Наукові записки УКУ: Богослов'я.
Вип. 8 (2021) 227-242.

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DOI: 10.47632/2075-4817-2021-227-242

THE PATRIARCHATE AT VATICAN II

Patriarchate, a key term to understand the Christian East, forms part of the problem and part of the solution. Part of the problem: if a new patriarchate's lines were to be drawn and allowed to harden without correct adaptation to current circumstances (OE 9), these improvised lines of demarcation might prove hard to re-draw, as the question of canonical territory goes to show (OE 30). Part of the solution: if what OE says about the necessity of restoring the traditional rights of each patriarchate and, where necessary to establish new patriarchates (OE 11), is taken to heart, the natural Eastern character of these churches, sometimes disfigured by Latinization, will be restored, enabling the new patriarchate to have its voice more clearly heard in the community of Churches.

Keywords: patriarchate; canonical territory; patriarch of the West; *potestas*, jurisdiction; primacy; synod; establishing new patriarchates.

Introduction

The patriarchate received considerable attention in *Orientalium ecclesiarum* (OE) 7–11[1], Vatican II's Decree on the Eastern [Catholic] Churches, and yet it did not satisfy everybody. On the part of some Eastern Catholics themselves it gave rise to misgivings by those who claim their Church should be raised to the dignity of a patriarchate. The theme remains one of the more incendiary items on the post Vatican II agenda, looming large on the horizon as a just reward for a vital Eastern Catholic Church and yet potentially disruptive of ecumenical relations in regions with overlapping Eastern denominations. Finally, can we say that a thoroughgoing upgrading of the patriarchate in subsequent canonical legislation of the Catholic Church has really taken place?

[1] Patriarchates are also named in *Lumen Gentium* 23, but the context there is more of the particular Churches in which and from which (N. Loda. In quibus et ex quibus // *EDCE*, pp. 979–981) the Universal Church exists. Analogously but at a less universal level, this can be affirmed of larger entities short of the Universal Church, as patriarchates and major archbishoprics. Indeed, this analogy is more tangible in the relationship between "Mother Church" and "daughter Churches", also discussed in LG 23, where patriarchates are explicitly mentioned.

(1) We shall first review briefly what Vatican II said about patriarchates[2] in Neophytos Edelby's *classical commentary* on OE[3]. (2) Next comes the *interpretation* given to these texts by the kind of expectations it aroused in Easterners themselves. (3) The *implementation* of improvements enunciated by OE allows us to interpret the text by comparing project and performance. This implementation of the Council claimed to be found in the Eastern Code, the CCEO, regards three issues: a) Easterners' demand, already voiced while the Council was still sitting, to erect new patriarchates[4]; b) the question of principle about the relation between patriarchates and primacy; and c) the particular issue of primacy and the patriarchs, especially in relation to the pope as "patriarch of the West". Finally, (4), a short *evaluation* will be attempted at the end.

1. *The Patriarchs in Neophytos Edelby's Interpretation*

Hardly anyone was better qualified than Edelby[5] (1920–1995) to write a commentary on OE entitled *Les* églises *orientales catholiques*[6]. An expert in canon law and ecumenism and member of the Oriental commission which prepared OE[7], he promoted most of all the idea of the patriarchate[8] to the point of arousing suspicions, unjustly so, of his Catholic loyalty[9]. During the Council, Edelby was prominent as counsellor to his patriarch in the Melkite lobby which exercised

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[2] C. O'Donnell. Patriarchates // *Ecclesia: A Theological Encyclopedia of the Church,* Collegeville, MN 1996, pp. 352–354.

[3] Edelby formed part of what was dubbed "the Melkite lobby". See S. Shofany, *The Melkites at the Vatican Council II: Contribution of the Melkite Prelates to Vatican Council II*, Bloomington, IN 2005, pp. 38–76.

[4] The CCEO speaks of "patriarchal churches", not of patriarchates.

[5] D. Salachas. La figure juridique du Patriarche dans la pensée de Mgr Néophytos Edelby // *Mélanges en mémoire de Mgr Néophtos Edelby (1920–1995)* / ed. N. Edelby, P. Masri. Beirut 2005, pp. 387–422.

[6] N. Edelby, I. Dick. *Les Églises orientales catholiques: Décret 'Orientalium Ecclesiarum'* [= Unam Sanctam, 76]. Paris: Cerf 1970.

[7] G. Hachem. Le rôle de Mgr. Néophyte Edelby dans l'élaboration des numéros 7–11 sur les patriarches orientaux dans le décret *Orientalium ecclesiarum* Patriarchates // *Mélanges*, pp. 133–156, here p. 155: "Mgr. Edelby fut le défenseur de l'institution patriarcale 'la commission orientale aussi bien qu'au Concile, un grand pionnier du rapprochement entre le catholicisme et l'orthodoxie et restera une grande figure qui honore l'histoire de l'Église melkite catholique".

[8] This may be gauged by the space the comment on the patriarchates offers. The text of the book, without the Table of contents, occupies 499 pages, of which 105 is dedicated to preliminaries (introductory sections, text of OE in Latin and French, history of the preparation of the text, more than one fourth of the book is dedicated to the patriarchates (pp. 269–378), by far the largest section.

[9] It is enough here to repeat A. Riccardi's comment: "Un tel jugement envers Edelby semble être suffisamment ridicule, rien qu'à parcourir les pages de ce journal, qui témoignent de son engagement comme évêque catholique avec un esprit de grande attention et de soumission au pape de Rome". See A. Riccardi. Introduction // *Neophytos Edelby (1920–1995): Souvenirs du Concile Vatican II (11 octobre 1962 – 8 décembre 1965)*, Raboueh, Lebanon 2003, p. 21.

such influence that Patriarch Athenagoras I, meeting Paul VI in Jerusalem on 6 January 1964, told the Melkite Patriarch Maximus III Sayegh: "You have talked at the Council as I myself would have had I been in your place"[10]. Once Greek Catholic Melkite metropolitan of Aleppo (1968–1995), Edelby enlisted Ignace Dick's help to finish the commentary[11].

Edelby-Dick's commentary zeroes in on the fourth section of the decree, OE 7–11, on the patriarchs, for him the most important part of OE[12]. In a questionnaire of 1961, Edelby-Dick take as their point of departure Pius XII's Motu Proprio *Cleri sanctitati* (1957)[13], the last section of the provisional Eastern canon law at the time on the constitution of the Eastern Churches from patriarchs to pastors[14]. According to Edelby-Dick, *Cleri sanctitati* distorted the figure of the patriarchate, in its role and importance. To upgrade the patriarchate, patriarchs should not be made cardinals because their rank is superior to that of the former[15], indeed they should have precedence over cardinals[16] and have a say in the election of the pope[17], nor should they be subordinated to the control of a Roman dicastery, but solely to that of their synod, and, in more important cases, to that of the pope[18]. Although the Latin patriarchates of the East, have been suppressed, the Latin

[10] See A. Scrima. Epiphanie: Orient und Okzidenz // *Begegnung im Heiligen Land* / ed. L. Kaufmann. Frankfurt a. M., 1964, p. 139.

[11] Born in Aleppo in 1926, Archimandrite Ignace Dick studied at the University of Louvain, where he obtained a licentiate in Eastern philology and a doctorate in philosophy. See Edelby-Dick, p. 10.

[12] Edelby-Dick 269; Salachas 387. For the canons in Latin and English translation see the Appendix of this paper.

[13] N. Loda. Cleri Sanctitati // *EDCE*, pp. 456–458, here p. 458: "In general, in CS we come across a pronounced juridical ecclesiology, still strongly hierarchical, with a marked dependence and strict ties to the organizational principles of the CIC 1917, even if it cannot be called a copy of that Code. With the publication of the sources in CS an effort was made to bring out the peculiarities and traditions of the Eastern Churches, but objectively speaking this was still hampered by a series of difficulties, not least of which the uncertainty of the discipline and the absence of recognized standards of action".

[14] Edelby-Dick 388. Under Pius XII, there was a project of a provisional Code of Canon Law. "Given the good reception of the *Codex Iuris Canonici* (1917) and the fact that Pius XI had set up the 'Pontifical Commission for the Drafting of the Code of Eastern Canon Law', Pius XII continued this work as pope and promulgated four MPs to bring Eastern canon law up to date". See E. G. Farrugia. Pius XII // EDCE, pp. 1495–1497, here p. 1496. The provisional code was known as CICO: *Codex Iuris Canonici Orientalis*, Vatican City 1957–1958. It consisted of four Moti proprii promulgated by Pius XII: *Crebrae Allatae* (MP), promulgated in 1949, *Solicitudinem Nostram* (MP), promulgated in 1950, *Postquam Apostolicis Litteris* (MP), promulgated in 1952, and *Cleri sanctitati* (MP), promulgated in 1957. On these 4 Moti Proprii, see V. J. Pospishil, *Eastern Catholic Church Law*, New York 1996, p. 68.

[15] Edelby-Dick 275–278.

[16] Edelby-Dick 278–279.

[17] Edelby-Dick 279.

[18] Edelby-Dick 281.

patriarchate of Jerusalem has not[19], which contradicts the declarations of the pope in favour of the East, and, besides, is an obstacle to union[20]. With reference to the title of the pope, "patriarch of the West", abolished by Benedict XVI, Edelby-Dick claim that the patriarchate is in no way typical of the East[21]. Against *Cleri Sanctitati* c. 216.1, Edelby-Dick's main concern is the jurisdiction of the patriarchs: it is not territory, or rite, but: territory or rite (without a comma)[22]. In other words, jurisdiction extends both to the territory *and* to the rite; it is coterminous with the territory *or* (Latin: *seu*, that is to say) the rite. Just as Latins do not stop appertaining to the patriarchate of the West just because they live in the East, so, too, there is no reason why a Melkite should not belong to the Melkite patriarchate just because he lives in the diaspora[23]. At the same time, Edelby-Dick, came out strong in favour of the addition to OE 7b that the rights of the pope's primacy over the Eastern Churches should be safeguarded[24].

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[19] A. Tamborra. *Chiesa ortodossa e Ortodossia russa*. Cinisello Balsamo 1992, pp. 242, 252–253. The Latin patriarchate of Jerusalem was re-established by Pius IX in 1848 to monitor the Eastern Patriarchs, and was, as such, held in suspicion. The first patriarch was Giuseppe Valerga (1813–1872), nominated Patriarch of Jerusalem in 1872; cf. C. Patelos. *Vatican I et les évêques uniates*. Louvain-la-Neuve 1981, pp. 107–112. With the nomination in 1987 of the first Arab Patriarch of Jerusalem, Michel Sabbah, who resigned in 2008 on reaching the age limit, the great change that had come about after Vatican II became particularly tangible. The titular patriarchates of Constantinople, Alexandria and Antioch were abolished by Paul VI in January of 1964, on his visit to the Holy Land. If the pope did not suppress the Latin patriarchate of Jerusalem, one has to remember that it is not a patriarchate in the Eastern sense of the term, but purely an honorific title such as the patriarchate of Venice, and thus subject to what the Latin canon law says about it (CIC [1983] c. 438); Salachas 419.

[20] For the grievances on this point of Melkite Patriarch Patriarch Gregory II Youssef (1823–1897, see A. Tamborra. *Chiesa ortodossa e Ortodossia russa*. Cinisello Balsamo 1992, pp. 252–253.

[21] Edelby-Dick 302. The text is worth quoting. As a reaction to a prior formulation of OE 7, that the patriarchal institution is in vigour among the Eastern Churches, it was noted, Edelby says, approvingly, that the institution of the patriarchate is "in no way a typically Eastern institution, but belongs to the universal Church". Here he recalls the existence of the pope's title of Patriarch of the West, but again this patriarch has no clearly delineated synod to be able to compare with Eastern patriarchs.

[22] Edelby-Dick 318: "Il s'est fait que la juridiction patriarcale en Proche-Orient (c'est là que se trouvent aujourd'hui tous les patriarches orientaux) a été considérée jusqu'ici comme *territoriale ET rituelle* à la fois. Cela veut dire qu'elle s'étend, dans les limites d'un territoire déterminé, à tous les fidèles d'un certain rite. While *Cleri sanctitati*, c. 216 §2,1, O7b says "proprium territorium vel ritus" *not:* "proprium territorium **seu** ritus" (bold type added); see also Salachas 390. *Vel* is inclusive and means here "as well", *seu* is exclusive, "or" as in "either ... or..." (*aut … aut*). Kokkaravalayil, *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*, Rome 2009, pp. 355–362.

[23] Edelby-Dick 318–319. On p. 319: "En soi, rien n'empêche qu'un Patriarche ait juridiction sur des fidèles de différents Rites à l'intérieur de son territoire patriarcal. Sa juridiction serait territoriale et pluri-rituelle. Rien n'empêche non plus, en soi, qu'un Patriarche ait juridiction uniquement sur ses fidèles mais partout dans le monde. Sa juridiction serait alors pluri-territoriale et mono-rituelle. On dit plus couramment qu'elle serait en ce cas purement personnelle". Here Edelby does not consider the Oriental principle of a bishop per city.

[24] Edelby-Dick 319; Salachas 391.

The hottest issue, for Edelby-Dick, is the *patriarch's* jurisdiction *outside of the patriarchate's territory.* If the pentarchic system functioned in the early Church, it functioned only on the level of the patriarchates[25]. Against *Cleri Sanctitati* (1957) Edelby-Dick champion a special kind of patriarchal jurisdiction, which he calls purely personal[26]. On his account, this would signify a great step forward[27]. As "fathers and heads of their patriarchal Churches" (OE 9a) patriarchs should be shown the greatest honour. He regrets that over the last centuries cardinals came to replace patriarchs in the Catholic Church's roll-call of honours[28]. Even before talking of creating new patriarchates, one must restore the rights and privileges of the patriarchs. This should follow according to two criteria: a) the tradition of each particular Church, and b) that of the ecumenical councils[29]. One of these rights is the internal canonical autonomy of each patriarchate, which finds its critical moment in the pope's right to intervene. That the pope can intervene does not mean, of course, that the pope *has* to intervene[30]. Since the Council set no limits to the pope's right to intervene, the question remains whether he has to do so for the sake of the validity of the acts of the council (cf. 3 below)[31]. Finally, under present conditions, Edelby-Dick do not agree with the creation of new patriarchates for communities in unity with Rome unless there existed one before in that area.

2. *Great expectations on the part of the Orientals*

For Jan Řezáč'[32], that a patriarch's *potestas* at first extended only to his territory is well anchored in tradition, and for this he quotes the letter of the then Cardinal Secretary of the Sacred Congregation of the Eastern Church, Acacio Coussa (d. 1962), which states: "It is a holy thing in the ancient canons and in the tradition of even the Eastern Church that patriarchs and bishops *have no power over the faithful of their own rite who reside outside their own territory*, if these are

25 Edelby-Dick 319; Salachas 391.

26 Edelby-Dick 326: "C'est ce que le Concile a fait en déclarant que les hiérarches orientaux constitués en dehors du territoire patriarcal restaient aggregrés (*aggregati*) à la hiérarchie de leur Patriarcat". See Salachas 393.

27 Edelby-Dick 327. See also Salachas 393–394. The term "aggregatus" corresponds here to what *Cleri Sanctitati* calls "ritui adscriptus"; Edelby-Dick 327.

28 Edelby-Dick 332–334.

29 Edelby-Dick 336–338.

30 Edelby-Dick 361–370. It was left to the CCEO to lay under which conditions the pope can intervene.

31 Edelby-Dick 360–361.

32 E. G. Farrugia. Remembering Fr. Jan Řezáč, Our Secretary // *OCP* 58 (1992) 353–366, especially p. 358. Besides being secretary, he was also a long-time professor of canon law and member of the papal commission for the revision of canon law for the Eastern Churches. Ibid., p. 356.

not subject to them"[33]. He bolsters his case by citing canon 6 of Nicaea I and canon 2 of Constantinople I[34]: "Diocesan bishops are not to intrude in churches beyond their own boundaries, nor are they to confuse the churches: but in accordance with the canons, the bishop of Alexandria is to administer affairs in Egypt only; etc."[35]. "Violated" almost immediately by "canon 28" of Chalcedon which extends Constantinople's jurisdiction to the three exarchates of Pontus, Asia and Thrace, the patriarch's power was further extended and adapted to mission lands from Rus' to most of the Slavic lands[36]. Moreover, the principle of territoriality was once more broken through the creation of Latin patriarchates in the East in the aftermath of the Crusades. Actually, Constantinople had already done that in the 8th century when Byzantine Emperor Leo III the Isaurian (d. 741) withdrew Sicily, Southern Italy and Eastern Illyricum from Rome's jurisdiction as a reprisal for the pope's condemnation of Byzantine iconoclasm[37]. On Rome's side, after 1054, Catholic clergy were appointed to take care of the Crusaders, with a Latin patriarchate in Antioch in 1098 and another Latin patriarchate in Constantinople in 1204 and. Even when parts of the separated Churches re-established communion with Rome, plural jurisdictions remained, especially from the 16th century onwards, so that the principle of the territoriality of jurisdiction was definitely abandoned, precisely thanks to the coexistence of various Eastern Churches as well as Latin constituencies, kept artificially alive through the scandal

[33] A. Coussa. *Epitome praelectionum de iure ecclesiastico orientali*, vol. I, Grottaferrata 1948, p. 229. J. Řezáč. The Extension of the Power of the Patriarchs and of the eastern Churches over the Faithful of Their Own Rites // *Concilium* 48 (1969) 116. Coussa's position corresponds to what prevailed before Vatican II and the CCEO. Requests to extend the Patriarch's authority outside the precincts of his Church have been common. On 5 November 1988 in the plenary assembly session of the Commission charged with preparing the Code fifteen members signed a letter to the pope asking to be able to discuss at once the extension of the patriarchal jurisdiction outside of his territory, to which an answer came allowing for the discussion, while pointing out that the current practice had already been established by the ecumenical councils and reiterated by Vatican II, which turned down the petition to extend the patriarch's *potestas* outside of his territory. See S. Kokkaravalayil. *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*. Rome 2009, pp. 351–361; for a copy of the official answer of then Substitute Cardinal E. Cassidy's on November 10, see ibid., pp. 357–358. For the whole discussion, see H. Destivelle. Le Territoire: Une question œcuménique // Ibid. *Conduis-là vers l'unité parfaite: Œcuménisme et synodalité*. Paris 2018, pp. 217–256. Destivelle discusses whether with the sociological relativization or even gradual disappearance of "territory" the question would not have to be re-defined. Ibid., pp. 248–256.

[34] Ibid., pp. 115–117.

[35] *Decrees of the Ecumenical Councils* / ed. N. Tanner, vol. I. Washington DC 1990, *31. Egypt is mentioned first because of the case of Maximus the Cynic, intruder bishop of Constantinople sent there with the help of Alexandria's bishop shortly before Constantinople I (381).

[36] Řezáč 117.

[37] Řezáč 118.

of proselytism[38]. The Latin Church is only one particular Church among others, and all enjoy equal dignity[39]. On the basis of this norm *of the equality of particular Churches*, and, if the Latin Church can exercise its jurisdiction wherever its own subjects are located, the same holds true for other particular Churches. Even then, many still appealed to the traditional principle of territoriality as found in chapter nine of the decrees of Lateran IV (1215), with its famous line: "We altogether forbid one and the same city or diocese to have more than one bishop, as if it were a body with several heads like a monster"[40]. Řezáč notes that sociology works against that principle, inasmuch as, at the beginning with the 20th century, Easterners are found everywhere in the West, and not only in the East[41]. The necessity to minister to the faithful of a rite in Diaspora becomes a matter of conscience. This was taken up by the Orthodox Council held in Crete in 2016, and indeed it became the fourth document to be approved of under the name of "The Orthodox Diaspora"[42].

At this point the expression of "a body with several heads like a monster" calls for an explanation, because deep down it is a misapplication. As Natale Loda, canonist at the Lateran University in Rome, has pointed out, the expression *unum corpus diversa capita*, which is used in the ninth constitution of the Lateran Council and employed ever since against having more than one bishop of different Eastern rites in one city, has deep down nothing to do with the East. Rather, it addresses ancient customs prevailing in the West, though subsequently it has been avidly applied especially by Westerners themselves for similar situations obtaining between several Eastern rites in a sole city[43]. This is not to deny, however, that Innocent III,

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38 Řezáč 118–119.

39 Řezáč 120. "Although individual Churches of this kind, both of the East and of the West, differ somewhat in what are called rites, such as liturgy, ecclesiastical order and spiritual heritage, still they are entrusted on an equal footing to the pastoral guidance of the Roman pontiff, who by divine right succeeds Peter in the primacy over the whole Church. Thus the same Churches enjoy equal dignity, so that none of them ranks higher than the others by reason of rite, and they enjoy the same rights and are bound by the same laws, even as regards preaching the gospels throughout the whole world (see Mk 16, 15), under the direction of the Roman pontiff (OE 3)"; Tanner *901.

40 Tanner *239.

41 Řezáč 120–121.

42 For the Synod in Crete, presently insurmountable pastoral and historical reasons make it impossible at this moment to pass from a provisional state of affairs to one regulated by the principle of a bishop per city. See E. G. Farrugia. Il Santo e Grande Sinodo Panortodosso: Documentazione e reazione // *La Civiltà Cattolica* 3991 (2016/4) 53–67, here pp. 61–62.

43 N. Loda. The 1215 legislation of Lateran IV: Greeks and Eastern Christians between tradition and innovation of canon law // *Il concilio lateranense a 800 anni dalla sua celebrazione. Una rilettura teologica* / ed. N. Ciola, A. Sabetta, P. Sguazzardo. Città del Vaticano 2016, pp. 237–273, here pp. 258–259; cf. E. G. Farrugia, Lateran IV (1215) and its Re-Reception // *OCP* 84 (2018) 509–527, here pp. 519–520: "Both Maximus the Confessor and Theodore the Stoudite gave as a justification of the pentarchy that on these five depended the validity of the general councils (PG 91, 352d). The pope was known as 'Patriarch of the West' and 'the other Patriarch of the Empire'. [...] Innocent III did not want

the organizer of Lateran V, had a keen interest in restoring the patriarchates in the East so as to restore unity between East and West.

3. *Dimitrios Salachas: An assessment of the Edelby's interpretation of OE in the light of subsequent implementation in CCEO*

By way of assessing progress by comparing project and promise we have to turn to Part IV of the Codex Canonum Ecclesiarum Orientalium (CCEO), *De ecclesiis patriarchalibus* (canons 55–150). Promulgating the Code of Canons of the Eastern Churches John Paul II declared it to be "a new complement to the teaching of the Second Vatican Council"[44]. Although thus far it did not lead to the erection of a new patriarchate, it did establish the next best thing to a patriarchate, four major archbishoprics[45]. In the CCEO the patriarchate has been upgraded. Whereas in Pius XII's *Cleri Sanctitati* this authority was considered to stem from the pope or at least recognized by him[46], John Paul II's *Sacri Canones* ascribe this power to the patriarch himself on the basis of 'canon law'[47]. John Paul II had this to say about the patriarchs: "the patriarchs and the synods are sharers in the supreme authority of the Church by canon law"[48]. The ensuing profile of a patriarch shows his *potestas* limited only by his Synod and, in matters of major moment, by the Roman Pontiff[49]. Salachas here notes that the CCEO has rightly changed the term "jurisdiction" to the more generic term "*potestas*", given the East's allergy

to diminish the status of the patriarchates, but to restore them to their primitive glory so as to restore the unity of the Church in East and West. […] Thus Constitution 9 did not intend to uniform the rites, but rather to secure unity in diversity, especially in the hierarchy with one bishop…".

[44] Apostolic Constitution "Sacri canones" // *Code of Canons of the Eastern Churches* / ed. Canon Law Society of America. Washington, D.C. 1995, p. xxv.

[45] The first to be created with the Council still in session was the major archbishopric of Lviv of the Ukrainians, on 23 December 1963, transferred to Kyiv-Halyč on 6 December 2004. The second, that of Ernakulum-Angamaly of the Syro-Malabar Church, was created on 16 December 1992. The third, that of Trivandrum of the Malankara Catholic Church, was created on 10 February 2005, whereas, the fourth, created on 16 December 2005, is that of Făgăraș și Alba Iulia of the Romanian Greek Catholic Church. – A major archbishopric is a patriarchate in all but name and precedence. We may take Cyprus and Athens as examples of Orthodox "major archbishops" (from the Catholic viewpoint). See J. D. Faris. Major Archiepiscopal Churches // *A Guide to the Eastern Code* / ed. G. Nedungatt. Rome 2002, pp. 201–206.

[46] *Cleri sanctitati*, can. 216 §1: "*potestate, a Romano Pontifice data seu agnita*".

[47] Apostolic Constitution "Sacri canones", p. xxiv: "[T]he patriarchal Churches are preeminent among these [i.e., the Eastern Churches], in which the patriarchs and synods are sharers in the supreme authority of the Church by canon law".

[48] Apostolic Constitution "Sacri canones", p. xxiv.

[49] Salachas 404.

to describing a patriarch as having "jurisdiction over other bishops"[50]. The implementation of OE is particularly tangible in the election of the patriarch (CCEO, cc. 63, 75). He is not nominated by the pope, but elected by the Synod, after which he is enthroned and immediately enters office[51]. The acts of the synod are sent to Rome only "*ad informationem*", and not for approval; on his part, the patriarch has only to ask the pope for communion by letter (CCEO cc. 76, 77.1), that is, asks to be incorporated into the college of bishops with the pope as its head[52]. Before the Council, the patriarch received the *pallium*, as if he were simply a metropolitan or primate. As for the patriarch's powers, with his Synod which he presides he shares a legislative power over the liturgy of his rite for all members of that rite who belong to his patriarchate even outside the limits of the patriarchate. If they are disciplinary, this applies only within his patriarchate, unless they have been approved by the Holy See[53].

4. *Critical evaluation*

In the Preface for Edelby's work, Y. Congar recalls the difference between Maximus IV at Vatican II and his predecessor Patriarch Gregory Yusef at Vatican I, noting withal the great progress reached and documented in OE. However, in view of the Maronites' opposition to the text, Y. Congar suggests reading Edelby both as a commentary to OE and as an independent Eastern voice in the Church[54]. That is a comparison between persons, but if we compare the position immediately before and after Vatican II, that is to say, in *Cleri Sanctitati* (1957) and in OE (1964), we can at once spot what giant steps ahead have been accomplished by the Council. An institution which was reminiscent of antiquities suddenly leapt to life. This comes across through a comparison between Edelby and Salachas, and we have no reason to doubt that, in its general strokes, both accurately reproduce the state of the issue before and after, as well as the progress attained. And yet, there remain a number of issues on which one has to distinguish.

(a) The interpretation that comes across on the nature of the patriarchate and the pentarchy leaves something to be desired. Not all authors really ask the *critical*

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50 Salachas 403: "Le législateur du CCEO a justement substitué le terme 'juridiction' par le terme plus générale de '*potestas*', car en Orient, la fonction de patriarche n'a pas été comprise comme une 'juridiction sur les Évêques".

51 Salachas 401.

52 Salachas 401. This demand to be incorporated in the hierarchy is to be understood in terms of the 'Preliminary Explanatory Note' of *Lumen Gentium*, appended at the end of the document.

53 Salachas 401.

54 Y. Congar. Préface // Edelby-Dick, *Vatican II: Les Eglises Orientales Catholiques*, Paris 1970, pp. 13–16. However, the much-repeated story, reproduced uncritically by Congar, that Pius IX would have placed his feet on the Patriarch's head, is held by G. Croce to be a legend.

theological question, and not only the *indispensable historical* one: "what is a patriarchate, or what is a pentarchy?", but simply assume it[55]. The question actually was particularly relevant at two times after the Council. When towards the end of the 1980s the next theme on the Joint Commission's work was the primacy, the relation between primacy and pentarchy was proposed for discussion at the 6th Plenary Assembly of the Joint Catholic-Orthodox Commission at Valamo (1988)[56], for which a sub-commission was set up to prepare the following plenary commission at Freising (1990). But with the collapse of the Berlin Wall many of the real problems kept artificially repressed during the Cold War came unstuck, foremost among which was the status of the Eastern Catholic Churches[57]. The second was in 2006, when Benedict XVI abolished the title of "Western Patriarch".

(b) It is remarkable that Edelby-Dick and Řezáč contradict themselves on the patriarchate, the first two considering it universal and the other Eastern. In order to decide this question, one should not ignore the important link of the Christian patriarch in the Jewish Patriarch[58]. For Řezáč, the Patriarch of the West is only nominally a patriarch, at best analogously so[59]. In retrospect we may say: True, the bishop of Rome reacts differently when he addresses the diocese of Rome, the West and the East (to repeat Congar's argument, which he took from Mgr George Calavassy, exarch for Byzantine Catholics in Greece in the 1920s)[60], but this difference in approach does not warrant our employing the term "Patriarch of the West" for it can be explained in a different way. Recognizing different sorts of authorities in a complex situation such as the East-West relationship one need not hypostasize the different authority into a patriarchal one, because some elements essential to patriarch in the Eastern sense are missing in this term.

(c) Secondly, what many take as the definition of the patriarchate (OE 7), cannot be such because it lacks any reference to the synod, which according to Salachas (and not only according to Salachas!) is essential to the notion of patriarchate[61]. The importance of this inclusion of synod in the definition of patriarchate is to

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55 Cf. E. G. Farrugia. The Primacy and the Patriarchates of the First Millennium: Some recent Interpretations // *OKS* 57:2 (2008) 268–295.

56 It was at this time that V. Peri wrote his article on the Pentarchy: V. Peri. La pentarchia: istituzione ecclesiale (IV–VII secc.) e teoria canonico-teologico // *Bisanzio, Roma e l'Italia nell'Alto Mediovevo: Atti della XXXIV Settimana di Studio del Centro Italiano di Studi sull'Alto Medioevo (Spoleto, 3–9 aprile 1986)*. Spoleto 1988, pp. 209–311.

57 D. Salachas. *Il dialogo ufficiale tra la chiesa cattolico-romana e la Chiesa ortodossa*. Bari 1994, p. 132.

58 E. G. Farrugia, Pentarchy // *EDCE*, 1469–1474.

59 Řezáč 125–126.

60 Y. Congar. Le pape, patriarche d'Occident // Ibid. *Église et papauté: regards historiques*. Paris 1994, pp. 11–30. By his own admission, he now saw more to the Patriarch of the East, than for most of his career.

61 Salachas 401.

help us ask: if the Patriarch of the West is a true patriarch, univocally so, where then is the Synod which is essential to his being a Patriarch? And even if we were to hypostasize one, is the relation between the head and the synod, in the West, the same as the relationship between the synod and its patriarch in the East?[62]

(d) Finally, although erecting a new Eastern Catholic patriarchate before re-establishing communion with neighbouring Orthodox Churches may create ecumenical complications, one must see that OE 11 actively encouraged the establishing of such patriarchates in spite of the fact that OE 30 seems to want to postpone such a possibility to after re-establishing communion. The active encouragement, however, is an eloquent enough witness that OE 30 does not consider such a new patriarchate, *in and of itself*, a hindrance to re-establishing communion.

Abbreviations

AAS – *Acta Apostolicae Sedis*, Vatican City, 1909–.
CCEO – *Codex canonum ecclesiarum orientalium* (1990). Canon Law Society of America (ed.), Washington, D.C. 2001.
CIC – *Codex Juris Canonici* (1983), the revised version of 1917. New Commentary on the Code of Canon Law / ed. J. P. Beal, J. A. Coridan, J. Green. Mahwah, NJ 2000.
CICO – *Codex Iuris Canonici Orientalis*, Vatican City 1957–1958.
CS – *Cleri Sanctitati*
EDCE – *Encyclopedic Dictionary of the Christian East* / ed. E. G. Farrugia. Rome 2015.
Edelby-Dick – N. Edelby, I. Dick. *Les* Églises *orientales catholiques: Décret 'Orientalium Ecclesiarum*'. Paris: Cerf 1970. (1964).
LG – *Lumen Gentium* (Vatican II's Dogmatic Constitution on the Church)
MP – Motu Proprio: letter sent on the pope's own initiative.
OCP – *Orientalia Christiana Periodica*, biannual publication of the Pontifical Oriental Institute, Rome 1935–.
OE – *Orientalium Ecclesiarum*, Vatican II's decree on the Catholic Eastern Churches (1964).
OKS – *Ostkirchliche Studien*, Würzburg 1952–.

[62] I. Žužek. Presentazione del 'Codex canonum Ecclesiarum orientalium' // Ibid. *Understanding the Eastern Code*, Rome 1997, 127. Over and above so much polemics on this subject, Žužek makes this interesting comment, well worth discussing: "Per esprimermi con tutta chiarezza, direi che la 'figura giuridica' della Chiesa latina è fondamentalmente la stessa, che era propria alla Chiesa universale ai suoi primordi, il papa, successore di Pietro ed i Vescovi, successori degli Apostoli, senza alcuna autorità intermedia sorta in seguito nell'Oriente e riconosciuta dalla suprema autorità".

Řezáč – J. Řezáč. The Extension of the Power of the Patriarchs and of the Eastern Churches over the Faithful of Their Own Rites // *Concilium* 48 (1969) 115–129.
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APPENDIX: De patriarchalibus orientalibus (OE 7 – 11)

English	*Latin*	*German*
7. The patriarchal function has been flourishing in the church from the earliest times, already recognized by the first ecumenical synods.	7. Ab antiquissimis temporibus in ecclesia viget institutio patriarchalis, iam a primis synodis oecumenica agnita.	7. Seit den ältesten Zeiten besteht in der Kirche die Einrichtung des Patriarchates, die schon von den ersten ökumenischen Konzilien anerkannt worden ist.
By the term "eastern patriarch" is meant a bishop who possesses jurisdiction over all the bishops (including metropolitans), clergy and faithful of his own territory or rite in accordance with the norm of law and without prejudice to the primacy of the Roman pontiff.	Nomine vero patriarchae orientalis venit episcopus, cui competit iurisdictio in omnes episcopos, haud exceptis metropolitiis, clerum et populum proprii territorii vel ritus, ad norman iuris et salvo primatu Romani pontificis.	Als ostkirchlichen Patriarchen bezeichnet man einen Bischof, dem im Rahmen des Rechtes, unbeschadet des Primates des Bischofs von Rom, die Regierungsgewalt über alle Bischöfe, die Metropoliten einbezogen, sowie über den Klerus und das Volk seines Gebietes oder Ritus zukommt.
Wherever an ordinary of a rite is appointed outside the boundaries of his patriarchal territory, he remains attached to the hierarchy of the patriarchate of the same rite in accordance with the norm of law.	Ubicumque hierarcha alicuius ritus extra fines teritorii patriarchalis constituitur, manet aggregatus hierarchiae patriarchatus eiusdem ritus ad normam iuris.	Wo immer ein Oberhirte eines bestimmten Ritus außerhalb des Patriarchatsgebietes eingesetzt wird, bleibt er unter Wahrung der sonstigen kirchenrechtlichen Bestimmungen der Hierarchie seines Patriarchates angegliedert.
8. Although some patriarchs of the eastern churches are later in time than others, they are all equal by reason of their patriarchal dignity, allowance being made for a certain precedence of honour among them, sanctioned by law.	8. Patriarchae ecclesiarum orientalium, licet alii aliis tempore posteriores, omnes tamen aequales sunt ratione dignitatis patriarchalis, salva inter eos praecedentia honoris legitime statuta.	8. Die ostkirchlichen Patriarchen sind zwar zu verschiedenen Zeiten aufgekommen, aber hinsichtlich ihrer Patriarchenwürde alle gleichen Ranges. Dabei bleibt jedoch der gesetzlich festgelegte Ehrenvortritt gewahrt.
9. In keeping with the church's very ancient tradition, the patriarchs of the eastern churches are to be attended with special honour	9. Secundum antiquissimum ecclesiae traditionem, singulari honore prosequendi sunt ecclesiarum orientalium	9. Nach ältester kirchlicher Überlieferung gebührt den Patriarchen der Ostkirchen ein einzigartiger Ehrenvorzug; stehen sie doch als Vater

Continuation of Table		
since each of them governs his own patriarchate as its father and chief. This synod therefore decrees that their rights and privileges be restored in accordance with the ancient traditions of each church and the decrees of the ecumenical synods.	patriarchae, quippe qui suo quisque patriarchatui tamquam pater et caput praesint. Ideo statuit haec sancta synodus, ut eorum iura atque privilegia instaurentur, iuxta antiquas traditiones uniuscuiusque ecclesiae et synodorum oecumenicorum decreta.	und Oberhaupt über ihrem Patriarchat. Daher bestimmt dieses Heilige Konzil, dass ihre Rechte und Privilegien nach den alten Traditionen einer jeden Kirche und nach den Beschlüssen der Ökumenischen Konzilien wiederhergestellt werden sollen.
Indeed these rights and privileges are those which were in force at the time of the union between east and west, although they may have to be to some extent adapted to modern conditions.	Haec autem iuria et privilegia sunt illa, quae tempore unionis orientis et occidentis viguerunt, etsi ad hodiernas conditiones aliquantum aptanda sint.	Es sind dies jene Rechte und Privilegien, die galten, als Ost und West noch geeint waren, mag auch eine gewisse Anpassung an die heutigen Verhältnisse notwendig sein.
The patriarchs with their synods make up a higher tribunal for all matters concerning the patriarchate, including right to setting up new eparchies and of appointing new bishops of their own rite within the confines of their own patriarchal territory, without prejudice to the inalienable right of the Roman pontiff of intervening in individual cases.	Patriarchae cum suis synodis superiorem constitutum instiantiam pro quibusvis negotiis patriarchatus, non secluso iure constituendi novas eparchias atque nominandi episcopos sui ritus intra fines territorii patriarchalis, salvo inalienabili Romani pontificis iure in singulis casibus interveniendi.	Die Patriarchen bilden mit ihren Synoden die Oberbehörde für alle Angelegenheiten des Patriarchates; nicht ausgenommen ist das Recht zur Errichtung neuer Eparchien und zur Ernennung von Bischöfen ihres Ritus innerhalb der Grenzen des Patriarchalgebietes, unbeschadet des Rechtes des Bischofs von Rom, in Einzelfällen einzugreifen.
10. What has been said about patriarchs holds true also, in accordance with the norm of law, of major archbishops who are in charge of a whole particular church or rite.	10. Quae de patriarchis sunt dicta, valent etiam, ad normam iuris, de archiepiscopis maioribus, qui universae cuidam ecclesiae particulari seu ritui praesunt.	10. Das über die Patriarchen Gesagte gilt im Rahmen des Rechtes auch von den Großerzbischöfen, die einer ganzen Teilkirche oder einem Ritus vorstehen.

Continuation of Table		
11. Since the patriarchal office in the eastern churches is a traditional form of government, this ecumenical synod earnestly desires that where it is necessary new patriarchates be set up, whose constitution is reserved to an ecumenical council or the Roman pontiff.	11. Cum institutum patriarchale in ecclesiis orientalibus sit forma regiminis traditionalis, sancta et oecumenica synodus exoptat ut, ubi opus sit, novi erigantur patriarchatus, quorum constitutio synodo oecumenicae vel Romano pontifici reservatur.	11. Da die Einrichtung des Patriarchates in den Ostkirchen die überlieferte Form der Kirchenregierung ist, wünscht dieses Heilige Ökumenische Konzil, dass, wo es nötig ist, neue Patriarchate gegründet werden. Ihre Errichtung ist dem Ökumenischen Konzil oder dem Bischof von Rom vorbehalten.
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Едвард Фарруджа

Патріархат на II Ватиканському соборі

Патріархат, ключовий термін для розуміння християнського Сходу, є частиною проблеми та частиною її вирішення. Частина проблеми: якщо провести і підсилити лінії нового патріархату без правильної адаптації до поточних обставин (OE 9), то виявиться, що ці імпровізовані лінії розмежування ледве чи можна перенакреслити, як показує питання канонічної території (OE 30). Частина рішення: якщо врахувати те, що OE каже про необхідність відновлювати традиційні права кожного патріархату і, де необхідно, творити нові патріархати (OE 11), то можна відновити природний східний характер цих Церков, іноді спотворений латинізацією, що дозволить виразніше чути голос нового патріархату у спільноті Церков.

Ключові слова: патріархат, канонічна територія, патріарх Заходу, *potestas*, юрисдикція, примат, синод, встановлення нових патріархатів.