

SYNODAL GOVERNANCE IN THE EASTERN CATHOLIC CHURCHES

John D. Faris*

As an expert of Oriental Canon Law, especially in the field of the constitution of the Church and its governance, Chorbishop John D. Faris systematically presents the synodal system of governance in the patriarchal and Major archiepiscopal Churches and the council of hierarchs in the metropolitan churches *sui iuris*, without neglecting at the same time the system of administration of Other Churches *sui iuris* under the following main heads: Synodal Governance and administrative systems in the Patriarchal and Major Archiepiscopal Churches; Metropolitan Churches and the system of administration in them with the help of the Council of Hierarchs, Metropolitan Assembly and finally the Eparchial Assembly, Eparchial Pastoral Councils and Assemblies of Hierarchs of Several Churches.

Introduction

During a recent meeting of the North American Orthodox-Catholic Theological Consultation, the topic of Church governance was

*Chorbishop John D. Faris was ordained a priest of the Maronite Church in 1976. After receiving his doctorate from the Pontifical Oriental Institute in 1980, he served in the Chancery of the Eparchy of Saint Maron and later worked with the Catholic Near East Welfare Association. He is currently the Pastor of Saint Louis Gonzaga Church in Utica, NY and is deeply involved in ecumenical dialogues. In addition to his pastoral responsibilities, Chorbishop Faris is Adjunct Assistant Professor in the Faculty of Canon Law at the Catholic University of America and continues to write on the topics of Eastern Churches and canon law.

discussed.¹ It came as a surprise to many—Orthodox and Catholics alike—that there are two structures of governance in the Catholic Church: Latin and Eastern. Both Catholic, they are quite different. This study will examine the institutions of the Eastern Catholic Churches to demonstrate how their governance structures are an interesting interweaving of governance by one and governance by many

1. Synodal Governance

Good governance, both ecclesial and secular, generally faces two threats: the dictatorial tyranny that can arise when power is entrusted to an individual and the inertia that can set in when power is entrusted to a group of individuals. The articulation of any governance model must always seek to a balance of powers—or better—to intertwine governance by the one and governance by the many. The Latin Church, despite its many collaborative and consultative bodies, retains the characteristics of a monarchical form of government whereby decisions are made by one person endowed with broad powers. This legal arrangement has many positive aspects; decisions are able to be made in a timely manner and there is a clear focus of authority. On the negative side, decisions can be arbitrary and may not be embraced by those subject to the authority. The Orthodox Church takes pride in its synodal governmental structures at all levels of communion. Such a legal arrangement not only finds its roots in the apostolic church, but also resonates with 21st sensibilities and preferences for democracies. On the negative side, decision-making can be delayed and lack a necessary focus and finality.

The *Code of Canons of the Eastern Churches* was promulgated by Pope John Paul II on 18 October 1990.² This legislation binds only 15 million Eastern Catholics in a Church comprising almost 1.2 billion, but the legal system articulated by it offers interesting possibilities in the balance of power between the head of the community and body of believers. The mandate given to the commission that prepared a

¹A version of this paper was delivered at the eighty-first meeting of the North American Orthodox-Catholic Theological Consultation in Washington DC on 28 October 2011.

²AAS 82 (1990) 1045-1363.

draft of the code was to prepare a code that would take into account both the ancient, genuine Eastern discipline and the need to accommodate this discipline to modern times in conformity with Vatican II. This legislation is an attempt to combine both a Western approach to governance (a final, supreme authority that can be personally exercised by the Roman Pontiff) with an Eastern approach (collective decision making by synods), that is, a governance system that is both *Catholic* and *Eastern*.

Before entering into a discussion of the governance structures, a brief description of the underlying ecclesial model is helpful.

The Catholic Church can be accurately described as a *communion of churches*, all in communion with the Roman Pontiff and with each other. This communion of churches is not to be misconstrued as a federation of independent churches that are joined together. Each church in the Catholic Church can only exist *as church* within that communion.

A schematic model of this communion of churches is three-tiered: the universal Church (all the particular churches), the Church *sui iuris* (a grouping of some of the churches); the eparchy (the particular church). One can derive a three-tiered hierarchy in the service of these three levels of the communion of churches: the Roman Pontiff, the patriarch (or major archbishop), and the eparchial bishop.

This three-tiered model is viewed with a certain degree suspicion by both Catholics and Orthodox, but offers many benefits. Catholics, especially Latin Catholics, are accustomed to a two-tier structure: the universal Church governed by the Roman Pontiff and the College of Bishops and the diocese governed by a bishop. Both these structures exist in virtue of divine law. Such a schematic model of the Church poses difficulties when Eastern Catholics are taken into consideration because the Church *sui iuris* (cf. CCEO c. 27) is an intermediate structure with a chief hierarch whose chief hierarch is ordinarily a patriarch, major archbishop or metropolitan. The lack of recognition of an intermediate structure makes it awkward to articulate governance structures for these churches in the context of the universal Church: any authority accorded to hierarchs at an intermediate level is viewed as an encroachment on the primatial authority of the Roman Pontiff or the rights of the bishops. No power is recognized as truly pertaining to the intermediate level of ecclesial

governance. Situating the patriarchal churches (and, naturally, the other Churches *sui iuris*) in an appropriate ecclesial structure is crucial if one is ever to consider the re-integration of the Churches of the West and East.

Orthodox—perhaps intentionally or perhaps inadvertently—also operate on the basis of a two-tiered ecclesial model. In their case, while they recognize the authority of an ecumenical council in the governance of the universal Church, they tend to focus on governance in at the level of the patriarchal church exercised by the synod of bishops and the local church. They view any consideration for another institution superior to the patriarchal synod (e.g., the Bishop of Rome) as a threat to the autonomy of the patriarchal synod. Again, restricting themselves to the two-tiered model impedes possible ecumenical advancement.

2. Patriarchal and Major Archiepiscopal Churches

Six Eastern Catholic Churches are of *patriarchal status*: Armenian, Chaldean, Coptic, Maronite, Melkite, and Syrian Churches.³ The synodal governance system in these churches has realized the highest degree of self-governing authority vis-à-vis the supreme authority of the Church.

There are four Eastern Catholic Churches that are of *major archiepiscopal status*: the Ukrainian Greek-Catholic (1963), Syro-Malabar (1992), Syro-Malankara (February 2005), and Romanian Greek-Catholic (December 2005). The major archiepiscopal churches can be characterized as “quasi-patriarchal” churches.

Vatican II, in the *Decree on the Eastern Churches* succinctly articulated to governance system of the patriarchal churches:

The patriarchs with their synods are the highest authority for all business of the patriarchate, not excepting the right of setting up new eparchies (dioceses) and appointing bishops of their rite within

³Coptic Church (with approximately 150,000 faithful); Melkite Church (with approximately 1 million faithful); Syrian Church (with approximately 100,000 faithful); Maronite Church (with approximately 2 million faithful); Armenian Church (with approximately 200,000 faithful); Chaldean Church (with 500,000 faithful).

the patriarchal territory, without prejudice to the inalienable right of the Roman Pontiff to intervene in any particular case.⁴

Note that the statement simply states that the supreme authority of the patriarchal church is exercised by the patriarch with his synod (a balance individual and collective authority) without attributing any specific role to either nor indicating the superiority of one over the other. It was left for the future code to allocate the powers of the patriarch and the synod of bishops.

The patriarchal churches are treated in canons 55-150⁵ and the major archiepiscopal churches (with self-governing authority almost identical to that of the patriarchal churches) are treated in canon 151-154.⁶ For the sake of simplicity, we shall refer to the patriarchal

⁴*Orientalium Ecclesiarum*, n. 9

⁵For additional information regarding the patriarchal churches and the synod of bishops, see W. Aymans, "synodale Strukturen im CCEO," *Archiv für Katholisches Kirchenrecht* 160 (1991) 367-389; M. Brogi, "Strutture delle Chiese orientali sui iuris secondo il C.C.E.O.," *Apollinaris* 65 (1992) 299-313; J. Chiramel, *The Patriarchal Structure in the Oriental Canon Law*, Rome 1992; J. Faris, "Patriarchal churches" in G. Nedungatt (ed.), *A Guide to the Code of Canons, Kanonika* 10 (Rome: Pontificio Istituto Orientale, 2002) 155-199; G. Nedungatt, "Sinodalità nelle Chiese cattoliche orientali," *Concilium* 5 (1992); 90-111; P. Pallath, *The Synod of Bishops of the Catholic Oriental Churches* (Rome: Mar Thomas Yogam, 1994).

⁶For additional information regarding the major archiepiscopal churches and their governance, see J. Andrijsyn, "I diritto particolare della Chiesa "sui iuris": I problemi e le Prospettive per la Chiesa Greco-Cattolica Ucraina," in *Ius Vehiculum Caritatis: Atti del simposio internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium* (Rome: Libreria Editrice Vaticana, 2004) 643-658; H. Chimy, H., *De figura Archiepiscopi Majoris in Jure Canonico Orientali vigente*, (Rome, 1968); J. Faris, "Major Archiepiscopal Churches" in G. Nedungatt (ed.), *A Guide to the Code of Canons, Kanonika* 10 (Rome: Pontificio Istituto Orientale, 2002) 201-206; G. Orioli "Gli Arcivescovi Maggiori: Origine ed Evoluzione Storica fino al Secolo Settimo," *Apollinaris* 58 (1985) 615-627; P. Pallath, "The Syro-Malabar Church: Juridical Status and Synodal Functioning," in Eluvathingal, Francis (ed.) *Syro Malabar Church since the Code of Canons* (Rome: Mar Thoma Yogam, 2002) 27-51; V. J. Pospishil and Hryhor M. Luznycky. *The Quest for a Ukrainian Catholic Patriarchate* (Philadelphia, PA: Ukrainian Publications, 1971).

churches and synods, with the understanding that it is the same also for the major archiepiscopal churches unless stated otherwise.

The patriarchal churches are those churches *sui iuris* with the highest degree of autonomy: the hierarchy can elect the heads of their churches, the patriarchs (cc. 63-77), elect bishops for offices inside the territory (cc. 180-189), enact liturgical laws for the entire patriarchal church and disciplinary laws for that portion of the church inside the territory (cc. 110 §1 and 150 §2), and adjudicate matters relating to the respective churches in all instances (cc. 110 §2, 1062, 1063).

2.1. Patriarch and Synod

The *Code of Canons* provides that the patriarch with the synod of bishops (cc. 102-113) share in the responsibility in governance of the patriarchal church (cf. *Orientalium Ecclesiarum*, n. 9). The powers of governance⁷ are generally allocated as follows: the synod of bishops is exclusively competent to enact particular laws (c. 110 §1),⁸ to function as a judicial tribunal (c. 110 §2) and to elect the patriarch, bishops and candidates for offices situated outside the patriarchal territory (c. 110 §3). Administrative acts are generally reserved to the patriarch (c. 110 §4).

2.2. Convocation and Participants

The common law establishes that the synod of bishops is to be convoked: 1. Whenever there is an issue that is the exclusive competence of the synod of bishops e.g., the elections of the patriarch (c. 63), bishops (cc. 180-183),⁹ and candidates for offices outside the patriarchal territory (c. 149), the enactment of laws for the patriarchal church (c. 110 §1), the adjudication of cases as the supreme judicial forum of the patriarchal church (c. 1062 §4), matters in which the

⁷The powers of governance are distinguished as legislative, judicial, administrative (CCEO cc. 985 §1) and electoral (CCEO cc. 947-960).

⁸The territorial restrictions on the legislative authority of the synod of bishops will be discussed below.

⁹There is a provision in common law for the election of bishops by letter in situations where the synod of bishops cannot be convened (c. 186).

consent of the synod of bishops is required (c. 106 §1, 1°);¹⁰ 2. Whenever the patriarch with the consent of permanent synod deems it necessary (c.106 §1, 2°); 3. Whenever two-thirds of the bishops request the convocation for a given matter (c.106 §1, 3°); 4. Whenever it is required by particular law, even annually (c. 106 §2).¹¹

The general principle is that all of the ordained bishops¹² of the patriarchal church are to be convoked to the synod of bishops. A bishop who is unqualified for mental or physical reasons, an apostate or schismatic (cf. c. 953 §1), who has been deposed or punished with major excommunication (cc. 1433-1434) is not be convoked to the synod of bishops.

While all of the ordained bishops have the right to be convoked to the synod of bishops, they do not always enjoy the same voting rights. The deliberative vote of bishops who are not eparchial bishops exercising authority inside the territory of the patriarchal church can be restricted except in the case of the election of the patriarch, bishops or candidates for office (cc. 102 §2 and 150 §1).¹³

¹⁰See the Index of *Code of Canons of the Eastern Churches. Latin-English Edition*. s.v. "synod of bishops of the patriarchal church, its consent required for."

¹¹CS c. 344 stipulated that the synod of bishops was to be convoked whenever the patriarch with the consent of the permanent synod deemed it necessary, but at least every twenty years.

¹²CS cc. 224 §1 and 340 provided that someone who is elected and confirmed as a bishop, but not yet ordained, was a member of the synod of bishops.

¹³In the interim between Vatican II (with its reference to bishops constituted outside the patriarchal territory as being *aggregated* to the hierarchy in the patriarchal territory [cf. *OE* n. 7c]) and the 1990 promulgation of the *Code of Canons*, the Congregation for the Eastern Churches issued a declaration regarding the meaning of the term *aggregatus*. See *AAS* 62 (1970) 179. The issue became more critical since, at the impetus of the Council, hierarchies for several patriarchal churches had been established outside the patriarchal territory. The 1970 *Declaration* was not entirely satisfactory since article 1 gave a deliberative vote in all matters to bishops constituted outside the patriarchal territory; given that the laws of the synod of bishops did not extend beyond the patriarchal territory, the bishops were voting on matters to which they themselves were not subject.

Such a provision is reasonable since it would not be appropriate for the eparchial bishops to be voting on a matter to which they themselves would not be subject. It should be noted that all of the bishops of the synod would be competent to vote on the particular law restricting the deliberative votes of certain bishops.

2.2.1. Legislative Role

The common law of the Eastern Catholic Churches is law common to the entire Catholic Church (e.g., the apostolic constitution on the election of the Roman Pontiff) or to all the Eastern Catholic Churches (e.g., the *Code of Canons of the Eastern Churches*). During the revision process, there was some concern that the creation of a common code would not allow for the legitimate disciplinary diversity among the churches. The "Guidelines for the Revision of the Code of Oriental Canon Law" affirmed the benefits of a single common code and the rights of the Eastern Churches to govern themselves according to their own discipline,¹⁴ designated as *particular law*.

2.2.1.1. Particular Law

The *Code of Canons* makes numerous references to matters that are relegated to particular law.¹⁵ However, the legislative authority of the synod of bishops is not restricted to those matters expressly mentioned in the common law; the synod can enact any laws not contrary to the laws of the supreme authority of the Church.¹⁶

Vatican II solemnly declared that the churches of the East, "have the right and duty to govern themselves according to their own special

Article 2 required that the bishops outside the patriarchal territory be convoked to the synod, but did not oblige them to attend.

¹⁴PCCICOR "Guidelines for the Revision of the Code of Oriental Canon Law" 18-23 March 1974: *Nuntia* 3 (1976) 19.

¹⁵See the Index of *Code of Canons of the Eastern Churches. Latin-English Translation* s.v. "particular law" and "particular law of a patriarchal church."

¹⁶"An inferior legislator cannot validly enact a law contrary to higher law" (c. 985 §2). One author calls for a further refinement of the legislative authority of the synod of bishops. See Péter Szabó, "Ancora sulla Sfera dell'Autonomia Disciplinare dell'Ecclesia sui iuris," *Folia Canonica* 6 (2003) 157-213.

disciplines. For these are guaranteed by ancient tradition, and seem to be better suited to the customs of their faithful and the good of their souls" (OE n. 5).¹⁷ The legislative role of the synod of bishops is crucial in the preservation and fostering of the rites of the patriarchal and major archiepiscopal churches.

During the revision process it was decided that the synod of bishops would be solely competent to enact law for the patriarchal church.¹⁸

Can. 110 - §1. The synod of bishops of the patriarchal church is exclusively competent to make laws for the entire patriarchal church that obtain force according to the norm of can. 150, §§ 2 and 3.

The *Code of Canons* provides that, "laws are established by promulgation" (c. 1488). Arrangements for the promulgation of a law illustrate the intertwining of patriarchal and synodal roles. The synod enacts the legislation (c. 110 §1) which is promulgated by the patriarch (c. 112 §2) according to a procedure (i.e., manner, time and publication) established by the synod (c. 111 §1).¹⁹

2.2.1.2. Territorial Restrictions

Perhaps one of the most hotly debated issues of the entire revision process was the territorial limitation on the authority of the patriarch

¹⁷OE n. 5. See also the conciliar affirmation of the same right of the Orthodox Churches to govern themselves in *Unitatis Redintegratio* n. 16.

¹⁸Laws for one or several patriarchal churches can be established by the Roman Pontiff or an ecumenical council (cf. cc. 58 and 1492), or the Apostolic See (e.g., cc. 29, 30 and 138). Since the Pontifical Council for the Interpretation of Legislative Texts is also competent to provide an authentic interpretation of the *Code of Canons* (*Communicationes* 23 (1991) 14-15), this pontifical council can legislate for one, several or all the Eastern Catholic Churches.

¹⁹The former provision of *Cleri Sanctitati* canon 350 §1 did not permit the promulgation of laws that had not received the confirmation of the Apostolic See. Such a procedural difference is an affirmation of the Vatican II declaration that the Eastern Churches have the right to govern themselves (cf. OE n. 5).

and the synod of bishops.²⁰ The territorial parameter of the force of laws enacted by the synod of bishops is articulated in canon 150 §2:

Laws enacted by the synod of bishops of the patriarchal church and promulgated by the patriarch, have the force of law everywhere in the world if they are liturgical laws. However, if they are disciplinary laws, or in the case of other decisions by the synod they have the force of law within the territorial boundaries of the patriarchal church.

Liturgical laws enacted by the synod of bishops and promulgated by the patriarch enjoy the force of law throughout the patriarchal church.²¹ Even in this matter, however, the synod of bishops is not completely autonomous since approval of the liturgical books can be given only after prior review by the Apostolic See (c. 657 §2).

All other legislation enacted by the synod of bishops *per se* has the force of law only inside the territorial boundaries of the patriarchal church (cf. 146). The eparchial bishop established outside of the territory of the patriarchal church, if he desires to do so and the matter does not exceed his competence, can attribute the force of law to the legislation for his eparchy (in which case, it has the weight of eparchial law). With the approval of the Apostolic See, the law can acquire force of law everywhere in the world (in which case, it has the status of pontifical law).²²

2.2.2. Judicial Role

Pre-conciliar legislation (*Sollicitudinem nostram* cc. 17, 18, and 83) provided that the patriarch, sometimes acting with the permanent synod, exercised judicial authority over the entire patriarchal church. During the revision process, it was decided that it was not appropriate to assign a judicial role to the patriarch and the

²⁰The issue is commonly referred to as the “restriction on patriarchal authority” a construction that ignores the traditional form of *synodal governance* in the Eastern Churches.

²¹Such a provision conforms to the requirement that the faithful—wherever they reside—are obliged to observe their own rite, unless the law allows for an exception (e.g., c. 883).

²²CCEO c. 150 §3.

permanent synod.²³ Therefore, the judicial role was assigned to the synod of bishops:

Canon 110 §2. The synod of bishops of the patriarchal church is a tribunal according to the norm of can. 1062.

Canon 1062 §1. The synod of bishops of the patriarchal church, without prejudice to the competence of the Apostolic See, is the superior tribunal within the territorial boundaries of the patriarchal church.

The clause in 1062 §1, “without prejudice to the competence of the Apostolic See” is specified in canon 1060 which reserves exclusively to the Roman Pontiff the adjudication of cases involving patriarchs, bishops in penal cases, heads of state, and other cases the pope calls to himself.²⁴

Territorial parameters are stipulated in the judicial power exercised by the synod of bishops: contentious cases involving bishops exercising their office outside the patriarchal territory are to be adjudicated in a tribunal designated by the Roman Pontiff (c. 1060 §2).

²³See *Nuntia* 5 (1977) 13 and 14 (1982) 5-6.

²⁴This canon is the fruit of a long debate within the commission entrusted with the revision of the common law. The debate focused on the competence of the synod of bishops to judge patriarchs and bishops. *SN* c. 15, 2° reserves to the Roman Pontiff the judgment of patriarchs. While it is consonant with Eastern tradition for a patriarch to be deposed by a synod of bishops, it was finally decided that such cases would continue to be reserved to the Roman Pontiff. See *Nuntia* 3 (1976) 23, n.3; 5 (1977) 10-14; 14 (1982) 4. Further, although *SN* c. 17 provided that the synod of bishops was competent to adjudicate minor criminal cases involving bishops, this matter was also reserved to the Roman Pontiff.

2.2.2.1. Synodal Tribunal

The synod of bishops is to elect for a five-year term²⁵ from among its bishops²⁶ a general moderator for the administration of justice who will serve as president along with two other bishops who will constitute the synodal tribunal. This tribunal is competent to adjudicate contentious cases involving eparchies or bishops (c. 1062 §2).²⁷ The general moderator of justice is to exercise vigilance over all of the territories of tribunals inside the boundaries of the patriarchal church and has the right to decide an objection against a judge in the ordinary tribunal of the patriarchal church (c. 1062 §5).²⁸

2.2.2.2. Synod of Bishops as Tribunal

The synod of bishops as a whole serves as the appellate tribunal for the synodal tribunal (c. 1062 §4), without any further recourse within the patriarchal church, but with due regard that a case can be appealed to the Roman Pontiff (c. 1059). In deciding such cases, the synod of bishops would be acting as a collegiate tribunal (c. 1085). Since this synod of bishops hears appeals of contentious cases involving bishops and eparchies, bishops party to the case or who were judges of the case in the synodal tribunal are excluded from the appeals process. Likewise are excluded any interested party (familial relationship, guardianship, curatorship, close friendship, great animosity or personal financial interest [c. 1106 §1]).

²⁵There is no prohibition against re-election. Given the paucity of qualified candidates in some patriarchal churches for such positions, re-election is a necessity.

²⁶The phrase *ex suo gremio* is translated "from among its members" in the English translation. The phrase "from its group" might be better. Since all ordained bishops are part of the synod of bishops and thereby candidates for the synodal tribunal, bishops situated outside the patriarchal territory could be elected to exercise judicial power to which they themselves would not be subject.

²⁷It would seem that in a contentious case involving one bishop inside and another outside the patriarchal territory, that the case would be adjudicated in a tribunal designated by the Roman Pontiff (c. 1060 §4).

²⁸The English translation of the CCEC of this canon is flawed; the phrase "to be" should be omitted.

2.3. Electoral Role

The synod of bishops is responsible for the election of the patriarch (cc. 63, 152 and 153), the bishops inside the territory of the patriarchal church (c. 183) and candidates for office outside the patriarchal territory (i.e., eparchial bishop, coadjutor bishop, and auxiliary bishop (c. 149).

2.3.1. Election of the Patriarch / Major Archbishop

The canons dealing with the election of the patriarch (cc. 63-77) opens with the simple statement that “A patriarch is canonically elected in the synod of bishops of the patriarchal church” (c. 63).²⁹ The patriarchal office can become vacant through death, resignation,³⁰ or privation. Within one month of the vacancy (or up to two months if so provided by particular law), the administrator of the patriarchal church is to convene the synod of bishops at the patriarchal residence (or another location with the approval of the permanent synod (c. 65)). All ordained bishops of the patriarchal church (with the exception of those who are incapacitated, schismatics or apostates [c. 953 §1]) or under canonical penalties (cc. 1433-1434), are to be convoked and have an active voice.

The required qualifications to be elected patriarch are the same as those for a bishop (c. 180), but can be modified by particular law (c. 64).

The one is elected who receives two-thirds of the votes. Particular law can provide that after three balloting an absolute majority suffices (c. 72 §1). The power of the synod of bishops to elect a patriarch is constrained by temporal parameters: if the synod is unable to elect a patriarch after fifteen days of the convocation of the synod, the matter devolves to the Roman Pontiff (c. 72 §2) who can then take appropriate measures.

²⁹Under the provisions of *Cleri Sanctitati*, this function was carried out by the *synod of election of a patriarch* (CS cc. 221-239).

³⁰Unlike the provision for eparchial bishops (c. 210 §1), there is no mention of an age at which a patriarch is requested to submit his resignation.

If the person elected is not at least a proclaimed bishop, the synod is to carry out all of the procedures required for episcopal proclamation (c. 73), which includes the approval of the Roman Pontiff (c. 182 §§3-4).

In the case of a patriarchal election, if the one elected is an ordained bishop and accepts the election (c. 74), he is to make a profession of faith and promise to exercise his office faithfully (c. 76 §1). The synod of bishops proceeds with the proclamation and enthronement of the patriarch according to the liturgical books (c. 74). By virtue of enthronement, the patriarch obtains his office with the full effects of the law (*qua pleno iure officium obtinet*) (c. 77 §1). The synod of bishops is to notify the Roman Pontiff by means of a synodal letter of the election, enthronement, profession of faith and promise to exercise his office faithfully and to notify the patriarchs of the other Eastern Churches of the election (c. 76 §1).

The patriarch is then to request ecclesiastical communion from the Roman Pontiff (c. 76 §2). Although the patriarch receives the fullness of his office with his enthronement, he cannot convoke a synod or ordain a bishop until he has received the letter of ecclesiastical communion. This restriction on the exercise of the patriarchal office is an apparent contradiction to the provision of canon 77 §1 which asserted that the patriarch obtained his office with the full effects of the law with enthronement. When objections were raised to this restriction, the explanation was offered that such actions can be carried out only in full communion with Roman Pontiff, the head of the college of bishops.³¹ However, such an explanation is weak if the one elected is a bishop who has already made a profession of faith and a promise of obedience to the Roman Pontiff (c. 187 §2). Does election to the patriarchal office result in a loss of communion?

In the case of a *major archiepiscopal election*, the synod of bishops is to proceed with the election of the major archbishop according to the procedure delineated in canons 63-74. At this point the election of the major archbishop diverges with that of the patriarch. After the election has been accepted, the synod of bishops of the major archiepiscopal church is to notify the Roman Pontiff of the canonical

³¹"Ubicumque enim collegialiter potestas ab Episcopis exercetur vel Episcopi eliguntur, ibi constare debet de plena cum Collegii Capite communionione ecclesiastica," *Nuntia* 22 (1986) 57.

election, and the person elected must petition from the Roman Pontiff a confirmation of the election (c. 153 §1). After the confirmation of the election has been granted, the person elected in the presence of the synod of bishops must make a profession of faith and a promise to fulfill his office faithfully; if the person elected is a bishop (if not, subsequent to episcopal ordination), the proclamation and enthronement are then to take place (c. 153 §2).

2.3.2. Election of Bishops

In addition to the general canons on elections (cc. 947-957), there is a special section on the election of bishops (cc. 180-189).

The minimal qualifications for a bishop are: solid faith, good morals, piety, zeal for souls and prudence, good reputation, not bound by a marriage bond, at least thirty-five years old, in the order of presbyters for at least five years, academic credentials such as a doctorate, licentiate or an expertise in some sacred science (c. 180).

The election of bishops can take the form of the preparation of a *list of approved candidates*. The list should contain a number of candidates sufficient to fulfill the needs of the church and can be constructed to include a list of candidates for the episcopacy in general or a list of candidates for a specific office.

It is the exclusive right of the members of the synod of bishops to propose candidates. If a bishop considers it necessary he may consult with presbyters and other Christian faithful for their opinions. They are then to inform the patriarch of their findings. If the patriarch, after adding his own opinion, deems it appropriate, he sends the proposal to the members of the synod. With the approval of the Roman Pontiff, particular law can restrict the right of presentation of candidates for election to the patriarch. The list is then transmitted to the Apostolic See for the assent of the Roman Pontiff; which, if given, is valid until it is expressly revoked. (c. 182)

In the election of a bishop for a specific office, an absolute majority is required for the first three ballotings; the fourth balloting votes are cast only for the two candidates who had received the most votes in the third balloting (c. 183).

If the one elected has already received the assent of the Roman Pontiff and accepts the election, the Apostolic See is to be notified of

the election and proclamation (c. 184). If the one elected has not received the assent of the Roman Pontiff, the patriarch is to seek the assent from the Roman Pontiff (c. 185).

2.3.3. Election of Candidates for Office

In the case of an eparchial, coadjutor or auxiliary bishop outside the territorial boundaries of the patriarchal church, the synod of bishops, observing the procedures for the election of bishops, elects at least three candidates. The patriarch submits this list to the Roman Pontiff for appointment (c. 149). It should be noted that the Roman Pontiff is not restricted to choosing one of the proposed candidates for the appointment.

2.4. Administrative Role

Administrative or executive authority generally resides with the patriarch. The synod of bishops is generally not competent for administrative acts (c. 110 §4; cf. c. 150 §2) unless the common law reserves certain acts to it.³² Certain administrative acts of the

³²The following administrative matters are assigned by the common law to the synod of bishops: resolution of a controversy regarding the transfer of a bishop (c. 85 §2, 2°); determination of the order of substitution of impeded members of the permanent synod (c. 115 §3); election of two bishops who, along with patriarch, replace the permanent synod (c. 121); examination of the financial report of patriarchal church (c. 122 §4); determination of amount to be paid by individual eparchy for expenses of patriarchal curia (c. 125); accept resignation of patriarch (c. 126 §2); determine time of convocation of metropolitan synod (c. 133 §1, 2°); determine agenda and approve statutes of patriarchal assembly (cc. 144 §1 and 145); investigate and petition the Roman Pontiff for a resolution of a doubt relating to the territorial boundaries of the patriarchal church (c. 146 §2); see to the support of resigned bishops (c. 211 §2); issue and change the program for the formation of clerics (c. 330 §1); elect religious to certain offices (c. 431 §1); establish a commission for missionary activity (c. 585 §2); care for the integrity of the faith and good morals (cc. 605 and 652 §2); create a catechetical directory and prepare catechisms (c. 621 §§ 1 and 3); approve censors (c. 664 §1); remove the president, judge, promoter of justice, defender of the bond of the ordinary tribunal of the patriarchal church (c. 1063 §2); erect a first instance tribunal common to several eparchies (c. 1067 §2).

patriarch require the consent of the synod of bishops.³³ It should be noted that if the synod of bishops gives consent to a certain action, the patriarch is not required to carry out the act. In certain cases, the patriarch is to consult with the synod of bishops (cc. 82 §3 and 148 §3).

2.5. Patriarchal Assembly

One innovation of the *Code of Canons* is an assembly representative of the entire patriarchal church. While the small population of the Eastern Catholic churches is often posed as a negative factor affecting the lives of these churches, on the positive side these small numbers allow for such assemblies; it would be impossible for the Latin Church to have such a gathering. The *Code of Canons* provides that the patriarchal, major archiepiscopal and metropolitan churches are to conduct these assemblies.³⁴

The patriarchal assembly (*conventus patriarchalis*), treated cc. 140-145, is to provide a consultative forum of collaboration between the patriarch and synod of bishops and the presbyters, deacons, religious, and lay persons of the patriarchal church touching matters of greater importance in the church (c. 140). It is composed of the patriarch, the bishops and local hierarchs,³⁵ presidents of monastic

³³Common law requires the consent of the synod of bishops in the following cases: transfer of the permanent residential see of the patriarch (c. 57 §3); erection, modification or suppression of provinces or eparchies (c. 85 §1); give a coadjutor or auxiliary bishop to an eparchial bishop (c. 85 §2, 1°); agreements with a civil authority (c. 98); transferal, prorogation, suspension, or dissolution of a session of the synod of bishops (c. 108 §1); erection of a seminary common to several eparchies (c. 334 §1); grant the removal of the clerical state (c. 397); suppression of a confederation of monasteries *sui iuris* (c. 440 §2); erection or approval of a Catholic university, ecclesiastical university or faculty (cc. 642 §2 and 649); approval of liturgical texts (c. 657 §§ 1-2); reservation of sins (c. 727); reception of Eastern non-Catholic bishops into the Catholic Church (c. 898 §1); suppression of a juridic person not erected by the patriarch (c. 928, 1°); alienation of temporal goods of the patriarchal church (cc. 1036 §3 and 1037, 3°).

³⁴See cc. 140-145, 152, and 172. For stylistic reasons and since the institution is treated by the *CCEO* in the context of the patriarchal churches, we shall refer to the institution as the patriarchal assembly.

³⁵Exarchs, apostolic administrators, protosyncelli, and syncelli all fall under the category of "local hierarch" (cf. c. 984 §2).

confederations, superiors general of institutes of consecrated life, superiors of monasteries *sui iuris*, rectors of Catholic and ecclesiastical universities, deans of theology and canon law faculties in the territory, rectors of major seminaries, at least one priest, one member of a religious institute or society of the common life in the manner of religious (with the consent of the competent superior) and two lay persons from each eparchy designated in a manner approved by the eparchial bishop (c. 143 §1).³⁶

³⁶The determination of the eparchial representation will require some clarification by the statutes of the patriarchal assembly (cf. c. 145). For the purpose of illustration, the text is as follows:

Canon 143 §1, 6° -- To the patriarchal assembly are to be convoked from each eparchy at least one of the presbyters, especially pastors, ascribed to the same eparchy, one of the religious or members of societies of common life according to the manner of religious, as well as two lay persons, unless the statutes determine a greater number, all of whom are designated in a manner determined by the eparchial bishop and indeed, if it is a case of a member of a religious institute or a member of a society of the common life according to the manner of religious, with the consent of the competent superior.

It should be noted that it is the eparchial bishop--and not the synod of bishops or the statutes of the patriarchal assembly--that determines the manner in which the presbyteral, religious and lay representatives are selected. In order to address the legitimate concern of the eparchial bishop regarding the representation of his eparchy, the statutes could determine a procedure (perhaps even an election) in the selection of the representatives, while reserving the final approval of the representatives to the eparchial bishop.

The designation of representatives from religious institutes or societies of common life according to the manner of religious is, according to the canon, done at the eparchial level. For entities that are of eparchial status, such an approach is appropriate, but if the institute or society is of patriarchal or pontifical status and has members in more than one eparchy, the designation of representatives could be awkward since the designation is made with the approval of the eparchial bishop.

Although Ivan Žužek includes deacons in the list of participants in the patriarchal assembly, they are not included in the canon as one of the categories of representatives. See Ivan Žužek, "Un Codice per una 'varietas Ecclesiarum,'" in *Understanding the Code of Canons* (Rome: Pontificio Istituto Orientale, 1997) 255. Nevertheless, it is a *lacuna legis* that could be filled by the statutes.

Since no mention is made of territorial restrictions, the assembly is to be composed of representatives of the entire patriarchal church and not simply those within the patriarchal territory.

Representatives from other churches *sui iuris* can be invited to participate in the manner determined by the statutes (c. 143 §3). Representatives from non-Catholic churches or ecclesial communities can be invited to participate as observers (c. 143 §4).

The patriarchal assembly is a tool that could well serve the revitalization of these churches and is to be convoked at least every five years (c. 141) The patriarchal assembly is an ideal occasion to strengthen the bonds between the communities in the lands of origin and the “diaspora.”

Given that the effectiveness of the patriarchal assembly will depend greatly on its preparation, planning and implementation of the patriarchal assembly can be considered as an ongoing function requiring a permanent secretariat in the patriarchal curia.

3. Metropolitan Church

There are currently two Churches *sui iuris* that are of metropolitan status: the Ethiopian/Eritrean Church (225,000 faithful) and the Ruthenian Church (100,000 faithful). The governance of a metropolitan church *sui iuris* is articulated in canons 155-173.³⁷

³⁷See CS cc. 320-321. The predecessor of the *metropolitan church sui iuris* as articulated in canons 155-173 of the *Code of Canons* is the canonical figure of a metropolitan who is “emancipated” from the intermediate jurisdiction of a patriarch or major archbishop and is directly subject to Roman Pontiff, with special rights, obligations, powers and privileges not enjoyed by metropolitans subject to a patriarch or major archbishop. Such a metropolitan was assisted by a provincial synod (an assembly of bishops and other hierarchs of a province [CS c. 340 §2]). The purpose of the synod was to study those matters relative to fostering the faith, improvement of morals, correction of abuses, reconciliation of controversies, and the promotion of a unified discipline (CS c. 349). The president, residential bishops, auxiliary bishops, titular bishops, apostolic administrators, exarchs and administrators of vacant sees enjoyed a deliberative vote (CS 341 §1). This provincial synod was to be convoked by the metropolitan whenever he deemed it necessary with the consent of the bishops of the province, but at least every twenty years (c. 344). The president, with the consent of the members of the synod, prepared the agenda; a topic could be added by a

3.1. Council of Hierarchs

The metropolitan, appointed by the Roman Pontiff, is assisted by a *council of hierarchs*.³⁸ The council of hierarchs has an indirect role in the appointment of the metropolitan and bishops (c. 168); it can enact laws which require the intervention of the Apostolic See prior in order to be promulgated (c. 167 §2); the consent of the council of hierarchs is required for administrative acts entrusted to the superior authority of a Church *sui iuris* (c. 167 §4). Further, the council is to see that the pastoral needs of the faithful are provided for, to determine what is opportune to promote the growth of faith, to foster common pastoral work, to regulate morals and to promote the observance of the proper rite and ecclesiastical discipline (c. 169).

The title of the body (*consilium hierarcharum*) is problematic. The *Code of Canons* generally applies the title of “consilium to bodies which must be consulted for advice or consent (cf. *consilium a rebus oeconomicis* [c. 263], *consilium presbyterale* [c. 264], *consilia ad res pastorales et oeconomicas* [c. 294]). While the authority of the council of hierarchs is quite restricted, the term “council” would seem to diminish it further. The term “Hierarcharum” is imprecise since it can be applied to persons who are bishops and those not endowed with episcopal character (c. 984 §2) and participation in the council of hierarchs is restricted to bishops (“All and only the ordained bishops of the metropolitan Church *sui iuris*...” [c. 164 §1). A title such as *Synodus metropolitana Episcoporum* might have been more appropriate.

member of the synod with the approval of the president after having consulted the two senior bishops (CS c. 347 §§1-2). Decisions of the synod could not be promulgated until they had received confirmation of the Apostolic See (CS c. 350 §1).

The initial approach taken during the revision process was to describe the metropolitan and the ecclesiastical province is not subject to a patriarch or major archbishop (See *Nuntia* 19 [1984] 48, c. 131), but eventually the metropolitinate was configured as a Church *sui iuris* immediately subject to the Roman Pontiff.

³⁸It should be noted that *OE* n. 9b speaks of the patriarch with his synod of bishops as the superior instance of authority in the patriarchal church. In the case of the metropolitan Churches *sui iuris*, the council of hierarchs assist the metropolitan.

3.2. Convocation and Participation

The council of hierarchs is to be convened at least once a year or more often whenever special circumstances warrant it, a matter must be carried out which is reserved to it, or requires its approval (c. 170). All of the ordained bishops of the metropolitan Church *sui iuris* are to be convoked to the council (c. 164 §1).³⁹ All bishops who are legitimately convoked are obliged to attend, with the exception of those who are resigned (c. 165 §1). Common law attributes a deliberative vote only to eparchial bishops and coadjutor bishops. Particular law can accord the deliberative vote to auxiliary and resigned bishops (c. 164 §2).⁴⁰

3.2.1. Electoral Role

As mentioned above, the metropolitan is appointed by the Roman Pontiff (c. 155 §1). When the metropolitan see becomes vacant (c. 173 §1), the council of hierarchs submits a list of at least three suitable candidates to the Apostolic See (c. 168); without being restricted to the submitted list of candidates, the Roman Pontiff then makes the appointment. A similar procedure is to be observed in the appointment of bishops.

3.2.2. Legislative Role

The council of hierarchs is competent to enact laws and norms whenever common law so provides or remits a matter to the particular law of a Church *sui iuris* (c. 167 §1). However, before the law can be promulgated by the metropolitan, the metropolitan must have the written notification from the Apostolic See of the reception of the acts of the council.⁴¹

³⁹The exceptions are those who are physically or mentally incapacitated, schismatic, apostate or under excommunication (cf. cc. 953 §1; 1433-1434).

⁴⁰Compare with the arrangements in the synod of bishops which accords the deliberative vote to all the bishops, with the possibility that particular law can restrict the vote of bishops who are not eparchial bishops inside the territory of the patriarchal church except in the case of elections (c. 102 §2).

⁴¹It would seem that the metropolitan is obliged to promulgate legislation that has been enacted by the council and approved by the

3.2.3 Judicial Role

The council of hierarchs does not exercise a judicial role in the metropolitan Church *sui iuris*. Instead, it is the competence of the metropolitan to erect the metropolitan tribunal (c. 159, 3°) which functions as the tribunal of the eparchy of the metropolitan for first instance cases and the appellate tribunal for other cases adjudicated in the metropolitan Church (c. 1064 §1). The metropolitan designates, with the approval of the Apostolic See, another tribunal which is to function as the appellate tribunal for the first instances cases tried in the metropolitan tribunal (c. 1064 §2). The tribunal of the third instance is the Apostolic See (c. 1065), an arrangement exceptional to the general principle that the Eastern Catholic Churches are competent to adjudicate their own cases in all three instances.⁴²

3.2.4. Administrative Role

Generally the metropolitan exercises administrative authority in the metropolitan Church and the common law attributes certain administrative acts to him (e.g., c. 159). However, while the patriarch is competent to carry out certain administrative acts without the consent or counsel of either the synod of bishops or the permanent synod, in the case of the metropolitan Church, those administrative acts committed by common law to the superior administrative authority of a Church *sui iuris* can be carried out only with the consent of the council of hierarchs (cc. 167 §4; 642 §1 and 649).

The common law expressly mentions the required *consent of the council of hierarchs* in: the erection of a common seminary for several eparchies (c. 334 §1); the approval of liturgical texts with the prior review of the Apostolic See (c. 657 §1); the approval of translations of liturgical texts after sending a report to the Apostolic See (c. 657 §2); reservation of the faculty for the absolution of sins (c. 727); reception of an Eastern non-Catholic bishop into the Catholic Church (c. 898 §1).

Apostolic See: "Metropolitae est curare promulgationem legum..." (c. 167 §3) Compare with "Patriarchae competit promulgationem legum . . ." (c. 112 §1)

⁴²*Nuntia* 3 (1976) 23.

3.3. Metropolitan Assembly

In the case of the metropolitan Churches *sui iuris* an assembly is to be convoked at least every five years; those norms regarding the patriarchal assembly (cc. 140-145) are applicable (c. 172).

4. Eparchial Assembly

At the level of the individual eparchy, the *Code of Canons* provides for the periodic convocation of an *eparchial assembly* (*conventus eparchialis*⁴³), the first institution treated among the bodies that assist the eparchial bishop in governance (see cc. 235-242). The eparchial assembly is a consultative body comprised of the bishops, priests, deacons, religious and laity of an eparchy (and Catholics from other churches *sui iuris*), and even observers from other non-Catholic churches or ecclesial communities. The assembly is convened to reflect upon, discuss, and offer their advice to the eparchial bishop and offers the eparchial bishop a forum to present his initiatives and proposals.

Figures are not available as to how many eparchies have conducted eparchial assemblies. Since it is to be convoked only whenever the eparchial bishop deems it appropriate (c. 236), it will be an institution that may not be so quickly incorporated into the lives of Eastern Catholic churches.

4.1. Eparchial Pastoral Council

A standing body provided by the *Code of Canons* to assist the eparchial bishop in the governance of the eparchy is the pastoral council (cc. 272-275). Some might easily dismiss the pastoral council as being optional, but it would be more accurate to conceive of the eparchial bishop's discretion as *conditioned* optionality: If the circumstances warrant it, a pastoral council is to be established.

The pastoral council is a consultative body that is to advise the eparchial bishop regarding the pastoral needs of the eparchy (c. 272). It is a representative body composed of clerics, religious, lay persons, and even persons from other churches *sui iuris* (c. 273). It is convoked

⁴³In the Latin Church, the counterpart of the *conventus eparchialis* in the Latin church is the *synodus diocesana* (cf. CIC c. 460). In the CCEO, the use of the term *synod* is reserved to an assembly of bishops which collectively exercises a power of governance.

at the behest of the eparchial bishop (c. 275) and ceases on the occasion of the vacancy of the eparchy.

Figures are not available as to how many eparchies have such entities, but one does yet not encounter the institution with much frequency.

4.2. Assemblies of Hierarchs of Several Churches

Title IX of the *CCEO* is comprised of only one canon (c. 322) and is dedicated to the Assembly of Hierarchs of Several Churches (*Conventus Hierarcharum Plurium Ecclesiarum Sui Iuris*).⁴⁴ The assembly of hierarchs, created only with the permission of the Apostolic See, can include the Eastern Catholic, Latin Catholic and even, if the statutes permit, non-Catholic hierarchs. The purpose of the assembly is that by “sharing the insights of wisdom born of experience and by the exchange of views, the pooling of their resources is ratified for the common good of the Churches, so that unity of action is fostered, common works are facilitated, the good of religion is more readily promoted and ecclesiastical discipline is preserved with better effect” (§1).

The decisions of the assembly of hierarchs cannot impinge on the rite of each church *sui iuris* or the authority of the patriarchs, major archbishops, metropolitans, synods of bishops and councils of hierarchs. In order to acquire authority, a decision must have two-thirds approval of the members having a deliberative vote and the approval of the Apostolic See (§2). Any decision exceeding the competence of the assembly, even if given unanimous approval, must have the approval of the Roman Pontiff before it acquires the force of law (§3).

There are seven assemblies falling under the category of Assemblies of Hierarchs of Several Churches.⁴⁵ There has been some unofficial

⁴⁴The lack of literature on the Assembly of Hierarchs of Several Churches is indicative of the need for further study and reflection of this institution.

⁴⁵Four of the assemblies are designated as *assemblies*: the Assembly of the Catholic Hierarchy of Egypt; the Assembly of the Patriarchs and Catholic Bishops in Lebanon (Documentation from this body refers to the assembly as a “Conseil.”); Assembly of the Catholic Hierarchy in Syria;

discussion regarding the establishment of an assembly of Eastern Catholic Hierarchs of Eastern Europe.

Conclusion

Since the purpose of this study was to examine the salient points of synodal governance in the Eastern Catholic Churches, conclusions are minimal. This paper has demonstrated that patriarchal / synodal governance, an expression of the highest degree of ecclesial maturity, is not only a mode of governance of the Orthodox Churches, but a form of governance that has been incorporated into and has something to offer the Catholic Church. Today's ecumenical dialogues between the Orthodox and the Catholic Churches are obliged to focus on institutional structures. Hopefully, this study has pointed our possible paths.

Assembly of the Catholic Ordinaries of the Holy Land. Two assemblies are referred to as *conferences*: the Iranian Episcopal Conference and the Episcopal Conference of Turkey. One assembly is designated as the *Interritorial Reunion* of the Bishops of Iraq.