, and for removing one obstacle to the healing of divisions among Chinese Catholics?

It may well be that this "internal" reconciliation will be the most difficult to achieve. Within the Chinese Church there are deep divisions, often involving emotions born of years of suffering. Some evidence suggests that the divisions have become more bitter in recent years. Any process of healing of wounds and divisions can be undertaken only by the Chinese people themselves. But some "external" reconciliation between Rome and China is probably a precondition for such healing.<sup>62</sup> That there are obstacles to such a reconciliation is all too obvious, but the argument of this article has been that they are obstacles in the area of human relations rather than obstacles of theological or canonical principle.

## NOTES

1. It is not without significance that, whereas I was careful to talk about union with the Pope or the Holy See, the officials consistently referred to the Vatican. The perception of the Vatican as a state and the Pope as its head appears very frequently to influence judgment of Chinese officials on matters of ecclesiology.
2. *Ad apostolorum principis*, June 29, 1958: *AAS* 50 (1958) 601-614. English translation in *Papal Documents Related to the New China, 1937-1984*, ed. Elmer Wurth (Maryknoll NY: Orbis, Hong Kong: Holy Spirit Study Centre, 1985), pp. 51-60.
3. A summary is given by Wurth, p. 48.
4. *Ibid.*, p. 58.
5. *AAS* 43 (1951) 217-218.
6. *AAS* 47 (1955) 247. *Canon Law Digest* 4:425-426, Kim-Kwong Chan, *Towards a Contextual Ecclesiology--The Catholic Church in the People's Republic of China (1979-1983) Its Life and Theological Implications* (Hong Kong: Phototech, 1987), p. 253.
7. F. Belfiori, "The Chinese Catholic Patriotic Association" (unpublished

- transcript of a lecture, kindly made available to me by the author); Mark Fang Che-yong, "The Catholic Church in China: The Present Situation and Future Prospects," in *Re-Thinking the Church's Mission*, ed. Karl Rahner, Concilium, 13 (New York: Paulist Press, 1966). p. 65.
8. George Dunne, "The Prisoners of Shanghai," *China Update* 6 (Winter, 1983) pp. 52-53.
  9. Wurth, p. 59.
  10. Ibid.
  11. This view is taken by L. Ladany, *Behold, the Catholic Church in China* (Hong Kong, 1984), p. 10, and *The Catholic Church in China* (New York: Freedom House, 1987), pp. 23-26.
  12. Wurth, p. 57.
  13. *Lumen gentium*, 27
  14. Wurth, p. 54.
  15. Ibid., pp. 55-56.
  16. Quoted in Chan, p. 241, and Louis Wei Tsing-sing, *Le Saint-Siège et la Chine, de Pie XI à nos jours* (Paris: Editions Allais, 1968), p. 273. I have translated from the French text in Wei.
  17. The usual understanding, expressed in cc. 2205 and 2209, was that grave fear completely removed the offense in the case of merely ecclesiastical laws, unless the act was intrinsically evil or tended to bring into contempt the faith or ecclesiastical authority, or was such as to do (public) harm to souls. In these later instances, grave fear diminished imputability but did not take it away. Thus, in these latter instances, grave fear excused from a *latae sententiae* penalty only if the law contained the words *ausas fuerit*, etc. The Holy Office decree does not contain these words. In effect, therefore, the exclusion of grave fear as an "excuse" implies that the Holy Office considered the illegal ordination of bishops to involve contempt of the faith or of ecclesiastical authority, or was such as to bring harm to souls.
  18. For commentary on c. 1382 see Alphonse Borras, *L'excommunication dans le nouveau Code de Droit Canonique: Essai de définitions* (Paris: Desclée, 1987), pp. 57-63.
  19. Elizabeth McDonough, "A Gloss on Canon 1321," *Studia Canonica* 21 (1987) 381-390.
  20. Michael Hughes, "The Presumption of Imputability in Canon 1321, par.3," *Studia Canonica* 21 (1987) 19-36.
  21. Velasio de Paolis, "L'imputabilità dell'atto delittuoso nel libro V del CIC," *Apollinaris* 52 (1979) 166-174.
  22. See comments made by Chinese Catholics in, for example: *Guangming Ribao* (Beijing) March 17, 1951, reported in *Survey of China Mainland Press* (Hong Kong) 85 (March 18/19, 1951) 7-10; *Kirin Ribao*, June 5, 1959, reported in *Current Background* (Hong Kong) 610 (January 15, 1960) 4-6; *Heilungjiang Ribao*, July 25, 1959 reported in *Current Background* 610 (January 15, 1960) 8-9. On pride in the new China see Pi Shushi, "Life of Catholics in China" (1960) in *Religious Policy and Practice in Communist China: A Documentary History*, ed. Donald E. MacInnis (New York: Macmillan, 1972), pp. 248-251. The intemperance of some of these comments does not necessarily mean that they are totally insincere.
  23. For the nineteenth century see Paul A. Cohen, *China and Christianity: The Missionary Movement and the Growth of Chinese Antiforeignism, 1860-1870* (Cambridge, MA: Harvard University Press, 1963). A somewhat hostile, but documented, example from the twentieth century is given by William Hinton, *Fanshen: A Documentary of Revolution in a Chinese Village* (New York & London: Monthly Review Press, 1966),

- pp. 58-62.
24. Thomas A. Breslin, *China, American Catholicism and the Missionary* (University Park, PA: Pennsylvania State University Press, 1980), pp. 31-32.
  25. Wei, pp. 114-117, 283-284, and see Index under "Constantini, Celso card."
  26. Quoted by Michel Masson in an article "Réflexions sur les Jesuites et la Chine aujourd'hui" soon to be published in *Autrement*.
  27. Eric O. Hanson *Catholic Politics in China and Korea* (Maryknoll, NY: Orbis, 1980), p. 23.
  28. A very negative reading of his activities is given by Wei, *Le Saint-Siège et la Chine*. Riberi is defended in L. Ladany, *The Catholic Church in China*, p. 26.
  29. Léon Trivière, "Le Saint-Siège et la Chine," *Informations catholiques internationales* 380 (March 15, 1971) 20. The stated program of the Three-Self Movement can be read as a perfectly orthodox statement of the autonomy of the local church. But it would be naive, of course, to think that the movement was not politically motivated. Moreover, the ecclesiological climate of the time made it unlikely, to say the least, that Riberi would be sympathetic to emphasis being placed on the local church. Even so, his talk of a "schismatic movement" was unnecessarily intransigent and excluded any possibility of dialogue.
  30. Wei, p. 220, Jean Lefeuvre, *Shanghai--les enfants dans la ville: vie chrétienne à Shanghai et perspectives sur l'église de Chine 1948-1961* (Paris: Casterman, 6th ed. 1962), p.54.
  31. The writer quoted by Chan and Wei (see note 16 above) appears to be an example of this stance.
  32. This appears to be the view of Mgr. Louis Morel, former metropolitan of Inner Mongolia: "...Etant donné la grave situation en Chine, il n'y a plus la moindre possibilité d'observer strictement l'ordre établi par l'Eglise, car la loi humaine ne peut pas imposer à l'homme de faire des chose qui dépassent sa possibilité positive. Or, dans cette circonstance absolument impossible, la loi établie par l'homme, évidemment perd sa vigueur..." Quoted by Wei, p. 266.
  33. One Chinese bishop, whose loyalty to the Holy See is unquestioned, has said, "In the past I had to ordain two bishops without the Pope's permission--it was very painful." The same bishop has written about future prospects: "I desire to consecrate a bishop as my successor. But the election of a bishop at present does not belong to our priests only, but also and specially to the government. Then I'll consecrate as my successor any one chosen, \*so long as the hierarchy of the Roman Church would be continued. \*All my priests are good, and so, I would be willing to ordain any of them as bishop; my first choice is Father N." Unfortunately, the testimony of some Chinese Catholics quoted in this article must remain anonymous, in order to safeguard them from possible reprisals.
  34. In addition to some testimony which must remain anonymous, we have the published comment of Jin Luxian to this effect: interview with Giancarlo Politi (Hong Kong, June 14, 1988) *ASIA-Informationi* 37 (June 20, 1988) 15. See too the somewhat different testimony of the bishop quoted in footnote 33.
  35. Robert J. Lifton, *Thought Reform and the Psychology of Totalism* (London: Pelican, 1960); James R. Townsend, *Political Participation in Communist China* (Berkeley and Los Angeles: University of California Press, 1967), pp. 175-181. J.W. Lewis *Leadership in Communist China* (Ithaca: Cornell University Press, 1963), pp. 157-160.
  36. For discussion of ambivalent attitudes see Lifton, p. 63. Note too his



- comment on "apparent resisters" (p.133): "...their inner resistance was not nearly so complete as this external expression suggested."
37. "Address to the Chinese Catholic Communities of Asia," *L'Osservatore Romano* (February 25, 1981). Text reprinted in Chan, "Appendix V" (Quotation is on p. 460) and Wurth (Quotation is on p. 140).
  38. Wurth, p. 75.
  39. Ibid., p. 95.
  40. René Laurentin, *Chine et Christianisme--après les occasions manquées* (Paris: 1977), pp 186-187.
  41. Peter Barry, "The Formation of the Chinese Catholic Patriotic Association." *Ching Feng* 24 (1981) 120. For further discussion of the nature of the Patriotic Association see 'Vox,' "Catholiques chinois: Une Eglise, ou deux?" *Etudes* 366/5 (May, 1987) 663-674; Pierfilippo Guglielminetti, "The Catholic Church in China: One Church, Two Testimonies," *Tripod* 37 (February, 1987) 76- 88; Jerome Heyndrickx, "Emergence of a Local Catholic Church in China?" *Tripod* 37 (February, 1987) 51-75.
  42. Barry, p. 122.
  43. Ibid., p. 135.
  44. A point made several time by Liu Bainian, spokesman for the Association, and by Bishop Tu Shihua, rector of Beijing's national seminary, when I met them in Beijing in May, 1988. Both men reacted very strongly when the interpreter made the (Freudian?) slip of translating *Aiguohui* as "Patriotic Church: they rapidly corrected it to "Patriotic Association." The word *hui* can be used to denote associations of many different kinds (political, religious, etc.), including, for instance, the Society of Jesus and the political party led by Sun Yat-sen.
  45. Politi interview, p. 19.
  - 46 Ibid., pp. 15,20. Jin states, "I am a Catholic, not a schismatic" in answer to the question, "Can it be said that you are in communion with the Pope and that you fully accept him?" (p. 18).
  47. See, for example, J.M.R. Tillard, *The Bishop of Rome* (Wilmington, Michael Glazier: 1983), pp. 148-150, together with the references there to the work of Alberigo and Schmemmann.
  48. Text in Chan, p. 446.
  49. L. Ladany, "The Beijing-Rome Dialogue," *Religion in Communist Lands* 14 (Spring, 1986) 102.
  50. Points very similar to those made in this paragraph are made by Chan, pp. 248-249.
  51. See the discussion in Chan, pp. 246-247.
  52. For a comprehensive review of the arguments for and against *latae sententiae* penalties see Velasio de Paolis, "De opportunitate poenarum latae sententiae," *Periodica* 62 (1973) 319-373. De Paolis has taken up some of these issues again subsequent to the promulgation of the revised code: "Coordinatio inter forum internum et externum in novo iure poenali canonico," *Periodica* 72(1983) 401-433, "Aspectus theologici et iuridici in systemate poenali canonico," *Periodica* 75(1986) 221-254. See Also Peter Huizing, "De iudicio poenali in foro poenitentiali," *Periodica* 75 (1986) 255-272.
  53. De Paolis, "Aspectus theologici et iuridici," especially p. 247-253.
  54. Libero Gerosa, "Penal law and Ecclesial Reality: the Applicability of the Penal Sanctions Laid Down in the New Code," in *Canon Law--Church Reality*, ed. James Provost and Knut Wolf, Concilium 185 (Edinburgh, T. & T. Clark, 1986), pp. 54-63; idem, *La scomunica è una pena? Saggio per una fondazione teologica del diritto penale canonico* (Fribourg, Suisse: Editions Universitaires, 1984). See also Borrás *L'excommunication* (note 18 above).

55. Contrary to its statement of principle in c. 1314.
56. *AAS* 71 (1979) 415: "...the penalty imposed by the ecclesiastical authorities (but which is really a recognition of a situation in which the subject has placed himself) is seen...as an instrument of communion."
57. A translation of the letter is printed in Chan, Appendix VI, pp. 461-463; and in Wurth, pp. 144-147.
58. For the significance of this usage see Tillard, *Bishop of Rome*, pp. 68-74.
59. *Ad Sinarum gentem*, October 7, 1954: *AAS* 47 (1955) 5-14; translation in Wurth, p. 41.
60. For the history see, for example, William Bassett, ed. *The choosing of Bishops* (Hartford: CLSA, 1971); *Electing our own Bishops*, ed. Peter Huizing and Knut Walf, Concilium, 137 (Edinburgh: T. & T. Clark, 1980), especially the articles by Stockmeier and Gaudement: Jean Gaudement, *Les élections dans l'Eglise latine des origines au XVIe siècle* (Paris: Editions F. Lanore, 1979); John E. Lynch, "Co-responsibility in the First Five Centuries: Presbyteral Colleges and the Election of Bishops," *The Jurist* 31 (1971) 14-53.
61. A subject studied especially by J.-L. Harouel, "The Methods of Selecting Bishops Stipulated by Church-State Agreements in Force Today," in *Electing our own Bishops*, pp. 63-66, and *Les désignations épiscopales dans le droit contemporain* (Paris: Presses universitaires de France, 1977).
62. For his comments on these issues I am indebted to my confrere Christian Cochini of the Foreign Languages Institute in Guangzhou.



Participants in International Seminar held in May in Cologne, Germany, to celebrate the 400th anniversary of the birth of Adam Schall von Bell, S.J., noted China missionary and astronomer.