A Book by Andreas Kowatsch Regarding the Personal Principle in the Organization of the Ecclesiastical Community*

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The development of the pastoral mission in the Catholic Church in various countries and continents has as its natural consequence the constitution of dioceses, once the task of evangelization reaches a sufficient maturity. When, for different reasons, it not possible to constitute a proper diocese, the Holy See establishes other communities that have been described by various names, according to the cases and the historical evolution: prefectures, vicariates, prelatures, ordinariates, etc.

One issue that has especially occupied canonists in recent decades is the delimiting principle of those communities comprised of clergy and the people. Nowadays, these are called *circunscripciones* [circumscriptions] by a large part of Spanish and Italian canonists, or *comunidades jerárquicas* [hierarchical communities], in terminology used more so by those who speak French. Following the territorial principle, the circumscriptions are delimited by a proper territory where the presbytery and the faithful are canonically incorporated into that territory according to the rules of domicile and quasi-domicile. The paradigm of this

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organization is that which corresponds to the dioceses and territorial parishes. However, canon law also now admits, with more clarity than in other times, the validity of a personal principle by which communities are constituted without a proper canonical territory. These communities are based on pastoral, apostolic, or practical needs that affect groups of persons in socially relevant circumstances. This is the case of Catholic military members who, owing to the special conditions of their lives, form part of special community structures currently called military ordinariates. It is also the case of the ordinariates established in 2009 that allow former Anglicans who are received into the Catholic Church to corporately preserve their spiritual patrimony.

Canonists have studied different issues over these years. Some of these issues include: The very nature of the personal hierarchical communities and the impact of the doctrine of the local or particular Church in this context; the various forms of capital offices; the systems of incorporation of the faithful; the relation between the proper statutory norms and the canons of the CIC; the nature of the episcopal and quasi-episcopal power; the extent of parity of the personal circumscription with the dioceses; its relation with the power of the diocesan bishops. And so many other questions that have interested authors, also because the preparatory drafts of the CIC regarding this matter were not without their hesitations and uncertainties, for example, in relation to the legal framework of the personal prelatures. At the same time, the circumstances of modern society have seen a great social mobility, at times for professional reasons, and at times, tragically forced for reasons of violence and poverty that oblige no small number of Catholics to flee their native lands in search of better conditions. This social mobility brings up more than a few problems in pastoral care and the appropriate relationship between persons and territories.

The title of the book that I am reviewing in these pages does not lend itself to an easy translation into Spanish or English. It could be translated literally as "*Comunidades eclesioparticulares personales*" [Personal Ecclesial-Particular Communities] and not just "*Iglesias particulares personales*" [Personal Particular Churches]. It is helpful to also offer a translation of the subtitle of the book, which already introduces a fundamental thesis of the study, "*Ecclesia particularis* as a legal concept and its importance in the use of personal criteria in the demarcation of particular Churches". The book is not the first publication by the author. This book was his work to

obtain eligibility for university teaching (Berufungsfähigkeit) presented in the Faculty of Catholic Theology of the University of Ludwig-Maximilians in Munich, under the special direction of Professor Stephan Haering.

An essay is offered, in part theological and in part canonical, according to the traditional framework of the School founded by Klaus Mörsdorf in Munich. The key to his methodology and content is expressed in the subtitle of the work because the author begins from the theology and law related to the particular church in order to study the ecclesiastical communities without a proper territory. In the Latin Church, in addition to the personal prelatures, in the years following the 1983 CIC, an expansion of the hierarchical communities of the Church was accomplished through the regulation of new personal circumscriptions. In 1986 the military ordinariates were regulated, in 2002 the figure of the personal apostolic administration was established for the first time, and in 2009 Benedict XVI regulated the institution of the personal ordinariates for former Anglicans that are received into the Catholic Church.

According to the author, it is not enough for canon law to acknowledge the theology of the particular church. The thesis of Andreas Kowatsch is unlike the well-known explanation of Javier Hervada. The latter taught that the particular church is a theological concept, not originally a canonical one, although it is used by the legislator and the law of the Church. Kowatsch's thesis is that the particular church is indeed a juridical concept that determines the entire system of ecclesiastical circumscriptions. One ought to speak of a particular church not just in the case of the dioceses, but also in that of communities presided by a proper pastor with an episcopal function, a presbyterate, and a portion of the people of God open to all the charisms and legitimate forms of life in the Church, independently of whether this community is defined by a territory or by other criteria, such as the profession of the faithful, the proper rite, or membership in a specific and socially relevant spiritual and liturgical tradition. The author supports his thesis in canons 368-372 of the CIC and finds the text of c. 372 § 2 especially helpful for its reference to the personal ecclesial-particular communities.

The first part of the book studies the particular church as it is expressed in the documents of Vatican II and explains in concrete terms that the territory is not an essential element of the particular church. The author opportunely distinguishes among the location of the go-

vernment, of the pastoral and the reality of a truly canonical territory. He also extensively presents here the essential elements of the juridical notion of the particular church in the meaning indicated.

After these general considerations, the author then enters fully into the study of the personal communities: their precedents and common elements, as well as every pastoral organization in particular. This is the order by which he analyzes in detail the historical characteristics of the organization of the pastoral care of the emigrants, the always interesting juridical figure of the Mission of France (in his opinion, the first personal prelature in the sense used today by the CIC) and the institution of the personal prelature, of which he takes an interest especially in the matter of its juridical nature.

From that point, which corresponds almost exactly with the middle of the book, the author carefully studies each one of what he calls ecclesial-particular communities organized around the personal principle. For Kowatsch, the representative models which express the juridical concept of non-territorial particular church are the following: the personal diocese (his observations are interesting and convincing, not just in this part of the book, about the issues of the personal diocese, essentially without an application, except in the case of a Syro-Malabar archeparchy in India); the military ordinariate, the personal apostolic administration; the personal ordinariates for faithful who were members of the Anglican communion; and, finally, the ordinariates erected in the Latin Church for Eastern faithful without a proper hierarchy in the place, that the author calls in shorthand, "Latin ordinariates". The careful examination of each of these communities is accompanied by frequent excursus referring to particular arguments; for example, about concordat law, the concept of circumscription, the relations between the so-called structures of communion and the associative entities, the history of the military ordinariate in Austria, the relation between the universal and the particular in the configuration of religious institutes, and also the pages dedicated to the right of incardination.

In reality, the author deals extensively with all the questions of constitutional canon law implied in the territorial or personal organization of the communities. With a clear, serene, and objective style, the author manages to offer a complete panorama of the questions that have occupied canonists for years. He uses all the sources and thoroughly enters into dialogue with the published opinions in the com-

plete international bibliography cited. The author makes a valiant effort understanding and presenting faithfully the various opinions.

In some places, the presentation is brilliant and manages to advance in somewhat complex topics, for example in that which refers to the nature and justification of the power that is exercised in the communities compared with the dioceses, also when they are not governed by bishops but instead by priests with episcopal functions. The detailed explanation of the quasi-episcopal power of the prelate, and in particular the distinction in this area between proper and vicarious power, enriches what has been written about this matter to date.

The pages that the author spends on the legal parity or comparison of the personal circumscriptions to the diocese are also interesting. This legal comparison can be explicit in the legislation or implicit, that is, according to a reasonable interpretation. Regardless, the manner of arguing here does cause a question to arise. On one hand, the author presents the *aequiparatio in iure* as a "legislative technique" (p. 520), but, on the other hand, he explains that the object of the analogical comparison could be the "notion" of the particular church. For example, if I understood well this argument, the military ordinariate, *because it is a particular church*, would be canonically comparable to the diocese. But, in reality, the legislator does not establish this comparison through a logically deductive operation, from the category of the particular church. In fact, the comparison is made between two institutions that are similar in their history and organization. That is how the Apostolic Constitution *Spirituali militum curae* is understood when its art. I § 1 establishes that the military ordinariates are "peculiar ecclesiastical circumscriptions" that are "juridically likened to the diocese".

As far as the individual study of the institutions, it is impossible to summarize such a broad work in the space of a book review. But there are two questions that deserve, in my opinion, some comment. The two maintain a special relationship with the dialogues (I prefer to call them that, rather than to speak of polemic debates) about the figure of the personal prelature, but they have a wider meaning.

1) In the first place is the question of the incorporation into the communities. That is, the problem of the adscription or canonical bond of the lay faithful (and also, in their turn, of the members of institutes

of consecrated life) with the ordinariates, prelatures, and personal apostolic administrations.

During the years following the promulgation of the 1983 CIC, some authors, most of all Winfried Aymans and some of his students defended the required and involuntary incorporation of the particular churches as a characteristic element of the structures of communion. By contrast, the voluntary adscription would be signal of the associative structure, as is the case in c. 296, referring to the personal prelatures. It would not be possible to incorporate the hierarchical communities of the Church in an individual and voluntary fashion, but always according to objective criteria such as domicile or rite, and neither would the authority have freedom to deny the admission of the hypothetical candidate, as happens, however, with the superiors of the associations of the faithful and in institutes of consecrated life.

Nevertheless, this doctrinal outline has been better enhanced in recent decades, on the basis of the distinction between territoriality and personality. Excluding the domicile as means of incorporation into personal communities, given that they lack a proper territory, the law provides two basic possibilities. The first is through the means set out by the law itself, for example, when it determines that typically all the Catholics who, according to the law of the State, belong to the national armed forces, will be members of the corresponding military ordinariate. This affiliation *ope legis*, *ipso iure*, is complemented by a second possibility: that the faithful collaborate or even incorporate themselves into the personal circumscriptions through an individual declaration of their will that is communicated and accepted by the authority of the pertinent community.

This second possibility is provided for in c. 296 of the CIC in relation to the personal prelatures in general and is regulated in detail in the Statutes of the Prelature of Opus Dei, for now the only personal prelature in the Catholic Church. But the explanation of the incorporation into the personal circumscriptions has been being clarified also according to the legislative praxis following the 1983 CIC, especially with the norms applied in 2002 to the personal apostolic administration of Campos, Brazil and in 2009 with the Apostolic Constitution *Anglicanorum coetibus* and its complementary norms that regulated in a general fashion the personal ordinariates for former members of the Anglican Communion. These norms from 2002 and 2009 provided for the

voluntary and individual incorporation into these personal circumscriptions by interested faithful. Therefore, not only is the voluntary membership in these institutions of the hierarchical organization of the Church possible, but this possibility has been promoted by the ecclesiastical legislator. It is a way to respect and promote the freedom and personal commitment of the faithful with the Church's communities.

Andreas Kowatsch's book naturally assesses all of this legislative evolution, but with some disconcerting nuances. In the author's terminology, the personal prelature of the CIC is not an "ecclesial-particular community", such that the declaration provided for in c. 296 would not be comparable with the incorporation in the personal apostolic administration nor with the ordinariates for former Anglicans, and only the latter two would indeed enter into the category of "ecclesial-particular community". Independently of the legal category of particular church, which I am not addressing at this point, the arguments which the author uses to deny that c. 296 ought to be seen in connection with the development of the personal circumscription following the CIC are questionable.

In effect, the interpretation of c. 296 already even suggests some *petitio principii*. For Kowatsch, the interpretative framework of the *conventiones* alluded to in that canon is that of contracts, which in his opinion, are legal transactions that primarily belong to the sphere of private law and presuppose equality between the parties. In that sense, a jurisdictional relationship that implies in itself positions of superiority and subordination cannot be founded through a contract (p. 322). However, in canon law, the contract (pact, convention, covenant) is not an agreement between private individuals excluding possible consequences to the public position of the parties. As Teresa Blanco explained years ago, according to the canonical tradition, a contract is every pact or agreement of wills from which derive juridical obligations for the parties. It does not fit to give to this concept a necessarily privatist nor patrimonial interpretation. The CIC already considers cases of conventions that can give rise to consequences that are typical within the jurisdictional sphere, such as the contract of aggregation of a cleric provided for in c. 271, the contract entrusting a parish to a religious institute (c. 520 § 2) or the *conventio* precisely provided for in c. 296.

But, apart from the author's idea about the contractual institution, one can criticize his argumentation which underestimates the impor-

tance which the subsequent praxis has after the 1983 CIC. This praxis is necessary in order to arrive at the right systematic interpretation of the possibilities opened up by c. 296. It is a weak argument from the start that the *conventio* of c. 296 was not mentioned within the norms about ordinariates and personal apostolic administrations. This is logical because it deals with a canon expressly provided for personal prelatures; but that does not exclude the substantial question of if it can, or not, be made up of the people of *personal* circumscriptions also through declarations of the faithful which legitimately manifest their free will to belong to them, and not just by the preceptive determination of the law.

Neither does it seem to be a valid argument that, according to c. 296, the authority of the personal prelature would be able to deny admission to a candidate, whereas this rejection of an application would not be possible in the case of the personal apostolic administration nor of the ordinariates for former Anglicans, in spite of the fact that they also envisage voluntary incorporation. As far as the Administration of Campos goes, it is obvious in my opinion, that the corresponding authorities are able to reject a petition to join, among other reasons, because they would not be interested in admitting people that are motivated by spurious interests. Instead, only "those who, acknowledging that they bind themselves to the distinctiveness of the personal apostolic administration...", as is stated in the proper instituting norm, which naturally implies a verification by the authority in order to receive the [written] manifestation of will from the faithful. Of course, the rejection of a petition for admission ought to be reasonable and founded on just motives, but there is no obligation to always admit someone nor without any verification whatsoever of one who requests entrance.

Likewise, in the case of the ordinariates for former Anglicans, the ordinariate is not obliged to admit just anyone who requests it. First of all, the 2009 norms already established some requirements of ties to the Anglican tradition for those who wished to be a member. However, the lack of immediate efficacy of the will to enter seems especially obvious according to the recent Complementary Norms approved for these ordinariates in 2019. In effect, the new norms recognize the possibility of incorporation into the ordinariate of faithful that do not come from Anglicanism, but they do not say that these must be admitted, only that "possono essere ammessi" (cfr. art. 5 of these new

Norms). According to this expression, the application presented could be not accepted by the pertinent authority of the ordinariate, logically as long as there existed founded motives for the rejection.

In summary, it seems excessive to deduce from the praxis of entrance-exclusion within personal communities necessary and relevant consequences including for the determination of the nature of the entities. The personal prelatures, the personal apostolic administrations, and the personal ordinariates are not distinguished by the systems of incorporation of the faithful; on the contrary, they display a similar configuration within the various possibilities that the law offers for communities without a proper territory. In these communities it is expected that the lay faithful collaborate and join voluntarily. This type of agreements based on the free declaration of the will of the faithful are able to have different effects and scope according to the cases. But it is evident that these do not create the corresponding entity, given that ecclesiastical circumscriptions do not originate in the will of the members, as occurs conversely with the associations of the faithful, where the original force of the associative pact is in itself the creator of the association. Through the declaration of the faithful and the acceptance by the pertinent authority, the juridical relationship of the faithful with the entity that was already previously instituted by the Apostolic See is canonically confirmed (the clergy follow, for their part, the systems of incardination or of aggregation that correspond to them, according to the common law and the norms of each circumscription).

2) The second question that I would like to raise has to do with the principal thesis of the study, which the author defends firmly: that is, the systematic relevance of the "juridical concept" of the particular church. I think that the problem is not only the variety of terminology within the cultural linguistic setting, but also the consequences for the constitutional canon law associated with the conceptualization utilized.

Paradoxically, the study of Kowatsch, at once open to the possibility and presence of the personal principle in the canonical legislation, recognizer of the apostolic and pastoral usefulness of organizations without territory to the life of the Church, even expressive of a sympathetic closeness and lack of prejudice against these communities; is at the same time establishing through a general application of the concept

of "personal ecclesial-particular community" a criteria that excludes some of the community institutions of the ecclesiastical organization. This is because, in spite of being a general concept, that of particular church contains such presuppositions about its composition and objective of the *portio populi Dei*, that it can only include the diocese and some of the quasi-dioceses.

To be more specific, when Andreas Kowatsch discusses each of the six principal Latin ordinariates for the Eastern faithful, he is obliged to make distinctions such that all of them cannot be given the designation of ecclesial-particular. Specifically, the French ordinariate does not deserve it because of the limitations that exist in the regulations of this entity regarding the exercise of power by the archbishop of Paris. He needs to obtain the consent of the local ordinaries for determined measures of government relative to the faithful of the ordinariate. Neither is the ordinariate of Poland a true particular church, according to the information available. But one would also be able to exclude the case of the ritual ordinariate established in Spain in 2016, of which is debated even its proper juridical personality, because of its special ties with the Archdiocese of Madrid. The author gives the impression that this ordinariate is an ecclesial-particular community; proving the paradox of applying the juridical concept of particular church to an entity that perhaps even lacks a canonical personality. One might wonder, also, if the people attended by the ordinariates are aware that by belonging to them, they are in a different particular church than the *sui iuris* Churches of their countries of origin, or of the forms of relationships that they could establish with the local churches where they have their domiciles, for as long as a proper hierarchy cannot be establish in the place.

Inevitably, the concept of particular church leaves out of its classification community entities that do not have the theological elements of that category, and which, nevertheless, form personal circumscriptions of the ecclesiastical organization; not simple colleges of persons, offices, associations, nor foundations.

But the most affected by this system of classification of community entities considered within the juridical concept of the particular church would be the figure of the personal prelature. It is a piece that does not fit into the grander puzzle. In effect, canons 294-297 of the

CIC do not contain the fundamental elements of an ecclesial-particular community, and instead would regulate a clerical institution, whose basic precedent would be in the Mission of France. It would be a different case for the Prelature of Opus Dei, the first and only personal prelature to this day, a *sui generis* institution with characteristic elements of a particular church. This doble concept of personal prelature, that of the CIC and of Opus Dei, was already affirmed decades ago by Aymans. But it is a bit disappointing that after so many years the same framework keeps being repeated, in spite of the efforts made by canonists to achieve a harmonizing interpretation.

In recent years, two interesting official texts have been published to support this harmonization. They are incompatible with the supposed double model of personal prelature. The first is the letter of 17 January 1983 by the then prefect of the Congregation of Bishops which officially communicated to the first prelate of Opus Dei the papal will about the regulation of the personal prelatures (*obiter dictum*: the manifestation of the pontifical will through *rescripta ex audientia* is an analogous praxis, not infrequent in the pontificate of Pope Francis). This letter is opportunely cited by Kowatsch [1]. Cardinal Baggio made public in it the mind of John Paul II about the definitive regulation of the personal prelatures in the CIC and he wrote in particular about "the placement in the *pars I* of *liber II* does not alter the content of the canons which refer to the personal prelatures, which, therefore, although they are not particular churches, continue being jurisdictional structures, of a secular and hierarchical character, erected by the Holy See for the carrying out of peculiar pastoral activities, just as was sanctioned by Vatican Council II". Baggio adds that the documents of the Holy See constituting Opus Dei as a personal prelature would be "fully valid, for all intents and purposes" once the 1983 CIC was promulgated.

The second text, which nonetheless is not cited by Andreas Kowatsch, in spite of its importance, is the speech of John Paul II on 17 March 2001 to the participants in an international encounter about the Apostolic Letter *Novo millennio ineunte*. On that occasion, the Holy

[1] The full text of the letter was published in the journal *Studia et Documenta* 5 (2011) 379-380.

Father spoke of Opus Dei as a personal prelature "structured organically, that is, priests and lay faithful, men and women, headed by a proper prelate". He also affirmed that this hierarchical composition corresponds with that foreseen by Vatican II for personal prelatures in general[2].

The documents indicated entail a harmonized approach to the relationship among the personal prelature according to Vatican II, the canons of the CIC, and the application of this model to Opus Dei. Beyond the problems of interpretation that can logically present themselves, the confirmation expressed publicly by the person of the legislator who promulgated simultaneously the 1983 CIC and the norms of the first personal prelature is important. A personal prelature composed of priests and also with laity incorporated, structured hierarchically, but without forming a particular church, according to the will of Vatican Council II about personal prelatures.

But it is not only about turning to arguments of pontifical authority to affirm the appropriate nature of the personal prelature. The pressing need of a positive proposal and a harmonization of the possible difficulties surrounding this institution has to do with its usefulness for the life of the Church. A few canons from 294-297 without a lot of content, waiting to be completed by the Statutes of each personal prelature, with little doctrine presented explicitly in their regard, run the risk of not being taken advantage of, such that the institution that they regulate will hardly have any progress. Whereas a personal prelature open to interrelate with similar communities and properly inserted in the canonical system, would seem to be of pastoral and apostolic interest in the current circumstances in the life of the Church.

Let us consider the consequences of the logical framework of Kowatsch and other authors for the figure of the prelature in general, without adjectives. On one side, is the territorial prelature, historically derived from the ancient prelatures *nullius dioecesis*. Here we have a particular church separate from the diocese, but canonically compared with the diocesan model. On the other side, the personal prelature,

[2] The text of the speech can be found in *L'Osservatore romano*, 18-III-2001, 6 and on www.vatican.va, in the section containing Pope John Paul II's speeches.

which unlike the previous example is not a particular church nor does it belong to the hierarchical organization of the Church, for reasons that have to do with the preparatory drafting of canons 294-297 and the place they occupy in the CIC. Finally, the Prelature of Opus Dei, a *sui generis* institution, composed of clergy and people. Too many differences in institutions with the exact same name, that of prelature. Something has failed in this approach when it produces such a separation and rupture in the notion of prelature.

When one thoroughly studies the origin and development of the personal prelature in Vatican II, and especially the preparatory drafts of the Decree *Presbyterorum ordinis* no. 10, it becomes apparent that there is no evidence of the Council renouncing the traditional concept of the prelature when it instituted the new figure of the personal prelature. Very shortly after, Paul VI developed norms that were very close to those in the CIC. It is true that the prevision of the new entity could have been inspired by the model of the Mission of France, but, apart from that reference being abandoned when the preparation of *Presbyterorum ordinis* advanced, it seems that the juridical regulation of the Mission was precisely that of the prelature *nullius dioecesis*, of course with special characteristics that were applied to the French institution in the 1950s.

With this digression, I intend to say that the precedent of the personal prelatures is found in the prelature nowadays known as territorial and that it is not documented that Vatican II wanted to break the unity of the concept of prelature when instituting the new personal prelatures. Instead, the Council wanted that the new type would belong to a category already know in the law of the Church, such that its personal delimitation would not exclude its category of prelature. In this sense, not only is it legitimate, but also corresponds to reality, the defense of a common genus of prelature with both types recognized by the current ordinance: the territorial prelature and the personal prelature. An affirmation of the first (not entirely clear) as a particular church and not of the second, does not seem to be sufficient motivation to systematically separate both figures, as if the concept of prelature as a community entrusted to a prelate with quasi-episcopal jurisdiction did not have its own proper content in history and in constitutional canon law.

In summary, the use of the concept of particular church as a classifying category of the personal jurisdictions is not free from systematic issues. It is a general concept that was not borne of the way of conceptualizing and formalizing which is proper to ecclesiastical law, but instead from the theological sciences. However, the diocese, ordinariate, prelature, vicariate, administration, are juridical concepts, even though some may have their origins in Roman public law, they are notions that have been developed and established within canon law for centuries. Let it be understood well: it is not a question of absurd conceptual disputes between canon law and theology about the use and origin of the concepts; indeed, the particular church is a designation widely used in the ecclesiastical legislation and with an important content for the law of the Church. But that does not mean that it ought to necessarily be a general concept from which must be understood and explained the system of ecclesiastical communities.

In my opinion, it would be more appropriate to turn to other conceptual instruments that are more expressive and a better fit with reality, such as the circumscription. This term is not merely academic, in addition to being used in the praxis of government of the Holy See, it was applied in 1986 precisely in the general regulation of the military ordinariate, one of the typical personal hierarchical communities. At the same time, I believe it would be worth the trouble to study to what extent the concept of particular church ought to be reserved to the diocese, although the regulation of the CIC seems to employ it in a broader fashion. The issue is that the non-diocesan circumscriptions raise various questions about their capital offices, composition, characteristics, and objectives, such that it is not always easy to harmonize them with the notion of the particular church.

At the end of this book review and these critical annotations, I do not want to omit to underscore the interest of Kowatsch's book, which, for its amplitude and analytical effort, ought to be regarded as an important contribution to the bibliography about community institutions provided for by constitutional canon law.