

# The Powers of the Diocesan Administrator

*Brendan Daly\**

I am from Christchurch Diocese, a suffragan diocese of Wellington Archdiocese, a metropolitan see. During the past forty years, one diocesan bishop has resigned and was replaced by his coadjutor. This former coadjutor died soon afterwards. The next bishop resigned and was simultaneously replaced by the appointment of his auxiliary. The next two bishops died and created vacant sees. Usually there are significant time gaps between vacant sees, resulting in each vacancy being a new experience for the key people involved.

Vacancy is the ‘event and period of time which occurs when a diocese experiences a change in its diocesan bishop’.<sup>1</sup> Vacant sees have been administered in various ways throughout the history of the church. For about the first 500 years, the clergy in the vacant diocese simply provided for its own needs, but from about 500 to 1000 AD secular leaders appointed an individual to administer a vacant diocese. Saint Gregory the Great called such individuals ‘visitors’. The cathedral chapter governed vacant dioceses from 1000 to 1500 AD, and since then, the clergy of the vacant diocese has usually selected a single cleric called a vicar capitular to govern the vacant diocese. Since 1983 this cleric has been called a diocesan administrator.

When Saint Cyprian (200–258) was forced from Carthage, effectively creating a vacant see, he wrote to his clergy, stating that ‘I ask you for the sake of your faith and religion to discharge there [in Carthage] both your parts and mine, so that nothing may be lacking either in discipline or in diligence’.<sup>2</sup> Soon

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\* Brendan Daly, a priest of the Diocese of Christchurch, is Judicial Vicar of the Tribunal in New Zealand and lectures in canon law at Good Shepherd College. He is the author of *Canon Law in Action* (Strathfield, NSW: St Pauls, 2015).

1. Aaron Nord, *Sede Vacante Diocesan Administration* (Rome: Gregorian University, 2014), 306.  
 2. Saint Cyprian, ‘peto uos pro fide et religione uestra fungamini illic et uestris partibus et meis, ut nihil uel as disciplinam uel ad diligentiam desit’, *Epistula* 5, 1, 27, quoted in Nord, *Sede Vacante Diocesan Administration*, 29.

after this, during the persecution of Decius, the clergy of Rome wrote to Cyprian concerning their vacant see:

Before the constitution of the bishop, we think that nothing should be innovated, but we believe that the care of the lapsed must be moderately tempered, such that, in the interim, while one waits for God to give us a bishop, the care of those who can bear the delays of a postponement are held in suspense. But the case of those whose outcome, pressing hard on the end of their life, cannot bear a delay, [such a case,] with penance done and with detestation for their deeds frequently professed—if with tears, if with groans, if with weeping they produce signs of a suffering and truly penitent mind, when no hope of living according to man remains—in the end [such a case can] be helped cautiously and with anxious care. For God himself knows what he will do about such ones and how he will consider the burdens of his judgment, while we, however, anxiously take care lest either impious men praise our spineless easiness or the truly penitent accuse our hard near-cruelty.<sup>3</sup>

The clergy resolved the urgent cases of the lapsed, but left the other cases until there was a new bishop to resolve them.

From the canonical wisdom over the centuries, Aaron Nord outlines four canonical principles:

- (1) *Succour*: Continue the work of the bishop while he is absent
- (2) *Restraint*: Restrain your action because you are not the absent bishop
- (3) *Defence*: Defend the diocese from violations until the bishop is present
- (4) *Continuity*: Follow the tracks left by the last bishop.<sup>4</sup>

Nord developed the chart on next page to explain the principles:

### ***The Vacant See***

Most dioceses experience a vacant see and having a diocesan administrator at regular intervals. There are four possible causes of the vacancy of the see: (1) the death of the diocesan bishop; (2) his resignation accepted by the Roman Pontiff; (3) his transfer to another diocese and (4) his deprivation of or removal from office. The beginning of the vacancy is clear in the causes of death, resignation and deprivation. When the diocesan bishop is transferred to another diocese, canon 418 explains the scenario:

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3. Cyprian, *Epistula* 30, 8, 149–50, quoted in Nord, *Sede Vacante Diocesan Administration*, 30.

4. Based on Nord, *Sede Vacante Diocesan Administration*, 18, 27.

<b>Name</b>	<b>Directive</b>	<b>Why</b>	<b>Examples</b>
Succour	Continue the work of the bishop while he is absent.	The diocese's faithful still need some things that the bishop does when he is present.	Appoint parish administrators when a parish priest dies.
Restraint	Restrain your action because you are not the absent bishop.	The bishop and the diocese have a unique bond. Some actions belong only to the bishop, not to the temporary replacements.	Do not reorganise the parishes of the diocese.
Defence	Defend the diocese from violations until the bishop is present.	When the diocese has no bishop, the unscrupulous more easily take advantage of the diocese.	Do not sell diocesan property.
Continuity	Follow the tracks left by the last bishop.	Acting differently to the last bishop tends to waste effort.	Don't change vocations director.

Canon 418 §1 Upon certain notice of transfer, a bishop must claim the diocese to which he has been transferred [*ad quam*] and take canonical possession of it within two months. On the day that he takes possession of the new diocese, however, the diocese from which he has been transferred [*a qua*] is vacant.

§2 Upon certain notice of transfer until the canonical possession of the new diocese, a transferred bishop in the diocese from which he has been transferred:

1/ obtains the power of a diocesan administrator and is bound by the obligations of the same; all power of the vicar general and episcopal vicar ceases, without prejudice to can. 409, §2;

2/ receives the entire remuneration proper to this office.

The original diocese becomes vacant on the day that the bishop takes possession of the new diocese. The reality is that no one knows how long the diocese must wait for a new bishop. This uncertainty makes the situation more difficult to manage. Vacant sees are either a metropolitan see or one of the suffragan sees that with the metropolitan see constitute an ecclesiastical province. Aaron Nord carried out a study of vacancies in dioceses in the United States, producing this table for vacancies sorted by expected duration:

<b>Name</b>	<b>Description</b>	<b>Chief Characteristic of the Vacancy</b>	<b>Suggested Guidelines for a Diocesan Administrator</b>
Very short	New Bishop named by Holy See when vacancy occurred	The identity of the new bishop and the duration of the vacancy is known from the start.	<ul style="list-style-type: none"> <li>— Avoid decisions that affect the freedom of decision making by the new bishop.</li> <li>— Consult with new bishop before hard to reverse actions.</li> <li>— Continue preparatory steps for innovations and alienations.</li> </ul>
Short	Archdiocese not in very short class vacancy	The vacancy's end probably comes before a year passes. In any case, the vacancy will last not much longer than a year.	<ul style="list-style-type: none"> <li>— Early in vacancy, do not reserve beneficial acts for next bishop.</li> <li>— Suspend processes that prepare for innovations and alienations.</li> <li>— Hold back from reforms that will take longer than a year.</li> <li>— Near one year mark, begin to govern as in a very short vacancy.</li> <li>— Make parochial administrators pastors after 1 year, but continue to assign administrators to the newly vacant parishes.</li> </ul>
Long	Suffragan diocese not in very short class of vacancy	No matter how long vacancy has lasted, one cannot be confident a new bishop will come soon.	<ul style="list-style-type: none"> <li>— Govern as if diocese will not have bishop soon.</li> <li>— Use full powers given by the law.</li> <li>— Apostolic administrators can take the laws restraining diocesan administrators as guidelines.</li> </ul>

When the diocese has one or more auxiliary bishops at the time it becomes vacant, the senior auxiliary bishop governs the diocese until the election of the diocesan administrator.<sup>5</sup> If the diocese has no auxiliary bishop, then the college of consultors governs the diocese. The college of consultors is described as follows:

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5. Canon 419 When a see is vacant and until the designation of a diocesan administrator, the governance of a diocese devolves upon the auxiliary bishop or, if there are several, upon the one who is senior in promotion. If there is no auxiliary bishop, however, it devolves upon the college of consultors unless the Holy See has provided otherwise. The one who so assumes governance of the diocese is to convoke without delay the college competent to designate a diocesan administrator.

Canon 502 §1 From among the members of the presbyteral council and in a number not less than six nor more than twelve, the diocesan bishops freely appoints some priests are to constitute for five years a college of consultors, to which belongs the functions determined by law. When the five years lapse, however, it continues to exercise its proper functions until a new college is established.

Once a priest is a member of the college of consultors, he continues as a member even if he is no longer a member of the Council of Priests.<sup>6</sup>

When the see becomes vacant, the consultors must convene within eight days to elect the diocesan administrator. In practice this election usually takes place within a day of the diocese becoming vacant. If there is no auxiliary bishop, then the priest 'who is senior in ordination in the college of consultors presides' over the election of the diocesan administrator.<sup>7</sup> The law concerning the election is in canon 421:

Canon 421 §1 The college of consultors must elect a diocesan administrator, namely the one who is to govern the diocese temporarily, within eight days from receiving notice of the vacancy of an episcopal see and without prejudice to the provisions of Can. 502 §3.

§2 If a diocesan Administrator has not been legitimately elected within the prescribed time for whatever cause, his designation devolves upon the metropolitan and if the metropolitan church itself is vacant, or both the metropolitan and the suffragan churches are vacant, it devolves upon the suffragan bishop senior in promotion.

The election must follow the law on elections in canons 165–78. The diocesan administrator takes possession of the governance of the diocese merely by accepting his election.<sup>8</sup> He should then make a profession of faith.<sup>9</sup> He is to report his election to the Holy See, normally through the apostolic nuncio.<sup>10</sup> If the priest elected was the diocesan financial administrator, then he must resign that position.<sup>11</sup>

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6. Pontifical Council for the Interpretation of Legislative Texts, response 'Concerning the Stability and Replacement of a Consultor', 26 June 1984, AAS 76 (1984): 747.

7. Canon 502 §2 The diocesan bishop presides over the college of consultors. When a see is impeded or vacant, however, the one who temporarily takes the place of the bishop or, if he has not yet been appointed, the priest who is senior in ordination in the college of consultors presides.

8. Canon 427 §2 When he has accepted election, the diocesan administrator obtains power and no other confirmation is required, without prejudice to the obligation mentioned in can. 833, n. 4.

9. Canon 833 no. 4 In the presence of the college of consultors, the diocesan administrator.

10. Canon 422 An auxiliary bishop or, if there is none, the college of consultors is to inform the Apostolic See of the death of a bishop as soon as possible. The one elected as diocesan administrator is to do the same concerning his own election.

11. Canon 423 §2 A diocesan administrator is not to be the finance officer at the same time. Therefore, if the Finance officer of the diocese has been elected as administrator, the Finance council is to elect a temporary Finance officer.

**Obligations and Powers of the Diocesan Administrator**

Once elected, the diocesan administrator has the same powers and obligations as a diocesan bishop:

Can. 427 §1 A diocesan administrator is bound by the obligations and possesses the power of a diocesan bishop, excluding those matters which are excepted by their nature or by the law itself.

§2 When he has accepted election, the diocesan administrator obtains power and no other confirmation is required, without prejudice to the obligation mentioned in canon 833 no. 4.<sup>12</sup>

This canon enshrines the fundamental principle that the diocesan administrator governs with the power of a diocesan bishop. The following canons place some limitations on the exercise of that power. He has the obligations of residence in the diocese and is required to offer Mass for the people.<sup>13</sup> He is obliged to go on the *ad limina* visit if one occurs during the time that he is diocesan administrator. If it is a long vacancy, he has the obligations of canonical visitation of parishes. The diocesan administrator has broad executive powers and can delegate<sup>14</sup> responsibility and powers, as well as dispense<sup>15</sup> from many disciplinary laws.<sup>16</sup> However, he cannot judge briefer process marriage cases.<sup>17</sup>

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12. All translations of the 1983 *Code of Canon Law* are by the Canon Law Society of America.
  13. Canon 429 A diocesan administrator is obliged to reside in the diocese and to apply Mass for the people according to the norm of can. 388.
  14. Canon 137 §1 Ordinary executive power can be delegated both for a single act and for all cases unless the law expressly provides otherwise.
  15. Canon 427 §1 A diocesan administrator is bound by the obligations and possesses the power of a diocesan bishop, excluding those matters which are excepted by their nature or by the law itself.
  16. Canon 1683 The diocesan bishop himself is competent to judge the cases of the nullity of marriage with the briefer process whenever:
    - 1° the petition is proposed by both spouses or by one of them, with the consent of the other;
    - 2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest. Canon 427 is also important.
  17. Pontifical Council for Legislative Texts, Private Letter on the Meaning of ‘Diocesan Bishop’ in *Mitis Iudex Dominus Iesus*, 1 September 2017, Prot. N. 15983/2017: ‘By the term “diocesan bishop,” employed by the m.p. *MIDI*, are also understood all those who are made equivalent to the diocesan bishop. According to canons 134 §3, 381 §2 and 368 *CIC*, those who preside over territorial prelatures, territorial abbaties, apostolic vicariates, apostolic prefectures and apostolic administrations erected in a stable manner are equivalent to the diocesan bishop ... In the case of “sede vacante” of a diocese, the auxiliary bishop, the diocesan administrator and the judicial vicar cannot judge the briefer process because they possess only those powers that the law attributes to them and not those specifically attributed to the diocesan bishop (cf. cc. 134 §3 and 427 §1 *CIC*). In the case of a diocese with a large territory, the diocesan bishop cannot delegate to the auxiliary bishop his power to judge the briefer process (cf. c. 135 §3 *CIC* and III of m.p. *MIDI*). <http://www.cisadb.com/document/40f1b351-acec-4f3a-ab78-d06352d37ff6>.

Some actions can only be performed by a bishop; for example, blessing the oil of chrism or ordinations are excluded by their nature if the diocesan administrator is not a bishop.

A diocesan administrator can resign by presenting his resignation to the college of consultors for their acceptance and then notify the Holy See through the nuncio.<sup>18</sup> The consultors would then have to elect a new diocesan administrator.

When a new diocesan bishop is appointed, he takes possession of the diocese according to canon 382 §3:

Canon 382 §3 A bishop takes canonical possession of a diocese when he personally or through a proxy has shown the apostolic letter in the same diocese to the college of consultors in the presence of the chancellor of the curia, who records the event.

The diocesan administrator retains his powers until the new diocesan bishop takes possession of the diocese. It may be helpful if the diocesan administrator hands over a report about what has been happening during the vacancy of the see so that the new bishop is given a good introduction to the diocese.<sup>19</sup>

The diocesan administrator is a member of the episcopal conference with a deliberative vote.<sup>20</sup> However, if he is not a bishop, he does not have authority to participate in doctrinal declarations.

### ***‘Nihil Innovetur’ Principle***

When the see is vacant the ancient canonical principle *sede vacante nihil innovetur* applies. But the application of this principle can be impacted by the length of the vacancy of the see. Canon 428 states:

Canon 428 §1 When a see is vacant, nothing is to be altered.

§2 Those who temporarily care for the governance of the diocese are forbidden to do anything which can be prejudicial in some way to the diocese or episcopal rights. They, and consequently all others, are specifically prohibited, whether personally or through another, from removing or destroying any documents of the diocesan curia or from changing anything in them.

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18. Canon 430 §2 The removal of a diocesan administrator is reserved to the Holy See. If an administrator resigns, the resignation must be presented in authentic form to the college competent to elect, but it does not need acceptance. If a diocesan administrator has been removed, resigns, or dies, another diocesan administrator is to be elected according to the norm of can. 421.

19. Robert Hyde, ‘The Vacant See in Canon Law: Pertinent Canonical Issues’ (JCL thesis, Catholic University of America, Washington, DC, 1995), 51–2.

20. Congregation for Bishops, Directory for the Pastoral Ministry of Bishops, *Apostolorum Successores* (Rome: Libreria Editrice Vaticana, 2004), nn. 31, 240.

While the diocesan administrator has all the power of a diocesan bishop, canon 428 §1 states clearly the general principle that when the diocese is vacant, nothing is to be altered and there is to be no innovation. The diocesan administrator is holding power temporarily. He is to maintain the status quo of the diocese until a new diocesan bishop is appointed and takes possession of the diocese.<sup>21</sup> This means that the diocese is to function as much as possible as it has been functioning under the previous diocesan bishop. The principle of *sede vacante nihil innovetur* encourages the diocesan administrator to incline towards refraining from making major decisions and to avoid starting new programs or initiatives. Soler explains the application of this principle:

It seems that the diocesan administrator must, by virtue of this principle, seek to have everything function and continue to be decided *in the same way that it was usually done when the see was occupied*. That is, in all matters—be they pastoral, governmental, canonical etc.—the administrator must bear in mind that his function is to provisionally guarantee the continuity of the governance of the diocese, and that it is not appropriate for him to govern with an overly personal style.<sup>22</sup>

This would include no parish mergers, no new building unless in progress, no alienation of property unless in progress.<sup>23</sup> E. Molano, J. Punderson and G. Read consider that actions that benefit the diocese are not prejudicial;<sup>24</sup> however, Gordon Read notes the requirement of no innovations:

From the broad general principle [canon 428 §1], the law derives a more particular norm: those in charge of the diocese are to do nothing which might harm or restrict the rights of the incoming bishop [canon 428 §2]. They are free to act for the benefit of the diocese provided that this does not offend the general principle of §1.<sup>25</sup>

Consequently, while beneficial acts are not prejudicial, they may be prohibited innovations.

Once the vacancy of the see occurs, the diocesan pastoral council and the priests' council cease to exist, with the priests' council's functions being assumed by the college of consultors.<sup>26</sup> All the vicars general and episcopal

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21. John Renken, *New Commentary on the Code of Canon Law* (New York: Paulist, 2000), 556.  
 22. Carlos Soler, *Exegetical Commentary* (Montreal: Wilson and Lafleur, 2004), vol. 2, no. 1, 918.  
 23. Barbara Cusack, 'Navigating the Vacant See', in Canon Law Society of America, *Proceedings of the Seventy-Second Annual Convention 2010* (Washington, DC: Canon Law Society of America, 2010), 141.  
 24. Nord, *Sede Vacante Diocesan Administration*, 100.  
 25. Gordon Read, in *The Canon Law: Letter and Spirit*, ed. G. Sheehy et al. (Sydney: E.J. Dwyer, 1995), 240.  
 26. Canon 501 §2; canon 513 §2.



vicars lose their offices. The Directory for the Pastoral Ministry of Bishops, *Apostolorum Successores*, states concerning the office of the apostolic administrator when the see is vacant:

The offices of the Vicar general and episcopal Vicars cease, as well as the functions of the presbyteral and pastoral councils. The apostolic administrator may confer delegated power upon the Vicar general and episcopal Vicars until the new bishop takes possession of the see, but he may not extend the powers of the councils, since their functions are fulfilled by the college of consultors.<sup>27</sup>

What is said about the apostolic administrator applies to the diocesan administrator, who has the power to carry out the duties of the vicar general and episcopal vicars. However, for the sake of continuity it is usually best if the diocesan administrator appoints the vocations director to continue his role and appoints the vicar for education as the Deputy for Education or to a similar title such as Delegate for Education. The Episcopal Vicar for Marriage could become the Deputy for Marriage etc. The powers and responsibilities of these office-holders can then be clearly spelt out in their letters of appointment. This should result in the clergy and laity in the diocese feeling that there is a real sense of continuity with the administration of the previous bishop. The diocesan administrator may confer the sacrament of confirmation and delegate another priest to confirm.<sup>28</sup>

The law concerning the diocesan administrator favours a continuity of decisions and administration from those of the previous bishop. If matters arise that are of a serious nature involving changes in key structures and fundamental directions or policy, it is best that they be left for the future bishop to decide.<sup>29</sup>

### ***Confidential Information***

The diocesan administrator must ensure the integrity of the information held by the diocese.<sup>30</sup> He is specifically forbidden to do anything that could be prejudicial to the diocese or episcopal rights. The diocesan administrator and all other persons are forbidden to remove, destroy, or modify any documents of the diocesan curia, either personally or by getting someone else to do it. It can be tempting for individuals to purge their personal files or other files to remove material that is damaging to them personally or to their friends. Sometimes

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27. Congregation for Bishops, *Apostolorum Successores*, nn. 244, 268.

28. *Ibid.*, n. 240; Congregation for Divine Worship and the Discipline of the Sacraments, reply to a *dubium*, *Notitiae* 35 (1999): 160.

29. Canon 428.

30. Canon 428 §2 Those who temporarily care for the governance of the diocese are forbidden to do anything which can be prejudicial in some way to the diocese or episcopal rights. They, and consequently all others, are specifically prohibited, whether personally or through another, from removing or destroying any documents of the diocesan curia or from changing anything in them.

individuals have sought to rewrite letters or reports, or to find out damaging information about others. The diocesan administrator must carefully ensure this behaviour does not happen.

Only the diocesan administrator is to have access to the secret archive or safe of the diocese. Also, he can access it only in a case of true necessity.<sup>31</sup> The law provides a just penalty, according to the gravity of the crime, for those who violate this law.<sup>32</sup>

Information concerning sexual abuse or misconduct is especially sensitive during the vacancy of the see. The diocesan administrator cannot open the secret archive or safe during the vacancy of the see unless it is a case of real necessity.<sup>33</sup> Practically speaking he is going to need to share information with any delegate investigating complaints and the sexual abuse protocol committee as necessary. If the sexual abuse protocol committee is diocesan-based, then the diocesan administrator should be ensuring continuity of personnel and procedures. If he is wanting to make changes for a grave reason he would need the consent of the consultors. If the previous bishop was dealing with sexual abuse complaints as part of a provincial arrangement or under the auspices of the bishops' conference, then that should continue.

### ***Decision-Making and Actions of the Diocesan Administrator***

It is important that as much as possible the normal ecclesial life of the diocese continues and does not collapse or shut down unnecessarily. Sometimes there can be debate over whether a decision or an action is an innovation or not. In practice, unless the law specifically addresses an issue, an action of the diocesan administrator is not invalid even though it is an innovation.

Decisions concerning the diocese must still be made. John Renken identifies three categories of decisions:

- (a) certain decisions which the diocesan administrator may never take
- (b) decisions that may be made with the consent of the college of consultors

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31. Canon 490 §2 When a see is vacant, the secret archive or safe is not to be opened except in a case of true necessity by the diocesan administrator himself.

32. Canon 1391 The following can be punished with a just penalty according to the gravity of the delict:

1° a person who produces a false public ecclesiastical document, who changes, destroys, or conceals an authentic one, or who uses a false or altered one.

33. Canon 489 §1 In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.

§2 Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.

Canon 490 §1 Only the bishop is to have the key to the secret archive.

§2 When a see is vacant, the secret archive or safe is not to be opened except in a case of true necessity by the diocesan administrator himself.

§3 Documents are not to be removed from the secret archive or safe.

(c) decisions that may be taken after the see has been vacant for a full year with the consent of the consultors.<sup>34</sup>

(a) *Actions that a Diocesan Administrator May Never Take*

A diocesan administrator can never perform the following:

- approve a diocesan association of the faithful<sup>35</sup>
- remove, destroy or alter a document in the diocesan archives<sup>36</sup>
- confer a canonry in places where canons exist in cathedral or collegial churches<sup>37</sup>
- convene a diocesan synod.<sup>38</sup> If the diocesan administrator takes office when a diocesan synod is in progress, then the synod is suspended by the law itself and can only resume with a future bishop.<sup>39</sup>
- entrust a parish to a clerical religious institute or clerical society of apostolic life<sup>40</sup>
- allow a religious institute to come to the diocese when there is no house of the institute already present (canon 611)
- issue dimissorial letters to a man refused ordination by a previous diocesan bishop<sup>41</sup>
- remove the judicial vicar and associate judicial vicars,<sup>42</sup> who also continue in office if the mandate for their appointment expires.
- judge so-called ‘Briefer Marriage Cases’ or Bishop Summary Process cases<sup>43</sup>

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34. Renken, *New Commentary*, 555.

35. Canon 312 §1, 3<sup>o</sup> the diocesan bishop in his own territory, but not a diocesan administrator, for diocesan associations, except, however, for those associations whose right of erection has been reserved to others by apostolic privilege.

36. Canon 428 §2. See note 30, above.

37. Canon 509 §1 After having h/hfhe chapter, it is for the diocesan bishop, but not a diocesan administrator, to confer each and every canonry, both in a cathedral church and in a collegial church; every contrary privilege is revoked.

38. Canon 462 §1 The diocesan bishop alone convokes a diocesan synod, but not one who temporarily presides over a diocese.

§2. The diocesan bishop presides over a diocesan synod. He can, however, delegate a vicar general or episcopal vicar to fulfill this responsibility for individual sessions of the synod.

39. Canon 468 §2 When an episcopal see is vacant or impeded, a diocesan synod is interrupted by the law itself until the succeeding diocesan bishop has decided that it is to be continued or has declared it terminated.

40. Canon 520 §1 A juridic person is not to be a pastor. With the consent of the competent superior, however, a diocesan bishop, but not a diocesan administrator, can entrust a parish to a clerical religious institute or clerical society of apostolic life, even by erecting it in a church of the institute or society, with the requirement, however, that one presbyter is to be the pastor of the parish or, if the pastoral care is entrusted to several *in solidum*, the moderator as mentioned in canon 517 §1.

41. Canon 1018 §2 A diocesan administrator, apostolic pro-vicar, and apostolic pro-prefect are not to grant dimissorial letters to those who have been denied admission to orders by the diocesan bishop, the apostolic vicar, or the apostolic prefect.

42. Canon 1420 §5 When the see is vacant, they do not cease from their function and cannot be removed by the diocesan administrator; when the new bishop arrives, however, they need confirmation.

43. Pontifical Council for Legislative Texts, private letter on the meaning of ‘diocesan bishop’

- do anything prejudicial to the diocese or the bishop to be appointed<sup>44</sup>
- be the diocesan financial officer<sup>45</sup>
- appoint a vicar general or episcopal vicar.<sup>46</sup>

Because of the principle *sede vacante nihil innovetur*,<sup>47</sup> Molano stated:

The correct interpretation of this principle requires that it be considered in its context and, therefore, with the aforementioned canons (especially canon 435), which try to set the boundaries of the scope of that jurisdiction. In this sense, it is evident that the innovations prohibited to the chapter vicar (also the cathedral chapter, before the appointment of the Vicar, when he temporarily assumes the governance of the vacant see) must in fact refer to the illicit acts which also set forth in canon 435 3, under the following verbatim statement: ‘vicario Capitulari et Capitulo non licet agree quidpiam quod vel diocese vel episcopabilis iuribus praeiudicium aliquod affere possit.’<sup>48</sup>

A diocesan administrator cannot make a decision that would prejudice the rights of the diocese or an incoming bishop. ‘Prejudice’ has almost always meant legal prejudice in canonical tradition.<sup>49</sup> This would include incurring a large debt, entering a long-term agreement and other decisions of extraordinary administration.

Sometimes there are many circumstances to consider in particular cases. The diocesan administrator must be prudent and wise, taking competent advice to facilitate good decisions. The decisions and actions taken by the diocesan administrator are always valid provided that he has the consent of the consultors and the diocesan finance council. Soler concludes that ‘the principle *sede*

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in *Mitis Iudex Dominus Iesus*, 1 September 2017, Prot. N. 15983/2017: ‘By the term “diocesan bishop,” employed by the m.p. *MIDI*, are also understood all those who are made equivalent to the diocesan bishop. According to canons 134 §3, 381 §2 and 368 *CIC*, those who preside over territorial prelatures, territorial abbeys, apostolic vicariates, apostolic prefectures and apostolic administrations erected in a stable manner are equivalent to the diocesan bishop ... In the case of “sede vacante” of a diocese, the auxiliary bishop, the diocesan administrator and the judicial vicar cannot judge the briefer process because they possess only those powers that the law attributes to them and not those specifically attributed to the diocesan bishop (cf. cc. 134 §3 and 427 §1 *CIC*)’.

In the case of a diocese with a large territory, the diocesan bishop cannot delegate to the auxiliary bishop his power to judge the briefer process (cf. c. 135 §3 *CIC* and III of m.p. *MIDI*). <http://www.clsadb.com/document/40f1b351-acec-4f3a-ab78-d06352d37ff6>.

44. Canon 428 §2.

45. Canon 423 §2.

46. Pontifical Council for Legislative Texts, reply, 15 May 2015, <http://www.delegumtextibus.va/content/dam/testilegislativi/risposte-particolari/cic/Circa%20la%20nomina%20del%20Vicario%20delegato%20nelle%20Giurisdizioni%20Vicarie.pdf>.

47. Canon 428 §1 When a see is vacant, nothing is to be altered.

48. E. Molano, ‘El regimen de la diocesis en situacion de sede impedida y de sede vacante’, *Ius Canonicum* 21 (1981): 615; English translation by Carlos Soler in Renken, *New Commentary*, 917.

49. Cf. Nord, *Sede Vacante Diocesan Administration*, 69, who cites several authors.

*vacante nihil innovetur* is effective not only principally as a prohibition, but as a sensible principle of governance'.<sup>50</sup>

Several diocesan administrators in the Southern Hemisphere have been admonished by the Holy See for replacing meetings of the deaneries or of the council of priests with meetings of priests under some other title. Such rather blatant attempts to circumvent the law will inevitably be stopped.

If a diocesan administrator attempts to entrust a parish to a religious institute or to amalgamate parishes, his decisions are invalid.<sup>51</sup> He simply does not have the power to do these things. If there is an unusual situation that the diocesan administrator lacks the power to deal with, he should apply to the Holy See through the nuncio for additional authority to act. For example, there could be a need to settle litigation or there may be a debt/scandal that needs resolving. The Apostolic Signatura has allowed a diocesan administrator to take recourse against the Congregation for the Clergy after the congregation overturned a decision of the previous bishop.<sup>52</sup> In civil courts, failure by the diocesan administrator to act may be extremely prejudicial to a future bishop, so the diocesan administrator must uphold the rights of the diocese.

When a diocesan administrator is deciding whether a proposed decision or action is an innovation, it can be very helpful if there is a mention of the matter in the minutes of previous council of priests meetings, consultors or the diocesan finance council meetings. These minutes may indicate the intentions of the previous bishop in a formal setting. This could enable the diocesan administrator to make a decision.

If the previous bishop had been tolerating an unacceptable practice, it would not be an innovation for the diocesan administrator to stop the practice.<sup>53</sup> An example could be the lifestyle of a cleric(s) that causes scandal.

Frequently there are debates about what is an 'innovation'. Sometimes decisions are required for repairs after a fire, flood or earthquake. An insured parish church may need to be replaced. Ordinary business must continue in the diocese and generally these sorts of decisions are not innovations. However, if repairing the cathedral after an earthquake is going to cost many millions, this is not ordinary administration. A decision of this magnitude must wait until a new bishop is installed.

50. Soler, *Exegetical Commentary*, vol. 2, no. 1, 918.

51. Canon 520, cf. footnote 35; canon 525 When a see is vacant or impeded, it belongs to the diocesan administrator or another who governs the diocese temporarily:

1/ to install or confirm presbyters who have been legitimately presented or elected for a parish;

2/ to appoint pastors if the see has been vacant or impeded for a year.

52. Supreme Tribunal of the Apostolic Signatura, sentence, 20 July 2006, prot. N. 32108/01 CA, n. 2., in Nord, *Sede Vacante Diocesan Administration*, 155.

53. Z. Grochowski, 'Trasferimento e rimozione del parroco', in *La Parrocchia* (Vatican City: Studi Giuridici 43, 1997), 213, quoted in Nord, *Sede Vacante Diocesan Administration*, 184.

*Dimissorial Letters during the First Year of the Vacant See*

There has been debate about whether a diocesan administrator can issue dimissorial letters for ordinations during his first year as diocesan administrator.

James Provost wrote an opinion opposing a diocesan administrator writing dimissorial letters for ordination to the diaconate during the first year of the vacant see.<sup>54</sup> There seems to have been varied responses from papal nuncios. At least one nuncio has advised that a diocesan administrator could issue dimissorial letters based on canon 1018 §1 no. 2:

Canon 1018 §1 The following can give dimissorial letters for secular clergy:

1/ the proper bishop mentioned in can. 1016;

2/ an apostolic administrator and, with the consent of the college of consultors, a diocesan administrator; with the consent of the council mentioned in can. 495, §2, an apostolic pro-vicar and an apostolic pro-prefect.

§2 A diocesan administrator, apostolic pro-vicar, and apostolic pro-prefect are not to grant dimissorial letters to those who have been denied admission to orders by the diocesan bishop, the apostolic vicar, or the apostolic prefect.

Provost argued that canon 272 forbids a diocesan administrator to incardinate a cleric during the first year of the vacancy of the see:

Canon 272 A diocesan administrator cannot grant excardination or incardination or even permission to move to another particular church unless the episcopal see has been vacant for a year and he has the consent of the college of consultors.

Consequently, Provost argued that by ordination to diaconate a deacon is incardinated in the diocese, so deacons should not be ordained during the first year of the vacancy of the see. The diocesan administrator should not issue dimissorial letters during this time.

Although not specified in the canons, it could be argued that there are several types of incardination. Kaslyn thinks two adjectives, 'initial' and 'consequential change' should be added to the law concerning incardination and excardination:

'Initial' serves to distinguish *first* incardination (which requires and derives from ordination to the diaconate) from a '*consequential*

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54. James Provost, 'Ordination to Diaconate by a Diocesan Administrator', in *Roman Replies and CLSA Advisory Opinions 1997*, ed. F. Stephen Pedone and James Donlon (Washington, DC: Canon Law Society of America, 1997), 83.

*change*' in incardination (which also requires excardination from the canonical entity into which one entered through the diaconate).<sup>55</sup>

Kaslyn argues that granting dimissorial letters is significantly different from other acts of incardination. Canon 272 is focused on transfer of clerics already ordained, while Canon 1018 is concerned with initial incardination because of ordination:

[the] act of granting dimissorial letters for diaconal ordination differs from the act by which a cleric from elsewhere is granted incardination in the diocese; in the former case, the act of granting dimissorials is the result of an on-going process: the man has been a seminarian for the diocese and has undergone the required scrutinies ... at the various stages of formation and the bishop has already judged him suitable to proceed on the way for formation towards ordination.<sup>56</sup>

William Woestman also argues that the diocesan administrator can issue dimissorial letters during the first year of the vacancy of the see if he has the consent of the college of consultors. Woestman points out that canon 17 says that laws should be 'understood in their text and context'.<sup>57</sup> He argues that canon 272 only applies to 'the transfer of a cleric from one diocese to another and not the question of first incardination'.<sup>58</sup> He thinks that this canon does not consider first incardination.

Woestman points out that Pope Paul VI did not restrict the authority of the diocesan administrator to issue dimissorial letters when he revised the law concerning the reception of minor orders.<sup>59</sup> Implicitly this supports the capacity of the diocesan administrator to grant dimissorial letters during his first year.

It could be argued the previous diocesan bishop had been paying the seminary bills of the ordinand; had accepted him as a seminarian; and was almost certainly looking forward to the diocese having another cleric. Planning

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55. Robert Kaslyn, 'The Canonical Institute of Incardination: Entrance into the Clerical State in the Code of Canon Law', in *Institutiones Iuris Ecclesiae 1: Essays in Honor of Sister Rose McDermott, S.S.J.*, ed. Robert Kaslyn (Washington, DC: Catholic University of America, School of Canon Law, 2010), 50, quoted in Jamin Scott David, 'Something Old or Something New? The Diocesan Administrator's Authority: An Examination of Selected Functions in Canons 272 and 1018' (JCL thesis, Catholic University of America, Washington, DC, 2011), 50.
56. Kaslyn, 'Canonical Institute of Incardination', 68.
57. Canon 17 Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.
58. William Woestman, 'The Diocesan Administrator and Dimissorial Letters for the Diaconate', in *Roman Replies and CLSA Advisory Opinions 1998*, ed. Kevin W. Vann and James I. Donlon (Washington, DC: Canon Law Society of America, 1998), 50.
59. Pope Paul VI, motu proprio, *Ministeria Quaedam*, 14 August 1972, AAS 64 (1972): 529–34, and Pope Paul VI, motu proprio, *Ad Pascendum*, 15 August 1972, AAS 64 (1972): 534–40.

may also have taken place for an appointment when he was ordained a priest. It would not be an innovation to most people for the diocesan administrator to issue dimissorial letters. There would be no surprise to anyone that the ordinand was ordained. Rather the opposite would be the case: there would be surprise if the ordinand could not get ordained as planned. However, the incardination of priests coming from outside the diocese is a completely different matter that can only take place when the see has been vacant for a year.

(b) *Decisions that May Be Made with the Consent of the College of Consultors*

The first paragraph of canon 427<sup>60</sup> states that the diocesan administrator has the obligations and powers of a diocesan bishop—except for those which are excluded:

- (1) by the nature of the matter or
- (2) by the law itself.

The diocesan administrator has restricted power concerning some matters, but can with the consent of the college of consultors:

- remove the chancellor and other notaries<sup>61</sup>
- remove the diocesan financial administrator for a serious reason with the consent of the consultors and the diocesan finance council. This could be for financial malfeasance or sexual misconduct.<sup>62</sup>
- initiate the process for dismissal of a cleric for grave misconduct by petitioning the Congregation for the Evangelising of the Peoples in a mission territory concerning a deacon's grave misconduct, or the Congregation of the Doctrine of the Faith concerning a cleric committing a grave crime.
- issue dimissorial letters for ordination<sup>63</sup>
- accept the resignation of a parish priest.<sup>64</sup> If the previous diocesan bishop had stated when a certain parish priest could resign, the diocesan administrator should confirm that.
- allow a religious institute already present in the diocese to open a new house (canon 611)

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60. Cf. footnote 15, above.

61. Canon 485 Removal of officials does not result in legal prejudice to the next bishop. Cf. Nord, *Sede Vacante Diocesan Administration*, 191.

62. Canon 494 §2 The financial administrator is to be appointed for five years, but when this period has expired, may be appointed for further terms of five years. While in office he or she is not to be removed except for a grave reason, to be estimated by the Bishop after consulting the college of consultors and the finance committee.

63. Canon 1018 §1 The following can give dimissorial letters for secular clergy:

1/ the proper bishop mentioned in canon 1016;

2/ an apostolic administrator and, with the consent of the college of consultors, a diocesan administrator; with the consent of the council mentioned in canon 495, §2, an apostolic pro-visor and an apostolic pro-prefect.

64. Cf. Thomas Paprocki, 'Canons 412–430: Governance of the Diocese while the See Is Impeded or Vacant', in *Roman Replies and CLSA Advisory Opinions 1999*, ed. F. Stephen Pedone and James Donlon (Washington, DC: Canon Law Society of America, 1999), 60–2.



- appoint parish priests if the see has been vacant for one year.<sup>65</sup>

The diocesan administrator governs the diocese with the power of a diocesan bishop. For example, it could be that an insurance company is going bankrupt and it might be necessary to settle the claim of the diocese and parishes for earthquake damage. Failing to act would clearly be wrong.

If a parish priest offered his resignation, could a diocesan administrator accept it?<sup>66</sup> Canon 538 states:

Canon 538 §1 A pastor ceases from office by removal or transfer carried out by the diocesan bishop according to the norm of law, by resignation made by the pastor himself for a just cause and accepted by the same bishop for validity, and by lapse of time if he had been appointed for a definite period according to the prescripts of particular law mentioned in can. 522.

§2 A pastor who is a member of a religious institute or is incardinated in a society of apostolic life is removed according to the norm of can. 682, §2.

§3 When a pastor has completed Seventy-Five years of age, he is requested to submit his resignation from office to the diocesan bishop who is to decide to accept or defer it after he has considered all the circumstances of the person and place. Attentive to the norms established by the conference of bishops, the diocesan bishop must provide suitable support and housing for a retired pastor.

A parish administrator is to be appointed ‘when the pastor is prevented from exercising his pastoral office in the parish due to captivity, exile, banishment, incapacity, ill health or some other cause’.<sup>67</sup> Canon law clearly allows for the diocesan administrator to appoint administrators for parishes, diocesan agencies, etc. Therefore, a diocesan administrator could allow a parish priest to resign and then appoint a parochial administrator in his place.

If a priest from a diocese in a foreign country wanted to incardinate in a vacant see, the diocesan administrator could declare that he was incardinated during the first year of the vacancy, provided that the deceased bishop, before his death, has said he could incardinate in the diocese, and the foreign bishop said the priest could excardinate after the death of the bishop. Then when the present diocesan bishop of incardination of the priest grants him permission to excardinate, the diocesan administrator could confirm that the priest was

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65. Canon 525 no. 2.

66. Canon 189.

67. Canon 539 When a parish becomes vacant or when a pastor is prevented from exercising his pastoral function in the parish by reason of captivity, exile or banishment, incapacity or ill health, or some other cause, the diocesan bishop is to designate as soon as possible a parochial administrator, that is, a priest who takes the place of the pastor according to the norm of can. 540.

incardinated in the vacant see. However, if the previous diocesan bishop had not made a statement approving incardination, the diocesan administrator could only issue a decree of incardination with the consent of the consultors after the see had been vacant for one year.

In general, the requirement to have the consent of the consultors is a mechanism that helps prevent innovations from occurring in the vacant see. Soler makes the point that the prohibition on acting does not forbid actions that are necessary for the common good of the diocese or opportunities that may occur during the vacancy and should be taken advantage of.<sup>68</sup> One example might be that if the house next to a diocesan property is offered for sale. If it could be beneficial to the running of the diocese, then all things being equal it should be purchased during the vacancy of the see.

*(c) Decisions that May Be Taken After the See Has Been Vacant for a Full Year with the Consent of the Consultors*

A diocesan administrator cannot make some major decisions until the see has been vacant for one year. After that time, and then only with the consent of the college of consultors, the diocesan administrator can:

- (1) grant excardination to a priest of the diocese
- (2) grant incardination of a priest from another diocese or religious institute
- (3) grant permission to a priest to move to another particular church<sup>69</sup>
- (4) appoint parish priests.<sup>70</sup>

### **Conclusion**

The diocesan administrator governs the diocese in ordinary circumstances as the previous diocesan bishop would have governed. He cannot make major innovative decisions or initiate new policies. Significant decisions and actions require the consent of the consultors and in financial matters the consent of the diocesan finance council as well. Some actions and decisions can be made only after the diocese has been vacant for a year. It is important to avoid confusion, which can happen when everyone knows a decision made by a diocesan administrator can be modified or reversed by the new bishop. Chiapetta<sup>71</sup> and

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68. Renken, *New Commentary*, 917.

69. Canon 272 A diocesan administrator cannot grant excardination or incardination or even permission to move to another particular church unless the episcopal see has been vacant for a year and he has the consent of the college of consultors.

70. Canon 525, 2° to appoint pastors if the see has been vacant or impeded for a year.

71. Chiapetta, *Il Codice di diritto canonico*, vol. 1, 554, quoted in Augustine Mendonca, 'Ipso Iure Incardination of a Cleric Sede Vacante', *Studies in Church Law* 9 (2013): 383: the diocesan administrator should know that his function is temporary, because of which, they have the obligation to attach as far as possible, a provisional character to their decisions, thus abstaining from acts which would cause difficulties to the new bishop.

Mendonca<sup>72</sup> state that the diocesan administrator must avoid making decisions that could cause difficulties for the new diocesan bishop. There is a well-balanced explanation by Soler, who states:

Due to the infrequency of this type of situation in the life of those called to be diocesan administrators, it may occur that excessive difficulties arise regarding what an administrator can and cannot do. In view of this issue, it is worth knowing that it devolves upon him to govern the diocese with all the power of the diocesan bishop, that in principle he can do everything that is not expressly prohibited ... However, a good approach to governance leads one to take into account these two elements: continuity with the previous bishop's mode of governing, taking into account the temporary nature of his office; and not making grave decisions, which should be left for the future bishop, except in the event of a real emergency.<sup>73</sup>

The diocese cannot flourish without a diocesan bishop, but the life of the local church must continue. Since the diocesan administrator is only temporary, his relationship to the diocese is very different from the relationship of a diocesan bishop to the diocese. Some actions may be good to take, but they may need to be delayed because they should be done by a diocesan bishop, who can do them more effectively and fruitfully.

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72. Mendonca, 'Ipso Iure Incardination', 383: The ancient principle: *sede vacante nihil innovetur*. This implies that the office of a diocesan administrator and that of the apostolic administrator *sede vacante* are temporary in nature, therefore they are not to make decisions or place juridic acts of a permanent nature which might interfere with the power of the incoming bishop.

73. Soler, *Exegetical Commentary*, vol. 2, no. 1, 919.