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THE EASTERN CODE: A RESOURCE FOR THE REVISION OF THE LATIN CODE

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Introduction

After the promulgation of the 1983 *Codex Iuris Canonici (CIC)* and the 1988 apostolic constitution *Pastor bonus*, the promulgation of the 1990 *Codex Canonum Ecclesiarum Orientalium (CCEO)* signaled the completion of the canonical ordering for the entire Catholic Church. In presenting the new Eastern Code to the twenty-eighth General Congregation of the Synod of Bishops (October 25, 1990), John Paul II urged "that a proper and comparative study of both codes be promoted in Faculties of Canon Law," since the pope regarded the Eastern Code, together with the Latin Code and *Pastor bonus*, as "one *Corpus iuris canonici*."[1]

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[1] *Acta Apostolicae Sedis* [*AAS*] 83 (1991) 491.

The first goal of any comparative law study is to gain a knowledge of the juridical systems being compared. While these systems do vary widely from country to country, it can be argued that the Codes of the Catholic Church are, to a greater extent, more interrelated since they have the same legislator and they are integral parts of one body of canon law. Moreover, the legislator effectively codified this interrelationship in *CCEO* canon 1, which states: "The canons of this Code affect all and solely the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly (*expresse*) established otherwise."[2] According to the classic definition, what is expressly *(expresse*) established in law can be indicated either explicitly or implicitly.[3] While nine *CCEO* canons explicitly oblige the Latin Church, still others implicitly regard the Latin Church in relation to the Eastern Catholic Churches. These implicit references to the Latin Church in the Eastern Code arise, for example, in the use of the expression "Church *sui iuris*" or because of the interritual nature of the matter (*ex natura rei*), such as ascription or transfer to another Church *sui iuris*.[4]

The interrelationship of the Latin and Eastern Codes is also evidenced in a certain complementarity. Specifically, when the meaning of a canon in one Code remains doubtful, recourse can be made to the parallel canon of the other Code as an interpretative aid in resolving that doubt in individual cases (see *CIC* c. 17; *CCEO* c. 1499).[5]

Furthermore, unlike Eastern canon 1501, Latin canon 19 states that cases involving a lacuna in the law, except penal law, are to be decided having considered, among other things, laws made in

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[2] English translations for the *CIC* and *CCEO* canons have been taken from: *Code of Canon Law, Latin-English Edition* (Washington: CLSA, 1999) *and Code of Canons of the Eastern Churches, Latin-English Edition* (Washington: CLSA, 2001).

[3] See Luigi Chiappetta, *Il Codice di Diritto Canonico - Commento giuridico pastorale*, 2nd ed. (Rome: Edizioni Dehoniane, 1996) 1:38, note 4.

[4] For more detail, see Jobe Abbass, "The Interrelationship of the Latin and Eastern Codes," *The Jurist* 58 (1998) 1-40.

[5] *CIC* c. 17 states: "Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator."

CCEO c. 1499 states: "Laws must be understood according to the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, they must be understood according to parallel passages, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator."

similar circumstances (*legibus latis in similibus*).[6] As a possible complement, then, to the Latin Code, where the Eastern Code contains parallel laws to govern similar matters, the *CCEO* norms can serve to remedy legislative gaps in *CIC*. However, it must be stressed that any type of interpretative recourse in individual cases cannot condition the power of the legislator, or those to whom he grants that power, to authentically interpret laws (see *CIC* c. 16 §1; *CCEO* c. 1498 §1). In a comparative study written shortly after the promulgation of the Eastern Code, the argument was made that ambiguities and lacunae in many Latin canons could be resolved in individual cases by invoking *CIC* canons 17 and 19.[7] The argument was not only supported by a comparative analysis of the Codes but it also seemed entirely logical. The very same legislator, who had promulgated the Latin Code nearly eight years before, may well have had in mind certain ambiguities and/or lacunae in the *CIC* norms when enacting the parallel *CCEO* canons. Within the context of a possible revision of the 1983 Latin Code, the argument can now be made that, instead of having recourse to the same *CCEO* norms by way of *CIC* canons 17 and 19 in individual cases, the Eastern formulations should simply replace their Latin counterparts in order to clarify doubts and remedy legislative gaps in *CIC*. Besides those examples considered in the 1992 comparative study, many more have arisen in the nearly twenty years that have followed. Part 1 of this study treats three of them and proposes the eventual adoption of the Eastern norm to resolve an ambiguity and/or fill a lacuna in the actual Latin norm.

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[6] *CIC* c. 19 states: "If a custom or an express prescript of universal or particular law is lacking in a certain matter, a case, unless it is penal, must be resolved in light of laws issued in similar matters, general principles of law applied with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned persons."

CCEO c. 1501 states: "Unless it is a penal matter, if an express prescription of the law is lacking in some particular matter, the case is to be decided in the light of the canons of the synods and the holy fathers, legitimate custom, the general principles of canon law observed with canonical equity, ecclesiastical jurisprudence and the common and constant canonical doctrine."

[7] See Jobe Abbass, "Canonical Interpretation by Recourse to 'Parallel Passages': A Comparative Study of the Latin and Eastern Codes," *The Jurist* 51 (1992) 293-310. The cases treated: Invalid Resignation of an Office (*CIC* c. 188; *CCEO* c. 968); Inadvertent Exercise of Delegated Power (*CIC* c. 142 §2; *CCEO* c. 992 §2); Delegation of Habitual Faculties (*CIC* c. 132 §2; *CCEO* c. 982 §2); Conditions regarding Administrative Acts (*CIC* c. 39; *CCEO* c. 1516); Acceptance of Resignations (*CIC* c. 189 §3; *CCEO* c. 970 §1); and Third Ballot Elections (*CIC* c. 119, 1°; *CCEO* c. 956 §1).

A second objective of comparative law is to study laws in view of an eventual revision and improvement of one or the other of those laws. Although a comparative analysis of the laws of foreign countries can result in legislative reform to one's own laws, the legislative systems upon which nations are based are often too different and unrelated. However, in the case of the Catholic Church's Latin and Eastern Codes, the two are not so different and distinct as to be unrelated. In fact, within the framework of the Church's one body of canon law, the legislator has expressly established an interrelationship of the Codes. In addition, while parallel *CIC* and *CCEO* norms that govern a particular matter are not always the same, there is often no mistaking that the mind of the legislator and the purpose of the law are identical. Given these things, part 2 of this paper examines three *CIC* canons and proposes that one be omitted while the remaining two be replaced by a parallel Eastern formulation.

The future revision of the Latin Code might not only involve the omission of some CIC canons or perhaps their amendment/replacement by CCEO norms. A comparative study of both Codes shows that many praiseworthy Eastern norms are simply lacking in the Latin Code. Part 3, then, recommends three instances in which CCEO canons should be added to the Latin legislation, thus making the Eastern Code a full resource for the revision of the Latin Code.

1. Eastern Canons that Clarify Doubts or Fill Lacunae in the Latin Canons

1.1. Anointing of the Sick: (*CCEO c. 740; CIC c. 1006*)

Regarding persons to whom the sacrament of the anointing of the sick may be administered, *CIC* canon 1006 establishes: "This sacrament is to be conferred upon sick persons who requested it at least implicitly when they were in control of their faculties." Given the plain wording of the text, a doubt arises as to whether or not a priest can presume that, unless the contrary is evident, the sacrament is to be administered. Take, for example, the case of the priest-psychiatrist who asks if he can sacramentally anoint a patient who has been medically diagnosed as emotionally ill and severely limited in terms of brain function. Although the patient is Catholic, the priest has only recently met him and he cannot ascertain whether or not that person would have at least implicitly requested the sacrament when he was mentally well.

To arrive at a correct interpretation of *CIC* canon 1006, its direct source should be considered. Canon 943 of the 1917 Latin Code (*1917*

CIC) stated in broad terms: "The sacrament is nevertheless to be offered unrestrictedly to sick persons who, when they were in control of their faculties, requested it at least implicitly or probably would have requested it, even if, thereafter, they lost consciousness or the use of reason." In addition, *CIC* canon 1006 has been interpreted and applied in the light of the 1972 *Ordo Unctionis Infirmorum Eorumque Pastoralis Curae* issued by the Sacred Congregation for Divine Worship.[8] Number 14 of the *Ordo* stated: "Sick people who have lost consciousness or have lost the use of reason may be anointed if, as befits Christians, they would have requested it if they had been in possession of their faculties."[9]

As a general rule, commentators have interpreted the implicit request required by *CIC* canon 1006 in the wider sense intended by canon 943 of the 1917 Latin code and in view of number 14 of the *Ordo*.[10] Moreover, some commentators maintain that *CIC* canon 1006 effectively establishes a presumption in favor of conferring the sacrament or that, unless the contrary is clear, it should be presumed that a Catholic would have requested the sacrament.[11] However, no mention is made of a presumption in *CIC* canon 1006, which continues to prescribe that the recipient of the sacrament of the anointing of the sick, as in the case of the other sacraments, must ask for it. In his commentary of the Latin canons, Bruno Dufour implies that the French adaptation of the *Ordo* is perhaps too severe when it states that the request is not to be presumed systematically. Nevertheless, while admitting that *CIC* canon 1006 is to be applied in the wider sense of canon 943 of the 1917 Latin code, Dufour adds:

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[8] *AAS* 65 (1973) 275-276.

[9] Austin Flannery, ed. *Vatican Council II: More Post Conciliar Documents* (Northport, N.Y: Costello Publishing Company, 1982) 17.

[10] Chiappetta, *Il Codice di Diritto Canonico* (note 3) 2:214. The author states: "The implicit intention is to be interpreted in the widest sense of the term, as derived from canon 943 of the previous code and also from number 14 of the *Ordo*."

[11] Frederick R. McManus, "The Sacrament of Anointing of the Sick," in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden et al. (New York/Mahwah, NJ: Paulist Press, 1985) 711. The author states: "In effect, a presumption is established that the Christian believer is desirous of receiving the sacrament of anointing of the sick -- unless there is contrary evidence such as that described in canon 1007." and John McAreavey, "Those to be Anointed," in *The Canon Law Letter & Spirit: A Practical Guide to the Code of Canon Law*, ed. G. Sheehy et al. (London: G. Chapman, 1995) 547. The author writes: "Unless in a particular case the contrary is clear, it should be presumed that a Catholic would have so requested the sacrament."

> Then, the canon responds to the need of respect for convictions: the personal intention of the sick person to receive the sacrament is an important element since, in principle, the requirement of the use of reason is established. Finally, the canon averts a practice that could be inspired more by formalism (or even superstition) and it safeguards the perspective of faith in which the celebration ought to be conducted.[12]

Does *CIC* canon 1006, then, establish a presumption? As if to respond to the question, the parallel *CCEO* norm clarifies any doubt, at least for the Eastern Catholic Churches, by explicitly establishing a presumption in favor of administering the sacrament of the anointing of the sick to the seriously ill, the unconscious or those who lack the use of reason. *CCEO* canon 740 states: "Christian faithful who are gravely ill, who lack consciousness or the use of reason, are presumed to want this sacrament to be administered to them in danger of death or even at another time according to the judgment of the priest." Although no official canonical source is cited for *CCEO* canon 740, the subject matter was treated in the 1958 motu proprio *De Sacramentis*. The proposed Eastern norm, canon 182 of the motu proprio, was identical to canon 943 of the 1917 Latin code.[13] On the eve of the convocation of the Second Vatican Council, *De Sacramentis* was not promulgated, but it subsequently provided the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (*PCCICOR*) with "initial texts" for the further revision of the Eastern sacramental norms.[14] Within *PCCICOR*, the *Coetus de sacramentis* proposed an initial draft to *CCEO* canon 740 that was already substantially similar.[15] After the same norm appeared in the 1982 *Schema canonum de culto divino et praesertim de sacramentis*,[16] only the word "gravely" (*graviter*) was added to the canon during its *denua recognitio*.[17] As canon 735 of the *Schema Codicis Iuris Canonici Orientalis* (*SCICO*),[18] the norm was identical to *CCEO* canon 740.

Considering the *iter* of *CCEO* canon 740, it is clear that the Eastern norm supports a broader interpretation of *CIC* canon 1006. That is to

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[12] Bruno Dufour, *Le sacrement de pénitence et le sacrement de l'onction des malades* (Paris: Editions Tardy, 1989) 172.

[13] See: *Nuntia* 6 (1978) 78. It is reported: "Can. 182 verbatim CIC can. 943."

[14] *Nuntia* 6 (1978) 66.

[15] *Nuntia* 6 (1978) 64 (c. 4).

[16] *Nuntia* 10 (1980) 31 (c. 71).

[17] *Nuntia* 15 (1982) 43 (c. 71).

[18] *Nuntia* 24-25 (1987) 136 (c. 735).

say, unless the contrary is evident, a Catholic is implicitly presumed to request the sacrament of the anointing of the sick. However, *CCEO* canon 740 is not a Latin norm nor can it simply be added to the Latin code. In individual cases, recourse could still be made to the Eastern norm by way of *CIC* canon 17 to arrive at the proper meaning of the words in Latin canon 1006 considered in their text and context. Alternatively, by invoking *CIC* canon 19, *CCEO* canon 740 could serve to fill lacunae and resolve issues, as in the priest-psychiatrist case mentioned above, that are not explicitly covered in *CIC* canon 1006. Obviously, in a future revision of the Latin Code, the formulation in Eastern canon 740 could also simply replace Latin canon 1006. There can be no doubt regarding the mind of the legislator who is the same and whose purpose in both norms is undoubtedly to give concrete application to the scriptural exhortation: "Is there anyone sick among you? He should ask for the presbyters of the church. They in turn are to pray over him, anointing him with oil in the Name of the Lord" (*James* 5:14).

1.2. The Competent Authority in Cases of Illegitimate Alienations (CCEO c. 1040; CIC c. 1296)

If ecclesiastical goods are alienated without the necessary consent or other canonical requirements but the alienation is nevertheless valid with respect to civil law, *CIC* canon 1296 states:

> Whenever ecclesiastical goods have been alienated without the required canonical formalities but the alienation is valid civilly, it is for the competent authority, after having considered everything thoroughly, to decide whether and what type of action, namely, personal or real, is to be instituted by whom and against whom in order to vindicate the rights of the Church.

Regarding the interpretation of *CIC* canon 1296, a question has arisen as to which "competent authority" is meant to decide whether and which type of action to take in these situations.[19] V. De Paolis argues: "Which is the competent authority depends on the juridic person in question: it is the authority to which the same juridic person is

[19] This question was previously treated in: Jobe Abbass, "Alienating Ecclesiastical Goods in the Eastern Catholic Churches," *Folia canonica* 5 (2002) 125-147.

subject."[20] However, that would not seem to be so in all cases. For example, if a bishop proceeds with the sale of parish propriety without the consent either of the finance council, the college of consultors or the parish concerned, he is apparently not the appropriate authority to decide whether and which type of possible action to take. Again, if a bishop, as president of a diocesan public association, sells some of its property without the consent either of the diocesan finance council, the college of consultors, or the association concerned, that bishop is evidently not the competent authority to decide on further action because of his obvious conflict of interest. In both cases, even though the parish and the diocesan association are juridic persons directly subject to the bishop, it is undoubtedly the authority above the bishop, the Holy See, that is competent to decide on the possible remedial action to take.

With respect to the same question concerning the interpretation to be given "competent authority" in *CIC* canon 1296, R.J. Kennedy maintains that it has to be the superior authority of the one who carried out the alienation.[21] Moreover, he argues that this interpretation has been confirmed by the parallel *CCEO* canon 1040, which states:

> Whenever ecclesiastical goods have been alienated against the prescripts of canon law but the alienation is valid civilly, the higher authority of the one who carried out the alienation, after having considered everything thoroughly, is to decide whether and what type of action to be taken by whom and against whom in order to vindicate the rights of the Church.

Although Kennedy does not explain the reason for citing *CCEO* canon 1040 to confirm his interpretation of *CIC* canon 1296, it is evident that he has made recourse to that parallel Eastern norm, by way of *CIC* canon 17, since the meaning of the words "competent authority," considered in the text and context of the Latin canon, remain doubtful. At the same time, there can be no doubt that the legislator had the same purpose and circumstances in mind when promulgating both norms. It is also conceivable that the legislator intended to clarify *CIC* canon 1296 when promulgating the parallel

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[20] Velasio DePaolis, *I beni temporali della Chiesa* (Bologna: Edizioni Dehoniane, 1995) 194.

[21] R. T. Kennedy, *The Temporal Goods of the Church*, in J. P. Beal et al. (eds.), *New Commentary on the Code of Canon Law* (NewYork/Mahwah, NJ: Paulist Press, 2000) 1506.

CCEO canon 1040 in 1990. Nevertheless, there is nothing, at least in the reported proceedings of *PCCICOR*, to confirm that the more precise reference in the Eastern norm to "the higher authority of the one who carried out the alienation" meant to clarify the doubt in the 1983 *CIC* canon 1296. In fact, the first reported draft (1981) of *CCEO* canon 1040 already referred to the "immediately superior hierarch" (*Hierarchae immediate superioris*).[22] This notwithstanding, it is apparent that, according to *CIC* canon 17, recourse can be made in individual cases to *CCEO* canon 1040 as an aid to resolving the doubt that exists in *CIC* canon 1296. The "competent authority" who is to take remedial action if an alienation, made without observing the canonical requirements, is nonetheless valid civilly is the superior authority of the one who made the alienation. Of course, this interpretation cannot be the definitive word on the question since authentic interpretation of canonical norms is the competence of the legislator, alone, or those to whom has granted that power. However, in view of a future revision of the Latin Code, it seems altogether reasonable to propose that the formulation in *CCEO* canon 1040 replace the wording of *CIC* canon 1296 in order to clarify the doubt that has arisen regarding the Latin canon's interpretation.

1.3. Particular Law for Pious Foundations (CCEO c. 1048 §3; CIC c. 1304 §2)

Regarding the further regulation of pious foundations, Latin canon 1304 §2 stipulates: "Particular law is to define additional conditions for the establishment and acceptance of foundations." In the 2000 commentary on the Code of Canon Law sponsored by the Canon Law Society of America, R. T. Kennedy basically states that *CIC* canon 1304 §2 refers only to the further definition of conditions for non-autonomous pious foundations because the text of §2 speaks of accepting (indicative of non-autonomous foundations) and because, within the context of canon 1304, only non-autonomous foundations are being addressed. However, Kennedy does note that a doubt has arisen with respect to the norm's interpretation since other experts maintain that *CIC* canon 1304 §2 also regards autonomous pious foundations.[23]

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[22] See *Nuntia* 13 (1981) 40 (c. 111). The initial reference to the "immediately superior hierarch" was subsequently changed to "higher authority" (*auctoritatis superioris*) to include the Holy See [see *Nuntia* 18 (1984) 65 (c. 111)]. In its present form, *CCEO* c. 1040 already appeared as *SCICO* c. 1056 [see *Nuntia* 24-25 (1987) 189 (c. 1056)].

[23] R.T. Kennedy, "The Temporal Goods of the Church," in J.P. Beal et al. (eds.), *New Commentary on the Code of Canon Law* (New York/Mahwah: Paulist Press, 2000) 1517-1518.

As an interpretative aid to resolving this doubt, recourse has been made by way of Latin canon 17 to the parallel passage in *CCEO* canon 1048 §3, which states: "It is for particular law to determine other conditions, without which pious foundations cannot be erected or accepted."[24] Both *CIC* canon 1304 §2 and *CCEO* canon 1048 §3 effectively have the same source in canon 1545 of the 1917 Latin Code since the prior Eastern norm, promulgated as canon 295 of the motu proprio *Postquam apostolicis litteris*,[25] essentially repeated the 1917 Latin canon. There is also no doubt that both current norms, meant to regulate the matter of pious foundations, have the same legislator.

Like Eastern canon 1499, Latin canon 17 requires that ecclesiastical laws be understood according to the proper meaning of the words considered in their text and context. As for the text of *CCEO* canon 1048 §3, it intends to refer not only to non-autonomous foundations which are "accepted,"typically by juridic persons such as religious institutes, but also to autonomous foundations which are "erected" as juridic persons by competent ecclesiastical authority. If both these meanings are not already apparent by the references to "acceptance" and "establishment" in *CIC* canon 1304 §2, then the meaning becomes absolutely clear in *CCEO* canon 1048 §3, promulgated eight years later.[26] With respect to the question of context, it is true that §1

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[24] Jobe Abbass, "Establishment of Autonomous and Non-Autonomous Foundations," in *Roman Replies and CLSA Advisory Opinions 2004* (Washington: Canon Law Society of America, 2004) 162-163.

[25] Pius XII, motu proprio *Postquam apostolicis litteris*, *AAS* 44 (1952) 65-150.

[26] The difficulty here, and one that should be addressed in any future revision of *CIC*, is that the consistent choice of terminology in the Eastern Code is not always reflected in the Latin Code. While the Eastern norms speak only of the "erection" of an autonomous pious foundation or the "acceptance" of a non-autonomous pious foundation, this clear distinction is not made in the Latin norms, which refer variously to the "erection", the "establishment" and "acceptance" of pious foundations. This marked difference between the Codes is evident in many other areas of comparison. While "*officium*" is used in the Eastern Code only to mean an ecclesiastical or public office, the same term in the Latin Code can also indicate "services" (c. 556); "duty" (cc. 96, 510 §3, 757, etc.) or "bureau" (cc. 775 §3, 1733 §2). In the Eastern Code, while "*sodales*" refers only to members of institutes of consecrated life and "*membra*" describes members of all other groups, in the Latin Code there is no consistent usage of these terms and members of institutes of consecrated life are even called "*sodales*" and "*membra*" in the same canon 587 §1. In the Eastern Code, it is the "*intimatio*" of a judicial sentence that counts (c. 1298) whereas, in the Latin Code, "*intimatio*" is equated with "*publicatio*" (c. 1615) but publication may be insufficient where "*notitia publicationis*" is required (c. 1623). For more detail regarding the terminological precision of the Eastern Code, see Jobe Abbass, "Coordinating the New Eastern Code," in H. Zapp, A. Weiss and S. Korta,

of *CIC* canon 1304 addresses the acceptance of non-autonomous foundations. However, Latin canon 17 also requires consideration of an ambiguous norm's context, which cannot be limited only to the single canon in which that norm is found. In fact, the immediately preceding canon, *CIC* canon 1303 §1, 1°, which describes the erection of autonomous foundations, is certainly part of the same context as *CIC* canon 1304 §2 concerning pious foundations. To obviate even this doubt regarding context, §1 of *CCEO* canon 1048, which parallels *CIC* canon 1303 §1, 1°, makes specific mention of autonomous foundations. *CCEO* canon 1048, §1 states: "Autonomous pious foundations can be erected only by an eparchial bishop or another higher authority."

Given the text and context of *CCEO* canon 1048 §3, there is no doubt that the foundations meant there include both autonomous and non-autonomous ones. According to *CIC* canon 17, recourse can be made there to resolve the ambiguity in the corresponding *CIC* canon 1304 §2. However, in light of an eventual revision of the Latin canon, the doubt concerning *CIC* canon 1304 §2 could be clarified definitively in either of two ways. On the one hand, the Latin canon could be formulated in three paragraphs along the lines of *CCEO* canon 1048. On the other hand, for better terminological precision, *CIC* canon 1304 §2 might simply be amended to state: "Particular law is to define additional conditions for the erection and acceptance of autonomous and non-autonomous foundations."

2. Latin Canons to Omit or Replace with CCEO Canons

2.1.The Beginning and End of an Instance (CIC c. 1517)

Regarding the beginning and end of ecclesiastical litigation, *CIC* canon 517 states: "A trial (*instantiae*) begins with the citation; it ends not only by the pronouncement of a definitive sentence but also by other methods defined by law." Although a similar Eastern norm was expressed in canon 254 of *Sollicitudinem nostram*,[27] a reformulation of that entire canon did not appear at any stage of the Eastern codification process within *PCCICOR*. The reported proceedings of *PCCICOR* do not provide a direct explanation for this

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ed. *Ius Canonicum in Oriente et Occidente* (Festschrift für C.G. Fürst) (Frankfurt: Peter Lang, 2003) 26-35.

[27] Pius XII, motu proprio *Sollicitudinem nostram* (*SN*), *AAS* 42 (1950) 5-120. *SN* c. 254 stated: "The instance begins with the citation (*Instantiae initium fit citatione*); however, it ends by all the ways, in which a trial is terminated, not only by which an instance is interrupted but also by which it can be ended either by abatement or renunciation."

omission. Nevertheless, at least with regard to the definition of the end of an instance, it is probable that the *Coetus de processibus* did not consider it necessary to repeat the general principle. Besides providing norms for the pronouncement of the final sentence, the Eastern law, itself, identifies the ways in which an instance is interrupted or ends. For that matter, the Latin Code is no less clear in outlining the various ways in which cases end.

Regarding the definition of the beginning of an instance, *CIC* canon 1517 represented a change in the Latin legislation. Whereas canon 1732 of the 1917 Latin Code provided that the instance began with the joinder of issues, *CIC* canon 1517 states that an instance begins with the citation ("*instantiae initium fit citatione*"). Indeed, the 1983 Latin Code now effectively establishes that both the litigation (c. 1512, 5) and the instance (c. 1517) begin with the citation.[28] In the previous Eastern legislation, the change made in *CIC* canon 1517 was already reflected in *SN* canon 254. Just like the present Latin Code, *Sollicitudinem nostram* established that both the litigation (c. 247, 5) and the instance (c. 254) began with the citation. However, within *PCCICOR*, the *Coetus de processibus* incorporated the definition of *SN* canon 254 ("*instantiae initium fit citatione*") into its revision of *SN* canon 247, 5.[29] As initially proposed, the Eastern norm, like *CIC* canon 1512, 5, stated that, once the citation is legitimately communicated, "the litigation begins to be pending" ("*lis pendere incipit*"). As promulgated, *CCEO* canon 1194, 5 now specifies that, once the citation has been legitimately intimated, the instance of the litigation begins.[30] Although no reason for this reformulation was reported, it would seem to have been opportune from the point of view of juridical clarity. *CCEO* canon 1194, 5 more precisely identifies that the instance **of the** litigation, not both the instance (*CIC* c. 1517) **and** the litigation (*CIC* c. 1512, 5), begins with the citation.

In the same way, it seems logical to suggest that the Latin Code also correct this apparent lack of clarity. Just as the Eastern experts incorporated the definition of *SN* canon 254 ("*instantiae initium fit*

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[28] *CIC* c. 1512, 5° states: "Once the citation has been legitimately communicated .... the litigation begins to be pending..."

[29] *Nuntia* 14 (1982) 50 (c. 136, 4). The reformulation of *SN* c. 247, n.5 stated: "Once the citation has been legitimately communicated,... the instance begins (*instantiae initium fit*)..." When the norm subsequently appeared as *SCICO* c. 1209, 5°, it was essentially identical to *CCEO* c. 1194, 5° [see *Nuntia* 24-25 (1987) 213-214].

[30] Parallel to *CIC* c. 1512, 5°, *CCEO* c. 1194, 5° states: "If the citation is legitimately intimated... the instance of the litigation begins..."

citatione") into its revision of *SN* canon 247, 5° ("*lis pendere incipit*"), the Latin drafters should work the definition of *CIC* canon 1517 into the revision of *CIC* canon 1512, 5°. This would effectively result in the omission of *CIC* canon 1517 since the ways to end a trial are defined elsewhere in the Code. Like *CCEO* canon 1194, 5°, *CIC* canon 1512, 5° would state: "Once a citation is legitimately communicated, ... the instance of the litigation begins ..." The revised Latin norm would thereby specify that the legitimately communicated citation has the sole function of beginning the instance of the litigation rather than beginning both the instance and the litigation.

2.2. Admission of Non-Catholics to Institutes (CIC cc. 597 §1/643 §1; CCEO cc. 448/450 §1,1°)

Regarding admission to a religious institute, both *1917 CIC* canon 538 and *PA* canon 70 identically stated: "Any Catholic moved by the right intention and not prevented by any lawful impediment and who is fit to bear the burden of religious life can be admitted to the religious institute." With the same norm as its source, *CIC* canon 597 §1 basically restates the same rule for both religious and secular institutes of consecrated life. *CIC* canon 597 §1 establishes: "Any Catholic endowed with a right intention who has the qualities required by universal and proper law and who is not prevented by any impediment can be admitted into an institute of consecrated life." The Latin norm does not expressly state that only Catholics are validly admitted to the institute. One could argue that, on the basis of *CIC* canon 10, the Latin norm would not disqualify non-Catholics.[31] Then, regarding the eventual admission of a candidate to the novitiate of a religious institute, *CIC* canon 643 §1 lists the five factors required for validity but the candidate's being Catholic is not one of those elements.[32]

Within *PCCICOR*, the *Coetus de monachis* first met (April 19-28, 1977) to revise *PA* canon 70. In its reformulation of the Eastern norm

[31] *CIC* c. 10 states: "Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is unqualified."

[32] *CIC* c. 643 §1 states: "The following are admitted to the novitiate invalidly: 1° one who has not yet completed seventeen years of age; 2° a spouse, while the marriage continues to exist; 3° one who is currently bound by a sacred bond to some institute of consecrated life or is incorporated in some society of apostolic life, without prejudice to the prescript of can. 684; 4° one who enters the institute induced by force, grave fear, or malice, or the one whom a superior, induced in the same way, has received; 5° one who has concealed his or her incorporation in some institute of consecrated life or in some society of apostolic life."

regarding admission, the *Coetus* omitted the requirement that the candidate be Catholic but no reason was reported for the change. The provisional canon stated: "For one to be admitted to a monastery, it is required that the person be moved by the right intention, be suitable for leading the monastic life and not be prevented by any legitimate impediment."[33] At the same time, the *Coetus* revised *PA* canon 74 §1 governing valid admission to the novitiate but the requirement that the novice be Catholic was not added there.[34] Subsequently, however, in the 1980 *Schema canonum de monachis ceterisque religiosis necnon de sodalibus aliorum institutorum vitae consecratae* (1980 Schema), while the proposed revision of *PA* canon 70 remained the same, the reformulation of *PA* canon 74 §1 established, as a first element, that "non-Catholics cannot be admitted validly to the novitiate."[35]

During the *denua recognitio* of the 1980 Schema, the new formulation of *PA* canon 70 was not amended and, except for a few redactional changes, was already essentially identical to *CCEO* canon 448.[36] However, regarding the revised draft of *PA* canon 74, consultative bodies argued that the words "non-Catholics" in number 1 be omitted or, at least, better explained. In not accepting this argument, the expert study group entrusted with the *denua recognitio* replied:

> The juridical sense of the words (*acatholici, non catholici*), which appear in various canons, do not leave any kind of doubt. It concerns baptized Orthodox or Protestants, while heretics, schismatics and apostates are contemplated in n. 2 and in n. 3 inasmuch as "*poenae canonicae subiciuntur*," or they are already "*legitime accusati*" of these delicts. In particular, number 1 is necessary for clarity vis-à-vis possible Orthodox candidates who perhaps wish to spend some time in a Catholic monastery to decide on

[33] *Nuntia* 6 (1978) 42 (c. 1).

[34] *Nuntia* 6 (1978) 43 (c. 1).

[35] *Nuntia* 11 (1980) 25 and 26 (cc. 36 and 38, respectively). Canon 38, 1° stated: "With due regard for the prescripts established in the proper typicons of monasteries, that require more, the followning cannot be admitted validly to the novitiate: 1° non-Catholics (*non catholici*)."

[36] *CCEO* c. 448 states: "For one to be admitted into a monastery *sui iuris*, it is required that the person be moved by the right intention, be suitable for leading the monastic life, and not be prevented by any impediment established by law."

> their vocation. However, they cannot be admitted *canonically* to novitiate before becoming Catholic.[37]

Apart from the later decision to refer to *acatholici* instead of *non catholici*,[38] the stipulation that non-Catholics could not be admitted validly to the novitiate remained in the Eastern norm and was promulgated as *CCEO* canon 450, 1°. It states: "With due regard for the prescripts of the typicon that require more, the following cannot be admitted validly to the novitiate: 1° non-Catholics (*acatholici*)." By virtue of *CCEO* canon 517 §1, the same requirement also applies for valid admission to the novitiate of orders and congregations.[39]

While both the previous Latin and Eastern norms established that only Catholics could enter a religious institute, the legislator has removed that stipulation from *CCEO* canon 448 but made it a requirement in *CCEO* canon 450 §1, 1° for a person's valid admission to the novitiate. As a result, the Eastern Code foresees that a non-Catholic might wish to enter a religious institute to contemplate a vocation but that person must become Catholic before being admitted validly to the novitiate. Within the context of a future revision of *CIC*, the legislator could decide to update the Latin Code in the same way by omitting the imperative from *CIC* canon 597 §1 that only Catholics can enter an institute of consecrated life and by incorporating that requirement as a new number of *CIC* canon 643 §1 regarding a candidate's valid admission to the novitiate. Thus, a non-Catholic person could enter a Latin institute of consecrated life to consider a vocation, for example, but that person would have to become Catholic before entering the novitiate validly. In the alternative, if the substance of *CIC* canon 597 §1 is to remain unchanged, then at least the norm should expressly state that being

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[37] *Nuntia* 16 (1983) 38 (c. 38).

[38] Among the many decisions adopted by the Eastern *Coetus de coordinatione* to increase the precision of the Eastern Code, one regarded the choice to use either *non Catholicus* or *acatholicus* consistently. The *Coetus de coordinatione* stated: "Except for the various canons in which are mentioned those 'qui plenam communionem cum Ecclesia catholica non habent' (an expression that is kept unchanged), there are various other canons in which it is a question of 'non catholici' or 'acatholici'. Between these two terms, the study group has chosen the second, preferring it to the first, because it is shorter and, all things considered, rather 'neutro'." See *Nuntia* 21 (1985) 76.

[39] *CCEO* c. 517 §1 states: "The required age for valid admission to the novitiate of an order or congregation is seventeen years old. Regarding other requirements for valid admission to the novitiate, cann. 448, 450, 452, and 454 are to be observed."

Catholic is required in order for a person to be admitted validly into an institute of consecrated life.

2.3. Deciding Conflicts of Competence (CIC c. 1416; CCEO c. 1083)

In regulating conflicts of competence between tribunals, *CIC* canon 1416 establishes: "The appellate tribunal resolves conflicts of competence between tribunals subject to it; if the tribunals are not subject to the same appellate tribunal, the Apostolic Signatura resolves conflicts of competence." This norm, which is cited again in *CIC* canon 1445 §1, 4° regarding the role of the Signatura, is also consonant with the provisions of *Pastor bonus*. Article 122, 4 states: "It (the Apostolic Signatura) judges: conflicts of competence between tribunals, which are not subject to the same appellate tribunal."

However, this rule for deciding conflicts of competence, applicable in the Latin Catholic Church, differs from the norm the same legislator has established for the Eastern Catholic Churches. Even in the previous Eastern legislation, *SN* canon 127 stated:

> §1. If a dispute arises between two or more judges as to which of them is competent in a certain case, the matter is to be decided by the superior tribunal designated in canon 72.
>
> §2. If the judges, between whom the conflict of competence exists, are subject to different superior tribunals, deciding the dispute is reserved to the superior tribunal of that judge, before whom the action was first advanced. If there is no superior tribunal, the conflict is resolved either by the legate of the Roman Pontiff, if there is one, or by the Apostolic Signatura.

In the Eastern Catholic Churches, then, if the tribunals concerned were subject to the same superior (that is, metropolitan or patriarchal appellate) tribunal, conflicts of competence were decided by that superior tribunal (§1). However, if the tribunals concerned were not subject to the same appellate tribunal, these conflicts were resolved by the superior tribunal of the judge before whom the action was first brought. Only when such a superior tribunal was lacking did a

papal legate or the Apostolic Signatura intervene to resolve the conflict of competence (§2).[40]

The rule contained in *SN* canon 127 §2, that a conflict of competence between judges is to be decided by the appellate tribunal of the judge before whom the action was first introduced, also formed the basis upon which *CCEO* canon 1083 was formulated. Indeed, the 1977 provisional draft of the canon proposed by the *Coetus de processibus* was already substantially the same as the promulgated norm.[41] Within *PCCICOR*, the text only underwent minor redactional changes at two stages during the work of the *Coetus de coordinatione* to be produced a systematic coordination of the Eastern legislation.[42] As promulgated, Eastern canon 1083 provides:

> §1. A conflict between judges as to which of them is competent, is to be decided by the appellate tribunal of that judge before whom the action was first advanced by an introductory *libellus* of litigation.
>
> §2. If, however, one of the two tribunals is the appellate tribunal of the other, the conflict is to be decided by the tribunal of third grade for the tribunal before which the action was first advanced.
>
> §3. There is no appeal from the decisions in these conflicts.

Compared to the formulation of the Latin canon, the new Eastern norm does not direct the resolution of conflicts to a common appellate tribunal but, rather, to the appellate tribunal of that judge before whom the action was first introduced. While this appellate tribunal may be common to both Eastern tribunals, it could just as

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[40] According to the structure of ecclesiastical tribunals foreseen by the new Eastern legislation, superior (appellate) tribunals are designated in all cases according to the norm of law (see *CCEO* cc. 139, 175, 1063 §3, 1064 §2 and 1065.)

[41] *Nuntia* 5 (1977) 28 (c. 43). Indeed, the Latin text shows how similar the 1977 provisional norm was to *CCEO* c. 1083. Canon 43 stated: "*1. Controversiae inter iudices quisnam eorum ad aliquod negotium competens sit definiendae sunt, a tribunali appellationis illius iudicis coram quo actio primo per litis libellum promota est. §2. Sin autem alterutrum tribunalium sit alterius tribunal appellationis controversia definienda est a tribunali tertiae instantiae pro tribunali in quo actio primo, ad normam §1, mota est. §3. Contra decisiones in controversiis de quibus in §§ 1 et 2, non datur locus appellationi.*"

[42] See *Nuntia* 24-25 (1987) 196 (c. 1098) and *Nuntia* 27 (1988) 63 (c. 1098). The *Coetus de coordinatione* made these minor adjustments in coordinating all the schemas of Eastern norms to produce the 1986 *SCICO* and in identifying amendments to *SCICO* both before, during and after the second plenary assembly of *PCCICOR* in 1988.

well not be. In this latter case, instead of reserving the decision to the Apostolic Signatura, as in the Latin Code, the Eastern norm holds to the rule that the conflict of competence is resolved by the appellate tribunal of the judge before whom the action was started. When compared to the procedure in the Latin Church, it could well be argued that the Eastern rule effectively saves time and undoubtedly lightens the case-load before the Apostolic Signatura. Further, the Eastern canon foresees that, even when either of the tribunals concerned is the appellate tribunal of the other, the conflict is to be decided by the tribunal of third instance. In the Eastern patriarchal and major archiepiscopal Churches, that tribunal is the ordinary tribunal of the patriarchal (major archiepiscopal) Church (see *CCEO* c. 1063 §3); in the metropolitan and other Eastern Churches the tribunal of third instance is the Roman Rota (see *CCEO* c. 1065). In no case would a conflict of competence between judges be adjudicated by the Apostolic Signatura. Then, unlike the Latin Code, the Eastern norm adds that appeals are not allowed from the decisions made regarding these conflicts.

Given these comparative considerations, it is sensible to recommend, in view of a revision of the Latin Code, that *CIC* canon 1416 be reformulated along the lines of *CCEO* canon 1083. Because the faithful are much more mobile today, it is quite probable that competent tribunals in any future litigation will not be subject to the same appellate tribunal. In those cases, the intervention of the Apostolic Signatura will be required at the outset if a conflict of competence arises between the judges. When compared to the rule in *CCEO* canon 1083, which has eliminated any need for the Apostolic Signatura to adjudicate these matters, the Eastern norm seems eminently more practical. One might argue, though, that *CCEO* canon 1083, based upon *SN* canon 127 §2, is an Eastern norm which cannot simply be applied to the Latin Church. While the two Codes are separate and distinct, it is nevertheless a fact, as appendix I to this paper shows, that the legislator drew upon a score of *SN* canons as sources for the procedural canons of the 1983 Latin Code. In the same way, it is within the realm of possibilities that the legislator might adopt a number of *CCEO* procedural canons as sources for the revision of the same *CIC* canons.

3. Eastern Canons as Additions to the Latin Code

3.1. Provision of Ecclesiastical Offices within Six Months (CCEO c. 941)

Regarding the canonical provision of ecclesiastical offices, Eastern canon 941 establishes the general norm that canonical provision of all

ecclesiastical offices may never be deferred beyond six months of useful time from receipt of the news of the vacancy unless another period of time has been established by law. *CCEO* canon 941 states: "Canonical provision, for which no time limit has been prescribed by law, is never to be deferred beyond six months of useful time computed from the receipt of the news of the vacancy of the office." The Latin Code, however, prescribes no general rule with respect to a time limit within which canonical provision of ecclesiastical offices is to occur. The only canons which approach such a general norm are Latin canons 150 and 151, which have no Eastern counterparts. *CIC* canon 150 states: "An office which entails the full care of souls and for whose fulfillment the exercise of the priestly order is required cannot be conferred validly on one who is not yet a priest." By the "full care of souls," the canon intends the celebration of the sacraments of the Eucharist, penance and the anointing of the sick. Then, *CIC* canon 151 states: "The provision of an office which entails the care of souls is not to be deferred without a grave cause." In this case, the intended canonical provision is not strictly limited to offices that entail the administration of the sacraments. However, where the office entails the care of souls even in a broad sense, canonical provision may be deferred if the competent ecclesiastical authority finds there is a grave cause to do so. Even if no grave cause exists, there is no Latin norm requiring canonical provision to occur within six months or any stated time period.

In the previous Latin legislation, *1917 CIC* canon 155 established the general norm that canonical provisions were not to be deferred beyond six months of useful time computed from having notice of the office's vacancy. *1917 CIC* canon 155 stated: "The provision of offices for which no term has been prescribed by special law may never be deferred beyond six months of useful time computed from having news of the vacancy, with due regard for the prescription in can. 458." In turn, canon 97 of *Cleri sanctitati* (*CS*)[43] prescribed an identical norm for the Eastern Catholic Churches. While the Latin canon did not subsequently appear in the 1983 *CIC*, the equivalent norm contained in *CS* canon 97 was taken up again in the revision process for the new Eastern Code. Like the former Latin canon, *CS* canon 97 allowed an exception to the general six-month rule in the context of vacancies in parishes, which could be deferred at the discretion of the bishop because of "particularities of persons and places" (*peculiaria locorum ac personarum*). This exception contained in *CS* canon 499 was omitted from *CS* canon 97 before the presentation

[43] Pius XII, motu proprio, *Cleri sanctitati*, *AAS* 49 (1957) 433-603.

of the 1981 *Schema canonum de normis generalibus et de bonis Ecclesiae temporalibus* (1981 Schema). The *Praenotanda* to the 1981 Schema explained:

> Also noted is the omission of the clause (in can. 31) "*firmo praescripto can. 499*" which is referred to in CS c. 97 regarding provisions of parishes. By virtue of the said clause, such provision could be deferred beyond the period of six months according to the law now in force. The clause was omitted by a "special" group of consultors, having met in the month of November 1980, since they were of the mind that the period of time of six months be also observed regarding the provision of parish vacancies.[44]

As a result, canon 31 of the 1981 Schema stated: "The provision of offices, for which no term has been prescribed by special law, may never be deferred beyond six available months of useful time from having news of the vacancy."[45] During the *denua recognitio* of the 1981 Schema, canon 31 underwent no change.[46] By the time the canon appeared in the 1986 *SCICO*, it was practically identical to the present Eastern canon 941. *SCICO* canon 937 stated: "Canonical provision, for which no time limit has been prescribed by law, may never be deferred beyond six available months from having news of the vacancy."[47] Only the final words "having news of the vacancy" were subsequently changed to "receipt of the news of the vacancy of the office" by the *Coetus de coordinatione* before the 1988 plenary assembly of *PCCICOR*.[48]

With regard to a future project for the revision of the 1983 *CIC*, it seems entirely appropriate to argue that the Latin legislation include a general norm along the lines of *CCEO* canon 941. That Eastern norm, to a great extent, repeats the previous *CS* canon 97, which had obviously echoed an identical rule set in *1917 CIC* canon 155. Although the Latin Code no longer contains a general norm that the provision of ecclesiastical offices is not to be deferred beyond six months from the news of its vacancy, *CIC* canon 151 does establish that offices entailing the care of souls are not to be deferred without a serious cause. However, this rule only applies to a limited segment of ecclesiastical offices and, in any event, canonical provision of these offices can always be deferred for a serious reason. To provide for

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[44] *Nuntia* 13 (1981) 6.
[45] *Nuntia* 13 (1981) 21 (c. 31).
[46] *Nuntia* 18 (1984) 28 (c. 31).
[47] *Nuntia* 24-25 (1987) 168 (c. 937).
[48] *Nuntia* 27 (1988) 60 (c. 937).

greater certainty and coherence in the law, *CCEO* canon 941 arguably makes more sense in setting a six-month time limit not only regarding office vacancies in a parish but also in respect to the provision of all ecclesiastical offices. The establishment of this general rule is also supported by experience and the benefit such a rule holds for the ordered life of the Church and timely appointment to ecclesiastical offices not only in a parish but, also, in a diocese, an institute of consecrated life or even an association of the Christian faithful.

3.2. Contentious Actions Extinguished by Prescription after 5 Years (CCEO c. 1151)

Just as the Latin draftsmen drew upon the *SN* norms in formulating the procedural canons for the 1983 *CIC* (see Appendix I), the Eastern *Coetus de processibus*, in turn, revised the parallel procedural norms for the 1990 *CCEO* with a keen eye to the texts prepared within the Latin commission.[49] This approach on the part of the Eastern *Coetus* inevitably resulted from the guiding principle adopted by *PCCICOR* at its first plenary assembly (March 18-23, 1974) that "all Catholics observe the same procedural norms."[50] To assist in its work, the *Coetus* reported that the presidency of *PCCICOR* subsequently requested and received from the Latin commission an outline of the proposed schema of *CIC* procedural norms.[51] It is then evident that the Latin schema continued to serve as an important point of reference for the *Coetus de processibus* as it prepared 101 provisional canons from 1974-1977.[52]

In its revision of *SN* canon 221 concerning the extinction of contentious actions by prescription, the *Coetus* proposed a substantially new norm for the Eastern Code. Although no reference is made to the Latin schema in its reported deliberations, the *Coetus* undoubtedly was aware that *SN* canon 221 essentially repeated *1917 CIC* canon 1701.[53] Provisional canon 88 stated:

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[49] For more detail in this regard, see Jobe Abbass, *Two Codes in Comparison*, 2nd ed. (Rome: Pontifical Oriental Institute, 2007) 209-216.

[50] See *Nuntia* 3 (1976) 23.

[51] See *Nuntia* 5 (1977) 4.

[52] In revising many canons, the *Coetus* adopted the formulation or modifications made in the corresponding canons of the Latin Schema [see *Nuntia* 5 (1977) 20 (c. 19); 22 (c. 23); 28 (cc. 44, 45); 29 (c. 50); 31 (cc. 61, 63); 32 (cc. 69, 70); 33 (c. 72); and 38 (c. 95 §1)]. In drafting other norms, the *Coetus* added or borrowed from the text of the Latin Schema [see *Nuntia* 5 (1977) 23 (c. 26); 31 (c. 59); 33 (c. 74 §2); 34 (c. 78 §4); 35 (c. 84 §3); and 39 (c. 101)].

[53] Like *1917 CIC* c. 1701, *SN* c. 221 stated: "Both personal and real contentious actions are extinguished by prescription in accord with the norm of law; however, actions concerning the status of persons are never extinguished."

> Actions concerning the status of persons are never extinguished; unless expressly provided otherwise, other contentious actions are extinguished within five years from the day when the action could have first been introduced, without prejudice to any personal statutes where they are in force.[54]

In reporting the *Coetus*' reasons for proposing this new canon, the relator of the group stated:

> The *Coetus* proposes the *quinquennium* for all contentious actions, thus changing the text of SN c. 221 which says: "contentious actions are extinguished by prescription according to the norm of law," undoubtedly referring to civil law... However, it is difficult to determine which civil law to adopt in these cases where several possibilities are involved: the civil law of the petitioner, of the respondent or of the place of the tribunal, etc...
>
> Regarding temporal goods, in the countries where personal statutes are in force, there is no difficulty. It is obvious that the civil law must be applied because, otherwise, the sentences will not be recognized. For the other contentious cases, the *Coetus*, after a long discussion, thought it wise to specify the *quinquennium* so that whoever wishes to bring a contentious case before an ecclesiastical tribunal will have one clear rule.[55]

Together with the other proposed canons on procedure, provisional canon 88 became canon 91 of the 1982 *Schema canonum de tutela iurium seu de processibus* (1982 Schema).[56] Subsequently, the 1982 Schema was forwarded to consultative bodies of *PCCICOR* for their observations and a specially constituted study group was entrusted with the *denua recognitio* of the entire draft. The special study group met (May 17-27 and October 3-13, 1983) soon after the promulgation of the new Latin Code to examine the observations made to the1982 Schema. Once again, the members focused upon the importance of the guideline that "all Catholics observe the same procedural norms."[57] The group of experts stated: "After the promulgation of

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[54] *Nuntia* 5 (1977) 36 (c. 88).
[55] Ibid.
[56] *Nuntia* 14 (1982) 40 (c. 91).
[57] See *Nuntia* 17 (1983) 72.

the new Code of Canon Law for the Latin Church, this guideline could not have any other meaning for the study group than the maximum possible conformity with the Latin Code in this matter."[58] In achieving a "maximum possible conformity" with the Latin Code, the study group made significant changes to the 1982 Schema of procedural norms. With respect to the 126 canons on trials in general in the 1982 Schema, some were already identical to canons of the 1983 Latin Code while others, which had no *CIC* equivalents, were omitted.[59] In other cases, *CIC* canons not contained in the 1982 Schema were simply added. Among these added norms was canon 90bis, that is, *CIC* canon 1492 §1.[60] Although the addition of canon 90bis (*CIC* c. 1492 §1) effectively constituted the reintroduction of *SN* canon 221, the experts still did not intend to omit from the 1982 Schema the new and characteristic canon 91, which generally set a five-year limitation period for bringing contentious actions. Canon 90bis (*CIC* c. 1492 §1) underwent no further change within *PCCICOR* and was promulgated as *CCEO* canon 1150.[61] As for provisional canon 90, only its first line ("actions concerning the status of persons are never extinguished") was subsequently removed since it already was part of *CIC* canon 1492 §1 (*CCEO* c. 1150). As *SCICO* canon 1166, the new Eastern norm was reformulated only slightly before being promulgated as *CCEO* canon 1151.[62] It states: "Unless the law expressly provides otherwise, contentious actions are extinguished by prescription five years from the day when the action could have been first proposed, without prejudice to any relevant personal statutes where they are in force."

The inclusion of the five-year prescription rule in the Eastern legislation does provide for greater clarity in this matter. Even though *CIC* canon 1492 §1, which was added to the Eastern Code by way of *CCEO* canon 1150, states that actions are extinguished by prescription according to the norm of law, the difficulty initially raised by the *Coetus de processibus* still seems valid. While the Church generally accepts prescription as it exists in civil law (*CIC* c. 197;

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[58] *Nuntia* 17 (1983) 73.

[59] See *Nuntia* 21 (1985) 41-50 (cc. 1-126).

[60] *Nuntia* 21 (1985) 49 (c. 90bis). The entry simply states: "Canon 90bis is canon 1492 §1 of CIC."

[61] Identical to *CIC* c. 1492 §1, *CCEO* c. 1150 states: "Every action is extinguished by prescription in accord with the norm of law, or by some other legitimate means, with the exception of actions concerning the status of persons, which are never extinguished."

[62] See *Nuntia* 24-25 (1987) 207 (c. 1166) and *Nuntia* 27 (1988) 65 (c. 1166).

CCEO c. 1540), it may not always be easy to determine which civil law regarding prescription is to be applied in a given case.[63] As a general rule, then, the *CCEO* canon 1151 has established a five-year limitation period for contentious actions brought before ecclesiastical tribunals. The addition of such a norm to the Latin legislation is arguably no less desirable. Apart from the reference to personal statutes, characteristic of the Eastern Code, the formulation of a five-year rule, like *CCEO* canon 1151, for the Latin Code would obviate the difficulty arising from the variety of time limits that are set in the statutes of limitations of a great number of civil jurisdictions where the Latin faithful are present and are likely to begin a contentious action.[64] Just as the Latin draftsmen adopted some of the *SN* norms in formulating the procedural canons for the 1983 *CIC*, they might again draw upon Eastern procedural norms such as *CCEO* canon 1151 in drafting new and improved procedural canons for the Latin Church.

3.3. Arbitration Procedure (CCEO cc. 1168-1184)

Eastern canons 1168-1184 regarding arbitration are found in Title XXIV (Trials in General), Chapter X (Methods of Avoiding Trials). Latin canons 1713-1716, that deal with both out-of-court settlement and arbitration, are found in Book VII (Processes), Part III (Certain Special Processes), Title III (Methods of Avoiding Trials). A preliminary observation could be made regarding their relative placement in both Codes. Among Latin commentators, it has already been noted that the Latin canons "seem rather oddly placed."[65] Indeed, rather than following the canons on contentious and other special trials, as in the Latin Code, the Eastern canons have been placed before the beginning of the contentious trials. The reason justifying this placement was given by the *Coetus de processibus* in the *Praenotanda* to the 1982 Schema. The study group stated:

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[63] Like *CIC* c. 197, *CCEO* c. 1540 states: "The Church receives prescription as it is in the civil law, unless common law establishes otherwise; prescription is a means of acquiring or losing a subjective right as well as of freeing oneself from obligations."

[64] Reference is made to "civil jurisdictions" instead of "countries" because, in countries like Canada and the United States, property/contract rights and the corresponding actionable claims generally fall within the jurisdiction of the individual provinces and states.

[65] See: L.G. Wrenn, "Processes", in James A. Coriden et al., eds., *The Code of Canon Law: A Text and Commentary* (New York/Mahwah, NJ: Paulist Press, 1985) 947.

> ... As well, it (the chapter *De modis evitandi iudicia*) is placed before the ordinary contentious trial as an invitation directed to all the Christian faithful that they might wish to settle their controversies with their brothers and sisters in a manner more congruous with the Christian precepts, although one recognizes those things which are established regarding the regulation of tribunals in the Church.[66]

Given this observation, the natural suggestion, in view of a future revision of the Latin Code, would be to place the canons on methods of avoiding a trial at the end of Book VII (Processes), Part I (Trials in General), as a new Title VI before the part on contentious trials.

Another observation that can be made regarding the Eastern and Latin norms that treat the methods of avoiding a trial concerns the significant difference in the number of canons that each Code dedicates to this matter. While the Latin Code deals with out-of-court settlements and arbitration agreements together in four canons (cc. 1713-1716), the Eastern Code dedicates four canons (cc. 1164-1167) to settlements, alone, followed by seventeen canons (cc. 1168-1184) concerning arbitration. With specific regard to arbitration, this difference had also existed in the previous legislation of the Latin and Eastern Catholic Churches. The 1917 Latin Code contained four canons (cc. 1929-1932) on arbitration agreements while *Sollicitudinem nostram* devoted twenty-five canons (cc. 98-122) to the same subject.

When the *Coetus de processibus* met (June 6-16, 1977) to revise these Eastern canons, they had to decide whether to retain all of them given the decision adopted by *PCCICOR* for a certain uniformity of procedural norms in the entire Catholic Church. With respect to the *Coetus*' deliberations in this regard, the relator stated:

> It is worth noting here that the *Coetus* discussed...the sections *De transactione et compromisso in arbitros*. Regarding the *compromissum in arbitros*, the *Coetus* discussed at length whether it was necessary to reduce this section to a few canons, as is the case in C.I.C., or to retain it as it is in SN. It appeared opportune to the *Coetus* to retain the whole section, be it because this part of the Code has always been praised by the authors in that it represents an improvement on the Latin Code, be it because it corresponds more to the wishes of the Apostle (1 Cor.

[66] *Nuntia* 14 (1982) 9.

6, 1-8) and to the tradition of the first centuries of the Church.[67]

The relator also reported that, besides indicating the placement of the Eastern norms before contentious trials, the *Coetus* wanted to emphasize the following: 'The section *de compromisso in arbitros* should be retained (in that it is) highlighted as being most in accord with the spirit of the gospel, the product of long and detailed work, and because it avoids having to follow civil law which changes from country to country."[68]

In the *Praenotanda* to the 1982 Schema, the *Coetus* once again stressed the importance of retaining the norms on arbitration, which appeared as canons 110-126.[69] The group stated: "The praiseworthy section on arbitration in the apostolic letter, *Sollicitudinem nostram*, which stands out in that it is very much consistent with the early forms of administration of justice in the Church and the Gospel spirit, is retained with few amendments...."[70] During the *denua recognitio* of the 1982 Schema, despite the effort to achieve a maximum possible conformity with the Latin Code, these distinctive Eastern canons on arbitration remained with only minor modifications.[71] Subsequently, the norms appeared as *SCICO* canons 1183-1199.[72] Thereafter, but for one amendment proposed by the *Coetus de coordinatione, ex officio*,[73] these canons only underwent slight redactional changes before being promulgated as *CCEO* canons 1168-1184.[74]

To compare the Eastern and Latin Codes regarding arbitration procedure, the matter is basically treated in only one canon of the Latin Code as opposed to seventeen canons of the Eastern Code. In establishing three options, *CIC* canon 1714 first allows the parties who have agreed to arbitration to determine the norms to be observed; only if they choose no norms are they to follow the laws enacted by the conference of bishops, if such laws exist, or the civil

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[67] *Nuntia* 5 (1977) 27.

[68] Ibid.

[69] *Nuntia* 14 (1982) 44-47 (cc. 110-126).

[70] *Nuntia* 14 (1982) 9.

[71] *Nuntia* 21 (1985) 50. Only §1 of c. 117 was omitted due to changes made elsewhere in the Eastern Schema.

[72] *Nuntia* 24-25 (1987) 209-211 (cc. 1183-1199).

[73] See: *Nuntia* 27 (1988) 27. The *Coetus de coordinatione* added the phrase *etiam minoris* to *SCICO* c. 1187, 2° (now *CCEO* c. 1172, 2°) since, according to *SN* c. 103 §1, 2°, persons under minor penalties could not function as arbitrators, either.

[74] See *Nuntia* 27 (1988) 66 and 85 and *Nuntia* 31 (1990) 44.

law of the place where the agreement was made. Latin canon 1714 states:

> For an agreement, a compromise, and an arbitrated judgment, the norms selected by the parties or, if the parties have selected none, the law laid down by the conference of bishops, if there is such a law, or the civil law in force in the place where the agreement is entered into is to be observed.

As mentioned in the previous section, the *Coetus de processibus* specifically wished to avoid the situation of having to apply the civil law which varies from one civil jurisdiction to another. Furthermore, the group decided essentially to retain the prior *SN* norms on arbitration since they were highly commended to have served the Eastern Catholic Churches well. As a result, *CCEO* canons 1168-1184 outline a procedure and norms to be followed when a controversy is referred to arbitration. The only other Latin norm that finds some expression there is canon 1716 which requires confirmation by an ecclesiastical judge of an arbitration sentence if not recognized by the civil law (*CIC* c. 1716 §1; *CCEO* c. 1181 §1) and allows for the arbitration sentence to be challenged before an ecclesiastical judge (*CIC* c. 1716 §2; *CCEO* cc. 1182-1183). Otherwise, the Eastern canons regarding the procedure to be followed on arbitration remain quite unique.

To consider Latin canon 1714 more closely, let us suppose that the parties do not choose the procedural norms the arbitrators are to follow. In that event, they would observe the particular law established by the conference of bishops, if such exists. Unfortunately, apart from the rare exception,[75] it would not appear that episcopal conferences have been very active in legislating in this area.[76] Consequently, it is more probable that arbitrators will have to follow the procedural rules observed in civil law. Herein lies the

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[75]See, for example: United States National Conference of Catholic Bishops (USNCCB), *On Due Process*, rev. ed., (Washington: USNCCB, 1972). However, rather than making these norms obligatory, the episcopal conference only recommended them as models to be adopted at the respective diocesan, provincial and regional levels.

[76] The Canon Law Society of Great Britain and Ireland, *The Canon Law Letter & Spirit - A Practical Guide to the Code of Canon Law* (London: Geoffrey Chapman, 1995) 952. In a footnote to the commentary on *CIC* c. 1714, D. Kelly states: "It has to be said, however, that the overall legislation by Bishops' Conferences in this regard has been meagre."

potential problem for Latin Catholics who have agreed to resolve their dispute through arbitration.

Civil law, at least in countries of the common law tradition, often does not admit procedural rules that are followed in an ecclesiastical proceeding. Take, for example, the faculty granted in canon law to an ecclesiastical judge to supply for the negligence of the parties by producing evidence. *CIC* c. 1452 §2 (like *CCEO* c. 1110 §2) establishes: "Furthermore, a judge can supply for the negligence of the parties in furnishing proofs or in lodging exceptions whenever the judge considers it necessary in order to avoid a gravely unjust judgment, without prejudice to the prescripts of can. 1600."[77] Based as it is on the principle of equity, this facultative intervention is consonant with the role of an ecclesiastical judge who is actively engaged in a search for the truth. In civil law proceedings, characterized by an adversary procedure, the judge assumes the role of a referee between the parties. It is up to the parties and their lawyers to convince the judge of the truth as they see it. That is not to say that procedural norms in civil law lack equity. Rather, in respecting the nature of the adversary procedure, the law of evidence forbids such an intervention on the part of a civil law judge or arbitrator to furnish proofs.[78]

Therefore, when Latin Catholics agree to arbitration and the procedural rules of civil law are to be followed, the arbitrators will not be able to adduce evidence or supply for the negligence of the parties. Nor would canon law (*CIC* c. 22; *CCEO* c. 1504) fail to recognize this rule regarding the admissibility of evidence since such a rule would not be considered contrary to divine law. On the other hand, among the seventeen canons that have been established for Eastern Catholics with respect to arbitration agreements, *CCEO* canon 1176 §2 specifically deals with the procedure that arbitrators are to observe. *CCEO* canon 1176 §2 states: "Unless the parties have specified otherwise, the arbitrators are free to select the procedure to be followed; it is however to be simple and provide for brief time limits, observing equity and the procedural laws." This Eastern norm not only invokes equity but, also, calls into play the general procedural norms, which include the faculty of the judge (arbitrator), according to *CCEO* canon 1110 §2, to supply for the negligence of the parties by presenting evidence.

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[77] *CIC* c. 1600 (like *CCEO* c. 1283) generally prohibits the presentation of new evidence after the conclusion in the case.

[78] For more detail regarding the case law that has established this rule in arbitration proceedings, see Abbass, *Two Codes* (note 49), 292-293.

In order to avoid procedural rules that restrict the admissibility of evidence or create other possible conflicts between ecclesiastical and civil law, Latin Catholics who wish to settle a dispute through arbitration might consider it preferable to choose their own norms. Since the legislator allows for this option in *CIC* canon 1714, it would seem logical to suggest that they adopt *CCEO* canons 1168-1184. Indeed, in the context of a future revision of the Latin Code, it might simply be more practical to suggest that *CCEO* canons 1168-1184 be incorporated into the new Latin canons on methods of avoiding trials. While it is true that these Eastern canons, which basically kept the former *SN* norms on arbitration, were not included in the 1983 Latin Code, it is also apparent that the Eastern norms have been consistently praised from the point of view of the administration of justice and, perhaps for this reason alone, those who collaborate on a new Latin Code might be persuaded to have another look.

Conclusion

In view of a possible revision of the 1983 Latin Code, this comparative study of the two Codes of the Catholic Church intended to propose some ways in which the 1990 Eastern Code might serve as a resource in that revision process. Comparative articles written after the promulgation of the Eastern Code have suggested that, in individual cases, the Eastern Code might already be considered as an interpretative aid in clarifying doubts in parallel passages of the Latin Code or in filling legislative gaps in Latin laws made in similar circumstances. Certainly, the two Codes are not so separate and distinct as to be unrelated and the legislator, himself, effectively established a certain interrelationship between them not only by referring to them as integral parts of one body of canon law of the Catholic Church but, also, by codifying that interrelationship in *CCEO* canon 1. Furthermore, the same legislator, who had promulgated the 1983 Code, may well have wished to remedy certain doubts/gaps in the Latin norms when promulgating the 1990 Code. Now, however, in the context of any future revision of the Latin Code, the argument could be made that, in many cases, the later Eastern formulations should simply replace their Latin equivalents in order to resolve ambiguities and fill lacunae in *CIC*. Part I of this paper treated three such cases and proposed the eventual adoption of the clear *CCEO* norms over the earlier *CIC* counterparts.

Comparative law studies serve not only to increase the knowledge of the bodies of law being studied but, also, in the context of the reform of one or the other of those legislative systems, to suggest concrete possibilities for revision or improvement of either legislation. Again,

the two Codes of the Catholic Church cannot be compared as if they belonged to two distinctly separate nations or legislative systems. They have the same legislator whose mind and purpose when enacting laws to govern certain matters were undoubtedly identical. These things considered, part II of the study examined three *CIC* canons and proposed that one simply be omitted while the other two be replaced by the later *CCEO* formulation.

A comparative study of the Eastern and Latin Codes shows that many *CCEO* canons, some even longstanding, find no expression in *CIC*. Just as previous Latin and Eastern codification commissions have drawn upon each other's legislation for inspiration, the same rule will undoubtedly be followed in any future project to reform and improve the Latin Code. Within this perspective, part III of the paper recommended three instances in which *CCEO* should be added to the Latin legislation. In this way, the 1990 Eastern Code will not only prove to be a source and resource for the revision of the Latin legislation but, also, a living and dynamic part of the one body of the Catholic Church's canon law.

APPENDIX I

1. *SN* Norms that are Cited among the Sources to 1983 *CIC* Canons

SN	**'83 *CIC***	***SN***	**'83 *CIC***	***SN***	**'83 CIC**
64	1434	434 §1	1647 §1	468	1671
94, 98	1713	434 §2	1647 §2	469	1672
96, 107	1714	435-439	1649	470, 471	1698 §1
96, 99	1715	441-444	1649	470, 472	1673
120	1716	445 §1	1650 §1	471, 492	1681
134 §1	1452 §2	445 §2,1°	1650 §2	473	1676
177	1484 §2	445 §2,2°	1650 §3	474	1700
192	1499	446	1651	475	1701 §1
207	1646 §3	447	1652	476, 477	1678 §1
226	1501	448 §1	1653 §1	478	1674
404, 9°	1636	448 §2	1653 §2	479	1675
409	1633	448 §3	1653 §3	480	1697
410 §1	1634 §1	449 §1	1654 §1	482	1679
410 §2	1634 §2	449 §2	1654 §2	483-489	1680
412	1635	450 §1	1655 §1	492	1703
413 §1	1637 §1	450 §2	1655 §1	492	1705 §1
413 §3	1637 §4	450 §3	1655 §2	493	1682 §1
414	1637 §2	453-467	1656	494	1683
415 §2	1638	453	1657	495	1684 §1
416	1634 §3	454	1663 §2	496	1685
417 §1	1639 §1	456	1658	498	1686
417 §1	1640	457	1659	499	1687
429	1641	458	1660	500	1688
430	1643	459	1661 §1	501 §1	1709 §1
430	1644 §1	460	1661 §2	501 §2	1710
431 §1	1642 §1	461	1663 §1	502	1708
431 §2	1642 §2	462	1667	503	1710
432 §1	1645 §1	464	1665	504	1711
432 §2	1645 §2	464	1666	505	1709 §2
433	1646 §1	466	1668 §3	506	1712
433	1646 §2	467	1668 §1	536	1723 §1
		467	1668 §2	553, 570	1725

2. *SN* Norms Cited Alone as Sources to 1983 *CIC* Canons

SN	**1983 *CIC* Canons**
64	1434
120	1716
177	1484 §2
192	1499
226	1501
453-467	1656-1668
536	1723 §1
553, 570	1725