

EPISCOPAL CONFERENCES, PARTICULAR COUNCILS, AND THE RENEWAL OF INTER-DIOCESAN “DELIBERATIVE SYNODALITY”

PÉTER SZABÓ

“The council as an event of consensus is a creation of the Spirit”
[Hermann-Josef Sieben]

SUMMARY — Following a preliminary outline of some basic principles, the author makes some concrete proposals for a reform of the norms in the *Code of Canon Law (CIC)* governing conferences of bishops and particular councils. He takes a comparative approach, drawing on comparable norms of the *Code of Canons of the Eastern Churches (CCEO)*. The goal is to achieve wider synodal activity in the Latin Church with greater openness to the participation of lay persons.

RÉSUMÉ — Après avoir présenté certains principes de base, l’auteur fait quelques propositions concrètes en vue d’une réforme des normes du Code de droit canonique (CIC) régissant les conférences des évêques et les conciles particuliers. Il adopte une approche comparative en s’appuyant sur les normes du Code des canons des Églises orientales (CCEO). L’objectif est d’accroître l’activité synodale dans l’Église latine avec une plus grande ouverture à la participation des laïcs.

Introduction

After the debates of the late 1980s, the institution of episcopal conferences has returned to the centre of attention, largely as a result of pronouncements by Pope Francis.¹ Sceptical as some authors may be, it is well worth

¹ The Second Vatican Council stated that, like the ancient patriarchal Churches, episcopal conferences are in a position “to contribute in many and fruitful ways to the concrete

involving the experience and the *ius vigens* of Oriental Catholic Churches in the reflection on the renewal of episcopal conferences and particular councils. This article seeks to present conclusions yielded by a comparative approach: a preliminary outline of basic principles is followed by an examination of the norms on episcopal conferences² and considerations about particular councils³ in light of the analogous institutions of the *CCEO*. I shall attempt to make some concrete juridical proposals for the renewal of interdiocesan/regional synodal institutions in order to achieve wider synodal activity in the Latin Church, more open to lay involvement. Although specific recommendations are also made, the present paper is only concerned with the theoretical possibility of the proposed changes. Considerations about their timeliness or opportuneness are beyond the limits of this study.

realization of the collegial spirit.” Yet this desire has not been fully realized, since giving episcopal conferences a juridic status that would establish them as subjects of specific attributions, including genuine doctrinal authority, has not yet been elaborated. Excessive centralization, rather than proving helpful, complicates the Church’s life and her missionary outreach. See FRANCIS, Post-Synodal Apostolic Exhortation *Evangelii gaudium*, 24 November 2013, in *AAS*, 105 (2013), 1019-1137, no. 32.

Cf. also Antonio SPADARO, S.J., “Intervista a papa Francesco,” in *La civiltà cattolica*, 164 (19 settembre 2013), 465. On synodality in general: Lorenzo BALDISSERI (ed.), *A cinquant’anni dall’Apostolica sollicitudo: Il Sinodo dei Vescovi al servizio di una Chiesa sinodale*, Vatican City, LEV, 2016; Antonio SPADARO and Carlo M. GALLI (eds.), *La riforma e le riforme nella Chiesa*, Brescia, Queriniana, 2017; John A. RENKEN, “Synodality. A Constitutive Element of the Church. Reflections on Pope Francis and Synodality,” in *StC*, 52 (2018), 5-44.

² The literature on this subject is vast and mostly well known. Therefore, at this juncture, reference is made only to three recent studies reflecting the complexity of the question and the different approaches in this regard. See Carlos SCHICKENDANTZ, *Le conferenze episcopali. Questo auspicio non si è pienamente realizzato (EG 32)*, in *La riforma* (ftn. 1), 347-366; Antonio VIANA, “La cuestión de la posible potestad general de las conferencias episcopales,” in *Ius canonicum*, 58 (2018), 261-290; Péter SZABÓ, *Il Sinodo episcopale della Chiesa patriarcale in raffronto alla Conferenza episcopale: possibilità e limiti di una “osmosi” tra i due istituti*, in PONTIFICIO ISTITUTO ORIENTALE – PONTIFICIA UNIVERSITÀ S. TOMMASO D’AQUINO “ANGELICUM”, *Il diritto canonico orientale a cinquant’anni dal Concilio Vaticano II*. Atti del Simposio di Roma, 23-25 Aprile 2014, a cura di Georges RUYSEN, *Kanonika* 22, Rome, Edizioni Orientalia Christiana, 2016, 335-370.

³ See James PROVOST, “Particular Councils,” in Michel THÉRIAULT and Jean THORN (eds.), *Le nouveau Code de droit Canonique. Actes du Ve Congrès international de droit canonique, Ottawa 19-25 août 1984*, Ottawa, Université Saint-Paul, 1986, vol. 1, 537-562; Eloy TEJERO, Commentaries on particular councils in *Exegetical Comm*, vol. 2, 961-990; Nicolas LUNG, “Concile, I. Conciles particuliers,” in *DDC*, vol. 3, 1268-1280; Francis MURPHY, *Legislative Powers of the Provincial Council. A Historical Synopsis and Commentary*, Canon Law Studies 257, Washington, The Catholic University of America, 1947; Luigi SABBARESE, “Concilios particulares,” in Javier OTADUY, Antonio VIANA, and Joaquín SEDANO (eds.), *Diccionario General de Derecho Canónico*, Navarra, Editorial Aranzadi, 2012, vol. 2, 420-426. See also the bibliography here referenced.

1 — *Preliminary Remarks*

A prerequisite for any theological and ecclesiological discourse is recognition of the fact that revelation always is embodied and reflected in a specific human paradigm. Consequently, a well-known (but often neglected) demand that one must always keep in mind is the importance of distinguishing, as clearly as possible, between revealed truth and other requirements derived only from the proper theological system (but not from revelation itself). In the absence of this awareness, a theological vision and method (i.e., the “scientific system”) may lose sight of (or even may “overcome”) revealed sources (often in a way completely unnoticed) and may even distort our knowledge of the content of these sources. In my view, the strictly and exclusively historical foundation of episcopal conferences, for example, is rather a thesis of a concrete theological paradigm (a *changeable* human product) and not an inviolable axiom required by revelation itself.

The second prerequisite is the “diachronic principle,” according to which whatever was theologically possible in the past is theoretically not impossible in the future. If particular councils used to function as *ordinary* institutions of ecclesiastical government and were, on occasion, able to identify *teachings* which were subsequently *received* by the entire Church as definitive truths,⁴ they ought not to be denied a similar role thereafter.

No less persuasive an argument can be drawn from the comparison of the parallel institutions of the two Codes: *CIC* 1983 and *CCEO* 1990, *both equally Catholic*, promulgated by the same supreme legislator just a few years apart. Consequently, according to this “trans-ecclesial” principle, whatever is possible in the Eastern portions of the one and the same Catholic Church, similar (or even identical) juridical solutions cannot be considered as theologically impossible in the Western one, namely in Latin canon law, and vice versa.⁵ As we

⁴ Sieben states: “To the degree that a consensus was reached with which it could basically be assumed that the other churches would agree, the early Church’s particular synods laid claim to being a final instance in questions of church discipline and faith.” See Herman-Joseph SIEBEN, “Episcopal conferences in the Light of Particular Councils during the First Millennium,” in *Jur*, 48 (1988), 34.

According to Christopher O’Donnell, “The process of this reception is not always clear; there were hesitations over various councils which were not accepted by some Churches for a long time.... Other local councils were accepted as orthodox expressions of the faith, e.g., Carthage XV/XVI in 418, or the second council of Orange (529)” See O’DONNELL, “Reception,” in id., *Ecclesia: A Theological Encyclopedia of the Church*, Collegeville, MN, Liturgical Press, 1996, 400; see also fn. 79, *infra*.

⁵ Claiming that a particular solution is *theologically possible* does *not* necessarily imply that the implementation thereof in a given historical context would also be *expedient*. Considering this

know, the first footnote to *Apostolos suos*—an affirmation curiously absent from the official edition of this motu proprio published in the AAS!—precludes any comparison between the synods of bishops of patriarchal Churches and Western episcopal conferences.⁶ This authoritative verdict, however, seems precisely to be the evidence of the aforementioned controversial equation of the requirement of a concrete speculative system with that of revelation.⁷ Obviously, things of a different nature may also be the subject of comparison.⁸ What is truly harmful is not the comparison itself but conclusions hastily drawn from it.

latter aspect is the legislator's responsibility, even if it is true that the ecclesiological and ecumenical principles mentioned above seem very much in favour of modifying the *ius vigens*. For a list of arguments in favour of the juridical transformation of episcopal conferences, see also SCHICKENDANTZ, *Le conferenze*, (ftn. 2) 364-365.

- ⁶ JOHN PAUL II, Apostolic Letter m.p. *Apostolos suos*, 21 May 1998, in AAS, 90 (1998), 641-658; English trans. in *CLD*, vol. 14, 347-367. "The Oriental Churches headed by Patriarchs and Major Archbishops are governed by their respective Synods of Bishops, endowed with legislative, judicial and, in certain cases, administrative power (cf. *Code of Canons of the Eastern Churches*, Canons 110 and 152): the present document does not deal with these. Hence no analogy may be drawn between such Synods and episcopal conferences. This document does concern Assemblies established in areas where there exist several Churches *sui iuris* regulated by *Code of Canons of the Eastern Churches*, Canon 322, and by their relative Statutes approved by the Apostolic See (cf. *Code of Canons of the Eastern Churches*, Canon 322, 4; Apostolic Constitution *Pastor Bonus*, Art. 58), to the extent that these Assemblies are comparable to episcopal conferences (cf. Second Vatican Ecumenical Council, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, 38)." [Emphasis is mine.]

For the original text, see *L'Osservatore romano*, 138 (24 July 1998), 5. This warning is absent from the official edition of the text; see AAS, 90 (1998) 9, 641-658, 641; see also *Evangelii gaudium*, no. 32 (ftn. 1); SCHICKENDANTZ, *Le conferenze*, (ftn. 2) 354, 363.

- ⁷ For a recent critical analysis of the universalist ecclesiology behind this document, see Hervé LEGRAND, *Communio Ecclesiae, communio Ecclesiarum, communio episcoporum*, in *La riforma*, (ftn. 1) 159-188. See also Francis SULLIVAN, "The Teaching Authority of episcopal conferences," in *Theological Studies*, 63 (2002), 472-493.

- ⁸ On the usefulness of comparisons between Conferences and Synods, Ángel ANTÓN GÓMEZ states: "Il rapporto di analogia [...] tra le Conferenze e i patriarcati d'Oriente indica una strada molto promettente per progredire nello status teologico delle conferenze episcopali e per determinare *de iure condito et condendo* la loro figura giuridica." See *Le Conferenze Episcopali, istanze intermedie? Lo stato teologico della questione*, Turin, Edizioni Paolini, 1992, 106-107. See also Paolo MONTINI, "Le Conferenze episcopali e i Sinodi delle Chiese orientali," in *Quaderni di diritto ecclesiale*, 9 (1996), 433; Richard POTZ, "Der Codex Canonum Ecclesiarum Orientalium 1990. Gedanken zur Kodifikation des katholischen Ostkirchenrechts," in Hans PAARHAMMER and Alfred RINNERHALER (eds.), *Scientia Canonum. Festgabe für Franz Pototschnig zum 65. Geburtstag*, Munich, Roman Kovar, 1991, 408; Thomas J. GREEN, "The Legislative Competency of the Episcopal Competence: Present Situation and Future Possibilities in the Light of the Eastern Synodal Experience," in *Jur*, 64 (2004), 284-331, esp. 327-330. For a contrary opinion which refuses any comparison between these institutes, see Ivan ŽUŽEK, *Understanding the Eastern Code*, Kanonika 8, Rome, Pontificio Istituto Orientale, 1997, 253.

In fact, comparison between Eastern and Western canon law is always fruitful, and it may even contribute to the correction of one through the other. This was exactly the case, for example, in 1971, when Paul VI openly replaced the old Latin formula of chrismation with the more expressive one proper to the Byzantine tradition.⁹ As is clear from this example, a reform of a Latin institution based on Eastern patterns is not unprecedented in the life of the Catholic Church and is surely possible in other cases.¹⁰

Last but not least, there is a fundamental question on which canon lawyers should always reflect. In the light of deepening theological knowledge, does the law currently in force and the practices that arise from it allow the Church to take full advantage of all the saving potentialities available to her by the will of the Lord to implement her mission? In the case of regional synodal institutions foreseen by the *CIC*, the answer is clearly negative, a fact that calls for a true reform.¹¹ This step is also supported by its predictably strong impact on ecumenical convergence. From a passage by Joseph Ratzinger, we can conclude a further principle: whatever is possible theologically is also obligatorily ecumenically.¹² This authoritative consideration can also be

⁹ “Quod ad verba attinet, quae in chrismatione proferuntur, dignitatem venerabilis formulae, quae in Ecclesia Latina adhibetur, aequa aestimatione perpendimus quidem; ei tamen praefendam censem antiquissimam formulam ritus Byzantini propriam, qua Donum ipsius Spiritus Sancti exprimitur atque effusio Spiritus die Pentecostes peracta recolitur (cfr. Act. 2, 1-4 et 38). Hanc ergo formulam, fere verbum pro verbo reddentes, accipimus [...] ‘Accipe signaculum doni Spiritus Sancti’.” PAUL VI, Apostolic Constitution *Divinae consortium naturae*, 15 August 1971, in *AAS*, 63 (1971), 663.

¹⁰ As an argument for the dismissal of comparisons between the two institutions, it is frequently cited that, as opposed to the current composition of Oriental decision-making synods, episcopal conferences may include non-bishop members. Cf. *CIC* c. 450, § 1 vs. *CCEO*, c. 102. Mixed composition in itself, however, can hardly preclude the possibility of general deliberative competence. Particular councils—according to the former and the current law alike—may also include non-bishop members, even though this does not affect the deliberative nature of these organs; cf. *CIC* cc. 443, 445; see also PIUS XII, Apostolic Letter *m.p. Cleri sanctitati*, 2 June 1957, in *AAS*, 49 (1957), 433-603, c. 341; *CIC/17*, cc. 282, § 1, 290. Should mixed composition and deliberative nature prove to be incompatible, the problem could be eliminated by revoking the decision-making competence of the non-bishop members. As a matter of fact, non-bishop members usually constitute a very small fraction of episcopal conferences.

¹¹ The quest for the renewed vigour of particular councils, expressed by Vatican II (cf. *CD* 36) has not been realised. In the half century after Vatican II, according to Agostino Montan, only nine particular councils were held (of which only two were provincial councils), while there are 554 ecclesiastical provinces; see *Annuario Pontificio* 2018, 1130; MONTAN, “Concili particolari,” Gianfranco CALABRESE, Philip GOYRET, and Orazio F. PIAZZA (eds.), *Dizionario di ecclesiologia*, Rome, Città Nuova, 2010, 339.

¹² “Einheit ihrerseits eine christliche Wahrheit, ein christlich Wesentliches ist und daß sie in der Rangordnung so hoch steht, daß sie nur um des ganz Grundlegenden willen geopfert werden darf, nicht aber, wo Formulierungen oder Praktiken im Wege sind, die noch so

helpful in achieving the openness necessary for a renewal of regional synodal institutions and their praxis.¹³

After these preliminary remarks, I will focus on some juridical questions following a double line: (a) normative amendments needed for episcopal conferences and (b) juridical steps required for renewing the activity of particular councils. In my view, the renewal of regional synodal life is more feasible by the reactivation of particular councils. However, given that I have been asked to focus on episcopal conferences, I do not want to avoid this task.

2 — Juridical Renewal of Episcopal Conferences Canonical Possibilities, Conditions, and Limits

The second part of this study offers some concrete suggestions for a revision of the canon law of the Latin Church on conferences of bishops. Seven proposals are presented: the gradual elimination or reduced participation of titular bishops in the conferences; granting the conferences a general legislative competence, which is a juridical consequence of the “ultra-dio-cesan mission” of bishops that is rooted in their episcopal ordination; requiring for the passage of general decrees only an absolute majority of the members present at a plenary assembly; the elimination of the *recognitio* or its substitution with something less substantial; the dual rule of synodality to be observed; the elimination of the *recognitio* for doctrinal statements (while maintaining the requirement of a qualified majority of two-thirds and superior “confirmation”); and the creation of an advisory body to the conference of bishops, the members of which would include the laity.

bedeutend sein mögen, aber die Gemeinschaft im Glauben der Väter und in seiner kirchlichen Grundgestalt nicht aufheben. [...] Das theologisch Mögliche kann geistlich verspielt und dadurch auch theologisch wieder unmöglich werden; das theologisch Mögliche kann geistlich möglich und dadurch auch theologisch tiefer und reiner werden. [...] Die Aufgabe jedes verantwortlichen Christen und in besonderer Weise natürlich der Theologen und Kirchenführer ist es, dem theologisch Möglichen geistlich Raum zu schaffen.” Joseph RATZINGER, *Vom Wiederauffinden der Mitte. Grundorientierungen. Texte aus vier Jahrzehnten*, Freiburg/Bg, Herder, 1998, 189.

¹³ Even if the formulation of the following question appears to be quite radical, the problem referred by it is not irrelevant. “The question could be raised if *Apostolos suos* implicitly condemns the Oriental Churches who believe that their synods have a corporate power, *dynamis*, due to assistance of the Spirit.” Ladislav ÖRSY, “Episcopal Conferences and the Power of the Spirit,” in *Jur*, 59 (1999), 418.

2.1 — Titular Bishops

One of the main expectations reflected in doctrine calls for institutional expressions and connections between *communio episcoporum* and *communio Ecclesiarum*. It is a crucial topic, decisive from the point of view of the urgent correction of the one-sidedly universalistic vision of Catholic ecclesiology.¹⁴ According to some authors, the only way to achieve this goal would be the gradual elimination of the figure of titular bishops, an ecclesiological exigency reflected by the Council of Trent.¹⁵ This step seems to be urgently required from an ecumenical point of view, as is clear from a passage of John Zizioulas: “The modern office of titular Bishops, which is also found in present-day Orthodoxy, would not fit properly in an ecclesologically sound concept of an episcopal conference. If an episcopal conference is to be truly episcopal, it must consist only of diocesan Bishops—at least in what concerns final and decisive votes [...] it would be extremely helpful to the reestablishment of the full communion between the two Churches if [this] institution were placed in the context of an ecclesiology of communion of local Churches.”¹⁶ However, it should be noted that the figure of the titular bishop is fairly common in contemporary Orthodoxy as well.¹⁷

¹⁴ See, for example, LEGRAND, *Communio Ecclesiae*, (ftn. 7) 162-163; see also id., “Les Évêques, les Églises locales et l’Église entière. Évolutions institutionnelles depuis Vatican II et chantiers actuels de recherche,” in *Revue des sciences philosophiques et théologiques*, 85 (2001), 461-509.

¹⁵ According to Corecco, “A Trento la polemica fu nei loro confronti [i.e. vescovi titolari] particolarmente violenta anche per ragioni di principio, tanto che furono sul punto di essere aboliti.” Eugenio CORECCO, “L’origine del potere di giurisdizione episcopale. Aspetti storico-giuridici e metodologico-sistematici della questione (I–II),” in *La Scuola cattolica*, 96 (1968), 3-42, 107-141; at 27.

¹⁶ Zizioulas states: “Bishops are *not* to be understood as *individuals* but as *heads of communities*. There is *no Bishop without a Church*, since no episcopal ordination can be made in an absolute manner [...] the modern office of titular Bishops, which is also found in present-day Orthodoxy, would *not fit* properly in an ecclesologically sound concept of an episcopal conference. If an episcopal conference is to be truly episcopal, it must consist *only* of *diocesan* Bishops—at least in what concerns final and decisive votes [...] is an episcopal conference a *convening* of Bishops or of Churches? It would seem to me that the latter is the case. This is the reason that in present-day Orthodox canon law *only diocesan Bishops take part in synods*, whether permanent or extraordinary. If *episcopal conferences* are to be understood as *corresponding to Orthodox synods*, as I think is the case, then the way we answer the above question is crucial for a *rapprochement* between Orthodox and Roman Catholics. Episcopal conferences *must be understood* not as meeting of Bishops but as *meetings of Churches through their Bishops*. In other words, it would be *extremely helpful* to the reestablishment of the *full communion* between the two Churches if the institution we discuss here were placed in the context of an ecclesiology of communion of local Churches.” John ZIZIOULAS, “The Institution of Episcopal Conferences: An Orthodox Reflection,” in *Jur*, 48 (1988), 376-383, 377. [Emphasis mine.]

¹⁷ Cf. *Δίπτυχα της Εκκλησίας της Ελλάδος*, Athênai, Apostolikê Diakonia tês Ekklesiâs tês Hellados, 2017; see also Spyridon TROJANOS, *Die Synode der Hierarchie als höchstes*

The delimitation, or even the gradual elimination, of the role of titular bishops is both theologically and normatively possible.¹⁸ If something is theologically possible, on the one hand, while from an ecumenical point of view it is required, on the other, according to the aforementioned fundamental axiom the same thing is also obligatory for legislation.¹⁹ Consequently, on this topic the inner ecclesiological requirements and the ecumenical exigencies mutually reinforce each other.

While it is not easy to eliminate the figure of titular bishops, one must consider the proposal of Zizioulas to preclude (or reduce) at least their deliberative vote. It would be an initial, decisive step towards an ecclesiology in which *communio episcoporum* and *communio Ecclesiarum* are synonymous terms. From a juridical point of view, this goal could be achieved by the modification of *CIC* c. 454.²⁰ The decisions could be applied only to titular bishops who would be appointed in the future (cf. *lex non respicit retro*). In conferences where the number of titular bishops is few, this modification would be more easily acceptable. Where their number and weight are higher, a gradual implementation may be required, but it is exactly in this latter situation where the reconsideration of their role is more urgent from a theological perspective.

2.2 — An Ultra-diocesan Mission

The two models (i.e., purely historical vs. theological) describing the nature of conferences²¹ may seem irreconcilable. The first approach requires a true theological integration. However, besides the assertion that they are not “extensions” of the supreme authority but expressions of the local communion of dioceses,²² it is also necessary to describe the exact origin of their

Verwaltungsorgan der einzelnen autokephalen orthodoxen Kirchen, in Kanon [Jahrbuch der Gesellschaft für das Recht der Ostkirchen], II, Vienna, Herder, 1974, 192-216.

¹⁸ Cf. *CIC*, c. 454, § 2.

¹⁹ See fn. 12, *supra*.

²⁰ Proposition: *CIC*, c. 454 § 1. By the law itself, diocesan bishops and those bishops who are equivalent to them in law have a deliberative vote in plenary meetings of a conference of bishops. § 2: Auxiliary bishops and other members who belong to a conference of bishops have only a consultative vote.

²¹ Cf. Marcello MALPENSA, *Le conferenze episcopali*, in *Il Cristianesimo. Grande Atlante*, vol. 2, *Ordinamenti, gerarchie, pratiche*, diretto da Giuseppe ALBERIGO, Turin, UTET, 2006, 549-563, 557-563; Juan I. ARRIETA, “Conferenze episcopali e vincolo di comunione,” in *IE*, 1 (1989), 3–22, at 6ff. See also Marcello SEMERARO, *Mistero, comunione e missione. Manuale di ecclesiologia*, Bologna, EDB, 1997, 182–184; Umberto CASALE, “Conferenza episcopale,” in *Dizionario*, (fn. 11), 345-354, 352.

²² According to Feliciani, “... è anche da segnalare sul piano ecclesiologico la corretta impostazione della sistematica che non qualifica più le istanze gerarchiche intermedie tra la

superior power. This seems to be absolutely indispensable, for the purely historical model demands exclusivity by reason of the lack of credible theological evidence of the local source of superior power.

I find the thesis particularly convincing according to which the *sacra potestas* (or at least its ontological origin), even in the case of the power of *higher authorities* is rooted in episcopal ordination itself, specifically in its "second dimension." It can be identified as *sollicitudo ad extra*, giving rise to an "*ultra*-diocesan mission."²³ In different terms, the same thesis is sustained by others as well.²⁴ This capacity, by the appropriate and corresponding

Santa Sede ed i vescovi ... come una partecipazione alla suprema autorità del pontefice, ma, abbandonando la logica verticistica del Codice del 1917, le colloca tra le espressioni delle Chiese particolari." Giorgio FELICIANI, *Le conferenze episcopali nel Codice di diritto canonico del 1983*, in *Le nuove*, (ftn. 3) vol. 1, 501.

See Aymans, who states: "Wenn man beiden Elementen, die für das Wesenverständnis der hierarchischen Zwischeninstanzen maßgeblich sind, gerecht werden will, muß man darauf Rücksicht nehmen, daß zwar ihre formale Einrichtung kraft der höchsten kirchlichen Autorität geschieht, daß aber *die Vollmacht selbst*, die bei dem Akt den Einrichtung organisiert, d. h. auf verschiedene Organe verteilt wird, *wahre bischöfliche Vollmacht ist*." Winfried AYMANS, "Wesenverständnis und Zuständigkeiten der Bischofskonferenz im *Codex iuris canonici* von 1983", in *Archiv für katholisches Kirchenrecht*, 152 (1983), 47.

According to Müller, "... the power of the episcopal conference is neither delegated by the highest authority nor representative of that highest authority.... [T]he formal establishment for such an instance occurs through the intervention of the highest authority; however the power of such an instance which the act of establishment organizes or divides among different organs is truly episcopal power [...]; the powers of intermediary instances, like those of the diocesan bishops, are grounded in divine law." Hubert MÜLLER, "The Relationship between the Episcopal Conference and the Diocesan Bishop," in *Jur*, 48 (1988), 111-129, 119. See also Gianpiero MILANO, "Riflessione sulla natura della potestà dei patriarchi e dei loro sinodi alla luce della costituzione apostolica *Sacri canones*," in *EIC*, 47 (1991), 157-175, at 166; see also ftn. 26 and 30.

²³ Libero GEROSA, *L'interpretazione della legge nella Chiesa. Principi, paradigmi, prospettive*, Pregassona, Eupress, 2001, 147. See also Eugenio CORECCO, "Sinodalità," in Giuseppe BARBAGLIO and Severino DIANICH (eds.), *Nuovo dizionario di teologia*, Milan, San Paolo, 1985, 1434, who writes: "la dimensione personale e quella sinodale dell'ufficio ecclesiale"; and Casale: "Vi è inoltre un *fondamento ontologico-sacramentale* della collegialità in tutte le sue forme: 'uniti agli altri vescovi da legami di natura ontologico-sacramentale, in virtù dell'ordinazione episcopale, e da legami di natura sociale, come richiesto dalla struttura gerarchica della Chiesa, ogni vescovo è accolto nell'*ordine episcoporum* e guida la sua Chiesa in costante coordinazione con le altre Chiese'...." CASALE, "Conferenza," (ftn. 21) 352.

²⁴ See, for example: "... the acknowledged authority of local and regional synods and councils in the Church is *unintelligible if the episcopal order does not imply a basis for conjoint action*.... [T]here are ... bonds joining bishops which are rooted in their ordination and which encourage or require joint action. The notion that between the whole body of bishops ... and the individual diocesan bishop there are only cooperative arrangements with utilitarian value—even if that be considerable—does not seem at all adequate." John P. BOYLE,

juridical determination even in case of the supra-episcopal authorities, can be transformed into power of governance. There is no doubt that, without adequate “juridical determination,” this is not possible. However, this does not detract from the relevance of the ultra-eparchial aspect in question. In fact, even the *ad intra* mission—i.e., towards the bishop’s own diocese or eparchy—requires a similar determination for its transformation into *potestas expedita ad actum*;²⁵ but no one may impugn the constitutional importance of this inner mission for this reason. In the light of their common sacramental origin and their essential function for communion, the above-mentioned two missions (*ad intra* and *ad extra*) cannot be interpreted as antagonistic theological realities.²⁶

One may object that this “ultra-diocesan mission,” an expression of the only “*affective collegiality*” according to *Lumen gentium* 23b,²⁷ cannot be exercised in the form of jurisdictional acts. However, this conciliar statement does not seem to take into account the juridical demand inherent in the ultra-diocesan mission received in ordination and, for this reason, it is characterized by a *reductionist* view. This restriction of LG 23b, according to Umberto Betti, later Cardinal, solely consists in a *practical norm*, which has

Church Teaching Authority. Historical and Theological Studies, London, University of Notre Dame Press, 1995, 99–100 [emphasis is mine]; and Green: “... the Conference exercises sacramentally grounded episcopal authority comparable to other intermediary level entities such as Particular Councils.” GREEN, “The Legislative,” (ftn. 8) 327.

²⁵ *Nota explicativa praevia*, no. 2, in AAS, 57 (1965), 73; see also MILANO, “Riflessione,” (ftn. 22) 169.

²⁶ Cf. Correcco, who writes: “The synodal dimension, connatural to the episcopal ministry, is also determined by the principle of “*communio*.” Actually, *synodality* is not opposed to the *personal dimension*, from which it is formally distinct, but is *immanent* to it, because every bishop is *ontologically determined* by the fact that the other bishops also possess the same unique sacrament of Orders. The oneness of the sacrament in the plurality of its personal realizations is the foundation of the structure of the ministry that is not only personal but synodal. It follows that *synodality* does not tend to restrict the personal exercise of the episcopal ministry, but to confer a vaster extension to it because it develops the ontological relationship with other ministries which it already possesses, enlarging it beyond the institutional, jurisdictional or territorial limits in which the bishop is individually inserted.” Eugenio CORECCO, “Ontology of Synodality,” in Graziano BORGONOV0 and Arturo CATTANEO (eds.), *Canon Law and Communio. Writings on the Constitutional Law of the Church*, Vatican City, LEV, 1999, 350–351. [Emphasis is mine.]

²⁷ “The individual bishops, who are placed in charge of particular churches, exercise their pastoral government over the portion of the People of God committed to their care, and *not* over other Churches nor over the universal Church. But each of them, as a member of the Episcopal College and legitimate successor of the apostles, is obliged by Christ’s institution and command to be solicitous for the whole Church, and this solicitude, though it is not exercised by an act of jurisdiction, contributes greatly to the advantage of the universal Church” (LG 23b).

no clear dogmatic value.²⁸ Consequently, the theory of local synodal power as a juridical expression of a mission received thorough episcopal ordination itself is *not* to be excluded on theological grounds from Catholic ecclesiology.²⁹ Undoubtedly, the concrete forms of the supra-episcopal institutions are historically diverse (*ius mere ecclesiasticum*), but they are, nevertheless, expressions of a necessity rooted in the same episcopal ordination³⁰ responsible for converting *communio Ecclesiarum* into a harmonic *mutua inter-iioritas*. In this sense, the ecclesiological function of the supra-episcopal organs must be regarded as theologically essential.³¹

Although the theological foundation of episcopal conferences—albeit with the Curial vision—has always been supported by doctrine,³² it is often

²⁸ See Betti: “Essendo ogni Chiesa retta da un proprio vescovo, nessuna ingerenza di altri deve ledere i suoi diritti. Si tratta di una questione pratica però, non dommatica. La Chiesa quindi potrebbe disporre altrimenti: allargare l’esercizio della potestà di giurisdizione oltre i confini della diocesi....” Umberto BETTI, *La dottrina sull'Episcopato nel capitolo III della costituzione dommatica Lumen gentium. Sussidio per la lettura del testo*, Rome, Pontificio Ateneo Antoniano, 1968, 386. The aforementioned *ultra*-eparchial extension of jurisdiction—at least in oriental ecclesiological contexts—may obviously refer only to *supra-episcopal* authorities, be they types of competence exercised either by the *protos* or by the *episcopal synod*.

²⁹ This conciliar text (LG 23b), instead of being proof of such an exclusion, is rather an indication of the inability to elaborate a complete doctrine of synodality, which would include the local expression of this important theological phenomenon. I agree with the observation of Eugenio Corecco that “... Vatican II did not succeed in dealing with the problem of synodality in a doctrinally complete way [...] it treated [it] solely on the level of the universal Church without dealing with the issue on the level of the particular Church.” See CORECCO, “Ontology,” (ftn. 26) 342.

³⁰ “... the gradations of the episcopal ministry flow from the Church’s power to organize itself, but the content of the concrete ministries that are to be exercised remains of divine right because of the episcopate is of divine institution”, Klaus MÖRSDORF, “Bishop, IV. Canon Law,” in Karl RAHNER (ed.), *Sacramentum Mundi. An Encyclopedia of Theology*, New York – London, Burns & Oates, 1968, vol. 1, 229-230. See also Arrieta: “... mentre il sacramento è un fattore di uniformità tra gli appartenenti all’*ordo* episcopale –tutti ricevono lo stesso sacramento abilitante per le stesse azioni–, la missio canonica, invece, è l’elemento di diversità, in quanto ad ogni vescovo si affida uno specifico incarico e, in funzione di esso, una diversa giurisdizione da esercitare personalmente [...] La sede {titolo} affidata al vescovo con la *missio canonica* può essere una sede patriarcale, una sede metropolitana, una sede arcivescovile, o una sede vescovile.” Juan I. ARRIETA, “Vescovo,” in *Enciclopedia giuridica*, vol. 32, Rome, Istituto della Enciclopedia Italiana, 1994, 3a.

³¹ Cf. Klaus MÖRSDORF, Commentary on the Decree on the Bishops’ Pastoral Office in the Church, in Herbert VORGRIMMER (ed.), *Commentary on the Documents of Vatican II*, New York, Herder & Herder, 1966-69, vol. 2, 280-281; see also Winfried AYMAN, *Synodalität—ordentliche oder außerordentliche Leitungsform in der Kirche*, in *La synodalité. La participation au gouvernement dans l’Eglise, Actes du VII^e Congrès international de droit canonique, Paris 21-28 septembre 1990*, [l’*Année canonique*, hors série], 23-43, 42-43; see also fn. 22-26.

³² For an excellent synthesis, see SULLIVAN, “The Teaching,” (ftn. 7) 474ff.

explained in extremely short assertions.³³ Thus, highlighting the aforementioned explication about the “*ultra-diocesan mission*” arising from episcopal ordination itself as the theological foundation of supra-episcopal synodality can be helpful.

2.3 — General Legislative Power

Effective enculturation³⁴ of the faith is (or at least should be) one of the main tasks of episcopal conferences. This aim requires the reinforcement and enlargement of the legislative power of this institution.³⁵ In my view,³⁶ it could have *general* legislative power, as Eastern episcopal synods do. This general competency, otherwise explicitly proposed by Klaus Mörsdorf in the early stage of the codification,³⁷ seems indispensable for a true adaptation-capability,

³³ See, for example, the following authoritative assertion: “... Auch wenn diese geschichtlich variablen Ausdrucksgestalten nicht iure divino, sondern nur iure ecclesiastico sind, haben sie doch ein Fundament im ius divinum, und sie können für das Leben der Kirche eine fundamentale Bedeutung erhalten...” Walter KASPER, “Der theologische Status der Bischofskonferenzen,” in *Theologisches Quartalschrift*, 167 (1987), 3.

³⁴ See Christopher O'DONNELL, “Inculturation,” in *Ecclesia* (ftn. 4), 210-211; Luís Martínez FERRER, “Inculturación,” in *Diccionario*, (ftn. 3), vol. 4, 533-539; Arij A. ROEST CROLLIUS, *Teologia dell'Inculturazione*, Rome, Pontifical Gregorian University, 1994; id., “Inculturazione,” in *Dizionario di Missiologia*, Rome, Edizioni Dehoniane, 1993, 281-286; see also GREEN, “The Legislative,” (ftn. 8) 331.

³⁵ Cf. Manzanares: “The common law regulates with uniformity, within the Latin Church, problems and situations which have a great disparity among themselves due to the influence of cultural settings, historical distances, the idiosyncrasies of people and the radical differences in the available means. In this sense it is accused of having an excessively European stance, given that the Church is now spread through all continents. This gives rise to an even greater necessity and even an urgency for ‘inculturation’. This requires greater competency for episcopates of each territory, probably grouped in larger cultural zones,” Julio MANZANARES, “Papal Reservations and *Recognitio*: Considerations and Proposals,” in *Jur*, 52 (1992), 228-254, at 253; see also ftm. 38.

³⁶ See SZABÓ, *Il Sinodo*, (ftn. 2) 335-370.

³⁷ “... in pratica la Conferenza dei vescovi si occupa di tutti i problemi che interessano la vita religiosa della regione ecclesiale ad essa affidata. Data questa situazione sarebbe più che mai opportuno che alla Conferenza dei vescovi fosse riconosciuta una *competenza generale*. Ciò significa che la Conferenza dei vescovi potrebbe regolare in modo giuridicamente vincolante nel quadro del diritto superiore, tutto ciò che entrerebbe negli interessi di un ordinamento unitario di tutte le diocesi appartenenti al territorio della Conferenza stessa. Si tratterebbe naturalmente soprattutto di un'attività legislativa. Si dovrebbe così fare ricorso alla concessione di singoli competenze solo in quei casi nei quali il diritto superiore porrebbe dei limiti alla competenza generale della Conferenza dei vescovi....,” Klaus MÖRSDORF, “L'autonomia della Chiesa locale,” in *La Chiesa dopo il Concilio. Atti del Congresso internazionale di diritto canonico, Roma, 14-19 gennaio 1970*, Milan, A: Giuffrè, 1972, vol. 1, 184. See also Corecco: “... le conferenze episcopali ... sono destinate ad esplicare un'attività

as the formulation of an *organic* and *complete corpus* of particular law can be required for the good of the Church in a given country.³⁸ During the Latin codification, the legislative power of episcopal conferences was limited to concrete cases by reason of the conviction that the combination of general legislative competence on the one hand, and the permanent functioning of these institutes due to their stable organs, on the other hand, could easily be detrimental to the autonomy of individual bishops.³⁹ Now, in the *CCEO*, both these features are attributed to Eastern episcopal synods. They enjoy general legislative power and are equipped with permanent organs.⁴⁰ It must also be remembered that the restriction of a superior power to specific concrete cases is a phenomenon unknown even in the West until the late Middle Ages.⁴¹ In the light of the same theological foundation of the episcopal conferences and

quasi-permanente. Dal momento che la conferenza è solo un'istanza gerarchica intermedia, ultimamente subordinata alla s. Sede, sarebbe stato possibile dal profilo strettamente teologico investirla di una competenza generale" CORECCO, "Sinodalità," (ftn. 23) 1450b.

³⁸ Giorgio FELICIANI, "Response to Julio Manzanares," in *Jur.* 52 (1992), 255-258, at 257. See also id.: "... il bene della Chiesa in un determinato paese può esigere una legislazione particolare organica e non solo episodica e frammentaria" FELICIANI, "Conferenze episcopali," in *Digesto delle discipline pubblicistiche*, Turin, 1989, vol. 3, 346a. A similar compact local legislation should be elaborated first of all by particular councils, but such institutions are completely neglected; see ftn. 11.

³⁹ See, for example, Feliciani: "it implicitly recognized that a normative competence of a general character exercised by an organization of a permanent nature like the Conference would have been able to impose an unacceptable influence on the responsibility proper to each Bishop." Giorgio FELICIANI, commentary in *Exegetical Comm.*, vol. 2, 991-1031, at 1015; id., *Il potere normativo delle Conferenze episcopali nella comunione ecclesiale*, in ASSOCIAZIONE CANONISTICA ITALIANA, *Comunione e disciplina ecclesiale*, Studi giuridici 26, Vatican City, LEV, 1991, 87-93, 90; Angelo PAGAN, *Conferenze episcopali. Il lavoro del Coetus «De sacra hierarchia» (1966-1983)*, Venice, Marcianum Press, 2012, 245-246, 257ff; see also TEJERO, commentary in *Exegetical Comm.*, vol. 2, 984.

⁴⁰ Cf. *CCEO* c. 113; SZABÓ, *Il Sinodo*, (ftn. 3) 344-346. The existence of these auxiliary organs is also remembered in the relative statutes; see for example, *Statutes of the Synod of Bishops*, in *The Code of Particular Law of the Syro-Malabar Church*, Mount St Thomas, 2013, art. 20, p. 66; *Statutes of the Holy Episcopal Synod of the Syro-Malankara Catholic Church*, in *The Code of Particular Canons of the Syro-Malankara Catholic Church*, Trivandrum, Major Archiepiscopal Curia, Catholicate Centre, 2012, art. 74-77, p. 107. Some regulations are more concrete and detailed. Thus, the Statute of the Syriac Church foresees the following permanent commissions: liturgical, catechetical, ecumenical, juridical, and that for the preparation of the synod's acts; see *The Statutes of the Synod of Bishops of the Syro-Catholic Church*, no. 12, in *La Revue Patriarchal*, no. 3 (October 1999), 26 [in Arabic]. The Ukrainian Synod is equipped with fifteen permanent commissions; see *Благовісник*, 2 (2002), 112-115. Finally, the Synod of Bishops of the Romanian Major Archbishop Church is assisted by eight preparatory commissions; see *Acte Synodal* VI, no. 6 (2011), 26-41.

⁴¹ Cf. CORECCO, "Sinodalità," (ftn. 23) 1440a; Lorenzo SPINELLI, "Metropolita," in Francesco CALASSO (ed.), *Enciclopedia del diritto*, Milan, Giuffrè, 1976, vol. 26, 192-196.

Eastern episcopal synods (cf. 2.2—Ultra-diocesan Mission), we may call the two initial principles to mind: (1) whatever was theologically possible in the past is theoretically not impossible in future; (2) juridical arrangements possible in the Eastern Code cannot be considered as theologically impossible in Western canon law.

If the attribution of general legislative power to episcopal conferences were considered sustainable, canon 455 should be replaced by a text which affirms this extensive competence,⁴² with an explicit reference to their key role in enculturation. Finally, one could reflect on the usefulness of attributing further competences to episcopal conferences, such as local administrative tribunals.⁴³

2.4 — Sufficiency of an Absolute Majority

In the case of purely disciplinary questions,⁴⁴ it appears possible to reduce the qualified majority required for the acceptance of a new particular norm from two-thirds to a simple absolute majority of the members present with a deliberative vote at the plenary session of the episcopal conference.⁴⁵

⁴² A re-elaboration of *CIC* c. 455, § 1 could be: “For its own territory, an episcopal conference takes care that provision is made for the pastoral needs of the people of God and possesses general legislative power, so that, always without prejudice to the universal law of the Church, it is able to decide what seems opportune for the increase of the faith, the organization of common pastoral action, and the regulation of morals and of the common ecclesiastical discipline which is to be observed, promoted, and protected.” An alternative iteration could be: “The episcopal conference is to see that the pastoral needs of the Christian faithful are provided for, and, concerning these needs, can establish what is considered to be opportune to provide for an increase of the faith, the fostering of common pastoral action, the supervision of morals and the observation of their own rite as well as common ecclesiastical discipline.”

⁴³ See Ilaria ZUANAZZI, “La possibilità di tribunali amministrativi a livello particolare,” in Eduardo BAURA and Javier CANOSA (eds.), *Giustizia nell’attività amministrativa della Chiesa: il contenzioso amministrativo*, Monografie giuridiche 31, Milan, Giuffrè, 2006, 133-210. See also Nuntia, 29 (1989) 63-65; Zenon GROCHOLEWSKI, “Il sistema dei ricorsi e la giurisdizione dei tribunali amministrativi,” in Javier CANOSA (ed.), *I principi per la revisione del Codice di diritto canonico. La ricezione giuridica del Concilio Vaticano II*, Monografie giuridiche 16, Milan, Giuffrè, 2000, 461-499; id., “I tribunali regionali amministrativi nella Chiesa,” in Pio FEDELE (ed.), *De iustitia administrativa in Ecclesia*, Rome, Officium Libri Catholici, 1984, 135-165.

⁴⁴ This topic is to be distinguished from magisterial pronouncements which by their nature require at least a qualified majority; see fn. 68-71 below.

⁴⁵ Possible initial text [as c. 455, § 2, *CIC*/83]: *For validity, legislative acts of episcopal conferences must be passed by an absolute majority of members present at the session who possess a deliberative vote.* This norm could be rendered flexible by adding: *unless the Statute of the Conference requires a major proportion.*

The *CCEO* is silent on this question so, in the absence of a specific provision of the statutes of individual episcopal synods, we need to apply the general rule concerning collegial actions.⁴⁶

2.5 — Elimination of or Substitution for the *recognitio*

Finally, the superior legislative activity of Eastern episcopal synods is completely free from higher control. This makes it clear that the requirement of *recognitio*, even in the case of episcopal conferences and particular councils, is a purely ecclesiastical rule and, as such, alterable.⁴⁷ There is no doubt that the *recognitio*—like approbation or confirmation—involves advantages⁴⁸ and disadvantages.⁴⁹ Though this form of higher control is surely eliminable, it might be more appropriate to opt for gradual progress. As a first step, the formal *recognitio* could give way to a simple written notification from the Apostolic See about the arrival of the normative drafts as a condition for their promulgation by individual episcopal conferences. This solution—now applied in Metropolitan Churches *sui iuris*⁵⁰—does not necessarily imply a formal revision, on the one hand and, on the other, a modification of the draft texts is proposed rather than imposed.⁵¹ Con-

⁴⁶ Cf. *CCEO*, c. 924.

⁴⁷ Though the formulation of the following assertion is quite strong, it remains justifiable: the *recognitio* and similar institutions “as figures of positive law they must not be absolutized. They must not give way to an abusive theologization, that is, to elaborating theology based on discipline instead of elaborating discipline based on theology. There is a danger that prudential options taken at a given moment might harden and give institutions a rigidity which is far distant from the ecclesiological doctrine of Vatican II.” MANZANARES, “Papal Reservations,” (fn. 35) 253; see also fn. 75 and 76.

⁴⁸ See *Comm*, 38 (2006), 10–17; see also Jesus MIÑAMBRES, “La natura giuridica della ‘recognitio’ da parte della Santa Sede e il valore delle ‘note’ del Pontificio Consiglio per i Testi Legislativi,” in *IE*, 19 (2007), 518–524; MURPHY, *Legislative*, (fn. 3) 48–52.

⁴⁹ See fn. 75 and 76; see also: MANZANARES, “Papal Reservations,” (fn. 35) 228–254.

⁵⁰ *CCEO* c. 167, § 2 — The metropolitan will notify the Apostolic See as soon as possible of the laws and norms enacted by the council of hierarchs; nor can laws and norms be validly promulgated before the metropolitan has written notification from the Apostolic See of the reception of the acts of the Council; the metropolitan is also to notify the Apostolic See of other actions of the Council of Hierarchs.

⁵¹ See Federico MARTI, “La figura giuridica del Consiglio dei Gerarchi,” in Luigi SABBARESE (ed.), *Strutture sovraepiscopali nelle Chiese orientali*, Vatican City, Urbania University Press, 2011, 177–181. According to an authoritative commentary, the *mens* of Pope Francis seems to be exactly in this line: “The object of the changes is to define better the roles of the Apostolic See and the Conferences of Bishops *in respect to their proper competencies* which are different yet remain complementary. *They are called to work in a spirit of dialogue* regarding the translation of the typical Latin books....” For the original, see Arthur

sequently, this solution would guarantee the possibility of intervention in individual cases rather than making revision an integral part of every single superior legislative act.⁵²

2.6 — The dual rule of synodality

While such a triple modification (general legislative competence, simple absolute majority and elimination of the *recognitio*) is entirely feasible from a theoretical perspective, its adoption is bound by two indispensable conditions.⁵³ In the case of deliberative synodal organs, it is always a sensitive issue whether or not their activity restricts the autonomy of bishops. The adequate response is not necessarily the triple limitation of the authority of the conferences. Instead, the danger of excessive synodal dominance is sufficiently forestalled through the consistent observance of the two fundamental rules of synodality in praxis. (1) The first principle of synodality may be succinctly formulated in terms of the obligation of frequent coordination between bishops, as well as voluntary adherence to jointly drafted directives, even when they do not have a coercive character.⁵⁴ (2) The second principle

ROCHE, [*Il motu proprio Magnum principium*] *Una chiave di lettura*, in *OR*, 157 (10 September 2017), 5 [Emphasis is mine.]

⁵² The reconsideration of the nature and purpose of higher control in the case of the vernacular translation of liturgical texts (cf. a simple ratification rather than a meticulous revision) seems to be a sign of a similar reorientation; see Giacomo INCITTI, “In margine al motu proprio «Magnum principium». Il coraggio di *ritornare* al Concilio,” in *Ephemerides iuris canonici*, 58 (2018), 151-179, at 160-163; Elias FRANK, “Le competenze per i testi liturgici secondo il canon 838 del *CIC* in seguito al *motu proprio Magnum principium*,” in *Urbaniana University Journal*, 71, no. 2 (2018), 11-33, at 20-25; see also John FOSTER, “Canon 838 § 2 and the Adaptation of Liturgical Books after the *Motu Proprio Magnum Principium*,” in *StC*, 52 (2018), 81-104, at 96.

⁵³ These requirements are each a *conditio sine qua non*, without which the very nature of authentic synodality could be inadmissibly altered; see SZABÓ, *Il Sinodo*, (ftn. 2), 347-348, at fn. 44.

⁵⁴ The same principle is very clearly formulated in a passage of the former Directory for Bishops: “Ceteras decisiones et normas Conferentiae, vim iuridice obligandi non habentes, Episcopus pro regula suas facit, intuitu unitatis et caritatis erga confratres, nisi graves obstant rationes, quas ipse in Domino perpenderit. Has decisiones et normas nomine proprio et auctoritate propria in sua dioecesi ipse promulgat, si quando Conferentia non valeat definite circumscribere potestatem, quam nomine Christi unusquisque Episcopus personaliter fungitur.” S.C. FOR BISHOPS, *Directorium de pastoralis ministerio Episcoporum «Ecclesiae imago»*, 22 February 1973, in Xaverius OCHOA (ed.), *Leges Ecclesiae post Codicem Iuris Canonici editae*, Rome, Commentarium pro Religiosis, 1980, vol. 5, no. 212b, col. 6535. Moreover, according to the current Directory, the obligation to follow both common orientation and general decrees are still more explicit and strong in terms; cf. no. 29 “c) In the meetings, he should express his opinion with fraternal candour, without fear of expressing

of synodality demands that the legislative activity of higher episcopal synods be kept to a reasonable minimum at all times.⁵⁵ These two fundamental rules, as a guarantee of the lawful autonomy of diocesan bishops, should be inserted in the text of codifications of the law itself.

The consistent observance of this dual rule could render the existence of coercive power over bishops more acceptable. The aforementioned principles make it clear that superior power, as by its very nature subsidiary,⁵⁶ may only be activated in defence of communion. Consequently, it can be activated exclusively in cases when the mission/communion is harmed by an unjustified and unacceptable individualism, when a bishop or bishops, according to the judgement of their co-responsible brothers in the episcopate, fail to represent the Lord adequately.⁵⁷

a different opinion from the others when necessary, always disposed to listen with understanding to opposing arguments; d) When the common good of the faithful requires a joint approach, the Bishop should be ready to follow the opinion of the majority, without insisting on his own point of view; e) Should he ever feel in conscience that he cannot assent to a statement or a resolution of the Conference, he should weigh carefully before God all the circumstances, mindful also of the public repercussions of his decision. If it concerns a general decree endorsed by the *recognitio* of the Holy See, the Bishop should apply to the Holy See for a dispensation allowing him to distance himself from its contents.” See CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successores*, 22 February 2004, in *Enchiridion Vaticanum*, 22, no. 29 c–e, 1080 [emphasis is mine]; see also FELICIANI, commentary in *Exegetical Comm*, vol. 2, 1021; see also fn. 26.

⁵⁵ SZABÓ, *Il Sinodo*, (fn. 2) 347; cf Renken: “The spirit and practice of synodality does not mean that synodal structures must always function with a deliberative vote or a consensual vote. Seldom do structures of synodality function with a consensual vote, and even less do they function with a deliberative vote.” RENKEN, “Synodality,” (fn. 1) 30. The excessive proliferation of documents is to be avoided in the field of teaching authority as well; see FELICIANI, commentary in *Exegetical Comm*, vol. 2, 1020–1021.

⁵⁶ CORECCO, “Sinodalità,” (fn. 23) 1449b. The subsidiary nature of synodality does *not* exclude either general legislative competence or the full autonomy in discerning the needfulness to activate it. See Péter SZABÓ, “Tradizioni orientali e codificazione orientale,” in *IE*, 29 (2017), 635–658, 655.

⁵⁷ Cf. Feliciani: “[Giovanni Paolo II] ... si preoccupa, infatti, di sottolineare in termini inequivocabili come l’istituto si radichi, in ultima analisi, nella collegialità episcopale e nella stessa «communio Ecclesiarum» e risponda alle esigenze dei tempi che non consentono alcuna forma di *individualismo episcopale ispirato a concezioni rigorosamente monarchiche* del governo delle diocesi.” Giorgio FELICIANI, “Le conferenze episcopali nel magistero di Giovanni Paolo II,” in AA. Vv., *Scritti in memoria di Pietro Gismondi*, Milan, A-Giuffrè, 1987, vol. 1, 682; see also Goyret: “la questione ha la sua importanza rispetto al singolo vescovo a capo di una Chiesa particolare, perché pur reggendola come vicario di Cristo, egli lo fa sempre come membro del collegio, dentro della comunione dei vescovi. [...] il fatto che egli non agisce *isolatamente*, ma come membro di un collegio, è un parametro da tenere seriamente in conto. Un’ipotetica guida della sua Chiesa per *strade non condivise* dalla *communio episcoporum* implica una *contraddizione nel suo essere vescovo*. [...] il singolo

One theory holds that general legislative competence (as capacity) inevitably implies permanent legislative activity.⁵⁸ This thesis could only evolve if the double principle of synodality described above were ignored! At the same time, it underscores the vital importance of cognisance and observance thereof. General legislative competence of superior synodal authorities does *not* necessarily lead into permanent legislative activity, as convincingly evidenced by contemporary Eastern Catholic praxis. Despite their general legislative competence, most of episcopal synods of the patriarchal Churches produce considerably less normative documents than certain episcopal conferences.

Naturally, the theological positions of individual bishops⁵⁹—harmonised with the intrinsic demands of communion as the other fundamental theological principle⁶⁰—cannot be degraded. However, this latter danger is not contingent upon the extent of the competence of episcopal conferences but mostly on the size of conferences.⁶¹ The question is relevant, as it concerns

vescovo non è vicario di Cristo isolatamente, ma nella comunione del collegio episcopale.” Philip GOYRET, *Il Vescovo, vicario e delegato di Cristo nel governo della Chiesa particolare*, in id. (ed.), *I Vescovi e il loro ministero*, Vatican City, Pontificia Università della Santa Croce, 2000, 164 [Emphasis is mine.]

⁵⁸ Even if it is formulated indirectly, the same fear seems to be reflected in the following assertion: “Se comprueba que una descentralización plena de la potestad no es deseable para todas las conferencias, pues seguramente algunas de ellas no estarían en condiciones de asumir una plena responsabilidad ni una *actividad normativa permanente*.” VIANA, “La cuestión,” (ftn. 2) 276. [Emphasis is mine]; see ftm. 55.

⁵⁹ LG 27; see Gérard PHILIPS, *La Chiesa e il suo mistero. Storia, testo e commento della Lumen gentium*, 4th ed., Milan, Jaca Book, 1989, 304–308.

⁶⁰ See ftm. 57. One might ask if the current emphasis on the individual bishop (cf. LG 27, CD 8a) is not due to the intention to compensate for the ecclesiological imprecision of the post-Tridentine epoch, when bishops were considered to be simple vicars or delegates of the pope. Today, the concern for the protection of the authority of individual diocesan bishops is so strong that very little space and readiness remains for the control and regulation of this episcopal authority by superior synods responsible for protecting ecclesial communion.

⁶¹ On the danger of unlawful absorption of competencies proper to individual bishops by permanent organs of episcopal conferences see, for example, JOHN PAUL II, Apostolic Exhortation *Pastores gregis*, 16 October 2003, no. 63d, in AAS, 96 (2004), 910. See also Feliciani: “...grave problems can come up in practice. In effect, it is evident that when the assemblies are very numerous the bodies responsible for the formulation of the agenda, instructions, and the presentation of the various themes, and for the management of the meeting, exercise a notable influence over the orientation and the development of the debate, as well as over the respective conclusions.” FELICIANI, commentary in *Exegetical Comm*, vol. 2, 1005; see also p. 1026. The extent of the functions attributed to the episcopal commissions (and to the standing council) is proportional to the number of members of the single episcopal conferences: the larger the total number of members is, the more activity that is actually carried out by the permanent organs. This practice, even though it may seem

as much as half of the episcopate!⁶² For example, an essential point of synodality consists in listening to the views of others and conducting several rounds of discussions. This is only possible to achieve through operation in practically manageable sizes. This raises the question of whether it would be necessary to modify the structure of some episcopal conferences, numbering hundreds in their ranks, and grant a greater role to their future regional synaxes in the synodal process. Such a step would also be conducive to enculturation, as more attention could be paid to smaller regional differences. A better structuring of episcopal conferences would, through the elevation of the relative importance of regional synaxes, more closely align the activities of the conferences with local reality! The regional substructures could be elaborated upon in the statutes of individual conferences.⁶³

2.7 — Teaching Authority

The recognition of a superior teaching authority of episcopal conferences can be explained from the above principles. The foundations are sacramental in origin, just as in the case of their superior legislative power. This superior teaching authority of the particular councils is beyond question.⁶⁴ Episcopal synods of the patriarchal Churches, while identical with these councils as to

inevitable by reason of efficiency, is a risky phenomenon, since the auxiliary organs directly influence the concrete development of pastoral action. See Giorgio FELICIANI, “Le Conferenze episcopali,” in *QDE*, 9 (1996), 400-420, at 411; see also Péter SZABÓ, “Competenza governativa e fisionomia. L’integrità della potestà episcopale nel sistema degli organi sinodali di carattere permanente,” in *IE*, 19 (2007), 445-456.

⁶² In 2015, there were about twelve episcopal conferences, each of which covered more than seventy Catholic dioceses, while in total these conferences included more than half of all Catholic dioceses. These are Brazil: 275 dioceses (assimilated jurisdictional structures included), Italy: 226, USA: 197, India: 172, China: 145, France: 99, Mexico: 96, Philippines: 86, Columbia: 78, Canada: 73, Spain: 72, Argentina: 72, Nigeria: 56, Poland: 45, etc. The twelve largest episcopal conferences together comprised 1591 (50.55%) of the existing 3147 dioceses; cf. <http://www.catholic-hierarchy.org>; see also *Annuario Pontificio* 2016, 1136-1138.

⁶³ In some large episcopal conferences, regional substructures have an increasing role. For the complex structure of the Brazilian Bishops’ Conference see, for example, José I. ALONSO PÉREZ, “«Nova et Vetera» nella Conferenza Nazionale dei Vescovi del Brasile,” in *IE*, 16 (2004), 854, 868. See also ARRIETA, commentary in *Exegetical Comm*, vol. 2, 940-942; Giorgio FELICIANI, “Conferencias episcopales regionales,” in *Diccionario*, (ftn. 3), vol. 2, 490-493.

⁶⁴ Mucci states: “Inoltre, i Concili particolari, essendo organi collegiali di magistero non infallibile, detengono una competenza dottrinale.” Giandomenico MUCCI, “Concili particolari e conferenze episcopali,” in *La civiltà cattolica*, 138 (1987), 340-348, 343. See also TEJERO, commentary in *Exegetical Comm*, vol. 2, 986; MONTAN, “Concili,” (ftn. 11) 344; IUNG, “Concile,” in *DDC*, 1275; and ftm. 4.

their theological nature,⁶⁵ are provided with stable organs as well.⁶⁶ Thus, if an Eastern superior synodal synaxis may have magisterial power of its own despite being permanent in character, the same cannot be denied to episcopal conferences on theological grounds. Consequently, both historical and contemporary Oriental examples support the episcopal conferences having a more extensive and less conditioned teaching authority. Finally, the admission of such a competence is required for ecumenical reasons: “regional synods [and Conferences as well] should have authority on all matters, including doctrine, for it is mainly in the matter of doctrine that expression of cultural diversity is necessary.”⁶⁷

For exercising teaching authority, I consider the stipulation of a qualified majority necessary, for a magisterial pronouncement cannot be regarded as maturely formulated if it is not backed by a convincing consensus. A majority of at least a two-thirds could be indicative of that,⁶⁸ whereas having just an absolute majority (more than one-half but less than two-thirds) could be viewed as proof of division. If by “majority” is intended a relative or a simply absolute majority, the well-known assertion would be exact: “on matters of faith and morals no one can be bound by majority decisions.”⁶⁹ Consequently, while the unanimity now required appears contrary to tradition,⁷⁰ moral unanimity in questions of faith appears absolutely necessary. In fact, as observed by Francis Sullivan, a vast consensus reached after broad consultation is the very source of superior teaching authority, as the convergence expressed by it is a sign of the guidance of the Spirit and hence worthy of

⁶⁵ Cf. fn. 22-33. See also the interesting argumentation of Alejandro Bunge reported by SCHICKENDANTZ, *Le conference*, (fn. 2) 361-362.

⁶⁶ See fn. 40.

⁶⁷ ZIZIOULAS, “The Institution,” (fn. 16) 382. In *ibid.*, he adds: “As in the early Church baptismal creeds can be local... the proper way of understanding ... by common consent might remain different without betraying the fundamental principles of faith.”

⁶⁸ Sullivan states: “Hermann Pottmeyer locates the authority that is specific to the exercise of the teaching function by a conference of bishops in the fact of their concordant witness to the faith. In his view it is the fact that their statement expresses their consensus, reached with *moral unanimity*, that gives it *teaching authority*. Disciplinary decrees may be decided by majority vote, but *teaching by a council or conference demands consensus*. SULLIVAN, “The Teaching,” (fn. 7) 484-485. [Emphasis is mine.] Cf. Hermann POTTMEYER, “Das Lehramt der Bischofskonferenz,” in Hubert MÜLLER and Hermann J. POTTMEYER (eds.), *Die Bischofskonferenz. Theologischer und juristischer Status*, Düsseldorf, 1989, 116-133.

⁶⁹ See Joseph RATZINGER, *Church, Ecumenism and Politics: New Essays in Ecclesiology*, New York, Crossroad, 1988, 58.

⁷⁰ SULLIVAN, “The Teaching,” (fn. 7) 492. See also Joseph KOMONCHAK, “Consensus or Unanimity? On the Authority of Bishops’ Conferences,” in *America*, 179/6 (12 September 1998), 7-10, at 10.

trust and acceptance.⁷¹ Consequently, while for legislative acts an absolute majority of the votes of members present at the plenary session should be sufficient, for a superior teaching assertion, a larger consensus should be required.⁷²

From an interesting passage of John Boyle, it seems that, at an ecumenical council, even a simple absolute majority could be sufficient for defining matters of faith.⁷³ If it were true, why could an episcopal conference not issue an authentic magisterial pronouncement, especially when the respective teaching is supported not by a mere simple majority but by a qualified majority of the bishops?

The superior *recognitio*, even in this case, could be gradually eliminated by a simple written notification or *confirmatio*.⁷⁴ As has been demonstrated by James Provost, while not being a guarantee for the final endorsement of the text concerned, the procedure felt to be tedious and unpredictable from the point of view of its outcome regrettably discourages bishops from issuing authentic superior magisterial pronouncements in the framework of particular councils.⁷⁵ The most serious problem with the *recognitio*, however, has to do with its tendency to hinder or even preclude enculturation.⁷⁶ The Curial dicasteries could only act competently in this issue if experts of each cultural region were involved in them, requiring total membership in the

⁷¹ SULLIVAN, "The Teaching," (fn. 7) 493.

⁷² Proposed text: *CIC c. 455 § 2bis. In order that the doctrinal declarations of the Conference of Bishops may constitute authentic magisterium and be published in the name of the Conference itself, they must be approved in plenary assembly by at least two-thirds of the bishops belonging to the Conference and having a deliberative vote* [modified version of *Apostolos suos*, Complementary Norms, Art. 1, in AAS, 90 (1998), 657]; see also fn. 54 and 55 above.

⁷³ "One issue which assumed great importance at the [Vatican I] Council was what sort of majority was needed to make a final decision on a matter of faith. Though there was much talk about *consensus* or *moral unanimity* as the standard, the rules promulgated by Pius IX were clear: only a simple majority vote was needed for final approval of a council document." BOYLE, *Church*, (fn. 24) 133; see also Roger AUBERT, *Vatican I*, Histoire des Conciles oecuméniques 12, Paris, Éditions de l'Orante, 1964, 140-143.

⁷⁴ See fn. 47 and fn. 50-52.

⁷⁵ "This [the *recognitio*] did not debilitate Particular Councils completely, but has resulted in the need for extra sensitivity on the part of those charged with obtaining the approval of decrees and adds another obstacle to the willingness of Bishops to go through all the effort required." PROVOST, *Particular*, (fn. 3) 541.

⁷⁶ "In the present situation, the members of conferences may choose between two approaches. Either they can abandon all effort to teach, knowing that unanimity (especially in a larger group) is a practical impossibility; the result will be no evangelization by the conference. Or they can consistently send their doctrinal statements for *review* to Rome; the result may be that a *uniform Roman theology* (as distinct from Catholic teaching) *will be imposed on all*, hardly an effective approach to evangelization." ÖRSY, "Episcopal," (fn. 13) 417. [Emphasis is mine.]

hundreds. Therefore, the *recognitio* inevitably becomes an instrument to sustain a unilaterally homogeneous vision and, as such, it is more of an impediment than a facilitator of enculturation and catholicity.⁷⁷

Of course, particular councils cannot serve as standards of themselves, just as an individual bishop could in no way consider himself to be the only standard.⁷⁸ To better enforce this theological evidence, it would be necessary to emphasize the role of reception in the revised text of the Code. In addition, since “reception” is not a univocal term, an eventual revision should accommodate a brief description on the traditional understanding of this concept, applicable to the context of local councils.⁷⁹ Linking superior teaching authority to reception would underline the non-definitive nature of these pronouncements. In addition, it would emphasise the point that a local teaching—depending on its veracity, not accidentally signalled by the extent of authentic reception—could assume universal authority.⁸⁰

2.8 — An Advisory Body with Lay Participation

Some authors also make reference to the transformation of the *composition* of episcopal conferences.⁸¹ Several proposals were made in this regard following the Council, but they were met with rejection or, at least,

⁷⁷ Gilles ROUTHIER, “The Meaning of Catholicity and the Relevance of Enculturation: Understanding the Teaching Authority of the Episcopal Conference,” in this volume of *StC*.

⁷⁸ See fn. 54 and 57.

⁷⁹ For some insight on the traditional meaning of this concept see: “...leaders need to rest the consensus ... as to whether or not this [new teaching] represents a clear and adequate contemporary expression of the one apostolic faith which has been professed through the ages of the Church within that particular tradition. In other words, beyond particularity of confessional expression is the subsisting apostolic faith (which all sincere Christians ... seek to profess) adequately formulated therein. Reception involves an answer to this question. To ascertain the answer to that question takes time, patience and maturity. Anti-authoritarian frenzies, gnostic pretensions or atomistic polarizations will not help the dialogue at this point. What we need now is that prayerful discernment within all of our Churches of what the one Spirit is saying to us.” Charles ANGELL, “Reception,” in *One in Christ*, 21 (1985), 187–188. See also O'Donnell, who states, “Tradition involves the continuous process of re-reception of truth in different ages and cultures.” O'DONNELL, “Reception,” (fn. 4) 402a.

⁸⁰ See fn. 4, *supra*.

⁸¹ Cf. for example: “... First, lest church decision-making be perceived as unduly episcopal rather than broadly ecclesial, revised conference norms must provide for the diversified input of other clergy, religious, and the laity as is true for Latin Particular Councils (c. 443)... In these days when the credibility of episcopal leadership in the United States has been significantly eroded ... only serious involvement of the faithful at large in conference decision-making can enable such decisional processes to be perceived as genuinely accountable.” GREEN, “The Legislative,” (fn. 8) 330.

with strong restriction.⁸² The expansion of the membership *in sensu strictu* of episcopal conferences with other clerics and lay people is problematic, not only because this would lead to a *contradictio in terminis*, but because it would presumably hamper the ordinary operation of this organ. It appears that the complete dismissal of particular councils is to a great extent to be blamed on the fact that their membership is envisaged to include the laity.⁸³

Nonetheless, enabling the implementation of the full spectrum of participative synodality is a task of primary importance!⁸⁴ The experience acquired from contemporary Eastern Catholic discipline and praxis may furnish noteworthy points of reference as well. Instead of the expansion of episcopal conferences into bodies of a mixed membership, the optimal platform to involve the laity in synodal decision-making could be provided through the creation of an advisory body, wide-ranging in its composition yet self-contained, similar to Eastern patriarchal assemblies.⁸⁵ The canons of the Oriental Code⁸⁶ could also act as standards for the description of the new Latin advisory body and its incorporation into canon law. It is worth noting that, in determining the legal frame of this organ, the Eastern codifiers relied, among other things, on insights afforded by the German

⁸² Cf. *Comm*, 2 (1970), 165-166; *Comm*, 29 (1997), 238. See Luigi CHIAPPETTA, *Il codice di diritto canonico. Commento giuridico-pastorale*, Bologna, EDB, 2011, vol. 1, 558.

⁸³ In fact, the mixed membership of particular councils can easily lead to more public discussions on issues bishops would prefer to handle in a more reserved and private way. The inconveniences of the openness, transparency, and publicity proper to particular councils are surely one of the main reasons why they are conspicuously neglected. PROVOST, *Particular*, (ftn. 3) 558-559; see ftm. 11 above.

⁸⁴ For the centrality of the *sensus fidei* of the people of God and the need to make listening to this *sensus* a pervasive element in the life of the Church, see Ormond RUSH, "Inverting the Pyramid. The *sensus fidelium* in a Synodal Church," in *Theological Studies*, 78 (2017), 299-325. See also id., *The Eyes of Faith. The Sense of the Faithful and the Church's Reception of Revelation*, Washington, The Catholic University of America Press, 2009; Dario VITALI, "Una Chiesa di popolo. Il *sensus fidei* come principio dell'evangelizzazione," in Humberto M. YÁÑEZ (ed.), *Evangelii gaudium. Il testo ci interroga. Chiavi di lettura, testimonianze e prospettive*, Rome, Gregorian & Biblical Press, 2014, 53-66. See also Christopher O'DONNELL, "Sense of the Faith, Sense of the Faithful," in id., *Ecclesia*, (ftn. 4) 422-424; Pierangelo SEQUERI, "Sensus fidei," in *Dizionario*, (ftn. 11) 1306-1320.

⁸⁵ See Péter SZABÓ, "Asamblea patriarchal," in *Diccionario*, (ftn. 3), vol. 1, 491-493; id., *Il Conventus patriarchalis (CCEO cann. 145-150)*, in Luigi SABBARESE (ed.), *Strutture sovraepiscopali nelle Chiese orientali*, Vatican City, Urbaniana Univeristy Press, 2011, 203-222.

⁸⁶ CCEO, Chapter VII: The Patriarchal Assembly, cc. 140-145.

Gemeinsame Synode.⁸⁷ Consequently, such a solution would be yet another positive manifestation of the value of sharing between traditions.⁸⁸ It would also merit some consideration whether it would be more expedient to operate the new system described in this discussion on a national or a regional level. The relationship between the episcopal conference and the advisory body in question ought to be specified in the statutes of the two organs.

3 — *Renewal of Regional Synodal Life through Particular Councils*

Do we not expect too much of episcopal conferences? We must not forget that the episcopal conference is a young institution that has been developing and operating in the crossfire of fierce disputes from its inception. Would it be worth increasing the duties of this institution at the expense of particular councils? Would it not be more appropriate to expect from these ancient original assemblies the renewal of a large scale participative synodality? Although I am well aware of the current difficulties associated with their functioning, their revival appears to be a simpler and more promising enterprise!⁸⁹ The consolidation of local synodality could be ensured more easily and more effectively if—at least as part of the initial steps of a possible reform—emphasis were placed not on episcopal conferences but on the revival of particular councils.⁹⁰ Choosing this alternative would obviate the need to spectacularly oppose the principles and norms applicable to episcopal conferences as determined by Saint John Paul II. On the contrary, restoring

⁸⁷ *Nuntia*, 7 (1978), 39. See also Giovanni RULLI, “Il sinodo collettivo delle diocesi della Repubblica Federale di Germania, I: Preparazione e assemblea costitutiva,” in *La civiltà cattolica* (1972/3), 30-39; Karl H. BRAUN, “De communi dioecesium rei publicae foederatae Germaniae synodo,” in *Periodica de re canonica*, 62 (1973), 133-141; Albin NEES, *Die erste Gemeinsame Synode der Bistümer in der Bundesrepublik Deutschland: ihre innere Rechtsordnung und ihre Stellung in der Verfassung der katholischen Kirche*, Paderborn, F. Schöningh, 1978; Konrad HARTELT, *Die Diözesan- und Regionalsynoden im deutschen Sprachraum nach dem Zweiten Vatikanum*, Erfurter Theologische Studien 40, Leipzig, St. Benno Verlag, 1979; Bernard FRANCK, *Actualité nouvelle des synodes. Le Synode commun des diocèses allemands, 1971-1975*, Le point théologique 36, Paris, Beauchesne, 1980; Astrid KAPTJN, *Similitudini e differenze tra le “gemeinsame Synode” dell’Occidente post-conciliare e l’Assemblea patriarcale*, in *Il diritto*, (ftn. 3) 323-334.

⁸⁸ LG 13c; see also fn. 9.

⁸⁹ In this sense see also FELICIANI, “Response,” (ftn. 38) 256-257; cf. also TEJERO, in *Exegetical Comm.*, (ftn. 3) 971.

⁹⁰ See TEJERO, in *Exegetical Comm.*, (ftn. 3) 961-990; MONTAN, “Concili,” (ftn. 11) 338-345; and fn. 3.

the operation of particular councils was advocated not only by Vatican II,⁹¹ but Wojtyła himself, in his exhortation *Pastores gregis*.⁹²

In the case of particular councils, the teaching authority, general legislative power, and a large-scale participative synodality stemming from its mixed membership, are beyond question. From the point of view of the vitally important process of enculturation, all these features are indispensable. Their extension to conferences, however, could prompt considerable resistance. In short, remedying the nearly complete dismissal of particular councils appears to be an easier task than the strenuous transformation of episcopal conferences. What is more, by the revival of particular councils—albeit in a different and simpler way—all the goals hoped for from the transformation of conferences would also be attained.⁹³

One of the major obstacles to reviving particular councils stems from the fact that councils do not have permanent organs. Consequently, their operation is merely occasional in character, thus resulting in much lower performance levels than episcopal conferences.⁹⁴ Providing them with permanent organs—even parallel to the retention of their comprehensive superior legislative and magis-

⁹¹ See CD 36: "From the very first centuries of the Church bishops, as rulers of individual churches, were deeply moved by the communion of fraternal charity and zeal for the universal mission entrusted to the Apostles. And so they pooled their abilities and their wills for the common good and for the welfare of the individual churches. Thus came into being synods, provincial councils and plenary councils in which bishops established for various churches the way to be followed in teaching the truths of faith and ordering ecclesiastical discipline. This sacred ecumenical synod earnestly desires that the venerable institution of synods and councils flourish with fresh vigor. In such a way faith will be deepened and discipline preserved more fittingly and efficaciously in the various churches, as the needs of the times require."

⁹² "Particular Councils, precisely because they involve the participation of priests, deacons, men and women religious and lay persons, albeit with a consultative vote only, are an immediate expression not only of communion between the Bishops but also of communion between the Churches. As a solemn ecclesial occasion, Particular Councils also demand careful thought in their preparation, which involves all the categories of the faithful, so that they can be a fitting place for decisions of greater importance, especially regarding the faith. The place of Particular Councils cannot therefore be taken by episcopal conferences, as the Second Vatican Council made clear when it expressed the hope that Particular Councils would take on renewed vigour." For the original text see, *Pastores gregis*, (ftn. 61), no. 62, 908–909.

⁹³ The realisation of a more synodal-featured Church would render the uncompromising determination to protect the configuration of episcopal conferences defined by *Apostolos suos* superfluous. Thus, substantive transformation of the latter could become easier. Nevertheless, such an endeavour could be relegated to a lower degree of priority once the substantive objectives expected from it have been accomplished through particular councils.

⁹⁴ Cf. Giorgio FELICIANI, "Chiese particolari (struttura, organi di partecipazione, raggruppamenti)," in *Digesto delle Discipline Pubblicistiche*, Turin, UTET, 1989, vol. 3, 26.

terial competences—is theologically permissible. This point is best reinforced by the fact that it was Pope John Paul II himself who effected such a paradigm shift in Oriental canon law. In the previous law, synods were occasional meetings comparable to contemporary Latin councils;⁹⁵ now, they have become permanent in character in terms of their structure.⁹⁶ This is possible even in the case of particular councils. For this purpose, it is sufficient to incorporate a canon into the Code which makes reference to this character.⁹⁷

For exercising teaching authority, even in the case of this institution, both the two-thirds majority and an explicit reference to the role of reception seem essential. Though the *recognitio* was explicitly confirmed in their case as an intrinsic element,⁹⁸ this disposition, first of all in the light of the absence of a similar condition in the *CCEO*, is a requirement of a recent ecclesiological model rather than a true theological exigency. Consequently, it could be eliminated.⁹⁹

Another hindrance to the operation of particular councils consists in their mixed membership. It is by no means a coincidence that, in listing the disadvantages of the council, Provost includes the requirement for open and public discussion of issues that bishops would deem more appropriate for private exchanges.¹⁰⁰ One thing seems certain: Latin bishops do not appear in favour of convoking particular councils whereas, in the Eastern Churches, patriarchal and metropolitan assemblies offer a platform for wide-ranging participative synodality, with a five-yearly periodicity.¹⁰¹

⁹⁵ *Cleri sanctitati*, (ftn. 10) 534-538, cc. 341-350.

⁹⁶ Cf. ftm. 40.

⁹⁷ A possible working text for this integration could be the following: “The particular council is to draw up its statutes in which are provided a secretary of the council, preparatory commissions, the order of procedure, and other means which they consider effective for the attainment of its goals.” An alternative could be: “Each particular council is to prepare its own statutes which must be reviewed by the Apostolic See and which are to organize, among other things, the plenary meetings of the councils which are to be held and to provide for a permanent council of bishops, a general secretariat of the council, and also other offices and commissions which, in the judgment of the council, more effectively help it to achieve its purpose.” In the case of a provincial council, a “permanent council” as its central organ is unnecessary by reason of the relatively limited number of its bishop-members. In the case of a large plenary council, however, it is indispensable.

⁹⁸ See *Comm*, 38 (2006), 12, 16.

⁹⁹ Proposal: *CIC*, c. 446 — *When a Particular Council has ended, the president is to take care that all the acts of the Council are sent to the Apostolic See. Decrees issued by a Council are not to be promulgated until [its president/metropolitan] has written notification from the Apostolic See of the reception of the acts* [cf. *CCEO*, c. 167, § 2]; see ftm. 51.

¹⁰⁰ See ftm. 83.

¹⁰¹ *CCEO* cc. 143, 141. During the elaboration of particular councils, both these characteristics—i.e., large composition and periodicity—were considered but refused. Cf. TEJERO, in *Exegetical Comm*, (ftm. 3), 981, 973.

I would recommend the institutional division of both the membership and functions of particular councils. This could be achieved in two ways. (1) The council would be “bicameral” with a deliberative synaxis including only bishops and an assembly of mixed membership, the latter only functioning as a consultative body. Appropriate separation and harmonisation between the two sections would be necessary. (2) The current configuration of councils would be split into two completely separate institutions. Should this be the case, the functions of the episcopal synaxis and the mixed assembly, and the link between the two, would be in full compliance with the double configuration envisaged in the *CCEO*. Therein synod and assembly (corresponding to episcopal council and consultative synod in this context) emerge as two institutionally independent but closely harmonised entities.

Although this would appear to be a more radical transformation than a possible reform of episcopal conferences, it would be less problematic. However, a truly convincing argument could be adopted from praxis at this juncture. In Eastern Catholic Churches, participative inter-diocesan synodality of a mixed composition is functional, as illustrated by actual experience.¹⁰² Additionally, it is the Oriental Code that guarantees not only the periodicity of these assemblies but also the proportion of lay members, well above current Latin levels! In fact, only the obligatory minimum of lay participation is determined by law, which affords a large-scale presence for lay persons in these assemblies.¹⁰³

Conclusions

The understanding of episcopal conferences cannot be reduced to a one-sided, historical approach, which seeks to identify the nature of these organs solely from nineteenth century circumstances. The episcopal conference is also a theological phenomenon, the basis of which is sacramental, ultimately originating in ultra-diocesan solicitude, which in turn derives from episcopal

¹⁰² See for example James KALLUNGAL, *The Major Archiepiscopal and Eparchial Assemblies of the Syro-Malabar Church*, in Francis ELUVATHINGAL (ed.), *Syro-Malabar Church Since the Eastern Code. Festschrift in Honour of prof. George Nedungatt S.J.*, Rome, Mar Thoma Yogam, 2002, 110-124.

¹⁰³ Cf. *CCEO*, c. 143, § 1, 6°: ...from each eparchy at least one presbyter enrolled in the same eparchy, especially a pastor, one from among the religious or members of societies of common life according to the manner of religious, as well as two lay persons, unless the statutes determine a greater number ... vs. *CIC* c. 443, § 4: *Presbyters and other members of the Christian faithful can also be called to Particular Councils, but with only a consultative vote and in such a way that their number does not exceed half the number of those mentioned in §§ 1-3.* For a negative former decision on this topic, see fn. 101.

ordination. The recognition of this theological quality is crucial to renewing the vitality of local synodality and *communio*.

Not only is a comparison of Oriental and Latin canon law possible on the level of local synodal organs, it also promises several highly relevant findings. The current legal configuration of the episcopal synod of the patriarchal Church described in the *CCEO* provides indisputable proof of the fact that *general deliberative competence*, on the one hand, and the *permanent character* of the self-same organ, on the other hand, are by no means mutually exclusive features. Thus, this Oriental codification arrangement represents a clear refutation of the opposing axiom of Latin canon law in this regard!

However, albeit pertinent to the essential nature of the Church on account of its sacramental origin, synodality is obviously of a subsidiary character compared to the bishop's mission for his own diocese. Maintaining this essential feature demands faithful observance of the two principles of synodality.¹⁰⁴ The latter criterion, however, is in and of itself only applicable to substantive discussion and may be fully enforced only with reasonably sized episcopal synaxes. Therefore, in the case of synaxes with an excessively large membership, the endowment of episcopal conferences with general decision-making competence would call for transformations in their organisational structure and/or operational mechanisms since, apart from being subsidiary by nature, genuine synodality requires the meaningful involvement of everyone concerned in the discussion. In this respect, at least in the case of large countries, it is in fact regional conferences that appear to be around the optimal scale.

In the case where the above criteria are met, the three-way delimitation—reduced normative competence, two-thirds majority, and the *recognitio*—laid out in *CIC* c. 455, § 1-2, may be revised. Once the absence thereof proved to be possible in the *CCEO*, also promulgated by Saint John Paul II, the same juridical configuration cannot be excluded by *theological* reasons even from the Latin discipline.

As regards the *magisterial* authority of episcopal conferences—while the requirement of full unanimity is impracticable to implement and cannot be substantiated historically, either—consensus by a two-thirds majority of the whole membership must remain a necessary condition as long as it appears to be the minimal legal counterpart of the traditionally required *moral unanimity*. The persuasive force of a particular magisterial declaration of this type comes precisely from the size of the majority endorsing it. At the same time, local magisterial pronouncements—including statements issued by conferences—

¹⁰⁴ See fn. 54 and 55.

may gain final recognition and respect only in proportion to the degree of subsequent external reception.

In line with what has been proposed, as well as with the aforementioned conditions fulfilled, it seems that the transformation of episcopal conferences into deliberative institutions with general competence is theologically possible. However, it also needs to be considered whether, in terms of the attainment of the *undoubtedly important goals* expected from the transformation, a more practical and simple solution could be afforded by the revitalisation of provincial councils—either in lieu of the reform of episcopal conferences or possibly parallel to it.

It may appear reasonable to ask whether the alternatives outlined above are not rash or even imprudent, possibly leading to the undermining of the proper functioning of episcopal conferences. In any case, it would be hard to dispute the timeliness of dealing with the problem in earnest. This is underscored by the apparent dissonance between two substantive assertions by Giorgio Feliciani. He unequivocally recognises that, in some cases, a substantive higher particular legislation is indispensable for the reinforcement of the mission. On the other hand, he concedes that in their actual form neither conferences nor councils are adequate in this regard.¹⁰⁵ The distinguished expert made these formulations over twenty-five years after Vatican II. Since then, another good quarter of a century has passed without any major advances in improving regional-level legislative capacity. The inability for renewal is especially evident in the case of particular councils.

It is important to stress again that, provided the conditions discussed above are met—i.e., the *size* of the synaxis and the *duplex principle* of synodality—the proposals made herein quite probably will *not* infringe on episcopal autonomy. As corroborated by the *CCEO* and respective experience, synodal activity would remain *subsidiary*. At the same time, it would also acquire a kind of praxis that is *more dynamic* than the existing Latin one, thereby contributing to the efficiency of missionary work, as well as to the institution and *regular renewal* of *regional* particular law deemed to be ever so desirable nowadays.

Finally, should the reform of codified universal norms on episcopal conferences and/or particular councils, suggested above, fail to obtain the necessary endorsement hereafter as well, out of a sense of caution, the transformation of individual episcopal conferences by means of *particular law* enacted

¹⁰⁵ Cf. FELICIANI, “Response,” (ftn. 38) 256-258.

by the *Pope* might also be a viable option.¹⁰⁶ An asset offered by such an arrangement would be that the new “configuration” relevant to individual episcopal conferences would evolve through profound dialogue with the Petrine ministry, enabling concrete legal solutions to respond better to local needs.

These arrangements are bound to result in a greater disciplinary variety than the current one. This phenomenon, however, is in no way opposed to Western ecclesiastical discipline. It is worth remembering that, thanks precisely to an acute understanding of the missionary demands of the epoch, not only was a *varietas disciplinarum* able to prevail even in post-Tridentine times marked by a strong preference for complete disciplinary homogeneity, but it also led to the development of an essentially *dual* disciplinary system, viz. *ius communefius missionale*.¹⁰⁷

*

Although the above proposals are not precluded by any theological reasons, it is quite possible that they will be met with resistance in the present time. Were this to be the case, it would be worth considering an additional alternative. Proper enculturation may require extensive—i.e., *regional* or *continental-level*—particular law. It seems that this level of juridical norms may also be called into existence by way of the institutions offered by the Code (i.e., conferences and councils in their actual juridical form), provided they engage in synergic *cooperation*. Currently, conferences are inadequate for comprehensive legislation in the absence of the corresponding *authority*, and so are councils on account of the absence of the respective *permanent organs* (as well as of the putative and real difficulties presumably stemming from mixed membership). However, it appears that nothing hinders the drafting of proposals for the individual *corpora* of particular laws by the permanent apparatus of episcopal conferences. They already meet the necessary conditions to perform this function; the only addition that might be necessary

¹⁰⁶ Feliciani states: “... where there are special needs, nothing prevents the Holy See from conferring on individual Conferences broader powers through special mandates or even pontifical initiatives in the area of particular law...” FELICIANI, “Response,” (ftn. 38) 256; see also id., “Prospettive di sviluppo del diritto particolare ad opera delle Conferenze episcopali,” in *Folia canonica*, 2 (1999), 23-31.

¹⁰⁷ See Theodorus GRENTROP, *Ius missionarium*, Steyl, Netherlands, Typographia domus Missionum a S. Michaelis Archang. nuncupatae, 1925; Achilles BEVILACQUA, “Missiones sacrae,” in Pietro PALAZZINI (ed.), *Dictionarium morale et canonicum*, vol. 3, Rome, Officium Libri Catholici, 1966, 281-284. Cf. René NAZ, “Missionnaire,” in *DDC*, vol. 6, 892-895, at 894-895. See also Willi HENKEL, *Storia delle missioni: America Latina*, in *Dizionario*, (ftn. 34) 495-502; id., *Die Konzilien in Lateinamerika*, I-II, Paderborn, F. Schöningh, 1984.

would concern the proper completion of the composition of preparatory organs, along the lines of professional requirements and the demands of *sensus fidei*, i.e., the inclusion of a proper number of lay components.¹⁰⁸ Then particular councils would not function as fora for discussing and working on proposals but—as has happened usually in the past as well—would act as brief, solemn synaxes for the sole approbation and promulgation of completed drafts. The latter would only necessitate the presence of bishops with a deliberative vote, thereby eliminating one of the main reasons for distrust in particular councils, namely, fear of lay voices representing alien interests (“pressure groups”).¹⁰⁹ It would not mean a degradation of the role of lay faithful but, rather, a better *institutional articulation* between the decision-making and decision-taking phase of legislative and magisterial activity, at the local synodal level.

To this end, instead of the substantive transformation of the two synodal institutions, their minimal modification on the level of statutes would seem sufficient. Most importantly, this would include, for example, guaranteeing wide-ranging preliminary consultation as part of the preparatory phase,¹¹⁰ prescribing at least a two-thirds majority for magisterial documents to be passed,¹¹¹ as well as determining in what manner the Holy See ought to be involved in this activity. Contrary to current law, the latter could ordinarily take the form of a simple acknowledgement of the receipt of the aforementioned notification, whereas, in the case of magisterial declarations, instead of a meticulous *recognitio*, it could be rather a simple *confirmation*, as explained above.¹¹²

It appears that, geographically, the ideal size of these synaxes would as a rule correspond to regional divisions, encompassing *several* ecclesiastical

¹⁰⁸ Ghirlanda says, “È da tener presente che il voto consultivo... è *elemento integrante e costitutivo* del processo di *formazione* dello stesso voto deliberativo che danno i vescovi.” Gianfranco GHIRLANDA, “Concili particolari,” in Carlos C. SALVADOR, Velasio DE PAOLIS, and Gianfranco GHIRLANDA (eds.), *Nuovo dizionario di diritto canonico*, Milan, San Paolo, 1993, 220-224, at 223.

¹⁰⁹ See, for example, MUCCI, “Concili,” (ftn. 64) 348; PROVOST, *Particular*, (ftn. 3) 549; TEJERO, *Exegetical Comm*, (ftn. 3) 981.

¹¹⁰ If such participation is provided for with regard to the synod of bishops, it can hardly be excluded that lay persons take part in some form and way in the work of an episcopal conference. See FRANCIS, Apostolic Constitution *Episcopalis communio*, 15 September 2018, no. 7, artt. 2 § 2, 6 § 1, 7 § 2, 8 § 1, at www.vatican.va. See also Alphonse BORRAS, “*Episcopalis communio*, mérites et limites d’une réforme institutionnelle,” in *Nouvelle revue théologique*, 141 (2019), 66-88.

¹¹¹ See ftn. 68-72.

¹¹² See ftn. 50-52.

provinces but *below* the national level.¹¹³ It must be noted that one of the chief traditional functions of episcopal conferences was precisely the preparation of particular councils.¹¹⁴ Thus, the revival of this former area of responsibility is hardly open to criticism.

The translation of the continent-wide coordinative councils of episcopal conferences (e.g., CELAM, CCEE)¹¹⁵ into conciliar forms would call for further reflection. It seems to be imperative that the dual rule of synodality—evidently constituting a principle crucial to the legitimate operation of deliberative synaxes—be reinforced in this instance as well. In case the membership of some forms of these continental synaxes includes only the presidents of the episcopal conferences, the respective size will be appropriate for substantive consultation. However, in what sense and to what extent these smaller groups are to be regarded as *truly representative* of the bishops and dioceses behind them should be subject to further clarification.

Various forums for practicing synodality are conceivable. Although the denomination of some former synaxes may seem impressive,¹¹⁶ a modern, valuable solution for this activity can be expected only from an appropriate combination of their membership, function, and structure. As has been pointed out, “all these prospects ... merit a good deal of attention since an adequate development of particular law can contribute effectively to that continual adaptation of canonical legislation to the ‘new spiritual and pastoral atmosphere’ which, in the judgement of John Paul II, confirms and justifies ‘the legitimate place of law in the Church’.”¹¹⁷

¹¹³ See Gianfranco GHIRLANDA, “Concilio particolare [V. Concilio regionale in Italia],” in *Nuovo*, (ftn. 108) 224; and id., “Regione ecclesiastica,” in *ibid.*, 897-898.

¹¹⁴ Cf. *CIC/17*, c. 292.

¹¹⁵ See, for example, Juan I. ARRIETA, “Reuniones internacionales de Conferencias episcopales,” in *Diccionario*, (ftn. 3), vol. 6, 1105-1109; Myriam WJLENS, “Exercising Collegiality in a Supra-National or Continental Institution such as the FABC, CCEE and ComECE,” in *Jur*, 64 (2004), 168-204.

¹¹⁶ For example, the 1899 “Latin-American Plenary Council;” see Willi HENKEL, “Latin American Bishops’ Plenary Council,” in Hans D. BETZ (ed.), *Religion Past and Present*, vol. 7, Leiden-Boston, Brill, 2010, 350. This synaxis, however, was a meeting of only forty bishops gathered in Rome; although its legislation was not insignificant, it was far from being the summit of the dioceses of the whole continent as its name today might suggest.

¹¹⁷ FELICIANI, “Response,” (ftn. 38) 258; see *Comm*, 15 (1983), 15.

