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# The Old Catholic Synods

## Traditional or Innovative Elements within the Constitution of the Church?

Jan Hallebeek

### 1. Introduction

In 1928, at the eleventh international Old Catholic Congress in Utrecht, Dr Adriaan van den Bergh (1883–1943), professor of canon law, philosophy and apologetics at the Old Catholic Seminary (Amersfoort),<sup>1</sup> delivered a lecture on the Louvain canonist Zeger-Bernard van Espen (1646–1728) and his significance for the Old Catholic Churches. 1928 was exactly 200 years after van Espen had taken refuge in the seminary where shortly thereafter he died. Van den Bergh praised van Espen as the advocate of combining episcopal and synodal elements in the constitution of the Church and maintained that the permanent synodal system, as developed in the Old Catholic Churches from the nineteenth century onwards, can be regarded as the spiritual legacy of van Espen.<sup>2</sup>

This remark gives rise to various questions, because van Espen was a canonist who, on the one hand, criticized some ecclesiastical institutions, which he considered as incompatible with the constitution of the Early Church, but, on the other hand, he always upheld the sources of law as they were promulgated and received in the Western Catholic Church. Thus, our first concern is whether these sources offered sufficient concepts for developing the synodal elements van den Bergh is referring to, *viz.* synods on the national level, in which representatives of the lower clergy and the laity also participate. Secondly, van den Bergh seems to suggest that the emergence of national synods in the Old Catholic Churches was inspired by the ideas of van Espen. Neither of these statements seems obvious. It is known

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<sup>1</sup> See on van den Bergh: *Beknopte biografie van prof. mr. dr. A.J. van den Bergh*, in: Jan Hallebeek (ed.), A.J. van den Bergh, *De drie Hoofdgeschillen van Het Zwarte Boek* (Publicatieserie Stichting Oud-Katholiek Seminarie, 38), Amersfoort/Sliedrecht: Merweboek 2005, 7–22.

<sup>2</sup> See *Bericht über den XI. Internationalen Altkatholikenkongress in Utrecht vom 13. bis 16. August 1928*, in: *IKZ* 18 (1928), 193–238, at 229, also in: C.G. van Riel (ed.), *Bericht über den XI. Internationalen Altkatholikenkongress in Utrecht vom 13. bis 16. August 1928*, Bern: Staempfli, 1928, 37.

that van Espen's teachings were influential within the Church of Utrecht, but this cannot be said for the German, Swiss and Austrian churches, although in some respects he and the great German canonist Johann Friedrich von Schulte (1827–1914), who drafted the first canon law provisions for the German church, can be considered as kindred souls.<sup>3</sup> It is also possible that in Austria some of van Espen's ideas still appeared in the later and more developed doctrines of Justinus Febronius (pseudonym of Johann Nikolaus von Hontheim, 1701–1790). But can any influence be shown as regards the institution of a synod? Independently from the Church of Utrecht, national synods were established in Germany in 1874, Switzerland in 1875 and Austria in 1879. In the Netherlands this occurred only in 1919, and it seems appropriate to suppose that the Dutch church followed her sister churches in the German-speaking countries, rather than the reverse.

In order to answer these two questions, firstly that concerning the possible roots of the Old Catholic Synods in the traditional sources of canon law and secondly that concerning the contribution of van Espen to their development, we will begin by noting van Espen's own teachings on synods. Then we turn to the theory and practice of collegiate decision-making in the Church of Utrecht in the eighteenth century, especially at the Second Provincial Synod of 1763, then to the Synod of Pistoia (1786), which in many respects sympathized with the Church of Utrecht and confirmed her position, and finally to the formation of Old Catholic Synods in the late nineteenth century in the German-speaking countries and in the early twentieth century in the Netherlands.

## **2. Van Espen on Synods**

In van Espen's thoughts on the administration of the Church, collegiate decision-making certainly featured, for example his concept of all the clergy constituting a corporate body to participate in the administration of the diocese. However, the practical significance of such a principle should not be overestimated. Van Espen adhered to the idea that it is the diocesan

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<sup>3</sup> See Angela K.H. Berlis, *Das Nachwirken Zeger-Bernard van Espens in der Alt-Katholischen Kirche Deutschlands mit besonderem Blick auf Johann Friedrich von Schulte*, in: Guido Cooman e.a. (eds.), *Zeger-Bernard Van Espen at the cross-roads of canon law, history, theology and Church-State relations* (BETL, CLXX), Louvain: University Press, 2003, 375–404.

bishop to whom the Church entrusts the exercise of her jurisdiction. It is shared with the Cathedral Chapter, as representative of the clergy, but only in exceptional cases, as when there is an impediment to exercising episcopal jurisdiction (*sede impedita*) or when the See is vacant (*sede vacante*), the Cathedral Chapter alone will exercise jurisdiction.

As regards the councils or synods of the Church, van Espen distinguished four levels. Apart from the ecumenical council, which represents the entire Catholic Church, there are the national, provincial and diocesan synods. Although in his works van Espen dealt with the canons of all ecumenical councils, he paid little attention to the role of this assembly in the constitution of the Church. He never made it the main issue of a monograph and in his principal work, *Jus Ecclesiasticum Universum* (1700, supplement 1729), there is not one title or chapter discussing the ecumenical council and its authority. Only from a small number of scattered remarks, especially in the posthumously edited notes on a pamphlet by Emmanuel Schelstrate (1645–1692), custodian of the Vatican Library,<sup>4</sup> do we know that van Espen endorsed some of the major principles of the Conciliar Movement, such as the opinion that the Roman Pontiff is subordinate to the judgement of the council. However, he nowhere linked these theories to his own ideas on the constitution of the Church.<sup>5</sup> He may have had good reason not to do so. As was shown in a recent study by Stefan Sudmann, the Council of Basle (1431–1449) exercised its authority in the same exclusive and centralistic way as did many Popes, leaving little room for decision-making at the local level,<sup>6</sup> while van Espen was first and

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<sup>4</sup> See Gustave Leclerc, *Zeger-Bernard van Espen (1646–1728) et l'autorité ecclésiastique. Contributions à l'histoire des théories gallicanes et du jansénisme* (Studia et textus historiae juris canonici, 2), Zürich: Pas, 1964, 196–199; and Michel Nuttinck, *La vie et l'œuvre de Zeger-Bernard van Espen. Un canoniste janséniste, gallican et régalien à l'Université de Louvain (1646–1728)* (Recueil de travaux d'histoire et de philosophie, IV/43), Louvain 1969, 651–653.

<sup>5</sup> In the secondary literature this is sometimes suggested and, although this may seem to be plausible, it lacks evidence in the actual works of van Espen. Cf. Jan Visser, *Die Anschauungen Zeger-Bernard Van Espens über die Kirche und ihre Bedeutung für heutige alt-katholische/ekklesiologische Fragen*, in: Cooman e.a. (eds.), *Van Espen* [see note 3], 405–419, esp. 407; and Jan Visser, *Hat van Espen heute noch aktuelle Bedeutung?*, in: Rüdiger Althaus e.a. (eds.), *Kirchenrecht und Theologie im Leben der Kirche. Festschrift Heinrich J.F. Reinhardt* (Beihefte zum Münsterischen Kommentar, 50), Essen: Ludgerus, 2007, 411–422, esp. 417–419.

<sup>6</sup> Stefan Sudmann, *Das Basler Konzil. Synodale Praxis zwischen Routine und Revolution* (Tradition – Reform – Innovation, 8), Frankfurt a.M.: Lang, 2005.

foremost a defender of the rights of the diocesan bishop and the local church.

The term ‘national synod’ (*synodus nationalis*) covers the gathering of the patriarch with the metropolitans and bishops of the entire patriarchal district.<sup>7</sup> Such a synod is only mentioned in van Espen’s scholions on the African canons.<sup>8</sup>

The provincial and diocesan synods are dealt with extensively in the *Jus Ecclesiasticum Universum*, each in a separate title.<sup>9</sup> It seems appropriate to consider these synods as the possible precursors of the Old Catholic National Synods of the nineteenth century, since the Church of Utrecht is a church province, while the Old Catholic Churches in Germany, Switzerland and Austria are organized as temporary dioceses. It has to be seen, however, in which respect the provincial and diocesan synods are actually comparable with the newly established synods of the nineteenth century.

For both the provincial and the diocesan synod, van Espen discussed the question how often they should assemble and the various provisions which during the course of history could be found on this issue. The Council of Trent prescribed that the provincial synod should assemble at least (*saltem*) every third year,<sup>10</sup> but in the Southern Netherlands this happened only sporadically.<sup>11</sup> This deviating practice was strongly regretted by van Espen and in his disapproval one can read a plea for a permanent and fully fledged place for the provincial synod in the structure of the Church: “But, ah, distress! This is the misery of our days, and an injustice, that the provincial synod does not take place every third year, not even every twenty years. Almost ninety years already passed by, without our Low Countries seeing a provincial synod assembled.”<sup>12</sup> According to canon 6 of the Fourth Lateran Council (1215) the diocesan synod should take place every

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<sup>7</sup> See the *Commentarius in canones juris veteris*, Pars prima (de antiquis canonum codicibus), Dissertatio I (de veterum canonum stabilitate et usu), § XI.

<sup>8</sup> Part of the *Commentarii in canones juris veteris et novi*.

<sup>9</sup> *Jus Ecclesiasticum Universum*, Pars Prima, Titulus XVIII (De Synodis Diocesanis, seu Episcopalibus) and Titulus XX (De Synodis Provincialibus).

<sup>10</sup> JEU 1.20.1.9.

<sup>11</sup> JEU 1.20.1.11.

<sup>12</sup> JEU 1.20.1.11: Sed proh dolor! Ea est temporum nostrorum miseria, ac iniquitas, ut nec singulis trienniis; imo nec vicenniis Synodus Provincialis habeatur; imo jam anni sunt fere nonaginta, quod Belgium nostrum Synodus Provinciale congregatam non viderit.

year (X 5.1.25). The Council of Trent (1545–1563) held to this provision.<sup>13</sup> However, in the days of van Espen in some dioceses synods had not taken place for more than fifty years.<sup>14</sup>

The provincial synod was, from earliest times, intended to discuss controversial issues and to solve disputes.<sup>15</sup> It also served, as did the diocesan synod, to correct abuses (*excessum corrigere*) and to reform ecclesiastical life (*mores reformare*).<sup>16</sup> This was laid down in canon 6 of the Fourth Lateran Council of 1215.<sup>17</sup> The provincial synod is the assembly of the metropolitan and his suffragans. According to van Espen, it is possible to invite others as well, such as the canons of the chapters, abbots, archpriests, either in view of their rights or based on custom, but only the diocesan bishops have voting rights, the others merely a consultative voice.<sup>18</sup> The diocesan synod is the assembly of the diocesan bishop and his clergy, including those clerics enjoying exemption.<sup>19</sup> Van Espen referred to a historical source, revealing that in the eleventh century some laymen of an irreproachable life (*laici bonae conversationis*) attended the diocesan synod, but it is doubtful whether any practical significance can be ascribed to this text for his own days.<sup>20</sup>

### 3. Synodal Decision-Making in the Church of Utrecht in the Eighteenth Century

Let us now have a closer look at the practice of synodal decision-making in the Church of Utrecht. Of the two provincial synods<sup>21</sup> which took place since Utrecht became a church province in the sixteenth century, the second is the most interesting for our purpose. The first (10–30 October 1565) under archbishop Frederick Schenk van Toutenberg (1503–1588), which

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<sup>13</sup> Session 24, Decree on reformation, chapter 2; JEU 1.8.1.3–5.

<sup>14</sup> JEU 1.18.1.5–6.

<sup>15</sup> JEU 1.20.3.1–6, referring to canon 5 of the Council of Nicaea (325) and canon 19 of the Council of Chalcedon (451).

<sup>16</sup> See JEU 1.20.3.6 ff. for the provincial synod and JEU 1.18.2.9 for the diocesan synod.

<sup>17</sup> X 5.1.25, see JEU 1.20.3.6 ff.

<sup>18</sup> JEU 1.20.1.15.

<sup>19</sup> JEU 1.18.1.8.

<sup>20</sup> JEU 1.18.2.1.

<sup>21</sup> If we include the *coetus* of 1677 (see below) there were three Provincial Councils.

was intended to implement and further elaborate and interpret the decisions of the Council of Trent, had hardly any effect. It only pronounced upon matters of doctrine, and its proceedings were only published in the eighteenth century.<sup>22</sup> The Second Provincial Synod took place from 13 until 21 September 1763 under archbishop Petrus Johannes Meindaerts (1684–1767), i.e. in a period which was much more formative for the identity of the present-day Old Catholic Church of the Netherlands.<sup>23</sup> The synod aimed at demonstrating the catholic orthodoxy of the Church of Utrecht by, amongst other things, condemning the work *Précis d'un acte de dénonciation solennelle* (1758) of Pierre Leclerc (1706–ca. 1787), a French sub-deacon who from 1748 was living in Amsterdam.<sup>24</sup> The synod confirmed the primacy of the Roman Pontiff over the other bishops, not just as an honorary primacy, but as one of ecclesiastical power and authority.<sup>25</sup> Moreover, the synod accepted the Creed of Pope Pius IV (1499–1565), confirming the decrees of the Council of Trent.<sup>26</sup>

As stated above, van Espen considered it possible for clergy other than just the diocesan bishops to attend the provincial synod, as happened in 1763. Archbishop Meindaerts invited, apart from his two suffragans, Johannes van Stiphout (1708–1777) of Haarlem and Bartholomeus Johannes Bijeveld (1713–1778) of Deventer,<sup>27</sup> the seven canons of the Metropolitan Chapter of Utrecht. Furthermore, ten parish priests and four

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<sup>22</sup> See Judocus le Plat (ed.), *Monumentorum ad historiam concilii Tridentini amplissima collectio*, Tom. VII-I, Louvain 1787, 101–124.

<sup>23</sup> The proceedings of the Second Provincial Synod of Utrecht were published as *Acta et Decreta secundae Synodi Provinciae Ultrajectensis, in sacello Ecclesiae Parochialis Sanctae Gertrudis, Ultrajecti, celebratae, Die XIII Septembris MDCLXIII*, Utrecht 1774. A Dutch translation was published one year later as *Verhandelingen en Besluiten van de Kerkvergadering der Roomskatolijke Klerezije van het Uittregtse, en onderhoorige Bisdommen, in de Kapelle der parochie kerke van de Heilige Gertrudis te Uittregt in Herfstmaand, des jaars 1763, gehouden. Uit het Latijn vertaald door K.F.D.R. [Kaspar Franciscus de Rees], Pr. s.l.*, 1765. The proceedings can also be found in J.D. Mansi, *Sacrorum conciliorum nova et amplissima collectio* 38, Paris 1907 (reprint Graz 1961), 700–844.

<sup>24</sup> On Leclerc see: Bastian A. van Kleef, Leclerc und Pinel im Urteil der Utrechtter Kirche, in: *IKZ* 39 (1949), 69–95.

<sup>25</sup> See the *Acta et Decreta* of the Synod: Pars secunda, decretum III (Mansi Vol. 38, column 760): “non esse tantum primatum honoris, sed etiam ecclesiasticae potestatis et auctoritatis”.

<sup>26</sup> Ibid. Pars secunda, decretum V (Mansi Vol. 38, column 773–774).

<sup>27</sup> It may be questioned whether the bishop of Deventer can be regarded a suffragan, but we will leave that discussion aside here.

council theologians participated in the synod. These parish priests acted as representatives of the lower clergy. They were termed *deputati*, and appear to have been appointed by the bodies they were considered to represent. In the record of the synod in the journal *Nouvelles Ecclésiastiques*, possibly the work of Gabriel Dupac de Bellegarde (1717–1789), these representatives are said to have been ‘elected in their assemblies’.<sup>28</sup> Furthermore, from the *Facultates Deputatorum*, preserved in the archive of the Metropolitan Chapter,<sup>29</sup> it appears that the representatives from the parish priests of the archdiocese were appointed in the assemblies of the districts of the archpriests. For the district of Utrecht three representatives were elected on 27 April 1763, for Schieland two representatives on 5 May and for Rijnland-Delfland one representative on 31 August. The election of the four representatives of the clergy of Haarlem had apparently taken place by ballot, since the bishop of Haarlem, Johannes van Stiphout, declared on 12 September that these four representatives were elected *per scrutinium*.

The acts and decrees of the Second Provincial Synod do not reveal whether these representatives were granted the vote or whether they merely had a consultative voice. The decisions were taken unanimously and the acts and decrees were signed by all participants. In such a case it is difficult to judge whose votes must have been decisive. In the literature it was stated that the fact that all signed the acts of the synod indicates that all had voting rights.<sup>30</sup> That this was indeed the case is confirmed by the account of the synod in the *Nouvelles Ecclésiastiques*. At the end of the synod, the acts and decrees were alternately read aloud by the two secretaries of the synod, a proceeding which took about four hours. Subsequently, i.e. before the *Te Deum* was sung, the acts and decrees were signed by the participants. According to the *Nouvelles Ecclésiastiques*, the bishops signed with the words ‘I have judged and signed’ and the parish priests, who according to the anonymous writer of the account had voting rights in the synod, did the same. The record in the *Nouvelles Ecclésiastiques* even indicates why the participating parish priests were entitled to co-

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<sup>28</sup> NNEE of 28 May 1764, 85: “les Députés qu’ils auront choisis dans leurs assemblées”.

<sup>29</sup> Het Utrecht Archief (HUA), inv. 224, nr. 706-4.

<sup>30</sup> Bastian A. van Kleef, Das Utrechter Provinzialkonzil vom Jahre 1763, in: *IKZ* 49 (1959), 197–228; 50 (1960), 65–92, 194–224, at 205; Dale K. van Kley, Catholic Conciliar Reform in an Age of Anti-Catholic Revolution, in: Kathleen Perry Long (ed.), *Religious Differences in France: Past and Present*, Kirksville MO: Truman State University Press, 2006, 91–140, at 99.

sign: “following the custom of the Church since the first Council of Jerusalem (a model for all other councils), where the priests judged together with the Apostles”.<sup>31</sup> According to the Acts of the Apostles the Apostolic Council of Jerusalem (51 AD) was an assembly of the Apostles together with the ‘priests’ or ‘elders’.<sup>32</sup>

The reference to the Council of Jerusalem coincides perfectly with the inclination to adopt the practice of the Primitive Church as normative. Such an approach is typical of the theology as practiced at the University of Louvain at the end of the seventeenth and beginning of the eighteenth centuries.<sup>33</sup> It may be doubted, however, whether it was in accordance with canon law, as in force, to grant the representatives of the lower clergy voting rights. As seen above, inviting other clergy, such as the canons of the Metropolitan Chapter, to attend the provincial synod and granting them consultative votes, was in conformity with the canon law of the time, as described by van Espen in his *Jus Ecclesiasticum Universum*, but this cannot be said for the fact that they were granted the vote.

The acts and decrees do not reveal the underlying reason for granting the representatives of the lower clergy such a fully fledged position, while the author of the account in the *Nouvelles Ecclésiastiques* only mentions the Council of Jerusalem as a justification. This idea was not derived from van Espen. In the latter’s opinion, the Cathedral Chapter has jurisdiction in the sense that under normal circumstances it is an advisory body and only *sede impedita* or *sede vacante* it exercises episcopal jurisdiction. Similarly, the idea that jurisdiction is derived from the Church herself, as consisting of all the faithful, including the laity, does not imply a right of consultation for everyone. Exercise of jurisdiction is entrusted to the

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<sup>31</sup> NNEE of 11 June 1764, 93: “Les Evêques souscrivirent simplement par ces mots: *J'ai jugé & souscrit*, aussi bien que les Pasteurs du Second Ordre qui avoient eu voix délibérative dans le Sinode, suivant l'usage observé communément dans l'Eglise depuis le premier Concile de Jérusalem (modele de tous les autres,) où les Prêtres jugerent avec les Apôtres (Act. 15).”

<sup>32</sup> In the Vulgate: *apostoli* and *presbyteri* (Acts 15.2) or *seniores* (Acts 15.6). See for the Apostolic Council of Jerusalem: Henry Chadwick, *The Early Church*, Harmondsworth: Penguin, 1971.

<sup>33</sup> Eventually the appeal to the Primitive Church was to become a characteristic of the theology of the Church of Utrecht, although in the nineteenth century this was given a slightly different interpretation. See about this modification Dick J. Schoon, *Van bisschoppelijke Cleresie tot Oud-Katholieke Kerk. Bijdrage tot de geschiedenis van het katholicisme in Nederland in de 19de eeuw*, Nijmegen: Valkhof, 2004, 724–726.

bishop through his election. This opinion was adopted by the theologians of the Church of Utrecht, who taught that the concept that jurisdiction essentially resides in the Church as a whole, is merely expressed by the presumed consent, cooperation and prayer of the community.<sup>34</sup>

Granting the representatives of the lower clergy voting rights at a provincial synod may be due, however, to the strong plea for the rights of parish priests by French theologians and canonists. According to this view, parish priests, the *second ordre*, have the right to be consulted as regards the administration of the Church and have the right to vote in the synod.<sup>35</sup> The strongest defence of such rights can probably be found in the writings of the French jurist and canonist Gabriel Nicolas Maultrot (1714–1803), the most important of which were published after the Second Provincial Synod of Utrecht had taken place,<sup>36</sup> but the support for the *second ordre* was not new and also had its defenders in the Northern Netherlands.<sup>37</sup> However, the more extreme version of this doctrine, defended by Pierre LeClerc, was rejected by the synod itself. LeClerc had maintained that Christ has established only one office, that of the priests, and that both bishops and priests hold the plenitude of this priesthood.<sup>38</sup> For this opinion LeClerc referred to a fragment from the Church Father Jerome (ca. 347–420), adopted in Gratian's Decree, stating that the authority of the bishop over his priests is based on custom and that the bishop should

<sup>34</sup> See e.g. Pasquier Quesnel, *Le Nouveau Testament en François avec des Reflexions Morales*, Paris 1692, Tom. I, 229 (ad Mattheus 18.16), and Nicolas LeGros, *Du renversement des libertés de l'Eglise Gallicane dans l'affaire de la constitution Unigenitus*, 1716, Tom. I, 389–396.

<sup>35</sup> Van Kleef, Provinzialkonzil [see note 30], 205. See also: Dale K. Van Kley, Civic humanism in clerical garb. Gallican memories of the early Church and the project of primitivist reform 1719–1791, in: *Past and Present* 200 (2008), 77–120, at 84–85.

<sup>36</sup> *L'institution divine des curés et leur droit au gouvernement général de l'Église, ou, Dissertation sur le vingt-huitième verset du vingtième chapitre des actes des apôtres*, [s.l.] 1778; *Le droit des prêtres dans le synode, ou concile diocésain, avec un recueil de synodes*, [s.l.] 1779; *Les droits du second ordre défendus contre les apologistes de la domination épiscopale*, [s.l.] 1789. See about Maultrot: Hermann Josef Sieben, *Die Partikularsynode. Studien zur Geschichte der Konzilsidie* (Frankfurter Theologische Studien, 37), Frankfurt a.M.: Knecht, 1990, 94–97.

<sup>37</sup> Van Kleef mentions, besides Pierre LeClerc, Egidius de Witte (1648–1721) and Theodorus Witzenburg (ca. 1662–1717); cf. van Kleef, Provinzialkonzil [see note 30], 205.

<sup>38</sup> *Précis d'un acte de dénonciation solennelle faite à l'Eglise (...)*, Amsterdam 1758, 145.

administer his diocese together with the priests.<sup>39</sup> According to LeClerc, Christ had explicitly prohibited there being any hierarchy, power or predominance amongst the pastors of his Church.<sup>40</sup> LeClerc's ideas were incompatible with certain decrees of the Council of Trent and were condemned by the Provincial Synod of Utrecht, which confirmed the teachings of Trent to the effect that the hierarchy between bishops and priests is a divine institution and that priests are subordinate to the bishops.<sup>41</sup>

In the declaration *Non sine acerbo* (30 April 1765) of Clement XIII (1693–1769), the Second Provincial Synod of Utrecht in itself, not the contents of its acts and decrees, was condemned as “assembled and celebrated without legitimate jurisdiction and authority” (*sine legitima iurisdictione atque auctoritate coacta et celebrata*) and “of no force and importance” (*nulliusque roboris at momenti*), while the bishops of the Church of Utrecht were branded “evil people” (*perditi homines*) and “obstinate sons of iniquity” (*pervicaces iniquitatis filii*).<sup>42</sup>

The Second Provincial Synod of Utrecht adopted van Espen's stand on observing the provision of Trent to assemble at least once every three years. This intention was explicitly expressed in one of the synod's decrees.<sup>43</sup> In fact, the synod only met once more from 7 until 10 October 1766. The meeting took place, again with representatives of the lower clergy of the two dioceses, appointed in the same way as in 1763, but this time without council theologians. The meeting was not termed a provincial synod or provincial council, but simply a ‘gathering’ (*coetus*). There was only one issue to be discussed, *viz.* the question how to respond to the declaration *Non sine acerbo*. An extensive letter, addressed to Pope Clement XIII, appeared one year later in print.<sup>44</sup> A Dutch translation followed

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<sup>39</sup> *Ibid.*, 146. The text of Jerome is taken from his commentary on the Letter to Titus, chapter I; in the *Decretum Gratiani* it is D.95 c.5.

<sup>40</sup> *Ibid.*, 149.

<sup>41</sup> *Acta et Decreta* of the Synod, Pars secunda, decretum VI (Mansi Vol. 38, column 778–779). The synod determined that there is also a difference in sacramental powers between bishops and priests.

<sup>42</sup> *Bullarii Romani continuatio summorum pontificum*, Tom. III, Rome 1838, 67–69.

<sup>43</sup> *Acta et Decreta* of the Synod, Pars prima, decretum II (Mansi Vol. 38, column 721).

<sup>44</sup> *Epistola episcoporum et cleri ecclesiasticae provinciae Ultrajectensis totius ecclesiae Batavae Romano-Catholicae nomine scripta ad sanctissimum Dominum Nostrum Clementem XIII summum pontificem ... octobri mense 1766 occasione cuiusdam declarationis quae sic incipit: Non sine acerbo &c. ... datae die apri-*

in 1768.<sup>45</sup> The acts and decrees of the meeting of 1766 were never published.<sup>46</sup>

#### 4. The Synod of Pistoia (1786)

Since the Synod of Pistoia was a diocesan and not a provincial synod, it is, on the one hand, not surprising that bishop Scipio de' Ricci (1741–1810) invited all parish priests to attend it. However, it may be surprising that, according to the acts of the synod, all parish priests had a vote in the decrees. This was indeed de' Ricci's intention as is clear from the letter of 31 August 1786 with which he invited his clergy to attend the synod. He wrote that the synod will deliberate and decide according to the judgement of all, and that each of the priests with their ordination had received the rights intrinsic to the second order. De' Ricci argued that for them it would be of great importance what the synod would decide. So, all of them should take part in the decisions. Who other than the parish priests are aware of abuses somewhere in the diocese? Furthermore, he stated that assemblies like these date back to the time of the Apostles and that it is a reinstatement of an ancient custom, when priests decide together with the bishop. De' Ricci addressed his clergy as colleagues and collaborators in the priestly and pastoral office. The synod is no gathering of masters with their servants, but all are parts of the same building, branches of the same tree and limbs of the same body.<sup>47</sup>

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*lis 30. anni 1765 tam contra synodum ejusdem provinciae habitam anno 1763 mense septembri..., Utrecht 1767.*

<sup>45</sup> *Brief uit naame van geheele de Roomsche-Katholieke Kerke van Holland aan onzen Allerheiligsten Heere, den Roomschen Paus Clemens den XIII geschreeven door de bisschoppen, en klerezije der kerkelijke landstreeke van Utrecht, in de bijeenkoomste der bisschoppen, Utrechtse Kapittel, en pastoors ten dien einde afgevaardigd te Utrecht in Wijnmaand 1766, ter gelegenheid van zekere verklaaringe, die dus begint: Niet zonder bittere enz., uit naame van den voornoemde H. Paus den 30. van Grasmaand 1765 gegeeven, zoo tegen de kerkvergadering dier zelfder landstreek in Herftsmaand 1763 gehouden, als tegen het boek, door welk de verhadelingen dier kerkvergaderinge zijn uitgegeeven geweest, [s.l.] 1768.*

<sup>46</sup> Documents related to the *coetus* of 1766 are preserved in: HUA, inv. 224 (OBC), nr. 707. Cf. an unpublished paper by Dick J. Schoon: *Houd het gene gij hebt opdat niemand uwe kroon neeme; de provinciale kerkvergadering van de Utrechtse geestelijkheid in het jaar 1766*, [s.l.][1988].

<sup>47</sup> *Acta et decreta synodi diocesanae Pistoriensis anno MDCCCLXXXVI Pars I, Pavia 1789, 11–20.* See about these fragments from the letter: Charles A. Bolton,

This opinion, as reflected in these parts of the letter, was condemned as the ninth proposition in the constitution *Auctorem Fidei* of 28 August 1794.<sup>48</sup> The condemnation referred to the heresy of Aërius of Sebaste (*saec. IV*), who taught that bishops, priests and lay persons have equal authority.<sup>49</sup>

In a series of letters to the Pope, published in 1796 in two volumes, the Flemish canonist Josse (Judocus) Le Plat (1732–1810)<sup>50</sup> defended the decrees of the Synod of Pistoia against their papal condemnation. Soon these letters gained authority in the Church of Utrecht. Not only was Le Plat sympathetic to the Church. From 1798 to 1805 he stayed at Amersfoort, where he lectured at the seminary. During this sojourn he also advised the bishops on many delicate questions of canon law. His book was widely spread among the clergy. In the sixth letter of the first volume, dealing with the condemnation of de' Ricci's convocation to the Synod of Pistoia, Le Plat maintained that authority in the Church should be exercised by the bishop together with the lower clergy. The parish priests, by divine institution the pastors of the second order, are called and destined to administer the Church. Their rights are exercised by the Chapter as their representative, while the bishop needs their consent only for a small number of decisions. However, the Chapter has not replaced the diocesan synod, whose assemblies accordingly remain necessary. This is the truth expressed by Scipio de' Ricci in his convocation. In the synod, the bishop,

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*Church reform in 18th century Italy (The synod of Pistoia, 1786)*, 's-Gravenhage: Nijhoff, 1969, 56–57; Carlo Fantappiè, Note per una rilettura del sinodo di Pistoia del 1786, in: *Cristianesimo nella storia* 9 (1988), 541–562, at 545; Sieben, *Partikularsynode* [see note 36], 112–113.

<sup>48</sup> Heinrich Denzinger and Peter Hünermann (eds.), *Enchiridion symbolorum ...*, Freiburg im Breisgau: Herder 2001<sup>39</sup>, nr. 2609 (725): Epist. convoc. Doctrina, quae statuit, “reformationem abusum circa ecclesiasticam disciplinam in synodis dioecesanis ab episcopo et parochis aequaliter pendere, ac stabiliri debere, ac sine libertate decisionis indebitam fore subiunctionem, suggestionibus et iussionibus episcoporum,” – falsa, temeraria, episcopalnis auctoritatis laesiva, regiminis hierarchici subversiva, favens haeresi Arianae a Calvino innovatae.

<sup>49</sup> It was described by Epiphanius († 403); see Migne, *PG* XLII, column 503–516.

<sup>50</sup> Literature: Jan Roegiers, Un janséniste devant la Révolution: les avatars de Josse Leplat de 1787 à 1803, in: Fred Stevens and Dirk van den Auweele (eds.), “Houd voet bij stuk”, *Xenia iuris historiae G. van Dievoet Oblata*, Leuven 1990; Fred Smit, Josse Le Plat en de Clerezie (1798–1805), in: *Batavia Sacra* (Publicatieserie Oud-Katholieke Seminarie, 24), Amersfoort: Stichting Oud-Katholieke Seminarie 1992, 63–77.

together with the priests, decides upon both doctrine and discipline. In this respect they are judges also on questions of faith (*juges de la foi*). Le Plat substantiated his view by references to the Scriptures, the Church Fathers and theological writers. The most important text from the Scriptures, even more strongly emphasized than the text on the Council of Jerusalem (Acts 15), is Acts 20.28, where St Paul states the words “Look after yourselves and everyone the Holy Spirit has placed in your care. Be like shepherds to God’s church. It is the flock that he bought with the blood of his own Son.” Le Plat maintained, following the teachings of Origen (ca. 185–ca. 254), that these words were spoken to all priests. Moreover, he referred to Church Fathers such as Jerome, especially to the fragment mentioned above, to the works – some of these now considered spurious – of Theodoretus (393–466), Primasius († ca. 560), Gregory the Great (ca. 540–604) and many others, and to the recent writings by Maultrot. From Jerome, Chrysostom (ca. 347–407) and Isidore of Seville (ca. 560–636) he gathered that the orders of bishop and priests are very similar. The priests form the Senate of the Church and they are the co-workers of the bishop, without distinguishing between doctrinal and disciplinary matters. In the Primitive Church the bishop would do nothing without the priests and all questions were assessed in gatherings with the priests.<sup>51</sup>

## 5. Synodal Decision-Making in the Nineteenth Century; the Formation of National Synods in Germany, Switzerland and Austria

As stated above, the idea that parish priests can participate in guiding the Church and thus may have voting rights in a diocesan or provincial synod, was the accepted practice at the Second Provincial Synod of Utrecht, at the Synod of Pistoia and this practice was defended by Le Plat against the condemnations from Rome. In the nineteenth century this may have remained the prevailing view, but provincial synods no longer took place in Utrecht, despite the sincere intentions of 1763. This does not mean, however, that the parish priests lost all influence on the administration of their diocese. In the archdiocese of Utrecht there was the Vicariate or Metropolitan Chapter, the principal advisory body, reorganized in 1633 as the continuation of the medieval chapters. In the diocese of Haarlem all the clergy started to claim chapter rights, when in 1853 the ancient Chap-

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<sup>51</sup> *Lettres d'un théologien-canoniste à N.S.P. Le Pape Pie VI*, Tom. I, Brussels 1796, Lettre VI, 185–219.

ter of Haarlem, which had chosen the side of Rome, was disbanded. Instead of convening a provincial synod to find solutions for the major conflicts of that period,<sup>52</sup> such as the disputed question as to who is entitled to elect or nominate the bishop of Haarlem, less formal assemblies took place. These gatherings could not take decisions as a provincial council could have done, but nevertheless functioned as a consultative body through which the lower clergy did exert some influence. From 1885 general assemblies of the clergy of both dioceses took place. Further, the end of the nineteenth century saw the creation of associations of the officiating clergy of both dioceses.<sup>53</sup> These offered the opportunity for fuller discussion of ecclesiastical matters and for addressing the bishops on these issues.

In Germany the developments were different. A Church came into existence, which was not primarily a continuation by a number of the clergy who, together with their parishes, remained faithful to their legitimate pastor, defending the indefeasible rights of the local Church, but was rather the result of a broad movement of the laity within the Roman Catholic Church protesting against the dogmas of the First Vatican Council. When shaping a structure for the newly established Church, the need of a strong representation of the laity in a synodal process of decision-making became significant from the outset. There had been precursors. Participation of the laity in administering ecclesiastical affairs had been an issue in the so-called 'Synodal Movement' in the Southwest of Germany. In the assemblies resisting the new dogmas of Vatican I, the so-called Old Catholic Congresses, lay persons played a predominant role.<sup>54</sup> The first of these assemblies was the *Katholikenkongress* of 1871, which took place in Munich. It issued a statement containing in § III the desire of the catholic

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<sup>52</sup> See about these conflicts: Schoon, *Cleresie* [see note 33], *passim*.

<sup>53</sup> In 1883 three associations of parish priests were founded, *viz.* *Cor unum at anima una*, Utrecht and Haarlem. See: Dick J. Schoon, *Een beheerste revolutie. Pries- terverenigingen en hun rol bij hervormingen binnen de Bisschoppelijke Cleresie*, in: Angela Berlis and Petrus I.M. de Haan (eds.), *Met passie en precisie. Vriendenbundel voor Jan Jacobs bij zijn afscheid als hoogleraar geschiedenis van kerk en theologie*, Nijmegen: Valkhof, 2010, 87–113.

<sup>54</sup> Literature: Angela Berlis, *Frauen im Prozess der Kirchwerdung. Eine historisch-theologische Studie zur Anfangsphase des deutschen Altkatholizismus (1850–1890)* (Beträge zur Kirchen- und Kulturgeschichte, 6), Frankfurt a.M.: Lang, 1998, 86–232; Günter Esser, ... Keinen «unfehlbaren Bischof» an die Stelle des «unfehlbaren Papstes»... – Die Alt-Katholische Kirche in Deutschland und ihre Synodal- und Gemeindeordnung, in: Althaus e.a (eds.), *Kirchenrecht* [see note 5], 111–127.

people to participate, on a statutory basis, in the decisions concerning ecclesiastical affairs (*verfassungsmässig geregelte Theilnahme an den kirchlichen Angelegenheiten*).<sup>55</sup>

Before describing the events which followed, it is necessary to pay some attention to Johann Friedrich von Schulte, mentioned above, because the teachings of this canonist and jurist became of overriding importance for the formation of a synod for the newly established Catholic diocese of Old Catholics in Germany.<sup>56</sup> Schulte, professor of canon law and legal history at Prague, was one of the leading intellectuals against the dogmas of the First Vatican Council. Among his polemic writings against these dogmas was a monograph, published in 1871, under the title *Die Stellung der Konzilien, Päpste und Bischöfe*. In this work Schulte dealt with the Apostolic Council of Acts 15, but before doing so, he made clear on the basis of a number of texts from the Gospels that Christ had granted all Apostles the responsibility of preserving the *depositum fidei* and that all had doctrinal authority.<sup>57</sup> Subsequently, he discussed the text from the Acts of the Apostles and indicated what exactly must have happened during the assembly in Jerusalem. He emphasized that the letter, sent to the gentile believers, was the result of collegiate deliberation and decision-making, which included all. According to Schulte's interpretation, the draft by the Apostles was approved by the elders and the entire assembly. Thus, the first document, promulgated by the united Church, was delivered in the name of the Apostles, elders and brethren. The writers of the letter, thus again the Apostles, elders and brethren, were in verse 28 explic-

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<sup>55</sup> Text in Johann Friedrich von Schulte, *Der Altkatholicismus. Geschichte seiner Entwicklung. Innere Gestaltung und rechtliche Stellung in Deutschland*, Giessen: Roth, 1887 (reprint Aalen: Scientia, 1965), 22–24. For dissident views at this conference see: Ewald Kessler, Aus den Anfängen des deutschen alt-katholischen Bistums. Ein Entwurf zu einer Synodal- und Gemeindeordnung von Theodor Stumpf, in: *IKZ* 72 (1982), 46–54.

<sup>56</sup> I thank Oliver van Meeren (Saarbrücken) for his help and advice in describing Schulte's influence on the formation of a constitution for the Catholic diocese of Old Catholics in Germany.

<sup>57</sup> Johann Friedrich von Schulte, *Die Stellung der Konzilien, Päpste und Bischöfe vom historischen und kanonistischen Standpunkte und die päpstliche Konstitution vom 18. Juli 1870. Mit den Quellenbelegen*, Prague: Tempsky, 1871 (reprint Aalen: Scientia, 1970), 18–22. The texts are Matthew 28.18–20, John 14.16 ff, John 16.12 and Matthew 18.20.

itly qualified as a body, inspired by the Holy Spirit.<sup>58</sup> This interpretation by Schulte is not problem-free. The text in Acts 15 does refer to participation of the entire community in the decision process, but it does not state beyond question that the entire community is the competent body to decide. According to Acts 15.23, the letter was eventually written in the name of the Apostles and the elders, and not in the name of the entire assembly. Schulte's analysis, however, brings him to the conclusion that the Church is a community and that her communal character is inherent. Nor is this statement problem-free, because other sources, such as the First Epistle of Clement and the Didache, ignored by Schulte, seem to point towards different kinds of decision-making in the Early Church. Subsequently, Schulte found a connection between the Apostolic Council and forms of synodal decision-making which emerged after the second century AD. In so doing, he ignored the fact that this collegiate decision-making took place in synods of bishops and not in an assembly of 'Apostles, elders and brethren'.

As described by Berlis in her doctoral thesis, within the young Old Catholic Movement in Germany it was considered necessary that the rights and duties of the bishop were laid down before an election could take place. Accordingly, at the second *Altkatholikenkongress* in Cologne (1872) a committee of seven persons was set up, the so-called *Bischofs-kommission*, whose task it was to prepare for the election of a bishop. A first *Synodal- und Gemeindeordnung (SGO)* was drafted by Schulte and here it appears that what he had written about the Apostolic Council in 1871, i.e. within the framework of rejecting the dogma of Papal infallibility, became determinant for the structure of the Catholic diocese of the Old Catholics in Germany. Starting from his interpretation of the Apostolic Council, Schulte considered the Church a community of faithful in Christ. This communal character is fundamental. In his view the Church can only take decisions as a community and should therefore proceed in a synodal way. In elaborating the form of a synod, Schulte was afraid that the clergy would have too strong an influence. This had to be avoided by introducing a system of two Houses, *viz.* a House of the Clergy and a

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<sup>58</sup> This exegesis was not entirely new and was defended by protestant theologians. Within the Old Catholic Church it was shortly afterwards defended by the New Testament scholar Joseph Langen (1837–1901) in his book *Die Kirchenväter und das Neue Testament. Beiträge zur Geschichte der Erklärung der wichtigsten neutestamentlichen Stellen*, Bonn: Weber, 1874.

House of the Laity. In December 1872 the draft for a *Synodal- und Gemeindeordnung* was presented to the committee. Inevitably there was some criticism, i.e. from the Old Catholics in Cologne, who considered it undesirable that, according to the draft, doctrinal authority would only reside in the House of Clergy. Also it came from the professors Carl Adolf Cornelius (1819–1903) and Joseph Berchtold (1833–1894) from the Central Committee in Munich, from Franz Heinrich Reusch (1825–1900) and from Ignaz von Döllinger (1799–1890). The latter maintained that the draft was unworkable, because there were insufficient priests within the Old Catholic Movement to form a House of Clergy. In June 1873 it was to be expected that, on the eve of the episcopal election, there would be no time to discuss amendments and decide on a definitive version of the *Synodal- und Gemeindeordnung*. Accordingly, temporary provisions (*provisorische Bestimmungen*) were drafted so that the future bishop would know what his rights and duties were. These rules provided for a synod consisting of only one House.<sup>59</sup> Subsequently, Schulte drafted a new text, which was accepted as the *Synodal- und Gemeindeordnung* at the third *Altkatholikenkongress* in Konstanz (1873).<sup>60</sup> According to these provisions, the synod is not composed of two Houses, but consists of a single assembly with a considerable representation of lay persons. The synod has administrative competences. It elects the bishop and elects its representatives in the administration of the Church, the so-called *Synodal-Repräsentanz*. For many decisions the synod is the highest judicial body.<sup>61</sup>

The *Synodal- und Gemeindeordnung* did not say much about legislative competences. This issue was raised at the first session of the synod (1874). It was argued that particular (provincial) synods have the competence to abrogate, amend and promulgate ecclesiastical statutes in order to prepare or implement a reform in the Church. Similarly, the newly established German synod could consider itself competent to issue provisions, when according to ancient Canon Law, a particular synod is competent.<sup>62</sup>

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<sup>59</sup> Text in Schulte, *Altkatholicismus* [see note 55], 39–41.

<sup>60</sup> Text in Schulte, *Altkatholicismus* [see note 55], 46–55. That very year Schulte had accepted a call from the University of Bonn, where he was to lecture mainly on Canon Law for 33 years.

<sup>61</sup> §§ 6, 15, 49, 50, 54, 55, 56 of the *Synodal- und Gemeindeordnung* (1873/74). See also Berlis, *Frauen* [see note 54], 194–195.

<sup>62</sup> See *Beschlüsse der ersten Synode der Altkatholiken des deutschen Reiches, gehalten zu Bonn am 27., 28. und 29. Mai 1874*, Bonn: Neusser, 1874, III. Grundsätze über Reformen im Allgemeinen, 47.

The question arises whether this comparison holds, because a particular (provincial) synod is composed, unlike the newly established synod in Germany, of bishops who exercise ecclesiastical jurisdiction. It appears that Schulte endorsed the above view. At the eighth synod in Bonn (1883) he clearly pronounced, in reply to a motion, that the synod, in accordance with its nature (*naturgemäß*), is the highest tribunal for various disputes, has the highest supervision in the administration of the Church, including the one over the bishop and the synodal representation (*Synodal-Repräsentanz*), and is the highest legislative body. General provisions, other than merely administrative measures, cannot even be issued by the bishop or the synodal representation.<sup>63</sup> From such a perspective the competences of the synod have to be considered as its own competences, not derived from or delegated by the diocesan bishop. But was there any continuity with the existing tradition of the Church? In his address to the first synod of 1874, bishop Joseph Hubert Reinkens (1821–1896) did not search for justification in continuity with the past, but rather in systematic arguments. In earlier times the clergy claimed the Holy Spirit for themselves, he argued, but the present synod is the mouth of the Church, through which God's Spirit is speaking, because our church believes that the Holy Spirit is given to all.<sup>64</sup>

Until the present day the synod of the Catholic diocese of Old Catholics in Germany retained on the whole its original character and meanwhile had served as a model for the Swiss and Austrian synods. The fact that in these churches the synod occupies such a predominant place, results to a considerable extent from Schulte's understanding of the Apostolic Council of Jerusalem as well as from the role of the entire Church, including both clergy and laity, in electing the bishop. It has to be noted, however, that the ecclesiological principle, derived from this understanding of the Council of Jerusalem, which underlies the formation of the synods, is based on only one source from the Early Church, dating from a period in which diocesan and provincial structures had not yet developed. At the same time, at the level of elaborating the principle into an actual modelling of ecclesiastical structures, such as in the German *Synodal- und Gemeindeordnung* of 1873/74, other elements appear, which were not yet in existence at the time of the Apostolic Council, such as the office of the

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<sup>63</sup> See *Verhandlungen der achten Synode der Altkatholiken des Deutschen Reiches, gehalten zu Bonn am 16. Mai 1883*, Bonn: Neusser, 1883, 39–41.

<sup>64</sup> See *Beschlüsse der ersten Synode* [see note 63], 6.

diocesan bishop as the first presider over the Eucharist and, at the same time, the administrative leader of the local Church.

The Old Catholics in Switzerland and Austria soon followed the German lead by instituting a national synod. These synods were modelled on the German one and in both churches it appears that from the outset the emancipation of the laity and the desire to establish its rights in a statutory form played a major role.<sup>65</sup> In the proposals for a statute (*Verfassung*) of the Old Catholic (*Christkatholische*) Church of Switzerland of 1874, the national synod is deemed to be the highest legislative and judicial body. These were the actual words in which the competences of the synod were laid down in the first statutes of the Swiss church. As well as the clergy, lay representatives of parishes and associations have a seat in the synod, so that it faithfully reflects the entire community. The administrative powers reside with a Synodal Council (*Synodalrat*), whose members are elected by the synod.<sup>66</sup> The first assembly of the Swiss synod took place in 1875. The Austrian synod, established in 1879, was also modelled on the German one. Schulte redrafted the *Synodal- und Gemeindeordnung*. Also here the participation of the laity in the administration of the Church was an important part of the reform programme. It was one of the main issues discussed at the first assembly of the synod.<sup>67</sup>

## 6. The Formation of a Synod in the Netherlands

For the formation of an Old Catholic Synod in the Netherlands, a movement of laymen, organised as the association *Oud-Katholiek Ondersteuningsfonds* (Old Catholic Relief Fund, abbreviated *OKOF*), has been of the

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<sup>65</sup> Cf. Urs von Arx, Vor 125 Jahren, series 24 and 25, in: *Christkatholisches Kirchenblatt* 122 (1999), 161, 225–226.

<sup>66</sup> Urs Küry, *Die Altkatholische Kirche. Ihre Geschichte, ihre Lehre, ihr Anliegen* (Die Kirchen der Welt, 3), Stuttgart: Evangelisches Verlagswerk, 1978<sup>2</sup>, 87–88. The relevant documents are recorded in: Emil Friedberg, *Aktenstücke die altkatholische Bewegung betreffend mit einem Grundriss der Geschichte derselben*, Tübingen: Laupp, 1876, 494–496, 511–514.

<sup>67</sup> See Hans Josef Demmel, *Geschichte des Alt-Katholizismus in Oesterreich*, Kempten: Reichsverband alt-katholischer Jungmannschaften, 1914, 40–42; Christian Halama, *Altkatholiken in Österreich. Geschichte und Bestandsaufnahme*, Vienna: Böhlau, 2004, 244–249, 423–435.

utmost importance.<sup>68</sup> This association, founded in 1887, had 22 local branches and soon developed into the driving force behind many important innovations within the church. In this respect two names must not go unmentioned. The first is that of Cornelis Adrianus Mittelbeck (1870–1940), who worked until 1901 as a parish priest and thereafter as managing director of an insurance company. As a young deacon, he was in 1896 the first to bring up the question of a national synod at the annual general meeting of the *OKOF*.<sup>69</sup> In later years it was said that at the end of the nineteenth century a ‘wave of democracy’ had crossed the country and also in the administration of church some participation of the laity was wanted.<sup>70</sup> When in 1898 the *OKOF* decided to set up an advisory committee, which should report on the desirability of a synod, Mittelbeck was one of its members.<sup>71</sup> The second name is that of Adriaan van den Bergh, mentioned above, who in 1906 started what he himself characterized as a ‘forceful campaign’ (*krachtige actie*) with lectures to promote the influence of lay persons in the Church.<sup>72</sup> Later, in 1918–1919, he served on the committee which drafted the first regulations for the synod. The advisory committee of the *OKOF* published its report in 1901.<sup>73</sup> It immediately indicated the problem of historical continuity: there is no example in the history of the Church of a synod with administrative competence.<sup>74</sup> Much attention was paid to the history of the Church, starting with the Primitive Church (Acts 15) and what Cyprian († 258) had written on the cooperation between clergy and laymen in the administration of the Church. Accord-

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<sup>68</sup> On the build up to and establishment of the Dutch synod see: Govaert Christiaan Kok, *Uit de geschiedenis van de Synode. Een kleine kerk op weg in de 20e eeuw* (Publicatieserie Stichting Oud-Katholiek Seminarie, 17), Amersfoort: Stichting Oud-Katholiek Seminarie, 1987, 7–13.

<sup>69</sup> *De Oud-Katholiek* 12 (1896), 82.

<sup>70</sup> Wat er van de Synode bleef, in: *De Oud-Katholiek* 52 (1936), 331–332.

<sup>71</sup> *De Oud-Katholiek* 14 (1898), 71.

<sup>72</sup> See *Repertorium kerkrecht*, HUA, inv. 282 (Old Catholic Seminary), nr. 453, 39.

<sup>73</sup> This report was published several times. The first time as ‘Oud-Katholieke Synoden. Rapport der Commissie, benoemd volgens besluit der Algemeene Vergadering van de Vereeniging Oud-Katholiek Ondersteuningsfonds, gehouden te Rotterdam 24 mei 1898’ in *Vereeniging Oud-Katholiek Ondersteuningsfonds, Jaarverslag over 1900 en Ledenlijst. Rapporten over Oud-Katholieke Ziekenverpleging en Oud-Katholieke Synoden*, s.l. [1901], 43–66, later also in *De Oud-Katholiek* 34 (1918), 88–89, 97, 113–114, 120–121, 127–129, 136, 145–146, 151–152. I quote from the 1918 publication.

<sup>74</sup> *De Oud-Katholiek* 34 (1918), 89.

ing to the catechism, which was used at the time – it was the one of the “three Henry’s” translated into Dutch<sup>75</sup> – lay persons had no voice in electing their leaders. The authors of the report qualified this as a carry-over of the ‘Roman system’ (*het roomsche systeem*). “We do not have the courage to break with it, but neither do we apply it consistently any longer”, they argued.<sup>76</sup> Eventually there was little or no historical foundation on which to build a synod with a strong participation by the laity. Such foundation merely existed of the idea that such a synod would fulfil Christ’s concept of the essence of the Church. In addition to this argument, practical advantages were raised to the desirability of having a say in own affairs as envisaged in politics and society. Moreover, there was the ideological argument that a synod would strengthen the internal organisation of the Church, which was required to face the Jesuits. Because of a lack of a sufficiently strong organization, Gallicanism had come to nothing.<sup>77</sup> In their conclusion the authors of the report drew a distinction between two kinds of synod. One, a synod modelled on the existing provincial synod, where the bishops deliberate with their clergy and there is only room for a limited number of qualified lay persons. Without question reintroducing such a synod would be justified. Secondly, a synod modelled on the German one, with more competences and where the laity has a stronger representation. According to the report there is no example of such a body in the history of the Church, but this does not render it less Christian and catholic.<sup>78</sup>

Within the *OKOF* interest in the entire discussion soon died down. It was taken up again only in 1916 by the association of officiating priests of the archdiocese. At their meeting of 13 November of that year, Petrus Johannes van Harderwijk (1867–1948), parish priest at Schiedam, gave a lecture on “Church administration and synod”. He argued in favour of a synod which would take care of the tangible goods of the Church but would in no way take over the exercise of Episcopal authority. The association sent the text of the lecture to the bishops with the request to put the issue on the agenda of the general meeting of the clergy of both dioceses.<sup>79</sup> As was shown above, this assembly of the clergy functioned from the end

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<sup>75</sup> See about this catechism: Schoon, *Cleresie* [see note 33], 527–528 (note 196).

<sup>76</sup> *De Oud-Katholiek* 34 (1918), 127.

<sup>77</sup> *De Oud-Katholiek* 34 (1918), 136.

<sup>78</sup> *De Oud-Katholiek* 34 (1918), 152–153.

<sup>79</sup> Letter of 13 November 1916, preserved in HUA, inv. 86-1 (archive of the archbishops), nr. 460.

of the nineteenth century more or less as a standing consultative body of the bishops. The assembly itself was considered to lack the competence to decide on the introduction of a synod. This was left to the bishops.<sup>80</sup> At two meetings of the clergy, in 1918 and 1919, both under the chairmanship of archbishop Gerrit (Gerardus) Gul (1847–1920), the desirability and the form of a future synod were discussed at length. The episcopacy gave permission for the general board of the *OKOF* and for one representative from each of its branches to be present and to participate when these items on the agenda were under discussion. In the meeting of August 1918 proposals for Synodal Statutes, inspired by Harderwijk's lecture, were considered. A synodal board (*Synodaal Bestuur*), composed of the three bishops and one priest and two laymen from both dioceses, elected by the synod, would administer the Church but not decide on questions of theological doctrine.<sup>81</sup> At the meeting of 17 September 1918 in Utrecht, it was decided to put the proposals for both types of synod first to the vote of the 24 lay persons present. The proposal to create an administrative synod could not find a majority. The votes were equally divided (twelve against the proposal and twelve in favour). The proposal to let the synod be a consultative body with power of initiative, however, was accepted with only two dissenting votes (22 in favour).<sup>82</sup> This outcome was in later times seen as a vote of confidence, reminiscent of the way the bishops had guided the Church in the past.<sup>83</sup> In view of this clear choice, it was regarded necessary to draft a new version of the Synodal Statutes.

Maybe disappointed by the outcome of the voting, an anonymous author published in *De Oud-Katholiek* of 30 November an article, emphasizing the role of all the faithful at the Apostolic Council of Acts 15.<sup>84</sup> It was of not much avail, since at the next year's meeting, 20 May 1919 again in Utrecht, an amendment, calling for an administrative synod, was rejected.<sup>85</sup> This meeting also pronounced on the new draft for the Synodal Statutes, which was later to receive the assent of the bishops. The new synod was a compromise. It was composed of clergy together with lay

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<sup>80</sup> De Synode en ons kerkrecht, in: *De Oud-Katholiek* 35 (1919), 172–173.

<sup>81</sup> *Ontwerp reglement Synode* (August 1918), art. 11 and 35.

<sup>82</sup> *De Oud-Katholiek* 34 (1918), 162–163. The minutes are preserved in HUA, inv. 86–1 (archive of the archbishops), nr. 460.

<sup>83</sup> Wat er van de Synode bleef, in: *De Oud-Katholiek* 52 (1936), 331–332.

<sup>84</sup> *De Oud-Katholiek* 34 (1918), 201–202.

<sup>85</sup> *De Oud-Katholiek* 35 (1919), 91–92.

representatives of the parishes and obtained two principal duties, i.e. advising the bishops and the managing of the tangible goods of the Church. Only the latter duty was of an administrative nature. The management consisted of supervising the parishes and the funds, the latter as far as these would submit themselves to the authority of the synod. The synod would also manage a general fund which was still to be established.<sup>86</sup> For the period between the sessions of the synod, there was an executive committee, termed as *Synodal Council (Synodale Raad)*, serving as a permanent consultative body for the bishops.

Next it was the turn of the bishops. They decided on 4 August 1919 to introduce a synod and ratified the draft *Synodal Statutes* of 20 May. This was announced by pastoral letter of 1 October, which acquired force of law on 1 November. Forty-five years after the creation of a synod in Germany, the church of the Netherlands also had a national synod. The main difference from the traditional provincial synod was not only the supervising competence, but also the strong representation of lay members. The main difference from the German synod existed in the fact that the Dutch synod was mainly an advisory body and had little administrative competence. The bishops justified their decision by appealing to the Primitive Church, the Apostolic Council of Acts 15 and to what Cyprian had written on the cooperation between clergy and laymen. They qualified the institution of a synod as the return to the ancient concept of the Church as including all the faithful. In short, it was a reinstatement of the ancient constitution of the Church, to the effect that decisions can only be taken after consulting all.<sup>87</sup>

The pastoral letter shows that by this time the Apostolic Council of Acts 15 had more or less become a *locus communis*. Most interesting is the appeal to the concept of the Church as including all the faithful. Early eighteenth century theologians in the Church of Utrecht, such as Pasquier Quesnel (1634–1719) and Nicolas LeGros (1675–1751), used the term Church in such a sense, but, as was shown above, the fact that jurisdiction essentially resides in the entire community of the faithful could not justify lay persons participating in episcopal elections or in the administration of the Church, but only found expression in the prayer and presumed consent

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<sup>86</sup> *Synodale Statuten. Statuten betreffende de Synode der Oud-Katholieke Kerk van Nederland*, [s.l.] [s.a.], artt. 13, 17 and 15.

<sup>87</sup> *Herderlijk schrijven bij de invoering van de Synode*, [s.a.] [s.l.], also published in: *De Oud-Katholiek* 35 (1919), 177–178.

of the entire community.<sup>88</sup> This is also apparent from the question (nr. 40, question 3) in the catechism: “Should laymen have any part in electing the priests and other ecclesiastical ministers?” The catechism gives as an answer that the laity have only to pray for good leaders and that, if they know of ministers with serious shortcomings, they should caution their bishop. The authors of the *OKOF* report had declared that in their opinion a different answer would be more appropriate.<sup>89</sup> However, basing the competences of the synod directly on the jurisdiction which resides in the entire Church was no option. According to the established ecclesiological doctrine, the exercise of jurisdiction is exclusively entrusted to the diocesan bishop.

It cannot be said for sure whether the new supervisory competence of the synod was regarded as a delegation of episcopal jurisdiction, which, if desired, could be withdrawn, or as an independent right of the synod itself. The Synodal Statutes did not contain any right of veto for a bishop or for the bishops together with regard to the synod’s administrative decisions. Nor did the Synodal Statutes pronounce on any legislative competence of the synod. The latter was disputed in May 1921, when it was announced in the journal *De Oud-Katholiek* that the synod (probably within the framework of its supervision over the tangible goods of the parishes) intended to decide on a new regulation for the parish boards.<sup>90</sup> Some parishes saw this as an infringement of their autonomy and questioned whether, in the light of the outcome of the meeting of 17 September 1918, the ‘advisory’ synod had the competence to promulgate such a regulation. In May 1921 the church wardens of St Barbara and Anthony in Culemborg raised their objections in a letter to the synod. In October, after the draft text for the regulations was sent out, the church wardens of St Mary in Utrecht addressed the bishops, stating that they had always been opposed to a synod and had only suspended their protest when it was decided in 1919 that the synod was to be advisory. Moreover, they endorsed the position of their colleagues in Culemborg.<sup>91</sup> Before the regulations were prom-

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<sup>88</sup> See also: Jan Hallebeek, *Alonso “El Tostado” (c. 1410–1455): His doctrine on jurisdiction and its influence in the Church of Utrecht* (Publicatieserie Stichting Oud-Katholiek Seminarie, 29], Amersfoort: Stichting Oud-Katholiek Seminarie, 1997, 25 ff.

<sup>89</sup> *De Oud-Katholiek* 34 (1918), 127.

<sup>90</sup> *De Oud-Katholiek*, nieuwe reeks 1 (1921), 75.

<sup>91</sup> Letters are preserved in HUA, inv. 842-2 (parish of St Mary, Utrecht), nr. 368.

ulgated, the bishops obtained legal advice from three lawyers, probably practitioners in secular law. This advice confirmed the validity of a future regulation, issued by the synod. It was argued that the parishes had never been entirely autonomous and had always been subordinate to the bishops' authority. Because the bishops assigned part of their competences to the synod, the regulations under dispute would also bind the parishes and their members.<sup>92</sup> The synod laid down the final text of the regulation for the parish boards during its session of 8 June 1922 and ruled that the new regulations would acquire force of law on 1 July.<sup>93</sup> The Culemborg and Utrecht church wardens declared that they would not be bound by the new regulations and in July 1922 they attempted to mobilize other parish boards to organize resistance. For our purpose it suffices to note that the legal advice, sought in January 1922, indicates that the rights of the synod were considered as derived from the bishops.

After 1919 two major alterations took place. In the thirties there was a demand for reform. Initially the synod had dealt with conspicuous subjects, such as the abolition of the compulsory celibacy for clergy and the new regulations for the parish boards. Thereafter, there had not been much on the synod's agenda and only a few members had attended the meetings. In 1932 it was decided to set up a reform committee,<sup>94</sup> which made proposals which the synod accepted in 1935.<sup>95</sup> These were developed into a new regulation for the synod which became effective on 15 September 1936. Henceforth the synod was an exclusively advisory body and would only assemble when the bishops considered it necessary, while they themselves lost their seats in the synod.<sup>96</sup> As a consequence, the bishops were henceforth in opposition to the synod, comparable to the dual system we know in secular constitutional law, where the government or the city administration is accountable to the parliament or to the city council, without being part of it. As a matter of fact, however, the bishops could not be called to account by the synod. These alterations were very much regretted by van den Bergh, who, disappointed by the recent developments, had given up

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<sup>92</sup> The advice, dated 27 January 1922, is preserved in HUA, inv. 86-1 (archive of the archbishops), nr. 460. The jurists were K.J. Philips, A.W. Gerritzen and A. Baron van Haersolte.

<sup>93</sup> *De Oud-Katholiek*, nieuwe reeks 2 (1922), 102–103, 106–107, 132–133.

<sup>94</sup> *De Oud-Katholiek* 48 (1932), 160.

<sup>95</sup> *De Oud-Katholiek* 51 (1935), 156–157.

<sup>96</sup> *De Oud-Katholiek* 52 (1936), 172–173, 254.

his membership of the Synodal Council (*Synodale Raad*).<sup>97</sup> In 1970 Dr Andreas Rinkel (1889–1979), in his address to the synod on the occasion of resigning his office as archbishop of Utrecht, spoke the words “I became bishop at a time the synod had actually killed itself”.<sup>98</sup> The expulsion of the bishops from the synod not only increased the differences with other Old Catholic Synods, but also the discontinuity with the traditional provincial synod.<sup>99</sup>

The second modification took place at the end of the twentieth century. The synod regained some administrative competence, this time to lay down the budget for general ecclesiastical purposes for the coming year (including the payment of the parish priests). This right to approve the budget was factually, i.e. by way of experiment, exercised from 1993 until 1997. In 1997 it was laid down in the Statute, which is the partial codification of the current canon law. Each of the diocesan bishops acquired a right of veto with regard to the synod’s approval of the budget, which indicates we are dealing here with a delegated competence and not with a right of its own which the synod can exercise entirely independently.

After the synod was established in 1919 the clergy of both dioceses continued to assemble. When in 1950 the Statute was promulgated, a biennial deliberation was introduced of all officiating clergy at the invitation of the bishops. This assembly which resembles the traditional provincial synod to a greater extent than the synod with representation of the laity (parishes), was termed the Provincial Synod of the Clergy (*Provinciale Synode der Geestelijkheid*).<sup>100</sup>

## 7. Some Comparison

Collegiate decision-making and collegiate forms of administration within the Catholic Church have a long history. They can take divergent forms: the ecumenical councils of the Early Church, provincial synods, the exercise of jurisdiction by chapters, etc. We ask ourselves whether the Old

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<sup>97</sup> Kok, *Geschiedenis* [see note 68], 16.

<sup>98</sup> *Notulen van de 34ste zitting van de Synode van de Oud-Katholieke Kerk van Nederland, gehouden op 23 en 24 november 1970 in het gebouw voor Kunsten en Wetenschappen te Utrecht* (stencil), [s.a.][s.l.], 5.

<sup>99</sup> In 1959 all church wardens became members of the synod, which made it a cumbersome and indecisive body. In 1991 the synod became more restricted and returned to the earlier system of representatives of the parishes.

<sup>100</sup> *Statuut voor de Oud-Katholieke Kerk van Nederland* (1950), art. 95–96 (old).

Catholic Synods, established at the end of the nineteenth and the beginning of the twentieth centuries, can be considered a continuation of one or more of such traditional institutions, more specifically of the diocesan and provincial synods. In order to answer this question, we can again consider some of the main features of the present-day synods against the background of these traditional synods. In so doing, I will take the present-day statutory provisions as a starting point. These may differ from the original in some respects, but at least in the German-speaking countries they were not fundamentally altered in the course of the twentieth century.

In Germany, Switzerland, Austria and the Netherlands, the (national) synod is the most important ecclesiastical assembly at the national level and a body of an enduring nature within the constitution of the Church.<sup>101</sup> Ordinary sessions of the synod take place in Germany every second year<sup>102</sup>, in Switzerland every year, in Austria every third year and in the Netherlands at least every year.<sup>103</sup> This maintains the earlier directive that diocesan and provincial synods take place annually or at least triennially.

From the start in all the churches mentioned, lay persons constituted a considerable part of the synod. Nowadays, in Germany all officiating clergy and representatives of the clergy with a civilian employment are members of the synod, as well as lay persons representing the parishes. The number of lay persons representing a parish is determined by the size of the parish. The bishop is member of the synod. He convenes it and presides. In principle all members of the synod have equal voting rights.<sup>104</sup> In Switzerland all clergy are members of the synod, as well as 70 delegates from the parishes. These 70 seats are assigned to the parishes according to their size with a minimum of one seat for each parish. The synod is presided by a lay president. All members have equal voting rights, but the clergy to a maximum of 50 priests and deacons. The bishop abstains from

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<sup>101</sup> For Germany we here restrict ourselves to the diocesan Synode (*Bistums-synode*). In the 1920's *Landessynoden* were also introduced.

<sup>102</sup> § 5(2) *Synodal- und Gemeindeordnung*, henceforth referred to as *SGO*, speaks about "at least every third year". Recently it was decided that the national Synod will assemble every second year. Cf. *Christen heute* 54 (2010), 247.

<sup>103</sup> Art. 18 *Verfassung der Christkatholischen Kirche der Schweiz* (1979), henceforth referred to as *Verfassung*; § 17(1) of the *Kirchenverfassung* of the Old Catholic Church of Austria, henceforth referred to as *Kirchenverfassung*; art. 188 lid 1 *Statuut voor de Oud-Katholieke Kerk van Nederland*, henceforth referred to as *Statuut*.

<sup>104</sup> §§ 7(1), 5(1), 7(3), 8(1), 9 *SGO*.

voting in the synod.<sup>105</sup> In Austria every parish is represented by one of its priests and by two lay persons. For parishes with more than 500 members there will be an additional lay-representative per 500 parishioners. The clergy can assign more clerics as members of the synod, but the total number of clergy should not exceed 50% of the lay-members. The bishop is a member of the synod and presides, although the president of the Synodal Council (*Synodalrat*) chairs the deliberations. The clergy and lay-representatives of the parishes have equal voting rights.<sup>106</sup> In the Netherlands representatives of the clergy of both dioceses have a seat in the synod, besides the first and second representatives of every parish. The number of clergy may not exceed 50% of the first representatives of the parishes. Of the lay persons only the first representatives have voting rights. The number of votes they have depends on the size of the parish. The second representatives have only right to the floor. The clergy have jointly half the number of the votes of the lay persons. The synod is chaired by a presidium, whose chairperson convenes the synod. In 1936 the bishops lost their seat in the synod, but they have, just as the other members of the Collegiate Board (*Collegiaal Bestuur*) of the Church, the right to attend the synod's sessions, which they actually do.<sup>107</sup>

As was shown above, the tradition, especially in the Church of Utrecht, offers some starting points to grant the lower clergy a vote in the provincial or diocesan synod. For the Second Provincial Synod of Utrecht (1763) the priests could elect their representatives who had full voting rights and at the diocesan Synod of Pistoia (1786) all parish priests were invited and had voting rights. Such a practice was defended and justified. As regards participation and voting rights of lay persons, however, there are hardly any precedents. Both in Germany and in the Netherlands justification was sought in the Apostolic Council (Acts 15), but in fact there was in the later tradition of the Church not much evidence to support a strong participation of lay persons. In the Early Church we do find some traces of lay persons attending a synod, but always small numbers of individuals without any voting rights. In the Middle Ages it was the local princes who tried to gain access to the synods, while the Gregorian Church Reform attempted, from the twelfth century onwards, to suppress their influence as much as pos-

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<sup>105</sup> Artt. 16, 17, 18 *Verfassung*; §§ 1, 3, 5 *Geschäftsordnung der Nationalsynode* (1992).

<sup>106</sup> §§ 18(1), 20 *Kirchenverfassung*.

<sup>107</sup> Artt. 186, 187, 204 *Statuut*.

sible. It is not easy to find a historical example of a synod without the participation of one or more bishops. Diocesan and provincial synods are pre-eminently assemblies convened and presided over by the bishop(s). These gatherings were always deliberations where the diocesan bishop(s) played the key role and occupied such a central place, that it may be questioned whether the use of the term synod is appropriate for a body which excludes the diocesan bishop.

In the German-speaking countries the Old Catholic Synods have far-reaching competences. In Germany the synod is the highest legislature. Moreover, it has the highest judicial competence, except for some issues reserved for the bishop in view of his office, such as preaching, the unity of the Church, the liturgy, the administration of the sacraments and the diacony. All executive bodies and officers are accountable to the synod. The synod elects the bishop and is entitled on certain grounds to depose him after compulsory consultations and with a qualified majority.<sup>108</sup> It seems that in the German *Synodal- und Gemeindeordnung* the position of the bishop is still subordinate to the synod, as was intended from the outset. At the same time, however, the *Synodal- und Gemeindeordnung* rules that the bishop has all the rights which the councils of the Primitive Church and the undisputed early tradition ascribe to him.<sup>109</sup> It may well be questioned whether these provisions are compatible. In Switzerland the national synod is the highest legislature, also in the field of preaching, liturgy, pastoral care, theological training and ecclesiastical discipline. The synod pronounces upon doctrinal questions, although it is compulsory for reaching such decisions that an extraordinary procedure is followed. The synod has also the highest judicial competence. Administrative tasks reside with the bishop together with the Synodal Council (*Synodalrat*) whose members are elected by the synod. The synod elects the bishop and is entitled on certain grounds and after compulsory consultation to depose him with a two-third majority. It should be noted, however, that since the modification of the *Verfassung der Christkatholischen Kirche der Schweiz* in 1989, the synod can only exercise the competences mentioned above in cooperation with the bishop. As a consequence, both synod and bishop are nowadays compelled to pursue consent.<sup>110</sup> In Austria the synod is the high-

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<sup>108</sup> §§ 5(1), 21 (1), 23 (1), 26 *SGO*.

<sup>109</sup> § 20 *SGO*.

<sup>110</sup> See Preamble and artt. 3, 13, 15, 23 *Verfassung* and *Richtlinien über die bischöfliche Amtsführung* (1994).

est legislative and judicial body. Decisions of the synod can be barred by the bishop, but eventually after compulsory consultations the next ordinary synod will have the final word. The Church is on the national level administered partly by the bishop alone, partly by the bishop together with the *Synodal Council* (*Synodalrat*), whose members are elected by the synod. The synod also elects the bishop. He can be deposed by the *Synodal Council*, but only on specific grounds and after compulsory consultations. Unlike in Germany and Switzerland, appeal against such a decision is possible. In that case an extraordinary synod will have the final word.<sup>111</sup> The Dutch synod has always been primarily advisory. From its creation in 1919 until 1936 it had some administrative tasks, especially in supervising the tangible goods of the parishes. From 1993 it exercises the right to lay down the budget for general ecclesiastical purposes for the coming year. Judicial competences reside with the bishops, legislative and administrative rights partly with the bishops, while partly the bishops share these rights with a Collegiate Board (*Collegiaal Bestuur*), of which body the lay members are appointed by the synod. The archbishop of Utrecht is elected by the Metropolitan Chapter of Utrecht, the bishop of Haarlem by the diocesan clergy of Haarlem. Both bodies are for this purpose supplemented with lay voters.<sup>112</sup> The Statute does not contain any rules referring to a possible deposition of a bishop.

Compared to the Old Catholic Synods, the duties of the diocesan and provincial synods have always been less general and not directed at the ordinary, day-to-day administration of the Church. The first German synod considered itself as regards its legislative competences as resembling the provincial synods of the Early Church and this view can also be found in the literature.<sup>113</sup> At a later stage in history, however, the tasks of the provincial council appear to be more specific. According to canon 6 of

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<sup>111</sup> §§ 4(1), 9(3 and 4), 10(4 and 5), 17(1), 21(5) *Kirchenverfassung*.

<sup>112</sup> Artt. 79, 96, 105, 160, 172, 189 *Statuut*.

<sup>113</sup> Werner Stocker, *Die kirchenrechtlichen Grundanschauungen des Alt-katholizismus mit besonderer Berücksichtigung der Kirchen Deutschlands, Oesterreichs und der Schweiz*, Affoltern a.A.: Weiss, 1930, 41–42. It seems, however, that much of the role of the diocesan and provincial synods is nowadays carried on by bodies other than the synods. Such are the regular meetings of the diocesan clergy. In the Netherlands a Provincial Synod of the Clergy takes place every second year. In Germany a national *Pastoralkonferenz* takes place annually. The latter is referred to several times in the *SGO*, but its duties and competences are nowhere defined. See §§ 10(2), 37(5), 65(1), 84(1), 111(4), 113(1) *SGO*.

the Fourth Lateran Council (1215) its purpose is to correct abuses (*excessum corrigere*) and to reform ecclesiastical life (*mores reformare*).<sup>114</sup> The agenda of the provincial synod was always determined by the Metropolitan or, in case his See was vacant, by the eldest suffragan bishop. The right to judge a diocesan bishop was only subsequent and through a reception process of false pseudo-Isidorean decretals attributed to the Pope, but before that time deposing a bishop was never a matter to be decided upon in one single diocese. Gratian's *Decretum* (1140/45) still contains the genuine canons from the older councils which illustrated the practice of the Early Church. The diocesan clergy and laity certainly played a role and had a responsibility, but the final decision to depose a bishop had to be taken by all the bishops of the Church Province, sometimes even together with those of a neighbouring Church Province.<sup>115</sup>

## 8. Conclusion and Consideration

We started this study by asking whether the present-day Old Catholic Synods, as institutions in the administration of the Church, are rooted in the traditional sources of canon law. The comparison, just presented, makes clear that it is difficult to defend such a view. The synods display many comparatively new, extraneous elements. Nor were they modelled on the synods of the Church of England, with which the German Old Catholics from the end of the nineteenth century had friendly relations.<sup>116</sup> On the other hand, however, even in their present-day form the synods continue the basic principle of collegiate decision-making, which has always been present in the constitution of the Church. Thus, our conclusion should be that the value of the Old Catholic Synods exists primarily in giving expression to synodality as such. As regards their present-day form they are not traditional, but rather innovative.

Secondly, we asked whether it was correct to characterise the present-day synods as the 'spiritual legacy of van Espen'. As regards van Espen's

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<sup>114</sup> This canon was adopted in the *Liber Extra* as X 5.1.25.

<sup>115</sup> C.6 q.4 c.1 and 5, C.21 q.5 c.2 (Council of Antioch), C.6 q.4 c.7, C.2 q.6 c.36 (Council of Sardica).

<sup>116</sup> Norman Doe, *Canon law in the Anglican communion. A worldwide perspective*, Oxford: OUP, 1998, 43 ff. The General Synod of the Church of England was and is composed of three Houses: those of bishops, clergy and laity. The same holds good for provincial synods in the Anglican Communion.

contribution to the formation of the Old Catholic Synods, there is, however, only one opinion which may be relevant, since he stated that the provision of Trent, ruling that provincial synods take place at least once every three years, should be observed. This could underlie the permanent position of the present-day synods in the administration of the Church, although traces of a direct influence could not be found. Anyhow, this possible influence by itself does not suffice in my opinion to qualify the Old Catholic Synods as the 'spiritual legacy of van Espen'.

This having been said, it still has to be seen why these synods came into existence. As was shown above, the Apostolic Council of Jerusalem was claimed to be the main historical foundation for the new institutions, but this does not answer the question what may have actually prompted our ancestors to grant a synod, with a considerable participation of the laity, such a central and predominant place in the constitution of the various Old Catholic Churches. We did, however, encounter certain clues which all point in the same direction, *viz.* the *Kulturkampf* and the desire to 'update' the Church, to reach an *aggiornamento* at a stage when this term was not yet applied to ecclesiastical matters. In the nineteenth century a wave of democratization crossed Europe. The principles of the modern constitutional state with achievements as voting rights for many, if not for all, were regarded as morally correct and implementation within the Church seemed appropriate. In his *Lebenserinnerungen* Schulte wrote many years later: "Ich durfte meine Aufgabe als erfüllt ansehen. War es mir doch gelungen, (...) zweitens für die Kirche eine Verfassung zu machen und zur Annahme gebracht zu haben, welche bezüglich der Stellung der Priester, Bischöfe und Gemeinden der ersten Jahrhunderte am ähnlichsten ist und der heutigen Zeit entspricht (...)." <sup>117</sup> In the German-speaking countries this openness towards values, originating from a secular society, was from the outset determinative for the Old Catholic identity. As soon as some national ecclesiastical organization was established, there were synods which put the lay participation in ecclesiastical decision-making high on the agenda. At that time the identity of the Old Catholic Church of the Netherlands was still determined by other factors, but within a few decades developments in the German Church managed to produce an interest in the Netherlands. There also an emancipation movement emerged which eventually led to the institution of a synod in 1919.

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<sup>117</sup> Johann Friedrich von Schulte, *Lebenserinnerungen. Mein Wirken als Rechtslehrer, mein Anteil an der Politik in Kirche und Staat*, Vol. I, Giessen: Roth, 1908, 337.

Is the lack of historic continuity a problem? Can the Church introduce new elements in her structure in order to better conform to a changing society or to do more justice to valuable principles, even when there are no historic examples which can serve as a model? The answer to this question was given by the authors of the *OKOF* report of 1901: for a decision-making synod with a strong participation of the laity there is no example in the history of the Church, but this does not render it less Christian and catholic. Nevertheless, this answer does not imply that a catholic church is entirely free and can model her structure at random and at her own discretion. For the Old Catholic churches, belonging to the Utrecht Union, there are at least two landmarks to be observed, *viz.* the normative value ascribed to the Early Church and the twentieth century ecclesiology of the local Church.

The first landmark consists in the fact that in taking a stand in many issues, Old Catholics have appealed, as they still do, to the Early Church. The Early Church provided a model, still relevant for contemporary ecclesiology and canon law, which played an important role in the Church of Utrecht since the days that theological teaching at the University of Louvain refocused on the patristic sources of the Early Church, thereby passing over major parts of the scholastic theological doctrine of the later Middle Ages. Initially this orientation served as a standard to evaluate and interpret the sources of canon law. In van Espen's treatment of many issues, he noticed that due to the false pseudo-Isidorean decretals many abuses slipped into the Church at the time of the Gregorian Church Reform. This knowledge enabled him to evaluate the sources of canon law, which in his days were often inconsistent. For him provisions, observed for centuries in the Early Church, outweigh those of a later, sometimes very recent date. In the nineteenth century the Early Church provided the foundations for developing a local, Old Catholic *ius proprium* and for rejecting recent developments within the Roman Catholic Church. In view of the latter purpose, the appeal to the Early Church can only be legitimate when it is not arbitrary. Thus, it is no problem that the newly established synods have no precedent in the tradition of the Church. There can be a problem, however, when these synods are not compatible with the ancient structure of the Catholic Church or even infringe on this structure. If so, our appeal to the Early Church in other cases, such as for example in rejecting the Papal dogmas of 1870, is no longer legitimate. This argument is very serious, when the more fundamental elements of the Early Church or fundamental features of these elements are at risk.

The second landmark consists in the ecclesiology of the local Church (*Lokalkirchenekklesiologie* or *Ortskirchenekklesiologie*) as developed in the course of the twentieth century by Old Catholic theologians, mainly from Switzerland. This ecclesiology gradually grew into the common intellectual legacy of all Old Catholic Churches and is reflected in the preamble to the Statute of the International Old Catholic Bishops' Conference, put into effect on 1 January 2001.<sup>118</sup> As we have gradually reached a *communis opinio* in our theological doctrine concerning the Church, her tasks in this world and her structure, should this not result in certain limiting conditions for shaping a local constitution for all churches belonging to the Utrecht Union? As we have seen, at the moment there are considerable differences in the particular law of the several Old Catholic Churches, also as regards the national synod, its composition, tasks and competences.

Both landmarks, that of the Early Church as a standard for today and that of the ecclesiology of the local Church, lead to the same problem, *viz.* whether the far-reaching competences which in some churches are ascribed to the national synod do sufficient justice to the office of the diocesan bishop. When the Church of Utrecht in the eighteenth century made a stand for her own inalienable rights and the position of her Vicar Apostolic, she stated, with an appeal to the Early Church, that episcopal jurisdiction can in no way be restricted other than by the generally binding decrees of the universal Church. This idea became one of the cornerstones of ecclesiological Jansenism. A bishop cannot be subordinate to another bishop. Among bishops there can be no hierarchy. The Pope is no *ordinarius* of the *ordinarii*. In short, except maybe for the ecumenical council, there are no hierarchically higher authorities to which a diocesan bishop is subordinate.<sup>119</sup> And what does the preamble to the Statute of the IBC say? It contains references to both synodal and episcopal principles and speaks about synodal structures which unite the ordained ministry and the laity. It grants the bishop an important place. Around the bishop with the Eucharist as the centre, the local Church is constituted as a unity and thus becomes the complete Church carrying out her tasks autonomously. It says about catholic churches that they are headed by bishops in unison with the college of presbyters and exhibit a synodal structure. The bishops primar-

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<sup>118</sup> Statut der in der Utrechter Union vereinigten altkatholischen Bischöfe, Beiheft *IKZ* 91 (2001).

<sup>119</sup> Cf. Jan Hallebeek, Die Autonomie der Ortskirche im Denken von Zeger Bernard van Espen, in: *IKZ* 92 (2002), 76–99.

ily belong to their local church, but are also, as a college, responsible for the communion of local churches.

Two considerations, *viz.* the fact that the Old Catholic Synods in the German-speaking countries originally followed a by now outdated reform programme and the fact that the Old Catholic Synod of the Netherlands for inadequate reasons in 1936 decided to debar the bishops, render it desirable that all churches belonging to the Union of Utrecht should reconsider the role of the synod within the constitution of the Church, its composition, responsibility and tasks. Even the traditional diocesan and provincial synods can serve as a model, provided we supplement these assemblies with lay voters, as this was done in the Dutch electoral bodies for vacant bishops' Sees.<sup>120</sup>

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### *Deutsche Zusammenfassung*

Stehen die im 19. und 20. Jahrhundert eingerichteten altkatholischen Synoden auf dem Boden der alten Tradition (Kontinuität mit traditionellen kirchenrechtlichen Institutionen der katholischen Kirche), oder sind sie eher als Neuerungen in der Kirchenstruktur zu betrachten? Um diese Frage zu beantworten, wird zuerst die Lehre von Zeger-Bernard van Espen (1646–1728) hinsichtlich der Diözesansynode und Provinzialsynode erörtert. Danach kommt die kirchliche Praxis mit ihren kollegialen Entscheidungsprozessen zur Sprache, wie diese durch das Zweite Utrechter Provinzialkonzil (1763) und die Synode von Pistoia (1786) bezeugt wird. Nach einer Darstellung der

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<sup>120</sup> An attempt to interpret the *Verfassung* of the Swiss Church in the context of the ecclesiology of the local Church can be found in an unpublished paper by Urs von Arx (*Wie wird die Christkatholische Kirche der Schweiz geleitet?*, 2008), composed in view of the dialogue between the Old Catholic Churches of the Utrecht Union and the Church of Sweden. I would like to thank Mattijs Ploeger (Haarlem) and Dick Schoon (Amsterdam) for their useful comments on the draft version of this article, Angela Berlis (Bern) for further advice and Margaret Hewett (Cape Town) for correcting the English of the text.

den altkatholischen Nationalsynoden zugrunde liegenden Prinzipien, die hauptsächlich von den Auffassungen des Juristen Johann Friedrich von Schulte (1827–1914) geprägt sind, folgt zum Schluss eine vergleichende Übersicht bezüglich der Position, welche die Nationalsynode in der Struktur der verschiedenen westeuropäischen altkatholischen Kirchen heute einnimmt. Dieser Vergleich führt zu einem Plädoyer, die heutige Stellung der altkatholischen Synoden erneut zu überprüfen und dabei sowohl die Alte Kirche wie die Ortskirchenekklesiologie des 20. Jahrhunderts als Bezugspunkte zu beachten.