KANON

Jahrbuch der Gesellschaft für das Recht der Ostkirchen

I

VERLAG HERDER WIEN

KANON

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YEARBOOK OF THE SOCIETY OF THE LAW OF THE ORIENTAL CHURCHES

ANNUAIRE DE LA SOCIETE DU DROIT DES EGLISES ORIENTALES

I

ACTA CONGRESSUS 1971

EDITION HERDER – VIENNA
1973

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JAHRBUCH DER GESELLSCHAFT FÜR DAS RECHT DER OSTKIRCHEN

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VERLAG HERDER – WIEN
1973

HERAUSGEGEBEN
VON DER GESELLSCHAFT FÜR DAS RECHT DER OSTKIRCHEN

REDAKTIONELLE LEITUNG:
UNIV.-PROF. DR. WILLIBALD M. PLÖCHL
UNIV.-DOZENT DR. RICHARD POTZ

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Der erste Kongreß der Gesellschaft für das Recht der Ostkirchen wurde ermöglicht durch die Unterstützung folgender Persönlichkeiten und Einrichtungen:

Österreichische katholische Bischofskonferenz

Kardinal König für die Erzdiözese Wien

Österreichische Superiorenkonferenz der katholischen Ordenskongregationen

Bundesministerium für Wissenschaft und Forschung

Bundesland Niederösterreich

Gemeinde Wien

Bankhaus Bunzl und Biach

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Dipl. Ing. Carl Anton Graf Goess-Saurau

Kardinal de Fürstenberg für die Sacra Congregatio pro Ecclesiis Orientalibus

Metropolitan Archbishop of Munhall Stephen J. Kocisko, Pittsburgh

Bishop Michael Joseph Dudick, Passaic

Bishop Jaroslav Gabro, Chicago

Bishop Aemilius Ivan Mihalič, Parma

Apostolic Exarch Ivan Prasko, North Melbourne

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INHALT

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VORWORT

Dieses Buch ist das gemeinsame Werk der Verfasser und der Mitglieder der Gesellschaft für das Recht der Ostkirchen. Wenn es nunmehr der Öffentlichkeit übergeben wird, möge es zugleich ein Baustein sein im Werk der tieferen Erkenntnis der gemeinsamen Quellen des Rechtes der Ostkirchen. Unser erster Kongreß war ein Wagnis und Erlebnis zugleich. Ein Wagnis, weil niemand von uns wissen konnte, in welchem Maße uns Erfolg beschieden sein würde. Ein Erlebnis aber, weil unsere Arbeit sicherlich unter dem Segen Gottes gestanden und für uns alle das Gemeinsame die Grundlage unseres Erfolges gewesen ist. Wir dürfen ohne Zweifel von Erfolg sprechen. Mit diesem Buch soll zugleich der Anfang einer Serie gemacht werden, die nicht nur für die Ostkirchen ein Sprachrohr des tieferen Verständnisses ihrer Rechtsordnungen sein soll, sondern auch für alle, denen das Leben der Ostkirchen am Herzen liegt, ein Beitrag zur Erkenntnis der Bedeutung des kanonischen Rechtes.

W. M. P.

Wien, am 7. Dezember 1972, dem Tag des hl. Ambrosisus, dem siebenten Jahrestag, an dem der Bruch zwischen Alt-Rom und Neu-Rom aus dem Gedächtnis und der Mitte der Kirche getilgt wurde.

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BERICHT ÜBER DIE GRÜNDUNG UND DEN ERSTEN KONGRESS DER GESELLSCHAFT FÜR DAS RECHT DER OSTKIRCHEN

Die Gründung

Die Gründung der Gesellschaft für das Recht der Ostkirchen geht zurück auf eine Initiative des Rektors des Pontificio Istituto Orientale, Professor Pater Dr. Ivan Žužek. An gleicher Stelle ist aber zu nennen der Professor für Kirchenrecht an der Universität Athen, der leider seither verstorbene Dr. Amilkar Alivisatos. Die ersten informativen Kontakte wurden von Professor Žužek und Professor Alivisatos schon im Frühjahr 1968 aufgenommen und für Sommer 1968 oder Frühjahr 1969 wurde die erste vorbereitende Besprechung ins Auge gefaßt. Eine ganze Reihe hervorragender Personen aus dem Bereich der Ostkirchen und der römisch-katholischen Kirche konnten dafür gewonnen werden. Was den ersten Ort der Zusammenkunft anlangt, so wurde insbesondere von Professor Žužek eine orthodoxe Stadt vorgeschlagen. Es bestanden auch Pläne dafür, die jedoch schließlich wieder fallen gelassen wurden und so kam es endlich dazu, daß die erste vorbereitende Besprechung Ende November 1968 in Rom stattfand und mit einer gemeinsamen Resolution am 30. November beendet wurde. Insgesamt nahezu 50 Kirchenrechtler hatten damals sich mit dieser Resolution einverstanden erklärt. Der größte Teil von ihnen war auch während der Sitzungen in Rom anwesend, während die Abwesenden nachträglich ihre Zustimmung erklärten. Damals wurde eine griechische Stadt als Tagungsort in Aussicht genommen und der erste Kongreß hätte im September 1969 stattfinden sollen. Da dieser Plan nicht ausgeführt werden konnte, wurde daher eine weitere Sitzung nach Rom einberufen, die in der Zeit vom 27. bis 29. November 1969 abgehalten wurde.

Auf dieser Sitzung wurden der Titel der Gesellschaft und die provisorischen Statuten beschlossen und zugleich wurde als Sitz der Gesellschaft Wien erwählt und Univ. Prof. Dr. Willibald M. Plöchl mit der Präsidentschaft betraut. Am Schluß der Veranstaltung konnte der Rektor des Pontificio Istituto Orientale, Professor Pater Dr. Ivan Žužek, ein Schreiben des Erzbischofs von Wien, Kardinal DDr. Franz König, verlesen, in dem dieser die Gesellschaft einlud, ihren ersten Kongreß in Wien abzuhalten. Dementsprechend wurde der Beschluß gefaßt, im Herbst 1971 tatsächlich den ersten Kongreß der Gesellschaft nach Wien einzuberufen.

Der I. Kongreß der Gesellschaft für das Recht der Ostkirchen
Wien, 22. bis 27. September 1971

Von den damals insgesamt 90 Mitgliedern kamen 52. Sie verteilten sich auf Fachleute von insgesamt 17 Kirchengemeinschaften.

Die Eröffnung fand am 22. September im historischen großen Sitzungssaal des Niederösterreichischen Landtages statt. Unter den teilnehmenden Persönlichkeiten sind hervorzuheben: Die Kardinäle Maximilian de *Für-*

stenberg, Präfekt der Kongregation für die Ostkirchen und DDr. Franz *König,* Erzbischof von Wien, auf dessen Einladung der Kongreß in Wien abgehalten wurde, ferner als Vertreter des Ökumenischen Patriarchen Athenagoras I. der Metropolit von Österreich, Dr. Chrysostomos *Tsiter,* an der Spitze von Vertretern des Diplomatischen Corps der am Kongreß beteiligten Staaten der Apostolische Nuntius in Österreich, Dr. Opilio *Rossi,* Metropolit *Panteleimon* von Korinth, die Erzbischöfe Chucrallah *Harb* von Baalbeck und Tiran *Nersoyan* von New York, sowie Bischof *German* von Wien. Ferner zahlreiche geistliche Würdenträger verschiedener Kirchen. Schließlich nahmen Vertreter der Bundesministerien für Wissenschaft und Forschung und Unterricht, sowie der Niederösterreichischen Landesregierung teil.

Der Präsident der Gesellschaft Univ. Prof. Dr. Dr. h. c. mult. Willibald M. Plöchl begrüßte die Tagungsteilnehmer. Er unterstrich die Bedeutung der Mitarbeit Kardinals Dr. Franz *König.* Ohne seine Initiative, in dem er in einem Schreiben an die vorbereitende Generalversammlung der Gesellschaft für das Recht der Ostkirchen, das er Ende 1969 an diese gerichtet hatte, und worin er die Anregung gab, die erste Vollversammlung in Wien abzuhalten, wäre es kaum dazugekommen, daß Wien zum Sitz und Zentrum unserer Gesellschaft wurde. Der Kardinal war es auch, der die österreichische Bischofskonferenz veranlaßte, den ersten finanziellen Beitrag zu leisten und seine Unterstützung war die ganze Zeit über fühlbar. Wir richten daher an ihn die Bitte, auch in Hinkunft die kirchlichen Juristen unter seinen Schutz zu nehmen.

Ein zweiter Dank galt dem Niederösterreichischen Landtag und der Niederösterreichischen Landesregierung, die durch Landesamtsdirektorstellvertreter Hofrat Dr. Schneider vertreten war. „Wir danken nicht nur für die materielle Unterstützung, sondern auch für die ideelle. Dieser Sitzungssaal des Niederösterreichischen Landtages, das letzte spätbarocke Werk in Wien, symbolisiert bildlich in dem Deckengemälde die Ausstrahlung Österreichs in die Kontinente Asien, Afrika, Amerika und Europa. Diese Ausstrahlung kam ganz besonders aus dem eigentlichen Kernland Niederösterreich, wie es heute heißt, das tatsächlich das Herz Österreichs geblieben ist. In dem heute klein gewordenen Österreich und in dieser festlichen Veranstaltung insbesondere zeigt es sich, daß die Strahlung umgekehrt noch immer wirksam ist. Wir haben unter den Vertretern der Kirchen und der Fachleute Vertreter aus Asien, Afrika, Amerika und Europa. So wird dieser Landessitzungssaal zugleich wieder Symbol der Mission Österreichs" schloß Prof. Plöchl seine Begrüßung.

Zur Eröffnung der Tagung sprach Seine Eminenz DDr. F r a n z K ö n i g :

„Ich freue mich, als Erzbischof von Wien den heute beginnenden orientalischen Kanonistenkongreß begrüßen zu können. Ihrer Tagung kommt sowohl von der Sache wie vom Personenkreis her besondere Bedeutung zu. Die Gelehrten, die hier anwesend sind, machen die heute beginnende Tagung zu einem Ereignis. Als Kanonisten aus der orthodoxen und aus der katholischen Kirche sind Sie im Begriffe, über kirchliche Rechts- und Ordnungsfragen zu beraten an Hand gemeinsamer Quellen. Auch von der Sache her kommt Ihrem Treffen in unserer Zeit ein nicht geringes

ökumenisches Gewicht zu. Es ist das Gewicht der christlichen Tradition im Lichte der kanonistischen Ordnung aus den frühen Jahrhunderten der Kirche. Gute Gesetze und in dieser Materie erfahrene Männer haben immer viel für die Kirche bedeutet.

Die Kirche Gottes hat immer schon Normen und Gesetze gehabt, weil sie eine menschlich-göttliche Gesellschaft ist mit einer hierarchischen Struktur. Ihre Gesetze haben die Grundlage die Schrift, das Evangelium, die apostolische Tradition, die im Laufe der Zeit durch die ökumenischen Konzilien näher festgelegt wurde, durch die Regionalsynoden und die Väter der Kirche. Sie bilden das erste Corpus canonum, welches bereits mit der Didache und mit der didascalia apostolorum beginnt und im Laufe der Zeit weiter ausgebaut wurde in den verschiedenen Sammlungen der canones.

Diese canones haben in jeder Kirche die kirchliche Disziplin festgelegt „zum Heil der Seelen und zur Heilung der Leidenschaften", wie es der zweite Kanon des Konzils von Trullo ausdrückt. Es ist bekannt, daß dieser Kanon genau festlegt, welche canones zum Codex fundamentalis gehören, der für alle byzantinischen Kirchen verpflichtend ist: Es sind dies die sogenannten canones der heiligen Apostel, canones, die durch die ökumenischen Konzilien von Nicäa, Konstantinopel, Ephesus und Chalcedon ihre Formulierung fanden. Durch die Regionalsynoden von Ancyra, Neocäsarea, Gangra in Paphlagonien, Antiochien, Laodicäa, Sardika und Karthago.

Zu all dem hier genannten muß man noch die weitere Entwicklung hinzufügen, die in jeder partikularen Kirche stattgefunden hat, soweit sie zu den fünf großen Riten gehört: das sind der byzantinische, der alexandrinische, der antiochenische, der chaldäische und der armenische Ritus. Zu jedem einzelnen dieser Riten gehören verschiedene Kirchen von Südindien bis Äthiopien, im Vorderen Orient, in Griechenland, in Rumänien und in den slawischen Ländern. Jede dieser Kirchen hat sich konstituiert, indem sie sich immer auf die alten canones berief, in denen das disziplinäre wie kirchenrechtliche Erbe grundgelegt war. Es ist dies ein Erbe, das erforscht, respektiert und beobachtet werden muß, das versteht sich zwar von selber, nicht nur, weil es durch ein verehrungswürdiges Alter sich empfiehlt, sondern vor allem, weil es entspricht „den Gepflogenheiten der kirchlichen Gemeinschaften einer jeden Kirche und weil es besonders geeignet ist, für das Wohl ihrer Seelen zu sorgen", wie es das II. Vatikanische Konzil in seinem Ökumenismusdekret feierlich verkündet hat. Es handelt sich um ein Erbe, das ohne Zweifel verschieden ist von dem des Westens, aber das nicht weniger bedeutsam ist — obwohl es unter dem wissenschaftlichen Gesichtspunkt bisher wenig studiert worden ist.

Das ist auch der besondere Grund, warum ich mit einer besonderen Freude die Gründung der „Société du Droit des Eglises Orientales" begrüße. Diese Gesellschaft nimmt sich vor, wie der Artikel 3 des Statuts anführt, „die Geschichte der Quellen der Institutionen des kanonischen Rechtes" zu studieren, sowie „ein vergleichendes Studium der verschiedenen Gesetzgebungen, die im Orient Gültigkeit besitzen, zu erforschen". Die Gründung der Gesellschaft erfolgte in Rom im September 1969 und entsprach einem echten Bedürfnis in wissenschaftlicher Hinsicht. Diese

Gründung ist mit fast einmütiger Zustimmung aller Experten auf dem Gebiet des kanonischen und kirchlichen Rechtes im Orient begrüßt worden. Unter ihnen befinden sich die bekanntesten und angesehensten Vertreter dieses Wissenszweiges. Ich möchte unter ihnen nennen den verstorbenen Professor Hamilcar *Alivisatos,* den weltbekannten Vertreter und Förderer der ökumenischen Bewegung. Ich nenne Professor Willibald *Plöchl,* den Präsidenten der Gesellschaft, dessen zahlreiche Publikationen Ihnen allen bekannt sind.

Die Gesellschaft hat beschlossen, die Stadt Wien als Zentrum zu wählen aus verschiedenen Gründen: Zu ihnen zählt vor allem die akademische Tradition unserer Wiener Universität, wo bereits im letzten Jahrhundert ein Lehrstuhl für orientalisches kanonisches Recht errichtet worden war. Die österreichische Regierung hat die Wahl Wiens als eine Auszeichnung betrachtet und hat ihrerseits der Gesellschaft nach österreichischem Recht mit Datum vom 10. Februar 1970 den Status einer persona moralis verliehen. Die Gesellschaft hat außerdem eine beachtenswerte Unterstützung von seiten der kirchlichen Autoritäten erfahren sowohl von seiten der orthodoxen Kirche wie seitens der katholischen Kirche. Ich möchte in diesem Zusammenhang an erster Stelle Sr. Heiligkeit, dem ökumenischen Patriarchen Athenagoras I. nennen, der unter uns vertreten ist durch den Archimandriten Archondonis, Vizepräsident der Gesellschaft. An zweiter Stelle möchte ich Se. Eminenz, den hochwürdigsten Herrn Kardinal Fürstenberg nennen, der durch seine finanzielle Unterstützung die Gründungsversammlung im Jahre 1969 ermöglicht hat und der weiterhin ihre Bestrebungen unterstützt und fördert. Ich muß außerdem nennen Se. Eminenz den Herrn Kardinal Willebrands, der durch seine Ermunterungen das Unternehmen in liebenswürdiger Weise gefördert hat. Schließlich darf ich noch auf die Hilfe der österreichischen Bischofskonferenz hinweisen sowie auf die Unterstützung durch die orientalischen Bischöfe der Vereinigten Staaten und alle anderen, die der neuen Gesellschaft ihre Hilfe geschenkt haben.

Der hier in Wien tagende und heute beginnende Kongreß ist der erste der Société du Droit des Eglises Orientales. Im Mittelpunkt dieser Tagung steht die Sorge um das aktuelle aggiornamento der kirchlichen orientalischen Gesetzgebung, ein Bemühen, das bis zu den Wurzeln zurückreichen wird. Es ist Ihnen allen bekannt, daß die verehrungswürdigen und großen orthodoxen Kirchen heute mit der dringenden Notwendigkeit konfrontiert sind, ihre Gesetzbücher den heutigen Lebensverhältnissen anzupassen. Im besonderen sei darauf hingewiesen, was Ihnen ebenfalls bekannt ist, daß die byzantinischen Kirchen den Beschluß gefaßt haben, einen gemeinsamen Kodex auszuarbeiten, der einerseits den Erfordernissen unserer Zeit entspricht, andererseits den heiligen canones treu bleibt, die vom Konzil in Trullo approbiert worden sind. Für die Katholiken braucht man kaum die Notwendigkeit unterstreichen, die authentischen orientalischen Traditionen zu erforschen, um den Dekreten des II. Vatikanischen Konzils zu entsprechen, die zu wiederholten Malen ihre Beobachtung einschärfen.

Wie kann man ein solches Vorhaben realisieren ohne ein vertieftes Studium, wie die heiligen canones den heutigen Verhältnissen des mo-

dernen Lebens anzupassen sind. Das ist das Thema des Kongresses. Ich möchte nicht zuletzt betonen, daß nach meiner Auffassung ein solches Vorhaben sehr nützlich sein wird für das aggiornamento des westlichen Codex iuris canonici, weil dessen Reform nicht vollkommen gelingen kann, ohne das große Erbe der orientalischen kanonischen Überlieferung zu beachten. Die rechtverstandene Devise „lux ex oriente" — wenn sie in sachlicher und wissenschaftlicher Weise Ihrer Gesellschaft zum Beginn dieses Kongresses mitgegeben wird — kann nur dem Wohle der gesamten Kirche dienen.

Es ist mir ein besonderes Bedürfnis, zu Beginn des Kongresses, an dem so viele hervorragende Persönlichkeiten teilnehmen, Ihnen allen ein gutes Gelingen und eine fruchtbare Arbeit zu wünschen. Es handelt sich dabei ja um die gemeinsame Zusammenarbeit von orthodoxen und katholischen Professoren beim Studium der Überlieferungen der Kirchen. Dies ist wertvoll „einmal für die authentische Botschaft unseres Herrn und dann um den Bedürfnissen und Hoffnungen der Welt von heute zu entsprechen" (vgl. Observatore Romano vom 29. Oktober 1967). Dieses Vorhaben ist von Sr. Heiligkeit Papst Paul VI. und Sr. Heiligkeit dem ökumenischen Patriarchen Athenagoras I. gesegnet worden. Mit diesen Worten, die der gemeinsamen Erklärung entnommen sind, die anläßlich des Besuches des ökumenischen Patriarchen in Rom im Jahre 1967 gemacht wurden, darf ich diesen Kongreß für eröffnet erklären."

Weiters sprachen Worte der Begrüßung Seine Eminenz Kardinal de Fürstenberg:

„Eminenz, Exzellenzen, hochgeehrte Gäste, meine Damen und Herren, es ist mir eine Freude, der liebenswürdigen Einladung Seiner Eminenz des Kardinal-Erzbischofs von Wien und des Herrn Professor Dr. Willibald Plöchl, Präsidenten der Gesellschaft für das Recht der Ostkirchen, folgen zu können, und ihnen die herzlichen Grüße der Kongregation für die Ostkirchen zu überbringen. Die Kongregation verfolgt mit regem Interesse und großen Erwartungen ihre jetzigen und künftigen Sitzungen. Diese Kongresse erscheinen ihr besonders wichtig, um zu versuchen, Klarheit und Ordnung in den Studien der vielfältigen rechtlichen orientalischen Traditionen zu schaffen.

Wenn ihre gegenwärtigen Studien die Alten Orientalischen Quellen in der Modernen Zeit zum Thema haben, so bleiben doch noch viele andere Fragen, die von Interesse sind, offen; ich erlaube mir, davon einige zu zitieren:

— welches sind die rechtlichen Traditionen der verschiedenen Riten?
— welche Differenzierung besteht, unter diesem Gesichtspunkt, zwischen den Familien oder Kirchen eines gleichen Ritus?
— wie wird die Weiterentwicklung in der Zukunft dort sein, wo durch Abwanderungen verschiedene Zweige eines gleichen Ritus auf einem gleichen Territorium zu finden sein werden?
— wie liegen die Dinge im Nahen Orient in der Frage der statuta personalia; welche Wichtigkeit wird dieser Frage beigemessen im Hinblick der aktuellen Einflüsse auf die gesetzlichen Anordnungen der verschiedenen Staaten, welche die ottomanische Autorität ersetzen?

Die Hochachtung, die der Heilige Stuhl ständig für das Kirchenrecht des Christlichen Orientes genährt hat, ist durch die Entscheidungen des letzten Vatikanischen Konzils wieder neu besonders hervorgehoben worden.

Eine große Freude ist es mir, ihnen eine neue Initiative des Heiligen Stuhles bekanntgeben zu können, die ich ihnen hier in dieser Stunde mitteilen darf, nämlich die Gründung einer Fakultät des Orientalischen Rechtes am Orientalischen Institut in Rom. Möge sie den Hoffnungen entsprechen, die man mit Recht von ihrer Tätigkeit erwartet, in Mitarbeit von vielen unter ihnen.

So wünsche ich ihnen in dieser herrlichen Stadt Wien einen guten Erfolg ihrer Arbeiten."

Seine Exzellenz, Metropolit P a n t e l e i m o n von K o r i n t h :

"As a humble bishop of the Apostolic Church of Corinth, with the many thanks for the honorary invitation, I greet heartily the present conference, which starts today its work here in the famous town of Vienna and which is in fact, one result of the initiative of the Society for Canon Law of the Oriental Churches.

This initiative taken by the Society for the Law of the Eastern Churches, is very important, because by this way are brought together clergymen, as well as theologians and lawyers of the West and the East, in order to acquaint with each other, to interchange various aspects and to extent their activities for researching on subjects of the Canon Law of the Oriental Churches in general.

It is well known, the Eastern Orthodox Church, preserves either in theory or in practice (of course as well as possible) the Canon Law, that is to say, the sacred canons or rules, composed by well known holy fathers, by local synods and by ecumenical synods of the church, before the unfortunate great schism.

So that the invitation and the task of the Society for the Canon Law of the Eastern Churches arises very wisely in the present times while being theese present times marked by the growing tendency of return to the sources as well as by the necessity of approaching each other. The revival of Christian customs and the tense of practices of the early church is a consoling event which, with the attempt of penetrating to the thought of the early christian fathers, either Latin or Greek, will help all the churches to use in the present and modern difficult times what the Apostle of the Gentiles St. Paul called "Mind of Christ".

The above presuppositions, as we pray every day in the orthodox church will bring, sooner or later our Lord knows, the desired unity of our churches after elaborate and deep theological discussions, studies and decisions in the spirit of christian love as shown by their holinesses the Pope Paul and the Patriarch Athenagoras, which decisions of the churches will be under the presupposition of acceptance consequently and finally by the faithful.

Through studies, through lectures as well as through discussions on the subject of the Law of the Eastern churches, it will be possible to realize the truth, which springs up from the spirit of Jesus Christ, presewed and interpreted through the writings of the ancient church fathers,

from which writing the holy canons, of course, cannot be excluded, because they present a specific and important side of the life of the Church.

Your Eminence Cardinal and Archbishop of this famous City, Your Eminences Cardinal and Nuntious Representative of Apostolic Rome, Your Eminence Metropolitan and representative of the Ecumenical Patriarchate, Your Excellencies representatives of the Government, Mister President of the Society, Your Excellencies Metropolitans and Bishops, Dear Members of the Assemblee, Clergymen, Professors and Laymen, Ladies and Gentlemen,

May this first congress assembled here, become a starting point of many fruitful future meetings, which, will be crowned by such success, as to cultivate a real threshold for the unification of all christians in one undivided flock under the one flag and by the steady pastoral stick of Jesus Christ for the Glory of His and for the unquestioned extend of the salvation and the word of God to the whole world. May God bless, by all means, the present and future work of the said society."

*

Seine Heiligkeit der Ökumenische Patriarch Athenagoras I., Seine Seligkeit der Erzbischof von Athen und ganz Griechenland Hieronymos und Seine Exzellenz der Metropolit von Leningrad, Erzbischof Nikodim übersandte der Gesellschaft Glückwunschtelegramme mit den besten Wünschen für ein gutes Gelingen des Kongresses.

Anschließend hielt der Vizepräsident der Akademie der Wissenschaften Univ. Prof. Dr. Herbert Hunger den Festvortrag über das Thema: „Wien und die Ostkirchen".

Die musikalische Umrahmung der Eröffnung besorgte der Chor der Metropolis von Austria, Zur Heiligen Dreifaltigkeit und das Niederösterreichische Tonkünstler-Oktett.

Zum Abschluß der Eröffnung gab Kardinal König einen Empfang in den Räumen des Erzbischöflichen Palais.

Am Donnerstag, den 23. September begannen die Arbeitssitzungen des Kongresses. Sie fanden statt im historischen Rittersaal des Niederösterreichischen Landtages. Am selben Tag um 18 Uhr wurde die erste Generalversammlung der Gesellschaft abgehalten. Auf dieser ersten Generalversammlung kam es zur endgültigen Konstituierung der Gesellschaft für das Recht der Ostkirchen nach österreichischem Vereinsrecht. Es wurden die Statuten in der vorgelegten Form approbiert* und gemäß den Statuten folgende Organe des Vereines gewählt:

Rat:

Präsident: Univ. Prof. Dr. Dr. h. c. mult. Willibald M. Plöchl, Wien

Vizepräsident: Archimandrit Dr. Bartholomäus Archondonis, Istanbul-Halki

Räte: Vartaped Dr. Mesrop Krikorian, Wien
Univ. Prof. Dr. René Metz, Strassburg
Pater Rektor Dr. Ivan Žužek, Rom

* Text s. u. S. 21 ff.

Sekretariat:
Sekretär und Kassier: Univ. Doz. Dr. Richard Potz, Wien

Weiters wurde auf der Generalversammlung der nächste Tagungsort bestimmt. Nach einer kurzen Diskussion einigte man sich darauf, einer Einladung aus Griechenland Folge zu leisten, um den Kongreß und die zweite Generalversammlung für September 1973 in der theologischen Akademie der Kirche von Kreta abzuhalten.

Die Generalversammlung beschloß ferner die Herausgabe eines Jahrbuches der Gesellschaft für das Recht der Ostkirchen mit dem Erscheinungsort Wien.

Im Rahmen des Kongresses wurde auch ein Abendessen gegeben für Persönlichkeiten, die das Zustandekommen dieser Tagung in Wien besonders gefördert haben. An der Spitze der Gäste hatten sich Kardinal DDr. Franz *König* und Frau Bundesminister für Wissenschaft und Forschung Dr. Herta *Firnberg* eingefunden.

Ein gemütlicher Wiener „Heuriger" vereinigte alle Kongressisten am Donnerstag, den 23. September zu einem freundschaftlichen Beisammensein.

Am Samstag, den 25. September fuhren die Kongreßteilnehmer in die Wachau. Im Strandcafé Steiner in Spitz gab's am Nachmittag eine österreichische „Jause". Vom Vizebürgermeister Dr. *Winiwarter* und dem Pfarrer, Konsistorialrat *Schindl* begrüßt gab es als besondere Überraschung eine Gruppe von Kindern in echter Wachauer Tracht. Die Teilnehmer besuchten auch die schöne Pfarrkirche mit dem Musterwerk der gotischen Apostelkanzel (1390). Dann ging die Fahrt weiter. Pünktlich um 7 Uhr abends trafen die Autobusse unter Glockenläuten vor der Kirche des 900 Jahre alten Benediktinerstiftes Göttweig ein, wo sie vom Abt, Prälat Dr. Wilhelm *Zedinek* O. S. B., dem Prior P. *Ramoser* — der wenige Wochen später der Nachfolger des Abtes werden sollte — sowie den Festgästen empfangen wurden. In der Stiftskirche durch die Sängerknaben begrüßt, wurden die Teilnehmer zunächst zum Stiftergrab, des heiligen Altmann vom Abt geführt. Daran schloß sich im neuen Refektorium ein Empfang durch den Landeshauptmann von Niederösterreich Andreas *Maurer*. Die Festansprachen hielten Landesrat *Schneider* und Abt Dr. *Zedinek*. Es sollte, wie er vorausgeahnt hatte, seine letzte Ansprache sein. Der Tod raffte ihn kurze Zeit später als Folge eines Herzleidens dahin.

Am Sonntag, den 26. September fuhren die Kongreßteilnehmer zur grossen Schlußfeier in das große österreichische Marienheiligtum, nach Mariazell, zur Magna Mater Austriae. Zum Mittagessen wurde im Zistenzienserstift Lilienfeld Rast gemacht. Abt Prälat Norbert *Mußbacher* begrüßte die Kongressisten in der Stiftskirche und gab in französischer und englischer Sprache einen Abriß der Geschichte dieser Gründung der österreichischen Babenbergerdynastie. Das Mittagessen war im alten gotischen Cellarium maius (13. Jahrhundert) eigens für die Gäste arrangiert worden, wobei die jungen Ordensmitglieder bei Tisch dienten. Dort sang auch die Tischgebete der weit über Österreichs Grenzen hinaus bekannte ukrainische Kirchenchor von St. Barbara in Wien unter der Leitung seines Chormeisters Professor *Hnatyschyn*. Nach der Ankunft in Mariazell zo-

gen die Teilnehmer feierlich in die Basilika ein, wo vor dem Gnadenaltar der Mutter Gottes ein gemeinsamer Gottesdienst abgehalten wurde, der unter der Leitung des dem russischen Ritus angehörenden Diakons Dr. Johann *Kramer* stand. Vierzehn Repräsentanten der verschiedenen, am Kongreß beteiligten Angehörigen der Ostkirchen und des anglikanischen Domkapitels von Worcester, Dean Dr. *Kemp,* feierten unter der Führung des Metropoliten von Austria DDr. *Chrysostomos Tsiter,* des Erzbischofs von Baalbek *Chucrallah Harb* und des russischen Bischofs von Wien *German* diesen Gottesdienst, der zugleich nicht nur der religiöse Höhepunkt, sondern auch der eigentliche Abschluß des Kongresses war. Auch hier wirkte der Chor von St. Barbara mit. Dazu kam noch der ausgezeichnete Kirchenchor der Basilika. Der Superior der Wallfahrtskirche — deren Protektor Kardinal Tisserant war — P. Weremund hob unter anderem in seiner Predigt hervor:

„Eminenzen! Ehrwürdige Väter! Brüder und Schwestern in Christus!

Im Namen der Mutter Jesu, der „Ganzheiligen Gottesgebärerin", entbieten wir Ihnen unseren ehrfürchtigen Gruß mit den Worten des heiligen Paulus im 1. Korintherbrief: „Gnade Euch und Friede von Gott, unserem Vater, und dem Herrn Jesus Christus!" Ihr Besuch in der Basilika zu Mariazell bereitet uns lebhafte Freude und verpflichtet uns zu herzlichem Dank! Des Herrn Herzenswunsch klang im Evangelium einladend an unser aller Ohr: „Daß alle eins seien wie Du, Vater, in mir und ich in Dir, damit auch sie eins seien in uns!" (Joh. 17, 21—24).

Um die Einheit der Christen flehte der Herr zum Vater im Himmel! Sein Wille und Vorbild soll uns heilig sein! Darum haben wir uns zu dieser Feierstunde versammelt. Christi Vater ist unser Vater. Durch die Taufe sind wir alle Kinder Gottes und Brüder untereinander. Im Glauben bekennen wir alle den einen, heiligen, dreifaltigen Gott. Wir wollen dies einmütig, dankbar und voll Freude tun!

Wir verehren alle die eine Mutter unseres Herrn, Maria, als unsere Mutter, als Fürsprecherin, als die ganzheilige Magd des Herrn, als die Jungfrau und Königin. Wir verehren sie hier in ihrem Heiligtum zu Mariazell, das uns durch seine Lichtfülle zeichenhaft zur Pforte des Himmels wird.

Eines frommen Benediktinermönches schlichte Tat trug reiche Frucht. Man zählte das Jahr 1157, als er an diesem ehrwürdigen Ort für seine spätromanische Madonna, die er aus seinem Mutterkloster Sankt Lambrecht mitgebracht hatte, eine hölzerne Kapelle zimmerte. So entstand „Maria in der Zelle", Mariazell. Was der Mönch gläubig im Herzen trug, verkündete er dem notleidenden Volk: das Evangelium von Jesus, dem Erlöser und die Verehrung seiner jungfräulichen Mutter Maria.

Mit der Entstehungsgeschichte Mariazells hängen ein Fürst und ein König engstens zusammen: Der slawische Markgraf Heinrich von Mähren und der Ungarnkönig Ludwig I. Deswegen weisen ihre kunstvollen Standbilder aus Blei vor der Basilika den frommen Pilgern den Weg zum gotischen Hauptportal, dem Tor zum Frieden. Aus kleinen Anfängen also wuchs Mariazell zum größten Wallfahrtsort des Donauraumes.

Inmitten der nordsteirischen Bergwelt gelegen, förderte Mariazell durch Jahrhunderte die Einheit der Christen verschiedener Sprachen und Völker, besonders der Slawen, Ungarn und Deutschen. Drei Ehrentitel trägt die Mariazeller Madonna: „Mater gentium Slavorum", „Magna Domina Hungarorum" und „Magna Mater Austriae". Heute, in dieser ökumenischen Feierstunde, weitet sich der völkerumspannende Bogen nach allen Richtungen und umfaßt viele christliche Kirchen des Ostens und Westens in gleicher Ehrfurcht.

Tausende kleine Taten der Liebe, der Ehrfurcht voreinander, Gespräche, wie sie bei diesem Kongreß über das ostkirchliche Recht geführt werden, und gemeinsame Gebete mögen durch die Fürbitte der seligsten Jungfrau Maria unter der Führung des Heiligen Geistes die ersehnte Einheit der Kirchen herbeiführen, um die Christus selbst so innig seinen und unseren Vater im Himmel gebeten hat. Amen!"

Anschließend an die Feier gab der seither verstorbene Landeshauptmann der Steiermark, Josef *Krainer*, ein Abendessen, bei dem der Landtagspräsident des steiermärkischen Landtages Professor Dr. *Koren* die Festrede hielt. Der Mariazeller Madrigalchor in schmucken Trachten verschönte den Abend. Ein freundschaftlicher Ausklang blieb wohl allen Teilnehmern in Erinnerung.

STATUTEN DER GESELLSCHAFT FÜR DAS RECHT DER OSTKIRCHEN

Art. 1

Die Teilnehmer der inauguralen Sitzung haben am 28. September 1969 beschlossen, die Gesellschaft für das Recht der Ostkirchen zu gründen.

Art. 2

Der Wirkungsbereich der Gesellschaft erstreckt sich auf das Gebiet der Republik Österreich. Die Errichtung von Zweigvereinen ist beabsichtigt.

Art. 3

Gründungsmitglied ist, wer diesen Statuten beigestimmt hat.

Art. 4

Zweck der Gesellschaft ist die wissenschaftliche Zusammenarbeit zwischen den Fachleuten des Ostkirchenrechts und des die Ostkirchen betreffenden Staatskirchenrechts. Die Gesellschaft wird sich mit der Geschichte der Quellen und der Institutionen des Kirchenrechts befassen. Darüber hinaus wird sie vergleichende Studien über die verschiedenen derzeit in Geltung befindlichen Rechtsordnungen im Osten betreiben. Diese Zwecke sollen erreicht werden durch:

a) Vorträge und Zusammenkünfte
b) Herausgabe eines Bulletins
c) Einrichtung von Bibliotheken und Dokumentationszentren.

Die erforderlichen Mittel zur Erreichung des Zweckes werden aufgebracht durch:

a) Beitrittsgebühren und Mitgliedsbeiträge
b) Erträgnisse aus Veranstaltungen
c) Geschenke, Vermächtnisse und sonstige Zuwendungen

Art. 5

Der Sitz der Gesellschaft ist Wien. Er kann durch einen Beschluß der Mehrheit der Mitglieder verlegt werden, sei es während der Generalversammlung der Gesellschaft oder durch schriftliche Abstimmung, unter gleichzeitiger Abänderung der Statuten.

Art. 6

Die Gesellschaft setzt sich zusammen aus ordentlichen, assoziierten und unterstützenden Mitgliedern.

Fachleute aller Nationalitäten und Konfessionen des Ostkirchenrechts und des die Ostkirchen betreffenden Staatskirchenrechts können ordentliche Mitglieder der Gesellschaft werden.

Jeder, der sich für die genannten Fachbereiche interessiert, kann assoziiertes oder unterstützendes Mitglied werden, selbst wenn er keine akademische Qualifikation besitzt.

Über die Aufnahme der Mitglieder entscheidet der Rat.

Vor der Konstituierung des Vereines erfolgt die Aufnahme von Mitgliedern durch die Proponenten. Diese Mitgliedschaft wird erst anläßlich der konstituierenden Generalversammlung wirksam.

Art. 7

Die Mitgliedschaft endet durch Tod, Austritt oder Ausschluß. Der Ausschluß kann vom Rat wegen vereinsschädlichen Verhaltens oder grober Verletzung der Statuten erfolgen.

Art. 8

Alle ordentlichen und assoziierten Mitglieder haben das aktive Wahlrecht sowie das Stimmrecht in der Generalversammlung und können sämtliche Einrichtungen der Gesellschaft in Anspruch nehmen. Das passive Wahlrecht für den Rat haben die ordentlichen Mitglieder, für das Sekretariat ordentliche und assoziierte Mitglieder.

Den Mitgliedern wird es zur Pflicht gemacht, die Interessen des Vereines zu unterstützen und alles zu unterlassen, was dem Verein schaden kann.

Art. 9

Die Gesellschaft wird verwaltet:

1. Durch einen Rat, der sich zusammensetzt aus:
   a) einem Präsidenten, auf drei Jahre aus der Reihe der ordentlichen Mitglieder von der Generalversammlung durch Stimmenmehrheit der anwesenden Mitglieder gewählt. Im Falle, daß es nicht möglich ist, die Mitglieder drei Jahre nach einer Generalversammlung wieder zusammenzurufen, kann die Wahl auf Initiative des Sekretariats schriftlich stattfinden.
   b) einem Vizepräsidenten und drei Räten, gewählt auf die Dauer von drei Jahren aus der Reihe der ordentlichen Mitglieder in der gleichen Art wie der Präsident.
   In den Wirkungsbereich des Rates fallen:
   die Aufstellung des Rechnungsabschlusses
   die Vorbereitung der Anträge an die Generalversammlung
   die Aufnahme und der Ausschluß von Mitgliedern
   die Entscheidung von allen Angelegenheiten, die nicht ausdrücklich der Generalversammlung vorbehalten sind.
2. Durch ein Sekretariat, das jedoch ein bloß den Präsidenten in der Verwaltung unterstützendes Organ ist. Das Sekretariat setzt sich aus drei

ordentlichen oder assoziierten Mitgliedern zusammen: ein Sekretär, ein Vizesekretär und der Kassier der Gesellschaft, die alle auf die gleiche Art wie der Rat auf die Dauer von drei Jahren gewählt werden.

Art. 10

Die Mitglieder des Rates und des Sekretariates sind stets wiederwählbar.

Art. 11

Für den Fall, daß ein Mitglied des Rates oder des Sekretariates nicht im Stande ist, sein Amt auszuführen, kann der Präsident oder in seiner Abwesenheit der Vizepräsident, für dessen Stellvertretung bis zur nächsten Generalversammlung Vorsorge treffen.

Art. 12

Der Rat faßt seine Beschlüsse bei Anwesenheit von mindestens drei seiner Mitglieder. Die Beschlußfassung erfolgt mit einfacher Stimmenmehrheit.

Art. 13

Über den Aufwand der Gesellschaft entscheidet gemäß dem Budget der Präsident mit Zustimmung zweier Mitglieder des Rates, nach Anhörung des Sekretariates.

Im Falle dringender Ausgaben kann der Präsident allein entscheiden, falls der Betrag nicht US $ 200 übersteigt. Das dreijährige Budget, das durch die Generalversammlung festgesetzt wurde, kann, wenn nötig, durch den Rat bis zu einem Drittel abgeändert werden.

Art. 14

Die Generalversammlung der Mitglieder ist das legislative Organ der Gesellschaft. Ihr obliegt die Beschlußfassung über die Anträge und Rechenschaftsberichte des Rates, über Statutenänderungen und die Auflösung der Gesellschaft, sowie die Wahl des Rates und des Sekretariates.

Die Generalversammlung besteht aus ordentlichen und assoziierten Mitgliedern der Gesellschaft. Sie versammelt sich, wenn möglich, alle drei Jahre, grundsätzlich anläßlich eines wissenschaftlichen Kongresses. Für die Gültigkeit als Generalversammlung muß die Hälfte der Mitglieder anwesend sein. Soweit die Statuten nichts anderes bestimmen, entscheidet die Generalversammlung mit einfacher Stimmenmehrheit. Die Tagesordnung der Generalversammlung wird vom Rat bestimmt.

Jedes ordentliche und assoziierte Mitglied der Gesellschaft verfügt über eine beschließende Stimme in der Generalversammlung.

Ein ordentliches oder assoziiertes Mitglied kann sich durch ein anderes Mitglied der Gesellschaft vertreten lassen. Aber ein Mitglied kann nicht mehr als ein anderes Mitglied vertreten.

Art. 15

Die Gesellschaft wird durch ihren Präsidenten und in seiner Abwesenheit durch den Vizepräsidenten vertreten, die auch den Rat und die Generalversammlung zu ihren Tagungen einberufen. Die oben genannten jeweils Vertretungsbefugten sind für schriftliche Ausfertigungen einzeln zeichnungsberechtigt.

Art. 16

Der jährliche Beitrag der ordentlichen und assoziierten Mitglieder ist nicht fixiert. Die Gesellschaft überläßt es jedem Mitglied, dem Kassier einen jährlichen Beitrag in selbst gewählter Höhe zu leisten. Es wird der Initiative des Kassiers überlassen, die notwendigen Mittel für die Tätigkeit der Gesellschaft zu beschaffen, besonders durch Zuwendungen (Spenden, Subventionen) der unterstützenden Mitglieder.

Art. 17

Streitigkeiten unter den Mitgliedern werden durch ein Schiedsgericht entschieden. Das Schiedsgericht besteht aus je einem von den Streitparteien namhaft gemachten Mitglied und dem Vorsitzenden, der von den beiden anderen Schiedsrichtern gewählt wird. Falls über die Person des Vorsitzenden keine Einigung erzielt werden kann, entscheidet das Los.

Das Schiedsgericht entscheidet mit einfacher Stimmenmehrheit. Die Entscheidungen des Schiedsgerichtes sind vereinsintern endgültig.

Art. 18

Die Statuten der Gesellschaft können nur durch die Generalversammlung geändert werden.

Die Gesellschaft kann nur durch die Generalversammlung mit 2/3 Mehrheit der abgegebenen Stimmen aufgelöst werden.

Art. 19

Für den Fall der freiwilligen Auflösung der Gesellschaft bestimmt die Generalversammlung oder der Rat einen oder mehrere Liquidatoren und entscheidet, an wen das Vermögen der Gesellschaft fällt.

STATUTES OF THE SOCIETY OF THE LAW OF THE ORIENTAL CHURCHES

Art. 1

The participants to the inaugural session on September 28th 1969 have

decided to found the Society of the Law of the Oriental Churches (Société du Droit des Eglises Orientales).

Art. 2

The sphere of activity of the Society is extended over the whole territory of the Republic of Austria. The foundation of affiliated societies is planned.

Art. 3

The Society is made up of those persons who accept these statutes.

Art. 4

The purpose of the Society is scientific collaboration among specialists in Oriental canon law and in civil law, as far as it concerns the Churches in the Orient. The Society aims, therefore, at promoting investigations into the history of the fonts and institutions of canon law, as well as comparative studies of the different legislations used in the East.

These purposes will be realised by:

a) meetings and lectures
b) the edition of a bulletin
c) the foundation of libraries and centers of documentation.

The funds to afford these purposes will be raised by:

a) the acceeding rates and the members' contributions
b) revenues of performances
c) donations, legacies or other subsidies

Art. 5

The Society maintains its center at Vienna. The center can be changed by the vote of a majority of the members, either during the course of a General Assembly of the Society, or by written ballots sent by mail, modificating at the same time the statutes.

Art. 6

The Society is made up of ordinary members, associate members and benefactors.

All specialists in oriental canon law and the civil law that concerns the Eastern Churches, whatever may be their nationality or religious confession, are eligible as ordinary members of the Society.

All persons interested in oriental law, even though they lack academic qualifications, may become associate members or benefactors.

The Council decides on the admission of members.

Until to the constitution of the Society, members will be admitted by the proponents. This membership will be effective at the constituent General Assembly only.

Art. 7

The membership ends in case of decease, quitting or exclusion.

The Council can decide the exclusion of a member for any behaviour contrary to the Society's interests or for violation of the statutes.

Art. 8

All members, both ordinary and associate, have the active right to vote as well as a vote in the General Assembly; they also can dispose of all the institutions of the Society.

The passive right to vote for the Council is only given to ordinary members; for the Executive Secretariat also to the associate members.

The members' duty is to support the Society's interests and to abstain from any behaviour which might harm the Society.

Art. 9

The Society is governed by:

1. a Council that is made up of:
   a) a President who is elected for three years from among the ordinary members by a majority vote of those members who are present at the triennal meeting. If it should prove impossible to meet every three years, the election may be conducted by mail under the direction of the Secretariat of the Society.
   b) a Vice-President and three Councilors elected for three years among the ordinary members of the Society in the same way as in the case of the President.

   The activity of the Council includes:
   the balancing of accounts
   the preparation of motions to the General Assembly
   the admission or exclusion of members
   the decision on any subject which is non explicitly reserved to the General Assembly.
2. an Executive Secretariat under the President, which consists of three members, a Secretary, an Assistant Secretary and the Treasurer of the Society, all elected from among either the ordinary or the associate members of the Society in the same manner as in the case of the Council.

Art. 10

The members of both the Council and the Executive Secretariat are reeligible.

Art. 11

If any member of either the Council or the Executive Secretariat proves unable to fulfill his office, the President, or in his absence the Vice-Pre-

sident, can make provision for a substitute until the next General Assembly.

Art. 12

Decisions regarding any activity of the Society, the meetings of members, etc., are to be taken by at least three members of the Council. The decisions are taken by simple majority.

Art. 13

The expenditures of the Society are to be decided on, in accordance with the budget, by the President with the consent of two members of the Council and after consultation with the Executive Secretariat.

Urgent expenses can be decided on by the President on his own if their amount is less than $ 200.

The triennal budget established at the General Assembly can be revised, if necessary, to the extent of a third of its amount by the Council.

Art. 14

The General Assembly is the legislative organ of the Society. It decides on the Council's motions and reports, on amending the statutes and on the dissolution of the Society and also elects the Council and the Executive Secretariat. The General Assembly comprises all members of the Society, both ordinary and associate. As far as it is possible, it meets every three years, as a rule on the occasion of some academic congress of the Society. The presence of half of the members is necessary for the validity of the session. As long as the statutes do not provide anything else, the General Assembly decides by simple majority.

The agenda of the General Assembly is drawn up by the Council.

Every member, whether ordinary or associate, has a vote in the General Assembly.

Any member, whether ordinary or associate, can name another member of the Society as his substitue and representative.

However, each member can represent one other member only.

Art. 15

The Society is represented by its President or, in his absence, by the Vice-President, who also summon the Council and the General Assembly. These representatives above-mentioned are also empowered to sign individually written terms.

Art. 16

The annual due of the ordinary and associate members is not fixed. The Society trusts that each member will send to the Treasurer his annual contribution. It will be left to the initiative of the Treasurer to find the

funds necessary for the activities of the Society, especially by appealing to the benefactors (for donations or subventions).

Art. 17

Controversies between members will be submitted to a court of arbitration, which is composed by one member named by each of the adversaries, and a president elected by the two other arbiters. If no agreement upon the president's person can be made, he will be elected by drawing lots. The court of arbitration decides by simple majority. Regarding the Society, the sentences of the arbiters are final.

Art. 18

The statutes of the Society can only be amended by a General Assembly.
The Society can only be dissolved by a General Assembly with a majority of two-thirds of the votes cast.

Art. 19

If the Society is dissolved, the General Assembly or the Council will designate one or more liquidators and decide upon whom the goods of the Society should devolve.

STATUTS DE LA SOCIETE DU DROIT DES EGLISES ORIENTALES

Art. 1

Les participants à la séance inaugurale ont décidé le 28. septembre 1969 de fonder la Société du Droit des Eglises Orientales.

Art. 2

La zone d'activité de la Société portera sur toute la région de la République d'Autriche. La fondation des sociétés affiliées est projetée.

Art. 3

La Société est constituée par les personnes qui adhèrent à ces statuts.

Art. 4

Le but de la Société est la collaboration entre les spécialistes de Droit Canonique oriental et de Droit Civil concernant les Eglises de l'Orient. La Société étudiera l'histoire des sources et des institutions de Droit

Canonique; elle fera aussi des études comparées des différentes législations en usage en Orient. Ces buts seront atteints par:

a) des réunions et des discours
b) l'édition d'un bulletin
c) la fondation de centres de documentation et de bibliothèques.

Les moyens pour atteindre ces buts seront fournis par:

a) les taxes d'adhésion et les contributions des membres
b) les revenus des manifestations
c) des dons, des legs ou d'autres dispositions

Art. 5

Le siège de la Société est Vienne. Il pourra être transféré ailleurs par décision de la majorité des membres soit au cours d'une assemblée générale de la Société, soit par votes écrits, modifiants simultanément les statuts.

Art. 6

La Société se compose de membres titulaires, de membres associés et de membres bienfaiteurs.

Les spécialistes de Droit canonique oriental et de Droit civil concernant les Eglises Orientales, de toutes nationalités et de toutes confessions, peuvent faire partie des membres titulaires de la Société.

Toute personne qui s'intéresse au droit oriental même sans qualification académique peut faire partie des membres associés ou bienfaiteurs.

Le Conseil décide l'admission des membres.

Avant la constitution de la Société l'admission de membres sera faite par les proponants. Cette affiliation ne sera valide que lors la séance de l'assemblée générale constitutive.

Art. 7

L'affiliation se termine en cas de décès, de départ ou d'exclusion.

Le conseil peut décider l'exclusion d'un membre pour cause d'actions nuisibles aux intérêts de la Société ou à cause d'une violation des statuts.

Art. 8

Tous les membres, titulaires ou associés, ont le droit de vote activs et disposent d'une voix délibérative dans l'assemblée générale; aussi peuvent-ils se servir de toutes les institutions de la Société. Le droit de vote passif pour le conseil n'est accordé qu'aux membres titulaires, celui pour le sécrétariat aussi aux membres associés.

Le devoir des membres est de soutenir les intérêts de la Société et de s'abstenir de toute activité qui puisse nuire à la Société.

Art. 9

La Société est administrée:

1. Par un conseil composé:
   a) d'un Président élu pour trois ans parmi les membres titulaires, par

la majorité des voix des membres présents à l'assemblée générale. En cas d'impossibilité de réunir les membres tous les trois ans, l'élection pourra se faire par écrit à l'initiative du sécrétariat de la Société.

b) d'un vice-président et de trois conseillers élus pour trois ans parmi les membres titulaires de la même façon que le Président.
La spère d'activité du conseil inclut:
l'établissement du compte final
la préparation des motions pour l'assemblée générale
l'admission et l'exclusion de membres
le règlement de toute question qui n'est pas réservée expressément à l'assemblée générale.

2. Par un sécrétariat exécutif soumis au président et composé de trois membres titulaires ou associés: un sécrétaire, un vice-sécrétaire et le trésorier de la Société, tous élus de la même manière que le conseil.

Art. 10

Les membres du conseil et du sécrétariat exécutif sont toujours rééligibles.

Art. 11

Au cas où un membre du conseil ou du sécrétariat exécutif se trouverait dans l'impossibilité d'assumer sa charge, le président, ou en son absence le vice-président, peut pourvoir à son remplacement jusqu'à la prochaine assemblée générale.

Art. 12

Les décisions concernant l'activité de la Société sont prises par le conseil, en présence d'au moins trois de ses membres. Les décisions sont prises par simple majorité.

Art. 13

Les dépenses de la Société sont décidées, conformément au budget, par le président avec le consentement de deux membres du conseil et après consultation du sécrétariat exécutif.

Les frais de nature urgente peuvent être décidés par le président seul s'ils n'excèdent pas $ 200.

Le budget triennal établi par l'assemblée générale peut être révisé, dans les limites d'un tiers, si besoin est, par le conseil.

Art. 14

L'assemblée générale est l'organe législatif de la Société. Elle décide les motions et le compte rendu du conseil, des modifications des statuts et la dissolution de la Société; elle élit aussi le conseil et le sécrétariat.

L'assemblée générale comprend tous les membres, titulaires ou asso-

ciés de la Société. Elle se réunit autant que possible tous les trois ans, en principe à l'occasion d'un congrès académique de la Société. La présence de la moitié des membres est nécessaire pour la validité de la réunion. Tant que les statuts ne prévoyent autre, l'assemblée générale décide par simple majorité.

L'ordre du jour de l'assemblée générale est préparé par le conseil.

Chaque membre titulaire ou associé dispose d'un vote dans l'assemblée générale.

Un membre titulaire ou associé peut se faire remplacer et représenter par un autre membre de la Société, mais un membre ne peut représenter qu'un seul autre membre.

Art. 15

La Société est représentée par son président ou à défaut par le vice-président, qui convoquent aussi le conseil et l'assemblée générale à leurs sessions. Ces représentants nommés ci-dessus sont autorisés à signer indépendamment.

Art. 16

La cotisation annuelle des membres titulaires et associés n'est pas fixée. La Société fait confiance à chacun des membres pour faire parvenir au trésorier sa contribution annuelle. L'initiative sera laissée au trésorier de trouver les fonds nécessaires à l'activité de la Société, surtout en faisant appel aux membres bienfaiteurs (pour des donations ou des subventions).

Art. 17

Des différends entre les membres seront tranchés par arbitres. Le tribunal arbitral se constitue d'un membre nommé par chacune des parties adverses, et d'un président élu par les deux autres arbitres. Si aucun accord sur la personne du président ne peut être trouvé, il sera élu par tirage au sort.

Le tribunal arbitral décide par simple majorité. Les décisions du tribunal sont définitives en ce qui concerne la Société.

Art. 18

Les statuts de la Société ne peuvent être modifiés que par une assemblée générale.

La Société ne peut être dissoute que par une assemblée générale à la majorité des 2/3 des suffrages exprimés.

Art. 19

En cas de dissolution de la Société, l'assemblée générale ou le conseil désigne un ou plusieurs liquidateurs et décide à qui seront affectés les biens de la Société.

Kommuniqué der 1. Generalversammlung

An dieser ersten Vollversammlung nahmen über 50 der 90 Mitglieder der Gesellschaft teil. Dazu kam noch eine größere Gruppe von Interessenten. Festzustellen ist hier, daß die Vorträge und Diskussionsbeiträge durchwegs rein wissenschaftlichen Charakter und nicht den Charakter offizieller Erklärungen einzelner Kirchen hatten.

Das Thema des Kongresses „Die alten Quellen des Ostkirchenrechts in der Gegenwart" sollte eine Bestandsaufnahme der Vorstellung über die Möglichkeiten der Anwendung des alten Rechts heute bringen. Die Mehrheit der Teilnehmer trat nicht nur für ein intensiveres Studium der alten Quellen ein, sondern auch für eine stärkere Berücksichtigung dieser Quellen, sei es bei der Rechtsanwendung, sei es bei der Rechtssetzung. Diese Einstellung gegenüber den alten Quellen von Seiten aller Kirchen, würde keinen geringen Dienst leisten für ein besseres Verständnis der gegenwärtigen Probleme kirchlichen Lebens.

Es kann damit jener allen Rechtsordnungen innewohnenden Dynamik der Weg vorgezeichnet werden, der das wünschenswerte, ausgewogene Spannungsverhältnis von Einheit und Vielfalt in Christus bringt.

Es ist eine Aufgabe der Gesellschaft für das Recht der Ostkirchen, diesen Dienst, zu dem sie auf Grund ihrer Interkonfessionalität und ihrer Struktur besonders qualifiziert ist, allen anzubieten.

ΑΝΑΚΟΙΝΩΘΕΝ

τῆς Ἑταιρείας τοῦ Δικαίου τῶν Ἀνατολικῶν Ἐκκλησιῶν ἐπὶ τῇ λήξει τῶν ἐργασιῶν τῆς Α' Γενικῆς Συνελεύσεως αὐτῆς.

Περισσότερα τῶν 50 ἐκ τῶν 90 μελῶν τῆς Ἑταιρείας τοῦ Δικαίου τῶν Ἀνατολικῶν Ἐκκλησιῶν ἔλαβον μέρος εἰς τήν Α' ταύτην Γενικήν Συνέλευσιν αὐτῆς. Παρῆσαν ὡσαύτως τινές τῶν ἐνδιαφερομένων διά τό ἔργον τῆς Ἑταιρείας. Σημειωτέον, ὅτι αἱ ἀνακοινώσεις καί αἱ συζητήσεις ἦσαν καθαρῶς ἐπιστημονικοῦ χαρακτῆρος καί ὄχι ἐπίσημοι δηλώσεις τῶν ἀντιστοίχων Ἐκκλησιῶν.

Τό γενικόν Θέμα τοῦ Συνεδρίου „Αἱ ἀρχαῖαι πηγαί τοῦ Ἀνατολικοῦ Κανονικοῦ Δικαίου ἐν τῷ παρόντι" ἐπελέγη διά νά μελετηθοῦν αἱ δυνατότητες χρησιμοποιήσεως τῶν ἀρχαίων πηγῶν ἐν τῇ συγχρόνῳ ἐποχῇ. Ἡ πλειοψηφία συνεφώνησεν ἐπί τῆς ἀναγκαιότητος περισσότερον ἐντατικῆς μελέτης τῶν πηγῶν τούτων καί ἐφαρμογῆς αὐτῶν τόσον ἐν τῇ νομοθεσίᾳ ὅσον καί ἐν τῇ πράξει. Τοιαύτη τις στάσις ἔναντι τῶν ἀρχαίων τούτων πηγῶν ἐκ μέρους ὅλων τῶν Ἐκκλησιῶν, θά προσέφερεν ἐπίσης ὄχι μικράς ὑπηρεσίας εἰς μίαν καλυτέραν κατανόησιν τῶν συγχρόνων προβλημάτων τῆς ἐκκλησιαστικῆς ζωῆς.

Τοιουτοτρόπως θά ἦτο δυνατόν νά ἴδωμεν τήν ὁδόν πρός τόν ἐσώτατον ἐκεῖνον δυναμισμόν ὅλων τῶν νομοθεσιῶν, ὅστις δύναται νά ὁδηγήσῃ ἡμᾶς πλησιέστερον πρός τήν διαλεκτικήν τάσιν, ἔχοντας συγχρόνως ἑνότητα καί ποικιλίαν ἐν τῇ ἀγάπῃ τοῦ Χριστοῦ. Ὅθεν ἡ Ἑταιρεία, διά τῆς ἐπιστημονικῆς ἐρεύνης, θά συνέβαλλεν εἰς τό ἔργον τῆς ἀντιστοίχου κωδικοποιήσεως τοῦ Δικαίου ὅλων τῶν Ἀνατολικῶν Ἐκκλησιῶν, διότι εἶναι τό καταλληλότερον πρός τοῦτο ὄργανον, ἕνεκα τῆς δομῆς καί διαρθρώσεως αὐτῆς.

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CAN ALL THE ANCIENT CANONS BE VALID TODAY?

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The canons of the church decreed by the Ecumenical Councils or by local councils or by the Fathers of the Church and ratified by the Ecumenical Councils are considered as having eternal and divine authority, and in consequence they can be neither abolished nor altered. It is maintained that only an Ecumenical Council may alter them.

But all of them were pronounced at a time which is long past, and thus, the canons necessarily relate to conditions which prevailed at that time. Taking this into consideration, we have to accept that something temporary has entered into them. Some have already been modified by later synods. Conditions have constantly changed and some canons have just been neglected and have come in disuse by the church herself and without any discussion. Besides, other canons, which are supposed to be valid, have been interpreted in such a way that while the canon is in force with a new meaning, the practice of the church has changed. „Oikonomia" was another prevailing element. All these developments ought to take place since the church is a living institution and sometimes has to conform externally to new conditions which arise.

Canons refer to the administration of the church and to the religious and social life of clergy and laymen.

By this division we can consider the radical changes that have taken place in the course of the centuries.

In this paper we are also going to refer to canons which tacitly ceased to be active.

The situation in the Church of Greece will be kept in mind, as our research can not be extented to the whole of the Orthodox Church.

A. Administration of the church

Changes in the administration of the church may be understood through the canons. In the beginning the administration was simple and later on it was based on the metropolitan system, out of which developed the exarchs and the patriarchs. Canon 6 of Nicea refers to exarchs and their jurisdiction. In the meantime the throne of Constantinople was elevated and canon 2 of the Second Ecumenical Council stressed anew the administration of the exarchs, forbidding the intervention of bishops in other dioceses, but by canon 3 seniority of honour was given to the bishop of Constantinople second after the bishop of Rome; in this way Constantinople instead of Alexandria acquired the second rank in seniority. The reason for this elevation was that Constantinople had be-

come the New Rome. Then, by canon 28 of Chalcedon, the exarchs of Asia, Pontus and Thrace were subdued under the bishop of Constantinople. Thereby this patriarchate acquired a large jurisdiction and great power. All this did not happen at once, but according to the circumstances of the time; by canon 17 e. g. of the same synod it was laid down that when a bishop believed he had not had a fair trial by his metropolitan, he could apply to the exarch or to the throne of Constantinople; in that case it was possible for the throne to act or it had already acted with a power higher to that of the exarchs.

We might also refer to the procedure followed in the elevation of the bishopric of Jerusalem to the rank of patriarchate; this happened by an evolutionary process and was completed in the 5th century at the Synod of Chalcedon. These canons do not introduce something completely new, but they confirm practices already prevailing in the church. Until they were confirmed, however, there existed some irregularity. There has been a strong reaction against those canons; when something is not written down, it may easily be changed, but as soon as it is formulated as a canon it is very difficult to alter it.

With the administration of the metropolitans the provincial synod was connected and developed. Canon 37 of the Apostles established that a synod of bishops must be assembled twice a year at fixed periods. The same is demanded by canon 5 of Nicea and canon 20 of Antioch. Yet, the Synod of Charthage (419), while providing for a yearly synod of metropolitans (canon 18), by canon 95 defines that the yearly synod of bishops will be assembled only in case of need, and upon invitation sent to the bishops. In this way a local synod abolished the canon of the 1st Ecumenical Council. Furthermore, Emperor Justinian ruled that the synod must be called together once a year, which was decreed by canon 8 of Trullanum. When the "synodos endemousa" prevailed in Constantinople this synod was silently neglected and in the 12th century Zonaras said: „And now these synods have completely been disdained".

It was only in 1923 that in the Church of Greece, a yearly convocation of the synod of the hierarchy was introduced. The metropolitan administration does not exist anymore, since every bishop has acquired the title of metropolitan. Only in Crete the old system of administration based on the metropolitan system with the bishops of the metropolis existed until a short time ago; this old system was also abolished. There are many in Greece who strongly insist on the convocation of the synod of the hierarchy, but nobody speaks about the metropolitan administration. In this way the old system defined by the canon has been completely supressed, and nobody says a word about it.

Canons define the age for ordination; priests must be 30 years of age to be ordained; Dositheos was appointed patriarch of Jerusalem, when he was 29 years old, to give only one example; and he knew the canons very well.

The election of a bishop must be undertaken by all bishops of the province according to canon 4 of Nicea. When the metropolitan administration was abolished, the election of bishops was carried out in various ways; in Greece, at one time, by the whole body of the hierarchy and

sometimes by the permanent synod as it is foreseen by the statutory Charter of the Church, which often changes.

It is forbidden to give and receive money for ordination; but for a time it had been the custom for the ordinands to give a fixed sum of money to the bishop before ordination.

From the very beginning, many canons have forbidden a bishop to undertake worldly offices; otherwise he must be deposed. But in our church many bishops have been connected with wordly offices and none of them has been deposed.

Canon 30 of the Apostles says that if a bishop is elected upon the intervention of the secular rulers, he must be deposed. It has never been verified, whether the elected bishops have used the secular power to be elected.

Regarding the church property it is defined by the 38th and 41th Apostolic Canons that the bishop takes care of it; it is further laid down that the bishop has to appoint an "oikonomos". Today the bishop acts as president of the council of his bishopric, which has the administration of the church property. The entire church property in Greece is administered by bodies of bishops and laymen who act according to state laws.

There are canons which forbid the clergymen to give loans on interest (canon 44 Apost., 17 Nic., 10 Trullan., 5 Carth.). In this case it is not usury. But the clergymen deposit their own money and the funds of the church at the bank and receive interest. Today the church tribunals do not strictly follow the provisions of the canons. Generally an attempt is made to adapt their rulings to the spirit of the canons; church tribunals are regulated by state laws. There is also a difference in the penalties; canons usually foresee the strictest penalty, i. e. deposition, which is very rarely imposed.

Connected with the canons prohibiting bishops to engage in worldly offices, are canons forbidding clergymen to join the army. They do not enlist in the army, but there exists a department for religious affairs in the army and clergymen attached to it are named officers of various ranks. The bishop at the head of this department is a general.

Clergymen are not allowed to pray with heretics; moreover, they must neither give benediction nor allow Orthodox Christians to be buried in their cemeteries. Yet, John, bishop of Kitrous, at the end of the 12th century, expressed the opinion that Romaioi, i. e. Orthodox Christians may be buried and have funerals sung by Latins and vice versa. And Demetrios Chomatenos, at the beginning of the 12th century, said that unleavened bread of Latins ought not to be considered as common bread; also their sacred vessels and vestments ought not to be considered as common, for they are sealed by invocation of the name of the Lord (Rallis-Potlis, 5, p. 433). The same archbishop said that when a bishop is invited by them to their church, he can go and he may also give them the blessed bread when they visit the Orthodox Church.

Balsamon was asked by Marc, the Patriarch of Alexandria, whether it was allowed to give the holy communion to Latin prisoners who asked for it. The answer was negative. Latins first ought to renounce their faith.

Concerning this answer Chomatenos remarks that in his own time many learned men do not agree with Balsamon and his answer „because it is very merciless and rash"; they add that there has no synodical decision been taken on this matter and the Latins are not publicly rejected as heretics „but they eat together and pray together with us" (Rallis-Potlis, 5, p. 435). For the last 50 years clergymen of our church have prayed together with clergymen of other confessions. It is probable that prohibitory canons were pronounced when the struggle against heretics was at its peak and there was the danger for the Orthodox Christians to go astray.

There are many canons regulating the marriage of members of the clergy; there are also canons defining which woman a clergyman may take as his wife. Bishops were not allowed to marry at all. Canon 2 of Trullanum regulates transgressions by clergymen with respect to marriage and canon 12 says that there are still married bishops, which is forbidden. The justification is characteristic; marriage, it says, is prohibited, not because apostolic laws are violated or overturned, but for the sake of the salvation and improvement of the people and for avoiding any accusations against clergymen.

In contrast to the above, canon 18 permits marriage to priests and deacons, but at certain times sexual intercourse is not allowed, as had already been prescribed by the Synod of Carthage. That raised a question to which Balsamon refers in commenting on canon 70 of the same synod.

Clergymen and monks ought to cut their hair short (canon 21, 23, 42 of Trullan.). Those who grow their hair long are already condemned; since for a long time clergymen and monks of our church have grown their hair very long and many of them are strongly opposed to any one saying that they ought to cut it a little shorter.

There are many canons regarding the translation of bishops, and some expressions are used which, the canonists thought, needed an interpretation. We might say that the translation of bishops was basically forbidden, yet there was a door left open: it was possible for a bishop who proved himself capable in a small diocese to be transferred to a larger one in order to benefit more faithful. In the Synod of Sardica already Hosius of Cordova said that translations of bishops were realized on account of greediness and canon 1 decreed that the practice be discontinued. In his Ecclesiastical History Socrates gives a whole catalogue of translated bishops; he says that Bishop Alexander, was translated to Jerusalem after two visions sent by God (Socr. VII, 36, Euseb. E. E. VI, 11) and he adds „people of former times were indifferent towards the translation of a bishop from one town to another if there was a need". Niceforos Kallistos Xanthopoulos quotes the whole list given by Socrates and completes it with more recent examples. Six years ago a storm of excitement was raised in Greece on account of the translation of bishops; yet, one should remember that during the time of the Turkish occupation translations were common and necessary. The Patriarchate of Constantinople had no objections to that matter.

There is a great number of canons for the regulation of the social and religious life and conduct of clergymen and laymen.

Many of these canons presuppose the social and ecclesiastical relations existing at the time when they were pronounced. Canons referring to slaves and questions relating to their class have only historic meaning. There are also canons referring to heretics who do not exist today; e. g. the Synod of Carthage gave rise to many canons about the Donatists. There are also many canons regulating the ways by which the „lapsi" could return to church. Other canons regulate family relations or arrangement of relations between family members not anticipated by the laws of today. Penalties established by the canons have been radically changed, due to alterations of the penance system. Relations in matrimony and divorce are different now. In some cases, especially in sexual relations, canons are casuistic and refer to subjects which provoke surprise in the reader. The Old Testament influenced the church and naturally found a way to enter into the canons, too.

Clergymen were not allowed to eat at taverns of the old type, but for the restaurants of today these canons can not be valid. It is also forbidden to them and to the laity as well, to go to theaters on penalty of deposition and excommunication respectively. Actors can not bring an accusation against a clergyman; they may be accepted in the church, if they repent and abandon their profession. Canon 61 of Carthage says that the church should demand that theatrical performances must not be held on Sundays and holidays, because it had been observed that in the week after Easter people went to the theaters and not to the church. Canon 66 of Trullanum says that Christians must go to church during that week. Horse-races and other public shows must not take place during that period of time.

Regarding the subject whether a clergyman is allowed to go to the theater or not, there was a public discussion in Greece some years ago, and the conclusion was reached, that at that time there was a prohibition on account of the low level of the theater. Today the theater is one of the most remarkable elements of cultural life and many actors are important persons in the life of their country. How could one ask them to repent and abandon their career? Regarding the days for horse-races, football matches and athletics there is no restriction, on the contrary, the usual day for such activities is Sunday.

Canons are strict in regard to the relations of Christians with Jews. It is forbidden to eat their unleavened bread, to feast with them, receive gifts, to give oil and kindle their lamp, to go to the bath with them and to accept the medical care of a Jewish doctor. In my hometown there were 2.000 Jews before the war. I think my fellow-citizens have violated many of these canons.

Saint Basil says that the Fathers rightly did not consider as homicide the killing of people during a war, and they granted forgiveness to those who were defending piety and prudence. He then decrees that soldiers who kill during a war, must abstain from the holy communion for three

years. But Zonaras does not agree and says that if this canon is applied, soldiers will never receive communion. He then says, that they fight against the barbarians, who would otherwise prevail. Nicephoros Phocas, according to the same, asked that soldiers fallen in the war should be honoured as martyrs, but the bishops of the time rejected this petition of the emperor. There is no mention of the word liberty, nor does he say what happens, if the war is fought against Christians and Orthodox Christians.

Many canons refer to matters of family-life; matrimony, divorce and the relationship between husband and wife.

A multitude of canons regulates the impediments to marriage, and canonists used to give them great and minute attention. Some of them are still valid, but many are silently neglected. Since 1938 marriage among second cousins has been permitted in Greece by the Civil Code, although the canons do not allow it.

The canons presuppose the power of the father as it was the custom at the time of their origin. In canon 42 St. Basil decrees that if a girl marries without the consent of the κρατούντων (keepers), this marriage is considered a fornication. Today, however, the laws contain different provisions on this subject.

Canons are also very strict in case of abduction; even if the parents give their consent to the marriage, the abductor is regarded as a fornicator and is censured to four years of absention from the holy communion. The penalty is imposed even if he marries the girl. Two other canons impose the penalty of excommunication on the man.

It is not allowed to perform matrimonies during the fasting time before Easter. Many times permission is granted.

When Christians attend a wedding they are not allowed to sing and dance (canon 53 of Laodic). Balsamon says that this „canon is already inactive and there is no need to comment on it". If this canon were valid, everybody in Greece would have been under the ban. When clergymen are invited to bless a matrimony, they must leave as soon as the banquet begins. There are canons regulating conjugal sexual relations and forbidding them on certain days.

A divorce is not permitted, but for fornication. There are different standards of adultery for man and woman.

Before Justinian, a marriage could be easily dissolved, but that emperor prescribed, when a divorce could be granted and there are also fixed regulations going back to other Byzantine emperors. Today it is not difficult in Greece to dissolve a marriage and the problems arising are regulated by state laws at the courts.

It is forbidden for an Orthodox man to marry a heretic woman and vice versa; such a matrimony is considered invalid by canon 14 of Chalcedon and 72 of Trullanum. These marriages are usually concluded abroad and there are some restrictions imposed on the married couple.

For those who want to get married for the second or third time canons are very strict. A man married twice cannot become a clergyman. This man is not blessed with a crown and must abstain from the communion for 3 years. Concerning the third marriage, St. Basil says in canon 50

that there exists no law and in consequence a third marriage cannot be lawful, but it is preferable to fornication. Since the 10th century the state has allowed third marriages; a man who is married for the third time must abstain from the holy communion for five years. A priest is not allowed to take part at a banquet of a man who married twice. But Zonaras, already remarks that such provisions are „in letters" only; he knows that patriarchs and metropolitans took part in banquets of kings, married for the second time. It is needless to say that all these canons are not valid.

Laymen are not allowed to instruct (διδάσκειν) or preach at the church; if they do so, they are excommunicated for forty days (canon 64 of Trull.). Laymen are sheep, they cannot be shepherds. The same holds true for women, who moreover may not speak to other gatherings either. But in our church it is a common practice for the lay theologians to preach at the church.

Women are not admitted to the sanctuary. They are considered as unclean during menstruation; they are not allowed to receive communion then or even to enter the church; they must stay in the narthex. Men are not permitted to have intercourse with them; if they do, they must abstain from communion for 40 days. Balsamon regrets that those women in nunneries stay in the narthex, which according to him is inproper. The opinion about the women being unclean is based on the Old Testament. Would medical doctors and physiologists accept this opinion?

Laymen are forbidden to eat while hearing music. They must not have banquets paying each his own share (canon 55 of Laodic).

Many canons refer to sins and especially to those concerning sexual relations: adulteries, fornication, incest, sodomy, masturbation, bestiality. It is characteristic that some of these anomalies are discribed and cases of particularly repulsive nature are referred to. I give you one example: John the Faster decrees: if a boy was in sodomitic relation, he cannot later be ordained; though he did not sin, because he was a boy, but his vessel was broken and is useless to sacred service. But if he had the ejaculation on his thighs, after having been reproached, he cannot be hindered from ordination (Rallis-Potlis, 4, p. 441). The canons are contradictory, as to whether it is permissible for someone to receive communion, when he had had a nocturnal emission. The canons are detailed on these subjects, since they had to regulate sins told at the confession. Synods are not occupied in detail with these sins, but only the Fathers of the Church. St. Basil, who was very strict about these sins, has greatly influenced his posterity; he imposed heavy penalties, having in mind the penitential system of his time; these canons, as well as those of Gregory the Theologian, have been accepted by Trullanum. Yet, a century earlier John the Faster, patriarch of Constantinople (582—595), shortened the time of penance prescribed by St. Basil and Gregory the Theologian. St. Basil, having decreed a long time of penance for these sins, says: „We write all this, because we want to test the fruit of repentance; we do not judge all this by the time of penance, but we pay attention to the way of penance." (Canon 84).

John the Faster cut the time shorter introducing instead fasting, vigilance and genuflections, which he said, had not existed at the time of

the Fathers; only abstention from the communion existed then. „But", he continued, „for those who repent sincerely and want to sustain an austere training of their flesh, leading at the same time a life contrary to that they had already lived in sinfulness, it is right and correct to shorten the time of their penance in proportion. In this way the time of repentance is shortened for those who are willing to abstain from wine, meat, cheese, eggs, fish, olive oil for certain periods of time. Also for those who do genuflections and give alms the time is shortened." The patriarch preferred canons which were more humane. Here is an example: Gregory of Nyssa says that an adulterer must abstain from holy communion for 18 years. St. Basil decreed 15 years; both of them increased the 7-year penalty imposed by the Synod of Ancyra; John the Faster, however, foresaw a penalty of only 3 years saying that the sinner must eat only bread after the 9th hour and do 250 genuflections every day. In like manner he shortened the time of penance for other sins too, without having synodical authorization to do so. Confessionals published lately just repeat these sins and as penance they simply cite the old canons and those of John the Faster. As far as I know, the priests hearing confessions never impose the penance foreseen by the old canons.

There are heavy penalties for abortion; they are imposed on women and on those who in any way cooperate in it. The same strictness is shown for those who use contraceptives. Abortions are today more frequent than before. Is it possible to solve this problem by the old canons? In Greece abortions are counted in thousands.

Men who trim their hair are subjected to excommunication (96 Trull.). If somebody does not go to church for three Sundays, he is excommunicated. On Sunday one must not walk around without any need or if one is forced to do so. One must not work the whole week after Easter (Niceph. Omolog. Rallis-Potlis, 4, p. 431). Genuflections on Sunday are forbidden. But today many do prostrate on Sunday during the liturgy.

Regarding fasting, there are many relevant canons dealing with it in detail. In the first centuries fasting was of a different kind; later on the type we have now prevailed. The canons are very strict on those who do not fast; and now I do not know how many Greeks ought to be under the ban for breaking those canons. According to the canons a good Christian must keep fasting for 225 days a year.

There are regulations showing that attention is paid to superficial things and not to essential ones. At the end of the 4th century Timothy, the patriarch of Alexandria, answered to the question whether someone was allowed to receive communion after having swallowed some water before going to church when he was washing his face or while he was in the bath; he replied in the affirmative. There exist more such questions.

It is forbidden to give shelter to someone who abandoned his monastical status; he must not even be greeted.

From our research conducted so far, it may be seen that the synodical canons regulate serious questions concerning the life of the church and the faithful; some of them and some pronounced by the Fathers of the Church refer to questions of everyday life and to sins of the Christians.

The synodical canons know two penalties, deposition and excommunication, and these are the heaviest ones. In Greece excommunication is pronounced by the Synod after permission is granted by the Ministry of Education and Religions. Which one is the more powerful organ, the one pronouncing the excommunication or the one giving permission for it to be pronounced? In the period of the Turkish occupation excommunications were quite commonly pronounced; when somebody lost his horse or his cow, the priest pronounced an excommunication on the supposed thief, so that — being afraid of it — he would restore the stolen cattle. The Canons of the Fathers, which guide priests receiving confession, cite some more penalties and very rarely impose abstention from holy communion for lifetime.

Evidently, penalties are imposed by the ecclesiastical courts or by the confessors; the question could be asked, whether someone who does not reach the court or the confessor is automatically subjected to the penalty of excommunication foreseen by the canons?

There arises another question: many of the canons presuppose another epoch different from the cultural and social outlook of our own times; they also refer to relations among men which are different from those that we know; how could these canons possibly be valid today?

We have seen that synods changed the canons and even certain prelates, on their own initiative, changed the penalties by giving them another interpretation. For centuries there has been no change in the canons; the question is very critical, since serious subjects regulated by them are completely different today and the church officially acts in contradiction to the canons.

There is much talk about the codification of old canons. What is such a codex of canons going to include and which are the criteria for selecting the old canons? Would the new conditions of life be taken into consideration, as well as scientific progress, opinions on penalties, anthropological and psychological research? Would all these be duly considered — and they would have to — I do not know what form this codification will take.

There is another aspect to be considered; in each Orthodox Church there exists a different system of administration and different relations between church and state. In addition there is a different system for the election of bishops. Should all these be taken into account, I wonder if existing canons could cover these conditions. Thus, there is a need for new canons to be decreed.

One must also bear in mind the many changes we are faced with in our days, e. g. the neglect of authority. The church enjoys no more the authority she had in former times. This is a serious problem, if the Church wants to have canons that are not only decreed but also obeyed.

But if we have a codification, there is another danger, namely that the canons become a sort of law evolving into a fossilized legal system that is totally alien to the spirit of orthodoxy. How can we have a legal system of canons relating to sins and transgressions?

Tolstoy once saw a sergeant beating a soldier. "Why are you beating him?" he asked, „haven't you ever read the Gospel?" „Well", the sergeant

replied, „have you ever read the rules and regulations of the Army?" The canons of the church are not rules and regulations, they must be like the Gospel.

And there we must pay attention to the spirit of canons. The theme reflected in all of them is that the church, the divine institution, has an organization aiming at salvation and at giving the sanctifying grace. Clergymen are put to serve the faithful and to transmit the grace. Christian people receive the grace and cooperate in achieving salvation and receiving the grace of God. If we see the canons interwoven into God's benevolent will, then they lose their legal meaning and become means of promoting the salvation of the people. They are only propositions to help Christians towards obedience to God and His Church; they are guides of the conscience, not guards of it.

When a sinner comes and seeks the grace of God he wants to find love, compassion and mercy, not laws; he finds laws at the law courts. That is what Jesus Christ, our Lord, promised. The same applies to the administration of the church; it must be unlike that of a state. In the administration of the state there is no place for „oikonomia".

If those who apply canons are animated by the spirit of the Gospel, then the canons become helpful means for salvation and for a good administration of the church. If canons are understood as legal rules and regulations, then they become obstacles for the salvation of the Christian people.

A COMMON CODE FOR THE ORTHODOX CHURCHES

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I. While the Roman Catholic Church is preparing the revision of her 54 year old *Codex Juris Canonici,* and rigorous discussions are taking place about her *Lex Fundamentalis,* the Orthodox Churches are occupied with the study of their sacred canons and their canonical institutions with a view to their codification. This whole subject will figure on the agenda of their future General Council[1].

II. We talk about a Code of the Roman Catholic *Church* and about one of the Orthodox *Churches.* This difference of singular and plural does not imply that these Churches have a different ecclesiological conception of themselves. It only means that the Roman Catholic and Orthodox Churches have different administrative systems, different external forms and structures, the former having a monarchical structure and the latter a structure based on the principle of independent (autocephalous) local Churches, which are at the same time *one* Church. It is therefore correct to speak about a Code of the Orthodox Church, as well as about a Code of the Orthodox Churches.

III. The work of codification of the sacred canons of the Orthodox Church, which is now being undertaken for the first time many centuries after their original formulation, will of necessity be connected with their revision. Otherwise the Code would be of more theoretical than practical use, where as the codification is mainly required for practical reasons. The inevitable connection between the codification and the revision of the Church's legislation gives it far greater importance, because the whole work is combined with the work of the renewal of the external forms of the Orthodox Church. This will be one of the major aims of the future Holy and Great Synod of the Orthodox Church, the other being that of unity. The late Greek canonist Alivisatos was right in saying that we cannot talk about a real renewal of the life of our Church without the revision of the Church's legislation, by means of a codification.

IV. Among Orthodox Bishops and theologians there is no unanimous opinion regarding this revision, which will imply the change, fusion, shortening and even abrogation of some canons. Some Orthodox Bishops and theologians not taking account of the clear statements of the Councils and contemporary political legislation, think that canons and dogmas are pos-

[1] See: *B. Ch. Archondonis,* On the Codification of the Sacred Canons and the Canonical Institutions in the Orthodox Church, Thessaloniki 1970 (in Greek).

sessed of the same value and authority and are both eternal and unchanging in character. They consider the canons as positive laws of disputable authority for all places and all times. Thus they turn the canons into an „idol for foolish worship", as has been rightly pointed out.

Others, with whom we agree, distinguish between dogmas and canons, between the life-giving spirit and the deadening letter of the law, between essence and form, core and covering. The late Professor N. Afanasiev says epigrammatically: „The truth that canons express is in itself absolute, but the content of canons is not this truth itself, but the mode through which this truth must be expressed in a given historical form of the Church's life. Canons express the eternal in the temporal"[2]. J. Meyendorff expresses the same opinion as follows: „Ecclesiastical canons are the expressions of . . . the fundamental presence of the Kingdom among men, and they help the parts of the Body to remain together, but they can never replace truth itself"[3].

The canons would be, as dogmas are, for ever unchangeable, were they based only on divine law. But the Church's law is a divino-human law[4], for the Church is not only invisible but visible as well.

The only laws which are unchangeable are the fundamental laws of the Church which were formulated basically by the Lord and the Apostles, or those which are in accordance with the essence of the Church and are expressions of it. Other canons, brought into being by temporal necessities, express the essence of the Church in her various historical forms of existence. Such canons can be changed or even abrogated, if they do not any more serve the purpose for which they were originally issued.

As the Church is also a visible institution with her own organization, it is natural that her legislation, *sensu stricto,* should constitute the main source of her law. The ancient canons, are therefore the main and most fundamental source of Church law, in the sense that they contain the guiding and fundamental principles, on which all legislative work of the Church, created by changing ecclesiastical circumstances, must be based. The Church's legislation must always aim: firstly, at the application of the above mentioned principles in accordance with the special needs oft the Church in a given age, and secondly, at the elaboration of these principles in specific appropriate canons. These must always serve the purpose of the Church and its achievement. This is the task, the *„raison d'être"*, of the sacred canons and generally of ancient sources of Oriental Canon Law, the subject of this General Assembly.

The possibility of the modification and the abrogation of the canons, according to the needs of the time, is testified to by various Church Fathers and authors such as Basil the Great, Tertullian, Augustin and Leo the Great. The same possibility is also suggested by contemporary theologians and canonists and especially by the practice of the Church, which, guided by the Holy Spirit, follows practices always tending to foster the

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[2] The Canons of the Church: Changeable or Unchangeable, in: St. Vladimir's Seminary Quarterly II (1967) 62.

[3] The Holy Spirit in the Church, in: John XXIII Lectures, vol. I, New York 1966, p. 75.

[4] *N. Afanasiev,* loc. cit., p. 61.

achievement of her highest purpose, that is to say the salvation of the human souls.

The changing of canons, in which the Church has absolute power and competence through her legislative authority, should be carried out carefully so that no-one may be shocked. Changes should be made only when there is „utilitas evidens" and „necessitas urgens" and with the aim of serving the salvation and the progress of the peoples, as stated in the 12th canon of the Council in Trullo.

V. Within the Orthodox Church not many steps have been taken towards the codification of the canons and in connection also with their revision. The Panorthodox Preparatory Commission that met in Mount Athos in 1930, accepted the suggestion of the representative of the Patriarchate of Alexandria and included the subject of the codification of the canons in the prepared list of subjects of the future Prosynod. The 3rd Byzantinological Congress, held in Athens in 1930, and six years later also the Ist Congress of Orthodox Theology in Athens, expressed the wish that the work of codification, having such a high scientific and ecclesiastical importance, should be carried out soon. The Ist Panorthodox Conference, held in Rhodes in 1961, and which revised and enriched the list of subjects for the future Prosynod (and since 1968 "Synod"), included in the list the codification of the canons. The 4th Panorthodox Conference of Chambésy-Geneva (1968), confirmed these decisions. The Interorthodox Preparatory Commission of the Holy and Great Synod, constituted by the 4th Panorthodox Conference and held in Chambésy two months ago (July 1971), unanimously expressed the desire that the Ist Presynodal Panorthodox Conference should revise the list of the themes of the Synod as prepared in 1961[5]. From this tribune we are so bold as to make an appeal to the next Panorthodox Conference that it should not cross out the theme of the codification from the list because of its great importance and the urgency of the longed for renewal of the Orthodox Church that also partially depends on the codification of the canons. The next Presynodal Panorthodox Conference should call on all the Orthodox canonists to deal with the subject in detail, beginning this difficult but necessary work as soon as possible.

In 1965, on the proposal of Professor Alivisatos, the Academy of Athens decided to undertake the work of the codification. The Church of Greece and the Ecumenical Patriarchate expressed their joy at this decision of the Academy. More than six years have passed and no positive steps have been taken by the Academy towards the realization of its decision. Furthermore objections have been raised against the suggestion that this work should be undertaken by the Academy which is neither an ecclesiastical nor a theological institution. That is why we insist on our modest proposal that the future Presynodal Panorthodox Conference should entrust the codification of the sacred canons to all the Orthodox Autocephalous Churches. These Churches should invite then their theologians, canonists and other competent persons to perform this work as soon as possible.

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[5] Communication of the Preparatory Commission, art. 6. *Episkepsis*, No. 36, p. 9 (in Greek).

It would be an omission if we did not emphasize the fact that the late canonist of Athens Alivisatos was the person who more that anybody else recognized the necessity for the codification and worked for it.

VI. The codification of the sacred canons has become necessary both because of their „quantity" and their „quality". Some of them contradict each other, others sometimes, even of one and the same Council, contain repetitions, others have fallen into disuse by reason of the creation of customs contrary to them or the issue of new canons on the same subject. Those are facts. But it is also a fact that the Church has up today not decided officially on the number and the content of such canons as are not applied or inapplicable or on any criteria to distinguish them from those which are, also de facto, valid today. It has been said that the indifference towards the observation of the ecclesiastical canons leads to disorder. But we are bold to say that in the creation of this disorder the Church herself has had her part to play since, in the Corpus of her canons, she has preserved canons no longer in use or applicable. How can the Church demand from her faithful members the observation of the canons as a whole when among them there are also inapplicable canons? The faithful cannot be expected to be able to distinguish between applicable and inapplicable canons.

Nevertheless not all contemporary theologians and canonists share the opinion that there is a necessity for and the possibility of a *Codex Juris Canonici* for the Orthodox Churches. Some in principle have no objection to the codification, but they think it difficult because of the dissimilarity of the legal systems of the various Orthodox Autocephalous Churches; this, they hold, imposes the need for a different codification for each one of them. We think that this opinion ist not true, because, as is acknowledged by Orthodox and non-Orthodox scholars, the Orthodox Churches have basically a single law, whose most important sources are common and panorthodox. The Orthodox Church is neither the sum of a number of independent Churches, nor a federation of Churches, a „Kirchenbund", with external, inter-church law, but *one* Church, the Body of Christ, within which the local Churches are expressions of the One, undivided, living, holy, catholic Church in various places. This one Church has organically a single law, which expresses and makes a reality of the dogmatic unity that exists among the Autocephalous Churches. A multiplicity of codifications should be avoided because they would not serve Orthodox unity but even damage it. A common Code for all the Orthodox Churches would on the contrary however contribute to the reinforcement of this unity that binds together the sister Orthodox Churches and foster their being seen to be one Church well organized, but without any exaggerated organization, ready to fulfill her mission in the world with a united and consequently more widely valid legislation.

Finally, there are scholars who reject the codification of the sacred canons as not being in accordance with the Orthodox spirit; they claim that the deep unity in faith and worship which exists between the Orthodox Churches can take different forms of expression according to the various local traditions. That would be true, if the Church were only a charismatic

body. But the Church is a divino-human organization, within which the regular evolution of ecclesiastical life must be safeguarded by a Code, in such a way that the further evolution of Orthodox Canon Law will not be prevented and the Code will not become an iron collar imprisoning the Churches and abolishing the liberty which God granted to men.

VII. The task of the codification of the canons is a purely ecclesiastical affair. That is why the competent organ to carry out this task is the Church. Both the revision of the present Church legislation and the amending of it, through new canons, are part of the competence of the legislative authority of the Church, which constitutes an inseparable part of the *potestas jurisdictionis.* This *potestas,* as well as the *potestas ordinis* and the *potestas magisterii,* originate from the triple spiritual authority of Christ. Prior to his ascension to heaven the Lord made his Apostles bearers and continuators of this triple authority and likewise through them their canonical successors, the bishops. Therefore only the bishops, assembled in Ecumenical Council, have the right to codify the canons. An Ecumenical Council is indispensable for approving and confirming the Orthodox *Codex Juris Canonici,* because the revision of the present canons can only be undertaken by an authority equal to that which had issued them; this is in accordance with the well-known principle of the law.

If the Academy of Athens or another institution or a group of scholars etc. prepares the Orthodox Code, this Code will have no authority to do so without Panorthodox acceptance and confirmation.

VIII. The scholarly work of codification would contain the following four points:

1. The unification of the canons of similar content. Many canons have no practical importance, because they are repetitions of previous canons. In such cases the fundamental canon should be given preference over similar canons repeating it, based on it. (e. g. canon 4 of the Ist Ecumenical Council for the election of bishops, 34th Apostolic canon for the conciliar institution). This preferred canon may and must be completed by elements taken from later similar or related canons.
2. The abolition of no longer useful canons. *„Cessante ratione legis, cessat lex"* or *„ubi deficit ratio legis, deficit lex ipsa"*, as the Romans said. According to this principle, the canons, the *ratio* of which no longer exists, are considered dead, because *„ratio legis est anima legis"*. And such dead canons must be cut out of the Corpus of our legislation and put in footnotes or in an appendix to the Code, because although now lacking practical importance, they have not lost their scholarly and historical importance.
3. The modification of some canons according to later ecclesiastical concepts and understanding. The change of attitude should be specially taken into consideration in the field of penal law. A modification of the canons which regulate the relations of the Orthodox to other Christians and to other religions is also necessary. In order that the Church may be realistic and vitally present in the modern world, certain canons need modifying on a more realistic and human basis.
4. The study of the problem of the agreement between the various canonical regulations and the ecclesiastical institutions of the State. The ancient

State laws on ecclesiastical matters that hold for the whole Orthodox Church will have to go through the same processes as the canons (unification, cancellation, modification). From the new State laws the Code will retain only whatever can hold good for all the Orthodox Churches. It would be useful to add an appendix to the Code containing the State laws in use in each Autocephalous Church and another parallel one containing the special canonical institutions valid in each Church. In this way everybody would know exactly the entire law in use in each Autocephalous Church.

The Code will not include provisions about Church-State relations because of the difference in such relations in various countries and the impossibility of regulation of such relations by one side only.

Our Code may have one of the following four forms dependant on the method that is to be adopted:

1. A form in accordance with the order of importance of the organ which issued the canons (as canon 2 of the Council in Trullo follows this order) — although after the confirmation by this 2nd canon all the canons are equal.
2. The chronological form.
3. The alphabetical form.
4. The form based on content, which form we consider the best because it would bring together and place next to one another the provisions dealing with similar themes.

On the basis of the triple spiritual authority bestowed on the Church by the Lord, we think that the Code should consist of three parts:

1. An administrative part. That is to say the part containing all the provisions about the administrative as well as the legislative authority which is inseparably linked with it.
2. A part including canons about the sanctifying work of the Church.
3. A part including canons relevant to the subject and object of the *potestas magisterii*. Canons referring to missions also belong to this part.

The Code should begin with an introduction preceeding those three parts, including statements concerning the essence of the Church as a visible organization, general definitions of the canons and the State laws for the Church, and about the relations of the Orthodox Autocephalous Churches between themselves, etc. These relations may form a new branch of Orthodox Church Law today[6].

As to the method of construction of the Code and its content, we may further add the following:

1. The canons and later laws issued for ecclesiastical use at a certain very specific time and in and for certain very specific circumstances, are not to be included in the Code. For example the canons punishing those who yielded to violence (lapsi) during the persecutions.
2. The historical information included in some canons should be left out for adding unnecessary weight.

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[6] *V. Ivanovits Talysin,* Ai diekklesiastikai scheseis ton Orthodoxon Autokephalon Ekklesion os klados tou Orthodoxou Ekklesiastikon Dikaiou: See about it *Ekklesia* 45 (1968) 151 (in Greek).

3. The Code should only include canons referring to subjects of canonical order and discipline and not canons of dogmatic, moral, ascetic and liturgical content.
4. If there are two contradictory canons on the same subject the predominant principle of *„lex posterior derogat legi priori"* should be applied instead of the opposite principle according to which *„qui prior est tempore potior est jure"*. According to the principle *„lex posterior generalis non derogat priori speciali"*, the older provision should be preferred if it is of a special character in relation to the newer one.
5. The Code should be completed by: a) Elements taken from the local Church legislation of the Autocephalous Churches. b) Certain Church provisions of the State, as also practiced in ancient times: *"Quando de aliqua re in legislatione ecclesiastica regula certa et clara deerat, ipsa ex jure civili accipi deberet"*. c) Provisions of the law of custom. d) Provisions of the Code for the Oriental Catholics, and perhaps even of the Latin *Codex Juris Canonici*. This has ecumenical importance also, because the Roman Catholic Church and the Orthodox Church, having many common aspects in their Church life, approach more and more each other and that reconciliation and unity so desirable to both parties may thereby be facilitated. The Canon Law can facilitate ecumenical dialogue and must not obstruct it. Fortunately the importance of Canon Law in the field of Ecumenism is beginning to be recognized today: „There is no discipline of the sacred sciences as amenable to ecumenical endeavors as canon law"[7]. Our Society, made up of Roman Catholic and Orthodox canonists, can certainly help very much in this field.

IX. At all times, but especially in periods of *aggiornamento* such as today, new canons have been issued by the Church. In this way, in our days, on the occasion of the codification of the canons, all ommissions observed in the Code will be completed by the issue of new canons which will regulate the new aspects of the Church life which the previous canons have not covered. N. Afanasiev writes about the promulgation of new canons by the Church: „The Church cannot live only by the existing canon law, which is in reality the law of the Byzantine Church supplemented by the decrees of local Churches. The Church has the right to perform creative canonical work at all times, not just at a restricted period of time"[8]. These new canons will be canons of the Ecumenical Council which will confirm the new Code and will contribute to the maintenance and increase of canonical unity between the sister Orthodox Churches. The new canons will formulate the new forms of the Church's existence, by which the dogmatic teachings will be expressed in the most complete manner appropriate to our age. These canons should be based on guidelines derived from ancient canons. The scope for ecclesiastical legislation lies in the elaboration of these principles in the form of new canons.

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[7] *V. Pospishil*, Sources of Eastern Church Law, in: John XXIII Lectures, col. I, New York 1966, p. 113.
[8] *N. Afanasiev*, loc. cit., p. 67.

Some scholars will probably be afraid that the issue of new canons after so many centuries of relative inaction, will lead to errors and consequently that it would be better for us to remain satisfied with the existing canons. To those scholars we may answer in the words of Afanasiev: „Mistakes can be avoided only through a clear and correct canonical consciousness and under the condition that creativity always remains full of grace in the Church. It is impossible to protect ourselves from error by refusing to be creative, since the very rejection is a yet greater error and a violation of the divine-human will, and also because it opens up greater opportunities for the operation of *jus humanum* in the Church"[9].

X. The new Code must be confirmed by the future Ecumenical Council because it will modify and abolish canons of previous Ecumenical Councils. This has been mentioned above. We may only add that this confirmation is also necessary because the Code will contain new canons which should derive from the Ecumenical Council, which is the only proper organ to legislate for the whole Orthodox Church. That Ecumenical Council will only approve and confirm the Code which will be prepared by theologians and canonists. After its preparation and prior to the convocation of the new Ecumenical Council, the Code can be applied as having binding force for all the Orthodox Churches after their universal common assent to it, since *„quod omnes tangit, debet ab omnibus approbari"*. This is in accordance with an ancient practice of the Church by which in non dogmatic questions and sometimes even in dogmatic ones the Churches did not hold councils but settled them by common agreement brought about by means of correspondence and visits. The new Ecumenical Council will confirm *a posteriori* and officially all that has come about as a result of the application of the provisions of the Code but that is opposed to the decisions of previous Ecumenical Councils.

XI. The basic difficulties in the work of codification are the following: a) Our lack of that deep study that could theoretically solve some problems and on which legislation would subsequently be based. b) The revision of the whole legislation, which is the first one to take place after many centuries. c) The language problem of the Code.

Nevertheless these difficulties should not be overestimated. There are many factors that could support and facilitate the work, as for example, the local Codes of the Autocephalous Churches and especially that of the Serbian Church. The studies of Orthodox canonists especially in recent years. The two Codes of the Roman Catholic Church, the progress of the preparation of our Holy and Great Synod, etc.

XII. It is acknowledged also by non-Greek scholars that the Greek language was the language of the canonical legislation from time of the canons of the Councils of the first centuries up to the canonical institutions of the Patriarchal Synod of Constantinople in recent times. Therefore the original language of the Code should be greek. It is obious that

[9] *N. Afanasiev*, loc. cit., p. 68.

the Code will be translated into the language of each Orthodox nation in accordance with the old tradition of the Orthodox Church that she should offer her written spiritual riches to her children in their own languages. Such translation would not be an easy task, but in as much as it is essential, it should be undertaken at the same time as the codification or as soon as possible after it.

MINISTRE ET SUJET DES SACREMENTS DANS LES ANCIENS CANONS ET AUJOURD'HUI

CHARLES DE CLERCQ

Rome

Dans cet exposé, nous relevons d'abord ce que les principaux anciens canons[1] ont décidé au sujet de la validité des sacraments conférés hors de la vraie Eglise et montrons comment est née la théorie de l'économie, nous considérons ensuite comment se pose aujourd'hui le problème de la „communicatio in sacris sacramentis".

I

Le premier concile oecuménique, à Nicée en 325, a surtout voulu réaliser une oeuvre de paix et d'unité dans une Église à laquelle s'ouvraient les plus larges perspectives de stabilité et d'apostolat. Le canon 8 du concile reconnaît les ordinations faites chez les Cathares ou Novatiens, pourvu que leurs clercs soient réconciliés par l'imposition des mains, admettent par écrit certaines doctrines qu'ils avaient jusqu'alors rejetées et acceptent les droits acquis de la vraie hiérarchie. Le canon 19 déclare au contraire que les disciples de Paul de Samosate doivent être rebaptisés conformément à une décision qui a été prise antérieurement, mais les clercs peuvent être ensuite réordonnés. Une lettre synodale concernant les clercs schismatiques mélétiens contient des dispositions analogues à celles du canon 8 sauf que ces clercs n'ont pas à faire une rétractation écrite. La sévérité nicéenne vis-à-vis des Pauliniens a été expliquée différemment: certains la justifient du fait que les Pauliniens rejetaient la divinité du Christ, Athanase, évêque d'Alexandrie, souligne en effet qu'ils employaient la formule normale du baptême mais l'entendaient dans un sens contraire à la vraie foi[2] , d'autres insistent sur la règle promulguée par un synode antérieur que le concile de Nicée estime ne pouvoir changer[3]. Les canons du concile de Gangres vers 343[4] anathématisent le rigorisme des Eustathiens, la lettre synodale précise que ceux-ci doivent rejeter leurs erreurs avant de pouvoir être reçus dans la vraie Eglise. En la seconde moitié du IVe siècle, dans la collection canonique dite de Laodicée, selon le canon 7 les Novatiens, les Photiniens et les Quartodecimans, après avoir renoncé

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[1] Tous les textes que nous étudions ont été publiés par P. *Joannou,* Discipline générale antique. II^e^—IX^e^ siècles, 3 volumes (Pontificia Commissio ad redigendum Codicem Iuris Canonici Orientalis, Fontes, Series I, fasc. 9, 2^e^ éd.), Rome, 1962—1963. Cf. C. *de Clercq,* Fontes Iuridici Ecclesiarum Orientalium. Studium historicum, Rome, 1967.

[2] Orationes contra Arianos, II, 43 (*Migne,* Patrologia graeca, t. XXVI, col. 237).

[3] G. *Bardy,* Paul de Samosate. Étude historique, 2^e^ éd. Louvain, 1929, p. 393.

[4] W. *Jurgens,* The date of the council of Gangra, dans The Jurist, t. XX, 1960, p. 1—12.

à leurs erreurs seront réconciliés au moyen du saint chrême, selon le canon 8 les Cataphrygiens ou Montanistes doivent être rebaptisés: il n'est pas indiqué pourquoi leur baptême est invalide; dans une compilation dite canons des Apôtres, les canons 46 et 47 rejettent indistinctement tous les baptêmes des hérétiques. On constate donc certaines divergences, certaines hésitations, dans le jugement apporté sur les baptêmes conférés hors de la vraie Église.

Un concile tenu à Alexandrie en 362 permet aux clercs qui s'étaient ralliés aux Ariens d'abtenir leur pardon et de garder leur rang, par contre les clercs ariens eux-mêmes n'obtiennent pas cette dernière faveur. Athanase d'Alexandrie déclare que les premiers ont agi οἰκονομικῶς, afin que de vrais Ariens n'occupent pas leur place. Le mot οἰκονομία signifie administration, l'adverbe se réfère à une prudente administration, ou plutôt même à un certain opportunisme. Le deuxième successeur d'Athanase, Timothée I, à la question pourquoi tous les hérétiques ne sont pas rebaptisés répond que ceux-ci ont horreur de se soumettre une seconde fois au rite baptismal: (τὸ ἀναβαπτισθῆναι αἰσχυνόμενος). C'est là de l'opportunisme pur et simple. Basile, évêque de Césarée, dans ses deux lettres à son confrère d'Iconium, Amphiloque, datant de 374 et divisées plus tard en canons, s'occupe de l'économie du retour des hérétiques à la vraie foi. Amphiloque lui ayant demandé ce qu'il fallait croire du baptême des Novatiens et des Pépuzènes ou Montanistes, Basile — au canon 1 — admet que ces baptêmes ont été déclarés invalides par beaucoup d'Eglises, mais dans la suite on a usé d'une certaine indulgence vis-à-vis de beaucoup de baptêmes des Novatiens: (οἰκονομίας ἕνεκα τῶν πολλῶν δεθῆναι αὐτῶν τὸ βάπτισμα,) les Montanistes ne méritent pas une telle indulgence parce qu'ils blasphèment contre l'Esprit. Saint Basile parle ensuite avec la même sévérité du baptême des Encratites même si ceux-ci reconnaissent les baptêmes reçus en dehors de leur secte et même si cett e sévérité est contraire à l'économie, si malgré tout on s'en départissait il faudrait conférer l'onction pénitentielle aux Encratites convertis. Au canon 47 Basile confirme cette opinion rigoriste, de même que pour le baptême des Saccophores et des Apotactites, il reconnaît cependant que si en quelqu'endroit on s'est éloigné de cette sévérité on l'a fait οἰκονομίας τινός ἕνεκα. Deux lettres de Cyrille, également évêque d'Alexandrie, datent probablement de 438, elles parlent aussi d'indulgence: à Maxime, diacre à Antioche, troublé de ce que son évêque Jean admettait à sa communion des gens ayant adhéré aux idées de Nestorius, Cyrille répond qu'il faut comprendre que Jean fait ainsi οἰκονομίας ἕνεκα; à Gennade, archimandrite à Constantinople, inquiet de ce que son évêque Proclus est en communion avec l'évêque de Jérusalem qui veut commander illégalement à toute la Palestine, Cyrille donne la même réponse. Le concile de Chalcédoine de 451 reconnaît d'ailleurs les prétentions de l'évêque de Jérusalem.

Gennade, évêque de Constantinople, adresse vers 460 une longue lettre à son collègue Martyrios d'Antioche pour exposer la pratique suivie à Constantinople dans les retours à la vraie Église. Les Ariens, les Novatiens, les Sabbatiens et les tenants de trois autres sectes doivent abjurer

[5] *Migne*, Patrologia graeca, t. LXXXVI, col. 11—74.

par écrit leurs erreurs et être oints avec le saint chrême et les paroles „Le sceau du don du Saint-Esprit". C'était la formule employée pour l'onction chrismale sacramentelle, c'est-à-dire la confirmation après le baptême. Par contre les Montanistes et les membres de deux autres sectes doivent recevoir une formation abrégée de cathéchumènes, puis être rebaptisés. Deux explications de ces discriminations ont été données: celle que la première catégorie comprend les sectes les plus répandues pour lesquelles il faut user d'indulgence afin de ne pas avoir trop de baptêmes à refaire, à quoi on peut répondre que les Montanistes étaient également très répandus; une autre explication est que la première catégorie admettait malgré ses erreurs une distinction entre les personnes de la Trinité, tandis que la seconde créait une confusion entre elles.

Le concile tenu en 691 dans la salle à coupole — *in Trullo* — du palais impérial de Constantinople promulgua de nombreux canons dans le but de faire une certaine synthèse de la discipline byzantine, en ce qui concerne la réception des hérétiques le canon 95 reprend les dispositions de la lettre de Gennade, mais il supprime les Sabbatiens dans la première catégorie, il ajoute les Paulianistes, conformément au canon 19 du premier concile de Nicée, et des tenants d'autres sectes dans la seconde catégorie. Par contre les Nestoriens et les Monophysites doivent simplement rejeter par écrit leurs erreurs pour être admis dans la vraie Église. Déjà le prêtre constantinopolitain, Timothée, dans un traité sur la réception des hérétiques écrit vers 600 (5), indique ces trois procédures différentes; il place dans la deuxième catégorie les négateurs de la Trinité, dans la troisième les tenants des erreurs christologiques récentes, pour lesquelles manifestement plus d'indulgence est témoignée. Le canon 2 du concile *in Trullo* reçoit tous les canons dits des Apôtres, des conciles et des Pères, insérés dans la dernière recension de la collection canonique grecque en quatorze titres faite sous l'empereur Heraclius († 641), on trouve parmi ces textes tous ceux que nous avons indiqués concernant l'admission dans la vraie Église, sauf la décision du concile d'Alexandrie de 362 et les deux lettres de Cyrille d'Alexandrie tandis que deux autres lettres de celui-ci, sur d'autres sujets, sont reprises. Le canon 1 du concile oecuménique de Nicée-Constantinople de 787 confirme la décision du canon 2 in Trullo.

Le moine Nicon de la Montagne Noire, consacre la dernière partie du dernier ou 63ième chapitre de sa compilation appelée Pandectes, faite vers 1060, à la réception des hérétiques: il cite le canon 2 *in Trullo*, le canon 1 de Nicée de 787, les fait suivre d'un résumé du traité de Timothée de Constantinople, puis reproduit le canon 95 *in Trullo*, rappelant ainsi les principaux documents de la discipline byzantine en la matière[6]. Au cours des siècles suivants se présentèrent les problémes de la validité du baptême des Latins, des Uniates arméniens ou autres, puis de celui des Protestants: le patriarcat de Constantinople ne fut pas constant dans sa pratique, et d'autres Eglises byzantines orthodoxes s'écartèrent de lui à cet

[6] C. *de Clercq*, Les textes juridiques dans les Pandectes de Nicon de la Montagne noire (Pontificia Commissio ad redigendum Codicem Iuris Canonici Orientalis, Fontes, Series II, fasc. 30), Venise, 1942, p. 74.

effet; des canonistes grecs cherchèrent d'expliquer tout cela par la théorie de l'économie, mais le théologien uniate Pierre Arcadius († 1633) a montré avec raison qu'il est contradictoire que la réception de tel sacrement déclarée d'abord invalide devienne ensuite valide, et souligné que les Pères avaient très bien pu se tromper dans cette question. Les Églises orientales dissidentes non byzantines ont également observé des théories et des pratiques diverses et inconstantes en ce qui concerne la validité des sacrements reçus en dehors d'elles. Toute cette confusion demeure aujourd'hui.

II

A la théorie de l'économie prônée encore de nos jours par de nombreux canonistes orthodoxes s'oppose la doctrine de l'Eglise catholique romaine selon laquelle la validité des sacrements doit se juger d'après un critère extérieur visible, c'est-à-dire d'après la validité de l'ordination du ministre. Celle-ci à son tour dépend au for externe de la validité de l'ordination de l'évêque même qui ordonne. Si donc on peut établir que le premier évêque qui a rompu avec la vraie Église avait été ordonné par un évêque validement ordonné, on peut raisonnablement présumer que toute la succession épiscopale de ce premier évêque est valide également et que les prêtres ordonnés par ces évêques ont été aussi validement ordonnés. Les dissenssions dogmatiques ne jouent pratiquement de rôle que pour autant qu'elles touchent l'existence même d'un sacrement, ce qui est le cas pour l'onction des malades dans quelques Églises orientales séparées.

Le décret du concile Vatican II pour les Eglises orientales catholiques, du 21 novembre 1964[7], n'exige des Orientaux séparés revenant à l'Unité que la simple profession de foi, les clercs pourront exercer leur ordre suivant les normes fixées à cet effet, puisque leurs ordinations sont valides. En conséquence de ceci, après avoir invoqué la propension à l'indulgence chez Basile de Césarée, le décret permet aux catholiques de demander les sacrements de pénitence, d'eucharistie et d'onction des infirmes à des ministres orientaux acatholiques, chaque fois qu'une nécessité ou une vraie utilité spirituelle le conseille, et que l'accès à un prêtre catholique est difficilement ou moralement impossible. Il faut remarquer qu'il s'agit de sacrements qui doivent toujours être conférés par des prêtres, le décret ne s'occupe pas de la nécessité d'une juridiction spéciale chez le confesseur, laissant cela à l'appréciation des hiérarchies séparées elles-mêmes. Le même décret permet aux prêtres catholiques de conférer les mêmes trois sacrements à des Orientaux séparés, de bonne foi et bien disposés, demandant spontanément ces sacrements. Lors de l'élaboration du décret il a été impossible d'avoir un avis autorisé des observateurs des Eglises orthodoxes présents au concile, et par conséquent le décret n'a pas cru utile de créer des conditions restrictives à l'accès des orthodoxes aux trois sacraments indiqués, conférés par un prêtre catholique, puisqu'il ne connaissait pas la pensée des hiérarchies

[7] Acta Apostolicae Sedis, t. LVII, 1965, p. 76—89.

orthodoxes sur ce point. L'Eglise orthodoxe russe s'est montrée disposée à ce que ses ministres accordent les sacrements aux catholiques privés de prêtre, tandis que le patriarche de Constantinople et la hiérarchie orthodoxe de Grèce ont rejeté cette facilité.

Les Eglises orthodoxes orientales n'admettent aucun autre ministre des sacraments que le prêtre, sauf pour les baptêmes d'urgence et moyennant des conditions bien déterminées. Elles considèrent que le prêtre est le ministre du sacrement de mariage. Quelques unes ont autorisé que les espèces eucharistiques soient portées par des non prêtres hors de l'église pour la communion de personnes qui ne peuvent s'y rendre, mais il ne s'agit pas ici de la confection du sacrement pas plus que lorsque l'Eglise latine a permis et permet encore la même chose, et a jadis autorisé des laïques à oindre des malades alités loin de l'église avec de l'huile des infirmes bénite par l'évêque. L'Église latine considère le diacre comme ministre extraordinaire du baptême et admet la validité de ce sacrement conféré même illicitement par un laïque, elle ne considère le prêtre que comme un témoin d'office nécessaire à la validité du mariage sauf dans des circonstances spéciales.

Le décret de Vatican II n'exige pour les mariages entre catholiques orientaux et acatholiques orientaux que la présence d'un ministre sacré. Nous avons proposé en commission, lors de l'élaboration de ce texte que ce ministre sacré soit indiqué comme étant exclusivement le prêtre, mais la majorité a voulu comprendre sous ce terme également le diacre. Dans la Commission pour la révision du Code de droit canonique, nous avons proposé que cette présence soit suffisante pour n'importe quel mariage de baptisés, la majorité a préféré retenir les anciennes prérogatives du curé et de l'Ordinaire du lieu tout ent élargissant les possibilités de délégation et en y incluant même le diacre[8]. Nous regrettons les prérogatives sacramentelles accordées aux diacres contrairement à la discipline orientale. Nous croyons que toutes les Églises ayant une succession épiscopale valide dans le sens que nous avons indiqué plus haut pourraient se mettre d'accord à reconnaître mutuellement la validité de leurs sacrements dès qu'un prêtre est présent, pour le cas d'un baptême d'urgence par un non prêtre il suffirait que le prêtre ait ratifié le baptême conféré, par exemple par l'inscription dans le registre baptismal. Si les Eglises orthodoxes séparées le désirent, ne seraient provisoirement pas compris dans l'accord le baptême conféré par un diacre en dehors du cas d'urgence et le mariage contracté devant un diacre ou devant les seuls témoins pour un motif admis par l'Église catholique.

[8] Pontificia Commissio Codici Iuris Canonici recognoscendo. Communicationes, t. III, 1971, p. 78.

L'AUTHENTIQUE TRADITION ORIENTALE DE LE DECRET DE VATICAN II SUR LES EGLISES ORIENTALES CATHOLIQUES

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Introduction

Estimations Diverses du Decret

Le Décret „Orientalium Ecclesiarum" de Vatican II sur les Eglises Orientales Catholiques a été l'un des textes les plus discutés et les plus discutables du récent Concile. Il le restera sans doute longtemps encore[1].

Les critiques les plus clairvoyantes lui sont venues, un peu tardivement peut-être, des *milieux oecuméniques. Le Décret* ne se présentait-il pas comme réglementant l'avenir de l'union des Eglises sur le modèle de ces réunions si imparfaites entre des groupes plus ou moins restreints d'Orientaux et le Siège Romain? Le Décret ne présentait — il pas l'union sous une forme généralisée de l'uniatisme? Tout cela, indépendamment de certaines expressions oecuméniquement malheureuses et d'une mentalité pré-oecuménique qui de dissimule mal derrière des déclarations d'une bonne volonté indiscutable.

On connaît moins bien la réaction de l'*Orthodoxie officielle*. Mais elle ne peut être que négative, dans la mesure même où ces communautés orientales catholiques représentent aux yeux de l'Orthodoxie un nonsens ecclésial, une forme habile de prosélytisme romain, une tentative de réaliser l'unité de l'Eglise par le grignotement progressif de l'Orthodoxie.

Mais *parmi les Orientaux catholiques* eux-mêmes, l'accord était loin de se faire sur l'opportunité du Décret et des mesures qu'il a préconise. Si certains — les Melkites en particulier — le trouvaient désespérément latin de fond et de forme, d'autres — les latinisants — le trouvaient trop oriental, presque séparatiste, d'autres enfin — les orientaux non-byzantins — lui reprochaient de confondre Eglise byzantine avec Eglise orientale et prétendaient faire valoir une authentique tradition orientale, mais différente et, en certains points, antérieure à la tradition byzantine.

On sait que, pour finir, les Pères du Concile, entraînés surtout par les Melkites, ont jugé devoir sauver *in extremis* ce Décret, estimant qu'il présentait, dans la situation concrète des communautés orientales unies, un certain progrès en matière disciplinaire et qu'il ouvrait pour l'avenir des perspectives intéressantes. Son absence, a-t-on pensé, n'aurait pas

[1] Nous avons publié en 1970, en collaboration avec le R. Père Ignace *Dick*, de notre clergé d'Alep, un commentaire détaillé de ce Décret, aux Editions du Cerf, coll. „Unam Sanctam". On y trouvera les références et les preuves que nous n'avons pas jugé nécessaire de reproduisons dans cette conférence.

fait avancer davantage la cause de l'oecuménisme, ni le respect à l'égard de l'Orthodoxie, ni surtout le processus de redécouverte, par les orientaux catholiques, des authentiques valeurs de l'Orient.

Limites du Decret

En réalité, ce Décret ne peut se comprendre que dans les limites d'une situation de fait, comme une réponse sincère, mais provisoire, à des difficultés d'organisation auxquelles se voient confrontée par les communautés orientales unies à Rome.

Il est clair qu'il ne vise nullement les Eglises Orthodoxes, ni dans leur état présent, ni dans la perspective d'une éventuelle restauration de la communion avec l'Eglise Romaine.

Il ne concerne que les communautés orientales unies au Siège romain, et cela dans la perspective actuelle de l'union, telle qu'elle est comprise par Rome et par ces communautés orientales elles-mêmes: perspective encore assez étroite, pleine de compromis, mais capable d'évoluer avec le développement des idées oecuméniques. Encore, le Décret ne vise en outre que des questions d'ordre très pratique et ne donne à ces questions qu'une solution provisoire.

Ce caractère provisoire du Décret représente sans doute ce qu'il a de meilleur. Il lui fait trouver grâce aux yeux de l'oecuménisme, comme aux yeux de l'Orthodoxie et des Orientaux unis eux-mêmes, chacun espérant voir évoluer la situation dans le sens où il croit reconnaître l'avenir et le bien de l'Eglise.

Objet de Notre Recherche

Dans cet ensemble de mesures plus ou moins provisoires et de perspectives assez heureuses, la question précise qui se pose à nous dans cette causerie est de savoir dans quelle mesure le Décret s'inspire de l'authentique tradition orientale. Ce Décret est-il vraiment oriental?

Tout dépend naturellement de ce que l'on entend par „authentique tradition orientale".

Qu'est-ce-que l'Authentique Tradition Orientale?

La réponse à cette question, on le devine, n'est point facile.

„Authentique" risque le plus souvent de s'identifier dans notre esprit avec „ancien" ou „classique", alors qu'il signifie avant tout exclure ce qui est „hétérogène", „hybride".

Cela suppose donc qu'on admet pacifiquement un ensemble d'institutions propres à l'Orient chrétien; assez communes et établies assez longtemps pour servir de point de comparaison en matière d'authenticité.

Si cela paraît relativement facile en ce qui concerne les Eglises orthodoxes de tradition byzantine, la question se complique quand il s'agit de trouver une tradition authentique commune à l'ensemble des juridictions catholiques orientales, qui sont héritières de traditions multiples: byzantine, antiochienne, alexandrine, chaldéenne, arménienne, etc. . . .

Parmi toutes ces juridictions, le substratum législatif commun devrait être constitué seulement par les décrets des deux premiers conciles oecuméniques et par ceux des principaux synodes locaux tenus en Orient

jusqu'au Concile de Chalcédoine en 451. Ces Conciles et ces synodes sont les seuls antérieurs aux scissions de l'Orient. En réalité au cours des siècles, les Eglises nestorienne et monophysite n'ont pas hésité d'intégrer à leur „corpus juris" des canons empruntés aux conciles postérieurs de l'Orthodoxie chalcédonienne. En outre, la coexistence millénaire de ces Eglises orientales a pratiquement établi entre elles des influences disciplinaires réciproques.

Tout cela a contribué à créer, dans la plupart des institutions ecclesiastiques, une certaine tradition orientale commune. Malgré la diversité de ses dénominations, il y a *un* Orient chrétien, comme il y a *une* discipline canonique orientale, assez générale et assez cohérente pour se distinguer de la discipline de l'Occident latin et servir de base à un droit propre à l'Orient.

Les auteurs du Décret se trouvaient dans l'alternative de renoncer à légiférer pour l'ensemble des communautés catholiques orientales ou d'essayer de leur donner un droit commun, avec le risque inévitable de „latiniser" ou, au contraire, de „byzantiniser" ce droit.

Authenticite et Hybridismes

Dans la conjoncture ecclésiale actuelle, le Décret ne pouvait qu'essayer de créer une législation commune, avec tous les risques que cela comporte.

Comment éviter les emprunts à la législation latine quand ces communautés orientales unies sont pratiquement considérées — et se considèrent parfois elles-mêmes — comme une extension de l'Eglise romaine, confondue de fait avec l'Eglise catholique universelle? La latinisation de la discipline orientale a été le fait des Orientaux eux-mêmes autant que de Rome. Elle paraissait normale, presque obligatoire, si elle n'était pas recherchée comme le signe d'une adhésion plus profonde au catholicisme. L'opposition à ce courant latinisant n'a jamais été tout-à-fait absente, mais c'est seulement dans les dernières décades qu'elle s'est concrétisée, dans la mesure où ces communautés unies prenaient conscience de leur appartenance indéfectible à l'Orient, en même temps que du sens authentique et des limites de leur union avec Rome.

Leur retour à l'authentique tradition orientale en matière disciplinaire est désormais synchronisée avec la découverte progressive de la nature et des exigences de leur communion avec Rome.

Antiquité et Exigences Modernes

Cela ne veut pas dire que la découverte de l'authentique tradition orientale doive nécessairement s'accompagner d'un retour pur et simple à la discipline antique. Les Eglises orientales catholiques sont des communautés vivantes. La fidèlité au passé n'est souhaitable que dans la mesure où elle permet à ces communautés de ne pas se renier, de garder leur personnalité, de sauvegarder leur mission, d'assurer leur ministère. A côté de la fidèlité au passé, il y a aussi une fidèlité au présent, à l'heure actuelle de la Providence, avec toutes ses exigences d'incessante adaptation. Les Eglises orientales ne sont pas des momies. Le droit le plus authentique est,

en définitive, celui qui s'adapte le mieux à la vie. Les communautés orientales catholiques ne peuvent pas échapper à la loi générale du progrès et de l'adaptation. Ce n'est pas trahir l'Orient que de le rendre présent à notre génération, incarnant sa tradition avec la vie contemporaine mais, bien entendu, dans la ligne de son propre développement et de son authenticité.

Cela dit, passons à l'examen du texte même de notre Décret, sous cet angle précis de sa fidélité à l'authentique tradition orientale.

Nous relèverons certes, ici ou là, ce qui paraît être une violation de l'authentique tradition orientale (I).

Mais nous devrons constater aussi un désir sincère d'un retour à cette authentique tradition orientale qui n'empêche pas, comme nous l'avons dit, des adaptations plus ou moins réussies aux exigences des temps présents (II).

Quelques paragraphes, enfin, ouvrent dans le Décret de magnifiques perspectives oecuméniques (III).

I. Violations de l'authentique tradition orientale

Il n'est pas difficile, certes, de repérer dans notre Décret des violations plus ou moins directes de l'authentique tradition orientale.

Pour ne pas entrer dans les détails, contentons-nous de signaler les idées-maîtresses dont l'imperfection est à l'origine de ces violations.

1. — Et d'abord, la *notion même d'Eglise orientale catholique ou unie.* Là se déroule tout le drame de l'uniatisme. Quelles que soient les raisons historiques qui ont amené des groupes orientaux à faire avec Rome ce qu'on pourrait appeler aujourd'hui une union séparée, la nature même de cette union et ses exigences sont aujourd'hui remises en question. Plusieurs dispositions du Décret ne peuvent se justifier qu'a partir de la perspective uniate qui a commandé jusqu'ici les relations de Rome avec ces communautés orientales unies.

D'autre part, ces communautés existent, vivent intensément, et sont même parfois florissantes. On ne peut leur refuser aujourd'hui le bénéfice de la bonne boi. Il serait trop simpliste d'exiger leur disparition comme préalable à tout dialogue oecuménique. Il vaut mieux profiter de leur présence pour les diriger dans la bonne voie. Il n'est pas dit que l'uniatisme ne puisse pas devenir un catalyseur d'union, et que les uniates, élargissant leurs horizons et s'abstenant désormais de tout prosélytisme, ne puissent pas se transformer en apôtres de l'union. Des exemples nombreux de ces derniers temps sont là pour nous prouver que cette transformation est possible.

Il n'en reste pas moins vrai que plusieurs dispositions de notre Décret se ressentent encore trop de préoccupations de l'uniatisme. Le Décret ne marque pas encore clairement la fin de la période uniate.

2. — Ces relents d'uniatisme ont influencé naturellement *la conception du Primat romain.* Le Décret partage, au-delà du dogme catholique de la primauté romaine, les conceptions centralisantes en cours. L'Orient catho-

lique n'a pas encore réussi à faire entendre la voix de l'authentique tradition orientale en ce qui concerne l'exercice de la primauté romaine. La conception occidentale s'est imposée, ici comme ailleurs, avec ses excès et ses impasses. Il faudra longtemps encore pour que l'on revienne à une vision vraiment évangélique et patristique de ce facteur d'unité confié par le Christ à Pierre et à ses successeurs. L'Occident ne peut envisager la primauté autrement que sous forme de juridiction, et la communion sous forme de soumission. Les idées, à ce sujet, évoluent lentement. Mais il ne faut pas faire grief aux Orientaux catholiques, si faibles et si minoritaires, de ne pas avoir réussi à changer les perspectives en matière si délicate.

Par suite, trop de choses restent encore réservées au Pontife Romain et son intervention est explicitement requise pour des affaires que l'authentique tradition orientale ne songeait naturellement pas à lui confier (cfr 2d, 11, etc.).

3. — Plus faible encore apparaît la conception que se fait le Décret de l'*institution patriarcale,* bien que, sur ce point, Vatican II ait fait un certain progrés. La confusion entre le patriarcat romain et l'Eglise universelle relègue les Patriarches d'Orient en communion avec Rome dans une sphère d'exception où la vénération protocolaire couvre mal l'incompréhension fondamentale. Dans l'Eglise catholique d'aujourd'hui, fortement centralisée, il est difficile d'admettre pleinement la conception orientale authentique du patriarcat.

4. — Par ailleurs, *la dispersion des fidèles orientaux à travers le monde* pose la question de savoir si le fondement de la juridiction de la hiérarchie orientale est territorial ou personnel: grave problème qui divise l'Orthodoxie elle-même. En d'autres termes, les Orientaux, en dehors de leur territoire patriarcal ou de leur territoire propre, continuent-ils d'appartenir à leur Eglise d'origine, sont-ils encore soumis à son autorité, relèvent-ils encore de sa juridiction? La solution donnée par le Décret est ambignê. Alors que le n° 4a ordonne de „pouvoir partout au maintien et au développement de toutes les Eglises particulières et, en conséquence, là où le bien spirituel des fidèles le requiert, d'instituer partout des paroisses et une hiérarchie propre", le n° 9d soustrait à l'autorité patriarcale le droit d'ériger de nouvelles éparchies et de nommer des évêques de leur rite en dehors du territoire patriarcal. Il est vrai cependant, d'après le n° 7c, que le hiérarque établi en dehors des limites du territoire patriarcal demeure rattaché à la hiérarchie de son rite. Cette solution de compromis est à l'origine des tensions actuelles entre Rome et les Patriarches orientaux unis: ceux-ci voulant assurer leur juridiction et leur ministère à leurs fidèles émigrés, qui constituent souvent plus de la moitié de leur communauté, tandis que Rome cherche à restreindre au maximum toute autorité des Patriarches en dehors des limites de leur territoire. Logiquement, c'est la position des Patriarches orientaux qui semble davantage en harmonie avec l'esprit de Vatican II et les besoins spirituels des fidèles. Mais Rome a une position de force à laquelle elle ne semble pas vouloir renoncer de si tôt.

En tout cas, il es difficile de parler ici de violation ou de fidèlité par rapport à l'authentique tradition orientale. Il s'agit d'une situation nouvelle, presqu'entièrement inconnue de l'antiquité. A situation nouvelle, il faut une législation nouvelle, dont le premier critère doit être, non pas la sauvegarde des droits et des privilèges de telle ou telle autorité, mais la sauvegarde du bien spirituel des fidèles, dans le cadre d'une organisation générale de l'Eglise.

II. Retour á l'authentique tradition orientale

Malgré tous les défauts qu'on constate dans les dispositions du Décret, il faut reconnaître que celui-ci est animé d'un bout à l'autre du désir sincère, quoique pas toujours efficace, de ramener la discipline des communautés unies à l'authentique tradition orientale. Le préambule du Décret (n° 1*a* à *d)* proclame que l'Eglise catholique „tient en grande estime . . . la discipline de vie chrétienne des Eglises orientales", car elle voit dans cet ensemble de valeurs „la tradition qui vient des Apôtres par les Pères et qui fait partie du patrimoine révélé et indivis de toute l'Eglise".

Toute une section du Décret (n° 5 à 6) a pour titre: „Sauvegarde du patrimoine spirituel des Eglises Orientales". Relevons quelques passages: „Le Concile déclare solennellement que les Eglises d'Orient, aussi bien que d'Occident, ont le droit et le devoir de se régir selon leurs propres disciplines particulières" (n° 5*c*). „Que tous les Orientaux", affirme encore le Décret (n° 6*a*), „sachent en toute certitude qu'ils peuvent et doivent toujours garder leur rite liturgique légitime et leur discipline, et que des changements ne doivent y être apportés qu'on raison de leur progrès interne et organique".

Ce principe du retour à l'authentique tradition orientale est réaffirmé en d'autres passages, pour être appliqué, par exemple, en matière de sacrement: „Le saint Concile oecuménique confirme et approuve l'antique discipline des sacrements en vigueur dans les Eglises Orientales, ainsi que la pratique suivant laquelle ils sont célébrés et administrés. Il souhaite, si besoin est, que cette pratique soit rétablie".

De même, en ce qui concerne l'administration du Saint-Chrême (n° 13*a*), où le Décret saute par-dessus la discipline hybride des derniers temps pour retrouver la pratique et la législation en vigueur „depuis les temps les plus anciens" chez les Orientaux.

Comme nous l'avons vu plus haut, ce sont les Orientaux eux-mêmes qui sont les premiers responsables de l'occidentalisation de leur discipline. Ils ont été plus acharnés à latiniser leur droit que les autorités romaines elles-mêmes. C'est pourquoi, le Décret s'adresse à eux et leur recommande d'être, avant les autres, les fidèles observateurs de l'authentique tradition orientale. „Ils devront en acquérir une connaisance plus grande et une pratique toujours plus parfaite. Si, du fait des circonstances de temps ou de personne, ils s'en sont indûment écartés, ils s'efforceront de revenir à leur tradition ancestrale" (n° 6*b*).

A côté de ces encouragements généraux, le Decret a donné deci-delà quelques exemples frappants de retour à l'ancienne tradition orientale.

Il faut citer en premier lieu le concept très important, souligné par le Décret, de l'existence des Eglises particulières, composant organiquement l'Eglise universelle, avec leur autonomie disciplinaire relative. Le Décret (cfr n° 2*a-b*) écarte systématiquement la conception monolithique d'une Eglise où il n'y aurait que des individus reliés directement au Pape de Rome par l'intermédiaire, plus ou moins reconnu, des Evêques diocésains, considérés comme des vicaires du Pape plutôt que comme ses frères et ses égaux dans l'épiscopat. Le Décret favorise notamment la conception orientale et organique de l'Eglise universelle, qui est, selon l'expression de St-Cyprien, une „Ecclesia ecclesiarum".

En ce qui concerne le Patriarche, trois paragraphes, proposés et ardemment défendus par les Melkites, ont été insérés comme par miracle et à la dernière minute dans le texte du Décret. S'il n'y avait dans le Décret que ces trois seuls paragraphes, les auteurs et les défenseurs du Décret n'auraient pas perdu leur temps.

Après avoir parlé de l'honneur dû aux Patriarches orientaux, le Décret ordonne „de restaurer leurs droits et privilèges, conformément aux anciennes traditions de chaque Eglise et aux décisions des Conciles oecuméniques" (n° 9*b*). Mais le Décret précise encore davantage pour bien montrer qu'il entend imposer un retour, non pas à n'importe quelle tradition ancienne, mais à l'authentique tradition orientale. Il ajoute donc au paragraphe suivant (9c): „Ces droits et privilèges sont ceux qui étaient en vigueur au temps de l'union entre l'Orient et l'Occident, même s'il faut les adapter quelque peu aux conditions actuelles". Cette décision contient le germe d'une réforme globale de la discipline des Communautés orientales unies. La direction que doit prendre toute réforme est désormais bien connue.

Il ne s'agit pas de savoir avant tout ce qu'ont décidé les dicastères romains et les synodes nationaux fortement latinisés, mais ce qu'exige une fidélité, sincère et prudente à la fois, à l'authentique tradition orientale.

Enfin, mettant un terme définitif à la centralisation romaine, le Décret consacre *le principe de l'autonomie disciplinaire* de chaque Eglise orientale: „Les Patriarches avec leurs synodes constituent l'instance supérieure pour toutes les affaires du Patriarcat . . ., restant sauf le droit inaliénable du Pontife romain d'intervenir dans chaque cas considéré de particulier" (n° 9*d*). En principe, plus rien n'est réservé au Pontife romain. Il peut, certes, intervenir dans chaque cas, si le bien général de l'Eglise le requiert. Mais son intervention est limitée à chaque cas particulier et doit être justifiée par le bien général de l'Eglise. Pour tout le reste, chaque Eglise est gouvernée par ses organismes propres: principe d'une clarté et d'un courage exceptionnels, qui suffirait à lui seul à justifier la présence de notre Décret et à lui pardonner certaines imprécisions. Si ce principe est sincèrement appliqué, la porte est largement ouverte, non seulement à la restauration de l'authentique tradition orientale, mais aussi à l'oecuménisme.

Ce qu'il faut noter principalement, c'est l'instistance que met le Décret, d'une part, à ramener la discipline vers ses sources anciennes, supposées plus authentiques, d'autre part, à sauvegarder le principe de

l' évolution indispensable du droit. Les auteurs du Décret ne peuvent ignorer que le droit est aussi mobile que la vie. Rien ne desservirait le droit oriental autant que la prétention à le rendre immuable. Quand on ne sait pas faire évoluer les institutions, celles-ci meurent par inanition, ou bien la vie réelle s'organise en marge, et dans les deux cas, il y a fisure entre le droit et la vie.

Mais l'évolution, pour être utile et pour sauvegarder le patrimoine spirituel d'une société, doit se faire à partir „de l'intérieur et d'une manière organique" (cfr n° 6*a*): „de l'intérieur", ce qui écarte les emprunts inutiles qui défigurent la discipline orientale, la neutralisent et la rendent pratiquement inutile ou inadaptée; „d'une manière organique", comme l'évolution de tout être vivant, ce qui suppose que le droit évolue en même temps que l'institution et dans la même envergure que cette évolution.

Le Décret semble donc agir avec courage et prudence pour maintenir le droit de l'Orient, à la fois son authenticité et sa fidèlité à la vie.

III. Perspectives oecumeniques

On a beaucoup reproché à notre Décret son manque de souffle oecuménique. Cette accusation n'est pas sans fondement. Les auteurs du Décret ne collaboraient pas d'une manière régulière avec le Secrétariat pour l'Union des Eglises. Le Secrétariat lui-même a fini par penser que les Orientaux catholiques n'étaient pas des interlocuteurs valables face à l'Orthodoxie. Il a donc essayé, autant qu'il le pouvait, de limiter le contenu du Décret aux questions disciplinaires d'ordre intérieur et pratique. Mais les auteurs du Décret ne s'estimaient pas, en matière d'oecuménisme, on retard par rapport au Secrétariat. Ils ont tenu à pousser quelques pointes dans le domaine de l'oecuménisme. Il est vrai que, si certains membres de la commission qui préparaient le Décret étaient de vrais oecuménistes, d'âme et de coeur, la plupart en étaient encore, dans leurs préoccupations pastorales, au stade pré-oecuménique.

Le résultat de cette émulation entre le Secrétariat pour l'Union des Eglises et la Commission orientale fut assez peu satisfaisant. Néanmoins, le Décret — il faut le reconnaître — ne manque pas d'ouvrir certaines perspectives oecuméniques.

1. En premier lieu, les auteurs du Décret ont pris conscience que l'union romaine, telle que les Eglises orientales l'ont vécue, ne saurait être une formule définitive d'union. Sans regretter leur communion avec Rome, qui s'est traduite de fait par une soumission et une absorption souvent excessives, les Orientaux, catholiques savent aujourd'hui que, pour réaliser l'union entre les Eglises, il faut autre chose que l'uniatisme. Conscients de cette réalité, ils ont eu l'humilité de reconnaître que les mesures disciplinaires qu'ils ont édictées dans le Décret n'avaient qu'un caractère provisoire: „toutes ces dispositions juridiques sont prises en raison des circonstances présentes, jusqu'à ce que l'Eglise catholique et les Eglises orientales séparées s'unissent dans la plénitude de la communion" (n° 30). Cette phrase, insérée au début de la conclusion du

Décret, laisse donc la porte ouverte à d'autres formules disciplinaires que celles prises par le Décret. Autrement dit, le Concile ne pense pas du tout que la discipline actuelle des Orientaux, même réformée quel que peu à son authenticité traditionnelle, soit celle qui sera nécessairement et invariablement appliquée aux Eglises orientales si elles décidaient un jour de renouer la communion avec Rome. En d'autres termes aussi, le Concile, dans les efforts de rapprochement entre Orient et Occident, veut écarter l'obstacle de la discipline canonique. Que les Eglises décident de se rapprocher, et toute autre discipline pourrait être envisagée. Ni les Eglises orientales unies, ni leur discipline propre, ne sont un obstacle à l'union. L'union est un bien si grand que toute institution positive peut lui être sacrifiée.

2. Dans cette perspective, le Décret a timidement essayé de prendre quelques mesures qui, dans son intention, étaient destinées é faciliter le rapprochement des Eglises. L'intention oecuménique y est certainement, mais le résultat n'a pas toujours été à la hauteur de l'intention. C'est ainsi que le Décret autorise les chefs de communautés catholiques sur place à se mettre d'accord pour célébrer *la fête de Pâques* le même dimanche, „à condition, ajoute-til, que l'accord soit unanime et que les intéressés aient été consultés" (n° 20). On notera que ce qui est absolument requis pour prendre une telle mesure, c'est l'unanimité des autorités catholiques, tandis que l'on se contente de consulter les autres „intéressés", à savoir les Orientaux non-catholiques: exemple typique de ces demi-mesures oecuméniques, qui démontrent clairement que les auteurs de Décret ne semblent pas encore avoir pris conscience de la nécessité de collaborer avec les Eglises orthodoxes à pied d'égalité. Puisqu'il s'agit d' une mesure qui touche toutes les Eglises chrétiennnes à la fois, il aurait fallu demander leur accord à toutes. Mais c'est déjà beaucoup que l'on ait réussi à faire admettre aux catholiques qu'ils doivent au moins consulter les autorités non-catholiques.

3. Avec la même bonne volonté, les auteurs du Décret se sont penchés sur le problème des *mariages mixtes* (n° 18). Du point de vue de la forme, ils ont admis purement et simplement la validité du mariage entre une partie catholique orientale et une partie orientale noncatholique, à la seule condition qu'il ait été célébré en la présence du ministre sacré, catholique, orthodoxe ou évangélique. Cette disposition est certainemenet heureuse du point de vue oecumenique et elle a beaucoup contribué à créer en Orient un climat de sympathie entre orthodoxes et catholiques. Mais pourquoi faut-il que le Décret exige encore pour la licéïté que les mariages mixtes soient célébrés devant le ministre catholique? Cette mesure est pratiquement inutile et personne en fait n'en tient compte. Mais elle a été prise pour calmer les scrupules de certains pasteurs catholiques à qui on avait demandé l'immense effort de reconnaître la validité des mariages mixtes célébrés devant un ministre non-catholique. Voilà un autre exemple de ces mesures disciplinaires à moitié oecuméniques seulement. On ne peut que louer la bonne volonté des auteurs du Décret, tout en regrettant que leur ouverture oecuménique n'en soit encore qu'à ses débuts.

4. Ces réticences de la mentalité pré-oecuménique des auteurs du Décret se manifestent tout particulièrement dans les dispositions prises en matière de *„Communicatio in sacris"* (n° 26 à 29). Là encore, la bonne volonté ne fait pas de doute, mais on sent à la lecture de ces textes que les auteurs du Décret sent encore pris de frayeur à la pensée de faire des concessions sur ce point. La préface doctrinale du n° 26, qui entend justifier les concessions en matière d'inter-communion, est d'une maladresse remarquable. Elle accumule les soupçons, les craintes, les réserves, pour dire ensuite qu'en pratique ces craintes et ces réserves ne se réalisent pas dans l'inter-communion avec les frères orthodoxes. Passant aussitôt aux mesures pratiques, le Décret (n° 27) autorise les Orientaux orthodoxes à recevoir dans l'Eglise catholique les sacrements de la pénitence, de l'eucharistie et de l'onction des malades (n° 27 *a*). Le Décret ne mentionne même pas qu'avant d'accorder une telle autorisation, il aurait fallu obtenir l'accord des autorités orthodoxes. Cela paraît naturel. Cette difficulté a été soulevée à la Commission qui a préparé le Décret, mais la majorité des membres de la Commission ne pouvaient accepter l'idée qu'une mesure prise par l'autorité catholique doive être discutée au préalable avec l'autorité orthodoxe. Il a fallu se plier à leur mentalité, et le Concile n'a pas réagi.

Le Décret autorise ensuite les catholiques aussi à demander ces mêmes sacraments au ministre non-catholique, mais „chaque fois que la nécessite ou une véritable utilité spirituelle le demande et que l'accès à un prêtre catholique s'avère matériellement ou moralement impossible" (n° 27*b*). On notera tout de suite que ces conditions restrictives n'ont pas été prévues quand on a autorisé les Orthodoxes à recevoir les sacrements dans l'Eglise catholique. Les auteurs du Décret ont pensé qu'en admettant les Orthodoxes aux sacraments dans l'Eglise catholique, il n'y avait que des avantages et que par conséquent, il ne fallait pas restreindre cette libéralité, tandis qu'ils ont estimé que, pour les catholiques, recevoir les sacrements dans l'Eglise orthodoxe était seulement une tolérance et qu'il fallait donc la restreindre les plus possible. Il faut avouer que cette position est très peu oecuménique, sans parler que là encore, aucune mention n'est faite de la nécessité d'obtenir l'accord préalable des autorités orthodoxes.

Par tout ce qui précède, on voit clairement que le Décret, s'il laisse entrevoir deci-delà quelques ouvertures oecuméniques, reste dans son ensemble de mentalité pré-oecuménique.

Conclusion

Que conclure? Le Décret est certainement animé de bonnes intentions. Il a conscience de la nécessité d'un retour à l'authentique tradition orientale. Il prend dans ce sens quelques mesures intéressantes. Il ouvre la porte à d'autres mesures plus intéressantes encore. Le succes de cette entreprise dépendra de la bonne volonté de ceux qui auront à appliquer le Décret. De par l'expérience de ces dernières années, il semble que les Orientaux catholiques n'obtiendront pas facilement des autori-

tés romaines une application large et bienveillante des principes énumérés par le Décret. Et il faut s'attendre à une tension assez longue entre les autorités locales et l'administration romaine.

Ce qui console, c'est que la législation se présente comme essentiellement provisoire et donc réformable et passible d'améliorations infinies.

Le Décret présente sûrement un certain progrès par rapport à la législation antérieure. Mais on doit dire qu'il est déjà largement dépassé. Ce qu'il affirmait timidement, les Orientaux le réclament aujourd'hui ouvertement. Sa perspective oecuménique est caduque.

L'évolution de la discipline des Orientaux catholiques dans le sens d'une plus grande ouverture à l'œcuménisme et d'une plus grande fidèzlité à l'authentique tradition orientale, dépend moins des textes législatifs que de la vie. Leur discipline sera authentiquement orientale dans la mesure où ils seront eux-mêmes d'authentiques orientaux. Elle sera oecuménique aussi, dans la mesure où ils seront eux-mêmes de vrais apôtres de l'union.

THE JURIDICAL STATUS OF THE SYRO-MALABAR CHURCH IN RELATION TO ITS ANCIENT SOURCES

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Accacius Coussa wrote in 1948: „Numerically the Catholics of the Syro-Malabar Church form the second largest community among the Oriental Churches, and it can be said to be the most flourishing Oriental Church of our times". In other words we are dealing with the canonical situation of nearly one-third of the Catholic population of India. In seven dioceses of Kerala in South India and in six Mission-Exarchates in Central India there are about two million Catholics belonging to the Oriental Christian community of the Syro-Malabar Church. At the same time we are confronted with a serious juridical problem.

There exists a paradoxical situation in the Malabar Church, since it does not possess any valid juridical system either Oriental or Latin.

To make this clear, it is necessary to take a glimpse at the historical vicissitudes of the Malabar Church which resulted in such an anomalous situation.

The Oriental Christian community of Malabar

Malabar is the South-Western coastal region of India. Since 1956 the greater part of this region has been known politically as Kerala. It includes all those who speak Malayalam as their mother tongue. The Syro-Malabar Church had its glorious origin and successive developments in this region. It is the most ancient Christian community of India and the Far East. According to ancient tradition, both local and literary, St. Thomas, the Apostle came to India around 52 A. D. and made many conversions especially among the high caste Hindus and the diaspora Jews. In January 1972, the 19th centenary of his glorious martyrdom in India was celebrated. Since the Malabarians venerate St. Thomas as their spiritual Father and the Founder of their Church, they are called St. Thomas Christians.

The number of the first indigenous converts was enlarged by further local conversions and by Christian colonizations from abroad. Connected with the fourth century colonization is the origin of those called the Southists. They still form an endogamous community within the Syro-Malabar Church.

From time immemorial the Thomas Christians used the East Syrian Liturgy. But it was adapted to their environment and to the Hindu culture by Christianizing the customs and practices of the high caste Hindus.

Regarding the hierarchy and the organization of the first Christian community of India, we do not know much of its history. There is only a weak tradition which says that St. Thomas consecrated a bishop, a certain Kepha, (Peter), the nephew of the local king, as his successor, and ordained priests and deacons and founded many churches. But we are at a loss to ascertain to what extent this tradition is credible and how long this indigenous hierarchy lasted. At any rate, we know from historical documents that the Malabar Church had jurisdictional relations with the East Syrian Christian community from very remote times.

The Church of the Thomas Christians had hierarchical relations with the Church of Persia Proper till the eighth century and with the Church of Seleucia-Ctesiphon until the end of the 16th century. The Church of Persia Proper existed within the Persian Empire with a constitution of its own. The Church of Seleucia-Ctesiphon, which also existed within the Persian Empire, gradually brought under its rule the Church of Persia Proper. The Church of Seleucia-Ctesiphon took its name from the twin cities of Seleucia and Ctesiphon situated on either side of the river Tigris. It had several other names such as, „the Church of the East", „the Persian Church", „the Babylonian Church", „the Assyrian Church".

The Seleucian Patriarch Saliba Zakan (714—728) raised the Church of India to a Metropolitan See, and later Patriarch Timothy I (780—823) constituted the Indian Church independent of the Metropolitan of Persia. This Metropolitan of the Thomas Christians in India had jurisdiction over all India and had the title, „the Metropolitan and Gate of all India".

Malabar Customs and Practices

Though the Malabar Church was hierarchically dependent on the Seleucian Church, it had its own customs, traditions and autonomous government. We know from history that since the bishops were foreigners, the actual ecclesiastical administration was in the hands of the Thomas Christians and they were *de jure* and *de facto* the civil leaders and the *de facto* ecclesiastical leaders of the community of the Thomas Christians.

The parish assemblies held an important place in the Christian community. These parish assemblies consisted of the local clergy and the respectable adult laymen; they administered the temporalities of the churches and looked after the religious life of the people. These assemblies even excommunicated public delinquents, prescribed public penances for public crimes, watched over the fulfilment of these penances etc. Upon the decision of the priests and the ancients of the assemblies, penitents were also absolved at the door of the church, where they would then be slightly beaten with a bundle of sticks by the absolving priests.

Matters of greater importance social, civil, and religious were handled by the representatives of all the churches. It may therefore be rightly inferred that the Seleucian laws were referred to and applied only when the local customs and usages foresaw no other provision. Thus the Malabar Church enjoyed a *sui juris status*. Because of this situation

the Thomas Christians were sometimes described as a „Christian Republic".

Canonical Sources till the end of the 16th century

The canonical sources of the Syro-Malabar Church should be considered in two parts: the pre-seventeenth century and post sixteenth century sources, because it is in the 16th century that the Latinization penetrated the ecclesial life of the Malabarians.

Since the Malabar Church had hierarchical relations with the Seleucian Church until the end of the 16th century, we may, at least theoretically, consider the Seleucian sources also as sources of the Syro-Malabar Church.

The Seleucian Sources

These include the early Antiochene sources, which were accepted by the Seleucian Church. They consist of the pseudo-Apostolic works, which were supplemented by the canons of the Councils of Ancyra (314), Neocaesarea (318), Nicea (325), Gangra (340), Antioch (341), Laodicea (380), Constantinople (381). Then there are the canons passed or accepted by the synod held by the (Seleucian) Patriarchs, Isaac (410), Yabalah (420), Dadiso (424), Accacius (486), Babai (497), Mar Aba (544), Joseph (554), Ezechiel (576), Iso-yahb (585), Sabriso (596), Gregory (605), George (677), Hananiso (775), Timoty (790—805), Iso-barNun (*823—827*), John (*884—892*), Elias (*1028—1049*), and Timoty II (1318—1332).

Thus the canons of the Seleucian synods and all the decisions, rules and constitutions of patriarchs and bishops based on the teaching of the Fathers of the Church and the statutes of the emperors form the Seleucian sources of canon law, which may be presumed to have contributed to the creation of the Malabar codex.

The Collections

These Seleucian sources have been handed down to us through several collections. The first one is that of Marutha Maipharkat of 410 A. D. Another important one is that of an anonymus author of 790. The collections of Gabriel, Metropolitan of Bassora (9th cent) and Elias, Metropolitan of Damascus († 905) contain many valuable sources. There were also other collections of Patriarch Elias I (1029—1059) and Elias Bar Sinaja. There is another extensive collection of Iban Attib (Abdulphagias Abdulla † 1043). The most important one of all is the collection of Abdiso Sobensis († 1318), the Metropolitan of Nisibis. It is known as the Nomo-Canon of Abdiso and was approved by the Synod of Timoty II (1318) while the author was still living. This has become the chief code of canon law of the Seleucian Church. This collection is published in Syriac and Latin by A. Mai.

The Malabar Sources Proper

The Seleucian sources and collections were the norm for the Seleucian prelates whenever the local customs and usages were not clear. Hence the following could be mentioned as the sources of the Malabar Church until the end of the 16th century:

1. The Syro-Oriental sources, which we have mentioned above.
2. The customs and practices peculiar to Malabar, which were not written down and are known only through Western writers.
3. The statutes of the Seminary Vaipicota.
4. The decrees of the Provincial Council of Goa in 1567, in 1575 and in 1585.
5. The decrees of the Council of Florence, which were accepted by the diocesan Synod of Angamaly in 1582.
6. Decrees of the diocesan Synod of Angamaly in 1582.
7. The faculties which the Archdeacons enjoyed.
8. The decrees of the Synod of Diamper in 1599.

Sources after the 16th century

As we have indicated above, changes in a Latin direction began to take place by the middle of the 16th century. The Synod of Mar Abraham in 1582 corrected books, dealt with the marriage of priests and the dress of clerics and accepted the decrees of the Council of Florence. The Goan Synod of 1585 passed decrees regarding age, chastity, dress, ordination, and incardination of candidates for the priesthood. Archbishop Menezes of Goa, who convoked the Synod of Diamper in 1599, introduced fundamental changes in every field: in the ancient laws, rites, and liturgy of the Malabar Church. Portuguese and Latin laws and customs supplanted all others. This Latinization was mainly based on the Tridentine discipline.

From the 17th century onwards, except for a short interval, the Malabar Church was governed by Latin prelates either under the Portuguese Padroado or under the Propaganda Congregation. The laws, statutes and customs introduced by the Padroado Prelates are collected in the „Mitras lusitanas no oriente". The Vicars Apostolic of Verapoly under the Propaganda Congregation brought about many Latin reforms, introduced mainly through pastoral letters. A good number of them were introduced by Mgr Bernardine Baccinelli[1]. They were codified and promulgated by Mgr Leonardo Mellano in 1789.

From 1896 onwards the Malabar Church was governed by prelates of its own rite and nationality. The native bishops, instead of attempting to restore a genuine and authentic juridical system proper to the Malabar Church, followed the decrees and decisions of their Latin predecessors with slight peripheral and superficial reforms. As a result, the

[1] cf. *Pandinjare Kanjirathinkal Alphonse,* C. M. I., „The Canonical Reforms in the Malabar Church introduced by Mgr. Bernardine Baccinelli" Doctoral Thesis submitted to the faculty of Oriental Canon Law in the Pontifical Oriental Institute of Rome, in 1971.

laws and customs introduced by post-Diamper Latin and indigenous prelates were all Latin in form and content and were mostly adaptations based on the Council of Trient.

Present Situation

The laws of the Seleucian or Chaldean patriarchs were done away by withdrawing the Syro-Malabarians from the jurisdiction of the Chaldean patriarchs and imposing the rule of the Latin prelates on them.

On the other hand, the laws of the Synod of Diamper have no binding force as it was not a lawful synod[2]. It is possible that the laws concluded by the prelates who ruled the Malabar Church and which were all Latin in form and content were made under the erroneous assumption that Latin laws were universal. In that case, we at least have to doubt the validity of these laws and the customs based on them. It may be questioned whether the purely Latin elements in canon law have any force of law or custom *de jure*, though in default of proper laws they are followed *de facto*. There is still confusion about the force of Latin laws that apparently constitute the „jus particulare" of the Malabar Church.

An error cannot introduce a law or consuetude. The binding force of practices based on laws or persuasions founded in error, is doubtful. Hence *per se* and *de jure* one can apply to them the axiom: lex dubia, lex nulla. But *per accidens* and *de facto*, they may have to be applied sometimes.

Latinizing regulations of canonical rules may be regarded under two aspects: a) If the legislator introduced Latin regulations under the impression that such regulations were universal for all Catholics, then they have *per se* and *de jure* no binding force, neither as written laws nor as consuetudes. Nevertheless in default of proper laws, *de facto* and practically, they must be followed until competent authorities make adequate provisions. The local hierarch is competent in this matter, provided he does not act *ultra vires*. He can by his own authority accept them if they are not Latin *in se*, or he can replace them by other regulations. b) If the legislator by his own authority made Latin regulations his own and promulgated them, then they are legitimate provided they are not contrary to Oriental norms and he had not acted *ultra vires*.

In the case of the Malabar Church, the Latin prelates in several cases seem to have acted as though Latin regulations were universal and binding on all Catholics irrespective of rites. This general remark seems applicable also to regulations made by Malabar prelates in several cases. At present there are two metropolitans of equal status. Both of them have received the pallium from the Pope. This hierarchy in the Oriental way and tradition will be perfect only under a patriarch or a major archbishop for the Malabarians.

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[2] Lack of authority on the part of those who convoked it, absence of intention on the part of those who conducted it, lack of form in the manner of conducting it, lack of integrity in the text promulgated.

We have seen that through the vicissitudes of history the Syro-Malabar Church has not developed in an organic and authentic way. Many foreign elements have entered and caused deformation and hybridization. It is deeply deplorable that in spite of its apostolic origin and twenty centuries of faithful survival, it still lacks an autonomous and thoroughly authentic juridical status. It is obvious that one of the regrettable and detrimental factors that has crept into the Church of the Thomas Christians is the unwarranted tendency fostered by the Latin missionaries to bring everything in the Church into absolute uniformity. They gave to the Syro-Malabar Church an amalgamous and anomalous juridical system. Thus, the call and impending duty of every one interested in the organic progress and adequate development of the Malabar Church is to remove the anomaly and help develop the internal vigour and charismatic gifts of this Church with a juridical framework proper and congenial to it; then it will be enabled to achieve its authentic personality and legitimate autonomy.

As an immediate step the paradoxical situation which we explained above has to be rectified by proper authority. Its ancient rules conformable to the Malabar customs and traditions have to be revived. According to the genuine Oriental tradition such a process of rectification can be effected only if the Malabar Church becomes a patriarchate. It cannot but sound strange that the numerically second largest Oriental Church has no practical possibility of realizing this traditionally Oriental juridical system.

A BRIEF OUTLINE OF THE ARMENIAN LIBER CANONUM AND ITS STATUS IN MODERN TIMES

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Armenia was evangelized and its Church was organized by St. Gregory the Enlightener who is the patron saint of the Armenian people. Gregory began his missionary work during the first decade of the 4th century. He converted the king Trdat and the princes of the country into the new faith while he was still a layman (A. § 782). Then in the summer of the year 314 he went to Caesaria and was consecrated there as bishop and head of the Armenian Church by the metropolitan or exarch Leontius of that city (B. 115—145). Gregory had received his Christian education in Caesaria where he had lived since his childhood before returning to his native country. He was of princely lineage and was among the courtiers of the King when he embarked on his mission (C. § 46).

In his missionary labours Gregory received assistance from the Church of Caesaria and the neighbouring churches to the west and to the south of the country (A. § 806, 829).

According to the 6th canon of the Council of Nicaea the exarch of Caesaria had supervisory jurisdiction over the missionary districts to the east of the Exarchate. Consequently for about sixty years after the consecration of St. Gregory as catholicos or the chief bishop of the newly organized hierarchy, his successors were ordained by the exarchs of Caesaria (A. § 826). However, once in office, the consecration of bishops within the jurisdiction of the Armenian Church was the prerogative of the Catholicos, who established new dioceses as the Church extended its influence and its work, convened episcopal synods (D. 277), sent missionaries to the neighbouring territories in the north and in the east and supervised their administration.

After the year 373 open canonical ties with Caesaria were severed (C. § 158—161; Cf. E. Letters 120—122). For the Church had become sufficiently strong and mature, its clergy had increased in numbers and its authority had been firmly established. Political considerations were also operative in this movement for eccliastical independence. Armenia was within the sphere of influence of the Persian Empire which did not countenance the close ties between the Armenians and the Romans of Byzantium. Thus many factors became operative within the country and in the Church to make the latter self-governing and canonically independent. In the meantime full communion was naturally maintained with the Church of Constantinople. This de facto independence was gradually consolidated and the council of Shahapivan in the year 444 ruled that the candidates for consecration to the episcopate needed only the

approval of the Armenian Catholicos, whereas up to 373 this prerogative was exercized by the exarch of Caesaria.

In these circumstances the collections of canons prevalent and recognized in the Greek Church in the west and in the Syrian Church in the south were accepted and used in the Armenian Church also. The canons of the Council of Nicaea were brought to Armenia by the son and successor of St. Gregory, Aristakes, who had taken part in the Council. During the 4th and 5th centuries the canons of other councils as well as collections of various "apostolic" canons were in use. By the middle of the 5th century collections of canons were translated into Armenian together with or after the Bible and other liturgical and patristic literature (F. LVII; G. 431—433). Towards the end of the 5th century there already was a collection of canons comprising 114 articles taken from the following groups: 1) of the Apostles (of Syriac origin), 2) of Nicaea, 3) of Ancyra, 4) of Caesaria, 5) of Neocaesaria, 6) of Gangra 7) of Antioch, 8) of Laodicia, 9) of Shahapivan (an Armenian council). (G. 441—442).

These canons, except the Canons of the Apostles in 34 articles and those of Shahapivan (Armenian), were contained in the earliest Byzantine corpus attributed to Stephan of Ephesus (I. I., 265). It is thought that this corpus was put together at the end of the 4th century and comprised 166 canons, including the Apostolic Canons (Greek), which appeared in the Armenian corpus comparatively later. In the 6th century the Byzantine codex was augmented with the canons of the Council of Ephesus, those of Chalcedon, the canons of St. Basil and sections from the laws of Justinian added by John Scholasticus. Of these the canons of Chalcedon could not have found a place in the Armenian Codex because the Armenians did not formally recognize this council from the beginning, although its official conciliar rejection took place as late as the first decade of the 7th century. The canons of St. Basil, of St. Athanasius together with those of St. Gregory the Enlightener were however taken into the collections. The final determination of the contents of the corpus was made in the third decade of the eighth century by John of Ozun, the Catholicos.

It should be noted that the Armenian translation of the canons, such as those of the first three ecumenical councils and of the sever local councils have considerable variations from the Greek texts currently accepted. In some cases this may be due to the fact that the originals used by the Armenian translators were older or different texts, now probably lost. In some other cases these variations may be due to deliberate changes on the part of Armenian canonists with the purpose of accomodating the canons to existing customs and usages or to the exigencies of the prevailing social conditions in the Church. Other variations may, understandably, be due to the corruption of the texts through the carelessness of copyists of later times. There are also many instances where the wordings of the original Greek have been paraphrased for better intelligibility. No detailed and critical examination of these textual problems have yet been made for the Armenian Liber Canonum, except for the Apostolic Canons (Syriac) of 34 articles, which have been studied by J. Tashian, of the Mekhitharist Congregation of Vienna (G).

Following are a few random examples of such variations.

Canon 38 of Laodicia in the Greek text prescribing leavened bread for the eucharist has been left out in the Armenian translation, because Armenians have always used unleavened bread for the eucharist. Canon 1 of Neocaesaria prohibits the marriage of priests. This canon has been omitted in the Armenian translation presumably because priests used to marry in the Armenian Church at the time when the canon was translated or received. Although it is not clear whether the canon refers to celibate priests to prevent an abuse or to widowed priests. It is not improbable that a careful study of the Armenian text of the Liber Canonum might indicate or suggest corrections in the Greek texts that have reached us (F. XXV). Sometimes whole articles or parts of articles, sentences, clauses or significant words are found or missing either in the Greek originals or in the Armenian translations when one is compared with the other.

The way in which Armenian canonists and ecclesiastical authorities have treated the canons shows that they have not thought of the formulations of the canons enacted by church councils or promulgated by church fathers as being "eternal" or "unchangeable", but rather they have taken a realistic attitude with regard to the legislative function of the Church.

The formation of the Armenian Liber Canonum having begun during the middle of the 5th century, the first stage of the process of reception and incorporation of the revailing canons in a codex was completed by the time of the Catholicos John of Ozun who was in office from 717 to 728. He brought together twenty four groups of canons in a codex which he published with a short preamble.

The following are the headings included in the Liber Canonum of John of Ozun:

A. Pre-Nicaean: 1. Apostolic Canons (Syrian), 34; 2. Second Apostolic Canons (Greek) of Clement, 85; 3. Post-Apostolic Fathers, 27;

B. Ecumenical Councils: 1. Nicaean, 20; 2. Constantinopolitan, 3; 3. Ephesian, 6;

C. Local Councils: 1. Ancyra, 25; 2. Caesaria, 10; 3. Neocaesaria, 20; 4. Gangra, 23; 5. Antioch, 25; 6. Laodicia, 55; 7. Sardica, 21;

D. Armenian Councils: 1. Shahapivan, 20; 2. Duin II, 37;

E. Decretals of Ecumenical Fathers: 1. Athanasius, 88; 2. Basil, 51; 3. Sevantus, 14;

F. Decretals of Armenian Fathers: 1. Gregory the Enlightener, 30; 2. Sahak Parthev, 51; 3. John Mandakuni, 9; 4. Abraham Mamikonian, 3; 5. Sahak of Dsoraphor, 25; 6. John of Ozun, 32.

The following conciliar or decretal canons, which are included in the Byzantine codex and approved or confirmed by the Council in Trullo (Quinisext) of 692, are not found in the Armenian codex:

1. Chalcedon, 30; 2. Carthage, 1; 3. Constantinople (Date 394), 2; 4. Dionysius of Alexandria, 4; 5. Peter of Alexandria, 14; 6. Gregory of Neocaesaria (Thaumatourgos), 12; 7. Gregory of Nyssa, 8; 8. Amphilochius of Iconium. 1; 9. Timothy of Alexandria, 14; 10. Theophilus of Alexandria, 14; 11. Gennadius of Constantinople, 1 (J. LXIII).

After John of Ozun further additions to the Codex were made during subsequent centuries by other canonists, so that by the end of the 10th century we find 16 more groups of canons introduced into the Codex, making a total of 40 headings (F. XXV). After the year 1098 we see yet 17 more additional groups of canons incorporated into the Codex. Finally, the last phase of the growth, extending from the end of the 11th century to the end of the 14th, was completed with the increase of the Codex to 78 chapters, comprising 1544 individual canons in all. The most recent additions to the Codex were made by Georg of Erzinka († 1416) who augmented the 65 groups by 13 more chapters (F. XLII). The year of the latest writing among the 78 chapters of the Codex is 1166. It is a paragraph from the inaugural encyclical of Catholicos Nersess IV, who held office from 1166 to 1173. Thus from the beginning of the 15th century down to the present the Liber Canonum has remained practically unchanged. The continued use of the Codex, enlarged in the course of seven centuries, has enhanced its authority and has made it an accepted guide in the Church generally (K. 49).

The Codex in its present form, as we have seen, has two sections. The first comprises the 24 chapters published by John of Ozun, and the second section contains the remaining 54 chapters introduced into the original Codex from time to time beginning with the eighth century and ending with the fourteenth. These two sections of the Liber constitute the ecclesiastical law of the Armenian Church.

But the Codex in its present form has yet a third part which contains a mixed collection of civil laws and certain other material of unequal importance and authority.

The oldest manuscript of the Liber Canonum is dated 1098 and is found in the Monastery of All Saviour in New Julfa, Isphahan, Iran. This manuscript does not contain the third section found in later codices.

The second section of the Codex has the following groups of canons:

A. Non-Armenian Sources: 1. Thaddeus the Apostle, 32; 2. Philippus the Apostle, 8; 3. Second (Council) of Antioch, 9; 4. Ephrem the Syrian, 8; 5. Cyril of Alexandria, 5; 6. Epiphanius of Cyprus, 5; 7. Third (Council) of Antioch, 1; 8. Second (Council) of Nicaea, 114; 9. Basil of Caesaria, 272; 10. Gregory the Theologian, 30; 11. Macarius of Jerusalem, 9; 12. Dionysius of Athens, 1; 13. Epiphanius of Cyprus (again), 3; 14. John of Jerusalem, 1; 15. Hyppolitus (of Rome), 1; 16. Nectarius of Rome, 1; 17. Melito of Sardis, 1; 18. Athanasius of Alexandria (again), 1; 19. Severianus (of Gabala), 1; 20. Socrates, 2; 21. Dionysius Areopagite, 1; 22. Manuel, 1; 23. Clement of Rome, 1.

B. Armenian Sources: 1. Sion of Bawon, Catholicos, 23; 2. Elishah Vardapet, 1; 3. Vachakan of Aluans, 21; 4. Council of Duin (Date 645), 12; 5, Sahak Parthev, Catholicos, 1; 6. John Mandakuni, 1; 7. Council of Karin, 9; 8. Nerses III of Ishkhan, Catholicos, 43; 9. John Mandakuni (again), 7.

The following few notes appended to this enumeration may be of interest.

The Second Apostolic Canons, in 85 articles, are among the oldest in the Armenian Codex. It is one of the five apocryphal collections in the name of the Apostles. All five are of Syrian origin. But the 85 canons, with the title "Definitions and canons of the Holy Apostles by the hand of Clement the Apostle of Gentiles", has been translated from the Greek. The translation of these so-called apostolic collections into Armenian was made in most probability around the middle of the 5th century.

The canons "of the Post-Apostolic Fathers", 27 in number, are considered to be an Armenian compilation produced at a comparatively early date. It is not found in non-Armenian sources (F. XLI).

The Apostolic Canons of 34 articles, which have been translated from the Syriac, have considerable variations from the original. The postscript of this group of canons is of some interest and it reads as follows, in part:

". . . devout Jews and the sons of chief priests attached themselves to the Apostles and never departed from them, because they saw that what the Apostles were preaching in words the same they were showing in deeds before every one. And so they became the preachers of the truth of the Lord of life together with the Apostles . . . And they preached Christ all the days of their lives before the Jews and the Gentiles and the Samaritans. And after the death of the Apostles they became the leaders, the preachers and the rulers of the Gospel and of the Holy Church. And whatever the Apostles committed to them they received and they preached to all the people and taught them in synagogues and among all the Gentiles.

Similarly at their death they committed to their disciples and taught them everything they had received from the Apostles and whatever James wrote from Jerusalem and John from Ephesus and Markus from Alexandria and Andrew from Phrygia and Luke from Macedonia and Thomas from India and the fourteen epistles of the Apostle Paul that are read in all churches and in all places, as are read also together with the same the Acts of their virtue that Luke wrote, so that in these may be recognized the Apostles and the Prophets and the Old Testaments and the New Ones and that it may be known that one Holy Spirit spoke in them all and one truth was proclaimed and one faith was preached and the name of one God was declared to all and was worshipped by all and the whole world received their teaching . . ." (Cf. the translation of the Syriac text into English in L. 45—46. The Syriac text adds, after the words" James wrote from Jerusalem" the words „and Simon from the City of Rome". No Armenian text extant has this reference to Peter).

This passage is evidently an attempt to state the doctrine of the apostolic succession and the unity and identity of the Church by a story read into the past.

The Armenian Liber Canonum has a group of ten canons in the name of a council of Caesaria. The canons of this local council is found only in Armenian and Syrian collections. Six of these canons are similar to those of Ancyra, numbered 20—25. On the other hand the same canons are not found in the Armenian text of the canons of Ancyra, which has only 20 articles. In as much as Armenians were closely connected with

the jurisdiction of the Caesarean Exarchate, they would as a matter of course have received the canons issued by the council and they would have included them in their collections. The Caesarean canons are placed between those of Ancyra and Neocaesaria. Both of these councils are pre-nicaean. The long title of the canons of Neocaesaria mentions the Caesarean council together with that of Ancyra in the following way: "These canons were appointed after those of Ancyra and of Caesaria but they are before those of Nicaea, in as much as sixteen bishops were assembled in Neocaesaria concerning those of the adulterous sect who were permissive toward priests in the matter of acts of defilement, on acount of which they (i. e. the bishops) came together and enacted canons in twenty chapters." On the other hand the title of the Caesarean canons is as follows: "Twenty bishops assembled in Caesaria and appointed canons on certain iniquities of women in ten chapters." In the original Greek text of Agathangelos (M. § 133) the following is related:" Archbishop Leontius (of Caesaria) sent envoys to the bishops and metropolitans of his jurisdiction as far as Chalcedon of Bithynia and the bishops and metropolitans assembled twenty in number . . ." This assembly apparently coincided with the consecration of St. Gregory as the first bishop or Catholicos of Armenians by the Archbishop or Exarch Leontius in the summer of the year 314 (B. 119, 150—165; O. 89—132). The list of these twenty bishops is found in the Armenian Liber Canonum appended to the names of the bishops of the Council of Nicaea, designated as the bishops of (the province) of Caesaria. Eleven of these bishops have taken part also in the Council of Ancyra.

The Council of Shahapivan in Armenia in the year 444, which has enacted twenty canons and which has dealt with matters of sexual morality, of the ethics of the clergy, of sorcery, of the relics of saints, of confession, of excommunication, etc. is of special interest in that it prescribes physical punishments for those who violate the provisions of the canons (P. 79). This council was convened in the presence of princes representing the secular authorities in the country. The preamble of these canons states in part:

"It is right and proper for the teachers and the pastors of the Holy Church and the instructors of the laws of justice and of the authentic ordinances of the living God, to meditate on the laws of the Lord day and night always . . ."

"And the governors of provinces and the principal princes of Armenia unanimously stated as follows: these laws that are pleasing to God and good for the building up of his Church, these you order and we shall obey and execute them. And if anyone does not hold firm the provisions of these laws, be he a bishop or a presbyter or a freeman or a yeoman, he shall be punished and shall pay fines." (F. 428).

The third section of the Liber Canonum to which reference has been made, contains the following:

1. "The Mosaic Code", which was introduced into the Codex during the Arabic domination of Armenia, extending from the middle of the 7th to the middle of the 9th century. It has been translated from the Syriac and then adapted to the social conditions in Armenia (K. 57). The date of its

introduction and use in Armenia is not certain. The code is based, as the name indicates, on the Book of Exodus and the Book of Deuteronomy as developed in the Talmudic literature. "The Mosaic Code" was translated from the Greek into Armenian a second time in the 12th century.
2. "The Syrio-Roman Code", which has taken its origin sometime during the 5th century in Asia Minor. According to some scholars it was translated into Armenian from the Syriac (K. 60). The date of its introduction into Armenia is not certain. The prevailing opinion is that Armenians began to make use of it sometime during the 12th century. This code was in use in eastern mediterranian countries beginning with the 9th century (K. 61).
3. The third civil legislation which has found its way into the Liber Canonum is the "Roman Code", which is taken partly from Justinian's Civil Code, i. e. the Corpus Juris Civilis, and partly from the code known as Ecloga, enacted during the Isaurian emperors of Byzantium. This compilation has been introduced into Armenia during the 9th century (K. 70).

Apart from these three compilations of civil laws, the third section of the Liber Canonum contains also two other collections of laws compiled by Armenian jurists to meet the requirements of their time. One of these is the code of David of Alavik comprising 97 articles published early in the 12th century not long before the year 1139. The other is the code of Mekhithar Gosh compiled around the year 1148. It contains a preamble of 11 articles, 124 church canons and 130 articles of civil and criminal law. This second code is the more important of the two. It has been widely accepted and used down to the beginning of the 17th century in many Armenian communities.

Prior to the Arabic invasion of Armenia its western provinces were governed by Roman law and the administrators of the country supervised legal procedure along with their other duties. Every governor, regardless of his title or rank, was also a judge. In the 6th century Justinian was insistent that "Armenians should follow Roman law in all ways". The Emperor decreed that there should be no laws among them except those honoured among the Romans (N. 132, 143).

Prior to the 4th century, in pagan times, judicial power or the administration of justice in eastern Armenia lay in the hands of magians, in conformity with the system prevailing in Persia. When the country was christianized the same power passed to the bishops of the provinces (N. 340—341). The country was ruled by the sovereign and his satraps by decrees and without a set body of laws (N. 353).

When Arabs came to dominate Armenia in the 7th century the internal administration of justice continued to remain in the hands of the bishops and princes (K. 78), who had the responsibility of keeping order and dispensing justice while collecting and paying unbearably heavy tribute and seeing that military service is rendered to the alien overlords (Q. 34.). In about the middle of the 12th century feudal barons in the northern parts of Armenia began to gather strength and to consolidate their power, entering a period of comparative prosperity and political stability, after about a century of dreadful depredation and devastation by the asiatic hords of the Seljuk Turks (K. 79). Consequently the need was felt

for applicable laws in the changed social, political and economic conditions. Thus the compilation and publication of Christian civil and criminal legislation of Armenian or non-Armenian origin, as distinct from ecclesiastical legislation proper, became necessary inasmuch as the hold of foreign rulers over the country relaxed for a considerable period and laws supplementary to established ecclesiastical canons were required.

Bishop Nerses of Tarsus, who has translated the non-Armenian codes appended to the Liber Canonum, writes in 1196:

"Mohammedan princes and judges ruling in the cities were not adjudicating the suits brought by Armenians before them. They were referring those who were seeking justice to their own laws. For this was the order of the principal prince (melik) issued to the judges of cities that they should send the Armenians to be judged under their own laws. And the litigants were coming to the Church and were requesting judgement by their priests and chief-priests. But these did not have written codes by which to administer justice, whereas other nations were seen as having them" (K. 78—79).

In these circumstances even rather poorly organized codes such as that of Mekhithar Gosh were called to serve a useful purpose. And indeed the code of Gosh was not only used in Armenia proper but also in other areas where Armenian colonies were established. These colonies often needed their own communal statutes for their own internal government in the host countries. Such was, for example the case in Poland during the 16th century and earlier in Crimea in the 14th century and as late as early 18th century in Causasian Georgia (K. 89).

After the 14th century the Liber Canonum ceased to grow and no new canons were generally recognized or added to the Codex. Several Church Councils were held and canons were enacted in some of them, mainly in Cicilia during the first half of the 14th century. But the validity of the canons and the authority of the councils enacting them were controversial. Therefore they were not recognized by the Church for any significant length of time. These councils were 'royal' councils, i. e. they were convened by the Armenian kings of Cicilia and were considered of a regional character. They were politically motivated with the hope of securing military help from the West against the pressure of the superior forces of the Egyptian Mameluks who were threatening the Armenian kingdom and the freedom of the Church. But with the collapse of the Kingdom finally during the second half of the 14th century (the terminal date being 1375) these councils and their acts were altogether forgotten. Other councils before and after the 14th century were held as a matter of course for the election of catholicos and were of no juridical significance.

As time went on and the relevance of the provisions of more and more canons in the Codex became questionable in the minds of the clergy and of the people, and the political, social and economic conditions in the country deteriorated, the authority of the Liber Canonum as a whole diminished gradually and progressively. Recurrent calamities resulting from the invasion of Armenia by merciless barbaric peoples and from the oppressive regimen of alien rulers aided the process of deterioration of the authority of the canons. So much so that the two Church Constitutions

which came into being in the 19th century make no specific or effective reference to the ancient canons of the Liber Canonum pertaining to church order or to ecclesiastical administration. Thus for long centuries the Church appears to have lived by the inertia of established usages and customs reinforced from time to time, whenever the conditions were opportune, by patriarchal decretals which however could not fill the need of canons of certain recognized permanence and force.

During the 19th century political and social events of crucial significance for the eastern as well as the western sections of the Armenian Church, under the Persian and Ottoman rule respectively, produced drastic changes in the juridical organization or institutional form of the Church. The eastern part of Armenia was occupied by the Russians and was incorporated in the Tzarist Empire in 1828. Not long after the occupation, in 1836, and following negotiations of several years, a Church Constitution came into being and was ratified by the Tzar and the Catholicos. The latter agreed to accept the final document with reluctance inasmuch as it curtailed the power of the Catholicos both internally vis-a-vis the bishops and the clergy and externally vis a vis the State. This constitution brought the eastern dioceses of the Church as well as the Catholicate of All Armenians in Etchmiadzin, the central See of the Church, under the tight control of the Tzarist government, in line with the general policy of the State with regard to Russian and non-Russian religious and ecclesiastical institutions within the Empire. The Constitution, called *Bolojenieh* in Russian, created a permanent synod, composed of bishops and prelates, that sat in Etchmiadzin. In considering "spiritual" matters, which required the final decision of the Catholicos, the Synod hat its sessions separately from the Catholicos and with wide powers of its own. A representative or commissioner of the government, with the title of Procurator, attended the meetings of the Synod regularly. Participation of laymen in the affairs of the Church was confined to the stewardship of economic matters in the parishes.

In the western part of the Church under Ottoman rule a National Constitution was established in 1863. This constitution, granted by a muslim power after three years of uncertainty, was based on the principle that a religious community, as a people and as an ethnic minority, is in itself a juridical entity and has the inherent right to administer its own internal affairs in accordance with its own customs and usages and its rules of internal organization. Many other factors made the adoption of this Constitution possible. But we need not enter into the consideration of these in this short presentation. Identifying the Church with the people of the same culture as a whole, the Constitution recognizes the democratic rights of the people for its internal self-government, the adjudication of matters of civil status by community courts being included among those rights. By the application of these principles the National Constitution reduced drastically the traditional canonical authority of the Patriarch of Constantinople and of the bishops and the clergy generally. It established the rule of popular general election of all candidates for sacred office in the Church. It created organs for the government of the Church almost completely dominated by laymen, irrespective of the degree of their commitment to the Christian faith. The "National Assembly of Deputies" mainly com-

posed of laymen and presided over by the Patriarch was recognized by the state as being the highes representative body and governing authority for the internal administration of the "Armenian Nation" throughout the Ottoman Empire. In the last resort the Assembly was answerable to the Imperial Government and the Sultan. The Patriarch became simply the executive arm of the Assembly. As a result patriarchs resigned or were made to resign after short periods in office. Although the National Assembly was intended to be composed of the deputies of all the Armenian communities within the confines of the Empire, yet practical considerations made it inevitable for the Armenian population of the Capital City to have the dominant voice and effective representation in the affairs of the "Nation" and the voice of the provinces was virtually disregarded.

With the events, however, resulting from the First World War both these constitutions, the one of 1836 and the one of 1863 in Russia and Turkey respectively, were nullified and the institutions created by them went out of existence. Part of the Armenian population of the Ottoman Empire was massacred by the Government forces and the rest were scattered to many parts of the world.

Due to these events a schism developed in the twenties of this century in Lebanon and spread its jurisdiction over Armenian churches in Lebanon, Syria and Cyprus and later in Greece and in Iran and still later over minority segments of the Church elsewhere. It claimed to be the continuation of an earlier schism which had begun in the middle of the 15th century and had lasted till the First World War. Its leaders have refused to recognize the supremacy of the Catholicos of All Armenans in Etchmiadzin, in Soviet Armenia, and have maintained the principle of multiple autocephaly in the one national Church. The causes of the development and persistence of this schism in the Church are complex and we need not dwell on them here. Political factors have been determinative in its creation and continuation.

After the Second World War the desire arose to fill the vacuum left by the demise of the two constitutions to which reference has been made. Attempts were made in Etchmiadzin, Armenia, to frame a new contitution for the whole Church, a kind of fundamental law of the Armenian Church to be applied equally in Soviet Armenia and in the Diaspora. A draft was prepared and distributed to the bishops and their diocesan councils in 1958 for consideration and comment. But the draft did not elicit generally favourable response and was consequently withdrawn in 1962 in a session of the periodic Church Assmebly held in Etchmiadzin. In this way the attempt was abandonned indefinitely. It was seen that the situation of the Church was not sufficiently settled and the circumstances of the various dioceses in different countries were widely dissimilar. Moreover, the fixity of a definitive constitution was considered not to be desirable and opportune under the prevailing conditions.

At present the dioceses in Soviet Armenia and in the Diaspora — mainly in the Near East, in Europe and in the Americas — are governed, internally and in their relationship with the Mother See of Etchmiadzin, by make-shift regulations adapted to their local conditions and often without common terms of reference.

Consequently the necessity of the re-evaluation of the old canons, at least of those that are found to be relevant and applicable in our times, is being increasingly felt by many churchmen. Many problems are arising in the day-to-day life of the Church that require solutions through regulation. The nature and extent of the jurisdiction of bishops, of parish priests, the updating of liturgical practices, uncertainties about certain moral issues, etc. are such problems. It is therefore hoped that a return to some of the norms set by the Church through canonical legislation might be helpful in making the work of the Church effective in the performance of her sacred mission.

Code letters used in this paper refer to works listed hereunder. Numerals following the code letter indicate pages or sometimes paragraphs if so marked.

A. *History of Armenians*, Agathangelos, Tiflis, 1914 (in Arm.)
B. *The Date of the Ordination of St. Gregory the Enlightener*, P. Ananian, Venice, 1960 (in Armenian).
C. *National History (Azgapatoum)*, M. Ormanian, Constantinople, 1912—1914 (in Arm.).
D. *History of Armenians*, Moses of Khoren, Tiflis, 1913 (in Arm.).
E. *Nicene and Post-Nicene Fathers*, Vol. VIII, St. Basil, London, 1894.
F. *Liber Canonum of Armenians*, edited with introduction and notes by V. Hacobyan, Vol. I, 1964; Vol. II, 1971; Yerevan (in Arm.).
G. *„The Teaching of the Apostles", The Apocryphal Book*, Jacobus Tashian, Vienna, 1856 (in Arm.).
H. *Handes Amsorya, A Monthly of Armenian Philology*, Vienna (in Ar.).
I. *Dictionary of Christian Antiquities*, W. Smith & S. Cheetham, Vols. I & II, London, 1880.
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THE ANCIENT CHURCH CANONS AND THE NEW GREEK CHURCH LEGISLATION

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The relation of the new Greek ecclesiastical legislation, mainly before 1943, to the canons of the Church has been a research subject of other people, in the past[1]. Nevertheless, the topic is still relevant and of great importance, because it has not yet been fully clarified in its theory and practical application; the relations between Church and State often create doubts and suspicion and confusion to the Orthodox religious conscience.

The apostolic canons; the canons of the ecumenical councils; the canons of local councils or of the Fathers, confirmed by ecumenical councils, form the canonical legislation of the Church, by which all local Orthodox Churches are bound. This legislation is based on Orthodox ecclesiology, which expresses it in practical matters and is also a link of unity among the local Orthodox Churches. The Quinisext ecumenical council, in its second canon, confirmed the canons enacted earlier, and the Fathers of the VII ecumenical council did the same in the first canon there of.

The teaching of the ecumenical councils consists, as is known, of part of the Holy Tradition, which is a source of Divine Revelation, equal to and of the same authority as that of the Holy Scripture. Thus, the ancient canons, issued or confirmed by ecumenical councils, consist of part of the Holy Tradition, by which all Orthodox are bound. It is true, that the canons are not unchangeable like the decrees of faith. They can be changed or abolished. But, this can be done only by a Church authority equal or higher to that which issued them. The same applies also to the canons, which fell in disuse, according to the conscience of the Church. Ultimately, a Church authority equal or higher to that, which issued them will formally recognize their disuse.

It is of importance that even the Byzantine emperors recognized and imposed the authority and validity of the canons on their subjects. They gave them the authority and validity of State laws. Justinian, for example, believed that there were two authorities in the State, priesthood and royalty. Thus, he recognized that the Church had an authority of her own:

[1] See: Ham *Alivizatos:* Ecclesiastical Policy in the Greek State (in Greek), Athens 1932; also, Ham. *Alivizatos'* articles in the periodicals: „Ecclesia", „Orthodoxos Skepsis", etc.; Chrysostomos *Papadopoulos:* The Church of Greece (in Greek), Athens 1951, pp. 135 fl.; Con. *Dyobouniotis:* Relation of Church and State (in Greek), Athens 1916; Ger. *Konidaris,* Epitome Ecclesiastical History of Greece (in Greek), Athens 1938, pp. 350 fl.; Charal. *Fragistas:* Constitutional Authority of the Church Canons (in Greek), Thessaloniki 1966; N. *Pantazopoulos:* Georg Ludwig von Maurer (in Greek), Thessaloniki 1968; A. *Christophilopoulos:* Greek Ecclesiastical Law (in Greek), Athens 1965, pp. 66—82. (with literature)

"God's greatest gifts to men, granted by love from on high, are priesthood and royalty. The one serves the divine, the other rules and cares for the human; both come out of the same source and adorn human life . . ."[2]. There is no doubt, that to many the Church State relations in Byzantium are a problem. The purpose of this paper is not to propose a solution to this problem. Nevertheless, the Church in that period too, wanted to follow the Gospel principle: "Render to Caesar the things that are Ceasar's, and to God the things that are God's". This principle is the foundation stone of the system of dual authorities in the relations of Church and State.

The Byzantine emperors, by the tolerance or agreement of the Church, enacted laws regulating Church matters. But, they were careful not to contradict the canons by their laws: ". . . we believe that this is done in order that there may be preserved the observation of the canons, which the rightly praised and respected Apostles, eye-witnesses and servants of the word of God, have given and the Holy Fathers kept and taught"[3]. In case of contradiction between Church canons and State law, the view prevailed that the canons must be prefered to the law[4].

The interference of some emperors into the Church affairs, even in dogmatic teaching, must be regarded as a deviation from the system of right relations between Church and State. That was rejected by the conscience of the Church and was regarded as an example of arbitrary action by the State (Constantius-Athanasius, iconomachy-John of Damascus, Theodore of Studium, etc.).

Prior to the arbitrary announcement of the autocephalicity of the Church of Greece, in 1833, the first National Assembly of the Greeks, who revolted against Turkey, proclaimed in Epidavrus (December 1821) that: "the predominant religion in the Greek State is that of the Eastern Orthodox Church of Christ. Nevertheless, the Administration of Greece tolerates all other religions and their ceremonies and services are celebrated without hindrance." In these provisions, there is no reference to the authority of the canons. But, since the predominant religion recognized is that of the Eastern Orthodox Church, this is implied. The canons comprise a substantial element of the Holy Tradition of the Church.

Later on, at a similar assembly summoned at Hermioni in 1827, five bishops submitted a petition asking to invite experts to the assembly from among the canonical bishops, "to confer with them and to tell this venerable assembly what is necessary in order that the Church canons may be preserved." The assembly accepted the petition and asked those who submitted it, to formulate a scheme "based on how to revive religious respect, how to preserve the Church canons and to submit that to the assembly." The bishops drew up a scheme, in which they emphasized that the Synod should have "as the basis of our holy faith the apostolic and synodical canons of the Church", and that the Synod should "obey the orders of the Administration, which should not oppose doctrine and the sacred canons",

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[2] Introduction to VI Novel.
[3] Introduction to Justinian's VI Novel.
[4] See, *Balsamon*'s comment on 23rd Chapter, I title, of the Nomocanon, etc..

and that "the committee (synod) should be unchallengeable as regards the preservation of Church canons and rules".

The scheme, by which the validity of the ancient canons was declared, met with the approval of the assembly, but its application was postponed until the arrival of the first governor of Greece, Kapodistrias. He tried to solve the ecclesiastical problems of Greece in agreement with the Ecumenical Patriarchate, according to the canons and ecclesiastical traditions, but his assassination brought an end to his endeavours. Nevertheless, on October 8th, 1829, he issued an encyclical to the metropolitans and bishops in which, among other things, the validity of canons and the need of their application by them was emphasized: "basing your actions on the divine canons in this case (i. e. marriage and divorce) and in every case"[5].

During the Greek revolution a man of letters, Adamantios Koraes, formulated a theory according to which the Church in Greece should become independent from the Ecumenical Patriarchate. In consequence another theory was formulated, namely that every state becoming independent from Turkey should also have an independent Church. The regency of the young Bavarian King Otto, and especially the representative for ecclesiastical affairs, the distinguished Protestant jurist Georg Maurer, were very happy with that theory. The regency wanted to make the Church subordinate to King Otto, despite the fact that the king was a Roman Catholic. The purpose of that movement was to strengthen the monarchy and to prevent a probable future reaction of the Church against it. At that time the relations between the Western Church and the European monarchs were delicate[6]. These views were also held by all the distinguished Greek politicians of that period.

On July 23rd, 1833 a constitutional decree concerning the Holy Synod was published by the State without the knowledge of the Ecumenical Patriarchate. The decree was based on Bavarian law. Then, for the first time, the first members of the Synod were appointed by civil authority and they took their oath before the king, as the "sovereign" of the Church. Great internal upheaval followed in the country, many reacting very strongly, particularly the distinguished clergyman Constantinos Oikonomos .There was no contact at all between the Ecumenical Patriarchate and the Church of Greece until the Patriarchate issued the synodical tome, by which the autocephalicity of the Church of Greece was officially proclaimed.

The constitutional royal decree of 1833, by which the independence of the Church of Greece was partially proclaimed, is the first constitutional law for that Church. It is a copy, almost word by word, of the law of 1818 of the Bavarian Consistory. The unfortunate thing is that the administrative principles introduced by it, prevailed even during the period which followed, and they became a "tradition", influencing the whole Church legislation thereafter.

According to this decree, the Church in Greece recognizes as her spiritual head our Lord Jesus Christ, but the king is her administrative leader.

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[5] *Dyobouniotis,* ibid., pp. 19—20.

[6] Chrys. *Papadopoulos,* ibid., pp. 138—9.

She is proclaimed independent from any other church authority, keeping dogmatic unity with the other Orthodox Churches. Her supreme ecclesiastical authority becomes a five member permanent "Holy Synod of the kingdom of Greece" under the sovereignty of the king. Of those five members, the president and two other regular members, were appointed by the king. The two remaining members were appointed by the government as substitute or accessory members. Only bishops could be regular members of the Synod. The substitutes could also be presbyters. At the Synod's sessions a Royal Commissioner always had to be present, who was appointed by the king. The Secretary of the Synod was also appointed by the king. The other clerks were appointed by the Synod with the government's approval. The Royal Commissioner could make proposals to the Synod, but if he was absent from a session, that session, was legally invalid. In internal matters the Synod acted independently from civil authority, but every decision had to have the government's approval prior to its notification or application, even if the decision was on a matter of faith or worship etc. The bishops of the kingdom did not take part in the government of the whole Church, but they were under the supervision of the Synod. Number and size of the dioceses were decided by the government, upon the recommendation of the Synod. Archbishops and bishops were proposed by the Synod and appointed by the government. The Synod had the supreme judicial authority on clergy and laity in purely ecclesiastical matters. But each judicial decision of the Synod had to be confirmed by the government. The king had the privilege of calling general councils of the bishops of the kingdom and of arrangeing everything that was necessary for that purpose "but without interfering at all in dogmatic matters".

By this Royal Decree, the Church became subordinate to the State without any possibility for free action.

On the occasion of the new State Constitution in 1844, vivid discussions on the Church were conducted in Parliament. The Constitution's articles on the Church were favouring a canonical solution of Church affairs. The whole legislation referring to the Church should be based on these articles. The Constitution's article (2nd) referring to the sacred canons, reads as follows:

"The Orthodox Church of Greece, knowing as her head our Lord Jesus Christ, is inseparably and dogmatically united with the Great Church in Constantinople and with every other Church of the same faith, keeping unchangeably, like them, the sacred apostolic and synodical canons and the holy traditions and she is autocephalous . . .".

The government of Greece, following a decision of the Synod of Greece, sent a letter to the Ecumenical Patriarchate and asked for the recognition of the autocephalicity of the Church of Greece. In that letter they declared that the elected representatives of Greece, who drew up the Constitution of 1844, ". . . in one voice and with one vote maintained that the principle of the fundamental law is the good confession of faith. They all proclaimed, by the 2nd article of the Constitution, the unshakable piety of the Greek nation and the unbroken unity of faith by which the Greek Orthodox Church is united dogmatically with the Great Church

in Constantinople and with every other Church of Christ of the same faith, and keeps unchangeably the holy apostolic and synodical canons and the holy traditions".

A movement started for the revision of the Royal Decree of 1833. This was promoted by the issue of the Patriarchate's synodical tome, by which the autocephalicity of the Church of Greece was proclaimed. The tome recommended, among other things, that the Church should be governed "according to the divine and sacred canons freely and unhindered by any secular interference". The Ecumenical Patriarchate proposed the same in its Patriarchal encyclical to the Christians of the Greek kingdom: ". . . we command . . . that Church affairs be ruled and governed . . . according to the divine canons of the holy Apostles and of the holy ecumenical and local councils, and according to the holy traditions . . .".

Nevertheless, in 1852 the Σ' and ΣΑ' laws on the administration of the Church, on bishops and dioceses, were introduced in Parliament. These laws contained many uncanonical regulations similar to those in the Royal Decree of 1833. Thus, many discussions took place and many doubts arose about the constitutionality of those laws. Another question was raised, namely whether all Church canons were constitutionally valid[7].

The main points in which the laws Σ' and ΣΑ' were contradictory to the canons, are the following:

I. The supreme ecclesiastical authority in the realm is a permanent synod, carrying the name "Holy Synod". This synod consists of five members with an equal vote, who are diocesan bishops of the kingdom. The president of this synod is the metropolitan of the capital of the kingdom, and the members are appointed by the government alternately accordang to their seniority (ΣΑ' art. 2 und 3).

The canons of the Church do not forese a permanent synod governing the Church, but a periodical one, which meets once or twice a year, and its members are all bishops of the ecclesiastical diocese[8]. On the other hand, all bishops responsible for teaching, sanctifying and governing the people of their diocese also take part in the "diakonia" of the whole Church through synods. This privilege and duty is obtained by them by divine right at their election and consecration. There is no doubt that the synodical system, through the ages, took several forms; but, as a rule, there never existed certain bishops with greater privileges than their colleagues, concerning their participation in councils. A pernament synod can be justified, from a canonical point of view, only when it represents the synod of the hierarchy and is subject there to. But law ΣΑ' does not speak about the representation of the hierar-

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[7] See: Char. *Fragistas*, The Constitutional Validity of Church Canons (in Greek), Thessaloniki 1966.

[8] 30th apost. can., 5th of the I Ecumen. Council, 34th apost. c., 19th of the IV Ecumen. Council, 20th of Antioch, 50th of Laodicea, 26th of Carthage, 8th of Quinisext, 7th of the VII Ecumen council.

chy of the Church of Greece by the five members of the synod. This kind of synod was unknown to the Church canons[9].

II. For the consecration of a bishop, "the Holy Synod votes for three clergymen, Greek citizens, who have the right faith and are distinguished by their prudence, irreproachable life and ecclesiastical education. The names of those three elected are submitted by the Holy Synod to the king through the Ministry of Ecclesiastical Affairs. The king approves one of them. The king's approval is announced to the Holy Synod and then the person elected goes through the ecclesiastical procedures . . ." (ΣΑ' art. 2).

This kind of election does not conform to the canons. The 3rd canon of the VII Ecumenical Council recapitulating all earlier definitions on the subject, forbids the interference of civil authorities in the election of bishops. The bishops, according to the canon, must be elected by bishops. If we further take into consideration the patristic tradition, it becomes clearer that the interference of secular authorities in the election of bishops is excluded by the canonical tradition of the Church[10].

III. According to Σ' and ΣΑ' laws, the duties of the Holy Synod are divided into internal and external duties. In internal matters the Synod acts independently from the State, in external ones with the approval of the government (ΣΑ', 7). But in the articles of this law which define the internal and external duties of the Synod (i. e. 8, 9, 10, 14), it becomes clear that for many matters regarded as internal, the approval of the government is necessary.

The synodical decisions, according to the canonical and other traditions of the Church, were valid in ancient times without the approval of the State. If, however, this approval was sometimes granted by law, this was done in order to strengthen their application and not to give them legal validity, which they had anyway. "When did the judgement of a Church get authority from the king?" (Athanasius).

IV. According to Σ' and ΣΑ' laws, the king appointed a Royal Commissioner to sit at the Holy Synod. All decisions or acts of the Synod taken either in the absence of the Royal Commissioner or not signed by him were invalid.

This institution of having the Royal Commissioner sit at the Holy Synod and render validity to all synodical decisions by his approval, which was introduced in imitation of the Russian Emperor Peter the Great, deprived the Church of her freedom and made her wholly subordinate to the State.

In Byzantine times, as is known, the emperor's representatives at the councils did not interfere in the discussions. They were just "parakathemenoi". "The divine canons nowhere lay down that the secular pow-

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[9] *Dyobouniotis*, ibid., pp. 57—8.

[10] *Athanasius* asks perplexed: „which canon says that the bishop is sent from the palace?". Symeon of Thessaloniki writes: "The Synod acts, the king agrees and he follows their lead, because he honours the Church and does not dominate her . . ." etc. (in *Dyobouniotis*, ibid., p. 61). The Byzantine legislation also confirms the Church's way of election (Basilika 3, 1, 8; see also 6th Novel of Justinian 1, and 123rd).

ers assemble in synods, only the bishops"[11]. Later on, when the Emperor Manuel B' Palaiologos wanted "to have secular powers present at the discussions of the holy synod" for criminal cases, the bishops of Nikomedea and Corinth protested to the king to prove to the synod that he had such a privilege[12].

V. According to the ancient canons the Church tries her clergy, without interference by the State[13]. Clergy tried by an ecclesiastical court could appeal to higher synods or even to the Patriarch and his synod, but not to a civil authority. This is also confirmed by the Byzantine legislation[14].

But ΣΑ' law introduced a new practice. Penalties pronouced by an ecclesiastical court were imposed upon those condemned only after the approval of the Ministry of Ecclesiastical Affairs or the king.

These remarks on Σ' and ΣΑ' laws suffice to show that those laws contained many uncanonical articles and that the Church became subordinate to the State by those laws.

After Otto's expulsion there was much discussion in the National Assembly of 1863, and later in Parliament, about the revision of the ecclesiastical legislation, but the situation did not change. A petition of the Hierarchy of Greece for the revision of that legislation, submitted in 1868 had no result.

Some improvements in Church legislation took place in 1889 (Eutaxias law on dioceses) and in 1909 (on parishes and parish clergy), but there were no general reforms. The first World War came and its turmoil and political upheavals were extended to church affairs as well.

In December 1923, after an agreement between Church and State, a decision of great importance was published in the government's gazette by the revolutionary government. The law of 1852 ΣΑ' and the five member permanent synod were abolished.

On December 31st, 1923 a new Constitutional law for the Church was published in the government's gazette. Now the administration of the Church appeared in a new perspective. The five member synod was abolished; the supreme ecclesiastical authority became the Hierarchy of Greece meeting once a year, or whenever necessary. The bishops were elected by the Hierarchy. The Royal Commissioner could only be present at the Synod's sessions without having a vote; in his absence the Synod's decisions were valid. The judicial authority of the Church was made independent of the State. Furthermore, by the law of December 17th, 1923, concerned with parishes and parish clergy, the administration of parishes was emancipated.

Before long, there was a reaction against those reforms, especially in 1925 during the Pagalos' administration. In September 1925 a decree was published by which the permanent synod was established again. The bishops were elected again according to Σ' and ΣΑ' laws yet, the Synod

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[11] 12th can. of the synod against St. Photius.

[12] *Dyobouniotis*, ibid., p. 65.

[13] 74th apostolic can., 6th can. of the II Ecumen. council, 9th of the IV Ecumen. council, 15th and 104th of Carthage; see, also: Photius' Nomocanon 9, I.

[14] Epanagoge II, 6.

of Hierarchy, as the supreme authority of the Church of Greece, was not abolished.

In the following years the Church tried to restore the laws of 1923. In 1931 a new Constitutional Law (5187) was published together with another law (5438), which contained some modifications of the former and was a codification of the Constitutional Law. These laws reestablished many articles of the law of 1923. At the same time a new ecclesiastical legal procedure was published and new laws on parish clergy. Yet, the bishops were elected by the Minister of Religion, who chose one of three candidates proposed to him by the Synod of Hierarchy.

The election of a new archbishop of Athens in 1938, caused the publication of two laws (1457 and 1493), which contradicted each other. According to the first, the election of the archbishop is made by the Hierarchy; according to the second, the permanent Synod proposes three candidates to the king, who elects one of them. The one elected gives an "assurance" to the King according the law Σ' of 1852.

In 1940 the Metaxas government published a new Constitutional Law for the Church of Greece (2170) not very different from the previous one. The Synod of Hierarchy, meeting once in five years, was the supreme supervisory authority for the Church of Greece. and the small permanent Synod of the Church of Greece was the supreme administrative authority.

An improvement in Church legislation was the Constitutional Law 671 of 1943, published when Damascene was archbishop of Athens during the German occupation. That law was confirmed after the liberation of the country in 1946 by an act of government. According to this law the Synod of the Hierarchy is regarded as the supreme authority for the Church of Greece meeting every three years. The permanent Synod of the Church of Greece always acts as the representative of the Synod of Hierarchy. It consists of twelve members, who change every year according to their seniority. The president is the Archbishop of Athens. The bishops are elected by the small Synod; The Archbishop of Athens by the Synod of Hierarchy.

During the following years many modifications were made to that law. The most important one was made by decree (Φ. E. K. 272 A'), by which the Synod of Hierarchy undertook the election of all bishops. The publication of many modifications in the following years created a surfeit of laws and as a result a confusion in the administration and life of the Church and tension in the relations between Church and State. In order to solve these problems, from 1959 onwards, committees were established, consisting either only of bishops or of clergy and laity, to draw up a new Constitutional Law for the Church. From 1959 to 1967 three schemes of constitutional laws were drawn up, but none of them was published as law. In 1969 a new Constitutional Law was published. But since the Church legislation to be based on it has not yet been finalised, I am not commenting on it.

All Constitutions of new Greece establish constitutionally the authority of the apostolic and synodical canons of the Church. Also the laws for the Church published by the State recognize as a principle, from

a legal point of view, the validity of canons. Nevertheless, articles of some laws of that period were contradictory to the Church canons and especially some articles of the Σ' and ΣΑ' laws of 1852. Those laws profoundly influenced the legislation for the Church in the following years. This deviation from the canonical tradition in ecclesiastical legislation was caused mainly by the ecclesiastical policy of the Bavarian regent Maurer, who was a distinguished jurist, but in regard to ecclesiastical matters he knew and experienced situations foreign to Greek ecclesiastical reality. His policy created a dark tradition, which survived long and was only brightened by occasional intervals.

The system of dual authorities serves very well the relations between Church and State and their mission to the people. This system exists theoretically in Greece, and when it is applied, mainly through ecclesiastical legislation, it becomes beneficial to both Church and State. This is especially true for Greece, where the State usually is benevolent towards the Church, regarding her as the soul of the Greek nation, and where the Orthodox Church faithfully serves the Greek people and is "flesh of their flesh".

THE SOURCES OF THE MODERN CANON LAW (PERSONAL STATUTE) OF THE COPTIC ORTHODOX CHURCH

SALIB SOURIAL

Gizah

Preface

As Christians, we do not look upon our religion as a system of beliefs and practices by means of which a group of people try to solve the ultimate problems of human life, or by which we are better able to face frustration, or prevent hostility from destroying our human associations, but we look upon religion as a membership in Jesus Christ. As members in Jesus Christ we recognize the solidarity of God in His Incarnation. He has established His Covenant with all men, and all men are joined in love and solidarity irrespective of race, religion or ideology.

The Covenant of the Lord obliges us to take upon ourselves responsibilities and to embetter the Christian community through our work in the field of Canon Law and personal statutes. With the spirit of trust and understanding, the willingness to discuss and freedom from fear, we look up to our Lord and Saviour to bestow on us his blessed wisdom exposing our ideas on the sources of Canon Law in the Coptic Orthodox Church.

This paper is neither written as a purely professional paper, nor merely for the people, but comparatively speaking it is laid out to the respectable members of the Conference, to give them an opinion on the sources of our Canon Laws. We hope to have in the future the opportunity to submit a more adequate research work in this field, which is of great importance to all.

For our success we ask the blessing of the Gospel as a source of the law of life, faith and conduct. And although the Gospel gives no indication of how to enact the law, nor how statutes are organized, it provides us with the enlightening spirit for our personal statutes.

We ask God to bestow the grace of the Holy Spirit on the people entitled to legislate for the personal laws in all countries so that they may be guided spiritually in their approach — according to the Gospel.

We pray to Him to give us strength, and to enrich us with understanding of his provisions through the Scriptures and Saints, to lead towards fulfillment of true Christian families and to protect the Christian community from all evil, envy and dogma, through a personal statute fully in function.

The Sources of Coptic Canons

Before characterizing or framing the sources of Canon Laws in the Coptic Church, we have to explain what is meant by these terms in the topic. In other words what is meant by the word "canon" or "coptic" in our viewpoint, what are the factors which characterize the canon law sources in our country.

The Copts

The "copts" is a very old expression well known allover the world and naturally associated with the word Egypt. The copts are the native Christians of Egypt and the direct descendants of the Ancient Egyptians, a nation that goes far back in history with a record[1].

The words copt and coptic were known to the passing Europeans and that is how Egyptian Christians came to know about it[2]. These two words are a corruption of the word "Egyptian" which is derived from the Greek word "Aigyptus" indicating nationality and not creed. Aigyptus is the Greek form of one of the names of Memphis, the capital of Ancient Egypt, hence the corrupted forms copt and coptic. And even after the decline of the coptic language[3], the word copt survived to denote a Christian Egyptian, in other words it referred to those Egyptians who remained Christians and who did not embrace any other religion. It is still used in this sense in our public life up to this day.

Canonical Theology of Copts

The theology of the Coptic Church has undergone no systematic change since Christianity was introduced to Egypt as early as 42 AD. by St. Marc. Its doctrines have remained in the same glory, virginity, and steadiness, and with the values and static condition as they were left by the Old Fathers. The Copts under the leadership of their fathers have kept the faith intact. Their theological viewpoint on canons is still somewhat rigid with full loyality to the old principles, founded by their church. They have always been faithful to the legacy bequeathed on them by St. Marc, and have closely adhered to the decisions of the Ecumenical Councils of Nicea, Constantinople and Ephesus. At present, the clearest picture of early Christianity is that presented by the Coptic Church. As they have preserved the spiritual heritage of the Apostolic fathers, they have also maintained the Apostolic succession, hence the canon law in the Coptic Church has always been substantial and free from any foreign

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[1] Worrell: A short Account of the Copts, p. 8.

[2] School & Society in the Valley of the Nile — Amir Boctor, 1936, p. 45.

[3] The coptic language is the vernacular ancient Egyptian of the 3rd century AD. written phonetically in 22 Greek letters from the Demotic (aderinative of Egyptian Hieroglyphics). And reduced to grammatical and orthographic regularity, it was called coptic. In the 2nd century AD. Pantenus, the principal of the theological school of Alex. established that alphabet which is called coptic, adopting for it the name of the citizens of Egypt, the copts.

dogmas. Thus, the Coptic canon law is not only the law of an ancient branch of Christianity, upholding the old age teachings, but also a living law of the Copts preserving the right principles of the Orthodox Church with a great pride in the possession of Coptic tradition as will be explained later.

The Impact of the Theological School of Alexandria

We must not forget the history of the theological school of Alexandria which goes back to the beginning of Christianity in Egypt regarding the foundation of the principles and provisions of canon law. St. Marc himself founded this famous school and appointed Justus dean of the school, as reported by the historians[4]. Justus continued his deanship throughout the episcopacy of four popes until he became himself bishop of Alexandria — or the sixth pope (118—129 AD.). He then appointed Eumanios dean of the school. And when Eumanios became the seventh pope (129—141 AD.), he became successor to St. Marc. Then followed Dean Makarous, 141—152 AD. Then followed many other deans. One of the greatest deans was Panteanus, who thronged the theological school. He believed in Christ at the hands of Atenagoras, he sought scientific and religious knowledge. In all probability the New Testament was translated from Greek to coptic under his guidance, and this famous translation, which increases in value with the years and is recognized in the eyes of the scholars as being on equal footing with the Greek text. This school presented to the world the first precise and faithful translation of the New Testament from Greek to Coptic; namely the translation supervised by Panteanus and his disciple St. Clement, who became dean of the Theological School of Alexandria (193—211 AD.).

The most important achievement of the Theological School was that its scholars were the first to explain the Holy Scriptures, the first to lay down the rules of exegetic science and the first to introduce the philosophic method in the revelation of religious truths and to supply a basis for Christian family regulations and rules of conducting for their spiritual, marital and social relations, these being the provisions from which our canons are derived.

Another achievement was the impact of monasticism on the public opinion of the Copts, and the influence of the living ideals on the thoughts of the people and the result of it regarding the family laws and the problems ensuing thereof.

The Impact of Monasticism on the Inspiration of Canon Law in Egypt

No doubt, Egypt is the motherland of Christian monasticism, for monasticism came into existence in Egypt at the beginning of the fourth century and in a very few years it spread over the whole Christian world.

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[4] Mannassa Z. Komnos. History of the Coptic Church, p. 25. See also the Catechetical or Theological School of Alexandria Bishop Gregorius ch. 5 — 1968. Bishop for the Higher Studies Coptic Culture and Scientific Research.

Egyptian monasticism made an outstanding contribution to the whole of Christendom in the development of monastic life. St. Anthony (240—345 AD.) was the first to adopt a life of solitude in the desert. His monasticism comprised both solitude and companionship. He was known as Father of the Monks. Another native of Egypt was St. Pachom, who started communal monastic life. He organized the life of the monks subjected them to fixed rules and regulations by which they were to live together a common life. He was known as Father of Caenobites.

The catechesis of the Egyptian monks and their monastic ideals spread to many countries outside Egypt but in particular to the Christian Egyptian community. The canon law, which embraces directly the life of the Copts in the country, could not escape the effect of those ideals. Their interpretations regarding the texts of the Holy Scriptures, guided the people in their behaviour, marriage, divorce etc. They were considered as a first class interpretation, since it was believed that those true spiritual monks possessed the talent of interpretation through the Holy Spirit inserted in them. Nine monasteries still exist today, comprising about 300 monks, and five convents, comprising about 100 nuns. The libraries of such monasteries comprise many manuscripts, the value of which is beyond any price. Scholars and canon law makers refer to these libraries for pure Christian law principles.

Bishop Shenouda el Syrany (Monastry of the Virgin St. Mary)[5], known as Syrian, gave us a wonderful Arabic book on monogamy, published in 1967, in which he explains the doctrines of marriage. The book reflects the strict Christian provisions or a general guideline according to which this subject is treated. The text of this book reveals the true monk and the strong structure of monasticism in interpreting the divine texts or the speeches of the old Fathers of the Curch. This is but a recent example, which shows us the survival of monasticism and how effective it can be in carrying the responsibilities of the church and the Coptic Christian community.

These are some of the factors that deeply affected the inspiration of the canon law in the Coptic Orthodox Church. We may now explain what is meant by canon in our legal system and which are the cases of personal affairs according to Egyptian law, in order to define the sources from which these cases are derived.

The Canon

The canons are the norms and standards for the Christian behaviour. They are the expression of what is generally recognized by Christians, and either necessary or conductive to the well-being of the church. In a linguistic sense the word canon originally means a straight road or a yardstick, thus a definite rule. But in our language we did not know the word "canon". The word law pronounced in Arabic is "kanoun". The word canon may be derived from the word kanoun, which means the law. Canon law in Arabic is pronounced like kanoun kanassi, the English

[5] The principal, now dean of the Religious & Theological Institute of Egypt.

translation of it is ecclesiastic law. But as it is universally known as "canon law" we have to follow common usage in order to avoid confusion. Moreover, the word canon law has been applied in this sense for many centuries. The most common application of the word in the Western churches is in the sense of definitions or rules drawn up and agreed upon a council[6]. But it has come to include a great deal more, although originally and strictly speaking canon law is the law contained in canons. And canons define and determine the organization of the church and the conduct and duties of its members. And the nature of these canons command obedience combined with a good conscience. They aim at keeping the church from evil and prescribing what is necessary and useful for our communion with our God.

The canons in a wide sense comprise canons about the structure of the church, the clergy, the worships and the personal affairs of the laity, too. In the civil life of many countries the personal statutes comprise also other cases, besides family law. The list of personal affairs cases includes for instance heritage and wills etc.

Cases of Personal Affairs

Here in our country we find in article 13 of the law no. 147 of the judicial system promulgated in 1949, expressly stated what is meant by personal affairs cases. This article defines those cases as follows:

1. Cases of the legal status of persons and their legal capacities.
2. Cases relating to family relations like betrothal, marriage, rights of husband and wife, their reciprocal duties, the Mahaar[7], douta, financial settlements between the two spouses, divorce on the will of the husband[8], divorce before court and judicial separation.
3. Cases relating to the approval and denial of paternity and filiation and the relations between descendants and ascendants.
4. Cases relating to obligations of alimony expense for relatives.
5. Cases relating to the validity of adoption, relationship and kinship.
6. Cases of guardianship, custodianship, absence of people and the consideration of missing people as dead.
7. Conflicts to heritages, will and the obligations postponed after death.

The new law in force no. 43 July (a) 1965 abolished the preceding law no. 147 of 1949. But the new law did not lay down the cases of personal affairs[9] and left it to the leaders of each denomination. The legislator excluded some topics of a civil nature and placed them under the competence of the general civil laws, where all citizens are subject to their provisions without distinction of religion or other distinctions. Such topics are:

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[6] R. C. Mortimer Lord Bishop of Excester Canon Law — 1953.

[7] A sum of money given obligatory by the husband to his wife-to-be, mentioned in the Moslem contract of marriage.

[8] The Moslem husband can divorce his wife on his own free will.

[9] G. el Sharkay (in Arabic) Personal Statute of non-Moslems 1966, p. 11.

1. Cases relating to the capacity of persons, the guardianship, custodianship and the administration of the properties of mentally deranged persons or persons in detention (law no. 119—1952).
2. Cases relating to the legal status of missing persons, and the provisions concerning the certification of their death (Civil Code Art. 32).
3. Cases of heritages and will (law no. 77 — 1943 and law no. 71 — 1946).

Thus, we may reach the conclusion, that cases of personal affairs are restricted to the family relations like cases of engagement, marriage, spousal rights and duties, financial settlement among the spouses, divorce, separation, approval and denial of paternity and filiation, confirmation of relationship, cases of alimony expenses, adoption and kinship.

There are three other cases that show the extent of spousal rights. They are considered to be very important cases in the field of personal affairs problems. They are called:

Case of Rouiah — as pronounced in Arabic[10]

Cases of Dum — as pronounced in Arabic[11]

Cases of Taha — as pronounced in Arabic[12]

These three cases are well recognized by the positive law principles and they are generally practiced by all denominations.

Now that we have explained what is meant by personal affairs, we come to the main sources of canon law provisions adopted by our church. We have previously mentioned the essential elements attached to this subject, like the meaning of "coptic" and "canon", the essence of the canons, and in particular the personal affairs cases, and it is now time to state the main recognized sources and the extent to which these sources can be adopted in practice.

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[10] The action of „Rouiah" can be instigated by one spouse against the other in case of a separation but even then only as a result of any trouble, or in case of divorce. Rouiah means the right for each spouse to see his children in a certain place and at a certain time fixed by the court. This right, which is protected by the personal statute provisions, is derived from the natural right given to parents not to be deprived of seeing their children irregardless of any family disputes.

[11] Dum in Arabic means the right of the husband in case of separation or divorce to instigate this action of dum asking the judge to grant him the right to withdraw his children from the hands of his separated or divorced wife, when certain factors are given, i. e., in general when the boy completes his seventh year and the girl completes her ninth year. This is provided for by the general provisions of law which ascertain that the father can handle the future of his children in a more mature way than the mother, they are not in need of her care any more. But the wife can withdraw the custody of her children from the husband in certain cases, for instance, when they are under age (too young, or sick, etc. . . .) or when the husband has proved unfit to keep his children safe, protected and happy.

[12] Taha in Arabic means in this context that the wife has to submit her obedience to her husband, in case of her reluctance to live under his roof. In other words, the husband can instigate the action of Taha when his wife ceases to live with him and leaves the house for some other known place. The sentence of Taha enables the husband to oblige his wife to be obedient to him. But in that case, and although voluntary obedience of a wife to her husband is well recognized in the Coptic Orthodox Church, the public opinion in our church rejected this attitude of compulsory obedience, which is against human laws of marriage.

1. The Holy Scriptures

The church in Egypt has played a very important role in the establishment of the canons of the Holy Scriptures as well as in the dissemination of the knowledge of the Holy Scriptures in the vernacular.

The use of the Holy Scriptures in the Coptic Orthodox Church demonstrates that the Coptic Church has always been biblically rooted[13].

The main source is the Bible. The Holy Words were planted in the land of Egypt by St. Marc in 64 AD., irrigated by the blood of his martyrdom and they grew up by the grace of God into a large tree, which has remained standing through the ages in spite of storms of persecutions and dreadful hurricanes of torture blowing over it in the past. The Holy Scriptures have always held a central position as a source of canons and in the piety and theology of the Coptic Church.

2. The Statutes of the Apostles

The enactments which were undertaken at the Council of the Apostles at Jerusalem in 48 AD. may be regarded as the beginning of what was later known as canon law[14], and in the centuries which followed, the church had on all occasions followed these laws. And by their spiritual significance alone, these laws have regulated the performance of the Divine service and the administration of the Sacraments as well as the ways of supervising the conduct of the clergy, and solving the problems of Christian families and the laity in general. These laws or canons and their interpretations, which took the form of rules, are of two kinds, those which may be called general and those which may be termed local, depending on whether they are applicable to the church as a whole or only to a restricted part of it.

Up to the middle of the 5th century the general canons were everywhere recognized by the church, and even some of the local canons were also accepted as being suitable for general application.

However, owing to the unfortunate divisions, which occurred within the church at this period, a change took place. The general canons, which were in force before the divisions, continued to be observed by the various separated bodies, and henceforth it was no longer possible for canons to be framed as applicable to the church at large. Nevertheless, in every apostolic church the laws of the Apostles are still considered to be the sacred principle on which canon laws are enacted. The Orien-

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[13] Makary al Sariany (now bishop Samuel — representative of the Coptic Church in the World Council of Churches). The place of the Bible in the Coptic Church of Egypt. Bulletin of the United Bible Societies XXXVI 4 p. 164.

[14] We should not forget the Didascalia or the teachings of the Apostles, which is the earliest attempt at creating a Corpus Juris Canonici belonging probably to the second half of the 3rd century. This corpus is based in part upon an earlier caonon, the teachings of the twelve Apostles, the Didache, which belongs at least to the 2nd century. The Didascalia provides disciplinary measures as well as spiritual and moral precepts for the clergy and the laity. It also contains regulations relating to liturgical questions.

tal versions are in Arabic[15], Saidic and Ethiopic. They are in substance one and the same book, a church order which is ascribed to the Apostles. But the statutes or canons differ in detail as well as in number. There are 78 in the Saidic, 72 in the Ethiopic and 71 in the Arabic language. The material is the same all over, and at its basis are three Greek documents, of which the first is the so-called Apostolic church order published by Bickell in 1843. The third is the eighth book of the Apostolic constitutions, which are extant in Greek. But the second of the statutes does not probably correspond to any extant Greek original. Fragments of a Latin version of it were edited by E. Hauler in 1900, but while this Latin version is the most valuable one as far as it goes, it is also the most incomplete, and the Oriental versions have remained the only clue to the full reconstruction of the last document.

Now this document has been successfully identified by Schwartz („Die pseudo-apostolischen Kirchenordnungen") and by Don Connolly, the so-called "Egyptian church order in texts and studies" — 1916 with the Apostolic Tradition of Hippolytus AD. 225[16]. The Arabic Manuscript (Vatican 149, 150 Mai p. 275), according to Assemani, is said to have been written by the compiler of the collection of canons and decrees of councils which it contains (date 1372 AD.). The writer is Makarah, who died before 1350. He was a monk of the Nitrian monastery of Bu Yuhamms[17]. The little he wrote was either during the patriarchate of Cyril Ebn Laklak (1235—1243) or soon after his death[18].

There is another Arabic manuscript of the 14th century, which was restored in 1667 AD. The text differs very slightly from the above mentioned, but is more correctly pointed. The fifth section of this manuscript contains a very important and remarkable statement. It reads: The canons of the Apostles by Clement, which the Malchites and Nestorians translated into Arabic and combined in one book. Among the Melchites, Jacobites and Syrians they are counted as 83, and in the law of Christendom of Ibn el Tayib as 82. The Copts, however, divided them into two books of which one has 71 and the other 56 canons. The first book is partly derived from the Apostolic church order, which goes back to the beginning of the 4th century in Egypt and is based in part upon the Didache (canon 1—20), the Apostlic tradition of Hippolytus, also known as the Egyptian church order (canons 21—47), and excerpts from the Apostolic constitutions, Book VIII (canons 48—71), which are attributed to St. Clement of Rome (95 AD.). The second book with 56 canons is based upon the Apostolic constitutions[19].

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[15] These canons begin like this: "In the name of God, one in essence, and threefold in eternal persons, glory to Him for ever, and upon us His mercy. These are the canons of our Fathers, the Apostles, which they ordered for the establishment of the church by the hand of Clement." (This is translated from Arabic.)

[16] The Statutes of the Apostles. — G. Horner — 1904.

[17] One of the famous five monasteries in Egypt.

[18] This information can also be found in Riedel, Kirchenrechtsquellen, p. 122. See G. Horner — The Statutes of the Apostles, 1904.

[19] The Apostolic constitutions, or canons of the Apostles in Copt. London — 1848.

It is admitted that the canons of the Apostles number 127. Yet, there are thirty canons which contain regulations with regard to the service, the hierarchy, the feasts, of our Lord and the congregational life. Some of these canons are not accepted by the Coptic Orthodox Church.

We must not forget El Safih ben Assal, one of the distinguished Coptic people in the 13th century at the time of the Moslem jurisdiction in Egypt, who was fond of collecting the original Orthodox principles, Apostolic canons, Coptic Christian regulations and also penal and arbitrary provisions derived from the laws of kings for the purpose of establishing a suitable code in order to supervise the conduct of Christian people socially and spiritually. The Codex el Safih ben Assal is known by the name of el Magmouh el Saffawy[20]. This code has come to be an essential source of reference for practitioners of canon law in our Institutes.

3. The Provisions of the Holy Congregations

We mean by this topic the provisions derived from the canons attributed to the Holy Ecumenical Councils & synods.

a) *Nicaea Council* (325 AD.): It is the first Ecumenical Council assembled at Nicaea in Bithynia; the twenty canons of 318 Holy Fathers are well recognized by the Coptic Church and are of great importance for the study of canon law. These canons deal with the persecution of the "Lapsi", other canons state that members of the clergy should not castrate themselves, that they should not live with women except those belonging to their families. Canon six states, e. g. "let the ancient customs, which are observed in Egypt and Lybia and the Pentapolis prevail, so that the Bishop of Alexandria may have jurisdiction over all these parts".

b) *Constantinople Council* (381 AD.): There are seven canons of this council, which was held at Constantinople, where 150 fathers assembled during the consulate of Flavius Eacherius. These canons can be considered a re-affirmation of the Nicaea canons.

c) *Ephesus Council* (431 AD.): This council formulated eight canons, which were promulgated to diminish the Nestorian heresy. Here we can also find the twelve anathemas of St. Cyril against Nestorius. A decision was made to give formal approval to the term Theotokos, i. e., "God bearer" as a title of the Blessed Virgin Mary[21].

d) *Synod of Ancyra* (314 AD.): This congregation was held at Ancyra in Galatia and gave us 25 canons, which deal with the disciplinary measures to be taken against the Christians who lapsed from their church during persecutions and some other principles of the penitential system to be followed in other cases.

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[20] Guirguis Faltaous Awad. El Magmouh el Saffawy — 1908. Painted after a manuscript written by Eughounans Faltaous in 1886.

[21] E. C. Amelineau "Le Manuscrit Copte de la Bibliotheque Nationale Contenant des Actes du conceil d'Ephese" 3er IV 18 1890.

e) *Synod of Neo Caesarea* (352 AD.)[22]: At Neo Caesarea in Pontus, this congregation was held. The assembled fathers gave us 15 canons, dealing with the clergy and the penance to be imposed for polygamy, especially for diagamists and thrigamists.
f) *Synod of Cartagena or Carthage* (419 AD.): This congregation was held in Carthage to re-affirm the canons of the Nicaea Council. 137 canons may be traced back to it. Some of them stated that only canonical scripture should be read in churches, others prohibited the practice of rebaptism and of reordination etc. In the whole these three synods mentioned above, were recognized by the Coptic Church. There are others which are not accepted by our church like the Synod of Gangra (345 AD.) — 20 canons, the Synod of Antioch (341 AD.) — 25 canons, the Synod of Laodicea (343—381 AD.) — 40 canons and the Synod of Sardica (343—344 AD.) — 20 canons.

This was a brief summary of the councils and synods recognized by the Coptic Church. They represent one of the basic elements in enacting our canons. Apart from that there are canons of the Fathers of the Church and particularly of the Fathers and Saints of the Coptic Orthodox Church. Let us now list their famous acts and mainly the canons attributed to the Coptic jurist Pope Cyril III ebn Laklak, the 75th Patriarch of Alexandria.

4. The Canons of the Fathers of the Church

a) *St. Athanasius*[23] handed down to us 107 canons belonging to the 4th century, which contain regulations for the clergy, extra ecclesiastical functions of the clergy and discipline for monks and laymen, especially virgins.
b) *St. Basil*[24]: The canons attributed to him are of two series. Firstly, 106 canons, which deal with matters concerning marital life, penance, prayers etc. . . . and the ascetic life in general. Secondly, 13 canons, which include the duties of virgins, orphans, widows as well as the clergy[25].
c) *St. Hippolytus*[26]: The canons attributed to him may belong to the beginning of the fourth century. Their number is 38. They are dependent on the Apostolic traditions of St. Hippolytus as well as on the Apostolic constitutions.
d) *St. Gregory of Nyssa*[27]: He gave us 4 canons of a moral nature, some of them are dealing with the attitude of the clergy.
e) *St. John Chrysostom*[28]: 12 canons are attributed to him. These can-

[22] Probably early in the 4th century, before 352 AD., other writers show that it was held in 315 AD.
[23] The period between 295—373 AD. F. H. "The canons of Athansius" Anglican Theological Review IX 1926—1927, 378—386. See also, W. Riedel and W. E. Crum, The canons of Athanasius of Alexandria. The Arabic and Coptic versions edited and translated.
[24] The period between 330—379 AD.
[25] W. E. Crum. The Coptic versions of the canons of St. Basil, Proceedings of the Society of Biblical Archaeology XXVI, 1904, 52—62.
[26] The period starting 325 AD.
[27] The period between 330—395 AD.
[28] The period between 347—407 AD.

ons are on priesthood. El Saffih ben Assal mentioned such canons in his collection.

f) *St. Peter of Alexandria*[29]: He was the 17th Patriarch of Alexandria. The canons of St. Peter pertain to penitential measures.

g) *St. Timothy of Alexandria*[30]: The seventeen canons of St. Timothy of Alexandria contain rules and opinions relating to marital problems, sexual abstinence before receiving the Sacraments, and other provisions concerning the Christian behaviour in such cases.

h) *St. Christodoulos*[31]: He was the 66th Patriarch of Alexandria. The canons attributed to him include 31 numbers dealing with liturgical observances, the conduct of clergy towards their superiors etc. . . . Some of the canons list numerous feasts to be observed by the faithful. These canons were incorporated as part of the collection of el Magmouh el Saffawy[32].

i) *St. Gabriel Ben Tureak*[33]: He was the 70th Patriarch of Alexandria. Some canons of Ben Tureak are dealing with circumcision, marriage and burials, others prohibit simony, marriage during the 40 days of the Holy Fast, or at Easter, or on the Eve of Pentecost. Other parts of these canons are concerned with the duties of the clergy and their conduct in civil life. Some of them are concerned with the laws of inheritance, which constitute a code of canons based upon the Scriptures, the canons of the kings, the Didascalia and the Ecclesiastical canons[34].

After the above mentioned Saints, Cyril I, II, III will be discussed at the end of the list, to give a brief summary on the activity of St. Cyril III in the field of canon law.

St. Cyril I

He pronounced the twelve anathemas, which are the defense of the Orthodox faith against the Nestorian heresy.

St. Cyril II[35]

He was the 67th Patriarch of Alexandria. According to the Holy Assemblies held by him with the bishops, the result are 34 canons. These canons deal with the essential rules for bishops and clergy. For instance, the bishops should be honest and upright living persons, other canons prohibit simony. In case of disputes, priests and laity should not resort to the civil authorities but turn to their bishops.

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[29] The period between 302—311 AD.
[30] D, 477 AD.
[31] The period between 1048—1077 AD.
[32] Guirguis Faltaous Awad — El Magmouh el Saffawy, 1908.
[33] The period between 1131—1145 AD.
[34] O. *Burmester*. Orientalia Christiana Periodica I/1935, pp. 315—327.
[35] The period between 1078—1092 AD.

St. Cyril III Ebn Laklak[36]*:*

He was the 75th Patriarch of Alexandria. He was a great Coptic jurist of canon law.

The canons attributed to this jurist are of great importance in the field of the canon law system. The canons subscribed by him and his bishops, who assembled at Cairo in 1238 AD. are of particular interest, in that they furnish us with the complete code of canon law of the Coptic Church in the Middle Ages. The canons of Ebn Laklak are still considered among the top sources of canon law in the country.

Many of these canons, it is true, are based on earlier canon law as stated in our Arabic manuscripts[37]. For example, the canon of the Apostles and the canons of kings. But on the other hand, there are others which were obviously drawn up in order to remove certain abuses which had crept into the Coptic Church during the course of centuries, while a large number deals with the manifold problems which the ecclesiastical courts[38] were many times called upon to solve with regard to betrothals, marriages, wills, inheritances and the precedence of ecclesiastics, for which the earlier canon law had made no provision[39].

Ebn Laklak's canons open with a profession of the Monphysite Faith, after which follow twelve chapters dealing with the election and consecration of bishops, the ordination of priests, fasting, the system of suspending ecclesiastics, and the rights and privileges of leadership. To this profession of faith and these twelve chapters St. Cyril III and his bishops appended their signatures in testimony of their agreement to adhere to what had been laid down therein.

Then many chapters on baptism, marriage, wills, inheritance and priesthood follow. The chapter on marriage is divided into 8 sections, some of which originate from the canons of kings, and the rest from the customs, traditions and experiences of the country. The first sections concerns betrothal[40], the second one certain contracts of betrothal and what appertains thereto[41]. The fourth concerns marriage, including a list of

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[36] The period between 1235—1243 AD.

[37] The text of the canon of Cyril III is taken from Manuscrit Arab. 251 Bib. Nationale — Paris.

[38] The ecclesiastical courts. (denominational councils or Magalis Meliea) were abolished by the law no. 462 — 1955.

[39] Bulletin de la Societé d'Archologie Copte. V. 12 — 1946—1947.
An essay of O. H. E. KHS, Burmester.

[40] The canons explain that betrothal is valid only between persons whose marriage can be validly performed. If a man wants to be betrothed, he should not be under guardianship, then his betrothal is valid, whether it is done in person, or through somebody accepted as an intermediary.

[41] The canons state that the contract of betrothal shall be concluded in the presence of two elderly priests or of a priest and deacon who are prudent, and a cross shall be set up, and the dowry shall be settled, and three documents shall be written, one of them shall be left with the priest in charge of ecclesiastical legislation and the two other copies shall be given to the two contracting parties.

forbidden marriages[42]. The canons state that divorce is forbidden unless for reasons of adultery. Marriage may be annulled[43] if both parties mutually agree to embrace monastic life, if one of the partners attempts to corrupt the life of the other, if the marriage was a prohibited or repugnant one[44], if the husband remains impotent after 3 years of married life — if the wife suffers from certain illnesses contracted after marriage: such as epileptic fits, elephantiasis or leprosy — if the husband is made captive and is absent from his wife for 7 years and there is no news of him, or if the person absent got married again, or did not maintain his wife.

The fifth section concerns regulations after marriage. It is obligatory for the man or the woman who marries a second time to keep for their children the legacies of their parents and to set aside for them something of their wealth.

Then follow two chapters, the first on wills with a view to what reason and tradition demand[45]. The second on inheritance. It is divided into eight sections and the majority, as mentioned was written by Subo Cosmas (Kusman), one of the patriarchs of Alexandria[46], who is one of the important sources of law, and the rest is based on reason and customs[47].

This codex of St. Cyril III is a magnificent piece of work on law, regarding the time in which these canons were enacted by his juristic talents. At this point it would be nice to mention a short prayer written by him at the end of his code. He wrote: "Lord, forgive the sins of him who made this provision, and of the reader, and of the wretched copyist and of all the children of Baptism. Amen."

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[42] In the list of forbidden marriages it is stated that marriage is forbidden between foster brothers and sisters, between parents and their adopted children, etc. . . . In case where a man encounters hard times, his wife must provide for him and the children out of her paraphernalia. With regard to second marriages, legacies are made to children.

[43] It is stated that a believer shall not marry an unbeliever, be it man or woman, who is persistent in open adultery or a fourth wife or above this number. He shall not enter into marriage with two wives or more. As a general rule marriage is not valid without the consent of the two who are to be joined together.

[44] As for marriage which are regarded as repugnant and shameful, it is stated that there is something on account of which marriage is prevented. But if the marriage has taken place, it is made valid on account of this, namely, he who is under age, and he or she who consents against his or her will, and marriage with a woman who is past 60 years of age, or with a woman who has not accomplished the period of her mourning, which is 10 months, from the death of her husband. Such a person shall forfeit her inheritance from him and his bequest to her, and her rights as guardian and executrix for the children and brothers of both of them.

[45] The canons say that a will is recommended, and it shall be made with acceptable testimony. It shall become null and void on being revoked by the testor with acceptable testimony or by an act which can make its meaning null and void.

[46] Bulletin de la Societé d'Archologie Copte v. 12 p. 113—132.

[47] The respective canons lay down what is to be done and in which order with regard to what has been left. It begins with paying the price for the shroud and the expenses of the burial and the funeral procession. Then the debts of the deceased are covered. Further, the classes of heirs are defined and some provisions concerning the inheritance of bishops and monks are made, etc . . .

A draft personal statue was submitted by the Holy Synod[48] of the Coptic Church to the authorities on May 1955. It is more influenced by the Code of Ebn Laklak than by any other code or statute. And although this draft has not yet been officially accepted, in other words, it has not become a law in force in the country, it is in practice and applied before the courts in cases involving Orthodox Christian people. The draft's provisions have come to be looked upon as a customary law, except in certain cases where the text does not come within the scope of the general principles of the general positive laws.

The draft law contains 191 articles. The essential provisions deal with matters such as: engagement, marriage, divorce, family rights. These cover 68 articles. In general the nature of these articles and their quality reflect the theological and materialistic opinion, side by side[49]. Theologians and religious people may say that not all of these provisions of the draft reflect a pure Orthodox Coptic belief. Some provisions, concerning the causes of divorce, rights and duties of spouses, procedures of marriage, and the consequences after divorce are derived from our sacred essence of Coptic Orthodox ideas. However, many sentences rendered in cases are within this pure essence, where the alert judges may reject alien thoughts and apply pure Orthodox ones.

A very important question comes up. Which of the canons mentioned in this paper are acceptable? And is there any characteristic codified canon law regarding the Coptic Orthodox belief?

In theory, the unwritten canonical constitution, canons mentioned in the preceding paragraphs, enjoy full respect in the eyes of the Coptic Church. In practice, however, there are discrepancies to the application of the version where various canons are included. This is due to the nature and character of such canons.

The canon law should show certain characteristic features. There are some features which have to be discussed, first drawing a sharp line between the part of the law which is invariable and permits no alteration or exceptions, and that part which is subject to change in accordance with the varying conditions of time, place, local customs and traditions.

The distinction between the variable and the immutable parts of the canon law is based on the distinction between laws which are considered to be of divine origin and those which are of purely ecclesiastical authority; in other words, the unchangeable laws are those which are sanctioned by eternal law, the changeable ones are those which are not sanctioned by eternal law, but which were introduced by the wisdom of saints and Fathers of the Church and were written with the help of the Holy Spirit, and they should be considered unchangeable and should be interpreted charitably provided that nothing is done contrary to the Scriptures and the Apostles. Because the obvious ones are usually changeable

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[48] The Holy Synod of the Coptic Orthodox Church worked together with the bishops of all districts of the country assembled in Cairo, in coordination with the members of the General Denominational Council (Maglis el Mili) for the drafting of this work.

[49] On May 9th, 1938, a committee selected from members of the General Denominational Council, promulgated a code of personal affairs for the Copt Orthodox creed which is considered a preparatory work to the draft of 1955.

laws derived from customs, they may vary from place to place. The history of canon law shows a continuous shifting of the dividing line between the two parts, while we find that it is extremely difficult in canon law to decide whether a particular law is or is not of divine origin. We as Copts, still respect this extreme rigidity for the purpose of preserving it from any dishonest development. The determination of the divine part of canon law itself forms no part of the church's legislative power or function, it is not based on rules or orders which the church has made, and which the church can therefore alter. It is a judgement of facts of what God had ordained.

The mutable or changeable canon law is the expression of the legislative authority of the church, imposing upon her members the obligation to do particular things in a particular way and to facilitate the application of the unchangeable divine part of the canon law.

Other factors may characterize the canon law, like customs, traditions, and norms of culture. These factors may be of influence in some matters when the law is silent in satisfying certain conditions. But it must be understood that any custom automatically establishes itself as part of the law when certain norms and criteria ascertain it. In the first place, these customs must be reasonable and positively conduce to good, they must serve some useful purpose according to the Coptic Orthodox Fathers. Once such a custom is continuously observed, it becomes a recognized principle, even if it is not written in a book or promulgated as a text. The consensus of opinion between bishops, theologians and professors of canon law in the Coptic Church, concerning many principles, whether written or unwritten is well admitted. This consensus of opinion has been possible because the Coptic community, which undergoes a spiritual, social, educational and progressive revival, usually keeps her religious ethical norms and values of the past. As a result of industrialization, socialization and the high mobility rate other Christian communities have undermined, in some instances even destroyed, the ancient socio-religious patterns.

The acceptance of the Orthodox canons by the Coptic Church in general is influenced and effected by the religious and moral norms of the Copts.

Putting the Christian between mutable and immutable canons aside, we find that the Copts do not rely much on this dividing line, but partly they recognize all immutable canons. They rely on a traditional authority, which is considered to be inherent in the statements and attitudes of the ecclesiastical Coptic principles, as well as in certain thought-forms and behaviour patterns which have been adopted throughout the ages by the Coptic Orthodox culture. The interaction of these authorities and their characterstics determine the personal and social life of the Copts.

The acceptance of the mutable canons depends upon their convertibility to the Ortho-Coptic principles, traditions and experience.

The expression Ortho-Coptic mentioned in this paper refers to the summary of the Christian Orthodox Coptic culture, which reflects a description of a special kind of Orthodox people in whom the Coptic pat-

tern merges with their Christianity. Thus, in applying the canon law to their personal affairs problems this fact has to be taken into account. Therefore, when we accept any canon we have to test two points:

1. the purity of the text, that is the extent to which it is within the inspiration of the divine origin;
2. how it is compatible with the Ortho-Coptic principles.

We have come to the conclusion that there is no modern law or ancient one for canons in the Coptic Orthodox Church. There is a consensus about the basics of canon law, which constitutes an unwritten constitution of canons, well known to the Coptic Orthodox community, with a strange belief that God will preserve the purity of His principles from any foreign dogma.

In conclusion, we ask our Lord, who is the source of knowledge and justice, and who is the first legislator, enactor and judge, to teach us His testimonies, to keep us within the right limits and to purify our souls in His rightousness. Amen.

Let the true jurisprudence of Heaven be our guide and the righteous judgement of God be our Hope.

THE ANCIENT LAW OF THE KINGS — THE FETHA NAGAST — IN THE ACTUAL PRACTICE OF THE ESTABLISHED ETHIOPIAN ORTHODOX CHURCH

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I. The book and its general impact on the ethiopian legal tradition

A book which has enjoyed a wide spread fame in Ethiopia throughout many centuries is the Fetha Nagast "The Law of the Kings". It is a collection of ecclesiastical and civil laws and as such has been in use in Christian Ethiopia for many centuries. Originally it was written in Arabic by the Egyptian scholar As-safi Abu'l-Fada'il ibn al-'Assâl, who lived during the first half of the 13th century, the "Golden Age" of Coptic literature. Besides serving as legal adviser to Cyril III Ibn Laqlaq (1235—1243), 75th Patriarch of Alexandria, Ibn al-'Assâl produced considerable literary works, mainly on theological subjects[1].

Ibn al-'Assâl divided his work into two distinct parts: the first deals with religious matters and the second deals with secular matters. In the preface of his work[2], Ibn-al-'Assâl says that in compiling the first part he relied, apart from the Old and New Testaments, on the following sources:

I. Canons promulgated by the Apostles when they assembled in the Cenacle of Sion after the Ascension and after the descent of the Holy Ghost upon them before they went to preach the Gospel[3].

II. Other canons which the Apostles promulgated and sent to all the disciples and faithful by the hand of Clement, disciple of Peter, prince of the Apostles. These canons are contained in three books.

III. The Didascalia or the Doctrine. This book says that the twelve Apostles, Paul the chosen one and James, bishop of Jerusalem, gathered in Jerusalem to compose it.

IV. The Epistle of Peter to Clement.

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[1] See G. Graf, *Geschichte der christlichen arabischen Literatur*, Vol. 2, Rome 1947, pp. 388—398.

[2] See *Fetha Nagast, The Law of the Kings*, English Translation by A. Paulos Tzadua, (hereafter cited as Fetha Nagast, ET), Addis Ababa 1968, p. 5—9.

[3] These canons are not cited specifically since they are incorporated in the canons which follow.

V. The canons of the First Council held after the death of the Apostles in the city of Ancyra, one of the cities of Galatia.

VI. The canons of the Second Council held in Carthage near Caesarea.

VII. The canons of the Third Council, i. e., the Council of Gangra.

VIII. The canons of the Fourth Council, which was held in Antioch.

IX. The canons of the Fifth Council, which was the first of the great Councils, held in Nicaea in 325 A. D..

X. The canons of the Sixth Council, i. e., the Council of Laodicea.

XI. The canons of the Seventh Council, which was held in Sardica[4].

XII. The canons of Abulides (Hippolytus) Patriarch of Rome.

XIII. The canons of St. Basil, the Great, bishop of Caesarea.

There are also other canons taken from the works of some of the Holy Fathers such as St. Gregory of Nazianzen and St. John Crysostom, and some of the Patriarchs of Alexandria.

The above sources were also consulted in compiling the second part, but in this latter effort Ibn al-'Assal relied most heavily on a collection of laws found in four books known as „The Canons of the Kings".

The identification of the above mentioned four books has been the result of long and extensive research work. One of the books, the fourth one, cannot be strictly considered as a secular source, since it has been identified as the so-called "Precepts of the Old Testament" a collection of rules extracted from the Pentateuch with a few Christian interpolations[5].

Thus Books I, II, and III remain the major secular sources of the work of Ibn al-'Assâl. With regard to the work of identification of these three books, it ought to be said that Renaudot was the first one to indicate their link with the Byzantine-Roman Law. "Illi vero canones" — Renaudot said — "nihil aliud sunt quam excerpta ex nomocanonibus Graecis, Digestis, Codice Theodosiano et Justiniano, Novellis Constitutionibus et Basilicis, eo ordinis disposita, ut Corpus quoddam juris constituant, unde lites inter Christianos possint judicari"[6].

Further studies conducted in later times by other scholars such as Amari, Riedel, Sachau, Nallino and Costanzo succeeded in fully identifying each of the three books.

About 1859, the first book was recognized by Amari, as an Arabic translation of the *Procheiros Nomos,* a handbook of Roman-Byzantine law enacted between 870 and 878 A. D. by the Byzantine Emperor Basilius

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[4] In the book there is no quotation of the canons of this Council.

[5] See B. Sanguinetti, Les Préceptes de l'Ancient Testament, in *Journal Asiatique,* 5th Ser., Vol. 14 (1859), p. 449, Vol. 15 (1860), p. 5, cited by C. A. Nallino, Libri giuridici bizantini in versione arabe cristiane dei secoli XII e XIII, in *Rendiconti della Reale Accademia dei Lincei,* serie VI, Vol. 1 (1925), p. 105 fn. n. 2.

[6] E. Renodotius, *Historia Patriarcharum Alexandrinorum Jacobitarum a D. Marco usque ad finem saeculi XIII.* (Paris 1713), p. 75.

the Macedonian[7]. In 1883, Amari gave an account of the discovery he bad made[8] and this was later confirmed by Riedel[9]. A final contribution in the effort of identification of the first book as the *Procheiros Nomos* was made by C. A. Nallino through a profound comparative study of the citations of Ibn al-'Assâl and the *Procheiros*[10].

The second book was recognized by Sachau as the Syro-Roman Law Book[11], originally written in Greek at about 480 A. D. as a handbook, probably of didactic character, intended to explain the ancient Roman *jus civile* in the light of the *jus novum*. Among the Christian Arabic writings outside Egypt, this book was the only one bearing the title of "The Canons of the Kings"[12].

The third book has been identified by Costanzo[13] as the Ecloga[14], the Arabic version of a handbook of Roman-Byzantine Law, enacted by Emperors Leo III (Isauricus) and Constantine V (Copronimus) and published in Constantinople in the year 726. Prior to the studies made by Costanzo, this third book was identified by Riedel[15] and Nallino[16] as an Arabic version of the *Sanctorum Patrum 318 [Nicaeanorum] Sanctiones et Decreta*, a collection of Precepts of the Fathers of the Council of Nicaea excerpted from the four books of the kings, which had been compiled for Constantine the Great[17].

As already mentioned, the three major sources[18] of the secular part, namely, the Procheiros Nomos, the Syro-Roman Law Book and the Ecloga,

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[7] The Procheiros Nomos was edited in a Latin translation with an introduction by K. E. Zachariae von Lingenthal, *O' Procheiros Nomos: Imperatorum Basilii Constantini et Leonis Prochiron* (Heidelberg 1837), and was translated into English with a commentary by E. H. Freshfield, *A Manual of Eastern Roman Law, The Procheiros Nomos*, Cambridge, University Press 1928.

[8] M. Amari, in *Catalogue des manuscrits de la Bibliotéque Nationale* [de Paris] par M. le Baron de Slane, pt. 1 (Paris 1883), p. 64, cited by C. A. Nallino, Libri giuridici . . . op. cit., p. 106, fn. n. 2.

[9] W. Riedel, *Die Kirchenrechtsquellen des Patriarchats Alexandrien*, (Leipzig 1900), pp. 40, 142, 297.

[10] C. A. Nallino, Libri giuridici . . . op. cit., pp. 101, 111—117, 144—153.

[11] E. Sachau and K. G. Bruns, *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert*, (Leipzig 1880). For a recent study, see W. Selb, *Zur Bedeutung des Syrisch-Römischen Rechtsbuches*, (München 1964).

[12] Cf. C. A. Nallino, Libri giuridici . . . op. cit., p. 103.

[13] G. A. Constanzo, *L'Ecloga Araba nel Fetha Nagast e la sua prima versione in Italiano*, (Roma 1947), p. 8 ff. Idem, "Il Fetha Nagast" (Diritto dei Re), in *Novissimo Digesto Italiano*, Vol. 7, (1961) pp. 253—254.

[14] The Ecloga was edited by K. E. Zachariae von Lingenthal, *Collectio Librorum juris graeco-romani ineditum, Ecloga Leonis et Constantini*, (Lipsia 1852), and was translated into English with a commentary by E. H. Freshfield, *A Manual of Roman Law, The Ecloga*, Cambridge University Press 1926.

[15] W. Riedel, *Die Kirchenrechtsquellen* . . . op. cit., pp. 42—43, 296 ff.

[16] Cf. C. A. Nallino, Libri giuridici . . . op. cit., p. 105 and fn. n. 1. It is to be noted that Nallino believed that the Ecloga was unknown to Ibn al-'Assâl, Ibidem, p. 126.

[17] Latin translation from the Arabic by Abramus Echellensis, *Sanctorum Patrum 318 [Nicaeanorum] Sanctiones et Decreta alia ex quatuor Regum ad Constantinum libris decerpta*. This translation has been published in the collection of Mansi, *Sanctorum Conciliorum nova et amplissima Collectio*, (Florentiae 1751), Vol. II, col. 1029—1054.

[18] It is commonly said that Ibn al-'Assâl availed himself of Islamic sources without, however, making explicit references for religious reasons. I. Guidi believed that at least

are of Roman background; hence legal provisions taken from them such as provisions regulating various types of contract, guardianship, manumission of slaves, servitude, and many principles governing wills and succession can be traced back to the Roman Law. Above all, family law, especially that part which deals with the dissolution of marriage, is strongly influenced by Justinian's *Novellae*.

The work of Ibn al-'Assâl was originally entitled "Collection of Canons"[19], but it has been commonly identified as the Nomocanon of Ibn al-'Assâl. Considering the purpose for which it was compiled, it must first of all be observed that such a work was not unique in its kind. There were other nomocanons such as those of the Nestorian Ibn-at Tayyib (1043), an author known and admired by Ibn al-'Assâl himself[20], and the Syrian nomocanons of Bar Hebraeus and Ebed Yesher[21]. All of these works are said to have been prepared for the use of the *Episcopales Audientiae*, the churches' courts, which were set up and authorised by Islamic rule to adjudicate on disputes among Christians involving, in particular, family law and succession. The book of Ibn al-'Assâl must thus be considered as one belonging to the category of the above said works[22]. It may therefore be said that it was compiled as a guide or leading reference book for the legal practice of the Coptic Christians living among the Muslim people in Egypt. This may also be deduced from the statement of the author made in the introduction that the book "is compiled to help judges pronounce judgements with diligence and to enable them to rule on anything"[23].

The Coptic Church of Egypt regarded the book as a highly authoritative work and it is still being studied and consulted with great interest in Egypt. There have been two recent editions of the book — the edition of 1908 and that of 1927[24].

The nomocanon of Ibn al-'Assâl was introduced into Ethiopia by the name of "FETHA NAGAST" (The Law of the Kings). There are different explanations of how this book, originally entitled "Collection of Canons", came to be called "The Fetha Nagast". The explanation given by Ethiopian scholars can be formulated as follows: notwithstanding the fact that the

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one of the Islamic sources consulted by Ibn al-'Assâl for the secular part, but without any identification, was the Tanbîh of Abu Ishaq as-Shirazi, a work compiled in 1060. cf. I. Guidi, *Il "Fetha Nagast" o "Legislazione dei Re"*, Codice Ecclesiastico e Civile d'Abissinia, Roma 1899, p. VII. (Italian Translation).

About the influence of Islamic laws in the work of Ibn al-'Assâl cf. also C. A. Nallino, Libri giuridici . . . op. cit., p. 135; A. d'Emilia, *La Comprovendita nel Capitolo XXXIII del Nomocanone di Ibn al-'Assâl; Note storico esegetiche*, (Milano 1938); Idem, Influssi di diritto Mussulmano nel Capitolo XVIII, 2, del Nomocanone di Ibn al-'Assâl, in *Rivista degli Studi Orientali*, Vol. 19, (1940), fasc. 1, pp. 1—15.

[19] See I. Guidi, *Il "Fetha Nagast"* . . . op. cit., p. VIII.

[20] Cf. I. Guidi, *Ibidem*, p. V—VI.

[21] Cf. C. A. Nallino, Libri giuridici . . . op. cit., p. 102 ff.

[22] Cf. B. Ducati, "Postilla" to L. Agresti, "Su l'antico diritto Religioso Etiopico", in *Rivista Giuridica del Medio ed Estremo Oriente e Giustizia Coloniale*, Vol. 1, (1932), col. 63—72.

[23] See *Fetha Nagast*, ET, p. 3.

[24] Guirgues Philtaos Awad (ed.), *Al-Magmû' as-Safawî*, (Cairo 1908); Marcus Guirgues (ed.), *Kitâb al-qawanîn*, (Cairo 1927).

book encompasses both spiritual and secular matters, it is called after its secular contents (Law of the Kings), since the kings were ultimately responsible for secular as well as for spiritual matters[25]. The concept of the relationship between State and Church, which is put into effect in what is termed as Caesaropapism, is expressed here.

A more scholarly explanation is offered by I. Guidi. He says that the part of the nomocanon of Ibn al-'Assâl dealing with religious matters was already known in Ethiopia through the book of *Sinodos* before the introduction of the work of Ibn al-'Assâl. Only that part of the nomocanon dealing with secular matters, as found in the "Canons" or "Laws of the Kings", was new to Ethiopia. The title "Fetha Nagast" was, thus, taken from that part; "Fetha Nagast" is an almost literal translation of the words "Laws of the Kings"[26].

The question when Ibn- al-'Assâl's nomocanon first came to Ethiopia still remains unsolved. Ethiopian tradition holds that the book was introduced into Ethiopia at the time of Emperor Zer'a Yacob, who ruled over Ethiopia from 1434 to 1468.

The same tradition holds that the man who brought the book from Egypt and translated it into Ge'ez was a certain Petros Abda Sayd, an Egyptian by birth[27].

The most ancient known document which mentions the use of the Fetha Nagast dates back to the reign of Emperor Sarsa Dengel, who ruled over Ethiopia from 1563 to 1597[28].

Despite the uncertainty about the date of its introduction into Ethiopia, the Fetha Nagast has been taken into high consideration throughout the centuries and has exerted a great influence in the country.

Comprising both secular and religious laws the book must have been favourably accepted by both State and Church. Considered as a common legal source for both State and Church, these two institutions certainly found in the book a new unifying element accentuating and strengthening more and more their pluri-secular relationship.

Admittedly, the Fetha Nagast does not fully reflect the life and customs of the Ethiopian people. It cannot be denied, however, that it has been held in high esteem by Ethiopian scholars and judges. This was mainly due to the spiritual permeation pervaiding the book through its numerous references to the Holy Scriptures and to the canons of the councils and the writings of the Fathers of the Church as mentioned above. All these were

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[25] L. S. Habtemariam Workeneh, *Ye-Itiopia Tentawi Temhert*, (The ancient Teaching [System] of Ethiopia), Addis Ababa 1971, pp. 227, 233.

[26] Cf. I. Guidi, *Il "Fetha Nagast"*, . . . op. cit., p. VIII.

[27] Cf. *Fetha Nagast*, a Photo Offset Edition of a Ge'ez Manuscript of the Fetha Nagast with Amharic Commentary, (Addis Ababa 1966), p. 8, col. 1.

On the translator, one reads at the end of the book: "The end of this book of Christian laws. It was translated into Ge'ez by Petros, the son of Abda Sayd, a person of little importance and a sinner, full of faults, unworthy to be called a man and much less a deacon . . . The translator, weak and wicked, and, as I am sure, that I am of inferior intelligence, request all the readers of this book to correct the errors they come across and beseech pardon for me". (*Fetha Nagast*, ET, p. 319).

[28] Cf. C. Conti Rossini, *Historia Regis Sarsa Dengel (Melak Sagad)*, Paris - Leipzig 1907, P. I, p. 76 (Ge'ez Text), P. II, p. 87 (French Text).

matters that for a long time constituted the core of learning of Ethiopian scholars, who were generally churchmen entrusted with the task of interpreting and reading the Fetha Nagast in the courts.

The prestige of the Fetha Nagast was further enhanced by the common belief among Ethiopians that the 318 Fathers of the Council of Nicaea were the authors of the book and that Constantine the Great was the one who enacted it[29].

The respect and high esteem which the Fetha Nagast enjoyed among the Ethiopians have been so great that it has been called "The Venerable Fetha Nagast"[30]. Prof. Graven, who worked in the Commission set up for the compilation of the modern Ethiopian Civil Code, wrote: " . . . we are convinced, after several years of living in Ethiopia and working with the present guardians of the *Fetha Nagast* in the legislative Commission . . ., that the 'Law of the Kings' has indeed been the 'Book' in some sacred way"[31]. This also reveals the important role attributed to the Fetha Nagast by the Ethiopians.

The general impact of the Fetha Nagast on the legal tradition of Ethiopia can be summarized as follows: From the time of its introduction into the country until the organisation of a modern legal system, it had become not only the fundamental and unique source of the written law of Ethiopia[32], but it had also acquired the status of a true and unique code applied in the higher courts of the Ethiopian Empire. This can be said with respect to the secular part of the Fetha Nagast.

With regard to the religious part, it still plays an important role in the Established Ethiopian Orthodox Church. In the introductory study to his English translation of the Fetha Nagast, the author of this paper has illustrated, at large, the role of the Fetha Nagast in the legal tradition of Ethiopia and its application as State Law until the new Codes were enact-

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[29] This belief is certainly based on a passage of the Pre-Preface to the Fetha Nagast. The passage says that Our Lord commanded the 318 Fathers of the Council of Nicaea "to compile a book of laws extracted from the Old and the New Testaments. And Ibn al-'Assâl wrote this book and it was given to Constantine the son of Helen". (See *Fetha Nagast*, ET, p. 2). Besides the anachronism in making Ibn al-'Assâl a contemporary of the Council of Nicaea, it is to be remarked that the Pre-Preface is not found in the Arabic text; yet, it is of Arabic origin, (cf. I. Guidi, Il *"Fetha Nagast"* . . . op. cit., p. 2, fn. n. 2). The legend reported in it, which ascribes the book to the Nicaean Fathers and to Constantine could thus be of Coptic origin. With regard to this question the following passage of an Author is very enlightening: "In search of Christian 'personal law', beyond the elementary rules of conduct that could be derived from the holy scriptures and from various ecclesiastical sources, the Egyptian Melchites about 1100 A. D. turned to Greek-Byzantine texts on civil law and began to translate them into Arabic. Many of these texts are accepted as authoritative also by the Coptic community, not without some theological polishing; thus, the names of the later Byzantine emperors or 'kings' (considered as heretics from the Coptic point of view) are simply deleted, and their legislation indiscriminately ascribed to Constantine the Great and the Council of Nicaea". See Peter Sand, *Origin of the Fetha Nagast*, 1968, unpublished; Library, Faculty of Law, Haile Sellasie I University, Addis Ababa, p. 11. (This short pamphlet deals with opinions of various authors on the question of the introduction of the Fetha Nagast into Ethiopia and with its secular sources).

[30] See the Imperial Preface to the Civil Code of 1960.

[31] J. Graven, The Penal Code of the Empire of Ethiopia, in *Journal of the Ethiopian Law*, 1964, Vol. 1, n. 2, p. 269, fn. n. 7.

[32] *Ibidem.*

ed[33]. The attempt in the pages which follow is, then, to illustrate the role or the impact of the Fetha Nagast, in particular of its religious part, on the actual practice of the Ethiopian Orthodox Church.

II. The Fetha Nagast and the Ethiopian Orthodox Church

One of the main characteristics of the Fetha Nagast is that it is a book of a basically religious nature. As has been said before, the religious sources permeate even the secular part, thus, the tendency to blend secular matters with religious ones is a common occurrence in the Fetha Nagast[34]. Moreover, one must not forget, as said before, the common belief as to the Nicaean origin of the book. All of these factors have contributed to an intimate connection with the Ethiopian Orthodox Church, which the book has had since early times and continues to maintain to this very day. There is an early recorded reference to the Fetha Nagast which gives evidence of said connection. In the Chronicles of Emperor Johannes (1667—1682), it is reported that in the course of a religious dispute, which took place in 1669, the Fetha Nagast was quoted as evidence in the discussion[35].

More recent documents also demonstrate the fact that the Ethiopian Church considers the Fetha Nagast as one of the holy books which are numbered as appendices to the Holy Scriptures. In 1922, a doctrinal questionaire was sent to the authorities of the Ethiopian Orthodox Church by some members of the Church of England. In order to prepare replies to the questionaire, a commission of Ethiopian scholars was set up under the direction of Abuna Mattheos, at that time Egyptian Metropolitan of Ethiopia. Among the questions, there was one (N. 56) which reads as follows: "Which are the books which are added to the Holy Bible on the ground that they are holy?" In reply to this question, the scholars supplied a list of books which are considered as holy and the Fetha Nagast was one of them[36].

Apart from the above reasons, which are based on the intrinsic value of the book, there are other factors by which this book becomes closely tied to the Ethiopian Church. Until recent times, the Ethiopian Orthodox Church has played the role of an educator in literary matters as well as a depository and guardian of the literary patrimony of the country[37]. The Fetha Nagast was, therefore, taught by churchmen in the monasteries and schools annexed to great churches. The study of it was and still is part of the branch of learning known as the *gubaye liquawent*, the branch which

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[33] See *Fetha Nagast*, ET, p. XXI—XXIV. For what is written thereto, the author of this paper has depended heavily on the above said study. cf. *Ibidem* from p. XV to p. XIX; cf. also P. Sand, *Origin of the Fetha Nagast*, op. cit., pp. 11—17.

[34] Cf. S. Lowenstein, The Penal System of Ethiopia, in *Journal of Ethiopian Law*, Vol. II, n. 2 (1965), pp. 383—384, and fn. n. 6.

[35] Cf. I. Guidi, *Annales du Roi Yohannes Ier, (A'lâi Sagad)*, Paris - Leipzig 1903, Part I, p. 12.

[36] See A. F. Matthew, *The teaching of the Abyssinian Church as set forth by the Doctors of the same*, (London 1936), p. 62.

[37] Cf. Sylvia Pankhurst, *Ethiopia, A cultural History*, London 1955, p. 232.

embraces the studies of the works of the Church Fathers. The scholars, who thoroughly studied and commented on the Fetha Nagast, were all churchmen and the names of many distinguished scholars are still remembered[38].

Even those charged with the task of reading and interpreting the Fetha Nagast during the court hearings were churchmen[39] as mentioned before. Litigants used to go to important churches or monasteries for consultation and in order to have the Fetha Nagast read and interpreted to them. In the light of the Fetha Nagast, their disputes were settled. A fee borne in equal shares by the litigants was paid to the church or the monastery for opening the Fetha Nagast[40]. This shows that the church was the guardian of the Fetha Nagast and the place where the Fetha Nagast was mainly available.

But the most important fact is that the Fetha Nagast, and particularly the religious part of it, has been considered throughout its history in Ethiopia, and is still considered by the Ethiopian Orthodox Church, as the book in which the canonical laws of this church are laid down.

Prior to the introduction of the Fetha Nagast into Ethiopia, the Ethiopian Church had, in matters of church legislation, referred to the Sinodos and the Didascalia, two books containing canonical laws[41].

But after the introduction of the Fetha Nagast these two books could no longer be considered as the sole source of reference for canonical legislation. With the addition of the Fetha Nagast, there were thus three major works dealing with canonical laws. In the early periods following the introduction of the Fetha Nagast, the three canonical works seem to have been attributed equal bearing and importance within the Ethiopian Church[42]. However, in the course of time the tendency to give the Fetha

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[38] *Fetha Nagast,* Photo Offset Edition . . . op. cit., p. 8, col. 1.

[39] See E. Pereira, *Chronica de Susenios Rey de Ethiopia,* (Lisboa 1892) p. 298, (Ge'ez Text). See also I. Guidi, Contributi alla Storia Letteraria di Abissinia. Un responso sul diritto d'asilo, in *Rendiconti della Reale Accademia Nazionale dei Lincei,* Serie V, Vol. 31 (1922), p. 210; the same is also found translated into English in *Fetha Nagast,* ET, p. XXII—XXV.

[40] Cf. *Fetha Nagast,* ET, p. XXIX fn. n. 74.

[41] Cf. I. Guidi, *Storia della Letteratura Etiopica,* (Roma 1932), pp. 37—38. A description of the contents of the Sinodos is found in W. Wright, *Catalogue of the Ethiopian Manuscripts in the British Museum,* (London 1871), p. 266 ff.; cf. also C. Conti Rossini, Il "Senodos" Etiopico, in *Atti della Reale Accademia d'Italia, Rendiconti della classe di scienze morali e storiche,* Ser. VII, Vol. III (1941) p. 44 ff.

For the Didascalia see P. Platt, *The Ethiopic Didascalia or the Ethiopic version of the Apostolical Constitutions received in the Church of Abyssinia,* (London 1834); J. M. Harden, *The Ethiopic Didascalia,* (London 1920). Another book of canoical legislation known before the Fetha Nagast is the *Fewse Menfesawi,* (Spiritual Medicine), an Ethiopian production. See L. S. Habtemariam Workeneh, *Ye-Itiopia Tentawi Temhert* (The ancient Teaching . . .) op. cit., p. 227.

[42] This can be deduced from the events which occurred in the religious dispute of 1669 already mentioned. The dispute occurred between some rebellious monks and the religious authorities of the time. The former were going around pronouncing unmotivated excommunications and the latter were opposing such arbitrary behaviour sustaining that "hormis pour la fois" no one may pronounce excommunications without reason and against anyone. The epilogue of the discussion is described by the chronicle as follows: "D'abord le 12 de tequemt, et une second fois, le 19 de miyazia, ils discuterent et leur apporterent des temoignages du Sinodos et du Fetha Nagast; ils les

Nagast more importance and preference over the other two books became predominant. This means that, as time went by, the importance of the Fetha Nagast as canonical law had increased until it finally became a legal instrument more widely quoted and used than the two other books, while the latter had mainly assumed the role of sources[43] for legal reference; at present, they are rarely cited as canonical laws[44].

The main reasons why the Fetha Nagast has been preferred to the two books seem to be the following:

(a) Numerous canons contained in the two books were found to be incorporated in the Fetha Nagast, in particular, in the religious part, in which the canonical legislation is mainly contained.

(b) Many new elements of canonical legislation derived from the three Books of the Kings, which are not included in the Sinodos and the Didascalia, were found inserted in the Fetha Nagast. This holds true for its religious part but also for its secular part relating to canonical laws such as, for instance, the provisions in the chapter on marriage.

In addition to the reasons stated above, the Fetha Nagast encountered great popularity in both secular and religious circles, as has been said before. An instrument such as this book, which satisfied the legal instances of both secular and religious powers was bound to be preferred, (as it has been the case), over any other legal book.

Moreover, at the end of the las century, the Fetha Nagast appeared in a printed edition[45]. This meant that it had a larger circulation, thus becoming more widely and easily available than the two books.

Documents, which directly or indirectly belong to the Ethiopian Orthodox Church, clearly show that the said church has always considered the Fetha Nagast as the book containing its canonical legislation. To cite only a few of the more recent documents: The scholars who, on behalf of the Ethiopian Orthodox Church, answered the questions put to them by some members of the Church of England, as stated above, made mention, sometimes explicitly and othertimes implicitly, of the Fetha Nagast as "the ordinance of our church" or as "the ordinance of the church"[46]. In a publi-

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convainquirent et les reduisirent au silence en les réprimandant; ils leur imposèrent une penitence selon les préceptes des Apotrés". See I. Guidi, *Les Annales du Roi Yohannes* Ier *(A'lâf Sagad)*, op. cit., pp. 12—13. By the "préceptes des Apotrés" is meant, the Didiscalia, (see *Ibidem*, p. 13, fn. n. 1), thus reference is made simultaneously to the Sinodos, the Fetha Nagast and the Didascalia.

[43] About the Sinodos see L. S. Habtermariam Workeneh, *Ye-Itiopia Tentawi* . . . (The ancient . . .), op. cit., p. 224.

[44] Quotations from the Sinodos and the Didascalia occur very rarely, especially in works and writings of recent times. It may be said that sometimes they are mentioned only out of deference. L. S. Habtemariam Workeneh, for example, in his *Temherte Abe Nefs* (Teaching guide-lines for the spiritual father), Addis Ababa 1961, p. 21, says that in writing the book, he has availed himself of the Fetha Nagast, the Sinodos and the Didascalia besides the Holy Scriptures. But the fact is that while he frequently cited the Fetha Nagast, no quotation is found from the Sinodos and the Didascalia.

[45] *Il "Fetha Nagast" o "Legislazione dei Re"*, Codice Ecclesiastico e Civile di Abissinia, pubblicato da Ignazio Guidi, (Ge'ez Text) 1st Edition Napoli 1897, 2nd Edition Napoli 1936.

[46] See A. F. Matthew, *The Teaching of the Abyssinian Church* . . . op. cit., with explicit reference to the Fetha Nagast, p. 43; with implicit reference, pp. 50, 51, 57.

cation of the Ethiopian Orthodox Church, it is stated that the Fetha Nagast is a repository of Ethiopian ecclesiastical law and that the Ethiopian Orthodox Church still observes many of its precepts. In the same publication, the Fetha Nagast is identified as the "canon law" of the Ethiopian Church, which is still taught in church schools highly qualified in ecclesiastical studies[47]. In a document published by the Ethiopian Church, with the aim of giving some guide-lines to its faithful, it is affirmed that the Fetha Nagast is the written law on the basis of which the Ethiopian Church runs and regulates its spiritual affairs[48].

Authoritative churchmen refer to the Fetha Nagast as "the law of our church"[49] in their works dealing with the faith and teaching of the Ethiopian Orthodox Church. A statement made in another work by one of these churchmen deserves to be quoted here. After having critizised the system of incorporating arbitrary interpolations in the Fetha Nagast, the author says: "Despite these and similar defects, the Fetha Nagast is regarded in Ethiopia with great veneration and is called 'the sacred law'. Even now, the only law which is cited in our church, since there is no other legislation, is the Fetha Nagast . . . In the civil sphere, after the enactment of new legislations, the Fetha Nagast remains and serves as source of reference. While the book has this historical value in the civil field, it still maintains its role of law in the Church, as said before"[50].

In addition to the above statements, which are taken from church sources, it would also be interesting to cite other examples from Ethiopian sources not related to the church on the ecclesiastical legal character of the Fetha Nagast. The most significant example is found in a decision taken by the Imperial Ethiopian Supreme Court on a marriage case involving canonical provisions laid down in the Fetha Nagast. In the said decision the Court's pronouncement with regard to the Fetha Nagast reads as follows: "It is known that the Fetha Nagast is the document in which are dogmatized, in particular, the practices and canons[51] of the Ethiopian Orthodox faith . . . and which is, and will cortinue to be, the ecclesiastical law. Since it is fundamental law compiled by 318 scholars[52] from the Old and the New Testaments and from other scholarly writings, there can be no doubt as to its being a permanent and sacred law in the past, the present and the future"[53].

The importance attached to the Fetha Nagast as canonical law is so great and actual that sometimes it is referred to in order to corroborate

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[47] *The Church of Ethiopia,* a Panorama of history and spiritual life, a publication of the Ethiopian Orthodox Church, Addis Ababa 1970, pp. 77, 94.

[48] *Merha Me'emenan,* (Guide to the faithful), by Ethiopian Orthodox Church's Doctors, (Addis Ababa 1954), p. 9.

[49] Cf. L. S. Habtemariam Workeneh, *Ye-Itiopia Ortodox Tewahdo Biete-Kristian Emnetna Temhert,* (The faith and teaching of the Ethiopian Orthodox Church), Addis Ababa 1970, p. 43. cf. also, Admasu Jemberie, *Quekha Haimanot,* (The Rock of Faith), Addis Ababa 1957, pp. 238, 239.

[50] See L. S. Habtemariam Workeneh, *Ye-Itiopia tentawi* . . . (The ancient . . .) op. cit., p. 234.

[51] Read "canons" instead of "meditations".

[52] I. e., The Nicaean Fathers.

[53] See *Journal of Ethiopian Law,* Vol. III, n. 2, (1966), p. 392.

one's own opinion in canonical questions, even for matters not dealt within the Fetha Nagast itself[54].

Before going into the following sections that deal with some instances of application of the canonical norms of the Fetha Nagast and some explicit references to it in the practice of the Ethiopian Orthodox Church, it would be appropriate to illustrate the variety of terminology used in Ethiopian literature referring to the Fetha Nagast. Besides the usual name of "Fetha Nagast", it is called "the Three Hundred"[55] (an abbreviated form standing for the 318 Nicaean Fathers), or simply "The Fathers"[56], or "The Church's Doctors"[57]. Other names given to the Fetha Nagast are "The Law of the Church"[58], or simply "The Law"[59] or "The Corporal and Spiritual Law"[60] or, when referring to the religious part only, "The Spiritual Law"[61].

It is also common to cite passages from the Fetha Nagast without quoting it by name. This seems to be done on the presumption that the Fetha Nagast is so well known that there is no need to mention it expressly.

III. Norms of the Fetha Nagast regarding the Episcopal hierarchy

a) Historical outline

Until recent times, the Ethiopian Orthodox Church was not ruled by an episcopal hierarchy of Ethiopian nationality. This was in observance of a canon which is found inserted in the Fetha Nagast and falsely attributed to the Council of Nicaea. This canon reads as follows: "As for the Ethio-

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[54] See, for instance, Ethiopian Church, *The First Ethiopian Patriarch of the Ethiopian Church,* Addis Ababa 1959, p. 41, where it is stated that according to the Fetha Nagast, a meeting of nine Metropolitans (a quorum?), can elect a Patriarch. Such a provision is not found in the Fetha Nagast. In a synodal meeting held in 1954, the shortage of ministers for Mass service in some places was under consideration. (It is to be noted that according to the Ethiopian Rite, five ministers are required for Mass service). A speaker maintained that "there is a provision in the Fetha Nagast which establishes that Mass can be celebrated with three ministers". No similar provision is found in the Fetha Nagast. cf. *Ziena Biete-Kristian,* (News of the Church), 8th year, n. 103, p. 311.

Ziena Biete-Kristian Ze-Itiopia (News of the Curch of Ethiopia) and sometimes shortly: Ziena Biete-Kristian (News of the Church), hereafter ZB, is a paper published since 1945 by the Ethiopian Orthodox Church. The official character of the paper is recognized by the following decree of 1953: "The Ethiopian Orthodox Church will have an official paper called 'Ziena Biete-Kristian'. In this paper the Church will issue her laws, regulations and orders. Through it the Church will spread her faith and teachings; she will publish in it resolutions concerning church's rules and appointments, awards and promotions". *Rules of Administration for tle Ethiopian Orthodox Church,* Addis Ababa 1953, (November 1946 E. C.), Art. 11, pp. 14—15.

[55] See the Imperial Preface to the Penal Code of 1930 (1941 ed.).

[56] See ZB, 22nd year, n. 25, p. 5.

[57] See L. S. Habtemariam Workeneh, *Temherte Abe Nefs,* (Teaching guide-lines . . .) op. cit., p. 127.

[58] *Ibidem.*

[59] ZB, 20th year, n. 21, p. 4.

[60] *Ibidem,* 22nd year, n. 47, p. 1.

[61] *Rules for the bishops of the Ethiopian Orthodox Church,* Addis Ababa 1951, January 1943 E. C.) Art. 8, p. 8, Art 10; p. 9.

pians, a patriarch shall not be appointed from among their learned men, nor can they appoint one by their own will. Their Metropolitan is a subject to the holder of the see of Alexandria, who is entitled to appoint over them a chief who heils from his region and is under his jurisdiction"[62].

On the basis of this canon it was forbidden for an Ethiopian to become the Metropolitan of his country and the practice was established that the ruler of the Ethiopian Church must always be an Egyptian Metropolitan appointed by the patriarch of Alexandria. Such a humiliating situation for the Ethiopians lasted for many centuries. Only in 1928, through the effort of the incumbent Emperor Haile Sellasie I — at that time Regent and Crown Heir — the situation was partially remedied. In fact, in the said year, after complicated negotiations with the Church of Alexandria, it was agreed that five Ethiopian monks should be consecrated as bishops. The chief or the Metropolitan of the Ethiopian Orthodox Church, however, remained an Egyptian, the Archbishop Cyril[63].

During the Italian occupation (1935—1940), some progress was made towards the constitution of an episcopal hierarchy composed entirely of Ethiopian bishops. The Italian government, taking advantage of the retirement of Metropolitan Cyril to Egypt, replaced the latter by an Ethiopian bishop, Abuna Abraham, as Metropolitan of the Ethiopian Church. Before his death in 1939, Abuna Abraham consecrated several bishops and was succeeded by another Ethiopian bishop, Abuna Johannes.

After the restoration of the Ethiopian government in 1941, the Egyptian Metropolitan Cyril returned to Ethiopia, and negotiations for the complete autonomy of the Ethiopian Church with a hierarchy of Ethiopian nationality were resumed.

In 1948, an agreement was reached[64], when the Coptic Synod decreed that Ethiopian monks may be appointed as bishops during the lifetime of the Egyptian Metropolitan, and upon his death an Ethiopian Metropolitan may be consecrated[65]. As an immediate result of the agreement, five bishops of Ethiopian nationality were consecrated in July 1949. Upon the death of the Egyptian Metropolitan in 1951, an Ethiopian bishop was chosen as Metropolitan; thus the full autonomy of the Ethiopian Orthodox Church was established.

In 1959, another agreement was reached[66] and according to its terms the rank of the head of the Ethiopian Orthodox Church was raised from Metropolitan to Patriarch. In 1961, the Patriarch conferred the Archepiscopal title upon all the bishops heading the ecclesiastical districts including that of Jerusalem.

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[62] *Fetha Nagast*, ET, p. 18.

[63] The documentation about the negotiations between the Ethiopian Authorities and the Coptic Church of Egypt is found in *Oriente Moderno*, Vol. IX, (1929), pp. 141, 194, 493—494.

[64] This agreement is reproduced in *The Ethiopian Orthodox Church* published by the Ethiopian Orthodox Mission, Addis Ababa 1970, Appendix D, p. 176.

[65] See the documentation in ZB, 1st year, n. 2, p. 1 ff., n. 5, p. 41 ff., n. 6, p. 61 ff.

[66] Ethiopian Church, *The First Ethiopian Patriarch of the Ethiopian Church*, op. cit., Appendix 14, p. 98—104.

Today the Church of Ethiopia is divided into fourteen ecclesiastical districts each one headed by an Archbishop. In addition there is the Archepiscopal seat of Jerusalem. There are also five Episcopoi who are assigned to some dioceses as suffragan bishops[67].

b) The procedure for the election of the Episcopal hierarchy

During the rule of the Egyptian Metropolitans, the chapters of the Fetha Nagast dealing with the episcopal hierarchy, and in particular the chapters on patriarchs and bishops, had no practical bearing for the Ethiopians. Ignazio Guidi could, therefore, rightly write in the preface of his Italian translation of the Fetha Nagast in 1899, that the chapters on patriarchs and bishops were, on the whole or to a greater part, practically useless in Ethiopia[68]. But now with the constitution of an episcopal hierarchy of Ethiopian nationality the said chapters, or at least some of the canons contained in them, have become of practical importance. The objective here is to show the application of some canons regulating the procedure followed in the election of the episcopal hierarchy (the Patriarch and the other members of the episcopate).

In the chapter on patriarchs, after having said that "the patriarch's appointment is imposed on the faithful and binding on all of them", requirements applicable to the electors and the candidate are dealt with. The electors must meet the following requirements: "knowledge of uprightness . . . intelligence through which they can know well who is worthy of this office . . . prudence and wisdom to lead them to choose that person, whover he is, who is the most suitable person for the time". As for the candidate, the requirements are soundness of mind and body, and other qualifications necessary to carry out well the administrative and pastoral tasks. Suggestions are also given for solving problems which may arise in the process of election, e. g., if there are two candidates in question, or, if two candidates are elected in different places. For other provisions, reference is made to the chapter on bishops since "most of the provisions dealing with bishops hold good for patriarchs as well"[69].

In the chapter on bishops, it is laid down, first of all, that the candidate to the episcopacy "must be a monk from among those who have the holy orders of the altar". Furthermore, it is established that he must "have the approval of the people over whom he is appointed and the approval of his patriarch". "No one shall be appointed bishop unless twelve persons bear witness of praise for him". But besides simple approval or witness, the Fetha Nagast demands that "a bishop shall be appointed pursuant to an election made by all the people", and to be appointed bishop, one must have the support and the vote of the majority of the persons called to elect him. As for the electors, it is laid down that "it is necessary that each of them be over thirty years old"[70].

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[67] *The Ethiopian Orthodox Church*, op. cit., pp. 10, 14, 125; cf. also *The Church of Ethiopia*, op. cit., pp. 35—36, 38—39, 61.

[68] Cf. I. Guidi, *Il "Fetha Nagast"* op. cit., (Italian Translation), p. VIII.

[69] See *Fetha Nagast*, ET, pp. 20, 21.

[70] *Ibidem*, p. 25.

From the norms mentioned above, it is presumed that the candidate for the rank of the episcopacy must be a monk, and that the methods of appointing the hierarchy range from approval and witness to election. In all cases, the participation of the people in the appointment is clearly stated, while the participation of the clergy is to be presumed. Although the participation of the people is mentioned, it is controlled in such a way that there must be a qualified lay electorate.

It is well known that in the first centuries of the church's history, and particularly after the apostolic time, the participation of clergy and people in the appointment of bishops was a habitual practice. Yet, it is rather difficult to determine what kind of participation that was. One speaks of simple presence, or of witness, or of approval, or of elective suffrage of the clergy and people[71]. The above mentioned norms of the Fetha Nagast reflect this variety of participation. This indicates that the nature of participation varied, perhaps, from place to place and did not have a uniform character. As the time went by, however, it seems that in practice the participation of clergy and people in the appointment of bishops tended to be a participation by elective suffrage, except for the *jus confirmandi* by superior authorities. This can be evidenced by the laws on the appointment of bishops enacted by the civil authority during the rule of the Constantinopolitan Emperors[72]. It should be noted that in the said legislations a selective criterion for the formation of a lay electorate was adopted. According to this criterion the selected lay electorate should consist of the *optimates* or *primates civitatis*[73].

The electoral system and the participation of clergy and laity in the high church hierarchy have been practised throughout the centuries within the Oriental Churches to such an extent that it his been considered as the "Oriental custom" or "the Oriental discipline"[74].

Among the methods laid down in the Fetha Nagast with regard to the appointment of the episcopal hierarchy, election, with the participation of the clergy and laity, has been the method applied within the Ethiopian Orthodox Church from the time when it was given the right to choose the members of its hierarchy. For the sake of chronological order, this paper will first deal with the electoral procedure adopted in the appointment of bishops, and afterwards with that of the Patriarch.

As has been said above, in 1929, five Ethiopian monks were chosen and consecrated bishops for the first time. Detailed information about the procedure followed for their election is not available. It seems, however, that the principle of an elective method as laid down in the Fetha Nagast was followed, since it is said that they "were selected by a church as-

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[71] Cf. A. Coussa, *E Praelectionibus in Librum Secundum Codicis Iuris Canonici — De Personis, De Clericis in specie,* (1953), p. 160.

[72] Cf. Codex Iustin. lib. I, cap. III, n. 41; Nov. Iustin. 123, cap. I; Basilic. lib. III, tit. 1, 8.

[73] "Clerici et primates civitatis conveniant et tres candidatos eligant, melior ex his iudicio ordinantis et arbitrio ordinatur" Basilic. lib. III, tit. 1, 8.

[74] Cf. W. de Wries, *Rom und die Patriarchate des Ostens,* (München 1963) pp. 19—20, 87, 90, 170, 244—245. With regard to bishops in particular cf. A. Coussa, *Epitome Praelectionum de Iure Ecclesiastico Orientali,* Vol. I, (1948), pp. 295—297.

sembly"[75]. That is to say that a regular election was held by an electoral college, although the composition of the college is not specified.

In the appointments of 1937, i. e., during the Italian occupation, the Metropolitan archbishop and the bishops were elected by the most important members of the monasteries and churches of Ethiopia assembled in a council[76]. There are no details about the composition of the electoral body, that is, whether any representatives of the laity were also present. The appointments, however, were made on an elective basis. It is noteworthy that on that occasion "the consecration of the new bishops was performed according to the canons of the Fetha Nagast, that is, through breath, anointing and laying on of hands by the Abuna, in the presence of the church dignitaries and with the people acclaiming"[77].

Following the death of the first Metropolitan, an election was held on September 12th, 1939 to choose his successor[78]. In this election the electoral college consisted of representatives of the clergy and laity. The laimen were the so-called *Aleka*, people preeminently of church culture, but generally laimen. The list for the election of the Metropolitan contained seven candidates. The election was conducted by secret ballot and the Metropolitan was elected by majority vote. By the same procedure five bishops were elected three days after the election of the Metropolitan. Also on this same occasion, it is stated that "the bishops were consecrated according to the custom of the Orthodox Church and the canonical provisions of the Fetha Nagast"[79].

A fact to be noted is that all seven candidates for the election of the Metropolitan had episcopal character. With regard to this it was declared: "Notwithstanding the Coptic Egyptian Church's canonical provisions which establish that a simple monk may be appointed Metropolitan, provided he has the right faith and good conduct, it is decided that the Metropolitan shall be elected from among the bishops and episcopoi. This is in accordance with the opinion of the Doctors and based on the authority of the 'holy books'"[80]. This measure of excluding the monks seems to have been dictated by political circumstances rather than by the "holy books". It will, however, be a guideline for future praxis as will be seen later.

Another fact which is related to the Italian period is the issuing of a Constitution, drawn up with much reference to the Fetha Nagast[81]. It was drawn up with the collaboration of some Ethiopian scholars and contained various provisions including the appointment of the Metropolitan (Art. 1 and 2), and the appointment of bishops (Art. 9). These appointments

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[75] See *The Church of Ethiopia*, op. cit., p. 35.

[76] Cf. *Gli Annali dell'Africa Italiana*, Anno II, Vol. 1, (1940), p. 699.

[77] *Ibidem*. As for the canons of the Fetha Nagast, see *Fetha Nagast*, ET, pp. 27—28. In the Fetha Nagast, however, there is no mention made of the anointing.

[78] *Ziena Biete-Kristian Itiopiawit*, (News of the Ethiopian Church), 1st year, n. 1, p. 36, 48 ff. Ziena Biete-Kristian Itiopiawit (hereafter ZBI) is a paper issued in 1940, during the Italian occupation.

[79] *Ibidem*, p. 58.

[80] *Ibidem*, pp. 36—37.

[81] Cf. M. Perham, *The Government of Ethiopia*, (London 1948), p. 125. The Constitution was published in ZBI, pp. 2—7 and also in Gerima Teferra, *Gondare Begashaw*, (Addis Ababa 1957) pp. 96—102.

are to be made on an elective basis by the clergy and laity. Drawn up probably before the election of the hierarchy, which was held in 1939, the Constitution was officially presented to the Metropolitan by the Viceroy in July 1940. In presenting the Constitution, the Viceroy declared that it had been prepared with due consideration given to the Fetha Nagast[82].

In conclusion, it can be said that in the appointment of the episcopal hierarchy performed during the Italian interlude, the principle of an elective method with the participation of the clergy and laity as laid down in the Fetha Nagast had been put into practice. Moreover, the same principle acquired new statutory relevance since it was incorporated in the above mentioned Constitution.

After the restoration of the Ethiopian government, the appointments of the episcopal hierarchy have been made more or less according to the pattern begun during the Italian period. The first election after the restoration took place in 1946. The electoral college was composed of representatives from the clergy and laity. An innovation with respect to the former system followed during the Italian period was the adoption of a highly selective criterion for the lay electors. Lay electors were, in fact, chosen from among members of the Senate and the Chamber of Deputies, members of the Crown Council, Ministers and Vice-Ministers and other laymen of high governmental and non-governmental position who had reached 35 years of age. The condition that they had to be of Orthodox faith was laid down as mandatory. For the election of six bishops, a list of twelve candidates was presented and the election was conducted by secret ballot[83].

All subsequent elections have been conducted according to the above described procedure[84].

Upon the death of the Egyptian Metropolitan and pursuant to the agreement reached in 1948, an election of a Metropolitan of Ethiopian nationality was held in 1951. The agreement established that "the Metropolitan will be chosen in accordance with the prescriptions of the canons of the Church . . . and . . . from amongst the Ethiopian monks of the monasteries or churches or from the Ethiopian episcopate"[85]. By "the canons of the Church" there is no doubt that, within the Ethiopian Orthodox Church, only the canons of the Fetha Nagast can be meant. As for the candidatures for the position of Metropolitan, monks were excluded, contrary to the agreement, and in the list five candidates were

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[82] See ZBI, p. 1.

[83] Cf. ZB, 1st year, n. 6, p. 58—59. As said above, this election was held in April 1946, but due to disagreement which delayed the outcome of the negotiations between the Coptic and the Ethiopian Churches, the consecration of the elected candidates did not take place before July 1949. Of six elected candidates five were consecrated bishops. cf. Ethiopian Church, *The First Ethiopian Patriarch* . . . op. cit., pp. 24—25.

[84] For the election held in May 1951 (1943 E. C.), see ZB, 6th year, n. 67, p. 548; for that of May 1953 (1945 E. C.), see ZB, 7th year, n. 91, p. 161; for the election of some episcopos, see ZB, 15th year, n. 9, p. 1.

[85] See *The Ethiopian Orthodox Church,* op. cit., p. 176.

presented all with episcopal rank like in the election of 1939[86]. The electoral college was formed in the same way as in the election of 1946[87].

In 1955, with the promulgation of the new Constitution of the Empire, constitutional relevance was given to the election procedure of the episcopal hierarchy. Art. 127 of the new Constitution laid down that "the Archbishop and bishops shall be elected by the ecclesiastical electoral college consisting of reperesentatives of the clergy and the laity of the Ethiopian Orthodox Church". Thereby the former electoral praxis was sanctioned and was given permanent standing.

With regard to the election procedure for the appointment of the Patriarch, it must first of all be recalled that the title of Patriarch was conferred upon the head of the Ethiopian Orthodox Church only in 1959, pursuant to the agreement concluded between the Coptic Egyptian Church and the Church of Ethiopia in the same year. Since the incumbent Metropolitan at that time was considered as the only candidate for the title of Patriarch, there was no problem of electoral arrangement with the result that he was automatically elected. Upon his death in October 1970, the problem of the procedure for electing a Patriarch was faced for the first time.

There was a precedent in the procedure followed for the election of the Metropolitan in 1951. There was also the provision laid down in Art. 127 of the new Constitution on the election procedure of the Archbishop (Metropolitan), a provision which must, obviously, also apply for the election of a Patriarch[88]. In addition, there was the clause in the agreement of 1959, which stated that the Patriarch "should be chosen according to the laws and traditions of the See of Saint Mark of Alexandria from among Ethiopian monks not above the rank of Komos"[89]. The rank of Komos is equivalent to the rank of an Archpriest; contrary to the agreement of 1948, the clause is thus a measure excluding members of the episcopate from being eligible for the rank of Patriarch.

In practice, however, in March 1971, the Holy Synod of the Ethiopian Church laid down rules and procedures regulating the election of the Patriarch[90]. The most important point of the rules was the consideration of candidates from among the Ethiopian bishops with the exclusion of the monks[91]. This was contrary to the above clause, and so far it is not known whether that limitation was a decision of the Ethiopian Church alone or in mutual agreement with the Egyptian Church.

The election of the Patriarch was held on April 6th, 1971, and was conducted by secret ballot. The Patriarch was elected by majority vote from

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[86] Some years later, however, the same Ethiopian Church decreed that "the Ethiopian Metropolitan will be chosen by a church assembly from among the bishops and episcopoi or from among the monks". *Rules of Administration for the Ethiopian Orthodox Church*. op. cit., Art. 3, p. 5.

[87] Cf. Ethiopian Church, *The election of the Ethiopian Metropolitan*, Addis Ababa 1951, pp. 8—9.

[88] What the Ethiopian Church decreed in 1953 also holds true for the election of the Metropolitan. See fn. n. 86, *supra*.

[89] See Ethiopian Church, *The First Ethiopian Patriarch*, op. cit., p. 100.

[90] Cf. ZB, 25th year, n. 64, pp. 1, 2, 3, 4.

[91] *Ibidem*.

among three candidates, all members of the Ethiopian episcopate. In accordance with the rules and procedures laid down by the Holy Synod, the electoral college consisted of members of the clergy and laity representing the Holy Synod, the Crown Council, the Council of Ministers, the two Houses of Parliament, the administrative board of the national Church (i. e. the Ethiopian Orthodox Church), provincial dioceses, abbeys and monasteries in Addis Ababa[92].

Summarizing what has been said so far about the appointment of the episcopal hierarchy in the practice of the Ethiopian Orthodox Church, it can be said:

- right from the beginning, the appointment has always been made on an elective basis;
- the electoral college has consisted of the clergy and the laity, the latter always being composed of selected members, i. e., of the *optimates;* this becomes apparent especially in the elections held after the restoration of the Ethiopian Government. Needless to say, the candidates for the episcopal rank were all monks.

All this is in accordance with the Fetha Nagast and shows the application of the principles of the norms laid down therein. It is only to be remarked that the measure adopted to exclude monks from being candidates for Metropolitan and for Patriarch, is against the spirit of the canons of the Fetha Nagast and agreements entered into by the Ethiopian Church and statutory provisions laid down by the same[93].

It has been said before that at the time of the Constantinopolitan Emperors the civil authority interfered in regulating the appointment of the episcopal hierarchy. The same interference with regard to the appointment of the Ethiopian Orthodox Church's hierarchy was ratified by the Constitution given to the Church by the Italian government, and is presently ratified by Art. 127 of the new Constitution of the Ethiopian Empire.

c) The Episcopal Synod

The meeting of the bishops, called "the Episcopal Synod" or "the bishops' Synod", is dealt with in the Fetha Nagast in Chapter IV on patriarchs and in Chapter V on bishops.

In the chapter on patriarchs, it is established that "the bishops of every city shall gather with their Metropolitan twice a year to examine what is to be done". A little further it is said that "similarly the Metropolitans and the bishops shall gather with their patriarch once a year"[94].

The first provision deals with a synodal meeting on the metropolitan level while the second one deals with a synod on the patriarchal level.

The chapter on bishops establishes that "the synod of bishops shall take place twice a year and shall deal with matters pertaining to the Church and with matters of interpretation or arrangements which are dif-

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[92] *Ibidem,* n. 63, pp. 2, 3. 4.
[93] Cf. fn. n. 86, *supra.*
[94] See *Fetha Nagast,* ET, p. 19.

ficult for some. The bishops shall put an end to the scandals found in the Church. If there are enmities, they shall settle them peacefully. The first synod shall be called in the fourth week of the fifty days [between Easter and Pentecost]. The second synod snall be called on the 12th of Tekemt (mid-October)[95]. The Fetha Nagast identifies this as the "first" provision[96].

There is a "second" provision which says that: "the bishops of each place shall meet with their Metropolitan or their Patriarch twice a year. The first meeting shall take place before lent . . . The second shall be held in autumn after the feast of the Cross"[97].

The provisions contained in the chapter on patriarchs establish that a synod on patriarchal level should take place once a year while that on Metropolitan level should be held twice a year. There is no mention made about dates.

The provisions in the chapter on bishops, which are specified as "first" and "second", establish that a bishops' synod should take place twice a year; the dates are fixed, but in a different way.

Since the constitution of the national Ethiopian hierarchy, the bishops' synod has had due consideration and significance in the practice of the Ethiopian Orthodox Church. The Fetha Nagast has always been referred to as the canonical law providing for the celebration of the episcopal synod.

After the first constitution of the episcopal hierarchy, a Decree of 1930 established *inter alia* that "according to the provisions laid down in the 'Book', bishops must hold a meeting sometime during the year in order to consult each other on religious matters for the benefit of the faithful"[98]. It is clear that according to these terms the meeting may take place once a year or more often, but there is no fixed date.

In 1939, during the Italian interlude, besides the creation of a permanent Holy Synod, it was declared that "in compliance with the provisions of the Fetha Nagast, bishops ought to hold a synodal meeting at least once a year"[99].

Art. 6 of the Constitution, which was given to the Ethiopian Church at that time, established that "the bishops of Ethiopia together with the episcopoi shall hold a synodal meeting once a year . . . to examine church matters of high concern and to hear proposals made by the bishops"[100]. Here too, the date was not fixed although it is clear that the meeting ought to be held once a year.

It is not known whether the guidelines established by the above mentioned Decree and Constitution have had only programmatic value or whether synodal meetings have actually been held. At any rate, it is evident that the prescriptions of the Decree and the Constitution as in the

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[95] *Ibidem*, p. 37.
[96] *Ibidem*.
[97] *Ibidem*.
[98] See Mahteme Sellasie Welde Meskel, *Zekre Neguer*, (Documentations) Addis Ababa 1950, p. 548. In this instance "Book" may be taken to mean either the Sionodos or the Fetha Nagast.
[99] ZBI, p. 43.
[100] *Ibidem*, p. 3.

above, conform with the canonical provisions contained in the chapter on patriarchs, which demand the holding of a synod once or twice a year and do not fix the dates.

As for the period since the reestablishment of the Ethiopian episcopal hierarchy in 1949, the development of the practice to hold bishops' synods may be illustrated as follows.

The first synod was held in May 1949 in the fourth week after Easter[101]. By the Rules concerning the bishops of the Ethiopian Church enacted in 1951, it was established that "in accordance with the provisions laid down in Chapter V of the Fetha Nagast, the bishops and episcopoi of Ethiopia shall come to the See of the Metropolitan twice a year and shall discuss and define legal matters concerning the Church and matters of faith and spirituality"[102]. This statutory provision refers to the chapter on bishops, but it is not clear whether the reference is made to the provision identified as "first" or to that indicated as "second" in the chapter mentioned.

Besides, it seems that this statutory provision has not immediately been put into effect. In fact, in the synod held in May 1952, a proposal was made "to hold bishops' synod regularly twice a year; the first in October and the second in the fourth week after Easter in accordance with the provisions laid down in the Fetha Nagast"[103]. By this proposal, synodal meetings were intended to take place in accordance with the "first" provision of the chapter on bishops. This, in effect, became the traditional practice in the Ethiopian Orthodox Church, which means that bishops' synodal meetings are held regularly twice a year: in the fourth week after Easter and in mid-October.

In almost every synodal meeting which took place in this period, references were made to the Fetha Nagast, sometimes explicitly and sometimes implicitly, as the law in adherence to which the synods were being held. To give an example: in the synod held in May 1954, the Chairman declared in his opening address that "the Fathers used to hold a synod twice a year for the purpose of consulting each other about the spreading of religion and the increase of the faithful, and this is laid down in the Fetha Nagast"[104].

Lastly, the Fetha Nagast establishes that "no one except learned men shall ever stay near the bishops during the synod"[105]. In compliance with this, doctors, rectors of important churches and abbots of monasteries are usually admitted to synodal meetings[106].

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[101] See ZB, 4th year, n. 43, p. 354.
[102] *Rules for the bishops of the Ethiopian Orthodox Church*, op. cit., Art. 10, p. 9 .
[103] ZB, 7th year, n. 79, p. 640.
[104] *Ibidem*, 8th year, n. 103, p. 310.
[105] *Fetha Nagast*, ET, p. 37.
[106] ZB, 7th year, n. 90, pp. 156—58; 22nd year n. 24, p. 1; 24th year n. 52, p. 1.

IV. Norms regarding the clergy

The clergy in Ethiopia is composed of monks and secular clergy. Members of the secular clergy are normally married.

In the Fetha Nagast, there is a long chapter dealing with monks, (Chapter X). It contains rules of monastic life as well as rules regulating the administration of the monastery and the appointment and duties of the various officials, such as the abbot and the administrator (bursar) of the monastery. Although the rules of monastic life, the administrative structures and the offices within the Ethiopian monasteries correspond to those laid down in the Fetha Nagast, references to the latter with regard to monks and their rules are rarely encountered. Concerning monks and rules of monastic life, references are preferably made to works which specifically deal with monks and their lives, such as the monastic rules of St. Pachomius[107].

One of the few instances of reference to the Fetha Nagast with regard to monks is found in the Resolution drawn up in the first synod held in 1949. By this Resolution, it was declared that "If there are any faithful who desire to embrace monastic life, they must enter into a convent, men in monasteries and women in nunneries. There they must acquaint themselves with the rules of monastic life and complete the noviciate. After they have been examined in accordance with the provisions laid down in the spiritual law, Chapter X, Section II, on monks and nuns, and have understood the meaning of monastic life we propose that they be accepted as monks (or nuns), pursuant to their declaration that they can abide by the monastic life and after they have taken their vows before the abbot or abbess"[108].

The authority of the Fetha Nagast is more invoked in dealing with priests who do pastoral work and most of whom belong to the secular clergy.

In the above mentioned Resolution of 1949, it was established that "the task of spiritual father of the faithful dwelling around a church is reserved to the priests who serve and celebrate mass at that church. A priest is not allowed to become the spiritual father of the faithful who dwell outside the area of his church and belong to another church. If, for some reason, it is deemed necessary, the bishop or the episcopos of the diocese may grant the priest special permission to become spiritual father of the faithful of another church, after having previously asked and received the consent of the rector of that church. (Fetha Nagast, Chapter VI, p. 56)"[109]. The chapter indicated is that on priests and the page is pinpointed according to the Ge'ez text of the Fetha Nagast, published by I. Guidi[110]. The indicated page of the Fetha Nagast deals with canonical punishment of a priest who goes on a journey without the *litterae commendatiae* of his bishop or who "wants to go away from

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[107] *Ibidem*, 7th year, n. 91, p. 169.
[108] *Ibidem*, 4th year, n. 43, p. 355.
[109] *Ibidem*.
[110] Cf. fn. n. 45 *supra*.

his church" to another church without being duly authorized[111]. This is, therefore, not a question of a literal quotation as it appears to be, but only of an approximate reference.

In 1951, the permanent Holy Synod of the Ethiopian Church published a revised edition of the Resolution of the 1949 synodal meeting giving it the title *The First Synodal Issue*.

This Issue contains 12 articles, which are said to be formulated on the basis of the Fetha Nagast and the Sinodos[112], most of them concerning the clergy.

Art. 8 of the issue reads: "Any priest who wants to transfer from the church where he serves to another church of a different diocese must present to the bishop of the diocese credentials made out by the authorities of his place of origin, testifying that he was allowed to celebrate mass observing his marital or monastic status, and that he is in a regular position to continue the celebration of mass"[113]. The norm concerning the *litterae commendatiae* has been given a better formulation in this article. It reflects the provision of the Fetha Nagast which says: "No priest, monk or minister of the church may leave his post and go on a journey . . . without the knowledge of the bishop . . . and without a document certifying the uprightness of the traveller's faith and his ordination to his position in the church"[114].

By Art. 9 of the same issue priests are strictly commanded to keep their sacerdotal dignity. For this purpose they are enjoined not to frequent drinking houses or other dubious places and women. If they have to attend banquets in order to fulfil social obligations, they must be moderate in their drinking; they must be proper in their speaking, they must not cause quarrels or brawls, etc. Should priests disobey any of the above orders' "the first time, they shall be prohibited to perform priestly service for seven weeks; the second time, besides the seven weeks prohibition, they shall serve as deacons for one year; the third time, they shall be barred for good from priestly service"[115]. These regulations are based on the canons of the Fetha Nagast in the chapters dealing with priests (Chapter VI) and with the clergy in general (Chapter IX)[116]. The passage regarding punishments is an almost exact quotation of the Fetha Nagast's passage in Chapter IX which reads: "If a priest drinks, becomes inebriated . . . he shall be barred from any priestly service for seven weeks and shall be demoted to a lower position for one year . . ."[117].

A synodal meeting on diocesan level was held in Addis Ababa in 1967 with the participation of many doctors, rectors and deans of important churches. In the resolution issued at the end of the meeting the following items are found:

[111] *Fetha Nagast*, ET, pp. 45—46.
[112] Cf. ZB, 7th year, n. 91, p. 173.
[113] Holy Synod of Ethiopia, *First Synodal Issue*, Addis Ababa 1951, (December 1944 E. C.), Art. 8, p. 8.
[114] *Fetha Nagast*, ET, p. 62.
[115] Holy Synod of Ethiopia, *First Synodal Issue*, op. cit., Art. 9, p. 8—9.
[116] *Fetha Nagast*, ET, pp. 44—45, 60—61.
[117] *Ibidem*, p. 61.

1. "The duties and responsibilities of the priests are found defined in the Fetha Nagast and in the regulations enacted by the Holy Synod. Priests are therefore obliged to fulfil their duties and responsibilities in accordance with them"[118].

2. "Priests must know the interpretation of the Old and New Testaments on the basis of the training given in the church. If this is not possible they must have perfect knowledge of the interpretation of the four Gospels, the book of the Five Columns of the Mystery [of Faith] and the law of the Church"[119]. This is an implicit reference to a passage of the Fetha Nagast, which reads: "One who cannot interpret the words of the Divine Books accepted as good, especially the four Gospels, shall not be ordained"[120].

3. "In accordance with the regulations decreed by the Fathers, the duties of the priests are: teaching, preaching, baptizing, administering Holy Communion and blessing"[121]. This is an almost literal quotation of the Fetha Nagast which, in the chapter on priests, states that a priest has the "power to teach, to baptize, to say mass and to give benediction to the people"[122].

Priests in general are exhorted to conform to the respective canons of the Fetha Nagast in their conduct. In one instance, priests are reminded that they "will not meet with any difficulty, if they observe the provisions of the Fetha Nagast and abide by its teaching as contained in the chapter on priests"[123].

V. Norms regarding the sacraments

All the seven Sacraments have a more or less complete canonical discipline in the Fetha Nagast, although not in a systematic way[124].

In theory and in practice, the Ethiopian Orthodox Church recognizes the seven Sacraments[125]. Many canonical prescriptions, which are follow-

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[118] ZB, 22nd year, n. 25, p. 5.

[119] *Ibidem.* The same is decreed in the *First Synodal Issue,* op. cit., Art. 5, pp. 6—7. cf. also L. S. Habtemariam Workeneh, *Temherte Abe Neís,* (Teaching guide-lines for . . .), op. cit., p. 56. Metshafe Hamestu A'made Mistir, (The book of the Five Columns of the Mystery [of Faith] is a book of catechetical contents. cf. I. Guidi, *Storia della Letteratura Etiopica,* op. cit., p. 76.

[120] *Fetha Nagast,* ET, pp. 43, 56.

[121] ZB, 22nd year, n. 25, p. 5.

[122] *Fetha Nagast,* ET, p. 44.

[123] ZB, 22nd year, n. 49, p. 2.

[124] Cf. *Fetha Nagast,* ET, Baptism and Confirmation Chapter III, Eucharist as sacrifice Chapter XII, as sacrament Chapter XIII, Unction of the sick Chapter XXI, Holy Orders Chapters V, VI, VII, VIII, IX, Marriage Chapter XXIV. The sacrament of penance is dealt with in Chapter LI, but though it is considered as "spiritual medicine", the necessary requirements such as a good spiritual father and a willing penitent can seldom be met, thus confession of sins is not obligatory. (cf. *Ibidem,* p. 310 and fn. n. 35). In the Ethiopian Orthodox Church, however, the sacrament of penance is recognized and highly recommended. cf. L. S. Habtemariam Workenh, *Ye-Itiopia Ortodox Tewahdo . . .* (The Faith and Teaching . . .), op. cit., pp. 115—118. cf. also A. F. Matthew, *The Teaching of the Abyssinian Church,* po. cit., pp. 35—36, 37.

[125] Cf. *The Ethiopian Orthodox Church,* op cit., pp. 99—124.

ed by the Ethiopian Church in the administration of Sacraments, are found in the book of the Fetha Nagast. This, however, does not mean that their canonical origin is the Fetha Nagast. In fact, it must be retained that the canonico-ritual discipline of the Sacraments has its roots in ancient church practices and in previous legislation such as the Sinodos and the Didascalia. One exception to this is the sacrament of marriage, the actual canonical discipline of which depends almost entirely on that of the Fetha Nagast as will be seen later.

References to the Fetha Nagast are, however, found with regard to the greater number of the sacraments. In a work on the sacrament of baptism by a group of Ethiopian Doctors of the Orthodox Church[126], references are made to the Fetha Nagast. With regard to the matter of baptism, it is stated that in accordance with the provisions of the Fetha Nagast[127], baptism must be administered at a running stream, or in water that runs in the baptistery; in case of necessity, water drawn elsewhere shall be poured into the baptistery[128]. Again, in accordance with the provisions of the Fetha Nagast[129], those to be baptized must be undressed, and precedence must be given to babies over adults[130]. Referring to the Fetha Nagast[131], it is also said that after baptism the christened shall receive Holy Communion[132]. Furthermore, in adherence to the provisions of the Fetha Nagast[133], men shall not stand godfathers to women nor shall women stand godmothers to men, but the males shall stand to the males and the females to the females[134].

All these provisions are regularly observed by the Ethiopian Church. It is to be noted that with regard to the water for baptism, the provision indicated in the Fetha Nagast as the rule to be followed "in case of necessity" is the one followed at present. This means that water drawn elsewhere and poured into the baptistery is used for baptism.

In another work, references are made to the Fetha Nagast with regard to the necessity of baptism for all, without distinction of sex, age and time, and that it can never be repeated[135]. Yet, all of these questions are not strictly pertaining to canonical discipline.

Many canonical norms regarding the Eucharist as sacrifice and as sacrament are observed in the Ethiopian Church as laid down in the Fetha Nagast. Explicit reference to the Fetha Nagast is made by the Doctors of the Ethiopian Church[136] in dealing with the fast to be observed before receiving the Eucharist[137]. Once the question also arose on the fast to

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[126] *Serwe Haimanot,* (The Fundaments of Faith), by a group of scholars Doctors of the Ethiopian Church, Addis Ababa 1968.

[127] *Fetha Nagast,* ET, p. 14.

[128] *Serwe Haimanot,* (The Fundaments of Faith), op. cit., p. 124.

[129] *Fetha Nagast,* ET, p. 16.

[130] *Serwe Haimanot,* (The Fundaments . . .), op. cit., p. 124.

[131] *Fetha Nagast,* ET, p. 15.

[132] *Serwe Haimanot,* (The Fundaments . . .), op. cit., p. 124.

[133] *Fetha Nagast,* ET, p. 14.

[134] *Serwe Haimanot,* (The Fundaments . . .), op. cit., p. 124.

[135] *Fetha Nagast,* ET, p. 14; L. S. Habtemariam Workeneh, *Ye-Itiopia Ortodox* . . . (The Faith and . . .) op. cit., pp. 108—109.

[136] A. F. Matthew, *The Teaching of the Abyssinian Church* . . . op. cit., pp. 43—44.

[137] *Fetha Nagast,* ET, p. 68.

be observed by babies who, at baptism, must receive Holy Communion[138]. The question was settled by abiding by the provision laid down in the Fetha Nagast[139].

With regard to the sacrament of Holy Orders, a distinction is made on the basis of the Fetha Nagast, between the major orders, which are the diaconate, the priesthood and the episcopate conferred by the imposition of hands[140], and the minor orders which comprise the orders of door-keeper, singer, anagnost and subdeacon conferred by a special formula of benediction by the bishop[141]. Of greater canonical relevance is the reference to the Fetha Nagast[142] in affirming that physical integrity and mental sanity, which are required for the appointment of bishops, are also required for the ordination of priests[143]

In the book "The Teaching of the Abyssinian Church" the Ethiopian Doctors themselves refer to the Fetha Nagast (ordinances of the church)[144], to illustrate the prerequisites and the obstacles in acceding to the order of episcopate[145]. The same Doctors rely on the Fetha Nagast in affirming that a favourable testimony[146] is necessary for the ordination of priests[147].

Concerning the sacrament of the unction of the sick, the said book makes implicit reference to the Fetha Nagast as commanding[148] the priests to anoint sick persons with consecrated oil[149].

Lastly, concerning the sacrament of marriage, it is first of all to be noted, that its canonical legislation is, by exception, included in the secular part of the Fetha Nagast. This seems to be done on the preumption that marriage has not only religious bearing but also a civil one which must be regulated by civil laws.

Thus civil and canonical laws concur in regulating marriage, each one in its own sphere of competence. As has been said before, the sacrament of marriage is the one in which the Ethiopian Orthodox Church most heavily relies on the Fetha Nagast for its canonical provisions.

After having dealt with the aims and purposes of marriage, the Fetha Nagast goes on to consider matrimonial impediments. There are fifteen impediments, the most important of which are: Consanguinity, affinity, spiritual relationship, guardianship and relationship resulting from adoption, disparity of worship, religious vows, impotence, the fourth marriage

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[138] ZB, 21st year, n. 1, pp. 3—4.
[139] *Fetha Nagast*, ET, p. 15.
[140] *Ibidem*, pp. 27—28, 43, 48, 55.
[141] *Ibidem*, p. 52—53; L. S. Habtemariam Workeneh, *Temherte Abe Neís*, (Teaching guide-lines . . .), op. cit., pp. 35—36.
[142] *Fetha Nagast*, ET, p. 26.
[143] L. S. Habtemariam Workeneh, *Temherte Abe Neís*, (Teaching guide-lines . . .) op. cit., pp. 57—58.
[144] *Fetha Nagast*, ET, p. 24 ff.
[145] A. F. Matthew, *The Teaching of* . . . op. cit., p. 50.
[146] *Fetha Nagast*, ET, pp. 43, 55.
[147] A. F. Matthew, *The Teaching of the Abyssinian Church* . . . op. cit., p. 51.
[148] *Fetha Nagast*, ET, p. 121.
[149] A. F. Matthew, *The Teaching of the Abyssinian Church* . . . op. cit., p. 57.

and onwards[150]. The impediment of nonage is mentioned when dealing with consent[151].

All these impediments are, of course, recognized by the Ethiopian Orthodox Church and the reckoning of the degree of relationship preventing marriage such as consanguinity, affinity and spiritual relationship is close to that of the Fetha Nagast[152]. Some authors still maintain, on the basis of the prescription of the Fetha Nagast, that the fourth marriage and onward is an impediment to contract a valid marriage[153].

As for the impediment of nonage, it is to be noted that it has undergone some changes through recent regulations of the Ethiopian Church. In fact, while the Fetha Nagast prescribed that a man must be 20 years old and a woman 12 years of age in order to contract a valid marriage, the recent regulation of the Ethiopian Church establishes a minimum age of 18 years for the man and 15 years for the woman[155].

In the provisions on betrothal, the Fetha Nagast says that "betrothal is a pact and promise which precedes marriage". It further establishes that "the pact is made conclusive as follows: the couple must conclude the betrothal in the presence of two elder priests who shall impose their hands on them, [bless them] with the cross which seals [their union] and [place] rings [on their fingers]"[156].

The Ethiopian Doctors give the following rendering of the above passage: "Betrothal shall be concluded by joining the hands of the couple, making them hold the cross and placing the rings on their fingers[157]. The conclusion of betrothal as practised according to the regulations of the Ethiopian Church reflects, though slightly, the above described formalities. According to the regulations, the couple must, indeed, conclude their betrothal in the presence of a priest by laying their hands on the Gospel and the cross and exchanging their final promise[158]. It is strange, however, that the same regulations prescribe that a formality closer to the rendering of the Doctors be also performed at the wedding celebration. In fact, it is said that in the marriage ceremony "they shall place rings on the fingers of the spouses and they shall make them hold the cross"[159].

The most important item of the canonical discipline of marriage, as laid down in the Fetha Nagast, is the wedding celebration. This is defined as "the consent of man and woman manifested before true witnesses and

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[150] *Fetha Nagast*, ET, pp. 134—135.

[151] *Ibidem*, p. 142.

[152] Cf. *Fetha Nagast*, ET, pp. 134, 136; cf. also Holy Synod of the Government of Ethiopia, (*Rectius*: of the Orthodox Church of Ethiopia), *Regulations concerning marriage*, (1943), pp. 25—26. cf. Ethiopian Orthodox Church, *Metshafe Teklil*, (Ritual of Marriage), 1964, p. 15.

[153] Cf. L. S. Habtemariam Workeneh, *Ye-Itiopia Orthodox* . . . (Faith and Teaching . . .) op. cit., p. 103.

[154] *Fetha Nagast*, ET, p. 142.

[155] See *Regulations concerning Marriage*, op. cit., p. 19; Metshafe Teklil, (Ritual of Marriage), op. cit., p. 15.

[156] *Fetha Nagast*, ET, p. 138.

[157] *Fetha Nagast*, Photo Offset Edition . . . op. cit., p. 314, col. 2—3.

[158] *Regulations concerning Marriage*, op. cit., p. 20.

[159] *Ibidem*, p. 21.

accompanied by the prayer of the priests"[160]. The Fetha Nagast goes further in saying that a wedding shall not be celebrated "secretly without the gathering of many people", but it shall be celebrated "in public". Besides, "marriage does not take place and shall not be performed without the participation of priests and a prayer offered over the spouses; the Holy Eucharist shall be given to them at the time of wedding, by which both become united and become but one body as Our Lord — to Him be glory — has said. In the absence of this form, one shall not consider them as [validly] married, since it is the prayer which hands over the woman to the man and the man to the woman"[161].

In the above passages, we find what are commonly called the essential elements of the canonical form of marriage, i. e., the presence of the priest, the presence of the witnesses, and, according to the Oriental tradition, the liturgical prayer. In addition, there is one more element, i. e., the Holy Eucharist.

The Holy Eucharist or the receiving of the Holy Communion is regarded by the Ethiopian Orthodox Church as the most important requirement or, in other words, the most essential element of the canonical form of marriage. The Church puts special stress on the Eucharist as the element by which the spouses "become united and become but one body". The clause "in the absence of this form" is understood to mean "without the Holy Eucharist", thus marriage celebrated without receiving the Holy Communion is not a valid marriage. The Eucharist or the Holy Communion is therefore the essential element conditioning the validity of marriage[162].

The Ethiopian Orthodox Church, referring to the Fetha Nagast sometimes explicitly and othertimes implicitly, has constantly maintained and taught that a marriage contracted in proper canonical form or a religious marriage, is only that performed with the Holy Communion. Any marriage contracted without receiving the Holy Communion, is not celebrated in due canonical form and is not to be considered a valid marriage[163].

In 1961 there was a case of a young couple who had contracted a marriage in the presence of the priest and with liturgical prayer, but the couple had not received the Holy Communion. The case was commented on with disapproval and it was strongly urged that in the future, marriages would have to be celebrated with the liturgical prayer and the Holy Communion[164].

It is significant that a wedding celebrated in the canonical form, as recognized and practised by the Ethiopian Church, is commonly called "Kidan Bequrban" or "Teklil Bequrban" that is "Marriage by the Holy

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[160] *Fetha Nagast*, ET, p. 142.

[161] *Ibidem*.

[162] Cf. The Motu Proprio *Crebrae allatae*, Can. 85; cf. also V. J. Pospishil, *Code of Oriental Canon Law, The Law of Marriage*, (Chicago 1962), p. 135 ff.

[163] *Metshafe Teklil*, (Ritual of Marriage), op. cit., p. 17; ZB, 21st year, n. 11, p. 3; 22nd year, n. 36, p. 2; 21st year, n. 26, p. 2.

[164] ZB, 21st year, n. 39, p. 1, 4. This reveals the attitude of the Church with regard to this kind of marriage. Yet, this case is not an isolated one; such marriages are common, especially in the towns.

Communion". Of couples, whose marriage is performed in the above form, it is said "Querrebu", which means literally "they have received the Holy Communion" but is understood to mean "they have celebrated their wedding with the Holy Communion." All this indicates that within the Ethiopian Church the most essential element of the religious marriage is the Holy Communion.

A marriage contracted with the Holy Communion entails certain consequences, one of which is that such a marriage cannot be dissolved, except in a few exceptional cases such as, for instance, in the case of adultery[165]. Aware of the indissolubility of this kind of marriage, the greater number of young couples prefer to contract civil marriages which may be dissolved. Even if they do celebrate their wedding in the presence of a priests and with liturgical prayer, they avoid the receiving of the Holy Communion in order not to contract an indissoluble marriage. A marriage with Holy Communion is mostly contracted by deacons and by mature people who after a prolonged union by civil marriage intend to consecrate such a union by religious marriage.

Another consequence of a marriage with the Holy Communion is that any case affecting the sacramental character of this marriage is under the jurisdiction of the religious authority. There are records of cases which show that the said jurisdiction is recognized by the civil authorities and that it is exercised by the Ethiopian Church. In 1956, a case of a marriage contracted by Communion was brought before the ecclesiastical court. The court decided on the case and delivered its sentence by quoting a passage from the Fetha Nagast in support of its jurisdiction and the motivation of its sentence[166]. In 1966, as already mentioned, a case for the dissolution of a marriage was filed with the Imperial High Court. In the dispute it was found that the marriage had been celebrated with the canonical form of the Holy Communion. The court, therefore, making reference to the Fetha Nagast, held that for such a marriage only the religious authority was competent to make a judicial decision[167].

The Ethiopian word for "Marriage" or "Wedding" is "Teklil", which means "Coronation". This may be explained by the marriage liturgy of the Ethiopian Church where there is the ceremony of the solemn coronation of the spouses. The nuptial coronation, common to all Oriental rites[168], is bestowed upon those who enter into marriage for the first

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[165] Section 6 of Chapter XXIV of the Fetha Nagast deals with marriages which can be dissolved, on the ground that:
1) husband and wife choose monastic life;
2) one of the spouses refuses to perform the marital union;
3) it is a marriage in which mutual help is not attained, that is, through
   a) committing adultery,
   b) harm to the life of one of the spouses by the other, (See *Fetha Nagast*, ET, pp. 148—154). The reason more frequently mentioned in Ethiopia is, however, committing adultery. cf. L. S. Habtemariam Workeneh, *Ye-Itiopia Ortodox . . .* (Faith and Teaching . . .), op. cit., p. 122; cf. also Abba Philippos Mengustu, *Sele Hegawi Gabicha*, (On the lawful Marriage), Addis Ababa 1969, pp. 24, 52, 63.

[166] ZB, 10th year, n. 4, p. 354. For the passage of the Fetha Nagast quoted by the court, see *Fetha Nagast*, ET, pp. 152—153.

[167] Cf. *Journal of the Ethiopian Law*, Vol. III, n. 2, (1966), pp. 390—398.

[168] See V. J. Pospishil, *Code of Oriental Canon Law, The Law of Marriage*, op. cit., p. 191.

time[169]. The canonical background of the ceremony of coronation, at least for the Ethiopian Orthodox, is found in the Fetha Nagast which reads: "Nuptial coronation is bestowed upon the virgin man and woman during their marriage"[170].

It may happen that one of the spouses is a virgin while the other is not because he or she enters into a second marriage. In this case, nuptial coronation shall be bestowed only upon the virgin one. This is in accordance with the Fetha Nagast, which establishes: "If one of the spouses is a virgin, only that person shall receive the nuptial coronation; this law applies equally to men and women"[171].

The Fetha Nagast contains special provisions for those who enter into a second marriage. In the first place, the ceremony of the nuptial coronation does not take place in that kind of marriage. In fact, the Fetha Nagast establishes that "men are permitted to marry a second time without coronation"[172]. In another place it prescribes: "If those who marry are widows, the nuptial coronation shall not be performed upon them"[173]. In the second place, the entire wedding ceremony and the prayers must be different from the first wedding or the wedding of virgins. The prayers must consist of penitential prayers. The Fetha Nagast prescribes: "If they marry a second time, the prayer of absolution shall be said over them by the priest"[174]. It goes on to say that "marriage to a second woman is different. It is inferior to the first marriage. With respect to this second wife, it is laid down in the canons that she shall not have the nuptial coronation, but upon her the penitential prayer shall be said"[175].

These provisions are applied in the Ethiopian Orthodox Church with regard to widows and widowers who contract a second marriage and with regard to those who want to regulate a preceding civil marriage by contracting a Communion marriage. The latter are called "penitents"[176]. According to the marriage ritual of the Ethiopian Church, the penitential prayers recited over this cathegory of spouses are those which are commonly called "The Absolution of the Son" and the prayer known as "The penitential prayer of St. Basil"[177]. During these marriages also penitential Psalms are recited such as Psalms 32, 50, 25[178].

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[169] Cf. *Regulations concerning Marriage*, op. cit., p. 21; *Metshafe Teklil* (Ritual of Marriage), op. cit., p. 17, (Ceremony pp. 100—110).

[170] *Fetha Nagast*, ET, p. 143. (Read: "nuptial coronation" instead of "blessing").

[171] *Ibidem*, (Read: "nuptial coronation" instead of "nuptial blessing") cf. *Regulations concerning Marriage*, op. cit., p. 24.

[172] *Fetha Nagast*, ET, p. 143.

[173] *Ibidem*. See fn. n. 171, *supra*.

[174] *Fetha Nagast*, ET, p. 143.

[175] *Ibidem*, p. 132. See fn. n. 171, *supra*.

[176] *Regulations concerning Marriage*, op. cit., p. 24; *Metshafe Teklil* (Ritual of Marriage), op. cit., p. 134.

[177] Both of these penitential prayers are part of the Ethiopian Mass; they are also reproduced in the *Metshafe Teklil* (Ritual of Marriage), op. cit., pp. 134, 172.

[178] Cf. *Metshafe Teklil* (Ritual of Marriage) op. cit., pp. 142, 146, 152.

VI. Norms regarding fasts and Holy days

a) The Fetha Nagast defines fasting as "abstinence from food . . . observed by man at certain times determined by law to attain forgiveness and great reward, obeying thus the one who fixed the law. Fasting [also] serves to weaken the force of concupiscence so that [the body] may obey the rational soul"[179].

In another place it is stated that "fasting is the tribute of the body, just as giving alms is the tribute of wealth". Moreover, it is said that as in praying one worships the Lord with the spiritual half of one's nature, so in fasting one worships the Lord with the animal half of one's nature[180].

The mystic of fasting, as conceived in the above, is often affirmed and taught to the faithful by the Ethiopian Church with explicit reference to the Fetha Nagast[181].

The fasting periods to be observed during the year as established by the Fetha Nagast are the following:

1. The time of lent and Holy week.
2. All Wednesdays and Fridays.
3. The three days of fast of the people of Niniveh, which are observed in the week before Lent.
4. The fast on the Eves of Christmas and Epiphany.
5. The fast of Advent, otherwise called the Fast of the Prophets.
6. The fast of the Apostles, which follows the feast of Pentecost and ends at the feast of the Apostles Peter and Paul on the 5th of Hamle (Mid-July).
7. The fast preceding the feast of the Assumption of Our Lady. There are exceptions to the fasts on Wednesdays and Fridays, i. e., the fasting on these days need not be observed during the fifty days between Easter and Pentecost and at the feasts of Christmas and Epiphany, if these feasts fall on the said days. The Fetha Nagast goes further in establishing that during lent and Holy Week the fast must be observed until the end of the day, while at other times one must fast until the ninth hour, that is, until 3.00 p. m.[182].

With regard to abstinence, the Fetha Nagast prescribes that during the fasting periods no blooded animal nor any product from animals such as cheese, butter etc., shall be eaten[183].

On Saturdays and Sundays one shall not fast, but one shall abstain from milk products[184]. Holy Saturday is an exception, because on this day the fast must be observed[185].

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[179] *Fetha Nagast*, ET, p. 93.
[180] *Ibidem*, p. 94.
[181] ZB, 7th year, n. 94, p. 221; 14th year, n. 5, p. 113; 24th year, n. 44, p. 3.
[182] Cf. *Fetha Nagast*, ET, pp. 93—94.
[183] *Ibidem*, p. 93.
[184] *Ibidem*, pp. 94, 115.
[185] *Ibidem*, p. 115.

The above listed fasting periods are known as "the seven official fasting periods for the Ethiopian Christians"[186]. The fasts of the said periods are identified as canonical or "legal" fasts because they are based on and imposed by the Fetha Nagast. As legal fasts their observance is binding for the faithful and they must be observed publicly[187].

In fact, all fasting periods and the mode of fasting as laid down in the Fetha Nagast are strictly observed by all faithful members of the Ethiopian Orthodox Church.

In recent times, however, some mitigating measures seem to have been adopted. For instance, of the seven fasting periods, the fast of the Apostles and the fast of Advent are actually only compulsory for the clergy[188]. Another mitigating measure is found with regard to the mode of fasting, and the following quotation shows the actual practice: "During fasting periods . . . no food or drink is taken before noon, at the earliest; even then only a simple repast should be taken . . ., In the Holy Week no food is taken before 1. 00 p. m. or later"[189]. This is a mitigation in comparison to the prescription of the Fetha Nagast which demands that during Lent and Holy Week the fast must be observed until the end of the day and at other fasting times until 3. 00 p. m.

The law of the fast is also applied to the Holy Communion at Mass. Thus, in order not to break fast, during fasting periods, Mass cannot take place before 1. 00 p. m. and in some monasteries and churches it may not even begin until 3. 00 p. m. Sundays and Saturdays are exceptions; then Mass may begin in the early morning[190].

b) Dealing with Holy Days or festive days the Fetha Nagast gives precedence to Sunday. Sunday is the holiday on which Christians must not work but must rejoice with spiritual cheerfulness. "On Sunday no suit or judgement shall take place . . . Everyone shall go to church on that day. Each of the faithful shall come to church with purity and humility"[191], the reason being that Sunday is the day of the resurrection of Our Lord Jesus Christ[192].

Attention is also given to Saturday. In one place the Fetha Nagast says that Christians need not stop working on Saturday as the Jews do, but as Christians they shall work on this day. "You shall not observe Saturday as a holiday as the Jews do"[193]. In another place it recommends: "Gather every day in the church, especially on Saturday and on the day of resurrection [which is] Sunday . . . Servants shall work five days, but on Saturday they shall go to church to be instructed in the service

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[186] See *The Church of Ethiopia*, op. cit., p. 70.

[187] Cf. ZB, 22nd year, n. 17, pp. 1, 3; cf. also Admasu Jemberie, *Quekha Haimanot*, (The Rock of the Faith), op. cit., p. 238.

[188] *The Church of Ethiopia*, op. cit., p. 70.

[189] *Ibidem.*

[190] *Ibidem*, p. 66.

[191] *Fetha Nagast*, ET, p. 114.

[192] *Ibidem*, pp. 114, 115.

[193] *Ibidem*, p. 114.

of God, because the Lord rested on Saturday when He finished the creation of the creatures"[194].

With regard to Sunday and the obligation to go to church, the Ethiopian Church emphasizes this observance by explicit reference to the prescriptions of the Fetha Nagast[195].

With regard to Saturday, the question of its observance has been the cause of long discussions and agitations in Ethiopia, from earliest times, in some instances with blood-shed. In the 15th century, under the rule of Emperor Zer'a Yacob, the discussion on the observance of Saturday reached a climax between the two great religious orders of Teklehaimanot and Ewstatios. The monks of Ewstatios strongly upheld the observance of Saturday as obligatory on the grounds of the prescriptions of the Sinodos, while those of Teklehaimanot were against its observance[196]. Zer'a Yacob put an end to the question in ruling that Saturday ought to be observed like Sunday. It is said that many monks of the order of Teklehaimanot were punished by death as a result of their refusal to adhere to the ruling of the Emperor[197].

It has been seen above that the provisions of the Fetha Nagast on Saturday are a little ambiguous, (Christians need not stop working as the Jews do on Saturday; Saturday shall be a day on which Christian congregate in the church; servants should be allowed to go to church to be instructed). In substance, however, the Fetha Nagast seems to prescribe that Saturday is to be observed but not in the manner of the Jews, that is, as a day of strict obligation.

In the synod of the Ethiopian Orthodox Church, held in May 1954, the question of the observance of Saturday was dealt with. On that occasion, a speaker supported the observance referring to the disposition of Zer'a Yacob and the provisions of the Fetha Nagast. "The provisions of the Fetha Nagast on Saturday" — the speaker observed — "must be interpreted in such a way that on that day, without being as scrupulous as the Jews are, who cannot even bake bread, heavy work like ploughing, digging, cutting wood and harvesting should be avoided. Thus, Saturday must be observed as a holy day devoted to gathering in churches and to religious instruction"[198].

In practice, people do observe Saturday in the above manner in most parts of Ethiopia today. It is worth adding that, apart from the prescriptions of the Sinodos and the Fetha Nagast, the observance of Saturday is one of the remnants of Judaic elements in Christian Ethiopia[199].

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[194] *Ibidem*, pp. 114—115.

[195] Cf. ZB, 8th year, n. 101, pp. 265—266.

[196] Cf. C. Conti Rossini, Il "Senodos" Etiopico, op. cit., p. 44 ff.; I. Guidi, *La Chiesa Abissina*, excerpted from *Oriente Moderno* Anno II, nn. 2, 3, 4, (1922), p. 8.

[197] Cf. J. B. Coulbeaux, *Histoire Politique et Religieuse de l'Abyssinie*, Vol. II, (Paris 1929), pp. 15—16; cf. also R. K. Pankhurst (ed.) *The Ethiopian Royal Chronicles*, Addis Ababa, Oxford University Press 1967), pp. 39—40.

[198] Cf. ZB, 8th year, n. 103, pp. 313—314.

[199] Cf. *The Ethiopian Orthodox Church*, op. cit., pp. 123—124.

The Fetha Nagast lists other feasts, which are indicated as "the feasts of Our Lord", because they are connected with the major events in the life of Christ. These feasts are:

1. The feast of Christmas,
2. The feast of Epiphany,
3. The feast of Palm Sunday (Hisanna),
4. The feasts of Incarnation brought to an end by the Resurrection of Our Lord from death[200],
5. The feast of Ascension,
6. The feast of Pentecost,
7. The feast of Tabor, that is, the feast of Transfiguration.

These "seven feasts" are declared as solemn and major feasts to be celebrated by Christians[201]. A little further down the Fetha Nagast mentions the feast of the Incarnation or Annunciation, but since this feast is to be considered a feast of Our Lady it is not counted with the "seven feasts" of Our Lord[202].

The Ethiopian Church recognizes these feasts and celebrates them as the Lord's principal feasts. However, in the practice of the said Church, they are reckoned in a different way. In fact, contrary to the wording of the Fetha Nagast, according to the interpretation of the Ethiopian scholars, the feast of the Incarnation or Annunciation is considered as one of the Lord's feasts[203]; a different reckoning is also adopted for the feasts of the Incarnation (see *supra* n. 4), since, instead of being considered as one feast, they are counted separately as Good Friday and Easter. Thus, the number of feasts is increased from seven to nine and they are listed as follows: 1) The Incarnation (Annunciation), 2) The Birth of Christ, i. e., Christmas, 3) Epiphany, 4) Hosanna (Palm Sunday), 5) Crucifixion (Good Friday), 6) Easter, 7) Debre Tabor, (Transfiguration), 8) The Ascension, 9) Pentecost[204].

Conclusion

The purpose of this study is to demonstrate the status of the Fetha Nagast in the actual practice of the Established Ethiopian Orthodox Church by means of a selected documentation. This study has, therefore, not a speculative character but rather one of documentation.

From what has been illustrated in the above sections, it becomes clear that a great part of the Fetha Nagast pertaining to religious matters still

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[200] These Feasts are Good Friday and Easter.

[201] Cf. *Fetha Nagast*, ET, p. 115.

[202] Cf. I. Guidi, *Il "Fetha Nagast"* (Italian Translation), op. cit., p. 194; also *Fetha Nagast*, ET, p. 115, fn. n. 14.

[203] Cf. *Fetha Nagast* ET, p. 115 and fn. n. 14. The English rendering follows the above interpretation.

[204] Cf. *The Curch of Ethiopia*, op. cit., pp. 70—71.

has the authority of canon law in the Church of Ethiopia. It is still recalled, cited and referred to as ecclesiastical law in the Church's official acts such as regulations, Synodal issues, resolutions and acts of judiciary practice. Controversial matters or doubts rigarding actual cases involving canon laws are settled according to the provisions of the Fetha Nagast. Church scholars resort to it in order to prove, confirm or support opinions on canonical matters.

There are other documentations giving examples of application and reference to the canons of the Fetha Nagast, on such matters, for example, as worship and sacraments. But for the sake of avoiding further prolixity, they are omitted here.

Concerning its legal bearing, it may be said, therefore, that the Fetha Nagast has rendered and still is rendering a valuable service to the Church of Ethiopia. But in addition to that, the Fetha Nagast has played an important role in the history and life of the Ethiopian Orthodox Church in many other respects, too. As is well known, Ethiopian Christian literature, such as ascetical, theological and hagiographical writings, has depended heavily on Christian sources, originating in the East. This dependence also exists with regard to the sources of canonical matters, one of which is the Fetha Nagast. Together with other Oriental Christian sources, the Fetha Nagast has, therefore, had the task and the merit of having contributed to the opportunity of the Ethiopian Church sharing in the immense deposit and riches of Christian Oriental culture. This in turn has meant that the Ethiopian Church has always been able to maintain its relationship to the Oriental Christian world, despite difficulties of geographical distance and politico-historical events causing Ethiopia to be isolated.

Moreover, thanks to the assimilation of Oriental Christian culture, the Orthodox Church of Ethiopia has always kept its identity of an Oriental Church.

Besides its role in the Church of Ethiopia, the Fetha Nagast also deserves to be mentioned for the valuable contribution it has made outside this Church. It has been, in fact, enumerated and placed among the sources for the codification of Oriental Canon Law, an undertaking conducted under the auspices of the Sacred Congregation for the Oriental Churches[205].

No type of legislation has a static character. Legislations are subject to change and development necessitated by circumstances of time and place. This is what might te termed the dynamism of law. From this process of change the Fetha Nagast cannot be exempted; on the contrary, it can be said that this process is even foreseen and assumed by the Fetha Nagast itself. In effect, it empowers the head of the church "to add [new laws] or to repeal [existing ones] . . . in the measure that he sees as advantageous in his time"[206].

It is true that the Ethiopian Church considers the Fetha Nagast as a work of great value summarizing a vast amount of canonical legislation. But the fact that it is ancient and not responding to and satisfying the

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[205] P. Mauro da Leonessa, *Testi di diritto antichi e moderni riguardanti gli Etiopi*. Codificazione canonica orientale, Fonti, Fasc. V, Roma 1931.

[206] *Fetha Nagast*, ET, pp. 310, 5.

needs of the present time has created some uneasiness. Hence, the desire for a legislative renewal is often expressed by the learned members of the Ethiopian Church. In several Synodal meetings the necessity of revising, improving and updating the church legislation has been brought up. In one of the meetings, the above mentioned passage of the Fetha Nagast was cited to demonstrate the necessity and the lawfulness of the church authorities' actions of adding or adapting laws to given problems and situations[207].

It is in response to these desires for renewal that from time to time regulations and resolutions are elaborated and published by the permanent Holy Synod and by synodal meetings held at given times. In all of these decrees, attempts are made to update the provisions of the Fetha Nagast and to enact new provisions regulating new situations and problems within the church.

It is supposed that the task of systematic revision of the church legislation and a proper arrangement of the various regulations will be carried out in the future with the purpose of giving an up-to-date legislation to the Church of Ethiopia. There is no doubt that the Fetha Nagast will be the fundamental law on which the new legislation will be elaborated.

[207] ZB, 7th year, n. 79, p. 640.

THE ANCIENT ORIENTAL SOURCES OF CANON LAW AND THE MODERN LEGISLATION FOR ORIENTAL CATHOLICS

IVAN ŽUŽEK S. I.

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The title of this paper does not say precisely what is intended by a "modern legislation for Oriental Catholics". A further delimitation is necessary. By "modern legislation" I mean the four *motu proprios* of Pope Pius XII, promulgated shortly before the Second Vatican Council in the years 1949—1957. The four *motu proprios*, as is well known, comprise the Law on Marriage, Ecclesiastical Tribunals, Religious, Temporal Goods of the Church, and Persons[1]. These four *motu proprios* contain 1574 canons[2] and constitute a body of laws that is still "modern", even after the *aggiornamento* of Vatican II, since it is still in force and valid, *integer et sanctus*, except in the case of those canons that were formally (*aperte*) abrogated by the Council, according to the official declaration of May 2nd, 1967[3], that was made against some canonists, myself included[4], who were rashly casting doubts on the validity of many canons of this code after the Council's decrees. The canons that were formally abrogated by the Council are important, but few in number, and one cannot say that the code is "modern", if one compares it to the *aggiornamento* that Vatican II seems to require. Frankly, from this point of view, the code appears to me rather antiquated, even though, as a whole, it has not yet attained its majority (*maior aetas*), which for Orientals is 18 years.

However, this paper intends to speak not on what is modern in the four *motu proprios*, but on what is ancient. My aim is to show to what extent the Holy Canons of the Councils, Synods, and Fathers, together with other genuinely Oriental sources of ecclesiastical discipline, are reflected in them. It is hoped that this paper may not prove to be unavailing for a future *aggiornamento* of the code. One cannot sufficiently stress the Council's explicit demand that Oriental Catholics, wherever

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[1] Motu proprio "Crebrae allatae", AAS 41 (1949) 89—119; Mp. "Sollicitudinem Nostram", AAS 42 (1950) 5—120; Mp. "Postquam Apostolicis", AAS 44 (1952) 67—152; Mp. "Cleri sanctitati", AAS 49 (1957) 433—603: they will be quoted as follows — CA, SN, PA, and CS.

[2] It is not accurate to say 1590 canons, as is usually done, since canons 5—12 and 85—91 of SN are repeated respectively in CS 138—154, 286—290, 294, 298, 327 and 329.

[3] In the Mp. "Episcopalis potestatis" of May 2nd, 1967, no. 1: "quas leges providentissima Mater Ecclesia litteris Apostolicis *Crebrae allatae* (22 febr. 1949), *Sollicitudinem Nostram* (6 ian. 1950), Postquam Apostolicis Litteris (9. febr. 1952), *Cleri sanctitati* (2 iun. 1957), pro Ecclesiis Orientalibus sanxit atque aliis deinceps editis documentis statuit nec revocavit, integras et sanctas declaramus, nisi eas Concilium Oecumenicum Vaticanum II aperte abrogaverit aut iis in quibusdam obrogaverit vel derogaverit".

[4] Cf. my article 'Animadversiones quaedam in decretum de Ecclesiis Orientalibus Catholicis Concilii Vaticani II', *Periodica de re morali-liturgico-canonica* 55 (1966) 28.

they have "improperly abandoned" their genuine, ancient discipline, should strive to return to it, not only, of course, because it is "entitled to veneration for its antiquity", but because "it suits better the Oriental manner of life and" — this being the major reason — "constitutes a better means for the salvation of souls in the Eastern Churches"[5]. This obligation, which the Council has formulated here, evidently binds in the first place those who have the task of effecting the *aggiornamento* of the Code. The present paper is a plea to them, a plea that the future codification shall in actual fact correspond to genuine Oriental traditions. For this it will be helpful to see how much of these traditions has already been incorporated in the existing law for Oriental Catholics in the four *motu proprios.*

Certainly the two commissions named by the Pope[6] for these four *motu proprios,* the Preparatory Commission of 1929 and the "Codification Commission" of 1935, intended to produce a code from which "every vestige of Latinization" (*"ogni ombra di latinizzazione"*) would be removed, according to the precise instructions of Pope Pius XI[7]. However, at their first meeting, on March 7th, 1930, the official representatives of the Oriental Catholic Churches, unanimously decided to follow the pattern of the Latin Code[8], yet, in such a way, that it would be apparent "from the sources, omissions, additions, and modifications that it is really Oriental"[9]. This was the first and, in my opinion, the chief blow to the ancient Oriental Holy Canons. They were not taken as the basis for a truly Oriental codification, as would have been natural. They served only to modify the Latin Code so as to make it "truly Oriental". The Pope's express wish to remove every vestige of Latinization was gravely compromised from the very outset. It is particularly regrettable that none of the Oriental delegates voted against this decision. Moreover, the fact should be added that the Oriental bishops to whom the schemata of the four *motu proprios* were sent for criticism reacted in the same way. While the *motu proprios* on marriage, tribunals, and religious were coming out, the Oriental hierarchy made no move. They reacted only in 1957 against the publication of "Cleri sanctitati", which curtailed the ancient rights

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[5] Cf. *Orientalium Ecclesiarum* art. 6 and 5. In art. 6 it is said that Orientals "si ab iis ob temporum vel personarum adiuncta indebite defecerint, ad avitas traditiones redire satagant". Art. 5 says that the Council "sollemniter declarat, Ecclesias Orientis sicut et Occidentis iure pollere et officio teneri se secundum proprias disciplinas peculiares regendi, utpote quae veneranda antiquitate commendentur, moribus suorum fidelium magis sint congruae atque ad bonum animarum consulendum aptiores videantur".

[6] For more information on these commissions cf. D. Faltin, ‚La codificazione del diritto canonico orientale', in *La Sacra Congregazione per le Chiese Orientali nel cinquantesimo della fondazione 1917—1918,* Rome, 1969, pp. 121—137.

[7] Ibidem p. 128.

[8] Ibidem, p. 129. The members of this meeting were the following: Card. Gasparri, as president, Mons. Naslian (Armenian delegate), Peter Sfair (Maronite), Acacius Coussa (Melkite), P. Kidane (Ethiopian), P. Croce (Italo-Albanian), P. David (Chaldean), Mons. Haddad (Syrian), and the four consultors of the Oriental Congregation (all Latins) F. Cappello, P. Souarn, P. Ippolito, and Larraona. Five delegates were absent (Ruthenian, Syro-Malabarese, Coptic, Greek, and Bulgarian).

[9] *Ibidem, p. 130:* „. . . ma dalle fonti, dalle omissioni, aggiunte e modifiche, doveva apparire che esso è veramente orientale".

of patriarchs and enacted the precedence of cardinals over patriarchs. Orthodox authors saw this, of course, much more clearly and pointed to the root of the evil, saying — and here I quote Hamilcar Alivisatos — that they were filled "with dismay in seeing so little consideration given in the new code to the Holy Canons of the Ancient Councils and Fathers, while the footnotes are inundated with decrees of the Latin Church, making quite obvious the effort towards assimilation and unformity"[10].

The reaction of Oriental Catholics, though late, was timed well. It took place just before Vatican II. It is well known that it resulted in the formulation of some important texts in the conciliar decree on the Catholic Oriental Churches, as we have had the pleasure of hearing from the paper of His Excellency Neophitos Edelby.

The preliminary research for the present paper was rather long and tedious. It was directed principally to the footnotes of the four *motu proprios,* where the Oriental sources of the text of the canons are indicated. The result of this research is presented here as briefly as possible in the form of answers to a few questions.

First question: Which genuinely oriental sources were taken into consideration?

The answer is that the sources are all Byzantine, except for a very limited number of footnotes that refer to the sources of other churches. In particular one finds the Apostolic Canons, the canons of the seven ecumenical councils (Nicea I, Constantinople I, Ephesus, Chalcedon, Trullo-Quinisextum, Nicea II), the canons of seven regional synods (Ancyra, Neocesarea, Gangra, Antioch, Laodicea, Sardica, Carthage), the canons of eleven holy Fathers (Dionysius of Alexandria, Peter of Alexandria, Gregory of Neocesarea, Athanasius of Alexandria, Basil the Great, Gregory of Nyssa, Gregory the Theologian, Amphilochius of Iconium, Timothy of Alexandria, Theophilus of Alexandria, Cyril of Alexandria, plus the letters of Gennadius and Tarasius of Constantinople), the monastic rules and typica of Basil the Great, Theodore the Studite, Athanasius the Atonite, Pachomius, and the canons of Nicephorus of Constantinople; as for Justinian's legislation, one finds references to the entire *Corpus iuris civilis (Institutiones, Codex, Digesta, Novellae),* plus many references to the *Basilica.* All this is mostly Byzantine, due allowance being made for the councils and synods before 451 that were received by the pre-Chalcedonian Churches.

From non-Byzantine Oriental sources we have five references to the canons of Rabbula, nine to the Chaldean Synod of 410, six to Armenian sources, and fourteen to the monastic rules of Saint Pachomius of Egypt[11].

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[10] Cf. my article in *Concilium,* 1965, p. 68, English edition: the quotations in Greek from Alivisatos may be found ibidem p. 76, notes 21—23.

[11] Rabbula (cf. F. NAU, *Les canons et les résolutions canoniques de Rabboula,* Paris, 1906) is quoted in PA 137 § 1 (can. 11), PA 141 § 1 (can. 1), PA 268 (can. 65), CS 74 (can. 27, 29), CS 80 § 3 (can. 50, 51). The Chaldean Synod of 410 (cf. J. B. CHABOT, *Synodicon orientale,* Paris, 1902, 251 ff.) is quoted in PA 262 (can. 11), CS 76 (can. 15), CS 79 (can. 8), CS 216 § 2, 1° (can. 12), CS 251 (can. 1, 20 — it is called erroneously

That is all. It is not my task here to determine what non-Byzantine Oriental Catholics should say about this fact, but it is certainly an alarming discovery to make about a code that was intended for all the Oriental Churches, both Byzantine and non Byzantine. Their Excellencies, Msgr. Ziadeh and Doumith of the Maronite Church, not long ago expressed their disappointment saying that this code, "apparently Byzantine, but really Latin in spirit", disregards the genuine traditions of the non-Byzantine Churches, that is, of the Armenians, Copts, Ethiopians, Chaldeans, Maronites, Malabarese, and Malankarese[12]. To put together all these traditions in one code would be a difficult task indeed.

Second question: Which ancient canons were taken into consideration in the four "Motu Proprios"?

Before giving my answer two points must be emphasized: first, that even though the numbering of the canons in Byzantine collections differs slightly, we may count about 780—790 ancient canons; second, that two large sections of the Oriental code have never appeared, the section on the sacraments and the section on ecclesiastical punishments. Hence, when my answer to this question is that only 275 ancient canons out of 785 appear in the footnotes of the *motu proprios,* it is only fair to add that the number would have been greater, if the whole code had been published. The truth of the matter turns out to be that all ancient canons were in fact taken into consideration, but that a selection was made to eliminate references to those canons which were considered obsolete and those which refer exclusively to ritual, moral, ascetic, or dogmatical questions[13]. The commission that prepared the four *motu proprios* excluded from its consideration about 250 canons, all enumerated in an appendix to volume IX of *Fonti* (pp. 617—619). Possibly the Orthodox members of our Society of Oriental Canon Law may find this appendix interesting to examine, when they, too, endeavour to find out what in the Holy Canons would be applicable to the modern world and useful for a common code for the Byzantine Churches and what would not. For this purpose I add a table of three colums showing (A) the canons from each of the sources that are referred to in the four *motu proprios,* (B) the total number of

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„armenorum"), CS 315 (can. 18), CS 344 (can. 6), CS 397 (can. 18), CS 438 (can. 15). In CS 76 there is a reference to the Armenian synod of 1166; in CS 269 § 1, 2°, to that of 1246 (can. 21); in CS 285 § 2 to those of 710 (can. 9) and 771 (can. 5); in PA 261 § 1 there is a reference to S. Isaac Patriarch of Armenians (can. 57). For the Armenian synods cf. *Fonti* VII; can. 57 of S. Isaac is quoted on pp. 97—98. The monastic rules of S. Pachomius are referred to in PA can. 1, 2, 37, 38, 71, 98, 136, 137, 1441, 143, 151, 152, 153, 157.

[12] Cf. my article in *Concilium,* 1967, n. 8, English edition p. 71.

[13] The Preface to vol. IX of *Fonti,* under no. XIV (p. XV) reads: „Siccome la disciplina generale antica termina al nono secolo, nella redazione del presente fascicolo furono omessi diversi canoni che oggi non hanno alcun valore, specialmente perchè parlano di pene per usi disapprovati e allora vigenti, ecc. Inoltre furono omessi tutti i canoni contenenti prescrizioni a) rituali, b) morali, c) ascetiche, come anche d) i canoni puramente dommatici: insomma tutto ciò che non è disciplinare".

canons usually found in Byzantine collections, and (C) the canons that the Oriental Code Commission explicitly excluded according to the appendix just mentioned.

Canons - Collections - Sources	A Canons referred to in the *motu proprios*	B Total number	C Canons explicitly excluded by the commission according to the appendix
Apostolic	4, 5, 14, 15, 20, 26, 27, 30, 31, 34, 36, 37, 38, 39, 40, 41, 42, 45, 48, 54, 55, 56, 62, 74, 75, 81, 82, 84	85	7, 24, 51, 53, 63, 64, 67
Nicaea I	1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18.	20	12, 14, 19 (2nd part), 20
Constantinop. I	2, 4, 6	7 (8)	1, 15
Ephesus	1, 4, 8	8 (9)	none
Chalcedon	2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 19, 20, 21, 25, 26, 30	30	15, 23, 28 (1st part)
Trullo	3, 5, 6, 7, 8, 9, 13, 17, 18, 20, 23, 25, 26, 27, 30, 34, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 53, 54, 64, 69, 80, 87	102	16, 28, 45, 55, 57, 60, 66, 67, 70, 71, 73, 77, 79, 81, 82, 83, 86, 88, 90, 94, 96, 99, 100
Nicea II	2, 3, 4, 6, 10, 11, 14, 15, 16, 18, 19, 20, 21, 22 and Actio VII, in CS 400 § 1 et 2	22	none
Const. IV	5, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27 There are 27 canons. The Council is not accepted by the Orthodox	none in Greek Collections	11
Ancyra	10, 11, 15	25	3, 14, 16, 17, 19, 20, 24
Neocesarea	2, 9	15	4, 5, 6, 7, 13, 14, 15
Gangra	7, 8, 14	20	1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 15, 16, 17
Antioch	3, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25	25	1
Laodicea	12, 13, 15, 18, 20, 24, 31, 40, 42, 55, 56, 57	59 (8)	2, 4, 11, 14, 16, 17, 30, 53
Sardica	1, 2, 3, 4, 5, 11, 13, 14, 17	21	none

	A	B	C
Carthage	2, 3, 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 21, 22, 23, 28, 29, 31, 34, 35, 36, 43, 53, 54, 55, 56, 57, 58, 61, 62, 73, 74, 76, 77, 78, 79, 80, 81, 86, 88, 89, 90, 93, 94, 98, 99, 100, 102, 104, 105, 106, 107, 110, 120, 121, 122, 123, 124, 125, 127, 128, 130, 132, 133 Note that the numbering adopted is that of a collection that has 141 canons, e. g. the Greek Pedalion	133—147	4 (2nd part), 5, 6, 10 (1st part), *11*, *13*, 25, 27, *28*, 30, *31*, 32, 33, 36, 48, 49, 51, 55, 59, 60, *61*, 66, 68, 72, 73, 75, *76*, *78*, *79*, *80*, *81*, 82, 83, 100. The canons in italic type, though excluded by the commission, are nevertheless referred to in the *motu proprios*
Const. 861	not accepted by Catholics	17	not mentioned
Const. 879	not accepted by Catholics	3	not mentioned
Dionisius of Alexandria	none	4	2, 3, 4 "ad Basilidem" 1, 4 „ad Cononem"
Peter of Alexandria	none	14	1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14
Gregory Thaumat.	none	13	all omitted
Athanasius the Great		4 excerpts	Epist "ad Aman", "festiva". From the Epist. "ad Rufinianum" a few texts are taken
Basil	1, 9, 10, 18, 19, 21, 22, 23, 27, 31, 36 ,38, 40, 42, 44, 46, 47, 48, 69, 70, 77, 78, 87, 88.	92	7, 11, 13, 15, 16, 24, 25, 26, 28, 29, 30, 33, 34, 35, 37, 39, 43, *44*, 45, 49, 52, 54, 55, 56, *57*, 58, 59, 61, 62, 63, 64, 65, 66, 67, 68, 71, 72, 73, 74, 75, 79, 81, 82, 83, 84, 85, 86.
Gregory of Nyssa	none	8	1, 2, 3, 4, 6, 7, 8
Timothy of Alexandria	questions 11, 15, 22, 23	15—38 +24: Greek sources have 15—29	1, 5, 6, 7, 13, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37 From 24 "alia diversa capitula" are omitted: 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 19
Theophilus of Alexandria	4, 5, 9, 10, 13	14	8, 12, 14
Cyril of Alexandria	1, 2, 3, 4	7	6, 7

	A	B	C
Gregory of Nazianzen	none	1	omitted
Amphilochius of Iconium	none	1	omitted
Tarasius of Constantinople	five references to the letter "ad episc. Siciliae"	Letter to Pope Hadrian	all omitted, except a short text from the letter to Pope Hadrian
Gennadius of Constantinople	once reference is made to the Encyclical letter of 459: once to the letter to Martyrius of Antioch	1 letter	none
John the Faster	none	Greek Pedalion has 35	all omitted
Nicephorus of Constantinople	*Fonti* IX accept 227 canons: but 15 times a reference to them appears in the *motu proprios*	Greek Pedalion has 37+7+11	many canons omitted

The work of the Commission was thorough, but one is disturbed to note the lack of respect with which the ancient canons, called Holy Canons by Orientals, are treated. To say that any of them should exeluded from consideration, it seems that a greather authority is needed.

Third question: Are the ancient canons referred to in the same order that is traditional in the christian east?

The answer here is "No", and the reason for it is significant: the Council of Trullo is not acknowledge as ecumenical, and therefore, its second canon loses its real impact. For the Orthodox, an ecumenical council is the only authority competent to make disciplinary prescriptions binding on all churches, to abrogate or change the canons of preceding councils, to formulate new ones better adapted to the times[14]. The Council of Trullo or *Quinisextum* is, in their opinion certainly ecumenical, and, therefore, only another ecumenical council could say that the canons enumerated in its second canon are no longer valid, even though, as many Orthodox agree, many canons can no longer be applied to modern church life.

On the contrary, the Commission for the Oriental Catholic Code had at least strong doubts about the ecumenical character of the Council of Trullo, since its canons were approved by Rome only in so far as they were not in contradiction to more ancient canons, to the decrees of the Popes, or

[14] Cf. my article in *Concilium* 1969, no. 8, English edition, p. 74.

to *boni mores*[15]. This being so, the Trullan canons are referred to in fifth place, after the regional synods of Ancyra, Gangra, Carthage, and others. I say "fifth place", because between the ecumenical councils and regional synods one finds references, first, to the letters and decrees of the Popes, and second, to the letters and decrees of Roman Congregations. In sixth place are found the canons of the Holy Fathers followed, occasionally, by the texts from the works of Saints Theodore the Studite, Athanasius the Athonite, and Pachomius. In seventh place we have the synods of Oriental Catholics of the last three centuries, the whole being concluded by Justinian's *Corpus iuris civilis* and the *Basilica*. Of course not all of these sources are referred to for each and every canon, but wherever it was possible to find a suitable text from the above mentioned sources, this is the order of citation. I give one example from "Cleri sanctitati", canon 349, adding the remark that many examples of this sort could be given.

This canon is a sort of exhortation to the bishops congregated in patriarchal synods to deal with matters that concern faith, morals, the eradication of abuses, controversies, and so on. The canon, in my opinion, is not necessary in a code; it contains, in fact, nothing of importance, these things being the natural topics for a patriarchal synod. Nevertheless, the commission that composed the Code found a long list of sources quoted in the footnote to this canon in which the order is the following.

1. *Ecumenical Councils:* Nicea I, can 5; Constantinople I, can. 2; Chalcedon, can. 17, 19; Nicea II, can. 6; Constantinople IV, can. 26.
2. *Letters of the Popes:* Leo XIII, letter *Litteris datis,* June 15th, 1901;
3. *Decrees of Roman Congregations:* S. C. de Propaganda, instruction of May 31st, 1629, to the Apostolic Nuncio of Poland; instruction of June 7, 1638, no. 2; decree of July 20th, 1760, n. 6; instruction of August 9th, 1760; letter to the Bishop of Alba-Julia of July 12th, 1867, no. 1.
4. *Apostolic Canons and Ancient Regional Synods:* Apostolic can. 37; Antioch, can. 20; Laodicea, can. 40; Carthage, can. 36, 61, 98, 106.
5. *Council of Trullo:* can. 8, 25.
6. *Canons of the Holy Fathers:* Basil the Great can. 47.
7. *Synods of the Oriental Catholic Churches:* Armenian Synod of 1911; Maronite Synod of 1736, part III, Chapter IV, 29; Rumanian Synod of 1872 tit. III, chapter III; Ruthenian Synod of Zamošč of 1720, tit. IV.

If there were appropriate texts from the *Corpus iuris civilis* of Justinian or from the *Basilica,* they would have been referred to in the last (8th) place.

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[15] *Fonti* IX, p. VIII says: „non si vuole . . . toccare la questione dell'approvazione o meno del sinodo trullano o quinisesto: ma si vuole unicamente dire che i cento due canoni trullani hanno avuto valore giuridico per le comunità orientali. Naturalmente anche per i canoni in questione rimane in pieno vigore la clausola apposta dalla S. Sede all' approvazione della disciplina orientale. Come ciò fu esplicitamente ripetuto più di una volta a proposito di Trullano: „Ita haec in hac synodo", dice il Papa Giovanni VIII (an. 872—882), „principalis Sedes admittit, ut nullatenus ex his illae recipiantur, quae prioribus canonibus vel decretis Sanctorum Sedis huius Pontificum, aut certe bonis moribus inveniantur adversae".

The canon thus appears to be quite Oriental, even though one cannot say that it really is. Actually, almost half of the above enumerated sources come from Rome. For number 2 and 3 this is obvious: for number 7 it is still true, because it is well known that the synods of the Oriental Catholic Churches of the last three centuries were so strongly influenced by the Latin *Jus Decretalium* that many of them can hardly be called "Oriental". Moreover, the very text of the canon is taken word for word from canon 290 of the Latin Code, which speaks of a metropolitan or provincial synod of the Latin Church[16]. It is obvious that the commission for *Cleri sanctitati* had not first studied all the Oriental sources referred to in the footnote to canon 349 and then formulated the canon. Rather, the reverse was true; the canon was ready-made in the Latin Code, from where they took it over and, in the footnote, gave it more or less Oriental garb. The sources indicated in the Latin Code are fewer and different. There we find the following sources listed: the *Liber Extra* (C 25, X de accusationibus, inquisitionibus et denuntiationibus, V, I), the Council of Trent (sess. XXIV, de ref. C. 2), the Apostolic Constitution of Leo X of May 4th, 1515 (§ 2), and the letter of the Sacred Congregation of Propaganda Fide to the bishops of India of August 28, 1893.

This simple example speaks for itself. It must only be added that this is not an exception, but the general rule. Almost every canon of the four *motu proprios* was dealt with in the same manner. And by this, one says all that is to be said about the ancient Holy Canons in the four *motu proprios*. It would have been preferable if, at least in the case of canons taken over *verbatim* from the Latin Code, this code had been indicated as source. However, for the purpose of research, the sources indicated in the four *motu proprios* are very useful. In the Oriental Code the sources of the text up to the *Decretum Gratiani* are found, whereas in the Latin Code the references to the *Decretum* and subsequent councils, synods, letters, and decrees of the Holy See are contained. Thus, by way of comparison, the history of modern canons can be better traced.

Fourth question: The works of Saint Theodore the Studite, Saint Athanasius the Atonite, and Saint Pachomius were mentioned; what was their influence on the four "Motu Proprios"?

In answering one has to include the monastic rules of Basil the Great. These rules are referred to in 27 canons, all but one contained in the *motu proprio* on monks and religious (PA)[17]. The monastic rules of Saint Pacho-

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[16] The Latin Code, can. 290, says: "Patres in Concilio plenario vel provinciali congregati studiose inquirant ac decernant quae, ad fidei incrementum, ad moderandos mores, ad corrigendos abusus, ad controversias componendas, ad unam eandemque disciplinam servandam vel inducendam, opportuna fore pro suo cuiusque territorio videntur". *Cleri sanctitati*, can. 349, says: „Patres in Synodo congregati studiose inquirant ac decernant . . .". etc. The text that follows is exactly the same as in the Latin Code.

[17] These references are found in: SN 167; PA 1, 2, 11, 35, 37, 48, 62, 69, 71, 74, 77, 97, 107, 112, 117, 135, 136, 137, 139, 151, 152, 157, 182, 195, 208, 312, 313 (the last two canons still treat of religious, although they are found in the section *de verborum significatione* in PA).

mius are mentioned among the sources of 14 canons on religious (cf. supra, note 11). The works of Saint Athanasius the Atonite are indicated as sources of 11 canons of the same *motu proprio*[18]. Most numerous of all are the references to Saint Theodore the Studite, which are given for 43 of the canons on religious and for 3 canons of *Cleri sanctitati*[19]. Thus, one could gain the impression that the *motu proprio* on monks and religious was principally based on the writings of those four Oriental monks. To some extent this is true, because all rules on religious and monks have some roots in the ancient monasticism that originated in the East. Here again, however, the canons in the *motu proprio* were taken over, for the most part, word by word, from the Latin Code. Nonetheless, there are some important differences between the Latin Code and the Oriental *motu proprio* on religious, especially as regards the canons on monks, which were introduced after a careful study of the works of the four saints, just mentioned. Hence the influence of these saints on *Postquam Apostolicis Litteris* was considerable. In spite of this, it still holds true that, in general, the wording of the canons is taken over almost *verbatim* from the Latin Code[20], even though the sources indicated appear to be exclusively Oriental.

Fifth: question: What influence did Justinian's "Corpus Juris Civilis" and the "Basilica" have on the four "Motu Proprio"?

The answer is "almost none at all", even though the references to these Byzantine civil law collections are the most numerous of all, so numerous, in fact, that I abandoned my plan of adding an appendix to this paper with the exact indication of these references. (If it would be of use to any colleague, I would be ready to give this indication too.) I present here only a brief summary of my research. The *Institutiones* of Justinian are indicated as a source for 16 canons (11 in SN, 3 in CS, 1 in PA, and 1 in CA), the *Codex* for 126 canons (110 in SN, 10 in CS, 3 in PA, and 3 in CA), the *Digesta* for 144 canons (120 in SN, 16 in CS, 5 in PA, and 3 in CA), and the *Novellae* for 38 canons (33 in SN, 3 in CA, 2 in CS). As for the *Basilica*, one finds references to them in the footnotes of 54 canons (48 in SN, 4 in CS, and 2 in PA). Of course, the number of texts referred to is really much greater, since, in a single canon with its different paragraphs, one can find as many as 10 references (e. g. SN, can. 360) and even more (SN, can. 404 has 16 references) from these sources of Byzantine civil law.

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[18] PA can. 29, 35, 48, 64, 71, 74, 106, 136, 137, 183, 313.

[19] PA can. 1, 26, 29, 31, 34, 35, 36, 37, 38, 48, 62, 64, 69, 71, 74, 75, 99, 105, 106, 107, 109, 112, 116, 123, 135, 136, 137, 138, 139, 141, 143, 157, 161, 175, 182, 195, 196, 204, 206, 207, 223, 312, 313: CS can. 162, 272, 347.

[20] Here are some examples taken at random: PA can. 36 (— CIC 508), 37 (not in CIC), 38 (— CIC 509), 48 (— CIC 516), 62 (— CIC 530), 64 (— CIC 532). For these canons the Latin Code refers exclusively to Latin sources, whereas PA refers to Saint Theodore the Studite, Saint Pachomius, Saint Athanasius the Athonite, the monastic rules of Saint Basil and, occasionally, an ancient canon (PA 48 refers to Nicea II, can. 11).

Especially the *motu proprio "Sollicitudinem Nostram"* is simply inundated with references to such sources, despite the fact that it is the one whose canons are the closest to the corresponding section (procedural law) of the Latin Code. The influence of these sources was, in fact, no greater on the Oriental Code than it was on the Latin Code, which, at bottom, does contain some traces of the procedural laws of Justinian's Code, as do the civil procedural codes of many European states. In this *motu proprio,* the great majority of the canons are, indeed, taken *verbatim* from the Latin Code, and one may well ask why the sources indicated in the footnotes should be different. Some parts, on the other hand, are totally new, for instance, the canons *de compromisso in arbitros* (SN can. 98—122), which correspond better to the scripture (1 Cor. 6, 1—9) and ancient tradition (*de episcopali audientia*) than any other part of the procedural laws, the canons on trials before a single judge (SN can. 453—466), and those on penal procedure (SN can. 540—576). For these canons almost no Oriental source is indicated, and rightly so, since the first of these sections is taken from Pio Ciprotti's *Observations,* published by the Vatican Press in 1944[21], the second is based on the Code of Civil Procedure of the Vatican City State[22], and the third, it would seem, is based on the Italian Civil Code, though a thorough investigation of the point has not yet been made. If in these sections few attempts were made to make the canons appear Oriental, one cannot but wonder why there should be such a flood of references to texts of Justinian in other sections, where the canons have been taken over word by word from the Latin Code. In any case both Justinian's *Corpus juris civilis* and the *Basilica* have long since been abandoned in the Christian East. Their basic principles are still maintained today by the Byzantine Orthodox Churches, but they are applied, not to Justinian's procedural law, but to the civil procedural law of modern states. The Russians applied the civil procedural laws of the Russian Empire from at least the time of Peter the Great, and the Greeks follow Greek civil procedure. Why, then, make such an effort to convince Catholics that their procedural law is solidly based on Justinian? The procedural law has the purpose of assuring that justice be administered in the best possible manner, and the Orientals are ready to accept it, wherever it comes from, whether from Justinian, the *Codex iuris canonici* or elsewhere, provided that it fulfills this basic requirement. Very hard work was necessary to incorporate in the footnotes references to all these texts from Byzantine civil codes. However precious this work may be for the sake of research, it is totally unconvincing in so far as the Oriental character of the four *motu proprios* is concerned. From this point of view, one would prefer the references to be made to no other source, but the Latin Code. The Latin Code, especially concerning the procedural laws, was excellent, and now, after the Council, it is and will be even better. There should be no difficulty for Oriental Catholics to

[21] Cf. for this R. SENETSKY, *Excerpts from the „influence of Pio Ciprotii's observations on the Motu proprio Sollicitudinem Nostram",* Rome, 1968.

[22] Cf. for this I. ŽUŽEK, 'Trials before a Single Judge in the Eastern Canon Law', *Orientalia Christiana Periodica* 30 (1964) 510—525.

accept it as it is, provided, of course, that some provision be made for patriarchs and their tribunals, and that consideration be taken here and there of the personal statutes that are still valid for Christian communities in some countries of the Near East.

Last question: In what sense are the Holy canons the source of the "Motu Proprios"?

The answer could be very complicated; to express it briefly, however, one may say that the Holy Canons are the source in many senses ranging from substantial agreement (in most cases), through various degrees of analogy, to the vaguest community of subject matter, a phenomenon that is verifiable with regard to the sources indicated in most codes. Here are two instances taken from the *motu proprio* on marriage to substantiate my answer. Thus, the 11th canon of Ancyra, the 98th canon of Trullo, and the 22nd canon of Saint Basil, have very little in common with the 6th canon of CA, for which they are cited as sources. The canon speaks about formal betrothal, which, though juridically valid, gives no title to legal action for obtaining the celebration of marriage. The canons of Ancyra and Saint Basil do not speak about a breach of betrothal, but about betrothed girls who were abducted and must be given their freedom; as for the Trullan canon, it declares a man who marries a girl betrothed to another man, to be guilty of adultery and hence (implicitly) liable te penal action. As an example of analogy one may take canon 24 of CA: the canon is an exhortation to parish priests not to assist at a marriage of minors, if their parents are unaware of it or are *rationabiliter inviti*. The references given are to four canons of Saint Basil (22, 38. 40, 42) that speak of parental consent (or the consent of the master in the case of slaves) as a condition for the validity of a marriage of minors. Basil's principle is expressed in his 40th canon, which says that "those who are subject to the command of others can accomplish no juridically valid acts without the consent of their masters". Nobody applies the above provisions to marriage today.

Examples of this nature could be pointed out in great number. Nonetheless, as I have said, the Holy Canons, whenever referred to, are on the whole substantiality in agreement with the discipline enacted in the canons of the four *motu proprios*.

Some final suggestions

On the basis of this paper I would like to state the following points regarding a future code for Oriental Catholics.

1. The Latin Code should not be taken as the basis for the Oriental Code, except, perhaps, for procedural law.
2. The basis should be the Holy Canons as enumerated in the 2nd canon of Trullo, which has been approved by the Holy See since it does not contradict the decrees of the Popes or *boni mores*.
3. All references to Byzantine civil laws should rather be omitted.

4. More consideration should be given to the ancient canons and traditions of the non-Byzantine Churches.
5. The canons of the Oriental Catholic synods of the last three centuries should not be taken into consideration in preparing the new code until they have been revised according to the decree of Vatican II on the Oriental Catholic Churches and until all Latinisms have been eliminated.
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 the Holy Canons to the conditions of presentday life. Their decisions in this regard deserve 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 as already existing between the Catholic and Orthodox Churches[23].

[23] Cf. *Osservatore Romano*, 7. III. 1971; „quasi piena" ibidem 21. I. 1971.

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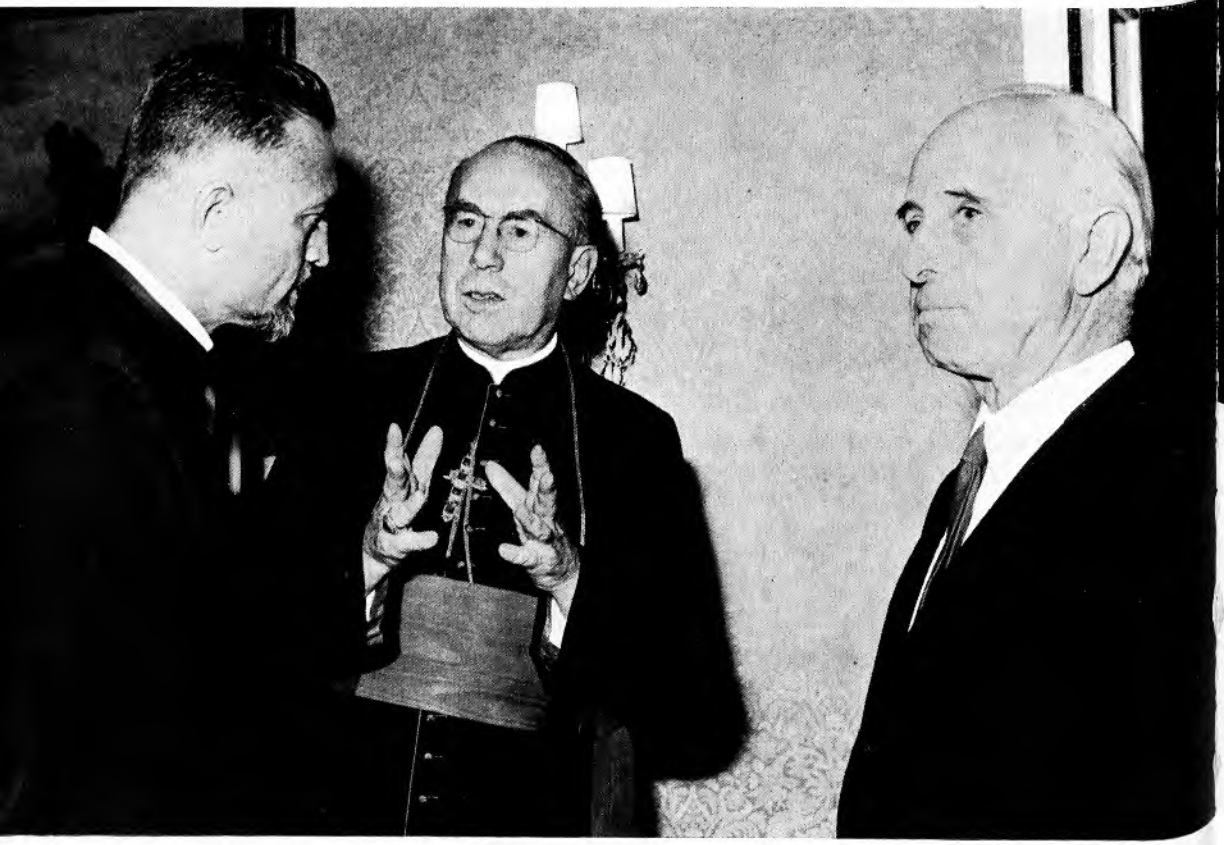

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Erzbischof Chucrallah Harb (Baalbek, Beirut), Metropolit Panteleimon von Korinth

Hans Dombois (Heidelberg), Jean Tomajean (Charfet)

Im Vordergrund links: Erzbischof Tiran Nersoyan (New York), Mesrop Krikorian (Wien), Erzbischof Harb; im Vordergrund rechts: Habte Mariam, János Hollós (Téglas-Nyireghaza)

Im Vordergrund links: Charalambos Fragistas (Thessaloniki), Metropolit Panteleimon, Demostenes Savramis (Bonn); im Vordergrund rechts: Konstantin Vavouskos (Thessaloniki)

BEGRÜSSUNG VON KONGRESSTEILNEHMERN DURCH DEN BUNDESMINISTER FÜR WISSENSCHAFT UND FORSCHUNG DR. HERTHA FIRNBERG

Willibald M. Plöchl, Habte Mariam

Eric Kemp (Worcester)

Erzbischof Harb, Dekan der juridischen Fakultät Hans W. Fasching, Rektor der Universität Wien Alexander Dordett, Minister Firnberg, Kardinal König, Nuntius Rossi

MITTAGESSEN IM LAIENBRÜDERDORMITORIUM DER ZISTERZIENSERABTEI LILIENFELD

Ansprache des Erzbischofs Harb

EMPFANG DES LANDESHAUPTMANNES VON NIEDEROSTERREICH
ANDREAS MAURER IM STIFT GÖTTWEIG

Begrüßung durch den Abt Wilhelm Zedinek †: Salib Sourial (Kairo), Charles de Clercq (Rom)

Feierlicher Einzug: Metropolit Tsiter, Erzbischof Harb, Bischof Hermann, Diakon Kramer (St. Pölten)

Georges Nedungatt (Rom), Salib Sourial, Mesrop Krikorian, Paulos Tzadua (Addis Abeba), Gregoris Manian (Wien), Superior von Mariazell Pater Weremund Hochreiter

Die drei Bischöfe in der Gnadenkapelle

Predigt des Superiors Pater Weremund

EMPFANG DES LANDESHAUPTMANNES VON DER STEIERMARK
JOSEF KREINER

Ansprache des Generalabtes der Mechitharisten in Wien Manian

Zum Abschluß des Kongresses spricht Pater Žužek; im Hintergrund der Madrigalchor von Mariazell