

4. Canon Law & Structures for Synodality

Theological Briefing Papers for the Synod 2023

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Summary

Both official documents and theological literature speak much more frequently about structures for synodality and (less often) institutions and procedures than about canon law and other canonical regulations. Still, canon law is seen as a much-needed instrument that fosters and facilitates a synodal ecclesial lifestyle by providing synodality with a form and structure.

Four perspectives may be detected. In the first place, various authors draw attention to existing structures of participation, such as the synod of bishops and pastoral councils. The second perspective posits that canon law is a practical instrument that is situated in an ecclesial and theological context and can therefore be reformed. Thirdly, authors suggest various possibilities for reconfiguring structures and rules in view of greater lay participation. Finally, several reflections point out that canon law needs to be complemented by something else, namely, conversion and (different) attitudes.

Detailed Analysis

Statistics

- The *Working Document for the Continental Stage* speaks once of “canon law” (in no.71) and 26 times of “structures.” The *Instrumentum Laboris* mentions “canon law” 7 times (in 3.2, 3.3, and 3.4), over against some 40 references to “structures” and more than 30 references to “institutions.”
- A quantitative MAXQDA search reveals a similar trend. There are 23 articles, books, or book chapters with 10 or more references to canon law, over against 82 to structures.

- At the same time the bibliography reveals that canon lawyers have contributed more than 70 articles, books, or book chapters, that is, some 10% of the total number of publications. Two persons stand out for the number of contributions: Alphonse Borras (18) and Myriam Wijlens (13). (Some of these contributions are republished translations.)

1) Existing structures of participation

- Canon law already allows for (or even urges) lay participation. Scholars refer to fundamental statements on the common baptismal dignity of all the faithful and their participation and particular responsibilities in the Church, including sharing one's view related to ecclesial matters (can. 208-223; for laity can. 224-231). They also refer to specific participative provisions, such as those for Diocesan Synods (can. 460-468), Diocesan and Parish Finance Councils (can. 492-494 and 537), the Presbyteral Council and the College of Consultors (can. 495-502), the Diocesan Pastoral Council (can. 511-514), the Parish Pastoral Council (can. 536) (Althaus, Glendinning, Peña Garcia, Prisco, Rees, Renken). (See the *Briefing papers* on participation and on the bishop.)
- However, scholars observe that the Code has been formulated with a focus on the hierarchical aspect of the Church. For example, the reflection on the diocesan bishops starts with stipulating that “a diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority” (can. 381) (Glendinning). Similarly, diocesan synods depend greatly on the bishop; as Glendinning writes, the bishop “convokes it, determines its agenda, presides over it, and dissolves or suspends it. The diocesan bishop alone ‘signs the synodal declarations and decrees, which can be published by his authority alone’ (can. 466).” The hierarchical focus of the Code and Catholic theology and practice makes that the laity's participation depends too much on good will and on bishops voluntarily sharing power, and “real consultation is often minimal” (Clifford).

2) Canon law is reformable

- Canon law is meant to be an instrument: “the Code is no more than the instrument that seeks to translate the conciliar ecclesiology into canonical language” (Peña Garcia), and “structures must enable the community to live according to its own faith, not hinder it”

(Wijlens 2020). Moreover, canon law is situated in the context of time and theology, and, therefore, reformable (Borras 2022a, Peña Garcia, Szabó, Wijlens 2020).

- We are living in a new theological context. Pope Francis has “hit the reset-button” in the interpretation of Vatican II and emphasizes the people of God over the hierarchy, and (baptismal) synodality over (episcopal) collegiality (Wijlens 2017 and many others). Borras and Luciani highlight the importance of the local Church over the universal one, and therefore inculturation and diversity. (For a fundamental reflection on the maintaining both the importance of the local Church and the universal one, see Polanco’s chapter on polarity.) Those theological shifts require institutional conversion that translates into structural reform. Canonists are realistic people who know that ideals need to be put into structures, “otherwise we are left with pious wishes” (Borras 2022a).
- This requires canonical creativity and courage. Wijlens refers to the period between Vatican II and the promulgation of the new Code in 1983 and speaks of temporary constitutions (or, “ad experimentum”) and of interpreting the law in its current context (the jargon speaks of the “mens legislatoris ex nunc” and not merely “ex tunc”) (Wijlens 2017). In a similar vein, Borras speaks about the dynamic between “lo instituido y lo instituyente” (what has been instituted and what is being instituted) (Borras 2022a).

3) Institutional reform

- According to Borras, synodality requires various shifts: from the universal to the particular Church, from a focus on the priest towards the fundamental dignity and equality of all the baptized, from consultative to deliberative, overcoming autocratic tendencies in ecclesial governance (Borras 2022a/b). (Again, see Polanco for a fundamental analysis on polarity.)
- More concrete proposals for “ecclesial structures of communication” (Osheim) are the following.
 - Collegiality needs to be both affective and effective (Borras 2022a, cf Szabó).
 - Making diocesan and parish pastoral councils obligatory (Borras, Glendinning, Osheim, Poothavelithara).
 - Meeting with the local community during pastoral visitations (Glendinning).
 - Setting up review boards in relation to urgent issues, such as the sex abuse scandal (Glendinning, Schickendantz), and more generally, third-party reporting

mechanisms or procedures for hearing grievances (Clifford, Glendinning, Schickendantz).

- Developing ways for the laity to contribute their perspective and collaboration (Peña Garcia), especially for (lay) theologians (Peña Garcia), thus developing and integrating the variety of ministries (Clifford, Peña Garcia).
 - Consulting the laity before appointing bishops or parish priests (Clifford, Glendinning).
 - Strengthening “regional instruments of communion” such as national or diocesan synods, or even continental ones such as CELAM, and a healthy decentralization away from the Roman curia (Clifford, Luciani).
 - Instituting greater lay representation in Diocesan Synods (Borras 2022b).
 - Making accountability the norm (Borras 2022b).
 - Including women at the various ecclesial levels (Schickendantz).
- In developing more synodal rules and structures, the Catholic church may learn from ecumenical sister Churches (Clifford, Osheim).
 - There are good examples that can be followed. Australia’s Plenary Council or the new *Conferencia Eclesial de la Amazonia* respect canon law yet work with larger lay participation and are rooted in a particular Church (Lennan, Luciani, Neumann). There is some literature reflecting with examples from the perspective of Eastern Churches (cf. Szabó) and religious orders, but these are unincorporated into this analysis for reasons of time constraints.

4) Conversion

- Authors note that changing canon law alone is not enough and that we need a conversion of the heart to a mindset of openness to the Spirit (Moons, Poothavelithara). Osheim speaks of “spiritualities and structures of discernment” and Borras states that “synodal events suppose a *habitus*, a ‘style,’ and its institutional formalization” (Borras 2022a). Some authors quote Paul VI’s word of a “*novus habitus mentis*” (Paul VI) (Glendinning, Renken, Wijlens). Various resistances need to be overcome for this, including some hierarchical “autocratic tendencies,” the laity’s passiveness, a fear of change, etc. (Borras 2022a /b). (See the *Briefing Paper* on the practice of synodality.)

- This involves formation (Osheim, Poothavelithara). Glendinning makes a plea for “better formation of lay persons and clergy on the benefits and necessity of a broad-based consultation in the decision-making process.”

Materials: Major Recommended Readings

- Althaus**, Rüdiger, “Die Synodalität (in) der Kirche aus Sicht des katholischen Kirchenrechts,” *Catholica: Vierteljahresschrift für ökumenische Theologie* 70 (2016): 101-113.
- Borras**, Alphonse “¿Que hay que cambiar en el derecho canónico para una auténtica sinodalidad?,” in *Sinodalidad y reforma. Un desafío eclesial*, ed. by Rafael Luciani, Serena Noceti and Carlos Schickendantz (Madrid: PPC, 2022), 137-162.
- , “The Call to Synodal Conversion,” *Studia Canonica. Revue canadienne de droit canonique* 56 (2022): 691-707.
- Clifford**, Catherine E., “Diverse Structures and Procedures for the Exercise of the Teaching Office Anglican-Catholic Ecumenical Learning,” *Studia Canonica. Revue canadienne de droit canonique* 53 (2019): 297-315.
- Glendinning**, Chad J., “Structures of Accountability in the Parish and Diocese: Lessons Learned in North America and Possibilities for Reform,” *Studia Canonica. Revue canadienne de droit canonique* 56 (2022): 645-669.
- Lennan**, Richard, “The Plenary Council as a Practice of Theology,” *The Australasian Catholic Record* 100 (2023): 3-24.
- Luciani**, Rafael, “Reconfigurar la identidad y la estructura eclesial a la luz de las Iglesias locales. ‘Querida Amazonia’ y el estatuto teológico de las realidades socioculturales,” *Medellín. Teología y pastoral para América Latina y el Caribe* 46 (2020): 487-515.
- Moons**, Jos, “La lettre ou l’esprit ? La synodalité et les limites de la réforme du droit canon,” *Nouvelle Revue Théologique* 145 (2023), 403-419.
- Noceti**, Serena, “Reforma de la Iglesia, reforma del ministerio ordenado,” in *Reforma de estructuras y conversión de mentalidades. Retos y desafíos para una Iglesia Sinodal*, ed. by Rafael Luciani and Carlos Federico Schickendantz (Madrid: Khaf, 2020), 313-346.
- Neumann**, Thomas, “Synodalität ‘Down Under’. Ein rechtlicher Vergleich der synodalen Prozesse in Australien und Deutschland,” *Theologische Quartalschrift (Tübingen)* 202 (2022): 470-488.
- Osheim**, Amanda C., “Stepping toward a Synodal Church,” *Theological Studies* 80 (2019): 370-392.
- Peña García**, Carmen, “Ministerialidad laical en una Iglesia sinodal,” in *En camino hacia una iglesia sinodal. De Pablo VI a Francisco*, ed. by Rafael Luciani and Teresa Compte (Madrid: PPC, 2020), 305-326.

- Polanco**, Rodrigo, “Necesidad de una perspectiva «polar» para recuperar teológica y estructuralmente las Iglesias locales,” *Estudios Eclesiásticos. Revista de investigación e información teológica y canonica* 95 (2020): 31-68.
- Poothavelithara**, Varghese, “Encouraging and Developing the Participative Bodies for a Synodal Church,” *Asian Horizons. Dharmaram Journal of Theology* 14 (2020): 181-208.
- Prisco**, José San José, “Las estructuras de la sinodalidad en la Iglesia local: consideraciones canónicas,” in *La sinodalidad en la vida y en la misión de la Iglesia. Texto y comentario del documento de la Comisión Teológica Internacional*, ed. by Santiago Madrigal (Madrid: BAC, 2019), 141-174.
- Rees**, Wilhelm, “Synoden und Konzile. Geschichtliche Entwicklung und Rechtsbestimmungen in den kirchlichen Gesetzbüchern von 1917 und von 1983,” in *Unverbindliche Beratung oder kollegiale Steuerung? Kirchenrechtliche Überlegungen zu synodalen Vorgängen*, ed. by Wilhelm Rees and Joachim Schmiedl (Europas Synoden nach dem Zweiten Vatikanischen Konzil, vol. 2) (Freiburg im Breisgau: Heder, 2014), 10-67.
- Renken**, John Anthony, “The Management of Church Property in a Synodal Church. Towards Eliminating Financial Misconduct,” *Studia Canonica. Revue canadienne de droit canonique* 52 (2018): 593-626.
- Szabó**, Péter, “Episcopal Conferences, Particular Councils, and the Renewal of Interdiocesan ‘Deliberative Synodality’,” *Studia Canonica. Revue canadienne de droit canonique* 53 (2019): 265-296
- Schickendantz**, Carlos, “Estándares contemporáneos de buena gobernanza. Hacia una sinodalidad estructural,” in *La sinodalidad en la vida de la Iglesia: Reflexiones para contribuir a la reforma eclesial*, ed. by Rafael Luciani and María del Pilar Silveira (Madrid: San Pablo, 2020), 67-92.
- Wijlens**, Myriam, “Reforming the Church by Hitting the Reset Button: Reconfiguring Collegiality within Synodality because of *sensus fidei fidelium*,” *The Canonist* 8 (2017): 235-261.
- , “Una Iglesia sacramental. La vía del derecho canónico para conceder una dispensa del impedimento del matrimonio en orden al sacerdocio,” in *Reforma de estructuras y conversión de mentalidades. Retos y desafíos para una Iglesia Sinodal*, ed. by Rafael Luciani and Carlos Federico Schickendantz (Madrid: Khaf, 2020), 429-460.

Italian References

- Severino Dianich, *Riforma della chiesa e ordinamento canonico* (Bologna: EDB, 2018).
- Carlo Fantappiè, “Variazioni della sinodalità,” in *Ephemerides Iuris canonici* 62 (2022), 371-404.
- Rafael Luciani and Serena Noceti, “Imparare una ecclesialità sinodale,” in *Il Regno attualità* (2021) 257-264.
- Vito Mignozzi, “Il Consiglio pastorale diocesano e parrocchiale. Note di carattere ecclesiologico,” in *Sinodalità. Dimensione della Chiesa, pratiche nella chiesa*, ed. by Riccardo Battocchio and Livio Tonello (Padova: EMP, 2020), 141-152.

Roberto Repole, “Il Sinodo diocesano. Una prospettiva ecclesiological,” in *Sinodalità. Dimensione della Chiesa, pratiche nella chiesa*, ed. by Riccardo Battocchio and Livio Tonello (Padova: EMP, 2020), 97-120.