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POSSIBLE FUTURE CHANGES NEEDED ON "RELIGIOUS" IN CCEO AND OTHER SECTIONS IN BOTH CIC AND CCEO

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Codes of Canon Law are subject to change and reform. The author encourages canonists to review a few areas like, CCEO Title XII: Religious and Other Institutes, CIC c. 579: Erection of a new Institute of Con. Life, concepts of Synodality, Ecumenism, Papal Primacy, Priestly Celibacy, Penalties in CCEO and CIC. Therefore, inspired by the research on the studied opinions of some eminent canonists of today, he invites the canonists and theologians to make a collective effort for reform and this search need not be a finished act but a work in progress.

Introduction

What is the Role of Theologians in Magisterium? The role of theologians is explained in CCEO c 606 (no parallel in CIC): "It is for the theologians, given their profound understanding of the mystery of salvation and their expertise in the sacred and related sciences as well as in current questions, to explain and defend the faith of the Church and to pave the way for doctrinal progress, while faithfully submitting to the authentic magisterium of the Church and at the same time availing themselves of proper freedom"(CCEO c. 606 §1). It is the call

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and role of theologians to build up the faith community, a faith that is operative in justice and love. They are invited to cooperate with the bishops in the common task of building up the Church as a community of faith. But their legitimate freedom is guaranteed by the canon by the usage "availing themselves of proper freedom," so that theirs can be an unfettered, genuine service to pave the way for doctrinal progress.

The East is East and the West is West: The "East is East, and the West is West, the twain shall never meet."[1] This pessimistic view of Rudyard Kipling stresses the differences between the East and the West. It has its corrective counterpart in the aphorism "*Ex oriente lux*" (Light from the East), which fascinated the poet-pope John Paul II, who issued an apostolic letter "*Orientale Lumen*" (2 May 1995). This Pope also liked to use the metaphor of two lungs of the Church: the Eastern and the Western: the Church should breathe with both its lungs in order to be healthy. During the first millennium of union between the East and the West, the Church did breathe with both lungs and was healthy. But after the breach of unity between the Orthodox East and the Catholic West in 1054, mutual estrangement prevented the Church from breathing with two lungs.[2]

The great programme of *aggiornamento* set in motion by Pope John XXIII and the sensitivity to the needs of our changing times prompt us to ask several critical questions demanding significant revision to the Codes of Canon Law as CIC (1983) has elapsed more than three decades, and CCEO (1990) reaching three decades after their promulgation. There are several canonists and theologians who urge the Church for revision of the Codes of Canon Law[3]. Let me bring out some of the areas, which need rethinking and revision in the conceptual level as well as in the practice of the Church. Some are basically theological questions which need to be accommodated in the Codes of Canon Law because, our legal frame work, i.e. the body of Canon Law (CIC/1983, PB/1988 & CCEO/1990) is the end result of

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[1] Rudyard Kipling, "The Ballad of East and West," in *Barrack Room Ballads, Departmental Ditties, and Other Ballads and Verses* (New York: Alex Grosset and Co., 1899) 11-17.

[2] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," in A. Loretan, F. Wilfred (eds.*), Revision of the Codes: An Indian European Dialogu* (Zurich: LIT Verlag GmbH & Co K G Wien 2018) 211-212.

[3] The international journal *Concilium* dedicates the issue of 2016/5 only for Revision of Canon Law.

the theological transformation that has taken place with and after the Second Vatican Council.

1. CCEO Title XII: Religious & Other Institutes of Consecrated Life

In the years after the promulgation of CCEO, the more serious defects of the legislation contained in the canons of its title XII came to be noticed when it was put into practice by religious communities all over the world. In particular it has been found from experience that the norms of this code regarding the formation and apostolate of religious who are not called to the monastic life ("*ceteri religioisi*") are very defective. These religious serve the Church dedicating themselves to various kinds of apostolate according to their constitutions or statutes. They have reported encountering with two difficulties. First, too short a period has been allowed by CCEO for formation in specialized fields of modern apostolate, which is often the only form of evangelization practicable today in several countries like India. However, whereas CIC c. 657 §2 allows a maximum period of nine years of formation between the first profession and the final profession, the corresponding CCEO c. 526 §2 limits this formation to a maximum of six years, the same as allowed for monks called principally to "divine praises" (*laudes divinae*, "choir"), not apostolate. The frequent and high number of requests for dispensation from the provision of this canon that have been submitted to the Congregation for the Oriental Churches is indirect proof that the law has been badly made and is in need of revision.

A second serious defect of CCEO Title XII is the almost total lack of proper norms regarding the exercise of apostolate by these religious ("*ceteri religioisi*"). This defect has been brought to the attention of all, including the ecclesiastical hierarchy and the religious themselves, particularly through certain regrettable conflicts arising chiefly because of the lacunose legislation of the Eastern Code. While CIC has codified the conciliar and post-conciliar norms on the apostolate of religious, CCEO on the contrary has overlooked them, with its focus on monastic life regarded effectively as the *analogatum princeps* of religious life. It is necessary that CCEO too, contain adequate norms regarding both due submission of religious to the local hierarch on the one hand and the "*justa autonomia*" of religious institutes on the other. This can easily be done by including the relevant norms of CIC in CCEO, without disturbing the order and the number of the canons of CCEO.

1.1 What are the Weak Areas of Title XII which Need Correction?[4]

(i) It is clear that the apostolate of religious is common to the Eastern Catholic Churches. As such, it should have been regulated in the common code CCEO, according to the first draft of the ten guidelines for the revision of the Eastern code.[5]
(ii) CCEO has no parallel section as we found in CIC and says almost nothing about the apostolate of the monks and the other religious. This is not an oversight but a consequence of the idealization of monasticism as *fuga mundi*.[6]
(iii) The work of the codification of CCEO was completed by 1989, when communism fell in countries like Ukraine. Study group V drafted canons for the situation in which, as Minsci (chair person of study group V) wrote, "la vita monastica tradizionale è scomparsa nella maggior parte di quelle Chiese, avendo gli antichi istituti religiosi optato per un ordinamento *ad instar* degli Ordini latini."[7]
(iv) The radical call of the CCEO to revitalise the monastic life through the oriental religious institutes presents certain problems today. First of all, although the monastic life seems to be well exposed in the CCEO as a major form, certainly like the origin as well as specimen of others, it seems that there are at present only a few monasteries as they are exposed in the code itself. Certainly, it is to be noted that the then prevailing monastic orders at the promulgation of the *MP PAL* in 1952, have nearly all been declared non-monastic in 1955. To the extent that, all of them changed their organization in accordance with one of the types of the religious institutes of the Latin Church, i.e., -monastery, order, congregation, society without vows - whose apostolate they wished to emulate within their own Churches. They are dedicated, namely, to the works of apostolate. This is signified by the Holy See's declaration itself (*Annuario Pontificio*, (1991) pp. 1362; 1365-1368). Though the Orders and Congregations are of Latin origin, they are the treasures of the universal Church as monasteries of the Oriental Churches are part and parcel of the patrimony of the universal Church. In the modern era, the apostolic religious institutes have served and have continued to serve the needs of the Oriental Churches in accomplishing their apostolates. In order to

[4] Varghese Koluthara, "The Apostolate of Religious in CCEO: A Critical Appraisal," in G. Ruyssen & S. Kokkaravalayil (eds.), *Il CCEO-Strumento Per Il Futuro Delle Chiese Orientali Cattoliche,* Kanonika 25 (Roma: PIO, 2017) 243-272.

[5] *Nuntia* 3 (1976) 3-18.

[6] Cf., G. Nedungatt, "The Eastern Code on the Apostolate of Religious needs Revision," *Ius Ecclesiae* XXIV/2 (2012) 389.

[7] Cf., *Nuntia* 4 (1977) 4.

revitalize the monastic values of the Eastern religious life, it will be impossible to bring out radical changes in the legal structure of the religious institutes like orders and congregations prevailing today in the Oriental Churches without destroying their specific charism and the related apostolates.[8]

(v) We do not find any specific norms in CCEO regarding the formation of the religious who are not monks. Some of these norms may be suitable for monks but not for other religious. Between the first profession (temporary) and the final (perpetual) profession in orders and congregations CCEO c. 526 §2 allows a maximum time span of six years ("numquam ad tempus quod ... sexennio longius est"). This may not work out well with the religious institutes, which are constitutionally oriented toward various kinds of apostolate.[9]

(vi) To be in the framework of "*fuga maundi,*" cannot be a helpful norm for the manifold apostolate of other religious. Its basic error is monasticism the "*analogatum principes*" of religious life. Religious institutes especially of women, which undertake manifold woks of charity and social services today, have to form their temporarily professed sisters in various apostolates. While the sisters often get their professional training in the same specialized institutions, the Latin sisters are allowed enough time for their formation by CIC c. 657 §2 up to a maximum of nine years: "*iuxta ius proprium, prorogari potest, ita tamen ut totum tempus, quo sodalis votis temporariis adstringitur, non superet novennium*." Thus the Latin religious can attend to the professional training and religious formation across nine years before their final (perpetual) profession. The Orientals, however, are constrained by a six year deadline set by CCEO c. 526 §2: "*complexive numquam ad tempus, quod triennio brevius vel sexennio longius est, extendatur*." This restriction appears strange especially since no restriction is set by CCEO on the time span before perpetual profession in monasteries.[10]

(vii) Regrettably, CCEO does not allow Oriental religious dedicated to apostolate sufficient time to devote themselves to professional formation. The law forces them to interrupt their training or rush

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[8] Cf., Varghese Koluthara, *Rightful Autonomy of Religious Institutes: A Comparative Study Based on the Code of Canons of the Oriental Churches and Code of Canon Law* (Bangalore: Institute of Oriental Canon Law) 209-210.

[9] Cf., G. Nedungatt, "The Eastern Code on the Apostolate of Religious needs Revision," 390.

[10] G. Nedungatt, "The Eastern Code on the Apostolate of Religious needs Revision," 390-91.

through in order to evade this sword of Damocles, the final profession is sometimes done in haste with little or no preparation during the vacation. Alternatively, recourse is made to the Congregation for the Oriental Churches for dispensation. The high number of these recourses that reached the Congregation for the Oriental Churches is evidence that the law is badly made. Not seldom has this affected negatively the genuine religious formation of the candidates when the preparation for perpetual profession had to be rushed through. The Congregation for the Oriental Churches, too, seems to have got tired of handling these numerous recourses: in response to a recent recourse, the Congregation authorized a Superior General to grant herself the dispensation to the concerned religious. Surely, a law requiring frequent recourses or dispensations is a bad law and is in need of revision.[11]

(viii) Even for Secular Institutes, the rule of 6 years is prescribed for making final profession after the first vow or bond (CCEO c. 526, §2; cf., Caritas Secular Institute, Kottayam, Kerala, *Constitutions* n. 88, 39[12]). This provision of CCEO is totally contradicting the spirit of the freedom that is allowed for the Secular Institutes in the Church. Secular Institutes is a typology of the consecrated life well dealt both in CCEO and CIC. The latter has given the provision for extending after first profession up to nine years, if it seems opportune, taking into account the time needed for formation and education that is to be followed up for taking up a specific ministry (CIC c. 656, §2). Whatever is prescribed in CIC for the religious institutes is also applicable for the Secular Institutes. But in CCEO what is prescribed for monks, who do not have apostolate and who are leading a cloistered life, is six years, which is also made binding on the Secular Institutes. According to the teachings of the conciliar and post-conciliar teachings of Vatican II, the Secular Institutes are allowed to have the freedom to remain in the world and act as leaven in the world. Essential to the tradition of most secular institutes 'is the conviction that the members are to exercise the apostolates in many ways and carry out manifold ministerial tasks which are related to

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[11] G. Nedungatt, "The Eastern Code on the Apostolate of Religious needs Revision," 391.

[12] Soly Mathew, "Consecration and Secular Character of Secular Institutes in CCEO and CIC with special reference to the Constitutions of the Caritas Secular Institute" (Unpublished LOCL Thesis, Bangalore: Institute of Oriental Canon Law, Dharmaram Vidya Kshetram, 2017) 119.

their own professional lives'.[13] Therefore, they need more time for preparing themselves for taking up apostolates. They are also not having public vows. Their consecration is only private and it can be expressed in terms of bonds, oaths or promises, or semi public vows. It shows that they have the right in the Church to be more free and flexible. This flexibility and freedom is blocked by CCEO by asking them to make their final incorporation within six years after their initial act of incorporation in a Secular Institute. It shows the defect of CCEO in this section, and it needs correction.

(ix) At the final draft of the CCEO, the Societies of Apostolic Life[14] was a missing typology in CCEO. Only at the last moment when the draft[15] was submitted to Pope John Paul II a single canon (CCEO c. 572) was added[16] to it and the rest of the legal provision which is due to this typology is left to the discretion of the law makers of particular law of each Church *sui iuris*. It also shows another weakness of the Title XII of CCEO and a lacuna of the same whereby typology of the Societies of Apostolic Life is lacking the common referral point in the common Code of Eastern Churches. It shows that the *coetus* on Title XII of CCEO did not pay a comprehensive attention to the different typologies existing in the Oriental Catholic Churches. May be the preoccupation for bringing back the monastic trends of the Oriental Churches to its pristine glory, might have sidetracked the other typologies in the formulation of the CCEO. No substantial reports are

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[13] David f. O' Connor, *Witness and Service*, New York/ Mahwah, N J: Paulist Press, 1990, 21.

[14] Missionaries of St. Thomas is a vibrant Society of Apostolic Life in the Syro-Malabar Church with the thrust of apostolic and missionary zeal, by which new evangelization is taking place in the context of India.

[15] There was no corresponding canon in 1986 Draft of *Codex Iuris Canonici Orientalis*. Sebastian Vadakkel, now bishop of Ujjain, North India, noted in his doctoral dissertation on the statutes of the Missionary Society of St Thomas (MST), the practical difficulties that would be created for MST, destined to work mostly in areas under Latin Jurisdiction, if the Oriental Code contained no norm at all, which MST could invoke but had to rely simply on the particular law of Syro Malabar Church (SMC). Prof. G. Nedungatt SJ advised him to move his Superior General to have recourse to the Pope. The Pope ordered the insertion of a canon. As cited in Varghese Koluthara, "Code of Particular Laws of the Syro- Malabar Church," *Kanon* XXIII (2014) 120.

[16] Boby Kochuparambil, "Societies of Apostolic Life in CCEO and CIC and Societies of Common Life according to the Manner of Religious of CCEO," (Unpublished LOCL Thesis, Institute of Oriental Canon Law, Dharmaram Vidya Kshetram, Bangalore 2013) 35.

available regarding the dynamism of *coetus* on Title XII of the PCCICOR in this regard.

In the same context, CIC provides a comprehensive picture regarding the typology of the Societies of Apostolic Life. It is true that Societies of Apostolic Life is not a form of consecrated life. It is only 'appropriating' it. At the same time, in the context of apostolates they play a great role in a Church *sui iuris*. This typology should have been given substantial importance especially when the missionary thrust of the remnant Oriental Catholic Churches is envisaged. The best example is the Missionary Society of St. Thomas (MST), a Society of Apostolic Life of the Syro-Malabar Church. It is a vibrant society doing exemplary evangelization apostolates in the mission areas of the Syro-Malabar Church. Often it is said that it is left to the discretion of the Particular Law of a Church *sui iuris* to enact further norms on it. It is not a correct methodology. It is because a typology with its full-fledged details can provide a model or a referral point in CCEO to make particular laws applicable to the *ethos* of each Oriental Catholic Churches. This is lacking in CCEO. Therefore, it is a lacuna. If this lacuna is not corrected in the common Code, each Churches *sui iuris* may lack the detailed reference point in CCEO to make the particular law on the Societies of Apostolic Life. For example, in the Particular Code of the Syro-Malabar Church, the particular statutes of the MST are being copied *verbatim* for the typology of the Societies of Apostolic Life. Then, if MST changes its statutes in their general synaxis, would this section on the Societies of Apostolic Life of the Particular Law of the Syro-Malabar Church also change *ipso iure*?[17] Then, it becomes a defect of the Particular Law. Therefore, it is another *lacuna* of Title XII of CCEO which calls for correction.

(x) The title XII of CCEO is 'Monks and Other Religious as well as Members of Other Institutes of Consecrated Life', and it is unwieldy and lengthy. There should have been a canon, which should have worked out as a canon knitting together the different typologies envisaged in the title. Instead, it begins directly with the chapter one and it is titled 'Monks and other Religious as well as members of other institutes of consecrated life' and the addressing canon of Title XII of CCEO is 410. Logically, it should have been a canon linking all these typologies that are dealt under the long title and this canon could have connected harmoniously chapters one, two, three and four successively. It is lacking in CCEO and it gives scope for correction.

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[17] Varghese Koluthara, "Code of Particular Law of the Syro-Malabar Church," 121.

2. Some observations on CIC canon 579: **Erection of a New Institute of Consecrated Life**[18]

According to CIC c. 579, the diocesan bishop is competent to erect a new Institute of consecrated life or a Society of Apostolic life of diocesan right (CIC c. 579: Diocesan bishops, each in his own territory, can erect institutes of consecrated life by formal decree, provided that the Apostolic See has been consulted.) Each word or phrase in this canon is important:

a) 'Diocesan bishops': it is the bishop, who is the residential bishop of a diocese who has this competence. Hence, no auxiliary or a coadjutor bishop, nor an administrator of a diocese can erect an Institute.

b) 'Each in his territory': that means a diocesan bishop can erect a new Institute that is founded in his diocese or that has its principal house and principal activities in it. No bishop can erect an Institute that is in fact outside his own diocesan territory, as the competence of each diocesan bishop is strictly territorial. Unfortunately, there are instances of a new group which, though founded in a particular place, goes in search of a "benevolent bishop," because his own bishop is not in favour of it. Sometimes it finds one in some other diocese, sometimes even in some other country. Such situations are canonically irregular and go against the spirit of CIC c. 579.

c) 'The erection is through a motivated decree of the bishop himself': by doing this, the bishop assumes all the canonical responsibilities towards the new group as prescribed in CIC.

d) 'Provided that the Apostolic See has been consulted': this prior consultation of the Apostolic See before erecting a new Institute of consecrated life is an obligation. The Congregation for the Institutes of Consecrated Life and Societies of Apostolic Life has been interpreting it as necessary for the legitimacy of the erection, and not for its validity. (This interpretation apparently goes against the prescriptions of CIC c. 127, §2, n. 2). This was the traditional interpretation followed until recently. Accordingly, even if a bishop erected an Institute without consulting the Holy See, it was valid, though illicit and

[18] Jose Koonamparambil CMF, an official in the Congregation of the Propaganda Fide and at present a senior canonist and Head of the Juridical Commission of the Dicastery, communicated his observation on this canon to me through through my email id on 11 October 2019. The entire text is reproduced here.

imprudent. The consultation gives the bishop the possibility to get a qualified opinion on the proposed action and it could help him to make a better discernment. There are cases in which bishops have not followed this canon and have erected Institutes which did not have even the minimum of canonical requirements. Due to this situation, on 11 May 2016, Pope Francis gave a Rescript, promulgated by the Secretary of State, according to which the consultation required by CIC c. 579 is obligatory *ad validitatem*. Consequently, the non-observance of this canon will now invalidate the eventual erection of a new Institute of consecrated life. Here again, the opinion of the Apostolic See is not binding on the bishop. In other words, if the bishop erects a new Institute without the *nihil obstat* or a positive opinion of the Apostolic See, after the due consultation, the erection would be valid. This situation needs to be modified, so that only groups with all the mandatory canonical requirements receive formal approval. Unfortunately, there are bishops who go ahead in erecting new groups without a serious and objective discernment.

2.1. Erection of Public Associations:

The life of a new Institute or Society begins normally as Pious Union, which later obtains the approval (erection) of the diocesan bishop as a Public Association, with the intention to become an Institute or Society. Here, according to the present canonical norms, the diocesan bishop has complete freedom of action. One notices, however, that some Associations are founded and approved without a proper and authentic charism and discernment. Naturally, many innocent young men or women may be attracted to these new groups. Often it also happens that candidates dismissed from other institutes or others who left them for serious reasons find acceptance in a new "Association." Later these candidates make the profession or, in the case of clerical Associations, some are ordained Deacons and Presbyters. There are already a number of such Associations that have very serious problems of discipline created by such members. The higher ecclesiastical authorities get the information about these problems too late, then, it will be very difficult and sometimes impossible to rectify the anomalies. Thus, there are cases in which the Apostolic See had to intervene suppressing an Association.

According to CIC c. 312 §1, n. 3, the diocesan bishop, according to his discretion, can erect such Associations, even those that intend to become an Institute of consecrated life or a Society of Apostolic Life. It would be recommendable that before erecting an Association that intends of becoming an Institute of Consecrated Life or a Society of

Apostolic Life, the diocesan bishop consults the Apostolic See. Such a new provision will help to avoid the founding and approval of Associations that do not have the minimum canonical requirements.

3. Some New Changes to CIC and to CCEO

Several canons of both the codes have already been revised under Pope John Paul II, Pope Benedict XVI and Pope Francis. Recently, some changes were introduced in both the codes by the present pope. With apostolic letters given on 15 August 2015 in the form of *motu proprios Mitis Iudex Dominus Iesus* for the Latin Church and *Mitis et misericors Jesus* for the Oriental Churches Pope Francis reformed the canons pertaining to cases regarding the nullity of marriage.

3.1. *De concordia inter Codices*

With a third apostolic letter issued on 31 May 2016 given in the form of motu proprio ***De concordia inter Codices***,[19] Pope Francis also modified some norms of CIC such as c. 111 (ascription of children to a Church *sui iuris:* CCEO c. 29 §1); CIC c. 112 (formalities for transfer to another Church: CCEO c. 36); CIC c. 1109 (faculties to bless marriages of subjects and non-subjects: CCEO c. 829 §1); CIC c. 1112 (diocesan bishop can delegate lay people to attend marriages with the favourable vote of the episcopal conference and with a license from the Holy See - no parallel canon in CCEO) without prejudice to the provision of CIC c. 1108 §3: "Only the priest attends validly the marriages between two Eastern parties, or between a Latin party and an Eastern party, whether Catholic or non-Catholic;" CIC c. 1127 (the form of mixed marriage with a non-Catholic party of Eastern rite, the intervention of a priest is required for validity - CCEO c. 834), are fully replaced by new texts; second paragraph of CIC c. 535 is entirely replaced (enrollments/transfers recorded in baptismal register - CCEO c. 37); second number of the first paragraph of CIC c. 868 is fully replaced and a new third paragraph is added to it (baptizing Orthodox children - CCEO c. 681 §5); CIC c. 1108 will have a third paragraph (only a

[19] Pope Francis, Apo. Letter, MP, *De concordia inter Codices,* 31 May 2016: AAS 108(2016) 602-605; English text is taken from *Justitia*: Dharmaram Journal of Canon Law, vol. 8, no. 1 (June 2017) 41-48; Job Abbas, *De Concordia inter Codices, Justitia*: Dharmaram Journal of Canon Law, vol. 8, no. 1 (June 2017) 15-41; Pablo Gafaell, "Harmonizing Two Codes: Open Legal Issues," and "The Relationship between CIC 1983 and CCEO 1990 in the Light of the PCLT's Explanatory Note," in *Harmonizing the Canons* (Dharmaram Canonical Studies 16), Bengaluru: Institute of Oriental Canon Law, 2016, 03- 35.

priest validly assists at marriages of Easterners - CCEO c. 828); first paragraph of CIC c. 1111 is totally replaced by a new text (the local ordinary and the parish priest can delegate); CIC c. 1116 will have a third paragraph (blessing marriages of Orthodox faithful - CCEO c. 833 §§1-2).

3.2. Common Canons in CIC and CCEO Indicating the Need for Revision

Several canons in both codes (CIC and CCEO) are the same. Some have to be inevitably so, since Eastern Catholic Churches together with the Latin Church or Western Catholic Church constitute the same Roman Catholic Church. Thus, most of the canons on the sacraments, Supreme Church authority (Ecumenical councils, Roman Pontiff) are the same. The general norms in both the codes are mostly the same but there are some striking differences too for example, CCEO c. 1506 §1; CIC c. 23.

The first change was the addition of a paragraph to canon 750 of CIC (CCEO c. 598) introducing a new category of ecclesiastical magisterium, namely definitive and non infallible teaching. This category was created by Pope John Paul II to cover his teaching that women could not be ordained to ministerial priesthood, a papal teaching that has not convinced all theologians.[20] But more changes will be needed in the canons in both the codes regarding the Roman Pontiff, who as was frankly admitted by Pope Paul VI, is the first hurdle in ecumenism. If an ecumenical breakthrough were to happen that readies the divided Churches to form and be united in one Church as "*Una Sancta*" several canons including those on papal primacy (CIC c. 331; CCEO c. 43) and the infallible magisterium of the Pope (CIC c. 749; CCEO c. 597) will need revision. Such a revision, if it is possible at all, will be the task of theologians in the first place, or rather a matter of interdisciplinary co-operation between theologians, historians, and canonists.[21]

4. Some Canons in CCEO with no Counterparts in CIC (1983)

There are some canons in CCEO with no counterparts and in CIC vice versa. For example, there are canons on election of bishops in CCEO but not in CIC. The CIC canons on cardinals (cc. 349-359) and on papal delegates (cc. 362 - 367) have no counterparts in CCEO. The title

[20] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 226.
[21] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 226.

"*Vicarius Christi*"[22] was initially an episcopal title common to all bishops. It was reserved to the Pope by Innocent III (1198-1216). The Second Vatican Council applied the title '*vicarii Christi*' also to the bishops: "the bishops govern the Churches entrusted to them as vicars and legates of Christ" (*LG* 27). Following the council, the Eastern Code uses the title *Vicarius Christi* for the Supreme Pontiff and bishops (CCEO cc. 43; 178); but the CIC applies only to the Roman Pontiff (c. 331), not to the bishops (c. 375 §1) following the popular usage.

There is no corresponding canon in CIC for CCEO c. 27 on Churches *sui iuris* and CCEO c. 28 on rites. Another canon is on theologians (CCEO c. 606) and also on publication of books (CCEO c. 661 §1).

Now, Let me present the following themes for better deliberations and for making a backdrop for revision of the Codes of Canon Law.

5. Legislative Power, Judicial Power and Particular Law

In the Eastern Patriarchal and Major Archiepiscopal Churches the synod of bishops has legislative power and can make particular laws that are not contrary to the common law (CCEO cc. 110; 150 §2). These synods also have judicial power, and they function as a tribunal, which is the ecclesiastical equivalent of a High Court in India. It consists of a body of five bishops elected by the synod of bishops of these Churches for a period of five years (CCEO c. 1062). This tribunal can judge contentious cases involving even bishops (CCEO c. 1060 §2), whereas in the Latin Church cases involving bishops are reserved to the Roman See (CIC c. 1405). The Episcopal conferences (CIC cc. 449-459) are the Latin counterparts of the synods of the Patriarchal and Major Archiepiscopal Churches. These synods enjoy legislative or judicial powers whereas the Episcopal conferences have no such powers. The decisions of the Episcopal conferences can have legal force only if approved by a two-third majority and confirmed by the Roman Apostolic See (CIC c. 455 §2). Thus, with the centralization of power in the Roman See, the autonomy of the local Churches is reduced to the minimum in the Latin Church. In short, while the CIC is the code of a highly centralized Church and the CCEO is a code that

[22] Cf., Michele Maccarone, *Vicarius Christi*: *Storia del titulo papale,* (Romae: Fac. Theologica Pontificii Athenaei Lateranenis, 1952): "Vicarius," (vicar) is a title of Roman Law meaning *vicem gerens,* "a substitute, deputy, or proxy." The apostles are qualified as 'vicars' of Christ in Roman liturgy, Preface of the Apostles (as cited in, G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 226).

applies extensively the 'principle of subsidiarity,' thus, leaving ample areas of freedom in the Eastern Catholic Churches.[23]

6. The concept of Synodality

The concept "synodality" has been a topic of frequent discussion by Pope Francis particularly during the previous Ordinary synod[24] of bishops on young people, the faith, and the vocational discernment in October 2018. From the period of its apostolic origins, the Church realized that the Gospel message had not been entrusted to an individual, but to a community of believers, a Church. A cursory examination of ecclesiastical history reveals that when questions arose regarding doctrine or morality, it has been the common practice of the Church leadership to assemble, deliberate and decide upon such matters under the guidance of the Holy Spirit (Acts. 15.2). This decision-making procedure was incorporated into the institutional life of the Church in the form of synods and councils.[25] Pope Francis addressing at the Ceremony of commemorating the fiftieth anniversary of the institution of the synod of bishops said:

> Syondality, as a constitutive element of the Church, offers us the most appropriate interpretive framework for understanding the hierarchical ministry itself. If we understand, as St. John Chrysostom says, that 'Church and Synod are synonymous,' in as much as the Church is nothing other than the 'journeying together' of God's flock along the paths of history towards the encounter with Christ the Lord… The world in which we live and which we are called to love and serve, even with its contradictions, demands that the Church strengthen cooperation in all areas of her mission. It is precisely this path of synodality which God expects of the Church of the third millennium.[26]

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[23] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 223.

[24] The word 'synod' originates etymologically from two Greek words such as '*syn*' meaning 'together' and '*odos*' meaning 'way'. The Oriental Churches traditionally considered that in synods when the fathers of the Church deliberate together for the welfare of the people of God they would be 'walking together' in 'the same way' as the Holy Spirit hovers over them and their deliberations were traditionally called *sacri canones.*

[25] John D Faris, *Eastern Catholic Churches: Constitution and Governance*, New York: St. Maron Publications, 1992, 278-279.

[26] Cf. http://w2.Vatican.va/content/Francesco/en/speeches/2015/October/documents/papa-francesco_20151017_50-anniversario-sinodo.html as cited by John D Faris, " The Exercise of Roman Primacy and the Communion of Churches," in G. Ruyssen & S. Kokkaravalayil (eds.), *Il CCEO-Strumento*

The synod of bishops is an innovation of the Second Vatican Council, when Pope Paul VI established the institution in 1965.[27] Synodality, as defined by the International Theological Commission in 2018, is "the action of the Spirit in the communion of the Body of Christ and in the missionary journey of the people of God." Quoting Saint Chrysostom, Pope Francis made a commitment to build a "synodal Church." Let this Synodal Church be well defined and be made a working principle for Church governance in both the Codes of Canon Law, though Synodal governance is functional according to the Code of the Canons of the Eastern Church. Thus, it is beneficial to reflect on how the synod of bishops can most effectively assist the Bishop of Rome as he fosters *communio* in the universal Church.[28] In the words of Pope Francis synodality is the path of hierarchical ministry for the Church in the third millennium.

7. Penalties

Another important difference between the two Codes is regarding penalties. The CIC provides for automatic punishments ("*poenae latae sententiae*"), that is, one who has committed a delict is punished "*ipso facto*" (CIC c. 1336). There are no automatic punishments in CCEO, which preserves the common discipline of the Church of the first millennium. Punishments foreseen by CCEO are to be inflicted by a judge or tribunal after examining the delict. But according to CIC c. 1364, an apostate or a heretic or a schismatic is punished with excommunication automatically.

According to CCEO, which contains no provision for automatic punishments, "One who denies…a truth that is to be believed by divine and catholic faith… and does not retract after being legitimately warned is to be excommunicated" (CCEO c. 1436 §1). But if the person retracts after the warning, there is no excommunication.

According to several experts, the penal legislation of CCEO (cc. 1401-1467) is more humane and more satisfactory than that of CIC (cc. 1311-

Per Il Futuro Delle Chiese Orientali Cattoliche (*Kanonika 25*), Roma: PIO, 2017, 442.

[27] Paul VI, *mp Apostolica sollicitudo*, 15 September 1965: AAS 57(1965) 775-780; *Canon Law Digest* 6: 388-393, as cited by John D Faris, "The Exercise of Roman Primacy and the Communion of Churches," 442.

[28] John D Faris, " The Exercise of Roman Primacy and the Communion of Churches," 443.

1399).[29] As regards the style of legislation, too, the former is simpler: it is divided into two chapters: chapter 1, Delicts and Penalties in general (CCEO cc. 1401-1435) and chapter 2, Penalties for Individual Delicts (CCEO cc. 1436-1467). On the other hand, CIC Book VI "Penal Sanctions in the Church" is divided into parts, titles and chapters, which follow rather the style of a textbook.[30]

8. Canon Law on Ecumenism

Only the Catholic Church, which is a communion of twenty-three Churches *sui iuris* of the West and East, has the most elaborate canonical structure.[31] The Code of Canon Law (1983) deals summarily on ecumenism in c. 755: 'It is primarily the Supreme Church authority to foster and direct the ecumenical movement among Catholics, whose scope is the restoration of unity among all Christians'; and 'It is for bishops and Episcopal conferences to promote it according to the norms of law.' According to George Nedungatt S.J, 'Placing ecumenism under the teaching function of the Church hierarchy, this canon evokes the position of the Roman Catholic Church as *Mater et Magistra*' of all Churches, which is not a helpful position in ecumenical relations.[32]

The CCEO deals with ecumenism under title XVIII out of XXX titles with seven canons (cc. 902-908). It has an elaborate description and the practical guidance on ecumenism. All these canons are sited with the sources from *LG, OE, UR* and the *Directory* of the Secretariat for Christian unity (14 May 1967). CCEO c. 904 §1 reads as follows: "Ecumenical initiatives are to be promoted in every Church *sui iuris* through special norms of particular law, while the Roman Apostolic See functions as the moderator of the movement for the entire Church." This expression 'Roman Apostolic See' differs from the common Catholic usage 'Apostolic See'. It implies the fact that besides Rome, the only Apostolic See in the West, there are other Apostolic

[29] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 224.

[30] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 224.

[31] The Canon law of the Orthodox Churches consists chiefly of the canons made by the Ecumenical Councils of the first millennium. The Protestant and Reformed Churches have their own church order. The Pentecostals have no canonical structure or only the loosest structure with the Bible being held to furnish rules of order and discipline. (Cf., G. Nedungatt, "Ecumenism and the Reform of the Canon Law," in F. Wilfred, A. Queiruga and E. Galavotti (eds.) *Concilium:* Revision of Canon Law, 2016/5), 54.

[32] CIC cc. 256, 364, 383, 463, 825, 844; Cf., G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 54.

Sees in the East like Jerusalem, Antioch and Ephesus which were also founded by the Apostles. The use of the absolute expression 'the Apostolic See' without qualification ignore these Apostolic Sees. It can be an ecumenical irritant. Following the conciliar decree on ecumenism (*UR* chapter 3), the Eastern Code uses *Sedes Apostolica Romana* just once.[33]

9. Papal Primacy

The development of Papal Primacy in theology is the end result of First Vatican Council and to strengthen it infallibility was also defined. The 1917 CIC is the capsule version of the First Vatican Council's pyramidal concept of the ecclesiology and the hierarchical structure. CIC 1983 and CCEO 1990 and *PB* 1988 translate the communion model ecclesiology of the Second Vatican Council.

According to the Codes of Canon Law the 'bishop of the Church of Rome…' is the head of the College of Bishops, the Vicar of Christ and the shepherd of the whole Church; by his office he enjoys supreme, full, immediate and universal power' (CIC c. 331; CCEO c. 43), which is legislative, executive and judiciary. The Pope 'is not judged by anyone' (CIC c. 1404; CCEO c. 1058). Thus, pope 'Sovereign Pontiff', who is above the law and he cannot be impeached'.[34]

The pope is routinely called 'Supreme Pontiff' in Catholic usage. The first ecumenical councils called him simply 'Bishop of Rome'. The title 'Patriarch of the West' also figured in the *Annuario Pontificio* (the official Vatican directory), until Pope Benedict XVI suppressed it in 2006. The deletion of the title 'The Patriarch of the West' from the different titles of the Bishop of Rome is a debated question today in the ecumenical circles.

9.1. Appointment of the Bishops

In the Eastern Patriarchal Churches or an equivalent institution, according to CCEO the bishops are elected by their synods (CCEO cc. 180-189). In the Latin Church, the pope 'freely appoints' bishops or confirms[35] those legitimately elected (CIC c. 377). The confirmation

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[33] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 55.

[34] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 56.

[35] There are a few Latin dioceses in which the Cathedral chapter participates in the appointment or election of the bishops. There are 22 Latin dioceses in this situation: 18 in Germany, in accordance with concordats and

mentioned here is actually confirmed by the customary law. But in today's changed circumstances, it gives the pope the pose of a super bishop and deprives the local Churches of their due autonomy.[36] On the model of the Synod of Bishops of the Eastern Churches (CCEO cc. 55-150), the Episcopal Conferences of the Latin Church could be upgraded as synods having legislative and judicial powers. This would bring about decentralization of Church government.[37] It is another area where the CIC (1983) could be thought of updating.

9. 2. Convocation of Ecumenical Councils

Supreme Church authority is vested not only in the Ecumenical Councils but also on the Roman Pontiff according to Catholic doctrine and law. Ecumenical councils obviously cannot always be in session nor be convoked very frequently. It is reasonable that in the interim, supreme Church authority is exercised by Supreme Pontiff as successor of the apostle Peter. According to Canon Law it is for the Roman Pontiff 'to convoke an ecumenical council, preside over it either personally or through a delegate, to transfer, suspend or dissolve it and approve its decisions' (CIC c. 338; CCEO c. 51). The Roman Pontiff also sets his agenda; and his prior approval is needed to discuss the proposals of the bishops on the council floor. He can reject a motion proposed by the majority of the members of the council or even unanimously. This provision places the Roman Pontiff virtually above the councils. It is for the Codes of Canon Law to find for the Roman Pontiff its unique place between monarchy and democracy.[38]

9. 3. Completion of Seventy-Five Years of Age

Catholic diocesan bishops have to submit their resignation from office on reaching seventy-five years of age (CIC c. 401; CCEO c. 210). But there is no age limit regarding the Roman Pontiff. Oddly, bishops who have reached the age of seventy-five submit their resignation to the Bishop of Rome who may be over eighty. The office of the Roman Pontiff becomes vacant by the pope's death or renunciation.[39] It is also an area where Codes of Canon Law could think of providing an answer.

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conventions between 1929 and 1994 (Aachen, Köln, Paderborn, etc…), three in Switzerland, one in Austria.

[36] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 56.

[37] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 56.

[38] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 56-57.

[39] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 57.

9. 4. Suggestions for Renewal of Papacy

St. Pope John Paul II invited constructive suggestion for the renewal of papacy. Renewal would involve certain changes in the Codes of Canon Law regarding Roman Pontiff. According to Pope Francis, Catholics can learn from the Orthodox experience of synodality (Ap. Ex. *Evengelii Gaudium,* 26 November 2013, n. 246). In Orthodox Churches, but also in the Eastern Catholic Churches, legislative and judicial powers are vested in the synods while the Patriarchs exercise administrative or executive power (CCEO c. 110). Such a division of powers in the government of the Catholic Church at the highest level is not incompatible with papal primacy. [40]

10. Priestly Celibacy

Clerical celibacy has been the practice in the Latin Church. While celibacy is obligatory not only for bishops but also for priests in the Latin Church, it is an 'optional vocation' for priests and deacons in twenty of the twenty-two Eastern Catholic Churches. There are married priests and married deacons also in the Orthodox Church, which follows the sacred canons. CCEO regards married clerical system in par with celibacy. It is explicit in CCEO c. 373. Thus, clerical celibacy is 'greatly esteemed' to the priesthood everywhere according to the tradition of the entire Church; likewise, the state of married clerics is 'to be held in honour'. Both these phrases have practically the same meaning.[41]

The same married clergy was normal in the primitive Church, starting with the first pope St. Peter. St. Gregory Naziansen (330-390), archbishop of Constantinople and after his resignation bishop of Nazianz was born as the son of Gregory, the then bishop of Nazianzus. Another St. Gregory, bishop of Nyssa (335-399), was a married man.

CIC requires priests and bishops to be celibate (CIC c. 1037). Pope Siricius (384-399) made priestly celibacy obligatory by invoking the Old Testament law of ritual purity against the state of married clerics. The first written law obliging clerics to perpetual continence or celibacy in the West is found in canon 33 of the Council of Elvira, in Spain, celebrated at the beginning of the fourth century. However, "the implementation of the strict prescriptions of celibacy spread in

[40] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 58-59.
[41] G. Nedungatt, "The Latin Code and Eastern Code: A Comparison," 226.

the Western Church only slowly."[42] And in the East, Emperor Justinian I (527-565) restricted episcopal ordination to celibates in order to prevent bishops, who were charged with the administration of Church property, from diverting it in favour of their family and children. But the custom of married men being ordained as priests continued in the East. Thus, the East and West diverged as regards clerical celibacy.

Priestly celibacy is often exalted as the glory of the Catholic Church. But from the ecumenical viewpoint, the law of obligatory celibacy can be an obstacle to union with those Churches in which it is optional. Not to impose 'any obligation beyond what is necessary' is a golden rule of canon law of apostolic origin (Acts 15:28).[43]

Conclusion

Catholic Church, which, today, is a communion of twenty-three Churches *sui iuris,* is the body of Christ, a living organism guided by the Holy Spirit, and the "vitality of the whole Church should never appear to be aging."[44] The Codes of Canon Law, which are the guides for the people of God are also subject to change and need reform. Using the 'expertise in the sacred and related sciences' and 'availing ourselves the proper freedom' given to us let the canonists and theologians 'pave the way for doctrinal progress'[45] especially in the context of the lacunae and defects that we might have come across in the Codes of Canon Law in their research and learning. Therefore, it nneds to be a collective effort of theologians and canonists given their profound understanding o the mystery of salvation, to explain and defend the faith of the Church answering to the current challenging questions. They are encouraged to do this research faithfully sumitting to the authentic Magisterium of the Church and at the same time availing themselves of their proper freedem. It is not a finished act but a work in progress.

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[42] W. M. Plöchl, *Geschichte des Kirchenrechts*, 5 vols., Vienna, 1953; see Band I, p. 167 (as cited in G. Nedungatt (ed.), *A Guide to the Eastern Code*, Rome: PIO, 2002, 296).

[43] G. Nedungatt, "Ecumenism and the Reform of the Canon Law," 59.

[44] John Paul II, Apo. Const. *Sacri Canones,* xxiii (Cf., CCEO republished from TPI, 2003).

[45] We may update ourselves with the new developments in the legislative section referring to www.vatican.va especially referring to the Pontifical Council for the Interpretation of Legislative Texts.