

Primacy and Synodality: Deepening Insights

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The Latin Episcopal Conferences: are they an expression of *synodality*?*

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* Lists of abbreviations

AAS – *Acta Apostolicae Sedis, Commentarium Ufficiale*, Romae Typis Poliglottis Vaticanani.

LG – Conciliar constitution *Lumen Gentium*, in AAS 57 (1965) 5–71.

CD – Conciliar decree *Christus Dominus*, in AAS 58 (1966) 673–701.

OE – Conciliar decree *Orientalium ecclesiarum*, in AAS 57 (1965) 76–89.

UR – Conciliar decree *Unitatis redintegratio*, in AAS 57 (1965) 90–112.

SC – Conciliar constitution *Sacrosanctum Concilium*, in AAS 56 (1964) 97–138.

GE – Conciliar declaration *Gravissimum educationis*, in AAS 58 (1966) 728–739.

PO – Conciliar decree *Presbiterorum Ordinis*, in AAS 58 (1968) 991–1024.

OT – Conciliar decree *Optatam totius*, in AAS 58 (1966) 713–727.

PC – Conciliar decree *Perfectae caritatis*, in AAS 58 (1968) 702–712.

AD – Conciliar decree *Ad gentes divinitus*, in AAS 58 (1968) 947–990.

Apostolos suos – JOHN PAUL II, motu proprio *Apostolos suos* of May 21, 1998, in http://w2.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_22071998_apostolos-suos.html last access on 8 August 2019.

Pastores gregis – JOHN PAUL II, *Post-Synodal Apostolic Exhortation Pastores Gregis* of 16 October 2003, in http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_20031016_pastores-gregis.html last access 8 August 2019.

SLMC – INTERNATIONAL THEOLOGICAL COMMISSION, *Synodality in the Life and Mission of the Church* of 2018 http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20180302_sinodalita_en.html last access on 8 August 2019.

DCDG – *Diccionario General de Derecho Canónico*, Javier OTADUY – Antonio VIANA – Joaquín SEDANO (eds.), Navarra 2012, voll. 1–7.

Introduction

In order to answer the question laid down in the title one must first solve the question i.e. what does *synodality* mean? In fact, the answer to this question is the natural starting point to any reflection regarding the topic about the synodal nature of latin Episcopal Conferences.

Synodality, which comes from ancient greek and means walking together, is an ecclesiological and canonical concept that, in the catholic world, was re-evaluated after the Second Vatican Council. Before, in particular after the Council of Trent, *synodality* was not an autonomous or relevant question between catholic canonists and theologians. In fact, Councils (both ecumenical and particular) and their relationship with the Roman Pontiff according to the ecclesiology of *ecclesia societas iuridice perfecta* and the idea that Bishops were vicars of the Roman Pontiff, were the main scholars' topic.

In very important pre-conciliar dictionaries as *Dictionnaire de Théologique Catholique*¹, *Dictionnaire de Droit Canonique*,² *The Catholic Encyclopedia*,³ *synodality* was not included as specific entry. It is only after time from the Second Vatican Council that *synodality* has received attention by scholars. So, only recently it has become a topic in catholic canon law and ecclesiology⁴. However, according to the way of speaking of Vatican II, latin canonists and ecclesiologists prefer the latin term *collegialitas* instead of the original greek *synodality*. In fact, the conciliar Fathers never used the term *synodality*⁵. They used the term *Synod* 40 times⁶ and the term *synods* 10 times⁷. But when using the term *Synod*

1 Cfr. *Dictionnaire de Théologique Catholique*, Émile AMANN – Alfred VACANT (par), Paris 1908–1972, voll. 1–18.

2 Cfr. *Dictionnaire de Droit Canonique*, René NAZ et alii (eds.), Paris 1935–1965, voll. 1–7.

3 Cfr. *The Catholic Encyclopedia: an international work of reference on the constitution, doctrine, discipline, and history of the Catholic Church*, Charles G. HERBERMANN (ed.), London 1907–1914, voll. 1–16.

4 A select bibliography can be found in Manuel A. SANTOS, “Sinodalidad”, in DCGC, vol. 7, 341–345, in particular 345.

5 Cfr. SANTOS, “Sinodalidad” (ftn. 4), 342.

6 In the conciliar documents, the term *Synod* occurs 37 times related to the Council itself; twice related to the Synod of the Bishops (CD 5); once time related to the Patriarchal Synod (OE 23).

7 In the conciliar documents, the term *Synods* occurs 3 times related to diocesan Synods (SC 57; CD 36, twice times); 3 times related to patriarchal Synods (CD 35; OE9;

or *Synods*, conciliar Fathers didn't refer to it as a way of ruling in the Church, according to the greek sense of the term, but only to mean juridical place or institution; they never used *synodality* as referring to a way of being in the Church or acting within the Church. In this regard, Eugenio Corecco, an important canonist that studied the topic of *synodality*, wrote:

That Vatican II did not succeed in dealing with the problem of synodality in a doctrinally complete way - if only for the fact that it treated synodality solely on the level of the universal Church without dealing with the issue on the level of the particular Church - is very probably due to the fact that it was not able to develop an explicit theological discourse on the Church based on the central category of *communio*, which ties together all of ecclesiology like a tenuous filigree. A symptom of this doctrinal embarrassment is the lack of the use of abstract nouns, such as "synodality," "conciliarity," "collegiality," which would inevitably have required the Council to give a theoretical definition of the contents. The Council has avoided even using the adjectives "synodal" and "conciliar".⁸

However, in my opinion, the conciliar Fathers were right when they avoided use of the term *synodality* by preferring the latin term *collegialitas* when speaking about the relationship between Bishops as referred to Roman Pontiff and the universal Church's governance. In this case, there was and still is the risk that *synodality* could be intended with a conciliaristic nuance that it is inconsistent with the doctrine of the papal primacy⁹.

OE 19); twice related to Synods of oriental catholic Churches (CD 38; OE1); once time related to the ancient local Synods (UR16).

- 8 Eugenio CORECCO, *Canon law and communion, Writings on the Constitutional Law of the Church*, Graziano BORGONOVO – Arturo CATTANEO (eds.), Città del Vaticano 1999, 342.
- 9 The conciliar Fathers' choice doesn't seem so wrong when taking into account that there are even canonists and ecclesiologist that understand *synodality* in relationship with democracy of the occidental societies, cfr. SANTOS, "Sinodalidad" (ftn. 4), 343-344. From this point of view, one cannot support the idea that «To clarify the underlying question, it could be very useful to substitute the term "collegiality" with that of "synodality," much less compromised from the juridical and theological point of view. The Greek term "synodos," which in its Latin transcription ("synodus") was always used as a perfectly equivalent synonym of "concilium" (with which it was translated), has the merit above all of terminologically including, among the institutions of a "collegial" character, also the synod of bishops and the diocesan

Nevertheless, the conciliar Fathers' choice to avoid the term *synodality* by using the term *collegialitas* doesn't stop rising difficulties and confusion in the theological and canonical field. All the aforementioned difficulties and confusion are caused by the considerable depth in theological meaning of *synodality*. In an attempt to circumvent the difficulties, with reference to *synodality* I think it might be useful to introduce three distinct forms or way of being¹⁰. In fact, the word *synodality* might be applied to:

1. the relationship within the whole body of the Church of Christ (clerics, laics, religious) with regard to the universal, local and particular Church's way of being and way of evangelizing the world. One might call it *koinonial synodality*, and it usually refers to the particular Church level¹¹. Thanks in particular to pope Francis, this kind of *koinonial synodality* is also establishing itself on universal Church level¹²;
2. the relationship within the Episcopal body referred to the Ro-

synod. The substitution of “synodality” for “collegiality,” although not required for substantial reasons, enables us to avoid, at least terminologically, the misunderstanding according to which “collegiality” is identified with the activity of bishops within their several “collegial” structures. Since it is not tied to reductive historical-doctrinal preconceptions, the term “synodality” permits us to approach the problem of “collegiality” without conceptually tying it to those juridical-institutional forms in which it can be expressed», CORECCO, *Canon law* (ftn. 8), 342.

- 10 The need to introduce a distinction within the concept of *synodality* is present in other authors. For example, Eugenio Corecco set at the side of *episcopal synodality*, the *presbyterial and laic synodality*. cf. Eugenio CORECCO, *Ius et Communio, scritti di diritto canonico*, Graziano BORGONOVO – Arturo CATTANEO (a cura di), Milano 1997, 39–81, especially 73–79. Cardinal Erdő, after reviewing the doctrinal debate, concludes that « per quanto riguarda il senso più stretto della sinodalità sembra ben fondata la scelta terminologica di quelli che riferiscono questa parola esclusivamente alle assemblee composte essenzialmente da Vescovi e che costituiscono una espressione della collegialità episcopale, almeno di quella affettiva», Péter ERDŐ, “La partecipazione sinodale al governo della Chiesa. Problemi circa gli organi sinodali con potere di governo”, in *Ius Ecclesiae* 10 (1998) 89–107, herein 90.
- 11 In the latin Church expression of *synodality* in its broad sense is the *diocesan Synod* (CIC83 cann. 460–468), the *diocesan pastoral Council* (CIC83 cann. 511–514) and the *parochial pastoral Council* (CIC83 can. 536); in the Oriental Catholic Churches expression is the *patriarchal Assembly* (CCEO cann. 140–145), the *eparchial Assembly* (CCEO cann. 235–242) and the *parish pastoral Council* (CCEO can. 295).
- 12 Cf. the praxis followed in the last *Synods of Bishops* and in the new apostolic constitution *Episcopalis communion* on the Synod of Bishops issued on 15 September 2018,

man Pontiff and the universal Church government (but, in theory, also to government of the local Church or even the particular Church). One might call it *collegial synodality* (i.e. *collegialitas*)¹³ and it refers to the universal Church level.

3. the relationship within a group of Bishops that are expression of the Episcopal Body when exercising their own powers individually or jointly on a group of particular Churches. One might call it *episcopal synodality*, and it refers to the local Church level¹⁴.

This resulting tripartite division might be considered as an ulterior or sub-distinction within the distinction proposed by the International Theological Commission in 2018.

Collegiality is thus the specific form in which ecclesial synodality is manifested and made real through the ministry of Bishops on the level of communion of the local Churches in a region, and on the level of

and *the Instruction on the celebration of Synodal Assemblies and on the activity of the General Secretariat of the Synod of Bishops* of the 1 October 2018, both texts in http://www.vatican.va/roman_curia/synod/index_it.htm last access on 8 August 2019.

- 13 An introduction to the ecclesiological and canonical questions raised by papal primacy and *collegialitas*, it is still useful Karl RAHNER, *Qualche riflessione sui principi istituzionali della Chiesa*, in *L'episcopato e la Chiesa universale*, Yves M.-J CONGAR and others (eds.), Roma 1965, 669–695, especially 672–678; Karl RAHNER, *Episcopato e primato*, in *Episcopato e primato*, Karl RAHNER – Joseph RATZINGER, Brescia 1966, 17–39; Yves CONGAR, *Sinodo, primato e collegialità*, in *La collegialità episcopale per il futuro della Chiesa*, Vincenzo FAGIOLO – Gino CONCETTI (a cura di), Firenze 1969, 44–61.
- 14 The relationship between *episcopal synodality* and episcopal power is a difficult matter, on this topic cf. Péter SZABÓ, “Competenza governativa e fisionomia degli organi sinodali. L'integrità della potestà episcopale nel sistema degli organi sinodali di carattere permanente”, in *Ius Ecclesiae* 19 (2007) 445–456. An effort to harmonize these two dimensions of the episcopal power in the Church of Christ is done by CORECCO, *Canon law* (ftn. 8), 350–359. About the way of being of the *collegialitas* within the Episcopal body, it has been noted that «il carattere collegiale dell'episcopato è radicato nell'unicità del ministero (dei *munera* ricevuti) e della missione affidata ai vescovi attraverso il sacramento, che tuttavia *ex natura rei*, deve essere esercitato da più soggetti gerarchicamente cooperanti, come segnala il n. 2 della *Nota explicativa praevia*. Di conseguenza, le diverse funzioni episcopali individuate all'interno del collegio e affidate ai suoi componenti non sono perfettamente autonome e divisibili: sono compiti che hanno un'essenziale dimensione compartecipativa e, di conseguenza, devono essere svolti in collegamento con gli altri membri del collegio», Juan I. ARRIETA, *Diritto dell'organizzazione ecclesiastica* (Trattati di diritto 3), Milano 1997, 244.

communion of all the Churches in the universal Church. An authentic manifestation of synodality naturally entails the exercise of the collegial ministry of the Bishops¹⁵.

In this study, the second case only will be considered.

Synodality and Episcopal Body

Despite use of the word *collegialitas* instead of *synodality* to avoid misunderstandings regarding the hierarchical constitution of the Church according to the Vatican I, conciliar Fathers still feared that a conciliarist interpretation of the conciliar constitution *Lumen gentium* could be prevailed. Therefore, the General Secretary of the Council, the cardinal Pericle Felici, in an effort to fix this situation, issued a *Nota explicativa previa*. In this very important addendum to the conciliar constitution *Lumen Gentium*, the cardinal explains that *collegialitas* is not to be intended in a strictly juridical sense.

“College” is not understood in a strictly juridical sense, that is as a group of equals who entrust their power to their president, but as a stable group whose structure and authority must be learned from Revelation. [...]

For the same reason, the words “Ordo” or “Corpus” are used throughout with reference to the College of Bishops. The parallel between Peter and the rest of the Apostles on the one hand, and between the Supreme Pontiff and the bishops on the other hand, does not imply the transmission of the Apostles’ extraordinary power to their successors; nor does it imply, as is obvious, equality between the head of the College and its members, but only a proportionality between the first relationship (Peter-Apostles) and the second (Pope-Bishops). Thus the Commission decided to write “*pari ratione*” not “*eadem ratione*” in n. 22. Cf. *Modus* 57.¹⁶

¹⁵ SLMC, n. 7 par. 2.

¹⁶ «1. Collegium non intelligitur sensu stricte iuridico, scilicet de coetu aequalium, qui potestatem suam praesidi suo demandarent, sed de coetu stabili, cuius structura et auctoritas ex Revelatione deduci debent. Quapropter in Responsione ad Modum 12 explicite de Duodecim dicitur quod Dominus eos constituit “ad modum collegii seu coetus stabilis”. Cf etiam Mod. 53, c. – Ob eandem rationem, de Collegio Episcoporum passim etiam adhibentur vocabula Ordo vel Corpus. Parallelismus inter Petrum ceterosque Apostolos ex una parte, et Summum Pontificem et Episcopos ex

But as Correcco notes, the *Nota explicativa praevia* erred in its effort to fix the issue that members of *Collegium* are not equals, because equality is not a real problem. In fact, from a juridical point of view members' equality is not a strictly necessary requisite in a *collegium*. Instead, the main characteristic of *collegium*, according to Correcco, is that each individual wish (*voluntas*) of its members becomes just one, i.e. the *voluntas collegii*. There are different points of view regarding the question if *collegialitas* and *collegium* necessarily imply equality between members or not¹⁷, but it is quite evident that *collegium* is a strictly juridical term. By consequence, it isn't fully adequate, when used as synonymous with *synodality*, to mean the much broader sense of *synodality*, which involves meta juridical dimensions¹⁸.

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- altera parte, non implicat transmissionem potestatis extraordinariae Apostolorum ad successores eorum, neque, uti patet, aequalitatem inter Caput et membra Collegii, sed solam proportionalitatem inter primam relationem (Petrus – Apostoli) et alteram (Papa – Episcopi). Unde Commissio statuit scribere in n. 22: non eadem sed pari ratione. Cf. Modum 57», *Nota explicativa praevia*, in AAS 57 (1965) 71–75, herein 72–73. A first explication about the juridical nature and ecclesiological value of the *Nota explicativa praevia* was given by Joseph RATZINGER, *La collegialità episcopale dal punto di vista teologico*, in *Episcopato e primato* (ftn. 13), 145–186, especially 172–182.
- 17 Joseph Ratzinger has a dissenting opinion; in fact he remembers that the word *collegialitas* found some difficulties during the Second Vatican Council because «il Concilio Vaticano I aveva combattuto contro l'idea dei giuristi protestanti che avevano parlato di una struttura collegiale della Chiesa universale e avevano così espresso l'idea della perfetta uguaglianza di tutti i membri della Chiesa, caratteristica della Riforma», RATZINGER, *La collegialità* (ftn. 16), 146. A review of the doctrinal debate on the issue if *collegialitas* necessarily implies equality cf. Giampietro MAZZONI, *La collegialità episcopale. Tra teologia e diritto canonico*, Bologna 1986, 193–195.
- 18 In this regards, Eugenio Corecco writes: «Interpreting *Lumen gentium*, which intentionally uses the term “collegium” alternatively with others (such as “coetus,” “corpus,” “ordus”), the *Nota explicativa praevia* n. 1 attempts in vain to explain that the “ordo episcoporum” cannot be identified with the juridical institution of a college, maintaining that the college of bishops does not rigorously realize the notion of college according to the understanding of it proper to the general theory of law, by reason of the fact that it is not ruled by the principle of the juridical parity of its members», CORECCO, *Canon law* (ftn. 8), 343–344. Having said that, it must be acknowledge that «la *NEP* [*Nota explicativa praevia*] ha il merito di suggellare l'armonia e la sinergia tra il Papa e il Collegio dei Vescovi, evitando improprie derive plebiscitarie o assembleari. L'azione collegiale non è mai autonoma o autarchica. Il rapporto tra primato e collegialità non è di concorrenza ma di convergenza», Mas-

In general, when canonists speak about *synodality*, they usually consider the episcopal powers, the *Collegium Episcoporum* and the problems linked to the primacy of Roman Pontiff. But in reality, *synodality* (walking together) has a much broader meaning that goes far beyond the Episcopate and its relationship with the Roman Pontiff: in fact, it is a way of being of the universal Church and the particular Churches. More precisely: as the Church is ontologically *koinonia* then necessarily its way of being and acting must be synodal¹⁹. But what does this walking together really mean. It is not easy to realize because many factors must be taken into account: first of all the constitutive hierarchical dimension of the power in the Church. In particular, the special role of the Roman Pontiff as declared by the First Vatican Council represents the principal disagreement with the traditional meaning of *episcopal synodality* (especially according to Oriental ecclesiology) that involves equality between members.

It is evident that *synodality* is today an awkward concept in Catholic ecclesiology and by consequence in canon law²⁰. By using the tripartite division proposed above, i.e. when one takes in to account that one is the *collegial synodality* (i.e. *collegialitas*) referred to the universal Church government, the other is the *episcopal synodality* within the Episcopal body in reference to the government of the local and particular Churches, and the other is the *koinonial synodality* within the whole body of the Church of Christ with regard to the universal and local Church's way of being and evangelizing the world, then the question becomes a little bit clear from a juridical point of view²¹.

simo DEL POZZO, *Introduzione alla scienza del diritto costituzionale canonico* (Subsidia canonica 16), Roma 2015, 118.

19 Cfr. SLMC, nn. 54–57.

20 To resolve the question, the Catholic magisterium has developed the distinction between *collegialitas effectiva* and *collegialitas affectiva*. *Pastores gregis*, n. 8 §5 and *Apostolorum successores* n. 12 indicate as ways of *collegialitas affectiva* the Synod of the Bishops, the Visit *ad limina*, the presence of residential Bishops in the dicasteries of the Roman Curia, the ecumenism and the interreligious dialogue. Regarding the relationship between the single diocesan Bishop and the *Collegium Episcoporum*, cf. Federico MARTI, “Ἐπισκοπή, una proposta di interpretazione alla luce dei principali documenti del magistero universale della Chiesa Cattolica”, in *Diritto e Religioni* 24 (2017) 170–216.

21 The idea that «It is possible to go deeper into the theology of synodality on the basis of the doctrine of the *sensus fidei* of the People of God and the sacramental

Finally, in today's catholic doctrine, it is common opinion that in the Church of Christ there is only one power operating in two dimensions: 1) the hierarchical dimension represented by the Roman Pontiff and the *Collegium Episcoporum* at universal Church level and by Bishops at particular Churches level; 2) the *koinonial-communional* dimension (represented by the different kind of Synods). But is not easy to understand and explain this duplex dimension as faces of the same ecclesiological reality. In the light of this, it is not possible to give a definitive answer to the question of what does *synodality* mean from a catholic point of view.

collegiality of the episcopate in hierarchical communion with the Bishop of Rome», SLMC, n. 64, seems not sufficient to end the debate from a canonistic point of view. With reference to a correct understanding of *synodality* in a broad and proper sense, one must take into account that «it is necessary to distinguish between the process of decision-making through a joint exercise of discernment, consultation and co-operation, and decision-taking, which is within the competence of the Bishop, the guarantor of apostolicity and Catholicity. Working things out is a synodal task; decision is a ministerial responsibility. A correct exercise of synodality must contribute to a better articulation of the ministry of the personal and collegial exercise of apostolic authority with the synodal exercise of discernment on the part of the community» *ibidem*, n. 69. The Pontifical Theological Commission approach to *synodality* seems to be exactly what Winfried Aymans feared while writing «per la chiarezza dei concetti ecclesologici e ad un tempo per onestà intellettuale non si dovrebbe estendere la sinodalità nell'ambito del principio consultivo. Si correrebbe altrimenti il rischio di fare ultimamente riferimento – senza parametri ecclesiologicali – ai modelli secolari e di trovarsi nuovamente dinanzi ad una costituzionalizzazione parlamentare dell'ufficio vescovile oppure addirittura ad un mero parlamentarismo ecclesiale», Winfried AYMANS, *Sinodalità: forma di governo ordinaria o straordinaria nella Chiesa?*, in *Diritto canonico e comunione ecclesiale. Saggi di diritto canonico in prospettiva teologica*, Rinaldo BERTOLINO (a cura di), Torino 1993, 33–59, herein 57 n. 3. In this regard, the German canonist observes that «una particolarità del CCEO consiste nella rigorosa separazione dell'elemento sinodale e di quello consultivo, segnalata mediante la differenziazione di sinodi e assemblee», Winfried AYMANS, *Strutture sinodali nel Codex Canonum Ecclesiarum Orientalium*, *ibidem*, 63–90, herein 82. However the Chaldean Synod of August 4th–13th 2019 in which laics have been invited, shows the high probability that the clear distinction laid down in the CCEO between *episcopal synodality* and *koinonial synodality* (i.e. between *synods* and *assemblies*) will be lost in the practice, cf. *Address of His Beatitude Patriarch Sako at the Opening of the Chaldean Synod Attended by Laity*, in <https://saint-adday.com/?p=33779> last access 8 August 2019.

Episcopal synodality and Episcopal Conferences

The history of Episcopal Conferences clearly shows that they were born as a meeting point for the Bishops of a country because Bishops needed to arrange, in an informal way, a shared policy in the face of civil authorities and in ecclesiastical affairs without involving jurisdictional power²². In the initial stages *episcopal synodality* has clearly nothing to do with Episcopal Conferences; particular Councils still keep their primary importance (for example in Italy between 1861 and 1961 twenty-four plenary and provincial Councils were held)²³. But over time things changed: the quickness of economic, social, demographical and political development

22 Scholars studied the question of the ecclesiological nature of the Episcopal Conferences in depth, especially by comparing them to other episcopal bodies, first of all the Patriarchal Synod, cf. 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 RUYSSSEN (Kanoniika 22), Roma 2016, 335–370. In this paper, Prof. Szabó gives a bibliographical note about the topic of the ecclesiological nature of the Episcopal Conferences.

The Council of Hierarchs of the Catholic Metropolitan Churches *sui iuris* arises similar ecclesiological and canonical questions. In fact, some canonists assimilate the latin Episcopal Conferences with the Council of Hierarchy. In this regard, Lazzaro M. DE BERNARDIS, *Sinodalità nelle chiese orientali*, in *Incontro tra canonici d'Oriente e d'Occidente*, Raffaele COPPOLA (ed.), Bari 1994, 193–208, writes about the Council of Hierarchs and latin Episcopal Conference that «da quanto abbiamo finora osservato ci sembra quindi di poter dedurre che, dal confronto fra i due codici, emerge una sostanziale omogeneità fra struttura, disciplina e poteri fra questi due collegi», *ibidem*, 200. For a dissenting opinion cf. Federico MARTI, *Il Consiglio dei Gerarchi, natura giuridica e potestà*, in *Strutture sovraepiscopali nelle Chiese orientali*, Luigi SABBARESE (ed.), Roma 2011, 143–186; IDEM, "The Legislative power of the Council of Hierarchs in the Metropolitan Church *sui iuris*", in *Folia Canonica* 13 (2010), 71–82. An overview on *synodality* in the Oriental Catholic Churches can be found in John D. FARRIS, *Synodal Governance in the Eastern Catholic Churches*, in *Canon Law Society of America, Proceedings of the Forty-Ninth Annual Convention*, Washington [D.C.] 1988, 212–226.

23 For a summary of the wide bibliography on the Episcopal Conference, cf. Antonio VIANA, "Conferencia episcopal", in DGDC, vol. 2, 484–490, especially 490. One suggests reading Giorgio FELICIANI, *Le conferenze episcopali*, Bologna 1974, because it is still the main historical research about the topic of the Episcopal Conference. A good summary of the historical evolution of the Episcopal Conferences can be found in Luigi MISTÒ, "Le conferenze episcopali dalle origini al nuovo codice di diritto canonico", in *La Scuola Cattolica* 117 (1989) 415–451.

made the traditional synodal instruments of ecclesiastical government (i.e. the particular Councils) no longer suitable for today's Church. In fact, a new human society requires a new Church attitude toward her: in particular, it requires a new nonstop working cockpit that day-by-day might respond to the necessity of the local Churches.

In this context, Vatican II open to new comprehension of the role of Episcopal Conferences within the mission of the Church at local level. The large number of references to Episcopal Conferences in Vatican II's documents prove the central importance that Fathers give to Episcopal Conferences as way of governing the local Churches²⁴.

The new latin Code of canon law laid down in cann. 447-459 the general norms about constitution, competence and powers of Episcopal Conferences. According to necessity of a cockpit working nonstop for the particular Churches living in the same country, can. 447 stated:

The Episcopal Conference, a permanent institution, is the assembly of the Bishops of a country or of a certain territory, exercising together certain pastoral offices for Christ's faithful of that territory. By forms and means of apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, that greater good which the Church offers to all people.

In order to answer the question if the Episcopal Conferences are an expression of *episcopal synodality*, one must take into account that at least *synodality* may be inflected in two ways:

1. *synodality* in the broad and own meaning that proceeds from the *koinonia*
2. *synodality* that proceeds from the Holy Order of Episcopate, which in catholic way of thinking is denominated *collegialitas*. But in this regard, the distinction between *collegial synodality* (i.e. *collegialitas*) and *episcopal synodality* as proposed above, depends on the nature and the kind of the dutiful involvement of the Bishop of Rome because of his *primatial office*²⁵.

²⁴ Cfr. AG 16,18 20, 22, 26, 29, 31, 32, 33, 37, 38, 41, 42; CD 18, 24, 35, 38; UR 8; LG 23; SC128; GE *Proemio*; PO 21; OT *Proemio*, 1, 22; PC 23. In particular, AG 33 e PC 23 calls for the foundation of national religious superior's conferences that must be operated jointly with the national Episcopal Conferences, cf. Aitor JIMÉNEZ ECHABE, "Conferencia de superiores mayores", in DGDC, vol. 2, 481-484.

²⁵ To distinguish between *collegial synodality* (i.e. *collegialitas*) and *episcopal synodality*, one should consider that: in the first, case Supreme Authority by exercising its pow-

The main difference between the two mentioned forms of *synodality* is that in the first case the subjects acting in the synodal bodies are not equal and cannot be equal: in fact, members are an expression of different limbs of the Church of Christ (clerics, laics, religious, etc.) with different titles of membership²⁶. In the second case, conversely, the subjects, with the exception of the Roman Pontiff, must necessarily be equal because unique is the title of their membership in synodal bodies i.e. to be called to a given Synod, the sharing of the Holy Order of the Episcopate and ecclesiastical communion with the Roman Pontiff.

With regard to the second case, one must also highlight that the calling (i.e. the calling to participate in a specific Synod) is the only distinctive element that diversifies a specific group of Bishops within the Episcopate as a whole. To explain better: a Bishop may be called to an Synod or not according the current norms of canon law, but when called, he is fully equal to all other members because there aren't any distinctive elements or requisites other than the Episcopate and communion with the Roman Pontiff. In fact, can. 443 §2 rules that: «other titular Bishops

ers takes care of the universal Church or, exceptionally of the local Churches; in the second case, the Roman Pontiff gives to a group of Bishops already existing by *divina provvidentia* or *immemorabilis consuetudo* his licence or permission to exercise powers, that the said Group of Bishops enjoys by itself and *iure proprio*. Péter Szabó supports the idea that local synodal structures might exercise episcopal jurisdiction *iure proprio* over particular Churches without deriving powers directly from the Supreme Authority of the Church. In fact «Se l'origine della potestà di governo è radicata nell'ordine sacro, allora neanche la sua dimensione sovraepiscopale deve essere necessariamente considerata come una semplice espressione locale, "derivazione", o "emanazione" della *sola* Suprema autorità»,

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, herein 93; cf. IDEM, *Segni di "pluralità teologica" nel CCEO: progressi e limiti*, 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, 111–162, especially 144–150.

26 Being different limbs of the body of Christ and having different status in the Church doesn't contradict the equal dignity of each faithful; in fact, all faithful sharing the same baptism and all faithful sharing the same status of sons by adoption of God.

who are living in the territory, even if they are retired, may be invited to particular councils; they have the right to a deliberative vote».

The particular role of the Roman Pontiff within the *Collegium Episcoporum* (i.e. within the Episcopal body as a whole) is the only exception to the foresaid statements; but this is a hard matter not relevant to my topic, that is the Episcopal Conferences and *episcopal synodality* not *collegial synodality* (i.e. *collegialitas*).

As a consequence of the lack of defined ecclesiological doctrine, the latin canon law regarding Episcopal Conferences is not very clear in its theoretical fundaments. This is evident when reading canons about the title of membership in the Episcopal Conferences and each member's prerogative in assembly.

Regarding the title of membership, can. 450 stated that:

§1 By virtue of the law, the following persons in the territory belong to the Episcopal Conference: all diocesan Bishops and those equivalent to them in law; all coadjutor Bishops, auxiliary Bishops and other titular Bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Episcopal Conference. Ordinaries of another rite may be invited, but have only a consultative vote, unless the statutes of the Episcopal Conference decree otherwise.

§2 The other titular Bishops and the Legate of the Roman Pontiff are not by law members of the Episcopal Conference.

Therefore, according to the catholic canon law, non-Bishops may be members *pleno iure* of the Episcopal Conference: but this is not fitting with the nature of the *episcopal synodality* (and *collegial synodality* too, i.e. *collegialitas*) that strictly requires the Holy Order of the Episcopate.

With regard to member's prerogative in assembly can. 454 stated that:

§1 By virtue of the law diocesan Bishops, those equivalent to them in law and coadjutor Bishops have a deliberative vote in plenary meetings of the Episcopal Conference.

§2 Auxiliary Bishops and other titular Bishops who belong to the Episcopal Conference have a deliberative or consultative vote according to the provisions of the statutes of the Conference. Only those mentioned in §1, however, have a deliberative vote in the making or changing of the statutes.

By reading this canon, it is clear that there are Bishops without the deliberative vote in assembly, but this is not in line with *episcopal*

synodality that requires equality in members because they have all been invited, they are all in communion with the Roman Pontiff and, lastly, they are all Bishops²⁷.

The above mentioned *motu proprio Apostolos suos* gives other signs that Episcopal Conferences are institutions not an expression of the *episcopal synodality*. The document simply reiterates the restriction of the rights of the titular and retired Bishops without saying anything about the ecclesiological questions raised by non-Bishops' full memberships²⁸. Secondly, *Apostolos suos* not only confirms that Episcopal Conferences, unlike the particular Councils, don't have any powers *iure proprio* but clarify that Episcopal Conferences, without the *placet* of the Apostolic See, cannot have any power at all. In fact, Bishops individually or collectively cannot share their episcopal powers with the Episcopal Conferences²⁹.

The power by which each Episcopal Conference within territorial competence rules over Bishops and particular Churches doesn't come

27 In the case of *collegialitas* (the *synodality* at the level of all Episcopal body as a whole, i.e. the *Collegium Episcoporum*), equality is not acceptable because of the specific role of the Roman Pontiff.

28 The only arrangement in favour of the Episcopate is a clause coming from a declaration of 23 May 1998 made by the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, in AAS 81 (1989) 388. In fact, the Pontifical Commission says that only diocesan Bishops can be President and Vice-President of the Episcopal Conference. *Apostolos suos* in this regard says that «The President and Vice-President of the Episcopal Conference must be chosen only from among the members who are diocesan Bishops. As regards auxiliary Bishops and other titular Bishops who are members of the Episcopal Conference, the statutes of the Conference should determine whether their vote is deliberative or consultative. In this respect, the proportion between diocesan Bishops and auxiliary and other titular Bishops should be taken into account, in order that a possible majority of the latter may not condition the pastoral government of the diocesan Bishops. However, it is appropriate that the statutes of Episcopal Conferences allow for the presence of Bishops *emeriti*, and that they have a consultative vote», *Apostolos suos*, n. 17.

29 «In the Episcopal Conference the Bishops jointly exercise the episcopal ministry for the good of the faithful of the territory of the Conference; but, for that exercise to be legitimate and binding on the individual Bishops, there is needed the intervention of the supreme authority of the Church which, through universal law or particular mandates, entrusts determined questions to the deliberation of the Episcopal Conference. Bishops, whether individually or united in Conference, cannot autonomously limit their own sacred power in favour of the Episcopal Conference, and

from their common and shared Episcopate (i.e. it is not of *episcopal synodal nature*) but comes directly from the Supreme Authority, and probably from the *primatialis potestas Romani Pontificis*³⁰. In fact, according to the catholic doctrine and in particular to the *Apostolos suos*, the Supreme Authority may restrict the power enjoyed *iure divino* by a Bishop. But it doesn't mean that the Supreme Authority may transfer, in whole or in part, the Bishop's own powers to another subject³¹. By consequence taking into account that Supreme Authority cannot transfer the Bishops own powers to the Episcopal Conferences, the only source of the Episcopal Conferences powers can only be the Supreme Authority.

Conclusion

The Episcopal Conferences' structure shows its own individual features making it possible to exclude that Episcopal Conferences are a true expression of *episcopal synodality*³². In fact, Episcopal Conferences undoubtedly share the general founding idea and purpose of the coordination of Bishops ruling over their dioceses with particular Councils (true expression of *episcopal synodality*). But, first of all, the particular Councils enjoy powers *ex iure proprio* whilst the Episcopal Conferences don't have any powers in general. Secondly, the membership in Episcopal Conferences of non-Bishops deriving from the fact that in latin canon law

even less can they do so in favour of one of its parts, whether the permanent council or a commission or the president», *Apostolos suos*, n. 20.

- 30 «La conferenza [episcopale] non è invero un'istituzione vincolata al Collegio dei vescovi, nel qual caso, come esattamente è stato evidenziato, per la determinazione dei membri di diritto dovrebbe seguire la logica del sacramento anziché quella del *munus* episcopale, e sarebbe allora ingiustificata l'esclusione degli emeriti *ex can. 450*» Andrea BETTETINI, "Collegialità, unanimità e «potestas». Contributo per uno studio sulle Conferenze Episcopali alla luce del m.p. «Apostolos suos»", in *Ius Ecclesiae* II (1999) 493–509, herein 499.
- 31 An example in order to understand better: when the Roman Pontiff appoints *sede plena* an *Apostolic Administrator* for a dioceses or eparchy, from a juridical point of view, the Pope restrains, fully or partly, the power that diocesan Bishops enjoys by divine law; then, the Roman Pontiff provides the juridical *vacuum* of power with his own pontifical power that he confers to the *Apostolic Administrator*.
- 32 Winfried Aymans, for example, has a dissenting different opinion: he even considers the Episcopal Conferences as a new evolutionary stage of *synodality*, cfr. AYMANS, *Sinodalità* (ftn. 21), 48–49.

the government of the People of God is not necessarily entrusted to a Bishop, is a relevant argument against the qualification of the Episcopal Conferences as institutions of *episcopal synodality*. In the same sense, it is to be understood the participation of Bishops who, despite being members of the Episcopal Conference, only have a non-deliberative vote in general or in drawing up or changing the statutes. Another proof that Episcopal Conferences are not a true expression of *episcopal synodality* results from *Apostolos suos* that declared

Art. I. – In order that the doctrinal declarations of the Conference of Bishops referred to in No. 22 of the present Letter may constitute authentic magisterium and be published in the name of the Conference itself, they must be unanimously approved by the Bishops who are members, or receive the *recognitio* of the Apostolic See if approved in plenary assembly by at least two thirds of the Bishops belonging to the Conference and having a deliberative vote.

By this statement, it clearly follows that the Conferences of Bishops *iure proprio* have no episcopal power of teaching like particular Councils have. Only Bishops, such as a separate group within the whole members (Bishops and non-Bishops) of Episcopal Conference, enjoy this power of teaching.

Having said that, there is no doubt that «Episcopal Conferences constitute a concrete application of the collegial spirit»³³.

In summary, the main differences between particular Councils (true expression of *episcopal synodality*) and Episcopal Conferences are that:

1. The particular Councils
 - in which only Bishops have a deliberative vote
 - by their own collegial power
 - *ruling* over Bishops
 - in order to coordinate them in ruling their dioceses
2. The Episcopal Conferences
 - in which also non-Bishops have deliberative vote
 - without power in general
 - coordinate Bishops in ruling their dioceses

Only in the special cases laid down in the code and by the power of the Supreme Authority, the Episcopal Conferences

³³ *Apostolos suos*, n. 14.

- enjoy power (that from a canonical point of view should be qualified as a participation to the Supreme Authority's powers)
- ruling over Bishops
- in order to coordinate them in ruling their dioceses³⁴

Therefore, the juxtaposition of Episcopal Conferences with particular Councils laid down in the *Synodality in the Life and Mission of the Church*, a recent document published by the International Theological Commission³⁵, is not commendable whether it is read as meaning that both Episcopal Conferences and particular Councils are an expression of *episcopal synodality*. But the text, as it seems probable, should be understood as referring to the *koinonial synodality* as an ontological characteristic of the Church of Christ, according to the general approach of the *Synodality in the Life and Mission of the Church* to overcome the difference between the *synodality* coming from *koinonia* and the *synodality* coming from the very nature of the Holy Order of the Episcopate.

In conclusion, while particular Councils are institutions related to the natural essence and structure of the Church and true expression of the *episcopal synodality* and strictly linked to the very nature of the Holy Order of the Episcopate, Episcopal Conferences are simply institutions of positive human law established by Supreme Authority and with some elements of the *episcopal* and *collegial synodality* (i.e. *collegialitas*) on the grounds that the majority of their members are Bishops members of the *Collegium Episcoporum* and in communion with the Roman Pontiff.

³⁴ Cfr. BETTETINI, "Collegialità" (fn. 30), 509.

³⁵ Cf. SLMC, nn. 85–91.

