

## THE ROLE OF CONSULTATION IN A SYNODAL CHURCH

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### Abstract

Focusing on a term included in the theme of the 2023 Synod, “participation,” the presentation examines an institution already extant in the Eastern Catholic Churches, *consultation*. Beyond the narrow understanding of consultation for the purpose of consent or counsel, the consultation can also serve to coordinate and build consensus. The study examines the forms, requirements, and the role of consultation at the level of the Church *sui iuris* in the patriarchal, major archiepiscopal and metropolitan Churches.

**Key Words:** Eastern Churches; Canon Law; Synodality; Consultation; Participation; Patriarchal Church; Major Archiepiscopal Church; and Metropolitan Church.

### 1. Towards a Synodal Church

On 9 October 2021, Pope Francis initiated a process of consultation (possibly the broadest consultation in history) that will culminate with a convocation of the universal Synod of Bishops on the topic of synodality.<sup>1</sup> Characterized by the Pope as “an ecclesial event in which

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<sup>1</sup> On 9 October 2021, Pope Francis opened the first phase, the diocesan phase (October 2021 – April 2022). The plan is that this will be followed by the continental phase (September 2022 – March 2023). The universal phase will begin with the XVI Ordinary General Assembly of the Synod of Bishops, dedicated to the theme “For a Synodal Church: Communion, Participation, and Mission,” at the Vatican in October 2023. See the 9 October 2021 Discourse of Pope Francis “On the occasion of the Moment of Reflection for the Beginning of the Synodal Journey,” available online: <https://press.vatican.va>

the Holy Spirit is the protagonist," the event focuses on three key words: *communion, participation, and mission*.

This presentation will focus on the notion of *participation*, the involvement of all the baptized in the life of the Church.

Participation is a requirement of the faith received in baptism ... Consequently, all the baptized are called to take part in the Church's life and mission. Without real participation by the People of God, talk about communion risks remaining a devout wish. In this regard, we have taken some steps forward, but a certain difficulty remains and we must acknowledge the frustration and impatience felt by many pastoral workers, members of diocesan and parish consultative bodies and women, who frequently remain on the fringes. Enabling everyone to participate is an essential ecclesial duty! All the baptized, for baptism is our identity card.<sup>2</sup>

A real challenge in this entire initiative is for the lofty ideals to become real and concrete in the governance processes and institutions of the Church. "The Synodal Process will naturally call for a renewal of structures at various levels of the Church, in order to foster deeper communion, fuller participation, and more fruitful mission."<sup>3</sup>

In order to realize communion, participation and mission, the Church must restructure itself to create processes and institutions that will facilitate participation of the faithful: ". . . moving *not occasionally but structurally* towards a *synodal Church*, an open square where all can feel at home and participate."<sup>4</sup> True participation in the life of the

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vatican.va/content/salastampa/en/bollettino/pubblico/2021/10/09/211009a.html.

<sup>2</sup> 9 October 2021 Discourse of Pope Francis.

<sup>3</sup> Synod of Bishops, *Vademecum for the Synod on Synodality*, September 2021, 2.4.4, available online: <https://www.synod.va/content/dam/synod/document/common/vademecum/Vademecum-EN-A4.pdf>.

This statement is followed by the caveat that the renewal of structures is not the primary purpose of the synodal process:

At the same time, the experience of synodality should not focus first and foremost on structures, but on the experience of journeying together to discerning the path forward, inspired by the Holy Spirit. The conversion and renewal of structures will come about only through the on-going conversion and renewal of all the members of the Body of Christ. (ibid.)

<sup>4</sup> 9 October 2021 Discourse of Pope Francis.

Church does not mean simply executing the orders of superiors, but rather means a participation in the decision-making process.

This study will examine the notion of *consultation* as a facilitator of participation in the decision-making processes of the Church. *Consultation* can be defined as "the request by a decision-maker of an opinion from individuals or bodies for the purpose of consent, counsel, consensus or coordination."

We shall explore when consultation is required, its purposes and forms, and the consultative structures in Churches *sui iuris* and eparchies as articulated in the *Codex Canonum Ecclesiarum Orientalium*.<sup>5</sup> At various points, I shall offer points for consideration as to whether the current norms and structures are adequate or need re-consideration. But first, let us make a brief excursus on the ecclesial and hierarchical structuring of Eastern Catholic Churches.

### 1.1 Eastern Catholic Churches

In exercising the powers of governance, an Eastern Catholic eparchial bishop acts in a context different than that of a Latin diocesan bishop because of the differences in ecclesial and hierarchical structures.

The Catholic Church (or "Catholic Communion of Churches") is hierarchically organized. In the West, the ecclesial/hierarchical structure is two-tiered: the Supreme Authority and the diocesan bishop. In the East, the structure is three-tiered, with an intermediate ecclesial communion, the Church *sui iuris*,<sup>6</sup> which is headed by either a patriarch, a major archbishop, a metropolitan or another hierarch who collaborates with synods of bishops (in the case of the patriarch and major archbishop) or is assisted by councils of hierarchs (in the case of the metropolitan).

The Second Vatican Council's Decree on the Eastern Catholic Churches, *Orientalium Ecclesiarum*, portrays the patriarch and the synod of bishops as equals: "The patriarchs with their synods are the highest authority for all business of the patriarchate . . ." (OE 9);

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<sup>5</sup> *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (Città del Vaticano: Libreria Editrice Vaticana, 1990). The translation used here is based on *Code of Canons of the Eastern Churches. Latin English Edition. New English Translation* (Washington: CLSA, 2001).

<sup>6</sup> The Latin Church is also a Church *sui iuris*, but because the Bishop of Rome is the head of Latin Church (albeit lacking a title for the role) and the head of the universal Church, its intermediate role is not so evident.

references to the interaction between the patriarch and various auxiliary bodies in the form of consultation are numerous in the Eastern Code. In an Eastern Catholic Church *sui iuris*, the eparchial bishop participates in the election of the leadership and in the enactment of particular law for his Church. However, there is a distinction between the eparchial bishops constituted inside the territory of the patriarchal Church and those established outside that territory. Those established outside the territory, while part of the hierarchy of the Church *sui iuris*, are appointed by and are directly subject to the Roman Pontiff and are not subject to all particular laws enacted by the synod of bishops and promulgated by the patriarch (see CCEO cc. 78 §2, 102 §2, 150 §§1-2).

## 2. Consultation<sup>7</sup>

Synodality calls for a greater participation of all the faithful by virtue of their baptism in the life of the Church. *Consultation* is a process that can enhance the decision-making process. Some take a minimalistic view of the consultation process and simply construe it as a formality (i.e., obtain consent or hear counsel) to be fulfilled by a decision-maker who intends to place a certain juridic act.

A more beneficial approach to consultation is that it is a dynamic process of decision-making. A decision-maker seeking consent might hear the opinion of those consulted and possibly modify or even abandon the proposal. Those being consulted may have originally opposed (or supported) to the proposal may modify their position. Consultation is primarily an engagement by all the participants in the process *to listen*, an approach that will enhance the environment of decision-making in the Church.

### 2.1 Notion

In the exercise of the three powers of governance in the Church, there are cases in which an eparchial bishop is competent to decide a matter on his own.<sup>8</sup> However, there are numerous occasions in which good governance recommends or requires the participation of others (e.g., subordinates or peers or superiors) in the decision-making process,

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<sup>7</sup> For more information regarding the processes and structures involved in the decision-making process, see Sebastian S. Karambai, *Structures of Decision-Making in the Local Church*, 2<sup>nd</sup> ed. (Bangalore: Theological Publications in India, 2001).

<sup>8</sup> For example, the eparchial bishop is free to appoint a protosyncellus or syncellus (CCEO c. 247 §1).

i.e., consultation. This brief study will, for the most part, focus on consultation with subordinates or peers.

Consultation is founded on *communio* as an essential element of ecclesiology and has a long canonical tradition. The biblical roots of consultation can be found in *Acts* 15, the "council" of Jerusalem, which addressed the issue of whether gentile Christians ought to observe Mosaic Law. One notes that the event comprises two consultations: the Church of Antioch consulted the Christian elders in Jerusalem, who in turn consulted each other.

One finds examples of consultation in the First Council of Nicaea (325). Canon 4 treats the appointment of bishops, requiring the consent of the bishops of the province and the confirmation of the metropolitan bishop. Canon 5 requires that the bishops of each province respect the excommunication of clerics or laity imposed by a bishop, but also calls for regular inquiries to be conducted by the bishops of the province to ascertain if the excommunications are reasonable.

One form of consultation with which we are most familiar is consultation for the purpose of obtaining *consent* or *counsel* in order to place a juridic act.<sup>9</sup> This form of consultation creates a protocol of accountability by moderating the authority of the decision-maker in placing a specific juridic act.

*Accountability* is defined as the "state or quality of being answerable to somebody for something; responsibility."<sup>10</sup> The terms *accountability* and *responsibility* are almost interchangeable and involve the notion of being duty-bound and answerable to others. To create an atmosphere of accountability requires structures and processes in which persons consider themselves as responsible not only to superiors, but also to the people of God whom they serve.

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<sup>9</sup> It seems that consultation for the purpose of consent or counsel is a twentieth-century innovation as an articulated canonical institution. The earliest source cited for the 1917 *CIC* c. 105 is S. C. Consist. Decree *Maxima curet*, 20 August 1910 (*ASS* 2 [1910] 640). The earliest source of 1983 *CIC* c. 127 is 1917 *CIC* c. 105. The 1957 *Cleri sanctitati* c. 35 indicates no sources (but obviously draws from 1917 *CIC* c. 105); CCEO c. 934 cites CS c. 35 as its source.

<sup>10</sup> *Black's Law Dictionary*, s.v., *accountability*. *Responsibility* is defined in this same source as the "quality, state or condition of being duty-bound, answerable, or accountable," and can be construed as a synonym.

Consultation for the purpose of consent or counsel holds the decision-maker accountable, by requiring the participation of others in the decision-making process and can ultimately moderate behavior. Canon 934 (see CIC c. 127) delineates the requirements of this process.<sup>11</sup>

In those actions requiring *consent*, the decision-maker needs the prior approval of determined individuals or groups in order to place the act according to the law.<sup>12</sup> When consent is required, those consulted are sharing in the responsibility of the decision since the expression of consent is a declaration of the will and is itself a juridic act.<sup>13</sup> Canon 110 §4 notes that the synod of bishops of the patriarchal Church is participating in an administrative act when it gives consent to a proposal of the patriarch.<sup>14</sup>

To require *counsel* means that the decision-maker is obliged to hear<sup>15</sup> the opinions of others before making a decision. The requirement of counsel is somewhat underrated as the decision-maker is considered free in making his/her decision (although this is not precisely true).<sup>16</sup>

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<sup>11</sup> See Salvatore Berlingò, “*Consensus, consilium* (cc. 127 C.I.C./934 C.C.E.O.) e l’esercizio della potestà ecclesiastica,” *Ius Canonicum* 38 (1998) 97-99. See also Jobe Abbass, “The Missing Link in the History of the CCEO Canons,” *The Jurist* 71 (2011) 192-197.

<sup>12</sup> “. . . una persona, para proceder a un acto conforme a dereche, necesita la aprobación praevia de otra persona.” See Ulrich Rhode, “Consentimento para actos de la autoridad,” in Javier Otaduy, ed., *Diccionario general de derecho canónico* (Navarra: Universidad de Navarra, 2012) 2:653.

<sup>13</sup> “Giving counsel is not an expression of the will or positing a juridic act, but rather giving an opinion” – John Huels, “Title XIX. Persons and Juridic Acts,” in John D. Faris and Jobe Abbass, eds., *A Practical Commentary to the Code of Canons of the Eastern Churches* (Montréal: Librairie Wilson & Lafleur Inc., 2019) (Hereafter Faris and Abbass, *Commentary*) 2:1756.

<sup>14</sup> “The synod of bishops of the patriarchal Church is not competent for administrative actions unless the patriarch determines otherwise for certain actions or common law reserves some actions to the synod, with due regard for the canons which require the consent of the synod of bishops of the patriarchal Church.”

<sup>15</sup> The requirement of counsel is often expressed in the Eastern Code through use of the term “to hear” (*audire*). See, for example, CCEO c.. 160, 182 §1, 408 §1.

<sup>16</sup> Another reason for a lack of appreciation of a consultative role is that the CCEO describes certain bodies or members of those bodies as “only

The counsel of others, however, enhances the decision-making process. The mere exchange of opinion can modify the opinion not only of the decision-maker, but also of those who are offering their counsel. If the argument of the decision-maker is convincing, detractors may be won over and supporters reinforced.

The consultation of a superior is of greater weight, even when only counsel is required, precisely because it is the consultation of a superior authority. For example, the Eastern Code calls for consultation for the purpose of counsel with the Apostolic See for a variety of issues.<sup>17</sup> The counsel given has greater weight because it is given by the Supreme Authority of the Church. The decision-maker would need a grave reason to act otherwise. If a decision contrary to the counsel was taken because of an undisclosed reason, why was it not disclosed?

## 2.2 Terminology

The Eastern Code employs a variety of terms to indicate the purpose of consultation. The term "consent" (*consensus*) is only one term used to indicate the approval on the part of another party or body. In various contexts, the Eastern Code uses other terms such as "assent" (*assensus*), "approval" (*approbatio*), "permission" (*licentia*), or "confirmation" (*confirmatio*).

The requirement for counsel is indicated with the use of the words "to hear" (*audire*), "to consult" (*consulere*), "counsel" (*consilium*), or "review" (*recognitio*).<sup>18</sup>

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consultative" (eparchial assembly [c. 241], eparchial finance council [c. 263 §4], eparchial pastoral council [c. 273 §1]).

<sup>17</sup> There are numerous examples when a bishop, either individually or as a member of the synod of bishops of the patriarchal Church, consults superiors: to seek votes by letter in the election of bishops in patriarchal Churches (CCEO c. 186 §1); to erect an institute of consecrated life (CCEO cc. 435 §1, 506 §§1-2, 556, 566); to erect a Catholic university (CCEO c. 642 §1); to establish diriment impediments for marriage by particular law (CCEO c. 792); in uncertain and complicated cases regarding the presumed death of a spouse (CCEO c. 1383 §3).

<sup>18</sup> *Recognitio* is the analysis of an inferior authority by experts in order to ensure that the acts are not erroneous or inopportune. By its very nature; the lack of a *recognitio* does not mean that the act of the inferior was lack any value. in such a way that lacking it, the act of the inferior authority would lack any value. Julio Manzanares Marijuán, "Recognitio" in Javier Otaduy, *et*

### 3. Requirements for Consultation

There are occasions wherein the eparchial bishop is free to exercise the powers of governance on his own. For example, the eparchial bishop can freely appoint the protosyncellus to office or remove him from it (CCEO c. 247 §1).

On occasions, the Eastern Code declares that consultation is *optional*: Members of the council of hierarchs can consult with presbyters and other Christian faithful regarding the needs of the Church and qualifications of episcopal candidates (CCEO c. 168). The eparchial bishop is to convoke an eparchial assembly whenever he deems it beneficial and after having consulted the presbyteral council (CCEO c. 236).

Consultation can also be *recommended*: The eparchial bishop is urged to consult with the pastor (but is free not to do so) regarding the appointment of a parochial vicar to the parish (c. 301 §3). Consultation among hierarchs who exercise power in the same territory is recommended to promote a unity of action and the good of religion, to protect ecclesiastical discipline and to foster the unity of Christians (CCEO cc. 84 §1, 99 §1 and 202).

There are situations in which consultation is *obligatory*: In order to enter into agreements with a civil authority, the patriarch must have the consent of the synod of bishops and the assent of the Roman Pontiff (c. 98). In order to reduce a church to profane but not sordid use, the eparchial bishop must consult with the presbyteral council and have the consent of those who legitimately claim rights over the church (CCEO c. 873 §2).

### 4. Role of the Laity

A reflection on consultation requires at least some comment on the persons who are to be consulted. In light of conciliar renewal, the laity are to be given an expanded role in the decision-making process of the Church. CCEO canon 15 §2 states that it is the right of all the Christian faithful "to make known their needs, especially their spiritual needs, and their desires to the pastors of the Church." Such an expression of needs can influence decisions that are taken.

All the Christian faithful, in keeping with their knowledge, competence and position, have the right and at times even the duty

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*al.* (eds.), *Diccionario general de derecho canónico*, 1<sup>st</sup> edition (Navarra: Universidad de Navarra, 2012) 6:753-754.



to manifest their views regarding the good of the Church to the pastors of the Church and to other Christian faithful, "with due regard for the integrity of faith and morals and respect toward the same pastors, with consideration for the common benefit and the dignity of persons" (CCEO c. 15 §3).

The involvement of lay persons in the consultation process is expressly encouraged in canon 408 §1:

Lay persons who excel in the necessary knowledge, experience, and integrity are qualified to be heard as experts or consultors by ecclesiastical authorities, whether individually or as members of various councils and assemblies, be they parochial, eparchial, or patriarchal.

## **5. Forms of Consultation**

It is not possible or necessary to review all the circumstances involving consultation that are indicated in the Eastern Code. However, it will be helpful if we cite a few examples of the different forms of consultation that are foreseen in the Eastern Code.

### **5.1 Consultation with Subordinates<sup>19</sup>**

#### **a. Consent**

There are cases for which the Eastern Code requires the eparchial bishop or administrator to obtain the consent of a body or an individual in order to act. For example: After consulting with the presbyteral council, the eparchial bishop needs the consent of the major superior of a religious institute or society of the common life in the manner of religious in order to create a parish in the church of the same institute or society (CCEO c. 282 §1). An eparchial bishop cannot appoint a pastor for a determined period of time in a special case without the consent of the college of consultors (CCEO c. 284 §3, 3°). The consent of the college of consultors is required in certain cases for the alienation of the stable patrimony of the eparchy (c. 1036 §1). An eparchial administrator cannot remove a chancellor (c. 255) or grant a dimissorial letter (c. 750 §1, 2°) without the consent of the college of consultors.

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<sup>19</sup> This term is not entirely satisfactory but is used in this study for the lack of a better term.

### **b. Counsel**

The eparchial bishop is to consult with the college of consultors prior to appointing or removing the eparchial finance office (c. 262 §§1-2) or in order to appoint someone to the finance council (c. 263 §1).

The eparchial bishop is to confer a parish on the presbyter whom he considers most suitable and should make the judgment after consulting with the protopresbyter and conducting appropriate inquiries, which can include if he considers it opportune, other Christian faithful and clerics (c. 285 §3). This consultation serves not only to assist the eparchial bishop in making the best selection, but also gives him the opportunity to share his own concerns with others regarding the needs of the parish and the suitability of candidates. In this way, consultation can not only serve accountability but also promote *consensus*, that is, a general shared agreement.

Consultation has a place in the administration of penal law in an eparchy. In order for a hierarch to abstain from a penal process or even abstain from a penalty, he must seek the counsel of the promoter of justice (c. 1403 §1).

### **c. Procedures**

In its articulation of the procedures and requirements for consultation with consultative bodies or individuals, canon 934 uses the term “authority” in place of the term “superior” that is found in CIC c. 127. This change is appropriate since the decision-maker may not be a canonical superior of the body or individual being consulted.<sup>20</sup>

The canon delineates the procedure and requirements for the consultation with how to conduct consultation with a group (§1) or with individuals (§2);<sup>21</sup> the obligation on the part of the authority to provide the necessary information and to ensure a free expression of opinion (§3); the obligation on the part of those consulted to offer an opinion sincerely and to observe secrecy, possibly obliged by the authority (§4). The eparchial bishop cannot dispense from this canon since it is procedural (CCEO c. 1537).

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<sup>20</sup> John Huels in Faris and Abbass, *Commentary*, 2:1756-1757.

<sup>21</sup> There are occasions when the Eastern Code requires the consultation of individuals (curial bishops) or, if they do not exist, a group (permanent synod). See CCEO cc. 220, 3° and 232 §3.

When the eparchial bishop is required to consult for the purpose of consent or counsel, CCEO c. 934 §1<sup>22</sup> requires that the group be convoked according to the norm of CCEO c. 948,<sup>23</sup> which treats the manner, time and place of convocation (§1), the effects of overlooking someone (§2) and the requirement of a quorum of two-thirds of the members of the group for validity (§3).<sup>24</sup> Particular law can depart from the requirement of convocation when the consultation is for counsel.

CCEO c. 934 §2<sup>25</sup> states that if consent or counsel is required to place a juridic act, failure to seek the consent or counsel renders the act invalid. When consent is required of one or several individuals,<sup>26</sup> each must consent in order for the authority to act validly (1°). If counsel is required, for validity all must be consulted.<sup>27</sup>

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<sup>22</sup> "If it is established by law that to place a juridical act an authority needs the consent or counsel of some group of persons, the group must be convoked in accord with the norm of CCEO c. 948, unless, when it concerns seeking counsel only, particular law provides otherwise for cases stated by that law. For such a juridic act to be valid, however, it is required that the consent of an absolute majority of those present be obtained or that the counsel of all be sought, with due regard for §2, n. 3."

<sup>23</sup> The Eastern Code, with its reference to c. 948 for positing a juridic act and not to c. 924, is indicating that it is a juridic act, but not a collegial act.

<sup>24</sup> Paragraph 3 is somewhat imprecise because persons might have been overlooked but gotten word of the convocation and are in fact present. It is not so much the failure to convoke someone to the meeting, but the effect of that failure - their absence - that could possibly invalidate the act.

<sup>25</sup> "If it is established by law that, to place a juridic act, an authority needs the consent or counsel of certain persons as individuals: 1° if consent is required, the juridic act of an authority who does not seek the consent of those persons or who acts contrary to their opinion or the opinion of any of them is invalid; 2° if counsel is required, the juridic act of an authority who does not consult those persons is invalid; 3° although in no way obliged to accept their counsel, even if unanimous, an authority is nonetheless not to depart from it, especially if unanimous, without a reason that is considered to be overriding in the authority's judgment."

<sup>26</sup> The consent of all eparchial bishops concerned is required for the constitution of a common tribunal (CCEO c. 1068 §§1 and 3).

<sup>27</sup> Bishops of the patriarchal curia must be consulted for their counsel regarding the appointment of an eparchial administrator (CCEO c. 220, 3°) or an eparchial finance officer during a vacancy of the see (CCEO c. 232 §3).

The authority is strongly encouraged to accept the opinion of the individuals, especially if it is unanimous, unless there is an overriding factor that would warrant acting otherwise.

**FOR CONSIDERATION**

There is no requirement that the decision-maker provides a reason to those consulted for acting contrary to their opinion. Granted that there can be cases in which disclosure would be imprudent, the law could urge the decision-maker to do so when lacking a serious reason not to do so.

CCEO c. 934 §3<sup>28</sup> creates two obligations on the part of the authority:

1. The authority is to provide those whose consent or counsel is required with “the necessary information.” The canon does not make any reference to invalidity, but one could argue that if the authority failed to provide all the information necessary, there was no true consultation and therefore the act would be invalid.
2. The second obligation is for the authority to ensure that those consulted are free to give an expression of their opinion. If that freedom is impeded in any way, the act is invalid (cf. CCEO cc. 932 §2, 952, 954, 1°). If those consulted are not free to express their opinion, the consultation did not take place, thereby invalidating the action of the authority.

CCEO c. 934 §4<sup>29</sup> places obligations on the part of those consulted to provide their sincere opinion and to maintain secrecy, which can be insisted upon by the authority.

**FOR CONSIDERATION**

There should be a provision that persons who have a personal interest in a matter ought to recuse themselves from the consultation. If it is a case of consultation with a group, the members can accept or reject the recusal. In the case of consultation with an individual, the

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<sup>28</sup> “An authority that needs consent or counsel must provide those whose consent or counsel is required with the necessary information and ensure in every way their free expression of opinion.”

<sup>29</sup> “All those whose consent or counsel is required are obliged to offer their opinion sincerely and to maintain secrecy; moreover, the authority can insist upon this obligation.”

authority can decide and inform the interested party of the disqualification in writing.<sup>30</sup>

Especially in cases for the purpose of obtaining consent, it would be beneficial if the final balloting be secret.

Secrecy can be necessary to protect reputations and to create an atmosphere for a free exchange of opinions. It can also be a screen to protect the authority, especially if the counsel given was contrary to the decision taken.

Written records should be maintained to memorialize the consent or counsel given.

## 5.2 Consultation with Peers

The consultation processes treated in canon 934 involve a decision-maker consulting with subordinates. The Eastern Code also calls for consultation with peers.<sup>31</sup>

### a. Consent

The consent of the eparchial bishops involved is needed for the constitution of a tribunal of first instance for several eparchies (c. 1067 §§1 and 4), and the consent of the relevant eparchial bishops of several Churches *sui iuris* is needed for the constitution of a common tribunal (CCEO c. 1068 §§1 and 3).

### b. Coordination

Consultation can take the form of a *sharing of insights and an exchange of opinions among individuals* for the purpose of a united voice and coordinated apostolate. In those places where several patriarchs exercise power recognized or conceded to them by personal statutes, the patriarchs (or other hierarchs, if no patriarch of a Church *sui iuris* is in the locale) should act in matters of greater importance only after consulting with one another (CCEO c. 99 §2).

The remission of a penalty can also involve consultation: A local hierarch can remit the penalty of a resident in his eparchy after having consulted with the hierarch who imposed the penalty

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<sup>30</sup> At the level of the patriarchal Church, the Eastern Code takes into account that a bishop who has a personal interest in a matter enjoys the right to address the permanent synod, but is *ipso iure* substituted by another bishop in the permanent synod (c. 116 §3).

<sup>31</sup> Consultation with superiors, generally construed as permission, is not included in this study.

(c. 1420, 1° and 2°). It would be contrary to the norms of justice to remit a penalty that has been legitimately imposed without at least consultation with the hierarch who imposed it.

The *assembly of hierarchs of several Churches sui iuris* (which can include eparchial bishops) institutionalizes hierarchical consultation and serves as a forum for an exchange of information and opinions (CCEO c. 322).

One finds a requirement to consult with non-Catholics: Particular law regarding *communicatio in sacris* can be enacted only after consultation with the local competent authority of the non-Catholic Church or ecclesial community concerned (CCEO c. 671 §5).

### c. Consensus

One of the characteristics of a synodal Church is that it is “the People of God in dialogue.” At times, we will not be able to reach an agreement on a particular issue (hence, the need to agree to disagree). Nevertheless, as we engage in the consultative process, our goal must be that of consensus. Too often the process of consultation is constrained to the decision-maker expressing his/her opinion followed by a response by the group or individuals. This is a limited and static view of consultation. Instead, the consultation process should be dynamic, in that all the participants (decision-makers and those consulted) are open to listen and to revisit their own opinions. The decision-maker, after hearing others, may modify or even abandon the original proposal. Those being consulted might change their opinions after hearing the opinions of others. Consultation, especially but not only in the context of the assembly of hierarchs of several Churches *sui iuris*, should not be a series of disjointed expressions of opinion, but a dialogue, especially an engagement to listen.

### 5.3 Consultation with Superiors

Consultation with a superior authority for the purpose of consent is commonly construed as “permission,” that is, the requirement that a subordinate obtain the consent of a superior in order to act. An expansive understanding of consultation allows for a greater appreciation of the place of permission in the governance of the Church. Every request for permission is fundamentally a participation of another, in this case, a superior, in a decision. The one who wants to act declares his or her intention and perhaps

provides reasons in support of the action. The concession or denial of permission on the part of the superior then allows the person to act.

Consultation with a superior authority for the purpose counsel ("only consultation" in common parlance) is a different dynamic. The process is the same except that the response of the superior is not canonically determinative, that is, the decision maker is free to decide otherwise.

## 6. Patriarchal Structures for Consultation

As a general approach, CCEO c. 82 §3 urges the patriarch to hear the permanent synod, the synod of bishops of the patriarchal Church or even the patriarchal assembly in matter that concern the entire Church or more serious affairs. Further, the Eastern Code indicates specifically instances when the patriarch is to consult a body or individual in his patriarchal Church for the purpose of consent or counsel. Before examining the consultative arrangements and bodies inside the patriarchal Church, let us briefly look at how the Eastern Code provides for consultation between the patriarch and the Roman Pontiff or the Apostolic See.

### 6.1 Superior Authority<sup>32</sup>

The Eastern Catholic Churches *Sui Iuris*, as the generic name implies, enjoy a certain degree of self-governing authority (see CCEO c. 27). This does not mean that they are absolutely autonomous vis-à-vis the supreme authority of the Church. Throughout the Code, there are situations that require they must consult with the Roman Pontiff or the Apostolic See for the purpose of *consent*<sup>33</sup> or *counsel*.

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<sup>32</sup> By "superior authority" is intended the Roman Pontiff or a dicastery of the Apostolic See. In the case of the Eastern Catholic Churches, the Dicastery for the Eastern Churches plays a major role. However, the dicasteries for the Doctrine on the faith, the Causes of the Saints, Legislative texts, the Apostolic Penitentiary, the Apostolic Signatura, and the Roman Rota retain their specific and exclusive competence. In certain matters involving the Latin Church, the Dicastery will collaborate with the appropriate dicastery. The Dicastery for the Eastern Churches will also collaborate when appropriate with the dicasteries for Promoting Christian Unity, Interreligious Dialogue, and Culture and Education. See Francis, Apostolic Constitution *Predicate Evangelium*, 19 March 2022, *L'Osservatore Romano* 162 (31 March 2022) i-xii, nn. 84 §§2-3 and 87.

<sup>33</sup> The Eastern Code uses various terms to indicate the consent of the superior authority. See above "Terminology."

### a. Consent

There are a variety of administrative matters on the part of the patriarch that require the approval of the Apostolic See. For example, suppression of a congregation with the consent of the permanent synod (CCEO c. 507 §2); only the Apostolic See or the patriarch with the consent of the permanent synod is competent to alienate or perpetually transfer well-known relics, icons, or images (CCEO c. 888 §2); the patriarch must have the assent of the patriarch in order to enter into a civil agreement with a civil authority and cannot put these same agreements into effect without the approval of the Roman Pontiff (CCEO c. 98)<sup>34</sup>; the exercise of the power governance of a non-Catholic bishop entering into full communion with the Catholic Church must have the assent of the Roman Pontiff (CCEO c. 899).

Before a man can be ordained a bishop, the candidate must receive the assent of the Roman Pontiff in his capacity as head of the College of Bishops (CCEO cc. 49 and 182 §§2-3).

#### FOR CONSIDERATION

The requirement of pontifical assent for episcopal candidates has not been much criticized by Catholic canonists, who accede to it in consideration of the role of the Roman Pontiff as head of the College of Bishops. One might speculate the requirement might not receive such sanguine reception in a re-united Church from former Orthodox.

### b. Counsel

The Apostolic See must be consulted before the patriarch can determine that the synod of bishops cannot be convened and see the votes of the bishops by letter (CCEO c. 186 §1).

In order to erect a Catholic university, the patriarch with the consent of the synod of bishops must consult with the Apostolic See for the purpose of counsel (CCEO cc. 642 and 649).

Canon 110 §2 indicates that the synod of bishops is exclusively competent legislate for the entire patriarchal Church. CCEO c. 150 §2 states that liturgical laws enacted by the synod and promulgated by the patriarch have the force of law everywhere. While the arrangement seems consistent with the *sui iuris* status, CCEO c. 657 §1

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<sup>34</sup> This arrangement might appear to be an excessive disregard for subsidiarity, but the required approval of an authority outside the local civil authority can safeguard the freedom of the Church.



requires that the approval of all liturgical texts must be preceded by a review (*recognition*) of the Apostolic See. In consideration of the juridic nature of *recognitio*, this matter is placed under counsel.

This requirement to seek the counsel of a superior differs with the requirement of seeking the counsel of a subordinate authority. A patriarch is required to consult with the interested eparchial bishop before committing to a cleric a function in service to the entire patriarchal Church (CCEO c. 89 §2; see also c. 114 §2) or after having consulted with an eparchial bishop suppress a monastery of eparchial right (CCEO c. 438 §1). In these cases, the patriarch may act in a manner different—even directly opposed—to the counsel of the eparchial bishop if there is an overriding reason in the judgment of the patriarch. The patriarch is not obliged to communicate this reason to the eparchial bishop, who may not even know it. In the case of obligation of the patriarch to consult with the Apostolic See, it is incomprehensible—albeit not impossible—that the patriarch would act contrary to the counsel of the Apostolic See. For example, if the patriarch wants to create an eparchy and has the consent of the synod of bishops, but the Apostolic See counsels him that it is inopportune, what would induce the patriarch to proceed with his plan?

### c. Coordination

The synod of bishops of the patriarchal Church is competent to establish a diriment impediment to marriage for a most grave cause but must consult with the eparchial bishops of other Churches *sui iuris* and the Apostolic See (CCEO c. 792). This consultation can contribute to consistency in Catholic marriage discipline in a given region.

## 6.2 Synod of Bishops

Inasmuch as the Eastern Catholic patriarchal Churches have both the patriarch and the synod of bishops as the superior instances of authority (see OE 9), it is necessary to examine both institutions *qua* decision maker and to ascertain the role that consultation has in the process. Generally speaking the synod of bishops is exclusively competent for legislative acts (CCEO c. 110 §1)<sup>35</sup> and the exercise of judicial authority (c. 110 §2). The patriarch and the synod of bishops collaborate in the election of ecclesial leadership (CCEO c. 110 §3).

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<sup>35</sup> While the synod of bishops enacts the legislation, the competence to promulgate the laws belongs to the patriarch (CCEO c. 112 §1).

### **a. Consent**

The Eastern Code determines that the patriarch is solely competent for administrative acts.<sup>36</sup> It is to be noted that when the synod of bishops of the patriarchal Church is required to give its consent to an act, canon law considers the synod as carrying out an administrative act.<sup>37</sup> With both the patriarch and the synod functioning as decision-makers, consultation is a form of collaboration. The general approach of the Eastern Code is that the patriarch must consult with the synod bishops for the purpose of consent in those matters of greater importance, e.g., the erection, alteration, or suppression of an eparchy (c. 85 §1); the erection of a seminary common to several eparchies (CCEO c. 334 1); the erection of a Catholic or ecclesiastical university (CCEO c. 642 §2); the approval of liturgical texts and their translations (CCEO c. 657 §§1-2).

### **b. Consultation**

Perhaps because of the presumed regular interaction between the patriarch and the synod, there are no requirements in the Eastern Code for the patriarch to consult with the synod of bishops beyond the general recommendation of CCEO c. 82 §3.

### **6.3 Permanent Synod<sup>38</sup>**

The permanent synod comprises the patriarch and four bishops (CCEO c. 115 §1) and serves as a kind of “executive committee” of the synod of bishops. It retains its role in the consultation process even if the synod of bishops is in session unless it concedes that role to the synod of bishops (CCEO c. 119).

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<sup>36</sup> CCEO c. 110 §4 approaches the matter from the perspective of the synod of bishops of the patriarchal Church, which it determines as generally incompetent of administrative acts unless the patriarch determines otherwise or common law reserves some acts to it.

<sup>37</sup> “The synod of bishops of the patriarchal Church is not competent for administrative acts . . . with due regard for the canons that require the consent of the synod of bishops of the patriarchal Church.” CCEO c. 110 §4.

<sup>38</sup> The synod of bishops of a patriarchal Church may determine that it is impossible to constitute a permanent synod. This does not mean that the consultation is no longer required. In such situation, the synod of bishops is to inform the Apostolic See and to elect two bishops, one of whom is to be an eparchial bishop, who along with the patriarch take the place of the permanent situation for as long as the situation lasts (CCEO c. 121).

**a. Consent**

Examples of administrative acts of the patriarch require the consent of the permanent synod are: erection, modification or suppression of an exarchy (CCEO c. 85 §3); exemption of juridic persons or places from the power of the eparchial bishop (c. 90); appointment of a patriarchal finance officer (c. 122 §1) or removal in danger of delay (CCEO c. 122 §2).

**b. Counsel**

There are occasions when the patriarch must consult the permanent synod for the purpose of counsel. For example, warning an eparchial bishop for a grave transgression (CCEO c. 95 §2); interpretation of the law of the synod of bishops by the patriarch (CCEO c. 112 §2); determination of the rights and obligations of a coadjutor bishop constituted by the patriarch (CCEO c. 213 §2); suppression of a juridic person of erected by the patriarch (CCEO c. 928).

**6.4 Patriarchal Assembly**

The patriarchal assembly, a consultative group of the entire patriarchal Church, is to assist the patriarch and the synod of bishops in dealing with matters of greater importance, especially in the forms and methods of the apostolate and ecclesiastical discipline (CCEO c. 140). It is to be convoked by the patriarch every five year but is suspended if the patriarchal see becomes vacant (CCEO c. 142). Eparchial bishops and other local hierarchs, the leadership of religious institutes, rectors of Catholic and ecclesiastical universities, deans of theology and canon law, rectors of major seminaries, presbyters, religious and lay persons designated in a manner determined by the eparchial bishop and, in the case of religious, the consent of the competent superior (CCEO c. 143 §1; see also c. 408 §1). Persons from other Churches *sui iuris* can be invited to participate according to the norm of the statutes (CCEO c. 143 §3). Baptized non-Catholics can be invited as observers (CCEO c. 143 §4).

**FOR CONSIDERATION**

The categories of eparchial representatives do not include deacons. The text might be improved with the replacement of "presbyters" with "clerics." Another issue that could be addressed by the statutes is representation of persons who are possibly excluded by CCEO c. 408 §1 and are marginalized in the life of the Church

Without delineating specific matters, the Eastern Code states that the patriarch is not to fail to hear the counsel of the patriarchal assembly in matters that affect the entire patriarchal Church or treat more serious matters (CCEO c. 82 §3).

### **6.5 Bishops of the Patriarchal Curia**

The patriarch can have bishops (no more than three) to collaborate with him in the patriarchal curia (CCEO c. 87). There are occasions in which the patriarch is obliged to consult with these bishops. For example, the patriarch can reserve to himself a matter that affects several eparchies and can affect the civil authorities but must consult with the bishops of the patriarchal curia if the matter does not permit convening the permanent synod (CCEO c. 100). An example of required consultation with the bishops of the patriarchal curia is the patriarchal appointment of an eparchial administrator (CCEO c. 220, 3°).

### **6.6 Metropolitan Synods**

An ignored entity in the patriarchal/major archiepiscopal Churches is the metropolitan synod (CCEO c. 133 §1, 2°). Perhaps one reason for the neglect of this governance structure is that none of the Eastern Catholic patriarchal Churches have provincial structures (although some might benefit from them). Metropolitan/provincial structures are currently found in certain major archiepiscopal Churches. The metropolitan synods are to be convoked at periods determined by the synod of bishops, but presidency including the preparation of an agenda are the competence of the metropolitan (CCEO c. 133 §1, 2°). The metropolitan synods can facilitate coordination and cooperation among the eparchial bishop with a focus on certain issues and circumstances that may not concern the entire patriarchal/major archiepiscopal Church.

#### **FOR CONSIDERATION**

Some of the patriarchal Churches with significant numbers of faithful outside the historical territory may benefit from a metropolitan/provincial structure to coordinate liturgical and pastoral life.

### **7. Metropolitan Churches *Sui Iuris***

The superior governance structures of the metropolitan Church *sui iuris* differ from those of the patriarchal Church. The metropolitan Church is presided over by a metropolitan who is assisted by a

council of hierarchs (CCEO c. 155 §1). Note that the metropolitan and the council of hierarchs do not share in the responsibility of the governance of the metropolitan Church: the metropolitan is *assisted by* the council of hierarchs. Compare this with the description of the governance structures of the patriarchal/major archiepiscopal Churches as formulated by *Orientalium Ecclesiarum* n. 9: "The patriarchs with their synods are the highest authority for all business of the patriarchate . . ." For this reason, Title VI, which treats metropolitan Churches *sui iuris* does not have a counterpart to CCEO c. 110, which allocates the various powers of governance. Some might say that the Legislator constructed too great a distinction between the synod of bishops and the council of hierarchs, resulting in a significantly diminished role for the latter. Even the use of the term "Council" gives the impression that it is a consultative body, similar to a finance council or presbyteral council.<sup>39</sup>

The metropolitan cannot perform those administrative acts committed to the superior administrative authority of a Church *sui iuris* without the consent of the council of hierarchs (CCEO c. 167 §4). There are other specific instances in which the metropolitan is required to have the consent of the council of hierarchs: the erection of a seminary common to several eparchies (CCEO c. 334 §1); the approval of liturgical texts and their translations (CCEO c. 657 §2); the reservation of the faculty to absolve sins (CCEO c. 727); the reception of an Eastern Non-Catholic bishop into the Catholic Church (CCEO c. 898 §1).

The consent of two senior eparchial bishops in a metropolitan Church *sui iuris* is required for the suppression of non-pontifical associations of the Christian faithful by the metropolitan (CCEO c. 583 §2, 1°).

The canons on metropolitan Churches *sui iuris* include a canon that would be beneficial for the canons on the patriarchal Churches. CCEO c. 160 urges mutual consultation on the part of the metropolitan and eparchial bishops: "In extraordinary matters or those entailing special difficulty, the eparchial bishops are not to fail to hear the metropolitan, not the metropolitan the eparchial bishops."

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<sup>39</sup> See John Paul Kimes, in Faris and Abbass, *Commentary*, 1:398, fn. 4.

In a manner similar to the patriarchal assembly (CCEO cc. 140-145), a metropolitan assembly is to be convoked every five years. CCEO c. 172 applies the power of the patriarch to the metropolitan, but it should be noted that the actions, which are administrative, must have the consent of the council of bishops according to CCEO c. 167 §4.

### **Concluding Remarks**

The purpose of this study has been to examine one facet of Church governance, consultation, in order to explore possibilities for greater participation in the decision-making process. At first glance, one notes that there are numerous procedures and bodies already in place to facilitate the consultation process, but they are used unevenly according to the leadership style of the eparchial bishop.

Through our examination of the various forms that consultation takes, we can see that it already serves purposes beyond the generally-known ones of *consent* and *counsel*. Consultation can also serve to *coordinate* efforts and policies for the common good and to build *consensus*.

Our examination of the bodies involved in consultation has identified certain weaknesses that can be improved. At times, consultative bodies that are generally used for counsel could occasionally be endowed with deliberative authority, with the eparchial bishop ratifying the decision.

A caveat: Eastern Catholic bishops minister in a variety of circumstances, including regions where Christians are the minority and are in some cases persecuted. One approach does not fit all. The Eastern Code itself is often restricted to general principles because an attempt to impose a uniform system of governance does a great injustice to the diversity within the Catholic Communion of Churches and is contrary to the Second Vatican Council. Arrangements appropriate for North America and Europe may be difficult and dangerous in other parts of the world. On the other hand, we cannot allow declarations of cultural diversity to serve as an excuse to constrain the voices of others.

Despite the inherent weakness in the consultation process, its proper application can improve decision-making processes in the Eastern Catholic Churches by bringing additional—and the right persons—into the process, and can advance the Church on its path to synodality through greater participation of all the baptized.