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THE first general rule regulating the relations of bishops and monasteries was laid down by the fourth canon of Chalcedon in 451. It specified that 'monks of the country and of the town are under the jurisdiction of the bishop.'[1] The nature of that jurisdiction is nowhere specifically defined, yet such a definition is of signal importance for a study of Merovingian canon law.

Of the bishop's spiritual jurisdiction, there is no question.[2] The problem is whether, in addition, he was also granted the right to interfere in the administration of monastic properties and in the general internal economy of monasteries in his diocese.

The Merovingian bishop treated monks and monasteries with a fine disregard for their own wishes. He ordained monks as priests without consulting their abbots,[3] and made parish priests of them.[4] He ordered the treatment to be accorded laymen or clergy imprisoned in monasteries.[5] He disposed of monastic lands as he would his episcopal possessions.[6] He treated abbots of his diocese as he would parish priests, removing them from office as he pleased,[7] excommunicating,[8] imprisoning,[9] or even beating them,[10] and supplanting them by his own

[1] C. J. Hefele, *Histoire des conciles*, (ed. and trans. H. Leclerq, Paris: Letouzy and Ané, 1907), II, 779. This canon was aimed specifically at the Eutychian monks, who, under their leader Barsauma, had withdrawn from their bishop, whom they accused of Nestorianism (*ibid.*, p. 782).

[2] In Lesne's opinion, monks were not under episcopal spiritual jurisdiction before the fifth century and, presumably, the Council of Chalcedon (*Histoire de la propriété ecclésiastique en France* [2 vols, Paris: H. Champion, 1910], *I*, 124). But there is reason to believe that they were under the spiritual jurisdiction of the bishop from the beginning. Cf. Augustine, *Confessions*, VI, 6, 15 (Migne, *Patr. Lat.*, XXXII, 755); Ambrose, *Epistolae*, LXIII, 65 (*ibid.*, XX, 1258). Cf. Edgar Loening, *Geschichte des deutschen Kirchenrechts* (Strasburg: K. J. Trübner, 1878), I, 345; H. Grisar, *Geschichte Roms und der Päpste im Mittelalter* (Freiburg, 1901), I, 560.

[3] Cf. Council of Agde (506), c. 27 (Hefele, *op. cit.*, II, 991); Council of Tarragon (516), c. 11 (*ibid.*, p. 1029); Council of Lerida (524), c. 3 (*ibid.*, p. 1064).

[4] Council of Tarragon, *loc. cit.*

[5] Council of Narbonne (589), c. 6, (*ibid.*, III, 229).

[6] The councils of the sixth and seventh centuries were forced continually to prohibit bishops from disposing of monastic lands without consulting the abbot. Cf. Council of Lerida, *loc. cit.;* Third Council of Orléans (538), c. 23 (*ibid.*, 1161); Third Council of Toledo (589), c. 3 (*ibid.*, III, 224); Council of Rome (601) (*ibid.*, p. 239); Council of Paris (614–615), c. 10 (*ibid.*, p. 253); Council of Seville (619), c. 10 (*ibid.*, p. 257); Fourth Council of Toledo (633), c. 51 (*ibid.*, p. 273); Council of Châlons-sur-Saône (644 or 656), c. 7 (*ibid.*, p. 283); Tenth Council of Toledo (656), c. 3 (*ibid.*, p. 295). See also the letters of Gregory the Great, *Epistolae*, II, 29 (*MGH, Epistolae*, I, 25); VI, 28, p. 406; VII, 40, p. 488; VIII, 32 (*ibid.*, II, 33–34).

[7] First Council of Orléans (511), c. 19 (Hefele, *op. cit.*, II, 1013); Council of Epaon (517), c. 19 (*ibid.*, p. 1039); Second Council of Tours (567), c. 7 (*ibid.*, III, 186); Council of Paris (614–615), c. 4 (*ibid.*, p. 252); Tenth Council of Toledo (656), c. 3 (*ibid.*, p. 295). Cf. Gregory the Great, *Epistolae*, IX, 21 (*op. cit.*, II, 49) and X, 9, p. 244. The Council of Epaon permitted abbots so deposed to appeal to the archbishop (*loc. cit.*).

[8] Second Council of Orléans (533), c. 21 (Hefele, *op. cit.*, II, 1135).

[9] First Council of Orléans, *loc. cit.;* Council of Auxerre (578), cc. 23, 26 (*ibid.*, III, 219, 220).

[10] Fourth Council of Braga (675), c. 6 (*ibid.*, III, 315).

favorites or relatives.[1] Without his consent, they could not appeal to the king,[2] absent themselves from their monasteries,[3] or dispose of monastery lands.[4] Nor might they administer more than one monastery at a time.[5]

During this same period, episcopal charters were granted to monasteries, all of which limited episcopal jurisdiction to the spiritual realm. Approximately two dozen of these charters have survived, three of which contain such a limitation and nothing else.[6] The others contain other provisions, such as the right of the monks to elect their abbot and the right of the abbot to administer the monastery as he saw fit.[7]

If by virtue of the fourth canon of Chalcedon, bishops were granted temporal as well as spiritual jurisdiction over monasteries in their dioceses, then the behavior of the Merovingian episcopate with respect to monasteries was only a logical development of their former powers,[8] and the episcopal charters amounted to exemptions from the bishop's authority. If, on the other hand, the Council of Chalcedon restricted episcopal authority to the spiritual sphere, then the high-handed treatment which most Merovingian bishops seem to have accorded monasteries was an encroachment on the rights of the monks, and the episcopal charters were not exemptions from episcopal power but merely attempts to restrain bishops to the bounds set in 451.

There are several possible approaches to an analysis of the problem. If the fourth canon of Chalcedon be taken in conjunction with the other relevant canons, it would seem to be a simple statement of the police power to be exercised by bishops, defined by the remainder of the fourth and succeeding canons. Thus, monks were forbidden to travel from one town to another or to erect monasteries without the consent of the bishop.[9] They might not 'occupy them-

[1] Tenth Council of Toledo (656), c. 3 (*ibid.*, p. 295).

[2] Council of Châlons-sur-Saône (644 or 656), c. 15 (*ibid.*, p. 284).

[3] Fifth Council of Arles (554), c. 3 (*ibid.*, p. 170).

[4] Council of Agde (506), c. 56 (*ibid.*, II, 1001); Council of Epaon (517), c. 8 (*ibid.*, p. 1037); Third Council of Orléans (538), c. 23 (*ibid.*, p. 1161); Fourth Council of Orléans (541), c. 11 (*ibid.*, p. 1167).

[5] Council of Vannes (465), c. 8 (*ibid.*, p. 905); Council of Agde (506), cc. 27, 38 (*ibid.*, pp. 997, 1001); Council of Epaon (517), c. 8 (*ibid.*, p. 1037).

[6] The charters for Holy Cross of Poitiers (567), (Gregory of Tours, *Historia Francorum*, IX, 39); St Bertin (662), (Bréquigny-Pardessus, *Diplomata, chartae, epistolae, leges* . . . [Paris, 1843], no. 344); St Vaast (680), (*ibid.*, no. 391).

[7] A full discussion of these episcopal charters has not yet appeared in print. However, Marculf's *Formula* for an episcopal charter is a good example and must have been the model for many which have not survived. (*Mon. Germ. Hist., LL.* V, 39–40).

[8] This is the opinion of most scholars. Cf. A. Hauck, *Kirchengeschichte Deutschlands* (4th ed., Leipzig: J. C. Hinrich, 1907), I, 245–246; Loening, *op. cit.*, II, 369 ff.; A. Pöschl, *Bischofsgut und Mensa Episcopalis* (2 vols, Bonn: P. Hanstein, 1908–10), I, 82; August Hüfner, 'Das Rechtsinstitut der klösterlichen Exemtion in der abendländischen Kirche,' *Archiv für katholisches Kirchenrecht*, LXXXVI (1906), 304–305; Hans von Schubert, *Geschichte der christlichen Kirche im Frühmittelalter* (Tübingen: J. C. B. Mohr, 1921), pp. 607–608; F. K. Weiss, *Die kirchlichen Exemtionen der Klöster von ihrer Entstehung bis zur Gregorianisch-Cluniacensischen Zeit* (Basel, 1893), p. 10; L. Duchesne, *L'église au VI^e siècle* (Paris: De Boccard, 1925), p. 542; T. P. McLaughlin, *Le très ancien droit monastique de l'occident* (*Archives de la France Monastique*, XXXVIII [1935]), pp. 85, 157–158, 186, 196.

[9] Canon 4, Hefele, *op. cit.*, II, 779. Leo Ueding emphasizes this point without developing it further (*Geschichte der Klostergründungen der frühen Merowingerzeit* [*Historische Studien*, heft 261, Berlin, 1935], pp. 36–42).

selves with the affairs of church or state.'[1] They might not serve in the army or accept civil charges.[2] They were commanded not to disturb the peace,[3] not to join secret societies forbidden by law or otherwise vent their hatred against their diocesan bishop.[4] They were not to marry.[5] They were to 'love peace, applying themselves only to fasting and prayer, and . . . settle in the localities . . . assigned to them.'[6] There is nothing here concerning the right of a bishop to regulate details of monastic life or to administer monastic property. It is possible, of course, that the fourth canon was a general statement of a situation so well understood at the time that no further definition was thought necessary.

Limitation of the jurisdiction conferred upon bishops at Chalcedon to the spiritual realm would seem to be borne out by the proceedings of those later councils which are thought to have been based on Chalcedon. Barring specific attempts to restrain the bishop from exercise of temporal powers[7] and general repetitions placing monks under episcopal jurisdiction,[8] the Merovingian councils were concerned for the most part with keeping monks from becoming vagrants and public charges,[9] and from building monasteries without episcopal consent.[10] An occasional council sought to prevent monks from secular activity.[11] These are general disciplinary provisions and do not concern the relation of bishop to abbot nor the right of bishops to regulate details of monastic life.

The first specific definition of the jurisdiction to be exercised by a bishop over a monastery in his diocese and of the authority which an abbot might exert in his monastery is to be found in the third council of Arles (455). The proceedings confirm a pact made sometime between 419 and 426 A.D. between Honoratus, founder and first abbot of Lérins, and Leontius, bishop of Fréjus.[12] According to its terms, the bishop was to ordain monks as priests as occasion demanded, confirm the newly baptized, and bless chrism for monastic use. Strangers could not be admitted to the monastery without his consent. But those monks not ordained were under the complete jurisdiction of the abbot. The bishop had no

[1] *Ibid.* [2] Canon 7, p. 789. [3] Canon 23, p. 809. [4] Canon 18, p. 806.

[5] Canon 16, p. 804. [6] Canon 4, *loc. cit.* [7] *Vide supra.*

[8] The Council of Barcelona (540) was content with the general statement, 'as to monks, the prescription of the council of Chalcedon must be obeyed' (canon 10, Hefele, *op. cit.*, II, 1163). The Fifth Council of Arles (554), placed monasteries under episcopal jurisdiction (canons 2, 5, *ibid.*, III, 170).

[9] Councils of the fifth, sixth, and seventh centuries continually legislated against the wandering of monks without episcopal permission. Cf. Third Council of Arles (455), (Hefele, *op. cit.*, II, 886) Council of Angers (453), c. 8, (*ibid.*, p. 885); Council of Vannes (465), c. 6, (*ibid.*, p. 905); Council of Agde (506), cc. 27, 38, (*ibid.*, pp. 991, 997); Council of Lerida (524), c. 3, (*ibid.*, p. 1064); Seventh Council of Toledo (646), c. 5, (*ibid.*, III, 287); Council of St Jean de Losne (670 or 673), c. 19 (*ibid.*, p. 302); Council of Herford (673), c. 4 (*ibid.*, p. 301); Council of Berghamsted (697), c. 8, (*ibid.*, p. 589).

[10] Council of Vannes (465), c. 7, (*ibid.*, II, 905); Council of Agde (506), cc. 27, 38, 58, (*ibid.*, pp. 991, 997, 1001); First Council of Orléans (517), c. 10, (*ibid.*, p. 1037).

[11] The Council of Merida (666) prohibited monks from accepting civil functions without the bishop's consent (*ibid.*, p. 304, canon 2).

[12] Leontius was bishop of Fréjus from 419 to 432 or 433. Honoratus was bishop of Arles in 426. Consequently, the agreement must have taken place between 419 and 426. Cf. *Gall. christ.*, I, 421; T. Scott Holmes, *The Origin and Development of the Christian Church in Gaul during the First Six Centuries of the Christian Era* (London; Macmillan, 1911), p. 283.

rights over them and could not ordain them without the consent of the abbot. The monks were to elect their abbot.[1]

This pact has been the subject of considerable controversy.[2] One group of scholars holds that Lérins was placed in a privileged situation as a result of it.[3] A few authorities have thought that the pact was a simple recognition of the commonly recognized and previously existent legal status.[4] I must confess that, for reasons now to be advanced, I agree with the minority.

In 426 A.D., to take the latest date at which the agreement between Honoratus and Leontius could have been made, Roman law was still in force in Provence. The problem thus becomes that of the legal status of monasteries according to Roman law. If bishops were thereby permitted to interfere in the internal regulations of monasteries in their dioceses, then the pact of Lérins, which limited the bishop to the performance of his spiritual functions, was a special privilege. If, on the other hand, bishops were limited to purely spiritual acts, the pact was no more than an expression of the custom of the time.

According to the Roman law of the earlier Empire, only the state could confer

[1] Hefele, *op. cit.*, II, 886.

[2] The Third Council of Arles was called in 455 to decide an argument between Theodore, bishop of Fréjus, and Faustus, abbot of Lérins. The occasion of the dispute is not known. It may be conjectured that since the council forbade Theodore to exercise any rights over the monastery not formerly possessed by bishops of Fréjus, he must have encroached upon the monastery's rights in some way. (Thus, Hefele, *loc. cit.;* l'abbé Alliez, *Histoire du monastère de Lérins* [2 vols, Paris: Didier, 1862], I, 224.) — Several writers have conjectured that Theodore, who had been abbot of one of the monasteries in Hyères, resented the privileged situation of Lérins, and tried to revindicate his episcopal rights. Cf. J. Anthelmius, *De initiis ecclesiae Forojulensis dissertatio historica, chronologica, critica, profano-sacra; accedunt appendices tres . . . III. Notae uberiores in concilium Arelatense in causa Theodori, episcopi Forojulensi et Fausti abbatis Lerinensis* (Aix, 1680); *Histoire de l'église gallicane* (4th ed., Paris: Bureau de la bibliothèque catholique, 1825), II, 288; C. F. Arnold, *Caesarius von Arelate und die Gallische Kirche seiner Zeit* (Leipzig: Hinrichs, 1894), p. 521; A. Malnory, *Saint Caesar évêque d'Arles (503–43)* (Paris: Bouillon, 1894), p. 273. This would assume, of course, that Lérins was in a privileged situation, an assumption which I feel is untenable, *vide infra.* — Some scholars, among them Loening (*op. cit.*, I, 351) and Dom Paul Delatte (*The Rule of St Benedict*, trans. Dom Justin McCann [New York: Benziger, 1921], p. 429), see in the decision of the Council of Arles an application of the principles laid down by the Council of Chalcedon in 451. In as much as the Council of Arles was confirming an agreement made about 425, it could not have been following a precedent laid down in 451.

[3] Anthelmius, *op. cit.*, p. 28: Alliez, *op. cit.*, I, 221; Hefele, *op. cit.*, II, 784 and n. 1; Hüfner, *op. cit.*, pp. 303–304; Malnory, *op. cit.*, p. 272; H. Lévy-Bruhl, *Etude sur les élections abbatiales en France jusqu'à la fin du règne de Charles le Chauve* (Paris: A. Rousseau, 1913), p. 22; P. Viollet, *Histoire des institutions . . . de la France,* (Paris: L. Larose and Forcel, 1890), I, 371; Besse, *Les moines de l'ancienne France* (Paris: Poussielgue, 1906), pp. 530–531; Theodore Sickel, 'Beiträge zur Diplomatik. IV. Die Privilegien der ersten Karolinger bis zum Jahre 840,' *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften, Phil.-hist. Classe,* LXVII (1864), 567; R. Breitschopf, 'De regularium exemptione,' *Studien und Mittheilungen aus dem Benedictiner und dem Cistercienser-Orden,* XXI (1900), 80.

[4] Louis Thomassin, *Ancienne et nouvelle discipline de l'église, touchant les bénéfices et les bénéficiers,* (3 vols, Paris: Francois Montalant, 1725), I, iii, c. 26, sec. 16, col. 1534; Mabillon, *Annales,* I, 19; Bréquigny-Pardessus, 'Prolegomena,' I, 215; Camille Paulus, *Welt- und Ordens-Klerus beim Ausgange des XIII Jahrhunderts im Kampfe um die Pfarrechte* (Göttingen diss., 1900), p. 2, n. 3. Arnold, although he did not think Lérins' relationship to its bishop unusual in Gaul, considered the Gallican monasteries freer in that respect that elsewhere (*op. cit.*, p. 36, n. 98, p. 521).

upon foundations the separate juristic personality of a corporation.[1] With the recognition of the Christian Church, ecclesiastical property was recognized as a public foundation under the control of the bishop.[2] It then became possible for private individuals to establish foundations for charitable purposes which were recognized as a species of church property under the supervision of the bishop. Such *piae causae*, as they were known, were ecclesiastical and hence public institutions, and so could be endowed with juristic personalities of their own and be recognized as corporations.[3]

A law of 434, permitting monasteries to inherit property of those of the brethren who died intestate and without heirs,[4] would indicate that monasteries were included among the *piae causae* and hence were to be regarded as corporations, since the right to hold property was one of the attributes of corporations.[5]

It would seem, then, that as corporations, monasteries would have the right to order their own internal affairs. Such was the conclusion of Hauck.[6] Under such circumstances, the rights of bishops over monasteries in their dioceses must have been purely supervisory. The bishop probably exercised over monks, who were laymen, the same disciplinary powers which he held over the laymen of his diocese.[7] He appointed clergy to celebrate mass for the monks.[8] In some cases, he appointed the abbot.[9] But it seems reasonable to conclude that the

[1] While private persons were not competent to create a corporation, the Emperor might establish charitable foundations which were, however, considered as the property of the imperial fisc (Rudolph Sohm, *The Institutes* [transl. J. C. Ledlie, 2nd ed., Oxford, 1901], pp. 205–208).

[2] According to Sohm, this development took place in the fifth century, for which statement no source reference is given (*op. cit.*, p. 208). On the other hand, W. K. Boyd thinks that this recognition of corporate rights antedated Constantine ('The Ecclesiastical Edicts of the Theodosian Code,' *Columbia Studies in History, Economics, and Public Law*, XXIV [1905], no. 2, p. 79).

[3] Sohm, *op. cit.*, p. 208. [4] *Theodosian Code*, v, 1, c. 1

[5] Cf. Loening, *op. cit.*, I, 352; Hauck, *op. cit.*, I, 244; Lesne, *op. cit.*, I, 124.

[6] *Loc. cit.* While dismissing the problem as a 'vexed question,' W. W. Buckland states that by the time of Justinian, *piae causae* came to be in such a form that the property was not vested in the Church, although the bishop usually had certain supervisory rights (*A Manual of Roman Private Law* [Cambridge, 1925], p. 36.) However, Buckland gives no citation for his statement.

[7] Loening, *op. cit.*, I, 263.

[8] The earliest ascetics attended the churches of their district (Antonius Dadinus Alteserra, *Asceticism* [Paris, 1674], I, ii; B. J. Kidd, *A History of the Church to 461 A.D.* ([2 vols, Oxford, 1922], II, 103; Delatte, *op. cit.*, p. 424.) In some cases, secular priests came to the monastery to celebrate mass. This was the arrangement in the monasteries of Pachomius (S. Schiwietz, 'Pachomianische Klöster im vierten Jahrhundert,' *Archiv für katholisches Kirchenrecht*, LXXXII [1902], 454). In others, one or more monks were ordained by the bishop for the purpose. Cassian noted desert monasteries where a few monks were priests and deacons (*Collationes*, iv, 1 in Migne, *Patr. Lat.*, XLIX, 584–585). According to Palladius, the five thousand monks of Nitria were served by eight priests, of whom only one, the eldest, celebrated mass (*Lausiac History* [ed. A. Lucot; Paris: A. Picard and son, 1912], c. 7, p. 66). The proportion of ordained monks to lay monks was never great in the early monasteries, the priesthood being nothing more than an accident of a monk's profession (Cassian, *loc. cit.*). And see Herbert B. Workman, *The Evolution of the Monastic Ideal* (London: Charles H. Kelly, 1913), pp. 14–15.

[9] Isidore Pelusiota, *Epistolae*, I, 262 (Migne, *Patr. Graec*, LXXVIII, 339). Chapman, basing his opinion on the *Novellae* of Justinian, thinks that this was the usual method of selecting abbots in the Byzantine Empire (Dom Chapman, *Saint Benedict and the Sixth Century* [London: Sheed and Ward,

bishop was excluded from interfering in the internal affairs of the monastic corporation.

If episcopal authority over monasteries in a diocese was limited under Roman law to the spiritual realm, then these conclusions follow: The jurisdiction conferred upon bishops at the Council of Chalcedon did not include temporal powers. The provisions of the Council of Arles created no special status for the monastery of Lérins. The episcopal charters of the Merovingian period were not exemptions but were merely attempts to restrain the bishops to what had been the *status quo*. And the Merovingian bishops were not acting in accord with the provisions of the Council of Chalcedon but were encroaching upon the rights of the monks.

COLUMBUS, OHIO.

1929], p. 60). However, in the early centuries, there were several methods of selecting abbots, of which episcopal appointment was only one. Abbots might appoint their own successors (Theodoret, *Religiosa historia*, c. iv in Migne, *Patr. Graec.*, LXXXII, 1345; Cassian, *De coenobiorum institutis*, IV, in Migne, *Patr. Lat.*, XLIX, 188). In monasteries following the *Rule* of Basil, abbots seem to have been appointed by the senior monks of the community (E. F. Morison, *St Basil and his Rule. A Study in Early Monasticism* [London, 1912], p. 53). In some cases, the monks elected the abbot (Cassian, *op. cit.*, II, 3, p. 80; at Lérins, *supra*, p. 6).