

THE COMMON CANONICAL HERITAGE OF THE CHRISTIAN EAST REVISITED BY VATICAN II

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The author deals with the following points: 1. Drafting of CCEO Canon 2; 2. Scope; 3. Ancient Eastern Law; 4. Sacred Canons and the Orthodox Churches; 5. The Councils and the Fathers; 6. Imperial Legislation; 7. Codification of Ecclesiastical Law; 8. Commentaries and 9. Synodal and Patriarchal Decrees.

Introduction

On the eve of the 13th ordinary synod of bishops dealing with the theme of New Evangelization, and of the opening of the Year of Faith in the 50th anniversary of the Second Vatican Council, we would like here to focus our reflection upon the common canonical heritage of the Churches of the Christian East.

In the light of the Dogmatic Constitution on the Church, *Lumen Gentium*, and the Decree on the Eastern Churches, *Orientalium Ecclesiarum*, the Catholic Church, constituted by all persons who have been baptized and incorporated into Christ by the bonds of the profession of the faith, the sacramental mysteries and ecclesiastical

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governance, guided by the successor of Peter and the bishops in communion with him, is currently governed with the assistance of a twofold legislation: the *Codex Iuris Canonici* (CIC) for the Latin Church¹ and the *Codex Canonum Ecclesiarum Orientalium* (CCEO) for the Eastern Catholic Churches.² To this twofold legislation is added the Apostolic Constitution on the Roman Curia, *Pastor Bonus*,³ in order to complete the one *Corpus Iuris Canonici* of the Catholic Church.

The CCEO, promulgated on October 18, 1990 with the Apostolic Constitution *Sacri Canones* (SC), came into force on the first day of October of the successive year. The constitution SC begins with the following words: “The Sacred Canons are, according to a summary description given by the seventh ecumenical council of Nicea, those that have been put forth by the divine Apostles, as tradition has it, and by the ‘six holy and universal synods and local councils’ as well as by ‘our holy Fathers.’ Hence the Fathers of the same council, which assembled at the See of Nicaea in 787 and was presided over by the legates of our predecessor Hadrian I, confirmed in its first canon ‘the integral and immutable binding force’ of the same sacred canons, ‘rejoicing over them like one who has found rich spoils.’ Indeed, that same council, when it affirmed that the authors of the sacred canons were enlightened ‘by one and the same Spirit’ and had established ‘those things that are beneficial,’ considered those canons to be a single body of ecclesiastical law, and confirmed it as a ‘code’ for all Byzantine or Greek Churches. The Quinisext Synod had previously done this, assembled in the Trullan hall of the city of

¹This Code was promulgated by Pope John Paul II with his Apostolic Constitution *Sacrae Disciplinae Leges* on January 25, 1983, see AAS 75 (1983) *pars secunda*. The English translation is provided by the CLSA, *Code of Canon Law: Latin-English Edition. New English Translation* (Washington, DC: CLSA 2012).

²Promulgated by Pope John Paul II with his Apostolic Constitution *Sacri Canones* on October 18, 1990, see AAS 82 (1990) 1045-1363. The English translation is provided by the CLSA, *Code of Canons of the Eastern Churches: Latin-English Edition* (Washington, DC: CLSA 2001).

³AAS 8 (1988) 841-930. The English translation is found in the mentioned CLSA Codes.

Constantinople in 691, by defining the sphere of these laws more clearly in its second canon.”⁴

The faithful adherence to this sacred patrimony of ecclesiastical discipline has helped to maintain the physiognomy of the Christian East intact.⁵ “It is significant that the Second Vatican Council makes it quite clear that ‘a scrupulous fidelity to the ancient traditions’ together with ‘prayers, good example, better mutual understanding, collaboration and a brotherly regard for what concerns others and their sensibilities’ can contribute most to enable the Eastern Churches in full communion with the Roman Apostolic See to fulfill ‘their special task of fostering the unity of all Christians, particularly of the Eastern Christians’ (OE 24).

“... It should not be forgotten that the Eastern Churches that are not yet in full communion with the Catholic Church are governed by the same and basically single heritage of canonical discipline, namely, the ‘sacred canons’ of the first centuries of the Church.”⁶ The same council underlined that, “To the Eastern Churches maintaining communion with the Apostolic Roman See belongs the special responsibility of furthering the unity of all Christians, especially Eastern Christians, according to the principles of this synod’s Decree on Ecumenism, firstly with prayers, then by the examples of their life, religious fidelity towards ancient Eastern traditions, better mutual understanding, working together and a sensitive appreciation of realities and feelings” (OE 24).

Its authors affirm that, consequently, “The new Code is not at all an obstacle, but rather a great help” [to the general problem of the ecumenical movement]. Indeed, this Code protects that fundamental right of the human person, namely, of professing the faith in whatever their rite, drawn frequently from their very mother’s womb, which is the rule of all ‘ecumenism.’ Nor should we neglect that the Eastern Catholic Churches, discharging the tranquility of order desired by the Second Vatican Council, ‘are to flourish and fulfill their role entrusted to them with a new apostolic vigor” (OE

⁴ CCEO *Latin-English Edition*, XXI.

⁵ Address of Pope Paul VI to the Assembly of the Pontifical Commission for the Revision of the Eastern Code, AAS 66 (1974) 245.

⁶ CCEO *Latin-English Edition*, XXII.

1).⁷ The CCEO then, “must be assessed most of all according to the ancient law of the Eastern Churches,”⁸ a principle which is codified in can. 2, “The canons of the Code, in which the ancient law of the Eastern Churches has been mostly received or adapted, are to be assessed chiefly by that law.”⁹

1. Drafting of CCEO Canon 2

The first draft of this canon examined by the Pontifical Commission for Reviewing the Code of the Eastern Law was the eighth canon of the Initial Texts of 1945¹⁰, which was almost identical to the 1917/CIC can. 17¹¹:

“§1. Canons merely referring to ancient law, must be interpreted by the authority of that ancient law; §2. Canons only in part congruent with ancient law, as such, must be interpreted by the authority of that ancient law; if they are discordant, must be decided by means of its own sentence of the words; §3. In doubt, when some prescript of canons is discordant from ancient law, it shall not go back (for interpretation) to that ancient law.”

Canon eight of the Initial Texts becomes canon six of the General Norms¹²: “§1. Except for the prescripts of the canons of the Fundamental Law of the Church, when this code enters into force, all the laws and norms given by any authority and pertaining to matters regulated by this code are abrogated; §2. The canons however of this code, as far as they refer to the ancient law, must also be interpreted in the light of the received canonical tradition.”

This canon helps to carry out the necessary connection between the ancient law of the Eastern Churches and the new Code. The term *ius vetus* was intentionally replaced by the term *ius antiquum* in order to avoid the impression that the ancient law is by now old and thus totally outdated.

⁷ CCEO Latin-English Edition, XXII-XXIII.

⁸ CCEO Latin-English Edition, XXIII.

⁹ CCEO c.2.

¹⁰ *Nuntia* 2 (1976) 55-56.

¹¹ Edward Peters (Curator), *The 1917 Pio-Benedictine Code of Canon Law* (San Francisco: Ignatius Press 2001) 35.

¹² *Nuntia* 10 (1980) 90; 19 (1984) 21.

Emmanuel Lanne criticized the fact that the new codification emphasizes the separation between history and law: "We conclude this first examination in order to answer to the question: Is the new Eastern code going to favour the return to the authentic traditions of the Eastern Churches in disciplinary matters? How can this be asserted, since the new code, following the plan of the Fundamental Law of the Church and the new Latin code, emphasizes the divorce between history and the law that unfortunately marked the 1917 Latin code?"¹³

The *denua recognitio* offers an explanation by means of canon 1 bis¹⁴: "The canons of this Code, wherein a large part of the ancient law of the Eastern Churches is received or adapted, must be chiefly appraised by means of that law."

Three members of the pontifical consultation proposed replacing *aestimandi* (appraised) with *interpretandi* (interpreted). A fourth member proposed this new formulation: "The ancient law of the Eastern Churches must be thus/so received, just as it is received and interpreted in this Code."

In addition to these proposals the Secretariat of the Commission *ex officio* offered a reformulation of the canon, as it was necessary to affirm explicitly that the four Motu Proprios promulgated by Pope Pius XII¹⁵ (not completely reflecting the Eastern tradition) and many particular laws (often Latinized) are about to be repealed by the future Code.

The text proposed by the Secretariat reads: "§1. The canons of this Code, whereas in many canons the ancient law of the Eastern Churches is received or interpreted, must be appraised by this law."

The Study Group found itself in agreement on the opportunity to manifest the *mens* regarding the *continuitas iuris* by which the future Eastern code was conceived, and to explicitly declare that the

¹³ *Irenikon* 54 (1981) 496-585; also Carl Fürst, *La preparazione dell'edizione di un Codex Canonum Ecclesiarum Orientalium*. (AA. VV., *Ius in Vita et Missione Ecclesiae*. Roma: Vatican Press 1994) 753-761.

¹⁴ *Nuntia* 22 (1986) 14; 17-19.

¹⁵ *Crebrae allatae*, February 22, 1949; *Sollicitudinem nostram*, January 6, 1950; *Postquam apostolicis*, February 9, 1952; *Cleri sanctitati*, June 2, 1957. Partial English translation by Victor Pospishil, *Law on Persons*, Philadelphia 1960; *Law on Marriage*, Philadelphia 1962.

antiquum ius Orientalium Ecclesiarum is the fundamental parameter for its appraisal. There was though a modification added in the substitution of the term *interpretatur* with *accommodatur* in order to emphasize that even the updating of the *ius antiquum* should not be considered as a separation from it, but instead, as an appropriate evolution of tradition, in conformity with the principle enunciated by Pope Paul VI in his 1974 Allocution to the Members of the Commission, “Any renewal must always have coherence and concordance with the sound tradition, so that the new norms appear not as a foreign body violently joined in the ecclesiastical connection, but almost spontaneously blossoming from the existing norms.”¹⁶

In the end, we have canon two, where the term *ex hoc* is replaced with *ex illo* in order to make the *mens* still clearer, and *in quo* is changed with *in quibus*.¹⁷

2. Scope

Having considered can. 2, we can assert that the ancient law of the Eastern Churches is the fundamental parameter for the assessment of the CCEO. This code can also be source of a supplementary law foreseen for plugging the *lacunae legis* as indicated in can. 1501, where there is an explicit reference to the ancient canons of the Synods and the holy Fathers: “If an express prescript of law is lacking in a certain matter, a case, unless it is penal, must be resolved according to the canons of the Synods and the holy Fathers, legitimate custom, the general principles of canon law applied with equity, ecclesiastical jurisprudence, and the common and constant canonical doctrine.”¹⁸ The corresponding norm of the CIC is can. 19: “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.”¹⁹ The CCEO replaces *legibus latis in similibus* of CIC with *secundum canones synodorum et sanctorum patrum*. And this is not a little difference.

¹⁶ *Nuntia* 22 (1986) 17-19.

¹⁷ *Nuntia* 24-25 (1987) 1 and *Nuntia* 28 (1989) 14.

¹⁸ CCEO *Latin-English Edition*, can. 1501, p. 522.

¹⁹ CIC *Latin-English Edition*, can. 19, p. 10.

The apostolic constitution *Sacri Canones* clearly says: "We consider that this Code, which we now promulgate, must be considered to be assessed most of all according to the ancient law of the Eastern Churches."²⁰ This implies that the new common discipline of the Eastern Catholic Churches has to faithfully follow the sacred patrimony of the Eastern ecclesiastical discipline of the undivided Church of the first millennium, with the necessary adaptations to the present circumstances. George Nedungatt subtly draws to our attention that "ancient law is conceptually vaster than sacred canons and includes also customs, norms of *typica*, prescriptions of *euchologia*, rules, statutes and the like."²¹

The corresponding canon of the CIC, can. 6 §2, reads: "Insofar as they repeat former law, the canons of this Code must be assessed also in accord with canonical tradition." The canon considers the possibility to refer to the ancient law inasmuch as the Code reports this law in order to value its continuity.²² The CCEO, instead, establishes that *praecipue* one has to consider the *ius antiquum*, as it is received or adapted by the new Code²³ which also values the continuity of law.

Canon 2 draws its inspiration particularly from the Decree on the Eastern Churches of Vatican II which, by referring to the liturgical rites and discipline of the Easterners, says: "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 [...] and if for reasons of circumstances, times or persons they have fallen unduly short of this they should have recourse to their age-old traditions"(OE 6).²⁴ The same Council

²⁰ CCEO *Latin-English Edition*, XXIII.

²¹ George Nedungatt, "Ancient Law in CCEO: The Interpretation of Canon Two," in AA.VV., *Ius Canonium in Oriente et occidente* (Frankfurt: Peter Lang, 2003) 87-115, hic 94.

²² Dimitri Salachas-Luigi Sabbarese, *Codificazione latina e orientale e canoni preliminari* (Roma: Urbaniana University Press, 2003) 240-251.

²³ Francisco Urrutia, "Canones praeliminares CIC. Comparatio cum canonibus praeliminaribus CCEO," *Periodica* 81 (1992) 174-177; *Nuntia* 22 (1986) 18-19.

²⁴ Norman Tanner, (Editor), *Decrees of the Ecumenical Councils* (Washington, DC: Georgetown University Press, 1990) II, 902.

“confirms and commends the ancient legislation in force in the Eastern Churches concerning the sacraments as well as the practice which pertains to their celebration and administration” (OE 12).

In this perspective, can. 40 §1, motivated by the Decree *Orientalium Ecclesiarum*, mandates that “Hierarchs who preside over Churches *sui iuris* and all other hierarchs are to care with the greatest diligence for the faithful and accurate observance of their own rite; nor are they to allow changes to be made in it except by reason of its organic progress; they are nonetheless to keep in mind mutual goodwill and the unity of Christians.”²⁵ Appropriately, can. 657 §4 establishes that, “In making changes in liturgical texts, attention is to be paid to can. 40 §1.”²⁶ This means that every eventual liturgical adaptation is to be based on a careful study of the sources, an objective acquaintance of the proper cultural peculiarities, the maintenance of the common tradition of the appropriate Church *sui iuris*.²⁷ Moreover, this “[...] implies taking into account first of all the roots from which the heritage of these Churches was initially developed, mainly in Jerusalem, Alexandria, Antioch, Constantinople, Armenia, and in the ancient empire of Persia; and secondly, the manner in which such traditions were transmitted, adapted to the various circumstances and places but maintained in a coherent, organic continuity.”²⁸

As for the hierarchical institutions of the Eastern Churches, the Second Vatican Council pauses in a special way over the ancient institution of the patriarchal Churches and establishes that “The patriarchal function has been flourishing in the Church from the earliest times, already recognized by the first ecumenical councils [...]. Therefore this Council decrees that their rights and privileges be restored in accordance with the ancient traditions of each Church and the decrees of ecumenical councils. These rights and privileges are those which were in force at the time of the union between East

²⁵ CCEO c. 40.

²⁶ CCEO c. 657.

²⁷ John Paul II, *Homily at the Incense Prayer*, August 14, 1988, in SICO Suppl. ai nn. 485-556, 24.

²⁸ Congregation for the Eastern Churches, *Instruction for Applying the Liturgical Prescriptions of the Code of Canons of the Eastern Churches* (Città del Vaticano: Libreria Editrice Vaticana 1996) 12; see also *Nuntia* 1 (1975) 6.

and the West, although they may have to be to some extent adapted to modern conditions.”²⁹

3. Ancient Eastern Law

The twenty canons of the Council of Nicea I (325) are at the basis of the existence of an already well consolidated and recognized disciplinary norm by all the Churches. Indeed the Nicean Council takes account of such set of norms expressed not only in the *antiqua consuetudo* (can. 6), but also in a very famous *ecclesiastica regula* (cann. 2, 6, 10, 16), in the *regula* (cann. 9, 15, 17, 18, 19), in the canones (can. 9) and in the *lex antiqua regularisque* (can. 13). However, one is not in a position to clearly indicate the documents in which such set of norms can be found. Among the probable documents it could be indicated as sure *regulae*, the *Didaché* and the *Didascalia Apostolorum*, several of the *Canones Apostolorum*, and the canons of the Synods of Ancyra (314) and of Neocesarea (314-319). To these one could add the canons of a few Church Fathers, with a reservation about their legal value, as those of Dionysius of Alexandria (+ 264), Gregory of Neocesarea (+ 270) and Peter of Alexandria (+ 311).

After the Council of Nicea the disciplinary norm was enriched with the canons of the Ecumenical Councils of Constantinople I (381) and Ephesus (431), and with the canons of the Synods of Gangra (340), Antioch (341), Laodicea (end of 4th century), Constantinople (391), Sardica (343-344) and Carthage (393-419).

Furthermore, before the Council of Chalcedon there existed the “canons” of Athanasius of Alexandria (+ 379), Basil the Great (+ 379), Timothy of Alexandria (+ 385), Gregory of Nyssa (+ 395), Gregory of Nazianzus (+ 390), Amphilochius of Iconium (+ 394), Theophilus of Alexandria (+ 412), and Cyril of Alexandria (+ 444).

Although the “canons” of these Church Fathers at the beginning of the fifth century did not have canonical force in the strict sense of the term in all the Christian East, nevertheless they were followed in the territories where they had jurisdiction.

With the first canon of the Council of Chalcedon a series of about three hundred canons, enacted by previous local synods, was officially confirmed as binding for all the Church. As a result, one can say that this conciliar statement constitutes the first common

²⁹ Tanner, op. cit., II, 903-904.

Codex Canonum available to all Byzantine or Greek Churches:³⁰ Canones Apostolorum, 85; Nicea I, 20; Ancyra, 25; Neocesarea, 14; Gangra, 20; Antioch, 25; Sardica, 21; Constantinople I, 7; Laodicea, 59; Ephesus, 8; Chalcedon, 34; Total canons: three hundred-fourteen.

The Christian Eastern Empire, through the Council in Trullo (691),³¹ reached what can be truly called a code of canons common to all its Churches, along with the one hundred and two canons enacted by same conciliar assembly. The "Trullan Code" was confirmed, together with the twenty-two new canons³², by the Fathers of the Second Nicene Council of 787, which was presided by the legates of Pope Hadrian I. Later on, to this collection were added another twenty-one canons, those of Tarasius of Constantinople (+ 806), the Protodeutero Synod (861), and the Synod of Agia Sophia (879).

The second Trullan canon establishes: "It is the most noble and serious resolve of this holy council that the eighty-five canons which have come down to us under the name of the holy and glorious Apostles, received and confirmed by the holy and blessed Fathers before us, should henceforth remain firm and secure, for the healing of souls and curing of passions. [...] We confirm also all the other sacred canons which have been set forth by the holy and blessed Fathers [...]."

This canon then endorses the ecumenical authority of the following canonical sources: a) The Sacred Canons of the Apostles (c. 400), the 85 canons which were formulated in agreement with apostolic tradition by some disciples of the Apostles. These canons deal with conciliar matters and previous canonical collections. b) The Sacred Canons of the ecumenical councils of Nicea I (325), 20 canons; Constantinople I (381), 7 canons; Ephesus (431), 8 canons; Chalcedon (451), 30 canons. c) The Sacred Canons of the local Synods: Ancyra (314), 25 canons; Neocesarea (314/319), 14 canons; Gangra (340), 20 canons; Antioch of Syria (341), 25 canons; Laodicea of Frygia (347-381), 59 canons; Sardica (343-344), 21 canons; Carthage (419), 133 canons; Constantinople (394), 1 canon. d) The Sacred Canons of the

³⁰ Ivan Ćirković, *Understanding the Eastern Code* (Roma: PIO, 1997) 66-327, hic 270; Wilfried Hartmann (ed.), *The History of Byzantine and Eastern Canon Law to 1500* (Washington: Catholic University Press, 2012).

³¹ George Nedungatt (Editor), *The Council in Trullo Revisited* (Rome: PIO, 1995) 64-69.

³² Tanner, op. cit., I, 138-139.

Holy Fathers: Dionysus of Alexandria, 4 canons; Peter of Alexandria, 15 canons; Gregory of Neocesarea, 11 canons; Athanasius the Great, 5 canons; Basil the Great, 96 canons; Gregory of Nyssa, 8 canons; Gregory the Theologian, 1 canon; Amphylochius of Iconium, 1 canon; Timotheus of Alexandria, 29 canons; Theophylus of Alexandria, 14 canons; Cyril of Alexandria, 8 canons; Gennadius of Constantinople, 1 canon.

It goes without saying that to all these one should add the 102 canons of the Trullan Council and the 22 of the Second Nicean Council.

The first canon of the Second Nicean Council (787) confirms the Trullan action when says, "For those to whom the priestly dignity is allotted, the guide-lines contained in the canonical regulations are testimonies and directives. [...] We joyfully embrace the sacred canons and we maintain complete and unshaken their regulation, both those expounded by those trumpets of the Spirit, the Apostles worthy of all praise, and those from the six holy universal synods and from the synods assembled locally for the promulgation of such decrees, and from our holy fathers."³³

Among the sources of the CCEO, besides the Sacred Canons, there are the canons of canonical collections, the norms of the Roman imperial legislation of the East, the canons of the western councils, the decrees and instructions of the Roman pontiff and his curial dicasteries, the canons of the four *motu proprio*s by Pius XII - *Crebrae Allatae, Sollicitudinem Nostram, Postquam Apostolicis, Cleri Sanctitati*, the canons and decrees of the synods of the various Eastern Churches, and the constitutions and decrees of the Second Vatican Council.³⁴

4. Sacred Canons and the Orthodox Churches

In order to know Byzantine ecclesiological thought it is necessary to go to the canonical sources: conciliar decrees, commentaries, and later synodal legislation. Even imperial laws concerning the Church, inasmuch as they were accepted as guiding principles of

³³ Ibid.

³⁴ *Codex Canonum Ecclesiarum Orientalium, Fontium Annotatione Auctus* (Città del Vaticano: Libreria Editrice Vaticana, 1995).

ecclesiastical polity, often witness to ecclesiastical consciousness essentially identical to that of the conciliar canons.³⁵

Viewed from a juridical viewpoint, the entire body of Byzantine canonical sources hardly constitutes a coherent whole. The attempts at codification are far from exhaustive and do not eliminate important contradictions. They were never intended to provide the Byzantine Church with a complete *corpus iuris*. Many Western polemicists have pointed to this state of affairs as an essential weakness of Eastern Christianity, which has failed to provide itself with an independent and consistent canon law, and, thus, has surrendered to the power of the state. These judgments, however, have generally taken for granted that the Church is a divine institution whose internal existence could be adequately defined in juridical terms, a presupposition which Byzantine Christians did not consider. For them the Church was, first of all, a sacramental communion with God in Christ and in the Spirit, whose membership is not limited to the earthly *oikoumene* (the inhabited world) where law governs society, but includes the host of angels and saints, as well as the divine head. The management of the earthly Church was certainly recognized as a necessary task, and there the use of juridical terms and concepts was unavoidable; but these concepts never exhausted the ultimate reality of the Church of God, and could be determined occasionally by the councils, or even left to the benevolent and, in principle, Christian care of the emperors.

This attitude did not mean, however, that the Byzantines were either indifferent towards the canons or juridically incompetent. Quite the contrary. They were generally aware that at least certain canons reflected the eternal and divine nature of the Church, and that it was a Christian and absolute duty to obey them. Yet, Roman traditions were always strong enough in Byzantium to maintain almost permanently a series of highly competent ecclesiastical jurists who advised the emperors on decrees regarding the Church, and also introduced principles of Roman Law into ecclesiastical legislation and jurisprudence.

³⁵ John Meyendorff, *Byzantine Theology: Historical Trends and Doctrinal Themes* (New York: Fordham University Press 1974) 79-90; Pavlos Menevissoglou, *Historical Introduction to the Canons of the Orthodox Church* (Stockholm: Iera Metropolis 1990); Panteleimom Rodopoulos, *An Overview of Orthodox Canon Law* (Rollinsford, NH: Orthodox Research Institute 2007).

5. The Councils and the Fathers

The standard Byzantine canonical collection, which will also form the basis of canon law in Slavic countries and in the modern Orthodox Church, the so-called "Nomocanon in Fourteen Titles," contains the same canons endorsed by the Trullan and Nicean II Councils, that is, the Apostolic Canons, (a series of 85 disciplinary rules introduced in the Church of Constantinople by Patriarch John III Scholasticus in 575), the Canons of the Ecumenical Councils, the Canons of the local Councils (with the later addition of the 17 canons of Constantinople [859-861] - also known as "first-second," because the two councils of 859 and 861 were conveniently considered as a single assembly - and the 3 canons of Constantinople (879-880), and then the Canons of the Holy Fathers.

6. Imperial Legislation

The *Codex* and the *Leges Novellae* contain a series of laws concerning the Church which cover a much wider range of ecclesiastical functions and activities than does the entire conciliar legislation before and after Justinian (483-565).³⁶

It was self-evident that, in principle, there could be no contradiction between ecclesiastical canons and imperial laws. Later, though, Byzantine commentators admitted the possibility of a contradiction between them; in that case the canons were to be preferred. In fact, the emperors were not above either the dogmas or the canons of the Church.

After the *Codex* and the *Leges Novellae*, other important collections of laws relevant for the Church are the *Ecloga* (selection of legislative texts) of the Isaurians, issued between 739 and 741, which includes modifications of Justinian's legislation, especially in marriage and divorce matters. Basil I (867-886) published major legislative texts, the *Procheiron* (handbook of laws) which appeared between 870 and 878, was a handbook for jurists which contains laws on marriage and on ecclesiastical affairs. The so-called *Basilics*, which appeared partly under Basil I and partly under Leo VI, reproduced some of Justinian's laws, but omitted others, thus making a selection important for medieval Byzantine and Slavic ecclesiastical practices. The *Epanagogé* (recapitulation of the law) is well known for its

³⁶E. Chrysos, *Ecclesiastical Polity of Justinian*, (Thessaloniki: Analecta Vladaton 1969); Pierre Noailles, *Les collections de Nouvelles de l'empereur Justinien*, 2 vols. (Paris, 1912-14).

description of the emperor and the patriarch of Constantinople as the most eminent and the most necessary members of society; it also contains legislation on matters of clerical discipline, on the legal status of Church property, and on marital law.³⁷

7. Codification of Ecclesiastical Law

Patriarch John III Scholasticus of Constantinople (565-577) is credited with having composed a *Collection of Fifty Titles* which divided the conciliar canons according to subjects, as well as a parallel collection of imperial laws, divided into eighty seven chapters (*Collectio LXXXVII Capitulorum*). The end of the 6th century was marked by the appearance of another anonymous collection similar to that of John Scholasticus', but subdivided into fourteen titles, with a parallel collection of imperial laws under the same headings. The anonymous author was familiar with the work of a Western contemporary and colleague, the monk Dionysius Exiguus (+555), the author of the first Latin collection of conciliar canons, and adopted from him the so-called *African Canonical Code* known as the *Canons of the Council of Carthage*. The entire work of John Scholasticus, as well as that of the anonymous author, was re-edited and completed in the following centuries in the form of *Nomocanons*.

The *Nomocanon in Fifty Titles* covered a much greater number of texts, and, in general, gave greater satisfaction to generations of canonists. Moreover, it often served as a basis for later canonical commentaries. Both *Nomocanons* were translated in Slavic. The *Nomocanon in Fourteen Titles* served as the basis for the standard Slavic canonical collection, the so-called *Kormchaya Kniga*.³⁸

Several canonical handbooks circulated throughout the Byzantine world, including a *Canonical Synopsis* by Stephan of Ephesus, dating probably from the 6th century and a collection of consecutive canons, *Akolouthia ton nomon*, comprising the original text of canons exposed in a chronological order up to the convocation of the Council of Chalcedon. In the 14th century, two jurists of Thessalonica published systematic collections in which canons were clearly separated from imperial laws: Constantine Harmenopoulos, known for his *Hexabiblon*, also compiled an *Epitome* of canons; and

³⁷ Meyendorff, op. cit.

³⁸ Ivan Ćuk, *Kormčaja kniga* (Roma: PIO 1964); Edward Farrugia (Editor), *Dizionario Enciclopedico dell'Oriente Cristiano* (Roma: PIO 2000); Spiros Troianos, *The Sources of Byzantine Law* (Athens 1999).

Matthew Blastares composed a canonical collection, accompanied by numerous newer documents and critical articles on canonical issues.

8. Commentaries

Under the reign of John II Comnenos (1118-1143), the scholar John Zonaras composed a commentary on the anonymous canonical collection in fourteen titles, clarifying the disciplinary texts in order of importance.

A contemporary of Zonaras, Alexius Aristenos, composed a more literal and shorter commentary based on an abbreviated collection or epitome of canons. His aim was to explain the meaning of the texts in their historical setting.

The third great commentator of the twelfth century, Theodore Balsamon, in his major work based on the *Nomocanon* of Photius, pursued a specific task entrusted to him by Emperor Manuel I Comnenos (1143-1180) and Ecumenical Patriarch Michael of Anchialos (1170-1178): a coordination between ecclesiastical and imperial legislation.

Among the later canonical collections it is necessary to mention particularly the *Pedalion* (The Rudder). It was composed in the year 1793 by the Athonite hieromonks Agapius and Nicodemus. This collection was published first in 1800, but because of the interpolation of personal views on the part of the publishers, was condemned by the author and by the Patriarchal Synod. It was then published a second time, with the approval of the Patriarchal Synod in 1841. Alongside the text of each canon are displayed any corresponding canons and a detailed interpretation of the relevant canon. Finally, as an appendix, instructions and teachings are added concerning: a) the degree of kinship and b) types of different letters and epistles of an ecclesiastical nature.

The most important of all the writings concerning the sources of the collections of the Canon Law of the Orthodox Church in recent times is the collection approved by the Patriarch of Constantinople and the most important Autocephalous Churches, which thus have validity and authority over all and bears the title: *Syntagma of the Divine and Sacred Canons*. This collection was published in Athens between the years 1852-1859, in six volumes, by George Rallis and Michael Potlis. The first volume contains the *Nomocanon* of Photios, while the second includes the Canons of the Holy Apostles and of the Ecumenical Councils. The third volume includes the Canons of the

Local Synods and the fourth comprises the Canons of the Holy Fathers and the canonical responses of the canonists Theodore Balsamon (+ 1195) and John Zonaras (+1180). The fifth volume contains canonical ordinances by the Ecumenical Patriarchs from the year 911 until 1835, a table of the episcopal thrones of the Orthodox Church and various other matters. The sixth volume presents the *Syntagma kata Stoicheion* (Alphabetical Treatise) by Matthew Blastares (+1346) in twenty-four sections, most of them subdivided into chapters.

The *Syntagma* by Rallis and Potlis is the best work ever published on the canonical sources of Orthodox Church Law.

9. Synodal and Patriarchal Decrees

During the entire Byzantine period, the patriarch of Constantinople was the *de facto* head of the Greek Church as a whole. His authority was first described as a “privilege of honor after the Bishop of Rome” (First Council of Constantinople [381], can. 3); the Council of Chalcedon [451] in its can. 28 spoke of privileges “equal” to those of Rome and gave to the bishop of the capital a wide patriarchal jurisdiction, as well as a right to receive appeals against the judgments of regional primates. The major doctrinal issues, however, were resolved in Constantinople by the patriarch and the bishops who, around him, constituted the permanent synod.³⁹ Major decisions of this permanent magisterium are included in the *Synodikon* of Orthodoxy, a lengthy liturgical text which, since the year 843, has been read in all churches on the first Sunday of Lent and commemorates the end of the iconoclasm.

Conclusion

The Orthodox Churches have always tenaciously maintained intact these canons, despite all the ups and downs of history, and thus caring for their own existence and growth. These canons are an integral part of the culture of the nations which constitute these Churches. During the intervening centuries the “sacred canons” mentioned by the second canon of the Trullan Council have remained unaltered in those ecclesiastical legislations. It is all about faith for a Christian Orthodox. The conviction that puts the supreme authority of the Church in the ecumenical council, especially when it promulgates canons dealing with ecclesiastical polity. The council

³⁹ Joseph Hajjar, *Le synode permanent* (Rome: PIO 1979).

fathers act under the influence of the Holy Spirit, and therefore in the Orthodox ethos these canons are rightly called sacred and immutable "enlightened by one and the same Spirit" (Second Council of Nicaea, can. 1).⁴⁰

The Sacred Canons of the first millennium, confirmed in the year 787 by the Council Fathers of Nicaea, are the common heritage of the whole Greek and Latin Church. This appeal to the common roots of all Churches to their disciplinary heritage, fundamentally one and unique, has an extraordinary ecumenical import. Since the solicitude to re-establish full visible unity among all Christians belongs to the *pleroma* of the Church, all Christian faithful, especially the Shepherds of the Church, must pray the Lord for this desired unity and openly participate in the ecumenical activity prompted by the Holy Spirit.

⁴⁰ Tanner, *op. cit.*, I, 138-139.