

Chapter 7 – The Episcopate and the Roman Curia

This memorandum was presented at the February 1962 meeting of the Central Commission. In an analysis of the schema “On the Relations between the Bishops and the Congregations of the Roman Curia,” the patriarch established the theological foundations of decentralization.

This schema could be entitled “On Decentralization in the Church.” It states the desire to recognize broader powers for the bishops and at the same time limit the competences, which we believe are too broad, of the dicasteries (offices, congregations, tribunals, etc.) of the Roman Curia.

I. The least felicitous part of this schema, it seems to us, is its preamble. Certain doctrines are insinuated in it that seem to us to be at the very least debatable.

1. Thus, after affirming in the first paragraph that the episcopate stems immediately from Christ, the preamble continues: “*Jurisdictio particularis, quam singuli Episcopi vi officio pastoralis in suas dioeceses exercent, a Romano Pontifice, tanquam ex causa proxima, est derivanda*” (The particular jurisdiction which the individual bishops, by the power of their pastoral office, exercise in their dioceses, must be derived from the Roman pontiff, as if from the immediate cause).

First of all, this theory, which makes the Roman pontiff the immediate source of the pastoral power in their dioceses, is in no sense a dogma. It is not even a necessary consequence of a dogma, since the Roman primacy does not necessarily determine that the pope be the source of all episcopal power in a specific diocese. Inasmuch as the bishops are by divine right the successors of the Apostles, they receive their power over a specific diocese through the authority that presided over their election or nomination.

In the West, for many centuries but not always, no bishop has been nominated except through the definitive intervention of the Roman pontiff. Thus the proponents of the theory that prevails in the preamble have been able to find a certain basis in this fortuitous canonical custom. In the East, however, it is unanimously agreed that the bishops were neither named nor confirmed by the popes. This was recognized not only by Eastern Christians but also by the popes themselves, who, in classical Christian antiquity before the great separations, never asserted that the designation of the bishops or their investiture depended solely on them, either explicitly or implicitly. What, then, is the basis for the theory which the preamble sets forth?

It is true that this theory is currently called a “common doctrine.” We would prefer to call it a “current theory.” However, in our opinion, not only is this theory not defined, but it is very debatable, to say the least. It is therefore not appropriate to insinuate it as a doctrine peaceably accepted by everyone, because it is heavy with consequences for a dialogue between the East and the West. We see it as one of the ever-growing number of theories popularized by certain modern theologians and canonists in order to exalt papal power at all costs, to the detriment of the power of the bishops. Besides, the preamble finds no document to support this theory other than a reference to the canonists Wernz-Vidal. We

believe that this is not sufficient and that nothing in the authentic tradition of the Fathers could be found to support such an extreme theory. It is better, therefore, to remain in the traditional line of the dogma defined by the First Vatican Council: the Roman pontiff has a direct power over each of the pastors and the faithful. But it does not logically follow from this that he is the ultimate and exclusive source of all power in the Church.

2. Furthermore, the preamble states that the Roman pontiff, by reason of his right of primacy "*jurisdictionem episcopalem plus minusve amplificare vel restringere potest*" (He is able to widen or restrict the episcopal power to a greater or lesser degree).

Asserted in this way without any nuances, this proposition is not correct. It is true that in view of the common good, the synods, the patriarchs, and the popes can, up to a certain point, limit the exercise of the power of the bishops in order to better coordinate their pastoral activity. It is also true that the pope can reserve for himself as many "major causes" as the common good of the Church demands. But it is false to insinuate, as the preamble does, that the limits of episcopal power depend unconditionally on the will of the pope who can widen them or restrict them arbitrarily. This would make the bishops simply legal representatives of the pope, having no attributes except those that the pope cares to give them. Such insinuations are very serious.

3. Then, the preamble gives the reasons why the popes have reserved for themselves certain "major causes." We must say that the extensive extension of these "major causes" has been the principal reason for the excessive Roman centralization about which the Catholic world is now complaining almost unanimously. Before a "major cause" can be reserved to the pope, there must be assurance that this reservation is demanded by the higher good of the Holy Church, and not by the human desire to "centralize." All power has a natural tendency to monopolize as many prerogatives as possible at the expense of the powers of others. The trend toward centralization that for certain fortuitous historical reasons has dominated the Roman organizations for centuries must now give way to a trend toward decentralization, for the greatest good of the Catholic Church and of the Roman organizations themselves.

4. Finally, the preamble, in response to the almost unanimous hopes of prelates and Catholic universities, proposes that broader faculties be granted to the bishops. On this subject we take the liberty to point out that the power of the bishops must not be conceived as the aggregate of the faculties that are granted to them by the pope. A bishop in his diocese should have all the powers necessary for his apostolic ministry, certain cases being reserved to the synods, to his patriarch or metropolitan, or to the pope. It is not a question of giving the bishops powers they would not already have; it is a question rather of enumerating the cases that are believed to be reserved to supra-episcopal authority for the common good.

Therefore, instead of drawing up a list of faculties, whether quinquennial or other, there is need to pinpoint more precisely a list of reservations that are truly "major causes," while limiting them considerably. It is not a question of giving more to the bishops; the need is to take less away from them. This change in perspective is of the greatest importance.

II. Turning now to the details of the measures taken to decentralize the Church, we make the following comments:

1. The schema proposes that certain more important “faculties” be reserved to the nuncios and apostolic delegates. It seems to us that this is not expedient, for it would contribute still more to having these representatives of the Holy See considered as super-bishops. Now this falsifies the true notion of the episcopacy. Either the “faculty” in question can be left to the bishop, or else, if it is a very serious matter involving the general good of the Church, the bishop must have recourse to the supreme authority. But the representatives of the Holy See must not be made into viceroys of sorts, commanding “prefects” (bishops) guided from afar by central organizations. This does not seem to us to be the authentic concept of the Church.

2. Once again we propose the elimination of the “secrecy of the Holy Office” which might open the way to abuses, just as we also propose the reform of the Holy Office itself, which must be reorganized in such a way as to avoid the numerous complaints that are justifiably being leveled against it from all sides, even if one does not always dare to say so because of the climate of fear that the Holy Office has created in the Church.

3. Among the proposed reforms should be added the internationalization of the Roman Curia. At least seventy-five percent of the central government of the Church and the external representation of the Holy See is in fact reserved today to Italians who are tempted to consider the Holy See a little like a family patrimony, a source of advantage and an opportunity for a career. An internationalization of the curia would broaden the horizons of the central government, permit a wider choice of personnel, lead to a salutary renewal in ideas, and make the Church appear as truly and effectively catholic. There is still too much nationalist chauvinism in the Roman Curia. We hold no brief against the Italians, whose beautiful human qualities on the contrary we esteem, but we must affirm that they are not the whole Catholic Church and therefore must not have a monopoly on it. These are things that everyone thinks deep in their hearts and about which there is talk in small committees, but concerning which unfortunately few of the ecclesiastical leaders dare express their opinions openly, in order to avoid the annoyances and trouble that it might cause them. As for us, we owe it to our conscience, to God, and to the Church to be very frank on this point as well as on all others, even at the risk of displeasing persons who are most dear to us.

The comments that we have just made on this schema are of a very serious nature. If certain theologians insist on applying to the papacy ideas that do not adequately conform to dogma, and if there is a militant effort to have them accepted, we run the great risk of seeing this council fail lamentably from the point of view of Christian unity. Far more, we would have definitively created an insurmountable obstacle to union between the Eastern Church and the Western Church. This is enough to make every soul that loves our Lord and who wishes to accomplish his divine desire for unity tremble with fear.

For a “Synod of Bishops” around the Pope

This is one of the most important interventions of Patriarch Maximos IV. It took place on November 6, 1963, at the end of the sixty-first General Congregation. Received with applause, it was to encounter strong opposition in certain quarters. We know that ultimately the pope constituted around himself a “Synod of Bishops,” an eloquent sign of episcopal collegiality in the central administration of the Church.

Chapter I of this schema on “The Bishops and the Government of the Dioceses” envisions, around the supreme pontiff and to help him in his primatial ministry with respect to the universal Church, only the congregations, the tribunals, and the offices which in their totality form what has come to be called the “Roman Curia.” In No. 5, it is true, our text proposes a small and timid reform, envisioning the possibility of inviting bishops from the entire world to take part in the dicasteries of the Roman Curia in the role of members or counselors.

It seems to me that this way of limiting to the Roman Curia the collaboration of the Catholic episcopate in the central government of the Church corresponds neither to the real needs of the Church of our time nor to the collegial responsibility of the episcopate with respect to the Church.

Likewise, may I be allowed to propose a new solution, which appears to me to meet more fully the needs of our time and to agree with sound theological principles: Peter with the Apostles, that is the pope with the episcopal body.

The pope is the Bishop of Rome, the Primate of Italy, and the Patriarch of the West. Yet these roles are secondary although real—by comparison with his universal primacy. Such being the case, it follows that when the pope governs the universal Church, he associates to himself, to share his responsibility, the college of bishops which succeeds the college of the Apostles, and not the priests, deacons, and other clerics of the Diocese of Rome.

The particular court of Rome, which belongs specifically to the Diocese of Rome, must not take the place of the college of the Apostles living in their successors the bishops. It is therefore the duty of this holy council to use the means necessary to bring to light this truth beclouded by an age-old practice wrapped in ever-deepening shadows, to the point where many, even among us, have come to think of the situation as being normal, even though it is something else. With the present court of the pope it is difficult for those who are outside the Catholic Church and for some who are in it to see the ecumenical stance of the Church, and they see instead the particularism of a particular Church to which men, time, and favorable circumstances have given a considerable human and temporal increment of grandeur, power, and wealth. The very fact of assigning the cardinals to particular churches in Rome clearly shows that the cardinals belong to the particular Church of Rome, and not to the universal Church of Christ.

It goes without saying that all the bishops of the world cannot be constantly assembled in council. This concrete responsibility of helping the pope in the general government of the Church must devolve upon a small group of bishops representing their colleagues. This is

the group that could form the true holy college of the universal Church. It would consist of the principal bishops of the Church. These would be first of all the residential and apostolic patriarchs, as recognized by the ecumenical councils of the first centuries; then the cardinal-archbishops as a prerogative of their cathedral and not of a Roman parish; and finally there would be bishops chosen in the episcopal conferences of every country. The last suggestion should be studied in order to be made perfectly clear. This universal holy college could be convoked by the pope at certain fixed times and when the need is felt to debate the general concerns of the Church.

Yet, of course, that is not enough. There would be a need to have constantly in Rome what the Eastern Church calls the “*synodos endimousa*,” that is to say, a few members of this apostolic and universal holy college succeeding one another so as to be at the side of the pope, their leader, who always has the last word by primatial right. That is where the supreme council of the Church, the “*suprema*,” would be, the executive and decisive supreme council of the universal church. All the Roman bureaus must be submissive to it. This *suprema* will have its special rules concerning its constitution. It will make Christ shine out over the entire world, especially the pagan world. Since it will not be closed in on itself, it will not even think of wishing to monopolize everything, regulate everything, dominate everything in a uniform and sometimes petty way. It will understand that the problem of peoples must be settled by themselves or with them but never without them.

To sum up, we say that the Holy Father cannot, any more than anyone else in the world, whoever he or she may be, govern with his confidants an institution as large as the universal Church in which the best interests of Christianity in the whole world are at stake. And all this is in conformity with the Gospel, for while the Church has been entrusted in a special way to Peter and to his successors, it has also been entrusted to the Apostles and their successors. And if this government is entrusted to nonconstitutional persons, such as confidants and the local clergy, the general good would not be served and real disasters could ensue. History gives us examples of this.

In our time, these truths of a theological, constitutional, and practical order take on an aspect of urgency and gravity.

In the lands of the Mediterranean civilization of the ancient Roman Empire of the East and the West, or in lands that have sprung up from it, things might work out for an indeterminate time if we are content to grant great powers to the episcopal conferences, which, after all, are a modern form of the historical patriarchates. However, in the countries with great agglomerations of peoples like China and India, lands of great and ancient civilizations that have nothing in common with Mediterranean civilization, something more is needed and it must be found with the help of Christianity itself. The same can be said of the African Churches, which are so rich in their dynamism.

This will involve a great and fundamental effort so that these Churches may feel at home with respect to their language, mentality, ways, and customs. They must feel that Christianity is not foreign to them, that it can become the soul of their soul. These peoples should also enjoy a greater internal autonomy than that of the Mediterranean lands, while preserving the necessary link at the highest level with the See of Peter. Only what is essential to the constitution of the Church should be imposed on them, as was

decided by the first council at Jerusalem in the early days with respect to the Gentiles. After so much very meritorious work, dedication, expense, and sacrifice, can we say that Christianity has won the hearts of these lands? However, this must be achieved.

Is up to the new holy college to elucidate these great problems and to give them the solution they require, with the help of prayer, study, time, and the necessary prudence. The members of the holy college, coming from all parts of the world and thus having an ecumenical mentality, will be in a position to bring this work to a successful conclusion and to endow the Church with an organization capable of leading all peoples to Catholic unity.

Seeing that the Holy Spirit, through the intermediary of Pope John XXIII of holy memory, inspired the holding of this council to bring about openness and dialogue on the part of the Church with the entire world, and seeing that after his death, the Holy Spirit inspired the choice of our Holy Father Paul VI to continue and organize this divine work, it is because He is still in His Church to guide and vivify it. "Send forth your Spirit and He will renew the face of the earth."

Episcopal Conferences

First of all, here is a memorandum presented by Patriarch Maximos at the meeting of February 1962 of the Central Commission. It is dated February 9, 1962. It comments on the draft of a schema "On the Meetings or Conferences of Bishops."

I approve the schema as a whole. The idea of encouraging episcopal conferences on the national level coincides with one of the concerns of the Eastern Catholic Churches: the restoration in Catholicism of the idea and the exercise of episcopal collegiality. The Church is not made up of individuals directly linked to the head, or even of bishops directly and exclusively subject to the pope. The Church is an organic body, constituted not of individual cells and of a head, but of organs, diversely constituted, diversely grouped, and with diverse functions. The bishops are not responsible only for their respective dioceses. Collegially they are also responsible for the Church of their country and for the universal Church.

However, I feel that I must make the following observations on the text of the schema that is presented to us:

1. In the East, episcopal conferences or synods must be viewed overall on a twofold level: first, synods of one specific Church or rite, then synods of the entire Catholic episcopate independently of rites. The former, namely the synods, generally extend beyond the borders of one nation. The latter can usefully be confined to a specific nation. It would be good likewise to look forward to inter-ritual patriarchal synods for the East.
2. The decisions of these episcopal conferences, it is said, have no juridical value. Actually, I don't see why these conferences that assemble the entire episcopate of a country would not be able to make decisions that are binding, as long as they are not contrary to the common law of the Church. When these conferences are held annually or frequently, synods or plenary councils will be rather rare. Why then, not grant these conferences the juridical strength that the decisions of the plenary councils have, especially since constitutionally there is no difference between the episcopal conferences and the plenary councils?
3. It is said that if in these episcopal conferences a question requires a juridical solution there must be recourse to the Holy See and they must abide by its decision. It seems to me that the plenary assembly of the bishops of a whole nation unquestionably possesses a legislative power. It would be desirable to recognize that the synods of bishops, even in the Latin Church, possess a genuine power in the Church, without requiring that their decisions have binding power only through recourse to the Holy See. What one bishop can do in his diocese where he possesses legislative power, as is recognized by No. 4 of this paragraph, all bishops of a country can do collegially for all their dioceses. Papal confirmation has been necessary only according to recent ecclesiastical law. In the past, even in the West, provincial or regional synods were held and made decisions having the power of law for the province or region, without anyone believing it necessary to have a confirmation by the Roman pontiff. It would wise to step back a bit and recognize in the bishops, whether individually or collegially, the powers that the authentic tradition of the

Church admits that they have. This contributes to the decentralization that is necessary in the Church.

4. The schema envisions episcopal conferences only at the national level. Today international conferences are increasing in number. Why would the Catholic Church be the last to profit from the benefits of these international gatherings? Episcopal congresses or conferences on the regional or continental level would be useful.

On the same subject of the episcopal conferences, here is the text of the intervention at the Council on November 15, 1963, by Archbishop Elias Zoghby, Patriarchal Vicar for Egypt and the Sudan

I sum up my intervention on the subject of the episcopal conferences in the four following considerations, some of which have ecumenical importance.

1. The Roman Church was involved with the Orthodox East through ten centuries of union, during which it not only recognized its collegial and synodal system, but even lived this system, in common with the traditional or apostolic Churches of the East.

Indeed, apart from the great ecumenical councils that assembled the episcopates of the East and the West, the Roman Church exchanged with the traditional or apostolic Churches of the East synodal letters that dealt with problems concerning both the local Churches and the universal Church.

In our own era, when the Catholic Church is striving to become more accessible to communion with the Orthodox East and is preparing for ecumenical dialogue, the Second Vatican Council cannot propose to the Churches of the East any ecclesiastical system other than the synodal system, i.e., the system of active and effective episcopal conferences. To speak of purely consultative conferences is to condemn all dialogue to failure beforehand.

2. The synods or episcopal conferences in the Eastern Catholic Churches have been stripped of all real power to the advantage of the Roman dicasteries, and especially of the Sacred Congregation for the Eastern Church. In order to realize this, it is sufficient to consult the new code of Eastern canon law. This congregation actually assumes the role of a pseudo-patriarchate.

It is true that the six patriarchs have been named adjunct members of the Congregation for the Eastern Church, which already has some thirty members, all of them cardinals. This solution is neither efficacious, nor honorable, nor ecumenical.

To make the patriarchs, who are the presidents *de iure* of their own synods, inferior members, numerically in the minority, in a congregation responsible for the affairs of their own patriarchates is in fact to condemn the synodal system.

In the place of this congregation there should be an organization whose members would be delegates of the episcopal synods or conferences of the Churches of the Eastern rite.

3. The bishops are the pastors and have primary responsibility for Catholic action and for the entire lay apostolate. Now, this apostolate is no longer circumscribed within the limits of specific parishes or dioceses. It is organized on a national or worldwide scale. Only the collective power of the episcopate will enable it to exercise its pastoral function at the level of the national or universal organizations of the lay apostolate which the bishops must control and direct.

4. In this hall the specter of danger of nationalism has been raised in opposition to collegiality and to episcopal conferences with jurisdiction.

Now, we live in an era when nationalism, as long as it is not exclusive and dedicated to centralization, no longer constitutes an obstacle to the general welfare, but is rather a principle of enrichment for the whole of human society.

Indeed, while young nations are rising and attaining liberty, we see international organizations arise with greater prestige than ever, in which all peoples participate on an equal basis.

Can churchmen be less generous and less open-minded than statesmen?

Episcopal “Faculties” or Pontifical “Reservations”?

The patriarch discussed this question in a memorandum presented at the meeting of the Central Commission in May, 1962.

In my opinion, there should be no question in the Catholic Church of “faculties conceded to the bishops,” permanently or for a specific time, since the bishop has in his own Church by divine right all the powers necessary to rule his flock, without any limitation. However, when there is a higher interest, certain powers are reserved to the metropolitan, to the patriarch, to the synod, or to the Roman pontiff. We should speak of “reservations” rather than “faculties.” In other words, we must not draw up a list of “faculties” but a list of “reservations.” Moreover, these reservations must be limited to serious cases in which the general interest of the Church requires that the bishop not use his rightful power. But to reserve to the Holy See the blessing of stations of the cross or permission for those in cloisters to leave their enclosure to go to the dentist, and then to cede the “faculty” for this to the ordinaries is a manifest abuse. If the bishop cannot by his own right bless stations of the cross, what else can he do? We have started from the false principle that the Holy See has all the powers and that it alone has them; it then cedes their use, sometimes and as it chooses, to the bishops, as a favor. This concept, never formally stated but applied in practice, is inadmissible.

We even suggest that the future Eastern canon law, even if it is worked out in Rome in the interest of greater uniformity, be promulgated not by the Holy See but by the highest authority of each Eastern Church. The consequence of its promulgation by the Holy See is that every dispensation, even the most minimal, is reserved to the Holy See. If this canon law is promulgated by the highest local authority, there will be no need to have recourse to the Holy See for dispensations in very trivial matters. Only certain serious cases of general interest will be reserved to the Holy See.

Dividing Dioceses

A memorandum presented by Patriarch Maximos at the session of the Preparatory Commission in February, 1962. It deals with the problem of "personal dioceses" for Eastern emigrants.

In general I approve this schema "*de Episcopis et dioecesium regimine*" (on bishops and the administration of dioceses) presented by the commission. I take the liberty, however, of making the following comments:

1. Article I sets out to define what a diocese is. Very felicitously, it stresses that the diocese is a Church in the particular sense of the word, entrusted to a bishop, who is a successor of the Apostles, to govern it, and it adds: "*sub Romani Pontificis auctoritate*" (under the authority of the Roman pontiff). We think that this definition should be amplified by saying: "*sub Romani Pontificis auctoritate aliorumque qui, iure ecclesiastico, potestate supra-episcopali gaudent*" (under the authority of the Roman pontiff or of others who by ecclesiastical right, enjoy supra-episcopal power), such as patriarchs, archbishops, metropolitans, etc. In fact, it is not correct to present the pope as being the only one to have supra-episcopal power in the Church. Other hierarchs likewise enjoy this power, but only by ecclesiastical right.

2. Paragraph 6 recommends that an episcopal commission in each nation have the responsibility of proposing to the Holy See the fixing of boundaries of dioceses. We know that changes in the boundaries of dioceses are not reserved directly to the Holy See in Eastern law. It is therefore also necessary to amend the text of the schema as follows: "*Sanctae Sedi vel aliae auctoritati competenti ad normam iuris proponat*" (Let it propose it to the Holy See or to another competent authority according to the precepts of the law.)

3. The same comment applies to Paragraph 8, which deals with the union of two dioceses that are "equal in importance." Inasmuch as this matter is not directly reserved to the Holy See in Eastern law, the text of the schema must be amended as follows: "*nisi Sedes Apostolica vel alia competens auctoritas ad normam iuris aliter decreverit*" (unless the Apostolic See or another competent authority according to the precepts of the law should decree otherwise).

4. Article 12 envisions the creation in each country of a commission of bishops with the responsibility of proposing to the Holy See all the necessary mutations in the boundaries of the dioceses, allowing the rights of the Eastern Church to remain unchanged. We think that even for the Latin Church the formation of such a commission is inopportune. We propose that this work be the responsibility of the national episcopal conference itself. It is useless to create new organizations.

5. Paragraph 13 envisions the possibility of creating personal dioceses for the faithful of a different rite. Yet the terms that it uses appear to us inadequate because they are either too weak or too elastic: "*erigi poterunt*" (they could be erected). This paragraph must be harmonized with an article already presented by the Commission of the Eastern Churches in which it is said that whenever the number of the faithful of another rite is sufficient

and the welfare of souls *requires* it, the maintenance and development of the Eastern rites must be provided for by the creation of personal dioceses.

The Latin Church has divided up the entire world in such a way that there is not a single parcel of land that is not subject to a Latin jurisdiction. Even in places where there is only one Eastern Catholic jurisdiction, a Latin jurisdiction has been created for the benefit of the Latins, thus doubling the local Catholic hierarchy. By contrast, even for tens of thousands of Eastern Catholics, the Latin hierarchy of certain countries still refuses to allow a personal diocese of the Eastern rite to be created by the Holy See, under the pretext that it wishes to remain alone and free in its movements on its own territory. The modern history of the Eastern Catholic Churches also offers many examples of such discriminatory measures that unjustly affect Eastern Catholics, especially in India and in America.

We think that the Council, by using more categorical terms, must request the creation of these personal dioceses of the Eastern rite whenever the number of the faithful permits it and the welfare of souls requires it, so that the long-standing opposition of certain territorial bishops may at last be seen by them to be prejudicial to the good of the Church. In the countries of emigration our Orthodox brethren have their own hierarchy, organize themselves, and develop. We, on the contrary, because we are Catholic, see ourselves deprived of a hierarchy, which not only places us in a state of inferiority by comparison with the Orthodox, but also prevents us from assuring the spiritual service of our faithful and the effective oversight of our priests. This results in a veritable confusion in our parishes of the diaspora, and as a consequence the loss of our children in many localities.

Internationalization of the Roman Curia

In its "Comments on the schemas of the Council" (1963), the Holy Synod proposed the practical means of internationalizing the Roman Curia. The comment is made on the subject of a paragraph of the schema "On the Bishops and the Government of Dioceses."

The schema proposes that certain members of the episcopate, designated by the episcopal conferences of each country, be named members or consultors of the Roman congregations. This, it is hoped, will accomplish the internationalization of the Roman Curia, which is so strongly desired. We believe that this measure is not sufficient. To accomplish this internationalization we think that the following measures must be taken:

1. Have the courage to face reality clearly: the Catholic Church, in its central administration, is not very universal, not very international. More than ninety percent of the representative staff of the Holy See consists of Italians: at the Roman Curia the percentage must not be much lower. The same holds true of the Roman universities as a whole. How can we prevent anyone from thinking that the administration of the Catholic Church is *de facto* monopolized by the Italian nation, which, for that matter, is extremely venerable and obliging? A thousand reasons will be given to justify this state of things. Yet, are these authentic reasons, valid before God, or self-interested pretexts? If the Council does not remedy this situation, the reforms it plans to accomplish in the Church will not be complete. Whether we like it or not, we are faced with an abnormal situation, which can perhaps be explained by the historical evolution of pontifical power, but which is no longer justifiable.
2. In order that the bishops of the entire world be appointed members of the Roman congregations, current canon law, according to which only cardinals can be members of a Roman Congregation, must be changed. Even recently, His Holiness Pope John XXIII, favorably accepting a suggestion that we had made to him, wished to introduce the Eastern patriarchs into the "plenary" assemblies of the Eastern congregation. It seems that in order not to contravene canon law it was considered adequate to give the patriarchs the title of "adjunct-members": a useless insult to the patriarchs whom the Holy Father intended to honor.
3. The practice of the Roman congregations, which holds that the members be neither convoked nor regularly consulted, must also be changed. If, in fact, one of them is temporarily in Rome, and if by chance a "plenary" is held during that time, he is permitted to attend. But no file is sent to him ahead of time to study. In reality, to be a member of a Roman congregation, for those members who live outside Rome, is a purely honorary title. As a matter of fact, this has been the case for the Eastern patriarchs who have been appointed "adjunct-members" of the Eastern Congregation. *L'Osservatore Romano* and other newspapers have outdone themselves in pointing out this gesture of "special benevolence" by the Holy See for the Eastern patriarchs. In fact, since they were named, the patriarchs have never been convoked; they have never received a file to study; they have never been asked for their opinion. That is how the most generous reforming intentions are neutralized by the routine of administration.

4. In actual fact, the most important questions must be reserved for the deliberations of all the members and not be settled by the Cardinal Prefect or the Secretary, with at most one or two officials of his department.

Naturally, the text of the schema is not opposed to these reforms, but it does not require them. It is content to make theoretical assertions, but it would be good for it to go into a few details on this point.

One would also like to see provision made for a sort of supreme council around the pope, composed of the Eastern patriarchs (as incumbents of the great apostolic sees of Christendom), the cardinals, and even the primates (under whatever title they are called) of all the Churches (for example, the presidents of the national episcopal conferences).

Reform of the Holy Office

The Holy Synod, in its "Comments on the Schemas of the Council" (1963) asked for the reform of the Roman Curia in general and of the Holy Office in particular.

In our opinion, the Council owes it to itself to provide the fundamental principles of a reform of the Roman Curia. The faithful will be shocked to see the Council begin the reform of dioceses, of parishes, of religious institutions, of associations of the faithful, etc., and not touch on the reform of the organizations of the Roman administration. More than one will think that this indicates the premeditated intention to avoid all reform of the curia, whereas this reform, according to the universal view of popes, bishops, and the faithful is necessary for the good of the Church.

The reform of all dicasteries of the Roman Curia requires detailed studies which are more within the province of the post-Conciliar commission. The council should merely order the reform and indicate its broad outlines.

Reform is especially necessary in what concerns the "Supreme Sacred Congregation of the Holy Office." With respect to this congregation there is something like a conspiracy of silence: a respectful silence perhaps, but above all a silence of fear. We think that on the contrary, through love of the Church and of the Holy See, the Fathers of the Council should speak out, always respectfully but frankly and courageously, for God will hold them accountable for having seen the evil, of complaining about it in secret, and not denouncing it. We shall simply say what we think. But others than ourselves have certainly much more to say.

Every physical or moral body owes it to itself to possess a structure capable of defending itself against ailments. Likewise, the Catholic Church must have within its bosom an effective structure to defend the faith and sound morals. The necessity of a congregation "*De Fide et Moribus*" is therefore not called into question. Yet between such an organization and a "Supreme Sacred Congregation of the Holy Office" with its current form and procedures, there is a difference, and what a difference!

Thus a reform of the Holy Office is indispensable. Here are the reforms that, in our opinion, are the most urgent ones:

1. First of all, the spirit that dominates at the Holy Office must be changed. This spirit does not seem to us to be the spirit of Christ and of His holy Gospel. From its origins, the Holy Office has inherited an absolutism of thought and procedures that was inherent in the customs of the time, but that our contemporaries, with good right, can no longer tolerate. The spirit of Christ is a spirit of non-violence, of charity with respect to those who sin or who involuntarily go astray, a spirit of humble search for the truth, of graciousness, service, openness, forgiveness, etc. The members of the Holy Office can be, and we believe are in fact holy persons who individually possess all these qualities. However, as a body, they do not act according to the spirit of Christ. As a result, they give the faithful and others a false idea of Christianity. The Christian virtues must be practiced, not only individually but also collectively, in a body.

2. In particular, what shocks our contemporaries is this self-assurance that the Holy Office displays in every domain, dogmatic as well as moral, political, artistic, etc., so that in its view everything is clear, evident, and certain. The Holy Office acts as if it were endowed with infallibility.

3. It is also necessary that the Holy Office no longer remain above the Law. Its public legislation must be widely known. In legislating on procedure, the Code begins by excepting the Holy Office (can. 1555, #1), which would have its own particular norms, which would remain secret. The procedure of the Holy Office must cease to give the impression of being left to the arbitrariness of the members of this congregation.

4. The Holy Office must also have a clearly-defined jurisdiction. Under the pretext of safeguarding faith and morals, it must not take care of everything. In fact, the entire discipline and the entire administration, and in the last analysis everything in the Church stems in a certain respect from faith. The Holy Office has been seen to meddle in the liturgy, the apostolate, politics, art, nominations, everything, under cover of faith and morals, for example, when it sought to prohibit priests of the Byzantine rite from using the vernacular language in the liturgy or to forbid an Eastern bishop from exercising the apostolate with regard to certain non-Christians of his diocese in order to reserve it for Latin authority of the same diocese.

5. Likewise, it must never happen that a sentence handed down in the first instance by the Holy Office be final. When the Holy Office pronounces on appeal, it is normal that its sentence be final, but when it pronounces in the first instance, an appeal must be assured.

6. Moreover, no sentence of the Holy Office must be handed down without the interested party's having knowledge of the grievances imputed to him and very ample means available to him for defending himself.

7. The system of "secret accusation," tolerated if not encouraged by the Holy Office, must be eliminated. The accusers must be severely punished. Except in very rare and very serious cases, such accusing, even when it is not false, harms the Church by creating an atmosphere of suspicion, fear, and terror.

8. No member of the laity, and especially no ecclesiastic, must be judged and condemned by the Holy Office except after his hierarchic leader has been heard. That is ordinary common sense.

9. The Holy Office must no longer condemn *ex informata conscientia*, by arrogating omnipotent and absolute power over consciences. Justice, and even simple decency, condemns such a method.

10. We must put an end to this terror of the "*Secretum Sancti Officii*" (under the secrecy of the Holy Office), which forbids speaking under pain of very serious censures or which imposes commands that are sometimes repugnant to the conscience. Such for example would be the case when the Holy Office directs a bishop "*sub secreto Sancti Officii*" to take a stern measure against a priest while making the priest believe that this measure

comes from his bishop and not from the Holy Office. Such procedures are repugnant to the natural conscience and create mistrust in the Church. It is even immoral.

In a word, the Holy Office can no longer live in the Middle Ages. The Inquisition of Torquemada is over. The Holy Office, which inherited its spirit, must also come to an end in its present form and with the procedures that it still uses, in order to give way to a normal Congregation "*De Fide et Moribus*" (On Faith and Morals).

We for our part acknowledge that throughout our life we have never heard anything but complaints, and often very bitter ones, concerning the Holy Office. Yet very few are those who dare to raise their voices. We have done so, and we shall do it again, because we deem that our patriarchal and episcopal duty demands that we speak out openly but also with respect for the venerable members of this congregation.

Ecclesiastical Censures and the Holy Office

A memorandum presented by Patriarch Maximos at the May 1962 meeting of the Central Commission concerning two schemas on ecclesiastical penalties that will not be retained in the future.

I completely approve of this schema which has introduced into the penal administration of the Church some indispensable guarantees of justice. It was a point of weakness in the procedures of the Church to commit the accused to the prudent judgement of the ordinary. Certainly, the ordinaries must have our trust, but trust must also be inspired in the accused, and he should not be given reason to believe that the Church refuses him the guarantees of defense and equity that all the tribunals of the free world today now provide. On this point the Church law was still manifesting the customs of the Middle Ages.

And yet the tribunal that, in the Church, is most seriously accused of not observing these formal guarantees of justice will still escape, according to the schema, this absolutely indispensable reform. I speak of the Holy Office, which Canon Law still dispenses from these rules of common procedure.

We do not doubt the virtue and good intentions of the members of the Holy Office, but that is not the question. What is at stake is whether the Church will continue to tolerate in the mid-20th century that the Holy Office will continue to proceed like the Holy Inquisition of the Middle Ages, for example by condemning someone *ex informata conscientia*, without having heard him, without giving him the opportunity to defend himself, and by reserving for itself the rights to inflict penalties not provided by law and to follow an unknown procedure. Such ways of acting degrade the Church in the eyes of unbelievers, and of believers as well. They embitter Catholics. They give the Holy Office an exaggerated power in the Church, to the point of sometimes allowing it to neutralize the wishes of the supreme pontiff. They humiliate the Catholic hierarchy. They surround this organization, which should be only a simple dicastery of the Roman Curia like the others, with a reputation for shadowy terror, something that is most contrary to the spirit of the Gospel. The Holy Office must defend faith and morals, but by evangelical means, not by the means, mitigated it is true, of the Holy Inquisition of the Middle Ages, and, in any case, with the formal and external guarantees of justice that all tribunals of the free world approve.

For all these reasons, we ask that the Holy Office be obliged to observe the common procedures of the Church and not constitute an exceptional tribunal either as to jurisdiction, procedure, or penalties. For the honor of the Church, a radical reform is absolutely indispensable.

I approve all the simplifications in the penal law accomplished by this schema. I would even wish for greater simplification. Ecclesiastical penalties are most often vestiges of a past medieval society. It is enough to have ten or so censures or penalties for really serious cases, intended to avoid scandal and to put an end to contumacy.

The censure foreseen for No. 16 (censure *latae sententiae* reserved for the Holy See against clerics or religious who become guilty of moral offenses with minors under the age of 16) should not be introduced, in our opinion. First of all, the statement of such an offense in conciliar acts does not befit the honor of the Church and the dignity of the clergy. Besides, there is no need to inflict a censure on this sin. Inasmuch as it is concerned with clerics or religious, the evil of the sin, in itself, should suffice to deter them from such a shameful offense. Finally, and above all, it is not fitting that the censure be reserved for the Holy See. This would be interpreted as an indirect means used by the Holy See to dominate consciences. It suffices that confessors warn their penitents of their serious duty, under certain circumstances, to denounce their accomplice to the ordinary who will take the appropriate measures, since he knows the circumstances of place and persons. Generally speaking, the custom of informing, even if anonymous, must not be introduced into the Church. In fact, if informing to the Holy See is anonymous, it has little usefulness; if it reveals the name of the guilty party it transforms the Holy See into a bureau of police investigation, which is odious.

Restoring the Free Election of Bishops in the Eastern Church

This is a post-conciliar memorandum written by the patriarch in Damascus on April 9, 1965. In its "Decree on the Eastern Catholic Churches," the Council had decided to restore to the patriarchs together with their synods the right to freely elect, without need of pontifical confirmation, the bishops of their rite within the limits of the patriarchal territory. However, when, after the Council, it was necessary to exercise this right, difficulties arose. This memorandum had to be written in order to defend the decision of the Council.

1. Nothing in Holy Scripture or in the Tradition of the Fathers reserves to the Roman pontiff the election or confirmation of bishops in the entire world.

In the East, after the variety of customs in the first three centuries, the designation of bishops was always carried out by way of an election in a provincial synod, presided over by the metropolitan, by the patriarchal synod, presided over by patriarch, or by any other synod possessing internal canonical autocephaly.

This in no way denies the right of the supreme pontiff to intervene by directly naming a bishop. However, this intervention is only sporadic, motivated by extraordinary urgent circumstances or by the supreme interest of the universal Church. Apart from these cases, the supreme pontiff respects the normal functioning of the institutions of the East that reserve to the holy synod the free election of bishops.

Once the Eastern bishops have been elected in a synod, they do not need, according to authentic Eastern law, to be confirmed by the supreme pontiff.

Never during the thousand years that the union of the East and the West endured did the Bishop of Rome intervene to confirm the election of an Eastern bishop.

Even in the West, it was only very recently that the nomination or confirmation of bishops was reserved to the Roman pontiffs. This is an evident proof that there is question here of a reservation of a purely disciplinary nature, not demanded by Catholic dogma. Now, in a purely disciplinary matter, not only is evolution accepted, but also divergence between the East and the West must be accepted. On this question of the designation of bishops, the East does not impose its discipline on the West. Conversely, neither must the West impose its discipline on the East.

2. Unfortunately, it has happened that when segments of the Eastern Churches united with Rome during the last few centuries, the West did impose its own discipline on them in this matter. Whether due to ignorance of the institutions of the East or to an erroneous conviction that this was a point of doctrine, the fact is that little by little the various Eastern Catholic Churches have been compelled in this matter of the designation of bishops to follow measures that have been progressively restrictive of their internal canonical autonomy, even when the right to freely elect their bishops was not completely taken from them and reserved entirely to the Roman pontiff.

The Eastern Catholic Churches allowed this to be done to them. It did not even occur to them that they could do anything else, since their hierarchs were for the most part imbued with the theories of the Counter-Reformation, according to which all power in the Church issues from the pope and no bishop can be received into the college of the successors of the Apostles unless he is directly named or at least confirmed by the pope.

In this general atmosphere of submissiveness amid the forgetfulness of the authentic discipline of the East, which is more ancient on this point than the discipline of the West, the Melkite Church and the Maronite Church refused to allow themselves to be latinized. The Melkite Synod, presided over by the patriarch, has always proceeded freely in the election of bishops without being held to any previous authorization or confirmation by the Holy See of Rome. Out of deference to the supreme pontiff, the patriarch simply transmitted to Rome, purely by way of information, the name of the elected bishop. Thus Rome knew that there was a new bishop in the Melkite Church and could deal with him. It was in no sense a request for confirmation, but simply the transmission of information. The name of the bishop was not cited by the pope in consistory, and he received no bull of nomination or confirmation.

It was only under Benedict XV that the Eastern Congregation took the initiative on its own to publish in the *Acta Apostolicae Sedis*, when learning of a new bishop elected among the Melkites or the Maronites, that the Holy Father “*ratam habuit*” this election. This does not mean that he “ratified” it, but that he simply “recognized it as valid.” On the other hand, with respect to the other communities subject to a latinizing discipline that demanded the confirmation of the pope (the Armenians, the Copts, the Syrians, and the Chaldeans), the *Acta* said that the pope “*electionem confirmavit*” (confirmed the election). (Cf. on this question A. Coussa, “*Epitome praelectionum de iure ecclesiastico orientali*,” Vol. I, Rome, 1948, No. 296, pp. 297-8.) As for the communities that had no patriarch, such as the Ukrainians, the Ruthenians, the Romanians, the Malabarese, etc., Rome named the bishops directly.

3. This last vestige of internal canonical autonomy, this last trace of authentic Eastern discipline miraculously preserved by the Melkite Church and the Maronite Church, was destroyed by Pope Pius XII.

Under his orders, the Sacred Eastern Congregation, by a letter of December 15, 1951 (No. 389-51), addressed to all the heads of the Eastern Churches, made obligatory the part of the proposed codification of Eastern law which concerns the elections of bishops. This new discipline went into effect immediately, but it was to remain secret by the order of the pope. It was to be made public by the publication of the Motu Proprio “*Cleri sanctitati*” of June 2, 1957. We have energetically protested against these measures, but in vain.

The most serious aspect of this new discipline is the obligation, henceforth unlimited and extended to all the Eastern Churches, including the Melkite Church and the Maronite Church, to receive from the Holy See either the confirmation of bishops elected or else the prior approbation of lists of those under consideration for elevation to the episcopacy, to be renewed every six months. In each alternative, there is the same obvious and serious infraction of authentic Eastern discipline.

More serious still is the principle adopted for legitimizing this restriction of the freedom of election of bishops. According to the letter of the Sacred Eastern Congregation mentioned above, it is “the intention to provide that these promotions to the episcopal dignity more perfectly reflect the fundamental principles of doctrine...”

This allusion in turn reflects not Catholic doctrine but a certain theory, very much honored in certain quarters, notably the Roman, according to which Catholic dogma requires that no bishop be designated except by the pope, directly or indirectly. This is the theory that inspired the first draft of the schema “*De Ecclesia*,” still completely imbued with the above-mentioned theory. This draft said in substance that no bishop is received into the apostolic college except through the direct or indirect intervention of the pope.

The Melkite representative and also the late Cardinal Acacius Coussa demonstrated to the Central Commission, where this first draft was submitted for discussion, how lacking this theory was in scriptural, patristic, and historical foundation. It projected on the universal Church what was simply a fortuitous disciplinary and rather recent custom of the Western patriarchate alone, while elevating it to the level of a theological doctrine.

In the face of these criticisms and others that came later, this theory was abandoned, and a new draft was adopted by the Theological Commission that respects the truth of revelation and of history.

This new draft, with slight modifications, found a place in the dogmatic constitution “On the Church,” approved by the Council on November 21, 1964, which says the following in the last paragraph of No. 24:

“The canonical mission of bishops can come about:

- by legitimate customs which have not been revoked by the supreme and universal authority of the Church,
- or by laws made or recognized by the same authority,
- or directly through the successor of Peter himself. If the latter refuses or denies apostolic communion, a bishop cannot assume office.”

Of the three possibilities envisioned by this text, the third is the one that suits the Latin Church, in which the pope directly names all bishops; the second has been applied to those Eastern Catholic Churches upon which a so-called “Eastern” legislation has been imposed in this matter, which is really only a stage of latinization. Only first possibility constitutes the true and authentic law of the East, in which bishops are elected by the Holy Synod, by virtue of legitimate customs and of a conciliar law that should not be revoked.

4. In other words, the transitory law that is the latinizing legislation of the *motu proprio* “*Cleri Sanctitati*” must be replaced by an authentically Eastern law. On this point, as on so many others, the authentic Eastern law must be restored.

a. This is absolutely necessary if we wish to enter into discussions with Orthodoxy with a view to union. Orthodoxy will never accept union if it knows that its bishops will be nominated or confirmed by Rome, as are the Latin bishops.

b. The Latin Church must not absorb the Eastern Churches. We must be Catholic, but not necessarily Latin. In everything that does not concern dogma and the necessary communion with the successor of Peter, it is necessary to recognize the broadest disciplinary autonomy of the Eastern Churches.

c. One must have confidence in the synods of bishops. The candidate whom they will elect is better known and judged by a group of 15 or 20 bishops assembled in synod than by a “*minutante*” or by another functionary of the Roman Curia, who necessarily judges on the basis of reports that are not always truthful. In our own time especially, the episcopate is demonstrating great maturity of judgment, and we believe that no pernicious influence could make it deviate from its course.

d. It is necessary to avoid the shame of having to receive approbation of lists of those qualified to become bishops and of having the approbation renewed every six months. Likewise, it is necessary to avoid the shame of electing a bishop in synod, and then waiting at least one month until Rome has studied his file, as if the judgment of the bishops assembled in synod had no value compared with the judgment of a “*minutante*” of the Roman court. Meanwhile the Catholic episcopate is the laughing-stock of Orthodox Christians.

e. The council, aware of these difficulties, has made serious decisions that radically remedy the situation and must now be put into practice.

Referring to the Eastern patriarchs, the Council in its “Decree on Eastern Catholic Churches” sets forth in No. 9 three governing principles that absolutely require a radical recasting of the “latinizing” legislation in force until now.

The first principle: “This sacred Synod, therefore, decrees that their rights and privileges should be re-established in accord with the ancient traditions of each Church and the decrees of the ecumenical Synods.”

Now, it is evident, absolutely evident, that the free election of bishops is one of the most authentic and most serious prerogatives of the Eastern patriarchs with their synods, according to the ancient traditions of the Eastern Churches and the decisions of the ecumenical councils.

The second principle specifies how we are to understand this restoration and what are these rights and privileges to be restored. It says: “The rights and privileges in question are those which flourished when the East and West were in union, though they should be somewhat adapted to modern conditions.”

Therefore this restoration must be accomplished not according to a hybrid and latinizing law conceived by the Roman Curia, but according to the authentic Eastern law as it was applied during the thousand years of union between the East and the West. Now, during

the time of union, never, absolutely never, would it have come to anyone's mind that the bishops of the East must be elected or confirmed by Rome. Those who think otherwise are ignorant of the elements of history. It is all the more true in that even until the twentieth century, and more precisely until the end of 1951, no Melkite bishop ever needed confirmation by Rome.

It is true that this authentic Eastern law can and sometimes must be "somewhat adapted to modern conditions." But these modern conditions in no way require, quite to the contrary, that the Eastern bishops be confirmed by Rome.

The third principle removes all doubt about this matter, since it considers our case in particular. It says: "The patriarchs with their synods constitute the superior authority for all affairs of the patriarchate, including the right to establish new eparchies and to nominate bishops of their rite within the territorial bounds of the patriarchate, without prejudice to the inalienable right of the Roman pontiff to intervene in individual cases."

According to this conciliar text, the patriarchs with their synods are normally the superior authority for all the business of their patriarchates, including the right to name the bishops of their rite within the patriarchal territory. This could not be stated more clearly. The pope can certainly intervene whenever he so wishes, but if he does not intervene for reasons of exceptional gravity in which the general welfare of the Church is at stake, the nomination of bishops, as well as all the other business of the patriarchate, is under the jurisdiction of the patriarch with his synod.

5. The three principles naturally call for a complete recasting of the current Eastern codification in the direction of greater internal canonical autonomy, but this work will no doubt require several years.

Meanwhile, one must conclude that through these principles the Council virtually abrogates the directly contrary restrictive provisions of the *motu proprio* "*Cleri sanctitati*," in particular Canons 253 and 254, that require the confirmation by Rome of elected candidates or the prior approbation of lists of those being considered as potential bishops.

6. Practical conclusion

In order to avoid any doubt as to interpretation, and while awaiting the recasting of Eastern canon law, we humbly suggest that the Holy Father, as an application of the decrees of the council, abrogate or suspend the effect of the two above-cited canons by declaring that the Eastern patriarchs with their synods can freely proceed to the election the consecration and the installation of the bishops of their rites within the limits of the patriarchal territory.

This point, which is of very great importance, is, as it were, the touchstone which will indicate the sincere determination of the central administration to apply the reforming decisions of the Council in accordance with the spirit of the Council.

Indeed, the decisions of the Second Vatican Council approved and promulgated by Pope Paul VI must not remain dead letters, in the state of futile solemn declarations but never applied, as happened with all those that were proclaimed by Leo XIII and a few other popes but never put into force by their central administration. For the honor of the Roman Church, these decisions of the Second Vatican Council must be put into practice.

The Oriental Congregation had expressed interest in gathering the opinions of the Eastern patriarchs on the practical way of applying Article 9 of the conciliar "Decree on the Eastern Catholic Churches." Patriarch Maximos again assembled his Synod in Beirut on January 11, 1966. The Synod proposed to Rome a procedure which would allow the Holy See of Rome to intervene on occasion if the good of the Church required it, and allow the Eastern Churches to exercise their prerogative of free election.

The patriarch, as of January 18, 1966, transmitted to His Eminence Gustave Cardinal Testa, Pro-Prefect of the Oriental Congregation, the deliberations of the Holy Synod.

Your Eminence:

Following up on my letter of November 27th last, relating to the practical procedure proposed by Your Eminence for applying Article 9 of the Conciliar Decree on the Eastern Catholic Churches, I hasten to inform Your Eminence that I convoked the Synod of our Bishops on Tuesday, the eleventh of this month, in Beirut. Seventeen bishops were able to attend; five excused themselves from coming for reasons of health or work...

The Fathers asked me to transmit their response to you in writing the following text:

1. The Synod, by law as well as in conscience, must hold to Article 9 of the Decree on the Eastern Catholic Churches, restoring to the said Churches their full freedom in episcopal elections that they enjoyed previously. That is why the Synod does not wish to give an opinion in what concerns the procedure of the elections that could be interpreted as if we were renouncing a right that the council has recognized that we have.
2. Inasmuch as the patriarch is obliged by reason of his function to consult before proposing the candidacy of anyone for episcopal election, it is natural that he consult the Holy See of Rome, on condition, however, that this consultation not be considered as a renunciation of our rights or as the recognition of a new right of others.
3. The procedure of consultation indicated below must be considered not as an obligatory juridical norm to be inserted in the Codex, but as a practical measure of the pastoral order.

Here, then, is the practical procedure of consultation before the election:

- a. The patriarch writes to the Holy See of Rome to present to it at the opportune time a list of names of priests who seem to him deserving of being candidates in future episcopal elections.
- b. This presentation of names does not have as its purpose to obtain approval or confirmation of future candidates. However, its purpose is to provide information that enables the Roman pontiff to intervene in each election if he judges it appropriate, as the Second Vatican Council says (Decree on the Eastern Catholic Churches, 9).

c. The list presented by the patriarch can be increased by new names, or reduced, according to the circumstances of times and persons and the needs of the Church.

d. The names on this list that have been formally vetoed by the Holy See of Rome will be the objects of explanation or definitively excluded. The other names can be presented to the electoral Synod, as candidates for episcopal election.

As soon as they are elected, they can, without other prior notice, be proclaimed bishops.

e. However, out of deference to the Holy See of Rome, the first notification shall be made to the pope through the intermediary of his representative in the locality.

In transmitting this response of the Holy Synod, I am certain that Your Eminence will understand the underlying reasons why our Church wishes to retain the freedom of elections restored by the Council, and at the same time benefit from the authoritative opinions of the Holy See of Rome. I believe that the proposed procedure allows Rome to exercise its right and allows our Church to exercise its prerogatives...

Meanwhile, the patriarch learned that the post-conciliar Central Commission, as of January 31, 1966, had given Article 9 of the conciliar "Decree on the Eastern Catholic Churches" an interpretation contrary to the text and spirit of the decree. The patriarch convoked his Synod once again, at Ain-Traz on April 25 and 29, 1966. On April 30 he wrote an urgent letter to the Holy Father, begging him to please defer the publication of this interpretation. The Holy Father in fact suspended the effect of this interpretation. In a second letter dated May 11, 1966, the patriarch transmitted to the Holy Father the reasons why he, together with his Synod, believed that the interpretation of the post-conciliar commission was inadmissible. He accompanied his letter with an explanatory memorandum; the full text follows:

Memorandum on the Interpretation of No. 9, sentence 4, of the Conciliar Decree on the Eastern Catholic Churches I The Context

The fourth sentence of No. 9 of the conciliar "Decree on the Eastern Catholic Churches" states the following:

"The patriarchs with their synods constitute the superior authority for all affairs of the patriarchate, including the right to establish new eparchies and to nominate bishops of their rite within the territorial bounds of the patriarchate, without prejudice to the inalienable right of the Roman pontiff to intervene in individual cases."

In order to understand this text it is advisable first of all to place it in its context. Several interventions of the conciliar Fathers stressed that in the current discipline of the Catholic Church the authentic rights of the Eastern patriarchs were greatly reduced. This appeared to be an obstacle to ecumenical dialogue with Orthodoxy, in which the patriarchal dignity is held in high esteem. That is why the Eastern Commission submitted to the Council, which approved them, a series of measures intended to restore the dignity and the powers of the Eastern patriarchs.

After explicitly affirming in the first sentence of this No. 9 that “the patriarchs of the Eastern Churches are to be accorded exceptional respect,” the second sentence goes further and says: “This sacred Synod, therefore, decrees that their rights and privileges should be re-established in accord with the ancient traditions of each Church and the decrees of the ecumenical Synods.” Thus, the Council presumes that at the present time, according to the discipline in force (in particular, the discipline of the *motu proprio* “*Cleri sanctitati*”), the patriarchs are deprived of at least certain of their rights and privileges and the Council decides that they must be given back to them. Therefore, if the pre-conciliar law of the *motu proprio* is maintained as such, the Council, which decided to restore the rights and privileges of the Eastern patriarchs, is not being obeyed.

In order to make for still greater clarity, the third sentence indicates in what direction this restoration must be made. The Council says: “The rights and privileges in question are those which flourished when the East and West were in union, though they should be somewhat adapted to modern conditions.” The Council therefore commands that the inspiration for the restoration of the rights and privileges of the patriarchs be drawn not from the recent law of the *motu proprio* of Pius XII, or even from the recent synods of the communities united with Rome, which have often introduced a very shocking hybrid law, but from the classical and authentic Eastern law such as it was practiced during the millennium of union between the East and the West. It is the Council's thought, therefore, that we must pass over a certain recent period of legislation and return to the ancient law. It is not in accordance with the thinking of the Council to refer constantly to the *motu proprio* of Pius XII and cling to it as to an immutable law. The interpretation of the conciliar texts on this matter need not culminate in the confirmation of pre-conciliar legislation. If that were to happen, the Council would have accomplished nothing. There was no need to assemble a Council in order to confirm, purely and simply, the *status quo ante*.

To conclude, the Council approved, in the fourth sentence, an important application of the principles of restoration that it had just set forth. The fourth sentence is intended to return to the patriarchs with their synods a certain internal canonical autonomy insofar as it is reconcilable with the recognition of the dogma of Roman supremacy. We must not allow ourselves to be impressed by the expression of opinion that has indeed been used at the Council by eminent orators, such as Cardinal Francis Koenig himself. There is no question of autonomy in the sense of independence *vis-a-vis* Rome or of autocephaly such as the Orthodox understand it. It is a question of recognizing the right of the Eastern Churches to govern themselves internally, with full recognition of the prerogatives of Roman primacy, without being obliged to have recourse, constantly and often for administrative details, to previous authorizations and to subsequent confirmations by the dicasteries of the Roman Curia, as is the practice today, according to the current law in which the patriarch cannot even give a *celebret* to a priest who is going to America for two or three months without obtaining an authorization from Rome, etc.

The Council has sought to react against this state of affairs and to liberate the patriarchs from these administrative servitudes by recognizing their right, as in former days of union, to govern their patriarchates as leaders of particular Churches, conscious of their duties and responsible for their apostolic mission, not as executive agents of the Sacred Eastern Congregation. This does not mean that Roman primacy and the exercise of that

primacy are denied. However, from the fact that the pope *can* intervene in all ecclesiastical matters, even the smallest, it does not follow that he *must* intervene in all matters and that no measure can be taken without his consent or his confirmation.

The East was closely united with Rome before the great rupture of the eleventh century and fully recognized Roman primacy. However, it governed itself freely, while the pope retained the right to intervene when he deemed it advisable for the good of the Church; and in fact he did intervene, more or less frequently, according to the gravity of the cases.

It is this perfectly Catholic state of affairs, during the millennium of union between the East and the West, that the Council intends to give as the model for the future codification of the Eastern Canon Law when it pronounces the following principle contained in the fourth sentence of No. 9: “The patriarchs with their synods constitute the superior authority for all affairs of the patriarchate, including the right to establish new eparchies and to nominate bishops of their rite within the territorial bounds of the patriarchate, without prejudice to the inalienable right of the Roman pontiff to intervene in individual cases.”

Before passing to the commentary on this text, it is perhaps appropriate to recall that this text is henceforth a conciliar text. Whether it please certain persons or not, whether it has been presented by the Melkites or by others, whether it has been bitterly debated at the Eastern Commission or not, it belongs from now on to the incontestable heritage of the universal Church. Those who were formerly opposed to it at the preparatory stage should not be authorized today to raise doubts about it or to cleverly empty it of its efficacy by the devious means of all sorts of interpretations that do not respect its original meaning.

II. What Does This Text Grant to the Patriarchs with Their Synods?

The council is deciding that “for all the affairs of the patriarchate” without exception “the patriarchs with their synods constitute the superior authority.”

The affairs that the patriarchate deals with are many and unlimited: the discipline of the clergy and of the faithful, seminaries, the apostolate, etc. No exception is made.

In all these affairs, the patriarchs, alone or with their respective synods, according to the determinations of positive law, constitute the “superior authority.” The term “supreme” is not used, in order to respect the “more superior” or “supreme” authority of the Holy See of Rome. And yet, the Council says that normally all the affairs of the patriarchate are under the authority of the patriarch with his synod. This is the obvious meaning of the Council's statement. In accordance with this principle it will therefore be necessary to review completely current legislation which takes an infinite number of affairs of the patriarchate away from the patriarchs with their synods. The council has chosen to set bounds to these countless limitations on the rights of the patriarchs, in order to restore it to the situation that prevailed “during the time of union.”

The council, naturally, could not enter into the details of a reform of legislation. Nevertheless, in order to avoid possible hesitations, it mentions two affairs among the most important ones of the patriarchate, to make it clear that even these two matters are

under the jurisdiction of the patriarchs with their synods. It says: “including the right to establish new eparchies and to nominate bishops of their rite within the territorial bounds of the patriarchate...” If the council felt the need to mention these two matters, it is because they had in fact during modern times been withdrawn, in certain rites, from the competence of the patriarchs and of their synods. The council commands that they be restored to them.

III. What is the Role of the Roman pontiff?

This role is indicated in the conciliar decree by the final clause “without prejudice to the inalienable right of the Roman pontiff to intervene in individual cases.”

In order to fully understand this clause, it is necessary to take note of the following:

1. This clause is general in character. It is found, in this form or in similar form, hundreds of times in the documents of the council. Actually, it would suffice to affirm the prerogatives of the Roman primacy once and for all, without having to repeat this clause each time. It is clearly understood, in fact, that the pope can intervene everywhere, always, in all matters. The reason that a special need has been felt to insert this clause in the section that we are discussing is that the text lays the foundations for a certain internal canonical autonomy for the Eastern Churches. Now, in order that there may be no misinterpretation of the meaning of this internal autonomy and so that it may not be confused with autocephaly as it is practiced in the Orthodox Churches, the authors of the decree have felt the need to add the clause cited above in order to show clearly that the internal autonomy in question presumes respect for the prerogatives of the Roman primacy. Yet this clause, once again, is of a general nature and has no more authority in this paragraph than anywhere else. It simply signifies this: the broad jurisdiction recognized for the patriarchs and their synods to manage their own affairs must remain compatible with the rights of Roman primacy, such as they have been defined by Vatican I and clarified by Vatican II in the light of the powers of the episcopate.

2. Having said this, the conciliar text affirms that the pope has the right to intervene in every case, and that this right is inalienable. The difficulty—if there is a difficulty—would relate to the meaning of the words “*jus interveniendi*” (right to intervene) and “*in singulis casibus*” (in individual cases).

a. “*In singulis casibus*” does not mean “*in aliquibus casibus*” (in some cases) or “*in particularibus casibus*” (in particular cases). According to Catholic doctrine, the right of the pope extends to all persons and all cases. If necessary, according to the letter of the law, there is not a single ecclesiastical matter in the world of which it can be said to the pope: “this is not within your competence as pope.” According to the letter of the law, the pope can intervene even to name a pastor in a parish, the rector of a church, or a school principal, etc.

“*In singulis casibus*” includes “*in omnibus casibus*,” but adds a nuance to it. It could be translated “in all cases, these being considered each in particular.” The nuance is not to be scorned; it is in each case in particular (it does not say: in certain particular cases) that the pope can intervene. This therefore presumes not a general rule commanding

intervention, but a particular determination appropriate for each case in particular, even if, in an extreme hypothesis, this determination were to be repeated for all cases.

b. “The right to intervene” means the power to intervene, if the pope deems it appropriate. The right to intervene does not involve the obligation to intervene, namely, the necessary exercise of this right. The fact that the pope can intervene even in the nomination of pastors of parishes does not signify that he must intervene for each nomination of a pastor and that the ordinary of the place cannot name a pastor without the previous or subsequent intervention of the pope. Likewise, the fact that the pope has the right to intervene in each nomination of a bishop or in the erection of a new diocese does not signify that he must necessarily intervene, and that without his prior or subsequent intervention the patriarch with his synod cannot validly and licitly perform the acts in question.

It should be noted that we do not distinguish here, as certain persons do abusively, between the right and the exercise of the right. If the pope has the right, he can always exercise it. What we affirm is that neither the obligation nor the necessity to intervene logically result from the right to intervene.

It is true that the pope’s right to intervene involves a corresponding obligation for the patriarch and the synod. But this is the obligation not to prevent this right from being exercised whenever the pope wishes to do so.

Nothing more can logically be deduced from the conciliar text.

Since the conciliar decree of November 21, 1964, sufficient time has not elapsed to permit discerning from experience whether the clause in question is the object of abuse on the part of the Eastern Churches. If in spite of this the pope wishes to assume the responsibility of imposing on the patriarchs and on their synods a new obligation by restricting the jurisdiction which the council has acknowledged in them, he can according to the letter of the law do so by relying on his supreme power. However, one must not have recourse to a violent interpretation of a text by making the council say what it has not said.

To make our explanation clearer, let us imagine a similar text, for example this one: *“Ordinarii locorum suorum cum suis variis Consiliis superiorem constituunt instantiam pro quibusvis negotiis suae dioeceseos, non secluso jure constituendi paroecias novas atque nominandi parochos sui ritus intra fines territorii dioecesani, salvo inalienabili Romani Pontificis jure in singulis casibus interveniendi.”* (The ordinaries of their locations with their various councils constitute the superior authority for all the affairs of the diocese, including right to establish new parishes and to nominate pastors of their rite within the territorial bounds of the diocese, without prejudice to the inalienable right of the Roman pontiff to intervene in individual cases.)

By virtue of such a canon the pope could certainly, if he so desired, intervene in the establishment of a new parish or the nomination of a pastor, and even, in the last analysis, if the welfare of the Church demanded it (a purely extreme hypothesis) intervene in the establishment of all new parishes and the nomination of all pastors. But does that mean

that the ordinary of the place cannot validly and licitly establish new parishes and name pastors without the intervention of the pope?

Let it not be said that the analogy is invalid since the founding of a parish is not the founding of a diocese, and the nomination of a pastor is not the nomination of a bishop. Admittedly, these matters are not of equal importance. But that is not the question. The question is to recognize that, through the conciliar text, the founding of a diocese and the nomination of a bishop have been said to be within the superior authority of the patriarch and of his synod, just as the formation of a parish or the nomination of a pastor is within the jurisdiction of the ordinary of the place with or without his council.

In the light of what precedes, it is possible to pass sounder judgment on the interpretation given by the Central Commission on January 31, 1966: "*Utrum per clausulam 'salvo inalienabili Romani Pontificis jure in singulis casibus interveniendi', de qua in No. 9, comm. 4 Decreti 'Orientalium Ecclesiarum' statuatur, quod spectat ad elegendos episcopos, plena facultas indicandi singulis in casibus, ante electionem, utrum candidatus dignus et idoneus sit?*" "Affirmative." (Whether through the clause "without prejudice to the inalienable right of the Roman pontiff to intervene in individual cases," which appears in No. 9, sentence 4, of the "Decree on Eastern Churches," which pertains to nominating bishops, there is a full faculty for the Roman pontiff of indicating in individual cases, before the election, whether the candidate is worthy and suitable? In the affirmative.)

In our opinion "*facultas*" (faculty) says no more than "*jus*" (right). We remain at a standstill. We would even say that this interpretation, rightly understood, actually restricts the power of the pope unduly, for he has not only the "faculty of indicating in individual cases before the election." He can intervene just as much after the election as before the election. The council places no limitation on the pope's power of intervention.

However, the interpretation has not touched the crux of the problem. No one can deny that the pope has the full faculty to intervene either before or after the election.

Yet the question remains whether he must intervene, or at least whether it is necessary that he intervene so that the acts laid down by the patriarch and his synod may be valid and licit. To this question the interpretation of January 31, 1966, gives no answer, at least if it is understood in its obvious sense. The answer is given in the Central Commission's proceedings. In it we read, "All members...have unanimously decided to reply that the Holy Father has the right to intervene. Consequently, the patriarchs must present a request before the election of bishops. More precisely, that the patriarchs present the names of the candidates and wait until the Holy See gives the answer as to their suitability."

This interpretation appears to us to be erroneous on two points:

- a. In that it passes from the right to intervene to the obligation to intervene;

b. In that it limits the unconditional right of the pope to intervene in every case to an intervention only prior to the election, as if the pope could not intervene even after the election.

After this statement of a canonical nature, may we be permitted to add a few words on the human and ecclesial level.

The whole history comes down to this: the conciliar text in question won in the Eastern Commission the necessary majority of two-thirds plus one vote. It displeased certain members and consultors of the commission. When afterwards it was almost unanimously approved by the council, it displeased certain groups that see in it a diminution in Roman control over the activities of the patriarchs. The reform of the former legislation on this point displeased them. Since they were unable to block the conciliar text, they are now trying to empty it of its content. With this violent interpretation of the text there is practically a return to the prior situation and we act as if the council had never existed. That is the whole story.

However, this conciliar text is of primordial importance from the pastoral and ecumenical point of view. It marks the beginning of decentralization. It indicates that there is an ever-growing desire to place trust in the patriarchs with their synods. In the ecumenical dialogue, it places before the eyes of Orthodoxy the state of affairs that Catholicism can offer it in the event of union. In the eyes of Catholics themselves it is a test that will show if there is a decision to go forward according to the spirit of the council, or if, by evasions through more or less violent interpretations we wish to nullify the council and come back, whatever the cost, to the prior situation. The problem is more serious than it appears.

On June 22, 1966, the Sacred Eastern Congregation transmitted to the patriarch a new solution adopted by the postconciliar Central Commission to solve the problem arising over the interpretation of Article 9 of the "Decree on the Eastern Catholic Churches." This solution, which conformed essentially to the practical procedure proposed by the Melkite Synod of January, 1966, was received by the Synod of August, 1966. Thus, the freedom of episcopal elections and of the erection of new eparchies was confirmed, at the same time that the pastoral utility of a previous and private consultation between the patriarchs and the Holy Father was recognized.