

**CANONICAL ASPECTS OF THE RELATIONSHIP BETWEEN THE PATRIARCH  
AND THE SYNOD OF BISHOPS IN A PATRIARCHAL CHURCH**

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**ABBREVIATIONS**

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>c.</i>	canon
<i>cc.</i>	canons
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus</i>
<i>ECC</i>	J.D. FARIS, <i>Eastern Catholic Churches</i>
<i>GEC</i>	G. NEDUNGATT (ed.), <i>A Guide to the Eastern Code</i>
<i>OE</i>	SECOND VATICAN COUNCIL, Decree on the Catholic Eastern Churches <i>Orientalium Ecclesiarum</i>
<i>SacCan</i>	JOHN PAUL II, Apostolic Constitution <i>Sacri canones</i>

## 1 – A *PERICHORESIS* OF THE ONE AND THE MANY

### 1.1 – Practical Advantages

*Perichoresis* is a Greek word that is used to describe the relationship of the three persons in the one God. The patriarch and the synod of bishops share in the governance of the patriarchal Church.<sup>1</sup> Specific examples will be examined throughout this paper. The sharing of power assures that neither the patriarch nor the synod of bishops is able to govern the patriarchal Church alone. They need each other to govern the patriarchal Church. Therefore, neither the patriarch nor the synod of bishops is able to become too powerful and dominate the other.

Shared governance in this way is unique within the Catholic Church; both the Roman Pontiff and the eparchial bishop each have legislative, judicial, and executive power. But, the patriarch and the synod of bishops, who together govern a *sui iuris* patriarchal Church as an intermediate authority, between the supreme authority of the Church and the local Church, share in the supreme authority of the Church by canon law.<sup>2</sup> Therefore, their structure of governance is different as will be illustrated throughout this paper.

### 1.2 – Definitions

To have an adequate understanding of what will be discussed throughout this paper, it is important to understand the terms that will be used. Therefore, I will begin by defining the patriarch and the synod of bishops of the patriarchal Church in the next two subsections.

#### 1.2.1 – Patriarch

The term patriarch has its origins in Jewish roots. The Greek New Testament refers to several prominent figures from the Old Testament as patriarchs. This term is used to mean the

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<sup>1</sup> The patriarch and the synod of bishops will be defined in the next section.

<sup>2</sup> *SacCan*, 1037: *CCEO*, xxiv.

head of a family or the head of a tribe; the one who rules a family or a tribe. It is a combination of the Greek words meaning “family” or “tribe” and “to rule”. Therefore, in the New Testament the term patriarch is used to refer to Abraham, the twelve sons of Jacob, and King David.<sup>3</sup>

In the Church, the patriarchs go back to the earliest traditions. Not only did the Christian authors of the New Testament refer to the great figures of the Old Testament as patriarchs; they also came to refer to the bishops of the ancient historical cities of Antioch, Rome, Alexandria, Jerusalem, and Constantinople as patriarchs, as well. The bishops of these cities came to exercise a certain degree of authority over the other bishops in their region and the faithful who followed the particular liturgical traditions of their area.<sup>4</sup> The patriarchs developed organically in the early Church. The authorities of the Church did not institute them. But, the patriarchs were sanctioned, or approved, by the Church.

As can be seen in the decrees of the Ecumenical Councils, the role and the authority of the patriarchs are recognized. Beginning with the First Council of Nicaea in 325 AD, the role of the patriarch is recognized and even specific patriarchal sees are recognized, such as Antioch, Rome, and Alexandria. The recognition of the continuing presence of the patriarchs, and the continuing development of their role within in the Church, is seen throughout the decrees of the Ecumenical Councils.<sup>5</sup> Therefore, canon 55 states, “the patriarchal institution has flourished in the Church.”<sup>6</sup>

Because of the historical importance of their office and the role they now serve in presiding over a Church, patriarchs are to be accorded special honor (c. 55). Canon 88 §1 specifically describes the honor that the bishops of the patriarchal Church are to show to the

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<sup>3</sup> *ECC*, 211.

<sup>4</sup> *ECC*, 211.

<sup>5</sup> *ECC*, 212–214.

<sup>6</sup> All references to canons in this paper will be to the canons of the *CCEO* unless otherwise noted.

patriarch. It states: “The bishops of the patriarchal Church must show honor and respect (*obsequium*) to the patriarch and must render due obedience to him” (c. 88 §1). The respect or *obsequium* that is referred to in this canon is the recognition of the authority and competency of the patriarch by the bishops and also the readiness of the bishops to show ecclesiastical obedience to the patriarch.<sup>7</sup> This is a serious obligation imposed on the bishops. It is not to be taken lightly. It is a sign of their communion with the patriarch, and through the patriarch, their communion with the Roman Pontiff as well.

An example of the special honor accorded to patriarchs is that “Patriarchs of Eastern Churches precede all bishops of any degree everywhere in the world, with due regard for special norms of precedence established by the Roman Pontiff” (c. 58). The second part of this canon, “with due regard for the norms established by the Roman Pontiff,” already makes clear that while the patriarch is the head of a Church *sui iuris* (a self-governing Church) he is also in communion with the Roman Pontiff, who occupies the First See and oversees the entire Catholic Church. Therefore, while a patriarchal Church is a Church *sui iuris* and exercises the highest degree of self governance among the Eastern Churches, it is still in communion with, and under, the Roman Pontiff.

Examples of how communion between the patriarch and a patriarchal Church *sui iuris* are manifested with the Roman Pontiff can be found in canons 91 and 92. Canon 91 requires the bishops and other clerics to commemorate the patriarch in the Divine Liturgy and in the divine praises after the Roman Pontiff. This canon addresses the special honor accorded to the patriarch as the head and father of his Church. He must be commemorated in the Divine Liturgy and the divine praises by all the bishops and other clerics in his Church. But, the patriarch is commemorated after the Roman Pontiff. This is a sign of communion with the Roman Pontiff by

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<sup>7</sup> *ECC*, 256.

the members of the patriarchal Church. It is also a sign of their respect for the Roman Pontiff as the successor of Saint Peter and the head of the entire Catholic Church.

The patriarch in particular is to manifest his communion with the Roman Pontiff through specific actions. First, the patriarch is to show fidelity, reverence, and obedience to the Roman Pontiff in virtue of his office as the successor of Saint Peter and supreme pastor of the entire Church (c. 92 §1). Second, the patriarch is to commemorate the Roman Pontiff in the Divine Liturgy and the divine praises and he is to ensure that bishops and other clerics of his patriarchal Church also commemorate the Roman Pontiff in the Divine Liturgy and the divine praises (c. 92 §2). Third, the patriarch is to have frequent interactions with the Roman Pontiff. He is to submit a report to the Roman Pontiff about the Church over which he presides. And, the patriarch is to visit Rome throughout his tenure, to visit the tombs of the Apostles, Saints Peter and Paul, and to present himself to the successor of Saint Peter, the Roman Pontiff, who has primacy over the entire Church (c. 92 §3).

A second reason for the special honor accorded to patriarchs is canon 59 §1, which states, “Patriarchs of Eastern Churches ... are all equal by reason of patriarchal dignity with due regard for the precedence of honor among them.” This canon affirms the special patriarchal dignity of one who is a patriarch, while also noting that there is a special precedence of honor among the patriarchs themselves, which I will not address here.<sup>8</sup> However, this canon shows that there are several patriarchs in the Catholic Church, even some sharing the same see. But, all preside over different patriarchal Churches *sui iuris* that are all in communion with the Roman Pontiff. The example of the various patriarchs, all in communion with the Roman Pontiff, is an example of the diversity that exists in the unity of the Catholic Church. Although there are currently twenty-three Churches *sui iuris*, each following their own traditions, they all share the same faith, the

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<sup>8</sup> The precedence among the patriarchs is addressed in canon 59 §§2–4.

same beliefs, and express communion with, and respect for, the Roman Pontiff, as the successor of Saint Peter, and head of the Catholic Church, of which they are a part.

A third example of the special honor accorded to patriarchs, especially in the Church over which they preside, is canon 60 §1. This canon makes clear that a patriarch precedes other patriarchs, “even if they are higher than him in virtue of title of the see or senior according to promotion,” “in the churches that are designated for the Christian faithful of the Church over which he presides and in the liturgical celebrations of the same Church” (c. 60 §1). Again, this canon also illustrates that there are several patriarchs in the Catholic Church, who are all in communion with Roman Pontiff. All of these patriarchs are to show mutual respect to each other, especially in the churches of, and celebrations in, a patriarch’s own Church. Paragraph 2 of canon 60 gives precedence to “A patriarch who actually possesses patriarchal power.” He “precedes those who [still] retain the title of a patriarchal see that they once held” (c. 60 §2). In other words, a current patriarch takes precedence over any former patriarchs.

A patriarch presides over his Church as its father and head (c. 55). This sentence of the canon is significant. It demonstrates the link between the patriarchs of the Eastern Churches, who have existed from the first centuries of the Church, to the patriarchs of the Old Testament, as the authors of the New Testament referred to them. The patriarchs of the Old Testament were the head or ruler of their family or tribe. The patriarch of an Eastern Church presides over his Church as its father and head. This description of the patriarch is significant. Not only because of its link to the Old Testament figure of the patriarchs, but also because it uses the word preside. The use of the particular word preside is significant. To preside over a Church means the patriarch leads the Church, he is the head of the Church, but he does not do so alone. He shares the responsibility for governing his Church with others, the synod of bishops, in particular.

To use the analogy in this canon (c. 55), the head, which contains the brain, is a very significant and important part of the body, but it is not the only necessary part of the body, there are other vitally important parts of the body in addition to the head, such as the chest, which contains the heart and the lungs, which are also necessary for life. Another analogy used in the canon to describe the way a patriarch presides over his Church is that of a family. The patriarch is said to preside over his Church as a father. However, a father is not the only parent in the family. There is also a mother, without whom, the father could not be a father. Therefore, the mother too has the role of a parent within the family, over the children. It is the mother and the father, together, who are the parents in the family, and of their children. In the same way, the patriarch presides over his Church as a father, but he is not alone; he shares governance of his Church with the synod of bishops. He does not, and cannot, govern the Church alone.

The patriarch does however possess ordinary and proper power “over bishops and other Christian faithful of the Church over which he presides” (c. 78 §1). The power of the patriarch is ordinary (c. 78 §1). It is joined to his office as patriarch (c. 981 §1). He acquires it upon his enthronement as patriarch (c. 77 §1). His power is also proper to him. It is given to him in his own right. It is not vicarious power that he is exercising on behalf of someone else. Lastly, his power is personal. It is attached to the person of the patriarch himself. That is why canon 78 §1 prevents the patriarch from constituting a vicar for the entire patriarchal Church and from delegating his power to someone else in all cases. He can constitute a vicar for a part of the Church or delegate his power in specific cases. But, because his power is personal, attached to him, he cannot have a vicar over the entire Church nor can he delegate someone in all cases.

“The patriarch represents the patriarchal Church in all its juridic affairs” (c. 79). Because a patriarchal Church is a juridic person established *a iure* (c. 921 §2), it has a physical person

who represents it in all its juridic affairs, both ecclesial and civil. In a patriarchal Church, this is the patriarch.

Canon 56 further articulates who the patriarch is. The patriarch is a bishop. Specifically, he is “a bishop who has power over all the other bishops including metropolitans and other Christian faithful of the Church over which he presides” (c. 56). An examination of how the patriarch exercises this power, especially with the synod of bishops, is the focus of this paper. Therefore, the exercise of power by the patriarch and the synod of bishops will be examined in greater detail throughout this paper. But for now, as the canon notes, the power of the patriarch in his Church is not unlimited. It is exercised “according to the norm of law approved by the supreme authority of Church” (c. 56). For example, the patriarch in governing his Church is bound by the *CCEO*. He cannot preside over his Church in a way that is contrary to the *CCEO*. The supreme legislator, the Roman Pontiff, promulgated the *CCEO* for all of the Eastern Churches. Therefore, it is binding on the Christian faithful of the Eastern Churches. And, the patriarch cannot govern in a way that is contrary to it.

This fact illustrates an important point that will be further developed later in this paper.<sup>9</sup> The patriarch and the synod of bishops of a patriarchal Church are an intermediate authority under the supreme authority of the Church. Yes, a patriarchal Church is an autonomous and self-governing Church, it is a Church *sui iuris*, exercising the highest form of self-governance. But, as the canon states, the patriarch exercises this self-governance “according to the norm of law approved by the supreme authority of the Church” (c. 56). Therefore, this submission of self-governance to the supreme authority of the Church is a sign of the patriarch’s, and his Church’s, communion with the Roman Pontiff. It is also a sign of their communion with the other Churches

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<sup>9</sup> See section 2.1 on Intermediate Authority for further development of this theme.

that are in communion with the Roman Pontiff and compose the Catholic Church, through their communion with the Roman Pontiff.

Three brief, but specific, examples of how a patriarchal Church is under the supreme authority of the Church are found in canon 57. Paragraph 1 of canon 57 restricts “The erection, restoration, modification and suppression of patriarchal Churches ... to the supreme authority of the Church.” Paragraph 2 restricts the modification of “the title that has been legitimately recognized or granted to each patriarchal Church” to the supreme authority of the Church (c. 57). Paragraph 3 of the same canon requires, in addition to other things, the assent of the Roman Pontiff for the transferal of the patriarchal see. The three paragraphs of canon 57 all regard the external or ecclesial structure of a patriarchal Church, which is overseen and regulated by the supreme authority of the Church.

To preside over his Church, the “patriarchal Church must have a permanent see for the residence of the patriarch inside its own territory ... from which the patriarch takes his title” (c. 57 §3). This canon makes clear two things regarding the patriarch. First, his Church must have a permanent see for his residence inside the territory of the Church. Second, it is from this see that the patriarch takes his title. For example, the Maronite Patriarch takes his title from the ancient see of Antioch, where the Maronite Church traces its roots and the patriarch once lived.

In addition to having the assent of the Roman Pontiff to move the patriarchal see, the canon also requires the consent of the synod of bishops of the patriarchal Church. This is the first of many instances where the canons require the action of the patriarch and the synod of bishops to govern the patriarchal Church.

### 1.2.2 – Synod of Bishops

The synod of bishops of the patriarchal Church is a vital and essential part of the patriarchal Church. The synod, in conjunction with the patriarch, governs the patriarchal Church. The shared governance of the patriarchal Church, between the synod of bishops and the patriarch, is the topic of this paper. It will be explained in greater detail in the subsequent chapters that follow.

According to canon 102 §1, the synod of bishops of a patriarchal Church is comprised of all and only the ordained bishops of the patriarchal Church wherever they are constituted. This canon has two key words. The first key word is all. The synod of bishops is composed of all the ordained bishops of the patriarchal Church. Therefore, all the ordained bishops have a right to be convoked to the synod and cannot be excluded.

All of the ordained bishops who have been legitimately convoked to the synod of bishops of the patriarchal Church are bound by a serious obligation to attend the synod (c. 104 §1). However, a bishop who has already resigned from his office is not bound by a serious obligation to attend the synod. If a bishop considers himself prevented from attending the synod by a just impediment, he is to present his reasons in writing to the synod of bishops of the patriarchal Church. The bishops present at the beginning of the synod will determine the legitimacy of the impediment (c. 104 §2).

Bishops who are constituted outside the patriarchal territory are to be convoked to the synod of bishops of the patriarchal Church, because the canon refers to all bishops “wherever they are constituted” (c. 102 §1).<sup>10</sup> However, according to paragraph 2 of canon 102, particular law can restrict the deliberative vote of eparchial bishops constituted outside the territory of the

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<sup>10</sup> I will address the territory of a patriarchal Church and the impact it has upon governance of the Church in chapter 2.

patriarchal Church and the deliberative vote of titular bishops. But, as paragraph 2 of the canon makes clear, the canons concerning the election of the patriarch, bishops, or other candidates for office mentioned in canon 149 remain intact and cannot be restricted by particular law. Therefore, with regard to the elections mentioned above, the right to vote remains as provided in the other canons of the *CCEO*. It cannot be restricted by this canon, which allows particular law to restrict the deliberative vote only in matters other than the elections mentioned above.

However, canon 102 § 1 provides a list of exceptions of ordained bishops who are to be excluded from the synod of bishops and not convoked. The first exception mentioned in canon 102 §1 is a bishop who meets the criteria of canon 953 §1. The criteria include: “1° a person incapable of a human act; 2° a person who lacks active voice; [and] 3° a person who has publicly rejected the Catholic faith or has publicly defected from the Catholic Church.” If a bishop meets the criteria from numbers one, two, or three above, he is to be excluded from the synod of bishops. The second exception is a bishop who has been reduced from the episcopate to a lower grade or a bishop who has been deposed (c. 1433). The third exception is a bishop who has been punished with a major excommunication (c. 1434).<sup>11</sup>

The second key word in this canon is solely. This means that only the ordained bishops of the patriarchal Church are members of the synod of bishops of the patriarchal Church and no one else. For example, a bishop who has been elected, but has not yet been ordained a bishop, is not yet a member of the synod of bishops and therefore does not yet have the right to be convoked. However, he could be invited as a guest.<sup>12</sup> Paragraph 3 of canon 102 provides that others can be invited to the meeting of the synod of bishops by the patriarch, according to the norm of particular law or with the consent of the permanent synod, especially hierarchs who are not

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<sup>11</sup> *GEC*, 173.

<sup>12</sup> *Ibid.*

bishops and experts, to give their opinion. But, these persons, even though invited to attend the meeting of the synod, are not part of the synod. They are only invited guests who are attending the meeting. The canon makes specific mention that the invitation to persons who are not members of the synod of bishops of the patriarchal Church, therefore, persons who are not ordained bishops, in no way allows them to be present during the election of the patriarch. Only members of the synod of bishops are to be present for the election of the patriarch, according to the norm of canon 66 §2.

Also, in the synod of bishops, each bishop must represent himself. Canon 105 provides that “No member of the synod of bishops of the patriarchal Church can send a proxy in his place, nor does anyone have several votes.” Therefore, each member of the synod must attend personally and must cast his own vote. No one can attend in place of the member, and no one can vote for that member, except the member himself.

Before proceeding further, it may be best at this point, while still defining terms, to define a few additional important terms. Common law in the *CCEO* is used to identify the laws and legitimate customs of the entire Church and the laws and legitimate customs common to all the Eastern Churches (c. 1493 §1). Particular law in the *CCEO* is used to identify “all laws, legitimate customs, statutes and other norms of laws, which are neither common to the entire Church nor to all the Eastern Churches” (c. 1493 §2). Therefore, particular law can be the particular law of a Church *sui iuris*, the particular law of a patriarchal Church, or the particular law of an eparchy. For example, the Maronite Church, a patriarchal Church *sui iuris*, has its own particular law that binds only the members of the Maronite Church. Within the Maronite Church an eparchy can have its own eparchial particular law. But, particular law cannot be contrary to higher law or common law. Particular law is in addition to the common law, it stands alongside

the common law and complements the common law. It does not, and cannot, contradict the common law.

## 2 – THE POWERS OF THE PATRIARCH AND THE SYNOD OF BISHOPS

### 2.1 – Intermediate Authority

Our Lord Jesus Christ chose from among all of his followers twelve Apostles. Specifically, he chose Saint Peter to be the head and first of the Apostles. Therefore, the office of the Roman Pontiff, the college of bishops, and the office of eparchial bishop were instituted by Christ, Our Lord, Himself. The Roman Pontiff and the eparchial bishops are vicars of Christ (cc. 42, 43, 178).

The Roman Pontiff, as the Bishop of Rome, is the successor of Saint Peter, who was named as the first and head of the Apostles. Therefore, by virtue of his office (*munus*), the Roman Pontiff possesses “supreme, full, immediate and universal ordinary power in the Church which he is always able to exercise freely” (c. 43). All six of the main words in the canon are important. First, supreme, the Roman Pontiff is at the highest level of earthly power in the Church. He is subordinate to no one in the Church. For example, canon 45 §3 states: “No appeal or recourse is permitted against a sentence or decree of the Roman Pontiff.” And canon 1058 states: “The Roman Pontiff is judged by no one.” Second, full, his power is complete. He can exercise the threefold *munera* of teaching, governing, and sanctifying and he has legislative, executive, and judicial power. Third, the power of the Roman Pontiff is immediate; it belongs to him and can be exercised by him directly, without the assistance of an intermediary, or another person. Fourth, universal, it extends to all parts of the entire Church. Fifth, ordinary, the power of the Roman Pontiff is attached to the office of the Roman Pontiff itself. Therefore, the power is attached to, and ordinary to, the office (c. 981 §1). Sixth, freely exercised, the power of the Roman Pontiff is exercised independent of any ecclesial power or civil authority.<sup>13</sup> The only

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<sup>13</sup> *GEC*, 135.

restraint on the power of the Roman Pontiff is divine law, the law instituted by God for the Church, to which the Roman Pontiff is bound. Otherwise, the Roman Pontiff is always able to freely exercise the supreme, full, immediate, and universal ordinary power he has in the Church.

The college of bishops is also a divinely instituted office in the Church. It is also the subject of supreme power in the Church. The college of bishops is composed of all the bishops who are in communion with the Roman Pontiff, who is the head of the college (c. 49). The college of bishops began when Christ called the Apostles and gathered them together as a college with Saint Peter as their divinely appointed leader and head (c. 42).

The bishops are the successors of the Apostles. They are joined together with the Roman Pontiff, who is the successor of Saint Peter (c. 42). “The eparchial bishop, to whom the eparchy has been entrusted to shepherd in his own name, governs it as the vicar and legate of Christ; the power which he exercises personally in the name of Christ is proper, ordinary, and immediate, although by the supreme authority of the Church its exercise is ultimately regulated and can be circumscribed within certain limits in view of the benefit of the Church or of the Christian faithful” (c. 178).

The office of eparchial bishop is divinely instituted. The bishops are successors of the Apostles who were called by Christ. An eparchial bishop, in particular, governs his eparchy in his own name and governs it as a vicar and legate of Christ, who commissioned the Apostles. He is not a vicar of the Pope nor is he a vicar of the patriarch. The eparchial bishop represents Christ to his people and governs them in the name of Christ. The power that the eparchial bishop exercises personally, in the name of Christ, is proper, ordinary, and immediate. Proper means that the eparchial bishop is able to exercise the power in his own name by virtue of his office. Ordinary means that the power is attached to the office that the eparchial bishop holds (c. 981).

§1). Immediate means that the eparchial bishop exercises his power directly, without the need for an intermediary.<sup>14</sup> However, as the canon states, the exercise of the eparchial bishop's power is ultimately regulated, and can be circumscribed, by the supreme authority of the Church within certain limits for the benefit of the Church or the Christian faithful. The restrictions on the power of the eparchial bishop, who shepherds his eparchy, are a sign of his communion with the Roman Pontiff, who is the pastor of the entire Church and has supreme, full, immediate, and universal ordinary power in Church, which he is always able to exercise freely (c. 42).

In a patriarchal Church, between the divinely instituted offices of the supreme authority of the Church, the Roman Pontiff and the college of bishops, and the divinely instituted office of the eparchial bishop, there is the patriarch and the synod of bishops of the patriarchal Church. The patriarch and the synod of bishops, originating in and being recognized in the earliest traditions of Church as described above, are not per se directly divinely instituted. To be clear, the patriarch is a bishop, and has a patriarchal eparchy. But, the office of patriarch, with “power over all the bishops ... and other Christian faithful of the Church in which he presides” (c. 56), was not per se directly instituted by Christ but rather originated in, and was recognized in, the most ancient tradition of the Church and has since flourished throughout the history of the Church (c. 55).<sup>15</sup>

In a patriarchal Church, there is a synod of bishops for that patriarchal Church. However, just as the patriarch is rooted in the earliest traditions of the Church, so too is the synod of bishops of the patriarchal Church. The synod, although composed of bishops, whose office was divinely instituted, is not itself divinely instituted. The synod governs in collaboration with the

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<sup>14</sup> *ECC*, 406.

<sup>15</sup> The history of the office of the patriarch is treated in greater detail in chapter 1.

patriarch, who along with the synod, are in communion with the Roman Pontiff, whose office was also divinely instituted.

Therefore, the patriarch and the synod of bishops of a patriarchal Church are intermediate authorities that exist together to govern the patriarchal Church. But, they exist between the divinely instituted offices of the Roman Pontiff and the college of bishops and the eparchial bishop. The patriarch, and through him the synod of bishops, is in communion with the Roman Pontiff and must respect his authority as the head of the Catholic Church. The rights and powers of the eparchial bishops, who function under the patriarch and the synod, must also be respected and protected, because they also govern in their eparchy by virtue of divine law. Canon 88 §1 makes clear that the patriarch must show due reverence to the bishops of the Church over which he presides and treat them with fraternal charity.

## **2.2 – In Relation to the Patriarchal Territory**

Because the patriarch and the synod of bishops are an intermediate authority, under the supreme authority of the Church, and are only capable of governing their own patriarchal Church, they do not have universal jurisdiction. Only the supreme authority of the Church has universal jurisdiction (c. 43). Everyone else has a limited jurisdiction. For example, an eparchial bishop only has the power of governance in his eparchy (c. 178).

“The power of the patriarch is exercised validly only within the territorial boundaries of the patriarchal Church” (c. 78 §2). This has been the tradition of the Church and was reaffirmed by the decree of the Second Vatican Council on the Catholic Eastern Churches *Orientalium Ecclesiarum*. The decree repeatedly makes reference to specific powers that the patriarch and the synod of bishops are able to exercise within their territory. The decree also refers to certain restrictions on the power of the patriarch and the synod of bishops outside of their territory.

Therefore, by making clear that there is a difference between the powers of the patriarch and the synod of bishops that can be exercised within their territory and outside of their territory, the decree affirms that there is indeed a patriarchal territory, that it is limited, and that it does not extend throughout the whole world.

The decree identifies that there will be Christian faithful of the patriarchal Church residing outside of the patriarchal territory and that hierarchs can be appointed to shepherd the faithful residing outside of the patriarchal territory. But, these faithful and their hierarch continue to remain outside the territory, despite the presence of the hierarch and his attachment to the patriarchate.<sup>16</sup> One might try to argue that the appointment of a hierarch might constitute an extension of the patriarchal territory, because a significant enough portion of the patriarchal Church's Christian faithful live in an area outside the territory and warrant the appointment of a hierarch. But the Council, in its conciliar decree, makes clear that this is not the case and that the hierarch is appointed to an area that is outside of the patriarchal territory. If the territory of the patriarchal Church was to be wherever the flock resides, or even wherever there is a hierarch, it would not only contradict the decree and tradition of the Church, but it would place no limits on the territory of the patriarchal Church, because that territory would extend to wherever the Christian faithful moved. Not having a defined physical territory, and only saying that the territory of the patriarchal Church extends to wherever the Christian faithful are, would give the patriarchal Church a universal jurisdiction, which it never had throughout the history or tradition of the Church. Furthermore, doing so would contradict *Orientalium Ecclesiarum*, which lays the foundation for the post-conciliar Eastern Churches and the *CCEO*. The mandate of the

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<sup>16</sup> *OE 7*.

commission charged with preparing the *CCEO* was to prepare the canons according to the intentions of the Second Vatican Council and authentic Eastern tradition.<sup>17</sup>

In terms of tradition, the title of patriarch always was, and still is, tied to a see, a physical location, a city, as the *CCEO* prescribes. The patriarch governs, with full jurisdiction, all the faithful of the patriarchal Church living in a specific area, not all the faithful of the patriarchal Church wherever they live. The title of the patriarch makes clear that there are geographic restrictions on his territory. For example, the title of the Maronite Patriarch is the Maronite Patriarch of the Antioch and all the East. The geographical reference in the title itself indicates that there are territorial restrictions to the title, just like the Bishop of the Eparchy of Byblos or the Archbishop of the Archeparchy of Beirut. Both have their territory limited to a certain area that is indicated by their title. Even a metropolitan, who oversees a province, and has suffragan bishops in the province, has his jurisdiction as a metropolitan limited to his province. Only the supreme authority of the Church has universal jurisdiction.

Despite this, however, consultors to the commission for the preparation of the Code suggested removing the territorial limits of the patriarchal Churches.<sup>18</sup> I believe that the reason for their request was that a substantial number, if not perhaps in some cases a majority, of the Christian faithful of the Eastern Churches live outside the historical boundaries of the patriarchal territory because of emigration from their patriarchal territory, located either in the Middle East or Eastern Europe. These Christian faithful usually emigrated to predominantly Latin Catholic areas such as: North or South America, Western Europe, or Australia. This emigration is due in large part to the history of political turmoil and economic unrest that have plagued the areas

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<sup>17</sup> *Preface to the Latin Edition* in *CCEO*, xxvii.

<sup>18</sup> *ECC*, 353–355.

where Eastern Catholics have lived for centuries, often in the minority, in the presence of either a Muslim or Orthodox Christian majority.

This emigration from the patriarchal territory that began two centuries ago continues until the present without showing any signs of ceasing. For example, the Middle East is still ravaged by war and political turmoil. Christians continue to leave their historic homes there, as they have done for almost two centuries. Eastern Europe is still plagued with poor economic conditions, especially relative to other parts of the world.

Therefore, because of the substantial number of Christian faithful living outside of the territorial boundaries of the patriarchal Church, there has long been a desire to extend the territorial boundaries of the patriarchal Churches, from their historic boundaries. Some patriarchal Churches now have more than half of their Christian faithful living outside of the patriarchal territory. Therefore, in some cases now, the patriarch and the synod of bishops have full authority over less than half of their Church. However, when presented with the desire by some of consultors for the preparation of the *CCEO* to extend the patriarchal territory beyond its historical boundaries, the legislator chose to remain faithful to the tradition of the Church, as expressed in the decree *Orientalium Ecclesiarum* of the Second Vatican Council and the task given to the commission for the preparation of the *CCEO*, by limiting the territory of the patriarchal Churches to their historic territory.

However, the supreme legislator has reserved to himself the right to make any alterations or resolve any doubts regarding the boundaries of the territory of the patriarchal Churches. Although the synod of bishops of the patriarchal Church is competent to investigate the matter and present a properly documented petition to the Roman Pontiff, canon 146 § 2 states, “It is for the Roman Pontiff alone to resolve the doubt authentically or to decree a modification of the

boundaries.” This is consistent with the three paragraphs of canon 57 which were addressed above in chapter 1 and relate to the patriarch, his title, or the transfer of his see. Again, in all three cases it is reserved to the supreme authority of the Church to make changes to the exterior structure or appearance of a patriarchate or patriarchal territory. A patriarchal Church is largely *sui iuris* with regard to internal matters. But, concerning external matters, especially those which affect the relations between Churches, the intervention and approval of the supreme authority of the Church is required because the effects of such a change go beyond the patriarchal Church alone. Therefore, as will be demonstrated in the next two subsections, there are certain powers of the patriarch and the synod of bishops that can be exercised within the patriarchal territory and certain powers that are restricted outside of the patriarchal territory.

### **2.2.1 – Inside the Patriarchal Territory**

Canon 78 §2 states, “The power of the patriarch is exercised validly only within the territorial boundaries of the patriarchal Church.” Canon 146 §1 defines this further by providing a more specific definition of the patriarchal territory. It states: “The territory of the Church over which the patriarch presides extends over those regions in which the rite proper to that Church is observed and the patriarch has a legitimately acquired right to erect provinces, eparchies, and exarchies” (c. 146 §1). The first of the two criteria needed for defining the patriarchal territory is the observance of the rite, specifically the rite proper (cf. c. 28 §1) and not just the generic tradition (cf. c. 28 §2) such as Antiochian, but specifically the Maronite or Syriac Catholic rite. Also, it is interesting to note that the Code does not make reference to how long the rite proper must have been observed but simply that it be observed. The previous law had required the observance of the rite from ancient times.<sup>19</sup>

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<sup>19</sup> *ECC*, 356.

The second criterion that is also needed is the “legitimately acquired rite to erect provinces, eparchies, and exarchies” (c. 146 §1). An acquired right is a right that was lawfully acquired under a previous law and still remains intact. Again, the *CCEO* simply states that the right has to be acquired. It does not require that the acquired right have an ancient origin. However, in many cases, given the historical nature of the patriarchate, it may very well be that the acquired right has an ancient origin, but it does not have to.

Inside the patriarchal territory, the patriarch and the synod of bishops exercise the full degree of their self-governance over the Christian faithful of their Church. In addition to the Christian faithful of their Church, the patriarch and the synod of bishops, within their territory, also exercise power “over others who do not have a local hierarch of their own Church *sui iuris* constituted in the same territory and, even if they remain ascribed in their own Church” (c. 147). This provision is in place so that none of the Christian faithful are without a hierarch to whose care they have been entrusted.

Inside the territory of the patriarchal Church, there are several ways that the patriarch and the synod of bishops exercise the full degree of their self-governance. First, in a patriarchal Church the synod of bishops is competent to elect the patriarch (c. 64). All and only the members of the synod of bishops have active voice in electing the patriarch. The members of the synod of bishops include “all and solely the ordained bishops of the patriarchal Church wherever they are constituted” (c. 102 §1). Certain exceptions are made in canon 102 §1. These exceptions along with the canon itself are explained in greater detail in section 1.2.2 on the synod of bishops. The phrase “wherever they are constituted” indicates that the bishops constituted outside the patriarchal territory are to be included in the synod. While paragraph 2 of canon 102 allows the restriction of their deliberative vote, it makes clear that their rights regarding the election of the

patriarch, bishops, and other specific candidates for office remains intact and can not be restricted. Therefore, as bishops constituted outside of the patriarchal territory, they have certain rights in the patriarchal Church that remain intact and other rights that can be restricted. The right to elect the patriarch and other bishops remains intact. While other rights can be restricted.

Regarding the election of the patriarch, all members of the synod bishops “legitimately convoked are bound by a grave obligation to take part in the election” (c. 68 §1). This is different from a meeting of the synod of bishops (c. 104 §1), where the bishops legitimately convoked are bound by a serious, but not grave, obligation to attend. Also, bishops who have already resigned their office are not bound by the serious obligation to attend a meeting of the synod of bishops (c. 104 §1). In either case, “If a bishop considers himself to be prevented by a just impediment, he is to present his reasons in writing to the synod of bishops of the patriarchal Church. It is for the bishops present in the designated place at the beginning of the sessions of the synod to decide the legitimacy of the impediment.”<sup>20</sup> This allows for the determination that a bishop may be justly impeded from attending the synod.

The patriarch is canonically elected in the synod of bishops. However, he does not validly exercise his office until after his enthronement. It is by his enthronement that the patriarch obtains his office with the full effects of the law (c. 77 §1). But, “The patriarch is not to convoke the synod of bishops of the patriarchal Church nor to ordain bishops before he receives ecclesiastical communion from the Roman Pontiff” (c. 77 §2). This is because these two acts, in particular, are directly linked with ecclesiastical communion and the supreme authority of the Church. After the canonical election and enthronement of the new patriarch, the synod of bishops is to inform the Roman Pontiff, as soon as possible, by means of a letter from the synod, that the election and enthronement of the new patriarch were canonically carried out (c. 76 §1). “The

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<sup>20</sup> Canons 68 §2 and 104 §2 are identical.

new patriarch must request as soon as possible ecclesiastical communion from the Roman Pontiff by means of a letter signed in his own hand” (c. 76 §2).

I cite all of these canons to show the synod’s ability to elect their own patriarch. The Roman Pontiff does not have a role. He is informed that the election and enthronement were carried out and he receives the request for ecclesiastical communion from the new patriarch. This is a first example of self-governance carried out by a patriarchal Church, the synod of bishops in particular, in the patriarchal territory.

A second example of the self-governance of a patriarchal Church inside the patriarchal territory is the election of bishops by the members of the synod of bishops of the patriarchal Church. The Roman Pontiff does give his assent for the priest to be added to the list of priests who can be elected to the episcopacy. The process begins with the submission of potential candidates, by the members of the synod of bishops, to the patriarch. The patriarch then submits the names of the potential candidates for the episcopacy and their attached files to the synod of bishops to compile a list of candidates, by a secret ballot, which will be sent by the patriarch to the Apostolic See for the assent of the Roman Pontiff (c. 182 §§1–3). When the election takes place, “The bishops are freely to elect the one whom before all others they consider before the Lord to be worthy and suitable” (c. 183 §2). If the one elected has already received the assent of the Roman Pontiff, he can be informed of the election. If he accepts his election, the patriarch is to notify the Apostolic See immediately (c. 184 §§1–2). If the one elected has not already received the assent of the Roman Pontiff, the patriarch is to notify the Roman Pontiff immediately in order to obtain the assent of the Roman Pontiff to the one elected. In the meantime, secrecy is to be observed by all, even toward the one elected. After having obtained the assent of the Roman Pontiff, the patriarch is to inform the one elected of his election. If he

accepts his election, the patriarch is to notify the Apostolic See of his acceptance and the day of proclamation (c. 185 §§1–2).

The election of bishops by the synod of bishops within the patriarchal territory is a clear example of the self-governance of the patriarchal Churches. The election of bishops by the synod of bishops, with the assent of the Roman Pontiff, is unique to only the patriarchal and major archiepiscopal Churches. Other Churches *sui iuris*, despite being self governing, do not exercise this degree of self governance. The metropolitan Churches are only able to submit a list, of at least three names, to the Roman Pontiff for his appointment of their metropolitan and their bishops (c. 168). In the other Churches *sui iuris* that only have hierarchs, it is for the Roman Pontiff to appoint their hierarchs (c. 175). The election of bishops is no longer practiced in the Latin Church, except with the example of the election of the bishop by the chapter of canons of a cathedral, and this itself is a very rare practice reserved to a few historic cathedral chapters in a few very old cities in Europe. It is not at all common.

And, in addition, the election of bishops by the synod of bishops also shows the relationship between the patriarch and the synod of bishops. The members of the synod of bishops propose names, with files attached, to the patriarch. The patriarch can then add further information as he sees fit. The patriarch then submits the proposed names and files to the synod of bishops for consideration and the establishment of a list. The patriarch then submits that list to the Apostolic See for the assent of the Roman Pontiff. The synod of bishops elects the new bishop. The patriarch then informs the candidate of his election, once the candidate has received the assent of the Roman Pontiff. This process clearly shows the close interaction of the patriarch and the synod of bishops in one area of self-governance granted to patriarchal Churches, the election of bishops. The patriarch has certain responsibilities that he is to fulfill for the election,

and the synod of bishops has certain responsibilities that it is to fulfill for the election. Each set of responsibilities is laid out and clearly defined in the *CCEO* and requires the cooperation and interaction of the other party. Yes, the synod elects, but they do not do so in a vacuum. The candidate must receive the assent of the Roman Pontiff and the patriarch facilitates, or presides over, the whole process.

I would also note briefly that in this process, as with other typical processes between the patriarch and the synod of bishops, it is the patriarch who interacts with the Apostolic See and the Roman Pontiff. For example, canon 81 states in part, “The acts of the Roman Pontiff regarding the patriarchal Church are to be made known through the patriarch to the eparchial bishops.” This is another example that shows the patriarch interacting with the Apostolic See and the Roman Pontiff on behalf of his patriarchal Church. Yes, as canon 79 states, “The patriarch represents the patriarchal Church in all its juridic affairs.” And, according to canon 55, the patriarch presides over his Church as its father and head. But, in addition to illustrating these principles, the canon mentioned above, and the others that are similar to it, show clearly the patriarch’s role of interacting with the Apostolic See and the Roman Pontiff on behalf of the patriarchal Church. Therefore, they are also a clear reminder of the patriarch’s communion with the Roman Pontiff.

A third way the patriarchal Church is able to exercise self-governance within the boundaries of the patriarchal territory is the internal ordering of the patriarchal Church. The patriarch, with the consent of the synod of bishops, has a great deal of latitude in the ordering of the patriarchal Church. For example, for a serious reason, with the consent of the synod of bishops and having consulted the Apostolic See, the patriarch can “erect provinces and eparchies, modify their boundaries, unite, divide, and suppress them, and modify their

hierarchical status and transfer eparchial sees” (c. 85 §1). Furthermore, again with the consent of the synod of bishops, the patriarch is competent “to give to an eparchial bishop a coadjutor bishop or auxiliary bishop” observing the norms of law regarding the election of bishops and the norms of law for auxiliary and coadjutor bishops (c. 85 §2, 1°). Also, for a grave reason and with the consent of the synod of bishops, the patriarch is competent “to transfer a metropolitan, eparchial bishop or titular bishop to another metropolitan, eparchial or titular see” (c. 85 §2, 2°). “The patriarch, with the consent of the permanent synod, can erect, modify and suppress exarchies” (c. 85 §3).

In all of these actions the patriarchal Church is able to exercise the highest degree of self-governance of a Church *sui iuris*. This degree of self-governance is exercised first in collaboration with the patriarch and the synod of bishops. Each has a role. The patriarch is not able to take any of these actions alone. Most require the consent of the synod of bishops, and only one requires the consent of the permanent synod, and not the consent of the full synod of bishops.<sup>21</sup> Furthermore, some of these actions require a serious or grave reason, meaning that the patriarch and synod can act, but not without a motivating, justified cause that rises to the appropriate level of reason. Lastly, the more serious of these actions, having to do with provinces and eparchies, requires consultation with the Apostolic See. Therefore, the patriarch must discuss the matter with the Apostolic See and hear its opinion. The patriarch can deviate from the opinion of the Apostolic See, but only for a serious reason in his judgment. This is a clear example of the *sui iuris* nature of a patriarchal Church that is also in communion with the Roman Pontiff. A further example is found in paragraph 4 of canon 85 requiring the patriarch to inform the Apostolic See, as soon as possible, of the decisions made by canon 85. Again, as mentioned

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<sup>21</sup> For more information on the permanent synod of the patriarchal Church, a topic that is not addressed in this paper, see canons 115 through 122 of the *CCEO* and the appropriate commentaries and authors on the subject.

above, it is the patriarch who is called upon to interact and communicate with the Apostolic See on behalf of the patriarchal Church.

The fourth way that a patriarchal Church is able to exercise self-governance within the patriarchal territory is by the enactment of laws, especially liturgical and disciplinary laws, to govern the patriarchal Church within the patriarchal territory (c. 110 §1). The specific way in which laws are made and the specific allocation of power in making laws, between the patriarch and the synod of bishops, will be looked at in depth in the next chapter. But at this point it is sufficient to say that within the patriarchal territory the patriarchal Church is competent to make its own laws, including especially liturgical laws and disciplinary laws, to govern the patriarchal Church within its own territory.

This can be contrasted with the restricted ability in metropolitan Churches, and even inability of other Churches *sui iuris*, to make their own laws. In a metropolitan Church, the council of hierarchs is able to enact laws that are expressly stated in the *CCEO* and in cases in which the common law leaves the matter to the particular law of the Church *sui iuris*. However, before the metropolitan can validly promulgate any law that the council of hierarchs is allowed to make, he must notify the Apostolic See as soon as possible of the laws enacted by the council and receive written notification from the Apostolic See that it has received the acts of the councils before he can validly promulgate them. Without the written notification of the Apostolic See the promulgation is invalid (c. 167 §§1–3).

This can be compared with canon 110 §1, which gives the synod of bishops of a patriarchal Church the exclusive competence to make laws for the entire patriarchal Church and, with canon 112 §1, which gives the patriarch the competence to promulgate laws. In this sense, the legislative ability of the patriarchal Church is not restricted and certainly does not require the

intervention of the Apostolic See, as does the legislative ability of a metropolitan Church. As shall be seen in the next section, the force of law enacted by the synod does have some restrictions outside of patriarchal territory.

### **2.2.2 Outside of the Patriarchal Territory**

Outside of the patriarchal territory, the authority of the patriarch and the synod of bishops are limited and restricted. Otherwise, if their authority were not limited to the patriarchal territory, as I have established at length in section 2.2 above, the patriarchal Church would have universal jurisdiction, which it has not had in history, nor can it have. Yes, this may present issues for the large number, even possibly majority, of the faithful currently residing outside of the patriarchal territory. But, I also address that issue above and will further address it below. The current law does provide adequate, albeit limited ways, for the patriarchal Church to continue to exercise some form of governance outside of the patriarchal territory.

A first way in which the authority of the patriarch and the synod of bishops is restricted outside of the patriarchal territory is that their ability to enact laws that are binding on the faithful who reside outside of the patriarchal territory is limited. For example, only liturgical laws enacted by the synod of bishops have the force of law everywhere in world (c. 150 §2). This is to preserve the Liturgy of the Church *sui iuris*, which expresses its unity and communion and is a primary characteristic of a Church *sui iurus*. Disciplinary laws and other decisions of the synod of bishops have the force of law only within the territorial boundaries of the patriarchal Church (c. 150 §2). This is because a patriarchal Church does not have universal jurisdiction, and because geographic and cultural circumstances around the globe may limit the ability of the Christian faithful to follow such laws, especially when they reside outside of the patriarchal

territory and outside of the cultural and geographic area where the laws were originally enacted and intended to have force.

Therefore, in a spirit of subsidiarity, the decision is left to the eparchial bishop of the patriarchal Church constituted outside the territory to, if he desires, attribute the force of law to disciplinary laws and other decisions of the synod of the bishops in his own eparchy (c. 150 §3). This allows for the needed discretion of the eparchial bishop in this matter. For example, the Maronite Church, which is based in Lebanon and has the majority of its eparchies in Lebanon and neighboring countries, also has extra-territorial eparchies in Europe, Australia, and North and South America. These eparchies are on completely different continents, in the opposite hemisphere, and in cultures that are very different from the prevailing Middle Eastern culture that exists in the Maronite Patriarchal Territory.

Furthermore, in light canon 102 §2, eparchial bishops constituted outside of the patriarchal territory can have their deliberative vote, on certain matters, restricted in the synod of bishops. I address this in greater detail above in section 1.2.2 on the synod of bishops. But, because their deliberative vote can be restricted, it is entirely possible that eparchial bishops constituted outside of the patriarchal territory will only have a consultative vote on matters other than elections, which are guaranteed in canon 102 §2, and possibly Liturgy. Therefore, if the principles in canon 150 did not exist, the binding force of law could be attributed to laws and decisions that bishops, outside of the patriarchal territory, only had a consultative vote on. Therefore, for a number of reasons, all of which are expressed above, eparchial bishops outside of the patriarchal territory can attribute the force of law to disciplinary laws and other decisions of the synod of bishops with certain restrictions.

The first restriction provided in canon 150 §3 is that the law, which the eparchial bishop is seeking to attribute the force of law to, must be within his competence as eparchial bishop. He has to have the competence to enact the law itself; otherwise he cannot give it force. This is restrictive, because if a law enacted by the synod of bishops is the particular law of a patriarchal Church or a matter that is by its own nature reserved to the synod of bishops, the eparchial bishop cannot give it the force of law. He can only give the force of law to decisions of the synod of bishops that he would otherwise have been able to make on his own.

The second restriction provided in canon 150 §3 is that if a law or decision of the synod is approved by the Apostolic See it then, by virtue of being approved by the Apostolic See, has the force of law everywhere in the world for the patriarchal Church. This is because the Apostolic See has universal jurisdiction. Therefore, the law already has force in the entire patriarchal Church, throughout the world, and the eparchial bishop cannot give it force himself, because the supreme authority of the Church has already given the law force.

A second way in which the authority of the patriarch and the synod of bishops are restricted outside the territorial boundaries of the patriarchal Church is the election and appointment of bishops to offices outside of the patriarchal territory. To fill the office of an eparchial bishop, coadjutor bishop, or auxiliary bishop that is outside the boundaries of the patriarchal territory, the synod of bishops elects, according to the norms for the election of bishops, at least three candidates, and proposes them, through the patriarch, to the Roman Pontiff for appointment (c. 149). The synod of bishops does not make the appointment; they only propose at least three candidates for the offices mentioned above to the Roman Pontiff. It is the Roman Pontiff who appoints candidates to the offices of eparchial, coadjutor, or auxiliary bishops that are constituted outside of the patriarchal territory. Furthermore, the Roman Pontiff

does not have to appoint from the list of candidates proposed by the synod of bishops. He is free to appoint a candidate that is not on the list proposed by the synod. I would note again, it is the patriarch who communicates the list of proposed candidates to the Roman Pontiff on behalf of the synod of bishops of the patriarchal Church. The patriarch is again the one interacting with the Roman Pontiff and the Apostolic See on behalf of the patriarchal Church.

The appointment of bishops to offices outside of the patriarchal territory differs from the election and appointment of bishops inside the patriarchal territory, which was treated above in subsection 2.2.1. Inside the patriarchal territory, as long as the candidate has received the assent of the Roman Pontiff to become a bishop, the synod of bishops is able to elect bishops as they see fit, within in the norms of law.

A third example of the restriction of the rights of the patriarchal Church outside of the patriarchal territory concerns visitation of the faithful residing outside of the patriarchal territory and establishing subsequent measures to care for them. The patriarch has the right, and also the obligation, to seek appropriate information about the Christian faithful who reside outside the territorial boundaries of the patriarchal Church. He can do so personally or through a visitor, who must receive the assent of the Apostolic See (c. 148 §1). Although members of the Christian faithful of the patriarchal Church reside outside the boundaries of the territory of the patriarchal Church, they are still members of the patriarchal Church. And, the patriarch is the head and father of the patriarchal Church over which he presides (c. 55). Therefore, the patriarch has both the right and the obligation to seek information about the Christian faithful of his Church living outside the boundaries of the patriarchal territory, either personally or through a visitor.

After the completion of the visit, the patriarch can propose suitable measures to the Apostolic See for the care of the Christian faithful living outside the boundaries of the patriarchal

territory, after discussing the matter in the synod of bishops. If the patriarch did not make the visit personally, the visitor is to send a report of the visit to the patriarch, who will review the report and then discuss the matter in the synod of bishops, before making proposals to the Apostolic See (c. 148 §3).

However, although this canon establishes a right of the patriarch outside of the territory, it still places restrictions on that right. First, if the patriarch sends a visitor in his place, because it is outside of the patriarchal territory and because the visitor does not have the right that the patriarch does personally to make the visit, the visitor must receive the assent of the Apostolic See. Second, the patriarch can propose suitable measures following the visit, but neither he nor the synod of bishops is competent to enact the proposals, because it is outside of the patriarchal territory. The patriarch must propose the measures to the Apostolic See for enactment, even though it affects the patriarchal Church, because it is outside of the patriarchal territory.

Therefore, in this canon (c. 148) we see, first, the union of the patriarchal Church with Apostolic See, by submitting to the Apostolic See outside the patriarchal territory. This illustrates the limits of a patriarchal Church outside of the patriarchal territory. This is very different from the situation inside the patriarchal territory where the patriarchal Church is able to govern itself and make its own decisions concerning internal governance.<sup>22</sup> Also in this canon, we see the collaboration between the patriarch and the synod of bishops. An issue that has already been addressed, in some respects concerning above, and will continue to be addressed in further respects, concerning the power of governances, in the next chapter.

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<sup>22</sup> See subsection 2.2.1 above for greater detail on this topic.

### 3 – THE ALLOCATION OF POWER

#### 3.1 The Three Types of Power

In the Church there are three *munera*, or three offices, duties, functions, or ministries.<sup>23</sup> They are the *munus docendi* (teaching office), the *munus sanctificandi* (sanctifying office), and the *munus regendi* (governing office). The governing office yields the power of governing or ruling in the Church. The patriarch and the synod of bishops of the patriarchal Church are entrusted with the power of governing, ruling, the patriarchal Church.<sup>24</sup> Their power is exercised in the patriarchal Church.

The power of governance can be further distinguished into three areas: legislative, judicial, and executive power of governance (c. 985 §1). Legislative power of governance is the power to make laws that are binding on the Christian faithful.<sup>25</sup> This also includes the power to authentically interpret laws. The Roman Pontiff has universal legislative power. The eparchial bishop has legislative power within his competence in his eparchy. Legislative power below the supreme authority of the Church cannot be validly delegated unless the common law provides otherwise. Nor can an inferior legislator validly issue a law that is contrary to higher law (c. 985 §2).

“Judicial power of governance is the right to judge one’s subjects, according to the norms of law and, if necessary, to impose penalties upon them (c. 24).”<sup>26</sup> This is exercised through the issuing of judicial decrees and judicial sentences. A judge or a college of judges exercises judicial power. The Roman Pontiff and the eparchial bishop are judges and exercise judicial

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<sup>23</sup> The term *munera* has several different meanings in Latin and therefore can be translated into English using several different words.

<sup>24</sup> I will address the allocation of power of governance among the patriarch and the synod of bishops in a patriarchal Church in the next section.

<sup>25</sup> *GEC*, 664.

<sup>26</sup> *GEC*, 665.

power within their competence in their jurisdiction, universally and within the eparchy, respectively. Typically, though, the Roman Pontiff and eparchial bishop appoint judges to hear cases, either as a sole judge or as a college of judges. Judicial power, which is exercised by a judge or a college of judges, cannot be contrary to the law and cannot be validly delegated, except to perform acts preparatory to some decree or sentence (c. 985 §3).

Executive power of governance is the power to execute laws. It is the power to apply or carry out laws. Therefore, executive power is exercised within the limits of the law and is subordinate to the law. Executive power can be used for general acts of executive power or for singular administrative acts. Each is a form of executive power. Ordinary executive power can be delegated unless the law provides otherwise (c. 988 §1). Furthermore, executive power delegated by the Apostolic See or the patriarch can be subdelegated “unless the delegate was chosen for personal qualifications or subdelegation was expressly forbidden.” (c. 988 §2) Therefore, there is a wide range of individuals that can exercise executive power, either in virtue of their office which has ordinary executive power, through delegation, or even through subdelegation.

### **3.2 – Examples of the Specific Allocation of Power**

Within the patriarchal Church, the power of governance is shared between the patriarch and the synod of bishops. It is shared between the one and the many. Therefore, the patriarch and the synod of bishops must work together to govern the patriarchal Church. Neither the patriarch nor the synod of bishops can govern the patriarchal Church alone. Although the three forms of the power of governance are generally divided between the patriarch and the synod of bishops, there are some significant areas of overlap as well, where the patriarch and the synod must work together to exercise certain forms of the power of governance. But, for now, generally speaking, legislative and judicial powers of governance are given to the synod of bishops, and executive

power of governance is given to patriarch (c. 110). The patriarch and the synod each have certain aspects of the three forms of power of governance that are given to them by the *CCEO*.

### **3.2.1 – Legislative Power**

Generally speaking, legislative power of governance in the patriarchal Church is allocated to the synod of bishops. And, generally speaking, with the exceptions noted in the canon itself and explained in section 2.1 and its subsections above, the synod of bishops is exclusively competent to make laws for the patriarchal Church (c. 110 §1). Also, “The synod of bishops of the patriarchal Church establishes the manner and time of promulgation of laws and the publication of decisions” (c. 111 §1). But, the synod of bishops does not have full legislative power alone. Legislative power of governance in the patriarchal Church is shared with the patriarch who can authentically interpret laws. Canon 112 §2 provides that until a forthcoming synod, it is the competence of the patriarch, after having consulted the permanent synod, to provide an authentic interpretation of the laws of the synod of bishops (c. 112 §2).

However, it is important to note, that the promulgation of laws is best understood as executive power, not legislative power. Therefore, “The promulgation of laws and the publication of decisions of the synod of bishops of the patriarchal Church is the competence of the patriarch” (c. 112 §1). Even though it is the synod of bishops that enacts laws and establishes the time and the manner of their promulgation (c. 110 §1 & c. 111 §1), “laws are established by promulgation” (c. 1488). Therefore, the laws enacted by the synod of bishops do not achieve binding force until the patriarch promulgates them. Promulgation can be compared to a decree that makes a provision, allowing the law, already validly enacted, to achieve binding force.

This division and allocation of legislative power between the patriarch and the synod of bishops is unique to the governance of a patriarchal Church. For example, in an eparchy the

eparchial bishop is the legislator. He has the full authority to make, enact, and promulgate laws that are within his competence. The eparchial bishop can also delegate another person, such as the chancellor, to promulgate laws that he has approved and enacted by his own legislative power (c. 191). The same is true of the Roman Pontiff. He is also a legislator. He is the supreme legislator. He has full legislative power to make, enact, and promulgate laws. He can also delegate power to another to promulgate his laws.

Even in the case of an eparchial assembly, it is still the eparchial bishop alone who is the legislator. He alone signs the decrees and decisions arising from the assembly, and he promulgates, or authorizes the promulgation of, any legislation arising from the assembly (cf. c. 241). The members of the assembly only have a consultative vote.

At the universal level, an ecumenical council, which is a meeting of the entire college of bishops, has supreme legislative power.<sup>27</sup> An ecumenical council's supreme legislative power is shared with the Roman Pontiff, who presides over the council as the head of the college of bishops. The legislation of an ecumenical council does not have force unless it is approved by the Roman Pontiff and promulgated on his authority.<sup>28</sup> However, an ecumenical council is rare. Therefore, the exercise of supreme legislative power in the Church by an ecumenical council is also rare. It is not a common occurrence. Nor is it the typical way legislation is made for the Church. There have only been twenty-one ecumenical councils in the history of the Church, an average of one per century.

In the patriarchal Church there are three differences that make the allocation of legislative power unique. First, generally speaking, legislative power is allocated to the synod of bishops, not the patriarch. This is very different from the typical allocation of legislative power in an

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<sup>27</sup> All of the bishops from around the world are convoked to an ecumenical council, not just a representation, as is the case with a meeting of the synod of bishops convoked by the Roman Pontiff.

<sup>28</sup> See canon 54 for more details.

eparchy where an eparchial bishop alone has full legislative power or, even at the universal level, where the Roman Pontiff is the one to typically exercise legislative power. Second, although legislative power generally is allocated to the synod of bishops, the patriarch also exercises certain essential aspects of legislative power. Therefore, legislative power is shared between the patriarch and the synod of bishops in a patriarchal Church. Third, the sharing of legislative power is the way in which legislation is made; it is not a rare occurrence, like an ecumenical council. Rather, it is a common, frequent occurrence because it is how legislative power is allocated in the patriarchal Church.

### **3.2.2 – Judicial Power**

The judicial power of governance in a patriarchal Church is allocated to the synod of bishops of the patriarchal Church. “The synod of bishops of the patriarchal Church is a tribunal according to the norm of can. 1062” (c. 110 §2). Canon 1062 §1 states: “The synod of bishops of the patriarchal Church, without prejudice to the competence of the Apostolic See, is the superior tribunal within the territorial boundaries of the patriarchal Church.” Therefore, judicial power in the patriarchal Church is clearly and exclusively allocated to the synod of bishops. The patriarch does not have judicial power. Here again, before proceeding further, we see two common themes throughout this paper. The first theme is the intermediary authority of the patriarchal Church as indicated by their communion with, and respect for, the competence of the Apostolic See to judge certain cases (c. 1060 §1). The second theme is the limits of the power of governance of the patriarchal Church outside the patriarchal territory. The synod of bishops only serves as the superior tribunal within the patriarchal territory, not outside of it.

Serving as the superior tribunal of the patriarchal Church, within the territory of the patriarchal Church, is not the only way the synod of bishops exercise judicial power. The synod

of bishops also elects “from among its members, a general moderator for the administration of justice, as well as two bishops, who together with him as president, constitute a tribunal ... to judge the contentious cases of eparchies or bishops, even titular bishops” (c. 1062 §§2–3). The three bishops of the synod serving as judges and constituting a tribunal is an exercise of judicial power. This tribunal is known as the tribunal of the synod of bishops or the synodal tribunal. An appeal from a case judged by this tribunal is brought to the superior tribunal of the patriarchal Church, the synod of bishops. There is no further appeal from a judgment rendered by the synod of bishops, unless the case is brought directly to the Roman Pontiff, according to canon 1059. Therefore, in the patriarchal Church, it is the synod of bishops that exercises judicial power of governance and serves as the superior tribunal of the patriarchal Church.

### **3.2.3 – Executive Power and Administrative Acts**

Executive power of governance is the power to execute laws. It is the power to apply or carry out laws. The most common exercise of the executive power is placing administrative acts. “Administrative acts can be placed, within the limits of their competence, by those who have executive power of governance as well as by those who have received such power explicitly or implicitly by the law itself or by legitimate delegation” (c. 1510 §1).<sup>29</sup> Administrative acts can be divided into three main categories: “1° decrees which give a decision or make a canonical provision for a special case; 2° singular precepts which directly and legitimately enjoin a specific person or persons to do or omit something, especially in order to urge the observance of the law; 3° rescripts which grant a privilege, dispensation, permission or another favor” (c. 1510 §2).

Generally, in a patriarchal Church, “The synod of bishops of the patriarchal Church is not competent for administrative acts” (c. 110 §4). Therefore, what is implied, but is not explicitly stated in this canon, is that the patriarch is generally competent for administrative acts. Placing

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<sup>29</sup> I address the delegation of executive power, mentioned in canon 1510, §1, in section 3.1 above.

the competence for administrative acts with the patriarch, and not with the synod of bishops, corresponds with the typical exercise of executive power in the Church by a physical person, and not a college or group of persons together, such as the synod of bishops.

However, this general rule, that the synod of bishops is not competent to place administrative acts, is accompanied by three very important exceptions: first, “unless the patriarch determines otherwise”; second, if the “common law reserves some acts to the synod”; and third, “with due regard for the canons that require the consent of the synod of bishops of the patriarchal Church” (c. 110 §4). Therefore, although not generally competent to place administrative acts, the synod of bishops does exercise some executive power and is competent to place certain administrative acts as noted in the three exceptions of canon 110 §4 above. In this way, executive power, especially through administrative acts, is shared between the patriarch and synod of bishops. There are certain times when the patriarch can exercise executive power exclusively, but he is not the only one who possesses executive power. The synod of bishops also possesses executive power in certain instances.

The patriarch exercises executive power in the patriarchal Church over which he presides. He can perform general acts of executive power such as the promulgation of general executory decrees and the publication of instructions. For example, canon 82 §1, 1° states: “By his own right the patriarch can, within the scope of his competence, issue decrees that determine more precisely the methods to be observed in applying the laws or urge observance of the laws.”

The patriarch can also place singular administrative acts. Administrative acts include, but are not limited to, decrees that give a decision or make a canonical provision, singular precepts that urge observance of the law, and rescripts that grant a privilege, dispensation, permission or

another favor (c. 1510 §2).<sup>30</sup> For example, “the patriarch is competent to give to a metropolitan or bishop a patriarchal letter of canonical provision” (c. 86 §1, 1<sup>o</sup>). This is also an example of how the patriarch, through his executive power, has a role in the election of bishops inside the patriarchal territory, even though it is the synod of bishops that elects bishops. The patriarch can issue orders, which are singular precepts, to have his decrees and instructions read and displayed publicly within the patriarchal Church (c. 82 §2). The patriarch can also issue warnings, which are singular precepts. For example, he can issue warnings to a metropolitan who has not appointed a finance officer, to a hierarch who has a cleric that merits punishment, and to an eparchial bishop who has gravely transgressed in a certain matter.<sup>31</sup> The patriarch is also able to confer on any cleric a dignity recognized in his own patriarchal Church, with due regard for religious clerics and for the cleric’s superior (c. 89 §3).<sup>32</sup>

The synod of bishops is also able to exercise administrative power when the patriarch determines the synod can, when common law permits the synod to, and when the canons require the consent of the synod of bishops (c. 110 §4). For example, common law, the *CCEO*, permits the synod of bishops to exercise administrative power: to consent to the request of individual bishops to add items to the agenda of the synod of bishops (c. 108 §3), to approve the reason a bishop may absent himself from the sessions of the synod after the opening of the synod (c. 109), to accept the resignation of the patriarch, after consultation with the Roman Pontiff (c. 126 §2), and to remove the president, judges, promoter of justice and defender of the bond from the ordinary tribunal of the patriarchal Church (c. 1063 §2).

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<sup>30</sup> Examples of the exercise of the executive power and the placing of administrative acts by the patriarch are contained throughout the *CCEO*. In this section, I point to only a few specific examples, contained in canons 78 to 101 on the rights and obligations of the patriarch, to show briefly the executive power of the patriarch.

<sup>31</sup> Canons 80, 4<sup>o</sup>; 89 §1; 95 §2.

<sup>32</sup> The promulgation of laws, which is understood as an act of executive power, is addressed in subsection 3.2.1 above because of its relationship to legislation.

The synod of bishops also participates in administrative acts when they give their consent, as required by the *CCEO*, to an act of patriarch. For example, the synod of bishops must consent when the patriarch: erects provinces and eparchies, modifies their boundaries, unites, divides, and suppresses them, and modifies their hierarchical status and transfers their eparchial sees (c. 85 §1).<sup>33</sup> The synod must also give their consent when the patriarch appoints a coadjutor bishop or an auxiliary bishop to an eparchial bishop and when the patriarch transfers a metropolitan, an eparchial bishop, or a titular bishop to another metropolitan, eparchial or titular see (c. 85 §2).

It must be noted before concluding that although not a power of governance, an important competence given to the synod of bishops is the ability to elect the patriarch and the bishops inside the patriarchal territory (c. 110 §3). Outside the patriarchal territory, the synod of bishops elects three candidates and proposes them, through the patriarch, to the Roman Pontiff for his appointment. Inside the patriarchal territory, the synod elects the bishops. However the candidates must receive the assent of the Roman Pontiff to become bishops. The synod also elects the patriarch and is competent to enthrone him. The election of bishops is the competence of the synod, but the patriarch also has a role in various parts of the electoral process. This is just one of the many ways the patriarch and the synod of bishops share in the power of governance in the patriarchal Church.

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<sup>33</sup> For these acts the Apostolic See must be consulted before the act is placed. This is an example of the intermediate authority of the patriarchal Church and its communion with the Apostolic See.

## CONCLUSION

This paper examined the relationship between the patriarch and the synod of bishops in a patriarchal Church. We see in this relationship the one and the many. For a patriarchal Church, it is the relationship between the patriarch, the one, and the many, the synod of bishops. Both share the governance of the patriarchal Church together. Neither is able to govern it alone. Governance is shared between a person, the patriarch, and a group, the synod, the one and the many. Specifically, examples of this can be seen in the governance of the patriarchal Church both inside and outside of the patriarchal territory (Chapter 2). Examples can also be seen in the allocation and sharing of the three forms of the power governance in the patriarchal Church between the patriarch, the one, and the synod of bishops, the many (Chapter 3).

This relationship between the one and the many is not limited to the patriarchal Church. It extends beyond the patriarchal Church. For example, there is one, holy, Catholic, and Apostolic Church, but the one Church is composed of many Churches. There are now twenty-three Churches *sui iuris* within the Catholic Church, all professing the same faith, all in communion with the Roman Pontiff, and all in communion with each other. There is one Church, but within that one Church, there are many Churches that are united to, and part of the one Church.

Lastly, the Most Holy Trinity is also an example of the one and the many, the first example. There are three persons, the Father, the Son, and the Holy Spirit, in the one God. In the one God there are three persons. This central belief of our faith, the relationship between, and the existence of, the one and the many carries down the Church, and even to patriarchal Church in the relationship between the patriarch and the synod of bishops.

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