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SYNODALITY AND PARTICULAR LAW

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Abstract

As the theme of synodality is being discussed globally to attain better "communion, participation and mission," this article states that this idea of communion and participation in the canonical framework was pondered over by Fr. George Nedungatt about 25 years ago. In his capacity as Professor and later Dean of the PIO and as a close collaborator of the drafting Committee of the Guidelines a Working Group he had insisted on the principle of subsidiarity in the drafting of Eastern canon law, he argued for legislative freedom and flexibility to the *sui iuris* Churches and individual bishops. The right of the bishops to make law in his diocese, guaranteed by episcopal consecration, and that of the Synod of Bishops for making particular law are evaluated. The author cautions against the danger of synchronization in applying this legislative right in the life of Eastern Churches.

Keywords: Communion, participation, mission, Principle of subsidiarity, Particular Law, Law of a Church *Sui Iuris*

Introduction

It is a happy coincidence that the *ad Memoriam* of Fr George Nedungatt, S.J., is prepared at a time when the theme of synodality is being discussed globally. The outcome of these deliberations on synodality is expected to be "communion, participation, and mission" through listening and dialogue on the local level. That process would bring out an inverted pyramidal structure of the Hierarchy of the Church. I am happy to state that this idea of communion and participation in the canonical framework was pondered over by Rev. Fr George Nedungatt, S. J., about 25 years ago. I feel privileged to have done my doctoral thesis[1] under Fr George

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[1] Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, Pontifical Oriental Institute, Rome (1994).

Nedungatt, S.J., who has thoroughly been aware of this principle of synodality and subsidiarity at that time and was a champion of decentralization and subsidiarity in the Eastern Churches.

In his capacity as Professor and later Dean of the Pontificio Istituto Orientale (PIO) and as a close collaborator of the drafting Committee of the Guidelines for the Revision of the Eastern Code, a Working Group consisting of Fr. George Nedungatt, S.J. had insisted on the principle of subsidiarity in the revision of Eastern canon law. As Ivan Žužek testimonies, Fr George Nedungatt, S.J., along with Saraf and Tocanel, argued for giving sufficient space for the principle of subsidiarity ensuring the rights vested on the bishops by divine law.[2] As the principle of synodality is widely discussed today, it is appropriate to evaluate how far this principle is applied today in the juridical framework of the Eastern Churches, especially in emanating canonical norms by the Synod of Bishops. Applying this principle ensures the participation of all levels and strengthens the communion of the bishop's office and the Synod of Bishops in a balanced manner. The former will be treated in the first part of this study along with the notion of *sui iuris* Church and the latter in the second part. And finally, how the deviations from these canonical principles would create unnecessary difficulties in the life of the Church will be evaluated. A few juridical solutions also are proposed.

Principle of Subsidiarity

Subsidiarity,[3] a fundamental principle of social philosophy, has been well adapted by Pope Pius XI in the encyclical *Quadragessimo Anno*.[4] Later, Pope Pius XII also adopted this principle in the functioning of the Church in 1946. Subsequently, the Synod of Bishops, in 1967, adopted the principle of subsidiarity as a fundamental Guideline for the revision of the Latin Code.[5]

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[2] Kuriakose Bharanikulangara (Ed.) *Diritto Canonico Orientale nell'ordinamento ecclesiale*, Libreria Editrice Vaticana (1995) 37.

[3] *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 18-21

[4] "Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of "subsidiary function," the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State". AAS, 23 (1911) 203.

[5] *Communicationes* 1 (1969), 81

Pope Paul VI[6] endorsed this principle in the ecclesial life but at the same time cautioned that it should not be confused with pluralism.[7]

It is against this backdrop the PCCICOR[8] adopted subsidiarity as a guiding principle of the revision of Eastern canon law.[9] It may be noted that though it was adopted unanimously, there was one remark, "*iuxta modum*" about the power of the bishop underlined in *Christus Dominus* (CD n. 8)[10] and

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[6] Kuriakose Bharanikulangara (Ed.), *Il Diritto canonico orientale nell'ordinamento ecclesiale*, Libreria Editrice Vaticana, Città del Vaticano, 1995, 275 pp.

[7] Ivan Žužek, "Qualche nota circa lo <Ius Particulare> nel Codex Canonum Ecclesiarum Orientalium" in Kuriakose Bharanikulangara (Ed.), *Il Diritto canonico orientale nell'ordinamento ecclesiale*, Libreria Editrice Vaticana, Città del Vaticano (1995) 35. Also, Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 20. "In the same way, we are very much ready to accede to the expressions of legitimate desires, that the local Churches may have power so that they are allowed to play a fuller role and that their own special traits, needs and demands are duly appreciated through the proper application of the so-called 'principle of subsidiarity'. This principle, surely needs to be both understood and explained in theory and fact. We accept by all means its core meaning. At the same time, this principle is by no means whatever to be confused with a certain cry for a sort of pluralism which is injurious to faith, moral law and principal forms of sacraments, liturgy and canonical discipline."

[8] Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo.

[9] "Thanks to their traditional structure within the One Church of Christ oriental Churches have, to a certain extent, adhered to the principle subsidiarity all through the ages, even if without explicit reference to it. The new Code should limit itself to the codification of the discipline common to all the oriental Churches, leaving to the competent authorities of these Churches the power to regulate by particular law all other matters reserved to the Holy See". *Nuntia* 3 (1976) 21.

[10] "CD 8: Bishops and the Apostolic See: 8. (a) To bishops, as successors of the Apostles, in the dioceses entrusted to them, there belongs per se all the ordinary, proper, and immediate authority which is required for the exercise of their pastoral office. But this never in any way infringes upon the power which the Roman pontiff has, by virtue of his office, of reserving cases to himself or to some other authority.

(b) The general law of the Church grants the faculty to each diocesan bishop to dispense, in a particular case, the faithful over whom they legally exercise authority as often as they judge that it contributes to their spiritual welfare, except in those cases which have been especially reserved by the supreme authority of the Church."

Lumen Gentium[11] (LG n. 27). The leader of this idea was Fr George Nedungatt S.J., and his Working Group.[12] It may be noted that the episcopal office instituted by divine law grants them "their authority and sacred power," which is proper, ordinary, and immediate. It is further stated that "in virtue of this power, bishops have the sacred right and the duty before the Lord to make laws for their subjects, to pass judgment on them, and to moderate everything pertaining to the ordering of worship and the apostolate.

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[11] "LG n. 27: 27. Bishops, as vicars and ambassadors of Christ, govern the particular Churches entrusted to them (58*) by their counsel, exhortations, example, and even by their authority and sacred power, which indeed they use only for the edification of their flock in truth and holiness, remembering that he who is greater should become as the lesser and he who is the chief become as the servant.(169) This power, which they personally exercise in Christ's name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful. In virtue of this power, bishops have the sacred right and the duty before the Lord to make laws for their subjects, to pass judgment on them and to moderate everything pertaining to the ordering of worship and the apostolate."

[12] As Fr. Ivan Žužek testimonies, "In the second meeting of the same "*Coetus*", the text was re-discussed on January 14 and 18, 1974, but still without an acceptable result. Then a consultant [Sarraf] took charge of the drafting of a new text in an attempt to be able to approve it the following day, scheduled as the last day of the meeting. However, the next day, it proved impossible to discuss the new rather substantial text, and therefore the "*Coetus*" gave a group of three consultors [Sarraf, Nedungatt, Tocanel] the mandate to compose another text, on the basis of the discussions that had taken place, within the same month of January, so that it could be promptly submitted to the members of the Commission, together with the entire project of the «Governing Principles», before the Plenary Assembly scheduled for 18-23 March. The aforementioned subcommittee drew up a new text in a special afternoon meeting on 23 January. This text, published in *Nuntia* 30 (p. 53), was accepted by the Plenary Assembly in preliminary line by all the Members present in the hall on 22 March morning (ibid., Pp. 53-54), with the exception of one "*Iuxta modum*" ("two citations are added to n. 5: *Christus Dominus*, n. 27 and *Presbyterorum Ordinis*, n. 7"). When this "modus" was also accepted (in the subcommittee that met on the afternoon of the same day; cf ibid., P. 75), the text received the unanimity of the consensus of those present in the hall (16) on 23 March morning. Cfr. Ivan Žužek, "Qualche nota circa lo <Ius Particulare> nel Codex Canonum Ecclesiarum Orientalium", 36.

From the discussions of the Commission, it is evident that the legislative capacity of the office of the bishop should always be respected and its exercise can be ultimately regulated only by the supreme authority of the Church and can be circumscribed by certain limits, for the advantage of the Church or of the faithful.

About the notion of particular law, Fr George Nedungatt S.J. made a significant contribution. About the term "particular," he states that "in relation to the Church (particular Church) he applied the literal meaning of the term *particularis* and explained that particular Church means whatever that does not exhaust the totality of the Church of Christ, but stands only for a '*part*' of it, whether limited to a diocese/eparchy or extending to a patriarchal Church.[13] The same can be said of the term '*particularis*' in particular law; it applies to all those laws that are not applicable to *all* Eastern Churches (the whole Church universal Church) but to a *part* of it – to one *sui iuris* Church, whether a patriarchal Church, a metropolitan Church or to a *part* of an entire *sui iuris* Church – of an eparchy, or of the religious, or of any other canonical institution.[14]

Particular law in the CCEO indicates all laws, legitimate customs, statutes, and other juridical norms which are not common to the whole Church[15], nor to all Eastern Churches.[16] Even though CCEO c. 1493 §2

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[13] Nedungatt George, "Ecclesia Universalis, Particularis, Singularis", *Nuntia* 2 (1976) 80.

[14] Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 27-28.

[15] It may be noted that when CIC uses the term "*Ecclesiae Universae*" (c.392§1) it means "the whole Church" to designate the totality of particular Churches (dioceses); it never means "universal Church" though often it is translated so. In c.331 the term "*Ecclesiae Universae*" is used as the whole of the Church of Christ. In CIC the term "universal Church" does not occur even once. Roche Page, « Note sur la terminologie employée par le Code du droit canonique de 1983 pour parler d'Eglise », in Theiriault M. & Thorn J. (eds.) *Le nouveau Code de droit canonique*, vol. 1 (Ottawa 1984) 273-274. Cfr. Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 29.

[16] Canon 1493§1. Beyond the laws and legitimate customs of the universal law, this Code also includes by the designation "common law" the laws and legitimate customs common to all Eastern Churches.

§2. Included in the designation "particular law" are all the laws, legitimate customs, statutes and other norms of law which are not common to the universal Church nor to all the Eastern Churches.

gives the notion of particular law, it does not embrace all shades of meaning. It is rather a description by exclusion than a definition. The CCEO presents a two-tier combination of common law and particular law. If we accept this description of particular law, the provisions for particular law clearly indicated in the Code are not exhaustive. They can be taken to formulate a general structure, content, and nature of particular Code. The application of particular law cannot be limited to these explicit provisions given in the CCEO. As per the necessity of each *sui iuris* Church, appropriate norms can be enacted by the competent legislative bodies like the Synod of Bishops, Eparchial bishops, religious superiors, etc.[17]

The CCEO contains the laws "common" for all the Eastern Churches, and based on them, each *sui iuris* Church had to prepare its own "particular" laws. Based on them, each eparchial bishop had to prepare the so-called "more-particular" law. Applying the principle of subsidiarity, the CCEO limited legislating on issues common to all Eastern Churches, leaving specific items applicable to each *sui iuris* Church allowing sufficient space for particular law. About this, (Saint) Pope John Paul II, in Apostolic Constitution *Sacri Canones,* stated: "attention should well be given to all of the things committed to the particular law of each *sui iuris* Church, which are not considered necessary for the common good of all of the Eastern Churches. Concerning these things, it is my intention that those who enjoy legislative power in each of the *sui iuris* Churches take counsel as quickly as possible by issuing particular norms, keeping in mind the traditions of their own rite as well as the teachings of the Second Vatican Council."[18]

Particular Law, Law of a Church *Sui Iuris*

One of the contributions or innovations of the new Eastern Code is the notion of a *sui iuris* Church. Canon 27 defined it as "a group of Christian faithful united by a Hierarchy according to the norm of law which the supreme authority of the Church expressly or tacitly recognizes as *sui iuris* is called in this Code a *sui iuris* Church. Furthermore, canon 28 §1 describes that "a rite is the liturgical, theological, spiritual and disciplinary patrimony, culture and circumstances of history of a

[17] Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 64.

[18] Sacri Canones (Consti. Apost.) 18 October 1990, AAS 82 (1990) 1033-1044.

distinct people, by which its own manner of living the faith is manifested in each *sui iuris* Church. It is important to underline that a *sui iuris* Church exists and practices the liturgical, theological, spiritual, and disciplinary patrimony in a given culture and circumstance. The rite is all about the manner of living the faith in a given circumstance of history.

Naturally, those people living in a particular circumstance and culture need to have their own laws. That set of laws may differ from other *sui iuris* Churches that live in another circumstance and culture. These Churches, only the Eastern ones, are enumerated as belonging to the Alexandrian, Antiochene, Armenian, Chaldean, and Constantinopolitan traditions (CCEO c.28 §2). As their particular legal system differs among themselves, so also among the Latin Church. In all the legal frameworks of the Latin and Eastern Churches, the principle of subsidiarity applied at all levels leaving ample freedom to the lower legislative bodies. A certain degree of flexibility and spontaneity is foreseen in making laws at different levels, but at the same time, the universality and unity of the ecclesiastical law are maintained.

Subsidiarity and More-Particular Laws

In the classification of particular laws, there is a category of laws called "more-particular laws" described in CCEO c. 1502 §2.[19] Using his legislative power, the eparchial bishop can, without prejudice to the common Code and the particular Code of the *sui iuris* Church, make laws in the eparchy and promulgate the same.[20] Some canons guarantee legislative freedom to the eparchial bishop provided that he acts within the limits set by particular law of his own *sui iuris* Church (*intra limites iure particulari propriae Ecclesiae sui iuris statutos*). For example, according to CCEO c. 1013 §1, the eparchial bishop has the right to set the amount of taxes for the various acts of the power of governance without prejudice to the particular law.[21]

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[19] "Canon 1502§2. "A prescription of the common law, unless the law expressly provides otherwise, does not derogate from a particular law nor does a norm of particular law enacted for a *sui iuris* Church derogate from a more particular norm in force in that same Church".

[20] Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 42-43.

[21] Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 44.

The eparchial bishop is responsible for supervising the observance of the law, both common and particular, in his eparchy (CCEO cc.196 and 199). The implementation of law in his eparchy is to be supervised by the local Hierarch. In that capacity, he can make some dispensations, as guaranteed by c. 1536.

With the application of this principle of subsidiarity, it is not intended to deny the universality of the Code which, however, should limit itself to the most fundamental and important institutions so that the common good does not suffer and that the purpose of the Church is saved. However, the norms of the Code should have certain flexibility so that even bishops can, in certain cases and just reason, dispense from the general laws or apply them according to their prudence and responsibility.[22]

The decentralization assumed by the aforementioned principle must also be applied in the context of eparchies, for example, with respect to presbyteral councils, and as far as possible, –in the parish context. In particular, the norms regarding the presbyteral council, required by the special Hierarchical communion of priests with the office of bishops, should be developed. Furthermore, the Eastern Code must consider the great convenience of pastoral councils in which suitable clerics and religious and lay people can take part so that the diocesan community can organically prepare pastoral work and carry it out effectively.[23]

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[22] Ivan Žužek, "Qualche nota circa lo <Ius Particulare> nel Codex Canonum Ecclesiarum Orientalium" 36. Also *Nuntia* 26, 107-108.

[23] Cfr. *Christus Dominus*, n. 27; *Presbyterorum Ordinis*, n. 7. „All priests, in union with bishops, so share in one and the same priesthood and ministry of Christ that the very unity of their consecration and mission requires their Hierarchical communion with the order of bishops.(32) At times in an excellent manner they manifest this communion in liturgical concelebration as joined with the bishop when they celebrate the Eucharistic Sacrifice.(33) Therefore, by reason of the gift of the Holy Spirit which is given to priests in Holy Orders, bishops regard them as necessary helpers and counsellors in the ministry and in their role of teaching, sanctifying and nourishing the People of God.(34) Already in the ancient ages of the Church we find liturgical texts proclaiming this with insistence, as when they solemnly call upon God to pour out upon the candidate for priestly ordination "the spirit of grace and counsel, so that with a pure heart he may help and govern the People of God," (35) just as in the desert the spirit of Moses was spread abroad in the minds of the seventy prudent men, (36) "and using them as helpers among the people, he easily governed countless multitudes."(37)

It should be borne in mind that when the legislative power of the Synod of Bishops and that of the eparchial bishop was defined, one difficulty was to strike a balance between the power of the bishop and the Synod of Bishops. In other words, between particular law and more-particular law. In line with the above-mentioned principle of subsidiarity and powers entrusted to the office of the bishop by divine law (*ex iure divino*), arises the question, can a bishop make laws in the diocese sometimes with prejudice to the particular law? CCEO c. 1536 permits the power of dispensation in particular situations.

We have seen above that in the notion of particular law, more than a definition, a description of particular law is given in the CCEO. There are also some provisions for particular laws in the Code. In all other aspects, if necessary, particular laws can be promulgated by the competent bodies – the Synod of Bishops, the Council of Hierarchs, etc. In that sense, the eparchial bishop can also make appropriate legislation about more particular laws applicable in the territory of a diocese. The bishops should have a certain flexibility in this matter, urged by just reason and according to their pastoral prudence and responsibility. The pastoral needs of a particular place may vary from that of another place. Here the Code leaves ample space for the pastoral solicitude of the local Hierarch and his discretion. If, however, such laws need to get the approval of the higher authorities, the Code provides for that possibility.

The Code envisages a category of particular law, approved and/or established by the Roman Pontiff. Only in two canons explicit mention of the approval of the particular law by the Roman Pontiff is made (cc.78§2, 182§3).[24] There is another category of particular law called *ius*

[24] Canon 78 - §1. "The power which, according to the norm of the canons and legitimate customs, the patriarch has over bishops and other Christian faithful of the Church over which he presides is ordinary and proper, but personal. Thus, the patriarch cannot constitute a vicar for the entire patriarchal Church nor can he delegate his power to someone for all cases. §2. The power of the patriarch is exercised validly only inside the territorial boundaries of the patriarchal Church unless the nature of the matter or the common or particular law approved by the Roman Pontiff establishes otherwise." Canon 182§3. Unless particular law approved by the Roman Pontiff states otherwise, the synod of bishops of the patriarchal Church is to examine the names of the candidates and compile a list of the candidates by secret ballot, which is to be transmitted through the patriarch to the Apostolic See to obtain the assent of the Roman Pontiff.

speciale, for example, laws concerning the extra-territorial jurisdiction …"[25] In the same line, the Code refers to "particular law *established* by the Roman Pontiff."[26] There are references to particular law established by the Apostolic See, which also includes Dicasteries and other Institutions of the Roman Curia. For example, the Dicastery for Eastern Churches.[27]

Synodality and Synchronisation

The *raison d'etre* of including the principle of subsidiarity in the Guidelines of the revision, was the upper level with legislative power should limit to "fundamental and important institutions so that the common good does not suffer and that the purpose of the Church is saved." These may serve as an overarching mechanism or substratum, leaving the format of detailed implementation to the lower-level legislative bodies. Taking into consideration the "authority and sacred power" which is proper, ordinary, and immediate of the episcopal office, instituted by divine law, this eparchial level legislation may vary from one diocese to another. In that sense, a certain degree of diversity (*varietas)* is presupposed at the eparchial level. In other words, the by-laws as well as *Typica* or *Statuta* of the religious congregations, etc. – "more-particular law"- in a diocese may vary from another one. The principle of subsidiarity presupposes certain flexibility to the office of the eparchial bishop, and diversity in legislative outcome may not be seen as contradictory but spontaneous. One should be able to see certain unity and communion in this difference and diversity.

In the context of certain issues of contemporary *sui iuris* Churches, a tendency of synchronization or generalization is seen. On the one side, bishops make use of the legislative power vested in them and make laws applicable within their territory. But there is a tendency of synchronization, to impose the laws or practices of one diocese to the other. If "the other" does not follow the same as one bishop who might have introduced it in his territory, then "the other" becomes defiant or deviant! In his territory, the eparchial bishop is responsible for the pastoral care and *salus animarum* of the faithful entrusted to him. In another territory, the local bishop of that diocese holds this

[25] Kuriakose Bharanikulangara, *Particular Law in the CCEO: A Blueprint for the Syro-Malabar Church*, 53.

[26] Ref. Canons 159, 174, 58, etc.

[27] Cfr. C.48, 29, c.30, 758§3 880§3, 1388, et al.

responsibility. It is important to respect the legislative freedom granted to one bishop in his territory and the freedom of other bishops in their territory.

The flexibility foreseen by the principle of subsidiarity envisages certain diversity, while the spirit of synchronization promotes uniformity. The shade of meaning of synodality as "walking together" of diverse people will be marred by synchronization, turning it out to be a "military parade," which kills the flexibility and spontaneity. In the canonical context, once a common law is made by the superior authority, and the eparchial bishop tries to implement it in his territory, a certain degree of flexibility must be given as per his particular context. Instead, if one bishop applies that law and insists to impose the same modalities on all other bishops, problems, and tensions arise. In an era of globalization and geopolitics, the same modality and modus operandi that exists, for example, in North Kerala, cannot be synchronized or exported to North America. This will be all the more feasible when one recognizes that the eparchial bishop who so does is also vested with "authority and sacred power" that is proper, ordinary, and immediate. When the spirit of *salus animarum* the ultimate objective of the canonical framework, will be the guiding principle "for the edification of their flock in truth and holiness" (CD 8) many problems will be solved.

In some cases, such attempts may go against a particular law of a *sui iuris* Church or can turn contrary to it. In such cases, recourse can be made to the Roman Pontiff and the Apostolic See and get such norms approved or established by the superior instance. Another possibility would be making amendments to the existing particular law by the same legislative authority, accommodating the specific situation of an eparchial unit. A legislative body, even a collective, that makes a law can also make amendments. The ultimate objective should be the common good of the Church and the pastoral solicitude of the local Hierarch. To be on the legally safer side, such particular laws or more-particular laws can be approved by the Roman Pontiff or Apostolic See.

This study compiled is dedicated as a tribute to my research guide and director, Rev. Fr. George Nedungatt S.J, a great scholar and professor. The contributions of this great son of the Syro-Malabar Church to the canon law as well are religious life will be remembered for generations in the academic world.