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Hezron Jhud Cartagena

CONTRIBUTION OF THE AFFIRMATIVE
DEFINITIVE SENTENCES OF THE SUPREME
TRIBUNAL OF THE APOSTOLIC SIGNATURA IN
CONTENTIOUS-ADMINISTRATIVE MATTERS
TO GOOD GOVERNANCE IN THE CHURCH

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ABBREVIATIONS

§	paragraph
§§	paragraphs
AAS	<i>Acta Apostolicae Sedis</i>
art.	article
artt.	articles
can.	canon
cann.	canons
CA	contentious-administrative
cf.	confront
CIC 1917	<i>Codex iuris canonici</i> 1917
CIC 1983	<i>Codex iuris canonici</i> 1983
cit.	cited
ed.	editor
eds.	editors
ibid.	ibidem
LP	<i>Lex propria</i> of the Apostolic Signatura (2008)
n.	number
nn.	numbers
PE	apostolic constitution <i>Praedicate Evangelium</i> (2022)
prot. n.	protocol number
vol.	volume

INTRODUCTION

From the very start of his pontificate, the Holy Father Pope Francis, through his words and gestures, already left a distinctive stamp that would express the pastoral priorities close to his heart. Among his motifs, we find that of synodality, understood not as an event that should take place occasionally (such as a diocesan synod, or a synod of bishops), but rather a way of being, a structure with which the Church should be and should act in order to become a synodal Church.¹ This structure is not something superimposed on the Church but is something internal, since synodality is considered a «constitutive element of the Church».² With synodality as the background, the nature of ecclesiastical authority and power understood as service is even more emphasized through the images of «walking together» and that of «listening». Given that baptism is the source of the «equal dignity of the children of God», then all the faithful member of the Church «are called to take part in the Church's life and mission».³ They ought to be able to participate in the internal dialogue and their voices ought to be heard in a dynamic of «mutual listening in which everyone has something to learn. The faithful people, the college of bishops, the Bishop of Rome: all listening to each other, and all listening to the Holy Spirit».⁴ Despite being made pastors, those who hold power in the Church are not to «lord it over» the faithful, but instead they ought to

¹ The Supreme Pontiff dreams of a Church which moves «not occasionally but structurally towards a *synodal Church*, an open square where all can feel at home and participate». FRANCIS, *Momento di riflessione per l'inizio del percorso sinodale*, October 9, 2021, in <https://www.vatican.va/content/francesco/it/speeches/2021/october/documents/20211009-apertura-camminosinodale.html>, accessed April 5, 2023 (English translation in <https://www.vatican.va/content/francesco/en/speeches/2021/october/documents/20211009-apertura-camminosinodale.html>, accessed April 5, 2023, emphasis in original).

² FRANCIS, *allocutio occasione L anniversariae memoriae ab inita Synodo Episcoporum*, October 17, 2015, in *AAS* 107 (2015), p. 1141 (English translation in https://www.vatican.va/content/francesco/en/speeches/2015/october/documents/papa-francesco_20151017_50-anniversario-sinodo.html, accessed April 5, 2023).

³ FRANCIS, *Momento di riflessione per l'inizio del percorso sinodale*, October 9, 2021, *cit.*

⁴ FRANCIS, *allocutio occasione L anniversariae memoriae ab inita Synodo Episcoporum*, October 17, 2015, *cit.*, p. 1140. This also entails that among the bishops, the Bishop of Rome also need to listen to his «Brother Bishops», and be counseled by their «guidance and of their prudence and experience». FRANCIS, *lettera del Santo Padre al Segretario generale del Sinodo dei vescovi, Em.mo Card. Lorenzo Baldisseri, in occasione dell'elevazione alla dignità episcopale del Sotto-segretario, Rev.do Mons. Fabio Fabene*, April 1, 2014, in https://www.vatican.va/content/francesco/it/letters/2014/documents/papa-francesco_20140401_cardinale-baldisseri.html, accessed April 5, 2023 (English translation in https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140401_cardinale-baldisseri.html, accessed April 5, 2023).

minister as though a «servant» or a «slave».⁵ For this reason, they should not be «“raised up” higher than others. On the contrary, in the Church, it is necessary that each person “lower” himself of herself, so as to serve our brothers and sisters along the way».⁶

We do know that the Church continues to journey on its pilgrim way, and not always are its marks made evident in its historical contours and in the concrete operations of the people that govern and compose it. To actualize the vision of the Church where everyone walks side by side with each other, much effort still needs to be exerted. One very relevant area that deserves our attention is no doubt the subject of ecclesiastical governance. And if there is a part in ecclesiastical governance where the existence—or non-existence—of the ideals mentioned above (listening, participation, equality of the members, and power as service) are made very evident and close to the experience of the majority of the members of the Church, it is probably in the administrative function, the actions—or inactions—of which directly affect the ecclesial life of the faithful, for better or for worse.

This research then is an attempt to answer to this call for the Church to reflect its synodal dimension (including the dynamics of participation and listening) through its governance, and more specifically in the way good governance⁷ may be promoted, and bad governance corrected, by the ecclesiastical administrative justice system. Furthermore, we shall dwell on the subject of jurisprudence, and how it can be a very useful tool indeed to improve Church governance, instructing the administrators, reminding them of the weight of their responsibility, and giving more incentive to the faithful members to be more proactive in the life of the Church.

Our research would be qualitative, gathering articles and insights from various authors who dedicate their work to the themes that we will be tackling on, especially in the first chapters where we will try to establish the foundation of our study and equip ourselves with tools in order to better interpret the jurisprudence and also to analyze and synthesize it. In studying jurisprudence, we shall limit ourselves to gather and read only the published definitive sentences issued by the Supreme Tribunal,⁸ and further narrow down our

⁵ Mark 10: 42-45.

⁶ FRANCIS, *allocutio occasione L anniversariae memoriae ab inita Synodo Episcoporum*, October 17, 2015, cit., p. 1142.

⁷ In this research, “good governance” is preferred to “good government.” Although they could be used interchangeably, in common parlance government is used to refer to the leaders or the body of people which effectively governs a given state in a given moment, whereas governance may be defined as the action or process of governing.

⁸ Throughout the course of this research, we will employ the term “Supreme Tribunal” to refer exclusively to the Supreme Tribunal of the Apostolic Signatura, although often the entire term might also be utilized. This is to clarify that we will not be dealing here with the jurisprudence of the tribunal of the Dicastery for the Doctrine of the Faith, which also happens to be called a «Supreme Apostolic Tribunal». FRANCIS, apostolic constitution *Praedicate Evangelium*, March 19, 2022, art. 76 §1, «Communicationes», 54 (2022), p. 39 (English translation available in https://www.vatican.va/content/francesco/en/apost_con-

material to only the affirmative sentences. While we shall dedicate some pages to explain these choices made, it shall suffice us to say for now that we are convinced that the affirmative definitive sentences carry greater weight with regards to the contribution of jurisprudence to good governance compared to the other types of decisions. We shall try to summarize these definitive sentences, reporting from each case the most essential information that may be relevant to the subsequent analysis that we shall make, supported also by commentaries made on the decisions by distinguished scholars of Canon law.

Since the majority of works that form the bibliography of this study remain untranslated into English, the citations reported—if they are not paraphrases—are translations done by the researcher himself. Since they are numerous, no indication will be made in the body of the research that a translation is unofficial, and this initial notice made in this introduction should suffice. Should there be any official English translation of any source utilized in our work, then it will be provided in the footnotes.

To guide us in this path towards acquiring the necessary instruments that will enable us to interpret the definitive sentences from the perspective of good governance, we shall organize our study in an orderly fashion. We begin by constructing the basic premises of the study: understanding the concept of good governance in general, and what good governance can specifically mean in relation to the Church. In this first chapter, the objective would be to appreciate the significance not only of ecclesiastical governance, but that such governance should be good. The second chapter would try to explore the different tools that have been used in order that governance in the Church should fulfill its purpose (such as the formulation of certain principles to guide the work of revising the Code and the implementation of a desired distinction of the functions of power, and the different instruments being employed—especially concerning the administrative function—in order to ensure the right exercise of power). In this part, the objective would be to situate better the ecclesiastical administrative justice system and understand how essential it is, and what are its implications to good governance. After demonstrating this, the third chapter would be dedicated especially to an important component of the administrative justice system, which is its jurisprudence. We shall attempt here to see the threads that connect jurisprudence with Church governance, and specifically with each of the functions of power. We will tackle also the lack of publication concerning contentious-administrative cases, and the

stitutions/documents/20220319-costituzione-ap-paedicare-evangelium.html, accessed April 28, 2023; henceforth *PE*). Concerning the peculiarity of the fact that there are two supreme tribunals in the Church, R. Rodríguez-Ocaña comments: «*Existe en la Iglesia una cierta inflación de tribunales supremos. Tanto el tribunal del DDF como el STSA se denominan así en PE (cfr. arts. 76 § 1 y 194). La pluralidad de tribunales supremos no encaja bien con la concepción jurídica de la más alta magistratura. Su supremacía, además, no es propia, sino vicaria, pues solo el Romano Pontífice tiene la suprema potestad judicial propia. Estas peculiaridades hacen que el concepto de tribunal supremo en la Iglesia sea sui generis, diverso al de los ordenamientos seculares*». R. RODRÍGUEZ-OCAÑA, *Los organismos de justicia en “Praedicate Evangelium”*, «Stato, Chiese e pluralismo confessionale» rivista telematica (www.statoechiese.it), (April 3, 2023), pp. 137-138.

corresponding opinions of authors about this phenomenon. The objective of this part is to argue that if the ecclesiastical administrative justice system contributes to good governance then jurisprudence, being part of this structure, can also contribute to good governance, but only when it is published. These chapters lay the ground for the work of sifting through the different definitive sentences. But before we go into the heart of our study (which will be the fifth chapter), the fourth chapter intends to introduce first the categories of the decisions issued by the Apostolic Signatura, and also provide a brief explanation of the nature of the definitive sentence. These preliminaries should help us understand the choice made in our research of studying only the definitive sentences, and furthermore of studying only the affirmative definitive sentences. In the fifth chapter, we will go through all the published affirmative sentences in a chronological manner, summarizing them and extracting relevant elements. The last chapter will then intend to close the research by synthesizing the points made and identifying important and overarching elements which surfaced in our analysis, always with the purpose of pointing out how the activity of the Apostolic Signatura in contentious-administrative matters has contributed to good governance in specific cases, and how it can amplify its beneficial effects by crystallizing its activity through jurisprudence, and making it available for all to scrutinize and be edified by.

Finally, I would like to acknowledge everyone involved in this undertaking, without whom I would not have been here writing this down: to God, whose calling has led me here, and who will continue to call me to where He wants me to serve His Church; to my family, for never failing to support me even from afar; to His Excellency Jose S. Palma, Archbishop of Cebu, whose arms welcomed me into the ordained ministry, and whose arms entrusted me to a particular service for the universal Church; to my immediate superiors, His Excellency Salvatore Pennacchio, and Msgr. Gabriel Viola, respectively the president and the eonomus of the Pontifical Ecclesiastical Academy, for welcoming me into this new ministry, and whose example and diligence have always inspired my current studies; to the Prelature of Opus Dei, for their indefatigable zeal for service, and their advocacy to offer holistic formation for the benefit of the local Churches and the universal Church; to the Faculty of Canon Law of the Pontifical University of the Holy Cross, for instilling in me the desire to be a minister of justice; to the Studium Theologiae Foundation, for their generosity in supporting my studies; and to don Javier Canosa, the *relatore* of this thesis, for being a patient, understanding, and encouraging companion in this journey from the very inception until the end, without whom this project would never had come to light.

Chapter 1

GOOD GOVERNANCE IN THE CHURCH

1. THE CONCEPT OF GOOD GOVERNANCE

1.1. *Man as a “political animal”*

Not only written human history, but also scientific research of prehistoric man proves that human beings have always formed groups in order to maintain social bonds and share resources with each other, which in turn increased the chances of survival of the members.¹ This is hardly a point for debate, since even animals—in a certain sense—also share resources and form groups, and thus, we could see how man shares similar characteristics with other sentient beings. What makes man different though is that human beings not only form into groups, but rationally organize themselves in these groups, assigning roles and dividing tasks and responsibilities.

In differentiating man from other animals, we emphasize the fact that human beings «rationally» organize themselves, that is, with intention and with purpose. A certain «organization» might also be observed in the animal kingdom, wherein—for example, in an ant colony—certain members only perform specific tasks for the benefit of the species. But this organization does not arise from intention but rather from instinct. The fact that man throughout history has created different systems of organizing a community (based on different criteria, brought about by the vicissitudes of life, or the proposals from thinkers, or the concrete ends defined by a particular group of people) precisely shows that it is not instinctual.

Aside from reason, what differentiates man from other animals is that, according to Aristotle, «man is by nature a political animal».² By this definition, he views man as «adapted by nature for life in the *polis*» and «that life in that context is necessary and sufficient for the attainment of individual human good».³ In addition to man’s intellectual capacity, he also has the capacity to

¹ *Social Life*, in <http://humanorigins.si.edu/human-characteristics/social-life>, accessed October 6, 2022.

² ARISTOTLE, *Politics*, C. D. C. REEVE (trad.), Hackett Publishing Company, Indianapolis/Cambridge 1998, p. 4. Tied-up with his reasoning of man being naturally inclined to associate with others is also Aristotle’s assertion that the city-state or the *polis* also «exists by nature».

³ C. C. W. TAYLOR, *Politics*, in J. BARNES (ed.), *The Cambridge Companion to Aristotle*, Cambridge University Press, Cambridge 1995, p. 238.

relate with others due to his innate «relational openness», made manifest both by his ontological and physiological characteristics.⁴

It is not the object of this study how best to define or explain this political nature in man. It would suffice to affirm that man, because of his capacity for rationality and relationality, is able to form relationships with others, and is able—with others—to create communities. This nature in man however seems to be so essential for his survival and well-being that in fact, and as we have said earlier, both history and human experience show that man has always lived in communities. Moreover, these communities aren't just merely an aggregate of different people, but they are molded by a certain structure and organization, which has always characterized the communities formed by man, no matter how primitive.

The next point to be observed is that almost always, in human communities, part of the internal organization is the position of a leader (or of a group of leaders) who directs the others. This leadership is often exercised by giving direction, commanding, or laying down the objectives to be achieved, in order to coordinate the activities of every member of the group. In a sense, one could affirm that governance—that is, to govern, and to be governed—has always been part and parcel of human life.

1.2. Governance and the realization of the good

Following Aristotle, he posits the necessity of living in a community in order to survive,⁵ and this is because the community promotes the common good of its members. Given the limitations of a single human person, it is not only beneficial to him but also to everyone else who forms a community that they should collaborate and help each other out, in order to ensure that the basic necessities of survival are met through the fulfillment of each member's role for the good of the group.

A real community however cannot be a mere assembly of different people, without organization or even any agreement of some kind between them. For collaboration to work out between them, it is necessary that someone, or a group of people, should bear the task of planning out the goals, coordinating the activities, formulating basic norms to follow, etc., that is, to put order into the community, to channel their work and direct its life. Basically, what we are looking for is a kind of government which works to administer to the members of the group, give a common direction to the efforts contributed by each

⁴ This openness is made manifest ontologically by the fact that his being implies an existential task, that is authentic realization of one's self. On the other hand, his corporeality, his sexuality, the faculties of intellect and will, and the capacity for language are all essentially communicative characteristics. In fact, even the very decision to isolate one's self and avoid social bonds may be, in a negative sense, one's way of exercising one's *socialità*, which is man's innate intentional openness towards others, in contrast with *socialità*, which refers to the effective realization of the capacity to socialize. J. A. LOMBO – F. RUSSO, *Antropologia filosofica. Una introduzione*, Edizioni della Santa Croce, Roma 2005, p. 192.

⁵ According to him, only a god or a beast can be self-sufficient. ARISTOTLE, *Politics*, cit., p. 5.

member, to ensure that their common good (which also imply the good of the individual members) is obtained.⁶

It is not a given however that the mere existence of a governing body can ensure the attainment of the good of all its members. In fact, even from the time of Aristotle, selfish people have always somehow ended up in governing roles, to the detriment of the people.⁷ Thus, what is really needed is not just the existence of a government, but of a good government at that.

1.3. *What is good governance?*

Despite the anachronism, it is not difficult to imagine how Aristotle would have understood the concept of good governance: a leader whose actions are directed towards the fulfillment of the good of the group he is leading and of each member of that group. The answer demands to be qualified further, however, especially since the idea of what is good for man constantly changes throughout history, depending on the place, epoch, culture, and many other circumstances that come into play. We need to understand what is the good that a man—in a particular time and place—needs, in order then to define how a government can better serve him.

In our day and age, the term “good governance” may be heard and encountered often, albeit there does not seem to be a clear and precise understanding what it means. In many conversations, it may often only be seen from the narrow viewpoint of economics and political reform, as can be observed for example in the World Bank’s Worldwide Governance Indicators project. Recent definitions of indicators of good governance are the following: voice and accountability (measuring perceptions of the right to suffrage, freedom of expression and press freedom), political stability and absence of violence (measuring perceptions of the possibility that a government may be destabilized or overthrown), government effectiveness (measuring the quality of public and civil services, the government’s policy formulation and implementation), regulatory quality (measuring how the government is able to promote and regulate the private sector development), rule of law (measuring perceptions of contract enforcement and the likelihood of crime), and control of corruption (measuring perception of the extent to which public power is exercised for the benefit only of a few).⁸ Being merely indicators, they may in

⁶ It is possible to delve deeper into this topic, touching on all sectors of society and how they are related with the common task to achieve the good of everyone (for example, the work of the judiciary power, law enforcement, etc.). For the purposes of our study here, it would suffice us to merely see the necessity of an authority in a community understood in its most primitive sense.

⁷ «Nowadays, however, because of the profits to be had from public funds and from office, people want to be in office continuously, as if they were sick and would be cured by being always in office». ARISTOTLE, *Politics*, p. 77.

⁸ J. K. SUNDARAM – A. CHOWDHURY, *Introduction: Governance and Development*, in J. K. SUNDARAM – A. CHOWDHURY (eds.), *Is Good Governance Good for Development?*, Bloomsbury Academic, London and New York 2012, pp. 3-4.

some way point out the possibility of the presence or absence of good governance, but they seem superficial at best, relying merely on perceptions, which in themselves may not necessarily reflect the truth of the matter.

Perhaps a better way is to take the approach of H. Addink. He understands good governance as one of the three cornerstones of the modern state, along with rule of law and democracy.⁹ He considers these factors to be intertwined, developing simultaneously, each benefiting from the others. Regarding the content of good governance, he enumerates six principles: the principle of properness, the principle of transparency, the principle of participation, the principle of effectiveness, the principle of accountability, and the principle of human rights.¹⁰

Some similarities may be observed between the indicators from the first approach and the principles from the second one.¹¹ However, whereas the indicators somehow concentrate more on the negative aspect of good governance (that is, they provide certain criteria to perceive symptoms of bad governance), the principles show its positive aspect (that is, they define objectives to achieve), thus opening a wide room of freedom and creativity in order to achieve the ends of the community, and not merely avoid the pitfalls of the indicators. This point ought to be highlighted, after all it is not enough that a government be free from wrongdoing for it to be considered a good government; it must also be able to deliver what is expected of it, address issues, and provide for its people. This assertion nevertheless does not rule out the actual and bigger problem that remains to be faced every day, brought about not so much by the existence of inept and sterile leaders, but by selfish and malicious ones. In fact, one may also speak of bad governance.¹²

The important thing here is to take into account the other cornerstones of the modern state—which are rule of law and democracy—and their interconnectedness. Taking these into consideration, along with the principles put forward, one can arrive at a certain modern understanding of the concept of good governance: a style or a way of governing, exercising authority, which contributes and consolidates the modern, democratic state (and its values and objectives), under the guidance of law.

⁹ H. ADDINK, *Good Governance: Concept and Context*, Oxford University Press, New York 2019, pp. 3-5.

¹⁰ The whole Part II of his book is dedicated to these principles. *Ibid.*, pp. 99-182.

¹¹ In both schemas, we find effectiveness and accountability. The indicator called voice may be likened to the principle of participation. Rule of law may be connected with the principle of properness, while the control of corruption indicator may be related to the principles of properness, accountability and transparency. And finally, the principle of human rights finds its reflection in many indicators, such as that of voice, of political stability, absence of violence, and rule of law.

¹² Cf. E. Baura's analysis of the fresco panels of Ambrogio Lorenzetti found in Siena's Palazzo Pubblico entitled «The Allegory of Good and Bad Government» (*Effetti del Buono e del Cattivo Governo nella campagna e nella città*) in E. BAURA, *Il "buon governo": diritti e doveri dei fedeli e dei pastori*, in GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO (ed.), *Il governo nel servizio della comunione ecclesiale*, Milano 2017, pp. 4-7.

2. GOOD GOVERNANCE IN THE CHURCH

2.1. *The two dimensions of the nature of the Church*

We now turn our attention to the Church. In the same way that one may arrive at an understanding what should be considered as good governance for a particular community by taking into account the objective reality (the nature of a particular community, the needs of its members, the objectives and aims to which this community strives to achieve, etc.), thus to gain an understanding of what should be considered as ecclesial good governance it is important first and foremost to have an understanding of ecclesiology.

According to Church teaching, God's «plan was to raise men to a participation of the divine life».¹³ After the fall of Adam, God sent His Son as the Redeemer. Furthermore, He «planned to assemble in the holy Church all those who would believe in Christ», and thus «the Church was constituted and, by the outpouring of the Spirit, was made manifest. At the end of time it will gloriously achieve completion, when, as is read in the Fathers, all the just, from Adam and 'from Abel, the just one, to the last of the elect,' will be gathered together with the Father in the universal Church».¹⁴ This declaration without doubt shows the very spiritual dimension of the Church: it was planned by God, made manifest through the power of the Holy Spirit, and constituted for a spiritual end: the communion of the believers with God at the end of times. This explains the teleological principle that lies at the very end of the Code of the Canon Law, of which the final canon states that the «supreme law in the Church» is the «salvation of souls».¹⁵ Thus, even the Canon law, which is a legal system like any other legal system of other secular entities and states, is primarily an instrument for the fulfillment of the spiritual end of the Church.¹⁶

¹³ VATICAN COUNCIL II, dogmatic constitution *Lumen gentium*, November 21, 1964, n. 2, in *Acta Apostolicae Sedis* (henceforth, *AAS*) 57 (1965), pp. 5-6 (English translation in https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html, accessed April 22, 2023).

¹⁴ *Ibid.*

¹⁵ *Codex iuris canonici* 1983 (henceforth, *CIC* 1983), can. 1752.

¹⁶ We state this without of course forgetting that as a human institution—and like all human institutions—law is indispensable for the Church. Cf. the Supreme Legislator's own words, with which he promulgated the revised Code of the Canon Law, and with which he outlined the necessity of law in relation to the human and divine dimensions of the Church: «In actual fact the Code of Canon Law is extremely necessary for the Church. Since, indeed, it is organized as a social and visible structure, it must also have norms: in order that its hierarchical and organic structure be visible; in order that the exercise of the functions divinely entrusted to her, especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well defined; in order, finally, that common initiatives, undertaken for a Christian life ever more perfect may be sustained, strengthened and fostered by canonical norms». ST. JOHN PAUL II, apostolic constitution *Sacrae disciplinae leges*, January 25, 1983, in *AAS* 75 (1983), p. viii (English translation in <https://www.vatican.va/content/>

It is important not to lose sight of the spiritual aspect of its nature, since this is what essentially differentiates the Catholic Church from other civil organizations, states, or any kind of community.

The final point is significant, because setting aside the supernatural dimension of the Church could mean treating it merely as a gathering of human beings who share ideas and beliefs, and nothing more, hardly any different from other human groups and communities. And no doubt it is easy to act towards it as such since our immediate and sensible contact with the Church is principally in its human dimension—with its leaders, members, laws, properties, etc.—and not with the Church as the mystical Body of Christ. Moreover, the faithful often have to deal with non-Catholics or non-believers in their day-to-day lives, speaking a common language composed of shared values in order to render oneself comprehensible to those of other beliefs. This entails the risk of getting used to talk of the Church stripped of its unique character and specific attributes, like an association among others. How then should we reconcile these two dimensions, these two ways of looking at and understanding the Church? *Lumen gentium* offers an answer:

Christ, the one Mediator, established and continually sustains here on earth His holy Church, the community of faith, hope and charity, as an entity with visible delineation through which He communicated truth and grace to all. But, the society structured with hierarchical organs and the Mystical Body of Christ, are not to be considered as two realities, nor are the visible assembly and the spiritual community, nor the earthly Church and the Church enriched with heavenly things; rather they form one complex reality which coalesces from a divine and a human element. For this reason, by no weak analogy, it is compared to the mystery of the incarnate Word. As the assumed nature inseparably united to Him, serves the divine Word as a living organ of salvation, so, in a similar way, does the visible social structure of the Church serve the Spirit of Christ, who vivifies it, in the building up of the body.¹⁷

The passage likens the Church to Jesus Christ. The incarnate Word has a divine nature, but it also has a human one that «serves the divine Word» since it is necessary for the fulfillment of redemption. In an analogical way, the Church, apart from its spiritual nature, has a human and secular outline (with its visible institutions and characteristics) which is necessary in order to fulfill its function to gather human beings in the world, and bring them—both body and soul—into communion in God’s kingdom.¹⁸

john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_25011983_sacrae-disciplinae-leges.html, accessed April 5, 2023).

¹⁷ VATICAN COUNCIL II, dogmatic constitution *Lumen gentium*, n. 8, cit., p. 11.

¹⁸ While the Church, through its ministry and through the sacraments, makes grace (which is a spiritual reality) in a certain sense tangible, the faithful are also invited by Christ and the Church to go into the world and sanctify it. This cycle, which expresses the mutual relationship between both dimensions, shows the principle of Christian dualism, which is also reflected in Christ’s incarnation, in the union of the divine and human natures in Christ, and in the presence of both body and soul in the human person. Being

2.2. *The authority that governs in the Church*

Having affirmed the human dimension of the Church, and having previously seen how a governing body is necessary in human communities, it is then only logical that a governing authority should also exist in the Church, if it is to attain its good. Despite the supernatural origin and end of the Church, following the principle of Incarnation (wherein the very nature of the human dimension is respected, and made an instrument to achieve salvation), it wouldn't be against the nature of the Church then to have a human government. On the contrary, it should facilitate in fulfilling God's plan for mankind.¹⁹

However, that there is a government in the Church is not so much the result of human reasoning, but the philosophical and theological reflection is antecedent to the fact that Jesus Christ himself instituted it within the Church, with a specific model which is hierarchical, bound to accompany the whole of the existence of the Church in the world, as taught by the Second Vatican Council.²⁰

Perhaps it would not be possible to exhaust all the concrete ways and activities relevant to the social and institutional life of the Church, but we can of course try to enumerate those which take priority and in some way already encapsulate the more specific activities: proclamation of the Gospel, formation of the faithful, administration of the sacraments and other acts of public worship, the conservation, development and the teaching of the truths of faith, and the organization of the social life and the pastoral governance of the Christian people.²¹ All these activities imply the exercise of the *tria munera* of the priesthood of Christ—the *munus docendi*, the *munus sanctificandi*, and the *munus regendi*—done for the benefit of the members of the ecclesial society, and carried out by those who have received public functions.²²

Among the many sectors and activities involved in the social and institutional life of the Church, in this study, we will specifically focus on eccle-

a channel of grace through the sacraments, the Church sanctifies man, so that he in turn may also be inspired to sanctify his family, his work, the society and the secular institutions that make it up. See C. J. ERRÁZURIZ, *Riflessioni circa il diritto canonico nell'ottica del dualismo cristiano*, in IDEM, *Chiesa e diritto. Saggi sui fondamenti del diritto nella Chiesa*, Edusc, Roma 2022, pp. 343-351.

¹⁹ M. del Pozzo notes the necessity of guiding the people of God to ensure the authenticity and integrity of the salvific patrimony, which constitute of the goods of communion. Cf. M. DEL POZZO, *La dimensione costituzionale del governo ecclesiastico*, EDUSC, Roma 2020, p. 28. The concept of goods will be discussed later in the third point of this chapter.

²⁰ «This Sacred Council, following closely in the footsteps of the First Vatican Council, with that Council teaches and declares that Jesus Christ, the eternal Shepherd, established His holy Church, having sent forth the apostles as He Himself had been sent by the Father; and He willed that their successors, namely the bishops, should be shepherds in His Church even to the consummation of the world». VATICAN COUNCIL II, dogmatic constitution *Lumen gentium*, n. 18, cit., p. 22.

²¹ J. I. ARRIETA, *Diritto dell'organizzazione ecclesiastica*, Giuffrè Editore, Milano 1997, p. 10.

²² *Ibid.*

siastical governance.²³ This activity is concerned with the social and public sphere of ecclesial life, thus it limits itself to the external forum. J. Hervada delimits its competence in the following areas: the direction, coordination and supervision of the activities of the ecclesial organization; the formulation of the fundamental, common, and general norms regarding the participation of the life of the people of God; the decision concerning doctrinal controversies and the judgment of conformity to the Gospel regarding the activities and spirituality of the faithful and the institutions; and the regulation, promotion, help, and—if such is necessary—initiating activities that properly belong not to the public sphere but the private dimension of its members.²⁴ Given that the functions of direction and governance are specific to the *munera* attributed with the episcopal ordination, these functions of governing generally coincide also with the episcopal function.²⁵

2.3. Elements of ecclesial good governance

We have considered the dual aspects of the nature of the Church, which led us to affirm both its spiritual nature and its human form and outline. Being a human society too, composed of human beings who are “political animals”—that is, beings who are capable of relating and associating with others, and who collaborate with each other in order to attain their common goals—the Church cannot but also have the same human characteristics and necessities, just like any other human community or society. Thus, it needs a certain body which governs it, gives it direction, and orders its members and activities. And in the same way the mere existence of a government does not necessarily ensure that said community will be able to reach its good, but that good governance is needed, the Church too, in order to attain its common good, requires the very same good governance to ensure the efficient exercise of authority. While perhaps certain general principles and characteristics will have to be present in all kinds of human communities, the description of what should be considered as good ecclesial government should also take into consideration the specific nature and ends of the Church.

In this regard, as a way of concretizing the rather abstract concept of “good governance” and its presence in the Church, J. Canosa offers us some elements that may be considered as essential and characteristic, which ensure

²³ Delineating semantic nuances, M. del Pozzo prefers the term «governance» in contrast with other more or less equivalent terms. The term «public function» presents a concept that is too wide and indeterminate to indicate the role of direction and management of the social life. «Power» risks relegating the diaconal aspect this role, which in fact is service, while «organization» is insufficient and ambiguous, unable to summarize the primary and basic level of the ecclesial institution. «Governance» on the other hand clearly indicates the role of giving direction, giving orientation, and taking care of a community, as well as the notion of administering and nourishing the social body, more in line with the idea of *munus pastorale*. M. DEL POZZO, *La dimensione costituzionale del governo ecclesiastico*, cit., p. 27.

²⁴ J. HERVADA, *Elementos de derecho constitucional canonico*, EUNSA, Pamplona 1987, p. 251-252.

²⁵ J. I. ARRIETA, *Diritto dell'organizzazione ecclesiastica*, cit., p. 11.

the favorable conditions that will allow the Christian faithful to answer the call to sanctity and to participate in the apostolic mission. These are: the ministerial perspective in governance, foresight, the participation of people and organisms with different responsibilities, rationality, and realism.²⁶ We might also further add the necessity of virtues.

2.3.1. Governance as ministry

In the Church, authority always ought to be understood primarily as service, as a work directed towards the benefit of the Christian faithful who are being served. In fact, all charisms and gifts are entrusted by the Holy Spirit not only for the good of those who receive them, but for the good of everyone.²⁷ In this context, there are those who receive the particular ministry of governing the Church through which they «serve their brethren, so that all who are of the People of God, and therefore enjoy a true Christian dignity, working toward a common goal freely and in an orderly way, may arrive at salvation».²⁸ It is interesting to observe, as Blessed Á. del Portillo notes, how during the Second Vatican Council, the hierarchy was characterized as a *servitium* and *ministerium*, rather than as a position of power. And the pastors (or those who exercise governance) were often qualified as *ministri*, *dispensatores*, *debitores*, or *constituti pro hominibus*.²⁹ We are no doubt reminded of Jesus' own words,³⁰ and his actions, especially when he washed the apostles' feet.³¹ Following his example, the subject of this ministry should always be aware how the function of governance is not to be flaunted, is not to be wielded according to one's caprice, but exercised with humility and discretion, always remembering its instrumentality and precariousness.³²

²⁶ Cf. J. CANOSA, *La consideración del buen gobierno en la Iglesia como un derecho de los fieles*, «Ius Canonicum», 62 (2022), pp. 635-642. This list of course does not pretend to be exhaustive and conclusive, but is rather a result of finding common denominators among examples of good governance in the history of the Church.

²⁷ «To each is given the manifestation of the Spirit for the common good» (1 Corinthians 12:7).

²⁸ VATICAN COUNCIL II, dogmatic constitution *Lumen gentium*, n. 18, cit., pp. 21-22.

²⁹ Á. DEL PORTILLO, *Fieles y laicos en la Iglesia*, EUNSA, Pamplona 1991³, pp. 60-61. Cited by J. CANOSA, *La consideración del buen gobierno en la Iglesia como un derecho de los fieles*, cit., p. 635, footnote 17.

³⁰ For example, we recall how he said that «the Son of Man came not to be served but to serve» (Matthew 20:28).

³¹ John 13:1-17. Cf. Pope Francis' words on the synodal nature of the Church: «But in this Church, as in an inverted pyramid, the top is located beneath the base. Consequently, those who exercise authority are called "ministers", because, in the original meaning of the word, they are the least of all. It is in serving the people of God that each bishop becomes, for that portion of the flock entrusted to him, *vicarius Christi*, the vicar of that Jesus who at the Last Supper bent down to wash the feet of the Apostles». FRANCIS, *allocutio occasione L anniversariae memoriae ab inita Synodo Episcoporum*, October 17, 2015, cit., p. 1142.

³² M. DEL POZZO, *La dimensione costituzionale del governo ecclesiastico*, cit., p. 65.

Given that the ministerial element is essentially founded on the figure of Christ, another characteristic of Jesus that is very much related to ministry is also that of a pastor, since Jesus is the Good Pastor. In this sense, one could synthesize the two metaphors—that of a minister and that of a pastor—by understanding the ministry of a pastor as that of serving the flock to which he is entrusted with. The Good Pastor leads the sheep towards «green pastures», the «still waters», refreshing the soul of the faithful.³³ He does not only provide for the material and physical needs of the flock (which is important, given the human dimension of the Church), but seeks the wholistic and integral good of the people, which includes their moral formation and spiritual needs. He never loses sight of both dimensions, and in this regard, one could consider good governance as a fruit of the union between the supernatural and human dimensions, because the supernatural does not substitute the natural, but instead human reason embraces grace so that the former may further widen its horizons.³⁴ The equilibrium between both dimensions—which can also be expressed as equilibrium between justice and charity—is of utmost importance, lest we fall into the trap of either *pastoralismo* or *giuridicismo*, both consequences of a dialectical distortion between the two elements.³⁵

Thus, much is demanded from those who exercise authority. First and foremost, some form of preparation or expertise is necessary, because «*se quiere servir [...] hay que servir*».³⁶ This is also reflected in the phrase «leaders are made, not born». On the other hand, it would also be right that certain conditions may be required before a specific person may be designated with any function that implies the exercise of ecclesiastical power. The fact that there are already in place canonical norms that regulate this matter goes to show the

³³ Psalm 23.

³⁴ M. DEL POZZO, *La dimensione costituzionale del governo ecclesiastico*, cit., p. 69. On pages 83-86 of the same book, he discusses on the idea God's presence among his people is made concrete and real by the identification of those in authority with Jesus Christ, both in a functional and in a personal manner (*immedesimazione con la capitalità di Cristo*). In this sense, they are to be seen as vicars of Christ (*vicarietà cristologica del governo ecclesiastico*).

³⁵ This dialectical distortion is founded on the idea that pastoral activity (together with the concepts of freedom and charity) and Canon law (as well as the concepts of justice, the institutions, and the juridical dimension of the Church) are mutually exclusive. While *pastoralismo* is the excessive focus on pastoral activity, spontaneity, and flexibility (as opposed to *pastoralità*, which is a balanced understanding of the pastoral dimension that does not do away with other elements), *giuridicismo* points towards the other extreme, which tends towards the rigidity of legalism and normativism, highlighting the unrelenting respect towards the law and juridical institutions, to the detriment of genuine Christian charity and the notion of *epicheia*. Cf. C. J. ERRÁZURIZ, *Riflessioni circa il rapporto tra diritto e pastorale nella Chiesa*, in IDEM, *Chiesa e diritto. Saggi sui fondamenti del diritto nella Chiesa*, cit., pp. 131-142.

³⁶ This pun plays upon the fact that the Spanish word *servir* both implies the idea of being useful or being of help (to serve), and at the same time to have need of something (in this case, what one needs in order to have the ability or capacity to serve). Thus, before being able to serve in a particular manner, one has to be formed or learn the necessary skills in order to be capable. J. CANOSA, *La consideración del buen gobierno en la Iglesia como un derecho de los fieles*, cit., p. 637.

concern of the Supreme Legislator that the whole apparatus of ecclesiastical governance functions well because competent people make sure that it does for the good of the Church.³⁷ These prerequisites may be subsumed under the concept of “suitability,” which «expresses a judgment about the propriety (or lack of it) of a person to perform a certain act or be vested with some responsibility or honour, based on the onus implied by the responsibility and the capability of the person to fulfill it under given circumstances».³⁸ This suitability would have to be verified of course, and the Church has long practiced this examination in the process of evaluating candidates for the priesthood (who, for the major part, would occupy the offices of ecclesiastical governance).³⁹ Hopefully, these procedures of evaluation would not only remain as mere formalities, but rather the starting point for a serious discernment of the needs of a particular ecclesiastical setting, and the diligent search of the most apt person to govern that specific portion of God’s people. Not only that, this

³⁷ «The legislator’s insistence on the suitability of candidates to be invested with ecclesiastical offices places the good of the Church first above subjective interests of individual members in the distribution and exercise of ecclesiastical responsibilities and powers». B. N. EJEH, *The Principle of Suitability in the Provision of Ecclesiastical Offices in the 1983 Code of Canon Law*, «Ius Ecclesiae», 20 (2008), p. 589.

³⁸ *Ibid.*, p. 574. The different elements with which suitability could be gauged may be synthesized as follows: fundamental suitability (concerning the essential constitution of the human person, which could be on the natural level, that is, «on the natural constitution of the human person as male or female», or the supernatural order «due to a sacramental configuration within the Ecclesial community, which fundamentally qualifies him to validly possess and exercise an ecclesiastical office»), communion with the Church (through baptism, and through adherence to the faith of the Church and allegiance to the authority that governs it), moral suitability («refers the state of worthiness of the candidate to be entrusted with the responsibilities of the office on the one hand, and on the other hand to be a vehicle of the spiritual values embedded in the office»), maturity (determined through «the objective criterion of age»), appropriate knowledge (of what constitutes a particular office to be assumed: «its nature, its duties, its goals, its limits, etc.»), and the absence of any ecclesiastical censures, irregularities, and impediments (pp. 575-583).

³⁹ Cf. A. VIANA, *La comprobación de la idoneidad para el oficio eclesiástico y el orden sagrado*, «Ius Ecclesiae», 28 (2016), pp. 345–366, wherein he presents the means by which the suitability of candidates for the clerical order and also for ecclesiastical offices are verified (which are: signed documents and declarations, examinations, personal knowledge of candidates, individual and collegial consultations, and personal reports). On his part, F. Puig analyzes the canonical context for the appointment of episcopal sees (or capital offices), the aspects of which are significant towards the respect of the right of the faithful to good governance. F. PUIG, *Anotaciones acerca de la provisión de oficios capitales como acto jurídico y como acto de gobierno*, «Ius Canonicum», 57 (2017), pp. 761–797; cf. IDEM, *La provvista dell’ufficio episcopale come azione di governo relativa all’organizzazione istituzionale della Chiesa*, «Ius Ecclesiae», 29 (2017), pp. 353–380. On her part, G. Boni calls for more involvement on the part of the lay faithful in the procedure for the provision of ecclesiastical offices, which is a very important part of governance, since they too are invited to be co-responsible through what she calls «*indiretta soprintendenza [...] sempre orientate al bonum commune, sia quindi davvero buon governo a cui tutti i fedeli, senza ostracismi, si possono e devono sentire interpellati*». G. BONI, *Il buon governo nella Chiesa. Inidoneità agli uffici e denuncia dei fedeli*, Mucchi Editore, Modena 2019, p. 52 (emphasis in original).

discernment for the needs of a specific reality (be it a diocese or a religious community) should also be integrated into the formation of its members, so that this contextualized formation may better prepare the future ministers for the particular milieu they will find themselves in their ministry.

2.3.2. The element of prevision

Prevision seems to be more characteristic to the legislative function of government,⁴⁰ since it is this function which properly adopts the farsighted and long-term perspective in order to come up with laws that are general and abstract, ensuring their wider coverage and stability for a longer period of time. This is not to say however that foresight is not utilized in the other two functions, since the executive power may be able to issue decrees and should always be careful in its decisions since they could set a precedent, while the decisions made by the judicial power can influence the course of jurisprudence.

In general, prevision is important for governance since good and effective decisions cannot be a product of improvisation or spontaneous choices, bereft of careful judgment, but requires time to study a particular context and weigh the different possibilities at one's disposal. It is no wonder that the concepts of ponderation and discernment are often related to governance. This point also connects with other elements, such as rationality and realism (the use of reason to study and analyze the general needs of a particular community or the specific needs of specific people), and the offering of space to also allow the Christian faithful to express themselves and participate (because by involving more perspectives, it may be possible to gain an even wider and more comprehensive grasp of reality).

The necessity of foresight in ecclesial administration is also expressed in these examples: Canon law has already set forth requirements for eligibility and the process for the appointment of functions of government, as well as the procedure and elements needed to be able to produce certain acts of governance.⁴¹ The risk of leaving certain decisions completely under the will of an authority were already anticipated, and so these measures were set in place.

Given that ecclesial good governance ultimately is directed towards the salvation of souls, prevision also takes into consideration not only the temporal aspect of governance but should never lose sight of the even wider perspective of eternity and transcendence.⁴²

⁴⁰ This division of power—or, at least in the Church, the distinction of power—will be discussed subsequently.

⁴¹ J. CANOSA, *La consideración del buen gobierno en la Iglesia como un derecho de los fieles*, cit., pp. 637-638. Particularly with regards to the administrative function, cf. IDEM, *I principi e le fasi del procedimento amministrativo nel diritto canonico*, «Ius Ecclesiae», 18 (2016), pp. 551-577.

⁴² J. CANOSA, *La consideración del buen gobierno en la Iglesia como un derecho de los fieles*, cit., p. 637.

2.3.3. Participation of people and organisms with different responsibilities

Participation is not only a manner by which prevision may be realized—as is affirmed in the previous point—but is also a reflection of the very constitution of the Church. Although we have already seen that Jesus is the one true shepherd of his flock, he instituted some members as «human shepherds», his vicars here on earth whose task it is to lead his sheep according to the dictates of Jesus who is «the Good Shepherd and the Prince of the shepherds».⁴³ Thus, the hierarchy—in fulfilling their ministry—participates in Christ's salvific work.

Essential to the right operation and fulfillment of roles in a community is the respect towards the juridical relationships between the subjects. For example, in the procedure of a formation of a singular administrative act, it would be of great help to everybody if those who happen to have rights and interests involved in a particular act would be able to express their opinion and side on the matter. Otherwise, how would the public administration be able to have an objective view of a certain situation without taking into consideration the very people who will be directly affected by an act, and who ought to benefit from this service?⁴⁴ Additionally, besides the rather variable nature of the opinions of interested parties, the Code provides for the intervention of certain collegial bodies for the valid realization of certain acts, like for example in the alienation of diocesan properties.⁴⁵

In this context perhaps we can even remember the call of the Holy Father Pope Francis for the Church to recognize its synodal nature, synodality being a «constitutive element of the Church».⁴⁶ The challenge posed by this call is to provide a space in the Church wherein everyone can speak «with *parrhesia*» and everyone ought to «listen with humility and welcome, with an open heart», what others say.⁴⁷ By initiating this constant dialogue with the members of the ecclesial community, everyone then is made to participate in the work of edifying the Church. In effect, the «spirit and practice of synodality means that the leaders in the Church serve more effectively, having been informed more clearly of the pastoral needs of their communities. Synodality connects leaders to the basic needs of those to whom the leaders minister. It demon-

⁴³ VATICAN COUNCIL II, dogmatic constitution *Lumen gentium*, n. 6, cit., p. 8.

⁴⁴ Aside from providing a forum wherein the interested party may be able to express themselves, the authority should also do its part to encourage participation by—utilizing the principle of publicity—manifesting the relevant information regarding a particular context and situation, communicating beforehand a decision to be made, explaining the reason behind it, etc. J. MIRAS – J. CANOSA – E. BAURA, *Compendio di diritto amministrativo canonico*, Edusc, Roma 2009², p. 178.

⁴⁵ See CIC 1983, can. 1292 §1.

⁴⁶ FRANCIS, allocutio occasione *L anniversariae memoriae ab inita Synodo Episcoporum*, cit., p. 1141.

⁴⁷ FRANCIS, allocutio dum *Papa Synodales Patres salutatur*, October 6, 2014, in AAS 106 (2014), p. 834 (English translation in https://www.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141006_padri-sinodali.html, accessed April 25, 2023).

strates awareness that ecclesial authority and leadership is a practical service, and that those serving and those served are fellow travelers on a common journey».⁴⁸

This factor also coincides with the «voice» previously referred to in the World Bank’s Governance Indicator schema.⁴⁹

2.3.4. Rationality and realism

By rationality, we obviously refer to the act of reasoning. According to St. Thomas, man arrives at the knowledge of truth by moving «from one thing understood to another» or through an «intellectual process»⁵⁰ that is by mental reasoning. And this truth, which is the object of intellect, «is defined by the conformity between intellect and thing».⁵¹ This understanding explains why both elements—rationality and realism—may be lumped together, because to be rational is to have contact with reality, to recognize its nature. Rationalism is not reason confined behind its own shackles, nor does it do away with the material world. Instead, it is anchored on reality and upholds it fully. To govern well, for example, is not simply to impose a state of affairs—copied from another context, or a product of a utopian theory—into a different setting, wishfully thinking that what functions in a given situation should also function in all situations. Rather, to govern well means to recognize the similarities that are present across different realities, but also to scrutinize the differences and the specificities of each one, knowing well that even minute details can demand an application that is widely divergent from what is common. And aside from actual differences and variations that may exist in the present moment, one must also take account how human consciousness can also change through time, brought about by economic and cultural progress, or an even more profound understanding of human nature and society. To flatten every aspect of a situation and treat everyone in the same way, or to retain certain norms of operation or procedure without even asking if they still correspond to the present needs would be an outright neglect of one’s duties caused by lack of concern and intellectual laziness, which in the end would be a disservice to the people of God.

Aside from this close relationship with reality, rationality in a wider sense could also refer the achievements or discoveries brought about by the con-

⁴⁸ J. A. RENKEN, *Synodality: A Constitutive Element of the Church. Reflections on Pope Francis and Synodality*, «*Studia Canonica*», 52 (2018), p. 35.

⁴⁹ Perhaps we may offer some normative examples, like can. 50 («Before issuing a singular decree, an authority is to seek out the necessary information and proofs and, insofar as possible, to hear those whose rights can be injured») or can. 1215 §2 («The diocesan bishop is not to give consent unless, after having heard the presbyteral council and the rectors of the neighboring churches, he judges that the new church can serve the good of souls and that the means necessary for building the church and for divine worship will not be lacking»).

⁵⁰ THOMAS AQUINAS, *Summa Theologiae*, I, q. 79 a. 8.

⁵¹ THOMAS AQUINAS, *Summa Theologiae*, I, q. 16 a. 2.