

The New Code of Canons of the Eastern Churches: Ecclesiological Presuppositions¹

Andrew T. Onuferko

Резюме

Автор аналізує еклезіологічні підвалини нового Кодексу Канонічного Права для східних католицьких Церков. Хоч сам Кодекс – який є правосильний з 1991 р. – не є основним джерелом для вивчення католицької еклезіології, він усе таки визначає ієрархічну структуру східних Церков. Крім того, Кодекс зосереджується над деякими питаннями єкуменізму і є відкритим на критичні заваги від православних. Оскільки новий Кодекс по суті виходить із римокатолицьких (тобто, не зовсім східних) еклезіологічних заłoженнь і не визначає місця східних католицьких Церков у лоні вселенської, автор висловлює думку, що така критична оцінка могла би посприяти корисному переосмисленню Кодексу.



¹ Paper presented at the Ottawa consultation of the Kievan Church Study Group, April 1993.

The experts who prepared the *Codex Canonum Ecclesiarum Orientalium* (CCEO)² understood that their main task was to translate the theological and ecclesiological vision of the Second Vatican Council into ecclesiastical law. One can question whether they have been successful in this endeavor. But it is important to remember that while it is possible to arrive at certain ecclesiological structures based on the New Code, it would be wrong to consider the CCEO as a source for ecclesiology. After all, canon law should be based on ecclesiology, and not vice versa.

Another limitation to consider is that while the CCEO offers many opportunities for ecclesiological reflection simply because of its subject matter, that is, the Eastern Churches in communion with the See of Rome, the Code must be also considered in reference to other canonical legislation currently in force in the Catholic Church. Pope John Paul II, in promulgating the CCEO, writes:

The Code of Canons of the Eastern Churches which now comes to light must be considered a new complement to the teachings proposed by the Second Vatican Council, by which the canonical ordering of the entire Church is completed. This is accomplished with the previously issued Code of Canon Law of the Latin Church promulgated in 1983 and "The Apostolic Constitution concerning the Roman Curia" in 1988, which is added to both Codes as the chief instrument of the Roman Pontiff for "the communion, which binds together the whole Church" (Apostolic Constitution *Pastor Bonus*).³

Finally, I would also like to note by way of introduction that, taking into account the very nature of the Kievan Church Study Group, I would have liked to present more of the ecumenical

² *Codex Canonum Ecclesiarum Orientalium*, (Vatican City: Typis Poliglottis Vaticanis, 1990).

³ *Code of Canons of the Eastern Church. Latin-English Edition*, Canon Law Society of America, (Washington D.C., 1992), xv. Cited hereafter as: *Code of Canons*.

aspects of the new Code. Much has been said in Catholic academic circles about the ecumenical sensibilities of those who compiled the new Code. There is, in fact, a separate title in the Code under the heading *Ecumenism or fostering the Unity of Christians*, which is unique to the CCEO. The very fact that the new Code is today for us a topic for ecumenical discussion is encouraging in itself. Whether the Code will continue to be an instrument for ecumenical dialogue, or to put it in terms more familiar to the Eastern Catholic Churches, whether the Code will become "a bridge or an obstacle" can only be determined by our Orthodox brethren in future dialogue. My hope is that the discussion following today's presentation will be a step in the right direction.

The question remains how to address the ecclesiological issues at hand in a way that those of you unfamiliar with the new Code may benefit. It is impossible here to give an ecclesiological overview of the CCEO in its entirety. Therefore, following a brief historical introduction, I will limit myself to the hierarchical structure of the Catholic Church as found in the CCEO, adding some observations in conclusion.

Brief History of the CCEO since Vatican II

Before the promulgation of the CCEO, the body of legislation concerning the Eastern Catholic Churches was scattered throughout various apostolic letters issued by the Roman Pontiff. These were:

Crebrae allatae sunt (Feb. 22, 1949), regulating divine worship and the sacraments;

Sollicitudinem nostram (Jan. 6, 1950), regarding trial procedures;

Postquam apostolicis litteris (Feb. 9, 1952), on monks and other religious, on temporal goods of the Church and on the meaning of words;

Cleri sanctitati (June 2, 1957), on Eastern Rites, physical and moral persons, on clerics in general, on clerics in particular, on the laity; and

Cum matrimonialium (Sept. 8, 1973), regarding matrimonial procedures.

For obvious reasons the Eastern Catholic Churches felt the need for a unified Code, rather than having to consult this increasingly unavailable collection of papal documents, which has never been published in a single volume. The stimulus for this became the Second Vatican Council and the need to put its counsels and principles into practice.

In 1972 Pope Paul VI established the *Pontifical Commission for the Revision of the Eastern Code of Canon Law*. The college of commission members was composed of the patriarchs and heads of the Eastern Catholic Churches and of a selection of cardinals from the Roman Curia. A college of 70 consultors to the commission was also created, composed in large part of bishops and presbyters of the Eastern Churches, and also of experts from the Latin Church. Cardinal Joseph Parecattil, Archbishop of Ernakulam of the Malabar Church, served as Commission President until his death in 1987.

The process of preparing the Code involved work on eight *schemata*, sent out at various intervals with the Roman Pontiff's approval to all the Eastern Catholic bishops and to various consultative bodies, who were invited to submit their opinions and observations within six months of receiving each *schemata*. In October 1986 *The Schema of the Eastern Code of Canon Law* was printed and sent to the members of the commission for review and judgment.

A special study group was called to assess and evaluate the various observations, and to propose appropriate changes in the text or explain why a proposal was rejected. The work of this group of experts was collected in one volume which was sent out in April 1988.

After further editing, the latest version with the title *Code of Canons of the Eastern Churches* was presented to Pope John Paul II on January 28, 1989, with the petition that it be promulgated. However the Roman Pontiff, consulting his own experts, still reviewed the entire proposed text himself. Finally the Code was ordered published and promulgated on October 18, 1990, with the indication that it have the force of law from October 1, 1991.

The Hierarchical Structure of the Church in the CCEO

The hierarchy of the Catholic Church as presented in the new Eastern Code of Canons is found in the following Titles:

- Title III: The Supreme Authority of the Church
 - 1 – The Roman Pontiff
 - 2 – The College of Bishops
- Title IV: The Patriarchal Churches
- Title V: The Major Archiepiscopal Churches
- Title VI: Metropolitan Churches and other Churches *Sui Iuris*
- Title VII: Eparchies and Bishops
- Title VIII: Exarchies and Exarchs
- Title IX: Assemblies of Hierarchs of Several Churches *Sui Iuris*

The simplest way to proceed might be to follow the structure of the CCEO, but I believe that if we have to arrive at an understanding of ecclesiology as understood at the highest levels of the Catholic Church, the first thing we have to do, unfortunately, is to look at the structure of the Latin Code and use that as a starting point. I do this intentionally, because I believe there is no other way to understand the mind of the Legislator. Although the ancient Canons of the Eastern Churches were considered an important source for the CCEO, nonetheless I am convinced that for the majority of experts who worked on the Code the psychological starting point was the Latin Code, the *Codex Iuris Canonici* (CIC),⁴ with its theological and ecclesiological base. Therefore, instead of treating the Roman Pontiff, The Patriarchates and other *Sui Iuris* Churches, and then Bishops, I will follow the order of the Latin Code: Pope-Particular Churches (in the sense of Eparchies), and then proceed to Groupings of Particular Churches (in our case: Patriarchates and other *Sui Iuris* Churches).

⁴ *Code of Canon Law. Latin-English Edition*, (Washington, D.C.: Canon Law Society of America, 1983).

1. The Supreme Authority of the Church (Title III)

This Title is divided into two chapters, the first on the Roman Pontiff (Can. 43–48), the second on the College of bishops (49–54), preceded by the introductory Canon 42, which reads: “Just as, by the Lord’s decision, Saint Peter and the other Apostles constitute one college, so in a similar way the Roman Pontiff, successor of Peter, and the bishops, successors of the Apostles, are joined together.”

1.1 The Roman Pontiff (Can. 43–48)

This Chapter corresponds literally to the same section in the Latin Code (CIC 330–341), with three redactional differences. In Canon 45 the phrase of the CIC “particular churches and groupings of churches” are changed to “eparchies and groupings of them.” The second difference is found in Canon 46 §2 regarding the participation of patriarchs and other hierarchs who preside over *Sui Iuris* Churches in the Papal synod of bishops. And finally Canon 48 explains that the term “Apostolic See” or “Holy See” applies not only to the Roman Pontiff, but also to the various dicasteries and institutes of the Roman curia.⁵ This Canon is found in the CIC under a separate heading for the Roman Curia.

Regarding the authority of the Roman Pontiff himself, the two Canons of substance are 43 and 45. Canon 43 reads: “The bishop of the Church of Rome, in whom resides the office given in a special way by the Lord to Peter, first of the Apostles and to be transmitted to his successors, is head of the college of bishops, the Vicar of Christ and Pastor of the entire Church on earth; therefore, by virtue of his office he enjoys supreme, full, immediate and universal ordinary power in the Church which he can always freely

⁵ The title “the Apostolic See” is in itself out of place in the Eastern Code of Canons, since it conveys an exclusive claim on “apostolicity.” While in the West Rome is arguably “*The* Apostolic See,” in the Christian East there are many sees which can claim “apostolic” origin. A qualifying “Roman” would have been more appropriate.