

THE VIENNA DIALOGUE

Five PRO ORIENTE Consultations
with Oriental Orthodoxy

JURISDICTION
FOURTH STUDY SEMINAR
JULY 1996

Published by
Alfred Stirnemann and Gerhard Wilflinger
on behalf of the
Foundation PRO ORIENTE

Booklet No 9
Vienna 1998

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ISBN: 3 - 901 188 - 09 - 6

Cover Picture Credits: Syrian Cross Plate, Paris, Louvre; Coptic Embroidery, Vienna, Museum für Angewandte Kunst; Romanesque Cross, Barcelona; Armenian Cross (Khatchkar), Sanahin; Ethiopian Cross, Pro Oriente, Vienna

Cover Layout and Design by Hedwig Bledl
 Text Layout by Franz Gschwandtner

Printed by Ferdinand Berger & Söhne Ges.m.b.H., Horn, Austria 1998

PREAMBLE

The present volume on *Authority and Jurisdiction* is the result of a Study Seminar organized by the PRO ORIENTE Foundation as the fourth in a series. These study seminars which have brought together, over a period of five years, theologians and specialists on issues like Primacy, Councils and Conciliarity, Ecclesiology and Unity of the Church. Authority and Jurisdiction are an offshoot of the celebrated Vienna Dialogues between theologians of the Roman Catholic and Oriental Orthodox Churches sponsored by PRO ORIENTE since 1971.

In the unofficial conversations of the Vienna Dialogues, fundamental Christological issues, which had divided the Church since the Council of Chalcedon 451, were settled and agreements reached. The Study Seminars took up for further clarification theological and ecclesiological issues that remained between the Roman Catholic and Oriental Orthodox Churches as obstacles in their way to establishing eucharistic communion. On the firm footing of the Vienna Dialogues, these Seminars have enhanced mutual understanding and further agreements between the two ancient Church traditions.

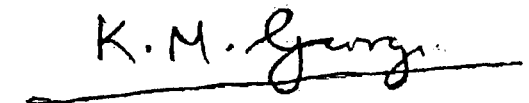
The issue of Authority and Jurisdiction, however, remains to be the major (probably the last?) bastion of discord and disagreement to be confronted with on the way to communion. In the historical evolution of the Churches in the West and the East, different structures of authority were developed at local, regional and global levels. Primate sees like Patriarchates and Catholicosates became the hub of authority structure in different churches. In the light of the contemporary globalization of the formerly "local" churches through mission and diaspora, the issue of primacy in the churches acquired a new dimension. In the dialogue between the Roman Catholic Church and the Oriental Orthodox Churches, the traditional question of the primacy of the see of Rome and the ministry of the Bishop of Rome naturally loomed large.

Some of the convergence points and the topics for further discussion and elucidation are briefly outlined in the communiqué of the Fourth Study Seminar.

The Seminar was partly a response to the call of Pope John Paul II in his encyclical *Ut Unum sint* to open a wider discussion on the question of the authority of the Bishop of Rome in view of the new millennium and the aspiration of Christians all over the world for close unity and cooperation.

Our profound gratitude goes to the PRO ORIENTE Foundation, its founder Francis Cardinal König, whose gracious presence in some sessions of this seminar enriched us, and to Alfred Stirnemann, President of the PRO ORIENTE Foundation, whose highly informed and indefatigable ecumenical enthusiasm and remarkable organizational abilities made this seminar and other such activities of the foundation a major step forward in the fellowship of our Churches.

Orthodox Theological Seminary
Kottayam, November 2nd, 1998



The Oriental Orthodox - Roman Catholic Ecumenical Dialogue

PRO ORIENTE Publications in English

* First Ecumenical Consultation between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church, Papers and Minutes. Supplementary Issue Number 1 of the Periodical "Wort und Wahrheit" (Verlag Herder, Vienna 1972) 190 p.

* Second Ecumenical Consultation between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church, Papers and Minutes. Supplementary Issue Number 2 of the Periodical "Wort und Wahrheit" (Verlag Herder, Vienna 1974) 208 p.

* Third Ecumenical Consultation between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church, Papers and Minutes. Supplementary Issue Number 3 of the Periodical "Wort und Wahrheit" (Verlag Herder, Vienna 1976) 240 p.

* Fourth Ecumenical Consultation between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church, Papers and Minutes. Supplementary Issue Number 4 of the Periodical "Wort und Wahrheit" (Verlag Herder, Vienna 1978) 256 p.

* Fifth Ecumenical Consultation between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church, Papers and Minutes. Supplementary Issue Number 5 of the Periodical "Wort und Wahrheit" (Verlag Herder, Vienna 1989) 208 p.

* Selection of the Papers and Minutes of the Four Vienna Consultations between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church. Edited by Ökumenische Stiftung PRO ORIENTE in Vienna (1988) 286 p.

* Five Vienna Consultations between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church 1971 - 1988. Selected Papers in One Volume. Published and edited by the Ecumenical Foundation PRO ORIENTE - Vienna 1993, 370 p.

The PRO ORIENTE Dialogue within the Churches of Syriac Tradition

* Syriac Dialogue No 1, First Non-Official Consultation on Dialogue within the Syriac Tradition, PRO ORIENTE, Vienna 1994, 240 p. Available in English, French and Arabic.

* Syriac Dialogue No 2, Second Non-Official Consultation on Dialogue within the Syriac Tradition, PRO ORIENTE, Vienna 1996, 228 p. Available in English and French, planned in Arabic.

* Syriac Dialogue No 3, Third Non-Official Consultation on Dialogue within the Syriac Tradition, PRO ORIENTE, Vienna 1998, 228 p. Available in English and French, planned in Arabic.

FOREWORD OF THE EDITORS

Booklet Number 9 on the Vienna Dialogue with Oriental Orthodoxy in presenting the papers and the discussions of the Fourth Study Seminar of PRO ORIENTE on "Authority and Jurisdiction" which was held from the 5th to the 9th of July 1996 in Vienna. By this Study Seminar and the previous ones we intended to intensify the study of controversial issues of the Vienna Dialogue between the Ancient Oriental Churches and the Roman Catholic Church thus continuing the Five Consultations of the "Non-Official Ecumenical Consultations between theologians of the Oriental Orthodox Churches and the Roman Catholic Church" in the years 1991, 1973, 1976, 1978 and 1988.

This time we had lectures from theologians of all the Oriental Orthodox Churches, from Amba Bishoy of Damiette from the Coptic Church, from Mar Gregorios of Aleppo from the Syrian-Orthodox Church, from Archbishop Mesrob K. Krikorian of Vienna and Vardapet Sebou Sarkissian of Antelias from both jurisdictions of the Armenian Apostolic Church, from Abba Gabriel of Northern Shoa from the Ethiopian Orthodox Church and of Kondothra K.M. George from the Syro-Indian Church as well as from eminent Roman-Catholic scholars from Paris, Rome and Vienna. At the end you will find the Joint Communiqué which was unanimously carried at the final session of the Fourth Study Seminar.

May we on behalf of the Foundation PRO ORIENTE from Vienna express our gratitude to the speakers and the participants of this meeting, to the PRO ORIENTE Standing Committee which was planning and performing this meeting, to the Church leaders who encouraged and promoted our efforts, to Prof. Philipp Harnoncourt for his describing the scholarly achievements of the seminary, to father Kondothra K.M. George then vice-principal of the Ecumenical Institute of Bossey, Switzerland and now principal of the Orthodox Seminary in Kottayam, Kerala, for writing the preamble and to our Secretary General Dr. Franz Gschwandtner for his endeavours in publishing this volume.

The Oriental Orthodox - Roman Catholic Ecumenical Dialogue

PRO ORIENTE Booklet Series

- * Booklet Number 1, Communiqués and Joint Documents; PRO ORIENTE, Vienna 1990, 136 p. Available in English, Arabic, Malayalam and German, planned in Armenian and Amharic.
- * Booklet Number 2, Summaries of the Papers; PRO ORIENTE, Vienna 1991, 74 p. Available in English, German and Arabic; planned in other languages.
- * Booklet Number 3, Middle East Regional Symposium, Deir Amba Bishoy, October 1991; PRO ORIENTE, Vienna 1993, 168 p. Available in English and Arabic, planned in other languages.
- * Booklet Number 4, On Primacy, First Study Seminar, June 1991; PRO ORIENTE, Vienna 1993, 92 p. Available in English. Planned in the above mentioned languages.
- * Booklet Number 5, On Councils and Conciliarity, Second Study Seminar, June 1992; PRO ORIENTE, Vienna 1993. Available in English. Planned in the above mentioned languages.
- * Booklet Number 6, Kerala Regional Symposium, Kottayam, October 1993; PRO ORIENTE, Vienna 1995. Available in English and Malayalam.
- Booklet Number 7, On Ecclesiology, Third Study Seminar, July 1994; PRO ORIENTE, Vienna 1995. Available in English. Planned in the above mentioned languages.
- * Booklet Number 8, Lebanon Regional Symposium, Kaslik, September 1994, PRO ORIENTE, Vienna 1998. Available in English.
- * Booklet Number 9, On Authority and Jurisdiction, Fourth Study Seminar, July 1996; PRO ORIENTE, Vienna 1998. Available in English. Planned in the above mentioned languages.
- * Booklet Number 10, Regionalsymposium Kröffelbach, August/September 1997; PRO ORIENTE, Vienna 1998. Planned in the above mentioned languages.

Wilflinger

Alfred Stirnemann

COMPARATIVE ECUMENICAL THEOLOGY ILLUSTRATED BY AUTHORITY AND JURISDICTION IN THE ONE CHURCH OF CHRIST

The comparative method has become naturally in many fields of the natural sciences and the humanities: comparative anatomy and physiology of the creature, comparative anthropology, comparative language study, comparative history of civilizations etc. Both the fundamental correspondences and the characteristically particularities of certain phenomena can be shown and proved in a correct methodical comparison.

Also in theology and in general in religious sciences this method of comparison is established for a long time: comparative liturgy, comparative iconology, comparative history of doctrine, comparative mystics and asceticism, comparative canon law etc. have become natural, however, first and with more consequence in the Churches of the Reformation than in the Orthodox Churches and in (Roman) Catholic theology. There existed prejudices against a method, which seemed to relativize everything and abandon thus the own tradition's absolute demand of truth.

The comparative method is of great importance for both, the ecumenical movement as such and for the ecumenical theology with all its branches. And since its application the targets of ecumenical work have changed distinctly. The object of "reconciled diversity" of the many churches in the One Church is a typical example, for the recognition of a common basis and center grows without saying just through the unbiased comparison of similar circumstances in the divided churches - witnesses of faith, theological reflections, church structures, calendar of feasts, liturgy, chant, church architecture and painting, sacramental life, spiritual acts, adoration of saints etc.:

- Accord of faith in the eternal verities (mystery of the Triune God, creation, history of salvation towards perfection, Christ's mystery as true God and true man, salvation from guilt and death through life, death and the resurrection of Christ, sending of the Spirit, foundation of the Church),
 - agreement in the witness of faith in life (praying, fasting, devotion to the poor) and
 - socialization in well-organized church communities,
- as well as the development and differentiated inculturation of the common in manifold expressions.

As the human being exists only as a distinct and different from others, the culture only as a distinct culture in the diversity of cultures, the language only as a distinct language among many other languages, people only as a distinct people among other peoples, also the One Church of Jesus Christ exists only in different churches. And each Christian who wants to be a member of this One Church must be a member of a concrete church with its peculiarities which characterize that church.

In the long-lasting successful dialogue with the Ancient Oriental Churches the foundation PRO ORIENTE has organized Study Seminars in addition to the five non-official Consultations in Vienna-Lainz since some time. Such Study Seminars tackle the hot problems in the ecumenical dialogue which definitely need a fundamental preparatory survey, before joint commitments in consultations can be reached.

The four hitherto organized Study Seminars of PRO ORIENTE treated the following issues:

- 1991 "On Primacy"

- 1992 "On Councils and Conciliarity"
- 1994 "On Ecclesiology"
- 1996 "On Authority and Jurisdiction"

The organizing method at these Study Seminars is constantly the same: comparison. Relatively few participants are invited personally in order to work together efficiently. The selection of participants is not easy. Qualified lecturers of the respective churches present from their point of view a statement about the given topic. Extent discussions of experts follow in working groups and in the plenary in order to clarify open problems and to focus on the important common essence and at last showing the diversity of legitimate expressions, through which the different churches should make each other a present with their peculiarities. By that way every church comes to know the supplementary destitution of its own insights and practices without becoming insecure and at the same time a more comprehensive view of the discussed phenomena's common link. The attempt never is to try to remove traditional and identity marking peculiarities through uniformity, and so establishing a new ecumenical church.

* * *

The present publication documents the Study Seminar on the topic "Authority and Jurisdiction in the Church". It is clarifying to discern:

- that every single church has its own understanding and its own motivation for authority;
- that every church claims a certain authority transmitted to her by Christ; and
- that ecclesiastical authority is jurisdictional carried out by peculiar shapes and procedures in jurisdiction.

All churches have the common conviction, that every authority has its foundation in God, in His Holiness, His Freedom and His Sovereignty as Creator, as Savior and as the one who perfects everything. He has authority from Himself, for He is God. On the contrary each authority of man is one given by God and therefore to be justified in the face of God.

The authority which Jesus Christ claims for himself is based on the participation in the authority of the Father. But as Son of God he also respects the authority of the Father, which is his cause, and as son of man he complies with the authority of God, which demands account.

The authority of the Church - independent from its practice - is solely based on the participation at Christ's authority in the Holy Spirit or with other words: it is in its essence the mandated and entrusted authority of God through Christ in the Holy Spirit. However, the church also remains a institution of man, who stay as creatures facing God's and Christ's authority and must respect it.

Ecclesiastical jurisdiction can be formulated and practiced in many different ways. Influences may come from the surrounding culture with its special social structures, from the legal understanding and from the legal practice. Also churches, which lack a canon law, practice distinct forms in the pursuit of their authority which need not to be defined as jurisdiction.

Those insights found by comparison are very important for the ecumenical movement, because it clarifies that these questions exist and must exist in every single church, independent from the fact, whether and how authority and jurisdiction are to be understood and to be pursued in view of the universal church - such as Petrine ministry

or as conciliar task. Equally important is the insight that a synodal and primatial perceived authority with related jurisdiction exists which belongs to the larger local churches - metropolitan churches, catholicossates, patriarchates etc. - and exceeds the authority and jurisdiction of the single bishop.

The question of the Roman bishop's authority and jurisdiction can only be treated against this background and in that connection as ecumenical problem. It gives hope for the future that in 1996 Pope John Paul II himself invited the churches separated from Rome in his ecumenical encyclica *Ut unum sint* to begin a discussion how the Petrine ministry viewing the unity of the churches which Christ desired and granted by the Holy Spirit is to be understood and realized. Authority and Jurisdiction of the Roman Pontiff towards the whole of Christianity have not yet been discovered and defined, for the First Vatican Council was a council of the Catholic Church only, not an ecumenical council of the whole church like the three first councils in the first millennium.

In present times the ecumenical dialogue is more and more concentrated on the issue of the Roman Pontiff's ministry. The obstacles coming out of that seem to be greater than the possibilities to overcome it. Therefore just now this meeting documented in the present publication was of special importance. Through this publication new ideas and arguments will be implemented in the ecumenical dialogue, but also some conclusions. May they find due attention.

This documentation published by PRO ORIENTE intended:

- for the participants of the Study Seminar of PRO ORIENTE in Vienna-Lainz to be a helpful memory and a summary of an experience;
- to offer to all interested in and working for ecumenical renewal an authentically insight to that field and ideas for further study; and
- to encourage to hold such and similar Study Seminars at other places too.

PROGRAMME

FRIDAY, JULY 5TH:

- 9.00 Inaugural session, chaired by President Alfred Stirnemann
- 9.30 First working session, chaired by Archbishop Mesrob K. Krikorian
Professor Legrand and Father K.M. George present their papers
- 12.30 Lunch
- 15.30 Second working session, chaired by Archbishop Mar Gregorios,
Discussion
- 16.30 Metropolitan Amba Bishoy presents his paper
- 18.30 Dinner

SATURDAY, JULY 6TH:

- 9.00 Third working session, chaired by Father K.M. George
Archbishop Mar Gregorios and Archbishop Krikorian present their papers
- 12.30 Lunch
- 15.30 Fourth working session, chaired by Professor Harnoncourt
Archbishop Abba Gabriel and Vardapet Sarkissian presents his paper
- 18.30 Dinner

SUNDAY, JULY 7TH:

Liturgies

MONDAY, JULY 8TH:

- 9.00 Fifth working session, chaired by Metropolitan Amba Bishoy
Father Žužek presents his paper
- 12.30 Lunch
- 15.30 Sixth working session, chaired by Father Bouwen
Professor Potz and Professor Primetshofer present their papers
- 18.30 Dinner

TUESDAY, JULY 9TH:

- 9.00 Seventh working session, chaired by Archbishop Krikorian, discussion on the communiqué
- 12.30 Lunch
- 15.30 Final working session, chaired by President Alfred Stirnemann, Communiqué
- 18.30 Dinner

LIST OF PARTICIPANTS

Oriental Orthodox Churches:

Coptic Orthodox:

Metropolitan *Amba Bishoy* of Damiette, Kafr el Sheik and Bekravi; Secretary General of the Holy Synod, Honorary Member of PRO ORIENTE, member of the PRO ORIENTE Standing Committee.

Bishop *Amba Benyamin* of Manufeya, Egypt.

Syrian Orthodox:

Archbishop *Mar Gregorios Hannah Ibrahim* of Alep, Honorary Member of PRO ORIENTE, member of the PRO ORIENTE Standing Committee.

Armenian Apostolic:

Archbishop *Mesrob K. Krikorian*, Patriarchal Delegate of Austria and Sweden, Honorary Member of PRO ORIENTE, member of the PRO ORIENTE Standing Committee.

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Vardapet Dr. *Sebouh Sarkissian*, Antelias, Lebanon.

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Professor DDr. *Peter Hofrichter*, Institut for Church History and Patristics, Salzburg, member of the PRO ORIENTE Standing Committee

President *Alfred Stirnemann*, Vienna

Secretaries of the Minutes:

Father *Gerhard Habison*, parish priest of Großmugl, Lower Austria

PAPERS AND DISCUSSIONS

The president of PRO ORIENTE, Alfred Stirnemann, welcomes the participants to the 4th study seminar on "Authority and Jurisdiction". He summarizes the history of the dialogue with the non-Chalzedonian Churches: After the Five Vienna Consultations, which started in 1971, it was decided to continue the dialogue on certain well-defined topics. This task was given to a standing committee, which was established in 1989. The Standing Committee continues the dialogue with two kinds of events, regional symposia and study seminars. President Stirnemann hopes for a fruitful discussion and invites to begin with an opening prayer.

First working session: Friday, July 5th: 9.30 a.m.

Chairman: *Archbishop Mesrob K. Krikorian*

Hervé Legrand

THE NATURE OF AUTHORITY AND JURISDICTION IN THE CATHOLIC TRADITION

1. Introduction

In the spontaneous perception of other Christians, the Catholic Church gives great importance to questions of authority, and manifestly accentuates questions of jurisdiction. The Church has recently promulgated two codes: one for the Latin Church (1983), and the other for the Eastern Catholic Churches (1991). Misled by this exterior impression, they rarely realize that there is relatively little reflection to be found among Catholic theologians on the nature of canon law. There is nothing to be found which would correspond to what can be found in German Protestantism by such authors as Sohm, Barth and Dombois.

The present paper will be concerned with the *nature* of authority and of jurisdiction, and not, as are the other papers, with the way authority and jurisdiction are exercised. It will be more difficult to be clear and unequivocal as the *practice* of authority demands. In addition for some thirty years, fundamental discussions about the ontological and epistemological status of canon law have been in progress. They have tended to attribute a theological, confessional, and sacramental foundation to canon law, while unanimity has not been reached in this area.

Such discussions are, however, full of hope for the reunion of Christians. In addition, I rejoice to tell you that our group is a pioneer work in this field. While doctrinal agreements multiply among Christians, we often seem to draw away from each other in the moral domain, and we hardly think at all of canon law.

Our plan, in three parts, will be simple. It will resituate the general context of authority in the Church. Part One will examine who is in authority and who classically has authority in the Church. Part Two will examine the complex relationships between order

and jurisdiction from the thirteenth century to Vatican II. Part Three will deal with the return to the sacramental and confessional foundation of law and jurisdiction, a promising position ecumenically.

2. Who is in authority and what classically has authority in the Church?

In the Catholic Church, authority resides both in texts and in persons.

2.1. *The authority of Scripture and Tradition*

Essentially, it is Scripture which is in authority in the Church. Scripture is the fundamental norm of Christian faith. It is the central authority through which Christ himself exercises his authority in the Church and over the Church. In the last instance, all teaching in the Church is an interpretation of Scripture, which is itself the explication of the living word of Jesus Christ.

It is in the heart of the living tradition of the Church that this preeminence of Scripture as witness is both recognized and transmitted. The Church which regulates itself according to Scripture, is itself the indissociable bearer and interpreter of Scripture.

As content, Tradition implies first of all sacramental and liturgical life, the *status generalis ecclesiae* (the Latin expression which signifies the global ordering of the Church, an expression less precise than constitutional law. Such ordering has never been fixed irrevocably). It also includes Creeds and dogmas, but also Council canons, the witness of the Church's saints, the *sensus fidei* of all the faithful, and the consensus of theologians. All these realities and norms are not of the same importance. They are subject to the witness of Scripture which represents the norm of each and all of them.

2.2. *Authority is that of their ministry; it implies a personal and collegial jurisdiction*

2.2.1. *The personal authority of Christ*

The Evangelists stressed the personal authority of Christ: „He taught with authority, and not like the scribes“ (Mt. 7:29). This authority allows him to forgive sins (Mk. 2:10; Mt. 9:6; Lk. 5:24). The Risen Christ says of himself: „All authority in heaven and on earth has been given to me“ (Mt. 28:11).

2.2.2. *The authority conferred upon the disciples by Christ*

Jesus did not transmit all his authority to his disciples, but he gave to them the power of the keys: to Peter in person: „I will give you the keys of the kingdom of heaven and whatever you bind on earth shall be bound in heaven, and whatsoever you loose on earth shall be loosed in heaven“ (Mt.16:19), then to the Twelve corporately: „Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven“ (Mt 18:18). In the Gospel of John, he gives them the Holy Spirit for the remission of sins (Jn 20:21-23). In the Pastoral Epistles, the gift of the Spirit is conferred by ordination, as one can see in 1 Tim 4:14 and 2 Tim 1:6. In Acts 20:28, it is implied that it is the same Spirit who chooses the pastors of the flock.

2.2.3. Foundation of the authority of pastors according to the Catholic Church

This authority has been classically founded on the commission to preside in a Church, a commission conferred by sacramental ordination.

In the early Church, the prohibition of absolute ordinations (without a Chair), under pain of nullity, like the establishment of lists of apostolic succession to a Chair of a local Church (and never according to a succession of the imposition of hands) clearly shows that authority received is not a „personal power“, but always the power of a Christian who has received the commission to preside over the life of a Church of God.

This authority is also an authority exercised in communion. The participation of the Local Church in the choice of its presider is always required, but such participation is not sufficient alone to give access to presidency. This requirement indicates that there must be a real communion between the Church and its bishop, and that the faithful are equally responsible, with their presider, in their own proper manner, for their Church. However, a person never becomes a presider without the imposition of hands of all the bishops of the same province, or at least, three of them. This clearly shows that the presider of a local Church is the link of ecclesial communion. He represents the faith and the communion of the entire Church in his own Church and simultaneously, he represents his own Church to all the others, with an evident authority.

Finally, access to the episcopal charge does not result from acceptance by neighboring Churches alone. It is given on the foundation of the gift of the Spirit in the context of the Church's prayer, which in later history would be explicitly called sacramental.

2.2.4. The jurisdictional authority of the bishop is strictly limited to his Church.

No canonical rule was named with such consistency during the first fifteen centuries of the Church's history as that which enjoined one bishop for any territorial jurisdiction: „There are not to be two bishops in the same city“ (Nicaea, canon 8). The presence of two bishops always signifies the existence of two Churches which have excommunicated each other. This one, sole bishop only has jurisdiction for the members of his own Church, and any episcopal act which he executes in a Church other than his own, is without effect. The meaning of this regulation is complex: good order is thus assured; it is affirmed that the Local Church is fully Church of God; and the eschatological dimension of Christian salvation is thus manifested: in the visible unity of the Local Church which gathers together „people of every tribe, language, people and nation“ (Rev. 5:10; 7:9), it is God who is in process of gathering his people together in unity, from out of the situation of diversity and antagonisms which characterizes the human context.

However, the bishop's authority meets two super-local authorities: that of synods and councils, and that of primacies. These authorities are correlative. Let us try to discern the nature and foundation of such authorities.

2.3. Super-Local Authorities

2.3.1. Local Synods and Ecumenical Councils

Whatever the origins of synods, which remains a disputed question among historians, it can be observed that from the time of Nicaea (canon 5), it was obligatory to

hold synods in each province (éparchie) twice a year. They were called „bishops' assemblies“, and they were able to make decisions which local bishops were bound to accept. These synods must be distinguished from the synods of the Church of the Empire, which were understood, little by little, as ecumenical councils. These latter were not seasonally convoked, but whatever their status, their non-reception by a local or regional Church implied Church's separation from the ecclesial communion.

Two sorts of synods carried jurisdiction, that is to say, the capacity to make legitimate decisions in defining the Church's faith (horoï) and fixing its discipline (canones), in such a way that such decisions were binding either on a regional Church (cf. the letter of Nicaea to the Egyptians), or on all the local Churches. What was the foundation of such jurisdiction? It rested on the common witness given by the bishops to the faith of their local Churches, which was the faith of the Church, the apostolic faith, which the bishops, situated in the succession of the apostles and exercising this ministry collegially, expressed. Their authority was not therefore an authority over the Church, but an authority in the Church, in the communion created by the apostolic tradition. It was a question of an authority in the Church, because the authority of a council, whether regional or ecumenical, depended definitively on its reception by the local Churches.

However, this reception was not a purely spiritual phenomenon. As the Catholic historian C. Vogel has remarked, the so-called „ecumenical“ councils did not draw their ecumenical quality from the number of participants, the geographical representation of the members, nor the person of their president. For all the councils, it was a question of being convoked by the emperor, and especially, of being ratified by the imperial power. This ratification did not transform all conciliar decisions into secular laws, but it imposed council decisions as if they carried the statute of law, and pursued the recalcitrant with the secular arm.

To summarize: the foundation of the jurisdiction of synods and councils was based in the collegial ministry of the bishops who, as the links of communion between churches, had the right and the duty to express the faith common to all the churches, and to watch over the faithfulness of each of the churches to the apostolic tradition.

This authority is an authority in the Church and not over it, for this authority is one with the witness of the churches themselves, and the authority of a synod only attains its fullness by the reception of its decision in these same churches. However, reception is only the second criterion of the truth which resides first of all in the apostolic faith and in its tradition. So much for the theology of synods and councils. A Catholic theologian must add that the effectiveness in history of councils, and particularly of ecumenical councils, was linked to the imperial power.

2.3.2. The foundation and nature of primates or metropolitans

2.3.2.1. Regional primates exercise a jurisdictional authority

A clear example of the jurisdiction of a local primate is mentioned in canon 6 of Nicaea, where it is said that the bishop of Alexandria exercises an *exousia* with regard to the bishops of Egypt, Lybia and the Pentapole. The same canon attributes the same custom to the bishop of Rome in the West. This canon allows us to concretely measure the jurisdictional power of metropolitans: without their consent, the ordination of a bishop

in their sphere of influence has no effect. This power of jurisdiction is clearly above that bestowed sacramentally through ordination.

- The existence of such primacies of jurisdiction is clearly attested: their growth and their uniformity are evident. Several diverse factors explain the development of such primacies. The principle of adaptation certainly plays a part (the organization of the Church models itself on the organization of the State), as well as the equally fundamental principle of the illustriousness of an ecclesial Chair due to the personality of its first bishops (apostles, martyrs), its fidelity to orthodoxy, and its generosity in helping other churches.

- The pluriformity of these regional primacies is also clearly attested. The primacy exercised by Rome and Alexandria in their regions, seems more centralized than that exercised by Antioch.

- On the other hand, the foundation and theological nature of such jurisdictions is hardly made explicit by the texts, even though the concrete reality of these jurisdictions was considerable. Let us emphasize again that the reality of an episcopal ordination depended on the consent or non-consent of the metropolitan. This canonical fact teaches us as much about sacramental power as about jurisdictional power.

2.3.2.2. The power of jurisdiction emerges in the power of primates. It goes beyond a strictly sacramental power, for the power of the Church can only exist in and according to the essence of ecclesial communion.

Sacramental power *only exists in the communion of the Church*. In the case with which we are dealing: to transmit sacramental power, it is not sufficient that a validly ordained minister lay hands on a subject in the context of the appointed liturgy and with the intention to do what the Church does. If this act does not take place within the communion of the Church, such a bishop ordains no-one and the person supposedly ordained, in fact is not ordained.

The nature of the power of jurisdiction is not identical with the power of orders, since this last is null if its exercise is not approved by the metropolitan primate. It is certainly true that the power of jurisdiction presupposes the power of orders, but it goes beyond it, it does not simply regulate it, for it can radically decide about the effects of the power of orders. The attribution of jurisdictional power is made within the ecclesial communion of churches and is exercised within this communion (cf. canon 36 of the Apostles). It proceeds from the reality of ecclesial communion, which is wider than sacramental communion alone, considered in its strict sense. This jurisdiction is a reality which customarily goes beyond the custom: here we find ourselves before the conviction of the early Church that only what operates within the ecclesial communion has value.

2.3.2.3. During the first millenium, the content of the Roman primacy with regard to the whole Church was not conceived as a power of jurisdiction with the same consistency as that of metropolitans or regional primacies.

The jurisdiction of metropolitans and patriarchs was regional. That of the bishop of Rome, as metropolitan of Italy and patriarch of the West, was identical in all respects to that of the other metropolitans and patriarchs. His jurisdiction was equally founded in the custom and requirements of ecclesial communion.

In contrast, the authority which the bishop of Rome was conscious of having in the whole Church came to him from custom (he is bishop of the first Chair of the Empire).

Yet not only from custom, since his ministry takes over from that which Christ entrusted to Peter, a ministry which is not regional, but which concerns the whole Church.

Yet these two characteristics (Peter's ministry, and for the whole Church) do not make the bishop of Rome a sort of patriarch for the whole Church. While East and West remained in communion, Peter's ministry was never so understood. The ecclesiology of the first seven ecumenical councils, carefully studied by W. de Vriestestify irrefutably to this fact. In addition, the Council of Sardica, the only council at which the Latin West and the Byzantine East reached agreement about the exercise of the Roman primacy, did not envisage Roman jurisdiction over the East. Canons 3, 4 and 5 of Sardica recognize that the bishop of Rome is able to receive an appeal from a bishop condemned by his own synod. In such a case, the Roman pope may confirm the first judgment, or decide that there will be a new hearing, but he may not, unlike the Emperor in an analogous situation, prejudge the case himself. He must confide the affair to the bishops of a neighboring province to that in which the first judgment was given. If he judges it useful, he may send Roman presbyters to the new tribunal.

It is clear that if there is a Roman primacy during the first millenium, it is not in the sense of a universal jurisdiction over the whole Church.

2.3.2.4. Other spiritual authorities are recognized in the early Church, but they do not have jurisdiction.

The authority of the monks must be especially mentioned. They played a considerable role in the reception or non-reception of councils. There was also the authority of saints and prophets, and also of theologians, which was often identical with that of bishops. However, none of these groups had a pastoral authority.

2.4. Summary

During the first millenium, authority in the Church was given through sacramental access to a pastoral responsibility. Such authority was considered as perfectly one, and was received in its fullness at the moment of ordination, which was always conferred for a concrete service in and for a concrete local Church.

However, the exercise of this authority was regulated by an authority wider than this strictly sacramental authority, which allowed a person to preside over the whole of the life of a local Church. This authority was an authority within the ecclesial communion and in favor of the ecclesial communion, and was customarily exercised by the metropolitan or patriarch, an authority which tried to ensure that local authority was exercised in the context of the communion of the wider Church. Whatever operated outside this communion remained without spiritual and canonical effect.

The exercise of this local authority could also be conditioned by the reception of decisions made by regional synods or ecumenical councils in matters of faith and discipline. If the local bishop did not accept such decisions, he placed himself outside of the communion of the whole Church, which could lead, pure and simply, to the non-reception of his ministry.

Finally, the primacy of the bishop of Rome within the whole Church was not a jurisdiction of a patriarchal kind; it was an authority founded in the succession of Peter, for the benefit of the whole Church, an authority at the service of the universal communion.

During the first millenium, a power of orders and a power of jurisdiction of which source and exercise were distinct was unknown. The Latin Church from the thirteenth century to Vatican Council II would experience such an evolution. We must look briefly at this evolution, before arriving at contemporary Catholic conceptions of authority and jurisdiction, which remain marked by the medieval evolution, even as they increasingly renew their links with the approach of the first millenium.

3. From the 13th century to Vatican II: the separation of the power of orders from the power of jurisdiction.

As the German canonist Mörsdorf wrote:

„the history of this fundamental question (= the distinction between the power of orders and of jurisdiction) has yet to be written. It is in fact a very difficult question that requires much specialized research and that can only be settled by the collaboration of many experts (...).“

3.1. A distinction that postdates Gratian

The distinction on a conceptual level between the two powers postdates Gratian and does not go back beyond the beginning of the 13th century. Many have devoted studies to this author (Sohm, Orsy, Zirkel, Chodorow, Lenherr); these confirm Chodorow: „The question whether Gratian recognized any division in the kinds of power held by priests is a very difficult one“ (Chodorow, p. 157).

Lexicographical analysis, now an easy affair thanks to Reuter and Silagi's Concordance, shows with no room for doubt that Gratian never mentions what has since become a classic distinction: that between the powers of orders and of jurisdiction. The expression *potestas ordinis* is unknown to him, just as unknown as *potestas iurisdictionis* which appears only in a letter from Gregory the Great (592 A.D.) to the bishop John of Larissa wherein the Pope asks this Metropolitan to abstain from all power of jurisdiction over a bishop whose seat no longer comes under his authority. Other uses of *iurisdictionis* never refer to the power of government but always to the capacity to pronounce judgment.

Gratian, faced with the then frequent question of the value of acts performed by simoniacal clerics (bishops and priests) and who were grouped with schismatics and heretics, distinguished between power (*potestas*, which a heretic may hold) and the exercise of power (*executio potestatis*, which a heretic loses). Theologically, his position is a transitional one: he is no longer quite of the opinion of those who refuse to recognize the sacraments celebrated by anyone who does not hold some office in the communion of the Church, thus making full communion with the Church a condition *sine qua non* for the sacrament; nor is he of the opinion which will win out in the end to this day and according to which a sacrament celebrated by a bishop or priest validly ordained but separated from the Church, is valid though illicit.

Faced too with the question of whether a monk priest can hold an office against the will of the local bishop, Gratian makes use of the same distinction: through his ordination, he does receive a *potestas* absolutely identical to that of other priests. However, he may not exercise this power for as long as he has not been elected by the people and installed in office by the bishop, with the permission of the Abbot.

The beginnings of the distinction that would become common in the 13th century between priesthood and ministry, between the sacramental powers of the priest and his power of government, are already visible in Gratian. Such a distinction is already gross with the distinction between orders and jurisdiction that would later become widespread.

3.2. Power of orders and power of jurisdiction experience separation on the eve of Vatican II

Several factors went into the dissociating of the power of orders from the power of jurisdiction in the West. Special mention must be made of:

- the multiplication of absolute ordinations, i.e. priests that held no office, nor even belonged to a diocese. This evolution is explained by the introduction of the system of benefices, substituting an economic title for an ecclesiological ordination title, especially where pious foundations were involved (the chantry system - ordinations in order to celebrate Masses). Another step in the same direction was the clericalisation of monastic life and the birth of religious orders - first mendicants (Franciscans, Dominicans), then regular clerics (Jesuits) - all directly subject not to their bishop but to the Pope (exemption) from whom they received jurisdiction.

- the admitting of principalities, especially German ones, into the system of benefices, allowing princes to become bishops without being ordained even to the presbyterate. To exercise the power of orders they arranged to be seconded by an auxiliary. The separation between jurisdiction and orders in this case is plain.

- Roman centralization added to this dissociation, with Popes up to and including John XXIII teaching that bishops did not receive their jurisdiction from the ordination which gave them office, but from the fullness of Papal jurisdiction. This dissociation orders/jurisdiction also allows legitimizing the ordination of bishops who do not in fact have seats.

- finally, the distinction between valid and licit acts has taken the place in doctrine of the distinction between *ratum* (accepted) and *irritum* (not recognized), while the doctrine of indelible character is generally accepted.

3.2.1. The Code of Canon Law of 1917 officialises the distinction.

This is not the place to summarize the history of this separation. In view of the first millenium, Canon Law of 1917 surprisingly makes the material distinction in canon 108 between two hierarchies: *By divine institution, the sacred hierarchy according to orders is made up of bishops, priests and ministers; according to jurisdiction, of the Supreme Pontiff and the subordinate episcopate; also, by Church institution for other grades.* The presentation of the sacrament of orders in c. 948 reinforces this separation: *Orders distinguish, by Christ's institution, clerics from laity in the Church, for the governance of the faithful and the mystery of divine worship.* Again we have here the distinction between two hierarchies (c. 108 § 3) on the one hand, and on the other the distinction between the governance of the faithful and the mystery of divine worship (c. 948). The governance of the faithful would become part of jurisdiction, whereas the mystery of divine worship part of orders.

We find this distinction again in the first canon of Book II, Title IV, on ecclesiastical office, which stipulates (c.145): § 1. *Generally, ecclesiastical office is one that is*

legitimately exercised for spiritual ends; more specifically, it is one that is instituted permanently by divine or ecclesiastical ordination, conferred according to the norms of sacred canons, whereby one receives at the least participation in ecclesiastical powers either of orders or of jurisdiction.

3.2.2. Canonical doctrine generally follows the Code of Canon Law.

With the notable exception of Mörsdorf, who favors the unity of the two powers, canonical doctrine has followed the Code of Canon Law. This is the case of the very influential commentary of Wernz and Vidal, professors at the Gregorianum, and of Naz, which says most clearly in the Dictionnaire de droit canonique:

The power of orders is obtained by ordination; the power of jurisdiction results from a mission given by the hierarchy. The end of the power of orders is the sanctification of men by the giving of sacraments and performing of certain rites. The power of jurisdiction tends to govern men by the exercise of the magisterium and following of discipline. The power of orders is unalterable and permanent. The power of jurisdiction may end with the rescinding of the mission that brought it forth; it may, after being conferred, be restricted; its acts may be restricted; its acts may be waived by a superior authority. One of the two powers may be held without the other. A priest has the power of orders upon ordination. He may have the power of jurisdiction only after receiving his jurisdiction or mission.

3.3. Summary

The Latin Church, after a series first of institutional changes, later taken into account in canonical doctrine, has made a clear-cut distinction between the power of orders and the power of jurisdiction. The results may be clearly given as follows:

- the two powers are *distinct from each other*: it is no longer a case, as with Gratian, of a power on one hand, and the exercise of that power on the other hand;
- each has its own *source*: the power of orders comes directly from God, that of jurisdiction, from a higher ecclesiastical authority;
- each is *transmitted* differently: the power of orders through ordination, the power of jurisdiction through canonical mission;
- each has a different *object*: the power of orders has to do with the sacraments, jurisdiction is a matter of governing and teaching the flock in the care of the cleric;
- finally, orders last throughout time and cannot be lost. However, jurisdiction may be given, taken away or modified by the higher authority, as circumstances allow.

What happens as a result is that the classic Catholic position ends up losing sight, as during the first millenium, of the tie between power and the office sacramentally given into care and exercised in communion. This makes the power of orders something tied to a person and no longer takes sufficient notice of the ecclesial character of the sacraments. The scope of this situation can be measured, and Vatican II's reaction against it understood, with this text of C. Vogel:

„The bishop and the priest, even excommunicated, deposed from their office, interdicted, suspended *divinis*, heretic, schismatic, apostate, unworthy, perform sacred acts (ordinations and the eucharist, for example) as long as these acts stem from their episcopal or priestly quality, or inasmuch as the bishop or presbyter perform the sacred acts following the ritual as laid out in liturgical books then in use, whereby is perceived, as we say, the intention do what at least what the Church does.“

4. A theological and canonical investigation of the relationships between authority and jurisdiction at Vatican II and in the 1983 Code

4.1. The power of order and jurisdiction since Vatican II

4.1.1. The texts of Vatican II

Vatican II manifestly wished to bring to an end the division between jurisdiction and order, and so to recover the unity of the *potestas sacra*, founded essentially in the sacrament (cf. *Lumen Gentium* 10:18; 27 and *Presbyterorum Ordinis* 2). The most significant decision in this regard is to be found in no. 21b of *Lumen Gentium*:

The holy Council teaches that the fullness of the sacrament of Orders is conferred by episcopal consecration, which in both the liturgical tradition of the Church and in the language of the Fathers of the Church is called the high priesthood, the acme of the sacred ministry. Episcopal consecration confers, together with the office of sanctifying, the duty also of teaching and governing, which, however, by their very nature, can be exercised only in hierarchical communion with the head and members of the college.

Read in the light of the *Nota praevia*, which attempts to make clear its meaning, such a passage clearly establishes the unity at root of the power of order and jurisdiction, to the benefit of a single ecclesiastical authority, wholly founded in episcopal ordination, and which is contextualised within the authority of ecclesial communion as in the first millenium. An example is already to be found in the relation between local bishop and metropolitan from the time of Nicaea.

4.1.2. The interpretation of Vatican II by theological and canonical doctrine

The remarkable monography of Adriano Celeghin, *Origine et natura della potestas sacra. Posizioni postconciliari*. Morcelliana, Brescia, 1987, which lists 144 positions taken by theologians and canonists, allows us to discover in these different post-conciliar interpretations the changes brought about by *Lumen Gentium* on this precise point. Here we must be content to indicate the positions of the three main schools of thought, without being able to enter into more detail:

- 1) A few authors judge that Vatican II decided nothing in this matter.
- 2) A second group, basing itself on the history of canon law, refuses to speak of the original unity of the *sacra potestas*: such authority flows from ordination and mission, so that ordination and hierarchical communion may be said to constitute two distinct sources of authority. This position takes into account the authority of metropolitans and of primates, such as it may be seen to have been exercised during the first millenium, when the metropolitan, as responsible for ecclesial communion, could refuse to recognize an ordination which had been carried out according to the liturgical regulations, in the name of this responsibility.
- 3) The largest group holds a similar position, but more than once with nuances, to that held by G. Philips, the principal redactor of *Lumen Gentium*, for whom authority finds its origin in ordination, hierarchical communion being the *sine qua non* without which the exercise of governing and of the magisterium remains impossible.

4.1.3. The options of the 1983 Code

The preparatory commission had taken an apparently contradictory position about the unity of authority during its groundwork, and this continued: the commission granted to laypeople the faculty of participating in the exercise of a governing authority (e.g. by being a member, although not the president, of an ecclesiastical tribunal), but it maintained, with Vatican II, that authority finds its origin in ordination.

The technical notion of *sacra potestas* is absent from the 1983 Code, but its unity is conserved by the fact that only ordained Christians can be titularies of a full power of jurisdiction (canon 129.1; 271.1). One seeks in vain for the distinction between the power of order and the power of jurisdiction.

A great advance has thus been made on the hermeneutic level, and for the future, which can only contribute to the coming together of Latin Catholics and Oriental Christians even if in practice the distinction continues to produce its effects in the Church.

4.2. Positive readjustments for the drawing closer of Latin Christians and the Churches of the East

4.2.1. The rearticulation between order and jurisdiction

The authority of each bishop is rooted in his pastoral charge, and flows from ordination, and not from the delegation of an authority flowing from the pope or the college, or from the two together.

The papacy saw itself invested with the plenitude of jurisdiction at a moment when the episcopate was considered only as a dignity, having no additional sacramental sense than that of the presbyterate. With such horizons Pius XII and John XXIII were able to teach that if bishops do have an ordinary authority in the Church, it is a power of jurisdiction immediately communicated to them by the pope. Yet, according to Vatican II, „episcopal consecration confers together with the office of sanctifying, the duty also of teaching and governing“ (*Lumen Gentium* 21b). Thus, should not bishops be henceforth considered „as vicars and legates of Christ (...) and not as vicars of the Roman pontiff“ (*Lumen Gentium* 27). *Lumen Gentium* 23 made clear too that „the canonical mission of the bishops can be made by legitimate customs,... or by laws made or acknowledged by the same authority, or directly by Peter’s successor himself“.

In the same way, the pope only holds his powers within the episcopate by his access as bishop to the See of Rome. In such a way the disposition that would attribute to the pope powers held simply by his own election is suppressed. Henceforth, it is ordained that he should be ordained bishop if it should happen that he is not already a bishop, before the powers of his particular charge can be recognized.

4.2.2. Conclusions

The vision according to which the episcopate can only be understood in relation to the papacy is rejected. At the same time there is a recognition that authority comes from the sacrament, which allows a person to preside in a local Church. There is a decisive

beginning here for an articulation of the collegiality of bishops with the communion of Churches, and thus henceforth, an ecclesiology with an ecumenical orientation.

4.2.3. The recognition of the fullness of authority of each bishop in his diocese leads back to the question of the papal reserve at present in place and to the question of the concession of powers.

This canonical evolution is in conformity with the declaration of the Decree on the Pastoral Office of Bishops in the Church (*Christus Dominus*):

„Bishops ... enjoy as a right, in the dioceses assigned to them all ordinary, special and immediate power which is necessary for the exercise of their pastoral office“ (*C.D.* 8).

The renunciation of certain of their prerogatives on the part of local Churches, for the common good of ecclesial communion, represents a healthy criterion of what might be mutually acceptable constraints in a fully recovered unity.

4.2.4. The principal consequence of this rearticulation of power and jurisdiction is the theological axiom of *Lumen Gentium* 23:

„It is in and out of the particular Churches, constituted after the model of the universal Church, that the one and unique Church of Christ exists.“

This text throws real light on the ecclesiology of communion which can and must develop in the Catholic Church. The mutual inclusion between local and regional Churches needs to be affirmed theologically, and to be put into practice practically. The whole Church must be understood from the local realizations of the Church of God, each of them being a portion and not a part of the Church.

4.2.5. Last consequence: the binomial „collegiality/primacy“ is not sufficient to describe the context of the responsibilities of bishops, taken either together or in groups.

Vatican II also recognizes both theologically and canonically, groupings of regional Churches. This recognition is explicit in *Lumen Gentium* 23:

It has come about through divine providence that, in the course of time, different Churches set up in various places ... joined together in a multiplicity of organically united groups which ... have their own discipline, enjoy their own liturgical usage and inherit a theological and spiritual patrimony.

And this in the context of unity of the faith and of the divine constitution of the universal Church. This description is not that of an historical memory but of a reality always existing, in the form of the Eastern Catholic Churches (cf. *O.E.* 2). Vatican II solemnly declares that the churches of the East, like those of the West, have the right and duty to govern themselves according to their own special disciplines (*O.E.* 5).

These churches ... have the same rights and obligations, even with regard to the preaching of the Gospel in the whole world (Mt.16:15), under the direction of the Roman Pontiff (*O.E.* 3).

In this context, it becomes evident that the collegiality of bishops cannot be an institution of bishops totally equal and interchangeable in stature, as a certain sort of translation habitually suggests. There are groups of bishops who are responsible for the whole complex spiritual destiny of regional Churches, which form unified groups within the whole Church. The Church is not only a *corpus ecclesiarum* of diocesan churches, but is also the regional churches „whose multiplicity, unified in a common effort, shows all the more resplendently the catholicity of the undivided Church“ (*ibid*).

4.2.6. Conclusion

The Catholic conception of ecclesial authority and of jurisdiction was deepened at Vatican II and in the years which followed the Council. Since the Catholic Church has become linked once again to the conceptions of authority and jurisdiction which held sway during the first millenium, it is possible to think that Pope John Paul II's invitation to the other Christian churches to join with him in seeking new forms for the exercise of the Roman primacy, found in nos 95-96 of the encyclical *Ut Unum Sint*, will not come to nothing before insurmountable doctrinal obstacles, issuing from the definitions of Vatican I. The new horizons, here described, at least leave the door ajar. In the fight of the preceding analyses, the universal jurisdiction of the pope can take new forms. This was not forbidden by Vatican I, but was called for by this Council; it is always forgotten that the expressed intention of Vatican I was that its definitions should be understood in the light of „the ancient and constant faith of the universal Church“ (Denz. 3059), lived in „the perpetual usage of the Churches“, translated in the ecumenical councils, „especially those in which the East met the West in the union of faith and charity“ (Denz 3065).

In other words, Vatican I itself made the tradition of the early Church and of its councils the criterion according to which it should itself be interpreted.

Theologians and canonists, first of all, bear a great responsibility to see that such a hope becomes a reality.

5. General Conclusion

The necessity of the theological foundation of canon law

In order that the evolution already taking place should bear fruit, it is necessary that Catholics cultivate a theological reflection and approach to canon law. It is not the moment to separate theology and law, and law and theology, as a fairly recent slogan used to proclaim. On the contrary, following in the footsteps of Protestant theologians like Barth and Dombos, Catholics must reject the vision which would found canon law on the simplistic adage „ubi societas, ubi ius“, and bring to light the sacramental and confessing foundations of law and its rootedness in ecclesial communion. They will do this by giving special attention to the sacraments which are creators of institutional law. Ecclesiology will thus show itself as inseparable from the practice of episcopal ordinations. It will even find in these ordination liturgies the truth of which it must become aware. Here too, we have a common base that we must deepen together, even before being able to reflect on the relations between the Petrine primacy and the Local Churches, and to be able to reflect justly. Is not reflection on authority and jurisdiction an area in which we hold much more in common than we ordinarily suppose?

SOME ASPECTS OF AUTHORITY AND JURISDICTION IN THE ORIENTAL ORTHODOX CHURCHES

The Oriental Orthodox Churches, together with the Latin and Byzantine traditions consider the early centuries of Christianity before major divisions as a rather normative period for later theological reflection. The advantage of this period is that it belongs to the common undivided tradition. Ecclesiastically and doctrinally divisive elements which emerged clearly in the fifth century stayed on to characterize the mutual separation of our churches to this day.

This, however, is a historical perspective. Doctrinally, the three ecumenical councils of Nicea, Constantinople and Ephesus, for instance, belong to the unity of the undivided tradition. It is not the chronology of events, but the integrity of faith which is of primary importance in the Oriental Orthodox understanding. This criterion has made possible the recent dialogue between the Oriental Orthodox family and those churches which are historically out of communion with the former, and which followed separate paths of historical development.

As to the question of authority and jurisdiction, the Oriental Orthodox will necessarily refer to this early period of common tradition and evaluate the later developments on that basis. In its etymological sense, the English word 'authority' implies growth and increase (Lat. *augere*, Gk. *auxanein* = to cause to grow, to increase, to enlarge). In the Christian biblical understanding God's authority is always for the good of creation, for fostering life and maintaining its vital harmony.

The authority of Jesus Christ as the Son of God was exercised for forgiving sins (Mt 9,1-8; Lk 7,48-49), for healing the sick and sending out evil spirits from the possessed (Lk 4,36; Mk 1,27) and for teaching the people the spirit of God's law (Mt 7,29; Mk 1,22; 27; Lk 4,32). His authoritative „commandment“ is „to love one another“ (Jn 15,12) So healing, reconciling, enlightening, enabling and liberating actions (Lk 4,18-19) performed by the incarnate son of God for all humanity and especially in favor of the poor, the powerless and the downtrodden characterize his authority. Christ did not receive any authority from men, from the established structures of religion, state or academy; yet the people marveled at the quality of his authority (Jn 7,15).

The gospel (*evangelion*) of Christ is „life-giving“ as the liturgical tests qualify it. The evangelists are called the „heralds of life and salvation“ in the liturgy. Divine authority manifested in and through Christ was for the promotion of life in all its abundance. („that they may have life and have it abundantly“ Jn 10,10) Apostolic authority transmitted to the church is then unambiguously for the fostering of the good, life and salvation of all creation.

While this is what the earliest and the best in Christian tradition teaches, the word 'authority', especially Church authority in contemporary parlance has assumed a very negative meaning. Exactly opposite connotations of *authority* as oppressive, debilitating, death-dealing, condemning, excluding and ex-communicating are in vogue.

History of division in the Church clearly shows that the way in which authority was used to settle doctrinal differences was a major source of conflict and division. So true

unity of Christians requires a restoration of the authentic forces of authority in the Church.

In considering the issue of authority one turns naturally to the person and office of the bishop. But closely associated with the bishop's person is the eucharistic community in which the bishop assumes the head role as the sacramental presence of Christ, the head of the body which is the Church.

Any authority vested in the bishop is always sacramental authority for which no secular model can be invoked. So we say that the bishop presides in love and simultaneously takes the 'servant' role. The 'governing' and 'serving' functions are both charisms, the gifts of the Holy Spirit and are integrally linked to the prayer, consent and support of the eucharistic assembly. The three-fold process of election, consecration and reception of a bishop by the church community demonstrates this essential and vital link between the authority vested in a bishop and the authority of the eucharistic assembly.

This sacramental model for episcopal authority is transferred to the level of what we call the 'diocese'. At this level, the bishop in council becomes the focus of authority. The council takes on a representative character, representing different eucharistic assemblies or parishes. In current practice, the diocese becomes visible only as an administrative structure creating a network of parishes. However, if one ignores the fundamental sacramental nature of authority derived from the eucharistic assembly, the diocese and its head will have to be seen as modeled on some form of provincial civil administration. The bishop-in-council has to manifest the sacramental quality of authority derived from Christ in and through his body, the Church.

This model is further pushed to a wider regional base, usually called the 'local church' in Orthodox ecclesiology. The primate-bishop is still in council, the council being further strengthened than at the diocesan level. Now the council means a council of bishops. In some churches like in India the council can be much broader - a whole church assembly that includes the council of bishops, constituted by the representatives both lay and clergy, of the different eucharistic assemblies or parishes. But more concretely and frequently it is the episcopal Synod that becomes the council for the primate of the local church.

In the Oriental Orthodox tradition, the primate is a bishop and there is no higher sacramental authority than that of a bishop. Yet as the focus of the unity of the local church the primate is held in special respect. He presides over the synod, and serves as its spokesman. In all essential matters of the exercise of his authority he does not do anything apart from his fellow bishops nor do they do anything part from him.

The regular exercise of the authority of a bishop in council, according to Orthodox ecclesiology, comes to an optimum point at the level of the local church. The function of primatial authority, if any, at the global level has to be considered in a category apart since there are no regular assemblies of all the local churches. We have only some paradigms from the distant past for convening the world synods of the church. All the three and only „ecumenical“ councils in Oriental Orthodox history were convened by Roman emperors for imperial unity and political expediency rather than for ecclesiological reasons. Yet these synods are known in Christian history for their conciliar deliberations and decisions. The question of a universal bishop as the focus of unity did not arise in these synods. The conciliar authority of bishops in these synods was still understood as sacramental authority, though the synods were convened under imperial patronage and the agenda had an obvious political scope.

From the local eucharistic assembly to the universal synod, there is an increasing emphasis on the conciliar nature of authority. The person of the primate is held in an increasingly powerful council in which the separate identity of the primate is assimilated into a conciliar identity. This is what we see in ecumenical councils. As a result while primatial authority is not totally rejected at the global level, it is increasingly qualified by expressions like „first among equals“, „primacy of honour“ and „presidency in love“. At this level too, the primate is a bishop and he has no higher sacramental authority than his fellow bishops.

Why is this increasing emphasis on the conciliar principle as we move from the eucharistic assembly to the global council? One reason seems to be the concern to safeguard the original sacramental and corporate character of authority as manifested in a parish eucharistic assembly. As we move to higher and wider organizational patterns there is probably a danger of moving away from the totality and concreteness of the Christian life, experience of worship and mutual accountability within the parish community. There is always the danger of personal authority being corrupted and dressed over against the community. The conciliar nature and exercise of sacramental authority guarantees that the authority of Christ lies ultimately with the totality of the church, and not with any individual personality or office.

With the rise of the Patriarchates the ecclesiology of the Church takes a new turn. Primatial power is strengthened on the basis of an expansion of territorial jurisdiction. The original sacramental authority of the episcopus linked to the eucharistic community and the local church now takes on a juridical character grounded in a geographically expansionist rule. The political ecclesiology developed around the patriarchates as ecclesiastical counterparts of imperial civil administration in the Roman empire obviously moved away from the theological ecclesiology of the local church. One can trace many conflicts in the history of the church until today to this disjunction between patriarchal ecclesiology and the local church ecclesiology. It is interesting that ancient titles still retained by the churches from before the rise of the patriarchates clearly indicate the difference between the two. The patriarchate of Rome, for example, has retained the title 'Bishop of Rome' for current use. A later title 'Servant of the Servants of God' embodies, despite of its modest outfit, a vastly different ecclesiology and primatial authority.

It should be admitted that within the Oriental Orthodox and Byzantine families of churches the dilemma of these two conflicting ecclesiologies remains unresolved. The theological consciousness and teaching of these churches faithfully adhere to the local church ecclesiology, while in practice some of these churches had been part of the Roman imperial system and had to accommodate themselves to the political ecclesiology.

The ancient practice of attaching the name of a place to a church and to the name of its bishop like 'church of Rome' and 'Bishop of Rome' is not a superficial custom, but embodies an authentic ecclesiological principle that upholds the visibility and concreteness of the local church and its vital sacramental link with its bishop. The territorial limits of the bishop's pastoral oversight is also clearly indicated by the same coin. A title like 'ecumenical' patriarch or universal pastor stands in obvious contradiction to this ecclesiology as they tend to set aside the particularity and catholicity of the local churches. The Oriental Orthodox churches have always rejected such titles and the ecclesiology they contain though they have never refused the principle of a primacy of honour in council at the global level.

„The definition and the nature of primacy, the limits of its jurisdiction, the mode of its application in a given time and place belong to the discretion of human agencies which have the task of carrying on the mission of the church. The geographical location of a primate's see, the ethnic and cultural background of the primate, the primate's jurisdictional relationship with the college of bishops of a national or a regional church, the duration of the primate's office, the mode of his election and other particularities of the structure of primatial power, are all matters of on-going human decisions guided by the 'Holy Spirit'.“¹

The charism of authority bestowed on a bishop at the time of ordination includes the power of jurisdiction over the diocese/local church to which and on behalf of which he is consecrated. Since Orthodox theology does not recognize any ordination beyond that of a bishop, any jurisdiction granted to a bishop over other bishops or over territories which does not belong to him by virtue of his episcopal ordination must be a purely ecclesiastical arrangement whether by common consent or not. Metropolitan or archiepiscopal or patriarchal jurisdictions have clearly existed in the oriental canonical tradition since the 4th century. They belong to that order of super-episcopal jurisdiction for which the Orthodox Churches invoke no divine authority. The situation is the same in the Byzantine Orthodox tradition as well. Although sanctioned by their canonical tradition, the Byzantine Orthodox Churches do not have any theological interpretation for regional or universal jurisdictions. Even while they are opposed to the type of universal jurisdiction as traditionally claimed by the Roman see, the original intention of an ecumenical (=universal) patriarchate could not be much less modest given the understanding that the Roman empire was the oikoumene, the whole inhabited universe. Eastern Orthodox theologians also generally would consider this element of „Supreme Power“ originating in super-episcopal or primatial jurisdictions and introduced into the canonical structure of the church as its essential element theologically unexplainable.

„The divorce between canonical tradition and the canonical facts is nowhere more obvious than in this universal triumph of the notion of Supreme power. Having rejected and still rejecting it in its Roman form, i.e. as universal power, the Orthodox conscience has easily accepted it in the so called 'autocephalies'“.²

The reason why the Oriental churches did not (or was not able to) develop a theology of jurisdiction seems to be that they did not separate jurisdiction from the Charisma of the sacramental authority of a bishop. Jurisdiction divorced from this grace of the Holy Spirit can run counter to the original intention of authority, namely to foster spiritual growth and to enhance life. Oppressive and inhibiting structures can sometimes appeal to the power of jurisdiction in order to justify themselves and to suppress the genuine forms of spiritual-pastoral authority.

In the conciliar structure of the Koinonia of our Churches, one church can lend pastoral help or specifically episcopal services like ordination of bishops to another Church in times of emergency as has occurred in the history of the Oriental Orthodox Churches, especially after the council of Chalcedon. This is an excellent example of the mutual sharing of the charisms of the Spirit as given to the episcopal and other ministerial orders. This includes the exercise of the gift of authority. This sort of mutual

services do not however imply any power of jurisdiction of the giving church over the receiving church. Although this is most clear in the consciousness and teaching of our churches, incidents of contrary experience have unfortunately occurred in our churches as well.

The patriarchal system in the Roman empire always sought to legitimize some form of universal jurisdiction. It is to be regretted that in the history of the church in both East and West, jurisdiction was more closely associated with the question of primacy rather than with the sacramental Charism of the authority of the bishop. Primacy, especially the so-called „universal primacy“, in turn was associated with the primacy of a local church over other local churches. Primacy of one local church in turn was derived from the primacy of one apostle over other apostles. Biblical, historical and theological arguments were adduced to justify this chain and legitimize the loose reins of jurisdiction. The pastoral role and authority of a bishop are in danger of being left out in this chain of power. Sometimes some Eastern Churches also attempt to climb this ladder along with the see of Rome, but stop at some point because they cannot develop a theology of universal jurisdiction at least in theory. What they can do then is to try to imitate Rome wistfully in some practices.

The see of Rome has „successfully“ bridged the ecclesiologically unbridgeable gap (according to the Oriental tradition) between the primary office of the bishop of the church of Rome and the claims of the universal jurisdiction of a so called universal bishop. Although the Bishop of Rome still carries with him the function as the metropolitan of dioceses around Rome, the function as the Primate of Italy, the function as the Patriarch of the West, these intermediate steps are shortcut in relating his primary episcopal function to the jurisdictional primacy of universal dimensions. It is precisely at these intermediate steps of regional or national primacies that Eastern ecclesiology sadly fumbles in theory. In the case of Rome though the jurisdictional element has been deliberately played down and the pastoral service role highlighted in post-Vatican II dialogical relations with the Eastern churches, the theological-ecclesiological hiatus between the pastoral and the jurisdictional, between the local and the universal remains.

The political structures and the imperial mode of government had obviously influenced to a great extent the evolution of ecclesiastical structures of authority. The socio-economic ingredient was no less important. Increasing urbanization and the prominence of cities created a widening gap between the city bishops and the village bishops (Corepiscopoi). Today in some of our Oriental churches, corepiscopos is a title of honour given to prominent priests, both married and celibate, without any episcopal function or jurisdiction. But several country bishops were present at the Council of Nicea 325, and signed the documents on their own right. By the time of Chalcedon 451, however, they were only delegates of bishops. The city bishop (Metropolitan) gradually assumed archiepiscopal roles with a growing notion of primacy over other bishops. For instance, St. Basil of Caesarea (+371) had fifty village bishops under his primacy.

The earlier norm of each eucharistic community being headed by a bishop was no longer necessary or applicable by the end of the fourth century. As observed by Theodore of Mopsuestia, „bishops were ordained not only in cities, but in quite small places where there was really no need of anyone being invested with episcopal authority“. The cultural and social demands of a city on its bishop and the need for the bishop to be theologically and intellectually well groomed in the content of theological controversies,

¹ Tiran Nersoyan, in: WW 4, 1978, pp. 167-168.

² A. Schmemmann, „The Idea of Primacy in Orthodox Ecclesiology“, in: J. Meyendorff [ed.], *The Primacy of Peter*, New York 1992 p.148.

brought increasing authority and prestige to the city bishops. This was reflected, for instance, in canon 6 of the Council of Sardica 343:

„One should not establish bishops in villages or in small cities where a simple priest suffices [...] so that the name and prestige of the bishop may not be humbled.“

In the light of the socio-political order intertwining with ecclesiastical structures and their evolution, it is extremely difficult to isolate any „pure“ Christian idea of authority and jurisdiction in any of our historic churches which were part of the imperial system (see J. Meyendorff, *Imperial Unity and Christian Divisions*, New York, 1989, p. 33) One can only refer back constantly to the evangelical principle which clearly distinguished the nature of worldly authority from that of Christian authority:

„[...] whoever would be great among you must be your servant, and whoever would be first among you must be slave of all. For the Son of Man also came not to be served, but to serve and to give his life as a ransom for many.“³

With the development of the ascetic-monastic movement, the custom of choosing bishops from among the monks became standard practice in the Oriental Churches. This gave a new twist, at least in the popular perception, to the understanding of the nature of authority of a bishop. A bishop was begun to be perceived primarily as a holy man, a true ascetic. His administrative and jurisdictional roles were kept to a secondary level. If he could also combine teaching abilities with the charisma of a saintly personality, that would be best. He could be a healer of all kinds of infirmities as well. So the bishop in popular understanding was predominantly a saintly spiritual father and wise teacher and healer. This rather idealized father-teacher-healer figure popularized by the ascetic movement was in fact modeled on Christ himself. When we add to it the high priestly and sacramental functions of the bishop, he is Christ himself in the midst of the community.

The Oriental Orthodox Churches maintain the theological perception, in spite of practical accommodations to changing historical situations, that authority is located in the totality of the Body of Christ and that any authority in the Church is a gift of the Holy Spirit and hence of a spiritual-sacramental order subject to the will of Christ and the consensus of His Body, the Church.

Discussions

Mar Gregorius misses explicit references to sources of the Oriental Orthodox Churches in Fr. George's paper, who is willing to add some more references for the publication.

Prof. Harnoncourt hints at some weak point in the realization of the "local church ecclesiology" of Oriental Orthodox Churches. He inquires about the jurisdictional status of immigrants in other countries, e.g. of Indians in Ethiopia. Do they need an Indian bishop or do they acknowledge the bishop of Ethiopia?

³ Mk. 10:42-45

Fr. George states that there are many Indians in Ethiopia, for whom no bishop has been appointed, but for whom there are some Indian priests to celebrate mass in their mother tongue. For these priests the patriarch of Ethiopia has made the pastoral arrangements. So the patriarch and his bishops "are in a way providing some pastoral supervision" for the Indians also.

As regards the diaspora situation which Fr. George has touched on *Archbishop Krikorian* adds that there is a weak point not only of Oriental Orthodox Churches but of Orthodox Churches in general. In Vienna, for example, there are two Eastern Orthodox metropolitans, which is contradictory to the ancient tradition. Furthermore, he hints at the co-existence of various Oriental Orthodox Churches in the United States.

Prof. Hofrichter mentions that also in the traditional Oriental Orthodox countries there are different hierarchies, e.g. the Armenians and the Syrian Orthodox; in Syria or in Lebanon there are two hierarchies for the same area of Churches. Moreover, Prof. Hofrichter points out that the structure of episcopal Churches seems to emerge at the end of the 2nd century, which shows that this is not the only possible model. Furthermore, he emphasizes that the link between the sacrament (eucharist) and the bishop's office is not that close as pointed out by Fr. George in his paper. He illustrates this with the example of St. Paul who exercised supervision but left the exercise of sacraments to others.

Prof. Legrand comments on "the claims of the universal jurisdiction of a so-called universal bishop". He states that in theory - in theology and teaching - the Bishop of Rome is not a universal bishop although in practice it may be that he actually acts as such. Moreover, Prof. Legrand asks for clarification about the statement that in the Oriental Orthodox tradition "there is no higher sacramental authority than that of a bishop". On the one hand this is true, on the other hand it is contradictory to canon 6 of Nicea, which says that if a bishop is ordained without the consent of the metropolitan this ordination has no effect at all. For Legrand this implies that the so-called jurisdictional power of the primate has sacramental effects because in a way it can nullify sacramental authority.

Fr. George states that Prof. Legrand seems to refer to a later period whereas in his paper Fr. Kondothra refers to the position of the bishop as such before patriarchal structures evolved.

But at least from Nicea onwards, as *Prof. Legrand* maintains, there is de facto in all our Churches the principle that the sacraments which do not occur in the communion of the Church have no effects. There is something more "powerful" than the sacramental authority of the local bishop, that is the communion of the whole Church which can decide whether what he is doing is received or not. This implies that only what is received beyond the local level of the Church is regarded as "valid". As this is a tradition which both the Oriental Orthodox Churches and the Roman Catholic Church have in common Legrand sees a chance of finding a solution together.

Archbishop Krikorian adds that the case Prof. Legrand has described is not the norm. He emphasizes that the bishop and his diocese are an entity, the bishop having the authority over his local Church. At least until the 4th century, and fundamentally it has remained

so until now, the bishop has been the central authority in every Church. Archbishop Krikorian emphasizes his point by referring to the tradition until and including Chalzedon which says that no bishop has the right to interfere in the affairs of another diocese.

Prof. Hryniewicz attaches great importance to the idea and vision of authority in the New Testament, which remains the critical instance in case of disorder. To the NT references in Fr. George's paper, which he considers very positive, he adds two more NT references about authority (2Cor 10,8 and 13,10). Thereby he wants to emphasize that the main quality of authority is spiritual edification. This should remain the critical instance for the evaluation of later developments such as the origin of patriarchal structures.

Archbishop Krikorian adds that in the Armenian Church the right of consecration of bishops is now reserved to the head of the Church. In reference to Fr. George's paper - where he mentions that in some of the Oriental Churches the title "corepiscopos" (originally a village bishop) is given to prominent priests as a title of honour - Archbishop Krikorian states that in the Armenian Church there were only one or two corepiscopi in the 4th or 5th century. Today neither the title nor such bishops exist. If the bishop wants to honour a married priest he offers him the title "arch-priest".

Metropolitan Bishoy

THE PRACTICE OF AUTHORITY AND JURISDICTION IN THE COPTIC ORTHODOX TRADITION

1. Constitution

According to the Constitution and By-laws of the Holy Synod of the Coptic Orthodox Church:

Article No 1: „The Coptic Orthodox Church of Alexandria is an Apostolic church which is intimately bound with other Oriental Orthodox Churches through the unity of faith and the ecclesiastical Tradition and Sacraments.“

According to this, the Church of Alexandria considers that she is not going to claim any type of Authority and Jurisdiction over other Oriental Orthodox churches, while they are in full communion with her.

The Constitution and By-laws continues to state:

Article No 2: „The priestly presidency of the Apostolic Alexandrine Seat extends to the whole see of St. Mark inside and outside Egypt.“

Article No 4: „The Holy Synod is the highest priestly authority in the Coptic Orthodox Church. Both the clergy and all the people are subjected to this authority.“

Article No 5: „The clergymen are the bishops, the priests and the deacons. The bishopric status includes His Holiness the Pope and Patriarch, the Catholicos, the Metropolitan, the Bishops whether diocesan or general or auxiliary bishops.

The auxiliary bishop is a full-fledged bishop from the point of view of his bishopric status; but from the pastoral viewpoint, he assists another bishop.“

Article No 6: „The Holy Synod is composed of the Pope and Patriarch who is its head, and all those who carry the rank of episcopacy, abbots, cor-episcopes, the Patriarchal vicars who are its members.“

Article No 7: „Membership of the Holy Synod is lifelong for all the bishops and according to their occupation for other members.

This membership is dropped without exception in case of those who go against the landmarks of the right Christian faith, or those who are heretical or insane or those who ought to be deposed or excommunicated according to church canon laws. This is only possible through a judgment issued by the Holy Synod after an official trial according to the Tradition of the church. In this case, the person is given the chance to defend himself, unless he is obstinate and refuses to be present. An official sentence is then pronounced and signed by the members of the Holy Synod.“

The Constitution and By-laws of the Holy Synod determined the Jurisdictions and Responsibilities of the Holy Synod as follows:

Article No 8: „The Holy Synod is the highest legislative authority in the church. It has the power to issue rules and regulations for the church as deemed fit. It can also issue internal by-laws related to the ordination and the versatile church services as needed. It is authorized to lessen punishments and issue by-laws for trials and punishments.“

Article No 9: „The Holy Synod is the highest judging authority in the church. It has the power to try any person who holds a priestly rank or any layman who is accused of going against the church or its teaching. The Synod may also re-open any church judgments issued against a priest or a layman.“

Article No 10: „The Holy Synod is the highest responsible body for faith and doctrine. It can explain the corner-stones of the faith without going against what has been handed down and fixed. In this wise it has the authority to revise books which deal with church education and give judgments therein.“

Article No 11: „The Holy Synod is the first reference to church rites.“

Article No 12: „Statements issued by the Holy Synod are final. Only the Holy Synod can review what had been done before, should conditions change. It may forgive, for instance, a guilty person, or a person who gave up his heresy, and may give its judgment as deemed fit.“

Article No 13: „The Holy Synod is concerned with the process of papal election and with those who let their name stand and then with the consecration or enthronement ceremony. It also participates with the Pope in the ordination of bishops.“

Article No 14: „The Holy Synod is also concerned with legislation of the relation with other churches in the light of the faith of the church and the teaching of its fathers.“

The Primacy over the Holy Synod:

Article No 15: „The Holy Synod meets under the Primacy of the Pope. It can never meet without him throughout his life.“

Article No 16: „There are two exceptions to this rule:

A. If the Pope is not feeling well severely, and is unable to talk or think according to the prescriptions of recommended physicians and this is witnessed true by more than half of the members.

B. If more than half of the members ask the Pope for the Holy Synod to convene, and he refuses to comply with their request, while this is possible for him.

In these two cases the Holy Synod may convene without the primacy of the Pope; in this case the oldest of the attending Metropolitan and Bishops presides over the meeting.“

Article No 17: „In case the Patriarchal Throne is vacant because the Pope is deceased or his priestly status is dropped according to the 7th article of this constitution, the locum

tenens of the Pope of Alexandria and Patriarch of the See of Saint Mark shall preside over the meeting of the Holy Synod.“

Article No 18: „The primate marshals, the affairs of the general meetings of the Holy Synod. He may attend and preside over any of its committees.“

2. Convening of the Holy Synod

Article No 36: „Invitations signed by His Holiness the Pope are sent to the members indicating that the Holy Synod would convene.“

Article No 38: „The Holy Synod convenes regularly twice a year.“

Article No 39: „The Holy Synod may convene on any sudden occasion for an important reason.“

Article No 40: „The Holy Synod may convene if more than half the members submit a request.“

Article No 41: „The regular meeting is legal if two thirds of all the members are present.“

Article No 43: „A decision of the Synod is legal if three quarters of the present members voted for it.“

3. The Primate and the members of the Holy Synod

Article No 49: „The Primate of the Holy Synod is the Pope of Alexandria and Patriarch, the successor to the Evangelist St. Mark the Apostle. He is the Bishop of Alexandria and Cairo. As the Bishop of the Great city of Alexandria he is also the Archbishop of the See of Saint Mark according to the Canons of the Holy Ecumenical Council of Nicea.“

The 6th Canon of the Holy Ecumenical Council of Nicea (325) states as follows:

„The ancient customs of Egypt, Libya and Pentapolis shall be maintained, according to which the bishop of Alexandria has authority over all these places, since a similar custom exists with reference to the bishop of Rome. Similarly in Antioch and the other provinces the prerogatives of the churches are to be preserved.

In general the following principle is evident: if anyone is made bishop without the consent of the metropolitan¹, this great synod determines that such a one shall not be a bishop. If however two or three by reason of personal rivalry dissent from the common vote of all, provided it is reasonable and in accordance with the church's canon, the vote of the majority shall prevail.“²

The constitution and By-laws of the Holy Synod of the Coptic Orthodox church continues defining the functions of the primate and members of the Holy Synod as follows:

Article No 53: „The Pope in association with the Bishops who are the members of the Holy Synod ordains the new Bishops and promotes Bishops to the status of Metropolitans and Catholicoi.“

Article No 54: „The Pope is responsible for the general affairs of the Church. He represents it nationally and in front of other churches and all official and religious organizations.“

¹ See Apostolic Canons 34-35 (CSP 24; trans. Percival 596).

² Decrees of the Ecumenical Councils, Norman P. Tanner, vol. I, Sheed & Ward and Georgetown Univ.Press, 1990, p. *8, *9

Article No 55: „The Pope is the Supervisor General overall the Coptic monasteries. He appoints the Abbots.“

4. The Metropolitans and the Bishops of the Dioceses

Article No 58: „The Metropolitans and the Bishops of the dioceses are their pastors and the primates of their clergy; each of them is responsible for all the churches of his diocese, all its parishes and its monasteries (except the monasteries that are affiliated to the Patriarchate), in addition to their pastoral, financial and administrative affairs.“

Article No 59: „The Bishop ordains the priests and deacons in his diocese. He consecrates churches, altars, baptisteries, icons, altar and service vessels. He pastoralizes his people as he is handed the pastoral staff by the hand of His Holiness the Pope.

He joins the Pope in Apostolic service in the membership of the Holy Synod, the ordination of new Bishops and the episcopal work.“

Article No 60: „A new bishop is chosen after the consent of the people and after they recommend and acclaim him, and also with the approval of His Holiness the Pope of this acclamation, on condition that He should fulfil the spiritual and personal conditions according to the teaching of the scriptures and church rules. If the majority of the members of the Holy Synod object to this ordination, then it must be stopped.“

The ministry of the bishop is well described in the epistles of Ignatius the Theophrus early in the second century as follows:

„See that ye all follow the bishop, even as Jesus Christ does the Father, and the presbytery as ye would the apostles; and reverence the deacons, as being the institution of God. Let no man do anything connected with the Church without the bishop. Let that be deemed a proper Eucharist, which is [administrated] either by the bishop, or by one to whom he has entrusted it. Wherever the bishop shall appear, there let the multitude [of the people] also be; even as, wherever Jesus Christ is, there is the Catholic church. It is not lawful without the bishop either to baptize or to celebrate a love feast; but whatsoever he shall approve of, that is also phasing to God, so that everything that is done may be secure and valid.“³

„Take ye heed, then, to have but one Eucharist. For there is one flesh of our Lord Jesus Christ, and one up to [show forth] the unity of His blood; one altar; as there is one bishop, along with the presbytery and deacons, my fellow servants: that so whatsoever ye do, ye may do it according to [the will of] God.“⁴

In the Coptic Orthodox church the presbyters and the deacons are playing a big role in the life of the church according to the Apostolic Tradition. In every diocese the bishop is the head of the clerical council, with the presbyters as members.

Each parish church has a board, with the priest presiding and the deacons as members. Everything is done under the supervision of the bishop.

Any ordination in the church is carried out according to the acclamation of the people and the consent of the bishop.

All the priestly ranks in the church are affected after the acclamation of the people so that the people are always sharing in the life of the church according to the Eu-

³ Epistle to the Smyrneans, chap. VIII: 1, ANF, vol. I, pp. 89/90

⁴ Epistle to the Philadelphians, chap. IV: 1, ANF, vol. I, p. 81

charistic model, where the Eucharist should be celebrated together with the people, as explained in the Epistle of Ignatius to the Smyrneans.⁵

An illustrative diagram is attached to explain the frame of performing. Authority and Jurisdiction in the Coptic Orthodox Tradition.

Further explanations to his paper by Metropolitan Amba Bishoy

In his paper Amba Bishoy quotes the following from the Coptic Constitution and By-laws: "The Holy Synod is also concerned with legislation of the relation with other Churches". He adds that ecumenical agreements must be accepted by the Synod, otherwise they are not official.

Furthermore, in his paper Amba Bishoy quotes canon 6 of Nicea, which says that the bishop of Alexandria has the authority over the places of Egypt, Lybia and Pentapolis in a similar way as the Bishop of Rome over his places. Amba Bishoy emphasizes that it is not by the consent of the Bishop of Rome that bishops are ordained in the diocese of Alexandria for he has no power of jurisdiction in this diocese. According to canon 6 of Nicea there is no obligation to raise the model of the archbishop in a certain area to a universal archbishop.

Moreover, Amba Bishoy stresses that any bishop is considered the successor of the Twelve Apostles. He underlines his point by showing a picture of his patriarch wearing a garment which depicts Christ and the Twelve Apostles in a vine-tree. This symbolizes the eucharistic model or assembly which every bishop is representing in his diocese, a point which is also emphasized in Fr. George's paper.

When reporting on the definition of the functions of the primate as laid down in the Constitution, Bishoy stresses that the patriarch/pope acts in association with the bishops who are members of the Holy Synod - and not through his own supreme power and authority - when ordaining new bishops or promoting bishops to the status of metropolitans and catholicoi.

Defining the functions of the bishop, Amba Bishoy emphasizes two times that he has full authority in his diocese. On the one hand the bishop represents the whole Church in his diocese on the other hand he is in full communion with the synod and the patriarch.

As regards the appointment of a bishop, the constitution laid down the following: the acclamation of the members of the Church, the approval of the patriarch of this acclamation and the approval of the majority of the synod. An important role is given to the church members in the acclamation and election of the bishop, so that a bishop is not imposed on his people, as Amba Bishoy stresses. Furthermore, Amba Bishoy states that a bishop cannot be transferred from one diocese to another.

Apart from the constitution and by-laws Amba Bishoy also refers to the writings of the early fathers of Christianity. By quoting from the epistles of Ignatius (2nd century) Amba Bishoy again emphasizes the eucharistic model of the Church, the bishop with the people, which is also pointed out by Fr. George. He also stresses that his Church is not claiming jurisdiction over another sister Church.

⁵ chap. VIII: 1

Also in the point of "primacy of honour", "presidency in love" Amba Bishoy agrees with Fr. George. For Amba Bishoy a type of "primacy of honour" is sometimes acceptable, such as in ecumenical councils where a chairman is needed. But this primacy is limited to a primacy in council as the ecumenical council is not a continuously governing body, being convened only in case of danger of heresy or division.

Amba Bishoy expresses his happiness about a pan-Oriental Orthodox meeting held in Addis Abeba in 1965 and expresses his Church's willingness to co-operate with the Oriental Orthodox sister Churches.

Questions to and comments on the paper of Amba Bishoy

Prof. Legrand expresses his admiration for the paper which he finds very interesting and very close to tradition. His first question refers to the type of jurisdiction presented by Amba Bishoy. Is this not an example of jurisdiction which is not personally performed by the bishop but collegially? How would Amba Bishoy characterize the jurisdiction of the Synod of Alexandria if the members of the synod are not necessarily bishops, e.g. the abbots and the corepiscopoi? (For the members of the synod cf. the quotation of Article No. 6 in Amba Bishoy's paper). If this jurisdiction is not personal, how would Amba Bishoy call it then? Collegial or corporate or synodical?

Legrand also asks about the status of a general bishop which he finds quite innovative. What is his status if he has no diocese or eucharistic assembly? Here Legrand sees a parallel to some innovations in the Western Church where it was accepted - in contradiction to the synod of Chalcedon - to have bishops ordained "absolutely", that is without a link to a local Church.

Mar Gregorius inquires about the date of the constitution, how and when it was accepted in the Church. Furthermore, he asks whether according to the constitution it is possible for the synod to be convened without the patriarch if he is alive. Moreover, who defines the jurisdiction of new bishoprics and archbishoprics? As regards laymen, where is their authority in the Church and how is it combined with the authority of the synod? How does the General Board of Trustees affect the Church?

Prof. Harnoncourt remarks that Amba Bishoy uses the term "primate" also for a bishop in relation to his clergy. To Harnoncourt this seems to be impossible because primate is usually used in a sense of "primus inter pares", which is not given here.

Fr. Bouwen asks for an explanation of the word "priestly" in "priestly presidency" and "highest priestly authority"

Archbishop Krikorian observes that Amba Bishoy refers to the Apostolic Canons, which are from the 5th century, as if they were before Nicea. Furthermore, he inquires about the actual performance of the acclamation of the people in the election of the bishop, which in the Armenian Church is done through a meeting of delegates of the diocese.

Prof. Hofrichter and *Dr. Synek* maintain that the Apostolic Canons are from the late 4th century.

As regards Prof. Legrand's question about the status of a general bishop, *Amba Bishoy* answers that it is in some way innovative. At the same time it reflects the apostolic era where the apostles were not necessarily bound to a certain area. The status of general bishops might be called that of assistant bishops, who either assist the patriarch or other bishops in their pastoral work. The Patriarchial Vicars, who are also members of the synod, are priests who assist the patriarch. They might be compared to auxiliary bishops, but the latter can do more. It is a practice of the Church, not a dogma, to choose new bishops from the abbots because they are considered as sources of spiritual life.

Amba Bishoy's answer to Mar Gregorius: The date of the constitution is June 1985 where it was approved in a synodical meeting. Chapter 11 of the constitution says that the constitution can be changed and under which conditions amendments can be done. The constitution can also be seen in the historical context of the return of the patriarch from exile when he wished to put down laws for the protection of the Church.

A synod cannot be convened in the absence of the patriarch, with two exceptions: a) if the patriarch is severely ill, b) if more than half of the members would like to meet in a synod but the pope refuses to come although this would be possible for him.

For pastoral reasons a diocese can be divided (which is usually not possible), but only with the consent of the synod.

As regards the role of the people in the appointment of bishops, which was asked for by both Mar Gregorius and Archbishop Krikorian, *Amba Bishoy* states the following: He considers it unfair to have a representational committee who elects the bishop as it is practised in the Armenian Church. In the Coptic Orthodox Church all male adults, on condition that they are eucharistic members of the Church, have the right to participate in the process of the appointment of bishops. Women and children are excluded from this right. The actual recommendations by the people are done by lists of signatures. The proposals of candidates by the people must be approved by the patriarch.

The General Board of Trustees which was imposed on the Church by the Ottoman empire, has administrative and financial functions, it constitutes a mixed regulation between Church and parliament. It also participates in the election of the Patriarch.

The questions of Prof. Harnoncourt and Fr. Bouwen are to be explained by wrong translations. Bishops are not "primates of their clergy" but "arch-priests". The "priestly presidency" quoted from Article 2 of the constitution should better be expressed by "presidency of priesthood" in the sense of arch-priest.

Dr. Synek again comes back to the appointment of bishops and asks for the procedure in case there is no agreement between the people and the patriarch.

Amba Bishoy: In this case there is an election by secret voting, as this is also done in the election of deacons in lands of immigration. But it is only the male eucharistic members of the Church who participate in the election. In order to emphasize the important role of women in his Church *Amba Bishoy* hints at the fact that there are many ordained deaconesses, the difference in ordination being that it is without laying on of hands.

Prof. Hofrichter asks about the status of corepiscopoi, abbots and general bishops, which has already been touched on by Prof. Legrand. Prof. Hofrichter would like to know whether corepiscopoi are bishops or not. He knows of some abbots that they are bishops, but need they be bishops or not? Do general bishops interfere in local dioceses?

Amba Bishoy: Traditionally a corepiscopos had the office of a village bishop, being under a city-bishop (metropolitan). In practice, the Coptic Orthodox Church took over the Syrian Orthodox rite of ordination of a corepiscopos. But this rite implies the ordination of a priest in a high rank, not a bishop, which is also expressed in the laying on of hands. As this was not a traditional rite of the Coptic Church it stopped ordaining corepiscopoi. At the moment there is just one corepiscopos left.

As regards the abbots, *Amba Bishoy* explains that not all of them are bishops. Irrespective of whether they are bishops or not they are allowed to participate in the Holy Synod. However, there is a tendency that all abbots should be bishops. A general bishop cannot interfere in a local diocese a) unless he is invited - his task is to serve in the other diocese - or b) unless the Holy Synod takes a decision for a certain task all over the Church, which has never happened so far.

Prof. Hofrichter: Is there a catholicos in the Coptic Orthodox Church?

Amba Bishoy: Historically the Coptic Church had a catholicos in Ethiopia, who is now the patriarch. For many centuries Alexandria had been sending metropolitans to Ethiopia. There they were raised to catholicoi (not in the Armenian sense but something between metropolitan and patriarch). Now Ethiopia is autocephal, having its own patriarch. But there are still close links to Alexandria.

Second working session, Friday afternoon:

Chairman: *Archbishop Mar Gregorius Yohanna Ibrahim*

Questions to and comments on Prof. Legrand's paper:

Mar Gabriel asks for further clarification about the primacy of the bishop of Rome as an "authority for the benefit of the whole Church".

Prof. Legrand: The bishop of Rome is a patriarch like the patriarch of Alexandria, but a patriarch for the West, which is clearly stated in canon 6 of Nicea. He is not a patriarch with universal jurisdiction. How can the ministry of Peter then be "for the benefit of the whole Church"? First of all, the ministry of Peter is to be understood as ministry in and for the communion of the Church. When east and west were in communion the ministry of Peter was commonly agreed upon, many ecumenical councils were held together (at least with the Byzantine east). Furthermore, at the Council of Sardica the Byzantine east and the Latin West agreed on the way in which the ministry of Peter could be exercised. Moreover, if the ministry of Peter is a ministry in favour of the local Churches and the communion between the Churches, then it is impossible for Rome to impose a certain

view of the ministry of Peter on the other Churches. If not understood in terms of jurisdiction the ministry of Peter could be a balance in pluriformity.

Archbishop Krikorian appreciates Legrand's paper very much because it opens new possibilities for dialogue about primacy in general and especially about the primacy of the Pope. However, he wants to add a few comments. He personally rejects Legrand's theory - which states that a local or regional Church which did not accept the decisions of regional synods or ecumenical councils placed itself outside the communion of the whole Church - with regard to the following examples. One should take into consideration the questions about the Nestorians or about Chalcedon, where interpretations are very different. Another example of the 5th century would be the distribution of power between the Churches: Although Egypt, Syria and Armenia as Churches were not less influential than Rome and Constantinople, the latter were politically more powerful and oppressed the other Churches. A further example in the history of the Armenian Church, which Krikorian considers important in this context, is the Synod of Sis (early 14th century). This synod accepted communion with the Roman Catholic Church. However, this union was rejected by the Armenian community and monks in Jerusalem - the monks having a spiritual authority in the early Church, as also pointed out in Legrand's paper. They established a new Armenian Patriarchate, a step which kept the whole Armenian Church on the same line of tradition, Krikorian maintains.

As regards the separation of the power of orders from the power of governing and teaching, which Prof. Legrand pointed out for the Roman Catholic Church from the 13th century until Vatican II, Prof. Krikorian mentions that a clear distinction is often difficult. The Vardapets in the Armenian Church, for example, have an important teaching office; but they are pastors not bishops.

Archbishop Krikorian is very pleased about Legrand's paper, especially about the clear declaration from the Catholic side that in the first millenium there was no jurisdictional primacy of the Bishop of Rome in a universal sense. However, he misses a remark about the claim of Vatican II in Lumen Gentium that an ecumenical council is only "valid" or ecumenical if the Pope confirms it as such. Maybe also in this point one might find a new interpretation. In general, Krikorian remarks, we are coming together very close.

Prof. Legrand: As regards the reception or non-reception of councils, this "was not a purely spiritual phenomenon" if one takes into account that the effectiveness of (ecumenical) councils was linked with imperial power. Legrand emphasizes that a synod is not an authority over and above the Church but the manifestation of the communion of the Church through its heads. So if somebody did not agree with the apostolic tradition he placed himself outside the Church. However, one must also consider the fact that there were misunderstandings and oppressions, and definitely there is the need of rehabilitation. It might well be that something valuable was preserved outside the Church. But as a formal principle the synod represents the communion and may be an instrument of communion. In the Vardapets Legrand sees a testimony to the pluriformity of ministries in the Church; also in the New Testament we find the teaching ministry.

As regards the relation of Pope and council, Legrand states that in a way the Council is superior to the pope, a fact which can also be seen in medieval councils. Above all this is true for ecumenical councils where the Pope only makes official and receives what the council decides. However, he admits that from a canonical point of view it is up to the

Pope whether he confirms the decisions of a council but in practice he has to submit to it as a member of this council.

Prof. Hryniewicz wonders why Prof. Legrand has not at all touched on the possibility of corruption of authority, as pointed out by Fr. George. Prof. Legrand tries to emphasize that "the whole Church must be understood from the local realizations of the Church of God" by calling them "portions" and "not parts" of the Church. For Prof. Hryniewicz this term is not enough to denote that the whole Church of Christ is realized in a particular place. He goes on to say that Chapter 2 of Lumen Gentium (de populo dei) does not sufficiently take into account the local ecclesiology but remains too much in a universal ecclesiology. Prof. Hryniewicz approves of Legrand's emphasis on authority in and not over the Church. However, he remarks that - although not in the Greek text - the English translation and the ecclesiastical teaching are full of the preposition 'over'. Therefore it is the more important to consider NT data where the *exousia* given by Christ is never an authority over the people.

Prof. Legrand: As his subject was the nature of authority he studied the patterns and not the spirituality of authority. Like Prof. Hryniewicz he is sorry for the bad translation of the canons of Nicea. As regards Lumen Gentium, it is some kind of compromise for it includes two legitimate lines of thinking, which is also evident in the question of Amba Bishoy (referring to articles 18 and 22 versus 27, see below). Legrand considers this fact a chance because it both offers and necessitates new ways of interpretations.

Amba Bishoy very much appreciates the statement in Legrand's paper that Vatican I "made the tradition of the early Church and its councils the criterion according to which it should itself be interpreted". It is the time of the early ecumenical councils where a meeting point about the understanding of the nature of the Church shall be found. He is also pleased to hear that the Bishop of Rome is not a universal bishop. At the same time he finds this in contradiction with the declarations of Vatican II in Lumen Gentium, articles 18 and 22, where "the sacred primacy of the Roman pontiff" (18) and his "full, supreme and universal power over the whole Church" (22) are maintained.

Prof. Legrand: The same document, Lumen Gentium 27, which he also quoted in his paper, says that bishops should be considered "as vicars and legates of Christ ... and not as vicars of the Roman pontiff" (also see above for the answer to Prof. Hryniewicz)

Mar Gregorius: Does Prof Legrand think that the Pope's encyclical "Ut Unum Sint" (that they may be one) is of the same spirit as the first millenium? Moreover, he asks Legrand to elaborate on the "collegiality of bishops"; how could be found a bridge between R. Catholics and Oriental Orthodox in this point? He also asks for clarification of the terms "local - regional - patriarchal".

Prof Legrand: Pope John Paul II's invitation to ecumenical discussion in "Ut Unum Sint" is remarkable. As regards the question of collegiality, Prof. Legrand thinks this is a very difficult one. He considers the definition of collegiality laid down by Vatican II not a directly historical and quite an unbalanced concept. He expresses his concern about a model where the body of bishops can do nothing without the head but the head can do

without the bishops. This concept of collegiality cannot bridge the gap between east and west.

"Local - regional - patriarchal": The communion of the Church is more than a communion of dioceses (dioceses = local level). We find groupings of Churches according to different cultures (regional level, such as Egyptian, Armenian, Greek, ...). The patriarchal level is an administrative and juridical one.

Further questions to all three speakers of the day: Fr. George, Amba Bishoy, Prof. Legrand

Fr. Žužek claims that it is not so sure that the Popes had no universal authority in the first millenium. At least they had a strong consciousness of having universal power. Therefore he suggests studying the matter very carefully. *Fr. Zuzek* does not agree with *Legrand* on the point that the patriarch of Rome is completely equal as patriarch to the other patriarchs. Moreover, he feels rather uneasy about the fact that the Orthodox Churches (Oriental and Byzantine) have no theological interpretation for the supra-episcopal power, which is also stated in the paper of *Fr. George*. Therefore he urgently asks the Orthodox Churches to study thoroughly the sources of supra-episcopal power, the tradition of which originated at least with Nicea I (confer the regulation of canon 6 for the bishop of Alexandria). Even earlier, at the end of the 2nd century there are cases where some bishops have the power to punish or excommunicate other bishops, which implies the exercise of supra-episcopal authority.

Prof. Legrand: The Bishop of Rome is a patriarch in the west and not a patriarch for other patriarchates. For instance, he does not appoint any bishops for other patriarchates. Furthermore, the patterns of the exercise of the patriarchates differ very much, e.g. of the patriarchate of Alexandria from that of Antioch. But if the patriarchs of Alexandria, Antioch, Rome ... are patriarchs, the foundation of their power as patriarchs is of the same nature.

Legrand agrees with *Zuzek* that it is necessary to have a theology of supra-episcopal power. Furthermore, he agrees with *Zuzek* that the Bishops of Rome had a strong consciousness of their responsibility towards the communion of the Churches. But Peter's ministry as a ministry of unity and communion cannot in its very exercise be a matter of division. So the important thing is to find a common point of departure: On what did east and west agree about the ministry of Peter, e.g. at the ecumenical councils or, at a later point, at the council of Sardica?

Fr. Žužek refers to his paper, in which he states that the "title 'Patriarch of the West', attributed to the Pope, ... has a substantially different meaning than the title 'Patriarch', attributed to the heads of Oriental patriarchal Churches".

Prof. Legrand: Can it really be the case that the Bishop of Rome acts by a power of different nature in the west than the Patriarch of Alexandria in his patriarchate?

Fr. George thanks *Fr. Zuzek* for pointing out the difference between episcopal authority and later canonical arrangements for supra-episcopal jurisdiction which were made for the good order of the Church. Since the Oriental Orthodox Churches do not invoke any

divine authority for these later canonical arrangements they - at least in his Church in India - maintain the original equality of all bishops. *Fr. George* emphasizes that, as it is also pointed out in the constitution of the Coptic Church, the patriarch does not do anything apart from the synod. Although he earns special respect, he is never apart from or above the synod.

Amba Bishoy does not at all agree that the Oriental Orthodox Churches have no theology of supra-episcopal authority. He refers to an image of Ignatius the Theophorus which he used in his paper. The bishop and his presbyters are an image of Christ and the apostles. In analogy to this, the bishops, who are the successors of the apostles, are an image of the apostles, and the arch-bishop is an image of Christ. But this image stops at the level of the local Church. It cannot be raised to the universal level because the only and supreme head of the Church is Jesus Christ. There are not two supreme heads of the Church, the Bishop of Rome and Jesus Christ. He emphasizes that St. Peter was a member of the college of the apostles, not its head nor the head of the synod of Jerusalem. The Coptic Church does not accept the primacy of Peter nor that the Bishop of Rome should be the supreme head of the Church, for the only head of the Catholic Church and of an ecumenical synod is Jesus Christ.

Archbishop Krikorian has the impression that the appointment of bishops on the one hand and the ordination on the other hand are confused. He hints at the fact that up to Chalcedon the *eparchia* together with the metropolitan had the right to appoint the bishop. For *Krikorian* the "primacy of honour" of the Bishop of Rome is due to political reasons and to the tradition of apostolic succession. He maintains - like *Fr. George* in his paper - that the Oriental Orthodox Churches accept some "primacy of honour" of the Pope but not in terms of jurisdiction. Furthermore, he emphasizes that the diocese is an entity in itself and that there is no right of interference from outside; this is also maintained in the ecumenical councils.

Prof. Hryniewicz quotes the council of Carthage (317) which states very clearly that the primate has no right to call himself the head of bishops.

Prof. Hofrichter states that the first millenium is quite complex and ambiguous. He supports this with a few examples and questions. The Church of the east, later the Nestorian Church, which became independent in the 4th century, called their catholicos *Mar Dadisho* "Peter for us" at a synod in Seleucia-Ctesiphon in 424. Are more realizations of the Petrine authority possible? What about mutual excommunications of patriarchs? What about the North African Church which never accepted the primacy of Rome?

Fr. Sebouh Sarkissian is pleased to learn from *Prof. Legrand's* paper that the idea of the primacy of Rome has changed. At the same time it is to be feared that it is still there in the mind of theologians. This overestimation of the role of Peter somehow implies the underestimation of the role of the other apostles, which is against the teaching of the gospel and the apostles. *Fr. Sarkissian* appreciates that in his paper *Legrand* mentions the spiritual authority of monks, who played a tremendous role in the development of theology in the Armenian Church.

Fr. George states that the Oriental Orthodox Churches have made bad experiences with Rome's claim of a special ministry of unity because they were divided, for example, into Coptic-Catholic and Coptic-Orthodox.

Prof. Legrand again refers to the relationship between local Church and Church at large. What kind of relationships are between local level and the Church at large? There are different legitimate answers in history: a) the Roman Catholic answer is the Petrine ministry, b) the Orthodox answer is autocephaly. Maybe both solutions are not completely satisfactory so that one might come together to find new ways. Once again he emphasizes that certainly no ministry of unity can be accepted if it is divisive.

Third working session, Saturday July 6th: 9.00 a.m.

Chairman: *Father K.M. George Kondothra*

Mar Gregorios Yohanna Ibrahim

THE CONCEPT OF JURISDICTION AND AUTHORITY IN THE SYRIAN ORTHODOX CHURCH OF ANTIOCH

1. Introduction

Nobody in the Syrian Orthodox Church of Antioch (SOCA) has treated, in a separate study, the subject of jurisdiction and authority and how it is practiced today. An order may be issued concerning these two subjects from an authority in the church which is believed to be based on church canon law and its constitution, while the truth is something different. Going back to the sources of church canon laws gives a clear idea about the meaning of jurisdiction and how to practice authority in the church.

Our church relies for its canon law on the following:

1. The rules of the Old and New Testaments.
2. The apocryphal canons of the Apostles including the canons of some local and regional synods.
3. The decisions of the three Ecumenical Councils which were held in Nicea (325 AD), Constantinople (381 AD) and Ephesus (431 AD).
4. The canons quoted from the letters of some famous church fathers who lived in the early centuries of Christianity and other canons prescribed by some church fathers as responses to questions they were asked.
5. Also, the canons of the universal synods which are recognized by the SOCA after the event of the schism in the year 518 AD, which include decrees and canons enacted by patriarchs on different subjects.

Fortunately a large number of these canons are preserved for us in the Syriac language in manuscripts scattered here and there. The Catholicos of the East, Mar Gregorius Ibn Al-Ibri (Bar Hebraeus, 1286) summarized them in his book known as *Nomocanon* which is the book the church still depends on and considers one of her most important canonical sources. After the time of Bar Hebraeus there were many efforts and numerous legal opinions, but the church had no occasion to enact a constitution, in which to define jurisdiction and how to practice authority, that was because of the difficult circumstances which the church passed through after the thirteenth century.

The time of Hulagu (1217-1265) was the beginning of the destruction in the Syrian Orthodox archdioceses. Firstly, jurisdiction was significantly changed in its geographical form. For example, many important archdioceses were removed from the church map, other small archdioceses were newly formed, and authority was on many occasions connected to the power of personality of church authorities and how close they were to political power.

I don't want to enter into the details of what happened in the distant past (between the 6th and 18th centuries) so as to show how authority was practiced by the Patriarch to

the extent of his jurisdiction and the scope of its effectiveness and his authority within the borders and jurisdiction of the Catholicos, because this subject needs separate research. But after World War I there were many developments forced on the church by political and security circumstances. These were the reasons for the changes of jurisdiction and geographical boundaries many times. The jurisdiction of the patriarch, which had been limited to a number of Middle Eastern countries and India, was expanded because of the emigration of a large number of church members to the whole world, specifically to every Syrian Orthodox Church which was established on any of the five continents.

The book *Nomocanon*, in which Bar Hebraeus treated the church, her sacraments and her feasts in the first 8 chapters, is not sufficient to clarify the meaning of jurisdiction and describe how to practice authority in the church. Due to that a number of synods were held in this century, most importantly: the Synod of Alway in Kerala, India in August 1911 which issued 39 articles, and the Synod of St. Matthew Monastery (Iraq, 1930) which put in place regulations and some articles. But, more important than these two was the Synod of Homs which was held in February 1933 and set out a complete constitution for the church clarifying the jurisdiction of the Patriarch and the metropolitans and explaining how authority should be practiced by the Holy Synod, the Patriarch, the metropolitans and the bishops and what the place of the authority of laity is through the general board of trustees (which does not exist today) and the special board of trustees for each archdiocese. (It has a special by-laws which the synod has decreed and the Patriarch has authenticated.)

There is another point that we will not elaborate on here which is the role of laity in our church (which needs separate research) and its authority which fluctuates from time to time and from patriarch to patriarch and from metropolitan to metropolitan.

The articles of the Synod of Homs in the year 1933 became the basis for what is known today as the **Church Constitution**. In spite of this brief time many amendments have been made to this constitution by several synods which were held after that date. The last one was the Synod of Damascus in 1991 presided over by Patriarch Mor Ignatius Zakka I Iwas. We will rely on this updated constitution in our paper on the meaning of jurisdiction and how to practice authority in the Syrian Orthodox Church of Antioch these days.

2. The Church Constitution

2.1. The Synod and Its Jurisdiction

The Holy Synod is composed of all of the metropolitans and bishops of the archdioceses which come under the Apostolic See of Antioch in the countries of the Middle East, India and the diaspora in addition to the metropolitans who are patriarchal vicars, and the patriarchal assistant in Damascus. The head of the Synod is the Patriarch. From this point the extent of the jurisdiction of the Synod will become clear. Its authority spreads to the extent of the authority of the Patriarch, the metropolitans and the bishops. These decisions are taken whenever two-thirds of the metropolitans meet and the decisions are taken unanimously.

2.2. The Jurisdiction of the Patriarch

The first article from the general rules in the church constitution says that:

„The Syrian Orthodox Church of Antioch is One, Universal, Holy and Apostolic Church. The old patriarchal headquarters was in Antioch where its See was founded by St. Peter, Head of the Apostles in the year 37 AD and its present headquarters (after 1959) is Damascus, the capital of Syria. The second article says: His Holiness the Patriarch is the supreme head over the church and its Holy Synod.“

In article 7 we read about the title of the Patriarch:

„His Holiness Mor Ignatius ... Patriarch of Antioch and all the East, Supreme Head of the Universal Syrian Orthodox Church.“

It is clear from these articles that the jurisdiction of the Patriarch is like the jurisdiction of the Holy Synod: he is the supreme head over the church wherever her sons and daughters are spread, he has the right to be preeminent in the archdioceses that have legal metropolitans and his jurisdiction includes all of the churches whether they are independent or are patriarchal vicariates.

Article 5 of the constitution says:

„The churches and the institutions and the Evangelistic Associations that are not included in the Syrian archdioceses mentioned in article 4, are administered directly by His Holiness the Patriarch.“

Since the Patriarch is the symbol of unity of the church and the universal father of all Syrians in the world, so it is necessary he be obeyed by the clergy at all levels and ranks, the deacons, the institutions, the active committees and the people altogether.

2.3. The Jurisdiction of the Catholicos

The Catholicos (Maphryono) comes second to the Patriarch in rank in the SOCA and the Catholicos is elected from only those metropolitans who are under the See of the Catholicate, and he should be obeyed by the priests and deacons and the people in the Syrian Orthodox archdioceses in India. And just as the name of the Patriarch is mentioned in all the archdioceses in the world so the name of the Catholicos should be mentioned in all the archdioceses in India after the name of the Patriarch and before the name of the metropolitan of the archdiocese. According to article 20 of the constitution, the jurisdiction of the Catholicos of the East includes all the Syrian Orthodox archdioceses in India along with two other metropolitans: The first metropolitan oversees the affairs of the church outside of Kerala - that is the other cities outside of the state of Kerala in India, for example New Kerala and Bombay - and the center of this archdiocese is the city of New Delhi. The Syrian Indian diaspora in the Arabian Gulf area also come under this metropolitan. The second metropolitan oversees the Syrian Indian church affairs in the United States.

The subject of the Catholicate in India has undergone developments recently. Several synods have been held in the patriarchal residence and in India to resolve the causes of the differences and to return to the unity which had tied together the churches throughout in India and the Antiochian See. This is another sensitive subject in need of separate research. Great efforts have been made these days for the sake of coming to an

agreement between the two factions, by preparing a draft agreement in which we hope will be defined the jurisdiction of the Catholicate and its authority in light of recent developments, throughout this we have had new information on these two topics.

2.4. The Jurisdiction of the Metropolitan

The Holy Synod consists of all of the active metropolitans. An active metropolitan is one who has an independent archdiocese which has its own entity and geographical boundaries, or is a vicar or a patriarchal assistant. The jurisdiction of each metropolitan is defined by the church constitution. The geographical boundaries of the archdiocese could include a whole city or part of it, or a number of cities in a state, or many states in one country, or many countries in one continent.

The scope of the geographical area does not necessarily determine the importance of the archdiocese. The boundaries of an archdiocese could be a whole continent as is the situation of Australia but its importance is less than other archdioceses which consists of one city in the Orient. Importance is usually given to the presence of the number of Syrian people, its active institutions and committees and different activities in the archdiocese.

According to the constitution (1991) we have 20 independent archdioceses or patriarchal vicariates. After 1991 the Holy Synod decided to form four archdioceses as patriarchal vicariates. These are all the archdioceses:

1. Damascus, the Patriarchate, its headquarters in Damascus includes the governorate of Damascus and its surroundings.
2. Homs and Hama and its surroundings, its headquarters is in Homs, includes the governorate of Homs, Hama and Tartus.
3. Aleppo, its headquarters is in Aleppo, includes the governorates of Aleppo, Idlib, Raqqa, and Latakia.
4. Jezirah and Euphrates, its headquarters is in Hassake, includes the governorates of Hassake and Deir Ez-Zor.
5. Beirut and Zahle, its headquarters is in Beirut, includes the governorates of Beirut and Bekaa.
6. Mount Lebanon, its headquarters is in Bouchrieh, includes the governorates of Mount Lebanon and Tripoli.
7. Baghdad and Bosra, its headquarters is in Baghdad, includes the governorates of Baghdad and Bosra.
8. Mosul and its surroundings, its headquarters is in Mosul, includes the cities of Mosul, Sinjar and Qaraq and the northern governorates of Irbil, Tamim (that is Kirkuk) and Suleimaneye.
9. St. Matthew Monastery, its headquarters is in St. Matthew Monastery, includes Bartilla, Bashika, Bahsahne, Akra and Mergi.
10. Mardin and its surroundings, its headquarters is in Mardin, includes the villages of Mardin and Qelleth and the governorates of Diyarbakir (Amid), Malateya, Adiaman and Al-Aziz.
11. Turabdin, its headquarters is in Midyat, includes the villages of Turabdin, Beit Zebde, Nusaybis and its villages.
12. Istanbul, it is a Patriarchal Vicariate with its headquarters in Istanbul, includes the governorates of Istanbul and Ankara.

13. Jerusalem and its surroundings, it is a Patriarchal Vicariate with its headquarters in Jerusalem, includes Palestine and Jordan.

14. The eastern states of the United States, it is a Patriarchal Vicariate with its headquarters in Lodi, New Jersey, includes the eastern states of the United States.

15. The western states of the United States, it is a Patriarchal Vicariate with its headquarters in Los Angeles, includes the western states of the United States.

16. Canada, it is a Patriarchal Vicariate with its headquarters in Montreal.

17. Brazil, it is a Patriarchal Vicariate with its headquarters in Sao Paulo, includes Brazil.

18. Argentina, it is a Patriarchal Vicariate with its headquarters in La Plata, Buenos Aires, includes Argentina.

19. Sweden and Scandinavian countries has its headquarters is in Södertälje, Sweden.

20. The Patriarchal Vicariate in Sweden has its headquarters in Södertälje, Sweden.

21. Middle Europe and the Benelux countries, its headquarters is in the St. Aphrem Monastery in Losser, Holland, includes Middle Europe and the Benelux countries.

22. The Knanaya, its headquarters is in Chingavanom, Kerala, includes all the churches of the Knanaya in India.

23. The Churches of the See (Simhasana churches) and its headquarters is in the monastery of St. Ignatius in Omalloor.

24. As for the Catholicate of the East, the constitution has delimited its jurisdiction and authority with the following words:

„The Catholicate of the East, its headquarters being in Muvattupuzha, includes all the Syrian Orthodox Archdioceses in India except the Archdiocese of the Knanaya and the churches of the Patriarchal See and the Evangelistic Associations of the East in India.“

It is not possible to add a new geographical area to or remove another from the archdioceses except by a decree from the Holy Synod and by authorization of the Patriarch. For example, our churches in Australia were included under article 5 of the constitution which orders that its administration goes back directly to His Holiness the Patriarch, despite the presence of a metropolitan in it who oversees its affairs as a patriarchal delegate. When it was necessary to make the archdiocese a patriarchal vicariate the Synod studied the request of the clergy, the organizations and the people in these churches. Then the Patriarch issued a decree joining it as a patriarchal vicariate to the list of archdioceses of the Patriarchal See.

3. The Present Structure of the Church

3.1. The Power of the Patriarch and How it is Practiced Today in the Church

3.1.1. Definition of the Patriarchal Authority

Who defines the authority of the Patriarch and who can call it into account? And from where does he have his wide authority in directing the church in its different affairs?

Answer: The constitution of the church declares clearly that the Holy Synod has the right to limit or widen the full authority of the Patriarch in light of the canon law of

the church and with a majority of the votes, if two-thirds of the active members are attending a legal session of the Synod.

This is what happened in the amended constitution of the year of 1991, which widened the authority of the Patriarch in the church. As for the subject of calling the Patriarch to account the article 7.g. (7.e. in English) gives to the Holy Synod the full power to investigate the Patriarch if it is needed, but this matter itself cannot take place unless two-thirds of the members of the Synod present a justified written request to two of the senior metropolitans who are members of the Synod. The Patriarch cannot be judged except by the agreement of two-thirds of the members of the Synod. Regarding this matter the constitution says in article 108.d. (108.h. in English) as follows:

„The Holy Synod issues its judgment on the Patriarch according to the adhered to rules and canons of the church by more than two-thirds of the members who are present. As for the other third, if they cannot attend they can express their opinion in writing and if he was condemned and discharged from his office the Apostolic See shall be considered vacant. In this case the articles pertaining to the election of a locum tenens will be implemented then and the election of a new Patriarch according to this constitution.“

It is useful to go back to the Book of Ordination in the church. The study of the prayers which are recited over the Patriarch elect shows the form of the service which the new Patriarch must necessarily carry out. The subject of the patriarchal staff has another meaning. No metropolitan or bishop may hold the staff in the presence of the Patriarch to assure respect of the Patriarchate and its honor. Three privileges of the Patriarch are mentioned in the Book of Ordination:

1. He is to be elected by ballot which means by the agreement of all the chief clergy (metropolitans and bishops) and in that way he becomes a universal father for the whole church and the Father of the Fathers;

2. It is on the Patriarch alone that the prayer of invocation of the Holy Spirit (belonging to St. Clemis) is recited and that is by the chief clergy, that is the metropolitans who are ordaining him;

3. The staff which the head chief clergy are holding onto - each one by the level of the order by which he became a metropolitan or a bishop - one after another takes the right hand of the patriarch elect and raises it up over all of their hands by this it is made clear it is by the free will and agreement of the whole church that he is given full authority over all the orders of the Holy Church of God.

For this reason he himself writes and reads what he has written according to the canon. This means his announcement embracing the constitution of the creed as is fitting to him, that he will behave well in justice and uprightness, walk or act according to the apostolic canons, accept the famous fathers and the three Ecumenical Councils, refute the heretics and dedicate himself to work and sacrifice for the safety and continuance of the Holy Church of God. He will also reconcile between two disputing adversaries in whatever promises are needed. He is never obliged to say: That he obeys an order of any of those who are ordaining him as they are obliged to submit to his order.

The act of kneeling down by the head of the synod and all of the metropolitans who are with him on the ground before the one to be elected and the head of the synod says to him: „The Holy Spirit is calling you to become Patriarch, the father of the heads of the city of Antioch and to the whole jurisdiction of this Apostolic See, I mean the father

for all of us.“ In return for that the one elected for the patriarchal see kneels before the synod and says: „I have agreed and accepted.“

3.1.2. *Bishop of Antioch*

Surely there is no ordination liturgy for the Patriarch but there is an enthronement rite. The one elected Patriarch does not take a new rank in the level of the episcopate. He becomes the first among the metropolitans and bishops, and with calling him Patriarch his name remains the **Bishop of Antioch**.

The boundaries of his jurisdiction and his direct authority in his archdiocese is the patriarchal residence which has been determined by the Holy Synod.

The church constitution defines the authority of the Patriarch as follows:

In pastoral affairs: The Patriarch carries out apostolic visits to the archdioceses and churches within the jurisdiction of the See of Antioch at least one time every five years, checking up on their affairs and giving comments on what he sees is necessary. He holds to account the metropolitans and bishops of the archdiocese, the priests, the community committee and all the organizations. He has full authority to dispatch clergy in church and cultural missions like attending conferences of an ecumenical, cultural or church nature. If there are vacant archdioceses the Patriarch appoints reliable clergy for administration of pastoral affairs until a metropolitan is legally elected for it. And in return for that, all archdioceses and churches present a yearly tithe which is known as „zedge“ - that he is entitled to from the financial accounts from the archdiocese. Or, it is gathered in the name of the patriarchate in a way which the archdiocese deems appropriate. This practice still exists in some of the archdioceses.

3.1.3. *On the subject of faith*

The constitution names the Patriarch as the protector of the faith of the church, her holy dogmas, doctrines and her apostolic and patristic traditions. Accordingly, it is included in his authority to investigate, correct and scrutinize all books and articles considering the matter of faith in them and giving his comments. He has the right to permit publication or to forbid printing and distribution. He also has the right to delete or enter new church premises.

Here we notice that although it is one of the Synods powers to watch out for religious heresies, contradictions of church traditions and its organizations and condemn those who commit them whether they are clergy or laity with all the sanctions of the church, the Patriarch as the head of this synod carries out this decision. Therefore His Holiness the Patriarch is called **defender of the faith**.

3.1.4. *The ordination of priests*

The Patriarch has the right to put the monastic cowl on those who have the qualifications from both genders, and to ordain males as priests and to appoint them as it is necessary in appropriate roles. He also responds to the invitations of metropolitans and bishops or archdioceses to ordain others to the priesthood or diaconate. As for the archpriests he elevates them or the metropolitans elevate them by his order. The ordination of the legally elected catholicos or metropolitans remains one of his authorities and

rightful powers. By his order, or in the case of the vacancy of the See, one of the metropolitans can do this if he has been the dean of the Synod or the oldest of the metropolitans by age.

Right after the ordination, the Patriarch provides them with the *Sostateequn* and that is the document which defines the jurisdiction and authority of the new metropolitan in light of his service whether it is a legal archdiocese or patriarchal vicariate. And with this document the metropolitan is endowed with patristic instructions and apostolic advice as he calls the clergy and laity to take care of their new metropolitan. It is within the authority of the Patriarch to approve the election of metropolitans who are under the See of the Catholicate directly after election. Then he grants the new metropolitans with the document *Sostateequn* after their ordination by the Catholicos and his metropolitans.

3.1.5. *The Other Sacraments*

The Patriarch, if present, takes the lead in the liturgy except in the sacrament of Holy Oil (*Mirun*). The Patriarch alone has the right to specify the time of the consecration of the Holy Oil (*Mirun*). Its consecration is done under his leadership and in his presence, with the assistance of two of his metropolitans, at least; or one metropolitan in case of dire necessity.

3.1.6. *The Affairs of Organization and Administration*

The Patriarch has the right to establish relationships between his church and other churches, to negotiate with them on ecumenical affairs, to sign common statements or bilateral agreements and to visit the worldly authorities wherever he is to discuss church affairs in general. He is the one who signs for all documents, contracts of all kinds, records and letters related to the affairs of the See. He announces the decrees of the synods, the election of the Catholicos and metropolitans and he transfers metropolitans from one archdiocese to another.

After taking a decision in the synod his authority gives him the right to receive resignations from the catholicos or metropolitans, and to implement their dismissal. He also orders the correction of geographical borders of the archdioceses. He announces the foundation and establishment of archdioceses or their abolishment, sells part or all of the properties and the endowments of the patriarchate. He has the authority to call for a holding of the Holy Synod and to set the time and the place.

3.1.7. *Concerning the Church's Court*

The Patriarch is the authority to refuse or approve any of the judgments issued by any preliminary court in the countries of the Middle East and the diaspora, and to appoint the head of the court of appeals in the patriarchate or in any other country. He has the right to appoint the head of a preliminary court in the patriarchal vicariates wherever they are found. He also has the right in case of the removal of one of the heads from his position in any spiritual court in the archdioceses to deputize another person for a short time in that case. The Patriarch alone is head of the high court in the church and is the highest level in the churches' courts and his decisions are legally valid and are not able to be appealed. This is for the subject of personal affairs. But on the subject of church

punishments in the lower levels, the patriarch does not interfere in the rights of the metropolitan or archdioceses but he should be informed of the matter. The subject of church excommunications remains entrusted to the Patriarch and after examination of all of the aspects of the case he will issue a judgment of excommunication on the clergy or the laity and will announce it by known media.

We still have to point out that Syrian monasteries including monastics (men and women) and the theological seminaries which include the seminarians, their affairs, taking care of them, preparing them educationally during their stay in the seminaries or sending them for research studies abroad in the theological colleges in different parts of the world, and printing and distribution of books, magazines and publications in the patriarchate: All are entrusted to the person of the Patriarch and are within his authority.

3.2. *The Authority of the Metropolitan and How it is Practiced in the Church Today*

The election of the metropolitan has changed in the Syrian Church between the past and now. While in the past the archdiocese chose three monks from among the monks, the Patriarch and his synod chose one of them to be the metropolitan for the archdiocese.

But, now the Patriarch selects and suggests three candidates from among the monks and the archdiocese chooses one of them. According to the constitution of 1991 the Patriarch must necessarily confer with the members of the Holy Synod about the monks who are candidates and if he gets a majority of the votes he ordains him. This plurality of authority puts the archdiocese in a bind sometimes but most important is that the metropolitan of the Syrian Orthodox Church (except for the patriarchal assistant and the patriarchal vicariates whose names are suggested by the Patriarch and they are appointed by him) is elected by the clergy and believers in the archdiocese. If it is impractical for the believers to do so: „Then the clergy or the archdiocese and the community committees and the organizations of the church and the active committees elect him.“ Then the metropolitan will stay at the head of his archdiocese as long as he remains in good health, does not desire resignation and is not more than 75 years of age when he is to retire. This last point is a new article in the revised constitution of 1991, for article 62 says: „The metropolitan has the right to present his resignation to His Holiness the Patriarch or to retire at 70 years of age. He must necessarily retire at the age of 75.“

His authority is manifold and various, for the metropolitan holds prime responsibility in the archdiocese, organizes its different affairs and is helped in that by two committees: First, by the laity known as the board of trustees, for in the committee the metropolitan has an assistant who deputizes for him in the administrative sessions in the committee during his absence according to the by-laws of the community committees. This committee has a long history in the Syrian Orthodox Church of Antioch. It is clear from different stages that laity has a great role in the life of the church. If we look at the powers of the committee from the organizational, the social and the financial side we find they are many. All of these powers call for the raising of the level of the archdiocese, to support her unity and preserve her rights. The community committee has the right to preside over the different kinds of activities of the organizations of the archdiocese, to enact suitable by-laws for them, to call them to account, to supervise them, to look into the affairs of its committees, to change them or they will be disbanded if they commit something wrong which is against what the committee has issued and to inter-

vene and resolve differences between the leaders and members of the administration of these organizations.

The community committee takes care of the cultural and educational movements in the archdiocese and they have the right to oversee in the peoples' voting to choose a new metropolitan and priests for the archdiocese and all of the financial affairs are within its domain. Although the committee has special, different smaller committees, and its meetings are considered legal if more than half of the members are present, the new article of the by-laws of the committees approved that the decisions of these committees will be considered null and void except if the metropolitan of the archdiocese is present. This new article in many cases hinders the working affairs of the committee. So, it makes it necessary that the metropolitan always attend to help these lay organizations in determining the administrative affairs in the archdiocese.

As for the committee of clergy which includes all of the priests of the archdiocese headed by the metropolitan, it is to oversee the spiritual affairs of the metropolitan. This committee has no by-laws, and does not take any executive decisions. Its task is limited to studying the spiritual affairs in the archdiocese, developing the activities of spiritual services, treating some of the problems in light of the teachings of the gospel and the canons of the church and putting forward their findings to whomever it may concern.

This clarifies the authority of the metropolitan: **Pastorally**, the metropolitan is always looking after the members of the archdiocese, blessing their homes, looking after their affairs, receiving them in the metropolitan's residence, meeting their needs as he is able. **Regarding Sacraments**, when he is present he heads spiritual services in the metropolitan. He alone has the right to build and to renovate the churches and the altars in the archdiocese. In article 59: „No one has the right to build or to renew a church or altar in the church except by the order of the metropolitan of the archdiocese.“ He alone has the right to consecrate the churches, the altars and the vessels used by the celebrant in them. He also ordains the priests and the deacons. He administers the sacraments and the Holy Oil for the baptism and the anointing of the sick. And it is within his authority to shift a priest from one church to another within the area of his metropolitan. He has the right to punish deviating clergy and laity through the church's discipline and informs His Holiness the Patriarch giving the reasons that necessitated the punishment.

It is also within his authority to take care of the affairs of the archdiocese administratively, financially and educationally. He is the one who holds the official records to register in them events like baptisms, engagements, marriages, deaths, and wills and all of the contracts and bequests and to preserve all of these. He presides over and approves the yearly budgets of the archdiocese and he establishes the schools and he oversees the publications and the circulations in his metropolitan. He establishes the organizations, committees, clubs and all of the community associations. Article 60.d. (60.I. in English) says: „Any of these committees that is not approved by the metropolitan is null and void.“

Another authority of the metropolitan is overseeing the affairs of the archdiocese, making sure they don't go against the constitution of the church, because he is responsible before the Patriarch and the Holy Synod concerning deviations from the church constitution in his metropolitan. He has the authority in this matter to announce and implement the decisions of the Synod within the boundaries of his archdiocese and to

prepare a detailed written report about his archdiocese for His Holiness to show to the Holy Synod in its usual and exceptional sessions which he personally attends.

The constitution defines the authority of the metropolitan on these subjects:

1. He does not negotiate with heads of churches, other religions or other religious organizations about spiritual or church affairs without the permission of His Holiness.

2. He may not lend, borrow, guarantee or take a guarantee on or rent the endowments of the archdiocese, the churches, the organizations or the charitable associations, without a decision of the local board of trustees.

3. He does not buy exchange or sell any of the archdiocese's endowments, churches, organizations or charitable organizations except with a decision from the local community committee and by the approval of His Holiness the Patriarch.

It remains to be pointed out that he alone in the archdiocese has the right to preside over the preliminary court sessions of first order and to choose whoever he prefers from the priests and the laity to be members in the spiritual court. He alone has the right to take suitable decisions according to the proceedings of the case and in light of the church canon law and execute them according to the personal statutes canon except for the decision regarding the dissolution of marriage or divorce, for that decision cannot be taken without the approval of the Patriarch.

In the situation where he is chosen to represent the Patriarch or the Holy Synod in an important church matter, whatever it is, when he returns to the archdiocese he must write a detailed report about the task he was delegated for.

Just as nobody can interfere in the administrative, organizational, spiritual and financial affairs except as permitted by constitution, so he has no right to interfere in the matters of another archdiocese nor to take part in practicing or carrying out any church services in it except by permission of the head of that archdiocese and by his satisfaction. If he ordains someone in it, it should be considered as false and the Patriarch and the Holy Synod will look into the matter.

3.3. The authority of the Holy Synod

3.3.1. Some Remarks

Before finishing, I would like to point out some authorities which the constitution specifies for the Holy Synod. In all cases these authorities supplement those of the Patriarch and the metropolitans and the whole church. The authority of the synod is to:

1. elect the Patriarch and enthrone him in the patriarchal residence at a suitable time and to receive the resignation of the Patriarch and the metropolitans and to order their dismissal.

2. to agree on or to reject the decisions of the Patriarch to candidate the monks for the rank of episcopate in the case of their election and appointment.

3. to investigate the Patriarch and the metropolitans and to judge them according to canon law.

4. to look into the religious heresies which are against the faith and traditions of the church and its organization and to issue judgments against whoever committed them, whether clergy or laity, with all of the punishments of the church.

5. to meet, presided over by the oldest metropolitan, if the Patriarch has not called the Synod for three successive sessions.

6. to shift Metropolitans from one archdiocese to another and to establish, to renew and to abolish archdioceses or to change its geographical borders or to sell a part or all of the endowments of the Patriarchate.

7. in case of a vacancy in the See, the Synod is to elect one of the metropolitans as an interim authority according to the principals and articles of the constitution.

This could be enough but I allow myself to add three notes on these two subjects: jurisdiction and authority.

3.3.2. Historical Review

The present situation cannot be compared to the distant past, for most of the sees and metropolitanates which were at one time included in the jurisdiction of the See of Antioch and were under the decisions of the Holy Synod are not present in this time. According to two ancient Syrian manuscripts it is clear that seven sees were under the See of the Antiochian Patriarchate and they were: (1) Aleppo, (2) Kanasreen, (3) Jebleh, (4) Sulokiah, (5) Hansarta, (6) Bloutoan, (7) Al Jabul. And there were two other sees in which the Patriarch had the authority to send their metropolitans wherever and they are: (1) Salameia, (2) Brakusun. Four other sees were independent and they are: (1) Beirut, (2) Homs, (3) Latakia and (4) Khorus. The number of metropolitanates which were under the Holy See were twelve: (1) Tyre, (2) Tarsus, (3) Al Ruhra (Edessa/Urfa), (4) Aphia, (5) Manbej, (6) Bosra, (7) Ain Zerba, (8) Sulokia ei Syria, (9) Damascus, (10) Amed, (11) Rasafe, (12) Dara. For each metropolitanate there were many archdioceses.

3.3.3. Titles and Persons

The title metropolitan, bishop, archbishop or episcopus all have been raised to the level of Episcopate. Each metropolitan is an archbishop and a bishop and an episcopus. The episcopus at this time is a widowed priest who has been raised to the level of the episcopacy. The article 91 of the constitution says as for the episcopus „he is chosen from among the widowed priests“ and the garb of the episcopus is not be different from that of the metropolitans and his rights are equal to their rights. But, he is always last in rank in the Holy Synod even if he was ordained previous to another.

3.3.4. The Position of the Patriarch Today

Today the Patriarch practices a much wider authority because the revised constitution in previous periods has permitted this. The power of the personality of the Patriarch and the metropolitans plays a distinguishing role in widening their authorities.

Mesrob K. Krikorian

AUTHORITY AND JURISDICTION IN THE TRADITION OF THE ARMENIAN CHURCH

1. Introduction

The theme „Authority and Jurisdiction“ is an important subject which deserves thorough investigation and deep discussion in the dialogue of reunion of the Church of Christ.

The “Authority“ is the ecclesiastical and spiritual power bestowed by God on the Apostles and from Apostles on the presbyters and/or bishops to administer the life of the ecclesia, of the community which follows Jesus Christ and exercises, or at least attempts to exercise the Christian faith, love and hope.

The „Jurisdiction“ is another aspect of ecclesiastical authority; it is rather a legal authority which extends over a territory, over a special geographical area. In conclusion, authority and jurisdiction are inseparable aspects of the same reality which is the ecclesiastical right, privilege and power for the administration of a Christian community living in a geographically limited and fixed territory - canton, province or country.

Already at the time of the Apostles had developed an ecclesiastical hierarchy according to which the presbyters and deacons guided the communities of Christians which were entrusted to them. Apparently towards the end of the first century from the presbyters emerged a rank and collegium of episcopoi/bishops who possessed the higher authority and jurisdiction within a community. Therefore I wish to focus my attention on the authority and jurisdiction of the bishop who is the main responsible minister and administrator of an ecclesia.

2. The Bishop: His Duties and Rights

The Church of Christ in general recognizes three stages or orders of hierarchy: Deacon, Presbyter and Bishop. It's the privilege of bishops to ordain or consecrate deacons and presbyters. All other hierarchs - Archbishop or Metropolitan, Patriarch, Catholicos and the Pope, in their rank are equal to the bishops, but they are endowed with more or higher responsibilities. Especially in the Roman Catholic and Armenian Apostolic Churches in course of time developments have occurred which entitle both the Pope and the Catholicos with unique rights and authority! All the bishops and cardinals in the Roman Catholic Church are ultimately nominated by the Pope and not by a Synod of Bishops or by delegates. Only the Pope possesses the power and authority to confirm by his signature the decisions of general councils of the Roman Catholic Church. The Pope is the highest instance not only in administration and judicial office, but also in deciding the truth in the Christian faith and morals. The Council of Vatican I went so far as to recognize the infallibility of the Roman Bishop in cases when he as Shepherd and Teacher of 'all Christians' speaks ex cathedra and defines on questions of Faith and Morals (Sit-

ten)¹. As to the Armenian Catholicos, after 1045 and especially after the fall of the Cilician kingdom in 1375 - when many Armenians migrated to Europe up to Singapur, India and Tibet, gradually he acquired the privileges of highest authority in the Church.

Towards the end of the first century, the church-father Clemens of Rome has written in his epistles as follows:

„The Apostles received the Good News for us from our Lord Jesus Christ: Jesus the Christ was sent by God. Consequently Christ comes from God, and the Apostles descend from Christ; both occurred in a fine order according to the will of God.“²

The bishops were assigned or elected with the agreement of the „whole community“ (*ecclesia*), and they could not be easily removed from office.³ „The flock of Christ“ should live in peace with the presbyters and accept their authority.⁴

About the same time or perhaps a little later (at the beginning of the second century), Ignatius of Antioch very often refers to bishops who should be understood as „episcopoi“ in proper sense. For instance, in his epistle to the Ephesians, he recommends the community to obey the bishop and the presbytership.⁵ The presbyters are bound with the bishop like the strings with a zither,⁶ and the believers should look at the bishop and respect him as they do regarding our Lord.⁷ Furthermore the renown church-father explains and defines in a pathetic way that the Bishop instead of God and the Presbyters in place of the assembly of the Apostles preside over the meetings of the community.⁸ Then he recommends to community-members „to undertake nothing without the Bishop and Presbyters“⁹ and suggests to submit themselves to the Bishop and one to another, like Jesus Christ did to the Father and as the Apostles did in respect to Christ and to the Father and to the Holy Spirit!¹⁰ The high-light of the thoughts, instructions and prescriptions of Ignatius of Antioch is the well known passage in his letter to the Smyrnians where he emphasizes that the Bishop is the central authority of a community and without him or his representative nothing can be undertaken. In paragraph 8 he writes:

„All follow the Bishop, as Jesus Christ [does] to the Father, and the Presbyterate as to the Apostles; but the Deacons you should esteem like commandments of God! Nobody should do anything with respect to the Church (*εκκλησια*) without the Bishop. That Eucharist can be regarded as legitimate when it is celebrated by the Bishop or by an (authorized) representative. Where the Bishop appears, there will be the community, as wherever Jesus Christ is, there is the catholic Church. Without a Bishop, it is not allowed to perform neither baptism nor agape.“¹¹

¹ Neuner - Ross, *Der Glaube der Kirche in den Urkunden der Lehrverkündigung*, 8th revised impression, Pustet/Regensburg, 1971, 303.

² Joseph A. Fischer, *Die Apostolischen Väter*, Kösel-Verlag Munich, 1956, 77.

³ *Ibid.*, 81.

⁴ *Ibid.*, 93 and 97.

⁵ *Ibid.*, 145, 159 (161).

⁶ *Ibid.*, 145.

⁷ *Ibid.*, 147.

⁸ *Ibid.*, 165 and 175.

⁹ *Ibid.*, 167 and 173.

¹⁰ *Ibid.*, 171 and 173.

¹¹ *Ibid.*, 211.

Certainly under „agape“ or love - feast should be understood also the Eucharist, because usually it was held by early Christians in connection with Lord's Supper. Here for the first time appears the expression „catholic Church“ (*καθολικη εκκλησια*) which stands under the authority of Jesus Christ: the Bishop is the head of a local community/„*Einzelgemeinde*“, whereas Jesus Christ is the Head of the universal Church which covers all local Churches. Consequently those heretical and schismatic groups who are separated from the Bishop, do not belong to the Church catholic.

No doubt the assertions of the fathers of the early Church concerning bishops and presbyters and their authority are based on the Truth revealed in the New Testament. Our Lord Jesus Christ while ascending into heaven entrusted the Apostles with the right and authority of teaching, instructing and baptizing all nations:¹²

„Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit.“

The Apostles received from the Lord also authority for the remission of sins. Jesus Christ said:

„Receive ye the Holy Spirit: Whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained.“¹³

In the penitence ritual of the Armenian Church, persons who confess their sins in a traditional formulary say:

„Holy father, I hold you as mediator for reconciliation and intercessor with the only - begotten Son of God, so that by the authority which is given to you, I beg you to release me from the bonds of my sins.“¹⁴

In his reply the presbyter declares:

„May God of charity have mercy upon you and forgive you all your trespasses, confessed or forgotten. And I by my priestly authority and by the command of God that - 'Whomever you shall loose on earth, shall be loosed in heaven', by the same order I discharge you from all connections of your sins - from thoughts, words and deeds, in the name of the Father, the Son and the Holy Spirit.“¹⁵

To the sacrament of repentance follows the Eucharist. Our Lord said:

„I am the living bread which came down from heaven: if any man eat of this bread, he shall live for ever; and the bread that I will give is my flesh, which I will give for the life of the world.“¹⁶

At the Last Supper Jesus Christ constituted the sacrament of Eucharist as he took bread and gave thanks, and brake it, and gave unto them, saying: „This is my body which is given for you: this do in remembrance of me.“¹⁷

Likewise he took also the cup and said: „This cup is the new testament in my blood, which is shed for you.“¹⁸

¹² Mt 28, 17-20.

¹³ Joh 20, 22-23.

¹⁴ Service-Book of the Holy Armenian Church (in classical Armenian), for instance Constantinople, 1895, 11.

¹⁵ *Ibid.*

¹⁶ Joh 6, 51 (53-56).

¹⁷ Lk 22, 19.

¹⁸ Lk 22, 20; Mt 26, 26-28, Mk 14, 22-25.

During the Last Supper our Lord gave right and authority to his disciples to celebrate the Eucharist in his remembrance for the remission of sins of all men, until the day when he will drink the „fruit of vine“ new in the Kingdom of God,¹⁹ till he comes.²⁰ The Apostles exercised the command of Jesus Christ and they transferred it to their successors or bishops. In the Acts we read as follows:

„And they (i.e. the baptized) continued steadfastly in the apostles' doctrine and fellowship, and in breaking of bread, and in prayers.“²¹

It is interesting that in the Acts the „elders“ are mentioned together with the apostles as colleagues and cooperators.²² Chapter 20 is a very important document in understanding and identifying the elders: according to verse 17 apostle Paul in Ephesus called the elders of the church (πρεσβυτερουζ της εκκλησιας) of the church and spoke to them. In the following verse 28 he states and recommends:

„Take heed therefore unto yourselves, and to all the flock, over the which the Holy Spirit hath made you overseers (επισκοπουζ), to feed the Church of God, which he hath purchased with his own blood.“

This passage explains and demonstrates very clearly that some of the presbyters or elders were called by the Holy Spirit as overseers or episcopos to take heed to all the flock and to feed the church/ecclesia of God. The responsibility of bishops described here, reminds us how Jesus Christ himself gave the same duty to the apostles in the person of Simon Peter saying: „Feed my lambs“, „feed my sheep.“²³ Not only the administrative authority, but also all other privileges which the apostles had received from Jesus or from the Holy Spirit, were conferred on the overseers - presbyters or bishops, gifts and rights of healing, preaching and teaching, baptizing, remitting sins and celebrating the Eucharist. Scholars of exegesis pay special attention to the evidence of the epistle to the Philippians where, perhaps for the first time,²⁴ the bishops/episcopi are mentioned together with deacons in proper sense as follows:

„Paul and Timotheus, the servants of Jesus Christ, to all the saints in Christ Jesus which are at Philippi, with the bishops and deacons.“²⁵

In the letters of apostle Paul to Timothy and Titus there are several testimonies concerning the position, behaviour and office of bishops.²⁶ Two statements particularly refer to the appointment and ordination of elders or presbyters: 1 Tim 4, 14 the Apostle states:

„Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the body of elders (πρεσβυτεριου).“²⁷

The second reference is an order to „ordain elders in every city, as I had appointed thee.“²⁸ The Greek text reads:

¹⁹ Mk 14, 25.

²⁰ 1 Cor 11, 26.

²¹ Acts 2, 42, cf. 20, 7.

²² Acts 11, 30; 15, 2 and 20, 28.

²³ Joh 21, 14-17. See also Mt 4, 19.

²⁴ Lexikon für Theologie und Kirche, volume II/1958, article „Bischof“, 491.

²⁵ Phil 1, 1.

²⁶ 1 Tim 3, 2-7; 4, 14 and 5, 17; Tit 1, 5, 7-10.

²⁷ 1 Tim 4, 14.

„και καταστησῃς κατα πολιν πρεσβυτερουζ, ωζ εγω σοι διαταζαμην.“. The first word (καταστησῃς / καθιςτημι) means „to introduce, to institute, to appoint“, whereas the second term suggests rather „to charge“.

3. Canonical Evidences of the Local Synods

It is interesting to search and research evidences in the canons of the Local Synods of the early Church in order to find data which could on the one hand confirm the continuation of the apostolic tradition, and on the other hand demonstrate the crystallization and development(s) of that tradition.

In the „Canons of the Holy Apostles“ which are compiled between 4th and 6th centuries, the first canon regulates that a bishop should be ordained by 2 or 3 bishops,²⁹ and priests, deacons and other clericals should be ordained by a bishop.³⁰ According to canon 14 it is not allowed for bishops to abandon their diocese and go to another, unless there is a forcible reason which may be for the benefit of a larger community. This however should be decided by numerous bishops (πολλων επισκοπων).³¹ Likewise, priests and deacons are not permitted to change their diocese,³² but if they do so and are accepted by another bishop, such a bishop must be excommunicated.³³ Canon 34 is an important prescription which says:

„Bishops have to recognize the authority of their Primate.

The bishops of each nation have to recognize their primate and consider him as their chief; nothing should be done without his instruction, and that each one should be occupied only with his diocese and with regions subordinate to it. But he also should not undertake anything without advice of all other bishops, because in this way the harmony shall reign and the Father, the Son and the Holy Spirit will be glorified.“³⁴

Among the canons of the Synod of Ancyra/Ankara (314), there are two interesting canons: canon 13 forbids the ordination of priests by cor-episcopi without the written consent of the bishop of each diocese.³⁵ The other canon (No. 18) is about bishops who were assigned for a diocese, but were not allowed to go to other dioceses, but they have to remain in their previous place and continue their pastoral work as presbyters!³⁶

Canon 3 of the Synod of Antioch (341) is similar to the 15th of the Apostolic Canons: priests, deacons or other clerics are not permitted to change their parish. If they do not obey their bishop, they must be deprived of their ecclesiastical functions.³⁷ Canon 9 confirms that the metropolitan is the head of a province and therefore enjoys primacy of honour. Every bishop is the leader of his diocese, and outside his jurisdiction he can not

²⁸ Tit 1, 5.

²⁹ Fonti - Fasc. IX - Discipline Générale Antique (IV^e-IX^e s.), tome 1, 2: Les Canons des Synodes Particuliers, edited by Périclès - Pierre Joannou, Rome, 1962, 8.

³⁰ Ibid.

³¹ Ibid., 14.

³² Canon 15, *ibid.*, 15.

³³ Canon 16, *ibid.*

³⁴ Ibid., 24.

³⁵ Ibid., 65.

³⁶ Ibid., 69.

³⁷ Ibid., 106-107.

do anything without the consent of the metropolitan.³⁸ According to canon 10, the *cor-episcopoi* receive episcopal consecration, but they minister and administer under the jurisdiction of the diocesan bishops, and without their agreement, they are not entitled to ordain deacons and priests.³⁹ Canon 16 rules that a bishop can not take over a vacant diocese, unless he is given authority by the whole synod. (a synod is complete when the metropolitan attends it).⁴⁰ Canon 19 concerns the ordination of bishops of a province: the election (as well as the ordination) of a bishop is valid only when he is elected in a synod by the majority of bishops, either through personal presence or through written endorsement. Naturally the metropolitan must be present at the synod.⁴¹ According to Canon 20, the synod of bishops of a province should be held twice a year in the presence of the metropolitan, once in the fourth week of the Pentecost, and for a second time in October.⁴²

The Synod of Carthage (419) has examined and decided on rather personal or special cases. However two canons are worthy to be quoted: canon 49 re-states that at least three bishops are necessary for the ordination of a bishop.⁴³ If an administrator - bishop is nominated for the election of a bishop of a vacant diocese, he has to fulfil his duty within a year, otherwise at the end of the year a new administrator should be elected (can. 74).⁴⁴

4. Evidences of the Ecumenical Councils

Naturally the evidences of ecumenical councils on the authority and jurisdiction are also of great importance and significance, since they were assembled under the patronage of the Byzantine emperors and their canonical decisions formed in a way a part of the imperial legislation.

Canon 4 of the Council of Nicea (325) states and declares that a bishop should be elected by all bishops of a province, in attendance of the metropolitan. In urgent cases at least three bishops should come together and the rest should communicate their written consent. The confirmation of the election is the right of the metropolitan of the province.⁴⁵ It is convenient and useful to convoke general/provincial synod twice a year in order to investigate important questions, such as excommunications by a bishop, in order to avoid arbitrary decisions (can. 5).⁴⁶ Canon 6 confirms the ancient custom according to which the bishop of Alexandria held jurisdiction on all provinces of Egypt - Lybia, Pentapolis, like the bishop of Rome. The same jurisdiction enjoys the See of Antioch on all its dioceses.⁴⁷ If somebody has become bishop without the approbation of the metropolitan, the majority of the general/provincial synod should take the final decision (can.

³⁸ Ibid., 110-111.

³⁹ Ibid., 112.

⁴⁰ Ibid., 117.

⁴¹ Ibid., 119.

⁴² Ibid., 120.

⁴³ Ibid., 267-68.

⁴⁴ Ibid., 315-16.

⁴⁵ Fonti - Fasc. IX - Discipline Générale Antique (IV^e-IX^e s.), tome 1, 2: Les Canons des Synodes Particuliers, edited by Périclès - Pierre Joannou, tome I, 1: Les canons des conciles oecuméniques, Rome, 1962, 26, cf. can. 19 of Antioch (341).

⁴⁶ Ibid., 27, cf. can. 20 of Antioch.

⁴⁷ Ibid., 28-29.

6).⁴⁸ Canon 15 prohibits to all bishops, priests and deacons to change their diocese or city; if anybody dares to do so, he should be returned by the large synod to his original church for which he was ordained.⁴⁹ The next canon threatens with excommunication all those presbyters and deacons who abandon their church,⁵⁰ and if a bishop ordains a clerical who belongs to another diocese, such an ordination should be null and void.⁵¹

The second ecumenical Council of Constantinople (381) re-affirms the jurisdiction or the primacy of the bishop of Alexandria on the dioceses in Egypt, as well as the jurisdiction of Antioch on its dioceses (can. 2).⁵² Furthermore it underlines - repeating the regulations of Nicea, that bishops should not interfere in the ecclesiastical affairs of another diocese, and that the provincial synod is responsible for the affairs of the whole province.⁵³ Since about this time under the reign of emperor Theodosios I (379 - 395) Christianity became the official religion of the East-Roman Empire, the Council recognized the pre-eminence of honour of the bishop of Constantinople, after the bishop of Rome, „since this city is the new Rome“ (can. 3).⁵⁴ The third ecumenical Council of Ephesus (431) too has examined questions of jurisdiction, especially in its canon 8. The decision concerns the case of Cyprus; the participants state: „Since until now has not existed any custom that the bishop of Antioch consecrates the bishops of Cyprus“, the bishops of the Holy Church of God in this island, observing the canons of the saintly and venerated fathers, themselves could elect new bishops.⁵⁵ Any order or action against this decision, was declared as null and invalid by the Council! It is important to note here that wherever the canons in Latin speak of „province“, the Greek text uses the term eparchy (επαρχία). Although the Oriental Orthodox Churches do not accept the doctrinal definitions of the Council of Chalcedon (451), still I wish to quote some canons regarding the authority and jurisdiction of bishops. (We should take in consideration that one or two Ancient Oriental Churches have translated the canons of this Council and incorporated them in their Book of Canons!). Canon 9 orders: If a clerical has any complaint against another clerical, he should not appeal to civil tribunals, but bring the case to the bishop. If a clerical has any complaint against his bishop or other bishops, he should call on the synod of the province/eparchy, and if a bishop or a clerical has any problem with the metropolitan, he has to bring the case before the primate (Gr. exarch) or the See (θρονοσ) of the imperial capital of Constantinople(!).⁵⁶ Canon 10 forbids the clergy to belong at the same time to two dioceses.⁵⁷ Canon 12 decrees that bishops should not dare to divide an ecclesiastical province/eparchy in two through imperial ordinance, because it's impossible to have two metropolitans in the one and same province. According to canon 13, clericals are not allowed to exercise their functions outside their diocese, without letters of recommendation from their own bishop.⁵⁸ Canon 19 re-affirms that the

⁴⁸ Ibid., 29.

⁴⁹ Ibid., 36-37.

⁵⁰ Ibid., 37, cf. can. 3 of Antioch and No. 15 of the „Apostolic Canons“.

⁵¹ Can. 16, *ibid.*, 37-38.

⁵² Ibid., 46-47.

⁵³ Ibid., 47.

⁵⁴ Ibid., 47-48.

⁵⁵ Ibid., 63-65

⁵⁶ Ibid., 76-77.

⁵⁷ Ibid., 77-78.

⁵⁸ Ibid., 78.

synod of bishops should meet twice a year.⁵⁹ Likewise canon 20 forbids the clergy any change of community or diocese.⁶⁰ Canon 25 reduces the time for the election of new bishops to three months⁶¹ (the Synod of Carthage had suggested one year!).⁶² Surely the most important canon is the decision concerning the primacy of the See of Constantinople. The Council has recognized the pre-eminence of the Throne of Constantinople - after the See of Rome, because the Imperial Capital is honored by the presence of the Emperor and the Senate and enjoys the same civil privileges as Rome. In fact this canon, which has aroused so much trouble and controversy, means nothing more than a primacy of honour and grants to Constantinople the right of consecrating metropolitans for the dioceses of Pontus, Asia and Thrace as well as for the dioceses of regions occupied by barbarians. The elections should be carried out according to the ancient customs, and new bishops for those dioceses should be consecrated by the local bishops, naturally under the presidency of the metropolitan.⁶³ The last canons Nos 29 and 30 use for the first time the title *archiepiscopus* for the bishops of Rome,⁶⁴ Constantinople⁶⁵ and Alexandria.⁶⁶ And canon 36 of the Council of Trullo (691) mentions the title of Patriarch for the archbishops of Rome, Constantinople, Alexandria, Antioch and Jerusalem.⁶⁷

5. Apostolic Origins

The formation of the Armenian Church and its hierarchical structure displays a different course of development than that of the Churches in the East and West. The Churches of Armenia and Iran emerged from their own geopolitical situation, cultural tradition and prescriptive common law. In this respect Wilhelm de Vries states:

„Outside the Empire the two Churches of Persia and Armenia should be regarded as original units/„Einheiten“... Both Catholicosates of Persia and Armenia corresponded in return to their own cultural spheres.“⁶⁸

Two facts and factors effected the independent emergence of the Armenian Church: the political independence or self-government and the apostolic preaching in Armenia. In 52 AD the Armenians succeeded in restoring their political independence and the Parthian Arsacids/Arsakuni reigned until 428; the country became a buffer state between Rome (and later Byzantium) and Iran and was subject to the influence and oppression of these two super-powers. In 65 the first Arsacid Tiridates/Trdat was crowned at the

⁵⁹ Ibid., 84-85; cf., can. 5 of Nicea.

⁶⁰ Ibid., 85-86.

⁶¹ Ibid., 88-89.

⁶² Can. 74 of Carthage (see above not 44).

⁶³ Ibid., 90-93; cf. LThK, vol. VIII/1963, 175.

⁶⁴ Ibid., 95.

⁶⁵ Ibid., 94.

⁶⁶ Ibid., 95-96.

⁶⁷ Ibid., 170. Since VIth century the head of the Byzantine Church claimed to be the „Ecumenical Patriarch“ - LThK, vol. VIII/1963, 175.

⁶⁸ Wilhelm de Vries, *Kirche der Vielfalt - Entwicklung der Kirche in Ost und West*, Editing House Paulus / Recklinghausen, 1967/68, 10-11: „Außerhalb des Reiches sind als ursprüngliche Einheiten anzusehen: die beiden Kirchen von Persien und Armenien ... Die beiden Katholikosate von Persien und Armenien entsprechen wiederum eigenen Kulturkreisen.“

forum in Rome by the Emperor Nero as King of Armenia.⁶⁹ According to an old tradition which has been documented in 4th/5th century, about this time two apostles of Jesus Christ arrived in Armenia to preach the Gospel, namely Thaddeus and Bartholomew. They succeeded to convert the daughter Sanduxt and the sister Awaguhi (or Oguhi) of King Sanatruk (75 - 110, perhaps ca. 70 - 110)⁷⁰ to Christianity and they were all martyred together - Sanduxt with Thaddeus and Oguhi with Bartholomew. Especially the mission of Thaddeus is an ancient and dignified tradition for Armenians and it constitutes the basis of their apostolic succession which was and is very important for the uninterrupted transmission of authority of the Apostles to the elders and bishops. Unfortunately the Armenian catholic scholars usually deny the apostolic roots of the Armenian Church and regard the tradition of Thaddeus and Bartholomew as „novel and legend“ and insist that before Gregory the Illuminator (301/314 - 325) there was no Christianity in Armenia (!).⁷¹ However the earlier Armenian Histories (4th/5th century), *Buzandaran Patmut'iwkn'* and Moses Chorenensis call the see of the Armenian Church as „Throne of the Apostle Thaddeus“, „Throne of St. Thaddeus“⁷² and record the missionary activity of the two Apostles. To the death of Thaddeus and Bartholomew followed the martyrdom of Oskean and Suk'iaseans in 2nd century as well as of other Christians. Already in 3rd century the history recognizes a head of the Armenian Church, namely Bishop Merouzan/Meruzan, who according to Eusebius of Caesarea (c. 260 - 339) received letters of penitence from bishop Dionysios of Alexandria (248 - 265):

„Among his letters there are also the one written to Origenes On the martyr, those to the brethren in Laodicea where presided Bishop Thelymidres, and likewise those addressed to the brethren of Armenia whose bishop was Merouzan.“⁷³

Some authors regard Merouzan/Meruzan as bishop of Lesser Armenia, but other scholars, like Heinrich Gelzer⁷⁴ and Nicolas Adontz⁷⁵ accept him as a bishop of Greater Armenia. The Christianity had penetrated into Armenia via Edessa/Syria (now Urfa in Turkey) and one of the first stations of the evangelization was Sophene/Cop'k' which most probably was the residence of Meruzan (or Mehruzan). Adontz says:

„The question of a genetic link between the Church of Meruzan and that of Edessa naturally presents itself. The orientation towards an Edessan tradition of Armenian legends dealing with early Christianity derives from the historical fact ... The existence of a Christian Church in the border of Armenian province of Sophene in the mid-third century should now be accepted as a fact no longer open to doubt. From there Christianity was able

⁶⁹ Pascal Asdourian, *Die politischen Beziehungen zwischen Armenien und Rom (von 190 v.Chr. bis 428 n.Chr.)*, Venice, 1911, 95-99.

⁷⁰ Ibid., 100-103.

⁷¹ Vardan Hatsuni, *Important Problems of Armenian Church History (Arm.)*, Venice, 1927, 3-88, L.S. Kogy, *The Armenian Church (until the Council of Florence)*, in *Armenian*, Beirut, 1961, 21-36 etc.

⁷² *The Epic Histories („Buzandaran Patmut'iwkn'“)*, translated by Nina Garsoian, Harvard University Press, 1989, 82, 110, 112 (also 67 and 89); Moses Chorenensis / Movses Xorenac'i, *History of the Armenians*, Arm. text: Tiflis, 1913, 242 (see also 151-59), English translation by Robert W. Thomson, Harvard University Press, 1978.

⁷³ Eusebius, *Hist. Eccl.*, VI, xlvi, 1-3.

⁷⁴ Heinrich Gelzer, „Die Anfänge der armenischen Kirche“ in: *Berichte über die Verhandlungen der Königlichen Sächsischen Gesellschaft der Wissenschaften in Leipzig*, philosophische Klasse, vol. 47/1895, Leipzig, 171-72.

⁷⁵ Nicolas Adontz, *Armenia in the Period of Justinian (in Russian)*, translated by Nina Garsoian, Louvain, 1970, 270-72 and ff.

to penetrate into Armenia. Just as the Edessene Church had given birth to the one in Sophene, so after the further development of the latter, a bishopric also appeared in the province of Taron adjoining Sophene.⁷⁶

At the end of 3rd and in the beginning of 4th century the Christians of Armenia were so numerous and strong that King Tiridates/Trdat the Great (298 - 330) and Emperor Maximinus Daia (309 - 313) undertook a new massive persecution. Eusebius of Caesarea in his Church History reports that besides the cold, famine and epidemic by the tyrannic Emperor was obliged to fight against the Armenians who since long time were Christians and friends of the Romans:

„They were Christians and fulfilled zealously their duties of piety towards God. But the hater of God endeavored to force them to make sacrifices to idols and demons, and in this way he made enemies out of friends and adversaries out of allies.“⁷⁷

The leader of resistance of the Armenian Christians was Gregor the Parthian, son of prince Anak who had killed the father of king Tiridates. As soon as Emperor Constantine the Great published his edict of Tolerance (Milan 313), Gregor and Tiridates reconciled and in 314 they proclaimed Christianity as the official religion of Armenia. The traditional date of the evangelization of Armenia is 301 when the Christians started to fight openly for the establishment of Christianity in the country. In the same year (314) Gregor, known as the „Illuminator“, went to Caesarea, where he was brought up in Christian education, and received his consecration as bishop from Bishop Leontios. Even if for some people the apostolic tradition of the Armenian Church is a „pure legend“, the consecration of Gregor the Illuminator/„Lusaworic“ in Caesarea guaranteed and guarantees the apostolic succession of the Armenian bishops and catholicoi, thus appeasing and satisfying all critical historians. It is interesting however, that for the first time a member of the Mekhitharist Order of Venice, father Paul/Boghos Ananian in a scholarly study accepts the authenticity of the mission of Thaddeus to Armenia and identifies many traces of Christianity in Armenia, before the succession of Gregor „Lusaworic“ to the throne of the Apostles.⁷⁸

6. Special Developments in Authority and Jurisdiction of the Catholicoi

We have seen in the canons of the first three Ecumenical Councils that the ecclesiastical heads of provinces and countries, even those of major apostolic Thrones were simply called „bishop“. For the first time in the canons of Chalcedon (451) the bishops of privileged sees are dignified as „archbishop“⁷⁹ and in one passage as „exarch“ (or Lat. „primate“).⁸⁰ Naturally such heads of Churches had the rank of the „patriarch“, but apparently the title itself came into common use after the Council of Chalcedon, in 5th/6th century.⁸¹ In case of the Armenian Church, already in the first half of 5th century the

⁷⁶ Ibid., 271.

⁷⁷ Eusebius, Hist. Eccl., IX, VIII, 1-3.

⁷⁸ Boghos Ananian, Traces of Christianity in Armenia before the Preaching of St. Gregor the Illuminator (Arm.), Venice, 1979.

⁷⁹ Canon 28, 29 and 30 of Chalcedon.

⁸⁰ Canon 17 of Chalcedon.

⁸¹ LThK, vol. VIII/1963, 174-75.

ecclesiastical heads are named „high priest“/„chief priest“/„k'ahanayapet“, „chief bishop“/„episkoposapet“, „patriarch“/„hayrapet“ and „catholicos“/„katholikos“ = „general“ (head).⁸² Concerning these titles we have a good and reliable documentation in the „Epic Histories“ (Buzandaran Patmut'iwkn') which is either written in Greek in 4th century (and translated into Armenian in 5th century) or compiled in Armenian in the first half of 5th century. For instance, St. Gregor the Illuminator is called by various titles: „high priest“,⁸³ „hayrapet/patriarch“⁸⁴ and „catholicos of Greater Armenia“.⁸⁵ Vrt'anes, the elder son of St. Gregor, is entitled „chief bishop“⁸⁶ and „high priest“,⁸⁷ Grigoris, son of Vrt'anes, „catholicos“,⁸⁸ Yusik, the brother of Grigoris, „hayrapet/patriarch“,⁸⁹ „catholicos“⁹⁰ and „high priest“,⁹¹ and finally Nerses the Parthian, son of Athanagenes and grand-child of Yusik, „high priest“,⁹² „chief bishop“,⁹³ „hayrapet/patriarch“,⁹⁴ „chief shepherd“⁹⁵ and „(great) catholicos“.⁹⁶ The Armenian „hayrapet“ corresponds to the Greek „patriarch(es)“, but this term as a loan-word we come across for the first time in the History of catholicos Yovhannes of Drasxanakert (10th century). At the beginning of his book the author presents an interpretation which is interesting, but has no historical basis or value. He reports that King Arsak (351 - 367) and the great princes of Armenia appealed to Emperor Constantius II (337 - 373) to elevate Nerses to the rank of „patriarch“, because „a short time before this“, the Emperor had transferred the relics of the Evangelist John from Ephesus to Constantinople and thereupon installed a patriarch in the imperial capital.⁹⁷ This assignment should had happened between 353 (succession of St. Nerses to the throne) and 361 (the end of the reign of Constantius II), but we know that the primacy of honour of Constantinople was decided only at the second ecumenical council in 381 (can. 3), and the jurisdiction of the Archbishop of Constantinople was extended over the dioceses of Pontica, Asiana, Thrace and also over the bishops of the barbarians at the Council of Chalcedon (can. 28). Consequently the historian and catholicos Yovhannes has confused the events and dates.

We have already mentioned that Gregor the Illuminator went to Caesarea to be consecrated as bishop and head of the Armenian Church. His sons, Aristakes (325-333) and Vrt'anes (333 - 341) received their consecration as bishop from him, without going to

⁸² See LThK, *ibid.*, vol. VI/1961, 72-73.

⁸³ History of Phaustos (Buzandaran Patmut'iwkn'), Arm. text, Venice, 1889, 6, 7, 10, 15; cf. the English translation by Nina Garsoian, 70 ff.

⁸⁴ *Ibid.*, (the Arm. text), 37.

⁸⁵ *Ibid.*, 25.

⁸⁶ *Ibid.*, 7, 9, 10, 16, 28.

⁸⁷ *Ibid.*, 8, 19, 27, 28.

⁸⁸ *Ibid.*, 13.

⁸⁹ *Ibid.*, 29.

⁹⁰ *Ibid.*, 30.

⁹¹ *Ibid.*, 31.

⁹² *Ibid.*, 221-22, 236.

⁹³ *Ibid.*, 165, 199, 200, 218.

⁹⁴ *Ibid.*, 74, 113, 114, 233-35.

⁹⁵ *Ibid.*, 109.

⁹⁶ *Ibid.*, 81, 112, (114), 127, 165.

⁹⁷ Yovhannes Drasxanakert'i, History of Armenia, Armenian text, Jerusalem, 1843, 32; English translation by Krikor Maksoudian, published in Atlanta/Georgia, 1987, 84-85.

Caesarea.⁹⁸ The reasons of the consecration of St. Gregor in Caesarea were twofold: first, at that time (314 - 315) there were no bishops in Armenia, and secondly, he was brought up there in Christian education. However the brotherly relation of the Armenian Church with the Bishopric of Caesarea was an ecumenical connection and an expression of unity, which could naturally mean a sort of „primacy of honour“ for Caesarea. Three successors of Vrt'anes too, namely Yusik (341-347), Pharen of Astisat (347-352) and Nerses the Parthian (353-373), received their consecration as bishop in Caesarea, but afterwards when the Church of Armenia endeavored to strengthen her national character, the catholicoi ceased from going to Cappadocia. In this connection the historian Phaustos (*Buzandaran Patmut'iwnk'*) records that the ecclesiastical leaders in Caesarea were angry,⁹⁹ but in fact there was no reason for such a reaction, because generally in the first millennium, and especially in 4th/5th century, the privileged position of some apostolic Sees in respect to neighboring dioceses and eparchies was only a „primacy of honour“ and nothing more. Here again the Armenian catholic („uniate“) scholars try to prove that the Church of Armenia was under the authority of Rome until 451, via Caesarea and/or Constantinople.¹⁰⁰ Before publishing such a theory, it would be right and fair to demonstrate first that the diocese of Caesarea and the See of Constantinople really, and not in fantasy, were subject to the jurisdictional primacy of Rome. Consequently the remarks of Malachia Ormanian are logical and historically true. He says:

„It is impossible to show throughout history an act or a case whereby the bishops of Caesarea have exercised jurisdiction or control over Greater Armenia. The ordinations received there have nothing more than honorary character and they do not possess any jurisdictional significance.“¹⁰¹

From the beginning of 4th century until the death of catholicos Sahak the Partian (387 - 439), the ascension on the See of the Armenian Church was hereditary, namely the sons, grand-children and great-grand-sons of St. Gregory the Illuminator automatically succeeded to the throne, but always by the will or agreement of the King and great princes of Armenia. The exceptions only filled up the vacancy: Pharen of Astisat (347-352) followed Catholicos Yusik (341-347), the grandchild of St. Gregor, because the next heir, Nerses was too young. After the death of Nerses the Parthian (335 - 373) and before the succession of Sahak (387), three catholicoi reigned in the transitory period, all from the famed region of Mantzikert (Malazgirt in the north of Lake Van) which was an important centre politically and of pagan religion:

- Sahak (373 - 377),
- Zaven (377 - 381), and
- Aspurakes (381 - 386).

These three catholicoi were descendants of Albanus who was a son of a renown and influential heathen family. In 428 the Kingdom of Arsacids in Armenia came to an end and thereupon the country fell under the domination of Sassanid Iran until 640/651 when the Arabs conquered both Persia and the territories of Transcaucasus (Armenia,

Georgia and Albania). 885/86 the Armenians succeeded to restore their independence under the supremacy of the Arabs and Byzantines. The kings of this period descended from the noble house of Bagratids, and in spite of political difficulties the country could have a prosperity and great cultural achievements, especially in the spheres of literature, architecture and painting (art of miniatures). In 1045 the Byzantines captured the capital of the Bagratids. Thereafter the Armenians searched a new homeland and endeavored to build up a new state. Straight after the tragedy of Mantzikert on 26th August 1071, when the Byzantines were defeated by the Seljuks, the Byzantine commander Philaretos Brachamios (Vahran Varaznuni) of Armenian origin, began to subdue the mediterranean territories (Cilicia) to his domination. From about 1080 until 1198 Armenian princes were the lords of Cilicia; on 6th January 1199 however Leo I was crowned in the cathedral of St. Sophia at Tarsus as the first King of Cilician or Little Armenia. During this period the Catholicosate moved gradually to Cilicia and finally found its centre in Sis where also the Kings resided. After the destruction of political power by the Mameluks of Egypt (1375), the leaders of the Armenian Church saw no reason to leave the See in Cilicia. In May 1441 the great National - ecclesiastical Assembly, which was held in Etchmiadzin, decided to return the Catholicosate to its original location. The last patriarch Grigor Musabegian refused to abandon Sis and the Assembly in Etchmiadzin was obliged to elect a new catholicos in the person of Kirakos/Kyrakos Virapec'i (1441-43). Subsequently at this time was founded the Catholicosate of Cilicia which after the Genocide of 1915 moved to Lebanon in Antelias, a suburb of Beirut.¹⁰² During 14th/ 15th centuries, besides St. Etchmiadzin and Sis, as results of ecclesiastical and political facts and factors, two patriarchates were created in the Armenian Diaspora, namely those of Jerusalem (1311) and Constantinople (1461 or 1537).¹⁰³ This historical survey can explain sufficiently why in course of time the authority and jurisdiction of the catholicoi underwent remarkable developments and the heads of the Armenian Church claimed, possessed and possess a special, highly venerated position with proper privileges according to which they only have the right of consecrating myron and bishops. However the case of myron has nothing to do with the formation of the Diaspora; we have to recall that historical Armenia was quite large (ca. 300.000 km²), and the control of abusements was not so easy. Since the Synod of Partav in 768 the blessing of myron is exclusively reserved to the catholicoi.¹⁰⁴ The ordination of bishops, which according to can. 4 of the Council of Nicea (325) could be performed by the college of bishops of every province and in urgent cases by three bishops, after 12th, but especially since 15th century the consecration of bishops became a privilege of the heads of the Armenian Church. This date, 15th century, is related with several important events: the removal of the centre of the Armenian Church to St. Etchmiadzin, the foundation of the Patriarchate of Constantinople and the large exodus of Armenians from their homeland to Europe and up to India and the Far East. In such situation only a strong central authority could avoid all sorts of abusements; this authority at first stage was concentrated in the person and position of the bishops, and on the higher level, in the person, responsibility and rank of the catholicoi.

⁹⁸ History of Phaustos, Arm. text, *ibid.*, 6-7; Agathangelos, History of Armenia, Arm. text: Tiflis, 1909, paragraph 862 (pp. 452-53), see also par. 859 and 861 (448-52).

⁹⁹ History of Phaustos, Arm. text, 232-33.

¹⁰⁰ V. Hatsuni, Important Problems of Armenian Church History, 177-252, 312-51, L.S. Kogy, The Armenian Church, 79 ff. etc.

¹⁰¹ Malachia Ormanian, History of the Armenian Nation (Arm.), vol. I, Istanbul, 1912-13, 227.

¹⁰² Concerning the Catholicosate of Cilicia see M.K. Krikorian, „The Development of Primacy of the Head of the Armenian Church“ in: Wort und Wahrheit, supplementary Issue No. 4 (Vienna, 1978), 90-92.

¹⁰³ See *ibid.*, 90.

¹⁰⁴ *Ibid.*, 89.

Nevertheless a catholicos is only the guardian of the Tradition, and any deviation from it can be a good reason for his deposition from the throne.

He has no right whatsoever to proclaim alone doctrinal, ritual or moral changes or novelties; such decisions should be taken by the college of bishops within the framework of the National - ecclesiastical General Assembly.

Concerning the election of catholicos I have already mentioned that until 439 the succession to the throne was hereditary, but of course always with the consent of the political power of the country. After the death of St. Sahak, Vardapet Mesrop Mastoc' (probably already ordained as bishop) carried on the affairs of the Catholicosate for six months, but then he passed away. In the meantime (437), bishop Surmak of Arcke by encouragement of Persia had become „catholicos“, in fact anti-catholicos and for about six years he reigned without being recognized by the majority of the bishops and people. He died in 443 and at that time Vasak Siwni was already assigned (441) by the Sasanids as marzpan „governor“ of Armenia, therefore the situation was favorable for the election of a new head of the Church. In August 444 at the Synod of Sahapivan bishop Yovsep' of Holoc'im, an assistant of St. Sahak and St. Mesrop was elected and confirmed as catholicos. Until 9th century the election of a bishop to the throne of the Church was sufficient; apparently after the foundation of the Bagratid Kingdom (885/ 86), the elected catholicos were ordained, and since 12th century they were and are anointed solemnly, probably under the influence of the Latin tradition of anointment of Kings.¹⁰⁵ The ordination and consecration with myron of the heads of the Armenian Church, naturally and at least psychologically elevated and strengthened their prestige and authority.

7. Councils and Conciliar Structure

At the Council of Sahapivan (444) where Catholicos Yovsep' was elected and several canons against the Messalians¹⁰⁶ were decreed, the assembly included not only bishops, priests and deacons, but also numerous princes and notables.¹⁰⁷ Even before that, when in 373 a synod was convoked to elect a successor to catholicos Nerses the Parthian, the assembly covered general representation „according to the custom;“ „asxarhoren xorhurd“ says the historian:

„Then, at that time, the council of the realm deliberated as to who should hold the patriarchal Catholicate. Then, since there was no one worthy of this dignity from the house of Gregor, they designated a certain Sahak from the house of the descendants of Bishop Albanos.“¹⁰⁸

In VIIth century when divided Armenia was suffering between Byzantium and Iran, the Armenian commander and satrap of Hyrkania, Smbat Bagratuni the Victorious („Chosrov Shum“), who was serving the Persian Empire, by encouragement of Shah Chosrov II (590 - 628), came to his homeland and in March - April 607 organized the election of a new catholicos. In this synod at Dvin participated 50 bishops, 390 abbots, vardapets and priests, as well as several princes, and elected bishop Abraham of Alba-

¹⁰⁵ Ibid., 87-88.

¹⁰⁶ Louis Duchesne, *Early History of the Christian Church*, translated by Claude Jenkins, vol. III, London, 1924 (Reprint 1960), 212-15 and Karapet Ter-Mkrtschian, *Die Paulikianer*, Leipzig, 1893, 39 ff.

¹⁰⁷ Ormanian, *ibid.*, 330-31.

¹⁰⁸ *The Epic Histories*, *ibid.*, 92.

than as catholicos. If not always, in many cases, princes and noble notables attended the synods as representatives of the people of God. After 14th century, when the feudal system gradually was dissolved, the common people began to assume social importance and influence. Yet a really organized participation of the people in ecclesiastical councils and elections was crystallized and legalized only in 19th century.

Until 19th century the Armenian Church was governed by ancient customs and by the canons of the ecumenical (325 Nicea, 381 Constantinople, 431 Ephesus) and local councils, as well as by the canons of the Armenian synods. In the middle of XIXth century, under new political and social circumstances and pressures, the Church was obliged to promulgate ecclesiastical constitution for her administration. In 1828 when as a result of the Russian - Persian War (1826/27), the larger part of Eastern Armenia was liberated and incorporated in the Tzarist Empire, the Catholicosate in Etchmiadzin on the demand of Russians prepared a constitution (1836) which is known under the name Po-lozenije.¹⁰⁹ This regulation apparently was decreed on the pattern of Russian Orthodox canons and system; consequently the role of laity¹¹⁰ was restricted, a Holy Synod was set up and the appointment of bishops was reserved to His Majesty. However upon protests and petitions, the regulation was slightly changed and allowed the Catholicosate to present two candidates for final election or decision.¹¹¹ About 25 years later the Armenians in Ottoman Empire, on the order of Sultan Abdülmecid, achieved a new community - regulation which was confirmed in 1863 by the Sublime Porte. This Regulation which by the Ottomans is called „Regulations of the Armenian Patriarchate“ and by the Armenians themselves as „National Constitution“ (!), restricted the immense authority of the patriarchs and notables in Constantinople, sanctified a large participation of laity in community - affairs and set up a „democratic system“ for ecclesiastical elections.¹¹² In 1923, upon the creation of the Turkish Republic, all the Ottoman legislation ceased to be valid, but many Armenian dioceses and especially the Catholicosate of Cilicia in Antelias,¹¹³ have promulgated their by-laws on the principles of this „National Constitution“.

During the reign of Catholicos Vasken I (1955 - 1994), in 1987 a special commission completed the draft of a new church - constitution, but because of political turbulence in Armenia, the initiated work did not come to a happy end. It is now one of the duties of Catholicos Karekin I (elected on 3rd April 1995), to accomplish this very important task.

8. Bishops and Dioceses

As in other Churches of ancient traditions, in the Armenian Apostolic Church also the dioceses under the leadership of bishops constitute the main structure of the Church.

¹⁰⁹ Krikorian, *ibid.*, 86-87.

¹¹⁰ Concerning the role of laity see the scholarly study of archbp. Tiran Nersoyan in: *Kanon (Jahrbuch der Gesellschaft für das Recht der Ostkirchen)*, III, Herder/Vienna, 1977, 96-119: „Laity in the Administration of the Armenian Church.“

¹¹¹ Krikorian, *ibid.*, 92-93.

¹¹² Krikorian, *ibid.*, 93-94 and *idem*, *Kanon III*, 206-209. A German translation of the „National Constitution“ by Krikorian see there, *Kanon III*, 124-39, and an English translation in *Armenia - Travels and Studies* by H.F.B. Lynch, vol. II, Reprint of Khayats, Beirut, 1963, 450-67.

¹¹³ The revised text (1992) of the Constitution of the Catholicosate of Cilicia can be seen in Hask (monthly review of Antelias), Nov.-Dec. 1992, 651-58.

As successors of the Apostles, and as high priests, the bishops administer the life of the local Church, minister the holy sacraments, preside over diocesan synods / councils and possess the last word in tribunal decisions. As Agnatus of Antioch states, „where the bishop appears, there will be the community“, and without bishop it is not allowed to baptize or to celebrate the Agape and Eucharist.¹¹⁴ Speaking in terms of analogy or of a picture, bishops are the pillars of the Church, the central one being the catholicos or patriarch - whereas Christ himself is the head or cupola of the whole structure. The parish - priests receive their commission/„Auftrag“ and authority from bishops and act in charge of them. The catholicos or the supreme patriarch is the chief of bishops and has to act with them and within the framework of councils (Conference of Bishops, National - ecclesiastical Assembly, Supreme Spiritual Council). Nevertheless the authority of bishops in the Armenian Church is counterbalanced by diocesan councils where laymen present the majority of the members; but comparing with Roman Catholic bishops, still they enjoy a larger freedom and a better position, because they depend rather on tradition and „democratic constitution“ than on the authority of the catholicos. In the past, bishops were elected or appointed by the catholicos, but always other bishops at the Catholicosate, as well as local princes and despots also expressed or gave their consent. This method still is being continued in Armenia, because of the lack of organization, but in the Diaspora all diocesan bishops are elected by diocesan delegates. The catholicos normally confirms such elections, but can withhold his agreement, only if he is able to prove the non-orthodoxy or non-authenticity of faith of the candidate (!).

A permanent Holy Synod, like those of the Orthodox Church(es), apparently has never existed in the Armenian Church as an ecclesiastical organ which could elect bishops or patriarchs. Naturally bishops always assisted the head of the Church as consultants, but the existence of an official body of episcopoi, is difficult to prove by documents.¹¹⁵

9. Concluding Words

The bishop is the central ecclesiastical authority in the Armenian Church, but his jurisdiction extends only over his diocese. According to apostolic tradition and to the canons of the first three ecumenical councils, every bishop is the leader and at the same time servant of his diocese but he has no right to interfere in the affairs of other dioceses. Each diocese is a complete unity and all diocesan bishops together with the catholicos and of course with other bishops resident at the Patriarchate, collectively decide on most important questions and problems of the Armenian Church, in the framework of the National - ecclesiastical Assembly. The participation of laity in the affairs of the Church is a fact which to many people offers a ground for pride and joy, but at the same time it presents a defect or danger, because politically motivated activists can penetrate in administrative bodies and damage the peace and unity of the Church. The question - which is the best structure for the Church, remains open to discussion!

¹¹⁴ Die apostolischen Väter, *ibid.*, 211.

¹¹⁵ See Ormanian, *ibid.*, 559.

Discussions

Questions to and comments on Mar Gregorius paper

Amba Bishoy is pleased to hear about the constitution of the Syrian Orthodox Church of Antioch (S.O.C.A.). He inquires about the necessary majority of the members of the synod for decisions.

Mar Gregorius makes clear that decisions can be taken whenever 2/3s of the members are present, but for the decisions a 2/3 majority of all the members is necessary.

Fr. Žužek asks for further clarification about the use of the titles of "independent" and "dependent" arch-dioceses. He observes that there are no dioceses.

Mar Gregorius: Historically, the metropolitans/archbishops were over the dioceses. But today the old titles are kept so that the bishop of Aleppo keeps the title archbishop although he is actually a bishop today. (In)dependence of dioceses is determined by the constitution. Dependent archdioceses are those attached to the patriarch (patriarchial vicariates) such as Damascus, Jerusalem, Istanbul whereas independent archdioceses are those with clearly determined boundaries such as Aleppo (cf "The Jurisdiction of the Metropolitan" in the paper).

Fr. Sebouh Sarkissian congratulates the Church on its constitution.

Prof. Hofrichter inquires whether there are suffrocan bishops in the S.O.C.A.

Mar Gregorius explains that there are none.

Mar Gabriel asks about the role of the other members of the Holy Synod and the people in the appointment of metropolitans if the patriarch both selects and suggests three candidates.

Mar Gregorius makes clear that he must confer with the members of the synod about the monks who are candidates, which is clearly stated in the paper.

Questions to and comments on Archbishop Krikorians paper

Prof. Hryniewicz suggests to replace the term "valid" in reference to the Eucharist with "legitimate" in a quotation from Ignatius in order not to introduce this controversial and later category into an early text.

Prof. Primetshofer thinks that in the context of canon 16 of Nicea which is referred to in the paper the term "annulled" should be replaced with "null and void"

Fr. Žužek asks whether the Armenian Church accepts the Antiochian canons (314), trying to point out a contradiction between these canons, which state that a bishop is to

be elected by the synod, and the actual custom of the Armenian Church where the catholicos elects the bishops.

Archbishop Krikorian: Although in general the Armenian Church accepts the canons of the local synods this discrepancy is to be explained by historical development. Besides, in the diaspora the community elects the bishop through diocesan delegates, and the catholicos usually confirms the election.

Prof. Legrand agrees with Prof. Krikorian that the Pope is "the highest instance ... in administration and judicial office". But he doubts whether he is that also "in deciding the truth of the Christian faith and morals". He suggests that "deciding" shall be replaced with "defining". Even in this case one has to bear in mind that the main bodies of definitions of this kind are the councils.

Fr. Sebouh Sarkissian states that the traditional date of the christianization of Armenia is 301 and not 314. In the year 2001 there will be a celebration of 1700 years of Christianity in Armenia.

Archbishop Krikorian fully agrees with that. The reason why he cited 314 is that this is the year when Christianity was officially recognized in Armenia.

Amba Bishoy appreciates the paper for its theological and historical overview. Apparently, the constitution of the Armenian Church, which ensures a large participation of the laity in church affairs, was to a great extent influenced by external forces, by the occupation through other countries. Bishoy sees a danger in having a high majority of laymen in the highest authority of the Church. As regards the Coptic Constitution, the committees of the synod can include laymen in their preparatory work but the last decision is taken by the synod.

Prof. Krikorian maintains that a purely episcopal synod like in the Eastern Orthodox Churches has not existed. Always non-episcopal church members, first priests and deacons, later also laity, have been participating in the decisions. In the draft for the new constitution there is a chapter on the synod of bishops. But the General Assembly will remain the body which elects the catholicos.

Fr. Bouwen thinks that "Apostolic Succession" is not the right terminology for the title of Chapter 4 and he suggests replacing it with "Apostolic Origins". He emphasizes that apostolic succession does not depend on the fact whether Thaddeus and Bartholomew actually were in Armenia but it denotes a succession in faith. Moreover, Bouwen hints at a problem of translation in the paper. "Catholic", taken from a quotation of St Ignatius, has no geographical but a qualitative meaning. It denotes the fullness of faith and should not be translated with "universal".

Prof. Harnoncourt points out that Popes were never anointed but enthroned. Therefore, since the 12th century, the catholicos were anointed solemnly not "under the influence of the Roman Catholic Church" but under the influence of the Latin tradition of the anointment of kings, as Prof. Legrand maintains.

Prof. Legrand to Archbishop Krikorian: Why is it compulsory for bishops to be celibate while the ancient tradition was not in favour of this regulation? For instance, the succession to the See of the Armenian Church was once hereditary.

Prof. Legrand to Mar Gregorius: What are the spiritual reasons for the fact that celibate bishops are preferred to widowed bishops? As regards the possibility for metropolitans to retire at the age of 70 and the obligatory retirement at the age of 75, what is the rational behind it? And was there any resistance to this innovation?

Mar Gregorius attributes one reason for the preference of celibate bishops to the fact that in this century there are only three cases of widowed bishops. Another reason may be due to the tradition that widowed bishops cannot become metropolitans. The latter are always chosen from monks. The innovation about the retirement age of metropolitans was introduced for practical reasons in the constitution of 1991 and met no resistance. This decision might have been influenced by Vatican II.

Archbishop Krikorian attributes the development towards the celibacy of bishops to a - universal - tendency towards monastic life, especially under the influence of Egypt. In the Armenian Church widowed and celibate priests or bishops are completely equal. At the beginning of the 20th century there was, for example, a widowed catholicos.

Amba Bishoy: At the beginning of the Church there were no monks from whom bishops could have been chosen. But as long as there are monks they seem to be preferable as bishops. He agrees with the Syrian tradition to have married priests but unmarried bishops. He remarks, the Roman Catholics do not even have married priests. Amba Bishoy does not approve of the fact that bishops in the Syrian Church can retire at the age of 70 but must retire at the age of 75. He suggests that they should not resign but have an assistant bishop. He uses the image of a father who remains father until his death.

Prof. Hryniewicz observes that in the Coptic Church a bishop can never be transferred whereas in the Syrian Orthodox Church the Holy Synod has the authority to shift metropolitans from one archdiocese to another, as Mar Gregorius stated in the paper.

Amba Bishoy emphasizes that according to Nicea it is not possible for a bishop to change his diocese. If a bishop causes harm the synod may stop him from doing that, it may even remove him and send him to a monastery for a certain time. In the meantime a vicar appointed by the patriarch through the synod carries out the church affairs. As a final step, the bishop may even be disposed but he must never be transferred.

THE PRACTICE OF AUTHORITY AND JURISDICTION IN THE ETHIOPIAN ORTHODOX CHURCH TRADITION

„Ethiopia shall stretch her hands unto God“ Ps. 67 (68); 31

This Paper will briefly deal with the practice of Authority and Jurisdiction in the Ethiopian Orthodox Church Tradition. In order to throw more light on the subject, a short history of the country and church will be presented by way of introduction.

The paper would, therefore, have three sections, namely,

1. Brief history of the country and church
2. Authority
3. Jurisdiction

1. Brief History of the Country and Church

The Holy Scriptures, historical records and archaeological findings attest that Ethiopia is one of the most ancient nation states in the world. It is well known that Ethiopia was one of the four great nations of the earth. As a land wherein a glorious civilization flourished she is reputed to have had ancient maritime relations with China, India, Persia and Greece. The Holy Bible confirms that Ethiopia is an ancient nation as revealed in the statement „And the name of the second river is Gihon: the same is it that compasseth the whole land of Ethiopia.“¹

The Holy Scriptures further relate that one of the sons of Ham was called Kush (Gen 10,6). Since the land inhabited by Kush, his sons and grand sons were named after them, the country was called land of the Kushites (in Greek, land of Ethiopians).²

Among the ancient scholars, Homer, the well known Greek poet who lived about 800 BC, mentions in his poetry the name Ethiopia. He has mentioned Ethiopia twice in his Ilias and thrice in his Odyssey. Writing about Ethiopians and their country Homer states: „Ethiopians are kind and generous people and the land they inhabit is sunny and is in the uttermost parts of the earth.“³ A cluster of other well known scholars like Herodotus, Pliny and Ptolemy have all asserted that Ethiopia is ancient, vast and a great power of the times. It is interesting to note as well that current anthropological research and ensuing discoveries have established Ethiopia as the original habitat of mankind.

Ethiopia is commonly referred to as the Land of God and the people as the people of God.⁴ This is a reflection of the fact that from time immemorial belief in One God,

¹ Gen. 2:13.

² Today's Ethiopia is the Ethiopia mentioned in the Holy Scriptures, ancient historical documents and archaeological findings. Ethiopian Orthodox Church Statement. Aug. 1990, p.8

³ Ibid., p. 10.

⁴ Ancient and Medieval Ethiopia History to 1270. Sergew Habte Sellassie. Addis Ababa, 1972, p. 23.

Monotheism, has been practiced in this country. It also depicts that the people are God-fearing and bend their will to the tenets of the Lord. It is believed that among the tribes which settled in Ethiopia is Saba, the great grand son of Noah or grand son of Ham. The fact that Saba, the grandson of Ham, is one of the leaders of the tribes that settled in Ethiopia is borne out in various facts one of which is the existence of several villages and towns that are called after him now as well as in the past.⁵ Ethiopian scholars believe that Monotheism was introduced to Ethiopia by Saba.⁶

Various statements made by the ancient prophets of the Old Testament reveal that Ethiopia has always had a firm belief in the Deity. Amongst a wide array of these sayings, perhaps the most prominent is „Ethiopia stretches her hands unto God.“⁷ This statement categorically proves that Ethiopia had the knowledge of God and also believed in the Almighty, even prior to the visit of the Queen of Sheba to Jerusalem.

An important historical episode which illustrates that Ethiopia adhered to Monotheism is the historic visit of Makeda or Queen of Sheba to King Solomon of Israel about 991 BC. The Queen who was impressed by the news she received about the wisdom of Solomon and decided to find out by herself made the long journey to Jerusalem. In her speech before the king she said „Blessed be the Lord thy God. Which delighted in thee, to set thee on the throne of Israel, because the Lord loved Israel for ever, therefore made He thee king, to do judgment and justice.“⁸

The fact that she paid a visit to the temple of God in Jerusalem, worshipped the one true God and mentioned His name with awe and reverence in her speech is a strong indication that she firmly believed in God. This deeply rooted faith in God was reinvigorated when her son she bore King Solomon, Ibne Melek (Menelik) later brought with him Moses Ark of the Covenant to Ethiopia.⁹ The Ark rests in the Church of St. Mary of Tsion in Axum. The Ark or replicas of the Ark are the central elements of the Church and occupy the most prominent place in the life of the church. Thus the Laws of Moses were fully accepted and practiced in Ethiopia. Confirming this fact the prophet Zephaniah says „From beyond the rivers of Ethiopia my suppliants even the daughters of my dispersed shall bring mine offering.“¹⁰ Likewise, another prophet discloses that Ethiopians were regarded as the beloved children of God by saying „Are ye not as children of the Ethiopians unto me, children of Israel.“¹¹

With the dawning of the Christian era, Ethiopia became among the first, in fact the first outside the Israelites, to accept Christianity. This was carried out by the Ethiopian Eunuch. This man of great authority, who served as an envoy of Candace, Queen of Ethiopia traveled to Jerusalem in 34 AD to offer worship at the temple of God. Confessing that he believes that Jesus Christ is the Son of God, he was baptized by Philip the evangelist.¹² Several church historians have written extolling the devout nature of the Eunuch. St. Jerome (Hieronymus) states fondly:

⁵ Genesis 19: 6-8.

⁶ History of the Ethiopian Orthodox Church. Abba Gorgorios, Addis Ababa, p. 17.

⁷ Ps. 67 (68):31.

⁸ Kn 10:1-10.

⁹ Tekle Tsadik Mekuria, History of Ethiopia, p. 14. See also Glory of kings. Book I, p. 35.

¹⁰ Zeph. 3:10.

¹¹ Amos 9:7.

¹² Acts 8:26-39.

„I am no more holy nor more diligent than this Eunuch. He came from Ethiopia, that is from the ends of the world, leaving a royal court he went as far as the Temple; and such zeal for the knowledge of God that even on his chariot he was reading the Holy Scripture. Yet although he held the book in his hand and was reflecting on the words of the Lord, even articulating them with his tongue and pronouncing them with his lips, he did not know he one whom, still without knowing it he was worshipping in this book. Then Philip came along; he showed him Jesus hidden under the letter. What marvelous power of the teacher. In the same hour the Eunuch believed and was baptized, he became one of the faithful and a saint. He was no longer a pupil but a master; and he found more in the desert spring of the church than he had done in the gilded temple of the synagogue.“¹³

Thus the doctrines of Christianity and the mystery of Baptism were accepted and the faith spread across a wide expanse of the country. However, administration of the sacraments and the rite of ordination were not introduced until the first half of the fourth century AD. The well known Church historian Rufinus has written at great length how the two brothers, both from Tyre, Adesius (Sidracos) and Frumentius came to the royal court, to seek a bishop for Ethiopia from the See of St. Mark. Frumentius was consecrated as the first bishop of Ethiopia by St. Athanasius in 329 AD.¹⁴ Owing to the remarkable achievements he made in evangelisation, spread of Christianity and his singular dedication to advance the cause of our Lord Jesus Christ, he is fondly alluded to by Ethiopians as Abba Salama, Kesate Berhan (Father of peace, Revealer of Light).

Later on, when the nine saints came to Ethiopia about 480 AD Orthodox Christianity became further depended and enriched. These saints who arrived from the Eastern part of the Roman Empire fleeing religious persecution were well received by Emperor Ella Amida.¹⁵ They played an active part in founding the order of monasticism, translating ecclesiastical books such as canons and monastic orders into Geez (Ethiopian Classical language) and the development of the Geez Liturgy and literature.¹⁶ During their time and after, Ethiopian scholars and fathers of the church like St. Yared (composer of Ethiopian hymnology), St. Tekle Haymanot, Abba Giorgis of Gascha, St. Lalibela, Iyasus Moa, Emperors Zera Yakob, Naod, Caleb, Gebre Meskel and a host of others have contributed immensely to the spread and consolidation of Christianity in Ethiopia.¹⁷ Thus, the belief in the Eternal Deity, in God the father, God the Son, God the Holy Spirit has become a distinct trait of Ethiopians. By developing an abiding faith in their religion and through a constant effort of guiding their lives in accordance with the teachings of the Gospel they have imparted resilience to their faith.

2. Authority

The authority of the Ethiopian Orthodox Tewahido Church is primarily derived from the Lord Jesus Christ who instituted the church and found it with His precious blood. Emphasizing this point the Lord clearly stated that He has been given full authority over the world by saying „All authority in heaven and on earth has been given to

¹³ Jerome, Letter 53, 4, 5, 6.

¹⁴ Rufinus, Historical Eccl. P. 1 XXI 478-480. See also Glory of kings.

¹⁵ The Church of Ethiopia. A Panorama of History, Addis Ababa Dec. 1970, p. 8.

¹⁶ Ibid., p. 9.

¹⁷ Ibid., p. 25.

me. Go therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit.“¹⁸ This spiritual authority which He conferred on His disciples has been passed down by them both through the Scriptures and word of mouth to the Holy Fathers who laid the church on a firm foundation.

The Synod which was established by the Apostles under the guidance of the Holy Spirit became the collective and supreme source of power and administration of the church.

The hierarchical authority of the Ethiopian Orthodox Tewahido Church is shown in the attached chart. As indicated in the chart, the hierarchy has five tiers of responsibility. At the apex is the Holy Synod, followed by the Patriarchate, Diocese, District Ecclesiastical Office and the Parishes. It is a vertical line of authority whose wide base are the Parishes. The church as a single vibrant body of Christ exercises its spiritual authority through such a monolithic power structure. This arrangement enables it to maintain unity of faith, ease in the flow of decisions and information and coherence of activity. The EOTC¹⁹ has about 40 million members, 30,000 monasteries and churches and a clergy numbering about 400,000.

2.1. The Holy Synod

In the Ethiopian Orthodox Tewahido Church supreme authority is vested in the Holy Synod. Members of the Synod are all Archbishops and Bishops. Their current size is 43. The Synod meets twice a year regularly, every six months. However, on rare occasions, if a matter of great spiritual urgency arises, extra-ordinary meetings could be held.

The Synod is a collegial body whose objectives are to:

1. protect the Holy Church and ensure that her services are fully discharged;
2. organize her serving clergy in Apostolic duties and better their skills and lives;
3. increase the number of the faithful, equip them with spiritual knowledge so as to build their character, strengthen their faith and enable them lead a Christian life and to disseminate the Gospel;
4. improve the Administration of the Church and attain self-sufficiency in all domain;
5. strive to nurture the youth in knowledge and conduct to enable them protect and defend the faith and culture of their fathers;
6. teach and pray so that all mankind rid itself of hunger, disease, illiteracy and lead a spiritual life in peace and collaboration.²⁰

While its duties and responsibilities are to:

1. teach and disseminate the Gospel and the doctrine of the Church;
2. establish and spread spiritual schools so as to disseminate in and outside the country the Ethiopian Orthodox Tewahido faith;
3. carry out the administration and services of the Church in accordance with the established canons of the Church;
4. implement the laws, directives, rules and decisions it legislates in accordance with the canons of the Church.²¹

¹⁸ Mat. 28:18-20.

¹⁹ EOTC = Ethiopian Orthodox Tewahido Church

²⁰ Rules of the Ethiopian Orthodox Tewahido Church issued in 1996, Addis Ababa, Chapter 3, Art 4, p. 4.

2.2. The Patriarchate

The Patriarchate, sometimes referred to as the General Headquarters, is the highest administrative organ of the Church. Headed by a General Manager who is responsible to the Patriarch, it implements the decisions of the Synod. As the highest administrative machinery it controls, co-ordinates and guides the various departments of the Church.

2.3. Diocese

The Diocese comprises of the regional head office of the church and all the faithful under it. The current number of the Dioceses is 35. Among these seven are outside Ethiopia overseas. They are USA, Canada, Caribbean and Latin America, Europe, Africa, Australia and Ethiopian Monasteries in Jerusalem. A Diocese is headed by an archbishop or a bishop. The head of the Diocese is the final spiritual and administrative authority of the region.

2.4. District Ecclesiastical Office

This body provides spiritual and administrative leadership to the district. It functions under the Diocesan office.

2.5. Parishes

The Parish is the single spiritual and administrative church unit which has direct and immediate link with the laity. As such, it is the spiritual grassroots unit which through daily contact with the faithful, administering of the sacraments and delivery of sermons etc. maintains a strong bond of faith with the laity.

2.6. Parish Councils

Parish Councils play a very important role in the administration of the church. Starting with the Patriarchate and extending down to the parish churches each organizational unit has a parish council. The councils are elected bodies comprising of the laity, youth and clergy.

The Councils have as their objective the establishing of a spiritual administrative council that is responsible for administering, expanding and controlling the property and services of the church. It is also entrusted with the task of upholding and implementing the decisions and directives of the Holy Synod. The Council is responsible for the dissemination of the Gospel, ensuring that the property of the church is properly recorded and utilized for development, and the setting up of humanitarian welfare associations etc.²²

²¹ Ibid., pp. 4-5.

²² Revised decree (Kale Awadi) for the establishment and consolidation of the association of the faithful. Ethiopian Orthodox Tewahido Church. April 1978, p. 10.

3. Jurisdiction

The Ethiopian Orthodox Tewahido Church belongs to the family of the Oriental Orthodox Churches which are also known as the Non-Chalcedonian Churches. These are groups of churches which base their faith on the Nicene Creed passed by the 318 fathers in 325 and also accept the decisions of the holy fathers made in the subsequent councils of Constantinople in 381 and Ephesus in 431.

Ever since the appointment of St. Frumentius as the first bishop of Ethiopia in 320 AD, the EOTC came under the jurisdiction of the Patriarchate of Alexandria. The two churches started following the same doctrine.

As is known, in particular during the 4th and 5th centuries, the holy fathers of the Alexandrian church acted as custodians of the Eastern churches. When heretics rose to dispute the true faith these holy fathers played a leading role in defending the church and teaching and elucidating the faith. Since their teachings about the Orthodox Faith was regarded as perfect, it was considered a paragon of faith against which all controversies that arose during their times and even later periods were measured.

The most prominent among these holy fathers was St. Athanasius. When king Constantine the Great died in 337 AD. Constantius, one of his sons was crowned in Constantinople (337-361). The new Emperor proved to be a supporter of the Arian Heresy which was condemned in Nicaea in 325 AD. Due to this, he banished St. Athanasius from his throne and replaced him with the Arian George of Cappadocia by appointing him as Patriarch of Alexandria. Then he laid a plan to banish the Bishop of Ethiopia, St. Frumentius, who was a supporter of St. Athanasius, if he refused to accept the Arian Creed. Accordingly he sent a letter to the Ethiopian Emperors Abraha and Atsbha (Aezana and Saezana). He dispatched the letter to Axum in the hands of Theophilus, a priest and native of India. The content of the letter was as follows:

„Victorious Constantius Maximus Augustus,
to Abraha and Atsbha (Aezana and Seizana). It is my wish that the teaching and the power of reflection given to us by God reach all who seek truth and righteousness. It is befitting that there should be union between you and Rome. Athanasius who was charged with many thousand cases and couldn't defend himself had appointed and sent Frumentius, therefore ye send back Frumentius to Alexandria to Archbishop George and the presbyter there and they will see his case. Abba Athanasius has been rejected by everybody but he seeks refuge with you. If Frumentius wants to be a bishop in earnest he has to tell his life history to them and if he is found to adhere to the order and doctrine of the church he can be re-appointed as a bishop. If on the other hand, he prefers to run away from the law like the talkative Athanasius and chooses to stay in Axum with his appointment, he will spoil both you and the church and create confusion. I would rather Frumentius return to Alexandria, meet the respected Archbishop George and other scholars, learn the canons and teachings of the church and go back to his bishopric. My most honoured brothers, God be with you.“²³

Unfortunately, the exact date of the letter is unknown. It is, however estimated that it was written about 350 AD.

²³ Storia D'Ethiopia. Conti Rossini, pp. 149-151. See also Tekle Tsadik Mekura. History of Ethiopia Axum to Zague (in Amharic), Book 2, 218-219.

The Emperors Abrha and Atsbha confirming their adherence to the decisions of the Council of Nicaea, their respect for St. Athanasius and his teachings rejected the letter. St. Frumentius continued his teachings unperturbed and died on Hamle (July) 26, 378 AD.²⁴

Thus, the EOTC and the Coptic Orthodox Church of Alexandria continued this spiritual bond and affinity for about 1600 years. On the death of a bishop new ones were sent from Alexandria and they exercised jurisdiction over the EOTC up to 1959. The number of Metropolitans sent to Ethiopia during this period is 110, including St. Fraumentius.

The fact that the Alexandrian Church exercised jurisdiction over the Ethiopian Church is incontestable. However, jurisdiction in administrative affairs was always in the hands of the Etchegue (supreme elder who was appointed by the Emperors). Since Ethiopian Emperors were devout personalities who had an abiding faith in the church they considered themselves as general overseers of the church and defenders of the faith. In fact, it is interesting to note that Christianity was first introduced in the royal court from where it penetrated among the common people.²⁵ Apart from their commitment to defend the faith and oversee the smooth functioning of its administration, some were scholars of the church in their own right. Historians assert that Kings like Dawit (1380-1412), Zaria Ya'ikob (1434-68) and Na'od were particularly noted for their considerable scholarship, and they were the authors of a number of important original compositions in the Ethiopic language. Prolific writers such as king Zar'a Ya'ikob and Abba Gyorgis of Gascha were products of the great monastic schools.²⁶

The first Etchegue was St. Tekle Haymanot who was appointed by Emperor Yekuno Amlak (1270-1285). In total 59 Etchegues were appointed. The Etchegues were, therefore, responsible for the entire administrative affairs of the church while the Egyptian metropolitans were entrusted with the task of administering the sacraments and had the final say over all spiritual matters.

Although this relationship between the Alexandrian church and the Ethiopian church had a historical root and was based on identity of faith and cannon, there was always a strong interest on the part of Ethiopians to gain autocephaly. This seething movement for independence, and the desire for self-realization continued for a very long time. It was again the Emperors who as defenders of the faith spearheaded this effort and articulated the collective desire of the people. But this was by no means an easy task.

The first Ethiopian Emperor who during the 11th century requested the Alexandrian church that ten Ethiopian bishops be appointed was Harbe.²⁷ Then successive Ethiopian Emperors like Yohannes and Menelik also tried to have Ethiopian Bishops appointed, but all to no avail.

Then, after an exchange of series of letters and repeated requests on the part of Ethiopia, the Synod of the Coptic Church decided on 31st May, 1928 during the reign of Empress Zauditu of Ethiopia that four Ethiopian bishops, namely Abune Petros, Abra-

²⁴ Tekle Tsadik Mekura. History of Ethiopia Axum to Zague. See also Ethiopian Synaxarium July 26 (E.C.) Commemoration.

²⁵ The Church of Ethiopia, A Panorama of History and Spiritual Life, p. 5.

²⁶ Ibid., p. 25.

²⁷ Belatta Mersae Hazen Welde Kirkos, The 1st Ethiopian Patriarch of the Ethiopian Church, Addis Ababa, 1964, p. 7.

ham, Yishaq and Michael be consecrated along with the 10th Egyptian Metropolitan Kerillos.²⁸ This became, indeed, the decisive move that served as the gate opener towards a gradual negotiation for full autocephaly.

More than anybody else, it was Emperor Haile Sellassie who began a sustained and wise diplomatic effort to make the Ethiopian Church independent of Alexandrian control. He employed able and high ranking church scholars and made a strenuous and subtle diplomatic maneuvers to attain this objective. This bore a significant result when he succeeded in having 5 Ethiopian bishops consecrated at the hands of His Holiness Amba Yosab. The five bishops were their graces Abune Basilius, Michael, Tewoflos, Ya'ikob and Timothewos. This was followed in Jan. 1951 when Abune Basilius was consecrated and raised to the rank of an archbishop by His Holiness Abune Yosab Patriarch of Alexandria with the power of appointing bishops provided the latter is informed and consents to the act.²⁹

Now that this transfer of power of ordainment has been gradually and slowly made to the Ethiopian church, the final ladder to full autocephaly was in sight. But that too was no common task. It again required the repeated dispatching of high ranking church and government envoys, conducting series of meetings and exchanging several letters. Finally, the long awaited desire and healthy aspiration of the Ethiopians was realized on Sene 21, 1951 EC (June 28, 1959). This was a historic day in the life of the Ethiopian church when His Grace Abune Basilius was consecrated as the first Ethiopian Patriarch of the Ethiopian Church by His Holiness Abba Kerillos the 6th, Pope and Patriarch of Alexandria and the See of St. Mark at a very colorful ceremony held in Cairo in the presence of Emperor Haile Selassie.³⁰

It is important to underscore however that be it during the long period of Coptic Orthodox Church jurisdiction or after, no feeling of animosity or ill will has persisted between the two churches or towards the fathers. On the contrary, Ethiopians have always regarded the Egyptian fathers with deference, filial piety and love. It should be pointed out as well that the two churches maintain close and brotherly relations. This has been clearly spelt out in the protocol between the Coptic Orthodox Church (COC) and the Ethiopian Orthodox Tewahido Church and signed by the heads of the two churches. His Holiness Abune Paulos, 5th Patriarch of Ethiopia and His Holiness Abba Shenouda III, Pope and Patriarch of Alexandria and the See of St. Mark, in April 1994.³¹

The Protocol, among others, provides that the Church of Alexandria recognizes the autocephaly (independence) of the EOTC, the names of the heads of the two churches be mentioned in the liturgical prayers on specified occasions, each church has her own Holy Synod to care for her affairs but the resolutions of the two Synods should be exchanged regularly and that they will set up a permanent joint committee to monitor the implementation of the Protocol and to promote the cooperation of the two churches in education, social services, development and pastoral care.³²

²⁸ Ibid., p. 17.

²⁹ Ibid., p. 25.

³⁰ Ibid., p. 46-47.

³¹ Protocol between the Coptic Orthodox Church (COC) and the Ethiopian Orthodox Tewahido Church (EOTC). Addis Ababa, Ethiopia, April 1994.

³² Ibid., p. 1, 2, 3.

The two churches have strived together for about two thousand years to plant and nurture the church. On the brink of the close of the 2nd millennia, they indeed have a duty and a calling to foster greater cooperation, understanding and friendship.

As related in this paper, the EOTC ever since her establishment has for two millennia stood firm drawing on the support of her faithful, her scholars and the Emperors. Exercising the jurisdiction she has obtained after a long period of struggle, she has developed her ecumenical relations world wide. She maintains close relations with the Oriental Orthodox Churches and friendly working relations with the other Orthodox Churches. When the WCC was established in 1948 in Amsterdam, the EOTC played an active role as a founding member. Later on, when the All Africa Conference of Churches (AACC) was organized in 1963 the EOTC joined it as a founding member. In this spirit of ecumenism, the church has been working with the PRO ORIENTE movement to contribute to the effort made to bring about the visible unity among churches which is earnestly sought by Christians. It is the sincere desire of the EOTC that close co-operation and understanding be fostered among Christians so that gradually but steadily the prime goal set by our Lord so that all may be one shall be realized.

4. Annex: Ethiopian Orthodox Church

The Holy Synod is the highest body responsible for the spiritual, administrative and juridical life of the church.

4.1. The Holy Synod consecrates Holy Myron

4.2. The Patriarch

The Patriarch is elected from among the Holy Synod members by the members of the Holy Synod, administrators of the ancient cathedrals and monasteries and representatives of Parish Councils throughout the country. The Patriarch presides over the meetings of the Holy Synod and the National Parish General Assembly. He heads the Patriarchate Ecclesiastical office and overlooks at the administrative and spiritual activities of the church.

The name of H.H. is recited in the liturgical services of all the Ethiopian Orthodox Churches in Ethiopia and abroad.

He is referred to as „His Holiness“, the Patriarch and Head of archbishops and he is accorded all the honours due to his position.

4.3. The Bishop

He is elected by the Holy Synod and by the representatives of Parish Councils from the diocese to which he is going to be assigned. He is consecrated by the Patriarch together with the other members of the Holy Synod. There are also titular bishops who have no specific dioceses.

The bishop has supreme responsibility for all the activities of the church in his diocese. He presides over the meetings of the Diocesan Parish General Assembly. The name of the bishop is recited in all the liturgical services of EOC churches in his diocese.

4.4. The National Parish General Assembly and the National Parish Executive Committee

4.4.1. National Parish General Assembly: All archbishops, diocesan archpriests and representatives of clergy and laity attend this meeting. The Assembly is convened once a year. The Assembly makes decisions and recommendations on administrative and property matters of the church. The decisions and recommendations find their application following the approval of the Holy Synod.

4.4.2. National Parish Executive Committee: This executive committee is elected by the National Parish General Assembly. It has nine members. The secretary of the Head office of the Patriarchate acts as the chairman of the executive committee.

4.5. Diocesan Parish General Assembly and the Diocesan Parish Executive Committee

5.5.1. Diocesan Parish General Assembly: The Awraja archpriests, representatives of Awraja clergy and laity constitute this meeting. The Diocesan Parish General Assembly meets once a year. The Diocesan Parish General Assembly is responsible for church matters in the diocese.

5.5.2. Diocesan Parish Executive Committee: The Diocesan Parish General Assembly elects a Diocesan Parish executive committee. The Diocesan archpriest acts as the chairman of the executive committee.

4.6. Awraja Parish General Assembly and Awraja Parish Executive Committee

4.6.1. Awraja Parish General Assembly: The representatives of the Parish Councils in the Awraja constitute the Awraja Parish General Assembly. The Awraja archpriest presides over this assembly. The Awraja Parish General Assembly is the body responsible for all the church matters in the Awraja.

4.6.2. Awraja Parish Executive Committee: The Awraja Parish General Assembly elects an executive committee. The committee has five members. The Awraja archpriest is the chairman of the Awraja Parish Executive Committee.

4.7. Local Parish General Assembly and Local Parish Executive Committee

4.7.1. Local Parish General Assembly: The Administrator of the church presides over this meeting. The Parish General Assembly is constituted by all members of the Parish Community. It meets twice a year. It is the body responsible for all church matters in the Parish.

4.7.2. Local Parish Executive Committee: The executive committee is elected by the Local Parish General Assembly. The administrator of the local parish church is the chairman of the executive committee. The executive committee has several subcommittees.

AUTHORITY AND JURISDICTION IN THE ARMENIAN CHURCH WITH SPECIAL REFERENCE TO THE SPECIAL CHARACTERISTICS OF THE PRACTICE OF AUTHORITY AND JURISDICTION IN THE CATHOLICOSATE OF CILICIA

1. Preliminaries

The question of authority in the Church as a very sensitive and delicate subject has been reason and occasion for quarrels and divisions throughout the history of the Christian Church. A huge amount of literature has been produced at this point. In fact it still continues to be the burning issue within the ecumenical meetings and ecclesiastical communities.

No doubt that the Church of Christ, founded on the incarnated love of God, manifests that love in the service of the Church as such. There is a very moving story in the Gospel which tells us about the mother of Zebedee's sons who came to Jesus with her sons and asked a favor of Him for them, that one may sit at His right hand and the other at His left in the Kingdom of God, Jesus said.

„You know that the rulers of the Gentiles lord it over them, and their high officials exercise authority over them. Not so with you. Instead, whoever wants to become great among you must be your servant, and whoever wants to be first must be your slave - just as the Son of Man did not come to be served, but to serve, and to give his life as a ransom for many.“¹

The authority lies in the teaching and deeds of Jesus Christ. Once, due to the quarrel started within his apostles, He told them:

„The kings of the gentiles exercise lord it over them and those who have authority over them call themselves Benefactor. But you are not to be like that. Instead, the greatest among you should be like the youngest, and the one who rules like who serves.“²

Therefore, in the mind of Jesus the authority is inseparably related to the idea of service and that is why the apostles and the first fathers of the church dedicated their whole lives to the Church without thinking necessarily about their authority or the idea of primacy. As the evangelist St. Luke describes the life of the first believers, pointing out their mutual love and respect towards each other through which the authority of the church entered its early stages of development.

„All the believers were on in heart and mind. No one claimed that any of his possessions was his own, but they shared everything they had. With great power the apostles continued to testify to the resurrection of the Lord Jesus, and much grace was with them all. There were no needy persons among them. For from time to time those who owned lands or houses sold them, brought the money from the sales and put it at the apostles' feet, and it was distributed to anyone as he had need.“³

¹ Mt 20, 25-28

² Luke 22; 25-27.

³ Acts of Apostles 4; 32-35.

For the first fathers of the church, the absolute authority was Jesus Christ himself who by His resurrection ascertained the truth and reality of what He had said and done. It is with this understanding and belief that the apostles preached the gospel to all nations as the Lord told them.

„All authority in heaven and on earth has been given to me. Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you. And surely I will be with you always, to the very end of the age.“⁴

With this background of the understanding of the „authority“, I will try first to give a brief summary of the history of the Armenian church focusing mainly on the events related to the authority matters of the church, followed by the panoramic description related to the special characteristics of the practice of authority and jurisdiction in the Armenian Church in general and in the Catholicosate of Cilicia in particular, with special reference to her relationship with St. Etchmiadzin, the Catholicosate of all Armenians.

2. The Armenian Church

2.1. Introduction

The history of the Armenian church goes back to the middle of the first century AD, at which time according to Armenian historic sources, two apostles of our Lord came to Armenia and preached Christianity among Armenians. The period of the preaching of these two apostles, St. Thaddeus and St. Bartholomew, extends from 43 AD to 68 AD. They were martyred in Armenia leaving behind them thousands of believers of the new faith. Hence, the apostolic origin of the Armenian church is established as an incontrovertible fact in church history. At this point I would like to add that if tradition and historic sources which support this view, should give occasion for criticism, these have no greater weight than the difficulties created with regard to the origin of other apostolic churches which are universally admitted as such.⁵

It is worth mentioning that the Christianity in Armenia did not stop with the martyrdom of the apostles. Historic sources assert that St. Thaddeus, before his martyrdom had ordained bishops and priests from among his folk of believers, thus, maintaining the apostolic succession. An early tradition related to the See of Artaz mentions the names of bishops who succeeded the Apostle - Zacharia (16 years), Zementus (4 years), Atnerseh (15 years), Mooshe (30 years), Shahen (25 years), Shavarsh (20 years), Gehvondius (17 years). The history of the Armenian church gives us names of many Armenian

⁴ Matthew 28; 18-20.

⁵ According to the tradition of the Armenian church St. Thaddeus and St. Bartholomew came to Armenia, preached the Gospel and then were martyred. All churches unanimously recognize the tradition concerning St. Bartholomew, his apostolic journeys and his martyrdom in Armenia. Regarding to St. Thaddeus, tradition vary. Some recognize in him one Thaddeus Didymus, brother of the apostle st. Thomas. According to this group, he is said to have traveled to Artaz, layway of Edessa. According to the second tradition, the evangelization of Armenia was the work of the apostle St. Judas Thaddeus. This is why these two apostles were called first Illuminators of Armenia.

martyrs from the Apostolic Age such as St. Santoukhd, the beloved daughter of King Sanadrouk, St. Zarmantoukhd, and Vokouhie, the sister of the King; also, princes St. Samuel and St. Israel. There are those who were martyred in Armenia and were called „thousand martyrs of Ararat“.⁶ Another tradition related to the See of Sunik gives names of eight bishops, who were successors of St. Eustathius, first evangelist of that province.

Beside all these historical events, I would like to mention the letter of the Patriarch Dionysius of Alexandria written in 254 AD to Mehroojan (Meruzanes), bishop of Armenia, who was a successor of the above-mentioned bishops, we read: „He wrote in like manner to the Armenians, on Repentance where Meruzanes was bishop.“⁷ This letter serves as an additional document recognizing the continuation of Christianity in Armenia.

Furthermore, the famous ecclesiastical writer of the second century, Tertullian, in interpreting the quote in the text of the Acts of Apostles 2:9 where countries are enumerated whose languages were heard by the people on the day of Pentecost, mentions Armenia. However, in the text of the ordinary Bible, it is quoted as Judaea. Per Tertullian's logic, this cannot be possible because Judaea is not situated between Mesopotamia and Cappadocia; however, Armenia is. St. Augustine likewise follows the reading of Tertullian. These two fathers of the African church confirm through their writings their strong conviction that Christianity was spread among Armenians.

In conclusion, it is a historically well documented fact that during the first three centuries, Christianity continued to spread in Armenia despite the consistent persecution by several kings such as King Ardashes (AD 110), King Khosrov (AD 230) and King Drtad (AD 287).

2.2. Foundation of the Armenian Church

As it has been mentioned during the first three centuries, Christianity existed despite the persecution led by the kings and princes. It was at the beginning of the fourth century (301) that Christianity was officially accepted as the state religion in Armenia. Thus, Armenia was the first state in the world to accept Christianity as its official religion. The history of this conversion is firmly related to St. Gregory the Illuminator and the King Tiridates III, who together with St. Gregory played a very crucial and decisive role in the christianization of Armenia. Soon St. Gregory was elected by the King Tiridates III and the assembled members of the government as head of the church or first bishop in Armenia. We read in Agatangeghos:

„And generally assembled all of the military, and the highest rank personalities, prefects and nobles, magistrates and commanders, all of them came to the king. The king consulted all and urged them to achieve a good work. 'Let us elect Gregory, who is sent to us by God as a shepherd.'“⁸

At first, St. Gregory refused the proposal, but then accepted and went to Caesarea with a large delegation to be ordained as a bishop by the Archbishop Leontius. It is worth noting that this ordination of St. Gregory gave rise to a controversy related to the

Sees of Armenia and of Caesarea. The Greeks regarded the See of Armenia as it was suffragan to that of Caesarea; but this has no historic or ecclesiastical basis and it is a work of those who tried to say that the apostolic preaching in Armenia was nothing but a passing episode which ended with the deaths of the apostles and that Christianity was established in Armenia only in the beginning of the fourth century. Needless to say that at no period has the See of Caesarea or any other sees exercised any authority or jurisdiction in Armenia properly and the consecration of St. Gregory by the Archbishop of Caesarea must be ascribed to circumstances of a casual nature.

The fourth century has been marked in the history of the Armenian Church as the years of practicing Christianity in deeds and life. Christian love was manifested through building charitable institution, monasteries and schools. The fifth century will remain in the history of Armenia in general and in the life of the Armenian church in particular as a Golden Age, Golden Century. It was at the beginning of this century that the Armenian alphabet was invented by St. Mesrob Mashtoz, an eminent figure of the Armenian nation, the Bible was translated to Armenian and Christianity was armenized. The centuries followed were marked and identified with special characteristics of the Armenian nation and the Armenian church.

Armenia as a country, went through political and social turmoil throughout its history but because of its firm belief and desire of survival, it continued its life. At the beginning of the fifth century, the kingdom of the Arsacid Dynasty had fallen and for two and a half centuries, Armenia remained under the rule of the Sasanides, Byzantines and Arabs consecutively. At the middle of the ninth century, the Bagratid Kingdom was established in Armenia and lasted to the middle of the eleventh century. With the fall of the Bagratid Dynasty and its capital Ani, a huge balk of emigrants left Armenia for Cilicia and also towards eastern and western Europe. In Cilicia in 1080 AD, an Armenian state was founded; this principality later became a kingdom and lasted till 1375 when its last king, King Levon VI was captured and taken to Egypt.

Thus, with the destruction of the Armenian Kingdom of Cilicia, the Armenians had lost their independence and in the largest part of their homeland they had gradually subjugated to the Turkish rule, which soon became the Ottoman Empire. Eastern regions of Armenia fell under the rule of Persian Khans. From the 15th century to the 18th, Armenians passed through very hard times because of the continuous battles between the Ottoman Sultans and Persian Shahs.

In the beginning of the 19th century, Russia entered the Caucasus. In Armenia the situation had considerably changed. The Russian armies fought both the Persian Shahs and the Ottoman Sultans and as a result of that vast regions of Armenian territories including the plain of Ararad with Etchmiadzin and Yerevan were captured by the Russians.

As a result of the above mentioned historical events, the See of the Catholicosate also was moving from place to place following the political power center. As a matter of fact, one of the peculiar features of the Armenian church history is that the Catholicos See has moved to more than several places in Armenia and that is why we see the Catholicoi resided wherever the principalities or kings established their government. Thus at the end of the fifth century, the Catholicosate was transferred to Dvin (485-898) following the Armenian Satrap. Due to the political unrest and insecurity, the Catholicose Hovhannes V of Draskanakert, known as Badmapan (historian), moved from Dvin to a monastery called Tsoravank near the town of Van and afterwards he followed the

⁶ Ormanian Malachia, The Church of Armenia, A.R. Mowbray and Co. Ltd., London 1912, p. 3-4.

⁷ Eusebius Pamphilus, Ecclesiastical History, Baker Book House, Michigan, 14th edition 1990, p. 269.

⁸ Agatangeghos, History of Armenia. Yerevan University Press, Yerevan 1983, p. 445.

king to the Island of Aghtamar. In 946, the Catholicos See was in Argina and then Ani (946-1004-1067). After the fall of Ani, the capital of the Bagratid Kingdom, the Catholicos See was transferred to Dzamandav during the reign of the Catholicos Krikor V kayaser (the martyrophile). Later on the Catholicos See was moved to Shughr (1105-1125), to Dzovk (1125-1147), to Hromklay (1147-1292) and finally to the capital city of the Cilician Kingdom - SIS, where it remained till 1441.

At the end of the 14th century and at the first half of the 15th century, there was a growing desire and thought among the learned and highly educated „vartabets“ of the monasteries of Haghbad and Sanahin and later that of Glatzor and Datev in the eastern provinces, to have the Catholicos See established in its initial place, the Holy Etchmiadzin. Therefore, in 1441, an assembly was held in Etchmiadzin and elected Kyrakos of Virap as Catholicos. Meanwhile, from the end of the 11th century and the beginning of the 12th century, there came into existence another Catholicos See in Aghthamar; but this was a local See and had no authority except over those churches located on the island of Aghtamar. According to the Armenian church history, at one point there have been many Catholicoi at the same time; this was because of the political and geographical division of Armenia.⁹

Thus, from 1441 onward three Catholicosates came into existence side by side within the Armenian church, each with her distinct respective areas of jurisdiction. Of these three Catholicosates, the weakest was the Catholicosate of Aghtamar which in fact was only a relic preserved from ancient times, beginning from the 12th century when it was established in opposition to the Mother See which was located then in Cilicia. The last Catholicos was Khatchadour who passed away in 1895.

2.3. Election of the Catholicoi

The Armenian nation having identified its destiny with the Christian faith manifested in the life of the church, struggled so hard and so long for the survival of that faith. As a matter of fact, from the early days of its conversion, the geographic, cultural and political as well as economical situation of the Armenian nation has been such that the Catholicoi of the church have had to assume national leadership in a general scope both within the country and in relation to outside powers. At the absence of political power, the authority of the Catholicos was considered and looked at as a symbol and mainstay of the principal of unity. The nation leadership of the Catholicos has been strong when the country has been under foreign powers and it has been comparatively on a reduced scale under the rule of native Armenian kings or princes.

Due to the political condition under which the church was established and developed, the Armenian Church has not had any elaborate theory of Catholicos election. St. Nerses the Gracious from the 12th century says at this matter:

„The Apostles were followed by the Catholicoi-chief bishops, of each nation and of each throne, and by the teachers of the church who according to the Apostles, are to confirm the saints, to do the work of the ministry and of the building up of the body of Christ.“¹⁰

⁹ Ormanian Malachia, Azkabadoum (History of the Nation), 2nd edition, Seven Press, Volume 1, Part III, p. 131 f.

¹⁰ Nerses the Gracious, Encyclical, Jerusalem, 1871, p. 297.

In the church history there are signs, rather indications, of how should a bishop or a primate be elected. In 325, the ecumenical council of Nicaea laid down canons and regulations related to the election of a bishop or a primate. Accordingly a bishop or a primate would be elected or ordained by all bishops of the province; but in urgent or hard times, at least by three bishops. According to the council of Antioch (341), no one could have become a bishop without the approval of the synod and the presence of a metropolitan.¹¹

A journey through the history of the Armenian Church will soon point out that there has not been a single or consistent form of the election of the Catholicoi of the Armenian Church. There was a time when the political power, namely kings or princes, nobles and governors had a major role to play in this election. This has been the case of the election of St. Gregory the Illuminator; Housik (341-347) son of Vrthanes was elected Catholicos by King Diran; likewise, Nerses the Greek (353-373) by the King Arshad; Shahag of Manazkerd (373-377) was designated by King Bab; Sahag the Parthian (387-439) was elected by Khosrov; Mashdots of Eghivard (887-898) and Gregory of Anavarza (1293-1307) were elected by the kings of their time.

Another way of becoming Catholicos was the succession by inheritance. The sons and grandchildren of Gregory the Illuminator were elected as Catholicoi because of their origin as heirs of the Illuminator. In fourth to fifth centuries, another family gave five Catholicoi - that was the family of Albianus of Manazkert - Sahag (373-377), Zaven (377-381), Aspurakes (381-386), Melite (452-456) and Movses (456-461). In Cilicia too ten Catholicoi from Atchabahian family reigned in the See of the Catholicosate. Furthermore, in some cases, the Catholicoi have themselves designated their successors or co-adjutor. Just to give an example, Catholicos Gregory V kayaser (the martyrophile) who had a related to the election of Gregory III Bahlavouni, who in his turn suggested his brother Nerses IV to become his successor. Nerses himself before passing away ordered to elect Gregory named Dgha (young man) because of his age, to be the Catholicos of his time. Therefore, for a while, Bahlavouni family gave many outstanding Catholicoi to the church. Furthermore, sometimes the will of the predecessor had replaced the act of election; for instance, in the fifth century, Hovsep Hoghotsmetsi was designated and enthroned according to the will of his teacher St. Mesrop Mashtoz, who was at the same time the locum tenens of the Catholicosate.

There are indications that some Catholicoi were elected by force or by other means relevant to their time. Having pointed out all these cases, one has to bear in mind that despite of what has been said in this regard, the election of the Catholicos according to the accepted and well established tradition, was taking place by the National Ecclesiastical Assemblies called upon by the kings, princes or local tenens.

Secondly, and again despite the above mentioned historical facts, there was another aspect, that is the meritorious status of the elect or nominee person for the Catholicos See. In other words, the candidate was supposed to be well known, respected and highly qualified person because once he was elected, he was becoming a symbol of unity and authority within the Armenian Church.

It was only at the middle of 19th century that the election of the Catholicos has had its electoral procedure, although still there was the will of the political power, namely

¹¹ Hagopian Vazken, The Armenian Corpus Canonum, Yerevan, Volume 1, 1964, p. 119.

the Tzar in Eastern Armenia. This was the result of the *Polozenije* (constitution), produced by the Russian government in order to achieve and promulgate a regulation for the administration of the Armenian Church. It is worth mentioning that this constitution or *polozenije* is a document which formed part of the Imperial laws and according to which the life of the Armenian Church under Russia empire would be governed. Again according to this document, a General Assembly constituted of eight members of the Catholicosate's synod, seven eldest members of the monastery, six diocesan bishops or their representatives and six lay delegates coming from the dioceses were entitled to carry out the election of the Catholicos. The elect Catholicos will finally be attested by the Tzar himself.

In the life of the Armenian Church the Catholicos is the person who receives special consecration, which is one of the most moving ceremonies of the Armenian Church. It is difficult to say when the consecration of the Catholicos started in the Armenian Church. At the beginning, the appointment or election of a person to the throne of the church was sufficient to become Catholicos. It is after the 9th or even 10th and 11th centuries that consecration of the Catholicos became an order of ceremony in the liturgical life of the Armenian Church. At this point it might be helpful to say that the first historical indication to the consecration of the Catholicos comes from the middle of the 13th century.

2.4. The Present Situation of the Armenian Church

At the present time there are two Catholicosates and two Patriarchates in the life of the Armenian Church:

- a) the Catholicosate of Etchmiadzin - recognized as the Mother See in Armenia as well as the Catholicosate of All Armenians;
- b) the Catholicosate of Cilicia in Antelias, Lebanon;
- c) the Catholicosate of Constantinople;
- d) the Patriarchate of Jerusalem.

The Patriarchate of Jerusalem has had the character and scope of a monastic institution. Its main task has been the preservation of the religious rights and privileges of the Armenian church in the Holy Land.

The Armenian Patriarchate of Constantinople was established by the order of the conqueror, Sultan Mohammed II in 1461.

From 1441 onward, the Catholicosate of Cilicia served the Armenian Church in an autonomous position and with completely independent administrative authority and jurisdiction; whereas the two Patriarchates are related to the Catholicosate of Etchmiadzin who exercises her jurisdiction over them. Furthermore, both Patriarchates always send their candidates to Etchmiadzin to be ordained bishop and they regularly get the blessed myron from the Mother See.

2.5. Relationship Between Cilicia and Etchmiadzin

During five and a half centuries, from 1441 to 1996, the relationship between Etchmiadzin and Cilicia marked with the spirit of brotherly love, mutual respect, understanding and cooperation. However, in the course of this period, three or four incidents

came to disturb this situation by creating a conflict between the two centers of the Armenian Church, without harming the whole unity of the church.

1. The first misunderstanding was between the Catholicos Simeon II (1633-1648) of Cilicia and the Catholicos Philippos of St. Etchmiadzin (1633-1655). This was because of a matter related to the rights and equality of the Catholicos of Cilicia.¹²

2. The second conflict happened in the 17th century when the bishop of Ancyra (a diocese under Etchmiadzin's jurisdiction) was consecrated by the Catholicos of Cilicia. This led to mutual condemnation. Fortunately enough the problem was soon solved in a council held in Jerusalem (1652) where the two Catholicos, Philippos of Etchmiadzin and Nerses of Cilicia, agreed that there should be „love and concord between the two Catholicos of Etchmiadzin and Sis. Each should consecrate the bishop of his own jurisdiction of the Catholicos who consecrated him to the jurisdiction of the other Catholicos, he should not be accepted“. There were thirteen other canons set forth in the council dealing with disciplinary matters concerning the clergy in both jurisdictions. The reading of the mentioned canons shows very clearly that the Catholicos of Etchmiadzin recognized the independence of the Catholicosate of Cilicia and accepted the jurisdiction of the latter as being an ecclesiastical area out of his own authority; on the other side this document of the canons illuminate the understanding of the relationship between the two Catholicosates on historical and canonical grounds. It shows at the same time that the two Catholicos stand on an equal level in so far as the administration of their respective jurisdictions is concerned.¹³

3. The conflict was renewed when the Catholicos of Etchmiadzin Kevork IV (1866-1882) claimed that to him belong the absolute authority in Armenian Church all over the world. This claim was challenged and rejected by the Catholicos of Cilicia Mekertich I Kefsizian (1871-1894). This was because of the personal ambitions of the Catholicos Kevork, who declared that the Cilician Catholicosate had no legal basis for her existence. The Catholicos of Cilicia strongly rejected this idea, which was generally not accepted by other church dignitaries and lay people as well. The conflict ended with the deaths of the two Catholicos.

4. The last conflict occurred in 1956 when the Catholicos of St. Etchmiadzin wanted to participate in the election and consecration ceremony of the Catholicos of Cilicia. I do not wish to go into detail at this point. What I would like to say is that the political factors played a tremendous role in evoking that problem which finally ended with the fall down of the communist dynasty within the boundaries of Soviet Union nowadays Commonwealth of Independent States.

As it is been pointed out, the Catholicosate of Cilicia from the very beginning of the history enjoyed her independence and acted accordingly in the life of the Armenian Church and Armenian nation. The authority of the Catholicosate of Cilicia was and is confined to the communities related to it; on the other side, one has to add that the Catholicosate of Cilicia has always had the same attitude that is to say, she has always recognized the Catholicosate of Etchmiadzin as the Mother See of the Armenian Church as well as the primacy of honor of her has always been recognized by the Catholicosate of Cilicia.

¹² Guleserian Papken, History of the Catholicos of Cilicia, Antelias 1990, p. 1217-1226.

¹³ Davrijetsi Arakel, History, Yerevan 1988, p. 262.

2.6. The Catholicosate of Cilicia, Her Authority and Jurisdiction

As it is been constantly stated the Catholicosate of Cilicia has continued to serve the Armenian Church and Armenian nation in an autonomous position and with completely independent administrative authority which includes the rights of secular authority over the Armenians under his jurisdiction. The regulations and laws related to this secular authority are embodied in and channeled through so called the „National Constitution“, which is constituted of regulation of the spiritual and secular affairs of the Patriarchate of Constantinople and the Armenians in Turkey. Originally, this National Constitution was applied to all the dioceses of the Armenian church under the Ottoman Empire as well as in other countries such as Balkans, Europe and Egypt without distinction between Etchmiadzin and Cilician jurisdiction. Now, the whole diocesan organization of the Armenian Church under the Catholicosate of Cilicia is based on the National Constitution.

In 1941, in order to adapt this National Constitution to the new circumstances, the Catholicosate prepared another constitution called the Special Regulation of the Catholicosate of Cilicia or simply „Special Cilician Regulation“. This new „constitution“ contains regulation of the election of the Catholicos and the relationship of the Catholicosate with the dioceses. Later on another body of legislation was emerged related to the Rule of the Monastic Community or Religious Brotherhood of the Catholicosate.

According to all regulations and rules, the Catholicos presides over all the legislative bodies and has the right of veto in the matters related to the doctrine and dogma of the church.

Again according to the „Special Regulation of the Catholicosate of Cilicia“, an article was drawn up in the regulation of the election of the Catholicos by which the Catholicosate of Etchmiadzin was given for the first time in history the right of two votes in the election of the Catholicos of Cilicia; the same right has been recognized for the Catholicosate of Cilicia to participate in the election of the Catholicos of Etchmiadzin.

3. Concluding Remarks

According to well established tradition, the Catholicos in the Armenian Church is the head and the leader of the church. The Catholicos is the highest executive power, though his supremacy is restricted by the conciliar and democratic organization of the church. It is the National Ecclesiastical General Assembly presided by the Catholicos or his representative that could bring about any necessary or fundamental changes within the Armenian Church, but to the Catholicos only belongs the right to consecrate bishops and to bless the Holy Myron.

The Armenian historian, Movses Khorenatzi, tells us about how Nerses the Parthian (later called the Great), invited the whole laity to the Council of Ashtishad which decided social and ecclesiastical reforms.¹⁴ Because of the conciliar organization within the Armenian church, the laymen and clergymen in particular played a decisive role in the formation and preservation of the theology and doctrine of the church. To the

¹⁴ Movses Khorenatzi, Armenian History, University Press, Yerevan 1981, p. 257-258.

learned clergymen, namely „vardapets“, the Armenian Church owes the preservation of the Orthodox faith and the rejection of the Chalcedonian Christological definitions.

The Armenian Church with other Oriental Orthodox churches, namely the Coptic, Syrian, Ethiopian and Indian Orthodox, bases her doctrines and tradition on the Holy Scripture and the Apostolic faith, on the theology of the early fathers and the first Ecumenical Councils of Nicaea (325), Constantinople (381) and Ephesus (431). Within the family of the Oriental Orthodox churches, all are equal in right and primacy and associated in faith, love and eucharistical communion.

Within the life of the Armenian church, the existence of two Catholicosates did not mean and never meant division within the church or two separate churches, simply because they act together in matters of faith and dogma; however, they act independently according to their administrative legislation. As a matter of fact, duality does not mean necessarily partition. The Armenian Church was and is one body and the two Catholicosates enrich the life of the church and the nation as well because they are co-workers in the spirit of brotherly love and have the same mission with complimentary roles.

Discussions

Questions to and comments on Fr. Sebouh Sarkissians paper

Fr. Bouwen asks for clarification about the "rights of secular authority" of the Catholicosate of Cilicia.

Fr. Sebouh explains that according to the constitution there are two main bodies, the "civil council", constituted by lay people, and the "religious council". The "secular" authority denotes the authority of laymen, exercised within the Church.

Prof. Hofrichter suggests using the term "appointment" in denoting the designation of catholicoi, instead of "election", for this was partly done by political power, sometimes even by force.

Are the two catholicoi appointed in the same way? Moreover, who decides questions of faith or church politics? Is there some supreme authority?

Fr. Sebouh: The appointment of the catholicoi is almost the same, it follows the same procedure. Although there were sometimes misunderstandings in administrative matters, there has been agreement between the two catholicosates in matters of faith and dogma.

Mar Gregorius: Since Fr. Sebouh stated in his paper that "the laymen ... played a decisive role in the formation and preservation of theology", where is this role of laymen in the preservation of theology?

Fr. Sebouh: Unfortunately there are no lay theologians at the moment. But in the last century and at the beginning of this century there were lay theologians, also in the diaspora. Once a highly qualified laymen was even elected catholicos.

Amba Bishoy thanks Fr. Sebouh for his precious paper, especially for pointing out the sources of authority and primacy.

Prof. Hryniewicz observes a close identification of the Armenian faith and nation. Are there also negative associations?

Fr. Sebouh: As a whole there are more positive associations, the Church being the meeting-place of god and the nation. At the same time he admits that in history the Armenians suffered a lot because of their close identification with the Christian faith.

Questions to and comments on Mar Gabriels paper

Mar Gabriel states that he is learning a lot at this seminar, especially from *Amba Bishoy's* paper. Maybe the Coptic constitution can be a model for the improvement of the Ethiopian constitution.

Prof. Legrand: Can we say that the Etchegue has the power of jurisdiction and the metropolitan has the power of orders?

Mar Gabriel: The power of jurisdiction is always with the emperor, the Etchegue being his representative, appointed by him. The metropolitan is responsible for the matters of faith. The Etchegue is always a priestly abbot.

Mar Gregorius: Which role does the Protocol play in the life of the Churches of Ethiopia and Egypt? Under which jurisdiction is Eritrea?

Mar Gabriel: The Protocol definitely improved the relationship between the two Churches. Eritrea had been under the jurisdiction of Ethiopia before it became independent a few years ago. Eritrea has eight bishops, three from Ethiopia, five from Cairo. The latter were sent to be ordained in Cairo on the request of the government and the people. Certainly, the Ethiopian Church did not approve of this.

Amba Bishoy: The Protocol was necessary for the recognition of the hierarchy of the Ethiopian Church by Alexandria. As a result of the deposition of the patriarch under the communist regime in Ethiopia, Alexandria was not able to recognize the succession of the patriarch and the ordinations which happened under the regime. The Protocol manifests that five delegates/metropolitans of Ethiopia should take part in the election of the patriarch of Alexandria and vice versa. Furthermore, there should be a general synod of the two Churches every three years. Bishoy expresses his happiness about the independence of the Church of Ethiopia which is declared in the Protocol. Ethiopia should have the right to pastor her own people in their own language and culture. In history Ethiopia was a daughter of Alexandria, so Eritrea could be considered as its grand-daughter. Like Ethiopia, it should have the right to be independent and to elect its own patriarch.

Fr. George gives a short oral presentation of the paper of Metropolitan Dr. Mathews Mar Severios:

There are several features which characterize the Malankara Orthodox Syrian Church of India. The Church in India goes back to apostolic origins, to the preaching of St. Thomas. Therefore it does not derive ecclesiastical authority from any patriarchate outside India. It has always accepted help from other Churches, especially from the Syrian Orthodox Church, which, for example, helped in re-establishing the episcopal ordination after the Portuguese period. But this does not imply any jurisdictional power of the Syrian Orthodox Church over the Indian Church whereas a spiritual relationship is welcome.

The Indian Church was one Church until the Portuguese deplorate, which began at the end of the 15th century. This brought about divisions in the Church, into the Malankara Catholics and the Indian Orthodox.

The Church of India has never been patronized by an emperor or king nor been persecuted by Hindus or Buddhists. But oppression came through her sister Churches: through the Portuguese Catholics and, in a milder form, through British Protestants. In this century some conflicts arose between the Syrian Orthodox Church and the Orthodox Church of India.

The structure of the Church:

Until recently each parish elected a priest and two laymen to the General Church Assembly, the Malankara Association, which makes a majority of laymen in the assembly. This will now be slightly changed, each parish will send lay representatives according to the numerical strength (the number of families) in the parish. This implies an increase of members in the Association. Furthermore, there will now also be women in the association. The Malankara Association (around 2600 members) does not meet regularly, it is convened by the catholicos whenever need arises. It directly elects the bishops and the catholicos with the separate majority of clergy and lay persons. This is very similar to the Armenian tradition because the names of episcopal candidates come from the people. Furthermore, the Association can modify the constitution, the present constitution having been qualified and approved by the Association in 1934. The Association elects the Managing Committee, which - like the Association - includes all the members of the episcopal synod. It has a majority of lay people and will now also include women. The Committee meets three or four times a year and manages the administrative affairs and the temporal matters of the Church.

The Synod of Bishops has exclusive authority in matters of faith, order and discipline whereas the Association and the Managing Committee have the final say in material affairs. The existence of several dioceses is quite a recent phenomenon. The Church had acted as one diocese until 1876 when it was divided into different dioceses.

The catholicos, who is also elected by the Association, presides the synod and speaks on behalf of it. Being a "primus inter pares" he has no authority without or against the synod.

Fr. George totally disagrees with *Mar Gregorius* about India in his presentation. The Indian Orthodox Church had disputes with the Syrian Church of Antioch about jurisdiction. It went to the Supreme Court of India, which ruled in 1950 that the Patriarch of Antioch has no jurisdiction in India; in 1958 the case was re-opened. In 1964 Patriarch

Jacob III was invited to India. With the help of the Indian synod he installed a catholicos in India, who felt himself belonging to the See of India. But some time later he denied the Catholicos he had himself installed and installed a counter-catholicos who was subordinate to the Patriarch of Antioch.

In the seventies the conflict was revived by the patriarchal party because some of them went to Damascus to be ordained bishops without the permission of the Church of India. At the moment serious negotiations are going on in order to find a way of reconciliation.

Mar Gregorius: First of all the historical facts have to be considered by specialists, which might bring some solution. He agrees that there are wounds through the conflicts between the two Churches which need to be healed. However, he makes clear that in the constitution of the Syrian Orthodox Church a chapter is directed to the Catholicosate of India which states that India is a sub-church of Antioch.

Fr. Bouwen: Who is the addressee for the state when the Church goes to court?

Fr. George: The main point of reference at court is the constitution and thereby the Association as the body which approves the constitution.

Mar Gregorius: When was this Association established and how far is it connected with the civil court?

Fr. George: In 1876 Patriarch Peter came to India and divided the Church of India into various dioceses with the intention to have a tight relationship with each diocese. Soon after that the bishops formed a synod and the Association was established.

For the Supreme Court Verdict of 1958 the constitution of the Malankara Church was an important element. Essential points of the Malankara constitution were not taken into consideration in the constitution of the Syrian Orthodox constitution, e.g. the role of the patriarch: he has no authority to consecrate a bishop or ordain a priest in India unless he is invited to.

Prof. Hannoncourt sees some parallels between Ethiopia and India. Both Churches claim to have apostolic origins but have then a certain time when they are under no specific jurisdiction.

Fr. George: Ethiopia had always been under the explicit jurisdiction of Alexandria and it was never colonized. The Indian Church suffered a lot under the Portuguese colonization. Books were burnt, priests were forced to divorce their wives. After this devastation the Indian Church asked the Syrians for help, so that in 1665 bishop Mar Gregorius of Jerusalem came to India. This is for the Indians the beginning of the contact with Antioch.

Prof. Legrand: Can we Christians trust secular courts in settling church matters? Is this not a dangerous precedent if we give power to secular institutions?

Fr. George maintains that the first priority should be to settle things between "us".

Fifth working session: Monday, July 8th: 9.00 a.m.

Chairman: *Metropolitan Amba Bishop*

Ivan Žužek SJ

THE AUTHORITY AND JURISDICTION IN THE ORIENTAL CATHOLIC TRADITION

1. Introduction

It may be a noble and respectable intention to propose bold solutions on the basic issues at stake in the ecumenical endeavors, but this does not mean that such solutions will be accepted by both Catholics and Orthodox. To such proposals, it seems to me, belongs that, which was expressed by Joseph Ratzinger, when he was professor at the university of Ratisbon. Actually he asserted, that «Rome does not have to demand more of a doctrine of primacy than was formulated and lived in the first millennium»¹ He also specified that «the essence of primatial teaching of the first millennium» was described by Patriarch Athenagoras on 25 July 1967, at his visit in Rome, when he addressed Pope Paul VI as «successor to Peter, the first in honor among us, the one presiding in love».² «Unity in this connection - continued Joseph Ratzinger in 1979 - could be on the following basis: the East on the one hand refrains from fighting the Western development of the second millennium as heretical and accepts the Catholic Church as legitimate and Orthodox in faith in the form it has come to take as a result of this development; conversely, the West for its part recognizes the Church on the East as legitimate and Orthodox in faith in the traditional form in which it has come down to us».³

Rescinding from the question how this could be «theologically possible» having in view that the primacy of the Pope, as defined and specified by both Vatican I and Vatican II, includes what Patriarch Athenagoras meant by the above cited words, while the conscience of Orthodox firmly requests that this primacy should be excluded from the same words, I limit myself - in accord to what I was kindly requested to present to this honorable assembly - to state that in the twenty one Catholic oriental Churches, the primacy of the Pope and the entire teaching on the supreme authority of the Church is accepted in exactly the same sense as in the Latin Church. Actually, this constitutes their distinctive mark and entitles them to be called Catholic.

2. Common Canons on the Supreme Authority of the Church

It is common knowledge that the sections of the canons concerning the Roman Pontiff and the College of Bishops, as supreme authority in the Church, in both Codes,

¹ Pro Oriente, Vienna, 1993, Booklet N. 4, p. 85. For the original text in German the reference is given to Pro Oriente of 1979 (Tyrolia, Innsbruck-Wien-München), Volume N. 4 „Prognosen für die Zukunft des Ökumenismus“, p. 121.

² Ibidem.

³ Ibidem, pp. 85-86. For later specifications of the mind of J. Ratzinger, see A. Garuti, in Antonianum 70 (1995) 44.

that is in the *Codex iuris canonici* (cann. 330-341) of the Latin Church and in the *Codex canonum Ecclesiarum orientalium* (Tit. III: cann. 42-54) valid for all oriental catholic Churches, coincide almost completely, apart from rather numerous editorial variations and some others⁴ required by the nature of CCEO.⁵

During the elaboration of the drafts of the CCEO this section of canons was criticized for repeating the Latin Code's canons and some requests were made that it should be restructured according to an eastern theological vision, taking into account the more pneumatological and eucharistological nature of eastern ecclesiology.⁶ But it was soon evident that the section was the result of common work of Latins and Orientals, in the framework of the *Lex Ecclesiae Fundamentalis*, which was meant to contain legislation common to the Churches of the East and of the West. It is from the drafts of this *Lex* that both Codes took the above mentioned canons, when it became certain that such a *Lex* would not be promulgated. Moreover, to the Orientals there seemed «to be no reason for not considering them fully in accordance with the genuine theological tradition of the East».⁷ Actually, against this position no objection was raised until virtually the very last moments of the elaboration of the oriental Code. At that time (1987) two of the Members of the Commission, to which this elaboration was entrusted, proposed a restructuring of the whole section. (By the way, let me say it, both of these Members could easily have spoken ten years before.)⁸

One of the two Members just mentioned requested, without proposing an alternative text, that this section of the Code should be reformulated according to «the ecclesiology and experience lived by the Church in the period when Christianity was undivided». The other Member presented a totally new draft, based on something rather similar to the ancient *Pentarchia*, although enlarged to all Patriarchs and Major Archbishops. Among other things, he requested that «the Patriarchs and Major Archbishops together with the Bishop of Rome» be «endowed with special rights and privileges, constituting a peculiar College by which symphony among the Churches is safeguarded».⁹

This, at the end of 1987, was not accepted in a special study group, since in it was advocated «an ecclesiology which is not that of Vatican II».¹⁰ Actually, there is no trace of such a peculiar College in the documents of Vatican II.

Nevertheless, the Member referred to, was not satisfied with this. Right from the opening meeting of the «Plenary Assembly» of the Pontifical Commission for the Revision of the Oriental Code, he explained that with his draft he had not intended to go «against», but rather «beyond» the Second Vatican Council. This induced other eight Members of the Commission to sign a motion in which it was requested «to return to the draft reformulation rejected» by the aforesaid study group, with the hope that «a more

⁴ Can. 46 § 2 was added; can. 48 was inserted in this section, when in CIC it is placed elsewhere (CIC can. 361).

⁵ Cf. my work «Origin of the canons, „coincidences“ with CIC and „omissions“ in Titles I and III of CCEO», published by the Canon Law Society of Australia and New Zealand, in the *27th Annual Conference Proceedings*, „From east to west...“, Melbourne, November 22-26, 1993, pp. 80-123; see pp. 98-113 on «Titulus III, De suprema Ecclesiae auctoritate».

⁶ *Nuntia* 22, p. 38.

⁷ *Nuntia* 22, p. 39.

⁸ Cfr. the work referred to in annotation 5, p. 105.

⁹ *Nuntia* 28, O. 29, cann. 41-53: *Patriarchae atque Archiepiscopi Maiores una cum Episcopo Romano iuribus et privilegiis singularibus instruantur atque peculiare Collegium constituunt quo symphonia inter Ecclesias servatur*.

¹⁰ *Nuntia* 28, p. 29, cann. 41-53.

profound study would lead to a greater good and create a better ecumenical climate with our non-Catholic brethren, especially Byzantine Orthodox».

But it happened that in the meanwhile the same Member, who proposed the «rejected draft», rejected it too, recognizing that «his previous proposals had not been entirely satisfactory even to his own mind». He presented a new draft. However, he did not want that the draft be put to the vote of the Assembly, but submitted to a special commission «charged with studying the draft in depth and then, if appropriate, sending it to the Pope, so that he could use it in any way he saw fit».¹¹

The discussion was over. The Assembly agreed that the «Holy Father be made aware of the existence of the draft reformulation of Title III and that the matter be deferred to his decision». All one can say now is that after this «storm», inspired by ancient, though revised, ideas on *Pentarchia*, the *ius* on the *suprema Ecclesiae auctoritas* in both the oriental and the Latin Codes is the same and indeed common to the universal catholic Church.

3. Some Annotations on «Pentarchia»

It does not seem possible that the substance of the theory of Pentarchia can fit in any way with catholic teaching on the supreme authority of the Church. Moreover, after a new study of this matter refreshed by the careful reading of some recent works,¹² I remain even more certain than before, that W. de Vries in 1967 was right in stating that in the first millennium there never existed, whether in Rome or in Constantinople, a College of Patriarchs, which, under the guidance of the Successor of St. Peter, would have been endowed with a supreme collegial authority in the universal Church. This should have been a College analogous to a «sénat suprême de l'Eglise, peut-être susceptible de se réunir - régulièrement ou du moins à un certain fréquence - et jouissant de compétences dûment reconnues (et exactement déterminées par le droit canon) en vue de diriger l'Eglise universelle».¹³

Evidently, one cannot pretend to find an accurate juridical figure of such a College in the ancient canons. Nevertheless, had it existed, it would have left in canonical legislation at least some trace of itself.

It is outside the purpose of the present paper to go into details about the theory of the ancient *Pentarchia*, which developed in the time of *iconoclasm* after 680,¹⁴ and

¹¹ Cfr. *Nuntia* 29, pp. 54-58 and my account in English on these, rather «dramatic» discussions, which was published by Canon Law Society of Australia and New Zealand in *27th Annual conference Proceedings* „From East to West...“, Melbourne, November 22-26, 1993, pp. 106-110.

¹² F.R. Gahbauer, *Die Pentarchie Theorie. Ein Model der Kirchenleitung von Anfängen bis zur Gegenwart*, Frankfurt am Main, 1993. As far as the «Model» is proposed in the conclusive pages of this book, I have many reservations, very similar to those expressed by A Garutti, in his article „Ancora a proposito del Papa Patriarca d'Occidente“, *Antonianum* 70 (1995), pp. 31-45 (especially pp. 42-45).

¹³ W. de Vries, „Le Collegium patriarcharum“, *Concilium*, 1965, N. 8, French edition, pp. 63-64.

¹⁴ In the *Constantinopolitanum III*. Cfr. *Mansi* 11, 681-692D *actio XVIII* and 907A. A few years later (691) was formulated can. 36 of the *Quinisext* Council, about the precedence among the five patriarchal sees. F.R. Gahbauer, *Die Pentarchie-Theorie*, Frankfurt, 1994, pp. 92-93 writes in this regard as follows: «Von einer Pentarchie theorie in Vollsinn bis zum Jahre 700 kann aber nicht gesprochen werden, da noch nicht über die Fünzfzahl der Patriarchate nachgedacht worden ist. Wohl aber läßt sich für diese erste untersuchte Epoche [until *iconoclasm*] von einer Zuteilung der obersten Leitung der Kirche an die Patriarchen sprechen, weil deren Verantwortung für den Glauben in Verbindung mit ihrer Leitungsgewalt über die Kirche deutlich wurde.» (ib. pp. 92-93).

which constituted after the schism of 1054 one of the chief weapons of Orthodox authors against the primacy of Rome. In my view, it was not built on solid theological grounds, *salva reverentia* for Athanasius the Librarian, who first justified it by analogy with the five senses in his proslution to the fourth council of Constantinople of 869.¹⁵ This theory rather originated from the fact that in the first millennium the *communio patriarcharum*, was the most visible sign of the unity of the universal Church. However, there is big difference between this *communio* and a *collegium* endowed with supreme authority over the universal Church. In the sense of *communio*, as just expressed, the *Pentarchia*, so it seems, was fully accepted also by Roman Pontiffs. On the contrary, anything that could mean a College of Patriarchs endowed with supreme authority in the Church, was never accepted by Rome. This seems to be true even in regard to the theory of *Triarchia* which was based on the Petrine origin of three sees - Rome, Alexandria, Antioch - and to some extent supported by the Roman Pontiffs,¹⁶ not to say anything about the theory of *Tetrarchia*,¹⁷ which was justified by analogy with four Gospels or four paradisiac rivers (Gn 2,10) or, even, four elements, earth, water, air and fire.

4. The Roman Pontiff as the «Patriarch of the West»

In what regards the Pope as «Patriarch of the West» - this is one of the official titles attributed to him in the *Annuario Pontificio* - I repeat, what I have written elsewhere,¹⁸ that this is not only a «honorific title», but neither does it mean that the Pope's patriarchal rights have a human origin, as it is true for all other patriarchs. Whoever is the Pope, enjoys also patriarchal rights, and that, not in virtue of a human *norma iuris*, but *iure divino*, since in his primatial power all other powers in the Church are comprised, as was affirmed in a *Relatio* during the first Vatican council: «nullam concipi posse partem ecclesiasticae potestatis quae non comprehenderetur in eius suprema potestate».¹⁹ Thus the title «of Patriarch of the West», attributed to the Pope, even if it will

¹⁵ *Mansi* 16, 7.

¹⁶ Cfr. S. Damasus, litt. *Quod vestra caritas*, a. 378/82, „... Itaque“; S. Leo M., litt. *Quantum dilectionis*, 21 iun. 445; litt. *Credebamus post*, 6 ian. 446 (?); S. Gregorius M. litt. *Suavissima mihi*, nov. 597 («sola apostolica Sedes in auctoritate convalerit, quae in tribus locis unius est...»); Nicolaus I, litt. *Proposueramus quidem*, a. 865, „Ista igitur“ and „Per has“; S. Leo IX, *Congratulamur vehementer*, a. 1.052/53 „Pro cuius“. For a short description of this theory cfr. F.R. Gahbauer, *Die Pentarchie-Theorie*, Frankfurt, 1993, pp. 390-397. For some considerations about it cfr. W. de Vries, „Le Collegium Patriarcharum“, *Concilium*, french edition, 1965, N. 8, pp. 65-67.

The nearest expression to a *Collegium patriarcharum* seems to be that of Nicholas I: «Per has igitur tres praecipuas Ecclesias omnium Ecclesiarum sollicitudo beatorum apostolorum Petri et Pauli procul dubio moderamen expectat». The Pope, however, immediately specifies: «nos ... nati sumus ... principes super universam Ecclesiam».

¹⁷ Cfr. *ib.* pp. 401-416. The theory was first expressed in the so called Arabic canons (can. 37), from a time shortly prior to the Council of Chalcedon (441), in which the sees of Rome, Alexandria, Ephesus (where the Apostle John lived), and Antioch are mentioned.

¹⁸ I. Žužek, „Incidenza del *Codex Canonum Ecclesiarum Orientalium* nella storia moderna della Chiesa universale“, *Ius in vita et in missione Ecclesiae*, Vatican, 1994, 716-717.

¹⁹ *Mansi* 52, 1201, *Relatio* of F.M. Zinelli. Cfr. I. Žužek, „Incidenza del *Codex Canonum Ecclesiarum Orientalium* nella storia moderna della Chiesa universale“, *Ius in vita et in missione Ecclesiae*, Vatican, 1994, p. 717, note 98.

remain in the *Annuario Pontificio*,²⁰ has a substantially different meaning, than the title «Patriarch» attributed to the Heads of oriental patriarchal Churches.²¹

5. Some Unacceptable Opinions on the Origin of Patriarchal Powers

On the origin of patriarchal power in the Christian East there are several opinions, some of which, although expressed with deep ecumenical feelings, seem to be out of harmony with the teaching of the catholic *Magisterium*. Some of these opinions are briefly exposed below, with the intention of giving a better explanation of the catholic doctrine on the supra-episcopal power in the Church as *participatio supremae Ecclesiae auctoritatis*, which is common to East and West, but particularly important to understand all of the detailed *normae iuris* that regulate the practice of authority and jurisdiction of the oriental catholic tradition.

5.1. Renunciation of Bishops in favour of Patriarchs

Admittedly, W. de Vries was right in saying, that the patriarchal rights originated by custom (*antiqua consuetudo*, says can. 6 of Nicea I) sanctioned by the ecumenical councils, with at least «une approbation tacite par le pape».²² He, however, is on the wrong side in stating that an oriental patriarch, is «un évêque qui rassemble en lui toute plénitude du pouvoir épiscopal, tandis que les autres évêques ont renoncé, en faveur de celui-ci et en vue d'un meilleur gouvernement de l'Eglise, à une partie de leurs droits».²³

Actually, in the tradition there does not seem to be a trace of such a renunciation of bishops' rights. On the contrary, from the same fact, that ecumenical councils had to sanction the «*antiqua consuetudo*» concerning the rights of the *Protos* (metropolitan, patriarch), one could suppose that the Bishops were rather reluctant in this matter.

Usually, Councils and Synods solved contentious matters. Thus, one may be near the truth in thinking that behind the sixth canon of Nicea I, that sanctioned the «*antiqua consuetudo*» of the supra-episcopal power of the «Alexandrinus episcopus», there was some uneasy feeling of the Bishops of Egypt, Lybia and Pentapolis. May be that already at the beginning of the IV century, such as yet undefined power was carried out in a manner that «les patriarches alexandrins s'attirèrent en certaines circonstances le surnom malsonant de pharaons».²⁴

One may have the impression that, notwithstanding the still imperfect theology on bishops' power at that time, the «Hyppolitan synthesis», contained in the *Apostolic tradition* (beginning of the III century), which could be «un écrit alexandrin» and certainly «exerça son influence aussi bien dans le patriarcat d'Antioche que dans celui d'Alexan-

²⁰ A. Garuti, at the conclusion of his book, *Il Papa Patriarca d'Occidente?*, Bologna, 1990, p. 270, writes: «Al termine di questa ricerca ci si potrebbe chiedere se non fosse opportuno che non vi figurasse più» in the *Annuario Pontificio*.

²¹ A. de Halleux expressed the same in the following terms: «Les Orientaux considéraient l'évêque de Rome comme le Patriarche de l'Occident, sans se rendre compte que sa „patriarcalité“ n'y répondait pas à la même réalité institutionnelle que chez eux» *Revue. Théol de Louvain*, 23 (1992) 224.

²² *Concilium* 1965, French edition, N. 8, p. 63; annotation 1.

²³ *Ib.* p. 63.

²⁴ *Dictionnaire d'histoire et de géographie ecclésiastiques*, II, 337.

drie»,²⁵ on the concept of Bishop as «simultaneously the image of Christ and the image of the apostles»,²⁶ was well known by all the Bishops. In light of this they easily felt the impossibility of renouncing a part of this image. One cannot renounce being oneself, not even a small amount. Neither does it seem tolerable that a Bishop, be he of Alexandria or Antioch, or even a particular Synod of Bishops, curtails in his own favour, the bishops' rights, unless he is entitled, in so far as the exercise of such a right is concerned, to do so by the supreme authority of the Church. Bearing in mind many such «curtailings», that have taken place in the history of the Oriental Churches, one is inclined to propose to the eastern Patriarchs - catholic or orthodox - to save the Bishops in the first place from themselves.

One of the chief concerns of the Code of the Canons of Oriental Churches is to avoid anything, that could, in one way or another, imply a *deminutio capitis* of oriental Bishops in comparison with those of the Latin Church in which there do not exist any hierarchical intermediate organs between the Pope and the Bishops.²⁷ This was necessary not only to sustain the principle of «subsidiarity» which, as I wrote elsewhere, «holds good also in the relations between the heads of the individual Churches and the Bishops who in their eparchies should be true Bishops»,²⁸ but, first of all, to cut at the very root any possibility of an attempt on the part of Patriarchs, Metropolitans or Synods of Bishops, to limit the exercise of bishops' power given to them *iure divino*. The theory of *cedere proprium ius* was explicitly rejected.²⁹ Canon 178 was introduced into the Code with this scope. It now governs the practice of power and jurisdiction in the Catholic Oriental Churches. The fact that this canon is taken literally from *Lumen gentium* (n. 27), means that it is equally valid for the Latin Church and that there is absolutely no question of any *deminutio capitis* in the Bishops of the catholic East. The fact, however, that it was necessary to include it in the Oriental Code, while for the Latin Church it suffices as written in *Lumen gentium*, speaks by itself of the danger that the intermediate hierarchical structures, between the Pope and the Bishops may be tempted to try to induce Bishops to renounce what is not renounceable, or simply arrogate to themselves - may be with the excuse of a unanimity vote in a Synod - the rights that Christ has entrusted to Bishops.

Canon 178, in English translation reads, as follows:³⁰

²⁵ B. Botte, *La Tradition apostolique de Saint Hippolyte, Liturgiewissenschaftliche Quellen und Forschungen*, Heft 39, Münster, 1963, Introduction, pp. XIV-XV.

²⁶ Cfr. Zizioulas J. D., *Being as Communion*, London, 1985, p. 196 (i), quoting Hippolytus, *Apostolic Tradition*, 3 (prayer for the ordination of a bishop). The Latin text, in the edition of D. Botte (p. 8) reads at this point: «nunc effunde eam virtutem. quae a te est, principalis spiritus, quem dedisti filio tuo Iesu Christo, quod donavit sanctis apostolis, qui constituerunt ecclesiam per singula loca...».

²⁷ Cfr. *Nuntia* 9, pp. 6-7.

²⁸ Cfr. Ivan Žužek, „Particular Law in the Code of Canons of the Eastern Churches“, *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alway, 1992, pp. 40-56 (Sec p. 41).

²⁹ *Nuntia* 9, p. 6.

³⁰ CCEO can. 178 - *Episcopus eparchialis, cui scilicet eparchia nomine proprio pascenda concredita est, eam ut vicarius et legatus Christi regit; potestas qua ipse nomine Christi personaliter fungitur, est propria, ordinaria et immediata, etsi a suprema Ecclesiae auctoritate exercitium eiusdem potestatis ultimam regitur et certis limitibus intuitu utilitatis Ecclesiae vel christifidelium circumscribi potest.*

The above translation differs from that of G. Nedungatt (*A comparison to the Eastern Code: for a New Translation of Codex Canonum Ecclesiarum Orientalium, I Kanonika*, 5, p. 63) especially in the second part of the canon, where for the clause «circumscribed by certain limits», the *Decrees of the Ecumenical Councils*, Georgetown, 1990, vol. II, p. 871, is followed as nearer to the latin text («certis limitibus... circumscribi»), and where the clause «by the supreme authority of the Church» is left in the exact spot as in

«The eparchial Bishop, to whom, that is, the eparchy has been entrusted to be pastured in his own name, governs it as the vicar and legate of Christ; the power, which he exercises personally in the name of Christ, is proper, ordinary, and immediate, although by the supreme authority of the Church its exercise is ultimately regulated and can be circumscribed within certain limits in view of the benefit of the Church or of Christ's faithful».

In this context it seems good to point out that the Oriental Catholic Bishops are rather reluctant to consider the Patriarch as their superior. Actually, from the beginning of the work for the revision of the Oriental Code, the following question was on the desk: «Les canons doivent-ils ou non être formulés de façon à faire disparaître du CICO toute apparence que les évêques *sunt subditi patriarchae*?»³¹ The decision taken was favourable.³² It was also carried out throughout the Code with a single, unavoidable, exception. Actually, in can. 187 § 2 a candidate to the episcopate in the patriarchal Churches is bound to promise, before episcopal ordination, obedience not only to the Roman Pontiff, but also to the Patriarch «*in eis, in quibus Patriarchae ad normam iuris subiectus est*» (in those matters in which he is subject to the Patriarch according to the norm of law).

5.2. The question of the origin „*iuris divini*“ of patriarchal authority

The statement of *Lumen gentium* that it has come about «by divine Providence» that «various Churches established in diverse places by the apostles and their successors have in the course of time coalesced into several groups, organically united, which, preserving the unity of faith and the unique divine constitution of the universal Church, enjoy their own discipline, their own liturgical usage, and their own theological and spiritual heritage»,³³ leads certain authors to make, with the best ecumenical intentions, every effort to introduce into the sphere of *ius divinum*, not only the «various Churches» (by which the Council meant dioceses) or the «unique universal Church», but also «groups» of Churches «organically united» (*coetus, organice coniuncti*). However, for

the latin text. This is necessary, to avoid the meaning, as if the clause beginning with the words «and can be...» stands by itself, independent from the supreme authority. Note also that G. Nedungatt does not translate the word «scilicet» («that is»), which, however, is essential since with it is specified what in this canon and in the whole code is meant with the terms *Episcopus eparchialis*.

Some interpretations of the above canon, one heard lately, are no more than a *deus ex machina* to support some peculiar personal opinions. This occurs if the word *ultimam*, is applied to the last clause in such a manner that the clause could be referred to an «intermediate power» between the Bishops and the supreme authority which would not be *canonico iure participatio Ecclesiae supremae auctoritatis*. In the latin text the *ultimam* specifies the word *regatur*, while the *suprema Ecclesiae auctoritas* is the only one to which the last clause, introduced by *et*, can be referred to. It is also out of place to appeal in this matter to the parallel canon of 381 of CIC, as if in it the words *de iure* can mean something other than the *ius* established by the supreme authority of the Church. One may be sure that not even a single Bishop in Vatican II did agree that the powers given him by Christ, can be in any way shortened by somebody else than the supreme authority of the Church.

³¹ *Nuntia* 2, p. 51.

³² *Ib.* «On s'orienter vers l'élimination de pareilles expressions, tout en cherchant d'autres qui puissent sauvegarder le principe établi par le Concile et inséré par le Coetus dans le can. 1 de Patriarchis: *Nomine Patriarchae venit episcopus, cui competit iurisdictio in omnes episcopos, haud exceptis metropolitans...*»

³³ *Lumen gentium*, n. 23, as translated in W.M. Abbott's *The Documents of Vatican II*, London-Dublin, 1966, p. 46.

this purpose these authors challenge the traditional notion³⁴ of *ius divinum* and try to reassess it in such a manner that it may include the so called «triadic» constitution of the Church, corresponding to three sorts of power *iuris divini*: the supreme power, the bishop's power, and a selfstanding intermediate power. The traditional notion of the *ius divinum* is called to be «simplistic», while the new notions, especially those of K. Rahner, E. Schillebeeckx and A. Dulles, are considered to be «of greater theological depth». But the opinions of these, indeed outstanding authors, before being used as arguments, should be demonstrated to be true and in accord with the Church's *Magisterium*.³⁵

Actually, after much consideration, it seems to me that K. Rahner's «conceptual variation» of the *ius divinum*, does not give more support to «an intermediate power of governance», independent, as some sustain, from the supreme authority of Church, than to such a power conceived as *participatio supremæ Ecclesiae auctoritatis* springing out «by divine Providence» in the time prior to Nicea I, and explicitly confirmed by it. Something similar, it seems, may be said also regarding Schillebeeckx's ideas on the offices of the Church which, though emerging in postapostolic times, «owe their emergence to the community of the Church as set in order by the Apostles»,³⁶ could, to some extent, be understood, since the supreme authority of the Church, established by Christ, potentially implied every subsequent legitimate participations of it, even through an *antiqua consuetudo* accepted by the same authority.

Various factors contributed to the *antiqua consuetudo* by which certain episcopal sees began to exercise a supra-episcopal power of governance. Some of these factors were ecclesiastical, as the power of the «Mother Church» in territories evangelized by her; or the power of control³⁷ over the «suffragan» Bishops, by the see to which their ordination was reserved; or the prestige that some sees had because directly (as Antioch) or indirectly (as Alexandria) erected by the Apostle Peter or other Apostles. Other factors were sociological, cultural, or political: Alexandria and Antioch were great cultural centers and capitals of, respectively, great Roman *Diocesis augustalis* and *Diocesis Orientis*. The good order of the Church required the exercise of such a power, and the respective *antiqua consuetudo* certainly arose «by divine Providence». Yet this does not

³⁴ This notion implies at the least, so it seems, that an institution, to be *iuris divini*, must be proved to be „a Deo ipso volita“ in such a manner that „ab hominibus supprimi nequeat, sed hi obligationem habeant hoc institutum servandi“ (G. Philips, „Utrum Ecclesiae particulares sint iuris divini“, *Periodica de re morali, canonica, liturgica* 58 [1969] pp. 143 and 146.

³⁵ I have in view J. D. Faris booklet, containing a doctoral dissertation directed by G. Nedungatt, in which the opinions of the above mentioned authors are no more than exposed (pp. 71-82), however, «with the goal to demonstrate how a refined notion of *ius divinum* need not exclude the *ecclesia particularis* (the «intermediate» group of dioceses is meant here) from the fundamental, essential structure of the Church» (p. 83). As for A. Dulles's «four categories» (institutions that belong to 1) *esse Ecclesiae*, to 2) *plene esse Ecclesiae* (papacy would be among them), to 3) *bene esse Ecclesiae* (reversible), and to 4) *ad hoc structures*) D. Faris himself does not know whether A. Dulles would place the *Ecclesia particularis* in the second or third category. How then use such theories to «demonstrate» anything on the «refined notion of the *ius divinum*»: *obscurum per obscurius*.

³⁶ *Ib.*, p. 79 with the reference to E. Schillebeeckx „The catholic understanding of Office in the Church“, *Theological Studies* 20 (1969) 568.

³⁷ Such control implied also the *potestas coercendi*. E. Nedungatt (in *Kanon V* p. 27, note 18) points out how the bishop of Alexandria Heraclius (231-247), about hundred years before Nicea I, punished by deposition his suffragan bishop Ammonius for having allowed to preach in his church Origen, who was already condemned. One may suppose that other cases of punishing bishops occurred in the first centuries of the Church. They certainly are the most striking examples of supra-episcopal authority attributed to certain sees by *antiqua consuetudo*, but nothing can be concluded from this about the very nature of such a power.

entitle anyone to affirm that this power is something intermediate, between the bishops' power and the supreme authority of the Church, or that the historically determined forms of exercise of such a power {metropolitans, patriarchs} belong to the essential, irreversible, structure of the Church. One can even suppose, that at a certain time before Nicea I, some began to ask themselves about the theological basis of the *antiqua consuetudo*, and, not finding a solid one, questioned the supra-episcopal power of metropolitans and, may be in a particular manner, the supra-metropolitan power, of the Bishops of Alexandria and Antioch. The Council of Nicea I admitted the matter to discussion and formally confirmed the *antiqua consuetudo* by its supreme authority. It did that without giving any theological reason, not appealing to «divine Providence», neither to «apostolic origin» of this power or of the Sees of Alexandria or Antioch. This leads one to think that the Council was fully conscious that it could have decided just the opposite, the *antiqua consuetudo ne servetur*, had the good of the Church required this. There was no question in this matter of an «irreversible *ius divinum*» or of an «apostolic irreversible institution»,³⁸ but of deciding by supreme authority whether or not the *antiqua consuetudo* should be confirmed. It was this authority that later, in 415, was invoked by Innocent I, as legitimate to establish Antioch not only as the see «*super aliquam provinciam*» but «*super Diocesim*» [= *Diocesis Orientis* of the Roman Empire, with 15 provinces].³⁹

This is in accord with the constant discipline of the Catholic Church,⁴⁰ according to which even patriarchal Churches may be, as an ultimate measure, suppressed by the supreme authority of the Church. Of course, this shall hardly happen. Nevertheless, it is possible, and if it happens, one may think that it will be due to divine Providence no less than the *antiqua consuetudo* and its approval by the sixth canon of Nicea I. The decisions of the supreme authority of the Church have the greatest guarantee of pertaining to divine Providence.

Some, although admitting that the «Roman Pontiff and an ecumenical council can create, modify or even suppress a specific patriarchal Church», think that from this «one cannot conclude that the *Ecclesia particularis*, as an intermediate entity, could be absolutely abolished». ⁴¹ Strictly speaking, this is possible. One never knows, if in the future, not only eight hundred million catholics could constitute a vital Church with no intermediate *Ecclesiae particulares*, as it happens today in the Latin Church, but also a much more numerous community of all united christians. It is known how I defend and will do so to my last breath, the existence of each single Oriental Catholic Church, with the deep conviction that it is necessary, for many reasons, to preserve and foster in the Catholic Church the *varietas Ecclesiarum sui iuris*. Yet, in the strongest terms as stated above, I express also my equally firm conviction that such *varietas* is totally subject to the supreme authority of the Church, and does not belong to the essential constitution of

³⁸ Cfr. Ivan Žužek, „Un codice per una *varietas Ecclesiarum*“, *Studi sul «Codex Canonum Ecclesiarum Orientalium a cura di Sandro Gherro*, Padova, 1994, pp. 3-31 (cfr. p. 8).

³⁹ Innocentius I, litt. *Et onus et honor*, a. c. 415. The Pope words *Revolventes ... auctoritatem Nicaenae synodi ... recognoscimus constituam*, underline rather the constitution than recognition of the Antiochean see, rather the supreme authority, than the *antiqua consuetudo*. To point out is also that the Pope in this letter expressed, what the Nicea I did not, that is that the council acted in the case of Antioch *non tam pro civitatis magnificentia ... quam quod primi apostoli sedes esse mostretur*.

⁴⁰ See CCEO can. 57.

⁴¹ J.D. Faris, *The Communion of Catholic Churches. Terminology and Ecclesiology*, Brooklyn, New York, 1985, pp. 59-60.

the Church. May be that by some other sort of *varietas*, the most fundamental rights of human persons, of the baptized, of their communities or nations living each in its own culture, can be equally or better safeguarded. The supreme authority, established by Jesus Christ, cannot be chained within such limits that will make it unable to face even that eventuality.

To such chaining of the supreme authority belongs also a peculiar opinion expressed lately in a Congress of canonists.⁴² It was said there that the patriarchal institution is no less divine in origin than the Roman primacy or the diocesan episcopal office. This was supported by stating that the Apostles were, besides their other prerogatives, also patriarchal figures *iure divino*, which, when the apostolic age came to an end, emerged, after years of persecutions, on the original apostolic models, and that this is linked to the catholicity of the Church in such a way that it is as much of divine right as catholicity itself. It was said that if the ministry of unity is rightly assigned to the Petrine See, the ministry of catholicity must be canonically assigned to the heads of the various Churches, and before all to the Patriarchs, since among the successors of the Apostles it is the Patriarchs rather than the diocesan Bishops that are or can be the symbols and foundation for the catholicity of the Church. The appeal was made also to *Lumen gentium* which states (n. 23), as Leo XIII did at the end of the last century,⁴³ that the variety of the local Churches «shows forth in a most resplendent manner, the catholicity of the undivided Church».⁴⁴

Not a few are the reservations to be made about this opinion.

First of all, the «ministry of catholicity» is a gratuitous term, and to speak about a canonical assignment of such an imaginary ministry to anyone is out of place. If it has any sense at all, it is by no means proved that such a «ministry» could be something adequately distinct from the ministry of unity of the Petrine See. Actually, to assign such a «ministry» to the Patriarchs, is not in accord with the teaching of Vatican II, repeated by the Pope in the constitution *Sacri canones*, according to which the Petrine See *legitimas varietates tuetur* («guards the lawful variety»)⁴⁵ It goes well beyond this text to state that the patriarchal institution as such is the guarantor of legitimate ecclesial pluralism.

Secondly, it is common doctrine that the special prerogatives of the Apostles, entitled by Jesus Christ to share the supreme authority of the Church, including infallibility, are to be well distinguished from their episcopal prerogatives. The former ceased with the ending of the apostolic age, the latter, established for all times, were transmitted to the Bishops. After the apostolic age the supreme authority of the Church was *statuente Domino*,⁴⁶ reserved to the Roman Pontiff, as the successor of St. Peter and, with him as head, to the College of Bishops united with him. It is not in agreement with this common doctrine to sustain that the «patriarchal power», of course included in but not adequately distinct from the power *iuris divini* that the Apostles had,⁴⁷ emerged sometime

at the end of the persecutions as an «intermediate power», established *iure divino* for all time, to be substantially always safeguarded by the supreme authority of the Church.

Thirdly, the thesis that among the successors of the Apostles it is the Patriarchs rather than the diocesan Bishops that are or can be the symbols and foundation of the catholicity of the Church, supposes what it has to be proved, and, moreover, includes in the notion of catholicity as an essential element what is actually a mode of its external manifestation. The supposition is that the Apostles were entitled to transmit to certain Bishops a supra-episcopal and supra-metropolitan (this is called patriarchal) power, that they indeed, as just said, personally had *iure divino*, not through a *norma iuris* (it might have the form of an *antiqua consuetudo*) established (or accepted) by the supreme authority of the Church and changeable by the same authority, but as an untouchable *ius divinum* for all time, that Peter or the College of Apostles, the Successors of Peter and the College of Bishops, with Roman Bishop at the head, will be unable to change or suppress. The evidence, even if one takes into consideration only the canons of Nicea I, totally excludes such a supposition. By the statement that the variety of the local Churches (not only patriarchal Churches) shows forth in most resplendent manner, the catholicity of the undivided Church, neither Leo XIII nor Vatican II wanted to subvert in any way the meaning of catholicity itself. Admittedly, the catholicity of the Church will manifest itself always by some «variety», but this is a consequence, not an essential element of catholicity itself. This appears to be true in a special manner if catholicity is defined as the Church's intrinsic potential to recapitulate all humanity under the headship of Christ in the unity of Spirit, or, more traditionally, as «une universalité morale, largement entendue».⁴⁸ The almost two thousand years long «variety», as respectable as it is and as resplendent it may be in manifesting the catholicity, is not an essential element of it. In the light of what was just said one cannot accept the above thesis and neither can one agree with those who say that the patriarchal institution, as linked to catholicity, has an ecclesiological role that is as much of divine right as catholicity itself is an essential note of the Church of Christ. To point out - in a blunt manner - the incongruity of such statements, I venture to say that if there were today only dioceses linked together by Rome, in «une universalité morale, largement entendue», the catholicity, would exist, although not shown in so splendid a manner as it is today by a variety of over twenty catholic *Ecclesiae sui iuris*.

6. The maintenance of the traditional teaching of catholic „Magisterium“

The traditional teaching of the Catholic Church concerning the origin of the patriarchal institution (or any other that implies a supra-episcopal power of governance, once called «jurisdiction») was best expressed by both the Latin (of 1917) and oriental canonical legislation (of 1957) in the following manner: «*Hierarchia iurisdictionis constat pontificatu supremo et episcopatu subordinato, ex Ecclesiae autem institutione alii quoque gradus accessere*».⁴⁹ The Patriarchs belong to those «gradus» which were established *ex Ecclesiae institutione*. The power of governance, in other words, established by Jesus Christ, is only twofold: that of the supreme authority and that of the diocesan

⁴² I will not name the author since his paper, distributed in the Congress, is as yet not published.

⁴³ Leo XIII, litt. ap. *Orientalium*, 30 nov. 1894, proem. Cfr. also Ioannes Paulus II, const. ap. *Sacri canones*, 18 oct. 1990, „*Cum Leo XIII*“.

⁴⁴ *Quae Ecclesiarum localium in unum conspirans varietas indivisae Ecclesiae catholicitatem luculentius demonstrat*.

⁴⁵ *Lumen gentium*, 13 „Vi huius“; const. *Sacri canones*, „Idem etiam“.

⁴⁶ Vat. II, const. *Lumen gentium*, 22 „Sicut“ and *Nota explicativa praevia* n. 1; CIC can. 330; CCEO can. 42.

⁴⁷ This is the answer to those who think that it is anachronistic to suppose that the apostles possessed patriarchal powers, when the patriarchates did not yet exist? In the supreme authority such powers are comprised.

sed. The contra-argument *ad hominem* («to suppose that the apostles possessed the powers of diocesan bishops, when as yet no dioceses existed, is anachronistic»), used by some, is impertinent.

⁴⁸ DTC, II, 2, 2.007, 2.

⁴⁹ CIC of 1917 can. 108 § 3; Pius XII, m.p. *Cleri sanctitati*, 2 iun. 1957, can. 38 § 3.

(eparchial) Bishop, equal in the East and West. Any other power of governance, consequently, should pertain either to the one or to the other. There is absolutely no room in catholic teaching for a selfstanding «intermediate power». This is why, the canons referring to this power, in both Codes were regrouped under two sections:

- a) *De suprema potestate deque iis qui eiusdem sunt canonico iure participes* and
- b) *De potestate episcopali deque iis qui eam participant*.⁵⁰

The whole group of canons concerning Patriarchs, is placed in the first section, which regards those who *canonico iure* share the supreme authority of the Church. It cannot be otherwise, since they have supra-episcopal, and also supra-metropolitan power, which can be no other thing but a participation in the supreme authority of the Church, originating not from *ius divinum*, but *canonicum ius* (or *ecclesiasticum ius* in the wording of the Latin Code of 1917). This was well known common doctrine.

What, however, should be stressed again, is that this doctrine undoubtedly remains unchanged even today, after the promulgation of the new Latin and oriental Codes. Admittedly, in neither of the two Codes do the above mentioned «two sections» appear, since each of them is articulated on other basic principles.⁵¹ However, nothing should have been inferred from this fact in regard to the doctrine just mentioned. Those who during the elaboration of the oriental Code, asserted that its «Schema does articulate a triadic ecclesial model in its treatment of the hierarchy and corresponding ecclesial communions»,⁵² did so on no solid basis. The Code leaves the above doctrine totally intact. One can surmise, however, that this could not be so clear during the composition of the Code and that it was very pertinent to make it transparent at the promulgation of the Code.

Actually this was done by the Pope himself in the *constitution Sacri canones*. The Pope reaffirmed the traditional doctrine on the supra-episcopal power in the patriarchal Churches in the same terms as both former Codes: «*Patriarchae et Synodi iure canonico supremae Ecclesiae auctoritatis participes sunt*» (the Patriarchs and Synods are by canon law sharers in the supreme authority of the Church).⁵³

Elsewhere I underlined the importance of this reaffirmation in the view of «certain opinions on a pretended origin *iuris divini* of oriental patriarchates which are in various ways expressed also today». ⁵⁴ It is totally gratuitous to restrict this reaffirmation only to the various Catholic patriarchates erected or approved by the Popes in the last centuries, excluding from the Pope's statement patriarchal institution a such, or suggest, if the last were not excluded, that it would imply the affirmation that all authority in the Church descends through Peter and his successors in the Roman see. The last suggestion is especially captious. Actually, it introduces into our discussion a question, well known but resolved by Vatican II, regarding episcopal power, and not the supreme authority of the Church, which belongs not only to the Roman Pontiff but also to «*Collegium Episcopopo-*

rum ... una cum capite suo et numquam sine hoc capite»,⁵⁵ and may be shared *canonico iure* by others, as Patriarchs, Synods, Metropolitans etc.

The traditional teaching of the Catholic Church concerning the supra-episcopal power as the participation in the supreme authority of the Church is transparent also from what the Pope says with regard to supra-diocesan legislative power, that is to the laws or norms that bind more than one diocese and, therefore, cannot be enacted by diocesan Bishops. In the constitution *Sacri canones* the Pope states that «it was always dear to the individual Churches that any ordering of ecclesiastical discipline had strength in those norms, which flowed from the tradition acknowledged by the supreme authority of the Church or were contained in canons promulgated by the same authority, and that the rules of particular law have force if in accord with the higher law; however, to be null, if departing from it». ⁵⁶ By these words are excluded certain theories which tend to consider as primary legislative authority of single Churches, patriarchal or else, the Synods of these Churches. Also this power is a sharing of the supreme authority of the Church, greater or lesser, within the limits established or acknowledged by the same authority.

To conclude this section one feels obliged - (and one is happy to do so) - to state that the oriental catholic tradition about the power of governance in the Church does not differ from what was always the teaching of Rome: *Primatus (the Pope and the College of Bishops) et Episcopatus*. Moreover, that the *Episcopatus* in the East is exactly of the same *status* as in the West. Those who participate in the supreme power, as Patriarchs and Synods, do so within the limits of the *norma iuris* established or recognized by the supreme authority of the Church. They, as sharers *canonico iure* of the supreme authority, may be called «superior intermediate authority», between the Bishops and the Pope, but they do not limit in any way the *Episcopatus*. The difference between catholic East and West is only in the more or less direct dependence of the Bishops on the Pope and the Holy See. One could say, if such simplicity could be permitted in so complicated matter, that in the West this dependence is direct almost in all matters, while in the East it is in many matters indirect, but not in all. For instance in penal matters all oriental catholic Bishops nowadays may be judged exclusively by the Roman Pontiff,⁵⁷ and, as is known, they feel this as a great protection, that they never had in the first millennium. Actually, not a single Bishop until now has objected to this great change of the *antiqua consuetudo*. If someone still thinks that this *consuetudo* was *iuris divini*, he must, of course, give a «specific», - and one that fits in with his own ideas -, meaning to this notion, which, however, even if it were less «simplistic» and «theologically deeper», shall not imply an «unchangeable intermediate power» in the Church acting legitimately between *Primatus* and *Episcopatus*.

⁵⁰ Pius XII, m.p. *Cleri sanctitati*, 2 iun. 1957, Tit IV, Pars I (ante can. 162) and Pars II (ante can. 392). Cfr. *CIC* of 1918, Lib. II, Pars I, Tit VII (ante can. 218: where instead of *iure canonico* is said *ecclesiastico iure* [in the East this usually refers to the civil law regarding the Church]); Lib. II, Pars I, Tit. VIII (ante can. 329).

⁵¹ For the Eastern Code cfr. references to *Nuntia* in fasc. 31, p. 69 under the heading *Ordinatio systematica Codicis*.

⁵² J.D. Faris, in his doctoral dissertation directed by G. Nedungatt, published with the title *The Communion of Catholic Churches. Terminology and Ecclesiology*, Brooklyn, New York, 1985, p. 66.

⁵³ Cons. *Sacri canones*, „Idem etiam“.

⁵⁴ I. Žužek, „Riflessioni circa la costituzione apostolica *Sacri Canones* (18 ottobre 1990)“, *Apollinaris* 65 (1992) 53-64 (cfr. p. 62 c).

⁵⁵ *CIC* can. 336: *CCEO* can. 49, with *fontes*.

⁵⁶ Const. *Sacri canones* „In tam“. The above English text is taken from *Code of Canons of the Eastern Churches Latin - English Edition*, Canon Law Society of America, Washington, D.C., 1992, p. xii. The Latin text reads as follows: «*Singulis Ecclesiis semper perspicuum fuit quaecumque ordinationem ecclesiasticae disciplinae firmitatem habere iis in normis, quae ex traditionibus a suprema auctoritate Ecclesiae agnitis profluunt vel in canonibus ab eadem auctoritate promulgatis continentur, atque iuris particularis regulas valere, cum iure superiore si congruant, si vero ab eo discrepent, nullas esse*».

Note that «habere», «profluunt», and «continentur» are in the present.

⁵⁷ *CCEO* can. 1060 § 1 n. 2: «*Soli Romano Pontifici ius est iudicandi ... Episcopus in causis poenalibus*».

7. A short note on the «practice of authority»

I hope that the above exposition of more fundamental notions regarding the «practice of authority» in the Eastern Catholic Churches, will be regarded by this honorable assembly, not so much as a help to a better understanding of the new *Codex Canonum Ecclesiarum Orientalium*, but rather as a frank putting on the table of what really has to be considered in this distinguished ecumenical encounter.

Actually, what precedes here is essential to understand the difference concerning the practice of authority and jurisdiction in the catholic East and West. To illustrate this difference by the detailed explanation of many *normae iuris*, concerning the power of the Patriarchs, Synods, Major Archbishops, Metropolitans (the extent of such *normae* may be grasped from the *Index Analyticus of the Codex Canonum Ecclesiarum Orientalium*), which are proper to the catholic eastern Code, is not possible on this occasion. The profound difference between the East and the West in our matter comes from the fact, that the Latin Church has at its head only the Roman Pontiff, who has *iure divino* the fullness of the legislative, judicial and executive power, neither of which can be taken from him and reserved to any other authority nor it can be in anyway conditioned, without his own consent, by a body of Bishops (Patriarchs, Cardinals, Synod of Bishops) including the same Ecumenical Council. On the contrary the supra-episcopal power in the Eastern Catholic Churches, is established or recognized by the supreme authority of the Church as its own *participatio* and, therefore, by the *norma iuris* promulgated by the same authority, divided among various institutions, and, in more important matters pertaining to executive power conditioned by a «consent» of a body of Bishops.

Thus the legislative and judicial power, that patriarchal Churches enjoy nowadays (the above mentioned penal power over the Bishops is excepted), is totally entrusted to the Synod of Bishops.⁵⁸ The Patriarchs, on their part, enjoy whatever executive supra-episcopal power exists in their Churches according to the *norma iuris* approved by the supreme authority of the Church, which, in more important matters conditions this power by a *consensus* of the Synod of Bishops or of the Permanent Synod or by the necessity to consult this last Synod before enacting some administrative acts.⁵⁹

Very extensive⁶⁰ is the power of the Patriarchs and the Synods of Bishops in the patriarchal Churches in accordance with the tradition of first millennium. They share to a great extent the supreme authority of the Church. The *normae iuris* concerning this authority, stretch throughout the new Oriental Code, characterize it as such while the canons concerning directly the supreme authority of the Church, the *Primatus*, or the rights and duties of the *Episcopatus*, are substantially equal in the whole Catholic Church.

⁵⁸ CCEO cann. 110 §§ 1-2, 1.062.

⁵⁹ Such cases are indicated in my *Index Analyticus Codicis Canonum Ecclesiarum Orientalium* under the lemmas: *Synodus Episcoporum Ecclesiae patriarchalis* and *Synodus permanens*.

⁶⁰ The former Code, *Cleri sanctitati*, can. 216 § 1 spoke about the *amplissima potestas* of the Patriarchs.

Discussions

Questions to and comments on Fr. Žužek's paper

The chairman, *Amba Bishoy*, thanks Prof. Žužek for his detailed paper which - with its many references and quotations - will encourage further study.

Fr. George: a) What is the basis of the "ius divinum"? What are the Roman Catholic criteria? b) What is the core, the essence of the supreme authority of the Church?

Fr. Žužek: a) The basis of ius dvinum is Jesus Christ. Whatever is demonstrated and instituted by Jesus Christ himself as permanent and essential to the Church is ius divinum. In the other cases it is ius ecclesiasticum or canonicum. Fr. Žužek agrees with Fr. George that all supra-episcopal power is of ecclesiastical institution. So if there is any supra-episcopal power that should be called supreme authority it must be proved that it is of ius divinum. In the Roman Catholic teaching the primatus exists of ius divinum as instituted by our Lord in Mt 16 and John 23.

b) As regards the supreme authority of the Church, one must look at Title III of the eastern code and canons 240 and others of the Latin code. The supreme authority of the Church resides in two bodies: the Pope and the College of Bishops, in which the Pope must always be present.

Mar Gregorius appreciates the high level of the paper. Does it also refer to Oriental Orthodox patriarchs?

Fr. Žužek thinks so but emphasizes the necessity to differentiate. He refers to the example of Nicea, canon 6, which has already been appealed to several times in the seminar by both Oriental and Catholic members. This canon was enacted by supreme authority. It is by virtue of supreme authority that the patriarch of Alexandria has his rights.

Mar Gregorius: Do you think that the ius divinum only refers to the Pope of Rome?

Fr. Žužek: And to the College of Bishops.

Mar Gregorius makes clear that his question is whether his primatial power only refers to the Roman Catholic Church.

For *Fr. Žužek* it refers to the universal Church. There are to consider two chief issues. a) One has to go back to Mt 16 which shows that there is no primatial power iuris divini except this in the universal Church.

b) The supra-episcopal power - exercised by Orthodox Churches - is already recognized to some extent. Vatican II ("Unitatis redintegratio", No. 16) states the right for the Oriental Orthodox Churches to govern themselves according to their traditions. But if the traditions, the particular laws of single Churches go against the ancient canons which were established by the supreme authority this is not accepted. These ancient canons include the following canons (which are not accepted by the Oriental Orthodox Churches): a) the first canon of Chalcedon which enumerates canons that are valid for

all Churches, b) the second canon of Trullo which constitutes a code, this code being confirmed by c) the first canon of Nicea II.

Prof. Legrand asks about the status and authority of the statement: the Petrine See "legitimas varietates tuetur" (= guards the lawful variety), which *Žužek* quoted from *Lumen Gentium* No.13. What is its authority if the Pope interferes in oriental matters? This means that sometimes the variety is actually not safeguarded.

Fr. Žužek: In the context of Vatican II the "legitimae varietates" are the traditions which are not Latin. If the Pope interferes with oriental matters then because this variety is considered illegitimate.

Prof. Legrand has his doubts about the fact that one Church in the communion of Churches should be entrusted with safeguarding a lawful variety among them. Furthermore *Legrand* states that the Codex for the Oriental Catholic Churches receives a very modern, limited, western concept of collegiality and makes it a universal one. It is therefore not preserving the variety of the Oriental Churches.

Fr. Žužek hints at the fact that the codex was elaborated together with Oriental members, with view to both eastern and western traditions. It was considered completely corresponding to the eastern traditions as well. He asks *Prof. Legrand* to show actual points where the west did not safeguard the variety of the east. The only possible point would be the theory of pentarchia, which was discussed and finally dismissed. For *Žužek* there is no trace of such a college in the whole canonic legislation of the first millennium.

Prof. Legrand asks again whether the Oriental brethren really agree with this western concept of collegiality: namely a body of bishops (who are all equal) and a supreme Pontiff as their head, the college not being able to do anything without the head; but the head being able to decide something without the body of bishops who then have to obey? He cannot imagine that the Orientals do recognize their roots in this western concept of collegiality, which - he maintains - is not the only solution and which cannot be imposed on the eastern Churches.

Fr. Žužek considers it gratuitous to call this concept western for it is both eastern and western. In contrast to *Prof. Legrand* he states that the primacy and the college of bishops already existed - although not so explicitly formulated - in the first millennium, from *Clemens Romanus* onwards.

Žužek again emphasizes the foundation of the Petrine Office in the gospel. It will be difficult for the Oriental Orthodox Churches to accept the Petrine Office in the form mentioned above as long as they maintain that supreme authority exists only in an ecumenical council, and that any supra-episcopal power stops at the patriarchal level. Certainly, the head of the Church is Christ; the Bishop of Rome is his vicar (*Žužek* admits that about this title there was some discussion). He is the head of the college of bishops and the pastor of the universal Church, as pointed out in the codex for the Oriental Catholic Churches. Furthermore, this part of the codex includes many references to sources of the first millennium, which have to be studied carefully.

Archbishop Krikorian comments on *Fr. Žužek's* theory that there is no intermediate stage between the patriarch and the bishop. For *Prof. Krikorian* this remains only a theory because this is not in the tradition and in the canons. Between the patriarch and the bishop there is the archbishop or metropolitan. Furthermore he remarks that *Fr. Žužek's* paper brings the classical, traditional position of the Roman Catholic Church and does not bring any green light for further discussion and dialogue.

Fr. Žužek claims that he has never said anything about intermediate instances between patriarch and bishop, just about supra-episcopal power in general. He maintains to bring the Roman Catholic position which is the *primatus episcopatus*.

Archbishop Krikorian maintains that this starts only very vaguely after Chalcedon. *Žužek's* theories do not confirm with the tradition of the early Church but refer to a later time (after Chalcedon, Trullo etc.). Such reaffirmations of the traditional Roman Catholic theory do not enhance the discussion. But even his holiness the Pope, John Paul II, invited for discussion.

Fr. George appreciates the high level of the paper but shares the concerns of *Prof. Legrand* and *Archbishop Krikorian*. For him the Oriental Catholic canon law does not really foster the dialogue between the Roman Catholic Church and Oriental Orthodox Churches. One has to consider the fact that individual parts of Oriental Churches were made to accept the primacy of Rome, which is also a constituent element of the new codes. Shall this be expanded? This is not a common strategy for dialogue.

Fr. Žužek states that the Catholics - according to "Ut Unum Sint" - try to reflect about a mode of exercise of primacy that could be accepted by the Orthodox. He would like to invite the Orthodox to reflect on the sources of supra-episcopal power in their Churches. For instance, where does the power of their synods come from?

Prof. Hryniewicz praises *Fr. Žužek's* scholarly work but is dissatisfied with the approach. He finds it regrettable that the suggestion that one should go beyond Vatican II was finally dismissed by the preparatory committee. By quoting *Yves Congar*, *Prof. Hryniewicz* tries to demonstrate that the title "vicarius Christi" is contradictory to the spirit of Vatican II. This title, which was introduced by *Innozenz III*, indicates a clear victory of the juridical conception over a sacramental conception of the Petrine office. *Prof. Hryniewicz* emphasizes the importance of taking into account the eucharistic ecclesiology in order to foster the ecumenical process. Furthermore, he hints at new categories, which the Pope introduced in his encyclical "Ut Unum Sint" (that they may be one) such as the "ministry of praise" or the "ministry of mercy". These categories should bring new dimensions to the practice of authority and jurisdiction.

Prof. Harnoncourt: *Fr. Žužek's* concept of only two levels of authority is contradictory to the history and theology of liturgy. In liturgy the authority of supra-episcopal power (but not primatial power over all the Church) is the first mentioned. There has never been a liturgical power to the Petrine office for the Church Catholic. The successor of St. Peter has jurisdictional power in the western Church as the patriarch of the west. The Vatican has never been the office of a Petrine office for the Church Catholic.

Fr. Žužek states that the Pope gives a clear answer in the preface to "Pastor Bonus", which says that all the organs of the curia are organs of the supreme authority in the Church.

Prof. Harnoncourt maintains that this is contradictory to history. "Pastor Bonus" is only one attempt to explain the Petrine office. We should not forget the Pope's invitation to discuss these matters in the Church Catholic and not only in the western Church alone. Furthermore, already Paul VI expressed very clearly that the so-called "ecumenical" councils of the second millennium were only general synods of the western Church.

With reference to Garuti *Prof. Žužek* emphasizes that the title "Patriarch of the West" has a completely different meaning than the title "Patriarch" of Oriental patriarchs, as he also maintains in his paper.

Prof. Legrand has his doubts about the reliability of such sources as Garuti because Garuti's work is grounded on a discussion of the 18th century and he is not a specialist of the first millennium.

Prof. Hofrichter emphasizes that *Fr. Žužek's* paper is necessary for a vivid discussion. From a historical point-of-view he cannot agree with *Fr. Žužek's* statement that it is not possible that bishops renounce their power in favour of supra-episcopal power. For instance, the first synods in North Africa were synods of bishops without legitimacy from above. North Africa is an example of a self-standing authority of bishops within the Latin world. They did not accept the Roman primate in the first millennium, neither did they allow their clergy to appeal to overseas. The bishop of Carthage called himself pope, his primacy not being derived from above but from the organization of the Church.

Fr. Žužek agrees with *Prof. Hofrichter* that in North Africa bishops renounced their rights in favour of supra-episcopal power. This was the same for Alexandria. But the important thing is that in the end this was confirmed by an ecumenical council. The renunciation of bishops' rights even goes on today if one looks at the Syrian constitution which lays down that the metropolitan has to resign at the age of 75. Anyway, *Žužek* emphasizes, it is impossible to go on in the Church without supreme authority.

Prof. Hofrichter adds that the main question is where it comes from - from and institution above or from the bishops themselves.

Fr. Žužek: The Roman Catholic doctrine says that primatus and episcopatus come from Christ.

Prof. Harnoncourt corrects that the episcopatus comes from apostolic tradition. In fact, *ius divinum* also includes the apostolic tradition.

Prof. Hofrichter emphasizes that the idea of a Roman primate was always opposed by the east in the first millennium. It was a claim which in itself has a history. This claim came up with Stephan I but had never been made before.

Fr. Žužek repeats that one cannot be so sure that the primatus did not exist in the first millennium; from the Roman point-of-view it existed. In analogy to a dogma he states that if this claim is true it has to be true always.

Prof. Hofrichter emphasizes that the results of NT scholars show how weak the fundamentals of the primate theory in the New Testament are and that one should be modest with these claims.

Fr. Bouwen thanks *Fr. Žužek* for the faithful presentation of the codex for the Catholic Oriental Churches. But what is the status of such a text? a) Is it dogmatic teaching? Are there more interpretations possible? b) Is it positive law? If it is positive law that was published by the supreme authority could it be changed also by the supreme authority? Or is it so closely linked to dogmatic teaching that it cannot be changed?

Fr. Bouwen agrees with *Prof. Legrand* in stressing the importance of a theology of canon law and of law as such.

As regards the title of *Fr. Žužek's* paper ("The Authority and Jurisdiction in the Oriental Catholic Tradition"): What does the term tradition imply here? Does it imply canonic tradition? When does the Oriental Catholic tradition start? At the time of the apostles or in the 16/17th century? Is it different from the Oriental Orthodox traditions?

Fr. Žužek states that there are many texts in the codex, some being dogmatic and many being clearly not dogmatic. The text as a whole has canonical status; the Pope declared that it had the same validity as the Latin code. It can be changed by the same supreme authority that promulgated it, above all if the unity of the Church necessitates this. As regards the term "Oriental Catholic Tradition", *Fr. Žužek* was faced with the same questions raised by *Fr. Bouwen*. The title had been given to him by the conference.

Prof. Hofrichter: How can we achieve ecumenical progress? *Fr. Žužek's* conviction seems to be that there are only two levels of authority, the supreme power and the episcopal power. Can *Fr. Žužek* imagine that this supreme power is divided?

There are some enlightening facts in history. St. Cyprian of North Africa considered himself the head of his Church. When the East-Syrians became self-standing, the synod at Seleucia-Ctesiphon called its first catholicos Mar Dadisho "Peter for us" (in 424). So at the beginning of autocephaly the heads of these Churches considered themselves as followers of Peter who have the Petrine power. Could this also be a model for the future?

Fr. Žužek refers to a letter of Nicolas I to the patriarch of Antioch. Therein he specifies that there are three Petrine sees, Antioch, Alexandria and Rome, but there is only one real head which he is himself. But there is no doubt that they had the consciousness of being successors of St. Peter.

Prof. Hofrichter maintains that apart from these three sees Cyprian and Mar Dadisho were convinced of having the Petrine power in their Church, without restriction. Could our Church agree that there are more representatives of supreme power?

Fr. Žužek: In the universal Church there is only one supreme power, the pope and the college of bishops.

Prof. Hofrichter: This is for the present, but for the future?

Fr. Žužek: The common doctrine of the Roman Catholic Church is *primatus episcopatus iuris divini*.

Prof. Hofrichter: Would it be a contradiction to have more realizations of the supreme power?

Fr. Žužek thinks so.

Mar Gregorius is especially interested in Fr. Žužek's statement about the request of two (Oriental?) members of the commission to restructure the chapter on the supreme authority of the Church.

Fr. Žužek sums up what he has already presented in his paper on this point.

Prof. Primetshofer has the impression that for Fr. Žužek the *ius divinum* is unchangeable for all times, which has to be questioned. Actually the different codes have changed the *ius divinum*, e.g. from the code of 1917 to the code of 1983. Therefore it seems that the Church has the right to define what primacy and episcopacy mean today in accord with the actual situation.

Fr. Žužek: As he exemplified in his paper Schillebeeckx, Rahner and Dulles tried to adapt the *ius divinum* to a wider notion whereas the traditional notion is that it is unchangeable for all times.

Prof. Harnoncourt: One has to consider the history of dogmas, or even the formulas of sacraments were changed although considered unchangeable because of *ius divinum*.

Prof. Primetshofer gives an example where the code of 1983 is different from the code of 1917: the canon on mixed marriages. He emphasizes that he does not touch the dogma of primacy. What he was referring to was the exercise of papal primacy.

Fr. Žužek explains that in "Ut Unum Sint" the Pope clearly invites to reconsider the exercise of primatus but not primatus itself. The Pope speaks about the exercise of primatus whereas Žužek refers to the primatus itself. But how apply "Ut Unum Sint" if the existence of the primatus or its biblical foundation are questioned?

Actually the Oriental Orthodox Churches do exercise primatial power, e.g. in limiting bishops's rights or enacting laws over them. Let's take the example of the Coptic Church: Where does the legislative power of the synod come from? In fact, the Articles of the Coptic Constitution concerning the definition of the power of the synod (the definition of its legislative and judging authority and the regulation for the election of bishops and the patriarch) are very similar to canon 110 of the Oriental code. The constitution actually describes the supra-episcopal power of the synod.

Archbishop Krikorian comments on Fr. Žužek's invitation to the Oriental Orthodox Churches to establish a theory of supra-episcopal power. Prof. Krikorian maintains that for the Oriental Orthodox Churches the sources of this authority are clear. It comes from

the teaching and the practice of the apostles. At the council of Jerusalem, for example, the conciliar idea was born. The apostles gave their authority to the elders or bishops, which constitutes the apostolic tradition.

For the Oriental Orthodox Churches the supreme power is realized by collegiality. In the Armenian Church the catholicos does not have the supreme power alone. The apostolic tradition is the highest instance that guides the Church. In this authority the catholicos, the bishops and the National Ecclesiastic Assembly participate. On a larger scale, that is in the universal Church, the supreme power will only be an ecumenical council; neither the patriarch of Constantinople nor of Alexandria nor the Pope of Rome will have the supreme power.

Archbishop Krikorian does not at all agree with Fr. Žužek's statement that "the ministry of catholicity must be canonically assigned to the heads of the various Churches and before all to the Patriarchs, since among the successors of the Apostles it is the Patriarchs rather than the diocesan Bishops that are or can be the symbols and foundation for the catholicity of the Church". One has to take into account that at the beginning there were a few privileged Sees like Rome, Constantinople, Alexandria, Antioch. The situation described in this statement is to be found after the 5th or even after the 10th century. Moreover, Prof. Krikorian does not agree with the statement that "after the apostolic age the supreme authority of the Church was .. reserved to the Roman Pontiff ... and with him as head, to the College of Bishops united with him". For Krikorian the apostolic age comprises the first century. But the situation described by Fr. Žužek does not apply to the time after the first century but after the first millenium. It is historically wrong that the supreme power is reserved to the Roman Pontiff.

Apart from that, Prof. Krikorian is very pleased with the distinction (made by Fr. Žužek and Prof. Primetshofer) between the theory and practice of primacy, which opens new ways for the dialogue. Is it possible that the exercise of the primacy of the Roman Catholic Church a) remains within the limits of the Roman Catholic Church and b) that this practice in relation to other Churches means collegiality and acceptance of their tradition and practice, and that they all together exercise their primacy in an ecumenical council? Or is this utopia?

Fr. Žužek makes clear that the theory about the "ministry of catholicity" is a quotation which he himself criticizes (although for other reasons, see his paper). The statement that "after the apostolic age the supreme authority of the Church was ... reserved to the roman Pontiff ... " is common doctrine of the Roman Catholic Church. Fr. Žužek emphasizes that "Ut Unum Sint" is a very serious invitation of the Pope. At the moment a model like the Pentarchia does not fit to Vatican I and II but it is not excluded in the next millenium. However, the pope would have to agree; the Pope has a synod of bishops who help him, but they cannot limit his power. Maybe even Vatican III is necessary. Once again Žužek emphasizes that the exercise of primacy may be done through other means, maybe through a college of patriarchs. Finally he emphasizes that he is a strong defender of the variety of Churches.

Prof. Hryniewicz observes in Fr. Žužek's paper a certain logic against anything which sounds like renunciation. This stands in clear contrast to the *kenosis* of Christ (Phil 2, 6ff). It is essential for the theologians to work out again and again the kenotic abilities of our Churches, especially of the Roman Catholic Church. This ability of renunciation

shall also be applied to all claims, even that of dogmas. It is necessary for the Latin Church to re-interpret dogmas, to reduce them to their truest dimensions. It shall be no utopia to have concrete collegiality between the patriarchates. Furthermore, why not create patriarchates in Latin America, in North America, in Africa etc. so that the college of patriarchs would be more balanced? The Pope admits himself that his office is the main hindrance for unity. Is not also he obliged to reflect on the principle of kenosis in order to be a true servant of unity?

Fr. George: In his paper Fr. Žužek tries to prove the compatibility of the Oriental tradition with the Latin tradition, which has to be questioned. Since in the discussion Fr. Žužek quoted from the Coptic and the Syrian Orthodox constitutions, Fr. George makes clear that these constitutions do not exhaust the theological perception of the Churches. For example, according to theology a Syrian metropolitan does never retire even after his death, but the constitution lays down an obligatory retirement age at 75. So one has to distinguish between the theology on the one hand and the canonic regulations on the other hand.

As regards the order of primatus and episcopatus, the Oriental Orthodox Churches do not refuse primacy itself. But for them primacy has no self-standing, autonomous status, it is an integral part of the college of bishops which expresses the *communio* of the local Churches.

Amba Bishoy wants to clarify some points as Fr. Žužek referred to the Coptic constitution in the discussion. a) The Coptic constitution is for a local Church, not for the universal Church. There are no claims on other Churches. b) The constitution clearly says that the synod is above the patriarch, not vice versa. The patriarch is only the presiding bishop.

As regards the supreme power of the Church: If the ecumenical synod is not the supreme power of the universal Church, what is the role of the Holy Spirit? Jesus Christ is the head of the universal, Catholic Church and the Holy Spirit its leader (cf. the first apostolic council in Jerusalem).

Sixth working session, Monday afternoon:

Chairman: *Father Frans Bouwen*

Richard Potz

THE EXERCISE OF AUTHORITY AND JURISDICTION IN THE LATIN TRADITION

1. A Canonical historical view

When William of Aquitaine in 910 founded the reform Abbey of Cluny - so famous in later days - he subdued it to the protection of the Apostles Peter and Paul. From the point of view of the later Catholic doctrine of primacy this dedication could anachronistically be regarded as a submission at large to the jurisdiction of the Pope.

In the 10th century however „the Pope who knew little or nothing about Cluny and so in the case of necessity was not able to do anything for the monastery, was far away. The apostles Peter and Paul in those times were much more real and present, plenty of stories existing about Saints who violently took revenge for offences against their properties.“

However high the Pope might rank spiritually, so little could be said of any efficiency in jurisdiction or ecclesiastical policy. „Nothing could be said - regardless of single episodes - of a systematic Church-government which intervened in distant countries, before the middle of the 11th century“.

With other words: whoever in those times trusted his property to the Apostles Peter and Paul was convinced of the effectiveness of this measure in a way hardly comprehensible to us nowadays. Faithful intentions and practical considerations caused the founder of Cluny to trust the protection of the Apostles, this dedication however cannot be interpreted - neither theoretically nor practically - as indicating any recognition of a comprehensive papal authority. Only through historical projection by later catholic apologetes this became an indication for universal papal jurisdiction.

The difficulties to understand the faith, the thinking and the feeling of historical societies is understandably the greater, the more they are distant from present times. Therefore today in the historical disciplines a far reaching consensus is existing, that only a cautious approximation to the thinking and feeling of previous ages is possible.

An additional difficulty is arising when institutions and terminology are discussed, which have been developing over a period of time and are still of immediate interest in our times.

In presenting long term historical processes there is a remarkable ambition to put historical reference as far back into the past as possible. The more this beginning lies in the dark the more zealous each small indication is pursued up to the origin.

It is obvious that this procedure has very often to serve only for subsequent legitimation and thus gets an ideological character.

In the presentation of the history of canon law one is confronted with those problems mentioned, in a still higher degree than in the other historical disciplines. This is

probably due to the fact that there exists a special tie of the Church to its origins and that tradition is essential for the maintaining of the identity of the Church in the course of times. That is why the impulse is specially strong to present actual structures as rooted in the tradition and to prove them as to come from an as early time as possible.

The constant self reflection on the own aims and the actual interest pursued by it, has become academically unquestioned in the meantime. In this sense the discipline of history of canon law has to render account in order not to become an uncritically used instrument for the justification of the just actual law.

From there results the task for Church history and for the history of canon law to study carefully and unprejudiced under which conditions something has become part of the tradition.

Therefore it is one of the most important tasks of the history of canon law to screen in the historical critical work the present structures and to lay open the historical contingency. This is true in a special measure for the development and the juridical shaping of ecclesiastical ministries and there before all for the papal ministry of unity.

In view of the referred theoretical difficulties and a situation of sources which are not too abounding, it is clear that for the time before the Gregorian reform the question of the so-called „Ratzinger's Formula“ of what was formulated and lived as doctrine of primacy will have a sobering effect for many.

The uncritical legitimization of actual legal structures of a Church cannot belong to the aims of epistemology in historical canon law research. Church history and the history of canon law have to avoid consequently confessional narrowing for the sake of scientific integrity. If this is successful, then automatically an ecumenical perspective will result, which actually is one of the most important concerns from a theological point of view. But this actual interest in the ecumenical perspective must not seduce us to project ecumenically desired models of our times into the first millenary. This is especially true for the scholarly working up of the so-called „Ratzinger's Formula“. However important and fundamental this formula has become for ecumenical dialogue, it should not lead us to an anachronistic view of papal primacy nor of the model of pentarchy.

2. The „Constitutional Structures“ of the early Church

The apologetic catholic interpretation of some sources of early Christianity shows us some characteristic examples of misunderstandings which are marked by an ideological interest. The first proof that already at the end of the first century the consciousness of the special status of the bishop of Rome was existing, for many catholic authors was traditionally the First Letter of Clement.

Today it can be taken as an asserted opinion that the author of the letter had in mind the maintenance of peace in the community, according to the example of the political Pax Romana. In this letter any indication on a Petrine Primat is lacking. The pre-eminence of the Roman Church is not at all in the view of the author. When he speaks in 5,4.5 of the Princes of the Apostles Peter and Paul so only to present them as models of Christian behavior. Neither the First Letter of Clement itself nor another source in temporal connection with it do see in its author a bishop of Rome in the sense of the episcopal constitution which became successful in the second century.

Also in the Ignatian Letter to the Romans which is full of praise for the community of the imperial capital, there is no indication to an outstanding status of Rome because

of the works of Peter and Paul. The high esteem for the Roman Church has no feedback with an apostolic legitimization of a special status of this Roman Church.

In the third century the whole Church was constituted as a communion of episcopal Churches among which, in the West next to Rome also Carthago, and in the East also Alexandria and Antioch had an outstanding status. Anyhow an ecclesiastical structure of constitution in the sense of the second millenary is quite out of question.

3. The Bishop of Rome as Patriarch of the West?

The political-cultural dichotomy of the Roman Empire reached back until the time of the beginning of the principate. Subsequently the slow Romanisation of the West and the Hellenisation of the East can be stated. Concerning a Christian West-East dichotomy, tradition on the one hand is too scarce. On the other hand the Romanisation of the Church starts only with some delay, and there it is Carthago, not Rome which is the first latin-christian centre.

The Council of Nicea fixes the old customs for the rights of the single main Churches. The formulations make understand that these customs were similar in the case of Alexandria and Roma, but different in Antioch and in other not explicitly named Churches of the East.

In Canon 6 nothing indicates a universal extra status of the bishop of Rome. Moreover there is unanimity in literature today, that the territory mentioned in this canon, is not the whole West, but comprised only the territory of the civil diocese Italia Suburbicaria.

This was still recognizable in the 4th century, when the bishop's see of Milan was reevaluated through the imperial Residence and the personality of Ambrosius.

At the turn to the 5th century there arose an element of tension, due to the claims of the new centre of Constantinople which also asked for territorial demarcations. Those tensions appeared first in the necessity to define the structure of the supra-metropolitan order which was in formation in Asia Minor. The last consequence of this development was, that at the end of the fifth century the idea of a global partition of the Oikumene into patriarchal Churches came up.

Rivalries caused by that and the dominance of Constantinople in the Imperial Church intensified the existing differences between the ancient main Churches. So the Councils of Ephesus and Chalcedon are not only to be interpreted in a theological way but perhaps in first line on the level of Church policy and less of theology: They document the victory of the Church of the new imperial capital over the elder patriarchal Churches in Antioch and Alexandria - achieved with the help of the Church of the old capital.

In the 6th century Justinian's conception of a uniform imperial Church was leading to the final exclusion of the oriental orthodox Churches. Thus the just developing patriarchal constitution experienced a decisive handicap. The relative weakness of the imperial Church communities of Alexandria and Antioch brought them into ever deeper dependence from emperor and patriarch in Constantinople. That is how the special development of the Ecumenical Patriarchate as imperial Patriarchate of the Byzantine Empire was favored, in which Emperor and Patriarch are standing on the head of the Church.

About that we ought not to be misled by the theory of the patriarchal Pentarchy which turned up in the 8th century. So the conferment of the title of a „Judge of the Universe“ to the Patriarch of Alexandria was also an expression of imperial power in the Church and a historical accident, but in no way a genuine ecclesiastical element of constitution. With some imagination one could however picture, what from such a conferment of this title to the bishop of Rome would have been deduced by Catholic apologetics.

The fact that the ancient Rome always drifted more to the periphery of the Roman Empire and after the 5th century got into a new political constellation, favored a separate western development and induced more and more evidently the alienation between emperor and patriarch in Constantinople and the pope.

This appeared in the fact that times of harmonical communion were rather an exception whereas schismatical or tension-loaded phases were the rule.

4. Development of the Conception of the „Plenitudo Potestatis“ in the High Middle Ages

Only starting from the middle of the 11th century the general conditions of Church policy and canon law began to change distinctly. The pope had now become a real power whose intervention became perceptible. Every-day experience now showed more and more frequently, the practical importance of the papal protection to those involved.

„Soon after the middle of the eleventh century, as a consequence of the new burst out of energy, arising from the Reform movement and inspiring the study of canon law, the three classical statements on *plenitudo potestatis* were rediscovered.“

But first of all, what was the meaning of this term transferred from the Roman Law?

Significantly Pope Gregor VII personally never used this term, forcibly quite familiar to him, for the papal legislative authority.

What he claimed for the Ecclesia Romana was the creation of new law, but not a universal right to legislation. Also the formulation of the so-called Dictatus of Avranches: „*Omni temore licet ei nova decreta constituere et vetera temperare*“, presumed a principal commitment to existing law. This perfectly corresponds to the fact that Gregor VII never got tired to accentuate the principal commitment to the holy canons. According to the eminent pre-gratianian canonist Cardinal Deusdedet, the popes were entitled to dispense from the observance of the holy canones and to temper their strictness only under special circumstances and for a restricted period of time.

Only in the course of the following century the formula of the *plenitudo potestatis* was developed to the most important instrument of justification of papal claims of jurisdiction.

Gratian remained within the framework of the old theory when mentioning the *plenitudo potestatis* never in context with legislation, but only with juridical power. On the other hand Gratianus provided the popes with a juristic justification for their legislative activities.

He did not only set free the *ius humanum* by a clear definition of its relation to the *ius divinum*, but he also, in his system of law-sources, listed up the papal decrees after the canons of the Ecumenical Synodes and declared them to be equivalent to these. In this way the process of promotion of the papal law as a stratum of new law into the

stratum of the old law of the Holy Canons arrived at its decisive phase. As a justification Gratianus invoked the papal right of convocation of Councils and of authorization of their canons. By that a changement of paradigmata had taken place and so the formula *plenitudo potestatis* appeared in the hands of popes and canonists of the 13th century „in a bewildering variety of contexts“.

This variety however was in the beginning restricted to two principal claims: firstly the pope claimed to be *iudex ordinarius omnium* and secondly bearer of extraordinary full powers, like in granting dispenses and filling up vacant sees. So the *plenitudo potestatis* comprised - anachronistically spoken - the supreme juridical and administrative power and besides of that a right to privilegize which is difficult to range in that scheme. The idea of a legislative power connected with the *plenitudo potestatis* began however only slowly to prevail.

The theory of the *plenitudo potestatis* for the time being, served to put through an unlimited right of privilegation and dispensation. In a long lasting process of intensifying condensation of legislation the right of privilegation represents the elder type of objective-legal structure, compared to law. Privileges were practically the most important juridical figure of supporting new monasteries, new orders, new principles of Church life and of economy.

The increased search for papal juridical protection thus led to a distinct increase of appellations to Rome. The appellation to the Roman See became a mean, by which the curia flexibly adapted to the wishes of a broad class of clients and in consequence was able further on to intervene powerfully in the Occident.

Only the medieval juridical organization of the Church led to a change from punctual interventions of the pope as the supreme bearer of authority in important and extraordinary causes, to a systematically organized regiment. This is based first of all on the continuation of the late-antic-Roman imperial law: terms like *auctoritas*, *potestas*, *iurisdictio*, *officium* and even *ordo* are termini technici of the late-Roman constitutional law. Starting from the middle of the 11th century, we have also the systematic reception of essential elements of the western medieval royal administration, from the way of practicing authority over the organization of the curia, up to details in the handling of documents. It was in this century that the pope became a medieval western ruler. The decisive factor of the characteristic western form of reigning is the theoretic development of a universal legislative power. It represents a wholly new theoretic conception of legislation which took to push through from the 13th to the 17th century.

From the point of view of law-history the development of the papal primatial power is most essentially connected with the formation of the legislative power of the pope. Contrary to a conception often presented in Church-historical literature one should speak only very discretely of a legislative absolutism of the pope already in the 13th century. On the other hand it is not suitable to apply to the papal legislation of the 13th century the strict standards which were taken from the late modern age legislation, concerning technique of codification or forms of promulgation. In such a way historical developing processes become tendentially veiled.

5. The Expansion of Papal Jurisdiction in the Modern Times

It was not before the high middle-ages that the one Latin Europe was formed, when it became possible to concentrate those various cultures and countries by means of the

clamp of a specific thinking, which was formed not insignificantly by the rational learned canon law.

In the European history of law there are only two periods, which are parted from another by the revolution of the 12th century initiated by the popes.

The universal papal jurisdiction, which expressed itself before all in the comprehensive legislation, remained one of the specific phenomena of Western Europe since that turning point of the 12th century. Its further development was determined by the overcoming of the conciliaristic crisis of the late middle-ages, by the challenge by reformation and modern absolutism. Starting with the Council of Trient the practice of the papal jurisdiction became more and more bureaucratic. With the construction of an absolutistic system of offices by the end of the 16th century, the perfection of the juridical institutions of the Church continued. The institutional consolidation of the Church took place in analogy to the modern state, its law therefore was formed as „*Jus Publicum Ecclesiasticum*“ according to the modern public law. Thus a late modern legal term, taken from the secular law, was adopted in the ecclesial law system and in the „*societas perfecta*-theory“ was connected with the hierarchical dimension of the Church. In other words: The way of practicing the ministry of unity in the Catholic Church is deeply rooted in the western tradition.

Describing the *ministerium unitatis* of the bishop of Rome, it is therefore important to consider that much of what in the 19th and 20th centuries is regarded as indispensable for the practice of the papal primacy, is only an adaptation to western forms of government.

Bruno Primetshofer

DECENTRALISATION WOULD BE APPROPRIATE

1. Canon law reflections on the appointment of bishops

The circumstances of the appointment of bishops have been for a long time key issues in the relation between the local Churches and the Apostolic See. Today almost all bishops are freely nominated by the pope; This was not the rule during most of the church history. A year ago a Roman symposium treated this subject. The Vienna canon law professor Bruno Primetshofer was the only German speaking participant in this symposium and is describing the state of the discussion.

Two models for the appointment of bishops are proposed in C 377 §I of the Codex Iuris Canonici (1983) which is valid for the Latin Church: *The free nomination by the pope* and the confirmation of a canonically elected candidate by a certain body by the pope.

Considering the linguistic ductus of this canon it seems that both forms of appointment of bishops have almost the same importance. One could have the impression that both models would stand side by side being equally entitled. Reality however consists in the fact that the free nomination by the pope is the prevailing normal case while in contrast of (to) that the election with following confirmation is a rare exception.

Even with this exception (let us presume this beforehand) there is an important distinction: a *completely free right of electing* from the side of the Cathedral chapter that means without restriction to a number of certain candidates exists only in two cases. *Restricted electoral rights* from the side of the Cathedral chapter exists however several times on the basis of concordats where the Cathedral chapter is electing from a list of three persons proposed by the pope (the so called ternus proposal) a candidate who afterwards has to be confirmed.

There have been in recent times at least two marked examples.

For the fact that this ternus proposal can be formulated by those who have the right to propose in a way that the elective body of the Cathedral chapter can find it extremely difficult i.e. where from the beginning a preference for a certain candidate is seen, who however is not convenient to the Cathedral chapter :The election of the present Archbishop of Cologne and that of the Archbishop of Salzburg.

2. "Cleansing of Territory" in favor of the free papal right of nomination

The regulation stated above of c. 377 §1 of the Codex of 1983 is materially almost identical with c. 329 §§ 2 and 3 of the Codex of 1917. However this codex was still confronted with plenty of *limitations of the free rights of nominations by the pope*. These limitations consisted partly in favor of ecclesiastical institutions (Cathedral chapters) partly also in favor of secular sovereigns in the form in the so-called rights of nomination.

So the Austrian emperor for instance possessed - finally based on the Concordat of 1855 - the right of nomination for quite a number of episcopal sees in the Austro-Hungarian Monarchy where, strange enough, not even the two unilateral notices of termination of the Concordat (1870 and 1874) from the side of Austria had any consequence of changement concerning that legal situation.

Notwithstanding that the Concordat according to the Austrian understanding was no longer existing, the rights of nomination which were in possession of the prince were still claimed further; anyhow the Roman Curia had not acknowledged the unilateral notice of the termination of the Concordat so that on this point there was further unanimity of conception between Vienna and Rome.

The political upheavals especially through the forming of new states on the territory of Europe after World War I were taken by the Roman Curia as an occasion to go on in the field of episcopal nominations with a "cleansing of the territory" in the sense that the free right of nomination by the pope was unequivocally underlined by putting the free right of nomination by the pope in the foreground and in order to abolish limitations at all or to bring it in the above mentioned form of a weakened electoral right in favor of some of the Cathedral chapters.

The Concordats concluded under the pontificate of Pius XI (1922-1939) were characterised by the tendency to push through by means of the particular (i.e. Concordat's) right the universal right of the Codex also on the sector of episcopal nominations. In the same line stands also the document of the Second Vatican Council "Christus Dominus" on the pastoral duties of the bishops, when it expresses at first the wish "that in future civil authorities should have no rights of privileges any more to elect or nominate or propose or name bishops". These authorities are at the same time kindly invited to volunta-

rily renounce of the mentioned rights and privileges which they actually enjoy on account of treaties or of custom after consultation with the Apostolic See (nb 20b). Similarly this declaration is repeated by c.377 § 5 of the Codex.

It is true and has been repeatedly stated that under the pretence to push back the influence of the State in reality *the respective rights of participation of the local churches are rejected*. Because the electoral right which is mentioned in the Council Decree as well as in the quoted canon never existed for civil authorities; such rights consisted exclusively in favor of ecclesiastical institutions (Cathedral chapters).

3. Different forms of the right of participation of the local Church

In spite of the invitation of the Council Decree to civil authorities to renounce of existing rights of nomination of bishops they are still existing and most interestingly especially in a state who on the other hand maintains a laicistic separation of Church and State, this is France. The French president of the Republic nominates the bishops of Strasbourg and Metz. Also the head of the State of Portugal possesses rights of nominations in respect to certain dioceses.

The appointment of bishops in the Latin Church results from *different sources of law*: On the one hand it is the stipulation of the codex, on the other "norms of the Council for the Public Matters of the Church" (1972) and finally in given cases the right of the Concordat. The right of the Concordat has the characteristic that it derogates the universal right of the codex in any case that is "the right of the Concordat breaks the right of the Codex".

In the above mentioned prevailing model of the free nominations of the bishops by the pope a rather somehow undefined right of participation from the side of the local Churches or from local Church bodies are not excluded. This happens prevalingly in the form of the so-called list procedure. There is a distinction between the *absolute* and the *relative* list procedure.

The first one, the absolute, consists in the fact that independently from an bishop's see actually vacant, the Holy See is presented from the side of the bishops of a metropolitan province or sometimes by a whole bishops' conference after a common and secret consultation a list of suitable candidates for the episcopal ministry. However, individual diocesan bishops are free to inform independently from this the Holy See with names of priests whom they consider as suitable for the episcopal ministry (c.377 §2). The relative list procedure is concerned with this concretely see to be occupied, for which names of suitable candidates are presented to the Holy See.

Especially in this point the right of the Concordat is intervening. According to those Concordats we can consider here, especially the Concordats of some German Länder (Bavaria 1924, Prussia 1929, Baden 1932) and the Austrian Concordat (1933) as well the individual diocesan bishops as also the respective Cathedral chapters present *lists of suitable candidates* to the Holy See. The point of distinction is however whether the Holy See is bound to this lists, that means whether he can nominate a bishop only out of the candidates presented there.

In the *Austrian Concordat* it is explicitly said, that the Holy See is not bound to the lists presented. According to the Prussian Concordat the Holy See will "in recognition of those lists" name three persons to the competent Cathedral Chapter from which it has to

elect the bishop. A similar regulation one finds also in the Badian Concordat which originally was only valid for the Archdiocese of Freiburg, through the Concordat of the Reich of 1933 was, however, of the Holy See extended to the dioceses of Mayence, Rottenburg and Meissen. The strongest commitment to stick to the proposed lists one finds in the Bavarian Concordat in which the Holy See committed himself not to nominate a bishop who is not in one of the presented lists.

4. Similar procedures as in the Catholic Oriental Patriarchal Churches

The reserve of the Holy See in relation to be bound to the presented list is obvious. This becomes clear also in relation with the Prussian Concordat in a significant detail. This Concordat contains - as it was mentioned - the formulation that the Holy See will make the nomination of bishops "in recognition of those lists" In the text officially announced in the *Acta Apostolicae Sedis* (in Italian and German language) there are added footnotes in Latin language according to which the Holy See is *not bound to the presented lists* in the establishment of the proposal for the Cathedral Chapter who have the right to vote but reserves the power to add "some" names.

This could come to the result that in the establishment of the terna proposals for the respective Cathedral Chapter in a given case no name mentioned in the list would appear at all. At these footnotes there is no indication whatsoever contained whether this change has been agreed upon with the treaty partner. It is interesting that in the collected editions of the Concordats (Mercati, Listl) only the Italian and German text of the Concordat is printed; the two Latin footnotes are not found there.

The situation of the episcopal nominations in *Switzerland* is characterised by some extraordinary particularities. In the dioceses of Basle and of St. Gall there is still on the bases of Concordat regulations of the 19th century a *free electoral right* of the concerned Cathedral Chapter to elect a bishop out of the clergy of the concerned dioceses. The elected one has to be confirmed by the Holy See. This free electoral right (that means not restricted to a Roman terna proposal) of the Cathedral Chapter of Basle and of St. Gall means the *most extensive limitation of the free papal right of nomination* in favor of Church institutions.

In this case it is a genuine form of a so called bound conferment of the ministry as the elected one already has a claim for this ministry. The confirmation cannot be refused to him, in case he possesses the qualities required by canon law.

So it is understandable that the Roman curia in past and present time was always thinking on a most restrictive handling of this right of the Cathedral Chapter. A neutral point in this context is the timing of the annunciation of the elective result on one side and the papal confirmation on the other.

Repeatedly the Holy See has insisted that the name of the elected one has to be kept secret as long until the Roman confirmation (confirmatio) has come through. In the diocese of St Gall an agreement has been made that before starting the election the Cathedral Chapter gives a list of candidates suitable for the episcopal ministry to the Holy See who can cancel not acceptable candidates to it. Under those who are considered as suitable by the Holy See the Chapter can freely elect.

This procedure is similar to the one fixed in the *Catholic Oriental Patriarchal Churches* where there is a *far higher degree of autonomy* in the nomination of bishops.

When there is elected a candidate from a list previously accepted by Rome, there is no further need for a confirmation but just for an announcement of the election to the Holy See.

In the last actual episcopal election in St. Gall in 1995 the elected one (*Ivo Furer*) was on the list previously accepted by Rome; however the Holy See insisted in a new confirmation of the elected. The last episcopal nomination in the diocese of Coire (1988) has found a permanent interest of the great public at least what concerns the legal procedure. On account of a Roman Decree (1948) the Cathedral Chapter of Coire possesses the right to elect in an existent sedisvacancy a bishop out of a papal ternus proposal. This right of the Cathedral Chapter was undermined in 1988 in nominating a bishop coadjutor (with the right of succession) when there was not yet a sedisvacancy and this was done without asking the Cathedral Chapter.

5. Claim for stronger participation of the faithful in the appointment of bishops

In the canonistic discussions this procedure was very subtly explained by a Swiss canonist that the electoral right of the Chapter works *only in case of sedisvacancy* and this exactly was what did not happen. In such an argument it is not seen that this state has been introduced by those who should have allowed the Cathedral Chapter the right to vote through the establishing of a ternus proposal.

A symposium held in April 1995 in the Roman Lateran university has critically discussed in several papers the present form of episcopal appointment actually reigning in the Latin Church. Starting from a fundamental right of all faithful a stronger participation of the faithful in the episcopal-appointment was advocated. The "allergy" of the Holy See in front of to such aspirations is not to be understood. Concerning the investigation on candidates and the so-called informative process taking place in Rome a demand for a greater measure (dimension) of transparency and information was raised. In this connection the *dominant position of the papal nuncio* was severely criticised as he sometimes makes decisions without sufficiently knowing the situation of the country.

Bishops have to offer their resignation to the pope in reaching the age limit of 75 years. Acceptance of this resignation by the pope -which sometimes is very substantially delayed without giving reasons - is sometimes interpreted as a sort of implicit giving school marks relating to the exercise of the ministry of the bishop.

An immediate acceptance of the resignation seems to indicate that Rome is interested in an early relieve of the bishop.

On the contrary a longer hesitation in accepting the resignation is interpreted as a positive evaluation of the ministry led so far.

Bishop *Reinhold Stecher* (Innsbruck) who is excellently profiled in (pastoral) theology and has sometimes stood up with unconventional utterings (statements) will reach the age of 75 in December of this year. He has expressed the view that his offer of resignation will probably be accepted at once.

Stecher has, as many other bishops before him, made a *general inquiry for suitable candidates for the episcopal ministry* among the clergy of his diocese. He has also made known his intention to present a candidates' list in Rome. No one can say if his wishes will be considered. In the recent past there have been at least two cases in Austria where

Rome has not only ignored wishes of the leaving bishops but has chosen candidates who have not been the wish of the leaving bishops.

Also Archbishop *Christoph Schönborn* (Vienna) has started a similar inquiry in relation to an auxiliary bishop to be appointed (Originally there were - in plural- some auxiliary bishops in discussion). However in this context there was also the critical question discussed whether Vienna besides the already existing auxiliary bishop *Helmut Krätzl* needs a second auxiliary bishop, even whether there is generally a need for the appointment of auxiliary bishops.

The power to administer the sacrament of confirmation has been decentralized to a great extent also to priests and for liturgical acts of consecration which are reserved to the bishop one acting (arch) bishop would be sufficient.

The principle originating from medieval canon law "nullus in vitis detur episcopus" what one might in a free manner translate that a bishop should be never forced upon the people was several times not taken into account in Austria in the last years.

Anyway there are also cases where the leaving of one bishop and the coming of a new one was completely without tension and greatly accepted by the population. Here one could speak about the passing from bishop *Stefan Laszlo* to bishop *Paul Iby* (Eisenstadt).

One of the principle for the remodeling of the canon law after the 2nd Vatican Council the necessity of *decentralizing* and acting according to *the principle of subsidiarity in favor of structures of the local Churches*. What concerns the appointment of bishops only little has been put into reality but especially this question is suited to become a sort of seismograph for a just ecclesiastical sense of identity. The Church has to show how far it is willing to apply principles which are recognized as necessary. Also in this point nothing less as its own credibility is at stake.

(translated by Alfred Stirnemann from the German version in Herder Verlag-Korrespondenz 7/1996 p. 348ff.)

Questions to and comments on the papers of Prof. Potz and Prof. Primetshofer

Cardinal König asks for the meaning of "ad limina of Peter and Paul".

Prof. Potz explains that it has no juridical meaning.

Prof. Hannoncourt adds that it is a kind of profession of apostolic faith.

Amba Bishoy asks for the translation of "plenitudo potestatis" which Prof. Potz translates with "fullness of power".

Prof. Primetshofer suggests replacing "juridical" with "judicial" power in order to make clear that the implication is "judgement"

Fr. George thanks Prof. Potz for his historical survey which brings further clarification to the discussion. Prof. Potz stated that "the development of the papal primatial power is

most essentially connected with the formation of the legislative power of the pope". Is the Roman Catholic theology of primacy less important than the legislative power of the pope? Is there any priority?

Prof. Potz: In the Middle Ages a completely new type of legislation evolved. The popes were the first legislators of this kind, the western princes followed. Therefore the legislative power is of great importance for the evolution of papal power.

Fr. George asks for a) an explanation of the "cathedral chapters" and b) clarification about the statement "The power to administer the sacrament of confirmation has been decentralized to a great extent also to priests"

Prof. Primetshofer: a) The cathedral chapters are a group of priests (at most 12) who are nominated by the bishop and assist him in liturgical functions. b) In the Latin rite the sacrament of confirmation is normally reserved to bishops. Today the administration of this sacrament is often delegated to certain priests, e.g. many abbots.

Mar Gregorius: a) What was the conclusion of the symposium held in April 1995? b) What is the role of the papal nuncio in the appointment of bishops?

Prof. Primetshofer: a) This was only a scientific symposium with no official appeal to any ecclesiastical authority at the end. b) Sometimes the role of the nuncio in the decision who becomes bishop is too dominant. It is demanded that the local institutions should have more attention, of course in co-operation with the nuncio.

Prof. Legrand would like to know where the texts of this symposium are published.

Prof. Primetshofer: In the periodical "ius utrumque"

Prof. Hryniewicz comments on the statement that "today almost all bishops are freely nominated by the pope; this was not the rule during most of the church history". Definitely this was not so in the first millennium, even for most of the second millennium.

Prof. Primetshofer: It is only a very recent development, in the 20th century, that the Pope got the exclusive right in the nomination of bishops.

Mar Gabriel inquires about the resignation of bishops at the age of 75. Since when does this exist and is there any enforcement of this resignation?

Prof. Primetshofer: This is a very recent development, based on Vatican II. The bishop has to present his resignation at the age of 75, it is the Pope's decision to accept it or not.

Further discussion:

Amba Bishoy to *Prof. Primetshofer:* These developments in the Western Church threaten the eastern Churches from accepting any type of proposals of primacy etc. The Oriental Orthodox Churches try to ensure the role of the people in the acclamation and election of bishops. This is very important because a) the participation of the people establishes a

certain tie between the bishop and them, a good basis for communication. Otherwise the bishop is isolated from his people, which results in a crack between the priesthood and lay people. b) Real interaction of the people with the church is also very important for the future of Christianity as such.

Prof. Legrand agrees with *Prof. Potz* on the history and theory of church government but he misses the relation to the real situations. The Gregorian reform was not just an ideological structural power but a real reform of the Church resulting in a disconnection of secular and church interests. *Prof. Legrand* misses the "vocation of the Church in society" not only in this paper but in the whole seminar. He proposes a study seminar with the same topic but under a social perspective, which should not only include history and theory but case studies. The main question is how a Church can be the Church of God in a given society. Also problems between single Churches should be discussed under this perspective.

Prof. Potz emphasizes that the Gregorian reform was the beginning of secularism.

Prof. Legrand again tries to make clear what he meant with a necessary social perspective. As regards the appointment of bishops he is neither in favour of an appointment by Rome nor in favour of an appointment only by a local synod. This question is not only an internal one in the Church, between central and local power, but there is a third dimension, the relation to society. However, this does not imply that a democratic appointment would be a solution. *Legrand* suggests treating together questions of ecclesiology and of the Church in society. For the appointment of bishops he could imagine that Rome has not the first but perhaps a last word.

Archbishop Krikorian appreciates both papers very much because they do not read later views into the first millennium. He agrees very much with *Prof. Potz* on the fact that a crystallization of papal power was to be found in the 11th century.

Prof. Žužek says that he cannot accept *Prof. Potz's* paper; there are many questions which have to be studied carefully. It is necessary to study the sources and to be careful in quoting them. The canons about primacy in the Oriental codex refer to many sources of the first millennium (whereas in the Latin coedx they are mostly from Gratianus onwards). A careful study of the sources of the first millennium shows that the primatus of Rome substantially exists in the first millennium. Confer *Clemens I* or the letter of *Nicolas I* to the patriarch of Antioch.

Prof. Potz maintains if *Nicolas I* gave the "solicitudo omnium ecclesiarum" to the three Petrine sees (of Antioch, Alexandria, and Rome) this means that all three sees have the solicitudo of the right faith but it has no juridical implication. We should not read later associations - from the Middle Ages - into early documents.

Prof. Žužek again emphasizes the necessity of careful study. He admits that he might be conditioned in favour of primacy, but also the others might be conditioned, therefore the necessity of careful study.

Prof. Harnoncourt is pleased about Prof. Legrand's suggestion of relating ecclesiology to society. With respect to Christ's incarnation we have to find the "Christian red thread" for different circumstances in society.

As regards the Gregorian reform, he adds that its motivation was theological, but the effect a different one: it was a division between secular and church government, between law and grace. It also made it possible to establish a new state of the Holy See, as a secular state.

Prof. Harnoncourt suggests going back to the bible to find out god's will about the Church. In analogy to the 12 Apostles there could be a synodical college. He emphasizes that plurality should have priority over uniformity because it fosters life in the Church.

Amba Bishoy: It is important that the people and pastors live together in a priestly union. If continuously no agreement between the Church and the people can be found, perhaps a synod can bring a solution. He hints at the pan-Oriental meeting of 1965 in Addis Abeba which was some kind of ecumenical council because five sister Churches met.

Prof. Harnoncourt: The early ecumenical councils were convoked by the emperor Who initiates a synod between sister Churches, as in a pan-Oriental meeting?

Mar Gregorius: It was proposed by the Churches.

Prof. Hryniewicz emphasizes that the "solicitude ecclesiarum", the pastoral care is more important than authority: the pastoral care for society and the care for unity. As regards the primacy of Rome, it is important that it is reduced to its proper dimensions, that its religious core is found. He agrees with *Amba Bishoy* that we shall leave more room to the Holy Spirit.

Fr. Žužek: It seems that the paper of Primetshofer caused stress among the Oriental members. He maintains that usually mistakes in the nominations of bishops are rare. The nominations of bishops for large dioceses is sometimes very difficult whereas in smaller dioceses in the east it is easier to make people participate in the election of bishops.

Archbishop Krikorian considers it important to reflect on the reciprocal effects between church and society, for example in the questions of democracy and women's emancipation. The Church has created problems in her reactions to developments in society, which again creates counter-reactions.

Mar Gregorius: It is not the numerical strength of a diocese which is decisive for the procedure of the appointment of bishops, it is a matter of principle. He suggests having "the election of bishops" as a separate topic for a further study seminar.

COMMUNIQUÉ OF THE *PRO ORIENTE* FOURTH STUDY SEMINAR ON "AUTHORITY AND JURISDICTION"

Vienna, July 5th to 9th 1996

At the invitation of *PRO ORIENTE* the Fourth Study Seminar was held in Vienna in the Bildungshaus Lainz, from July 5th to 9th on the theme of "Authority and Jurisdiction". Its purpose was to continue the work started at three previous study seminars "On Primacy" in 1991, "On Councils and Conciliarity" in 1992 and "On Ecclesiology and the Unity of the Church" in 1994.

The main theme in this year's seminar was the nature and the exercise of authority and jurisdiction in the tradition of different Churches represented by different theologians. A number of specialists on theological canon law from the Oriental Orthodox, Oriental Catholic and Roman Catholic Churches took part in the presentations and discussions. The general theme was introduced by two presentations on "The Nature of Authority and Jurisdiction" in both Church families; one from the Catholic side by Prof. Hervé Legrand OP (Paris) and one from the Oriental Orthodox side by Fr. Kondotra K. M. George from the Malankara Orthodox Church of India.

On this followed a presentation of reports on the practice of the exercise of authority and jurisdiction in the different traditions represented by Metropolitan *Amba Bishoy* of Damiette, Archbishop *Mar Gregorius* of Aleppo, Archbishop *Mesrob Krikorian* of Vienna, *Vardapet Sebouh Sarkissian*, *Antelias*, Archbishop *Abba Gabriel* of Western Shoa as well as the Professor *Ivan Zuzek*, SJ. (Rome), *Richard Potz* and *Bruno Primetshofer*(both Vienna).

His Eminence, *Franz Kardinal König* was present for part of the meeting and we thank him for his encouragement and interest. We are grateful to *PRO ORIENTE* for the generous hospitality for this study seminar.

The Standing Committee has planned the meeting, its program and its speakers and chaired the meetings.

In an effort to learn from and with each other the following results have been reached in common agreement.

1. Authority

Authority in the Church of God resides in the person of the glorified Jesus Christ, the witness of the Scriptures and of those to whom He entrusted it. The self emptying (kenosis) of God in Christ gave us a model of authority that is radically different from the authority of the rulers of this world who "lord it over the people". Christ's authority, on the contrary, was "to serve and to give his life as a ransom for many"(Mk 10,42 -44). The authority he gave to the apostles consisted in healing all kinds of sickness, forgiving sins and announcing the good news of the kingdom of God (Lk 9.1-2) as well as all power to build the Church and to guide it. Christ promised to them the continuing presence of the Holy Spirit who guides the Church to the fullness of truth.

2. Jurisdiction

Jurisdiction was generally understood in this seminar as the capacity of exercising authority which is recognized by the Churches

- for a bishop to make the decisions required by his office;
- for a synod or a council to make decisions in defining the faith of the Church and in fixing its discipline, in such a way that these decisions are binding for the local Churches concerned or even for the Church Catholic (e.g. the jurisdiction of an ecumenical council)
- for a primate or a patriarch to represent a regional Church and to preside, in various ways, over synods and councils.

The foundations of such a capacity are generally customary, they need to be further explored & from a theological perspective.

3. Authority and Jurisdiction in Our Churches

The topic of authority and jurisdiction is a matter of vital concern for our Churches. All of them have in common the exercise of authority on a local, regional or global level. Exercising pastoral and teaching authority obliges the local Churches to decide together because the world and history constantly challenge us. Common witness and common actions are necessary for the common good of the faithful and because in a variety of situations there are social injustice, ethnic tensions and political and other pressures.

Our Churches have in common many grounds and many elements when they exercise authority and jurisdiction on a supra-local level, but they differ on those matters and they need to rediscover together the normative principles and patterns of authority originating in the apostolic Church. It is of crucial importance for the unity and communion of our Churches and their common responsibility in today's world.

4. Convergence

Oriental Orthodox and the Roman Catholic participants had their starting point in the biblical apostolic witness to Christian authority, the practice of the undivided Church and the decisions of the three Ecumenical Councils of Nicea, Constantinople and Ephesus which together provide a set of norms and paradigms for the exercise of authority and jurisdiction within the local Churches and in the global communion of Churches.

One such model of the ministry is shown by Ignatius of Antioch (early 2nd century) in his letters to the Churches of Smyrna and Philadelphia. He invokes the Trinitarian unity and the relationship of the Son to the Father as a model for the unity of the Church. According to this model, the bishop sacramentally representing Christ, surrounded by the presbyters, deacons and people expresses the reality of the local Church. The principle of one Eucharist, one altar and one bishop along with the presbyters and deacons became decisive for the eucharistic episcopal model of Ecclesiology. The sacramental authority of the episcopos as head of the local church representing Christ in the midst of

the eucharistic community has remained unaltered in our Churches in the East and the West.

Following the apostolic practice of conciliarity, as demonstrated in the Council of Jerusalem (Acts 15), the councils at local, regional or global levels are called to manifest the communion of local Churches in one faith and one Eucharist and to express a common mind of the Church in all important matters.

5. Questioning History

The greater part of our time was devoted to the study of practical exercise of authority and jurisdiction. It helped to discover that the model of this exercise as well as its foundation have changed in the course of the centuries and differ today from one Church to another. The major question raised was that of the foundations of the authority of the synods and councils as well as the authority of primates corresponding to them. Three sets of factors are at the origin of this type of authority:

1. The local Churches from the beginning maintained the practice of exchanging letters of paschal greetings and other forms of communication providing mutual support, exhortation and information. This showed the communion of Churches without global structures of authority.

2. The Churches within the Roman empire had to reckon with the imperial civil administration which was reflected in their canonical and jurisdictional practices. It is recognized, however, that some Churches of Christ flourished also outside the Roman imperial borders. This fact helps us to distinguish the binding doctrinal positions of the whole Church from particular canonical arrangements within the Roman empire for the good order of the Churches.

3. The practice of the undivided Church and ancient canons like canon 6 of Nicea which demarcate the areas of jurisdiction of the ancient sees.

6. Open questions from both sides

There is agreement on both sides that primacy in the Church is closely associated with the college of bishops. However, the Oriental Orthodox maintain that primacy arises from the collegiate or conciliar authority and is subject to it as the apostolic practice shows. As to the Roman Catholic position, primacy is traditionally understood as arising from the Petrine role directly authorized by Christ, and is capable of assuming a decisive role in relation to the college of bishops. The relationship between the Ecumenical Council and the Bishop of Rome is a matter of ongoing ecumenical discussion.

The Oriental Orthodox attribute a "primacy of honor" to the "first among equals" in an assembly of the primates of all Churches. They do not, however, recognize any primacy with a universal pastoral or jurisdictional authority over all local Churches.

The Roman Catholic position traditionally recognizes the primacy of the Bishop of Rome as having universal pastoral and jurisdictional authority over all Churches in the service of unity. The Oriental Orthodox Churches in this matter would follow their understanding of the practice of the undivided Church and ancient canons without presupposing a universal role for any particular see.

In the light of the historical experience of the Western Church in certain periods in the second millennium when the power of jurisdiction could be separated from the power of ordination, there is agreement that jurisdiction is an aspect of the sacramental, pastoral and teaching authority of the bishop and it should not be dissociated from its spiritual roots as constituting a different power in imitation of secular authority.

It is necessary today to reflect anew on the basis of the authority of the councils and primates at the regional and global levels. The possible implications of a eucharistic ecclesiology for such levels need to be worked out.

Most of the Catholic participants recognized that the authority of the Bishop of Rome during the first millennium in the West was largely similar to the authority of eastern patriarchs in their realms. The authority which Rome claimed in the whole Church at that time was not that of a patriarchal type. But most of the Catholic participants recognized that the Roman claims were of a different nature during the second millennium. In this respect the encyclical "Ut Unum Sint" (that all may be one), in which Pope John Paul II invites Church leaders and theologians to discuss the exercise of primacy has been taken into account with interest.

Could the model of primacy-collegiality expressed in Vatican II documents be fruitful in the ecumenical dialogue? The Oriental Orthodox did not enter in this discussion. Among Catholic participants some have their doubts because in their view the model insists on the communion of bishops as ordained persons (Lumen Gentium 21) and does not explicitly take into account the communion of Churches which have their different identities and traditions.

The community of baptized, anointed and practicing Christians as the people of God are called to share in the life of the Church. Their active participation in such matters as the election of bishops may enhance the quality of Christian authority. The authority of the members of the Church with various charisma (saints, monks, theologians, etc.), even if they do not belong to the three-fold ministry, need to be recognized in view of the building up of the Church. The challenges raised by new human social situations need to be seriously considered by our Churches for a constant re-examination of the hierarchical and administrative structures of authority in the light of the authority of Christ granted to the Church.

7. We suggest for further study

1. The theological foundation of the supra-episcopal authority in the Church
2. Election or appointment of bishops and primates
3. The nature and theology of canon law
4. The participation of the baptized and practicing members in the life of the Church in respect to the tradition and new human situations
5. A biblical (especially NT) and patristic (up to the 5th century) study on the nature and exercise of authority and primacy
6. How to respond to the invitation of Pope John Paul II expressed in the encyclical "Ut Unum Sint" to be engaged in ecumenical, fraternal dialogue on the universal ministry of unity in the Church.