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**THE EVOLUTION OF THE  
PROMOTER OF THE FAITH  
IN CAUSES OF  
BEATIFICATION AND CANONIZATION:  
A STUDY OF THE LAW OF 1917 AND 1983**

*Thesis ad Doctoratum in Iure canonico adsequendum*

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*“O, while you live, tell truth and shame the devil!”*  
*(Hotspur in Shakespeare’s Henry IV, Act III, Scene I)*

*“The devil's in the detail.”*  
*(Old German maxim)*



## INTRODUCTION

The office of the promoter of the faith is the subject of widespread curiosity, though not because of his canonical importance in causes of canonization, but because he is also commonly known by the moniker, the devil's advocate. As the name suggests, he serves a contrarian role, presenting reasons against a cause of canonization. The participation of a figure that is responsible for raising objections to a cause provides a safeguard, insuring that the decision to canonize a member of the people of God is not made too lightly. If the martyrdom or virtues and intercessory power of a candidate for canonization have been proven, in spite of every argument to the contrary, the faithful can be secure in the conviction that the saint is truly worthy.

The 1917 Code of Canon Law contained canons that governed causes of canonization and carefully articulated the rights and the obligations of the promoter of the faith. The 1917 code synthesized in canonical language the law and traditions that had developed around this important figure in the preceding centuries. When the new Code of Canon Law was promulgated in 1983, the legislation governing causes of canonization was also revised. This legislation modified the rights and obligations of the promoter of the faith within the Congregation of the Causes of Saints, and also replaced the promoter of the faith in local inquiries with the promoter of justice. These changes were influenced by experiences in causes of canonization, historical factors, and the reforms called for in the Second Vatican Council. This thesis will consider the evolution of the promoter of the faith, considering his role in the 1917 Code of Canon Law and in the 1983 legislation. By comparing and contrasting his duties in these two bodies of law, the figure of the promoter of the faith can be better understood, especially with respect to his responsibility to present objections to a cause of canonization.

In order to recognize the context of the 1917 code and the 1983 legislation, it is necessary to consider the historical developments that preceded these two bodies of law. Therefore this theme will be treated in four chapters by considering the following: (1) the history of the promoter of the faith before 1917; (2) the promoter in the 1917 Code of Canon Law; (3) the history of the promoter after 1917; and (4) the promoter in the 1983 legislation. Within the wider field of causes of canonization, it will be necessary to focus this study by concentrating principally on the promoter of the faith. While some connections must be made to other figures, such as the *promotor fiscalis* or the defender of the bond, these will be limited to what is necessary to understand the figure of the promoter of the faith.

The first chapter will consider the history of the promoter before 1917. The promoter of the faith has not always been a required participant in causes of canonization. In fact, the creation of the promoter of the faith has been a relatively recent historical development arising only in the 17th century. The promoter of the faith evolved from the *promotor fiscalis*, though this figure only came into existence in the 13th century. Nevertheless, the Church has manifested concern from the first centuries that those who are honored as saints be worthy of imitation because of their martyrdom or their holiness of life, and sure intercessors for the faithful who call upon their prayerful assistance. This notion that the worthiness of a candidate must be tested and proven is related to the role that the promoter of the faith would eventually serve in posing objections to a cause. Even before any thought had been given to the office of the promoter of the faith, the Church developed procedures for the treatment of candidates for canonization that gradually became more detailed. By the 13<sup>th</sup> century, a pivotal development had occurred. Not only did the Roman Pontiff reserve the power to canonize to himself, but the Church also developed a more detailed system for the investigation of candidates for canonization by applying the *contradictorium*, a dialectical system that depended on the participation of two opposing parties who argued their positions before an impartial judge. This canonical innovation would eventually lead to the appointment of a promoter of the faith who was to take part in the

*contradictorium* by standing in opposition to a cause of canonization after the Sacred Congregation of Rites was created in the 16<sup>th</sup> century. Because of the importance of this legal tool, the presence of the *contradictorium* will be examined in both the 1917 and 1983 legislation, with attention to its contribution in the treatment of causes of canonization.

The second chapter will consider the promoter of the faith in the 1917 Code of Canon Law. As the figure responsible for opposing a cause of canonization, the promoter of the faith participated in a process that resembled a canonical trial. While the process was not a true criminal trial, seeking the punishment of an offender, the promoter of the faith was responsible for objecting to the cause as an adversarial figure in the dialectical process. The promoter accomplished his task by insuring that all legal formalities were carefully observed and that all useful proofs were gathered during the instruction of the cause. The canonical norms served the purpose of thoroughly examining the candidate such that nothing was overlooked regarding the cause. The promoter also accomplished his task by presenting observations in which he expressed his objections. Following the pattern of a trial, the other party who promoted the cause offered his responses to the arguments of the promoter. The 1917 code will be considered not only with respect to the specific and detailed procedures that were prescribed, but also with respect to the precise juridic approach that was applied to causes of canonization.

The third chapter will continue the historical study of the promoter of the faith after 1917. With the reforms of Pius XI and the introduction of the historical section in the Sacred Congregation of Rites, greater probative value began to be attributed to documentary evidence in ancient causes. The application of the modern scientific method and historical criticism began to transform the previous, strictly juridic approach. By the time of the Second Vatican Council, there was widespread support for the decision of John XXIII to revise the Code of Canon Law, which also led to a revision of the canons for causes of canonization. Following the Council, Paul VI divided the Sacred Congregation of Rites and created the Congregation for the Causes of Saints, introducing reforms that sought to streamline the treatment of causes. In the years before the new code, there was general

dissatisfaction with the cumbersome procedures required in the previous law and an appetite for a new approach that entrusted greater responsibility for the instruction of causes to the local bishops. Within the Congregation for the Causes of Saints, there was a desire to redefine the responsibilities of the various officials, to simplify the procedures, and to make greater use of a historical-critical approach. As a result of these historical forces, the office of the promoter of the faith was significantly reconfigured in the new legislation in 1983. This period of history was noteworthy because of the tensions that emerged between the juridic and the scientific approach, as well as the debates regarding the probative value that should be attributed to oral testimony and to documentary evidence. With the promulgation of the new law, the use of the *contradictorium*, which was heavily associated with the juridic approach, was substantially weakened.

The fourth chapter will take up the study of the promoter in the current legislation. Though the promoter of the faith maintains his role in the Congregation, his function in the instruction of the diocesan or eparchial inquiry has now been entrusted to the promoter of justice. While causes of canonization continue to have juridic elements and share some similarities with an ordinary trial, they also have historical elements that call for a modern scientific approach and the participation of various experts in science, history, and theology. The duties of the promoter of justice and the promoter of the faith will be considered in relation to the 1917 code, noting that the present law no longer explicitly requires these promoters to stand in opposition to the cause. While the promoter of justice continues to exercise many of the same functions previously exercised by the promoter of the faith during the instruction of the cause, the promoter of the faith in the Congregation of the Causes of Saints performs a significantly different function during the study of the cause. It will be argued that the continued application of the principle of the *contradictorium* remains useful for a thorough and careful examination of a candidate for canonization.

These reflections seek to provide insights regarding the figure of the promoter of the faith. In the study of causes of canonization, it is advantageous to recall the benefits that were offered by the 1917 code,

including the juridic precision of the law and the application of an adversarial, dialectical process. It is also advantageous to consider the strengths of the current legislation, including the application of modern scientific methods and the wider use of qualified experts. An awareness of the history in causes of saints and the strengths and weaknesses of the previous and current legislation will hopefully encourage individual causes of canonization to be instructed and studied in the most effective way possible.



## CHAPTER 1

### HISTORY OF THE DEVELOPMENT OF THE PROMOTER BEFORE 1917

From the beginning of Christianity, the Church has honored those holy men and women who have given witness to their faith in Jesus Christ. From the first century, martyrs who died for Christ were held in great esteem. They were remembered in the liturgy and given the title of saint. In essence, they were the subject of cult—a technical term indicating that they were the object of ecclesiastical veneration and honor, especially in the context of the sacred liturgy. Because of the importance of the honor of liturgical cult, the Church from early days has also been concerned that these saints be truly deserving of this distinction, meaning that they were true martyrs or true saints, holy and worthy of imitation and veneration. In short, the Church has always been concerned about the truth regarding the catalog of saints.

Over the course of time, the Church developed more extensive systems for recognizing and eventually canonizing those witnesses to the faith. With these developments, there also came the necessary evolution of an increasingly precise juridic system ordered to the discovery of the truth regarding who is (and who is not) worthy of the title of saint. As juridic systems developed, there was a concern not only with the search for the truth, but also with the observance of the law, since the adherence to those time-honored canonical procedures was considered to be the most trustworthy way to guarantee the discovery of the truth. This thesis will

treat in detail only a part of that system: the promoter of the faith, a juridic figure who was responsible for safeguarding the observance of the law, promoting the search for the truth, and thereby protecting the faith by insuring that only those who were worthy would be honored with liturgical cult and be given the title of saint.

Given the importance of protecting the integrity of the catalog of saints, it may seem surprising to learn that the promoter of the faith did not appear as a necessary and stable figure in causes of canonization until the 17<sup>th</sup> century. Even his juridic predecessor, the *promotor fiscalis*,<sup>1</sup> did not emerge as a widespread fixture in canonical praxis until the 14<sup>th</sup> century. And yet, even before these promoters were conceived, the groundwork for their creation was being established gradually through an organic evolution during the prior centuries. A historical survey of the promoter of the faith requires some reference to those events that influenced the creation of this office, many of which occurred long before there was even the slightest awareness of the importance this figure would have. In order to give a coherent structure to this historical survey, it is useful to first define the essential responsibilities of the promoter of the faith, at least in broad terms. Those responsibilities represent fundamental principles that evolved over the course of history.

For the present, it suffices to refer to a summary of the duties of the promoter of the faith as described by the historian Giovanni Papa. He commented on the brief of Urban VIII (1623-1644)<sup>2</sup> in which he nominated the first stable promoter of the faith, Antonio Cerri, on January 2, 1631:

From the brief ... one can clearly grasp the certain and fundamental role that he [the promoter of the faith] came to fulfill in the treatment of Causes, of

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<sup>1</sup> The *promotor fiscalis* could be rendered in English as the «fiscal promoter» in much the same way that the *promotor fidei* is called the promoter of the faith. This thesis will retain the Latin title for the *promotor fiscalis* for three reasons: 1) the term «fiscal promoter» is not commonly used in English; 2) the emphasis on fiscal matters would give the false impression that this figure was concerned only with finances; 3) in a historical sense, the *promotor fiscalis* was most commonly known by his Latin title, until this office was transformed in the 1917 Code of Canon Law into the promoter of justice (*promotor iustitiae*).

<sup>2</sup> The dates given in parenthesis for the Roman Pontiffs in this thesis represent the beginning and ending years for their Pontificates.

searching for the truth and safeguarding the law, so that the candidates for the honor of the altars appear to be truly worthy, without stain no matter how small or the slightest uncertainty.<sup>3</sup>

From this passage, it can be deduced that the promoter of the faith served four purposes:

1. to promote authentic divine cult;
2. to prevent abuses in divine cult;
3. to thoroughly seek the truth; and
4. to faithfully observe the law.

Papa first presented the practical responsibilities of the promoter (seek the truth and observe the law) before he referred to the fundamental duty that the promoter was meant to fulfill (promote authentic liturgical cult and prevent abuse). The promotion of true liturgical cult required careful attention to those proposed for canonization in order to prevent the abuse of an unworthy candidate being honored as a saint. However, in a historical analysis, it is more useful to organize these principles chronologically according to the order in which they organically developed over time. The Church desired from the first centuries to encourage divine worship and liturgical cult (*first principle*) because of their sacred character. The importance of liturgical cult led naturally to interventions by the members of the hierarchy when they detected signs of abuse (*second principle*). In order to avoid the abuse of venerating someone who was unworthy, the Church became increasingly attentive to the need for a thorough search for the truth (*third principle*) regarding a proposed saint. Finally, that search for the truth became formalized through the customary observance of procedures that were eventually defined in law (*fourth principle*). The observance of that law was of vital importance, because its goal was to safeguard and protect the faith and right worship.

Even though the juridic figure of the promoter of the faith was not stably created until the 17<sup>th</sup> century, the evolution of these four principles

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<sup>3</sup> G. PAPA, *Le Cause di Canonizzazione nel Primo Periodo della Congregazione dei Riti (1588-1634)*, Vatican City, 2001, 357: «Dal breve ... si coglie bene il ruolo, certo, fondamentale che egli veniva a coprire nella trattazione delle Cause, di ricerca della verità e di salvaguardia della legge, in modo tale che i candidati all'onore degli altari si presentino veramente degni, senza ombre, sia pure piccole, o incertezze di sorta».

can be traced throughout the history of the Church, even back to its earliest days. It is appropriate, therefore, to return to the beginnings of Christianity to observe the formation of these principles. In fact, the historical survey of these principles will prove critical to the proper understanding of the juridic figure of the promoter of the faith, since these were the very principles that constituted his *raison d'être*.

## 1.1 CANONIZATIONS UNDER LOCAL AUTHORITY

### 1.1.1 THE EARLY MARTYRS

The first saints of the Church were the martyrs who died under the persecutions beginning in the first century and continuing up to the Edict of Milan in 313. The liturgical honor given to the martyrs was a spontaneous act on the part of the faithful who remembered them. From the time of the protomartyr St. Stephen, the faithful looked after the mortal remains of those who died for Christ.<sup>4</sup> The faithful visited the tombs of the martyrs, remembered the anniversaries of their martyrdom, and celebrated the liturgy in their honor.<sup>5</sup> The funerals of martyrs were generally celebrated by the local bishop, as well as the annual commemorations of their birth into eternity (*dies natalis*). These celebrations were marked by a spirit of joy because of the confidence that the martyrs were with Christ in the glory of Heaven.<sup>6</sup> From the time of the martyrdom of St. Polycarp in 155, the accounts of martyrdom began to be recorded and preserved so that the memory of the battles faced by the martyrs would serve as a model for later Christians to imitate when they faced similar trials. Like the New

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<sup>4</sup> A. AMORE, *Culto e canonizzazione dei santi nell'antichità cristiana*, in *Antonianum*, 52 (1977), 39. Amore cites Acts 8:2 as an early example of the concern of the members of the early Christian communities for the bodies of their martyrs.

<sup>5</sup> J. SCHLAFKE, *De competentia in causis Sanctorum decernendi a primis post Christum natum saeculis usque ad annum 1234*, Pontificia Università San Tommaso d'Aquino, Roma, 1961, 9. Schlafke referred to the archeological evidence from the excavation under St. Peter's Basilica in Rome as a sign of the veneration of the early martyrs from the first century.

<sup>6</sup> H. MISZTAL, *Le cause di canonizzazione: Storia e procedura*, Città del Vaticano, 2005, 127-128.

Testament epistles that were circulated among the Christian communities because of their value, wisdom, and importance, these acts of the martyrs (*acta martyrum*) were circulated among various Christian communities so that the memory of the martyrs could be shared and recalled by other believers on their anniversaries of death, thereby more widely diffusing their cult.<sup>7</sup> The act of martyrdom was often a notorious and well-established fact, confirmed on the basis of the testimony of the community that served as a witness.<sup>8</sup> As the memory of the martyr was diffused, his or her reputation of martyrdom (*fama martyrii*) grew in the early Church along with the veneration given to the martyr.<sup>9</sup> The reputation (*fama*), widely held by the Christian faithful, was central to causes of canonization, and constituted a fundamental requirement for recognition as a saint in the first centuries of Christianity.

While these spontaneous acts of the faithful were in keeping with the desire of the Church to commemorate the early saints, even in the first centuries there were signs of excessive cult that had to be curtailed. St. Clement I (88-97) instituted seven notaries, one for each of seven regions, who were given the responsibility of caring for and researching the authentic liturgical cult of martyrs.<sup>10</sup> St. Fabian (236-250) later expanded this number by adding seven deacons and seven subdeacons to the seven notaries entrusted with this duty. «The reason for this zeal by the Roman Pontiffs was so that the splendor of true martyrdom might shine out in later times,

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<sup>7</sup> CONGREGAZIONE DELLE CAUSE DEI SANTI, *Le Cause dei Santi: Sussidio per lo Studium*, 3 ed., Città del Vaticano, 2014, 132. The Congregation of the Causes of Saints is hereafter referred to as CCS. An example of the *acta martyrum* can be found in hagiographical reading in the Liturgy of the Hours for the memorial of Saints Perpetua and Felicity (March 7). The passage provides a vivid description of the martyrs' perseverance in the faith and their heroic death.

<sup>8</sup> M.B. MEINARDI, *La natura giuridica delle cause di canonizzazione*, Roma, 2005, 10. Meinardi notes that the testimony of the community was sufficient to recognize a saint in the first centuries, and that there was no further need of proof, much less a formal process, to declare martyrdom.

<sup>9</sup> A. AMORE, *Culto e canonizzazione*, 43.

<sup>10</sup> P. LAMBERTINI, *De servorum Dei beatificatione et beatorum canonizatione in septem volumina distributum*, ed. novissima, Prati, 1839-1841, Liber 1, Caput 3, §1.

but also so that true martyrs might be distinguished from false ones».<sup>11</sup> The recognition of a false martyr—such as a person whose account of martyrdom was fictitious, or a person who died, but not with the courage of those who heroically gave their lives for Christ—would constitute an abuse that would contaminate the sacredness of divine cult.

Up to the 3<sup>rd</sup> century, the only requirement for the veneration of a saint was stated as follows:

the certainty of martyrdom; that is, a violent death, inflicted out of hatred for the faith and voluntarily accepted [by the martyr] for love of Christ, followed by his or her commemoration [by the faithful] in the liturgical assembly.<sup>12</sup>

However, some discernment was still applied, since those who were schismatics or heretics, even if their blood was shed, were not considered worthy to be called true martyrs.<sup>13</sup> By the 3<sup>rd</sup> century, bishops began to authenticate true martyrs through a declaration, called the *vindicatio*, by which the act of martyrdom was recognized and their liturgical cult was sanctioned.<sup>14</sup> The *vindicatio* was another sign that the early Church sought to separate true martyrs from false ones.

Before the toleration of Christianity in the Roman Empire, and long before any formal juridic process, the veneration of the martyrs grew out of the natural devotion of the early Christian communities to those who had died for the faith. In spite of the lack of a defined procedure, the Church developed an understanding of what constituted true martyrdom and who was worthy of the liturgical cult that was attributed to the martyrs. Already in this period, the Church reacted to signs of abuse, such as the introduction of veneration for a false or unworthy martyr, since such abuse was considered to be an offense against the liturgy, jeopardizing the integrity of the faith. Though the evidence gathered about the alleged martyr was

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<sup>11</sup> J. SCHLAFKE, *De competentia*, 10: «*Finis huius studii Romanorum Pontificum est, ut splendor veri Martyrii in posteriora tempora fulgeat, sed non minus, ut veri Martyres a falsis distingui possint*».

<sup>12</sup> CCS, *Le Cause dei Santi*, 134: «la certezza del suo martirio, cioè la sua morte violenta inferta in odio alla fede e accettata volontariamente per amore di Cristo, e quindi la sua commemorazione nell'assemblea liturgica».

<sup>13</sup> J. SCHLAFKE, *De competentia*, 10. CCS, *Le Cause dei Santi*, 134.

<sup>14</sup> H. MISZTAL, *Le cause*, 129.

rudimentary, there was already a desire to record the facts of the martyr's death. These facts were established on the basis of those who witnessed the act of martyrdom, and were preserved because of the existence of the reputation of martyrdom among those early Christian communities. During this period, there was clear evidence of the desire to promote divine cult and prevent abuses, and at least the initial signs of the desire to thoroughly seek the truth in these causes.

### 1.1.2 THE EARLY CONFESSORS

After the Edict of Milan in 313, the commemoration of the martyrs took on a much more public form. The graves of the martyrs became places of pilgrimage and basilicas were constructed, often over the place where the martyr was buried. In some cases, a basilica was built nearby and the body of the martyr was taken in solemn procession to be placed in the church or under an altar dedicated in his or her honor. This became known as the elevation (*elevatio*) or transfer (*translatio*) of the martyr's mortal remains, regularly performed by the bishop (or at least confirmed by him), followed by the solemn celebration of Mass in honor of the saint.<sup>15</sup> Since a martyr was a person who sacrificed himself for Christ, an altar built over the martyr's body was considered a worthy place for the celebration of Mass in which the Church commemorated Christ's death on the cross. Hence the *translatio* of the body was sometimes referred to as raising the servant of God to the honor of the altars.<sup>16</sup> Naturally, the Church was concerned that

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<sup>15</sup> A. AMORE, *La canonizzazione vescovile*, in *Antonianum*, 52 (1977), 232-233. Amore distinguished between the *elevatio*, the moving of the body of a saint into a nearby church dedicated in his or her honor, and the *translatio*, the longer procession to a church further away. There was no strict distinction between the two terms, and both were considered to constitute a canonization as we know the term today. In some cases, when there was some doubt about the place of burial, an addition rite, the *inventio*, would be celebrated in which the body would be found and authenticated. The terms were combined in medieval times as canonizations were said to be accomplished through the *elevatio et translatio*. See G. DALLA TORRE, *Santità e diritto: Sondaggi nella storia del diritto canonico*, 2 ed., Torino, 2009, 30. See also L. HERTLING, *Materiali per la storia del processo di Canonizzazione*, in *Gregorianum*, 16 (1935), 171.

<sup>16</sup> During the period of the early martyrs, a saint was recognized by the act of solemnly transferring the body to an altar or a church. The concept of canonization by decree had

no one unworthy be given this honor, as such an act would constitute a sacrilege.<sup>17</sup> The account of the saint's martyrdom was solemnly read at the *translatio*, eventually accompanied by accounts of miracles attributed to his or her intercession. During the 4<sup>th</sup> century, the miraculous accounts were not added out of a desire to demonstrate a divine confirmation of the martyr's worthiness, but rather to reflect the Church's growing recognition that the martyr was more than a courageous example to imitate: the martyr was also a worthy intercessor whose prayers could win graces and favors from God.<sup>18</sup>

With new developments in causes of saints came also the need to correct further abuses. In 419, at the Third Council of Carthage, steps were taken to impede the veneration of false martyrs. A shrine dedicated to a martyr was not to be permitted unless the body or at least the relics of the martyr were present, having been proven by a trustworthy source and approved by the bishop. Where there was no evidence of the martyr's remains, nor testimony regarding the martyr's suffering and death, the bishop was to discourage the people from frequenting the place, and, if possible, to demolish the shrine. Relics could not be substantiated through visions, dreams, or private revelations, all of which were entirely rejected.<sup>19</sup>

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not yet come into use, nor had the term «canonization» been coined. The English word «transfer» does not capture the solemn nature of this act by which the mortal remains of the martyr were moved, and the martyr was proclaimed a saint. Therefore, the Latin word *translatio* will be retained for its technical meaning.

<sup>17</sup> S. KUTTNER, *La réserve papale du droit de canonisation*, in *Revue Historique de droit français et étranger*, 17 (1938), 173-174. G. PAPA, *Le Cause di Canonizzazione*, 72. After the 16<sup>th</sup> century, the description of the duties of the promoter of the faith often included that of «protecting the sanctity of the altars».

<sup>18</sup> H. MISZTAL, *Le cause*, 129. CCS, *Le Cause dei Santi*, 136.

<sup>19</sup> CONCILIUM CARTHAGINENSE V (398), can. 14, in J.D. MANSI (ed.), *Sacrorum Conciliorum nova et amplissima collectio*, Venezia, 1778, III, 971: «Item placuit, ut altaria, quae passim per agros aut vias tamquam memoriae martyrum constituuntur, in quibus nullum corpus aut reliquiae martyrum conditae probantur, ab episcopis, qui iisdem locis praesunt, si fieri potest, evertantur. Si autem hoc propter tumultus populares non sinitur, plebes tamen admoneatur, ne illa loca frequentent, ut qui recte sapiunt, nulla ibi superstitione devincti teneantur, et omnino nulla memoria martyrum probabiliter acceptetur, nisi aut ibi corpus aut aliquae certae reliquiae sint aut ubi origo alicuius habitationis vel possessionis vel passionis fidelissima origine traditur. Nam quae per somnia, et per inanes quasi revelationes quorumlibet hominum ubicumque constituuntur altaria, omnimodo improbenentur». J. SCHLAFKE, *De competentia*, 11-12. A. MITRI, *De figura juridica postulatoris in causis beatificationis et canonizationis*, Roma, 1962,

With the end of the Roman persecutions, the number of new martyrs decreased. And yet, there were still those who were regarded by the faithful as saints, even if they did not die a martyr's death. These holy men and women, who were stalwart confessors of the faith, also came to be honored as spiritual martyrs because of their lives lived radically for Christ according to the Gospel.<sup>20</sup> This new category of saints presented a problem because it was no longer sufficient to focus primarily on a particular act, the offering of one's life in the act of martyrdom. Instead, it was necessary to consider the whole of life and whether the candidate was truly worthy to be proposed for the veneration of the faithful and liturgical cult.<sup>21</sup> A critical element of proof for the recognition of a confessor was the reputation of holiness (*fama sanctitatis*) that the person enjoyed both in life and after death, as well as the miracles that were attributed to his or her intercession.<sup>22</sup> This reputation of holiness for a confessor, like the reputation of martyrdom, depended on the widespread conviction among the faithful regarding the sanctity of the person.<sup>23</sup> Like the martyrs, these confessors were proclaimed saints through the *elevatio* or the *translatio* of their mortal remains to a place where the bishop would celebrate Mass in their honor.<sup>24</sup> In place of the account of the sufferings of the martyr, a brief biography or a hagiography of the life of the confessor was often prepared. These accounts increasingly included a list of

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25. The original text appeared in canon 14 of the Council of Carthage held in 398. Schlafke cites the same text from canon 83 of the compendium of canons issued in 419.

<sup>20</sup> H. MISZTAL, *Le cause*, 130. Those who confessed the faith, but did not die the death of a martyr, came to be known as confessors.

<sup>21</sup> A. AMORE, *Culto e canonizzazione*, 65. Amore observes the high degree of critical study employed in causes of saints today, contrasting it, in his judgment, with a lack of precision in the early Church, in particular with the excessive passions written about the sufferings of the early martyrs (see A. AMORE, *Culto e canonizzazione*, 45-47 and 77).

<sup>22</sup> A. AMORE, *Culto e canonizzazione*, 67-68 and 78-79.

<sup>23</sup> Confessors were said to have the reputation of holiness (*fama sanctitatis*) while the martyrs had the reputation of martyrdom (*fama martyrii*). This language should not be construed to assume that martyrs were not known for their holiness. Rather, all saints were recognized for their holiness, whether confessors for their practice of the virtues, or martyrs for their martyrdom.

<sup>24</sup> H. MISZTAL, *Le cause*, 133-134. By the late 4<sup>th</sup> century, a ritual—even if primitive—was being established for the celebration of the *translatio*. Those recognized were considered to be true saints, according to the practices of the time.

miracles attributed to the intercession of the confessor—another point of similarity with the solemn *translatio* of a martyr.<sup>25</sup>

By the 5<sup>th</sup> century it had become common to gather in large numbers to consider a candidate proposed as a saint. The gathering was often in the form of a diocesan synod with the bishop surrounded by the clergy and the faithful. As time passed, it was more common to gather many bishops, accompanied by neighboring abbots, clergy, and the faithful in regional or national synods or councils. The participation of a large number of people had two effects: First, the large gathering provided the bishop with broad consultation before deciding whether to raise a candidate to the honor of the altars. Second, the participation of people from diverse regions, especially bishops, added to the solemnity of the event and better reflected the participation of the universal Church.<sup>26</sup> The significance of the participation of a large number of bishops during this period was most likely not for juridic reasons—that the consent of more bishops to the veneration of the saint indicated a wider territory in which the liturgical cult of the saint was officially recognized. At the time, the juridic concept of the territorial restriction of liturgical cult had not yet been formulated. Rather, it was more likely that the participation of a large number of high-ranking leaders, coming from greater distances, would have had the effect of raising the public profile of the ceremony. The saint would have become more widely known, implying that the saint was of greater importance. This claim would have been a point of pride for the local community.

After the toleration of Christianity by the Roman Empire in 313, the practices in the canonization of saints continued to evolve. The construction

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<sup>25</sup> CCS, *Le Cause dei Santi*, 141. S. INDELICATO, *Le basi giuridiche del processo di beatificazione: dottrina e giurisprudenza intorno all'introduzione delle cause dei servi di Dio*, Roma, 1944, 13. Indelicato indicated that the Church's judgment regarding martyrdom or heroic virtue was assisted by the existence of accompanying signs or miracles.

<sup>26</sup> L. HERTLING, *Materiali per la storia*, 175. H. MISZTAL, *Le cause*, 135. Hertling gave a variety of examples between the 4<sup>th</sup> and 9<sup>th</sup> centuries of canonizations undertaken in a particular council, in a diocesan synod, or even by a single bishop alone (even as late as the 9<sup>th</sup> century). The transition toward the requirement that canonizations be considered in the presence of many bishops gathered in council did not follow a smooth and consistent trajectory in its historical development.

of basilicas created a new level of devotion by providing a location for liturgical cult and veneration. The ceremonies of the *elevatio* and the *translatio* were developed by which a person was publicly proclaimed to be a saint through the transfer of their mortal remains to the church or altar where they would be venerated. As confessors were honored alongside the martyrs, increased scrutiny was required through the examination of the whole of their lives to determine if they were worthy of veneration. Their holiness was proven not only through the example of their lives, but also through the miracles attributed to their intercession, constituting another important element of proof in the search for truth. Through councils and synods, greater attention was given to the examination of a candidate's worthiness to be enrolled among the saints. This period presented developments in liturgical cult and in methods of evaluating the truth of a candidate's holiness. Even more, the convocation of synods constituted a step toward a more formal system, with corresponding procedures and formalities to be observed before a canonization.

### 1.1.3 SYNODS AND EPISCOPAL CANONIZATIONS

Up to the 9<sup>th</sup> century, canonizations continued to be performed by individual bishops, though more and more frequently they were celebrated in the context of a council or a synod after receiving the opinion of cardinals, archbishops, and bishops.<sup>27</sup> The facultative nature of the synod, as well as the informal approach to causes of canonization, changed with the Council of Frankfurt in 794 and the Council of Mainz in 813.

Canon 42 of the Council of Frankfurt stated:

No new saints are to be venerated or invoked, nor memorials erected in their honor along the streets, but only those may be venerated in the Church who

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<sup>27</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 15, §12.

have been chosen on the basis of the authority of their sufferings or merits in life.<sup>28</sup>

This canon required a careful examination of the candidate, presupposing the production of a hagiographical biography which would serve as the proof of the candidate's holiness. This canon raised the standards for an episcopal canonization, practically requiring evidence through established facts or recorded documents whose truthfulness could be certainly ascertained.

In other words, the canonization was not arbitrary, nor left to the personal judgment of the bishop, nor carried out under the influence of fantasy or false enthusiasm, but rather it required a prior serious examination, or process, based on written and oral testimony.<sup>29</sup>

A general sense of the person's holiness was insufficient. Nor was it sufficient that the *elevatio* or *translatio* had been performed by a bishop, a religious, or another person of importance.

This canon reinforced the increasingly common practice of canonization by decree, that is, a formal declaration recognizing the candidate to be a saint after having carefully examined his or her life and miracles.<sup>30</sup> Eventually, these decrees, which could be called canonizations properly speaking, came to take on a greater importance than the ceremony in which the remains were transferred. In fact, even if the *translatio* had been previously performed, that act began to be equated with our present day view of beatification, which is the according of some degree of honor, but not the formal act declaring the person to be a saint.<sup>31</sup> Decrees of canonization came to be regarded as formal juridic acts, placed by the competent ecclesiastical authority, authorizing public cult and veneration for

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<sup>28</sup> J. SCHLAFKE, *De competentia*, 12: «*Ut nulli novi sancti colantur aut invocentur nec memoriae eorum per vias erigantur, sed hi soli in ecclesia venerandi sint, qui ex auctoritate passionum aut vitae merito electi sunt*».

<sup>29</sup> CCS, *Le Cause dei Santi*, 151: «In altre parole la canonizzazione non viene lasciata all'arbitrio o al giudizio personale del vescovo, né condotta sotto l'influsso di un falso entusiasmo o di fanatismo, ma essa deve essere preceduta da un serio esame, o processo, basato su testimonianze scritte e orali».

<sup>30</sup> CCS, *Le Cause dei Santi*, 151.

<sup>31</sup> A. AMORE, *La canonizzazione vescovile*, 242.

a saint whose holiness of life had been studied and confirmed.<sup>32</sup> With the introduction of canonization by decree, Misztal considered this to mark a formal separation of the juridic act (the decree of canonization) from the liturgical act (the *translatio* of the mortal remains).<sup>33</sup>

A further development occurred at the Council of Mainz in 813. Canon 51 established that «no one is to presume to transfer the bodies of saints from place to place without the counsel of the prince, or the permission of the bishops of the holy synod».<sup>34</sup> With this development, it became the general practice to gather in synod or council before declaring, by decree, a candidate to be a saint. Only after this decree of canonization was issued could the *translatio* of the mortal remains take place, honoring the saint with the construction of a church or an altar. From this point forward, the celebration of the *translatio* was *de facto* reserved to the bishop.<sup>35</sup>

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<sup>32</sup> G. DALLA TORRE, *Santità e diritto*, 27. M.B. MEINARDI, *La natura giuridica*, 15.

<sup>33</sup> H. MISZTAL, *Le cause*, 137. The verb «to canonize» did not exist in the earlier centuries. Previously, a saint was recognized as the legitimate object of cult through the physical act of the *translatio* (see footnote 15 on page 13). With the increased importance of the synod, a saint came to be recognized by a decree, officially enrolling the candidate among the catalog (or canon) of saints. A saint, who was numbered among the canon of saints, was said to be «canonized», and the act of recognizing the saint came to be known as «canonization». As this change took effect, the act of the *translatio* ceased to constitute the authoritative act by which the candidate was named a saint. The *translatio* took place because it had been ordered by the decree of canonization which had become the authoritative act.

<sup>34</sup> D. 1 c. 37 *de cons.*: «*Corpora sanctorum de loco ad locum nullus transferre presumat sine consilio principis, vel episcoporum sanctaeque sinodi licentia*». There was some debate about the identity of the *princeps*. Some assumed that the Roman Pontiff was the *princeps*, but this could be rejected as a mistaken presupposition of later commentators since papal authority over canonization did not enter into consideration until the 12<sup>th</sup> century. Furthermore, if the canon intended to reserve canonization to the Roman Pontiff, one might expect that his permission would be required, not merely his counsel. Nor did it seem that the *princeps* referred to the local diocesan bishop, since the reference to the permission of the synod of bishops would have barred any one bishop from acting on his own authority apart from his brother bishops. The most likely interpretation was that the *princeps* referred to the proper civil authority who, given the era of the Holy Roman Emperors, might wish to be heard in a matter of such importance. See J. SCHLAFKE, *De competentia*, 70. G. DALLA TORRE, *Santità e diritto*, 30. A. AMORE, *La canonizzazione vescovile*, 244.

<sup>35</sup> A. MITRI, *De figura juridica*, 35.

The discernment of the bishops, gathered in synod, constituted the third of three essential elements of proof in causes of canonization that came to be recognized through the fruits of theological and historical reflection. These three elements, all of which must be present, evolved over the course of history as follows:<sup>36</sup> (1) The *vox populi* or the voice of the people. The initiative for canonization always arose from the faithful who were drawn to the saint because of his or her reputation (*fama sanctitatis vel martyrii*).<sup>37</sup> In the early period of the martyrs, those who died for Christ were recognized as saints solely on the strength of this reputation among the faithful who were witnesses to the martyrdom. (2) The *vox Dei* or the voice of God. The divine confirmation that the reputation of holiness was genuine came by means of miraculous intervention through the intercession of the servant of God. The importance of miracles was seen in the period of the first confessors, as the Church looked more frequently to supplement the human judgment of a candidate's holiness with the divine confirmation of heavenly graces. (3) The *vox sacrae hierarchiae* or voice of the sacred hierarchy. From the first century, individual bishops have intervened in canonizations. However, the growing importance of the synod as a means of evaluation represented the increasing role that the bishops exercised as a college in causes of canonization. Throughout Church history, the bishops often gathered in councils or synods to discuss those matters of central importance to the faith. In causes of canonization, it was also natural that the hierarchy should gather to consider those candidates for public veneration, since this decision touched on matters of divine cult and the integrity of the faith. With a favorable judgment, the synod issued the decree of canonization,

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<sup>36</sup> L. SCORDINO, *Natura giudiziaria del processo di canonizzazione secondo la vigente legislazione*, Roma, 2006, 13. H. MISZTAL, *Le cause*, 249. J.L. GUTIÉRREZ, *Le cause di beatificazione e di canonizzazione*, in AA. VV., *I giudizi nella Chiesa, Processi e procedure speciali*, Milano, 1999, 269. J.L. GUTIÉRREZ, *La metodologia nelle cause di canonizzazione*, in *Quaderni di diritto ecclesiale*, 16 (2003), 65.

<sup>37</sup> The widespread reputation among the faithful was considered to be a work of the Holy Spirit. For this reason, this reputation must not be manufactured as a human creation, but must arise from the *sensus fidei*. The theological significance of this would be later clarified in Vatican II. See CONCILIIUM OECUMENICUM VATICANUM II, *Constitutio dogmatica de Ecclesia: Lumen Gentium*, 21 novembris 1964, in AAS, 57 (1965), 5-71, n. 12.

which could be executed by means of the solemn celebration of the *elevatio* or *translatio*.<sup>38</sup>

These elements of proof represented milestones in the evolution of the treatment of causes of canonization. The protection of sacred cult required increasing attention to the qualifications of the candidate for canonization and the truth of his or her holiness or martyrdom, proven by the presence of accompanying signs of intercessory power. The procedures used in the search for the truth began to take on greater juridic formality as the convocation of a synod or a council became increasingly important in causes of canonization. The history of episcopal canonizations demonstrated a desire to protect divine cult from abuse by an ever more thorough search for the truth and, as synods became more prominent, through the beginnings of a formal juridic procedure that was to be observed.

## 1.2 CANONIZATIONS UNDER PAPAL AUTHORITY

### 1.2.1 EARLY PERIOD OF PAPAL CANONIZATIONS

As mentioned above, the gathering of a large number of bishops for an individual canonization demonstrated the importance of the saint in the life of the Church. A larger assembly of bishops signified a greater diffusion of devotion to the saint and therefore a wider public cult. With the passage of time, the symbolic importance of a saint was represented not just by the number of bishops participating (quantity), but also by the relative importance of those bishops (quality). It was no surprise that bishops eventually asked the Bishop of Rome to lend his authority to the proceedings by authorizing a canonization, or at least giving it his blessing, before proceeding with the *translatio* of the mortal remains. The participation of the Roman Pontiff in this evaluation had great significance because the act of canonization would have been made with apostolic

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<sup>38</sup> W. HILGEMAN, *Le Cause di beatificazione e canonizzazione e l'Istruzione Santorum Mater*, in *Apollinaris*, 82 (2009), 293.

consent or even by explicit apostolic authority.<sup>39</sup> In the course of time, a canonization approved or executed by the Pope would take on an additional juridic significance: the universal extension of liturgical cult for the saint, a privilege that could only be granted by the Supreme Pontiff.<sup>40</sup>

In the early history of the Church, little is known about the involvement of the Pope in episcopal canonizations. Before the 10<sup>th</sup> century, some individual bishops wrote to the Pope to ask for his blessing or his authorization to proceed to a canonization. While there was scattered evidence to indicate that these requests were made, there was no recorded evidence of any declaration on the part of the Holy Father. The lack of any official pontifical response to these requests supports the argument that competence for canonizations during this period of history belonged properly to the local bishop. Whatever correspondence was exchanged with the Pope was likely considered personal and not a formal exercise of pontifical authority. Examples date back to the early 5<sup>th</sup> century. The Bishop of Trent asked Innocent I (401-417) to authorize a canonization. Later, the Bishop of Naples sought approval from Gelasius I (492-496) for the canonization of St. Severin.<sup>41</sup> In 730, there was an account of a *translatio* denied by the Bishop of Benevento who refused to proceed without papal permission.<sup>42</sup> For the canonization of St. Celso in 978,

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<sup>39</sup> G. DALLA TORRE, *Santità e diritto*, 31.

<sup>40</sup> S. KUTTNER, *La réserve papale*, 175. CCS, *Le Cause dei Santi*, 151. J.L. GUTIÉRREZ, *Studi sulle cause di canonizzazione*, Roma, 2005, 79-80. Eventually papal decrees of canonization made explicit reference to the universal cult to be given to the new saint. See J. SCHLAFKE, *De competentia*, 36. For example, the bull of canonization of St. Bernard of Clairvaux included the phrase «and he is to be held in memory by all the children of the same Church» («*et omnibus eiusdem Ecclesiae filiis in memoria habendus sit*»). See ALEXANDER PP. III, bulla: *Canonizatio Sancti Bernardi Clarae Vallensi*, 18 ianuarii 1174, in L. PORSI (ed.), *Leggi della Chiesa su beatificazione e canonizzazione dall'anno 993 all'anno 2000*, Roma, 2006, 37.

<sup>41</sup> E. APECITI, *L'evoluzione storica delle procedure ecclesiastiche di canonizzazione*, in *Quaderni di Diritto Ecclesiale*, 15 (2002), 71. S. KUTTNER, *La réserve papale*, 178. L. HERTLING, *Materiali per la storia*, 192. Misztal indicated that these requests became more frequent from bishops in Italy during the 6<sup>th</sup> century. See H. MISZTAL, *Le cause*, 135.

<sup>42</sup> Prince Arectis of Benevento sought the *translatio* of the Abbot Martin. See E. APECITI, *L'evoluzione storica*, 71.

Benedict VII (974-983) was asked to authorize a ceremony of canonization by apostolic authority.<sup>43</sup>

A milestone was reached when John XV (985-996) responded to a request to canonize St. Ulrich, which he did in a bull of canonization issued on January 31, 993.<sup>44</sup> The first recorded papal canonization was a historic event, though it was likely considered at the time to be the next logical step in a sequence of events that increasingly brought questions of canonization to the Pope for consultation or approval. This development was not a surprising canonical novelty, but rather the result of an organic evolution in the institution of canonization. These ceremonies had become important celebrations in the life of the Church, calling for particular solemnity. As saints were becoming more universally known, there was an increased desire to make recourse to the bishop who possessed universal jurisdiction. The greatest possible solemnity came by proceeding to the canonization under the authority of the Roman Pontiff.<sup>45</sup>

In the bull of canonization of St. Ulrich, John XV referred to the *libellus* that requested the canonization, and made mention of the consent of the bishops with whom he consulted before issuing the decree.<sup>46</sup> However, he gave no indication that he intended to assume control over all future canonizations, nor did he act in a positive way to limit the power of local bishops and synods to take up causes of canonization. While John XV did not reserve the power to canonize to the Pope, he did open the door to many similar requests for this pontifical favor. And so, a period of papal canonizations began in 993 which coincided with the already established period of episcopal canonizations. During this period, various bishops began to appeal to the Pope for a particular canonization, not because of any doubt regarding their own jurisdiction, but rather to give greater solemnity to the act and to more widely diffuse veneration of the saint in the universal

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<sup>43</sup> H. MISZTAL, *Le cause*, 135. E. APECITI, *L'evoluzione storica*, 71.

<sup>44</sup> IOANNES PP. XV, bulla: *Canonizatio Sancti Udalrici*, 31 ianuarii 993, in L. PORSI (ed.), *Leggi della Chiesa*, 20-21.

<sup>45</sup> L. HERTLING, *Materiali per la storia*, 176.

<sup>46</sup> IOANNES PP. XV, bulla: *Canonizatio Sancti Udalrici*, 31 ianuarii 993, in L. PORSI (ed.), *Leggi della Chiesa*, 20-21.

Church. In order to draw greater attention to those candidates whom the bishops considered to be of special importance, they began to direct many requests to the Pope for a pontifical decree of canonization.

The responses of the Pontiffs during this period varied: Sometimes the canonization was permitted by papal authority.<sup>47</sup> Other times permission was given to build a church and proceed to the *elevatio* or *translatio*.<sup>48</sup> Still other times the Pontiff would delay a canonization that he did not think was sufficiently proven,<sup>49</sup> or even prohibit the *translatio* of a body.<sup>50</sup> A canonization by papal authority always involved an assembly (a tribunal) which was constituted within the context of a council or a synod in which the Pope was surrounded by his brother bishops and cardinals.<sup>51</sup> A *libellus* of the life of the servant of God was read; attributed miracles were examined; and witnesses were heard. The council discerned and the Roman Pontiff decided whether to grant liturgical cult and the title of saint to the servant of God.<sup>52</sup> There were several canonizations that were decreed by the Roman Pontiff during this period.<sup>53</sup> The various responses of the Popes

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<sup>47</sup> For the canonization of St. Nicola Pellegrino di Trani in 1099, Urban II approved the canonization by apostolic authority («*auctoritate nostra*») but remanded the act of canonization to the local bishop to execute. See URBANUS PP. II, bulla: *Canonizatio Sancti Nicolai Peregrini*, 1099, in L. PORSI (ed.), *Leggi della Chiesa*, 27.

<sup>48</sup> For the canonization of St. Simeon Padolironensem in 1016, Benedict VIII issued a rescript entrusting the examination of the servant of God to the local bishop in *forma commissoria*. The Pontiff did not judge the case, but permitted the construction of a church and the *elevatio* to the altar consecrated in his honor if the judgment of the bishops was positive. See J. SCHLAFKE, *De competentia*, 22. See BENEDICTUS PP. VIII, bulla: *Canonizatio Sancti Simeonis de Polirone, sine data*, in L. PORSI (ed.), *Leggi della Chiesa*, 22.

<sup>49</sup> S. KUTTNER, *La réserve papale*, 181.

<sup>50</sup> S. KUTTNER, *La réserve papale*, 188-189. Kuttner gave an example of Benedict IX forbidding a *translatio* and reprimanding the Duke of Bracislav and the Bishop of Prague who stole the body of St. Adalbert from the Cathedral of Gnesen. The historical accuracy of this event, however, appears to be dubious.

<sup>51</sup> As an example, the Bull of canonization of St. Gerard mentioned the gathering of 55 bishops who advised Leo IX. See LEO PP. IX, bulla: *Canonizatio Sancti Gerardi*, 2 maii 1050, in L. PORSI (ed.), *Leggi della Chiesa*, 24. The use of the word «tribunal» during this period of history should not be understood in the sense of a formal juridic process, but rather as an assembly of people who considered the case and gave advice to the Pontiff.

<sup>52</sup> J. SCHLAFKE, *De competentia*, 43-44.

<sup>53</sup> Several examples of papal decrees from this period can be found in L. PORSI (ed.), *Leggi della Chiesa*, 22-34.

demonstrated that a critical evaluation was taking place, since some decrees of canonization were granted for causes that appeared worthy, while other less certain causes did not receive a favorable hearing.

Evidence showed not only that there was increased rigor in the evaluation of candidates for canonization, but that the investigations themselves also began to take on a more precise form. This was true not only in those causes considered by the Roman Pontiff with his curia, but also in those inquiries that were conducted on the local level. In 1088, Urban II (1088-1099) responded to the Bishop of Nantes regarding the canonization of Guorlesio, the Abbot of Kemperleg, indicating that the cause had not been sufficiently instructed. The Pontiff indicated that the canonization by papal authority «could not be as easily granted; nor is anyone to be admitted to the canon of saints unless there are eyewitnesses who can attest to his or her miracles with their own eyes, and [unless they] can be affirmed by the assent of the full synod».<sup>54</sup> In 1099, Urban II remanded a request to canonize Nicola Pellegrino of Trani back to the local bishop to perform by apostolic authority, but only after he had carefully investigated the merits of the cause. The Archbishop of Trani was to inquire so that the cause might be «established by more mature deliberation».<sup>55</sup> Prior to the canonization of St. Henry in 1146, an investigation was ordered under papal authority in which two cardinals were sent «to diligently inquire about the truth of [his] life and the miracles [attributed to him]».<sup>56</sup> In 1163, Alexander III (1159-1181) wrote to the Bishop of Canterbury, entrusting him with the canonization of St. Anselm. The local bishop was to convoke the other bishops and abbots of the province, to declare publicly Anselm's

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<sup>54</sup> See URBANUS PP. II, Litterae: *Benedictum Episcopum Nannetensem*, 1088, in L. PORSI (ed.), *Leggi della Chiesa*, 26-27: «non eadem potuit facilitate concedere; non enim sanctorum quisque canonis admisceri, nisi et testes adsint, qui eius visu miraculis suis oculis attestentur, et plenariae synodi firmetur assensu».

<sup>55</sup> H. MISZTAL, *Le cause*, 137. URBANUS PP. II, bulla: *Canonizatio Sancti Nicolai Peregrini*, 1099, in L. PORSI (ed.), *Leggi della Chiesa*, 27: «maturiore deliberatione constituat». This bull was mentioned above in footnote 47 on page 24 as an example of a canonization entrusted to a local bishop to perform by papal authority.

<sup>56</sup> M.B. MEINARDI, *La natura giuridica*, 18. EUGENIUS PP. III, bulla: *Canonizatio Sancti Henrici Imperatoris*, 1147, in L. PORSI (ed.), *Leggi della Chiesa*, 32: «de vita et miraculis Henrici Regis rei veritatem diligenter inquirent».

life and miracles in their presence, and—after hearing their counsel and receiving their assent—he was to proceed to the canonization by papal authority.<sup>57</sup> A final example is found in a letter regarding the cause of St. Wulstan, eventually canonized in 1203. The undated letter, written prior to his canonization, described the incredulity of so-called miracles and the need for a high degree of rigor in their approval.<sup>58</sup>

In spite of the trend favoring increased petitions of the Pope, the freedom of bishops during this period to proceed on their own authority to canonize continued unabated. Among the saints canonized by bishops, with the participation of a synod but not the Roman Pontiff, were Eugene martyr, canonized by the Bishop of Tongres in 1083; St. Guibert of Gembloux, canonized in the Synod of Liege in 1110; and St. Gautier of Pontoise, canonized by the Archbishop of Rouen in 1153.<sup>59</sup>

During this period, the intervention of the Roman Pontiff in causes of canonization brought greater fame to the canonized saints, as well as concession of universal cult. At the same time, the approach to canonization took on a more serious tone through a more careful examination of the candidates and the miracles attributed to them. Popes intervened by sometimes cautioning against proceeding too quickly without a thorough examination, by remanding some cases for further study, and at times even by ordering an inquiry carried out under apostolic authority. In these interventions, there was evidence not only of a strong interest in the search for the truth, but also the beginnings of a more formal structure to guide that investigation.

### 1.2.2 THE TRANSITION TOWARD PAPAL RESERVATION OF CANONIZATIONS

A definitive step toward the reservation of canonizations to papal authority came with the writing of the famous letter *Audivimus* by

<sup>57</sup> J. SCHLAFKE, *De competentia*, 57.

<sup>58</sup> L. HERTLING, *Materiali per la storia*, 189. For the text of the undated letter, see L. PORSI (ed.), *Leggi della Chiesa*, 31.

<sup>59</sup> S. KUTTNER, *La réserve papale*, 181-182.

Alexander III in 1171.<sup>60</sup> However, even before this letter was written, the opinion was becoming more widespread that canonizations should generally receive papal approval.<sup>61</sup> From a historical perspective, the letter *Audivimus*, and the increased intervention by the Pope in matters of canonization, should be considered part of a slowly evolving historical trend, and not a radical or sudden departure from past practice.

On July 6, 1171, Alexander III wrote a letter to Knut Eriksson, King of Sweden,<sup>62</sup> in which, among other things, he lamented the reverence that was being shown to a false martyr. The Pope was told of a certain monastery in which the appointed procurator, serving in the absence of the abbot who was away, tried to stab two monks in the refectory after dinner while in a state of drunkenness. These two monks responded by clubbing the procurator to death. Afterwards, this wayward monk was honored by some of the inhabitants of that place with the cult of martyrdom, under the false presumption that he had died for the faith.<sup>63</sup> This gave rise to the famous letter known by its introductory word «*audivimus* (we have heard)».

An excerpt of this letter was included in the Decretals of Gregory IX (1227-1241), prepared by St. Raymond of Peñafort and published on September 5, 1234.<sup>64</sup> Because the version in the Decretals is only an excerpt of the original letter by Alexander III, both texts are presented below in a side-by-side format for comparison:

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<sup>60</sup> ALEXANDER PP. III, letterae: *K(anutum)*, MCDXLVII bis, c.d. “*Audivimus*”, 6 iulii [1171], in *Opera Omnia*, Parigi, 1855, 1259-1261.

<sup>61</sup> L. HERTLING, *Materiali per la storia*, 184. J. SCHLAFKE, *De competentia*, 60.

<sup>62</sup> Various scholars debate the proper dating of this letter, as the year was not mentioned in the text. Opinions range from 1170 to 1180, but the weight of modern scholarship supports authorship in 1171. Furthermore, the letter was simply addressed to «K» which gave rise to the possibility that the intended recipient was Kol Sverkersson, a rival to the Swedish throne. This erroneous conclusion has been debunked in favor of Knut Eriksson, King of Sweden. For more information about these arguments, see J. SCHLAFKE, *De competentia*, 64-66.

<sup>63</sup> See P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 10, §3.

<sup>64</sup> J. SCHLAFKE, *De competentia*, 69 and 133. CCS, *Le Cause dei Santi*, 161. Gregory IX published his Decretals with the bull *Rex Pacificus*.

## Alexander III's letter (1171)

## Gregory IX's Decretals (1234)

Finally, we have heard something, much to our horror, that some among you, deceived by the fraud of the devil, venerate a certain man killed in a state of drinking and drunkenness as though he were a saint, according to the custom of unbelievers, since the Church hardly permits even to pray to such as those killed in their drunkenness.

For the Apostle says that drunkards will not inherit the kingdom of God.

Hence, if you desire to have the kingdom of God, you ought to restrain yourself from carousing and drunkenness and you should in no way presume to honor that man or others like him to the detriment of your souls.

Whereas, even should there be many signs and miracles worked through him, it is not licit for you to publicly venerate him as a saint without the authority of the Roman Church.

We have heard that some among you, deceived by the fraud of the devil, venerate a certain man killed in a state of drinking and drunkenness as though he were a saint, according to the custom of unbelievers, since the Church hardly permits to pray to such as those killed in drunkenness.

For the Apostle says that drunkards will not inherit the kingdom of God.

You should therefore in no way presume to honor that man or others like him.

Whereas, even should there be many miracles worked through him, it is not licit for you to publicly venerate him as a saint without the authority of the Roman Church.<sup>65</sup>

<sup>65</sup> The same side-by-side comparison of the original Latin text is presented below. It should be noted that the English translations are not able to reflect all of the minor differences between the two Latin texts, especially subtle variations in word order.

It should be noted that there was no indication that the bishops of Sweden had sought to honor the inebriated monk with a solemn *translatio*, nor with the construction of a church in his honor. Furthermore, there was no evidence that a synod had been convoked to issue a decree of canonization. However, the popular reputation of martyrdom, which was completely undeserved but which circulated among some of the faithful, should have been rightly suppressed.

For many years, only the version of *Audivimus* as published in the Decretals was widely known. With the passage of time it was discovered that the excerpt was a part of a much longer letter of Alexander III.<sup>66</sup> The version in the Decretals, which had the authoritative tone of a promulgated norm, appeared in the Liber Extra under the title *De reliquiis et veneratione sanctorum* with the summary attributed to Alexander III: «Without the permission of the Pope it is not licit to venerate anyone as a saint».<sup>67</sup>

A study of the original text gave a very different picture of the letter. Alexander III was not promulgating a norm, but rather writing a pastoral

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*Denique quiddam audivimus, quod magno nobis fuit horrore, quod quidam inter vos sunt qui diabolica fraude decepti, hominem quemdam in potatione et ebrietate occisum quasi sanctum, more infidelium, venerantur, cum vix etiam pro talibus in suis ebrietatibus interemptis orare permittat Ecclesia.*

*Dicit enim Apostolus quoniam ebriosi regnum Dei non possidebunt.*

*Unde a potationibus et ebrietatibus, si regnum Dei habere desideratis, vos continere oportet, et hominem illum de caetero colere in periculum animarum vestrarum nullatenus praesumatis.*

*Cum etiamsi signa et miracula per eum plurima fierent, non liceret vobis pro sancto absque auctoritate Romanae Ecclesiae eum publice venerari.*

*Audivimus, quod quidam inter vos sint, qui, diabolica fraude decepti, hominem quemdam in potatione et ebrietate occisum quasi sanctum, more infidelium venerantur, quum vix pro talibus in ebrietatibus peremptis ecclesia permittat orare.*

*Dicit enim Apostolus quod ebriosi homines regnum Dei non possidebunt.*

*Illum ergo hominem non praesumatis de cetero colere,*

*quum, etiamsi per eum miracula plurima fierent, non liceret vobis ipsum pro sancto absque auctoritate Romanae ecclesiae publice venerari.*

<sup>66</sup> S. KUTTNER, *La réserve papale*, 191. The connection was made by Hinschius who published his findings in 1888.

<sup>67</sup> X 3.45.1: «*Sine Papae licentia non licet aliquem venerari pro sancto*».

letter filled with personal comments, encouragement, and criticism. To better appreciate the tone of the letter and the context of *Audivimus*, it is useful to briefly recall the letter as a whole and the other themes it treated. The letter was addressed to King Knut, the bishops, noblemen, clergy and people of that territory. It opened with an affectionate greeting in which the Pope, whose mission was inherited from St. Peter as the Vicar of Christ, showed his personal concern for his flock that they be taught true doctrine. In the letter, the Pope touched on three themes. In his first theme, he gave an instruction on marriage with references to the Scriptures, warning the people not to dismiss their wives, not to take several wives, not to engage in fornication, and forbidding the marriage of those related by affinity. In his second theme, he urged the people to be generous in tithing so as to provide just support for the clergy. He promised spiritual blessings from Our Lord for their generosity, citing passages from the Old and New Testaments. Before treating the third theme, that of the veneration of a false martyr, he briefly returned to the topic of marriage, warning wives not to remarry if their husbands were taken captive, lest their husbands should return and their wives be found in adultery.<sup>68</sup>

This brief reprisal of the first theme—warning against adultery just before warning about false martyrs—may have two explanations: On one hand, it may have indicated that the Pontiff was particularly concerned with the sanctity of marriage, perhaps because of reports of abuses, such that he wanted to give the topic greater emphasis. On the other hand, it may have been that the brief reprisal of the theme of marriage served as a transition to the topic of right worship. There are numerous comparisons in the Scriptures between idolatry (turning away from fidelity to God) and adultery (turning away from fidelity to a spouse).<sup>69</sup> A mention of the fidelity of brides to their bridegrooms may have opened the door to the reminder that the Church must always be faithful to her Bridegroom, worshiping Him alone. According to this interpretation, the Pope may have wished to

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<sup>68</sup> ALEXANDER PP. III, *Litterae: K(anutum)*, c.d. “*Audivimus*”, 1259-1260.

<sup>69</sup> A few examples could include the description of Israel as an unfaithful harlot in Ezekiel 16, or the spiritual comparison between the bride and groom with the Church and Christ in Ephesians 5:22-33.

remind the Swedes not to be unfaithful to God by giving false veneration to a monk who was manifestly unworthy of the honor.

In the third theme, Alexander III treated the incident of the drunken monk, already described above. Following this theme, the Pope concluded with some final counsels: an encouragement to seek after eternal gifts from God, a caution about excessive fasting before the feast of St. Michael the Archangel, and an expression of gratitude to the people for the welcome offered to the carrier of the letter.<sup>70</sup> Alexander III had a very warm and pastoral tone throughout the letter. Drawing upon the entire text, Kuttner presented a thorough argument that this letter was not intended to be a solemn promulgation of a norm, by which episcopal canonizations were forbidden and reserved to the Pontiff alone.<sup>71</sup> The promulgation of this norm, investing the sole authority to canonize only in the Roman Pontiff, came 63 years later when Gregory IX issued his Decretals in 1234.<sup>72</sup>

Between 1171 and 1234, there were other developments in the practice of canonization. During the pontificate of Clement III (1187-91) the practice of postulation became more frequent, whereby bishops would propose candidates for canonization to the Holy Father. The Pope often nominated three examiners who sought out proof of the holiness of the candidate through authentic documents, sworn witnesses, and depositions. The results of the inquiry were considered in a consistory after which the Pope decided whether to inscribe the candidate among the catalog of saints.<sup>73</sup> In the bull of canonization of St. Homobonus in 1199, Innocent III (1198-1216) explained that the seriousness of this search for the truth was

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<sup>70</sup> ALEXANDER PP. III, *Litterae: K(anutum)*, c.d. “*Audivimus*”, 1261.

<sup>71</sup> S. KUTTNER, *La réserve papale*, 191-199. Kuttner cites the texts of several other bulls of canonization to support his theory.

<sup>72</sup> J. SCHLAFKE, *De competentia*, 133.

<sup>73</sup> J. SCHLAFKE, *De competentia*, 114-115. The examiner could also be called an inquisitor (both in Latin and English), since he was sent to carry out a kind of inquisition regarding the holiness of the candidate. However, the word «inquisitor» is avoided here as it carries an unnecessarily pejorative connotation in English. An example of this procedure can be found in the canonization of St. Stephen of Muret. See CLEMENS PP. III, bulla: *Canonizatio Sancti Stephani*, 21 martii 1189, in L. PORSI (ed.), *Leggi della Chiesa*, 37-38.

«so that we could proceed to a judgment that is both divine and human, with greater confidence».<sup>74</sup> In the bull of canonization of St. Cunegunda in 1200, Innocent III explained the motivation behind the solicitous inquiry into the truth of her life, virtues, and miracles through the testimony of witnesses under oath: «Therefore, recognizing that this judgment is in fact among the more lofty of the judgments needing to be decided, we have wished to proceed with caution in the full examination of this [candidate]».<sup>75</sup> These passages connect the importance of divine cult with the need for a thorough and critical investigation into the truth. Procedures began to be refined in order to better facilitate this search for certainty regarding the holiness of a candidate before proceeding to canonization. This period in history therefore marked a moment of real breakthrough in the investigation of causes of saints, driven by the growing sense of the importance of critical reason in the high medieval period.<sup>76</sup>

Also during this period, Innocent III convened the Fourth Lateran Council in 1215. While causes of canonization were not the focus of the council, the question of relics was addressed:

As there are those who present the relics of saints for sale, displaying them here and there, often disparaging the Christian religion, in order that it may not be so disparaged in the future, we establish by the present decree that henceforth ancient relics are not to be displayed outside their case, nor presented for sale. However, no one is to presume to publicly venerate newly discovered relics, unless they are previously approved by the authority of the Roman Pontiff.

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<sup>74</sup> INNOCENTIUS PP. III, bulla: *Canonizatio Sancti Homoboni*, 12 ianuarii 1199, in L. PORSI (ed.), *Leggi della Chiesa*, 48: «*ut sic divinum et humanum sicuti iudicium, cum maiori procedere securitate possemus*».

<sup>75</sup> See INNOCENTIUS PP. III, bulla: *Canonizatio Sanctae Kunegundae Imperatricis*, 12 aprilis 1200, in L. PORSI (ed.), *Leggi della Chiesa*, 50: «*Nos itaque cognoscentes, quod hoc revera iudicium sublimius est inter cetera iudicia iudicandum, in ipsius examinatione plenaria volumus adhibere cautelam*». See also P. LAMBERTINI, *De servorum Dei*, Liber I, Caput 15, §3.

<sup>76</sup> G. DALLA TORRE, *Santità ed economia processuale: L'esperienza giuridica da Urbano VIII a Benedetto XIV*, in *Archivio Giuridico*, 211 (1991), 13. Dalla Torre indicated that the later developments of the 16<sup>th</sup> and 17<sup>th</sup> centuries built upon the pivotal innovations that occurred during in the 13<sup>th</sup> century, in particular the juridic and theological contributions of Hostiensis, St. Raymond of Peñafort, and St. Thomas Aquinas. See also G. DALLA TORRE, *Santità e diritto*, 42.

In the future, prelates are certainly not to permit the faithful to come to their churches to venerate when they are deceived by various fabrications or false documents, which were often presented in many places solely for the sake of profit.<sup>77</sup>

This text also appeared in substantially the same form in the Liber Extra under the title *De reliquiis et veneratione sanctorum* with the summary attributed to Innocent III: «Relics of saints are not to be sold, nor displayed in various places, lest the people be deceived about them».<sup>78</sup> The Fourth Lateran Council did not explicitly reserve canonizations to the Roman Pontiff, but it took another step in that direction by requiring pontifical approval for any new relics.<sup>79</sup>

Other developments occurred after the Fourth Lateran Council. In 1218, Honorius III ordered examiners to investigate the cause of St. William, Archbishop of Bourges. They were to take testimony under oath and to conduct an investigation into the life of the candidate for canonization separate from the investigation of the miracles attributed to his intercession.<sup>80</sup> In 1222, the same Pontiff ordered an examiner, by apostolic authority, to investigate the life and miracles related to the founder of the Cistercians, St. Robert of Molesme. In addition to sworn depositions, the Pope ordered eyewitnesses (witnesses *de visu*) to be heard.<sup>81</sup> In 1233, Gregory IX ordered an informative process to be instructed for St. Hildegard, complete with prepared articles according to which the witnesses

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<sup>77</sup> CONCILIUM LATERANENSE IV (1215), can. 62, in J.D. MANSI (ed.), *Sacrorum Conciliorum*, XXII, 1049-1050: «Cum ex eo, quod quidam sanctorum reliquias exponunt venales, et eas passim ostendunt, Christianae religioni detractum saepius, ne in posterum detrahatur, praesenti decreto statuimus, ut antiquae reliquiae amodo extra capsam non ostendantur, nec exponantur venales. Inventas autem de novo nemo publice venerari praesumat, nisi prius auctoritate Romani Pontificis fuerint approbatae.

«Praelati vero de cetero non permittant eos, qui ad eorum ecclesias causa venerationis accedunt, variis figmentis aut falsis documentis decipi, sicut et in plerisque locis occasione quaestus fieri consuevit».

<sup>78</sup> X 3.45.2: «Sanctorum reliquiae vendi non possunt, vel passim ostendi non debent, ne circa illas populus decepti possit».

<sup>79</sup> S. KUTTNER, *La réserve papale*, 208. G. DALLA TORRE, *Santità e diritto*, 34.

<sup>80</sup> L. HERTLING, *Materiali per la storia*, 189-190. HONORIUS PP. III, bulla: *Canonizatio Sancti Gulielmi Archiepiscopi Bituricensis*, 17 maii 1218, in L. PORSI (ed.), *Leggi della Chiesa*, 54-55.

<sup>81</sup> J. SCHLAFKE, *De competentia*, 99-101. See also HONORIUS PP. III, bulla: *Canonizatio Sancti Roberti*, 8 ianuarii 1222, in L. PORSI (ed.), *Leggi della Chiesa*, 56.

were to be interrogated. This process was to treat her reputation of holiness, her merits, the circumstances of her life, and the integrity of her writings.<sup>82</sup>

In 1230, Gregory IX commissioned St. Raymond of Peñafort to prepare a compendium of ecclesiastical law, which eventually resulted in the Decretals promulgated on September 5, 1234.<sup>83</sup> In Book III, Title 45 of the Liber Extra, Gregory IX included two chapters «on relics and veneration of the saints». The first was a reference to *Audivimus* by Alexander III and the second was a reference to canon 62 of the Fourth Lateran Council, both cited above.<sup>84</sup> As has already been observed, Gregory IX omitted the pastoral parts of *Audivimus*, focusing instead only on the factual details that prompted Alexander III to write to the King of Sweden. While the original letter of Alexander III was a pastoral encouragement, the version of this letter in the Decretals constituted a legislative act, transforming the letter into universal law. With the promulgation of the Decretals, the power to issue a decree of canonization was formally reserved to the Roman Pontiff alone.<sup>85</sup>

### 1.3 THE RISE OF THE INQUISITORIAL SYSTEM AND THE *PROMOTOR FISCALIS*

#### 1.3.1 DEVELOPMENT OF THE INQUISITORIAL SYSTEM

Another contribution from the pontificate of Innocent III must be examined—one which did not have any direct connection to causes of canonization at the time, though it was of vital importance to the creation of the *promotor fiscalis* and would eventually lead to the creation of the promoter of the faith. The Church's canonical system of law was heavily based on Roman Law, and in legal disputes it depended largely on an

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<sup>82</sup> L. HERTLING, *Materiali per la storia*, 190. This was the first recorded example of an informative process with articles and an interrogatory, setting a precedent for the instruction of future processes.

<sup>83</sup> The Decretals of Gregory IX were first mentioned on page 27.

<sup>84</sup> X 3.45.1-2: «*de reliquiis et veneratione sanctorum*». For the text of for *Audivimus*, see footnote 65 on page 28 and for the text from the Fourth Lateran Council, see footnote 77 on page 32.

<sup>85</sup> S. KUTTNER, *La réserve papale*, 211.

accusatorial process. Innocent III introduced a new innovation: the inquisitorial process.

From the time of the Roman Republic, Roman Law proceeded under an accusatorial system (the so called *via accusationis*). A party who claimed to have been injured by another party had to bring an accusation before the praetor or the judge. This system depended on popular action, since the responsibility resided with the individual and not the state to initiate a cause. The accuser (*actor*) brought the accusation in the form of a petition (*libellus*) to a judge (*iudex*) who would cite the accused (*reus*). The accused was bound to respond to the accusation according to the formalities of law.<sup>86</sup> If the accusation was proven, the condemned was required to pay a penalty (*poena*) to the accuser. This system was rudimentary, and in the first centuries after the Edict of Milan, it was abused by heretics who sometimes harassed orthodox bishops by falsely accusing them of crimes. This problem was addressed by the First Council of Constantinople in 381 which instituted the *poena talionis* or «penalty of retaliation» as a remedy.<sup>87</sup> With this change, the accuser was bound to prove his accusation, or else the accuser himself was required to pay the same penalty or receive the same punishment that he sought to inflict on the one accused. This change vastly reduced the number of false accusations, but had a further adverse effect, that of discouraging worthy accusations from being brought forward. An upright person would hesitate to bring an accusation, especially regarding a serious crime, for fear that the accuser himself would be the one to suffer the severe penalty.<sup>88</sup>

Around the 9<sup>th</sup> century, a change was proposed that allowed for the denunciation of a crime (the so called *via denunciationis*) in place of an accusation. Under this modification, the one presenting the denunciation brought the crime to the attention of the judge. This person did not have to report the crime under the threat of the *poena talionis*, but at the same time,

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<sup>86</sup> For a detailed description of the accusatorial system, see H. DE SEGUSIO [HOSTIENSIS], *Summa aurea*, Venezia, 1570, Liber 5 «*de accusationibus*», 1287-1302.

<sup>87</sup> A. STITT, *De Promotore Justitiae: Ejusque Munere in Curia Dioecessana*, Roma, 1939, 13.

<sup>88</sup> J.C. GLYNN, *The Promoter of Justice, his rights and duties*, Catholic University of America, Washington DC, 1936, 15-16. A. STITT, *De Promotore Justitiae*, 13-14.

the accuser was also deprived of any possibility of receiving the financial benefit of the *poena* if the crime was proven. The petition still required the accuser to identify himself and provide a description of the crime to which the accused was bound to respond. The judge investigated the alleged crime by hearing witnesses, and when these were lacking, the judge could still inquire about the public reputation (*fama*) that the accused was guilty of the mentioned crime.<sup>89</sup> Unfortunately for the one denouncing, this person was not immune from prosecution, since the accused could bring a separate action against the denouncer for calumny if it seemed warranted. Thus, many upright people feared to bring a denunciation, especially against a person of importance, because of the danger of a counter-action. This new modification was a marginal improvement, but far from effective since many crimes still remained unpunished.<sup>90</sup>

Whether by means of accusation or denunciation, this legal system depended on an accuser who initiated the process by making the allegation. This fundamental principle was expressed in Gratian's *Decretum*: «No accusation is brought against anyone unless there is a legitimate and qualified accuser»; and furthermore, «no one is judged without an accuser».<sup>91</sup> The fundamental underpinning of this system was the presumption that there must always be three in judgment: the accuser (*actor*), the accused (*reus*), and the judge (*iudex*). The accuser was the one who acted; the accused was the one who responded; and the judge was the one who spoke the law.<sup>92</sup> The accuser asked for what was his due, while the judge remained impartial so as to weigh the proofs and decide between the parties. If the need for an accuser was the first fundamental principle in any criminal process, then the impartiality of the judge was the second principle that followed immediately from the first. This natural corollary was also expressed in Gratian: «In one and the same cause, no one can be

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<sup>89</sup> For a detailed description, see H. DE SEGUSIO [HOSTIENSIS], *Summa aurea*, Liber 5, «de denunciationibus», 1303-1308.

<sup>90</sup> J.C. GLYNN, *The Promoter of Justice*, 17. A. STITT, *De Promotore Justitiae*, 14.

<sup>91</sup> C. 2 q. 1 c. 4: «*Nihil contra quemlibet accusatum absque legitimo et idoneo accusatore fiat*». C. 2 q. 1 c. 17: «*Non est sine accusatore dampnare*».

<sup>92</sup> M. LEGA, *Praelectiones in textum iuris canonici de iudiciis ecclesiasticis*, I, Roma, 1896, 74.

simultaneously accuser and judge».<sup>93</sup> The importance of separating these two roles was intuitively obvious, since the accuser wanted the accused to be punished, while the judge wanted only to find the truth. The judge could not be a fair arbiter if he was already predisposed to see the accused as guilty. The conflation of the accuser and the judge would produce an unfair system represented by the English idiom that he would become «judge, jury, and executioner».

After the terms of the controversy were determined, the case was proven with witnesses who either confirmed or refuted the accusation. The witnesses therefore, constituted a fourth figure in the process. Gratian also confirmed the importance of independent witnesses:

The accuser cannot be simultaneously witness or judge.

No one is to ever presume to simultaneously be both accuser and judge or witness, since in every judgment four persons are always necessary, that is: the chosen judges, the qualified accusers, the corresponding defendants, and the legitimate witnesses. Moreover, the judges must practice equity; the witnesses must tell the truth; the accusers must attend to the development of their case; and the defendants must act to diminish it.<sup>94</sup>

Everyone had their proper role, and the duty of the accuser and the judge were intrinsically distinct. In Gratian's time, it was unthinkable that a judge might be the one to initiate an action, even if a guilty party remained unpunished for lack of an accuser. In the late 12<sup>th</sup> century, Innocent III lamented those injustices that remained unaddressed. In his desire to provide for the right administration of justice, he introduced a third type of process to deal with these situations: the inquisition (the so called *via inquisitionis*).

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<sup>93</sup> C. 2 q. 1 c. 17: «*In una enim eademque causa nullus simul potest esse accusator et iudex*».

<sup>94</sup> C. 4 q. 4 c. 1: «*Accusator, testis vel iudex aliquis simul esse non potest. Nullus unquam presumat accusator simul esse et iudex vel testis, quoniam in omni iudicio quatuor personas semper esse necesse est, id est iudices electos, et idoneos accusatores, defensores congruos atque legitimos testes. Iudices autem debent uti equitate, testes veritate, accusatores intentione ad amplificandam causam, defensores extenuatione ad minuendam causam*».

Three letters from the Pontiff serve to explain the nature of this reform. In a first letter of September 22, 1198, Innocent III, in the first year of his pontificate, entrusted the Archbishop of Milan with the responsibility of investigating an allegation of simony through the misuse of ecclesiastical goods, even though no accuser had come forward. To preserve the Church's honor and dignity, the Pope commissioned the Archbishop to conduct an inquiry *ex officio* to seek the truth, even though this procedure would have been contrary to the principle that no one is to be condemned without an accuser.<sup>95</sup> In this letter, the Pontiff recounted a lengthy description of the steps taken and the evidence gathered, which appeared to serve as the basis for the unusual step of ordering an *ex officio* investigation without a formal accusation. In a second letter of May 5, 1199, the same Pope wrote to the Archbishop of Sens regarding a case of a notorious heretic. Even though no accuser had publicly come forward, the widespread reputation of the heresy and the danger of scandal called for an *ex officio* inquiry into the truth.<sup>96</sup> This letter connected the public reputation (*fama*) of the offense and the grave scandal that it had caused with the need to undertake the inquiry. Apparently aware of the potential for abuse, the Pope detailed the numerous precautions that were to be taken in the inquiry so that the guilt would be proven before the accused could be condemned. Finally, in a third letter of December 2, 1199, the same Pope addressed various teachers of canon law, indicating that it was licit to initiate a process when news of a cleric's criminal conduct reached the ears of the prelate.<sup>97</sup> The crime must be investigated cautiously but diligently to arrive at the truth. Aware that this ran contrary to established principle of three in judgment, the Pope noted that «it is not as though the same person is both accuser and judge, but

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<sup>95</sup> X 3.12.1: «*Quum nullus debeat sine accusatore damnari, ... Et ideo nos, qui non tam ex plenitudine potestatis, quam ex officii debito possumus et debemus de subditorum excessibus ad correctionem inquirere veritatem, te maxime causam et occasionem praestante, inquisitionem commisimus faciendam*». See also A. STITT, *De Promotore Justitiae*, 16.

<sup>96</sup> X 5.34.10: «*Licet contra eum nullus accusator legitimus appareret, ex officio tuo tamen, fama publica deferente, voluisti plenius inquirere veritatem. Attendentes autem vulgatam infamiam, grave scandalum, et vehementem suspicionem ex testium dictis obortam*».

<sup>97</sup> X 5.3.31: «*Nam iuxta canonicas sanctiones, si quid de quocunque clerico ad aures praelati pervenerit, ... diligenter est veritas perscrutanda*».

rather, as if demanded by reputation or denounced by outcry, one carries out what is proper to his office».<sup>98</sup>

The importance of reputation (*fama*) has already been observed in causes of canonization which depend on the existence of a widespread reputation of holiness or martyrdom. From the earliest days, causes of canonization were initiated because of the common opinion of the faithful regarding the candidate. The Church responded to this desire of the faithful by investigating the candidate. If worthy, the saint was canonized, thereby recognizing and approving the sentiment already held by the people. In the reforms of Innocent III, reputation also began to serve a similar function in criminal matters. It was the widespread reputation of wrongdoing that constituted the reason for initiating a cause against the accused. The Church responded to the sense of scandal and injustice among the faithful by investigating the claim. If proven, the offender was punished.

In 1215, Innocent III further solidified the inquisitorial system in the Fourth Lateran Council. In canon 8, *de inquisitionibus*, it was decided that an offense ought to be investigated when news of it «comes through clamor or reputation to the ears of the superior, not from spiteful or slanderous persons, but from those who are thoughtful and honest». In this matter, the case should proceed «not because the judge is the actor, but rather, as if demanded by reputation or denounced by outcry, he carries out the duty proper to his office».<sup>99</sup> The language of this canon is almost identical to that of Innocent III's letter of December 2, 1199, mentioned above.

However, the canon expressed many concerns, perhaps because of the dangers involved in investing so much power in a judge who could prosecute crimes *ex officio*. Diligent precautions were to be taken lest someone be falsely maligned or incriminated. The accused was to be summoned to hear the reason for the inquisition so he could defend himself,

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<sup>98</sup> X 5.3.31: «*Non tanquam sit idem ipse accusator et iudex, sed, quasi fama deferente vel denunciante clamore, sui officii debitum exsequatur*».

<sup>99</sup> CONCILIUM LATERANENSE IV (1215), in J.D. MANSI (ed.), *Sacrorum Conciliorum*, XXII, 994: «*si per clamorem et famam ad aures superioris pervenerint, non quidem a malevolis et maledicis, sed a providis et honestis ... non tanquam sit actor et iudex, sed quasi deferente fama, vel denunciante clamore, officii sui debitum exequatur*».

not just by means of his own declarations, but also through the testimony of witnesses that he may call, as well as by means of exceptions and legitimate responses that he may make during the process. In conclusion, the canon sums up:

[There are] three ways in which the case can proceed, by accusation, denunciation, or inquisition: Yet, nevertheless, diligent caution is to be employed in all things, lest per chance grave harm come for only a slight gain: in the same way, legitimate inscription must precede the accusation, a charitable admonition must precede the denunciation, and the indication of an outcry must come before the inquisition.<sup>100</sup>

The characteristics of the inquisitorial system were described by contemporary scholars of the law, including Hostiensis, who recounted not only the procedures to be observed, but all the cautions to be employed in this process.<sup>101</sup>

Following the Fourth Lateran Council, the inquisitorial system came into wide use since experience proved that it was much more effective in punishing crimes and achieving justice than the previous systems that depended on a person to make an accusation or denunciation.<sup>102</sup> Innocent III was aware of the strong canonical tradition against one person functioning as both actor and judge, and so went to great lengths to avoid conflating the two. The key to the inquisitorial system, as explained by Innocent III, lay in the kind of legal fiction by which the reputation of wrongdoing itself was recognized as the accuser in the cause. The public outcry was personalized, being invested with the role of petitioner in the trial.<sup>103</sup> According to the

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<sup>100</sup> CONCILIUM LATERANENSE IV (1215), in J.D. MANSI (ed.), *Sacrorum Conciliorum*, XXII, 995: «*tribus modis possit procedi, per accusationem videlicet, denunciationem et inquisitionem eorum: ut tamen in omnibus diligens adhibeatur cautela, ne forte per leve compendium ad grave dispendium veniatur: sicut accusationem legitima praecedere debet inscriptio, sic et denunciationem caritativa admonitio, et inquisitionem clamosa insinuatio praevinire*».

<sup>101</sup> See H. DE SEGUSIO [HOSTIENSIS], *Summa aurea*, Liber 5, «*de inquisitionibus*», 1308-1314. A. STITT, *De Promotore Justitiae*, 15. Enrico da Susa (c. 1200-1271) was the Cardinal Bishop of Ostia, from which his more common moniker, «Hostiensis», was derived. He was a scholar of law in Bologna before he was named a cardinal. He was a prolific author of well-known canonical commentaries during the 13<sup>th</sup> century.

<sup>102</sup> A. STITT, *De Promotore Justitiae*, 18.

<sup>103</sup> J.C. GLYNN, *The Promoter of Justice*, 23.

canons of the Fourth Lateran Council, the judge would not have any power to inquire into a crime unless there was the reputation or clamor, publicly established among upright people. From this description, it followed that there were two parts to this process: (1) The judge must first determine whether the reputation of the crime existed, and only if the *fama* was proven, (2) could the judge proceed to evaluate whether the accused was guilty of the crime.<sup>104</sup> In both stages, the judge was theoretically acting impartially, evaluating the existence of the reputation, and then weighing the evidence of guilt.

### 1.3.2 RESPONSE TO THE INQUISITORIAL SYSTEM

In spite of reassurances to the contrary, doubts lingered about the impartiality of the judge who still appeared to function as the accusing party. Fear remained that the judge, who recognized the existence of the accused's reputation of criminal wrongdoing, would automatically be biased in favor of finding the accused guilty of the same crime. Even accepting the legal fiction that identified the accused's infamous reputation as the accuser in the cause, this intangible reality still required a tangible person to give life to the accusation by laying out the argument in the form of the petition. It was difficult to make the theoretical argument that the judge was not the accuser, when the judge had to be the one, in fact, to put the accusation into written form. When the judge brought forward the action, even on the basis of a public outcry, the suspicion of partiality naturally fell on him. Traces of this suspicion could not be completely dispelled, no matter how impartially the judge approached his task. Without a separate person filling the role of accuser, some objected that this new inquisitorial system violated the classic principle that there must always be three in judgment: *actor*, *reus*, and *iudex*.<sup>105</sup>

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<sup>104</sup> A. STITT, *De Promotore Justitiae*, 17. This two-step process was also found in the classic approach to causes of canonization. The reputation of holiness or martyrdom must be established, and only then could there be the specific inquiry into the life of the servant of God.

<sup>105</sup> A. STITT, *De Promotore Justitiae*, 16.

A solution to this conundrum was eventually found by making use of a figure already well known in canon law during this period: the procurator. Under Gallic law, individuals were required to act personally in legal matters and could not make use of a procurator or any other third party. However, by the 13<sup>th</sup> century, this restriction had yielded to the more common practice of acting through a nominated procurator.<sup>106</sup> Hostiensis explained that a procurator was simply a representative who acted on behalf of another in a legal matter.<sup>107</sup> Some crimes were so grave that they required the accused to respond personally after being cited to appear before the judge. However, in lesser matters, one might not have the time to appear in person to deal with a controversy, especially in the case of a noble person or someone of great importance. With a properly issued mandate, a procurator could appear for the person, either to introduce an action or to defend against the action of another. This frequently occurred in the case of monasteries in which a procurator dealt with secular affairs, leaving the religious to remain dedicated to their spiritual duties. Bishops also began to treat various issues through a procurator. The powers of the procurator varied, as this person could serve as the bishop's representative in all cases, or only in specific matters, according to the terms of the written mandate.<sup>108</sup>

For the prosecution of crimes under the inquisitorial system, the decision to entrust the initiation of the action to a kind of procurator was a natural evolution, since a separate petitioner in a criminal inquisition relieved the judge from the appearance of serving as the accuser. This separation of roles avoided the problems associated with a perceived conflict of interest. However, this person was not considered to be a procurator in the strict sense, that is, a representative who merely carried out the wishes of another, such as the bishop or the judge. Rather, this person became known as a promoter, someone who assumed the responsibility of

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<sup>106</sup> A. STITT, *De Promotore Justitiae*, 33.

<sup>107</sup> H. DE SEGUSIO [HOSTIENSIS], *Summa aurea*, Liber 1, «*de procuratoribus*», 337-348. At least in the year 1255, it did not appear that procurators could be mandated to bring actions *ex officio* through the *via inquisitionis*, though the *promotor fiscalis* would eventually acquire this faculty.

<sup>108</sup> F. EASTON, *The Defender of the Bond: Then and now*, in *CLSA Proceedings*, 59 (1997), 138.

personally promoting the action against the accused. The promoter could bring an action in the *via inquisitionis* when no other person would come forward to make an accusation or a denunciation. This procedure in which the promoter stood in the place of the *actor* became known as a *processus cum promovente*,<sup>109</sup> and the *actor* became known as the *promotor fiscalis*.<sup>110</sup>

### 1.3.3 THE FIRST APPEARANCE OF THE PROMOTOR FISCALIS

As Cardinal Lega said, the historical origins of this new figure remain «shrouded in the darkness of more remote antiquity».<sup>111</sup> Many studies have probed these shadows of history in search of a predecessor to the *promotor fiscalis*, yielding the following results. In Roman Law, there were references to various persons such as the «defender of the city», the «procurator or defender of Caesar», or the «fiscal advocate». However, scholarship demonstrated that these figures served to protect the specific interests of the emperor, the state, or even the public treasury. In the first millennium of Church history, some references were found to an «ecclesiastical defender or advocate», though these were men chosen to represent the bishop or, in some cases, the needs of widows and orphans. None of these figures were responsible for prosecuting crimes *ex officio*, or for protecting the general public welfare. Scholars are agreed that these positions had no similarity to the *promotor fiscalis* as he came to be known in the 13<sup>th</sup> century, save only in the similarities of their titles.<sup>112</sup>

<sup>109</sup> J.C. GLYNN, *The Promoter of Justice*, 24. A. STITT, *De Promotore Justitiae*, 19-20.

<sup>110</sup> J.C. GLYNN, *The Promoter of Justice*, xi. A. STITT, *De Promotore Justitiae*, 1 and 21. The *promotor fiscalis* was also known by several other similar names, including *procurator fiscalis*, *fiscalis*, *advocatus fisci*, or *procurator fisci*. The promoter looked after the prosecution of crimes and the vindication of rights, though often this involved vindicating the rights of the Church, especially in matters of temporal goods. For this reason, he was often referred to by his most commonly used title: the *promotor fiscalis*. To avoid confusion, this is the only term that will be used in this thesis.

<sup>111</sup> M. LEGA, *Praelectiones*, I, 171, n. 1: «*Historia Procuratoris Fiscalis tenebris obvolvitur remotioris antiquitatis*».

<sup>112</sup> For an in depth study of the figures mentioned here, see J.C. GLYNN, *The Promoter of Justice*, 3-7. P. HALLEIN, *Le Défenseur du lien dans les causes de nullité de mariage: Étude synoptique entre le code et l'Instruction 'Dignitas connubii', fondée sur les travaux des commissions préparatoires de l'Instruction*, Rome, 2009, 13. A. STITT, *De Promotore Justitiae*, 2-8.

The earliest explicit references to this new figure came from 1274 when French monarchs began to speak of the Procurators of the King (*Procurateurs de Roi*). Around the same time period, there are references to the fiscal procurator of the Bishop of Paris (*procurator fiscalis Episcopi Parisiensis*). In other places, this figure was simply referred to as the promoter specially delegated by the judge (*promotor specialiter delegatus a iudice*) or the minister of the inquisition (*minister inquisitionis*).<sup>113</sup> By the 14<sup>th</sup> century, the figure of the promoter had become widespread, being found in many diocesan curias throughout France and beyond.<sup>114</sup> While these officials were mentioned in various documents, nowhere was it indicated who first created this office or who was the first to appoint this official. It seems that these figures evolved organically, and that various civil leaders and bishops, seeing the praiseworthy value of such an appointment in a neighboring region or diocese, chose to imitate this example.

In Rome, the office of *promotor fiscalis* became connected naturally to that of the consistorial advocate of the apostolic household.<sup>115</sup> By the height of the middle ages, the papal court had evolved into a highly developed structure to provide advice and assistance to the Roman Pontiff in matters that called for his judgment. In addition to the cardinals who gathered around the Pope in consistory, there was a group of highly trained canonists who studied individual cases and presented them before the assembly.<sup>116</sup> This college of consistorial advocates was extremely

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<sup>113</sup> J.C. GLYNN, *The Promoter of Justice*, 24-25. A. STITT, *De Promotore Justitiae*, 11.

<sup>114</sup> J.C. GLYNN, *The Promoter of Justice*, 29. A. STITT, *De Promotore Justitiae*, 9. Glynn mentioned the existence of a promoter in the Diocese of Cerisy in 1314, in the Diocese of Arras in 1327, and by 1329, promoters existed in the Archdiocese of Reims and many other ecclesiastical courts. Stitt mentioned references to this figure in the royal courts, including in 1278 under Phillip III, and 1302 under Phillip IV of France.

<sup>115</sup> A. STITT, *De Promotore Justitiae*, 29-30. Boniface VIII appointed an *advocatus fiscalis* in 1302, noting that he himself had previously been the *advocatus generalis fisci* before his election as Pope in 1294. Other *advocati fiscales* were named by John XXII in 1329 and by Benedict XII in 1335.

<sup>116</sup> J. RAFFALLI, "Avocats Consistoriaux", in R. NAZ (ed.), *Dictionnaire de droit canonique*, I, Paris, 1958, 1535. R. RODRIGO, *La Figura de los Abogados y de los Relatores de las Causas de los Santos según la Nueva Legislación*, in A. MORINI – C. PINTO – M. BARTOLUCCI (eds.), *Sacramenti, Liturgia, Causa dei Santi: Studi in onore del Cardinale Giuseppe Casoria*, Napoli, 1992, 691. It is possible that the origins of the consistorial advocates could be traced back to seven regional defenders instituted

influential since any matter that called for a judgment by the Roman Pontiff was presented by means of one of these advocates selected to speak on behalf of the question. When one of the consistorial advocates was appointed to act *ex officio* or to defend the interests of the Church, he was referred to by one of these titles: the fiscal advocate (*advocatus fiscalis*), the fiscal procurator (*procurator fiscalis*), or the procurator of the fisc and Apostolic Household (*procurator fisci et Camerae Apostolicae*). Over time, he was most commonly referred to as the *promotor fiscalis*.<sup>117</sup>

The *promotor fiscalis* enjoyed broad discretion in bringing canonical action against the accused in a criminal matter. The breadth of the power of this office could be deduced from the various problems that arose and the efforts within the Church to curtail the excessive zeal of some promoters. For example, at the Council of Noyon in 1344, the fathers addressed the «excesses of promoters in ecclesiastical curias», observing that promoters had caused great injury and scandal by their own disproportionate accusations as well as the extravagant expenses that they imposed. The Council bound the promoters by oath to bring an action only when there was a just cause and certainty of guilt.<sup>118</sup> Promoters were also called upon to act on behalf of those who could not defend themselves, including widows and orphans. At the Council of Magdeburg in 1370, promoters were charged with defending clerics who were left destitute because of the unscrupulous behavior of others. In this way, the Council established «the procurator as the defender of the poor and oppressed clergy of the diocese, making him an agent of equity and justice in the supervision of the administration of justice in the diocese».<sup>119</sup>

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by Gregory the Great in 598. Benedict XII made references to the consistorial advocates by 1340, showing that their existence had been well established by this time. Their number was raised from seven to twelve by Sixtus IV in 1471.

<sup>117</sup> A. STITT, *De Promotore Justitiae*, 25. The fisc is another term of Roman origin for the royal (or ecclesiastical) treasury.

<sup>118</sup> CONCILIUM NOVIOMENSE (1344), Caput 16, in J.D. MANSI (ed.), *Sacrorum Conciliorum*, XXVI, 11: «*de excessibus promotorum curiarum ecclesiasticarum*». See also J.C. GLYNN, *The Promoter of Justice*, 30. A. STITT, *De Promotore Justitiae*, 22.

<sup>119</sup> J.C. GLYNN, *The Promoter of Justice*, 30-31. See also F. EASTON, *The Defender of the Bond*, 138. CONCILIUM PROVINCIALE MAGDEBURGENSE (1370), Caput 21, «*De institutionibus*», in J.D. MANSI (ed.), *Sacrorum Conciliorum*, XXVI, 567-589.

The origins and early development of the *promotor fiscalis* serve as essential background for a study of the promoter of the faith, since the latter developed out of the former. However, it is not the focus of this text to trace the full history of the *promotor*. Having treated the initial characteristics of the *promotor fiscalis*, it is sufficient at this point to make the following observations.

With the canonical advances of the high Middle Ages came important advances in criminal law. The failure of Roman Law to adequately punish crimes provided the incentive for Innocent III to create the inquisitorial process, which itself led to the creation of an *ex officio* figure to promote the inquisition, the *promotor fiscalis*. The initial motivation for the *promotor* was to protect the impartiality of the judge by providing someone to take the place of the accuser in a criminal cause. However, the *promotor* swiftly became a regular fixture in ecclesiastical curias and evolved into an office that assumed a great dignity. In the councils of the 14<sup>th</sup> century, the *promotor* was called to dispassionately seek only the truth and not a personal agenda. By the Council of Magdeburg, the *promotor* had become responsible in certain circumstances for safeguarding equity and justice. These initial developments gave the first indication of what the *promotor* was to become: a figure whose responsibility it would be to protect and defend principles, not personal prerogatives, dedicated to the search for the truth and the faithful observance of law.

## 1.4 THE *PROMOTOR FISCALIS* IN CAUSES OF CANONIZATION

### 1.4.1 THE INQUISITORIAL PROCESS APPLIED TO CAUSES OF CANONIZATION

In the 13<sup>th</sup> century, the noted canonist Hostiensis commented on many of the contributions of Innocent III, Gregory IX, and the Fourth Lateran Council, not only in matters of penal law but also in causes of canonization. Hostiensis described the great caution that was to be employed in these causes, since the veneration of saints was intimately connected with the

integrity of the faith. The final judgment always belonged to the Pope, as universal pastor, since he was qualified to authoritatively teach in matters of faith. He emphasized the importance of inquiring into the life of the candidate, as well as the miracles performed through his or her intercession, since these served as a divine confirmation of an otherwise human judgment.<sup>120</sup> Causes of canonization were investigated through a rigorous system that included two specific inquiries (*inquisitiones*), within a larger twelve step process as described by Hostiensis.<sup>121</sup> The first inquiry was ordered to investigate the reputation of holiness or martyrdom and miracles *in genere*. Presuming a favorable evaluation of this first general inquiry, the second, more detailed, inquiry was ordered into the reputation, life, and miracles *in specie*. Like the inquisitorial system which required proof of the reputation of wrongdoing before the prosecution of the crime, the reputation of holiness or martyrdom in the first inquiry was necessary to proceed to the more detailed second inquiry. This second inquiry was to be instructed diligently and prudently according the articles and interrogatories transmitted by apostolic authority which were to be closed and returned under seal. The results of these inquiries were studied in Rome and examined in consistory by the bishops and cardinals in the presence of the Pope who would decide whether or not to proceed to the solemn canonization.<sup>122</sup>

These inquiries followed many of the canonical formalities of the inquisitorial system as it was applied to penal cases. These formalities included the exposition of important facts in the articles, the preparation of questions for the witnesses in the interrogatory, the selection of a judge who would carry out the inquiry, the testimony of the witnesses given under oath, and the careful documentation of all the proofs which were preserved and

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<sup>120</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 95-97.

<sup>121</sup> CCS, *Le Cause dei Santi*, 168.

<sup>122</sup> H. DE SEGUSIO [HOSTIENSIS], *Tertium Decretalium librum commentaria*, Venezia, 1581, 172-173, also found in L. PORSI (ed.), *Leggi della Chiesa*, 64-66. See also P. SCARCELLA, *Pope Benedict XIV's De Servorum Dei Beatificatione et Beatorum Canonizatione: A Study on Canonical Principles and Procedures*, Catholic University of America, Washington DC, 1988, 27-28. For a more detailed description, see H. DE SEGUSIO [HOSTIENSIS], *Rubrica*, in L. PORSI (ed.), *Leggi della Chiesa*, 68-72.

authenticated by a seal.<sup>123</sup> These formalities were observed much like they would have been in any other process, except that the inquiry into a cause of canonization was treated with greater care because of its distinguished nature.<sup>124</sup> However, there were also many differences between causes of canonization and penal trials, principally with respect to the object of the process. A regular inquisitorial process investigated wrongdoing and sought to prove the accused guilty of a crime; whereas an inquiry in a cause of canonization investigated holiness or martyrdom and sought to prove the candidate worthy of canonization. The objects of a cause of canonization and a penal trial were polar opposites, as much as saintliness was opposed to criminality. The petitioner sought not to punish the accused for his or her guilt, but rather to honor the candidate for canonization because of his or her holiness.

In spite of these differences, canonists were quick to note the similarities between the two processes, at least with respect to the procedure that was used. Though substantially different in their natures, they both had a similar procedure, observing similar formalities. The notion that penal trials and causes of canonization could both be successfully carried out by using the same canonical method was very appealing, and served as a justification of the rightness of the inquisitorial method itself.<sup>125</sup> Notwithstanding these similarities, some adaptations were necessary because of the fundamental differences in the nature of these causes. In particular, adaptations were required with respect to the identification and the role of the accused and the accuser (the *actor* and the *reus*).

#### 1.4.2 THE RISE OF THE *PROMOTOR FISCALIS* IN CAUSES OF CANONIZATION

In adapting the inquisitorial system to causes of saints, the cause was initiated, not by an accuser, but by a petitioner who asked for the canonization of the candidate. Using today's terminology, the petitioner

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<sup>123</sup> G. DALLA TORRE, *Santità e diritto*, 35.

<sup>124</sup> A. MITRI, *De figura juridica*, 41.

<sup>125</sup> G. DALLA TORRE, *Santità ed economia processuale*, 20.

was the person or group of persons who took responsibility for promoting the cause. Since candidates for canonization must enjoy a widespread reputation of holiness among the faithful, causes had, by definition, many supporters who asked the Church for the honor of the canonization of the proposed candidate. In order to give some structure to the process, it became customary for the petitioner to act by means of a postulator who became the official representative of the petitioner in the treatment of the cause. The postulator was responsible for presenting the arguments in favor of the canonization and, in particular, evidence of the widespread reputation of holiness. Therefore, the postulator expressed this reputation concretely and in written form, presenting evidence of what already existed generally among the faithful.

The earliest evidence of the existence of postulators dates back to the 6<sup>th</sup> century, when they served as the person who petitioned the competent authority for the canonization of a saint through the *translatio* of his or her mortal remains.<sup>126</sup> By the 13<sup>th</sup> century postulators had become a regular part of the process and were mentioned in the acts of causes. With the passage of time, they developed into more than mere functionaries who presented the request for the *translatio* or the canonization. They were increasingly well trained canonists who supported their petitions for canonization with detailed arguments.<sup>127</sup> The presence of the postulator did not diminish the importance of the reputation of holiness, which was still an essential element for the introduction of a cause. Rather, the postulator took on the duty of speaking for the many faithful who held the opinion that the candidate was a saint. The postulator was responsible for articulating the reasons in favor of the canonization on behalf of the many people who supported the cause.

It was not sufficient under the model of the inquisitorial system for the postulator alone to present those arguments in favor of the canonization. As a fundamental principle of Roman Law, another party must argue against the petitioner if the principle of three in judgment was to be maintained. If

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<sup>126</sup> A. MITRI, *De figura juridica*, 32.

<sup>127</sup> A. MITRI, *De figura juridica*, 34 and 44-45. References to a procurator appear in the canonization of St. Dominic by Gregory IX in 1233.

one party argued for the canonization, then another party, or respondent, must present arguments against the canonization; just as the *actor* presented one set of arguments that were opposed by the *reus*. The process by which the two opposing parties presented their contrary arguments came to be known as the *contradictorium*. The *contradictorium*<sup>128</sup> is a technical term that described the dialectical process by which two opposing parties presented their contrasting arguments in a judicial forum. The adversarial relationship between the two parties served the interests of justice, as they each developed their best arguments before the judge who could make the decision.

In the 13<sup>th</sup> century, as the postulator was assuming a more defined role in the promotion of causes, there was not yet a single individual responsible for opposing these causes. The lack of a specific individual to present contrary arguments was no cause for alarm, since the inquisitorial process itself provided the serious level of investigation to satisfy any concerns about the truthfulness of a candidate's worthiness for canonization. Just two months before promulgating his Decretals, Gregory IX issued a bull of canonization for St. Dominic making many references to the proofs of his holiness, the testimony of miracles that were worthy of belief, as well as the careful consideration of these proofs by the bishops and cardinals. Such a process allowed the Pontiff to proceed without fear to decree that Dominic be inscribed in the catalog of saints.<sup>129</sup> It was presumed that the debates about the worthiness of the candidate, both for and against the canonization, occurred in the context of the inquiries into his life, the study of the acts, and the meetings of the prelates in consistory. This debate and the discussion of the strengths and weaknesses of the cause constituted a

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<sup>128</sup> The Latin term *contradictorium* is preferred for the following reasons: 1) The term closely resembles the word «contraddittorio» which is commonly used in Italian articles to describe this adversarial dialectic. 2) There is no English word that captures the technical sense of the term. The term cannot be rendered as a «contradiction», which is an argument that is internally inconsistent. The term can be described by means of a circumlocution, such as an «oppositional dialectic», though this expression is unnecessarily awkward.

<sup>129</sup> GREGORIUS PP. IX, bulla: *Canonizatio Sancti Dominici*, 3 iulii 1234, in L. PORSI (ed.), *Leggi della Chiesa*, 62-63.

true *contradictorium*, albeit without the formalities that would later be established in causes of canonization.

These causes also came to be studied by auditors of the Roman Rota, who elevated the level of serious scrutiny applied to these candidates for canonization. During the time of Innocent III, the Rota grew in importance, as the auditors began to issue sentences in those contentious causes entrusted to them. The Pope asked the Rotal auditors to study certain causes of canonization.<sup>130</sup> The participation of the Rota in these causes grew more frequent as their consultation gradually became a normal part of the process and their evaluations were presented to the cardinals for consideration.<sup>131</sup> As the Rota became regularly involved in these processes, the selected auditors often composed the interrogatories for the apostolic processes.<sup>132</sup> In the 14<sup>th</sup> century, the Rota was regularly asked to assemble a report (*relatio*) on these causes.<sup>133</sup> The careful study of the auditors provided for the *contradictorium* as they weighed the arguments for and against the cause.<sup>134</sup> The auditors brought a decidedly canonical methodology to these causes, applying both their approach and terminology to the exposition of the facts, to the evaluation of proofs, and to their legal deductions. They focused on the critical points in their reports which were accurate, succinct, and superior in quality. Their reports regularly called upon the assistance of specialists, including theologians and doctors, who were interpellated by the auditors.<sup>135</sup> The bulls of canonization in the years after Gregory IX often

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<sup>130</sup> P. HALLEIN, *Le Défenseur du lien*, 34. M.B. MEINARDI, *La natura giuridica*, 20.

<sup>131</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 15, §13.

<sup>132</sup> G. DALLA TORRE, *Santità ed economia processuale*, 17. It became commonplace for the Rota to prepare interrogatories in causes of canonization by the 16<sup>th</sup> century. However, the general concept of preparing the interrogatory in an apostolic inquisition was known to Hostiensis even in the 13<sup>th</sup> century.

<sup>133</sup> G. DALLA TORRE, *Santità ed economia processuale*, 21. G. PAPA, *Le Cause di Canonizzazione*, 79. A Rotal auditor in 1407 offered an opinion about the witnesses who must be heard in the process, indicating that the custom of calling upon the Rota to study causes of canonization was already established in some cases, even if not all. By 1484, there are references to the regular mandate given to Rotal auditors to treat these cases. See P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 15, §14 et Caput 18, §7.

<sup>134</sup> R. RODRIGO, *La Figura de los Abogados*, 693. Eventually, as the promoter of the faith began to assume the responsibility for examining causes of canonization, the role of the Rota in this area diminished.

<sup>135</sup> G. PAPA, *Le Cause di Canonizzazione*, 82-83. L. SCORDINO, *Natura giudiziaria*, 15.

contained detailed information about the inquiries, the excellence of the proofs, the participation of the Rotal auditors, and the careful discussions in consistory that allowed the Pontiffs to proceed with certainty to issue bulls of canonization.

However, with the passage of time, there was a desire to hear from someone specifically charged with the duty to present arguments contrary to those presented by the postulator. It was not until the 15<sup>th</sup> century that the first signs of this opposing figure emerged. At the Council of Basel, the cause of Peter of Luxemburg was recommended in 1435 by the Bishop of Albano. The Council expressed caution, observing that doubts existed among the council fathers and that there was need for further investigation. During the discussion of the cause in 1436, a call was made to hear from the procurator of the faith before concluding.<sup>136</sup> The reference to the so-called «procurator of the faith» demonstrated that—even if the office had not yet been constituted for causes of canonization in general—there was a desire to hear a contrarian argument to balance the one presented by the postulator in favor of the cause.

In 1519, Leo X (1513-1521) referred explicitly to the title of the promoter of the faith in a letter to the Bishop of Cremona concerning the cause of St. Lorenzo Giustiniani.<sup>137</sup> The letter gave special instructions regarding the investigations *in specie* that were to take place. Among these instructions, the Pope ordered that the promoter of the faith was to be cited for the examination of the witnesses who were to be diligently questioned according to the established interrogatory. Everything was to be written down and every effort was to be made to most accurately search for all that was both necessary and opportune in order to arrive at a complete understanding of the matter. In 1525, Clement VII (1523-1534) made reference to summoning the promoter of the faith for the hearing of

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<sup>136</sup> CONCILIUM BASILEENSE IV (1431-1449), Basel, 1903, 72: «*Dominus episcopus Dignensis surrexit in medium et voluit audiri super requesta procuratoris fidei, antequam concluderetur*». A. MITRI, *De figura juridica*, 46-47. R. RODRIGO, *La Figura de los Abogados*, 693.

<sup>137</sup> See P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 39, §13. St. Lorenzo Giustiniani was eventually canonized by Alexander VIII in 1690.

witnesses in the cause of St. Giacomo della Marca.<sup>138</sup> These passing references to the promoter of the faith gave the impression that this appointment was becoming a matter of routine, hinting at the increasing necessity of this figure in causes of canonization.

In 1567, a reference to the promoter of the faith was made in the instruction of the cause of St. Diego of Alcalá.<sup>139</sup> The auditors of the Rota reported that the *promotor fiscalis* for the Holy See included the interrogatory of questions to be asked in the dimissorial letters for the apostolic inquiry. Furthermore, when the tribunal was constituted in Spain, a *subpromotor fiscalis* intervened in the process. The Rotal auditors noted that this practice was becoming more common, even though there was no specific law that ordered the constitution of a promoter and a sub-promoter in these causes. Furthermore, the auditors lamented the combination of the offices of the *promotor fiscalis* and the promoter of the faith, since the *promotor fiscalis*—often a lay person—was responsible for punishing criminals, which seemed at odds with the strictly ecclesiastical and sacrosanct nature of causes of canonization.<sup>140</sup> These references showed that the practice of drawing upon the services of a promoter of the faith had become much more common, not only in investigations that occurred before the Holy See, but also in the diocesan inquiries.

The promoter of the faith was generally seen as an opponent of the postulator, taking opposite sides in the *contradictorium*. Those who emphasized the similarity between causes of canonization and penal causes tended to portray causes of saints as processes in which the holiness of the candidate was on trial. From this procedural perspective, it became natural to expect that, if there was to be an advocate in favor of the cause, the

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<sup>138</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §8: «*ad specialem super praemissis inquisitionem deveniatis, articulisque et interrogatoriis datis, Promotoreque Fidei adhibito, citatione legitima praecedente, testium productorum iuramenta recipiatis, et iuxta interrogatorium et articulorum formam examinare diligenter curetis, ac eorum dicta in scriptis fideliter redigi mandetis, ac monumenta recipiatis, quae ad negotium huiusmodi facere videbuntur, omniaque alia accuratissime perscrutemini, quae et necessaria et opportuna esse, et ad omnem plenam huius rei scientiam facere cognoveritis*».

<sup>139</sup> St. Diego of Alcalá was canonized in 1588 by Sixtus V.

<sup>140</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §5.

postulator, there should be an advocate whose function was to oppose the cause.<sup>141</sup> This interest in hearing from two opposing advocates gave rise to the popular nomenclature in which the postulator or advocate for the canonization of a saint was known as the saint's advocate (*advocatus sancti*) or God's advocate (*advocatus Dei*). By contrast, the opposing party was sometimes referred to as the devil's advocate (*advocatus diaboli*), since his duty would have been to identify those weaknesses in the candidate for canonization. As Misztal observes, «This popular name of the promoter seemed in bad taste, while his role in the process was and is very useful and necessary».<sup>142</sup> In fact, not only has the term «devil's advocate» never been an official ecclesiastical title, it carried the false presumption that this advocate was purposefully, even vindictively, against the candidate.

In reality, it appeared that the promoter of the faith served a more nuanced role. Rather than taking a position that was against the canonization of the saint, he took a position that was for the promotion of the Christian faith.<sup>143</sup> This reality meant that the postulator and the promoter were not diametrically opposed to one another, but collaborators of a kind with the Church, each one fulfilling the duties that were proper to their respective roles. The promoter served the faith and was therefore bound to protect the integrity of divine cult by raising objections when a candidate seemed unworthy for the honor of the altars. However, since the promoter was not to raise objections that were without merit, he was also focused on the truth which he was to serve in the context of the canonical process. Therefore, the promoter of the faith tied together, in the form of a juridic figure, the promotion of authentic divine worship, the prevention of abuse, the search for the truth, and the observance of the law.

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<sup>141</sup> G. DALLA TORRE, *Santità ed economia processuale*, 20.

<sup>142</sup> H. MISZTAL, *Le cause*, 341: «Questo nome popolare del promotore aveva un sapore offensivo, mentre il suo ruolo nel processo era ed è molto utile e necessario». See also A. MITRI, *De figura juridica*, 47.

<sup>143</sup> C. GARCEAU, *Le rôle du postulateur dans les procès ordinaires de béatification*, Rome, 1954, 124-125.

## 1.5 THE SACRED CONGREGATION OF RITES AND THE PROMOTER OF THE FAITH

### 1.5.1 THE CREATION OF THE SACRED CONGREGATION OF RITES

The 16<sup>th</sup> century was dominated by the Protestant Reformation which had tremendous repercussions for the Catholic Church. Although the focus of the reformers began with the selling of indulgences, at least some criticism was directed toward the Catholic Church for its practices in causes of canonization. Martin Luther, though not opposed to honoring the saints for their example, expressed concern that some devotions to the saints bordered on idolatry. He questioned whether the liturgical cult given to them and the emphasis on their intercession was in conflict with the singular intercession of Jesus Christ. John Calvin also criticized the Church for its devotion to relics.<sup>144</sup>

In the Council of Trent, the Church responded with the «Decree on invocation, veneration of saints and their relics, and sacred images» issued December 3, 1563.<sup>145</sup> Among the declarations in this decree, the Council reaffirmed: the existence of saints who pray for us and whose intercession the faithful should invoke; the veneration of saints; the honoring of relics; the dedication of churches in honor of the saints; the commemoration of the memorials of the saints; and the use of images of the saints in order to encourage the imitation of their example. The Council also affirmed that abuses were not to be tolerated in causes of saints, especially when sacred objects were manipulated for financial gain. The role of the bishop was emphasized both in the approval of legitimate relics and sacred images, as well as in the suppression of any corresponding abuses.<sup>146</sup> In this decree, the Council of Trent accomplished two goals simultaneously. First, the traditions regarding saints, relics, and their images were unambiguously affirmed. Second, abuses were acknowledged that rightly called for reform.

<sup>144</sup> E. APECITI, *L'evoluzione storica*, 78-80.

<sup>145</sup> H. DENZINGER-A. SCHÖNMETZER (eds.), *Enchiridion Symbolorum definitionum et declarationum de rebus fidei et morum*, 36 ed., Roma, 1976, 1821: «*Decretum de invocatione, veneratione et reliquiis Sanctorum, et sacris imaginibus*».

<sup>146</sup> H. DENZINGER-A. SCHÖNMETZER (eds.), *Enchiridion Symbolorum*, 1821-1825.

The 16<sup>th</sup> century saw many reforms that responded to the needs of the Church during this time of crisis. Popes began to create various dicasteries to respond to these needs, including the Holy Office of the Inquisition, the Congregation of the Council, the Congregation of the Index, and the Congregation of Bishops and Regulars.<sup>147</sup> However, Sixtus V (1585-1590) would break from this piecemeal approach to these reforms when he more than tripled the size of the Roman Curia on January 22, 1588, with the promulgation of *Immensa aeterni Dei*, bringing the number of dicasteries to fifteen.<sup>148</sup> Sixtus V opened this apostolic constitution with a description of the important work of the bishops who shepherded their flocks throughout the world, as well as the cardinals and other officials who served the Pope in an *ad hoc* capacity within the Roman Curia. Turning to the example of Moses who was encouraged by his father-in-law to divide up the work of governing the people by entrusting wise men with various responsibilities, he described the need to better distribute the work within the Roman Curia. By entrusting the various dicasteries with specific responsibilities, the Pope provided for a more timely and effective response to the needs of the Church.<sup>149</sup> The system of congregations therefore brought about a decentralization of authority within the Church, augmenting the authority of individual cardinals who were responsible for their respective dicasteries, and establishing a new balance of power within the Roman Curia.<sup>150</sup>

The creation of the Sacred Congregation of Rites and Ceremonies marked a major evolution in causes of canonization, providing a stable structure so that these causes could be treated in a systematic way. The document laid out the noble purpose of this new dicastery:

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<sup>147</sup> G. DALLA TORRE, *Santità e diritto*, 115. The Holy Office of the Inquisition was created by Paul III (1534-1549) in 1542; the Congregation of the Council by Pius IV (1559-1565) in 1564; the Congregation of the Index by Pius V (1566-1572) in 1571; and the Congregation of Bishops and Regulars during the pontificate of Gregory XIII (1572-1585).

<sup>148</sup> XYSTUS PP. V, *Constitutio apostolica: Immensa aeterni Dei*, 22 ianuarii 1588, in *Bullarium Romanum*, Lyon, 1673, II, 610-622.

<sup>149</sup> G. DALLA TORRE, *Santità e diritto*, 114. XYSTUS PP. V, *Immensa aeterni Dei*, 616.

<sup>150</sup> G. DALLA TORRE, *Santità e diritto*, 115.

The Church, instructed by the Holy Spirit and following apostolic teaching and tradition, uses sacred rites and ceremonies. In the administration of the sacraments, the celebration of the divine office, and in every [act of] veneration of both God and the saints, these sacred rites: contain the great teaching of the Christian people and the profession of the true faith; commend the greatness of sacred things; raise the mind of the faithful to the meditation of the highest things; and inflame them by the fire of devotion. Therefore, we wish to greatly increase the piety of the sons of the Church and the divine cult by the preservation and the restoration of the sacred rites and ceremonies.<sup>151</sup>

In this introduction, the great nobility of the liturgy was described with dignified elegance. The liturgy was so connected to the faith that its proper celebration served as an aid to the faith itself. The veneration of the saints was one of these liturgical elements to be safeguarded and promoted.

The next paragraph in *Immensa aeterni Dei* described the specific competencies of the Sacred Congregation of Rites, among which included the care of sacred rites and ceremonies, the administration of sacraments, and other matters pertaining to divine cult. In addition, the members of the dicastery were «to also exercise diligent care regarding the canonization of saints and the celebration of feast days, so that all would be done properly and correctly according to the tradition of the Fathers».<sup>152</sup> In spite of the detailed vision for the Congregation, its specific competency was not further defined, much less rigidly formalized. The document referred only to five cardinals to be appointed, but made no mention of any other officials in the Congregation.<sup>153</sup> The further specification of the methods and systems to be observed would be established over time.

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<sup>151</sup> XYSTUS PP. V, *Immensa aeterni Dei*, 612: «*Iam vero, cum sacri ritus et caeremoniae, quibus Ecclesia, a spiritu Sancto edocta, ex apostolica traditione et disciplina utitur, in sacramentorum administratione, divinis officiis omnique Dei et sanctorum veneratione magnam christiani populi eruditionem veraeque fidei protestationem contineant, rerum sacrarum maiestatem commendant, fidelium mentem ad rerum altissimarum meditationem sustollant, et devotionis eas igne inflamment, cupientes filiorum Ecclesiae pietatem et divinum cultum sacris ritibus et caeremoniis conservandis instaurandisque magis augere*».

<sup>152</sup> XYSTUS PP. V, *Immensa aeterni Dei*, 612: «*Diligentem quoque curam adhibeant circa Sanctorum canonizationem, festorumque dierum celebritatem, ut omnia rite et recte et ex Patrum traditione fiant*».

<sup>153</sup> G. DALLA TORRE, *Santità e diritto*, 116-117.

The bull of Sixtus V did not explicitly respond to the Protestant Reformation, but there appeared to be a desire to defend the dignity of the saints and the institution of canonization from the criticisms levied against it. The Council of Trent had reasserted the Church's right to teach in matters of canonization. With the expansion of the Roman Curia, the Church now had a stable bureaucratic structure to carry out this mission. In fact, more than merely safeguarding its prerogatives, the Church was now able to enact those reforms that were called for in Trent in view of the pressures brought about by the Reformation.<sup>154</sup> The Sacred Congregation of Rites was entrusted with the duty to study causes of canonization with great care, thus insuring that those to be proposed as saints were truly worthy. Moreover the Congregation was to see that the institution of canonization observed the highest degree of integrity so as to hold it above ridicule.<sup>155</sup> These goals could be best accomplished by empowering a dicastery that was specifically dedicated to this subject matter and which took a systematic approach.

#### 1.5.2 THE *PROMOTOR FISCALIS* WITHIN THE SACRED CONGREGATION OF RITES

The various stages of evolution within the Congregation demonstrated the «need for juridic rigor as an indispensable prerequisite for a serious and well-founded final decision».<sup>156</sup> While the Congregation did not begin with a well-defined procedure, the methods employed quickly became standardized, developing into a rigid process, which was later formalized under Urban VIII (1623-1644). Dalla Torre referred to this as «positivization» in which the practices and customs were transformed into positive ecclesiastical law.<sup>157</sup> Dalla Torre contrasted the Sacred

<sup>154</sup> G. DALLA TORRE, *Santità e diritto*, 111-113.

<sup>155</sup> M.B. MEINARDI, *La natura giuridica*, 23.

<sup>156</sup> M.B. MEINARDI, *La natura giuridica*, 28: «Lo studio delle varie tappe seguite ci fanno comprendere più da vicino come col passare del tempo si manifestava sempre più impellente, in questo genere di materia, la necessità di rigore giuridico, quale presupposto indispensabile per pervenire ad una seria e fondata decisione finale».

<sup>157</sup> G. DALLA TORRE, *Santità e diritto*, 120. W. HILGEMAN, *Le Cause*, 297.

Congregation of Rites with the Congregation of the Holy Inquisition, in that both were constituted as tribunals though with opposite competencies: the latter was responsible for condemning heresy and the former for identifying examples of virtue.<sup>158</sup>

Sixtus V made no mention of the *promotor fiscalis* or the promoter of the faith in 1588. However, from the time of Gregory XIV (1590-1591), the *promotor fiscalis* was regularly cited in causes of canonization, and, by 1594, the *promotor* was heard before the writings of a candidate were approved.<sup>159</sup> In 1595, the *promotor* was referred to as the adversary to the parties, indicating that he was to bring opposing arguments that seemed opportune.<sup>160</sup> In 1601, the citation and the participation of the *promotor fiscalis* was specifically mentioned in the bull of canonization of St. Raymond of Peñafort by Clement VIII (1592-1605).<sup>161</sup> It was understood that the *promotor* was to present arguments against a cause, though he was not bound to invent objections where they did not exist nor propose criticisms of only minor importance. In 1610, a demonstration of this fact was found in the canonization of St. Charles Borromeo by Paul V (1605-1621) in which the *promotor fiscalis* asserted that he had nothing to say against the arguments in favor of the canonization.<sup>162</sup>

While the custom of citing the *promotor fiscalis* was becoming increasingly common, the individual rights and duties of this promoter seemed to be taken for granted as they were not specifically enumerated. However, on November 14, 1620, a more detailed description appeared in a

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<sup>158</sup> G. DALLA TORRE, *Santità ed economia processuale*, 37-38.

<sup>159</sup> G. PAPA, *Le Cause di Canonizzazione*, 72. P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §9.

<sup>160</sup> G. PAPA, *Le Cause di Canonizzazione*, 73. The *promotor fiscalis* in 1595 was Giovanni Giacomo Nerotti.

<sup>161</sup> CLEMENS PP. VIII, bulla: *Canonizatio Sancti Raimundi a Peñafort*, 29 aprilis 1601, in L. PORSI (ed.), *Leggi della Chiesa*, 110. The *promotor* was cited by name, Pompeo Molella. He was referred to as the «procurator of our fisc» («*fisci nostri procuratore*»).

<sup>162</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §1. The *promotor fiscalis* in 1610 was Giovanni Battista Spada, who was sometimes referred to as the «advocate of the sacred consistorial hall and the fisc» («*sacrae concistorialis aulae et fisci advocatum*»), the «dean of the consistorial advocates» («*consistorialium advocatorum decanum*»), and even the «promoter of the faith or fiscal procurator» («*promotori fidei seu procuratore fiscali*»). See G. PAPA, *Le Cause di Canonizzazione*, 73.

decree delegating the consistorial advocate, Giovanni Battista Spada, to serve as the promoter of the faith in the cause of St. Isidore. He was to be cited before each assembly for the discussion of the cause. Beforehand he was to receive the relevant information, both in fact and in law, as well as the summaries that were to be treated, so that he could present whatever opposing arguments he wished against the process, including objections to the report that was prepared by the three Rotal auditors.<sup>163</sup>

Up to this point, the title given to this figure had been the *promotor fiscalis*. However, with the interventions of Spada in 1610 and 1620, the term promoter of the faith (*promotor fidei*) began to appear more routinely. The former title generally referred to the office while the latter title referred to the function. In other words, the person who held the (stable) office of the *promotor fiscalis* was generally appointed to fulfill the (*ad hoc*) role of the promoter of the faith. As such, the office of promoter of the faith did not yet appear to be stably constituted in its own right.

On January 19, 1630, Urban VIII issued a decree requiring the participation of the promoter of the faith in processes of servants of God:

The most illustrious Fathers ordered me, the secretary, to inform the Promoter of Faith that the opinion of the Congregation is this: namely, in order that the causes of canonizations and beatifications be handled in a more efficient and timely manner, the Promoter of Faith must propose in writing whatever problems are involved in any process regarding Servants of God.<sup>164</sup>

With this decree, the so called «*animadversions*» or observations were instituted, by which the promoter presented a written report that contained those arguments that seemed opportune against the cause.<sup>165</sup>

On January 11, 1631, the same Pope appointed Antonio Cerri as the first stable promoter of the faith within the Sacred Congregation of Rites. As of this date, there was no doubt that the promoter of the faith had been

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<sup>163</sup> G. PAPA, *Le Cause di Canonizzazione*, 75.

<sup>164</sup> URBANUS PP. VIII, Decretum, 19 ianuarii 1630, in L. PORSI (ed.), *Leggi della Chiesa*, 134: «*Ill.mi Patres mandarunt mihi secretario ut notificem Promotori Fidei sensum huius S. Congregationis esse ad hoc, ut causae canonizationum seu beatificationum in posterum melius et maturius discutiantur, ipsum debere in scriptis proponere difficultates eorum quae continentur in quolibet processu Servorum Dei*».

<sup>165</sup> G. PAPA, *Le Cause di Canonizzazione*, 324.

constituted as an office in the Church.<sup>166</sup> In the letter of appointment, the Pontiff confirmed the obligatory participation of the promoter who must always be chosen from among the college of consistorial advocates. Furthermore the faculties of the promoter of the faith were specified in detail and at great length.<sup>167</sup> In particular, the promoter had the faculty of intervening in any congregation for any cause of canonization, whether before the gathering of cardinals or before the Pope himself. He had the right to prepare an opinion (*votum*) in which he presented his objections in writing, regarding either the law or the facts of the cause. He was not restricted to a written opinion, since he could also intervene verbally if he wished. Similar to the *promotor fiscalis*, he was always to be cited to take part in any procedural act. He likewise had the right to present the interrogatory to be used in the examination of the witnesses under oath. He had the right to examine the writings of the servant of God and to visit the place of burial. These rights could be exercised in the Roman Curia, as well as anywhere in the world and before any judge. The promoter furthermore had the right to delegate a substitute or a sub-promoter to whom he could extend whatever faculties he deemed opportune. The promoter had the right to receive an authentic copy of the instructed process, of the collected writings, and of the gathered proofs regarding those doubts to be considered. The promoter, having seen and considered the evidence, had the right to present any opportune objections and responses in the form of his observations.

Three conclusions can be drawn from this detailed appointment of the first stable promoter of the faith. First, the connection between the promoter of the faith and the *promotor fiscalis* should not be underestimated. Before 1631, the *promotor fiscalis* was regularly chosen to fulfill *ad hoc* the function of the promoter of the faith. Therefore, it seems likely that the

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<sup>166</sup> G. PAPA, *Le Cause di Canonizzazione*, 75.

<sup>167</sup> URBANUS PP. VIII, Decretum, 11 ianuarii 1631, in L. PORSI (ed.), *Leggi della Chiesa*, 161-162. G. PAPA, *Cardinali prefetti, segretari, promotori generali della fede e relatori generali della Congregazione*, in CONGREGAZIONE DELLE CAUSE DEI SANTI, *Miscellanea in occasione del IV Centenario della Congregazione per le Cause dei Santi (1588-1988)*, Città del Vaticano, 1988, 427. P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §4.

promoter of the faith inherited many of his faculties from the *promotor fiscalis*. This conclusion is proven by observing that the *promotor* enjoyed many similar faculties in a criminal trial: The *promotor fiscalis* must be cited since he had the right to participate in the penal process.<sup>168</sup> He had the right to be informed of the proofs that had been gathered. He had the right to ask for evidence through the interrogatory that he composed, even compelling witnesses to be heard under oath. Finally, he had the right to speak by means of his written observations, regarding issues both in law and in fact.<sup>169</sup> One of the few limitations on the *promotor fiscalis* was that he could not judge a cause. This observation has already been made when treating the origins of the *promotor*, since he acted as a figure distinct from the judge, who was always to remain impartial.<sup>170</sup>

The second conclusion drawn from the detailed appointment of the promoter of the faith is that this office was not created impulsively or randomly. It is much more logical to hold that the office of the promoter of the faith, with his many duties and prerogatives, was gradually honed through years of prior experience. The letter in 1631 represented the first time that these faculties were enumerated in a succinct, clear, and precise manner. However, the articulation of these powers was almost certainly the fruit of traditions that developed, not only in criminal causes prosecuted by the *promotor fiscalis*, but also in those causes of canonization treated by past promoters of the faith, appointed *ad hoc*.

The third conclusion stems from the faculty to appoint sub-promoters of the faith who participated in those inquiries instructed in the various dioceses. The existence of these sub-promoters demonstrated that the presence of this *ex officio* figure had already become both widespread and customary. The participation of a promoter was becoming standard practice in every process, whether in Rome, in an apostolic process conducted in a local diocese, and increasingly even in diocesan processes instructed under ordinary authority.

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<sup>168</sup> J.C. GLYNN, *The Promoter of Justice*, 45 and 50.

<sup>169</sup> M. LEGA, *Praelectiones*, I, 175-177.

<sup>170</sup> See the argument presented above in section 1.3.3 on page 43ff.

On May 12, 1631, in a decree from the Congregation, it was decided that the promoter of the faith and the cardinal ponens must determine in advance the arguments to be debated before the Supreme Pontiff.<sup>171</sup> This decision provided for a useful discussion when causes of canonization were considered in a gathered assembly. Rather than focusing on already established areas of agreement or ancillary points of little value, the promoter and the cardinals could focus on those issues of central importance that must be examined.

One of the most important documents issued by Urban VIII was the apostolic constitution *Caelestis Hyerusalem Cives* on July 5, 1634.<sup>172</sup> The document concentrated on preventing the abuse of prematurely attributing cult to someone who had not yet been canonized. A saintly depiction, a book about supposed miraculous signs, or testimonials erected at the tomb of a candidate could lead the faithful to conclude that the person was already considered to be a saint, even before any declaration had been made by the Church. The presence of unapproved cult could give the false impression that a candidate had already been found worthy of this honor, thereby generating an artificial or manufactured reputation of holiness or martyrdom. This fabricated reputation could then be used as the basis to introduce a cause of canonization. For Urban VIII, a cause was not worthy of consideration if it was not rooted in a legitimate and spontaneous reputation among upright persons, since no one should be canonized on the basis of a contrived reputation that was more fiction than fact.

In order to distinguish a commonly held and legitimate reputation from an illegitimate one, the Pope ordered the suppression of all unapproved signs of cult that were not either immemorial or explicitly sanctioned by the Church. In particular, it was prohibited to display images in churches or oratories in which the candidate was crowned with the halo, rays, nimbus, or aureole. It was forbidden to publish books about miracles or revelations

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<sup>171</sup> URBANUS PP. VIII, Decretum, 12 maii 1631, in L. PORSI (ed.), *Leggi della Chiesa*, 142.

<sup>172</sup> URBANUS PP. VIII, Constitutio apostolica: *Caelestis Hyerusalem Cives*, 5 iulii 1634, in P. GASPARRI – J. SERÉDI (eds.), *Codicis iuris canonici fontes*, I, 402-406, n. 213 and in L. PORSI (ed.), *Leggi della Chiesa*, 146-150.

related to a candidate's life or intercession after death. No tombs were to be adored with testimonials, images, or lamps. Naturally, other public signs of cult, such as the celebration of Mass or Divine Office in the candidate's honor, the veneration of their relics, and the burial under an altar were also forbidden. This constitution contained a brief mention of the promoter of the faith in the context of the need for a thorough examination of the life and miracles of a candidate. All the materials presented for canonization were to be made known to the promoter of the faith. This brief reference was significant, not because it provided further elaboration of the faculties of the promoter, but rather because it put his position in context and hinted at his purpose. His function was part of a larger process that was intended to arrive at the truth regarding a candidate for canonization, so the Church could be confident that only those who were worthy would be honored as saints.

On the same day as the apostolic constitution, Urban VIII also promulgated the decrees to be observed in the canonization and beatification of saints.<sup>173</sup> Among these decrees appeared a formula that was used when asking the Holy Father for the initiation of a cause and the ordering of a general commission. The participation of the promoter or sub-promoter of the faith was mentioned no less than a dozen times. The document referred to the citation and participation of the promoter of the faith at every phase of the study of the cause within the Congregation. Furthermore, the interrogatory of the promoter of the faith was mentioned both in the context of the general inquiry into the reputation of holiness and miracles, as well as in the specific inquiry. In both cases, the document referred to a sub-promoter, who was nominated by the promoter, and who was always to be cited so he could intervene during the instruction of the inquiry.<sup>174</sup>

Finally, on March 12, 1642, Urban VIII promulgated additional dispositions regarding causes of canonization, among which were further clarifications regarding the responsibilities of the promoter of the faith.

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<sup>173</sup> URBANUS PP. VIII, *Decreta servanda in Canonizatione et Beatificatione Sanctorum*, 5 iulii 1634, in L. PORSI (ed.), *Leggi della Chiesa*, 145.

<sup>174</sup> URBANUS PP. VIII, *Forma Commissionis Generalis*, 5 iulii 1634, in L. PORSI (ed.), *Leggi della Chiesa*, 158-161.

«The promoter of the faith, in order to better test cases of this nature in the future, is bound to set forth in writing the difficulties regarding any of those things contained in any process whatsoever».<sup>175</sup>

### 1.5.3 THE PURPOSE OF THE PROMOTER OF THE FAITH

The above documents, written between 1588 and 1642, contained many observations about the promoter of the faith, the creation of this office, and his various rights and duties. While much was said in these documents about what the promoter of the faith could do, little was said about his purpose for acting. The purpose of the promoter was implied in a few passages, such as the decree of Urban VIII on January 19, 1630, in which the participation of the promoter was required so that causes could be handled more effectively. In the appointment of the first stable promoter of the faith by the same Pope on January 11, 1631, the promoter was given many faculties, among which was the duty to present any opportune objections to a cause, whether in law or in fact. Finally, on July 5, 1634, the promoter was mentioned in *Caelestis Hyerusalem Cives*, an apostolic constitution oriented toward the elimination of abuses in the concession of liturgical cult.<sup>176</sup> From these documents, it was implied that the purpose of the promoter was to prevent abuses in causes of saints by highlighting the obstacles which could be carefully debated and considered before proceeding to a canonization. The detailed requirements of the juridic process also served to protect the integrity of canonizations. A failure in the observance of these norms during the instruction of a cause could also enter into the written observations as one of the objections presented by the promoter.

Because the promoter of the faith was derived from the *promotor fiscalis*, it was presumed that the purpose of these two promoters in the Church would have had some common elements. It has been observed that

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<sup>175</sup> URBANUS PP. VIII, Decretum, 12 martii 1642, in L. PORSI (ed.), *Leggi della Chiesa*, 175: «*Promotor Fidei, ut melius huiusmodi Causae in posterum discutiantur, teneatur in scriptis proponere difficultates eorum quae continentur in quolibet Processu*».

<sup>176</sup> These documents were mentioned above in footnotes 164, 167, and 172.

the *promotor fiscalis* had a role in bringing accusations forward so that crimes could be punished in the interests of justice.<sup>177</sup> While the promoter of the faith was not responsible for bringing criminal accusations against candidates for canonization, he was tasked with the duty of presenting objections. These objections also served the interest of justice, in the sense of protecting the faith of the Church and the integrity of divine cult. Since both figures brought forward accusations or objections, commentators often compared the promoter of the faith to the *promotor fiscalis*, also drawing connections between the process in causes of canonization and penal trials.<sup>178</sup>

Another purpose shared by the *promotor fiscalis* and the promoter of the faith came from a commentary of St. Charles Borromeo. In 1579 at the Fifth Council of Milan, St. Charles commented on the types of causes that the *promotor fiscalis* was to pursue. The list of causes included simony, blasphemy, concubinage, the false appropriation of a benefice, and the usurpation of ecclesiastical goods. However, St. Charles did not begin with these more nefarious crimes. Rather, he said that the *promotor fiscalis* was «before all else [to] promote with great attentiveness causes of the faith ... [and] causes that pertain to the observance of divine cult». In this sense he was to be a promoter of the truth.<sup>179</sup> This noble depiction of the *promotor fiscalis*, tasked not only with prosecuting crimes, but also with the duty to safeguard the most sacred things in the Church, made him a natural selection to take on the function of promoter of the faith in causes of canonization.

From these observations, it is deduced that the purpose of the promoter of the faith was to safeguard the faith, to protect divine cult from abuses, and to protect the observance of the law, in the interest of justice and

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<sup>177</sup> J.C. GLYNN, *The Promoter of Justice*, 29. A. STITT, *De Promotore Justitiae*, 48.

<sup>178</sup> C.F. MATTA, *Novissimus de sanctorum canonizatione tractatus in quinque partes divisus*, Roma, 1678, Pars 4, Caput 1, nn. 1-2, 303-304.

<sup>179</sup> J.C. GLYNN, *The Promoter of Justice*, 37. CONCILIUM PROVINCIALE MEDIOLANENSE V (1579), Pars 3, Titulus 12, «*De procuratore fisci episcopalis*», in J.D. MANSI (ed.), *Sacrorum Conciliorum*, XXXIV, 475: «*Ante omnia promovent omni vigilantia causas fidei... causas quae pertinent ad observantiam divini cultus*».

for the sake of discovering the truth, lest anyone unworthy be granted the honor of the altars.<sup>180</sup>

#### 1.5.4 THE EFFECT OF THE PROMOTER OF THE FAITH IN CAUSES OF CANONIZATION

It has been observed that the auditors of the Roman Rota had a role in studying causes of canonization even from the time of Innocent III in the late 12<sup>th</sup> century. The participation of the Rotal auditors became increasingly common as they prepared reports on the validity of the inquiries as well as the arguments regarding holiness or martyrdom.<sup>181</sup> The creation of the Sacred Congregation of Rites in 1588 did not immediately change the function exercised by the Rotal auditors. They prepared their reports on causes and continued to have an influence through the application of juridic principles, thereby contributing to the development of jurisprudence that had a lasting impact on causes of canonization.<sup>182</sup> So they could fulfill their responsibilities, three Rotal auditors were appointed as members of the Congregation. However, as the Congregation began to establish its own methods and procedures, it had become evident that the *ad hoc* treatment of these causes by the Rota was not sufficient.<sup>183</sup> While the auditors still served a purpose, certain functions gradually passed to the promoter of the faith who opposed the postulator or his advocate.<sup>184</sup>

Up to the pontificate of Innocent X (1644-1655), the Rotal auditors were responsible for the preparation of the *informatio* in which the arguments regarding the cause were established, and the *summarium* in which the proofs in the cause were organized. However, by 1678, this

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<sup>180</sup> G. PAPA, *Le Cause di Canonizzazione*, 72.

<sup>181</sup> This argument was presented in footnote 133 on page 51.

<sup>182</sup> G. PAPA, *Le Cause di Canonizzazione*, 80-81. J.L. GUTIÉRREZ, *Studi sulle cause*, 86.

<sup>183</sup> C. LEFEBVRE, *Relationes inter Sacram Rituum Congregationem et Sacram Romanam Rotam*, in CCS, *Miscellanea in occasione del IV Centenario*, 54-59. The participation of the Rotal auditors diminished until it was revived in 1878 by Leo XIII (1878-1903). At least one Rotal auditor remained a member of the Sacred Congregation of Rites until 1969. Their function in causes of canonization ceased after the reforms of Paul VI and the promulgation of *Regimini Ecclesiae Universae*. See section 3.4.1.

<sup>184</sup> M.B. MEINARDI, *La natura giuridica*, 25. S. INDELICATO, *Le basi giuridiche*, 20.

responsibility had passed to the college of consistorial advocates who took on the responsibility of representing the cause before the Holy See. From this point forward, only these specially trained advocates could be entrusted with the study of the cause and its defense in the Congregation or in a consistory.<sup>185</sup> In this way, the advocate was responsible for presenting the arguments in favor of the cause while the promoter of the faith was responsible for presenting his observations in which he expressed his objections to the cause. In this system, the contentious relationship between these two parties with contrasting interests created the *contradictorium*.<sup>186</sup> The Rotal auditors who studied these causes continued to serve a valuable juridic purpose, since they provided a careful analysis of the proofs and the arguments. However, the procedure was gradually honed, so that it would also take on the character of a contentious process between two opposing parties.<sup>187</sup> This system reflected the principle of three in judgment, in which one person argued for and another person argued against, so that the truth could emerge before the third person, the judge. This dialectical relationship was expanded as the advocate for the petitioner was given the opportunity to respond to the observations of the promoter of the faith.<sup>188</sup> The observations (*animadversions*) of the promoter and the responses (*responsiones*) of the advocate further developed the *contradictorium* as the competing arguments were considered in the various assemblies of the cardinals and in a consistory before the Pope.

## 1.6 CONTRIBUTIONS AFTER URBAN VIII

In the years between the end of Urban VIII's pontificate in 1642 and the promulgation of the Pio-Benedictine Code of Canon Law in 1917, there were only a few developments regarding the promoter of the faith that are worthy of mention. The fact that so few modifications were necessary was a

<sup>185</sup> R. RODRIGO, *La Figura de los Abogados*, 694.

<sup>186</sup> E. DI BERNARDO, *Il Cardinal Roberti e la teoria del "rapporto giuridico processuale"*: *Linee evolutive*, Pontificia Università Lateranense, Roma, 2008, 235. J.L. GUTIÉRREZ, *Studi sulle cause*, 89.

<sup>187</sup> S. INDELICATO, *Le basi giuridiche*, 20.

<sup>188</sup> G. PAPA, *Le Cause di Canonizzazione*, 324.

testament to the completeness of the process that was handed down by Urban VIII. Nevertheless, these modifications provide additional insight into the function of the promoter in causes of canonization.

### 1.6.1 CONTRIBUTIONS OF INNOCENT XI

On October 15, 1678, Innocent XI (1676-1689) introduced modifications to the procedure established by Urban VIII. In his *Decreta Novissima*, he established 14 clarifications, some of which affected the promoter of the faith.<sup>189</sup>

The first paragraph treated the diocesan inquiry. Other witnesses, beyond those selected by the postulator, were to be heard, and the Congregation was to be informed of any information contrary to the cause that might be discovered. These witnesses, who were to be heard *ex officio*, were selected by the judge generally at the request of the promoter of the faith.

The second and third paragraphs treated the inquiry conducted in the diocese under apostolic authority. Not only was the Congregation to write to the delegated judge, entrusting him with his duties and encouraging him to earnestly exercise every diligence, but the promoter of the faith in the Congregation was to write a similar letter to the duly appointed sub-promoter. Furthermore, all officials, including the sub-promoter, were to swear an oath to exercise this required diligence.

The fourth and tenth paragraphs described the examination of the cause in the Congregation. The promoter of the faith had the right to be cited and heard in the nomination of an interpreter to deal with causes that were presented to the Congregation in various languages. A *summarium* was to be prepared by a procurator of the Apostolic Palace in which the proofs in the cause were organized and presented. This summary was to be examined by a sub-promoter in the Congregation in a process called the

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<sup>189</sup> INNOCENTIUS PP. XI, *Decreta novissima*, 15 octobris 1678, in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, VII, 944-949, n. 5626 and in L. PORSI (ed.), *Leggi della Chiesa*, 201-203. See also A. BLAT, *Commentarium textus Codicis Iuris Canonici*. IV. *De Processibus*, Roma, 1927, 555.

*revisa*, referring his observations to the promoter of the faith. Furthermore, a sub-promoter in the Congregation was to study the apostolic process regarding three distinct doubts: first with respect to the validity of the process, second with respect to the proof of virtues or martyrdom, and third with respect to miracles.

The eleventh and twelfth paragraphs described the college of procurators of the Apostolic Palace who could work on no more than four causes at a time, and the college of consistorial advocates who could work on no more than six causes at a time. While the promoter was not mentioned in these paragraphs, the limitation of the number of causes that a procurator or an advocate could treat at a time pointed to the degree of careful attention that these cases were to receive.

#### 1.6.2 CONTRIBUTIONS OF CLEMENT XI AND BENEDICT XIV

On April 7, 1708, Clement XI (1700-1721) contributed to the development of the promoter when he appointed two consistorial advocates to take the place of Giovanni Battista Bottini: Prospero Lambertini was appointed coadjutor promoter of the faith, and Filippo Sacripante was appointed assistant fiscal advocate. Through this appointment, Clement XI began the separation of the office of promoter of the faith from that of *promotor fiscalis*.<sup>190</sup> In 1712 Lambertini was promoted to the principal position of Promoter General of the Faith, a position that he would hold until 1728. He was later named by Clement XII (1730-1740) as Cardinal Archbishop of Bologna, though he would eventually return to Rome when he was elected Pope on August 17, 1740, choosing the name Benedict XIV. His pontificate continued until May 3, 1758.<sup>191</sup>

The separation of the office of *promotor fiscalis* and promoter of the faith was a pivotal moment in the evolution of these offices. While it had been customary before 1708 to appoint one person to fulfill both offices, this was thought by some to be unseemly, as it called for the same person who

<sup>190</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §6.

<sup>191</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 100. G. PAPA, *Cardinali prefetti*, 427.

was responsible for punishing delicts to also assume the responsibility for evaluating a proposed saint.<sup>192</sup> The image of a candidate for canonization being put on trial by the *promotor fiscalis* gave the impression that the servant of God was being investigated for a crime, and seemed in conflict with the sacrosanct nature of causes of saints.<sup>193</sup> In 1734, Clement XII appointed one person, Ludovico de Valentibus, to both offices, though Lambertini (Benedict XIV) noted that this appointment did not formally reverse the decision to separate these offices. Future Pontiffs appointed separate persons to the office of promoter of the faith and *promotor fiscalis*.<sup>194</sup>

One of the greatest contributions of Benedict XIV was not found in any norms issued by him, but in the publication of the scholarly study of causes of canonization entitled *De servorum Dei beatificatione et beatorum canonizatione*, which was first published in 1734 while Lambertini was in Bologna, but later revised between 1747 and 1751, after his election as Pope.<sup>195</sup> This magnum opus of Lambertini has been compared to the *Summa Theologica* of St. Thomas Aquinas with respect to causes of canonization.<sup>196</sup> As such, Benedict XIV's contribution was essentially that of a historian and an expert who presented a compendium of the theology and the law in these causes. While this Pontiff did not institute radical innovations to change the

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<sup>192</sup> The auditors of the Roman Rota made the same observation in 1567 regarding the inappropriate selection of the same official to punish delicts and evaluate causes of saints. See page 53.

<sup>193</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §6. D. ARRU, *Il Promotore della Fede nel Processo di Canonizzazione*, in *Dalle Decretali alle Intese, Studi e documenti raccolti*, Roma, 2013, 130.

<sup>194</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 18, §§5 et 10, et Caput 46, §3, n. 16. Benedict XIV noted that the jurist, Giovanni Battista De Luca (1614-1683), had observed the incongruity of appointing one person as both *promotor fiscalis* and promoter of the faith during his time.

<sup>195</sup> V. CRISCUOLO, *Prefazione*, in P. LAMBERTINI, *De servorum Dei beatificatione et beatorum canonizatione*, I/1, 2010, Città del Vaticano, 60. The first edition of this text was published under his baptismal name: Prospero Lambertini. Subsequent editions, published after his election as Pope, often carried both names: «*Benedicti XIV, Pont. Opt. Max., olim Prosperi Card. de Lambertinis*».

<sup>196</sup> W. HILGEMAN, *Le Cause*, 299. P. PALAZZINI, *La perfettibilità della prassi processuale di Benedetto XIV nel giudizio di Pio XII*, in *CCS, Miscellanea in occasione del IV Centenario*, 77.

procedures used in canonizations, his work stands out as a fundamental point of reference in any scholarly treatment of causes of saints.

### 1.6.3 CONTRIBUTIONS OF LEO XII

In 1826, Leo XII (1823-1829) issued a general decree in which he clarified the procedure to be observed in the exceptional causes in which immemorial cult predated the decrees of Urban VIII.<sup>197</sup> The apostolic constitution, *Caelestis Hyerusalem Cives*, prohibited the attribution of liturgical cult without papal approval from 1634 forward, though causes in which cult had existed from time immemorial could be tolerated. Leo XII clarified the procedure used to establish the existence of legitimate and immemorial cult, thus opening the door for the concession of Mass and Office in honor of the candidate and even for the equivalent canonization. The cause was to be examined in an ordinary assembly of the cardinal members of the Congregation who were first to discuss whether the cause was proven to be an exception to the decrees of Urban VIII. In this examination, the promoter of the faith was to present his observations to which the postulator could respond. If the exception to the decrees of Urban VIII was proven, the cardinals were to consider whether liturgical cult could be granted in the form of Mass and Office, and whether it was opportune to proceed to formal canonization. Again, the promoter of the faith was to be heard and was to present his written observations.

Although the mention of the promoter of the faith in this document was brief, this reference reinforced two important procedural elements that had become standard. First, the promoter was always to be heard when considering any important question in a cause of canonization. The promoter served as a check on the process, giving voice to any contrary arguments for the consideration of the cardinals and before the Roman Pontiff made his judgment. Second, the postulator had taken up a counterpoint position, responding to the promoter. As the postulator

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<sup>197</sup> LEO PP. XII, Decretum: *Ad tollendos*, 20 decembris 1826, in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, VIII, 27-28, n. 5851 and in L. PORSI (ed.), *Leggi della Chiesa*, 250-252.

opposed the promoter by presenting the arguments in favor of the cause, he and the promoter of the faith formed a *contradictorium* which had become central to the process at the time.

#### 1.6.4 EXCURSUS: THE INTRODUCTION OF THE DEFENDER OF THE BOND

It may seem strange to consider the role of the defender of the bond and causes of marriage nullity in connection to the promoter of the faith or even the *promotor fiscalis*. However, history demonstrates that there were points of intersection between these three figures.

With respect to the possibility of being legitimately admitted to a second marriage, little is known about the way such cases were adjudicated in the early centuries of Church history. The first recorded evidence of marriage cases was in the 8<sup>th</sup> century and records demonstrated that these cases increased in number over time. Drawing upon the Gospel command, the Church remained focused on the protection of marriage and its permanence in the development of law.<sup>198</sup> By the 13<sup>th</sup> century, the nullity of a marriage was treated extensively in the Decretals of Gregory IX and in the commentaries of Hostiensis. By this time, the legal principle had already been established that marriage enjoyed the favor of the law and was presumed valid until the contrary was proven.<sup>199</sup>

During this time, the spouse asking for the declaration of nullity was often opposed by the other spouse who argued for the validity of the marriage. However, when there was no second party to defend the marriage, Hostiensis called for the judge to seek out an opponent, even among relatives or friends who might speak for the marriage. If no one could be found, the judge himself was to inquire on behalf of the marriage,

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<sup>198</sup> P. HALLEIN, *Le Défenseur du lien*, 14.

<sup>199</sup> X 2.20.47: «*De testibus et attestationibus*». In this chapter, the requirements for proving consanguinity were laid out. Failing sufficient proof, the chapter concluded that it was more tolerable to deny the marital desires of people than to let them separate contrary to the law of God: «*Tolerabilius est enim, aliquos contra statuta hominum dimittere copulatos, quam coniunctos legitime contra statuta Domini separare*».

lest a decree of nullity be given too lightly.<sup>200</sup> Even when the other spouse did come forward to defend the marriage, there was concern that the parties not be in collusion with one another to present false testimony or deceive the court into giving a favorable decision.<sup>201</sup> As Dolan summarizes:

[Hostiensis] seems to argue that if anyone can ask that a marriage be declared null, why should not anyone stand in its defense? He is not concerned with an *ex officio* defense of the marriage bond, but solely with the juridical necessity of having someone on the side of the defense. The *defensor* of Hostiensis is nothing more than a witness for the defense, or substitute defendant.<sup>202</sup>

This system of judging the validity of a marriage depended on the same principles outlined in the judicial process, namely that there be three in judgment: one who sought to depart the marriage (*actor*), one who responded (*pars conventa*),<sup>203</sup> and the judge in the middle (*iudex*). The same principle of the *contradictorium* still applied, that the judge sought the truth by hearing the confrontation of the two opposing parties.<sup>204</sup> By the 14<sup>th</sup> century, the *promotor fiscalis* was sometimes cited when the two spouses were in agreement regarding the nullity of the marriage.<sup>205</sup> By the 16<sup>th</sup> century, various canonists called for the *promotor* to intervene as a more general rule, arguing that he should be cited to stand for the marriage in the

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<sup>200</sup> H. DE SEGUSIO [HOSTIENSIS], *Summa aurea*, Liber 4, «de libello accusationis», 1240. See also J.L. DOLAN, *The defensor vinculis, his rights and duties*, Coll. *Canon Law Studies*, n. 85, Catholic University of America, Washington DC, 1934, 6. F. EASTON, *The Defender of the Bond*, 137.

<sup>201</sup> P. HALLEIN, *Le Défenseur du lien*, 15-16.

<sup>202</sup> J.L. DOLAN, *The defensor vinculis*, 7.

<sup>203</sup> In a penal case, the *actor* accused the *reus* of the crime. In a contentious cause, the second party is referred to as the summoned party (*pars conventa*).

<sup>204</sup> P. HALLEIN, *Le Défenseur du lien*, 20. Hallein made an explicit comparison between marriage and criminal cases: «Par conséquent, naît, à l'intérieur du procès matrimonial, l'exigence de l'aspect de contradiction comme il était prévu pour les procès criminels».

<sup>205</sup> I. ZANUAZZI, *Le parti e l'intervento del terzo*, in *Il processo matrimoniale canonico*, Città del Vaticano, 1994, 346: «Nei processi matrimoniali il *procurator fiscalis* doveva essere citato ogniqualevolta le parti fossero state concordi nel sostenere la nullità del consorzio». See also F. ROBERTI, *De processibus. I. De actione de praesuppositis processus et sententiae de merito*, 4 ed., Città del Vaticano, 1956, 294.

trial.<sup>206</sup> Nevertheless, the *promotor* was called only when it seemed necessary, and not in every single cause of marriage nullity.

On November 3, 1741, Benedict XIV issued the apostolic constitution *Dei Miseratione*, in which he constituted the defender of marriage, eventually referred to as the defender of the bond. The Pope explained that he had heard of many abuses in matrimonial causes, in which judges, lacking either training or prudence, rendered sentences in favor of nullity too easily or without sufficient examination.<sup>207</sup> He therefore created the defender of the bond as an *ex officio* party who was to participate in every marriage case. His duty was to oppose the decree of nullity by presenting arguments in favor of the validity of the marriage. It was not difficult to see the connection between the defender and the promoter of the faith who was called upon to present *ex officio* arguments against a candidate for canonization. The relationship between these two figures has been observed by various scholars:

It is easy to conceive that [Benedict XIV], having seen the success of the office of *Promotor Fidei* which evolved from the *Fiscus*, decided to extend the evolution a step further, giving us the *Defensor Vinculi*, who was then the product of a development in a direct line from the *Promotor Fiscalis*.<sup>208</sup>

Hallein classified the defender of the bond as a type of promoter of the faith, adapted to the circumstances of a marriage case. Furthermore, the promoter of the faith was considered to be nothing other than a highly specialized form of the *promotor fiscalis*.<sup>209</sup> The similarities between the promoter of the faith and the defender of the bond were seen also in the rights they shared in common. Both had the right to be cited, to participate in the

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<sup>206</sup> P. HALLEIN, *Le Défenseur du lien*, 17-18. J.C. GLYNN, *The Promoter of Justice*, 39.

<sup>207</sup> BENEDICTUS PP. XIV, *Constitutio apostolica: Dei miseratione*, 3 novembris 1741, in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, I, 695-701, n. 318, §§1 et 3. Among the abuses that Benedict XIV was most concerned with was the custom in Poland by which some parties contracted three or even four successive ecclesiastical marriages while the former spouses were still living. He wrote to the bishops of Poland in *Matrimonii* (cfr. BENEDICTUS PP. XIV, *Litterae encyclicae: Matrimonii*, 11 aprilis 1741, in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, I, 677-678, n. 307).

<sup>208</sup> J.L. DOLAN, *The defensor vinculis*, 14.

<sup>209</sup> P. HALLEIN, *Le Défenseur du lien*, 22.

process, to be present at the examination of witnesses, and to present any arguments in the form of written observations.<sup>210</sup>

For the present, these observations are sufficient to demonstrate the connection between these two offices. As it is not the focus of this text to provide a comprehensive treatment of the defender of the bond, the further development of this theme is left to others.<sup>211</sup>

## 1.7 CONCLUSION

After an overview of centuries of Church history, it is useful to return to the four responsibilities of the promoter of the faith that were articulated at the beginning of this chapter. The promoter of the faith was responsible for promoting authentic divine cult, preventing abuses in cult, thoroughly seeking the truth, and faithfully observing the law. This historical survey has given ample evidence that the Church has been concerned with these four principles, at least in an embryonic form, from the beginning. The full development of the detailed methods for seeking out the truth and the defined procedures in law evolved only with experience and the passage of time. Throughout this historical evolution, the desire to more accurately seek out the truth had a powerful influence on the creation of new and innovative methods for the discovery of this truth. As the methodology became more advanced, procedures were established that required these best practices to be faithfully followed. In order to achieve the object of the investigation—the truth—it was necessary to observe the procedures defined by law—the method. Stated conversely, the method used in the investigation was gradually perfected in order to find the best way to arrive at the truth.

A brief summary of the procedures employed in causes of canonization throughout history demonstrates that improvements always required an increasing level of rigor in the investigation: The history of canonization began with a study of the act of martyrdom. As time went on,

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<sup>210</sup> BENEDICTUS PP. XIV, *Dei miseratione*, §§6 et 7.

<sup>211</sup> For further information about the origins and development of the defender of the bond, see J.L. DOLAN, *The defensor vinculis*, or P. HALLEIN, *Le Défenseur du lien*.

the life and virtues of a candidate were increasingly studied and witnesses were heard in order to gather more substantial proof of holiness. These proofs were considered in a diocesan synod with the bishop, his clergy, and the faithful. Miracles became increasingly necessary in order to confirm the worthiness of the candidate. Broader consultation was conducted as regional synods or even councils were held to consider the proofs. Eventually, the Pope intervened and these causes were studied by the cardinals in consistory. Well trained consistorial advocates began to take part and the auditors of the Roman Rota offered their considered opinions. At each stage, greater scrutiny was applied either by increasing the number of people who were consulted, or by elevating the dignity, qualifications, or importance of those who were consulted. The presumption was that greater scrutiny, both quantitatively and qualitatively, would provide an increased guarantee that the truth would be found.

A watershed moment came with the formal introduction of the *contradictorium*. This development was not simply the addition of one more opinion offered by one more juridic figure. Rather, the *contradictorium* introduced a fundamentally new technique in the evaluation of a cause of canonization by separating those who argued for or against the cause from those who judged the cause. Before the formal *contradictorium*, a cause was studied by various people (bishops, cardinals, advocates, auditors) who had to engage in a kind of internal debate, considering both the factors that favored a cause as well as those that stood in its way. Human experience makes clear that it is all too easy to formulate an initial opinion for or against a cause, even subtly allowing that predisposition to color the final judgment. As a judge begins to make up his mind, he may even discount or disregard those proofs that seem at odds with the conclusion that is in the process of being formed. With the *contradictorium*, the judge was able to approach a cause with less bias, since he was not responsible for formulating the arguments for or against the cause. That responsibility was assumed by others. He received these arguments and weighed them dispassionately against each other. Without the *contradictorium*, the judge must personally enter into the mindset of the

prosecutor and the defender before making a judgment. With the *contradictorium*, he only has to serve one function as the judge.

In the following chapters, the various changes that were introduced in the procedures for causes of canonization will be studied. However the historical insights in this chapter will provide a simple test to identify the nature of the *contradictorium* in any new system: Are there still three in judgment: someone for the cause, someone against the cause, and the impartial judge? Another way to express the same test is to determine which function a particular figure exercises in the process. Does he take the first part, being in favor of the cause? Does he take the second part, opposing the cause or at least arguing in favor of the faith? Does he take the third part, offering an impartial opinion or rendering a judgment?

According to the longstanding principle of three in judgment, there must always be someone for the cause, someone against the cause, and the impartial judge. In the history of causes of canonization, as the Church approached the preparation of the first Code of Canon Law in 1917, there was no doubt that the promoter of the faith took the second part, that of raising objections to a cause in order to promote the integrity of the faith.

## CHAPTER 2

### THE PROMOTER OF THE FAITH IN THE 1917 CODE OF CANON LAW

This chapter will analyze the promoter of the faith in causes of canonization according to the 1917 Code of Canon Law. The promulgation of the 1917 code ushered in a new phase in the history of the Church. The collection of various norms that had been promulgated over the course of time was replaced with a single code that gave a coherent structure to ecclesiastical laws. This work began under Pius X (1903-1914) and was completed under Benedict XV (1914-1922), but depended largely on the study and redaction of the existing texts by Cardinal Gasparri who sought to gather together the norms that were in force, to remove what had fallen into disuse, and to synthesize the existing law using generalized formulas that were consistent and clear.<sup>1</sup> One of the greatest contributions of the 1917 code was the methodology that it brought to the arrangement and the structure of the existing norms.<sup>2</sup>

In performing this work, the fundamental approach was not to innovate through the introduction of new norms, but rather to preserve zealously the faithful observance of the existing law without any derogation.<sup>3</sup> For this reason, the canons on beatification and canonization

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<sup>1</sup> J.L. GUTIÉRREZ, *La formazione dei principi per la riforma del "Codex Iuris Canonici"*, in J. CANOSA (ed.), *I principi per la revisione del Codice di Diritto Canonico: La ricezione giuridica del Concilio Vaticano*, Milano, 2000, 23.

<sup>2</sup> G. DALLA TORRE, *Santità e diritto*, 135.

<sup>3</sup> «Il nuovo codice» in *Monitor Ecclesiasticus*, 29 (1917), 267.

were drawn directly from the norms of Urban VIII, informed by the doctrine of Benedict XIV, and adjusted to reflect the slight modifications introduced by the various Popes during the intervening three centuries.<sup>4</sup> The desire to maintain a high degree of fidelity to the previous law was reflected in canon 6 of the 1917 code which expressed a general principle of canonical interpretation. «The code generally retains the [same] teaching in force up to now». In the second paragraph, this canon provided further detail by stating that, «Canons that refer to the old law in its entirety are to be assessed according to the authority of the old law and therefore according to the received interpretations of proven authors».<sup>5</sup> Because the legislation for causes of canonization was taken in large measure from the norms of Urban VIII, these norms were to be treated in a manner generally consistent with established traditions, following canon 6 §2.

Since the principal intention in the composition of the 1917 code was the preservation of the law that was in force, the analysis of this law will largely reflect the historical observations that were made in the previous chapter. Nevertheless, the 1917 code did make a contribution to the procedures in causes of canonization by providing a carefully organized and coherent structure that made consistent use of canonical terminology.<sup>6</sup> In addition to providing this internal structure, the 1917 code provided a context for these norms by inserting them into a larger body of law that comprehensively treated ecclesiastical governance. As such, the code provided a backdrop for the norms on canonization, creating connections

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<sup>4</sup> H. MISZTAL, *Le cause*, 162. G. DALLA TORRE, *Santità e diritto*, 134. W. HILGEMAN, *Le Cause*, 303. Gasparri's *Fontes* bear this out, since only 32 individual fonts were referenced in the 143 canons on canonization (cc. 1999-2141). Only 12 of these fonts came from the period between 1868 and the 1917 code. Of the remaining 20 fonts, Gratian was cited 2 times; Urban VIII, 4 times; Benedict XIV, 11 times; and 3 other citations that predated Benedict XIV. See P. GASPARRI, *Fontium Annotatione in Codex Iuris Canonici, Pii X Pontificis Maximi, Iussu Digestus Benedicti Papae XV Auctoritate Promulgatus*, Città del Vaticano, 1934, 642-669.

<sup>5</sup> *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, in AAS, 9/II (1917), 2-593, can. 6: «*Codex vigentem huc usque disciplinam plerumque retinet ... 2° Canonēs qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos auctores interpretationibus, sunt aestimandi*». Hereafter referred to as CIC 1917. The English translations in this thesis are provided by the author.

<sup>6</sup> G. DALLA TORRE, *Santità e diritto*, 135.

with other related canons. For this reason, a careful examination of the 1917 code will yield fresh insights regarding the promoter of the faith, by considering both the text of the norms and the context in which they appear.

## 2.1 THE NATURE OF CAUSES OF CANONIZATION AND THE OFFICE OF PROMOTER OF THE FAITH

Before taking up the rights and obligations of the promoter of the faith in the 1917 code, the general nature of causes of canonization in the code will be considered. An analysis of the nature of these causes will provide a better understanding of the individual processes and the specific persons who participated in them, including the promoter of the faith.

### 2.1.1 THE LOCATION OF THE NORMS IN THE CODE

The norms on canonization were found in the fourth book of the code on procedures (*de processibus*), which was divided into three parts. The first and longest part was on trials, containing 448 canons. The second part treated the beatification of servants of God and the canonization of the blessed, consisting of 143 canons. The third and shortest part treated a variety of circumstances in which administrative or penal procedures were applied to clerics, consisting of only 53 canons.<sup>7</sup>

The position of these norms within Book IV on procedures had the effect of confirming, certainly in the minds of canonists, that causes of canonization followed a juridic and procedural approach. It should be noted that the norms on canonization fit more logically within the treatment of processes, as they would seem out of place in the other four books of the code (on general norms, persons, things, or delicts and penalties). However, since the time of Urban VIII, the established procedures had long been regarded as a kind of juridic process following the model of an inquisition.

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<sup>7</sup> Book IV of the 1917 Code of Canon Law was divided into three parts: *de iudiciis* (cc. 1552-1998), *de causis beatificationis servorum Dei et canonizationis beatorum* (cc. 1999-2141), and *de modo procedendi in nonnullis expediendis negotiis vel sanctionibus poenalibus applicandis* (cc. 2142-2194).

This model was substantially incorporated into the code with little variation.<sup>8</sup> Benedict XIV affirmed this same conclusion when he resolved a dispute regarding the judicial or extra-judicial nature of causes of canonization. He concluded that «today those causes are to be treated according to the norms of a true trial».<sup>9</sup>

Since the norms were contained in Book IV, it could be concluded that causes of canonization were considered to be processes, that is to say, «a series of acts and legal formalities that are prescribed by law for the treatment of disputes or the handling of affairs by a public authority».<sup>10</sup> While these causes could be considered processes that followed many of the procedural norms used in trials, they were not formally equivalent to a trial. In fact, the first part of Book IV on trials was only a subset of the processes treated in this book. As such, Book IV described a variety of processes, some of which were treated judicially, while others were treated extra-judicially, such as the various administrative processes at the end of Book IV.<sup>11</sup> In order to understand the rights and obligations of the promoter of the faith, it is necessary to more precisely define whether the nature of causes of canonization is judicial, administrative, or something unique and distinctive.

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<sup>8</sup> L. SCORDINO, *Natura giudiziaria*, 17. Scordino noted that these causes have often been compared to criminal causes because of the use of the inquisitorial process. On this point, see C.F. MATTA, *Novissimus*, Pars 4, Caput 1, nn. 9-16, 305-306 and A. MATTEUCCI, *Practica theologico-canonica ad causas beatificationum et canonizationum pertractandas juxta formam decretorum*, Venezia, 1722, Titulus 3, Caput 5, §4, n. 66, 253.

<sup>9</sup> P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 47, §6: «Cum hodie causae istae ad normam veri iudicii sint redactae». See also L. PORSI, *Cause di Canonizzazione e Procedura nella Cost. Apost. "Divinus Perfectionis Magister": Considerazioni e Valutazioni*, in *Monitor Ecclesiasticus*, 110 (1985), 376-377. Lambertini was responding to the question regarding the judicial norms that were to be observed in the collection of testimony. He affirmed that a postulator, who served as a type of procurator, was always necessary in the presentation of the witnesses who were to be heard according to all the formalities of law, just as in a trial.

<sup>10</sup> J. NOVAL, *Commentarium Codicis Iuris Canonici. IV. De Processibus*, Roma, 1923, Pars 1, 2: «series actuum et solemnitatum, quae a lege praescribuntur pro questionibus pertractandis aut negotiis expediendis publica auctoritate».

<sup>11</sup> J. NOVAL, *Commentarium*, Pars 1, 1. Of the three parts of book 4 of the 1917 code, part one on trials (*de iudiciis*) was treated judicially while part three on the manner of proceeding in resolving certain matters or applying penal sanctions (*de modo procedendi in nonnullis expediendis negotiis vel sanctionibus poenalibus applicandis*) was treated administratively. Part two on causes of canonization fell literally between these other two parts, having both judicial and administrative elements according to Noval.

## 2.1.2 THE CAUSE AS A TYPE OF ECCLESIASTICAL TRIAL

Beyond the location of the norms on causes of canonization in Book IV, there were other connections with the ordinary trial that are worthy of recognition. Various commentators looked to the definition of a trial in the first canon of Book IV. Canon 1552 §1 states: «The term ecclesiastical trial is understood to mean the legitimate debate and decision, before an ecclesiastical tribunal, of those disputed matters in which the Church has the right to inquire». <sup>12</sup> Dissecting this definition, an ecclesiastical trial required (1) a matter that was within the Church's competence to treat, (2) an object of the trial which was the controversy to be resolved, (3) the presence of an ecclesiastical tribunal, (4) a legitimate debate in which contrary arguments were presented according to the norm of law, and (5) a decision that resolved the controversy.

Some scholars saw all of these elements of a trial in causes of canonization. (1) The Church had the sole right to inquire in causes of canonization, a right that was in fact reserved to the Pope since 1234. (2) There was an object at trial or a controversy to be resolved, i.e. whether or not the virtues, martyrdom, or miracles of a servant of God were proven. (3) These causes were treated by a special tribunal, either in the form of the Sacred Congregation of Rites or through a tribunal specially constituted in a local diocese by either ordinary or apostolic authority. <sup>13</sup> (4) There was a legitimate debate, or a *contradictorium*, between the postulator and the promoter of the faith, by which the proofs for and against the canonization were gathered and evaluated. <sup>14</sup> (5) Finally, there was a decision resolving the doubt about whether the virtues, martyrdom, or miracles were either

<sup>12</sup> CIC 1917, can. 1552 §1: «*Nomine iudicii ecclesiastici intelligitur controversiae in re de qua Ecclesia ius habet cognoscendi, coram tribunali ecclesiastico, legitima disceptatio et definitio*».

<sup>13</sup> I. GALASSI, *Quaestiones de processibus beatificationis et canonizationis*, in *Ephemerides Iuris Canonici*, 3 (1947), 151. Galassi concluded that the Sacred Congregation of Rites was constituted as a tribunal, united to the Supreme Pontiff who served as the sole judge. The Congregation carried out the gathering and evaluating of the proofs in a canonical manner before offering an opinion to the Holy Father who made the judgment.

<sup>14</sup> A. STITT, *De Promotore Justitiae*, 59-60. According to Stitt, the legitimate debate in a penal matter required a *contradictorium*.

proven or not proven. This decision was reserved to the Pope who had the final word in these causes.<sup>15</sup>

Another argument in favor of connecting causes of canonization with ecclesiastical trials came from the text of the code itself. Part one of Book IV was called *de iudiciis*, referring to the word *iudicium*, meaning trial, tribunal, or judgment. The same word appeared in the norms on causes of canonization 15 times. One reference suffices to demonstrate this point. The very first canon on causes of canonization states: «Causes of beatification of Servants of God and canonization of the Blessed are reserved solely to the judgment (*iudicio*) of the Holy See».<sup>16</sup> References to a trial or a judgment continued to appear in part two on causes of canonization. Furthermore, many more references were made to the judge (*iudex*) who exercised an important function in these causes.<sup>17</sup> The use of similar terminology implied a connection between the examination of causes of canonization and the contentious or penal trial as described in the first part of Book IV.

However, not all scholars were agreed on the equivalence between the procedures applied in causes of canonization and those applied in contentious or penal trials. In fact, there were significant differences between these two types of causes, as they had different objects. The 1917 code provided a list of three possible objects of a trial in canon 1552 §2: 1) the vindication of the rights of physical or moral persons, 2) the declaration of juridic facts, and 3) the punishment of delicts. The first two were treated through the contentious process and the third through the penal process.<sup>18</sup>

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<sup>15</sup> L. SCORDINO, *Natura giudiziaria*, 67.

<sup>16</sup> CIC 1917, can. 1999 §1: «*Causae beatificationis Servorum Dei et canonizationis Beatorum unius Sanctae Sedis iudicio reservantur*».

<sup>17</sup> The term *iudicium* appeared in the following canons: cann. 2033 §1, 2039 §1, 2068 §§1 and 2, 2069, 2070, 2072, 2081, 2082, 2083, 2110 §3, and 2114. It also appeared in the title of articles 3 and 4 of chapter 3 of title 24 of this part of the code (located before canons 2101 and 2116), describing the judgment (*iudicium*) of heroic virtue or martyrdom and of miracles. Beyond this, the term *iudex* appeared even more frequently as judges were chosen to carry out many of the steps in these processes.

<sup>18</sup> CIC 1917, can. 1552 §2: «*Obiectum iudicii sunt: 1<sup>o</sup> Personarum physicarum vel moralium iura perseguenda aut vindicanda, vel earundem personarum facta iuridica*

These three objects each deserve consideration. Causes of canonization could not involve the vindication of a right because there was no right to be canonized, nor the right to demand that another be canonized.<sup>19</sup> The canonization of a saint was wholly within the power of the Roman Pontiff to freely grant if he judged the candidate to be worthy, or to freely deny if deemed unworthy. The petitioner in a cause of canonization did have one right mentioned in canon 2003 §1 of the 1917 code—the right to ask that the cause be considered. «Any member of the faithful or legitimate group of the Christian faithful has the right of petitioning that a cause be instructed before a competent tribunal».<sup>20</sup> However, the competent ordinary was not bound to open a process if he did not believe the cause was well founded.<sup>21</sup> Even if a process was opened and the investigation was conducted, the petitioner still could not claim the right, owed in justice, to the eventual beatification or canonization of the servant of God. The Supreme Pontiff always retained the right to pronounce the final word, granting this ecclesiastical recognition as a favor only «if and when he will have judged it opportune».<sup>22</sup>

Secondly, causes of canonization could not be considered declarations of a juridic fact. The act of canonization was a declaration «that these particular servants of God are outstanding for their virtues, noble death, and extraordinary miracles, and so, as they are victorious in Heaven, so are they

*declaranda; et tunc iudicium est contentiosum; 2° Delicta in ordine ad poenam infligendam vel declarandam; et tunc iudicium est criminale».*

<sup>19</sup> J. NOVAL, *Commentarium*, Pars 2, 2-3. L. SCORDINO, *Natura giudiziaria*, 55-56. D. ARRU, *Il Promotore della Fede*, 136.

<sup>20</sup> CIC 1917, can. 2003 §1: «*Quivis fidelis vel legitimus Christifidelium coetus ius habet petendi ut causa apud tribunal competens instruat*».

<sup>21</sup> In the 1917 code, the competent ordinary could refuse to admit a petition from a petitioner. Canon 2003 §2 began, «If the petitioner has been admitted by a legitimate and competent authority of the Church» («*Si petitio a legitima et competenti Ecclesiae auctoritate admissa fuerit*»), implying that the ordinary was under no obligation to begin the process. Canon 2038 §2 listed the obligations of the ordinary in the instruction of a cause, though these obligations were not incurred unless «he thought the petition should be admitted» («*Ordinarius, si petitionem admittendam esse existimaverit*»).

<sup>22</sup> CIC 1917, can. 2140: «*Post haec omnia, Romanus Pontifex, auditis votis Patrum Cardinalium et consultorum, si et quando opportunum iudicaverit, decretum fert, quo decernit tuto procedi posse ad sollemnem Beati canonizationem*».

to be honored in the Church».<sup>23</sup> While the process in a cause of canonization established many facts (even with moral certitude) about the virtuous deeds of the servant of God or about miracles that could not be naturally explained, it was not for a tribunal to declare a juridic fact about a heavenly reality.<sup>24</sup> Even if the virtues or martyrdom and intercessory power were proven with moral certitude, it still remained the responsibility of the Pope to prudently discern whether the candidate was to be honored as a saint. For this reason, canonization had often been considered to be one of the more sublime judgments to be made by the Roman Pontiff. Since it was beyond the power of human experience or reason, it depended on a judgment that was more divine than human.<sup>25</sup> The judgment of the Holy Father relied on the human wisdom of those who had studied the cause, but also involved on the discernment of the divine will. For these reasons, the canonization of a particular candidate could not be reduced simply to a juridic fact to be declared by a panel of judges.

Third, causes of canonization could not be regarded as penal processes for the punishment of a delict. In a penal process, an individual person was on trial, so that his deeds might be examined before a tribunal, and the appropriate punishment be applied if necessary. A cause of canonization was analogous in the sense that an individual servant of God was «on trial» so that his or her deeds might be examined by a tribunal.<sup>26</sup> However, the examination did not involve the commission of crimes but

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<sup>23</sup> P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 12, §8: «*declarare hos et illos Dei servos virtutibus, insigni morte, eximisque miraculis praefulgentes, et sic in caelo triumphantes esse in Ecclesia colendos*».

<sup>24</sup> Scordino argued that the recognition of the holiness of a person was in the realm of declaring a juridic fact, since the norms for canonization translated the theological concept of holiness into juridic terms so they could be applied through the canonical investigation. See L. SCORDINO, *Natura giudiziaria*, 75. Scordino's position was unique and did not agree with the majority of commentators who asserted that a cause of canonization could not be declared as a juridic fact. For two examples, see D. ARRU, *Il Promotore della Fede*, 136, and A. MITRI, *De figura juridica*, 63.

<sup>25</sup> J. NOVAL, *Commentarium*, Pars 2, 2. Noval referred to the lofty judgment that was more divine than human in the bulls of canonization of St. Cunegunda by Innocent III (see chapter 1, footnote 75 on page 32) and of St. Ubaldo by Celestine III. These texts can be found in L. PORSI (ed.), *Leggi della Chiesa*, 42-43 and 49-51.

<sup>26</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 112. Gutierrez presented the arguments that favored a comparison by analogy between a trial and a cause of canonization.

rather the acceptance of martyrdom, the practice of the virtues, or the signs of miraculous intercession. The object was not to inflict a punishment, but to determine whether the candidate was worthy of the honor of the altars and public veneration. There was an additional difference between these two processes. In the penal process, the accused must be cited in order to have the opportunity to take part in his or her own defense. In the cause of canonization, the servant of God was deceased and could neither be cited nor participate in the process. The duty of presenting the arguments for and against the canonization had to be assumed by others.<sup>27</sup>

The arguments presented on the basis of canon 1552 §§1 and 2 were considered by many commentators. They reached a variety of conclusions regarding the nature of causes of canonization and whether or not they were to be considered as judicial processes like those used in a contentious or penal trial. The process used to discern who was to be honored with the title of blessed or saint stood apart from the ordinary trial as totally unique, making it impossible to establish a univocal relationship between the two. While the distinctive nature of causes of canonization was acknowledged by the commentators on the 1917 code, they nevertheless drew attention to the various comparisons between causes of canonization and ordinary trials, highlighting either a greater or lesser degree of similarity by analogy.

Some commentators emphasized the blend of both judicial and administrative elements in causes of canonization. Blaher called the process judicial-administrative while Garceau called it formally administrative but analogically judicial. Others recognized judicial aspects to the process without further specification. Blat called it a non-judicial process that observed the formalities of a judicial process, while Roberti called it completely different while retaining the form of a contentious process. Noval called it ultra-judicial meaning that it was beyond any judicial process

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<sup>27</sup> L. PORSI, *Cause di Canonizzazione*, 371. The petitioner and the postulator bore the responsibility of making the argument in favor of canonization. C. GARCEAU, *Le rôle du postulateur*, 124-125. The promoter of the faith bore the responsibility of raising objections in the cause.

and in a category of its own.<sup>28</sup> These theories that causes of canonization were mixed processes, partly judicial and partly non-judicial, were consistent with the view of Matta in the 17<sup>th</sup> century who described causes of canonization as contentious in part and non-contentious in part. Matta indicated that the phases of the instruction and the evaluation of the cause were juridically contentious, but the phase in which the Pope rendered his definitive judgment was non-contentious.<sup>29</sup> Lega made a similar distinction when he referred to the granting of the liturgical favor of canonization by the Pontiff as an administrative act, while the prior study of the servant of God was a true contentious process following a strict judicial order with some adaptations because of the nature of the matter.<sup>30</sup>

Some authors did not define the nature of causes of canonization, but described the uniqueness of these processes. In a handbook for postulators, this process was distinguished by its demand for precision and thoroughness, noting that great and wearing labor was required, taking every precaution, in order to thoroughly instruct the cause and arrive at a successful end.<sup>31</sup> Indelicato distinguished causes of canonization from other causes by the rigor and severity of the process and the complexity and precision of the instruction.<sup>32</sup>

Reflecting on the common threads among these commentators, causes of canonization under the 1917 code appeared to be *sui generis*, not being judicial in their nature, but following a procedure that was judicial in form.<sup>33</sup>

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<sup>28</sup> D.J. BLAHER, *The Ordinary Processes in Causes of Beatification and Canonization: A historical synopsis and a commentary*, Catholic University of America, Washington DC, 1949, 5. C. GARCEAU, *Le rôle du postulateur*, 11. A. BLAT, *Commentarium*, 536. F. ROBERTI, *De processibus*, 31. J. NOVAL, *Commentarium*, Pars 1, 2, n. 5. Galassi described the Sacred Congregation of Rites as a tribunal, subject to the Pope, which rendered juridic decisions, though he did not comment further about the comparison of causes of canonization to other trials. I. GALASSI, *Quaestiones de processibus*, 151.

<sup>29</sup> C.F. MATTA, *Novissimus*, Pars 4, Caput 1, nn. 1-2, 303-304.

<sup>30</sup> M. LEGA, *Praelectioniones*, II, 213 et 235.

<sup>31</sup> A. LAURI, *Codex pro postulatoribus causarum beatificationis et canonizationis*, 4 ed., Roma, 1929, 36: «Magnus et molestus labor in hisce Processibus Iudicibus ferendus est: memorent vero se laborare ad Dei gloriam, Servorum Dei et Ecclesiae exaltationem. Quapropter omnem adhibeant diligentiam, omne studium pro rei felici exitu».

<sup>32</sup> S. INDELICATO, *Le basi giuridiche*, 13.

<sup>33</sup> M.B. MEINARDI, *La natura giuridica*, 116. R. SARNO, *Diocesan Inquiries required by the legislator in the New Legislation for the Causes of the Saints*, Pontificia Università

Because these causes took on the form of a contentious judicial process, useful comparisons could be drawn by analogy between causes of canonization and the ordinary trial. Where the canons regarding canonization were silent, recourse could be usefully made to the canons on trials. The validity of this approach is confirmed by canon 18, explaining that doubtful matters were to be resolved by making reference to parallel places in the code.<sup>34</sup> The parallel connections between the canons on canonization and those on ordinary trials were not only implicitly present, but also explicitly stated in the specific canons that referred to the individual provisions of the ordinary trial.<sup>35</sup>

Considering the arguments presented and the relationship between causes of canonization and the ordinary trial, it is legitimate to make recourse to the rights and duties of the promoter of justice and the defender of the bond when looking for insights regarding the rights and duties of the promoter of the faith. This connection is further justified on the basis of the historical analysis presented in the first chapter, since all three of these figures shared a common ancestor in the person of the *promotor fiscalis*.

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Gregoriana, Roma, 1987, 27. Although Sarno treated the instructional phase of a cause of canonization from the perspective of the 1983 legislation, he reached a similar conclusion, describing these processes as administrative, even though they had similarities to other judicial processes. A cause of canonization could not be considered a judicial process strictly speaking, since there was no proper judicial object. See the observations above on canon 1552 §2 on page 85.

<sup>34</sup> CIC 1917, can. 18: «*Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum*».

<sup>35</sup> The implicit connection has already been established by the placement of these norms in the same book under the common title of *de processibus*, as well as through the common use of the terms judgment and judge (cfr. footnotes 16 and 17 above). Regarding the explicit connections, see CIC 1917, cann. 2010 §1; 2006 §2; 2027 §2, 1°; and 2050 §3. Canon 2010 §1 made reference to canon 1587 regarding the manner of citing the promoter of the faith. Canon 2006 §2 referred to canon 1659 regarding the preparation of the mandate of the postulator. Canon 2027 §2, 1° referred to canon 1757 §3, 2° regarding the inability of confessors to give testimony about confessional matters both in ordinary trials and in causes of canonization. Canon 2050 §3 referred to canon 1747 regarding the generalities of the witness that were to be asked when giving testimony.

## 2.1.3 THE ROLE OF THE PROMOTER OF THE FAITH

Many aspects of the role performed by the promoter of the faith could be deduced from the various rights and obligations expressed in the 1917 code. However, one canon served as a key point of reference. Canon 2010 §1 states that «to safeguard the law, the promoter of the faith must take part in any process».<sup>36</sup> This expression «to safeguard the law» («*ad ius tuendum*») deserves more careful attention, because the term *ius* is broad and can be translated as right or law in English. Two examples serve to demonstrate these separate meanings. Canon 2003 §1 states that the faithful had the right (*ius*) to petition that a cause be instructed.<sup>37</sup> However, canon 2008 states that the mandate of the postulator ceased according to the norm of law (*ius*).<sup>38</sup> These two examples from the canons on causes of canonization demonstrate that the word *ius* encompasses both the concept of right and law. Therefore, the promoter of the faith acted *ad ius tuendum*, which meant both «to safeguard [the observance of] the law» and «to safeguard [the protection of] rights». These two interpretations were not opposed to one another. Because of the depth of the meaning of the word *ius*, the promoter was considered to seek the protection of both the law and those rights established in law.

The notion of the promoter of the faith as a protector of the law was closely connected to the understanding of the promoter of justice (formerly the *promotor fiscalis*) who was responsible for defending the public good.<sup>39</sup>

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<sup>36</sup> CIC 1917, can. 2010 §1: «*Ad ius tuendum in quolibet processu partem habere debet promotor fidei, qui semper citari debet ad normam can. 1587*».

<sup>37</sup> «Any member of the faithful or legitimate group of the faithful have the right (*ius*) to petition that a cause be instructed before a competent tribunal». CIC 1917, can. 2003 §1: «*Quivis fidelis vel legitimus Christifidelium coetus ius habet petendi ut causa apud tribunal competens instruat*».

<sup>38</sup> «The mandate of the postulator, if the postulator acts in the name of another, ceases for the same reasons that, according to the norm of law (*ius*), the mandate of other procurators is extinguished». CIC 1917, can. 2008: «*Mandatum postulatoris, si postulator nomine alius agat, finem habet iisdem de causis quibus ad normam iuris mandatum aliorum procuratorum exstinguitur*».

<sup>39</sup> CIC 1917, can. 1586: «*Constituatur in dioecesi promotor iustitiae et defensor vinculi; ille pro causis, tum contentiosis in quibus bonum publicum, Ordinarii iudicio, in discrimen vocari potest, tum criminalibus; iste pro causis, in quibus agitur de vinculo sacrae ordinationis aut matrimonii*». Blat saw the connection between the promoter of

The promoter of justice was himself bound by the duty to «safeguard justice and the law».<sup>40</sup> These two concepts were bound together, since the proper observance of the law was considered to be in the interest of the public good. This understanding that the promoter of the faith had the mutually connected duty of safeguarding the public good by insuring the observance of the law was so commonly held that many commentators simply took this for granted.<sup>41</sup>

The notion of the promoter of the faith as a protector of rights was explained more fully by Noval. In his commentary, he stated that it was assumed that the promoter of the faith protected not rights in general, but specifically the rights of the faith.<sup>42</sup> The one responsible for promoting the faith (*promotor fidei*) naturally served the rights of the faith (*ius fidei*), which was to say that he protected the integrity of the faith of the Church. Safeguarding the faith is consistent with the theme from the first chapter that the promoter of the faith was called to protect divine cult from any abuse. From these observations, it could be concluded that the promoter of the faith was entrusted with the duty of safeguarding both the law and the faith of the Church. These two complementary goals could be achieved through a careful and thorough search for the truth in causes of canonization.

From the other canons of the 1917 code, it could be discerned that the promoter of the faith had a second fundamental role as a counterbalance to the postulator or the advocate in the process. While the duties of the promoter will be more fully explored in the rest of this chapter, a few

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the faith and the promoter of justice, stating that both promoters must be concerned with the public good. See A. BLAT, *Commentarium*, 549.

<sup>40</sup> Noval described the promoter of justice as serving justice and the law, quoting a 1880 instruction from the Sacred Congregation of Bishops and Regulars. See J. NOVAL, *Commentarium*, Pars 1, 77. SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, Instructio, 11 iunii 1880, n. 13 in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, IV, 1023, n. 2005: «*Unicuique curiae opus est procuratore fiscali pro iustitiae et legis tutela*».

<sup>41</sup> See D. ARRU, *Il Promotore della Fede*, 140. M. D'ALFONSO, *Alcuni Aspetti Giuridici nei Processi delle Cause dei Santi*, in *Monitor Ecclesiasticus*, 104 (1979), 492. C. GARCEAU, *Le rôle du postulateur*, 125. Hilgeman connected the interest in the public good and the safeguarding of the law, noting the promoter of the faith must be concerned with both. See W. HILGEMAN, *Le Cause*, 332.

<sup>42</sup> J. NOVAL, *Commentarium*, Pars 2, 57. Speaking of those who served as promoters of the faith, he referred to the duty to safeguard the right of the faith («*ius fidei tuentur*»).

examples serve to demonstrate the opposing roles of the promoter and the postulator. During the instruction of the cause, the postulator presented a favorable argument for the cause of canonization in the articles, on which the witnesses were to be interrogated. The promoter of the faith, however, composed the interrogatory that sought the truth above all else about the servant of God.<sup>43</sup> The postulator presented the list of witnesses to be examined who could support the arguments in favor of the canonization. The promoter of the faith, however, chose other witnesses to be heard *ex officio* in order to arrive at a more complete understanding of the servant of God.<sup>44</sup> During the evaluation of the cause, the advocate for the petitioner was responsible for presenting the arguments in favor of the canonization in the *positio*. The *positio* could be compared to a position paper that set out the facts and the arguments related to the cause.<sup>45</sup> During the various stages of discussion, the promoter of the faith raised his objections in his written

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<sup>43</sup> CIC 1917, can. 2007, 4<sup>o</sup>: «*Ad postulatoris officium pertinet: 4<sup>o</sup> Conficere et exhibere promotori fidei articulos, super quibus testes in processibus debeant interrogari*»; can. 2012 §1: «*Promotoris fidei est concinnare interrogatoria sobria, mere historica, quae non eo spectent ut certam quandam responsionem ab interrogato eliciant, quaeque apta sint ad veritatem eruendam etiam super articulis a postulatore propositis, eaque iudicibus exhibere sub secreti obligatione*». A. BLAT, *Commentarium*, 547. Blat described the preparation of the articles and the interrogatory as a sign of the opposition between the promoter and the postulator.

<sup>44</sup> CIC 1917, can. 2007, 3<sup>o</sup>: «*Ad postulatoris officium pertinet: 3<sup>o</sup> Nomina testium et documenta tribunali exhibere*»; can. 2024: «*Tanquam testes vocandi in primis sunt a promotore fidei, etsi a postulatore non inducti, ii omnes qui cum Servo Dei familiaritatem vel consuetudinem habuerunt*».

<sup>45</sup> The *positio* could also be compared to a dossier of information on the cause. See J. NOVAL, *Commentarium*, Pars 2, 337.

There were several kinds of *positiones* depending on the stage of the cause. Examples included the *positio super introductione causae, super non cultu, super validitate processuum, super virtutibus vel martyrio, super miraculis, super tuto ad beatificationem, super reassumptione causae, super tuto ad canonizationem*. See SACRA CONGREGATIO RITUUM, *Norme per la compilazione delle Positiones*, 8 ottobre 1943, in L. PORSI (ed.), *Leggi della Chiesa*, 383-390.

The specific contents of the *positio* varied according to the stage of the cause. However, in general terms, the *positio* contained the following: the *summarium* in which the important proofs were organized and presented, the *informatio* in which the advocate presented the arguments in favor of the cause based on the proofs, the *animadversiones* of the Promoter of the Faith outlining the objections against the cause, and the *responsiones* of the advocate addressing the objections of the Promoter of the Faith. See P. GUMPEL, *Il Collegio dei Relatori in seno alla Congregazione per le Cause dei Santi: Alcuni commenti e osservazioni personali di un relatore*, in CCS, *Miscellanea in occasione del IV Centenario*, 309.

observations while the advocate presented his responses.<sup>46</sup> In this way, a debate was constructed in which the promoter drew attention to the obstacles that stood against the cause and the advocate sought to overcome them by arguing for the cause. This dialogue formed a true *contradictorium*.<sup>47</sup>

#### 2.1.4 THE VALUE OF THE *CONTRADICTORIUM*

It has been noted in the first chapter that trials in Roman Law depended on the *contradictorium* in which the *actor* and the *reus* appeared in judgment to oppose one another so the truth could emerge before the judge. This dialectical process was based on the principle that there should always be three in judgment: the first party who presented the petition, the second party who opposed petition, and the third party who pronounced judgment after weighing the arguments.<sup>48</sup> Two important innovations were introduced in causes of canonization through the application of the inquisitorial system. First, parties began to be represented by their chosen advocate or procurator who was responsible for arguing on their behalf. Second, the *promotor fiscalis* began to serve as the accuser by bringing forward penal causes *ex officio* on behalf of the Church. In causes of canonization, he took on a similar role by raising objections *ex officio* on

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<sup>46</sup> CIC 1917, cann. 2078, 2099, 2106, 2109, 2112, 2121, 2131. These canons referred to various stages in the process when the promoter of the faith and the advocate presented their written observations. In order, these canons referred to decision to introduce the cause; the discussion of the validity of the apostolic process; the *positio* for the ante-preparatory congregation, for the preparatory congregation, and for the general congregation; the congregation for a miracle; and the presentation of a cause through the *via cultus*.

<sup>47</sup> L. PORSI, *Natura delle "Cause dei Santi" Indagini Storico-Scientifiche o vere Cause e quali?*, in A. MORINI – C. PINTO – M. BARTOLUCCI (eds.), *Sacramenti, Liturgia, Cause dei Santi*, 657. D'Alfonso reflected on the centrality of the dialectic between two opposed parties, producing the *contradictorium* which he considered to be the best way to arrive a moral certitude in the resolution of the doubt examined by the tribunal. See M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 492.

<sup>48</sup> E. DI BERNARDO, *Il Cardinal Roberti*, 125. Di Bernardo described the juridic relationship between the different subjects (the parties and the judge) as polycentric because, each of these parties was assigned a different role and acted for the fulfillment of that role.

behalf of the Church. In time, the dialectical process evolved in causes of canonization so that the postulator stood in the first position, that of promoting the cause, and the promoter of the faith stood in the second position, that of opposing the cause. The Pope was assisted by the various officials of the Sacred Congregation of Rites who stood in the third position, that of evaluating and judging the cause, with the final judgment in these matters belonging to the Supreme Pontiff alone.

The 1917 code provided for this dialectical system in causes of canonization by codifying the roles and responsibilities of the individual figures who took part in the instruction of these processes, especially the postulator and the promoter of the faith. The code clearly articulated their respective rights and obligations on the basis of well-defined principles that were consistently and logically applied. The result was a clear division of responsibilities in which those who promoted the cause were clearly distinguished from those who raised objections to the cause, and both of these from those who objectively evaluated the cause. The clarity and precision of these canons contributed significantly to a greater understanding of the value of this procedure.

The first party in this dialectical system brought the petition in favor of the cause. In causes of canonization, this function was performed by the petitioner, whether an individual, a group of persons, or a moral person, who was always represented by a postulator.<sup>49</sup> In addition to the postulator, the petitioner also had the eventual assistance of a procurator and an advocate.<sup>50</sup>

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<sup>49</sup> CIC 1917, can. 2003 §1. This canon was cited above in footnote 20 on page 85. A moral person (or juridic person in the terminology of the 1983 code) was an ecclesiastical entity, such as a diocese, an eparchy, or a religious order.

<sup>50</sup> CIC 1917, cann. 2018: «*Advocati et procuratores in causis beatificationis et canonizationis apud Sacram Congregationem debent esse potiti laurea in iure canonico et saltem licentia in sacra theologia, et fecerint oportet tirocinium penes aliquem ex advocatis Sacrae eiusdem Congregationis vel penes ipsum fidei Subpromotorem generalem; pro advocatis insuper requiritur legitimus titulus advocati rotalis*». The postulator treated the cause before the competent tribunal. The procurator assisted with the preparation of the *Summarium* of the cause. The advocate argued the cause by presenting his responses to the various *animadversions* of the promoter of the faith. See CIC 1917, cann. 2004 §2, 2076 §1, 2078 et passim. Each of these figures were referred to separately according to their unique and distinctive role (for example, see CIC 1917, can. 2027, §2, 2° in which these three figures were disqualified to be heard as a witness).

In an ordinary trial, the petitioner—strictly speaking—must be able to claim a right that is owed to him in justice. This was one of the key distinctions between ordinary trials and causes of canonization, since there was no such right to demand that a servant of God be canonized. Noval resolved this difficulty by explaining that the Church admitted causes of canonization, not out of an obligation owed in justice, but by benevolent concession, arising from the Church’s duty to promote the cult of the saints.<sup>51</sup>

One of the first responsibilities of the postulator was to prove that the servant of God enjoyed a legitimate reputation of holiness through the practice of heroic virtue or through martyrdom.<sup>52</sup> From the first centuries, the Church had always responded to the widespread and legitimate reputation of holiness among the faithful who sought the honor of canonization for a particular candidate. Drawing upon Noval’s insight about the Church’s benevolent willingness to take up these causes, it could be said that the Church responded not so much to the request of an individual petitioner, even if the one requesting was of great importance. Rather, the Church responded to the widespread call of the faithful.<sup>53</sup> Since the widespread reputation was abstract and could not concretely serve as the one to petition for the cause, it could be said, in this sense, that the petitioner stood as the representative for the widespread *fama*, speaking for the vast number of people wishing for the beatification and canonization.<sup>54</sup>

The second party responded to the petition. In a penal trial, the second party was the one accused of the crime, defending himself against the petition. This point marked another difference between ordinary trials and causes of canonization, since the servant of God could not be

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<sup>51</sup> J. NOVAL, *Commentarium*, Pars 2, 3-4.

<sup>52</sup> The informative process had to prove the existence of a legitimate reputation (*fama*) before the cause could be introduced in the Holy See. See CIC 1917, can. 2038 §1: «*Ad introductionem causae beatificationis Servi Dei, a Sede Apostolica obtinendam, debet prius iure constare de puritate doctrinae in eius scriptis, de eiusdem fama sanctitatis, virtutum et miraculorum vel martyrii, de absentia cuiuslibet obstaculi quod peremptorium videatur; mox vero de cultu publico eidem non praestito*».

<sup>53</sup> P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 39, §§5-7. L. SCORDINO, *Natura giudiziaria*, 82. Scordino considered the inquiry to be *ex officio* on the part of the hierarchy, seeking signs of legitimate *fama*.

<sup>54</sup> This point was made in section 1.4.2. on page 48ff.

summoned to trial, nor was he or she accused of wrongdoing. On the contrary, it was the holiness of the servant of God that was the object of inquiry. Without the servant of God standing the second position in the *contradictorium*, it would fall to another party to take up this responsibility. Over the course of history, that function was assumed by the *promotor fiscalis* and eventually by the promoter of the faith. If the postulator was seeking the canonization by arguing in favor of the virtues or martyrdom of the servant of God, then the promoter of the faith assumed the opposite function by raising objections where they existed.<sup>55</sup>

For the promoter of the faith, a distinction must be made between the desire to oppose the candidate and the goal of protecting the faith. In both circumstances, the promoter presented those obstacles that he saw to the cause of canonization, but not for the same reason. If the promoter sought only to oppose the candidate, he would be motivated principally by the desire to damage the reputation of the servant of God, impugning his or her character and virtue, and using any lack of clarity as a pretext to presume the worst. If he sought primarily to protect the faith, he would raise objections for the sake of the Church, but only insofar as those objections were rooted in sound reasoning and a concern for the truth. The second perspective, and not the first, was both fitting and more naturally desirable. Noval explained

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<sup>55</sup> M. LEGA, *Praelectiones*, II, 232. Lega referred to the promoter of the faith as the one who took the place of the *reus* or the *pars conventa* in the trial, functioning in the same capacity as the *promotor fiscalis* to the extent that he contradicted the intentions of the *actor* (i.e. the petitioner) and the postulator. E. DI BERNARDO, *Il Cardinal Roberti*, 235. Di Bernardo described the dialectical procedure, based on a *contradictorium* between parties with contrasting interests, as fundamentally dynamic. The *contradictorium* recognized not only the symmetrical right of each party to participate in the presentation of their respective but opposed positions. It also anticipated that that there would be reciprocal implications in the activities of each party as they responded to one another.

Lega was a philosopher, a theologian, and a canonist who not only taught, but who also worked in the Congregation for the Council, the Roman Rota, the Apostolic Signatura, and the Congregation for the Discipline of the Sacraments. He was known for his scholarly work, including the *Praelectiones*, which were renowned for presenting his insights in a highly organized and logical order. He addressed not only the letter of the law, but also the reason and the soul of the law which made up its spirit. See M. NACCI, *Il Cardinale Michele Lega: Profilo Storico-Giuridico*, in *Quaderni Dello Studio Rotale*, 21 (2011), 149-167.

this attitude which was proper to the promoter of the faith in the context of canon 2010 and his duty to safeguard the law (*ad ius tuendum*):

[The promoter of the faith serves] to protect the law; hence he is not solely to oppose the beatification or canonization with all his strength, as though he were to consider only what is unfavorable [to the cause], while rejecting altogether whatever is favorable. Consequently, the promoter does not betray his office, though he fails to give it the attention it requires when he expressly admits or even slightly praises the facts that are evident or supported by solid arguments, by which the virtues or miracles appear proven. Still, it seems that their attention is to be directed to the example, worthy of imitation, of those previous promoters, recounted by Benedict XIV ..., regarding the difficulties to be raised in at least the more important matters, even if they are only slight. On account of this severity, which is certainly most prudent, promoters of the faith are commonly called the devil's advocates; moreover whoever says so seriously understands that to ignore a difficulty, which at first seems light, is often determined to be proven serious.<sup>56</sup>

This passage provided an extremely compact and succinct summary of the promoter's fundamental responsibility and deserves further consideration in order to uncover its many implications. Noval began by rejecting the model of the promoter that was simply focused on finding fault with the servant of God. The promoter was not merely to seek out every defect in the life of the candidate, strictly for the purpose of undermining his or her reputation. Such a mission would have been beneath the dignity of this office. However, Noval also rejected the notion that the promoter should praise those positive characteristics regarding the servant of God. If the promoter were to argue in favor of those signs of heroic virtue or martyrdom, he would be serving the same function as the petitioner,

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<sup>56</sup> J. NOVAL, *Commentarium*, Pars 2, 56: «*Ad ius tuendum non igitur ad resistendum beatificationi aut canonizationi totis viribus et exclusive, ita nempe ut solummodo quae eis non faveant consideret, quae vero faveant negligat omnino. Itaque officio suo non deest, quin potius eidem optime satisfacit, promotor qui expresse admittit, aut etiam sobrie extollit, facta manifesta, vel solidis argumentis munita, quibus virtutes aut miracula apparent probata. Tamen ipsorum oculis, ut imitentur, obiiciendum esse videtur promotorum praedecessorum exemplum a Benedicto XIV supra memoratum n. 55 circa difficultates, etsi levissimas, in dubiis saltem principalioribus excitandas. Ob hanc severitatem, certe consultissimam, promotores fidei vulgo dicuntur advocati diaboli; si quis autem id quod dicit, serio sentiret, censendus est ignorare difficultatem, prima facie levem, saepe comprobari esse gravem*».

presenting arguments favorable to the cause and thereby diminishing the *contradictorium*. The promoter did not abandon his responsibilities if he acknowledged the evidence in favor of canonization, but Noval said that this promoter was not fully living up to his duties, since he would have failed in his principal obligation of raising objections. Noval referred to the examples given by Benedict XIV regarding those promoters who faithfully drew attention to the obstacles that existed in a cause, even if they seemed minor. These worthy examples were meant to be remembered and imitated. Finally, Noval referred to the common sobriquet of the promoter: the devil's advocate. Noval praised the promoter for his seriousness and severity in such important matters. Rather than running away from this vulgar nickname, Noval indicated that this title ought to be carefully considered, since even a small failure to point out the flaws in a particular servant of God might have grave consequences. From this carefully considered opinion, Noval presented an image of the promoter that was not so much against the candidate, as much as he was for the faith. Even so, the responsibility of pointing out those weaknesses and obstacles, for the sake of the Church and the integrity of the faith, remained a serious one.

Those who favored the cause of a servant of God included the petitioner, the postulator, and those associated with them. However, because causes of canonization required evidence of a widespread reputation of holiness, by definition there would have been many other people favorable to the cause. Since so many people would presumably desire to see the canonization of the servant of God, it is understandable that the presence of a contrarian was considered to be critical in the search for the truth. The opposing arguments must be soberly articulated and considered if a mature deliberation was to occur. The need for the opposing party was essential to the *contradictorium* and essential to the ultimate goal of reaching a decision that was accurate. Egan summed up the value of the *contradictorium* as follows:

History has contrived to make the People of God feel most secure in officially declaring certain important facts by means of a trial. Nor should this come as any surprise. For when one person has done everything in his power to demonstrate that something is so and another has done everything

in his to demonstrate that it is not and all of this has taken place openly and according to well-defined rules of confrontation, those in authority to whom it belongs to issue a declaration on the subject will generally and understandably believe that their decision is more likely to be accurate than it might have been without the controversy.<sup>57</sup>

This observation made clear the importance of the person who took the second part in the *contradictorium* by opposing the petition. The promoter of the faith, rather than merely standing in the way of the cause, was serving a critical role in validating the authenticity of the cause. When serious and considered scrutiny was applied, and when the merits of the servant of God withstood this challenge, the praiseworthiness of the candidate for canonization was all the more evident. Only by putting the candidate to the test, could it be discovered if he or she was truly worthy of the title of saint.

## 2.1.5 THE STAGES OF THE PROCESS

The specific rights and obligations of the promoter of the faith will be considered in each of the stages of the cause. However, to better understand these stages, it is useful to review the various phases in a cause of canonization of a servant of God.

The procedure used to treat causes of canonization had many similarities with the procedure in an ordinary trial. After the preliminary formalities, the ordinary trial could essentially be divided into three broad phases: the gathering of the proofs, the discussion or evaluation of the proofs, and the judgment.<sup>58</sup> Causes of canonization were structured in a similar manner. There were preliminary formalities, largely consisting of the identification of the parties (e.g. the petitioner, the postulator, the

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<sup>57</sup> E. EGAN, *Appeal in Marriage Nullity Cases: Two Centuries of Experiment and Reform*, in *CLSA Proceedings*, 43 (1981), 133.

<sup>58</sup> Trials were preceded by some preliminary formalities including the introduction of the *libellus* and the joinder of the issue (cfr. CIC 1917, cann. 1706-1731). The gathering of proofs took place during the period of instruction and constituted the most lengthy phase of the trial (cfr. CIC 1917, cann. 1732 and 1742-1836). The discussion of the proofs began at the conclusion of the cause with the publication of the acts and the *animadversions* of the advocates, the promoter of justice, and the defender of the bond (cfr. CIC 1917, cann. 1858-1867). Finally, the judgment occurred when the doubt was resolved by means of the sentence (cfr. CIC 1917, cann. 1868-1877).

competent ordinary, etc.), and the nomination of the officials (e.g. the judges, the promoters of the faith, the notaries, etc.). These causes however did not have a joinder of the issue to determine the doubt that was to be resolved. The doubt in a cause of canonization was not proposed by the parties, nor determined by the judge, but rather defined by law with respect to heroic virtue, martyrdom, or miracles.<sup>59</sup> After these preliminary formalities, commentators divided causes of canonization, like the ordinary trial, into three phases: the instruction, the discussion, and the decision.<sup>60</sup> The instruction was the phase in which the proofs were gathered; the discussion was the phase in which the proofs were weighed; and the decision was the judgment, ultimately made by the Roman Pontiff.

In the 1917 code, the phases for the instruction, the discussion, and the judgment of the cause each took place at least twice, first in the ordinary processes and then in the apostolic processes. The first instruction occurred under the authority of the local bishop who ordered the three ordinary processes to be carried out.<sup>61</sup> The first process on the writings called for the gathering of all documents written personally by the servant of God. Secondly, the informative process was to be instructed regarding the reputation of virtues or martyrdom, and miracles. This informative process did not need to prove the specific details regarding virtues or martyrdom, and miracles, but only the existence of a general reputation of holiness or martyrdom and intercessory power held spontaneously by the faithful. The third process on non-cult was to be instructed to verify that the servant of God was not the object of illicit cult contrary to the decrees of Urban VIII.<sup>62</sup>

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<sup>59</sup> The doubt to be resolved was expressed in CIC 1917, can. 2104: «*In causis confessorum discuti debet dubium: an constet de virtutibus theologalibus Fide, Spe, Caritate tum in Deum tum in proximum, nec non de cardinalibus Prudentia, Iustitia, Temperantia, Fortitudine, earumque adnexis in gradu heroico in casu et ad effectum de quo agitur; in causis vero martyrum: an constet de martyrio eiusque causa et de signis seu miraculis in casu et ad effectum de quo agitur*».

<sup>60</sup> J. NOVAL, *Commentarium*, Pars 2, 223. He referred to these three phases as the *instructio*, *discussio*, and *decisio*.

<sup>61</sup> See CIC 1917, cann. 2038ff.

<sup>62</sup> These three processes were referred to as the *processus super scriptis*, the *processus informativus*, and the *processus super non cultu*. See CIC 1917, can. 2038 §2: «*Quare ad preces postulatoris Ordinarius, si petitionem admittendam esse existimaverit, debet: 1° Scripta Servi Dei perquirere; 2° Processum informativum instruere super fama*

The first evaluation of the cause occurred after these ordinary processes were transmitted to the Sacred Congregation of Rites, where all three processes were examined and submitted to the Pope for his judgment regarding the formal introduction of the cause by the Holy See.<sup>63</sup>

Once the cause was introduced, this pattern was repeated under apostolic authority. The apostolic process was composed of two parts.<sup>64</sup> In the first part, an apostolic process was to be instructed on the reputation in general of holiness or martyrdom, and miracles, in order to confirm that this same reputation established in the informative process continued to exist. In the second part, an apostolic process was to be instructed on the specific details of the practice of the virtues, the martyrdom and its cause, or miracles attributed to the servant of God. The first of these two parts, regarding the reputation of the candidate, could be dispensed if it was sufficiently proven during the informative process. When the apostolic processes were complete, the acts were studied in the Congregation in a series of steps that examined the validity of their instruction and then the merits of the cause.<sup>65</sup> The merits were considered in three separate congregations: the ante-preparatory, the preparatory, and the general. Assuming that the cause received a favorable hearing in these various stages, it passed to the Pope for his judgment. The Pontiff could decree the servant of God to be named venerable, and with sufficient evidence of miraculous intercession, he could decree the beatification or canonization of the servant of God.<sup>66</sup>

Throughout these phases, the promoter of the faith safeguarded the law and the faith in two fundamental ways. He participated in the process with the right of placing a series of actions or exceptions, and he offered his opinion through his written observations.<sup>67</sup> The specific details regarding

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*sanctitatis, virtutum in genere vel martyrii, causae martyrii et miraculorum; 3<sup>o</sup> Processum instruere super non cultu».*

<sup>63</sup> See CIC 1917, cann. 2065ff.

<sup>64</sup> See CIC 1917, cann. 2087ff.

<sup>65</sup> See CIC 1917, cann. 2098ff.

<sup>66</sup> The number of miracles required varied according to the nature of the cause and the quality of the proofs presented. See CIC 1917, cann. 2116, 2117, and 2138.

<sup>67</sup> F. ROBERTI, *De processibus*, 307 et 312-313. In this passage, Roberti described the rights of the promoter of justice and the defender of the bond to place juridic acts and to

these actions or exceptions, as well as the various observations, are treated in the remainder of this chapter.

## 2.2 THE ROLE OF THE PROMOTER OF THE FAITH IN GATHERING THE PROOFS

The promoter of the faith assisted in the gathering of proofs on the local level, both in the ordinary and in the apostolic processes. In the ordinary processes, he was appointed by the diocesan bishop and was simply called the promoter of the faith. In the apostolic processes, he was appointed by the Promoter General of the Faith in the Sacred Congregation of Rites and was called the sub-promoter of the faith.<sup>68</sup> In each of these processes, the rights and obligations of this promoter could be organized according to two fundamental goals: insuring that the acts were legitimate and that the proofs were complete.

### 2.2.1 INSURE THAT THE ACTS ARE LEGITIMATE

#### 2.2.1.a *The citation and presence of the promoter*

The promoter of the faith safeguarded the law which included protecting the integrity of the acts of the process. The nomination of the promoter at the beginning of the process insured that he would be able to exercise this function throughout the instruction of the cause. In the process instructed by the local ordinary, the promoter of the faith was nominated by

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present *animadversions*. The principles that he described were also applicable to the promoter of the faith.

<sup>68</sup> CIC 1917, can. 2011: «§1. *Promotor fidei, extra Sacram Congregationem, constitui potest vel ad omnes causas vel ad aliquam causam particularem. §2. Promotor fidei generalis et Sub-promotor generalis a Romano Pontifice eliguntur; promotor fidei apud Ordinariorum tribunal, si quidem agatur de processu apostolico, nominatur a Promotore generali et tunc nomen sub-promotoris habet; secus nominetur ab Ordinario ante edictum de quo in can. 2043*».

the ordinary at the same time as the judges who composed the tribunal.<sup>69</sup> The promoter of the faith had to be nominated before the publication of the edict, which was used to call for the presentation of the writings of the servant of God and to identify the witnesses who had useful information to contribute.<sup>70</sup> These canons made it evident that the promoter was to be nominated at the beginning of the ordinary processes, before the instruction had begun either through the formal gathering of the writings or the hearing of witnesses. In an apostolic process, the Promoter General of the Faith nominated two sub-promoters by means of a letter which was included with the remissorial letters that ordered the instruction of the process.<sup>71</sup> Therefore, the sub-promoters also took part in an apostolic process from the very beginning of its instruction.

The citation and participation of the promoter (or sub-promoter) was a critical aspect of the process. In the informative process, the promoter must always be cited for validity to allow him to be present at the individual sessions. The acts of the session were still valid, even in the absence of the promoter, provided that he had been cited.<sup>72</sup> In the apostolic processes, not

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<sup>69</sup> CIC 1917, can. 2040 §2: «*Ordinarius per decretum designet tribunalis praesidem, sive hoc munus sibi reservet, sive delegatum cum duobus aliis iudicibus nominet; eodemque decreto nominet fidei promotorem et notarium*».

<sup>70</sup> CIC 1917, can. 2011 §2. This canon, which referred to canon 2043, was cited above in footnote 68 on page 102. The edict mentioned in canon 2043 called for all the writings of the servant of God to be presented to the tribunal, and reminded all who had familiarity with the servant of God to make their knowledge known in a letter delivered to the promoter of the faith. See can. 2043 §1: «*Ordinarius per publicum edictum in singulis paroeciis, si fieri potest, vulgandum vel alio opportuniore modo scripta Servi Dei ab omnibus penes quos exstent ad tribunal deferri iubeat, et praescripta can.2023-2025 in memoriam revocet atque urgeat*».

<sup>71</sup> CIC 1917, can. 2089: «*Litteris remissorialibus addantur peculiares litterae Promotoris generalis fidei, quibus duos sub-promotores designet qui eius nomine processui adsint*».

<sup>72</sup> The obligation to cite the promoter of the faith was found in CIC 1917, can. 2010 §1: «*Ad ius tuendum in quolibet processu partem habere debet promotor fidei, qui semper citari debet ad normam can. 1587*». The canon made reference to CIC 1917, can. 1587: «*§1. In causis in quibus eorum praesentia requiritur, promotore iustitiae aut vinculi defensore non citato, acta irrita sunt, nisi ipsi, etsi non citati, revera interfuerint. §2. Si legitime citati aliquibus actibus non interfuerint, acta quidem valent, verum postea eorum examini subiicienda omnino sunt ut ea omnia sive voce sive scriptis possint animadvertere et proponere quae necessaria aut opportuna iudicaverint*». This canon required the citation of the promoter of justice or the defender of the bond for validity. Applying this canon to the promoter of the faith, the acts were invalid if the promoter was neither cited nor present at the session. If the promoter was legitimately cited but absent

only was the citation of the sub-promoters required, but at least one of them must have actually been present for validity. The session was invalid if both sub-promoters were absent, even if they had been legitimately cited.<sup>73</sup> In light of the fundamental responsibilities of the promoter of the faith, the citation and the active presence of the promoter allowed him to see to the observance of the law and the proper instruction of the cause. The obligatory nature of the citation demonstrated that the active and personal participation of the promoter of the faith was expected in all the sessions of the process.<sup>74</sup> When the acts of the process were transmitted to the Holy See, it was typical to inform the Sacred Congregation of Rites that nothing was done without the presence of the promoter of the faith, a practice that further underscored the importance of the citation and the participation of the promoter.<sup>75</sup>

### 2.2.1.b Oaths and secrecy

The integrity of the process was protected by various oaths. The promoter of the faith, as well as the ordinary, the judges, and the notaries were each required to take an oath in which they swore three things: to fulfill the duties of office faithfully, to maintain secrecy, and not to accept gifts. Witnesses were also to swear three things. At the beginning of his or

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for the session, the acts were to be made available for examination so the promoter could make his observations or opportune proposals. Noval noted that the promoter of justice must be cited because he served to safeguard both justice and the law, a point of similarity with the promoter of the faith. See J. NOVAL, *Commentarium*, Pars 1, 77. See also J.C. GLYNN, *The Promoter of Justice*, 50, and M. LEGA, *Praelectiones*, IV, 474.

<sup>73</sup> CIC 1917, can. 2094: «*Quamvis omnes, ad quos remissoriales litterae datae sunt, adesse possint singulis processus apostolici sessionibus, ad validitatem tamen sufficit ut adsint praeses cum duobus iudicibus vel ipso annuente et absente, tres alii iudices, itemque unus ex sub-promotoribus fidei, notarius vel adiunctus*». This canon requires at least one sub-promoter to be present for validity.

<sup>74</sup> J.L. DOLAN, *The defensor vinculis*, 42. Citing canon 1587, Dolan noted the necessity of the active and personal presence of the defender of the bond in all the sessions of a marriage trial. Because of the reference in canon 2010 §1, the same necessity applied to the promoter of the faith.

<sup>75</sup> A. LAURI, *Codex pro postulatoribus*, 127-129: «*Praesertim vero declaramus numquam a nobis actum aliquid fuisse nisi praesente Fidei Promotore ac Notario deputato*».

her testimony, the witness first swore to tell the truth. At the end of the testimony, the witness swore that he or she had told the truth, and that the witness would maintain secrecy. Other officials must swear at the beginning of their office that they would faithfully discharge their duties, and at the end that they had, in fact, done so. The postulator and vice-postulators must give an oath of calumny, that they would speak the truth and not defraud others in the process.<sup>76</sup> The consequences for breaking these oaths were severe, as they were binding under pain of excommunication *latae sententiae* reserved personally to the Roman Pontiff.<sup>77</sup>

The obligation of maintaining secrecy ceased once the process was published, marking the conclusion of the instructional phase for the gathering of the proofs.<sup>78</sup> The oath to maintain secrecy served to avoid the possibility of collusion in the instruction of the cause. The officials and those witnesses who had given testimony were prohibited from speaking

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<sup>76</sup> CIC 1917, can. 2037: «§1. *Personae quae in processu, sive a locorum Ordinariis iure proprio sive a delegatis Sedis Apostolicae instruendo, partem habent, scilicet iudices, promotor fidei ac sub-promotores, notarius et adiunctus debent, initio uniuscuiusque processus, secundum formulam a Sacra Congregatione praescriptam, iusiurandum praestare de munere fideliter adimplendo, de secreto servando usque ad processus publicationem et de donis cuiusvis generis non accipiendis.*

§2. *Ordinarius, etsi partes iudicis non agat, tenetur tamen praestare iusiurandum de secreto servando.*

§3. *Praeterquam quod de secreto servando, iurare praeterea debent testes, nemine excepto aut dispensato, de veritate dicenda, antequam interrogentur, de veritate dictorum, post factam interrogationem; periti, interpretes, revisores et scriba, de munere bene adimplendo, antequam peritiam, conversionem de uno sermone in alium, revisionem, transcriptionem peragant; de munere bene adimpleto, post peractam peritiam, conversionem, transcriptionem, revisionem. Etiam cursor seu nuntius iusiurandum praestet de officio fideliter obeundo.*

§4. *Postulatores ac vice-postulatores praestare debent iusiurandum calumniae, id est iurent se veritatem per totum processum dicturos nullaque fraude usuros.*

Among the officials who must swear to faithfully fulfill their duties included experts, interpreters, reviewers, scribes, translators, and copyists. Noval observed the connection between this canon and canon 1744 that gave the judge the power to impose an oath in an ordinary trial. While oaths were not always required in every judicial process, they were obligatory in causes of canonization (cfr. J. NOVAL, *Commentarium*, Pars 1, 302-303 and Pars 2, 136).

<sup>77</sup> M. LEGA, *Praelectiones*, II, 231. See A. LAURI, *Codex pro postulatoribus*, 84, for an example of an oath mentioning the threat of excommunication.

<sup>78</sup> CIC 1917, can. 2037 §1, cited above in footnote 76 on page 105: «*de secreto servando usque ad processus publicationem*». A. BLAT, *Commentarium*, 582.

about the testimony that had been given, lest that information prejudice future witnesses who might be influenced in their own responses. Even the questions that were asked were not to be discussed, lest future witnesses prepare for difficult questions in advance, having their rehearsed responses ready.<sup>79</sup> Commentators clarified that the obligation of secrecy did not bar the witnesses entirely from speaking about the servant of God. It was legitimate for them to speak about their general knowledge of the candidate for canonization, though they were prohibited from revealing the specific questions that were asked and the specific answers that they gave in response, at least until the publication of the process.<sup>80</sup> As a sign of the importance of preserving secrecy, the interrogatory for the witnesses, at least in the apostolic processes, was kept sealed between sessions and was only opened in the presence of the members of the tribunal and only in the context of a session for the hearing of witnesses.<sup>81</sup> Moreover, the acts themselves were to be sealed between sessions, preventing anyone from examining their contents. The seal also prevented the possibility of

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<sup>79</sup> A. BLAT, *Commentarium*, 551. A. LAURI, *Codex pro postulatoribus*, 37.

<sup>80</sup> A. LAURI, *Codex pro postulatoribus*, 55-56.

<sup>81</sup> CIC 1917, can. 2091 §2: «*Una simul mittantur ad aliquem ex sub-promotoribus, clausa et non aperienda nisi in actu examinis, interrogatoria, super quibus qui inducentur testes, sint interrogandi*». A. LAURI, *Codex pro postulatoribus*, 45. Canon 2091 required that the interrogatory in the apostolic process be transmitted under seal. There was no similar reference to sealing the interrogatory in the informative process or the process on non-cult. It should be noted that the informative process was general by its very nature, examining only the reputation of virtues or martyrdom and miracles. As such, the witnesses would have expected to be asked general questions about the servant of God, making the sealing of the interrogatory less essential. On the other hand, the interrogatory used in the apostolic process was more detailed and responded to specific concerns that were proper to the particular cause, making the duty to safeguard it more critical. Nevertheless, the obligation of maintaining secrecy regarding the questions of the interrogatory, even in the informative process, was obligatory by canon 2010 §1 and by the oaths mentioned above, even if the interrogatory was not sealed between sessions. See A. LAURI, *Codex pro postulatoribus*, 37.

An argument can be made that the interrogatory in the informative process was to be sealed by appealing to the process for causes of marriage nullity in which the defender of the bond was to transmit the interrogatory under seal with his signature (cfr. CIC 1917, can. 1968, 1°: «*Defensoris vinculi est: 1° Examini partium, testium et peritorum adesse; exhibere iudici interrogatoria clausa et obsignata, in actu examinis a iudice aperienda, et partibus aut testibus proponenda; novas interrogationes, ab examine emergentes, iudici suggerere*»). Both causes of canonization and causes of marriage nullity required careful instruction because they both involved the public good.

tampering with the acts by removing, inserting, or modifying any part of the process except during an official session in which the members of the tribunal were present.<sup>82</sup> Once the last witness had been heard, the interrogatory, which was no longer considered a secret, was opened and inserted into the acts which were to be published.<sup>83</sup>

### 2.2.1.c *Specific interventions of the promoter*

Every process was composed of a series of formalities to be observed according to the norm of law. Indelicato described the purpose of these procedural norms and canonical formalities as follows:

First and foremost, every process results in an assortment of activities, distributed among the various juridic persons who intervene, involving a series of formalities that distinguish it from every other private investigation. The Church always urges the observance of procedural norms, established precisely to safeguard the security and the truth of the acts and of the judgment...<sup>84</sup>

Among these formalities for the protection of the process were the various interventions of the promoter of the faith. These interventions involved the work of experts, the authenticity of documentary proofs, and the transmission of the acts to the Holy See.

The promoter of the faith protected the integrity of the process with respect to the work of experts. There were a variety of circumstances in

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<sup>82</sup> CIC 1917, can. 2041 §2: «*Post unamquamque sessionem acta causae claudi et iudicis sigillo obsignari debent, non aperienda, nisi in sequenti sessione, postquam iudex sigillum integrum et intactum recognoverit; si sigillum integrum et intactum non inveniatur, iudex rem deferat ad Sacram Congregationem*». See also canon 1642 §1 which defined the acts as the totality of the proofs adduced and the procedural acts performed by the tribunal which were to be put into writing. Noval observed that the sealing of the interrogatory and the sealing of the acts at the end of each session served to provide a greater degree of protection regarding the integrity of the process. See J. NOVAL, *Commentarium*, Pars 2, 241.

<sup>83</sup> A. LAURI, *Codex pro postulatoribus*, 116, note 2.

<sup>84</sup> S. INDELICATO, *Le basi giuridiche*, 86: «Ogni processo, anzitutto, risulta da un complesso di attività che, distribuite alle varie persone giuridiche che vi intervengono, comporta una serie di solennità che lo distinguono da ogni altra indagine privata. La Chiesa sempre urge l'osservanza delle norme procedurali, stabilite appunto per salvaguardare la sicurezza e la verità degli atti e del giudizio».

which experts were required, such as medical experts in the case of a miraculous healing or historical experts to examine documents.<sup>85</sup> In order to provide an objective analysis, the law itself required two separate experts, and granted the promoter of the faith the opportunity to be heard so as to present any objections.<sup>86</sup> For example, the promoter could object if he believed that the expert was unqualified or biased and thus incapable of giving an impartial opinion. The experts were to be unknown to each other, unless the promoter agreed that the circumstances required them to work together.<sup>87</sup> The preference in the law was that the experts remain separate and independent, leaving the tribunal with two opinions that could reinforce or contradict each other. Only by way of exception were the experts to work together, on account of the particular circumstances or the nature of the work to be done.

The promoter of the faith certified the authenticity of documentary proofs. The promoter was specifically mentioned with respect to the gathering of the writings of the servant of God, whether published or unpublished. The notary was to prepare the list of writings, describing them both quantitatively and qualitatively. This list was then signed by the promoter as a guarantor of its accuracy.<sup>88</sup> Regarding the presentation of other documentary proofs, the promoter was not specifically mentioned. However, since the acts were sealed between sessions, proofs could only be presented during the sessions of the tribunal, necessarily involving the presence of the promoter of the faith. The promoter would therefore have

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<sup>85</sup> J. NOVAL, *Commentarium*, Pars 2, 126: Noval cited examples of kinds of experts who could be useful depending on the need. Beyond doctors and historians, he mentioned other experts for the examination of inscriptions, handwriting, archeological sites, and even depictions of a servant of God in paintings or statuary.

<sup>86</sup> CIC 1917, can. 1793 §2: «*Hanc designationem in causis mere privatis iudex facere potest rogatu utriusque partis vel etiam alterutrius, altera tamen consentiente; in causis vero bonum publicum respicientibus, audito promotore iustitiae aut vinculi defensore*». In the ordinary trial, the promoter of justice and the defender of the bond had a similar right to be heard before the appointment of an expert.

<sup>87</sup> CIC 1917, can. 2031, 4<sup>o</sup>: «*Cum peritorum opera est necessaria: 4<sup>o</sup> Periti seorsum singuli ad peritiam deveniant, nisi ex iusta causa iudex, assentiente promotore fidei, permittat ut ii simul peritiam instituant*».

<sup>88</sup> CIC 1917, can. 2046: «*Notarius diligenter describat tum scriptorum numerum et qualitatem, tum acta omnia perquisitionis ipsorum; quae acta debent praeterea ab Ordinario vel ab eius delegato et promotore fidei subscribi ac Ordinarii sigillo muniri*».

been able to confirm that those who presented documents to the tribunal declared them to be both original and authentic, as required by law.<sup>89</sup> The lack of a more significant role for the promoter of the faith in the scrutiny of documents may have been rooted in the fact that documentary proof enjoyed only limited probative value under the 1917 code.<sup>90</sup> It was not for the local tribunal to determine the usefulness of the presented documents, but rather for the experts in the Sacred Congregation of Rites.<sup>91</sup>

Toward the end of the process, the acts were published and the transcript was prepared for transmission to the Holy See. The promoter of the faith participated in the authentication of the transcript, confirming its accuracy by his signature and seal.<sup>92</sup> Finally, when the acts were transmitted, the promoter of the faith prepared a letter in which he informed the Promoter General of the Faith in the Sacred Congregation of Rites about the trustworthiness of the witnesses and the legitimacy of the acts.<sup>93</sup> The text of the letter to the Promoter General of the Faith often followed a standard formula. It indicated that the greatest care and diligence had been

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<sup>89</sup> CIC 1917, can. 2034: «*Qui documenta exhibent, debent declarare eorum originem et authenticitatem*». In matrimonial causes, Dolan noted that the defender of the bond had the right to inspect all documents in order to insure that they were authentic. See J.L. DOLAN, *The defensor vinculis*, 78.

<sup>90</sup> CIC 1917, cann. 1814-1818. These canons described the limitations regarding the probative value of documentary proof in ordinary trials.

<sup>91</sup> The limited value of documentary evidence in causes of canonization was mentioned in canons 2033 and 2035. The evaluation of the documents was entrusted to the experts of the Congregation in canon 2036. Declarations, even made *ad perpetuam rei memoriam*, and other extrajudicial testimony could serve as *adminicula*, while not enjoying the force of full proof (cfr. J. NOVAL, *Commentarium*, Pars 2, 128-130). In ancient causes, documentary evidence from the historical record was singled out for its particular value (cfr. CIC 1917, can. 2020 §6 and J. NOVAL, *Commentarium*, Pars 2, 91). For the historical treatment of documentary evidence, see P. LAMBERTINI, *De servorum Dei*, Liber 3, Caput 10.

Gumpel described the limited weight given to documentary proofs, lamenting these norms as unnecessarily restrictive (cfr. P. GUMPEL, *Il Collegio dei Relatori*, 306, note 15).

<sup>92</sup> CIC 1917, can. 2055: «*Absolute transumpto, fiat eius collatio cum archetypo a notario et ab eius adiuncto, praesentibus uno ex iudicibus et promotore fidei; qua collatione expleta, ad authenticitatem transumpti probandam tum notarius tum iudex et promotor fidei subscriptione sua et sigillo transumptum communiunt*».

<sup>93</sup> CIC 1917, can. 2063 §2: «*Una cum transumpto mittat quoque litteras tum iudicum ad Sacram Congregationem tum promotoris fidei ad Promotorem fidei generalem, ut Sacra Congregatio certior fiat tum de fide testibus praestanda tum de omnibus actis legitime absolutis*».

taken in the instruction of the process; that every norm of law had been observed; that secrecy had been kept in the process; that every witness was heard under oath according to the interrogatory of the promoter (which was safeguarded under seal) as well as the articles submitted by the postulator; and that the witnesses appeared to be worthy of trust.<sup>94</sup>

These interventions on the part of the promoter of the faith served to protect the integrity of the acts of the process, eliminating doubt regarding their legitimacy when they were studied in the Holy See. Insuring that the acts were legitimate was only one part of the responsibility of the promoter of the faith. The promoter also served the purpose of insuring that the proofs that were gathered were complete.

## 2.2.2 INSURE THAT THE PROOFS ARE COMPLETE

### 2.2.2.a *Complete proofs and moral certitude*

The complete and thorough instruction of the processes in causes of canonization was mentioned as a general principle in the 1917 code, though not in direct relation to the promoter of the faith. Canon 2019 stated:

In these causes the proofs must be entirely complete; nor can other [proofs] be admitted unless they emerge from witnesses or documents.<sup>95</sup>

It has already been observed in the first chapter that causes of canonization throughout history had consistently placed an increasing value on the thoroughness of the investigation of a servant of God. This canon emphasized that same goal of thoroughness by requiring proofs that were not only complete, but entirely complete. The requirement that the process be thorough was imposed on all who took part in its instruction, and not only the promoter.

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<sup>94</sup> A. LAURI, *Codex pro postulatoribus*, 128-129.

<sup>95</sup> CIC 1917, can. 2019: «*In his causis probationes debent esse omnino plenae; nec aliae sunt admittendae, nisi quae ex testibus et ex documentis eruuntur*». Note that the proofs did not need to be merely full or complete (*plenae*), but entirely complete (*omnino plenae*). The use of the particle *omnino* emphasized the degree of rigor to be applied.

Commentators interpreted this requirement as a sign that the proofs must be suitable to arrive at moral certitude.<sup>96</sup> This interpretation was rooted in the longstanding opinion, predating the composition of the 1917 code, that causes of canonization required full proof, but not most full proof.<sup>97</sup> Full proof was understood to mean a level of proof sufficient for moral certitude; while most full proof was considered to mean evidence sufficient for absolute certainty. It was considered impossible to obtain absolute certainty in most cases, and especially in causes of canonization in which the object of this certitude touched on heavenly and not earthly realities. Moral certitude required substantial proof sufficient to exclude doubt, even if the certainty was not absolute. Because moral certitude was not perfect, the possibility of error remained theoretically possible, though the intense level of rigor applied in practice to these causes was more than sufficient to rule out all reasonable doubts.<sup>98</sup>

Commentators have traditionally linked the above canon on causes of canonization with canon 1869 regarding the certitude required in the ordinary judicial process:

For the pronouncement of any sentence, moral certitude is required in the mind of the judge regarding the matter to be decided by sentence.<sup>99</sup>

Commentators on this canon noted that moral certitude differed from physical or metaphysical certitude which excluded all possibility of error on the basis of natural laws or the conclusions that flow from them. Nevertheless, moral certitude was still sufficient to exclude all prudent doubts regarding the possibility of a grave error of judgment.<sup>100</sup>

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<sup>96</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 188.

<sup>97</sup> P. LAMBERTINI, *De servorum Dei*, Liber 3, Caput 1, §6. J.L. GUTIÉRREZ, *Studi sulle cause*, 43 and 53. Gutierrez cited Matteucci who argued that moral certitude was needed on the basis of the law and the witnesses (cf. A. MATTEUCCI, *Practica theologico-canonica*, Titulus 5, Caput 1, 325, nn. 1-3). Matteucci described most full proof as metaphysical certainty, while full proof was juridically sufficient because it allowed for moral certitude.

<sup>98</sup> J. NOVAL, *Commentarium*, Pars 2, 77-78.

<sup>99</sup> CIC 1917, can. 1869 §1: «*Ad pronuntiationem cuiuslibet sententiae requiritur in iudicis animo moralis certitudo circa rem sententia definiendam*».

<sup>100</sup> J. NOVAL, *Commentarium*, Pars 1, 409. Pius XII addressed this theme in his address to the Roman Rota on October 1, 1942, distinguishing moral certitude from absolute

Commentators after 1917 observed that moral certitude admitted of degrees. Some causes, being more important, required a higher degree of certitude, while others that were less important did not need to be held to the same standard.<sup>101</sup> For example, the resolution of a contentious cause that affected only a private matter was less significant and did not require as stringent a degree of moral certitude compared to a matter affecting the public good, such as a cause of marriage nullity.<sup>102</sup> Because causes of canonization were among the more important judgments to be made by the Church, they were considered to require the highest degree of moral certitude.<sup>103</sup> The recognition of the need for this high degree of certitude was inferred not only from canon 2019, mentioned above, but from the other canons on causes of canonization which imposed many stringent, specific, and exacting restrictions on the instruction of the processes.

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certitude on one hand and mere probability on the other. Moral certitude was sufficient to remove all prudent doubt (cfr. PIUS PP. XII, Allocutio, 1 octobris 1942, in AAS, 34 (1942), 338-343, n. 1).

<sup>101</sup> CIC 1917, can. 1791 §2: «*Si sub iuramenti fide duae vel tres personae, omni exceptione maiores, sibi firmiter cohaerentes, de aliqua re vel facto in iudicio testificentur de scientia propria, sufficiens probatio habetur; nisi in aliqua causa iudex ob maximam negotii gravitatem, vel ob indicia quae aliquod dubium de veritate rei assertae ingerunt, necessariam censeat plenior probationem*». This canon mentioned that the judge could require additional proof in causes of greater importance. The judge was not to impose this requirement in ordinary causes, but only in those of greatest importance (cfr. J. NOVAL, *Commentarium*, Pars 1, 355). Pius XII addressed the question of the various degrees of certitude required in relation to different types of causes (cfr. PIUS PP. XII, Allocutio, 1 octobris 1942, n. 5).

<sup>102</sup> Z. GROCHOLEWSKI, *La Certezza morale come chiave di lettura delle norme processuali*, in *Ius Ecclesiae*, 9 (1997), 418-419.

<sup>103</sup> A. ROYO MEJÍA, *Algunas cuestiones sobre la heroicidad de las virtudes y la certeza moral jurídica en las causas de los Santos*, in *Ius Canonicum*, 34 (1994), 195. Mejia found an example of the awareness of the need for a high degree of moral certitude in the canonization of St. Cunegunda, in which Innocent III described it as one of the more sublime judgments needing to be made, requiring a great degree of caution and examination (cfr. INNOCENTIUS PP. III, bulla: *Canonizatio Sanctae Kunegundae Imperatricis*, 12 aprilis 1200, in L. PORSI (ed.), *Leggi della Chiesa*, 49-51). This papal bull was mentioned in chapter 1, footnote 75 on page 32.

### 2.2.2.b *The selection of witnesses*

It belonged to the office of the postulator to present the names of witnesses to be heard during the instruction.<sup>104</sup> The postulator would have naturally chosen those witnesses who were best able to describe the holiness of the servant of God, through the practice of heroic virtue or the acceptance of martyrdom, as well as those witnesses best able to describe the reputation of the servant of God regarding holiness, martyrdom, and intercessory power. However, the promoter of the faith also had the responsibility of proposing witnesses to be heard *ex officio*.<sup>105</sup> In light of the promoter's fundamental duty to propose objections, his choice of witnesses was oriented toward arriving at the truth, especially by hearing from those who might have something of substance to say against the cause.<sup>106</sup>

Because the postulator worked to promote the cause, he would have been generally knowledgeable about the servant of God and those who could testify in favor of canonization. The promoter of the faith, on the other hand, having been appointed to this office, would not have had the same specific knowledge about the servant of God and likely did not know who should be called as witnesses. To help the promoter, the law provided him with some guidelines and assistance for the selection of witnesses.<sup>107</sup> As the cause began, a decree or edict was to be published that called on all

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<sup>104</sup> CIC 1917, can. 2007, 3°. This canon was mentioned in footnote 44 on page 92. In order to argue that the servant of God was worthy of canonization, the postulator presented witnesses to be heard and articles on which the witnesses were to be questioned. These two tasks were connected, since the chosen witnesses should have been able to give testimony regarding the assertions made in the articles. See A. LAURI, *Codex pro postulatoribus*, 51.

<sup>105</sup> CIC 1917, can. 2012 §2: «*Est praeterea eiusdem promotoris instare ut testes ex officio citentur et opportunas promovere exceptiones; sed iudex potest testes, etiam promotore fidei non instante aut renuente, ipso tamen monito, ex officio arcessere*». A. LAURI, *Codex pro postulatoribus*, 52. The right of the promoter to call *ex officio* witnesses was considered an extension of his power to raise any exceptions to the process that he saw fit. A decree of the Congregation in 1733 required the hearing of *ex officio* witnesses under threat of nullity of process. (cfr. SACRA RITUUM CONGREGATIO, Decretum, 28 martii 1733, in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, VII, 1025, n. 5766).

<sup>106</sup> A. LAURI, *Codex pro postulatoribus*, 52. The promoter fulfilled his duty of highlighting whatever difficulties might exist in a cause by calling those contrary witnesses who had useful knowledge of the servant of God.

<sup>107</sup> A. BLAT, *Commentarium*, 567.

those who possessed writings of the servant of God to make them known to the tribunal.<sup>108</sup> Similarly, all were bound to bring forward any information they possessed that was contrary to the cause.<sup>109</sup> The code required that all those who had familiarity or experience with the servant of God and those with relevant information, even if negative, were to send letters in which they briefly explained their knowledge of the candidate. These letters were to be transmitted to the promoter of the faith who must examine them before the conclusion of the informative process.<sup>110</sup> From the information presented to the promoter, he could select those witnesses, not already selected by the postulator, who could contribute to the instruction of the cause, especially if they had knowledge that could work against the servant of God.<sup>111</sup> Noval observed that witnesses who did not have meaningful knowledge of the servant of God should not be called merely because they opposed the cause.<sup>112</sup>

The general practice was to first call the witnesses presented by the postulator. Only after the postulator's witnesses had been heard did the tribunal call the co-witnesses (those who could confirm elements of the

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<sup>108</sup> CIC 1917, can. 2043 §1. This canon was quoted in footnote 70 on page 103. The edict issued by the ordinary called for the writings of the servant of God to be presented to the tribunal. The ordinary was also to urge those who knew the servant of God to make known any useful testimony they might have, either for or against the cause (cf. CIC 1917, cann. 2023-2025). The publication of the edict was similar to an edictal citation (CIC 1917, can. 1720: «*Quoties, diligenti inquisitione peracta, adhuc ignoratur ubi commoretur reus, locus est citationi per edictum*»), which served as public notification of a disputed matter in order to urge the participation of persons, including witnesses (cf. J. NOVAL, *Commentarium*, Pars 1, 283-284).

<sup>109</sup> CIC 1917, can. 2023: «*In processibus beatificationis omnes Christifideles, salvo praescripto can. 2027, §2, n.1, tenentur, licet non vocati, ea in Ecclesiae notitiam perferre, quae contra virtutem aut miracula aut martyrium Servi Dei facere ipsis videantur*».

<sup>110</sup> CIC 1917, can. 2051: «*Absolvi nequit processus informativus nisi prius promotor fidei omnes ad se remissas litteras, de quibus in can. 2025, expenderit eique constiterit examinatos fuisse eos de quibus in can. 2023-2025*».

<sup>111</sup> SACRA CONGREGATIO RITUUM, Decretum: *De servis Dei*, 26 augusti 1913, in AAS, 5 (1913), 436-438 and in L. PORSI (ed.), *Leggi della Chiesa*, 325-327, Art. 1. Pius X ordered that those witnesses who opposed the cause, and not only those who favored the cause, must be heard. This requirement, which must be followed under pain of nullity, bound the consciences of the ordinary and of the *promotor fiscalis*.

<sup>112</sup> CIC 1917, can. 2029: «*Testes in sua testificatione propriae scientiae causam reddere debent circa ea quae asserunt; secus eorum testimonium nihili faciendum est*». J. NOVAL, *Commentarium*, Pars 2, 111-112.

testimony given by the witnesses) and the *ex officio* witnesses selected by the promoter of the faith.<sup>113</sup> Witnesses could be added by the postulator or the promoter of the faith up to the point of the publication of the acts.<sup>114</sup>

The code did not refer specifically to the faculty of renouncing a witness who had been presented in causes of canonization. However, making recourse to the norms regarding the ordinary trial, a party who presented a witness to the tribunal could renounce the hearing of that witness, provided that the other party did not object.<sup>115</sup> Applying this norm to causes of canonization, a postulator could renounce the hearing of a witness, provided that the promoter of the faith was not opposed. If the promoter rejected the reasons advanced by the postulator, he could insist that the witness be heard.<sup>116</sup> It sometimes occurred that a witness to be heard had passed away or was no longer available to give testimony. The practice in these circumstances was to provide proof to the tribunal about the witness regarding his or her death, sickness, or other motive for not appearing. The promoter of the faith was to be informed of the reason for which the witness was not available to appear before the tribunal.<sup>117</sup>

### 2.2.2.c *Composition of the interrogatory*

Like the selection of witnesses, the composition of the interrogatory involved an interaction between the postulator and the promoter of the faith. The postulator had the right to prepare and present articles to the promoter of the faith regarding those things on which the witnesses were to be

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<sup>113</sup> A. LAURI, *Codex pro postulatoribus*, 107-108. Regarding co-witnesses (*contestes*), see J. NOVAL, *Commentarium*, Pars 2, 84-85.

<sup>114</sup> CIC 1917, can. 2052: «*Tribunal cum iudicaverit probationes omnes sive per testium examen sive per documentorum exhibitionem fuisse collectas et scripta omnia Servi Dei, quae haberi poterant, in actis esse, audito promotore fidei, moneat postulatores ut, si alia habeat, offerat intra certum temporis spatium, quo elapso, processui finis imponitur*».

<sup>115</sup> CIC 1917, can. 1759 §4: «*Pars, quae testem induxit, potest eius examini renuntiare; sed adversarius postulare potest, ut, hac non obstante renuntiatione, testis examini subiiciatur*».

<sup>116</sup> A. LAURI, *Codex pro postulatoribus*, 54-55.

<sup>117</sup> A. LAURI, *Codex pro postulatoribus*, 113.

questioned.<sup>118</sup> In these articles, the postulator presented brief propositions referring to historical details and corresponding sources of proof, establishing the essential elements of the life of the servant of God.<sup>119</sup> The articles were not considered to be documentary proofs in themselves, but they did serve to organize the assertions made by the postulator that were to be subsequently proven by means of the testimony of the witnesses. Rather than suggesting specific answers, the articles were to spur the witnesses to explain, from their own memory, the details about the servant of God. The articles were not to lead the witnesses to a specific answer, as the witnesses were required to swear that they had not been previously instructed regarding their testimony.<sup>120</sup> It was for the postulator to provide evidence of the reputation of heroic virtue or martyrdom as well as the reputation of miracles. He accomplished this task by presenting both witnesses and the themes on which those witnesses were to be questioned.

In the informative process, the articles proposed by the postulator passed to the promoter of the faith who composed the questions of the interrogatory. In the apostolic processes, the interrogatory was composed by the Promoter General of the Faith in the Sacred Congregation of Rites, drawing upon the articles of the postulator, but also on the evidence that had been presented up to that point.<sup>121</sup> The Promoter General of the Faith considered the objections raised during the discussion of the introduction of the cause, the proofs adduced, and even any extrajudicial information that may have come to his attention. The interrogatory in the apostolic processes was not merely to confirm information already presented, but to provide further insight, especially regarding objectionable points, in order to better understand the servant of God.<sup>122</sup>

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<sup>118</sup> CIC 1917, can. 2007, 4°. This canon was quoted in footnote 43 on page 92.

<sup>119</sup> J. NOVAL, *Commentarium*, Pars 2, 51.

<sup>120</sup> A. LAURI, *Codex pro postulatoribus*, 22.

<sup>121</sup> J. NOVAL, *Commentarium*, Pars 2, 172. Even in an apostolic process, the postulator was to submit a *libellus* and articles. See J. NOVAL, *Commentarium*, Pars 2, 232-233.

<sup>122</sup> CIC 1917, can. 2090: «*Interrogatoria conficiantur a Promotore generali fidei super obiectionibus in causae introductione agitatis et super testimoniis receptis in processu informativo ad normam can. 2050, itemque super extrajudicialibus informationibus, quas ipse exquirendas existimaverit, adhibita quoque opera periti, si de miraculis agatur*». The interrogatory was informed both by the objections of the Promoter General of the

In both the ordinary and the apostolic processes, the questions of the interrogatory were to be straightforward, historical, impartial, and designed in a way to elicit the truth.<sup>123</sup> Rather than accenting only those details about the servant of God that were favorable or unfavorable to the cause, the promoter was to compose an objective questionnaire attentive above all to the comprehensive search for the truth. The questions were not to encourage a specific response, but to remain neutral in a way that left the witness free to respond with answers that were either complimentary or critical of the servant of God.

The interrogatory in the informative process and the apostolic process *in specie* had different objectives that were expressed in law.<sup>124</sup> In the informative process, the purpose of the inquiry was to examine «the reputation of holiness, virtues in general or martyrdom, the cause of martyrdom, and miracles».<sup>125</sup> The code further specified that the object of this process need not prove virtues, martyrdom, or miracles in specific detail, but only the existence of the reputation. Furthermore, this reputation must be proven to be spontaneous and not artificial, held by honest and serious persons, and continuous among a large part of the faithful from the time of the servant of God to the present.<sup>126</sup> In addition, the witnesses were

Faith and the responses of the advocate for the petitioner. See A. BLAT, *Commentarium*, 625.

<sup>123</sup> CIC 1917, can. 2012 §1. This canon was quoted in footnote 43 on page 92. The requirements for the interrogatory were similar to those expressed in the ordinary trial in canon 1775 of the 1917 code (cfr. J. NOVAL, *Commentarium*, Pars 2, 58).

<sup>124</sup> The first apostolic process *in genere* was similar to the informative process because it was instructed in order to confirm the existence of the reputation of holiness or martyrdom and intercessory power which had been previously established in the informative process. The second apostolic process *in specie* was different because of the detailed nature of the examination of the servant of God.

<sup>125</sup> CIC 1917, can. 2038 §2, 2°: «*Quare ad preces postulantis Ordinarius, si petitionem admittendam esse existimaverit, debet: 2° Processum informativum instruere super fama sanctitatis, virtutum in genere vel martyrii, causae martyrii et miraculorum*».

<sup>126</sup> CIC 1917, can. 2050 §2: «*Non est necesse ut constet in specie de virtutibus, martyrio, miraculis, sed sufficit ut probetur fama in genere, spontanea, non arte aut diligentia humana procurata, orta ab honestis et gravibus personis, continua, in dies acta et vicens in praesenti apud maiorem partem populi*». Noval stated that the object of the informative process was not the search for the truth regarding virtues, martyrdom, or miracles in themselves, but rather the existence of a legitimate reputation or public opinion regarding these qualities. While the informative process was not ordered to enter into the search for specific detail regarding virtues, martyrdom, or miracles, specific

to be questioned about the source of their knowledge and how they came to know the servant of God.<sup>127</sup> The specific details in these canons provided a great degree of guidance to the promoter of the faith in the preparation of the interrogatory. Drawing upon the information supplied by the postulator, the promoter was able to propose questions that probed the details of the life of the servant of God in order to carefully examine his or her reputation.

The promoter of the faith in the informative process was also aware that the proofs would be subjected to scrutiny when they were studied in the Congregation. The code explained in canon 2082 that the cardinal members of the Congregation were to consider the value of the informative process, the reputation of holiness or martyrdom, and any peremptory obstacles that may have arisen. Finally, the cardinals considered whether a commission for the introduction of the cause was to be approved to carry the cause forward to its conclusion.<sup>128</sup> The ultimate goal of the apostolic processes was to arrive at the possible beatification or canonization of the servant of God, meaning that the evidence should have been sufficient to give at least the reasonable probability that the cause would have a positive outcome. Knowing that this scrutiny would be applied, the promoter of the faith was encouraged to be attentive not only to the observance of the law, but also to

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details would often emerge in the course of the witness testimony on the reputation in general. See J. NOVAL, *Commentarium*, Pars 2, 169.

<sup>127</sup> CIC 1917, can. 2050 §3: «*Praemissis generalibus quaestionibus ad normam can. 1774, testibus quaestio in primis a iudice proponatur quid nempe de vita, virtutibus, miraculis aut martyrio Servi Dei ad eorum notitiam pervenerit et quomodo haec noverint et an sciant de eisdem esse publicam famam, et deinde interrogandi sunt super interrogatoriis a promotore fidei confectis et super articulis a postulatore exhibitis*». This canon referred to canon 1774 on the hearing of witnesses in the ordinary trial. Witnesses were to be asked about their generalities, including name, place of origin, age, religion, state in life, address, relationship with the parties in the cause, and the source of their knowledge. This reference provided another connection between the process used in causes of canonization and the process used in the ordinary trial.

<sup>128</sup> CIC 1917, can. 2082: «*Judicium circa valorem processus informativi ab Ordinario instructi, circa famam sanctitatis vel martyrii et circa absentiam cuiuslibet obstaculi peremptorii profertur a Patribus Cardinalibus in comitiis ordinariis, Cardinali Ponente referente ac proponente dubium: an signanda sit commissio introductionis causae in casu et ad effectum de quo agitur*». The cardinals considered whether to approve the commission for the introduction of the cause «in [this] case and for its intended effect » («*in casu et ad effectum de quo agitur*»). The decision was based on the evidence which had been presented in the specific case, and on the suitability of that evidence to achieve its goal or effect: the introduction of the cause for canonization.

the effective search for the truth, so that the cause would not later suffer because the details had not been sufficiently explored during the diocesan instruction.

For the apostolic processes, the purpose of this inquiry was also laid out in the code. The first apostolic process considered the continuous existence of the reputation of virtues or martyrdom *in genere* as well as intercessory power. If the continuation of this reputation could be deduced from the informative process already instructed, the Prefect, with the agreement of the Promoter General of the Faith, could dispense the first apostolic process.<sup>129</sup> The cause then passed to the second and more detailed apostolic process. In the case of confessors, the apostolic process must examine whether the servant of God practiced to a heroic degree the theological virtues of faith, hope, and love of God and of neighbor, as well as the cardinal virtues of prudence, justice, temperance, and fortitude, in addition to all other connected virtues. In the case of martyrs, the martyrdom and the cause of martyrdom must be proven.<sup>130</sup> In the case of an alleged miracle, the subject must be proven to have been definitively healed (in the case of a healing) and the miracle must be beyond the explanation of

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<sup>129</sup> CIC 1917, can. 2087 §§1 and 2: «§1. *Edito decreto de non cultu, impetrentur a Summo Pontifice et expendantur a Cardinali Praefecto litterae remissoriales, quas vocant, ad instruendum processum apostolicum tum super fama sanctitatis, miraculorum aut martyrii, tum super virtutibus et miraculis in specie vel super martyrio eiusdemque causa.*

§2. *Hi duo processus distincte fiant; sed primus omitti potest, si Cardinali Praefecto et Promotori fidei generali nec necessarium nec opportunum videatur de continuatione famae iterum inquirere».*

<sup>130</sup> CIC 1917, can. 2104: «*In causis confessorum discuti debet dubium: an constet de virtutibus theologalibus Fide, Spe, Caritate tum in Deum tum in proximum, nec non de cardinalibus Prudentia, Iustitia, Temperantia, Fortitudine, earumque adnexis in gradu heroico in casu et ad effectum de quo agitur; in causis vero martyrum: an constet de martyrio eiusque causa et de signis seu miraculis in casu et ad effectum de quo agitur*». This canon made specific mention of the need to prove the general existence of signs or miracles in the case of a martyr. The code noted that the obligation to prove a specific miracle for a martyr could be dispensed, in favor of the general evidence of signs through his or her intercession (cfr. CIC 1917, can. 2116 §2: «*Verum, si de martyre agatur et evidenter constet de martyrio et causa martyrii tum materialiter tum formaliter spectati, sed deficientibus, Sacrae Congregationis est decidere an signa in casu sufficient et, iis deficientibus, an supplicandum sit Sanctissimo pro dispensatione a signis in casu*»). On the possibility of dispensing from the study of miracles in causes of martyrs, see J. NOVAL, *Commentarium*, Pars 2, 348.

the laws of nature.<sup>131</sup> The interrogatory prepared by the Promoter General of the Faith for the apostolic process regularly contained very specific questions about the virtues, the details of martyrdom, or the facts in an alleged miracle, in order to seek out the proof necessary for the cause to reach a successful end.

It is difficult to underestimate the importance of the interrogatory, which served as the principal instrument in the search for the truth regarding the servant of God. The crafting of a well-written interrogatory was one of the most important responsibilities of the promoter. Its effectiveness alone had a tremendous impact on the success or failure of the process which was focused on the search for objective truth.<sup>132</sup> A poor interrogatory would leave many unresolved doubts that would have to be clarified at a later time, while a carefully constructed interrogatory would uncover ample evidence with precise detail to establish the moral certitude necessary if the cause was to move forward.

#### 2.2.2.d Examination of the witnesses

The witnesses were examined by the judges with the participation of the promoter of the faith. In the informative process, the promoter of the faith was always to be cited for validity, though, provided he had been

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<sup>131</sup> CIC 1917, can. 2119: «*Vota peritorum, breviter sed dilucide conscripta rationibusque fulta, haec duo contineant, scilicet: 1° Utrum, si de sanatione agatur, is qui eam consecutus dicitur, vere sanus haberi debeat; 2° Utrum factum, tanquam miraculum propositum, per naturae leges explicari possit, necne*». This canon specified the questions to be answered by the experts with respect to an alleged miracle. When the question was considered in the various congregations, it was expressed more generally, «whether the miracle is proven» («*an constet de miraculo*»). The general nature of this expression arose in part because of the variety of alleged miracles. Different types of miracles required different factors to be considered during their evaluation (cfr. J. NOVAL, *Commentarium*, Pars 2, 206-212).

<sup>132</sup> J.L. DOLAN, *The defensor vinculis*, 125. Dolan commented on the interrogatory composed by the defender of the bond in causes of marriage nullity. These comments are equally applicable to the promoter of the faith in causes of canonization: «Suffice it to say that the preparation of these questions is actually one of the most important of the duties of the *Defensor*. Their effectiveness alone is sufficient to crown the work of the *Defensor* with success or failure. It is well also to keep in mind that the success of a *Defensor Vinculi* does not hinge upon the successful outcome of the cause for validity, but on the agreement of the final sentence of the court with objective truth».

legitimately cited, his absence did not invalidate the session. In the apostolic processes, two sub-promoters of the faith were nominated, and at least one of them must be present for the validity of these sessions.<sup>133</sup> The presence of the promoter of the faith served to insure that the norms were followed in the collection of the proofs.

While the citation and presence (at least in the apostolic processes) of the promoter was required, the postulator conversely was prohibited from attending the sessions for the hearing of witnesses. This prohibition was so commonly known and widespread that many commentators simply took this fact for granted.<sup>134</sup> The postulator was excluded in order to prohibit any influence on the witnesses in favor of the cause during their testimony. The exclusion of the postulator prevented him from colluding, even unintentionally, with other witnesses about their testimony.<sup>135</sup> While the postulator and the promoter of the faith performed opposite roles in the process, one promoting the cause and the other raising objections to the cause in the name of the Church, the exclusion of the postulator from the sessions for testimony was a sign that these two figures were not considered equals, having the same rights in the process. The presence of the promoter and the absence of the postulator for the hearing of witnesses demonstrated the high degree of scrutiny that was to be applied to these causes, lest they

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<sup>133</sup> CIC 1917, can. 2094. This canon and the citation of the promoter were discussed in footnotes 72 and 73 on page 103.

<sup>134</sup> As a sign that the postulator was excluded, consider that the notary was to carefully document the members of the tribunal who were present at the sessions (cfr. CIC 1917, can. 1779). However, the postulator was not considered a member of the tribunal (cfr. CIC 1917, cann. 2037 §1 and 2040).

This argument is strengthened by referring to the manuals most often used to prepare the acts of the sessions, which did not mention the postulator. While this is an argument from silence, it remains convincing when considering the exacting attention to detail present in these manuals. If the postulator had the option of attending the sessions for the hearing of witnesses, this fact would have been mentioned by the various commentators (cfr. A. LAURI, *Codex pro postulatoribus*, 44).

<sup>135</sup> Had the postulator been present at the sessions, he would have come to know the questions of the interrogatory. This knowledge would have made it theoretically possible for the postulator to collude with subsequent witnesses by suggesting particular responses. However, the sealing of the interrogatory between sessions suggested that every precaution was to be taken to insure that the interrogatory remained secret (cfr. CIC 1917, can. 2091 §2, quoted in footnote 81 on page 106). The exclusion of the postulator from the sessions for hearing witness testimony avoided any suspicion of collusion.

be influenced unduly by those favoring the canonization and lead to an unjust result.

During the sessions, the promoter of the faith was more than a passive observer of the witness's testimony. He could actively propose questions to be asked *ex officio* during the session beyond those established in the interrogatory. The questions were always asked by the judge, though the promoter of the faith always had the right to request that additional questions be inserted. The right of the promoter to pose additional *ex officio* questions was not mentioned in the second part of Book IV on causes of canonization, but it did appear in the first part of Book IV on the ordinary trial.<sup>136</sup> Because of the similarity between the procedural formalities of a cause of canonization and an ordinary trial, it is reasonable to appeal to the various provisions regarding trials to make up for any lacunae in the norms. In fact, the use of *ex officio* questions has been a historically regular part of causes of canonization.<sup>137</sup>

The value of *ex officio* questions was self-evident. No matter how well-crafted the interrogatory might have been, there was always the possibility that a witness might not have understood the scope of a question or might have given only an incomplete answer. Whenever the judge, or the promoter, was aware that the witness had not provided sufficient detail or explanation, additional questions were to be asked in order to establish the facts. The judge was strongly discouraged from accepting answers that merely affirmed or denied a statement, as these responses were useless to the cause. Rather, the judge was to urge the witness to give full answers that clarified what was obscure and resolved what seemed contradictory in the testimony.<sup>138</sup> The progress of a cause would suffer if the virtuous actions

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<sup>136</sup> J. NOVAL, *Commentarium*, Pars 2, 239. The duty of the judge to pose the questions and the right of the promoter to suggest other questions was found in the first part of Book IV on ordinary trials. See CIC 1917, cann. 1773 and 1779. The defender of the bond had a similar right to pose additional questions in causes of marriage nullity (cfr. CIC 1917, can. 1968, 1°).

<sup>137</sup> A. BLAT, *Commentarium*, 597. Blat took it for granted that the judge had the power to add questions for a better explanation of their responses «*pro maiori responsorum explanatione*».

<sup>138</sup> A. LAURI, *Codex pro postulatoribus*, 32 and 56. C. GARCEAU, *Le rôle du postulateur*, 126.

(or the lack thereof) by the servant of God were not adequately explained, leaving confusion in a matter of central importance. Causes of martyrdom would also suffer if the act of martyrdom, its voluntary acceptance for Christ, and the intentions of the persecutor remained similarly vague or confused.

Therefore, the promoter was to be attentive to the questions and the responses, as well as the purpose of the questions, to verify that all useful information had been obtained. The judge and the promoter were not therefore to be passive figures during the examination of the witnesses, mechanically posing questions and inattentively recording the answers. The promoter was to be an active figure, ready to request those opportune clarifications of the judge that served the search for the truth.<sup>139</sup>

In the informative process, the promoter who composed the interrogatory was the same promoter present for the questioning of the witnesses. Knowing the interrogatory well, it would not have been difficult for this promoter to intervene if a question he proposed did not elicit a relevant response. However, *ex officio* questions were equally important for the apostolic processes, in which the questions were composed by the Promoter General of the Faith, and not by the nominated sub-promoter who was present during the hearing of the witnesses.<sup>140</sup> Although the sub-promoter did not compose the interrogatory, he was not to fail to intervene if a witness did not provide an adequate explanation in answer to a question, especially if it touched on the heart of the case for martyrdom or the practice of heroic virtue.<sup>141</sup> Even though the interrogatory in the apostolic processes

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<sup>139</sup> A. LAURI, *Codex pro postulatoribus*, 32-33: «*Ad veritatem plenius eruendam, fas est Iudicibus Interrogatoria addere iis quae Promotor Fidei in Processibus Ordinariis aut Apostolicis exhibuit*». As the commentary explained, *ex officio* questions should be added for the sake of more fully searching out the truth.

<sup>140</sup> P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 47, §3: «*In reliquis suppleat pietas, integritas, et diligentia Dominorum Iudicum examinare debentium, quibus, et Subpromotori in solidum datur facultas alia superaddendi, prout illis in Domino salubriter expedire videbitur*». Because of the strict rules applied in the apostolic process, Benedict XIV addressed the question about what faculties the judges and the sub-promoters enjoyed. To leave no doubt, the remissorial letters often included the express faculty to ask *ex officio* questions.

<sup>141</sup> Noval argued that the sub-promoter in the apostolic process should intervene in order to resolve doubtful points or to better arrive at the truth. He compared this right to ask *ex*

was transmitted under seal, the sub-promoter was not to hesitate to ask those *ex officio* questions that flowed from the testimony for the sake of clarity.<sup>142</sup>

Witnesses who responded with vague generalities about the practice of the virtues or the circumstances of martyrdom were to be challenged to give specific examples to elucidate their responses. Precise answers from the witnesses served the purpose of making it easier to arrive at moral certitude when the cause was studied. Alternatively, the inability of the witnesses to give specific examples, even when prompted to do so, could also be probative as it would demonstrate an inherent weakness in the cause.

### 2.2.2.e *Presentation of documents*

It has been mentioned that the promoter of the faith certified the authenticity of documents presented.<sup>143</sup> The promoter also had the right to intervene if the documentary proof was evidently incomplete.

The promoter of the faith was not explicitly mentioned in the canons that treated the presentation of documents during the sessions, but his role could be inferred from the canons of the 1917 code. It was the duty of the postulator to present to the tribunal all the documents related to the cause in his possession. Because the promoter of the faith was one of the members of the tribunal, the promoter would have had the opportunity to examine these documents when they were presented.<sup>144</sup> However, the tribunal could require that other necessary documents be produced regarding the cause, in

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*officio* questions to the same right in the ordinary trial expressed in canon 1742. See J. NOVAL, *Commentarium*, Pars 2, 238.

<sup>142</sup> A. BLAT, *Commentarium*, 625.

<sup>143</sup> See section 2.2.1.c above on page 107ff.

<sup>144</sup> SACRA CONGREGATIO RITUUM, *De servis Dei*, Art. 4. Pius X ordered that every document, as well as the opinions of the experts, was to be exhibited to the Promoter General of the Faith in the Congregation. While this decree did not mention the instruction of the ordinary or the apostolic processes, it is reasonable to conclude that the local promoter had the right at least to inspect the documents presented. This argument is further supported by drawing an analogy with the defender of the bond who had the explicit right to review all documents exhibited by the parties in a cause of marriage nullity (cfr. CIC 1917, can. 1968, 2°).

addition to the documents presented.<sup>145</sup> As a member of the tribunal, the promoter shared in this right to require the production of additional documentation.<sup>146</sup>

Nevertheless, the right to request additional documents appeared to be limited. Anyone who presented documents to the tribunal was only required to declare that they were original and authentic, which was done in the presence of the promoter of the faith.<sup>147</sup> The evaluation of the probative value of documentary evidence was reserved to experts in the Sacred Congregation of Rites.<sup>148</sup> Therefore, it appeared that the promoter was not tasked with the responsibility of evaluating the merits of the documentary proofs, but only with the duty of insuring that they were authentic and trustworthy.<sup>149</sup>

In light of these observations, the promoter of the faith should insist that additional documents be produced whenever it was evident that an important proof had been overlooked. For example, if it was discovered during witness testimony that some published works, letters, or diaries of the servant of God existed, but had not yet been presented to the tribunal, the promoter should insist that these documents be found. Similarly, the

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<sup>145</sup> CIC 1917, can. 2032: «§1. *Documenta, quibus postulator ininitur, integra exhibenda sunt tribunalī.* §2. *Sed alia quoque documenta poterit a postulatore tribunal exigere, quae ad veritatem detegendam conferre eidem tribunalī videantur.*». In causes of marriage nullity, the defender of the bond had a similar right to require that other acts be produced (cfr. CIC 1917, can. 1969, 4°).

<sup>146</sup> The right of the promoter of the faith to request additional documentary proof was specifically mentioned in commentaries for postulators. See A. LAURI, *Codex pro postulatoribus*, 59.

<sup>147</sup> CIC 1917, can. 2034. This canon was quoted in footnote 89 on page 109. The promoter of the faith had the proper right to inspect any documents presented to the tribunal (cfr. A. LAURI, *Codex pro postulatoribus*, 115). By analogy, Dolan asserted that the defender of the bond had the right to inspect all documents in a trial of marriage nullity, primarily for the sake of insuring their authenticity (cfr. J.L. DOLAN, *The defensor vinculis*, 78).

<sup>148</sup> CIC 1917, can. 2036 §1: «*Documenta historica sive manu scripta, sive typis impressa, quibus postulator Servi Dei virtutes aut cultus eidem praestiti antiquitatem eiusque non interruptam continuationem probare intendit, inserantur in processum et cum ipso transmittantur ad Sacram Congregationem et a viris peritis examinentur.*».

<sup>149</sup> A. LAURI, *Codex pro postulatoribus*, 60-61. By analogy, Lega noted that the citation of the defender of the bond was necessary to protect the integrity of both the witness testimony and the documentary proofs, and ultimately the validity of the process (cfr. M. LEGA, *Praelectiones*, IV, 474).

promoter should insist on the presentation of any missing biographical documents, including the birth certificate, death certificate, and any documents regarding the baptism, confirmation, marriage, ordination, or religious profession of the servant of God. It is also common to include the parent's marriage certificate and the baptismal certificates of any children born to a married servant of God. For an alleged healing, the corresponding medical documentation should be included. However, as the evaluation of the documentary evidence took place in the Congregation by appointed experts, it did not appear obligatory that the promoter of the faith form an opinion about the probative value of the documents in relation to the merits of the cause.

#### 2.2.2.f *Conclusion of the process and publication of the acts*

Once all the proofs had been gathered, the process reached its conclusion. However, before this could be decreed, both the promoter of the faith and the postulator had a right to request additional proofs. First, all of the letters that were transmitted by the potential witnesses after the promulgation of the edict must be examined by the promoter of the faith. He must verify that all the witnesses who had personal experience with the servant of God were heard, as well as those able to provide testimony against the virtues, martyrdom, or miracles of the servant of God.<sup>150</sup> A witness who had useful testimony, but who was overlooked, was to be heard by the judges at the request of the promoter of the faith.<sup>151</sup> At this stage in the process, the promoter was called upon to make an evaluation about the evidence that had been gathered. This evaluation required him only to determine whether the instruction was sufficiently thorough and the evidence was complete. He was not required to evaluate the quality of the evidence or whether the cause of beatification or canonization had been proven, as those evaluations would take place within the Sacred Congregation of Rites.

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<sup>150</sup> CIC 1917, can. 2051. This canon was quoted in footnote 110 on page 114.

<sup>151</sup> J. NOVAL, *Commentarium*, Pars 2, 174-175. The promoter of the faith had the right to block the publication of the acts if he indicated that further proofs had to be gathered.

Before the conclusion of the process, the postulator was also to be given the opportunity to provide any additional proofs within an established time limit. After hearing the promoter of the faith, the judges were required to extend this right to the postulator. When this time had elapsed, the judges could determine that the conclusion of the cause had been reached.<sup>152</sup>

After the instruction of the cause was complete, and after the promoter of the faith was again heard, the acts must be published. The publication took place when the judge ordered the notary to publish the acts to the nominated scribe who was to prepare a handwritten copy of the acts, which was called the transcript.<sup>153</sup> According to the strict reading of the text of the 1917 code, the promoter of the faith and the postulator had their opportunities to present additional proofs before the conclusion of the cause, after which the acts were published only to the scribe. Since the promoter of the faith was to be cited for all the sessions, he presumably would have already seen most, if not all, of the acts during the instruction. Although the postulator had the opportunity to present additional proofs before the conclusion of the cause, he did not—strictly speaking—have a right to view the proofs that had been gathered at the time of publication.

By the 1920s, these canons had already been reinterpreted by commentators, recognizing the injustice of depriving the postulator of the right to examine the acts before the conclusion of the instruction. Appealing to canons on the ordinary trial, the opposing parties had a legal right to view the acts before the cause was concluded. Applying this principle to causes of canonization, this same right should also be extended to the opposing parties, namely the postulator and the promoter of the faith.<sup>154</sup> While the publication of the acts was the opportunity for the promoter of the faith to

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<sup>152</sup> CIC 1917, can. 2052. This canon was quoted in footnote 114 on page 115. Blat argued that the judges must be morally certain that all the proofs had been gathered. See A. BLAT, *Commentarium*, 597.

<sup>153</sup> CIC 1917, can. 2053: «*Iubente iudice et non contradicente promotore fidei, notarius publicet processum; qui scribae a tribunali designato transcribendus tradatur*»; can. 2054: «*Exemplar processus, seu, ut aiunt, transumptum, sicut acta archetypa, manu transcribantur*».

<sup>154</sup> Blat referred to canon 1859 in which the definition of publication was given for the ordinary trial. In causes of canonization, he stated that the parties were the postulator and the promoter. See A. BLAT, *Commentarium*, 597.

review the acts, the postulator had his first opportunity to see the testimony that had been gathered, since he was excluded from the sessions for the hearing of the witnesses.<sup>155</sup> It became standard practice to publish the acts to the promoter and the postulator.

### 2.2.2.g *The processes for the gathering of writings and non-cult*

Beyond the informative process, the local ordinary was responsible for the instruction of two other processes: the process for the gathering of the writings of the servant of God and the process of non-cult.

The primary means of discovering the writings was through the publication of the edict by the local ordinary ordering those in possession of any document written by the servant of God to present it to the tribunal. All the writings of the servant of God were to be gathered, both published and unpublished, whether the servant of God wrote them in his or her own hand or through another.<sup>156</sup> The edict was often issued at the request of the postulator, though the local ordinary could issue it *ex officio*, or at the request of the promoter of the faith.<sup>157</sup> The promoter also had the right to ask that the edict be more widely disseminated in those places where writings of the servant of God were likely to be found.<sup>158</sup> Before the process was concluded, the promoter of the faith was to be heard in order to provide the opportunity for further investigations if it appeared that additional writings of the servant of God still remained to be gathered.<sup>159</sup> It was the responsibility of the promoter of the faith, and of the tribunal, to confirm that the writings of the servant of God were authentic and that the search

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<sup>155</sup> The exclusion of the postulator during the sessions for the hearing of the witnesses was discussed above in footnote 134 on page 121.

<sup>156</sup> CIC 1917, can. 2042: «*Nomine scriptorum veniunt non modo opera inedita Servi Dei, sed etiam quae iam typis fuerint impressa; item conciones, epistolae, diaria, autobiographiae, quidquid denique vel ipse per se, vel aliena manu exaraverit*».

<sup>157</sup> CIC 1917, can. 2044 §1: «*Ordinarius non solum ad instantiam postulatoris, sed etiam ex officio scripta Servi Dei diligenter perquirat*».

<sup>158</sup> CIC 1917, can. 2043 §3: «*Munus est promotoris fidei instare ut edictum publicetur etiam in aliis locis ubi spes sit fore ut aliquis inveniatur qui scriptum aliquod penes se habeat*».

<sup>159</sup> See CIC 1917, can. 2052 (in footnote 114 on page 115) regarding the opportunity of the promoter of the faith to call for further investigations.

had been diligent.<sup>160</sup> At the conclusion of this process, the postulator was to give an oath before the local ordinary and the notary that he had diligently sought out all the writings of the servant of God.<sup>161</sup> Since the code referred to the thoroughness required in the gathering of the writings, this process was also referred to as the «little process of the diligences».<sup>162</sup> The use of the term «little process» (*processiculus*) reflected the fact that the gathering of the writings was still a juridic process, requiring oaths and the participation of the appointed members of the tribunal. However, the process was abbreviated because it did not require the hearing of witnesses regarding the writings with the other accompanying juridic formalities.<sup>163</sup>

The process on non-cult sought to verify that the servant of God was not the subject of illegitimate cult. In the apostolic constitution *Caelestis Hyerusalem Cives*, promulgated on July 5, 1634, Urban VIII prohibited any unapproved cult in honor of a servant of God that was not immemorial.<sup>164</sup> The process of non-cult required the inspection of the place where the servant of God was buried, as well as other places associated with the servant of God in life, where signs of unapproved cult might be found.<sup>165</sup> The tribunal was to confirm that there were no images of the servant of God depicted in heavenly glory, no published books about miracles or revelations attributed to the servant of God, no testimonials or candles at the tomb (giving the appearance of a shrine in honor of the deceased), and no altar constructed over the mortal remains.

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<sup>160</sup> CIC 1917, can. 2046. This canon was quoted in footnote 88 on page 108.

<sup>161</sup> CIC 1917, can. 2047 §1: «*Postulator iusurandum coram Ordinario emittat de scriptorum perquisitione a se diligenter facienda, et postea de eadem diligenter peracta*».

<sup>162</sup> CIC 1917, can. 2061: «*Ordinarius statim ac expleverit perquisitionem scriptorum, ea Romam una cum processiculo mittat diligentiarum, idest cum iuridica relatione diligentiarum quibus in perquirendis scriptis usus est*». A. LAURI, *Codex pro postulatoribus*, 67. J. NOVAL, *Commentarium*, Pars 2, 167.

<sup>163</sup> J. NOVAL, *Commentarium*, Pars 2, 188.

<sup>164</sup> URBANUS PP. VIII, *Caelestis Hyerusalem Cives*, §1.

<sup>165</sup> CIC 1917, can. 2058: «*Tribunal adeat praeterea et diligenter inspiciat sepulcrum Servi Dei, cubiculum in quo habitavit vel obiit, et si qua sint alia loca ubi cultus signa adesse merito quis suspicari possit*». Blat compared the inspection of the tomb and places where the servant of God lived to the canons on access and judicial recognition (cfr. CIC 1917, cann. 1806-1811; A. BLAT, *Commentarium*, 601).

The instruction of the process of non-cult required the hearing of a minimum of four witnesses, with at least two additional witnesses chosen *ex officio*.<sup>166</sup> As in the informative process, the promoter of the faith performed his function in this process as the party responsible for composing the interrogatory and for proposing the *ex officio* witnesses.<sup>167</sup> In addition to his participation in the selection and the hearing of the witnesses in this process, the promoter of the faith also had the general right to raise objections if any signs of cult were discovered. If any abuse had occurred regarding illegitimate cult with respect to the servant of God, it was his responsibility to call for additional inquiries into this matter.<sup>168</sup>

### 2.3 THE ROLE OF THE PROMOTER GENERAL OF THE FAITH IN EVALUATING THE PROOFS

Once all the proofs had been gathered, the instruction of the cause was complete and the cause passed to the discussion or study phase.<sup>169</sup> The study of the proofs occurred on the Roman level in the Sacred Congregation of Rites and required the participation of the Promoter General of the Faith.

The duties of the Promoter General of the Faith could be divided into two broad categories: his interactions with the local promoter and his interventions within the Congregation. By interacting with the local promoter, the Promoter General was connected, at least vicariously, to the instruction of the local process and the gathering of the proofs. By intervening within the Congregation, he participated in the discussion of the

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<sup>166</sup> CIC 1917, can. 2020 §1: «*Ad probandum nunquam Servo Dei cultum fuisse praestitum, quatuor saltem testes sunt necessarii*»; can. 2057: «*Tribunal praeter testes inductos a postulatore, duos alios ex officio inducat omnesque interroget num Servo Dei cultus publicus fuerit unquam praestitus*». Noval argued that the *ex officio* witnesses must be in addition to the four witnesses presented by the postulator. See J. NOVAL, *Commentarium*, Pars 2, 79.

<sup>167</sup> A. LAURI, *Codex pro postulatoribus*, 134-135.

<sup>168</sup> CIC 1917, can. 2059: «*Si in processus decursu non levia habeantur indicia cultus interea Servo Dei praestiti, munus esto promotoris fidei instare ut ulterior inquisitio hac de re peragatur*».

<sup>169</sup> Regarding the traditional three stages of a process (the instruction, the discussion, and the judgment), see section 2.1.5 above on page 99.

proofs by voicing his objections and, most importantly, by submitting his written observations in which he identified the obstacles to the cause.

### 2.3.1 THE CONNECTION BETWEEN THE DIOCESAN AND ROMAN PROMOTERS

In the Sacred Congregation of Rites, there existed one Promoter General of the Faith, appointed by the Supreme Pontiff. The Promoter General was assisted by several sub-promoters general of the faith. In a process conducted in a local diocese, there was a promoter of the faith (nominated by the diocesan bishop in the case of an ordinary process) or two sub-promoters of the faith (nominated by the Promoter General of the Faith in an apostolic process).<sup>170</sup> An immediate connection was established between these figures because of their common titles. The local promoter or sub-promoter implicitly shared in the same duties and responsibilities as the Promoter General. In particular, the local promoter was responsible for insuring that the law was followed and that the faith was protected. He was to participate as a party in opposition to the postulator by raising opportune objections that were ultimately in service of the truth.<sup>171</sup>

Beyond the implicit connection established by their common title, there were various explicit interactions in which the promoter or sub-promoter on the diocesan level communicated with the Promoter General of the Faith in the Congregation. The first interaction occurred at the conclusion of the ordinary processes. The local promoter of the faith wrote a letter to the Promoter General of the Faith in the Congregation in which he made his observations about the trustworthiness of the witness testimony and the legitimacy of the acts.<sup>172</sup> The local ordinary and the judges were also to send letters to the Congregation about the processes, but only the promoter of the faith was to write his letter directly to the Promoter General. The content of the letter generally focused on the careful observance of all

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<sup>170</sup> CIC 1917, cann. 2010-2011 and 2040 §2.

<sup>171</sup> The nature of the promoter of the faith was addressed in section 2.1.3. above on page 90ff.

<sup>172</sup> CIC 1917, can. 2063 §2. This canon was quoted in footnote 93 on page 109.

the norms in the instruction of the processes.<sup>173</sup> The promoter of the faith was encouraged to include observations on the following: the care in the instruction of the processes; the observance of the law, including the obligation of secrecy; the oaths sworn by the officials; the hearing of all witnesses under oath using the full interrogatory and the articles of the postulator; the sealing of the interrogatory between sessions; and whether the testimony of the witnesses appeared to be true, integral, and deserving of faith. If there were irregularities in the instruction of the processes, the promoter could bring these to the attention of the Promoter General. Nothing prevented the promoter from adding other observations, even regarding the merits of the case. In theory, he could offer his own evaluation of the obstacles he discovered in the cause, or his own opinion of the servant of God regarding virtues or martyrdom, and miracles. However, the evidence from historical sources indicated that the promoter ordinarily limited his observations to the factual observations regarding the observance of the law.<sup>174</sup>

A second interaction occurred in the apostolic processes. With the approval of the Holy Father, the Sacred Congregation of Rites sent remissorial letters ordering the instruction of an apostolic process, to which the Promoter General added his own separate letters. In these letters the Promoter General appointed the two sub-promoters of the faith, explaining their faculties and urging them to faithfully discharge their office, since they stood in the place of the Promoter General during the instruction of the apostolic process.<sup>175</sup> Because the sub-promoters were nominated by the

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<sup>173</sup> J. NOVAL, *Commentarium*, Pars 2, 190. Benedict XIV made references to the letters sent by the judge to the Congregation regarding the trustworthiness of the proofs gathered during the instruction (cfr. P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 50, §4).

<sup>174</sup> A. LAURI, *Codex pro postulatoribus*, 127-129. Similar models were presented for the letters from the ordinary and the judge. In addition to the observations made by the promoter, the judge was encouraged to draw attention to the fact that nothing was done apart from the promoter of the faith and the notary. The judge often concluded by asking for forgiveness for any failure on the part of the tribunal in the observance of the norms during the instruction of the process. This request for forgiveness was not merely an expression of humility presented to the Holy See. Rather the norms in causes of canonization were so precise and demanding that mistakes could easily be made.

<sup>175</sup> CIC 1917, can. 2089. This canon was quoted in footnote 71 on page 103. J. NOVAL, *Commentarium*, Pars 2, 236-237.

Promoter General, and not by the local ordinary or by any of the judges, they served as an arm of the Promoter General, and remained accountable to him in the search for the truth.

The Promoter General also transmitted the interrogatory in an apostolic process which was to be kept under seal.<sup>176</sup> The interrogatory constituted a further point of contact between the Promoter General and the sub-promoters, as the Promoter General determined the questions to be asked of the witnesses in the presence (and under the watchful eye) of the sub-promoters. The Promoter General determined the focus of the apostolic process while the sub-promoters were present during the interrogation of the witnesses. At the conclusion of the apostolic process, the sub-promoters sent a letter with their observations to the Promoter General of the Faith, just as the local promoter did at the conclusion of the ordinary processes.

Beyond these implicit and explicit connections between the promoter or sub-promoter and the Promoter General, there was an additional important connection between the processes instructed on the local level and the discussion that took place in the Holy See. When the cause was discussed in the Sacred Congregation of Rites, the doubts to be resolved were publicly known because they were established in law, whether on virtues, martyrdom, or miracles.<sup>177</sup> Because the cause would be evaluated according to the criteria that were plainly stated in the code, the promoter or sub-promoter of the faith on the local level would have presumptively been aware of the object to be proven. Therefore, the attention of the promoter (as well as the judges) during the informative and the apostolic processes would have been focused on these points which needed to be addressed. This guidance would have informed the promoter who could make prudent selections of *ex officio* witnesses, insuring that all the important issues of the cause were explored. The promoter could also intelligently intervene by suggesting additional *ex officio* questions to clarify those critical points that

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<sup>176</sup> CIC 1917, can. 2091 §2: «Una simul mittantur ad aliquem ex sub-promotoribus, clausa et non aperienda nisi in actu examinis, interrogatoria, super quibus qui inducentur testes, sint interrogandi». See also CIC 1917, can. 2090, quoted in footnote 122 on page 116.

<sup>177</sup> CIC 1917, can. 2104. This canon was quoted in footnote 130 on page 119. J. NOVAL, *Commentarium*, Pars 2, 304-326. Noval provided a detailed explanation of the requirements sufficient to prove the practice of heroic virtue or the act of martyrdom.

were central to the cause. If the proofs were unclear regarding the virtues, martyrdom, or miracles of the servant of God, the efforts of the promoter to seek out the truth would provide the Promoter General of the Faith with a more complete account on which to formulate his written observations.

### 2.3.2 OFFER OPINION ON THE CAUSE

The local promoter and sub-promoters had the opportunity to offer their opinions about the instruction of the cause to the Promoter General of the Faith at the conclusion of the ordinary and apostolic processes. However, the Promoter General of the Faith had a pivotal responsibility regarding the discussion of causes presented in the Sacred Congregation of Rites. The citation of the promoter, which was important during the instruction of the cause when the proofs were gathered, remained equally important within the Congregation as those proofs were discussed.<sup>178</sup> The Promoter General of the Faith was to be cited at each stage in which the cause was discussed, allowing him to intervene and make known any objections he might have.<sup>179</sup>

Specifically, the Promoter General was to be heard in the appointment of the reviewers who were selected to study the writings of the servant of God. It was not the responsibility of the Promoter General to conduct the study of the writings personally. However, the Promoter General, after receiving the report from the reviewers, could raise any objections regarding

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<sup>178</sup> The citation of the promoter in the ordinary or apostolic processes was discussed in section 2.2.1.a. on page 102ff.

<sup>179</sup> The Promoter General of the Faith was able to raise his objections regarding more than only the merits of a cause. He could even raise objections regarding the management of the funds of a cause by the postulator. See SACRA CONGREGATIO RITUUM, *Norme sull'amministrazione dei fondi per le Cause*, 17 settembre 1885, n. 4 in L. PORSI (ed.), *Leggi della Chiesa*, 271-273: «Appartiene all'Eminentissimo Cardinale Prefetto della Sacra Congregazione, unitamente al Segretario della medesima, ed al Promotore della Fede, l'esaminare tutte le predette note, ed approvare le spese, affinché se ne possa tenere ragione nei resoconti». Following the promulgation of the new legislation in 1983, the Promoter of the Faith is no longer responsible for supervising the financial management of causes. See CONGREGATIO PRO CAUSIS SANCTORUM, *Normae servandae de bonis Causarum canonizationis Servorum Dei administrandis*, 20 augusti 1983, in X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, Roma, 1983, VI, col. 8666-8668.

the writings and could propose points of discussion to be considered in the meetings of the cardinal members of the Congregation.<sup>180</sup> It was the duty of the cardinal members to formulate their opinions which were presented to the Pope for his judgment.<sup>181</sup> Recalling the principle of the *contradictorium*, the Promoter General was responsible for posing objections to the cause, since he functioned in opposition to the postulator. While he raised objections, it was not his responsibility to decide the cause. It was for the cardinal members to formulate their opinions regarding the writings, which they presented to the Pope for his judgment.

Before the informative process could be discussed, it was the responsibility of the postulator, by means of an advocate or procurator, to compose the *summarium* and the *informatio*. The *summarium* was to accurately present the important proofs from the instruction, neither adding what was not present in the transcript, nor omitting anything of substance. The *informatio* contained a brief history of the life of the servant of God with arguments, drawn from the acts, demonstrating the existence of the reputation of virtues or martyrdom and miracles.<sup>182</sup> The *summarium* had to be reviewed by a sub-promoter general of the faith who confirmed that these texts corresponded to the acts presented to the Congregation.<sup>183</sup> In this task, the sub-promoter general was not offering his opinion on the cause, but rather insuring that these two texts that would be used to evaluate the cause were faithful to the original. This responsibility was critical, as the Promoter General would base his observations regarding the cause on these documents after they had been reviewed by the sub-promoter general.

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<sup>180</sup> CIC 1917, can. 2066 §1: «*Revisores scriptorum in singulis causis deligantur a Cardinali Ponente, audito Promotore generali fidei; eorumque nomina secreto servantur*»; can. 2070: «*Promotor generalis fidei obiectiones ex scriptis Servi Dei ac revisorum iudicio desumptas, si quas habeat, Patribus Cardinalibus discutiendas proponat*».

<sup>181</sup> CIC 1917, can. 2071: «*Si quid in scriptis Servi Dei fidei non omnino consonum contineri certo fuerit demonstratum aut aliquid habeatur quod in praesenti fidelium offensionem esse possit, Romanus Pontifex, audito Patrum Cardinalium voto et perpensis omnibus casus circumstantiis, decedit num ad ulteriora procedi possit*».

<sup>182</sup> J. NOVAL, *Commentarium*, Pars 2, 206.

<sup>183</sup> CIC 1917, can. 2076 §2: «*Summarium addi debet fides Sub-promotoris generalis fidei testantis summarium ipsum concordare cum actis Sacrae Congregationi exhibitis*». The review of the *summarium* by the sub-promoter was called the *revisa* (cfr. A. LAURI, *Codex pro postulatoribus*, 157).

In the discussion of the informative process, the Promoter General had the right to present his objections to the introduction of the cause, to which the advocate would respond. These were expressed through the written observations of the promoter and the responses of the advocate. These two documents, one presenting reasons that oppose the cause, and the other responding with reasons favoring the cause, constituted a true *contradictorium*. The observations were not to contain repetitive or protracted arguments over minor points, nor were they to posit accusations that were vague or based on unsound reasoning. The observations, as well as the responses of the advocate, were to be brief, clear, and scholarly.<sup>184</sup> The duty of evaluating and judging belonged to the cardinal members of the Congregation who made their recommendation to the Pope.<sup>185</sup>

If the Holy Father decided that the cause should proceed, two separate apostolic processes were ordered: one on the continuation of the reputation of holiness or martyrdom and miracles in general, and the other on the specific virtues and miracles or on the martyrdom and its cause.<sup>186</sup> The first apostolic process was similar to the informative process that had already been instructed by the local ordinary, since it considered the continuation of the reputation of holiness or martyrdom and miracles regarding the servant of God.<sup>187</sup> If the Cardinal Prefect and the Promoter General agreed that it was not necessary to repeat the examination of the reputation of virtues or martyrdom and miracles, the first apostolic process could be dispensed.<sup>188</sup> The Promoter General of the Faith evaluated the informative process, determining whether or not he believed the evidence already gathered was sufficient. In making this decision, the Promoter General was not required to reach a conclusion regarding the ultimate merits of the cause, but only the sufficiency of the proofs already gathered. In this sense, the Promoter General served a function like the local promoter at the publication of the acts: he weighed whether there was sufficient proof of the reputation of the

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<sup>184</sup> CIC 1917, can. 2080: «*Obiectiones et responsiones breviter et perspicue, scholastica fere methodo, secundum veteres Sacrae Congregationis consuetudines, exarentur*».

<sup>185</sup> CIC 1917, can. 2082. This canon was quoted in footnote 128 on page 118.

<sup>186</sup> CIC 1917, can. 2087 §1. This canon was quoted in footnote 129 on page 119.

<sup>187</sup> J. NOVAL, *Commentarium*, Pars 2, 231.

<sup>188</sup> CIC 1917, can. 2087 §2. This canon was quoted in footnote 129 on page 119.

servant of God, or whether further instruction was necessary to gather additional proof.<sup>189</sup>

After the apostolic processes had been instructed, the Promoter General was to be heard regarding their validity.<sup>190</sup> He prepared his observations to which the advocate could propose his responses. The question was discussed in a congregation held for this purpose in which the Promoter General participated. The evaluation and judgment regarding the validity of the process was made by a particular congregation of cardinals and officials chosen for this purpose.<sup>191</sup>

If the process was judged to be valid, the merits of the cause were considered in the *positiones* presented in three congregations: ante-preparatory (held in the presence of the cardinal relator, the prelate officials, and consulters of the Congregation), preparatory (held in the presence of the cardinal members of the Congregation, the prelate officials, and the consulters), and general (held in the presence of the Holy Father with the participation of the cardinal members, the prelate officials, and consulters).<sup>192</sup> The Promoter General had the right to participate in each of these congregations. For each congregation, a *positio* was prepared, containing the *summarium* mentioned above, the arguments of the advocate on virtues or martyrdom, the observations of the Promoter General of the Faith and the responses of the advocate.

The *positiones* built on one another, in the sense that the Promoter General had the opportunity to propose new observations at each stage,

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<sup>189</sup> A. BLAT, *Commentarium*, 622. The publication of the acts and the evaluation of the promoter of the faith was mentioned above in section 2.2.2.f on page 126ff.

<sup>190</sup> CIC 1917, can. 2098: «*Processu apostolico ad Sacram Congregationem remisso, in primis de eiusdem processus validitate constare debet, simulque ad examen revocetur validitas processus informativi*». The validity of the previous informative process was considered in relation to the apostolic process.

<sup>191</sup> CIC 1917, can. 2100 §1: «*Pro diiudicanda validitate processus habeatur congregatio, praesentibus Cardinali Sacrae Congregationis Praefecto, Cardinali Ponente et aliis tribus eiusdem Sacrae Congregationis Cardinalibus ab ipso Romano Pontifice electis, nec non Secretario, Protonotario Apostolico, Promotore generali fidei et Sub-promotore*».

<sup>192</sup> See CIC 1917, cann. 2105, 2108, and 2112. J. NOVAL, *Commentarium*, Pars 2, 227. The same congregations were described by Benedict XIV in essentially the same form as the 1917 code (cfr. P. LAMBERTINI, *De servorum Dei*, Liber 1, Caput 16, §§5-7).

based on his further reflection or the comments made in the previous congregation. Consequently, the advocate had the right to propose his own additional responses to the new observations.<sup>193</sup> The progressive nature of the successive *positiones* allowed the Promoter General to hone his arguments and make them more precise.<sup>194</sup> The thorough consideration of these causes demonstrated the high degree of certitude desired before a servant of God was beatified or canonized.

These written observations were central to the work of the Promoter General, since they constituted the most significant means of raising objections to the cause of a servant of God proposed for beatification and canonization. The law did not limit the Promoter General nor prescribe a standard formula to follow when composing his observations. Rather, he had maximum latitude to comment on any aspect of the life of the servant of God, the practice of any virtue, the acceptance of martyrdom, or the motives of the persecutor. In causes involving miracles, he was free to comment on the arguments of the experts, on the possibility of a natural explanation of the event, or on the invocation of the intercession of the servant of God. Since the observations were to be brief, clear, and scholarly, the promoter was not to use this freedom to propose objections that were unnecessarily long, useless, or simplistic.<sup>195</sup> Instead, he was to use his knowledge, prudence, and insight to delve into the central issues and expose them plainly in his argumentation. Through his observations, the Promoter General fulfilled his fundamental duties which could be summed up as follows:

Therefore the promoter of the faith is to take care lest anyone be lightly and imprudently judged [worthy] of the highest heavenly honors. Likewise, the promoter of the faith and the sub-promoter exercise vigilance in all the more

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<sup>193</sup> See CIC 1917, cann. 2106, 2109, and 2113. J. NOVAL, *Commentarium*, Pars 2, 337 and 340. A. LAURI, *Codex pro postulatoribus*, 157 and 221. The various *positiones* were referred to by different titles to distinguish them. The *positio* was presented in the ante-preparatory congregation; the *nova positio* was presented in the preparatory congregation; and the *novissima positio* was presented to the Holy Father in the general congregation.

<sup>194</sup> A. BLAT, *Commentarium*, 613 et 639.

<sup>195</sup> CIC 1917, can. 2080. This canon was cited in footnote 184 on page 136.

serious matters treated before this Congregation, and are thus present in the meetings which are held each week.<sup>196</sup>

## 2.4 CONCLUSION

After considering the treatment of causes of canonization in the 1917 Code of Canon Law, there are several conclusions that can be drawn from this study. First, the 1917 code reflected the longstanding historical practice in causes of canonization. The norms in the code were drawn from the traditions of the prior centuries, reflecting the theology of Benedict XIV, the norms handed down by Urban VIII, and even the basic procedure outlined by Hostiensis. The rights and duties of the promoter of the faith bear a striking resemblance to those prerogatives enjoyed by the *promotor fiscalis* in previous centuries. However, in spite of the many similarities with the traditional treatment of these causes, the 1917 code also represented a real evolution in the norms for causes of canonization. The code articulated the procedures to be observed and the role of the promoter of the faith with a level of detail that surpassed the previous norms. The meticulous attention to detail provided a process that was consistent in its execution and clear in its purpose. In spite of the variety of promoters of the faith who took part in various stages of the cause, they always remained rooted in the fundamental principles that defined the office of the promoter. The articulation of the characteristics of the promoter of the faith reached a pinnacle in this code, defining him as crucial figure in causes of canonization. In short, the 1917 code remained faithful to the previous legislation, while providing true insight and real development regarding the office of promoter of the faith.

As a consequence of this clarity and precision, the promoter of the faith, even on the diocesan level, had a clear understanding of his duties, his

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<sup>196</sup> M. LEGA, *Praelectioniones*, II, 210: «*Quare Fidei Promotor cavet, ne alicui leviter et imprudenter supremi Coelitum honores decernantur. Nihilominus Fidei Promotor et Subpromotor in omnia negotia graviora apud hanc Cong. expedita vigilantiam exercent, et hinc adsunt congressibus, qui habentur semel in hebdomada*».

Lega made a comparison in this context between the promoter of the faith and the *promotor fiscalis* regarding the duty to propose all serious objections to a cause. The defender of the bond enjoyed the same right to compose his observations against the petition and in favor of the validity of the bond (cfr. CIC 1917, can. 1968, 3°).

rights, his responsibilities, and his purpose. All of these qualities were laid out in the canons of the code and applied in many respects to the promoter in the diocese as much as they did to the Promoter General of the Faith in the Congregation. Some might consider the strict definition of the promoter's rights and obligations to have been excessively rigid or confining. However, the norms themselves allowed for a degree of flexibility since the promoter could choose to present those objections or observations that seemed to him to be opportune.

Second, the 1917 code drew a clear and unmistakable connection between causes of canonization and the ordinary trial. While the object of a cause of canonization was significantly different from the objects of an ordinary trial, the procedure used in both cases followed a strong judicial model. The connection between these procedures was not superficial, based only on their common appearance in Book IV of the code. These procedures were connected by explicit cross-references, and moreover by a common internal logic that was consistently applied according to the pattern of a trial. A thread uniting these procedures was found in the desire to effectively search for the truth using a common set of juridic principles applied according to the nature of each process. The strength of this connection left no doubt among the commentators on the code that the mind of the legislator desired to approach causes of canonization according to a system that was fundamentally juridic. In spite of certain differences between the ordinary trial and causes of canonization, a decidedly judicial approach was applied to the study of servants of God.

As a consequence of this second conclusion, both the ordinary trial and a cause of canonization relied more on witness testimony than on documentary proofs. The majority of the norms in causes of canonization focused on the hearing of witnesses. Conversely, very few norms were dedicated to the collection of documentary proofs, which only enjoyed limited probative value—another point of similarity with the ordinary trial. Documents could only be studied to determine their authenticity, but witnesses could be cross-examined in order to probe the truth of their statements. While a document could only be used to assert what had been

written, a witness could be challenged to explain or clarify an answer, making the contributions of the witnesses substantially different from documentary evidence. Apart from the special procedure focused on the study of the writings of the servant of God, the canons called for the hearing of witnesses above all else.

Third, the 1917 code provided for a precise and detailed *contradictorium*, according to the principle of three in judgment that called for one party to argue for the cause, one to argue against the cause, and a third party to make an impartial judgment. The references to the role of the postulator identify him as the first party, arguing on behalf of the petitioner for the canonization. The promoter of the faith exercised the contrary role as the second party, arguing against the petition by raising opportune objections. The third party, that of impartial judge, was exercised by the Supreme Pontiff who rendered his definitive judgement with the assistance of the cardinals and other officials in the Congregation who offered their own evaluations in their written opinions (*vota*). In this respect, the many people who stood in the third position in the *contradictorium* were identified principally by their impartiality. Even if the cardinals and other officials lacked the power to judge the cause, they were still called upon to offer their opinions which could be favorable or unfavorable to the cause, according to their own prudent evaluation of the facts. The promoter of the faith, standing in the second position in the *contradictorium*, was not called to be impartial, but rather to raise objections against the cause.

The 1917 code treated causes of canonization according to a well-defined and precise *contradictorium* with clearly identified figures to stand in each of the three positions in the process. The various promoters of the faith consistently performed the second function in this dialectical system, insuring the observance of procedural norms, confirming the legitimacy and the completeness of the acts, and offering substantive observations and objections regarding the cause. While not explicitly stated in the code, it is implied that the faithful observance of all the legal formalities would lead to the discovery of the truth. Therefore, by standing in opposition during the

process, the promoters of the faith served the interest of seeking the truth regarding the worthiness of a candidate for beatification and canonization.

## CHAPTER 3

### HISTORY OF THE PROMOTER AFTER 1917

In the first chapter, the history of the promoter of the faith was traced up to the promulgation of the 1917 Code of Canon Law. This history followed the development not only of the promoter, but also of causes of canonization as the Church sought to foster divine cult and protect it from abuse by means of a system of laws ordered toward the search for the truth. The method that was developed was fundamentally juridic, following the pattern of a contentious trial in which various figures, including the promoter of the faith, performed their proper functions. This juridic method, which evolved over centuries, responded to the desire of the Church to find the best possible way to identify and discern those who were to be canonized as saints. This juridic approach was considered to be ideal because of its precision and structure which were effective both in the search for proofs and in their careful evaluation.

The study of the history of causes of canonization demonstrates that these procedures were not static, nor did they reach a stage in which they were considered perfected and therefore immutable. The procedures used for these causes have evolved over time in response to the needs of the Church and changing circumstances. Throughout these evolutions, however, the goal has remained the same, as the Church has consistently sought to honor those who were proven to be worthy because of their exceptional dedication to Christ. The selection of the juridic approach, as a means to achieve this goal, was the product of centuries of development and

evolution in response to the various forces of history. Just as these procedures had passed through periodic modifications in the centuries leading up to the 1917 code, so they were also subjected to further changes in the years that followed as various Popes saw improvements that could be introduced in this area.

The 20<sup>th</sup> century saw countless innovations in science and technology that have had an impact on the procedure used in causes of canonization. With the rise of the modern scientific method, there have been developments in historical criticism that have opened new doors in various fields of academic study. With the explosion of modern technology, the means of conducting research and communicating information have grown and changed in ways that were beyond the imagination of figures such as Gasparri, and certainly Lambertini. These innovations necessarily had an impact on causes of canonization, as these modern scientific methods came into use, affecting the way that causes were treated by the Sacred Congregation of Rites.

A historical study of causes of saints must observe the changes introduced over time, while also recalling the changeless goal in causes of canonization, namely that the Church continues to discern those servants of God who have been set apart by their holiness, using the means best suited to arrive at the truth. The scientific and technological advances of the 20<sup>th</sup> century contributed to the application of the historical critical method in causes of canonization, while simultaneously challenging the traditional juridic model developed in previous centuries. Since the promoter of the faith was central figure in the juridic system, a shift toward a historical critical approach would necessarily have repercussions as the role of the historian increased in importance. At the time of the promulgation of the 1917 code, a fundamentally juridic system was used that followed a judicial model and depended on the active participation of the promoter of the faith. This juridic perspective stands as the point of departure and the background for the historical changes that occurred in the decades that followed.

### 3.1 PROVISIONS OMITTED FROM THE 1917 CODE

The 1917 code contained a synthesis of the canonical legislation in causes of saints that existed at the time of its composition. However, some elements in the prior law were not incorporated into the code, including two significant provisions that were notably omitted. These provisions were found in an instruction of the Sacred Congregation of Rites from 1878 regarding the witness testimony collected in the informative process, and in a decree of Pius X from 1913 regarding the search for documentary evidence. Neither of these texts made explicit reference to the promoter of the faith, though they each contributed to the thorough instruction of a cause of canonization, a principle that was central to the responsibilities of the promoter.

In 1878, the Sacred Congregation of Rites issued an instruction that offered practical advice for carrying out the informative process under the authority of the local ordinary. With respect to the informative process, the instruction explained:

These processes already were and always had been within the full power of the Ordinary. They became indispensable after the reservation of Causes to the Holy See, when it was decided to treat them through a perfect juridic model according to the pattern of contentious trials.<sup>1</sup>

This portion of the instruction reinforced the understanding that causes of canonization followed the juridic pattern of the ordinary trial. It further emphasized the importance of the local instruction of the cause. The evaluation of the proofs in the Holy See could not take place unless the proofs had first been gathered by a tribunal constituted under the ordinary authority of the local bishop. Regarding the purpose of the informative process and the proofs that were to be sought, the instruction continued:

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<sup>1</sup> SACRA RITUUM CONGREGATIO, *Instructio*, 1878, in P. GASPARRI – J. SERÉDI (eds.), *Fontes*, VIII, 214-218, n. 6104 and in L. PORSI (ed.), *Leggi della Chiesa*, 263-268: «Questi processi, che già erano e sempre rimasero in piena facoltà inerente agli Ordinari, divennero indispensabili dopo la riserva delle Cause alla S. Sede, allorché fu indotta nel trattarle una perfetta forma giuridica a modo dei giudizi contenziosi».

In order to obtain the immediate introduction of the Cause, it is sufficient that the ordinary inquisition be carried out on the reputation of holiness, virtues or martyrdom, miracles and signs. Nevertheless, as the Cause proceeds afterwards to the Sacred Congregation, as has been stated, with the dual process, it is most advantageous that the Ordinary use his authority to include in the inquisition not only the reputation, but also the proofs *in specie* of virtues or martyrdom, miracles and signs.<sup>2</sup>

The local tribunal was required to gather evidence during the informative process regarding the reputation of the servant of God. However, nothing prohibited the tribunal from gathering more proofs, in view of the pending apostolic process in which evidence must be sought on the virtues or martyrdom *in specie*. The instruction referred to the minimum requirements for the informative process, while also encouraging the local tribunal to go further by carrying out a more detailed instruction for the benefit of the cause. The 1917 code included only the minimum requirement, leaving aside the suggestion that the tribunal consider evidence beyond the reputation of the servant of God. The code gave no indication that proofs *in specie* could and should be sought during the ordinary processes, steering the local tribunal only toward the general examination of the servant of God.<sup>3</sup> This omission from the code could be explained by distinguishing between that which was required and that which was encouraged. The 1917 code synthesized what was obligatory in the law, focusing on those elements that were strictly required. Further efforts by the tribunal to seek out more detailed proofs during the informative process were not considered to be a requirement but a facultative encouragement. As such, this possibility was not included in the canons, though the principle remained that the gathering of proofs during the instruction a cause of

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<sup>2</sup> SACRA RITUM CONGREGATIO, *Instructio*, 1878: «Al fine immediato di ottenere l'introduzione della Causa sia bastante che l'inquisizione ordinaria si faccia sulla fama di santità, virtù o martirio, miracoli e segni; nondimeno procedendosi dipoi dalla S. Congregazione nella Causa, come si è detto, con duplice processo, è opportunissimo che l'Ordinario si valga della sua potestà comprendendo nella sua inquisizione non solo la fama, ma anche le prove in specie delle virtù o martirio, miracoli e segni».

<sup>3</sup> F. VERAJA, *Le cause di canonizzazione dei santi: commento alla legislazione e guida pratica*, Città del Vaticano, 1992, 22. Though not mentioned in the 1917 code, Veraja believed that the gathering of all the evidence during the informative process furnished the fullest possible proof in the cause.

canonization was to be entirely complete.<sup>4</sup> This duty to thoroughly seek the truth bound the members of the tribunal, and the promoter of the faith in particular. While the recommendation from the 1878 instruction was not expressly included in the code, nothing prohibited a tribunal from going beyond what was strictly required during the instruction of the informative process.

It must be noted that the gathering of specific proofs on virtues or martyrdom during the informative process did not substitute for the apostolic process. When a cause was introduced by the Holy See, an apostolic process was still required to examine the virtues or martyrdom *in specie* of the servant of God, even if the local tribunal had already gathered specific evidence during the ordinary processes. In practice, the apostolic process often took place long after the informative process had been completed. This delay meant that some eye witnesses, available to give testimony during the informative process, would have died or no longer been available when the apostolic process was instructed.<sup>5</sup> The value of the apostolic process was greatly diminished if it was conducted at a time in which no living eyewitnesses remained to be heard.<sup>6</sup> This consideration alone demonstrated the value of gathering all the useful evidence available, even during the informative process.<sup>7</sup> The promoter of the faith could contribute to this goal through his selection of witnesses as well as the questions he proposed in the interrogatory and *ex officio*.

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<sup>4</sup> CIC 1917, can. 2019: «*In his causis probationes debent esse omnino plenae; nec aliae sunt admittendae, nisi quae ex testibus et ex documentis eruantur*». The proofs gathered were to be «entirely complete» («*omnino plenae*»).

<sup>5</sup> Beyond the death of important witnesses, Serafini noted that the quality of the testimony still available could degrade over time as those witnesses began to forget specific details. Though the 1917 code gave greater weight to the testimony received in response to the specific questions of the apostolic process, Serafini considered the earlier testimony, given at a time closer to the death of the servant of God, to be more secure, more precise, and more valuable (cfr. P. SERAFINI, *Cause di beatificazione: sviluppi in atto*, in *Monitor Ecclesiasticus*, 105 (1980), 331).

<sup>6</sup> W. HILGEMAN, *Le Cause*, 304.

<sup>7</sup> F. VERAJA, *Le cause di canonizzazione*, 13. Veraja strongly supported the gathering of all the evidence during the first instruction before memories of the servant of God were lost to the passage of time. In the absence of eye witness testimony, he also encouraged the use of documentary evidence, which he considered, in certain cases, to have the greater probative value than the statements of the witnesses.

In 1913, under Pius X, the Sacred Congregation of Rites issued the decree *De servis Dei* that ordered the comprehensive gathering of documentary evidence in causes of canonization. Article 2 of this decree stated:

In all causes, especially ancient ones, each and every historical document pertaining in any way to the cause under consideration, whether handwritten or printed, is to be carefully sought out in the ordinary or informative process. Therefore, not only are those in possession of documents to be advised that they are bound under oath to exhibit them to the ordinary, but, as the circumstances require, the custodians of any archive or registry, whether public or private, are to be subjected to examination under sacramental sanction. Also the documents of any kind whatsoever that are related to the cause are to be sought out with the greatest care and diligence, as each and every [document] is to be examined according to the norms of Benedict XIV of happy memory.<sup>8</sup>

Furthermore, article 7 stated that causes pending in the Congregation could not proceed further until this prescript had been observed. Therefore, even those causes that had already been introduced were required to conduct a full and complete search for all documentary proofs before they could proceed to beatification or canonization.

In the 1917 code, it was assumed that the documents related to the servant of God would be presented to the Tribunal in response to the edict of the ordinary.<sup>9</sup> The promoter contributed to the thorough search for these documents by asking for a wider publication of the edict. However, the code only required the edict to call for the production of the writings of the servant of God, remaining silent regarding the need to produce other

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<sup>8</sup> SACRA CONGREGATIO RITUUM, *De servis Dei*, Art. 2: «*In omnibus causis, praesertim antiquis, cum processu ordinario sive informativo compulsentur omnia et singula historica documenta sive manuscripta, sive typis edita, quae quocumque modo causam respiciant quae agitur. Ad hoc non modo monendi sunt detinentes iura compulsanda, ut ea ordinario exhibeant; sed, si res postulaverit, examini subiiciendi erunt sub religione sacramenti custodes cuiusvis archivi vel tabularii sive publici sive privati; summa quoque diligentia et industria curandum est ut cuiuslibet generis documenta ad causam conferentia conquirantur, quae omnia et singula cognoscenda sunt ad normas traditas a fel. rec. Benedicti XIV*» (cfr. P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 52, §2).

<sup>9</sup> CIC 1917, can. 2043 §1. This canon was quoted in chapter 2, footnote 70 on page 103.

documents that might be of value. The 1913 decree was much broader because it called for the production of each and every document related to the cause, whether written by the servant of God or not. The requirement that all documentary evidence be gathered was attributed to the progress of the historical critical method and a desire to make greater use of the historical sciences.<sup>10</sup> The comprehensive research required by the decree would have produced a much broader collection of documents for scientific study.

The decree *De servis Dei* encouraged the judges, who might also be prompted by a request from the promoter of the faith, to take an active role in searching out the documents in various archives. Rather than passively waiting for those in possession of the relevant documents to come to the tribunal, the judges could actively call upon those responsible for the care of archives to produce the obligatory documentation, and to swear under oath that they had done so. In the absence of another party to carry out this research, this obligation would appear to bind the members of the tribunal who were called upon to seek out this documentation with the greatest diligence.

The 1878 instruction and the 1913 decree from the Congregation each called for a more detailed gathering of specific evidence of virtues or martyrdom, both when hearing witnesses and when gathering documents related to the servant of God during the informative process. Even if these provisions did not refer expressly to the promoter of the faith, they served to gather the witness testimony and documentary evidence in a manner that was more thorough and complete, a concern at the heart of the responsibilities of the promoter of the faith. While these two provisions were not adopted in the 1917 code, they would resurface in the later reforms of the 20<sup>th</sup> century. In particular, they appeared in connection with the creation of the historical section in the Sacred Congregation of Rites under Pius XI.

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<sup>10</sup> F. VERAJA, *Le cause di canonizzazione*, 11. L. SCORDINO, *Natura giudiziaria*, 18, footnote 30.

## 3.2 THE REFORMS OF PIUS XI

### 3.2.1 GIÀ DA QUALCHE TEMPO (1930)

On February 6, 1930, Pius XI (1922-1939) introduced the historical section in the Sacred Congregation of Rites with the *motu proprio*, *Già da qualche tempo*, promulgated not in Latin, but in Italian. On the same day, he appointed the first Relator General, Enrico Quentin, O.S.B.<sup>11</sup> This reform affected only those «historic causes» for which there were no longer any living witnesses able to testify regarding the servant of God.<sup>12</sup> The purpose of this historical section was explained in the introduction:

For some time now we have become increasingly convinced that the procedures used by the Sacred Congregation of Rites for the treatment of «historical» causes of Saints needed some revision, so that they can better correspond to the very nature of such cases and their special needs ... especially in view of the development achieved by the historical disciplines and improvements brought about in their methods.

By «historical» causes of the Servants of God we mean those for which (treating the life, the virtues, the martyrdom, or ancient cult) it is not possible to take depositions from contemporaneous witnesses to the facts of the case, nor are there trustworthy documents of those depositions duly gathered at the opportune time.

Since it seems to us, before the Lord, that no further delays can be imposed, having invoked the divine assistance and having called upon the counsel of men of undoubted competence, after mature reflection, in our *motu proprio* we have ordered and we order the following.<sup>13</sup>

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<sup>11</sup> G. PAPA, *Cardinali prefetti*, 428.

<sup>12</sup> The *motu proprio* used the term «historical cause» (in Italian, «causa storica») to refer to a cause in which there were no living eye witnesses to the servant of God. The 1917 code and the legislation promulgated in 1983 used the more common term «ancient cause» («*causa antiqua*») in distinction to a «recent cause» («*causa recentior*»). In this thesis, the term «ancient cause» is preferred. See CIC 1917, can. 2020 §6.

<sup>13</sup> PIUS PP. XI, *Motu proprio: Già da qualche tempo*, 6 februarii 1930, in AAS, 22 (1930), 87-88: «Già da qualche tempo è venuta maturando in Noi la persuasione che i procedimenti in uso presso la Sacra Congregazione dei Riti per la trattazione delle cause «storiche» dei Santi hanno bisogno di qualche ritocco, affinché possano meglio corrispondere alla propria natura di tali cause e alle loro speciali esigenze ... massime

The *motu proprio* proceeded to indicate a series of new provisions that were to be applied when treating ancient causes in order to implement the principles outlined in the introduction. In the first article, the apostolic process was to be omitted for those ancient causes in which there were no contemporary witnesses to be heard. Without the apostolic process, all the proofs had to be gathered during the informative process, which became the sole means of collecting witness testimony. As a natural consequence of this decision, the local tribunal bore a greater responsibility of thoroughly seeking out all the proofs during the informative process, imposing a greater burden on the promoter of the faith to see that this was done. In the second article, a new historical section was created in the Congregation, taking its place alongside the section under the direction of the Promoter of the Faith.<sup>14</sup> The third article described the historical section which was to be directed by a Relator General, assisted by a number of consulters who were experts in historical research. When an ancient cause arrived in the Congregation, it was first studied by the Relator General who determined if the research was complete or if additional documentation was required for the cause. If additional information was to be gathered, the Relator General communicated this request to the postulator. The documentary evidence was studied by the consulters who submitted their written opinions regarding the value of the documentary evidence. These opinions were passed to the Promoter General of the Faith who could raise objections. The

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tenuto conto dello sviluppo raggiunto dalle discipline storiche e dei perfezionamenti portati ai loro metodi.

«Per cause “storiche” dei Servi di Dio intendiamo quelle per le quali (trattisi della vita, delle virtù, del martirio o di antico culto) non si possono raccogliere deposizioni di testimoni contemporanei ai fatti in causa, né si hanno documenti certi di tali deposizioni debitamente raccolte in tempo opportuno.

«Sembrandoci *coram Domino* di non poter frapporre ulteriori indugi, invocato il divino aiuto e chiamati a consiglio uomini di non dubbia competenza, dopo matura considerazione, di Nostro *Motu proprio* abbiamo ordinato ed ordiniamo quanto segue:»

<sup>14</sup> *Annuario Pontificio*, Città del Vaticano, 1930, 526-530. Before 1930, the Sacred Congregation of Rites had two sections: one for causes of saints and one for liturgical questions. The Promoter General of the Faith served the Congregation as a whole and did not belong to either section. The *Annuario* of 1930 indicated that the Congregation was composed of three sections: one for causes of saints under the direction of the Promoter General of the Faith, one for liturgical questions, and one called the historical section under the direction of the Relator General.

consulters of the historical section responded to any objections presented by the Promoter General that were within their competence. The examination of the cause then continued in the normal way, drawing upon the documents gathered and the opinions of the historical consultants.<sup>15</sup> The *motu proprio* extended to the historical section the faculty to carry out investigations in order to complete the search for documents and writings related to a cause. While the historical section had the right to search for documents, the doctrinal examination of the cause proceeded according to the norms established in the code.<sup>16</sup>

With the promulgation of *Già da qualche tempo*, elements of the two reforms introduced in the 1878 instruction and the 1913 decree of the Congregation were formally introduced into the law, at least with respect to ancient causes. In 1878, it was recommended that the tribunal inquire regarding the details of a cause *in specie*, even in the context of the informative process regarding the reputation of virtues or martyrdom of the servant of God. In *Già da qualche tempo*, that recommendation became a requirement in ancient causes, as tribunals were obliged to inquire about all aspects of the life of the servant of God. In 1913, it was decreed that all the documentary evidence regarding virtues or martyrdom was to be gathered during the informative process. While this requirement was not found in the 1917 code, it returned as an obligation imposed on the local tribunal, at least in ancient causes, in *Già da qualche tempo*.

Under the 1917 code, the postulator was required to hand over all the documents in his possession related to the cause. The tribunal then ordered other persons with relevant documents to produce them.<sup>17</sup> As such, the tribunal proceeded to collect the documents in a juridic manner, under the watchful eye of the promoter of the faith, before this evidence was transmitted to the Congregation for study. However, if the documentary evidence was not considered to be complete, the *motu proprio* introduced an additional way of gathering supplementary proofs. Once the Relator General had examined the documents, he could personally undertake any

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<sup>15</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 1-3.

<sup>16</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 3, 7<sup>o</sup>.

<sup>17</sup> See CIC 1917, cann. 2043 and 2047.

further research that he judged necessary, or he could order others to do so, asking that the postulator transmit the required documents to the Historical Section of the Congregation.<sup>18</sup> While the documents in the informative process were gathered under the direction of the tribunal, with the participation of the promoter, supplementary documents could be gathered by the postulator, at the direction of the Relator General, without the participation of the local promoter of the faith. Even the Promoter General in the Congregation was not involved, though he would study the gathered evidence as the process developed.

The *motu proprio* also introduced profound changes in the study of ancient causes within the Congregation. The 1917 code provided for the appointment of experts, who served *ad hoc* to assist the Congregation. In particular, experts were to be appointed for the examination of historical documents.<sup>19</sup> The provisions of the *motu proprio* created a new and stable group of experts who would perform this function, and furthermore invested them with specific responsibilities in all ancient causes. The responsibilities entrusted to the historical consultants served two purposes, insuring that the documents presented were authentic and trustworthy, and that the research was complete. These two themes were in harmony with the duties imposed on the promoter of the faith as described in the previous chapter.<sup>20</sup> And yet, even with the introduction of the historical section, the prerogatives of the Promoter General of the Faith remained intact, since the conclusions drawn by the historical consultants and the Relator General were submitted to the Promoter General who retained the right to raise any opportune objections, even about the documentary evidence.

The introduction of the new office of the Relator General and the new historical consultants raised a question regarding their function in the study of

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<sup>18</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 3, 3<sup>o</sup>: «Il Relatore generale, dopo la regolare apertura del processo informativo, ne esaminerà le parti di sua competenza, farà egli stesso od ordinerà le ulteriori ricerche che giudicherà necessarie, e richiederà alla Postulazione, in originale od in copia autentica, tutti i documenti che riterrà opportuni, trasmettendo poi i documenti così raccolti ai Consultori della sua Sezione, che stimerà più idonei alle singole cause».

<sup>19</sup> CIC 1917, can. 2036 §1. This canon was quoted in chapter 2, footnote 148 on page 125.

<sup>20</sup> See sections 2.2.1 and 2.2.2 above.

causes during the Roman phase. From the brief *motu proprio*, it appeared that they were called upon to study causes and provide an objective evaluation. This observation placed these new figures in the third position of the *contradictorium*, that of offering their impartial opinion. They were responsible for identifying obstacles related to the documentary evidence if it was not authentic or complete. However, it did not appear that they were responsible for opposing the cause on its merits. The obstacles identified by the historical section served as an opportunity to complete the gathering of proofs if they were lacking. Since the documentary proofs constituted the only way to demonstrate the virtues or martyrdom of the servant of God *in specie*, the thorough gathering of these proofs was essential to the evaluation of the cause as it passed through the remaining stages within the Congregation.

In this regard, one provision of the *motu proprio* deserves further comment. «It will be for the consulters of the historical section to respond to the objections and questions of the Promoter of the Faith concerning those difficulties within the scope of their competence».<sup>21</sup> In the code, it was always the responsibility of the advocate for the petitioner to respond to the objections of the promoter of the faith, as these two figures took opposite sides in the *contradictorium*, one proposing obstacles against the cause and the other responding in favor of the cause. Yet, the *motu proprio* called for the consulters of the historical section to respond to the objections of the promoter, possibly leading to the conclusion that these consulters were to stand in the first position in the *contradictorium*, that of defending the cause. However, this conclusion was incorrect, since the responses of the historical consulters were limited only to their areas of expertise. In other words, the consulters responded only with respect to their opinions regarding the completeness of the evidence. As such, it was not for the

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<sup>21</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 3, 6°: «Ai Consultori della Sezione storica toccherà di rispondere alle obiezioni e domande del Promotore della Fede per le difficoltà comprese nell'ambito delle loro competenze».

consulters to act in defense of the merits of a cause nor did they to take the place of the advocate or the postulator.<sup>22</sup>

### 3.2.2 *NORMAE SERVANDAE* (1939)

In 1939, the Sacred Congregation of Rites issued further norms to clarify the procedures to be observed in ancient causes during the instruction of the informative process. The document, *Normae servandae in construendis processibus ordinariis super causis historicis*, issued in Latin, provided the means to better apply the *motu proprio* of Pius XI in the instruction of ancient causes. The most important innovation was the introduction of the historical commission for ancient causes, as described in the first article:

Before the process is instituted, the Ordinary, having heard the Promoter of the Faith or the *Fiscalis*, is to institute a commission of three members, whose expertise regarding historical methods and regarding archival research is entirely proven. It is the responsibility of these [experts] to collect *in solidum* all the written sources about the life, virtues or martyrdom, ancient reputation of holiness or martyrdom, or ancient cult of the servant of God.<sup>23</sup>

These norms expanded upon the previous innovations regarding documentary proofs. The 1913 decree of the Congregation called for the gathering of all documentary evidence during the informative process,

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<sup>22</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 3, 5° and 7°. After the historical section completed its evaluation, the *motu proprio* referred to the normal procedures to be observed in the treatment of the cause according to the norms of the Code of Canon Law. Therefore, the advocates continued to present their normal responses to the objections of the Promoter General of the Faith.

<sup>23</sup> SACRA CONGREGATIO RITUUM, *Normae servandae in construendis processibus ordinariis super causis historicis*, 4 ianuarii 1939, in AAS, 31 (1939), 174-175, Art. 1: «Antequam Processus instituat, Ordinarius, audito Fidei Promotore seu Fiscali, Commissionem instituat trium membrorum, quorum peritia circa historicas methodos et circa archíuales investigationes omnino sit probata. His competit “in solidum” officium colligendi omnes fontes scriptos circa vitam, virtutes vel martyrium, antiquam famam sanctitatis vel martyrii, aut antiquum cultum Servi Dei».

Hereafter, this document of the Sacred Congregation of Rites will be referred to as *Normae servandae* (1939). The reference to the year will distinguish these norms from other norms issued by the Congregation for the Causes of Saints in 1983 which also began with the words *Normae servandae*.

imposing this responsibility on the local tribunal. The 1930 *motu proprio* improved the study of the documentary evidence in ancient causes by providing for a historical section in the Congregation which was responsible for examining the completeness of the evidence. While *Già da qualche tempo* provided for the study of the documentary proofs, it did not provide any additional structure to search out those proofs. With the 1939 norms, a mechanism was created to provide for the more effective discovery of these documents in ancient causes. The responsibility of collecting this evidence was transferred from the members of the tribunal to the historical commission, which was to be composed of three experts. The witness testimony was taken by the judges with the participation of the promoter of the faith and the notary. The documentary evidence was gathered primarily by the historical commission, though nothing prohibited the members of the tribunal from directly receiving documents from the witnesses or the postulator. Nevertheless, the experts of the historical commission bore the responsibility of insuring that the gathering of the documentary evidence in an ancient cause was thorough and complete.

Before the experts were appointed to the historical commission, the ordinary was to hear the promoter of the faith.<sup>24</sup> Therefore, the historical commission was constituted only after the other members of the tribunal had already been appointed.<sup>25</sup> While the 1917 code required the promoter of the faith to be heard before the appointment of any expert, the norms made explicit reference to the role of the promoter who was able to challenge the appointment of a historical expert who was not suitable.<sup>26</sup> The norms introduced a noteworthy innovation by requiring that these experts work in collaboration with one another as a single commission. The 1917 code

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<sup>24</sup> The norms referred to the promoter of the faith or the *promotor fiscalis*, a sign that the connection between these two offices was still widely recognized in 1939. The 1917 code no longer referred to the *promotor fiscalis* who had been renamed the promoter of justice (*promotor iustitiae*).

<sup>25</sup> The promoter of the faith was appointed at the same time as the judges in the ordinary processes. See CIC 1917, can. 2040 §2, cited in chapter 2, footnote 69 on page 103.

<sup>26</sup> CIC 1917, can. 2031, 2°: «*Cum peritorum opera est necessaria: 2° Deputentur a tribunali per maiorem suffraiorum partem, audito fidei promotore, vel, si penes Sacram Congregationem operam suam praestare debeant, a Cardinali Ponente, audito fidei generali Promotore; semper autem excludi debent qui in causa testis munere functi sunt*».

presumed that the experts would work separately, with their identities kept secret even from one another. Only by way of exception, and for a just cause acknowledged as such by the promoter of the faith, were the experts allowed to work *in solidum*.<sup>27</sup> In consideration of the work they had to do, it would have been counterproductive to require the historical experts to each search independently for the same documentary proofs in various archives. In fact, there is no reason to require them to work separately, since they were not asked to offer their opinion regarding the merits of the cause, but only to gather the documentation, a task that was best done through a joint effort.

The remaining articles of the norms provided further direction regarding the historical commission. For causes in which the servant of God was a religious, a majority of the members of the commission could not be chosen from the same religious order as the candidate for canonization.<sup>28</sup> This provision protected the impartiality of the historical commission. The third article required the experts to give testimony before the tribunal. They were to testify regarding the work they had done, enumerating and describing the specific investigations carried out in the various archives or other locations where documents might have been preserved. They were to swear under oath that they collected every document that referred in any way to the servant of God and that no document was altered. Furthermore, they were to be questioned about the authenticity and the value of the individual documents that had been gathered.<sup>29</sup> While the majority of the work of the historical commission was undertaken apart from the judges and the promoter of the faith, these experts were still accountable to the tribunal as they had to appear under oath to give an account of their activity. The promoter had the opportunity to examine their work when it was presented to the tribunal. If it was evident that the experts had failed to gather all the

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<sup>27</sup> CIC 1917, can. 2031, 4°: «*Cum peritorum opera est necessaria: 4° Periti seorsum singuli ad peritiam deveniant, nisi ex iusta causa iudex, assentiente promotore fidei, permittat ut ii simul peritiam instituant*».

<sup>28</sup> SACRA CONGREGATIO RITUUM, *Normae servandae* (1939), Art. 2.

<sup>29</sup> SACRA CONGREGATIO RITUUM, *Normae servandae* (1939), Art. 3.

documentation, the judges, or even the promoter, could oblige them to faithfully complete their task.

### 3.2.3 CONSEQUENCES OF THE REFORMS IN ANCIENT CAUSES

While the promulgation of *Già da qualche tempo* in 1930 and *Normae servandae* in 1939 did not affect recent causes, these documents had several important consequences on the instruction and evaluation of ancient causes. The first consequence affected the probative value of documentary proofs. While the *motu proprio* and the norms did not make mention of the probative value of documents, these initiatives had a profound impact on the way that documentary evidence was viewed in causes of canonization. Before 1930, documentary evidence could be used only to support other witness testimony, though it could not be accorded the value of full proof regarding virtues or martyrdom.<sup>30</sup> However, in 1930, Pius XI recognized the futility of attempting to instruct an apostolic process in an ancient cause when there was no eye witness testimony available. The documentary evidence, especially where it was abundant, appeared therefore to provide the primary source of detailed information about the servant of God, and deserved careful historical analysis.<sup>31</sup> With this emphasis on documentary evidence, its importance grew to the point that it assumed a level of value alongside the witness testimony, allowing it to enter into the evaluation of the judicial merit of ancient causes. While the continuous existence of the reputation of holiness was to be proven in the context of the informative process through the testimony of contemporary witnesses, documentary evidence could be used to demonstrate the virtues or martyrdom of the servant of God.<sup>32</sup>

In fact, some commentators considered documentary evidence to surpass the recollections of witnesses, since an authentic document might

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<sup>30</sup> J. NOVAL, *Commentarium*, Pars 2, 128-129. Documents had only the probative force of supporting evidence (*adminicula*).

<sup>31</sup> W. HILGEMAN, *Le Cause*, 304.

<sup>32</sup> L. SCORDINO, *Natura giudiziaria*, 19. Regarding the value of documentary evidence in ancient causes, see chapter 2, footnote 91 on page 109.

record many specific details that might fade from a witness's memory over time. In some cases, a witness might give an account that was uncertain, confused, or contradictory, while a trustworthy document could present a description that was clear, organized, and consistent.<sup>33</sup> With greater emphasis on documentary evidence, there was an increased awareness of the historical, social, and cultural context of the servant of God, as described in written records.

A second consequence of these new provisions arose because of the creation of the office of the Relator General and the historical section. From the beginning of this office, the Relator General took part in all the meetings of the Congregation.<sup>34</sup> It might appear that the Relator General was subordinate to the Promoter General of the Faith, since the Relator had to report his observations in ancient causes to the Promoter.<sup>35</sup> However, there seemed to be some parity between the two figures, as the Relator General was the head of the newly created third section (for historic causes), while the Promoter General was the head of the already established first section (on causes of saints).<sup>36</sup> Some of the responsibilities of the Promoter General appear to have been absorbed by the Relator General who was primarily responsible for the evaluation of the completeness of the documentary evidence, a duty that previously was the domain of the Promoter.

The third consequence, and perhaps the most significant, had to do with the increased importance given to the methods of scientific study and historical research. While ancient causes still required the traditional hearing of witnesses regarding the reputation of holiness, a modern approach was employed in the evaluation of the historical documents.<sup>37</sup> The creation of the historical section of the Congregation had the effect of validating the modern methods of scientific research. While the historical critical method had been greeted with skepticism in prior decades, the 1930s

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<sup>33</sup> E. APECITI, *L'evoluzione storica*, 86. Apeciti believed that the documentation could assume a level of probative value equivalent to eye-witness testimony.

<sup>34</sup> A. FRUTAZ, *La sezione storica della Sacra Congregazione dei Riti: Origini e metodo di lavoro*, Città del Vaticano, 1964, 13.

<sup>35</sup> L. SCORDINO, *Natura giudiziaria*, 21.

<sup>36</sup> See the reference to the 1930 *Annuario Pontificio* in footnote 14 on page 151.

<sup>37</sup> G. DALLA TORRE, *Santità e diritto*, 136.

saw a greater willingness to take advantage of this more scientific approach in the evaluation of a cause.<sup>38</sup> As such, the juridic approach established in canon law no longer constituted the exclusive means of forming a judgment regarding the merits of a cause.

These new norms appeared to introduce only modest changes, but their full consequence may not have been fully anticipated by Pius XI. In *Già da qualche tempo*, the Pontiff stated that he only wanted to introduce a few revisions. However, those revisions started a process that had unexpected future implications.<sup>39</sup> «The innovations that were introduced signaled the beginning of an evolution in the treatment of the causes of beatification and canonization».<sup>40</sup> In fact, with these modernizations, Pius XI had opened the door to further revisions and updates, in line with modern scientific methodology, that would unfold over time.<sup>41</sup>

### 3.3 THE REASSESSMENT OF THE 1917 CODE

#### 3.3.1 THE VIEW OF THE CODE FROM 1917 TO VATICAN II

The perception of the code changed significantly between the time of its promulgation and the opening of the Second Vatican Council. Before

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<sup>38</sup> The historical critical method has seen a similar evolution in the study of Scripture. In 1893, Leo XIII issued *Providentissimus Deus*, expressing great skepticism regarding those so-called sciences that used modern methodology to call into doubt the authenticity and the inerrancy of Scripture. By 1943, Pius XII issued *Divino Afflante Spiritu*, in which he called upon Catholic scholars to study Scripture using modern textual criticism and the historical critical method, always informed by theology and sacred tradition. By 1993, the Pontifical Biblical Commission issued the document, *the Interpretation of the Bible in the Church*, accepting the historical critical method as one of the standard tools used in scriptural interpretation, and recognizing its strengths and its weaknesses. See LEO PP. XIII, Litterae encyclicae: *Providentissimus Deus*, 18 novembris 1893, in J. WYNNE (ed.), *The Great Encyclicals of Leo XIII*, New York, 1902, 270-302. PIUS PP. XII, Litterae encyclicae: *Divino Afflante Spiritu*, 30 septembris 1943, in *AAS*, 35 (1943), 297-325. PONTIFICIA COMMISSIONE BIBLICA, *L'interpretazione della Bibbia nella Chiesa*, Città del Vaticano, 1993.

<sup>39</sup> F. VERAJA, *Il Motu Proprio "Sanctitas Clarior" e le Cause "Storiche" dei Santi*, in *Monitor Ecclesiasticus*, 104 (1979), 320.

<sup>40</sup> G. DALLA TORRE, *Santità e diritto*, 137: «Le innovazioni così introdotte segnarono l'inizio di una evoluzione nella trattazione delle cause di beatificazione e di canonizzazione».

<sup>41</sup> W. HILGEMAN, *Le Cause*, 304.

considering the changes introduced in causes of canonization after the Council, it is useful to consider the reevaluation of the code that took place during these intervening years. Because the law for causes of canonization was a part of the code, the assessment of these norms was also necessarily affected by the changing attitudes to the code as a whole.

The promulgation of the 1917 Code of Canon Law had a profound impact on the life of the Church. In the previous chapter, it was noted that Gasparri did not intend to introduce new law, but rather to faithfully preserve the existing law.<sup>42</sup> The object of the code was to synthesize the laws that were in force at the time, presenting them in a way that was unified, comprehensive, systematic, and rational. However, the very existence of the 1917 code had a sweeping effect on the field of canon law, because it transformed the juridic system of the Church from one based in the common law to one based on a unified code.<sup>43</sup> Before 1917, canonists had to consult collections of laws and decrees as well as the opinions of scholars to provide legal interpretations. After 1917, the promulgated code became the one and only source of law. While the code did abrogate those laws that were contrary to its canons, it did not appear to be the mind of the legislator that the traditions and the learned opinions of canonical scholars should be entirely supplanted. The code referred to the desire to maintain continuity with the previous legislation and to respect scholarly opinion regarding the law.<sup>44</sup> Nevertheless, the comprehensive nature of the code as a single body of law made it a natural point of reference in matters of ecclesiastical governance. The centrality of the code was expressed in a decree of the Congregation of Seminaries:

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<sup>42</sup> See the discussion in Chapter 2 at footnote 3 on page 79.

<sup>43</sup> C. REDAELLI, *Il metodo esegetico applicato al Codice di Diritto Canonico del 1917 e a quello del 1983*, in *Periodica*, 86 (1997), 57-61.

<sup>44</sup> CIC 1917, can. 6, 2°: «*Codex vigentem huc usque disciplinam plerumque retinet, licet opportunas immutationes afferat. Itaque: 2° Canones qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos auctores interpretationibus, sunt aestimandi*». This canon referred to those laws that were opposed to the prescripts of the code and were therefore abrogated. Where the code maintained the previous law, it was to be interpreted in a manner that maintained continuity with previous legislation and scholarly opinion.

When the new Code of Canon Law ... is declared to have the force [of law], it is clear that from that same day, the Code will be the sole and authentic font of canon law, and therefore whether in the regulation of discipline in the Church, or in trials and in schools, it alone is to be used.<sup>45</sup>

In the 1920s commentators on the code focused on these instructions from the Holy See and used an exegetical approach when presenting the text of each canon. The meaning of the canon was explained, describing the motivations of the law, and drawing attention to the similarities and differences with the preceding law.<sup>46</sup> By the 1930s, commentators began to take a broader approach, describing the code as a system that was perfect and orderly. The origins of the canons were explained, showing the development of doctrine over history. The practical application of the law was taught, demonstrating how the canons should be applied in accord with the established jurisprudence.<sup>47</sup> In 1931, Pius XI issued an apostolic constitution governing ecclesiastical universities that required «the history and the text of ecclesiastical laws, as well as their purpose and relationship ... to be set forth» in the instruction of canon law.<sup>48</sup> While this approach was still exegetical, it entered more deeply into the history of the text which was crucial to a proper interpretation.

Even during this period of great respect for the contribution of the 1917 code, some norms regarding the probative value of proofs appeared unnecessarily rigid. The probative value of documentary evidence was limited on the basis of the nature of the document and its authenticity.

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<sup>45</sup> SACRA CONGREGATIO DE SEMINARIIS ET STUDIORUM UNIVERSITATIBUS, decretum *de novo iuris canonici codice*, 7 augusti 1917, in AAS, 9/I (1917), 439: «*Cum novum iuris canonici Codicem ... vim habiturum esse edixerit, liquet ex eo ipso die Codicem fore authenticum et unicum iuris canonici fontem, proptereaque tum in disciplina Ecclesiae moderanda, tum in iudiciis et in scholis eo uno utendum esse*». See also J.L. GUTIÉRREZ, *La interpretación literal de la ley*, in *Ius Cononicum*, 35 (1995), 546.

<sup>46</sup> C. REDAELLI, *Il metodo esegetico*, 66-67. Redaelli mentioned Blat in 1921 among the commentators who took an exegetical approach.

<sup>47</sup> C. REDAELLI, *Il metodo esegetico*, 67-68. Redaelli mentioned Wernz-Vidal in 1938 among the commentators who described the origins and the practical application of the laws.

<sup>48</sup> PIUS PP. XI, *Constitutio apostolica: Deus Scientiarum Dominus*, 12 iunii 1931, in AAS, 23 (1931), 241-262, Art. 29b: «*In Facultate Iuris Canonici tam historia et textus legum ecclesiarum quam earundem ratio et nexus modo scientifico exponantur*».

Meanwhile, witness testimony could have a greater probative value, especially if it was in the form of a judicial confession.<sup>49</sup> In 1936, with the instruction *Provida Mater*, the value of a judicial confession was diminished in marriage cases, out of a fear that the parties might have colluded in the interest of obtaining a decree of marital nullity. The probative value of a statement made by one of the parties at a suspect time, when contemplating a divorce or an annulment, was greatly reduced.<sup>50</sup> These provisions approached both witness testimony and documentary proofs from a perspective of great skepticism. This rigorous juridic approach seemed to call into question the value of those proofs that affirmed what was in the interest of the parties. These negative presumptions regarding witness testimony «manifested a lack of trust that was nourished with respect to the human person, whose affirmations were considered *a priori* to be untrue».<sup>51</sup> This system appeared to limit the power of the judge to freely evaluate the evidence presented. Rather, he seemed to be restrained by a system that did not trust the parties to speak with honesty or credibility. It seemed to be presumed that the witnesses were not telling the truth until the contrary had been demonstrated.<sup>52</sup>

Nevertheless, the general admiration for the excellence of the 1917 code remained firm through the 1950s, a time in which it was still

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<sup>49</sup> The probative value of public and private documents is addressed in canons 1814-1818. The probative value of witness testimony depended on the witness's character and source of knowledge (cfr. CIC 1917, cann. 1789-1791). A judicial confession of a fact that is contrary to the party's interest had the effect of relieving the other party of the burden of proving that fact (cfr. CIC 1917, can. 1751). However, if the same confession was not stated orally before the court, but only in a document, it was considered equivalent to an extrajudicial confession and its value as a proof was diminished (cfr. CIC 1917, can. 1753).

<sup>50</sup> SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, instructio *Provida Mater Ecclesia*, 15 augusti 1936, in AAS, 28 (1936), 313-372, Artt. 116-117. A confession against the marriage had probative value if made before the marriage. A confession made after the marriage and at a non-suspect time had only the value of an *admiculum*. A confession made after the marriage and at a suspect time was not a suitable proof. The same instruction, in article 169, confirmed that documentary evidence continued to have the same probative value as defined in the 1917 code.

<sup>51</sup> E. DI BERNARDO, *Il Cardinal Roberti*, 145: «manifestava la sfiducia nutrita nei confronti della persona umana, le cui affermazioni erano ritenute aprioristicamente come non vere».

<sup>52</sup> E. DI BERNARDO, *Il Cardinal Roberti*, 144-145.

considered imperishable and a masterpiece in its articulation of ecclesiastical law. It remained the conviction that the solution to any problem within the Church could be found in the exegesis of the canons. This attitude was reflected in the well-known maxim of Gasparri that «what is not in the code, is not in the world».<sup>53</sup> During this period, various solid and reliable manuals continued to be written in relation to the code.

The respect for the code was based in part on the theory that the Church had been constituted as a perfect society (*societas perfecta*). The concept of a perfect society can be traced back to Plato's Republic, which described the ideal of a well ordered and efficient community guided by philosophical principles. In the 20<sup>th</sup> century, the theory of a juridically perfect society described a community that was ordered toward the good and was complete in the sense that it possessed all the means necessary to achieve its purpose. The perfect society was essentially sufficient, independent, and autonomous.<sup>54</sup> The meaning of the adjective «perfect» could be interpreted in two ways, signifying a community that was whole and complete, or one that was without flaw or defect. The traditional interpretation of the Church as a perfect society was in the first sense, meaning that the Church was whole and complete, capable of governing itself and achieving its purpose. The Church governed itself through public laws (the so called *ius publicum*) that were just and true. Gasparri distinguished between the civil laws used by the state that were to be based in the natural law, and the ecclesiastical laws used by the Church which were based on divine revelation and the infallible Magisterium.<sup>55</sup> The divine and infallible nature of the Church contributed to the understanding that ecclesiastical laws were perfect in the second sense, meaning that they

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<sup>53</sup> J.L. GUTIÉRREZ, *Alcune questioni sull'interpretazione della legge*, in *Apollinaris*, 40 (1987), 514-515: «*quod non est in Codice, non est in mundo*».

<sup>54</sup> M. NACCI, *Origini, sviluppi e caratteri del ius publicum ecclesiasticum*, Pontificia Università Lateranense, Roma, 2010, 126. Nacci cited the theory as presented by Cardinal Alfredo Ottaviani regarding the perfect society.

<sup>55</sup> M. NACCI, *Origini, sviluppi e caratteri*, 158-159. The public law of the state was called the *ius publicum civile* and the public law of the Church was called the *ius publicum ecclesiasticum*. See Nacci for a comprehensive treatment on the development of the *ius publicum ecclesiasticum* during the 20<sup>th</sup> century, including the various figures who made the most important contributions to this field.

were without flaw or defect. This approach had the effect of investing an immense amount of authority in the 1917 code as a paragon in the articulation of ecclesiastical law. Canon law came to be taught in various universities in a dogmatic sense, emphasizing the rightness of the law because of the authority of the Church that promulgated it.<sup>56</sup> With the development of canonical theory and methodology, the study of the law increasingly became its own field, without necessarily connecting the law to the doctrine that served as its foundation.<sup>57</sup> While canonical norms had been historically developed on the basis of doctrine, the necessary connection between doctrine and law began to be deemphasized. Without a connection between the canonical norms and their dogmatic underpinning, the study of the law subtly began to give way to an emphasis on authority and the power of jurisdiction.<sup>58</sup> The final result was a shift toward positivism in the study of the law.<sup>59</sup>

### 3.3.2 THE ANNOUNCEMENT OF VATICAN II AND A NEW CODE

Sensing the need for reform in the Church, John XXIII (1958-1963) announced on January 25, 1959, not only his intention to call the Second Vatican Council, but also the plans to revise the Code of Canon Law.<sup>60</sup> As the Church entered into the 1960s, the opinions regarding the 1917 code had changed significantly. Instead of being considered a masterpiece of canonical legislation, it had come to be seen as overly legalistic and excessively juridical. With the prospects of a new code came the opportunity to introduce changes that were eagerly anticipated.

Even before John XXIII's announcement, the desire to introduce canonical modifications in the legislation for causes of canonization had

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<sup>56</sup> J.L. GUTIÉRREZ, *La interpretación literal*, 540.

<sup>57</sup> C. REDAELLI, *Il metodo esegetico*, 64-66.

<sup>58</sup> G. DALLA TORRE, *Santità ed economia processuale*, 47.

<sup>59</sup> C. REDAELLI, *Il metodo esegetico*, 70-74. Redaelli emphasized the comparisons that were drawn between the ecclesiastical law of the Church and the civil law of the State. This approach emphasized that both laws acquired their force in a positivistic sense on the basis of the authority of the one who promulgated the law, whose authority was not questioned.

<sup>60</sup> IOANNES PP. XXIII, *Sollemnis allocutio*, 25 ianuarii 1959, in AAS, 51 (1959), 65-69.

already been anticipated by Pius XII (1939-1958). Shortly before his death, Pius XII prepared a message to commemorate the 200<sup>th</sup> anniversary of the death of Benedict XIV. Although he died before the anniversary, his message was published posthumously in *L'Osservatore Romano* on April 9, 1959.<sup>61</sup> This address expressed gratitude for the valuable contributions of the past, while articulating the need for change and modernization in the Church. Pius XII praised the insight of Benedict XIV whose doctrinal contributions, especially in causes of saints, could be compared to St. Thomas Aquinas. According to this analogy, the teaching of St. Thomas is timeless, «[presenting] the compendium of sacred doctrine in its totality from the beginning and in every age, just as the work of Lambertini offers a complete vision of ecclesiastical tradition in the matter of cult and of the canonization of saints».<sup>62</sup>

As he continued, Pius XII described the need for change in order to adapt the timeless teachings of Benedict XIV to the modern age. He observed that «the vision of Catholic holiness offered by Pope Lambertini has and will always have a permanent value, [though] it is also proper and useful to discuss the possibility of improving the procedural practices established by him».<sup>63</sup> Pius XII noted that it was not the intention of Benedict XIV to leave a rigid process that could never be changed. Rather, «the law of the historic development of human institutions could compel, even in this material, some renewal of the procedural system, in order to render it more suitable for the fulfillment of its obligations which have become more complex and numerous in the past two centuries».<sup>64</sup> The

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<sup>61</sup> PIUS PP. XII, *Discorsi e radiomessaggi di Sua Santità Pio XII*, XX, Città del Vaticano, 1959, 450-472.

<sup>62</sup> PIUS PP. XII, *Discorsi e radiomessaggi*, 465: «[San Tommaso] presenta il compendio di tutto ciò che la sacra dottrina fu dal principio ed in ogni tempo, così l'opera del Lambertini offre una compiuta visione della tradizione ecclesiastica in materia di culto e di canonizzazione dei Santi».

<sup>63</sup> PIUS PP. XII, *Discorsi e radiomessaggi*, 467: «La visione della santità cattolica, quale è offerta, dal Papa Lambertini, ha ed avrà valore permanente, è lecito, ed anche utile, discutere sulla perfettibilità della prassi processuale da lui stabilita».

<sup>64</sup> PIUS PP. XII, *Discorsi e radiomessaggi*, 467: «La legge dello sviluppo storico delle umane istituzioni potrebbe imporre, anche in questa materia, alcuni rinnovamenti dell'ordinamento processuale, affine di renderlo più atto ad assolvere i suoi uffici, divenuti sempre più complessi e numerosi nei due secoli scorsi».

Pontiff noted that the process for beatification and canonization has been subject to various changes in the previous 200 years, in light of various scientific developments, including the contributions of historical criticism with its insights regarding the probative value of proofs.<sup>65</sup> In fact, Pius XII pondered whether «those technical means, available today, should be adopted which would notably simplify the processes» in causes of canonization.<sup>66</sup> Pius XII concluded that his observations were left for the future study of others, recognizing the need for a maximum of scientific rigor adapted to the circumstances of the time.<sup>67</sup> This astute tribute praised the past contributions of Benedict XIV, while also anticipating that fidelity to this tradition would require future reforms in line with contemporary scientific methodology.

With the election of John XXIII, and throughout the 1960s, the opinion had become commonly held that the entire system of ecclesiastical law was plagued with an excessive legalism, requiring a comprehensive reform of the 1917 code. This created a source of great tension for those trained in the code.

The canonist often [felt] the need to justify his task in the life of the Church while, at the same time, observing the collapse of a large part of that edifice which had been constructed on the basis of the code. Above all, he [did] not know where to turn, no longer having any secure point of reference.<sup>68</sup>

Following the Second Vatican Council, this state of flux continued for three reasons: First, while the conciliar documents called for many reforms, there

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<sup>65</sup> S. GAROFALO, *A Proposito degli "Scritti" nelle Cause dei Santi*, in A. MORINI – C. PINTO – M. BARTOLUCCI (eds.), *Sacramenti, Liturgia, Cause dei Santi: Studi in onore del Cardinale Giuseppe Casoria*, Naples, 1992, 641.

<sup>66</sup> P. PALAZZINI, *La perfettibilità*, 80-82: «Sarebbe innanzi tutto da esaminare – osserva egli – se siano da adottarsi quei mezzi puramente tecnici, di cui oggi si dispone, e che semplificherebbero notevolmente i processi». As one example of a technological improvement, Pius XII noted that the rule that all testimony be written by hand could be modified to allow the use of typewriters. See A. FRUTAZ, *La sezione storica*, 8.

<sup>67</sup> P. PALAZZINI, *La perfettibilità*, 82 and 87.

<sup>68</sup> J.L. GUTIÉRREZ, *Alcune questioni*, 515: «Il canonista esperimenta spesso il bisogno di giustificare il proprio compito nella vita della Chiesa mentre, allo stesso tempo, vede crollare in buona parte quell'edificio le cui linee maestre erano costituite dal Codex e soprattutto, non sa dove aggrapparsi, perché non ha più un punto sicuro di riferimento».

was still a period of general confusion, filled with contradictory signs as the text of the new norms was being debated. Second, this period was characterized by a spirit of hostility toward the law. Even if the 1917 code had not yet been abrogated, it had become commonly held that some of the provisions in the law were no longer applicable after the Council. Third, canonists were left with the precarious challenge of seeking the best solutions to concrete cases during the period of transition from the 1917 code to the new code which had not yet been promulgated.<sup>69</sup>

Similar trends had developed regarding the norms governing causes of canonization, which were also thought to be plagued by a degree of formalism that unnecessarily slowed and prolonged the forward movement of causes. Pius XI had already opened the door to reform when he streamlined the instruction of ancient causes by eliminating the apostolic process. After him, Pius XII had spoken of the need for further reform through a modernization of the approach used in instructing causes of canonization. During the 1960s, the need for reform was evident, both regarding the procedures used in the local instruction of a cause and its discussion in the Congregation.<sup>70</sup> The widespread recognition of the advancements of the historical critical method in the 19<sup>th</sup> and 20<sup>th</sup> centuries, as well as the changing opinions regarding the traditional juridic model, made this scientific approach very attractive to those who wanted to see reforms in causes of canonization.<sup>71</sup>

### 3.4 THE REFORMS OF PAUL VI

#### 3.4.1 *REGIMINI ECCLESIAE UNIVERSAE* (1967)

On August 15, 1967, Paul VI (1963-1978) issued *Regimini Ecclesiae Universae* which modified some of the structures within the Roman Curia.<sup>72</sup>

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<sup>69</sup> J.L. GUTIÉRREZ, *Alcune questioni*, 515-516.

<sup>70</sup> H. MISZTAL, *Le cause*, 171.

<sup>71</sup> S. GAROFALO, *A Proposito degli "Scritti"*, 641.

<sup>72</sup> PAULUS PP. VI, *Constitutio apostolica: Regimini Ecclesiae Universae*, 15 augusti 1967, in AAS, 59 (1967), 885-928.

The apostolic constitution noted that these changes were in direct response to the Second Vatican Council which called for the Dicasteries of the Roman Curia to be «subjected to a new organization better adapted to the needs of the times, regions, and rites especially as regards their number, name, competence and particular way of proceeding, as well as the coordination of work among them».<sup>73</sup> *Regimini* revised the internal organization of the Sacred Congregation of Rites, reducing the dicastery to two sections, the first being liturgical and the second being judicial to treat causes of saints. Within the second judicial section, three sub-sections were created to address the various phases in the process.<sup>74</sup> Following the promulgation of this constitution, the section for historic or ancient causes came to be known as the historical-hagiographical office, alongside the office of the Promoter General of the Faith.<sup>75</sup>

While *Regimini* did not change the procedures to be observed in the Congregation for the treatment of causes, it was noteworthy that there was no mention of the rotal auditors among the members of the dicastery. Rotal auditors continued to be listed among the officials of the Congregation for two more years, though by 1970, the Rota no longer had any role in causes of saints.<sup>76</sup> The participation of the Rotal auditors in causes of canonization, which began in the 14<sup>th</sup> century, had come to an end. Lefebvre explained that the suppression of the participation of the rotal auditors had come about because «the separation of the administrative and judicial approaches had been completed, as the juridic knowledge and the expertise of the members

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<sup>73</sup> PAULUS PP. VI, *Regimini Ecclesiae Universae, prooemium*. The introduction of the constitution referred to *Christus Dominus*. See CONCILIUM OECUMENICUM VATICANUM II, Decretum de pastoralis episcoporum munere in Ecclesia: *Christus Dominus*, 28 octobris 1965, in *AAS*, 58 (1966), 673-701, n. 9: «*Exoptant autem Sacrosancti Concilii Patres ut haec Dicasteria ... novae ordinationi, necessitatibus temporum, regionum ac Rituum magis aptatae, subiciantur, praesertim quod spectat eorundem numerum, nomen, competentiam propriamque procedendi rationem, atque inter se laborum coordinationem*».

<sup>74</sup> PAULUS PP. VI, *Regimini Ecclesiae Universae*, Artt. 61-62.

<sup>75</sup> PAULUS PP. VI, *Regimini Ecclesiae Universae*, Art. 63. *Annuario Pontificio*, Città del Vaticano, 1968, 977-981.

<sup>76</sup> *Annuario Pontificio*, Città del Vaticano, 1970, 992-994.

of the Congregation for the Causes of Saints had increased». <sup>77</sup> Lefebvre identified a trend that approached causes of canonization less according to the pattern of a judicial trial and more as a juridic administrative process. This trend was also seen in the study of the *positio* which was formerly entrusted to the Rotal canonists, but later undertaken by the various officials in the Congregation. While *Regimini* did not change the juridic nature of causes of canonization, the subtle shift from a more judicial system to an increasingly administrative system was consistent with other trends in the 20<sup>th</sup> century that favored a scientific approach according to the historical critical model that seemed more suited to the needs of the time.

### 3.4.2 *SANCTITAS CLARIOR* (1969)

In 1969, Paul VI issued two documents that introduced profound changes in the instruction and discussion of causes of canonization. The first of these two documents was the *motu proprio Sanctitas Clarior*, promulgated on March 19, 1969, which responded to the themes of the Second Vatican Council and introduced modifications in the instruction of both recent and ancient causes. <sup>78</sup> Paul VI opened *Sanctitas Clarior* with the conciliar theme of the universal call to holiness by which all are called to conform themselves to the image of Christ. This invitation is not for a select few, but for all regardless of their condition or social class. To urge the faithful to strive for this holiness, the Church proposes models of holiness, whether martyrs or those confessors known for heroic virtue, whose example of life can be followed and whose help can be sought through

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<sup>77</sup> C. LEFEBVRE, *Relationes inter Sacram Rituum Congregationem*, 59: «Ratio autem istius suppressionis in eo esse videtur quod perfecta iam sit separatio ordinis administrativi et ordinis iudicialis, dum exaltarentur scientia iuridica et peritia membrorum Congregationis pro causis Sanctorum».

<sup>78</sup> PAULUS PP. VI, *Motu proprio: Sanctitas Clarior*, 19 martii 1969, in AAS, 61 (1969), 149-153.

prayer.<sup>79</sup> In order to accomplish this mission, the procedures used in causes of canonization were to be modified, as the Pontiff explained:

So that the splendid examples of this holiness may be properly discerned and that their pure light may fully shine forth, canonical investigations are necessary, carried out indeed with the highest zeal and attention, as required by the importance of the topic. Our predecessors, especially Benedict XIV of happy memory, in consideration of their own times, strengthened [these investigations] with most wise laws that were later received in the Code of Canon Law. But, as the way of life and circumstances have changed, it seems suitable and fitting to reconsider the path and the method of the investigation mentioned above, and even to adapt it to our time, so that the supreme authority of the Supreme Pontiff, associated effectively with the authority of the Bishops, might make the path more level and unencumbered in the instruction of causes of beatification and canonization of servants of God.<sup>80</sup>

From this introduction, the fundamental motives that guided this call for reform can be identified. Relying on the theology of Vatican II, this reform was to promote the universal call to holiness among the faithful through the canonization of those men and women who could serve as models of holiness and intercessors. The examination of a servant of God required a zealous and attentive investigation according to the prescribed norms. However, the circumstances of the times called for two principles to shape those reforms. First, the Pope wished to associate the bishops with his supreme authority. Second, the instruction was to be reformed to render it simpler and more streamlined.

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<sup>79</sup> PAULUS PP. VI, *Sanctitas Clarior, prooemium*. The Pontiff quoted from the dogmatic constitution of the Second Vatican Council (cfr. CONCILIUM OECUMENICUM VATICANUM II, *Lumen Gentium*, nn. 40-42 and 51).

<sup>80</sup> PAULUS PP. VI, *Sanctitas Clarior, prooemium*: «*Ut vero praeclara huiusmodi sanctitatis exempla probe dignoscantur, atque sua sincera luce plene resplendeant, canonicae pervestigationes necessariae sunt, summo quidem studio ac sedulitate, prouti rei gravitas postulat, peragenda, quas Decessores Nostri, in primis f. r. Benedictus XIV, sapientissimis, pro suorum temporum ratione, communierunt legibus, in Codicem Iuris Canonici postea receptis. Sed mutatis moribus vitaeque adiunctis, congruum et consentaneum visum est inquisitionis, quam diximus, viam ac rationem recognoscere, atque ad nostri huius temporis necessitates accommodare, ut, suprema Summi Pontificis cum Episcoporum auctoritate efficaciter consociata, planius et expeditius fiat iter ad causas beatificationis et canonizationis Servorum Dei instruendas*».

On the surface, these articulated goals seemed to suffer from an inherent contradiction. The Pope desired both to maintain a zealous and attentive investigation, and, at the same time, to simplify and streamline the process. In the history of causes of saints, innovations in the canonical procedures have generally imposed more stringent requirements on the instruction of a cause in order to make the investigation more thorough.<sup>81</sup> The increased rigor and complexity were often considered to provide a greater guarantee that the process would arrive at the truth. While the norms for these causes had gone through various changes throughout history, the period after the Council was the first time in which the procedure as a whole was considered not only too complex, but even a burden that created unnecessary obstacles in the search for holiness.<sup>82</sup> The reform was intended to comprehensively simplify the procedures to be observed, while maintaining the seriousness of the investigation. The simplification of the process, while maintaining high standards, required changes that would render the process more efficient and more effective. While the *motu proprio* emphasized the need for careful a canonical investigation, there was a subtle shift away from the strictly juridic model of the past, which was considered unnecessarily burdensome, toward a system that incorporated modern scientific methods which seemed more suited to the needs of the Church following the Second Vatican Council.

The purpose and the principles outlined in the introduction of *Sanctitas Clarior* were similar to the general principles that were identified for the revision of the Code of Canon Law. Following the Second Vatican Council, a commission was selected to begin the work of revising the code. On April 8, 1967, this Code Commission approved ten principles which were subsequently approved by the Synod of Bishops on September 30, 1967.<sup>83</sup> These principles would have also been applied to causes of

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<sup>81</sup> G. DALLA TORRE, *Santità ed economia processuale*, 41-42. Dalla Torre referred to the historical improvements that occurred in the investigation of causes through an increased bureaucratization of the process. More rigorous procedures were employed in order to guarantee that the proofs sought were authentic and true.

<sup>82</sup> M.B. MEINARDI, *La natura giuridica*, 58.

<sup>83</sup> ACTA COMMISSIONIS, *Principia quae codicis iuris canonici recognitionem dirigant*, in *Communicationes*, 1 (1969), 77-85.

canonization, except that the decision was made on April 4, 1968, to remove these norms from the new code and treat them in separate legislation that was to be composed.<sup>84</sup>

Nevertheless, the effect of the code principles can be seen in *Sanctitas Clarior* which sought to accomplish some of the same goals. The first principle for the revision of the code determined that the new code would retain an essentially juridic structure. This principle was also retained for causes of canonization by Paul VI who called for servants of God to be examined by means of a precise canonical investigation. The third principle determined that the new code should be more pastoral, avoiding rigid norms that were not necessary. This principle was reflected in the desire to render the process for causes of canonization less rigid by making it simpler and more streamlined. Finally, the fifth principle called for greater subsidiarity, allowing more authority, previously reserved to the Holy See, to be entrusted to bishops on the local level. This principle was also reflected in the desire for greater collegiality by increasing the role of the bishops in some aspects of causes of canonization that had previously been tightly regulated under apostolic authority. These principles guided the changes that were introduced in causes of canonization, redefining the approach to the canonical investigation of servants of God, and therefore necessarily having an impact on the role of the promoter of the faith.

One additional principle is worthy of consideration, though it was not explicitly mentioned in *Sanctitas Clarior*. The ninth principle called for a reduction of the number of *latae sententiae* penalties imposed in the code, limiting them only to those cases of serious need. The custom in causes of canonization had been to administer oaths that bound the officials, the postulators, and the witnesses under pain of excommunication *latae sententiae*, reserved personally to the Supreme Pontiff.<sup>85</sup> The ninth principle for the reform of the code was reflected in the absence of references to *latae sententiae* penalties in any legislation promulgated after Vatican II regarding

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<sup>84</sup> ACTA COMMISSIONIS, *De ordinatione systematica novi codicis iuris canonici*, in *Communicationes*, 1 (1969), 106.

<sup>85</sup> See chapter 2, footnote 77 on page 105.

causes of canonization. The threat of excommunication did not appear in *Sanctitas Clarior*, or in any of the subsequent norms in this area.

### 3.4.2.a *The association of bishops with the Supreme Pontiff*

The norms of *Sanctitas Clarior* were divided into three sections: 1) the association of bishops with the Supreme Pontiff in the instruction of the process, 2) the development of the process, and 3) the tribunals to instruct the process.<sup>86</sup> The first two of these sections contained important changes that affected the local instruction of causes of canonization and, by extension, the promoter of the faith. The third section, which provided for the possibility of establishing regional or national tribunals, did not affect the promoter and will not be treated in this thesis. In fact, the concept of a regional tribunal for causes of canonization had limited practical effect.

In the first section on the association of bishops with the Supreme Pontiff, the first article determined that causes that followed the ordinary way, whether recent or ancient, would proceed with a single cognitional process to be instructed under double authority, both ordinary and delegated.<sup>87</sup> In 1930, the apostolic process was to be omitted for ancient causes in favor of a single instruction. The reform of *Sanctitas Clarior* reduced the investigation of all causes to a single cognitional process under ordinary and apostolic authority. This concept created some confusion since, on one hand, the bishop had the right to instruct the cause by his own authority.<sup>88</sup> On the other hand, his authority was delegated, and therefore

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<sup>86</sup> *Sanctitas Clarior* was divided into three sections: «*De episcoporum cum Summo Pontifice consociata actione in processibus instruendis*» composed of articles 1-3; «*De cursu processus*» composed of articles 4-8; and «*De tribunalibus ad processum instruendum*» composed of articles 9-15.

<sup>87</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 1. Causes that followed the ordinary way, also known as non-cult causes, were those in which immemorial cult did not exist before the decrees of Urban VIII. Extraordinary or cult causes were those in which this cult did exist before the decrees of Urban VIII. The use of the term «ordinary way» (*via ordinaria*) indicated that the *motu proprio* applied to all non-cult cases, whether recent or ancient.

<sup>88</sup> G. DALLA TORRE, *Santità ed economia processuale*, 44, footnote 75. The question of the rights of the local bishop with respect to a cause has been the subject of historical debate. While various Roman Pontiffs have stated that certain actions were reserved to

dependent on the Holy See which was to be consulted prior to the instruction of the cause.<sup>89</sup> This provision responded to the canons of the 1917 code since the one cognitional process called for in *Sanctitas Clarior* was to satisfy all the canonical requirements for both the ordinary and apostolic processes.<sup>90</sup>

Articles 2 and 3 provided additional details regarding the dual nature of this instruction. Article 2 stated that the diocesan bishop or eparch «has the right of inquiring and of opening or introducing the cause».<sup>91</sup> However, article 3 stated that «before the bishop or eparch, whether *ex officio* or at the request [of another], opens or introduces the cause, the Holy See is to be consulted, supplying valid and adequate evidence by which the cause is recognized to be supported by a solid and legitimate foundation».<sup>92</sup> This consultation with the Holy See, to confirm the legitimate foundation of the cause, was referred to as the *nihil obstat* for the introduction of the cause.<sup>93</sup> The term, *nihil obstat*, has been used in the Sacred Congregation of Rites from the time of Pius XII when the Congregation began to routinely consult with the Holy Office to determine if there were any objections to the introduction of a particular cause in the Holy See. If nothing opposed the introduction of the cause, the Holy Office replied to the Congregation in

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apostolic authority, and were not within the ordinary authority of the local bishop, the right to instruct the ordinary processes has been one that remained under local authority. Benedict XIV treated this question in greater detail, recognizing the importance of the ordinary processes in order to undertake the apostolic process (cfr. P. LAMBERTINI, *De servorum Dei*, Liber 2, Caput 1).

<sup>89</sup> E. APECITI, *L'evoluzione storica*, 88. A person who has the right to act by his own authority (*iure proprio*) does not need to be delegated the power to act.

<sup>90</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 1. The *motu proprio* made reference to the obligations imposed on the process instructed under ordinary authority (cfr. CIC 1917, cann. 1999 §3 and 2038ff) as well as the process instructed under apostolic authority (cfr. CIC 1917, cann. 2087-2097).

<sup>91</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 2: «*ius competit: inquirendi, atque ... causam aperiendi seu introducendi*».

<sup>92</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 3: «*Antequam vero Episcopus vel Hierarchy, sive ex officio sive ad instantiam, Causam aperiat seu introducat (n. 2), Sancta Sedes consulenda est, validis idoneisque suppeditatis argumentis, quibus Causa ipsa legitimo solidoque fundamento innixa cognoscatur*».

<sup>93</sup> This was called the *nihil obstat ad causam introducendam*.

what came to be known at the *nihil obstat* of the Holy Office.<sup>94</sup> Following the promulgation of *Regimini Ecclesiae Universae*, this title was changed to the *nihil obstat* of the Congregation for the Doctrine of the Faith.<sup>95</sup> However, the *nihil obstat* for the introduction of the cause, described in *Sanctitas Clarior*, was different because it was given by the Pope to the local bishop after the legitimate foundation of the cause had been examined. This *nihil obstat* gave the local bishop permission to introduce the cause and begin the instruction of the single cognitional process.<sup>96</sup>

This *nihil obstat* for the introduction of the cause in *Sanctitas Clarior* had three important consequences for the instruction of a cause of canonization and the function of the promoter of the faith. In the first of these consequences, the *motu proprio* changed the meaning of the

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<sup>94</sup> R. SARNO, *Diocesan Inquiries*, 48-50. The first recorded intervention in a cause by the Congregation of the Holy Office was found in a letter dated May 19, 1922. In the cause of a specific servant of God, the Sacred Congregation of Rites was ordered by Pius XI to consult with the Congregation of the Holy Office if that cause was ever promoted. While this intervention set a new precedent, consultation with the Holy Office did not occur with regularity until 1932. On July 25, 1940, Pius XII made this consultation obligatory for the introduction of a cause. In a letter from the Congregation of the Holy Office to the Sacred Congregation of Rites, it was explained that requesting the *nihil obstat Sancti Officii* at the introduction of the cause would avoid unfortunate consequences «especially if, after all the work done by the Sacred Dicastery [of Rites], the case should be interrupted by an objection of the Holy Office». See SUPREMA SACRA CONGREGATIO SANCTI OFFICII, *Lettera*, 2 augusti 1940, in Archivio, Congregatio pro Doctrina Fidei, Prot. N. 610/36: «specialmente se, dopo tutto il lavoro compiuto presso cotesto Sacro Dicastero, la cosa dovesse interrompersi per un *obstare* del S. Offizio».

<sup>95</sup> When the name of the Holy Office was changed to the Congregation for the Doctrine of the Faith in 1967, the *nihil obstat Sancti Officii* came to be known as the *nihil obstat Congregationis pro Doctrina Fidei*.

<sup>96</sup> R. SARNO, *Diocesan Inquiries*, 20. In *Sanctitas Clarior*, the *nihil obstat ad causam introducendam* was essentially the «permission to open or introduce the cause of beatification and canonization». It should be noted that the *nihil obstat Sancti Officii* and the *nihil obstat Congregationis pro Doctrina Fidei* were both sent to the Sacred Congregation of Rites, as a communication from one dicastery of the Roman Curia to another, indicating only that there was no opposition to a particular cause. The *nihil obstat ad causam introducendam* in *Sanctitas Clarior*, granted by the Holy Father to the local bishop, was not a mere consultation, but a permission on the part of the Holy See. Before the Sacred Congregation of Rites recommended to the Holy Father that he grant the *nihil obstat ad causam introducendam*, the Congregation first asked for the *nihil obstat Congregationis pro Doctrina Fidei*, demonstrating that more than one kind of *nihil obstat* was involved in causes of canonization after *Sanctitas Clarior*.

introduction of a cause. According to the 1917 code, the local bishop had the right to admit the petition and instruct the ordinary processes, but not the right to introduce the cause, as this power was strictly reserved to the Holy See.<sup>97</sup> The reason for this distinction was that the introduction of the cause in the Holy See marked a moment of transition between the ordinary and apostolic processes, in which the cause moved from the authority of the local bishop to the authority of the Holy See. Once the reputation of holiness of the servant of God had been proven through the ordinary processes and the introduction of the cause in the Holy See was decreed, the Holy Father claimed authority over the cause by taking the cause in hand, marking the end of the local bishop's authority over the cause and signifying the sole competency of the Holy See from that point forward.<sup>98</sup> With the reforms of *Sanctitas Clarior*, the cause was no longer introduced in the Holy See by a decree of the Holy Father, but rather in a diocese or eparchy by the local bishop. Consequently, the introduction was no longer considered to be a moment in which the Holy See took the cause in hand, marking the transition from ordinary to apostolic authority.<sup>99</sup> On the contrary, since the instruction of the cause took place under dual authority, the Holy See

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<sup>97</sup> The right of the ordinary to admit the petition and instruct the ordinary processes was mentioned in canon 2038 §2, while the introduction of the cause was mentioned in canon 2038 §1.

<sup>98</sup> Canon 2077 referred to the petition for the introduction of the cause as a request that the Holy Father take the case in hand (*«ut causae beatificationis alicuius Servi Dei manus apponatur»*). The decree for the introduction of the cause, signed by the Holy Father, was mentioned in canon 2083. Once this decree had been signed, canon 2084 §1 prohibited the ordinary from acting on the cause without the express permission of the Congregation. Noval explained this in terms of the common principle that the jurisdiction of the lesser authority ceases when the cause is taken in hand by the greater authority. See J. NOVAL, *Commentarium*, Pars 2, 211: *«Ratio huius praescripti est quia decet omnino iurisdictionem Superioris inferioris in aliquam causam cessare per appositionem manus Superioris maioris»*.

<sup>99</sup> After 1969, when the acts were transmitted to Rome, postulators no longer asked the Congregation for the introduction of the cause, but rather for the study of the cause within the dicastery. This change in terminology became more consistent as the dispositions of *Sanctitas Clarior* became better understood. For examples, see Archivio, Congregatio de Causis Sanctorum, Prot. NN. 1031-6/69, 1184-4/71. The Archives will be referred hereafter to as ACCS.

authorized the cognitional process which the bishop then carried out by his own right (*iure proprio*).<sup>100</sup>

As a second consequence, the formal process for demonstrating the basis for the introduction of the cause was replaced by an informal system. The requirements for the introduction of a cause in the Holy See were explained in detail in the 1917 code:

For the introduction of a cause of beatification of a servant of God, which is to be obtained from the Holy See, the purity of doctrine in his or her writings must be demonstrated, as well as the reputation of holiness, virtues and miracles or martyrdom, the absence of any obstacles that appear peremptory, and finally that public cult has not been extended to him or her.<sup>101</sup>

Prior to *Sanctitas Clarior*, three of these requirements were met through the instruction of the ordinary processes on writings, on the reputation of holiness *in genere*, and on non-cult, with the regular participation of the promoter of the faith. Furthermore, there must not be any other peremptory obstacles that, in the judgment of the Holy See, would bar the introduction of the cause.<sup>102</sup> With the reforms of *Sanctitas Clarior*, the introduction of the cause simply required proof that the cause had a solid and legitimate foundation—a general standard that had traditionally included proof of the reputation of holiness.<sup>103</sup>

In order to help bishops better understand what was required to demonstrate this solid foundation, the Congregation issued norms in 1972 regarding the introduction of a cause.<sup>104</sup> When requesting the *nihil obstat*

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<sup>100</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 1.

<sup>101</sup> CIC 1917, can. 2038 §1: «*Ad introductionem causae beatificationis Servi Dei, a Sede Apostolica obtinendam, debet prius iure constare de puritate doctrinae in eius scriptis, de eiusdem fama sanctitatis, virtutum et miraculorum vel martyrii, de absentia cuiuslibet obstaculi quod peremptorium videatur; mox vero de cultu publico eidem non praestito*».

<sup>102</sup> A. BLAT, *Commentarium*, 586. J.L. GUTIÉRREZ, *La metodología nelle cause*, 70. Blat referred to the lack of any signs of sanctity at the time of death as a peremptory obstacle. If there was not some evidence of sanctity, further investigations would be useless. Gutierrez associated the lack of the reputation of holiness of the servant of God on the part of the faithful as a peremptory obstacle.

<sup>103</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 3. The required proof of the reputation of holiness was not explicitly stated in the *motu proprio*.

<sup>104</sup> CONGREGATIO PRO CAUSIS SANCTORUM, *Norme particolari sui documenti richiesti per l'Introduzione delle Cause dei Servi di Dio*, 1972, in X. OCHOA, *Leges*

for the introduction of the cause, the local bishop was required to send a number of documents to the Congregation. These included the petition and the articles of the postulator, a biography of the servant of God, a report on his or her writings, an assessment of the quality of the witnesses available to testify, and information regarding the public opinion of the cause and the reputation of holiness on the part of the servant of God. These norms marked a point of continuity with the 1917 code, since many of the same elements were required for the introduction of the cause prior to *Sanctitas Clarior*. The bishop demonstrated that the cause had a solid foundation by providing evidence to the Congregation which he could gather in an informal way. Since the bishop was not required to gather this evidence by means of a formal canonical process, no intervention on the part of the promoter of the faith was required at this preliminary stage.

As a third consequence, the solid foundation of a cause had to be evaluated on the basis of limited information. After *Sanctitas Clarior*, the decision to authorize the introduction of the cause was made before the instruction of the cognitional process, and without the prior instruction of the ordinary processes. This change created an apparent conundrum, since the foundation of the cause had to be examined before the gathering of many of the proofs that had previously served to demonstrate its existence. Even with the documents required of the bishop when requesting the *nihil obstat* for the introduction of the cause, the Congregation had to formulate an opinion using only the general information available.<sup>105</sup> This apparent conflict is resolved by recognizing that the legislator wished to maintain the oversight on the part of the Holy See, while also applying a less stringent scrutiny to causes before their introduction. Having expressed his desire that these processes be simplified and streamlined, the Pope allowed causes to be introduced on the basis of information that could be informally gathered rather than requiring the longer instruction of the ordinary

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*Ecclesiae post Codicem iuris canonici editae*, vol IV, col. 6356, n. 4106. R. SARNO, *Diocesan Inquiries*, 71.

<sup>105</sup> F. VERAJA, *Il Motu Proprio "Sanctitas Clarior"*, 331-332. Veraja suggested that the judgment regarding the existence of a solid foundation regarding a cause should be left solely to the local bishop. The local bishop, being closer to the place where the servant of God was known, would have had more knowledge about the cause than the Holy See.

processes. The foundation of a cause was evaluated by the Congregation, after receiving the *nihil obstat* of the Congregation for the Doctrine of the Faith, the opinion of the Promoter General of the Faith and, in ancient causes, the Relator General.<sup>106</sup>

Considering the overall effect of the *nihil obstat* for the introduction of the cause in *Sanctitas Clarior*, this change did not grant the local bishop greater autonomy, but conversely imposed a significant limitation on his authority. Whereas the local bishop could previously accept the petition and instruct the ordinary processes on his own authority, after *Sanctitas Clarior*, he could not instruct the single cognitional process unless he had received the permission of the Holy See.<sup>107</sup> Even in causes involving miracles, the local bishop was to write first to the Congregation to receive instructions before proceeding.<sup>108</sup>

In the final analysis, *Sanctitas Clarior* was a step backward from the Code of Canon Law of 1917 since the diocesan bishop was deprived of his authority to instruct even an informative process. The process of requesting the Holy See for its permission to initiate a cause of canonization, on the other hand, was more or less superfluous since practically every cause, with rare exception, received the *nihil obstat* for its introduction by the diocesan bishop.<sup>109</sup>

### 3.4.2.b *The development of the process*

After the Holy Father had given the *nihil obstat* for the introduction of the cause, the local bishop could begin the instruction of the cognitional process. Since the local bishop carried out the instruction by his own authority, the same bishop nominated the promoter of the faith.<sup>110</sup> Since there were no longer any apostolic processes, the Promoter General of the

<sup>106</sup> R. SARNO, *Diocesan Inquiries*, 50-51.

<sup>107</sup> H. MISZTAL, *Le cause*, 176. F. VERAJA, *Il Motu Proprio "Sanctitas Clarior"*, 315. In *Sanctitas Clarior*, the required *nihil obstat* of the Holy See was mentioned (article 3) before the introduction of the cause (article 4) or the instruction of the process (article 5).

<sup>108</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 8.

<sup>109</sup> R. SARNO, *Diocesan Inquiries*, 52.

<sup>110</sup> See CIC 1917, can. 2011 §2. This canon was cited in chapter 2, footnote 68 on page 102. M.B. MEINARDI, *La natura giuridica*, 61.

Faith no longer nominated sub-promoters, effectively abolishing this position. Without this point of contact, the local promoter would not have had the same sense of accountability to the Promoter General in the exercise of his responsibilities.<sup>111</sup> Even so, the Promoter General in the Congregation continued to prepare the interrogatory to be used in the cognitional process. Although the local promoter retained the right to present his witnesses and pose *ex officio* questions, he received the prepared interrogatory from the Promoter General who transmitted the questions to be asked with the *nihil obstat* of the Holy Father for the introduction of the cause.<sup>112</sup> The expertise of the Promoter General guaranteed that the interrogatory would be thorough, though he had to prepare the questions on the basis of the limited information provided when the *nihil obstat* was requested by the local bishop, a factor that could limit the effectiveness of the interrogatory. While the local promoter was not entrusted with the preparation of the interrogatory, it was still his responsibility to supplement the instruction through his *ex officio* questions, posed on the basis of his knowledge of the cause during the cognitional process.

The focus of the investigation was defined in article 5 of the *motu proprio*:

The process is composed of an inquiry: 1) on the writings of the servant of God; 2) on his or her life and virtues, or martyrdom, as well as on the absence of cult.<sup>113</sup>

Although the article only mentioned two objects of the inquiry, the investigation of the absence of cult was distinct from the investigation of virtues or martyrdom and constituted a third object. Therefore, the single

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<sup>111</sup> Regarding the connections between the sub-promoter and the Promoter General, see section 2.3.1. above on page 131.

<sup>112</sup> H. MISZTAL, *Le cause*, 174. CONGREGATIO PRO CAUSIS SANCTORUM, Verbale del Congresso Ordinario, 10 febbraio 1972, in ACCS, Prot. N. VAR 490/972. In 1972 the Congregation for the Causes of Saints internally affirmed the practice by which the Promoter General of the Faith would transmit the interrogatory for the cognitional process when the *nihil obstat* was granted for the introduction of the cause.

<sup>113</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 5: «*Processus complectitur inquisitionem: 1° super Servi Dei scriptis; 2° super eiusdem vita et virtutibus, vel martyrio, necnon super non cultu*».

cognitional process appeared to focus on the same three objects as defined in the 1917 legislation: the writings of the servant of God, his or her virtues or martyrdom, and the absence of cult.

However, the *motu proprio* no longer distinguished between the investigation of the reputation of virtues or martyrdom *in genere* and the investigation of the virtues or martyrdom *in specie*. In the 1917 code, the general reputation of holiness was investigated during the informative process, while the specific details regarding that holiness were investigated during the apostolic process. The norms of the Congregation, issued in 1972, did require local bishops to submit evidence of the reputation of holiness when requesting the *nihil obstat* for the introduction of the cause.<sup>114</sup> However, this preliminary information was gathered informally, and not as a part of a canonical process involving the participation of the promoter of the faith. Even though signs of the reputation of holiness were to be presented in order to demonstrate the solid foundation of the cause before it was introduced, *Sanctitas Clarior* did not explicitly require further investigation regarding this reputation during the cognitional process.

It may have been presumed that the need to examine the reputation of the servant of God was understood because of the context of the *motu proprio*. In its brevity, *Sanctitas Clarior* did not attempt to repeat every detail of the law, but referred back to the norms of the 1917 code that explicitly required evidence of this reputation of virtues or martyrdom. It may also have been presumed that proofs regarding virtues or martyrdom *in specie* would necessarily prove the existence of the same *in genere*. Yet, this presumption ignores the distinction between the actual practice of virtues or martyrdom and the reputation of virtues or martyrdom. The former was proven through the examination of the life of the servant of God while the latter was proven through the examination of the widespread opinion of the faithful. Both elements must be proven in causes of canonization. From ancient times, the existence of this reputation of holiness among the faithful constituted an indispensable prerequisite for the further study of the practice of virtues or martyrdom by the servant of

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<sup>114</sup> These norms were mentioned in footnote 104 on page 178.

God.<sup>115</sup> The omission in *Sanctitas Clarior* of any reference to the investigation of the reputation of the servant of God led some to erroneously conclude that this element of the cause was no longer considered important.<sup>116</sup> Others trusted in the evaluation of the local bishop, assuming that the cause of a servant of God would not be introduced unless there was some reputation of his or her holiness.<sup>117</sup>

The cognitional process defined by *Sanctitas Clarior* did achieve its desired effect of streamlining the instruction, especially in recent causes, replacing the various ordinary and apostolic processes with a single process.<sup>118</sup> Although the single cognitional process was faster, the danger remained that the instruction might not gather the proofs as thoroughly in order to advance the cause in the Congregation. The potential need for a supplemental process was not mentioned in the 1917 code, but was specifically included in article 7 of the *motu proprio*:

If it appears that anything must be added or completed, after subjecting the acts of the process to a careful examination, the Sacred Congregation of Rites is either to seek this from the Bishop or Hierarch or to complete [the investigation] *ex officio*.<sup>119</sup>

If it was determined that further proof was necessary, the Congregation contacted the local bishop, demonstrating again the principle of collegiality. While the Congregation had the right to complete the investigation *ex officio*, it was preferable to contact the local bishop who gathered the

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<sup>115</sup> See the importance of the *fama sanctitatis vel martyrii* mentioned in chapter 1, footnote 37 on page 20.

<sup>116</sup> W. HILGEMAN, *Le Cause*, 308-309. Hilgeman reviews the history of causes of canonization and the importance of the reputation (*fama*). Following the changes introduced by *Sanctitas Clarior* and the newly promulgated legislation, he referred to the need to correct those who no longer saw the canonical demonstration of the *fama* as obligatory.

<sup>117</sup> P. GUMPEL, *Il Collegio dei Relatori*, 325.

<sup>118</sup> The instruction of ancient causes had already been streamlined in 1930 by *Già da qualche tempo*, which called for the omission of the apostolic process. Following *Sanctitas Clarior*, ancient causes, like recent causes, were no longer instructed through the various ordinary and apostolic processes but through the single cognitional process.

<sup>119</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 7: «*Sacra Rituum Congregatio, Actis Processus diligentè examine cognitis, si quae addenda vel complenda videantur, vel ea ab Episcopo aut Hierarcha requirat, vel ex officio ipsa compleat*».

additional information under his own authority. Therefore, even if the Congregation ordered a further instruction, it was not considered an apostolic process under the control of the Holy See.<sup>120</sup> The language of *Sanctitas Clarior* did not require the formal instruction of a supplemental cognitional process to gather additional proofs. Depending on the circumstances, the Congregation could ask the local bishop to instruct a supplemental process, or simply to clarify smaller questions in an informal manner, similar to the approach mentioned in *Già da qualche tempo*.<sup>121</sup>

### 3.4.3 SACRA RITUUM CONGREGATIO (1969)

On May 8, 1969, approximately two months after the promulgation of the *motu proprio Sanctitas Clarior*, Paul VI issued the apostolic constitution *Sacra Rituum Congregatio*, dissolving the Sacred Congregation of Rites, and creating the Sacred Congregation for Divine Cult and the Sacred Congregation for the Causes of Saints. The introduction of the apostolic constitution explained the reasons for this division:

It is not to be considered of lesser [value] the work carried out by the Congregation ... in the preparation and the examination of causes of saints. This is clearly demonstrated by the catalog of saints, who from 1588 to the present have been added to the heavenly ranks, called upon because of their heroic virtues or their proven death by martyrdom.

Nevertheless, today, both the general renewal of the liturgy decreed by the Second Vatican Council, and the review of the laws regarding causes of saints according to the experience of our time, seem to require and demand renewed zeal, fresh attention and concern in the treatment and the accomplishment of these sorts of affairs.<sup>122</sup>

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<sup>120</sup> PAULUS PP. VI, *Sanctitas Clarior*, n. 1. M.B. MEINARDI, *La natura giuridica*, 61. The direct intervention by the Congregation in the instruction of a cause, similar to ordering the former apostolic process, was seen as extraordinary because the Holy See would have been entering into an area that was the proper competence of the local bishop. Such interventions were rare and only undertaken in exceptional circumstances.

<sup>121</sup> The informal approach to the collection of additional documentary proof was described in relation to *Già da qualche tempo* in footnote 18 on page 153.

<sup>122</sup> PAULUS PP. VI, *Constitutio apostolica: Sacra Rituum Congregatio*, 8 maii 1969, in *AAS*, 61 (1969), 297-305, introduction: «*Nec minoris aestimanda est Congregationis, de*

The introduction drew attention to the fact that the former Sacred Congregation of Rites had been given two significant tasks in the wake of the Council: the renewal of the liturgy and the revision of the canonical norms for causes of canonization. Paul VI divided the Congregation in order to create two Dicasteries that were able to devote the time and energy required to accomplish these two important goals.

The Sacred Congregation of Rites was divided, such that the first section became the Sacred Congregation for Divine Cult, entrusted with all matters that refer to divine cult in the Latin Rite.<sup>123</sup> The second section became the Sacred Congregation for the Causes of Saints, entrusted with all that refers to the beatification of servants of God, the canonization of the blessed, and the preservation of relics.<sup>124</sup> The three offices established within the new Congregation for the Causes of Saints generally corresponded to the three sub-sections that had been created by *Regimini Ecclesiae Universae*: a judicial office under the direction of the Secretary, a second office under the Promoter General of the Faith, and a historical-hagiographical office under the Relator General.<sup>125</sup> Therefore, *Sacra Rituum Congregatio* divided the former Congregation into two new Congregations, without substantially modifying the internal structure of either one.

*Sacra Rituum Congregatio* established several procedures regarding the internal treatment of causes of canonization within the Congregation, describing the competencies of the judicial office, the office of the Promoter

*qua loquimur, opera ad Sanctorum causas apparandas et cognoscendas collata. Quod palam index Sanctorum testatur, qui ab anno MDLXXXVIII ad nostrum hoc tempus in Caelitem numerum ascripti sunt, vel virtutibus heroicis, quas appellant, vel martyrio accurate excussis.*

«Attamen nunc sive generalis liturgiae instauratio a Concilio Vaticano II decreta, sive legum causas Sanctorum respicientium ad nostri temporis sensum recognitio nova studia, novas curas sollicitudinesque [sic] in huiusmodi negotiis pertractandis et expediendis requirere et exigere videntur».

<sup>123</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 1.

<sup>124</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 5. The Sacred Congregation for the Causes of Saints had universal competence, since Pius XII extended the competence of the Sacred Congregation of Rites to causes of canonization from the Eastern Churches *sui iuris* in 1957. See PIUS PP. XII, Litterae apostolicae: *Cleri Sanctitati*, 2 iunii 1957, in AAS, 49 (1957), 493, can. 200.

<sup>125</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 6. *Annuario Pontificio*, Città del Vaticano, 1970, 992-994. See the description of the sub-sections mentioned on page 169.

General of the Faith, and the historical-hagiographical office. While these procedures were described in great detail, they reflected the norms established in the 1917 code with the modifications promulgated by *Sanctitas Clarior*. The apostolic constitution did not introduce any new procedural innovations.<sup>126</sup>

*Sacra Rituum Congregatio* was noteworthy, however, for emphasizing continuity with the 1917 code. In spite of all the reforms called for by the Council and notwithstanding the forces that sought to deemphasize the juridic characteristics of ecclesiastical law, the constitution maintained a judicial view of causes of canonization. «In the examination of causes, the Sacred Congregation proceeds according to the model of a trial».<sup>127</sup> Even though the introduction of this apostolic constitution spoke about the need for a renewal in the legislation, the same canonical approach was taken, fundamentally preserving the office of the Promoter General of the Faith as it had been previously described. The Promoter General retained his right to safeguard the law (*ius tueri*), and to make known his observations, his questions or his opinions.<sup>128</sup> Meanwhile, the historical-hagiographical office remained only competent to treat ancient causes.<sup>129</sup>

Some scholars praised the emphasis placed on a classical juridic approach to causes of canonization.<sup>130</sup> Meanwhile, other scholars lamented the use of so-called anachronistic canonical terminology, stating that «it was only because the thinking [at the time] continued according to the categories of the Code of Canon Law, without realizing that they had been superseded by a new reality in this area».<sup>131</sup> According to this latter line of thinking, the changes introduced in *Sanctitas Clarior* represented only an initial step,

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<sup>126</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, nn. 7-8.

<sup>127</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 6: «*Sacra Congregatio, quae in Causis cognoscendis ad modum iudicii procedit*».

<sup>128</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 9: «*Officium secundum est proprium Promotoris Generalis Fidei, cuius est ius tueri et animadversiones, vel disquisitiones aut suffragia edere*».

<sup>129</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 10.

<sup>130</sup> L. PORSI, *Cause di Canonizzazione*, 376-377.

<sup>131</sup> F. VERAJA, *Il Motu Proprio "Sanctitas Clarior"*, 326: «è dovuto al fatto che si è continuato a pensare con le categorie del Codice di diritto canonico, senza accorgersi che esse erano ormai superate dalla nuova realtà in questo settore».

since they established a structure that was considered to be more suitable for the treatment of these causes. The completion of this reform would come through other modernizations to be enacted through an organic revision of the norms used to carry out the investigation and the evaluation of these causes.<sup>132</sup>

#### 3.4.4 THE EFFECT OF THESE REFORMS

The reforms of Paul VI constituted a transition between the norms in the 1917 code and the new law that would eventually be promulgated in 1983. Responding to the desires expressed in Vatican II, *Regimini Ecclesiae Universae*, *Sanctitas Clarius*, and *Sacra Rituum Congregatio*, modified many of the practices in causes of canonization in the years following the Council. These reforms walked a fine line between opposing principles. The treatment of causes of canonization was to be juridic though less rigid. The investigation into the servants of God was to be streamlined while remaining thorough. Causes of canonization were to follow canonical principles but were also to incorporate the modern scientific method. The principle of subsidiarity called for the instruction of these causes to take place under local authority without surrendering the sole and unique competence of the Holy See in these matters. Reconciling these competing principles proved to be a difficult task, as some elements of the law seemed incongruous. Even as these reforms were introduced, the work continued on the revision of the entire code. Paul VI himself noted in *Sacra Rituum Congregatio* that a comprehensive revision of the norms for causes of canonization was expected, indicating that these reforms represented only a stage in a broader evolution that was to take place after the Council.<sup>133</sup>

While the reforms of Paul VI did not refer frequently to the promoter of the faith by name, the changing approaches to these causes had a necessary impact on this longstanding historical figure. As the importance of the canonical norms in causes of canonization diminished in favor of a

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<sup>132</sup> F. VERAJA, *Le cause di canonizzazione*, 15.

<sup>133</sup> See footnote 122 on page 184.

more modern scientific approach, the promoter of the faith—a traditional figure responsible for safeguarding the law—also subtly diminished in importance. The canonical safeguards that once seemed essential to the search for the truth had been reevaluated. Rather than promoting the search for the truth, the traditional norms came to be seen as obstacles that would be better exchanged for a historical critical methodology. In place of the importance attached to the widespread reputation of holiness and the testimony of witnesses, documentary evidence and historical research were given increased weight. In place of several processes with detailed requirements, a simpler and more streamlined process was preferred. In place of the auditors of the Roman Rota, causes came to be studied by other officials in the Congregation, including the Relator General who was a historian, not a canonist.

As the principle of subsidiarity was applied to causes of canonization, more authority for the instruction of causes was entrusted to the local bishop. However, the reforms in causes of saints demonstrated the underlying tension that existed between local and apostolic authority. The local bishop could introduce a cause, though he required the permission of the Holy See. The local promoter could assist with the instruction of a cause, though he was required to follow the interrogatory prepared by the Promoter General of the Faith in the Congregation. Paul VI began the reform of causes of saints in the years following the Second Vatican Council. The continuation of that reform was to unfold through the preparation of new legislation.

### 3.5 THE LEGISLATION OF JOHN PAUL II

#### 3.5.1 PRELIMINARY DISCUSSIONS

The work of the revision of the code began with the appointment of the Pontifical Commission for the revision of the Code of Canon law. On February 21, 1967, Cardinal Pericle Felici was named president of this

commission.<sup>134</sup> It has already been observed that the Code Commission had made the decision at a very early stage, on April 4, 1968, to omit the legislation for causes of canonization from the new code, leaving it to be treated in separate legislation.<sup>135</sup> By the promulgation of *Sanctitas Clarior* in 1969, the call for an organic revision of the entire legislation regarding causes of canonization had become widespread. Following the promulgation of *Sacra Rituum Congregatio* on May 8, 1969, Cardinal Benno Gut, O.S.B., former Prefect of the Sacred Congregation of Rites, became Prefect of the Congregation for Divine Worship. On the same day, Cardinal Paolo Bertoli was appointed the first Prefect of the newly created Sacred Congregation for the Causes of Saints.<sup>136</sup> It became the responsibility of this new Congregation to study and propose the revisions to the law that had been called for not only in *Sacra Rituum Congregatio*, but also in the Second Vatican Council.

Paul VI created a special commission to treat the legislation in Causes of Saints, separate from the Pontifical Commission for the revision of the code, but still under the guidance of Cardinal Felici. As a fruit of this study, a first schema was prepared in 1974 and examined by another limited commission which prepared a second schema in 1975. These two proposals were harmonized in a third schema that was examined by the major officials of the Congregation and representatives of the postulators in 1978. Following these responses, a commission of three cardinals proposed a fourth schema that was formally presented to the cardinal members of the Congregation for the Causes of Saints in a plenary assembly on June 23, 1980.<sup>137</sup>

In the midst of the drafting of this legislation, various proposals were made to urge the Code Commission to reconsider the decision to exclude the norms on canonization from the new code. Several reasons were advanced in favor of maintaining the law governing causes of canonization within the

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<sup>134</sup> AAS, 59 (1967), 382.

<sup>135</sup> ACTA COMMISSIONIS, *De ordinatione systematica novi codicis iuris canonici*, in *Communications*, 1 (1969), 106. See the reference in footnote 84 on page 173.

<sup>136</sup> AAS, 61 (1969), 352.

<sup>137</sup> F. VERAJA, *Le cause di canonizzazione*, 15.

text of the new code. In particular, canonization was a universal institution that affected the entire Church, and the procedures used to investigate these causes were canonical in nature. Diocesan curias must have the relative norms accessible in order to conduct the local investigations regarding the life of a servant of God or the circumstances of an alleged miracle. Similarly, eparchies in the Eastern Catholic Churches must also have access to these norms since they also govern causes arising from their Churches *sui iuris*.<sup>138</sup> In spite of these arguments, and following additional consultation, the initial decision was confirmed in 1978 that these norms would be promulgated in separate legislation.<sup>139</sup> Though these norms were not to be inserted into the body of the new code, it was considered appropriate to attach the special legislation to the code in the form of an appendix.<sup>140</sup> Furthermore, the code commission accepted a recommendation that the new code should make explicit reference to this special legislation in a new canon that was to be inserted in the book on procedures.<sup>141</sup>

### 3.5.2 THE 1980 SCHEMA

The 1980 schema was presented to the members of the Congregation in a plenary assembly under the leadership of Cardinal Corrado Bafile, Prefect of the Congregation since 1975. The proposed schema contained 99 canons, representing a simplification of the 143 canons contained in the

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<sup>138</sup> ACCS, Lettera, 20 luglio 1978, Prot. N. VAR 1479/978.

<sup>139</sup> ACTA COMMISSIONIS, *Coetus studiorum de processibus*, sessio 1, in *Communicationes*, 10 (1978), 210. The exclusion of the norms on canonization was discussed by the commission members in the session on April 3, 1978, and subsequently confirmed in a private response to the above mentioned letter of July 20, 1978 (cfr. ACCS, Prot. N. VAR 1479/978).

<sup>140</sup> The special pontifical legislation was not included in Code of Canon Law printed by the Canon Law Society of America in 1984. This legislation was included when the Canon Law Society of American reprinted the code in 1998.

<sup>141</sup> ACTA COMMISSIONIS, *Relatio*, in *Communicationes*, 16 (1984), 71-72. The recommendation called for the insertion of a canon in the book on procedures that made reference to the particular legislation. This became canon 1403 in Book VII, *De Processibus*, in the 1983 Code of Canon Law. A corresponding canon was inserted into the 1990 Code of Canons of the Eastern Churches (cfr. *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* in AAS, 82 (1990), 1061-1363, can. 1057). Hereafter referred to as CCEO.

1917 code. In addition to being shorter, the 1980 schema followed a much more linear construction than the 1917 code. The linear nature of the proposed norms was a natural consequence of the streamlined process after *Sanctitas Clarior* in which only one process needed to be instructed before sending the cause to the Congregation for discussion and judgment. The canons were divided into three broad sections: 1) general norms, 2) norms on beatification, and 3) norms on canonization. The first section on general norms treated the persons who took part in the processes, the competency of the local tribunal, the competency of the Congregation, and the nature of the proofs. The second section on beatification treated the introduction of the cause, the investigation of martyrdom or virtues and the reputation of miraculous intercession, the investigation of historic (ancient) causes, the investigation of alleged miracles, and the beatification of the servant of God. The third section on canonization treated only the canonization of the blessed.<sup>142</sup>

It seemed apparent that the 1980 schema sought only to state in canonical language the norms that were in force at the time, that is, the norms of the 1917 code with the modifications promulgated by Pius XI and Paul VI. In this regard, the 1980 schema was composed with the same goal as Cardinal Gasparri who avoided any innovation when composing the text of the 1917 code. The proof of this assertion lay in the few novelties introduced into the norms and the large number of provisions that remained substantially unchanged.<sup>143</sup> The 1980 schema did provide a few minor

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<sup>142</sup> CONGREGATIO PRO CAUSIS SANCTORUM, *Schema Canonum de causis sanctorum*, in ACCS, Plenaria, 23 iunii 1980. Hereafter referred to as CCS, 1980 schema.

<sup>143</sup> Among the principal similarities between the previous legislation and the 1980 schema were the following:

- Most importantly, only one process was to be instructed in the local diocese or eparchy (cfr. PAULUS PP. VI, *Sanctitas Clarior*, n. 1; CCS, 1980 schema, cann. 57ff).
- The qualifications of the procurator and advocate remained unchanged (cfr. CIC 1917, can. 2018; CCS, 1980 schema, can. 9).
- The Relator General had the same role as in 1930 (cfr. PIUS PP. XI, *Già da qualche tempo*, n. III, 2; CCS, 1980 schema, can. 12).
- The same provisions were included regarding regional or national tribunals as defined in 1969 (cfr. PAULUS PP. VI, *Sanctitas Clarior*, nn. 9-15; CCS, 1980 schema, cann. 15 §4 et 21-24).

clarifications regarding matters that were not specifically expressed in the 1917 code or in any of the subsequent legislation.<sup>144</sup> However, these clarifications did not introduce any particularly novel reforms.

Among the very few real innovations present in the 1980 schema was the provision that called for the cognitional process to be instructed by a single judge, assisted by two assessors, one of whom could be a lay person. Thus, the tribunal was to be composed of the judge, two assessors, the promoter of the faith, and the notary. The judge, the assessors, and the promoter were to be well versed in theology, canon law, and history.<sup>145</sup> The notion that a cause could be heard by a single judge with the help of two assessors was found in the 1917 code in the context of an ordinary contentious trial. The possibility of choosing lay persons as assessors was an idea that was accepted by the code commission, which likely had some

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- Experts were treated in the same way, with the presumption that they were to be unknown to each other and worked separately unless the promoter of the faith agreed that the circumstances required them to work together (cfr. CIC 1917, can. 2031; CCS, 1980 schema, can. 42).
  - The historical commission was only appointed to gather documents in ancient causes. Recent causes did not make use of the historical commission and placed more emphasis on witness testimony over the search for documentation (cfr. SACRA CONGREGATIO RITUUM, *Normae servandae* (1939), nn. 1, 3; CCS, 1980 schema, cann. 74 et 78).
  - It was for the Congregation to evaluate the acts of the cognitional process, reserving the right to request a supplementary instruction to remedy any defects (cfr. PAULUS PP. VI, *Sanctitas Clarior*, 7; CCS, 1980 schema, can. 29 §2).
  - The discussion of the heroic virtues of the servant of God could not take place until fifty years had passed since the death of the servant of God (CIC 1917, can. 2101; CCS, 1980 schema, can. 70 §1).

<sup>144</sup> Among the more significant clarifications in the 1980 schema were the following:

- Although not mentioned in the 1917 code, the 1980 schema prohibited the spiritual director or habitual confessor of the servant of God from testifying, even about matters outside the internal forum (cfr. CIC 1917, can. 2027; CCS, 1980 schema, can. 34 §2, 2°).
- The 1980 schema clarified that the postulator, even if present at the beginning or the end of a session, could not be present during the hearing of witness testimony (cfr. CCS, 1980 schema, can. 28).
- The 1980 schema clarified the meaning of the publication of the acts, expressly granting the promoter of the faith and the postulator the right to see the acts and request further proofs before the conclusion of the process (cfr. CCS, 1980 schema, cann. 59, 62). Regarding the redefinition of the publication of the acts, see chapter 2, footnote 154 on page 127.

<sup>145</sup> CCS, 1980 schema, can. 16.

influence on the drafting of this provision of the 1980 schema.<sup>146</sup> A further innovation was found in a provision that required the bishop to hear the opinion of the episcopal conference, a requirement not found in the prior legislation.<sup>147</sup>

In comparing the 1980 schema to the previous legislation, the provisions regarding the local promoter of the faith contained only a few modifications, while the Promoter General of the Faith in the Congregation remained essentially unchanged. In spite of its apparent similarity with the prior law, a careful analysis of the 1980 schema reveals a few critical issues, especially in relation to the local promoter of the faith. The 1980 schema contained a definition of the Promoter General's responsibilities: «It is for the Promoter General of the Faith to safeguard the law and make known his observations, questions, or opinions in each stage of the cause».<sup>148</sup> This canon directly quoted *Sacra Rituum Congregatio*, in which the Promoter General of the Faith was tasked with the same responsibilities.<sup>149</sup> However, it must be noted that *Sacra Rituum Congregatio* was an apostolic constitution dealing only with the responsibilities within the Congregation for the Causes of Saints, while the 1980 schema was presented as a comprehensive body of legislation both for the instruction of the local processes as well as for the treatment of causes in the Holy See. The 1980 schema defined only the responsibilities of the Promoter General, while leaving undefined the duties of the local promoter of the faith during the instruction of the cognitional process. It might be possible to infer some of the duties of the local promoter from those of the Promoter General, but the local promoter had never been tasked with the duty of preparing formal observations (*animadversiones*) regarding the merits of a cause.

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<sup>146</sup> A single clerical judge with two other clerics as assessors was mentioned in canon 1575 of the 1917 code. The possibility of choosing two lay assessors appears in canon 1424 of the 1983 code (cfr. *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* in AAS, 75/II (1983), 1-317). Hereafter referred to as CIC 1983.

<sup>147</sup> CCS, 1980 schema, can. 46.

<sup>148</sup> CCS, 1980 schema, can. 11: «*Promotoris generis fidei est ius tueri et animadversiones vel disquisitiones aut suffragia edere in singulis causae stadiis*».

<sup>149</sup> PAULUS PP. VI, *Sacra Rituum Congregatio*, n. 9.

The appointment of the promoter of the faith was made by the bishop who appointed the judge, the assessors, and the notary.<sup>150</sup> Following the abolition of the apostolic process in *Sanctitas Clarior*, there was no mention of a sub-promoter of the faith, nominated by the Promoter General. Furthermore, at the end of the cognitional process, the promoter of the faith was to write a letter to the Prefect of the Congregation regarding the trustworthiness of the witnesses and the legitimacy of the acts.<sup>151</sup> This letter was no longer written to the Promoter General of the Faith. While these slight changes from the 1917 code may seem insignificant, they represent the severing of two important points of contact between the local promoter and the Promoter General. The local promoter was no longer explicitly considered to be an agent of the Promoter General, nor did he report to him regarding the process. This separation would have left the local promoter more independent and less connected to his Roman counterpart.

Regarding the presence of the promoter during the hearing of witnesses:

For the hearing of witnesses, the promoter of faith must be present; but if he, having been duly cited, did not take part, the acts are nevertheless valid, provided that afterwards they are submitted for his examination so that he may observe and propose whatever he should judge necessary and opportune.<sup>152</sup>

This canon appeared to reflect the provisions of the 1917 code regarding the instruction of the ordinary processes in a cause of canonization. However, there were some noteworthy modifications. First, unlike the 1917 code, the 1980 schema never expressly stated the circumstances in which the acts were rendered invalid.<sup>153</sup> Rather, the citation of the promoter of the faith seemed to be taken for granted. Second, in the apostolic process under the

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<sup>150</sup> CCS, 1980 schema, can. 20 §1.

<sup>151</sup> CCS, 1980 schema, can. 65.

<sup>152</sup> CCS, 1980 schema, can. 27: «*Excutiendis testibus promotor fidei adesse debet; quod si idem, debite citatus, non interfuerit, acta nihilominus valent, dummodo postea eius examini subiciantur ut ipsemet animadvertere ac proponere possit quae necessaria et opportuna iudicaverit*».

<sup>153</sup> During the ordinary processes, if the promoter was not cited and was not present, the acts were invalid (cfr. CIC 1917, can. 1587, discussed in chapter 2, footnote 72 on page 103).

1917 code, it was not enough to cite the sub-promoter. One of the sub-promoters was always required for the validity of the session.<sup>154</sup> The 1980 schema was less strict, allowing for the promoter's absence and permitting him to fulfill his duty by examining the acts after the session. The net effect of these modifications was a general lessening of the importance of the physical presence of the promoter at the individual sessions of the process.

One of the classic responsibilities of the promoter of the faith was the composition of the interrogatory. Regarding this point, the 1980 schema stated that «the promoter of the faith ... if he thinks it opportune, can add other [questions] to the interrogatory transmitted by the Sacred Congregation».<sup>155</sup> The schema explicitly reaffirmed the right of the promoter to request that *ex officio* questions be asked of the witness. However, the schema maintained the practice established after *Sanctitas Clarior* by which the interrogatory was prepared by the Promoter General in the Congregation.<sup>156</sup>

It has been observed that the 1980 schema took the general approach of presenting, in a coherent series of canons, those norms that were in force at the time, that is, the provisions of the 1917 code as modified by the reforms of Pius XI and Paul VI. Therefore, the schema sought to synthesize the current law rather than to modify it through innovation, a conjecture supported by the observations presented above. However, the introduction to the apostolic constitution *Sacra Rituum Congregatio* seemed to call for a more comprehensive revision in place of the status quo. Paul VI divided the

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<sup>154</sup> CIC 1917, can. 2094. This was also discussed in chapter 2, at footnote 73 on page 104.

<sup>155</sup> CCS, 1980 schema, can. 38 §3: «*Promotor fidei, antequam testium examen inchoetur, potest, si res opportuna eidem videatur, interrogatoriis a Sacra Congregatione missis alia addere*». A similar provision was found regarding the instruction of a cause regarding an alleged miracle. Before the instruction began, the bishop was to send all the documentation to the Congregation, which prepared instructions and the interrogatory to be used in instructing the process. See CCS, 1980 schema, can. 88: «*Episcopus documenta omnia a postulatore tradita ad Sacram Congregationem mittat, simul suam mentem aperiens, ut ab eadem instructionem et interrogatoria ad hunc peculiarem processum instruendum accipiat*».

<sup>156</sup> CCS, 1980 schema, can. 53. The schema called for the Congregation to prepare the interrogatory in connection with the granting of the *nihil obstat*. See footnote 112 on page 181.

Sacred Congregation of Rites and created the Congregation for the Causes of Saints, indicating that this was done in part to provide for the renewal of the law governing causes of canonization, a responsibility that required fresh zeal and attention to this task.<sup>157</sup>

It appeared that there were two fundamental problems that were not addressed by the 1980 schema, but which called for a response in order to bring about an integral revision of the norms. The first of these problems dealt with the right of the local bishop by law (*iure proprio*) to instruct the cognitional process, but only after receiving the prior *nihil obstat* for the introduction of the cause. The 1980 schema summarized this right as follows: «Instructional processes take place in dioceses or eparchies by the authority of the Supreme Pontiff and by the associated power of the Bishop and those others equivalent to him in law».<sup>158</sup> The 1980 schema avoided the expression «by proper right» (*iure proprio*), instead describing the instruction as a process that took place under apostolic authority, in which the Pope chose to associate local bishops with himself. This expression did not appear to be in harmony with *Sancitas Clarior* that described the instruction of the process as the proper right of the local bishop.<sup>159</sup> The 1980 schema limited the bishop's right in several ways. The bishop was not allowed to begin the cognitional process without the *nihil obstat* for the introduction of the cause. In determining whether the *nihil obstat* was to be granted, the Holy See, and not the local bishop, determined whether the cause had a sufficient basis. If the *nihil obstat* was granted, the Holy See transmitted the interrogatory rather than leaving this task to the local promoter of faith.<sup>160</sup>

In ancient causes, the 1980 schema restricted the proper right of the local bishop even further. The 1917 code required the local bishop to investigate the reason for the delay of more than 30 years from the death of

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<sup>157</sup> See PAULUS PP. VI, *Sacra Rituum Congregatio*, introduction, quoted in footnote 122 on page 184.

<sup>158</sup> CCS, 1980 schema, can. 4: «*Processus instructorii fiunt in diocesibus seu eparchiis auctoritate Summi Pontificis et consociata potestate Episcopi aliorumque ipsi in iure aequiparatorum*».

<sup>159</sup> PAULUS PP. VI, *Sancitas Clarior*, n. 1.

<sup>160</sup> CCS, 1980 schema, cann. 50 et 53.

the servant of God to the first efforts to initiate of the cause.<sup>161</sup> *Normae Servandae* of 1939 required the local bishop to also appoint a historical commission of three experts to gather all the documentary evidence. However, according to the 1980 schema, the bishop could not order the instruction of the cognitional process until this information, as well as the other evidence that demonstrated the solid foundation of the cause, was transmitted to the Congregation and the *nihil obstat* for the introduction of the cause had been granted.<sup>162</sup> These cumbersome procedures created new restrictions that were not present in the reforms of Pius XI. After 1939, the local bishop could instruct the ordinary processes and appoint the historical commission to search out the documentary evidence without any prior involvement of the Congregation, which later evaluated the proofs before recommending that the Pope introduce the cause in the Holy See. The 1980 schema obligated the local bishop to receive the prior approval of the Holy See for an action that he previously was authorized to take on his own initiative. This provision ran contrary to the post-Vatican II call for greater collegiality, allowing bishops more freedom, not less, to take actions that were previously reserved to Rome.

The second remaining problem dealt with the search for documentary evidence. The 1980 schema called for proofs, in the form of witness testimony and documentary evidence, which were to be entirely complete.<sup>163</sup> While ancient causes required the diligent search for documents by the three appointed historical experts, there was no such requirement in recent causes. The schema did not call for a historical commission in recent causes, appearing to diminish the importance of the thorough search for documents: «In addition to the postulator and the witnesses, anyone can present documents regarding the servant of God to the tribunal; the tribunal, however, can examine documents that seem to affirm the truth being

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<sup>161</sup> CIC 1917, can. 2049: «*Processus informativus per Ordinarios instruitur; et si inchoatus non fuerit intra triginta annos a morte Servi Dei, ut ad ulteriora procedi possit, probari debet nullam in casu fraudem vel dolum aut culpabilem negligenciam adfuisse*».

<sup>162</sup> CCS, 1980 schema, cann. 74-77.

<sup>163</sup> CCS, 1980 schema, can. 32. The schema used the same Latin phrase, *omnino plenae*, calling for the completeness of the proofs as found in the 1917 code. See CIC 1917, can. 2019. This canon was cited in footnote 4 on page 147.

sought».<sup>164</sup> While the tribunal was to actively search for documents in ancient causes, the schema presented the tribunal as the passive recipient of documentary evidence in recent causes. There appeared to be no urgency in the search for documentary evidence when contemporary witness testimony was available.

Immediately connected with this issue was the question of the probative value of documentary evidence. The 1917 code provided norms that governed both the collection and the evaluation of proofs. Specifically, documents had the value of supplementary proof, but could not constitute full proof.<sup>165</sup> While the 1980 schema did not give clear guidance regarding the value of proofs, some answers could be inferred from the text of the schema. Ancient causes were those which «depended principally on documents» because there were no eye-witnesses available.<sup>166</sup> The notion that documentary evidence could have a greater probative value than witness testimony was a departure from the approach taken under the 1917 code. The schema did not provide a predetermined value for documentary evidence, but called for its worth to be assessed by applying the scientific rules of historical critical analysis.<sup>167</sup> The documentary evidence was evaluated in the Congregation to determine whether it was sufficient to prove the object of the cause, that is, the heroic virtue or the martyrdom of the servant of God.<sup>168</sup> While the documentary evidence was accorded

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<sup>164</sup> CCS, 1980 schema, can. 40 §1: «*Praeter postulatorem et testes, omnes tribunali exhibere possunt documenta Servum Dei respicientia; tribunal autem documenta exigere valet quae ad veritatem acquirendam conferre videantur*». The presentation of documents to the tribunal appeared facultative, since the canon spoke of what persons can (*possunt*) do, rather than what they must (*debent*) do. Similarly, the tribunal was able (*valet*) to examine documents, rather than obligated (*debet*) to do so.

<sup>165</sup> Documents were considered to be *adminicula*. See chapter 2, footnote 91 on page 109.

<sup>166</sup> CCS, 1980 schema, can. 73: «*Causa historica illa dicitur quae, ob defectum testimonium de visu, documentis praecipue nititur*». In the 1917 code, the witness statements regarding the reputation of heroic virtue or martyrdom would have been considered fundamental, while documentary evidence could serve a supporting role. The 1980 schema appeared to shift the emphasis toward the documentary evidence.

<sup>167</sup> The *positio* in ancient causes was to be prepared by the historical-hagiographical office «applying the rules of historical criticism» (cfr. CCS, 1980 schema, can. 80 §2: «*legibus criticae historicae adhibitis*»).

<sup>168</sup> This evaluation was made by the historical consultants of the Congregation «to see whether the collected documentation [was] sufficient for its intended effect» (cfr. CCS,

greater probative value and a greater level of importance, the schema did not explain the relative value of documentary proof in comparison to witness testimony. It appeared that ancient causes were evaluated primarily on the basis of the written documents and recent causes on the basis of the witness testimony.<sup>169</sup>

The 1980 schema attempted to render the legislation in force at the time in canonical language. In the end, it did not respond to the conciliar call for greater collegiality and subsidiarity, giving greater flexibility to the local bishops in the instruction of causes, nor did it streamline the procedure in accord with the advances of historical critical methodology as had been desired. On the contrary, the schema maintained a degree of formalism that appeared, to some, to be without merit. On June 27, 1980, the plenary assembly of the Congregation did not approve the proposal, thereby giving encouragement to those who wanted to see the legislation move in a more radical direction by abandoning an excessively juridic tone in favor of an approach that depended more on the scientific method.<sup>170</sup> Four days after the plenary assembly, Cardinal Corrado Bafile retired and Cardinal Pietro Palazzini was appointed as the new Prefect of the Congregation for the Causes of Saints. With the progress of the code commission and the impending promulgation of the new code, the pressure increased to find solutions to the difficulties in order to finalize the new legislation in causes of canonization.

### 3.5.3 DEBATE PRIOR TO THE PROMULGATION OF THE NEW LAW

The debate regarding the new law in causes of canonization was not limited to the plenary assembly within the Congregation. As information about the proposed changes circulated among those who were associated

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1980 schema, can. 81 §1: «*ut videant num collecta documenta ad effectum de quo agitur valeant*»).

<sup>169</sup> For ancient causes, the virtues or martyrdom of the servant of God could only be proven through documentary evidence. Witness testimony served to demonstrate the existence of the reputation of virtues or martyrdom among the faithful.

<sup>170</sup> M.B. MEINARDI, *La natura giuridica*, 72. F. LEONE, *La prova documentale degli scritti nei processi di beatificazione e canonizzazione*, Roma, 1989, 185-187.

with the work of the Congregation for the Causes of Saints, a debate took place through the publication of various articles during this period. The authors could be generally divided between those who preferred a fundamentally juridic approach to causes of canonization and those who preferred a historical-scientific approach.

In 1979, Fabijan Veraja, then an official in the Historical Section of the Congregation, published an article written on the topic of *Sanctitas Clarior*, in which he commented on the innovations introduced for ancient causes by Pius XI as well as those instituted by Paul VI.<sup>171</sup> Commenting on these changes, Veraja believed that causes of canonization were undergoing a transformation away from the traditional canonical categories, in favor of more modern systems based on historical criticism.<sup>172</sup> Veraja observed the internal conflict in *Sanctitas Clarior* which required evidence regarding a cause to be presented to the Holy See prior to any instruction, in order to obtain the permission to introduce the cause and begin the instruction. In order to avoid what he considered to be a conflict of circular reasoning, Veraja argued that the judgment of the local bishop should be accepted regarding the sufficiency of the reputation of the servant of God for the introduction of the cause.<sup>173</sup> Looking toward the future, Veraja hoped that the new legislation would avoid useless repetition and those formalities that were purely juridic. He expressed this desire with vivid imagery:

Would it not rather be opportune to prepare a new “tunic” (legislation) adapted to the realities as they appear today, and not those of the 17<sup>th</sup> or 18<sup>th</sup> centuries? ... It appears that the time is ripe to proceed with a radical and coherent revision of the entire legislation in the area of causes of saints.

The juridic formalism inherited from the past is no longer functional, since the demands of historical criticism cannot be ignored, not even in the treatment of “non-historical” causes.<sup>174</sup>

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<sup>171</sup> F. VERAJA, *Il Motu Proprio “Sanctitas Clarior”*, 315-337.

<sup>172</sup> F. VERAJA, *Il Motu Proprio “Sanctitas Clarior”*, 326. This passage was quoted in footnote 131 on page 186.

<sup>173</sup> F. VERAJA, *Il Motu Proprio “Sanctitas Clarior”*, 332-333.

<sup>174</sup> F. VERAJA, *Il Motu Proprio “Sanctitas Clarior”*, 335: «Non sarebbe forse opportuno provvedere a una nuova “tunica” (legislazione) adatta alla realtà delle cose quali

Veraja contrasted his new «tunic» with those attempts to craft an old tunic by cobbling together the old scraps of an outdated Baroque canonical system. Veraja hoped for a radical revision of the entire legislation based on the experiences of the historical section of the Congregation. With the critical study of scholars trained in modern scientific methodology, he anticipated that «the observations of the Promoter of the Faith and the corresponding responses of the Advocate would be rendered superfluous».<sup>175</sup>

Michele D'Alfonso, an advocate for causes of canonization, published an article that responded to Veraja by offering reflections on the value of the juridic aspects of the process in causes of saints.<sup>176</sup> While recognizing that there were legitimate theological, historical, and scientific insights to bring to the study of these causes, he argued for the fundamental importance of the dialectical process between two opposing parties.

From the confrontation or the dialectical contraposition of the two opposed positions, represented by the Promoter General of the Faith and by the Advocate, is born the so-called *contradictorium*, the only suitable means of arriving at moral certitude regarding the object of the cause.<sup>177</sup>

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appaiono oggi, e non quali erano nel Sei-Settecento? ... Pare che sia maturo il tempo per procedere a una radicale e coerente revisione dell'intera legislazione in materia delle cause dei santi.

«Di certo formalismo giuridico, ereditato dal passato, non si sa cosa fare oggi, mentre ci sono delle esigenze di critica storica che non possono essere ignorate neanche nell'impostazione delle cause “non storiche”».

Veraja compared the attempts to reassemble the juridic elements of the law into a new structure to the scriptural image of trying to sew old pieces of fabric together to form a new garment (cfr. Mt 9:16).

<sup>175</sup> F. VERAJA, *Il Motu Proprio “Sanctitas Clarior”*, 336: «ciò che per lo più rende superflue le Animadversiones del Promotore della Fede e la relativa Responsio dell'Avvocato». Veraja indicated that «the *animadversiones* and responses appeared to be a purely academic exercise that did not contribute to an improved understanding of the [servant of God]». See F. VERAJA, *Il Motu Proprio “Sanctitas Clarior”*, 336, footnote 21: «Le *Animadversiones* e la relativa *Responsio* spesso appaiono come un puro esercizio accademico, che non contribuisce affatto a una migliore conoscenza del soggetto».

<sup>176</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 491-497.

<sup>177</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 492: «Dal confronto o dalla contrapposizione dialettica delle due tesi opposte, rappresentate dal Promotore Generale della Fede e

Aware of the proposals that sought to discard the traditional canonical categories, D'Alfonso expressed concern that the juridically precise system previously in force would be corrupted by a secular wisdom that could substantially distort the process.<sup>178</sup>

In particular, D'Alfonso was concerned with the interest in equating witness testimony with documentary evidence, which could not be subjected to an oath nor cross-examined. While the historical critical method depended on documentary evidence, the author noted the importance of witness testimony in a juridic process. He objected to the use of the historical section to treat recent causes as well as the suggestion that only one *positio* needed to be prepared for the theologians without any prior debate between the Promoter and the advocate through their respective observations and responses.<sup>179</sup> Responding to Veraja, he warned that the loss of this debate would have dire consequences.

[Without the *contradictorium*] one runs the risk of the nullity of all the acts, giving birth, in place of the true canonical process, to a hybrid procedure or a simply administrative procedure which would amount to nothing.<sup>180</sup>

D'Alfonso criticized the proposed changes which he described as offering nothing of substance, except a faster process.<sup>181</sup> These passionate arguments were motivated by the pending promulgation of the new code and the urgent need to bring the debate regarding the new legislation in causes of canonization to a conclusion. While the assertions appeared to be exaggerated at times, they were posited with the intention of attempting to retain a juridic system that appeared on the verge of being radically changed. One difficulty with D'Alfonso's presentation lay in the fact that his argument was rooted in a strong sense of allegiance to the traditional canonical system. While this argument may have been convincing to those

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dall'Avvocato, nasce il cosiddetto "contraddittorio", unico mezzo idoneo per far scaturire "la *moralis certitudo*" dell'oggetto della causa».

<sup>178</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 493.

<sup>179</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 494-495.

<sup>180</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 496: «si rischia la nullità di tutti gli atti, dando vita ad un procedimento ibrido, che del vero processo canonico, o semplicemente amministrativo, non avrebbe nulla».

<sup>181</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 497.

who were formed as classically trained canonists, it did little to convince those who were not grounded in this approach, or who even had a sense of hostility toward it.

The following year, Veraja responded to D'Alfonso in an article that emphasized the value of the historical approach.<sup>182</sup> His argument was not based on any classical theories of canon law, but rather on the practical contributions of the historical section of the Congregation since its creation in 1930. From his perspective, the norms in force no longer responded to the modern needs in these causes. Unlike D'Alfonso, who came from a background steeped in canon law, Veraja had no difficulty in abandoning a juridic system that seemed, to him, to be outdated and disadvantageous. Veraja saw no contradiction in exchanging one set of norms for another, stating that the new norms would become «juridical» once they acquired the force of law through their promulgation.<sup>183</sup> This assertion was a form of pure legal positivism, in which a newly promulgated law was treated as no less juridic than a former law, simply because of the declaration of the one promulgating it. In this sense Veraja failed to understand the argument presented by D'Alfonso who was appealing to centuries worth of canonical tradition that he was hoping to conserve. At the same time, D'Alfonso appealed to a legal tradition that was not of apostolic origin, but which began only in the 13<sup>th</sup> century when Roman Pontiffs began to apply the model of the contentious trial to these causes because it seemed to be the most effective method of determining who should be canonized. According to Veraja's reasoning, if a better method had been found, nothing prevented the Holy Father from implementing a new, more effective procedure in place of a previous one.

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<sup>182</sup> F. VERAJA, *Alcune Proposte per il Rinnovamento delle Cause dei Santi* in *Monitor Ecclesiasticus*, 105 (1980), 305-322.

<sup>183</sup> F. VERAJA, *Alcune Proposte*, 306: «Chi fa delle proposte per una nuova normativa, evidentemente vuole che nel rispettivo settore tutto proceda secondo le norme del diritto che dovrà sostituire l'attuale legislazione; e tutto ciò che sarà fatto secondo queste nuove norme sarà "giuridico". È pertanto superflua l'insistenza [di D'Alfonso] sull'"elemento giuridico", quasi noi l'avessimo voluto ignorare».

In his article, Veraja explained his concrete proposal by presenting it in the context of the historical section which was created in the Congregation and which simplified the instruction of ancient causes. Noting the positive results produced by these innovations, he hypothesized that these productive reforms could be carried forward, especially by prescribing one process instructed solely under the ordinary authority of the local bishop for both ancient and recent causes.<sup>184</sup> Once the evidence arrived in the Congregation, Veraja strongly argued for a critical study to recognize the value of both the witness testimony and the documentary evidence. According to the circumstances, he concluded that the documentary evidence might be more probative than the witnesses in certain causes.<sup>185</sup> In place of the *contradictorium* between the Promoter and the advocate, Veraja believed that the important questions could be resolved by experts before the printing of a single *positio* that would address all the important facets of the cause. He did not consider the production of three separate *positiones* to contribute meaningfully to the study of the cause. In particular, he argued that a dispassionate and objective *positio* could prove to be more useful to the theologians.

[The consulters] would not be distracted by the reading of the historical *positio* (as can sometimes occur when the written observations of the Promoter of the Faith and the responses of the Advocate are attached), so that [the consulter's] opinion can be even more personalized and better founded.<sup>186</sup>

In this citation, Veraja appeared to believe that the strong willed and partisan opinions of the promoter and the advocate were more of a distraction than an aid to the understanding of a cause. He continued,

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<sup>184</sup> F. VERAJA, *Alcune Proposte*, 308-310. In arguing for instruction under ordinary authority, Veraja argued that the *nihil obstat* for the introduction of the cause no longer had any meaningful value. Veraja proposed an instruction that was not under the dual authority of the Holy See and the local bishop, but under the ordinary authority of the local bishop alone.

<sup>185</sup> F. VERAJA, *Alcune Proposte*, 313.

<sup>186</sup> F. VERAJA, *Alcune Proposte*, 315: «[I consultori] non sarebbero distolti dalla lettura della *Positio* storica (ciò che talvolta può accadere quando vi sono allegate le *Animadversiones* del Promotore della Fede e la *Responsio* dell'Avvocato), onde il loro voto risulterebbe ancor più personale e meglio fondato».

No scholar will accept the opinion that, in order to arrive at the truth regarding the moral figure of a servant of God, the *contradictorium* is required between the Promoter of the Faith and the Advocate, which takes place in their respective observations and responses.<sup>187</sup>

With this single statement, Veraja dismissed the core of D'Alfonso's argument, asserting that the critical study by scholars during the Roman phase can substitute for the classical *contradictorium* between the parties.

In this new system, Veraja envisioned that the relator would take the place of the Promoter in some of his responsibilities. Since the relator would be responsible for producing a scientific level of work, he would liberate the Promoter of the Faith by responding to many of the questions that would arise during the preparation of the *positio*. The Promoter of the Faith would be more available to analyze the theological issues related to a cause. In this new system, according to Veraja, the Promoter of the Faith would not be diminished but would take on a new responsibility.<sup>188</sup>

During the same year, Agostino Amore, the Relator General in the Congregation, published an article on the updates proposed in causes of canonization.<sup>189</sup> Amore began by noting that the call for reform in the legislation for causes of canonization was widespread, though the content of the various proposals came mostly from jurists who maintained a juridic approach that did not take into account the theological or historical evolutions that could contribute to these causes. He noted that the recognition of heroic virtue or martyrdom was a problem that was fundamentally theological and historical, though it had been classically treated in a juridic manner.<sup>190</sup> For Amore, the time had come to evaluate whether the juridic method was best suited to these causes:

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<sup>187</sup> F. VERAJA, *Alcune Proposte*, 316: «Nessuno studioso accetterà la tesi secondo la quale, per arrivare alla verità sulla figura morale di un Servo di Dio, sia indispensabile un "contraddittorio" tra il Promotore della Fede e l'Avvocato quale si ha nelle rispettive *Animadversiones e Responiones*».

<sup>188</sup> F. VERAJA, *Alcune Proposte*, 317, 321.

<sup>189</sup> A. AMORE, *Le cause dei santi. Proposte per un aggiornamento in Antonianum*, 55 (1980), 425-438. Agostino Amore, O.F.M., was Relator General from 1975 to 1982 (cfr. G. PAPA, *Cardinali prefetti*, 428).

<sup>190</sup> A. AMORE, *Le cause dei santi*, 425-426.

It is necessary to see and consider [a cause] in its totality, and sometimes according to the particular significance that it has when framed in its historical context. In essence, I would say: more history and less law.<sup>191</sup>

He questioned whether causes of canonization called for an update, a renewal, or a streamlining of their juridic structure, or whether these causes called for a more radical transformation of the law. Amore preferred the radical option, approving of the image of the «new tunic» presented by Veraja.<sup>192</sup> He compared the modern developments of historical criticism to the technological developments that produced modern cars and highways. Just as no one would give up rapid modern transportation for older and slower systems, so he questioned why anyone would prefer to treat causes of canonization using the clumsy and lumbering juridic methods of the past when modern scientific methodology was available. Rather, Amore preferred to abandon what he called traditional sentimentalism for anachronistic categories.<sup>193</sup>

During the same year, Piero Serafini, an advocate for causes of canonization, published an article that called for a reconciliation of the historian and the canonist.<sup>194</sup> Recognizing the divisions between the historical and juridic approaches, he argued that these two methods could be harmonized by allowing for the juridic method of the *contradictorium* according to the dictates of the historical critical method. This method would call for individual parties to argue for and against the cause by making use of modern scientific methodology.<sup>195</sup>

Serafini lamented the divide between the historian and the canonist which he attributed to differences in language.

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<sup>191</sup> A. AMORE, *Le cause dei santi*, 427: «Bisogna vederla e considerarla nel suo insieme, e talvolta nel significato particolare che acquista per la cornice storica nella quale si inquadra. In sostanza io direi: più storia e meno diritto».

<sup>192</sup> A. AMORE, *Le cause dei santi*, 428. Amore extended Veraja's image of a «new tunic» by calling for this new garment to be composed of new fabric, as the new legislation in causes of canonization called for a new approach different from its juridic heritage.

<sup>193</sup> A. AMORE, *Le cause dei santi*, 430.

<sup>194</sup> P. SERAFINI, *Cause di beatificazione*, 331-338.

<sup>195</sup> P. SERAFINI, *Cause di beatificazione*, 332.

It follows ... that each discipline will tend to develop on its own, without systematic ties with the other [fields of study], thus giving rise to a patchwork of results in which no possible organic framework can be found [uniting them]. This situation leads the scientist (or a group of scientists) to a greater and greater isolation, insofar as it provides a language, a set of problems, and a methodology that is altogether incomprehensible to those outside the same area of specialization. Those who have worked on causes of beatification over the past decades know well how concrete and real this difficulty of communication has been and continues to be between jurists and historians.<sup>196</sup>

Serafini was concerned that the divisions between the historical and juridic approaches had created conflicts that left the study of causes of canonization more impoverished.

### 3.5.4 THE 1981 SCHEMA

In January of 1981 a proposal was submitted by the Polish bishops regarding several principles that could be incorporated in the new legislation for causes of canonization. First and foremost, they recommended the use of sound theological and historical methodology in the new law, noting that documentary evidence, objectively and critically evaluated, could sometimes be more valuable than witness testimony, especially if the memory of the witness was confused or less than clear. Several suggestions were made related to the principle of collegiality and the proper role of the local bishop in the instruction of causes. It seemed appropriate to trust the judgment of the local bishop and the episcopal conference regarding the solid foundation for the introduction of the cause. The composition of customized interrogatories on the local level would be preferred to the formulaic interrogatories that were generally sent by the Congregation. It

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<sup>196</sup> P. SERAFINI, *Cause di beatificazione*, 333: «Ne segue ... che ogni disciplina tenderà a svilupparsi per proprio conto, senza legami sistematici con le altre, dando così luogo a un mosaico di risultati, ove non è rintracciabile alcun disegno fornito della benché minima organicità, situazione che conduce lo scienziato (o il singolo gruppo di scienziati) a un isolamento via via maggiore, in quanto lo fornisce di un linguaggio, di una problematica e di una metodologia, del tutto incomprensibili a chi non coltiva la stessa specialità. Coloro che, durante gli ultimi decenni, hanno lavorato per le cause di beatificazione, sanno bene quanto concreta e reale sia stata e sia questa difficoltà di comunicare tra giuristi e storici».

also seemed fitting to allow a local censor to examine the writings of the servant of God. Before the conclusion of the local instruction, the local promoter of the faith and the postulator were in the best position to examine the acts at the time of publication to determine if the inquiry was complete.

With respect to the office of the promoter of the faith in the Congregation, the Polish bishops made a perceptive observation. Given the variety and complexity of causes of canonization, it seemed unreasonable to expect one Promoter General to evaluate each cause at every stage of study. Rather, it appeared advantageous to have a group of promoters who specialized in particular subject matters. For example, one promoter might deal particularly with the canonical norms and the evaluation of the juridic validity of the instruction. Another promoter might deal with the arguments regarding heroic virtue or martyrdom, while yet another might focus specifically on the details for the investigation of an alleged miracle.<sup>197</sup> This recommendation provided a concrete response to the increasing complexity of causes of canonization through the specialization of individual promoters within the Congregation.

A new draft of the proposed law was presented at the plenary assembly held on June 22-23, 1981. This schema represented a radical change from the 1980 schema. In place of one text, the schema proposed two separate documents: an apostolic constitution governing the work in the Congregation, and a separate instruction regarding the local inquiry.<sup>198</sup> The texts were no longer divided into canons, but rather into paragraphs, with the proposed apostolic constitution and accompanying instruction containing 13 paragraphs and 35 paragraphs respectively. The proposed constitution was divided into three parts. The first part, containing 2 paragraphs, treated

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<sup>197</sup> *Lettera*, 24 gennaio 1981, in ACCS, *Plenaria*, 22-23 iunii 1981. The recommendations of the Polish bishops were preserved in the acts of the 1981 Plenary Assembly of the Congregation during which they were considered.

<sup>198</sup> CONGREGATIO PRO CAUSIS SANCTORUM, *Testo della Costituzione Apostolica*, 1981, in ACCS, *Plenaria*, 22-23 iunii 1981. CONGREGATIO PRO CAUSIS SANCTORUM, *Instructio de Inquisitionibus ab Episcopis faciendis in Causis Sanctorum*, 1981, in ACCS, *Plenaria*, 22-23 iunii 1981. The proposed texts were simply called the apostolic constitution and the instruction. These are hereafter referred to as the 1981 constitution and the 1981 instruction.

the inquiries to be conducted by bishops. The second part, containing 8 paragraphs, treated the Congregation for the Causes of Saints and the various officials who serve in the dicastery. The third part, containing 3 paragraphs, treated the manner of proceeding in the Congregation.<sup>199</sup> The proposed instruction regarding the diocesan inquiry was not divided into parts, but passed through the steps of the inquiry in chronological order.

The difference between the 1980 schema and the 1981 proposals consisted not only in the length and organization of the texts, but also in the vocabulary used. The process (*processus*) was replaced by an inquiry (*inquisitio*). The judge (*iudex*) was replaced by a delegate (*delegatus*). There was no mention of a tribunal (*tribunal*) but only of the officials (*officiales*) who carried out the instruction. The proposed texts no longer made reference to the sessions of the instruction, though the officials did gather together for the hearing of witnesses and for specific acts.

The texts represented a substantial simplification of the procedures to be followed, while maintaining many of the elements present in the norms that were in force. The proposed constitution resolved one problem by unambiguously affirming the right of the diocesan bishop or eparch to instruct the inquiry without any previous permission of the Holy See. The constitution called for the bishop to appoint theological censors to examine the published writings of the servant of God, and historical experts to gather all the unpublished writings and other documents related to the cause. The appointment of a historical commission was obligatory in all causes, both ancient and recent.<sup>200</sup> The instruction called for witness testimony to be heard, neither by a panel of three judges, nor by one judge with two assessors, but by an episcopal delegate who was assisted by a promoter of the faith and a notary.<sup>201</sup>

Within the Congregation, the proposed constitution redefined the responsibilities of some of the officials. The Relator General presided over

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<sup>199</sup> The second and third parts of the constitution were distinguished between the static part which listed the officials in the Congregation and the dynamic part which treated the procedures to be observed.

<sup>200</sup> CCS, 1981 constitution, nn. 1-2.

<sup>201</sup> CCS, 1981 instruction, n. 16.

the historical consulters, as previously established in *Già da qualche tempo*. He was also assisted by a certain number of officials who worked in the historical-hagiographical office. The proposed constitution also called for the Relator General to preside over a college of relators. Each relator was responsible for studying individual causes and preparing the corresponding *positio* with the cooperation of an external collaborator. The constitution described the relators as equivalent in law to the auditors of the Roman Rota, who had previously studied causes and prepared their own reports on their merits.<sup>202</sup> The creation of the college of relators marked a significant change from the original purpose of the office of the Relator General. In *Già da qualche tempo*, the Relator General and the historical consulters were only called to evaluate the thoroughness and the value of the documentary evidence and to prepare a report in this regard.<sup>203</sup> The proposed constitution called for the individual relators to assume a responsibility for the composition of the *positio*, a task that had been previously left to the petitioner's postulator, procurator, and advocate. The composition of the *positio* was to follow the scientific method adopted by the historical-hagiographic office, not only for ancient causes, but also for recent causes.<sup>204</sup>

The proposed constitution also modified the role of the Promoter of the Faith, who was simply designated to preside at the meetings of the theological consulters.<sup>205</sup> The changes proposed to this office became clearer in light of those responsibilities that no longer belonged to the Promoter. The examination of the juridic validity of the diocesan or eparchial inquiry was not performed by the Promoter of the Faith, but by an auditor in the Congregation. In addition to preparing the *positio*, the assigned relator offered responses or elucidations to any objections

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<sup>202</sup> CCS, 1981 constitution, nn. 6-7. The work of the Rotal auditors was mentioned in chapter 1 on page 51.

<sup>203</sup> PIUS PP. XI, *Già da qualche tempo*, III. *Regimini Ecclesiae Universae* and *Sacra Rituum Congregatio* did not expand the role of the Relator General, but only made reference to the provisions already established by Pius XI.

<sup>204</sup> CCS, 1981 constitution, n. 11, 2°.

<sup>205</sup> CCS, 1981 constitution, n. 10, 1°. The constitution referred to this figure as the Promoter and not the Promoter General.

presented by the historical consulters.<sup>206</sup> There was no mention of the observations of the Promoter or the responses of the postulator or the advocate. Instead, the Promoter of the Faith was called to evaluate the cause only after the *positio* had been printed and when the cause was presented to the theological consulters.

The proposed texts of both the constitution and the instruction were presented in the plenary assembly in 1981. The cardinal and bishop members of the dicastery discussed the text of the legislation, commenting on various aspects of the proposal.<sup>207</sup> Regarding the instruction of the inquiry, the principle of subsidiarity served to streamline the process by allowing the bishop to act without being directly dependent on the Holy See. The gathering of the documentary evidence was left to the authority of the local bishop who appointed the historical experts to seek out the writings of the servant of God as well as those documents that were related to the cause. In this way, the decree first issued under the pontificate of Pius X in 1913, calling for the gathering of any and all relevant documentation, was finally to be put into effect for all causes.<sup>208</sup> It was agreed that the published writings of the servant of God would be examined by theological censors appointed by the local bishop. It also seemed fitting that the interrogatory be composed, not by the Congregation, but by an official on the local level on the basis of the information submitted by the postulator, the writings of the servant of God and the documentary evidence that had been gathered. The appointment of three judges appeared to create an excessive burden, when one delegate could effectively carry out the instruction of the cause by hearing the witnesses with the assistance of the promoter and the notary. Documentary evidence was acknowledged to have legitimate probative

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<sup>206</sup> CCS, 1981 constitution, n. 11, 1° et 4°.

<sup>207</sup> ACCS, Plenaria, 22-23 iunii 1981. The observations that follow were drawn from the individual *vota* of the members of the Congregation. While the specific opinions of the individual members cannot be reported, the summary represents a synthesis of the various opinions.

<sup>208</sup> SACRA CONGREGATIO RITUUM, *De servis Dei*. This decree, which ordered the collection of all relevant documentary evidence was mentioned above in footnote 8 on page 148.

value, in light of the observation that an authentic and authoritative document might present valuable and accurate information about the servant of God. In some cases, the documents may have been more probative than oral testimony, especially if the witnesses had forgotten specific details about the servant of God because of the passage of time. The relative probative value of documentary evidence and witness testimony had to be evaluated according to the circumstances of the cause. However, unlike the reforms of Pius XI which elevated the probative value of documentary evidence only for ancient causes, the new law would allow documentary evidence to assume a value comparable to witness testimony in all causes including recent ones.

While there was general agreement regarding the application of the principle of collegiality by recognizing the latitude that the local bishop should have to instruct the cause by his own authority (*iure proprio*), there was debate among the members about relinquishing the authority of the Holy See regarding the introduction of the cause. The 1981 instruction made no reference to the Holy See, omitting any mention of the *nihil obstat* or the need for any prior permission of the Congregation to begin the instruction.<sup>209</sup> Those who opposed the retention of the *nihil obstat* noted that the Congregation was not in a position to evaluate the merits of a cause at a preliminary stage before any instruction had taken place. According to this opinion, the intervention of the Congregation would have only created a delay without any appreciable benefit, thereby standing in the way of the desired streamlining of the procedure. Those who supported the retention of the *nihil obstat* argued that, without any prior intervention of the Holy See, the quality of the instruction carried out by the local bishop was likely to diminish. The idea of proposing a manual was discussed, as a service to the bishops, providing a practical guide as they carried out the instruction.

Regarding the study of the cause in the Congregation, the members of the plenary assembly discussed the value of a modern scientific approach to causes of canonization drawing upon the insights of historical and

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<sup>209</sup> CCS, 1981 instruction. The terms «Holy See» and «Congregation for the Causes of Saints» did not appear in the text of the instruction.

hagiographic criticism, especially in the drafting of the *positio*. The former approach appeared excessively dependent on juridic methodology that did not appear to produce optimal results. The preparation and printing of three separate *positiones* under the old law appeared excessive. Each *positio* contained the written observations of the Promoter General of the Faith, though these observations were sometimes criticized for being repetitive and for lacking the depth of analysis that was desired for these causes.<sup>210</sup> The time required for the Promoter General to prepare his observations (as well as the time needed for the advocate to prepare his responses) created lengthy delays in the treatment of a cause. Each of the three printings of the various *positiones* also added to the expense of a cause. It was observed that an enormous quantity of work was imposed on the office of the Promoter General, rendering his task difficult under even the best of circumstances. The new apostolic constitution called for the preparation of only one *positio*. The assigned relator was to comprehensively study each cause, such that the *positio* would present a careful and exhaustive study of the servant of God. In this way, the preparation of the *positio* was hoped to be more efficient and more effective, producing a better result in a shorter period of time.

With the introduction of the relator, the Promoter General of the Faith was liberated from much of the work involved in the preparation of the written observations. The college of relators took the place of many of the subordinate officials who worked under the Promoter General, including the sub-promoter general. According to this proposal, the office of the Promoter General was to be dismembered, and the Promoter of the Faith was to take his position at the head of the theological consultants, guiding the study of the *positiones* and giving his opinion on the causes. Since the Promoter of the Faith no longer had sub-promoters under his direction, he

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<sup>210</sup> P. GUMPEL, *Il Collegio dei Relatori*, 311. Gumpel criticized the *animadversiones* of the Promoter General of the Faith based on his own experience in the Congregation. Rather than confronting the underlying problems in a cause, the *animadversiones* sometimes focused on the theologically irrelevant points, taking quotes out of context in an unscientific manner.

was no longer referred to as Promoter General.<sup>211</sup> The decision to place the Promoter of the Faith at the head of the theologians was considered by some to be an enhancement of his role. Others, however, commented on this fundamental change, recognizing that the Promoter was placed in the role of an impartial evaluator which was incompatible with his traditional responsibility of presenting objections to a cause. It was debated whether shifting the responsibilities regarding the *positio* from the Promoter and his assistants to the Relator General and his college of relators would produce substantially different results. It was also debated whether the individual relators would be sufficiently knowledgeable about the various causes to prepare a suitable *positio*, or whether it would be more advantageous to call upon the various postulators to prepare the *positiones* which could then be submitted to the relator. In any case, the individual relator was to have the assistance of a collaborator in the preparation of the *positio*.<sup>212</sup> While there was dissatisfaction expressed with the former way of studying causes and the juridic formalities that seemed to impede their effective examination, it was also observed that the historical critical method should not be overemphasized to the exclusion of the theological, pastoral, and spiritual dimensions of the individual causes.

The debate within the plenary assembly included many observations, both positive and negative, regarding the proposed legislation. However, the 1981 proposal received an overall favorable evaluation and was considered to be an improvement in comparison to the 1980 schema. The recommendations of the members of the Congregation provided guidance for the further modifications before the law was promulgated.

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<sup>211</sup> Although no longer called the Promoter General, the title of the sole Promoter of the Faith in the Congregation for the Causes of Saints will continue to be capitalized as a proper office.

<sup>212</sup> CCS, 1981 constitution, n. 7, 1°. The relator was to be helped by an external collaborator who was not part of the Congregation.

## 3.5.5 THE 1982 SCHEMA AND 1983 PROMULGATED TEXT

A subsequent draft of the particular legislation was produced in 1982 for circulation among the heads of the various dicasteries of the Roman Curia. In this version, the apostolic constitution carried the title «*Divinus Perfectionis Magister*», while the second document continued to be called an instruction.<sup>213</sup> The most significant change was found in the introductions to both documents. The apostolic constitution contained an introduction that referred to the theological and historical evolutions in causes of saints.<sup>214</sup> The accompanying instruction also contained a brief introduction, referring to the apostolic constitution.

The text of the 1982 version of *Divinus Perfectionis Magister* added four paragraphs to the 1981 draft. These paragraphs called for the appointment of groups of experts to advise the Congregation in theological and historical matters, as well as medical experts for the study of miracles. Toward the end of the constitution, paragraphs were inserted that addressed the procedure to be applied to causes that were already pending before the Congregation, as well as the date on which the legislation would take effect.<sup>215</sup> Beyond these additions, several modifications were introduced into the other paragraphs, some of which dealt directly with the Promoter of the Faith, who was now also called the «Prelate Theologian» and was given the right to participate in the meeting of the cardinal and bishop members,

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<sup>213</sup> CONGREGATIO PRO CAUSIS SANCTORUM, *Divinus Perfectionis Magister*, 1982, in ACCS, *Nuova legislazione (1981-1983)*. CONGREGATIO PRO CAUSIS SANCTORUM, *Instructio de Inquisitionibus ab Episcopis faciendis in Causis Sanctorum*, 1982, in ACCS, *Nuova legislazione (1981-1983)*. While the apostolic constitution had been given an *incipit*, the title of the accompanying instruction remained unchanged. See footnote 198 on page 208. These documents will be referred to as the *Divinus Perfectionis Magister* (1982 draft) and 1982 instruction.

<sup>214</sup> CCS, *Divinus Perfectionis Magister* (1982 draft). The theological elements were adapted from the introduction proposed in the 1980 schema, citing the theology of Vatican II expressed in *Lumen Gentium*. The historical elements were adapted from the introduction proposed to the 1981 apostolic constitution.

<sup>215</sup> CCS, *Divinus Perfectionis Magister* (1982 draft), nn. 11-12 et 16-17. The added paragraphs correspond to the text of *Divinus Perfectionis Magister* promulgated in 1983. See IOANNES PAULUS PP. II, Constitutio apostolica: *Divinus Perfectionis Magister*, 25 ianuarii 1983, in AAS, 75 (1983), 349-355.

though without the right to vote.<sup>216</sup> The 1982 constitution also clarified that it was within the competence of the Promoter of the Faith to highlight the controversial theological questions that were to be treated by the theological consulters. The opinions of the theologians, as well as the conclusions drawn by the Promoter of the Faith were to be transmitted to the cardinal and bishop members for their evaluation.<sup>217</sup> These provisions elevated the role of the Promoter of the Faith by inserting him in a more prominent position over the relator of the cause, especially in the discussion among the cardinal and bishop members of the Congregation.

The text of *Divinus Perfectionis Magister*, as promulgated in 1983, contained only a handful of modifications when compared to the 1982 text. The assistant to the Secretary was given the title of Undersecretary and was entrusted with the study of the juridic validity of the local inquiries.<sup>218</sup> The last paragraph was expanded to indicate that, with the promulgation of the new law, it took precedence over the laws previously issued by other Roman Pontiffs. This paragraph contained an explicit derogation of the laws previously in force:

Moreover, we wish that these Our statutes and rules should be, now and hereafter, binding and effective and, insofar as is necessary, we abrogate the Apostolic Constitutions and Regulations published by Our Predecessors and all other rules, including those which are worthy of special mention and derogation.<sup>219</sup>

This paragraph is noteworthy for two reasons. First, the legislation took effect immediately, with no interval (*vacatio legis*) between the date of

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<sup>216</sup> CCS, *Divinus Perfectionis Magister* (1982 draft), n. 10: «*Promotor fidei seu Praelatus theologus*». This same phrase appeared in the text promulgated in 1983.

<sup>217</sup> CCS, *Divinus Perfectionis Magister* (1982 draft), n. 13, 4° et 5°. In the 1981 version of the constitution, it was left for the relator to treat any objections posed by the theologians in front of the cardinal and bishop members. In the 1982 version, the Promoter replaced the relator in this task. The same provision appeared in the text promulgated in 1983.

<sup>218</sup> IOANNES PAULUS PP. II, *Divinus Perfectionis Magister*, nn. 5 et 13, 1°.

<sup>219</sup> IOANNES PAULUS PP. II, *Divinus Perfectionis Magister*, n. 17: «*Nostra haec autem statuta et praescripta nunc et in posterum firma et efficacia esse et fore volumus, non obstantibus, quatenus opus est, Constitutionibus et Ordinationibus Apostolicis a Decessoribus Nostris editis, ceterisque praescriptionibus etiam peculiari mentione et derogatione dignis*». English translations of *Divinus Perfectionis Magister* are taken from the official translation approved by the Congregation.

promulgation and the date it acquired the force of law. Because of the evident dissatisfaction with the previous law, it appeared that the immediate implementation of the new legislation was more important than allowing time for the new norms to be studied and understood.<sup>220</sup> Second, the paragraph emphasized the radical separation that was intended between this new law and the previous laws governing causes of canonization. The introduction of *Divinus Perfectionis Magister* concludes by emphasizing this separation in stronger language:

Therefore, having abrogated all laws of any kind which pertain to this matter, we establish that these following norms are henceforth to be observed.<sup>221</sup>

The 1982 version of the accompanying instruction added one paragraph to the 1981 draft, discouraging any presumption that the instruction of the diocesan or eparchial inquiry carried with it any guarantee of a future beatification or canonization.<sup>222</sup> While there were very few modifications to the remainder of the text, the references to the promoter of the faith were changed to the promoter of justice in the diocesan inquiry.<sup>223</sup>

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<sup>220</sup> *Divinus Perfectionis Magister* was promulgated on the same day as the 1983 Code of Canon Law. While the legislation in causes of canonization took effect that day, on January 25, 1983, the new code did not take effect until November 27, 1983, allowing time for it to be studied before taking effect. See IOANNES PAULUS PP. II, *Constitutio apostolica: Sacrae Disciplinae Leges*, 25 ianuarii 1983, in *AAS*, 75/II (1983), vii-xiv.

<sup>221</sup> IOANNES PAULUS PP. II, *Divinus Perfectionis Magister, prooemium*: «*In posterum, igitur, abrogatis ad rem quod attinet omnibus legibus cuiusvis generis, has quae sequuntur statuimus normas servandas*».

<sup>222</sup> CCS, 1982 instruction, n. 36. The paragraph inserted in the 1982 instruction corresponds the same paragraph in the norms as they were promulgated in 1983.

<sup>223</sup> The term *promotor fidei* had been replaced by *promotor iustitiae*. See CCS, 1982 instruction, n. 6b, 15a, 16b, and 27b. The same terminology appeared in the text promulgated in 1983.

It is possible that this change reflected the opinion that the promoter of justice was a figure focused principally on juridic issues while the promoter of the faith attended to theological issues. As such, the juridic task of verifying the observance of the norms in the inquiry appeared to be more appropriately the domain of the promoter of justice.

It is also possible that this change was made to reflect the principle of subsidiarity. While the promoter of the faith was implicitly connected to the Promoter in the Congregation, the promoter of justice, even in the 1917 code, was a diocesan or eparchial figure who was appointed by the local bishop as a regular part of his curia. The participation of this

Though no explanation for this change was given, it can be inferred that the promoter of the faith and the promoter of justice were considered to be similar figures, invested with similar responsibilities. The substitution of the promoter of justice may also have arisen from the fact that the schema for the new code contained many references to the promoter of justice, but no references to the promoter of the faith.

This text, promulgated in 1983, was no longer referred to as an instruction, but rather as «Norms to be observed» (*Normae Servandae*), indicating that these norms have the true force of law.<sup>224</sup> The norms contained two significant additions that were not found in the 1982 instruction. A clause was added to the final paragraph of *Normae Servandae*, stating that the norms took effect from the moment of their publication.<sup>225</sup> The more significant addition was found in the reinsertion of the *nihil obstat* of the Holy See, which had been the subject of much discussion. This paragraph did not refer to the introduction of the cause, but rather to the opportunity for the bishop to learn whether there were any objections on the part of the Holy See that would render the instruction of the cause useless.<sup>226</sup> When the bishop transmitted the request for the *nihil obstat* of the Holy See to the Congregation for the Causes of Saints, the Congregation made inquiries among the other relevant dicasteries of the Holy See. Provided that there were no reasons to oppose the cause, individual responses were returned to the Congregation for the Causes of Saints with the respective *nihil obstat* of each dicastery. If none of the

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diocesan or eparchial figure would emphasize that the instruction is undertaken by the local bishop *iure proprio*.

<sup>224</sup> CONGREGATIO PRO CAUSIS SANCTORUM, *Normae Servandae in Inquisitionibus ab Episcopis Faciendis in Causis Sanctorum*, 7 februarii 1983, in AAS, 75 (1983), 396-403. Hereafter referred to as NS. According to the 1983 code, an instruction does not have the force of law, but only clarifies how other laws are to be observed (cfr. CIC 1983, can. 34). Since the promulgation of this document was meant to have legislative effect, it is appropriate that the title found in the 1981 and 1982 drafts was changed. See footnote 198 on page 208.

<sup>225</sup> NS, 36.

<sup>226</sup> NS, 15c: «*Interim Episcopus brevem de Servi Dei vita ac de causae pondere notitiam ad Sacram Congregationem pro Causis Sanctorum transmittat, ad videndum utrum ex parte Sanctae Sedis aliquid causae obsit*». From this paragraph came the *nihil obstat ex parte Sanctae Sedis*. English translations of *Normae Servandae* are taken from the official translation approved by the Congregation.

dicasteries objected, the Congregation could then transmit the *nihil obstat* of the Holy See to the local bishop.<sup>227</sup>

The promulgation of *Normae Servandae* in 1983 fundamentally redefined the meaning of the *nihil obstat* of the Holy See. No longer referring to the *nihil obstat* for the introduction of the cause, the norms did not refer to any permission on the part of the Holy See that was required for the bishop to begin the instruction. In fact, the norms called for the bishop to request the *nihil obstat* of the Holy See after some elements of the instruction had already begun.<sup>228</sup> The norms themselves do not refer to the introduction of the cause. They do refer to the decision to initiate the cause, but do not define the moment at which this initiation occurs.<sup>229</sup>

### 3.5.6 THE REGULATIONS OF THE CONGREGATION (1983)

Following the promulgation of *Divinus Perfectionis Magister* and *Normae Servandae*, the regulations (*Regolamento*), governing the internal workings of the Congregation, were also published in 1983.<sup>230</sup> While the regulations did not modify the law, they did provide some further explanation regarding the treatment of causes in the Congregation, especially regarding the work of the relator and the preparation of the *positio*. While the relators were to be experts in historical studies and were to have a solid theological preparation, they were not required to have any particular expertise in canon law. The primary responsibility of the relator was to prepare the *positio* with the cooperation of the external collaborator,

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<sup>227</sup> R. SARNO, *Diocesan Inquiries*, 63. A. ROYO MEJÍA, *Algunas cuestiones*, 204. After the promulgation of the new law in 1983, the Congregation for the Causes of Saints expanded the *nihil obstat* of Pius XII by consulting with other relevant dicasteries of the Roman Curia beyond the Congregation for the Doctrine of the Faith.

<sup>228</sup> The request of the *nihil obstat* appeared after the bishop had accepted the petition and nominated the theological censors for the examination of the writings of the servant of God and the historical experts to gather the documents related to the cause. The bishop was to request the *nihil obstat* while the promoter of justice was preparing the interrogatory. See NS, 11-15.

<sup>229</sup> NS, 8 and 13. The norms do not refer to the introduction («*introducere*») of the cause, but only to the desire to initiate («*inchoare*») the cause. The moment at which the cause is formally initiated is not defined.

<sup>230</sup> CONGREGAZIONE PER LE CAUSE DEI SANTI, *Regolamento*, Roma, 1983.

who was presented by the postulator but who worked under the direction of the relator.<sup>231</sup> The collaborator was bound by oath not to hide any defects in the cause.<sup>232</sup> The *positio* was signed by those who took part in redacting the document, including the relator who supervised its composition. The relator was juridically responsible for the *positio*, which could not be printed until he confirmed that the study of the cause was thorough and complete.<sup>233</sup> In these articles, the relator and the external collaborator—not the Promoter of the Faith and the advocate—emerged as the central figures in the composition of the *positio*, overseeing its preparation from beginning to end. The Promoter of the Faith no longer had a role in this process, and received the *positio* for study only after it was printed and transmitted to the theologians. While the regulations did not call for the participation of an advocate, they did mention that those who had received this title before *Divinus Perfectionis Magister* were preferred as collaborators.<sup>234</sup> The regulations also contained an appendix which listed those advocates who were recognized before the promulgation of *Divinus Perfectionis Magister*.<sup>235</sup>

In 1983, the evolution of the special norms for causes of canonization reached a conclusion, as the former law was abrogated and the new law was put into effect. If the reforms of Pius XI and Paul VI represented modifications of the law, the new legislation carried those initiatives forward to a real transformation of the law. The traditional canonical elements of the various processes were simplified or eliminated. Causes were studied in accord with modern scientific methodology, relying on the historical critical approach. Some changes were cosmetic, as terms like

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<sup>231</sup> CCS, *Regolamento*, 1983, Art. 5 §§2 and 5.

<sup>232</sup> CCS, *Regolamento*, 1983, Art. 15 §§1 and 4.

<sup>233</sup> CCS, *Regolamento*, 1983, Art 17: «La *Informatio* sarà firmata da chi l'ha redatta e sarà controfirmata dal Relatore della causa, il quale ne è giuridicamente responsabile».

<sup>234</sup> CCS, *Regolamento*, 1983, Art. 15 §2. Those who had received the title of advocate under the 1917 code were required to have degrees in canon law and theology, to pass an internship within the Congregation and to hold the title of Rotal advocate (cfr. CIC 1917, can. 2018, which was quoted in chapter 2, footnote 50 on page 94). Because of their qualifications and their education, these advocates would have been well qualified as collaborators to assist in the composition of the *positio*.

<sup>235</sup> CCS, *Regolamento*, 1983, Appendice II.

«process» and «judge» were replaced with «inquiry» and «delegate». Other changes were more substantive, as the duties of the Promoter of the Faith were redefined and the relator became the central figure in the composition of the *positio*. However, the similarities between the new law and the former law should not be overlooked, since many of the juridic elements in the instruction and the evaluation of a cause remained substantially the same. The 1983 legislation created a system that relied both on canonical methodology and historical criticism.

The 1983 legislation did lay to rest two controversial points after the reforms of Paul VI. The new legislation drew a sharp distinction between the instruction of the cause that took place under local authority and the discussion and evaluation of the cause that took place under pontifical authority within the Congregation. The concept of an instruction under dual authority had disappeared. Furthermore, the *nihil obstat* of the Holy See mentioned in *Sanctitas Clarior* was retained, but in a modified form. No longer considered to be the permission to introduce a cause, this *nihil obstat* became a moment of consultation in which the local bishop could learn if an impediment to the cause was known to the Holy See that would render the instruction of the cause useless.

### 3.6 DEVELOPMENTS AFTER THE PROMULGATION OF THE NEW LAW

#### 3.6.1 *PASTOR BONUS* AND *IUSTI IUDICIS* (1988)

The legislation promulgated in 1983, *Divinus Perfectionis Magister* and *Normae Servandae*, continue in force and constitute the special pontifical law that governs causes of canonization. Nevertheless, there have been further developments in the following years through the promulgation of other documents or decisions made by the Congregation. One document that introduced a change in the Congregation was the apostolic constitution

*Pastor Bonus* promulgated by John Paul II (1978-2005) on June 28, 1988.<sup>236</sup> This constitution, which superseded the apostolic constitution *Regimini Ecclesiae Universae* issued by Paul VI in 1967, listed the various dicasteries of the Roman Curia and described their respective competencies. *Pastor Bonus* renamed the «Congregation for the Causes of Saints», calling it instead, the «Congregation of the Causes of Saints».<sup>237</sup> One might speculate that the change in name was meant to indicate a greater sense of objectivity, lest the Congregation be seen as being for, meaning «in favor of», the advancement of individual causes of canonization. However, this hypothesis must be discounted since several Congregations were also similarly renamed in *Pastor Bonus*.<sup>238</sup>

Beyond the specific mention of the Congregation of the Causes of Saints, *Pastor Bonus* addressed all the elements of the Roman Curia, including the various advocates who served before the Holy See. In addition to the advocates who served in the Roman Rota and the Apostolic Signatura, the apostolic constitution also listed the advocates who served in causes of saints.<sup>239</sup> This last reference was striking because the role of the advocate did not appear in the special pontifical law on causes of canonization.<sup>240</sup> Those who were advocates under the prior law were mentioned in the regulations of the Congregation, but only with respect to their qualifications to assume the function of collaborator.<sup>241</sup>

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<sup>236</sup> IOANNES PAULUS PP. II, *Constitutio apostolica de Romana Curia: Pastor Bonus*, 28 iunii 1988, in *AAFS* 80 (1988), 841-912.

<sup>237</sup> The name of the dicastery was changed from «*Congregatio pro Causis Sanctorum*» to «*Congregatio de Causis Sanctorum*». See PAULUS PP. VI, *Sacra Rituum Congregatio*, and IOANNES PAULUS PP. II, *Pastor Bonus*.

<sup>238</sup> IOANNES PAULUS PP. II, *Pastor Bonus*, Artt. 48, 62, 71, and 112. The preposition «*pro*» was changed to «*de*» in the names of three other dicasteries: *Congregatio de Doctrina Fidei*, *Congregatio de Cultu Divino et Disciplina Sacramentorum*, and *Congregatio de Seminariis atque Studiorum Institutis*. It is more likely that the preposition «*pro*» was used for dicasteries that dealt with people and «*de*» for dicasteries that dealt with things. This change was not retained for the *Congregatio pro Doctrina Fidei* which reassumed its former title in 1990. See *Annuario Pontificio*, Città del Vaticano, 1990, 1103.

<sup>239</sup> IOANNES PAULUS PP. II, *Pastor Bonus*, Art. 183.

<sup>240</sup> IOANNES PAULUS PP. II, *Divinus Perfectionis Magister*, n. 2. NS, 1a et passim. This legislation of 1983 omits both the term «advocate» and «procurator».

<sup>241</sup> CCS, *Regolamento*, 1983, Art. 15 §2.

A similar statement was found in the apostolic letter *Iusti Iudicis*, promulgated on the same day as *Pastor Bonus*. Before introducing a new register of advocates who could plead causes before the Apostolic Signatura, the apostolic letter opened with the following words: «Beyond the Rotal Advocates and [the Advocates] for causes of saints, who continue to exercise their particular function as before according to the prescripts of the common law and the proper law of each Dicastery».<sup>242</sup> Those advocates are now referred to in the proper law of the Congregation as external collaborators, establishing a connection between these two roles. In addition to reaffirming the function of advocates in causes of canonization, *Iusti Iudicis* was also historically significant because it brought to an end the college of consistorial advocates and procurators of the Apostolic Palace, leaving instead individual groups of specialized advocates to present causes before the Rota, the Signatura, and the Congregation of the Causes of Saints.<sup>243</sup>

It has been noted that the 1981 drafts of *Divinus Perfectionis Magister* and *Normae Servandae* sought to utilize less juridic language, avoiding terms such as tribunal, judge, and advocate.<sup>244</sup> In view of the abrogation in 1983 of the prior law, it appeared that the office of the advocate had been replaced by the collaborator.<sup>245</sup> In *Pastor Bonus* and *Iusti Iudicis*, it was made clear that it was not the intention of the legislator that the function exercised by these advocates should be entirely suppressed. Rather, they continue to serve in an analogous capacity as collaborators. The advocate had traditionally served as an important interlocutor with the Promoter of the Faith in the *contradictorium*. The participation of the advocate, even in a modified form, represents a sign of continuity with past practice.

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<sup>242</sup> IOANNES PAULUS PP. II, Litterae apostolicae motu proprio datae: *Iusti Iudicis*, 28 iunii 1988, in AAS 80 (1988), 1258-1261, Art. 1: «*Praeter Advocatos Rotales et pro causis Sanctorum, qui proprium munus exercere pergunt sicut antea secundum praescripta iuris generalis et legis uniuscuiusque Dicasterii propriae*».

<sup>243</sup> IOANNES PAULUS PP. II, *Iusti Iudicis*, Art. 10. The introduction of this apostolic letter contained a historical overview of the office of consistorial advocate which dated back to the time of Gregory the Great.

<sup>244</sup> See section 3.5.4. on page 209.

<sup>245</sup> L. SCORDINO, *Natura giudiziaria*, 139.

## 3.6.2 DECISIONS OF THE CONGREGATION (1999)

On November 12, 1999, the Congregation clarified two important questions that had arisen regarding the confidentiality of the interrogatory and the rights of the postulator. With the abrogation of the previous law and the passage of time, some postulators began to make recourse to the 1983 Code of Canon Law in order to resolve questions that had arisen regarding the instruction of a cause of canonization according to special pontifical law. Since the restrictions that were expressed in the 1917 code were no longer in force, it seemed reasonable to apply the provisions of the 1983 code when the special legislation was silent. The 1983 code itself made reference to the special pontifical legislation in canon 1403 §§1 and 2, which stated in part:

§2. The prescripts of this Code, furthermore, apply to these causes [of canonization] whenever the same [special pontifical] law makes reference to the universal law or whenever norms are involved that also affect these same causes by the very nature of the matter.<sup>246</sup>

It seemed reasonable, especially in light of the general norms regarding the interpretation of law, to apply the canons of the 1983 code to causes of canonization whenever a particular detail was lacking.<sup>247</sup>

In particular, some postulators argued that it should be considered permissible to communicate the questions of the interrogatory to the witnesses before they give their testimony. This argument was based on canon 1565 of the 1983 code which stated:

§1. Questions must not be communicated to the witnesses beforehand.

§2. However, if the matters about which they are to testify are so remote to memory that they cannot be affirmed with certainty unless previously

<sup>246</sup> CIC 1983, can. 1403 §2: «*Iisdem causis applicantur praeterea praescripta huius Codicis, quoties in eadem lege ad ius universale remissio fit vel de normis agitur quae, ex ipsa rei natura, eisdem quoque causas afficiunt*». Canon 1403 §1 referred generically to the special pontifical law (*peculiaris lex pontificia*), which was composed of *Divinus Perfectionis Magister* and *Normae Servandae*.

<sup>247</sup> This reasoning followed canon 17 which indicated that reference can be made to parallel places in the law to interpret points that are doubtful or obscure. Furthermore, canon 19 indicated that *lacunae* in the law can be filled by applying similar laws.

recalled, the judge may advise the witness beforehand on some matters if the judge thinks this can be done without danger.<sup>248</sup>

The 1917 code had been stricter regarding the secrecy of the interrogatory in causes of canonization.<sup>249</sup> With the abrogation of the prior code, and given that the special pontifical law was silent on the confidentiality of the interrogatory, an appeal was made to the second paragraph of canon 1565. Since causes of canonization involved extremely detailed investigations of past events, it seemed reasonable to bring the questions to the attention of the witnesses so that they might be better prepared to give precise testimony.

However, this argument relied on an excessively broad application of canon 1565 §2. While the canon allowed the judge to communicate «some matters» to the witness, the language of the canon did not imply that the entire interrogatory could be revealed to the witness beforehand. A witness who was previously informed of the questions could use this knowledge to plan his or her answers, shading them to emphasize (or deemphasize) certain qualities regarding the servant of God. It also seemed likely that some postulators, or some episcopal delegates, wanted to apply the custom employed in some tribunals by which questionnaires were transmitted to the witnesses who prepared their written answers beforehand. The instruction of a cause of canonization would be vastly simplified, saving much time and energy, if it were done solely through the collection of the previously prepared written testimonies of the witnesses who appeared only to present their statements under oath. However, this approach would necessarily lead to flaws since the prepared responses could be nuanced by the witnesses, and would lack the candor of direct oral testimony in which the answers would be ordinarily expressed with a greater sense of raw honesty. The episcopal delegate who simply accepted prepared testimony would also lose

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<sup>248</sup> CIC 1983, can. 1565: «§1. *Interrogationes non sunt cum testibus antea communicandae.* «§2. *Attamen si ea quae testificanda sunt ita a memoria sint remota, ut nisi prius recolantur certo affirmari nequeant, poterit iudex nonnulla testem praemonere, si id sine periculo fieri posse censeat».*

The same text appeared in canon 1776 of the 1917 code.

<sup>249</sup> CIC 1917, can. 2091 §2. This canon was cited in chapter 2, footnote 81 on page 106. The secrecy of the interrogatory in the apostolic process was explicitly required. See also the argument in chapter 2, footnote 135 on page 121.

the opportunity to pose additional questions *ex officio* in order to clarify doubtful points.

After considering this question in the ordinary meeting of the Congregation, it was decided in accord with canon 1565 §1 and «the constant jurisprudence of the Causes of the Saints» that «the Interrogatories must not be made known to the witnesses for any reason before their deposition». With respect to those matters that can be made known to the witnesses in accord with canon 1565 §2, the Congregation decided that «a chronology of the life and the activities of the Servant of God can be exhibited to the witnesses».<sup>250</sup> The reference to the constant jurisprudence of the Congregation indicated that the previous norms, though abrogated, still continued to be useful as a point of reference to understand the rationale for the historical traditions that existed in causes of canonization. This decision has been mentioned in various manuals.<sup>251</sup> Mindful of this provision, the promoter of justice has the duty of insuring that the instruction of the cause is not only thorough, but that it is also conducted properly in accord with the norms and this decision of the Congregation.

As a separate question, some postulators argued that it should be considered permissible for the postulator to be present at the sessions for the examination of the witnesses in causes of canonization. This argument was

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<sup>250</sup> CONGREGATIO DE CAUSIS SANCTORUM, Verbale del Congresso Ordinario, 12 novembre 1999, in ACCS, Prot. N. VAR 4959/99: «1. Attesi il can. 1565 §1 CIC, la peculiare normativa delle Cause di Beatificazione e Canonizzazione (cfr. can. 1403 §1 CIC) e la costante giurisprudenza delle Cause dei Santi, questa Congregazione al quesito proposto risponde che: gli Interrogatori non devono essere portati a conoscenza dei testi per qualsiasi ragione prima delle loro deposizioni. 2. Può essere esibita ai testi una cronologia della vita e dell'operato del Servo o della Serva di Dio».

<sup>251</sup> R. RODRIGO, *Manuale delle Cause di Beatificazione e Canonizzazione*, 3 ed., Roma, 2004, 67: «Possono essere mostrati gli interrogatori ai testimoni? ... La Congregazione dei Santi, nel Congresso ordinario del 12 novembre 1999 dichiarò che “gli Interrogatori non devono essere portati a conoscenza dei testi per qualsiasi ragione prima delle loro deposizioni”. Nonostante questa dichiarazione, riteniamo che possa essere consegnato ai testimoni uno schema generale delle domande su cui saranno interrogati». While Rodrigo holds that the interrogatory can still be communicated in at least a summary form to the witnesses, this opinion does not seem consonant with the decision of the Congregation.

based on canon 1559 of the 1983 code which defined who could be present for the examination of witnesses. It stated in part:

The advocates or procurators [of the parties], however, can attend unless the judge has decided that [the examination] is to proceed in secret on account of the circumstances of the matters and persons.<sup>252</sup>

It had been furthermore suggested that the postulator, as a kind of procurator/advocate on behalf of the petitioner, could not only attend the sessions, but even pose questions to the witnesses. This argument was based on canon 1661 which called for the judge to pose the questions to the witnesses as follows:

Therefore the parties, the promoter of justice, the defender of the bond, or the advocates who are present at the examination, if they have any questions to be put to the witness, are to propose them not to the witness but to the judge or the one who takes his place, so that he may pose them.<sup>253</sup>

The law under the 1917 code had excluded the postulator.<sup>254</sup> However, since the new special pontifical law did not address this question, some postulators argued that they should have the same right as an advocate in an ordinary trial to be present and suggest questions. This argument assumed that the postulator and the promoter of justice should be considered as equal but opposing parties, one representing the petitioner and the other representing the Church, both armed with the same rights during the instruction of the cause. Since the abrogation of the prior law, with its many restrictions imposed on the postulator, a modification of this past praxis seemed possible.

This argument, however, did not consider the unique nature of causes of canonization. Unlike a contentious trial, in which the petitioner claimed a

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<sup>252</sup> CIC 1983, can. 1559: «*Assistere tamen possunt earum advocati vel procuratores, nisi iudex propter rerum et personarum adiuncta censuerit secreto esse procedendum*». A similar provision appeared in canon 1771 of the 1917 code.

<sup>253</sup> CIC 1983, can. 1661: «*quapropter partes, vel promotor iustitiae, vel defensor vinculi, vel advocati qui examini intersint, si alias interrogationes testi faciendas habeant, has non testi, sed iudici vel eius locum tenenti proponant, ut eas ipse deferat*». This canon was similar to canon 1773 §2 of the 1917 code.

<sup>254</sup> The exclusion of the postulator from the sessions for the hearing of the witnesses was described in chapter 2, footnote 134 on page 121.

right that was owed to him in justice, the petitioner in a cause of canonization could not claim a right to the canonization of a servant of God.<sup>255</sup> The limitations on the rights of the postulator reflected an attitude of caution that had traditionally characterized the approach of the Church to these causes, lest the postulator unduly influence the testimony. After considering this question in the ordinary meeting of the Congregation, it was decided in light of *Normae Servandae* and «the constant jurisprudence of the Causes of Saints» that «for the validity of the Session, the Postulator and the Vice-Postulator were not to be present at the Sessions for the hearing of the witnesses in the Diocesan Inquiries».<sup>256</sup> The Congregation again referred to the constant jurisprudence of the Congregation as a sign of continuity with the prior law. The strength of this decision was also indicated by the explicit declaration that the presence of the postulator rendered the session invalid for the hearing of the witness. In spite of this decision, some manuals continued to erroneously indicate that the postulator may take part in these sessions.<sup>257</sup>

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<sup>255</sup> This unique nature of causes of canonization was discussed in section 2.1.2. regarding the cause as a type of ecclesiastical trial.

<sup>256</sup> CONGREGATIO DE CAUSIS SANCTORUM, Verbale del Congresso Ordinario, 12 novembre 1999, in ACCS, Prot. N. VAR 3989/94: «Attese la normativa dei nn. 6° e 16° b delle *Normae Servandae in Inquisitionibus ab Episcopis faciendis in Causis Sanctorum* del 1983 e la costante giurisprudenza delle Cause dei Santi, questa Congregazione stabilisce che:

«*ad validitatem Sessionis*, il Postulatore e il Vice-Postulatore non devono essere presenti alle Sessioni dell'escussione dei testi nelle Inchieste Diocesane».

<sup>257</sup> R. RODRIGO, *Manuale delle Cause*, 78: «Secondo il c. 1561, il giudice istruttore è colui il quale deve fare le domande ai testimoni, ... Il promotore di giustizia e il postulatore, se assistono all'esame del testimone, possono anche proporgli alcune domande, non direttamente, ma attraverso il giudice, che è colui il quale deve formularle (c. 1561). Nei verbali deve constare la domanda d'ufficio così come è stata formulata e da chi è stata proposta, nel seguente modo: "domanda d'ufficio a istanza del promotore di giustizia o a istanza del perito"». This manual, published in 2004, explicitly mentioned the faculty of the postulator both to attend the sessions for the hearing of witnesses, and to propose questions to the judge. If followed in a diocesan or eparchial inquiry, this advice, contrary to the decision of the Congregation, would place the canonical validity of the inquiry in jeopardy (cfr. ACCS, Prot. N. 2159-10/12).

## 3.6.3 THE NEW REGULATIONS OF THE CONGREGATION (2000)

In 2000, the regulations (*Regolamento*) that govern the internal workings of the Congregation were revised.<sup>258</sup> The new regulations fortified the procedures for the study of causes, clarifying some points and reinstating certain provisions that were part of the longstanding tradition in causes of saints. The regulations contained 88 articles, significantly more than the 38 articles in the 1983 version. In addition to the increased length, the number of references to the Promoter of the Faith greatly increased, as the Promoter was increasingly inserted into the various steps in the study of a cause.<sup>259</sup>

Proceeding chronologically through the study of a cause, the first noteworthy change deals with the relationship between the relator, the postulator, and the external collaborator. While the relator was to be a historical expert with a solid theological background, the new regulations called for him to also have some knowledge of canon law.<sup>260</sup> The new regulations confirmed the duties of the relator who directs the preparation of the *positio* with the participation of the external collaborator, but not the Promoter of the Faith. The relator remained juridically responsible for the *positio*.<sup>261</sup> The 1983 regulations left some confusion about the person who appointed the collaborator:

The Undersecretary will invite the Postulator to contact the Relator to whom the cause has been entrusted and to present him with a collaborator who will work on the drafting of the *Positio* under the direction of the relator.<sup>262</sup>

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<sup>258</sup> CCS, *Regolamento*, Città del Vaticano, 2000.

<sup>259</sup> CCS, *Regolamento*, 1983, Art. 7. CCS, *Regolamento*, 2000, Art. 7. The 1983 version referred to the Promoter of the Faith, while the 2000 version used the older expression, the Promoter General of the Faith. The use of this term may have been intended to elevate the position of the Promoter General in relation to the Relator General. However, the use of the former title was not retained, as he continued to be referred to as the Promoter of the Faith in the Congregation. See *Annuario Pontificio*, Città del Vaticano, 2001, 1014-1017.

<sup>260</sup> CCS, *Regolamento*, 1983, Art. 5 §5. CCS, *Regolamento*, 2000, Art. 9 §2.

<sup>261</sup> CCS, *Regolamento*, 1983, Art. 5 §2 and 17. CCS, *Regolamento*, 2000, Art. 9 §1 and 66 §2.

<sup>262</sup> CCS, *Regolamento*, 1983, Art. 15 §1: «Il Sottosegretario inviterà il Postulatore a mettersi in contatto con il Relatore a cui è stata affidata la causa e a presentargli un collaboratore che lavorerà alla stesura della *Positio* sotto la direzione del Relatore».

Some believed that this article entrusted the appointment of the collaborator to the postulator while others held that the relator had the responsibility of appointing the collaborator after receiving the recommendation of the postulator. It was clear that the collaborator followed the direction of the relator. However it was unclear whether the collaborator represented the interests of the relator or the postulator, that is, whether or not he was allowed to present the argument in favor of the cause.<sup>263</sup> The new regulations provided some clarification. The postulator was to present an external collaborator when requesting the assignment of a relator, while the Relator General was to propose the relator for the cause. The question was brought to the ordinary meeting of the Congregation for approval.<sup>264</sup> The collaborator worked according to the directives of the relator, promising not to conceal any difficulty in the cause.<sup>265</sup> However, the regulations did not further specify the relationship between the collaborator and the relator, or whether the collaborator was considered to be the representative acting on behalf of the petitioner.

The new regulations reintroduced two important details found in the 1917 code. The preparation of the *positio* was to focus on allowing the consulters and members of the Congregation to arrive at moral certitude regarding the proposed doubt.<sup>266</sup> Furthermore, the specific doubts to be resolved were formulated in the regulations, drawing directly from the 1917

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<sup>263</sup> Gumpel argued that the 1983 Regolamento was clear in calling for the postulator to present the relator and for the relator to nominate the collaborator (cfr. P. GUMPEL, *Il Collegio dei Relatori*, 319-320). Others did not find this provision of the Regolamento to be as clear as Gumpel. Porsi relied on the canonical principle that the petitioner always bears the burden of proving his claim. Therefore, the postulator must nominate the collaborator who argues in favor of the cause (cfr. L. PORSI, *Cause di Canonizzazione*, 390). Rodrigo agreed that the postulator should nominate the collaborator, lamenting that this collaborator has been placed in a subsidiary position under the relator (cfr. R. RODRIGO, *La Figura de los Abogados*, 680). Veraja avoided the issue, emphasizing only that the postulator presents the collaborator, though the collaborator takes direction from the relator (cfr. F. VERAJA, *Le cause di canonizzazione*, 60).

<sup>264</sup> CCS, *Regolamento*, 2000, Artt. 47 §1 and 60 §2.

<sup>265</sup> CCS, *Regolamento*, 2000, Art. 49.

<sup>266</sup> CCS, *Regolamento*, 2000, Art. 62 §1. Regarding the obligation of reaching moral certitude in the 1917 code, see the argument presented in section 2.2.2.a on page 110.

code.<sup>267</sup> Neither the special pontifical law nor the regulations promulgated in 1983 made any reference to the concept of moral certitude or to the individual doubts to be treated in the Congregation.

Most of the new regulations essentially repeated the same provisions from 1983 with some elaboration or clarification. However, the new regulations entrusted the Promoter of the Faith with two rights not previously found in the 1983 regulations. First, the Promoter had the right to participate in the medical consultation regarding an alleged miracle, a provision omitted from the previous version.<sup>268</sup> Second, the previous regulations spoke of the right of the Promoter to define the theological questions to be discussed during the meeting of the theologians. However, the new regulations added the right of the Promoter to request clarifications from the postulator, through the relator, before the meeting of the theologians.<sup>269</sup> This exchange between the Promoter and the postulator is reminiscent of the 1917 code that called for the formal observations of the Promoter and the responses of the postulator or advocate to be added to each of the three *positiones* for the study of a cause. This communication between the Promoter and the postulator, called for in the 2000 regulations, was not obligatory, and was not formally inserted into the printed *positio*. However, it did constitute a limited kind of *contradictorium* through the arguments advanced by opposing parties.

#### 3.6.4 *SANCTORUM MATER* (2007)

On May 17, 2007, the Congregation of the Causes of Saints published the instruction, *Sanctorum Mater*. Just as the regulations published in 2000 reinvigorated the study of causes within the Congregation, *Sanctorum Mater* clarified many points regarding the instruction of the inquiry, reinstating certain provisions that were not explicitly addressed in the legislation of

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<sup>267</sup> CCS, *Regolamento*, 2000, Art. 62 §2 and 69 §1. See CIC 1917, can. 2104, cited in chapter 2, footnote 130 on page 119.

<sup>268</sup> CCS, *Regolamento*, 2000, Art. 85. This provision did not appear in the 1983 *Regolamento*.

<sup>269</sup> CCS, *Regolamento*, 1983, Art. 22 §3. CCS, *Regolamento*, 2000, Art. 73 §2.

1983 but which have been part of the longstanding tradition for the instruction of these causes. In this sense, *Sanctorum Mater* represented a refortification of the juridic traditions in the diocesan or eparchial inquiry.

As an instruction, it served to supplement the special pontifical legislation found in *Divinus Perfectionis Magister* and *Normae Servandae*, which continue to retain the force of law. The instruction sought to «clarify the dispositions of currently existing laws in the causes of Saints, to facilitate their application and indicate the ways of executing them both in recent and in ancient causes».<sup>270</sup> The instruction did not focus on the study of causes within the Congregation, but rather on the instruction of causes during the diocesan or eparchial inquiry.<sup>271</sup> As such, it was addressed particularly to diocesan bishops, eparchs, and those who take part in the instructional phase, treating the procedures to be observed in a chronological manner.<sup>272</sup> The detail of the instruction is evident from the text itself, as well as the length of the document. With 150 articles and an appendix, *Sanctorum Mater* is approximately five times longer than *Normae Servandae* which contains only 36 paragraphs.

*Sanctorum Mater* reintroduced several juridic terms that were not used in *Normae Servandae*. Terms such as «process», «tribunal», and even «session», absent in *Normae Servandae*, are found in *Sanctorum Mater*.<sup>273</sup> The reference to the sessions of the inquiry is important because it emphasizes the obligation of the tribunal to assemble for the formal work of gathering the proofs. The episcopal delegate always acts with the participation of the promoter of justice, who must be properly cited, and the

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<sup>270</sup> CONGREGATIO DE CAUSIS SANCTORUM, instructio: *Sanctorum Mater*, 17 maii 2007, in AAS, 99 (2007), 465-510, *prooemium*: «Praesens Instructio dilucidare intendit praescripta legum vigentium in causis Sanctorum, earum applicationem faciliorem reddere et modos eas exsequendi sive in recentioribus sive in antiquis causis ostendere». Hereafter referred to as SM. English translations of *Sanctorum Mater* are taken from the official translation approved by the Congregation.

<sup>271</sup> *Sanctorum Mater* introduced the language proper to the various Churches *sui iuris* of both the Latin and Eastern Rites, making reference to both the 1983 and 1990 codes. These references reflected the fact that the Congregation of the Causes of Saints has universal competence over causes of canonization.

<sup>272</sup> SM, *prooemium*.

<sup>273</sup> The following terms, omitted in *Normae Servandae*, are found in *Sanctorum Mater*: «*processus*» appears 7 times; «*tribunal*» appears once; and «*sessio*» appears 53 times.

notary. If no references were made to the sessions of the inquiry, it could appear that the tribunal did not need to gather in order to go about its work, permitting the collection of the proofs in an informal matter such that they could be reviewed by the promoter of justice after the fact. The instruction rejected this informal approach, highlighting the participation of the promoter of justice who emerges as a prominent figure in the instruction, since he is mentioned only four times in *Normae Servandae*, but 33 times in *Sanctorum Mater*.

The first title of *Sanctorum Mater*, regarding preliminary elements, contains some provisions that are particularly noteworthy.<sup>274</sup> The scope of the inquiry is defined as «the gathering of the proofs in order to attain moral certitude on the heroic virtues or the martyrdom of the Servant of God».<sup>275</sup> While the necessity of arriving at moral certitude was reemphasized in the 2000 regulations of the Congregation for the study of a cause during the Roman phase, this reference in *Sanctorum Mater* communicated to the local tribunal the importance of thoroughly searching out the proofs during the local instruction. This responsibility binds all the officials of the tribunal, including the promoter of justice.

The first title of *Sanctorum Mater* also made reference to the various Codes of Canon Law. When gathering documents, and especially when hearing witnesses, the provisions of the special pontifical legislation must be observed. However, the gathering of proofs was also to follow the procedural norms of the 1983 code for a diocesan inquiry, or the 1990 code for an eparchial inquiry.<sup>276</sup> The instruction also made reference to the 1917 code: «In the present Instruction, the Inquiry is equivalent to that process conducted in causes of beatification and canonization in conformity with canon law previously in force».<sup>277</sup> The reference to the 1917 code does not

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<sup>274</sup> The first title of *Sanctorum Mater*, which addresses the «preliminary elements» («*praenotanda*»), is made up of articles 1-3.

<sup>275</sup> SM, Art. 1 §2: «*Propositum quatenus ad praedictas Causas est ut probationes colligantur ad assequendam moralem certitudinem circa heroicis virtutes vel martyrium Servi Dei, cuius beatificatio et canonizatio postulantur*».

<sup>276</sup> SM, Art. 1 §3.

<sup>277</sup> SM, Art. 2: «*In praesenti Instructione Inquisitio idem valet ac processus, qui in praecedenti iure canonico instruebatur super causis beatificationis et canonizationis*». The footnote for this article cited canons 1999-2141 of the 1917 Code of Canon Law.

indicate that the provisions of the former code have reacquired the force of law. However, the connection of the current diocesan or eparchial inquiry with the former canonical processes indicates that reference can be made to the traditions that were established and codified in the prior law. While the prior norms for causes of canonization were abrogated in 1983, they continue to be a valuable point of reference that helps the norms of the present legislation to be better understood.

On February 18, 2008, the Prefect of the Congregation of the Causes of Saints, Cardinal José Saraiva Martins, gave a presentation in which he commented on *Sanctorum Mater*.<sup>278</sup> In his address, he listed four motives of the Congregation for the publication of the instruction. The first motive was found in certain misunderstandings in diocesan curias regarding some provisions of the law. Further explanation was required to correct this lack of precision. The second motive arose because some local curias lacked specifically trained personnel in the instruction of these causes. For them, the instruction served as a guide to help them apply the special law. The fourth motive was to correct those who held that the demonstration of the reputation of holiness was not required before undertaking the inquiry. The instruction placed renewed emphasis on the importance of demonstrating the existence of a widespread reputation of holiness or martyrdom and a reputation for intercessory power with respect to the servant of God.<sup>279</sup>

Of the four motives for *Sanctorum Mater* presented by Cardinal Saraiva Martins, the third deserves particular consideration. It had become apparent that some believed that the procedural approach to the canonical inquiry had been replaced entirely by historical critical methodology.

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<sup>278</sup> J. SARAIVA MARTINS, *Conferenza Stampa di Presentazione dell'Istruzione Sanctorum Mater*, 18 febbraio 2008, in URL: <<http://www.causesanti.va/content/causadeisanti/it/archivio/saraiva-martins/sm-2008.html>> (in data 16 febbraio 2015). The text is also quoted in part in other works. See also J.L. GUTIÉRREZ, *Note di commento all'Istruzione Sanctorum Mater*, in *Ius Ecclesiae*, 20 (2008), 594, and W. HILGEMAN, *Le Cause*, 308-309.

<sup>279</sup> Regarding the importance of the reputation of holiness, see the comments on the solid foundation of a cause in *Sanctitas Clarior* in section 3.4.2.a on page 174.

After the current legislation in causes of saints took effect ... the idea had spread, though without foundation, that the traditional procedural methodology employed in [these causes] had been substituted by an inquiry of a historical critical character. ... Without denying, and indeed confirming the need and the importance of rigorous historical research, which is obviously intrinsic to the collection of the proofs in a cause of canonization, the Instruction vigorously reaffirms the procedural substance of these same causes, and underscores with precision the norms that must be observed.<sup>280</sup>

The Cardinal attributed this misunderstanding, in part, to the translation of the term «inquiry» (*inquisitio*), which could give the mistaken impression in Italian that the investigation was an academic exercise rather than a canonical procedure. In this observation, Saraiva Martins clarified that Congregation did not see the canonical approach and the historical critical method as mutually exclusive. Causes of canonization are to be considered simultaneously both canonical and historical.

The promulgation of *Sanctorum Mater* provided a detailed explanation of the diocesan or eparchial inquiry and thus contributed to the improved instruction of causes of canonization. The need for this instruction indicated that problems had developed in these causes after 1983, some of which were mentioned by Saraiva Martins. However, the instruction also contributed to the understanding that causes of canonization continued to be canonical processes. *Sanctorum Mater*, like the other contributions after 1983 mentioned above, helped to reconstruct the bridge that connected the former law to the present law. While many innovations occurred in these causes during the 20<sup>th</sup> century, there also remained many aspects of continuity with the long-standing practices in causes of canonization that had developed with time and experience.

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<sup>280</sup> J. SARAIVA MARTINS, *Conferenza*, 3c: «Con l'entrata in vigore dell'attuale legislazione sulle cause dei santi ... si era diffusa l'idea, peraltro senza fondamento, che la tradizionale metodologia processuale in esse adoperata era stata sostituita da un'inchiesta di carattere storico critico. ... Senza negare, anzi confermando la necessità e l'importanza di una rigorosa ricerca storica, che è ovviamente intrinseca alla raccolta delle prove in una causa di canonizzazione, l'Istruzione ribadisce con vigore la sostanza processuale delle stesse cause, e sottolinea con precisione le norme che devono essere osservate».

### 3.7 CONCLUSION

From 1917 to the present, many changes occurred in the instruction and the discussion of causes of canonization. Those changes were motivated primarily by the scientific and technical developments that called for the modernization of an institution whose rules seemed antiquated and ill-suited to the needs of the Church in the current age. In particular, the progress of the historical critical method led many to see the potential for a great contribution to the study of these causes. The reform in causes of canonization was also motivated by the Second Vatican Council which called for many changes that had a profound impact on every aspect of ecclesial life. In the midst of these forces, the treatment of causes of canonization underwent several reforms that led to the complete revision of the law in 1983.

Throughout this historical survey, it is evident that most of these changes did not take place because of an obstacle attributed to the office of the promoter of the faith. While some frustrations were expressed with respect to the promoter, these were attributed more to the cumbersome system that required the participation of the promoter according to a predefined series of legal formalities. The changes in the law were motivated by the desire to enact positive reforms that appeared advantageous for causes of canonization. In fact, most of these reforms did not even directly mention the promoter, who continued to perform his duties with some adjustments. Some reforms appeared to have very little direct impact on the promoter of the faith.

However, the changes that were introduced did have a significant effect on the overall understanding of these causes and the approach to their instruction and discussion. Many traditional principles of canon law began to yield to the new principles of the modern scientific method that were incorporated in the new law. These transformations had a subtle but inevitable effect on the Promoter in the Congregation, as his role changed with the introduction of the Relator General and eventually the college of relators who assumed the responsibility for the preparation of the *positio*.

With this development, the classical *contradictorium* between the Promoter and the postulator was cast aside.

Nevertheless, the various reforms of the 20<sup>th</sup> century were divided between those provisions that introduced a modern scientific and historical methodology, and those that maintained or reasserted the traditional canonical approach. These two forces seemed at times to be in competition, with some even desiring to see the historical critical method definitively replace the canonical system. However, the perspective that emerged after the promulgation of the new law sought to reconcile these two perspectives. In this sense, causes of canonization could be served both by the insights offered through modern methodology and by the precision and structure of a canonical approach. The reconciliation of these two forces continues to be a work in progress, as the respective roles of the canonist and the historian are refined. In this context, the opportunity remains for a deeper appreciation of the office of the promoter of the faith and the contribution that this figure is able to make in causes of canonization.



## CHAPTER 4

### THE PROMOTER IN THE CURRENT LEGISLATION

The previous chapter addressed the historical events that affected the promoter of the faith following the promulgation of the 1917 Code of Canon Law. These events did not have as their primary goal the transformation of the office of the promoter of the faith, though the rights and responsibilities of the promoter were necessarily affected as a result of the efforts to introduce modern scientific methodology and the principles outlined in the Second Vatican Council. This historical evolution led to the promulgation of the new law governing causes of canonization in 1983. Since the purpose of this chapter is to examine the promoter under the current legislation, reference will be made to the law that is currently in force, namely *Divinus Perfectionis Magister* and *Normae Servandae*, while also considering the instruction *Sanctorum Mater* that treats the instruction of the diocesan or eparchial inquiry and the current regulations (*Regolamento*) that establish the procedures to be followed in the Congregation of the Causes of Saints.

This chapter will take the same approach as the second chapter which analyzed the office of the promoter of the faith according to the norms of the 1917 code. The use of the same topical approach will best facilitate a comparison with the present law. The treatment of the 1917 code began with the consideration of several preliminary questions, including the nature of causes of canonization, the role of the promoter, and the value of the *contradictorium* between the postulator and the promoter. Because the previous law had been abrogated and the new special legislation has reordered this material, it cannot be presumed that the same principles that were identified when studying the 1917 code will continue to remain

operative in the current law. On the basis of the law and scholarly opinion, the goal of this chapter will be to define the role, the rights, and the obligations of the promoter of the faith in the present legislation, drawing comparisons to the prior law.

In order to thoroughly treat these themes, it must be observed that the traditional role of the promoter of the faith has been divided into two separate figures in the current legislation. In the diocesan or eparchial inquiry, the duties performed by the promoter or sub-promoter of the faith are now performed by the promoter of justice. In the Congregation, one single Promoter of the Faith remains, although he now serves alongside various other figures including the Relator General and the college of relators. The sub-promoters general of the faith have been eliminated. These changes will require separate consideration of the diocesan or eparchial inquiry and the study of the cause in the Roman phase since it cannot be presumed that the promoter of justice, when collecting the proofs, has the same rights and obligations as the Promoter of the Faith, when evaluating the proofs.

#### 4.1 THE NATURE OF CAUSES OF CANONIZATION AND THE OFFICE OF THE PROMOTER

##### 4.1.1 THE LOCATION OF THE NORMS

The location of the norms governing causes of canonization in the 1917 code was relevant because the context in which they appeared could be used for the purpose of interpretation. The canons were located in the book on procedures and made several explicit references to the canons on the ordinary trial. These observations led to the conclusion that causes of canonization were treated as juridic processes that followed the pattern of the ordinary trial. However, the current special legislation for causes of canonization does not appear in the 1983 code. The apostolic constitution and accompanying norms were promulgated separately, making it difficult to apply the same arguments regarding the interpretation of causes of canonization within the context of the procedural canons of the code.

Nevertheless, there are explicit references contained in the law that do allow some conclusions to be drawn.

The 1983 Code of Canon Law and the 1990 Code of Canons of the Oriental Churches each contain a specific reference to the special pontifical legislation. The canon in the 1983 code contains two paragraphs, the first which refers to the special pontifical law and the second which defines the relationship of this special law to the code:

§1. Causes of canonization of Servants of God are governed by special pontifical law.

§2. Furthermore, the prescripts of this Code are applied to these causes, whenever the same [special pontifical] law makes reference to the universal law or whenever norms are involved that also affect these same causes by the very nature of the matter.<sup>1</sup>

The canon in the 1990 code does not contain the second paragraph, and refers only to the special pontifical law which is to be applied to the causes of servants of God.

In causes of the servants of God whereby they are inscribed among the saints, the special norms established by the Roman Pontiff are to be observed.<sup>2</sup>

In both codes, the canon appears among the procedural norms in the section on trials in general.<sup>3</sup> The reference within the universal law to the special pontifical law creates a connection between them, such that it is possible to

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<sup>1</sup> CIC 1983, can. 1403: «§1. *Causae canonizationis Servorum Dei reguntur peculiari lege pontificia.* §2. *Iisdem causis applicantur praeterea praescripta huius Codicis, quoties in eadem lege ad ius universale remissio fit vel de normis agitur quae, ex ipsa rei natura, eisdem quoque causas afficiunt*». This canon was cited in chapter 3, footnote 246 on page 224.

<sup>2</sup> CCEO, can. 1057: «*In causis servorum Dei, ut inter Sanctos referantur, servantur normae speciales a Romano Pontifice statutae*».

<sup>3</sup> In the 1983 code, canon 1403 appears in Book VII, *De Processibus*, Part 1, *De Iudiciis in genere*. In the 1990 code, canon 1057 appears in Title 24, *De Iudiciis in genere*. See L. SCORDINO, *Natura giudiziaria*, 64.

argue that other canons in the codes should also apply to causes of canonization.<sup>4</sup>

*Divinus Perfectionis Magister* and *Normae Servandae* make no direct reference to the 1983 code.<sup>5</sup> However, the local inquiry still maintains the structure of an ordinary trial since both procedures share many similarities, such as the presentation of the *libellus* to the competent authority, the appointment of officials, the collection of proofs in the form of witness testimony and documents, and the publication of the acts.<sup>6</sup> These few examples demonstrate that there is a degree of similarity between the instruction of an ordinary trial and a cause of canonization.

The connection between the codes and the special legislation is strengthened significantly by *Sanctorum Mater*, which contains 26 footnotes that refer to a canon in the Latin code with its corresponding canon in the Eastern code. Among these 26 references, 21 of them refer to procedural law. The many references to the Codes of Canon Law create a strong argument that the special legislation should be understood in light of the procedural norms in the universal law. This argument is reinforced by the first article of *Sanctorum Mater* which directly calls for the canons on procedural law to be applied during the diocesan or eparchial inquiry with respect to the gathering of documentary proofs or the hearing of witnesses.<sup>7</sup> The connections between the special pontifical law and the codes, especially the canons on procedural law, lead to the conclusion that the diocesan or

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<sup>4</sup> L. PORSI, *Cause di Canonizzazione*, 369. L. SCORDINO, *Natura giudiziaria*, 65. G. DALLA TORRE, *Santità e diritto*, 142.

<sup>5</sup> *Divinus Perfectionis Magister* and *Normae Servandae* naturally contained no references to the Code of Canons of the Eastern Churches which was not promulgated until 1990.

<sup>6</sup> G.P. MONTINI, *De Iudicio Contentioso ordinario de processibus matrimonialibus*, I. *Pars statica, ad usum Auditorum*, Roma, 2014, 56. Since *Divinus Perfectionis Magister* does not refer to either code, Montini states that there is no basis to apply their canons to causes of saints. However, because these causes are similar to the contentious judicial process, the application of the procedural canons is justified because they are related to causes of canonization by the nature of the matter (*ex ipsa rei natura*) in the sense of canon 1403 §2 of the 1983 code.

<sup>7</sup> SM, Art. 1 §3: «*Salvis particularibus praescriptionibus, in praefatis causis observandae sunt normae de processibus Codicis Iuris Canonici et Codicis Canonum Ecclesiarum Orientalium, attinentes ad modum procedendi in colligendis probationibus documentalibus ac praesertim in testibus examinandis*».

eparchial inquiry should still be considered to follow the pattern of the ordinary trial.

The support for a judicial approach to the study of a cause is less convincing with respect to the procedure observed in the Congregation. While the 1983 regulations (*Regolamento*) of the Congregation did not refer to the code, the 2000 regulations make three references to the 1983 and 1990 codes. These references deal with the oath that all postulators and vice-postulators are to take, the manner of approving additional documentary evidence presented by the postulator, and the composition of the *positio* such that the consulters and members of the Congregation can arrive at a conclusion with moral certitude.<sup>8</sup> While these references establish a limited connection with the procedural norms in the codes, this observation alone is not sufficient to prove that the study of the cause during the Roman phase necessarily follows the model of a canonical trial.

A further point of connection with the procedural norms in the codes is created by the appearance of the promoter of justice, at least in the context of the diocesan or eparchial inquiry. The promoter of justice has never before taken part in causes of canonization, even though this figure is related to the promoter of the faith since they both have a common origin in the *promotor fiscalis*.<sup>9</sup> Because the title «promoter of justice» was not found in causes of canonization before 1983, it is not possible to find a definition of his responsibilities with respect to causes of canonization in the previous law. The current special legislation does not explain the relationship between the duties previously exercised by the promoter of the faith and those now exercised by the promoter of justice. Furthermore, there is no definition regarding the office of the promoter of justice in the current special legislation. The promoter of justice does however appear in both the 1917 and 1983 codes. Absent any other authoritative source, these codes

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<sup>8</sup> CCS, *Regolamento*, 2000, Artt. 43, 59, 62. Article 43 called for the postulator and vice postulator to swear the prescribed oath, referring to CIC 1983, can. 1532 and CCEO, can. 1213. Article 59 required any supplementary documents presented by the postulator to be examined according to CIC 1983, cann. 1539-1546 or CCEO, cann. 1220-1227. Article 62 required the preparation of a *positio* suitable for arriving at moral certitude regarding the proposed doubt, referring to CIC 1983, can. 1608 and CCEO, can. 1291.

<sup>9</sup> This historical argument was treated in the first chapter under section 1.4.

provide the background necessary to understand this promoter, especially the 1983 code which was promulgated during the same year as the current norms for causes of canonization.

Even if the promoter of justice is a new figure in causes of canonization, his duties appear to be similar to those of the local promoter of the faith in the previous legislation. It is reasonable, therefore, to draw comparisons to the previous legislation when considering the individual rights and obligations of the current promoter of justice. Since the promoter of justice is treated in the procedural canons of both codes, the appearance of this promoter forges an additional point of connection between the norms for the diocesan or eparchial inquiry and the canons on the ordinary trial.

#### 4.1.2 THE CAUSE AS A TYPE OF ECCLESIASTICAL TRIAL OR ACADEMIC STUDY

In the second chapter, causes of canonization were compared to the contentious process used in the ordinary trial in the 1917 code. This comparison considered both the nature of a cause of canonization, as well as the procedure that was applied to the instruction and evaluation of the cause. The second chapter began with the definition of the ecclesiastical trial found in the 1917 code. Under the prior law, a cause of canonization could be compared to an ecclesiastical trial because it contained all the elements of this definition: (1) a matter that was within the Church's competence to treat, (2) an object of the trial which was the controversy to be resolved, (3) the presence of an ecclesiastical tribunal, (4) a legitimate debate in which contrary arguments were presented according to the norm of law, and (5) a decision that resolved the controversy.<sup>10</sup> Since there is no corresponding definition of an ecclesiastical trial in the 1983 code, the definition expressed in the former code will be used to examine the current legislation in causes

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<sup>10</sup> CIC 1917, can. 1552 §1 defined the ecclesiastical trial. This canon was mentioned in chapter 2, footnote 12 on page 83. While this text is not found in the current codes, the object of the trial, defined in canon 1552 §2 of the 1917 code, is substantially unchanged in the current codes (cfr. CIC 1983, can. 1400 §1; CCEO, can. 1055 §1). Since the object of the ecclesiastical trial has not changed, it is reasonable to appeal to the definition of the ecclesiastical trial found in the prior code.

of canonization. The special pontifical legislation still deals with causes of canonization which are within the Church's competence (*first element*). The current law continues to deal with a controversy to be resolved, i.e. whether the virtues, martyrdom, or miracles of a servant of God are proven (*second element*). The controversy is still resolved by a decision of the Roman Pontiff (*fifth element*). However, special consideration must be given to the existence of a tribunal in the current legislation (*third element*) to the presence of a legitimate debate, or *contradictorium*, in which contrary arguments are presented according to the norm of law (*fourth element*).

With respect to the diocesan or eparchial inquiry, the cause is instructed by officials who constitute what has traditionally been called a tribunal and who gather evidence according to the norm of law.<sup>11</sup> The tribunal is composed of similar officials (*third element*), even if the three judges are now replaced by a single episcopal delegate and the promoter of the faith is now called the promoter of justice. If the postulator and the promoter of justice are considered to be opposing parties, responsible for presenting contrary arguments according to the norm of law (*fourth element*), then the inquiry satisfies all the above-mentioned criteria in the definition of an ecclesiastical trial. As the current norms are discussed in this chapter, special attention must be paid to the relationship between the postulator and the promoter of justice to determine if a true *contradictorium* exists between these two figures.

With respect to the discussion of the cause in the Congregation, the presence of a tribunal and a *contradictorium* are less clearly defined. The special legislation does not refer to the Congregation as a tribunal (*third element*), nor does it continue to call for a formal debate through the written observations of the Promoter of the Faith and the responses of the postulator or advocate (*fourth element*). Rather, the *positio* is composed with the

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<sup>11</sup> The term «tribunal» was used informally in the history of causes of canonization before it was deliberately applied to the Sacred Congregation of Rites which was called upon to make judgments regarding particular servants of God (cfr. Chapter 1, footnotes 51 and 158 on pages 24 and 58). The 1917 code referred to a «tribunal» 27 times in connection with causes of canonization. While the term «tribunal» is not mentioned in *Divinus Perfectionis Magister* or *Normae Servandae*, it does appear one time in *Sanctorum Mater* (cfr. SM, Art. 61 §1).

participation of the external collaborator who works under the direction of the relator. Special attention will be given to the relationship between the collaborator and the relator to see if a *contradictorium* exists between these parties. Furthermore, it will be necessary to consider whether the Promoter of the Faith continues to stand in opposition to the cause as was the case in the former law.

After observing that causes of canonization in the 1917 code met the definition of a trial, the nature of these causes was also considered in the second chapter. After considering the ordinary trial, it was concluded that a cause of canonization could not be equated with a judicial process because it lacked a legitimate object.<sup>12</sup> Rather than resolving a dispute related to the vindication of a right, the declaration of a juridic fact, or the punishment of a delict, causes of canonization dealt with matters of divine cult that were subject to the authority of the Roman Pontiff. After examining the positions of various commentators, it was concluded that causes of canonization had a nature that was both judicial and administrative, making them *sui generis*.<sup>13</sup> While these causes did not appear to be judicial in nature, it was demonstrated that they remained judicial in form since the general procedure used in a contentious cause could be applied, with appropriate modifications, to the cause of a servant of God.

The reforms of Pius XI and Paul VI called for the increased use of scientific methodology in the instruction and study of causes of canonization, drawing upon the work of experts in the field of historical criticism. Rather than moving in a more juridic direction, the forces at work in the revision of the current legislation moved in a historical and an academic direction. In light of these changes and the abrogation of the

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<sup>12</sup> Causes of canonization do not fit into one of the defined objects of a judicial process: the vindication of a right, the declaration of a juridic fact, or the punishment of a delict. Even though there are facts in the cause that must be proven with moral certitude, the decision to beatify or canonize a particular servant of God or blessed ultimately depends on the prudent discernment of the Roman Pontiff. This was discussed in chapter 2, section 2.1.2. See also CIC 1917, can. 1552 §2; CIC 1983, can. 1400 §1; CCEO, can. 1055 §1.

<sup>13</sup> This argument was laid out in chapter 2, footnote 33 on page 89. Montini described these causes as neither exclusively administrative nor exclusively judicial (cfr. G.P. MONTINI, *De Iudicio*, 59).

former law, it seems appropriate to reconsider the nature of causes of canonization: whether a cause is still considered to be a judicial-administrative process treated according to the pattern of an ecclesiastical trial, or whether a cause is considered to be an academic study that is treated according to the scientific methodology of historical criticism.

The opinion had grown among some who worked in causes of canonization that the juridic method had become a hindrance to the study of a cause. With the promulgation of the special legislation came an increase in the use of the historical critical method. In this regard, Amore posed the question:

[Whether] today the juridic way is still the only way [that is] most secure [and] most perfect in the investigation of holiness; or whether it should not be integrated and perfected by other investigative methods of a scientific character and according to the development of modern sciences, especially in the area of historical criticism.<sup>14</sup>

Amore believed that the historical critical method was better suited than the juridic approach for the recognition of holiness, a matter that is fundamentally the domain of the theologian and the historian. Apeciti also saw the reforms as a triumph of the historical method over the canonical:

It was the overcoming of the «juridic» mentality of the Church that used to refer to a cause of canonization as a «process». It was the attribution of singular importance, not so much to the debate about the procedural model, based on testimonies (often uncertain or confused or contradictory), sometimes [constituting] a real and actual obstacle, the jealous patrimony of the devil's advocate; it was the attribution of importance to the documents and not only to those about the candidate ... but to those contemporaneous [documents], specifically the historical testimonies, [that is] the sources.<sup>15</sup>

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<sup>14</sup> A. AMORE, *Le cause dei santi*, 426: «se ancor oggi la via giuridica sia l'unica via, la più sicura, la più perfetta, nell'indagine della santità; o se non debba essere integrata e perfezionata con altri sistemi di indagine a carattere scientifico e secondo lo sviluppo delle scienze moderne, specie nel campo storico-critico». Amore wrote during the period in which the special legislation was being prepared, but before it had been promulgated in 1983.

<sup>15</sup> E. APECITI, *L'evoluzione storica*, 86: «Era il superamento della mentalità "giuridica" della Chiesa, che chiamava "processo" una causa di canonizzazione. Era l'attribuzione di singolare importanza, non tanto al dibattito sul modello processuale basato sulle

Apeciti continued his line of reasoning, preferring to suppress the procedural aspects of causes of canonization in favor of «the model of research and academic discussion».<sup>16</sup>

In response to these arguments, Porsi held that causes of canonization still retain their fundamentally juridic nature. His argument depended on an appeal to the mind of the legislator. It seemed impossible to him that the Supreme Pontiff should intend, through a few brief phrases in *Divinus Perfectionis Magister*, to throw away the jurisprudence and practice of centuries of Church history. Porsi appealed to the use of the term «cause» (*causa*) which has a technical meaning referring to a controversial matter that is canonically examined through a dialectical method. Porsi noted that the diocesan or eparchial inquiry for the gathering of the proofs continued to follow a fundamentally juridic system modeled in the current procedural law. Therefore, it would seem illogical to conclude that the Roman phase for the study of those proofs should deviate from this pattern by employing the model of an academic study.<sup>17</sup>

Gumpel criticized the approach taken by Porsi. After observing that the new legislation specifically avoided procedural language, he referred to the «specious arguments» of those authors who attempted to reintroduce procedural terminology in these causes. «Such efforts are, in my opinion, in strict contrast with the letter and the spirit of the new legislation and therefore are without value».<sup>18</sup> While Gumpel appealed to the many specialists who believed that the new legislation was wise and reasonable,

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testimonianze (spesso incerte o confuse o contraddittorie), talvolta di vero e proprio ostacolo, patrimonio geloso dell'avvocato del diavolo; era l'attribuzione di importanza ai documenti e non solo a quelli propri del candidato ... ma a quelli coevi, alle testimonianze, storiche appunto, alle fonti».

<sup>16</sup> E. APECITI, *L'evoluzione storica*, 90: «La Chiesa non considera più l'aula di un tribunale come luogo in cui ricercare la verità sulla vita di un santo, ma ricorre al modello della ricerca e della discussione accademica».

<sup>17</sup> L. PORSI, *Cause di Canonizzazione*, 370, 374, and 398. This text was written by Porsi in 1985.

<sup>18</sup> P. GUMPEL, *Il Collegio dei Relatori*, 299: «Ciò non di meno qualche autore ha tentato – con argomenti più o meno speciosi – di introdurre di nuovo il concetto e il termine del “processo” nell'ambito della nuova legislazione e di dedurre poi dalla generale dottrina sui “processi” delle applicazioni pratiche riguardanti il trattamento delle Cause. Siffatti tentativi sono al mio parere in netto contrasto con la lettera e lo spirito della nuova legislazione e quindi privi di valore».

he also acknowledged that «the law retains an important function, especially in the instructional phase, but it is not of primary importance».<sup>19</sup> In this argument, Gumpel maintained his dedication to the historical critical approach in causes of canonization, but also manifested a willingness to soften his position by acknowledging that the law had an appropriate role in the gathering of evidence.

In a commentary on the current special legislation, Veraja criticized those who advanced arguments based on an adherence to the former categories found in the previous legislation. Veraja provided an image to explain the work of revising the law in causes of canonization by comparing the previous law to a spider's web. As modifications were made, various strands were cut because they were considered unimportant or superfluous. However, at a certain point, the web could no longer support itself. The web had to be cut down and remade from the beginning.<sup>20</sup> In his commentary, Veraja did not argue that the historical method had entirely supplanted the juridic method. In fact, he described the special legislation as a new set of juridic norms that incorporated modern scientific methodology. However, he regarded this new law as substantially different from its predecessor. He emphasized this discontinuity as follows,

Since some continue to think according to the categories of the past legislation, one sometimes finds affirmations that do not precisely conform to the mind of the current legislation; in these cases, we have sought to explain the true sense of the norm in question, avoiding polemical references.<sup>21</sup>

In this quotation, Veraja avoided giving direct offense as he entered into the argument between the juridic and historical methods. Nevertheless, he remained confident that he knew the true sense of the new norms, which

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<sup>19</sup> P. GUMPEL, *Il Collegio dei Relatori*, 321 and 324: «Il Diritto conserva una funzione importante, specie nella fase istruttoria, ma non è di primaria importanza». This text was written by Gumpel in 1988.

<sup>20</sup> F. VERAJA, *Le cause di canonizzazione*, 7.

<sup>21</sup> F. VERAJA, *Le cause di canonizzazione*, 7: «Poiché talvolta si continua a pensare con le categorie della passata legislazione, capita di leggere delle affermazioni non proprio conformi alla mente della legislazione vigente; in questi casi, abbiamo cercato di spiegare il vero senso della norma in questione, evitando accenni polemicici».

implied that he could speak to the authentic interpretation of the special legislation in this regard.

In arguing that causes of canonization should continue to follow a juridic approach, Porsi appealed to the mind of the legislator by citing the juridic terms that were used by the Supreme Pontiff in the new law. However, it should also be observed that those who preferred the historical approach were also implicitly appealing to the mind of the legislator, building a case largely on conclusions drawn from the abrogation of the prior law in *Divinus Perfectionis Magister*. Nevertheless, when the Supreme Pontiff receives advice regarding the composition of a law, the intentions of those who advise him do not automatically become the intentions of the legislator unless directly affirmed by him.<sup>22</sup> For this reason, it cannot be assumed that Veraja spoke for the Roman Pontiff in this matter. The mind of the supreme legislator must be determined independently from the intentions of those who participated in the preparation of the law.

With the passage of time, a middle ground was discovered as it came to be recognized that causes of canonization benefitted from the application of both the historical and the juridic methods. Gutierrez noted the fruitlessness of debating «if a cause of canonization is a process or an administrative procedure, or if one should adopt a juridic or historical methodology in the treatment of a cause».<sup>23</sup> Rejecting those who prefer a purely juridic or a purely historical approach, Gutierrez called for a combination of both methodologies. He viewed the expert opinion of the historian as a true contribution to the study of a cause, while the jurist

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<sup>22</sup> J. OTADUY, *canon 17*, in E. CAPARROS (ed.), *Exegetical Commentary on the Code of Canon Law*, Chicago, 2004, 334. Otaduy explains that the committee that drafts the law lacks legislative power. Therefore, the reasoning of the committee cannot be assumed to be the mind of the legislator unless it is explicitly or implicitly adopted. When the legislator does not express his intentions, reference can be made to other laws issued by the legislator since it is presumed that he acts «within a coherent juridical system».

<sup>23</sup> J.L. GUTIÉRREZ, *La proclamazione della santità nella Chiesa*, in *Ius Ecclesiae*, 12 (2000), 527: «Sono convinto, in effetti, che non abbia alcun senso chiedere se una causa di canonizzazione sia un processo o una procedura amministrativa, oppure se, nella trattazione della causa, si debba adoperare la metodologia giuridica o quella storica».

contributes the system that seeks moral certitude based on the acts and the proofs.<sup>24</sup>

Writing several years after his earlier article, Porsi maintained his conclusion that causes of canonization should be treated in a juridic manner, while also expressing his acceptance of the contributions brought by the historical method. He continued to believe that it was not the legislator's intent to eliminate the *contradictorium* between the parties, but rather to give it a new form of expression. He acknowledged that the comparison of a cause of canonization to a contentious process is more difficult to make during the Roman phase.<sup>25</sup> While he believed that the *contradictorium* was indispensable, it could take on a different form by incorporating the opinions of experts in the area of historical criticism. Meinardi agreed that the instruction of a cause can take advantage of the historical critical method while still proceeding in a fundamentally juridic manner. The study of a cause in the Congregation can draw upon the contributions of the historian, but the juridic concept of moral certitude is still used when evaluating a cause and resolving a doubt.<sup>26</sup>

Scordino expanded on the arguments presented by Porsi in support of a fundamentally juridic approach to causes of canonization. The judicial process must never be considered to be an end in itself, but rather a functional means to protect the substantial rights of the parties and to reconstruct the truth. It is possible for critical science to make a valid contribution to the seriousness of the search, while useless legal formalism can prove to be a hindrance.<sup>27</sup> Scordino's approach to the juridic process is highly philosophical, since it considers the fundamental contributions that can be made by a juridic system rather than simply adhering to traditional canonical practices with unquestioning loyalty. According to Scordino, it is more likely that the legislator intended to give the former rigid process greater flexibility and elasticity. The effect of this transformation has been a reconsideration of the traditional juridic procedure and a rediscovery of its

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<sup>24</sup> J.L. GUTIÉRREZ, *La metodologia nelle cause*, 72-75 and 79.

<sup>25</sup> L. PORSI, *Natura delle "Cause dei Santi"*, 669. This text was written by Porsi in 1992.

<sup>26</sup> M.B. MEINARDI, *La natura giuridica*, 111 and 130.

<sup>27</sup> L. SCORDINO, *Natura giudiziaria*, 58-59.

fundamental purpose.<sup>28</sup> Scordino argues strongly that causes of canonization should maintain a principally juridic approach that is enriched by the contributions of the modern scientific method.

Following the publication of *Sanctorum Mater* and the presentation by Cardinal Saraiva Martins, the procedural approach to the diocesan or eparchial inquiry has been reaffirmed<sup>29</sup>. Montini draws attention to the observation in *Sanctorum Mater* that the present inquiry is equivalent to the processes that appeared in the prior legislation.<sup>30</sup> This equivalence neutralizes the argument of those who claim that the new legislation is a rejection of the canonical or procedural methodology of the past. Montini notes that it is incorrect to assume that the juridic approach is completely opposed to the historical approach. Rather, he calls for the recognition of a certain equilibrium in which the value of the juridic and scientific approaches is acknowledged and the procedural norms are recognized for their contribution to the search for objective truth.<sup>31</sup> Hilgeman sums up this debate by concluding that the procedural nature of causes of canonization has been reaffirmed while recognizing that they have a historical character as well.<sup>32</sup>

After the promulgation of the new legislation, it can be concluded that causes of canonization are both judicial-administrative and historical-critical in nature.<sup>33</sup> While some authors sought to exclude one or the other of these

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<sup>28</sup> L. SCORDINO, *Natura giudiziaria*, 48 and 60.

<sup>29</sup> Cardinal Saraiva Martins addressed the procedural approach to the diocesan or eparchial inquiry in the presentation given February 18, 2008. See chapter 3, footnote 280 on page 235.

<sup>30</sup> SM, Art. 2: «*In praesenti Instructione Inquisitio idem valet ac processus, qui in praecedenti iure canonico instruebatur super causis beatificationis et canonizationis*».

<sup>31</sup> G.P. MONTINI, *De Iudicio*, 57.

<sup>32</sup> W. HILGEMAN, *Le Cause*, 308-309.

<sup>33</sup> Causes of canonization are still considered to be juridic processes, since they are treated through a series of acts and legal formalities that are prescribed by law. See the definition given by Noval in chapter 2, footnote 10 on page 82. They are partially judicial since the instruction of the inquiry bears many similarities to the ordinary contentious trial. They are partially administrative since the a canonization is not a right that can be claimed by law, but belongs to the prudent judgment of the Roman Pontiff who renders his decision by means of a decree which is an administrative act. In arriving

qualities, the arguments that have been presented support the conclusion that both remain operative. These two qualities are not inherently contradictory, since canonical processes regularly take advantage of the contribution of expert scientific opinion.

Both of these qualities are recognizable in the diocesan or eparchial inquiry, since research is carried out by the historical commission according to the standards of historical criticism, while the inquiry follows a procedure that is still judicial in form. While *Sanctorum Mater* explicitly recognizes the juridic elements in the inquiry, these elements are not as clearly defined during the study of the cause in the Roman phase.<sup>34</sup> The legislation does not adopt an approach to the study of a cause that is plainly judicial in form, but one that has the appearance of being more historical and scientific, similar to the research that would be performed in an academic setting.<sup>35</sup> Nevertheless, some juridic elements are still present during the study of the cause in the Congregation, such as the examination of the juridic validity of the inquiry, the need for moral certitude, and the interactions of the various figures that still manifest some elements of the *contradictorium*. These elements will be considered in greater detail when exploring the evaluative phase of the cause in the Holy See.

#### 4.1.3 THE ROLE OF THE PROMOTER OF THE FAITH AND THE PROMOTER OF JUSTICE

In the second chapter, the promoter of the faith was examined according to the canons of the 1917 code. His principal duties were to safeguard the law and to protect the faith, which required him to act in the

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at his decision, the Pontiff is assisted by those who study the cause, using the modern scientific methods of historical-criticism.

<sup>34</sup> J.L. GUTIÉRREZ, *Le cause di beatificazione e di canonizzazione*, 271. Gutierrez refers to various opinions about causes of canonization, recognizing the contentious appearance in the diocesan or eparchial inquiry, but noting that the later stages appear more administrative in nature. At the end, the cause takes on a spiritual nature as the Pope prays for the guidance of the Holy Spirit when canonizing a saint. See also L. SCORDINO, *Natura giudiziaria*, 54. The present norms appear to be more administrative with some vestiges of a judicial character. The declaration of the Pope appears administrative in nature.

<sup>35</sup> L. PORSI, *Natura delle "Cause dei Santi"*, 658-659.

interest of justice and the thorough search for the truth.<sup>36</sup> He stood in the second position of the *contradictorium*, opposing the petitioner by raising any objections that he had to the cause. These observations applied to the local promoter of the faith during the collection of the proofs and to the Promoter General of the Faith in the Congregation as the proofs were studied and the cause was evaluated.<sup>37</sup> In the current legislation the promoter of justice assists during the collection of the proofs and the Promoter of the Faith in the Congregation participates in the evaluation of the proofs. The separation of these two figures requires that they be considered individually, since it cannot be assumed that they continue to exercise the same function in their respective contexts.

Beginning with the diocesan or eparchial inquiry, it must be recognized that the promoter of justice is a new figure in causes of canonization, even though he is a well-established figure in the wider field of canon law. Having evolved from the *promotor fiscalis*, the promoter of justice emerged as a significant figure in the 1917 code. The promoter of justice was called upon to act in criminal causes and in those contentious causes in which the public good could be called into question.<sup>38</sup> While some contentious causes may not involve the public good, all criminal causes for the punishment of delicts touch on the public good, since adherence to the law is itself a good that serves the interests of the Church. For this reason, commentators described the promoter of justice as «a public ecclesiastical office for the protection of justice and law».<sup>39</sup> Drawing upon the 1917 code, the promoter of justice can be described through three fundamental

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<sup>36</sup> J. NOVAL, *Commentarium*, Pars 2, 57. See the discussion regarding the duty of the promoter of the faith («*ius fidei tuentur*») in chapter 2, footnote 42 on page 91.

<sup>37</sup> See the argument presented in section 2.1.3 on page 90.

<sup>38</sup> CIC 1917, can. 1586: «*Constituatur in dioecesi promotor iustitiae et defensor vinculi; ille pro causis, tum contentiosis in quibus bonum publicum, Ordinarii iudicio, in discrimen vocari potest, tum criminalibus; iste pro causis, in quibus agitur de vinculo sacrae ordinationis aut matrimonii*».

<sup>39</sup> J. NOVAL, *Commentarium*, Pars 1, 77: «*publicus officialis ecclesiasticus pro iustitiae et legis tutela*». This definition appeared in a 1880 instruction of the Sacred Congregation of Bishops and Regulars. See SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, *Instructio*, 11 iunii 1880, n. 13: «*Unicuique curiae opus est procuratore fiscali pro iustitiae et legis tutela*». This source was quoted in Chapter 2, footnote 40 on page 91.

responsibilities: As a protector of the law, he encouraged the observance of all ecclesiastical laws. As a defender of the law, he denounced transgressions of the law to the appropriate ecclesiastical superiors. As a censor of justice, he looked after the right administration of justice, watching over the actions of the parties and the actions of the judge.<sup>40</sup> The promoter of justice speaks in favor of the truth or the observance of the law, presenting his observations or requests to the judge.<sup>41</sup>

The 1983 code provides further elaboration regarding the responsibilities of the promoter of justice, who is to act in the same types of causes as the prior code. Canon 1430 states:

For contentious causes, in which the public good can be put at risk, and for penal [causes], a promoter of justice, who is bound by office for providing for the public good, is to be constituted in a diocese.<sup>42</sup>

This canon adds to the text of the 1917 code by making explicit what was implicit regarding the duty of the promoter of justice: he is always to provide for the public good. Causes that involve the public good require greater care in order to insure that the truth is sought and justice is done.<sup>43</sup> The participation of the promoter of justice helps to insure that these goals are accomplished. The instruction, *Dignitas Connubii*, of the Pontifical Council of Legislative Texts provides an additional description of the general responsibilities of the promoter of justice. While this instruction

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<sup>40</sup> J. NOVAL, *Commentarium*, Pars 1, 77: Noval referred to the promoter of justice as the «*custos ac vindex legis et censor iustitiae*».

<sup>41</sup> M.J. ARROBA CONDE, *Diritto processuale canonico*, 6 ed., Roma, 2012, 231: «La sua risposta [del promotore di giustizia] al quesito sottopostogli dal giudice è un voto *pro rei veritate o iuxta legem*».

<sup>42</sup> CIC 1983, can. 1430: «*Ad causas contentiosas, in quibus bonum publicum in discrimen vocari potest, et ad causas poenales constituatur in dioecesi promotor iustitiae, qui officio tenetur providendi bono publico*». This canon is essentially identical to canon 1094 of the 1990 code.

<sup>43</sup> CIC 1983, can. 1532. This canon contains one example of the special care to be exercised in causes that involve the public good. In these causes, the judge must administer an oath in order to compel the witnesses to testify truthfully. While witnesses are always to tell the truth, the addition of the oath provides greater degree of security in service of the truth and the public good. The same provision appears in CCEO, can. 1213.

was issued in relation to causes of marriage nullity, the following description of the promoter is still useful for comparison:

The promoter of justice ... must take part when it involves the protection of the procedural law, especially when the matter [involves] the nullity of actions or exceptions.<sup>44</sup>

In addition to providing for the public good, the promoter of justice serves to protect the procedural law by insuring that it is validly observed.

Considering these observations from the previous and current codes, the promoter of justice is bound to protect the public good, to safeguard the observance of the law, to see to the administration of justice, and to search for the truth. These aims resonate with the traditional responsibilities of the promoter of the faith in causes of canonization, since the protection of authentic divine cult is a public good.<sup>45</sup> The Church has exercised great vigilance over the canon of saints, since these men and women are honored in the liturgy, presented as models for imitation, and recognized as true intercessors for the faithful who make known their needs in prayer. The Church wishes to honor only those whose worthiness of the title of saint is without question, lest the sanctity of the altars be compromised, and the faithful be led to imitate and pray to someone who is undeserving of this honor. The careful safeguarding of the canon of saints is unquestionably a public good because it is intimately connected to the authentic practice of the faith.

The first chapter drew attention to the fundamental duties of the promoter of the faith (to promote authentic liturgical cult and prevent abuse), as well as the practical responsibilities of the promoter (to seek the

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<sup>44</sup> PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS, instructio *Dignitas Connubii*, 25 ianuarii 2005, Città del Vaticano, 2005, Art. 57 §2: «*Promotor iustitiae ... intervenire debet ubi de lege processuali tutanda agitur, potissimum ubi res est de actuum nullitate vel de exceptionibus*».

<sup>45</sup> M. D'ALFONSO, *Alcuni Aspetti Giuridici*, 492. *Sanctorum Mater* refers to the promoter of justice as «the protector of the public good in causes of great importance» which includes causes of canonization (cfr. SM, Art. 91 §1: «*Perpenso specifico munere curatoris boni publici in causis magni momenti*»).

truth and observe the law).<sup>46</sup> The responsibilities of the promoter of justice in the present law are in complete harmony with those responsibilities that previously belonged to the promoter of the faith. In the diocesan or eparchial inquiry, the promoter of justice should recognize that he is to see to the observance of the law and to seek the truth. In so doing, he serves the greater duty to the public good by working ultimately to safeguard the integrity of the canon of saints.

Turning to the Roman phase of the cause, the responsibilities of the Promoter of the Faith in the Congregation changed significantly in the special legislation. While the purpose of the Promoter of the Faith is not explicitly defined, there are some conclusions that can be drawn from the current law. In *Divinus Perfectionis Magister*, the Promoter of the Faith is described as the Prelate Theologian.<sup>47</sup> This honorific title indicates that the Promoter is considered to be first and foremost a theologian. The emphasis on the Promoter as a theologian seems to lessen the vision of this figure as a jurist or a canonist, which was central to his duties under the former law. In its original usage, a promoter, such as the *promotor fiscalis*, was a person who could bring a canonical action in the absence of another petitioner.<sup>48</sup> However, the current legislation approaches the Promoter of the Faith less from the perspective of his canonical function as «promoter» and more from the perspective of the object of his concern, the «faith». This observation is confirmed by considering the function exercised by the Promoter of the Faith. No longer responsible for assessing the juridic validity of the local inquiry or preparing the *positio*, the Promoter of the Faith participates primarily in the evaluation of the merits of the cause with the theological consulters.

Veraja summarized the transformation of the Promoter of the Faith in comparison to the previous legislation. The Promoter was previously

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<sup>46</sup> The promotion of authentic divine cult and the importance of guaranteeing the worthiness of those proposed as saints were addressed in the first chapter. In particular, see the introduction to chapter 1 on page 9.

<sup>47</sup> DPM, 10: «*Apud Sacram Congregationem unus adest Promotor fidei seu Praelatus theologus*».

<sup>48</sup> See the treatment of this point in chapter 1 on page 43.

responsible for two duties: First, he examined causes of canonization in order to safeguard the observance of the law. Second, he expressed his objections through his observations regarding the merits of the cause to which the advocate for the cause could respond. According to Veraja, the first responsibility has passed to the Undersecretary who studies the validity of the diocesan or eparchial inquiry with the assistance of the other officials in the Congregation. The second responsibility has passed substantially to the relator who raises objections in the context of the composition of the *positio*. According to Veraja, the Promoter of the Faith retains the responsibility of proposing his observations on the merits of the cause through his judgment about the virtues, martyrdom, or miracles related to the servant of God. Veraja held that the Promoter is able to apply himself more diligently to this work, since he has been liberated from other duties and has the benefit of the *positio* whose quality is guaranteed by the expertise of the relator.<sup>49</sup>

Gumpel placed special emphasis on the positive aspects of the transformation of the Promoter of the Faith:

In the new legislation the office of Promoter General of the Faith has certainly undergone an intense change. However, one cannot speak of its depreciation or its devaluation, as some have instead wanted to suggest.<sup>50</sup>

Gumpel preferred to emphasize the contribution that the Promoter can make. Taking part in the evaluation of every cause in the Congregation, he can develop a global vision in matters pertaining to causes of canonization. His specialization allows him to contribute to the development of the theological themes in these causes.

According to Arru, the Promoter of the Faith exercised two specific functions under the 1917 code. He was responsible for the precise

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<sup>49</sup> F. VERAJA, *Le cause di canonizzazione*, 70. The first responsibility referred to classical duty of the Promoter of the Faith, *ad ius tuendum*, quoting from canon 2010 §1 of the 1917 code. The second responsibility referred to the *animadversiones* of the Promoter and the opposing *responiones* of the advocate.

<sup>50</sup> P. GUMPEL, *Il Collegio dei Relatori*, 309: «Nella nuova legislazione l'ufficio del Promotore Generale della Fede ha subito certo una forte modifica. Tuttavia non si può parlare di un suo deprezzamento o di una sua svalutazione, come taluni hanno invece voluto suggerire».

observance of the canonical norms, and he expressed his opinion on the merits of the cause. While he is no longer responsible for verifying the observance of the law, he continues to express his opinion among the theologians. Arru describes the observations of the Promoter to be related to the search for the truth (*pro rei veritate*), a function that has been given greater prominence because of the elevation of the Promoter.

The Promoter of the Faith, Prelate Theologian, therefore, no longer writes his observations, as previously, during the instructional phase or during the study of the cause, but takes a stand, expressing his own opinion and preparing the report for the meeting of the Theologians during the judgment phase on the merits [of the cause].<sup>51</sup>

The opposing observations and responses of the Promoter and the advocate have passed to the relator who has the responsibility of resolving any incongruence in the *positio* before it is printed.

It must be noted that the observations of Veraja, Gumpel, and Arru avoid a key distinction between the observations (*animadversiones*) formerly proposed during the composition of the *positio* and the opinion (*votum*) currently presented during the evaluation of the cause by the theologians. These observations or opinions are depicted as equivalent opportunities for the Promoter of the Faith to present his comments regarding the merits of the cause, either during the preparation of the *positio* or after it has been printed. However, there is an essential and qualitative difference that is overlooked. The former observations of the Promoter General of the Faith provided him the opportunity to raise objections regarding the merits in opposition to the cause, after which the advocate presented his responses. In the current law, the Promoter of the Faith is not required to present objections and the postulator does not respond to his opinion. Rather than opposing the cause, the promoter currently participates in its evaluation and can even vote in favor of the cause.

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<sup>51</sup> D. ARRU, *Il Promotore della Fede*, 140: «Il Promotore della Fede, Prelato Teologo, perciò, non scrive più, come in passato, le sue osservazioni nella fase istruttoria o in quella dello studio della causa, ma prende posizione, esprimendo il proprio voto e redigendo la Relazione al Congresso dei Teologi, nella fase del giudizio di merito».

Considering both the promoter of justice in the local inquiry and the Promoter of the Faith in the Congregation, these two figures no longer share a similar set of responsibilities. In gathering evidence related to the object of the inquiry, the promoter of justice is focused on the thorough instruction of the cause and the observance of the law. The Promoter of the Faith in the Congregation is not focused on the law, but only on the theological issues that must be resolved during the evaluation of the cause. In the previous section it was established that causes of canonization have both a juridic and a historical-critical character, both in the instruction of the inquiry and in the study of the cause.<sup>52</sup> If the responsibilities of the Promoter of the Faith in the Roman phase are primarily concerned with the critical study of the theological issues related to the merits of the cause, then the juridic issues must be addressed by others. Attention must be given to the functions performed by the Undersecretary, the Relator General and the individual relators during this phase of the cause.

#### 4.1.4 THE VALUE OF THE *CONTRADICTORIUM*

The *contradictorium* is the classical term for the dialectical process by which two parties oppose one another according to a set of defined procedural norms in a legal forum. In causes of canonization, this *contradictorium* has traditionally existed between the postulator or advocate who represents the petitioner and the promoter of the faith who represents the Church. Because the postulator or advocate argued for the cause and the promoter raised objections to the cause, these figures confronted one another within a legal construct that sought to arrive at the truth.<sup>53</sup> As commentators on the 1917 code observed, the serious obligation of the promoter of the faith to present objections to the cause earned him the moniker «the devil's advocate». As such, it was not considered to be the duty of the promoter to praise any aspect of the cause, but only to draw attention to those points that

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<sup>52</sup> See section 4.1.2 on page 252.

<sup>53</sup> The *contradictorium* was first defined in chapter 1 on page 50. The nature of the *contradictorium* between the postulator and the promoter of the faith was discussed in chapter 2, section 2.1.4 on page 93.

could hinder it.<sup>54</sup> Since the office of the promoter of the faith has been divided between the promoter of justice during the inquiry and the Promoter of the Faith in the Congregation, the participation of each of these figures in the *contradictorium* must be considered in the current legislation.

With respect to the diocesan or eparchial inquiry, there are many similarities between the instruction of this inquiry and the instruction of the former processes.<sup>55</sup> For this reason, it is not surprising that the interactions between the postulator and the promoter of justice also appear similar to the interactions of the postulator and the promoter of the faith under the previous system. While the diocesan or eparchial inquiry will be explored in greater detail in this chapter, a few examples can demonstrate this similarity. While the postulator still presents information about the servant of God in support of the petition (*libellus*), the promoter of justice bears the responsibility of preparing an interrogatory that carefully examines the details of the life of the servant of God. While the postulator still presents witnesses to be heard in support of the cause, the promoter of justice presents other witnesses *ex officio*. The postulator and the promoter of justice continue to have the common right to examine the acts before the conclusion of the inquiry, as well as the right to ask for additional proofs.<sup>56</sup> While many authors have written on the *contradictorium* in the current legislation, their comments have focused almost exclusively on the debate regarding the Roman phase. The continued existence of the *contradictorium* in the diocesan or eparchial inquiry is presumed.<sup>57</sup>

While the promoter of justice stands opposite the postulator, it is less clear whether the motives of the promoter of justice remain the same. Commentators on the 1917 code emphasized the responsibility of the promoter of the faith to present those observations that stood in the way of a

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<sup>54</sup> J. NOVAL, *Commentarium*, Pars 2, 56. This reference was quoted in chapter 2, footnote 56 on page 97.

<sup>55</sup> J.L. GUTIÉRREZ, *La metodologia nelle cause*, 77-78.

<sup>56</sup> NS 10, 15a, 16a, 27b-c.

<sup>57</sup> L. PORSI, *Natura delle "Cause dei Santi"*, 669. As one example, Porsi notes that the contentious nature of causes of canonization is less apparent in Rome. The unstated implication is that the contentious nature of the inquiry is more apparent during the diocesan or eparchial stage, because of the participation of opposing parties.

cause. However, under the current law, the promoter of justice is responsible for seeking the truth which would allow him to present observations that could be either favorable or unfavorable to the cause. If the promoter of justice is called to focus only on the search for the truth, he would remain impartial and unbiased, exploring both positive and negative elements of a cause as they arise during the inquiry. On the other hand, if the promoter of justice is called to imitate the former promoter of the faith, he would focus solely on those objections to a cause, standing in opposition to the postulator. The motivation of the promoter of justice, whether neutral or critical, will change his relationship with the postulator and necessarily have an effect on the *contradictorium*. As the role of the promoter of justice is further explored in the special legislation, attention must be given to the ways in which the promoter of justice can fulfill these two functions by searching for the truth and raising objections to the cause.

While the presence of the *contradictorium* is more evident in the diocesan or eparchial inquiry, it is difficult to clearly identify the adversarial elements in this dialectical process when the cause is studied in the Congregation. The observations of the Promoter of the Faith and the responses of the advocate have disappeared, as the Promoter of the Faith receives the cause for study only after the *positio* has been completed. In the current law, the Promoter of the Faith does not participate in a formal *contradictorium* with an opposing party, but rather presents his opinion regarding the cause when it is evaluated by the theologians.<sup>58</sup> As the Roman phase is studied, it must be considered whether the Promoter of the Faith exercises even an informal role in the *contradictorium*.

Apeciti praises the change in the vision of a cause in procedural terms.

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<sup>58</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 247. R. RODRIGO, *La Figura de los Abogados*, 689. Rodrigo laments the loss of the *contradictorium* which he regards as necessary in any true process.

The Church no longer considers the tribunal hall as the place to search for the truth of the life of a saint, but turns to the model of research and academic discussion.<sup>59</sup>

For Apeciti, it is the relator who searches for the truth according to the rules of historical criticism.

Ultimately, the relator takes the place of both the defense advocate and the promoter of the faith: therefore the responsibility of demonstrating the martyrdom or the heroic virtues of the candidate falls on him alone.<sup>60</sup>

Apeciti entrusts a significant responsibility to the individual relators who are bound to thoroughly consider all arguments for and against the cause. While this approach calls for the consideration of opposing arguments, it is not a true *contradictorium* since it does not call for separate people to take up the arguments for and against the cause. According to Apeciti, the dialectical process for the weighing of the contradictory arguments occurs only within the mind of the relator. Even when the cause is later discussed in the gatherings of the theologians, and the bishops and cardinals, two contrasting arguments are not presented, but only the single *positio* prepared by the relator.

Other authors have focused on the participation of the external collaborator. After considering the new legislation, some began to see signs of the *contradictorium* in the relationship between the collaborator and the relator.<sup>61</sup> The special legislation is silent on this point, referring only to the relators who are «to study the causes entrusted to them, together with collaborators from outside the Congregation».<sup>62</sup> To the extent that the collaborator and the relator represent two different sides, one attentive to the

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<sup>59</sup> E. APECITI, *L'evoluzione storica*, 90: «la Chiesa non considera più l'aula di un tribunale come luogo in cui ricercare la verità sulla vita di un santo, ma ricorre al modello della ricerca e della discussione accademica». This passage was also cited in footnote 16 on page 248.

<sup>60</sup> E. APECITI, *L'evoluzione storica*, 90: «In definitiva il relatore prende il posto sia dell'avvocato difensore sia del promotore della fede: solo su di lui cade allora la responsabilità di dimostrare il martirio o la virtù eroica del candidato».

<sup>61</sup> M.B. MEINARDI, *La natura giuridica*, 119.

<sup>62</sup> DPM, 7, 1°: «*Singulorum Relatorum est: 1° una cum externis cooperantibus causis sibi commissis studere atque Positiones super virtutibus vel super martyrio parare*».

interests of the postulator and the other to the interests of the Church, it could be argued that there is a kind of *contradictorium* in this relationship.

Scordino argues that the current legislation contains a new form of the *contradictorium*, expressed in the specialized competencies of those who participate in the study of a cause. No longer based on the formal observations and responses of the Promoter of the Faith and the advocate, the *contradictorium* takes place during the redaction of the *positio*. A different kind of working relationship is established between the collaborator and the relator. According to Scordino, the collaborator, who is nominated by the postulator, is naturally attentive to the postulator's desire to promote the cause. Nevertheless, both the collaborator and the relator share the same commitment to search for the truth.<sup>63</sup>

Porsi focuses on the *contradictorium* between the postulator and the relator. While the postulator nominates the collaborator who assists in the preparation of the *positio*, it is the postulator who bears the responsibility of proving his case.<sup>64</sup> Both the postulator and the relator share the common responsibility of searching for the truth by clarifying obscure points, filling in holes, and illustrating complex questions. Yet, these two figures do not approach this common responsibility from the same perspective. The postulator, who is favorable to the cause, works with an eye toward proving the existence of martyrdom, heroic virtue, or miracles. The relator also works to arrive at the truth, but from a different perspective since it is not his responsibility to prove the assertions of the postulator. Porsi argues that the relator should function in opposition to the postulator by proposing difficulties, such that the evaluation of the cause may be more secure.

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<sup>63</sup> L. SCORDINO, *Natura giudiziaria*, 30, 84, 96, and 103. Scordino believes that the collaborator is at the disposition of the postulator who nominated the collaborator.

<sup>64</sup> CIC 1983, can. 1526. It is a general principle of law that the responsibility for proving an assertion rests with the one who makes it. If the postulator is qualified, he or she can assist directly in the composition of the *positio* without the nomination of a separate external collaborator.

It is good that the one who must express a judgment on the merits knows distinctly the thoughts and argumentation of the one who promotes the cause and of the one who, instead, has the duty to criticize it.<sup>65</sup>

Porsi continues to see the *contradictorium* as essential to the work of the Congregation. Far from abolishing the *contradictorium*, he considers the new law to have adapted its exercise to render it more modern and agile, eliminating those former elements that were excessively cumbersome and artificial.<sup>66</sup> During the detailed examination of the Roman phase for the study of the cause, it will be necessary to consider both the existence and the nature of the *contradictorium*, taking into account the roles of the postulator, the relator, and the external collaborator.

#### 4.1.5 THE STAGES OF THE PROCESS

In the second chapter, the stages of the process were explained according to the 1917 code. These procedures went through many modifications before the current special legislation was promulgated. The history of these reforms was described in the third chapter. Before considering the current procedures in detail, it is useful to review them in summary form. In comparison to the previous law, the current process is simpler and more linear, beginning with the local instruction of the diocesan or eparchial inquiry and then proceeding to the study of the merits of the cause within the Congregation.

In the diocesan or eparchial inquiry, the process can be divided into specific phases on the basis of the special norms. The first phase is preliminary as the petitioner, the postulator, and the competent bishop are identified. During this phase, it is the responsibility of the petitioner and the postulator to assemble the information that will justify the initiation of the cause when the petition is presented to the bishop. This phase is informal

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<sup>65</sup> L. PORSI, *Cause di Canonizzazione*, 392-393: «È bene che chi deve esprimere un giudizio di merito conosca distintamente il pensiero e le argomentazioni di chi promuove la causa e di chi, invece, ha il compito di criticarla».

<sup>66</sup> L. PORSI, *Natura delle "Cause dei Santi"*, 664-665.

and does not require the participation of any promoter of justice.<sup>67</sup> Once the petition of the postulator has been evaluated and accepted by the bishop, a consultative phase begins in which he seeks the opinion of the episcopal conference and publishes the petition, or edict, in which he invites the faithful to bring forward any useful information they may have.<sup>68</sup> After this consultation, the bishop must evaluate whether there are any obstacles that would block the cause, or whether the cause may proceed to the next phase.<sup>69</sup> While the previous norms called for the appointment of a promoter of the faith before the publication of the edict, no participation of any promoter of justice is foreseen during this consultative phase, nor is any promoter called upon to give his opinion to the bishop regarding any obstacles that have been uncovered.<sup>70</sup> If the cause is to proceed, the bishop appoints two theological censors to examine the published writings of the servant of God.<sup>71</sup> Presuming a favorable vote from the theological censors, the bishop is to appoint historical experts who gather the unpublished writings of the servant of God and all other documentation that pertains to the cause.<sup>72</sup> Unlike the previous norms that called for the promoter of the faith to be heard before the appointment of any experts, no participation of any promoter of justice is required while the theological censors and historical experts perform their duties.<sup>73</sup>

After the historical commission has completed its work, all the information that has been gathered from the postulator, the episcopal conference, the faithful, the theological censors, and the historical experts is to be given to the promoter of justice for the preparation of the

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<sup>67</sup> NS, 1-10.

<sup>68</sup> NS, 11.

<sup>69</sup> NS, 12. This norm calls for the bishop to evaluate the information he has received after consulting with the episcopal conference and the faithful. If an obstacle has been discovered, the cause stops while the bishop brings the obstacle to the attention of the postulator to see if it can be overcome. If there is no obstacle, the bishop proceeds to the next step by appointing the theological censors.

<sup>70</sup> Regarding the participation of the promoter of the faith in the publication of the edict under the 1917 code, see chapter 2, footnote 70 on page 103.

<sup>71</sup> NS, 13.

<sup>72</sup> NS, 14.

<sup>73</sup> The role of the promoter of the faith in the nomination of experts was addressed in chapter 2 on page 108.

interrogatory.<sup>74</sup> This duty is the first required action of the promoter of justice during the inquiry. From this point forward, the promoter of justice regularly participates in the remaining steps of the process from the hearing of the witnesses to the conclusion of the inquiry.

While the special legislation requires inquiries to follow this specific chronological order, it is possible to begin hearing witnesses before the work of the theological censors and the historical commission is complete.<sup>75</sup> Witnesses may be heard if it is foreseen that a delay might result in the loss of their testimony.<sup>76</sup> In this circumstance, the bishop can issue letters of appointment for the officials of the inquiry, including the promoter of justice, immediately after accepting the petition.<sup>77</sup> The witnesses can be heard by the officials after they take their respective oaths. In this case, the promoter of justice would not have the reports from the theologians and the historians to assist him when composing the interrogatory. This fact will cause the questions in the interrogatory to be more generic, insofar as they would have been composed only on the basis of the limited information available to the promoter at that time.

Following the instruction of the diocesan or eparchial inquiry, the procedures to be observed during the study of the cause in the Congregation are outlined in *Divinus Perfectionis Magister*.<sup>78</sup> First, the validity of the

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<sup>74</sup> NS, 15a.

<sup>75</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 204. Gutierrez notes that the time required for the theological censors and the historical commission to complete its work can be significant, resulting in a notable delay before the witnesses are heard.

<sup>76</sup> NS, 16a: «*Si vero urgeat examen testium ne pereant probationes, ipsi interrogandi sunt etiam nondum completa perquisitione documentorum*». This practice is often referred to as hearing witnesses «lest proofs be lost» («*ne permeant probationes*»). The roots of this practice are found in the 1917 code which required the publication of the decree of non-cult before the letters could be sent ordering the instruction of the apostolic process. However, if there was danger that witness testimony could be lost, it was possible to order the apostolic process before the decree of non-cult was published. Nevertheless, these steps took place after the local bishop had already ordered the instruction of the ordinary processes in which witnesses were heard. See CIC 1917, can. 2087.

<sup>77</sup> CCS, *Le Cause dei Santi*, 277. It is common for the officials to be nominated and to take their oaths after the petition has been accepted, even if the hearing of witnesses is delayed by the intervening work of the censors and historical experts.

<sup>78</sup> DPM, 13, 1°-5°. The five items in this paragraph outline the five general steps to be observed.

diocesan or eparchial inquiry is studied under the direction of the Undersecretary. Second, the *positio* is prepared under the direction of the assigned relator. Third, when the cause is ancient or when circumstances require it, the Relator General convenes the historical consulters to examine the sufficiency and the authenticity of the documentary evidence. Fourth, the Promoter of the Faith convenes the theological consulters to examine the merits of the cause. Fifth, the *positio* and the opinions of the various consulters are examined by the cardinal and bishop members of the Congregation. In the case of an alleged miracle, the *positio* is not reviewed by the historical consulters, but it is subjected to the examination of scientific experts before it passes to the theological consulters.<sup>79</sup>

While the Promoter General of the Faith, under the prior legislation, had the right to intervene at any stage in the study of a cause, the number of interventions by the Promoter of the Faith is notably reduced in the current legislation. His principal duty takes place after the *positio* is prepared, when he leads the discussion of the cause in the meeting of the theological consulters. Finally, the Promoter of the Faith still participates in the meeting of the cardinal and bishop members, though without the right to vote.<sup>80</sup>

#### 4.2 THE ROLE OF THE PROMOTER OF JUSTICE IN GATHERING THE PROOFS

In the second chapter, the role of the promoter of the faith was examined in the context of the collection of proofs during the ordinary and apostolic processes. This chapter will consider the specific rights and obligations of the promoter of justice in the context of the diocesan or eparchial inquiry. Following the same approach, the duties of the promoter of justice can be organized according to the same two fundamental goals. As a person who promotes the observance of the law, he works to insure that

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<sup>79</sup> DPM, 14, 1°-2°. The scientific experts are generally physicians, though circumstances may require that other qualified experts be chosen according to the nature of the alleged miracle.

<sup>80</sup> CCS, *Regolamento*, 2000, Art. 79.

the acts are legitimate. As a person who seeks the truth, he works to insure that the proofs are complete. These goals remain in harmony with the fundamental duty of the promoter of justice to protect the public good.<sup>81</sup> However, in light of the observations made earlier in this chapter, it cannot be assumed that the promoter of justice serves the same function as the former promoter of the faith with respect to the gathering of the proofs. Unlike the promoter of the faith who was previously required to raise objections in opposition to the cause of canonization, the present norms do not require the promoter of justice to raise objections, but rather to seek the truth. In light of this observation, the current norms must be examined to more precisely define the nature of the dialectical relationship between the promoter of justice and the postulator.

The traditional dynamic of the *contradictorium* brings together the first and second parties in an adversarial relationship in which the second party opposes the petition of the first party. If the promoter of justice is only concerned with the observance of the law and the search for the truth, he would have the appearance of a neutral figure who remains strictly impartial. Leaving aside causes of canonization for a moment, it can occur that the promoter of justice intervenes as an impartial third party in an ordinary contentious cause. When the two opposing parties raise a question that involves the application or the interpretation of a law, the judge can call upon the assistance of the promoter of justice to offer his opinion regarding the disputed point.<sup>82</sup> In this case, the promoter of justice functions as an impartial figure concerned only with the search for the truth or the correct observance of the law. This promoter of justice is *super partes*, that is, not taking the side of either party. In offering his opinion, the promoter of justice provides a service for the judge who must resolve the principal dispute and any incidental questions that arise during the trial.

Returning to causes of canonization, this model of the promoter of justice, as the impartial third party, is problematic. If the promoter of justice does not assume the second position in the *contradictorium* by opposing the

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<sup>81</sup> The duties of the promoter of justice were addressed in section 4.1.3.

<sup>82</sup> M.J. ARROBA CONDE, *Diritto processuale canonico*, 231.

cause, there is no other figure in the norms that can serve this function. In such a case, there would not be a dialectical process between two opposing parties. Instead, there would be only one party, the postulator, who is favorable to the cause, while the promoter of justice and the episcopal delegate would remain neutral. Without a conflict between two opposing parties, there would not be any disputed points that would arise through a dialectical process. Therefore, the episcopal delegate would not need the promoter of justice to advise him regarding a debated fact or point of law.

In such a case, the promoter of justice would stand alongside the episcopal delegate during the inquiry, advocating for the public good, the thorough search for the truth, and the observance of the law. However, the episcopal delegate shares these same objectives as an impartial official responsible for gathering the proofs.<sup>83</sup> If the promoter of justice and the episcopal delegate both work for the same purpose, it would appear that the promoter of justice would be called simply to remind the episcopal delegate regarding his duty. The promoter of justice would not seem to exercise a unique function that is substantially distinguished from the function of the episcopal delegate. In this circumstance, it would not be difficult to imagine that the role of the promoter of justice might be considered superfluous and his participation redundant.

The model of the impartial promoter of justice is also problematic with respect to his interaction with the postulator. If the promoter of justice is a neutral party in the inquiry who is interested only in the truth, he would have the right to inquire about both favorable and unfavorable elements of the cause. In this case, the promoter of justice might help clarify positive elements about the cause, essentially taking the same side as the postulator in the inquiry. If the promoter of justice were to become convinced of the

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<sup>83</sup> M.J. ARROBA CONDE, *Diritto processuale canonico*, 223: «La loro funzione [del promotore di giustizia e del difensore del vincolo] consiste nella salvaguardia dell'ordinamento giuridico, attraverso la tutela del bene pubblico. In questo coincidono con il giudice». While the functions of the promoter of justice and the judge are distinct, they share a common purpose because they both work to serve the interests of justice and the public good.

The episcopal delegate is required to see to the thoroughness of the inquiry (cfr. NS, 27a), and is required to attest to the observation of the law in a letter transmitted to the Congregation (cfr. NS, 31c).

truth of the heroic virtues, the martyrdom, or the miraculous intercession of the servant of God, he might deliberately accentuate those proofs that support the cause, even arguing vigorously on its behalf. In this circumstance, the *contradictorium* would collapse since there would be two parties agreeing on the same position rather than opposing one another. Without an opposing voice, the instruction of the cause might fail to carefully explore any contrary arguments, leaving the work of the inquiry essentially incomplete.

These arguments demonstrate that the vision of the promoter of justice as a purely impartial figure is problematic in causes of canonization. Among the figures who participate in the diocesan or eparchial inquiry, the promoter of justice is the only figure who can perform the opposing function in the *contradictorium*. Therefore, it would appear desirable, at least for the sake of the *contradictorium*, that the promoter of justice should be the party to raise objections to the cause.

While the norms do not explicitly require the promoter of justice to oppose the cause, recourse can be made to the other canonical texts that oblige him, by the nature of his office, to protect the common good.<sup>84</sup> Since the protection of the integrity of the canon of saints is a public good, it becomes the responsibility of the promoter of justice to oppose the canonization of any servant of God whose virtues or martyrdom and miraculous intercession are not proven.<sup>85</sup> From this perspective, it is appropriate for the promoter of justice to be attentive to the defects that are discovered in a cause. In his search for the truth, the promoter can probe these weak points through his choice of witnesses, through the composition of the interrogatory, and through his *ex officio* questions. If the promoter of justice, in his search for the truth, works to identify any objections to a cause, a clearer *contradictorium* would be created between the favorable

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<sup>84</sup> The reference to the common good is mentioned in canon 1430 of the 1983 code, as referenced in footnote 42 on page 255. The same reference is found in canon 1094 of the 1990 code.

<sup>85</sup> The connection between the common good and the protection of liturgical cult was made on page 257.

postulator, the objecting promoter of justice, and the impartial episcopal delegate.

In light of the current law, it must be considered whether the promoter of justice can be responsible both for seeking the truth and objecting to the cause. This question was addressed by Pius XII and John Paul II in two addresses to the Roman Rota. Reflecting on an address by Pius XII, Di Bernardo states,

The *contradictorium* cannot be understood as a simple contraposition of interests, but must be considered and treated as an authentic collaboration in the search for the truth.<sup>86</sup>

Therefore, each party in the *contradictorium* shares the responsibility to search for the truth, including the party that must oppose the petitioner. John Paul II makes this clear in his address as he stated,

To help this delicate and important work of the judges, the “defenses” of the Advocates, the “observations” of the Defender of the Bond, [and] the possible opinion of the Promoter of Justice are ordered. Even these must serve the truth when performing their duty so that justice may triumph, the first in favor of the parties, the second in defense of the bond, the third in examining the law.<sup>87</sup>

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<sup>86</sup> E. DI BERNARDO, *Il Cardinal Roberti*, 241: «Il contraddittorio non può essere inteso come una semplice contrapposizione di interessi, ma deve essere ritenuto ed affrontato come un'autentica collaborazione alla ricerca della verità». Di Bernardo reflected on the address of Pius XII to the Roman Rota in 1944. In this address, Pius XII describes the responsibility of each of the officials who participate in the work of the tribunal, describing their common search for the truth. When treating the promoter of justice, the Pontiff notes that the promoter may be arguing in favor of an annulment for the sake of the public good, while the defender of the bond must oppose the annulment. Even though these two figures take opposite sides in the cause, they are united in their request that the judge make a decision that corresponds to the truth. See PIUS PP. XII, *Allocutio*, 2 octobris 1944, in AAS, 36 (1944), 281-290, n. 2c: «poiché ambedue, nonostante l'apparente opposizione, pongono in fondo al giudice la medesima richiesta: di emettere un giudizio secondo la verità e la realtà dello stesso fatto oggettivo».

<sup>87</sup> IOANNES PAULUS PP. II, *Allocutio*, 4 februarii 1980, in AAS, 72 (1980), 172-178, n. 5: «Ad aiutare quest'opera delicata ed importante dei giudici sono ordinate le “defensiones” degli Avvocati, le “animadversiones” del Difensore del Vincolo, l'eventuale voto del Promotore di Giustizia. Anche costoro nello svolgere il loro compito, i primi in favore delle parti, il secondo in difesa del vincolo, il terzo in “*iure inquirendo*”, devono servire alla verità, perché trionfi la giustizia». This quote addresses causes of matrimonial nullity in which the defender of the bond performs the opposing

From these observations, it can be concluded that the obligation to seek the truth is not the sole responsibility of the judge. Each party shares in this responsibility according to his or her own rights and duties.<sup>88</sup> Applying these observations to causes of canonization, the postulator, even in his or her work to promote a cause of canonization, must collaborate with the Church in the search for the truth.<sup>89</sup> Standing in the first position of the *contradictorium*, the postulator naturally wants to call attention to the evidence that is favorable to the cause, though he or she must not conceal any evidence that is unfavorable. Turning to the promoter of justice, there would also be no contradiction if he focused on the objections to a cause for the sake of the public good, while also seeking the truth.<sup>90</sup> Nothing prevents him from standing in the second position of the *contradictorium* by highlighting the evidence that is contrary to the cause, in the context of an inquiry that seeks the truth regarding the candidate's holiness. While it is argued that the promoter of justice should function as the party opposed to the cause, he is not necessarily held to the same strict role fulfilled by the promoter of the faith in the previous legislation.<sup>91</sup>

As the individual responsibilities of the promoter of justice are considered, attention must be given to his fundamental duty to see to the observance of the law and to search for the truth. In searching for the truth,

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function and the promoter of justice remains an impartial third party in favor of the law. Each of these parties must still serve the truth. Therefore, it is not contradictory for the promoter of justice in causes of canonization to stand in opposition while also serving the interests of the truth.

<sup>88</sup> E. DI BERNARDO, *Il Cardinal Roberti*, 241.

<sup>89</sup> R. RODRIGO, *La figura del postulatore nelle cause dei santi secondo la nuova legislazione: diritti e doveri*, in *Monitor Ecclesiasticus*, 111 (1986), 215. A. MITRI, *De figura juridica*, 99. The postulator must take an oath to tell the truth during the inquiry.

<sup>90</sup> Z. GROCHOLEWSKI, *La Certezza morale*, 444. Grocholewski made an observation about the defender of the bond that could be applied to the promoter of justice. The defender of the bond is obliged to oppose the petitioner and bring arguments against nullity of the marital bond. However, he has a juridic and moral obligation to maintain a personal orientation conformed to the truth and to the law. In this, he shares in the common responsibility to act *pro rei veritate*. This argument could also be applied to the promoter of justice in causes of canonization.

<sup>91</sup> Under the 1917 code, Noval provided a description of the promoter of the faith as a severe figure who was strictly bound to focus only on those obstacles that existed to a cause. See J. NOVAL, *Commentarium*, Pars 2, 56, quoted in chapter 2, footnote 56 on page 97.

the promoter of justice should remain attentive, for the sake of the common good, to those obstacles that he may uncover. Standing in opposition to the postulator, he should recognize that he acts for the good of the Church, and that his careful efforts to identify any weak points related to the cause will ultimately contribute to the thorough and complete instruction of the inquiry.

#### 4.2.1 INSURE THAT THE ACTS ARE LEGITIMATE

##### 4.2.1.a *The citation and presence of the promoter*

By means of the citation, the promoter of justice is summoned to the sessions that are held during the instruction of the diocesan or eparchial inquiry. Since the promoter of justice is responsible for seeing that the law is observed, his citation and his regular presence at the sessions serve to guarantee the legitimacy of the acts. The citation of the promoter of the faith was required for validity under the 1917 code. In the current law, however, the obligation to cite the promoter of justice has been significantly lessened. Paragraph 16b of *Normae Servandae* does not speak of the «citation» of the promoter, but it does refer to his presence:

The promoter of justice is to be present at the examination of the witnesses. If, however, he was not present, the acts are to be submitted afterwards for his examination so that he can make his observations and propose anything which he judges to be necessary and opportune.<sup>92</sup>

While the presence of the promoter of justice is still obligatory, this norm seems to anticipate his possible absence, allowing him to fulfill his function by examining the acts after the fact. The text of this norm would technically permit the promoter of justice to be absent for every session of the inquiry, provided that he examined the acts and had an opportunity to make his observations and proposals regarding the cause. Such a promoter of justice

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<sup>92</sup> NS, 16b: «*Examini testium adsit promotor iustitiae: quodsi idem non interfuerit, acta postea eius examini subiciantur, ut ipsemet animadvertere ac proponere possit quae necessaria et opportuna iudicaverit*».

would fulfill the letter of the law, though he would not meet the spirit of the expectation expressed in the norms.<sup>93</sup>

If the promoter of justice is not present at a session, the norms anticipate that he will still be able to perform his function by examining the acts. If some action should occur that is contrary to the special legislation, the promoter could lodge an objection, asking that the error be corrected. If some detail emerges that should be verified, the promoter could ask that an additional corroborating witness be heard. However, without the participation of the promoter of justice during a session, the instruction of the cause would be impoverished since he would not have had the opportunity to pose *ex officio* questions during the witness's testimony.

The provisions of *Normae Servandae* are significant not only because of what they expressly contain, but also because of the terminology that is omitted from the text. First, paragraph 16b does not use the term «citation» or «session». Under the 1917 code, the promoter of the faith received a citation to appear at a session of the tribunal. The citation informed the promoter of the faith that the tribunal would gather in a specific place on a particular date and time to continue the work of instructing the process. The promoter was to be present in order to fulfill his duties. Because the acts were sealed between sessions, the formality of opening a session also literally meant the opening of the acts to allow for new proofs to be added or for existing information to be examined. The closing of the session also meant that the work of the tribunal had temporarily ended as the acts were once again sealed to protect their integrity.<sup>94</sup> The current norms refer neither

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<sup>93</sup> Even under the 1917 code, some commentators lamented the liberties that were taken with respect to the presence of the defender of the bond in causes of marriage nullity. The defender of the bond had to be cited for validity, though if he was absent for some acts («*aliquibus actibus*»), he had to examine the respective acts afterwards. Dolan reproved those who sought to take advantage of this provision to justify the defender's regular absence during the process. See J.L. DOLAN, *The defensor vinculis*, 36: «However to understand this canon to mean that the *Defensor* can be absent from all the sessions of the trial, ... seems to misinterpret the canon. The words "*aliquibus actibus*" cannot be given so wide an extension without doing violence to the essential meaning of the word "*aliquibus*"» (cfr. CIC 1917, can. 1578). Similarly, it would be a misinterpretation of *Normae Servandae* to argue that the promoter of justice need not be present for the sessions of the diocesan or eparchial inquiry.

<sup>94</sup> This point was addressed in chapter 2. See page 106.

to the citation of the promoter of justice nor to the sessions of the inquiry, leaving the impression that the examination of the witnesses is somewhat less formal. When the promoter of justice is absent, the acts are to be submitted for his examination later, giving the impression that the acts can be accessed at any time, and not necessarily within the context of a formal session. On the contrary, the presence of the promoter of justice helps to confirm the legitimacy of the acts which are certified by his signature and his seal.<sup>95</sup>

Paragraph 16b also does not use the term «validity». Since the norm does not refer to the presence of the promoter of justice for the validity of the session, the failure to cite him and his absence at the session does not appear to constitute a significant obstacle. Rather than declaring the session invalid, the norm simply calls for the acts to be submitted to the promoter of justice for his subsequent examination. When the inquiry is examined in the Congregation, the observance of the norms will be considered before the decree of juridic validity is issued.<sup>96</sup> However, even at this stage, as long as it is demonstrated that the acts were presented to the promoter of justice before the inquiry was concluded, the minimum requirement of the law has been met for the validity of the inquiry.

*Sanctorum Mater* clarifies these points. The presence of the promoter of justice is emphasized because of his importance to the instruction of the inquiry:

Since his specific function is to be the protector of the public good in causes of great importance, the Promotor of Justice must participate, in an active and methodical manner, with physical and continuous presence, at all the

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<sup>95</sup> The promoter of justice is invited to send a letter to the Congregation at the end of the inquiry in which he testifies to the legitimacy of the acts (cfr. SM, Art. 148). If the promoter was not present at various sessions, he would not be in a position to personally guarantee that the law was faithfully observed.

<sup>96</sup> The Congregation issues, by decree, a «declaration on the juridic validity of the inquiry». See CCS, *Le Cause dei Santi*, 320: «Le dichiarazione sulla validità giudica dell'Inchiesta riguarda la sua struttura procedurale». However, the special law does not use the term «validity», speaking only of the verification that the law has been observed during the instruction (cfr. DPM, 13, 1°).

single Sessions of the Inquiry, and in direct collaboration with the Episcopal Delegate.<sup>97</sup>

In this article, the importance of the promoter of justice is directly connected to his general duty to protect the public good. Far from being optional, the promoter is to take an active part in the inquiry next to the episcopal delegate. The expectation is that the promoter should participate personally in each and every session. The article goes on to state that «the Promotor of Justice may be absent only for grave reasons and this must be recorded in the acts of the relative Session of the Inquiry».<sup>98</sup> This provision reminds the promoter of justice that he should not lightly excuse himself from the sessions, but rather requires him to justify his absence by documenting the reason in the acts. *Sanctorum Mater* also reintroduces the language of «citation» and «session» into the inquiry. Under the title «Citations for the Sessions», the instruction indicates:

The place and time of the Sessions are to be communicated in ample time to the Promotor of Justice, the Notary or the Adjunct Notary and to the witnesses that are called to testify.<sup>99</sup>

In addition to this article, *Sanctorum Mater* contains 42 references to the sessions of the inquiry. When the episcopal delegate cites the promoter of justice and the notary (or adjunct notary), he summons the officials of the tribunal who must be present for the sessions of the inquiry.<sup>100</sup> By their presence, the episcopal delegate, the promoter of justice, and the notary serve to protect the legitimacy of the acts. The promoter of justice is particularly required to see that the law is observed.

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<sup>97</sup> SM, Art. 91 §1: «*Perpenso specifico munere curatoris boni publici in causis magni momenti, Promotor Iustitiae tenetur actuose et methodice participare, cum praesentia physica et continua, omnes singulas sessiones Inquisitionis, et in cooperatione immediata cum Delegato Episcopali*».

<sup>98</sup> SM, Art. 91 §3: «*Si occurrerit absentia Promotoris Iustitiae, quae dari potest tantum gravibus de causis, apparere debet in actis respectivae Sessionis Inquisitionis*».

<sup>99</sup> SM, Art. 85 §1: «*Sedes et hora Sessionum utili tempore notae fiant Promotori Iustitiae, Notario vel Notario Adiuncto et testibus vocatis ad deponendum*». This article appears under Part 5, Title 3 of the instruction: «*De citationibus ad sessiones*».

<sup>100</sup> R. RODRIGO, *Manuale delle cause*, 61. In addition to these three central figures (the episcopal delegate, the promoter of justice, and the notary) there is added a medical or technical expert when investigating an alleged miracle (cfr. SM, Art. 92 §2).

#### 4.2.1.b Oaths and secrecy

*Normae Servandae* makes reference to the use of oaths during the inquiry. The norms require all officials who participate in the cause to «take an oath to fulfill faithfully their duty, and maintain secrecy».<sup>101</sup> Furthermore, the witnesses are to give their testimony, confirming its truthfulness by an oath.<sup>102</sup> In contrast with the 1917 code, *Normae Servandae* does not require the officials to promise under oath that they would not accept gifts. Furthermore, *Normae Servandae* mentions neither the oath of the witnesses to maintain secrecy, nor the oath of the postulator or vice-postulator to speak the truth and not to defraud others. Furthermore, no oaths in the present legislation bind under threat of excommunication *latae sententiae*.<sup>103</sup> *Sanctorum Mater* provided clarifications regarding those who must take an oath. In addition to the officials of the inquiry, the oath to faithfully fulfill their tasks and to maintain secrecy was also to be applied to the postulator and vice-postulator.<sup>104</sup> Witnesses are required to swear to tell the truth before they testify and, afterwards to confirm their testimony with an oath in which they also promise to maintain secrecy.<sup>105</sup>

The various types of oaths in the current legislation can be grouped in three general categories: the oath to tell the truth, the oath to faithfully fulfill a duty, and the oath to maintain secrecy. The importance of the first category of oaths is intuitively obvious, since inquiries in causes of

<sup>101</sup> NS, 6c: «*Omnes officiales partem in causa habentes debent iuramentum de munere fideliter adimplendo praestare, et secreto tenentur*».

<sup>102</sup> NS, 23: «*Testes in sua testificatione, iuramento firmanda, propriae scientiae fontem indicare debent circa ea quae asserunt; secus eorum testimonium nihil faciendum est*».

<sup>103</sup> This point was addressed in chapter 2. See page 105.

<sup>104</sup> SM, Art. 51 §1: «*Episcopus dioecesanus vel eparchialis, omnes qui ad munus nominantur, et postulator vel, si casus detur, vice-postulator, de munere fideliter adimplendo ac de secreto ex officio servando iusiurandum praestare tenentur*». The same oath is individually mentioned with respect to each official of the inquiry. These officials include the episcopal delegate, the promoter of justice, the notary and adjunct notaries, the theological censors, the historical experts, the medical or technical expert, the experts *ab inspectione*, the translator, the copier, and the carrier. The instruction addresses the responsibility of the officials to swear an oath to faithfully fulfill their duty at the beginning of their function, and at the end that they had faithfully done so. See SM, Artt. 51 §1, 63 §2, 65 §2, 70 §1, 76 §1, 92 §1, 109 §3, 124 §2, 130 §2, 132 §2, and 144 §1.

<sup>105</sup> SM, Artt. 99 §2 and 103 §3.

canonization are primarily focused on the search for the truth. The truthfulness of the testimony given by the witnesses and the assertions made by the postulator are essential in order to guarantee that the proofs are authentic and that the inquiry has been properly instructed.

The importance of the second category of oaths is also clear, since the legitimacy of the acts and the thoroughness of the inquiry depend on each of the officials carefully and attentively fulfilling their assigned duty. Each official must therefore understand his or her duty in order to carry it out. With respect to the promoter of justice, his duty to see to the observance of the law and to seek the truth is well established. However, his duty to draw attention to obstacles in the cause is not expressly stated in the law. The promoter of justice will be better able to fulfill this duty in service of the common good if this responsibility were more clearly defined and better understood.

The third category of oaths has traditionally served to protect the integrity of the inquiry by requiring all parties, including the witnesses and the officials, to observe secrecy. Neither the current legislation nor *Sanctorum Mater* explains the purpose of the oath to maintain secrecy, its nature, or its duration. In the absence of any other explanation, reference must be made to the insights in the previous legislation.<sup>106</sup> The fundamental purpose of the oath to maintain secrecy is to prevent any collusion that might lead to false or prejudicial testimony. For this reason, the officials must keep the questions of the interrogatory secret, lest a witness prepare his or her responses in advance.<sup>107</sup> The witnesses must not communicate the questions they were asked nor the specific answers that were given, lest another witness be influenced or prejudiced when testifying. According to the interpretation of the previous legislation, the oath of secrecy refers to the questions and answers given before the tribunal, but should not be considered so strict that the witnesses are barred from speaking generally about the servant of God. In contrast with the former law, the current legislation does not forbid the postulator from knowing the questions. If the

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<sup>106</sup> The purpose of secrecy was treated in section 2.2.1.b.

<sup>107</sup> The secrecy of the interrogatory is required by the decision of the Congregation of November 12, 1999, cited in chapter 3, on page 225.

interrogatory is revealed to the postulator, he or she is still bound by the same oath of secrecy not to communicate the specific questions to the witnesses. Since the primary motive for the oath of secrecy is to prevent collusion, the oath does not bind after the instruction has been completed. There is no further opportunity to influence witness testimony once the acts of the inquiry have been sealed and transmitted to the Congregation for study. The observance of the oath of secrecy guarantees the integrity of the acts by taking every safeguard to prevent any collusion from corrupting the truthfulness of the testimony that is gathered.

#### 4.2.1.c *Specific interventions of the promoter*

In the second chapter, three other interventions by the former promoter of the faith were examined: he was to be heard before the appointment of experts; he certified the authenticity of documentary proofs; and he authenticated the acts when the copies were prepared for transmission to the Holy See. Each of these interventions served to protect the legitimacy and the integrity of the acts of the inquiry.

In the previous law, the promoter of the faith was given the opportunity to object to a particular expert. Those who were appointed as experts could not be known to each other or work together unless required by a need that was recognized by the promoter of the faith.<sup>108</sup> In the current law, the promoter of justice is not involved in the selection of experts. Neither *Normae Servandae* nor *Sanctorum Mater* call for the promoter to be heard before any expert is selected. The experts are directly nominated by the bishop or by the episcopal delegate.<sup>109</sup> In fact, since the nomination of the promoter of justice is not required until the interrogatory is to be prepared, no consultation with the promoter is required before the appointment of the theological censors and the historical experts. Without

<sup>108</sup> This point was addressed in chapter 2. See page 108.

<sup>109</sup> The experts involved in the cause include the theological censors, the historical experts who make up the historical commission, the medical or technical expert and the experts *ab inspectione* in the case of a miracle. The legislation calls for these experts to be appointed by the bishop, though the experts *ab inspectione* can be appointed by the episcopal delegate. See NS, 13, 14a, and 34; SM, Artt. 60 §1, 62 §1, 68 §1, and 109 §2.

the participation of the promoter of justice, it is the responsibility of the bishop or the delegate to insure that those who are chosen as experts are qualified and impartial. Following the precautions of the previous law, the theological censors continue to work individually.<sup>110</sup> However, the experts of the historical commission must work together (*in solidum*) in the collection of the documentary evidence, following the norms issued by Pius XI.<sup>111</sup> While the promoter of justice does not need to be heard before the appointment of any expert, he does have the right to examine their reports, both when he prepares the interrogatory and when the acts are published.<sup>112</sup> In addition, the historical experts who conducted the search for the documentary evidence are required to testify before the tribunal.<sup>113</sup> Therefore, if the promoter of justice discovers any obstacle related to the work performed by any expert, he must make his objection known so it can be addressed in the course of the inquiry.

In the previous law, the promoter of the faith had the responsibility of certifying the authenticity of documentary proofs by verifying the list of the writings of the servant of God.<sup>114</sup> In the current law, the promoter of justice is not responsible for authenticating any documentary evidence. The published writings of the servant of God must be handed over to the bishop by the postulator for study by the theological censors, while the historical commission is responsible for gathering the unpublished writings and all other documents about the servant of God.<sup>115</sup> Given the increased complexity of causes and the need for a high degree of scientific rigor, the current legislation entrusts these experts with the responsibility of studying the writings and gathering the documentary evidence.

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<sup>110</sup> SM, Art. 65 §1. The theological censors are sometimes mistakenly referred to as the theological commission, giving them a title parallel to the experts who make up the historical commission. The reference to the theological commission is not appropriate since these experts work independently and do not form a commission.

<sup>111</sup> SM, Art. 73 §1. Also see section 3.2.2 and footnote 23 on page 155.

<sup>112</sup> NS, 15a and 27b; SM, Artt. 78 §1 and 121 §1.

<sup>113</sup> NS, 21b; SM, Art. 76 §1.

<sup>114</sup> See CIC 1917, can. 2046, cited in chapter 2, footnote 88 on page 108.

<sup>115</sup> NS, 10, 1° and 14a.

In the previous law, the preparation of the copies of the acts to be transmitted to the Holy See required the participation of the promoter.<sup>116</sup> The current legislation also calls for the careful preparation of the copies which must be compared to the original by the copier and authenticated by the notary. *Sanctorum Mater* calls for this work to be done in the presence of the episcopal delegate and the promoter of justice.<sup>117</sup> While the promoter of justice is no longer involved in the selection of experts or the certification of the documentary proofs, his role in the verifying that the acts are faithfully reproduced has been retained in the current legislation. Since the promoter of justice participates in the gathering of the testimony of the witnesses and the preparation of the copies of the acts, he is invited to express his opinion to the Prefect of the Congregation of the Causes of Saints regarding the trustworthiness of the witnesses and the legitimacy of the acts.<sup>118</sup>

#### 4.2.2 INSURE THAT THE PROOFS ARE COMPLETE

##### 4.2.2.a *Complete proofs and moral certitude*

The 1917 code required that the proofs in causes of canonization must be entirely complete. Commentators on the 1917 code understood this obligation to require proof sufficient for moral certitude, even if this was not expressly stated in the 1917 code.<sup>119</sup> The present legislation uses exhortative language to call for the thorough and complete collection of proofs.

The Bishop or his delegate is to take the greatest care that in gathering the proofs nothing is omitted which in any way pertains to the cause, recognizing

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<sup>116</sup> See CIC 1917, can. 2055, cited in chapter 2, footnote 92 on page 109.

<sup>117</sup> SM, Art. 134 §3 and 135 §1. *Normae Servandae* does not explicitly mention the presence of the promoter of justice for the *collatio et auscultatio* (cfr. NS, 29-31). However, it can be inferred that the promoter of justice should participate to insure that the law is followed and that the prepared copies are legitimate.

<sup>118</sup> SM, Art. 148.

<sup>119</sup> This argument, based on the requirement that the proofs be *omnino plenae*, was made in chapter 2. See page 111.

for sure that the positive outcome of a cause depends to a great extent on its good instruction.<sup>120</sup>

Rather than stating that the proofs must be entirely complete, the current norms communicate this requirement with different language, stating that nothing is to be omitted.<sup>121</sup> This paragraph imposes the responsibility for the thoroughness of the inquiry primarily on the bishop or his episcopal delegate. However, the paragraph is followed by the requirement that the acts be published to the promoter of justice and the postulator, who each have the right to call for further instruction if it seems necessary.<sup>122</sup> While the inquiry is instructed by the episcopal delegate, the context of the norm indicates that both the promoter of justice and the postulator share the responsibility of seeing that the inquiry is thoroughly instructed.

*Sanctorum Mater* expands responsibility for the thorough instruction of the cause.

The Bishop and all those who take part in the Inquiry must see to it with the greatest diligence and commitment that, in gathering all the proofs, nothing is omitted which in any way regards the cause. The positive outcome of the cause, in fact, depends to a great extent, on its good instruction.<sup>123</sup>

This article binds the promoter of justice, and all who are involved in the inquiry, to see that its instruction is complete. The officials accept this responsibility when they take their oaths to faithfully fulfill their tasks.

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<sup>120</sup> NS, 27a: «*Episcopus vel delegatus summa diligentia et industria curet ut in probationibus colligendis nihil omittatur, quod quoquo modo ad causam pertineat, pro certo habens felicem exitum causae ex bona eius instructione magna ex parte dependere*».

<sup>121</sup> J.L. GUTIÉRREZ, *Studi sulle cause*, 189. Gutierrez holds that the requirement that the instruction be entirely complete («*omnino plene*») has been formally abrogated, but it continues in force because of the nature of causes of canonization («*ex ipsa rei natura*») in the sense of CIC 1983, can. 1403 §2.

<sup>122</sup> NS, 27b and c.

<sup>123</sup> SM, Art. 47 §1: «*Episcopus et omnes qui partes habent Inquisitionis, summa diligentia et industria curent ut in probationibus perquirendis nihil omittatur, quod quolibet modo ad causam pertineat. Felix enim exitus causae plerumque dependet ex bona eius instructione*». Article 47 §2 names the officials who have this duty: the episcopal delegate, the promoter of justice, the notary, and the medical or technical expert when investigating an alleged miracle.

Among the officials, however, the promoter of justice is singled out for his particular vigilance over the completeness of the inquiry:

§1. The Promotor of Justice must be vigilant so that everything prescribed by law is faithfully observed in instructing the cause.

§2. He must also see to it that all the acts and documents relative to the object of the Inquiry have been gathered in a thorough manner.<sup>124</sup>

The particular nature of these obligations distinguishes the promoter of justice from the other officials in the inquiry. These duties to see that the law is observed and that all the proofs have been gathered help to uniquely define his role and demonstrate the importance of his participation.

The obligation to completely investigate the servant of God is extended to other officials in the inquiry, including the experts of the historical commission.

If the votes of the theological censors are favorable, the Bishop is to order that all the writings of the Servant of God, those not yet published as well as each and every historical document, either handwritten or printed, which in any way pertain to the cause, are to be gathered.<sup>125</sup>

While the episcopal delegate is responsible for the thoroughness of the inquiry, the present norms entrust the collection of the documentary proofs principally to the historical commission. In fact, since the episcopal delegate and the promoter of justice are not responsible for personally collecting the documentary proofs, they are able to concentrate on the collection of the witness testimony. In this regard, the special legislation depends on a certain delegation of authority, dividing the responsibility for certain functions and calling upon those who are best qualified to carry them

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<sup>124</sup> SM, Art. 56: «§1. *Promotor Iustitiae invigilat ut fideliter servantur ea quae ad causam instruendam lege sunt praescripta.* §2. *Ipse insuper inspicere tenetur utrum omnia acta et documenta quae attinent ad materiam Inquisitionis exhaurienti ratione fuerint collecta.*».

<sup>125</sup> NS, 14a: «*Si vota censorum theologorum favorabilia sunt, Episcopus mandat ut universa scripta Servi Dei nondum edita necnon omnia et singula historica documenta sive manuscripta sive typis edita, quoquo modo causam respicientia, colligantur.*» With the exception of the published writings that are to be gathered by the postulator, the collection of the documentary proof is entrusted to the historical commission (see NS, 14c).

out. Therefore, the promoter of justice can generally trust that the historical experts, who have sworn to faithfully fulfill their duties, will be thorough in their research. If the promoter of justice has any doubts, he can always ask the experts to explain their work when they appear before the tribunal as *ex officio* witnesses.<sup>126</sup>

The special legislation uses very broad language to describe the kinds of proofs that need to be sought. All the proofs are to be gathered «which in any way regard the cause». This requires the gathering of all the acts and documents «relative to the object of the Inquiry».<sup>127</sup> The traditional object of the inquiry is defined in *Sanctorum Mater*:

the life, the heroic virtues and the reputation of holiness and of intercessory power ... [or] the life, the martyrdom and the reputation of martyrdom and of intercessory power.<sup>128</sup>

Furthermore, this reputation of holiness or martyrdom must be present «in life, in death and after death», demonstrating the continuity of this reputation.<sup>129</sup> The scope of the inquiry is also identified:

These causes have, as their scope, the gathering of the proofs in order to attain moral certitude on the heroic virtues or the martyrdom of the Servant of God whose beatification and canonization are asked.<sup>130</sup>

Therefore, the scope of the inquiry is to collect all proofs that are useful for arriving at moral certitude regarding the object of the inquiry. Since the

<sup>126</sup> NS, 21b.

<sup>127</sup> See NS, 27a: «*quod quoquo modo ad causam pertineat*»; and SM, Art. 56 §2: «*quae attinent ad materiam Inquisitionis*». These were cited above in footnotes 120 and 124 on page 283.

<sup>128</sup> SM, Art. 31: «*§1. Si probanda est heroicitas virtutum Servi Dei, Inquisitio instruenda est super vita, virtutibus heroicis et super sanctitatis signorumque fama. §2. Si probandum est martyrium Servi Dei, Inquisitio instruenda est super vita, martyrio atque martyrii signorumque fama*».

<sup>129</sup> SM, Art. 4 §1: «*Causa beatificationis et canonizationis afficit fidelem catholicum qui in vita, in morte et post mortem, sanctitatis fama gaudebat, heroico in gradu vivens omnes christianas virtutes; vel fruitor fama martyrii, quoniam, Dominum Iesum Christum vicinius secutus, vitam immolavit martyrio occumbens*».

<sup>130</sup> SM, Art. 1 §2: «*Propositum quatenus ad praedictas Causas est ut probationes colligantur ad assequendam moralem certitudinem circa heroicis virtutes vel martyrium Servi Dei, cuius beatificatio et canonizatio postulantur*».

norms call for a very broad collection of evidence, the tribunal must conduct a comprehensive and wide-ranging investigation in order to be thorough and complete. In particular, the norms call for the gathering of all the published and unpublished writings of the servant of God, complete biographical information about his or her life, and evidence of the existence of the reputation of holiness or martyrdom which is spontaneous, widespread, and held by persons worthy of trust.<sup>131</sup> While the norms call for the collection of vast quantity of information, the tribunal is not required to gather those proofs that do not contribute in any respect to the object of the inquiry. Proofs that are purely extraneous to the cause need not be included.<sup>132</sup>

#### 4.2.2.b *The selection of witnesses*

In the previous legislation, the postulator and the promoter of the faith each presented witnesses to be heard by the tribunal. Those persons who had knowledge of the servant of God were ordered by the edict of the local bishop to send letters to the tribunal which explained their knowledge of the candidate, whether positive or negative. The promoter of the faith had the right to ask that the edict be more widely circulated in order to communicate with those who might have knowledge of the servant of God. The letters that were received allowed the promoter of the faith to select those witnesses with useful testimony whom he could present *ex officio*, especially if they had information against the cause.<sup>133</sup>

The edict of the local bishop is retained in the present legislation.

Furthermore, the Bishop is to publicize the petition of the postulator in his own diocese and, if he has judged it opportune, in other dioceses, with the permission of their respective Bishops, and to invite all the faithful to bring

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<sup>131</sup> CCS, *Le Cause dei Santi*, 72.

<sup>132</sup> With respect to witness testimony, the episcopal delegate has the right to limit the number of witnesses who are to be heard (cfr. SM, Art. 97). By analogy, the historical commission can exclude documentary evidence that is truly extraneous to the cause. For example, extended histories of a religious order, or accounts that contain only passing reference to the servant of God can be omitted.

<sup>133</sup> This point was addressed in chapter 2. See page 114.

to his attention any useful information, which they might have to offer regarding the cause.<sup>134</sup>

Whereas the previous law «required» the faithful to present letters indicating their knowledge of the servant of God, the present legislation «invites» the faithful to come forward. This facultative provision may leave the tribunal with less complete information, if those who have information to contribute do not identify themselves. In the present legislation, the edict of the bishop is often disseminated during the preliminary phase of the inquiry, generally before the promoter of justice is nominated. But, even if he has been nominated, the norm does not call for the bishop to consult with the promoter of justice when determining how to make the edict known.

The norms call for the episcopal delegate «to examine the witnesses proposed by the postulator and others to be questioned *ex officio*».<sup>135</sup> *Sanctorum Mater* describes the qualities of the witnesses, indicating that among those who must be called to testify are «*ex officio* witnesses, especially if they are contrary to the cause».<sup>136</sup> These witnesses are called by office, which indicates that they may be called directly by the episcopal delegate on his own initiative or at the request of the promoter of justice.<sup>137</sup> While the law does not state that these witnesses must be presented by the promoter of justice, the promoter has the right to ask that particular witnesses be heard.<sup>138</sup> Those witnesses who are called *ex officio* must have

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<sup>134</sup> NS, 11b: «*Insuper in sua et, si id opportunum duxerit, in aliis dioecesibus, de consensu eorumdem Episcoporum, petitionem postulatoris publici iuris faciat, omnes christifideles invitando ut utiles notitias causam respicientes, si quas suppeditandas habeant, sibi deferant*».

<sup>135</sup> NS, 16a: «*Deinde Episcopus vel delegatus testes a postulatore inductos et alios ex officio interrogandos examinet, adhibito notario qui verba deponentis transcribat, in fine ab eodem confirmanda*».

<sup>136</sup> SM, Art. 96, 2°: «*Testes vocandi in Inquisitionibus sunt: 2° testes ex officio, praesertim si causae adversantur*».

<sup>137</sup> See CCS, *Le Cause dei Santi*, 279. According to this text, *ex officio* witnesses are called by the bishop or his delegate. The text does not mention the promoter of justice, even though his right to request that a witness be heard is well known.

<sup>138</sup> At the time of the publication of the acts of the inquiry, *Normae Servandae* gives the promoter of justice the right to request further inquiries (cfr. NS, 27b). In practice, the promoter of justice can ask that witnesses be heard at any time during the inquiry.

useful testimony to contribute, being either eyewitnesses or second hand witnesses.<sup>139</sup>

When selecting his witnesses, the promoter of justice should consider those who can provide information that is useful for arriving at the truth. Since the postulator will be attentive to those witnesses who are favorable to the cause, the promoter of justice should consider those who might provide evidence against the cause.<sup>140</sup> In particular, the promoter of justice should consider those who are not connected to the servant of God by friendship, familial bond, or religious association. The promoter contributes to the thoroughness of the inquiry by insuring that a wide variety of witnesses are heard according to the nature of the cause.

While the postulator must present a list of witnesses with the petition, the promoter of justice is not required to present his list of *ex officio* witnesses at the beginning of the inquiry. The promoter of justice has the right to request the hearing of witnesses before the conclusion of the inquiry, even after the publication of the acts.<sup>141</sup> If the promoter is not familiar with the servant of God, he may not be able to suggest witnesses at the time the inquiry is opened. He may identify witnesses to be called during the course of the inquiry, especially if he judges that some corroborating witnesses (*contestes*) should be heard to confirm the testimony presented by other witnesses.<sup>142</sup>

Since the promoter of justice functions opposite the postulator, he has the right to intervene regarding the selection of witnesses. The promoter of justice may object if the postulator presents a witness who is unqualified to

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<sup>139</sup> NS, 17. The witnesses are to have direct knowledge of the servant of God (*de visu*). Second hand witnesses (*de auditu a videntibus*) may be heard. The hearing of third hand witnesses (*de auditu ab audientibus*) is not foreseen during the inquiry (cfr. SM, Art. 98).

<sup>140</sup> NS, 10, 3°. *Normae Servandae* requires the postulator to present witnesses with knowledge about the virtues, martyrdom, or intercessory power of the servant of God, as well as those with contrary opinions. Since the postulator works in support of the cause, it is appropriate that the promoter of justice verifies that no knowledgeable opposing witnesses have been overlooked.

<sup>141</sup> This point was addressed in chapter 2. See page 115.

<sup>142</sup> The value of hearing from corroborating witnesses is mentioned in SM, Art. 96, 3°. Co-witnesses (*contestes*) were discussed in the context of the 1917 code. See chapter 2, footnote 113 on page 115.

give testimony.<sup>143</sup> If the servant of God was a religious, the promoter may object if too many or too few witnesses from the same institute or society are presented.<sup>144</sup> The promoter might rectify this discrepancy by calling witnesses to make up for this imbalance. Finally, the promoter of justice might object to the renunciation of a witness by the postulator.<sup>145</sup> If a witness is not to be heard, a suitable reason must be given in the acts, such as poor health or old age. If the promoter of justice does not believe the reason is sufficient, he could request that the witness be heard nevertheless to verify that an opposing witness is not being deliberately excluded.<sup>146</sup>

#### 4.2.2.c *Composition of the interrogatory*

In the previous legislation, interrogatories were prepared for the ordinary and apostolic processes. During the ordinary processes, the local promoter of the faith prepared the interrogatory on the basis of the articles of the postulator in order to examine the reputation of holiness of the servant of God and the existence of any illegitimate cult. When the apostolic process was instructed, the interrogatory was prepared by the Promoter General of the Faith on the basis of all the information that had been presented up to

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<sup>143</sup> NS, 20; SM, Artt. 101-102. The norms exclude the postulator and vice-postulator while they are in office, or priests who served as regular confessors or spiritual directors of the servant of God. Applying the procedural norms in the codes, anyone who holds an office in the inquiry is also excluded as a witness (cfr. CIC 1983, can. 1550 §2, 1°; CCEO can. 1231 §2, 1°).

<sup>144</sup> *Normae Servandae* requires the hearing of a significant number of witnesses who do not belong to the institute of consecrated life or society of apostolic life: «*notabilis pars testium inductorum debent esse extranei*» (cfr. NS, 19). *Sanctorum Mater* defines this significant number as a majority: «*testes inducti debent esse plerumque extranei*» (cfr. SM, Art. 100). Although the norms do not address this question, if the postulator presents a minimal number of fellow religious, the promoter might question why more witnesses were not called from the servant of God's own religious family, where he or she was presumably best known. By analogy, the same questions can be raised by the promoter for a servant of God who was a diocesan priest if too many or too few of his brother priests from the same diocese are presented as witnesses.

<sup>145</sup> CIC 1983, can. 1551; CCEO, can. 1232. These canons generally allow a party to renounce a witness that has been introduced, although the opposing party can request the witness be examined nevertheless. The decision is made by the judge.

<sup>146</sup> SM, Art. 104 §2. While *Sanctorum Mater* does not specifically address the right of the postulator to renounce a witness, it does require that the decision not to hear a witness presented by the postulator or *ex officio* must be explained in the acts.

that point. While the interrogatory for the ordinary processes was general, the interrogatory in the apostolic process was detailed and examined the virtues or martyrdom of the servant of God *in specie*.<sup>147</sup> Following the promulgation of *Sanctitas Clarior*, the ordinary and apostolic processes were replaced by one cognitional process. Nevertheless, the Promoter General of the Faith continued to prepare the interrogatory which was transmitted with the *nihil obstat* for the introduction of the cause.<sup>148</sup>

In the current legislation, the responsibility for preparing the interrogatory for the diocesan or eparchial inquiry has passed to the promoter of justice who is to make use of the information that has been gathered, including the opinions of the theological censors and the report of the historical commission.

Once the report has been accepted, the Bishop is to hand over to the promoter of justice or to another expert everything gathered up to that point so that he might formulate the interrogatories most effective in searching out and discovering the truth about the life of the Servant of God, his virtues or martyrdom, his reputation of holiness or of martyrdom.<sup>149</sup>

*Normae Servandae* allows either the promoter of justice or another expert to prepare the interrogatory. *Sanctorum Mater* refers to the use of experts, but places the emphasis on the duty of the promoter of justice.

The Promotor of Justice is to draw up the Interrogatories for the hearing of the witnesses. If necessary he may do this with the eventual collaboration of some experts.<sup>150</sup>

In the inquiry for the examination of an alleged miracle, the promoter of justice must have the assistance of a specifically qualified medical or technical expert to assist him in the composition of the interrogatory. This

<sup>147</sup> See CIC 1917, can. 2090, cited in chapter 2, footnote 122 on page 116.

<sup>148</sup> This point was addressed in chapter 3, footnote 112 on page 181.

<sup>149</sup> NS, 15a: «*Relatione accepta, Episcopus omnia usque ad illud tempus acquisita promotori iustitiae vel alii viro perito tradat, ut interrogatoria conficiat quae apta sint ad verum indagandum et inveniendum de Servi Dei vita, virtutibus vel martyrio, fama sanctitatis vel martyrii*».

<sup>150</sup> SM, Art. 78 §2: «*Promotor Iustitiae exarat Interrogatoria ad testium excutionem, adhibens, si opus fuerit, sociatam cuiusdam experti viri operam*».

expert assists the promoter of justice in constructing questions that thoroughly explore the medical or technical aspects of the cause.

After he has sworn to fulfill faithfully his task and to maintain the secret of office, the [Medical or Technical] Expert is to help the Promotor of Justice in preparing the Interrogatories for the witnesses.<sup>151</sup>

The transfer of responsibility for the preparation of the interrogatory from the Promoter of the Faith in the Congregation to the local promoter of justice represents a significant decentralization in the instruction of a cause. The local promoter of justice brings one important advantage to the interrogatory. As he is the local promoter in the diocesan or eparchial inquiry, he is closer to the cause and more knowledgeable than the Promoter of the Faith in the Congregation about the particulars of the servant of God. Since the current norms no longer require the permission of the Holy See to introduce a cause in a diocese or eparchy, the Promoter of the Faith no longer studies the preliminary information about a cause in order to prepare the interrogatory.<sup>152</sup> The local promoter of justice, on the basis of the information that is available to him, is better able to craft a customized and detailed interrogatory that corresponds to the particular issues that must be explored in the cause.

On the other hand, the local promoter of justice has one particular disadvantage, since he is not as experienced as the Promoter of the Faith in the Congregation regarding the issues that need to be considered. In some cases, the promoter of justice may have no prior experience in causes of canonization and will therefore need expert advice to help him fulfill his function. The promoter of justice should not underestimate the importance of this phase of the inquiry, since the preparation of a thorough and complete interrogatory will affect the quality of the testimony obtained from

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<sup>151</sup> SM, Art. 60 §3: «*Peritus, praehabito iureiurando proprium munus fideliter adimplendi et secretum ex officio servandi, iuvat Promotorem Iustitiae ad conficienda Interrogatoria pro testibus excutiendis*». *Normae Servandae* does not refer directly to the medical expert in the context of the composition of the interrogatory. However, the medical expert is to assist during the examination of the witnesses by suggesting *ex officio* questions (cfr. NS, 34a).

<sup>152</sup> The *nihil obstat* of the Holy See in the current norms is not the permission of the Holy See to initiate the cause. See the treatment of this question in section 3.5.6.

the witnesses and the general value of the inquiry itself. The promoter of justice must be aware of the object of the inquiry in order to compose a suitable interrogatory. Returning to the citation from *Normae Servandae* above, the purpose of the interrogatory is to search out the truth about three elements related to the servant of God: (1) his or her life, (2) the virtues or martyrdom, and (3) the reputation of holiness or martyrdom and of intercessory power.<sup>153</sup> The interrogatory should contain questions that respond attentively to each of these essential elements.

Every interrogatory regarding virtues or martyrdom must carefully explore each stage of the life of the servant of God, with particular attention to those moments that were of greatest importance. For a confessor, the interrogatory must also examine whether the servant of God practiced all the theological and cardinal virtues and all other connected virtues. Therefore, the interrogatory must individually consider the practice of faith, hope, love of God and of neighbor, prudence, justice, temperance, and fortitude. Questions must be added regarding the observance of poverty, chastity, obedience, and humility. The interrogatory must also ask questions about the heroic degree of the virtues, the reputation of holiness in life, at death, and after death, as well as any graces attributed to the intercession of the servant of God which demonstrate the reputation of signs. For a presumed martyr, the interrogatory must ask questions about the nature of the martyr's violent death, the voluntary acceptance of martyrdom for love of the faith on the part of the martyr, and the motives of the persecutors who acted in hatred of the faith or virtue. In addition the interrogatory should also ask questions about the reputation of martyrdom at death and after death, as well as any graces attributed to the intercession of the servant of God.<sup>154</sup> For an inquiry regarding an alleged miracle, the interrogatory must be customized according to the nature of the case. The questions should establish the details regarding the alleged miracle with attention to the relevant

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<sup>153</sup> NS, 15a. See also SM, Art. 31.

<sup>154</sup> The criteria for examining heroic virtue or martyrdom were specified in canon 2104 of the 1917 code and in Article 62 §2 of the 2000 Regolamento. See the references indicated in chapter 2, footnote 130 on page 119, and chapter 3, footnote 267 on page 231.

circumstances before and after the event, whether it can be explained by science, and the nature of the intercession through the invocation of the servant of God or the blessed.<sup>155</sup>

Because *Normae Servandae* and *Sanctorum Mater* do not enter into the specific kinds of questions that must be included in the interrogatory, the promoter of justice can seek the help of a qualified expert to assist him. It may also be useful for the promoter to also consult a trustworthy manual when crafting the interrogatory.<sup>156</sup> Nevertheless, it is desirable that the promoter of justice avoid copying a generic interrogatory, since one that is personalized will be more effective in searching out and finding the truth about the servant of God. The promoter may customize the interrogatory by drawing upon the biography or chronology of the servant of God prepared by the postulator and submitted with the petition.<sup>157</sup> Like the former articles of the postulator which were submitted to the promoter of the faith, the preliminary information of the postulator can serve as a resource to help the promoter of justice.<sup>158</sup> The opinions of the theological censors and report of the historical experts will also be invaluable, allowing the promoter of justice to use the fruits of their research to pose questions that treat the particular aspects, both favorable and unfavorable, in the life of the servant of God. However, if the bishop or the episcopal delegate has decided that, lest the proofs be lost, the hearing of the witnesses must begin before the theologians and historians have completed their research, the promoter of justice must compose the interrogatory on the basis of the information that is available at the time.<sup>159</sup>

The material provided by the postulator may be particularly useful in crafting the interrogatory. In fact, nothing in the norms prohibits the

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<sup>155</sup> These criteria were specified in canon 2119 of the 1917 code. The treatment of miracles is also addressed in a more general way in Article 69 of the 2000 Regolamento. See chapter 2, footnote 131 on page 120, and chapter 3, footnote 267 on page 231.

<sup>156</sup> Sample interrogatories have been published in various texts that can assist the promoter of justice. See R. RODRIGO, *Manuale delle cause*, 241-266, 281-283, 324-327, e 344. See also CCS, *Le Cause dei Santi*, 464-489.

<sup>157</sup> NS, 10, 1°.

<sup>158</sup> The articles of the postulator were mentioned in chapter 2, on page 116.

<sup>159</sup> See NS, 16a and SM, Art. 82. The provision for hearing witnesses lest the proofs be lost («*ne pereant probationes*») was mentioned above on page 267.

promoter of justice from calling upon the assistance of the postulator for the preparation of the interrogatory, especially if the postulator is an expert with more experience in causes of canonization than the promoter. Nevertheless, the participation of the postulator in the preparation of the interrogatory raises several issues, especially in light of the fact that the former legislation prohibited the postulator from knowing the questions in the interrogatory.<sup>160</sup> Since the postulator and the promoter of justice oppose one another in the *contradictorium*, it would seem incongruous for these two figures to collaborate in the crafting of the questions, or for the promoter to simply delegate this duty to the postulator. Since the interrogatory is to seek out the truth regarding the positive and negative characteristics of the servant of God, the promoter of justice must insure that the interrogatory does not seek only favorable answers from the witnesses. Rather, the questions should be impartial and not deceptive or suggesting of a particular answer.<sup>161</sup> Even if the postulator suggests questions or topics for the interrogatory, the promoter of justice is not excused from his responsibility to see that the interrogatory is suitable for uncovering the truth. In the service of the common good, the promoter must insure that the interrogatory contains questions that allow for any criticisms of the servant of God to be discovered.

#### 4.2.2.d Examination of the witnesses

In the previous legislation, the examination of the witnesses was conducted by the judges with the participation of the promoter of the faith who had the right to suggest *ex officio* questions. Whenever a witness did not provide a clear or complete answer to one of the questions in the interrogatory, the use of *ex officio* questions allowed the tribunal to better

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<sup>160</sup> If the postulator knows the questions in the interrogatory, he or she is bound by the oath of secrecy not to reveal the questions to the witnesses who will testify. See the decision of the Congregation regarding the secrecy of the interrogatory mentioned in chapter 3, on page 225.

<sup>161</sup> SM, Art. 79. *Sanctorum Mater* calls for an interrogatory that is objective and impartial, similar to the interrogatories that are to be composed in ordinary judicial processes. See CIC 1983, can. 1564; and CCEO, can. 1245.

establish the facts and arrive at a fuller response. The promoter, but not the postulator, had the right to be present and to pose questions that would help clarify the testimony in the interest of arriving at the truth. In the apostolic process, it was the right of the sub-promoter of the faith to supplement the interrogatory prepared by the Promoter General of the Faith through the insertion of *ex officio* questions.

In the current legislation, the questions are asked by the episcopal delegate who instructs the inquiry. The episcopal delegate is urged to ask additional questions in the interest of the truth:

First of all, the witnesses are to be examined according to the interrogatories; the Bishop or his delegate, however, should not fail to propose to the witnesses other necessary or useful questions so that their statements may be put in a clearer light or any difficulties which may have emerged may be plainly resolved and explained.<sup>162</sup>

Furthermore, the promoter of justice may also suggest questions:

The Promotor of Justice is to suggest to the Episcopal Delegate specific questions to be asked of the witnesses that are necessary and useful for examining the case more deeply.<sup>163</sup>

As another point of continuity with the previous legislation, the postulator is excluded from the sessions and may not pose additional questions, lest he or she unduly influence the answers given by the witnesses.<sup>164</sup>

Since the promoter of justice composes the interrogatory for the inquiry, he is aware of the scope of the questions and the object of the inquiry. He must, therefore, be attentive to the testimony that is given in order to insure that it suitably responds to the established questions. In this

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<sup>162</sup> NS, 16c: «*Testes imprimis iuxta interrogatoria examinentur; Episcopus autem vel delegatus ne omittat alias necessarias vel utiles interrogationes testibus proponere, ut quae ab ipsis dicta sint in clariore luce ponantur vel difficultates, quae emerint, plane solvantur et explanentur.*»

<sup>163</sup> SM, Art. 91 §2: «*Promotor Iustitiae suggerere poterit Delegato Episcopali specificas interrogationes testibus proponendas, quae necessariae vel utiles videantur ad casum penitus inspicendum.*» If the inquiry is examining an alleged miracle, the medical or technical expert who assists the tribunal also has the right to suggest additional questions according to his or her area of expertise (cfr. SM, Art. 92 §2).

<sup>164</sup> The exclusion of the postulator was settled by a decision of the Congregation from November 12, 1999, which was described in chapter 3. See page 228.

regard, the promoter of justice cannot be a passive figure who mechanically observes the testimony that is given. The promoter must be an active figure who seeks those clarifications that will be more useful for discovering the truth.<sup>165</sup>

These responsibilities of the promoter of justice during the inquiry are very much in harmony with the responsibilities of the promoter of the faith under the previous legislation. While the promoter of justice searches for the truth, he is also to protect the public good as the representative of the Church. Consequently, he may suggest questions in order to more precisely clarify favorable points regarding the cause that may seem obscure. However, he must be particularly attentive to any unfavorable points that require explanation. His attention to the details of the inquiry, including those that are negative, serves to insure that the investigation is thorough and complete.

#### *4.2.2.e Other interventions of the promoter of justice*

In the previous legislation, the promoter of the faith participated in the separate process for the gathering of the writings of the servant of God and the process on non-cult. The present legislation treats these various processes through the single diocesan or eparchial inquiry. Given the limited scope of these interventions, they can be treated together.

Regarding the collection of the writings of the servant of God, it is the responsibility of the postulator to present copies of the published writings and the responsibility of the historical commission to collect all the unpublished writings. Furthermore, the theological censors must examine at least the published writings for any positions contrary to the faith and good morals. The promoter of justice has the right to examine the evidence that has been gathered and can present objections, especially if the norms for the collection and examination of the writings were not followed. However, in

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<sup>165</sup> SM, Art. 91 §1. The promoter of justice is to participate in the sessions actively and methodically with his physical and continuous presence.

the present legislation, it is not the responsibility of the promoter of justice to collect or authenticate the writings of the servant of God.

Regarding the prohibition of illegitimate cult, the place of burial of the servant of God is to be examined as well as any other places associated with him or her in life. The episcopal delegate, with the promoter of justice and the notary, is to carry out this examination to verify that there are no signs of prohibited cult attributed to the servant of God and that the decrees of Urban VIII have been faithfully observed.<sup>166</sup> The promoter of justice should be attentive to the following abuses: Mass and Divine Office may not be celebrated in the servant of God's honor; churches and chapels may not be dedicated in the name of the servant of God; the remains of the servant of God may not be buried or displayed under an altar; relics may not be publicly displayed or revered; images of the servant of God displayed in a church or chapel may not depict the servant of God with a halo, rays, nimbus, or aureole; books may not be published about miracles, revelations, or graces attributed to the servant of God; the tomb may not be decorated with testimonials, images, or votive candles.<sup>167</sup> A failure to observe the decrees regarding non-cult constitutes a serious obstacle to a cause, since the faithful may have been illegitimately led to believe that devotion to the servant of God has been sanctioned by the Church.<sup>168</sup> This error can lead to a fabricated and inauthentic reputation of holiness among the faithful.

#### 4.2.2.f *Conclusion of the inquiry and publication of the acts*

Before the inquiry reaches its conclusion, the acts must be published, providing the promoter of justice and the postulator with the opportunity to examine the evidence that has been gathered. The purpose of this

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<sup>166</sup> NS, 28a. Although *Normae Servandae* required only the episcopal delegate to perform this examination, *Sanctorum Mater* clarified that the promoter and the notary were also to be present (cfr. SM, Art. 118 §2).

<sup>167</sup> CCS, *Le Cause dei Santi*, 285-287.

<sup>168</sup> *Normae Servandae* prohibits solemn celebrations or panegyric speeches, lest the faithful be erroneously led to conclude that the future canonization of the servant of God is certain (cfr. NS, 36).

examination is to determine whether the proofs are complete or whether additional proofs are required:

Once all the proofs have been gathered, the promotor of justice is to inspect all the acts and documents so that, should he deem it necessary, he may request further inquiries.<sup>169</sup>

The *contradictorium* between the promoter of justice and the postulator is particularly visible in the obligation to exhibit the acts to both parties, offering the opportunity to request additional instruction. The postulator can determine whether any further evidence in favor of the cause can be usefully submitted before the conclusion. The promoter of justice verifies that the truth has been adequately sought and the law has been faithfully observed. However, as the opposing party in the dialectical process with the postulator, the promoter of justice should be particularly attentive to any obstacles to the cause that have not been fully explored.

#### 4.3 THE ROLE OF THE PROMOTER OF THE FAITH IN EVALUATING THE PROOFS

In the second chapter, the role of the former Promoter General of the Faith in the Congregation was examined. The responsibilities of the Promoter General were divided between his interactions with the local promoter in the ordinary and apostolic processes and his interventions during the study of the cause within the Congregation in which he offered his opinions. While the steps for the treatment of a cause were very detailed in the 1917 code, the Promoter General had a relatively free hand to make any observations that he judged opportune during his various interventions in the cause. Recognizing that his primary purpose was to identify obstacles that could hinder the cause, his interventions were not tightly regimented, affording him a maximum of flexibility when he stated his opinion. The Promoter General functioned in the second position of the *contradictorium*

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<sup>169</sup> NS, 27b: «*Collectis igitur omnibus probationibus, promotor iustitiae omnia acta et documenta inspiciat ut, si ipsi necessarium videatur, ultiores inquisitiones petere possit*». The postulator has a similar right (cfr. NS, 27c).

opposite the postulator who sought to advance the cause. The other consulters and cardinal members of the Congregation functioned in the third position as the impartial evaluators. Their evaluations ultimately served to advise the Supreme Pontiff who has the sole authority to pronounce judgment in these causes.

#### 4.3.1 THE LACK OF CONNECTION BETWEEN THE DIOCESAN AND ROMAN PROMOTERS

In the previous legislation, there were several implicit and explicit connections between the promoter of the faith on the local level and the Promoter General of the Faith in the Congregation. The strongest implicit connection arose from their shared title. Although they each had their own specific responsibilities, it was assumed that the local promoter or sub-promoter served an analogous role to the Promoter General. Every promoter of the faith was responsible for protecting the faith by insuring that the law was followed and by raising objections to a particular cause.

This implicit connection was broken when the diocesan or eparchial inquiry called for the participation of a promoter of justice rather than a promoter of the faith. The local promoter of justice and the Promoter of the Faith in the Congregation share in the responsibility to search for the truth, although this is a responsibility that is common to all who take part in these causes. However, the distinct duties entrusted to the promoter of justice and the Promoter of the Faith demonstrate that they are currently very different figures. Various commentaries emphasize their distinct roles.

The first responsibility of the Promoter of Justice, therefore, is to follow the cause at each stage to guarantee that the legislative norms in causes of Saints have been faithfully observed.<sup>170</sup>

In this regard, the promoter of justice is considered an official responsible for the juridic formalities of a diocesan or eparchial inquiry. On the

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<sup>170</sup> CCS, *Le Cause dei Santi*, 270: «Il primo dovere del Promotore di Giustizia, pertanto, è di seguire la causa in ogni tappa per garantire che le norme legislative nelle cause dei Santi sono state fedelmente osservate».

contrary, the Promoter of Faith is recognized by his alternate title as the Prelate Theologian of the Congregation.

The title of Prelate Theologian illustrates his principal function in the cause: to insure that all the questions of a theological nature regarding the cause are explored and clarified.<sup>171</sup>

While the promoter of justice is concerned with gathering proofs that are related to questions of a theological nature, he is also concerned with juridic issues and focuses on the observance of the law. On the contrary, the Promoter of the Faith is not responsible for verifying the observance of the law, focusing principally on the theological issues related to the merits of a cause.<sup>172</sup>

Turning to the explicit connections in the previous law between the Promoter General and the local promoter of the faith, these interactions have essentially disappeared in the current legislation. Unlike the previous law, the promoter of justice is not appointed by the Promoter of the Faith but by the local bishop. Therefore, the promoter of justice would not have any particular sense of accountability to the Promoter of the Faith in the exercise of his function. The promoter of justice does not receive the interrogatory from the Promoter of the Faith, but rather crafts the questions himself. At the close of the local inquiry, the promoter of justice is not required to send a letter to the Promoter of the Faith. On the contrary, he is invited to send a letter to the Prefect of the Congregation «in which he formulates his own observations».<sup>173</sup> The promoter of justice can offer any favorable or unfavorable observations he may have even regarding the merits of the cause. However, in practice, the promoter often adds his own assurances to

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<sup>171</sup> CCS, *Le Cause dei Santi*, 302: «Il titolo di Prelato teologo illustra la sua principale funzione nelle cause: curare che vengano approfondite e chiarite tutte le questioni di natura teologica riguardanti la causa».

<sup>172</sup> This observation may explain why the promoter of the faith during the instruction of the inquiry was replaced by the promoter of justice. The promoter of justice oversees the canonical collection of the proofs while the Promoter of the Faith is responsible for the theological evaluation of those proofs. See the comments in chapter 3, footnote 223 on page 217.

<sup>173</sup> SM, Art. 148: «*Ad studium causae in romana periodo, opus erit ut Promotor quoque Iustitiae ad Praefectum litteras mittat, quibus significantur proprii maioris momenti aspectus, quaeque litteris Episcopi vel eius Delegati inserantur*».

those of the episcopal delegate regarding the credibility of the witnesses and the faithful observation of the norms during the instruction of the cause.<sup>174</sup>

The detachment of the promoter of justice from the Promoter of the Faith is also evident in the division of the current legislation for causes of canonization. No longer contained in the code, the special legislation has been promulgated in two separate documents. The responsibilities of the Promoter of the Faith are described in the apostolic constitution, *Divinus Perfectionis Magister*, to which can be added the current regulations (*Regolamento*) of the Congregation. The responsibilities of the promoter of justice are described in *Normae Servandae*, to which can be added the instruction, *Sanctorum Mater*. These last two documents contain the information that the promoter of justice needs in order to fulfill his function. The promoter of justice does not interact with the Promoter of the Faith, and is not required to have any particular understanding of his function in the Congregation.

This lack of connection between the promoter of justice and the Promoter of the Faith can lead to difficulties in the thorough instruction of an inquiry, especially if the promoter of justice lacks experience or training in causes of canonization. The promoter of justice may overlook important points during the instruction of the inquiry simply because he may lack familiarity with these kinds of causes or because he may fail to appreciate the importance of his role. It would be helpful if the promoter of justice received some training in causes of canonization and the praxis of the Congregation before he begins his function.<sup>175</sup> His knowledge of the way in which the cause will be evaluated in the Congregation will help him more effectively participate in the instruction of the cause during the inquiry. The

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<sup>174</sup> The episcopal delegate is also invited to present any observations he may have regarding the cause. However, the delegate is required to «express his opinion about the trustworthiness of the witnesses and the legitimacy of the acts of the Inquiry» (cfr. SM, Art. 147 §2: «*In huiusmodi litteris sententiam ferre debet de credibilitate testium ac de legitimitate actorum Inquisitionis*»). It is not unusual for the promoter of justice to comment on these same topics in his letter to the Prefect of the Congregation.

<sup>175</sup> In 1984, John Paul II authorized the Congregation to offer a stadium to provide training for those who may work in causes of canonization. See CCS, Decretum: *Studium S. Congregationis pro Causis Sanctorum instituitur*, 2 iunii 1984, in AAS 76 (1984), 1089-1090; CCS, *Le Cause dei Santi*, 309-310.

current legislation entrusts the promoter of justice with a great deal of discretion and responsibility. A thorough inquiry depends in no small part on the competence of the promoter of justice and his dedication to his duty.<sup>176</sup>

#### 4.3.2 OFFER OPINION ON THE CAUSE

The five principal stages for the study of a cause in the Congregation are outlined in *Divinus Perfectionis Magister*.<sup>177</sup> Of these five stages, the Promoter of the Faith does not have a direct role in three of them: the study of the juridic validity of the inquiry, the preparation of the *positio*, and the examination by the historical consulters, when this is required. The Promoter of the Faith performs his primary function in the fourth stage when the *positio* is examined by the theological consulters of the Congregation. The Promoter also retains his right to participate in the fifth stage when the cardinal and bishop members meet to discuss the cause.

Since the Promoter of the Faith in the current legislation has been significantly redefined, many of the observations that were made in the second chapter will no longer apply. As the individual stages in the current legislation are examined, three points will be taken into account. First, each stage will be considered in relation to the previous legislation, with particular attention to any changes in the function of the Promoter of the Faith. Second, the participation of the other officials in the Congregation will be considered, especially if they have assumed a duty that previously had been performed by the Promoter of the Faith. Third, the presence of the *contrdictorium* will be considered with respect to the Promoter of the Faith and the other officials.

The importance of the first point is evident, since the changes to the office of the Promoter of the Faith can only be identified by comparing the present and the prior law. The underpinning of the second point lies in the

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<sup>176</sup> SM, Art. 47 §1. This article was cited in footnote 123 on page 283. The same argument also applies to the episcopal delegate who has also been entrusted with a tremendous amount of discretion and responsibility.

<sup>177</sup> DPM, 13, 1°-5°. These procedures were briefly discussed in section 4.1.5 on page 267.

introduction of a variety of new figures in the study of causes of canonization. Causes have greatly increased in complexity both through the application of the historical critical method and through the use of a wide range of experts. As the level of complexity has increased, it has become increasingly difficult for one person to have the necessary expertise and time to oversee every aspect of the study of a cause.<sup>178</sup> Instead, a division of the responsibilities in the Congregation has allowed various individuals to participate in the study of a cause by exercising a variety of roles for which they are qualified. During the preparation of the present law, some suggested that the competencies of the Promoter General of the Faith should be divided in this way.<sup>179</sup> This division has occurred in the current legislation through the introduction of various figures, such as the Undersecretary, the Relator General, the relator, and the external collaborator, who have assumed various responsibilities, some of which were previously related to the office of the Promoter General of the Faith. These figures will be considered as the stages in the study of the cause are analyzed.

The third point hinges on the nature of causes of canonization which are judicial-administrative processes that are also studied in a historical-critical way.<sup>180</sup> While causes continue to have a judicial element, the presence of the *contradictorium* within the Congregation is less evident. The use of the *contradictorium* during the Roman phase remains a matter of debate, since no consensus has emerged from the variety of published opinions.<sup>181</sup> Nevertheless, insofar as causes of canonization continue to be

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<sup>178</sup> Veraja made this observation when he argued that the work of the Promoter General was too great and could be more effectively divided between the relators and the Promoter. In this way, he argued, the Promoter would be more available to dedicate himself to the study of the theological issues in causes of canonization. See pages 205 and 258.

<sup>179</sup> In 1981, the Polish bishops thought it would be advantageous to break up the role of the Promoter General, dividing his responsibilities among series of promoters of the faith who could specialize in the study of specific aspects of causes. See section 3.5.4 on page 207.

<sup>180</sup> This point was discussed in section 4.1.2 on page 252.

<sup>181</sup> Various positions were mentioned in section 4.1.4. Among the various authors who have contributed to this topic, Apeciti no longer sees a *contradictorium* in the process. Meinardi and Scordino concentrate on the modified *contradictorium* between the relator

treated according to the pattern of a contentious process, the articulation of contrary positions remains useful in order to arrive at the truth. Therefore, the presence of the *contradictorium* during the study of a cause in the Congregation will be examined. It will also be useful to consider ways in which a clearer application of the principles of the adversarial, dialectical process could more effectively contribute to the search for the truth.

The first stage for the study of a cause in the Congregation requires the Undersecretary to examine the validity of the inquiry.

First of all, the Undersecretary is to verify whether all the rules of law have been followed in the inquiries conducted by the Bishop. He is to report the result of his examination in the ordinary meeting of the Congregation.<sup>182</sup>

Although this paragraph only speaks of verifying «whether all the rules of law have been followed», the regulations of the Congregation refer to this stage as the «verification of the validity of the acts».<sup>183</sup> The Undersecretary oversees the examination of the juridic validity of the inquiry, with the assistance of other officials. The results of this examination are presented in the ordinary meeting of the Congregation.<sup>184</sup>

In the previous legislation, the study of the validity of the ordinary and apostolic processes called for the observations of the Promoter General of the Faith against the validity and the responses of the advocate.<sup>185</sup> The *contradictorium* was found in the responsibility of the Promoter General to present any observations he may have had in opposition to the validity of the processes, to which the advocate for the petitioner could respond in a dialectical process. The *contradictorium* is less recognizable in the current

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and the external collaborator, while Porsi focuses on these relationship between the relator and the postulator. See pages 263-265 above.

<sup>182</sup> DPM, 13, 1°: «*Ante omnia Subsecretarius scrutatur utrum in inquisitionibus ab Episcopo factis omnia legis statuta servata sint, et de exitu examinis in Congressu ordinario referet*».

<sup>183</sup> CCS, *Regolamento*, 2000, Titolo 3, Capitolo 1, n. 3: «Verifica della validità degli atti».

<sup>184</sup> CCS, *Regolamento*, 2000, Art. 6, 1°; 56; and 57 §1.

<sup>185</sup> CIC 1917, can. 2099, 2°: «*Quare ante disceptationem paretur a causae advocato positio, quae constet: 2° Animadversionibus Promotoris generalis fidei contra validitatem, cum responsionibus advocati, utrisque ad normam can. 2080 exaratis*».

legislation, which does not expressly require the Undersecretary or the other officials to oppose the juridic validity of the acts as they are studied. Furthermore, the postulator is not called to present any response before the validity is examined in the ordinary meeting of the Congregation. However, in the context of the study of the juridic validity of the inquiry, the regulations refer to the possibility that the postulator may be called upon to provide additional documents that are to be inserted into the procedural acts.<sup>186</sup> This provision of the regulations of the Congregation refers to the circumstance in which the juridic validity of the inquiry cannot be granted because of a defect or omission in the acts. In this case, the postulator is informed and may be able to remedy the defect.<sup>187</sup> This exchange between the Undersecretary and the postulator is a type of *contradictorium*, since the Undersecretary identifies an obstacle regarding the cause to which the postulator can respond.

This *contradictorium* could be strengthened, if the specific responsibilities of the Undersecretary and assisting officials were further clarified. The postulator who requests the decree of juridic validity is in favor of the cause. The opposing function could be fulfilled by the officials who study the acts if they are specifically tasked with the duty to raise objections against the validity of the inquiry. The function of the impartial evaluator would then be assumed by the officials who participate in the ordinary meeting of the Congregation. While the Promoter of the Faith participates in these ordinary meetings, he is not directly involved in the study the juridic validity of the inquiry.<sup>188</sup> According to this arrangement, if the Undersecretary must decide when to request additional documentation, he would be considered to be in the third position as an impartial evaluator rather than the second position in opposition to the cause.

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<sup>186</sup> CCS, *Regolamento*, 2000, Art. 59.

<sup>187</sup> Some defects cannot be remedied through the presentation of additional documentation. In more serious cases, the Undersecretary may indicate the need for the instruction of a supplementary inquiry to gather additional proofs (cfr. CCS, *Le Cause dei Santi*, 320-321).

<sup>188</sup> CCS, *Regolamento*, 2000, Art. 25 §1. The Promoter of the Faith participates in the ordinary meetings of the Congregation: «Al Congresso ordinario prendono parte il Cardinale Prefetto, il Segretario, il sottosegretario, il Promotore della Fede e il Relatore generale, nonché i Relatori e gli Officiali convocati».

The second stage in the Congregation requires the relator and the external collaborator to prepare the *positio*.

If the meeting judges that the cause was conducted according to the norms of law, it decides to which Relator the cause is to be assigned; the Relator, then, together with a collaborator from outside the Congregation, will prepare the Position on virtues or on martyrdom according to the rules of critical hagiography.<sup>189</sup>

The preparation of the *positio* no longer involves the Promoter of the Faith, since this work has now been entrusted to the relator and the external collaborator. In the previous legislation, the Promoter General of the Faith and the advocate took part in the preparation of the *positio* through their opposing observations and responses.<sup>190</sup> While the Promoter General and the advocate faced each other in a dialectical process, this paragraph does not specify whether the relator and the collaborator are impartial figures or whether they are to take different positions either for or against the cause. The precise functions of the relator and the collaborator, as well as the nature of their interaction, have been the subject of significant debate.<sup>191</sup>

There are some indications in the present regulations that the relator and the external collaborator may exercise opposing functions, since the relator is an official who is presented by the Relator General and nominated by the Congregation, while the collaborator, who is presented by the postulator, cannot be chosen from the officials in the Congregation.<sup>192</sup> Although these two figures work together in the composition of the *positio*,

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<sup>189</sup> DPM, 13, 2°: «*Si Congressus iudicaverit causam instructam fuisse ad legis normas, statuet cuinam ex Relatoribus committenda sit; Relator vero una cum cooperatore externo Positionem super virtutibus vel super martyrio conficiet iuxta regulas artis criticae in hagiographia servandas*».

<sup>190</sup> CIC 1917, cann. 2106, 2109, et 2113. The Promoter General presented his *animadversiones* for each of three *positiones* that were composed regarding the merits of the cause. The advocate presented his corresponding *responsiones*.

<sup>191</sup> Regarding the debate about the role of the relator and the external collaborator with respect to the *contradictorium*, see the arguments presented in section 4.1.4 on pages 262-265.

<sup>192</sup> CCS, *Regolamento*, 2000, Artt. 47 §1 and 60. The postulator can ask to perform the function of collaborator personally. This possibility was mentioned in the 1983 regulations (cfr. CCS, *Regolamento*, 1983, Art. 15 §3).

the regulations of the Congregation approach these two figures in different ways. It appears to be presumed that the collaborator will be favorable to the cause, since the Congregation requires «the external collaborator [to] swear not to hide any gap or difficulty that may present itself during the study of the Cause».<sup>193</sup> On the other hand, it appears that the relator will take an opposing role during the redaction of the *positio*, since he is to «inform the ordinary meeting [of the Congregation] when a problem of particular importance emerges».<sup>194</sup> Furthermore, the relator is to prepare his own report about the questions inherent in the cause, including any possible obstacles.<sup>195</sup> Unlike the collaborator, the relator does not need to take a separate oath to expose the weaknesses in a cause, since this is part of his duty within the Congregation.

The theory that the relator and the collaborator may take opposite parts in the *contradictorium* is undermined by other provisions in the regulations. The relator and the collaborator are not considered to be equal parties, since the collaborator is subordinated to the relator and works under his direction. Since these two figures must work together in the preparation of the *positio*, they seem to share a common purpose in their mutual search for the truth.<sup>196</sup> Rather than presenting competing arguments, they agree on the single *positio* which is signed by all those who participated in its composition. Moreover, the relator is juridically responsible for its preparation.<sup>197</sup>

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<sup>193</sup> CCS, *Regolamento*, 2000, Art. 49: «Il collaborator esterno giurerà di non nascondere alcuna lacuna o difficoltà che gli si presenterà durante lo studio della Causa, e di lavorare secondo le direttive impartite dal Relatore».

<sup>194</sup> CCS, *Regolamento*, 2000, Art. 9 §1: «I Relatori dirigono, in collaborazione con il Postulatore, la redazione della *Positio* delle Cause loro affidate, informandone il Congresso ordinario quando emerge un problema di particolare importanza».

<sup>195</sup> CCS, *Regolamento*, 2000, Art. 61 §1: «Il Relatore designato redige una relazione riguardante le questioni inerenti alla Causa (gli eventuali ostacoli; la richiesta di eventuali perizie o di studi specialistici; l'accettazione del collaboratore proposto, ecc.)».

<sup>196</sup> CCS, *Regolamento*, 1983, Art. 15 §4. The mutual cooperation of the collaborator and the relator in the search for the truth was expressly affirmed in the 1983 regulations. The 2000 regulations used different language to express the same principle by emphasizing that these two figures work together in the composition of a *positio* that is sufficient to arrive at moral certitude. See CCS, *Regolamento*, 2000, Art. 62 §1.

<sup>197</sup> CCS, *Regolamento*, 2000, Art. 66 §2.

It is not easy to determine from the regulations which position the relator assumes in the *contradictorium*. When the relator identifies problems or obstacles in a cause, he appears to stand in the second position, that of opposing the cause. In this respect, the relator appears to perform the traditional responsibility of the Promoter of the Faith. However, the *positio* is to be a scientific work in which the facts of the cause are presented in accord with modern critical hagiography. In fulfilling this duty, the relator must be objective and impartial, producing a report or dossier that corresponds to the truth. Veraja summed up the role of the relator as follows:

The task of the Relator cannot therefore be reduced to that of a professor who directs a doctoral thesis, since the Relator is the person personally responsible by office for the dossier, on the basis of which the theologians will express their judgment on the merits of the cause. However, it is not for the Relator himself to anticipate this judgment, expressing [his opinions] on the degree of the virtues of the servant of God. Even less would it conform to the mind of the law if the Relator were to end up functioning as the advocate of the cause; it is appropriate rather to remember that the function of censor, which in the past was performed by the Promoter general of the Faith, has been, in part, absorbed by the Relator.<sup>198</sup>

According to Veraja, the relator is not to express an opinion regarding the cause. He is to remain neutral, verifying only that the information presented in the *positio* is accurate, complete, and truthful. According to this understanding, the relator studies the cause, but he is not specifically called to oppose it. When he detects a problem or an obstacle, he is only to indicate the difficulty as an object for further study. Although Veraja compares the relator to the former Promoter General of the Faith, he envisions the relator to be an impartial academic rather than a figure called to stand in opposition to the cause.

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<sup>198</sup> F. VERAJA, *Le cause di canonizzazione*, 59-60: «Il compito del Relatore non può quindi ridursi a quello di un professore che dirige una tesi di laurea, poiché il Relatore è la persona d'ufficio personalmente responsabile del dossier, in base al quale i teologi esprimeranno il loro giudizio sul merito della causa. Al Relatore stesso, però, non spetta di prevenire questo giudizio, esprimendosi sul grado delle virtù del Servo di Dio. Ancor meno sarebbe conforme alla mente della legge se il Relatore finisse per fare l'avvocato della causa; conviene piuttosto ricordare che nella funzione di Relatore è stata assorbita, in parte, quella di Censura, che in passato svolgeva il Promotore generale della Fede».

From these observations it can be concluded that there is not a clear *contradictorium* in the current legislation, since the party who stands in the second position in opposition to the cause remains obscure. This responsibility is not assumed by the Promoter of the Faith since he is not involved in the preparation of the *positio*. It is not assumed by the collaborator who is nominated by the postulator. A limited *contradictorium* may be present insofar as the relator is responsible for identifying problems and obstacles to the cause, but he is also responsible for producing an objective *positio* that presents the evidence in a way that impartially corresponds to the truth. In the interest of having a more robust debate regarding the strengths and weaknesses in the cause, it would be advantageous to clarify the responsibilities of those who compose the *positio* and to explicitly entrust one party with the duty of presenting objections regarding the merits of the cause. Further clarification is necessary to define the way in which the relator is juridically responsible for the *positio*. Since the relator cannot assume the function of advocate for the cause, he cannot be responsible for the quality of the argument in favor of a cause of canonization.<sup>199</sup> Since it would be similarly contrary to his function to assume the role of supporter or defender of the cause, it is not his responsibility to guarantee that the *positio* will receive a favorable evaluation when it is studied by the historical consultants, the theologians, or the cardinal and bishop members of the Congregation. The relator, however, can be responsible for the accurate presentation of the proofs, the diligent search for the truth, and the complete examination of the elements of the cause.<sup>200</sup>

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<sup>199</sup> It is a canonical principle that the burden of proof falls to the petitioner who advances the cause (cfr. CIC 1983, can. 1526 §1). Therefore, it is for the postulator, and not the relator, to see that the argument in favor of the cause of canonization is as complete as possible.

<sup>200</sup> The Relator General gives approval for the printing of the *positio* (cfr. CCS, *Regolamento*, 2000, Art. 67). In an objective sense, this approval should indicate only that the proofs have been accurately presented, the argumentation is scientific, and any obstacles have been addressed. However, a positive outcome cannot be presumed, since the various consultants retain the freedom to conclude, based on the totality of the evidence contained in the *positio*, that the cause has or has not been proven with moral certitude. While the relator directs the composition of the *positio* and the Relator General approves its printing, the cost of printing is paid by the postulator who administrates the

The third stage in the Congregation calls for the evaluation of the documentary evidence in certain circumstances.

In ancient causes and in those recent causes whose particular nature, in the judgment of the Relator General, should demand it, the published Position is to be examined by Consultors who are specially expert in that field so that they can cast their vote on its scientific value and whether it contains sufficient elements required for the scope for which the Position has been prepared.<sup>201</sup>

Under the direction of the Relator General, the historical consulters consider three questions regarding the *positio*: whether the documentary evidence is complete, whether it is authentic, and whether it contains sufficient evidence to reach a conclusion regarding the reputation of holiness or martyrdom.<sup>202</sup> In the 1917 code, this work was performed by nominated experts whose conclusions were submitted to the Promoter General of the Faith.<sup>203</sup> Since 1930, this responsibility has been stably entrusted to a group of historical consulters in the Congregation who continued to submit their opinions to the examination of the Promoter General of the Faith.<sup>204</sup> This arrangement remains fundamentally unchanged, since the current legislation calls for the opinions of the historical consulters to be transmitted to the Promoter of the Faith and the theological consulters in the fourth stage of the process. The

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funds offered for the cause (cfr. NS, 3c). As a steward of these funds, the postulator has a natural interest in the presentation of the best possible arguments for the cause in the *positio*.

<sup>201</sup> DPM, 13, 3°: «*In causis antiquis et in iis recentioribus, quarum peculiaris indoles de iudicio Relatoris generalis id postulaverit, edita Positio examini subicienda erit Consultorum in re speciatim peritorum, ut de eius valore scientifico necnon sufficientia ad effectum de quo agitur votum ferant*».

<sup>202</sup> CCS, *Le Cause dei Santi*, 330.

<sup>203</sup> The Congregation called upon experts to examine the authenticity of the documents (cfr. CIC 1917, can. 2036 §1). However, the report of the experts and the documents themselves were examined by the Promoter General of the Faith, both when the ordinary processes and the reputation of holiness or martyrdom were examined for the introduction of the cause and when the validity of the ordinary and apostolic processes was examined (cfr. CIC 1917, cann. 2078 and 2099).

<sup>204</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 3, 4°. See section 3.2.1.

relator, but not the Promoter of the Faith, is present for the meeting of the historical consulters.<sup>205</sup>

The historical consulters present their objections regarding the sufficiency and the authenticity of the documentary evidence. *Già da qualche tempo* indicated that any difficulty related to the documentary evidence could be brought to the attention of the postulator who could address it.<sup>206</sup> However, neither the regulations of the Congregation of 1983 nor 2000 make any reference to the postulator's role in responding to the historical consulters. Nevertheless, in practice, it remains the responsibility of the postulator to determine if any objections raised by the historical consulters can be resolved with additional evidence.

In the case of an alleged miracle, the *positio* is not studied by the historical consulters, but rather by a group of medical or technical experts who must determine whether the event is inexplicable from a scientific point of view.<sup>207</sup> Like the historical consulters, the opinions of the experts are also transmitted to the Promoter of the Faith and the theological consulters. While the Promoter of the Faith does not participate in the meeting of the historical consulters, the regulations call for the Promoter to be present, with the relator and the Undersecretary, at the meeting of the experts.<sup>208</sup> Furthermore, there is a kind of *contradictorium* between these experts and the postulator. The experts can raise objections to the cause if they do not find that the circumstances of the alleged miracle are proven to be beyond the explanation of science. The postulator may respond to these objections. If the postulator is able to resolve them, he or she may request that the cause be reexamined by the same experts.<sup>209</sup>

The fourth stage in the Congregation calls for the Promoter of the Faith and the theological consulters to evaluate the merits of the cause.

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<sup>205</sup> CCS, *Regolamento*, 2000, Art. 72.

<sup>206</sup> PIUS PP. XI, *Già da qualche tempo*, Art. 3, 3°.

<sup>207</sup> CCS, *Le Cause dei Santi*, 332.

<sup>208</sup> CCS, *Regolamento*, 2000, Art. 85.

<sup>209</sup> CCS, *Le Cause dei Santi*, 331. The praxis of the Congregation permits the possibility of a second presentation of the cause to the «consulta medica», even though this is not mentioned in the 2000 *Regolamento*.

The Position (together with the votes of the historical Consultors as well as any new explanations by the Relator, should they be necessary) is handed over to the theological Consultors, who are to cast their vote on the merit of the cause; their responsibility, together with the Promoter of the Faith, is to study the cause in such a way that, before the Position is submitted for discussion in their special meeting, controversial theological questions, if there be any, may be examined thoroughly.<sup>210</sup>

The Promoter of the Faith and the theological consultors offer their opinion regarding the merits of the cause. However, the Promoter of the Faith is responsible for focusing the discussion of the theologians by identifying those questions to be specifically examined. Furthermore, the Promoter of the Faith can ask, through the Relator, for any clarifications that the postulator has to offer.

The Promoter will transmit to the Consultors, when sending the *Positio*, a note prepared with the help of an Official, in which the questions are indicated that, in a particular way, are to be discussed in the meeting of the theologians. If necessary, he will ask the Postulation, through the Relator of the Cause, to present in writing the useful clarifications.<sup>211</sup>

This exchange between the Promoter of the Faith and the postulator has the appearance of a *contradictorium* between opposing parties, since the postulator responds to those problematic points raised by the Promoter. However, this exchange is not a true *contradictorium* for two reasons. First, the consultation with the postulator is facultative and occurs only when the Promoter judges it to be useful. Second, the Promoter is not presenting a comprehensive argument against the cause, but only posing questions or points that call for useful clarification.

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<sup>210</sup> DPM, 13, 4°: «*Positio (una cum votis scriptis Consultorum historicorum necnon novis enodationibus Relatoris, si quae necessariae sint) tradetur Consultoribus theologis, qui de merito causae votum ferent; quorum est, una cum Promotore fidei, causae ita studere, ut, antequam ad discussionem in Congressu peculiari deveniatur, quaestiones theologicae controversae, si quae sint, funditus examinentur*».

<sup>211</sup> CCS, Regolamento, 2000, Art. 73 §2: «Il Promotore trasmetterà ai Consultori, insieme con l'invio della *Positio*, una nota redatta con l'aiuto di un Ufficiale, nella quale saranno indicate le questioni che, in maniera particolare, dovranno essere discusse nel Congresso teologico. All'occorrenza, chiederà alla Postulazione, tramite il Relatore della Causa, di presentare per iscritto le opportune delucidazioni».

When the cause is discussed by the theologians, the Promoter of the Faith joins the other theologians in expressing his opinion about the merits of the cause. In this respect, he has shifted from the second position of the *contradictorium* to the third. He no longer is responsible solely for raising objections to a cause and no longer participates in a dialectical process through his observations to which the advocate submits his responses. In the current legislation, the Promoter stands in the third position, that of offering an impartial opinion or judgment. He must give his opinion regarding the proposed doubt, responding affirmatively, negatively, or by suspending judgment.<sup>212</sup> This change marks a significant break from the prior law under which the Promoter General of the Faith was forbidden to praise any element of a cause, and could never vote in favor of a cause.<sup>213</sup> Furthermore, it should be observed that there is no person present during the meeting of the theologians who bears the specific responsibility to present arguments against the cause.

The fifth stage in the Congregation calls for the cause to be presented to the cardinal and bishop members in an ordinary session.

The definitive votes of the theological Consultors, together with the written conclusions of the Promotor of the Faith, are submitted to the judgment of the Cardinals and Bishops.<sup>214</sup>

The Promoter of the Faith participates in this ordinary session, though without the right to vote.<sup>215</sup> The participation of the Promoter in the meeting of the members of the Congregation appears to be a point of continuity with the previous law. In fact, the Promoter General of the Faith had the right to

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<sup>212</sup> CCS, *Regolamento*, 2000, art. 77: «Al *dubium* sulla fama di santità e sull'esercizio eroico delle virtù o sul martirio e la causa del martirio i Consultori presenti al Congresso risponderanno: *affirmative* o *negative* o *suspensive*». A vote *suspensive* was a vote to suspend judgment since the evidence did not provide enough proof to resolve the doubt. A supermajority must vote in the affirmative for the cause to advance. Negative votes and votes to suspend work against the cause.

<sup>213</sup> This point was made by Noval. See J. NOVAL, *Commentarium*, Pars 2, 56, quoted in chapter 2, footnote 56 on page 97.

<sup>214</sup> DPM, 13, 5°: «*Vota definitiva Consultorum theologorum, una cum conclusionibus a Promotore fidei exaratis, Cardinalibus atque Episcopis iudicaturis tradentur*».

<sup>215</sup> CCS, *Regolamento*, 2000, Art. 79.

intervene at every stage in the treatment of a cause, even when it was presented before the Pope, in order to make known his objections or arguments against the cause.<sup>216</sup> However, the role of the Promoter of the Faith has changed in the current legislation. He is no longer required to oppose the cause and responds only to those questions posed by the members of the Congregation. The written opinion that he prepared for the theological consultation, which could be in favor of the cause, is added to the *positio* with the opinions of the other theologians before it passes to the cardinals and bishops. Again, it should be observed that there is no one in the ordinary session with the specific responsibility of presenting arguments against the cause. If the prior opinions of the medical, historical, and theological consultants were unanimously in favor of the cause, it could occur that the cardinals and bishops would receive only favorable recommendations, with no other argument to the contrary.

These consultations with the historians, medical experts, theologians, bishops, and cardinals share one ultimate goal: to give advice to the Supreme Pontiff who is the only judge in causes of canonization. When he pronounces the formula for canonization, the Pope indicates that he has arrived at this decision after lengthy reflection.

That lengthy reflection is understood to refer not only to the personal meditation of the Holy Father, but also to the long and laborious process of treating a Cause, in which innumerable protagonists take part through their theological, historical, juridic, spiritual, scientific, and pastoral competence, and who make their contribution to the achievement of the final objective of the solemn declaration of the holiness of a Servant of God.<sup>217</sup>

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<sup>216</sup> The rights of the Promoter General of the Faith to intervene were discussed in chapter 2. See page 137.

<sup>217</sup> S. LA PEGNA, *La Congregazione delle Cause dei Santi in Ephemerides Iuris Canonici*, 52 (2012), 336: «Qui il Papa afferma di essere giunto a questa decisione “dopo aver lungamente riflettuto”. In tale lunga riflessione, non è intesa solo la personale meditazione del Santo Padre, ma anche il lungo e laborioso processo di trattazione di una Causa, in cui sono implicati innumerevoli protagonisti che, con la loro competenza teologica, storica, giuridica, spirituale, scientifica e pastorale danno il loro contributo al raggiungimento del traguardo finale della dichiarazione solenne della santità di un Servo di Dio».

Arriving at this important goal requires a careful and precise study of the cause.

The official recognition of holiness entails a delicate theological discernment accompanied by an accurate canonical procedure with precise stages and deadlines. All this [serves] to avoid the temptation of superficiality and of inappropriate haste.<sup>218</sup>

Each expert who participates in the evaluation of a cause ultimately serves the Holy Father in his responsibility of discernment regarding the cause. Furthermore, the procedures that are utilized in the Congregation provide the structure that allows for this advice to be effectively sought. The careful application of the current legislation, in the interest of searching for the truth, seeks to provide the most thorough and complete evaluation of the cause to the Holy Father.

#### 4.4 CONCLUSION

A cause of canonization in the present legislation is still a special kind of judicial-administrative process, though it now also has a historical-critical component. These causes have become more complex on account of the desire that they be thoroughly examined using modern scientific methodology. In order to accomplish this demanding task, the current legislation calls for the participation of a wide number of figures who contribute according to their individual competence. In the diocesan or eparchial inquiry, the promoter of justice is not singularly responsible for the thorough examination of a cause. Rather, the inquiry is assisted by the participation of historical, theological, medical, and technical experts who participate in the careful collection of proofs. In the Congregation, the Promoter of Faith is joined by several other figures, including the relator and

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<sup>218</sup> A. AMATO, *Un'impresa di alto profilo. Prolusione al corso dello Studium*, 9 gennaio 2012, in URL: <<http://www.causesanti.va/content/causadeisanti/it/archivio/amato/studium-2012.html>> (in data 1 aprile 2015): «Il riconoscimento ufficiale della santità implica un delicato discernimento teologico accompagnato da un'accurata procedura canonica, con tappe e scadenze precise. Tutto ciò per evitare le tentazioni di superficialità e di fretta inopportuna».

the various experts, who participate in the careful study of the cause. The incorporation of a wide variety of persons responds to the modern needs in causes of canonization and ultimately serves the interests of the truth.

With the rise in the use of modern experts and scientific methodology, some have sought to diminish or transform the juridic dimension of causes of canonization. Those who considered the juridic formalities of the prior law to be unworkable were open to new systems that would replace a juridic approach with a more scholarly or academic study of causes. However, these juridic formalities were the result of the historical evolution of causes of canonization, responding to the changing needs of the Church over time. From these historical developments came a series of juridic procedures that were introduced in order to protect the integrity of the institution of canonization. In the present era, it would be imprudent to entirely abandon a longstanding juridic approach in favor of a new system, solely because some aspects of that system appear outdated. One of these valuable juridic contributions is the *contradictorium* by which the parties act in opposition to one another in the interest of discovering the truth.

Some signs of the *contradictorium* are still present in the current legislation, though further clarifications could more precisely define the rights and duties of the opposing parties. In particular, the promoter of justice emerges as the figure in the diocesan or eparchial inquiry who represents the Church and acts opposite the postulator. His careful work in gathering the proofs, especially those that could work against the cause, serves the interest of conducting a thorough search regarding the servant of God. In the Congregation, further clarification is needed to identify the figures that are called to oppose the cause. With respect to the juridic validity of the inquiry, this function could be performed by the Undersecretary or the officials who are entrusted with the study of the cause. With respect to the *positio*, this function could be performed by the relator working opposite the external collaborator. However, the current Promoter of the Faith cannot assume this opposing function insofar as he currently participates in the objective evaluation of the merits of the cause. The Promoter cannot stand in opposition to the cause if he can vote in its favor

when he believes that the virtues, martyrdom, or miracles have been proven with moral certitude.

A more vigorous use of the traditional *contradictorium* would strengthen the juridic aspect of causes of canonization. However, clarifications that sharpen the dialectical process between opposing parties can be applied to the current legislation without a need to return to the detailed formalities of the 1917 code. The historical and scientific advancements that have been introduced since 1917 have made a legitimate and valuable contribution to the study of causes of canonization. The application of the juridic principles outlined in this chapter could be a valid aid to the present legislation. In this way, the contributions of the theologian and the historian can be brought together with those of the canonist for the greater benefit of the study of causes of canonization.



## CONCLUSION

This history of causes of canonization demonstrates that the Church has used a variety of means, evolving over the course of time, to discern who is to be declared a saint. In the early centuries, these judgments were made by local bishops who recognized those men and women who enjoyed a solid reputation of martyrdom or holiness. By the 9<sup>th</sup> century, these judgments were routinely made by synods or councils, in which a number of bishops considered the proofs and the testimony presented by witnesses. By the 13<sup>th</sup> century, the Roman Pontiff reserved the power to canonize to himself, calling upon cardinals to advise him after conducting a careful investigation according to the pattern of a penal trial. By the 16<sup>th</sup> century, the Sacred Congregation of Rites had been entrusted with the study of these causes after they had been canonically instructed. These practices were concretized in the 1917 Code of Canon Law that presented a precise juridic formulation of these procedures to be observed. The years after 1917 saw other major developments through the application of modern scientific hagiography and the historical critical method, leading to the promulgation of the current special legislation in 1983.

Considering the recent history in causes of canonization and the present legislation, much has been gained through the application of a more rigorous scientific approach and the use of specialized experts in science, history, and theology, but much has also been lost as canonical principles have been devalued and the use of juridic terminology has diminished. This thesis has demonstrated that causes of canonization can be fruitfully instructed and studied by drawing upon both the contributions of modern science and the juridic insights from canonical law and tradition.

Among the canonical principles that can make an effective contribution to the study of causes is the *contradictorium* in which the

responsibilities of those who are favorable and those who are contrary to the cause are clearly articulated. For much of the history of causes of canonization, the *promotor fiscalis* and, later, the promoter of the faith have served this contrarian role, presenting objections to a cause as the so-called devil's advocate. In the present legislation, this responsibility is appropriately entrusted to the promoter of justice during the diocesan or eparchial inquiry. When the cause passes to the Congregation for study, this contrary role can be best served by the official who examines the juridic validity of the inquiry, and by the relator during the preparation of the *positio*. The participation of these figures, insofar as they are responsible for challenging a cause and raising objections, provides a safeguard to insure that only worthy candidates are canonized.

A greater use of the principle of the *contradictorium* does not imply a return to the procedures in the 1917 code. It is evident that the reforms that took place in the 20<sup>th</sup> century were motivated by frustrations with the previous law that at times seemed to be cumbersome, inflexible, slow, and laborious. In their place, it was hoped that the new norms would streamline the treatment of causes while maintaining a high degree of quality through a process that was more efficient and effective. One way to achieve this goal can be found in the careful and precise identification of those persons who are responsible for promoting a cause, for opposing a cause, and for impartially judging a cause. The identification of this division of responsibility would be a clarification and not a complication in the treatment of causes of canonization.

In order to achieve this level of effectiveness, it is paramount that those who take part in these processes be knowledgeable about their individual responsibilities. Reforms after the Second Vatican Council decentralized the instruction of causes of canonization. As a natural consequence of these reforms, the local officials who participated in the instruction of causes were entrusted with more authority but often had less knowledge and experience regarding their duties. In the instruction of the inquiry, the promoter of justice, as well as the other officials, would be served by a clear articulation of their roles as well as their individual responsibilities. The study of the cause in the Roman phase has not been

decentralized and continues to take place within the Congregation. However, even here, the clear articulation of the roles and responsibilities of the individual officials, including the relator and the external collaborator, would serve the interests of increased effectiveness.

Among the juridic terminology that requires clarification is the norm that the relator is juridically responsible for the *positio*. According to the principle that the burden of proof rests with the person who makes the assertion, the duty to prove the virtues, martyrdom, or miraculous intercession of a candidate for canonization rests with the postulator. If the external collaborator is presented by the postulator and acts on behalf of the petitioner of the cause, it is the collaborator's responsibility to present the most convincing argument in favor of canonization, while always respecting the truth. From this perspective, the postulator or the external collaborator should be defined as the party juridically responsible for the quality of the argument presented in the *positio*. Acting on behalf of the Church, it would be fitting for the relator to be responsible for presenting objections to the cause that correspond to the truth. He can function as a kind of censor by confirming that the information in the *positio* corresponds to the acts of the inquiry and that nothing of importance has been omitted. From this perspective, the relator could be considered juridically responsible for the accuracy and the thoroughness of the *positio*. This distinction would clarify the responsibilities of the relator and the collaborator. As a corollary to this clarification, the duty of the collaborator to work under the direction of the relator should also be reconsidered. While the relator can require that the *positio* be prepared in a way that is accurate, thorough, and scientific, it is not for the relator to devise the best argument in favor of canonization, nor to direct the collaborator as a type of advocate on behalf of the cause. Even when the *positio* is studied by the various consulters, the relator should be considered an expert who is knowledgeable about the cause, but not a defender who must act on its behalf.

Within the Congregation, the «Promoter of the Faith / Prelate Theologian» has assumed the role of the impartial judge, similar to the other theological consultants in the Congregation, since he must give his opinion regarding the merits of a cause. Because he is no longer responsible for the

traditional duty of identifying objections to a cause, this figure could perhaps be referred to simply as the «Prelate Theologian», while the relator who assumes the responsibility for raising objections could be referred to as the «relator / promoter of the faith» for a particular cause. This change in title would create a point of continuity with the traditional canonical understanding of the office of the promoter of the faith and would more precisely define the duties of the relator. The study of the office of the relator and his role in relationship to the postulator and external collaborator would be a beneficial topic for further study.

When reflecting on the contributions of Benedict XIV, Pius XII observed that history always requires the periodic revision of ecclesiastical laws in order to respond to the needs of each age. This fact is demonstrated in the various historical evolutions in causes of saints. With the passage of time, future developments will also become necessary in response to changing circumstances. A familiarity with the history of causes of saints, as well as the principles that shaped the corresponding canonical legislation, will provide the context necessary to guide future decisions regarding the examination of candidates for canonization. The observations in this thesis are offered for consideration as future causes of canonization are instructed and studied, with the desire that they be treated in the most effective way possible, in accord with their dignity and importance. The canon of saints serve the people of God as models who are worthy of imitation and intercession on the way to salvation. By safeguarding the integrity of the canon of saints, the Church works for the salvation of souls which must always be kept before one's eyes as the supreme law.

## ABBREVIATIONS

ACCS	<i>Archivio, Congregatio de Causis Sanctorum</i> Archives, Congregation of the Causes of Saints
AAS	<i>Acta Apostolica Sedis</i>
c.d.	cosiddetto also known as
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i>
CCS	<i>Congregatio pro Causis Sanctorum</i> (pre 1988) <i>Congregatio de Causis Sanctorum</i> (post 1988) Congregazione per le/delle Cause dei Santi Congregation for/of the Causes of Saints
CIC	<i>Codex Iuris Canonici</i>
DPM	<i>Divinus Perfectionis Magister</i>
NS	<i>Normae Servandae in Inquisitionibus ab Episcopis Faciendis in Causis Sanctorum</i>
SM	<i>Sanctorum Mater</i>



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## TABLE OF CONTENTS

Introduction.....	1
Chapter 1: History of the development of the promoter before 1917 .....	7
1.1 Canonizations under local authority .....	10
1.1.1 The early martyrs .....	10
1.1.2 The early confessors.....	13
1.1.3 Synods and episcopal canonizations .....	17
1.2 Canonizations under papal authority .....	21
1.2.1 Early period of papal canonizations .....	21
1.2.2 The transition toward papal reservation of canonizations.....	26
1.3 The rise of the inquisitorial system and the <i>promotor fiscalis</i> .....	34
1.3.1 Development of the inquisitorial system .....	34
1.3.2 Response to the inquisitorial system .....	41
1.3.3 The first appearance of the <i>promotor fiscalis</i> .....	43
1.4 The <i>promotor fiscalis</i> in causes of canonization .....	46
1.4.1 The inquisitorial process applied to causes of canonization .....	46
1.4.2 The rise of the <i>promotor fiscalis</i> in causes of canonization.....	48
1.5 The Sacred Congregation of Rites and the promoter of the faith.....	55
1.5.1 The Creation of the Sacred Congregation of Rites .....	55
1.5.2 The <i>promotor fiscalis</i> within the Sacred Congregation of Rites .....	58
1.5.3 The purpose of the promoter of the faith .....	65

1.5.4	The effect of the promoter of the faith in causes of canonization.....	67
1.6	Contributions after Urban VIII .....	68
1.6.1	Contributions of Innocent XI .....	69
1.6.2	Contributions of Clement XI and Benedict XIV .....	70
1.6.3	Contributions of Leo XII .....	72
1.6.4	Excursus: The introduction of the defender of the bond .....	73
1.7	Conclusion .....	76
Chapter 2: The promoter of the faith in the 1917 Code of Canon Law .....		79
2.1	The nature of causes of canonization and the office of promoter of the faith .....	81
2.1.1	The location of the norms in the code .....	81
2.1.2	The cause as a type of ecclesiastical trial .....	83
2.1.3	The role of the promoter of the faith .....	90
2.1.4	The value of the <i>contradictorium</i> .....	93
2.1.5	The stages of the process .....	99
2.2	The role of the promoter of the faith in gathering the proofs .....	102
2.2.1	Insure that the acts are legitimate .....	102
2.2.1.a	The citation and presence of the promoter .....	102
2.2.1.b	Oaths and secrecy .....	104
2.2.1.c	Specific interventions of the promoter .....	107
2.2.2	Insure that the proofs are complete .....	110
2.2.2.a	Complete proofs and moral certitude .....	110
2.2.2.b	The selection of witnesses .....	113
2.2.2.c	Composition of the interrogatory .....	115
2.2.2.d	Examination of the witnesses.....	120
2.2.2.e	Presentation of documents .....	124
2.2.2.f	Conclusion of the process and publication of the acts.....	126
2.2.2.g	The processes for the gathering of writings and non-cult.....	128
2.3	The role of the Promoter General of the Faith in evaluating the proofs .....	130
2.3.1	The connection between the diocesan and Roman promoters .....	131
2.3.2	Offer opinion on the cause .....	134

2.4	Conclusion .....	139
Chapter 3: History of the promoter after 1917 .....		143
3.1	Provisions omitted from the 1917 code .....	145
3.2	The reforms of Pius XI.....	150
3.2.1	<i>Già da qualche tempo</i> (1930).....	150
3.2.2	<i>Normae servandae</i> (1939).....	155
3.2.3	Consequences of the reforms in ancient causes .....	158
3.3	The reassessment of the 1917 code .....	160
3.3.1	The view of the code from 1917 to Vatican II.....	160
3.3.2	The announcement of Vatican II and a new code.....	165
3.4	The reforms of Paul VI .....	168
3.4.1	<i>Regimini Ecclesiae Universae</i> (1967) .....	168
3.4.2	<i>Sanctitas Clarior</i> (1969) .....	170
3.4.2.a	The association of bishops with the Supreme Pontiff.....	174
3.4.2.b	The development of the process .....	180
3.4.3	<i>Sacra Rituum Congregatio</i> (1969) .....	184
3.4.4	The effect of these reforms.....	187
3.5	The legislation of John Paul II .....	188
3.5.1	Preliminary discussions.....	188
3.5.2	The 1980 schema .....	190
3.5.3	Debate prior to the promulgation of the new law .....	199
3.5.4	The 1981 schema .....	207
3.5.5	The 1982 schema and 1983 promulgated text .....	215
3.5.6	The Regulations of the Congregation (1983) .....	219
3.6	Developments after the promulgation of the new law .....	221
3.6.1	<i>Pastor Bonus</i> and <i>Iusti Iudicis</i> (1988) .....	221
3.6.2	Decisions of the Congregation (1999).....	224
3.6.3	The new Regulations of the Congregation (2000).....	229
3.6.4	<i>Sanctorum Mater</i> (2007).....	231
3.7	Conclusion .....	236
Chapter 4: The promoter in the current legislation.....		239

4.1	The nature of causes of canonization and the office of the promoter .....	240
4.1.1	The location of the norms .....	240
4.1.2	The cause as a type of ecclesiastical trial or academic study .....	244
4.1.3	The role of the promoter of the faith and the promoter of justice.....	253
4.1.4	The value of the <i>contradictorium</i> .....	260
4.1.5	The stages of the process .....	265
4.2	The role of the promoter of justice in gathering the proofs .....	268
4.2.1	Insure that the acts are legitimate .....	274
4.2.1.a	The citation and presence of the promoter .....	274
4.2.1.b	Oaths and secrecy .....	278
4.2.1.c	Specific interventions of the promoter .....	280
4.2.2	Insure that the proofs are complete .....	282
4.2.2.a	Complete proofs and moral certitude .....	282
4.2.2.b	The selection of witnesses .....	286
4.2.2.c	Composition of the interrogatory .....	289
4.2.2.d	Examination of the witnesses.....	294
4.2.2.e	Other interventions of the promoter of justice .....	296
4.2.2.f	Conclusion of the inquiry and publication of the acts .....	297
4.3	The role of the Promoter of the Faith in evaluating the proofs.....	298
4.3.1	The lack of connection between the diocesan and Roman promoters.....	299
4.3.2	Offer opinion on the cause .....	302
4.4	Conclusion .....	315
	Conclusion.....	319
	Abbreviations .....	323
	Bibliography .....	325
	Table of Contents.....	339