

**THE INFLUENCE OF VATICAN II ON CCEO  
TITLE VII, EPARCHIES AND BISHOPS  
CHAPTER I. BISHOPS, c. 178**

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**Michael J. Kuchera, S.J.\***

After a brief introduction stating the subject matter of the two main canons involved, *CIC* 83 c. 381 § 1 and *CCEO* c. 178, there are a few words about the interpretation of these canons. The historical and juridical nature of the topic is presented in three main sections with subsections: I. Vatican I, *spectaculum Deo, Angelis et hominibus*; II. The Period between Vatican I and Vatican II; III. Vatican II, ... *neque vicarii Romanorum pontificum putandi sunt*: The conclusion is that Vatican II offers an *aggiornamento* of jurisdiction as presented at Vatican I and this is incorporated into the juridical tradition of the Oriental Catholic Churches, which must be understood in the context of intermediate hierarchical structures which exist in the Oriental Churches, but not in the Latin Church.

**Introduction**

To be sure, it is the event and the body of doctrine<sup>1</sup> of Vatican II which necessitated the revisions of canonical law which governed

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\* Fr. Michael J. Kuchera, S.J. was born in 1956 in Pennsylvania, U.S.A. He was ordained a priest in 1987 in his native Byzantine Catholic Church of the Eparchy of Passaic, New Jersey, U.S.A. Since 1978 he is a Jesuit of the Maryland Province of the Society of Jesus, U.S.A., currently serving in Rome as the Dean of the Pontifical Oriental Canon Law Faculty at the Pontifical Oriental Institute.

<sup>1</sup>The theme of Vatican II with respect to "*evento and corpus dottrinale*" was developed in a superb talk by Angelo Card. Scola, based in work by Giuseppe Alberigo in *Transizione epocale* (848), at the Convegno Internazionale di Studi *Il Concilio Vaticano II alla luce degli archivi dei Padri Conciliari Nel 50° anniversario dell'apertura del Concilio Vaticano II (1962-1965)*, Città del Vaticano, 3-5 ottobre 2012, "Dagli albori all'apertura del Concilio,

the Western and Eastern Catholic Churches. Such was also the case with Vatican I which necessitated the development of the 1917 Code of Canon Law for the Latin Church and the beginning of a Code for the Oriental Catholic Churches. After Vatican II with the promulgations of the 1983 Latin Code, *Pastor Bonus* of 1988 and the 1990 Oriental Code of Canon Law, the Catholic Church, in its canonical dimension, meets the call of *aggiornamento* requested by John XXIII (1958-1963). Indeed, this was affirmed by John Paul II (1978-2005) in his promulgation of the Oriental Code on 18 October 1990 in *Sacri Canones*.

The *Code of Canons of the Eastern Churches* should be considered as a new complement to the teaching proposed by the Second Vatican Council. By the publication of this Code, the canonical ordering of the whole Church is thus at length completed, following as it does the *Code of Canon Law* of the Latin Church, promulgated in 1983, and the "Apostolic Constitution on the Roman Curia" of 1988, which is added to both Codes as the primary instrument of the Roman Pontiff for "the communion that binds together, as it were, the whole Church" (ap. const. *Pastor bonus*, n. 2).<sup>2</sup>

The influence of Vatican II on the *Codex Canonum Ecclesiarum Orientalium* is seen dramatically in the application of its decree on Eastern Catholic Churches, *Orientalium ecclesiarum* (21 November 1964). The emphasis this decree places on an "aequalitas Ecclesiarum" in the heart of the universal Church is the keynote signalling a significant change in attitude and practice allowing for a legitimate variety regarding discipline in the Catholic Church. The passages in the decree one after another speak not in terms of a *praestantia ritus latini*,<sup>3</sup> but in terms of a *pari pollent dignitate*.

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Note per una lettura del Vaticano II." His point was that there is conformity between "the event and the body of doctrine."

<sup>2</sup>*Code of Canons of the Eastern Churches*, Latin-English Edition, Bangalore, 1995 (XXV).

<sup>3</sup>*Etsi pastoralis* and *Allatae sunt* are usually quoted as codifying the mentality "praestantia ritus latini," despite the fact that Pius IX (1846-1878) sanctioned the opposite conclusion. This was in 1867 on the occasion of a controversy between the two Catholic patriarchs of Antioch, the Melkite and Maronite, where a special commission of prelates completely abandoned the principle of the primacy of the Latin rite and proclaimed an equality of all the rites. Although this may be a *mutatis mutandis* in the

The express wish of Vatican II, reiterated by Paul VI (1963-1978) and Blessed John Paul II, especially in conjunction with the 1990 promulgation of the *Codex Canonum Ecclesiarum Orientalium*, is stated in clear language that: "the Churches of both east and west enjoy the right, and are bound by the duty, to govern themselves in accordance with their own particular rules, seeing that they are recommended by venerable antiquity, are more suited to the customs of their faithful and seem more suitable for assuring the good of souls." Furthermore, "All Eastern Christians should know and be certain that they may and should always preserve their own lawful liturgical rites and way of life, and that changes should be made only by reason of their proper and organic development. All these things are to be observed with the greatest fidelity by Eastern Christians themselves."<sup>4</sup>

In the Oriental Code of Canon Law and the Latin Code the most striking contrast of allowing for different disciplines in the universal

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context of the situation, it may be something more. The more, might be what began to pave the way on the long road to Leo XIII (1878-1903), twenty-seven years later in *Orientalium dignitas* (1894) which abrogated canonical prescriptions based on "praestantia ritus latini." However, at least some of the difficulty remains in that twenty years before 1867, there was a road block, on 11 June 1847, when Pius IX, in the first year of his pontificate, in *Plura sapienter*, no. 4, strongly stated the opposite. Naturally this must be qualified by the advances in Eastern studies undertaken in the time of Pius IX (1846-1878) by I. B. Pitra and those who followed him. For "L'Istruzione di Clemente VIII 'Super Aliquibus Ritibus Graecorum' (1595) e Le Congregazioni per La Riforma dei Greci (1593), see Karalevskij, D. C. (Don Cirillo Karalevskij = C. Korolevskij) *Bessarione*, Fasc. 124-125, Anno XVII, Fasc. 2<sup>o</sup>-3<sup>o</sup>, aprile-settembre, 1913, pp. 344-365 and pp. 466-481. Also see Gatti, C. and Korolevskij, C., *I Riti e Le Chiese Orientali*, vol. I, Genova, 1942, pp. 508-525, especially pp. 508-512. *Ibid.*, p. 513. Read this with, Petrani, A., "An adsit ritus praestantior," *Apollinaris*, vol. VI, Romae, 1933, pp. 74-82. Also see □u□ek, I., "Incidenza del Codex Canonum Ecclesiarum Orientalium nella Storia Moderna della Chiesa Universale," *Understanding the Eastern Code, Kanonika* 8, 1997, pp. 287-288, footnote 46. He does consider the 1932 observations in *Fonti*, fasc. VIII, 1932, p. 259, by Ieromonaco Isidoro, Grottaferrata, who admittedly (p. 264) received the material for the basis of his work from Rev. D. Cirillo Korolevskij. He also considers the 1955 cited work on Benedict XIV of H. L. Hoffmann, but he does not consider the above Gatti - Korolevskij observations from 1942.

<sup>4</sup> *Orientalium Ecclesiarum*, nos. 5 and 6. Norman P. Tanner (ed.), *Decrees of the Ecumenical Councils*, vol. 2, Sheed & Ward and Georgetown University Press, 1990, 902.

Catholic Church is found in CCEO Title XXVII, "Penal Sanctions in the Church." The fact that *poenae latae sententiae* do not exist in the Oriental Code and do exist in the Latin Code is a much discussed difference in the canonical practices of the two Codes.<sup>5</sup> This is a significant difference in "assuring the good of souls" in two different canonical systems.

However the topic of this presentation is about the change which takes place during Vatican II with respect to the notion of a diocesan or eparchial bishop. This is not a difference in the same sense as in the penal law in both Codes, but rather it is a difference in another sense. Namely, Vatican II accepts the practice and understanding of the episcopal office for all Catholics which was preserved in the East, but lost in the West.<sup>6</sup> Previously the Catholic teaching was that the bishop has those powers and faculties which the Roman Pontiff has delegated to him. In this sense the bishop was the vicar of the pope. After Vatican II the diocesan or eparchial bishop is clearly understood as the vicar and legate of Christ and governs the diocese or eparchy by divine right in his own name.

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<sup>5</sup> See *Nuntia* 4, 1977: "Lo schema dei canoni riguardanti le sanzioni penali nelle Chiese Orientali Cattoliche," Sophronio Mudryj, O.S.B.M., Relator.

<sup>6</sup> See □u□ek, I., "Incidenza del *Codex Canonum Ecclesiarum Orientalium* nella storia moderna della Chiesa universale," *Understanding the Eastern Code*, pp. 326-327: "Conclusione - Il *Codex Canonum Ecclesiarum Orientalium* è uno, ma vale per tutte queste ventuno Chiese *sui iuris*. Queste però hanno un denominatore comune, che le distingue tutte allo stesso modo nettamente dalla Chiesa latina e che potrebbe essere indicato come segue: queste Chiese sono rette da gerarchi ed istituzioni giuridiche con un potere dato loro *ad normam iuris* dalla suprema autorità della Chiesa e come una partecipazione alla stessa suprema autorità. Ed è in primo luogo tale *norma iuris* che viene stabilita nel CCEO, che, pertanto, molto opportunamente è unico e comune a tutte queste Chiese, anche prescindendo dal fatto che queste Chiese hanno un proprio comune patrimonio disciplinare contenuto nei « sacri canones » del primo millennio. ... La Chiesa latina, invece, oltre il patrimonio disciplinare assai differente da quello delle Chiese orientali, ha a capo direttamente lo stesso Romano Pontefice, ogni atto del quale nel reggerla promana dal potere primaziale che egli possiede *iure divino*, che non può essere condizionato da alcuna *norma iuris* umana. Pertanto, come già accennato sopra, si direbbe per la Chiesa latina, che essa quasi *ex natura rei* richiede un «Codex Iuris Canonici» a sé stante."

The canon in the Oriental Code on this matter is c. 178:

The eparchial bishop, to whom the eparchy has been entrusted to shepherd in his own name, governs it as the vicar and legate of Christ; the power which he exercises personally in the name of Christ, is proper, ordinary, and immediate, although by the supreme authority of the Church its exercise is ultimately regulated and can be circumscribed within certain limits in view of the benefit of the Church or of the Christian faithful.<sup>7</sup>

The similar canon with considerable difference, but the same sources,<sup>8</sup> in the Latin Code is c. 381 §1:

In the diocese entrusted to his care, the diocesan Bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority.<sup>9</sup>

### **I. Vatican I, *spectaculum Deo, Angelis et hominibus***

**1. ... *supremam potestatem ... , non solum in rebus, quae ad fidem et mores, sed etiam in iis, quae ad disciplinam et regimen ecclesiae ...***

Culminating in the proclamations of Vatican I and until Vatican II the common understanding was that the bishop is the vicar of the pope. Although it must be mentioned that Vatican I never dealt with

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<sup>7</sup> Can. 178 - *Episcopus eparchialis, cui scilicet eparchia nomine proprio pascenda concredita est, eam ut vicarius et legatus Christi regit; potestas, qua ipse nomine Christi personaliter fungitur, est propria, ordinaria et immediata, etsi a suprema Ecclesiae auctoritate exercitium eiusdem potestatis ultimatim regitur et certis limitibus intuitu utilitatis Ecclesiae vel christifidelium circumscribi potest.*

<sup>8</sup> Principally const. *Lumen gentium*, 27; decr. *Christus Dominus* 8. a) [for CCEO, not 8. b)] and 11 with variations in the other particular sources in the two different Codes. However, the understanding in CCEO can. 178 is that the bishop must be seen in relation not only to the supreme pontiff, but also in relation to the patriarchal curia, can. 87. Naturally this is not part of CIC 83 can. 381.

<sup>9</sup> Can. 381 § 1: *Episcopo diocesano in dioecesi ipsi commissa omnis competit potestas ordinaria, propria et immediata, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae reserventur.*

the topic of the bishop as it did with the topic of papal infallibility. However it did state the following which is the background for the teaching of Vatican II.

... Wherefore we teach and declare that, by divine ordinance, the Roman Church possesses a pre-eminence of ordinary power over every other Church, and that this jurisdictional power of the Roman pontiff is both episcopal and immediate. Both clergy and faithful, of whatever rite and dignity, both singly and collectively, are bound to submit to this power by the duty of hierarchical subordination and true obedience, and this not only in matters concerning faith and morals, but also in those which regard the discipline and government of the Church throughout the world. ...

This power of the supreme pontiff by no means detracts from the ordinary and immediate power of episcopal jurisdiction, by which bishops, who have succeeded to the place of the apostles by appointment of the holy Spirit, tend and govern individually the particular flocks which have been assigned to them. On the contrary, this power of theirs is asserted, supported and defended by the supreme and universal pastor; ...

Furthermore, it follows from that supreme power which the Roman pontiff has in governing the whole Church, that he has the right, in the performance of this office of his, to communicate freely with the pastors and flocks of the entire Church, so that they may be taught and guided by him in the way of salvation. ...

... So then, if anyone says that the Roman pontiff has merely an office of supervision and guidance, and not the full and supreme power of jurisdiction over the whole Church, and this not only in matters of faith and morals, but also in those which concern the discipline and government of the Church dispersed throughout the whole world; or that he has only the principal part, but not the absolute fullness, of this supreme power; or that this power of his is not ordinary and immediate both over all and each of the Churches and over all and each of the pastors and faithful: let him be anathema.<sup>10</sup>

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<sup>10</sup> Tanner, N., ed., *Decrees of the Ecumenical Councils*, vol. 2, *Trent to Vatican II*, "Vatican I, 1869-1870, Session 4, 18 July 1870, First dogmatic

## 2. The Historical Perspective of Vatican I

Vatican I is considered the twentieth ecumenical council in the Catholic tradition. It was opened by Pius IX on 8 December 1869. It was suspended on 20 October 1870 after the Fathers were allowed to leave Rome on 20 July. There were about 700 Bishops present at the council, not all participants, with 60 prelates of the Eastern Rites, mostly from the Near East and almost 200 Fathers from outside of Europe with 121 from America, 49 from the United States, 41 from India and the Far East, 18 from Oceania and 9 from the missions in Africa. The prelates from the other parts of the world were about one-third of the council, but many especially the missionaries were European and there were no Western Rite Bishops from Asia or Africa.<sup>11</sup>

The decrees of the council were exclusively doctrinal and not disciplinary. From the outset when the Fathers entered the council they were already divided and would remain so to the end between those who were for infallibility and those who were against it. The outcome of the council was the constitution *Pastor aeternus* which was discussed from 13 May to 16 July in 37 general congregations and solemnly promulgated in the fourth session of the council on 18 July 1870. Of the 535 Fathers the vote was *placet* with the exception of one Italian and one American who voted *non placet*.

Initially when the Fathers gathered for Vatican I many also thought that it was opportune to examine the question of canonical legislation for the Latin Church and perhaps reorganize and modify the existing legislation. Some were in favour of a new codification, others suggested additions to the existing *Corpus*, some called for a simple revision to eliminate parts which were abrogated, some suggested a new body of law be produced in either the form of a Code or, as many Italians wished, in the form of a *Corpus* along traditional lines. However, due to the abrupt suspension of the council the question of codification was not formally discussed and decided upon.

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constitution on the Church of Christ, Chapter 3 on the power and character of the primacy of the Roman pontiff," Georgetown University Press, 1990, 813-815.

<sup>11</sup>Jedin, H. and John Dolan, eds., *History of the Church*, VIII, London, 1981, 318.

Finally a new Latin rite codification was decided upon by Pius X (1903-1914) and outlined in his *Arduum sane munus* of 19 March 1904 in which he nominated a commission of cardinals together with a college of consulters presided over by Msgr. Pietro Gasparri (1852-1934) who was also the secretary of the commission of cardinals.<sup>12</sup> The commission was to collect and coordinate all of the laws of the Church, eliminate the ones which were abrogated or fell into disuse and the commission was to introduce appropriate modifications where necessary. In another constitution of Pius X on 11 April 1904 he said that the work was to concern itself with rules of discipline and it was not to deal with principles of faith. Furthermore the basis of the new Code was to be the *Corpus iuris canonici*, the acts of the council of Trent, pontifical constitutions, decrees of the holy Congregations and Sentences of ecclesiastical tribunals. All of this was to be synthesized into brief and clear canons in Latin.

When the work was completed, the Latin Code was promulgated by pope Benedict XV (1914-1922) with the constitution *Providentissima Mater Ecclesia* on 27 May 1917 and it went into effect on 19 May 1918. The Code was universal in the sense that it was binding for all of the faithful of the Latin Church, but it did not extend to the faithful of the Oriental Catholic Churches which were regulated by their own disciplinary laws. The official interpretation of the Code was entrusted to a commission of cardinals nominated by Benedict XV in the *motu proprio Cum iuris canonici* of 15 September 1917.

The official description of the impending council in 1869 included a hope for Christian unity in the rather non ecumenical spirit of the time.

6. In conclusione possiamo fin d'ora esser certi che nel Concilio ecumenico vaticano coi Vescovi di rito latino siederanno i Vescovi di tutti i riti orientali, armeno, greco-melchita, greco-rumeno, greco-ruteno, greco-bulgaro, siro, siro-caldeo, siro-maronita. L'unità e la cattolicità della Chiesa si vedrà a così dire cogli occhi e sarà veramente *spectaculum Deo, Angelis et hominibus*.

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<sup>12</sup> P. Gasparri, from 1890 he held the Chair of Canon Law at the Institut Catholique of Paris where he taught from 1880 to 1897. He was also Apostolic Delegate in Bolivia and Equador. In 1904 in *La Civiltà Cattolica* (Anno 55°, 1904, vol. 4, pp. 257-276) he published a noteworthy article on "Territory" involving Oriental and Latin Catholics, specifically his opinion on the Catholic protectorate of France in the Orient and the Far Orient.



7. L'unità e la vita che mostrano in sì grande occasione le Chiese orientali unite, e il nuovo spirito che prenderanno al Concilio, colpirà anche gli sguardi delle povere Chiese dell'Oriente separate dall'Unità; e però quand'anche o pochi, o anche niuno dei Vescovi orientali non uniti, venisse al Concilio vaticano, pure questo Concilio recherà a suo tempo grandi vantaggi a tutto l'Oriente. Speranza adunque e preghiera!<sup>13</sup>

### 3. The Oriental Catholic Fathers at Vatican I

The interventions of the Oriental Catholic Fathers are well documented<sup>14</sup> and their remarks help to understand the general Oriental Catholic position on infallibility. This might be summed up basically as against it, but accepted in the end. One outstanding Oriental example, in order to have a sense of the Oriental Catholic position, is that which was expressed by Gregory II Jusof, the Melkite Patriarch (1864-1897). He was against the definition of the primacy of the pope because he saw it as an obstacle to reunion. However he did accept the definition on the condition of the acknowledgement of the rights of the patriarchs as stated in a clause in the acts of the Council of Florence (1439). Afterwards during the pontificate of Leo XIII (1878-1903) Gregory played a very important part in the conference of Oriental patriarchs which was held in 1894. It is also of note that a later successor of Gregory, Patriarch Maximos IV Saigh (1878-1967), played an important part in upholding the traditions of the Catholic patriarchs at Vatican II, especially with respect to their relationship to both the pope and bishops.

Before the opening of Vatican I, Gregory II Jusof in 1866 wrote of the need for reform and also noted the need for an updated law for the Oriental Catholic Churches. He lamented the lack of a canonical Code corresponding to the traditions of each of the various rites and that the ancient canons were no longer practical to follow and consequently the Oriental Catholic Churches, in many areas, applied

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<sup>13</sup> "Cose spettanti al futuro concilio, V. Gli orientali cattolici," *La Civiltà Cattolica*, Vol. VI, 7. Serie, Roma, 1869, (736).

<sup>14</sup> The best work in this area is found in any number of articles in □u□ek, I., *Understanding the Eastern Code*, (Kanonika 8), Pontificio Istituto Orientale, 1997. See for example: "Common Canons and Ecclesial Experience in the Oriental Catholic Churches" (203-238, especially pp. 213-224).

them in an arbitrary manner and consequently many abuses arose. He said: “la mancanza d’un gius canonico proprio, e conforme agli usi di ciascun’ rito, poiche i canoni antichi sono inesequibili e per conseguenza le chiese orientali in molte cose si reggono arbitrariamente, e molti in molte cose si reggono arbitrariamente, e molti altri abusi secondarii.”<sup>15</sup> This sentiment was confirmed in the “Acta commissionis super missionibus et ecclesiis ritus orientalis” of 21 September 1867 which recorded: “Venendo alla parte disciplinare si riflettè che gli Orientali mancano affatto di un codice, che ne regoli la disciplina; e quindi il tutto dipende dagli usi tradizionali, i quail variano secondo l’arbitrio dei patriarchi, e spesso anche de’vescovi.”<sup>16</sup> Continuing along the same lines on 4 December 1868 there was a clear expression for the need for a common Code for all nations.

... che d’altronde il libero, di cui si sente maggiore il bisogno per le chiese orientali, è un codice di diritto canonico, che ne regoli la disciplina, un codice autorevole, complete e generale per tutte le nazioni, e in armonia colle circostanze de’tempi (quale non può dirsi nè il *Pidalion* de’Greci, né il *Pravila* de’Rumeni); che finalmente la compilazione di questo codice sembra essere il compito principale della nostra commissione.

In risposta si avvertì che nello studiare la disciplina orientale non convien preterire i libri specialmente liturgici, potendo questi servire anche a dare lume a quella. ...<sup>17</sup>

Given all of these hopes which were expressed by many, both Orientals and Latins, for a reform in the law of the Church, it was the topic of infallibility which ultimately dominated the council. The political situation in Europe and the place of the pope in the Church and in the new political realities of Europe took center stage. This fact gives rise to the statement that Vatican I was the council of the “pope” and Vatican II became the council of the “bishop.” Perhaps this is an oversimplification, but the understanding of the bishop in Vatican II did issue from the understanding of the pope in Vatican I and this understanding was conditioned by infallibility.

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<sup>15</sup> *Mansi* 49, c. 200 with spellings as in the text.

<sup>16</sup> *Mansi* 49, c. 987 with spellings as in the text.

<sup>17</sup> *Mansi* 49, c. 1012 with spellings as in the text.

As noted above, the vote on infallibility in the end was *placet*, but this was not without reserve by some, especially the Oriental bishops. Gregory II Jusof presents his position and makes his clear distinction between faith and discipline in the matter, a distinction which Vatican II gives prominence to especially in *Orientalium ecclesiarum*. In the following he is writing from Cairo on 8 February 1871 and clearly states his position on the matter.

... Non esito di manifestare la mia illimitata adesione, ed il mio compiuto consentimento a quanto insegna la chiesa cattolica in tutti i suoi concilii, compresi il concilio Vaticano e la IV sessione. Io tengo per fede tutti i dogmi definiti dalla stessa chiesa, compresi quello della infallibile autorità dottrinale del capo visibile della chiesa di Cristo. All'autorità, ed alle doti del successore di Pietro io non mi sono giammai opposto, né mi opporrò, anzi io ho cercato, e cercherò di farle note, e renderle amabili al popolo a me affidato. Dunque la mia fede è quella stessa, che professa la sede di Pietro; ed in questa fede voglio colla divina grazia vivere e morire, perché è la vera, e l'unicamente vera fede, fuor della quale non è salute. In quanto poi alla questione disciplinare, permettendolo v. e. reverendissima, ed avendo riguardo al bene attuale e futuro della religione cattolica in Oriente, ed in specie quei di rito greco, sono obbligato in coscienza di dichiarare che io ritengo quella stessa riserva che il concilio universale di Firenze aveva solennemente proclamato con questa formola (*sic*): *salvis omnibus iuribus et privilegiis patriarcharum ...*<sup>18</sup>

To be sure there were other Oriental voices at the council of a like mind to Gregory II Jusof such as the Patriarch Joseph Audò, the Chaldean Catholic patriarch elected in 1847, who died in Mossoul in 1878. Likewise he strongly argued for a variety in things which were outside the realm of faith, in so far as they are a certain proof of divine virtue and omnipotence in the unity of the Catholic Church. He insisted that his patriarchal Church be given the right to select a time and place to produce a new body of Church laws which corresponded to the venerable canons of antiquity and the postulates of the 16<sup>th</sup> General Congregation of Vatican I and they in turn be

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<sup>18</sup> *Mansi* 53, c. 942.

submitted for the approval of the Fathers.<sup>19</sup> Another Oriental bishop at Vatican I was Joseph Papp-Szilàgyi de Illyésfalva (1814-1873). As the bishop of Oradea Mare (Varadino) he argued for the restoration of ecclesiastical discipline and he also produced an entire Code.<sup>20</sup> In contrast to those already mentioned was the Syrian Archbishop of Mossul (Nineveh), Cyril Behnam Benni who supported a “unicitas disciplinae.”<sup>21</sup>

#### 4. Latin Opposition to an Oriental *varietas* during Vatican I

However, the strongest voice in opposition to the general opinions of the Oriental bishops was the voice of the Italian born Latin Patriarch of Jerusalem, Joseph Valerga (1813-1872), who became patriarch on 1 October 1847. He was in favour of one single Code of canon law for all Latins and Orientals and for the unity of discipline. His position on the relation of a bishop to the pope is clearly put in these words by one eminent scholar:

... Ci sembra di sentire l'eco della tesi della *plenitudo potestatis* del Romano Pontefice, di fronte al quale i vescovi sono dei semplici collaboratori e partecipanti per una concessione papale alla *sollicitudo omnium Ecclesiarum*; è perciò, secondo lui, inescusabile recalcitrare contro gli interventi pontifici

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<sup>19</sup> See: Naz, *Dictionnaire de Droit Canonique*, Vol. III, Paris, 1942, 375-385. CCEO, Praefatio, p. XVI = Joseph VI Aūdū, Babilonia dei Caldei, promosso dal vescovato di Amadia 11 settembre 1849 (*Annuario Pontificio* 1864, Roma, p. 111), pat. 1847 (eletto), 11.IX.1848 (conferma), † Mossoul 14 marzo 1878.

<sup>20</sup> A Greek Romanian, Joseph Papp- Silàgyi, born in Èr-Teresa dioc. of Gran Varadino, “Hungary,” 10 April 1814. The Code he produced is the *Enchiridion juris Ecclesiae Orientalis Catholicae*, Magno-Varadini, 1862, 2° ed. 1880. Other Oriental voices at Vatican I spoke about clerical celibacy. Also see in *Mansi* 50 re. *Discussio schematis de vita et honestate clericorum* (517-700) in general for a *varietas* in discipline: Archbishop Melchior Nasarian of Mardin of the Armenians (563-566 and 683-684); Archbishop Peter Bostani of the Maronites (Tiro and Sidone/Saïd□) (609-612); the Greek Archbishop Stephen Stefanopoli of Philippi (638-642); the Caldean bishop Paul Hindi (“Iazirensis”) (642-644).

<sup>21</sup> See *Mansi* 50, 596-602, *Congregatio generalis vigesima*, 3 February 1870; also see *The Tradition of the Syriac Church of Antioch: Concerning the Primacy and the Prerogatives of St. Peter and His Successors the Roman Pontiffs*, London 1871 (trans. Joseph Gagliardi); also □u□ek, I., *Understanding the Eastern Code*, 221-222.

anche in materia disciplinare; e qui ignora o finge di ignorare la storia dei rapporti fra Roma e l'Oriente del primo millennio. Naturalmente secondo questa concezione non dubita di suggerire le maniere forti per contenere le pretese e salvare quelli che egli crede i diritti della Sede Apostolica. Purtroppo la curia romana scrive ancora una pagina nera nella storia dei rapporti con l'Oriente: e il Valerga in buona parte ne è il diretto responsabile: senza dubbio il più ascoltato a Propaganda per gli affari orientali. ...<sup>22</sup>

This opinion would be corrected by Vatican II, especially in *Orientalium ecclesiarum*.

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<sup>22</sup> Manna, Salvatore. *Chiesa Latina e Chiese Orientali all'epoca del Patriarca Giuseppe Valerga (1813-72)*, Napoli, 1972, pp. XIX-XXV. In a quasi defense of attempting to rationalize Valerga's position, Manna also offers the following regarding: "Valerga e le condizioni delle Missioni, l'esperienza missionaria - ... Si conferma l'impressione negativa nei riguardi degli orientali, incapaci di risolvere da sé le proprie questioni e bisognosi perciò di una mano forte che li sappia guidare. In conclusione, questo primo periodo della sua esperienza missionaria, da un punto di vista che stimoli l'apprezzamento dei valori orientali, è stato fallimentare: sei anni di difficoltà, di lotte, di incomprensioni e di autentica sofferenza. Le soddisfazioni non sono mancate, ma quanti sacrifici: le situazioni trattate più ingarbugliate una dell'altra! Queste tristi esperienze non fanno che confermarlo nella bontà del latinismo, e a questo scopo si adopererà per partecipare alle comunità del Levante i vantaggi di una maggiore organizzazione, di un codice giuridico più completo, di una legislazione più compatta. Quest'opera fu portata avanti grazie alla sua tenacia e ai suoi suggerimenti, piegando resistenze, adottando espedienti, e, senza colpa, misconoscendo talvolta autentici valori. Certo l'ambiente non era l'ideale per un uomo con tali convinzioni sull'Oriente, ma una maggiore malleabilità e minori pregiudizi avrebbero potuto suggerire un atteggiamento più compiacente e distensivo." Also on Valerga and his ideas about a future Code see, Gefaell Chamochín, Pablo. *Dissertatio ad doctoratum (PIO), Il Primo Concilio Vaticano e gli orientali, Voti dei consultori della Commissione preparatoria per le Missioni e le Chiese orientali*, Romae, 2005, Vol. I, pp. I - 281 e Vol. II, pp. I - 681. Specifically: "Valerga, Consultore, *Commissione relativa alle chiese e missioni orientali pel futuro Concilio Ecumenico, Agosto 1869*, "In qual modo debbano essere nel Concilio Ecumenico trattate le materie riguardanti le Chiese di rito Orientale." VOTO di Valerga, in Gefaell, pp. 242 (b.), doc. p. 14. "35. Dovrebbe usarsi ogni cura e diligenza per stabilire, quanto è possibile una disciplina universale e comune per gli Orientali egualmente che pei latini."

It is important to remember that the entire debate about discipline which took place during and after Vatican I was conditioned and carried out within the framework set up in 1862 before Vatican I. Namely, with *Romani Pontifices* of 6 January 1862, the establishment within the Congregation for the Propagation of the Faith a section for Eastern rite affairs with a cardinal *ponens* on a stable basis. This section which gained its independence from Propaganda in 1917 and was defined as it exists today by Paul VI in 1967 played an essential part in maintaining and preserving the legitimate identities of the various rites within the Catholic Church. It is also this same Pontifical Oriental Congregation which played the most significant part in the codification and partial promulgation of Oriental canon law in the intervening years, especially from 5 January 1929 until the opening of Vatican II.<sup>23</sup>

## II. The Period between Vatican I and Vatican II

### 1. *Cleri sanctitati*

The Oriental Catholic canon law legislation between Vatican I and Vatican II which directly deals with what became can. 178 in the current Oriental Catholic Code is found in *Cleri sanctitati* promulgated on 2 June 1957, which went into effect on 25 March 1958. The legislation in general followed the Latin Code of 1917, but at various turns was saved from wholesale "latinization" by various individuals and especially one outstanding one, A. Coussa (1897-1962).<sup>24</sup>

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<sup>23</sup> For this history see especially □u□ek, I., *Understanding the Eastern Code*, *Kanonika* 8, 1997, for "Valerga," pp. 217-219 and for "Romani Pontifices," *Pii IX, Pontificis Maximi, Acta, Pars Prima*, Vol. III., (6.XII.1862), pp. 402-416, especially p. 409: "...Nostris Litteris constituta existat Cardinalis *Ponens* a Nobis, et a Nostris Successoribus stabili modo semper eligendus, qui munere fungatur sedulo dirigendi studia, quae necessaria sunt ad colligendos Ecclesiae orientalis canones et ad examinandos, ubi opus fuerit, omnes orientales libros cuiusque generis sint, sive huiusmodi libri respiciant Sacrorum Bibliorum versiones, sive catechesim, sive disciplinam. ..."

<sup>24</sup> Gabriel Acacius Coussa (1897-1932) was born in Aleppo and died in Rome. He entered the Basilians in Aleppo and was ordained in 1920. He was an adviser to the Congregation for the Oriental Church and a member of the commission for the revision of the Oriental Code. He was ordained a titular bishop of Gerapoli in Syria in 1961, became a cardinal in March 1962 and died in June 1962. He is credited with writing the *Epitome praelectionum de iure ecclesiastico orientali* in two volumes, which he

The first canon in the Latin Code of 1917, with a clear basis in Gratian, Trent and Vatican I,<sup>25</sup> which deals with the bishop is:

Can. 329. § 1. Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis.

The articulation of this matter in *Cleri sanctitati* is:

Can. 392 § 1. Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur, quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis.

The only difference, other than a comma after *praeficiuntur* in *Cleri sanctitati*, in the presentation of the canons in the two “different” canonical systems is in the cited footnotes. The 1917 Code notes Gratian which the Oriental canon does not, but rather it cites *Canones Apostolorum*, 39.<sup>26</sup> Both canons cite Leo XIII, ep. encycl. *Satis cognitum*, 29 iun. 1896. The Latin version also adds other sources from 1794, 1833, 1835, four additional sources from Leo XIII of 1886, 1887, 1888 and 1890 and another congregational source from 1907.

## 2. The Notion of the Bishop as Codified after Vatican I

In general the matter of the notion of the episcopal office with respect to the bishop in the pre Vatican II period might be summarized in the following synthetic form. “Bishops are the successors of the apostles and are placed by divine institution over particular Churches which they govern with ordinary power under the authority of the Roman

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published first in Venice in 1921 and in three volumes in Rome between 1940 and 1950. However, much of this work was from P. Charles Abéla, S.J. (1876-1946) from the Université Saint-Joseph, Beirut, who was also a consulter for the commission for the publication of Oriental canon law, who himself published a study on the canon law of the Melkites.

<sup>25</sup> C. 16, C. XII, q. 1; Conc. Trident., sess. XXIII, *de ordine*, c. 4, can. 8; Conc. Vatican., sess. IV, c. III, *de vi et ratione primatus Romani Pontificis*...

<sup>26</sup> On the matter of sources for the Oriental Code see: □u□ek, I., “The Ancient Oriental Sources of Canon Law and the Modern Legislation for Oriental Catholics,” Rome, especially p. 155 in *Kanon, Jahrbuch der Gesellschaft für das Recht der Ostkirchen*, I, Acta Congressus 1971, Wien, 1973, pp. 147-159.

Pontiff.”<sup>27</sup> The statement summarizes the nature of residential bishops as successors of the apostles, they are of divine origin, they have ordinary power which is by law part of the office itself and their authority is dependent on the Roman Pontiff. The understanding is also that it is in a collective sense that bishops are the successors of the apostles. This means that the body of bishops succeeds to the body of the apostles, “since the collective ordinary power possessed by the episcopate belonged also to the apostles as ordinary power.”<sup>28</sup>

The following three paragraphs<sup>29</sup> are an important interpretation of the matter by two eminent canonists from the pre Vatican II period. These paragraphs are a clear and accurate interpretation of the notion of the episcopal office as codified in the 1917 Latin Code and in *Cleri sanctitati*. Precisely in these lines there is a concise explanation of the place infallibility plays in the understanding of the relationship between pope and bishop(s).

The apostles possessed a twofold power, ordinary and extraordinary, both derived immediately from Christ. The power that was ordinary was the power of presiding over and governing determined churches, subordinate to the power of St. Peter. The power that was extraordinary was the power, peculiarly apostolic, of establishing Churches and of making visitation of those established. The ordinary power only was transmitted to the successors of the apostles, the bishops, with the further qualification that, whereas the apostles received it immediately from Christ with the authority to place themselves at the head of the dioceses they established, of exercising jurisdiction there, and of instituting bishops in them, their successors were and are appointed by the Roman Pontiff and receive jurisdiction immediately from him.

The extraordinary power, that is, the peculiarly apostolic power was personal to the apostles. Their successors did not, therefore, receive it. Only in the case of St. Peter was this power an ordinary power and for that reason it is transmitted

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<sup>27</sup> See Abbo, John and Hannan, Jerome, *The Sacred Canons, A Concise Presentation of the Current Disciplinary Norms of the Church*, Vol. I, 1952, p. 354.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* pp. 354-355.



to his successors. With it is transmitted the prerogative of infallibility, but not the gifts (*carismata*) of miracle-working, inspiration, or revelation.

The power of bishops is, however, proper and ordinary, not merely an authority shared through the Roman Pontiff, as is that enjoyed by vicars apostolic. Bishops, therefore, rule their flocks as true pastors in their own name and with a power inherent in their own persons; but it can be exercised only in the subordination to the supremacy of the Roman Pontiff. However, the latter cannot restrict the power of bishops to the extent that it would be but the semblance of the power and he cannot abolish the Episcopal office altogether, even *de facto*, e.g., by governing the Church exclusively through papal vicars. Even this factual deposition of all bishops would violate the divine constitution (Cf. can. 108 § 3.) of the Church. On the other hand, the Roman Pontiff may, without such unqualified restriction, place limits on the jurisdiction and even on the territorial extent of the dioceses of individual bishops.

### 3. *Episcopus curiae patriarchalis*

At this point it must be acknowledged that during the production of the Oriental Code the preoccupation was not with episcopal power in the same sense as it was in the Latin Church, but rather the concern, one which did not exist in the Latin Church, was the question of Catholic patriarchal jurisdiction.<sup>30</sup> However, naturally this concern was addressed within the context of the theology of episcopal jurisdiction within a particular Church and multiple jurisdiction.<sup>31</sup>

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<sup>30</sup> This is the main difference in *CIC* 83 can. 381 §1d and *CCEO* can. 178, “*Episcopus curiae patriarchalis*” as found previously in *Cleri sanctitati* can. 257.

<sup>31</sup> In the production of the Oriental Code, the single *Coetus (III) de Sacra Hierarchia* dealt with all of the hierarchy within the Catholic Church. Some of the most important literature on the matter of jurisdiction is found in: *Nuntia* 2, 1976, pp. 75-87, *Ecclesia Universalis, Particularis, Singularis*; □u□ek, I., *Kanonika* 8, 1997, *Understanding the Eastern Code*, pp. 94-109, “Le « *ecclesiae sui iuris* » nella revisione del diritto canonico”; *Nuntia* 9, pp. 3-5 (*Cleri sanctitati*), pp. 14-15; *Nuntia* 19, p. 15, points 1-7; *Nuntia* 2, pp. 75-87 (“*Ecclesia universalis, particularis, singularis*”); □u□ek, I., “The Authority

Although this material is too complex in its historical and canonical dimensions to be treated here, it is very important to clearly state that unlike the Latin Church, power in the Oriental Catholic Churches must also be understood in the context of synods and of bishops. Indeed both have power in the East which is not the same case in the West. Consequently, although the essential notion of episcopal power in the canonical systems of both Latin and Oriental Catholic Churches may be identical in the 1917 Latin Code, *Cleri sanctitati*, the 1983 Latin Code and the 1990 Oriental Code, the exercise of the power of episcopal jurisdiction ultimately moves along different “lines” in *CIC 17* and *Cleri sanctitati* and the two post Vatican II Codes.

**I. Vatican II, ... *neque vicarii Romanorum pontificum putandi sunt*:**

**1. *per eam doctrina tradita nullo modo immutata est: Lumen gentium 27 and Christus dominus 8. a) and 11:***

The influence of Vatican II on *CCEO* can. 178 and *CIC* 83 can. 381 § 1 is significant, but perhaps the novelty of the influence is often exaggerated. In the words of Paul VI on 21 November 1964, in his discourse closing the third period of the council he noted that during Vatican II nothing was changed in the traditional doctrine of the Church. It is more a matter of: “What the Church has taught for centuries is what we teach. The only difference is that something that up to now could be found only in the vital activity of the Church is now clearly expressed as doctrine.”<sup>32</sup> Vatican II expounds on the

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and Jurisdiction in the Oriental Catholic Tradition,” *Understanding the Eastern Code*, pp. 459-479 (465-468); Cf. de Vries, W., “The College of Patriarchs,” *Concilium*, vol. 8, 1965, pp. 65-80 [De Vries, W., “Le Collegium Patriarcharum,” *Concilium*, 8, 1965, 63-77.] vs. □u□ek in *Understanding the Eastern Code*, pp. 465-468. De Vries argues: “At the head of each patriarchate stands a bishop who embodies the fullness of episcopal power and in whose favour the other bishops *have renounced* part of their rights for the sake of better government in the Church,” (English version, p. 65). □u□ek’s response is a resounding “no.” Also see Congar, Y. *L’épiscopat et l’Église universelle*, in *Unam Sanctam*, 39 (43-52), Paris, 1962.

<sup>32</sup>“Huius vero promulgationis potissimum commentarium illud esse videtur, quod per eam doctrina tradita nullo modo immutata est. Quod Christus voluit, id ipsum nosmetipsi volumus. Quod erat, permansit. Quae volventibus saeculis Ecclesia docuit, eadem et nos docemus. Tantummodo, id quod antea solum vitae actione continebatur, nunc aperta etiam doctrina exprimitur; quod usque adhuc considerationi, disputationi, atque ex parte etiam controversiis obnoxium erat, in certam doctrinae formulam nunc

notion of the bishop and in a sense completes the work begun by Vatican I on the notion of the pope now with respect to the bishop.

The three principal sources for both the Latin and Oriental Codes on the notion of the bishop are the following:

The bishops govern the churches entrusted to them as vicars and legates of Christ, by counsel persuasion and example and indeed also by authority and sacred power which they make use of only to build up their flock in truth and holiness, remembering that the greater must become as the younger and the leader as one who serves (see Lk. 22, 26-27). This power which they exercise personally in the name of Christ is proper, ordinary and immediate although its exercise is ultimately controlled by the supreme authority of the church and can be circumscribed within certain limits for the good of the church or the faithful. By virtue of this power, bishops have the sacred right and duty before the Lord of making laws for their subjects, of passing judgment on them and of directing everything that concerns the ordering of worship and the apostolate. The pastoral office, that is to say the habitual and daily care of their sheep, is completely entrusted to the bishops and they are not to be considered vicars of the Roman Pontiffs, because they exercise a power that is proper to themselves and most truly are said to be presidents of the peoples they govern. Therefore their power is not destroyed by the supreme and universal power, but on the contrary it is affirmed, strengthened and vindicated by it, since the holy Spirit unfailingly preserves the form of government established in his church by Christ the lord. ...<sup>33</sup>

and

As successors of the apostles, the bishops in the dioceses entrusted to them possess as of right all the ordinary power necessary for the exercise of their pastoral office. This power belongs to them as bishops and rests in their own hands, always without prejudice to the universal power which, in virtue of his office, the Roman pontiff possesses of reserving cases to himself or to some other authority.

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redactum est. ..." AAS 56, 1964, pp. 1009-1010, paraphrase, Abbott, *Documents*, p. 396.

<sup>33</sup> *Constitutio dogmatica de ecclesia, Lumen gentium* 27, Tanner, N., trans., *Decrees* (871).

and

... Individual bishops, to whom the pastoral care of particular churches has been committed, are the proper, official and immediate shepherds of these churches, under the authority of the supreme pontiff. Accordingly they lead their sheep in the name of the Lord by fulfilling their office of teaching, sanctifying and governing them. At the same time, they themselves must recognize the rights which legitimately belong to patriarchs or to other hierarchic authorities.<sup>34</sup>

### 1. *Munus and potestas*

It is necessary to distinguish between the terms *munus* and *potestas* for a basic understanding of the matter. In very general terms *munus* is related to the consecration of the bishop as a vicar of Christ. Whereas *potestas* is related to the *missio canonica* of the exercising of episcopal jurisdiction as the “vicar” of the supreme pontiff, while still maintaining that jurisdiction always in the first place is personal.<sup>35</sup>

Naturally the foundation for the doctrine about a Catholic bishop is based in the tradition and magisterium of the Church, but as always the starting point is sacred scripture. This in no way denies that the Oriental Code of Canon Law is primarily juridical in nature, but the fact is that the basis is always sacred scripture. Due to the social nature of the Church there is a foundation in the authority of jurisdiction. However, the ultimate purpose of the legislation in the Code, based on Roman and Byzantine law, is life with Christ in this world and for all eternity. This is clearly expressed in one of the most important guidelines for the production of the Oriental Code. Namely that the Code principally is to be a *compendium* of laws to guide

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<sup>34</sup> *Decretum de pastoralis episcoporum munere in ecclesia, Christus dominus*, 8. a) and 11, *ibid.* (923-924).

<sup>35</sup> There is a very large body of literature on this, but two authors of help in understanding this matter are the following: Ghirlanda, G., “*Hierarchica Communio*”: *Significato della formula nella “Lumen Gentium,”* *Analecta Gregoriana* 216, Sectio A, n. 9, Roma, 1980, pp. 129-168, 177 and Ghirlanda, “*Il munus regendi del vescovo alla luce del can. 381 § 1 e del Sinodo dei Vescovi del 2001,*” *Periodica de re canonica* 91, Romae, 2002, pp. 677-704. Also see Delhay, Philippe et Léon Elders (eds.). *Episcopale Munus, Recueil d'études sur le ministère épiscopal offertes en hommage à Son Excellence Mgr. J. Gijzen*, Assen, 1982, here see: Gherardini, B. “*Il vescovo, maestro e difensore della fede,*” especially pp. 32-62.

Catholics in their daily Christian lives with the intention of one day being united with God forever in all eternity.<sup>36</sup>

*Christus dominus*, the decree on the pastoral office of bishops in the Church, no. 1, begins by quoting Saints Mathew and Luke: "Christ the Lord, the Son of the living God, came to save his people from their sins (Mt. 1:21) and makes all humanity right with God. As he himself was sent by the Father, so he in turn sent his apostles (Jn. 20:21). To this end he sanctified them, giving them the holy Spirit in order that they too might glorify the Father on earth and bring salvation to people, "for building up the body of Christ" (Eph. 4:12) which is the church."<sup>37</sup> *Lumen gentium*, the dogmatic constitution on the Church, no. 21, concerning the hierarchical constitution of the church and in particular the episcopate, abounds in biblical citations.

### 3. Sacred Scripture, Tradition and Magisterium

The pastoral letters in the New Testament, the two letters to Timothy and the one letter to Titus, are letters addressed by Paul to individuals in charge of particular Churches and thus become points of reference for bishops. Timothy in the area of Ephesus and Titus on Crete, receive instructions from Paul on how to lead the new Christian communities. The letters treat of how important it is to adhere to the traditional deposit of faith, to defend the faith against heretical teachings, to appoint qualified officials in the new communities, to be the custodians of public worship and in general to teach the faithful to be Christian examples in their various states of life. In a variety of canons in both Codes these basic principles find juridical expression.

The juridical distillation of the notion of the bishop in the Catholic Church takes place over long centuries of developments in the tradition and official magisterium of the Church. After Vatican II the formulation is concisely expressed for the Oriental Catholic Churches in the words of CCEO can. 178. As noted above the concern in the Oriental Churches in the Code was to assure a bishop indeed remains a bishop in the true and Catholic sense of the notion of a bishop. This was clearly the preoccupation in the production of the canons in the

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<sup>36</sup> *Nuntia* I, 1973, p. 26: "Nel Codice infatti si deve trovare principalmente un complesso di legge per dirigere i cattolici nella pratica della loro vita Cristiana allo scopo di raggiungere il fine della stessa vita Cristiana, cioè la vita soprannaturale e quindi la vita eterna."

<sup>37</sup> Tanner (trans.), *Decrees*, p. 921.

Oriental Code, especially in Title VII, "Eparchies and Bishops," cann. 177-310.<sup>38</sup>

### Conclusion

The final word on "The Influence of Vatican II on *Codex Canonum Ecclesiarum Orientalium Titulus VII: De eparchiis et de Episcopis, Caput I, De Episcopis, can. 178*" is left to the following words of the pre-eminent Oriental Catholic canonist who was nominated by Paul VI as Pro-Secretary of the Pontifical Commission for the Revision of the Oriental Code of Canon Law (1972-1977), reconfirmed as Secretary of this commission by John Paul I and John Paul II (1978-1990) and following the promulgation of the Oriental Catholic Code, was the Undersecretary of the Pontifical Council for the Interpretation of Legislative Texts (1991-1995). He guided the production of *Codex Canonum Ecclesiarum Orientalium* from the very beginning, through the production itself, to the promulgation and through the early official interpretations. He said the following regarding CCEO can. 178.

One of the chief concerns of the *Code of the Canons of Oriental Churches* is to avoid anything, that could, in one way or another, imply a *diminutio capitis* of oriental bishops in comparison with those of the Latin Church in which there do not exist any hierarchical intermediate organs between the pope and the bishops. This was necessary not only to sustain the principle of 'subsidiarity' which, as I wrote elsewhere, "holds good also in the relations between the heads of the individual Churches and the bishops who in their eparchies should be true bishops", but, first of all, to cut at the very root any possibility of an attempt on the part of patriarchs, metropolitans or synods of bishops, to limit the exercise of bishops' power given to them *iure divino*. The theory of *cedere proprium ius* was explicitly rejected. Canon 178 was introduced into the Code with this scope. It now governs the practice of power and jurisdiction in the Catholic Oriental Churches. The fact that this canon is taken literally from *Lumen gentium* (n. 27), means that it is equally valid for the Latin Church and that there is absolutely no question of any *deminutio capitis* in the bishops of the Catholic East. The fact, however, that it was necessary to include it in the Oriental

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<sup>38</sup> See *Nuntia* 9, pp. 6-8 and *Nuntia* 19, pp. 14-18.

Code, while for the Latin Church it suffices as written in *Lumen gentium*, speaks by itself of the danger that the intermediate hierarchical structures, between the pope and the bishops may be tempted to try to induce bishops to renounce what is not renounceable, or simply arrogate to themselves – may be with the excuse of a unanimity vote in a synod – the rights that Christ has entrusted to bishops.<sup>39</sup>

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<sup>39</sup> □u□ek, I., “The Authority and Jurisdiction in the Oriental Catholic Tradition,” *Understanding the Eastern Code, Kanonika*, 8, 1997, pp. 466-467.