

Selecting Australia's Bishops

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Few governance issues in the life of the Catholic Church have consumed so much time and energy as the selection and appointment of worthy bishops. On 12 May 1834, when Pope Gregory XVI named the English Benedictine, John Bede Polding, as the first vicar apostolic of the Vicariate Apostolic of New Holland and Van Diemen's Land with the rank of bishop, he wrote another page in the long history of episcopal selection and appointment.

Ministries in the early Church

In establishing his church Jesus chose twelve men to be Apostles and, before ascending to heaven, passed on to them the mission he had received from the Father: to give witness to the truth, to rescue and not sit in judgement, and to serve and not be served. He further commanded them to announce the Good News of salvation, to baptize, to heal the sick, to raise the dead and to cast out demons.¹

In the New Testament, the Twelve, including Judas' replacement, Matthias, and Paul, are always spoken of as 'Apostles', those especially chosen by Jesus and given authority to loose and to bind.² Though, in the infant church, there was a diversity of ministers and leaders, including Apostles, 'overseers' (*episcopoi*), 'elders' (*presbyteroi*),³ 'pastors' (*poimainoi*), and 'deacons' (*diaconoi*), it was the Apostles who, either alone or with the community, selected from among the assembly of believers those persons who might serve the local community in one of those other ministries and then commission them with the laying on of hands.

The scriptures indicate that ministers were selected in different ways: sometimes by the congregation casting lots,⁴ sometimes by the whole community being responsible for the selection process,⁵ sometimes by the appointment of elders by a single apostle or a person authorised by an apostle,⁶ and at other times by selection by the apostles and elders with the concurrence of the whole church.⁷ Whatever the manner, it usually involved the local community of believers.

¹ Matthew, Chapter 10

² Matthew 16:19; 18:18. Paul's companion, Barnabas, is also referred to as an 'apostle' (Acts 14:14) as is Mary Magdalen, who announced the good news of Jesus' resurrections to the Apostles.

³ St Peter did refer to himself as 'a fellow presbyter' (1 Peter 5: 1-4)

⁴ Matthias was selected to replace Judas Iscariot as one of the Twelve by the Old Testament method of 'casting lots' (Acts 1:21-26)

⁵ The Twelve called all the community together and told them that they 'must select from among themselves: the first seven deacons were chosen by the whole community to take care of the material wants of widows among the Greek Christians (Acts 6:1-8)

⁶ Paul wrote to Titus telling him that "the reason I left you behind in Crete was for you to get everything organized and appoint elders in every town." (Letter to Titus 1:5)

⁷ Barsabbas (Judas) and Silas were chosen to be delegates of the Jerusalem community to accompany Paul and Barnabas to Antioch (Acts 15:12-29)

In the earliest years of the Church, each local community of believers, whether in Jerusalem or in the Jewish Diaspora, was governed by a body of 'elders' or 'presbyters' (*presbyteroi*) selected and commissioned for their leadership qualities. From among these elders some were chosen to act as 'president' or 'supervisor' or 'overseer' (*episcopoi*), assisted by deacons (*diaconoi*), although it initially is not always clear that *episcopoi* and *presbyteroi* were distinct or different.⁸

As to who might be suitable to be chosen for ministry, St Paul gave clear instructions. For those to be appointed as 'elders' (*presbyteroi*) he wrote that "each of them must be a man of irreproachable character, not have been married more than once, and his children must be believers and not uncontrollable or liable to be charged with disorderly conduct".⁹ Those suitable to be selected as 'presiding elders' (*episcopoi*) or 'presidents' and 'God's representatives' "must be irreproachable, never arrogant or hot-tempered, not heavy drinkers or violent, not out to make money; but hospitable and a friend of all that is good; sensible, moral, devout and self-controlled; and have a firm grasp of the unchanging message of the tradition, so that they can be counted on for both expounding the sound doctrine and refuting those who argue against it"¹⁰; moreover, "... the president must have an impeccable character, not have been married more than once, be temperate, discreet and courteous, hospitable and a good teacher; not a heavy drinker, not hot-tempered, but kind and peaceable; not be a lover of money, but a man who manages his own family well and brings his children up to obey him and be well-behaved. He should not be a new convert, in case pride might turn his head, and then he might be condemned as the devil was condemned. It is also necessary that people outside the Church should speak well of him so that he never gets a bad reputation and falls into the devil's trap".¹¹

Those suitable for selection as deacons (*diaconoi*) "must be respectable men whose word can be trusted, are moderate in the amount of wine they drink, with no squalid greed for money, and conscientious believers in the mystery of the faith. They are to be examined first, and only admitted to serve if there is nothing against them. In the same way, the women must be respectable, not gossips, but sober and quite reliable. Deacons must not have been married more than once, and must be men who manage their children and families well."¹²

The *episcopoi* in the college of presbyters may have taken turns to carry out their official duties, which included administration, teaching and governing, but in time the word *episcopos* came to replace analogous titles such as *proistamenos* (official), *poimen* (pastor, shepherd) and *hegoumenos* (guide, leader), and became synonymous with 'bishop'.

Sometime around the beginning of the 2nd century some local assemblies¹³ which had originally been governed by a body of *episcopoi* and *presbyteroi*, began to be governed by a

⁸ The word *episcopos*, taken over from the pagan world, indicated the duty of an official, while *presbyteros* indicated the status or dignity of the same office.

⁹ Letter to Titus 1:6-9

¹⁰ Ibid.

¹¹ First Letter from Paul to Timothy, 3: 1-7

¹² 1 Timothy 3:8-13

¹³ The local assembly became known as a 'particular church'. a 'community of Christ's faithful living in a communion of faith and sacraments under the authority of a single bishop ordained in apostolic succession'

single *episcopos* (bishop) set over a group of *presbyteroi* (priests). It is not certain how this transition evolved, but there was probably an intermediate stage where a single *episcopos* in each community was given the same powers over that local community which had previously been exercised over several communities by an apostle or their representatives, such as Timothy or Titus. What is clear is that the ‘monarchical bishop’, as he became known, was exercising leadership in many places before 107 AD. His emergence may also have been due to local communities believing that there were advantages to be gained from being led by a single bishop, such as doctrinal unity and ministerial discipline. What is quite clear is that the monarchical bishop was seen as a successor to the apostles and derived his authority from them.¹⁴

Apostolic succession and the selection process in the 1st millennium

By the 2nd century there had also developed within the Church a clear hierarchy of bishops, presbyters, and deacons, commissioned for specific ministries, and ordained into a ‘sacred order’ with the laying on of hands. These ordained persons became known as ‘clerics’, as distinct from others of Christ’s faithful who had not received sacred orders and were known as ‘lay’ members of the Church, or simply the ‘laity’.¹⁵ While the laity, by baptism, shared in the priestly, prophetic and royal office of Christ, it was the bishops, entrusted through apostolic succession with the authority which Jesus gave to the Twelve, who had the special leadership role.¹⁶

There is no record in the Gospels of Jesus giving any instructions about how successors to the Apostles should be chosen or what their qualities should be. Indeed, when Peter, in the week before Pentecost, called on the infant community to choose a replacement for the dead Judas Iscariot, he did not refer to anything which Jesus had said, but only to the words of Psalm 109: “*Let someone else take his office*”.¹⁷ What is noteworthy in the selection process that followed is that Peter took the leading role, insisted that the Holy Spirit

and in communion with the Church of Rome’. Later on a particular church became known as a diocese or eparchy. It is “in the various particular churches, and formed out of them, that the one and unique Catholic Church exists” (Lumen Gentium, n. 23).

¹⁴ The 1917 Code of Canon Law states that “bishops are the successors of the Apostles and by divine institution are placed over particular church which they govern with ordinary jurisdiction under the authority of the Roman Pontif” (c. 329). The 1983 Code states that “bishops succeed to the place of the Apostles through the Holy Spirit who has been given to them” (c. 375).

¹⁵ Canon 207.1: “By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons.”

¹⁶ Canon 208: “From their rebirth in Christ, there exists among all the Christian faithful a true equality regarding dignity and action by which they all cooperate in the building up of the Body of Christ according to each one’s own condition and function.” Canon 375 of the Code of Canon Law states that “bishops, by divine institution, succeed to the place of the Apostles through the Holy Spirit”.

¹⁷ “Peter stood up to speak to the brothers – there were about a hundred and twenty persons in the congregation: ‘Brothers, the passage of scripture has to be fulfilled in which the Holy Spirit, speaking through David, foretells the fate of Judas, ... [and] in the Book of Psalms says: We must therefore choose someone who has been with us the whole time that the Lord Jesus was travelling round with us, someone who was with us right from the time when John was baptising until the day when he was taken up from us – and can act with us as a witness to his resurrection.’ Having nominated two candidates, Joseph ..., and Matthias, they prayed, ‘Lord, you can read everyone’s heart; show us therefore which of these two you have chosen to take over this ministry and apostolate, which Judas abandoned to go to his proper place’. They then drew lots for them, and as the lot fell on Matthias, he was listed as one of the twelve apostles.” (Acts, 1: 15-26)

required the replacement, directed the prayer of the assembly to Jesus, included the whole assembly of 120 lay 'brothers' including women – as distinct from apostles and elders – in the selection process, and used the Old Testament method of 'drawing or casting lots' to arrive at the choice.¹⁸

By the time the last of the Apostles had died, the idea of apostolic succession was clearly understood. St Iranaeus (early 2nd century) writes: "We must obey the priests of the Church who have succession from the Apostles",¹⁹ and St Clement of Rome states: "The Apostles, sent by Christ, appointed [the above-named] and then gave them command, so that when they came to die, other approved men should succeed to their ministry".²⁰

How the successors of the apostles were to be selected and appointed was also becoming established. In the 2nd century the *Didache (Teaching of the Twelve Apostles)* advised: "You must elect for yourselves bishops and deacons who are a credit to the Lord, men who are gentle, generous, faithful, and well tried".²¹ Around 215 AD, Hippolytus of Rome instructed: "Let the bishop be ordained ... having been elected by all the people. When he has been named and found pleasing to all, let the people come together with the presbyters and any bishops who are present. When all give their consent, they lay hands on him".²² St. Cyprian of Carthage (baptised c. 246 AD) stated: "By virtue of divine authority, the bishop should be elected by all the faithful, and the provincial bishops, after consenting to the election, should ordain the one elected. The people have the power of choosing worthy priests and of rejecting unworthy ones"²³.

By the latter half of the 2nd century, the bishops within the different civil provinces of the Roman Empire in the East had begun to assemble on important occasions for provincial 'synods' - convened by the bishop of the provincial metropolis who also presided over them - to discuss common issues. Soon ecclesiastical provinces, co-terminus with the civil provinces, emerged with a superior metropolitan bishop/archbishop and suffragan bishops,²⁴ and the election of bishops became a provincial matter.²⁵ On his own election as bishop, St Cyprian wrote that he himself had been made a bishop "by the vote (*suffragium*)]

¹⁸ This method is mentioned 70 times in the OT and was used to determine the will of God in a variety of circumstances, e.g. the selection of the scapegoat on the Day of Atonement.¹⁸ It involved drawing or casting sticks or stones with markings or symbols on them in a closed-off space, and then interpreting the result. It was probably like our ballot method of using a small ball in a secret vote. After the coming of the Holy Spirit at Pentecost, there is no further mention of Christians 'casting lots'.

¹⁹ *Adv. Haeres*, IV, xxvi, n.2.

²⁰ *Ep. I, ad Cor.*, 42-44.. This letter is usually dated at around 95 CE.

²¹ *Didache*, 15.1

²² *On the Apostolic Tradition*, Translation by Stewart-Sykes, A, NY, 2001.

²³ *Epistolae*, 67,3

²⁴ Ecclesiastical provinces developed much later in the Western Empire. The North African Province of Carthage developed only in the 4th century, and other provinces in Spain, Gaul and Italy not until the 5th century. In Italy, because of the Diocese of Rome, the development of provinces was slower.

²⁵ Cf. Sullivan, Francis J. SJ, "Provincial Councils and the choosing of priests for appointment as bishops" in *Theological Studies*, 74 (2013), 872-883. From the 3rd century there grew a strong conviction that the ordination of a local bishop had to include the participation of the neighbouring bishops as a manifestation of the communion between the churches, especially those of the same province. In the 4th century the bishops of the province elected the bishops and consecrated him. In this case, the people affirmed the election by affirmation.

of all the people”²⁶ and insisted on “preserving a practice which is based on divine teaching and apostolic observance, a practice which is faithfully followed among us and in practically every province. And it is this: when an Episcopal appointment is to be duly solemnized, all the neighbouring bishops in the same province convene for the purpose along with the people for whom the leader is to be appointed; the bishop is then selected in the presence of those people, for they are the ones who are acquainted most intimately with the way each man has lived his life and they have had the opportunity thoroughly to observe his conduct and behaviour. And we note that this procedure was indeed observed in your own case when our colleague Sabinus was being appointed; the office of bishop was conferred upon him and hands were laid upon him in replacement of Basilides, following the verdict of the whole congregation and in conformity with the judgment of the bishops who had convened with the congregations as well as of those who had written to you about him”.²⁷

By the latter half of the 3rd century, in Africa, Spain, Rome, and almost all the Roman provinces, there was, presumably after some form of nomination of suitable episcopal candidates, a clear three stage process: a testimony (*testimonium*), a vote (*suffragium*), and a judgment (*iudicium*), with both the laity and clergy having a clear role in all three stages. It was accepted that the congregation had not only a right to suggest, but a right to elect in the full sense of the word, and a right to judge and confirm.²⁸

In the 4th century, the 1st Ecumenical Council at Nicaea (325 AD) decreed that “it is proper that a bishop should be appointed by all the bishops of the province; but should this be difficult, three at least should meet together, and only after the written consent of the absent bishops have been received could the ordination take place. In every province it is the Metropolitan bishop who ratifies the proceedings” (Canon 4). Nicaea clearly specified ‘provincial synods/councils’ for the election of a local bishop and indicated that the Metropolitan had full authority to confirm the election and ordination of the new bishop.²⁹ Canon 6 also stated: “If anyone be made bishop without the consent of the Metropolitan, such a man ought not to be a bishop; and if two of three bishops oppose the common vote of the rest, let the choice of the majority prevail.” In this century even spontaneous elections, prompted by the Spirit and acclamation of the faithful, took place (for example, St Ambrose of Milan in 373 AD).³⁰ By the close of the 4th century, however, the powerful and the influential, were being called to the election. They were seen to take the place of the ordinary faithful.³¹

In the 5th century, Pope Celestine I (422-432) stated that “no one who is unwanted should be made a bishop; the desire and consent of the clergy and the people and the order is

²⁶ Epistolae, 59.6

²⁷ Clarke, G.W., *The Letters of St Cyprian of Carthage*, vol. 4, Ancient Christian Writers 47, Letters 67.5, Newman, New York, 1989. Pp. 23-24

²⁸ O’Callaghan, Joseph F., *Electing our Bishops: How the Catholic Church should choose its leaders*, Sheed & Ward, New York, 2007

²⁹ Sullivan, *op. cit.*, pp. 872-883.

³⁰ Pauline the Deacon, ‘The Life of St Ambrose’ in Hoare, *Western Fathers*, 152-153.

³¹ Juels, John and Gaillardetz, Richard R., *The Selection of Bishops: Exploring Canonical Alternatives*, published at https://richardgaillardetz.files.wordpress.com/2014/04/election_of_bishops.pdf (accessed 10 January 2107).

required".³² Pope Leo I the Great (440-461) declared that "the one who is to be head over all should be elected by all", and "when the election of the chief priest is being considered, the one whom the unanimous consent of the clergy and people proposes should be put forward".³³

Until the 6th century, it was accepted that the clergy and laity elected the bishop on condition that the election should be approved by the neighboring bishops, although at times the Christian Roman emperors intervened, but generally over the suitability of a particular candidate. In some countries where bishops became temporal lords or princes acquiring civil jurisdiction, not only over his clergy but also over the laity of their dioceses, difficulties arose over the interference of lay authority in the election of bishops. From the beginning of the 6th century, in the West, Catholic kings regularly intervened in the elections, and sometimes assumed the right of direct nomination. Pope Gregory the Great (590-604), concerned about royal interference, gave instructions that when a bishop of the Roman province died, a visitor-bishop was to be appointed to visit the 'widowed' diocese and make preparations with the clergy and people for an election of a candidate 'worthy of such a great ministry'. He was to be chosen from the local church, unless there was no one suitable.³⁴

From the beginning of the Carolingian period (800 AD) the election of a metropolitan bishop was confirmed by the pope as well as the local ruler. By the 10th century, in many places, bishoprics had become feudal fiefdoms controlled by noble families, with the local clergy and laity having little or not say. Royal secular interference and investiture lasted until the 12th century.

Many early (pre-Constantine) provincial and ecumenical synods affirmed the principle that bishops should be chosen by the clergy and laity assembled in synod, together with the metropolitan archbishop and other provincial/suffragan bishops. They also specified that the synodal election process include an assessment of the suitability of the candidates, a vote by all the assembly, and the acceptance of the chosen candidate by the bishops and metropolitan, who would then ordain the bishop-elect to serve a specific community or diocese. Episcopal transfers were to be avoided. During the early part of the first millennium, three authorities were normally decisive in nominating a new bishop to a diocese: the local faithful, the local clergy, and the neighbouring bishops. All three had, or expected to have, in one way or another, a decisive voice in the selection of their bishop.³⁵ It involved the local province, not just the local diocese.

However, after Constantine in the Byzantine Empire, synods to elect bishops began to exclude the ordinary clergy and laity, and the emperor assumed the right to designate Episcopal candidates. Later in Western Europe, despite synods and some popes confirming the right of the faithful to elect their bishops, emperors and kings asserted their own rights

³² *Epistolae*, 4.5, PL 50:434-435

³³ *Epistolae*, 10.6

³⁴ Eidenschink, John, *The Election of Bishops in the Letters of Gregory the Great*, Catholic University of America, Washington, DC, 1945, pp. 22-29

³⁵ Buckley, Michael J., SJ, 'Resources for Reform from the First Millennium' in Pope, Stephen J., *Common Calling: The Laity and Governance of the Catholic Church*, Georgetown University, Washington DC, 2004. Cf. pp. 71086

to name and appoint bishops of their choice. By the end of the millennium in the Latin Church, many bishops had become secular vassals, the local clergy and laity effectively deprived of their role in the selection of their bishops, and the process of selection largely taken over by subservient bishops and secular authorities.

Selection process in the 2nd millennium

A major aim of the Gregorian Reforms (1073-85) was to remove secular influence from the selection of bishops and restore the early practice requiring election by the clergy and all the faithful, which by now had been reduced to merely 'affirming' or 'acclaiming' the choice of the bishops or secular rulers. However, the reforms were short-lived. From the 11th century bishops had themselves steadily relinquished more and more power to Rome, and from the Middle Ages up to the later part of the 19th century, secular authorities continued to demand their say in the selection process and even the right to choose the bishops directly; or if this was not permitted, insisted on at least the right of veto.

The 2nd Lateran Council (1139) handed over to the canons of the Cathedral Chapter (senior consultors of the diocese) the sole right of choosing the bishop, but the election had to be held within 3 months and with other religious men (monks of the diocese) involved with a consultative vote and the right of consent.³⁶

The 4th Lateran Council (1215) reaffirmed that the canons of the Cathedral Chapter had to elect a new bishop within the 3 month deadline and, if they failed, would lose their right to elect which would pass to the metropolitan, or when a metropolitan see was vacant, to the pope.³⁷ This council ignored the ordinary clergy and laity entirely, although the *Decretum Gratiani* (12th century) reaffirmed the tradition that no one should be counted as a bishop who was not elected by the clergy, requested by the people, and consecrated by the metropolitan and provincial bishops.³⁸

During the 13th century more and more bishops sought confirmation of their election from the pope, rather than from the metropolitan bishop, as was the traditional practice. Many elections by the cathedral chapters were being carried out badly, and those elected also sought to gain more freedom and autonomy. As the gap between bishops and clergy and people grew wider, as bishops were frequently not chosen from the local diocesan clergy, increasingly transferred, often absent from their dioceses and sometimes accumulating multiple benefices, the grounds for papal claims to appoint all bishops mounted, and led to the 1448 Concordat of Vienna granting the pope the right of confirmation (i.e. appointment) to all offices, including bishoprics, which maintaining free elections by the cathedral chapters (canons).

³⁶ Canon 28. This would suggest that other clergy were normally excluded from the selection process. Cf. Appendix A attached below.

³⁷ Canon 23 of 4th Lateran Council. This situation was known as 'devolution', the right to elect devolving to a higher authority. The aim was to ensure that the 'widowed' diocese was not left for a long period without a bishop. Cf. Appendix A attached below.

³⁸ The *Decretum Gratiani* or *Concordance of Discordant Canons* was a collection of ancient canons compiled by the jurist, Gratian (d. 1160). It forms part of the legal texts which became known as the *Corpus Juris Canonici* used by canonists up to 1918. Gratian distinguished the role of clergy and laity as: "election belongs to clerics; consent to people".

In the later part of the 15th century, when Spain and Portugal were building and expanding their colonial empires, various popes not only legitimized their land-grabbing activities but also conferred on them considerable ecclesiastical authority in their new colonies, including the right to establish bishoprics, set the boundaries, and to appoint the bishops.³⁹

Prior to the Council of Trent (1545-1563), the process of selecting bishops had been heavily corrupted by 'lay investiture' (the practice of emperors or secular rulers selecting or appointing bishops) and 'simony' (the buying and selling of church offices). Though investiture, commonplace until the major reforms of the 11th and 12th centuries, had been significantly remedied, 'simony' was still rife and practiced by popes, cardinals and bishops.⁴⁰ Other abuses were also widespread, including nepotism, the stacking of cathedral chapters (Episcopal electors) with lay teenage nobles, bishopric accumulation, and Episcopal absenteeism. To stop the abuses, Trent decreed that henceforth "in the ordination of bishops ... neither the consent, vocation, nor authority of the people or civil power is required for validity: rather ... [bishops who] are only called and instituted by the people, or by the civil power ... are not ministers of the church, but ...thieves and robbers, who have not entered by the door."⁴¹ With this decree Trent effectively locked the laity out of any role in the selection process from then on.

On the manner of selecting bishops Trent said that it did not wish to make any changes to the present arrangements. Rather it charged all those who had any right from the Apostolic See in the selection of bishops, or who assist in the selection in any way, to promote good pastors capable of governing a church. They were to select only those whom they judged the most worthy, looking to the merits of the individuals, and ensuring that they are persons born in lawful wedlock and who, by their life, learning, and in all other qualifications satisfy the sacred canons and Trent's decrees. Moreover, it accepted that since a uniform system cannot be followed everywhere, due to the diversity of nations, peoples, and customs, a provincial Synod should be convened by the metropolitan to formulate a useful way of examining candidates suited to the place and province, and submitted to the pope for approval. After the candidates have been examined a public report is to be sent to the pope who, well informed, can provide a suitable bishop for the diocese. After the examination a Roman cardinal is to examine the report, assisted by a first and second consistory of three other cardinals, and make their signed recommendation known to the pope. Trent confirmed that nothing is more necessary for the Church than that the Roman Pontiff apply

³⁹ With the Papal Bulls *Provisionis Nostrae* (14 May 1486) and *Dum ad illam* (4 August 1486) , Pope gave to the kings of Spain the right to nominate all bishops and to participate in the benefices and tithes of the Church. After the discovery of the Americas, two more Papal Bulls issued by Pope Alexander VI, *Inter Coetera* and *Eximiae devotionis sinceritas* (3-4 May 1493), placed the newly discovered lands under the authority of the Spanish Crown. King Ferdinand of Aragon was able to wrest from the pope the nomination of all bishops, the establishment of new dioceses and the setting of their boundaries under the *Jus Patronatus*. In 1524 the Supreme Council of the Indies was established as the executive organism of the *Patronato* and it organized the episcopacy of the Spanish colonies. Cf. Dussel, Enrique, *A History of the Church in Latin America*, Eerdmans Publishing, Grand Rapids, 1981, pp. 38-9

⁴⁰ For an outline of the state of the Church at this time, see the section 'How Bad was it?' in O'Malley, John W., *Trent: What happened at the Council*, Belknap Press, Harvard, Cambridge US, 2013, pp. 38-48

⁴¹ Council of Trent, Session 23, Ch. IV

that solicitude, which, by the duty of his office he owes to the Universal Church, that he appoint over each church, above all things, good and fit pastors.⁴²

Following Trent, decision-making on Episcopal appointments increasingly followed the Tridentine formula, though some Western European kings (France, Spain, Portugal, Bavaria, Sicily) and some presidents (in South America and Haiti) continued to insist on their 'regal right' to nominate bishops, and elsewhere some cathedral chapters (particularly in Central Europe) continued to elect. In Ireland, larger bodies of clergy chose the *terna* for presentation to the pope. However, the pope reserved to himself the right of confirmation (*institutio canonica*) which conferred episcopal jurisdiction.

In France, following the Revolution, new laws affirming the 'electoral principle' said nothing about the right of bishops, clergy or laity to participate in the election process, and treated bishops as just another state official and elected by lay civil officials. There and elsewhere confusion and political maneuvering ensued, with the *institutio canonica* (nomination/appointment) of bishops being used as a bargaining chip for various concordats with different nation states. An attempt by the pope in 1799 to reach an accommodation with England, by conceding to the king the right to veto unacceptable candidates for Irish bishoprics, met with such fierce opposition (the 'Irish veto') that it was dropped.

In 1917, the Code of Canon Law gave the ultimate power of appointment and confirmation exclusively to the Pope.⁴³ Before confirmation, the bishop-designate had to take the profession of faith and swear an oath of fidelity to the Holy See.⁴⁴ This indicates that a bishop's most important relationship was to the pope, rather than to the clergy and people of his diocese, or to his fellow provincial bishops and his metropolitan.

The Second Vatican Council (1962-65), recalling the provincial and other synods of the early church convened for the pooling of resources and the coordination of plans for the common good and the good of individual churches - and by implication lamenting their fall into neglect - stated in its *Decree on the Pastoral Office of Bishops*, that there was now a need for local provincial and plenary synods councils to flourish with renewed strength for the more suitable and efficacious provision of discipline in the particular churches, as the circumstances of the times require.⁴⁵

However, if there was any prospect of restoring the ancient link between provincial synods and Episcopal selection, it was killed off in 1972 by a pre-emptive document from the Sacred

⁴² Council of Trent, Session 24, *On Reformation*, Chapter 1. Trent also decreed that metropolitan bishops were to convene a provincial synod every third year, at which all bishops of the province as well as all others who by law or custom should be present, were absolutely bound to attend (Session 24, *On Reformation*, Chapter 2).

⁴³ Canon 329.2, stating that the "Roman Pontiff freely appoints bishops", for the first time in general law made a blanket rule giving the pope extensive power in the selection of bishops. Originally the intervention of the pope in the selection of bishops was an 'extraordinary' phenomenon, requested by a local church to resolve a dispute or break a deadlock: it was service to the local church to assist them to obtain capable and worthy bishops. It was not a role that the pope actively sought. The 1917 Canon also recognized that there were some exceptions based on privilege or concordat.

⁴⁴ 1917 Code, Canon 332.2

⁴⁵ Christus Dominus, n. 36"

Council for the Public Affairs of the Church, titled *Norms for the Promotion of Candidates to the Episcopal Ministry in the Latin Church*, which gave the Apostolic Delegate in each nation the sole responsibility for drawing up the *terna* (list of three names)⁴⁶ to be sent to Rome for the appointment of a bishop to a diocese in the nation to which he was assigned.⁴⁷ It was these *Norms* which were incorporated into the revised Code of Canon Law (see Appendix A, 9).

When the 1983 Revised Code of Canon Law set out the rules for particular councils/synods (provincial and plenary), it left their convocation to the discretion of the local bishops,⁴⁸ but allowed them to retain their ‘legislative power of governance’ to provide for the pastoral needs of the people of God in their own territory.⁴⁹ More significantly, in setting down the membership composition of these synods/councils, the new Code returned much closer to early church practice and included in the synod membership: a) clerics who must be called with a deliberative vote; b) clerics who must be called with a consultative vote; c) those who can be called with a consultative vote; d) two elected representatives of the cathedral chapter, presbyteral council and diocesan pastoral council of each particular church (i.e. diocese, eparchy) with a consultative vote; and e) guests considered appropriate by the bishops (C. 443). Now, members of the faithful in c) and d) who had been excluded from particular synods/councils for centuries, such as ordinary secular and religious priests, religious sisters, and lay men and women who are members of diocesan pastoral councils, if and where they are established, will be eligible to participate.⁵⁰ But the scope of the role of provincial synods was not extended to the selection of bishops.

The 1983 Code, in stating that “the Supreme Pontiff freely appoints bishops or confirms those legitimately elected”⁵¹, recognizes that although most bishops in the Latin Church are directly appointed by the pope, there is not total uniformity in the election process within the Latin Church. For example, the cathedral chapters in some dioceses of Germany, Switzerland and Austria still retain the right to elect their bishops from a *terna* presented by the Holy See, elect the bishop outright, or present a *terna* to the pope for appointment.⁵²

⁴⁶ The ‘*terna*’ was a device first used in 1829 by Propaganda to overcome a problem encountered in Ireland which threatened its appointing power. Cf. O’Callaghan, *op. cit.*, p. 96

⁴⁷ AAS 64 (1972) 386-91. In the Catholic Eastern churches, the patriarch and other bishops inside the territorial boundaries of the patriarchal church, as well as the major archbishop of major archiepiscopal churches, are elected by the synod of the church *sui juris* (CCEO, cc. 63-77; 153, 181-7). Other bishops are appointed by the pope (CCEO, c.181.2)

⁴⁸ The Code refers to provincial and plenary synods under the heading of ‘particular councils’. Cf. Canons 439-446. A Plenary Council was held in Poland in 1993 and a 2nd Plenary Council held in the Philippines in 1994. A 5th Plenary Council has been proposed for Australia in 2020.

⁴⁹ Canon 445

⁵⁰ Cf. Canon 511-514. Diocesan pastoral councils are not obligatory, but only if the local bishop considers that ‘the circumstances suggest it’ (C 511). The members of the diocesan pastoral council are to be “clerics, members of institutes of consecrated life, and especially laity ... selected in such a way that they truly reflect the entire portion of the people of God which constitutes the diocese ...” (C. 512). At July 2014 only 9 of Australia’s 28 territorial dioceses had a diocesan pastoral council. Cf. *The Swag*, Spring (2014), p. 32

⁵¹ 1983 Code, Canon 377.1

⁵² Harouel, Jean-Louis, “The Methods of Selecting Bishops Stipulated by Church-State Agreements in Force Today: in *Concilium* 137, pp. 63-66. In most dioceses in Germany, in the diocese of Salzburg (Austria) and the dioceses of Chur, St Gall and Basel (Switzerland) the chapter of canons retain the right to elect the diocesan

Vatican II also virtually extinguished any remaining vestiges of secular privilege in the election process, although currently (January 2017) the interference of civil authorities in the selection of bishops as raised its head in the Peoples Republic of China.⁵³ The 1983 Code also states that the Holy See has a ‘definitive’ right to judge the suitability of all candidates to be promoted to bishop.⁵⁴

Australia and the selection of Bishops

In the 1830s, when the appointment of the first bishop to a Catholic mission in the British colonies of New Holland and Van Diemen’s Land was being discussed, the influence of civil powers on the episcopal selection process was still strong. In 1622 Pope Gregory XV sought to minimize that influence in countries where the civil government was not Catholic, by setting up a special Roman dicastery titled Sacred Congregation de Propaganda Fide (‘Propaganda’) to centrally direct the entire mission activity of the Church. In Europe, England (and later Ireland) was placed under Propaganda’s extensive jurisdiction, as was the United States and Canada in the Americas, and all the countries of Asia (except the Russian possessions), Africa, and Oceania (except the Philippines).⁵⁵ To circumvent problems associated with the decline of the Portuguese and Spanish colonial powers, and to address the expansion of the English, Dutch and French colonizers, and new Protestant missionary activity, Propaganda devised a new governance structure with territories called vicariates apostolic and prefectures apostolic, over which vicars and prefects would be directly appointed by the pope, on the advice of Propaganda, to govern in his name. Unlike ‘ordinary’ bishops whose jurisdiction derived from their office, the new vicars apostolic, usually appointed by the pope as bishops and directly accountable to him, derived their ‘vicarious’ jurisdiction from the pope as ‘universal bishop’. The first vicars apostolic were appointed in 1659 to vicariates in India and the Far East with a three-fold mission: to propagate Christianity, to instruct the native peoples, and to train a native clergy.⁵⁶

When the British Government established the first European settlement at Sydney Cove in 1788, the Catholic Church in England was under the jurisdiction of Propaganda and still without a hierarchy.⁵⁷ Propaganda exercised its considerable authority throughout its jurisdiction by establishing delegations, dioceses, vicariates and prefectures apostolic, simple missions, and colleges for the education and formation of clergy. It also played a

bishop and the pope only confirms the one elected. The President of France had the right to designate the bishops of Strasbourg and Metz. Cf. Beal et al., *op.cit.*, p. 514-5

⁵³ Cf. <http://cathnews.com/cathnews/27453-vatican-and-china-reach-compromise-on-selection-of-bishops> (accessed 31 December 2016).

⁵⁴ 1983 Code, Canon 378.2

⁵⁵ The Catholic Church in Ireland, which was emancipated in 1829, came under the jurisdiction of the S.C. de Propaganda Fide in 1833, and soon after underwent a period of significant reform under the ultramontanist Cardinal Paul Cullen (1803-1878).

⁵⁶ The first vicariates apostolic were Tonkin (Vietnam), Cochin-China (Saigon), Nankin (China), Malabar (India), Bijapore (India) and North India. In the Portuguese dioceses established under the Patronatus system, the clergy mainly concerned themselves with the spiritual needs of the Portuguese. Their missionary activity was limited; hence the new emphasis on ‘instruction of the native people’. Cf. Schmidlin, Joseph, *Catholic Mission History*, SVD Mission Press, Techny, 1933, pp. 476-77

⁵⁷ It would not be re-established until 1850, largely because of the influence of the Benedictine, William Ullathorne.

preeminent role in selecting the bishops for the dioceses and vicariates apostolic under its jurisdiction.

Between 1622 until 1850, when the English hierarchy was restored, the Holy See had established four vicariates apostolic and selected four bishops to govern them as representatives of the pope. One of these was the Vicar Apostolic of the London District, a bishop selected by Propaganda on recommendations sought and received from the British Government, and given extensive faculties of jurisdiction throughout the fast expanding British Empire,⁵⁸ including responsibility for the pastoral welfare on all Catholics embarked on the 1787 First Fleet headed for Botany Bay. Later, in 1812, he was given jurisdiction over all Catholics “who dwell in America and other places subject to his Most Serene British Majesty where no ecclesiastical superior is to be found constituted by papal apostolic authority”.⁵⁹ Those other places included New Holland and Van Diemen’s Land.⁶⁰

At that time there were two territories in the Indian Ocean under French Government control and with a French bishop: Mauritius and Madagascar.⁶¹ When both came under British Government control between 1806 and 1810, they passed into the jurisdiction of Propaganda, which was informed that only an English bishop would be acceptable.

⁶²Accordingly, following delicate negotiations between Propaganda, the London Vicar

⁵⁸ Collins, Paul, , ‘Australia’s First Bishops’, in *Australasian Catholic Record*, 62/2 (1987), pp. 189-199

⁵⁹ *Ibidem*

⁶⁰ In 1681, in response to a submission to the Sacred Congregation de Propaganda Fide by the Italian Dominical Prior of St Dominic’s Priory in Manila, Philippines, and Prefect Apostolic of the Island of Formosa (China), Fr Vittorio Riccio OP, the Congregation’s 9 cardinals recommended the creation of the Prefecture Apostolic of Terra Australis (including modern Papua New Guinea, West Irian, Australia and Antarctica). This was approved and Riccio appointed Prefect Apostolic with all opportune faculties. By the time the documents authorising the erection and his appointment arrived in Manila in 1686 he was already dead. See Wiltgen, Ralph M., *The Founding of the Roman Catholic Church in Oceania, 1825 to 1850*, Princeton Theological Monograph Series, Pickwick Publications, Eugen, Oregon, 2010, pp. 170-178. Prefects Apostolic, appointed by the Holy See, rule a territory which has not yet been erected as a diocese. They are not bishops, but enjoy the same rights and faculties in their territories that residential bishops have in their dioceses, unless some faculties have been reserved to the Holy See (cf. Canons 293-311 of the 1917 Code of Canon Law). In January 1804, as a result of the petition of the Irish lay emancipator in Sydney, Michael Hayes, communicated to Propaganda by his Franciscan priest brother in Rome, Fr Richard Hayes OFM (Richard was at the time actively engaged in a fight to stop Pope Pius VII granting the British Government the right to have a say in the nomination of bishops in Ireland), Pope Pius VII established the Prefecture Apostolic of New Holland, and named the conditionally emancipated Irish convict priest, Fr James Dixon (1758-1840) as the first Prefect Apostolic of the “all the Missions contained within the boundaries of New Holland”. However, following the rebellion at Castle Hill the same year, Dixon was held personally responsible, had his permission to celebrate Mass publicly revoked, and his government salary discontinued. He stayed on in Sydney until 1809 ministering privately and then returned to Ireland (cf. Wiltgen, *op. cit.*, pp. 182-186). In 1816, on the basis of information provided by his lay brother, Michael, in Sydney, again petitioned Propaganda for another priest for New Holland. On 1 September 1816 Pope Pius VII appointed the Irish former Cistercian priest, Fr Jeremiah F. Flynn as Prefect Apostolic of New Holland. It was not an Episcopal appointment, but he was given “all the necessary and opportune faculties”. However, the whole affair turned into a disaster, with Flynn being deported in May 1818 after only two years in New Holland. His presence convinced the Colonial Governor Macquarie that “If it should at any time be advisable to sanction the Ministry of Popish Priests in New South Wales, I would beg to suggest that they should be Englishmen of liberal Education and Sound constitutional principles.” (cf. Wiltgen, *op. cit.*, pp. 186-190. Also, O’Farrell, Patrick, *The Catholic Church and Community in Australia: A History*, Nelson, West Melbourne 1977, pp. 12-18).

⁶¹ In Mauritius the Catholic clergy were all French and the community was, ecclesiastically, subject to the Archbishop of Paris. Cf. Collins, *op. cit.*, p. 191

⁶² There was a long history of lay investiture in England. Soon after his conquest in 1066, William the Conqueror replaced the Anglo-Saxon bishops with Norman bishops who were royal vassals within the feudal system. Even after the Concordat of London (1107) whereby the English king surrendered the right of investiture, they continued to control the Church and appointed bishops as they wished. Cf. Cantor, Norman F., *Church, Kingship and Lay Investiture in England, 1089-1135*, Princeton University, Princeton, 1985. Clause 1

Apostolic, the English Benedictine Congregation, and the British Government, over a complex mix of secular, ecclesiastical, and congregational politics, a mutually acceptable English Benedictine priest, Edward Slater OSB, was selected for appointment as bishop of the newly established Vicariate Apostolic of the Cape of Good Hope, Mauritius and Madagascar with - for the administrative convenience of London and Rome - additional jurisdiction over New Holland and Van Diemen's Land. Slater's selection and appointment, a totally clerical affair except for the involvement the lay Protestant British civil authorities in London, meant that the Catholic community in Australia would be governed by a bishop in Port Louis in Mauritius, rather than a bishop in London. This situation would last from 1819 until 1834 when the first resident bishop in Australia was appointed.

This first resident bishop in New Holland was the English Benedictine, John Bede Polding OSB, selected, like Slater, via a complex process and by mutual agreement, involving Propaganda in Rome, the British Colonial authorities in London and Sydney, the English Benedictine Congregation in England, the Vicar Apostolic of Cape of Good Hope, and the predominantly Irish clergy in New South Wales and Van Diemen's Land, most of whom would have preferred an Irishman. It was the third time Polding had been offered Episcopal office within three years, having turned down the appointment as vicar apostolic of Mauritius in 1831⁶³ and bishop of Madras in India in 1832. Polding and his priests and seminarians were officially appointed to civil positions (bishop, chaplains and catechists) and paid stipulated government salaries.

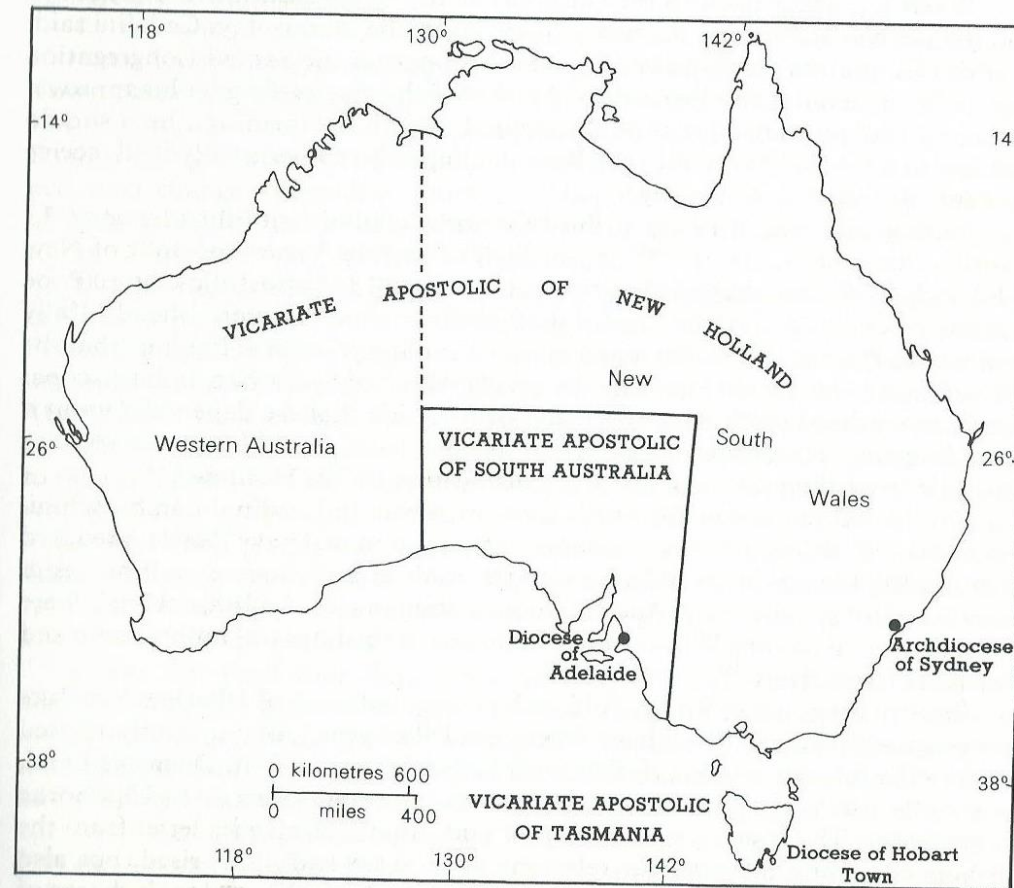
Polding was the sole bishop in Australia until 1842, when the British Government agreed to the establishment of a Catholic hierarchy, the first time it had allowed this in a British possession since the Reformation.⁶⁴ When Polding arrived at Sydney in 1835 his intention was to establish a medieval-type Benedictine monastery beside the cathedral as the centre of Catholic life. In 1836 he obtained papal approval for the monastery, but could not get English monks. Two years later he obtained a papal decree recognizing St Mary's as a monastic cathedral with the monastery annexed, and in 1838 opened his monastic novitiate and seminary. But his grander vision for the Sydney abbey-diocese was to have the abbot-bishop and the monks in effective control of the diocese by ensuring that, when a new abbot-bishop was required, it would be the monastic community which would elect him. When, In 1851, he asked the Holy See to make Sydney a Benedictine diocese 'in perpetuity'

of the 1215 *Magna Carta* stated that "FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity." Cf. <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation> (accessed 19 January 2017). In 1351 and 1390 the English *Statutes of Provisors* enacted by the English Parliament stated that "the free elections of archbishops and bishops ... that are elective in England shall continue to be held."

⁶³ The appointment to Vicar Apostolic of Mauritius was offered to four Benedictine colleagues of the dismissed Bishop Slater: Thomas Brown, Luke Barber, John Polding and William Morris. Polding, Brown and Barber refused, and Morris was appointed. Cf. Collins, *op. cit.*, p. 198-9

⁶⁴ O'Farrell, *op. cit.* p. 62. Cf. Fogarty, Gerald P. SJ, "Episcopal Governance in the American Church" in *Governance, Accountability, and the Future of the Catholic Church*, ed. Francis Oakley and Bruce Russert, Continuum, New York, 2004. Pp. 103-118

with the monastic community having the 'perpetual right' to elect the local bishop, Rome refused, insisting that future bishops be chosen from both religious and secular priests.⁶⁵ Rome terminated the abbey-diocese plan in 1854.



Map Source: Wiltgen, *op. cit.* p. 353

William Ullathorne OSB, the Vicar General in Sydney, was never convinced of Polding's plan, and in 1840 came up with a proposal, to be presented to Propaganda, that two new dioceses be established in Australia (Hobart Town and Adelaide) to form an ecclesiastical province, with Sydney as the metropolitan see and the other dioceses as suffragans. This would establish an Australian 'hierarchy' to serve as a point of unity.

In 1808 the Holy See had established a hierarchy and provincial structure in the United States of America, with Baltimore as the metropolitan see and the dioceses of Boston, New York, Philadelphia, and Bardstown as suffragan sees. However, what was different in the Australian proposal was that it asked that the three dioceses – Sydney, Hobart Town and Adelaide – take their names from the main population centres in the separate colonies, but be located, as enclaves, within three distinct vicariates apostolic: New Holland, South Australia and Tasmania (see Map above). It was a novel idea, but Pope Gregory XVI approved it in 1842, and made each bishop both the ordinary of the diocese and the vicar

⁶⁵ Cf. Letter: Cardinal Alessandro Barnabò to Polding, 4 June 1852, Sydney Archdiocesan Archives (SAA), U1416, 14/11

apostolic of a vicariate apostolic.⁶⁶ In the discussions both Polding and the Propaganda officials had agreed that the boundaries of dioceses should be co-terminus with existing civil boundaries as they were well known.⁶⁷

Propaganda then asked Polding to propose suitable candidates for the two new dioceses. He nominated the English secular priest, Robert Willson, for bishop of Hobart, and four others - two English Benedictines, William Ullathorne and Francis Appleton, his Irish Vicar General, Francis Murphy, and an Italian missionary working in England, Fr Gentili – for Adelaide. Propaganda chose Willson for Hobart and Ullathorne for Adelaide, but as both declined the appointment, Polding was asked to propose substitutes⁶⁸. He named the English Benedictine prior, Joseph Wilson for Hobart, who also declined, and his Irish vicar general in Sydney, Francis Murphy, for Adelaide. Murphy accepted and Robert Willson, now placed under obedience by the Holy See to accept Hobart, acquiesced.⁶⁹

At the request of Polding and with the support of Propaganda, Pope Gregory XVI also consented on 10 April 1842 to the three Australian dioceses being erected as an ecclesiastical province, with Sydney as the Metropolitan See and Adelaide and Hobart as suffragans. The advantage of a province was uniformity of discipline and unity of direction. There were already tensions in Australia, and both Polding and Ullathorne were well aware that the Irish priests and laity there, as well as the Irish bishops in Ireland “were sore at being under an English Bishop and a Benedictine”.

1845 Propaganda Instruction *Neminem profecto* on increasing number of Bishops

On 23 November 1845 the Propaganda Congregation issued an Instruction titled *Neminem profecto* which it sent to the heads of all the mission territories around the world calling on them to advise the Congregation whenever they thought circumstances were such as to require an increase in the number of bishops. It further recommended that the most suitable candidates for selection were those missionaries with experience in the territory.⁷⁰

During his visit to Rome in early 1847, Polding raised the suitability of having a new diocese at Melbourne, the principal town of the Port Phillip Settlement, soon to become the State of Victoria (1851). There was no mention of another Vicariate Apostolic, but simply that the Bishop of Melbourne should have jurisdiction over the whole new State. Although Polding had been advised to “recommend Irishmen for Bishops, and more good will be done” he included in his short list to English Benedictines as well as two Irish diocesan priests.⁷¹ The

⁶⁶ Polding was very keen for all three bishops to be the ordinary of a diocese, but at the same time to retain the title and office of vicar apostolic, as this provided them with ‘the most ample faculties’ which were not available to bishops of a normal diocese. Cf. Wiltgen, *op.cit.* pp. 348-357

⁶⁷ Wiltgen, *op. cit.* 387

⁶⁸ Besides refusing to accept the Episcopal appointment to Adelaide in 1842, Ullathorne also declined the bishopric of Hobart Town in 1841 and that of Perth in 1845.

⁶⁹ Wiltgen, Ralph M., *The Founding of the Roman Catholic Church in Oceania, 1825-1850*, Pickwick Publications, Oregon, 2010, pp. 347-356

⁷⁰ Wiltgen, *op. cit.* p. 383

⁷¹ Wiltgen, *op. cit.* p. 355, 385-6. The English Benedictines were Frs Henry Gregory and Richard Burchell; the Irish priests were John McEnroe and James Goold.

Irish Augustinian priest, James Alypius Goold, who had been working in NSW for 8 years, was selected.

In his discussions with Propaganda, Polding pointed out the weaknesses in Bishop Brady's proposals regarding the ecclesiastical divisions of WA, and how they had violated the norm of having diocesan (and vicariate) boundaries co-terminus with civil boundaries. The Vicariate Apostolic of King George had invaded the Diocese of Adelaide, and the Vicariate Apostolic of Essington had invaded the Archdiocese of Sydney.⁷² Polding further recommended a reorganization of the ecclesiastical divisions of Australia with new boundaries for the Diocese of Perth, the suppression of the Vicariates of King George Sound and Essington, and a new Diocese of Victoria (NT) being temporarily under his own jurisdiction. [INSERT MAP, Wiltgen, p. 388]. For the position of bishop, Polding recommended the Spanish Benedictine, Fr Jose Serra, who could seek support from his successful Spanish confreres in the Philippines.

A few weeks later, Polding made a new recommendation to Propaganda: the erection of a new diocese at Maitland, just north of Sydney, but with its bishop to be a coadjutor to himself. Polding's motives for having new dioceses at Melbourne and Maitland were to a great extent based on a determination to keep up with the increasing number of Anglican dioceses. Polding's suggested candidate for the new bishop of Maitland was the English Benedictine, Richard Burchell, and if appointed, would favour Goold for Melbourne.⁷³ Pope Pius IX accepted all Polding's proposal on 9 May 1847. Goold and Serra were consecrated as first Bishops of Melbourne and Port Victoria respectively in 1848, and the same year, English Benedictine, Fr Henry Charles Davis, not Burchell, was consecrated as first Bishop of Maitland and Coadjutor Bishop of Sydney.

Reality, however, was the determining factor: sufficient suitable English candidates were not available, and by 1850, of the 8 bishops appointed, only 3 were English and the others Irish (3) and Spanish (2). By the late 1850s, however, senior prelates in Ireland were already exerting influence on Episcopal appointments to Australia and it would increase exponentially over the next several decades. At the same time, input to the selection process from the Catholic laity in Australia was nil.

In missionary countries, such as Australia, at that time, the pope generally sought "recommendations" for Episcopal candidates from Propaganda, which in turn tapped into the clerical resources of the migrant-sending countries, as well as those of the migrant-receiving countries. But this did not bind him, for he was always 'free', and had the power to choose a new bishop from persons not included in any list of recommended candidates.

1866 Propaganda *Instruction on Election of Bishops for Australia*

During the 1860s Propaganda's planning for the Australian mission was largely shaped by Cardinals Alessandro Barnabò and Karl von Reisach of Propaganda in Rome and Paul Cullen in Ireland. Polding was largely shut out of the planning, received few replies to his letters, and was only informed after decisions had been made, including those concerning the

⁷² Wiltgen, op. cit. p. 387

⁷³ Ibid. p. 390

appointment of bishops.⁷⁴ There was a significant change in local episcopal selection when, in 1866, the Sacred Congregation de Propaganda Fide issued a formal *Instruction on the Election of Bishops for Australia*.⁷⁵ This document was almost identical to that sent to the hierarchy in United States of America in 1861, and encapsulated many of the different selection process developments which had been trialled by Propaganda in Ireland, England, and the US over the previous several decades.

In Ireland, the bishops and senior clergy (cathedral canons and parish priests) - but not laypersons – usually chose the candidates for vacant dioceses by ballot and forwarded the names for one (or more) for the pope’s confirmation. In 1825 Propaganda insisted that only a short list of three names (a ‘terna’)⁷⁶ be sent, to ensure that there was no suggestion of an ‘election’ or that Propaganda and pope had no choice in the appointment. In 1829 Propaganda sent the following new instructions to the Irish bishops: i) on a vacancy, the vicar general of the diocese was to summon the cathedral canons and parish priests; ii) each was to write in secret the name of the most suited candidate of his choice; iii) the names of the three candidates with the most votes was to be sent to the bishops of the province (of the vacant see); and iv) the provincial bishops were to forward the *terna* to Propaganda with their own comments, but without introducing other names. In the case of a coadjutor with the right of succession, the same rules were to be followed, but at the electoral meeting, the bishop seeking the coadjutor is to preside.⁷⁷ This process gave parish priests a significant voice, but totally excluded the laity

In England since the Reformation, the vicars apostolic had been appointed by the pope, on the recommendation of Propaganda. But in 1850, following the Catholic Emancipation of 1829, Pope Pius IX restored the Catholic hierarchy, established an English province of 13 dioceses with Westminster as the metropolitan see, and created new cathedral chapters of

⁷⁴ Dowd, Christopher OP, Rome in *Australia: The Papacy and Conflict in the Australian Catholic Missions, 1834-1884*, Brill, Leiden, 2008, Chapter 10

⁷⁵ This Instruction, dated 19 May, 1866, was attached to the Decrees of the 1st Plenary Council of Australasia, held in Sydney in November 1885, as Appendix III.. A similar document had been sent to the bishops of the United States of America on 24 January 1861 and the selection process was now being extended to Australia. The Instruction contained 10 main points as well as a list of qualities necessary for a suitable candidate. Besides the list of names to be proposed by the ‘Antistites’ and sent to Propaganda every three years, every care was to be taken to gather credible information on the named candidates. When a diocese became vacant all the senior clergy were to meet in Synod within 3 months to discuss at least 3 suitable candidates and to propose one to fill the vacancy. Before the Synod [sic] the names of the candidates were to be sent to the Metropolitan or a senior priest of the Province, and to all the senior clergy, for the purpose of seeking their recommendations. At an assembly of the bishops, where the Metropolitan or senior cleric of the concerned Province is to be present, the qualities of all the proposed candidates were to be discussed publicly, and a secret ballot held. The minutes of the bishops’ meeting were to be forwarded to Propaganda by the Metropolitan or senior cleric of the concerned diocese. Where the selection of a coadjutor bishop was concerned, the bishop seeking the coadjutor was to provide the names of 3 candidates to the relevant Metropolitan and Suffragan bishops who, having concurred, would communicate the minutes of their meeting and the nominations to Propaganda. When a new ecclesiastical province was proposed, the bishops from all the existing provinces were to meet and recommend candidates for the new dioceses; and when a new archbishop or coadjutor archbishop was to be elected, all the Metropolitan bishops were to be consulted.

⁷⁶ This was the first time the ‘terna’ had been used for the selection of bishops.

⁷⁷ *Instruction of Propaganda*, 17 September 1829 and 25 April 1835 in *Collectanea* nos. 40 and 41. Cf Whyte, John H., “The Appointment of Catholic Bishops in Nineteenth Century Ireland” in *Catholic Historical Review*, 48 (1962): 12-32

canons with the responsibility for nominating bishops. When a diocese fell vacant, the metropolitan was to convene a chapter of canons who would choose at 3 successive ballots a *terna* to be sent to Propaganda with the comments of the provincial bishops. The pope was free to disregard the *terna* and nominate whomever he wished.⁷⁸ From 1874, if the bishops wanted to they could propose other names.⁷⁹

In the United States, in 1788, a year after the American Constitution was adopted and the same year the first European settlement was made at Sydney Cove, the American clergy (a total of 34 priests serving 25,000 Catholics) petitioned Pope Pius VI to allow them to 'elect' their first bishop. When Propaganda acceded to the request "on this first occasion at least" the General Chapter of the American Clergy 'elected' John Carroll as the first bishop of Baltimore the following year. But when the clergy then petitioned for the right to select their bishops in the future, the pope replied in his brief erecting the diocese of Baltimore that Carroll's election was a 'one time only' event and that henceforth the pope would appoint the bishop.⁸⁰ When Carroll broached the idea of electing a second bishop, Propaganda told him to consult with the 'older and more prudent priests' and the pope would appoint the person they recommended. Two coadjutor bishops to Carroll were then 'elected' by the General Chapter and appointed by the pope. However, when Pope Pius VII erected the new dioceses of Boston, New York, Philadelphia and Bardstow in 1808 and made them suffragan to Baltimore, he appointed the four new bishops without even consulting the three other American bishops. Pius VII made it clear that he was terminating the participation of the American clergy in the selection of bishops. Much discontent and confusion among bishops and clergy followed. Ethnic tensions, especially among Anglo-American, French, Irish, and German clergy were acute. In 1833, Bishop John Ireland urged for some system be set up which would allow 'recommendations' to be made to the Holy See. Proposals to have European-style cathedral chapters, with the right to elect bishops, were made, but rejected as not feasible. As the quality of many bishops came into question, so did the role of Propaganda and the pope. At the 8th Provincial Council of Baltimore in 1855 (11 years after the 1st Provincial Council of Australia) a compromise proposal was agreed: a body of 10-12 priest consultors should be established who, on the death of the bishop, would recommend to the metropolitan archbishop (or senior bishop of the province) a suitable successor.

In 1859, after persistent procedural problems with the appointment of bishops and requests from the US hierarchy to have a uniform process for selection and appointment, Propaganda responded by asking the American Archbishops for suggestions for improvement. On the basis of the responses, Propaganda, in 1861, came up with its own new systematic process for "acquiring extensive information of priests with a view to promoting them to the office and dignity of bishops".⁸¹ It sent the instruction to all the US bishops⁸² with a series of norms for making recommendations for "the discernment of candidates for Episcopal

⁷⁸ Cf. Trisco, *op.cit.*, 38-42

⁷⁹ Instruction of Propaganda, 21 April 1852, *Collectanea*, no. 42. Also, Decision of Propaganda, 25 April and 3 May 1904, confirming the practice.

⁸⁰ Ellis, John Tracy, *Documents of American Catholic History*, Bruce, Milwaukee, 1956, pp. 167-171, Doc. N.53 (6 November 1789)

⁸¹ Cf. Dowd, *op. cit.*, p. 312

⁸² Decree of Propaganda, 21 January 1861, modified on 21 September 1885. *Collectanea*, no. 43.

office". They were almost identical to those that Propaganda sent to the Australian bishops 5 years later. In essence, Propaganda had modified the Irish system of regular updating (every 3 years) of suitable candidates for appointment, so that it could be better prepared when a vacancy arose or a new diocese was to be established. But one Latin word in the instruction - '*Antistites*' (senior clergy)⁸³ - was ambiguous and open to interpretation. Propaganda clarified the term, saying it was to be interpreted as 'diocesan consultors and irremovable rectors', and that these senior clergy were to come up with three names (in order of worthiness), in secret, which were to be sent to the metropolitan and then on to Propaganda. The bishops were then to review the merits of the candidates proposed by the *Antistites* and by secret ballot come up with their own *terna*, and if their choice was different from the *Antistites* they had to give reasons. [The Australian Instruction did not mention the bishops' review or *terna*.]

When there was an actual vacancy, all the *Antistites* were to gather 'in synod' within 3 months of the vacancy under the presidency of the metropolitan (or senior bishop) to discuss at least three potential candidates, whose names had been circulated prior to the synod, to assess each against a prescribed set of questions, and to propose one candidate for the vacancy. At a 'gathering of the bishops' (only), at which the metropolitan or a senior 'Antistite' was presiding, the qualities of all the candidates were to be discussed publicly, a secret vote taken, and the minutes ('*Acta*') of the gathering [with the name of the candidate elected] forwarded to Propaganda by the metropolitan or another bishop of the province.

If it was a case of a coadjutor bishop being 'elected', the bishop requesting the coadjutor was to preside of the meeting of the *Antistites*, send the *terna* to the metropolitan and suffragans of the province for their agreement, and then forward the agreed *terna* to Propaganda. When a metropolitan was to be replaced or given a coadjutor with the right of succession, all the US metropolitans had to be consulted by Propaganda.⁸⁴

However, Propaganda's proposals for the US did not meet with universal approval. At the 2nd Plenary Council of Baltimore in 1866, another proposal for establishing cathedral chapters of canons to nominate Episcopal candidates was made, but rejected on the grounds that it would restrict the role of bishops. Relations between priests and bishops remained tense, with many priests resenting that they had no say in the selection of their bishop.⁸⁵ In 1884 at the 3rd Plenary Council of Baltimore, the issue of priest participation in the selection of bishops again emerged. Propaganda put a proposal for 'irremovable

⁸³ '*Antistites*' was a term used in classical Latin literature to describe a high official in the sacral ranks.

⁸⁴ Van Hove, A., 'Bishop' at <https://www.catholic.com/encyclopedia/bishop> (accessed 22 January 2107)

⁸⁵ Cf. O' Callaghan, op. cit. pp. 102-106. In 1868 Rev. William Wheeler (St Louis) said that the time had come to give priests authority to choose their bishops. Bishop George Conroy, an official Visitor to the US in 1878 found a system of Episcopal patronage, a very mediocre crop of bishops meriting little respect from the clergy, and recommended that before they making Episcopal recommendations to Rome, they should consult their pastors more widely. He did not favour giving them a 'deliberative' vote. In 1883, Fr Patrick Corrigan (New Jersey) advocated that it would be in the best interests of the Church if qualified priests were allowed a role in Episcopal nominations, and that all new bishops should be native-born Americans who had been reared in and attuned to the spirit of the United States. He argued that the 'veto power' of the provincial bishops would eliminate any unsuitable candidates proposed by the priests, and that the 'principle of self-government' on which the US had been founded was not revolutionary and would not result in the Americanization of the Church. He

rectors' to have a vote so long as the bishops could determine the final *terna* to be sent to Rome. One bishop argued that "if priests are given the right of electing [their bishop] the people will also covet it".⁸⁶ The Council, under pressure, finally agreed to the appointment of 'diocesan consultors' rather than canons of cathedral chapters, and that together with the irremovable rectors, in an assembly under the presidency of the metropolitan archbishop, they would recommend the candidates they considered most worthy, and the metropolitan would send their recommendations to the provincial bishops and Propaganda. At the same time the provincial bishops would draw up their own *terna*, and if they rejected any of the priests' choices they had to give reasons. In effect, priests (some only) could choose their candidates, but the bishops were not obliged to endorse them.⁸⁷ The laity would have no say.

Canada was obliged to follow the same norms laid down by Propaganda in the 1861 Instruction to the US bishops.⁸⁸

When the Cardinals of Propaganda were considering Episcopal vacancies in the dioceses of Armidale and Goulburn on 20 March 1866, Cardinal von Reisach opined that the nomination of bishops for Australia needed to be made more systematic.⁸⁹ And since Australia, he argued, had "a similar situation as North America", he suggested that Propaganda apply the same provisions that had been tested over five years in the US, and hold off appointing the new bishops until information and recommendations had been received from the Australian bishops according to the US norms. Propaganda was more and more convinced that the US model would serve the Australian mission well, and this approach was endorsed by Pope Pius IX.

In a Decree titled *Quum ad Catholicae Ecclesiae utilitatem (Instruction of the Congregation of the Congregation de Propaganda Fide concerning the Election of Bishops in Australia)*, dated 19 May 1866, Propaganda imposed on Australia the same norms that it had formulated in 1861 for the US.⁹⁰ It clearly anticipated a rapid population expansion in Australia which would necessitate new dioceses, and to ensure it could take timely action, it sought to have a triennially updated list of potential Episcopal candidates supplied by the 'Antistites', taken to be (in Australia) the diocesan bishops.⁹¹ It was a 'clerical' closed-shop

⁸⁶ This was said by Bishop John Lancaster Spalding of Peoria, Illinois

⁸⁷ *Acta et Decreta Concilii Plenarii Baltimorensis Tertii in Ecclesia Metropolitana Baltimorensi habiti a die IX. Novembris usque ad diem VII. Decembris A.D. MDCCCLXXIV*, John Murphy, Baltimore, 1886, 12-14, title 2, chap.1, nos. 15-16

⁸⁸ Decree of Propaganda, 2 December 1862. *Collectanea*, no. 43.

⁸⁹ Dowd, op. cit., p. 311

⁹⁰ *Instruction of Propaganda*, 19 May 1866, modified by the Decree of 1 May 1887, *Collectanea*, no. 44. This Instruction, which contains 2 parts, was attached to the Acta et Decreta of the 1st Plenary Council of Australasia held in Sydney in November 1885 as Appendix III. The text is in Latin. The Instruction was modified on 1 May 1887. *Collectanea* no. 44. The interpretation of the Latin word 'Antistites' caused some confusion. Only in 1885 did it come to be interpreted as the "diocesan consultors and irremovable rectors (i.e. parish priests with stability of tenure)".

⁹¹ On 24 January 1861, letters were sent by Propaganda to the entire episcopate of the United States making recommendations for the discernment of candidates for episcopal office. In 1789 the priests of the United States were granted the privilege of choosing the first Episcopal see (Baltimore) and the first bishop (John Carroll). At the first diocesan synod of Baltimore, Carroll consulted his priests on the selection of a coadjutor. With the establishment of extra diocese between 1808 and 1850, Propaganda established a new selection

arrangement designed to identify the 'holiest senior clergy' or those 'clerics distinguished for their teaching and prudence', to be appointed as 'overseers', 'leaders' or 'prelates'.⁹² But unlike the US *Instruction*, there was no mention of bishops making comments on the list of names prepared by the 'senior clergy', or changing the list with reasons provided. In Australia the 'senior clergy' were excluded from the process, as was the laity.

If the way of selecting bishops in the US had been haphazard, it was no less so in Australia. Up until 1866 the names of candidates had arisen from a very loose arrangement of individual bishops sending their suggestions to Propaganda, supplemented by correspondence among themselves or from informal meetings where names and merit were discussed. The 1866 decree transformed and upended this old method of nominating priests for Episcopal appointment and replaced it with a fixed, regular procedure. It assigned a pivotal role to the Metropolitan Archbishop, but did not guarantee his preferences. From 1866 onwards, every three years each and all Australian bishops (*Antistites*) were to forward to their provincial Metropolitan, and then to Propaganda, the names of priests they thought suitable to be made a bishop. This was to be done in the utmost secrecy to avert any kind of ambition, and care was to be taken to gather reliable information on those named (paras 1 & 2).

In the case of a vacant diocese, whether metropolitan or suffragan, all the bishops (*Antistites*) [of the province] were to meet in synod within three months of the vacancy occurring, to discuss at least three possible candidates, with a view to proposing one. Before the synod, the names of the candidates were to be circulated by the archbishop or senior bishop of the province, and the bishops were to consider them, using the set of written questions attached to the Instruction, with a view to making a recommendation. At the synod, the qualities of each of the candidates were to be discussed publicly in the present of the Metropolitan or senior bishop of the province, and in a strictly secret ballot, each bishop was to place his vote in an urn. The result and minutes of the synod were to be sent to Propaganda by the metropolitan or senior bishop of the province (paras 3-6).

In the case of selecting a coadjutor [with right of succession], or where the Holy See for some reason required it, the bishop wanting a coadjutor was to send his request to Propaganda with three names, which he had already shown to the metropolitan and other suffragans of his province and received their agreement (para. 7).

process for the US in 1834 which excluded priests: at a provincial meeting of the bishops, after discussion, all were to prepare a terna (with comments) which was to be sent to Propaganda, which would make known to the pope its preference for appointment. A slight change was made in 1850 after the 7th Provincial Council of Baltimore, and shortly after varied slightly again, making it obligatory to all US metropolitans had to see the provincial terna if candidates from outside the province were being proposed, or a new metropolitan was being considered. The 8th Provincial Council of Baltimore (1855) permitted bishops to consult their diocesan consultors if they wished. The 1861 instruction from Propaganda required every bishop to prepare an updated list of suitable Episcopal candidates (with background notes on each) to be forwarded to their metropolitan and then to Propaganda. Propaganda and the 2nd Plenary Council of Baltimore prepared a template to cover the candidate's background. Cf. McKenna, Devin E., *The Battle for Rights in the United States Catholic Church*, Paulist Press, New York, 2007, pp. 128-129

⁹² Propaganda later insisted that the '*Antistites*' be interpreted as 'diocesan consultors' and 'irremovable rectors.'

When it was necessary to establish new ecclesiastical provinces, the bishops from all the existing provinces were to meet to recommend candidates for the new dioceses. If a candidate from outside the province concerned was being proposed, the candidate's bishop and the metropolitan of the concerned diocese were to be advised in writing. (para. 8)

When a new archbishop or coadjutor archbishop was to be selected, all the Australian metropolitans were to be consulted (para. 9)

Table: Bishops appointed to Australian Dioceses and Vicariates Apostolic: 1832-1866*

Name of Bishop	Place of Birth	Date of Appointment	Episcopal Ordination	Australian Diocese where Ordinary or Vicar Apostolic
Polding, John Bede OSB	England	1832	1834	VA of New Holland and VDL (1 st); Sydney (1 st)
Murphy, Francis	Ireland	1842	1844	Adelaide (1 st)
Willson, Robert	England	1842	1842	Hobart (1 st)
Murphy, Daniel	Ireland	1845	1846	Hobart (2 nd)
Brady, John	Ireland	1845	1845	Perth (1 st)
Davis, Charles OSB	England	1846	1848	Maitland (1 st)
Goold, James OSA	Ireland	1847	1848	Melbourne (1 st)
Serra y Julia, Jose OSB	Spain	1847	1848	Port Victoria (1 st)
Salvado, Rudesindo OSB	Spain	1849	1849	Port Victoria (Darwin) (2 nd); New Norcia (1 st Abbot)
Quinn, James	Ireland	1859	1859	Brisbane (1 st)
Geoghegan, Patrick OFM	Ireland	1859	1859	Adelaide (2 nd); Goulburn (1 st)
Quinn, Matthew	Ireland	1865	1865	Bathurst (1 st)
Shiel, Laurence OFM	Ireland	1865	1865	Adelaide (3 rd)
Murray, James	Ireland	1865	1865	Maitland (2 nd)
Lanigan, William	Ireland	1866 (18 Dec)	1867	Goulburn (2 nd)

Notes: 1. William Lanigan was appointed 7 months after the 1866 Instruction. 2) Several other priests were appointed to dioceses or vicariates apostolic, but either were not ordained as bishop, resigned before taking possession, or did not take up their appointment

The *Instruction* made it clear that only the bishops had a vote to select the preferred candidate. But while only the name of the 'recommended' candidate(s) was to be sent to the Holy See, the *Instruction* stated that the Holy See was not to be limited in the advice that it might seek, and was under no obligation to follow the recommendation(s) sent by the Australian bishops. Given that difficult circumstances sometimes arise, the freedom of the Holy See to choose had to be safeguarded, and there must be no restriction on the liberty of Propaganda (para. 10).⁹³ The *Instruction* made no provision for the participation of the clergy or laity of the relevant diocese or province in the Episcopal selection process. It is not clear how the idea of using the US norms for the Australian mission originated, but the Irish bishops were pleased, for initiative and decision-making on Episcopal selection shifted from the local metropolitan (Polding) to the college of bishops in Australia. The metropolitan would now be no more than a co-ordinator and agent for Propaganda, while

⁹³ *Instruction*, para. 10

all the bishops (at end-1866: 8 Irish, 1 English, 1 Spanish) together would select the recommended candidate(s). The Cullenite trio of Murray and the Quinn brothers needed the support of only three others to control the vote. Murray and Matthew Quinn also advised Cardinal Barnabò at Propaganda that henceforth decisions about Australia would be made only by consultation with the bishops.⁹⁴

By the late 1850s, over 75 per cent of the clergy in Australia were Irish-born and almost all graduates of All Hallows College.⁹⁵ But as new dioceses were being established (see Table below), Polding continued to recommend the appointment of more English bishops, while the Irish bishops, both in Australia and Ireland, strongly urged Rome to appoint more Irish bishops. With strong support from the majority Irish clergy and laity in Australia, the Irish bishops had more clout in Rome than Polding, who deeply resented the interference of the clergy and hierarchy in Ireland in his affairs.⁹⁶

The Irish bishops argued that all new Episcopal appointments should come direct and uncontaminated from Ireland, claiming that more Irish bishops would bring more Irish priests with them. From 1859 onwards, Irish Episcopal appointments escalated, with at least twelve of those appointed between 1846 and 1878 having been recommended by their relative, patron, or former Rector at the Irish College in Rome and now Archbishop of Dublin, Cardinal Paul Cullen.⁹⁷ Cullen was constantly consulted by Rome on Australian, Canadian and US affairs, and his Irish protégés sought to emulate his authoritarian policies and practices which did not include lay participation in Episcopal selection or much else. In 1866, with the Propaganda *Instruction* giving them official support, there would be little that the Metropolitan Archbishop, Polding, could do to hold back the Irish powerbase.

Just days before the Propaganda Instruction was to be issued, on 19 May 1866, Polding, who was in Rome at the time, requested a delay, so that new bishops for the dioceses of Goulburn and Armidale, which had vacant for four years, could be appointed. He did not want to give the Irish bishops the opportunity to assemble in synod and choose their candidates. Though he did not succeed, in July, Pope Pius IX did permit that on this one occasion the *Instruction* could be set aside and nominations made directly by Polding.⁹⁸ His

⁹⁴ Cf. Dowd, *op. cit.*, p. 313

⁹⁵ All Hallows was the Irish seminary established in 1842 specifically for preparing Irish priests for ministry in mission territories, such as Australia, where many or most of the Catholic laity were Irish-born.

⁹⁶ In August 1865 Polding got word that Frs Hayes, Hanly and Murray had already been appointed in May 1865 to the dioceses of Armidale, Goulburn and Perth. It was the first he knew of it. By January 1866, Polding learnt that the appointments of Hayes and Hanley had been suspended – due to the views expressed by Bishops Murray and Matthew Quinn (Bathurst), who had not yet taken possession of their dioceses in Australia – and Murray appointed to Maitland. Cf. Dowd, *op. cit.*, p. 303

⁹⁷ John N Moloney states that Cullen was able to influence the choice of Episcopal appointments in Australia to the extent that 12 of the bishops appointed to Australian sees between 1846 and 1878 were in some way Cullen's men. They included the brothers Matthew (Bathurst) and James Quinn (Brisbane), James Murray (Maitland), William Lanigan (Goulburn), his nephew Patrick Moran (Sydney), Michael O'Connor (Ballarat) and Daniel Murphy (Hobart). Cf. *Australian Dictionary of Biography*, 'Cullen, Paul (1803-1878)'. Dowd (*op. cit.*, p. 306) notes that of Polding's 7 suffragan bishops, 3 were related. Propaganda wanted to appoint a third Quinn brother as a bishop in Australia, but Cullen objected, claiming he was too valuable.

⁹⁸ Cf. Dowd, *op. cit.*, p. 314

recommendations⁹⁹ included 10 priests, with three preferred: the English Benedictine, Henry Gregory, the Irish-Australian Benedictine, Samuel Sheehy, and the Irish-Australian secular, William Lanigan. The pope appointed Lanigan to Goulburn and an English Benedictine with no experience in Australia, John Crookall to Armidale. When Crookall declined that appointment, Polding pushed for Gregory, but he was unacceptable to Propaganda. Propaganda now ordered a bishops' synod to be held in Australia and its recommendation forwarded. Polding's fortunes had almost run dry. Not only must he hold a synod, but before the year was out, Cullen had been made a cardinal with an official seat at Propaganda, Patrick Moran was made Cullen's secretary, the English cleric, Mgr George Talbot, who consistently opposed Polding's projects, was made a Propaganda consultor, and Bishop Murray of Maitland was urging Propaganda not to trust any more of Polding's recommendations, but to proceed strictly in accord with the May Instruction.¹⁰⁰

In 1873, however, in one last calculated attempt to stem the Irish bishops from taking complete control and to prevent the Australian church from become an exclusively Irish Church, Polding asked Propaganda to appoint some bishops of other than Irish nationality to suit Australia's multi-ethnic population. In response, Rome appointed a Belgian (Lecaillei), four Italians (Cani, Tanganelli, Torreggiani, and Fontini),¹⁰¹ and to his great delight, another English Benedictine, Roger Vaughan, not as his coadjutor at Sydney with the right of succession, but as his auxiliary. Vaughan's appointment was not welcomed by most of the Irish bishops, priests and laity in Australia, but having assessed him, many soon softened. Vaughan died unexpectedly in 1883.

Plenary Councils of 1885, 1895 and 1905 and the Selection of Bishops

When Vaughan's replacement, the Irish-born nephew of Cullen, Patrick Francis Moran, arrived in Sydney in 1873, most of Australia's bishops, clergy and laity were Irish-born or of Irish background. With Moran, first as archbishop and then as cardinal, Irish ecclesiastical imperialism became rampant, and his vision of Australia as 'his Irish spiritual empire', a reality. Like his uncle, Moran was not particularly interested in consulting the laity or clergy, or even his brother bishops. He intended to run church affairs in Australia his way, and he would use synods to do it, requesting Pope Leo XIII to allow the convening of the 1st Plenary Council of Australasia (Australia and New Zealand) in November 1885. He would use this synod/council to lay the foundations for a united and national Australian church modelled on the Church in Ireland.

⁹⁹ As well as bishops for Goulburn and Armidale, Polding also requested a coadjutor for himself at Sydney. The background information he supplied to Propaganda on each candidate was thin, and he did not make it clear which candidates he was proposing for which position. He also added to the list later on, and offered a confusing set of scenarios. Cf. Dowd, *op. cit.*, p. 317.

¹⁰⁰ Cf. Dowd, *op. cit.*, pp. 321-2

¹⁰¹ Fr Adolphus Lecaille (Belgian) was appointed Vicar Apostolic of Queensland in 1877, but did not take up his appointment; Fr John Cani (Italian) was appointed Vicar Apostolic of Queensland in 1877 and became Bishop of Rockhampton in 1882; Fr Tarqino Tanganelli PIME (Italian) was appointed pro-Vicar Apostolic of Cairns in 1878 but did not take possession; Fr Elzear Torreggiani OSFC (Italian) was appointed 2nd Bishop of Armadale in 1879; and Fr Paul Fontini (Italian) was appointed Vicar Apostolic of Queensland in 1882, but recalled to Rome in 1884. Propaganda was content to appoint priests from Ireland as bishops because it was easier to gauge their suitability, whereas Australian-born candidates were an unknown quantity.. Cf. Dowd, *op. cit.*, 310.

At this Council the bishops varied only slightly the 1866 Propaganda *Instruction on the Selection of Bishops* (the original was attached to the Council Decrees as Appendix III) to make it identical to the process followed in Ireland and the United States¹⁰² giving the bishops the right to examine the list of Episcopal candidates selected by the senior clergy (*Antistites*) of a diocese before being sent to Rome, and to vary it, if they thought fit, with their own choice, so long as they provided reasons (Decree n. 23). The process was similar when selecting a coadjutor bishop (Decree n. 24). In the case of a newly established diocese, the metropolitan had to seek the opinion of all the consultors of the dioceses from which the new diocese was being formed, and all the rectors in the new diocese (Decree n. 25).¹⁰³ But, in practice, it would appear that up until 1885 it was only the bishops who had proposed the name of candidates for Episcopal appointment to the Holy See, and there had been no consultation with the priests.¹⁰⁴

Table: Bishops appointed to Australian Dioceses and Vicariates Apostolic: 1867-1885*

Name	Place of Birth	Date of Appointment	Episcopal Ordination	Australian Diocese where Ordinary or Vicar Apostolic
Griver y Cuni, Martin	Spain	1869	1870	Perth (3 rd)
Mahony, Thomas	Ireland	1869	1869	Armidale (1 st)
Vaughan, Roger OSB	England	1873	1873	Sydney (2 nd)
Moran, Patrick	Ireland	1872	1872	Sydney (3 rd)
Reynolds, Christopher	Ireland	1873	1873	Adelaide (4 th)
O'Connor, Michael	Ireland	1874	1874	Ballarat (1 st)
Cani, John	Italy	1877	1882	VA Queensland (1 st); Rockhampton (1 st)
Torreggiani, Elzear OSFC	Italy	1879	1879	Armidale (2 nd)
Dunne, Robert	Ireland	1882	1882	Brisbane (2 nd)
Carr, Thomas	Ireland	1883	1883	Melbourne (2 nd)
Moore, James	Ireland	1884	1884	Ballarat (2 nd)
Reville, Stephen OSA	Ireland	1885	1885	Sandhurst (2 nd)
Byrne, Joseph	Ireland	1885	1885	Bathurst (2 nd)

*Note: Several other priests were appointed to dioceses or vicariates apostolic, but were either not ordained as bishop, resigned before taking possession, or did not take up their appointment

There was much debate about 'irremovable parish priests' at the 1885 council, for up until then all priests were considered to be 'missionaries' and able to be transferred 'at will' by

¹⁰² In Ireland, from immemorial custom, canons [of the cathedral] and parish priests had been involved in presenting names for Episcopal candidates. In 1829 Propaganda attempted to bring order into the system and prevent abuses by requiring that, when the votes (3 names on each ballot) were to be made, the church doors were to be closed, a roll-call taken, absences explained, an oath taken, and the metropolitan to be president. In 1835 Propaganda instructed that just one name was to appear on each ballot. This was the case until 1925, and after Ireland had been removed from the jurisdiction of Propaganda in 1908. Then the Sacred Consistorial Congregation insisted that before a provincial meeting on bishops to prepare a *terna*, individual bishops could only consult the canons and 'the more prudent priests' on their opinion secretly and one-on-one. Cf. Waters, *op. cit.*, p. 136-7

¹⁰³ Ibidem. Decree n. 25 was first used in 1928 when the diocese of Toowoomba was being established.

¹⁰⁴ Ian Waters *op. cit.* states that "up until this time [1885] the names of candidates to the episcopacy in Australia had been made by bishops only, with no prescribed consultation of priests" (p. 69)

the bishop. The bishops had, till then, been quite prepared to have some priests appointed as permanent 'canons' functioning as their 'consultors' on matters of grave import and having the defined task of proposing names for filling an Episcopal vacancy, but they balked at the idea of 'permanent parish priests'. However, the proposed decrees – passed on the casting vote of Moran - stated that one fifth of the 'districts' (there were no canonical 'parishes' until 1928) of each diocese was to have permanent parish priests, or three at an absolute minimum. Now, for the first time, there would be in Australia a group of permanent parish priests (irremovable rectors) and canons (diocesan consultors) having the significant 'privilege' of being able to meet together and propose the names of Episcopal candidates, which would be forwarded to the bishops of the province for presentation to the Holy See.¹⁰⁵ When approval for these decrees was sought from the Holy See, there were no objections or comments.

The 1885 council also spent considerable time on planning the establishment of new dioceses, vicariates apostolic and ecclesiastical provinces, as well as proposing the names of Episcopal candidates for them. During the council, and before the decrees had been approved (in 1887), the Melbourne provincial bishops met separately to propose candidates for the new diocese of Sale, as well as names for coadjutor bishops (with right of succession) for Melbourne and Perth.

In 1895, however, when the new see of Geraldton was being established, Decree 25 was ignored, as it was again in 1917, when the new diocese of Wagga Wagga was being established, and the diocese Wilcannia-Forbes was being reconstituted.¹⁰⁶ Nevertheless, the 1885 process (after Roman approval in 1887) remained on the statute books until the 4th Plenary Council of Australia and New Zealand in 1937. It was first used in 1891.

The 2nd Plenary Council was held at Sydney in 1895 and the 3rd, also at Sydney in 1905, but the New Zealand bishops were not present.¹⁰⁷ Both were essentially a reworking of the 1885 Council but much expended. Cardinal Moran presided over both as Apostolic Delegate.

From 1890, at the request of the Holy See, all the metropolitan bishops had an annual meeting, and communicated afterwards with their suffragan bishops. All the bishops met irregularly between the councils, but in the later years of Moran's life, both meetings lapsed. They were revived in 1918, and from 1922 met triennially.

Table: Bishops appointed to Australian Dioceses and Vicariates Apostolic: 1885-1905

Name	Place of Birth	Date of Appointment	Episcopal Ordination	Australian Diocese where Ordinary or Vicar Apostolic
Gibney, Matthew	Ireland	1886	1887	Perth (4 th)

¹⁰⁵ Waters, op. cit. p.69

¹⁰⁶ Waters, op. cit., 129

¹⁰⁷ The New Zealand bishops were advised by Propaganda that their situation was quite different from Australia, and they convened the 1st Provincial Council of New Zealand in 1899.

Corbett, James	Ireland	1887	1887	Sale (1 st)
Doyle, Joseph Jeremiah	Ireland	1887	1887	Grafton (Lismore) (1 st)
Dunne, John	Ireland	1887	1887	Wilcannia-Forbes (1 st)
Hutchinson, John OSA	Ireland	1887	1887	VA of Cooktown (1 st)
O'Reilly, John	Ireland	1887	1888	Port Augusta (1 st); Adelaide (5 th)
Higgins, Joseph	Ireland	1888	1889	Rockhampton (2 nd); Ballarat (3 rd)
Delany, Patrick	Ireland	1893	1893	Hobart (3 rd)
Kelly, William	Australia	1894	1898	Kimberley/Broome (1 st); Geraldton (1 st)
Gallagher, John	Ireland	1895	1895	Goulburn (3 rd)
Maher, James	Ireland	1896	1896	Port Augusta (2 nd)
Dwyer, Patrick	Australia	1897	1897	Maitland (3 rd)
Murray, James OSA	Ireland	1898	1898	VA of Cooktown (2 nd)

By 1900 various popes had appointed 31 Irish bishops to Australian dioceses on the recommendation of a Propaganda Congregation heavily influenced by the Irish bishops both in Ireland and Australia as well as the senior Irish priests in the Australian dioceses. Some of the bishops, in vetting the lists submitted by the senior priests (*Antistites*) saw themselves as 'kingmakers' and inserted their own favourites, often based on place of origin.¹⁰⁸ And whereas many of the senior priests were beginning to recommend Australian-born candidates, some Irish bishops kept insisting on the Irish-born only. Although Propaganda's standing policy at the time was to favour locally-born candidates for Episcopal appointment, by 1900 only two – both of Irish background - had been appointed: Patrick Dwyer to Maitland, and William Kelly to Kimberley/Broome and Geraldton. Direct lay input to the selection process continued to be non-existent.

Whereas in 1872 one third of Australia's Catholics were still Irish-born, by 1901 the Irish-born represented just 5 per cent of the nation's total population of 3.7 million, and 20 percent of all Catholics. But it was not until the First World War that Irish clergy rule began to be challenged, and the challenge came not from the Australian laity, but from the Australian-born priests. Australia's Catholic laity continued to remain passive, mostly preoccupied with improving their worldly station and unconcerned for the church's internal affairs. Moreover, before World War I, few were well-educated or sufficiently intellectually formed to ponder or question church matters. Their Catholic world was restricted to religious and devotional piety with an Irish slant, and not until the 1930s did that world begin to wane.

1908 – Australia remains under Propaganda

In 1908, with his Constitution *Sapienti Consilio*, Pope Pius X removed England, Scotland, Ireland, Canada and the United States of America from the jurisdiction of Propaganda, on the basis that their ecclesiastical hierarchies were now well established. However, despite the Australian hierarchy having been in place for over 60 years, Australia was left under

¹⁰⁸ Vodola, Max, *Simonds: A Rewarding Life*, Catholic Education Office, Melbourne, 1997, p. 29

Propaganda's jurisdiction, which was considerably diminished with authority in matters pertaining to faith, the sacraments, rites and religious institutes assigned to other Roman congregations.¹⁰⁹ Australia was to remain an 'infant' and 'mission' church officially for another 68 years until 1976, and effectively until 1986.

The Manly Union and the Australianization of the Catholic Church

It was the Australian-born clergy who began to question Irish clerical dominance.¹¹⁰ By 1914 the Manly seminary in Sydney had produced 160 priests, one fifth of the national total of 800, but the bulk of the clergy was still predominantly Irish-born and they held almost all the senior positions. Moreover, the Manly seminary formation program allowed few concessions to the Australian environment and most of the Irish bishops were reluctant to 'increase the local product'.¹¹¹

In 1914, a group of Manly graduates formed the Manly Union, an association of priest graduates, with the firm purpose of affirming the 'Australian character of the local church' and its need 'for an Australian priesthood and hierarchy'. However, they were immediately accused by many of the Irish clergy of fostering division among the priesthood, of being rampantly disloyal, and irreligiously anti-Irish. Their Irish confreres further asserted that 'Australians lacked certain qualities essential to the priesthood'.¹¹² Yet, despite the tension and hostility, Irish control of the hierarchy and all the higher levels of clerical authority remained absolute, and the Australian laity showed no interest in the issue. In the circumstances, the bishops agreed that their best policy was to 'do nothing'.¹¹³

But by promoting an Australian priesthood with Australian ideals and characteristics, the Manly Union was doing exactly the same as the Irish clergy had done with the English Benedictines: arguing that in an Australia with a predominantly Irish laity, a predominantly Irish priesthood was needed. The Manly Union wanted nothing more than Australian-born priests and bishops for a now predominantly Australian-born laity. The Union also argued that the Irish clergy were not meeting the real pastoral needs of Australian Catholics; again, a claim no different from what the Irish clergy had accused the English Benedictines of failing to do. By 1920, the Australian-born priests were thoroughly fed up with Ireland and its politics, and had turned their focus on the overwhelmingly Irish hierarchy who had failed to encourage an Australian priesthood, and even, according to some, deliberately obstructed it.

When the Irish priest, Michael Sheehan, was appointed Coadjutor Archbishop of Sydney in 1922, many Australian priests saw it as a frontal rebuff and major reversal and took their campaign public. A Melbourne priest, Fr J.M. Cusack, wrote in the Melbourne *Advocate* that

¹⁰⁹ Cf. <http://www.newadvent.org/cathen/12456a.htm> (accessed 6 January 2017). Cf. Part 6, nn. 1-8 The Church in Australia was to remain under the jurisdiction of the Sacred Congregation de Propaganda Fide (renamed Congregation for the Evangelization of Peoples in 1982 by John Paul II) until 1976, with an administrative extension until 1986.

¹¹⁰ O'Farrell, *op.cit.*, p. 356

¹¹¹ O'Farrell, *op.cit.*, p.358

¹¹² O'Farrell, *op.cit.*, p. 359

¹¹³ O'Farrell, *op.cit.* p. 359

the principle of ‘Australia for the Australians’ had been ignored,¹¹⁴ and his message resonated. Sheehan resigned in 1937 and returned to Ireland. In his place, the Australian-born Norman Thomas Gilroy was appointed.

The Manly Union also had support from other quarters: the Australian Catholic Federation – part of a world-wide lay movement – founded to advocate the political interest of the Church in Australia – and some senior curial officials in Rome who were well aware that most of the Irish bishops in Australia usually ignored Vatican directives they disliked, were ignorant of canon law, and generally governed *iure divino* in a highly autocratic manner. In 1914, in a move to bring them into line, Pope Pius XI appointed the first Apostolic Delegate, whose first words on his arrival at Sydney in 1915 were “Australia for the Australians’ and an assurance that Australian-born bishops would be arriving soon.¹¹⁵ On the sensitive issue of Episcopal nominations, Rome also wanted its own man on the scene to seek out suitable candidates and make recommendations at first hand.¹¹⁶

However, between 1914 and 1936, of the 25 bishops selected and appointed, only seven were Australian-born, while fourteen were Irish, and others were from Spain (Abbot), Italy, England and Germany. The showdown over Episcopal selection and appointment came in 1936-37 and involved the 4th Apostolic Delegate, Archbishop Giovanni Panico (1935-1948).

4th Plenary Council of Australia and the Selection of Bishops

By 1933 the Vatican had become very concerned at the power of Archbishop Daniel Mannix of Melbourne within the Australian hierarchy. He was perceived as working against the emergence of an ‘Australianized’ church and obstructing the selection of Australian-born bishops.¹¹⁷ Mannix was strongly supported by Archbishop Duhig of Brisbane and Archbishop Andrew Killian of Adelaide, who saw themselves as ‘autonomous chieftans’ wielding immense power. When Archbishop Panico arrived in 1936 with a mission from Propaganda to remodel the Church in Australia, the promotion of Australian-born priests to the episcopacy was top of his agenda.

At the time, Irish-born archbishops occupied all six metropolitan sees, while the 6 Australian-born bishops were in the hardship dioceses of Townville, Geraldton, Lismore, Wilcannia-Forbes, Rockhampton and Port Augusta. It was not long before the relationship between the Irish bishops - who resented the unwanted interference of an Apostolic Delegate with a supervisory role and a determination to expose the tactical contrivances of certain Irish bishops over Episcopal selections - and Panico morphed from respect to mutual suspicion, and then to outright obstruction.¹¹⁸

¹¹⁴ O’Farrell, *op.cit.*, p. 362

¹¹⁵ O’Farrell, *op.cit.* p. 363

¹¹⁶ Vodola, *op.cit.*, p. 30

¹¹⁷ Niall, Brenda, *Mannix*, Text Publishing, Melbourne, 2015. Pp. 228 ff. She quotes historian Oviver MacDonagh used the phrase “*Ubi Mannix, ibi Hibernia*’ (Where Mannix is, there is Ireland). She also writes that Panico thought that, in the matter of Episcopal appointments, Mannix had been the key decision maker as a ‘*deus ex machina*’ as though, like some god, he could resolve a challenging decision by an inspired intervention.

¹¹⁸ Vodola, *op.cit.*, p. 30

When the archdiocese of Hobart fell vacant in 2 October 1936, the process decreed by the 1st Australasian Plenary Council of 1885 swung into action. The senior priests of the archdiocese met and unanimously selected the Australian-born and well-qualified priest, Justin Simonds, as the most worthy candidate. But their choice was not well received by the Irish bishops. In a letter written by Panico to Propaganda in 1937, he confided that the way Episcopal nominations were being made in Australia was 'unsavoury'. Though the senior priests were making their selection in accord with the local decrees, the bishops, Panico said, would only favour the senior priests's choice if it accorded with the candidate they wanted. Panico described the situation as like 'episcopal seats being mortgaged beforehand', claimed that many bishops were personally selecting their own 'coadjutors with right of succession', and inferred that Mannix, as 'ringleader' with Duhig and Killian, had tried to block Simonds and 'secure the appointment of an Irish intriguer who did not even secure one vote from the Tasmanian clergy'.¹¹⁹

When Pope Pius XI endorsed the Hobart senior priests' selection and appointed Simonds as the first ever Australian-born archbishop, the Irish bishops determined not to take their defeat lying down, and to change the rules. When all the bishops of Australian and New Zealand met in September 1937 for the 4th Australasian Plenary Council under the presidency of Panico, the Irish bishops moved to have the right of the senior priests to vote in a formal election process for a new bishop removed. They succeeded, and from then on the only involvement of the senior priests (diocesan consultors and irremovable rectors) would now be a one-on-one consultation with the local bishop and under the grave obligation of secrecy.¹²⁰ Having ousted the local and increasingly Australian-born senior priests from the selection process, the Irish bishops now had almost complete control among themselves.¹²¹ There was no role at all for the ordinary clergy or the Australian laity.

After 1937, Propaganda became even more insistent on promoting Australian-born priests to the episcopate, and the appointment of Sydney-born Norman Gilroy as coadjutor archbishop of Sydney in 1937, to replace the Irish-born Sheehan, was the first indication of its serious intent. For the next 11 years Propaganda had Archbishop Panico as its willing operative in Australia, determined to bring Mannix to heel and scale back the Irish influence. In strategic moves, Panico engineered Sheehan's removal from Sydney, had Mannix's right-hand man, John Lonergan, appointed as bishop of Port Augusta, and in 1942, without consulting Mannix, had Simonds appointed abruptly and secretly as his coadjutor.

The appointment of bishops in the 1917 Code of Canon Law

In 1917 the new *Code of Canon Law* for the Latin Church came into force. Canon 329 stated that "bishops are successors of the Apostles by divine institution", that "the Roman Pontiff freely appoints them", and that "if the right of electing a bishop has been granted to a

¹¹⁹ Letter dated 5 October 1937 from Panico to Cardinal Fumasoni-Biondi, Prefect of S.C. de Propaganda Fide. Extract reprinted in Vodola, *op. cit.*, p. 31

¹²⁰ Cf. Waters, *op. cit.*, p. 129. This was identical to the regime which the Sacred Consistorial Congregation had imposed on the Church in Ireland on 25 March 1925, after Ireland had been removed from the jurisdiction of Propaganda in 1908. Cf. *Ibidem*, pp. 136-7.

¹²¹ Vodola, Max, *Simonds: A Rewarding Life*, Catholic Education Office, Melbourne 1997 [CHECK page]

college” an “absolute majority of the votes cast is required for validity”.¹²² The Code also stated that candidates for the office of bishop may be ‘elected, presented, or in any other way designated by those who have been granted ... the privilege. But it always pertains to the Apostolic See alone to judge whether candidates were suitable, and to the Roman Pontiff to freely appoint them. It listed the qualities required in candidates and stated that their fitness must be proved in a manner determined by the Holy See.¹²³

For Australia, then still under the jurisdiction of Propaganda with power to constitute and arrange necessary ministers,¹²⁴ the manner of selecting bishops determined by the Holy See was that the names of worthy candidates were to be proposed through the Apostolic Delegate, after having been suggested, discussed, and voted on at provincial meetings of the bishops held every two years. [CHECK WITH IAN WATERS] There was no mention of other clergy being involved in the process, and nothing about a role for the laity. Between 1917 and the revised Code of 1983, 91 new bishops were appointed for Australia: 66 Australian-born, 16 from Ireland, 3 from England, and others from Italy, Germany, Spain, Ukraine and Lebanon.

1983 Revised Code of Canon Law and the current selection process

From 1962 to 1965 the 2nd Vatican Council met and issued several decrees which paid significant attention to bishops, especially the Decree on The Church (*Lumen Gentium*) and on The Pastoral Office of Bishops (*Christus Dominus*). However, it made no specific recommendations on the selection of bishops except to state that “the right of nominating and appointing bishops belongs properly, peculiarly, and of itself exclusively to the competent ecclesiastical authority”.¹²⁵ Following the Council and the publication of the 1983 *Revised Code of Canon Law* significant changes in the selection process were introduced.¹²⁶ Canon 377 sets out the process in detail, and Canon 378 the required qualifications.

To identify priests who are more suitable to become bishops, the current process, which applies to Australia, requires that, at least every three years, the provincial group of bishops or the national Episcopal Conference,¹²⁷ in common and in secret, is to draw up a list (no number specified) of more suitable priest candidates, and forward it to the Congregation for

¹²² 1917 *Code of Canon Law*, C. 329 and C. 321.

¹²³ 1917 *Code of Canon Law*, Canons 329-331

¹²⁴ *Ibidem*, Canon 252

¹²⁵ *Christus Dominus*, n. 20

¹²⁶ In 1972 the Sacred Council for Public Affairs published *Norms for the Promotion of Candidates to the Episcopal Ministry* in the Latin Church (*Episcoporum delectum*) which sets out the process of consultation prior to the appointment of bishops in the Latin Church. These are reflected in C. 377 (1983 Code). Unless contradicted by the Code the norms remain applicable. Cf. Beal, JP, Coriden, JA, & Green, TJ, *New Commentary on the Code of Canon Law*, Paulist Press, New York, 2000, p. 515

¹²⁷ Currently (2017) the hierarchical structure of the Catholic Church in Australia includes 28 territorial dioceses organized into 5 provinces: Sydney (metropolitan archdiocese with 9 suffragan dioceses), Melbourne (metropolitan with 3 suffragan dioceses), Adelaide (metropolitan with 2 suffragan dioceses), Perth (metropolitan with 3 suffragan dioceses), and Brisbane (metropolitan with 4 suffragan dioceses). For administrative and practical purposes the Archdiocese of Canberra and Goulburn is usually considered together with the Province of Sydney and the Archdiocese of Hobart with the Province of Melbourne.

Bishops in Rome via the local Apostolic Nuncio. Individual bishops can send their preferences direct.

When a ‘diocesan’ or ‘coadjutor’ bishop¹²⁸ must be appointed, the Nuncio is to prepare a preferred list of three names (*terna*) after he has consulted with the relevant provincial bishops, the president of the national Episcopal Conference, some members of the college of consultors¹²⁹ [of the diocese where the new bishop is needed] and, if he sees fit, he may also seek in secret and individually the opinion of other clergy (diocesan and religious) and laity outstanding in wisdom. The Nuncio must attach his own opinion to the submitted *terna*.

Table. Persons to be involved in selecting bishops for the Church in Australia: 1983 - 2017

Persons	Preparation of Triennial list	Selection of Diocesan Bishop	Selection of Coadjutor Bishop	Selection of Auxiliary Bishop
Apostolic Nuncio	Yes (agent only)	Yes (agent & <i>terna</i> proposal)	Yes (agent & <i>terna</i> proposal)	Yes (agent only)
Bishops of Province	Yes (in common & secret)	Yes (advisory) for own Province only	Yes (advisory) for own Province only	No
Bishops Conference*	Yes (in common & secret)	No	No	No
Individual Diocesan Bishop	Yes	Yes (advisory) for own Province only	Yes (advisory) for own Province only	Yes (proposes at least 3 names)
Metropolitan of Province	Yes	Yes (advisory) for own Province	Yes (advisory) for own Province	No
President of Bishops Conference	Yes	Yes (advisory)	Yes (advisory)	No
Members of Diocesan College of Consultors	No	Yes (‘some’ only and advisory) for own diocese	Yes (‘some’ only and advisory) for own diocese	No
Other clergy	No	Yes (some, if judged expedient)	Yes (some, if judged expedient)	No
Laity (only those outstanding in wisdom)	No	Yes (‘some’, if judged expedient)	Yes (‘some’, if judged expedient)	No
Civil Authorities	No	No	No	No

Source: 1983 Code of Canon Law, Canon 377. Note: * The Statutes of the Australian Catholic Bishops Conference state that the members of the Conference are “all diocesan bishops in the territory and those equivalent to them in law, all coadjutor bishops, auxiliary bishops and other titular bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Bishops Conference” (Art. 3) and all the “hierarchs of Eastern Catholic Church dioceses, eparchies or exarchies established by the Holy See within Australia” (Art. 4). Except for matters outside their jurisdiction or competence, all members have a deliberative vote on drawing up the triennial list of more suitable Episcopal candidates.

¹²⁸ The Code of Canon Law distinguishes two categories of bishop: ‘diocesan’ (those entrusted with the care of a diocese) and ‘titular’ (all others) (C. 376). Titular bishops may be ‘coadjutor’ with the right of succession (C. 403), ‘auxiliary’ with no right of succession (C. 403), ‘legates of the Holy See’, ‘territorial abbots’, ‘apostolic vicars’, ‘apostolic administrators’, ‘retired or emeritus’, or others assigned special service (C. 376).

¹²⁹ The College of Consultors is a group of 6-12 priests (including bishops) chosen from the membership of the Council of Priests. Its role is to deal with matters appropriate to a smaller group, such as urgent matters, and to assume the functions of the Council of Priests when the see is vacant. The advice of only ‘some’ members of the college need be sought by the Apostolic Nuncio when a new diocesan (ordinary) or coadjutor bishop.

A diocesan bishop who believes his diocese needs an 'auxiliary' bishop, is to propose to the Holy See a list of at least three names of suitable candidates for appointment.¹³⁰ And in the future, not rights and privileges of election, nomination, presentation, or designation of bishops are granted to civil authorities.¹³¹

Episcopal candidates whose names are put forward must have a solid faith, good morals, piety, zeal for souls, wisdom, prudence, other virtues and qualities suited to the office, and a good reputation. They should be at least 35 years of age, ordained for at least 5 years, and have a higher degree in a sacred science from an approved university, or expertise in these areas.¹³²

The Code places no limitations on which or how many clergy or laypersons the Nuncio may consult, save that the laypersons be 'outstanding in wisdom'.

Related to the process are three other requirements imposed on bishops: i) before taking canonical possession of his office, every bishop must take an oath of fidelity to the Apostolic See¹³³; ii) a diocesan bishop who has completed his 75th year is to present his resignation from office to the Pope, who will make provision after he has examined all the circumstances (in the case of ill health or other grave reason he is requested to resign)¹³⁴; and iii) a diocesan bishop is to report to the Pope every 5 years on the condition of his diocese, with the bishop's own personal views on the pastoral difficulties in the diocese, their causes and the means to resolve them, an assessment of the general situation of the diocese, the diocesan pastoral plan, as well as future goals and the means to achieve them.¹³⁵ Unfortunately, these reports are ultra-secret, shared only with Holy See, and not even copies kept in the diocesan archives.

New bishops and Episcopal replacements

Table: Timeline of processes used for Episcopal selection of Australia's bishops

¹³⁰ 1983 *Code of Canon Law*, c. 377.4

¹³¹ *Ibidem*, c. 377.5

¹³² 1983 *Code of Canon Law*, c. 378

¹³³ *Ibidem*, c. 380

¹³⁴ *Ibidem*. C.401

¹³⁵ 1983 *Code of Canon Law*, c. 399

Years	Jurisdiction	Persons involved in selection process
1787-1834	Propaganda	Propaganda officials; VA of London District; VA of Cape of Good Hope; Benedictine Congregation in England; British Government
1835-1842	Propaganda	Propaganda officials; Bishop Polding; Sydney Vicar General, William Ullathorne OSB
1842-1847	Propaganda	Propaganda officials; Archbishop Polding
1848-1866	Propaganda	Propaganda officials; Archbishop Polding, Irish bishops in Australia; Cardinal Cullen in Ireland (from 1846 to 1878)
1866	Propaganda	<i>Instruction of Election of Bishops in Australia (no action taken)</i>
1866-1885	Propaganda	Propaganda officials; Bishops in Australia by province; Cardinal Cullen in Ireland (to 1878)
1885	Propaganda	Ist Plenary Council of Australasia allows diocesan consultors and irremovable rectors to propose name of Episcopal candidates (effective from 1887); all Bishops in Australia propose new dioceses and vicariates apostolic; provincial groups propose candidates for Episcopal appointment
1885-1891	Propaganda	Propaganda officials; Bishops in Australia ignore decrees of 1st Plenary Council and keep selection to themselves
1891-1917	Propaganda	Propaganda officials; Diocesan consultors and irremovable rectors (propose candidates for diocese); provincial bishops Australia
1917	Propaganda	Code of Canon Law introduced (no change to process)
1917 - 1937	Propaganda	4th Plenary Council: diocesan consultors and irremovable rectors removed from selection process. Now only Propaganda officials and Australian bishops.
1962-65	Propaganda	2nd Vatican Council:

In Australia, from 1842 to December 2016 there have been 217 bishops appointed to Australian dioceses and eparchies, and they have been born in 19 different countries. Of the total, just over half (121) were born in Australia, with 60 from Ireland, 8 from England, and more recently 7 from Lebanon. From 1938 to March 2016 the Holy See continued to implement its policy of favouring the locally-born, with 107 Australian-born priests appointed bishops, and fewer and fewer overseas-born.

Since 1842 a total of 184 diocesan bishops (ordinaries) have needed to be replaced, 120 prior to the 1983 Revised Code, and 64 subsequent to it. Before 1983 it took an average 40 days to select and appoint a replacement bishop; from 1 January 2008 to 31 December 2016, it has taken an average 488 days (1.3 years) with 7 appointments still pending (see Table 1 below). That the 'widowed' dioceses of Wilcannia-Forbes and Townsville should be left so long without a shepherd (1767 days and 1009 days respectively, and the latter still vacant) flies in the face of the 90 day limit set down by the 4th Lateran Ecumenical Council.¹³⁶

¹³⁶ Decrees of the 4th Lateran Council (1215 AD), Canon 23 Cf. <https://www.ewtn.com/library/COUNCILS/LATERAN4.HTM> (accessed 15 January 2017)

Replacement bishops are needed when the incumbent dies, resigns, retires, is transferred, or is removed. Prior to 1983 death was the major reason for replacements (75), and in 31 of these cases the deceased was replaced immediately by a coadjutor with the right of succession. Since 1983 only 7 diocesan bishops have died in office with 5 replaced by a coadjutor. Transfers to other dioceses have been more common, with 34 to date, or 18 per cent of all replacements. Of the 38 ordinaries who retired, only 8 did so before 1983, and of the 29 who resigned, 16 did so before 1983. Just one has been removed.¹³⁷

Table 1: Days taken to replace 27 Ordinaries¹ of Australia's 28 Territorial Dioceses: 1 January 2008- 31 December 2016

Diocese	Ordinary to be replaced	Date of death, or resignation, transfer, retirement or removal	New Replacement Ordinary (if appointed)	Number of days until Replacement Ordinary appointed
Armidale	Luc Matthys	3.5. 2010 (resigned–age)	Michael Kennedy	583 (7.12. 2011)
Ballarat	Peter Connors	6.3. 2012 (resigned–age)	Paul Bird	146 (1.8.2012)
Bathurst	Patrick Dougherty	21.11.2006 (resigned–age)	Michael McKenna	875 (15.4. 2009)
Brisbane	John Bathersby	9.11. 2011 (resigned–age)	Mark Coleridge	144 (2.4.2012)
Broken Bay	David Walker	13.11.2013 (resigned–age)	Peter Comensoli	372 (20.11.2014)
Canberra & Goulburn	Mark Coleridge	2.4.2012 (transferred to Brisbane)	Christopher Prowse	527 (to 12.9.2013)
Darwin	Eugene Hurley	21.4.2015 (resigned–age)	Still in office	620 (to 31.12.2016)
Geraldton	Justin Bianchini	28.1.2016 (resigned–age)	Still in office	338 (to 31.12.2106)
Hobart	Adrian Doyle	16.11.2011 (resigned–age)	Julian Porteous	610 (19.7.2013)
Lismore	Geoffrey Jarrett	1.12.2012 (resigned–age)	Gregory Homeming	1480 (to 20.12.2016)
Maitland-Newcastle	Michael Malone	4.4. 2011 (resigned–personal)	William Wright	0 (4.11.2011)
Melbourne	Denis Hart	16.5.2016 (resigned – age)	Still in office	229 (to 31.12.2016)
Parramatta	Kevin Manning	2.11.2008 (resigned–age)	Anthony Fisher	432 (8.1.2010)
Parramatta	Anthony Fisher	18.9.2014 (transferred to Sydney)	Vincent Long Van Nguyen	595 (to 5.5.2016)
Perth	Barry Hickey	14.4.2011 (resigned–age)	Timothy Costelloe	311 (20.2.2012)
Port Pirie	Eugene Hurley	7.7. 2007 (transferred to Darwin)	Gregory O'Kelly	650 (15.4.2009)
Port Pirie	Gregory Kelly	10.8.2016 (resigned – age)	Still in office	143 (31.12.2016)
Rockhampton	Brian Heenan	4.8.2012 (resigned–age)	Michael McCarthy	555 (to 10.2.2014)
Sale	Jeremiah Coffey	21.1.2008 (resigned – age)	Christopher Prowse	502 (18.6.2009)
Sale	Christopher Prowse	12.9.2013 (transferred to Canberra & Goulburn)	Patrick O'Regan	451 (to 4.12.2014)
Sandhurst	Joseph Grech	23.12.2010 (died)	Leslie Tomlinson	407 (3.2.2012)
Sydney	George Pell	24.2.2014 (transferred to Vatican)	Anthony Fisher	202 (18.9.2014)
Toowoomba	William Morris	1.5.2011 (removed)	Robert McGuckin	377 (14.5.2012)
Townsville	Michael Putney	28 March 2014 (died)	Vacant	1009 (to 31.3122016)
Wagga Wagga	Gerard Hanna	22.12.2106 (resigned – age)	Still in office	9 (to 31.12.2016)
Wilcannia-Forbes	Christopher Toohey	9.6.2009 (resigned–personal)	Columba Macbeth-Green	1767 (to 12.4.2014)
Wollongong	Peter Ingham	19.1.2016 (resigned-age)	Still in office	347 (to 31.12.2106)
22 Dioceses in need of new Ordinary	27 Ordinaries need to be replaced		20 new Ordinaries appointed by 31 December 2016	Total of 13,179 days so far taken (to 31.12. 2016) to replace 27 Ordinaries

Notes: 1. Starting date of delay is taken as the 75th birthday of the incumbent when he must tender his resignation to the pope (C. 401).

2. Rev Timothy James Harris was appointed Bishop of Townsville on 8 February 2017 and will take possession on 3 May 2017.

Vatican II's recommendation¹³⁸ that bishops tender their resignation to the Pope when they complete their 75th year has had a major impact on replacements in Australia. Moreover, since the pope is entitled to 'make provision after he has examined all the circumstances'

¹³⁷ This was William Morris, Bishop of Toowoomba, who was forced to resign by Pope Benedict XVI in May 2011.

¹³⁸ *Christus Dominus*, n.21

¹³⁹, in the period 2008-2016, this has led to significant delays in appointing replacement bishops, and those delays have grown steadily longer. Where age-related resignations can be anticipated, long delays are not helpful. Quality succession planning should obviate such delays altogether.

Long delays can be harmful to local churches and everything possible should be done to avoid or minimize them. The 4th Lateran Council spoke of 'widowed' churches and that they should not be without a bishop for more than 3 months.¹⁴⁰ Just as Canon Law imposes urgency when a new bishop is to be consecrated and take possession of his diocese.¹⁴¹ A similar urgency should prevail for selecting and appointing replacement bishops. Matthias was selected and confirmed as one of the Twelve within 43 days, and the last six replacement bishops for the Diocese of Rome were elected in an average 17.7 days. Pope Francis was selected in just 13 days. Every diocese deserves the same degree of urgency and the avoidance of delay.

Why the delays?

There are many reasons why is it taking so long for new and replacement bishops to be selected and appointed in Australia. The following are some and require serious attention:

- Very poor succession planning, especially in the case of age-related resignations.
- Too much episcopal politicking, in Australia and Rome, with lobbying and jousting for preferred candidates and dioceses.
- The increasing use of transfers, even though diocesan bishops are meant to be wedded to their diocese for life. Under recent popes, transfers have become commonplace in Australia, and frequently used as stepping stones to more important dioceses or higher rank.
- Inadequate diocesan pastoral planning and lack of accurate and up-to-date reporting on the state and needs of the diocese. This inevitably leads to time-consuming reviews and delay in selecting a replacement suited to the needs of the diocese.

Where to from here?

Vatican II introduced some key reforms which should have brought the selection process more into line with the modern world. One was its emphasis on the principle of co-

¹³⁹ 1983 Code, Canon 401

¹⁴⁰ 4th Lateran Council, Canon 23: "That the ravenous wolf may not invade the Lord's flock that is without a pastor, that a widowed church may not suffer grave loss in its properties, that danger to soul may be averted, and that provision may be made for the security of the churches, we decree that a cathedral or regular church must not be without a bishop for more than three months. If within this time an election has not been held by those to whom it pertains, though there was no impediment, the electors lose their right of voting, and the right to appoint devolves upon the next immediate superior. Let the one upon whom this right to appoint devolves, having God before his eyes, not delay more than three months to provide canonically and with the advice of the chapter and other prudent men the widowed church with a suitable pastor, if he wishes to escape canonical punishment. This pastor is to be chosen from the widowed church itself, or from another in case a suitable one is not found therein." Translation from sourcebooks.fordham.edu/basis/lateran4.asp (accessed 14 January 2017)

¹⁴¹ 1983 Code, Canons 379 and 382

responsibility, decreeing that local bishops “in exercising pastoral care should preserve for their faithful the share proper to them in Church affairs, and they should recognize their duty and right to collaborate actively in the building up of the Mystical Body of Christ”.¹⁴² This advice received teeth in the 1983 Revised Code of Canon Law with Canon 212, which states: “all the faithful, according to their knowledge, competence and prestige, have the right and, at times, the duty to manifest to the bishops ... their opinion on matters which pertain to the good of the Church, and to make their opinion known to the rest of the Christian faithful.”

There can be no doubt that the selection of bishops is one matter that pertains to the good of the Church, particularly the local diocesan church to which all Catholics belong. It must follow, therefore, that all the faithful, according to their knowledge, competence and prestige, have the right and, at times, the duty to manifest to the bishops ... their opinion on the selection of their bishop, and to make their opinion known to the rest of the faithful in the diocese.

Vatican II also urged the use of the ‘principle of subsidiarity’ - a principle formulated by Pius XI stating that high levels of a society should not take on tasks and functions that can be better accomplished at lower levels¹⁴³ - and a renewed flourishing of synods and councils.¹⁴⁴

Joseph O’Callaghan, in *Electing our Bishops*, argues that “if the Church is to be renewed ... a return to the ancient tradition of popular election of bishops is imperative”.¹⁴⁵ Thomas Reese, former editor of *America*, wants the Church to return to the system endorsed by Pope Leo I, where every bishop would be elected by the local clergy, accepted by the people of his diocese, and consecrated by the bishops of his province. Jesuit theologian, Michael Buckley, warns that “if the present system for the selection of bishops is not addressed, all other attempts at serious reform will founder and ever greater numbers of Catholics will move toward alienation, disinterest and affective schism.”¹⁴⁶ Renowned moral theologian, Bernard Häring, as long ago as 1970 called for a ‘bold revision’ in the process of making bishops.

¹⁴² *Christus Dominus*, n. 16

¹⁴³ Pius XI, in his 1931 Encyclical *Quadragesimo Anno*, stated: “Just as it is wrong to withdraw from the individual and commit to the community at large what private enterprise and endeavour can accomplish, so it is likewise unjust and a gravely harmful disturbance of right order to turn over to a greater society of higher rank functions and services which can be performed by lesser bodies on a lower plane. For a social undertaking of any sort, by its very nature, ought to aid the members of the body social, but never to destroy and absorb them.” Cf. *Gaudium et Spes*, n. 86 (c).and footnote.

¹⁴⁴ *Christus Dominus*, n. 36

¹⁴⁵ O’Callaghan, *op. cit.*, p. ix

¹⁴⁶ Cited in O’Callaghan, *op.cit.*, p. 130

Traditional enduring values

In a recent paper on ‘The Selection of Bishops’, Huels and Gaillardetz¹⁴⁷ identified eight traditional and enduring values which have underpinned the selection of bishops: a) the theological integrity of the local church; b) the fundamental relationship of the bishop to the local church; c) participation by all members of the local church in the selection process; d) application of the ‘principle of subsidiarity’¹⁴⁸ in preserving diverse procedures for episcopal selection; e) avoidance of interference from secular authorities; f) selection of suitable candidates; g) participation of bishops of neighbouring dioceses (of province) in the selection process; and h) the expeditious filling of a vacant (‘widowed’) see.

Heuls and Gaillardetz also propose some very specific reforms to the Code of Canon Law for the Latin Church to better incorporate these traditional and enduring values around the selection of bishops (full text of draft canons at Appendix B). They offer 8 new draft canons which might be incorporated in a section of the Code titled ‘On the Selection of Bishops’.¹⁴⁹ Their draft Canon C on ‘the ways of choosing a bishop’ is particularly relevant for the Church in Australia, which in 2020 will have its 5th Plenary Council. It suggests 4 different methods of choosing a bishop with the fourth being a ‘method chosen by the conference of bishops or plenary council, with the approval of the Apostolic See’ which ‘would be the same of all the dioceses within the territory of the Australian Conference of Bishops’. I would urge those preparing the agenda for the 2020 plenary council to include an item to consider the selection of bishops in Australia with careful attention to the traditional values identified by Huels and Gaillardetz (see Appendix C, p. 62).

The canonical process is forward looking, insisting that provincial and national groups of bishops plan for their succession regularly and discreetly.

Francis Sullivan SJ had also drawn attention to the important and traditional role that provincial councils have played in the selection of bishops.¹⁵⁰

In 2016 Australian lay Catholics are no longer in the situation of their counterparts in 1914: poorly educated, only preoccupied with improving their worldly station, unconcerned for the church’s internal affairs, and unequipped to ponder them. The Catholic laity of then may have had reason to be passive; but not the laity of today. Australian lay Catholics are very well educated, very aware of the situation of the Church in this country and have no justification for passivity. They have a right and a duty to speak out on the selection of their bishops, and it time that they did.

How can they do so? I would suggest there are at least four ways:

¹⁴⁷ Huels, John OSM, and Gaillardetz, Richard, *The Selection of Bishops: Exploring Canonical Alternatives*, 1999. Text available at https://richardgaillardetz.files.wordpress.com/2014/04/election_of_bishops.pdf (accessed 12 January 2017). Cf. pp.12-24 for detailed notes on each value.

¹⁴⁸ The ‘principle of subsidiarity’;

¹⁴⁹ Heuls & Gaillardetz, op. cit., pp. 24-35

¹⁵⁰ Sullivan, Francis A. SJ, ‘Provincial Councils and the Choosing of Priests for appointment as Bishops’ in *Theological Studies*, 74 (2013), pp. 872-883

- The first is to wait to be approached by the Apostolic Nuncio with a questionnaire to voice your opinion. This is a highly restricted avenue and likely to be available to only a handful of lay persons. It is neither adequate nor realistic, and likely to be similar to waiting for Godot.
- Use the online survey which Catholics for Renewal have put up on their website. Though unofficial, Catholics for Renewal have assured respondents that their aggregated responses will be sent to the Nuncio. He may consider them, though he is not obliged to do so. This is realistic approach, but dependent on the mood of the Nuncio.
- Write directly to the Nuncio with your personal views, to your own bishop, to the Bishops Conference, or even to the Congregation for Bishops in Rome, or to the Pope. This can definitely have an effect, as we saw in the case of the forced removal of Bishop Bill Morris of Toowoomba. However, it is a bit like a throw of the dice, as the upper echelons of the Catholic Church tend not to reply to correspondence, especially from lay persons.
- Make the issue of lay participation in the selection of our bishops a public and central issue for the Church in Australia, and definitely a central issue for the proposed 2020 Australian Plenary Council. If the Australian laity is not interested in this issue, or unconcerned about its importance, it will go nowhere. But it must be raised, and publicly. Given what we have seen of our bishops at the Royal Commission, not to raise the issue would be a disaster. Pope Francis has made the selection of bishops and the qualities they need, a central plank in his renewal agenda, but as yet he has not directly addressed the laity's role. He wants 'synodality, which he understands as "not some of the bishops some of the time, but all of the Church (i.e. all the faithful) all of the time". Now is the time to show it. If you can write about this issue, write. If you can't write, talk about it and discuss it with your friends and fellow lay Catholics. Raise the issue in your parish council, in your deanery, with your parish priest.

Summing up

In presenting this short overview of the history of Episcopal appointments in our Church in Australia over the past 230 years, what emerges are three very clear campaigns waged along the lines of ethnicity and nationality: in the first, the British Government sought to have the Pope appoint only English bishops to their colonies in Australia; in the second, the Irish clergy sought to get the English Benedictine bishops out, and be replaced by Irish bishops, because the Catholic laity were predominantly Irish; and in the third, from 1914 onwards, the Australian clergy sought to have the Irish bishops gone, and replaced with Australian bishops for the sake of a predominantly Australian-born laity. All three used the laity for their own purposes but did not insist on having the laity as an essential element of the selection process.

What I would suggest is that it is now time for a fourth campaign, with two clear objectives: the first, is to secure a guaranteed and official role for the Catholic laity (and clergy) of Australia in the selection process for the bishop(s) of their own diocese; the second, is to ensure that the bishops, clergy and the laity of each diocese work and pray together 'co-responsibly' to discern what sort of bishop the present situation of their diocese needs, and

then find the person(s) who will pastor the People of God in the diocese in a Christlike way, reach out to those who have gone astray, and announce the Good News to those who have never heard it.

Peter J Wilkinson

7 December 2017

Note: This document is a revised version of an address made to the Yarra Deanery of the Melbourne Archdiocese in October 2016.

Appendix A: Key Church Documents on Selection of Bishops

1. First Ecumenical Council of Nicaea (325 AD)¹⁵¹

Canon 4: "It is by all means desirable that a bishop should be appointed by all the bishops of the province. But if this is difficult because of some pressing necessity or the length of the journey involved, let at least three come together and perform the ordination, but only after the absent bishops have taken part in the vote and given their written consent. But in each province the right of confirming the proceedings belongs to the metropolitan bishop."

Canon 6: "The ancient customs of Egypt, Libya and Pentapolis shall be maintained, according to which the bishop of Alexandria has authority over all these places since a similar custom exists with reference to the bishop of Rome. Similarly in Antioch and the other provinces the prerogatives of the churches are to be preserved. In general the following principle is evident: if anyone is made bishop without the consent of the metropolitan, this great synod determines that such a one shall not be a bishop. If however two or three by reason of personal rivalry dissent from the common vote of all, provided it is reasonable and in accordance with the church's canon, the vote of the majority shall prevail."

2. Second Ecumenical Council of Nicaea (787 AD)¹⁵²

Canon 3: "Any election of a bishop, priest or deacon brought about by the rulers is to be null and void in accordance with the canon that says: "If any bishop, through the influence of secular rulers, acquires responsibility for a church because of them, let him be suspended and let all those who are in communion with him be excommunicated.

It is necessary that the person who is to be advanced to a bishopric should be elected by bishops, as has been decreed by the holy fathers at Nicaea in the canon that says: "It is by all

¹⁵¹ Translation by Tanner, Norman P. SJ (ed.), *Decrees of the Ecumenical Councils*, (2 vols), Georgetown University, Washington DC, 1990. Text readable online at www.ewtn.com/library/COUNCILS/NICAEA1.HTM (accessed 15 January 2017)

¹⁵² Ibidem. Text readable at <https://www.ewtn.com/library/COUNCILS/NICAEA2.HTM> (accessed 16 January 2017)

means desirable that a bishop should be appointed by all [the bishops] in the province. But if this is difficult because of some pressing necessity or the length of the journey involved, let at least three come together and perform the ordination, but only after the absent bishops have taken part in the vote and given their written consent. But in each province the right of confirming the proceedings belongs to the metropolitan."

3. Fourth Ecumenical Council of Constantinople (869-870)¹⁵³

Canon 12: "The apostolic and conciliar canons clearly forbid the nomination and consecration of bishops which have come about as a result of the power and intrigues of the civil authorities. Therefore we declare and proclaim, in full agreement with them, that if any bishop has received his consecration through the manipulation and constraint of such persons, he should be deposed absolutely as one who has desired and consented to have the gift of God not from the will of God and ecclesiastical law and decree, but from human beings and through their machinations as a result of the prompting of carnal desire."

Canon 22: "This holy and universal synod declares and decrees, in agreement with earlier councils, that the promotion and consecration of bishops should be done by means of an election and decision of the college of bishops. So it promulgates as law that no lay authority or ruler may intervene in the election or promotion of a patriarch, a metropolitan or any bishop, lest there be any irregularity leading to improper confusion or quarrelling, especially since it is wrong for any ruler or other lay person to have any influence in such matters. Rather he should be silent and mind his own business until the election of the future bishop has been completed with due process by the ecclesiastical assembly. But if any lay person is invited by the church to join in the discussion and to help with the election, he is permitted to accept the invitation with respect, if he so wishes. For in this way he may be able to promote a worthy pastor in a regular manner, to the benefit of his church.

If any secular authority or ruler, or a lay person of any other status, attempts to act against the common, agreed and canonical method of election in the church, let him be anathema - this is to last until he obeys and agrees to what the church shows it wants concerning the election and appointment of its leader."

4. Second Lateran Ecumenical Council (1139 AD)¹⁵⁴

Canon 28: "Since the decrees of the fathers prohibit churches to be left vacant for more than three months, we forbid under anathema the canons of the episcopal see to exclude religious men from the election following on the death of the bishop; but let a virtuous and suitable person be elected as bishop with their advice. Because if an election is held with these religious persons excluded, where this is done without their knowledge and consent, it is null and void."

¹⁵³ Ibidem. Text readable at <https://www.ewtn.com/library/COUNCILS/CONSTAN4.HTM> (accessed 17 January 2017)

¹⁵⁴ Ibidem, Text readable at <https://www.ewtn.com/library/COUNCILS/LATERAN2.HTM> (accessed 18 January 2017)

5. Fourth Lateran Ecumenical Council (1215 AD)¹⁵⁵

Canon 23: Churches not to be without a prelate for more than 3 months

“Lest a rapacious wolf attack the Lord's flock for want of a shepherd, or lest a widowed church suffer grave injury to its good, we decree, desiring to counteract the danger to souls in this matter and to provide protection for the churches, that a cathedral church or a church of the regular clergy is not to remain without a prelate for more than three months. If the election has not been held within this time, provided there is no just impediment, then those who ought to have made the election are to lose the power to elect for that time and it is to devolve upon the person who is recognized as the immediate superior. The person upon whom the power has devolved, mindful of the Lord, shall not delay beyond three months in canonically providing the widowed church, with the advice of his chapter and of other prudent men, with a suitable person from the same church, or from another if a worthy candidate cannot be found in the former, if he wishes to avoid canonical penalty.”

Canon 24: Democratic election of pastors

“On account of the various forms of elections which some try to invent, there arise many difficulties and great dangers for the bereaved churches. We therefore decree that at the holding of an election, when all are present who ought to, want to and conveniently can take part, three trustworthy persons shall be chosen from the college who will diligently find out, in confidence and individually, the opinions of everybody. After they have committed the result to writing, they shall together quickly announce it. There shall be no further appeal, so that after a scrutiny that person shall be elected upon whom all or the greater or sounder part of the chapter agree. Or else the power of electing shall be committed to some suitable persons who, acting on behalf of everybody, shall provide the bereaved church with a pastor. Otherwise the election made shall not be valid, unless perchance it was made by all together as if by divine inspiration and without flaw. Those who attempt to make an election contrary to the aforesaid forms shall be deprived of the power of electing on that occasion. We absolutely forbid anyone to appoint a proxy in the matter of an election, unless he is absent from the place where he ought to receive the summons and is detained from coming by a lawful impediment. He shall take an oath about this, if necessary, and then he may commit his representation to one of the college, if he so wishes. We also condemn clandestine elections and order that as soon as an election has taken place it should be solemnly published.”

Canon 25: Invalid elections

“Whoever presumes to consent to his being elected through abuse of the secular power, against canonical freedom, both forfeits the benefit of being elected and becomes ineligible, and he cannot be elected to any dignity without a dispensation. Those who venture to take part in elections of this kind, which we declare to be invalid by the law itself, shall be

¹⁵⁵ *Ibidem*. Text readable at <https://www.ewtn.com/library/COUNCILS/LATERAN4.HTM#23> (accessed 15 January 2017)

suspended from their offices and benefices for three years and during that time shall be deprived of the power to elect.”

Canon 26: Nominees for prelatures to be carefully screened

“There is nothing more harmful to God's church than for unworthy prelates to be entrusted with the government of souls. Wishing therefore to provide the necessary remedy for this disease, we decree by this irrevocable constitution that when anyone has been entrusted with the government of souls, then he who holds the right to confirm him should diligently examine both the process of the election and the character of the person elected, so that when everything is in order he may confirm him. For, if confirmation was granted in advance when everything was not in order, then not only would the person improperly promoted have to be rejected but also the author of the improper promotion would have to be punished. We decree that the latter shall be punished in the following way : if his negligence has been proved, especially if he has approved a man of insufficient learning or dishonest life or unlawful age, he shall not only lose the power of confirming the person's first successor but shall also, lest by any chance he escapes punishment, be suspended from receiving the fruits of his own benefice until it is right for him to be granted a pardon. If he is convicted of having erred intentionally in the matter, then he is to be subject to graver punishment. Bishops too, if they wish to avoid canonical punishment, should take care to promote to holy orders and to ecclesiastical dignities men who will be able to discharge worthily the office entrusted to them. Those who are immediately subject to the Roman pontiff shall, to obtain confirmation of their office, present themselves personally to him, if this can conveniently be done, or send suitable persons through whom a careful inquiry can be made about the process of the election and the persons elected. In this way, on the strength of the pontiff's informed judgment, they may finally enter into the fullness of their office, when there is no impediment in canon law. For a time, however, those who are in very distant parts, namely outside Italy, if they were elected peaceably, may by dispensation, on account of the needs and benefit of the churches, administer in things spiritual and temporal, but in such a way that they alienate nothing whatever of the church's goods. They may receive the customary consecration or blessing.”

Canon 30: Penalties for bestowing ecclesiastical benefices on the unworthy

“It is very serious and absurd that prelates of churches, when they can promote suitable men to ecclesiastical benefices, are not afraid to choose unworthy men who lack both learning and honesty of behaviour and who follow the urgings of the flesh rather than the judgment of reason. Nobody of a sound mind is ignorant of how much damage to churches arises from this. Wishing therefore to remedy this ill, we order that they pass over unworthy persons and appoint suitable persons who are willing and able to offer a pleasing service to God and to the churches, and that careful inquiry be made about this each year at the provincial council. Therefore he who has been found guilty after a first and second correction is to be suspended from conferring benefices by the provincial council, and a prudent and honest person is to be appointed at the same council to make up for the suspended person's failure in this matter. The same is to be observed with regard to chapters who offend in these matters. The offence of a metropolitan, however, shall be left by the council to be reported to the judgment of the superior. In order that this salutary

provision may have fuller effect, a sentence of suspension of this kind may not be relaxed at all without the authority of the Roman pontiff or of the appropriate patriarch, so that in this too the four patriarchal sees shall be specially honoured.”

Canon 31: Canons' sons cannot be canons where their fathers are

“In order to abolish a very bad practice that has grown up in many churches, we strictly forbid the sons of canons, especially if they are illegitimate, to become canons in the secular churches in which their fathers hold office. If the contrary is attempted, we declare it to be invalid. Those who attempt to make such persons canons are to be suspended from their benefices.”

6. Ecumenical Council of Constance (1414-1418)¹⁵⁶

Session 39 (9 October 1417): That prelates may not be translated without their consent

“When prelates are translated, there is commonly both spiritual and temporal loss and damage of a grave nature for the churches from which they are transferred. The prelates, moreover, sometimes do not maintain the rights and liberties of their churches as carefully as they otherwise might, out of fear of being translated. The importunity of certain people who seek their own good, not that of Jesus Christ, may mean that the Roman pontiff is deceived in such a matter, as one ignorant of the facts, and so is easily led astray. We therefore determine and ordain, by this present decree, that henceforth bishops and superiors ought not to be translated unwillingly without a grave and reasonable cause which, after the person in question has been summoned, is to be inquired into and decided upon with the advice of the cardinals of the holy Roman church, or the greater part of them, and with their written endorsement. Lesser prelates, such as abbots and others with perpetual benefices, ought not to be changed, moved or deposed without a just and reasonable cause that has been inquired into.”

7. Ecumenical Council of Basel (1431 - 1445)¹⁵⁷

Session 12 (13 July 1433): Election and Confirmations of Bishops and Prelates

“Just as in building a house the architect's chief concern is to lay such a foundation that the edifice built on it will endure immovable, so in the general reformation of the church the principal preoccupation of this holy synod is that the pastors set over the church may be such that, like pillars and bases, they will firmly uphold the church by the strength of their doctrine and merits. The office enjoined on prelates manifestly shows how great care should be taken in their election, for they are appointed for the government of souls for which our lord Jesus Christ died and shed his precious blood. Therefore the sacred canons promulgated under the Spirit of God, providentially established that each church and

¹⁵⁶ Ibidem, Text readable at <https://www.ewtn.com/library/COUNCILS/CONSTANC.HTM#6> (accessed 19 January 2017)

¹⁵⁷ Ibidem. Text readable at <https://www.ewtn.com/library/COUNCILS/FLORENCE.HTM> (accessed 19 January 2017). The Council moved from Basel to Ferrara in 1439, to Florence in 1439 and to Rome in 1443. The decisions taken at Basel have the form of conciliar decrees: those taken at Ferrara, Florence and Rome, the form of Papal Bulls.

college or convent should elect a prelate for itself. Adhering to these prescriptions this holy synod, assembled in the same Spirit, establishes and defines that a general reservation of all metropolitan, cathedral, collegiate and monastic churches and elective dignities ought not to be made or used by the Roman pontiff in the future, always with the exception of reservations contained in the body of law and those which may arise in territories mediately or immediately subject to the Roman church by reason of direct or beneficial dominion. Rather, provision should duly be made for the aforesaid metropolitan, cathedral, monastic and collegiate churches and elective dignities, when they are vacant, by canonical elections and confirmations in conformity with the dispositions of the common law, without thereby derogating from statutes, privileges and reasonable customs, all postulations in the disposition of the common law remaining intact. This holy synod also decrees that it will be in conformity with reason and beneficial for the common good that the Roman pontiff should attempt nothing contrary to this salutary decree, except for an important, reasonable and manifest cause, which is to be specified expressly in an apostolic letter. So that this salutary decree may be more strictly adhered to, the same holy synod wishes that, among other things that the Roman pontiff shall profess on assuming office, he shall swear to observe inviolably this decree.

Since prelates should be such as is described above, those with the right of electing them should be very careful that they make a worthy election in the presence of God and of the people, and let them be most solicitous to elect such persons as can fill so great an office. Let them remember that if they act in so important an affair either fraudulently or carelessly or without regard for the fear of God, they will be the authors and cause of evil pastors and will therefore share in the penalties which the evil pastors themselves will suffer in the severe judgment of God. Since the endeavour of human fragility can effect nothing without the help of almighty God, from whom every good endowment and every perfect gift comes down, those in whose hands lies the election of a pontiff or an abbot shall meet in church on the day of the election in order to hear with great devotion a mass of the holy Spirit, whom they will humbly petition to deign to inspire them to elect a worthy pastor. The more devoutly they approach the act of election, the more readily they will merit that grace, so let them confess and reverently receive the sacrament of the eucharist. When they have entered the place of the election of any prelate who is to be chosen through election, they shall swear in the hands of the president of the chapter, and the president in the hands of his immediate subordinate, in these words: I, N. , swear and promise to almighty God and to such and such a saint (according to the dedication of the church) to elect the person who I believe will be the more useful to the church in spiritual and temporal things, and not to give a vote to anyone who I think is procuring the election for himself by the promise or gift of some temporal thing, or by making a request in person or through another, or in any other way directly or indirectly. He who appoints a procurator to elect a certain person shall take the same oath and shall confess and communicate; so also shall a procurator with a general mandate for election in matters in which by common law he can be appointed a procurator in the business of such an election. The oath shall be taken also by those who may have made an agreement about the election of a future prelate, and they too are obliged to confess and to communicate. If they do not do so, for that occasion they shall be deprived by law of the power of electing. Thereupon let them elect to the said prelate a man of lawful age, of serious character and adequate education, already in sacred orders and suitable in other respects in accordance with canonical regulations.

If the election is made in another way and of a different kind of person than the above or by the wickedness of simony, the election shall be invalid and null by law. Those electing simoniacally shall be automatically subject to perpetual deprivation of the right of electing, besides other penalties. Others shall be subject to canonical penalties. Those elected simoniacally and those who take part in such a simoniacal election, as well as the electors and those confirmed shall automatically incur the penalty of excommunication in horror of so great a crime. Moreover, those so elected and confirmed cannot be absolved from such guilt and excommunication unless they freely resign the churches and dignities which they had disgracefully obtained, and they are rendered perpetually disqualified from acquiring them again. In order to remove every root of ambition this holy synod implores through the tender mercy of Jesus Christ and most earnestly exhorts kings and princes, communities and others of whatever rank or dignity, ecclesiastical or secular, not to write letters to electors or to provide petitions for someone who will get such petitions or letters for himself or for another, and much less to resort to threats or pressure or anything else whereby the process of election would be rendered less free. Similarly, in virtue of holy obedience, it is enjoined on electors not to elect anyone on the strength of such letters, petitions, threats or pressure.

When the election has been completed and presented to the person who has the right of confirmation, if a co-elected person or an objector to the election shows himself, he should be summoned by name to discuss the matter of the disputed election. Usually a public announcement should be made in the church in which the election was held, in accordance with the constitution of Boniface VIII of happy memory. Whether or not a co-elected person or an objector appears, the confirmer should proceed in virtue of his office, as is done in the business of the inquisition, using diligence in the due examination and discussion of the form of the election, of the merits of the one elected and of all the circumstances. The confirmation or the annulment of the election should be done in a judicial manner. So that the whole process may be clean and without blemish or even a suspicion of it, the confirmer should altogether refrain, personally as well as through others, from presuming to demand anything at all or even to receive free offerings in return for the confirmation or under the pretext of homage, subvention, gratitude or any other excuse of supposed custom or privilege. For notaries and scribes in such cases, let a moderate fee be levied which is proportionate to the work of writing and not to the value of the prelacy. If the said confirmers shall confirm elections in contravention of the above regulations or in respect of unsuitable persons or involving simony, such confirmations are automatically null. This is to be the case for the occasion, for those who confirm persons other than as stated above: but for the stain of simony, if they have incurred it, they automatically incur sentence of excommunication, from which they cannot be absolved except by the Roman pontiff', except at the point of death.

This holy synod exhorts the supreme pontiff, since he should be the mirror and standard of all sanctity and purity, not to demand or accept anything at all for confirming elections referred to him. Otherwise, if he scandalizes the church by notorious and repeated contraventions, he will be delated to a future council. However, for the burdens which he must carry for the government of the universal church, and for the sustenance of the cardinals of the holy Roman church and of other necessary officials, this holy council will make due and suitable provision before its dissolution. If it does not make any provision in

this way, then those churches and benefices which hitherto paid a certain tax on the entry into office of a new prelate, shall be obliged thenceforward to pay in parts half of this tax for the year after their peaceful possession; this provision shall continue until the sustenance of the said pope and cardinals is otherwise provided for. By these ordinances the same synod does not intend any prejudice to the holy Roman and universal church or to any other church.”

Session 23 (26 March 1436): On Elections and Reservations

“Already this holy synod, with its abolition of the general reservation of all elective churches and dignities, has wisely decreed that provision should be made for them by canonical elections and confirmations. It wishes also to forbid special and particular reservations of elective churches and dignities, whereby free elections and confirmations can be prevented; and to ensure that the Roman pontiff will attempt nothing against this decree, except for an important, persuasive and clear reason, which should be expressed in detail in an apostolic letter. However, much has been done against the intention of this decree and without the required reason, resulting in serious scandals already and the likelihood of even more serious ones in the future. This holy synod wishes to prevent this and does not want the purpose of the decree, which was to remove every obstacle to canonical elections and confirmations, to be deprived of its effect. It therefore decrees that elections should assuredly be held in the said churches without any impediment or obstacle and that, after they have been examined in accordance with common law and the dispositions of our decree, they shall be confirmed. However, if perhaps on occasion it should happen that an election is made which in other respects is canonical but which, it is feared, will lead to trouble for the church or the country or the common good, the supreme pontiff, when the election is referred to him for confirmation, if he is convinced that there exists such a most pressing reason, after mature discussion and then with the signed votes of the cardinals of the Roman church or the majority of them declaring that the reason is true and sufficient, may reject the election and refer it back to the chapter or convent for them to institute another election, from which such consequences are not to be feared, within the legal time or otherwise according to the distance of the place.”

“The numerous reservations of churches and benefices hitherto made by supreme pontiffs have turned out to be burdensome to churches. Therefore this holy synod abolishes all of them both general and special or particular — for all churches and benefices whatsoever that were customarily provided for by an election or a collation or some other disposition — which were introduced either by the additional canons *Ad regimen* and *Execrabilis* or by rules of the chancery or by other apostolic constitutions, and it decrees that never again shall they exist, with the exception only of reservations expressly contained in the corpus of law and those which occur in the lands mediately or immediately subject to the Roman church by reason of direct or beneficial dominion.”

8. Ecumenical Council of Trent (1545-1563)¹⁵⁸

Session 23, Chapter IV (15 July 1563) - The Ecclesiastical Hierarchy And Ordination:

¹⁵⁸ English translation by Tanner, *op. cit.*

“Wherefore, the holy council declares that, besides the other ecclesiastical grades, the bishops, who have succeeded the Apostles, principally belong to this hierarchical order, and have been placed, as the same Apostle says, by the Holy Ghost to rule the Church of God; that they are superior to priests, administer the sacrament of confirmation, ordain ministers of the Church, and can perform many other functions over which those of an inferior order have no power.

The council teaches furthermore, that in the ordination of bishops, priests and the other orders, the consent, call or authority, whether of the people or of any civil power or magistrate is not required in such wise that without this the ordination is invalid, rather does it decree that all those who, called and instituted only by the people or by the civil power or magistrate, ascend to the exercise of these offices, and those who by their rashness assume them, are not ministers of the Church, but are to be regarded as thieves and robbers, who have not entered by the door. These are the things which in general it has seemed good to the holy council to teach to the faithful of Christ regarding the sacrament of order. The contrary, however, it has resolved to condemn in definite and appropriate canons in the following manner, in order that all, making use with the help of Christ of the rule of faith, may in the midst of the darkness of so many errors recognize more easily the Catholic truth and adhere to it.”

Session 24 (11 November 1563) - Decree Concerning Reform

Chapter 1: Norms Of Procedure In The Election Of Bishops And Cardinals

“If in all ecclesiastical grades a prudent and enlightened attention is necessary in order that in the house of the Lord there be nothing disorderly and nothing unbecoming, much more ought we to strive that no error be committed in the election of him who is constituted above all grades. For the state and order of the entire household of the Lord will totter if what is required in the body be not found in the head. Hence, although the holy council has elsewhere decided to advantage a number of things concerning those to be promoted to cathedral and major churches,[34] yet it considers this office to be of such a nature that if viewed in its greatness, there can never be caution enough taken concerning it. Wherefore it decrees that as soon as a church becomes vacant, public and private supplications and prayers be made and be ordered throughout the city and diocese by the chapter, that clergy and people may implore God for a good shepherd. It moreover exhorts and admonishes each and all who in any manner have a right from the Apostolic See to participate in the promotion of those to be placed in authority, or who otherwise render assistance (due to the circumstances of the present time no change being made herein), that they above all bear in mind that they can do nothing more serviceable to the glory of God and the salvation of the people than to exert themselves to the end that good and competent shepherds be promoted to the government of the Church, and that they become partakers in the sins of others and sin mortally unless they strive diligently that those be promoted whom they judge the more worthy and useful to the Church, not moved by entreaties or human affection, or the solicitations of rivals, but because their merits speak for them, whom they know to be persons of lawful wedlock, and whose life, age, learning and all other qualifications meet the requirements of the sacred canons and the decrees of this Council of Trent. But since the taking of the important and competent testimony of upright

and learned men regarding the aforesaid qualifications cannot by reason of the diversity of nations, peoples and customs be everywhere uniformly followed, the holy council commands that in the provincial synod to be held by the metropolitan, there be prescribed for each place and province a special or proper form of the examination, investigation or instruction to be made, such as shall appear most useful and suitable for these places and which is to be submitted to the approval of the most holy Roman pontiff; so however, that after the completion of the examination or investigation of the person to be promoted, it shall, after having been put in the form of a public document, be transmitted as soon as possible, with all the attestations and with the profession of faith made by the one to be promoted, to the most holy Roman pontiff, in order that the Roman pontiff himself, with a complete knowledge of the whole matter and of the persons before him, may for the benefit of the Lord's flock provide the churches more profitably if in the examination or investigation they have been found competent. All examinations, investigations, attestations and proofs of whatever kind and by whomever made, even though in the Roman Curia, concerning the qualifications of the one to be promoted and the condition of the church, shall be carefully examined by the cardinal, who shall report thereon to the consistory, and three other cardinals; and this report shall be authenticated by the signature of the cardinal making the report and of the three other cardinals, in which each of the four cardinals shall affirm that, after having given it his careful attention, he has found those to be promoted to possess the qualifications required by law and by this holy council and at the peril of his eternal salvation firmly believes that they are competent to be placed over churches; and the report having been made in one consistory, that the investigation may in the meantime receive more mature consideration, the decision shall be deferred to another consistory, unless the most blessed pontiff shall deem it expedient to act otherwise. Each and all of the particulars relative to the life, age, learning and the other qualifications of those who are to be appointed bishops, which have been determined elsewhere by this council, the same It decrees are to be required in the election of the cardinals of the holy Roman Church, even though they be deacons, whom the most holy Roman pontiff shall, in so far as it can be conveniently done, choose from all the nations of Christendom according as he finds them competent. Finally, the same holy council, moved by so many very grave afflictions of the Church, cannot but call to mind that nothing is more necessary to the Church of God than that the holy Roman pontiff apply that solicitude which by the duty of his office he owes the universal Church in a very special way by associating with himself as cardinals the most select persons only, and appoint to each church most eminently upright and competent shepherds; and this the more so, because our Lord Jesus Christ will require at his hands the blood of the sheep of Christ that perish through the evil government of shepherds who are negligent and forgetful of their office."

Chapter 2: Provincial Synods Are To Be Celebrated Every Three Years, Diocesan Synods Every Year; Who Are To Convoke Them And Who Are To Be Present Thereat

"Provincial synods, wherever they have been omitted, shall be restored for the regulation of morals, the correction of abuses, the settlement of controversies, and for other purposes permitted by the sacred canons.[36] Wherefore the metropolitans in person, or if they are legitimately hindered, the oldest suffragan bishop, shall not neglect to convoke, each in his own province, a synod within a year at least from the termination of the present council and after that at least every third year, after the octave of the resurrection of our Lord Jesus

Christ or at some other more convenient time, according to the custom of the province, and which all the bishops and others who by right or custom are under obligation to be present shall be absolutely bound to attend, those being excepted who at imminent danger would have to cross the sea. The bishops of the province shall not in the future be compelled under pretext of any custom whatsoever to go against their will to the metropolitan church. Those bishops likewise who are not subject to any archbishop shall once for all choose some neighboring metropolitan, at whose provincial synod they shall be obliged to be present with the other bishops, and whatever has been decided therein they shall observe and cause to be observed. In all other respects their exemption and privileges shall remain intact and entire. Diocesan synods also are to be celebrated annually; at which also all those exempt, who would otherwise by reason of the cessation of that exemption have to attend, and who are not subject to general chapters, shall be bound to assemble; those also who have charge of parochial or other secular churches, even though annexed, whoever they may be, must be present at the synod. But if the metropolitans and also the bishops and the others mentioned above prove negligent in these matters, they shall incur the penalties prescribed by the sacred canons.”

9. Instruction of the Sacred Congregation de Propaganda Fide concerning the Election of Bishops in Australia (19 May 1866)¹⁵⁹

“Insofar as it is expedient for the Catholic Church, and always for the salvation of souls, nothing greater can be achieved than that to appoint the holiest senior clergy (*Antistites*) [1], men distinguished for their teaching and prudence, as overseers of the Lord’s flock. For this reason the Holy See, in any particular place or time, is particularly diligent in the election of Bishops. As always in the matter of Canonical acts, the utmost wisdom must be clearly manifest in all of the adjustments made due to the appropriate vagaries of times and the regions involved. It should not be surprising that where new cities appear and in order to promote Christian identity the Sacred Council establishes new dioceses and sets up appropriate structures in order to support them. Accordingly the Apostolic See, keeping in mind particular prevailing circumstances, places great value on acquiring extensive information on Priests with a view to promoting them to the office and dignity of Bishops. For this purpose, letters were sent by the Sacred Council on the 24th of January, 1861 to the entire episcopate of the United States of America making recommendation for the discernment of candidates for episcopal office.

Since indeed, the great region of Australia is considered as having a similar situation as North America and for this reason, the Eminent and Reverend Fathers of the Sacred Congregation gathered in general assembly on 20 March, 1866, and now extend the same norms to Australia; these are reduced to the following headings.

1. Every three years, all and every Australian senior priest (*Antistites*) shall present, firstly to the Metropolitan of their Province, then to the Sacred Congregation, the names of suitable, worthy and distinguished priests to be considered for promotion to the office of bishop. They must carry this out in utmost secrecy in order that (*excessive?*) ambition of any kind is averted.

¹⁵⁹ This document, originally in Latin, was attached, as Appendix III to the Decrees of the First Plenary Council of Australasia, held at Sydney on 14-19 November 1885. The English translation was made by David Timbs

2. Every care is to be taken in the process of gathering information so that they might attain a level of certainty about the qualities of those who are recommended.
3. When any See, whether suffragan or Metropolitan becomes vacant, all the senior clergy, on whom the Supreme Pontiff relies for these ecclesiastical appointments, will meet within three months so that one of them will be proposed in the *Synod* for the vacant See. They are to discuss at least three candidates using the written questions included here as a guide.
4. Before the scheduled meeting is convoked, the names of the candidates shall be sent to the Archbishop or a senior bishop of the Province, and the senior clergy are to consider these with a view to making a recommendation.
5. The qualities of the candidates are discussed publicly in the gathering of the bishops, with the Archbishop or a senior clergyman of the Province being present: In strictly secret ballot, the votes are then to be placed in an urn.
6. The Acts of the meeting are then forwarded by the Archbishop or a bishop of the Province to the Sacred Congregation.
7. With respect to the election of Coadjutors or in a circumstance required by the Apostolic See, the Bishop requesting a coadjutor must send this on to the Sacred Congregation. He should then clearly provide the names of three priests for the appointment to the (provincial) Archbishop and (suffragan) bishop who, having concurred (*reached agreement*), shall then communicate these nominations to the Sacred Congregation.
8. When it becomes necessary to establish multiple ecclesiastical provinces in Australia, action will be taken to gather the Bishops from all the provinces to recommend candidates for the new Sees. Additionally, however they are obliged to write to the Metropolitan or the non-provincial bishop when it is an issue of a candidate from an outside province.
9. Where it will be necessary to elect a new Archbishop or Coadjutor-Archbishop, all Australian Metropolitans are to be consulted about the election.
10. It must, finally, be noted generally, that in all the aforesaid investigations to be transmitted to the Holy See, nothing needs to be sent about the actual election, nomination or application but only a clearly stated recommendation. Therefore, it should not be inferred from these letters that there is any implied obligation on the part of the Holy See regarding the election of any of those recommended. Given the fact that sometimes difficult circumstances arise, the freedom of the Holy See must be safeguarded in matters pertaining to recommendations and elections of bishops. However much light and knowledge there may be, there should be no restriction on liberty of the Sacred Congregation.

I am communicating to you the matters foremost in the mind of the Sacred Congregation. Since in fact the salvation of souls may depend in some way on the election of a Prelate, and on that account also, whoever exercises this office shall ensure that his undivided devotion is directed to Jesus Christ, the supreme pastor. I hope that whatever opportunities open to the Bishops of Australia, they themselves will continue to be closely bound to the Apostolic See. May you learn in the Lord due diligence in all these things. I pray that God will give you long lasting health.

Given at Rome from the Offices of the Sacred Congregation for the Propagation of the Faith, 19 May, 1866.

The following are the inquiries and questions about the qualities necessary for one to be promoted to the office and dignity of Bishop.

1. First name, family name, age, candidate's country?
2. To which Diocese and Ecclesiastical Province does he belong?
3. Where has he pursued his theological studies: and to what level?
4. Were there interruptions to his studies? What were they? Was he a professor and in what faculty?
5. Did he have served on the missions and what experience did he gain?
6. The number of languages in which he is competent and which ones?
7. In how many official positions has he functioned and in what sequence?
8. What degree of prudence has he manifested in his deliberations and character?
9. Whether he enjoys good health, is frugal in lifestyle, and he is competent in the administration of temporal matters?
10. Whether he is firm in his opinions and whether he has a changeable nature?
11. Does he genuinely enjoy a good reputation or might or has he at any time manifested disreputable behaviour?
12. Whether he has been diligent in the exercise of the priestly office, exhibited edifying behaviour and scrupulously observant of rubrics?
13. By his bearing, gestures, comportment, speech and in everything else has he preserved a serious and religious character?

10. Instruction of the Sacred Congregation de Propaganda Fide concerning the way information of the Election of new Bishops, Vicars Apostolic or Prefects Apostolic is to be presented (19 May 1866)¹⁶⁰

"In every way this Sacred Congregation for the Propagation of the Faith has, from its very beginnings, and with the greatest zeal taken special care that the Catholic faith is established as peacefully and as widely as possible among heretical and schismatic peoples and that the new faithful are governed in an appropriate and flexible manner. Therefore it is of the utmost importance to ensure that the Bishoprics, Vicariates or Prefectures Apostolic will have the necessary and appropriate supports for their pastoral mission. These concerns of the Sacred Council have often enough been effective. However, due to the lack of necessary guidelines, there was plenty of information as to unnecessary issues but generally speaking not enough about necessary aspects. To offset these inconvenient realities, therefore, the following points should be kept in mind as to the material and formal state of the Missions to be erected into new Bishoprics, Vicariates or Prefectures Apostolic.

1. It should be briefly and clearly reported what initiatives and progress are made in the region in relation to the Catholic mission and what language is used.
2. The boundaries of the new Diocese, Vicariate or Prefecture need to be clearly described and presented, including a table of terminology, maps in distinct colours,

¹⁶⁰ This document was included (with Item 4, above) in Appendix III of the Decrees of the First Plenary Council of Australasia. The English translation from the Latin was made by David Timbs.

and if financially feasible, these should be printed and bound. Where it is possible dangers and obstacles should be indicated: mountain ranges, river courses, and the boundaries according to latitude and longitude. The utmost care should be given to indicate each district in its entirety, where the inhabitants use the same language as the civil government within its own distinct boundaries. Also it should be ascertained whether other religions, any other human factors or other unavoidable circumstances within the civil domain would in any way threaten to impeded the Church in the safe exercise of its sacred mission whether in the Diocese, Vicariate or Prefecture.

3. The number of cities is listed; small towns and locales which exist across the region; moreover the number of farmers and their origin; above all, with whom do they humanly compare and what hopes may be held for the preaching of the Gospel among them?
4. Whether in the territory there may be heretics or schismatics and whether their errors may be dealt with from the start.
5. If and how many schools have been established in the area by non Catholics or unbelievers (*infideles*).
6. Whether it is possible for the Gospel to be preached freely and for the Catholic faith to be practiced freely in those areas, and whether there might be obstacles in the way of religious behaviour either from the civil authorities or from heretics, schismatics or even non-Christians (*pagani*).
7. The number of Catholics should be published as well as their customs and also the manner in which they practise their faith and carry out their religious observances.
8. And whether these Catholics have the means of financially supporting the necessary religious activity (liturgy etc) of the Church.
9. Whether the associated members (of the Church) feel confident to pass through the different territories and among non Catholics or unbelievers in order to exercise the ecclesiastical ministry and to spread the Gospel.
10. In what city or location does the Bishop, Vicar or Prefect Apostolic intend to establish the official offices and where and in what area does the prelate wish to have his Church and place of residence.
11. The number and status of the churches and priests are intended in the territory; the provisions for the security of the necessary sacred vessels, at least whether it is possible to reserve the Blessed Sacrament in designated Churches or chapels; whether those in which the missionaries intend to live will have a conjoined presbytery, or at least in those places it might be necessary to purchase a residence for the priest; and finally the Churches shall need to plan for projected income and offerings and in what ways these will be administered.
12. How would it be possible to provide income and assurances to the Bishopric, Vicariate or Prefecture, and what would be of assistance in providing support for the Prelate and missionaries.
13. Whether it would be possible to procure subsidies from the civil administration for the construction of churches, a living wage for the priests and endowment of a range of pious works, without compromising the freedom and independence of the Church.

14. How many missionaries would be on hand to care to the faithful in any one area? What race do the indigenous belong to, what languages do they speak and how much time have they spent in the missions.
15. Whether they would be indigenous priests and what hope could there be for them to safeguard and spread the faith.
16. Whether there would be catechists, their number and would these be sufficient in assisting the priests in the care of the people and for the necessary teaching required.
17. Whether any institute, either of men or women with a similar language, might be introduced into the region. Would there be religious men, depending on their particular mission, to carry out the work of teaching the youth.
18. Whether, without undue difficulty, a seminary could be established; whether the necessary support can be arranged for the education of suitable young men in religious and ecclesiastical instruction; whether at least it would be useful in a particular location for young men to have their own institution for priestly training; and finally, given inevitable inconveniences, would there be hope that some young men could be sent to the seminary particularly in their own missionary area in order to receive an ecclesiastical education.
19. Whether there will be Catholic schools or community locations especially designated for indigenous men or women and whether people of different backgrounds and religions can be admitted; finally, whether in this circumstance they might be all study together and whether these institutions could be opened with relative ease.
20. Whether it would be permitted to set up confraternities, hospitals, orphanages and basic catechism schools; whether subsidies would be available for these and whether these funds would be administered exclusively by the Church.

The preceding things need to be answered diligently by those legally required to do so when the establishment of any new Diocese, Vicariate or Prefecture is recommended to the Sacred Congregation; they also may be asked for their specific opinions on these matters. It shall belong, however, to this Sacred Council to determine if the advice given above might be insufficient. For this reason, and because of circumstances, a suitable foundation, needed for the good of the faithful and the conversion of non-Catholics, should be prudently consulted.

Notes:

[1] *Antistites* has been translated *Senior Clergy* given that they are, in the context, clearly not *Bishops* but had sufficient rank for them to exercise considerable authority and influence in ecclesiastical governance. The word *antistis* is used in classical Latin literature to describe a high official in the sacral ranks. For example, Tacitus writes that when Ptolemy I of Egypt wished to introduce the cult of the Greek healing god *Serapis* to Alexandria, he enlisted an Athenian, Timotheos of Eleusis, as *antistis caerimoniarum*, “overseer of the sacred rituals” – *Histories*, 4. 83.

For a contemporary Canonical perspective on Collegiality, especially the hierarchical link between the Bishop of Rome and the College of Bishops see, Philip Gray, “That They May All Be One: The Principle of Collegiality” in *Catholic Canon Law*.

11. Decrees of the First Plenary Council of Australasia (14-19 November 1885)¹⁶¹

Decrees on the participation of priests in the appointment of bishops (Decrees 23-25)

Decree 23: “Whenever the bishops of a province are to propose the names of candidates to the Holy See for appointment as a diocesan bishop or coadjutor bishop, the diocesan consultors and irremovable rectors of the vacant diocese are to meet under the presidency of the metropolitan archbishop (of the senior suffragan bishop if the metropolitan see is vacant, or a suffragan bishop delegated by either), and by a secret ballot, after an oath to seek neither grace nor favour, are to produce a list of three names of priests they consider most worthy and suitable for Episcopal office. This list is to be sent to the S.C. de Propaganda Fide, and to the bishops of the province for them to have before their eyes as they draw up their list to be presented to the Holy See. If they omit any names proposed by the priests, they are to attach their reasons for the omission.”

Decree 24: “In proposing the names for a coadjutor bishop, the meeting of the priests could be presided over by the metropolitan archbishop or his delegate: either the bishop seeking the coadjutor or another suffragan bishop.”

Decree 25: “For the appointment of a bishop for a newly-established diocese, the metropolitan archbishop is to convoke all the diocesan consultors in the diocese from which the new diocese is to be formed, together with all the immovable rectors in the newly-established diocese.”

12. 1917 Code of Canon Law: Title 8, Chapter 1 – On Bishops¹⁶²

Canon 329. “The bishops are the successors of the Apostles and are placed by Divine law over the individual churches, which they govern with ordinary authority under the authority of the Roman Pontiff. They are freely appointed by the Pope. If some college has received the right to elect the bishop, Canon 321 shall be observed, which requires the absolute majority of votes of all those who have the right to vote.”

Canon 330. “Before a person is elevated to the episcopate, proof must be furnished in the manner prescribed by the Holy See that the individual is worthy.”

Canon 331. “The requisites of a candidate for the episcopate are:

1. He must be born of legitimate wedlock (even those legitimized by subsequent marriage are excluded);
2. He must be at least thirty years of age;

¹⁶¹ The Decrees of the Council were published in Latin. This English translation was made by Rev. Ian B Waters and appears in his doctoral dissertation *Australian Conciliar Legislation prior to the 1917 Code of Canon Law: A Comparative Study with Similar Conciliar Legislation in Great Britain, Ireland and North America*, (Unpublished) Thesis, St Paul University, Ottawa, 1990, pp. 127-129.. This system was used in Australia and New Zealand until replaced by the new legislation of the Fourth Plenary Council of Australia and New Zealand 4-12 September 1937).

¹⁶² English translation from Woywod, Stanislaus OFM, *The New Canon Law: A Commentary and Summary of the New Code of Canon Law*, Joseph Wagner, New York, 1918

3. He must have been ordained priest for at least five Years;
4. He must be of good character, piety, zeal for souls, prudent and otherwise qualified to govern the diocese about which there is question;
5. He must be a doctor or licentiate in theology or Canon Law, in an institution of learning approved by the Holy See, or must at least be well versed in these sciences. If the candidate is a religious he must have received from the major superiors a similar degree, or at least have their testimony certifying to his learning.

Also those who are elected, presented or designated for a bishopric by persons who have the privilege from the Holy See to elect, or present or designate, must have the aforesaid qualifications.

The Holy See has the exclusive right to pass judgment on the qualification of any candidate for the episcopate.”

Canon 332. “Every candidate to the episcopate, even those elected, presented or esignated by the civil government, needs the canonical provision or institution in order to be the lawful bishop of a vacant diocese. The only one to in stitute a bishop is the Roman Pontiff.”

13. Vatican II; Decree on the Pastoral Office of Bishops in the Church (Christus Dominus), (28 October 1965)¹⁶³

Chapter II. Bishops and their Particular Churches and Dioceses. 1. Diocesan Bishops

Para 20: “Since the apostolic office of bishops was instituted by Christ the Lord and pursues a spiritual and supernatural purpose, this sacred ecumenical synod declares that the right of nominating and appointing bishops belongs properly, peculiarly, and per se exclusively to the competent ecclesiastical authority.

Therefore, for the purpose of duly protecting the freedom of the Church and of promoting more conveniently and efficiently the welfare of the faithful, this holy council desires that in future no more rights or privileges of election, nomination, presentation, or designation for the office of bishop be granted to civil authorities. The civil authorities, on the other hand, whose favorable attitude toward the Church the sacred synod gratefully acknowledges and highly appreciates, are most kindly requested voluntarily to renounce the above-mentioned rights and privileges which they presently enjoy by reason of a treaty or custom, after discussing the matter with the Apostolic See.”

Para 21: “Since the pastoral office of bishops is so important and weighty, diocesan bishops and others regarded in law as their equals, who have become less capable of fulfilling their duties properly because of the increasing burden of age or some other serious reason, are earnestly requested to offer their resignation from office either at their own initiative or upon the invitation of the competent authority. If the competent authority should accept

¹⁶³ English translation taken from Vatican website www.vatican.va

the resignation, it will make provision both for the suitable support of those who have resigned and for special rights to be accorded them.”

Chapter III, I. Synods, Councils and Episcopal Conferences

Para. 36: “This sacred Ecumenical Synod earnestly desires that the venerable institution of synods and councils flourish with new vigour. This, faith will be spread and discipline preserved more fittingly and effectively in the various churches, as the circumstances of the times require.”

14. 1983 Revised Code of Canon Law. ¹⁶⁴

Book II, Part II, Section II, Title I, Chapter II, Article 1: Bishops in General

Can. 377: §1. “The Supreme Pontiff freely appoints bishops or confirms those legitimately elected.

§2. 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.

§3. Unless it is legitimately established otherwise, whenever a diocesan or coadjutor bishop must be appointed, as regards what is called the ternus to be proposed to the Apostolic See, the pontifical legate is to seek individually and to communicate to the Apostolic See together with his own opinion the suggestions of the metropolitan and suffragans of the province to which the diocese to be provided for belongs or with which it is joined in some grouping, and the suggestions of the president of the conference of bishops. The pontifical legate, moreover, is to hear some members of the college of consultors and cathedral chapter and, if he judges it expedient, is also to seek individually and in secret the opinion of others from both the secular and non-secular clergy and from laity outstanding in wisdom.

§4. Unless other provision has been legitimately made, a diocesan bishop who judges that an auxiliary should be given to his diocese is to propose to the Apostolic See a list of at least three presbyters more suitable for this office.

§5. In the future, no rights and privileges of election, nomination, presentation, or designation of bishops are granted to civil authorities.”

Can. 378: §1. “In regard to the suitability of a candidate for the episcopacy, it is required that he is:

¹⁶⁴ English translation taken from Vatican website www.vatican.va

1. outstanding in solid faith, good morals, piety, zeal for souls, wisdom, prudence, and human virtues, and endowed with other qualities which make him suitable to fulfill the office in question;
2. of good reputation;
3. at least thirty-Five years old;
4. ordained to the presbyterate for at least Five years;
5. in possession of a doctorate or at least a licentiate in sacred scripture, theology, or canon law from an institute of higher studies approved by the Apostolic See, or at least truly expert in the same disciplines.

§2. The definitive judgment concerning the suitability of the one to be promoted pertains to the Apostolic See.”

Can. 379: “ 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.”

Can. 380: “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.”

Book II, Part II, Section II, Title 1, Article 3 – Coadjutor and Auxiliary Bishops

Canon 403: §1. “When the pastoral needs of a diocese suggest it, one or more auxiliary bishops are to be appointed at the request of the diocesan bishop. An auxiliary bishop does not possess the right of succession.

§2. In more serious circumstances, even of a personal nature, an auxiliary bishop provided with special faculties can be given to a diocesan bishop.

§3. If it appears more opportune to the Holy See, it can appoint ex officio a coadjutor bishop who also has special faculties. A coadjutor bishop possesses the right of succession.”

Book II, Part II, Section II, Title II, Chapter 3 - Particular Synods

Can. 439 §1. “A plenary council, that is, one for all the particular churches of the same conference of bishops, is to be celebrated whenever it seems necessary or useful to the conference of bishops, with the approval of the Apostolic See.

§2. The norm established in §1 is valid also for the celebration of a provincial council in an ecclesiastical province whose boundaries coincide with the territory of a nation.”

Can. 440 §1. “A provincial council for the different particular churches of the same ecclesiastical province is to be celebrated whenever it seems opportune in the judgment of the majority of the diocesan bishops of the province, without prejudice to C. 439, §2.

§2. When a metropolitan see is vacant, a provincial council is not to be convoked.”

Can. 441. "It is for the conference of bishops:

- i) to convoke a plenary council;
- ii) to select the place to celebrate the council within the territory of the conference of bishops;
- iii) to select from among the diocesan bishops a president of the plenary council whom the Apostolic See must approve;
- iv) to determine the agenda and questions to be treated, set the opening and duration of a plenary council, transfer, extend, and dissolve it."

Can. 442 §1. "It is for the metropolitan with the consent of the majority of the suffragan bishops:

- i) to convoke a provincial council;
- ii) to select the place to celebrate the provincial council within the territory of the province;
- iii) to determine the agenda and questions to be treated, set the opening and duration of the provincial council, transfer, extend, and dissolve it.

§2. It is for the metropolitan or, if he is legitimately impeded, a suffragan bishop elected by the other suffragan bishops to preside over a provincial council."

Can. 443 §1. "The following must be called to particular councils and have the right of a deliberative vote in them:

- i) diocesan bishops;
- ii) coadjutor and auxiliary bishops;
- iii) other titular bishops who perform in the territory a special function committed to them by the Apostolic See or the conference of bishops.

§2. Other titular bishops, even retired ones, living in the territory can be called to particular councils; they also have the right of a deliberative vote."

§3. The following must be called to particular councils but with only a consultative vote:

- i) the vicars general and episcopal vicars of all the particular churches in the territory;
- ii) major superiors of religious institutes and societies of apostolic life in a number for both men and women which the conference of bishops or the bishops of the province are to determine; these superiors are to be elected respectively by all the major superiors of the institutes and societies which have a seat in the territory;
- iii) rectors of ecclesiastical and Catholic universities and deans of faculties of theology and of canon law, which have a seat in the territory;
- iv) some rectors of major seminaries elected by the rectors of the seminaries which are located in the territory, in a number to be determined as in n. 2.

§4. Presbyters and other members of the Christian faithful can also be called to particular councils, but with only a consultative vote and in such a way that their number does not exceed half the number of those mentioned in §§1-3.

§5. Moreover, cathedral chapters and the presbyteral council and pastoral council of each particular church are to be invited to provincial councils in such a way that each of them

sends two of their members designated collegially by them; however, they have only a consultative vote.

§6. Others can also be invited as guests to particular councils, if it is expedient in the judgment of the conference of bishops for a plenary council, or of the metropolitan together with the suffragan bishops for a provincial council.”

Can. 444 §1. “All who are called to particular councils must attend them unless they are prevented by a just impediment, about which they are bound to inform the president of the council.

§2. Those who are called to particular councils and have a deliberative vote in them can send a proxy if they are prevented by a just impediment; the proxy has only a consultative vote.”

Can. 445. “A particular council, for its own territory, takes care that provision is made for the pastoral needs of the people of God and possesses the power of governance, especially legislative power, so that, always without prejudice to the universal law of the Church, it is able to decide what seems opportune for the increase of the faith, the organization of common pastoral action, and the regulation of morals and of the common ecclesiastical discipline which is to be observed, promoted, and protected.”

Can. 446. “When a particular council has ended, the president is to take care that all the acts of the council are sent to the Apostolic See. Decrees issued by a council are not to be promulgated until the Apostolic See has reviewed them. It is for the council itself to define the manner of promulgation of the decrees and the time when the promulgated decrees begin to oblige.”

Appendix B

Draft Canons for a reform of the Code of Canon Law for the Latin Church and a return to the tradition on the selection of bishops proposed by Huels & Gaillardetz¹⁶⁵

On the Selection of Bishops

Draft Canon. A:

“§1. As soon as possible after a vacancy occurs in the episcopal office, or during the bishop’s 75th year, a visitor appointed by the metropolitan is to consult representatives of the presbyterate, diaconate, members of institutes of consecrated life and societies of apostolic life, and the laity of the diocese, and is to prepare a confidential report on the needs of the vacant see and the kind of episcopal leadership that would be most suitable.

¹⁶⁵ Huels, John OSM & Gaillardetz, Richard R., *The Selection of Bishops: Exploring Canonical Alternatives*, pp. 26-35. Text of article with explanatory comment on each draft canon is readable at https://richardgaillardetz.files.wordpress.com/2014/04/election_of_bishops.pdf (accessed 10 January 2107)

§2. The visitor must consult the presbyteral council, the college of consultors or chapter of canons, the vicars general and episcopal, and the finance officer; other groups and persons are also to be consulted as required by particular law, such that representatives of all groups mentioned in #1 have a voice in the consultation process.

§3. The conference of bishops or a particular council should issue suitable provisions governing the visitor, the report, and the consultation process.”

Draft Canon B:

“Within two months from the date the vacancy occurred, the report is to be sent to the Apostolic Roman See³⁶ and, where applicable, also to each of the episcopal electors. Those who see the report are bound to complete secrecy.”

Draft Canon C:

“ §1. The ways of a choosing a bishop are:

- i) appointment by the patriarch of the Latin church, whether freely or from a *terna* drawn up by the bishops of the province or by the presbyteral council or chapter of canons;
- ii) election by the bishops who have a pastoral office in the province;
- iii) election by the presbyteral council or chapter of canons under the presidency of a visitor appointed by the metropolitan;
- iv) another method chosen by the conference of bishops or plenary council, with the approval of the Apostolic Roman See.

§2. It is the competence of the conference of bishops or plenary council to choose one of the ways in §1 for the provision of the episcopal office, which must be the same in all the dioceses within the territory of the conference.”

Draft Canon D:

“ §1. Only priests incardinated or domiciled in a diocese within the territory of the province are eligible for election or for selection for the terna.

§2. [Other qualifications added here, as in canon 378, §1 of the 1983 code.] “

Draft Canon E:

“If a majority of the electors, or of those who have the right to present a *terna*, decide that an eligible and suitable candidate cannot be found, they are to notify the metropolitan who is to report this fact to the Apostolic Roman See so that the patriarch of the Latin church may freely appoint the bishop.”

Draft Canon F:

“ §1. If the electors fail to elect the bishop within three months since the vacancy occurred, the patriarch of the Latin church freely appoints the bishop.

§2. If those who have the right to present the *terna* fail to present it to the Apostolic Roman See within three months since the vacancy occurred, the pope freely appoints the bishop.”

Draft Canon G:

“The election of a suffragan bishop must be confirmed by the metropolitan; the election of the metropolitan must be confirmed by the patriarch of the Latin church alone.”

Draft Canon H:

“Whenever the canons above refer to the metropolitan, the senior suffragan is intended in the case of a vacancy in the metropolitan see.”

Appendix C

John Heuls & Richard Gaillardetz, ‘The Selection of Bishops’, p 17

Participation By Representatives of the Whole Local Church in the Selection of the Bishop

The previous two values, the theological reality of the local church and the bishop’s fundamental relationship to his church, together constituted the theological foundation for this third value. The testimony of the early church confirms a widespread conviction regarding the necessity of local participation in the selection of the bishop.

For most of the church’s history, the laity as well as the clergy had a role in the episcopal selection process. In the ancient church the laity directly participated in the selection of their bishop. As the church grew, only the more important laypersons, wealthy or powerful persons, participated directly. In the Middle Ages kings and other noble persons were influential and often played the decisive role in the choice of bishop. By the twelfth century, in reaction to abuses that resulted from control by secular rulers, episcopal elections began to be reserved more and more to the clergy of the diocese; the laity thenceforth were excluded from participation, except for some secular rulers who maintained their privileges. In today’s canon law, the laity’s role in the selection of bishop is reduced to selective consultation left to the discretion of the papal legate (c. 377, §3); this only barely acknowledges the longstanding ideal of participation by the clergy and laity in the choice of their bishop. In an assessment of the development away from the participation of the local church in the appointment of the bishop, it is difficult to avoid the conclusion that political rather than theological factors were responsible for this development. The more ancient practice of local participation of the faithful would appear to have been grounded not in pragmatic political realities, as clearly was the case when their participation later diminished, but in a conviction regarding what would later be called the *sensus fidelium*.²⁶

This refers to the ancient belief, affirmed at Vatican II (LG#12), that the church as a whole, itself a recipient of God’s Word, cannot err in matters of belief. If the faithful, through the exercise of the supernatural sense of the faith which they received at baptism, have a role to play in receiving God’s Word and discerning God’s will, then the church must not overlook the contributions of the faithful in the choice of church leadership.

Consequently, any reform of canon law should attend to this value, which corresponds to the church's self-understanding as the "people of God." The universal canon law should seek to restore to the faithful a greater role in the selection process, at least by some mandatory consultation, in every kind of selection process that may be permitted.

D. The Application of the Principle of Subsidiarity in Preserving a Diversity of Methods of Episcopal Selection

There has never been a historical period in which there was only one way that bishops were chosen. Even in the Latin church today there are exceptions to the rule that the pope freely appoints the bishops. Diversity of practice is not disunity; it accurately reflects the diversity of the local churches that make up the one church. The universal law should allow local churches to decide for themselves the way they want to select their bishop from among the ways that have best served the church in history, excluding those that were abuses or are impractical today. This kind of decentralization of the episcopal selection process would witness to the other Christian churches and communities that the Catholic church is not an absolute monarchy with all powers flowing from the pope, but that its canon law recognizes and fosters a diversity of practices that are faithful to the best of its traditions.²⁷ The ultimate value here is not diversity for its own sake, but subsidiarity, the principle that higher levels of a society should not take on tasks and functions that can be accomplished better at lower levels.²⁸ This principle was first articulated in church documents by Pope Pius XI as part of the church's social teaching. However, his successor, Pope Pius XII, extended the sphere of application when he observed in 1946 that this principle, "valid for social life in all its grades" was valid "also for the life of the church without prejudice to its hierarchical structure."²⁹ This requires that we transpose the socio-political principle into the ecclesiological framework determined by the integrity of the local church "in and out of which" the universal is manifested.³⁰ Within this ecclesial framework the principle of subsidiarity would support any legitimate diversity of processes for the selection of bishops employed by local churches as long as they are in accord with the fulfillment of each church's mission and do not constitute a breach in the communion of churches. In particular, regarding the selection of bishops, an application of the principle subsidiarity would dictate that only when the local church can no longer actualize within itself the means necessary for the fulfillment of its mission should the universal church intervene.

²⁶ See Gustave Thils, *Choisir les évêques? Élire le pape?* (Paris: Éditions J. Duculot, 1970); Patrick Granfield, "The Sensus Fidelium in Episcopal Selection," *Concilium* 137, 33-38; Edward Kilmartin, "Episcopal Election: The Right of the Laity," *ibid.*, 39-43.

27 See Giovanni Cereti, "The Ecumenical Importance of the Laity's Collaboration in the Choice of Bishops," *Concilium* 137, 48-53; and Groupe des Dombes, *Le Ministère épiscopal: Réflexions et propositions sur le ministère de vigilance et d'unité dans l'Église particulière* (Presse de Taizé, 1976), 45-46.

28 Cf. Ad Leys, *Ecclesiological Impacts of the Principle of Subsidiarity*, trans. A. Van Santwood (Kampen: Kok, 1995).