

“Synodality” – Dimensions of an Ecclesiological and Canonical Concept in Ecumenical Perspective

Towards a Common Sacramental Understanding?*

“il fattore ultimamente genetico dei concili fu l’emergere con prepotenza nel corso del II sec. della *coscienza sinodale* [...] L’autocoscienza dei vescovi di essere ‘in solidum’ custodi della tradizione apostolica, in quanto membri di una sola ed unica Chiesa la cui tradizione trascendeva quelle delle singole Chiese locali” [Eugenio Corecco] p. 1433

Summary: Introduction; 0. Preliminary Notes on Synodality and Synods; 1. The “Ontology”, or the Theological Basis of Episcopal Synodality; 1. The “Ontology” of Synodality; i.e. the Theological Basis of Episcopal Synodality; 2. Is it a Real Supraepiscopal Power Possible at all? 3. A Few Introductory Remarks on the *Juridical* Dimensions of Synodality; Conclusion.

Introduction

Over the past half a century, synodality as a general phenomenon, as well as individual synodal organs have been the subject of countless works, which would be hard to review even from bibliographical point of view. The professional meetings of theological and canon law societies, proceedings, monographic works of varying size, and academic days initiated by official Church authorities, among other things, represent this rich panorama.¹

Moreover, studies in this area have been given new impetus in both Catholic and Orthodox settings in the past few years. This tendency is furthered in no small part by Pope Francis’s particular interest in synodality, on the one hand, and, in equal measure, by the events taking place in Orthodoxy. As is exemplified by the ‘Holy and Great Council of the Orthodox Church’ held at last Pentecost, which was the culmination of a series of preparations extending over half a century, on the other hand.

The last Congress of SLEC held in September, dealt with the same topic under the title “Primacy and Synodality — Deepening Insights”.² Many of the speakers of the present academic gathering contributed valuable talks to this programme, for which I would like to express my appreciation now once again.

Although it may be premature to talk about a new “synodal age” of the Church, synodality as an institutional form and even as a ‘fundamental ecclesiastical attitude’ understood in a much broader sense, is expected to play a part far greater than its conventional role in the past centuries.

The present International Conference also fits into this trend. However, in comparison with previous developments, it may add a highly relevant new angle to our existing knowledge by collecting and reviewing individual synodal statutes. This initiative will make it possible for us to

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¹ See for example: Winfried AYMANS, *Das synodale Element in der Kirchenverfassung*, München 1970; *Kanon* [Jahrbuch der Gesellschaft für das Recht der Ostkirchen], vol. II, Wien 1974; *La synodalité. La participation au gouvernement dans l’Église*, Paris 21–28 septembre 1990, *L’année canonique* (hors série); Salvador PIE-NINOT, *Sinodalitat Ecclesial. Ecclesia synodon estin onoma* [St. Joan Crisostom], Barcelona 1993; *Synod and Synodality. Theology, History, Canon Law and Ecumenism in New Contact.* International Colloquium, Bruges, 2003, Alberto MELLONI – Silvia SCATENA (eds.), Münster 2005; ASSOCIAZIONE TEOLOGICA ITALIANA, *Dossier Chiesa e sinodalità*, Giovanni ANCONA (a cura di), Gorle [BG] 2005; ID., *Chiesa e sinodalità. Coscienza, forme, processi*, Riccardo BATTOCCHIO – Serena NOCETI (a cura di), Milano 2007; *Strutture sovraepiscopali nelle Chiese orientali*, Luigi SABBARESE (a cura di), Città del Vaticano 2011; *A cinquant’anni dall’Apostolica sollicitudo: Il Sinodo dei Vescovi al servizio di una Chiesa sinodale*, Lorenzo BALDISSERI (a cura di), Città del Vaticano 2016; GRUPPO ITALIANO DOCENTI DIRITTO CANONICO (a cura di), *Il governo nel servizio della Chiesa* (Quaderni della Mendola 25), Milano 2017; ecc.

² See: <http://congress.szentatanaz.hu/>

obtain a more detailed and concrete knowledge of how the most important synodal organs operate. This unique ‘added value’ may render the present Congress particularly precious.

In light of the enormous number of publications, it is needless to expound upon the difficulties this opening talk must address. Given the general, introductory character of my presentation, I wish to touch upon the following issues: (1) the “ontology” of synodality, i.e. the newly rediscovered *theological basis* of episcopal synods; (2) Orthodox exclusion of supra-episcopal power and the possible relevance of this new understanding to the ecumenical dialogue; and (3) to conclude, some theoretical consideration and juridical rules which I consider necessary to understand the special importance and proper function of these organs in the life of the Church.

The subject will be treated primarily from the Catholic perspective. The justification of this decision comes not only from the fact that it would obviously be daring of me to speak about the Orthodox doctrine and synodal forms before this distinguished audience but also from the fact that in my opinion certain elements of the recent Catholic doctrine about theoretical foundations of synodality could be of interest to the Orthodox position as well, despite some undeniable essential differences.³ The title of my talk carries specific allusions to ecumenical considerations. In line with that, I shall endeavour to make my discourse “dialogic”: in discussing some essential points, attempts will be made to include the concerns of Orthodoxy in relation to the respective topics.

Finally, I would like to extend my sincere thanks to the organisers for the invitation. While I am deeply honoured by this opportunity, the difficulties of my task are all more obvious to me.

0. Preliminary Notes on Synodality and Synods

While the Church was “indeed conceived as synodal or conciliar in structure from the beginnings”,⁴ the theological expression “synodality” is, per contra, a neologism originally becoming widespread in French,⁵ while completely lacks the form found in the texts of Vatican II. The term “synodos” (etimologically “on the way together”) may refer to a great variety of institutions: from occasional gatherings, or synaxis that meet relatively regularly to quasi-permanent organs; from bodies authorised with sacred power to advisory meetings; in addition, as for their membership, we can distinguish between synods made up exclusively of bishops and other assemblies with wider composition including clerics or lay peoples as well; finally, as for their hierarchical level, we can distinguish between inter-eparchial and higher expression of synodality, up to its supreme form represented by occasional ecumenical councils. In our days both Orthodox canon law⁶ and the Eastern Catholic Code⁷ reflect quite similar variety and richness of these institutions.

In this study I will focus my attention mainly on the basic structure of the original and proper form of these gatherings: the inter-eparchial synods of neighbouring bishops.⁸

³ Some of these aspects do not receive due attention in Catholic doctrine, either. Thus, it is by no means surprising that the outcomes of such reflections are largely absent in ecumenical dialogue.

⁴ Aristides PAPADAKIS – Anthony CUTLER, “Councils (σύνδοτοι)”, in *The Oxford Dictionary of Byzantium*, Alexander P. KAZHDAN (ed.), New York 1991, vol. 1, 540.

⁵ “Synods and Councils, Local”, in Christopher O'DONNELL, *Ecclesia. A Theological Encyclopedia of the Church*, Collegeville [Minn.] 1996, 433.

⁶ Cf. for example: Lewis PATSAVOS, “The Synodal Structure of the Orthodox Church”, in ID., *Primacy and Conciliarity. Studies in the Primacy of the See of Constantinople and the Synodal structure of the Orthodox Church*, Brookline [Ma.], 1995, 31–57; Richard POTZ – Eva SYNEK, *Orthodoxes Kirchenrecht: eine Einführung*, Freistadt 2007, 290–328.

⁷ See: Winfried AYMANS, “Synodale Strukturen im Codex Canonum Ecclesiarum Orientalium” in *Archiv für katholisches Kirchenrecht* 160 (1991) 390–407; Paul PALLATH, *The Synod of Bishops of Catholic Oriental Churches*, Rome 1994; Helmuth PREE, *Die Synoden im Recht der katholischen orientalischen Kirchen*, in *Unverbindliche Beratung oder kollegiale Steuerung? Kirchenrechtliche Überlegungen zu synodalen Vorgängen*, Hrsg. von Wilhelm REES – Joachim SCHMIEDL [Europas Synoden nach dem Zweiten Vatikanischen Konzil 2], Freiburg/Br. 2014, 246–263.

⁸ Cf. “La sinodalità, essendo la dimensione operative della *communio ecclesiarum*, si realizza in senso proprio solo nell'esercizio episcopale”, in Eugenio CORECCO, “Sinodalità”, in *Nuovo dizionario di teologia*, Giuseppe BARBAGLIO –

1. The “Ontology” of Synodality; i.e. the Theological Basis of Episcopal Synodality

As it is well-known, the origin of episcopal power is interpreted by contemporary Catholic doctrine in (partially) different terms from the model that has evolved since the 12th century.⁹ According to the earlier conception, “jurisdiction” was considered to be of extra-sacramental origin, in other words, transmissible independently of episcopal ordination. 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.¹⁰ However, 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.¹¹ In consequence of this (sacramentally inaccurate) starting point, jurisdictional power assumed a one-sidedly “vertical” character in the medieval ecclesiological model. This deviation would be corrected only in the second half of the last century¹² thanks to the recognition that ecclesiastical power (as sacred reality) is in its *entirety* of *sacramental* origin. As Mörsdorf emphasised after the Council “order and jurisdiction cannot be considered two separate powers but complementary elements of the one ecclesiastical power”.¹³ Thus, governing power (“jurisdiction”) also derives from episcopal *ordination* or, at least, has its roots in it.¹⁴

Though in the light of the thesis on the “oneness” of the ontological source of all ecclesiastical power it would be axiomatic, differently to the power held by Bishops in their own proper diocese,

Severino DIANICH (a cura di), Cinisello Balsamo [Mi.] 1991, 1455. (From historical point of view see also: “The synod, since its basic purpose is the consecration of a bishop, is primarily a regional synod, i.e., the council of a definite geographical area”, Alexander SCHMEMANN, *The Idea of Primacy in Orthodox Ecclesiology*, in John MEYENDORFF (ed.), *The Primacy of Peter. Essays in Ecclesiology and the the Early Church*, New York 1992, 160.)

⁹ Cf. for example: Severino RAGAZZINI, *La potestà nella Chiesa: quadro storico-giuridico del diritto costituzionale canonico* (PUL Diss 290), Roma 1963.

¹⁰ Cf. Pierre L’HUILIER, “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 *Episcopal Ordination and Episcopal Ministry according to Catholic and Orthodox Doctrine and Canon Law*, Faculty of Theology of the University of Fribourg, Switzerland, April 3–6 2013 [*in press*]; Roberto INTERLANDI, *Potestà sacramentale e potestà di governo nel primo millennio: esercizio di esse e loro distinzione* (Tesi Gregoriana DC 103), Roma 2016.

¹¹ The origins of this “one source model” have been present at least since the time of pope Leo the Great: “The Leonine thesis brings into clear relief the properly conceived monarchic institution of the papacy according to which the some total of powers is in the hands of the pope. Therefore, one can speak of a vertical or descending concept of government, because whatever power is found in the Church, in the congregation of the faithful, is conceptually derived from the pope: hence the early pictorial representation of the Roman Church as the source of a river. This theme has particular relevance for episcopal power, which only later was formally held to have been dependent on the pope for its exercise of jurisdiction. In other words, the bishop was called upon to participate in the papal solicitude for all Christians, but not in the papal plenitude of power...”, Walter ULMANN, “Papacy”, in *New Catholic Encyclopedia*, vol. 10, New York 1967, 953.

¹² For an excellent panoramic synthesis see: Salvador PIÉ NINOT, “História del Tratado teológico sobre la Iglesia”, in Christopher O’DONNELL – Salvador PIÉ-NINOT, *Diccionario de Ecclesiología*, Madrid 2001, 484–501.

¹³ *Decree on the Bishops’ Pastoral Office in the Church* [commented by Klaus Mörsdorf], in *Commentary on the Documents of Vatican II*, Herbert VORGRIMMER (ed.), New York 1966–69, vol. II, 207. For an overview of the different interpretations on the relationship between LG 23 and NEP, see for example: Adriano CELEGHIN, *Origine e natura della potestà sacra: posizioni postconciliari*, Brescia 1987; 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; Francesco VISCOME, *Origine ed esercizio della potestà dei vescovi dal Vaticano I al Vaticano II. Contesto teologico-canonico del magistero dei «recenti pontefici». Nota esplicativa praevia 2* (Tesi Gregoriana DC 21), Roma 1997. Although it is true that the Explanatory Note (NEP) clarify this statement, in any case, it does not modify it in merit, since the “effective cause” of the sacred power according to the intention of the conciliar text remains the *only* ordination, while the hierarchical communion or *missio canonica* is only an additive *conditio sine qua non*; see: Gérard PHILIPS, *La Chiesa e il suo mistero. Storia, testo e commento della Lumen gentium*, Milano 1989, 226; Umberto BETTI, *La dottrina sull’Episcopato nel capitolo III della costituzione dogmatica Lumen gentium. Sussidio per la lettura del testo*, Roma 1968, 365.

¹⁴ Even in terms of this new model, governing power remains *subordinate* to supreme authority inasmuch as, in the absence of ‘determinatio iuridica’, it is non-existent in a sociological sense, or, at least, it cannot be exercised legitimately; cf. GHIRLANDA, “Potestà” (ftn. 13), 805–806.

there has not been so far achieved full agreement with respect the sacramental origin of the power exercised by supra-episcopal authorities.

In the light of the conciliar teaching according to which “ecclesiastical power is *one*”, the following observations of Kalus Mörsdorf, however, seems to be plausible, if not really the only coherent:

„... 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 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.”¹⁵

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 surely but not “entirely granted from outside”, then, and only in this hypothesis, we can recognize *a real synodal character* of the Church.¹⁶

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As for the interior structure of this superior power, it is in the same way a composite one as like the power of the bishop exercised individually inside of his own diocese.

I find really convincing the thesis according to which the *sacra potestas* (or its ontological origin), even in the case of the power of *higher authorities*, is rooted in the very episcopal ordination, in particular in its “second dimension”. It can be identified as a “sollicitudo ad extra” from which arises an “*ultra-diocesan mission*”.¹⁷ This capacity by the appropriate and corresponding juridical determination even in case of the supra-episcopal authorities can be transformed into power of governance. There is no doubt that, without an adequate “juridical determination” this is not possible. However this does not seem to remove the relevance of the ultra-eparchial issue in question. (In fact the *ad intra* missions nevertheless require a similar determination in order to transform into “*potestas expedita ad actum*”,¹⁸ but no one doubts its constitutional importance.)

¹⁵ *Decree*, [Mörsdorf] (ftn. 13), 280–281. For a more nuanced re-interpretation of the expression “participation” reappeared in the ap. const. *Sacri canones* see: 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; 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.

¹⁶ Expressly in this sense: “Synodality, as a *constitutive element* of the Church, offers us the most appropriate interpretive framework for understanding the hierarchical ministry itself...” http://w2.vatican.va/content/francesco/en/speeches/2015/october/documents/papa-francesco_20151017_50-anniversario-sinodo.html. For the original version: «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.

¹⁷ Cf. Libero GEROSA, *L'interpretazione della legge nella Chiesa. Principi, paradigmi, prospettive*, Pregassona 2001, 147. See also: CORECCO, “Sinodalità” (ftn. 8), 1434a: “la dimensione personale e quella sinodale dell'ufficio ecclesiale”; and last but not the least: “Vi è inoltre un *fondamento ontologico-sacramentale* della collegialità *in tutte le sue forme*: ‘uniti agli altri vescovi da legami di natura ontologico-sacramentale, in virtù dell'ordinazione episcopale, e da legami di natura sociale, come richiesto dalla struttura gerarchica della Chiesa, ogni vescovo è accolto nell'*ordine episcoporum* e guida la sua Chiesa in costante coordinazione con le altre Chiese’...”, Umberto CASALE, “Conferenza episcopale”, in *Dizionario di ecclesiologia*, Gianfranco CALABRESE – Philip GOYRET – Orazio F. PIAZZA (a cura di), Roma 2010, 352.

¹⁸ Cf. NEP 2.

One may object that this “ultra-diocesan mission”, an expression of the only ‘*affective collegiality*’, according to *Lumen gentium* 23b cannot be expressed in juridical acts.¹⁹

This conciliar statement however does not seem to take into account the juridical demand inherent to the ultra-diocesan mission received by ordination, and by this reason in my opinion seems to be characterised by a reductionist view. This assertion, anyway, according to Umberto Betti, later cardinal, constitutes solely of a *practical norm* which has no dogmatic value.²⁰ Consequently the above mentioned theory, i.e. local synodal power as juridical expression of a mission received by the very episcopal ordination, is *not* to be excluded on theological grounds (even) from Catholic ecclesiology.

This conciliar text, instead of being a proof of a like exclusion, is rather an indication of an inability to elaborate a complete doctrine of synodality, which would also include the local expression of this important theological phenomenon. I agree with the critical observation of Eugenio Corecco according to which: “... Vatican II did not succeed in dealing with the problem of synodality in a doctrinally complete way” [...] “it treated [it] solely on the level of the universal Church without dealing with the issue on the level of the particular Church”.²¹

Surely, the *concrete forms* of the supra-episcopal institutions are historically diverse (“*ius mere ecclesiasticum*”), but, they are, nevertheless, expressions of a *necessity* rooted in the same episcopal ordination,²² which is responsible for creating and coordinating the *communio Ecclesiarum* into a harmonic “*mutua interioritas*”. In this, and only in this sense, the *ecclesiological function* of the supra-episcopal organs, first of all that of the local episcopal synods, can and must be regarded as theologically essential.²³

It is to recognize that the aforesaid theory today is not commonly shared in Catholic doctrine either. Yet, as it promising from ecumenical point of view, the supra-episcopal power is to understand by the same composite model as the episcopal one. In fact, according to the main rule of ecumenism anything theologically admissible is also mandatory to the extent it promotes unity.²⁴

¹⁹ “The individual bishops, who are placed in charge of particular churches, exercise their pastoral government over the portion of the People of God committed to their care, and *not* over other Churches nor over the universal Church. But each of them, as a member of the Episcopal College and legitimate successor of the apostles, is obliged by Christ’s institution and command to be solicitous for the whole Church, and this solicitude, though it is not exercised by an act of jurisdiction, contributes greatly to the advantage of the universal Church” (LG 23b).

²⁰ See BETTI, *La dottrina* (ftn. 13), 386.

²¹ 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, 342. (Original version: ID., *Ontologia della sinodalità*, in *Pastor bonus in populo: figura, ruolo e funzione del vescovo nella Chiesa*. Miscellanea di studi in onore di S.E.Mons. Luigi Belloli, Antonio, AUTIERO – Omar CARENA [a cura di], Roma 1990, 303–329.)

²² “... the gradations of the episcopal ministry flows 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: “... 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, un asede arcivescovile, o una sede vescovile”, Juan I. ARRIETA, “Vescovo”, in *Enciclopedia giuridica*, vol. 32, Roma [1994], p. 3a.

²³ Cf. *Decree*, [Mörsdorf] (ftn. 13), 280–281; see also: Winfried AYMANS, *Synodalität – ordentliche oder außerordentliche Leitungsform in der Kirche*, in *La synodalité. La participation au gouvernement dans l’Eglise, Actes du VII^e Congrès international de droit canonique, Paris 21–28 septembre 1990*, [l’Anée canonique, hors série] 23–43, 42–43.

²⁴ Cf. “Le devoir [...] des théologiens et de ceux qui guident l’Église est de créer spirituellement un espace au théologiquement possible [...]; l’unité pour sa part est une vérité [...] qui, dans l’ordre des choses, se trouve tellement au sommet qu’elle ne peut être sacrifiée qu’au nom de ce qui est absolument fondamental, mais [elle ne peut être sacrifiée] là où des formulations ou les pratiques constituent des obstacles. Ces dernières peuvent être importantes, mais elles n’annulent pas la communion dans la foi des Pères et dans la structure fondamentale ecclésiale” (For the original text see: Joseph RATZINGER, *Vom Wiederauffinden der Mitte. Grundorientierungen. Texte aus vier Jahrzehnten*, Freiburg/Bg 1998, 189–190.)

2. Is it a Real Supra-episcopal Power at all Possible?

The doctrine of the sacramental origin and nature of supra-episcopal power delineated previously could raise the question of whether the fundamental change of perspective manifest herein could produce any favourable consequences for ecumenical dialogue.

Catholic theology can only be grateful to Orthodoxy for not being ready in the past to accept its medieval western model, explained above, describing the origin of jurisdiction in unilateral vertical and *extra*-sacramental terms. Today, however, it appears to be justifiable to ask whether the new Catholic paradigm that professes the *sacramental origin* of this superior power should be really considered as invariably unacceptable.

The Orthodox Eucharistic ecclesiology seems to reject even the very possibility of any true supra-episcopal *power*, arguing that this later lacks any real sacramental foundations. This conviction is illustrated by the following substantive assertions of Alexander Schmemmann: "... 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 ecclesiologically the answer should be 'no': there can be no power *over* the bishop and his... 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 heterogeneous 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."²⁵

Thanks to the critical insights of John Zizioulas, the original Orthodox doctrine of Afanassieff on Eucharistic ecclesiology has adopted a more nuanced form.²⁶ Nevertheless, it seems that there is no substantial change respecting the rejection of supra-episcopal *power* (i.e. 'coercive capacity') as yet: the Orthodox mainstream even today considers it wholly incompatible with the very sacramental structure of the Church, as it seems to be clear from the following observation of the metropolitan of Pergamon: "Does the council or synod constitute a structure above the bishop? The answer to this question can only be a negative one from the point of view of the ecclesiology... Ecclesiologically, there is nothing higher than the bishop in the Church."²⁷ (This theological axiom, however, in the context of the 34th apostolic canon seems to be nuanced asserting that "no ministry is higher than bishop, since the *prōtos* is himself a bishop").²⁸

This ecclesiological premise however has embarrassing implications for canon law and ecclesiastical practice. Effectively, since the end of second century superior authorities (synods and bishops to which are accorded a greater *exousia*) are *de facto* present even in the Eastern discipline, and what is more, these institutions are often considered as belonging to the very constitutional structure of the Church, it must be acknowledged a real "divorce" between ecclesiology and "canon law". This last one just since the early centuries would have been away from the apostolic tradition.²⁹ (In contrast to this opinion, I myself agree rather with that opinion according to which

²⁵ SCHMEMMANN, *The Idea* (fn. 8), 147–148. (For the original text see: *La primauté de Pierre dans l'Eglise Orthodoxe*, Neuchâtel 1960.)

²⁶ See for example: John ZIZIOULAS, "Cristologia, pneumatologia e istituzioni ecclesiastiche: un punto di vista ortodosso", in *Cristianesimo nella storia* 2 (1981) 111–127, 118–120; cf. Yannis SPITERIS, *La teologia neo-greca*, Bologna 1992, 399 ss.

²⁷ John ZIZIOULAS, *The Bishop in the Theological Doctrine of the Orthodox Church*, in John ZIZIOULAS, "The One and the Many". *Studies on God, Man, the Church, and the World Today*, Gregory EDWARD (ed.), Alhambra [CA] 2010, 250. Cf. "«Permanent synods» are ecclesiologically an abnormality that should be not tolerated, for they subject the bishop to their decisions, thus endangering the Catholicity of each local Church", Idem., 250.

²⁸ Cf. Idem., 250 [Arrieta@]

²⁹ "The divorce between canonical tradition and the canonical fact is nowhere more obvious as than in this universal triumph of the notion of suprem power [...] Loosing its ties with ecclesiology, the canonical tradition became 'canon law'..." SCHMEMMANN, *The Idea* (fn. 8), 148, 149. This phenomenon (i.e. the *de facto* existence the superior power) is usually qualified as an inappropriate concession towards "universalistic" ecclesiology.

the “patriarchalisation” of the Church was a natural phenomenon emerged from the inner theological need of communion structure.³⁰⁾

In the light what have been said here may I dare to formulate a question. I wonder whether the aforesaid theory on the sacramental origin of the supra-episcopal power could not be an axiom helpful also for the dialogue and not less for the Orthodox self-reflection. In fact, the reasons for the refusal of the very existence of the supra-episcopal power are originated in two main factors: the non-sacramental nature of this power³¹ and its vertical (“universalistic”) origin.³² As we have seen both of these problems have been fully reconsidered and resolved by the doctrine according to which the supra-episcopal power is originated in the ultra-diocesan dimension of the very episcopal ordination.³³ Would not this theory deserve to become a possible topic for further dialogue? In my view it could offer a mutually acceptable starting point, and it could also give a chance to overcome the above mentioned embarrassing divorce between theory and praxis.

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No doubt, if the bishop is the authentic representative of Christ in the eparchy, exercising coercive power over him is unjustifiable. However, there have been instances of digression from this ideal state.³⁴ It is this experience that led bishops, early on (from the late second century), to the elementary realisation that they had a mission (*sollicitudo*) to rectify such situations outside their own eparchies as well.³⁵

Ordinarily, only the function of the election of bishops and coordination lie with the synod. However, in extraordinary situations, when it is patent that the conduct of a particular bishop in matters of faith or discipline deviates significantly and grievously from the envisaged authentic functioning, the synodal response could not avoid a corrective and, consequently, coercive action. Failing that, the principle and reality of communion itself, which pertains to the quintessential structure of the Church just as much as the very figure of the bishop does, would be marred.

In my view, thanks to the emergence of supra-episcopal power, the Church has not departed from her authentic theological foundations, as sustained by Schmemmann, but rather recognised that, in addition to the normal (idealistic) function, she may also need to have recourse to an “emergency function” on account of her human fallibility. This is precisely the *raison d’être* and essence of higher synodal power.

When this higher corrective effect appears in forms alien to the sacramental structure of the Church, whether by way of extra-sacramental jurisdiction or secular power, aversions to it are easy to understand. However, as long as the basis of synodal power may be traced to episcopal ordination, in its secondary (ultra-eparchial) dimension, as aforesaid, rather than being alien to the nature of the Church, it is to see as something rooted in her very sacramental essence. In this sense the emergence of synodal higher power is a realistic response to a real problem, and, additionally, as has been pointed out, its existence may be substantiated with reference to *sacramental structure* itself.³⁶

³⁰ André DE HALLEUX, “L’institution patriarcale et la pentarchie. Un point de vue orthodoxe”, in *Revue théologique de Louvain* 3 (1972) 2, 177–199, 197.

³¹ See: “only sacramentally received power is possible in the Church”, SCHMEMMANN, *The Idea* (ftn. 8), 148, 159.

³² Supreme power as “source” of any local power, Idem 168; “whatever power is found in the Church... is derived from the pope”, ft. 11, *supra*.

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³⁴ It is fair to ask whether the outright rejection of supra-episcopal power may be imputed to an excessive idealisation of the eparchy. As long as it is the perfect earthly image of the heavenly model, there is indeed no room for any governing power above it. However, in case the earthly implementation of this model is compromised, correcting it becomes an intrinsic theological necessity. It is precisely this realisation that acts as a catalyst in the evolution of superior synodal power.

³⁵ “...” CORECCO, “Sinodalità” (ftn. 8), 1433.

³⁶ See: ft. , *supra*.

3. A Few Introductory Remarks on the Juridical Dimensions of Synodality

Firstly, as has been proposed previously, apart from ordination, governing power comprises a second component, which may be defined as the ‘juridical delimitation’ of the ontological ability deriving from the sacrament. Ultimately, this has its origins in the supreme authority of the Church even today. Accordingly, one might argue that there is no substantial alteration in the Catholic view on the origins of governing power as, whether it is about Episcopal or higher synodal power, it continues to be essentially *dependent* on the Pope. Despite the fact that power, or at least its legitimate exercise, is indeed not possible without full communion with him³⁷, this area also offers some noteworthy novelties from an ecumenical point of view. Whereas, according to the former understanding, the mere existence of the elements of a supra-episcopal structure was purely *accidental*, inasmuch as these depended on the discretion of the Pope, these days the view that an intermediate structure could dispensed with (or could be wholly dispensed with) in the Church is no longer tenable. Quite the contrary, it is increasingly more self-evident that “... communion among Churches cannot succeed unless it is regionally organized...”,³⁸ a construction which obviously demands the presence of superior synodality and its head (prōtos).

An apt expression of this radical change of perspective is the assertion by 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 *possess* since Apostolic times.³⁹ Moreover, a council passage overtly describes these organs as the work of Providence.⁴⁰ 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 a work inspired by the very Holy Spirit itself. 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 indeed 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 (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.

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Some other considerations about the legal dimensions of synodality:

CCEO’90 may not at all be regarded as a perfect construction from an ecumenical perspective. (At this point, it is enough to call to mind the canons describing supreme authority, the wording of which Cardinal Ratzinger did not consider to be satisfactory, either.⁴¹) Once this

³⁷ See: “The canonical mission of bishops can come about by legitimate customs that have not been revoked by the supreme and universal authority of the Church, or by laws made or recognized by that authority, or directly through the successor of Peter himself; and if the latter refuses or denies apostolic communion, such bishops cannot assume any office” (LG 24b).

³⁸ Cohen WILL, «Why Ecclesiastical Structures at the Regional Level Matter: Communion as Mutual Inclusion», in *Theological Studies* 75 (2014) 2, 308–330, 312.

³⁹ IOANNES PAULUS II, litt ap. *Euntes in mundum universum* [ob expletum millennium a baptismo regionis Rus’ Kioviensis], 25. I. 1988, in AAS 88 (1980) 8, 950.

⁴⁰ “By divine Providence it has come about that various Churches... have in the course of time coalesced into several groups, organically united, which, preserving the unity of faith and the unique divine constitution of the universal Church, enjoy their own discipline, their own liturgical usage, and their own theological and spiritual heritage. Some of these Churches, notably the ancient patriarchal Churches, as parent-stocks of the Faith, so to speak, have begotten others as daughter Churches... (LG 23d).

⁴¹ See: Péter SZABÓ, *Les normes “de Suprema ecclesiae auctoritate” (CCEO cc. 42–54) peuvent-elles être reformulées? Quelques brèves réflexions à partir d’une proposition de la Congrégation pour la Doctrine de la Foi, alors présidée par Joseph Ratzinger, pour la codification orientale*, in *Les évolutions du gouvernement central de L’Église. Ecclesia sese renovando semper eadem*, Colloque des 23-25 novembre 2016 à l’occasion des XX ans du Studium de droit canonique de Lyon, Éric BESSON (dir.), Toulouse 2017, 336–353.

circumstance is conceded, it is, nevertheless, fair to propose that the many regulations of the Code on synodality contain modifications that represent progress relevant to ecumenism.

In the first place, it must be noted that, as opposed to previous law, synodal legislation is already free from prior control by Rome. That being said, it is necessary to mention that, due to modern codification, local legislation is only possible in closely defined conditions. However, in my opinion these limits are in any ways more flexible than they may appear at first glance.⁴²

Furthermore, it is also apposite to remark that currently the Catholic patriarchal Churches are also endowed with quintessential feature of autocephaly. This can be seen in the fact that in terms of a narrow definition of the *provisio canonica*, they may elect their bishops, including the head of their Church, without the direct intervention of the pope (*electio simplex*).⁴³

Last but not least, in the case of deliberative synodal organs, it is always felt to be a sensitive issue whether or not their activity happens to restrict excessively the autonomy of the single bishops. In my opinion, with a view to avoiding such a danger, the adequate response is not the limitation of the authority of the synods by superior laws. (This would in fact impair their essential function in the realisation of communion among neighbouring eparchies.) Excessive synodal activity is best forestalled through the consistent observance of the two rules of synodality in praxis: (1) The first principle of synodality may be succinctly formulated in terms of the *obligation of frequent coordination* between bishops, as well as regular *voluntary adherence* to jointly drafted directives even when they do not have a coercive character; (2) The second principle of synodality, predicated on the presumption that the first principle is observed as closely as possible, demands that instances of mandating by the higher governing power (i.e. *external coercion*) be kept to a reasonable *minimum* at all times.

The consistent observance of this dual rule could render the existence of coercive power over Bishops more acceptable perhaps in the context of Eucharistic ecclesiology as well, for, as the aforementioned principles make it obvious, this kind of power may only be activated in defence of communion, qua an “ultima ratio”. (In other words over a Bishop who, according to the judgement of their co-responsible brothers in the episcopate, is failing to represent the Lord in an adequate manner.)

⁴² Cf. Péter SZABÓ, “Ancora sulla sfera dell’autonomia disciplinare dell’*Ecclesia sui iuris*”, in *Folia Canonica* 6 (2003) 157–213, 181 ss.; ID., *Altre Chiese di tradizione bizantina. L’attività legislativa sui iuris delle Chiese ‘minori’ di tradizione bizantina*, in PONTIFICIO CONSIGLIO PER I TESTI LEGISLATIVI (a cura di), *Il Codice delle Chiese orientali, la storia, le legislazioni particolari, le prospettive ecumeniche*. Atti del Convegno di studio tenutosi nel XX anniversario della promulgazione del Codice dei canoni delle Chiese orientali, Sala San Pio X, Roma 8–9 ottobre 2010, Città del Vaticano 2011, 336–343.

⁴³ SZABÓ, *Comunione* (ftn. 15), 96.