

THE TEACHING OF ORIENTAL CANON LAW IN THE FORMATION OF LATIN CANONISTS

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Abstract

The author presents the relevance of the two Codes of Canon Law in the Church and explains that all Churches *sui iuris* enjoy the same dignity in the Catholic Church. He also explains other areas of interrelationship between the Eastern and Latin disciplines, legal relations with the Orthodox Churches and the reasons for primacy in the universal Church. He concludes his article stating that the Orthodox Churches have true canon law because they are “Churches” and have episcopates.

Keywords: “Latin” Universities, Dialogue between Catholics and Orthodox, Areas of interrelationship between the Eastern and Latin disciplines, Synod of Bishops, *Oikonomia*.

Introduction

I am addressing to you, staff and students of the Institute of Oriental Canon Law (IOCL), erected at *Dharmaram Vidya Kshetram* (DVK) in Bengaluru (India) and aggregated to the Faculty of Eastern Canon Law of the Pontifical Oriental Institute in Rome, now joined to the Pontifical Gregorian University. I am fond of being from 2013 a member of the Advisory Board of your Canonical Journal *Iustitia* and I have beautiful memories of my visit in 2015 invited by dear Prof. Fr. Varghese Koluthara, CMI. I am deeply thankful to Dharmaram Publications for publishing my book *Harmonizing the Canons* in 2016,

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and also to your Journal *Iustitia* for accepting not a few of my contributions to canonical research. Now you are celebrating 25 years of academic service to the Church, and I want to rejoice with you for this important landmark.

Obviously, IOCL main target is the formation of good experts in Canon Law of the Oriental Churches for serving the Syro-malabar Church (although not exclusively). In my case, instead, since my studies at the PIO in the early 1990's, I have been involved in teaching Eastern Canon Law mostly at the Faculty of Canon Law of Santa Croce Pontifical University, and now also at Urbaniana Pontifical University, both in Rome and aimed mainly at training future Latin canonists.

It is therefore necessary to justify the presence of this subject in the *curriculum* of studies in such "Latin" universities. I think this reflection is interesting for you too, because maybe some of those who are hearing me now will be called tomorrow to do a similar service of teaching Oriental Canon Law to Latin canonists. In fact, I believe that it is necessary to broaden our horizons beyond the sphere of our respective Church. In this regard, we must not forget the words of the Second Vatican Council:

«All clerics and those aspiring to sacred Orders should be instructed in the rites and especially in the practical norms that must be applied in interritual questions. The laity, too, should be taught as part of its catechetical education about rites and their rule» (decr. *Orientalium Ecclesiarum* n. 4).¹

In 1990 the *Codex Canonum Ecclesiarum Orientalium* (CCEO) was promulgated,² parallel to the 1983 Code for the Latin Church, both expressions of the development of Law according to the impetus given by the Second Vatican Council. Saint John Paul II, on the occasion of the presentation of this new Code to the Synod of Bishops,³ said:

¹ Official version in Latin: CONCILIUM OECUMENICUM VATICANUM II, *Decretum de Ecclesiis orientalibus catholicis*, *Orientalium ecclesiarum*, n. 4, 21 November 1964, «AAS» 57 (1965), pp. 76-89 [here, p. 77]. As a development of this conciliar indication, in 1987 the Congregation for Catholic Education emphasized the importance of studies on the Eastern Churches (cf. CONGREGATION FOR CATHOLIC EDUCATION, Circular Letter *Eu égard au développement*, 6 January 1987, in *Enchiridion Vaticanum* 10, Nos. 1130-1149).

² Promulgated on 18 October 1990 by the Apostolic Constitution of the Constitution. *Sacri Canones* (AAS 82 [1990], pp. 1033-1044), entered into force on 1st October 1991.

³ JOHN PAUL II, *Discorso al Sinodo dei Vescovi nella presentazione del "Codice dei Canoni delle Chiese Orientali"*, 25 October 1990. My translation. Latin version in *Insegnamenti di Giovanni Paolo II*, XIII/2 (1992), pp. 936-937.

«In presenting to this Assembly, which is so representative of the universal Church, the Code, which regulates the ecclesiastical discipline common to all the Eastern Catholic Churches, I consider it as an integral part of the one "Corpus iuris canonici" [consisting of the Latin Code, the Eastern Code and the Apostolic Constitution on the Roman Curia⁴], [...]. In the face of this "Corpus" the suggestion arises spontaneously that in the Faculties of Canon Law an appropriate comparative study of both Codes be promoted, even if, according to their statutes, their principal object is the study of one or the other of them. In fact, canonical science, which fully corresponds to the degrees conferred by these Faculties, cannot disregard such a study» (n. 8).

The desire to promote this comparative study in the Faculties of Canon Law was then an opportunity to enrich the *curriculum* of the Latin Faculties with the introduction of a new subject dedicated to Eastern Canon Law.⁵

In 1993, in this regard, the Holy Father insisted:

«In fact, this attention corresponds to my often-repeated wishes that the whole Church breathes with two lungs. [...] Knowledge of this entire Corpus, [...] must be opportunely promoted in priestly formation, and, in the first place, in all Faculties of Canon Law».⁶

And two years later, speaking of the relationship with the Orthodox, he reiterated:

⁴ The one now in force is the Apostolic Constitution *Praedicate Evangelium*, 19 March 2022, in «L'Osservatore Romano» 31st March 2022, [www.Osservatore romano.va](http://www.Osservatore_romano.va) [<https://bit.ly/3y6jHOo>], accessed 31st July 2023.

⁵ In my university, initially, Prof. Marco Brogi, OFM, then Undersecretary of the Congregation for the Oriental Churches, gave an optional course, and later this task was taken by the dear teacher and Prof. Carl Gerold Fürst, of the University of Freiburg. That optional course then became a compulsory curricular subject. In the meantime, I was able to integrate my canonical studies at the Pontifical Oriental Institute, which I always thank from the bottom of my heart for the enrichment received in those years of formation. It was a privilege to have been able to attend the lessons given by many of the protagonists of Eastern codification. I would like to remember here with particular affection Profs. Ivan Žužek S.J., George Nedungatt S.J., Joseph Prader, Dimitrios Salachas and many others who initiated me in the discovery of that new world, new at least for me. Cf. P. GEFAELL, *El Derecho oriental desde la promulgación del CIC y del CCEO*, «Ius Canonicum» 49 (2009), pp. 37-65 [here, pp. 39-43].

⁶ JOHN PAUL II, *Allocutio Summi Pontificis ad eos qui conventui internationali iuris canonici interfuerunt*, 23 April 1993, «L'Osservatore Romano» 25 aprile 1993, p. 4, and also «Communicationes» 25 (1993), pp. 13-14. My translation from the Italian online version in www.vatican.va [<https://bit.ly/3LNAMECB>], accessed 30 September 2023.

«I believe that an important way to grow in mutual understanding and unity is precisely to improve our knowledge of each other. The children of the Catholic Church already know the ways that the Holy See has indicated so that they can achieve this goal: to know the liturgy of the Eastern Churches; to deepen the knowledge of the spiritual traditions of the Fathers and Doctors of the Christian East; to take the example of the Eastern Churches for the inculturation of the Gospel message; to combat tensions between Latins and Orientals and to stimulate dialogue between Catholics and Orthodox, to form theologians, liturgists, historians and canonists in institutions specialized for the Christian East that can in turn spread knowledge of the Eastern Churches; to offer adequate teaching in seminaries and theological faculties on these subjects, especially for future priests. These are always very valid indications, on which I intend to insist with particular force».⁷

Today, after the intense migratory flow from East to West, hundreds of thousands of Eastern faithful (Catholics and Orthodox) find themselves in territories that were previously almost exclusively Latin.⁸ Since centuries ago in India there are also many contacts among Eastern and Latin faithful, but, after the extension of Syro-Malabar Church jurisdiction to all India in 2017, the need of mutual understanding is more acutely felt. It presupposes a formative challenge for all of us, but especially for pastoral agents. This is what the holy Polish Pope said addressing to Western countries, and being analogically valid also for the Indian circumstances:

«A special thought then goes to the territories of the diaspora where, in a predominantly Latin environment, many faithful of the Eastern Churches who have left their homelands live. These places, where serene contact within a pluralistic society is easier, could be the ideal environment for improving and intensifying collaboration between the Churches in the formation of future priests, in pastoral and charitable projects, also for the benefit of the lands of origin of the Orientals.

⁷ JOHN PAUL II, Letter *Oriente Lumen*, No. 24, official version «AAS» 87 (1995), pp. 745-774 [here, p. 771], Italian version in www.vatican.va [<https://bit.ly/3rkkHwY>], accessed 10 July 2023.

⁸ Cf. P. GEFAELL, *Impegno della Congregazione per le Chiese orientali a favore delle comunità orientali in diaspora*, «Folia Canonica» 2 (2006), pp. 117-137; IDEM, *L'attenzione degli orientali cattolici nei documenti delle Conferenze episcopali*, «Ius Ecclesiae» 22 (2010), pp. 367-382; IDEM, *La relación con las Iglesias orientales ortodoxas y orientales católicas en España*, in R. VÁZQUEZ JIMÉNEZ (ed.), *Las Iglesias ortodoxas y orientales en España. Presencia y características*, Madrid, Edice editorial, 2021, pp. 67-93.

To the Latin Ordinaries of those countries, I recommend in a special way the careful study, full understanding and faithful application of the principles enunciated by this See on ecumenical collaboration and pastoral care for the faithful of the Eastern Catholic Churches, especially [but not only] when they do not have a hierarchy of their own. »⁹

These arguments would be sufficient in themselves to justify the introduction of the subject we are dealing with.¹⁰ However, it is not only a matter of "knowing the other", as if he were an "exotic alien"; above all when we speak of other Catholics belonging to other Churches *sui iuris*, but even when we refer to the Orthodox Churches, which equally should not be considered as something "foreign". Later we will dwell on these two realities and on the stimulus that the very existence of Catholic and Orthodox Eastern Law poses to canonical reflection.

Since the beginning of the 1990s, various canonists from many countries and rites¹¹ have put into practice the new Eastern discipline, harmonizing the different components of Canon Law in the Catholic

⁹ JOHN PAUL II, Apostolic Letter *Orientale Lumen*, 2 May 1995, AAS 87 (1995), pp. 745-774, n. 26.

¹⁰ In fact, in 2002 an "introduction to the Code of Canons of the Eastern Churches for students of a Faculty of Latin Canon Law" and the "introduction to the Code of Canon Law for students of a Faculty of Eastern Canon Law" were included as compulsory subjects for the second cycle of the studies of every School of Canon Law (CONGREGATION FOR CATHOLIC EDUCATION, *Decreto con cui viene rinnovato l'ordine degli studi nelle Facoltà di Diritto Canonico*, 2 September 2002, art. 56, 2^o, c, in www.vatican.va [<https://bit.ly/45ycsMy>], accessed on 22 August 2023). In the Instruction of THE CONGREGATION FOR CATHOLIC EDUCATION, *Gli studi di Diritto Canonico alla luce della riforma del processo matrimoniale*, of 29 April 2018 (in www.vatican.va [<https://bit.ly/3YN68Pm>], accessed 22 August 2023), Arts. 9, 13, 18, 24, 28, the necessary study of Eastern Law is indicated several times, but only as an alternative to Latin law, without proposing comparative study. In any case, I believe that such a comparative study must always be carried out, as requested by St. John Paul II and according to the indications of the Dicastery in 2002.

¹¹ I can mention here only a few: Péter Szabó (Hungarian Greek-Catholic), Lorenzo Lorusso (Italian Latin), Luis Okulik (Argentine Greek-Catholic Belarusian), Astrid Kaptijn (Dutch Latin), Natale Loda (Italian Latin), Ionela Cristescu (Romanian Greek-Catholic), Georges Ruyssen (Belgian Latin), Danilo Ceccarelli-Morolli (Italian Latin), Michael Kuchera (American Greek-Catholic Slovak), Luigi Sabbarese (Italian Latin), Sunny Kokkaravalayil (Syro-Malabar Indian), Orazio Condorelli (Italian Latin), Jobe Abbass (Canadian Maronite), Leszek Adamowicz (Polish Latin), John D. Faris (American Maronite), Paolo La Terra (Italian Latin), Federico Marti (Italian Latin) and the now bishops Cyril Vasil' (Slovak Greek Catholic), Elie Haddad (Lebanese Melkite), Giorgio Gallaro (Italian Greek Catholic) and Selim Sfeir (Lebanese Maronite).

Church. Among them, the promoters and developers of your Institute have played an important role since 1999. I take advantage to greet Fr. Varghese Koluthara, CMI, its first director, now emeritus, the present director Fr. Sebastian Payyappilly, CMI, Fr. Cherian Thunduparampil, and the other resident staff.¹² It fills our heart with hope to know that the generation to come is already under training, some of whom I have recently met personally. This Institute, along with PIO and since 2016 the Institute of Eastern Canon Law at *Paurastya Vidyapitham*, Kottayam, are the only institutions in the World specifically dedicated to Oriental Canon Law.

When teaching this subject in a Latin Faculty, it is necessary to look at the entire canonical horizon; for this reason, I think it was an excellent decision that my university introduced the study of the subject in the last semester of the last year of the Licentiate, that is, when the students have already studied almost all the disciplines of the *curriculum* and are about to take the final exam. In fact, unlike the other subjects, ours is structured by attempting to cover almost all the subjects taught in our Faculty (from constitutional law to history and sources, from norms to persons, from ecclesiastical organization to the sacraments, from matrimonial law to patrimonial law, from criminal law to procedural law, etc.), offering the corresponding oriental approach to each of them. It is therefore useful to review the entire path of the License and therefore also to better prepare for the final test.

One of the peculiarities of the Dicastery for the Oriental Churches¹³ is that, like our matter, it questions concerning the entire span of canonical discipline must be resolved: inquiries about bishops, clergy, religious, eparchies, sacraments, etc. For someone called to collaborate with that Dicastery is therefore extremely useful to have received an integral vision of Eastern Canon Law.

¹² Fr. Benny Tharakunnel, CMI, Sr. Rosmin Cheruvilparambil, SH, Fr. Alex Velacherry, and Sr. Sibi CMC.

¹³ An organism of the Roman Curia that «deals with matters concerning the Eastern Catholic Churches *sui iuris*, as far as persons and things are concerned»: FRANCIS, Apostolic Constitution *Praedicate Evangelium*, 19 March 2022, art. 82, «L'Osservatore Romano» 31 March 2022, www.osservatoreromano.va [<https://bit.ly/3y6jHOo>], accessed 31 July 2023.

1. The Canon Law of Eastern Catholics

Let us now see, in the first place, the challenges and stimuli that the presence of a canonical discipline proper to the Eastern Catholic Churches poses to the teaching of Canon Law.

According to the Roman Pontiff, the CCEO, the CIC and the Apostolic Constitution on the Roman Curia constitute a unity within the Canon Law of the Universal Church, although each one of them has its own field of application.

The existence of canonical discipline for the Eastern Catholic Churches is certainly not a new fact for the People of God. The promulgation of the CCEO did not entail a change in the juridical structure of the Church, because such duality, in this area, has always existed. The scholar, however, can ask questions, and try to deepen the meaning and scope of this reality. Canonical reflection has received new coordinates since John Paul II, in the aforementioned presentation address of the CCEO to the Synod of Bishops, affirmed that the two Codes constitute part of a single "Corpus" (Body) of Canon Law.

This assertion raises questions that require an adequate doctrinal response. What canonical consequences can such a statement entail? How should one evaluate the fact that in the Church there is a single "Corpus" of Law, composed, however, of two Codes (in addition to the special universal laws, such as *Praedicate Evangelium* on the Roman Curia)?

1.1. Two Codes in the Church?

In the Church there exists a single primary juridical order,¹⁴ born from common Baptism and ecclesial communion among the faithful, which make her a single social body, composed, however, of different disciplinary systems or secondary juridical orders.

There is, in fact, only one Church, with a single constitutional right¹⁵ common to all the faithful, but there are undeniably two disciplines

¹⁴ In the perspective of healthy juridical realism in the search for "what is just", law is not only norms and codes, but the reality of the relationships of the baptized with ecclesial goods and among themselves. J. HERVADA, *Cos'è il Diritto? La moderna risposta del realismo giuridico*, Edusc, Roma 2013.

¹⁵ Constitutional law in the Church can be defined as the set of demands of justice and ordering principles which, contained explicitly or implicitly in the foundational will of Christ, have consequences in relation to what we call Law and which prevail over the rest of the ecclesiastical juridical order (cf. P. LOMBARDIA, *Lezioni di diritto canonico. Introduzione - Diritto Costituzionale - Parte Generale*, Giuffrè, Milano 1985;

(the Latin and the Eastern) which, although emanating from the same supreme legislator, are addressed to two different groups of the faithful.

The existence of two “Codes” in the Church, therefore, seems to undermine the very idea of a Code or the idea of unity of a sovereign juridical order.¹⁶ Since the Church is one, and the twenty or so¹⁷ Churches *sui iuris* that exist within it are not sovereign, it should be admitted that the problem can be solved by abandoning, once and for all, the myth of codification, and considering the notion of “Code” in the Church as a concept only analogous (and therefore different) to that existing in the state systems of the codificatory tradition.¹⁸

If we admit that not all the content of constitutional law belongs to divine law, it seems legitimate to say that each of the Churches *sui iuris* constitutes a secondary juridical order with its own norms, which integrate at a particular level the common constitutional norms of the universal Church.¹⁹ This is the logical consequence of the recognition of each Church as a “Church having its own Law (*sui iuris*)”.²⁰ The Latin Church (which in some way²¹ is a Church *sui iuris*) has its own

M. DEL POZZO, *Ordine costituzionale del Popolo di Dio. Compendio di diritto costituzionale canonico*, Edusc, Roma 2023).

¹⁶ «In fact – García Hervás observes – the coexistence of two “Codes” on the same subject within the Church is as inadequate as that of two civil, commercial, etc. Codes within the same State» (D. GARCÍA-HERVÁS, *La significación para la Iglesia del nuevo Código Oriental*, in R. COPPOLA [ed.], *Atti del congresso internazionale “Incontro fra canonici d’Oriente e d’Occidente”*. Bari 23-29 settembre 1991, vol. II, Cacucci Ed., Bari 1994, pp. 41-47 [here, p. 42]).

¹⁷ We will not dwell here on the discussion concerning the “number” of oriental Churches *sui iuris* existing today. Suffice it to say that there are more than twenty.

¹⁸ Cf. G. ALPA (ed.), *Corso di Sistemi Giuridici Comparati*, G. Giappichelli Editore, Torino 1996, p. 64 ss.

¹⁹ Cf. P. VALDRINI, *L’Aequalis dignitas des Églises d’Orient et d’Occident*, in A. AL-AHMAR, A. KALIFÉ, D. LE TOURNEAU (éds.), *Acta Symposii internationalis circa Codicem Canonum Ecclesiarum Orientalium*. Kaslik 24-29 aprilis 1995, Centre d’édition et de diffusion du livre à l’USEK, Kaslik (Liban) 1996, p. 65.

²⁰ The discussion on the uniqueness, duality or multiplicity of the Codes (one for each Church *sui iuris*) began at the beginning of the First Vatican Council: cf. C.G. PATELOS, *Vatican I et les évêques uniates, une étape éclairante de la politique romaine à l’égard des orientaux (1867-1870)*, Ed. Mauwerlaerts, Louvain-la-Neuve-Louvaine 1981, pp. 162-183; I. ŽUŽEK, *Common Canons and ecclesial Experience in the Oriental Catholic Churches*, in R. COPPOLA, *Incontro fra canonici d’Oriente e d’Occidente*, vol. I, cit., pp. 21-56 [in particular, p. 37]; and, above all, «Nuntia» 3 (1976), pp. 3-4, and «Nuntia» 26 (1988), pp. 102-104.

²¹ We say “in some way” because there are some characteristics of the Latin Church that do not correspond exactly to the profile outlined by cc. 27 and 28 of the CCEO for the Churches *sui iuris*. Cf. PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS

order and its own Code. The law proper to each of the Eastern Churches constitutes a secondary juridical order which, for functional reasons, is included in a Law "common" to all the Eastern Churches, collected in the CCEO.²²

The existence of a "Code" common to many secondary juridical systems (common, that is, to the more than twenty Eastern Catholic Churches) highlights even more the analogical meaning of the term "Code".

As we have pointed out elsewhere,²³ the uniqueness of the canonical order leads to the need to construct and teach a unitary Canon Law, which takes into account both disciplines: Eastern and Latin. Although, in any case, the study should focus preferably on one or the other, the reconstruction of common canonical institutes must be carried out by harmonizing the set of data, hints and implications deriving from the entire normative order.

1.2. All Churches enjoy the same dignity in the Catholic Church

Decades after the Second Vatican Council, today we are perhaps accustomed to concepts and approaches to ecclesial life that were not so "evident" before the Council. In order to be able to adequately evaluate the historical significance of the magisterial turn it has made, and to fully realize its novelty (within continuity), it is appropriate to dwell briefly on the historical antecedents of this theme.

From the time of the Schism between East and West, and throughout the Late Middle Ages, Christians united with Rome belonged almost exclusively to the Latin Church. In this state of affairs, a mentality had formed that identified being "Catholic" with being "Latin". For centuries, therefore, efforts to achieve the unity of the Churches often resulted in attempts at Latinization, and "the Eastern rites" were seen almost as a liturgical "curiosity" that could at best be "tolerated." In

[PCLT], *Nota explicativa quoad can. 1 CCEO*, 8 December 2011, «Communicationes» 34 (2011), pp. 315-316.

²² «In choosing the expression "re-establishment of the Common Code", one was aware that it could also have been "unwelcome", especially to those who had written that the very notion of autonomy of a Church *sui iuris* should have its own Code, at least formally different from that of the other Churches» (my translation of I. ŽUŽEK, *Incidenza del "Codex Canonum Ecclesiarum Orientalium" nella Storia moderna della Chiesa Universale*, in PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS [ed.], *Ius in vita et in missione Ecclesiae. Acta Symposii internationalis Iuris Canonici occurrente X anniversario promulgationis Codicis Iuris Canonici, diebus 19-24 aprilis 1993, in Civitate Vaticana celebrati*, LEV, Città del Vaticano 1994, pp. 675-738 [here, pp. 689-690]).

²³ P. GEFAELL, *La presentazione del Codice orientale*, «Ius Ecclesiae» 3 (1991), p. 355.

the eighteenth century the idea of the “*praestantia latini ritus*” (pre-eminence of the Latin rite)²⁴ was coined, which naturally had inevitable practical repercussions. For example, this is what the encyclical *Allatae sunt* said in 1755:

«Since the Latin Rite is that used by the Holy Roman Church, which is the mother and Teacher of the other Churches, it must be preferred to all the other Rites. From this it can be deduced that it is not licit to pass from the Latin Rite to the Greek Rite, nor is it lawful for those who once passed from the Greek or Eastern Rite to the Latin Rite to return to the former Greek Rite. »²⁵

This mentality remained substantially unchanged until the end of the nineteenth century.²⁶

Only with the apostolic letter *Orientalium dignitas* of Leo XIII, the widespread conviction of the “*praestantia*” of the Latin rite, until then dominant (and, let us not deceive ourselves, still shared today by some

²⁴ This “*praestantia*” was based on the fact that «*dignitatem vel praestantiam ipsius Sedis Romanae paulatim in ritum quoque romanum extensam esse putamus*» (A. PETRANI, *An adsit ritus praestantior*, «*Apollinaris*» 6 [1933], p. 74). It must be acknowledged, however, that, in the context of the time, Pope Benedict XIV defended and promoted Eastern Catholicism extensively: cf. H. HOFFMANN, *De Benedicti XIV latinizationibus in const. “Etsi Pastoralis” et “Inter Multa”*, «*Ephemerides Iuris Canonici*» 4 (1948), pp. 9-54.

²⁵ «*Cum Latinus Ritus is sit, quo utitur Sancta Romana Ecclesia, quae Mater est et Magistra aliarum Ecclesiarum, reliquis omnibus Ritibus praeferri debet. Ex quo porro sequitur, haud licere a Latino Ritu ad Graecum transire; nec illis, qui semel a Ritu Graeco, vel Orientali, ad Latinum transierunt, integrum esse ad pristinum Graecum Ritum reverti*» (BENEDICTUS XIV, litt. enc. *Allatae sunt*, 26 luglio 1755, n. 20, in P. GASPARRI [a cura di], *Codicis Iuris Canonici Fontes*, vol. II, Typis Polyglottis Vaticanis, Romae 1928, pp. 456-474 [here, p. 459, § 20]. My translation from the Italian version in [www.vatican.va](https://bit.ly/3Rd06Wn) [https://bit.ly/3Rd06Wn], accessed 12 September 2023). Cf., also, BENEDICTUS XIV, Apostolic Constitution. *Etsi pastoralis*, 26 maggio 1742, § IX n. I, in P. GASPARRI (a cura di), *Codicis Iuris Canonici Fontes*, vol. I, Typis Polyglottis Vaticanis, Romae 1924, pp. 734-755 [here, p. 739, XIII].

²⁶ Pius IX, for example, replied to the question of the bishop of Palermo on requests for free transit from the Latin rite to the Greek rite: «If permission were granted to them, the most certain superiority that is proper to the Latin rite over the Greek rites would be almost totally subverted. It is well known to you that this excellence of the Latin rite must be absolutely preserved» [«*Si iisdem assensus praeberetur, certissima illa, quae latini ritus propria est, supra graecorum ritum praestantia fere penitus everteretur. Verum exploratum tibi est, hanc ritus latini praestantiam omnino custodiri debere*»] (PIUS IX, litt. *Plura sapienter*, 11 June 1847, No. 4, in SACRA CONGREGAZIONE “PRO ECCLESIA ORIENTALI” [ed.], *Codificazione canonica orientale. Fonti*, serie I, fasc. II, Tipografia poliglotta vaticana, Roma 1931, p. 533. My translation).

Latins)²⁷ was beginning to be overcome. But the practical effects of the change made by the Pope were in fact very limited and gradual.

Providentially, in the Decree on the Eastern Catholic Churches, the Second Vatican Council wished to emphasize that all the Churches:

«whether of the East or the West, although they differ somewhat among themselves in rite (to use the current phrase), that is, in liturgy, ecclesiastical discipline, and spiritual heritage, are, nevertheless, [...] are consequently of equal dignity, so that none of them is superior to the others as regards rite and they enjoy the same rights and are under the same obligations, also in respect of preaching the Gospel to the whole world (cf. Mark 16, 15) under the guidance of the Roman Pontiff» (*Orientalium Ecclesiarum* No. 3).²⁸

This principle also had to be put into practice in the legal field.

The doctrinal principles formulated by the Council were concretized in many canons of the CCEO and in the general spirit of the Code itself, but on this detail, they are reflected directly above all in cc. 39-41, on the observance of the rites (canons that do not exist in the CIC, perhaps because it is addressed only to the Latin Church). Can. 39, for example, sanctions the obligation to observe and promote the rites of the Eastern Churches and can. 40 recalls the duty at all levels, hierarchy, clerics, religious and other faithful, to guard and observe the rite *wherever* they may be. In this sense, for instance, even if can. 333 CCEO allows, exceptionally, seminarians from various Churches *sui iuris* to be admitted to the same seminary, nevertheless can. 343 CCEO requires that the students be formed according to their own rite, reproving the contrary custom. Finally, can. 41 of CCEO directly binds those (including Latins) who, for reasons of office, have frequent relations with the Orientals, to the obligation to know and venerate the ritual patrimony of the Churches concerned.

²⁷ See, for example, the resistance on the part of some to apply the norms that provide for the duty to preserve the rite of origin in the case of reception of Orthodox in the Catholic Church (cf. can. 35 CCEO). On this respect, cf. the new limiting criteria of the DICASTERY FOR THE ORIENTAL CHURCHES, *Grants of biritualism, Transfer of Church and Adaptation of rite*, 22 November 2024, in www.orientchurch.va [<https://bit.ly/4j70jG9>], accessed 13 January 2025.

²⁸ An in-depth study of OE No. 3 can be found in I. ŽUŽEK, *Incidenza del "Codex Canonum Ecclesiarum Orientalium"*, pp. 692-715.

1.3. Other Areas of Interrelationship Between the Eastern and Latin Disciplines

Another area in which this principle finds reflections in the oriental Code is can. 916 §§ 4-5, which establishes norms for knowing who is to take pastoral care of the faithful without a parish priest or Hierarch [i.e. Ordinary] of his own Church. In fact, it is necessary to take into account the existence of Eastern communities in territories that were once perhaps exclusively Latin. These communities, if small and without a Hierarch of their own, will be entrusted to the pastoral care of the local Latin Bishop, who must provide in the way he deems reasonable, but always guaranteeing their identity. If, on the other hand, there is already a hierarchy of their Church in the place, the Latin bishop must respect his competence.

During the years of application of the CCEO, some points came to light where it was necessary to harmonize the Latin and Eastern disciplines. In my opinion, there are still several matters to be harmonized, but in 2016 the *motu proprio De concordia inter Codices*²⁹ introduced important innovations.

A few years ago, we saw the reforms of matrimonial procedural law with parallel norms for Latins³⁰ and Orientals,³¹ but with their own peculiarities and, it cannot be denied, with the limits proper to every human right.³² The same happened with the very recent update of Criminal Law, first the Latin one³³ and then the Eastern one.³⁴

²⁹ FRANCIS, *Motu proprio De concordia inter Codices*, 31 May 2016, «L'Osservatore Romano» 16 September 2016. The text can also be found in www.vatican.va [<http://bit.ly/37g7beK>], accessed on 26 July 2023. Cf. P. GEFAELL, *Comments on the m.p. De Concordia inter Codices*, «Ius Ecclesiae» 29 (2017), pp. 159-174.

³⁰ FRANCIS, *Motu proprio Mitis et misericors Iesus*, 15 August 2015, «AAS» 107 (2015), pp. 946-957.

³¹ IDEM, *Motu proprio Mitis Iudex Dominus Iesus*, 15 agosto 2015, «AAS» 107 (2015), pp. 958-967.

³² Cf. P. GEFAELL, *Nota al Motu proprio "Mitis et Misericors Iesus"*, «Ius Ecclesiae» 28 (2016), pp. 63-77 [here, pp. 71-74].

³³ FRANCIS, *Apostolic Constitution Pascite gregem Dei*, 23 May 2021, «L'Osservatore Romano» 21 June 2021, see www.osservatoreromano.va [bit.ly/43SivdS]. Also in www.vatican.va [<https://bit.ly/3o85gqx>]. The texts of the new canons of Book VI of the CIC can be found in www.vatican.va [<https://bit.ly/3gNhMU5>], accessed 27 July 2023.

³⁴ FRANCIS, *Motu proprio Vocare peccatores*, 20 March 2023, «L'Osservatore romano», No. 80, 5 April 2023, pp. 10-11. Cf. P. GEFAELL, *La riforma del Diritto Penale Orientale*, «Folia Theologica et Canonica» 12 (2023), pp. 95-108.

In addition to the study of the juridical criteria for the relationship between the two codes,³⁵ the Eastern traditions are also sources of incentive for the reflection of the whole Church. I cannot dwell on the details, but I recall here, for example, the traditional sensitivity in living synodality in the East,³⁶ the challenges posed by the discipline on the Eastern married clergy,³⁷ the possibilities and limits of the application of *oikonomia* in the application of Law,³⁸ the anthropological and canonical sense of the non-acceptance of placing conditions on marriage,³⁹ the necessary breadth of mind to find even in the East an adequate canonical framework of personal prelatures,⁴⁰ etc. Like other colleagues, I have been involved in each of these subjects at a scientific level.

2. Regarding the Juridical Relations with the Orthodox Churches

As regards the ecumenical aspects of the Canon Law of the Orthodox Churches, we can indicate here only a few. I will not go into the canonical questions of sacramental sharing now,⁴¹ nor into other points that might be interesting in another context. I will therefore focus only on two questions: the primacy of the Roman Pontiff and the

³⁵ Cf. P. GEFAELL, *Rapporti tra i due "Codici" dell'unico "Corpus iuris canonici"*, in G.P. MILAN, J.I. ARRIETA (eds.), *Metodo, Fonti e Soggetti del Diritto canonico*, Città del Vaticano, Libreria Editrice Vaticana 1999, pp. 654-669.

³⁶ Cf. IDEM, *L'istituzione sinodale nelle Chiese di Oriente: Aspetti storici e canonici, ed eventuali suggerimenti per la Chiesa universale*, «Annales Theologici» 36 (2022), pp. 461-474.

³⁷ Cf. IDEM, *Il celibato sacerdotale nelle Chiese orientali: storia, presente e avvenire*, in L. TOUZE, J.M. ARROYO (eds.), *Il celibato sacerdotale: teologia e vita*, Edusc, Roma 2012, pp. 135-156.

³⁸ Cf. IDEM, *Fondamenti e limiti dell'oikonomia nella tradizione orientale*, «Ius Ecclesiae» 12 (2000), pp. 419-436; IDEM, *Oikonomia for failed Marriages? A Catholic Perspective based on Pastoral Sensitivity*, in SOCIETY FOR THE LAW OF THE ORIENTAL CHURCHES (ed.), *Oikonomia, Dispensatio and Aequitas Canonica* (Kanon XXIV), Edition Roman Kovar, Hennef 2016, pp. 246-262.

³⁹ Cf. IDEM, *Il matrimonio condizionato durante la codificazione pio-benedettina. Fonte del c. 826 CCEO*, «Ius Ecclesiae» 7 (1995), pp. 581-625.

⁴⁰ Cf. IDEM, *Juridical discipline of personal prelatures in Latin Canon Law*, in SOCIETY FOR THE LAW OF THE EASTERN CHURCHES (ed.), *Autonomie in den Ostkirchen* (Kanon XXI), Edition Roman Kovar, Hennef 2010, pp. 305-321.

⁴¹ Cf. IDEM, *Sharing in Sacramental Life: doctrinal principles and normatives in the New Ecumenical Directory*, in A. AL-AHMAR, A. KALIFÉ, D. LE TOURNEAU (éds.), *Acta Symposii internationalis circa Codicem Canonum Ecclesiarum Orientalium*, cit., pp. 315-367; IDEM, *L'Eucaristica e la cura pastorale degli ortodossi*, in G. RUYSEN (ed.), *Dalle fonti dei canoni – Festschrift Ivan Žužek, "La divina Eucaristia nel Diritto canonico orientale"* (Kanonika 16), Pontificio Istituto Orientale, Roma 2010, pp. 189-201.

recognition of the existence of true canon law in the Orthodox Churches.

2.1. Reasons for Primacy in the Universal Church

For many years I have been trying to explain, in dialogue with Orthodox authors, the theological and juridical coherence of the Primacy of the Roman Pontiff.⁴² It seems only an ecclesiological question, but it also has indisputable canonical implications. In this study one can have recourse to the fascinating Eucharistic ecclesiology that invites to unity, and thus draw the canonical consequences also with regard to the binding capacity in the social sphere of the Pope's indications and decisions. As Saint John Paul II pointed out, addressing all the Christian Churches:

«The mission of the Bishop of Rome within the College of all the Pastors consists precisely in "keeping watch" (*episkopein*), like a sentinel, so that, through the efforts of the Pastors, the true voice of Christ the Shepherd may be heard in all the particular Churches. [...]. With the power and the authority without which such an office would be illusory, the Bishop of Rome must ensure the communion of all the Churches. »⁴³

It would be appropriate to mention the tension towards a *Protos* that also exists in the Orthodox Churches, but it would be too long a topic to deal with in detail here. While we work on it, let us leave it in the hands of the Lord, He who first committed himself to unity ("*ut omnes unum sint*" [Jn 15:21]).

2.2. Orthodox Churches have true Canon Law because they are "Churches" and have episcopate

We cannot go into all the arguments on the existence of true Canon Law in the Orthodox Churches here. We will only give a few hints and for further analysis I refer to some of my previous studies.⁴⁴

After the conciliar insights in the field of ecumenical ecclesiology, the reasons that were put forward before the Second Vatican Council for

⁴² Cf. IDEM, *L'ecclesiologia eucaristica e il Primato del Romano Pontefice*, «Folia Canonica» 1 (1998), pp. 129-149. Cf., also IDEM, *The Ecclesiological Foundations of the Ecumenism and the Primacy of the Successor of Peter*, in IDEM, *Harmonizing the Canons*, Dharmaram Publications, Bengaluru (India) 2016, pp. 61-89.

⁴³ JOHN PAUL II, litt. enc. *Ut unum sint* [UUS], 25 May 1995, No. 94, «AAS» 87 (1995), pp. 921-982. English translation from www.vatican.va.

⁴⁴ Cf. P. GEFAELL, *Basi ecclesiologiche della giurisdizione delle Chiese ortodosse sui matrimoni misti*, in J. CARRERAS (ed.), *La giurisdizione della Chiesa sul matrimonio e sulla famiglia*, Giuffrè, Roma 1998, pp. 127-148.

denying the existence of jurisdiction in the Orthodox Churches are no longer tenable.

Today, in fact, different degrees of communion with the Church are admitted,⁴⁵ and the true *ecclesiality* of the Orthodox Churches is recognized.⁴⁶ If, on the one hand, it is admitted that the Orthodox Churches are true Churches and, on the other, it is established that the juridical dimension is an *essential dimension* of the Church – analogous to the essentiality of the humanity of Christ, the Incarnate Word, true God and true man⁴⁷ – the existence of Canon Law in the Orthodox Churches must be affirmed as a logical [theological] consequence, to the extent that they are precisely true Churches. And this right must be considered as belonging to the one "primary juridical order" of the Church of Christ. The Orthodox Churches possess the episcopate, in which resides the sacramental origin of the *sacra potestas*, the basis of the legislative, executive and judicial authority of the Church, and therefore have the capacity to have *canonical jurisdiction* in the strict sense.

Saint John Paul II affirmed:

«From the decree [UR 16] appears clearly the characteristic disciplinary autonomy that Eastern Churches enjoy: it is *not a consequence of privileges granted by the Church of Rome, but of the law itself* which these Churches have possessed since apostolic times. »⁴⁸

⁴⁵ Cf. UR 3 22; OE 4; UUS 56.

⁴⁶ As a result of the various conciliar texts that recognize the ecclesial nature of the Orthodox Churches (e.g. UR 3 and 14) and the centrality of the Eucharist in being a Church (cf. SC 41; LG 3, 11, and 26; CD 30; UR 2), «wherever there is a Christian community that constitutionally (therefore individual cases are not enough) validly celebrates the Eucharist, there is the Church of Christ, with greater or lesser fullness» (P. GEFAELL, *Principi dottrinali per la normativa sulla "communicatio in sacris"*, «Ius Ecclesiae» 8 [1996], p. 515).

⁴⁷ «But, the society structured with hierarchical organs and the Mystical Body of Christ, are not to be considered as two realities [...]; rather they form one complex reality which coalesces from a divine and a human element. For this reason, by no weak analogy, it is compared to the mystery of the incarnate Word» (*Lumen Gentium*, No. 8).

⁴⁸ «Ex hoc Decreto [UR 16] eruitur dilucide autonomiam, qua quoad disciplinam Ecclesiae Orientales fruuntur, *non manare e privilegis ab Ecclesia Romana concessis, sed a lege ipsa*, quam huiusmodi Ecclesiae a temporibus apostolicis tenent» (JOHN PAUL II, litt. ap. *Euntes in mundum universum*, 25 January 1988, «AAS» 80 [1988], p. 950, No. 10. My translation from the Italian version in www.vatican.va [https://bit.ly/478JBah], accessed 1st August 2023).

This disciplinary autonomy would not be understood without the exercise of jurisdiction. The Pope's statement, therefore, means that in the Orthodox Churches the bishops exercise the ecclesiastical jurisdiction handed down by the apostles. At the same time, it is undeniable that the exercise of episcopal power is only possible in union with the Pope; but «the papal ministry demands unity with him only as a sign of unity with the Church herself, and this admits different degrees of realization. »⁴⁹

The existence of canon law in the Orthodox Churches explains, for example, why, provided that they are not contrary to divine law, their laws on marriage can be "recognized" by us and not simply "canonized" (as civil laws are). In this regard, cc. 780-781 of the CCEO, on the application of the law of non-Catholic Churches, were later accepted also in Latin Law through arts. 2 and 4 of the instruction *Dignitas Connubii*⁵⁰ to be observed in the treatment of cases of nullity of marriage.

The same can be said of the juridical competence of their bishops to judge: the sentences they pronounce, if they are in accord with divine law and legitimate, can also be recognized by the Catholic Church.⁵¹

Many other considerations could still be proposed, but I think that those just set forth are sufficient for the purpose set, that is, the justification of the study of Eastern Canon Law at the Faculties of Latin Canon Law.

⁴⁹ «L'affirmation fondamentale que l'exercice du pouvoir épiscopal n'est possible que dans l'unité avec le pape, mise en doute par l'évidence de cet exercice par des ministres qui n'ont pas gardé la communion avec lui, peut donc être gardée, mais en comprenant la possibilité de l'existence de degrés différents, possibilité ouverte par le fait que le ministère papal n'exige l'unité avec lui que comme signe de l'unité avec l'Église elle-même, et celle-ci admet des degrés de réalisation différents» (A. CARRASCO ROUCO, *Le Primat de l'évêque de Rome. Etude sur la cohérence ecclésiologique et canonique du Primat de juridiction*, Éditions Universitaires, Fribourg [Switzerland] 1990, p. 226).

⁵⁰ PCLT, Instruction *Dignitas Connubii*, to be observed by diocesan and interdiocesan tribunals in handling causes of the nullity of marriage, 25 January 2005, Vatican City, LEV, 2005. Digital version in www.vatican.va [https://bit.ly/42cRtk3], accessed 13 January 2025.

⁵¹ Cf. PCLT, *Nota explicativa quoad pondus canonicum divortii orthodoxi*, 20 December 2012, «Communicationes» 44 (2012), pp. 357-359, No. 6; P. GEFAELL, *Can Orthodox Sentences of "Annulment" of Marriage be Recognized by the Catholic Church?*, in IDEM, *Harmonizing the Canons*, cit., pp. 91-114.

Many years ago, when I was a young professor of Oriental Law in the Faculty of Latin Canon Law of the University of the Holy Cross, I wrote:

«The challenge of rooting a global vision of Church Law must continue to stimulate the work of research and teaching in our Faculties. Only in this way will this approach gradually permeate the other realities of the Church's life. [...] I believe that within the teaching staff we cannot do without a professor specialized in Eastern Law as a whole. This professor [...] should take charge of promoting knowledge of Eastern Law among professors through seminars, refresher courses, advice and specific indications regarding a topic that some professor is studying, bibliography recommendations, etc. [...] It is not a question of training specialists in Eastern Law, but of integrating Latin canonical formation with a sufficient knowledge of the other "lung of the Church." »⁵²

I am still convinced of the need to integrate the *curriculum* of Latin Canon Law studies with knowledge of the main cornerstones of Eastern Canon Law, in order to provide students with a complete canonical formation and a truly Catholic vision of the Church.

⁵² P. GEFAELL, *Metodologia dell'insegnamento del Diritto canonico orientale ai latini*, «Folia Canonica» 4 (2001), pp. 168-169.