

## THE FOSTERING OF ECUMENISM: COMPARATIVE REFLECTIONS ON THE LATIN AND EASTERN CODES

### Introduction

One of the most significant developments at Vatican II was its transcending prior sharp conflicts among the various Christian churches and ecclesial communities. The council gave a new ecumenical orientation to the Catholic Church and created a much more favorable climate for restoring unity among all Christians<sup>1</sup>. Despite the difficulty of translating conciliar theological perspectives or practical ecumenical developments into law, both the 1983 Latin code and the 1990 Eastern code reflect the Church's postconciliar ecumenical preoccupations in their own distinctive fashions. Both documents must be interpreted in part in light of Vatican II as instruments of the Church's contemporary ecumenical renewal and ongoing commitment. Personal and corporate conversion (*metanoia*)<sup>2</sup> are integral

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<sup>1</sup> With due regard for the centrality of *Lumen gentium* (LG, AAS 57, 1965, 5-75), the two most significant documents for ecumenical theory and practice were the decrees *Unitatis redintegratio* (UR, AAS 57, 1965, 90-107) and *Orientalium ecclesiarum* (OE, AAS 57, 1965, 76-89).

<sup>2</sup> For an interesting exploration of this theme see GROUPE DES DOMBES, *For the Conversion of the Churches*, Geneva 1993. Original version: *Pour la conversion des Eglises*, Paris 1991.

elements of a genuine ecumenical commitment, mentioned by John Paul II as a key ecclesiological motif underlying both codes.

Actually the Latin code is not as explicitly ecumenically oriented as the Eastern code although the number of canons explicitly touching on ecumenical issues is approximately the same in each code and there are significant similarities between them in addressing such issues<sup>3</sup>. However, the 1983 apostolic constitution *Sacrae disciplinae leges* promulgating the Latin code makes only a brief reference to the Church's ecumenical commitment<sup>4</sup>. Furthermore, despite this authoritative statement of the ecumenical implications of Latin canonical reform, there was no explicit reference to such concerns in the ten principles for the revision of the 1917 Latin code approved by the 1967 synod of bishops<sup>5</sup>. By contrast the 1990 apostolic constitution *Sacri canones* promulgating the Eastern code devotes three paragraphs to the ecumenical aspects of Eastern canonical reform. The document high-

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<sup>3</sup> In this connection it should be noted that there are some very profound theological-canonical issues that are most relevant to ecumenical relationships, e.g. nature and exercise of papal primacy, synodal patterns of church governance, ecclesial status of laity especially women. While such issues can at times be viewed in terms of specific canons in either code, nevertheless in numerous instances they transcend such specific canonical provisions. The author, however, focuses his attention exclusively on such provisions.

<sup>4</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (CIC, Città del Vaticano 1983) xii: "Ex elementis autem, quae veram ac propriam Ecclesiae imaginem expriment, haec sunt praecipue recensenda: ... studium denique ab Ecclesia in oecumenismum impendendum." Any references to the English translation of the Latin code are taken from *Code of Canon Law Latin-English Edition*, Washington 1983.

<sup>5</sup> *Communicationes* 1 (1969) 77-85.

lights the ecumenical service to be performed by the Eastern Catholic churches (*OE* 24) and stresses the common canonical patrimony of the various Eastern churches including those not in full communion. The apostolic constitution also affirms that the code advances the ecumenical movement, is geared to the flourishing of the Eastern Catholic churches and remains in effect until abrogated or changed by supreme church authority. The most serious reason for such an abrogation or change would be full communion of all the Eastern churches with the Catholic Church<sup>6</sup>. Furthermore, one of the 1974 guidelines for revising Eastern law explicitly mentioned its ecumenical character while stressing its pertinence only to Eastern Catholics and noting a concern to ensure the flourishing of their respective churches<sup>7</sup>.

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<sup>6</sup> *Codex canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli II promulgatus* (CCEO, Città del Vaticano 1990) ix-x. Any references to an English translation of the Eastern code are taken from *Code of Canons of the Eastern Churches. Latin-English Edition*, Washington 1992. For critical comments on this translation see G. NEDUNGATT, *A Companion to the Eastern Code: For a New Translation of Codex Canonum Ecclesiarum Orientalium*, Rome 1994.

<sup>7</sup> *Guidelines for the Revision of the Code of Oriental Canon Law*, in *Nuntia* 3 (1976) 20. The guidelines were approved at a March 18-23, 1974 plenary session of the Eastern code commission. While the guidelines were not numbered, the third of them was entitled "Ecumenical Character of the CICO" and read in part:

"2. It must be a prime concern of the new Code to promote the fulfillment of the desire expressed by the Second Vatican Council that the Oriental Catholic Churches 'flourish and execute with new apostolic vigour the task entrusted to them' (*Orientalium ecclesiarum*, n. 1) ... 'of promoting the unity of all Christians' (*ibid.*, n. 24) of which unity they are called to be faithful witnesses according to the principle of the Decree on Ecumenism.

In light of such ecumenical preoccupations of the legislator, it might be instructive to examine briefly the canons in the two codes that touch on ecumenical concerns<sup>8</sup>. No detailed exegesis of the canons is envisioned

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3. In virtue of this 'special office', referred to in the previous paragraph, due consideration must be given, in the revision of CICO to the 'aggiornamento' to which the Orthodox churches are tending in the hope of an ever greater unity of the Canon Law of all the Oriental Churches.

4. Therefore, in all things concerning the Orthodox Churches, the Code must be inspired by the words of Paul VI: on the Sister Churches, the 'almost full' communion, on the respect due to the Hierarchs of these Churches as 'Pastors to whom have been entrusted a portion of the flock of Christ'; inspired also by the Conciliar text on their 'right to govern themselves according to their own disciplines, since these are better suited to the temperament of their faithful and better adapted to foster the good of souls' (*Unitatis redintegratio* n. 16)."

For the original Italian text of the pertinent guideline see *Principi direttivi per la revisione del Codice di Diritto Canonico Orientale*, in *Nuntia* 3 (1976) 5. For a French translation see *Principes directeurs pour la revision du Code de Droit Canon Oriental*, *ibid.*, 13.

<sup>8</sup> The author has already attempted a modest examination of ecumenical issues in the 1983 Latin code. See T. Green, *Changing Ecumenical Horizons: Their Impact on the 1983 Code*, to appear in *The Jurist* 56/1 (1996), a festschrift in honor of Ladislav Orsy, S.J.

Besides the standard commentaries on the 1983 Latin code, the following authors among others have systematically addressed ecumenical issues in the 1983 code: W. AYMANS, *Ökumenischen Aspekte des neuen Gesetzbuches der lateinischen Kirche Codex Iuris Canonici*, in *Archiv für Katholischen Kirchenrecht* 151 (1983) 479-489; A. EBNETER, *Das neue Kirchenrecht und die Ökumene*, in *Ökumenisches Rundschau* 32 (1983) 461-476; O. GARCIA, *Ecumenical Aspects of the Revised Code*, in *Proceedings of Canon Law Society of America* (1983) 201-220; B. GRIFFIN, *The Challenge of Ecumenism for Canonists*, in *Proceedings of Canon Law Society of America* (1993) 17-38; H. HEINEMANN, *Ökumenischen Implikationen des neuen kirchlichen Gesetzbuches*,

but rather a modest effort to articulate the 'ecumenical profile' of the two codes. Where appropriate, reference will also be made to a particularly significant tool of

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in *Catholica* 39 (1985) 1-26; IDEM, *Kirchen und kirchliche Gemeinschaften. Eine Anfrage an das neue Gesetzbuch der katholischen Kirche*, in *Zeitschrift für Evangelisches Kirchenrecht* 32 (1987) 378-386; IDEM, *Ökumene im neuen 'Codex des kanonischen Rechtes' der Römisch-Katholischen Kirche*, in *Una Sancta* 41 (1986) 7-14; A. JOOS, *Il movimento ecumenico e il nuovo Codice di Diritto canonico 1983*, in *Apollinaris* 57 (1984) 61-88; H. MÜLLER, *Der oekumenische Auftrag*, in *Handbuch des katholischen Kirchenrecht*, (ed. J. Listl, H. Müller and H. Schmitz), Regensburg 1983, 553-561; V. PAPEŽ, *La lettura ecumenica del Codice di Diritto Canonico*, in *Antoniano* 68 (1993) 91-107; L. PIVONKA, *The Revised Code of Canon Law: Ecumenical Implications*, in *The Jurist* 45 (1985) 521-548; R. POTZ, *Communio non plena*, in *Una Sancta* 41 (1986) 15-25; B. PRIMET-SHOFFER, *Die interkonfessionelle Geltung des kanonischen Rechts*, in *Österreichisches Archiv für Kirchenrecht* 41 (1992) 194-207; I. RIEDEL-SPANGENBERGER, *Codex Iuris Canonici und seine ökumenischen Implikationen*, in *Catholica* 38 (1984) 231-250; A. TACHE, *The Code of Canon Law of 1983 and Ecumenical Relations*, in M. THERIAULT and J. THORN (eds.), *Le Nouveau Code de Droit Canonique The New Code of Canon Law*, vol. 1, Ottawa 1986, 401-422; R. VOELTZEL, *Une lecture protestante de nouveau Code de Droit Canonique*, in *Revue d'Histoire et de Philosophie Religieuses* 66 (1986) 109-121.

As regards the 1990 Eastern code, Dimitri Salachas has commented specifically on its ecumenical aspects. See IDEM, *I battezzati acattolici che vengono alla piena comunione con la Chiesa Cattolica*, in *Apollinaris* 60 (1987) 227-244; IDEM, *L'ecumenismo nello schema del codice di diritto canonico orientale*, *ibid.* 61 (1988) 205-227; IDEM, *Ecumenical Significance of the New Code*, in *The Code of Canons of the Eastern Churches: a Study and Interpretation* (ed. J. Chiramel and K. Bharanikulangara), Alwaye, India 1992, 258-275. See also V. POSPISHIL, *Eastern Catholic Church Law According to the Code of Canons of the Eastern Churches*, Brooklyn, N.Y. See especially pp. 546-554 on baptized non-Catholics coming into full communion with the Catholic Church and on ecumenism.

ecumenical interpretation, i.e. the 1993 ecumenical directory issued by the Pontifical Council for Promoting Christian Unity<sup>9</sup>. The directory, a general executory decree<sup>10</sup>, implements both the Latin and Eastern codes and frequently addresses issues not explicitly mentioned in them, sometimes in notable detail.

The following reflections will be organized as follows. Initially we will identify those areas where the formulation of the canons is basically similar in both codes. Then we will consider instances where the canons are formulated differently although at times these differences are not overly significant. Thirdly we will consider Latin code provisions that are not explicitly contained in the Eastern Code. Next we will note Eastern code provisions not contained in the Latin code. Finally we will offer some brief concluding reflections. In treating the respective canons we will follow the order of the Latin code except for the last discussion focusing solely on the Eastern code. The canons will be quoted only where necessary to illustrate significant textual issues. Where appropriate, re-

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<sup>9</sup> PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY, *Directory for the Application of Principles and Norms on Ecumenism*, March 25, 1993, Washington 1993. The numbers cited in references to the directory indicate paragraphs in the document. The 1993 directory revises an earlier directory which appeared in two parts. For part one see SECRETARIAT FOR THE PROMOTION OF CHRISTIAN UNITY, directory *Ad totam Ecclesiam*, May 14, 1967, in AAS 59 (1967) 574-592. It will henceforth be cited as '1967 directory' with the corresponding paragraph number. For part two see SECRETARIAT FOR THE PROMOTION OF CHRISTIAN UNITY, directory *Spiritus Domini*, April 16, 1970, in AAS 62 (1970) 705-724.

<sup>10</sup> For a brief overview of the text by the undersecretary of the Council see E. Fortino, *The Revised Ecumenical Directory: Process, Content, Supporting Principles*, in *Information Service* 3-4 (1993) 84, 138-142.

ference will be made to the 1917 code<sup>11</sup> or to one of the four Eastern law *motu proprio*s issued by Pius XII between 1949-1957<sup>12</sup>.

## I. Similar formulations of canons in the Latin and Eastern Codes

### 1. *The binding force of ecclesiastical law*

Canon 12 of the 1917 code stated theoretically that all the baptized were bound by ecclesiastical law unless they were expressly exempt. However, both the Latin c. 11 and the Eastern c. 1490 indicate that ecclesiastical law binds only those who have been baptized in one of the *sui iuris* Catholic churches or received into it, who have the sufficient use of reason and who have completed their seventh year of age unless the law expressly provides otherwise. The codes thus acknowledge the legal autonomy of other churches and ecclesial communities, a canonical corollary of the conciliar theological recognition of their salvific reality (*UR* 15 and 19). Other Christians are bound by merely ecclesiastical law only when they enter into relationships with Catholics, e.g., mixed marriage situation.

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<sup>11</sup> *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (CIC-17, Westminster, Maryland 1964).

<sup>12</sup> The four *motu proprio*s in question were the following: *Crebrae allatae* (CA), February 22, 1949, in AAS 41 (1949) 89-117; *Sollicitudinem nostram* (SN), January 6, 1950, in AAS 42 (1950) 5-120; *Postquam apostolicis litteris* (PA), February 9, 1952, in AAS 44 (1952) 65-152; and *Cleri sanctitati* (CS), June 2, 1957, in AAS 49 (1957) 433-600.

## 2. *The meaning of Christifidelis and the subsistence of the Church of Christ in the Catholic Church*

The 1917 code viewed other Christians somewhat negatively as non-Catholics (*acatholici*), heretics (*haeretici*) or schismatics (*schismatici*) and considered them basically in terms of their separation from the Catholic Church. However, they are now esteemed as fellow Christians and members of sister churches and ecclesial communities enjoying at least an imperfect communion with Catholics. Both the Latin c. 204, § 1 and the Eastern c. 7, § 1 view all the baptized as *Christifideles*, who through baptism are incorporated into Christ and constituted as members of his Church. They likewise share in the threefold *munera* of Christ and his mission in the world. However, the specific implications of such sharing depend on their degree of communion with the Church and specific juridic condition within it.

Both the Latin c. 204, § 2 and the Eastern c. 7, § 2 also affirm a central point of conciliar ecclesiology (LG 8). The Church of Christ *subsists* in the Catholic Church, governed by the pope and the bishops in hierarchical communion with him, but is not identified with it. While other Christian churches and ecclesial communities contain various salvific elements, the Catholic Church is the only complete institutional realization of the Church of Christ, possessing all the pertinent means of grace and truth to assist believers in their journey of faith.

## 3. *The requisites of full communion*

Although all the baptized are *Christifideles*, both the Latin c. 205 and the Eastern c. 8 specify certain legally verifiable criteria for determining who is in full



communion with the Catholic Church (*LG* 14). The bonds of faith, sacraments and ecclesiastical governance highlighted in the law are significant in determining how fully Christians participate in the Church's mission and in clarifying the degree to which Christian rights may be vindicated within the Church<sup>13</sup>.

#### *4. Ecumenical formation of seminarians*

Unlike the 1917 code, which did not address the issue explicitly<sup>14</sup>, both the Latin c. 256 and the Eastern c. 352, §§ 2-3 emphasize a proper ecumenical formation of seminarians. Such doctrinal, spiritual and pastoral formation is crucial if the faithful at large are to be duly engaged in the ecumenical movement according to their proper condition (*UR* 4)<sup>15</sup>.

#### *5. Sacramental sharing*

Both the Latin and Eastern codes notably modify the strict prohibitions of sacramental sharing with other Christians characteristic of canon 731, § 2 of the 1917 code. Since full communion in faith, worship and ecclesial life is to be symbolized by such sharing, it is normally precluded and is not to be used indiscriminately to foster Christian unity. However, at times the need to share in the means of grace and the fact of at least imperfect communion may warrant some such

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<sup>13</sup> See CIC, c. 96 on the effects of baptism, a text for which there is no corresponding provision in the Eastern code.

<sup>14</sup> In fact canon 1325, § 3 of the 1917 code adopted a rather negative posture regarding conversations with members of other churches/ecclesial communities.

<sup>15</sup> For a rather detailed discussion of this issue see directory, 70-82, of which paragraphs 72-81 deal with doctrinal formation and paragraph 82 with ecumenical experience.

sharing. The Latin c. 844 and the Eastern c. 671 succinctly clarify the parameters of such sharing<sup>16</sup>.

After an initial paragraph clarifying the basic connection between full ecclesial communion and sacramental sharing<sup>17</sup>, three paragraphs clarify different possible situations of sacramental sharing: a) Catholics receiving the sacraments from non-Catholic ministers, b) Christian faithful of the Eastern churches not in full communion receiving the sacraments from Catholic ministers and c) Christian faithful of other churches or ecclesial communities not in full communion receiving the sacraments from Catholic ministers. A final paragraph calls for Catholic church authorities to consult their counterparts in other churches or ecclesial communities before formulating norms on sacramental sharing<sup>18</sup>.

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<sup>16</sup> For a more detailed discussion of these issues see *Directory*, 122-136.

<sup>17</sup> The Latin c. 844, § 1 differs slightly from the Eastern c. 671, § 1 and hence will be addressed briefly in the next section of this article.

<sup>18</sup> Some slight differences between the codes might be noted here. The Eastern code speaks more precisely of 'Catholic' members of the Christian faithful in paragraph 2. Furthermore, it speaks of 'Christian faithful' rather than 'members' of churches in paragraph 3. In paragraph 4 the Eastern code refers to the 'eparchial bishop' instead of the 'diocesan bishop'; it also mentions the 'synod of bishops of the patriarchal church or the 'council of hierarchs' instead of the 'episcopal conference'. In the same paragraph the Eastern code speaks of the non-Eastern Christian professing a 'faith consonant with that of the Catholic Church' rather than the 'Catholic faith'. Finally in paragraph 5 the Eastern code speaks generically of 'particular law' rather than specifically of the 'diocesan bishop' or the 'episcopal conference'. According to the Eastern c. 1493, § 2 'particular law' means laws, legitimate customs, statutes and other norms not common to the universal law or all the Eastern churches.

### 6. *Prohibited concelebration with other Christians*

Unlike the aforementioned provisions for some sacramental sharing, both the Latin c. 908 and the Eastern c. 702 strictly prohibit concelebration with priests or ministers of churches or ecclesial communities not in full communion (*Directory* 104 e). This restriction presumably reflects the ecclesial centrality of the Eucharist and the inauthenticity of such a sacramental sign of unity in the absence of full communion.

### 7. *Binding force of ecclesiastical marriage law*

The marriage canons provide a specific implication of the general freedom of other Christians from ecclesiastical law (CIC, c. 11; CCEO, c. 1490). Unlike the 1917 code and *Crebrae allatae* which viewed the marriages of the baptized (*baptizatorum*) as governed both by divine law and canon law (CIC-17, c. 1016; CA 5), both the Latin c. 1059 and the Eastern c. 780, § 1 speak of the marriages of Catholics (*Catholicorum*) in this connection<sup>19</sup>.

### 8. *Conditions for mixed marriages*

One of the most significant ecumenical differences from the 1917 code and *Crebrae allatae* are the provisions for the mixed marriages of Catholics, whether they involve baptized members of other Christian churches or non-baptized persons<sup>20</sup>. For example, formerly the Catholic party was technically obliged to at-

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<sup>19</sup> By way of contrast to the Latin code, the Eastern code addresses in somewhat more detail the issue of the law binding baptized non-Catholics (CCEO, cc. 780, § 2; 781). This point will be discussed briefly later in this article.

<sup>20</sup> For detailed reflections on mixed marriages see *Directory*, 143-160.

tempt to convert the non-Catholic party (CIC-17, c. 1062; CA 52). However, now the former is to declare a readiness to maintain the Catholic faith while promising to do all in his or her power to see to the Catholic baptism and education of any children. If such conditions are not met, a permission for such a marriage cannot be granted (CIC, cc. 1124-1125; CCEO, cc. 813-814)<sup>21</sup>.

Fulfilling such a commitment may cause serious practical problems in the marriage especially since the Catholic spouse must respect the religious freedom, conscience and good faith of the other party. Unlike the former law (CIC-17, c. 1061, § 1, 2°; CA 51, § 1, 2°), the non-Catholic party need not make any formal oral or written promise in this regard but must simply be made aware of the Catholic's commitment (CIC, c. 1125, 2°; CCEO, c. 814, 2°)<sup>22</sup>. Hopefully this may preclude or at least minimize future marital conflicts.

### 9. *Prohibitions regarding expression of vows*

With the permission of the competent local authority, a Catholic minister may participate in the marriage of a Catholic celebrated outside a Catholic church (*Directory*, 157). With similar permission a non-Catholic minister may likewise participate in a mixed marriage celebrated in a Catholic church (*Directory*, 158). Such participation may involve offering

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<sup>21</sup> These conditions are also relevant to disparity of worship unions. See CIC, c. 1086, § 2, which refers to the Latin cc. 1125 (declarations and promises) and 1126 (role of episcopal conference). Also CCEO, c. 803, § 3 which refers only to the Eastern c. 814 (declarations and promises).

<sup>22</sup> There are some noteworthy differences between the codes regarding those bound by the law on mixed marriages and the regulations on the *cautiones* which will be discussed briefly later.

appropriate prayers, reading from the Scriptures, giving an exhortation and blessing the couple. However, the integrity and unity of the marriage celebration preclude a simultaneous reception of the marriage vows by both ministers or a double expression of consent in two separate religious ceremonies (CIC, c. 1127, § 3; CCEO, c. 839; *Directory*, 156)<sup>23</sup>.

#### 10. *Spiritual assistance of the couple and children in a mixed marriage*

Given the particular pastoral problems confronting those in mixed marriages, the Latin c. 1128 and the Eastern c. 839 encourage local hierarchs and other pastors to offer special assistance to spouses and children in such ecumenical families (*Directory*, 144; 146). The Church's preeminent concern for marital and family stability will take various forms depending upon differing pastoral circumstances. This is a potentially fruitful area of ecumenical pastoral collaboration although the quality of ecumenical relationships in different areas will influence the effectiveness of such pastoral efforts.

#### 11. *Burial of other Christians*

If the minister of other Christians is unavailable and they had not expressed a contrary intent, the Latin c. 1183, § 3 and the Eastern c. 876, § 1 indicate that they may be given a Catholic burial. This provision reverses the strict prohibition of such a burial in the former law

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<sup>23</sup> It is permissible, however, to have a civil ceremony before the religious one if the former is required by civil law. Furthermore, it is legitimate to have a religious ceremony after the marriage involving a blessing of the couple without a renewal of vows.

(CIC-17, c. 1240, § 1, 1°) as well as the corresponding non-reserved *latae sententiae* excommunication for Catholics presuming to bury such individuals (CIC-17, c. 2339).

## 12. *Procedural capacity*

Contrary to the former law which did not accord procedural capacity to non-Catholics, baptized or not (CIC-17, c. 1646; *SN* 161)<sup>24</sup>, the Latin c. 1476 and the Eastern c. 1134 articulate in principle the procedural capacity of all persons to function in church tribunals. However, such capacity is qualified somewhat by other provisions in the two codes<sup>25</sup>. This change reflects a conciliar emphasis on affirming and vindicating the substantive and procedural rights of persons, which was expressed subsequently in principles 6 and 7 guiding the revision of the Latin code<sup>26</sup>.

## II. Differences in formulations of canons in the Latin and Eastern codes

### 1. *Ecumenical solicitude of diocesan bishop (eparch)*

Both the Latin c. 755 and the Eastern c. 904 identify three principal centers of ecumenical authority in the Church: the Holy See, the diocesan bishop (eparch), and the competent territorial authority, be it the conference of bishops or the pertinent Eastern synod<sup>27</sup>. Both

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<sup>24</sup> CONGREGATION FOR THE SACRAMENTS, instruction *Provida mater*, August 15, 1936, article 35, 3, in AAS 28 (1936) 321.

<sup>25</sup> See for example CIC, cc. 1477-1480; CCEO, cc. 1135-1138.

<sup>26</sup> *Communicationes* 1 (1969) 82-83.

<sup>27</sup> *Directory*, 26-29 (different levels of ecumenical activity), 37-40 (ecumenical organization).

codes also specifically highlight the responsibility of the bishop (eparch) to manifest a genuine ecumenical solicitude as an integral part of his pastoral office. The Latin c. 383, §§ 3-4, however, explicitly focuses solely on the diocesan bishop whereas the Eastern c. 192, §§ 2-3 emphasizes more consciously the eparch's role in facilitating the ecumenical commitment of all the faithful. This may reflect the fact that the Eastern c. 902, without a Latin counterpart, explicitly emphasizes the ecumenical involvement of all the faithful under the leadership of their pastors. Both codes call for the bishop (eparch) to foster the ecumenical movement in light of principles approved by the Church and to manifest kindness and charity towards those not in full communion. Specific reference is made to his considering the non-baptized as committed to him in the Lord, a task that is especially significant wherever Christians are a distinct minority<sup>28</sup>.

## 2. *Non-Catholic involvement in Catholic synodal processes*

Despite the significant presence of non-Catholic observers at Vatican II, neither code explicitly refers to such a possibility either at the *ecumenical council* or at the *synod of bishops*. However, the rather open-ended

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<sup>28</sup> On the complexity and diversity of the ecumenical situation to which bishops (eparchs) and other church leaders need to respond creatively see *Directory*, 30-34. This seems to be a particularly clear example of the need to implement the principle of subsidiarity as an ongoing dimension of canonical reform. See principle 5 for the revision of the Latin code in *Communicationes* 1 (1969) 80-82. Also principle 6 for the revision of the Eastern code in *Nuntia* 3 (1976) 21-22 (English version); 6-7 (Italian version); 14-15 (French version).

Latin c. 339, § 2 and Eastern c. 52, § 2 on non-episcopal conciliar participation could probably be interpreted as leaving the door open for such ecumenical involvement. Furthermore the Latin c. 346 on papal discretion regarding synod participants could also be understood as possibly permitting ecumenical involvement in such a process.

The norms on two other synodal processes seem to provide for ecumenical participation although in one instance the reference is implicit rather than explicit. The Eastern c. 143, § 4 explicitly provides for the possible invitation to the *patriarchal assembly* of observers from other churches or ecclesial communities. Such an assembly is to address issues of the apostolate and ecclesiastical discipline (CCEO, c. 140). It is not stated who is to issue such an invitation, but presumably the patriarch with the consent of the permanent synod or the episcopal synod would be the competent authority according to particular law. A Latin code parallel to such an assembly is the *particular council* (plenary or more likely provincial). The Latin c. 443, § 6 indicates the possibility of inviting as guests persons other than those present by law with a deliberative or consultative vote<sup>29</sup>. No explicit reference, however, is made to members of other churches or ecclesial communities although they might contribute to the realization of the council's objectives, e.g. increasing the faith, organizing common pastoral activity or fostering ecclesiastical discipline (CIC, c. 445). Unlike the Eastern code, the Latin code indicates that the decision to invite such guests pertains to the episcopal confer-

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<sup>29</sup> The first five paragraphs indicate who is to be called to such a council or may be called with a deliberative or consultative vote.



ence in the case of a plenary council or the metropolitan with his suffragans for a provincial council.

Explicit reference is made to possible ecumenical participation at *diocesan synods* or *eparchial assemblies*, whose purpose is to assist the local hierarch to provide more effectively for the pastoral welfare of the particular church (CIC, c. 460; CCEO, c. 235). Unlike the Eastern c. 238, § 3, the Latin c. 463, § 3 explicitly refers to the discretion of the diocesan bishop in this connection and specifically mentions the ministers or members of other churches or ecclesial communities. Such ecumenical consultation might help to clarify the concerns of those not in full communion regarding Catholic teaching and practice<sup>30</sup>.

### 3. *Notion and penal implications of being a heretic, schismatic or apostate*

Both codes modify the former legislation, which referred regularly to other Christians as 'heretics' or 'schismatics' and required their being absolved from excommunication when they entered the Catholic Church (CIC-17, cc. 1325, § 2; 2314, § 2). The present law, however, speaks of them rather as *Christifideles* belonging to churches or ecclesial communities not in full communion. The change in law is not simply terminological since there has been a change in our understanding of heretics, schismatics and apostates. Such terms refer solely to baptized Catholics or those received into the Catholic communion who in bad faith

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<sup>30</sup> In this connection one might note the provision on consultation with local hierarchs of other churches or ecclesial communities regarding possible norms on sacramental sharing. See CIC, cc. 844, § 5; CCEO, c. 671, § 5.

separate themselves from that communion with possible penal implications (*UR* 13; *1967 directory* 19).

While there are some basic similarities between the two codes, they approach these issues somewhat differently. For example the Latin code deals with this problematic in two different books. The substantive concepts are addressed in book III on the Church's teaching office (CIC, c. 751) while the penal implications are spelled out in book VI on sanctions (CIC, c. 1364). On the contrary the Eastern code deals with both the substantive concepts and penal implications in title XXVII on penal sanctions (CCEO, cc. 1436, § 1; 1437).

The Latin code speaks abstractly of 'heresy', 'schism' and 'apostasy' whereas the Eastern code personalizes the issue in terms of 'heretics', 'schismatics' and 'apostates'. The Latin c. 751 deals with all three types of persons while the Eastern code differentiates between 'heretics' and 'apostates' on the one hand (CCEO, c. 1436, § 1) and 'schismatics' on the other hand (CCEO, c. 1437). In speaking of 'heresy' the Latin code alone refers to the fact of the heretic's having receiving baptism and speaks of 'obstinate' (*pertinax*) doubt regarding a truth to be believed with divine and catholic faith. The two codes' formulations regarding schism likewise differ somewhat. The Latin c. 751 refers to a refusal of subjection to the Supreme Pontiff or communion with those subject to him. However, the Eastern c. 1437 speaks of an evasion of subjection to supreme church authority or communion with those subject to it. While the Latin c. 1364, § 1 initially provides for a *latae sententiae* excommunication for such delicts, the Eastern code more wisely requires a legitimate warning before a major excommunication is imposed (CCEO, cc. 1436, § 1; 1437). The serious penal-inquiry entailed by such a *ferendae sententiae* approach

seems more appropriate in dealing with potentially complex theological-canonical issues<sup>31</sup>. The Latin code, however, also provides for possible *ferendae sententiae* expiatory penalties including possible dismissal from the clerical state if long-standing contumacy or serious scandal warrant such a measure<sup>32</sup>.

#### 4. *Ecumenical authority*

Unlike the Eastern cc. 902-908 no separate section of the Latin code is devoted to the ecumenical movement as such. However, the Latin c. 755 clarifies the basic tripartite structure of ecumenical governance to insure the integrity of church life in word and sacrament. Paragraph one stresses the central role of the college of bishops and the Apostolic See in fostering ecumenism, which hopefully will lead to the union of Christians as willed by Christ. Paragraph two highlights the juridical duty of bishops, individually and in conferences, to promote unity and issue practical norms to achieve such a goal in the diverse pastoral circumstances in which they minister. Ecumenical policy will necessarily differ depending on whether Catholics are a significant majority or whether other Christians are in the majority or whether the milieu is a significantly non-Christian one<sup>33</sup>.

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<sup>31</sup> The Eastern code neither provides for *latae sententiae* penalties nor explicitly speaks of *ferendae sententiae* penalties.

<sup>32</sup> The Eastern c. 1436, § 1 also provides for additional penalties for clerics guilty of heresy and apostasy including possible deposition. However, unlike its Latin counterpart, the Eastern c. 1437 does not provide for such penalties in the case of schism.

<sup>33</sup> Given the relative paucity of provisions on episcopal ecumenical ministry in both codes, especially the Latin code, frequent recourse needs to be made to the 1993 ecumenical directory in its entirety, not simply to chapter II on ecumenical organization.

In issuing such norms the bishops are to consider the prescriptions of supreme church authority. Realistically this usually means the Council for Promoting Christian Unity, which must closely collaborate with the Congregation for the Doctrine of the Faith and the Congregation for the Eastern Churches<sup>34</sup>.

Most of the aforementioned comments are also relevant to the Eastern c. 904, which deals with ecumenical authority. Paragraph one highlights the importance of particular law in each *sui iuris* church with due regard for the supervisory function of the Apostolic Roman See for the universal church. Unlike the Latin code, paragraph two explicitly calls for the establishment of an ecumenical commission in each *sui iuris* church to offer advice on ecumenical matters. Before such commissions are set up in any individual church, there should be appropriate consultation with the leaders of other churches in order to ensure the maximal pastoral effectiveness of such bodies. The Eastern code also reflects a concern about coordinating and fostering ecumenical efforts at the eparchial level. Hence paragraph three calls for the establishment of a council for ecumenical matters or suggests entrusting at least one member of the Christian faithful with such responsibilities. While the Eastern code does not describe the responsibilities of

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<sup>34</sup> *Pastor bonus*, 135-137. Collaboration with the Congregation for the Doctrine of the Faith is required because of the doctrinal implications of the Council's activities. Collaboration with the Congregation for the Eastern Churches is warranted because of its expertise in matters affecting the life and ministry of the various Eastern churches. The clearest recent example of the Council's coordinating and directive role is the publication of the 1993 ecumenical directory.

such groups or individuals, the 1993 ecumenical directory is quite helpful in this regard<sup>35</sup>.

### *5. Collaboration on scripture translations*

Besides baptism a very significant spiritual factor that unites Christians is a reverence for the scriptures. An especially noteworthy indicator of recent ecumenical collaboration has been increasing cooperation in preparing editions of the scriptures. Both codes address this issue though in a slightly different fashion. Their encouragement of such translations sharply contrasts with the former legislation, which generally prohibited Catholics from reading non-Catholic versions of the scriptures and other non-Catholic religious works (CIC-17, cc. 1399-1400). The Latin c. 825, § 2 notes that episcopal conference permission is required to prepare and publish ecumenical translations of the scriptures with appropriate annotations. The Eastern c. 655, § 1 is somewhat less centralized in its approach since the eparch can authorize such translations. It is also a bit more qualified in its authorization since such translations can be prepared if they can be done properly and usefully (“quatenus id convenienter et utiliter fieri possit”). As is frequently the case, the 1993 directory is rather helpful in clarifying further

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<sup>35</sup> For a description of the office of a diocesan ecumenical officer see paragraph 41. For a description of the function of a diocesan ecumenical commission or secretariat, which is genuinely diversified in its membership comparable to a diocesan pastoral council, see paragraphs 42-44. For a description of the functions of an ecumenical commission serving the episcopal conference or Eastern synod see paragraphs 46-47.

implications of ecumenical sharing of the scriptures (*communicatio in scripturis*)<sup>36</sup>.

## 6. *Sacramental sharing*

While the issue of sacramental sharing was discussed earlier, one might note that there is somewhat of a difference in the formulation of paragraph one in the Latin c. 844 and the Eastern c. 671. The latter text states simply that Catholic ministers licitly administer the sacraments only to Catholics while the latter receive them licitly solely from Catholic ministers. On the contrary, the former text, while not substantively different, qualifies the aforementioned principle by referring to exceptional circumstances warranting sacramental sharing (paragraphs 2-4) as well as to the Latin c. 861, § 2 with its broad provisions for the extraordinary minister of baptism.

## 7. *Baptism of a non-Catholic infant in danger of death against the will of the parents*

Both codes provide for the possible licit baptism of an infant, even one born of non-Catholic parents, in danger of death. However, the Latin c. 868, § 2, unlike the Eastern c. 681, § 4, indicates that such a baptism is possible even if the parents are opposed (“etiam invitis parentibus”). With due regard for the salvific necessity of baptism, the Latin c. 840 states that the sacraments are not simply the principal means of salvation but also actions of Christ and the Church and privileged ways

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<sup>36</sup> See *Directory*, 183-186 on common biblical research, the preparation of common translations and common bible study at the local level.

of expressing and reinforcing one's faith. Furthermore, the current law emphasizes the importance of a nurturing faith environment for the baptized child<sup>37</sup>. If the parents are opposed to baptism, its celebration seems to be a countersign. This is especially true if they are unbaptized and the child recovers. It might be more prudent pastorally to refrain from such a baptism, however legitimate canonically, and trust in the graciousness of God to provide for the infant's salvation.

### 8. *Baptismal sponsorship*

To deal properly with the possible liturgical involvement of other Christians at Catholic baptisms and of Catholics at the baptisms of other Christians, one needs to examine the 1967 ecumenical directory, the 1983 Latin code, the 1990 Eastern code and finally the 1993 ecumenical directory.

According to paragraph 48 of the 1967 directory *Eastern Christians* could be 'sponsors' at a Catholic baptism along with a Catholic godparent, who would assure the Christian education of the candidate. Catholics could be 'sponsors' at an Eastern Christian baptism under comparable conditions<sup>38</sup>. Such sponsorship theoretically entails representing a community of faith and means much more than simply acknowledging ties of blood or friendship, whatever may be the situation in practice.

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<sup>37</sup> See CIC, c. 868, § 1, 2° and CCEO, c. 681, § 1, 1° on the ordinary need for a *spes fundata* of Catholic upbringing for licit baptism.

<sup>38</sup> This provision modified CIC-17, c. 765, § 2 prohibiting heretics, schismatics and excommunicated persons from functioning as baptismal sponsors.

The lack of comparable ecclesiological and sacramental unity with *Western Christians* understandably meant a somewhat more restrictive policy on such baptismal sponsorship. Such persons could technically function only as 'Christian witnesses' at Catholic baptisms, and Catholics could do likewise at an Anglican or Protestant celebration (1967 *directory*, 57).

Interestingly enough the Latin c. 874, § 2 does not restate the above differentiation but refers simply to the possible 'Christian witness' function of members of non-Catholic ecclesial communities at Catholic baptisms along with a Catholic sponsor. It neither explicitly addresses nor prohibits the possible 'sponsor' role of Eastern Christians at Catholic baptisms<sup>39</sup> or the possible comparable functioning of Catholics at baptisms in other Christian churches, Eastern or Western.

Similarly the Eastern c. 685, § 3 does not restate the aforementioned differentiation of the 1967 *directory*. The former text states simply that for a just cause a member of a non-Catholic Eastern church can serve as a 'sponsor' at a Catholic baptism. It neither explicitly addresses nor prohibits the possible 'Christian witness' role of Western Christians at Catholic baptisms or the possible comparable functioning of Catholics at baptisms in other Christian churches, Eastern or Western.

Paragraph 98 of the 1993 *directory*, however, basically restates the provisions of its 1967 predecessor, thereby seemingly rectifying any *lacunae iuris* in the two codes. Rather than treating Eastern and Western Christians in two separate sections, the most recent di-

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<sup>39</sup> The term 'ecclesial community' (*communitatem ecclesialem*) in the canon does not include the Eastern Orthodox churches not in full communion. See *Communicationes* 5 (1983) 12 (footnote 107 of the 1993 *directory*).



rectory treats them together in the same context. It stresses the primary liturgical role of the sponsor, who is a member of the church or ecclesial community in which the baptism is celebrated, especially as regards the Christian education of the child baptized. The recent directory also clearly differentiates between Eastern ('sponsor') and Western Christians ('Christian witness') in terms of their degree of communion with the Catholic Church and explicitly provides for the possible participation of Catholics at baptisms in other Christian churches without requiring any special permission of local church authority.

#### 9. *Celebration of Eucharist in non-Catholic church*

Both codes address the issue of Catholic priests celebrating the Eucharist in a non-Catholic church, but the Latin c. 933 is somewhat more qualified than the Eastern c. 705, § 2. The latter text speaks simply of the permission of the local hierarch whereas the former canon speaks also of a 'just cause' and the 'avoidance of scandal'. The present law thereby modifies canon 823, § 1 of the former code, which prohibited such celebrations presumably because such non-Catholic facilities were not technically 'sacred places' although they may once have been consecrated or blessed. Furthermore such celebrations might have risked creating scandal or occasioning religious indifferentism.

#### 10. *Banns of marriage*

The highly negative approach of the 1917 code to mixed marriages was evident in canon 1026, which normally prohibited the publication of the banns (*publicationes*) for such unions unless the local ordinary

permitted it and scandal was avoided. The present law's more open, even if still cautious, approach to such relationships seems clear in its not restating the prior prohibition.

While the Latin c. 1067 explicitly mentions such banns, the corresponding Eastern c. 784 makes no explicit reference to them. Both codes call for norms to be drawn up regulating the examination of the parties and other appropriate means to ascertain the couple's freedom to marry. However, the corresponding provisions in the two codes differ somewhat. The Latin code entrusts this normative competency to the episcopal conference whereas the Eastern code speaks more generically of 'particular law' (hence possibly the eparch) and also calls for consultation with the eparchial bishops of other *sui iuris* churches in the territory, presumably to ensure a desirable uniformity of policy. The Eastern code also speaks specifically about ascertaining the facts of baptism and freedom to marry as key concerns of such a pre-matrimonial inquiry.

### 11. *Requirement of canonical form*

The different relationship of Eastern and Western Christians to the Church is somewhat reflected in the provisions of both codes for the ordinary canonical form in mixed marriages<sup>40</sup>. In principle that form<sup>41</sup> is

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<sup>40</sup> The basic but not the only canons on those who are bound to the form are CIC, c. 1108, § 1 and CCEO, c. 828 although both texts also refer to other canons.

<sup>41</sup> The two codes differ somewhat in their understanding of the ordinary canonical form. The Latin c. 1108, § 1 views it as meaning the contracting (*contrahuntur*) of a marriage before the local ordinary, the pastor, a priest or deacon delegated by either of the former or exceptionally a layperson with appropriate Holy See au-

obligatory for validity in all marriages, mixed or otherwise. However, both codes explicitly articulate exceptions to that principle. One pertinent exception is that such form is for liceity only in marriages involving Latin or Eastern Catholics and other Eastern Christians (CIC, c. 1127, § 1; CCEO, c. 834, § 2). This measure reflects the theoretically close bond between Catholics and Eastern Christians, whatever may be the practical reality. It also seeks to minimize the number of invalid unions *ex defectu formae*. For the validity of such unions the Latin code requires the presence of a sacred minister and the observance of the other legal requirements. However, besides this latter factor, the Eastern code somewhat more restrictively requires the blessing of a priest.

A second noteworthy exception to the aforementioned principle of canonical form concerns a possible dispensation from form in marriages involving Catholics and Western Christians. In this connection the Eastern c. 835 is much more restrictive than the Latin c. 1127, § 2. Probably because of the Eastern emphasis on the centrality of the priestly blessing, the Eastern code restricts dispensations from form to the Apostolic See or the patriarch, who will grant such only for a most serious reason (*gravissima de causa*). By contrast the Latin code permits the local ordinary of

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thorization after a favorable episcopal conference *votum* (CIC, c. 1112). However, the Eastern c. 828 deals with the issue somewhat differently. It speaks more properly (from a liturgical standpoint) of marriages being celebrated (*celebrantur*) in a 'sacred rite' (*ritu sacro*) in the presence of the local hierarch, local pastor or a priest given the faculty of blessing the union by either of the former. Given the liturgical centrality of the priestly blessing, no reference is made to deacons or laypersons as authorized official witnesses in this connection.

the Catholic party to dispense from the form if there are serious difficulties (*graves difficultates*) in observing it. While the code does not specify such difficulties, the directory notes as reasons for such a dispensation the maintaining of family harmony, the obtaining of parental consent to the marriage, the recognition of the particular religious commitment of the non-Catholic partner or his or her blood relationship to the minister of another church or ecclesial community (*Directory*, 154)<sup>42</sup>. If the marriage is to be celebrated outside the territory of the dispensing authority, the local ordinary of the place of the marriage is to be consulted. From a penal standpoint the 1917 code excommunication for marrying before a minister is dropped (CIC-17, c. 2319, § 1, 1°).

## 12. *Place of marriage*

The two codes differ somewhat in their provisions for the place of the marriage with both obviously concerned in principle about the celebration of a sacred rite in a sacred place. Unlike the Eastern c. 838, § 1, which does not distinguish various types of marriages, the Latin c. 1118 differentiates between the marriages of two Catholics, a Catholic and a baptized non-Catholic and a Catholic and a non-baptized person. The Eastern code states in principle that marriage is to be celebrated in a parish church; however, it may be

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<sup>42</sup> The fact that a non-Catholic church or ecclesial community requires its members to observe a canonical form is not an automatic reason for Catholics to be granted such a dispensation (*ibid.*, 155). On the possible participation of a Catholic minister in a marriage celebrated in a non-Catholic setting after such a dispensation is granted, see *ibid.*, 157.

celebrated in another sacred place with the permission of the local hierarch or pastor. Only the local hierarch can permit its celebration in other places. By contrast the Latin code states that sacramental marriages, even mixed marriages, are normally to be celebrated in a parish church; by way of exception they may be celebrated in another church or oratory with the permission of the local ordinary or the pastor (§ 1). Furthermore such unions may be celebrated in some other suitable place (e.g. a non-Catholic church) with the permission of the local ordinary (§ 2). In a disparity of cult situation (CIC, c. 1086, § 1), however, marriage can be celebrated in any suitable place without any special permission being required (§ 3).

13. *Those bound by the norms on mixed marriages and canonical form*

The Latin code is less comprehensive than its Eastern counterpart regarding those who are bound by the norms on mixed marriages<sup>43</sup>. The Latin c. 1124 implicitly exempts from such norms those who have left the Catholic communion with a formal act; the Latin c. 1117, § 2 provides the same for the norms on canonical form. Hence such persons are viewed legally somewhat comparable to baptized non-Catholics in the 1917 code. On the contrary the Eastern c. 813 makes no exception for such lapsed Catholics and binds them both to the laws on mixed marriages and those on canonical form.

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<sup>43</sup> Such norms also apply to disparity of cult marriages. See CIC, c. 1086, § 2 and CCEO, c. 803, § 3; also CIC, c. 1129, for which there is no corresponding Eastern code provision.

#### 14. *Sunday and holyday obligation*

The two codes differ somewhat in articulating the Sunday and holyday worship obligation of Catholics. Unlike the Eastern c. 881, § 1, the Latin code explicitly refers to the fulfillment of such a feast day obligation in a 'Catholic rite' (CIC, c. 1248, § 1). The Latin c. 1248, § 2 alone states that if a eucharistic celebration is impossible (e.g. lack of a sacred minister), the faithful are encouraged to share in a liturgy of the word in the parish church or elsewhere or engage in family prayer. Presumably the moral obligation of Sunday or holyday worship does not bind since ecclesiastical laws do not bind under conditions of grave hardship.

Interestingly enough, however, neither code restates paragraph 47 of the 1967 directory, which indicated that Catholics attending the Holy Liturgy (Mass) in the church of separated Eastern Christians need not participate in the Eucharist in their own church. Furthermore, Catholics who could not attend Mass in their own church for just reasons were encouraged to participate in the liturgy of separated Eastern Christians if possible. Paragraph 50 of the 1967 directory noted various liturgical reasons for Catholics participating in such liturgies, e.g. blood relationship, desire to be better informed about such liturgical celebrations, etc.

The 1993 directory approaches the issue somewhat differently from its 1967 predecessor. The former reaffirms the Sunday and holyday obligation, suggests that ecumenical services should not be scheduled on Sundays and states that Catholics are still bound by such an obligation although they attend ecumenical services or liturgical services in other churches or ecclesial communities. Unlike the earlier directory, however, no specific exceptions are made for

services in the churches of separated Eastern Christians. Hence the earlier provision regarding Catholics occasionally not being bound by the Sunday and holy-day obligation seems to lose its force. However, the encouragement to attend such Eastern Christian services if a Catholic Eucharist is impossible still seems pastorally relevant even if it is not explicitly mentioned in the Latin c. 1248, § 2. The reason for not restating the earlier provision is not entirely clear, but perhaps concerns about possible scandal or religious indifferentism were significant.

#### 14. *Violations of the norms on communicatio in sacris*

Both the Latin c. 1365 and the Eastern c. 1440 penalize prohibited *communicatio in sacris* but are very cryptically formulated and leave significant discretion to the competent penal authority to address possible violations of the law, e.g. prohibited Eucharistic concelebration (CIC, c. 908; CCEO, c. 702)<sup>44</sup>. In such instances penalties should be imposed only as a last resort (CIC, c. 1341), and the penal legislation is to be strictly interpreted (CIC, c. 18; CCEO, c. 1500). The significant difference between the codes is that the Latin code provision for a just penalty is preceptive (*puniatur*) whereas the Eastern code provision for an appropriate penalty is facultative or discretionary (*puniri possunt*).

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<sup>44</sup> Both codes modify the strict provisions of CIC-17, cc. 2315-2316, which indicated that one breaching the norms on *communicatio in sacris* was suspect of heresy, which entailed various serious penal consequences.

### 15. *Children handed over for non-Catholic baptism and/or education*

Both codes call for preceptive (*puniantur*) penalties for parents or their surrogates who hand over children for baptism and/or education in another religious tradition<sup>45</sup>. The only significant difference between the codes is that the Latin c. 1366 specifically refers to a censure or other just penalty whereas the Eastern c. 1439 speaks simply of an appropriate penalty.

One may wonder about the precise applicability of these norms in practice. For example, one must consider certain problematic pastoral situations where an alleged violation might occur, e.g. a mixed marriage. At times a Catholic spouse's concern to sustain the unity and permanence of the marital relationship and maintain family communion may lead him or her to permit such a baptism and/or education of the children in another church or ecclesial community. Even in such trying circumstances, the Catholic's obligation to share the faith with the children does not cease, however difficult it may be to discharge such a duty<sup>46</sup>.

In any event the competent penal authority must exercise significant legal-pastoral discretion in assessing the complexities of such situations, especially the

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<sup>45</sup> The former Latin code treated this issue in somewhat greater detail and envisioned a more severe penalty for violating the law. Canon 2319 provided for an excommunication reserved to the ordinary for those entering marriage with an explicit or implicit pact to educate all or some of the children outside the Catholic Church (2°), for those knowingly (*scienter*) presuming to offer their children to non-Catholics for baptism (3°) and for those parents or surrogates knowingly handing over their children to be educated or formed in a non-Catholic religion (4°).

<sup>46</sup> For a thoughtful treatment of some of the pressures experienced by Catholic spouses in such situations see *Directory*, 151.



betrayal of primordial parental educational responsibilities (CIC, cc. 226, § 2; 793; 1125, 1°; 1136; CCEO, cc. 407; 627; 814, 1°). The positive initiative, freedom, understanding and bad faith of the parent(s) in handing over (*tradunt*) the children for non-Catholic baptism and/or education are significant factors influencing penal imputability.

#### 16. *Service as procurator and advocate in church tribunals*

In the former law procurators and advocates in church tribunals in principle had to be adult Catholics and persons of good faith. Non-Catholics were not to be admitted to such functions except by way of exception and where necessary (CIC-17, c. 1657, § 1; *SN* 172, § 1). The present law by contrast does not differentiate between Catholics and non-Catholics regarding the functioning of procurators. Yet the norms are still somewhat restrictive regarding advocates, who can be non-Catholics if permitted by the diocesan bishop (CIC, c. 1483) or the authority to which the tribunal is immediately subject (CCEO, c. 1141).

### III. Provisions in the Latin code not contained in the Eastern code

#### 1. *The effects of baptism*

The Latin c. 204, § 1 describing all the Christian faithful including the baptized not in full communion must be understood in relationship to the Latin c. 96 on the effects of baptism, which has no counterpart in the Eastern code. This latter canon highlights the centrality of baptism as a primordial theological-canonical event

differentiating Christians from non-Christians. Baptism incorporates believers into the Church of Christ and constitutes them as persons within it with certain duties and rights. These rights are proper to all believers unless a sanction (censure or expiatory penalty) has been legitimately declared or imposed. More important for our purposes, however, is the fact that such rights are also proper to all believers if they are in full communion. Hence, to the extent that they are not in full communion, the exercise of basic baptismal rights is somewhat qualified. It is hardly within the scope of this article to address the complex question of the rights of other Christians in the codes. However, it should be noted that throughout the postconciliar period Catholic ecumenical policy has consistently differentiated between Eastern Christians on the one hand and Anglicans and Reformed Christians on the other hand regarding their participation in Catholic life and worship. Such a differentiation is clearly rooted in the closer sacramental and ecclesiological unity of the Catholic Church with the separated Eastern churches<sup>47</sup>.

## *2. Ecumenical role of papal representative*

While all believers are to be involved in the ecumenical movement according to their condition, the Latin code, unlike its Eastern counterpart, unfortunate-

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<sup>47</sup> See for example *UR* 14-18 on the communion between the Catholic Church and the separated Eastern churches and *UR* 21-23 on the communion between the Catholic Church and other churches and ecclesial communities. See also *Directory*, 18. The differing legal-pastoral implications of a lack of full communion are most clearly seen regarding sacramental sharing especially the Eucharist. See *Directory*, 122-128 regarding the Eastern churches and *ibid.*, 129-136 regarding other churches and ecclesial communities.

ly focuses explicit attention only on the ecumenical responsibilities of church leaders. One such leader is the papal representative, who is to foster ecumenical exchanges with other churches, ecclesial communities and non-Catholic religions (CIC, c. 364, 6°). This task will obviously vary depending on different ecclesiastical and socio-political situations<sup>48</sup>. Collaboration especially with the bishops (eparchs) is crucial since they must deal practically with such ecumenical situations and presumably should be fairly knowledgeable about diverse local conditions. The role of the papal representative symbolizes particularly forcefully the papal commitment to ecumenism of the last three decades beginning with John XXIII and articulated most recently by John Paul II in the June 1995 encyclical *Ut unum sint*<sup>49</sup>.

### 3. *Conditional baptism*

A heightened conciliar respect for the authenticity of baptisms celebrated in other Christian churches (1967 *directory*, 9-20) underlies the Latin c. 869 on conditional baptism. This text in turn must be interpreted in light of the Latin c. 845, § 1 on the non-repeatability of baptism, confirmation and orders and the Latin c. 845, § 2 on conditional celebration of those sacraments in case of prudent doubt about the fact or the validity of their conferral<sup>50</sup>.

Unlike preconciliar pastoral practice in some places, which regularly entailed rebaptizing 'converts' to Catholicism, the Latin c. 869 wisely stresses that, unless there is a serious reason to question the fact or

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<sup>48</sup> See *Directory*, 30-34 on diverse ecumenical situations.

<sup>49</sup> English translation in *Origins* 25/4 (June 8, 1995) 49; 51-72.

<sup>50</sup> See also CCEO, c. 672 and CIC-17, c. 732.

validity of baptism, those entering full communion are not to be conditionally baptized. Such a conditional baptism is justified only after a serious investigation of the pastoral situation.

Interestingly enough the canon deals solely with members of Western churches or ecclesial communities ('baptizati in communitate ecclesiali non catholica'). While the code says nothing about Eastern Christians here, presumably there is no question about the validity of their baptisms (*Directory*, 99 a). As was true for the baptismal sponsorship issue, the Latin code simply does not explicitly address an issue pertinent to Eastern Christians.

If there is a prudent doubt about the validity of the baptism of a Western Christian, the pastoral minister must conscientiously strive to obtain a baptismal certificate or investigate the matter and form of the celebration and the intentions of the minister and adult recipient of baptism (*Directory*, 95 a-c). Furthermore a respect for the religious heritage of the person entering into full communion requires the pastoral minister to explain the Church's teaching on baptism and the reasons for conditional baptism if such is warranted after the aforementioned inquiry (*Directory*, 99 d).

#### *4. Relevance of certain mixed marriage norms to disparity of worship marriages*

The Latin c. 1129 explicitly applies the Latin cc. 1127 and 1128 to disparity of worship unions (CIC-17, c. 1071; CA 61). The first of these latter canons treats especially of a dispensation from form situation, which is highly unusual in the Eastern code. It also prohibits a double religious ceremony involving the expression or renewal of consent. The second of these

latter canons calls for appropriate pastoral care of couples in mixed marriages to assist them in fulfilling their marital and parental obligations and fostering marital and family communion. There is no comparable text in the Eastern code.

### *5. Availability of blessings for non-Catholics*

The Latin c. 1170 states that, barring an explicit prohibition to the contrary, non-Catholics may receive Catholic blessings presumably to enhance their spiritual lives. This provision modifies the somewhat un-ecumenical provision of canon 1149 of the 1917 code, which stated that generally such blessings were to be conferred on Catholics. However, blessings could be given to catechumens and even to non-Catholics so that the latter might receive the light of faith ('ad obtinendum fidei lumen'). This perspective failed to differentiate between baptized and non-baptized non-Catholics or duly respect the religious heritage of such baptized persons.

## **IV. Provisions in the Eastern code not contained in the Latin code**

### *1. Ecumenical dimension of catechetics*

Catechesis entails not only doctrinal teaching but also initiation into the Christian life with full sacramental participation. Such catechesis is a significant dimension of the ministry of the word, a central legal-pastoral concept in both codes. Such catechesis can have a notable ecumenical impact as is highlighted in the 1993 directory, which views the ecumenical formation of all believers as a significant pastoral priority

(*Directory*, 61). Although the Latin code does not explicitly address the issue, the Eastern c. 625 wisely calls for catechists to present a correct image of other churches and ecclesial communities even while safeguarding the proper nature of Catholic catechesis<sup>51</sup>.

### *2. Dissemination of scriptures among non-Christians*

Unlike the Latin code, the Eastern c. 655, § 2 explicitly invites all the Christian faithful, especially pastors, to see to the dissemination of properly annotated copies of the scriptures among non-Christians. Presumably this is an integral part of the evangelization enterprise and a way of implementing the basic Christian duty to share in such a task (CIC, cc. 211; 781; CCEO, c. 14).

### *3. Sharing in liturgical worship and facilities*

Both codes address the issues of sacramental sharing (CIC, c. 844; CCEO, c. 671), prohibited ecumenical concelebration of the Eucharist (CIC, c. 908; CCEO, c. 702) celebration of the Eucharist in a non-Catholic church (CIC, c. 933; CCEO, c. 705, § 2). However, the Latin code does not explicitly regulate the issue of non-sacramental Catholic participation in the liturgical celebrations of other Christians or the use of Catholic facilities by other Christians. Yet the Eastern c. 670 wisely addresses both issues.

First of all, Catholics for a just cause may attend the liturgical worship of other Christians and take an appropriate part in them according to the norms of the eparch or higher authority in keeping with the degree

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<sup>51</sup> *Catechesi tradendae*, 32-33.

of communion linking such Christians to the Church (§ 1)<sup>52</sup>. Obviously Catholics need to consider the sensibilities and pertinent norms of other Christians. As is frequently the case, one should consult the ecumenical directory to clarify some of the practical implications of this principle<sup>53</sup>.

Furthermore if other Christians lack a place to celebrate divine worship properly, the eparch can permit them to use a Catholic building, cemetery or church according to the particular law of his *sui iuris* church (§ 2). Such pastoral openness seems based on a desire to enable such Christians to exercise their sacramentally grounded liturgical rights<sup>54</sup>. The ecumenical directory is also valuable here in clarifying some practical implications of the sharing of facilities (*Directory*, 137-142, especially 137).

#### 4. *Licit baptism of children of other Christians*

Unlike the Latin code, the Eastern c. 681, § 5 provides for the licit baptism of the child of other Chris-

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<sup>52</sup> Interestingly enough canon 52, § 1 of the original Latin schema on sacred times and places/divine worship would have provided a comparable norm with specific reference being made to episcopal conference norms. However, it was dropped in the latter stages of the revision process. Such a text like the Eastern c. 670, § 1 would have reversed the rather inhibiting provision of canon 1258 of the 1917 code, which permitted merely passive Catholic presence at the services of other Christians. See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Canonum Libri IV de Ecclesiae Munere Sanctificandi. Pars II De Locis et Temporibus Sacris deque Cultu Divino*, Città del Vaticano 1977.

<sup>53</sup> See for example *Directory*, 116-121.

<sup>54</sup> See for example CCEO, c. 16 (right to be assisted from spiritual goods of church) and 17 (right to worship God and follow legitimate form of spiritual life).

tians if the parents or their surrogates explicitly request such and their minister is physically or morally unavailable. The language of the canon is somewhat comparable to the Eastern c. 876, § 1 and the Latin c. 1183, § 3 on according funeral services to non-Catholics under such conditions. Such liturgical sharing, however, does not fundamentally alter the ecclesial affiliation of the non-Catholic Christians in question.

### *5. Norms governing the marriages of other Christians*

As noted earlier, neither Latin nor Eastern non-Catholics in principle are bound by Latin or Eastern ecclesiastical law unless they enter into relationships with Catholics. Both codes recognize a certain legal autonomy of other churches (CIC, c. 11; CCEO, c. 1490) and ecclesial communities although the council explicitated such competency only for non-Catholic Eastern hierarchs (*UR* 16). The Latin code does not pursue the matter further. However, the Eastern c. 780, § 2 notes that in mixed marriages several laws may be operative: divine law, ecclesiastical law (CCEO or pertinent other Christian discipline) and other possible laws (e.g. civil law) if a given ecclesial community does not have its proper marriage law.

### *6. Adjudication of marriage cases of other Christians*

Another corollary of the principle of recognizing a certain legal autonomy of other Christians is the Eastern c. 781 regarding church tribunals' adjudicating the validity of the marriages of such Christians among themselves. There is likewise no Latin counterpart of this text. This issue would likely arise if such a person



desired to marry a Catholic. The aforementioned canon indicates that one is to follow the Eastern c. 780 in determining what law bound the parties at the time of the celebration, i.e. divine, ecclesial (if such a law existed) and civil (no. 1). Furthermore, one must ascertain what 'form' of celebration was prescribed or admitted by the law to which the parties were subject. However, the legislator also expresses a concern that consent be expressed in a public form<sup>55</sup> and that a sacred rite be celebrated if one of the parties is an Eastern Christian (no. 2)<sup>56</sup>.

Two significant titles of the Eastern code of ecumenical relevance have no Latin code counterparts. We will briefly note here the pertinent canons of titles 17 on the reception of non-Catholics into Catholic communion (CCEO, cc. 896-901) and 18 on ecumenism (CCEO, cc. 902-908). There seems to be a dual emphasis in the code here: promoting the unity of Christians and respecting the freedom of conscience. The preparation and reconciliation of individuals seeking full communion differs from ecumenical action proper; yet both are to be viewed in the broad context of the providence of God (*UR* 4)<sup>57</sup>.

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<sup>55</sup> See CIC, c. 1127, § 2 for a comparable concern in dispensation from form situations.

<sup>56</sup> See CCEO, c. 828 on the form of marriage.

<sup>57</sup> In this section the author especially depends on the thoughtful observations of Salachas, whose work is mentioned above in note 8.

### *7. Reception of non-Catholics into Catholic communion*

#### (a) Reception of baptized non-Catholics into full communion

According to the Eastern c. 896 no undue burdens are to be placed on persons desiring to be received into full communion<sup>58</sup>. Several significant values underlie the canon: a respect for freedom of conscience, a desire to avoid proselytism and a respect for the imperfect communion existing between the Catholic Church and other churches and ecclesial communities.

#### (b) Profession of faith and appropriate instruction

The reception of Eastern Christians into full communion requires only a profession of faith and appropriate doctrinal-spiritual formation depending on personal circumstances (CCEO, c. 897). There is no need for an absolution from excommunication due to a sinful separation from the Church since this is pertinent only to Catholic heretics, schismatics or apostates (*UR* 3; *1967 directory*, 19-20). Unlike the Latin c. 869, the issue of the validity of baptism is not mentioned here given the presumptive validity of the baptism and chrismation of Eastern Christians (*Directory*, 99 a).

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<sup>58</sup> Obviously the significant issue of what constitutes an 'undue' burden must be the subject of theological-canonical discussion depending on the level of communion existing between the Catholic Church and other churches and ecclesial communities. See also *UR* 18; *OE* 25.

(c) Competent authority to receive non-Catholics

The provisions of the Eastern c. 898 for reception into full communion reflect a certain hierarchy of persons. Given concerns about hierarchical communion, a non-Catholic Eastern bishop can be received only by the pope, the patriarch (major archbishop) with the consent of his synod or the metropolitan with the consent of the council of hierarchs (§ 1). Other Eastern Christians, clerics or laity, may be received by the local hierarch or perhaps by the patriarch depending on particular law (§ 2). Individual laypersons can be received by the local pastor unless it is forbidden by particular law (§ 3).

(d) Exercise of orders by clerics received into full communion

The Eastern c. 899 also reflects a hierarchy of persons principle (*OE* 25). Only the pope, the head of the college of bishops and the center of hierarchical communion, can permit an Eastern bishop received into full communion to exercise the power of governance by conferring a canonical mission. By contrast the authorization of other Eastern clerics to function depends on the competent ecclesiastical authority, probably the eparch, according to the Eastern code and particular law.

(e) The reception of minors under 14 years of age

The Eastern c. 900 is a specific example of the general provisions on minors. Those under 14 years of age follow the religious preferences of their parents and are not to be received in the face of parental opposition. Furthermore, if the reception of minors 14 years

of age and older would cause significant problems for the Church of the person, such a reception can be deferred except in danger of death when the desire of the person seeking full communion is the prevailing consideration. This provision reflects a realistic assessment of the need for a supportive or at least non-hostile family environment if the faith is to be nurtured<sup>59</sup>.

#### (f) The reception of non-Eastern Christians

The Eastern c. 901 states that the reception of other Christians not belonging to an Eastern church follows the aforementioned rules with suitable adaptations as long as there is no doubt of the validity of their baptism<sup>60</sup>. Understandably doctrinal differences between the Catholic Church and the Anglican and Reformed churches need to be considered in providing the requisite doctrinal and spiritual formation of such persons.

### 8. *Ecumenism*

#### (a) Prayer and good works for the restoration of unity

Unlike the Latin code, the Eastern c. 902 highlights the ecumenical responsibility of all believers especially pastors (*UR* 4 a; 5). This serves as a basic frame of reference for the subsequent canons and other provisions throughout the code (*Directory*, 22-25, especially 22).

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<sup>59</sup> A similar concern is operative in the Latin c. 868, § 1, 2° requiring a *spes fundata* of Catholic upbringing for the licit baptism of a child.

<sup>60</sup> See earlier discussion of canon 869 of the Latin code. Also *UR* 19.

(b) The specific ecumenical duty of the Eastern Catholic Churches

As noted above, the significant ecumenical duty of the Eastern Catholic churches (CCEO, c. 903) was highlighted both in the principles for drafting the Eastern code and in the apostolic constitution *Sacri canones* promulgating it (*OE* 6; 9). Realistically speaking there have been and continue to be significant conflicts between Eastern Catholics and other Eastern Christians. Hopefully the Eastern Catholic churches may foster the unity of the various Eastern churches by prayer and example, religious fidelity to the ancient Eastern liturgical, theological and disciplinary traditions<sup>61</sup> and deeper mutual knowledge and collaboration.

(c) Negative elements to be avoided in ecumenical work

A prudent approach to ecumenical activity entails avoiding false irenicism, i.e. treating lightly religious differences for the sake of politeness, religious indifference, i.e.; creating the impression that differences among the churches are insignificant and immoderate zeal, which expects ecumenical success in an unduly brief time (CCEO, c. 905).

(d) Ecumenical education of the faithful

Mutual knowledge of the respective religious traditions is indispensable in the search for unity (*UR* 9). All Christians need to learn more about the doctrine,

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<sup>61</sup> See for example CCEO, c. 40 on the obligation of Eastern Catholic hierarchs to be faithful to their own liturgical traditions and to permit changes only if they foster organic growth.

history, spirituality, liturgical life, religious psychology and culture especially of other Christians. According to the Eastern c. 906 all involved in the teaching mission of the Church are to be sensitive to the ecumenical dimensions of Christian education<sup>62</sup>. This concern obviously underlies the significant attention the 1993 directory devotes to ecumenical formation at all levels and in all settings (*Directory*, chapter 3, paragraphs 55-91).

(e) Respect for the religious liberty of other Christians

The Eastern c. 907 reflects a respect for the freedom of conscience of other Christians who may be visiting or working in various Catholic institutions such as schools, hospitals, homes for the aged and similar Catholic facilities. Such freedom should be able to be expressed and realized in practice especially through access to ministers of other churches and ecclesial communities. Such access should guarantee appropriate spiritual nurture, e.g. through celebration of the sacraments (*Directory*, 141-142).

(f) Collaboration of Christians in various common fields

The crucial human problems of the day call for common commitment on the part of the various churches and ecclesial communities. Christians should not do separately what they can do together in the absence of significant doctrinal differences. With due regard for the observance of the norms on *communicatio in sacris*, the Eastern c. 908 calls on Catholics to col-

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<sup>62</sup> See also CCEO, c. 625 and *Catechesi tradendae* 32-33 on the ecumenical dimensions of catechetics.

laborate with other Christians in works of charity and social justice, defense of the dignity and fundamental rights of the human person, promotion of peace, celebration of national holidays, etc. Here too the 1993 directory offers a detailed discussion of areas of such ecumenical collaboration<sup>63</sup>.

## Conclusion

This brief comparative study of the two codes has revealed both similarities and differences in the formulation of the canons. Perhaps a few general observations on that study may be helpful here.

First of all the Eastern code seems more explicitly ecumenical in focus than the Latin code. This is evident in significant documents such as the principles for the revision of the Eastern code and the apostolic constitution *Sacri canones* promulgating it. However, the apostolic constitution *Sacrae disciplinae leges* also speaks of an ecumenical concern as a key ecclesiological motif underlying the Latin code.

Secondly, in numerous respects the canons of the two codes are similarly formulated, e.g. binding force of ecclesiastical law, meaning of *Christifideles*, notion of full communion, conditions for celebrating mixed marriages and procedural capacity.

Thirdly, in some respects the two codes differ in addressing various issues, e.g. ecumenical authorities, baptismal sponsorship, provisions on canonical form of marriage, those bound by mixed marriage norms and the place of marriage.

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<sup>63</sup> *Directory*, chapter V: ecumenical cooperation, dialogue and common witness (161-218).

Fourthly, at times certain issues mentioned in the Latin code are not explicitly restated in the Eastern code, e.g. effects of baptism, conditional baptism and the ecumenical role of papal representatives.

Somewhat more frequently, however, norms in the Eastern code have no counterparts in the Latin code, e.g. ecumenical dimensions of catechetics, sharing in non-sacramental liturgical worship and in facilities, norms governing the marriages of non-Catholics and the separate titles on reception into full communion and ecumenism.

The author has purposely intended only to raise a few issues without examining the canons thoroughly. He hopes that other scholars (canonists, theologians and ecumenists) will explore further the implications of the canons in view of a deeper understanding of the richness of our Latin and Eastern theological and canonical traditions.

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