

*Primacy and Synodality: Deepening Insights*

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## Synodality and Primacy

### Perspectives of Interaction between East and West\*

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‘Wiederauffinden der Mitte’  
[Joseph Ratzinger]

#### Introduction

According to Louis Bouyer, albeit in inverse directions, the development following the Great Schism led to the emergence of unfavourable ecclesiological phenomena both in the West as well as in the East. On one side, the Patriarchate of Constantinople disintegrated into independent autocephalies drifting apart from one another (cf. ‘autocephalism’ used in the sense of a lax confederation of national Churches), while, on the other side, in the medieval Catholic Church reduced to the Latin West, the governing role of pope and the roman curia excessively intensified to the detriment of local bishops.<sup>1</sup> However, as it is known, multi-cen-

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1 Bernard SESBOÛÉ, *Pour une articulation nouvelle entre primats et primauté*, in *La primauté et les primats. Enjeux ecclésiologiques*, Sorin SELARU – Patriciu VLAICU (dir.), Paris 2016, 20; cf. Louis BOUYER, *L’Église de Dieu, Corps du Christ et Temple de Esprit*, Paris 1970, 555. For some auto-critical insights both from Orthodox and Catholic doctrine see, for example, the following short summaries: John MEYENDORFF, “Il regionalismo ecclesiastico: struttura per la comunione o pretesto per il separatismo?”, in *Cristianesimo nella storia* 2 (1981) 295–310; Salvador PIÉ-NINOT, “Historia del tratado teológico sobre la Iglesia”, in Christopher O’DONNELL – Salvador PIÉ-NINOT,

ennial divergence would change course, and ecclesiological visions have been heading towards convergence since the Second Vatican Council.<sup>2</sup> It is by no means exaggeration to claim that the present age is witness to yet another *substantial advance* in this process. This is essentially due to the fact that, by now, both sides have begun to acknowledge basic structural components of the *other* as, in one way or another, representing *constitutive* elements of their *own* ecclesiological model. Namely, Orthodoxy has started to recognise the indispensable structural role of the *protos*, i.e. the *monocratic* component, again. (Indirect evidence of this may also be found in the mere fact that the ‘Great and Holy Council’<sup>3</sup> has of late been celebrated). Conversely, on the Catholic side, a contemporaneous pontifical pronouncement has asserted that ‘synodality is [also] a *constitutive* dimension of the Church’.<sup>4</sup> This favourable ecumenical tendency, i.e. the understanding of the essential structure of the Church in a more harmonising manner between East and West than previously –provided that it is finally endorsed by both sides<sup>5</sup>– will open

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*Diccionario de Eclesiología*, Madrid 2001, 484–501; “Primado papal”, in Idem, 877–887; see also: Edward SIECIENSKI, *The Papacy and the Orthodox. Sources and History of a Debate*, Oxford 2017, 240 ss.

- 2 John ERICKSON, *Common Comprehension of Christians Concerning Autonomy and Central Power in the Church in View of Orthodox Theology*, in *Kanon [Jahrbuch der Gesellschaft für das Recht der Ostkirchen]*, vol. IV, *The Church and the Churches: Autonomy and Autocephaly 1<sup>st</sup> part*, Wien 1981, 100–112, 103.
- 3 See: <https://www.holycouncil.org/>; cf. also: John CHRISAVGOS, “Toward the ‘Great and Holy Council’”. Retrieving the Culture of Conciliarity and Communion”, in *St Vladimir’s Theological Quarterly* 60 (2016) 3, 317–332; Alberto MELLONI, “Le Saint et Grand Concile de Crète, Héraklion-Kolymbari-Chania”, in *Contacts [revue française de l’Orthodoxie]*, n° 255, 68 (2016) 322–336; Vassilios MAKRIDES, “Le concile panorthodoxe de 2016. Quelques réflexions sur les défis auxquels le monde orthodoxe doit faire face”, in *Istina* 62 (2017) 5–26.
- 4 See: The speech of Pope Francis delivered on 17 October 2015, in conjunction with the 50<sup>th</sup> anniversary of the establishment of the Synod of Bishops: “la sinodalità, come *dimensione costitutiva* della Chiesa, ci offre la cornice interpretativa più adeguata per comprendere lo stesso ministero gerarchico”, «L’autorità del servizio» [Commemorazione del 50° Anniversario dell’Istituzione del Sinodo dei Vescovi. Discorso del Santo Padre Francesco, Aula Paolo VI, Sabato, 17 ottobre 2015], in *L’Osservatore romano*, anno CLV, n. 238, 18 ottobre 2015, p. 4; see also: AAS 107 (2015) 1138–1144, 1141–1142 [emphasis mine].
- 5 Even though the documents endorsed by the Joint Commission are not legally binding, the unanimous approval of the ‘Chieti Document’ is certainly a signal of encouragement; cf. JOINT INTERNATIONAL COMMISSION FOR THE THEOLOGICAL

new perspectives in the Catholic-Orthodox dialogue, despite the distance and difficulties undeniably persisting into the present day.<sup>6</sup>

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This present reflection is intended to reconsider some thesis of Catholic ecclesiology, in contexts where self-correction may bring the desired consensus closer without the threat of renouncing Catholic identity.

The title of the present paper could as well enable the scrutiny of questions of a more technical nature. The current phase of ecumenical rapprochement, however, calls for elaboration on some even more fundamental issues. It stands to reason that it is certainly premature to conduct disputes on the possible *modalities* of the *praxis* of primacy and the corresponding synodality, while there is no consensus even on basic questions. Such central dilemmas, for example, include: the interrelationship between the local and the universal Church, or the question of the nature (i.e. the ultimate basis) of superior ecclesiastical structures. These aspects are crucial as the stability of Eastern autonomy, and, consequently, the prospects of the dialogue as well, are functions of this doctrine.

The ideas addressed herein are centred around these fundamental questions, presented in the following threefold division: (1) the ‘co-original’ correlation between ‘part’ and ‘whole’, i.e. the particular Church and the universal Church, in conjunction with the genesis of the episcopal function; (2) a new, sacramentality-based Catholic understanding of the governing power of the intermediate (supraepiscopal) level in the eccle-

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DIALOGUE BETWEEN THE ROMAN CATHOLIC CHURCH AND THE ORTHODOX CHURCH, “Synodality and primacy during the first Millennium: Towards a common understanding in service to the unity of the Church”, Chieti, 21. September 2016; in *Information Service* 148 (2016/II), 64–66. (As opposed to the ‘Ravenna Document’, the ‘Chieti Document’ putting forward the *same* substantive claims has been signed by the Russian representative as well.)

6 Despite some encouraging developments in the Eastern dialogue, complete unity does not seem to be a realistic expectation in the short term; cf. Kurt KOCH, *Sviluppi del rapporto ecumenico nell’ambito teologico*, in PONTIFICIO CONSIGLIO PER I TESTI LEGISLATIVI, *Attenzione pastorale per i fedeli orientali. Profili canonistici e sviluppi legislativi*. Atti della Giornata di Studio tenutasi nel XXV anniversario della promulgazione del Codice dei Canoni delle Chiese Orientali, Roma Sala San Pio X, 3 ottobre 2015, Città del Vaticano 2017, 52; SIECIENSKI, *The Papacy* (ftn. 1), 418; and see also: ftm. 31, *infra*. This somewhat sombrely realistic assertion may, of course, be revitalised to some extent in light of the hypothesis that complete doctrinal consensus is not necessarily a *conditio sine qua non* of full communion; cf. 718–719, *infra*.

siastical structure; (3) a brief reflection on the crucial question of whether full formal consensus is also a necessary condition for the restoration of *plena communio*.

It appears that the interaction referred to in the title may take various forms. On the one hand, the demands of Orthodox ecclesiology reconcilable with Catholic doctrine may produce an *orientative* effect by highlighting which of the different theologically possible models is to be favoured with a view to promoting unity. On the other hand, precisely on account of its heightened sensitivity to Orthodox priorities, enabled by its proposed solutions, this renewed Catholic vision may even trigger a *counteraction*, provided its theses are seen as inspirational in surpassing individual aporias within Orthodox doctrine.

Finally, the present reflection concerns, first of all, Catholic doctrine, even if the refinement of this position may also contribute to a greater degree of openness in Orthodoxy by delineating a Catholic doctrine that is more compatible with their ecclesiological tradition than the existing one.

## 1. A proviso of correct synodal doctrine and praxis is the balanced interpretation of the basic structure of the Church

If synodality is nothing but ‘an operative dimension of *communio Ecclesiarum*’<sup>7</sup> it is self-evident that proper understanding of the latter will be crucial to the appropriate articulation of the former. From the angle of the ecclesiological genesis of the episcopal function and the correlation of ‘portion’ and ‘whole’ (i.e. eparchy and *Ecclesia universa*), it is possible to conceive of divergent models.<sup>8</sup> If the promotion of unity is indeed a fundamental priority,<sup>9</sup> greater compatibility with the Orthodox vision will also feature as an important consideration in the choice from theologically feasible solutions.

7 Eugenio CORECCO, “Sinodalità”, in *Nuovo dizionario di teologia*, Giuseppe BARBAGLIO – Severino DIANICH (a cura di), Milano 1985, 1455b.

8 See: ARTURO CATTANEO, “La priorità della Chiesa universale sulla Chiesa particolare”, in *Antonianum* 77 (2002) 503–539; DEREK SAKOWSKI, *The Ecclesiological Reality of Reception Considered as a Solution to the Debate over Ontological Priority of the Universal Church* (Tesi Gregoriana/Serie Teologia 204), Roma 2014.

9 Cf ftn. 35, 36, *infra*.

Although representing divergence from the traditional and hitherto official Catholic doctrine, a few authors of note, such as Hervé Legrand and Richard Gaillardetz *inter alios*, are of the opinion that, in the ecclesiological embedding of the bishop, it is *affiliation* with his *own eparchy* as opposed to the College of Bishops that is of *primary* importance.<sup>10</sup> This is well reflected in the succinct claim that “it is the bishop’s relationship to his local Church that gives full meaning to his relationship with his brother bishops in the episcopal college”.<sup>11</sup> This association of the ecclesiological genesis of episcopal power with the local Church exclusively, is fully consonant with the Orthodox view.<sup>12</sup> As a corollary, every bishop ought to have his own community (eparchy) as a result of the inner nature of his function. Although the figure of titular Bishops today is present in Orthodoxy Churches as well, they are even less doubtful that Bishop without a proper flock is an ecclesiological anomaly.<sup>13</sup>

10 Hervé LEGRAND, «*Communio Ecclesiae, communio Ecclesiarum, communio Episcoporum*», in *La riforma e le riforme nella Chiesa*, a cura di Antonio SPADARO – Carlos M. GALLI (Biblioteca di Teologia Contemporanea 177), Brescia 2016, 159–188, 162–164, 183; Richard R. GAILLARDETZ, “The Pope and Bishops. Collegiality in Service of Catholicity”, in *Boston College/C21 Resources/Fall 2013*, 8–10.

11 GAILLARDETZ, “The Pope” (ftn. 10), 9. Furthermore, Gaillardetz also suggests: “For Francis, in order to fulfil his role as pope, he must first seek to be a bishop to his local Church. The central importance of the relationship between a bishop and his local Church is what gives Catholicism its unique form of unity that we call catholicity”, *Idem*, 8. In a similar sense: See also: “Así pues, la Iglesia universal tiene en el Colegio de los obispos y en el Papa su expresión ministerial propia, enraizada en la Iglesia local, ya que no sólo los obispos sino también el Papa que es obispos de Roma tiene su «locus theologicus» en la Iglesia local. Ahora bien, esta Iglesia universal non existe como realidad autónoma, sino en cuanto se realiza concretamente e históricamente en las Iglesias locales y emerge ellas como «communio ecclesiarum»”, Salvador PIÉ-NINOT, “Communio Ecclesiarum ‘in et ex quibus’ (LG 23)”, in *Diccionario* (ftn. 1), 184a.

12 Cf. “Introduire la mention du nom de l’Église locale dans la prière, lors de la consécration de l’évêque, c’est-à-dire dans cet acte constitutif de l’institution épiscopale, montre que l’évêque n’est consacré évêque de l’Église catholique qu’en passant par une relation avec une Église locale”, Jean ZIZIOULAS, “L’institution synodale. Problèmes historiques, ecclésiologiques et canoniques”, in *Istina* 47 (2002) 23–24.

13 Cf. “*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 ecclesiological sound concept...*”, in *The Jurist* 48 (1988) 376–383, 377 [emphasis mine].

On the contrary, the Catholic doctrine regards their affiliation with the *universal* Church as paramount from the perspective of the genesis of the episcopal function. This is overtly expressed in some prominent documents such as the apostolic exhortation *Pastores Gregis* or the *motu proprio Apostolos suos*. As no. 12 of the latter explains, “the College of Bishops is not to be understood as the aggregate of the Bishops who govern the particular Churches, nor as the result of their communion; rather, as an essential element of the universal Church, it is a reality which *precedes* the office of being the head of a particular Church”.<sup>14</sup>

As is widely known, evidently prompted by one of the theses of the letter *Communio nis notio*,<sup>15</sup> the turn of the millennium saw an interesting theoretical debate unfolding around the difficult question of the relationship between the particular Church and the universal Church,

<sup>14</sup> “Episcoporum corporis actuum collegialitas ex eo oritur quod «Ecclesia universalis comprehendi non potest ut summa Ecclesiarum particularium neque tamquam confoederatio Ecclesiarum particularium». «Non est fructus communionis istarum, sed, pro essentiali suo mysterio ontologice et temporaliter praecedit quamcumque Ecclesiam particularem». Collegium simul Episcoporum veluti Episcoporum summa non est intellegendum, qui Ecclesiis particularibus praesident, neque eorum communionis effectus, at, ut proprium et necessarium Ecclesiae universalis elementum, quiddam est quod praecedit officium particulari in Ecclesia munus capitis sustinendi”, IOANNES PAULUS II, mp. *Apostolos suos* [de theologica et iuridica natura Conferentiarum Episcoporum], 21. V. 1998, in AAS 90 (1998) 641–658, n. 12, 649–650. Cf. “Ecclesia universalis non est summa Ecclesiarum particularium neque earum foederatio [...] Quamobrem «Collegium Episcoporum veluti Episcoporum summa non est intellegendum, qui Ecclesiis particularibus praesident, neque eorum communionis effectus, at, ut proprium et necessarium Ecclesiae universalis elementum, quiddam est quod praecedit officium particulari in Ecclesia munus capitis sustinendi”, IOANNES PAULUS II, ex. post.syn *Pastores gregis*, 16. X. 2003, in AAS 96 (2004) 12, 825–924, n. 8, 835 [emphasis mine].

<sup>15</sup> “Ut germanus sensus percipiatur quo vox communionis analogice applicari queat Ecclesiis particularibus simul sumptis, ante omnia prae oculis habendum est inter illas, in quantum «unius Ecclesiae Christi partes», et totum, id est Ecclesiam universalem, vigere peculiarem relationem «mutuae interioritatis», quia in unaquaque Ecclesia particulari «vere inest et operatur Una Sancta Catholica et Apostolica Christi Ecclesia». Quare «Ecclesia universalis nequit concipi quasi sit summa Ecclesiarum particularium aut Ecclesiarum particularium quaedam foederatio»; non est enim fructus communionis istarum, sed, pro essentiali suo mysterio, *ontologice et temporaliter* praecedit *quamcumque Ecclesiam particularem*”, CONGREGATIO PRO DOCTRINA FIDEI, litt. *Communio nis notio* [de aliquibus aspectibus Ecclesiae prout est communitio], 28. V. 1992, in AAS 85 (1993) 838–850, n. 9, 843.

and specifically as to which of them has chronological and ontological *priority* over the other.<sup>16</sup> The colloquy resulted in a more accurate formulation of the viewpoints, even with considerable consensus materialising in relation to certain details.

It is completely justifiable to endorse the proposition of *Communio* *notio*, noting the following: “the universal Church cannot be conceived as the sum of the particular Churches, or as a federation of particular Churches”.<sup>17</sup> On the contrary, the same document appears to be problematic due to its insufficient emphasis on the *perfect balance* of ‘part’ and ‘whole’. From this point of view (i.e. perfect balance), the following remarks of *Winfried Aymans*, written in 1970, continue to be valid even today:

“The universal Church seems, according to Conciliar declarations, a reality which exists in tension. On the one hand, the universal Church exists, by virtue of its very nature, in every local Church; on the other hand the universal Church herself is made up of these selfsame local Churches. It is not possible to separate this dialectical relationship without eviscerating the Church of its very essence. One needs to guard against the tendency of giving priority to the universal Church over the local Churches, or the opposite tendency, of giving priority to the local Churches over and against the universal Church.”<sup>18</sup>

16 Cf. e.g. Kilian McDONNELL, ‘The Ratzinger/Kasper Debate. The Universal Church and the Local Churches’, in *Theological Studies* 63 (2002) 227–250; Amphilochios MILTOS, ‘Les Églises locales et l’Église universelle: une relecture orthodoxe du débat Ratzinger-Kasper’, in *Istina* 58 (2013) 1, 23–39 [Id., ‘Le Chiese locali e la Chiesa universale’, in *Il Regno-documenti* 17/2013, 568–576]; see also: PIÉ-NINOT, ‘Communio’ (ftn. II), 183–187; Joseph KOMONCHAK, *À propos de la priorité de l’Église universelle: analyse et questions*, in *Nouveaux apprentissages pour l’Église. Mélanges offerts à Hervé Legrand o.p.*, Gilles ROUTHIER – Laurent VILLEMEN (eds.), Paris 2006, 245–268; SAKOWSKI, *The Ecclesiological Reality* (ftn. 8); etc.

17 See: *Communio notio* (ftn. 15), n. 9, 843.

18 Winfried AYMANS, ‘Die *Communio Ecclesiarum* als Gestaltgesetz der einen Kirche’, in *Archiv für katholisches Kirchenrecht* 139 (1970) 69–90, 85 [emphasis mine]. See also: ftn. 22., *infra*. It is worth noting that signs of a wide consensus around the thesis of simultaneity of part and whole were seen earlier as well; see e.g. the following self-explanatory remarks by outstanding authors: “Una Chiesa universale anteriore, o supposta come esistente in sè stessa, al di fuori di tutte le Chiese particolari, non è altro che un essere di ragione”, Henri LUBAC, *Pluralismo di Chiese o unità della Chiesa*, Brescia 1973, 46; “la Chiesa universale... non è una idea astratta, ma una realtà ecclesiale concreta non solo storicamente ma anche ontologicamente risultante

It is natural to raise the question whether this vision is still feasible in light of the aforementioned official documents stressing the priority of the universal Church. As it seems, one of the key conclusions of the ‘Ratzinger-Kasper Debate’ proves that Aymans’ formula on perfect simultaneity of ‘part’ and ‘whole’ quoted above is fully valid in the present time as well! Nearly ten years after the letter *Communio notio*, as one of the concluding remarks of the ‘Debate’, Joseph Ratzinger made the following, ecumenically important observation:

“... he [Kasper] claims that this pre-existence applies not only to the universal Church, but also to the concrete Church which is composed ‘in and of’ local Churches. As opposed to the notion of the ‘primacy’ of the universal Church he defends the ‘thesis of the simultaneity of the universal Church and the particular Churches’. What he means by this becomes clearer when he writes: ‘The local Church and the universal Church are internal to one another; they penetrate each other, and are perichoretic’. I can certainly accept this formula; it is valid for the Church as it is lives in history...”<sup>19</sup>

In terms of this thesis, ‘part’ and ‘whole’ are thus fully ‘co-original, simultaneous and complementary’ components of each other at the level of *historical reality*,<sup>20</sup> or, in other words, they are only *two dimensions* of the *same* reality, which is the ‘Church of Christ’, *inseparably* local and universal *at the same time*.<sup>21</sup> This last formulation seems to be more accurate than either of the two aforementioned ones: the official thesis on the

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dalla comunione di tutte le Chiese particolari”, Eugenio CORECCO, “Teologia del diritto canonico”, in *Nuovo* (ftn. 7), 1669–1671, 1670a; see also the following critical observation on the ecclesiological vision of *Communio notio*: “perspectiva que al parecer de la mayor parte de los eclesiólogos, es unilateral, privilegiando el *in quibus* y desatendiendo el *ex quibus*”, Ángel ANTÓN, “La ‘recepción’ en la Iglesia y eclesiología (II)”, in *Gregorianum* 77 (1996) 457.

19 Joseph RATZINGER, ‘The Local Church and the Universal Church’, in *America* [*The National Catholic Weekly*] 185, 16/2001 [19.11.2001]. In this vein, the priority of the universal Church is not the historical reality of the Church but ought to be understood (only) as the “inner precedence of God’s idea of the one Church, the one bride, over all its empirical realization”, Idem.

20 PIÉ-NINOT, “Communio” (ftn. 11), 185b.

21 “La fórmula «*in quibus* et *ex quibus*», capta por esta razón el mistero de la Iglesia de su esencia institucional, según la lógica de la inmanencia recíproca de la dimensión local-particular en la universal-católica, y al revés”, PIÉ-NINOT, “Communio” (ftn. 11), 184b.

*prior* existence of universal Church/College of Bishops, or the contrary thesis of the *prior* existence of the Bishop as head of his Eparchy.<sup>22</sup>

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Now, this ecclesiological thesis of perfect balance and coexistence between the local and universal dimensions of the Church of Christ, seems to yield essential *institutional consequences*, for it is obvious that, as Paul McPartlan puts it, “if the worldwide Church has priority, then Rome and the curia naturally have a higher profile than they do if the worldwide Church and the local Church are interpenetrating and simultaneous”.<sup>23</sup> In this fashion, notwithstanding its vehement repudiation, some correlation between the thesis of the ontological priority of the universal Church and ‘centralisation’ may be identified. In negative terms, this is also corroborated by the observation that “weakening the notion of the universal Church detracts from Petrine primacy”.<sup>24</sup>

22 Although the thesis on simultaneous relation is not shared by all in Orthodoxy either, it is remarkable that Zizioulas identifies it as the sole theologically correct interpretation; cf. “Quale viene prima, l’una o le molte? È assurdo persino il porre la domanda. Vi è una *simultaneità* fra l’una e le molte, simile a quella esistente nell’essere stesso di Dio come Trinità... Questa misteriosa simultaneità ha un’importanza cruciale nella nostra fede cristiana. L’ecclesiologia non può discostarsi da questo principio senza cadere nell’eresia”. “La Chiesa è locale è universale al tempo stesso. Nella mia stessa Chiesa certi teologi hanno cercato di invertire la precedenza tradizionalmente preferita dall’ecclesiologia cattolica romana (cf., ad esempio, Rahner e Ratzinger), secondo cui la Chiesa è *anzitutto* universale e solo in subordine locale. Invertendo questa posizione, teologi ortodossi come Affanasiev e Meyendorff hanno sostenuto l’esistenza di una priorità sia storica che teologica della Chiesa locale e la possibilità di parlare di una Chiesa universale al massimo solo in subordine. (Affanasiev non è disposto a concedere neppure questo almeno fino al tempo di san Cipriano). Personalmente non ho mai accettato questa impostazione, perché ho sempre creduto che la natura dell’eucaristia sottolinei la simultaneità di località e universalità nell’ecclesiologia...”, John ZIZIOULAS, “Il primato nella Chiesa. Un approccio ortodosso”, in *Il Regno-attualità* 2/1998, 5–9, 6b.

23 Paul McPARTLAN, *The Local Church and the Universal Church: Zizioulas and the Ratzinger-Kasper Debate*, in *The Theology of John Zizioulas: Personhood and the Church*, Douglas H. KNIGHT (ed.), Aidershot 2007, 181.

24 “È evidente che l’indebolimento del concetto di Chiesa universale toglie ossigeno al significato del Primato petroino...”, Mariano FACCANI, *Il vescovo e la collegialità*, in *Chiese particolari e Chiesa universale*. XXIX Incontro di Studio “Villa Cagnola” – Gazzada (Va) 1–5 luglio 2002, a cura del GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO (Quaderni della Mendola 11), Milano [2003], 11–53, 40.

The above thesis of simultaneity makes it possible and even demands that, in the Catholic ecclesiological paradigm, the heuristic cornerstone be no longer exclusively the jurisdictional primacy. The Petrine function should be interpreted in the framework of the doctrine of communion instead.<sup>25</sup> In this context, it is easier to understand the proposition according to which the goal of ecumenical dialogue would no longer be the full recognition of the universal jurisdiction of the pope by the Orthodox in terms of purely juridical categories, but, moving away from this vision and approximating to the idiom of communion, the finding of new horizons of ecclesiological understanding to elucidate the theological relationship between primacy and the episcopate.<sup>26</sup>

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Finally, two brief remarks to conclude this chapter. Firstly, I am well aware of the fact that the possibility of the above described more balanced ecclesiological vision is not a new discovery. Secondly, I am also cognisant that, although the thesis on the priority of the universal Church has never won a convincing recognition,<sup>27</sup> it still enjoys considerable support. In short, my purpose by reviving the debate on this subject is but to draw attention to the fact that in this field it would be possible for Catholic doctrine to take a significant step towards Orthodoxy.

Albeit also justified by intrinsic theoretical arguments,<sup>28</sup> and despite the fact that the majority of authors have always adhered to this posi-

25 “... quando è il primato a funzionare da criterio euristico di un’ecclesiologia, il rischio è quello di determinare il modello di Chiesa a partire dalla funzione petrina e non viceversa”, Dario VITALI, “Il Concilio Vaticano I nel contesto ecclesiologico del secolo XIX”, in *Path* 13 (2014) 39–81, 77. There is no doubt that, from the Middle Ages, Catholic doctrine described the papal office in terms of a paradigm and terminology which have become obsolete in many ways by now; cf. e.g. “papa qui potest dici Ecclesia” (Egidio Romano, 1302); see: PIÉ-NINOT, “Historia” (ftn. 1), 488.

26 William HENN, *Historical-Theological Synthesis of the Relation between Primacy and Episcopacy during the Second Millennium*, in AA.VV., *Il Primato del successore di Pietro*. Atti del Simposio teologico, Roma, 2–4 dicembre 1996, Città del Vaticano 1998, 271. Even in this context, it seems to be extremely important to distinguish –as far as possible– those elements which are really required by the very revelation from those which in turn are required *only* by the coherence of our theological model, a phenomenon human by nature and, therefore, always susceptible to further rethinking.

27 LEGRAND, «*Communio*» (ftn. 7), 170.

28 Cf. ftn. 11, 18, *supra*.

tion,<sup>29</sup> earlier documents may give the impression that the official view continues to be the universalist thesis. It could be a remarkable example of ecumenical interaction if the demand of the Eastern vision motivated Catholic doctrine to adopt the above paradigm of simultaneous relation as official. This would also be vital to the consolidation of the synodal structure.<sup>30</sup> Although even this more balanced view is unlikely to be fully endorsed by the other side,<sup>31</sup> this vision is by all means more acceptable to the East than a one-sidedly universalist ecclesiology, and, therefore, also a better starting point for further dialogue.

## 2. Elaboration and interactional opportunities in the context of the theological and legal bases of synodality

A similar ‘retrieval of the middle’, namely a rediscovery of a more delicate theological balance between local and universal, at *institutional level* is just as important as it is in terms of the basic ecclesiological structure referred to above.

According to traditional doctrine, jurisdictional power is of extra-sacramental origin, i.e., in its entirety, transmitted by the Pope, in relation to both bishops and higher authorities.<sup>32</sup> Whereas the sacramental *origin* of

29 Cf. PIÉ-NINOT, “Communio” (ftn. 11), 185b, 186b; see also: ftn. 27, *supra*.

30 For this topic see: Péter SZABÓ, “Episcopal Conferences, Particular Councils, and the Renewal of Inter-Diocesan «Deliberative Synodality»”, in *Studia canonica* 53 (2019) 265–296.

31 Two decades ago, Zizioulas considered consensus in the joint assessment of ecclesiological foundations to be such a significant achievement that would enable the drawing of pragmatic conclusions required for unity to be accelerated. Complete agreement around the thesis of simultaneity –at least among the dominant Orthodox and Catholic experts– would be hard to deny. Nonetheless, Orthodox conclusions on ecclesiastical structure generated from this common starting point, which, among other things, continue to preclude the existence of jurisdictional primacy, aptly indicate that the positions concerned remain distant from each other; cf. ZIZIOULAS, “Il primato” (ftn. 22), 5a, 9. Notwithstanding these difficulties, the shared foundations in the understanding of simultaneity provide a *starting point* no doubt more conducive to dialogue than a situation with antagonistic theses pitted against each other even with regard to the starting point (cf. the priority of universality *versus* the priority of locality).

32 See for example: Vincent M. WALSH, “The Theological and Juridical Role of the Bishop. Early Twentieth Century and Contemporary Views”, in *Apollinaris* 44

the governing authority of bishops, or at least the *close relationship* between the ‘munera’ received in episcopal consecration and sacred power, has by now become a generally endorsed doctrine,<sup>33</sup> in the case of supra-episcopal organs, there are still some rather sporadic yet noteworthy views to be found, continuing to claim exclusive papal origins for their power.<sup>34</sup>

It is well over half a century since Wilhelm de Vries put forward the following statement: “... humanly speaking reunion between East and West can be hoped for only if the Catholic Church makes whatever concessions are possible to the separated Eastern Churches on the question of the autonomy of the patriarchates...”<sup>35</sup> If it is true that all theologically feasible alternatives must be considered in earnest with a view to advancing the cause of unity,<sup>36</sup> the elucidation of the doctrine on the

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(1971) 39–92, 53 ss., 61 ss.; Francesco VISCOME, *Origine ed esercizio della potestà dei vescovi dal Vaticano I al Vaticano II. Contesto teologico-canonico del magistero dei «recenti pontefici». Nota explicatriva praevia 2* (Tesi Gregoriana DC 21), Roma 1997, 7 ss.

33 Cf. Umberto BETTI, *La dottrina sull'Episcopato nel capitolo III della costituzione dogmatica Lumen gentium. Sussidio per la lettura del testo*, Roma 1968, 365–366; Gianfranco GHIRLANDA, “Potestà sacra”, in *Nuovo dizionario di diritto canonico*, Carlos C. SALVADOR – Velasio DE PAOLIS – Gianfranco GHIRLANDA (a cura di), Milano 1993, 803–812, 805–806; Christopher O'DONNELL – Salvador PIÉ NINOT, “Autoridad/Potestad sacramental (potestas sacra)”, in *Diccionario* (ftn. 1), 81–89, 85.

34 See for example: “... nella Chiesa di Cristo, infatti, non v'è alcuna potestà sopra-episcopale, e a maggior ragione sopra-metropolitana, che non sia quella suprema, da Cristo affidata a Pietro e ai suoi successori [...] i Patriarchi e i sinodi sono resi partecipi *iure canonico* della Suprema autorità della Chiesa, la sola che possa, per istituzione di Gesù Cristo, circoscrivere l'esercizio della potestà dei Vescovi”, Angelo SODANO, “Intervento al Simposio Internazionale *Ius Ecclesiarum – vehiculum caritatis* nel X anniversario dell'entrata in vigore del *Codex Canonum Ecclesiarum Orientalium*, 23 novembre 2001”, in *L'Osservatore Romano*, 24 novembre 2001, p. 6, see also: *Ius Ecclesiae* 13 (2001) 3, 885–889, 886; see also: Ivan ŽUŽEK, *The Patriarchal Structure according to the Oriental Code*, in *The Code of Canons of the Oriental Churches. An Introduction*, Clarence GALLAGHER (ed.), Rome 1991, 42; Cyril VASILE, *La synodalité dans le C.C.E.O. – Considérations sur la doctrine et sur la pratique*, in this volume, p. 65 ss.

35 Wilhelm DE VRIES, “The Eastern Patriarchates and their Relationship to the Power of the Pope. Part II. The Change in the Relationship in the Second Millennium”, in *One in Christ 2* (1966) 130–142, 141.

36 Cf. “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 bedeutend sein mögen, aber die Gemeinschaft im Glauben der Väter und in seiner kirchlichen Grundgestalt nicht aufheben. [...] Das theologisch Mögli-

nature of supra-episcopal organs encapsulating the Eastern concept of autonomy is obviously a task of fundamental importance. In this regard, two options appear to be available. One of them –the recognition of the sacramental origin of this power– has been present in doctrine as the dominant view for a long time. Therefore, the discussion in this relation will be confined to the presentation of facts, as well as to the exposition of arguments in support of the thesis. Conversely, the other option –the deduction of the increased stability of Eastern autonomy from the context of customary law– represents, as it seems, a novel approach.

### 2.1. *The origin and the nature of supra-episcopal power*

As has been pointed out above, the origin of episcopal power is interpreted by contemporary Catholic doctrine in (partially) different terms from the model that has evolved since the 12<sup>th</sup> century. According to the earlier conception, ‘jurisdiction’ was considered to be of extra-sacramental origin, in other words, transmissible independently of episcopal ordination.<sup>37</sup> The medieval doctrine, as we know, not only differentiated but professed full *separation* of the two realities as well. According to this theory only power of order derives from episcopal ordination, whereas the source of all forms of jurisdiction is exclusively the papal office.<sup>38</sup> In

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che 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”, in Joseph RATZINGER, *Vom Wiederauffinden der Mitte. Grundorientierungen. Texte aus vier Jahrzehnten*, Freiburg/Bg 1998, 189.

37 See for example: Severino RAGAZZINI, *La potestà nella Chiesa: quadro storico-giuridico del diritto costituzionale canonico* (PUL Diss 290), Roma 1963. (A subtle *distinction* between the sanctifying and jurisdictional dimensions of power is appropriate – since it is required by the practicalities of life–, and some of its traces are even detectable in former tradition; cf. Pierre L’HUIILLIER, “Rapport entre pouvoirs d’ordre et de juridiction dans la tradition orientale”, in *Revue de Droit Canonique* 23 [1973] 281–289; see also: Orazio CONDORELLI, *La distinzione tra potestà di ordine e potestà di giurisdizione nella tradizione canonica bizantina*, in «*Curiosità e rigore*». Studi in memoria di Maria Cristina Folliero, Giuseppe D’ANGELO [a cura di], I, Torino 2018, 241–271; Roberto INTERLANDI, *Potestà sacramentale e potestà di governo nel primo millennio: esercizio di esse e loro distinzione* [Tesi Gregoriana DC 103], Roma 2016.)

38 For example: WALSH, “The Theological” (fn. 32), 53 ss., 61 ss.; see also: O’DONNELL – PIÉ NINOT, “Autoridad” (fn. 33), 83b; PIÉ NINOT, “Historia” (fn. 1), 486b. The

consequence of this –sacramentally inaccurate– starting point, jurisdictional power assumed a one-sidedly ‘vertical’ character in the medieval ecclesiological model. Despite the fact that this vision is no doubt part of the legacy of the decretalist approach<sup>39</sup> that oriental codification positively sought to break free from,<sup>40</sup> surprisingly, the continuance of this old ecclesiological vision is exemplified in a number of instances in the context of the Oriental Code.<sup>41</sup> However, this model claiming papal origins for supra-episcopal power, as will be demonstrated soon, is not the only theologically possible one.<sup>42</sup>

The one-sided medieval vision was corrected only as late as the second half of the previous century,<sup>43</sup> thanks to the recognition that ecclesiastical power (as a sacred reality) is in its *entirety* of sacramental origin. As Klaus Mörsdorf emphasised after the Council, “order and jurisdiction cannot be considered two separate powers but complementary elements of the one ecclesiastical power”.<sup>44</sup> Thus, governing power (‘jurisdiction’) also derives from episcopal *ordination* or, at least, has its roots in it:

“... Now even though the [supra]episcopal grades derive from ecclesiastical authority, nevertheless the office itself does not lose *its foundation in divine right* owing to the divine institution of the episcopate. As the title of Chapter III [of CD] makes clear, the Synodal

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origins of this ‘one source model’ have been present at least since the time of pope Leo the Great; cf. Walter ULMANN, “Papacy”, in *New Catholic Encyclopedia*, vol. 10, New York 1967, 953; see also: ftn. 34, 67.

39 Cf. FRANCISCUS X. WERNZ, *Ius decretalium*, tom. II, *Ius constitutionis Eccles. catholicae*, pars II, Romae 1906, n. 713, 480–481; WALSH, “The Theological” (ftn. 32), 61 ss.

40 Cf. Ivan ŽUŽEK, “Oriental Canon Law: Survey of Recent Developments”, in *Concilium* 1 (1965) 8, 68.

41 Cf. ftn. 34, *infra*.

42 The thesis of the papal origin of supra-episcopal power could rather be accounted for by the demand to guarantee a centralised ecclesiastical model. At the same time, it is not at all doubtful that its advantages materialising in the former relation are directly proportional to its disadvantages from the perspective of ecumenism. Thus, in a paradoxical way, the model designed to ensure greater unity ultimately results in the perpetuation of ecclesiastical fragmentation.

43 For an excellent panoramic synthesis see: PIÉ NINOT, “História” (ftn. 1), 484–501.

44 *Decree on the Bishops’ Pastoral Office in the Church* [commented by Klaus Mörsdorf], in *Commentary on the Documents of Vatican II*, Herbert VORGRIMLER (ed.), New York 1966–69, vol. II, 207. (See also: Arturo CATTANEO, *La complementarità di ordine e giurisdizione nella dottrina di Klaus Mörsdorf*, in *Cuadernos doctorales* 1 [1983] 383–438.)

element in the sphere of the particular Churches is *not a participation* in the supreme power, *but only a special form of the cooperation of the bishops* for the common good of several Churches even though the competence and thus the authority of the synods is not the sum of the authority of the bishops participating but an authority *sui generis*... Thus the *synodal element appears clearly as derived from the episcopal power* and is not to be misunderstood as deriving from the primatial power.”<sup>45</sup>

It goes without saying, that *acceptance or rejection* of this *axiom* would be fully determinative of the juridical weight and role, on a practical level, of episcopal synods. Effectively, if their power does not derive from the pope, but has an existence of its own, subordinated securely but not ‘entirely granted from outside’, then, and only then, may a *real synodal character* of the Church be recognised.<sup>46</sup>

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In this relation, two additional important observations may be formulated. On the one hand, there is consensus among the majority of influential authors regarding the sacramental-law-based origin of supra-episcopal power.<sup>47</sup> On the other hand, there is no doubt that this doctrine is

<sup>45</sup> *Decree*, [Mörsdorf] (ftn. 13), 280–281.

<sup>46</sup> Cf. synodality, as a *constitutive element* of the Church; see: ftn. 4, *supra*.

<sup>47</sup> For example: Mörsdorf, at ftn. 45, *supra*; Aymans: “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 der 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; 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 *The Jurist* 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 *Ephemerides iuris canonici* 47 (1991) 157–175, 166; and also: Feliciani: “... è anche da segnalare sul piano ecclesiologicalo la corretta impostazione della sistematica che non

in harmony with the essential requirements of Catholic teaching as the subordination of intermediate authorities to papal power is guaranteed here as well by virtue of the superior origins of *missio canonica*.

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As suggested by the fragmentary comment found in the literature, the sacramental origin of supra-episcopal power may also be accounted for by a more extensive explanation. 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’.<sup>48</sup> In different terms, the same thesis is supported by others as well.<sup>49</sup> This capacity by the appropriate and corresponding juridical determination even in case of the supra-episcopal authorities, may be transformed into governing power. However there is no doubt that without adequate ‘juridical determination’ this is not possible. Nonetheless, this does not detract from the relevance of the *ultra*-eparchial aspect in question.<sup>50</sup> In

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qualifica più le istanze gerarchiche intermedie tra la 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 nouveau Code de droit Canonique. Actes du V<sup>e</sup> Congrès international de droit canonique, Ottawa 19–25 août 1984*, Michel THERIAULT – Jean THORN (eds.), Ottawa 1986, vol. 1, 501; see also: *Natura e futuro delle Conferenze episcopali. Atti del Colloquio internazionale di Salamanca, 3–8 gennaio 1988*, Julio MANZANARES –Hervé LEGRAND –Antonio GARCÍA Y GARCÍA (a cura di), Bologna 1988; Francis SULLIVAN, “The Teaching Authority of Episcopal Conferences”, in *Theological Studies* 63 (2002) 472–493, 479–480.

48 Cf. Libero GEROSA, *L'interpretazione della legge nella Chiesa. Principi, paradigmi, prospettive*, Pregassona 2001, 147.

49 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, *Church Teaching Authority. Historical and Theological Studies*, London 1995, 99–100 [emphasise is mine].

50 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* (cf. *Nota explicativa praevia*, n. 2); but no one may impugn the constitutional importance of this inner mission for this reason.

the light of their common sacramental origin and their essential function for communion, the above-mentioned two missions (*ad intra* and *ad extra*), i.e. individual and synodal episcopal power, cannot be interpreted as antagonistic theological realities.<sup>51</sup> In sum, the theory of local synodal power as a juridical expression of a mission received through episcopal ordination itself is *not* to be excluded on theological grounds from Catholic ecclesiology.

This ecclesiological paradigm also highlights the need to refine the traditional *ius mere ecclesiasticum* label of supra-episcopal organs. Undoubtedly, the concrete forms of the supra-episcopal institutions are historically diverse, but they are, nevertheless, expressions of a necessity rooted in the same episcopal ordination<sup>52</sup> responsible for converting *communio Ecclesiarum* into harmonious *mutua interioritas*. In this sense, the ecclesiological function of the supra-episcopal organs must be regarded as theologically essential.<sup>53</sup> If this authority can be traced to ordination,

51 Cf. “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 *Canon Law and Communio. Writings on the Constitutional Law of the Church*, Graziano BORGONOVO – Arturo CATTANEO (eds.), Città del Vaticano 1999, 350–351 [emphasis is mine].

52 “... 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 *Sacramentum Mundi. An Encyclopedia of Theology*, Karl RAHNER (ed.), New York – London 1968, vol. I, 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, Roma 1994, 3a.

53 See: ftn. 45, *supra*; see also: LEGRAND, «*Communio*» (ftn. 7), 177–178.

then some form of super-episcopal structure can never be absent from the ecclesial framework, since, in fact, this power is nothing but a juridical instance *intrinsically required* by episcopal ordination itself, or, more precisely, by the aforementioned sacramental mission *ad extra*. Ultimately, this fact –i.e. the rediscovery of the sacramental origin of ‘*ultra*-diocesan solicitude’– will be one of the fundamental reasons why the Church is to be considered as ‘natively synodal’ on a local level as well. From an ecumenical point of view, this approach is undeniably more advantageous than the old model claiming purely papal origins for superior power.

The thesis on the sacramental origin of governing power may be supported by considerably more arguments than the extra-sacramental alternative. One of these is the benefit for ecumenism. Extra-sacramental jurisdiction is completely alien to Orthodoxy.<sup>54</sup> However, as the proposed view deducting supra-episcopal power from the *ultra*-diocesan mission of episcopal ordination claims *sacramental* origin for this superior authority, this interpretation might even be worth considering by Orthodox doctrine as well. The presence of supra-episcopal structures in Orthodox praxis has been reality for nearly two millennia. This legal phenomenon is, however, assessed by prominent Orthodox authors as an anomaly.<sup>55</sup> The above doctrine on the *ultra*-diocesan dimension of ordi-

54 See for example: “... is there in Orthodoxy a power superior to that of bishop, i.e. the power *over* the bishop and hence over the Church of which he is the head? [...] theologically and ecclesiologicaly the answer should be ‘no’: there can be no power *over* the bishop and his Church (i.e. diocese) for ‘if power belongs to the Church as one of its constituent elements, it must correspond to the nature of the Church and not be heterogenous to it...’ The ministry of power and government, as all other ministries within the Church, is a *charism*, a gift of grace. It is bestowed through the sacrament of order, for *only sacramentally received power is possible in the Church*, whose very nature is grace and whose very institution is based on grace”, Alexander SCHMEMMANN, *The Idea of Primacy in Orthodox Ecclesiology*, in *The Primacy of Peter. Essays in Ecclesiology and the the Early Church*, John MEYENDORFF (ed.), New York 1992, 147–148 [emphasis is mine].

55 See for example: “divorce between canonical traditon and the canonical facts”, or: “Loosing its ties with ecclesiology, the canonical tradition became canon law”; also: “time has come ... to admit openly that the Byzantine period of our history, which in many respects is still for us the golden age of Orthodoxy, saw, nevertheless, the beginning of an ecclesiological disease... It was the triumph of universal ecclesiology in Byzantine form”; ... and finally: “all the harm done to the Church by this acting ‘canon law’ disconnected as it is from the living sources of Orthodox ecclesiology” etc., in SCHMEMMANN, *The Idea* (ftn. 54), 148–149, 169, 170.

nation supplies sufficient basis for the demonstration of the *sacramental* character of superior governing power. It appears reasonable to ask whether, even in light of this latter fact, it is absolutely justifiable to maintain the position that supra-episcopal power is after all theologically impossible, a view that seems to have been expressed explicitly only as a modern doctrinal thesis. Institutional history *de facto* shows the diametrical opposite of this most palpably. This realisation begs the question if it is indeed ecclesiastical praxis that has drifted towards anomaly, or if it is more about modern Orthodox ecclesiological vision not being sufficiently open to recognise the more profound realities of superior ecclesiastical structure. If, as has been suggested, this power is not the local emanation of *plenitudo potestatis* but an operative function of sacramental origin, arising from an *intrinsic* demand of communion, it seems that ignoring its theological character would not only entail the uneasy force of degrading historical facts into an anomaly but would also cause the very theological image of communion and thus of the intensity of its inner cohesion to be felt as weaker. If *institutional* cohesion manifested by superior power is not founded theologically, ‘communion’ is but mere voluntary federation from a disciplinary point of view.<sup>56</sup>

Acknowledgement as *official* doctrine of the sacramental origin of superior power could enable Catholic doctrine to take a significant step both on the road to unity and in terms of more profoundly understanding and underpinning its own synodal structure.

At the same time, it is also clear that this new version of the interpretation of the origins and nature of the sacred power is not acceptable to Orthodoxy, either.<sup>57</sup> This position is to some extent understandable from the Eastern perspective – even if this power, as opposed to the decretalist model, is no longer defined as the simple local emanation of papal pow-

<sup>56</sup> Cf. ftn. 17, *supra*.

<sup>57</sup> “It is clear that the ... Orthodox theologians should criticize the notion of *missio canonica*, for it does indeed imply a dependence of the sacramental power of the bishops on papal power”, in Maximos VGENOPOULOS, *Primacy in the Church from Vatican I to Vatican II. An Orthodox Perspective*, Dekalb [Ill.] 2013, 108–110, 110. “Orthodox remain most perplexed by the ‘missio canonica’, and the text in which it appears. On the other hand, they appreciate very much the statement of the sacramental nature of the episcopate and of the ordination which, of itself, confers the three *munera*”, Pierre DUPREY, “The Synodical Structure of the Church in Eastern Theology”, in *One in Christ* 7 (1971) 152–182, 176–177 [reported by Vgenopoulos].

er. Still, in its inception, on account of *determinatio iuridica* manifest in *missio canonica*, one component of this power continues to be derived from the pope, i.e. ‘externally’. Moreover, only few explicit signs seem to suggest that the pope would not exercise full discretion in granting this component. Last but not least, the Catholic doctrine scrutinising the phenomenon of *missio canonica* marshals rather disparate positions in an effort to produce an accurate definition of this component.<sup>58</sup>

However, the reservations of Orthodoxy in this respect are far from being reasons for retreat but, on the contrary, are more indicative of the need to determine through its more extensive examination whether it is possible to find an ‘ecumenism-friendly’ explanation for this second, juridical component of the sacred power as well.

## 2.2 *The possibility of internal-local origin for “missio canonica”*

Thus, the question is whether an explanation of the phenomenon *missio canonica* capable of simultaneously meeting two such seemingly mutually exclusive expectations as the recognition of the *internal* (i.e. non-papal) origins of superior governing power and the ensuring of its sufficient subordination to papal power is conceivable.

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58 Cf. In some reading, its function may apparently continue to display quite a close affinity with the nature of the previous (extra-sacramental) model: “tutta la problematica circa la potestà sacra nella Chiesa si incentra sull’origine della potestà dei vescovi [...] Il Vaticano II non ha voluto dirimere la questione dibattuta se l’origine di tale potestà sia immediata dalla consacrazione oppure mediata dalla missione canonica del romano pontefice; cf. *Acta synodalia* III/VIII, 96–97. [...] senza dubbio il Vaticano II ha voluto mettere in stretta relazione i *munera* ricevuti nella consacrazione episcopale e la potestà sacra, tuttavia non si può affermare che abbia identificato le due cose. Si tratta, allora, di cercare una sintesi tra la dottrina e la disciplina millenarie espresse nel *Codex-17* e quelle contenute nel nuovo *Codex* sulla base del Vaticano II”, GHIRLANDA, ‘Potestà sacra’ (ftn. 33), 807–808 *vs.* “La consacrazione ha valore di *causa efficiente*. La comunione, ulteriormente qualificata come «gerarchica» ha valore di *condizione* indispensabile. Tutt’e due dei requisiti sono dunque necessari ... ma sotto un aspetto ben diverso. Questa diversità è indicata dalla stessa formulazione verbale: «*in forza della consacrazione sacramentale e mediante la comunione*» [...] la Commissione dottrinale si è decisamente rifiutata di mettere i due requisiti sullo stesso piano, nonostante le reiterate richieste in tal senso”, BETTI, *La dottrina* (ftn. 33), 365–366; see also: Arturo CATTANEO, “Potestas sacra”, in *Diccionario General de Derecho Canónico*, Javier OTADUY – António VIANA – Joaquín SEDANO (dir), Cizur Menor [Navarra] 2012, VI, 342–347, 344–345; Adriano CELEGHIN, *Origine e natura della potestà sacra*, Brescia 1987.

In this relation, n. 24b of LG is of particular relevance. According to this passage the canonical mission –so the *juridica determinatio* of the ‘ontological capacity’ received by sacramental ordination– can be conferred according to a threefold modality: by way of *custom*, through *laws* emanated by the supreme legislator, or through a *direct intervention* of the Roman pontiff.<sup>59</sup>

Whereas the first two solutions are less acceptable from an ecumenical point of view, the version identifying the source of *missio canonica* in customary law –at least with reference to Eastern understandings of this source of law– affords encouraging prospects.

As opposed to the earlier doctrine,<sup>60</sup> Eastern canon law in force no longer specifies *external* reasons (i.e. consensus by a superior authority) to account for the binding force of a legal custom but *internal* reasons instead, embedded in the praxis of the community itself. Canon 1506 of the CCEO’90 states: “The custom of the Christian community, insofar as it responds to the action of the Holy Spirit in the ecclesiastical body, can have the force of law”.<sup>61</sup>

Relative to this norm, of outstanding interest are Velasio de Paolis’ observations:

“Neither CIC nor CCEO defines custom, but CCEO has introduced a striking novelty into the traditional canonical doctrine on custom. [*Canon 1506.*] In CCEO the very notion of custom as normative in the Church is related to the active presence of the Holy Spirit, which

59 *Episcoporum autem missio canonica fieri potest per legitimas consuetudines, a suprema et universali potestate Ecclesiae non revocatas, vel per leges ab eadem auctoritate latas aut agnitas, vel directe per ipsum Successorem Petri; quo renuente seu communionem Apostolicam denegante, Episcopi in officium assumi nequeunt.*

60 Cf. “... nell’ordinamento canonico vera, immediata e unica causa efficiente della norma giuridica consuetudinaria è il consenso del competente superiore ecclesiastico, per cui, anche se materialmente essa può dirsi fonte autonoma di diritto, essendo, la materia su cui essa verte, determinata non già dal legislatore come avviene nella legge, ma esclusivamente dalla comunità, formalmente, invece, al pari della legge, essa acquista la sua forza obbligatoria esclusivamente dalla volontà del legislatore”, Anna RAVÀ, “Consuetudine, b) diritto canonico”, in *Enciclopedia del diritto*, Francesco CALLASSO (dir.), IX, Milano 1961, 443–456, 443a; see: Gommarus MICHIELS, *Normae generales iuris canonici. Commentarius libri I Codicis iuris canonici*, II, Parisiis-Romae 1949, 37–40.

61 CCEO’90, can. 1506 – § 1. *Consuetudo comunitatis christianae, quatenus actualitate Spiritus Sancti in corpore ecclesiali respondet, vim iuris obtinere potest.*

arouses and guides the ‘sensus fidei’ of the People of God. Hence there is an exigency already in the custom as a *fact* that it be duly recognized by the lawful ecclesiastical authority. According to CIC c. 23, custom has force of law only by the approval of the legislator. On the contrary, CCEO c. 1506 stresses that in as much as a custom is the Christian community’s response to the abiding Spirit, the ecclesiastical legislator cannot be unconcerned or arbitrary but in his ministerial role is called by duty to discern and approve it. [...] According to CCEO it is not through the *extrinsic* intervention of a competent legislative authority... that a custom becomes normative, but *intrinsically*, provided it corresponds to the criteria determined by the Code (CCEO cc. 1506–1507). This is a significant departure from the CIC [...] which certainly does not reflect the tradition of the early Christian centuries: for example, the Council of Nicea in 325 with its canon 6 did not give legal force to ancient custom, but recognized its juridical force and applied it. Historically, in the earlier or classical period of Roman law, custom was ‘quod voluntate omnium sine lege vetustas comprobavit’ (Cicero, *de inv.* 2, 22, 67). But in the imperial period, the emperor became effectively the sole source of law: ‘Quod principi placuit legis habet vigorem’ (Ulpian, *D I, 4, 1, pr.*) [...]. It is this imperial model that shaped the doctrine supporting CIC-1917 c. 25, while the Eastern canon law reflects the earlier model”.<sup>62</sup>

Thus, along the lines of this version, the following conclusion may be reached. As, according to the law in force,<sup>63</sup> the efficient cause of a legal custom is the community itself, if (in a particular context) the basis of *missio canonica* is customary law (LG 24b<sup>[31]</sup>) –beyond the sacramental core deriving from ordination– this second legal component of governing power is to be considered as of *internal* origin! In addition,

62 *A Guide to the Eastern Code. A Commentary on the Code of Canons of the Eastern Churches*, edited by George NEDUNGATT (Kanonika 10), Roma 2002, 828–829 [*Velasio de Paolis*].

63 It is apposite to note that this interpretation is not an exclusive feature of Eastern Canon Law any more. On the contrary, prominent authors of Latin canon-law studies also support this position; see: e.g. “the community of faithful as efficient cause of custom”, in *Exegetical Commentary on the Code of Canon Law*, Angel MARZOÀ – Jorge MIRAS – Rafael RODRÍGUEZ-OCAÑA (eds.), vol. I, Chicago 2004, 392–400 [*Javier Otaduy*], 393–394; “It has been said that the intervention of the legislator is compromised, that there is ‘*un dovere di ascolto*’, a juridical obligation to accept community behaviour that fulfils the necessary conditions. As a result, ‘the choice of the legislator to give normative standing to custom cannot be considered absolutely free’”, *Idem*, 396; cf. Giuseppe COMOTTI, *La consuetudine nel diritto canonico*, Padova 1993, 167.

this paradigm not only provides internal origin for legal delimitation. It also unequivocally shows that, in witnessing to the legality of the given custom –naturally a necessary condition for the legally binding force of the norm derived from generally endorsed praxis in this framework as well (!)– the legislator does not have unlimited discretionality.<sup>64</sup> Insofar as the customary-law-based norm serves the benefit of the Church, with the operation of the Holy Spirit objectively evident therein, it would be contrary to her basic mission if this fact was not authenticated (at least) through (tacit) testimony.

A fitting expression of this ‘oriental-friendly’ vision is the formulation by St John Paul II, which while appearing to break with earlier interpretations, emphasises that the characteristic disciplinary autonomy of Eastern Churches does *not* originate from the ‘privileges’ granted by the Church of Rome but from the ‘law’ these Churches have *possessed* since Apostolic times.<sup>65</sup> (As is obvious from the context, the expression ‘privilege’ is used here in the sense adopted for this term in the decretalistic period of the Middle Ages,<sup>66</sup> as it is evidenced also by Wilhelm

64 Cf. Giuseppe COMOTTI, *Note in margine alla disciplina della consuetudine nel Codex Canonum Ecclesiarum Orientalium*, in *Incontro fra canonici d’Oriente e d’Occidente*. Atti del Congresso Internazionale, Raffaele COPPOLA (a cura di), Bari [1994], II, 70; see at fn. 62, *supra*.

65 “Ex hoc decreto eruitur dilucide autonomiam, qua quoad disciplinam Ecclesiae Orientales fruuntur, *non manare e privilegiis ab Ecclesia Romana concessis, sed a lege ipsa, quam huiusmodi Ecclesiae a temporibus apostolicis tenent*”, IOANNES PAULUS II, litt ap. *Euntes in mundum univrsam* [ob expletum millennium a baptismo regionis Rus’ Kioviensis], 25. I. 1988, in AAS 80 (1988) 8, 935–956, n. 100, 950 [emphasis is mine].

66 *Ad hanc autem sic potestatis plenitudo consistit, quod ecclesias ceteras ad sollicitudinis partem admittit; quarum multas et patriarchales praecipue diversis privilegiis eadem Romana Ecclesia honoravit, sua tamen observata praerogativa tum in generalibus conciliis, tum in aliquibus aliis semper salva*, in *Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum*, Concilio di Lione, Professione di fede dell’imperatore Michele Paleologo, in *Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum* [‘Denzinger’], edizione bilingue, Peter HÜNERMANN (a cura di), Bologna 2001, 489–490, n. 861.

It is important to remark that, depending on the context, the expression *privilegium* may have several different meanings. On the one hand, it may denote one of the categories of inalienable rights on account of their antiquity: ‘privileges’ (τὰ πρεσβεῖα). In the cited source, however, it is not used in this sense. Here the term *privilegium* refers to a papal *ex gratia* act, the concession and revocation of which are wholly contingent upon the Pope’s discretion. As it appears, Latin sources employ the term

de Vries.<sup>67</sup>) Moreover, a council passage overtly describes these organs as the work of Providence.<sup>68</sup> At this juncture, it is well worth remembering that, in the Eastern view, ancient ecclesiastical discipline, be it in relation to customs or the ‘Holy Canons’, is seen as a work inspired by the Holy Spirit. In line with this, the supreme ecclesiastical authority –whether an ecumenical council or the pope– does not so much ‘create’ but rather simply ‘acknowledges’ these offices of ancient origins, i.e. it declares that it is in fact the action of the Holy Spirit enlivening the Church that manifests itself in them and works in them. Consequently, as long as this latter fact is taken to be self-evident, the role of supra-episcopal organs, including episcopal synods, remains *unquestionable* in the Church. In this sense, although the consent of the supreme authority

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in this latter meaning as early as the Middle Ages. It is obvious that John Paul II applies this term in this particular sense as he speaks about it *in contrast* with the stability of patriarchal rights rooted in ancient laws. Thus, in this context, *privilegium* is not a synonym of ancient inalienable right but, on the contrary, the sum of the powers granted and withdrawable by the Pope at will. (It must be admitted that the vocabulary of the letter *Euntes in mundum*, both the use of the patriarchal title and the dating of the expression ‘lex [ecclesiastica]’ to the early days of the Church are somewhat anachronistic. Nonetheless, the *mens* behind the text is clear: It claims that supra-episcopal structure is of ancient and autochthonous origin.)

67 Cf. “The canonical autonomy of the patriarchates was a fact during the whole first millennium [...] popes did not claim to have established the rights of patriarchs as a share in the supreme power [...] by a free act of generosity. In the second millennium, on the contrary, we find a fundamentally different conception: now [the pre-eminence of patriarchs] is understood as participation in the power of the pope, and consequently is *granted* by the pope, as a *privilege*” [...] “In the profession of faith of Michael Paleologus the Council [of Lyon, 1274] propounds the doctrine that the Roman Church has *conceded* the to the patriarchal sees of the East their privileges, and has transmitted a part of her power to them”, DE VRIES, “The Eastern” (ftn. 35), 130, 132. “When Rome spoke of privileges, it meant those which the Holy See had *freely* accorded the oriental patriarchs out of *pure good-will*, but not a wide-ranging autonomy based on ancient tradition”, Idem, 140 [emphasis is mine]. See also: SIECIENSKI, *The Papacy* (ftn. 1), 335; HENN, *Historical* (ftn. 26), 249.

68 *Divina autem Providentia factum est ut variae variis in locis ab Apostolis eorumque successoribus institutae Ecclesiae decursu temporum in plures coaluerint coetus, organice coniunctos, qui, salva fidei unitate et unica divina constitutione universalis Ecclesiae, gaudent propria disciplina, proprio liturgico usu, theologico spiritualique patrimonio. Inter quas aliquae, notatim antiquae Patriarchales Ecclesiae, veluti matrices fidei, alias pepererunt quasi filias, quibuscum arctiore vinculo caritatis in vita sacramentali atque in mutua iurium et officiorum reverentia ad nostra usque tempora connectuntur* (LG 23d); cf. fn. 34, 66, 67, *supra*.

(i.e. communion) is indispensable for the functioning of these organs as well, this recognition does not depend entirely on papal grace and favour, as was thought and taught in medieval doctrine. The aforementioned church concept inferable from the brief formulation in the letter *Euntes in mundum* would be hard to interpret as anything but the clear intention to surpass the ‘emanative privilege’ model dating back to the decretalistic period.<sup>69</sup>

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The facts discussed above suggest that not only the sacramental component of governing power but also its extra-sacramental element (*missio canonica*, i.e. *determinatio iuridica*) may be defined as having *internal* origins. It is important to note that supra-episcopal power, if it is Catholic, remains *subordinated* to the petrine ministry even in this model. However, this relation in the present hypothesis –as opposed to the first two in LG 24b–, as has been proposed, no longer implies that one of the *ontological component* comes *from outside* but merely that the *legitimacy* of the internally derived intermediate structural organs is dependent on the recognition and witness of their authenticity given by the supreme authority. Furthermore, it appears that this minimal form of intervention (i.e. acting as a *witness*) is precisely the only function that is regarded as permissible by Orthodox authors in relation to their own Church,<sup>70</sup> with reference to tradition.

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Only time will tell whether the above theory on the local origins of the superior power could contribute to the advancement of ecumenical dialogue... At any rate, it seems to be more favourable than the old interpretive framework, since it describes *supra-episcopal* power as of *sacramental* and *local* origin, precisely in the manner considered to be solely acceptable by Orthodox authors.<sup>71</sup> This orientation offers two ad-

69 Cf. *non manare e privilegiis ab Ecclesia Romana concessis, sed a lege ipsa* (ftn. 63, *supra*)

70 “Afanassieff explains that, in the hierarchy that existed in the ancient Church, the church that possessed priority had no power over the other local churches, or special rights but possessed *highest* authority of *witness*”, VGENOPOULOS, *Primacy* (ftn. 57), 137.

71 Cf. fn. 54, *supra*. It is noteworthy that in Orthodox context supra-episcopal *authority* is interpreted in the optics of *witness* rather than in the optics of superior *power*; cf. “The synod is not ‘power’ in the juridical sense of this word, for there is no power

vantages. On the one hand, it helps to detect the “sine paribus” nature of the supra-episcopal organs,<sup>72</sup> and, on the other hand, it opens a new horizon for the reinterpretation of the old “participative” formula.<sup>73</sup>

### 3. The question of the extent of theoretical consensus required for the proclamation of full communion

Although it is reasonable to expect that Catholic and Orthodox ecclesiological visions will continue to converge, it remains uncertain whether attaining complete ecclesiological consensus is possible (or necessary at all) for *plena communio* to be proclaimed. Contemporary theology tries to express ‘unity in diversity’ by different formulas.<sup>74</sup> Even in the area of ecclesiology, there seem to be differences in Eastern and Western herit-

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over the Church Body of Christ. The synod is, rather, a *witness* to the identity of all Churches”, SCHMEMANN, *The Idea* (ftn. 54), 159.

72 See: “It is indeed doubtful that the bishops ever thought themselves the equals of the patriarch in every respect, or that he thought himself their equal” [Afanassieff, reported by VGENOPOULOS, *Primacy* (ftn. 57), 136]; for the same problem in different context see: metr. Elpidophoros LAMBRINIADIS, “*Primus sine paribus*. Ein Antwort auf den Text des Moskauer Patriarchats zum Primat”, in *Ökumenische Information*, 4, 21, Januar 2014, I–IV.

73 Péter SZABÓ, *Comunione e pluralità: le Chiese orientali. Frammenti di una realtà complessa*, in GRUPPO ITALIANO DOCENTI DIRITTO CANONICO (a cura di), *La comunione nella vita della Chiesa: Le prospettive emergenti dal Concilio Vaticano II*, XLI Incontro di Studio – Borca di Cadore (BL) 30 giugno – 4 luglio 2014 (Quaderni della Mendola 32), Milano 2015, 79–110, 92–94. For a historical review of the question see: Agostino MARCHETTO, «*In partem sollicitudinis... non in plenitudinem potestatis*». *Evoluzione di una formula di rapporto Primato-Episcopato*, in *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, curante Rosario CASTILLIO LARA (Studia et textus historiae iuris canonici 7), Roma 1992, 269–298.

74 Cf., for example, Yves CONGAR, *Diversités et communion* (Cogitatio Fidei 112), Paris 1982; Gérard PHILIPS, “A proposito del pluralismo teologico”, in *Vita e pensiero* 54 (1971) 90–103 [282–295]; Hans URS VON BALTHASAR, *La verità è sinfonica. Aspetti del pluralismo cristiano*, Milano 1991; Christopher O’DONNELL, “Pluralismo”, in *Dizionario* (ftn. 1), 854–856; Hervé LEGRAND, “Le consensus différencié sur la doctrine de la Justification (Augsbourg 1999). Quelques remarques sur la nouveauté d’une méthode”, in *Nouvelle revue théologique* 124 (2002) 30–56; Adriano GARUTI, “Né ‘ritorno’ né ‘consenso differenziato’. A proposito di talune reazioni alla *Dominus Iesus*”, in *Antonianum* 76 (2001) 3, 551–560; Jorge M. BERGOGLIO, “Il pluralismo teologico”, in *La civiltà cattolica* n. 3952, 166 (2015), 1, 313–328; see also: ftn. 74, *infra*.

age, present from the beginning, that may be hard to reduce to real common denominators.<sup>75</sup> The dialogue on Christology evidences that even different theological formulae do not always preclude common faith.<sup>76</sup> In the hierarchy of truths, ecclesiological questions are theoretically of a less central character than Christological doctrines. Only time will tell whether the different emphases and, more importantly, different models will open the way for the proclamation of full communion in the area of ecclesiology as well. This will no doubt require greater convergence, possibly calling for a more in-depth joint exploration of the two themes discussed above. Nevertheless, it must be noted that, during the first millennium –albeit against the backdrop of a rather poorly explicated ecclesiological doctrine– even differences occasionally appearing to be essential did not impede the mutual recognition of full communion.<sup>77</sup>

75 Thus, for instance, the duality between the Petrine monocratic authority (*origo unitatis*) and ‘catholicity’, the latter understood as an expression of communion and consensus among all the Churches of Apostolic origin, is thought to be characteristic of the ecclesiological image of West and East from the beginning; see: Basil STUDER, “Papato”, in *Dizionario patristico e di antichità cristiane*, Angelo di BERARDINO (dir.), II, Roma 1983, 2653. Inherent differences of this type (i.e. *polyphyletic* features) cannot be relinquished by either side without the danger of causing damage to the respective party’s own identity; cf. Zoltán ALSZEGHY – Maurizio FLICK, *Lo sviluppo del dogma cattolico* (Giornale di Teologia 10), Brescia 1969, 122. For some further aspects of the issue of ecclesiological plurality see: Péter SZABÓ, *Segni di “pluralità teologica” nel CCEO: progressi e limiti*, in *Attenzione* (ftn. 6), III–162, 140 ss. 156 ss.

76 Cf. Antonio OLMI, *Il consenso cristologico tra le Chiese calcedonesi e non calcedonesi, 1964–1996* (Analecta Gregoriana 290), Roma 2002; José R. VILLAR, *El diálogo teológico entre católico y ortodoxos orientales*, in Adolfo GONZÁLEZ MONTES (dir.), *Las Iglesias Orientales* (BAC 604), Madrid 2000, 645–717; see also: Georges DEJAIFVE, “Diversité dogmatique et unité de la Révélation”, in *Nouvelle revue théologique* 89 (1967) 16–25; William HENN, “Pluralismo teológico”, in *Dizionario di teologia fondamentale*, René LATOURELLE – Rino FISICHELLA (a cura di), Assisi 1990, 852–855.

77 Cf. “It is notable that these rather different understandings of the position of the bishop of Rome and the relationship of the major sees in West and East, respectively, based on quite different biblical, theological and canonical interpretations, co-existed for several centuries until the end of the first millennium, without causing a break of communion (n. 22) [...] “The experience of the first millennium profoundly influenced the course of relations between the Churches of the East and the West. Despite growing divergence and temporary schisms during this period, communion was still maintained between West and East. The principle of diversity-in-unity, which was explicitly accepted at the council of Constantinople held in 879–80, has particular significance for the theme of this present stage of our dialogue. Distinct

## Conclusions

1. For Catholic ecclesiology, the thesis of the unilateral priority of the local Church is not acceptable because it degrades the ‘whole Church’ in its historical reality into a merely federative conglomerate. At the same time, the other thesis preferring the priority of the universal dimension also supported in official documents, albeit for different reasons, is no less problematic. A thesis more advantageous than these is the one that advocates the full simultaneity of part and whole as it is devoid of the self-contradictions inherent in the former. Were Catholic doctrine to adopt this latter thesis (simultaneity) officially as well, the renunciation of the unilaterally universalist approach might also encourage Orthodox reflection to give some serious consideration to the potential benefits yielded to them by the acceptance of the thesis of simultaneous relation.<sup>78</sup>

2. Another area of potential for the ecclesiological ‘interaction’ mentioned in the title is a novel explanation of the origin and nature of supra-episcopal power. Contrary to the old yet still surviving doctrine interpreting superior organs simply as local derivatives of papal power (cf. emanation, participation and delegation), it appears that it may be acknowledged without relinquishing the essential thesis of Catholic identity that superior organs are also of *local*, i.e. *sacramental* origin. Accordingly, the supra-episcopal structural element is not a simple derivative of papal power, the existence of which is exclusively dependent on the discretion of the latter, but the intrinsic need of a unique *ultra*-eparchial mission derived from episcopal ordination<sup>79</sup>. By virtue of their

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divergences of understanding and interpretation did not prevent East and West from remaining in communion. There was a strong sense of being one Church, and a determination to remain in unity, as one flock with one shepherd (cf. Jn 10:16). The first millennium, which has been examined in this stage of our dialogue, is the common tradition of both our Churches. In its basic theological and ecclesiological principles which have been identified here, this common tradition should serve as the model for the restoration of our full communion (n. 32), in JOINT COORDINATING COMMITTEE FOR THE THEOLOGICAL DIALOGUE BETWEEN THE ROMAN CATHOLIC CHURCH AND THE ORTHODOX CHURCH, “The Role of the Bishop of Rome in the Communion of the Church in the First Millennium”, Aghios Nikolaos, Crete [Gr.], September 27 – October 4, 2008, October 3, 2008 <http://chiesa.espresso.repubblica.it/articolo/1341814bdc4.html?eng=y>

78 See: ftn. 18, 19, 21, 22.

79 See: pp. 710–711, *supra*.

cohesive function, which is practically vital to the uninterrupted operation of *communio* constituting the essential structure of the Church, intermediate ecclesiastical structure is the work of Providence and, as such, it is rooted in divine law. Acknowledgement of this functional indispensability of theirs is fully compatible with the subordination of the respective organs to the pope, akin to that of a bishop, where the theological stability of the office does not raise doubts about subordination, either.

An important conclusion of the present study is that the doctrine on superior authorities may even enable further refinement that is, as I see it, fairly promising from an ecumenical vantage point. In this vein, not only may the thesis of the local/sacramental origin of these organs be reconciled with the [truly] essential requirement of Catholic ecclesiology (namely, papal subordination), but it is also possible to avoid tracing this subordination to the direct granting of *missio canonica* by the pope. Instead, subordination may also be sufficiently ensured merely with reference to the role of this authority in witnessing to the authenticity of a system originated in customary law. The origin of supra-episcopal organs may be traced to customary law, reflecting the work of Providence as well as, ultimately, the operation of the Holy Spirit. (It was precisely this realisation that led to their first ecumenical ratification enabled by canon 6 of the Council of Nicaea I.) The formal binding force of customary law is contingent upon approval by the competent superior authority, which witnesses to the fact that the custom in question and therefore the operation of the resultant institution as well continue to serve the benefit of the Church. Thus, according to this paradigm, the guarantee of subordination consists only in the fact that the existence of *missio canonica* (cf. LG 24b) presupposes the uninterrupted continuance of the supreme witness testifying to the legitimacy of the supra-episcopal organs [or of the praxis rooted in customary law, associated with their origin]. The hypothesis claims that what is involved here is *not* the act of *granting* supra-episcopal power by the pope (ontological transfer) but 'only' the *recognition* of the legitimacy of *locally* originated superior power. This witness, however, is essential, for, in this case, it may be traced to the customary law of *missio canonica*, providing a central component of governing authority, the binding force of which happens to depend upon this very witness, as well as upon the continued justifiability of the custom.

Even though the involvement of the supreme authority in the creation of supra-episcopal power is constitutive in the form of the indispensable witness in this instance as well, the present paradigm –differently from the other two forms of granting *missio canonica*– is a more apt representation of the fact that superior involvement (i.e. the granting of *missio canonica*) is not subject to discretion. Once the function of the institution concerned is a sign of the operation of the Holy Spirit, questioning or eliminating its role is simply not an option. In brief, although the establishment of a superior governing authority necessitates some degree of involvement on the part of the supreme authority –observable in witnessing to the justifiability of the institution or, at least, in the tacit approval to maintain this witness–, this model patently shows that, similarly to the episcopal office, supra-episcopal organs also owe their *raison d'être* to themselves, i.e. to their sacrament-based function benefiting communion. Their existence does not originate in papal power but in the *ultra*-diocesan mission deriving from episcopal ordination, representing an intrinsic need of communion.

The two above theses –on the simultaneity of the particular Church and the universal Church, as well as on the high stability of supra-episcopal organs provided by the degree of their providential function– are two thematic areas in which the Catholic side might improve the chances of ecumenical rapprochement even by means of unilateral self-correction. At the same time, it may not be ruled out that these propositions could trigger reflection on the Orthodox side as well provided they offer a source of inspiration for resolving their own specific ecclesiological aporias.

3. The job of ecumenical dialogue in the area of ecclesiology is two-fold as well: beyond the approximation of different views, it is also of fundamental importance to better appreciate the extent of consensus necessary and sufficient for the proclamation of *plena communio* in conjunction with these theses at the beginning of the third millennium.<sup>80</sup>

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80 Cf. 718–719.