THE CANON 28 OF THE FOURTH ECUMENICAL COUNCIL AND THE PATRIARCHAL INSTITUTION

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The Formula of Reunion (Ὅρος τῶν Διαλλαγῶν, 433) seemed to be close the doctrinal issue, although the Third Ecumenical Council interpreted what happened in the union of the divine with the human nature, but did not reply to how became this association in the person of Christ.1 The death of hierarchs who contributed to bridge the contradictions between the Antiochian and Alexandrian tradition, allowed the revival of tension between the extreme persons of the two traditions. The successor of Cyril (412-444), Dioscorus of Alexandria (444-451), among other things, showed great zeal in the promotion of the primacy of his throne in the East, based on the criterion of apostolicity of the throne of Alexandria.2 His intentions were confirmed at the Robber Council of Ephesus (449).3 So, the Canon 284 of the Fourth Ecumenical Council was the answer to the efforts of Dioscorus to challenge the See of Constantinople, but also the experience of the Eastern Church.

The Precedence of Honour of the bishop of New Rome is the main question addressed by the first part of canon 28. The canon literally and notionally is separated into two parts, the Precedence of Honour of the See of New Rome is mentioned in the first part (Πανταχοῦ τοῖς ... ἐκείνην ὑπάρχουσαν) and the right of the ordinations of the See of New Rome is mentioned in the second part of the canon (Καὶ ὥστε τοὺς ... αὐτὸν ἀναφερομένων). The interest of the holy fathers of the Fourth Ecumenical Council to interpret the already valid canon 3 of the Second Ecumenical Council, arouses suspicions. The recognition of the Precedence of Honour of the See of New Rome was an unquestionable fact for any party. This is proved by the rank of the signatures in the records of the synods. But the papal delegates also declared their opposition to the effort of

3 Phidas, History I, 637.
Dioscorus to demote the See of New Rome at the Robber Council of Ephesus.⁵
Eusebius of Dorylaeum confirmed the synod and that Leo of Rome (440-461)
had been informed by him about canon 3 of the Second Ecumenical Council
and that he had accepted it.⁶ The opposite opinions that state that the synod
of Rome (382) had reacted to canon 3, are based on the third chapter of the
famous Decretum Gelasianum, but they are judged as wrong.⁷

Professor Vlassios Phidas believes that the first part of canon 28 has an ob-
viously apologetic character. The cause of that is the refusal of the papal dele-
gates to participate in the composition of the canon, but mainly in the expressed
opinion of the bishops of Rome to the bishops of Eastern Illyricum regard-
ing the theory of papal primacy.⁸ The indirect disputing of the Precedence
of Honour of the bishop of New Rome undermined any sense of authority of
the Archbishop of Constantinople with regards to the right to ordain which is
found in the second part of the canon. Through the first part of the canon:

«a) The Council refused the claim that the bishop of Rome had primacy
by divine law and the principle of Apostolicity, which had been repeat-
edly put forward in the letters of the bishops of Rome to the bishops of
Eastern Illyricum.
b) The Council recognized the first place (πρωτοκαθεδρία) of the See of
Old Rome in the Church on the basis of the political principle.
c) The Council accepted the Precedence of Honour of the throne of
New Rome, on the basis of the same principle used by the fathers of the
Second Ecumenical Council. Because of that, the council ratified this
decision (of the Second Ecumenical Council)»⁹.

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⁵ E. Schwartz (ed.), Acta Conciliorum Oecumenicorum (ACO), Berlin, 1927, II, 1, 78.
⁶ ACO II, 1, p. 97.
⁷ See Pentarchy I: V. Phidas, Ο θεμός της Πενταρχίας τον Πατριαρχόν: Προϋποθέσεως
διαμορφώσεως τοῦ θεμσοῦ (ἀπ’ ἀρχῆς μέχρι τὸ 451), Athens, 1969, 306;
F. Dvornik, The idea of apostolicity in Byzantium, and the legend of the apostle
Andrew, Cambridge - Massachusetts, 1958 (Harvard University Press), 64, ft. 56.
Rome had been involved in serious controversies during this period for the election of
the bishop of the city. See B. Kidd (D.D.), The Roman Primacy, to A.D. 461, London,
1936, 56 ff. For the position of the canon in the ancient Latin canonical collections see
F. Dvornik, «The See of Constantinople in the First Latin Collections of Canon Law»,
Melanges G. Ostrogorsky I. (Zbornik Radova BizantoloŠkog Instituta 8.1), Belgrade,
⁸ Cf. Phidas, Pentarchy I, 304-319.
⁹ Phidas, Pentarchy I, p. 305.
Hence, the holy fathers of the Fourth Ecumenical Council established the right of the Archbishop of Constantinople to consecrate the metropolitical bishops of the dioceses of Asia, Pontus and Thrace not only on the basis of the existing custom, but also on the basis of the *Precedence of Honour* of the throne. Thus, they saw in the *Precedence of Honour* the right to ordain, because the centre of grants of canon 28 lies in the right to ordain and not in the *Precedence of Honour*. Canons 9 and 17 were not believed to be enough, because they did not establish the right to ordain for the See of Constantinople. The right to adjudicate cases of bishops of the dioceses of Asia, Pontus and Thrace had to be established upon the right to ordain, according to the canonical consciousness of the period in both West and East.

The composition of the canon was realized after the agreement of the bishops of the East. The representatives of the emperor did not appear at the composition of the relevant act and the delegates of the bishop of Old Rome refused to follow the act. Obviously, this situation influenced the composers of the text. The result was that canon 28 demonstrates this in its syntax and composition. The question was discussed in the seventeenth session, when the papal delegates argued about anticanonical decision, but without success. In the eighteenth session they tried to exploit the absence of the delegates of the emperor and to put the question of free agreement of the two sides (the clergy of Constantinople and the Eastern bishops). They read the famous falsified text of canon 6 of the First Ecumenical Council, instead of directly attacking canon 3 of the Second Ecumenical Council. Obviously, canon 28 would be invalid through the falsified text. The reading of the text, which the church of Constantinople possessed, was the answer to any attempt at mis-
leading the Council, and stopped any attempt at falsification. Of course the canonical regulation which canon 28 presented was innovative. The church of Constantinople acquired the power over the metropolitans of the dioceses of Pontus, Asia and Thrace. This decision was against equal canonical decisions of this very synod. But the church of Constantinople had the advantage of its established authority concerning the right to ordain and adjudicate bishops of these dioceses. The polemic of the papal delegates raised the obvious question of whether their position was a personal one, or whether they were following orders from the bishop of Rome. The papal delegates were supplied with a letter that strengthened their position against any change. The relative letter concerned the problems that had been created by the Robber Council of Ephesus (*latrocinium Ephesinum*). The position of the East was confirmed in the face of the situation because they had already agreed. The imperial delegates had a clear position and they ratified canon 28. On the other hand, the papal delegates insisted against canon 28, and sent the question of validation to the bishop of Rome.

The reaction of Leo of Rome was as acute as that of his delegates, in that he refused to accept even the doctrinal decisions of the Fourth Ecumenical Council, which had been formed according to his doctrinal letter. Leo of Rome tried to dismiss canon 28 in a series of letters. The reaction of Leo even led to disputing the ecumenical character of the Second Ecumenical Council, and the strength of the principle of political accommodation, as a principle of ecclesiastical government and as direct factor of the determining rank of the prestigious Sees. Thus, he disputed the authority of canon 3 of the Second Ecumenical Council and presented the authority of canon 6 of the First Ecumenical Council and the principle of petrine Apostolicity. The argumentation was not new, because Boniface (418-422) had used it in the well known controversy concerning the jurisdiction of Illyricum. Canon

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20 The See of Rome had developed arguments with regard to the primacy of power of its bishop in certain letters to Eastern Illyricum. In parallel, we saw that at other times it tried to impose its position through the falsification of canonical texts (synod of Carthage), especially when it was in a difficult position.

21 ACO II, 1, 95.


23 ACO II, 1, 98.

24 ACO II, 1, 99.


The use of the falsified text of canon 6 in the proceedings of the Fourth Ecumenical Council had the same effect and it served the same claims of the bishop of Rome. Boniface was obliged to accept the equal rights of the thrones of Alexandria and Antioch with the appearance of canon 6. The production of the form was very problematic. Leo of Rome asked that the solution to this problem be found by the introduction of the idea of the direct and the indirect petrine Apostolicity of the thrones of Rome, Alexandria and Antioch. It is a matter of course that only the bishop of Old Rome had direct petrine Apostolicity, where as the bishop of New Rome could not claim petrine Apostolicity. Thus, the Precedence of Honour of this throne was lower than that of the three prestigious Sees to which canon 6 referred. Hence, the throne of Constantinople could not claim any jurisdiction, and canon 28 was invalid, because the Precedence of Honour of the most prestigious Sees was connected with the right to ordain and adjudicate the cases of bishops. Therefore, the throne of Constantinople did not have any such Precedence according to Leo of Rome.29

It is a matter of course that the Palace and the local church regarded such an argument as unacceptable in Constantinople. Leo of Rome tried to join hands with the Sees of Antioch and Alexandria against canon 28, which only showed his ignorance of the ecclesiastical situation in the East as it had been formed by the controversies of Monophysitism. Leo finally understood that his reaction was in vain, because he would not be able to impose his opinions on the Church of the East.30 Julian of Kos, the spokesman of Leo in Constantinople, informed him of the ecclesiastical situation in the East, and that it did not permit any action.31 Leo finally accepted the doctrinal decisions of the synod and, at the same time, could not change the ecclesiastical situation of the jurisdiction of the See of New Rome. The question of canon 28 was regarded as closed. The authority of the See of New Rome was unquestionable. The effort by anyone to dispute the Precedence of the See of Constantinople would prove to be in vain during this period. In reality, the relationship of the two thrones had moved from canon 28 to the question of the primacy claimed by the bishop of Old Rome. The theoretical construction of pope Leo was the basis of an evolution the results of which were seen in the so-called Acacian schism and in the opinions that pope Gelasius (492-496) expressed during this schism.

30 W. DE VRIES, Ορθοδοξία και Καθολικισμός, tr. M. Roussos, Athens, 1979 [Orthodoxie und Katholizismus, Freiburg, 1965] (Orthodoxy, 34) believes that Leo regarded canon 28 as dangerous for the progressive subordination of the Church to the State.
31 PHIDAS, Pentarchy I, 317.
The *Precedence of Honour* of the throne of Constantinople was at the centre of the polemic of the Archbishop of Old Rome because it was exactly the principle of the conferment of suprametropolitan authority and the basis of the patriarchal practice (that is the connection between the exceptional *Precedence of Honour* of the prestigious thrones with the right to ordain and adjudicate cases concerning bishops). The canonical decisions of the Fourth Ecumenical Council were the starting point of the evolution of the patriarchal institution in the life of the Church. The title *Patriarch* (πατριάρχης) was used in order to declare the dignity of the bishops of the five prestigious Sees that were honoured with exceptional suprametropolitan authority. This title gave the name to the new institution of the ecclesiastical government (*patriarchal system*). The title patriarch is historically charged. It is a biblical title that was reformed in order to characterize the new governmental situation. As an ecclesiastical title, it was colourless before the Fourth Ecumenical Council and it was used mainly in order to declare the orthodoxy of the faith of the honoured bishops (Phidas, *Pentarchy II*, p. 30).\(^3^2\) The absolute connection of the Orthodoxy of the faith with the *Precedence of Honour* accommodated the establishment of the title in the ecclesiastical consciousness. Hence the title could include the new dignity bearing the meaning of the *Precedence of Honour* and of the orthodoxy of the faith. At the same time, the notion of the governmental autonomy of each throne could be easily declared. The recognition of the patriarchal right by the whole Church after the Fourth Ecumenical Council shows the deep ecclesiastical presuppositions of the new institution.\(^3^3\)

The inclusion of the exceptional *Precedence of Honour* of the five prestigious thrones with suprametropolitan authority gave birth to the new institution of the Pentarchy of the Patriarchs. The institution of the Pentarchy of patriarchs is a form that was created and developed within the limits of the Church. The system of the Pentarchy of patriarchs did not have any previous model that the Church took and reformed. We can see that the existence of the political system of “Pentarchy” in ancient Carthage (Aristotle preserved all information) did not coincide and did not seem to influence the institution of the Pentarchy of patriarchs.\(^3^4\)

We have traced the development of the canonical recognition of the *Precedence of Honour* of the prestigious Sees and of the conferment of relative administrative power from the Second to the Fourth Ecumenical Council. The convocation and recognition of the five autonomous administrative provinces is a given fact. Of course, we ought to confess that the Fourth Ecumenical Council

\(^{32}\) V. Phidas, Ο θημος της Πενταρχίας τῶν Πατριαρχῶν: Ἰστορικοκανικά προβλήματα περί τὴν λειτουργίαν τοῦ θεσμοῦ (451 - 553), Athens, 1970 (*Pentarchy II*), 30.

\(^{33}\) See Phidas, *Pentarchy II*, 27-37; ODB 3, 1599-1600.

did not deal with the establishment of the new institution, the Pentarchy of the patriarchs, with issuing any particular canonical act if we stay with the letter of the Law. It is certain that a long historical period was completed with a new form of ecclesiastical government, borne through canonical decisions (canon 28 for the See of Constantinople) and canonical regulations (for the jurisdiction of the Sees of Antioch and Jerusalem) of the Fourth Ecumenical Council but also through the previous recognition of the rights of the See of Alexandria and the self-evident acceptance of the rights of the See of Old Rome in the West. Vlassios Phidas observes, as regards the Fourth Ecumenical Council’s relation with the institution of the Pentarchy, that it was not dependent on the results of the governmental decisions but on the whole meaning that the division of the suprametropolitical authority had according to the Precedence of Honour of the thrones. He concludes that «this position of the issue leads us to the confirmation of the unbroken connection of the Fourth Ecumenical Council with the ecclesiastical institution of the Pentarchy of the Patriarchs. The “vehicles” of the suprametropolitical authority are determined directly not only by the adoption of the principle of the Precedence of Honour by the synod, but also the permanence and the exclusiveness of the “vehicles” of the (suprametropolitical authority) are founded indirectly»35. Patrick O’Connell accepts this opinion and writes that «for the origin of the idea of the five patriarchs in the Church we must go back to the council of Chalcedon»36. Thus, the opinion of John Meyendorff that the «system of “pentarchy” never really coinsided with reality»37, is historically unfounded.

Doubtless the enactment of the patriarchal right was in the spirit of the canonical decisions of the Fourth Ecumenical Council.38 The clear connection between the Precedence of Honour and the right to ordain (the right of adjudication arises from this right) was a special characteristic of each throne. The function of the Patriarchal synod certifies the administrative independence of these thrones. It regulates the question of ordinations and the adjudications of the metropolitical bishops and the bishops. It expresses the orthodoxy of the faith. This reality was known in West and East by the middle of the fifth century.39 The canonical decisions of the Fourth Ecumenical Council are the canonical precedent on which the idea of the permanence and the exclusiveness of the patriarchal right of the five prestigious Sees is founded.40

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35 Phidas, Pentarchy II, 25
37 Meyendorff, Imperial unity, 58.
38 Cf. Phidas, Pentarchy III, 27 ff.
39 Phidas, Pentarchy III, 43 ff.
40 Phidas, Pentarchy II, 26-27.