

## THE TEACHING AUTHORITY OF EPISCOPAL CONFERENCES

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*[Pope John Paul II in *Apostolos suos* has decreed that doctrinal statements to be issued by episcopal conferences either must have been approved unanimously, or, if approved by a two-thirds majority, must have received the recognitio of the Holy See. The author argues that these requirements are consistent with Cardinal Joseph Ratzinger's opinion that the teaching authority of bishops belongs only to individual bishops, and to the entire college with the pope.]*

WHILE THE NATIONAL CONFERENCE of Catholic Bishops in the United States was preparing its pastoral letter "The Challenge of Peace," several of its members were invited to Rome in 1983 to discuss this project with representatives of some European episcopal conferences. Cardinal Joseph Ratzinger, who chaired the meeting, proposed five points for discussion, the first of which was his statement: "A bishops' conference as such does not have a *mandatum docendi*. This belongs only to the individual bishops or to the College of bishops with the pope." The controversy over this issue led, 15 years later, to the issuing of John Paul II's motu proprio *Apostolos suos*. While this does allow episcopal conferences to issue doctrinal statements, the conditions under which they can do so raises the question whether Ratzinger's opinion about their teaching authority has actually prevailed. To provide some background for this question, I shall begin with a brief account of the development of episcopal conferences.

### HISTORICAL DEVELOPMENT

Within the second century bishops of neighboring churches were already gathering in local councils, to find common solutions to problems facing

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their churches. Several such councils were held in Asia Minor to deal with the issue of Montanism, and at the request of Victor, Bishop of Rome (189–199), bishops of various regions gathered in local councils to agree on a common date for the celebration of Easter. In the middle of the third century we have abundant evidence in the letters of Cyprian of Carthage for the regular holding of regional councils in North Africa, and for the common persuasion that important questions should be answered through a process by which the bishops of a region could reach a consensus which they would then communicate to other churches. Thus, for well over a century there was a flourishing practice of local and regional councils before a Christian emperor made possible the holding of the first ecumenical council in 325. Even after that, regional councils continued to be held through the first millennium, and a number of them, such of those of Carthage, Orange, and Toledo, made important contributions to the development of doctrine.

The Council of Trent decreed the regular holding of provincial councils, but this decree was rarely observed. However, in the 16th century some important provincial councils were held in Latin America, and seven provincial councils (1829–1849) and three plenary councils (1852–1884) were held in the United States during the 19th century. Elsewhere, however, the holding of such councils had fallen into desuetude. Among reasons that have been suggested for this is the necessity of obtaining the permission of Rome to hold a plenary council, and the obligation of submitting its decrees for review by a Roman congregation which would also introduce changes into them as it saw fit.

During the course of the 19th century, the bishops of a number of European countries, experiencing the need of taking common counsel on important issues facing their churches, began to hold annual meetings. While the bishops involved were the same as would have composed a plenary council, their meetings did not meet the canonical requirements of a council, and therefore did not have the legislative power that a council would have. However, they could take place frequently, and allow the bishops of the whole nation to take counsel together as often as issues came up that called for a common solution. While at first such “conferences of bishops” as they came to be called, were looked upon with suspicion by Rome, Pope Leo XIII recognized their usefulness and encouraged them. In the late-19th and early-20th centuries, more and more national episcopates saw their usefulness, and by the beginning of the Second Vatican Council, more than 40 episcopal conferences had been established. In the United States, the archbishops had been meeting annually since 1890, but in 1919 the National Catholic Welfare Council was founded in which all the bishops would have a voice. Later on, at the insistence of the Holy See, the name “Council” was changed to “Conference.” After Vatican II this was

given a new structure as the National Conference of Catholic Bishops (NCCB), which more recently has undergone a further restructuring and changed its name to the United States Conference of Catholic Bishops (USCCB).

### THE SECOND VATICAN COUNCIL

The presence and importance of episcopal conferences became evident at the very beginning of Vatican II, when the bishops rejected the slate of candidates for the conciliar commissions that the leadership presented to them, and insisted on choosing their own candidates who would be proposed by the various conferences of bishops. During the course of the council, the role of the conferences became more important, as the bishops regularly gathered in them to discuss the questions that were coming up in the conciliar debates. In its *Constitution on the Sacred Liturgy* the council recognized the role that “groupings of bishops” with “territorial ecclesiastical authority” were to have in the local adaptation of the liturgy.<sup>1</sup> In the *Dogmatic Constitution on the Church*, after speaking of the organic groupings of churches such as patriarchates, whose formation it attributed to divine providence, the council declared: “This variety of local churches, in harmony among themselves, demonstrates with greater clarity the catholicity of the undivided church. In a similar way episcopal conferences can today make a manifold and fruitful contribution to the concrete application of the spirit of collegiality” (no. 23).

The extended treatment of episcopal conferences by Vatican II is found in its *Decree on the Pastoral Office of Bishops in the Church* (nos. 37–38). While it did not mandate their establishment, it did express its judgment that it is of the utmost importance that, throughout the whole world, bishops of the same nation or region should unite in a single assembly and meet together at regular intervals. It described an episcopal conference as “a kind of assembly (*coetus*) in which the bishops of some nation or region discharge their pastoral office in collaboration, the better to promote the good which the church offers to people, and especially through forms and methods of apostolate carefully designed to meet contemporary conditions.” It laid down norms to be followed by such conferences concerning membership, voting rights, statutes, and the conditions under which their decisions would have binding force.

### AFTER VATICAN II

In the year following the close of Vatican II, Pope Paul VI, in his decree *Ecclesiae sanctae*, mandated the establishment of episcopal conferences

<sup>1</sup> *Sacrosanctum concilium* nos. 22, 36, 39. This constitution does not use the term “episcopal conferences,” but it can hardly be doubted that they are included among such “territorial ecclesiastical authorities.”

wherever they did not yet exist. The 1983 Code of Canon Law, after its treatment of particular councils, contains 13 canons dealing with episcopal conferences. It describes an episcopal conference as a “permanent institution” (thus differing from a council, which has limited duration), and as a “grouping [*coetus*] of bishops of a given nation or territory whereby, according to the norm of law, they jointly exercise certain pastoral functions on behalf of the Christian faithful of their territory . . .” (canon 447). It limits the capacity of a conference to issue general decrees to those cases in which the common law prescribes it, or a special mandate of the Apostolic See, given either *motu proprio* or at the request of the conference, determines it. Such decrees must be approved by two thirds of the members having a deliberative vote, and cannot be promulgated without being reviewed by the Holy See (canon 455). There is no mention of a conference’s teaching function in these canons. However in the section of the Code on the teaching office, canon 753 states: “Although they do not enjoy infallible teaching authority, the bishops in communion with the head and members of the college, whether as individuals or gathered in conferences of bishops or in particular councils, are authentic teachers and instructors of the faith for the faithful entrusted to their care; the faithful must adhere to the authentic teaching of their own bishops with a sense of religious respect.”

As has already been noted, Vatican II had described an episcopal conference as “an assembly in which the bishops of some nation or region discharge their pastoral office in collaboration.” Since the *munus pastorale* conferred on bishops at their ordination obviously includes the office of teaching the faith, it is not surprising that after Vatican II episcopal conferences saw it as within their competence to issue pastoral letters in which they were exercising their pastoral teaching office in common. Thus, the NCCB produced a number of pastoral letters during the 15 years between “Human Life in Our Day” (1968) and “The Challenge of Peace” (1983). It was during the preparation of this letter on peace that controversy erupted over the teaching role of episcopal conferences. The NCCB had published a draft of this letter, setting out its position on the moral issues involved in the maintaining of nuclear weapons as a deterrent against their use. A number of European conferences had expressed their reactions to this draft, some of which were critical of the position taken by the NCCB. With a view to promoting a broad consensus on the issue, the Holy See summoned representatives of the NCCB along with those of the episcopal conferences of six European nations to an “informal consultation” at the Vatican. Joseph Ratzinger, Prefect of the Congregation for the Doctrine of the Faith, chaired the consultation, and Jan Schotte of the Pontifical Council “Justice and Peace” served as its secretary and was commissioned to

prepare a synthesis of the discussion that took place.<sup>2</sup> According to Schotte's synthesis, Archbishop John Roach and Cardinal Joseph Bernardin spoke first, explaining that the NCCB had entered the public discussion on war and peace because "the bishops wish to speak in the pastoral letter as teachers of religion and moral principles in order to provide pastoral guidance for the Catholic conscience and to help set the right terms for the public debate on the morality of war." Ratzinger then spoke, proposing five points for discussion. The first of these, as we have already noted, began with the statement: "A bishops' conference as such does not have a *mandatum docendi*. This belongs only to the individual bishops or to the College of bishops with the pope."<sup>3</sup> While this was proposed as a "point for discussion," the manner of its proposal leaves little doubt that it was the conviction of the Prefect of the Congregation for the Doctrine of the Faith.

#### CONTROVERSY ABOUT THE CONFERENCES' TEACHING AUTHORITY

As might be expected, this "bombshell" ignited a lively controversy over the teaching function and authority of episcopal conferences. It soon became clear that a number of fundamental questions of ecclesiology were involved. Among these were the following: Are there in fact no collegial authorities in the Catholic Church intermediate between the universal college and the individual bishops? Can the regional communions of churches for which episcopal conferences are established be rightly described as "local" or "particular" churches, analogous to the patriarchal churches, whose formation Vatican II attributed to divine providence? Are such "regional communions of churches" and the conferences that exercise episcopal ministry on their behalf, creations of purely ecclesiastical law, or do they have a theological foundation in the nature of the Church and hence in divine law? Is collegiality the exclusive prerogative of the universal college, or can one rightly describe the pastoral ministry of an episcopal conference on behalf of a regional communion of churches as an instance of true but partial collegiality?

As one might expect, such questions as these came to be vigorously debated among theologians and canonists, and positions in their regard were also taken in statements that came, with varying degrees of authority, from Rome. In November 1985, two years after Ratzinger declared that episcopal conferences have no mandate to teach, the presidents of all the conferences gathered in Rome for the Extraordinary Synod which Pope

<sup>2</sup> This was published with the title: "Vatican Synthesis," *Origins* 12 (April 7, 1983) 691-95.

<sup>3</sup> *Ibid.* 692.

John Paul II had called “to celebrate and reflect on the Second Vatican Council twenty years after its conclusion.” It seemed inevitable that this synod would have something to say about episcopal conferences. A few months before the synod actually got under way, two statements concerning this question were published that became the object of lively discussion among the bishops. The first of these was made by Ratzinger in a long interview he gave to the Italian journalist Vittorio Messori.<sup>4</sup> In the course of this interview, Ratzinger was quoted as saying: “We must not forget that the episcopal conferences have no theological basis, they do not belong to the structure of the Church, as willed by Christ, that cannot be eliminated; they have only a practical, concrete function” (59). “No episcopal conference, as such, has a teaching mission; its documents have no weight of their own save that of the consent given to them by the individual bishops” (60).

The second of the two statements concerning episcopal conferences appeared in a document entitled “Select Themes of Ecclesiology” issued by the International Theological Commission, over which Ratzinger presides. Its statement is as follows.

It is impossible to deny the usefulness, and even the pastoral necessity, of both episcopal conferences and their continental federations. But does this mean that one should see in them, as is sometimes done on account of the cooperative character of their work, specifically “collegial” institutions, understood in the strict sense of *Lumen Gentium* (22, 23) and *Christus Dominus* (4, 5, 6)? These texts do not allow of any rigorous ascription to episcopal conferences or their continental federations of the adjective “collegial”. (We refer here to the adjective “collegial” since the noun “collegiality” nowhere exists in the documents of the Second Vatican Council.) That episcopal collegiality that stands in succession to apostolic collegiality is *universal* and can only be understood, by reference to the *whole* Church, in terms of the *totality* of the episcopal body in union with the Pope. These conditions are realized in the united action of the bishops dispersed around the world, for the reasons set forth in *Christus Dominus*, 4. . . . [Episcopal collegiality belongs to the very structure of the Church received from Christ (*jure divino*).] By contrast, the institutions like episcopal conferences (and their continental federations) have to do with the concrete organization or form of the Church (*jure ecclesiastico*). To describe them by such terms as “college”, “collegiality”, and “collegial” is to use language in an analogical and theologically “improper” way (V. 3).<sup>5</sup>

The distinguished Jesuit theologian, Bernard Sesboué, after quoting this final sentence, adds the following comment: “Truth obliges one to say that the position taken here was not made the object of any debate in the

<sup>4</sup> Published in English as *The Ratzinger Report: An Exclusive Interview on the State of the Church* (San Francisco: Ignatius, 1985).

<sup>5</sup> *International Theological Commission: Texts and Documents 1969–1985*, ed. Michael Sharkey (San Francisco: Ignatius, 1989) 267–304, at 285–86. The sentence between brackets is inadvertently omitted from the English translation cited here.

Commission, and that it was added to the text in the form of an amendment of the last hour. The affair was known in the corridors of the Synod.”<sup>6</sup>

### THE EXTRAORDINARY SYNOD OF 1985

Despite its brief duration of two weeks, the Extraordinary Synod of 1985 was able to produce a Final Report which included paragraphs on collegiality and on episcopal conferences. On the notion of collegiality it stated:

The ecclesiology of communion provides the sacramental foundation of collegiality. Therefore the theology of collegiality is much more extensive than its mere juridical aspect. The collegial spirit is broader than effective collegiality understood in an exclusively juridical way. The collegial spirit is the soul of the collaboration between the bishops on the regional, national and international levels. Collegial action in the strict sense implies the activity of the whole college, together with its head, over the entire church. Its maximum expression is found in an ecumenical council. . . . From this first collegiality understood in the strict sense one must distinguish the diverse partial realizations, which are authentically sign and instrument of the collegial spirit: the Synod of Bishops, the episcopal conferences, the Roman Curia, the *ad limina* visits, etc. All of these actualizations cannot be directly deduced from the theological principle of collegiality; but they are regulated by ecclesial law.<sup>7</sup>

In the following paragraph, entitled: “Episcopal Conferences,” the Synod Report adds this positive assessment of their value: “The collegial spirit has a concrete application in the episcopal conferences (*Lumen Gentium* 23). No one can doubt their pastoral utility, indeed their necessity, in the present situation.”<sup>8</sup> Obviously having in mind the controversy occasioned by Ratzinger’s statement and the position taken in the document of the International Theological Commission, the Synod offered the following “suggestion”: “Since the episcopal conferences are so useful, indeed necessary, in the present-day pastoral work of the church, it is hoped that the study of their theological ‘status’ and above all the problem of their doctrinal authority might be made explicit in a deeper and more extensive way, keeping in mind what is written in the conciliar decree *Christus Dominus* (no. 38) and in the Code of Canon Law (Canons 447 and 753).”<sup>9</sup>

When one compares what was said about collegiality and episcopal conferences in this Final Report of the 1985 Synod with Ratzinger’s statements and the one “added at the last hour” to the document of the International Theological Commission, it is evident that the members of the Synod, most of whom were presidents of episcopal conferences, were not ready to agree

<sup>6</sup> Bernard Sesboüé, *Le Magistère à l'épreuve* (Paris: Desclée de Brouwer, 2001) 224, n. 4 (my translation).

<sup>7</sup> *Final Report* II C, 4, *Origins* 15 (Dec. 19, 1985) 448.

<sup>8</sup> *Final Report* II, C, 5, *ibid.* 448–49.

<sup>9</sup> *Final Report* II, C, 8, *ibid.* 449.

that episcopal conferences “have no *mandatum docendi*” and “have no theological basis” and that the term “collegiality” can be used of them only in an “improper sense.” Rather, they saw the teaching authority and theological basis of episcopal conferences as open questions, needing further study and clarification; and they stated their view that episcopal conferences are to be numbered among the “diverse partial realizations” of collegiality which are “authentically sign and instrument of the collegial spirit.”

The task of responding to the call by the 1985 Synod for a study of the theological status and doctrinal authority of episcopal conferences was entrusted by the pope to the Congregation for Bishops, in collaboration with the Congregation for the Doctrine of the Faith, the Congregation for Eastern Churches, and the Congregation for the Evangelization of Peoples, as well as the General Secretariat of the Synod of Bishops. Their work took several years, and meanwhile theologians, canonists, and church historians offered their contributions to the study called for by the synod. In a work first published in 1987, Ratzinger again expressed his opinion that “bishops’ conferences do not have any teaching authority and cannot as conferences make teaching binding.” The reason for this, he said, is that “on matters of faith and morals no-one can be bound by majority decisions.”<sup>10</sup> Two members of the canon law faculty at the Gregorian University in Rome published opposite views on the question whether episcopal conferences as such had teaching authority, and several articles appeared in *La Civiltà Cattolica* arguing against their exercise of genuine collegiality or authentic magisterium.<sup>11</sup> The most thorough study of the question was done at an international and interdisciplinary colloquium held at Salamanca, Spain, January 3–8, 1988.<sup>12</sup>

#### THE SALAMANCA COLLOQUIUM

At this colloquium, after a number of papers had been given by acknowledged experts on the historical, canonical, and theological aspects of the

<sup>10</sup> Originally published in German as *Kirche, Ökumene und Politik* (Einsiedeln: Johannes, 1987) and published in English as *Church, Ecumenism and Politics: New Essays in Ecclesiology* (New York: Crossroad, 1988) 58.

<sup>11</sup> G. Ghirlanda, “De episcoporum conferentiis deque exercitio potestatis magisterii,” *Periodica* 76 (1987) 573–613, 637–49; F. J. Urrutia, “De exercitio muneris docendi a Conferentiis Episcoporum,” *Periodica* 76 (1987) 605–36; G. Mucci, “Le Conferenze Episcopali e l’autorità di magistero,” *La Civiltà Cattolica* 138/1 (1987) 327–37; “Concili Particolari e Conferenze Episcopali,” *CivCatt* 138/2 (1987) 340–48; “Conferenze Episcopali, Diritto Divino e Diritto Ecclesiastico,” *CivCatt* 140/2 (1989) 222–30.

<sup>12</sup> The papers of this colloquium have been published in English as *The Nature and Future of Episcopal Conferences*, ed. Hervé Legrand et al. (Washington: Catholic University of America, 1988).



question, the participants divided into five language groups, which were asked to discuss two questions, and then to express the points of convergence reached in their group. The two questions were: “What is the theological consistency of the body of churches (*coetus ecclesiarum*, “regional church”), which is served by this body of bishops (*coetus episcoporum*)?” “What is the theological consistency of the episcopal conference itself?”<sup>13</sup>

The detailed responses show that convergence was reached not only within each group, but also among all five groups. I shall offer my summary of the answers which they gave to the questions put to them. They agreed that the theological consistency of the “regional churches” is to be seen in their contribution to the realization of the Church’s catholicity, i.e. the inculturation of the gospel and the actualization of the Church in the diverse cultural, social, and political situations that characterize the different nations or regions of the world. The theological consistency of the episcopal conferences is seen in the fact that the communion among the churches of a region is expressed and maintained by the communion among their bishops, who exercise their pastoral function conjointly to serve the proclamation and reception of the gospel in that region. Episcopal conferences are therefore a manifestation of episcopal collegiality, founded in the sacrament of episcopal orders, and in the necessity of the collegial exercise of episcopal ministry in regional churches for the effective realization of the Church’s mission in today’s world.

Subsequently, after two papers had been given concerning the teaching function of episcopal conferences, the five language groups were asked to discuss the question whether episcopal conferences as such exercise an authentic magisterium with regard to the faithful of their territory, and again to express the points of convergence reached by their group. Here I shall quote the principal response given by each language group.<sup>14</sup> German: “The teaching function exercised by bishops gathered in conferences cannot be interpreted merely as a simultaneous action of its members, but rather as an action whose subject is the college and not the individuals.” Spanish: “The conference as such is an organ of authentic magisterium, specifically diverse from the sum of the magisterium of each and every bishop of the episcopal conference.” French: “The unity of the three *municipa* carries with it necessarily the authority of a magisterium of episcopal conferences as such, given that these are the exercise of ministry *coniunctim* (CD 38; cc. 447 and 753).” English: “In principle we are in agreement . . . that episcopal conferences as a body have the power of magisterium.” Italian: “Episcopal conferences as such exercise legitimately an authentic magisterium. The theological foundations for the episcopal conference naturally require a teaching authority on their part. Episcopal conferences

<sup>13</sup> Ibid. 227.

<sup>14</sup> Ibid. 270–74.

cannot exercise pastoral guidance of the churches without such an authority.”

### THE VATICAN DRAFT STATEMENT OR “WORKING PAPER”

In January 1988, shortly after the close of the Salamanca colloquium, the Prefect of the Congregation for Bishops, Cardinal Bernardin Gantin, sent to the bishops a document entitled: “Theological and Juridical Status of Episcopal Conferences,” along with a letter in which he described this as a “working paper” (*instrumentum laboris*), and requested corrections and emendations from bishops and episcopal conferences before the end of 1988.<sup>15</sup> This document was the official fruit of the study requested by the 1985 Synod of Bishops, done in collaboration with several dicasteries of the Holy See, including the Congregation for the Doctrine of the Faith. In view of the role which the prefect of this congregation had in the drawing up of this document,<sup>16</sup> it is not surprising that it reflects the view that Ratzinger had expressed, as well as the one that was added “at the last hour” to the document of the International Theological Commission. The latter is explicitly cited in the Draft Statement, where, referring to the concrete actualisation of episcopal collegiality, it says:

Among these, it is necessary to distinguish accurately those which involve the college as such with its head from those which gather the bishops in the name of their pastoral concern, but not in their universality. While the first express the exercise of collegiality in the strict sense and involve the *actio collegialis*, for the second, on the other hand, generated by *affectus collegialis*, one can make a reference to the notion of collegiality according to an analogical, theologically improper, use. . . . It is clear that the concept of collegiality can only properly be applied to the former case, while for the latter it is more precise to use the concept of corresponsibility.<sup>17</sup>

In other passages, the Draft Statement states that “conferences express collegiality, but only in an analogical sense,”<sup>18</sup> and that “it is not exact to speak of a collegial exercise of episcopal power in the case of the episcopal conference.”<sup>19</sup> However, there is another place where it says that “acts carried out within episcopal structures such as the synod and the national

<sup>15</sup> The document was published with the title: “Draft Statement on Episcopal Conferences,” *Origins* 17 (April 7, 1988) 731–37.

<sup>16</sup> According to Archbishop Jan Schotte, Secretary General of the Synod of Bishops, the *instrumentum laboris* was done under the direction of a postsynodal commission composed of five members, one of whom was Ratzinger (*Episcopal Conferences: Historical, Canonical and Theological Studies*, ed. Thomas J. Reese, S.J. [Washington: Georgetown University, 1989] viii n.7).

<sup>17</sup> Draft Statement II, 2, *Origins* 17 (April 7, 1988) 733.

<sup>18</sup> Draft Statement IV, 1, b, *ibid.* 734.

<sup>19</sup> Draft Statement IV, 2, *ibid.* 734.

conferences have a certain partial character of collegiality.”<sup>20</sup> It is not clear whether this is also understood as an “improper” use of the term.

Finally, after citing canon 753, which speaks of the teaching which bishops do “either individually or gathered together in episcopal conferences,” the Draft Statement expresses the following judgment with regard to the teaching authority possessed by these conferences.

The episcopal conferences do not, properly speaking, as such enjoy this *munus magisterii*. They are proposed, by their own nature, as operative, pastoral and social means, and not directly as doctrinal means. . . . The episcopal conferences do not constitute a doctrinal instance; they have no competence to establish doctrinal and moral contents. Moreover, it should not be forgotten that the episcopal conference is a contingent structure regulated by law and without those dogmatic foundations which are enjoyed instead by those structures of divine institution, among which the episcopal college *cum et sub Petro* should be counted. Now, a contingent structure of a collective, not collegial, character cannot substitute the individual bishop, who in episcopal consecration has been constituted authentic teacher of the faith for his particular church. Therefore the episcopal conferences do not, as such, properly speaking possess the *munus magisterii*.<sup>21</sup>

In its final section: “The Juridical Status of Episcopal Conferences,” where it refers to “documents of a doctrinal character” that might be issued by episcopal conferences, the Draft Statement insists on the necessity that their magisterial function “be limited to applying pronouncements of the magisterium of the universal church, exactly where the specific situations require it.”<sup>22</sup>

#### RESPONSE OF THE NCCB

Responding to Gantin’s request that episcopal conferences offer corrections and emendations to the Vatican “working paper,” Archbishop John May, then President of the NCCB, appointed an ad hoc committee composed of all the past presidents to prepare its response, with the assistance of a group of theologians and canon lawyers. The response, after discussion and amendment, was approved by the NCCB in its plenary session of November 16, 1988.<sup>23</sup> After mentioning a number of the “many valid insights contained in the draft,” the U.S. bishops expressed the following judgment on it:

Notwithstanding the important contributions made by the document, after careful and thorough review it is our considered judgment that the discussion of this delicate subject, with its attendant issues, would be better served if an entirely new working document were to be drafted. We do not think that this present document,

<sup>20</sup> Draft Statement III, 2, *ibid.*

<sup>21</sup> Draft Statement V, *ibid.* 735.

<sup>22</sup> Draft Statement V, *ibid.* 736.

<sup>23</sup> “Response to Vatican Working Paper on Bishops Conferences,” *Origins* 18 (December 1, 1988) 397–402.

despite its merits, is adequately suited to serve as the basis for an effective discussion of this important issue. . . . What we would hope could come from any draft that would function as a basis for future discussion are the following four characteristics: 1) More clarity and consistency of basic concepts or terms. 2) More cogent evidence and interpretation thereof. 3) Better and more adequate theological method. 4) Greater directness and precision in the questions or issues to be treated.<sup>24</sup>

In the rest of their response, the U.S. bishops criticized positions taken in the "working paper" which, in their judgment, demonstrated its deficiency in each of those four respects.

### RESPONSES OF THEOLOGIANS AND CANONISTS

During the year 1989 two collections of essays were published, one in North America, the other in Germany, in which Catholic theologians, historians, and canon lawyers offered their scholarly contributions to the discussion of the issues raised by the Vatican "working paper."<sup>25</sup> A few of these scholars had taken part in the colloquium at Salamanca, and, in general, one can say that all of them were in agreement with the conclusions reached at that colloquium, which means that they were not in agreement with the major assertions of the Vatican "working paper." Each of these collections contains a detailed critique of the Vatican document; one by Joseph Komonchak<sup>26</sup> and the other by Remigius Sobanski.<sup>27</sup> In the other essays the authors offered positive contributions to the solution of the questions which that document had raised. As was the case at Salamanca, the approach was interdisciplinary, with essays treating the historical, canonical and theological aspects. I shall limit myself to mentioning the key points made in the essays that dealt with the teaching function of episcopal conferences.

The volume edited by Thomas Reese has two essays on this topic, one by Avery Dulles<sup>28</sup> and the other by Ladislav Orsy.<sup>29</sup> Dulles offers three arguments in favor of the view that episcopal conferences do participate in

<sup>24</sup> Ibid. 399.

<sup>25</sup> *Episcopal Conferences: Historical, Canonical and Theological Studies*, ed. Thomas J. Reese, S. J. (see n. 16 above); *Die Bischofskonferenz. Theologischer und juristischer Status*, ed. Hubert Müller and Hermann J. Pottmeyer (Düsseldorf: Patmos, 1989).

<sup>26</sup> "The Roman Working Paper on Episcopal Conferences," *Episcopal Conferences* 177–204.

<sup>27</sup> "Der Entwurf der römischen Bischofskongregation im Licht der Konzilsdebatte des II. Vaticanums," *Die Bischofskonferenz* 36–43.

<sup>28</sup> "Doctrinal Authority of Episcopal Conferences," *Episcopal Conferences* 207–32.

<sup>29</sup> "Reflections on the Teaching Authority of the Episcopal Conferences," *ibid.* 233–52.

the Church's teaching office. The first is that it is difficult to deny that canon 753 accords some kind of teaching power to episcopal conferences. The second is drawn from the parallelism with particular councils, which are generally recognized to exercise an authentic magisterium. The third argument, which Dulles says is more speculative and needs the support of the other two, is that "collegiality, in a true theological sense, is partially and analogously verified when a group of bishops come together to serve the unity of the whole church by their joint ministry. Since collegiality includes the power of the episcopal body to teach, it seems to follow, at least *prima facie*, that conferences, as partial gatherings of the college, participate in the teaching office."<sup>30</sup> Dulles goes on to express his view as to the specific kind of teaching that episcopal conferences are qualified to do. He describes this as "pastoral magisterium," which "seeks to make the truth of the gospel accessible and fruitful in the lives of the faithful." This means proposing the one faith "with different accents and nuances corresponding to the abilities, resources, and customs of each people and the variety of historical situations."<sup>31</sup> Since the universal teaching authority cannot adequately serve the pastoral needs of every region, "it is almost essential that there be a pastoral teaching agency intermediate between the residential bishop and the Holy See."<sup>32</sup>

At the end of his essay, Orsy offers the following conclusion. "The clue to understanding the teaching authority of the episcopal conferences is in the concept of *communio*, which is an ontological reality in the church. Episcopal collegiality is a specific manifestation of this *communio*. It can reach perfection and completeness in the case of an ecumenical council. It can manifest itself to lesser degrees in other legitimate assemblies of bishops. All such assemblies carry an authority, but, again, in different degrees. . . . Whenever a particular assembly of the bishops make a doctrinal declaration, their message is not without authority, although the historical event of the gathering cannot be the final guarantee of the truth of it. The response of the faithful, therefore, should be *obsequium* on the one hand, and prudent waiting for the authentication of the message through its reception, on the other hand."<sup>33</sup>

Hermann Pottmeyer locates the authority that is specific to the exercise of the teaching function by a conference of bishops in the fact of their concordant witness to the faith.<sup>34</sup> In his view it is the fact that their statement expresses their consensus, reached with moral unanimity, that gives it teaching authority. Disciplinary decrees may be decided by majority vote, but teaching by a council or conference demands consensus. Needless to

<sup>30</sup> "Doctrinal Authority" 217.

<sup>31</sup> *Ibid.* 224.

<sup>32</sup> *Ibid.* 226.

<sup>33</sup> "Reflections on Teaching Authority" 251-52.

<sup>34</sup> "Das Lehramt der Bischofskonferenz," *Die Bischofskonferenz* 116-33.

say, such consensus must be reached by the whole conference, not merely by one of its committees. A doctrinal statement which expresses the morally unanimous witness of an episcopal conference must be attributed to the conference as such as its collegial subject. In Pottmeyer's view, such a consensus statement should not require the *recognitio* of the Holy See.<sup>35</sup>

### THE MOTU PROPRIO *APOSTOLOS SUOS*

Some 13 years after the Extraordinary Synod of 1985 had requested that a study be made of the theological and juridical status of episcopal conferences with special reference to their teaching authority, and ten years after Gantin had sent a draft of such a study to all the conferences inviting their criticisms and emendations, the authoritative response to the Synod's request was given by John Paul II with his motu proprio *Apostolos suos*.<sup>36</sup> It was well known that the "working paper" had received severe criticism from the episcopal conferences, and that more than one of them had suggested that an entirely new draft be prepared. A new draft was drawn up by the end of 1990 and was the subject of discussion and revision within several Vatican dicasteries for the next six years. In 1996 the pope entrusted the final revision of the text to the Congregation for the Doctrine of the Faith, and he issued it two years later as his own document motu proprio, with the title: "The Theological and Juridical Nature of Episcopal Conferences."

Judging from the title, one might expect this to be a purely doctrinal statement, but in fact its purpose is also, and perhaps primarily, legislative, since it concludes by laying down a series of "complementary norms" which regulate the exercise of teaching authority by episcopal conferences. While the longer part of the letter contains a good deal of material that is already familiar concerning the history, nature, and activity of the conferences, what is significantly new is the answer that the pope gives to the questions whether, and under what conditions, episcopal conferences can make doctrinal statements that oblige the faithful of their region to adhere to their teaching with *obsequium religiosum*. To the question whether they can make such a doctrinal statement, the answer is "yes." The conditions under which they can do so are the following: (1) It must be a statement issued by the conference in plenary session; not by its doctrinal commission or executive committee. (2) It must have been approved either by a unanimous vote of all the members, or by at least two thirds of the members having the deliberative vote. (3) If it was not approved unanimously, it cannot be published without first receiving the *recognitio* of the Holy See.

<sup>35</sup> Ibid. 132.

<sup>36</sup> This was signed by the pope on May 21, 1998, issued at the Vatican on July 23, 1998. An English translation appears in *Origins* 28 (July 30, 1998) 152–58.

Several commentators have remarked on the practical difficulties involved in the fulfillment of these conditions. There are good reasons for the fact that while councils have always sought to achieve consensus, no council in the history of the Church, whether regional or ecumenical, has ever required that its decisions be approved by a unanimous vote. One reason for this is that it is highly unlikely that a large group of bishops, each accustomed to making decisions for his own church, would decide a controverted question in a way that would satisfy every single member. Another reason is that requiring total unanimity would allow one or a very few persons to block a consensus that had been reached by the council with moral unanimity, and thus render the council impotent to achieve its task.

With regard to the requirement of *recognitio* by the Holy See, one could argue that such review by Rome has always been required for the decrees of plenary councils, and therefore would not cause any new problem. However, plenary councils are extremely rare, so that the task of reviewing their decrees would not place an undue burden on the officials of the Roman Curia. However, over one hundred episcopal conferences meet every year. It is true that canon law already requires Roman *recognitio* of their disciplinary decrees. But the nature of doctrinal statements is such that they would no doubt undergo more careful scrutiny. Presumably the burden of reviewing them would fall mainly on the Congregation for the Doctrine of the Faith. One can imagine how long conferences would have to wait before receiving the *recognitio* that would allow them to publish their doctrinal statements. It would not be surprising if conferences became less willing to put in the time and effort needed to write pastoral letters, especially if the Roman authorities required changes which the bishops felt would make their letters less suited to meet the particular needs of their people.

There are, then, difficulties connected with the fulfillment of the conditions laid down by the pope that could prove to be rather serious obstacles to the effective exercise of the teaching ministry by episcopal conferences. This leads one to ask what considerations might have led the pope to decide to require these particular conditions. It seems to me at least probable that the following considerations were involved in his decision. An authoritative doctrinal statement issued by an episcopal conference would call for the response of *obsequium religiosum* not only from the faithful of the region, but also from the bishops. This raises the question: What is the source of the authority which a statement issued by the conference as such could have on the bishops of the region? The problem is solved by requiring either total unanimity or *recognitio* by Rome of a statement approved by at least two thirds of the members. A statement approved with total unanimity would have the authority that each individual bishop gave to it. *Recognitio* by Rome would supply the authority which a two-thirds major-

ity of the conference would otherwise not have to impose an obligation on the bishops of the minority.

If one grants that this is at least a reasonable explanation for requiring the conditions laid down for the issuing of doctrinal statements by episcopal conferences, I would further suggest that this is consistent with the theory that teaching authority is properly held only at two levels: at the universal level, by the pope and the whole college of bishops, and at the local level, by the diocesan bishop. As we have seen above, this view was expressed by Ratzinger during the Vatican consultation concerning the NCCB pastoral on peace, when he said: "A bishops' conference as such does not have a *mandatum docendi*. This belongs only to the individual bishops or to the College of bishops with the pope." This theory has been further developed by the canon lawyers Gianfranco Ghirlanda and James P. Green, who insist that only the universal college of bishops can teach authoritatively as a college, and that no lesser body of bishops, whether a particular council or an episcopal conference, can do so.<sup>37</sup>

Up to this point, I have offered my conjectures as to the reasons behind the conditions laid down by the pope for the issuing of doctrinal statements by the conferences, and as to the theory about the location of teaching authority which this implies. I now intend to discuss some texts in the earlier part of *Apostolos suos*, where the pope treats the theological and juridical nature of episcopal conferences, which I believe tend to substantiate my conjectures.

I have suggested that the conditions laid down by the pope for the exercise of teaching authority by episcopal conferences imply a theory as to the source of the binding effect that such teaching would have not only on the faithful of the region but on the bishops as well. The two conditions would explain the source of this binding effect as either the collective authority of the individual bishops (through unanimity) or the universal authority of the Holy See (through *recognitio*). *Apostolos suos* seems to me to be consistent with this explanation when it says: "The binding effect of the acts of the episcopal ministry jointly exercised within conferences of bishops and in communion with the Apostolic See derives from the fact that the latter has constituted the former and has entrusted to them, on the basis of the sacred power of the individual bishops, specific areas of competence."<sup>38</sup>

The statement that the Apostolic See has constituted the episcopal conferences would seem to be based on canon 449.1 which says: "After hearing the bishops involved, it pertains to the supreme church authority alone to

<sup>37</sup> For Ghirlanda see n. 11 above; James P. Green, *Conferences of Bishops and the Exercise of the Munus Docendi of the Church* (Rome: Gregorian University, 1987).

<sup>38</sup> *Apostolos suos* no. 13, *Origins* 28 (July 30, 1998) 155.



erect, suppress or change the conferences of bishops.” The Commentary commissioned by the Canon Law Society of America remarks on this canon: “This hardly matches the history of conferences and represents a significant shift from the conciliar perspective. The Council (CD 38:3) and post-conciliar legislation (*mp Ecclesiae Sanctae* I, 41:1–2) had required the approval of statutes by the Apostolic See but had left the authority to establish a conference in the hands of the participating bishops.”<sup>39</sup>

Secondly, the binding effect of the acts of episcopal conferences is said to derive not only from their having been constituted by the Apostolic See, but also from the fact that the Apostolic See has entrusted to them specific areas of competence. This would seem to be based on canon 445,1 which says: “The conference of bishops can issue general decrees only in those cases in which the common law prescribes it, or a special mandate of the Apostolic See, given either *motu proprio* or at the request of the conference, determines it.” Since the issuing of general decrees is an exercise of legislative, rather than teaching authority, the fact that the Apostolic See entrusts specific areas of competence to episcopal conferences would not explain the binding effect of their exercise of teaching authority. Since *Apostolos suos* does recognize that this has binding effect, there must be some act of the Apostolic See that would be the equivalent of entrusting them with competence to issue authoritative doctrinal statements. No other act would seem to meet this need except the *recognitio* that is required if the statement does not enjoy the collective authority of all the individual bishops.

Finally, it is said that the Apostolic See has entrusted to episcopal conferences specific areas of competence “on the basis of the sacred power of the individual bishops.” This would indicate that the binding effect of the acts of an episcopal conference derives from two sources: the universal authority of the Holy See and the local authority of the individual bishops. This is consistent with the view that ecclesiastical authority is properly located only at the universal and the diocesan levels, leaving no room for an intermediate body with proper authority. The following passage of *Apostolos suos* would seem to confirm this view.

In the episcopal conference the bishops jointly exercise the episcopal ministry for the good of the faithful of the territory of the conference; but for that exercise to be legitimate and binding on the individual bishops there is needed the intervention of the supreme authority of the church which, through universal law or particular mandates, entrusts determined questions to the deliberation of the episcopal conference.<sup>40</sup>

<sup>39</sup> *The Code of Canon Law. A Text and Commentary*, ed. James A. Coriden et al. (New York: Paulist, 1985) 365–66.

<sup>40</sup> *Apostolos suos* no. 20, *Origins* 28 (July 30, 1998) 156.

This passage would tend to confirm my surmise that the crucial question about the exercise of authority by an episcopal conference is: How can an act of a bishops' conference be binding on the individual bishops? Obviously this is not a problem if they all voted in favor of it. But how can it bind the bishops of a minority who voted against it? *Apostolos suos* gives the answer: there is needed the intervention of the supreme authority of the Church, which entrusts determined questions to the deliberation of the episcopal conference. The term "deliberation" here means not merely discussing an issue, but deciding it by deliberative vote. But again, this is a question of legislative authority to issue general decrees, which is given either by common law or by specific mandates. But there is no such law or mandate about teaching authority. So the question remains: if an episcopal conference can also issue an authoritative doctrinal statement, what is the intervention of the Holy See that is needed to make that statement binding on the individual bishops? Once more, the required *recognitio* would seem to be the intervention that would make a statement that was not unanimously approved, binding on the bishops who voted against it.

I find a confirmation of this interpretation of the function of the *recognitio* of doctrinal statements which are not unanimously approved, in the passage of *Apostolos suos* in which John Paul II explains the conditions under which such statements would oblige the faithful to "adhere to them with a sense of religious respect."<sup>41</sup> The passage is as follows.

Taking into account that the authentic magisterium of the bishops, namely what they teach insofar as they are invested with the authority of Christ, must always be in communion with the head of the college and its members, when the doctrinal declarations of episcopal conferences are approved unanimously they may certainly be issued in the name of the conferences themselves, and the faithful are obliged to adhere with a sense of religious respect to that authentic magisterium of their own bishops. However, if this unanimity is lacking, a majority alone of the bishops of a conference cannot issue a declaration as authentic teaching of the conference to which all the faithful of the territory would have to adhere, unless it obtains the *recognitio* of the Apostolic See, which will not give it if the majority requesting it is not substantial. The intervention of the Apostolic See is analogous to that required by law in order for the episcopal conference to issue general decrees.<sup>42</sup>

This passage clearly distinguishes two sources for the authority of a doctrinal declaration of an episcopal conference. If it was approved unanimously, "the faithful are obliged to adhere to the authentic magisterium of their own bishops." In that case, the source of the statement's authority is the authority which each bishop has over his own faithful. However, if it

<sup>41</sup> It is worthy of note that the phrase "sense of religious respect" is the rendering of *obsequium religiosum* in the English translation of *Apostolos suos* provided by the Vatican.

<sup>42</sup> *Apostolos suos* no. 22, *Origins* 28 (July 30, 1998) 156–57.

was not approved unanimously, it could not be issued as authentic teaching of the conference to which all the faithful of the territory would have to adhere, unless it obtained the *recognitio* of the Apostolic See. The fact that in this case the Apostolic See would be the source of the declaration's authority is indicated by the final remark: "The intervention of the Apostolic See is analogous to that required by the law in order for the episcopal conference to issue general decrees." The two passages quoted above have made it clear that episcopal conferences derive their authority to issue general decrees from the fact that either common law or a mandate of the Holy See has entrusted to them specific areas of competence. There is no such mandate that would give them the power to issue authoritative doctrinal statements. Evidently the required *recognitio*, which is described as analogous to the mandate, is the source of the authority by which a conference's doctrinal statement would have binding effect on the bishops who had voted against it.

#### WHOSE VOICE HAS PREVAILED?

Pope John Paul II, with his *motu proprio Apostolos suos*, has answered the question whether episcopal conferences can exercise an authoritative teaching function. At the same time, he has imposed conditions on its exercise which are likely to render it so difficult as to discourage some conferences from making the effort involved in putting it into practice. While his letter is entitled: "The Theological and Juridical Nature of Episcopal Conferences," it does not clearly answer some of the questions about their nature that have been the object of dispute among theologians and canonists during the past 20 years or so. One of the most disputed of these questions is whether an episcopal conference is a collegial subject of teaching authority, intermediate between the universal college and the diocesan bishop, or on the contrary is not such a subject and has no teaching authority of its own, but must receive it either from Rome or from the individual bishops.

The theologians and canonists who took part in the colloquium at Salamanca were unanimous in their view that an episcopal conference as such is an intermediate organ of authoritative magisterium, whose teaching function cannot be interpreted merely as a simultaneous action of its individual members. Similarly, Avery Dulles and Ladislav Orsy, in the American symposium, and Hermann Pottmeyer in the German, all expressed views consonant with those of the Salamanca colloquium.

Ratzinger, on the other hand, declared: "A bishops' conference as such does not have a *mandatum docendi*. This belongs only to the individual bishops or to the College of bishops with the pope." This view was further expounded by the canonists Ghirlanda and Green, and was affirmed in the

“Draft Statement on Episcopal Conferences” which declared: “A contingent structure of a collective, not collegial character cannot substitute the individual bishop, who in episcopal consecration has been constituted authentic teacher of the faith for his particular church. Therefore the episcopal conferences do not, as such, properly speaking possess the *munus magisterii*.”

Now it is certain that one does not find in *Apostolos suos* a denial that episcopal conferences have a *mandatum docendi*. However, the question I have raised is whether the conditions which the pope has laid down for the binding effect of a teaching statement made by an episcopal conference do imply the theory that properly speaking, teaching authority belongs only to the individual bishops or to the college of bishops with the pope. I think it cannot be denied that the two conditions under which a conference’s teaching will have authority: either total unanimity or *recognitio* by Rome, are consistent with that theory. Furthermore, I have analyzed several passages of the *motu proprio* which rather clearly confirm my judgment that the two conditions laid down by the pope really mean that an episcopal conference is not an intermediate subject of teaching authority. To have a binding effect, its doctrinal statements must receive their authority either from the individual bishops, each of whom has approved it, or from the Holy See. In my opinion, it is Ratzinger’s view that has prevailed.

By way of conclusion, I shall offer my comments on an argument that Ratzinger has used to justify his view. It is found in his book *Church, Ecumenism and Politics* where he wrote:

On matters of faith and morals no-one can be bound by majority decisions. This is also the reason why bishops’ conferences do not have any teaching authority and cannot as conferences make teaching binding. Because this is so, even ecumenical councils can only decide on matters of faith and morals in moral unanimity, since one cannot establish the truth by resolution but can only recognize and accept it. The pattern whereby truths are defined as such is not the majority decision but the recognition becoming generally clear that the guardians of the faith united in sacramental communion jointly recognize a statement as the consequence of the faith they hold. Where this kind of unity arises it should be judged as a sign that this really is an expression of the faith of the Church which as the Church and as a whole cannot err in matters of faith. This is the inner foundation of theological definitions. The idea of consciences being bound by a teaching through a majority decision is an impossibility in human as well as theological terms.<sup>43</sup>

My first comment is that I fully agree that on matters of faith and morals no one can be bound by majority decisions. It is consistent with this view to understand that the Roman *recognitio* that is required for the binding effect of a teaching statement of an episcopal conference that received a

<sup>43</sup> See n. 10 above.

two-thirds majority, is really the source of the statement's authority. However, the fact that *Apostolos suos* allows such a statement to be published "in the name of the conference itself"<sup>44</sup> could give the impression that on matters of faith and morals one can in fact be bound by majority decisions. This could also give the impression that there is no real difference between disciplinary and doctrinal decisions in this respect.

However, as Ratzinger rightly points out, even ecumenical councils can only decide on matters of faith and morals in moral unanimity, when "guardians of the faith united in sacramental communion jointly recognize a statement as the consequence of the faith they hold." What I find strange in his argument is that he does not seem to consider the fact that from earliest times, regional councils have also consisted of "guardians of the faith united in sacramental communion" who have also "jointly recognized a statement as the consequence of the faith they held" and have decided questions with moral unanimity. What is even stranger is Ratzinger's assumption that when bishops teach in episcopal conferences they do not follow the pattern set by councils, but are satisfied with majority decisions, rather than seeking moral unanimity.

At least as far as the bishops of the United States are concerned, Reese has shown that this is not the case. Having studied the voting record of the U.S. conference—which consists of more than 250 bishops—he concluded:

Thus from 1966 through 1983, only thirteen of the ninety-four NCCB/USCC statements published in *Pastoral Letters of the United States Bishops* had more than nineteen negative votes. The rest were approved by voice vote or received less than twenty negative votes. As a result, 85 percent of the NCCB/USCC statements were supported by at least 90 percent of the bishops voting. . . . Judging from the final votes on documents in *Pastoral Letters*, the NCCB/USCC is clearly an assembly that operates by consensus.<sup>45</sup>

According to *Apostolos suos*, a doctrinal statement issued by an episcopal conference will have binding effect when it has either been approved with absolute unanimity, or, having been approved by a two-thirds majority, has been granted the *recognitio* of the Holy See. But throughout the course of history, bishops' councils, whether ecumenical or regional, have never demanded absolute unanimity for their doctrinal decisions, nor have they

<sup>44</sup> *Apostolos suos*, "Complementary norms 1," *Origins* 28 (July 30, 1998) 157.

<sup>45</sup> Thomas J. Reese, S.J., "Conflict and Consensus in the NCCB/USCC" in *Episcopal Conferences: Historical, Canonical and Theological Studies* 119 (see n. 16 above). For a complete collection of the American bishops' pastoral letters, see *Pastoral Letters of the United States Catholic Bishops*, ed. Hugh J. Nolan, vol. 1 (1792–1940); vol. 2 (1941–1961); vol. 3 (1962–1974); vol. 4 (1975–1983); vol. 5 (1983–1988) (Washington: NCCB/USCC, 1983–1989); *Pastoral Letters and Statements of the United States Catholic Bishops*, ed. Patrick M. Carey, vol. 6 (1989–1997) (Washington: NCCB/USCC, 1998).

usually been satisfied with a mere two thirds majority. As Hermann-Josef Sieben, the foremost authority on the history and theology of councils, has shown, they have always sought consensus. Referring to a letter of Cyprian, he writes:

In this letter the bases for the consensus sought and finally found in the council are the passages of Scripture concerning the point at issue. Elsewhere it is the tradition of the Church concerned. In the eyes of the bishops assembled in council both the texts of Scripture and the testimony of tradition represent, each in its own way, a consensus. The task of the council is now, on the basis of the consensus understood to have already been given, to achieve its own consensus. . . . The council itself is thus the event of a double consensus, indeed the convergence of the vertical and the horizontal consensus. But all this still does not capture all that Cyprian understood by a council. . . . Cyprian attributes the consensus found at the council to the Holy Spirit. The council as an event of consensus is a creation of the Spirit. The *sententia* of the council, the consensus found, is in the end not the work of men but of God. . . . This understanding remains characteristic of the broader development of the self-understanding of synods in the ancient Church.<sup>46</sup>

If one asks what was the source of the authority which a decision of such a council had for the faithful of North Africa, it would no doubt have been their confidence that in reaching their consensus the bishops had been guided by the Holy Spirit. Neither the bishops nor the faithful demanded absolute unanimity, but they recognized the achievement of a morally unanimous decision as a clear sign of the truth to which the bishops had given their concordant witness.

While the 1983 Code of Canon Law notes differences between plenary councils and episcopal conferences, there is really no fundamental difference of a theological nature between modern episcopal conferences and the regional councils that brought together the bishops of North Africa every year during the time of Cyprian and Augustine. It seems to me, then, that rather than locating the source of the authority of teaching statements of episcopal conferences either in total unanimity or in Roman *recognitio*, one should locate it in the reasons that the faithful have for recognizing statements on which their bishops have reached consensus after broad consultation and serious deliberation, as guided by the Spirit and hence worthy of their trust and acceptance.

<sup>46</sup> Hermann-Josef Sieben, S.J., "Episcopal Conferences in Light of Particular Councils During the First Millennium," in *The Nature and Future of Episcopal Conferences* (see n. 12 above) 32–33.