KANON

DIE KIRCHE UND DIE KIRCHEN
AUTONOMIE UND AUTOKEPHALIE

2. Teil

V

JAHRBUCH DER GESELLSCHAFT FÜR
DAS RECHT DER OSTKIRCHEN – WIEN

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THE CHURCH AND THE CHURCHES
AUTONOMY AND AUTOCEPHALY
2nd part

L'EGLISE ET LES EGLISES
AUTONOMIE ET AUTOCEPHALIE
2ième tome

V

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ANNUAIRE DE LA SOCIETE DU DROIT DES EGLISES ORIENTALES

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INHALT

The Church and the Churches – Autonomy and Autocephaly

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INHALT – KANON IV

The Church and the Churches – Autonomy and Autocephaly
1st Part

DIE AUTONOMIE DER TEILKIRCHEN UND DER TEILKIRCHLICHEN VERBÄNDE NACH DEM ZWEITEN VATIKANISCHEN KONZIL

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München

Im Unterschied zum Codex Iuris Canonici, dem das Wort „Autonomie" fremd ist, spricht das Zweite Vatikanische Konzil oft von Autonomie, allerdings nur in dem Dekret über das Laienapostolat[1] und in der pastoralen Konstitution über die Kirche in der Welt von heute[2]. Dabei geht es durchwegs um Probleme, die vornehmlich dem weltlichen Bereich zugeordnet sind[3]. Wenngleich gelegentliche Hinweise auf eine autonomia iusta[4] oder legitima[5] erkennen lassen, daß sich das Konzil zu gewissen Abgrenzungen genötigt sah, huldigt es geradezu einer recht verstandenen Autonomie mit den Worten: „Immer mehr wächst in der ganzen Welt der Sinn für Autonomie und zugleich für Verantwortlichkeit, was ohne Zweifel für die geistige und sittliche Reifung der Menschen von größter Bedeutung ist"[6].

Angesichts dieser aufgeschlossenen Haltung gegenüber der Autonomie im weltlichen Bereich überrascht es, daß sich das Konzil bei Fragen des kirchlichen Bereiches – abgesehen von dem Hinweis auf die den Vereinigungen und Unternehmen von Laien eigene Autonomie[7] – nicht des Wortes „autonomia" bedient hat. Es wäre indessen verfehlt, daraus schließen zu wollen, das Konzil habe der Autonomie im kirchlichen Bereich keinen Raum gegeben. In unserer Frage nach der Autonomie der Teilkirchen und der teilkirchlichen Verbände hat das Konzil, ohne ausdrücklich von Autonomie zu sprechen, vom theologischen Wesensverständnis der Kirche her, grundlegende Aussagen gemacht, an denen die in Gang befindliche Reform des kanonischen Rechtes nicht vorbeigehen kann. Die von der ersten allgemeinen Bischofssynode im Jahr 1967 gutgeheißenen „Principia

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[1] Cf. n. 1,2 (16); n. 7,2 (15); n. 11,2 (15); n. 26,1 (6). – Die in Klammern angegebenen Zahlen beziehen sich auf die Zeilen innerhalb der jeweiligen Nummer nach dem Dokumenten-Anhang bei X. *Ochoa*, Index verborum cum documentis Concilii Vaticani Secundi, Roma 1967; die Zeilenangaben stimmen überein mit den amtlich veröffentlichen Konzilstexten in den AAS.

[2] Cf. n. 20,1 (2); n. 36 (tn), 1 (3), 2 (5), 2 (19), 3 (23); n. 41,2 (31); n. 55 (4); n. 56,6 (22); n. 59,3 (19); n. 71,2 (8); n. 75,3 (34); n. 76,3 (12).

[3] Auf die Kirche oder auf kirchliche Verhältnisse beziehen sich allein die Aussagen über die Autonomie der Kirche gegenüber dem Staat in Gaudium et Spes n. 76,3 (12); „Communitas politica et Ecclesia in proprio campo ab invicem sunt independentes et autonomae", sowie in Apostolicam Actuositatem n. 26,1 (6) der Hinweis auf die Autonomie der Vereinigungen und Unternehmen von Laien („laicorum consociationes et incepta").

[4] Cf. Gaudium et Spes n. 41,2 (31): „iusta creaturae autonomia et praesertim hominis".

[5] Cf. Apostolicam Actuositatem n. 11,2 (15) sowie Gaudium et Spes n. 56,6 (22) und n. 59,3 (19).

[6] Gaudium et Spes n. 55,1.

[7] Apostolicam Actuositatem n. 26,1 (6).

quae Codicis Iuris Canonici recognitionem dirigant"[8] sprechen bei den Weisungen für die Anwendung des Prinzips der Subsidiarität in der Kirche (n. 5)[9] im Hinblick auf den teilkirchlichen Bereich zweimal von Autonomie, näherhin in Fragen der teilkirchlichen Gesetzgebung und der kritisch angegangenen Frage eines freieren Spielraumes in der gerichtlichen Verfahrensweise[10]. Daß es gleichwohl noch nicht leicht fällt, den Rechtsbegriff „autonome Kirche" anzuwenden[11], zeigt der jüngste Entwurf einer Lex Ecclesiae Fundamentalis, der von „Ecclesiae Orientales sui iuris" spricht (c. 40 § 1)[12].

Wer das Autonomieproblem im kirchlichen Bereich richtig erfassen will, tut gut daran, sich von den Autonomievorstellungen im weltlichen Bereich freizumachen und sich allein an dem theologischen Wesensverständnis der Kirche auszurichten. Formen staatlicher Organisation, wie sie etwa in der Gestalt des Einheitsstaates, des Bundesstaates oder des Staatenbundes auftreten, nicht minder die Weisen einer kommunalen Eigenständigkeit, die sich in der – meist mit einer staatlichen Auftragsgewalt vermischten – Selbstverwaltung der Gemeinden kundgibt, können auf kirchliche Verhältnisse nicht übertragen werden, und man sollte sich davor hüten, Analogien herzustellen. Der rechtstechnische Begriff der Autonomie indessen kann und darf, weil er nichts präjudiziert, auf kirchliche Verhältnisse angewendet werden. Autonomie im rechtlichen Sinn bezeichnet keine allseitige Ungebundenheit, sondern das einer bestimmten Teilgemeinschaft im Rahmen des Gemeinschaftsganzen zustehende Recht, die eigenen Angelegenheiten selbst zu ordnen. Autonomie ist somit ein relativer Begriff, der das jeweilige Maß eigener Gestaltungsmacht und mit ihr das Maß der Unabhängigkeit in einem gemeinschaftlichen Ganzen bestimmt. In diesem Sinne kann mit Fug und Recht nach der Autonomie in der Kirche gefragt werden.

Die Gliederung in Teilkirchen, denen ein Bischof als Nachfolger der Apostel vorsteht, ist für das Verfassungsrecht der Kirche wesentlich. Sie wirkt sich dank einer ungebrochenen Tradition dahin aus, daß Metropolit und Patriarch als Vorsteher teilkirchlicher Verbände und der Papst als oberster Hirt der Gesamtkirche zugleich Bischof einer bestimmten Diözese oder Eparchie sind. In der Sprache des Konzils wird der Ausdruck „Ecclesia particularis" in verschiedener Spannweite gebraucht. In dem Dekret Christus Dominus bezeichnet er stets die Diözese und solche Teilgemeinschaften, die der Diözese im Recht gleichgestellt sind, und in dem Dekret Orientalium Ecclesiarum bezeichnet er, ebenso einheitlich, nicht die einzelne Diözese als solche, sondern den regelmäßig aus mehreren Diözesen bestehenden teilkirchlichen Verband, insbesondere die Ecclesia patriarchalis. In der Konstitution Lumen Gentium wird Ecclesia particularis bald in dem einen und bald in dem anderen Sinn gebraucht, was dazu nö-

[8] Von der Pontificia Commissio Codici Iuris Canonici recognoscendo am 6.11.1967 als Sonderdruck (sub secreto) herausgegeben, später veröffentlicht in: Communicationes 1 (1969), S. 77–85.

[9] Principia, Sonderdruck S. 12.

[10] Auch in der Recensio modorum ist zweimal von autonomia die Rede. Cf. Principia, Sonderdruck S. 48 und 49.

[11] Hierzu siehe J. M. *Hoeck*, LThK, Konzilskommentar I, S. 367.

[12] Communicationes 9 (1977), S. 302.

tigt, den jeweiligen Wortsinn aus dem Sachzusammenhang zu erschließen. Mit der Unterscheidung zwischen Teilkirche und teilkirchlichem Verband dürfte, jedenfalls für die deutsche Kirchenrechtssprache, die aufgezeigte terminologische Not einigermaßen behoben sein.

I. Die Autonomie der Teilkirche

Das Bezugsverhältnis zwischen Gesamtkirche und Teilkirche wird in der Konstitution Lumen Gentium auf die lapidare Formel gebracht, daß die eine und einzige katholische Kirche in und aus Teilkirchen besteht[13]. Bei dieser Formel des „in quibus et ex quibus"[14] ist beides gleich wesentlich, und zwar in der wechselseitigen Verbindung, die sich nicht auflösen läßt, ohne daß der Sinn der Aussage verlorenginge. Wollte man das eine oder andere allein in Betracht ziehen oder gar absolut setzen, so löste sich bei dem „in quibus" die Gesamtkirche in die Teilkirchen als vollends eigenständige Gebilde auf, und bei dem „ex quibus" würde die Teilkirche zu einem bloßen Verwaltungsbezirk der Gesamtkirche absinken. In Wahrheit ist die Teilkirche gerade in ihrer Eigenständigkeit immer und wesenhaft auf die ganze Kirche bezogen; sie könnte ansonsten nicht Teil eines Ganzen sein und dieses Ganze zugleich in sich haben, um es zu wirksamer Darstellung zu bringen. Es ist daher nicht sinnvoll, Überlegungen darüber anzustellen, ob der Gesamtkirche vor der Teilkirche oder umgekehrt der Teilkirche vor der Gesamtkirche die Priorität einzuräumen ist[15]. Beide sind

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[13] Lumen Gentium n. 23,1. Der volle Text lautet: „Collegialis unio etiam in mutuis relationibus singulorum Episcoporum cum particularibus Ecclesiis Ecclesiaque apparet. Romanus Pontifex, ut successor Petri, est unitatis, tum Episcoporum tum fidelium multitudinis, perpetuum ac visibile principium et fundamentum. Episcopi autem singuli visibile principium et fundamentum sunt unitatis in suis Ecclesiis particularibus, ad imaginem Ecclesiae universalis formatis, *in quibus et ex quibus una et unica Ecclesia catholica exsistit.* Qua de causa singuli Episcopi suam Ecclesiam, omnes autem simul cum Papa totam Ecclesiam repraesentant in vinculo pacis, amoris et unitatis."

Wenngleich die von mir durch Kursivstellung hervorgehobene Formel in einem Nebensatz erscheint, ist sie für die Bestimmung des Verhältnisses von Gesamtkirche und Teilkirche schlechthin grundlegend. Nicht immer spricht das Konzil in dieser Klarheit. So heißt es z.B. an anderer Stelle, die für die Autonomie der Teilkirche bedeutsam ist, daß es in der kirchlichen Gemeinschaft zu Recht auch (etiam!) Teilkirchen gebe (Lumen Gentium n. 13,3). Dies ist ein beredtes Zeichen dafür, wie die Gesamtkirche bei den Konzilsvätern vielfach so im Vordergrund stand, daß deren Existenz „in und aus Teilkirchen" nicht gesehen worden ist. Vgl. Eu. *Corecco,* Der Bischof als Haupt der Ortskirche und Wahrer und Förderer der örtlichen Kirchendisziplin, in: Concilium 4 (1968), S. 602–609.

[14] W. *Aymans,* Das synodale Element in der Kirchenverfassung, München 1970, S. 321 f., hat die Formel näher analysiert und hält sie für geeignet, zwei irrige Auffassungen von der Kirche abzuweisen, dies aber nur dann, wenn jeweils der eine Aspekt im anderen mit zum Tragen kommt. Wer nur sagt, die Kirche bestehe als solche *in* den Teilkirchen, der löst die Gesamtkirche in die Teilkirchen hinein auf; die Gesamtkirche verliert in dieser exklusiven Sicht ihre reale Existenz und wird zur bloßen Idee verflüchtigt. Wer nur sagt, die Kirche bestehe *aus* den Teilkirchen, der geht von rein soziologischen Tatsachen aus, die ‚der mystischen Wirklichkeit, mit der in ihr (der Teilkirche) die Gesamtkirche in die Erscheinung tritt', nicht gerecht werden. In dieser exklusiven Sicht wird die Teilkirche in die Gesamtkirchen hinein aufgelöst."

[15] Während des Konzils wurden diese Überlegungen immerzu angestellt und im Pro und Contra für die Mitgliedschaft im Bischofskollegium und in den Bischofskonferenzen als Argumente angeführt. Darauf bezieht sich die in der Relatio zum Textus emendatus 1964

so ineinander verwoben, daß die Gesamtkirche nicht sein kann ohne die orthafte Konkretisierung in Teilkirchen und daß die Teilkirche notwendig an dem Wesen der Gesamtkirche teilhat. Es ist deshalb auch müßig, darüber zu streiten, ob die Teilkirche göttlichen Rechtes sei.

Die Diözese ist in ihrer Eigenart dadurch bestimmt, daß ihr ein Bischof vorsteht, der als Nachfolger der Apostel Stellvertreter und Gesandter Christi ist und demzufoge nicht als Stellvertreter des Papstes anzusehen ist[16]. Dem Bischof kommt in der ihm anvertrauten Diözese von selbst alle ordentliche, eigenständige und unmittelbare Gewalt zu, die zur Ausübung seiner Hirtenaufgabe[17] erforderlich ist, wobei die Gewalt des Papstes, sich selbst oder einer anderen Autorität kraft seines Amtes Fälle vorzubehalten, immer und in allem unangetastet bleibt[18]. Mit dem „per se" wird im Hinblick auf die alte Streitfrage, ob der Diözesanbischof seine oberhirtliche Gewalt (potestas iurisdictionis) von Gott oder vom Papste erhält, klargestellt, daß die Gewalt des Diözesanbischofs nicht aus der Gewalt des Papstes abgeleitet, sondern eine gegenüber der päpstlichen Gewalt eigenständige Gewalt göttlichen Rechtes ist. Die nähere Bestimmung dieser Gewalt als „potestas ordinaria, propria et immediata" ist hergebrachte Lehre; doch gewinnt das Merkmal „propria" nunmehr den spezifischen Sinn einer eigenständigen, von Gott gegebenen und nicht vom Papst entlehnten Gewalt, obwohl die Einsetzung in das konkrete Vorsteheramt durch die jeweils zuständige kirchliche Autrität – in der lateinischen Kirche durch den Papst (CIC can. 329 § 2) – erfolgt und diese Autorität befugt ist, das übertragene Amt nach Maßgabe des Rechtes zu entziehen. Ohne auf das Verhältnis von Amt und Weihe und die darin liegende Zuordnung von Weihe- und Hirtengewalt als komplementären Elementen der einen heiligen Gewalt eingehen zu wollen[19], darf kurz festgestellt werden, daß die zuständige kirchliche Autorität bei der Übertragung des Bischofsamtes jene verlierbare Gewalt vermittelt, die zusammen mit der aus der Bischofweihe stammenden, unverlierbaren Gewalt den Diözesanbischof macht. Die zuständige Autorität handelt hier als werkzeugliche Ursache; das heißt: Sie gibt nichts Eigenes her, sondern reicht die Gabe Christi, in dessen Namen der Diözesanbischof seines Amtes waltet[20].

(p. 11) getroffene Feststellung, Christus habe seine Kirche gegründet, „i.e. universalem, in qua postea tantum constitutae sunt particulares Ecclesiae seu dioeceses". Es heißt dann aber in der gleichen Relatio: „Episcopi enim aequali ratione consecrantur ad bonum Ecclesiae universalis et bonum Ecclesiae particularis sibi commissae" (p. 12).

[16] Cf. Lumen Gentium n. 27,1: „Episcopi Ecclesias particulares sibi commissas ut vicarii et legati Christi regunt" und n. 27,2: „. . . necque vicarii Romanorum Pontificum putandi sunt, quia potestatem gerunt sibi propriam verissimeque populorum quos regunt Antistites dicuntur."

[17] „Munus pastorale" bezeichnet hier (n. 8 a), wie in der Überschrift des Dekretes Christus Dominus, die Gesamtheit der bischöflichen Aufgaben, mithin das Lehr-, Priester- und Hirtenamt.

[18] Christus Dominus n. 8 a.

[19] Hierzu siehe K. *Mörsdorf*, Art. Heilige Gewalt, in: Sacramentum Mundi 2, Freiburg i.Br. 1968, S. 582–597 mit der dort angegebenen Literatur und *dens.*, De sacra potestate, in: Miscellanea in honorem Dini Staffa et Periclis Felici 1, Roma 1968, S. 41–58.

[20] Vgl. auch Eu. *Corecco*, L'origine del potere giurisdizione episcopale, Aspetti storico-giuridici e metodologico-sistematici della questione, in: La Scuola Cattolica 94 (1968), S. 3–42, und S. 107–141.

Der Diözesanbischof besitzt alle Gewalt (omnis potestas), die zur Ausübung des Hirtendienstes in seiner Diözese erforderlich ist, einerlei ob es sich dabei um das Lehr-, Priester- oder Hirtenamt des Bischofs handelt[21], allein mit der Einschränkung, daß der Papst sich oder einer anderen Autorität Fälle vorbehalten kann. Hierdurch ist das bisherige System der Vollmachterteilung an die Bischöfe (Konzessionssystem), das vom Tridentinum in die rechtstechnische Formel „tanquam Sedis Apostolicae delegatus" gekleidet worden war[22], durch ein System päpstlicher Vorbehalte abgelöst worden (Reservationssystem). Dies bedeutet eine grundsätzliche Umkehrung in dem Verhältnis von Papst und Diözesanbischof, so daß nunmehr für den letzteren die Vermutung streitet, daß er alle Gewalt besitzt, die zur Ausübung seines Hirtendienstes erforderlich ist. Gleichwohl handelt es sich nicht um eine umstürzlerische Neuerung, weil das kanonische Recht, auch in der lateinischen Kirche, einen guten Teil der ursprünglichen Bischofsrechte bewahrt hat, so z.B. in der Anerkennung eines im Recht begründeten Anspruches auf die Verleihung aller Benefizien im Bistumsgebiet (CIC can. 1432 § 1), wodurch das Bischofsrecht gegenüber päpstlichen Vorbehalten vermutet wird. Die konziliare Aussage, daß der Diözesanbischof alle Gewalt besitzt, die zur Ausübung seines Hirtendienstes erforderlich ist, hat den Charakter einer Grundsatzbestimmung mit verfassungsrechtlichem Rang; sie ist kein unmittelbar anwendbares Recht und bedarf notwendig der näheren Bestimmung durch das kirchliche Gesetz. Der Diözesanbischof steht in einem hierarchischen Ordnungsgefüge, bei dem es nicht allein darum geht, daß er die vom Papst für sich oder eine andere Autorität gemachten Vorbehalte hinnehmen muß, sondern zunächst und hauptsächlich darum, daß er an das Recht der Gesamtkirche und der zuständigen teilkirchlichen Verbände gebunden ist. Die Bindung an das gesamtkirchliche Recht ergibt sich eindeutig aus der in Christus Dominus n. 8 b folgenden Bestimmung, wonach dem Diözesanbischof – mit gewissen Einschränkungen – die Vollmacht erteilt wird, um des geistlichen Wohles willen von den allgemeinen Kirchengesetzen zu dispensieren[23]. In n. 11,2 des gleichen Dekretes werden die Diözesanbischöfe nach einem Hinweis darauf, daß sie die ihnen anvertraute Herde un-

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[21] In Lumen Gentium n. 27,1 findet sich die entsprechende Aussage zwar im Rahmen des von Lehr- und Priesteramt unterschiedenen Hirtenamtes und wird hier näher dahin bestimmt, daß es Recht und Pflicht der Bischöfe ist, Gesetze für ihre Untergebenen zu erlassen, Urteile zu fällen und alles, was zur Ordnung des Gottesdienstes und des Apostolates gehört, zu regeln; doch ist die in den Funktionen der Gesetzgebung, Rechtsprechung und Verwaltung tätige Hoheitsgewalt des Diözesanbischofs nicht auf den Bereich des Hirtenamtes beschränkt, sondern in dem gesamten, durch die Trias von Lehr-, Priester- und Hirtenamt umschriebenen Aufgabenkreis der Kirche wirksam. Die Konstitution folgt hier noch einem Denkschema, das sie mit der Lehre von der einen heiligen Gewalt überwunden hat.

[22] Vgl. H. *Jedin*, Delegatus Sedis Apostolicae und bischöfliche Gewalt auf dem Konzil von Trient, in: Die Kirche und ihre Ämter und Stände, Festschrift für Josef Kardinal Frings, Köln 1960, S. 462–475.

[23] Durch das Motu proprio „De Episcoporum muneribus" vom 15.8.1966 (AAS 58/1966, S. 467–472) wurden für die lateinische Kirche Ausführungsbestimmungen zu dem Dekret Christus Dominus n. 8 b gegeben, die jedoch nicht befriedigen können; vgl. hierzu K. *Mörsdorf*, Kommentar zum Dekret Christus Dominus über die Hirtenaufgabe der Bischöfe in der Kirche, LThK, Konzilskommentar II, S. 166–171.

ter der Autorität des Papstes leiten, aufgefordert, die Rechte anzuerkennen, die den Patriarchen und anderen hierarchischen Autoritäten rechtmäßig zustehen. Daraus folgt nicht weniger eindeutig, daß der Diözesanbischof an das ihm vorgeordnete teilkirchliche Recht gebunden ist.

Eine Schwierigkeit grundsätzlicher Art, die sich der Annahme einer Autonomie der Diözese stellt, bildet die Lehre von der Unmittelbarkeit der päpstlichen Gewalt[24], wonach die oberste Hirtengewalt des Papstes eine unmittelbare Gewalt sowohl über alle und jedwede Kirchen wie über alle und jegliche Hirten und Gläubigen ist (CIC can. 218 § 2). Das Zweite Vatikanische Konzil hat sich nicht der Frage gestellt, wie die Unmittelbarkeit der päpstlichen Gewalt über jede Teilkirche damit vereinbarlich ist, daß der Bischof der unmittelbare Hirt seiner Diözese ist. Anlaß, dieser Frage auf den Grund zu gehen und den alten Vorwurf, die Diözese habe nicht ein Haupt, sondern zwei Häupter, zu entkräften, war in reichem Maße gegeben, vor allem bei der Lehre vom Bischofskollegium, wo sich die einzigartige Gelegenheit geboten hätte, die Integration der Teilkirchen in die kollegiale Repräsentation der Gesamtkirche als Sinn und Zweck des Bischofskollegiums herauszustellen[25]. Der Blick der Konzilsväter war mehr darauf gerichtet, daß dieses Kollegium existiert, aber weniger darauf, wozu es da ist, so daß die Aufgabe, die den Teilkirchen für den Aufbau der Gesamtkirche zukommt, bei den Darlegungen über das Bischofskollegium nicht zum Tragen gekommen ist[26]. Die um eine Klärung des Papst-Bischof-Verhältnisses besorgten Väter blickten allein auf die zum Sakrament erklärte Bischofsweihe, ohne die bischöfliche Funktion mit ins Spiel zu bringen. Weihe und Funktion sollten sich entsprechen; denn die Bischofsweihe ist hingeordnet auf den bischöflichen Dienst. Dieser aber ist von den Anfängen des Episkopates her durch die Zuordnung zu einer Gemeinschaft von Christgläubigen bestimmt, die der Bischof im Namen Christi zu leiten hat.

Was bei der Lehre vom Bischofskollegium nicht zum Tragen kam, wird, obwohl das Problem der Unmittelbarkeit der päpstlichen Gewalt als solches unberücksichtigt bleibt, in n. 23 der Konstitution Lumen Gentium dargelegt, wo die Gedankenführung von dem Kollegium auf die Einzelbischöfe als Vorsteher von Teilkirchen übergeht. Die unterschiedliche Stellung von Papst und Diözesanbischof wird dahin bestimmt, daß der Bischof von Rom als Nachfolger Petri das immerwährende, sichtbare Prinzip und Fun-

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[24] Hierzu siehe K. *Mörsdorf*, Die Unmittelbarkeit der päpstlichen Primatialgewalt im Lichte des kanonischen Rechtes, in: Einsicht und Glaube, Festschrift für Gottlieb Söhngen, hrsg. von J. Ratzinger und H. Fries, Freiburg i.Br. 1963², S. 464–478.

[25] Vgl. K. *Mörsdorf*, Über die Zuordnung des Kollegialprinzips zu dem Prinzip der Einheit von Haupt und Leib in der hierarchischen Struktur der Kirchenverfassung, in: Wahrheit und Verkündigung, Festschrift für Michael Schmaus, hrsg. von L. Scheffczyk, W. Dettloff und R. Heinzmann, Paderborn 1967, S. 1441 ff. und in lateinischer Übersetzung: Quomodo in hierarchica structura constitutionis Ecclesiae se habeat principium collegialitatis ad principium unitatis Caput inter et Corpus: Acta Congressus Internationalis De Theologia Concilii Vaticani II Romae diebus 26 septembris – 1 octobris 1966 celebrati, ed. ab E. Dhanis et A. Schönmetzer, Rom 1968, p. 168 ss.

[26] Dagegen wurde bei der Konstituierung der Bischofskonferenz die den Teilkirchen zukommende Aufgabe im Aufbau der Kirche sehr wohl gesehen. Vgl. hierzu K. *Mörsdorf*, Über die Zuordnung des Kollegialitätsprinzips, a. a. O. (25), S. 1443 ff.; *dens.*, Quomodo se habeat, a. a. O. (25), p. 170 ss., und *dens.*, Kommentar zum Dekret Christus Dominus n. 38: a. a. O. (23), S. 233 ff. Ferner W. *Aymans*, Das synodale Element, a. a. O. (14), S. 169–171 und S. 351–360.

dament für die Einheit der Vielheit von Bischöfen und Gläubigen ist, und daß die einzelnen Bischöfe sichtbares Prinzip und Fundament der Einheit in ihren Teilkirchen sind, die nach dem Bild der Gesamtkirche gestaltet sind, aus denen und in denen die eine und einzige katholische Kirche besteht. Von Papst und Diözesanbischof wird hier in gleicher Weise ausgesagt, daß sie „visibile principium et fundamentum" der Einheit sind, der eine für die Gesamtkirche, der andere für seine Teilkirche. Darauf folgt die Erklärung, daß daher die einzelnen Bischöfe ihre Kirche, alle zusammen aber in der Einheit mit dem Papst die ganze Kirche darstellen im Band des Friedens, der Liebe und der Einheit. Darin liegt, was der Lehre vom Bischofskollegium entspricht, eine Ergänzung zu der Feststellung, daß der Papst sichtbares Prinzip und Fundament der Gesamtkirche ist. Papst und Bischofskollegium sind Träger höchster Gewalt in der Kirche, so daß die dem Papst zugesprochene Funktion für die Einheit der Kirche auch für das Bischofskollegium zutrifft; beide sind inadäquat unterschiedene Subjekte der einen Höchstgewalt der Kirche[27]. Man vermißt aber die für die Frage nach dem unmittelbaren Hirten entscheidende Feststellung, daß der Diözesanbischof in seiner Teilkirche und für diese die Gesamtkirche repräsentiert. Es geht mithin um eine Repräsentation in doppelter Richtung, einerseits in Richtung auf die Gesamtkirche, die aus vielen Teilkirchen besteht, und andererseits in Richtung auf die einzelne Teilkirche, in der die Gesamtkirche gegenwärtig ist. In der einen Richtung geht es darum, die Teile in die Einheit des Ganzen zu integrieren, und in der anderen Richtung geht es darum, für die Integrationsfähigkeit der Teilkirche Sorge zu tragen, der nach der gegebenen Rollenverteilung nicht der Papst, sondern der Diözesanbischof als unmittelbarer Hirt und als sichtbares Prinzip und Fundament der Einheit vorsteht.

Die Lehre von der Unmittelbarkeit der päpstlichen Gewalt muß sich in dieses verfassungsrechtliche Gefüge der Kirche einordnen. Es kann keine Rede davon sein, daß sich der Papst etwa an die Stelle des Diözesanbischofs setzen oder neben diesem und in gleicher Weise wie dieser als unmittelbarer Hirt die Diözese leiten wolle. Vielmehr ist daran festzuhalten, daß der Diözesanbischof eine im göttlichen Recht grundgelegte und von der zuständigen kirchlichen Autorität näher zu bestimmende Zuständigkeit besitzt, in die der Papst nicht nach Belieben eingreifen darf. Anders ausgedrückt: Es muß anerkannt werden, daß das Recht des Papstes, in die Lei-

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[27] Ausführlich hierzu W. *Bertrams*, Papst und Bischofskollegium als Träger der kirchlichen Hirtengewalt, München–Paderborn–Wien 1965, S. 38–71. Vgl. auch K. *Mörsdorf*, Die hierarchische Verfassung der Kirche, insbesondere der Episkopat, in: Archiv f. kath. Kirchenrecht 134 (1965), S. 89 f.; *dens.*, Primat und Kollegialität nach dem Konzil: Über das bischöfliche Amt, Veröffentlichungen der Katholischen Akademie der Erzdiözese Freiburg, hrsg. von H. Gehrig, Heft Nr. 4, Karlsruhe 1966, S. 42 f.; ferner W. *Aymans*, Papst und Bischofskollegium als Träger der kirchlichen Hirtengewalt – Gedanken zu einer Schrift gleichen Titels von W. Bertrams, in: Archiv f. kath. Kirchenrecht 135 (1966), S. 144–147 und *dens.*, Das synodale Element, a. a. O. (14), S. 248–255. Nur ein Subjekt der kirchlichen Höchstgewalt nehmen dagegen an z.B. D. *Staffa*, De collegiali Episcopatus ratione, in: Monitor Ecclesiasticus 89 (1964), S. 205–263; mit französischer Übersetzung: La nature collégiale de l'épiscopat, in: Revue de Droit Canonique 141 (1964), S. 106–205 [in Hinblick auf den Papst]; K. *Rahner*, Über das ius divinum des Episkopats, in: *Rahner – Ratzinger*, Episkopat und Primat, Freiburg–Basel–Wien 1961, S. 86 f. [in Hinblick auf das hierarchisch strukturierte Bischofskollegium].

tung der Diözese einzugreifen, nicht aufgrund einer gleichartigen und in jeder Hinsicht mit der des Diözesanbischofs konkurrierenden Kompetenz erfolgt, sondern kraft eines höheren Rechtes, das nur dann eingesetzt werden darf, wenn das in ordentlicher Weise zuständige Organ versagt. Wir werden damit auch in dieser Frage wiederum auf die im kanonischen Recht festgelegte Ordnung verwiesen. Für die im Gang befindliche Reform des kanonischen Rechtes sollte es ein dringliches Anliegen sein, daß die ordentliche, der Regel entsprechende Zuständigkeit des Papstes klar bestimmt und jegliche Vermengung mit Vorbehaltsrechten vermieden wird. Dies dürfte entscheidend dazu beitragen, daß die dem Diözesanbischof eigene Verantwortung nicht übersehen und daß, wenn irgendwo Schwierigkeiten auftreten, nicht alle Verantwortung dem Papste und seiner Kurie angelastet wird.

II. Die Autonomie der teilkirchlichen Verbände

Die Integration der Diözesen in die Einheit der Gesamtkirche vollzieht sich in der Regel nicht unmittelbar, sondern über teilkirchliche Verbände, deren Bedeutung für die Einheit der Gesamtkirche kaum überschätzt werden kann. Allerdings hat sich in der lateinischen Kirche – aus verschiedenen Gründen, unter denen das Verhältnis zwischen Kirche und Staat keine geringe Rolle spielte – eine verfassungsrechtliche Situation entwickelt, die durch die Aushöhlung der Mittelinstanzen, insbesondere des Metropolitenamtes, und der damit einhergehenden Zentralisierung der Kirchenleitung bei der römischen Kurie der Entfaltung eigenständiger teilkirchlicher Verbände keinen Raum gelassen hat. Das Zweite Vatikanische Konzil geht in den Fragen der kirchlichen Organisation vielfach von diesem Bild der Kirchenverfassung aus, hat aber doch wichtige neue Ansätze gemacht, um dem Eigenleben in einem Verband von Teilkirchen gerecht zu werden. Zeichen dieser Neubesinnung sind die vorgesehene Aufwertung des Metropolitenamtes und namentlich die, wenn auch unter Schmerzen geborene, Einrichtung der Bischofskonferenz als hierarchischer Instanz für eine kirchliche Region. Kirchenprovinz und kirchliche Region sind teilkirchliche Verbände, die mit den ihnen zugeordneten Teilkirchen in einem höheren teilkirchlichen Verband eigenen Rechtes beheimatet sind, d.h. in der lateinischen Kirche oder in einer orientalischen Kirche. Die Eigenständigkeit dieser vom liturgischen Brauchtum her geprägten Kirchen wird von dem Konzil eindeutig anerkannt. In Lumen Gentium (n. 23,4) wird von diesen Ritus-Kirchen gesagt: „Sie erfreuen sich unbeschadet der Einheit des Glaubens und der einen göttlichen Verfassung der Gesamtkirche einer eigenen Rechtsordnung, eines eigenen liturgischen Brauchtums und eines eigenen theologischen und geistlichen Erbgutes." Dabei wird darauf hingewiesen, daß gewisse alte Patriarchalkirchen wie Mutterstämme des Glaubens andere Kirchen gleichsam als Töchter geboren haben, mit denen sie durch ein engeres Liebesband im sakramentalen Leben und in der gegenseitigen Achtung von Rechten und Pflichten bis auf unsere Zeit verbunden sind. Den Ritus-Kirchen wird damit eine Eigenständigkeit zuerkannt, deren Schranken allein die Einheit des Glaubens und die eine göttliche Verfassung der Kirche sind.

In rechtlicher Sicht erhalten die Ritus-Kirchen ihre eigene Note durch das Prinzip der Ritusbindung, wonach jeder Christ dem teilkirchlichen Verband angehört, nach dessen Ritus er rechtmäßig getauft worden ist oder hätte getauft werden müssen (CIC can. 98 § 1; IOpers can. 6). Abgesehen von gewissen Ausnahmen, die um der rituellen Einheit der Familie willen getroffen worden sind (CIC can. 98 § 4; IOpers cann. 9 und 10), ist ein Rituswechsel, der ohne die Vollmacht des Apostolischen Stuhles vorgenommen wird, nicht nur unerlaubt, sondern ungültig. Das Konzil hat die heiß umstrittene Frage der Ritusbindung im Falle der Konversion eines nichtkatholischen Christen bejaht und damit die in dem MP „Cleri Sanctitati" (can. 11) vorgesehene freie Wahl eines Ritus abgelehnt[28]. Wie jedem katholischen Christen der Rituswechsel verboten ist, so müssen nichtkatholische Christen, die zur vollen Gemeinschaft mit der katholischen Kirche kommen, den ihnen eigenen Ritus „ubique terrarum" behalten („retineant")[29]. Diese personale Bindung an den angestammten Ritus, die mit der durch die Taufe bewirkten Eingliederung in die Kirche Christi einhergeht und die rechtliche Stellung des einzelnen Christen in der Gesamtkirche konkretisiert, ist zugleich die Grundlage für die Rechtshoheit der Ritus-Kirchen, ihrer gegenseitigen Unabhängigkeit und nicht zuletzt ihrer Einordnung in die Gesamtkirche. In diesem Bezugsverhältnis des einzelnen Christen zu seiner Ritus-Kirche wird deutlich, daß die Ritus-Kirchen Teile der Gesamtkirche sind und als solche unabdingbar an die hierarchische Gemeinschaft mit dem obersten Hirten der Kirche gebunden sind.

Im Hinblick auf die Tragweite, die dem Prinzip der Ritusbindung für eine kanonische Autonomie der Ritus-Kirchen zukommt, muß es überraschen, daß das Konzil bei der Einrichtung der Bischofskonferenz als hierarchische Instanz einer kirchlichen Region das Prinzip der Ritusbindung nicht beachtet hat. Es geht hier um die in dem Dekret Christus Dominus (n. 38,2) getroffene Anordnung, daß alle Ortsoberhirten eines jedweden Ritus ordentliche Mitglieder der Bischofskonferenz sind und als solche entscheidendes Stimmrecht haben. Die Worte „cuiuscumque ritus" finden sich in allen Entwürfen des Dekretes und sind bei den konziliaren Verhandlungen nie in Frage gestellt worden. Erst die wissenschaftliche Beschäftigung mit dem Dekret brachte es an den Tag[30], daß die Bischofskonferenz als hierarchische Instanz einer kirchlichen Region aufgrund der verfassungsrechtlichen Struktur der Kirche nur als Organ einer bestimmten Ritus-Kirche denkbar ist und folglich keine ordentlichen Mitglieder mit entscheidendem Stimmrecht haben kann, die einer anderen Ritus-Kirche angehören. In dem nunmehr vorliegendem Schema „De Populo Dei" (can.

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[28] In dem Dekret Orientalium Ecclesiarum (n. 4) heißt es: „Omnes denique et singuli catholici, necnon baptizati cuiusvis Ecclesiae vel communitatis acatholicae ad plenitudinem communionis catholicae convenientes, proprium ubique terrarum retineant ritum eumque colant et pro viribus observent; salvo iure recurrendi ad Sedem Apostolicam in casibus peculiaribus personarum, communitatum, vel regionum, quae, uti suprema relationum interecclesialium arbitra, providebit necessitatibus in spiritu oecumenico, ipsa vel per alias auctoritates, datis opportunis normis, decretis vel rescriptis." Hierzu siehe J. M. *Hoeck*, a. a. O. (11), S. 369.

[29] Es sei bemerkt, daß die offiziöse deutsche Übersetzung das für den kritischen Punkt der konziliaren Aussage entscheidende Wort „retineant" unterschlagen hat.

[30] Hierzu siehe W. *Aymans*, Ritusgebundenheit und territoriale Abgrenzung der Bischofskonferenzen, in: Archiv f. kath. Kirchenrecht 135 (1966), S. 543–549.

200) sind die Worte „cuiuscumque ritus" nicht mehr anzutreffen; es ist aber vorgesehen, daß die Ortsoberhirten eines anderen Ritus, die in dem Gebiet einer Bischofskonferenz tätig sind, zu Sitzungen der Bischofskonferenz eingeladen werden können, mit der Maßgabe, daß sie nur beratendes Stimmrecht haben. Diese Korrektur war notwendig, um die Eigenständigkeit der Ritus-Kirchen zu wahren, nicht zuletzt im Interesse der katholischen Ostkirchen, deren Hierarchien heute in aller Welt anzutreffen sind, wobei ihnen die Wahrung des eigenen Erbgutes ein dringliches Anliegen sein muß. Die Sorge für ein einträchtiges Miteinander verschiedener Riten in dem gleichen Gebiet hat das Konzil mehrfach angesprochen. In dem Dekret Orientalium Ecclesiarum (n. 4) fordert es, durch regelmäßige Beratungen der Ortsoberhirten eines Gebietes dafür zu sorgen, daß die Einheitlichkeit des Handelns gefördert und daß mit vereinten Kräften gemeinsame Unternehmungen zur Förderung der Religion und zum wirksameren Schutz der Disziplin des Klerus verwirklicht werden. In die gleiche Richtung zielt die in dem Dekret Christus Dominus (n. 38,6) an die Vorsteher östlicher Kirchen gerichtete Mahnung, auf ihren Synoden auch Rücksicht zu nehmen auf das Gemeinwohl des gesamten Gebietes, wo mehrere Kirchen verschiedener Riten bestehen, und regt hierzu die Beratung in interrituellen Zusammenkünften an. Diese conventus interrituales sind Bischofskonferenzen beratenden Charakters, sie haben keine Entscheidungsmacht, können aber in ihrem Bereich hervorragende Dienste für die Einheit der Kirche leisten, ohne die Eigenständigkeit der Ritus-Kirchen irgendwie zu gefährden.

Organisationsfragen lassen sich sinnvoll nur von den Aufgaben her lösen, die einem bestimmten Gebilde im Rahmen des Ganzen gestellt sind. Diese Maxime gilt auch für die teilkirchlichen Verbände, die ekklesiologisch als Integrationsstufen zur Einheit der Kirche anzusehen sind. Sinn und Zweck der teilkirchlichen Verbände ist es, das zu tun, was für die in einem Verband zusammengeschlossenen Kirchen gemeinsam ist, und hierdurch der Eingliederung der zusammengeschlossenen Kirchen in die Einheit der Kirche dienlich zu sein. In diesem Aufgabenbereich, der nach unten zur einzelnen Teilkirche wie nach oben zu den höheren Verbänden und immer naturgemäß zur Gesamtkirche weist, besitzen die teilkirchlichen Verbände eine eigene Autorität, die von der Autorität der einzelnen Teilkirchen unabhängig, aber an die Autorität der jeweils höheren Verbände sowie der Gesamtkirche gebunden ist. In diesem Sinne kann man von einer Autonomie der teilkirchlichen Verbände sprechen. Es fragt sich indessen, woher diese Autonomie stammt. Drei Möglichkeiten stehen in Frage: Ist sie von der höchsten Gewalt über die Gesamtkirche entlehnt, ist sie die Summierung von Gewalten der jeweils zusammengeschlossenen Teilkirchen oder ist sie weder das eine noch das andere, sondern etwas von ganz eigener Art?

In der Systematik des CIC, dem hierin das in dem Motu proprio „Cleri sanctitati" vom 2.6.1957 kodifizierte ostkirchliche Verfassungsrecht folgt[31], sind die Vorsteher teilkirchlicher Verbände (Patriarch, Groß-Erzbischof, Metropolit) samt den ihnen zugeordneten Synoden unter jene Orga-

[31] Vgl. K. *Mörsdorf*, Streiflichter zum neuen Verfassungsrecht der Ostkirche, in Münchener Theologische Zeitschrift 8 (1957), S. 235–254.

ne eingereiht, die kraft kirchlichen oder kanonischen Rechtes an der höchsten Gewalt teilhaben[32]. Sie stehen so in einer Linie mit den zuvor abgehandelten päpstlichen Gesandten, die im Namen und Auftrag des Papstes tätig sind und sich gerade hierdurch von den Vorstehern teilkirchlicher Verbände (wie von den Vorstehern der Teilkirchen) entscheidend abheben. Die Vorstellung, daß die in den teilkirchlichen Verbänden wesende Autorität aus der kirchlichen Höchstgewalt abgeleitet sei, läßt sich kaum vereinbaren mit der geschichtlichen Tatsache, daß die teilkirchlichen Verbände aus der Spontaneität bischöflichen Handelns entstanden sind und längst lebendige Gebilde mit eigener Autonomie waren, ehe sich die erste Ökumenische Synode von Nikaia damit befaßte und die Hoheit der alten Oberbischöfe, inbesondere der Bischöfe von Alexandreia, Rom und Antiocheia, anerkannte (can. 6). Dies war lediglich die Bestätigung bestehender Rechte. Mit dem Aufkommen des ortsgebundenen Bischofsamtes hatte sich ein unterschiedlicher Rang der Bischofssitze herausgebildet. Dieser Vorgang, in dem man die frühchristliche Integration zur kirchlichen Einheit sehen darf, beruhte auf dem Ansehen, das einem Sitze wegen seiner Gründung durch einen Apostel oder Apostelschüler zukam, auf dem politischen Rang der Bischofsstadt und namentlich auf der missionarischen Strahlungskraft eines Bischofssitzes, wodurch sich dank der göttlichen Vorsehung gewachsene Filiationsverhältnisse von Mutter- und Tochterkirchen ergaben, die auf dem Weg der Gewohnheit zur Bildung teilkirchlicher Verbände mit dem Archiepiskopos als eigener hierarchischer Spitze geführt haben[33]. Es kann deshalb, historisch gesehen, auch keine Rede davon sein, daß die den teilkirchlichen Verbänden eigene Autorität durch die Summierung der Gewalt der in dem Verband vereinten Einzelbischöfe entstanden sei. Man müßte sich dies etwa so vorstellen, daß die einzelnen Bischöfe auf einen Teil ihrer Autonomie verzichtet und diese Anteile in den Verband eingebracht hätten; dazu aber fehlten alle Voraussetzungen. Auch aus systematischen Gründen ist diese These nicht haltbar; denn die Kirche Jesu Christi ist von ihrer göttlichen Stiftung her eine Kirche, die in und aus Teilkirchen besteht, aber kein Kirchenbund, dessen Einheit auf dem Vereinigungswillen von Teilkirchen beruhte.

Historisch wie systematisch legt sich eine andere Lösung nahe, die den teilkirchlichen Verband als eine im Recht näher bestimmte Erscheinungsform der Communio Ecclesiarum[34] begreift; der teilkirchliche Verband repräsentiert demzufolge, unbeschadet der Autonomie der in ihm vereinigten Teilkirchen, in seinem Zuständigkeitsbereich die Kirche. Hier gilt nicht der vielstimmige Chor der Vorsteher von Teilkirchen, sondern die Autorität des Verbandes, einerlei ob sie durch einen einzelnen oder durch einen kollegialen Akt manifest wird. In diesem Sinne gilt die ekklesiologi-

[32] Im CIC lautet die Überschrift zu Titel VII des II. Buches: De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes; dem entspricht die Überschrift zu Teil I des Titels IV im IOpers, allein mit dem Unterschied, daß „ecclesiastico" durch „canonico" ersetzt ist.

[33] Vgl. H. E. *Feine*, Kirchliche Rechtsgeschichte. Die katholische Kirche, Köln–Graz, 4. Auflage 1964, S. 100.

[34] Hierzu siehe W. *Aymans*, Das synodale Element a. a. O. (14), S. 318–360; *dens.*, Die Communio Ecclesiarum als Gestaltgesetz der einen Kirche, in: Archiv f. kath. Kirchenrecht 139 (1970), S. 69–90; O. *Saier*, „Communio" in der Lehre des Zweiten Vatikanischen Konzils, München 1973.

sche Formel, daß die eine und einzige katholische Kirche in und aus Teilkirchen besteht, die nach dem Bilde der Gesamtkirche gestaltet sind (Lumen Gentium n. 23,1), auch für die teilkirchlichen Verbände. Was in der Formel über die wechselseitige Beziehung von Teilkirche und Gesamtkirche ausgesagt ist, läßt sich jedenfalls sinngemäß, d.h. bezogen auf den Zuständigkeitsbereich, auch auf die teilkirchlichen Verbände anwenden. Dies allein damit begründen zu wollen, daß die Ecclesiae particulares in der Sprache des Konzils auch die teilkirchlichen Verbände bezeichnen, erscheint nicht als hinreichend; gewichtig aber ist es, daß die Konstitution Lumen Gentium bei ihren hauptsächlichen Aussagen über die Autonomie in der teilkirchlichen Ebene weniger die Teilkirchen als die teilkirchlichen Verbände im Auge hat. Die Aussage in n. 23,4 bezieht sich eindeutig auf die teilkirchlichen Verbände[35], und die in ihrem wesentlichen Sinngehalt gleiche Aussage in n. 13,3, wo davon gesprochen wird, daß in der kirchlichen Gemeinschaft auch „Ecclesiae particulares, propriis traditionibus fruentes" bestehen, dürfte sich jedenfalls primär auf die teilkirchlichen Verbände beziehen; denn eigene Überlieferungen, zu deren Schutz und Überwachung der Primat des Stuhles Petri aufgerufen wird, finden sich in einzelnen Teilkirchen durchwegs nur insofern, als diese an den Überlieferungen eines teilkirchlichen Verbandes teilhaben. Teilkirche und teilkirchlicher Verband sind ihrem inneren Wesen nach dadurch miteinander verbunden, daß sie Formen des Dienstes sind, der den Bischöfen als Nachfolgern der Apostel aufgetragen ist. Unbeschadet der für alle Bischöfe gleichen sakramentalen Ausrüstung gibt es im Bereich des bischöflichen Dienstes vielfältige Stufungen, die nicht in der Weihe, sondern allein im Amt begründet sein können. Papst, Patriarch, Metropolit und Diözesanbischof haben die gleiche Bischofsweihe, stehen aber im Bereich des Amtes in einer hierarchischen Stufung, die auf die Einheit des Gottesvolkes bezogen ist. Außer dem Amt des Papstes und dem des Bischofskollegiums, die durch ihre göttliche Einsetzung konkret da sind und einer kirchlichen Errichtung weder fähig noch bedürftig sind, bedürfen alle anderen bischöflichen Ämter, auch solche kollegialer Art, weil sie auf Teilgemeinschaften bezogen sind, notwendig der näheren Bestimmung durch die zuständige kirchliche Autorität. Es geht dabei einerseits um die durch Gesetz oder Gewohnheit erfolgende Einrichtung bestimmter Arten des bischöflichen Dienstes, wobei mit der Festlegung des jeweiligen Aufgabenbereiches auch über das Maß der Autonomie bestimmt wird, und anderseits um die konkrete Errichtung eines bischöflichen Amtes, wodurch die Voraussetzung dafür geschaffen wird, daß eine Person oder Personenmehrheit zum Träger dieses Amtes gemacht werden kann, um die mit dem Amt verbundenen Aufgaben wahrzunehmen. In dieser doppelten Hinsicht sind die Stufungen im bischöflichen Dienst Ausfluß kirchlicher Gestaltungsmacht, ohne daß hierdurch der jeweils zu leistende Dienst wie die hierzu erforderliche Gewalt ihre mit der göttlichen Einsetzung des Episkopates gegebene Grundlegung im göttlichen Recht verlieren. Die in den teilkirchlichen Verbänden wesende rechtliche Autorität wurzelt daher nicht anders als die des Diözesanbischofs in einer von Gott gegebenen Gewalt.

[35] Hier ist nämlich ausdrücklich davon die Rede, daß verschiedene Kirchen an verschiedenen Orten im Laufe der Zeiten „in plures coaluerint coetus, organice coniunctos".

AUTONOMY, AUTOCEPHALY, AND THE PROBLEM OF JURISDICTION TODAY*

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A reflection on ecclesial autonomy and autocephaly presupposes some distinction between the Church and the churches. That the Church is *one* and at the same time is a communion of churches, and therefore *many*, is axiomatic in ecclesiology. However it is not easy to ascertain the exact relationship between the one and the many, between the one Church and the many churches. On what ground can many churches be distinguished legitimately and meaningfully? That heresy and schism can be no legitimate ground for the multiplication of churches will be agreed to by all – including the heretics and schismatics themselves who do not regard themselves as heretics and schismatics – since to achieve *many* at the expense of the *one* is clearly illegitimate; and heresy and schism, by definition, infringe upon the unity of the Church[1].

Other grounds of distinction can be found in the history of the Church, starting with the New Testament. First of all, there is the triple pauline use of the term "church" to designate the house church or liturgical assembly (e.g. Col. 4: 15), the local churches (1 Cor. 16: 19), and the universal church (Col. 1: 24; Eph. 1: 22). The seven churches of Asia Minor, distinguished in the Apocalypse (1: 11 – Ephesus, Smyrna, Pergamum, Thyatira, Sardis, Philadelphia, and Laodicea) are so distinguished purely on geographical basis. Whereas the "house church" has practically disappeared from Christian vocabulary since the advent of churches or buildings built specifically for the liturgical assembly, geography or *locus* has continued to furnish a legitimate and meaningful ground for the distinction of many churches in the one Church even to our own times. Most dioceses/eparchies are in fact erected even today on a geographical basis.

There are however other criteria too that are claimed to be legitimate for the distinction of churches, which remain in communion with one another and believe to constitute the one Church of Christ. Thus, though not exclusive of *locus* but usually coupled with it, nationality and ethnicity, and rite

* Given the nature of this paper, presented originally as a conference, bibliographical and other notes were kept to a minimum. A few points raised during the discussion after the conference largely account for the following notes.

[1] Not all heresy and schism destroy fully the ecclesiality of a given church, and not all heretics and schismatics are to be regarded as having fallen completely outside the one Church of Christ. On this teaching of the Second Vatican Council, see G. *Thils*, L'Eglise et les Eglises. Perspectives nouvelles en oecumenisme, Desclée de Brouwer 1967. The many churches objectively realize the ecclesiality of the one Church in varying degrees, though subjectively for each believer his church can have absolute claims. The old thesis about the juridical "inexistence" of heretical or schismatic churches and the resultant canonical praxis will have to be revised in the light of this ecumenical theology.

are *de facto* criteria that are invoked to establish the identity of the churches (By rite is meant here the particular expression of a church due to its cultural and historical patrimony, of which the principal elements are liturgy, spirituality, theology, and canonical order). Some would deny or at least doubt that these are legitimate grounds for the distinction of the churches, but we are only concerned for the moment in listing them as meaningful, not in discussing the question of their legitimacy[2].

In this paper we have mainly in view the churches that are in communion with the See of Rome and constitute the Catholic Church, though much of what we say will hopefully be pertinent to the other churches as well. After first shaping our terminological tools we shall discuss the question of methodology in our approach to the particular churches, to which autonomy or autocephaly is attributed in Oriental canonistics. We shall then take up an important problem facing these churches, that of jurisdiction. Finally, we shall analyse the phenomenon of social mobility affecting the very identity and destiny of the particular churches in their diaspora.

1. Terminology

The term "local church" is commonly employed in contradistinction to the universal church, and as such designates a geographically limited church. It is however no more precise than the term "church" itself, in its extension.

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[2] This paper subscribes to the thesis, which is presupposed here but cannot be developed, that not only *locus* but also other socially acceptable values like culture (often coupled with nationality) can serve as a legitimate basis for the distinction of particular churches, provided the particularity does not degenerate into particularism. The acid test is communion (positively) or exclusivism (negatively). Particularism, characteristic of some castes in India, and the 'apartheid' of certain African communities are stigmatized already, as in a prototype, in the factionalism of the Corinthian church by St. Paul (1 Cor 1:12). To condemn particularism, however, is not necessarily to condemn particularity. Though raised above being a mere Jew or Greek in Christ as "spirit" (Gal. 3:28, Col. 3:11), a Christian does not cease to be Jew or Greek in culture and society – even as Jesus of Nazareth in his "flesh" remained a Jew till the end of his life. The not too uncommon but all too facile exegesis of "no Jew no Greek", betraying a bias against all particularity in the Church, should be made aware of the no less pauline "no man no woman" in the same vein. This latter binomial is surely not a locus theologicus against the institution of marriage between man and woman in the Church or against the values of the Christian family – rather the opposite is true: marriage is "raised to a sacrament", and the Christian family is the initial "cell of the Church". Similarly, "no Jew no Greek" is no proof text against the institution of national churches. Nationality, like other social values, can be "raised" to be a legitimate basis for the building up of a particular church. This means: (negatively) that its distinctiveness be not allowed to degenerate into division or separation, and (positively) that it remain in communion with the universal church. It is after all the same proviso and an analogous social value (separate place, or a group of people with some identity of its own) that would justify the creation of a diocese. Of course, with nationality for its basis a particular church may easily slip into particularism, but not necessarily (cf. F. *Dvornik*, National Churches and Church Universal, Westminster 1944). In order to realize proper communion *ad intra*, a family must have privacy or a sort of exclusiveness (which is distinct from exclusivism), and this, far from being prejudicial to communion *ad extra*, is a neccessary means and preparation for it. Analogous is the case with particular churches and the church universal. However scandalous sometimes the practice of some particular churches, a principle must be defended and not allowed to be obscured by the practice. – We need badly a developed theology of particular churches, without which the ecumenical movement may not stir from its (providential?) standstill, as of today, in a pluralistic world.

Thus one may designate as local church, for example, the Catholic Church of India, or one may extend it in an ecumenical vision to the whole Christian community of India. The same term can also designate the Church in a less vast geographical configuration like the state of Kerala, once again with or without an ecumenical outreach. Thirdly, "local church" can mean the church in a city, a town or village, and can represent a single diocese (eparchy) or several overlapping dioceses of several particular churches ("particular" in its logical sense, as simply opposed to "the universal", and not in any technical sense, whether Eastern or Western in Catholic usage): for example, the local church of Kottayam can represent any or all three of the Catholic communities of the place, and it may include, in a different context, any or all of the non-Catholic eparchies as well, like the Syrian Orthodox, the Marthomite, the Church of South India, and so on[3].

This is even more strikingly the case in the Middle East, and especially in cities like Beirut, Aleppo and Cairo, where, as is well known, the Catholic community is divided between six or seven jurisdictions, (including the Latin) and each city is the see of six Catholic bishops. When the other Christian communities are also considered, any discourse on the "local church" becomes severly complex.

We are by no means dealing here with a situation that is peculiar to the East or the Middle East. In Europe and in the Western hemisphere analogous overlapping obtains for the Catholic Church as well as for the Orthodox Churches. A telling example is New York, which adds up to twelve Christian communities and ecclesiastical jurisdictions. The churches issuing from the Reformation are also to be reckoned with in this context.

Of the term "local church" should designate literally the church in a given place (but together with the complex notions associated with the term "church" itself), in most places today, except in rural areas generally, "local church" no more represents a single Christian community under a single bishop or pastor. And so, traditional expressions like "local Ordinary" or "local Hierarch", which presuppose that only one bishop or like authority has jurisdiction or competence in a given place, turn out to be ambiguous and unsatisfactory. A reappraisal of these expressions must go along with a revaluation of the meaning of "place" itself. It is significant that the Second Vatican Council, while not wholly eschewing the term "local church" has preferred to speak of "particular churches", although not in a univocal sense: "particular" (from Latin "pars", part), as opposed to "universal" can indeed signify either a single "part" or several "parts" or units. In any case, what is important is that the diocese is not defined in geographical or territorial terms, but as a portion of the People of God (cf. infra).

As for the term "particular church" itself, much discussed since the Council, it is not our purpose to determine its usage. However, if it is agreed that such terms as "universalis" and particularis" have to be attributed to the "Ecclesia" at all, then it would be more consistent with the traditional Aristotelian and Scholastic logical triad "universalis, particularis, singularis" to designate as "ecclesia particularis" that middle ecclesial unit or reality be-

[3] All these varying levels of meaning of the "local church", including also that of the parish (cf. Vat II, Presb. ord., 6:4), claimed right of citizenship in the Synod of Bishops held in Rome in 1974.

tween the universal church on the one hand and a diocese (eparchy) on the other, this last consisting of a single ecclesial unit being then termed as "ecclesia singularis". In terminological questions, however, logic has not always the last word. The decisive question is whether one is prepared to recognize a triadic canonical structure in the Church, that is to say, between a diocesan structure and a universal church structure there is or is not to be a middle structure, and on what grounds. This middle structure has the sanction of the very first ecumenical councils, and the Second Vatican Council applies to it the epithet "particular church" in its decree on the Oriental Catholic Churches.[4] It is to this middle structure that the canonical status of an autonomous church or an autocephalous church would belong in Oriental canonistics.

"Autonomy" is a sparingly and cautiously used term among traditional Catholic circles; even more so "autocephaly".[5] In point of fact, however, dioceses (eparchies) have a certain degree of autonomy; and the recognition of the Oriental Catholic patriarchs as "pater et caput" of their churches by the Second Vatican Council[6] seems to be tantamount to qualifying these churches as autocephalous, at least in an analogous sense.[7]

In any case, the conciliar statement that "the Patriarchs with their Synods constitute the superior authority for all affairs of the patriarchate, including the right to establish eparchies and to nominate bishops . . ."[8] recognizes a degree of ecclesial autonomy midway between that of the dioceses/eparchies and the higher supreme authority of the universal Church. What is termed patriarchate here is a Particular Church[9] invested with the above specified canonical status and competence. This canonical figure is represented by such terms as "ecclesia orientalis sui juris" or "ecclesia ritualis sui juris" in the project *Lex Ecclesiae Fundamentalis*.[10] It

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[4] Orientalium Ecclesiarum, n. 2.

[5] We presuppose that the notions of "autonomy" and "autocephaly" have been clarified in the previous conferences. However we may need some working definitions, and the following ones are offered without implying however that there is accord among writers or that historical events have always followed without exception the same pattern.

Autonomy in general is the exercise of the right to freedom and self-determination enjoyed by individuals and groups within and vis-a-vis a higher group or authority. When a Particular Church is the titular of such autonomy within and vis-a-vis an autocephalous church (or rarely simply the universal church), we have ecclesiastical autonomy. The fact of still being *within* or still belonging to the autocephalous church (often called the Mother Church) is expressed canonically above all by having the election of the head of the daughter church confirmed by the Mother Church, obtaining the holy myron from the latter, and its head being commemorated in the dyptichs of the former, etc.

Autocepholy represents the fullness of ecclesial selfdetermination of a Particular Church within the church universal, including the right to elect its own head without needing to have the election confirmed by any superior ecclesiastical authority.

[6] Orientalium Ecclesiarum, n. 9; Cleri Sanctitati, c. 216 § 1.

[7] Such a presupposition sometimes becomes the guiding principle of research and predetermines the conclusion, as for example in H. *Socha*, Das Ordensapostolat in der Teilkirche, München 1973. – Note that hierarchology has vitiated ecclesiology and canonistics in the Eastern churches as well: suffice to note terms like "eparchy" and "patriarchate", still in use to designate "portions of the People of God", with a hierarchal reference.

[8] Orientalium Ecclesiarum, n. 9.

[9] Ibid. nn. 2, 3.

[10] Cf. Nuovo testo della 'Traccia di schema' Legge Fondamentale della Chiesa, in: Il Regno, n. 386 (1. December 1978), pp. 486–87, cc. 40, 41.

seems doubtful however whether the desired canonical precision is contained in this new terminology, since dioceses/eparchies are also titulars of a certain degree of autonomy – are *sui juris*. More important still is the wrong impression conveyed by the context in which this new terminology is used, as if the particularity of being *ritualis* or *sui iuris* were an oriental peculiarity, allowed for by the universal church, which is consciously or unconsciously identified with the Western Church.

Unfortunately, we still lack a satisfactory theology of the Particular Churches, of which the conciliar decree on the Oriental Catholic Churches speaks (nn. 2, 3). This decree however has not developed the scant references to them contained in the *Lumen Gentium* (nn. 13, 23). The overall impression thus created, in spite of scattered bits of statements to the contrary, is that of a two-tier Church structure: dioceses/eparchies being in direct ecclesial communion with a single centre of unity and of universal jurisdiction, without passing through some intermediate structure, whether patriarchal, archiepiscopal or metropolitan. This impression is further confirmed by the mass of postconciliar literature on topics like collegiality and primacy, Primatus et Episcopatus, local churches and the universal church. Most of this literature applies only to the situation of the Western Church in modern times. But we need an ecclesiology that is both syncronically and diacronically pertinent to encompass the whole mystery of the Church in its historical unfolding; only such an ecclesiology can be truly catholic; only from it can we borrow satisfactory terminological tools for use in canonistics.

2. *Methodology*

Western Ecclesiology, in its post-tridentine development, is however at home with a two-tier model of the Church: the diocese (as "ecclesia particularis") and, without any intermediary structure, the universal church. Evidently, in the two-tier model there is no place for autocephalous and autonomous churches of Oriental canonistics, thus scrapping the very theme of this Congress. This two-tier model, in which the Oriental Churches appear to be structural misfits even when they are accommodated, is the product of different factors. First, the Western experience: after the split between the East and the West, the Church for the West shrank to what was the Western church, thus producing the impression that it was the universal church. Secondly, the cumulation of jurisdictions: the papal and patriarchal jurisdictions being coupled together in one single office, the prestige of the former led to the effective disappearance of the latter, even though the title "Patriarch of the West" is still kept and the several patriarchal basilicas of Rome evoke a model now no more alive. Thirdly, the reaction to the Protestant Reformation, initially at least a Western Church episode, served to divert thought from a triadic church structure. Fourthly, the enormous missionary expansion of the Western Church, now spread almost all over the globe, has made it increasingly difficult to regard it as a particular church; and for the unwary, it is but an easy slip to call it the church universal. And lastly, a hierarchologically oriented ecclesiology: A paradigm that conceives of Peter and the other Apostles as the exact pri-

mordial replicas of the Pope and the other bishops has helped emerge an unwritten constitution of the Church, from which is excluded any authority that is not identical with or derived from that of the pope and the other bishops. (It is in this way the *Codex Juris Canonici* is conceived and structured, and the *Lex Ecclesiae Fundamentalis* follows basically the same two-tier constitutional model). The questionable corollary that patriarchal authority is not of "divine institution" consigns to "ecclesiastical institution" the intermediary ecclesial units, labelling them "coetus" of dioceses (eparchies). Their ecclesial identity is then at best relegated to second rank, if preoccupation with *jus divinum* does not relegate them to oblivion itself.

We are not happy with a two-tier ecclesial structure that would pass for the divinely instituted constitution of the Church. Several things are wrong with it, such as: a rather crude idea of divine institution and *jus divinum*, a naive presumption of the correspondence of Peter-Apostles relationship with the Pope-Western Church Diocesan Bishops relationship, diacronic infidelity to facts of history, but above all the hierarchological approach or methodology.

True, the hierarchological approach in ecclesiology has been justly deflated by competent scholars like Congar, but it still continues to direct processes of thought or policy in several quarters. As our own approach to problems of autonomy-autocephaly or of jurisdiction is diametrically opposed to it, let us say a word about it in order to clear the way for a new methodology.

The fact that the Second Vatican Council in its dogmatic constitution on the Church, *Lumen Gentium*, effected an inversion of chapters two and three, treating the People of God before the hierarchy, has been widely hailed as the solemn defeat of hierarchology. But it is seldom noted that the above inversion has not been consistently carried through even by the Council itself. Take, for example, the definition of the diocese: "diocesis est Populi Dei portio, quae episcopo cum cooperatione presbyterii pascenda concreditur, . . . in qua vere inest et operatur una sancta catholica et apostolica Christi ecclesia"[11]. This conciliar definition is found in a decree on the bishops, and not in *Lumen Gentium*, where one would have thought it should belong. In its present setting, the diocese is above all an object of the bishop's pastoral care. If in the *Lumen Gentium*, the "Populus Dei" preceded the hierarchy, contextualizing or giving the proper setting to the hierarchy and not letting it stand over and above the Church, this is not quite the case with the "Populi Dei portio": the diocese or "ecclesia particularis" appears as an episcopal appendage, a hierarchical dowry, a flock to be pastured. *Lumen Gentium*'s great absentee is a chapter on the "Populi Dei portio". Sure enough, given the tension between "primatus and episcopatus" and the debate focused on "collegiality" during the Council, it is not surprising that the "portion of the People of God" should have come off rather poorly. This lacuna has not been and could not have been fully made good by *Christus Dominus* (with the inherent risk of a hierarchological approach) or by *Ecclesiarum Orientalium* (n. 2: Church as constituted by or as a communion of "ecclesiae particulares" in the sense of supra-diocesan, intermediate ecclesial units – with the inherent risk of misconception that

[11] Christus Dominus, n. 11.

this was an oriental peculiarity), in spite of considerable off-centre gains and recovery of balance in post-Tridentine Catholic ecclesiology, weighted heavily in favour of an overriding papal power[12].

The *Codex Iuris Canonici* (and following it, *Cleri Sanctitati* for the Oriental Catholic Churches) views dioceses and ecclesiastical provinces under "De clericis in specie" (cf. cc. 215sq.), a telling example of the hierarchological approach. The ongoing canonical revision, whether by the Latin Code Commission or by the Oriental Code Commission, has not given evidence of any departure from this approach. In trying to be faithful to the Council in details, the revision seems to fail to be faithful to the spirit of the fundamental "inversion" effected by the *Lumen Gentium*. Such a radical fidelity would seem to require a structure like the following:

Populus Dei		*Auctoritas ecclesiastica/Hierarchia*
1. Ecclesia universalis	:	Auctoritas suprema: Concilia ecumenica – Papa
2. Ecclesia particularis	:	Synodus Patriarchalis – Patriarcha (Conferentia Episcopalis – Primas)
3. Ecclesia singularis	:	(? eparchialis – Episcopus vel dioecesanus)

Perhaps the typical Oriental approach would prefer to change the order of 1, 2, 3 to 3, 2, 1; but in any case the corresponding church authority would be set in the Christian community. It is to be noted that the Episcopal Conferences are hierarchical bodies but juridically not comparable to Patriarchal Synods; whether an evolution in that direction is desirable may be a conclusion that could be drawn on analogy from a study of autonomous/autocephalous churches[13]. Likewise at the diocesan level, the evolution of the diocesan senate or some such body could give shape to an analogous synodal structure in the future. Such details aside, what is important at this point is that the three-tier church structure be thrown into due relief, rendering it canonically pertinent. The paradigm given here does not naturally determine the respective competences of the pope (for the Catholic Church) or of the patriarch or of the diocesan bishop, but shows where a discourse on autonomy and autocephaly belongs. Incidentally, it also helps avoid ambiguity in our subsequent use of the term "particular church" as the titular of autonomy or autocephaly.

It needs hardly to be added that this three-tier church structure is not presented here as the only theologically (or dogmatically) possible one, but as the one that is canonically and historically most feasible; and in saying this we are not falling back on the distinction between divine institution and ecclesiastical institution, but simply prescinding from this distinction. This number three in Church structuring is no trinitarian absolute: why not more than three? or why not only two, as in the Occidental conception?

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[12] On the very positive and fruitful revaluation of the diocese as a particular church, in which and out of which the one Church of Christ exists, cf. among others, Y. *Congar*'s paper presented to this Congress, in: Kanon IV, Vienna 1980, p. 130.

[13] Cf. W. *Aymans*, Das synodale Element in der Kirchenverfassung, München 1970.

Both seem to be open possibilities. The Occidental paradigm would be the following:[14]

Populus Dei		*Auctoritas ecclesiastica/Hierarchia*
1. Ecclesia universalis	:	Romanus Pontifex – Concilium oecumenicum
2. Ecclesia particularis (= singularis)	:	Episcopus dioecesanus
(Ecclesiarum particularium coetus	:	Conferentia episcopalis?
coetus	:	Patriarcha/cum Synodo)

The conciliar designation "ecclesia particularis", attributed to the Occidental church as well as to the Oriental churches[15] has to be interpreted in an analogical sense, (the juxtaposition with the Latin *et* need not necessarily imply a univocal sense) and this without prejudice to the juridical equality as regards rights and duties of the particular churches, whether Oriental or Occidental[16]. This means, however, in terms of the above paradigm, that the Occidental Church is a *coetus* of *ecclesiarum particularium coetus;* but this wider *coetus* itself is an ecclesial unit, an intermediary structure, and as such an "ecclesia particularis" – in an analogical sense. This conception does raise the question of the identity of particular churches, a question that is of some importance in the discussion of their autonomy. In the two-tier model, the diocese is the titular of ecclesial autonomy, in the first place, but autonomy too is analogous, like "particular" church.

Let us sum up and review the ground covered so far. The Church is one and many. The churches are distinguished according to several criteria, one of which is traditionally locus or place. But the term "local church" must often represent several churches distinguished on other grounds but intermingling in the same territory. To avoid this inconvenience, the term "particular church" is preferable. It represents the intermediate ecclesial unit in a three-tier Church structure. It is this unit that is the titular of ecclesial autonomy in the sense of Oriental canonistics. In the Occidental two-tier model, there is no corresponding titular, though dioceses (called particular churches) enjoy some amount of autonomy in the sense of Western canonistics (even when the term itself is avoided). This model is hierarchy centred, supposedly corresponding to Peter-Apostles relationship: the pope as successor in the Petrine office governing the universal church, and the bishops as successors of the apostles governing the single dioceses. Though this two-tier church structure is an open theological possibility, its hierarchological approach needs inversion in the spirit of the Second Vatican Council. The Church, and not the hierarchy, should be the point of departure in a reflection on questions of church order, including autonomy, autocephaly, and jurisdiction. This inversion in methodology is rich with consequences, and let us look at some of them now.

[14] W. *Beinert*, "Dogmenhistorische Anmerkungen zum Begriff 'Partikularkirche', in: Theologie und Philosophie 50 (1975), pp. 38–69, proposes a similar, though not identical, model of Church structure as part of "Grundlinien einer Theologie der Partikularkirche" (p. 66).

[15] Orientalium Ecclesiarum, n. 2.

[16] Ibid. n. 3.

"It was he (the glorified Christ) who appointed some to be apostles, others to be prophets, others to be evangelists, others to be pastors and teachers. He did this to prepare all God's people for the work of Christian service, to build up the body of Christ" (Eph. 1: 11, 12). Building up the body of Christ, that is the Church, is the finality of the "gifts" given by the Lord of glory to his ministers in the Church. Like St. Paul, who was conscious of the authority given him by the Lord "to build up, and not to tear down" (2 Cor. 13:10), "bishops use their sacred authority for the upbuilding of the flock"[17].

This sacred authority has been called by various names (potestas, auctoritas, cura pastoralis . . .), including the least satisfactory of all "jurisdictio". This term jurisdiction has recently come under severe fire. It has been denounced as ambiguous, inadequate, and illogical. But it has also been stoutly defended, distinguishing the various senses it has acquired during the course of its semantic evolution. As distinct from the power of orders, the power of jurisdiction has been somewhat overplayed in the canonistics developed in the Western Church since the thirteenth century; but the substance of the distinction is common to East and West and goes back to the earliest centuries, as evidenced by metropolitan authority[18].

Without wanting to drive a wedge through this distinction to turn it into a dichotomy, we wish to include in the concept of ecclesiastical jurisdiction all pastoral authority in general. As such it does not isolate itself from the power of orders (potestas ordinis) nor identify itself with the power of government (potestas regiminis, distinguished from potestas docendi and potestas sanctificandi). Till something better is found, it is still a useful term, as part of terms like territorial jurisdiction and personal jurisdiction[19]. Though this is not a fully satisfactory distinction either, here we have a live problem confronting many churches, especially those of the East scattered in a diaspora in the West[20].

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[17] Lumen Gentium, n. 27: episcopi . . . sacra potestate . . . nonnisi ad gregem suum in veritate et sanctitate aedificandum utuntur.

[18] An example. The metropolitan archbishop Heraclias (231–247) of Alexandria deposed Bishop Ammonius of Thmuis for having allowed Origen to preach in his church: Origen had been condemned in 231 by Demetrius, Heraclias's predecessor in the See of Alexandria. This deposition was a metropolitan act of jurisdiction, something which Bishop Ammonius as suffragan obviously lacked, though himself an equally ordained bishop.

[19] When ecclesiastical jurisdiction is specified by the criterion of territory, it becomes specifically territorial jurisdiction; when specified by rite, it should become ritual, and not be called simply personal (Persons as persons offer no criteria of specification of jurisdiction nor determine the subjects that come under it).

[20] The distinction is usually applied also to the character of law. Not laws as such are territorial but particular laws, which can also be personal: cf. G. *Onclin*, De territorialitate vel personali legis indole, Gembloux 1938, esp. pp. 318–29. For the problem for the Orthodox; cf. O. *Clément*, Avenir et signification de la diaspora en Europe occidentale, in: Contacts 30 (1978), pp. 259–83. For the latest attempt to elucidate this issue and to offer a canonical solution to the concerned Oriental Catholic Churches in the future code; cf. I. *Žužek*, Canons concerning the Authority of Patriarchs over the Faithful of their own Rite who live outside the Limits of Patriarchal Territory, in: Nuntia 6 (1978), pp. 3–33. with recent bibliography.

The problem can be formulated in the following way. It would seem that there should be some difference between the extent of the jurisdiction of the universal church and that of the local church. As for the universal church, its supreme ecclesiastical authority (the ecumenical council – and for the Catholics, also the pope) has jurisdiction over all the faithful and church institutions, irrespective of territoriality; it can make universal laws (binding on all) as well as particular laws (binding only a few churches or church groups, or particular categories or places). A local church on the other hand is geographically circumscribed and has jurisdiction within its proper territorial limits: it cannot make universal laws, nor may it exercise jurisdiction within the territorial limits proper to another local church. In fact multiple jurisdiction in the same place has been explicitly condemned by the ancient canons. For it would seem that in extending its jurisdiction beyond its limits it is either invading the territory of another local church (in a manner comparable to one country invading another country and violating its territorial integrity) or pretending to supraterritorial claims as if it were the universal church – thus denying its local character. To *be* local (that is, geographically limited) and to *act* as if it were not local (geographically not limited) is surely to admit a contradiction between being (*être*) and acting (*agir*).

Posed in this way, the problem of the diaspora appears already resolved with a verdict against the particular churches involved. But has the case been presented correctly? Let us return to take a closer look at the concept "local church". Early on we observed that where many churches exist, the "local church" is multiple (one and many, church and churches). In the pre-ecumenical era, it was usual for any one church to put forward exclusive claims (one may do so even today), and deny ecclesiality to all other Christian communities. Now, if as is generally agreed, the local church is not simply a department of the universal church but its concrete realization and representation, where several intermingling Christian communities are recognized as ecclesial, the local church ceases to be simply singular and is to be seen as the local replica of the vast and complex ecumene with an ecclesiological mystery and an ecumenical problem. Now a further question can be raised with regard to the concept of the local church. In what sense is a church *local,* when its faithful are for the greater part no more confined to its traditional boundaries but are scattered practically all over the world? And what are the limits of its jurisdiction? The answer would depend upon one's ecclesioligical stance (Note: we are deliberately prescinding here from specific cases and specific solutions given, in order not to be pinned down to the discussion of those historical precedents). If one's point of departure is the hierarchy and its territorially limited jurisdiction, the answer is simple and straight forward: within its territorial limits, it is still the local church or is part of a local church in the above ecumenical sense, and its pastors continue to exercise jurisdiction; outside those limits, well – it is in the diaspora!

If on the other hand one's point of departure is the "portion of the People of God" (hence, in accordance with the conciliar "inversion"), then the answer would be the following. However scattered, Christians who share a particular ecclesial patrimony constitute a *communion* or particular church. Their unity is no more locally based, and so they are not a local

church. What unites them beyond what is common to all the members of the Church of Christ and distinguishes them at the same time as a particular church may be any or some or all of the following: culture, nationality, ethnicity, rite (that is, a complex of liturgy, theology, spirituality, canonical order etc. that go into the make up of the identity of a particular church).

With the loss of local unity, a church indeed ceases to be a local church, but these other elements may still continue to impart to it a unity. Place is an immovable element of material or visible unity, but these other factors of socio-cultural heritage and historical character of a people are far more important elements of unity and sharing. True, in a rather static civilization, geographical unity or proximity is the condition for the maintenance of the unity of a group through mutual communication. In an age of social mobility and mass communications, this is no more the case today, at least for a very significant part of humanity. Like so many multinational or international organizations, which are not locally bound except for their headquarters perhaps, it is possible for a particular church to be spread out all over the globe without pretending to become the universal church. Here the concept of the local church breaks down, and the particular church takes over.

As regards its jurisdiction, it would seem to follow that it should be coextensive with the particular church itself, to be consistent with the methodological inversion. For jurisdiction is, as we saw, Christ's gift for the building of the Church, to enable it to grow to full stature in Christ. And all the faithful have a right to this growth, and pastoral care should stand by in its service. And normally it is pastors of the same particular church that are best fitted to render this service. Hence the conclusion: the jurisdiction of the pastor follows the flock.

But what happens if the flock migrates where other flocks are being pastured? For some the answer is: Halt, pastor, hand your flock over to the pastor there and withdraw; pastoral authority is territorial; multiple jurisdiction in the same territory is forbidden by the ancient canons. Others answer: pastoral authority is primordially personal; the norm of territorial jurisdiction is no absolute without exceptions or precedents; enter, pastor, but try to be nice to the other pastor. In other words, two contrary answers issue from the conflict between two principles, called territoriality and personality. Unable to reconcile them, a third principle is sometimes invoked to legitimize a practical situation, which would otherwise seem to be a flagrant violation of the holy canons and a public scandal: the principle of economy, though not all scholars are agreed on the theoretical value of this principle either. The practical solution long since adopted by the Catholic Church can be best summarized in the pastoral stance of the Second Vatican Council: "salva territorialitate iurisdictionis, ... providere intendit in bonum animarum pluralitati iurisdictionis in eodem territorio"[21].

But the canonist surely owes the Church a theoretically satisfactory solution, if it is possible. I suggest, the same inversion of methodology we met

[21] Orientalium Ecclesiarum n. 16, n. 20.

with earlier offers the best prospects. It can also perhaps enable us to read the ancient canons under a new light and in their proper context.

The ancient canons (chiefly c. 6 of the First Ecumenical Council of Nicea; c. 2 of the II Ecumenical Council; c. 8 – in the Greek collection, on Cyprus – of III; c. 5 of IV; c. 20 of Quinisext or in Trullo) deal with the problem of a hierarch encroaching on the competence of another colleague. The only case of an entire "portion of the people of God" moving out into another territory is c. 39 of Trullo, sometimes cited as a derogation to the principle of territorial jurisdiction, though the Council seems to have but created a new ecclesiastical circumscription for the expatriates in the new territory, a provision which with their repatriation quickly came to an end. In any case, to refer to the ancient canons which were aimed at regulating the aforesaid hierarchical abuse of interference with the jurisdiction of another hierarch, in the modern context of mass emigration and the dislocation of whole sections of the People of God is to regard the hierarchy as the normative point of reference for the church – a hierarchological stance. The canons in question have not envisaged the legitimacy or not of particular churches being spread out on the face of the earth and intermingling with other particular churches with or without a local unity. Hierarchical jurisdiction should be contextualized in this ecclesiological question. It is the legitimacy of the being of a particular church that legitimizes its jurisdiction (which is not the same thing as saying that the church is a democracy) and not the other way round. The canons referred to above are irrelevant, in this methodological inversion, to the problem of the diaspora.

The Church is one and many, because the one Church is also catholic: it exists in and out of particular churches. It is by building up particular churches that the universal church is built up. Now hierarchical jurisdiction is in function of this upbuilding, and so an essential and integral requisite of particular churches. True, particularity can be carried to an extreme and degenerate into particularism to the detriment of the unity of the Church of Christ; so too, universality can be insisted on up to the vanishing point of particularity and consequently damaging the Church's catholicity. It is in the right equilibrium between unity and catholicity that the problem of multiple territorial jurisdiction should be set and resolved. No autonomy, even in its highest degree of canonically articulated ecclesial structure (namely, autocephaly), can exempt a church from this interdependence in the body of Christ. Nor may the universal church authority or any other power hinder the faithful of a particular church from exercising the fundamental human right to emigrate anywhere and be built up with proper hierarchical organs into a fuller church.

The communion of the churches and their solidarity in the one Church will often require and justify, in the concrete, that, beyond intercommunion, pastoral care be supplied mutually for a time according to the needs and possibilities of the respective churches and that individuals and institutions be biritual or pluriritual. Thus the Catholic Church, in spite of certain regretable defects of the past, has evolved a pastoral care that includes today institutions like personal parishes, missions with cura animarum, chaplainciesorepiscopalvicarsforspecificcategoriesofthefaithful(national or linguistic groups, migrants, etc.), institutions that transcend ritual

differences and go beyond territorial limits[22]. Such institutions make for a feasible pastoral care in an age of social mobility that is ours, affecting the very identity and lot of the particular churches.

4. Social Mobility and Ecclesial Identity

In the ancient world with a static agricultural civilization, the particular churches found their identity as local churches on the basis of political and geographical divisions, which corresponded more or less to different cultures and subcultures. Ecclesial pluralism was spacially discernible, and the norm one city one bishop, or one province one metropolitan, was easily understood. Today spacial distinction has largely vanished. Social mobility brings the churches together into the same space, without necessarily levelling down their peculiarities with equal rapidity. Often the presence of the other as other accentuates the consciousness of one being different. This is more so with minorities and others at a disadvantage, making them insist on their being different and vindicate their rights in a pluralistic society. However, contemporaneously, social forces may work towards unity and standardization in relation to "reference groups" in a dominant culture, so that particular groups tend to lose their original features. These social processes affect, naturally, the particular churches as well and may change their very identity.

Mobility is a sociological term and refers to a society that is marked by the easy intermingling of different social groups. The importance of this phenomenon for the Church today has been underlined by the Holy See in a recent document of the Pontifical Commission for the Pastoral Care of Migration and Tourism. It is a letter addressed to the Episcopal Conferences, and is entitled in the Italian original "La Chiesa e la mobilità umana"[23]. Written from a pastoral point of view, it contains valuable insights like the following one: "i fenomeni della mobilità sono un invito alla

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[22] From the memorable Apostolic Constitution "Exsul Familia" (AAS 44, 30. Sept. 1952, pp. 649–704) of Pius XII "on the spiritual care of migrants" let us cite the following passage:

"The sacred ministry can be carried on more effectively among strangers and pilgrims if it is exercised by priests of their own nationality or at least who speak their language. This is especially true in the case of the uneducated or those who are poorly instructed in the Catechism. The Fourth Lateran Council solemnly affirmed that this was rightly so, declaring in 1215: "We find in most countries, cities and dioceses in which people of diverse languages who, though bound by one faith, have varied rites and customs. Therefore we strictly enjoin that the bishops of these cities or dioceses provide the proper men, who will celebrate the liturgical functions according to their rites and languages. They will administer the sacraments of the Church and instruct their people both by work and by deed" (*Mansi*, Sacr. Council., XXII, p. 998, c. IX). The Church has followed this instruction scrupulously, even down to our own days.

"Indeed, as we know, special parishes have been established for the various languages and nationality groups. At times, even dioceses have been established for the different rites [...]. The Code of Canon Law duly provides for them (can 216, § 4). And as the Holy See gradually gave its approval, numerous national parishes were established, especially in America." (Engl. transl. in: G. *Tessarolo*, The Church's Magna Charta for Migrants, Staten Island, N.Y. 1962, pp. 27–28)

Also *Paul* VI, Motu Proprio, "Pastoralis migratorum cura", (AAS 61/1969, pp. 601–603), along with S. Congr. for Bishops, "De pastorali migratorum cura", (AAS 61 / 1969, pp. 614–43), which revise and update Pius XII's "Exsul Familia."

[23] L'osservatore romano, 26–27 June 1978, pp. 5–7.

Chiesa a realizzare la propria identità e la propria vocazione"[24]. The Church has to realize its identity as a people on the move in the midst of a mobile human society and as part of it and in its service. This call to serve is voiced by Pope Paul VI axiomatically in a discourse addressed to the European Congress on the Pastoral Care of Emigrants: "Alla mobilità del mondo moderno deve corrispondere la mobilità pastorale della Chiesa"[25]. What pastoral mobility means is explained by the above mentioned Pontifical Commission: it has to do with overcoming a certain outlook that is rooted in the static ("staticità). In the words of the Commission:

> "Con questo non viene minimamente diminuito l'apprezzamento delle realtà territoriali, nemmeno della parrochia, che ne è l'espressione più accessibile. Il luogo, anche nella mobilità, resta una realtà. Ma la mobilità spinge a concezioni, prima ancora che a istituzioni, ultraterritoriali. Ciò corrisponde, del resto, alla mutata funzione del luogo, divenuto, per effetto della mobilità, intermediario di molteplici influenze. Nella visione pastorale, diocesi e parrocchia non si definiscono soltanto in termini geografici; esse sono chiamate ad estendersi fin là dove si recano o vivono tanti loro fedeli"[26].

The central insight is that, while retaining its traditional use, place has changed its role and become the medium of multiple influences as a consequence of social mobility. Hence the call to think in "ultra-territorial" terms and the directive to dioceses and parishes to reach out in their pastoral thrust beyond geographical limits. The same logic could apply *a fortiori* to Particular Churches as well, though they are not mentioned here explicitly.

To bring home what is meant by the mobility of present day society, let us look at a few facts. Not only are we to think of the millions of tourists and business people and professionals who pack into trains, planes and ships, but equally of millions of nomads and emigrants. Let us now focus our attention on this last category: the emigrants.

All through the ages people have emigrated, and every now and then in the march of history, empire builders and conquerors have deported or shifted masses of humanity from one geographical area to another. But the phenomenon of emigration today marks not only a quantitative difference for sheer numbers, but a qualitative leap[27]. Of the three continents, which since the dawn of the era of colonialism had become the haven of emigrants (North and South America, and Australia), the first one especially continues to draw still millions of emigrants, whether legal or illegal.

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[24] P. 6, col. 4.

[25] AAS 65 (1973), p. 591.

[26] L'osservatore romano, loc. cit. (23), p. 6, col. 1.

[27] According to U.N. statistics, released in the last week of June 1978, the forecast for certain metropoles is bewildering. The population of the following cities, for example, in the year 2000 will be as follows: Mexico City – 31,6 million; Tokyo – 26 million; Greater Cairo – 16,3 million . . .

Whatever be the percentage of Christians or Catholics in these and other similar megalopoles in the year 2000, it is worth reflecting, especially in view of the future canonical legislation of the Church, if the norm "one city one bishop" would have any real meaning for effective pastoral care and evangelization of future megalopoles that will be larger than some nations under the pastoral care of several bishops today. Already today cities like São Paulo, Mexico City, Buenos Aires have a population of about ten million.

Through the industrial revolution and technological progress, the economic and political orders have been revolutionized, and individuals and families and ethnic and national groups still swell the tide of emigration across seas and continents, draining certain areas and filling others.

In the category of emigrants are included all those who leave their habitual abode in search of another mode of life or of better means of livelihood abroad. Among them are chiefly workers, technicians, exiles, refugees in search of freedom. To these may be added students who go abroad for higher education or cultural perfectioning[28].

By way of sampling, let us look at a few countries in Europe. In Holland, 4 % of the population is foreign immigrants, mainly West Indians and Indonesians. Of West Germany's 60 million, about 6 % is composed of immigrants of various nationalities. In Sweden, the proportion rises to 10 %, mainly with Assyrians. And in Switzerland, the proportion is over 15 %. And as for students in particular: in 1976–77, there were 42.754 foreign students (ca. 60.000 – UCSEI) in Italy, 83.595 in Great Britain, about 98.000 in France, and 434.500 (in 1977–78, including school children as well of Gastarbeiter) in West Germany.

The United States is the country of immigration par excellence officially admitting 400.000 new immigrants each year, without counting the illegal immigrants (of about 12 million Mexican immigrants, the greater number are illegal). Between 1820 and 1972, 45,53 million emigrants came to the United States: 9,5 million from Great Britain and Ireland, 6,9 million from Germany, 5,2 million from Italy, 4,3 million from Austria and Hungary, 3,3 million from Russian, 3,3 million from Canada, 1,6 million from Mexico. In 1970, the population consisted of 87,5 % whites, 11,1 % blacks, 1,4 % Red Indians, Japanese, Chinese and others.

Such is the general background in which we have to study the phenomenon of the migration of Christians, whether Oriental or Occidental, and seek solutions to the specific problems it poses to the Church. Only then can we rightly appreciate the fact that, for example, there are about 2 million Oriental Catholics living now outside the so-called "Oriental Regions"[29]. For as we said before, the mobility of society today has achieved a qualitative leap. It has as it were hit the boiling point, like water at 100% C, signalling a profound transformation and giving rise to problems that call for new solutions. Let us look briefly at two such problems confronting the Oriental churches in the diaspora: latinization and absorption.

Surely the Orientals have the right to continue as Orientals in the diaspora, and to grow into ecclesial fullness. While this may be the happy lot of some Oriental churches, others may come under the prevailing influence of the Western church and become latinized. While forced latinization is illegitimate and regrettable, the free adoption of elements of another rite under the interplay of sociocultural forces will have to be looked upon differently. As the Second Vatican Council has recognized approvingly, the West itself has adopted many elements from the Oriental heritage in the camp of liturgy, spirituality and canonical order[30]. Such free ecclesial "re-

[28] Cf. Pontif. Commission for Migration, loc. cit. (23), p. 5, col. 1.
[29] For this term, cf. Pius XII, Motu Proprio Postquam Apostolicis, can. 303, § 1, 2.
[30] Unitatis Redintegratio, n. 14.

ception" may take place legitimately in the opposite direction too, with the result that "latinization" need not necessarily be a pejorative term, however regrettable a past history may lie behind that term.

Another phenomenon that is not very rare is the absorption of the faithful of a particular church in another church, whether eastern or western, in such a manner that the very existence of a given church in the diaspora is threatened. So for example, the Catholic Coptic emigrants from Egypt number about 10.000 in Canada alone. They have adopted the latin rite and have been absorbed in the Western Church. They seem to have preferred to identify themselves with the rite of 97,7 % of the Catholic population of Canada. Faced with a situation like this how should an Oriental Church react? It may try to prevent the process of absorption in a kind of death-struggle. And perhaps it may succeed, too. Or it can look upon the process as the natural interplay of socio-cultural forces, and accept the fact tranquilly, leaving the decision to the free choice of the faithful themselves. "Simple reference groups, that is to say, groups with which people want to identify themselves, have a considerable role in the phenomena of the mobility of attitudes and affiliations", as a leading scholar of religious sociology writes. Such identification is a factor of social integration, a phenomenon that is commoner with second and third generation immigrants, though the third or a later generation in search of an identity may still stage a return to the heritage of their forefathers[31].

The churches should consequently recognize the right of the faithful to change their rite as a fundamental Christian right. Given the fact that the Universal Declaration of Human Rights has included in its 18th article the right to "freedom in changing one's religion", analogously or even *a fortiori*, the faithful should have the Christian freedom to change their rite, even if that should mean the extinction of a particular church in the diaspora or anywhere else. While proselytism should be avoided, the demands of inculturation may indicate in certain cases that a change of rite is a better course of action than remaining as a foreign body isolated from the surrounding religious culture. It is not up to the pastors to make the decision for the members of their flock, but their duty as public church authorities is "to foster the conditions and the means which are capable of promoting Christian life among all the faithful"[32]. Here we see the chances and limits of particular churches and of the jurisdiction of their pastors[33].

Indeed, a church-oriented methodology over against a hierarchy-centred one may prove in the end to be a gain or loss for the particular

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[31] Cf. L. *Dinnerstein* – D. *Reimers*, Ethnic Americans. A History of Immigration and Assimilation, New York 1975; D. G. *Bell*, The Relationship of Russian Ethnic Identity to Orthodox Practice and Belief, in St. Vladim. Theol. Quart. 21 (1977), pp. 49–55.

[32] The citation is an adaptation from Vatican II, Gaudium et Spes, n. 59, where the Council is speaking of the function of public authority with regard to culture. The full text is as follows:

"It is not the function of public authority to determine what the proper nature of forms of human culture should be. If should rather foster the conditions and the means which are capable of promoting cultural life among all citizens and even within the minorities of a nation."

This conciliar statemant applies as well to the function of public authority in the Church with regard to rites in so far as rites are the cultural expression of a Particular Church.

churches, whether autonomous or not, and for their pastors themselves. But it can only be a gain for the Church, which is one and catholic. Neither autonomy, nor autocephaly, nor jurisdiction, not even the Church is an end in itself: "Seek ye first the Kingdom of God . . ."

While Pastors have the competence to "foster the conditions and the means which are capable of promoting" the rite of their Particular Church, even though this church is only a minority in a given place, it is not up to them, as public authority in the Church, to determine what form or course the rite itself should adopt, especially in the interests of power and money. Hence the following conciliar warning, which follows the text cited above, appears also relevant in the present context:

"Ideo praeprimis instandum est, ne cultura, a proprio fine aversa, potestatibus politicis vel oeconomicis servire cogatur". Instead of *cultura* read *ritus*, and instead of *politicis* read *ecclesiasticis* to apply to areas where, as is sometimes alleged, rites are "diverted from their proper scope" and are instrumentalized to serve pastoral power and economic interests.

In conclusion it may be added that the right and duty of the churches, whether eastern or western, to preserve the respective rites, as enunciated by the Council (Orien. Eccl. nn. 5, 6) is no absolute; it is in view of the faithful themselves ("ad bonum animarum consulendum"); it allows for changes for organic progress; and the very return to the "traditions of the fathers" ("avitas traditiones") should serve the cause of this progress. And the Council has also enjoined that attention should be paid "to the current needs of people, not only in terms of spiritual and moral conditions, but also of social, demographic, and economic ones. Social and religious surveys, made through institutes of pastoral sociology contribute greatly to the effective and fruitful attainment of that goal, and they are earnestly recommended." (Christ. Dom., n. 17). This conciliar recommendation is perhaps particularly relevant for the Oriental churches, few of whose theologians or canonists or pastors appear to have yet given religious sociology its due.

[33] In one and the same culture diversity of rites is artificial and raises the question about the legitimation of their diversity – rite (like sabbath) is for man and not man for rite. To every new generation the effort at legitimation would appear weaker and ever more farfetched, if the diversity in question had its origin in conflicts of the past now substantially overcome or in ethnic differences that have largely sunk in a single integrating culture.

The absence of a social value (cf. note 2 above) to justify the plurality of churches will appear to be the fundamental weakness of the particularity of the churches issuing from the Reformation, once it is agreed that dogmatic differences are not deep enough to warrant diversification. It should be noted however that often a single dominant culture subsists in several subcultures with their largely local variations. Ecclesially, to one culture and several subcultures would correspond one rite and several sub-rites. Perhaps the Western Catholic Church is now awakening to this consideration with its current concern for the evangelization of cultures or inculturation.

As for the Oriental churches, it cannot be claimed that they are perfect models of inculturation: their rites are not simply cultural expressions of the diversity of cultures or subcultures but have been differentiated owing also to historical vicissitudes, in which conflicting dogmas, politics, and nationalities have played their part. In the western diaspora, some of them become assimilated into the Western Church, others struggle to survive, and a few thrive chiefly in the open and mobile society of America. In so far as law is a social phenomenon too, canon law has also to be attuned to the sociological dimension of these churches, even as it was conditioned in the past by a different society in the ancient Oriental regions. Traditional canon law is caught unprepared by these churches, whose destiny is cast in a mobile society: they need supple canonical norms and not inflexible laws enshrined in a code, which may sooner or later prove to be a suffocating straight-jakket.

Finally, lest my plea for unity through cultural integration and for the christian right to change one's rite should be misunderstood as a swing away from my earlier stand for pluralism and autonomy, let me cite for the last time a conciliar text, remarkable for its right measure and equilibrium: "The growth of communication between the various nations and social groups opens more widely to all the treasures of different cultures. Thus, little by little, a more universal form of human culture is developing, one which will promote and express the unity of the human race to the degree that it preserves the particular features of the different cultures." (Gaudium et Spes, n. 54).

THE CONSTITUTIONAL DEVELOPMENT OF THE EASTERN CATHOLIC CHURCHES IN THE LIGHT OF THE RE-CODIFICATION OF THEIR CANON LAW*

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The Catholic Church found itself obliged, as a consequence of Vatican II, to revise its canon law. This was inaugurated by John XXIII for the Latin Rite Church on March 28, 1963. The Eastern Catholic churches had not yet received a complete code of their own prior to the Council. There had been promulgated four motu proprios altogether 1590 canons[1], and John XXIII could speak on January 25, 1959 of the proximate publication of the Code of Oriental Canon Law. Everything was then halted as a result of the new ecclesiological principles and legislative enactments of the Vatican II Council. Paul VI established on June 10, 1972 the commission which would be in charge of the revision, or more correctly, re-codification, of the canon law of the Eastern Catholic churches. This Commission (here abbreviated "CC") began its effective work in 1974. Since 1975, the CC has published *Nuntia*[2], of which have appeared eleven issues till the end of 1980, which contain reports on the work of the ten coetuses or work groups, and the drafts of future canons. Only in *Nuntia* 3 (1976) did the CC decide to publish the principles which the coetuses have to follow, the so-called *Guidelines* (*Principi Direttivi*), and which had been adopted in March 1974.

The very publication of the draft of some canons and of the Guidelines is to be understood as an invitation tendered to the students of canon law of the entire world to voice their opinion on the work accomplished by the CC. Having studied the efforts at codification of the Orthodox churches, especially those of the Serbian Orthodox Patriarchate, having acquired experience at codifying law on the diocesan level, having assisted by consultation at the ecclesial level heads of churches and bishops, having been involved in church administration just in circumstances in which the theoretical questions arising in codification become practical problems, I hope I shall not be charged with temerity if I scrutinize and evaluate these efforts

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* Abbreviations used here: CA = Crebrae Allatae; CC = Codification Commission; CIC = Codex Iuris Canonici; CICO = Codex Iuris Canonici Orientalis; CS = Cleri Sanctitati; OE = Orientalum Ecclesiarum; PA = Postquam Apostolicis; SN = Sollicitudinem Nostram.

[1] On the canons which were in preparation and had not been promulgated cf. the reports by I. *Žužek* in Nuntia 1, pp. 23–31; 4, pp. 31–71, 97–127; 6, pp. 66–79; 7, pp. 64–103; 8, pp. 85–100.

[2] We are interested here only in the canons on the patriarchs and archbishops, the only ones directly reflecting as of now the future structure of the Eastern Catholic churches in the CICO, as they were prepared under the chairmanship of I. *Žužek* as relator. Cf. Nuntia 2, pp. 31–52.

of the CC. I shall be following the general invitation expressed in "il vivo desiderio che si cerchi di suscitare un salutare 'feedback'"[3].

From the various parts of the future Code of Oriental Canon Law (abbreviated here "CICO"), I shall study the canons on the patriarchs and the patriarchal structures in the proposed codification since they define the basic or constitutional law of the sundry Eastern Catholic churches. If in the course of this evaluation, these canons should be judged wanting in some aspects, this should not be construed as lack of awareness on my part of the enormous difficulties inherent in the task of codification. Nevertheless, it shall be said at once: the new codification is *for* the Eastern Catholic churches, but it is not *by* the Eastern Catholic churches. The Guidelines and their interpretation by the people in charge of the work of the CC demonstrate clearly that the legal system under which these churches will have to live is being imposed from above, Rome; theirs is to decide on points of secondary import.

The Society for the Canon Law of the Eastern Churches is still young, but we can already predict that there will be no event more important affecting the Society and its work than the codification, or re-codification, of the canon law of the Eastern Catholic churches, now in progress in Rome. While the agenda of the codification expressly stipulates that it is destined for the Catholic Eastern ecclesiastical communities, it is clear that it will have profound repercussions upon the legislative attempts in the Eastern non-Catholic churches[4], and also the canon law of the Latin Rite Church may be affected, for instance, by what the Eastern codification will contribute to the legal definition of the particular church or the church *sui iuris*.

When the Guidelines were disclosed to the public in 1976 (*Nuntia* 3), two years after their adoption and after considerable work on the CICO had been done, they were said to have been "... published with the precise intention of offering them thereby to the critical evaluation of competent bodies." However, no identification of such "bodies" (*organismi*) was made, not even indirectly, by having the Guidelines addressed to them selectively.

The "Nota" following the Guidelines[5] tells us the *Coetus Centralis* discussed them first. This was followed by the approval by the *Plenaria*, reached in a number of meetings between March 18th and 23rd, 1974. This led to 23 additional hours of discussion, at which all consultors were present, to be terminated by the final approval of the Guidelines.

Considering the detailed report Fr. Ivan Žužek and other relators give us on the work of their respective coetus, the various suggestions and discussions on each canon on the patriarchs and major archbishops and other parts of the future CICO, we could have expected an even more detailed, though summary, review of the various opinions on several weighty ques-

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[3] Nuntia 5, p. 63. Nuntia 3 contains the Guidelines in Italian (pp. 3–10), French (pp. 11–17), and English (pp. 18–24). To the Italian version are added the "Nota ai Principi" (p. 10).

[4] B. *Archondonis*, A Common Code for the Orthodox Churches, in: Kanon 1 (1973), pp. 45–53, sees "Provisions of the Code for Oriental Catholics, and perhaps even of the Latin Codex Iuris Canonici" (p. 51) as possible suppletory sources for a future Orthodox code.

[5] Nuntia 3, p. 10.

tions, which must have been under debate in the discussion on the Guidelines, or ought to have been, the reasons why differing opinions were rejected, and how the assembly arrived at formulating the various positions. To be sure, some of these important elements can be gleaned by analytical speculation from the perusal of the Guidelines, but they are too meager to permit as a rule even an educated guess.

Since the development of the Eastern Catholic churches, the topic assigned to me, will depend to a significant degree on the canonical limitations established for them by the new CICO, and inasmuch as these canons will be a direct application of the principles defined in the Guidelines, our attention will be focused on the latter ones. In the discussion of the contents of the Guidelines, it will be necessary to overlook the provisions of which everybody approves, and concentrate on what I shall judge, justifiable or not, as shortcomings.

Once we have accepted the invitation to profer an evaluation of the work of the CC, immediately the question springs up: what are the criteria against which the draft of the canons is to be judged?

Briefly stated, I would like to see the following principles followed simultaneously in the work of the codification:

1. A return to the genuine tradition of the Eastern churches, the source of which, but not an exclusive one, is the ancient church, presided and reigned over, but not ruled, by the Bishop of Rome. I would at once preclude their exact identity with the canons of the ancient church. This would only reinforce the mistaken notion which equalizes the Eastern Christian heritage with immutability. Is it pure coincidence that the documents preparing the code for the Latin Rite Church do not mention this return to the discipline of the first centuries of Christianity? Is the CICO not to be a book of laws directed toward the future? Pope Paul VI said in an address on March 18, 1974 that ". . . *ecclesiae normae . . . inertes atque immotae, quasi res mortua, nullo modo esse possunt*"[6].

2. Due consideration shall be given to the subsequent development of all Eastern canonical institutions up to the time of the reunion with the Roman Church. Žužek establishes the legal basis for patriarchal rights, as for instance, "*iuxta antiquas traditiones uniuscuiusque Ecclesiae et Synodorum Oecumenicarum decreta*" or according to the traditions "*quae tempore unionis Orientis et Occidentis viguerunt*"[7]. Is this acceptable? We know that from the time of the Seventh Ecumenical Council (787) until reunion with the Church of Rome, the various Eastern churches had also undergone an evolution in their discipline, had introduced new norms and discontinued norms which had been sanctioned originally in an ecumenical council. Also, of what ecumenical councils do we speak here? The first seven ones, or do we include also those of the Western Church? At least some claim could be made for II Lyons (1274) and Florence (1438), although these councils did not promulgate disciplinary canons. What are the criteria of selection?

3. Elimination of inappropriate borrowings from the Latin Rite Church but retention of irreversible acquisitions from the West. Here I would like to

[6] Nuntia 1, p. 6.
[7] Nuntia 2, p. 32.

see the elimination of the feudal characteristics of the episcopacy, the disappearance of the strict territoriality of jurisdiction, and other such latinizations, while I would like to see retained, for instance, an obligatory consultative body in the diocese, the consultors or the presbyteral council.

4. Cognizance shall be taken of the evolution of structures and norms in the Orthodox sister churches, which were unimpeded in the natural development of their churches by Latin canon law influence. This could mean an extension of synodal administration even to smaller Eastern Catholic churches, the enlistment of representatives of the laity in parts of church governance, in the election of the patriarch, etc.

5. The CICO shall have an eminently ecumenical character, demonstrating to the Orthodox churches how an organic union with the Church of Rome does not necessarily destroy their ecclesiastical autonomy. This runs counter, of course, to the axiom that the CICO should reflect only the present law of the Eastern Catholic churches. While not infringing on the ecclesiological claims advanced by the Catholic Church for the papacy, the Roman Pontiff should not appear as an ordinary administrative organ in the law of the Eastern Catholic churches.

6. The new CICO shall look toward the future, to the exigencies of Christianity in the world at the threshold of the 21st century. It shall not treat the Eastern Catholic churches as archaeological relics. The preparation of these churches toward the reality of the present world can be accomplished best if each church is permitted to promulgate her own code.

The Limitations of a Common Code

The CC has decided to prepare and enact into law one common code for all the Eastern Catholic churches. I hold this to be a felicitous decision as far as preparation is concerned but an erroneous decision in respect to the promulgation. It is based on a view of the position of the Eastern Catholic churches within the Roman Church which ought now to be judged obsolete.

1. The Eastern Catholic Communities as Church Sui Iuris

An Eastern church, especially if it is a patriarchate or major archiepiscopate, is a legal entity of sovereign nature. Žužek uses several times the expression "sui iuris" for such churches, and states with a non-descript term that they are "assimelées" to the autocephalous or autonomous Eastern Orthodox churches[8]. Such an entity ought to have its own code of law, at least formally distinct from the codes of other churches. This formal separateness does not exclude the possibility, even likelihood, that the code of one church might be materially, totally or largely, identical with the code of another church. The situation of the various states in the United States of America presents the same arrangement. Individual states may accept the

[8] Nuntia 2, p. 33.

proposal for the codification of law prepared by the national lawyer's organization in so-called uniform codes, and we find then that numerous states enact materially identical laws concerning a certain matter, but that these statutes are formally distinct creations, enacted and promulgated by each state seperately. Even the smallest member nation of the United Nations, counting less than one hundred thousand inhabitants, has its own legal system, and enacts it own laws, which, as a rule, are copies of the laws adopted in some other country.

It has been said that the canonical reform of the Council of Trullo (692) constitutes even today such a common law for the Eastern Catholic churches. Consequently, this already existing code would then be revised in the CICO. This may be true in a very tenuous meaning in respect to those Eastern churches which derive their origin from the official church of the Eastern Roman Empire, the so-called Byzantine churches, which are enumerated in the *Annuario Pontificio* under the title of "Rito Bizantino o Constantinopolitano", but do not include the Coptic Patriarchate of Alexandria, the Ethiopian Church, the Malankar Church, the Maronite Patriarchate of Antioch, the Syrian Patriarchate of Antioch, the Chaldean Patriarchate of Babylonia, the Syro-Malabar Church of India, the Armenian Patriarchate of Cilicia.

Indeed, that which the Ukrainian Catholic Church has in common with the Malabar Church, for instance, is probably much less than what it has with the Latin Rite Church. Was the reason for associating these churches in one code of law the small number of their faithful, although this is not true of all of them? Was it that they trace their origin to the Near East? But so does the Latin Rite Church also, though perhaps in a slightly less prominent manner.

2. The Differences of Legal Tradition

The legal heritage of the individual Eastern churches may reach back to the same common sources, but they are removed from this common basis up to one and one half millenia. If the CICO is to be a guide to serve each church for life in the 21st century, then the principle – as accepted by Vatican II – of the separateness of the Eastern Catholic churches not only from the Latin Rite Church but also from each other, must be followed. The Guidelines admit the existence of differences in disciplinary norms in the present Eastern Catholic churches, but instead of concluding that this opposes a common code, they find that this ought to be suppressed by the imposition of one code for all of them. This is also justified by asserting that such differences could be "opposed to the movement towards that unity to which the world and all the Churches are tending and in which all Churches should be deeply involved"[9]. Such caution would be admissible if it concerned a probable union with the respective Orthodox sister church.

[9] Nuntia 3, p. 19. Cf. also M. M. *Wojnar*, The Project of a Constitution for the Patriarchate of the Ukrainian Church (Ukr.), in: Bohoslovia 34 (1970), p. 6: "The Latin Code speaks incorrectly in can. 1 of the Eastern Church, which, as such, does not exist, but there exist 17 Eastern Churches or Rites . . .".

However, in expectation of such a hypothesis, more attention ought to be paid to what parallel churches of the same extraction have in common, and the commonalities between one Eastern Catholic church and the other Eastern Catholic churches, as permanently established in one, common CICO, would then become a hindrance to union.

The question arises whether the differences among the Eastern Catholic churches could not be accommodated by particular law lagislation of each one, as it is provided in No. 3 of the Praeamble to the Guidelines. My objection to this proposal is the notion of particular law employed here. Why should a church *sui iuris* regard a legal institution evolved in its midst as particular law solely because a wholly different church has not done so? Particular law refers to legal norms peculiar to subdivisions of one and the same church. Why are not the legal peculiarities of the Latin Church referred to as particular law?

A social entity or community, as each Eastern Catholic church is, develops a self-identity, a self-image. Having struggled for centuries against enormous odds to preserve their existence, they do not wish to reduce their independence[10] by a partial merger with other churches in a common code. Vatican II has given hopes even to parts of the Latin Rite Church that they might achieve a certain home-rule as particular churches, and now we have the spectacle that the Eastern Catholic churches are about to lose a part of their own which they had possessed before their union with the Church of Rome, of which they had been subsequently despoiled, and which they were again re-promised in Vatican II.

3. The Diverging of the Eastern Churches

Never have the various Eastern Catholic communities been exposed to such rapid changes as today. In the Near East there is the threat from the Israeli-Arab conflict which forces them to emigrate to the Americas and Australia at an accelerated rate. The Ukrainians have become a diaspora church with sixteen eparchies and exarchies outside of their home country. The Malabars have attained the status of a patriarchate or at least a major archiepiscopate. We, therefore, join Edelby in affirming that "Les communautes orientales catholiques ne peuvent pas echapper à la loi generale du progrès et de l'adaptation"[11].

Despite there being clear indications of the need to develop structurally or legislatively each of these churches differently, according to the different exigencies to which they are exposed, they will be forced into the same Procrustesbed of one common code of law. The draft of the constitutional canons prevents any true individual development of these churches by such provisions as the following:

1. All constitutional canons are common, impeding the church from adapting itself to the specific needs of its existence, although, for instance,

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[10] I would prefer to avoid the English expression "independence", which contains the negative connotation of separating oneself from somebody, and would prefer to employ the German *Selbständigkeit*, "standing on one's own".

[11] L'authentique tradition orientale et le decret de Vatican II sur les Eglises orientales catholiques, in Kanon 1 (1973), p. 62.

the Ukrainian Catholic Church is placed into a situation totally different from that of the Malabar Church.

2. Because the CICO is proposed to be a common code and a papal law, not a law of the respective Eastern Catholic church, the individual church will have no power to directly effect the changes judged necessary in the future.

3. The principle of subsidiarity, so beautifully formulated by Pius XI in *Quadragesimo Anno* "... it is likewise unjust and a gravely harmful disturbance of right order to turn over to a greater society of higher rank functions and services which can be performed by lesser bodies on a lower plane"[12], was extended to the structures of the Church by Vatican II and by John XXIII in *Mater and Magistra*[13]. Why then not permit the scion of an ancient church to promulgate its own code?

4. A Common Code for the Orthodox Churches?

It was stated in defense of a common CICO that this is what the Orthodox churches themselves are planning to do for their own autocephalous churches. However, this is only partially true. First, it could refer solely to the churches which go back to the church of the Eastern Roman Empire, the so-called Byzantine churches, and do not embrace the other Eastern non-Catholic churches. Secondly, the endeavors toward a common Orthodox code in this limited understanding are still only unofficial attempts of canonical writers, some of them perhaps members of the hierarchy. Of these Metropolitan Bartolomais Archondonis of the Ecumenical Patriarchate is the foremost and most distinguished spokesman. He rejects the view that "the dissimilarity of the legal systems of the various Orthodox Autocephalous Churches ... imposed the need for a different codification for each one of them". However, he recognizes the need to make provisions for church-state relations in such a code, and these will have to differ from church to church. These provisions will enter essential features also of constitutional law, and thereby affect the entire code for that church. In nations where the law of family relationships is regulated by the law of the sundry religious denominations, the government will recognize the application of a code of the Orthodox church in that nation only if that local church directly supplied the legal force. Of course, the changes needed in the legal system of the Orthodox churches can come about only by common action in an ecumenical council because there is no other authority extant to empower the desired *aggiornamento*[14]. Having received this initial and basic authorization, each church will proceed to promulgate its own code. This is, at least, what happened in the past. Judging from what occurred in the last half century, the expectation of success

[12] AAS 23 (1931), p. 203.

[13] AAS 53 (1961), p. 414.

[14] "The new Code must be confirmed by the future Ecumenical Council because it will modify and abolish canons of previous Ecumenical Councils", *Archondonis*, op. cit. (4), p. 52. Cf. also B. *Archondonis*, On the Codification of the Sacred Canons and the Canonical Institutions in the Orthodox Church (Greek), Thessaloniki, Analekta Vlatadon 1970; I. *Žužek*, Un code pour les Eglises Orthodoxes, in: Concilium (French) 48, (Oct. 1969).

with the calling of an Orthodox ecumenical council or even some other type of legislative assembly is not encouraging. This is precisely the advantage of the Catholic Church in having the papacy, which can bring about changes speedily whenever the circumstances call for them. The Orthodox churches show officially no intention of promulgating a common code; on the contrary: they have in this century legislated extensively, each one separately for herself. In reality the preparation and promulgation of such codes by the sundry Orthodox churches did not pose a problem, as is attested by the codification of the Serbian Orthodox Patriarchate of Yugoslavia in the 1930s.

5. The Evening Twilight of Codification

The era of modern codifications of civil law started in the 1760s in Austria, and received its impetus by the publication of *the Code Napoleon (1805) and the Austrian Allgemeines Bürgerliches Gesetzbuch (1811)*. While the Romanic, Germanic and Slavic nations followed this trend and developed their own codifications, the Anglo-Saxon and the American legal systems kept aloof from it.

The Catholic Church could not remain indifferent to this activity in civil law, and the voices, expressed by bishops from various nations, multiplied around the time of the Vatican I Council, demanding an overhaul of all the canonical legislation. The French and Belgian bishops proposed a modern codification in imitation of the civil law codifications. The *Codex Iuris Canonici* (Code of Canon Law – CIC) was begun under Pius X and promulgated by Benedict XV (1917).

The CIC was in one aspect different from all civil codifications, namely, in the decision to assemble all church law in only one code. The civil law codifications had always left some parts of the law for specialized codes, such as criminal law, commerce law, civil and criminal procedure, etc. This tendency to move away from grand codifications in civil law became more apparent since the 1930s. The rapid and repeated changes of political systems and social conditions, and the resulting need for legislative accommodations, suggested to the legislators in various nations to confine the revision of laws in the form of new codifications to narrowly defined fields.

I shall advance here the idea that the system of collecting all canon law in one code ought to be abandoned. The church could avail herself of the experience of civil law and follow the secular example. A similar suggestion was made for another reason by the Canon Law Society of America. When the draft of the canons of the future CIC were subjected to a critical evaluation of canonists, it was found that they were defective in numerous aspects. Some of these deficiencies could not be supplied except after a prolonged discussion and further theoretical elucidation from ecclesiology and from the theology of marriage. In order not to postpone the process of codification on one hand, and not confer to the new canon law the quality of changelessness by making it a part of a code, the Canon Law Society of America urged "the continuation of the *post-conciliar pattern* of legislating through *ad experimentum* motu proprios. The flexibility of such an approach, such as the effort to situate law in a theological-pastoral

context, are crucial in developing a Church order genuinely responsive to contemporary pastoral needs"[15].

In other words, the character of perpetuity which is connatural to any all-encompassing code of law, should be avoided, if for no other reason than to make the church susceptible to a speedy and unencumbered response whenever the needs of the times suggest it. Within the Eastern Catholic churches this could be accomplished in two ways: One, by promulgating the law common to all Eastern churches in several separate legislative documents, such as the law on marriage, the law on court procedure, etc. Another way would be the promulgation of a complete code for each individual church, as I shall discuss it later, a solution which I would prefer.

6. Proposal

Each church shall receive its own code. The codification shall continue to be prepared for all churches by the CC in Rome. Each church shall at once form her own codification commission, assisted in this by the Pontifical Code Commission, and prepare those changes from the norms proposed for all churches, or for a group of churches, by the Roman CC, which the church wishes to see incorporated in her own code. This activity can run parallel with the work of the Pontifical CC.

If there is one common code, how would a given church supplement the general code with her own particular law as it is now proposed? The patriarchal synod would have to enact legislation on fifty or perhaps one hundred disparate matters, which would, by themselves, have no intrinsic connection. Should this then be published as a separate minicode of fragmentary legislative scraps and bits? Would it not be appropriate to let the church take from the Roman CC the common norms, decide on changes deemed necessary for the church, add the particular law at the proper places in the code, and promulgate her very own code?

In this way the church can make provisions for her own peculiar circumstances of existence, can incorporate legislative developments from her own Orthodox sister church, can enact provisions expressing ecumenical concerns according to specific needs, can introduce, or not, provisions for the participation of the laity in church affairs, etc. And finally, she can, without dragging in the Roman Pontiff, adapt her canonical legislation to the exigencies of times, whenever such a need should appear.

This will require a re-convening of the *Plenaria* of the Commission for the Codification, at which not only the appointees of the Curia should have the opportunity freely to discuss the essential ecclesiological direction of the work on the future code, but access should be accorded – by whatever appropriate means – to all segments of the Eastern Catholic churches, enabling them to take part – if not in the elaboration itself of the CICO – at least in the determination of the basic, philosophical rationale of the codification.

[15] C.L.S.A. Proceedings of the 37th Convention (1975), p. 216.

The CICO will become part of the governing system of the Catholic Church, which cannot be envisioned for dogmatic and historical reasons without the papacy. Consequently, there can be no objection that the position of the Roman Pontiff be properly defined also vis-a-vis each Eastern Catholic church. Yet, if the Eastern Catholic churches are sui iuris and occupy within the Catholic Church a position juridically quite different from the parts of the Latin Rite Church, such as the Church of Spain, Poland, Brazil, etc., would it not then follow that the reference to the pope should be limited to extraordinary interventions, and that he and the Apostolic Roman See should not figure in the CICO as institutional structures of the ordinary administration of a church? The presumption should prevail that any problematic situation which may arise in a church is to be solved by the patriarch and the patriarchal synod. The Roman Pontiff should therefore appear in the CICO only in these connections:

1. His right to intervene in any situation, as it is guaranteed by Catholic ecclesiological principles, should be mentioned.

2. In a few selected contingencies of major import, which presumably could not be solved in a church, such as, e.g., the right of final appeal of a patriarch against his deposition by his synod.

3. Whenever the highest authority of the church, the patriarch with the patriarchal synod, decides to submit voluntarily the determination of a matter to the pope. Such an example would be, e.g., the decision of the Greek-Melkite Patriarchate of August 23, 1974 in the affair of Metropolitan Gregory Haddad of Beyrouth, who had been accused of erroneous teachings, which in addition had also political dimensions. The synod, meeting in Ain-Traz,

> "conscious of its pastoral responsibility in everything that relates to the safeguarding of the deposit of faith and the maintenance of ecclesiastical discipline, conforming itself to the custom of the Church to have recourse in case of necessity to the Apostolic See of Rome in matters of faith, has decided: 1. to transmit the files on Msgr. Gregory to the competent Roman authorities for study and judgment"[16].

When one perused the canons of the first codification, one could find the papal offices too often mentioned as organs of ordinary ecclesiastical administration for each Eastern Catholic church: *Audita Sancta Sede – Consulta Sancta Sede – Audito Romano Pontifice – Cum consensu Romani Pontificis – Nisi de consensu Sedis Apostolicae – Certiore facta Sede Apostolica – Obtento consensu Sedis Apostolicae – Incolumi iure S. Congregationis – Impetrato consensu Sedis Apostolicae – Nisi obtenta Sedis Apostolicae approbatione – Approbatio Sedi Apostolicae reservatur – Sede Apostolica praemonita – Facultates habituales Patriarchae Sede Apostolica concessae – Salva Sedis Apostolicae confirmatione – Nisi in Apostolicis litteris aliud caveatur – Ad normam instructionum Apostolicae Sedis – Nisi post obtentam confirmationem Sedis Apostolicae – Certiore facta quamprimum Apostolica Sede – Sine licentia Sedis Apostolicae.* The new codification will re-

[16] Le Lien 1974, no. 4, p. 25.

place such mentioning of the Holy See in general and of its offices by substituting the person of the Roman Pontiff[17], and so we encounter in the draft: *A Romano Pontifice agnitam – Salvo primatu Romani Pontificis – Romano Pontifici reservatur – Romanus Pontifex immutare potest – Romani Pontifici assensu – Praevio consensu Romani Pontificis . . . etc.*[18]

It is not asserted that all such references could not be justified in the instance that the Eastern Catholic churches would be accorded their authentic character of autonomous parts of the Church universal. Many of such insertions of references to papal authority must be preserved, but their number and legal extension ought to be curtailed.

If the CICO has to reflect the ancient tradition of the undivided church (c.1), then the role of the Roman Pontiff in relation to the various Eastern Catholic churches should be established within the same framework, and this means that he will reign and rule, but not govern the individual Eastern church.

As an example how the beneficial role of the Roman Pontiff can be fitted into the framework of an Eastern Catholic church, I could see the draft of the canons on the possible jurisdiction over the person of a patriarch[19]. It is proposed that the patriarchal synod has such authority over the patriarch, but it assigns to the patriarch or the synod the right to bring the case before the pope. This is in the spirit of the Council of Sardica; it is a remedy against possible arbitrariness on the part of a patriarchal synod; it is an eminently practical affirmation of papal primatial authority; and it does not encroach on the basic autonomy of that Eastern Catholic church.

Whether Vatican II attempted to reduce papal power in the Church is still controverted. But there is no doubt that this is how the Church at large perceived and received it, and this with applause and joy, which was joined in by the non-Catholic world. This corrective "reduction" was not aimed as much at the papacy as personified in the popes, but rather referred to the viselike grip of the Roman Curia. However, it kindled the hope among Eastern non-Catholics that the Church of Rome was moving to a transformation into a denominator that could become a common one to all Christianity. Expression to such hopes was given, for instance, in the Anglican/Roman Catholic International Commission, working under the guidance of the Papal Secretariate for Christian Unity. The Commission, at the conclusion of its meeting in Venice (Aug. 24 – Sept. 2, 1976), agreed on the following formulation:

> "The theological interpretation of this primacy and the administrative structures through which it has been exercised have varied considerably through the centuries. Neither theory nor practice, however, has ever fully reflected these ideas. Sometimes functions assumed by the see of Rome were not necessarily linked to the primacy; sometimes the conduct of the occupant of this see has been unworthy of his office; sometimes the image of this office has been obscured by interpretations placed upon it; and sometimes external pressures have made its proper exercise almost impossible"[20].

[17] I. *Žužek*, Nuntia 2, p. 39.
[18] Compiled by Syrian Archbishop *Mar Joseph Mounayer* in a letter to be published.
[19] S. *Youssef*, Nuntia 5, p. 11.
[20] Secretariate for Promoting Christian Unity, Information Service 32 (1976/III), p. 4.

A possible adverse reaction to the endeavor to extol the role of the Roman Pontiff in the legal system of the Eastern Catholic churches beyond what Eastern tradition and the expectation of the Orthodox churches would permit one to predict may appear to some to have been met or attenuated by the elevation accorded to the Eastern patriarchs in their persons. The patriarch is traditionally seen as the representative head of his church, a *primus inter pares*; he is placed *within* the church. The draft of CICO assimilates the patriarch to the pope by speaking of him as if the church were an extension of the patriarch, placed around him, and not vice versa. This was seen by Alexander Schmemann from an Orthodox observer's viewpoint in his evaluation of *Ecclesiarum Orientalium* of Vatican II:[21]

> "The decree solemnly proclaims the *equality* of the Eastern tradition yet, at the same time, formulates and regulates it in terms of a Western and even juridical ecclesiology, hardly adequate to its spirit and orientation. To a great degree it remains thus a *Latin* text about the Eastern tradition. The institution of Patriarchates, for example, is not only given an importance it does not have, in fact, in the Eastern Church, but is also defined as personal jurisdiction of the Patriarch over other bishops, which is alien to the Eastern canonical tradition, where the Patriarch or any other Primate is always a *primus inter pares*."

Autonomy

How can one define the position of an Eastern Catholic church within the Catholic Church of Rome in distinction from the French "Church" or Italian "Church" of the Latin Rite? Is not the term "autonomy" the most appropriate and clearest expression to characterize the condition in law of an Eastern Catholic Church? Yet, the workers on the future CICO have excluded on purpose the use of even the term "autonomy" because it is employed in Orthodox canon law in an unclear meaning and therefore presumably dangerous in Catholic canon law[22].

Yet, I propose to suggest that this concern was unwarranted. One could apply to the Eastern Catholic churches even the term "autocephalous" which in general can be viewed from two aspects. One, a positive one, suggests the faculty of governing oneself alone, expressed by the German *Selbständigkeit*, standing on one's own. The other, rather negativistic, speaks of "independence", emphasizing the exclusion of outside influence and interference.

An autocephalous church in Orthodox understanding is a particular church which does not recognize the juridical authority of any other Orthodox church exercised over herself, but does accept the authority of the universal church when she speaks in an assembly such as the ecumenical council, and the autocephalous church does not reject *per se* the moral authority of the other autocephalous churches. Similarly, the Eastern Catholic church *sui iuris* could be seen as autocephalous on one hand and on the

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[21] W. M. *Abbott*, (ed.), The Documents of Vatican II, New York, p. 387.
[22] Cf. E. *Jarawan* in Nuntia 3, p. 44.

other fully recognizing the authority of the universal church as personified and exercised by the Roman Pontiff and ecumenical councils.

Because "autocephaly" is often employed in the second, defensive sense, the term has become suspect and undesirable in Catholic parlance. The Eastern Catholic churches will not direct themselves toward independence from the Roman Pontiff, but rather toward home rule or self-government under the authority of the pope. Yet, if the suggestion of the Guidelines is followed and the ecumenical hopes of Christianity are to be expressed in the CICO, autocephaly in this mitigated sense ought to appear in this magna carta of the Eastern Christian churches, if not under this name than at least in an equivalent manner, by having the limits of self-government of the Eastern Catholic churches extended as far as possible.

Does Rome believe that the Eastern Orthodox churches would ever give up their autocephaly in the case of a reunion? They now recognize as superior authority only the ecumenical council and the common Orthodox patrimony. In case of a union a place would have to be found for the Roman primacy within the limits indicated by the ancient tradition of the church, adjusted to the realities of our times, while preserving that degree of self-government which is defined as autocephaly[23]. This future state has to be made possible by the respective legislative principles enunciated and applied in the CICO.

When it comes to the other term, that of "autonomy", I would find it most appropriate to use this term for designating the legal position of the Eastern Catholic churches within the framework of Catholic ecclesiology. However, even this word is found objectionable in the codification, supposedly because it is employed in an Orthodox context with a somewhat different meaning. Yet Catholic canonists have made use of it in our own days, such as George Nedungatt, S.J., in his article *La giurisdizione delle chiese particolari*[24] or William W. Basset in his dissertation *The Determination of Rite*[25], to name a few.

It is, of course, not important by which term we designate the position of an Eastern Catholic church vis-a-vis the entire Catholic Church of Rome, as long as the actual position is adequately represented in the canonical norms. The problem consists not in which term is used but in what sequels are derived from the concept that animates the term. When one speaks of a church *sui iuris* one employs a more vague term, not found in the preceding legislation[26]. The Eastern Catholic churches will have received their due only to the extent that the application in the CICO of the concept of *sui iuris* creates an ecclesiastical structure which is identical with the governmental structure the same church possessed before its reunion, minor adjustments excluded.

The flight from the term "autonomy" is symptomatic of a deeper decision not to grant in reality the *Selbständigkeit* which these churches hoped to

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[23] Cf. Joh. Madey, Das zweite Vatikanische Konzil und die Revision des Rechtes der Ostkirchen, in: Bohoslovia 1977, pp. 119–143.

[24] Unitas 31 (1976), pp. 180–196, 261–285.

[25] Analecta Gregoriana, vol. 157, Gregorian University Press, Rome 1967.

[26] Postquam Apostolicis c. 303 § 1 applies the concept *"sui iuris"* to the great divisions of Eastern Christianity, the originally liturgical rites: *"ritus quos ut sui iuris expresse vel tacite agnoscit Ecclesia."*

enjoy in the Catholic community. Because the Eastern Catholic groups were, after reunion, treated more or less not differently from Latin Rite ecclesiastical provinces and dioceses, and the ecclesiastical autonomy which they possessed at the time of reunion was disregarded, they were demoted from "churches" to mere "rites", as if the liturgical differences – which underlay the concept of *ritus* – were essential and characteristic elements in canon law.

This points to another terminological problem. The exchange of *ecclesia sui iuris* for *ritus* has not solved it, and the term *ritus* will have to be continued for those Eastern Catholic groups which have not been organized into one legal body as *ecclesiae sui iuris*, as the Malabars and the Ukrainians. The individual Ukrainian metropolias, eparchies and exarchies around the globe, for instance, are not parts of a "church", legally speaking, but only of a "rite". The same can be said of ecclesiastical circumscriptions "outside the territory" of their mother church, to which they are only "aggregated".

What will be the legal situation of the so-called Ruthenian (Byzantine Rite) Metropolia of Pittsburgh, which has lost all connections with the Subcarpathian Region and Hungary, from which the original faithful emigrated to the United States? Today they are composed of the offspring of "Ruthenians", Hungarians (Magyars) and Croats. It is clearly a church *sui iuris*, but it is outside the territory from which it derives its origin, and it is not, and cannot be, "aggregated" to any other mother church.

The Territorial Limitation of Patriarchal Jurisdiction

The restriction of the jurisdiction of patriarchs and patriarchates and archiepiscopates to the regions of their historical origin must be distinguished from the limitations which now belong to the past, at least in the Catholic Church. The ancient church of the Roman Empire had established the axiom that, in the territory of a diocese, there should be but one metropolitan or bishop. This norm was finally abandoned in the Catholic Church in the 1600s, when parallel hierarchies of several Eastern Catholic churches, alongside the Latin Rite, were permitted to co-exist in one and the same city and region of Eastern Europe, the present Ukraine, Belorussia and Poland, and the Middle East[27].

Neither does the question refer to the plurality of bishops of several Catholic rites in the same town or area outside the patriarchate, as, e.g., when in the United States there co-exist in the same nation several Catholic jurisdictions: the Ukrainian, Ruthenian, Maronite, Melkite and the Latin rite. The Holy See has shown willingness to take steps to have parishes as well

[27] The Orthodox seem to have admitted the first time co-territorial jurisdiction in connection with the division between the Serbian Orthodox Church and the Romanian Orthodox Church in the Austro-Hungarian Monarchy (1864) when the Romanian eparchies of Oradea Mare and Karasebes and the Serbian eparchies of Timisoara and Vrsac had parishes in the common territory. Cf. V. J. *Pospishil*, Der Patriarch in der Serbisch-Orthodoxen Kirche, Wien 1965, p. 111.

as exarchies and eparchies erected for Catholics of any Eastern rite anywhere in the world[28].

The problem which remains and is to be treated here is the right of Eastern Catholic churches to extend, *on their own initiative*, pastoral care and jurisdiction over all their faithful wherever they reside *without needing the prior approval and permission* of the Roman Curia.

1. The Legal History of the Territorial Limitation

The question of groups of Oriental Catholics outside the region where their churches had their origin, became a problem for the Roman Curia first in the 17th and 18th centuries in Italy, to which Byzantine Rite Christians from Albania had fled from the Turks, reinforcing, thereby, the local remnants of Byzantine Rite Greeks. The great canonist, Benedict XIV (Prosper Lambertini), issued several documents to regulate their position in respect to the Latin Rite majority among whom they lived, in such a way that the superiority of the Latin Rite was ensured and the Byzantine Rite Catholics condemned to progressive disappearance[29].

However, this situation did not lead to a discussion of the question with which we shall deal here, because these Byzantine Rite Catholics in Italy had not left behind a Catholic mother church which would wish to maintain ties with the émigrés. Only a century later, when Byzantine Rite Catholics from the Austro-Hungarian Monarchy began to emigrate to the United States, Canada and Brazil, did the problem become acute, namely, whether the hierarchy of the mother church could take under its pastoral care, including here the exercise of jurisdiction, the clergy and faithful beyond the seas. We should be reminded that it was still a time of high barriers between the various rites within the Catholic Church. It may serve to recall that when Andrew Sheptyts'kyi, later metropolitan of Lviv, was to celebrate his first liturgy after ordination in the Ukrainian rite in the local Latin Rite church (1892), he needed a papal indult in order to give communion to his Latin Rite parents, before the start of his own liturgy, and from hosts consecrated by another priest in a Latin Rite Mass. It was, therefore, only natural that the emigrants should address themselves to their bishops at home and plead with them for priests of their own rite, and the bishops, foremost among them Cardinal Sylvester Sembratovych, the metropolitan of Lviv, should satisfy their needs and send them priests, giving them appointments and transfers in the same manner as he did within his archdiocese in Europe.

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[28] Cf. G. *Nedungatt*, La giurisdizione ..., op. cit. (p. 48) ... "... la giurisdizione ecclesiastica, essendo in funzione del servizio della Chiesa, riguarda *per se et principaliter* le persone e non il territorio ... Cristo, cioè chiama i suoi discepoli alla cura pastorale delle sue pecore ... non già al governo dei pascoli." (p. 189) "*Quindi la giurisdizione territoriale e da considerarsi giurisdizione personale esercitata attraverso il territorio.*" (p. 192). Cf. also on the same problem C. *Pujol*, De extensione iurisdictionis ecclesiarum orientalium, in: Periodica de re morali, liturgica, canonica 65 (1976), pp. 509–528. J. *Rezac*, Sur l'extension du pouvoir des Patriarches et, en general, des Eglises orientales sur les fideles de leur rite, in: Concilium 48 (1969), pp. 103–114.

[29] Allatae Sunt (1755), Etsi Pastoralis (1742).

However, this extension of the jurisdictional ties between the mother church and the emigrants was soon severed by various decisions of the Propaganda, which at that time was in charge in Rome of everything connected with Eastern Catholics[30]. Against the demand of the majority of the Latin Rite hierarchy of the United States, to force the Eastern Catholics to join the Latin Rite Church in everything, Rome established the principle that the Eastern Catholics would be under the jurisdiction of the Latin Rite bishops, but they could preserve their liturgical rite and have priests and churches of their rite. The bishops in Europe were peremptorily notified that they should desist from interfering in the ecclesiastical life of their emigrés[31]. The principle that the jurisdiction of Eastern churches was confined to certain territories was now solidly established.

The disastrous sequels of imposed separation of the mother church from the emigrants were soon visible in the United States and Canada, when the Russian Orthodox Church was able to attract hundreds of Eastern Catholic communities into its fold. Finally, Rome made a first concession, by appointing, in 1907, a bishop for the Byzantine Rite Catholics, first without granting him any jurisdiction, which he was supposed to receive from each of the sundry local Latin Rite bishops as their vicar general, and, in 1913, by establishing him as what we today would call apostolic exarch. The subsequent appointment of more bishops[32], the division of the exarchies, their elevation to ecclesiastical provinces and eparchies[33], did not introduce any change in the strict territorial separation between the mother churches and the parts in the New World. The principle was reinforced by a number of decrees emanating from Rome, and made applicable also to the emigrants from the ancient Eastern patriarchates who began to settle in larger numbers in the United States, Canada and South America[34].

The first Oriental codification canonized the principle of territorial exclusivity. *Postquam Apostolicis* published a glossary of basic legal terms (cc.302–335). The entire world was partitioned off, but only as far as Eastern Catholics are concerned, by three territorial divisions (c.303 § 1):

1. *Oriental regions* are those parts or places where the respective Eastern Rite was observed since ancient times even though no hierarchical structure may exist there at the present time. Thus, this could refer to all the lands to the East of Iraq up to China for the Chaldean Patriarchate, or to all the lands of the former Church of Kiev as it concerns the Ukrainian Catholic Church.

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[30] Cf. Letter to Archbishop of Paris on May 7, 1890 (ASS 1891/92, p. 320).

[31] Letter of Oct. 1, 1890 (Collectanea II, p. 356), Orientalium Dignitas of Nov, 30, 1894. Other documents cf. S. *Mudryi*, De transitu ad alium ritum (A Byzantino-Ucraino ad Latinum), ed. 2. (PP. Basiliani), Roma 1973; W. *Paska*, Sources of Particular Law for the Ukrainian Catholic Church in the United States, Cath. Univ. Canon Law Studies No. 485, Washington D.C. 1975.

[32] Apostolic exarchs were appointed in 1924 for the Ukrainians in the United States and Canada, and for the Ruthenians in the U.S.A.

[33] Today there are Ukrainian ecclesiastical provinces in the U.S.A. (3 eparchies) and Canada (5 eparchies), a Ruthenian province in the U.S.A. (3 eparchies), one Maronite and one Melkite eparchy for the U.S.A.

[34] Cum data fuerit (March 1, 1929); Qua sollerti (Dec. 23, 1929); Saepenumero (Jan. 7, 1930); Graeci-Rutheni ritus (May 24, 1930).

2. *Oriental territory* is one where at least an exarchy was established for that specific Rite. Thus, the United States is such an "Oriental territory" for the Maronites, Melkites, Ruthenians, and Ukrainians.

3. All other parts of the globe are not "Oriental" in any legal understanding, although Eastern Catholic parishes or religious communities do exist there.

These territorial divisions would apply only to the Eastern churches of the Catholic Church. It carries with it important legal disabilities for the Eastern churches, especially the prohibition addressed to such eparchies and exarchies to regard themselves as parts of their own church or patriarchate. Such bishops are only *aggregated* to the patriarchate, and the patriarch with his synod has no jurisdiction or legislative authority over them. As a consequence, to give an example, the Ukrainian Catholics with fifteen eparchies and exarchies in the Free World do not constitute a church but are only parts with no structural bonds among them. They could regard themselves as "aggregated" to the Church in Ukraine, were that Church not suppressed by the Soviet government and forcefully annexed by the Russian Orthodox Patriarchate.

Among other legal consequences which result from this *diminutio capitis* of the Eastern churches outside the region of origin is, for instance, the prohibition to erect, on their own initiative, parishes or dioceses; they have to wait until the Holy See does it for them, and this may take some time if the Roman authorities have first to overcome the opposition of the local Latin Rite hierarchy.

The Latin Rite Church being so consistent in affirming the principle of territorial confinement of the Eastern Catholic churches to the regions of their historical origin, one would expect that the popes would apply the same structure to the Latin Rite Church in respect to the homeland of the various Eastern Catholic churches. However, this expectation is not verified. The Latin Rite in the Holy Land, Palestine and Jordan, 50.000 strong, constitutes today one half of all Catholic Christians, and is composed of former Eastern Orthodox, chiefly Melkites of the Byzantine Rite, who thereby became estranged to their own ancient ritual heritage.

The provisions of *Postquam Apostolicis*, mentioned above, were then codified in *Cleri Sanctitati* (c. 216 § 2; 240 § 2). The Eastern patriarchs, as well as their churches, possess jurisdiction only within the territorial limits of the patriarchate, and, as a rule, have no authority over the faithful of their Rite outside these limits.

Art. 7 of *Orientalium Ecclesiarum* of Vatican II repeated the same principle, but the tenor of the decree is permeated with the generous spirit of the Council, promising solemnly to the Eastern Catholic churches a restoration of the autonomy enjoyed by them before reunion, and assimilation in their status to their Orthodox brothers.

The expectation that this limitation would be removed in the revision was rekindled in *Apostolica Sedes*, the declaration of the S. Congregation for the Eastern Churches of March 25, 1970[35], in which the connection was defined between a bishop or an apostolic exarch outside the territorial limits of the patriarchate and the respective patriarchate and synod. They

[35] AAS 62 (1970); also Nuntia 2, pp. 36–37.

were said to be only "aggregated", but the hope was left that the "hierarcha aggregatus", his eparchy or exarchy, his clergy, religious and people, would one day become full members of his church, since the decree was supposed to be in force only "*ad interim donec disciplina canonica orientalis organice cognoscatur*", (for the interim until the Eastern canonical discipline will be organically revised).

The Guidelines, approved by the CC on March 18–23, 1974, amazingly say nothing about this important problem of the territorial limitation of the Eastern Catholic churches. They repeat the beautiful and meaningful expressions and phraseology of Vatican II, and promise that the future CICO will possess an Oriental, ecumenical, and pastoral character, will return to the Eastern churches their right to govern themselves according to their own disciplines, and will acknowledge the principle of subsidiarity, in other words: the most marvelous renaissance combined with the most far-reaching *aggiornamento*.

However, what was not said explicitly in the Guidelines, had already been decided elsewhere. And so we find in the address delivered by Pope Paul VI to the members of the CC on March 18, 1970 the ominous injunction:

> "Both Commissions were instituted for the precise purpose to *prepare a Code*, and to proceed in an orderly fashion arranging the laws, and not to make or enact on their own authority laws themselves. The norms shall be upheld, while the principle themselves shall be derived from the sources of the laws, and neither the former nor the latter can be altered. In other words, the men assigned to the Commission are arrangers of these laws, and not authors or creators"[36].

I doubt that there was ever in history a mandate of this kind more clearly and more narrowly coerced as a precaution as in this important document. Did the "*stant enim normae*", and the admonition that the codifiers are not "auctores seu factores", mean that the territoriality of Eastern jurisdiction was to be preserved unchanged in the CICO? This could not be doubted because this is just how the codifiers understood it.

This was expressed with final precision by the Secretary of the CC, Ivan Žužek, S.J., in his report published in *Nuntia* 6 under the title "Canons Concerning the Authority of Patriarchs over the Faithful of their own Rite who live outside the Limits of Patriarchal Territory"[37]. While this learned study is based on documentation that is uncontrovertible when it refers to the past, it must be discounted when it treats Vatican II, for reasons which I shall discuss below. Žužek proceeds from the theory that denies or ignores the quasi-ethnic character of the Eastern churches which they have acquired in the second millenium. Once the principle of absolute limitation of the patriarchate or church *sui iuris* to a certain territory has been accepted, the conclusions appear unavoidable. Yet, I would like to submit that it does not apply to the present Eastern Catholic churches because it overlooks

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[36] "Utraque enim Commissio eo praecipue est instituta, ut *Codicem conficiat* rectaque, legibus insertis, disponat, non autem ut leges ipsas, pro sua auctoritate, ferat et condat. Stant enim normae, dumque ipsa principia legum ex fontibus hauriuntur, neque illae neque haec immutari possunt. Ut aliis verbis utamur, viri Commissioni addicti ipsarum legum sunt ordinatores, non auctores seu factores." Nuntia 1, pp. 4–8.

[37] Op. cit., pp. 3–33.

their essential changed nature as quasi-ethnic social groups, which they acquired relatively recently, a new historical and canonical phenomenon.

It is therefore of little consolation that we encounter a ray of hope in an unsigned news item published in *Nuntia*[38], informing us that the *Coetus de Hierarchia*, in meetings between January 10 and 22, 1977, had come to the conclusion:

> "infine nel *Coetus* si è previamente discusso sui rimanenti canoni riguardanti i Patriarchi che sembra necessario 'conficere ex novo' e cioè nel dibattito ci si è impegnati sopratutto nel cercare di determinare quale potestà i Patriarchi possano avere sui fedeli della propria Chiesa, residenti fuori dei territori patriarcali."

However, Žužek's report in *Nuntia* 6 and the subsequent one in *Nuntia* 7 on the "Canon de Synodo Ecclesiae Patriarchalis et De Conventu Patriarchali" show that the work of the CC directed by him is based not only on the principle of the preservation of the territorial limitation of patriarchal jurisdiction but that this is to be interpreted in the manner most disadvantageous to the Eastern Catholic churches. It is truly a strange phenomenon in an ecclesial framework when a Christian community is prevented by law from preserving full ties with its own spiritual children, scattered by dire necessity in various parts of the globe.

2. The Dearth of Historical Precedents

It must be admitted that history does not assist us much in finding some events, precedents, and rules, to guide us in reaching a solution.

We encounter freewheeling itinerant spreaders of the Gospel during the first centuries: apostles, prophets, teachers, and others, who were soon superseded by a settled, local hierarchy. Synods established then the rule that bishops should not exert any authority outside their own precincts, and that a problem appearing in a number of dioceses should be solved by the authority of the next-higher hierarchical structure.

The problem of extending pastoral care to his own subject outside his territory did not often occur to a bishop of the later Roman Empire, in which the Western and Eastern canonical legislation was originally formed. The faithful of the Eastern Mediterranean were rather homogenous, especially when we refer to those who may have migrated. They were urbanized and hellenized to the degree that leaving Antioch and settling in the Greek-speaking parts of Italy, including here such cities as Rome and Naples, was no great change for them[39]. However, when there appeared a genuine need, ecclesiastical jurisdiction seems to have been exercised without regard to territorial boundaries. This is at least what can be concluded from an example decreed by the Council of Trullo (692). After the conquest of Cyprus by the Arabs (632–647) many of the Christian population emigrated to the mainland with their priests and bishops. Emperor Justinian II built

[38] Nuntia 5, p. 64.

[39] The native rural population, living in villages (pagani!), became integrated into the orthodox, imperial church only to the degree that they were absorbed by the hellenistic city society. Those who were not, later formed the rival churches of the Monophysites.

for them, near the Hellespont, at the doorsteps of Constantinople, a city which he called Nea Justinianopolis. The Council of Trullo granted to the Archbishop of Cyprus, now residing in the new city, all the privileges and rights he had possessed on Cyprus, to be exercised now in the sight of the patriarch of Constantinople. While it is not excluded that his jurisdiction extended not only over the Cypriotes but also over the other faithful in this region, it is an indication that the special bond between the hierarchy and the faithful was respected when they had to emigrate to another region.

The idea that the shepherd ought to follow his sheep everywhere where they might need him, was the way in which Christianity was preserved in Central and Western Europe after the collapse of the Western Roman Empire, by the pastoral care extended for several centuries to the Celtic tribes by the itinerant Irish-Scotish monk-bishops, until the Germanic and Slavic migrations made their ministrations largely superfluous. The population had not only changed in ethnic composition but had become settled and homogenous, and a stable hierarchy from the same people had made the pastoral care exercised by outsiders unnecessary and undesirable.

Also the erection of the Latin Rite patriarchates in the Near East during the Crusades can be seen as a disavowal of the principle of strict territoriality. The same is to be said of the arrangement, sanctioned by the popes for Cyprus, where, parallel to the Latin Rite hierarchy, a Greek hierarchy for the native population was permitted to exist for several centuries. It was clear to everyone that the new settlers, chiefly French-speaking Crusaders, needed the pastoral attention of a church of their own[40].

The idea that the supreme shepherd of a community could follow his faithful everywhere was continually applied in the Middle East, and the various patriarchates, originally confined to one part of the region, as that of Antioch to Syria and its hinterlands, was extended to the entire area: "ogni Patriarca è praticamente diventato Patriarca di tutto il Medio Oriente"[41].

It is well known that the exclusive territorial character of secular law, civil and criminal, developed only quite late in the history of the West. For a long time, beginning with the Roman *ius gentium*, followed by the *leges barbarorum* of the early Middle Ages, and then by the consular law of the Italian city-states and their extra-territorial dependencies in the Eastern Mediterranean, legal norms were presumed to be personal and to follow the person everywhere. Only with the development of the concept of sovereignty, attached to the territory of an independent state, did the presumption arise that laws affected all persons in the territory, and did not follow a citizen outside of it.

In our own times we encounter two phenomena which, though somewhat different, fall into the category of juridical relationships analogous to those between the Eastern patriarchs and their emigrant faithful, namely, the world-wide jurisdiction exercised by military ordinaries, and the net-

[40] An example from later centuries is the separate hierarchy established for the Suddists in southern India, who differed from the Malabars solely by the fact that their ancestors had arrived there a few centuries later, while the claim of the majority was apostolic origin of their Christianity. There may have been also original caste differences.

[41] *Nedungatt*, op. cit. (28), p. 195.

work of pastoral structures organized by national hierarchies for their emigrants in other countries.

The Military Ordinariate of the armed forces of the U.S.A., for instance, enjoys worldwide jurisdiction for the personnel and their families in any country around the globe, and centers of pastoral care are established for them at the sole discretion of the military ordinary. And rightly so, because this is the only reasonable way of providing these faithful with the religious services they need.

Similarly, the Croatian or the Slovenian bishops, and some other hierarchies in Europe, are in charge of the pastoral care of their emigrants in various countries, although with the cooperation and nominal dependence on the local bishops.

3. Possible Reasons for Rome to Continue the Territorial Limitation

It is true that Vatican II took over the principle of territorial limitation of patriarchal jurisdiction in *Orientalium Ecclesiarum*. However, the tendency of the Roman Curia to restrict the jurisdiction of Eastern Catholic churches is not of recent origin, but follows a pattern of long standing.

In the course of more than one millenium and a half, Rome has succeeded in concentrating all power at the seat of the pope, especially the right of direct appointment of all bishops. While the governments of the various nations had to cede over the last two centuries in different degrees to the democratically elected representatives the right to appoint at least the higher officials who rule over them, the Vatican has been able in the last fifty years to remove nearly entirely the last remnants of interference by other factors, such as the right of some chapters of canons to elect their bishop, of governments to directly appoint bishops, as the Emperor-King of Austro-Hungary, or to absolutely veto candidates, as in Spain. While it is true that this power should not be exercised necessarily by the pope over the Eastern Catholic churches, which are outside the Western Church, the Patriarchate of the Occident, nevertheless, the curial officials, have, through the centuries, also carried over this attitude to the Eastern churches over which they rule, and we encounter the undirectional attempt toward concentration of power in the Roman Curia. Hence, we understand also the demand, repeatedly voiced in defense against this usurpation and suppression of Oriental tradition, that the officials of the S. Congregation for the Eastern Catholic Churches should not come out of the ranks of the Curial bureaucracy but ought to be representatives, preferably elected ones, of the Eastern Catholic churches[42].

The Eastern Catholics live in parts of the world in which turbulent, violent events are taking place just at this time, such as in the Soviet Union, a part of which is the Ukrainian Socialist Soviet Republic, the mother country of the Ukrainian Catholics; in Czechoslovakia, from which the Slovaks and the Ruthenians have their origin; in Romania, Hungary, Italy,

[42] This was the suggestion made by the Ukrainian Metropolitan of Canada, Archbishop *Maxim Hermaniuk*, at the IV Synod of Bishops held in 1974.

Yugoslavia, Greece, Bulgaria, and other such European nations. Similarly, the mother communities of the Greek-Melkites, the Maronites, Syrians, Armenians, Copts, and Ethiopians, in the Middle East, are involved in an intensive ongoing political struggle for survival. In such circumstances, the Vatican cannot overlook the political ramifications of ecclesiastical decisions. Since political repercussions spread easily from the mother church to all communities around the globe, the Roman Curia would like to be in charge as fully as possible of the ecclesiastical life in the outlying parts of the Eastern Catholic churches, and opposes the complete amalgamation of the mother churches and these communities.

There is the curious fact that the problem of jurisdiction beyond the pale of the mother church is a bone of contention also among the Orthodox churches of the Byzantine world. Thus, to give the example of the United States and Canada, the several solutions to this question, of who should be in charge of the sundry Orthodox communities, are debated, namely:

1. Should c. 28 of Chalcedon (451), which gave to the Patriarch of Constantinople authority to take care of the bishops of the churches *en tois barbarois*, apply, or

2. should that church be permitted to establish the paramount jurisdiction over all Orthodox in the nation which had set up first a local hierarchy, and this would be for the United States the Russian Orthodox Church, which has recently erected the autocephalous *Orthodox Church in America*, or

3. should the norm of one Orthodox church in one and the same political unit be discarded and every national Orthodox church be permitted to extend its jurisdiction over its people in the New World, which is the situation now in force?[43]

Could it be that the fact that the Orthodox were not able to settle this problem has influence on the way in which Rome approaches it in respect to the Eastern Catholics? Žužek certainly earnestly studies this argument[44]. The theoretical foundation in the Orthodox debate starts from the premise that there can be only one local jurisdiction in the same political territory. This principle has been abandoned by the Catholic Church a long time ago in the Middle East, and it has been discontinued in the New World. We find now a multiplicity of co-territorial jurisdictions in many parts of the world, similar to the celebrated example of the city of Beirut, the residence of patriarchs and bishops of six different Catholic rites. The axiom of the plurality of jurisdiction having been admitted, why not extend it fully by permitting direct connection with the mother churches without the interposition of Rome?

The right vindicated by the Eastern Catholic churches to follow unhindered their own faithful everywhere in the world, including the authority to establish dioceses for them, is essentially different from the aims of Orthodox churches in the same circumstances. Orthodox writers usually understand the prohibition of co-territorial jurisdictional multiplicity as be-

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[43] Cf. S. *Surency*, The Quest for Orthodox Unity in America, New York 1973; Orthodox America 1794–1976. Development of the Orthodox Church in America, Syosset, N.Y. 1975.

[44] Nuntia 6, pp. 11–14.

ing opposed to having more than one autocephalous church within the boundaries of the same nation, excepting only the churches recognized by ecumenical councils, such as the several ancient patriarchates of the Middle East, which were at one time all within the same political nation. The establishment of a Bulgarian Orthodox Exarchate in the Turkish Empire (1870) was branded by the Patriarchate of Constantinople as the heresy of phyletism (from the Greek *phyle* – tribe). The same patriarchate does not recognize the Patriarchate of Georgia in the USSR as an autocephalous but only as an autonomous church. The self-proclaimed autocephaly of the Macedonian Orthodox Church of the Macedonian Federal People's Republic of Yugoslavia was not recognized by either the Serbian Patriarchate of Yugoslavia or by any other Orthodox church[45]. The Eastern Catholic churches, on the other hand, do not seek autocephaly, but only autonomy, which is the right to selfinitiated administrative-jurisdictional activity anywhere in the world but always under the paramount authority of the Roman Pontiff.

4. A Justification for the Removal of the Territorial Limitation

It is now clear everywhere that Christ came into the world not to save the church, patriarchates, dioceses, rites, but individual members of his Mystical Body. The mobility of our times had some impact also on the theology of the particular church: "... questo fatto esige una impostazione ecclesiastica tale per cui la teologia tradizionale della Chiesa locale non è più sufficiente"[46]. "Infatti, per la legge della Chiesa tutte le Chiese particolari sono di uguale diritto (OE n.3) ... ne consegue che esse godono di ugual diritto di sviluppo ovunque si trovino; questo diritto non può essere condizionato da considerazioni puramente geografiche ..."[47]

Divine providence has chosen to define the relationship not only between God and his people as that of a father to his children, but Christian tradition has seen the ecclesiastical superior, from the pastor over the bishop, up to the pope (*papa*) as the father *par excellence*. Catholic canon law insists on applying to the patriarch the legally undefined but theologically eloquent, and by implication far-reaching, term of "*pater et caput*" (OE n.9). If the patriarch is a father how can anybody separate him from his children by a permanently established constitutional axiom, expressed solemnly in the CICO? Is the symbolism in the appellation of the patriarch as father restricted to sentimental and cordial wishes, or does it have also some practical, juridical implication?

The first Oriental codification, while restricting the patriarch to the historical territory of the patriarchate, expressed a wider principle, namely, that "the patriarchs possess authority over the faithful of the same rite who

[45] Literature on the concept of autocephaly cf. *Pospishil*, op. cit. (27), pp. 110–111; P. M. *Trempelas*, The Autocephaly of the Metropolia in America, Brookline, Mass., 1973; articles by A. *Schmemann*, J. H. *Erickson*, and documentation in St. Vladimir's Theological Quarterly 15 (1971), no. 1/2; O. *Lotots'kyi*, Avtokefalija (Ukr.) 2 vol., Warsaw 1935–38.

[46] *Nedungatt*, op. cit. (28), p. 197.

[47] Ib., p. 262.

reside outside the boundaries of their territory to the extent it is determined expressly in general and particular law" (CS c.216 § 2, n.2). This general legal presumption is not repeated in the new draft of the CICO, while the limitations have been taken over nearly unchanged.

Considering the geographical distance, the emigration of the Eastern Catholics from Eastern Europe and the Near East is one of the most notable demographic events of the last one hundred years. What started in the 19th century as a result of economic circumstances, was accelerated by political changes, either by the spreading of Communism in Eastern Europe, or by the circumstances adverse to the native Christians in the Middle East. For the Ukrainians, for instance, this could mean that the Ukrainian Catholic Church in the mother country may disappear, by being absorbed in time entirely by the Russian Orthodox Church of Moscow, to which it was forcefully annexed in 1945. The partial disenfranchisement of Christians in Islamic countries and in Israel, the ravages of the war in Lebanon, and the generally depressed economic situation in the area, have caused the emigration of many members of all Christian groups from these countries to Western Europe, North and South America, and Australia.

Not only do the mother churches wish to be able, on their own initiative, without anybody's prior permission, to provide for the religious needs of their faithful, but also the spiritual children have a natural need to be under the pastoral care, not only of priests of their rite, but also of their own bishops and patriarchs[48]. A patriarch or bishop is not simply a higher ecclesiastical administrative official, but he is the religious father figure, the image of Christ of that particular church, and he cannot be replaced by whatsoever other ecclesiastical dignitary of the same or of a higher rank.

Present canon law has made some concessions in this direction. Patriarchs and major archbishops are placed in charge of matters liturgical belonging to their respective rites (CS c.279 § 2). The liturgical rite of a patriarchate is to be observed also by the eparchies, parishes and churches outside the patriarchate. Consequently, the patriarchate is entitled to supervise, in liturgical matters, all the faithful, clergy and bishops anywhere in the world.

The patriarchs enjoy also a certain legal power, as yet undefined, outside the patriarchate. This conclusion is to be drawn from a decision of the S.Congregation for the Eastern Churches that a *caput ritus* may issue a de-

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[48] W. W. *Bassett*, The Determination of Rite, Analecta Gregoriana, vol. 157, Rome 1967: "The diversity of rite is an attribute of peoples, intimately connected with the life of nations, of ethnic groups and families, no matter where they may have taken root after centuries of migration. The stability of rite, nurtured and conserved historically in the cultures of different lands, and hence at one time circumscribed territorially, is now strictly personal. What were formerly regional peculiarities in liturgy and discipline, local customs sustained by ancient traditions springing from generations of Christian inhabitants, bear today in the present law the characteristics of particular personal law directly related to the person without mediation of territory. The territorial division of local hierarchies no longer fits the natural communal division of the faithful." (p. 114). "The answer lies in the right of the faithful to preserve their own rite and to seek the services of their own priests. Furthermore, the Church itself has a right, indeed a duty before God, to preserve the precious spiritual patrimony of the rites, which in present circumstances simply cannot be adequately achieved by limiting this preservation to the ancient Oriental territories." (p. 115).

cision which can render invalid legal actions of his faithful outside the patriarchate or archiepiscopate. Pope Paul VI had ordered that the *vacatio legis* of OE should terminate on January 22, 1965. The Eastern patriarchs were permitted to determine the same for their respective patriarchates. Major Archbishop Cardinal Joseph Slipyj issued a declaration establishing April 7, 1965 as the day when the decree would be in force for the Ukrainians. Since Art. 16 of the decree had established a new marriage form, the Latin Archbishop of Detroit (U.S.A.) submitted the *dubium* to the Holy See, whether this provision had begun to oblige the Ruthenians and Ukrainians living in the U.S.A. on January 22, 1965 or on April 7, 1965. This information was needed by the chanceries of the dioceses because it decided the validity of marriages entered between these two possible dates. The S. Congregation replied "that the Decree for the Eastern Churches began to oblige the Ruthenians of the United States on January 22, 1965. It began to oblige the Ukrainians of the United States on April 7, 1965"[49]. The principle was thereby affirmed that the Ukrainian Major Archbishop, and the same is to be said of any Eastern patriarch, has a certain legal, juridical authority over ecclesiastical circumscriptions wherever they are situated in the world.

A church which is threatened with total annihilation by the Communists, or by grave peril from other forces, must be given the opportunity to survive in its remnants in the free world. At the present time, to give the example of the Ukrainian Catholic Church, there are two ecclesiastical provinces (United States and Canada) with eight eparchies, in addition to five eparchies and exarchies in Europe, South America and Australia. They are all directly under the pope, and there is no legal bond uniting them, and no such bond is foreseen in the draft of the CICO. They could have a common episcopal conference, but it is doubtful whether this would suffice administratively, and certainly not symbolically, to express efficiently the unity which they are entitled to achieve within the Church. How can one speak of a "Ukrainian Catholic Church" if they have no common organization and no common head? But is it natural that the Ukrainian Catholics wish to preserve their church in the free world when the continued existence of the mother church in Ukraine becomes more and more questionable? Of course, this example applied to several other Catholic Eastern churches *mutatis mutandis*.

We should also be aware that the Eastern churches, Catholic and Orthodox, must now again take on the duty of representing their peoples as ethnic or national groups, and the bishops must become conscious of their function as ethnarchs. After their compatriots lost out to the Communists or to other enemies of Christianity, and had to seek refuge far away from their homes, it has devolved upon the hierarchy, as a sacred duty, to preserve the national heritage in its Christian form in their new home countries.

If there are legitimate interests of the Holy See or the local churches of another rite that are threatened, they could find protection by a norm that, to give an example, the patriarchate can appoint a candidate to be bishop of such an eparchy or exarchy only after the Holy See has agreed on his

[49] Private reply of Apost. Delegation in Washington of Nov. 28, 1966, Canon Law Digest, Annual Supplement through 1966, to c. 1, p. 19.

person, a procedure which would still leave intact the right of the patriarchate to initiate and execute the appointment.

These considerations, added to the explicit request of the Eastern Catholic bishops, ought to find clear expression in the future CICO. The canons in the present draft are to be discarded, and the Eastern Catholic churches permitted to accompany their own faithful everywhere in the world. Let the inchoate generosity of Vatican II, as found in *Orientalium Ecclesiarum*, be translated into law, a witness to the magnanimity of the Apostolic See of Rome, as great and as enduring as the pyramids.

5. Vatican II Council and Territoriality

There can be no doubt that *Orientalium Ecclesiarum* contains the principle of territoriality of the Eastern patriarchates (Art. 7 and 9). What is not clear is whether the division into patriarchal and non-patriarchal territories implies that the patriarchs with their synods cannot have any direct jurisdiction in the non-patriarchal territory, as it is the opinion of Ivan Žužek[50].

Žužek, who is not only as secretary of the CC in charge of integrating the work of all the Coetuses (Work Groups), but has also retained the chairmanship (relator) of the *Coetus Centralis*, the overall coordinating organism, and of the most prestigious Coetus III *De Sacra Hierarchia*, asserts that it is incorrect as "some feel that the only way to affirm an equality among Churches is to concede to the Oriental Patriarchs full rights to establish hierarchies dependent on them, wherever they might feel it opportune, even beyond the limits of patriarchal territory. In this perspective it is often said that Oriental hierarchs in the West should depend upon their respective patriarchs in the same manner as Latin hierarchs in the East depend upon Rome"[51]. The opinion rejected here by Žužek was presented by Metropolitan Maxim Hermaniuk of the Ukrainian Catholic Church to the IV Synod of Bishops in 1974, and in which the Eastern patriarchs and bishops join him, probably in the majority. Žužek discounts this possibility as "difficult to reconcile such assertions with the nature of the office of the Supreme Pontiff, who alone has full authority over the entire world." With all due respect, this is a strange argument. Nobody questions the primatial authority of the Pope, but only whether he has to assert it in this place and manner. Žužek's reasoning is a petitio principii: it is not denied that the Pope has such power, but the question concerns the doubt whether he wishes to assert it here, and this permanently in a codification. The CC purports, through Žužek, to express the wish of the Pope. Has the Pope ordered them to understand *Orientalium Ecclesiarum* in this restrictive manner? Obviously, he has not, because Žužek does not refer to such a declaration of the will of the Pope but wishes to derive independently the norm from the very meaning of the Vatican II decree. But this is just what is questioned. The fact that the Pope can claim universal jurisdiction over the en-

[50] Canons Concerning the Authority of Patriarchs over the faithful of their own Rite who live outside the Limits of Patriarchal Territory, in Nuntia 6, p. 3–33.
[51] Nuntia 6, p. 16.

tire world, has really here no application, because he can be presumed sometimes to appear only as the patriarch of the Western Church.

The problem here is straightforward: should territoriality be established for the Eastern Catholic churches in a restrictive manner, or shall the jurisdiction of patriarchs outside their territory be generally recognized and limited only in specific instances, taxatively enumerated in the new CICO. From the tenor of OE and of the entire Vatican II, it appears clear that the second possibility is the more correct one, and that the restrictive interpretation, so obnoxious and detrimental to the future of the Eastern Catholic churches, is nothing but the attempt of the Roman Curia to retain full and direct control over the churches.

The same defect of cogency is inherent in the second argument of Žužek with which he endeavors to support his assertion that Vatican II intended that the Eastern churches should not have an immediate jurisdiction outside the patriarchal territory. He quotes from *Christus Dominus*, the decree on the Bishops Pastoral Office:

> Art. 23,3 (2nd section): ". . . where there are faithful of a different rite, the diocesan bishop should provide for their spiritual needs either through priests or parishes of that rite or through an episcopal vicar endowed with the necessary faculties. Wherever it is fitting, the latter should also have episcopal rank. Or, the ordinary himself may perform the office of an Ordinary of different rites. If for certain reasons, these arrangements are not feasible in the eyes of the Apostolic See, then a proper hierarchy for the different rites is to be established"[52].

Laws have to be explained in the context of their historical background. The above norm refers, as daily practice demonstrates, to the initial, provisional status of Catholics of an Eastern rite who settled in a territory where another rite, usually the Latin rite, has an established hierarchy. Such faithful and clergy will be subject to the local Catholic bishop of whatever rite he belongs. Sometimes, such a parish will remain perhaps the only community of this rite in that part of the world, as it is the case, for instance, with the Ukrainian community in Caracas, Venezuela. No Catholic can remain outside the pastoral care of the Church, and no Christian community can be separated from episcopal supervision. Consequently, the local bishop, the only one capable in such circumstances of doing it efficiently, is entrusted, nay obliged, with exercising the office of episcopal shepherding over this community.

It must be admitted that one could read into this passage from *Christus Dominus* the wish that Eastern Catholics satisfy themselves with such an arrangement under an ordinary of a different rite, even on a permanent basis. However, this provision has to be brought into agreement with a higher axiom, namely, that a Catholic preserve a personal legal bond with the church or rite of origin irrespective where he chooses to settle. It does not follow that such a community under a Latin rite ordinary ceases to be a part of the patriarchate or church from which the people derive their origin. It does not follow by any reasoning from Art. 23,3 that their patriarch cannot take the initiative in supervising their life, become involved in the expansion of the community to other localities, etc. The norm of Art. 23,3 ought

[52] W. M. *Abbott*, (ed.), The Documents of Vatican II, p. 413.

to be seen as an obligation imposed upon the local bishop, and not as a norm which was enacted in order to limit the expansions of the Eastern Catholic churches. The needs of such a local church are such, that the orderly management of these affairs be done in cooperation with the local bishop, perhaps through the mediation of the Holy See, until such time that the patriarch and his synod judge the circumstances developed to the point when an exarchy or eparchy can be erected, which will then be under the direct jurisdiction of the patriarchate. This is what has happened till now, and it seems odd that the interpretation of Art. 23,3 would take away even this little breathing space from the Eastern Catholic churches.

Other parts of *Christus Dominus* and other documents of Vatican II may speak of the bishop in the diocese as the sole head of his community. Does this mean that Vatican II has reestablished the principle that in the same territory or city there should be but one bishop, excluding the possibility of several Catholic bishops of different rites taking their title from the same locality? Of course, not; the practice of the Catholic Church has settled that a long time ago, and the evidence is apparent to everyone who thumbs through the pages of the *Annuario Pontificio*, that the Catholic Church did not and does not comtemplate a change of this policy.

6. The Core of the Problem: Denial of Ethnicity or Social Particularity

Catholic canon law, including the Guidelines of the Codification Commission, and the administrative actions on the part of the Roman Curia can be explained and understood only if we become aware that the Eastern Catholic autonomous communities, churches, patriarchates, and archiepiscopates, are perceived by the Roman authorities and the Latin Rite Church at large not as ethnic groups but rather simply as Catholics who have been conditioned by social training to follow a particular rite and discipline[53]. Consequently, when members of an Eastern Catholic rite emigrate to another part of the world, especially one where the Latin rite predominates numerically, they are permitted to follow their own rite, in furtherance of which parishes and even dioceses may be established for them, but they are seen by the Curia as parts of the church of that nation. They are treated not differently from, e.g., Poles, Lithuanians, Italians, or other Latin Rite Catholics who had emigrated, e.g., to the United States. National parishes were erected for them; priests of their national extraction were appointed to the hierarchy; but they became members and parts of the one United States Catholic Church, and their peculiarities were lost in this process of assimilation. The same is expected to happen with the Eastern Catholics, and Rome was not able as yet to conceive of the possibility that, for instance, the Melkites, Maronites or Ukrainians may not wish to merge with

[53] The study of ecclesiastical structures from the viewpoint of the sociologist has only begun. One such valuable work by J. *Macha*, is Ecclesiastical Unification, Orient. Christ. Analecta 198, Rome 1974, which treats the Ruthenian (Ukrainian-Belorussian) Church from the Union of Brest (1596) to the early 1800s. A similar attempt is Ph. M. *Kayal* and J. M. *Kayal*, The Syrian-Lebanese in America. A Study in religion and Assimilation, Boston 1975. Cf. also G. *Nedungatt*'s contribution in this issue of Kanon, pp. 19–35.

the rest of the Catholic Church in the United States, but on one hand retain their own autonomy, and, on the other hand, continue a most intimate affiliation with the mother church, as well as with other parts of their church around the globe.

In perceiving the Eastern Catholics in this way the fact is overlooked that each such Eastern community constitutes a sociological unit that is equivalent to an ethnic group, although the criteria employed for defining ethnicity cannot be applied in the same meaning as to a group that is set apart by a language of its own, a separate racial ancestry, etc. Eastern rite churches in the Near East formed *millets* (nations) of the Ottoman Empire. Even today they cannot be differentiated from each other by such a criterion as language since nearly all speak the same Arabic language, they all espouse the same political goals, identical with those of the Moslem Arabs, etc. What makes them differ from each other and from the Latin Rite community is the fact that each of them, as individuals, and their ancestors, marched through history together. Their native leaders were the self-perpetuating hierarchy of their church. By having experienced the harsh, often heroic, reality of a common history and destiny, they constitute separate entities, ethnic groups, equivalent to nations.

Inasmuch as their cohesion does not arise through the possession of a land of their own, or from living in the same territory, and usually cannot be referred to a politically independent nation, but is based solely on personal bonds, when they become separated from each other by political boundaries, and are forced to live in several nations, and when they move from country to country as emigrants, their ties to each other and to the leaders of their community or society, the patriarchs and bishops, are not broken but rather strengthened and enhanced.

Therefore, when these Eastern Christians, Catholics and also non-Catholics, arrive in the United States, or in Brazil, or anywhere else, they desire and must maintain the ties with their own church, not only at the level of liturgical identity, but in administrative as well as disciplinary matters. The members of such churches continue to live in the new country according to the traditions and the way of perceiving religious and ecclesiastical realities handed down from their ancestors.

7. The Present Eastern Catholic Churches and Territoriality

There can be no doubt that *Orientalium Ecclesiarum* and other decrees of the Council accepted the territorial limitation of patriarchal jurisdiction, although the Eastern Catholic hierarchies understood it as a limitation imposed on the otherwise free exercise of a right, while the new codification proposes to see it as an absolute limitation that will be punctuated by a few exceptions. The essential freedom of every Catholic Eastern church to establish itself anywhere, is supported also by a number of other reasons.

1. The rule of territorial limitation should not be applied to the present Eastern Catholic churches because they have changed their essential nature, especially over the last century, by becoming quasi-ethnic social groups, as the millets of the former Ottoman Empire. *Phyletism*, con-

demned by some Orthodox, in defense of a narrow nationalism, is to be accepted as the norm in a modified form – autonomy under the Roman Pontiff, not autocephaly – for the Eastern Catholic churches dispersed in the world.

2. This new assessment of the situation of most Eastern churches is shared by George Nedungatt, S.J., in his paper "Autonomy, Autocephaly, and the Problem of Jurisdiction Today", presented at the IV. Congress of the Society for the Law of the Eastern Churches, in Regensburg . It is published in this book (pp. 19–35). In Part 4 Nedungatt speaks of social mobility, the transition of the Eastern churches from a static civilization based on agriculture to a mobile community of faithful, expanding to distant parts of the globe, where a pluralistic society and the presence "of the other as other accentuates of one being different". Nedungatt says that "surely the Orientals have the right to continue as Orientals in the diaspora, and to grow into ecclesial fulness", and he quotes Pope Paul VI's words in respect to emigrants in general, and thereby par excellence to the Eastern Christians, namely, that "la mobilità spinge a concezioni, prima ancora che a istituzioni, ultraterritoriali . . . sono chiamate ad estendersi fin là dove si recano o vivono tanti loro fedeli."

3. The concept and term of "aggregated" parts of a church ought to be abandoned. Any Eastern Catholic community, parish, exarchy, eparchy, metropolia, ought to continue to form an integral part of the mother church. Could one not reinstate the principle mentioned by Žužek that was proposed in the respective Coetus but rejected then, namely, *"potestas Patriarcharum cum eorum Synodis extenditur ad mundum universum, iis exceptis quae sedes Apostolica expresse reservat"* (the power of the patriarchs with their synods extends to the entire world, with the exeption of matters that the Apostolic See has reserved to itself)?

4. It may be argued that the majority perhaps of Eastern Catholic bishops may not be interested in abolishing the territorial limitation of the churches *sui iuris*, and this would be even more true if the Latin Rite hierarchy had some say in the matter. This could well be the case, but this would also demonstrate that one and the same code cannot satisfy the needs of all churches. Why should a hierarchy which has no stake in the problem, especially the Latin rite hierarchy, a factor extraneous to the destiny of the Eastern churches, sit in judgement over the legislative measures which a particular church needs in her predicament?

5. What about the rejoinder that even the Orthodox are accepting the principle of territoriality for the churches *sui iuris*? Even if it is true that Eastern Orthodox canonists and ecclesiastics may assert their respective claims to exclusive jurisdiction in a certain nation by attempting to show how they are based on the territorial principle sanctioned by ancient councils, we ought to ignore these self-serving assertions and look toward the reality of what Orthodox churches do actually. Seeing themselves as ethnic groups, they regard themselves to be entitled, and even obliged, to follow their own faithful anywhere in the world, and they erect their own ethnic jurisdictions everywhere. This is the only factual state which should be considered here when one mentions the opinion of the Orthodox. The same right is postulated for the Eastern Catholic churches, even if some moderation by the Roman See will be appropriate and necessary. The prin-

ciple of territorial limitations has been discarded at the level of parish and diocese; why should it be retained at the leval of the patriarchate or the church *sui iuris*?

6. It is, of course, true that Vatican II has continued to use the canonical terminology of the preceding law, and speaks of territorial limitation of the Eastern patriarchates. The fact that this was done by an ecumenical council cannot be easily discounted. However, there are reasons for interpreting Vatican II in a less rigoristic manner. The paramount desire of *Orientalium Ecclesiarum*, as read by the Catholic Orientals, was the return of the authority of the patriarchs and patriarchates to its pristine dignity and power, as they were possessed or claimed before re-union, and as they are enjoyed today by the Eastern Orthodox churches. The latter ones have followed in practice, now at least a century old, the principle that the church can follow its members everywhere, even when they cross the oceans.

7. Could it not be that the prohibition for Eastern patriarchs to extend their pastoral care by their own initiative to the faithful who have emigrated to other parts of the globe is against natural law, as it must find application also in the ecclesiastical structure? As the natural father cannot be forbidden by any human law to extend his care to his children anytime and anywhere, so also the "Pater et Caput" of an Eastern church cannot be deprived of the innate right to follow his flock anywhere, and conversely, any member of an Eastern church is entitled to lay claim to the pastoral solicitude of his church without interference from other authorities. Of course, as all power exercised in the Christian community, also this relationship is subject to the possibility of being moderated by considerations of local and personal exigencies.

With the exception of India, the Eastern Catholic churches are today in a decline due to external factors. The imminent possibility that some churches may soon disappear, or greatly be reduced, in the regions of their historical origin, may suggest to their spiritual heads to transfer the center of the church to a part of the globe which is outside their jurisdiction according to the present norm. I am thinking of the Ukrainian Catholic church, and do not exclude the same for some Middle East churches, such as the Maronites, of whom already more than one half lives outside the patriarchate. Do they not have a natural right to it?

8. The most essential characteristic of Roman Catholicism is the possession of the ecclesiastical office of the papacy with its plenitude of power, which is expressly defined as being above ecumenical councils. This is what makes the Catholic Church capable of responding swiftly and adequately when circumstances and needs change, and this is what the Eastern Catholic churches expect the Pope to do, through the codification.

Such changes cannot be excluded. Pope John Paul II stated in a personal letter to Patriarch Designate Cardinal Joseph Slipyj, of March 19, 1979: "... I regard it as necessary in the meantime to insure the future canonical unity of the entire hierarchy of the Ukrainian Catholic Church, in conjunction with the Apostolic See, on the basis of the possibilities which the present ecclesiastical legislation offers." While it was not indicated by what canonical formula His Holiness would fulfill this promise, the confining wall of jurisdictional territoriality will have been breached.

Since the territorial limitations imposed upon the Eastern Catholic

churches has now been burdened with the characteristics of a theological, ecclesiological, proposition of quasi-dogmatic standing, the possibility of a forthright solution, i.e., the total and irrevocable abrogation of the territoriality principle, cannot be expected. However, a possible compromise solution would be a general delegation of supra-episcopal jurisdiction, granted permanently in law, by the Roman Pontiff to the patriarchs and heads of other churches, over the faithful and dioceses outside the patriarchates or churches *sui iuris*. This "delegated" jurisdiction could then be coarcted by appropriate exclusions and reservations, such as the need of papal approval for the erection of dioceses, for the appointment of bishops, etc. What the Eastern Catholic churches desire most, is the right to *initiate by themselves* anywhere in the world jurisdictional and administrative measures, enacted by their synod in a collegial act, for the benefit of the faithful, and they are not averse to submitting such decision to the scrutiny of the Roman Pontiff.

The Ecumenical Character of the CICO

I must confess that I am disappointed with what the Guidelines say on this point. The quotations of beautiful passages from *Orientalium Ecclesiarum* of Vatican II do not satisfy me because I expected that the Guidelines would have at once indicated, at least by sketching some negative and positive demarcations, how ecumenical considerations are to be translated into law. I see two needs. First, the Catholic position in respect to the Eastern Orthodox churches has to be clarified, and secondly, the valuable legislative experience of the Eastern non-Catholic churches ought to be declared an additional source for the codification, and employed as such.

It is true that the CICO is to be a code for Catholics only, but let us not forget the goal of all Eastern Christians must be a final union. While I do not see corporate unions in the future of the church, but increasing fraternization and equalization, until one day we find ourselves, to our own surprise, joyfully together at the table of the Lord, the legal setup of the sundry Eastern Catholic churches should be such that the future union with their non-Catholic counterparts can be established with utmost ease.

The awareness of the importance of canon law for the realization of ecumenical goals has been recognized also by the World Council of Churches, which sponsored the Consultation of Church Law, March 29 – April 1, 1974. The noted ecumenicist Lukas Vischer realized the significance of canon law in the relationship even of Protestant churches to each other, whose ecclesiology pays far less attention to institutional structures: "The ecumenical movement is both aware and unaware of the extent to which legal questions block the way to church unity"[54].

Disappointment has been voiced numerous times that the Eastern Catholic churches have not fulfilled the expectation of the Catholic world, to be bridges between the Western, Roman Church and the respective Eastern, non-Catholic churches. Until recently, this failure was explained with

[54] Three papers from this area by L. *Vischer*, G. *Göranson* and H. *Ammer* were published in The Jurist 37 (1977), pp. 1–56.

the changed character and appearance of the Eastern Catholic churches due to the latinization they had undergone over the centuries. The strenuous effort of the Holy See in the last thirty years has succeeded in reversing this trend, and even in largely erasing the sequels of latinization in liturgical services. However, the task will never be finished if the eradication of latinization is not extended to the field of canon law. *Cleri Sanctitati, Orientalium Ecclesiarum* and even the draft of the first canons of the CICO are steps in the right direction. Yet, considering the permanent nature of every codification, the limits imposed in the Guidelines will prevent the return of the Eastern Catholic churches to their genuine canonical tradition. This in itself will be a testimony against the ecumenical character of the CICO.

After the exchange of kisses of peace and other such meaningful fraternal greetings, the Eastern non-Catholic churches will expect that the Catholic Church reveals to them what the conditions are on which a future union can be negotiated. Both parties being essentially hierarchical, based on institutional structures, there is no way to determine these conditions but in a legal form. It is natural that everybody will look to the CICO to see what the provisions are that the non-Catholics can reasonably anticipate in their dreams of a union. Is this not what is included in Žužek's announcement that the codification will have "une grande repercussion oecumenique", and that this effect will be achieved by directing the codification toward "le mise à jour à laquelle tendent les Eglises Orthodoxes soeurs"[55]?

The Eastern Orthodox churches cannot be ignored in the codification, among others, because one or the other has initiated a very close relationship with its Catholic counterpart. The *Papal Secretariate for Promoting Christian Unity* reports in its *Information-Service* (No. 33, 1977) about the intensification of the relations between the Greek-Orthodox Patriarchate of Antioch and the Melkite Catholic Patriarchate in recent years, "which have now come together at the level of the Synods of the two Churches... a Melkite Catholic bishop has proposed a 'union of transition' between the Greek Catholic and the Greek Orthodox Patriarchates: While awaiting the union of the Churches, Catholic and Orthodox as a whole, the Greek Catholic Patriarchate... wants to unite with the Greek Orthodox Patriarchate of Antioch"[56].

We know that the CICO will not repeat the ways of the CIC of 1917, of which Ladislas Orsy, S.J., said that "in the Code the non-Catholic Christian is not our brother, he is a separate heretic"[57]. Even if no terminology of that kind will be employed in the CICO, by ignoring the legislative development in the Eastern Orthodox churches, and by making no provisions for closing the gap between sister churches, the same result will be assured.

The Guidelines themselves realize that while the CICO will be the law of the Catholic Eastern churches, it cannot but create some repercussions

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[55] Nuntia 2, p. 33.

[56] At a reception for the Greek Orthodox Patriarch of Antioch Elias IV, during his visit of the U.S.A. in June of 1977, tendered by Archbishop Joseph Tawil of the Melkite Eparchy of Newton, Mass., the Archbishop is reported to have stated to the Orthodox patriarch: "We are a single community, temporarily administered by two organizations, until unity is achieved."

[57] Op. cit., p. 115.

within the Orthodox Eastern churches. They themselves experience also the pressing need to come to a legislative *aggiornamento* within the legal framework of their own communities, and the CICO should not ignore it, as was emphasized by Ivan Žužek at the I. Congress in 1971:

> "6. Careful consideration should be given to the efforts that the Orthodox are making at the present time to arrive at a common (Byzantine) code and to adapt Holy Canons to the conditions of present day life. Their decisions in this regard merit special attention in a future *aggiornamento* of the Code for Oriental Catholics, in view of the 'almost complete communion' ('*presque total*') that has been recognized by the Pope (Jan. 1, 1971 – Osservatore Romano, Mar. 7, 1971) as already existing between the Catholic and the Orthodox Churches"[58].

However, lacking the institution of the papacy with the ecclesiastical power, practically unlimited in legislation, they find it difficult to replicate the authority of the ecumenical councils in such an ecclesial structure which could be recognized as supreme lawgiver, if not by all, then at least by the majority. The endeavors of Metropolitan Bartolomais Archondonis of the Ecumenical Patriarchate are well known in this respect.

The Catholic Church has again proven its ability to advance even within a *theological* system, when Vatican II extended recognition to the Orthodox churches and their legislative authority as belonging to the one, universal church, as was expressed by Ivan Žužek:

> "Alle jurisdiktionellen Akte der orthodoxen Bischöfe sind anzusehen als getan in der hierarchischen Gemeinschaft mit der katholischen Kirche und sind darum auch juristisch gültig und erlaubt, außer jenen, welche der heiligen Schrift, der katholischen Lehre, oder dem Naturgesetz widersprechen"[59].

Once we have granted recognition to the legislative authority of the Orthodox churches, should we not permit the Eastern Catholic churches to approximate themselves to their Orthodox sister churches in the name of ecumenism, and recover in the new CICO their original autonomy?

I see the anti-ecumenical characteristics of the new CICO expressed in these features:

1. The Roman Pontiff appears too often in the CICO as a part of the ordinary administration of the individual Eastern Catholic church. This emphasis on the role of the pope, unnecessary and undesirable from an ecumenical standpoint, contradicts the authority of the Eastern patriarchs and chiefs of churches as it was accorded to them and their synods in the Christian past, and as it is still assigned to them in the present Eastern Orthodox churches[60].

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[58] The Ancient Oriental Sources of Canon Law and the Modern Legislation for Oriental Catholics, in: Kanon 1 (1973), p. 159.

[59] Hat die katholische Kirche die Jurisdiktion der orientalischen Bischöfe nach dem zweiten Vatikanischen Konzil anerkannt oder nicht, in: Österreichisches Archiv für Kirchenrecht 22 (1971), p. 127.

[60] Cf. the description given by Patriarch *Maximos V* of the relationship between the Melkites and the papacy at the time of re-union: "Dans les Patriarcats melkites, la hierarchie et le peuple orthodoxes avaient garde à l'egard du Pontife romain les positions traditionelles d'avant la séparation. On continuait à le regarder comme le chef incontesté de la catholicité. Les patriarches ne trouvaient aucun inconvenient à se mettre en relation

2. The Eastern Catholic churches are clearly not *sui iuris* in any true meaning. Their autonomy is curtailed in theory and in pratice. Could the Eastern Orthodox churches ever accept the papal prohibition to extend their care to emigrants who are residing outside their home country? Could they envision a papal prohibition of ordaining married candidates to the presbyterate as it is now in force for the Eastern Catholics in Western Europe, North and South America, and in Australia?

3. Every codification has, by definition, the quality of permanency, immutability, indicating with great seriousness and firmness, the will of the legislator how the legal order in the church shall be defined for a long time to come. This is even more so when it is the case of a recodification, and one which follows so soon after the first codification. There is thus no justified hope that the Catholic Church would easily deviate from the principles embodied in the CICO for a considerable period of time.

4. The present draft insists of a common code, one promulgated by the pope, an autority outside of the particular Eastern church. When, in the future, expediency should suggest to an Eastern Catholic church to narrow the gap between herself and her non-Catholic sister church by appropriate legislative changes, the CICO will interpose itself as a mighty obstacle: not only must recourse be had to the Roman Curia, but the natural reluctance and resistance would have to be overcome to tamper with such a common code, promulgated by and for all the Eastern Catholic churches together. Ecumenical interests must be protected now, in the CICO, and reliance should be placed on some possible future accomodations.

5. The Eastern Orthodox churches were able to continue their natural institutional and legislative evolution at the same time that the Eastern Catholic churches were under the dominance and extraneous influence of the Latin Rite canon law. If the institutions and structures developed in the Orthodox churches during this time – as expressed in codifications and other legislative enactments – are now ignored in the CICO, the abyss gaping between the Eastern Catholic and the Orthodox sister churches will only be deepened[61].

6. When we speak of ecumenical endeavors, our purview must include also the Protestant churches, for which the boundaries of autonomous existence – to which they may one day aspire – assigned to the Eastern Catholic churches in the CICO presages what they could expect in the case of a union. They must wonder what weight and significance such a document

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avec lui et à lui demander sa communion et son aide. Les missionnaires étaient invités à prêcher dans les églises orthodoxes et même à y exercer le ministère sacerdotal. Une large propagande s'était deployée auprès des Melkites pour intensifier leur attachement au catholicisme romain. Les patriarches et les évêques se laissaient gagner à leur apostolat, sans cesser de mantenir leur position traditionelle d'équilibre entre Rome et l'Orthodoxie et de tenir à leurs usages et coutumes propres." (Conference held in Milan/Italy, April 14, 1970).

[61] On the codification of Eastern Orthodox churches cf. B. *Archondonis*, On the Codification, op. cit. (14); *Pospishil*, op. cit. (27) with a German translation of the Constitution of the Serbian Patriarchate of 1949; B. P. *Tzortzatos*, The Fundamental Administrative Institutions of the Orthodox Patriarchates (Greek), Athens 1972; partially also R. *Potz*, Patriarch und Synode in Konstantinopel, Wien 1971.

carries as the *Common Declaration* between the Anglican Church on the occasion of the Archbishop of Canterbury's visit in Rome in 1977, when Pope Paul VI spoke of "the Anglican Church united and not absorbed"[62].

Epilogue

When the various Eastern communities re-affiliated themselves with the Holy Roman See, they did it with the expectation that this step would involve some dependence on the Roman Pontiff, but they envisioned a relationship of the kind we see today realized in the Commonwealth of Nations presided over by the Queen of England. Regrettably, church history proceeds not unlike secular history, and dynamics of a certain epoch, which are responsible for the political arrangements of nations, are at work also in the ecclesiastical sphere. The endeavors of colonisation spearheaded by Spain, Portugal, Holland, England, France, were paralleled by the colonisation of the Eastern Catholic churches by the Church of Rome. However well-meaning these efforts may have been, and how much the Eastern Catholics may have benefitted from them, it is now time that the Holy See of Rome follow the example of the secular world in the enterprise of decolonisation, and return to the Eastern Catholic communities what had been taken from them, their character of free, autonomous churches.

The Eastern Catholic churches themselves will have to develop again among their members, starting with their bishops, the consciousness that they are different from other parts of the Catholic Church not so much by the difference of rite, but that they constitute moral persons at the highest level of church structure. The dissimilarity between the Spanish or the German Catholic churches is of a different nature; they are nothing but administrative subdivisions of the Church, which possess no standing as such in law. Each Eastern Catholic church, on the other hand, has legal personhood, is a subject of rights and duties. The Eastern Catholics have to recover the recognition that they are in the first place members of their respective churches, and only through their church do they acquire membership also in the universal Catholic Church of Rome.

The task of retrieving this understanding of their proper role in the Catholic community does not burden only the Eastern Catholics, but there is a more pressing charge placed upon the Holy See of Rome: to take cognizance of the position rightfully due to each Eastern Catholic church, and to express this insight in the canons of the future Eastern law codes.

[62] Information Service, Secretariate for Promoting Christian Unity, no. 34, 177/II.

L'EGLISE PARTICULIÈRE EN TANT QU'UNITÉ FONDAMENTALE CRÉATRICE DANS LA COMMUNAUTÉ DES COMMUNAUTÉS*

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1. Introduction

Bien que l'Eglise particulière ne soit pas la plus petite dans la grande richesse des communautés existant dans l'Eglise, elle va se développant et s'agrandissant, créant dès le départ des communautés toujours nouvelles ayant précisément ce caractère d'Eglises particulières. Sous la conduite des Anciens et de leur évêque, elles acquièrent une certaine autonomie, en conservant toutefois un lien étroit avec leurs Eglises mères aussi bien qu'avec d'autres communautés faisant partie d'un tout sans cesse grandissant.

Il est très caractéristique tant dans les Actes des Apôtres, l'Apocalypse de saint Jean que dans les écrits des temps postapostoliques, nous trouvons des communautés de fidèles de différents genres et de différentes dimensions, parmi lesquelles l'Eglise particulière avec son évêque commence tôt à occuper une place à elle méritant une attention particulière. C'est avec ces communautés ecclésiales que renoue expressément le Concile Vatican II.

Les communautés qui se rassemblaient dans les maisons privées[1] les Eglises qui se groupaient dans différentes villes[2] et qui, ensuite, englobaient des pays entiers ou des provinces, nous sont connues d'après les Epîtres de saint Paul[3]. On pourrait du reste citer beaucoup d'autres textes confirmant l'existence de ces communautés.

2. Le caractère ecclésial postule la coexistence de communautés de petites dimensions

Le Concile Vatican II souligne le caractère ecclésial de la famille en autant qu'elle soit incorporée dans l'ordre du salut, et c'est pourquoi il l'appelle „l'Eglise domestique"[4]. Toutefois, cette dimension domestique ne se suffit

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* Texte français révisé par *Michel Thériault.*

[1] 1 Co 11, 18; 14, 23; 14, 34.

[2] En témoignent les Epîtres aux Corinthiens, aux Ephésiens et aux Romains.

[3] Les Eglises d'Asie: 1 Co 16, 19; de Macédonie: 2 Co 8, 1; de Galatie: 1 Co 16, 1.

[4] Cf. Constitutio dogmatica de Ecclesia, no 11, 2, in: Sacrosanctum Oecumenicum Concilium Vaticanum II. Constitutiones, decreta, declarationes, cura et studio Secretariae generalis Concilii Oecumenici Vaticani II, Civitate Vaticanis, Typis Polyglottis Vaticanis, 1966, p. 113. (Les citations latines des textes de Vatican II sont toutes tirées de cette éd., que nous ne citerons dorénavant qu'en en donnant le numéro de la page).

pas, ni n'est spécifiquement ecclésiale, et l'Eglise domestique doit rester en liaison non seulement formelle mais aussi active avec d'autres Eglises domestiques dans la communauté des communautés qu'est l'Eglise particulière.

Dans l'Eglise particulière des organismes communautaires existent, s'engrènent les uns dans les autres et coopèrent entre eux *in communione*, depuis le plus petit qu'est la famille, jusqu'à toutes sortes d'associations d'ordres, de paroisses, etc.

L'Eglise particulière en tant qu'organisme vivant n'est pas divisée de façon aussi compartimentée qu'il peut paraître de l'extérieur. Sa structure n'est pas une simple somme des parties composantes, mais une communauté des communautés souvent différentes de caractère et de dimension mais qui s'engrènent les unes dans les autres, coexistent et parfois s'interpénètrent. Elles restent en liaison *in communione* en mettant en oeuvre leur vie ecclésiale grâce à l'action du Saint-Esprit, les communautés et leurs membres étant unis à travers le Verbe de Dieu et les sacrements *in Christo*.

Les différentes communautés plus petites ne se suffisent pas à elles-mêmes, car elles ne disposent pas des moyens nécessaires à une pleine vie ecclésiale. En s'unissant, elles forment des communautés plus grandes qui, en s'appuyant sur la fonction sacerdotale exercée en leur sein, fournissent ces moyens. Elles acquièrent également la capacité d'intégrer des groupements plus petits même de caractère différent. Cependant, ces derniers n'ont pas leur plein sens ecclésial, s'ils ne restent pas en liaison étroite avec celui qui possède la plénitude du sacerdoce. Car c'est lui qui, en transmettant le pouvoir sanctifiant, remplit simultanément la fonction d'enseignement et de pastorale, et sert l'Eglise particulière, tout en étant également le fondement de son unité et de sa vitalité.

Ce lien dans l'Eglise particulière permet de remplir pleinement les tâches dans les communautés plus petites. Cependant l'évêque n'agit pas isolé des autres, mais conserve le lien avec ceux qui dirigent leurs propres Eglises ainsi qu'avec le Chef du Collège et, de ce fait, avec l'Eglise universelle. La mission canonique, grâce à laquelle il exerce son service dans l'Eglise concernée, en est la confirmation.

Par conséquent, dans la vie des petites communautés de différents genres, qui coexistent et s'engrènent les unes dans les autres, particulièrement dans les paroisses, l'Eglise particulière réalise sa vie à elle, se concrétise et trouve son expression dans les actions de particuliers ou de groupes. Et c'est ici que trouve son application le texte du Concile Vatican II: „in quibus et ex quibus"[5]. Il ne faut pas oublier que les unes et les autres sont liées avec les structures et la culture locales. Grâce à cela le Verbe divin peut donc être accepté, entendu et mis en oeuvre souvent de façon unique[6]. Il se forme donc une réalité ecclésiale specifique, enrichissant le pluralisme de la vie de l'Eglise particulière et de ce fait également universelle.

Grâce à cela divers usages et traditions prennent naissance, fondés sur les conditions et valeurs culturelles de la région donnée. C'est pourquoi non seulement l'Eglise particulière en tant que telle, mais aussi les communautés plus petites de tout genre qui existent en elle, ont le droit de conser-

[5] Id., no 23, 1, p. 134.
[6] J. *Majka*, Socjologia parafii (La sociologie de la paroisse), Lublin 1971, p. 53.

ver leurs particularités et leurs usages et de donner une couleur différente aux valeurs qu'elles produisent. Le Concile Vatican II, ce qui est caractéristique, souligne la possibilité de conserver la diversité – que l'on peut croire applicable à une échelle moindre – non seulement dans la tradition et la réalisation des vérités révélées dans des conditions culturelles concrètes, mais également que les communautés puissent se régir selon leurs propres lois „plus conformes au caractère de leurs fidèles et plus aptes à promouvoir le bien des âmes"[7].

Cela non seulement n'empêche pas d'assurer la cohésion, comme le constate expressément le Décret sur les Eglises orientales catholiques, mais encore la met en relief[8]. Il est caractéristique que le Concile ait souligné justement dans ce cas l'*unité* de l'Eglise, à laquelle ne nuit ni la variété des traditions, ni la réalisation de l'Evangile dans différents milieux culturels ni le maintien de la propre discipline adaptée aux besoins locaux. On a donc modifié la définition proposée dans le schéma, que justement cette diversité ne nuit pas à l'esprit catholique (*catholicitati*)[9].

Les Eglises primitives de Jérusalem, d'Antioche, de Corinthe, d'Ephèse, de Rome ou d'ailleurs différaient certainement entre elles en beaucoup de points secondaires. Ces différences étaient dûes au fait qu'elles étaient pénétrées de cultures différentes, qu'elles avaient leur propre tradition et même un mode de réalisation de l'enseignement révélé en fonction des conditions concrètes dans lesquelles elles vivaient. Malgré cela, elles avaient la conscience de leur unité[10]. Le Décret sur l'oecuménisme confirme la même idée. Il apprécie également la diversité de la discipline, qui souvent facilite la réalisation du but fondamental, qu'est le bien spirituel des fidèles. C'est pourquoi l'Eglise particulière unit en elle des gens de qualités différentes, les incorpore tous tels qu'ils sont et, à travers son activité, en coopérant avec leur bonne volonté, s'efforce de leur faciliter la réalisation de leur but fondamental personnel[11].

3. La réalisation concrète du but est possible dans la coexistence

Dans chaque Eglise particulière sont exercées les fonctions ecclésiastiques à travers des communautés plus petites, en particulier paroissiales: la prédication de la Parole de Dieu, l'administration des sacrements et les fonctions liturgiques, ainsi que les différentes manifestations de la pastorale, de la coopération fraternelle et des oeuvres de charité. Nous pouvons

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[7] „... unitati Ecclesiae minime obstat, immo decorem eius augeat et ad missionem eius implendam non parum conferat quaedam morum consuetudinumque diversitas ...", Decretum de oecumenismo, no 16, p. 226. Traduction française tirée de Les actes du concile Vatican II, textes intégraux des Constitutions, décrets et déclarations promulgés, t. 1, Paris, Cerf, p. 213. (La traduction française des textes de Vatican II est tirée de cette éd., que nous ne citerons dorénavant qu'en en donnant le numéro de la page après une référence générale à la traduction française.).

[8] Cf. Decretum de Ecclesiis orientalibus catholicis, nos 2 et 21, p. 224 et 235.

[9] Cf. Schema decreti de Ecclesiis orientalibus, Civitate Vaticanis 1963, p. 5, no 2; cf. aussi id., 1964, p. 5, no 2.

[10] D. *Stanley, Koinonia* as symbol and reality in the primitive Church, in: Communione intereclesiale, collegialità, primato, ecumenismo, t. 1, Roma, 1972, p. 87.

[11] Cf. Decretum de Oecumenismo, nos 15–18, p. 264–268.

donc affirmer que la vie actuelle de l'Eglise particulière est une réalisation permanente de l'Eglise dans l'histoire concrète du Peuple de Dieu, histoire qui se forme dans un domaine déterminé. Toutefois il convient de souligner notamment les communautés paroissiales et eucharistiques plus petites qui existent en elle, qui unissent les fidèles non seulement entre eux, mais également avec l'Eglise particulière, et à travers celle-ci, avec l'Eglise universelle. L'Eucharistie conséquemment célébrée dans les communautés susmentionnées possède son plein sens pour autant que les participants soient en liaison avec l'Eglise particulière, laquelle est présidée par l'évêque qui est revêtu de la plénitude du sacerdoce.

Ce qui précède peut certainement faire naître la réflexion suivante: que l'action apostolique concrète – la prédication de la Bonne Nouvelle, l'administration des Sacrements, c'est-à-dire le partage des moyens de sanctification, l'activité caritative, etc. – s'effectue, la plupart du temps, dans les Eglises particulières et à travers elles. C'est là également que de nombreux membres sont incorporés à l'Eglise[12]. D'autre part, l'activité missionnaire tend à créer de nouvelles communautés, qui, dans le futur, pourraient constituer une nouvelle Eglise particulière. En prenant également en considération la réalisation du but fondamental de l'Eglise, qui a toujours été, et sera toujours, la *salus animarum* (le salut des âmes); il nous faut constater que ce salut s'accomplit en effet dans les Eglises particulières.

4. Les Eglises particulières „in communione ecclesiarum"

Toutefois, des réflexions précédentes nous ne pouvons conclure à la diminution du rôle de l'Eglise universelle. Il est difficile de supposer que le Christ ait voulu qu'il y ait une seule Eglise universelle ou exclusivement des Eglises particulières. Tout indique qu'il avait l'intention d'en instituer une seule, mais de double dimension. L'Eglise universelle est donc une unité dans la multiplicité. Cette unité peut être appelée la communauté des communautés, *communio ecclesiarum*. Il est notoire que l'ecclésiologie de l'Eglise Occidentale mettait davantage l'accent sur l'élément d'universalité de l'Eglise, tandis l'Eglise Orientale restait fidèle à sa tradition, en soulignant particulièrement l'unité, c'est-à-dire la *communio* des Eglises particulières. L'Eglise universelle, c'est la communauté des Eglises c'est-à-dire la *communio ecclesiarum*. C'est pourquoi l'Eglise est une, car le Christ est un et le Saint-Esprit est un[13].

Il convient de faire remarquer qu'aussi bien chez saint Paul que chez les Pères, v.g. chez saint Cyprien, nous trouvons les notions d'Eglise locale et d'Eglise universelle étroitement liées l'une à l'autre[14]. Et c'est précisément

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[12] „Die Diözese heißt Teilkirche, weil sie Teil der Gesamtkirche ist; sie ist jedoch mehr als blosser Teil, weil in ihr die ganze Kirche mit der sich in Wort und Sakrament vollziehenden Heilswirksamkeit gegenwärtig ist und hierdurch konkrete orthafte Gestalt gewinnt", K. *Mörsdorf*, Die Autonomie der Ostkirche, in: Archiv für katholisches Kirchenrecht, 138 (1969), p. 392.

[13] J. H. *Provost*, Structuring the Church as a *Communio*, in: The Jurist, 36 (1976), p. 197.

[14] Cf. saint *Cyprien*, De Catholicae Ecclesiae unitate, c. 5, in: Corpus scriptorum ecclesiasticorum latinorum, vol. III, p. 1, Vindobonae (Vienne), apud C. Geroldi filium, 1868, p. 213–214; cf. aussi A. *Demoustier*, Episcopat et union à Rome selon saint Cyprien, in: Recherche de science religieuse, 52 (1964), p. 351.

à une telle vision de l'Eglise que nous incite la Constitution dogmatique sur l'Eglise *Lumen Gentium* du Concile Vatican II, qui dit ceci en parlant des Eglises particulières: „... formées à l'image de l'Eglise universelle, dans lesquelles et à partir desquelles existe, une et unique, l'Eglise catholique"[15].

Conformément à l'enseignement du Concile Vatican II, l'une et unique Eglise catholique se réalise dans les Eglises particulières. Car la même Constitution *Lumen Gentium* constate expressément que „cette Eglise du Christ est vraiment présente dans toutes les légitimes assemblées locales des fidèles, qui, attachées à leurs pasteurs, sont aussi appelées Eglises dans le Nouveau Testament"[16]. Ou autrement dit: les Eglises particulières coexistent et vivent ensemble dans l'Eglise universelle, aussi bien que les associations de fidèles coexistent dans l'Eglise particulière.

Par conséquent, toutes les Eglises particulières quelles qu'elles soient sont égales en dignité et aucune d'entre elles ne l'emporte sur les autres; elles jouissent des mêmes droits et sont tenues aux même obligations, même en ce qui concerne le devoir de prêcher l'Evangile dans le monde entier[17]. Conformément au principe de subsidiarité, appliqué par analogie en raison du caractère différent de la communauté ecclésiale, elles conservent une certaine autonomie partout où elles peuvent développer une activité propre – profitant ainsi des moyens communs – sans porter atteinte aux éléments essentiels ni au droit de liaison avec les autres. Elles ont en même temps droit à ne pas être gênées par l'activité d'autres Eglises particulières.

En revanche, l'Eglise universelle – l'union de la multiplicité dans le Christ – remplit les fonctions de différents niveaux qui lui sont propres, y compris les plus importantes. Elles les remplit au profit des Eglises particulières, de leurs composantes et de la totalité de celles-ci. En comparant bien imparfaitement, et donc de façon analogique, nous pouvons appeler toutes ces fonctions ensemble le *bien commun* toujours vivant et dynamique, servant le seul but qu'est la *salus animarum*.

Cette coexistence des Eglises particulières au sein de l'Eglise universelle n'est pas seulement quelque chose d'extérieur et d'organique[18], ni exclusivement l'expression d'un sentiment de liaison, mais quelque chose d'immanent découlant de la nature même de l'Eglise. Car, de même que dans une Eglise particulière les différentes communautés n'ont pas d'expres-

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[15] „... ad imaginem Ecclesiae universalis formatis in quibus et ex quibus una et unica Ecclesia catholica existit", no 23, 1, p. 134; traduction française, p. 44.

[16] „Haec Christi Ecclesia vere adest in omnibus, legitimis fidelium congregationibus localibus, quae, pastoribus suis adhaerentes, et ipsae in Novo Testamento ecclesiae vocantur", no 26, 1, p. 141; traduction française, p. 50.

[17] Cf. Decretum de Ecclesiis orientalibus catholicis, no 3, p. 225.

[18] „Die Communio Ecclesiarum ist im Wesen der Kirche angelegt und erwächst aus dem organischen Entfaltungsprozeß der Kirche. Sie ist Gestaltgesetz der Kircheneinheit und besagt, daß die Gesamtkirche in und aus Teilkirchen besteht. Somit ist die Kirche keine Einheitskirche mit einer Vielfalt bischöflich geleiteter Verwaltungsbezirke; die Kirche ist aber auch kein auf den freiwilligen Zusammenschluß der vielen Teilkirchen zurückgehender Kirchenbund. Als Gestaltgesetz der einen Kirche ist die Communio Ecclesiarum vielmehr die der Kirche eigentümliche Weise, in der die vielen Teile in das Ganze integriert werden. Sie ist konkrete Ausformung der vorgegebenen kirchlichen Gemeinschaft des in hierarchischer Ordnung lebenden neuen Gottesvolkes." W. *Aymans*, Die Communio Ecclesiarum als Gestaltgesetz der einen Kirche, in: Archiv für katholisches Kirchenrecht, 139 (1970), p. 90.

sion, de sens, ni d'authentique réalité ecclésiale si elles ne sont pas liées à l'évêque, de même les Eglises particulières ne constituent pas, en plein sens du terme, de communautés ecclésiales, si elles ne restent pas en liaison avec d'autres et avec l'Eglise universelle entière *in communione hierarchica*. Cela est très caractéristique non seulement de l'union intérieure de ceux qui remplissent les fonctions pastorales; cette liaison hiérarchique (*communio hierarchica*) apparaît également dans chaque communauté des communautés, depuis la plus petite qu'est la paroisse, jusqu'à l'Eglise particulière et l'Eglise universelle toute entière. Donc, ce principe, réalisé en diverses dimensions, est très typique de la vie ecclésiale. Il ne diminue personne ni ne donne non plus le droit d'en abuser, mais sert à la réalisation du même but fondamental.

Les Eglises particulières ne peuvent exister sans liaison réciproque avec l'Eglise universelle et entre elles. Ce sont elles qui forment l'Eglise „ex quibus et in quibus"[19]. L'Eglise universelle se manifeste donc dans les Eglises particulières[20], et les Eglises particulières qui existent en elle acquièrent un plein et vrai caractère ecclésial. Il faut donc parler de la réalité de l'Eglise existante ou en formation et non seulement de sa structure sociale visible, signe de son unité dans le Christ[21]. Aussi semble-t-il juste d'affirmer que l'on ne peut saisir le phénomène de l'Eglise quand on est hors d'elle[22].

Bien entendu, il ne s'agit pas d'une organisation extérieure des Eglises particulières avec l'Eglise universelle de type socio-humain, mais d'une communauté de type ecclésiastique (*communio*), qui est quelque chose d'autre, immanent d'un certain côté, de sorte qu'on ne peut l'exprimer pleinement en termes théologiques, et encore moins juridiques. Car cette communauté divino-humaine des communautés comporte des relations interpersonnelles et intercommunautaires à plusieurs dimensions et à plusieurs aspects. Pour tous les croyants, pour les différentes communautés, pour toutes les Eglises particulières et pour toute la vie de toute la communauté des communautés, le Saint-Esprit est le principe de l'union et de l'unité dans l'enseignement des Apôtres et dans la communion, la fraction du pain c'est-à-dire dans l'union en Jésus-Christ, notre Seigneur[23].

5. Le souci de toutes les Eglises de petites dimensions

S'appuyant sur cette unité fondamentale, le collège des évêques et le presbyterium qui s'engrène dans lui, mettèrent en oeuvre dès les premiers siècles le principe fondamental de la sollicitude pour toutes les Eglises (*sollicitudo omnium ecclesiarum*). Elle apparaît non seulement dans les plus grandes dimensions, c'est-à-dire dans les relations entre évêques, entre les Eglises particulières et l'Eglise universelle, ou avec les Eglises ayant un

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[19] Constitutio dogmatica de Ecclesia, no 23, 1, p. 134.
[20] Cf. id., no 23, 3, p. 135–136.
[21] Cf. Constitutio pastoralis de Ecclesia in mundo huius temporis, no 44, 3, p. 749–750.
[22] Cf. Discours de Paul VI aux dirigeants des Instituts séculiers réunis en congrès international: *Paulus VI*, [Allocutio] Institutorum Saecularium moderatoribus qui Romae internationali Coetui interfuerunt, in: AAS 64 (1972), p. 616.
[23] Cf. Constitutio dogmatica de Ecclesia, no 13, 1, p. 115.

champ d'action plus étendu, mais l'on peut parler aussi avec certitude d'une telle sollicitude de moindres dimensions à l'intérieur des Eglises particulières. Elle découle de cette même unité et des liens réciproques communautaires et individuels, qui sont le résultat de la vie réelle de la communauté des communautés, et aussi des unités particulières au sein de cette communauté, toujours dans le Christ.

Aussi peut-on parler „de la sollicitude pour toutes les Eglises" c'est-à-dire pour les communautés plus petites et même les plus petites, comme les familles ou les particuliers. Car nul ne peut être étranger à quiconque dans cette unité ecclésiastique et aucune communauté ne peut être étrangère à une autre. Car là est la vraie vie ecclésiale, comme le dit saint Paul, quand un homme souffre et que tout le monde compatit avec lui[24]. De cette façon la réalisation du souci de toutes les Eglises de petites dimensions se révèle de la façon la plus pertinente dans la vie des différentes Eglises particulières.

Donc, les Eglises particulières constituent le fondement de la formation de la réalité de l'Eglise, réalité toujours nouvelle et toujours vivante. C'est en elles que s'accomplit et se parachève le but fondamental de l'Eglise: le salut des âmes (*salus animarum*). Cependant, elles n'auraient pas un caractère entièrement ecclésial, ni ne pourraient accomplir leur devoir, ni s'appeler Eglises en plein sens du terme, si elles ne restaient pas en étroite liaison avec l'Eglise universelle et sa Tête, source durable et visible, base de l'unité des évêques aussi bien que des fidèles.[25] C'est à elle donc qu'il appartient de servir l'unité, de soutenir et de diriger l'ensemble (bien que cette admirable unité dans la multiplicité s'accomplisse par des hommes, ce qui peut entraîner de nombreuses imperfections et lacunes), afin que les Eglises particulières reçoivent des autres et de l'Eglise entière ce qui leur est nécessaire pour atteindre un but concret, et également afin que la richesse et la perfection des Eglises rayonne, émane et se communique aux autres dans la communauté *in communione*.

[24] Cf. 1 Co 2, 26.
[25] Cf. Constitutio dogmatica de Ecclesia, no 23, p. 134–137.

LA POLITICA DI ACCENTRAMENTO EFFETTUATA DAL PATRIARCATO DI CONSTANTINOPOLI E CONSEGUENTE LESIONE DELL' AUTONOMIA DEGLI ALTRI PATRIARCATI ORIENTALI NEL IX SECOLO

VITTORIO PARLATO

Urbino

I

De Vries nella sua relazione tratta della nascita e sviluppo dell'autonomia nelle chiese orientali, nel primo millennio, epoca importantissima per lo studio dei rapporti tra Roma ed i patriarcati d'Oriente, visto che a quelli dovranno, di massima, rifarsi le auspicabili relazioni da instaurarse con il ristabilimento della piena comunione tra chiese d'Occidente e chiese d'Oriente.

Quel periodo è anche interessante perché in esso si sviluppa e si concretizza un sistema di rapporti tra Roma e i patrarcati, e i singoli patriarcati tra di loro, che presenta la Chiesa non come istituzione centralizzata, bensì come comunione interecclesiale ripartita in cinque grandi circoscrizioni ecclesiastiche territoriali – i cinque patriarcati – solo nell'ambito dei quali si verifica un rapporto organico che lega la sacra gerarchia e i fedeli al patriarca, supremo esponente della chiesa particolare-patriarcato[1].

Si è sostenuto e si sostiene che l'ecclesiologia e la realtà ecclesiale del I millennio fu modificata dalla volontà della chiesa occidentale di rafforzare il primato pontificio e di trasformare la comunione interecclesiale in una istituzione gerarchica universale soggetta al romano pontefice[2]. Questo processo di accentramento operato dalla chiesa di Roma, che fu sicuramente una delle cause della rottura tra chiesa latina e chiese orientali, non è stato però, solo un fenomeno dell'Occidente. Anche in Oriente – e questo è il tema della mia comunicazione – sullo scorcio del I millennio assistiamo a dei tentativi, a delle prese di posizione, volti a preporre la sede costantinopolitana ad ogni altra, anche patriarcale, ed a realizzare una limitazione delle autonomie locali e delle prerogative patriarcali; sia pure in forme meno istituzionalizzate, meno accentratrici, ma comunque idonee a determinare un primato del patriarca bizantino su tutto l'Oriente cristiano.

Il concilio di Costantinopoli dell'879–880 segna, a mio avviso, una tappa di questo processo.

Il can. 1 di questo concilio (chiamato anche di S. Sofia) tenuto in occasione della seconda elevazione di Fozio al patriarcato, ha per oggetto il rico-

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[1] Cfr. V. *Parlato*, L'ufficio patriarcale nelle chiese orientali dal IV al X secolo. Contributo allo studio della communio, Padova 1969, p. 46 ss. e bibl. ivi cit.

[2] Cfr. *Parlato*, op. cit. (1), p. 55 e bibl. ivi cit.; G. *Alberigo*, Cardinalato e Collegialità, Firenze 1969, p. 6 ss. e 11 ss.

noscimento reciproco, tra Roma e Constantinopoli delle pene canoniche comminate nell'ambito delle rispettive competenze territoriali e personali[3].

II

La dottrina si è, soprattutto, soffermata sulla parte finale del canone „privilegiis quae adsunt sanctissimae romanorum ecclesiae sedi et eius antistiti nihil penitus innovatis, nec nunc nec in posterum", ed ha visto in esso un'ulteriore riprova dell'accettazione del diritto d'appello al vescovo di Roma[4], di cui al can. 3 del concilio di Sardica, accettazione[5], del resto, riscontrabile anche nel precedente concilio di Costantinopoli dell'861[6].

L'innovazione, in proposito, contenuta nel canone succitato sarebbe questa: in caso d'appello a Roma la presunzione giocherebbe a favore della

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[3] „De iis qui poenis canonicis ex sententia Romani episcopi subiacent, ut tales habeantur et a Constantinopolitano, et vicissim. 'Statuit sancta et universalis synodus, ut si qui ex Italia clerici vel laici vel episcopi in Asia vel Europa vel Libya versantes, sub vinculo vel dipositione vel anathematizatione apud sanctissimum papam Ioannem fuerunt, ut sint eiusmodi etiam apud Photium sanctissimum patriarcham Constantinopolitanum in eodem poenae gradu id est, vel depositi vel anathematizati vel segregati. Et quos Photius quidem sanctissimus noster patriarcha clericos vel laicos vel sacerdotalis et episcopalis ordinis in quacumque regione segregationi vel depositioni vel anathematizationi subiecerit, sanctissimus quoque papa Ioannes et sancta dei romanorum ecclesia eosdem in eodem poenae iudicio habeat; privilegiis quae adsunt sanctissimae romanorum ecclesiae sedi et eius antistiti nihil innovatis, nec nunc nec in posterum'". Il testo è quello dell'edizione critica curata da P. P. *Joannou*, in: Les canons des Synodes Particuliers (P. Commissione per la redazione del codice di diritto canonico orientale, Fonti, fascic. IX, t. 1, 2), pp. 482–484; il concilio viene chiamato anche di S. Sofia e fu tenuto dal nov. 879 al marzo 880. Presieduto dal card. Pietro, legato pontificio, ebbe tra i partecipanti, oltre a Fozio e a trentotto vescovi bizantini, i rappresentanti degli altre tre patriarcati orientali (quello di Alessandria arrivò alla fine dei lavori).

[4] Con il can. 3 del Concilio di Sardica, del 343–344, si sanzionò l'appello a Roma: „. . . quod si aliquis episcopus adiudicatus fuerit in aliqua causa et putat bonam se causam habere, ut iterum iudicium renovetur, si vobis placet, sanctissimi Petri apostoli memoriam honoremus ut scribatur ab his, qui causam examinarunt, Iulio Romano episcopo, et si iudicaverit renovandum esse iudicium, renovetur, et det iudices . . ." e si volle sospendere l'esecuzione della sentenza e con il can. 4 si vietò l'ordinazione di un nuovo vescovo al posto di quello deposto prima della definitiva sentenza di Roma. Il testo del can. è riportato da *Joannou*, op.cit. (3), p. 163, per il commento *Joannou*, Pape, concile et patriarches dans la tradition canonique de l'église orientale jusqu'au IX s., in: Les canons, op. cit., p. 529 ss.

[5] Cfr. *Joannou*, op. cit. (4), p. 533, scrive: „La clause finale du c. 1 se S. Sophie est la preuve, la dernière en date, de ce droit d'appel".

[6] „Paulus episcopus Cesareae Cappadociae dixit: „Sententia synodi data est et contra Ignatium et in Ecclesia nostra ille iam causam non habet et quaestionem non venit, sed propter honorem sancti Petri et sanctissimi et universalis Papae Nycolai renovari causam eius et iudicari placet omnibus nobis". Apocrisari Papae dixerunt: „Nos locum tenentes domini nostri Nicolai papae secundum auctoritatem sanctorum patrum Sardicensis concilii volumus Ignatium ante nos et revocare iudicium". Die Kanonessammlung des Kardinals *Deusdedit*, neu herausgegeben von V. W. *Glannel*, Paderborn 1905, lib. IV, cap. 428, p. 603. Gli atti di questo concilio furono inseriti dal Card. Deusdedit nella sua collezione canonica. Cfr. F. *Dvornik*, Byzance et la primauté romaine, Paris 1964, p. 99; egli rileva che giustamente Deusdedit ha rilevato in questi atti conciliari una prova dell'esercizio del primato pontificio in Oriente nel IX secolo. Il concilio fu tenuto per giudicare la legittimità della deposizione di Ignazio e della nomina di Fozio alla presenza dei legati romani; alla discussione non seguì alcuna decisione; il Papa avocò a sè la questione.

decisione del patriarca di Costantinopoli: l'appellante sarebbe presunto colpevole e pertanto toccherebbe a lui provare la propria innocenza e non al patriarca giustificare la propria sentenza[7].

Una tale interpretazione lascia perplessi soprattutto in seguito ad una più attenta analisi del dettato normativo del canone stesso alla luce della dottrina e della realtà politica ed ecclesiale di allora.

A prima vista la norma si presenta come un patto tra Roma e Costantinopoli con il quale le due chiese si impegnano a considerare soggetti a pene canoniche coloro che i rispettivi patriarchi puniscono, dall'esame più approfondito del canone si nota che la norma precisa quali siano i soggetti puniti dal Papa e considerati come tali da Fozio: quelli che siano originari d'Italia, in pratica nel patriarcato d'Occidente, anche se risiedano fuori di esso, in territori sottoposti ai patriarcati orientali[8]; Roma invece dovrà considerare puniti tutti coloro che il patriarca costantinopolitano censurerà, di qualunquee regione essi siano, nel testo greco si dice: ἐν οἱῳδήποτε παροικίᾳ[9], nel testo latino: "quacunque regione"[10], nel Mansi si ha invece: "quacumque dioecesi"[11]. C'è sì una riserva di giurisdizione a favore dei vescovi delle due Rome sui propri sudditi anche al di fuori dei territori loro soggetti, ma soprattutto viene riconosciuta implicitamente al patriarca costantinopolitano una potestà canonica sui territori degli altri tre patriarcati orientali. Manca, infatti, nella norma qualsiasi riferimento, come per il papa, al legame dei soggetti punibili con il territorio patriarcale bizantino, e l'assenza di rivendicazioni relative agli altri territori orientali sta proprio a significare una certa prudenza nell'affermare esplicitamente e a *claris verbis* un primato di giurisdizione su tutto l'Oriente.

In quei medesimi anni il patriarcato bizantino rivendicava anche una giurisdizione territoriale sui territori già appartenenti a quello romano: Calabria, Sicilia, Illirico Orientale, o rivendicati da Roma: Bulgaria[12]; l'assenza di denominazioni territoriali risponde bene ad una soluzione di compromesso.

Ormai la Chiesa ha di fatto due sedi primaziali, Roma e Costantinopoli, il patto è stretto tra di loro, e solo tra di loro.

III

Direi che il canone in esame segna un punto di passaggio nella organizzazione della Chiesa e riflette una nuova concezione ecclesiale, ancora in nuce. Il concilio di Costantinopoli dell'869–870 segna l'apice della concezio-

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[7] *Joannou*, op. cit. (4), p. 533.

[8] Il canone parla di Asia, Europa e Libia, queste regioni vanno individuate nella fascia comprendente la Tracia, Anatolia, Siria, Palestina, Egitto e costa africana, territori dell'Impero d'Oriente, anche se allora in parte in mano araba, ed al tempo stesso territori dei patriarcati orientali.

[9] Il termine greco παροικία è tradotto da G. W. H. *Lampe*, A patristic Greec lexicon, Oxford 1961, p. 1042, specie se riferito a comunità ecclesiali „community of Christians organized as geographical unit" con il termine di Diocese.

[10] Così nell'edizione critica dello *Joannou*, op. cit. (3).

[11] *Mansi*, XVII A, col. 498.

[12] W. *de Vries*, voce Costantinopoli (Patriarcato di –), in: Enciclopedia Cattolica, vol. IV, col. 737.

ne confederale, pentarchica, della Chiesa; nelle sue sessioni si proclama che Dio ha fondato la sua Chiesa sui cinque patriarchi e se anche quattro di loro dovessero errare, uno di essi rimarrà sempre a custodire il gregge di Cristo[13]; se il concilio dell'879–880 può sembrare una conferma di questa ecclesiologia con l'affermazione della reciproca parità tra Roma e Costantinopoli in relazione alla potestà coercitiva, in realtà il canone in esame è un punto di partenza per superare questa concezione. I contraenti sono solo Roma e Costantinopoli; il rappresentante di Gerusalemme plaude all'intesa raggiunta; quello di Antiochia esprime il suo parere favorevole a che contro chiunque chierico o laico trovato intento a separare se stesso dalla Chiesa di Dio, Fozio agisca nel modo che egli ritenga più giusto ed aggiunge che Fozio non agisce tanto come colui che ha la potestà sulle chiese orientali e detiene il diritto dell'autorità romana – romanae auctoritatis ius adeptus –, ma piuttosto come il pontéfice massimo detentore del pieno potere di legare e sciogliere[14].

Fozio è dunque il pastore supremo dell'Oriente e consente di considerare puniti quei soggetti latini censurati che dimorino nei territori dei patriarchi d'Oriente. Un concilio che si proclama ecumenico[15] avrebbe legiferato in modo diverso se la potestà dei cinque patriarchi fosse stata considerata eguale, e visto, che il canone si chiude con la salvaguardia degli speciali privilegi della sede romana avrebbe potuto accennare, a maggior ragione, ai diritti delle altre chiese patriarcali. Un accordo bilaterale, poi, in questa materia poteva essere oggetto di un concilio particolare o di un patto tra i due patriarcati, magari attraverso lettere di comunione.

Un rappresentante di un patriarcato – Elia di Gerusalemme – interviene nella seconda sessione per salvaguardare l'autonomia, ma in favore delle chiese orientali nei confronti di Roma. Quando i legati pontifici fanno rilevare che Fozio, deposto da un regolare concilio, considerato da Roma come ecumenico, divenne patriarca per la seconda volta, prima che fosse informata la chiesa di Roma, il legato gerosolimitano rileva che ognuno dei tre patriarcati dell'oriente ha sempre avuto il suo patriarca, che quasi tutti i vescovi e sacerdoti di Costantinopoli volevano Fozio come loro patriarca: chi avrebbe dovuto impedirgli di ritornare nella sua sede?[16] Dalle lettere

[13] *Mansi*, XVI, col. 140–141; *Dvornik*, op. cit. (6), p. 91; *Parlato*, op. cit. (1), p. 176.

[14] Antiochia è rappresentata da Basilio vescovo di Martiropoli il quale dice appunto: „Sedium nostrarum maximi Pontifices, magis adhuc inseparabilem erga sanctissimum patriarcham Photium mentem habentes, ex quo in pontificalem provectus est in sedem, huc etiam nos miserunt, dantes potestatem & auctoritatem Photio ... ut si quis, sive sit sacerdotalis ordinis, sive laici inveniatur si ipsum ab ecclesia sancta Dei separare, faciat contra tales quod videbitur suae sanctitati. Ut qui igitur Orientalium sedium potestatem accepit, & Romanae auctoritatis jus adeptus ... seu potius ut qui ex Dei jussu praesit tamquam pontifex maximus, quod cumque ligaverit sancti Spiritus insolubili, vinculo habemus etiam nos ipso ligatos; & quoscumque solverit, habemus & nos Ipsi solutos". *Mansi*, XVII A, col. 499; Gerusalemme è rappresentata dal monaco Elia, il quali si limia a dire: „Deus ita fecit, ut & Orientis sedes, et sanctissimus Papa Joannes cum sanctissimo nostro patriarcha Photio una anima essent, & unus spiritus; & voluntas eorum communis foret, & inseparabilis. *Mansi*, XVII A, coll. 498–499. Il rapprentante di Alessandria compare solo alla firma degli atti conciliari.

[15] Can. 1: „sancta et universalis synodus" nell'edizione cit. dello *Joannou*, op. cit. (3) nella versione latina; in quella greca αγία καὶ οἰκουμενικὴ σύνοδος; „sancta et oecumenica Synodus" in *Mansi*, XVII A, col. 498.

[16] *Mansi*, XVII A, col. 193 ss.; F. *Dvornik*, Lo scisma di Fozio. Storia e leggenda, Roma 1953, p. 221.

dei patriarchi di Antiochia e di Gerusalemme, lette durante la terza sessione, si desume chiaramente che Fozio era assunto al patriarcato indipendentemente dal consenso dei patriarchi orientali[17]. Ancora una volta si ribadisce il diritto di ogni chiesa patriarcale di nominarsi il suo capo senza nessun intervento esterno[18].

Se il concilio di Costantinopoli dell'869–870, che gli occidentali qualificano come l'ottavo ecumenico, dette un'idubbia prova dell'esercizio del primato pontificio in Oriente con l'ottenere la piena sconfessione dell'operato di Fozio e con la ratifica di molte disposizioni relative alla nomina di patriarchi e vescovi, fino ad allora non osservate nella chiesa bizantina[19]; il concilio dell'879–880 segna, invece, il trionfo di Fozio, non solo per la sua piena reintegrazione, ma anche per la completa invalidazione del concilio precedente e la cassazione dei canoni disciplinari di quello. Approfittando del momento favorevole[20] l'abile patriarca costantinopolitano si equipara, quasi, al vescovo di Roma, le sue decisioni disciplinari sono valide come quelle del romano pontéfice e l'uno e l'altro si impegnano a recepirle.

IV

Se consideriamo la situazione politica di quegli anni la primazia di Costantinopoli appare ben giustificata. Gli arabi hanno conquistato i territori degli altri patriarcati, quelle antiche sedi sono in piena decadenza e per gli scismi che le hanno dilaniate, e, ora, per la dominazione intollerante ed ostile dei conquistatori mussulmani. Solo Costantinopoli vive, legata alle fortune dell'Impero d'Oriente; essa si identifica sempre più con quello e vuolo estendere la sua giurisdizione fino là dove si estende la sovranità imperiale, anche nei territori d'Occidente; in Oriente, poi, come l'imperatore, si considera rappresentante e portatrice di interessi di tutte le popolazioni e territori caduti in mano agni infedeli.

V

Una riprova di quanto affermato circa il significato del can. 1 del concilio di Costantinopoli dell'879–880 si ha in un documento dell'ecclesiologia bizantina databile prima del V concilio ecumenico (VI secolo)[21] in cui si tenta di attribuire a Costantinopoli un primato sugli altri patriarchi orientali con il riconoscere ai chierici ed ai vescovi di quelli la possibilità di appellarsi al

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[17] *Dvornik*, op. cit. (16), p. 222; *Mansi*, XVII A, col. 484.

[18] Cfr. *Parlato*, op. cit. (1), p. 140 ss. e bibl. ivi cit.

[19] In particolare il divieto di elevare alla cattedra patriarcale un laico, can. IV del Concilio di Costantinopoli dell'869–870; cfr. *Parlato*, op. cit. (1), p. 172 ss. e bibl. ivi cit. e in part. nota 164 a p. 176.

[20] Siamo in un periodo di splendore e potenza dell'Impero d'Oriente sotto Basilio I, i bizantini si presentano come gli unici in grado di contrastare gli Arabi che continuavano a dominare il Mediterraneo ed a minacciare perfino Roma, la quale, vista la gravissima crisi che travagliava quello d'Occidente, dovette chiedere aiuto all'Impero d'Oriente. Questo spiega l'attegiamento conciliante che il papato assunse allora verso Bisanzio nelle questioni ecclesiastiche. Cfr. G. *Ostrogorsky*, Storia dell'Impero bizantino, Torino 1968, p. 215.

[21] Si tratta di uno scolio usato come base da canonisti bizantini posteriori; cfr. J. *Darrouzès*, Documents inédits d'Ecclesiologie byzantine, Paris 1966, p. 78.

patriarca bizantino ai sensi dei canoni 9 e 17 del Concilio di Calcedonia[22], che davano, appunto, a quella sede patriarcale una giurisdizione concorrente a quella degli esarchi delle tre diocesi (Asia, Ponto e Tracia) sulle quali Costantinopoli rivendicava un potere primaziale effetivo[23].

Si cercava, in sostanza, di interpretare il canone come ormai non più riferibile ai tre esarchi, il cui potere, prerogative, erano venute meno quasi completamente – nel concilio dell'879–880 non sono neppure chiamati esarchi[24] – anche per l'essere venuta meno la divisione territoriale civile in diocesi, bensì agli altri tre patriarchi orientali[25]. Gli esarchi sarebbero ora (nel IX secolo) i patriarchi e pertanto ci si può appelare contro una sentenza di un metropolita di un patriarcato orientale, che non sia quello bizantino, o all'esarca-patriarca o al patriarca di Costantinopoli[26].

Su questa stessa linea si porranno scritti posteriori del decimo e dodicesimo secolo[27].

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[22] Il can. 9 dice: „... Quod si adversus eiusdem provinciae metropolitanum episcopus vel clericus habeat querelam, petat primatem dioceseos aut sedem regiae urbis Constantinopolis et apud ipsam iudicetur"; il can. 17 ugualmente: „... Quod si quis a metropolitano laeditur, apud primatem dioceseos aut apud Constantinopolitanam sedem iudicetur ...", cfr. *Parlato*, op. cit. (1), p. 18 ss.

[23] Can. 28 di Calcedonia: „... et ut Ponticam et Asiam et Thraciam gubernationem habeant etiam qui in barbaricis sunt episcopi a sede suprascripta (Costantinopoli) paroecias eis ordinentur ...".

[24] Negli atti del concilio riportati da *Mansi*, XVII A, coll. 510–511, si parla infatti di Arcivescovo di Cesarea, di Arcivescovo di Efeso, di Metropolita di Eraclea.

[25] Nel secolo VII cambia di fatto, con la creazione dei themi la divisione amministrativa dell'Impero creata da Diocleziano e Costantino, ulteriori mutamenti si avranno proprio nel IX secolo, cfr. *Ostrogorsky*, op. cit. (20), p. 88 e p. 221.

[26] *Darrauzès*, op. cit. (21), p. 79. Questa breve comunicazione vuol rispondere, solo in parte, alle affermazioni dello *Zanchini*, il quale ha scritto un libro (per altro ancora in edizione provvisoria di cui però il primo capitolo, quello della chiesa nel I Millennio è pubblicato negli Studi in on. di P. A. D'Avack, vol. III, Milano 1977 col titolo L'età sonodale e la pentarchia) per dimostrare che fino alla riforma gregoriana: „la mancata imposizione di un centro unico di coordinamento (papa, imperatore bizantino, patriarca ecumenico di Costantinopoli) risponde ad una direttiva politica consapevole, legata ad una realtà federativa complessa ed articolata, tale da rendere lenta e problematica la stesa aggregazione di più sedi metropolitane intorno ad una cattedra patriarcale, sia pure attraverso la pratica dei sinodi nazionali e generali durante la durissima prova delle eresie cristologiche" (p. 23.) „Tutto considerato, la più sicura qualificazione, a livello sistematico, del complesso degli istituti di collegamento interecclesiale dell'età classica, sembra essere quella dell'ordinamento composto, formato ciòè da una pluralità di ordinamenti originari" e per l'a. una „confederazione: quindi, neppure; un ordinamento sia pur composto, ma fortemente integrato, come quello federale" (pp. 24–25). Le citazioni sono prese dal vol. F. *Zanchini di Castiglionchio*, La posizione del concilio nella costituzione della „Ecclesia romana". Rifessioni per una teoria giuridica del concilio ecumenico, Padova 1974. L'A. così ben disposto verso una ecclesiologia fondata sulla pentarchia e sulla confederazione ecclesiale – meglio sarebbe stato chiamarla comunione interecclesiale – si avesse tenuto presente tutta la dottrina più recente e soprattutto le fonti, avrebbe meglio colto l'importanza di questo can. 1 del concilio costantinopolitano dell'879–880 e di altre fonti.

Sul valore del. can. 28 di Calcedonia che lo *Zanchini* (p. 23) cita come esempio di volontà sinodale maggioritaria che si impone alla minoranza, rappresentata dai legati papali, rinvio a F. *Dvornik*, op. cit. (6), p. 45 ss e p. 59 ss. ed a V. *Parlato*, La 'conferma' pontificia alle deliberazioni del concilio di Calcedonia, in: Studi Urbinati, vol. XLIV 1975–76, p. 113 ss, dove preciso anche il ruolo della sottoscrizione imperiale (p. 137) che lo *Zanchini*, p. 22, qualifica come perfezionatrice del procedimento canonico chiamandola addirittura confirmatio.

[27] Cfr. *Darrauzès*, op. cit. (21), p. 80 ss e 125 ss.

DIE KIRCHE UND DIE KIRCHEN
AUTOKEPHALIE UND AUTONOMIE

STEFAN DYMŠA

Leningrad

Dieses Referat ist einem Thema der östliche Orthodoxie gewidmet, das sehr bedeutsam und aktuell ist, nämlich dem Versuch, die kanonische Natur der Autokephalie und der Autonomie im Rahmen der einen, heiligen, katholischen und apostolischen Kirche aufzudecken.

Die Kirche fährt wie früher fort, ihre wichtige Rolle im Leben der zeitgenössischen Menschheit zu erfüllen. Das beweist ihre mehrhundertjährige historische Erfahrung. Es besteht allerlei Grund für die Annahme, daß sie auch weiterhin großes Gewicht in der menschlichen Gesellschaft haben wird. Davon zeugen beredt bestimmte Umbrüche, die statthaben im geistig-moralischen Leben breiter Bevölkerungsschichten in vielen Ländern der Erde. Die geistig-moralische Erweckung einzelner Völker wird mehr und mehr gekennzeichnet durch Interesse für Religion und Kirche. Daneben vermehrt und vertieft sich dieses Interesse in den Ländern, die bisher als die säkularsten Staaten galten.

Daher ist es heilige Pflicht für jeden, der den Namen Christi trägt, für jeden Theologen, Kanonisten und Hierarchen, beizutragen zu einem möglichst großen Erfolg der Kirche unseres Herrn Jesus Christus unter den Menschen verschiedener Nationalität, ohne Rücksicht auf deren Geschlecht, geographische Heimat oder soziale Stellung. Will man aber der gesamten Christenheit dazu verhelfen, daß sie erfolgreich und einladend werde, spielen dafür die äußeren Formen ihrer Struktur eine wichtige Rolle.

Im christlichen Osten, der in den griechisch-byzantinischen Einflußbereich gezogen wurde, kam von altersher das System der Lokalkirchen mit Patriarchen, Metropoliten oder Erzbischöfen an der Spitze zur Geltung.

Ganz allgemein hatten die kirchlichen Strukturformen ihre lange historische Entwicklung. Großen Einfluß übten auf ihre schrittweise Herausbildung die psychologischen Eigenheiten der Völker aus, die in den Einflußbereichen der christlichen Religion einbezogen wurden. So zog z.B. die griechisch-slawische Welt mit ihrer beschaulich-individualistischen Mystik eine Struktur der Kirche vor, die den demokratischen Erfordernissen ihres besonderen Gebietes entsprach. Hingegen zog die römisch-germanische Welt, die durch Jahrhunderte auf der Grundlage des ausgewogenen und ins Detail ausgearbeiteten römischen Rechts erzogen wurde, eine strenge Zentralisierung in der Regierung der westlichen Kirche vor.

Die orthodoxe Kirche betonte und betont theoretisch und in ihrem alltäglichen praktischen Leben die Berechtigung und Nützlichkeit des Bestehens selbständiger kirchlicher Organismen, die es am besten erlauben, daß die einzelnen Völker unter dem wohltätigen Einfluß der christlichen Lehre schnell geistlich heranreifen.

Die über die ganze Erde verbreitete Universalkirche besteht nach orthodoxer Auffassung aus Lokalkirchen, die sich bei den verschiedenen Völkern bildeten; diese saugen in sich die Kulturen und Traditionen der einzelnen Völker oder Nationen auf, sie vereinen und verklären die nationalen Besonderheiten durch Christus und in Christus und bereichern so den Leib Christi durch das kulturelle Erbe eines jeden Volkes.

Die Tendenz zum lokalkirchlichen Strukturprinzip der Kirche Christi durchzieht als roter Faden die ganze Geschichte des orthodoxen Ostens. Hier legte man nie ein ausschließliches Gewicht auf die äußere Einheit der kirchlichen Organisation. Die östlichen Christen erinnerten sich stets der neutestamentlichen Grundwahrheit, daß Christus und die Kirche wie Bräutigam und Braut eine ewige und mystische Einheit bilden.

Zwischen dem theoretischen Prinzip der Einheit und der tatsächlichen Existenz von Lokalkirchen sahen sie keinen inneren Widerspruch, wie sie auch keinen kannten zwischen der Menschheit und den einzelnen Völkern oder Nationen mit je eigenen Staatsgebilden.

Die Universalkirche war für sie kein abstrakter Begriff, sondern ein einziger lebendiger Organismus, der wie der menschliche Leib aus vielen einzelnen und einander gleichrangigen Zellen besteht, sich aus Lokalkirchen, die sich eines autokephalen oder autonomen Status hinsichtlich ihrer inneren Angelegenheiten erfreuen, zusammensetzt.

Mit anderen Worten: Sie ist eine Einheit in der Vielheit und Vielheit in der katholischen* Einheit. Die Katholizität und nur die Katholizität gibt die Grundlage für das Prinzip der autokephalen Lokalkirchen. Letztere befinden sich trotz aller sichtbaren Absonderung in der Fülle der Universalkirche. Andererseits verbietet das Prinzip der Autokephalie, die Lokalkirchen miteinander zu verschmelzen und bewahrt sie gleichzeitig vor gegenseitiger Entfremdung.

Dasselbe Prinzip erlaubt die Unterteilung bestimmter kirchlicher Einheiten, das heißt der Lokalkirchen mit je eigener Jurisdiktion, die aber untereinander in organischer Einheit verbleiben dank der Gemeinsamkeit im Dogma, im kanonischen Recht und im Kult. Nach Ausweis der Geschichte bildete am Anfang der christlichen Ära jede Kirchengemeinde mit ihrem Gotteshaus und Klerus, an dessen Spitze der Bischof stand, eine kleine Demokratie, die der bekannte russische Gelehrte F. Golubinskij die lokale Einheit im Verband unabhängiger Kirchen unter der Oberhoheit des universalen Episkopats nannte.

Eine solche kirchliche Organisation war unseres Erachtens die ideale Organisation der Universal-Kirche, denn sie war einerseits von Einheit, andererseits von Unabhängigkeit gekennzeichnet. Die Vereinigung beider Prinzipien, die sich diametral zu widersprechen scheinen, erbrachte die autokephale Struktur der östlich-orthodoxen Kirche.

Das christliche Altertum gab seiner Auffassung vom verwaltungsmäßigen Aufbau der Kirche nicht nur mittels mündlicher Überlieferung Ausdruck, sondern mühte sich um diesbezügliche Aussagen in der kanonischen Gesetzgebung. Davon zeugen beredt die Apostolischen Kanones.

Hier werden deutlich die Normen für die hierarchischen Beziehungen

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* Kafoličeskogo ili sobornogo.

des Episkopats innerhalb einer jeden Lokalkirche, die jeweils eine ethnische Gemeinschaft umfaßt, gegeben. So besagt can. 34:

„Die Bischöfe eines jeden Volkes sollen den ersten unter ihnen kennen und ihn als Haupt anerkennen, und sie sollen keine übergreifende Angelegenheit ohne seinen Rat unternehmen: Jeder soll nur das tun, was seine eigene Eparchie und seine eigene Stadt betrifft. Aber auch der Erste soll nichts unternehmen ohne den Rat aller. So wird Einmütigkeit bestehen und verherrlicht werden wird durch den Herrn im Heiligen Geist Gott der Vater, der Sohn und Heilige Geist".

Weil die einzelne Eparchie zwar in der Leitung ihrer inneren Angelegenheiten frei war, aber dennoch eine gewisse Hinneigung empfand zu anderen, ihr gleichen kirchlichen Organisationen, von denen sie die Weihe eines neuen Bischofs erhielt, gab das Selbstverständnis der alten Christenheit das Attribut „Lokalkirche" nicht der Eparchie, sondern einem gewissen Verband der Einheit einiger Eparchien, wie mit unbestreitbarer Logik aus dem eben zitierten Apostolischen Kanon folgt.

Die Lokalkirche, die einige Eparchien umfaßte, verfügte über alle Gnadenmittel, die ihr vom Herrn Jesus Christus gegeben wurden, damit sie ihren Heilsauftrag auf Erden vollführe.

Andererseits legte der Apostolische Kanon die gegenseitigen Beziehungen der Bischöfe so fest, daß in jeder Lokalkirche, die ein bestimmtes Volk nach dem Synodalprinzip umfaßte, die Bischöfe in der Regelung der inneren Angelegenheiten ihrer Eparchie zwar unabhängig waren, aber den ersten unter ihnen als ihren Vorsteher anerkennen mußten und nichts, was ihre eparchiale Kompetenz überschritt, ohne seinen Rat unternehmen durften.

Eine weitere Analyse der alten kanonischen Norm zeigt, daß in der alten Christenheit der verwaltungsmäßig-kanonische Verband

1) einige Eparchien umfaßte,
2) eine gegenseitige Beziehung zwischen den Bischöfen herstellte, indem sie die Pflichten eines „primus inter pares" einführte,
3) eine bestimmte ethnographisch-territoriale Größe etablierte, die berechtigt war, alle Fragen ihres inneren Lebens unabhängig von jedweder äußeren Macht oder Autorität zu lösen.

Ein besonders wichtiges Moment in der hirarchischen Struktur der Lokalkirche war ohne Zweifel das enge gegenseitige Band zwischen den Personen der obersten kirchlichen Hierarchie. Kraft desselben apostolischen Kanons hatten weder die jüngeren Bischöfe das Recht, ihre Eparchien überschreitende Fragen zu entscheiden, noch durften die älteren etwas unternehmen ohne vorherige Zustimmung aller ihrer übrigen Mitbrüder.

Solche Beziehungen zwischen den Hierarchen brachte Einmütigkeit und innere Freiheit für jeden Träger des apostolischen Amtes und machte zugleich die Kirche zur Trägerin des Bildes der Heiligen Dreifaltigkeit.

Die aufgrund des ethnischen Prinzips entstandenen Landeskirchen hatten gewöhnlich die Bezeichnung „Provinzen". In der Verwaltung autokephal, wahrten sie die Einheit des inneren Lebens, die gewährleistet war durch die eine dogmatische Lehre und durch die Treue zu den Vorschriften des Heiligen Evangeliums. Aber die Einteilung der Universalkirche in Lokalkirchen nach dem ethnischen Prinzip, die den historischen Bedin-

gungen des kirchlichen Lebens in der apostolischen Zeit gerecht wurde, wurde in der nachfolgenden Periode, als das Christentum als Staatsreligion anerkannt war, unannehmbar für die neue Verwaltungseinteilung des Reiches, die durch Kaiser Konstantin d. Gr. eingeführt wurde.

Die Kirche Christi zog auf der Lokalsynode von Antiochien 341 die neue Verwaltungseinteilung des Reiches in Betracht und ersetzte die Provinz „eines jeden Volkes" durch den eindeutigeren Begriff „Metropolie"; deshalb verfügte sie, daß „in jedem Bezirk die Bischöfe den Bischof der Metropolie als Vorsteher anerkennen sollen".

Das Metropolitansystem wurde in der Folge zum Maßstab der kanonischen Autokephalie der Lokalkirchen.

Die historische Bestätigung dieses sehr wichtigen Faktors finden wir in den Erläuterungen Theodor Balsamons zum 2. Kanon des 2. Ökumenischen Konzils. Der bekannte byzantinische Kommmentator des kanonischen Rechts bezeugt, daß es auf dem Gebiet des griechisch-römischen Reiches im 4. Jahrhundert etwa 100 autokephale Metropolien gab.

Wenn sich früher die Einteilung in Lokalkirchen an den ethnischen Bevölkerungsgruppen orientierte und nur zufällig mit der Verwaltungseinteilung des Reiches zusammenfiel, so wurde nach dem Konzil von Antiochien das ehedem Zufällige zur verbindlichen Regel.

Als Ergebnis dieser Konzilsverfügung verkündete man zum ersten Mal in der Geschichte das Prinzip der Angleichung der jurisdiktionellen Leitung durch Lokalkirchen an die administrative Einteilung des Staates, auf dessen Gebiet die Kirche ihren Heilsdienst erfüllt.

Hier gab es, versteht sich, keine Verletzung der apostolischen Tradition. Im Gegenteil. Das neue System, die Lokalkirchen abzugrenzen, erschien logisch und historisch voranführend, denn schon ganz am Anfang der christlichen Ära, als die Lokalkirchen noch auf ethnischer Grundlage entstanden, fielen ihre Grenzen ihrerseits meist mit den Grenzen der Verwaltungsdiözesen bzw. -provinzen zusammen.

Davon zeugt beredt die Namengebung für die alten Lokalkirchen, die wir in einer Reihe neutestamentlicher Schriften antreffen: Korinthische Kirche (eine Bezeichung nach einer Provinz), Asiatische Kirche (eine Bezeichnung nach eine Diözese). Doch die kirchlich-administrative Einteilung, die vom Konzil von Antiochien eingeführt wurde, erwies sich als kurzlebig. Die spätere historische Entwicklung zeigt, daß die Metropolie als autokephale Größe vom Patriarchat abgelöst wurde, einer größeren Einheit, an deren Spitze ein Patriarch trat.

Die Patriarchate wurden im Lauf der Zeit zum neuen Maß autokephaler Lokalkirchen. Wie die kanonischen Bestimmungen des dritten Ökumenischen Konzils zeigen, konnte eine Kirche aber auch dann autokephal sein, wenn an ihrer Spitze ein Bischof oder Metropolit stand. Als Beweis für das Gesagte mag die Kirche von Zypern gelten, an deren Spitze nie ein Bischof mit dem Titel eines Patriarchen stand, die aber von alters her von den Ökumenischen Konzilen als autokephal anerkannt war.

Welche historischen und kanonischen Voraussetzungen bedingen die Autokephalie dieser oder jener Lokalkirche? Mit anderen Worten, was braucht es, damit eine bestimmte kirchliche Gemeinschaft den kanonischen Status einer autokephalen Kirche erlangt? Solche und ähnliche Fra-

gen werden nicht aus rein akademischer Neugier aufgeworfen. Sie haben ein großes praktisches Interesse für die gesamte östliche Kirche.

Ehe wir mitten in die Frage eintreten, ist zu bermerken, daß die Bezeichnung der Lokalkirchen als autokephal, das heißt mit eigenem Oberhaupt bzw. administrativ unabhängig, nicht apostolischen Ursprungs ist. Nach dem Zeugnis des bekannten russischen Kanonisten S. V. Troickij kam der Begriff „Autokephalie" erst seit dem 5. Jahrhundert in systematischen Gebrauch und wurde angewandt auf die Kirchen monophysitischer Orientierung, die sich nach dem Konzil von Chalkedon von der Universalkirche abgetrennt hatten.

Später begann man das Wort „Autokephalie" für die unabhängigen Lokalkirchen bei den slawischen Völkern zu verwenden. Während aber die Ausbildung der örtlichen Kirchen vorchalkedonischer Tradition formal begründet war in deren Abweichen in eine Häresie, wurde die Ausbildung autokephaler Kirchen in den slawischen Ländern begründet auf dem apostolischen Prinzip lokaler Leitung der christlichen Gemeinden durch ihre eigene nationale Hierarchie. Und wenn wir aufmerksam alle kanonischen Akte des Patriarchats von Konstantinopel über die Errichtung der Reihe von kirchlichen Autokephalien untersuchen, richtet sich ungedingt unsere Aufmerksamkeit auf die Tatsache, daß die so erhaltene jurisdiktionelle Unabhängigkeit bezeichnet wird als eine Folge der politischen Neuordnung des kirchlichen Territoriums, für das gemäß den Konzilsvorschriften nun auch Änderungen im Bereich der administrativ-hierarchischen Leitung dieser oder jener örtlichen christlichen Gemeinschaft erfolgen.

Wie das christliche Altertum zeigt, wurde die Autokephalie von der zuständigen Autorität (durch ein Ökumenisches Konzil oder durch die Mutterkirche) nur jenen christlichen Völkern verliehen, die auf einem bestimmten politisch geeinten Gebiet lebten und über alle notwendigen Mittel für ein unabhängiges geistlich-religiöses Leben verfügten.

Beim Erlaß einer Entschließung in bezug auf die Gründung neuer Autokephalien, muß sich, so scheint es uns, die zuständige Gewalt ausschließlich von den Prinzipien der Zweckmäßigkeit leiten lassen und diesen Prinzipien entsprechend auf Erden solche Bedingungen schaffen, die zu einer erfolgreicheren Erfüllung der Evangeliumsmission durch die Kirche verhelfen. Man kann nicht umhin, sich hier der sehr interessanten Erklärung des Kenners des östlichen Kirchenrechtes A. I. Brilliantov zu erinnern.

Der russische Wissenschaftler, ein Rechtsgelehrter, kommt z.B. unter Berufung auf das Prinzip der Zweckmäßigkeit zu folgendem Schluß: „Wenn es auch niemals eine Autokephalie gegeben hätte, so ist sie doch so notwendig für das Wohl der Kirche, daß man sie hätte einführen müssen".

Aber die Östliche Kirche, die in ihren administrativen Strukturen konservativ ist, brauchte nicht ein System autokephaler Leitung neu zu bilden.

Es war bereits durch die heiligen Apostel gebildet, die durch ihre Evangeliumsverkündigung in verschiedenen Sprachen einige Ortskirchen gegründet hatten. Deshalb brauchte die östlich-orthodoxe kirchliche Leitung lediglich das längst fertige und erprobte System autokephaler hierarchischer Leitung kirchlicher Territorien, das gleichbedeutend ist mit der Unabhängigkeit der Hierarchie und der hierarchischen Gleichwertigkeit der Ortskirchen untereinander, im praktischen Leben zu verwirklichen.

Zur Gewährleistung der autokephalen Existenz muß jede Ortskirche vor

allem über die Fülle der geistlichen Mittel verfügen. Nach diesem Prinzip ist die Mutterkirche, die einen Teil ihres Territoriums ausgliedert und es mit den Rechten der Autokephalie ausstattet, in erster Linie verpflichtet, die Fähigkeit der neuen kirchlichen Einheit zu selbständigem Leben zu prüfen. Da der Episkopat die Quelle der Jurisdiktions-, Konsekrations- und Lehrgewalt in der Kirche ist, ist sein Vorhandensein in der einen oder anderen christlichen Gemeinschaft auch der bestimmende Faktor für ihre Autokephalie.

Folglich, autokephal oder unabhängig kann nur eine solche Kirche sein, die imstande ist, ihre hierarchische Unabhängigkeit zu gewährleisten, die gewöhnlich in dem Recht, selbständig den ersten und die anderen Bischöfe ohne irgendwelche fremde Hilfe zu wählen, ihren Ausdruck findet.

Genauso haben es in der Vergangenheit die heiligen Kanones der Ökumenischen Konzile vorgeschrieben. Z.B. erwähnte das 3. Ökumenische Konzil, als es die Autokephalie der Kirche von Cypern verteidigte, keine ihrer anderen Vorrechte außer dem Vorrecht der zypriotischen Bischöfe, ihren Metropoliten zu wählen und zu weihen. Darin sieht es das Grundprinzip der Autokephalie, das es dann auch auf andere Kirchen ausdehnt:

„Die Vorsteher in den heiligen Kirchen von Cypern sollen die Freiheit haben, ohne fremde Ansprüche und ohne Einschränkung, nach den Regeln der heiligen Väter und nach alter Gewohnheit selbst die Einsetzung frommer Bischöfe zu vollziehen. So soll es auch in den anderen Gebieten und in den Eparchien gehalten werden".

Etwas Analoges schreibt auch die 39. Regel des 5./6. (Trullanischen) Konzils vor, wenn sie bestimmt, daß der Vorsteher der Kirche von Cypern, der vorübergehend auf das Territorium des Konstantinopler Patriarchats übergesiedelt ist, wie früher seine Bischöfe einsetzen soll: „Wir bestimmen, daß Neu Justinianoupolis die Rechte von Konstantinopel haben soll und der dort eingesetzte gottgeliebteste Bischof nach alter Gewohnheit von seinen Bischöfen eingesetzt werden soll".

Der angeführte Text zweier heiliger Kanones bezeugt deutlich, daß die alte Kirche die Autokephalie als das Vorrecht der Hierarchie einer Ortskirche verstand und formulierte, selbständig ihre Bischöfe zu wählen und zu weihen.

Mit einer solchen Interpretation stimmten auch die Kommentatoren des östlichen Kirchenrechtskodex überein, die die höchste Autorität genießen: „Beachte", wendet sich z.B. Theodor Balsamon an seinen Leser bei der Auslegung des 2. Kanons des 2. Ökumenischen Konzils, „daß nach dieser Regel alle Provinzmetropoliten autokephal waren und von ihren Synoden geweiht wurden".

Noch deutlicher und bestimmter drückt sich ein anderer Kanonist der Kirche von Konstantinopel, Matthäos Blastares, aus. „Keinem Patriarchen unterstellt sind", schreibt er im alphabetischen Syntagma, „die Kirche von Bulgarien, Zypern und Iberien. Denn die Bischöfe dieser Kirchen empfangen die Weihe gewöhnlich von ihren Bischöfen".

Eine keineswegs geringe Bedeutung bei der Bestimmung der Autokephalie haben nicht allein die sozusagen qualitativen, sondern auch die quantitativen Merkmale.

Wenn die Hierarchie eines bestimmten Kirchengebietes eine kanonische apostolische Sukzession haben wird, aber nur über eine kleine Zahl

verfügen wird, dann kann sie nicht autokephal sein, da sie nicht imstande sein wird, eine von den anderen Ortskirchen unabhängige Gnadenquelle zu bewahren. Die Unabhängigkeit aber einer kirchlichen Hierarchie wird dem Sinn der ersten Apostolischen Regel gemäß durch das Vorhandensein von mindestens vier Bischöfen in ihren Reihen gewährleistet, wenn man bedenkt, daß bei Wahl und Weihe eines neuen Bischofs die Teilnahme von nicht weniger als drei Bischöfen unerläßlich ist. Von daher kann man schließen, daß der Episkopat eines beliebigen christianisierten Staates, der über die Apostolische Sukzession verfügt und aus drei oder mehr Bischöfen besteht, die kanonische Möglichkeit hat, selbständig die Evangeliumsmission der Lehre, Weihe und Leitung zu verwirklichen und hierarchisch unabhängig von anderen Ortskirchen zu sein, und damit die inneren Voraussetzungen für die Gründung einer neuen Autokephalie hat, wenn dem, versteht sich, bestimmte Bedingungen entsprechen, nämlich: die Zustimmung des Episkopats und des Volkes Gottes zur Loslösung von der Mutterkirche, die Zustimmung der staatlichen Macht und schließlich das Vorhandensein nationaler und politischer Abgetrenntheit derer, die die Autokephalie zu erlangen wünschen.

Die Mutterkirche muß immer die Bedingungen für die Heranreifung zur Autokephalie berücksichtigen und eine soche begründen, wenn günstige Umstände zusammengekommen sind, um nicht anderenfalls eine Bremse auf dem Weg der Aneignung der Botschaft Christi durch die Völker der Welt zu sein.

Indessen, wenn die Mutterkirche festgestellt hat, daß ihre Tochtergründung noch nicht über ausreichende geistliche Kräfte für ein selbständiges Leben verfügt und zusätzlich von einer der Kirche gegenüber gleichgültigen oder sogar feindlichen Welt umgeben ist, soll sie sie vorübergehend unter ihrem mütterlichen Omophorion belassen, unabhängig davon, daß die äußeren Bedingungen eine Loslösung gleichsam begünstigen würden.

Eine solche jurisdiktionelle Lage einer Ortskirche hat in der kanonischen Literatur die besondere Bezeichnung ‚Autonomie' erlangt, die mit dem Begriff einer unvollständigen Autokephalie gleichbedeutend ist.

Im Lichte des kanonischen Rechtes wurde die Autonomie kirchlichen Organisationen zuerkannt, die, äußerlich unselbständig, einer zentralen kirchlichen Gewalt unterstellt waren. Der Bereich aber ihres inneren Lebens war frei, und sie leitete sich selbständig, ohne sich irgendeiner Regulierung von seiten der höchsten hierarchischen Administration unterzuordnen.

Im Unterschied zu einer autokephalen Kirche, die stets eine streng festgesetzte minimale Zahl von Eparchialbischöfen hat, kann autonom nicht nur eine Kirche mit einer kleinen Zahl von Bischöfen sein, sondern sogar auch eine einzelne Eparchie, ein Kloster oder eine Kirchengemeinde, die ihr Statut nutzt.

Besonders viele autonome Kirchen zählte man in alter Zeit, als der Prozeß der Zentralisierung der kirchlichen Leitung vor sich ging, in dessen Folge die Episkopien zu Metropolien vereinigt wurden und die Metropolien zu Patriarchaten.

Fast alle jetzt bestehenden autokephalen orthodoxen Kirchen haben das Stadium der Autonomie durchlaufen.

Auf der anderen Seite muß man unbedingt den zeitweiligen, vorüberge-

henden Charakter einer kirchlichen Autonomie unterstreichen, der durch vielerlei historische Ursachen bedingt ist, vor allem durch das Bestreben der Mutterkirche, alle notwendigen Bedingungen für das Wachsen des christlichen Glaubens unter nichtchristlichen und nichtorthodoxen Völkern zu schaffen.

Außerdem wurden sie stets als eine Form der stufenweisen Vorbereitung einer örtlichen Hierarchie zu selbständigem Leben unter der wachsamen Fürsorge von seiten der zentralen kirchlichen Gewalt angesehen.

Deshalb war der kanonische Status autonomer Kirchen so beschaffen, daß für die Mutterkirche stets der Zugang offenblieb, ihnen notfalls die unerläßliche rechtzeitige geistliche und materielle Hilfe zu leisten.

Wie aus einer Reihe von Synodalakten der Kirche von Konstantinopel deutlich wird, die in verschiedenen ihrer Periodika veröffentlicht wurden, sind die kirchlichen Autonomien oder die sogenannten unvollständigen Autokephalien im Bereich ihrer inneren Leitung vollkommen frei und unabhängig. Einzig an der Außenseite ist ihr Tätigkeitsbereich streng begrenzt durch den Rahmen der Mutterkirche. Z.B. können sie sich nicht unmittelbar mit anderen autokephalen Kirchen auf paritätischer Grundlage vereinigen, da sie kanonisch mit der Mutterkirche verbunden sind.

Die Unvollständigkeit der hierarchischen Gewalt autonomer Kirchen drückt sich auch im administrativen, liturgischen und teilweise im finanziellen Bereich aus.

Zugleich damit kann man nicht die Tatsache unerwähnt lassen, daß die sogenannten unvollständigen Autokephalien eine feste historische Grundlage haben. Ihr Erscheinen im Schoß der Östlichen Kirche wurde einerseits durch den stürmischen historischen Prozeß der Zentralisierung der kirchlichen Leitung hervorgerufen, auf der anderen Seite durch die Missionstätigkeit einzelner autokephaler Kirchen in Ländern mit nichtchristlicher Bevölkerung. Deshalb muß man die Tatsache der Existenz von kirchlichen Autonomien für eine vollkommen normale und positive Erscheinung halten, die noch nicht vollständig geistlich gefestigte christliche Völker zu selbständigem kirchlichen Leben in Entsprechung zu den dogmatischen und kanonischen Vorschriften der Universalen Kirche anleitet.

Autonome Kirchen, die das Recht innerer selbständiger Leitung genießen, befinden sich indessen im Schoß derjenigen Ortskirche, die ihre geistliche Mutter ist.

Die Abhängigkeit von der letzteren findet ihren Ausdruck in der Bestätigung ihres Metropoliten oder Erzbischofs, in der gottesdienstlichen Erwähnung des Vorstehers der Mutterkirche und im Empfang des Myron. Die Mutterkirche hat ihrerseits das Recht auf die Priorität als höchste Appellationsinstanz von seiten ihrer autonomen Tochtergründungen. Ihr bleibt auch das Recht der Vertretung der autonomen Kirche auf interorthodoxer und interkonfessioneller Ebene vorbehalten.

Die so als Ergebnis der jurisdiktionellen Entwicklung im Osten entstandenen Autokephalien und Autonomien sind in erster Linie dazu berufen, der Universalen Kirche eine erfolgreichere Erfüllung ihrer Mission bei der Hinzuführung von Menschen guten Willens zu den Geheimnissen des göttlichen Seins zu gewährleisten.

Durch ihre Struktur soll die Kirche Christi der Welt das Abbild der Heili-

gen Wesenseinen Lebenspendenden und Unteilbaren Dreieinigkeit zeigen. Und als die besten Formen der äußeren Darstellung des Dreihypostatischen Gottes ist die Sobornost' und das Autokephalie-Prinzip. Wie die historische Erfahrung zeigt, sind die Sobornost' (Katholizität) und das Autokephalie-Prinzip die optimalen Mittel, die gottmenschliche Natur der stets jungen Braut Christi darzustellen, die auf den Grundlagen der Freiheit, Gleichheit, Liebe und Einwesenheit ruht.

Die Prinzipien der Autokephalie und Autonomie, an denen die Östliche Kirche so streng festhält, gewährleisten ihr die entsprechenden Garantien für eine treue Bewahrung der gottgeoffenbarten Wahrheit des Evangeliums und ihrer richtigen Auslegung. Diese Prinzipien der Autokephalie und Autonomie bezeugen einerseits die Gleichwürdigkeit der Ortskirchen untereinander, auf der anderen Seite sprechen sie zu uns von der Möglichkeit der wahren katholischen Kirche an jedem Ort und der Ergießung ihrer überreichen Gaben auf jede christliche Gemeinschaft, die den unversehrten Glauben an die Allheilige Dreieinigkeit bewahrt, die eines Reiches und eines Thrones ist. Dabei geben weder der Ort noch der Titel noch die nationale Zugehörigkeit Christen das Recht auf irgendeinen Vorrang in der Kirche, da der Heilige Geist „weht, wo er will", und sein Wehen nicht von dem Willen irgendeines Hierarchen oder Vorstehers einer Ortskirche abhängt.

Es versteht sich, daß die kanonische Ordnung der Kirche nicht dogmatisiert werden kann und nicht als ewig und unveränderlich auf alle Zeiten bezeichnet werden kann. Unter den Bedingungen unseres irdischen Lebens erhält sie unausweichlich eine gewisse Relativität, schließt sie Elemente menschlicher Unvollkommenheit in sich ein und ist deshalb aufgrund dieser oder jener äußerlichen Umstände nicht nur einmal bereits Veränderungen unterworfen gewesen. Die Möglichkeit ist nicht ausgeschlossen, daß es auch in Zukunft nötig sein wird, einige Bestimmungen in Richtung auf eine noch größere Zentralisierung zu revidieren.

Das östlich-orthodoxe Bewußtsein, schrieb seinerzeit der bedeutende Hierarch der Russischen Orthodoxen Kirche Patriarch Sergij, kann die Konzentration der kirchlichen Gewalt in den Händen eines einzigen Bischofs zulassen, aber unter der Bedingung, daß der eine Leiter im Namen des ganzen Episkopats hervortreten wird als sein bevollmächtigter Vertreter und sein Oberhaupt.

Die Formen der kirchlichen Struktur stellen ihrerseits nichts Selbstgenügendes, Erstarrtes, Unveränderliches dar.

Sie sind Veränderungen in dem Maße unterworfen wie auch die historischen Bedingungen der irdischen Existenz der Kirche Christi selbst. Wichtig dabei ist es lediglich, das wahre Wesen der Kirchenstruktur selbst zu bewahren. Die letztere kann nicht der dogmatischen Lehre und dem göttlichen Recht widersprechen. Im Falle, daß der universale Episkopat aus seiner Mitte irgendeinen Bischof erwählt und ihn mit der obersten administrativen Gewalt in der Universalen Kirche ausstattet, kann seine Residenz nicht als beständiges universales Zentrum betrachtet werden, da die Bindung der Kirche an einen festen Ort dem grundlegenden Gebot Christi widerspricht, das auch im hl. Evangelium besiegelt ist, daß „die Zeit kommen wird, wo man weder auf diesem Berge noch in Jerusalem den Vater anbe-

ten wird. Die wahren Anbeter aber den Vater im Geist und in der Wahrheit anbeten werden".

Indessen die Frage der administrativen Einheit der Universalen Kirche ist vom orthodoxen Standpunkt aus eine technische Frage, eine Frage der Praktikabilität. Die Einheit administrativer Leitung ist allein für den Staat verpflichtend. Die Kirche aber ist auf den Prinzipien von Liebe und Freiheit gegründet, und deshalb ist ihre administrative Einheit auch nicht verpflichtend.

Die Einheit der Kirche – das ist die Einheit des Glaubens, die Einheit der kanonischen Grundlage und die Einheit der sittlichen Prinzipien, deren verbindendes Element die Liebe ist. Die Kirche kann nicht eine andere Kirche nicht lieben, und gleichzeitig kann sie auch nicht nicht Gegenstand der Liebe für die anderen sein; denn andernfalls würde sie sich von der Liebe zu Christus dem Erlöser lossagen. Die Liebe, die die Kirche erfüllt, überwindet ihre jurisdiktionelle Abgeschlossenheit und strebt danach, sich mit anderen ihr gleichen Objekten zu verbinden, wie vielzählig sie auch immer sein mögen. Und umso mehr Ortskirchen es gibt, umso mehr Objekte der Liebe für jede unter ihnen. Die Liebesbande zwischen den Kirchen überwinden die territorialen Grenzen und überwinden damit gleichzeitig ihre empirische Vielzahl, die nicht in Gespaltenheit, sondern in Einheit hervortritt. Die Einheit der Ortskirchen, der autokephalen und autonomen, die durch das Band des Glaubens und der Liebe verbunden sind, hat sich immer in gegenseitiger Übereinstimmung erwiesen. Aber das bedeutete, daß liturgische und kanonische Akte einer einzelnen Kirche Erbe aller Kirchen wurden in der Kraft der katholischen Identität ihrer Natur.

Mit anderen Worten, die Ortskirchen, auch wenn sie empirisch und jurisdiktionell untereinander geteilt sind, stellen doch in ihrer Gesamtheit ein einziges organisches Ganzes dar, den einen lebenatmenden kirchlichen Organismus, dem nicht umsonst der Name gegeben wurde: „die Eine, Heilige, Katholische und Apostolische Kirche".

L'EMERGERE DI CHIESE AUTONOME ED I PRINCIPI REGOLATORI PER LA LORO GENESI

MICHEL BREYDY

Colònia

Nell'ambito di una ripresa delle norme canoniche alla luce del *Thesaurus legum et regularum* della Chiesa Antica, come alla luce dell'aggiornamento auspicato, mi propongo di rilevare in questa inchiesta retrospettiva, i dati principali per una strutturazione giuridico-canonica della Chiesa dopo il Concilio Vaticano II, prendendo ad esempio precisamente l'emergere legittimo di *chiese autonome* nella religione cristiana.

1. Premesse ambientali del tema „autonomia cristiano-ecclesiale"

Scosso il sistema autoritario e giuridico-canonico dal pensiero ecclesiale, risvegliata la primitiva *Parrhaesia* dei cristiani-laici come all'epoca apostolica e post-apostolica, gli addetti al cristianesimo diventano oggigiorno sempre più consapevoli di essere *uomini e fedeli*, cioè soci di una comunità e organi di una collettività che emerge precisamente dal fatto della strutturazione e inserimento di costoro in un ordinamento sociale ove l'esigenza del *dominio riservato della coscienza con le sue immediate sequele* diventa un postulato primordiale.

La gioia di sentirsi capace di pensare e decidere da sè, congiugata con il senso di liberazione dai sistemi autoritari, religiosi come politici, sempre dettati *a tertio quodam ignoto* vel innominato aut impersonnificato, aveva causato finora certi rischi tanto per coloro che con animo pigro si avventuravano in dichiarazioni reazionarie, assumendo posizioni esagerate ed inesatte senza darsi la pena di rifletterci più a fondo, come anche per coloro che dovuto ad una religiosità troppo primitiva o semplicista preferivano il chaos di una rigidezza ferrea, anche se ingiusta od erronea, purchè si salvaguardino gli interessi che esige il ghetto spirituale in cui si sono rinchiusi ed isolati!

Per costoro, il Vangelo della Verità, dell'Amore e della Parrhaesia del singolo uomo diventato figlio di Dio, cioè di quella famigliarità audace di chi ha creduto in Cristo, questo Vangelo si è tramutato in canoni e prescrizioni da una parte, e dall'altra in attitudini soggettive di legalismo, autocrazia e salvaguardia ad ogni costo dei privilegi, poteri e prestigio politico acquistati attraverso una collaborazione ormai più che secolare con l'ordinamento statale di determinate societá etniche del bacino mediterraneo.

Il tutto si riassume in questa parafrasi che troviamo nel libro detto Medicina Spiritualis (Vat. Syr. 134 et alibi) della conclusione del libro VIII delle Costituzioni Apostoliche:

„Ciò che vi è stato ordinato o Vescovi, Patriarchi e Archierei da parte di

Clemente (negli otto libri dei Canoni) non deve essere portato a conoscenza del pubblico dei fedeli, perchè contengono delle leggi e prescrizioni che soltanto gli Archierei possono conoscere.

E voi, fedeli tutti, ricevete (accettate) le nostre parole e perscrizioni, poichè sono dallo Spirito Santo. Il Signore vivificante ci ha ispirato, e noi ve lo abbiamo imposto . . ."[1].

La messa in pratica di questa mentalità non sempre cosi apertamente espressa nei manuali di Diritto Canonico ha spinto il nostro Professore Gabrio Lombardi ad emettere questo giudizio, valevole non solo per i cristiani dell'Italia:

„Tutto questo ha finito per presentare alle coscienze un cristianesimo mortificato, perchè sacrificato nel suo respiro. Circosritto prevalentemente ai problemi di morale individuale, il cristianesimo degli Italiani della prima metà dell'Ottocento ha ignorato la carica di socialità che é nel Vangelo . . ."[2].

Ora, questa socialità del Vangelo è proprio la vera ragione che ci permette in questo studio di chiarire un elemento di importanza considerevole nella problematica orizzontale dell'ordinamento giuridico dei fedeli in „una Chiesa" rispettivamente in „molte Chiese".

Come noi le intendiamo, queste riflessioni dovrebbero costituire un raggio illuminatore dei piani fondazionali della Chiesa Universale, che sia di aiuto per una reciproca comprensione tra le chiese anteriormente emerse, e di auspicio per l'erezione ordinata, cioè legittima e regolare di altre Chiese particolari in futuro, senza nuocere in alcun modo all'unità nella santità e nella buona disciplina.

L'ipotesi congetturale che queste osservaioni vengano da certuni abusivamente adoperate per giustificare scismi o ramificazioni eretiche dentro o fuori della societè dei fedeli di Cristo è semplicemente da disprezzare in questo ambito congressuale. È infatti pacifico, che non possiamo volere di una giurisprudenza mortificata, poichè in fondo vogliamo solo di una giurisprudenza teologicamente responsabile, cioè giustificabile in un'atmosfera di libertà e di onestà, di una giurisprudenza dunque vitale ed attiva, capace non solo di svolgere un *jus conditum* e commentarlo tecnicamente, ma sopratutto di prevedere anche un *jus condendum*, come di ristorare un *jus antiquum*, se questo risultasse necessario.

2. *Considerazioni basiche per la genesi di Chiese autonome*

La Chiesa quale *ordinamento giuridico* tra individui concreti e conosciuti non è, nè può essere *un mistero*. Ma la Chiesa, considerata nella sua nascita iniziale, quale relazione tra un'anima singola e Cristo, diventa un mistero. Ciò vuol dire che la Chiesa è un *mistero risultante*.

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[1] Il testo arabo si legge nei differenti Codici conservati dell'opera detta „Medicina Spiritualis": Vat. Syr. 134, fol. 97r Borg. Arabo 137, fol. 94, Bonn, Arab. So 27 fol. 221r.

Il tutto però corrisponde ad una versione – amplificata? – del § 85 con il quale si conchiude il ibro VIII, 47 delle Constitutiones Apostolorum, edit. Funk, p. 593: Et constitutiones vobis episcopis per me Clementem octo libris nuncupatae, quas non oportet inter omnes divulgare ob mystica, quae in eis sunt, (et Acta nostra Apostolorum)."

[2] Cfr. G. *Lombardi*, La Croce nella città, 1957, p. 22–25.

Cristo da una parte e l'anima fedele dall' altra sono due realtà concrete da prendere però binominalmente:

Cristo come Dio e como Uomo Salvatore, ed il singolo fedele come a) anima individua vivificata dal Cristo al quale si è donata, b) come tralcio tagliato da una massa che si chiama un popolo determinato, una tribù oppure semplicemente una famiglia umana. Quest'aspetto del fedele cristiano singolo, ma pure radicato in una popolazione, non dovrebbe essere tralasciato quando si voglia analizzare correttamente il significato esistenziale della Chiesa cristiana. Chiamiamolo dunque aspetto etnologico, aggiungendolo all'aspetto individuale del singolo fedele.

Molte legittime conclusioni verrebbero dedotte da questa prospettiva, al grande vantaggio dell'ecumenismo, della teologia della Chiesa, ma anche a favore di un *„aequum jus canonicum"*. Una di queste deduzioni sarebbe la seguente:

Quando i diritti del singolo individuo vanno perduti, oppure legittimamente sospesi, quelli che gli provengono dalla sua appartenenza etnologico-umana non possono essergli lecitamente soppressi.

Quando un fedele pecca o prende un attegiamento scismatico, non per questo gli si dovrebbero negare il rispetto ed i favori che spettano a lui come *tralcio* di una Chiesa particolare che gode come tale di quel rispetto e di quei favori che gli appartengono per il fatto di essere una collettività riunita in Cristo.

Rispetto, diritti e favori sono da comprendersi concretamente nell'ambito degli elementi sacramentali del Cristianesimo, ai quali dovrebbe subbordinarsi in linea di principio ogni altro elemento giurisdizionale[3].

Impostato cosi l'ordinamento dei fattori costituenti la Chiesa, ci consta almeno storicamente che Gesucristo incominciò dapprima a parlare alle singole anime, ai singoli cuori ad alle singole coscienze. Poi, ma più tardi, di questi da Lui diletti, e da parte loro diventatigli amorosi, ne fece la Chiesa primitiva, dando loro la *Vita nuova* che predicava per l'uomo integrale, cioè come *anima*, come *corpo* e come *tralcio* di un popolo.

La religione cristiana, se c'ha una nota tipica e caratteristica, in confronto con le altre religioni, sarà proprio quella di essere una religione dove tutto è concentrato e basato fondamentalmente sulla consapevolezza degli atti proprii della persona umana (tanto intellettuali come volontari), e sulla coscienza dell'individuo: sempre che risulti che queste due cose corrispondino a verità nello „homo interior".

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[3] Védasi in questo senso C. G. *Fürst*, Jurisdiktion und Communio ecclesiastica, in: Atti del Congresso Inter. di Diritto Canonico, Milano – Giuffrè ed. 1972, pp. 671–686 praes. 685: „Auf dieser Basis aufbauend wäre es zu begrüßen, wenn in der *ökumenischen* Gesetzgebung gerade dort, wo es um Fragen der Jurisdiktion geht, die bisher starre Unterscheidung zwischen Ost und West aufgegeben werden könnte und das einzig entscheidende Kriterium – kirchliche Gemeinschaften *mit* aposotlischer Sukzession, gültiger Weihe und gültigen Sakramenten einerseits und kirchliche Gemeinschaften *ohne* apostolische Sukzession, ohne gültige Weihe und ohne gültige Sakramente andererseits – mehr beachtet würde.

Auf dieser Basis aufbauend wäre es aber auch zu begrüßen, wenn das juristische Element der Jurisdiktion gegenüber dem sakramentalen Element zurückgedrängt werden könnte."

3. *Un principio autentico per la legittimazione teologico-canonica dell'autonomia di Chiese locali*

Nella condotta della Chiesa Universale, anteriore all'epoca decretista medievale, della quale scriveva Ruggero Bacon che „ivi sovrabbondava la superfluità del diritto civile"[4], rintracciamo un principio di *Jus antiquum* che renderebbe concepibile per le menti dei canonisti contemporanei la legittimità di una proliferazione eventuale di Chiese particolari-autonome – nel senso sopraindicato.

Intendiamo per *chiesa particolare* quella che si costituisce pacificamente attraverso le circostanze storiche ed il fatto compiuto, oppure anche in occasione di movimenti reazionarii dovuti a polemiche, guerre di religione, scismi interni o persecuzioni devastatrici ab extra.

In questa prospettiva, la chiesa particolare-autonoma, è quella che consapevolmente (in futuro) oppure inavvertitamente (come nel passato dei 7 primi secoli) si impegna di promuovere il dominio riservato dell'individuo fedele e delle sue esigenze etnologiche dentro del marchio del patrimonio sostanziale (fede e sacramenti) indispensabile in una *Chiesa cristiana.*

Ed ecco che ritroviamo compendiati tutti questi elementi e requisiti nella lettera di Papa Martino I (651 AD) al suo delegato pontificio ad Amman – Filadelfia, in occasione della spontanea ricostituzione autonoma delle Chiese particolari di Gerusalemme e di Antiochia dopo l'invasione araba:

> „... propter angustias temporis nostri, et pressuram gentium: Ne usque in finem in illis partibus deficiat sacerdotalis decoris eximius ordo; ac ne inde de cetero nostrae religionis magnum ac venerandum misterium ignoretur; Si jam non sit sacerdos et sacrificium aut spirituale libamen ... cujus rei gratia, hortamur canonem observari in iis qui praeter mentem ac scientiam seipsos elegerunt vel electi sunt in patriarchia beatae memoriae Sophronii. Qui sane ante ipsius patriarchiam vel post decessum in Domino a quibusdam non convenienter electi sunt, propter angustiam (ut dictum est) temporis, vel quod eius copia non esset, qui iudicio adhibito sive juxta canones eligere deberet vel permittere: tales datis scriptis libellis (= Professio fidei?) confirmari mandamus, nullatenus inde canoni praejudicio facto. Novit enim canon afflictorum temporum persecutionibus veniam tribuere[5].

I motivi giustificativi – per la derogazione del canone motu proprio ossia per via autonoma – qui sopra allegati, sembrano abbastanza propagati nelle Chiese dell'Oriente, giacché ne fa fede il canone sequente del Concilio di Seleucia dell'anno 410:

„E se vi fossero villaggi ove manchino Bnai Qyomo dai quali si possa fare preti, Egli (= il vescovo) scelga fratelli dai monasteri e chiese sotto il suo potere e ne faccia (= Preti). E non tralasci Chiese e Monasteri senza preti, af-

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[4] Cfr. R. *Bacon*, Epist. ad Clementem Pp. IV, 1267 AD: „Nunc principaliter tractatur et exponitur et concordatur (= jus sacrum) per jus civile. Si ius canonicum purgaretur a superfluitate iuris civilis et regularetur per theologiam, tunc Ecclesiae regimen fieret gloriose et secundum eius propriam dignitatem ..." Cfr. etiam op. meum, Le Concept du Sacerdoce, Beyrouth 1964, pp. 76–77.

[5] Cfr. *Mansi*, Collectio Conciliorum X, col. 806–810: Epistula Martini Pp. I ad Johannem Episcopum Philadelphiae.

finchè gli altari ed i santi tempi non diventino deserti e rimangano senza servizio (=liturgico), sopratutto affinchè non vi siano cristiani di nome, mentre i (loro) atti sono come dei pagani, perchè non hanno pastori."[6]

Gli autori di questo canone sono Maruta di Maipherkat (= Miapharkin o Martyropolis) ed il Catholicos (patriarca) di Seleucia-Ctesiphon, ambedue presidenti del menzionato Concilio e responsabili in prima linea delle Chiese e cristiani di Persia e Diarbakr (= Sud-Est della Turchia).

Il punto più importante in questi testi, non è tanto la derogazione autonoma in casu, quanto il principio giustificativo addotto nei due casi.

Quanto alle Chiese di Gerusalemme e di Antiochia, già riconosciute anteriormente come sedi patriarcali, esse possono prendersi ad esempio per una iniziativa che confirma il fatto della loro autonomia, cioè nel darsi in tempo opportuno un patriarca che ricapitolasse in sè l'autonomia necessaria per la Chiesa correspondente. Nei due patriarchi si impersonificava quella autorità di per sè unificatrice proveniente per successione apostolica da coloro che già all'epoca di S. Paolo erano considerati „columnae Ecclesiae"[7].

La lingua materna, i costumi locali, i riti conformi alla *mens populi* nella regione sono certamente occasioni circostanziali per la genesi e strutturazione di quelle Chiese autonome. Ma l'autonomia stessa radica ed emerge dai diritti primordiali della Chiesa minuscola costituita da un'anima fedele e Cristo, e che esige che il „grande e venerando mistero" gli venga ad ogni costo garantito attraverso la presenza in loco del *prete e pastore*.

L'autonomia nella Chiesa particolare è di per sè una garanzia per il rispetto dovuto all'individuo singolo nella religione cristiana, perchè gli deve assicurare qualunque siano gli impedimenti e le circostanze avverse i suoi diritti sostenziali in materia di fede e di sacramenti.

L'unità nella pace, come l'unanimità nel „digne Evangelio conversandum" (Philip. 1, 27) servono innanzitutto per la „salvezza individuale", e soltanto per via di conseguenza possono rendere onore a Cristo ed al suo Vangelo.

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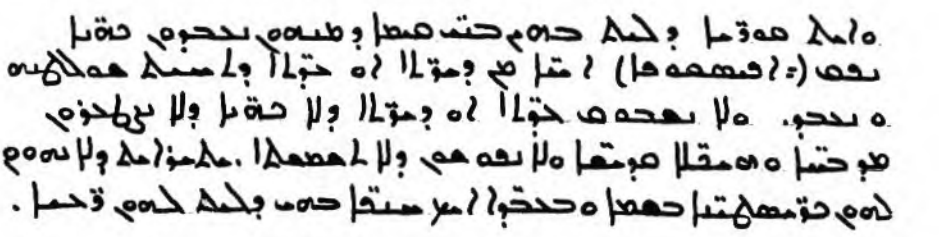
[6] Cfr. J. B. *Chabot*, Synodicon Orientale, Paris 1902, et A. *Vööbus*, Syriac and Arabic documents regarding legislation relative to syrian asceticism, Stockholm 1960, pp. 120–121 (so-called Canons of Maruta) can. 25 n. 7. Ecco il testo originale:



[7] Cfr. Ep. ad Galat. 2, 9: Jacobus et Cephas et Joannes qui videbantur columnae (= stuloi) esse. Item I Timot. 3, 15. Védasi a proposito M. *Breydy*, El decreto conciliar Orientalium Ecclesiarum, Meditacion y commentario, in: Rev. Esp. de Derecho Canonico 21 (1966), pp. 295–311.

Ed è forse in questo senso che sarebbe meglio interpretare le parole del Decreto Ad Gentes ove si riferisce alle Chiese particolari:

„Ipsae (Ecclesiae novellae in Christo) e suorum populorum consuetudines et traditionibus, sapientia et doctrina, artibus et disciplinis, ea omnia mutuantur quae ad Gloriam Creatoris confitendam, ad Gratiam Salvatoris illustrandam et ad Vitam christianam rite ordinandam conferre possunt"[8].

Nell'amara realtà però, le circostanze umano-politiche hanno trasformato l'istituto „Chiesa autonoma" in un ambiente dove le persone individue perdono ogni *valore ecclesiastico*, e diventano strumenti od oggetti (subdit – subordinati?!) per il conseguimento di finalità e scopi estranei al concetto *„Chiesa"*. In questo caso l'autonomia locale come la decentralizzazione non sono più a vantaggio delle persone singole in quanto fedeli, ma tanto l'una come l'altra si traduce in un abusivo potere incontrollato dal cento, oppure dalla cima, ed impossibile a frenare da parte dei soggetti, senza ricorrere a mezzi violenti o scandalosi.

D'altronde, la collegialità tanto promossa nel Concilio Vaticano II, se la consideriamo in un senso completo, significa certamente una relazione verso una Cima centralizzante, pero suppone essenzialmente una individuazione multiple in direzione della base, senza la quale non vi sarebbe neanche per ipotesi la possibilità di concepire *un Collegio*.

L'individuazione basica non si assicura che attraverso la costituzione di Chiese (particolari) autonome, con la carateristica di avere (o promulgare) una disciplina canonica ad ispirazione individuale, etnica, professionale attorno alle leggi sostanziali in materia di fede e sacramenti.

Per la *collegialità-cima* basterebbe riservare il compito di *promuovere l'unità* e la cattolicità, mentre per *l'individuazione-basica* dovrebbere bastare la santità e l'apostolicità, a condizione di dare a questi due concetti una determinazione piuttosto teologica che tradizionalmente giuridica. Cioè per la santità si deve esigere l'esistenza e la distribuzione dei sacramenti, in particolare quegli del battestimo e dell'Eucaristia, mentre per l'apostolicità basta un sacerdote *in pieno*, un successore di apostoli, un *vescovo-padre*, nel quale l'*eximius ordo sacerdotalis*, accennato tanto da Martino I come da Marutha di Maiferqat, venga assicurato, comunicato e tradotto.

Da non dimenticare che anche il Primato pontificio romano scaturisce e si innesta nell'Archeia del Sacerdozio, e che Pietro faceva bene nel chiamarsi a se stesso compresbyter nella sua Lettera (I Petri 5, 1).

Tutte le altre richieste canoniche possono considerarsi ragionevoli, utili e convenienti, ma non sono basicamente indispensabili a questo proposito, sopratutto se si tratta in fondo di ordinamenti a scopo meramente „politico-ecclesiale", come nel caso dell'infallibilità papale tradotta in pratica in senso di soppiantare l'autorità immediata dei vescovi locali. Questa è infatti la spiegazione officiale data dapprima dal proprio Segretario di Stato di Pio

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[8] Cfr. Decretum de Activitate Missionali Ecclesiae, Ad Gentes, § 22 (Cap. III = de Ecclesiis Particularibus), in: S. Oec. Con. Vaticani II Constitutiones, Decreta, Declarationes, Ed. Vaticana 1966, p. 587.
Ibidem Const. Lumen Gentium Cap. II = de Populo Dei, Nr. 13, pp. 116–117.

IX, il cardinale Jacobini, e accolta poi dalla maggioranza dei manuali di teologia e diritto canonico dei Latini[9].

4. Le funzioni opportune del Diritto Canonico

Rimettendo così la *congregatio fidelium* con il sacerdotalis decoris eximius *ordo* nella loro congenita prospettiva angolare, la stabilità autonomica della Chiesa dovrebbe provenire non occasionalmente, cioè dalle circostanze politiche, culturali o scismatiche, nè dalla benevolenza dei dirigenti centrali, ma dalla fiducia che dobbiamo avere tutti nello Spirito Santo, e nel „Portae inferi non praevalebunt" (Matt. 16, 18), come nella onestà da supporre in coloro che in quanti fedeli continuano a credere in Gesù e nella sua Chiesa!

Le leggi canoniche, previste dalla sola prudenza umana, non dovrebbere pretendere all'assolutismo, ma piuttosto protendere verso l'adagio ricordato da Martino I: „Novit enim canon . . . veniam tribuere."

Comprendiamo infatti la funzione del Diritto canonico come un s e r v i z i o per il conseguimento pacifico ed ordinato delle finalità di questa *„communitas fidelium peregrinans"*. Non ha pertanto una funzione di governo nel senso di una domazione o di una dominazione: „Non coacte... neque dominantes in cleris, sed forma facti gregis ex animo" (I Petri 5, 3). La natura strumentale di questo diritto, richiesto al servizio della natura umana per dargli una certa stabilità nella condotta facilita la conformità *edificante*, e la tranquillità interna di coloro che „praeter mentem ac scientiam" non possono nè sono capaci di ripensare ogni passo ed ogni condotta da seguire al livello sociale, in vista di essere sempre „degni del Vangelo".

La Chiesa centrale non può certamente ridursi nè ad una *Chiesa carismatica*, e neppure ad una *Chiesa di diritto*; ma pur esigendo una vita disciplinata si dovrebbe concepire in anticipo ed in linea di principio che:

1: il diritto canonico generale non può non ammettere ed implicare elementi carismatici che sorpassano i suoi canoni attuali (onde il rispetto a priori della iniziativa individuale e particolare);

2: che dentro delle strutture divine della Chiesa debbasi riconoscere ai gruppi locali l'autonomia disciplinare necessaria al loro sviluppo e

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[9] Cfr. Lettera-Nota al Nunzio di Madrid del 13 Aprile 1885 in: La Civiltà Cattolica, Ser. 12, Firenze 1885, pp. 364ss.: „Da questa dottrina risulta:
1 – che il Pontéfice romano, in virtù del Primato, è il vero pastore e Vescovo della Chiesa Universale;
2 – che sempre e in ogni occasione può intervenire con autorità in tutti gli affari di ciascuna Diocesi;
3 – che i Vescovi, in tutti gli affari nei quali interviene il Sommo Pontefice, sono obbligati ad obbedire, e a sottomettersi alle sue decisioni. Per conseguenza, affermare che i Vescovi quando trattano di interessi religiosi non devono consultare che la loro propria coscienza, è implicitamente negare l'obbligo di questa subbordinazione gerarchica e dell' obbedienza necessariamente dovuta dai Vescovi alla Santa Sede. Quando essi trattano affari religiosi, i Vescovi devono certamente *consultare* la loro coscienza, ma conformandosi alle prescrizioni del Sommo Pontefice, dalle quali non è loro concesso di sottrarsi." Cfr. item C. *Mirbt*, Quellen zur Geschichte des Papsttums und des römischen Katholizismus, Mohr, Tübingen 1924, pp. 465/66 nota 2.

crescenza in Cristo, come requisito delle „persone cristiane riunite in gruppo".

Qui sarebbe da ricordare che i principi regolatori della disciplina canonica riposano maggiormente sopra decisioni elettive o deliberative, che più tardi hanno colorato autonomicamente certi gruppi di fedeli, aiutando alla configurazione delle differenti Chiese locali dell'antichità cristiana[10]. Molte cose per non dire tutto nell'ambito disciplinare pratico potrebbero essere armoniosamente spiegate e canonicamente ammesse, se una Chiesa – sia essa centrale o locale – non pretende un giorno considerare quello che essa scelse per via elettiva una regola assoluta da imporre ad ogni costo, per tutti i tempi futuri e dappertutto nell'Orbe.

Finora le divisioni – autonome e particolaristiche – nella Chiesa erano attribuite a ragioni di fede, conchiudendosi con condanne di ordine eretico o scismatico. Eppure vi sono molte situazioni storiche documentate che ci presentano dei fatti compiuti di chiese particolari-autonome costituite senza provocazioni di ordine dommatico. Tra l'altro ricordiamo la Ciesa Irlandese e quella Maronita, che per essere fondate sull'elemento monacale o per dir meglio sulla iniziativa di gruppi clerico-monacali, si ricollegano assieme sotto questo aspetto della loro genesi.

La Chiesa Mozarabe ha passato alla storia dopo aver servito gli interessi dei fedeli suoi durante quasi un millennio. Lo stesso si dica, servatis servandis, delle Chiese Lugdunense e Milanese o Ambrosiana.

È chiaro che ristrengendomi a questi esempi non escludo dalla mia prospettiva le altre Chiese costituite in altre regioni, nè quelle che disfruttando in futuro della riabilitazione auspicata oppure della legittimità evangelica potrebbero essere anche canonicamente ammesse od anche costituite.

Mi sia pero qui permesso di osservare che trattandosi di autonomia, il fatto di parlare di Diocesi, oppure di aggruppamenti di chiese particolari non può che aumentare la confusione terminologica esistente[11].

Se la Diocesi non comprende effettivamente una regione etnologicamente compatta e tipica, l'autonomia sarebbe un impoverimento della società nella quale si erige, perchè la frantuma. D'altronde le diocesi quali previste dal diritto canonico latino, sono ormai sorpassate, in quanto che assistiamo già a diocesi di tipo non territoriale: castrense, emigrati (diaspora), ed un giorno ci saranno diocesi di lavoratori in terra straniera . . .

D'altronde perchè parlare di aggruppamenti di chiese particolari – Teilkirchlicher Verbände – significando l'istituto di Conferenze episcopali, laddove il termine patriarcato sarebbe il più indicato per questa stessa realtà esistente in Oriente?

Gli aggruppamenti in caso non possono formare una unità autonoma,

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[10] Con buone ragioni scriveva A. *Häußling*, OSB, in: Una Sancta 4 (1967), p.312: „Jede Entfaltung ist nämlich zugleich Auswahl; von vielerlei Möglichkeiten, die ursprünglich vorhanden waren, wird jeweils eine den anderen vorgezogen und realisiert. Wer die Geschichte nur mit der Methode der Rückschau erforscht, muß zwangsläufig alles übersehen, was wegen dieser Auswahl die Gegenwart nicht mehr beeinflußt . . . Nicht selten kam nämlich in einigen Kirchen das zur Entfaltung, was in der Entwicklung der anderen Kirchen nicht weitergetragen wurde.

Beide Positionen sind in einem solchen Fall einseitige, aber legitime Fortentwicklungen dessen, was in der alten Kirche angelegt war . . ."

[11] Cfr. K. *Mörsdorf*, Die Autonomie der Ortskirche, in: Archiv f. katholisches Kirchenrecht 138 (1969), pp. 388–405 praes. 391 et 399–405.

perchè mancherebbe loro sempre il capo responsabilie, che investirebbe per via diretta ed immediata il potere e l'autorità necessari per il funzionamento utile ed efficace dell'autonomia!

Conclusione

E' molto importante il riconoscere che parlando un linguaggio canonistico in Oriente ed in Occidente, non stiamo infondendo nei nostri termini concetti identici, poichè ci afferriamo a situazioni esistenziali differenti che ognuno poi affronta quotidianamente nella sua Chiesa locale e nel rispettivo „modus vivendi et cogitandi".

Perciò bisognerebbe far astrazione dei paradigmi dell'attuale Diritto canonico latino, come anche della mentalità decretistica del medio Evo europeo. Soltanto cosi potremmo intrapprendere un dialogo fruttuoso con le Chiese autonome non-cattoliche, partendo dalla convinzione pacifica che la Chiesa di Dio si fece dirigere in altri tempi con altri principi giuridici, con altre norme di disciplina sociale e con altre prospettive più vaste, più comprensibili e più adatte alle condizioni umane dell'anima battezzata e del Dio-Uomo.

E' qui infatti che radicano i fondamenti psicologico-evangelici del Cristianesimo, come fù predicato da Gesù missionario: in quel dialogo fra Gesù e l'anima di ogni singolo individuo[12].

Se questa verità fondamentale si offusca in noi, tutta la nostra produzione canonistica ed ecclesiologica verrebbe ridotta ad una semplice apparecchiatura di valore puramente umano, dunque sucettibile di servire un giorno o l'altro i più abbietti abusi di despotismo, di ipocresia, di gregarismo utilitario o di automatica selezione monovisionistica dei candidati tanto alla Chiesa dei laici come a quella dei Gerarchi.

Quest'ultimo abuso consisterebbe nel fatto che nessun candidato potrà mai essere accettato in seminario, in un ordine religioso oppure in un collegiò episcopale, se non è dotato in anticipo delle stesse qualità (o degli stessi vizi) corrispondenti in concavo a quelli in convesso presso i componenti di quelle istituzioni o di quel collegio gerarchico!

Allargando la visione, nessun candidato non cristiano o non cattolico potrà mai trovare una porta di accesso al Cristianesimo rispettivamente al Cattolicesimo, se coloro che ne tengono la rappresentanza gli offrono non già il suo aspetto genuino, ma quello che loro stessi si sono forgiati alla misura delle loro convenienze!

Del resto è inutile ricordare che quelli di fuori vedono in noi gli aspetti del cristianesimo o del cattolicesimo che oggettivamente possono costatare, e non sono disposti per niente a credere alle nostre dicerie e protestazioni di buona fede, di ineccepibile ortodossia, oppure di accettare le scuse ispirate – con molto ritardo – nella debolezza umana!

Confrontati con i molteplici dati di questa problematica, possiamo misurare meglio la nostra responsabilità in quanto canonisti di formulare al più presto e con la migliore tecnica possibile i principi regolatori dell'autonomia ecclesiale, che ho cercato di sbozzare nelle pagine precedenti.

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[12] Cfr. Dialogo con la Samaritana, Joh. 4, 7–30, con Marta e Maria: Lc 39–42, con Zaccheo Lc. 19, 2–10 etc . . .

L'AUTOCÉPHALIE DANS L'EGLISE ORTHODOXE ROUMAINE*

IOAN N. FLOCA

Sibiu

I. Notions préliminaires. Historique

Par *autocéphalie*, on entend, au sens canonique, l'état d'indépendance administrative, juridictionnelle ou de direction d'une Eglise orthodoxe vis-à-vis d'autres communautés ecclésiales. Toutes ces communautés sont éga-

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* Texte français révisé par *Michel Thériault.*

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les en droits mais sont cependant interdépendantes dogmatiquement et canoniquement, et constituent ensemble l'Orthodoxie oecuménique.

L'autocéphalie (dont les synonymes sont indépendance, autonomie ou souveraineté) représente une réalité de la vie de l'Eglise et date même du temps des Pères de l'Eglise. Tout en étant une forme traditionnelle d'organisation administrative au sein de l'Eglise orthodoxe, i.e. l'autogouvernement de l'Eglise (autos, kephalē), l'autocéphalie a pris des formes nouvelles à mesure de l'evolution de l'organisation ecclésiastique au cours des siècles. Les Pères de l'Eglise ont de toute évidence déployé leur activité d'une manière indépendante et que toutes les Eglises fondées par eux ont gardé un caractère autocéphale. Ce fut le cas des Eglises de Jérusalem, d'Antioche, d'Ephèse, de Thessalonique, de Corinthe et de Philippes, entre autres. Comme preuve, nous n'avons qu'à lire les lettres de saint Paul aux Romains, aux Galates, aux Corinthiens, aux Thessaloniciens, etc. L'Apocalypse de saint Jean mentionne sept Eglises indépendantes ou autocéphales en Asie, à savoir: les Eglises d'Ephèse, de Smyrne, de Pergame, de Thyatire, de Sardes, de Philadelphie et de Laodicée[1]. De même, tous les textes de l'époque apostolique et postapostolique, en plus de documents plus tardifs comme, par exemple, les listes d'évêques et les martyrologes, démontrent que les communautés ecclésiales episcopales, i.e. les communautés ecclésiales à la tête desquelles se trouvait un évêque, se conduisaient indépendamment les unes des autres: elles étaient autocéphales. Et, par conséquent, nous pourrions à juste titre qualifier les évêques de cette époque-là d'autocéphales.

Avec la réorganisation de l'Eglise suivant le système métropolitain, l'autocéphalie des évêques fut réduite; ils demeurèrent quand même autonomes jusqu'à un certain point, comme ils le sont aujourd'hui. L'autocéphalie devint le droit commun des métropoles, i.e. des provinces ecclésiastiques formées par plusieurs évêchés et ayant chacune à sa tête un *prōtos*, en Asie, ou un premier évêque (primat), en Afrique, qui fut appelé métropolite dès le IVe siècle.

La communauté ecclésiale qui fut ainsi constituée et conduite par le synod des évêques du territoire présidé par un des évêques (*prōtos*) que les autres devaient considérer comme chef (ἡγεῖσθαι αὐτός κεφαλήν), devint l'unité autocéphale type. Cette nouvelle forme d'autocéphalie fut consacrée par les usages apostoliques[2] qui sont de leur part confirmés par les décisions des conciles oecuméniques[3].

Les métropoles constituées comme unités administratives provinciales se sont formées au début en suivant l'appartenance ethnique des fidèles, principe qui determina à cette époque la division administrative de l'Empire romain.

La réorganisation administrative de l'Empire à l'époque de Dioclétien selon le principe territorial tint compte non seulement de l'appartenance ethnique des habitants, mais aussi de leur position géographique et des intérêts économiques et culturels de la population, et amena Constantin le Grand à réorganiser les unités administratives ecclésiastiques à l'intérieur

[1] Cf. Ap. 1, 4 et 11.
[2] Cf. Canons des apôtres, can. 34.
[3] Cf. concile d'Ephèse, can. 8; concile Chalcédoine, can. 12.

de la nouvelle structure administrative de l'Etat, de la sorte qu'à la tête d'une province ou d'un diocèse dont les limites sont les mêmes que le territoire civil se trouva un métropolite ayant une position homologue de celle d'un proconsul ou *praeses*, i.e. le gouverneur civil de la province. En effet, la centralisation de l'organisation ecclésiastique dans le cadre de l'Etat romain a amené l'apparition d'unités administratives plus grandes, nommées diocèses. Le métropolite de la capitale de chaque diocèse reçut la dénomination d'archevêque, d'exarque et, plus tard, de patriarche[4]. Le droit de ces diocèses-métropoles à l'autocéphalie a aussi été reconnu[5], car les patriarcats désiraient soumettre à leur direction autocéphale quelques exarchats et y parvenaient parfois[6]. Au cours de ce processus de développement de l'organisation ecclésiastique, les évêchés ont perdu leur autocéphalie, mais conformément aux dispositions apostoliques[7] et au droit romain, elles ont conservé un droit à *l'autonomie* à l'intérieur des métropoles autocéphales[8], i.e. une indépendance restreinte comparable à celle des cités constituées en unités administratives à l'intérieur de l'Empire. L'histoire est témoin que le processus de développement de l'organisation ecclésiastique avec la constitution des diocèses et puis des patriarcats (celui d'Egypte excepté), n'abolit pas l'autocéphalie des métropoles[9].

Dès le Ve siècle apparaissent aussi des archevêchés autocéphales créés par la division d'une des metropoles[10].

Depuis le Xe siècle jusqu'à aujourd'hui, de façon continue, des Eglises autocéphales nationales apparaissent dans le cadre des Etats nationaux respectifs, telles que les Eglises bulgare, serbe, russe, roumaine, arménienne, etc.

II. Le christianisme chez les Roumains et l'organisation de l'Eglise du Ier au IIIe siècle sous la forme de paroisses indépendantes les unes des autres (autocéphales, autonomes) sur le territoire de la Dacie, la Roumanie d'aujourd'hui

Par contraste avec tous les peuples voisins (Bulgares, Serbes, Russes, Hongrois et autres) qui furent christianisés par la volonté de quelques chefs à une date bien connue dans l'histoire, les Roumains ont connu le christianisme à l'époque de leur formation comme peuple, dans les premiers siècles de notre ère. Cette connaissance leur est venue par plusieurs canaux:

1) une mission non organisée mais naturelle de commerçants chrétiens ayant pénétré dans le nord du Danube, en Dacie, longtemps avant la conquête romaine;

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[4] Cf. concile de Nicée, can. 6; concile de Chalcédoine, can. 9.

[5] Cf. concile de Nicée, can. 6–7; concile de Constantinople I, can. 2–3; concile de Chalcédoine, can. 9, 17, 28; concile de Constantinople III, can. 36, 38–39.

[6] Cf. concile de Chalcédoine, can. 17, 28.

[7] Cf. Canons des apôtres, can. 34 et 37; concile d'Antioche (341), can. 9, 12, 25; plusieurs autres conciles.

[8] Cf. concile d'Antioche (341), can. 3, 13, 22; concile de Sardique, can. 3, 11–12, 15; plusieurs autres conciles.

[9] Ce point peut aussi être vérifié dans les sources suivantes: concile de Nicée, can. 6, concile d'Ephèse, can. 8; concile de Chalcédoine, can. 12.

[10] Cf. concile de Chalcédoine, can. 12; Nov., CXXI, c. 4.

2) les prisonniers chrétiens amenés en Dacie par les guérilleros Géto-daces en guerre avec les Romains;
3) les soldats chrétiens de l'armée d'occupation romaine;
4) les chrétiens amenés comme colons en Dacie par l'empereur Trajan;
5) les missionaires chrétiens envoyés par les autorités ecclésiastiques du sud du Danube.

Parmi les chrétiens venus en Dacie par différentes voies, quelques-uns étaient sans doute des clercs (diacres, prêtres, ou évêques).

Le nombre des chrétiens sur le territoire de la Dacie alla toujours en augmentant. Ce phénomène entraîna par conséquent leur organisation en communautés indépendantes les unes des autres, i.e. autocéphales, du type paroisse, comme à l'origine du christianisme partout ailleurs dans le monde.

L'organisation des communautés paroissiales a été déterminée par le besoin des fidèles d'accomplir le saint sacrifice, i.e. rompre le pain et recevoir la communion[11]. En d'autres termes, les besoins du culte ont précédé et amené les besoins administratifs. Ces communautés ont élevé des autels et des églises (basiliques) et ont formé leurs organes propres et indépendants (autonomes, autocéphales) de direction collégiale nommés „conseils des vieux" (presbyter), sous les directives des évêques et des prêtres.

L'existence de pareilles communautés chrétiennes autocéphales du type paroisse et organisées sur le territoire d'une cité ou village (*fossatum*) a laissé des traces dans la conscience populaire chez les Roumains qui nomment encore actuellement les paroisses non pas d'après le patron des églises mais d'après celui du village avec lequel la paroisse (la communauté des croyants) formait un tout homogène du point de vue social, politique et ecclésiastique.

Nous avons une indication de l'existence passée de ces communautés sur le territoire de la Roumanie d'aujourd'hui, la Dacie d'autrefois, à cause de la grande quantité de cimetières dans lesques furent découverts des artefacts relatifs à la pratique religieuse et des inscriptions chrétiennes qui datent des premiers siècles de notre ère.

III. Les commencements connus d'organisation centralisée de l'Eglise sur le territoire roumain sous la forme de diocèses (évêchés) ayant leur propre administration (indépendante, autocéphale, autonome)

Sur les commencements de la propagation du christianisme chez les Géto-daces et Roumains ou arrière-Roumains au nord du Danube dans les premiers siècles de notre ère, les écrivains de l'Antiquité donnent des détails: Justin le Philosophe, Hyppolite, Tertullien, Origène, Eusèbe de Césarée, etc. Deux conciles oecuméniques, Constantinople I et Chalcédoine[12], parlent de l'autocéphalie des Eglises des „régions barbares" parmi lesquelles est aussi comprise une partie du territoire sur lequel l'Eglise orthodoxe roumaine d'aujourd'hui exerce sa juridiction.

Comme corps organisé hiérachiquement, l'Eglise roumaine est née à To-

[11] Cf. Ac 2, 46.
[12] Cf. can. 28 concile de Chalcédoine. Sint. Ath. II, p. 280–281.

mis (Constanța aujourd'hui) dans la Scythie mineure (Dobroudja aujourd'hui). Des documents attestent l'existence d'un centre épiscopal autocéphale au temps de l'empereur Dioclétien ou même avant 313. L'existence de cette Eglise est attestée par l'historien Sozomène[13] et par Basile (829) et confirmée par les découvertes archéologiques contemporaines. Pendant la même période, d'autres centres diocésains existaient aussi ailleurs dans la Dobroudja, v.g. Tropaeum Trajani (Adamclisi), Axiopolis (Cernavodă), Troesnis (Igliţa), Novidunum ou Novinum (Isaccea), etc., qui tous avaient une administration indépendante (autocéphale).

De ces centres de la rive droite du Danube, des missionnaires ont sûrement passé dans la Dacie trajane, y répandant le christianisme et organisant des communautés ecclésiales toujours indépendantes.

La liberté religieuse accordée par l'empereur Constantin le Grand ainsi que ses conquêtes dans le région du Danube ont amené la propagation en masse du christianisme en Dacie et son organisation appropriée.

L'existence d'une Eglise organisée est attestée au Banat au VIIIe siècle puisque l'évêque Ursu de Cenad, capitale de l'Avarie, participa aux travaux du concile oecuménique de Nicée II (787). Au XIe siècle, le duc roumain Ahtum du Banat, baptisé à Vidin dans la religion grecque en 1002, établit un monastère dans sa capitale Morisena (Csanád); la ville avait aussi probablement un évêque.

Au XIIe siècle on signale l'existence dans la Dobroudja de la métropole de Celtine; au siècle suivant, on rencontre l'archidiocèse de Vicina en 1264, transféré à Argeş (Ardics) en 1359 à la demande du prince roumain de l'endroit et avec la bénédiction du patriarche de Constantinople.

Comme l'existence des anciennes organisations ecclésiales chez les Roumains de Transylvanie est confirmée, quelques témoignages peuvent aujourd'hui être amenés qui montrent qu'au Xe siècle, le territoire de la Transylvanie possédait une organisation ecclésiale orthodoxe, intégrée dans les unités sociales et politiques roumaines connues sous le nom du duchés. En 950, le duc Jula demande que Byzance lui ordonne un évêque. Une organisation ecclésiale existait à Dăbîca aussi, le centre politique du duc Gelu, puisque encore aujourd'hui on y conserve des basiliques et des tombeaux. A Alba Julia, la capitale du duché situé au sud de la Transylvanie, subsistait une organisation épiscopale; de même à Biharea, puisque le duc roumain entretenait des relations avec Byzance, si l'on croit le chroniqueur anonyme du roi de Hongrie Béla II l'Aveugle.

L'existence des organisations ecclésiales orthodoxes chez les Roumains de la Transylvanie est attestée aussi par les activités missionaires catholiques romaines chez les Roumains ainsi que par les lettres des papes Innocent III de 1204 et de Grégoire IX de 1234 adressées aux évêques latins d'Oradea et de Calocea dans lesquelles il était dit que les Roumains étaient sous la responsabilité pastorale des évêques „schismatiques", i.e. orthodoxes. Aux XIIe et XIIIe siècles, un grand nombre d'églises et de monastères en pierre apparaissent, qui ont subsisté jusqu'à présent. L'existence de pareilles constructions suppose aussi une structure ecclésiastique appropriée. La mention de l'existence des archiprêtres dans le duché de Haţeg

[13] Cf. Historia ecclesiastica, 6, 21, in: Patrologia latina, v. 67, col. 1344.

suppose aussi la présence d'un évêque. Des mentions semblables sont aussi faites pour les duchés de Chioara et Bihor à la même époque.

IV. La réorganisation de l'Eglise dans le cadre des Etats féodaux roumains, Valachie, Moldavie et Transylvanie, sous la forme d'évêchés et de métropoles indépendantes (autonomes ou autocéphales)

La constitution au XIVe siècle de vastes Etats féodaux roumains indépendants d'un côté et de l'autre des Carpathes a nécessairement amené la réorganisation de l'Eglise sur leur territoire. Par conséquent, avec la bénédiction du patriarche de Constantinople, le prince Nicolae Alexandru Basarab Ier transfère en 1359 le siège métropolitain de Vicina à Argeş, capitale de la Valachie, avec le métropolite Jachint „pour qu'il soit dorénavant [...] prélat légitime de l'Ungro-Valachie entière."

Pour les raisons pratiques et aussi pour réprimer la propagande catholique romaine, une métropole fut créée en 1370 pour les régions sous la domination roumaine de Severin, de la Valachie, de la Transylvanie et du Banat. A la suite de cet acte, le métropolite d'Argeş devint „exarque des plaines et de toute la Hongrie", ce qui suppose aussi l'existence de suffragants.

L'acte de 1359 par lequel le patriarche de Constantinople reconnaît le métropolite de la Valachie et l'acte de la constitution de la seconde métropole en 1370, puis l'acte de 1381 donnant au métropolite d'Argeş le titre d'exarque, sont des indices incontestables que l'Eglise de la Valachie était à cette époque-là indépendante (autocéphale) du point de vue administratif et possédait son propre synode métropolitain. Toujours d'une manière indépendante, i.e. „non asservie à aucun patriarcat", l'Eglise de la Moldavie est organisée de la même façon; elle est reconnue en 1401 par le patriarche de Constantinople et l'empereur byzantin Jean VIII Paléologue[14]. Le métropolite de Suceava lui aussi reçut le titre d'exarque.

L'autocéphalie de l'Eglise roumaine de Valachie et de Moldavie se fait remarquer somme une réalité dans les siècles suivants. A l'époque de Radu le Grand (1496–1508) où l'on réorganise canoniquement l'Eglise de la Valachie, deux nouveaux évêchés sont établis, à Rîmnic et Buzău, et un grand concile roumain a lieu en 1503. A l'époque du prince Michel le Brave, les trois provinces roumaines sont unies sous la même couronne et l'Eglise orthodoxe roumaine est réorganisée d'une manière autocèphale. Le prince Léon abolit le droit du pays d'élire le métropolite et les évêques „comme cela existait depuis toujours". A l'epoque de Matei Basarab et Vasile Lupu (XVIIe siècle), les Eglises roumaines sont réorganisées, un concile panorthodoxe a lieu à Iaşi en 1642, et sont élaborées les normes du droit canonique de ces Eglises et celles du droit civil en matière ecclésiastique.[15].

Au XIVe siècle en Transylvanie, l'Eglise était organisée sous la forme d'une métropole avec plusieurs évêchés. L'obituaire d'Urdea de 1656 en est

[14] Cf. Indreptarea Legii, Tîrgovişte 1652, gl. 391.

[15] Cf. Carte românească de învătătură de la pravilele împărăteşti, Iaşi 1646; Indreptarea Legii, Tîrgovişte 1652.

la preuve. La résidence des évêques changeait souvent, à cause du prosélytisme catholique romain soutenu par les princes (Feleac, Vad, Bălgrad, etc.); cette situation dura jusqu'en 1579, lorsque fut reconnu le droit des Roumains, conformément à la décision de la Diète de Transylvanie, d'élire „le métropolite de la région entière de Transylvanie et d'Oradea Mare, avec résidence à Bălgrad" (Alba Julia).

La métropole de Transylvanie faisait partie de l'exarchat de la Valachie, mais elle s'organisa indépendamment, fait mentionné aussi dans le traité du prince Michel le Brave avec le prince Sigismond Báthory du 20 mai 1595. Après une courte période, celle des princes phanariotes au XVIIIe siècle, durant laquelle l'autocéphalie des Eglises roumaines a été réduite à cause de l'influence grecque, les révolutionnaires de 1848 luttèrent non seulement pour l'indépendance nationale, mais aussi pour la totale indépendance ecclésiastique, i.e. l'autocéphalie. On voit ainsi que l'antique autocéphalie ecclésiastique fut désirée de tout temps par la conscience de notre peuple et que ce désir est toujours actuel.

V. L'action en vue de la reconnaissance formelle de l'autocéphalie de l'Eglise roumaine par le Patriarcat de Constantinople au XIXe siècle

Cette action a pris naissance pendant la Révolution de 1848 et immédiatement après, à la suite des ingérences dans les affaires intérieures de l'Eglise roumaine de la part du Patriarcat de Constantinople et de sa violation de l'autonomie de notre Eglise. L'action atteint son point culminant avec le vote de l'Assemblée délibérante des Principautés roumaines en 1857; l'Assemblée demandait, entre autres, „la reconnaissance de l'indépendance de l'Eglise orthodoxe orientale des Principautés roumaines et de chaque diocèse, mais étant sauve l'unité de foi avec l'Eglise oecuménique de l'Orient au plan des dogmes"[16].

La demande adressée par l'Assemblée délibérante des Principautés roumaines à la Conférence de Paris est restée un simple voeu pieux. Le prince Alexandre Ion Cuza qui voulait pour la nation roumaine une Eglise indépendante, autocéphale, passa à l'action et réorganisa l'Eglise roumaine, dont la Loi constitutive établit que „l'Eglise roumaine est indépendante de n'importe autre Eglise"[17].

A l'accusation du patriarche de Constantinople concernant ces réformes aux structures de l'Eglise roumaine, le métropolite Niphon répondit dans sa lettre du 30 avril 1864 en précisant que „L'Eglise roumaine a toujours été indépendante dans son activité intérieure."

Le décret organique du 3 décembre 1864 instituant une autorité synodale centrale pour l'Eglise orthodoxe roumaine précisa que celle-ci est et reste indépendante de n'importe quelle autorité ecclésiastique étrangère relativement à son organisation et à sa discipline, ètant sauve l'unité dogmatique avec l'Eglise orientale, par le moyen de la communion avec l'Eglise oecuménique de Constantinople[18]. C'était la première fois que l'Etat légiférait sur l'indépendance de notre Eglise ancestrale.

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[16] A. *Sturdza* si C. *Colescu-Vartic,* Acte si documente relative la istoria renasterii Romăniei, v. VI/I, Bucureşti 1869, p. 154.

[17] Projet de loi constitutive de l'Eglise orthodoxe roumaine, art. 2.

[18] Décret organique sur L-Eglise orthodoxe roumaine, 3 décembre 1864, art. 1, 3.

A l'accusation du patriarche de Constantinople Sophrone qu'il avait procédé d'une manière non canonique en proclamant unilatéralement l'autocéphalie, le prince Cuza répondit que „l'Eglise roumaine est indépendante de n'importe quelle Eglise étrangère, en ce qui a trait à son organisation et à sa discipline, et que ce droit dont elle jouit *ab antiquo* est fondé sur des témoignages anciens." De même le métropolite Niphon affirmait aussi que „l'Eglise roumaine a été depuis le temps jadis tout-à-fait indépendante dans son administration" et que les nouvelles lois ne font que „confirmer à nouveau cet état de choses". De plus, le prince Cuza déclare qu'il est appelé, dans sa qualité, à défendre „l'ancienne autocephalie de l'Eglise dacique" contre toute attaque et qu'il luttera avec les armes de la loi civile et des canons. Puis il démontre que le patriarche oecuménique „n'a jamais fait de lois pour l'Eglise roumaine, mais qu'il a seulement donné sa bénédiction aux élections épiscopales dans notre pays", ce qui ne se réconcilie pas avec „le pouvoir de juridiction et le droit d'ingérence qu'elle prétend posséder à present"[19].

VI. La reconnaissance officielle de l'autocéphalie de l'Eglise orthodoxe Roumaine par le Patriarcat oecuménique de Constantinople et par les autres Eglises autocéphales

Bien que le prince Alexandre Ion Cuza ait été déposé le 11 février 1866, la lutte pour la reconnaissance officielle par le Patriarcat de Constantinople de l'autocéphalie de l'Eglise roumaine se poursuivit.

La Constitution du 30 juin 1866 déclare que „l'Eglise orthodoxe roumaine est restée autonome vis-à-vis n'importe quel diocèse étranger, étant sauve l'unité dogmatique avec l'Eglise oecuménique de l'Orient".

La Loi organique de l'Eglise roumaine de décembre 1872 désigne l'Eglise Roumaine comme „autocéphale" tout en spécifiant qu'elle conserve l'unité dogmatique et canonique avec toutes les Eglises de l'Orient[20].

Après la reconnaissance de l'indépendance de la Roumaine à la suite de la guerre de 1877–78, l'action pour obtenir la reconnaissance officielle de l'autocéphalie de l'Eglise roumaine par le Patriarcat de Constantinople a été continuée de plus belle.

Au Patriarcat oecuménique qui prétendait que l'autocéphalie de l'Eglise roumaine n'était pas canonique vu qu'elle n'avait été reconnue par aucun concile oecuménique, le métropolite Calinic répondit en déclarant que l'autocéphalie de l'Eglise roumaine est „un fait incontestable et indiscutable"; le métropolite refuse donc d'accepter la prétention du Patriarcat oecuménique parce que l'autocéphalie d'une Eglise n'a jamais été proclamée par un concile oecuménique et réaffirme le principe canonique que l'organisation de l'Eglise suit toujours l'organisation de l'Etat. L'Eglise roumaine est par conséquent autocéphale et pleinement canonique.

En 1882, lorsque le saint chrême fut consacré dans notre pays, le Patriarcat oecuménique de Constantinople considéra cet acte presque comme un schisme, et publia une lettre synodale dans laquelle il protestait avec véhé-

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[19] Cf. N. *Serbănescu*, Optzeci de ani de la dobîndirea autocefaliei Bisericii Ortodoxe Române, Rev.Bis.Ort.Rom., Bucureşti 1965, no. 3–4, p. 255.

[20] Loi organique de l'Eglise orthodoxe Roumaine, art. 8, 9, 12.

mence contre l'acte de l'Eglise roumaine. Mais le Synode de l'Eglise orthodoxe roumaine répondit le 23 novembre 1882 par un magnifique exposé sur les fondements de l'autocéphalie[21]. Cette réponse affirme que „l'Eglise orthodoxe roumaine a été et est autocéphale à toute l'étendue du pays, et qu'aucune autorité religieuse étrangère n'a le droit de s'imposer. Il n'est plus nécessaire que notre autocéphalie soit reconnue par quelqu'un. En défendant l'autocéphalie de l'Eglise roumaine contre n'importe quelle pression extérieure, nous ne voulons pas nous séparer de l'ensemble de l'Eglise orthodoxe. Nous conservons les même doctrines, la même discipline et la même liturgie, toutes héritées de nos ancêtres et communes à l'Eglise orthodoxe à travers le monde".

A la suite d'un échange de lettres, le Saint Synode de l'Eglise orthodoxe roumaine demanda, le 26 avril 1885, au Patriarcat oecuménique de Constantinople la reconnaissance formelle de l'autocéphalie de notre Eglise, laquelle conserve et observe les principes canoniques de l'Eglise d'Orient. Ce document mentionne que „en union avec les plus anciennes traditions canoniques, l'Eglise orthodoxe roumaine a été déclarée autocéphale, et jouit d'une indépendance égale à celles des autres Eglises autocéphales" et souhaite que le Patriarcat oecuménique veuille bien „bénir cet état de choses et reconnaître l'Eglise autocéphale de Roumanie, comme une soeur de même foi et de même rite" et communiquer „cette décision aux trois autres sièges patriarcaux de l'Orient et à toutes les Eglises autocéphales". Toujours dans le même document de 1885, le Saint Synode de l'Eglise orthodoxe roumaine déclare qu'„elle conservera intacts les dogmes sacrés de notre sainte foi orthodoxe et la tradition de l'Eglise, qu'il reconnaîtra au Très Saint-Trône oecuménique et patriarcal de Constantinople le primat d'honneur, qu'il priera pour le patriarche en communion avec elle et avec toutes les Eglises orthodoxes autocéphales".

Le patriarche Joachim IV répondit le 28 avril 1885: „Ayant examiné avec le Saint Synode patriarcal réuni la demande envoyée, nous l'avons, après réflexion, trouvée bien fondée du point de vue canonique et ecclésiologique; nous bénissons la Sainte Eglise de Roumanie et la reconnaissons comme autocéphale et auto-administrée". Il proclame le Saint Synode roumain „fère bien-aimé dans le Christ"[22].

En même temps, il envoya le *tomos* synodal de reconnaissance et annonça qu'il a fait aussi connaître cette décision aux autres Eglises orthodoxes autocéphales. Le *tomos* synodal dit: „Nous déclarons que l'Eglise orthodoxe roumaine est indépendante et autocéphale, qu'elle est reconnue par toutes les autres, et que, administrée par son propre Saint Synode [...] elle s'administre et se conduit elle-même". Mais le *tomos* impose à l'Eglise roumaine l'obligation de réciter des prières pour tous les chefs des autres Eglises autocéphales, qu'elle s'entende avec celles-ci à l'occasion de problèmes canoniques et dogmatiques importants qui demandent une réflexion mûre, d'après les coutumes de nos ancêtres observées depuis les temps anciens[23].

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[21] Cf. Rev.Bis.Ort.Rom., Bucureşti 1882, no. 12, p 738–757.

[22] Cf. Dosar no. 78, f. 18.v–20.v. Actele p. 7–8, in Arhiva Sf. Sinod al Bisericii Ortodoxe Române.

[23] Cf. Rev.Bis.Ort.Rom., Bucuresti 1910–1911, no. 7, p. 722–733.

Par des lettres envoyées successivement à Bucarest et aux autres Eglises orthodoxes autocéphales, le Saint Synode patriarcal de Constantinople a béni la reconnaissance de l'indépendance et de l'autocéphalie de l'Eglise orthodoxe roumaine de la part des Eglises orthodoxes autocéphales.

VII. Conclusion

L'Eglise orthodoxe roumaine, comme institution socio-religieuse au sein des anciens Etats féodaux roumains, a suivi pas à pas la voie historique du peuple roumain, a adopté des formes d'organisation propres aux habitudes de l'époque, et a trouvé son chemin avec succès, sans renoncer à la substance orthodoxe, à laquelle elle donna une enveloppe roumaine. Sur chaque page de l'histoire de notre peuple, même à l'époque féodale, apparaît l'Eglise, se mettant au service de l'Etat et du peuple roumain. L'Eglise orthodoxe roumaine est devenue l'Eglise du peuple roumain et s'est conduite d'après ses propres lois élaborées conformément aux normes et principes du droit canonique orthodoxe, rejetant n'importe quelle influence étrangère.

Tout en s'administrant et se conduisant d'une manière autocéphale, l'Eglise orthodoxe roumaine a toujours gardé l'unité dogmatique, canonique et liturgique avec l'Eglise orthodoxe de l'Orient et a reconnu au patriarche oecuménique de Constantinople son droit honorifique de „premier représentant de l'Eglise orthodoxe", égal cependant aux autres chefs des Eglises orthodoxes autocéphales (*primus inter pares*).

Après de longues lettres et beaucoup d'interventions, l'Eglise orthodoxe roumaine a réussi, au siècle dernier, à se faire reconnaître comme indépendante, i.e. autocéphale, et au siècle présent, à se doter d'une structure patriarcale autocéphale.

L'Eglise orthodoxe roumaine comprend aujourd'hui tous les fidèles roumains de confession chrétienne orthodoxe dans la République socialiste de Roumanie. Elle est une Eglise autocéphale et homogène dans son organisation, tout en conservant l'unité dogmatique, canonique et liturgique avec l'Eglise oecuménique de l'Orient; elle a une administration synodale et hiérarchique conformément aux principes, aux canons et aux traditions de l'Eglise oecuménique, et se conduit d'une manière autonome par ses propres organes, élus par le clergé et le peuple, sous le contrôle de l'Etat, comme le prévoit la Constitution du pays et le statut de l'Eglise[24].

[24] Cf. Constitution de la République socialiste de Roumanie 1965, art. 30, par. 2; Statut de l'Eglise orthodoxe roumaine, art. 1–4.

AUTONOMY AND AUTOCEPHALY IN THE THEORY AND PRACTICE OF THE ANCIENT ORIENTAL CHURCHES

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Introduction

The terms 'autonomy' and 'autocephaly' are immediately related with the Eastern Orthodox Churches and reflect the administrative organization and jurisdiction of particular and/or national Churches which were formed within the boundaries of the Byzantine Empire. Naturally, it is possible to use typically 'orthodox' expressions also for the Ancient Oriental Churches, but of course, in a relative sense, since the inter-relations and interdependence of these Churches do not completely correspond to the situation of the Orthodox Churches.

The Eastern Orthodox Churches have the same confession of Christian dogmas based on the first seven Ecumenical Councils, as well as a fundamental common Liturgy and Canon Law[1]. It is true that the Ancient Oriental Churches also share the same creed and doctrines of the first three Ecumenical Councils, but their Liturgy and Canon Law, though alike in general features, are developed on and as different traditions.

The word 'autocephalous' deriving from the Greek (*autokephalos/auto* = self + *kephalos* = head) indicates independent Churches which elect their own heads or patriarchs. These heads organize and administer their Churches in co-operation with local ecclesiastical synods. The term 'autonomous' likewise originates from the Greek (*autonomos/auto* = self + *nomos* = law) and denotes such Churches which in organization and administration enjoy full freedom, but in certain matters of jurisdiction depend on another central Church. Sometimes these characteristic words are confused in minds and writings and are used synonymously without any differentation. In actual life also they are object of disputation and quarrel when an autonomous community names herself 'autocephalous', ignoring tradition and canon law. Such an example is the 'Russian Orthodox Greek Catholic Church of America (Metropolia)' of New York which since May 1970 calls herself 'Autocephalous Orthodox Church of America'. Another well known case is the Orthodox Church of Macedonia which in June 1959 assumed autonomy from the Serbian Orthodox Church and in 1967 declared herself as 'autocephalous'[2].

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[1] G. *Rhallis* und M. *Potlis, Syntagma ton theion kai hieron kanonon* (6 volumes), Athens 1852–1859, and N. *Milash*, Das Kirchenrecht der morgenländischen Kirche, 2nd edition, Mostar 1905. Concerning the revision and codification of the sacred canons of the Orthodox Church see B. Archondonis, A common Code for the Orthodox Churches, in: Kanon I Vienna 1973, pp. 45–53.

[2] D. S. *Constantopoulos*, Die "autokephale" orthodoxe Kirche von Mazedonien, in Kanon II, Vienna 1974, pp. 28–38.

1. The Relevance of the terms 'autonomous' and 'autocephalous' to the Oriental Orthodox Churches

A large family of Byzantine Churches, autocephalous or autonomous, form One Orthodox community. They express their unity through the same faith and dogmas and maintain close inter-church relations. The organ of highest authority in the Orthodox Church is the ecumenical council which has not been convoked since VIIIth or IXth century. The 7th Ecumenical Council met at Nicaea (2nd Nicaea = September 24th to October 23rd, 787) and dealt with the iconoclastic controversy. In IXth century, Constantinople and Rome started to blame one another: the 4th Council of Constantinople (October 5th, 869 to February 28th, 870 = 8th Ecumenical Council for the Roman Catholic Church) condemned the Patriarch Photius who was striving to establish his jurisdiction in South Italy and Dalmatia. In 879–880 Photius in his turn assembled a synod and annihilated the decisions of the Council of 869/870. This was the last Orthodox synod which sometimes is called 'Ecumenical'. After a long interruption of almost eleven centuries, in 1930 a Panorthodox Preparatory Commission met at Mount Athos and started with the organization of a Panorthodox Synod. The 1st preparatory Panorthodox Conference was held in 1961 at Rhodos and in November 1976 in Chambésy near Geneva thirty Orthodox bishops from 13 countries assembled an official pre-conciliar Panorthodox Conference which adopted a ten-point agenda for the Grand Orthodox Council.

A destiny, resembling to that of the Byzantine Churches, had the Ancient Oriental Churches. The last time when these Churches participated in a general Synod was in 451 at the Council of Chalcedon which condemned the heresy of Eutyches and accepted the christological Tome of Pope Leo. The Coptic and Syrian Delegates protested and left the Meeting! The Armenians did not come to the Council, because they were fighting against the oppressions of the Persians who endeavoured to establish their Zoroastrian religion in Armenia. In 554/555 at the 2nd Synod of Dvin and during the reign of the Catholicos Nerses of Bagrewand (548–557), the Armenians finally and definitly refused the decisions of Chalcedon[3] and translated the Book of Timothy Aelurus, *Refutation of the Definitions of the Council of Chalcedon*[4].This was neither the first, nor the last judgment about Chalcedon; in the following centuries, the Armenian Church repeatedly condemned the Chalcedonian christology as a new offspring of Nestorian heresy.

In VIth century coincide also the activities of two Syrian renowned bishops – Severus of Antioch (patriarch 512–518, † 538) and Jacob Baradaeus († 578) after whose name the Syrian Orthodox Church is sometimes called 'Jacobite'. Severus became a great intellectual and theologian, whereas Jacob re-organized the Syrian communities of the Middle East, specially in Syria, Palestine and Egypt. Patriarch Severus produced several important studies and homilies against the Council of Chalcedon and is recognized as

[3] M. K. *Krikorian*, Remarks concerning the date of the death of Dioscorus of Alexandria (in Armenian), Handes Amsoreay, Vienna 1972, pp. 59–72.

[4] T. *Aelurus*, Refutation of the Definitions of the Council of Chalcedon, (Armenian translation), edited by K. Ter-Mekerttschian and E. Ter-Minassian, Etchmiadzin 1908.

one of the champions of faith of the Oriental Orthodox Churches. In the liturgy of the Syrian Church, Severus and Baradaeus are remembered as glorified saints:

> "And we also remember our Patriarch Mar Severus, the Crown of the Syrians, that rational mouth and pillar and teacher of all the holy Church of God, the meadow full of flowers who always preached that Mary is undoubtedly the Mother of God; and our righteous and holy Father Mar Jacob Baradaeus who maintained the Orthodox faith" etc.[5]

During III–IVth centuries, missionaries of the Syrian Church from Syria and Persia had already evangelizing activities among Indians. However, the Christians of India traditionally recognize the Apostel St. Thomas as their first Illuminator. For that reason, their Church here and there is named also 'The Church of St. Thomas'. Some scholars insist that from IV–Vth century on, the Indian Church was rather influenced and led by East-Syrians or Nestorians than by West or non-Chalcedonian Syrians. In any case, after the conquest of India by the Portugese, with the Synod of Diamper (1599) Rome started her offensive missionary work to latinize the Christians of the country. Most of the members of St. Thomas Church accepted the jurisdiction of Syrian Orthodox Patriarchate and in XVIIth century they obtained a proper ecclesiastical head (metropolitan). Some other Christians acknowledged the authority of Rome, and still others remained in the Nestorian community. The early position of the Indian Orthodox Oriental Malankara Church towards the Syrian Church can be described as that of an 'autonomous' community; nevertheless, in 1912 she assumed autocephaly and became independent just like the Syrian or the Armenian Church. The two Malankara Orthodox parties which were in rivalry, one advocating complete independence and the other desiring dependence on the Syrian Jacobite Church, unfortunately continued their quarrels even after the proclamation of 'autocephaly', until 1958 when they came to a compromise-agreement[6].

In a similar situation were the Churches of Egypt and Ethiopia. Because of the Coptic missionary work among the Ethiopians, the two Churches stood in communion and interconnection. In a way, the Ethiopian Church was 'autonomous' – depending on the Coptic Church; the Ethiopian bishops and patriarchs were normally ordained in Egypt. Only recently in 1957/1959 the Church of Ethiopia assumed autocephaly[7].

In 1965 these Churches met in Addis Abeba as fully equal sister Churches and de facto recognized each other's autocephaly. The heads and their theologians gathered together, expressed their unity and communion publicly and solemnly, and prepared a programme of co-operation

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[5] Anaphora – the Divine Liturgy of Saint James. translated and published by Metropolitan *Mar Athanasius Yeshue Samuel*, USA 1967, p. 46.

[6] The history of the Malankara Orthodox Church of India appears to be rather confusing. I have written this short historical survey utilizing the following books in which the reader will find further bibliography: Metropolite *Seraphim*, L'Église orthodoxe, Payot/Paris 1952, pp. 131–132; A. S. *Atiya*, A History of Eastern Christianity, London 1968, pp. 357–88; C. Malancharuvil, The Syro – Malankara Church, Alwaye/Kerala (India) 1973, and P. *Verghese* (editor), Die syrischen Kirchen in Indien, Evangelisches Verlagswerk Stuttgart, published in the series "Die Kirchen der Welt", vol. XIII.

[7] F. *Heyer*, Synodale Institutionen der Äthiopischen Orthodoxen Kirche, in: Kanon II, Vienna 1974, pp. 106–107.

in the fields of education, theological research, and of ecumenical relations and activities. The 'order of primacy' was determined without any problem in the following form:

The Coptic Orthodox Church
The Syrian Orthodox Church
The Armenian Apostolic Church
The Ethiopian Orthodox Church
The Orthodox Syrian Church of India.

2. Is there a Theory of Autocephaly and Autonomy in the Ancient Oriental Churches?

In the strict and exact sense of the terms, the Ancient Orientals have not developed any special theory of autonomy or autocephaly. The actual life and the socio-political and cultural factors decisively influenced them to grow and to be organized as local (*Landeskirche*) or national autocephalous Churches. From political point of view, they were suffering under the despotic rule of the Byzantine Empire. Perhaps the freedom-loving character of these peoples also played a rôle in the shaping of their ecclesiastical relations; they didn't tolerate the pressures of the Emperors and endeavoured to secure at least their historical identity and spiritual liberty. The Chalcedonion controversies apparently offered the best chance for the Ancient Orientals to avoid every doctrinal-ecclesiastical familiarity with Byzantium which could lead to assimilation. Naturally, their suspicion that the Chalcedonian christology approaches to the teaching of Nestorius, fastened and hardened their attitude towards the Council. In the midst of VIth century, the Christian communities of Egypt, Syria and Armenia were established indisputably as national Churches. They were and are completely independent among themselves and maintain a unity on the ground of Faith and Love; they stand and live in intercommunion, but don't possess a common super-authority which could be effective and acceptable for all parties.

In order to understand rightly the events in connection with Chalcedon, one has to go back to V–VIth century. At that time, there was no problem of suprimacy and infallability of the Pope; Rome was too far from Syria, Armenia, or even Egypt, the Eastern Orthodox Churches of Balkan countries still didn't exist, therefore in fact what happened was that some in the spheres of Byzantine Empire broke their communion with the Greek-Byzantine Church. They didn't wish to continue their eucharistic fellowship with Christians who in their view, were following somehow the Nestorian christology. Caucasia, a larger part of Syria and Egypt (not excluding Ethiopia), were not negligible at all, but politically, economically and culturally important countries at the time. For that reason emperors and emperesses, bishops and patriarchs tried their best to restore the ecclesiastical unity of the Empire, but neither the condemnation of the "Three Chapters" by Justinian in 543, nor the 5th Ecumenical Council (in May – June 553), not even the Monothelite doctrine helped to cure the wounds and to bring about a reconciliation. This situation can by some people be regarded as "schisma"/division, but the Oriental Orthodox

Churches never had the feeling or the thought that they were divided from the rest of the Christendom. They were rather angry against all those who confessed the Nestorian doctrine or the Chalcedonian christology and refused to keep up eucharistic communion with them. Hanging on the Apostolic tradition (*paradosis*) and the first three Ecumenical Councils – they retained their orthodox Faith and Traditions, and continued missionary activities at home and outside their countries. Consequently it is not accurate to call the Oriental Christians and their Churches as "schismatic" or separated.

The erudite roman-catholic scholar and theologian Wilhelm de Vries is an author who has thoroughly studied the history of the Oriental Orthodox Churches and analysed in the best way the reasons of their disputes with the imperial Byzantine Church[8]. He explains the political, ethnical and national character of the factors which played an important rôle in the controversies and admits that the Ancient Orientals rejected Chalcedon predominantly from standpoint of religious-theological conviction:

> "Die Ausgliederung der nichtorthodoxen Gemeinschaften aus dem Verband der universalen Kirche geschah also – mindestens vorwiegend – aus religiöser Überzeugung. Die Monophysiten wollten keine Häretiker und Schismatiker sein, sondern fühlten sich als die Zeugen der echten apostolischen Überlieferung von der Einheit Christi im Kampf gegen die häretische Verfälschung durch das Konzil von Chalkedon"[9].

The idea or theory that Rome is the authoritative centre of ecclesiastical 'communio' was unknown to the Ancient Oriental Churches. Rome was an Apostolic See just like those of Antioch, Alexandria, Armenia or Jerusalem. Moreover, during the first millenium A.D. the Armenian Church didn't come into direct contact with Rome, until the period of Crusades. Although in the middle ages, some of the Popes claimed supreme authority within the Christian world, but their demand was never accepted by the universal Church; only after the tragic "schism" of 1054 when the Roman Church remained alone, such a theory was developed. All these facts and arguments are rightly understood by the roman-catholic author who writes:

> "Die Idee, daß Rom das entscheidende Zentrum der echten kirchlichen 'communio' sei, ist den monophysitischen Autoren unbekannt. Rom ist in ihren Augen vom wahren Glauben abgefallen. Das ist gewiß sehr zu bedauern, aber es ist für die Monophysiten kein besonderes Problem. Rom ist ein Bischofssitz wie viele andere"[10].

It is surprising how Prof. de Vries departing from sound premisses, has reached at a conclusion which is not logical. Inspite of his reasonable statements, he describes the Ancient Orientals as "schismatic" and thus

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[8] W. *de Vries*, Der Kirchenbegriff der von Rom getrennten Syrer, Orientalia Christiana Analecta vol. 145, Rome 1955; Rom und die Patriarchate des Ostens, Freiburg i. Br. 1963, and Die "Ausgliederung" der „nichtorthodoxen" Kirchen aus der universalen Kirche, in: Handbuch der Ostkirchenkunde, edited by E. v. *Ivánka*, J. *Tyciak* and P. *Wirtz*, Düsseldorf 1971, pp. 3–18.

[9] Die "Ausgliederung" der "nichtorthodoxen" Kirchen aus der universalen Kirchen, ibid., p. 5.

[10] Ibid., p. 7.

slips in contradiction and polemic. It is highly gratifying that after controversial discussions of many centuries, the Council of Vatican II acknowledged the special position of the Orthodox Churches (Eastern and Oriental), appreciated the liturgical treasury, the rich spiritual experiences and customs, the authentic theological traditions and the true sacraments of these Churches[11]. Particularly one shouldn't forget the tragic destiny and the heroic efforts and sacrifices of the Ancient Orientals who in the Near East retained their christian Faith and Hope in spite of hard oppressions and suppressions. Consequently, in my opinion, it isn't right and proper to offend peoples and Churches on the ground of theories and principles which were formed at least five or seven centuries after the Council of Chalcedon when the unity of the Christian Church was broken.

3. *Ecclesiology of the Ancient Oriental Churches*

The Oxford Dictionary of English explains the term "ecclesiology" as "science of churches, esp. of church building and decoration" (!)[12]. Leaving aside this odd and perplexing explanation, let us first of all state that the ecclesiology of the Ancient Oriental Churches in general is the same as that of Eastern Orthodox Churches. Christ himself is the founder and head of the Universal Church. In an early Armenian catechism we read: "He (Christ) planted one (corner) in the earth to show the placing of the Lord's feet on the earth, in order that on the firm rock He might build and place the depth of the foundations of the Church. As the Prophet foretold: On the rock Lord placed me, to make me immovable (Pss. 26/5; 39/3; 117/22)"[13]. Severus of Antioch proclaims Christ as the chief-priest of the Orthodox Apostolic Church[14], and Elias the Syrian (VI. c.) declares that the real head of the Christian Church is Christ himself and then come the patriarchs of Antioch, Alexandria and of Constantinople and with them all other orthodox bishops[15]. An Armenian theologian, Mchithar of Skevra (1263/1264) after mentioning that John became the Apostle of Ephesus, Thomas Apostle of India and Bartholomeus Illuminator of Armenia, etc. asserts: "The general head is Christ, as Paul said: The husband is the head of the wife, as also Christ is the head of Church, himself the Saviour of the body (Eph. 5/23), and we should not abandon the salvation who is Christ"[16]. To the argument that "Christ is the head in heaven, whereas Peter on earth", he replies that "One is the heavenly and earthly Church"[17] and for demonstration quotes

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[11] The documents of Vatican II, edited by W. M. *Abbott* and J. *Galagter*, New York 1966, Decree on Ecumenism, pp. 357–61.

[12] The concise Oxford Dictionary of current English, Oxford, reprint 1959, p. 379.

[13] *Agathangelos*, The Teaching of St. Gregory (an early Armenian catechism), translated by R. W. *Thomson*, Cambridge, Mass. 1970, par. 489 (p. 112).

[14] E. W. *Brooks*, The sixth book of the select letters of Severus Patriarch of Antiochia, London 1903, vol. II, part I, p. 184; *de Vries*, Der Kirchenbegriff, op. cit. (8), p. 7.

[15] E. W. *Brooks*, Vita Johannis Episcopi Tellae auctore Elia (CSCOSS, series III, vol. XXV), Paris 1907, p. 53; *de Vries*, ibid..

[16] *Mchithar of Skevra*, Replies concerning the equality in honour of the twelve Apostles (Arm.) Jerusalem 1860, p. 26; cf. p. 25 (Eph. 1/22–23).

[17] Ibid., pp. 26–27.

Col. 1/16, 18. This passage of Colossians had been utilized also by Nerses Shnorhali/Graceful (1166–1173) in his letter[18] addressed to the Patriarch Michael of Constantinople. According to ancient Armenian writers Christ empowered all the Apostles equally to preach the Gospel to the whole world[19], to heal the sick, to become trumpets of the Truth, Peace and Love and "to inform everyone of the worship of God and remove errors, to confirm all races in believing the commands of the Creater"[20]. Agathangelos speaking of Disciples, together with the twelve counts also the seventy-two, but he regards the chief of the 'cross-bearing' (Gr. *Stavrophoros*) Apostles Peter and Andrew, James and John, Philipp and Bartholomew, Thomas and Matthew, James and Simon, Thaddaeus and Barsabbas, Matathias and James, Marc and Luke, Paul and Barnabas[21]. Some others mention Peter as 'the first of Apostles' in a simple manner. For instance, the Historian Elishe (Vth c.) calls him "the head of Apostles" and emphasizes that *on his faith* Christ built the Church[22]. As the Apostles were equal in position and rights, likewise the sees founded by the Apostles were truly equal in honour and authority. According to an old tradition, the first enlighteners of Armenia were Thaddaeus and Bartholomew. The historian Faustos of Byzantium (IV. Vth c.) repeatedly names the Catholicate of Armenia as "the See of Thaddaeus"[23]. The heads of the Ancient Oriental Apostolic Churches present the highest executive power in their Churches and in administrative and disciplinary matters they enjoy great freedom and authority. Up to 451, the Ecumenical Councils were the highest authoritative synods and tribunals which decided the fundamental Christian doctrines and the essential canons. In 1179 the Catholicos Gregor the Young (1173–1193) in a letter replying to the Emperor Manuel Comnenus of Byzantinum, exposes and magnifies the Ecumenical Synods of the Holy and Catholic Church as combating assemblies against various heresies, speaks about the first three councils of Nicaea (325), Constantinople (381) and Ephesus (431), and mentions the particular Synods of Ancyra (314), Neo Caesarea (c. 315), Gangra (c. 340), Laodicea (380?) and Sardica (343–344) which also refuted heresies and promulgated useful disciplinary regulations[24].

In 325, the Ecumenical Council of Nicaea recognized the preeminence of the Apostolic Sees of Rome, Antioch and Alexandria in connection with their adjecent regions or provinces. In 381, the Synod of Constantinople restated the canons and decisions of Nicaea and in the order of priorities added the See of Constantinople:

"3. Que l'évêque de Constantinople est le second après celui de Rome.

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[18] N. *Shnorhali*, Encyclicals (General letters in Armenian), Jerusalem 1871, p. 164.

[19] *Agathangelos*, op. cit. (13), par. 468, 612–13,615, 633–34, 641, 685–99; *Stephanos of Siwniq* (VIIIth c.), Commentary on the Four Gospels (Arm.), Antelias, n.d., pp. 46, 48, 99, 101 etc.; *Shnorhali*, op. cit. (18), pp. 119, 162, and *Mchithar of Skevra*, op. cit. (16), pp. 3, 5, 37, 46, 47, 61–62 etc.

[20] *Agathangelos*, op. cit. (13), par. 685, p. 172.

[21] Ibid., par. 686, p. 172.

[22] *Elishe*, The Literary Works (Arm.), Venice 1859, pp. 329–30, 348.

[23] *Phaustos Byzandatsi* (Faustos of Byzantium), History of the Armenians (Arm.), Venice 1889, pp. 5, 30, 41, 72.

[24] *Shnorhali*, op. cit. (18), pp. 182–84.

Cependant l'évêque de Constantinople aura la préséance d'honneur après l'évêque de Rome, puisque cette ville est la nouvelle Rome"[25].

At the Council of Chalcedon "la préséance d'honneur" or the primacy of honour of the Patriarchal See of Constantinople was further stressed and stretched over the dioceses of Pontus, Asia (Minor!) and Thrace (can. 28). In a sentence not very clear, it was acknowledged that although Constantinople being second after the See of Rome, would enjoy the same supremacy and previleges:

"Les pères en effet ont accordé avec raison au siège de l'ancienne Rome la préséance, parce que cette ville était la ville impériale; mûs par ce même motif les cent cinquante évêques aimés de Dieu ont accordé la même préséance au très saint siège de la nouvelle Rome, pensant que la ville honorée de la présence de l'empereur et du sénat et jouissant des mêmes privilèges civils que Rome, l'ancienne ville impériale, devait aussi avoir le même rang supérieur qu'elle dans les affairs d'Eglise, tout en étant le second après elle" etc.[26]

The equality of primacy of the See of Constantinople was not recognized immediatly by Rome. In May 452, Pope Leo the Great declared: "In irritum mittimus et per auctoritatem B. Petri apostoli, generali prorsus definitione cassamus"[27]. Only in 869/870 at VIIIth Ecumenical Council of the Roman Church, the Legates of Rome reaccepted the primacy in honour of Constantinople in a canon (can. 21) which established the principle of pentarchy in the hierarchy of the Church: "En tout premier lieu le très saint pape de l'ancienne Rome, ensuite le patriarche de Constantinople, puis celui d'Alexandrie et celui d'Antioche et celui de Jerusalem"[28].

The primacy of honour of Rome and Constantinople was never radically rejected and disputed by the Ancient Oriental Churches[29]. In the Liturgy of the Syrian Orthodox Church, St. Peter and St. Paul are proclaimed as the exalted chiefs of the Apostles[30], in the Coptic Mass "St. Peter the saintly martyr and Pontiff" is repeatedly remembered[31], whereas in the Ethiopian Liturgy it is confessed: "To our father Peter were given the keys, and virginity to John, and apostleship to our father Paul, for he was the light of the Church"[32]. Furthermore the Faith of St. Peter on which Christ promised to build his Church, is praised by the Ethiopians: "Like Simon Peter and all thy disciples, like Paul and all thy holy apostles who bore the Gospel

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[25] Fonti, fasc. IX, P. – P. *Joannou*, Discipline générale antique, t. I, i. Les canons des conciles oecuméniques, Rome 1962, pp. 47–48, and Conciliorum Oecumenicorum Decreta, Bologna 1972/1973, p. 32.

[26] *Joannou*, ibid., pp. 90–93, and Conciliorum Oecumenicorum Decreta, pp. 99–100.

[27] Y. *Congar*, Zerrissene Christenheit – wo trennten sich Ost und West? (= Neuf cents ans après-Notes sur le 'Schisme oriental'), Vienna – Munich 1958, p. 68.

[28] "Praecipue quidem sanctissimum papam senioris Romae, deinceps autem Constantinopoleos patriarcham, deinde vero Alexandriae, ac Antiochiae, atque Hierosolymorum." *Joannou*, op. cit. (25), pp. 331, and Conciliorum Oecumenicorum Decreta, p. 182. A short discussion of can. 28 of Chalcedon can be found in the study of *Congar*, op. cit. (27), pp. 66–70, and further bibliography ibid., pp. 141–44.

[29] *De Vries*, Der Kirchenbegriff, op. cit. (8), pp. 19–20.

[30] Anaphora – the divine Liturgy of St. James, op. cit. (5), p. 45.

[31] The Coptic Liturgy, Cairo 1963, pp. 67 and 99.

[32] The Liturgy of the Ethiopian Church, translated by M. Daoud and revised by M. Hazem, Cairo 1959, p. 49 (see also 70, 132 etc.).

through that which they suffered and sustained the preaching of thy doctrine in their death"[33]. Disregarding the remarks of some Syrian authors[34], in general the Ancient Oriental Churches at no time claim(ed) that they were or are the only apostolic orthodox Church. They consider themselves as orthodox (*rechtgläubig*) members of the Universal Church without excluding or excommunating other Churches, and continue eucharistic communion among themselves mainly on the ground of the same fundamental doctrines. The anathemas read upon hereticals and schismatics, including venerated fathers of the Roman and Byzantine Churches, such as Pope Leo the Great or Patriarch Flavian of Constantinople, should be understood in the context of historical struggles. In spite of controversies the universal Church as a spiritual and godly Foundation, has always retained her unity. What concerns the tragic divisions, these should be regarded wounds on the structural body of the Church which were affected by historico-political and psychological factors and which can be healed in course of time, through dialogue of love and on the base of equality and brotherhood[35].

4. Central Authority and Conciliarity

According to the theory and conviction of the Ancient Oriental Churches, the highest authority of the Universal Church was/is present and in action at ecumenical councils. The central authority of part(*Teil*)icular Churches lies in the hands of the local Synod. Traditionally the patriarch or catholicos is the head and leader of a Church, possesses great authority, specially in administrative and disciplinary matters, presides over the synod and carries out the decisions made by the general synod or by the conference of bishops. The forms of election of patriarchs in each Church have varied, but in any case fundamentally besides the bishops also representatives of the respective nations or communities participate. In the Coptic Orthodox Church: "In theory, the whole nation participates. In practice, three candidates are chosen by the joint delibrations of the members of the Holy Synod, the Community Council and the Coptic archons or leading personalities"[36]. The final selection is made by lot. In the Syrian Orthodox Church: "The patriarch is elected by the Synod including the maphrian and all the bishops in consultation with the leaders of the Jacobite people"[37]. In Armenia also together with the bishops the royal house and/or the rulers of principalities have jointly elected the head of the Church. Since XVth century with or instead of the nobles, also representatives of the people in general

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[33] Ibid., p. 124.

[34] *De Vries,* Der Kirchenbegriff, op. cit. (8): "Manchmal scheint sogar die Gesamtkirche einfach mit der jakobitischen Kirche von Antiochien gleichgesetzt zu werden. Im Ritus der Patriarchenweihe heißt es, zur Wahl des Patriarchen sollten, wenn möglich, 'alle Bischöfe der Kirche Gottes auf dem ganzen Erdkreis' zusammenkommen. Der Patriarch wird 'der allgemeine Vater der ganzen Kirche' genannt" etc. (p. 91ff.).

[35] Cf. *de Vries,*ibid., pp. 95–96.

[36] A. S. *Atiya,* A History of Eastern Christianity, London 1968 p. 123.

[37] Ibid., p. 219.

have participated in the election of the catholicoi. A regular procedure for the election of the leaders of the Church, – bishops, patriarchs and catholicoi, in a real democratic form was crystalized and established only in XIXth century. In March–April 1836 in the Eastern Armenia the Tzarist government issued an ecclesiastical regulation, called *Položenije*, for the Catholicate of St. Etchmiadzin. According to this Constitution, although the traditional privileges of the head of the Armenian Church were recognized, but the part of laity in elections and administrative matters was reduced to the minimum. A General Assembly composed of eight members of the catholical Synod, seven eldest members of the monastery, six diocesan bishops and six lay delegates coming from the dioceses, was qualified to carry out the election of the catholicos. By the first ballot four candidates would be chosen and by a second vote would remain only two; then the Tzar himself would confirm one of the candidates as supreme patriarch of Etchmiadzin. This interference of the Tzar in the electoral process somewhat limited the autocephaly of the Armenian Church. During the years 1860–1863 in Turkey, under the dominion of the Ottoman Empire, the Armenian Patriarchate of Constantinople established a 'National Constitution', which under the pressure of the intellectual and labour class limited the absolute authority of the patriarch and notables and contrary to the determinations of *Položenije*, gave an exaggerated say to the people in the administration of their community life[38]. In second-half of XIXth century the Copts also were vigorously devoted to drawing up a community regulation just like that of the Armenians, but they had to strive hard in order to enforce and make it generally accepted by the clergy[39].

Naturally the existence of a central authority in connection with the teaching office of the Churches is more important. In the tradition of the Ancient Oriental Churches this office also is not assigned solely and entirely to the bishop(s) or the patriarch, but rather to the whole community. Of course one could argue that the term 'community' is general and vague, yet it designates not only the believers, but also the teachers of the Faith. Theoretically a synod, general or episcopal, could take decisions concerning the interpretation of the Faith of a given Church, but in practice this has not been done, because the traditional apostolic doctrines (*paradosis*) have been considerd fixed and unchangeable. In fact the patriarch/catholicos and bishops are the guardians and not exclusive possessors of *Paradosis*. For any doctrinal new decision would be necessary the convocation of an Ecumenical Council, at least a joint Conference of five Ancient Oriental autocephalous Churches.

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[38] Concerning authority and conciliarity in the Armenian Church see: M. K. *Krikorian*, The Development of Primacy of the Head of the Armenian Church in the Documentation of IVth Ecumenical Consultation between Theologians of the Oriental Orthodox Churches and the Roman Catholic Church, Sept. 11–17/1978, and Die Rechtslage der Armenischen Kirche heute, in: Kanon III, Vienna 1974, pp. 199–213; T. *Nersoyan*, Laity in the administration of the Armenian Church, in: Kanon III, pp. 96–119.

[39] A. A. *Bestawros*, The Organization and History of the Patriarchal/Laical Councils in the Coptic Orthodox Church of Egypt, in: Kanon III, pp. 39–50.

5. *Eucharistic Communion*

The common bond of Ancient Oriental Orthodox Churches is their Faith. Not so much their liturgical and canonical customs, but rather their doctrinal position, gathers and unites them on the foundation of the first three Ecumenical Councils and on the theological heritage of the early fathers of the Universal Church. This unity is a free and natural *communion* and does not involve for the member-Churches any jurisdictional dependence. It is more a fellowship arising out of Christian love which finds its expression in the eucharistic communion, the decisive ' external sign' of unity. Inside the Church, the members are expected to confess and retain the Faith of their ancestors; any step or heresy out of the right way can be examined and rejected and even in serious cases condemned by the conference of bishops or by a special ecclesiastical tribunal under the presidency of the patriarch/catholicos. The conclusion of Wilhelm de Vries concerning the membership of ancient oriental Christians within their Church should be understood in this sense: "Die Communio ist ein sakramental-juridisches Band. Die Zugehörigkeit zur Communio hängt von der kirchlichen Autorität ab. Das entscheidende Zeichen der Gemeinschaft ist die eucharistische Feier. Grundlegende Vorbedingung für das Bestehen der Communio ist der rechte Glaube. Häretiker stehen außerhalb der kirchlichen Gemeinschaft. Das Kriterium für den rechten Glauben und damit auch für die echte Communio ist die allgemeine Übereinstimmung der Bischöfe und der Gläubigen und die Lehre der Väter"[40].

It is worthy to note that as distinguished from the Eastern Byzantine Churches, the non-Chalcedonians in the field of ritual and canon law have cultivated varying traditions which sometimes contradict one another. For instance, the Armenians celebrate Christmas and Epiphany always on the 6th of January according to the old practice of eastern Christians, whereas Syrians and others, like the Western, celebrate the feast of Christmas on the 25th December and the Epiphany on the 6th January; the Armenians use unleavened bread and unmixed wine for the eucharist, whereas Syrians and others prepare leavened bread and mix water in the wine etc. Such local customs in the past have irritated some of our Syrian brothers, who have felt it necessary to write polemic treatises against the Armenian Church, as the Patriarch John Bar Shushan († 1073)[41] and Bishops Dionysios Bar Salibi († 1173)[42].

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[40] *De Vries*, Der Kirchenbegriff, op. cit. (8), p. 89.

[41] F. *Nau*, Lettre du patriarche jacobite Jean X. (1063–1073) au catholique arménien Grégoire II. (1064–1105), in: Revue de l'Orient Chrétien, XVIII (1912), pp. 145–98; O. *Lichti*, Das Sendschreiben des Patriarchen Barschuschan an den Katholikos der Armenier, in: Journal of the American Oriental Society, 1912, pp. 268–334; A. *Vardanian*, The Letter of Juhanna X. Bar-Shushan addressed to the Catholicos of the Armenians (Armenian translation from the Syriac), Vienna 1923.

[42] A. *Mingana*, The Work of Dionysius Barsalibi against the Armenians, Woodbrooke Studies: Christian documents in Syriac, Arabic and Garshūni, edited and translated, vol. IV, Cambridge 1931; P. *Essabalian*, The Treatise of Dionysius Barsalibi against the Armenians (Armenian translation from the Syriac), Vienna 1938.

The Armenians have shown more tolerance for differences in ritual practices. The Coadjutor-catholicos Georg III of Lori (1067–1072) in his reply[43] assured the Syrians that he and his Church "respect and accept the orthodox (*rechtgläubig*) confession of the Holy Trinity and the indefectible and complete tradition of their saintly fathers and teachers" and spoke of love and the fulfilment of the will of God[44]. In doctrinal questions, however, the Armenians were hard; they criticized and condemned those followers of Patriarch Severus of Antiochia and of Julian of Halicarnassus (V–VIth century) who were disputing about the corruptibility or incorruptibility of the body of Jesus Christ[45]. In 726 at the Synod of Malazgirt (Manzikert), Syrians and Armenians settled their theological controversies[46].

The relations of Syrian and Indian Malankara/Malabar Churches from XVIIth century on were very close and inter-dependent. In similar intimacy were the relations of the Coptic and Ethiopian Churches. After the establishment of the Armenian Patriarchate in Jerusalem in 1311, the multilateral relations of the Ancient Oriental Churches became closer on a local level. In XVI–XVIIth centuries when numerous Armenian colonies were settled and organized in India, the friendship between the two Churches was put on a more solid foundation. From XVIth century on the Armenians have cultivated amicable relations also with the Ethiopian Church[47]. The origin of the Armenian 'Patriarchate' in Egypt goes back as early as about 1070 when Gregor was ordained metropolitan bishop by his uncle the Catholicos Gregor II. Martyrophile (1066–1105). In the political sphere Armenians rendered notable services to Egypt; it is worthy to mention the names of two grand viziers, Badr al-Gamali under Mustansir and Tagaddaula Bahram under Hafiz[48]. An initiative for co-operation among the Oriental Orthodox Churches, based on a new ecumenical consciousness of common traditions, was made in 1965 at Addis Abeba under the patronage of Emperor Haile Selassie.

6. The autocephalous Churches of Transcaucasia

The Churches of Transcaucasia present a model of autocephaly which can be considered the nearest form to that of the Eastern Orthodox Churches. In IVth century the great Enlightener of Armenia, Gregor the Parthian, evangelized also the two other nations of Caucasia, namely the Georgian

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[43] Book of Letters (a collection of theological letters in classical Armenian), Tiflis 1901, pp. 335–57.

[44] Ibid., p. 335.

[45] M. K. *Krikorian*, Christology in the Liturgical Tradition of the Armenian Church, in: The Greek Orthodox Theological Review, vol. XIII no. 2, Brookline, Mass. 1968, pp. 215–17.

[46] Generally about the Syrian-Armenian ecclesiastical relations see E. *Ter-Minassian*, Die armenische Kirche in ihren Beziehungen zu den syrischen Kirchen, Leipzig 1904 (the Armenian translation, Etchmiadzin 1908).

[47] R. *Pankhurst*, The History of Ethiopian-Armenian Relations, in: Revue des Études Arméniennes (new series), XII, Paris 1977, pp. 273–345 and the following issues.

[48] R. *Strothmann*, Die Koptische Kirche in der Neuzeit, Tübingen 1930 (Reprint: Nendeln/Liechtenstein 1966), p. 63.

(Iberians) and the Albanian. In Vth century Mesrop Mashtots, after inventing the Armenian alphabet (406), travelled into Georgia and Albania and fashioned proper alphabets also for them. The three countries were bound together through political, ecclesiastical and cultural relations and in critical moments they came to the assistance of each other. However, as the general influence of Byzantium grew in Georgia, the bonds of friendship which united the local Church with Armenia, became loose and were finally broken officially in 608. The Catholicos Abraham of Aghbathan repeatedly invited the Georgian Patriarch Kyrion to continue the Communion, but he was rebuffed. Fortunately the correspondence between the leaders of the two Churches on the unfortunate separation has been kept in the *Book of Letters*, and we can precisely reconstruct the thoughts and arguments of the two parties. The most remarkable and important point is that although the Church of Armenia enjoyed a priority in honour and missionary service, there is no claim of primacy on the part of Armenians in the letters which were written by the locum tenens Vardapet Vrthanes and by the Catholicos Abraham of Aghbathan. It is repeatedly stressed that St. Gregor is the Father and Enlightener of the whole of Caucasia[49] and the Armenian and Georgian Churches are tied in "spiritual communion"[50]. Both accept and venerate the first three Ecumenical Councils[51] and they refuse and condemn equally Nestorius, Eutyches and the decisions of Chalcedon[52]. Moreover, the Armenians express their readiness, if necessary, to travel to Georgia and to explain the nature of the disputations and to clear up the misunderstandings. It may be of interest to give here the gist of the arguments of the Georgians. For the first time in such a controversy the Patriarch Kyrion cites the five Apostolic Sees of the Pentarchy and adds that he and his Church are loyal to the Faith of those centres: "The pope of Rome sits on the See of St. Peter, the Alexandrian patriarch on the See of the evangelist St. Marc, the Antiochian on the See of the evangelist St. Luke, the patriarch of Constantinople on the See of the evangelist St. John, and that of Jerusalem on the See of St. James – Brother of the Lord. Our fathers have transferred their faith to us and we have retained it up to this time. How can we now abandon it and follow you?" Secondly, Kyrion indicates that "many bishops, princes and kings on whole the world" are orthodox, and asks: "How can we leave all those and agree with you?"[53] The third argument of the Georgian Patriarch is a statement, in which he asserts that in his days God consolidated more than ever their faith, made their Church flourish and his Church found more favour in the eyes of the Emperor than his predecessors[54]. Undoubtedly this kind of reasoning was the fruit of Byzantine influence, for up to that time the theory of Pentarchy had never gained any ground in Transcaucasia. Curiously enough Abraham totally ignores the main arguments of Kyrion and does not regard it worthy of demonstration that the Churches of Antiochia and Alexandria were

[49] Book of Letters, pp. 112, 113, 132, 138, 169, 171 etc.
[50] Ibid., 164, 169, 176, 178, 180, 194 etc.
[51] Ibid., 122, 126, 138, 144, 181, 191 etc.
[52] Ibid., 115, 119–27, 130, 138, 141–42, 164–65, 177, 182–83, 192–93.
[53] Ibid., 179.
[54] Ibid.

anti-Chalcedonian and even Byzantium was vascilating between the monergic/monothelite doctrine and the Christology of Chalcedon. After long discussions, when the catholicos was convinced that it was useless to continue the correspondence, he recommended to his followers in Georgia and Armenia not to communicate any more with the adherents of Kyrion, and not to take communion in their Churches[55]. Thus at the beginning of the VIIth century the ecclesiastical unity of Transcaucasia was broken, through the efforts of Byzantine Greeks. In the XIVth century, as a result of Seljuk and Mongol-Tartar invasions, the Albanians lost rapidly their political strength and national vitality. Many of them were persecuted or massacred and others driven out of their country. From XIVth century on they continued to live as a religious and cultural community. The autonomous Church of Albania existed nominally under the patronage of Etchmiadzin. The Albanian Catholicate included also the Armenian province of Artsakh (later Khatchen/Qarabagh). In 1815 when the Albanians were almost assimilated in greater part among the Turks and in lesser part among the Armenians, the Russian Tzarist Government closed down the Patriarchate and organized two or three dioceses under the jurisdiction of Etchmiadzin[56]. In any case it has to be stressed that the pre-eminence of the Armenian catholicos in Caucasia was one of assistance and service, leadership and guidance, and not of domination.

7. The Patriarchates of Jerusalem and Constantinople and the Catholicate of Cilicia

Another domain which mirrors inter-church relations of autocephaly is the hierarchical structure of the Armenian Church herself. The head of the 'autocephalous' Church, the catholicos of Holy Etchmiadzin enjoys a priority within his own hierarchical centers. The Armenian patriarchates of Jerusalem, Constantinople and Cilicia can be described as 'autonomous' in their position regarding the Mother See. The Armenian patriarchate of Jerusalem[57] was officially established in 1311. In Cilicia, after the removal of the Catholicate of All Armenians from Sis to Etchmiadzin (1441), a local catholicate was spontaneously created and sanctified by the historico-political circumstances[58]. In 1461 Bishop Hovakim/Yoachim of Bursa was installed in Istanbul by the Sultan Mehmed Fatih as Patriarch of all Armenians in the Ottoman Empire[59]. From the viewpoint of jurisdiction

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[55] Ibid., 194.

[56] A short historical survey of the Church of Albania can be found in the Armenian Soviet Encyclopaedia (Arm.), Erevan I 1974, pp. 262–63. For details see M. *Dasxuranci* (Daskhurantsi), The history of the Caucasian Albanians, translated from the Armenian by C. J. F. Dowsett, London-Oxford 1961, and Malachia Ormanian's History of the Armanian Nation (Arm.) vols. I and II, Istanbul 1912–1914, vol. III, Jerusalem 1927.

[57] A. *Ter-Yovhannesians*, Chronological History of Jerusalem (Arm.), two volumes, Jerusalem 1890, and Ormanian's History, vols. II and III.

[58] *B. Güleserian*, History of the Catholicoi of Cilicia (Arm.), Antelias/Beirut 1939.

[59] H. *Berberian*, Materials concerning the History of the Armenians of Constantinople (Arm.), Vienna 1965, insists that the Armenian Patriarchate of Constantinople was established about the middle of XVIth century, however, his arguemts are not so strong as to remove or refute the traditional date (1461).

and administration, the Patriarchate of Cilicia enjoys complete autonomy, but in important matters of theology, moral and discipline concerning whole the Armenian Church, naturally the Catholicate of Holy Etchmiadzin is entitled only to take decisions together with all other bishops of the Church. Since 1441 this is the official or silent understanding, but from time to time, specially after 1870 (in the days of Meguerditch Kefsizian, 1871–1894 in Sis, and Zareh Payaslian, 1956–1963 in Antelias) misunderstandings and disagreements have produced serious crises. The patriarchates of Jerusalem and Constantinople, as well as the Catholicate of Cilicia by no means limit or disturb the hierarchy of the Armenian Church, on the contrary they rather strengthen and expand the pre-eminence of the Catholicos of Etchmiadzin who is the one and supreme head of the Church. Disregarding the sporadic claims of Sis which always had more political motivation than any other reason, the authority and primacy of the 'Supreme Patriarch and Catholicos of all Armenians' are recognized and respected by all members and servants of the Church: the patriarchates of Jerusalem and Constantinople always send their candidates to Etchmiadzin to be ordained bishop and they regularly get the blessed myron from the Mother See. Babgen Güleserian, an acknowledged scholar and co-adjutor of catholicos Sahak Khabayan, states about the hierarchy of the Armenian Church as follows:

> "The first personality of the ecclesiastical hierarchy and supreme head of the Church is the patriarch of Etchmiadzin, the catholicos of all Armenians. The patriarch of Etchmiadzin shares the highest jurisdiction of the Church together with the patriarchs of Constantinople and Jerusalem and with the catholicos of Cilicia; the latter effects in no way restriction to the primacy of the See of Holy Etchmiadzin and to the hierarchical unity of the Church. The last three patriarchates are of later origin and were created under the pressure of political and historical conditions in which Armenia and Armenians lived"[60].

Conclusions

1. The theory of autocephaly and autonomy is typically Byzantine Orthodox. This concept can be researched in the Ancient Oriental Orthodox Churches in a relative sense.

2. 'Autocephaly' in the tradition and situation of the non-Chalcedonian Churches marks a Church in administrative, disciplinary and eucharistic life, possesses complete freedom and independence, but in Faith basically is united with other Churches. These are the 'national' Churches of Egypt, Syria, Armenia, Ethiopia and India the *paradosis* of which is formed on the foundation of the first three Ecumenical Councils and early Churchfathers.

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[60] B. *Güleserian*, L'Église arménienne (publication officielle du Catholicossat des Arméniens à Antelias), Antelias/Beirut 1936, p. 37.

3. The Ancient Oriental Orthodox Churches can be described as 'autocephalous' as they stand now, but they do not manifest and exercise an inter-dependence which is a part of the tradition of the Byzantine Orthodox Churches. We find only a regional inter-dependence in the early history of Transcaucasia where the Churches of Armenia, Georgia and Albania were closely related together and where the Armenian Church used to enjoy a primacy of honour without claiming any supremacy in administrative and jurisdictional questions. Unfortunately this form and fact of communio was spoilt at the beginning of VIIth century.

4. The inter-dependence of the Coptic and Ethiopian as well as of the Syrian (Antiochian) and Indian Orthodox Churches in the past, may be considered as a relation of autocephalous and autonomous Churches. Many centuries the Coptic and Syrian Orthodox Churches exercised a sort of primacy until in recent times the autocephaly of the Ethiopian and Indian Churches was recognized.

5. In the final development and chrystalization, all five Oriental Churches have full administrative and jurisdictional independence, are equal in honour and primacy, but they share the same common *paradosis* in fundamental doctrinal matters. In the past their internal relations were rather bilateral in different regions, but since the Conference of Addis Abeba in 1965 they are all together pursuing and achieving general interests and aims.

6. After XIVth century when the Armenian patriarchates of Jerusalem (1311), of Constantinople (1461), and of Cilicia (1441) were established, a new situation of primacy and inter-dependence was created within the Armenian Church. In fact, Jerusalem and Constantinople are 'autonomous' patriarchates vis-a-vis the pre-eminence and authority of the Catholicate of St. Etchmiadzin. The Catholicate of Cilicia in Antelias near Beirut mirrors an 'autocephaly' which almost exactly corresponds to the Byzantine model. In administration and jurisdiction this 'autocephalous' see exercises its own independence, but in important spiritual and doctrinal matters it is bound to a dependence within the frame of the hierarchy of the Armenian Church.

AUTONOMY AND AUTOCEPHALY IN THE DOCTRINE OF THE ANCIENT ORIENTAL CHURCHES

† GEEVARGHESE MAR OSTATHIOS

Kottayam

The voice of Orthodoxy has become louder in the World Council of Churches since the New Delhi Assembly in 1961 and the West has learned to listen to the Oriental Orthodox Churches* since the Pro Oriente Foundation of Vienna has graciously arranged four unofficial consultations between the theologians of those Churches and those of the Roman Catholic Church from 1971 onwards, consultations in which this writer also had the privilege to participate in his own humble way. I am glad that my colleagues Metropolitan Paulos Mar Gregorios and Dr. V. C. Samuel, the author of *Chalcedon Re-examined*[1], have been able, no doubt with God's help, to see Oriental Orthodoxy in its true colours, without the age-old prejudices that had unwittingly obscured the vision of not only the West, but also of Byzantine Orthodoxy about the Pre-Chalcedonian or Oriental Orthodox Churches, namely the Coptic, Syrian, Armenian, Ethiopian and Indian Churches.

Oriental Orthodoxy has a unique role to play in today's and tomorrow's ecumenical dialogue as the custodian of the faith of the undivided Church of the first four centuries. God, in His Providence, has preserved these Churches amidst unparalleled persecutions from other Churches and the Arab conquerors, so that they can play their part in this great century of ecumenism. Among the many topics in which they can contribute something substantial and beneficial to the discussions, autonomy and autocephaly are among the major ones.

What are the sources from which Oriental Orthodox Churches can draw their doctrine on any given subject? Their primary source, of course, is the Bible and Tradition, i.e. the traditions enumerated by St. Basil in his famous *De Spiritu Sancto*, section 66[2], or the traditions of the undivided Church. The secondary sources would be the Fathers of the undivided Church like St. Athanasius, St. Cyril of Alexandria and the Cappadocian Fathers. Then, there are our own theologians who have attacked the Nestorian heresy, like St. Severus of Antioch and other theologians down to the present day.

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* Editor's note: The readers should be aware that the author uses the phrase 'Oriental Orthodoxy' or other forms of it to mean the Pre-Chalcedonian Churches, i.e. the Coptic, Syrian, Armenian, Ethiopian and Indian Churches.

[1] Madras: Christian Literature Society.

[2] The book of St. Basil the Great, bishop of Caesarea in Cappadocia, on the Holy Spirit, written to Amphilochius, Bishop of Iconium, against the Pneumatomachi. A rev. text with notes and introd. by C. F. H. *Johnston*. Oxford: Clarendon Prss, 1892, sect. 66, p. 127–132.

These two terms are complementary. The *Oxford Dictionary of the Christian Church* speaks of the word autocephlous as

> "A term used the early Church to describe bishops who were under no superior authority and thus independent both of Patriarch and Metropolitan . . . In another sense, the word was used of Eastern bishops who were directly dependent on the Patriarch without intermediate reference to a Metropolitan, as well as of priests belonging to Patriarchal dioceses. Its principal later and current use, however, is for the modern national Churches that make up the Eastern Orthodox Church which, though normally in communion with Constantinople, are governed by their own national synods"[3].

To quote J. Meyendorff:

> "The Orthodox Church is at present a decentralized organization, based partly on centuries-old traditions going back to the ancient patriarchates and partly on more modern conditions. It consists of a number of local or national churches, all enjoying an "autocephalous" status, that is to say, possessing the right to choose their own heads, the bishops (Greek *auto-*, "self", kephale, "head"). Some of these churches are contained within the boundaries of one state and are, in effect, national churches. Others, especially in the Near East, possess more traditional boundaries and include faithful belonging to several nationalities. Canonically speaking, the boundaries of all the local churches are not national but territorial in nature, and correspond to former metropolitan provinces; that is, they form groups of dioceses whose bishops meet regulary in synod and elect their own primate, who bears the title of patriarch, archbishop or metropolitan. Bound together by observance of a common canonical tradition, these churches give expression to their communion of faith by holding general councils from time to time, as the need arises"[4].

In the Oriental Orthodox Churches, the primate is called Pope in the Coptic Church, Catholicos in the Armenian and Indian Churches, and Patriarch in the Syrian and Ethiopian Churches. Unlike the Pope in the Roman Catholic Church, these primates are not above their synods and they have no veto power over the decisions of the synods that they preside. Hence it is more correct to say that they are governed by their national synods rather than being their supreme heads. The doctrine of the Oriental Orthodox Churches is that Jesus Christ is the only Absolute, Supreme, Infallible, Permanent and Universal Head of the Church and that so-called heads like the Pope, the Patriarch of the Catholicos are like the vertebrae in the Body, through which the Holy Spirit, like the spinal chord in a human body, functions in the Body of the Church, connecting the same to the only Head, her Lord. As St. Peter had no greater role in the college of the apostles than that of first among equals (*primus inter pares*), the Pope, Ca-

[3] London: Oxford University Press, 1958, p. 112, ad v^{0} Autocephalous.

[4] The Orthodox Church: its past and its role in the world today, New York: Pantheon Books, 1968, c 1962, p. 143.

tholicos or Patriarch is only first among the equals in the Holy Synod, and the Ecumenical Patriarch is *primus inter pares* among the national heads. Autonomy and autocephaly are meaningful only when the eternal criterion laid by the Jerusalem Council: "It is the decision of the Holy Spirit, and our decision" (Ac 15, 29)[5], is applicable. See also Ac 15,25: ". . . we have resolved unanimously".

Autonomy is not for the head of the national Church, but for the whole Church represented in the Holy Synod, guided by the Holy Spirit. If the Pope or the Patriarch is above the Church and the Synod, the Church and the Synod would not be autonomous and free. This point is now being agreed to by eminent theologians of the Roman Catholic Church also, as already published in the second Communiqué of the theologians of the Roman Catholic and Oriental Orthodox Churches who met in Vienna, Sept. 3–9, 1973, which asserted among other things:

> "As regards the relation between the ministry of St. Peter and the Ecumenical Council, as the Roman Catholics understand it, we have not reached a consensus on it though the principle of collegiality emphasized by the Second Vatican Council is appreciated as a move in the right direction according to which the role of the bishop of Rome is seen *within the Council and not above it*" (italics mine)[6].

II. The local Church and the universal Church in the New Testament

As the Church is the Body of Christ[7], where the Head is, the body is also present. The local Church was established in Jerusalem, but though a local Church, was One, Holy, Catholic and Apostolic. The Church in Ephesus was not a part of a universal Church, but "holds within it the fullness of Him who Himself receives the entire fullness of God" (Eph 1, 23). The Church that was in Jerusalem, or Antioch, or Ephesus, was not part of a Church, but the whole Church with the angels and the archangels and the "assembly of the first-born citizens of heaven, and . . . the spirits of good men made perfect, and Jesus the mediator of a new covenant" (Heb 12, 22–24). In his paper on the local Church, Metropolitan Paulos Mar Gregorios quotes the New Testament exhaustively and comes to the following conclusion:

> "In this wise *a local church is formed in Jerusalem. Meanwhile this local church is the Church of Christ universal without any real discrimination between what is local and what is universal. For the Church of Christ in Jerusalem is the Church of Christ universal. It has all the qualities, merits and characteristics of the Church of Christ as a celestial embassy on earth representing the kingdom of Heaven on earth to propagate the message*

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[5] All the quotes in English from the New Testament are taken from The New English Bible: New Testament, Oxford: Oxford University Press, Cambridge: Cambridge University Press, 1961.

[6] In: Wort und Wahrheit, Supplementary issue number 2, Vienna 1974, p. 176, par. no. 6.

[7] Ro 12, 4; 1 Co 12, 12ss; Eph 1, 23; 2, 16; Col 1, 18, 14, etc. Other New Testament analogies of the Church like the Bride, the Building, the Flock also substantiate the mystical unity that exists between the Church and her Saviour and Lord.

of Christ to all mankind . . . The local Church represents the doctrine of Christ and His moral tenets, the same as the Church universal" (italics in the original)[8].

The New Testament ecclesiology includes the universal Church which is the body of Christ, the local churches which are local manifestations of the same Church and the provincial Churches like the Churches of Judaea or "the seven churches in the province of Asia" (Rev 1, 4). All these Churches were one body and one spirit, with one hope, one Lord, one faith, one baptism and one God and Father of all (cf. Eph 4, 4–6). World confessionalism with parallel world Churches with different doctrines and different heads in the same place is the manifestation of the Babylonian captivity of the Church in this fallen world and not the will of Christ which He expressed in His prayer in Joh 17, 22–23. The profundity of this prayer: "that they may be one, as we are one", can be seen only in the light of the unity and collegiality of the Trinity as the model of both the Church and of the hierarchy within the Church, which I shall treat separately. We must also note that there is no trace of any pyramidal structure of the Church or her ministry in the New Testament. St. Peter was not made the head of the college of the apostles as some of the Roman Catholic brethren still claim. St. Peter himself exhorted the elders only "as a fellow-elder" (1 Pe 5, 1). St. Paul had no hesitation to oppose St. Peter on a crucial issue: "But when Cephas came to Antioch, I opposed him to his face, because he was clearly in the wrong" (Ga 2, 11). James, Cephas and John are called "reputed pillars of our society [i.e. the Church in Jerusalem]" (Ga 2, 9). In the Council of Jerusalem in Ac 15, we do not see St. Peter as the presiding officer. It was St. James who gave the decisive judgement saying: "My judgment therefore is that we should impose no irksome restrictions on those of the Gentiles who are turning to God" (Ac 15, 19–20). The whole witness of the New Testament is that Jesus Christ is the one foundation of the Church and that the twelve apostles were the first twelve stones laid on the Eternal Rock of Christ and that the keys of the kingdom are given to all the twelve apostles and not to St. Peter alone[9]. Feeding the lambs and sheep and tending the sheep of the Lord are the responsabilities entrusted to all the apostles up to the present and until the return of the Chief Shepherd as St. Peter himself understood it and exhorted his fellow-elders (1 Pe 5, 2–4). The controversial passage in Mt 16, 18–20 must be interpreted in the light of similar passages in Mt 18, 18 and Joh 20, 23, where the authority of binding and loosing is given to all the apostles. It was as a representative of the apostles that St. Peter made the epoch-making confession at Caesarea Philippi and our Lord Himself made it clear then and there that it was His Father who revealed it to Him. St. Paul is speaking in the same vein when he writes in 1 Co 12, 3 that "no one can say 'Jesus is Lord' except under the influence of the Holy Spirit". We do not see any instance in the New Testament where St. Peter acts as the head of a pyramidal hierarchy as the present Popes do by vetoing the decisions of the Councils or by proclaiming infallible dogmas *ex cathedra*! I am touch-

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[8] The Church of Christ as a local Church, in: Wort und Wahrheit, Supplementary issue number 3, Vienna 1976, p. 38.

[9] See Eph 2, 20; 1 Pe 2, 4–6; Ps 118, 22; Mt 21, 42; Mk 12, 10; Ac 4, 11ss; etc.

ing on this point briefly as autonomy and autocephaly cannot exist side by side with a pyramidal hierarchy like that of the Roman Catholic Church before the Second Vatican Council. That Church, by God's providential will, has started to reinterpret its pyramidal structure in the light of collegiality.

III. The Holy Trinity, the only valid model

The present writer has made a feeble attempt in his book *Theology of a classless Society*[10] to present the doctrine of the Holy Trinity as the basis of the hierarchy in the Church as well as of the theology of a classless society. I have dared to compare the Holy Trinity to a nuclear family with coequality, coeternity and coessentiality in the unity and plurality of the one God.

It is possible to speak of the Eternal Father only if we can speak of an Eternal Son and of an Eternal Mother (the Holy Spirit). The prayer of our Lord in Joh 17, 22–23 was for the growth of the Church as a nuclear family approximating the Blessed Trinity wherein the distinctions do not nullify the unity and equality. It has been a pleasure for me to read Wolfgang Beinert, the famous Roman Catholic theologian, writing as follows:

> "Church is 'the people united by the unity of the Father and the Son and the Holy Ghost.' The tension and complexity of unity and plurality is thus implanted in it. It lives by the dint of the *one* God, who exists in *three* persons. His ways of salvation affect the *one* world, which exists in many faceted differentiation" (italics in the original)[11].

Symbolism is inescapable in theology. God is not male, yet we speak of Him as Father. Similarly, God is not female, and yet we can speak of God as Mother. The Supreme Mind of God is Conation (Father), Cognition (Son) and Affection (Holy Spirit). Trinity is the ontological nature of God as Love, and God is perfection. If God is eternal love in eternal action, He has to be a composite consisting of singularity and plurality. The totality of the Divine Mind includes the unconscious mind of the Father, Whom no one has ever seen, the conscious mind of the Son, Who has revealed the Father and the pre- or subconscious mind of the Holy Spirit, through Whom the Revelation takes place. If God is a monad, He cannot be love in action. In a biad or binitarian God, there can be only the imperfect love which gives and receives without a common sharing. In the Trinitarian God, the 360 degrees of love as giving, receiving and corporate sharing is there, and so, God is Trinity if He is love. There is no greater self-disclosure of God in all history than the one human beings have received through the Incarnation and Pentecost. "You must therefore be all goodness, just as your heavenly Father is all good" (Mt 5, 48), is the ultimate commandment for the Church and her hierarchy. This is an 'impossible possibility' (Reinhold Niebuhr) towards which we must strive in the power of the Holy Spirit to Whom nothing is impossible.

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[10] Guildford, Eng.: Lutterworth Press, 1979, 159 p.

[11] The Church of Christ as a local Church in the first five centuries, in: Wort und Wahrheit, op. cit. (8), p. 43. The quote within the quote is from St. Cyprian's "De dominica oratione", in: Sancti Cypriani opera, pars II, Turnholti, Brepols 1976, p. 99 (Corpus Scriptorum Ecclesiasticorum Latinorum, v. III A).

What is the relevance of Trinity in speaking of autonomy and autocephaly? There is no aspect of Christian theology where Trinity is not relevant. The Christian understands creation, redemption and consummation as Trinitarian. The Church, the ministry and the sacraments are Trinitarian. There is a dimension of incomprehensibility and unknowability in all aspects of Christian dogma, especially the doctrine of Trinity, and yet the eyes of faith get a peep into the same '*mysterium tremendum et fascinosum*' (Rudolph Otto) and get an ecstatic joy at its beatific vision. Analogies on the Trinity have been tried by the great theologians of the Western Church like St. Augustine and St. Thomas Aquinas and of the Eastern Church like St. Basil and St. Gregory of Nazianus. St. Severus of Antioch writes:

> "One may say, for instance, that the humanity of Peter, Paul and John is one. For men are the same in race and essence, but separate from the point of view of individual designation of person. Every one of the persons that belong to the race... participates alike in those things that belong in common to the race. Peter for example, participates... in rationality, mortality and the possession of mind and knowledge"[12].

The relevance of Trinity in the hierarchical order of the Church is in the collegiality and unity of the hierarchy and the Church, locally, provincially, nationally and internationally. The synodical nature of the hierarchy is to be maintained at all levels. As the Father is not superior to the Son and to the Holy Spirit, except in the primacy of honour, the archbishop or metropolitan or the catholicos should not be superior to the other members of the Holy Synod except as the first among equals. As the question 'who is greater?' does not appear in an ideal nuclear family, wherein the joy and sorrow of one is shared by all, the question whether Peter, James or John is greater should not arise in their corporate *koinonia*. Jesus Christ Who in the economy of the incarnate period said that "My Father who has given them to me is greater than all" went on to add that "My Father and I are one" (Joh 10, 29–30). The Holy Synod, guided by the Holy Spirit, must have the patience to wait for unanimity until it can say: "It is the decision of the Holy Spirit and our decision" (Ac 15, 28). Individuality should never dominate over collectivity.

The Holy Trinity solves the mystery and the tension between the personal and social dimensions of existence, especially of human existence. We are to move to a collective leadership in the Church and the world wherein the personal aspect is not minimized for the social or the social watered down for the personal. Of course, the perfection of the combination of the social and the personal in the Holy Trinity is not perfectly applicable in the fallen world of history. Yet we are asked to be perfect as the heavenly Father is perfect and as each Person of the Holy Trinity is perfect individually and collectively. Autonomy and autocephaly are concepts which have not validity away from the perfect model of the Blessed Trinity. Divinization (*theosis*) of which the Cappadocian Fathers have written a lot must be understood as trinitization of the Church and of the world in the light of

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[12] Unpublished English translation of St. Severus of Antioch's Contra impium Grammaticum by V. C. *Samuel*, quoted in W. G. *Young*, Handbook of Source-Materials for Students of Church History up to 650 A.D. [Madras] Published for the Senate of Serampore College by the Christian Literature Society 1969, p. 189.

the centrality of the Trinity in their teachings. St. Basil, in his monumental treatise on the Holy Spirit, attacks the subordinationism of the Macedonians or Pneumatomachians and defends the consubstantiality of the Holy Spirit.

If God is not only to be worshipped, but also imitated and followed, there should be no subordination in the Synod of the autocephalous Churches or in the Ecumenical Councils, except that which regards the presiding bishop as *primus inter pares*. The pyramidal hierarchy that crept into the Church with the secularization and the romanization of its government must be transformed into a collective leadership through the divinization of the Church and of its hierarchy at every level of her life on this earth. The world is waiting for such a model of divinization in the Church. The present tug-of-war and the cold war between capitalism and communism will give way to a responsible society in which each member will be responsible for all, and all will be responsible for each one: this process might be the model the Church needs to follow. The very title 'autocephaly', which literaly means 'himself, the head', bridges the gap between the ruler and the ruled, as the ruler and the ruled are one body or one family. Autocephaly and autonomy are meaningful when the Church is understood as a classless society approximating the Blessed Trinity. The distinctions that the Father alone begets eternally, the Son alone is begotten eternally and the Spirit alone proceeds eternally need not be diluted in the perfect unity and solidarity of the nuclear family of God. The bishop, the priest and the deacon are members of the Body of Christ by virtue of the fact that baptismal regeneration is a second birth from the same womb which makes every baptized person direct brother or sister in the family of God. The Patriarch or Pope or Catholicos also addresses God as 'Our Father' in the unity of the fellow-baptized and even with the humanity sharing the same image of God in creation. All authority in the Church, therefore, is under the fatherhood of God and within the brotherhood of the Church and of humanity. Hence it is impossible to posit oneself above one's fellowmen as the Supreme Head and veto the decision of one's own intimate brothers and sisters in the loving family of God. The point I am trying to make is that autonomy is for the Holy Synod presided over by the elected president and not for the president alone. The Augustinian emphasis on circumincession (*perichoresis*) within the Trinity is quite valid here: where one acts, all act. May I go on my knees and plead to you, my fellow-theologians, to take the doctrine of Trinity of the criterion in everything. The reunion of Christendom will be delayed until we are open to the triune God.

IV. The witness of our common Fathers

The theological principle of collegiality briefly established in the previous section must be borne in mind in reading the questions from the Fathers and the Councils on monarchy and autocephaly of the local Churches in the first five centuries. Wolfgang Beinert has a valid insight in deciphering the Jerusalem and Pauline types of government developing in the early Church, although I have my doubts about the synthesis of the two types in the Petrine succession. To quote:

"The local-church structure of Christ's church is most clearly reflected in the different constitutional models which we encounter in the early church. It is above all two models that may be clearly differentiated. In the first, which we may call the 'Jerusalem type' according to its realization in the ancient community under Jacob, the community is governed by a resident head who has full authority in this respect. On the way via Asia Minor this system developed into the episcopal constitution, which has become dominant in the Church. The second model may be called 'Pauline model', since it may be encountered in the communities that were founded by Paul, the missionary. The government of the local church was entrusted to a collegiate body of presbyters and 'episcopoi', who were, however, not autonomous, but were bound to the instructions of the Apostle. These communities are acephalous, i.e. they lack in a local governing head. Their actual head is Paul himself, who is not bound to one specific place, but restlessly establishes new communities and constantly contacts the old ones by means of personal visits, letters or through 'apostolic legates' such as Titus or Timotheus. This model is characterized by certain inherent centralistic tendencies. Knowing that it was adopted by the Church of Rome for a relatively long period of time, one may assume that this first experience contributed toward the evolution of primatial tendencies. Seen in this light, the Petrine succession is the synthesis of the Jerusalem model with its stress on the monarchical episcopate and the Pauline constitution with its centripetal approach"[13].

I am sure W. Beinert is not asserting here that the development of papacy from 800 A.D. towards supremacy, infallibility and universal jurisdiction has been the natural result of such a synthesis. The political importance of Rome was the main cause of it. The first three ecumenical councils did not give the succession of the Petrine throne any authority on the Church universal. Canon 6 of Nicea does not make the Pope head of the universal Church. I quote:

"Let the ancient customs hold good which are in Egypt and Lybia and Pentapolis [Cyrenaica], according to which the bishop of Alexandria has authority over all these places. For this also is customary to the bishop of Rome. In like manner in Antioch and in the other provinces, the privileges are to be preserved to the Churches. But this is clearly to be understood, that, if anyone be made a bishop without the consent of the Metropolitan [i.e. the bishop of Antioch], the Great Synod [Council of Nicea] declares that he shall not be a bishop ... Since custom and ancient tradition has held good that the bishop of Aelia [Jerusalem] be honoured, let him have his proper honour, saving to the Metropolis [Caesarea] the honour peculiar to it"[14].

We see that Nicea gives patriarchal status to Rome, Alexandria, Antioch and Jerusalem. Constantinople gets this status after its establishment and

[13] The Church of Christ as a local Church in the first five centuries, op. cit. (11), p. 47–48.
[14] English translation quoted in Handbook of Source-Materials . . ., op. cit. (12), p. 155. See also the Greek and Latin texts in Conciliorum oecumenicorum decreta. Ed. 3. Bologna: Istituti per le scienze religiose, 1973, p. 8–9.

only in the Council of 381 A.D. held there. Canon 3 of the Council of Constantinople reads:

> "The Bishop of Constantinople shall have the primacy of honour next after the Bishop of Rome, because that Constantinople is the New Rome"[15].

We see no valid reason for the objection of Pope Leo to this act when the Council of Chalcedon reiterated this in canon 28 (B). The objection must have been to the principle of autonomy and autocephaly that even the Chalcedonian Council, which we the Oriental Orthodox do not accept, asserted in its statement:

> "For to the Throne of Old Rome, the Fathers gave privileges with good reason, because it was the Imperial city. And [the Council of Constantinople], with the same consideration in view, gave *equal privileges* to the most holy throne of New Rome, judging with good reason that the city honoured by the monarchy and the senate, and enjoying *equal privileges* with the old imperial Rome, should likewise receive *equal rank* in matters ecclesiastical, holding the second place after her" (italics mine)[16].

Pope Leo the Great wrote to Emperor Marcion as follows:

> "Let the City of Constantinople have, as we desire, its high rank and under the protection of God's right hand, long enjoy Your Clemency's rule. Yet things secular stand on a different basis from things Divine, and there can be one sure building save on that Rock [Peter] which the Lord has laid for a foundation . . . Let [the Patriarch of Constantinople] not disdain a city which is royal, though he cannot make it an Apostolic See; and let him on no account hope that he can rise by doing injury to others"[17].

It is very clear that Pope Leo did resent the phrases 'equal privileges' and 'equal rank' used by the Council of Chalcedon in agreement with the Council of Constantinople. It is self-evident that these phrases are the foundation of autonomy and autocephaly. Pope Leo perhaps was not satisfied with the phrase 'holding second place after her'. He had no objection in others being equal, but he wanted to be more equal than others and for holding an unequal rank, took on Peter and the Rock as if the Council Fathers were not aware of it. The principle of autonomy, however, is that the Patriarchal thrones are co-equal as the co-equality of the Father, the Son and the Holy Spirit. It is a strange logic to hold that equality is possible in things secular and not in things ecclesiastical. Actually, it should be from the ecclesiastical order that the secular rulers must learn the equality of one man with another and of one ruler with another.

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[15] Handbook of Source-Materials . . ., op. cit. (12), p. 155; see also Conciliorum oecumenicorum decreta, op. cit. (14), p. 32.

[16] Handbook of Source-Materials . . ., op.cit. (12), p. 156; see also Conciliorum oecumenicorum decreta, op. cit. (14), p. 100.

[17] Handbook of Source-Materials . . ., op. cit. (12), p. 156; quoted from the English translation published in A select Library of Nicene and post-Nicene Fathers of the Christian Church, 2d series, vol. XII: Leo the Great – Gregory the Great, pt. 1. Oxford: J. Parkes, New York: Christian Literature Co., 1895, p. 75; a more modern and acessible translation is to be found in St. Leo the Great, Letters. Translated by Brother E. Hunt, C.S.C. New York: Fathers of the Church Inc., 1957, p. 179.

While the West had only Rome as the apostolic see, the East had many. Fathers like St. Irenaeus of Lyon have insisted on the apostolic origin of certain Churches to show their orthodoxy in contrast to the heterodoxy of the gnostics. But Fr. J. Meyendorff thinks that Fr. F. Dvornik is right in his book *The Idea of Apostolicity in Byzantium* in his conclusion that "apostolic sees never claimed to have any special authority as a result of the fact of being ' apostolic'; there were far too many of them in Asia Minor, Syria, Palestine and Greece for such pretensions to be taken seriously"[18]. The teaching, preaching and sacramental functions of the bishop were the same in every place. St. Ignatius of Antioch (100 A.D.) sees the bishop at the Eucharistic table as 'the image of God' in the Church over which he presides. J. Meyendorff writes: "These episcopal functions are essentially the *same*, whether at Rome, Constantinople, or Moscow, and God could not have intended to grant one Church special privileges in this respect, since he gave the plenitude of power to *all*"[19].

Canon 4 of the Council of Nicea[20] and the ancient practice of the ordination of a bishop by three bishops expresses that the fullness of the Church is in each local Church. To quote W. Beinert again:

> "The synodal structure of the universal Church is reflected in the fact that, if possible, all, at least however, three bishops of the neighbouring communities are to ordain the newly elected bishop. This newly ordained bishop is responsible not only for his church, but for all, as is already evidenced by the letters of bishops such as Ignatius, Polycarp and Dionysios of Corinth, who address other churches. The ordination does not only make the local bishop the representative of the local church, but he is also integrated in the collegiate body which regards itself as the succession institution of the Apostles' community. Thus, he does not succeed one specific Apostle, but he is witness of apostolic teaching and tradition ... And so the idea of the immediate patrological representation of the Ignatian theology gives way to the idea of an institutional dual function. To the universal church the bishop is now witness of the faith of his local community, for which he testifies the faith of the universal church"[21].

The above quotation which is adequately documented by the author from the patristic writings gives the organizational basis of the autonomy of the autocephalous Churches. Each Church is a pleroma of the whole Church. There is no pipeline succession in any of the patriarchal Churches. Each bishop represents the whole Church as the presence of the whole Christ in each Church. Ordination is a communitarian deed of grace. "Ordination did not mean any subordination of the person consecrated to the consecrator, but appointment to a function in the episcopal see for the local Church"[22]. "You received without cost; give without charge" (Mt 10, 8).

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[18] J. *Meyendorff*, The Orthodox Church, Its Past and its Role in the World today, USA 1962, p. 213, on F. *Dvornik's* The Idea of Apostolicity in Bycantium and the Legend of the Apostle Andrew, Cambridge: Harvard University Press, 1958, p. 342.

[19] The Church of Christ as a local Church in the first five centuries, op. cit. (11).

[20] Cf. Conciliorum oecumenicorum decreta, op. cit. (14), p. 7.

[21] *Beinert*, The Church of Christ as a local Church in the first five centuries, op. cit. (11), p. 49.

[22] Ibid.

The Church of the patristic period, then, was autonomous and autocephalous. Christ was the one source of grace through all the apostles and not through Peter alone (see Joh 20, 21ss; 1 Ti 1, 6). St. Peter did not appoint St. James as the bishop of Jerusalem or St. Mark as the Head of the Alexandrian see or St. Barnabas as the Apostle of Cyprus or St. Thomas as the Apostle of India. The throne or see of Constantinople was not established as the see of St. Peter. Each see could claim each had all of the apostles because the 'owner' of every see or throne is Christ Himself. The servants of Christ are seated in the throne of Christ by the gracious will of the crucified and risen Lord according to His promise in Joh 12, 26: "If anyone serves me, he must follow me; where I am, my servant will be. Whoever serves me will be honoured by my Father".

Most of the Roman Catholic historians also would agree that until the fifth century, St. Peter was not regarded as the head of the universal Church:

> "Peter has only historical priority, but not substantive priority over the other bishops. He is the first among the others. In the fifth century he came to be the first *before* all others and is quite different from all others. And thus, there is actually one sedes apostolica, that of Rome. Its holder alone decides on the interpretation of the faith; he is also the supreme legislator concerning liturgical matters. This led to a decisive theological shift: The Pope did now have not so much the position of Peter, but rather that of Christ vis-a-vis the Apostles. This is clearly manifested in the intervention of Leo the Great in the negociations of Chalcedon which signalized a claim to power no longer only in, but over, the Church" (italics in the original)[23].

The whole Christian ethos goes against this claim of supremacy by any single individual, whether it is Peter or Paul or James. "Christ set us free, to be free men. Stand firm, then, and refuse to be tied to the yoke of slavery again" (Ga 5, 1). Baptism to the citizenship of heaven gives us a divine freedom which none can take away from us. Autonomy of the local Church which is the local manifestation of the whole Church, symbolized in its autocephaly, cannot be surrendered to any ambiguous authority of any single throne.

V. What is the symbol of unity?

Do we need the Ecumenical Councils as the symbol of our unity? The Oriental Orthodox Churches have existed for about sixteen centuries without any Ecumenical Council.

The Byzantine Churches have never called an Ecumenical Council since II Nicea in 787 A.D.. Ecumenical Councils are not the *esse* though they may be beneficial. When the Holy Spirit leads the whole of Christendom to a united Church, we may have another Ecumenical Council, whether it is called the Fourth, the Eighth or the Twenty-first Council according to one's own tradition and history.

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[23] Op. cit. (11), p. 51.

Should the Roman Pontiff or the Ecumenical Patriarch be the symbol of unity? I must agree with the answer of another theologian of my Church on this:

> "Though pragmatically it appears that a universal ruler of the Church, a supreme Pontiff with universal jurisdiction, would be a desirable and useful sign of communion between local Churches, the Oriental Orthodox Churches at this point hold resolutely to the view that no one bishop can be the visible principle of universal unity, be it the Roman Pontiff or the Ecumenical Patriarch. It is the College of Bishops as successors to the College of Apostles, and each bishop as sacramentally manifesting Jesus Christ the High Priest and Good Shepherd who constitute the visible sign of communio between the local Churches. For each bishop represents the Universal Church as well as the Catholic Church to the local Church, and the local Church can also be represented elsewhere by one or more bishops"[24].

The author goes on to point out that as the conciliar principle is built into the tradition of the Church, "at no time in the history of the Church has it acknowledged the principle of a Universal Church governed by a universal pastor . . . St. James had to share his authority with Simon Peter and others in Council"[25]. Christ the Universal Head is not an absentee Head and there is no one in history who would dare take His place. After all, the Paraclete is given to the Church to guide her to all truth.

The common faith, valid ministry and the Holy Eucharist are sufficient symbols of the unity of the Church. Those who share the common faith and accept the ordination must be participating in the common table of the Eucharist, which is the deepest *koinonia* possible for us in history. St. Paul goes on to point out that those who participate in the Eucharist must also share their food so that no one goes ahead with his own meal in such a way that one is hungry and the other is drunk (cf. 1 Cor 11, 20–21). The symbol of unity is the sharing *agape* of members of the Church. If the world must believe that the Church is one, intercommunion is not the way, but sharing of economic resources and sharing in the one communion of Our Lord. Intercommunion is a theological misnomer as it presupposes more than one Church. The autonomy and autocephaly of one national Church does not make it different from another autocephalous Church. Any member excommunicated by one Church will be regarded as excommunicated by other Churches also.

Next to the Eucharist, "the concord of the bishops in the Episcopal Synod is *a* sign of communio between local Churches which are organized together as an autocephalous Church. This sign is less essential and indispensable than the Eucharist" (italics in the original)[26]. Each bishop, as bishop, is a bishop in the universal Church, though as administrator he may be the bishop of one local Church. Therefore, the unity of the bishops is the unity of the Church. Frequent Synods of the autocephalous Churches are helpful for growing in the unity of the Spirit. Ecumenical Synods can also be held

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[24] Metropolitan *Paulos Mar Gregorios*, Necessity and Signs of 'Communio' between the local Churches, in: Wort und Wahrheit, op. cit. (8), p. 76.
[25] Ibid.
[26] Op. cit. (8), p. 75.

when the principles of autonomy and autocephaly of national Churches are put into practice for the unity of the Churches. We must accept the principle enunciated by Dr. Nissiotis at the Third Assembly of the World Council of Churches at New Delhi (19 November – 5 December 1961) that once there is a schism, both the parties are in schism. The Holy Spirit is grieving at the present divisions of Christendom and there is no particular Church about which the Spirit is not in grief. Dialogue between theologians of the divided Churches is certainly one of the helpful steps towards the unity for which Christ prayed. But there are many hurdles to be overcome before the final unity can be proclaimed in an Ecumenical Council which will be truly ecumenical.

We use the word 'infallibility' vaguely when we speak of the infallibility of the Councils and even of the Church. "The Church's infallibility is ultimately always the infallibility of the Spirit of Truth alone, who resides in the whole organism of the Church"[27]. This is why the Orthodox Churches do not accept the *ex cathedra* declarations of the Popes as infallible. The doctrine of reception adequately defended by Alexis S. Khomiakov of the Russian Orthodox Church in the 19th century is a valid doctrine. "You shall know the truth, and the truth will set you free" (Joh 8, 32). How do we know unless we are taught? "When he comes who is the Spirit of Truth, he will guide you into all the truth" (Joh 16, 13). If the Councils are guided by the Spirit of Truth, the same Spirit is present in the whole Church and makes it accept the decisions of the Council. The Nicene-Constantinopolitan Symbol, not mutilated by the later addition of the *Filioque* clause, ought to be the symbol of unity of the whole Church. It was once accepted by the whole Church, and it can also be the common symbol of the future. Allowing a margin for the inevitable relativity of the historical order, we must be ready to reexamine to so-called infallible dogmas like the Immaculate Conception[28] and allow the Holy Spirit to guide us into the full truth which is always beckoning us from the future.

May I make a humble suggestion, however, for what it is worth, though I am afraid it may be rejected out of hand by the other participants in this consultation, including those belonging to the autocephalous Churches. If we accept the collegiality principle in autonomy and autocephaly, the Petrine (Roman Catholic), the Johannine (Orthodox) and the Pauline (Protestant) Churches of each country must come into a unity with a collegial hierarchy in each country. As the things that unite us are stronger than the points that separate us, we must pool together our differences and shine together as a rainbow. In each country, the presiding bishop must be chosen unanimously, but he should not have veto power. The laying of hands in ordination must also be done collegially as the venerable tradition of the Churches insists. If this is acceptable, there should be an ecumenical symbol of unity in a collegial council consisting of these three traditions in unity, with no universal jurisdiction and administration. Cultural and theological identities have to be taken seriously in working out something similar to this in detail.

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[27] *Meyendorff*, The Orthodox Church, op. cit. (18), p. 31.
[28] Bull Ineffabilis Deus of Pius IX, 8 December 1854.

AUTOKEPHALIE UND AUTONOMIE ALS VERFASSUNGSSTRUKTUREN DER ORTHODOXEN KIRCHE

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I

Das Ziel der folgenden Überlegungen ist es, die Ordnung einer mittleren Ebene in der Kirchenverfassung unter dem Blickwinkel eines juristischen Strukturproblems zu überdenken. Dies soll keineswegs bedeuten, daß damit etwas, was auch und vor allem ekklesiologisches Thema ist, auf ein juristisches Strukturproblem reduziert werde. Um diese Gefahr auszuräumen, bedarf es einiger Klarstellungen zur Methodik.

Es geht dabei im besonderen um eine Präzisierung dessen, was in der Folge als „Struktur" verstanden wird, ist doch dieser Begriff durch systemtheoretische, v.a. aber strukturalistische Ansätze stark belastet. Diese Ansätze haben es mit sich gebracht, daß Strukturen nur mehr funktionell betrachtet werden, daß Strukturelemente nur noch als Bezugspunkte von Relationen erfaßt werden.

Demgegenüber bedeutet das Befassen mit Strukturen im Rahmen einer kritisch-hermeneutischen Theorie nicht das Verhaftetbleiben im empirischen Aufdecken oder normativ-systematischen Konstruieren von Relationen, die ein System bilden, sondern das kritisch gestaltende Herstellen von Sinnzusammenhängen. Diesen jedes System und jede Struktur notwendig transzendierenden Sinn gilt es vorerst zu bestimmen.

Der Sinnzusammenhang, der auch die Struktur der mittleren Ebene der Kirchenverfassung bestimmt, ist nur durch einen steten Rückbezug auf die zentrale Aufgabe jeder kirchlichen Verfassungsstruktur herzustellen. Diese kann darin gesehen werden, dem Volk Gottes auf allen Ebenen, die Ausdruck menschlicher Gemeinschaft sind, die Voraussetzungen für die Erfüllung der Mission der Kirche Christi zu schaffen. Dieses fundamentalen Gesichtspunktes hat sich die Kanonistik stets zu versichern, andernfalls sie sich in bezug auf die Darstellung der Verfassung der Kirche auf Erden in funktionalistischen Systemanalysen erschöpfte. Dies birgt noch dazu die Gefahr in sich, mittels Rückkopplung im Funktionieren des Systems einen zentralen Hauptzweck zu schaffen und damit den die kirchliche Organisation und ihre Strukturen tragenden Sinn zu verfehlen. Es ist nicht zu übersehen, daß das traditionelle katholische Kirchenrecht in seiner Geschichte dieser Gefahr immer wieder zu erliegen drohte, impliziert doch die behauptete ekklesiologische Irrelevanz verschiedener Ebenen der Kirchenverfassung deren strukturalistische-funktionalistische Reduktion. Aufgrund der durch das 2. Vatikanum erneuerten Communio- und Teilkirchen-Ekklesiologie dürfte diese Gefahr jedoch gebannt sein, obwohl die entsprechenden Konsequenzen bislang nur äußerst vorsichtig und behutsam gezogen werden.

Als zweite grundlegende Feststellung zur Methodik sei die Gewichtung der historischen Dimension erwähnt. Für diese ist zunächst der Stellenwert von Tradition im kirchlichen Selbstverständnis maßgebend. Des weiteren wird diese Gewichtung durch den methodischen Ansatz bestimmt: Historisch-genetische Argumentation dient einerseits der Herstellung des Traditionszusammenhanges, anderseits aber auch als kritischer Bezugspunkt zeitbedingter Angemessenheit. Mit anderen Worten: Es bedarf gerade der historisch-genetischen Analyse der spezifischen Bedingungen für die Entstehung und Entwicklung der entsprechenden Institute, um zu einer fruchtbaren Argumentation über ihre sinnvolle Ausgestaltung in der Gegenwart vorzustoßen.

Nach diesen Feststellungen zur Methodik eine weitere Vorbemerkung. Ich möchte mich bei meinen Überlegungen auf die orthodoxen Kirchen byzantinischer Tradition beschränken, in denen die mittlere Ebene ein zentraler Ort der Faßbarkeit kirchlicher Identität ist. In diesen Kirchen hat sowohl in der ekklesiologischen Theorie als auch in der Praxis des kirchlichen Lebens die mittlere Ebene mit den Autokephalien und Autonomien die größte Bedeutung gehabt und hat sie noch immer. Die von Christus auf Erden als sichtbares Gefüge verfaßte Kirche findet nach orthodox-byzantinischem Verständnis auf dieser mittleren Ebene eine wesentliche Ausdrucksform. Denn auf dieser Ebene kommt es – mit den Worten des griechischen Ekklesiologen Stylianos Harkianakis – zu einer Synthese der beiden ekklesiologischen Grundprinzipien, der Kollegialität und der Autokephalie, d.h. die ursprüngliche episkopale Autokephalie und die wohl noch ursprünglichere Kollegialität vereinigen sich zur Autokephalie der kirchlichen Einheiten auf der mittleren Ebene, ein Vorgang, der teilweise auch in historischen Abläufen erkennbar wird.

Bevor ich zu meinem Versuch einer Darstellung der aktuellen Probleme komme, möchte ich in einer etwas ausführlicheren Skizze, die mir dazu dienen soll, „historisches Material" für meine Argumentation zu liefern, zunächst die Entwicklung der Kirche Zyperns darstellen.

II

Das 1. Beispiel: Zypern

Bereits die Entstehung einer selbständigen Kirche in Zypern zeigt alle die Probleme auf, die mit den Grundfragen der Autokephalie bis heute verbunden sind. Für die Entstehung von selbständigen Kirchen gibt es zwei traditionelle Begründungstopoi: einerseits die Apostolizität des Ursprungs und andererseits die Anknüpfung an die politische Geographie bzw. sonstige demographische Ursachen. Ein anderes Argument tritt daneben etwas in den Hintergrund bzw. nimmt i.a. eine Zwitterstellung zwischen diesen beiden topoi ein, und zwar der Hinweis auf das Herkommen, die Tadition. Denn dieser läßt es prinzipiell offen, ob dieses Herkommen auf Grund der Apostolizität oder auf Grund der politischen Bedeutung der jeweiligen Hauptkirche zu erklären ist. Es läßt sich nun relativ leicht feststellen, daß zu bestimmten Zeiten bestimmte Argumente in den Vordergrund treten.

Anfangs steht unzweifelhaft das relativ indifferente Herkommensargument im Vordergrund. Es bestimmt die einschlägigen Kanones des 1. Nikaianums, in denen – durchaus differenziert – die Sonderrechte der Bischofssitze von Rom, Alexandreia und Antiocheia aus der Tradition begründet werden. Die weitere Argumentation ist dann im wesentlichen davon getragen, daß andere Kirchen ihrerseits Ansprüche auf vergleichbare Positionen anmelden, bzw. davon, daß die Kirche von Antiocheia – als die mit der schwächsten Tradition von den drei erwähnten – zunächst kein fest umrissenes Territorium umfaßte.

Das heißt also: Die weitere Entwicklung der Argumentation ist hauptsächlich durch den Gegensatz zwischen der Tradition der bestehenden Kirchen einerseits und der Begründung von Neuorganisation andererseits bestimmt. Dabei zeigt sich, daß vorerst auf das politische Vorbild gegriffen wird, wie die Begründung für die Rangerhöhung Konstantinopels deutlich macht, ebenso wie die Entwicklung des Territoriums der Kirche von Antiocheia.

Die spätrömische Staatsverfassung brachte einen starken Angleichungsdruck in Richtung auf eine gleichartige Organisation der Kirchen, was bekanntlich bis heute seine Auswirkungen zeitigt. Dies gilt besonders für die fünf Diözesen der Präfektur Oriens. Neben dem unbestrittenen Territorium Alexandreias konnte sich Antiocheia als Großkirche der Diözese Oriens etablieren, während die Entwicklung von kirchlichen Einheiten der mittleren Ebene in den drei anderen staatlichen Diözesen Pontus, Asiana und Thrakia durch das zunehmende Prestige der neuen Großkirche in Konstantinopel unterbrochen wurde und letztlich am Chalzedonense dazu führte, daß diese drei staatlichen Diözesen zum Territorium des Patriarchats von Konstantinopel wurden.

Wie war es nun möglich, daß sich die Kirche Zyperns in dieser Zeit ihre Selbständigkeit erkämpfen konnte, fällt sie doch aus diesem Schema der sich bildenden Großkirchen völlig heraus? In den ersten Dezennien des 5. Jahrhunderts war es zwischen dem Patriarchat von Antiocheia und den Bischöfen Zyperns zu Auseinandersetzungen gekommen um das Recht der Kirche Zyperns, unabhängig von Antiocheia Bischöfe zu weihen. Die Kirche Zyperns hatte sich im Laufe des 4. Jahrhunderts relativ unbehelligt von den arianischen Wirren eigenständig weiterentwickelt, sodaß sie sich gegenüber dem Patriarchat von Antiocheia auf ihr altes Gewohnheitsrecht berufen konnte. Von seiten Antiocheias dagegen wurde auf die politische Zugehörigkeit der Insel Zypern zur Diözese Oriens verwiesen. Gegen Ende des 4. Jahrhunderts war offensichtlich die Angleichung an die Geographie das stärkste Argument.

Am Konzil von Ephesos 431 sehen wir an der Spitze der Gefolgschaft des Patriarchen Kyrillos von Alexandreia den Bischof Rheginos von Konstantia/Salamis, den Führer der zyprischen Bischöfe. Was auch immer der Grund des vehementen Engagements der zyprischen Bischöfe für Alexandreia gewesen sein mag, sie konnten schließlich den Erfolg für sich buchen, daß das Konzil den Streit mit dem Patriarchat von Antiocheia zugunsten Zyperns beilegte. Dies geschah allerdings nicht ohne den Widerstand einiger Konzilsväter, die darauf verwiesen, daß man trotz des häretischen Verhaltens der Kirche von Antiocheia nicht die Rechte dieser altehrwürdigen Kirche schmälern dürfe. Ausschlaggebend für die Entscheidung des

Konzils war jedoch, daß die zyprischen Bischöfe erklärten, daß einer alten Tradition entsprechend die Bischöfe der Insel immer von den Bischöfen der Insel gewählt und geweiht wurden. In den Erklärungen der Bischöfe wird dabei deutlich zum Ausdruck gebracht, daß die bis auf die Zeit der Apostel zurück immer rechtgläubigen Bischöfe Zyperns nie von einer Synode außerhalb der Insel bestellt wurden.

Diese Vorgangsweise macht deutlich, daß man das Traditionsargument nicht ohne weiteres dem politischen Argument zuordnen kann, sondern daß der prinzipielle Gegensatz zwischen Tradition und Neuerung bestand und die Begründung für Neuerungen auf Grund der politischen Geographie nicht ausreichte. Nicht zu übersehen ist auch, daß in der Art, in der das Traditionsargument angeblich von den zyprischen Bischöfen gebracht wurde, der Ansatz für das Apostolizitäts-Argument zutage tritt, da man sich auf eine bis auf die Aposteln zurückreichende Tradition berief, ohne allerdings zunächst zu behaupten, die Kirche Zyperns sei apostolischen Ursprungs.

Im Zusammenhang mit der Zurückweisung des c. 28 Chalzedonense seitens Rom tritt das Apostolizitäts-Argument allgemein in den Vordergrund. Es beeilen sich nunmehr alle Kirchen, die entsprechende Ansprüche erheben, die Apostolizität ihres Bischofssitzes herauszustellen. Nicht nur die Gründung des Bistums Konstantinopel durch den Apostel Andreas wird nun ins Spiel gebracht (offiziell erstmals 525), sondern auch Zypern paßt sich dem nunmehr herrschenden Argumentationstopos an. Es wurde seitens des Patriarchates von Antiocheia abermals versucht, die Kirche Zyperns einzugliedern, und Patriarch Petros konnte als Vertrauter Kaiser Zenons durchaus auf politische Unterstützung hoffen. Die Reaktion aus Zypern kam prompt; Erzbischof Anthemios erschien im Traum der Apostel Barnabas und bezeichnete ihm die Stelle, wo er die Gebeine des Apostels finden könne. Mit dem glücklichen Fund eines auf der Brust des Heiligen von diesem selbst handgeschriebenen Matthäusevangeliums eilte der Erzbischof in die Hauptstadt zum Kaiser, um ihn von den Ansprüchen Zyperns zu überzeugen. Die vom Kaiser daraufhin einberufene Synode sprach sich für die Unabhängigkeit der Kirche Zyperns aus.

Ende des 7. Jahrhunderts zeigt die Episode des Exils des Erzbischofs von Zypern in Nea Iustiniana erneut die Selbständigkeit der Kirche Zyperns auf. Es ist ein erstes interessantes Beispiel dafür, wie eine durch politische Ereignisse veränderte Situation zur Anpassung in der Organisation der mittleren Ebene führt, ja es klingt geradezu das erste Mal das Personalitätsprinzip an. Die mit der Reduktion des Territoriums des Reiches verbundene Konzentration auf die Jurisdiktion des Ökumenischen Patriarchen brachte auch für die Kirche Zyperns die direkte Abhängigkeit von Konstantinopel, eine Entwicklung, die v.a. auch für das Patriarchat von Antiocheia gegeben ist.

Die Angelegenheiten der Kirche Zyperns werden nunmehr allein durch die Synodos Endemousa in Konstantinopel entschieden, die meiner Auffassung nach als reichskirchliches Organ anzusehen ist. Nach der hier nicht weiter auszuführenden lateinischen Besetzung setzt sich im Osmanischen Reich die Abhängigkeit Zyperns von Konstantinopel weiter fort. Der Patriarch wird auf Grund seiner staatsrechtlichen Stellung im Osmanischen de facto auch zum obersten Organ der orthodoxen Kirche im Reich.

Die Patriarchalakten bringen dies recht deutlich zum Ausdruck; so wird etwa zwischen 1600 und 1700 dreimal über die Erzbischöfe von Zypern in Konstantinopel entschieden. Nach 1700 macht Zypern jedoch einen bemerkenswerten Prozeß durch, an dessen Ende eine halbautonome politische Stellung Zyperns im Osmanischen Reich steht. Die politische Verwaltung gerät in die Hände des Erzbischofs und 1754 wird durch einen fermân der Erzbischof zum millet baschi der nun als eigene Volksgruppe anerkannten Zyprioten. Staatsrechtlich bedeutet dies das Ende der Zuständigkeit des Ökumenischen Patriarchen; kirchenrechtliche Konsequenzen sind deutlich erkennbar, denn nach diesem Zeitpunkt beziehen sich die wenigen Zypern betreffenden Patriarchalakten ausschließlich auf ein patriarchales Stauropegialkloster auf Zypern.

In den letzten zwei Jahrhunderten fügte sich die Kirche Zyperns dann in das Schema der neuzeitlichen Autokephalien ein, deren Entstehung im Regelfall mit der Gewinnung der politischen Selbständigkeit der Staaten einherzugehen pflegte. Zypern rutschte allerdings im Rang hinter die neuen Patriarchalkirchen. Das Problem der Autokephalie der Kirche Zyperns kam anläßlich der Auseinandersetzungen um die Person und Stellung des verstorbenen Erzbischofs Makarios III. wieder zur Sprache, wobei einige recht aufschlußreiche Grundsatzfragen erörtert wurden.

So wurde die Frage gestellt, ob die in der zyprischen Kirchenverfassung vorgesehene Anrufung einer meizon synodos, zusammengesetzt aus Bischöfen der vier alten Patriarchate und der Kirche Griechenlands, für bestimmte Fälle der Gerichtsbarkeit über zyprische Bischöfe mit dem Prinzip der Autokephalie vereinbar wäre, denn im Rahmen der Autokephalien gelte der Grundsatz der Nichteinmischung. Für die Beantwortung dieser Frage wird man davon ausgehen müssen, daß der Appell einer Kirche an die Schwesterkirchen um Mithilfe bei der Lösung verschiedener Fragen der orthodoxen kirchlichen Tradition durchaus geläufig ist. Damit kann man unter anderem auch von orthodoxer Seite päpstliche Interventionen im ersten Jahrtausend erklären, ohne die katholische Auffassung der päpstlichen Primatialgewalt akzeptieren zu müssen. Außerdem gilt es ja nicht nur, die päpstlichen Eingriffe der Zeit der Einheit zu rechtfertigen, sondern auch die Eingriffe der Kirche Konstantinopels in der Folgezeit bis herauf in die Gegenwart. Wenn man die orthodoxe Literatur zu diesem Themenkreis durchsieht, so findet man in griechischen Arbeiten immer wieder unter den besonderen Rechten des Ökumenischen Patriarchen angeführt, daß er auf Grund eines Ehrenprimats von den anderen Schwesterkirchen angerufen werden kann, um Streitfragen – auch innerhalb dieser Kirchen – zu entscheiden.

Niemals jedoch darf, und daran wird strikt festgehalten, die Kirche von Konstantinopel oder sonst eine Kirche von sich aus die Entscheidung in innerkirchlichen Fragen einer anderen Kirche beanspruchen. Die Kirche Zyperns hat nun in ihrer Verfassung für bestimmte Fälle die Anrufung anderer Kirchen vorgesehen. Dies entspricht den genannten Grundsätzen und steht keineswegs im Gegensatz zum Prinzip der Autokephalie. Daß die zyprische Verfassung durchaus in Übereinstimmung mit dem Prinzip der Autokephalie steht, ergibt sich auch aus einem Vergleich mit anderen orthodoxen Kirchenverfassungen. Man muß davon ausgehen, daß nur jene Kirchen für einen Vergleich in Frage kommen, die wie die zyprische Kir-

che durch die geringe Anzahl der Bischöfe in die Verlegenheit kommen können, der auf karthagenische Kanones zurückgeführten Notwendigkeit der Zwölfzahl der Mitglieder einer Synode, die über Bischöfe zu urteilen hat, nicht zu entsprechen. Für diesen Vergleich bieten sich lediglich die Patriarchate von Alexandreia und Jerusalem an. Jerusalem löst dieses Problem – wohl nicht ganz kanonisch –, indem laut Verfassung an der Synode neben Bischöfen auch andere Kleriker teilnehmen. Die Verfassung des Patriarchats von Alexandreia liefert hingegen vergleichbares Material. In den Kanonismoi des Patriarchats finden sich zweimal Bestimmungen über die Heranziehung von Bischöfen anderer Kirchen zu Synoden. Einmal muß anläßlich einer Patriarchenwahl eine nicht vollständig besetzte Synode durch Bischöfe aus anderen griechischen Kirchen ergänzt werden, d.h. es handelt sich um den gleichen Kreis von Schwesterkirchen wie in der zyprischen Verfassung.

Das zweite Mal finden wir eine derartige Ergänzung der Synode aus gleichem Anlaß wie in Zypern, bei der Absetzung eines Bischofs. Wenn die ordentliche Synode des Patriarchats die Absetzung nicht einstimmig beschlossen hat, so muß eine erweiterte Synode einberufen werden, um sie auf zwölf Mitglieder zu ergänzen. Der Kreis der Kirchen, aus denen die auswärtigen Bischöfe stammen können, ist wieder der gleiche wie in Zypern, was wohl auch als Demonstration der besonderen Zusammengehörigkeit der griechischen Kirchen im Raum des alten Reiches angesehen werden kann. Man wird daraus nicht ableiten können, daß die Kirche Zyperns oder gar das Patriarchat von Alexandreia in ihrer Autokephalie beschränkt seien. Ein einheitliches Schema von Inhalt und Umfang der Autokephalie – das sei in Zusammenhang mit diesem Beispiel einmal festgehalten – existiert nicht und hat auch praktisch niemals in der Geschichte der orthodoxen Kirchen bestanden.

Fassen wir also zusammen: Es gibt eine Reihe von Besonderheiten, die die Kirche von Zypern im Rahmen der orthodoxen Schwesterkirchen zu einem einzigartigen Phänomen machen, die aber auch andererseits gerade deshalb die Problematik der Autokephalie als Verfassungsstruktur besonders plastisch herausstreichen lassen.

1. Die Kirche von Zypern besitzt eine auf den Beschluß eines allgemeinen Konzils zurückgehende und in spätrömisch-byzantinischer Zeit mehrfach bestätigte Autokephalie. Sie gehört also zu den Autokephalien alten Typs.
2. Zypern erfüllt aber auch darüber hinaus die Voraussetzungen, die zur Bildung von Autokephalien neuen Typs in der Neuzeit geführt haben, insoweit als es zugleich ein politisch selbständiger Staat mit orthodoxer Bevölkerung ist. Man geht wohl nicht fehl anzunehmen, daß die Kirche Zyperns auch ohne ihren alten autokephalen Status durch die politischen Entwicklungen des letzten Jahrhunderts einen autokephalen Status erreicht hätte, vergleichbar dem der Kirche Griechenlands etwa. Zypern hat also insoferne eine einzigartige Kontinuität aufzuweisen.
3. Die Kleinheit Zyperns hat demgegenüber dazu geführt, daß auch die kirchliche Selbständigkeit Zyperns gefährdet war. Obwohl oder weil Zypern geopolitisch bedeutsam gelegen ist, waren ihm nur kurze Jahre politischer Selbständigkeit gegönnt. Die dadurch bedingte bewegte Ge-

schichte hat es immer wieder mit sich gebracht, daß die traditionellen Inhalte einer autokephalen Stellung für die Kirche Zyperns fast völlig verloren gingen. Der Anspruch auf Autokephalie blieb jedoch stets erhalten, und wann immer die äußeren Umstände es erlaubten, hat die Kirche Zyperns es mit großem Geschick verstanden, ihn durchzusetzen. Die damit jeweils verbundene Argumentation macht aber die Geschichte der Autokephalie Zyperns so besonders lehrreich, denn der, dessen Anspruch immer wieder gefährdet ist, muß besonders scharfsinnig und überzeugend argumentieren. Das heißt mit anderen Worten: Die Geschichte der Autokephalie Zyperns zeigt getreulich auf, was jeweils unter Autokephalie zu verstehen war, was jeweils zeitbedingt an Inhalt und Umfang dieses Begriffes war.

III

Das 2. Beispiel: Das österreichische Orthodoxengesetz

Welche Schwierigkeiten es mit sich bringen kann, wenn man den Versuch unternimmt, mit einem einheitlichen Schema orthodoxer Verfassungsstrukturen zu operieren, zeigt sich im österreichischen Staatskirchenrecht. Die Republik Österreich hat es – vor nunmehr 14 Jahren – unternommen, die Rechtsstellung der orthodoxen Kirche neu zu regeln. Man ging an diese heikle Aufgabe zwar in Kenntnis um die immensen Schwierigkeiten heran – wie daran Beteiligte glaubhaft versichern –, aber im Land Josephs II. traut man sich ohne weiteres zu, ekklesiologische Streitfragen der orthodoxen Kirchen in staatlichen Gesetzen einer Klärung zuzuführen. Und so fand man zu einer interessanten Kompromißlösung für die mit den Problemen der Diasporajurisdiktion verbundenen Schwierigkeiten.

Vorauszuschicken ist ein Hinweis auf die gewachsenen Strukturen der Wiener orthodoxen Gemeinden, die zunächst bis zum Ende der österreichischen Monarchie dem Metropoliten von Karlowitz unterstanden, deren Zugehörigkeitsregelungen aber bereits damals auf das Nationalitätsprinzip verwiesen. Durch die politischen Umbrüche bildeten sich einerseits die Kirchen am Balkan neu und andererseits verloren die Wiener Gemeinden ihre territorial bestimmte Zugehörigkeit zu Karlowitz. Es kam daher zu Überlegungen, welcher Jurisdiktion sich die Gemeinden unterstellen sollten. Eine einheitliche Lösung, etwa eine Unterstellung aller Gemeinden unter den Ökumenischen Patriarchen kam nicht zustande, sondern es setzte sich das nationale Personalitätsprinzip durch. Die griechischen Gemeinden unterstehen seither dem Ökumenischen Patriarchat, die damals bestehende serbische Gemeinde unterstellte sich dem Belgrader Patriarchat.

In jüngster Zeit wurde durch eine Gemeinde ein weiterer Schritt vollzogen, indem vom Personalitätsprinzip zu einem Bekenntnisprinzip übergegangen wurde. In den Satzungen der Russisch-orthodoxen Kirchengemeinde zum Hl. Nikolaus in Wien heißt es: „Der Russisch-orthodoxen Kirchengemeinde zum Heiligen Nikolaus in Wien können alle orthodoxen Gläubigen ohne Unterschied der Staatsbürgerschaft angehören, soweit sie

die geistliche Jurisdiktion des Moskauer Patriarchats anerkennen." Die Grundsätze des österreichischen Staatskirchenrechtes bringen es nun mit sich, daß die sog. „äußeren Rechtsverhältnisse" in Übereinstimmung mit den betroffenen Kirchen und ihrem Selbstverständnis geregelt werden. Solchen Regelungen gehen daher bei allen Religionsgemeinschaften gewissermaßen „Konkordatsverhandlungen" voraus. Der allgemeinen Problematik des Mitgliedschaftsrechtes in der Diaspora trug man Rechnung, indem das Gesetz eine Zweistufigkeit der Zugehörigkeit zur orthodoxen Kirche vorsieht. Es besteht als Basis eine „bekenntnismäßige Zugehörigkeit zur griechisch-orientalischen Kirche in Österreich" sowie als zweite Stufe die Mitgliedschaft zu einer anerkannten Kirchengemeinde.

Es wird also vom Bestehen mehrerer Jurisdiktionen auf einem Territorium ausgegangen, wobei die Zugehörigkeit nach dem nationalen Personalitätsprinzip bzw. sogar nach einem Bekenntnisprinzip bestimmt sein kann. Daneben hat das österreichische Gesetz dem besonderen Anspruch des Ökumenischen Patriarchats und damit auch dem Territorialitätsprinzip Rechnung getragen, denn im staatlichen Gesetz ist ausdrücklich die griechische Metropolis von Austria und deren kirchenrechtliche Unterstellung unter die Jurisdiktion des Ökumenischen Patriarchen erwähnt. Dies hat folgende Konsequenzen: Das staatliche Gesetz kennt nur Gemeinden, es sieht ausdrücklich *nicht* die Möglichkeit der Anerkennung eines orthodoxen Bistums auf Grund des Gesetzes vor, m.a.W. der österreichische Staat anerkennt lediglich die griechische Metropolis von Austria als eine Metropolie des Ökumenischen Patriarchats, und trägt insoweit der Auffassung Rechnung, daß auf Grund des Territorialitätsprinzips nur ein Bischof in einem bestimmten Territorium sein darf. Außerdem wurde dem Metropoliten durch das Gesetz noch die Stellung eines Gutachters über die Rechtgläubigkeit einer Gemeinde, die um Anerkennung ansucht, eingeräumt. Die staatliche Behörde ist zwar nicht verpflichtet, eine gutachterliche Äußerung einzuholen, wenn sie es jedoch tut, muß sie sich zuerst an den griechischen Metropoliten wenden.

Die Widersprüche, zu denen diese Konzeption führen muß, liegen wohl auf der Hand und haben auch bereits Schwierigkeiten mit sich gebracht. So ist es etwa seit Jahren nicht gelungen, die Statuten der serbischen Gemeinde neu zu fassen. Andererseits muß man aber sagen, daß angesichts der Probleme, die es zu bewältigen galt, die österreichische Lösung im Kern einiges für sich hat, worauf ich noch kurz zurückkommen werde.

IV. Die Folgerungen

1. Autokephalien alten und neuen Typs

Lassen Sie mich nun Folgerungen aus meinen Beispielen ziehen, wie sie sich an Hand einer kritisch-hermeneutischen Kirchenrechtstheorie ergeben. Zunächst möchte ich an meine eingangs gebrachten Bemerkungen zu den ekklesiologischen Grundlagen anknüpfen.

Der ekklesiologische Stellenwert einer mittleren Ebene in der Kirchenverfassung ist zweifellos nicht ebenso ursprünglich gegeben und selbstverständlich wie der der beiden anderen Ebenen. Es bedarf wohl keiner

weiteren Begründung für die eine Kirche Christi, von der uns immer wieder im Neuen Testament Zeugnis gegeben wird. Ebenso ursprünglich erscheint die Ausformung der Kirche in der in der Eucharistie geeinten Gemeinde, die in der Episkopalverfassung ihren Ausdruck findet. Diese Frühformen erfuhren nun zwei wesentliche Ergänzungen bzw. Veränderungen. Einerseits löste sich die Episkopalverfassung von der eucharistisch versammelten Gemeinde durch die Aufspaltung der territorialen Diözesen in der Pfarrverfassung, und andererseits entwickelten sich über der Bischofskirche verschiedene Verfassungsstrukturen, die sich zur Metropolitanverfassung und darüber hinaus zur Großkirchen- bzw. Patriarchalverfassung verfestigten.

Während jedoch die gesamtkirchliche Ebene bzw. die diözesane Ebene von einer weitgehenden Konstanz im ekklesiologischen Verständnis über die Zeiten und die Kirchen hinweg getragen ist, zeigt die dazwischenliegende mittlere Ebene eine Reihe von beachtenswerten Entwicklungslinien auf, die nur eine sehr vorsichtige idealtypische Erfassung zulassen. Nur so ist es möglich, alle Ausprägungen der mittleren Ebene zu erfassen. Der kurze Überblick über die Geschichte der Kirche Zyperns hat gezeigt, daß historische Bedingungen den Inhalt eines Begriffs der Autokephalie stark verändern können, ohne daß jedoch der Anspruch auf Autokephalie verloren geht.

Die Darstellung eines Versuches, die Jurisdiktionsprobleme der orthodoxen Kirche in der Diaspora zu lösen, hat ebenfalls gezeigt, daß ein statischer Begriff von Autokephalie zu sehr in Gefahr gerät, die Beziehung zu den Bedürfnissen der Gemeinschaften der Gläubigen völlig zu verlieren.

Es läßt sich meines Erachtens überhaupt kein überzeitlicher Begriff der Autokephalie oder Autonomie finden, außer man ist bereit, auf genau abgegrenzte Definitionen in Begriffsklassen zu verzichten. Es kann also für Autokephalie und Autonomie grundsätzlich die gleiche Aussage gemacht werden, die *Engisch* – er sei damit stellvertretend für eine ganze Reihe von Rechtstheoretikern und Rechtsphilosophen der Gegenwart genannt – bezüglich des Rechts gemacht hat. Um mein Anliegen plastischer heraustreten zu lassen, habe ich im Zitat das Wort Recht gleich durch Autokephalie ersetzt; es lautet daher sinngemäß: „Es hängt ein auf eine konkrete Kirche gemünzter Autokephaliebegriff mit der Autokephalie anderer Zeiten und Kirchen historisch und von einer gewissen Abstraktionshöhe gesehen auch begrifflich zusammen, so daß wir verstehen können, daß ein allgemeinster Autokephaliebegriff alle verschiedenen Ausformungen der Selbständigkeit von Teilkirchen trotz ihrer großen strukturellen und inhaltlichen Verschiedenheit deckt. Nur darf man nicht glauben, daß man einen solchen Autokephaliebegriff exakt und greifbar „definieren" kann. Es kann sich immer nur darum handeln, einzelne „wesentliche" Merkmale beschreibend hervorzuheben.

Mit anderen Worten, jeder Versuch einer synthetischen Definition eines Begriffs der Autokephalie bzw. der Autonomie muß die Vielfalt der Erscheinungen, die die Geschichte der selbständigen Teilkirchen auszeichnet, verfehlen; es kann nur darum gehen, das Wesen dieser Phänomene an zentralen Strukturelementen zu explizieren.

Das entscheidende Element der Autokephalie wie auch der Autonomie als Verfassungsstrukturen liegt in der bereits eingangs angesprochenen

Durchgängigkeit der ekklesiologischen Grundlegung, die darin zu sehen ist, auf allen Ebenen, die Ausdruck menschlichen Gemeinschaftslebens und -erlebens sind, die Bedingungen für die Erfüllung der Mission der Kirche zu schaffen.

Nun steht aber fest, daß gerade auf der mittleren Ebene, faßbar in autokephalen und autonomen Kirchen, ein hoher Identitätsgrad zu finden ist. Es wird hier die Einheit einer menschlichen Gemeinschaft in mannigfacher Weise zum Ausdruck gebracht, oder mit anderen Worten, es herrscht auf dieser Ebene eine besondere Geschlossenheit der Tradition und eine – sich daraus entfaltende – Geschlossenheit der sozio-kulturellen Strukturen vor.

Dieser Überlegung entspricht der historische Befund der Entstehung der ersten selbständigen Großkirchen durchaus. Man denke etwa an die Geschlossenheit Ägyptens und die damit verbundene starke Ausprägung der Eigenständigkeit der Kirche Alexandriens und umgekehrt an die relativ schwache Position Antiochiens, dessen Territorium schwer bestimmbar und mit vielfältigen Traditionen durchzogen war. Daß derartige Einheiten legitimerweise eigene liturgische-kanonistische Traditionen ausbilden und so auch verfassungsrechtlich abgegrenzte Komplexe bilden, findet ja bereits im 34. Apostolischen Kanon seinen Ausdruck.

Eine auf dem Communio-Prinzip aufbauende Kirchenverfassung hat derartige durch Traditionen bestimmte existentiell dichte Ausdrucksformen mit einem entsprechend hohen Identitätsgrad angemessen zu berücksichtigen. Andernfalls wird aus der Communio eine leere Begriffshülse, ein abstraktes Schema, das sich von vergleichbaren Strukturen des Völkerrechts durch nichts mehr unterscheidet. Dies war der alten Kirche durchaus selbstverständlich, als die Legitimität einzelner Traditionsströme im Rahmen der einen Kirche immer wieder betont und verteidigt wurde. Es besteht jedoch kein Zweifel, daß die Verfestigung der einzelnen Großkirchen eine starke Tendenz der Angleichung mit sich brachte, wie das Beispiel der Lehre von der Pentarchie deutlich macht. Damit wurde jedoch die Position jener Einheiten, die sich nicht so leicht in dieses Schema bringen ließen, wie etwa die Kirche Zyperns, stark gefährdet. Der in der Theorie immer wieder betonte Anspruch auf substantielle Gleichrangigkeit verhinderte auch nicht die Sonderentwicklung des Ökumenischen Patriarchats, wenn man von der Einordnung des alten Roms und des päpstlichen Primatialanspruches einmal absieht. Zu den besonderen Bedingungen der Ausprägung von Autokephalie im ersten Jahrtausend gehören schließlich noch die Position des Kaisers in der Kirche, aber auch die spezielle Synodos Endemousa v.a. in mittelbyzantinischer Zeit.

Jedenfalls erhält dieses älteste System der Autokephalien durch die Bestätigung auf Ökumenischen Konzilien eine starke Verfestigung. Es wurde damit ein Typ der Organisation der mittleren Ebene geschaffen, der in der Folgezeit nicht mehr ergänzt werden konnte. Aber bereits wenige Jahrzehnte nach dem letzten Ökumenischen Konzil der alten Kirche begannen sich neue Einheiten auf der mittleren Ebene herauszubilden. Ihre Eingliederung in das überkommene Schema erwies sich sofort als Ordnungsproblem ersten Ranges für die Orthodoxie und bleibt im Grunde genommen bis in die Gegenwart ungelöst, bzw. macht den prinzipiellen Verweis auf

den – dem orthodoxen Kirchenrecht durchaus implizit bekannten – Grundsatz von der Normativität des Faktischen notwendig.

Daß jedoch bereits in byzantinischer Zeit neben den Autokephalien alten Typs eine Vielfalt von Kirchen als mehr oder minder selbständig angesehen wurde, ist bekannt. Ich brauche hier nur auf das bekannte Projekt einer Synode, das von Kaiser Joannes Kantakuzenos im Jahre 1367 erörtert wurde, verweisen. Dabei scheint neben den alten Patriarchaten eine Reihe von Kirchen auf, die teilweise offenbar autokephalen Status hatten, teilweise ausdrücklich als autonom bezeichnet wurden; nicht darunter war die Kirche Zyperns. Es gab also bereits Autokephalien neuen Typs mit prinzipieller Gleichrangigkeit gegenüber den alten Autokephalien und mit fließenden Übergängen zu den ausdrücklich als autonom bezeichneten Kirchen.

2. Die formellen Voraussetzungen

Welche formellen Voraussetzungen ergeben sich nun für die Entstehung von Autokephalien neuen Typs. Als notwendige Voraussetzung haben wir zunächst die Zustimmung der Mutterkirche zu betrachten, aus der sich die neue Kirche herausentwickelt hat. Diese Bedingung ist jedoch nicht hinreichend, denn es bedarf weiters der interorthodoxen Anerkennung, wobei im besonderen die Anerkennung seitens des Ökumenischen Patriarchats ins Auge zu fassen ist, dem hier eine beschränkte Repräsentationsfunktion für die Gesamtorthodoxie zukommt. In der Frage der interorthodoxen Anerkennung von neuen Autokephalien besteht allerdings – parallel zu ähnlichen Strukturen des Völkerrechts – de facto die Möglichkeit einer partiellen Anerkennung. Die damit zusammenhängenden Schwierigkeiten wird man nur in jedem einzelnen Fall lösen können. Man wird jedoch davon ausgehen können, daß der ausdrückliche Protest seitens des Ökumenischen Patriarchats gegen eine neue Autokephalie nicht übergangen werden darf.

3. Die materiellen Voraussetzungen

Angesichts dieser Unklarheiten empfiehlt es sich, die materiellen Voraussetzungen für die Zuerkennung eines autokephalen bzw. autonomen Status herauszuarbeiten und in einer Typologie zusammenzustellen. Bei der Bestimmung der materiellen Voraussetzungen für die Anerkennung der Autokephalie einer Kirche möchte ich mit jenen Kirchen beginnen, die den Typ der Autokephalie am reinsten repräsentieren, den Patriarchalkirchen. Die Zuerkennung der patriarchalen Würde an das Haupt einer autokephalen Kirche ist durch folgende Voraussetzungen bestimmt:

1. Die Kirche ist „Nationalkirche" insoweit als sie die traditionelle Kirche eines Volkes ist und damit der entsprechend hohe Grad an Identität der Zugehörigkeit zum Volk und zur Kirche besteht.
2. Es muß eine entsprechende staatliche Einheit vorhanden sein, die die Mehrheit des Volkes umfaßt und damit auch die Mehrheit der Gläubigen dieser Kirche.

Ich möchte daher ausdrücklich darauf hinweisen, daß in der Patriarchenwürde für ein kirchliches Oberhaupt einer Autokephalie neuen Typs bereits von Anfang an das Personalitätsprinzip anklang. Der Patriarch ist eben Patriarch der Serben, der Rumänen, der Bulgaren usw., eine Verknüpfung, die vielleicht auch etymologisch naheliegt. Auf Grund dieser besonderen Verbindung zu einem bestimmten Volk bzw. auch zu einem bestimmten Staat ist auch kaum mit einer Vermehrung dieses Typs Autokephalie im Rahmen der byzantinischen Orthodoxie zu rechnen. Die besondere Würde einer derartigen Verbindung von Kirche, Volk und Staat, wie sie in den Patriarchalkirchen zum Ausdruck kommt, bringt es weiters mit sich, daß Patriarchalkirchen im Rang anderen Kirchen vorgehen, und zwar nicht nur dann, wenn diese jüngeren Datums sind, sondern sogar, wenn sie – wie das Erzbistum Zypern – ihre Selbständigkeit auf ein Ökumenisches Konzil zurückführen können. D.h. im Rang der orthodoxen Kirchen geht eine Patriarchalkirche mit einer Autokephalie neuen Typs einer Nichtpatriarchalkirche mit Autokephalie alten Typs vor.

Halten wir also am Beispiel der Patriarchalkirchen die wichtigste materielle Voraussetzung für die Anerkennung einer Autokephalie fest. Diese Voraussetzung hat bereits Anspruchscharakter, sie stellt eine hinreichende materielle Bedingung für die Anerkennung eines autokephalen Status dar. Wenn eine historisch-kulturelle Einheit von Kirche und Volk gegeben ist und dazu noch die politische Selbständigkeit dieses Volkes kommt, besteht ein Anspruch auf Zuerkennung des autokephalen Status, im Regelfall wohl auch der Würde einer Patriarchatskirche.

Das Beispiel der Kirche Zyperns macht deutlich, daß sie sowohl zum Zeitpunkt der Entstehung als Autokephalie als auch im Laufe ihrer ganzen Geschichte als solche niemals auch nur den Anspruch auf den Patriarchenrang erhoben hat. Weiters war, wie bereits erwähnt, die Selbständigkeit der Kirche Zyperns auf Grund der ethnischen Zugehörigkeit des zyprischen Volkes zu einer größeren Einheit immer dann gefährdet, wenn die politische Selbständigkeit der Insel verlorenging. Es genügt jedoch bereits ein halbwegs autonomer Status für Zypern als politische Einheit, um dem Anspruch auf kirchliche Selbständigkeit zum Durchbruch zu verhelfen.

Neben den Patriarchalkirchen steht eine Reihe von selbständigen Kirchen, deren typologische Erfassung ungleich schwieriger ist. Sie stehen unter der Leitung eines Erzbischofs oder eines Metropoliten und sind bis auf die Kirche Zyperns selbständige Kirchen neuen Typs. Sie sind dadurch gekennzeichnet, daß sie nicht als Nationalkirchen im vollen Sinn anzusprechen sind. Sie umfassen entweder nur eine Minderheit des betreffenden Volkes hinsichtlich der Konfession – z.B. die Kirche Polens, Albaniens und Finnlands im 20. Jahrhundert – oder nur eine Minderheit des betreffenden Volkes im Rahmen der durch die entsprechende politische Einheit gegebenen Grenzen. Für die zweite Gruppe können als wichtigste Beispiele die Kirche von Zypern und die Kirche Griechenlands gelten. Die Kirche Griechenlands hat ganz spezifische historische Bindungen an das Ökumenische Patriarchat als die griechische Großkirche, von der notwendigen politischen Rücksichtnahme ganz zu schweigen.

Wann sind jedoch bei diesen Kirchen mit einem Erzbischof oder einem Metropoliten an der Spitze die materiellen Voraussetzungen für die Zuerkennung eines autokephalen bzw. nur eines autonomen Status gegeben?

Mit dieser Frage haben wir das Hauptproblem unserer Typologie angesprochen.

Notwendige Voraussetzung für Autokephalie ist jedenfalls, daß die Kirche einer selbständigen politischen Einheit entspricht. Dies führt allerdings zu Schwierigkeiten bei Staaten mit föderalistischer Struktur – man denke nur an die Diskussion über die Selbständigkeit der makedonischen Kirche, sowie der Kirchen in den sowjetischen Republiken. In all diesen Fällen wird man – unabhängig von der aktuellen politischen Situation – die Voraussetzung für Autonomie für gegeben erachten müssen. Dies unbeschadet spezieller Voraussetzungen, die sogar die Autokephalie solcher Kirchen als angemessen erscheinen lassen; ich denke dabei v.a. an die georgische Kirche. Die Voraussetzungen für eine nichtpatriarchale Autokephalie lassen sich also wie folgt einengen: Im Rahmen eines souveränen Staates gehört ein zahlenmäßig ins Gewicht fallender Teil des Staatsvolkes (oder eines der Staatsvölker) einer orthodoxen Kirche an; als Beispiel sei Albanien angeführt. Fraglich wird diese Zuordnung dann, wenn die Minderheit sozio-kulturell einem in einem anderen Staat organisierten Volk angehört und die entsprechende Tradition sich auf diese Gemeinschaft bezieht. Dies gilt – zumindestens ursprünglich – für die Kirchen Polens, der Tschechoslowakei, Finnlands und Ungarns. Hier bietet sich als Differenzierungsmerkmal für Autokephalie einerseits und Autonomie andererseits die zahlenmäßige Stärke und der Aufbau eigener spezifischer Traditionen an, wobei als unterste Grenze für Selbständigkeit die Verwendung einer eigenen Liturgiesprache anzusehen ist. Der autokephale Status Polens ist unbestritten, nicht so der der tschechoslowakischen Kirche. Die Kirche Finnlands hat autonomen Status, der kleinen Kirche Ungarns wird auch dieser Status nicht einheitlich zuerkannt.

Wie steht es nun mit den materiellen Voraussetzungen für die Zuerkennung von Autonomie bzw. sogar von Autokephalie in Gebieten, die prinzipiell der Diaspora zuzuordnen sind? Es ist klar, daß hier die sich aus der Tradition und den alten Kanones ergebenden Schwierigkeiten am größten sind, wie das Beispiel der Russisch-orthodoxen Metropolis in Amerika zeigt. Erhebt doch hier eine Einheit der mittleren Ebene den Anspruch auf Autokephalie, die weder auf dem Territorialitätsprinzip noch auf einem nationalkirchlichen Personalitätsprinzip beruht, sondern auf das Bekenntnis zu einer bestimmten Jurisdiktion abstellt.

Man kann davon ausgehen, daß die spezifischen sozio-kulturellen Bedingungen in der Diaspora, durch die sich die dort lebende orthodoxe Gemeinschaft zunehmend von ihrer Mutterkirche abhebt, im Falle der entsprechenden organisatorischen Voraussetzungen einen autonomen Status rechtfertigen. Die notwendige Organisationsdichte wird man an der Zahl der Gläubigen, der Zahl der Priester, eventueller Ausbildungsstätten und geistiger Zentren bestimmen können, da damit die wichtigsten Voraussetzungen für ein besonderes Selbstverständnis gegeben sind.

Es kann nicht oft genug betont werden, daß eine recht verstandene Communio-Ekklesiologie der Vielfalt der Entwicklungen in der Entwicklung kirchlicher Gemeinschaften Rechnung zu tragen hat. Man wird für die Beurteilung der Jurisdiktion in der Diaspora sicher auch im besonderen an die Immigrationsländer denken müssen, in denen andere Integrationsvorgänge ablaufen als in den westeuropäischen Staaten.

So gesehen gibt es schwerwiegende Gründe für die Einrichtung autonomer Gemeinschaften der mittleren Ebene in Immigrationsländern, der Griff zur Autokephalie – noch dazu auf Grund des Bekenntnisprinzipes – scheint mir allerdings recht gewagt. Daß die Zuständigkeit einer autokephalen Kirche in den territorialen Bereich einer anderen auf Grund des Personalitätsprinzipes übergreift, ist insoferne gerechtfertigt, als am hohen Identitätsgrad von Einheiten, wie sie die Nationen in der europäischen Neuzeit darstellen, in der Organisation kirchlicher Gemeinschaft nicht vorbeigesehen werden kann. Insoferne ist mit der kategorischen Zurückweisung des Phyletismos den pastoralen Erfordernissen oft entgegengehandelt worden. Daß aber die Sonderentwicklung von Gemeinschaften in Immigrationsländern, die gerade in dieser Entwicklung Konvergenzen aufweisen, zu isolierten Autokephalien führt, ist pastoral nicht gerechtfertigt. Denn die Ablösung von der Mutterkirche ist mit einer Annäherung der einzelnen Gemeinden der Immigrationsländer untereinander verbunden. Pastoral wünschenswert wäre wohl eher eine organisatorische Form, die dieser Annäherung der verschiedenen Traditionen in der gemeinsamen Umgebung Rechnung trägt. Dies sei im Bewußtsein aller der historischen und politischen Implikationen, die dieses Problem aufweist, festgestellt.

V. Kurze Zusammenfassung

Die verfassungsrechtliche Organisation der mittleren Ebene in den Kirchen mit byzantinisch-orthodoxer Tradition – sei es in Autokephalien, sei es in Autonomien – muß nicht zuletzt den pastoralen Aufgaben der Kirche nachkommen. Ihre ekklesiologische Untermauerung ist in einem dynamischen Communiobegriff zu sehen, der den jeweiligen Ausdrucksformen menschlicher Gemeinschaft Rechnung trägt. Es muß sowohl vermieden werden, eine bestimmte Struktur als für alle Zeiten maßgeblich zu erklären, als auch jeden ephemeren – aus der politischen Sphäre hereinwirkenden – Zufälligkeiten zu entsprechen. Weder die Ausrichtung an einem starren normativ verfestigten Schema noch die unbesehene Legitimation von Faktizitäten, hinter denen nicht der sensus fidelium, sondern politische Manipulation steht, kann Aufgabe des Kanonisten sein, sondern die kritische Überprüfung sowohl des Überkommenen als auch neuer Entwicklungen, eine Überprüfung, die sich am Sinn jeder Organisation der Kirche in dieser Welt zu orientieren hat.

Es gab und gibt kein festumgrenztes Begriffsfeld von Autokephalie und Autonomie, sondern nur immer wieder Ausprägungen selbständiger Kirchen auf der mittleren Ebene zwischen der einen Kirche und den einzelnen Bischofskirchen placiert. Diese Gemeinschaften lassen sich mehr oder weniger den beiden Haupttypen Autokephalie und Autonomie mit all ihren Varianten zuordnen. Varianten, die sich aus den spezifischen Relationen von Kirchen zueinander ergeben. Weder das besondere Verhältnis der Kirche Griechenlands zum Ökumenischen Patriarchat noch die genannten Bestimmungen in den Verfassungen Zyperns und Alexandreias können daher den Status dieser Kirchen prinzipiell gefährden.

EINIGE BEMERKUNGEN ZU DEN MATERIELLEN UND FORMELLEN VORAUSSETZUNGEN DER AUTOKEPHALIE IN DER ORTHODOXEN KIRCHE

SPYRIDON TROIANOS

Athen

Die Frage der Unabhängigkeit und Selbständigkeit im Zusammenhang mit den die Ausübung der kirchlichen Jurisdiktionsgewalt betreffenden Regeln war bereits in der alten Kirche keine verwaltungstechnische Angelegenheit, sondern ein echtes kirchenpolitisches Problem. Der in den ersten Jahrhunderten herrschenden absoluten Unabhängigkeit der lokalen Kirchen folgte bekanntlich nach Einführung der Metropolitanverfassung die nur noch verwaltungsmäßige Autonomie der Kirchenprovinzen, die durch die Errichtung von Obermetropolitanverbänden, der Diözesen, aufgehoben wurde. Diese Organisation führte allmählich zur Gestaltung der Institution der Pentarchie, welche den mit der Autokephalie zusammenhängenden Problemen eine mehr oder weniger zufriedenstellende Lösung ermöglicht hat. Das auf diese Art zustandegekommene Gleichgewicht blieb im Rahmen der Ideologie des einen Reiches jahrhundertelang ungestört. Da aber die Autokephalie von der Frage des Verhältnisses zwischen Staat und Kirche nicht zu trennen ist, hat die Entstehung von neuen Staatsgewalten – in Staaten mit einem orthodoxen Oberhaupt – das Gesamtbild dieser Ausgeglichenheit in der spätbyzantinischen Periode nicht unerheblich durch die vorübergehende Errichtung von unabhängigen Kirchen auf der Balkanhalbinsel geändert. Im Osmanenreich blieb diese ziemlich unklare Situation zunächst weiter bestehen. Aber im 19. und in den ersten Jahrzehnten des 20. Jahrhunderts haben der erfolgreiche Ausgang des langjährigen Kampfes der unter türkischer Herrschaft lebenden Nationalgruppen um ihre politische Unabhängigkeit und die damit verbundenen Forderungen auf dem Gebiet der Ausübung der Kirchenverwaltung das Problem um die genaue Festsetzung der materiellen und formellen Voraussetzungen der kirchlichen Autokephalie bzw. Autonomie aufgeworfen. Im folgenden werden nur einige Bemerkungen über dieses Problem zum Ausdruck gebracht, welche der kirchlichen Praxis, besonders der letzten Jahrhunderte, entnommen sind.

I. In den Prooimien einiger Patriarchalakte des 19. und des 20. Jahrhunderts, durch die die Autokephalie bzw. die Autonomie einer Teilkirche proklamiert wurde, beruft man sich auf den bekannten Satz: „Die kirchlichen Verhältnisse werden gewöhnlich in Anlehnung an die staatlichen geordnet."

(„Τὰ ἐκκλησιαστικὰ τοῖς πολιτικοῖς συμμεταβάλλεσθαι εἴωθε.")

Dieser Satz kommt in einem nahezu gleichen Wortlaut:

„Εἴ τις ἐκ βασιλικῆς ἐξουσίας ἐκαινίσθη πόλις ἢ αὖθις καινισθείη, τοῖς πολιτικοῖς καὶ δημοσίοις τύποις καὶ ἡ τῶν ἐκκλησιαστικῶν τάξις ἀκολουθείτω" in zwei Kanones

von Ökumenischen Synoden vor: im 17. von Chalkedon und im 38. des Trullanum. In diesen Kanones aber steht er in keinerlei Verbindung mit irgendwelchen Fragen der Autokephalie oder auch mit der Einteilung der kirchlichen Jurisdiktionsbezirke. Es handelt sich dort vielmehr um die Verleihung von Ehrentiteln, ohne jedoch Privilegien auf dem Gebiet der kirchlichen Verwaltung zu berühren. Die Auslegung, der zufolge die Struktur der kirchlichen Verwaltung die weltliche zum Vorbild haben soll, geht auf den Patriarchen Photios zurück: „Τὰ περὶ τῶν ἐνοριῶν δίκαια ταῖς πολιτικαῖς ἐπικρατείαις καὶ διοικήσεσι συμμεταβάλλεσθαι εἴωθεν" (= Nach dem Gewohnheitsrecht ist die Angleichung der kirchlichen Organisation an die politische Gliederung des Reiches nötig). Aber auch diese nachträgliche Sinngebung, die vor dem konkreten historischen Hintergrund (nämlich dem Streit zwischen Konstantinopel und Rom um das östliche Illyricum) zu sehen ist, verselbständigte sich zu einem allgemeinen Lehrsatz, der jedoch nur bedingt richtig zu sein scheint. Dies ergibt sich deutlich aus dem in der Zeit des Patriarchen Nikolaos III. Grammatikos im Jahr 1084 verfaßten Synodalbrief anläßlich einer Klage des Metropoliten Niketas von Ankyra auf Rückkehr des Stuhles von Basileion unter seine Jurisdiktion und den dort zitierten Präzedenzfällen[1]. Insofern ist dieser zum Prinzip erhobene Satz als Entscheidungskriterium vollkommen ungeeignet. (A fortiori darf man nicht darin ein Allheilmittel für sämtliche Fragen der kirchlichen Selbstverwaltung sehen.)

Wenn man diesen Grundsatz des Photios nicht als Interpretation der beiden genannten Kanones auffaßt und ihm auch keine unbedingte Gültigkeit zuschreibt, kann man in ihm einen wahren Kern erkennen. Es ist bestimmt kein Zufall, daß die weltlichen Zentren seit alters her mit den kirchlichen meistens identisch waren. Mit Sicherheit ist anzunehmen, daß der Staat für seine Verwaltungszentren immer die Plätze ausgesucht hat, die in Hinsicht auf die Verkehrsverbindungen günstiger gelegen und die, besonders an den Grenzprovinzen, wegen ihrer Lage gegen feindliche Angriffe besser abzusichern waren. Angesichts dieser Vorteile lag es nahe, daß der Aufbau der kirchlichen Verwaltung in wesentlichen Punkten der staatlichen Administration angeglichen wurde. Aber diese Übernahme von weltlichen Vorbildern, sei es in größerem oder in kleinerem Umfang, ist keineswegs eine kanonische Notwendigkeit. Mit anderen Worten: die zuständigen kirchlichen Organe ließen sich bei der Rezeption staatlicher Strukturen allein von Zweckmäßigkeitsgesichtspunkten leiten und waren dabei nicht der Überzeugung, daß sie (in diesen Fällen) eine von den heiligen Kanones auferlegte Verpflichtung erfüllten. Mangels einer opinio necessitatis kann man ebensowenig von der Bildung eines Gewohnheitsrechts sprechen. Denn es ging nicht um eine einheitliche Handlungsweise, sondern um aus praktischen Gründen gebotene Einzelfallentscheidungen. Der Grundgedanke bei der Lösung der rein organisatorischen Probleme der kirchlichen Verwaltung war also in der Regel die Zweckmäßigkeit. Das galt auch im Fall der Erteilung des Selbstverwaltungsrechts entweder in der Form der Autokephalie oder in derjenigen der Autonomie. Wenn also die Gewährung eines solchen Rechts an eine Teilkirche zur Diskussion steht, muß geprüft werden, ob die in Frage kommende Regelung zur

[1] *Rhallis – Potlis*, Syntagma, Bd. 5, S. 62–82; V. *Grumel*, Reg. 938; F. *Dölger*, Reg. 1108.

optimalen Ausübung der Kirchenverwaltung beitragen wird. Für diese Entscheidung dürfen ausschließlich objektive Kriterien in Betracht gezogen werden, wie z.B. der Umstand, daß irgendwelche Faktoren (aber nicht nur vorübergehenden Charakters) der regelmäßigen Kommunikation zwischen der Hauptkirche und der von ihr abhängigen Teilkirche, die die Selbstverwaltung anstrebt, entweder im Wege stehen oder sie erheblich behindern. Infolgedessen stellt die Frage nach der optimalen Ausübung der potestas iurisdictionis eine der Voraussetzungen dar, und zwar die objektive Voraussetzung hinsichtlich der anzuwendenden Kriterien zur Gewährung des Selbstverwaltungsrechts an eine Teilkirche. In bezug auf den Umfang und die Form der Selbstverwaltung (Autokephalie oder Autonomie) ist die Ermessensfreiheit des zuständigen Organs (von dem sogleich die Rede sein wird) nicht uneingeschränkt, denn die entsprechende Entscheidung hängt von der Beantwortung der obigen Frage der Kommunikationsmöglichkeit ab.

Neben dieser Voraussetzung gibt es eine weitere oder genauer ausgedrückt: es geht die zweite Voraussetzung zeitlich der ersten voran. Damit ist die Willenserklärung des betreffenden Volkes, d.h. der Mitglieder der orthodoxen Religionsgemeinschaft, die zur autokephalen oder autonomen Kirche erhoben werden soll, gemeint. Die Notwendigkeit dieser Voraussetzung, die man als subjektive im Gegensatz zur oben erwähnten bezeichnen könnte, ist aus fast allen diesbezüglichen Patriarchalakten der Neuzeit zu entnehmen, in denen die Forderung des christlichen Volkes ausdrücklich genannt wird, und sie bedeutet gleichzeitig die Abtretung eines gewissen Selbstbestimmungsrechts, welches kirchengeschichtlich mehrfach belegt ist[2]. Es unterliegt keinem Zweifel, daß unter „Volk" sowohl der Klerus als auch die Laien zu verstehen sind. Der einseitige Schritt einer der beiden Gruppen würde diese Voraussetzung nicht erfüllen. Die Form jedoch der Willenserklärung läßt sich nicht genau bestimmen, denn sie ist de facto abhängig von den jeweiligen politischen und sonstigen Verhältnissen im betreffenden Ort.

Mit der Feststellung, daß diese beiden Voraussetzungen erfüllt sind, ist das Prüfungsverfahren noch nicht abgeschlossen. Die genaue Untersuchung der in Betracht gezogenen Patriarchalakte und deren historischen Rahmens hat zwei zusätzliche Punkte zum Vorschein gebracht, die man nicht als Voraussetzungen bezeichnen kann, weil sie keine unmittelbare Beziehung zum Prüfungsgegenstand haben. Sie stehen funktionell zwischen den beiden Voraussetzungen. Wegen ihres objektiven Charakters können sie unter Umständen die Erfüllung der objektiven Voraussetzungen beeinflussen, aber sie sind keineswegs mit ihnen identisch. Materiell gehören sie eigentlich eher zur subjektiven Voraussetzung; durch den eben genannten Charakter lassen sie sich jedoch von ihr deutlich unterscheiden. Die beiden Punkte sind einerseits die nationale Einheitlichkeit der Mitglieder der christlichen Gemeinde, deren Selbstverwaltung zur Diskussion steht, und andererseits die Tatsache, daß diese ethnische Gruppe unter ein und derselben staatlichen Organisation lebt. Dabei ist aber bestimmt nicht erforderlich, daß diese staatliche Organisation ausschließ-

[2] Vgl. zahlreiche Beispiele bei P. *Trempelas*, Ἀρχαὶ κρατήσασαι ἐν τῇ ἀνακηρύξει τοῦ αὐτοκεφάλου, in: Theologia 28 (1957) S. 14 ff.

lich die besagte Nationalgruppe umfaßt, was durch das Beispiel des serbischen Patriarchats bestätigt wird, oder daß sämtliche Staatsangehörige zur selben Konfession gehören (vgl. die Kirchen der Tschechoslowakei und Polens). Aber in diesem Zusammenhang entsteht eine Frage, zu der die bisherige kirchliche Praxis keine befriedigende Antwort anbietet. Nämlich: genügt zur Erlangung des Selbstverwaltungsrechts die Tatsache, daß die in Frage kommende Gruppe nur eine ethnische Minderheit innerhalb des Staates darstellt, insbesondere falls in dem Herkunftsland dieser ethnischen Minderheit bereits eine autokephale bzw. autonome Kirche existiert? Ich halte die Bejahung der Frage für ziemlich unwahrscheinlich, aber wie gesagt, das kann nur den Wert einer Hypothese haben. Im Gegensatz zu den Voraussetzungen, welche die eigentliche Frage der Autokephalie unmittelbar berühren, stehen die beiden Punkte nur in indirekter Beziehung zu ihr. In Anbetracht dieses Sachverhalts könnte man für sie den Terminus „äußere Bedingungen der Autokephalie" verwenden.

II. Die Verleihung der Autokephalie an die Kirche von Zypern, die eine Abweichung von den Regeln des Pentarchie-Systems darstellte, erfolgte durch den Kanon 8 des Ephesinum. Darauf folgte das Erzbistum Justinians Prima, dessen Autokephalie durch die Novelle 131 Justinians (cap.3) im Jahre 545 proklamiert wurde. Nach den Quellenzeugnissen aber gehen die Folgen dieser einseitigen Handlung des Kaisers kaum über seinen Tod hinaus[3]. Unberührt blieb im Gegensatz dazu durch die Jahrhunderte die angeblich unter Patriarch Petros von Antiochien zur Autokephalie erhobene Kirche von Iberien[4].

In bezug auf das Erzbistum von Achrida ist das Quellenmaterial ziemlich dürftig. Den drei Chrysobullen des Kaisers Basileios II. vom Jahre 1020[5], durch welche die Privilegien der autokephalen Kirche garantiert wurden, kann man nicht entnehmen, ob ihnen ein diesbezüglicher Synodalakt vorausgegangen ist. Die Anerkennung der Selbständigkeit des Erzbistums von Trnovo und die Erhebung des Erzbischofs zum Patriarchen gehen auf eine unter dem Patriarchen Germanos II. im Frühjahr 1235 ergangene Synodalentscheidung zurück, die vom Kaiser Johannes III. Vatatzes bestätigt wurde[6]. Dieser Vorfall wirft erhebliche Probleme auf, die allerdings wegen des Verlustes der kaiserlichen Originalurkunde nicht gelöst werden können. Es läßt sich auf jeden Fall mit größter Wahrscheinlichkeit vermuten, daß der Beschlußfassung in Konstantinopel ein Meinungsaustausch in brieflicher Form vorangegangen ist, in dessen Verlauf die Zustimmung der anderen Patriarchen eingeholt wurde. Nach einem Schreiben des Patriarchen Kallistos I. vom Jahre 1361[7] handelt es sich dabei nicht um eine Rangerhöhung, sondern um die bloße Verleihung eines Ehrentitels, die aus „Nachgiebigkeit und aufgrund kirchlicher Dispensation" (κατὰ

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[3] Siehe die Quellenangaben bei K. *Delikanis*, Πατριαρχικὰ ἔγγραφα, Bd. III, Konstantinopel 1905, S. 946 ff.; vgl. auch H.-G. *Beck*, Kirche und Theologische Literatur im byzantinischen Reich, München 1959, S. 186.

[4] So *Balsamon* im Kommentar zum Canon 2 des 2. Ökumenischen Konzils, in: *Rhallis – Potlis*, a. a. O. (1), Bd. 2, S. 172.

[5] Vgl. *Dölger*, Reg. 806–808.

[6] Siehe V. *Laurent*, Reg. 1282, und *Dölger*, Reg. 1746 (vgl. auch Nr. 1730 und 1745) mit der einschlägigen Literatur.

[7] *Miklosich – Müller*, Acta Bd. I, Wien 1860, S. 437, J. *Darrouzès*, Reg. 2442.

συγκατάβασιν) erfolgte, nachdem die Kanones 28 von Chalkedon und 36 des Quinisextum die Patriarchalstühle abschließend aufzählten. Deswegen unterlag das erteilte Selbstverwaltungsrecht gewissen Einschränkungen, die in einem unter dem Patriarchen Germanos II. in der Zeit zwischen 1235 und 1240 ergangenen Tomos[8] angeführt werden. Noch weniger informiert sind wir über die Vorfälle, die in der Zeit des Patriarchen Manuel I. zur Autokephalie der Serbischen Kirche geführt haben, weil der Text des diesbezüglichen Synodalaktes vom Jahre 1220 verloren gegangen ist.

Während der 3. Amtsperiode des Patriarchen Jeremias II. von Konstantinopel (1586–1595) wurde die russische autokephale Kirche zum Patriarchat erhoben und dem Metropoliten von Moskau der 5. Rang unter den orthodoxen Patriarchen zuerkannt. Da die vier Patriarchen des Ostens der Synode, die diesen Beschluß faßte, entweder persönlich oder durch einen Vertreter beiwohnten, ist der panorthodoxe Charakter dieser Synode unbestreitbar[9]. Fast zwei Jahrhunderte später (1767) vollzog sich die Aufhebung der Autokephalie des Erzbistums von Achrida ebenfalls durch einen Synodalakt[10]. Unter Heranziehung der bei den contrarii actus geltenden Zuständigkeitsnormen ist diese Entscheidung von besonderer Bedeutung.

Die politischen Ereignisse in Europa und insbesondere auf dem Balkan im 19. und im beginnenden 20. Jahrhundert haben die kirchliche Organisation sehr stark beeinflußt. So gewährte der Ökumenische Patriarchat der Serbischen Kirche zunächst (im August 1831) eine beschränkte Autonomie für die innerkirchlichen Angelegenheiten und später (im Jahre 1879) die Autokephalie. Im Jahre 1850 erlangte die Kirche von Griechenland die Autokephalie und im Jahre 1885 ebenfalls diejenige von Rumänien. Eine stärkere Entwicklung zur Autokephalie zeigte sich im 20. Jahrhundert. Als autonom wurden die Kirchen von Finnland, Estland, Lettland und von der Tschechoslowakei anerkannt, als autokephal die Kirchen von Polen, Albanien und Bulgarien und schließlich als Patriarchate die Kirchen von Serbien, Rumänien und Bulgarien.

Nun stellt sich die Frage, wer für die Erteilung der Autokephalie zuständig ist. Aus den Kanones und den Akten der ökumenischen Konzilien ergibt sich, daß die Regelung sämtlicher Fragen, die sich auf die Autokephalie bezogen, wie z.B. die Proklamation, die Rangordnung der autokephalen Kirchen und ihr Jurisdiktionsbereich, durch Beschlüsse dieser Konzilien erfolgte. Der Versuch der Staatsorgane, diese Rechte für sich in Anspruch zu nehmen, hat keinen Erfolg gehabt, wie das bereits erwähnte Schicksal des Erzbistums Justiniana Prima, dessen Autokephalie auf eine Kaisernovelle und nicht auf einen Synodalbeschluß zurückging, deutlich zeigt. Auch kleinere unmittelbare Eingriffe des Staates in die Sphäre der kirchlichen Organisation wurden von der Kirche entschieden zurückgewiesen[11]. Eine solche Intervention wurde nur in indirekter Form und nur im Sinne der Kanones 12 von Chalkedon und 38 des Trullanum von der Kirche akzeptiert.

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[8] *Miklosich – Müller*, a. a. O. (7), S. 438,26–439,19; *Laurent*, Reg. 1285.

[9] Siehe den Text des Synodalaktes bei *Rhallis – Potlis*, a. a. O. (1), Bd. 5, S 149–155.

[10] Siehe *Delikanis*, a. a. O. (3), S. 895–898.

[11] Siehe die Auseinandersetzung zwischen dem Metropoliten von Tyros und dem Bischof von Berytos in den Akten der 19. Sitzung des 4. Ökumenischen Konzils, in: E. *Schwartz*, Acta Concil. Oecumenicorum, Bd. II.1.3., S. 101–110.

Seit die Einberufung von ökumenischen Konzilien unmöglich wurde, trat de facto an deren Stelle als oberstes Verwaltungsorgan der Ostkirche die Endemusa Synodos von Konstantinopel, indem sie in ihren Aufgabenbereich viele Gegenstände, die früher zu der ausschließlichen Zuständigkeit der ökumenischen Konzilien gehörten, aufnahm[12]. Diese Ablösung geschah aber, wie bereits erwähnt, nicht de iure oder besser in „kanonischer Weise" (κατὰ κανονικὴν ἀκρίβειαν), sondern nur um jene im Laufe der Zeit entstandenen Probleme der Kirchenverwaltung, die wegen ihrer Wichtigkeit im Vordergrund standen, zu lösen. Konsequenterweise ist die Anerkennung von autokephalen Kirchen in der spät- und postbyzantinischen Periode von der Endemusa Synodos gemäß Oikonomia vorgenommen worden – nach der sehr zutreffenden Definition von Beck:[13] „Die Oikonomia stellt auf breitester Skala das Mittel dar, mit einer rechtlichen oder tatsächlichen Anomalie fertig zu werden. Sie umfaßt sowohl die im Einzelfall gewährten Dispense von der Einhaltung einer Rechtssatzung als auch das ausgleichende Verfahren zwischen Widersprüchen des Gesetzes, Widersprüchen zwischen Gesetz und Erfordernis der momentanen Sachlage." Dementsprechend darf die Oikonomia nicht nur auf dem Gebiet des materiellen Rechts, sondern auch auf dem des formellen, wie hier, angewandt werden. Weiterhin versteht es sich von selbst, daß man sich im Rahmen der Oikonomia, um einem gewissen Mißstand abzuhelfen, nicht jede Abweichung vom geltenden kanonischen Recht erlauben darf, sondern nur diejenige, die im konkreten Fall absolut erforderlich und möglichst unaufwendig ist, und zwar innerhalb der von der Dogmatik gezogenen Grenzen[14]. Diese Auffassung spiegelt sich deutlich in den folgenden Zeilen des oben zitierten Schreibens des Patriarchen Kallistos wider: „... dem Bischof von Trnovo wurde aus Großherzigkeit das Recht geschenkt, den Titel des Patriarchen von Bulgarien zu führen, ohne daß er jedoch zu den übrigen sehr heiligen Patriarchen gezählt wird, weshalb er auch kein Anrecht auf Nennung in den heiligen Diptychen haben soll..." („... ἐδωρήθη συγκαταβάσεως λόγῳ πρὸς τὸν Τρινόβου τὸ ὀνομάζεσθαι πατριάρχην Βουλγαρίας, οὐ μέντοι εἶναι καὶ συναρίθμιον τοῖς λοιποῖς ἁγιωτάτοις πατριάρχαις, καὶ διὰ τοῦτο μηδὲ μνημονεύεσθαι ἐν τοῖς ἱεροῖς διπτύχοις ...")[15]. Hier muß betont werden, daß es sich um eine Titelverleihung handelt und nicht um die Erhebung einer Kirche zum Patriarchat, die im Hinblick auf die Zuständigkeit anderen Normen unterliegt. Parallel laufende Verfahren oder gleichzeitig unternommene Handlungen der Staatsorgane[16] dürfen m.E. nur als eine politisch motivierte Aktivität bewertet werden und nicht als Zusammenwirken mit den zuständigen kirchlichen Organen, deren Entscheidungen gewiß auch ohne die staatliche Zustimmung kanonisch bindend sind.

Das Prinzip der Oikonomia manifestiert sich auch bei allen Autokephalien des 19. und des 20. Jahrhunderts, obwohl sie nicht von der Endemusa Synodos, sondern von der Patriarchalsynode proklamiert wurden. Wegen

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[12] Vgl. R. *Potz*, Patriarch und Synode in Konstantinopel, Wien 1971, S. 23 f. und 45 f.
[13] A. a. O. (3), S. 77.
[14] Vgl. auch N. *Milasch*, Das Kirchenrecht der morgenländischen Kirche, Mostar 1905^2, S. 73 f. mit Quellenangaben.
[15] *Miklosich – Müller*, a. a. O. (7), S. 437, 16–19.
[16] Siehe z.B. *Dölger*, Reg. 1705, 1746.

der Irregularität dieses Verfahrens wird in der Fachliteratur[17] die Meinung vertreten, daß die auf diese Art und Weise anerkannten Autokephalien einen provisorischen Charakter haben und daß sie der Bestätigung einer panorthodoxen bzw. einer ökumenischen Synode bedürfen, wenn eine solche in absehbarer Zeit zusammentreten sollte. Dieser Meinung kann ich mich nicht anschließen, denn sie widerspricht der Natur der kirchlichen Oikonomia. In der Tat stellt eine im konkreten Fall durch das allgemeine Wohl der Kirche begründete Nichtbefolgung einer kanonischen Vorschrift, deren allgemeine Gültigkeit dadurch jedoch nicht beeinträchtigt wird, eine endgültige Regelung der jeweils anhängigen Frage dar. Die entgegengesetzte These, nämlich daß die kat'oikonomian vorgenommene Handlung der Patriarchalsynode unter der auflösenden Bedingung der Ablehnung der Proklamation durch die übergeordnete allgemeine Synode steht, so daß sämtliche Rechtswirkungen der Autokephalie bei Bedingungseintritt wieder fortfallen, kommt in direkten Konflikt mit dem Zweck der Oikonomia. Infolgedessen bin ich der Ansicht, daß die von der Patriarchalsynode im 19. und im 20. Jahrhundert anerkannten Autokephalien keinerlei Bedingungen unterworfen sind.

Soweit die Regelung der Zuständigkeit bei der Verleihung der Autokephalie. Bei der Rangerhöhung einer autokephalen Kirche zum Patriarchat gilt ebenfalls die Grundregelung, daß sie durch Beschluß eines ökumenischen Konzils erfolgt. Da aber ein neues Patriarchat die Erweiterung der Anzahl der Patriarchate darstellt, die von den ökumenischen Konzilien abschließend bestimmt wurde[18], bedarf es dazu des Beschlusses eines in formeller Hinsicht gleichgestellten gesetzgebenden Organs. Mit anderen Worten, hier ist der Beschluß einer allgemeinen Synode – unter den gegenwärtigen Verhältnissen einer panorthodoxen Synode – absolut erforderlich und kann deswegen nicht durch einen Beschluß der Patriarchalsynode ersetzt werden, auch nicht in der Form der Oikonomia, weil ihre Voraussetzungen in diesem Fall nicht vorhanden sind. Dies zeigt sich deutlich bei den folgenden Vorgängen: Die Erhebung der russischen autokephalen Kirche zum Patriarchat erfolgte im ausgehenden 16. Jahrhundert durch den Beschluß einer Synode, deren Nähe zu einem ökumenischen Konzil wegen der Teilnahme der übrigen Patriarchate des Ostens[19] sehr auffallend war. Dagegen ist bei den Patriarchaten von Serbien, Rumänien und Bulgarien die Rangerhöhung im eigentlichen Sinne nicht vollzogen worden. Es hat nur das Patriarchat von Konstantinopel seine Einwilligung im voraus erteilt „in Erwartung einer ökumenischen oder auch einer anderen großen Synode, welche bei der nächsten Gelegenheit zusammentreten und alle diese Fragen mit ‚kanonischer Genauigkeit' endgültig beurteilen soll" („ἐν Οἰκουμενικῇ καὶ μεγάλῃ ἄλλῃ Συνόδῳ ἐν πρώτῃ εὐκαιρίᾳ συνερχομένῃ καὶ τελειωτικῶς περὶ τῶν τοιούτων κατὰ τὴν κανονικὴν ἀκρίβειαν ἀποφασιζούσῃ") nach dem einheitlichen Wortlaut der diesbezüglichen Synodaltomoi. Derselbe Grundsatz wird auch in einem an den Patriarchen von Serbien gerichteten Friedensbrief (εἰρνικὴ ἐπιστολὴ) des Patriarchen von Jerusalem vom 24.5.1922 betont: „Obwohl die Rangerhöhung einer der heiligen Teil-

[17] *Trempelas*, a. a. O. (2), S. 22, Anm. 36.
[18] Vgl. oben zur Idee der Pentarchie.
[19] Vgl. oben.

kirchen Gottes zum Patriarchat des Beschlusses eines ökumenischen Konzils bedarf, wie die Beispiele der Kirchenväter bezeugen, da die Einberufung eines ökumenischen Konzils zur Zeit wegen der gegenwärtigen Verhältnisse unmöglich ist, ..." („Ει δὲ καὶ τὸ προαχθῆναί τινα τῶν ἐπὶ μέρους ἁγίων τοῦ Θεοῦ Ἐκκλησιῶν εἰς πατριαρχικὴν ἀξίαν ἀποφάσεως δεῖται Συνόδου Οἰκουμενικῆς, ὡς τὰ τῶν πατέρων παραδείγματα μαρτυρεῖ, ὅμως ἀδυνάτου οὔσης ἔν γε τῷ παρόντι τῆς συγκλήσεως Οἰκουμενικῆς Συνόδου, τῶν καιρικῶν ἕνεκα περιστάσεων ...")[20].

Abschließend möchte ich noch einige Worte zur Frage der Zuständigkeit bei der Proklamation der kirchlichen Autonomie hinzufügen. Die Autonomie ist die Form der beschränkten Selbstverwaltung, die am nächsten zur absoluten Unabhängigkeit steht. Bei dieser Form äußert sich die Abhängigkeit der Tochterkirche meistens in der Notwendigkeit der Bestätigung der Wahl ihres Oberhauptes seitens der Mutterkirche. Zur Gewährung eines solchen Selbstverwaltungsrechts sind aktiv legitimiert nur die Patriarchate und zwar m.E. nur diejenigen, deren Rangerhöhung vollkommen vollzogen ist, und welche konsequenterweise eine originäre Verwaltungsgewalt ausüben. Die autokephalen Kirchen dagegen besitzen zwar ein Selbstverwaltungsrecht ohne jegliche Abhängigkeit von einer anderen Kirche, aber sie können von diesem Recht nur innerhalb der durch den konstitutiven Akt gezeichneten Grenzen Gebrauch machen. Angesichts dieser Rechtslage dürfen meiner Ansicht nach die autokephalen Kirchen nicht auf ihr Selbstverwaltungsrecht gänzlich oder auch nur zum Teil zugunsten einer Unterteilung ihres Territoriums verzichten, denn dieses Verfügungsrecht bleibt als Bestandteil der originären Verwaltungsgewalt bei deren Träger, d.h. bei der Mutterkirche.

[20] Ekklesiastike Aletheia, Bd. 44 (1922), S. 337.

v. l. n. r.: Metropolit Panteleimon Rodopoulos, Metropolit Mar Ostathios, Bürgermeister Friedrich Viehbacher, Erzbischof Chucrallah Harb, Bischof Samuel, Erzbischof Tiran Nersoyan, Bischof Rudolf Graber, Prof. Willibald Plöchl

Leitender Ministerialrat Voll, Prof. Peter Landau

Prof. Peter Landau, Bischof Rudolf Graber, Metropolit Mar Ostathios

Bischof Rudolf Graber, Adel Azer Bestawros, Metropolit Mar Ostathios, Erzbischof Chucrallah Harb

Vor dem Ostkirchlichen Institut in Regensburg

Erzbischof Tiran Nersoyan, Metropolit Mar Ostathios,
Prof. Willibald Plöchl, Metropolit Panteleimon Rodopoulos