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CANONICAL QUESTIONS BROUGHT ABOUT BY THE PRESENCE OF EASTERN CATHOLICS IN LATIN AREAS IN THE LIGHT OF THE « CODEX CANONUM ECCLESIARUM ORIENTALIUM » (1)

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1. *Statement of the problem.*

Our starting point is very simply stated and is at the origin of our conundrum: *What to do with canonical questions brought about by the presence of Eastern Catholics in predominantly Latin areas?*

First, there is a *socio-cultural* problem (2). The Eastern Catholics in our predominantly Latin areas are either recent immigrants or descendants of immigrants. In other words, those who have roots where we live have had them for few generations, but there are some who cannot be said to have roots in our midst yet. From the experience of the United States and Canada, the generations of immigrants tend to go through various stages: the ethnocentric stage, for the first couple of generations (usually, the first — or immigrant — generation and their children); the next few

(1) Revised and updated version of a paper given at the thirty-third Annual Conference of the Canon Law Society of Great Britain and Ireland, London Colney, Herts., Eng., 15 May 1990, published first in *Canon Law Society of Great Britain and Ireland Newsletter*, no. 82 (June 1990), p. 32-49.

(2) We are seeing the question from a North American perspective, the only one we know from our own experience.

generations tend to be « ethnofugal », i.e., they tend to shy away from ethnic identification and cultural heritage and want to blend with the majority (it is there that you will see Western Christian names, some modifications of surnames, the refusal to learn one's root language, etc.); then, some later generations will want to go back to their roots. There are variations to this and we do not intend to get into all the social and cultural implications of these decisions by immigrants. Obviously, they have consequences in the religious area: during that « ethnofugal » period, religious practice, for many, will wane; for some, there will even be a denial of their cultural and religious heritage. This is over and above the normal phenomena of secularization that is going through our society as a whole.

Second, there is a specific problem of *Church organization*. In many countries, there is no Eastern hierarchy, or there is, but only for some Churches; in all countries outside the traditionally Eastern areas, there is a great lack of clergy. In any case, not all ethnic groups live in fairly circumscribed areas; large numbers of immigrants live in isolation from one another and there is no practical way for all to be reached by their own clergy, even if there is enough clergy — which there is not.

Third, there is a problem on the part of *Latins*. Most of us do not have enough knowledge of the Eastern Churches; the consequence of that is, sometimes, a lack of sensitivity when we are confronted with specific situations.

Fourth, let us be frank, sometimes there is a problem brought about by some *Eastern Catholic clergy*. Indeed, there is a certain amount of overreaction on the part of some of them when confronted with situations of ignorance which are sometimes interpreted by them as slights and patronization — though there are some real instances of ethnic slurring and condescension on the part of Latins. These overreactions by some Eastern Catholics can be explained, however, but they are nevertheless difficult to handle.

So, these are the various elements in the background. But, what does in fact happen? What triggers the identification of a particular situation as a problem or question? Usually, it is a simple fact of daily life. Two examples will suffice, though there are plenty of others. But we want to give these two examples right away, to set the stage as quickly as we can. *First*, somebody comes to fill out the prenuptial forms and presents a baptismal certificate; and one

finds he is a Maronite born in England (if he is lucky enough to have been baptized by a priest from the Maronite Church); he may even tell the priest or other person interviewing him that he does not know what a Maronite is, that he is Roman Catholic and loves the pope, etc.; the thing is that there is a Maronite church in the city, so he cannot be married in the Latin parish church (there is more to it than that but we will deal with it later). *Second*, one is preparing children for confirmation and obliges the two Ukrainian Catholic children who are in the catechism class to be confirmed; it has been forgotten that Eastern babies — Catholic or not — are chrismated with holy myron at baptism and that it is very serious to repeat a sacrament which is not supposed to be repeated; indeed, one might even have some parents — even the Ukrainian parents of the example — breathing down one's neck and pleading — if not argiung — to « let the children feel part of the class and do like everybody else; it will not do them or anybody else any harm » (the same goes for first Communion: the Eastern children are given the Eucharist after chrismation) (3). Are not these situations familiar? We are sure other examples can be found easily enough.

Our objective in this article is to try and figure out where are the canonical problems in interecclesial matters within the Catholic community. Some issues are more important than others; so, we will try and focus on some of these issues only.

We are dealing with Latin canon law, which may be found in the *Code of Canon Law* promulgated in 1983 as well as in some extra-Code legislation. What about Eastern Catholic canon law? The *Codex canonum Ecclesiarum orientalium* was promulgated by Pope John Paul II on 18 October 1990, through the Apostolic Constitution *Sacri canones* (4). It will be in force as of 1 October 1991 (5).

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(3) There are some exceptional cases of Eastern Catholic and Orthodox babies who are baptized but not chrismated or given the Eucharist, but one must *presume* that all three sacraments have been given to the baby, even if it does not mention it on the baptismal certificate.

(4) The Apostolic Constitution *Sacri canones* and the *Codex canonum Ecclesiarum orientalium* may be found in *Acta Apostolicae Sedis* [= *AAS*], 82 (1990), respectively p. 1033-1044 and 1045-1364.

(5) « Ut omnes, ad quos pertinet, prope perspecta habere possint huius Codicis praescripta, antequam ad effectum adducantur, edicimus ac mandamus, ut ea vim obligandi habere incipiant a die prima mensis Octobris anni MCMXCI, festo Patrocinii Beatae Virginis Mariae in plerisque Orientis Ecclesiis » (Apostolic Constitution *Sacri canones*, in *ibid.*, p. 1043).

The present canon law of the Eastern Catholic Churches is formed of 5 major groupings of legislative matter (some descriptions are given here in a very general way without some necessary nuances):

a) The traditional Eastern canon law dating from the period of the undivided Church;

b) Vatican II's *Orientalium Ecclesiarum*, promulgated 21 November 1964 and effective 21 January 1965 (6);

c) The *Codex canonum Ecclesiarum orientalium*, replacing the four *motu proprio* promulgated between 1949 and 1957, viz., *Crebrae allatae* (on marriage; promulgated and effective in 1949) (7); *Sollicitudinem Nostram* (on procedure; promulgated in 1950 and effective in 1951) (8); *Postquam apostolicis litteris* (on religious, temporal goods and definitions; promulgated and effective in 1952) (9); *Cleri sanctitati* (on rites and persons; promulgated in 1957 and effective in 1958) (10); and replacing as well a number of other pieces of legislation outside these four *motu proprio*;

d) Other legislation enacted by the Holy See for all Eastern Catholic Churches or for some only and which has not been abrogated by the *Codex canonum Ecclesiarum orientalium*;

e) The synodal legislation of each autonomous Church.

Hereinafter, when we speak of the *Codex canonum Ecclesiarum orientalium*, we will be styling the reference « 1990 Eastern Code ». When a canon number is given without a qualifier, it will be coming from the 1990 Eastern Code.

2. *Concepts and definitions.*

It is important to understand certain concepts and to use certain words in their proper meaning. Let us go through a few of them.

2.1. *Autonomous Church.*

C. 27: « The term 'autonomous churches' is used in this Code for groups of Christian faithful bound together by a hierarchy according

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(6) In *AAS*, 57 (1965), p. 76-89.
(7) In *AAS*, 41 (1949), p. 89-117.
(8) In *AAS*, 42 (1950), p. 5-120.
(9) In *AAS*, 44 (1952), p. 65-152.
(10) In *AAS*, 49 (1957), p. 433-600.

to the norm of law, and which are expressly or tacitly acknowledged as autonomous by the supreme authority of the Church » (11).

The term « autonomous Church » refers only to a group of faithful bound together by a hierarchy; it does not refer to *ethnic* origin (though ethnic origin is *one* of the factors of this autonomy) nor to the *liturgical language and ritual* used. It is here that a *novus habitus mentis* is necessary: we must *not* speak of *rite* when we should be speaking of *Church* (12). We must be aware, however, that the more correct expression in Eastern ecclesiology would have been to use « particular Church » in lieu of « autonomous Church », but that the members of the Pontifical Commission for the Revision of the Code of Oriental Canon Law decided to use another expression so as not to confuse the Eastern concept of « particular Church » with the meaning of the same expression, « particular Church », as used in Vatican II in the context of Latin ecclesiology (13) (we personally feel that the use of « autonomous Church » instead of the use of the Eastern concept of « particular Church » in the *Codex canonum Ecclesiarum orientalium* is an unfortunate development, because it will certainly hinder ecumenical work with the Orthodox; they will say, not without reason according to us, that this is another example of the latinization of Eastern Catholics).

How many Catholic autonomous Churches are there presently? (14) Twenty-two. a) *Seven patriarchates*: Armenian, Chaldean, Coptic, Greek-Melkite, Latin, Maronite, Syrian.

b) *One major archiepiscopate*: Ukrainian.

c) *Five metropolitanates*: Ethiopian, Malabar, Malankar, Romanian, Ruthenian.

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(11) « Coetus christifidelium hierarchia ad normam iuris iunctus, quem ut sui iuris expresse vel tacite agnoscit suprema Ecclesiae auctoritas, vocatur in hoc Codice Ecclesia sui iuris ». The English-language text of the canons of the 1990 Eastern Code is taken, with appropriate changes in numbering and wording, if necessary, from the English-language translation of the *Schema Codicis iuris canonici orientalis* (Romae, 1986): *Code of Eastern Canon Law: 1986 Draft*, English translation, preliminary ed. for restricted distribution, Brooklyn, NY, United States Eastern Catholic Bishops Consultation, 1987.

(12) One wishes the *Annuario pontificio* would reorganize its listing, see « I riti nella Chiesa », in *Annuario pontificio per l'anno 1990*, p. 1083-1085.

(13) E.g., in *Lumen gentium*, 23 and 27; *Christus Dominus*, 11.

(14) Cf. V.J. Pospishil and J.D. Faris, *The New Latin Code of Canon Law and Eastern Catholics*, Brooklyn, Diocese of Saint Maron, 1984, p. 7-8. We urge the readers to buy this work (49 p.), available from the Chancery Office, Diocese of St. Maron of Brooklyn, P.O.B. 36, Dyker Heights Station, Brooklyn, NY 11228-0036, U.S.A.

d) *Nine others*: Albanian, Bulgarian, Belorussian, Greek (Hellenic), Hungarian, Italo-Albanian, Russian, Slovak, Yugoslav.

2.2. *Rite.*

C. 28, § 1: « A 'rite' » is the liturgical, theological, spiritual and disciplinary patrimony, culture and historical circumstances of a distinct people, and by which each autonomous church expresses its own manner of living the faith.

§ 2: « Unless otherwise indicated, the rites dealt with in this Code are those which arise from the Alexandrian, Antiochene, Armenian, Chaldean and Constantinopolitan traditions » (15).

As one can see, the term 'rite' is not any more an appropriate canonical term denoting membership: one is a member of an autonomous Church and is of this or that rite, i.e., tradition. For example, one belongs to the Slovak Catholic Church or to the Ukrainian Catholic Church by membership, but members of both belong to the Byzantine rite, because their respective Churches are part of the Byzantine or Constantinopolitan tradition, whether they use French, English, Slavonic, Ukrainian, or even a mixture of some of these languages in the Divine Liturgy. As we said earlier, ethnic origin is not the only factor either: as an example, the Byzantines from Yugoslavia, who belong to *one* eparchy which is an autonomous Church in itself, the eparchy of Križevci, come from different ethnic backgrounds: Croatian, Macedonian, Ukrainian, etc.

2.3. *Jurisdiction.*

One may be a *member* of an autonomous Church, for example, a Lebanese Christian who is a member of the Maronite Church, but it does not necessarily follow that he is under the *jurisdiction* of a Maronite hierarch. The jurisdiction of the patriarch does not extend beyond the traditional boundaries of the patriarchal Church in the East except in liturgical matters (16). Which means that the Maronite eparch of Saint Maron of Montréal, though he is a member of the

(15) « Ritus est patrimonium liturgicum, theologicum, spirituale et disciplinare cultura ac rerum adiunctis historiae populorum distinctum, quod modo fidei vivendae uniuscuiusque Ecclesiae sui iuris proprio exprimitur » (§ 1); « Ritus, de quibus in Codice agitur, sunt, nisi aliud constat, illi, qui oriuntur ex traditionibus Alexandrina, Antiochena, Armena, Chaldaea et Constantinopolitana » (§ 2).

(16) Cf. cc. 146-150.

synod of bishops of the Maronite Church — possibly with a restricted right to vote (17) —, is not bound to follow the decisions of the synod other than liturgical; he may, however promulgate them as particular law, if it is a matter in which he is competent (18). The Holy See can also decide to apply synodal non liturgical legislation to that eparchy — or to all Maronite eparchies outside the patriarchate — as particular law. And if our Maronite man is domiciled in a place where there is no Maronite hierarch, he does not cease to be a member of his Church nor of his rite — at least in principle, for the latter —, but he will be under the actual jurisdiction of the hierarch of another Church: in most cases, this is the Latin diocesan bishop. (Contrary to popular opinion, the Latin bishops have no preeminent jurisdiction nowadays over Eastern Catholics which have no hierarchs of their own. Indeed, the Holy See may put members of specific Churches under the care of another non-Latin Church: e.g., the Hungarian Catholics of the Byzantine tradition in Canada are under the care of the Ukrainian Catholic hierarchy (19), while the Rumanian Catholics of the Byzantine tradition in Canada are under the Latin bishops) (20). The principle is that the members of an autonomous Church who have no hierarch of their own are under the care of the diocesan bishop of the place, whichever Catholic Church the hierarch is a member of; if there are more than one, the Holy See decides. (The Latins who are domiciled within the Italo-Albanian eparchies of Lungro and Piana degli Albanesi in Italy are under the jurisdiction of the Italo-Albanian hierarchs).

There is another question: if there is no hierarch of one's Church, it is possible that a priest or chaplain of that Church may be brought in, put under the jurisdiction of the local bishop in order to minister to

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(17) « With regard to the eparchial bishops constituted outside the territorial boundaries of the patriarchal church and titular bishops, particular law can restrict their deliberative vote, with due regard, however, for the canons concerning the election of the patriarch, bishops or candidates for offices mentioned in can. 149 » (« Quod attinet ad Episcopos eparchiales extra fines territorii Ecclesiae patriarchalis constitutos et ad Episcopos titulares, ius particulare eorum suffragium deliberativum coartare potest firmis vero canonibus de electione Patriarchae, Episcoporum et candidatorum ad officia, de quibus in can. 149 » [c. 102, § 2]).

(18) Cf. c. 150, §§ 2-3.

(19) See R. LECLAIRE, *La forme canonique ordinaire des mariages interrituels au Canada*, Universitas catholica Ottaviensis, Dissertationes ad gradum laureae in facultatibus ecclesiasticis consequendum conscriptae, series canonica nova, t. 5, Ottawa, Éd. de l'Université d'Ottawa, 1962, p. 57.

(20) See *ibid.*, p. 134.

faithful of the Church in question. Example: there is no Syrian Catholic hierarch in Canada, but there is a Syrian Catholic chorbishop in Montréal, who is from the Syrian Catholic Patriarchate of Antioch; he is under the jurisdiction of the Latin archbishop of Montréal and ministers to the Syrian Catholics of Montréal from the ethnic parish of St. Ephrem.

What, then, should be remembered is that *rite* is personal but *jurisdiction* is still territorial.

3. *Selected issues.*

3.1. *Ascription to a Church.*

3.1.1. *By baptism.* — One should always speak of ascription to a Church, not to a rite. One is never a member of the Church of Christ at large, whether one speaks of the Catholic Church or of an Orthodox Church or of any Christian Church. One is always a member of a *particular* Church — in the Eastern sense of the word, i.e., of an autonomous Church. I, Joseph-Pierre-Yves-Michel Thériault, was baptized on 30 January 1943 as a member of the Latin Church and it is through this membership in the Latin Church that I am a member of the Church of Christ, not the other way around. However, there are limits to the freedom of choice of one's Church of membership; there are various parameters dealing with that issue. Here are the various cases:

a) *Unbaptized over 14.*

1983 Latin Code	*1990 Eastern Code*
c. 111, § 2: free choice	c. 30: free choice ([21])

One may choose whichever autonomous Church one wants. This is a hotly debated issue: some argue that the person should be required to be a member of the autonomous Church which is closer to him or her culturally and ethnically; so, according to that opinion, a German unbaptized who has no Church affiliation would become a member of

([21]) « Anyone to be baptized who has completed the fourteenth year of age can freely choose any autonomous church, in which this person is also enrolled through baptism » (« Quilibet baptizandus, qui decimum quartum aetatis annum explevit, libere potest seligere quamcumque Ecclesiam sui iuris, cui per baptismum in eadem susceptum ascribitur, salvo iure particulari a Sede Apostolica statuto »).

the Latin Church upon conversion or a Palestinian Muslim would become a Greek-Melkite; the solution would be the same in the case of an unbaptized Protestant, he or she would become a Latin Catholic, since Protestantism is considered to be an off-shoot of the Latin Church. *Logical as that reasoning might be on a conceptual level, the fact is, however, that the unbaptized converts who are more than 14 years old are free to join the autonomous Church they want.*

b) *Unbaptized under 14.*

Case	*1983 Latin Code*	*1990 Eastern Code*
parents in the same Church	c. 111, § 1: Church of parents	c. 29, § 1: Church of father
Latin father and Eastern mother	c. 111, § 1: Latin if parents agree on Latin; Church of father if they do not	c. 29, § 1: Church of father or, if both agree, Church of mother
Latin mother and Eastern father	c. 111, § 1: Latin if parents agree on Latin; Church of father if they do not	c. 29, § 1: Church of father or, if both agree, Church of mother
Latin father and Eastern non Catholic mother	cf. c. 1125, 1°, on promises	c. 29, § 1: Church of father
Latin mother and Eastern non Catholic father	cf. c. 1125, 1°, on promises	c. 29, § 1: Church of mother
Eastern Catholic unmarried mother		c. 29, § 2, 1°: Church of mother
parents unknown		c. 28, § 2, 2°: Church of guardian (if child is adopted, c. 29, § 1, is applied, i.e., common law)
parents are unbaptized		c. 29, § 2, 3°: Church of educator in faith (22)

(22) « Anyone who has not completed the fourteenth year of age is enrolled through baptism in the autonomous church in which the Catholic father is enrolled; enrollment is in the autonomous church of the mother, however, if only the mother is a Catholic or if both parents agree in requesting it, with due regard for par-

For the 1990 Eastern Code, to accept the Church of the mother as an option in the case of an interecclesial marriage is a hotly debated issue in the Middle East, because of tradition and because of civil ramification. The Churches are given civil powers in some judicial and administrative matters; children are ascribed civilly to the Church of the father (23).

3.1.2. *By transfer, after a request is approved.* — The petition is granted, as the case may be, by the Congregation for the Oriental Churches but, in some countries, the papal legate has the faculty of granting the request if the *vota* of the hierarch *a quo* and the hierarch *ad quem* are concordant and favourable; certain transfers are also effected with the presumed consent of the Apostolic See.

Procedure: 1; the petitioner requests the transfer to the hierarch *ad quem* enclosing with the petition the [favourable] *votum* of the hierarch *a quo* (24); 2; *a*) if both hierarchs are favourable and

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ticular law established by the Holy See » (§ 1); « Anyone who has not completed the fourteenth year of age, who is: 1° born of an unmarried mother, is enrolled in the autonomous church of the mother; 2° born of unknown parents, is enrolled in the autonomous church of the persons who have legitimately been entrusted to care for the child; if the father and mother are adopting, the prescriptions of § 1 apply; 3° born of unbaptized parents, is enrolled in the autonomous church of those who undertook their education in the Catholic faith » (§ 2). (« Filius, qui decimum quartum aetatis annum nondum explevit, per baptismum ascribitur Ecclesiae sui iuris, cui pater catholicus ascriptus est; si vero sola mater est catholica aut si ambo parentes concordi voluntate petunt, ascribitur Ecclesiae sui iuris, ad quam mater pertinet, salvo iure particulari a Sede Apostolica statuto » [§ 1]; « Si autem filius, qui decimum quartum aetatis annum nondum explevit, est: 1° a matre non nupta natus, ascribitur Ecclesiae sui iuris, ad quam mater pertinet; 2° ignotorum parentum, ascribitur Ecclesiae sui iuris, cui ascripti sunt ii, quorum curae legitime commissus est; si vero de patre et matre adoptantibus agitur, applicetur § 1; 3° parentum non baptizatorum, ascribitur Ecclesiae sui iuris, ad quam pertinet ille, qui eius educationem in fide catholica suscepit » [§ 2]).

(23) We cannot get into the various implications of this topic; suffice it to say that it is even more complicated than these few sentences may bring the reader to conclude.

(24) It seems logical that, if the bishop *a quo* is not favourable, that *votum* would not be sent by the petitioner to the bishop *ad quem*. However, the bishop *ad quem* would in any case have to write to the bishop *a quo* to ask for his *votum*, if one was not sent.

it is the case provided for by c. 32, § 2 — i.e., both eparchies are in the same territory —, the consent of the Apostolic See is presumed [25]; *b)* if both hierarchs are favourable and it is *not* the case provided for by c. 32, § 2 — i.e., both eparchies are *not* in the same territory —, c. 32, § 1, is operative and the consent of the Congregation for the Oriental Churches has to be given [26]; however, in virtue of a faculty given 23 December 1962, the papal legates in Canada, India, and the United States may consent to the transfer in these circumstances; 3; if at least one hierarch is not favourable to the request, the file is sent to the Congregation for the Oriental Churches; 4) if the decision of Rome — or, as the case may be, of the papal legate — is a favourable one, it is sent to the hierarch *ad quem*; he will forward it to the pastor *ad quem* of the petitioner; that pastor will ask the petitioner to appear before him to formally accept the indult; notice of the transfer will then be sent back to the hierarch who has to see to it that the appropriate authority of the Church *a quo* be notified so that the baptismal register be properly annotated; in the case of transfer with the presumed consent of the Apostolic See, an analogous procedure will be followed for recording the transfer.

Is the request for transfer for the validity of the transfer?

1983 Latin Code	*1990 Eastern Code*
c. 112, 1°: « [...] the following are enroled in another Ritual Church *sui iuris*: one who has obtained permission (*licentia*) from the Apostolic See »	c. 32, § 1: « Without the consent of the Apostolic See, no one can *validly* transfer to another autonomous Church » [27]

[25] « If it is a matter of a Christian faithful of an eparchy of an autonomous church who wishes to transfer to another autonomous church which has its own eparchy in the same territory, the consent of the Apostolic See is presumed if the eparchial bishops of both eparchies consent to the transfer in writing » (« Si vero agitur de christifideli eparchiae alicuius Ecclesiae sui iuris qui transire petit ad aliam Ecclesiam sui iuris, quae in eodem territorio propriam eparchiam habet, hic consensus Sedis Apostolicae praesumitur, dummodo Episcopi eparchiales utriusque eparchiae ad transitum scripto consentiant »).

[26] « Without the consent of the Apostolic See, no one can validly transfer to another autonomous church » (« Nemo potest sine consensu Sedis Apostolicae ad aliam Ecclesiam sui iuris transire »).

[27] « Nemo potest sine consensu Sedis Apostolicae ad aliam Ecclesiam sui iuris transire ».

It seems, *prima facie*, that Latins can transfer illicitly but validly to an Eastern Catholic Church without the *licentia* of the Holy See, but that *consensus* of the Holy See is required *ad validitatem* in the case of Eastern Catholics who wish to transfer to another Eastern Catholic Church or to the Latin Church. See below for how the transfer to another autonomous Church of children under 14 years of age is dealt with (c. 112, § 1, 3° [1983 Latin Code]; c. 34 [1990 Eastern Code]).

3.1.3. *Transfer granted by the law itself.* — This means that no recourse to the Holy See is necessary. The declaration mentioned in the listing below is to be made *before* the marriage and is *effective at the moment of marriage*. The 1983 Latin Code does not specify the form of the declaration (verbal or written). Furthermore, these transfers by the law itself *must* be entered in the baptismal record of the person transferring (the 1983 Latin Code is silent on the subject; but the requirement is explicit in c. 37 of the 1990 Eastern Code).

a) *Interecclesial marriage.*

Case	*1983 Latin Code*	*1990 Eastern Code*
Husband, at marriage	c. 112, § 1, 2°: Latin husband allowed, upon declaration	c. 33: Eastern husband forbidden
Wife, at marriage	c. 112, § 1, 2°: Latin wife allowed, upon declaration	c. 33: Eastern wife allowed, upon declaration (c. 36)
Husband, during marriage	c. 112, § 1, 2°: Latin husband allowed, upon declaration	c. 33: Eastern husband forbidden
Wife, during marriage	c. 112, § 1, 2°: Latin wife allowed, upon declaration	c. 33: Eastern wife allowed, upon declaration (c. 36)

Upon termination of marriage (death, dissolution, or declaration of nullity)	c. 112, § 1, 2°: former Latin spouse may return to Latin Church, upon declaration (the declaration, implied in c. 112, is necessary, because reversion needs to be entered in the baptismal register)	c. 33: Eastern wife may return to original Eastern Church, upon declaration (c. 36) (28)

b) *Children of parents who transfer.*

This case is the one of children who transfer with their parents. Age is the criteria: 14 for children of both sexes in the 1983 Latin Code *and* in the 1990 Eastern Code.

1983 Latin Code (c. 112, § 1, 3°)	*1990 Eastern Code* (c. 34)
under 14, when *parents* change (or when the Catholic parent changes, in a mixed marriage), child transfers automatically	*under 14*: *a*) when *parents* change (or when the Catholic parent changes, in a mixed marriage), child transfers automatically; *b*) in a marriage between Catholics, if only *one parent* transfers, children transfer *only* if both parents agree to this transfer;

(28) « A wife is at liberty to transfer to the autonomous church of the husband at the time of marriage or during it; but when the marriage has ended, she can freely return to her original autonomous church » (« Integrum est mulieri ad Ecclesiam sui iuris viri transire in matrimonio celebrando vel eo durante; matrimonio autem soluto libere potest ad pristinam Ecclesiam sui iuris redire » [c. 33]).

« Transfer to another autonomous church has the force of law from the moment a declaration has been made before the local hierarch or the proper pastor of that church, or a priest delegated by either of them, and two witnesses, unless a rescript from the Apostolic See determines otherwise » (« Omnis transitus ad aliam Ecclesiam sui iuris vim habet a momento declarationis factae coram eiusdem Ecclesiae Hierarcha loci vel parocho proprio aut sacerdote ab alterutro delegato et duobus testibus, nisi rescriptum Sedis Apostolicae aliud fert » [c. 36]).

after 14, child may revert to Latin Church, upon declaration	*after 14*, child may revert to original Church, upon declaration (c. 36) [29].

3.1.4. *Through entering into full communion.* — There are very important distinctions to be made here: we must distinguish between Eastern and Western Christians wishing to enter into full communion with the Catholic Church.

a) *Eastern non-Catholics.*

What was the law immediately preceding the 1990 Eastern Code on that question? Some say that *Cleri sanctitati* (2 June 1957) was still the law, others say that Vatican II's *Orientalium Ecclesiarum* (21 November 1964) was the law. Our position is that it is clear that *Orientalium Ecclesiarum*, 4, was the current norm up to the 1990 Eastern Code [30]. Let us proceed step by step.

Up to 21 January 1965, the *vacatio legis* of *Orientalium Ecclesiarum*, the law was stated in *Cleri sanctitati*, in force since 25 March 1958. Its c. 8, § 1, said that nobody can validly transfer to another autonomous Church without the permission of the Holy See [31]. But this canon dealt with Eastern Catholics, while c. 11, § 1, dealt with Eastern non-Catholics and said that those Eastern

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[29] « If the parents or, in a mixed marriage, the Catholic spouse, transfer to another autonomous church, any children who have not yet completed the fourteenth year of age are enrolled in the same church by the law itself; but if in a marriage between Catholics only one parent transfers to another autonomous church, the children transfer only if both parents consent; once the children have completed the fourteenth year of age, they can return to their original autonomous church » (« Si ad aliam Ecclesiam sui iuris transeunt parentes vel in matrimonio mixto coniux catholicus, filii infra decimum quartum aetatis annum expletum ipso iure eidem Ecclesiae ascribuntur; si vero in matrimonio inter catholicos unus tantum parentum ad aliam Ecclesiam sui iuris transit, filii transeunt solummodo, si ambo parentes consenserunt; expleto vero decimo quarto aetatis anno filii ad pristinam Ecclesiam sui iuris redire possunt » [c. 34]).

For the text of c. 36 on the declaration of transfer, see preceding note.

[30] To be very precise, let us be conscious that the 1990 Eastern Code will be in force only on 1 October 1991; therefore what we say here about *Cleri sanctitati* vs *Orientalium Ecclesiarum* still has immediate implications, until that date.

[31] « Nemo potest sine licentia Sedis Apostolicae ad alium ritum valide transire, aut, post legitimum transitum, ad pristinum reverti ».

non-Catholics who are admitted into the Catholic Church could choose the autonomous Church they wanted, though the wish was that they would opt for the Catholic Church of their original rite ([32]). *Free choice: that was the law until 1965.*

And then came *Orientalium Ecclesiarum*, 4, which says that « baptized members of any non-catholic church or community coming to the fullness of the catholic communion, *should* keep, follow and as far as possible observe their own rite everywhere in the world » ([33]). Why would not that text have had normative value since 1965? There is no reason why not: 1) it is a decree of Vatican II, and that typology implies that the document is disciplinary, even if in a general way; 2) there was a proper promulgation; 3) there was a proper *vacatio legis*; 4) considering the debates at the Council and pre-Vatican II literature, the Fathers clearly intended to change the discipline; 5) the rest of the paragraph from which the above-quoted excerpt came is clearly disciplinary (it deals with the right of recourse in special circumstances as well as other eventual detailed norms). One argument against the legal value of *Orientalium Ecclesiarum*, 4, seems to be that it does not mention that to contravene to its provisions is *ad validitatem*. True, to contravene to *Orientalium Ecclesiarum*, 4, may be illicit but it is certainly not invalid, because nowhere does it implicitly or explicitly say so. But, we do not see the point: whether it is *ad validitatem* or not is irrelevant to the legal value of the text! Furthermore, the Congregation for the Oriental Churches decided on 24 March 1966 ([34]) — so, *after* the coming into force of *Orientalium Ecclesiarum* — that Eastern non-Catholics who wished to become members of the Latin Church and not of the Eastern Catholic Church corresponding to their Church of origin would have to have recourse to the Holy See, which gives credence to the fact that *Orientalium Ecclesiarum* is in force, because if it was not, *Cleri sanctitati* would be and it gives

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([32]) « Baptizati acatholici ritus orientalis, qui in catholicam Ecclesiam admittuntur, ritum quem maluerint amplecti possunt; optandum tamen ut ritum proprium retineant ».

([33]) « Omnes [...] baptizati cuiusvis Ecclesiae vel communitatis acatholicae ad plenitudinem communitatis catholicae convenientes, proprium ubique terrarum retineant ritum eumque colant et pro viribus observent » (p. 77; English-language translation from N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, London, Sheed & Ward; Washington, DC, Georgetown University Press, 1990, p. 901).

([34]) N. HALLIGAN, *Some Inter-Ritual Norms*, in *The Jurist*, 42 (1982), p. 167.

freedom of choice (therefore, under *Cleri sanctitati*, there would not be need to have recourse to the Holy See in the case just mentioned).

Canon 35 of the 1990 Eastern Code retains *Orientalium Ecclesiarum*, 4, as the basis for its norm (35). The conclusion is that there is *no free choice since 1965*.

b) *Protestants*.

We deal here with validly baptized Protestants who wish to become Eastern Catholics. (Protestants who wish to join the Latin Church do not present a problem and, therefore, are outside the scope of this paper).

There has been a debate going on for many years. The question is, *Are baptized Protestants required to join the Latin Church when they want to enter into full communion with the Catholic Church?*

Orientalium Ecclesiarum, 4, says that « baptized members of any non-catholic church or community coming to the fullness of the catholic communion, *should* keep, follow and as far as possible observe their own rite everywhere in the world » (36). Though one could say that *Orientalium Ecclesiarum*, 4, applies only to Eastern non-Catholics, because of the nature of *Orientalium Ecclesiarum* which is the document on *Eastern* Catholic Churches, we think that this limitation is not right. The principle underlying *Orientalium Ecclesiarum*, 4, is that one should go in the lines of one's own spiritual and cultural heritage; but how can that principle apply only to Eastern non-Catholics and not to baptized Western

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(35) « Baptized non-Catholics coming into full communion with the Catholic Church are to retain and cherish their own rite anywhere on earth, and to observe it to the best of their ability. They therefore are to be enrolled in the autonomous church of the same rite, reserving the right of recourse to the Apostolic See in special cases of persons, communities or regions » (« Baptizati acatholici ad plenam communionem cum Ecclesia catholica convenientes proprium ubique terrarum retineant ritum eumque colant et pro viribus observent, proinde ascribantur Ecclesiae sui iuris eiusdem ritus salvo iure adeundi Sedem Apostolicam in casibus specialibus personarum, communitatum vel regionum »).

(36) « Omnes [...] baptizati cuiusvis Ecclesiae vel communitatis acatholicae ad plenitudinem communitatis catholicae convenientes, proprium ubique terrarum retineant ritum eumque colant et pro viribus observent » (p. 77; English-language translation from N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, London, Sheed & Ward; Washington, DC, Georgetown University Press, 1990, p. 901).

non-Catholics? It is obviously a general principle valid for all Christians.

In November 1988 ([37]), the consultors of the Eastern Code Commission refused to amend c. 33 of the 1986 Schema so as to limit its provisions to baptized Eastern non-Catholics only; if it had been approved, this limitation would have exempted baptized Protestants from the provisions of the canon and they would have been free to join the Church of their choice. Canon 33 of the 1986 Schema became c. 35 of the 1990 Eastern Code and stands as drafted, i.e., « Baptized non-Catholics coming into full communion with the Catholic Church are to retain and cherish their own rite anywhere on earth, and to observe it to the best of their ability. They therefore are to be enrolled in the autonomous church of the same rite, reserving the right of recourse to the Apostolic See in special cases of persons, communities or regions » ([38]). This clearly implies that *baptized Protestants will normally be enrolled in the Latin Church.*

There was a proposed amendment to c. 33 of the 1986 Schema to add a § 2 in which free choice would be given to baptized non Eastern non-Catholics. It was not even voted upon because it was so clearly against Vatican II. So, the mind of the Commission is clear on that point.

We must realize, however, that the situation is more sensitive than one would believe at first. This norm tries to respect a general principle that most agree on but it goes against actual practice: the Ukrainian and Ruthenian Catholic Churches in the United States and Canada have enrolled around 15,000 baptized Protestants in the last 10 years. For these Churches, it is a matter of survival. Rome knows these facts and statistics but chooses to turn a blind eye.

3.2. *A few points on marriage law.*

Obviously, we cannot do here a complete treatise on marriage among Eastern Christians, Catholics and non-Catholics. But we think

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([37]) The whole debate on this sensitive question is taken up again in *Resecconto dei lavori dell'Assemblea plenaria dei membri della Commissione, 3-14 novembre 1988*, in *Nuntia*, no. 29 (1989/2), p. 48-51.

([38]) « Baptizati acatholici ad plenam communionem cum Ecclesia catholica convenientes proprium ubique terrarum retineant ritum eumque colant et pro viribus observent, proinde ascribantur Ecclesiae sui iuris eiusdem ritus salvo iure adeundi Sedem Apostolicam in casibus specialibus personarum, communitatum vel regionum ».

it is important to list a certain number of points, considering that most Latin priests who will be in contact — other than social — with Eastern Catholics will do so on the occasion of an interecclesial marriage which they will witness or to the preparation of which they will be a party. What points should one be aware of or make an effort to remember?

3.2.1. *Church affiliation.* — Since the jurisdiction of the Eastern Catholic hierarchs is exclusive, i.e., not cumulative with the Latin diocesan bishops, it is essential for the validity of the marriage ceremony that the Church affiliation of the two parties be certain, so as to avoid invalid marriages because of defect of form due to lack of jurisdiction in the officiating minister. It is, therefore, very important that the prenuptial investigation be done in as complete and appropriate a manner as it is possible. Since Latin and Eastern Catholic legislations are not always compatible and that each party in an interecclesial marriage is bound by his or her own canon law [the canon law of one party does not have precedence over the canon law of the other], it is imperative that both parties be sure of their Church affiliation.

How is that accomplished? Through baptismal certificates, mainly, or affidavits (sworn declarations). If both parties were baptized by a minister of their Church, there should be no problem. The name of the parish church will, of course, be on the certificate and it should be a fairly easy matter to find out which autonomous Church is the parish in question part of. A first problem, however, is with certificates from the « old country ». Of course, they will have the name of the parish church, but they will use vernacular language and not the language of the liturgy if they are different: it is entirely possible that a certificate from a Slovak Eastern Catholic parish of the eparchy of Prešov will be written in Slovak and look, *prima facie*, indistinguishable from one from a Slovak parish of the Latin archdiocese of Trnava. One must look, sometimes, for hints, e.g., the name of the diocese or eparchy — if it is written on the certificate — and check it in the *Annuario pontificio* in order to find out to which Church it belongs if it is not readily evident; the typical Byzantine cross; the note regarding chrismation (remember that this sacrament is received at baptism), etc.

A further problem is that you may find, by looking at a certificate, that you are in front of an Eastern Catholic who does

not know he or she is an Eastern Catholic and has no idea of the implications.

Sometimes, you may find, usually through some fluke and not through a certificate, that somebody is actually an *oriental qui s'ignore* and that the family has been *de facto* Latin for a few generations. Example: there was no priest — let alone a hierarch — of the Syrian Catholic Church in that part of the country, so the family started going to the nearest Latin church, the sacraments were received in that Church (39), baptisms would be performed by the Latin priest who would not note the fact that the infant was a member of the Syrian Catholic Church, though baptized by a Latin priest, because the Latin priest probably did not know that the father was a Syrian Catholic; all of this being compounded by the fact that because of the marriage of some of the women in the family, the name of some members did not even look Eastern (maybe — to have a worst-case scenario — the grandfather modified his name to make it look Western), etc. Shall we go on? The question is, *Is it realistic to expect somebody to go back to the Church he is still formally part of*? In most cases, that person would not know what you are talking about and would not care. Is the person still formally part of the Syrian Catholic Church or is he now part of the Latin Church? Let us look at the question.

There is such an institution in canon law as *disuse* or *obsolescence*. « Nullum dubium est, quin lex ecclesiastica [...] abrogari possit per actualem non-observantiam seu desuetudinem » (40). But, obviously, a law cannot be abrogated for one person and not for others. Disuse means disuse by a community. This is not the case here, since the law is not only in force but is in fact used and followed.

There is another concept we may look at, i.e., *ignorance*. Could it be that, because of ignorance on the part of the parties involved (the priests, the various members of the family, the person in

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(39) For marriage, there would be no question of validity since the Latin pastor would be the proper pastor in the absence of a pastor or hierarch of that autonomous Church, supposing that the Latin bishops had been given jurisdiction over these Eastern Catholics.

(40) G. MICHIELS, *Normae generales juris canonici: commentarius libri I Codicis juris canonici*, ed. altera penitus retractata et notabiliter aucta, vol. 1, *Praenotanda generalia - Canones praeliminares - De legibus ecclesiasticis*, Parisiis, Tornaci, Romae, Desclée, 1949, p. 676.

question, etc.), the person has been excused from following the legislation regarding Church affiliation and its sundry consequences? What law are we talking about? Primarily, the norm that requires one to be a member of the Church in which one was supposed to be baptized and to stay a member, unless a change of affiliation was done through proper channels; secondarily, the various norms that flow from the basic principle, e.g., the norms regarding the canonical form of marriage. The type of ignorance here is, obviously, *ignorantia iuris*, i.e., the ignorance that a law exists or of the meaning of a law. In the Eastern tradition, the meaning and consequences of that ignorance are the same as in the Western tradition, because the origins are the same: Roman law. To cut a long story short: *ignorantia iuris* does not afford an excuse not to follow it and the person who acts from lack of knowledge bears the consequences of his or her actions. In other words, an act posed by a person while in a state of *ignorantia iuris* and contrary to a norm that this person should follow does not render the norm inoperative (41). The Roman law sources for this are *C.* 1, 18, especially *C.* 1, 18, 12: « Constitutiones principium nec ignorare quemquam nec dissimulare permittimus » (42). There is also the whole of *D.* 22, 6, entitled: « De iuris et facti ignorantia ». One could also refer to the Council *in Trullo* of 692, cc. 3 and 26, which deal with illegal marriages of priests through ignorance of the law (these unions are neither condoned nor sanated *ipso iure* due to ignorance) (43). So, the canonical consensus seems to be that an

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(41) However, there are a few exceptions in Roman law, which are not taken up by modern interpretation, i.e., that women, soldiers and *rustici* are excused because of *ignorantia iuris*. Minors, of course, were excused then, but modern authors tend to agree that children having the use of reason (presumed to exist after the 7th birthday) are subject to ecclesiastical laws.

(42) Constitution by Valentinianus II [West] and Theodosius I [East], 27 May 391.

(43) « [...] especially as the fault of ignorance has reached no small number of men [...] those who after their ordination have unlawfully entered into one marriage that is, presbyters, and deacons, and subdeacons, being debarred for some short time from sacred ministrations, and censured, shall be restored again to their proper rank, never advancing to any further rank, *their unlawful marriage being openly dissolved* » (c. 3); « [i]f a presbyter has through ignorance contracted an illegal marriage, [...] it is manifest that the nefarious marriage must be dissolved » (c. 26) (H.R. PERCIVAL (ed.), *The Seven Ecumenical Councils of the Undivided Church: Their Canons and Dogmatic Decrees, Together with the Canons of all the Local Synods which*

implicit change of Church affiliation done under and because of *ignorantia iuris* is not sanated by the law (the law on ignorance) and that the person is still formally a member of the Church he or she was supposed to be a member of from the start.

What to do in actual fact becomes, therefore, a pastoral decision. This may be a situation where a formal change of Church affiliation to the Latin Church in order to reflect reality may be justified. But we think that, in most cases, no formal procedure should be undertaken because the person would just be confused — to say the least — at hearing that he or she is a Syrian Catholic *qui s'ignore*; we would suggest that the very proper Eastern principle of oikonomia be used (44) and that the person be considered Latin (in Western canonical categories, one would speak of using the *Ecclesia supplet* principle; though a different concept than the one of oikonomia, the result is the same). Annotations should be made in the baptismal register of the person regarding the fact that he or she has technically been a Syrian Catholic — for this or that reason — but is considered a Latin, or some formula to that effect, so that the question is not posed again.

3.2.2. *Impediments.* — Remember that not all impediments are the same in both Latin and Eastern Catholic Churches. *In the case of an interecclesial marriage where the impediment does not have the same extent in both partners, the more stringent law applies*, e.g., in the case

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Have Received Ecumenical Acceptance, A Select Library of Nicene and Post-Nicene Fathers of the Christian Church, 2d Series, vol. XIV, Oxford, J. Parker; New York, The Christian Literature Co., 1900; Edinburgh, T. & T. Clark; Grand Rapids, MI, W.B. Eerdmans Pub. Co., 1988, p. 362 and 377.

(44) « According to Orthodox canon law, the term economia denotes a timely and logically defensible deviation from a canonically established rule for the sake of bringing salvation. [...] On certain occasions, the Church, being the 'economos' (steward) of the Grace issuing from her sacraments and the other sanctifying means, may decide that the absolutely strict observance of a rule would not in a certain case contribute to the pursuance of her main mission, that is, to the preservation of unity and order within the body of her faithful and to the effecting of personal salvation » (N.D. PATRINACOS, art. *Economia*, in *A Dictionary of Greek Orthodoxy*, New York, Greek Orthodox Archdiocese of North and South America, Department of Education, 1984, p. 131). The authority who may apply oikonomia depends on the level of the problem involved; in the case at hand, it should be dealt with at the level of the eparchial bishop, who, of course, may issue guidelines and delegate the parish priests.

of a marriage between a Latin (whose impediment of consanguinity goes to the 4th degree inclusive [c. 1091, § 2, of the 1983 Latin Code]) and an Eastern Catholic before the coming into force of the 1990 Eastern Code (whose impediment of consanguinity, according to c. 66, § 2, of *Crebrae allatae*, goes to the 6th degree inclusive) (45), marriage between these two people if they are related in the 5th degree is invalid without a dispensation, if that marriage is contracted between 27 November 1983 and 30 September 1991 inclusive. We are not going to go through all impediments here, but just present a selection. It is important to remember also that some autonomous Churches have some pre-*Crebrae allatae* particular law regarding impediments, especially affinity — particular law, which, according to the authors, was not abrogated by the concluding clauses of *Crebrae allatae* but was protected by specific canons within *Crebrae allatae* —; therefore, one should not end one's search at the concluding clauses of *Crebrae allatae* nor at the 1990 Eastern Code, but consult, when necessary, somebody from that autonomous Church as to the nature and extent of this or that impediment. This particular law may or may not still be valid after 1 October 1991 (46). Also, though c. 28, § 2, of *Crebrae allatae* said that only the supreme authority of the Church, i.e., the Apostolic See, could establish new impediments (47), this has now changed in the 1990 Eastern Code, whereby autonomous Churches may establish diriment impediments, though within very strict parameters (48).

Note that Eastern Catholics who have their own hierarchs are not subject to the power of governance of the Latin diocesan

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(45) « In linea obliqua [matrimonium] irritum est usque ad sextum gradum inclusive ».

(46) Cf. c. 6.

(47) « Eidem supremae auctoritati tantum ius est alia impedimenta matrimonium prohibentia vel dirimentia pro baptizatis constituendi ad modum legis sive universalis sive particularis ».

(48) « The particular law of any autonomous church will not establish a diriment impediment, unless for a most serious reason, and after taking the counsel of eparchial bishops of other autonomous churches to whom it is of interest and after consultation with the Apostolic See; no lower level of authority can establish new diriment impediments » (« Iure particulari Ecclesiae sui iuris impedimenta dirimentia ne statuantur nisi gravissima de causa, collatis consiliis cum Episcopis eparchialibus aliarum Ecclesiarum sui iuris, quorum interest, et consulta Sede Apostolica; nulla auctoritas inferior autem nova impedimenta dirimentia statuere potest » [c. 792]).

bishop. A true story: some years ago, a Latin diocesan bishop in Canada performed the wedding of a Ukrainian Catholic and a baptized Anglican in his cathedral. The marriage broke down and was declared null for defect of form due to lack of jurisdiction on the part of the officiating minister — the Latin bishop had not received proper delegation from the Ukrainian Catholic hierarch or pastor of the Ukrainian Catholic party. (As the Latin diocesan bishop, he also had given the permission the Latin Code provides for in the case of a mixed marriage; he had forgotten that neither party was a Latin Catholic and that, therefore, the permission was invalidly given because he had power of governance over neither of these persons).

Like the 1983 Latin Code, the 1990 Eastern Code does not contain impedient impediments, but it seems they can be established by particular law (*a contrario* from c. 792). Note, however, that Eastern Catholics are *still* bound by impedient impediments until the coming into force of the 1990 Eastern Code on 1 October 1991 (until that date, therefore, cc. 48-56 of *Crebrae allatae* are still valid).

Some marriage impediments.

Case	*1983 Latin Code*	*1990 Eastern Code*
Age	c. 1083, § 1: 16/14	c. 800, § 1: 16/14 (49)
Consanguinity (Roman computation)	c. 1091, § 2: 4th degree inclusive	c. 808, § 2: 4th degree inclusive (50)
Affinity (Roman computation)	c. 1092: *a*) direct line (all degrees); *b*) collateral line (no impediment)	c. 809, § 1: *a*) direct line (all degrees); *b*) collateral line (2d degree) (51).

(49) « A man before he has completed his sixteenth year of age, and likewise a woman before she has completed her fourteenth year of age, cannot validly celebrate a marriage » (« Vir ante decimum sextum aetatis annum expletum, mulier ante decimum quartum aetatis annis expletum matrimonium valide celebrare non possunt »).

(50) « In a collateral line of consanguinity, marriage is invalid up to and including the fourth degree » (« In linea collaterali invalidum est [matrimonium] usque ad quartum gradum inclusive »).

(51) « Affinity invalidates a marriage in the direct line in any degree whatsoever; in the collateral line, in the second degree » (« Affinitas matrimonium dirimit in quolibet gradu lineae rectae et in secundo gradu lineae collateralis »).

Public propriety	c. 1094: from an invalid marriage or from notorious or public concubinage (1st degree of direct line between one spouse and blood relatives of the other)	c. 810: from an invalid marriage after the start of common life (1°); or from notorious or public concubinage (2°); or from the start of common life by those who are subject to the canonical form but have gone instead through a civil ceremony or have been married before a non Catholic minister (3°) (1st degree of direct line between one spouse and blood relatives of the other) (52)
Adoption	c. 1094: those who are related by adoption (all degrees of direct line and 2d degree of collateral line)	c. 812: those who are related by adoption (all degrees of direct line and 2d degree of collateral line) (53)

(52) « The impediment of public propriety arises: 1° from an invalid marriage after common life has been established; 2° from notorious or public concubinage; 3° from the establishment of common life by those who are subject to the canonical form of marriage but have gone through a civil ceremony or have been married before a non Catholic minister » (§ 1); « This impediment invalidates marriage in the first degree of the direct line between the man and the blood relatives of the woman and between the woman and the blood relatives of the man » (§ 2) (« Impedimentum publicae honestatis oritur: 1° ex matrimonio invalido post instauratam vitam communem; 2° ex notorio vel publico concubinatu; 3° ex instauratione vitae communis eorum, qui ad formam celebrationis matrimonii iure praescriptam astricti matrimonium attentaverunt coram officiali civili aut ministro acatholico » [§ 1]; « Hoc impedimentum matrimonium dirimit in primo gradu lineae rectae inter virum et consanguineas mulieris itemque inter mulierem et viri consanguineos » [§ 2]).

(53) « Marriage cannot be celebrated validly between persons who are legally related by adoption in the first degree of the direct line or in the second degree of the collateral line » (« Matrimonium inter se valide celebrari non possunt, qui cognatione legali ex adoptione orta in linea recta aut in secundo gradu lineae collateralis coniuncti sunt »).

Guardianship	[no impediment]	[no impediment]
Spiritual relationship	[no impediment]	c. 811, § 1: between the godparent and godchild and the godparent and the godchild's parents (54)

3.2.3. *Canonical form.* — Latins are used to the standard canonical form of the exchange of consent of both parties received by a qualified witness (local Ordinary or pastor as well as delegated priest, deacon, or layperson) and two ordinary witnesses. « The Eastern Churches [Catholic or not] pose an additional requirement for validity in the ordinary form of marriage: the marriage must be celebrated with a *sacred rite* [c. 828, § 1] (55). Eastern canon law describes a sacred rite as the assistance and blessing of a priest [c. 828, § 2] (56). An authentic interpretation of the word 'blessing' indicated that it is a simple blessing; no specific liturgical formula is required » (57). Some Latins have a lot of problems in understanding this Eastern requirement of the sacred rite. Some Eastern Catholics have difficulty explaining or justifying it, except in terms of long-standing Eastern tradition, because they often are trying to explain the canonical form using Latin terms and concepts, like the one of « bride and groom as ministers » of the sacrament of marriage. In this context, if the bride and groom are ministers

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(54) « From baptism there arises a spiritual relationship between a sponsor and the baptized person and the parents of the same that invalidates marriage » (« Ex baptismo oritur inter patrinum et baptizatum eiusque parentes cognatio spiritualis, quae matrimonium dirimit »).

(55) « Only those marriages are valid which are celebrated with a sacred rite, in the presence of [...] » (« Ea tantum matrimonia valida sunt, quae celebrantur ritu sacro coram [...] »).

(56) « That rite which is considered a sacred rite is the intervention of a priest assisting and blessing » (« Sacer hic censetur ritus ipso interventu sacerdotis assistentis et benedicentis »).

(57) POSPISHIL and FARIS, *The New Latin Code of Canon Law and Eastern Catholics*, p. 31; italics in the original; the text of the authentic interpretation of 3 May 1953 — now incorporated in the 1990 Eastern Code as c. 828, § 2 — can be found in *AAS*, 45 (1953), p. 313 (English translation in *Canon Law Digest*, 4 (1953-1957), p. 15).

of marriage, why the absolute insistence on the blessing by a priest? We have no problem in following Orthodox theology on that score and leave out our Latin terms and concepts when we are dealing with the Eastern Catholic tradition on marriage. We will even go further and say that we do not think it matters one bit if the Eastern Catholic view on the form of marriage and on marriage consent is not the same as the Latin one. This is said deliberately without nuance, so a few words of explanation may be in order.

First, a quote: « According to *Orthodox* theology, it is the Holy Spirit who, through the sacred rite performed by the priest, transforms the couple who have pledged mutual fidelity in the eyes of the Church. The sacramental grace comes down on them through this blessing of the priest who is, according to Orthodox theology, the minister of the sacrament of matrimony. The mutual matrimonial consent of the couple is regarded as the indispensable *precondition* for receiving the sacrament » ([58]). We have absolutely no problem with this and say that it is perfectly acceptable Eastern Catholic theology also. We do not see why Latins should not believe that the Latin bride and groom are the ministers and the Latin officiating priest is a qualified witness while Eastern Catholics believe that the minister is the officiating priest. Actually, in some non-Byzantine Eastern Churches, consent is not formally asked from the parties, but is presumed through their presence at their wedding ceremony.

We think that the right Eastern theology is projected through the Oriental Code, though it certainly is not explicit but rather subtle. Canon 1057 of the 1983 Latin Code (§ 1: « Marriage is brought about through the consent of the parties [...] »; § 2: « Matrimonial consent is an act of the will by which [...] ») does *not* have a counterpart in the 1990 Eastern Code. This is highly significant: it means to us that the traditional Eastern view is projected. It does not mean that consent is of no value, of course not: c. 776, § 1, is the counterpart to the 1983 Latin Code's c.

([58]) C. GALLAGHER, *Marriage in the Revised Canon Law for the Eastern Catholic Churches*, in *Studia canonica*, 24 (1990), p. 76, note 12 (italics in original). He refers the reader to P. EVDOKIMOV, *The Sacrament of Love: The Nuptial Mystery in the Light of the Orthodox Tradition*, Crestwood, NY, St. Vladimir's Seminary Press, 1985.

1055, § 1, using almost the same words (59). After all, no matter which theology one follows, consent is essential, one way or the other, explicitly or not. However, a further element of correct Eastern theology is present in c. 776, § 2: the notion that it is God that unites the parties in marriage (60). The implication is that, though they consent to the marriage *in fieri*, it is God who receives this consent and unites the parties, cf. Mt 19:6 (« What God has united, man must not divide »).

The basic canon on the form is a counterpart to the Latin one, with the appropriate mention of the sacred rite: c. 828, § 1: « Only those marriages are valid which are celebrated with a sacred rite, in the presence of [...] »; § 2: « That rite which is considered a sacred rite is the intervention of a priest assisting and blessing ».

Unfortunately, the system, to our mind, broke down somewhat because the 1990 Eastern Code has not seen fit to ignore the extraordinary form of marriage with witnesses only, present in Eastern Catholic canon law merely since 1949. However, it does admit that the parties, in the impossibility of finding a Catholic priest, may ask a non Catholic priest to bless the marriage: « In either case [of the extraordinary form], if another priest is able to be present, inasmuch as it is possible he is to be called so that he can bless the marriage, without prejudice for the validity of a marriage in the presence only of the witnesses; in the same cases, a non Catholic priest may also be

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(59) « The marriage covenant, established by the Creator and ordered by His laws, by which a man and a woman by an irrevocable personal consent establish between themselves a partnership of the whole life, is by its natural character ordered toward the good of the spouses and the generation and education of the offspring » (« Matrimoniale foedus a Creatore conditum eiusque legibus instructum, quo vir et mulier irrevocabili consensu personali totius vitae consortium inter constituunt, indole sua naturali ad bonum coniugum ac ad filiorum generationem et educationem ordinatur »).

(60) « From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace » (« Ex Christi institutione matrimonium validum inter baptizatos eo ipso est sacramentum, quo coniuges ad imaginem indefectibilis unionis Christi cum Ecclesia a Deo uniuntur gratiaque sacramentali veluti consecrantur et roborantur »).

called » (61). The legislation does see the importance of the blessing, because c. 832, § 3, says very clearly that « if a marriage was celebrated in the presence only of witnesses, the spouses shall not neglect to receive the blessing of the marriage from a priest as soon as possible » (62). This institution of the extraordinary form of marriage is certainly not in the Eastern tradition, though some Orthodox Churches, especially the Russian Orthodox Church, have had experience in using oikonomia in dealing with civil marriages of their faithful, because of the absence of priests in many areas. We wonder if it would not have been better for the Oriental Code Commission not to copy the Latin Code and to ignore this form altogether? This would have certainly helped in our relationships with the Orthodox.

The 1990 Eastern Code will not permit permanent deacons and laypersons to officiate at marriages according to the ordinary form. This confirms previous practice. However, there is still a problem: it is entirely possible for a Latin Catholic and an Eastern Catholic to marry before a Latin permanent deacon or empowered layperson. We suggest that it would be wise not to use that possibility that the Latin Code offers when it is question of an interecclesial marriage. We think the closer relations we are developing with the Orthodox are worth sacrificing this or that sundry element in the law.

What about the canonical form in mixed marriages?

a) 1949-1965 (-1967): *Ad validitatem* for Eastern Catholics (until 1967 for Latin Catholics) (63);

b) 1965: *Ad liceitatem*, i.e., an Eastern Catholic and an Eastern non-Catholic may receive permission to have their marriage blessed by an Eastern non Catholic priest (64);

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(61) « In utroque casu, si praesto est alius sacerdos, ille, si fieri potest, vocetur, ut matrimonium benedicat salva matrimonii validitate coram solis testibus; eisdem in casibus etiam sacerdos acatholicus vocari potest » (c. 832, § 2).

(62) « Si matrimonium celebratum est coram solis testibus, coniuges a sacerdote quam primum benedictionem matrimonii suscipere ne neglegant ».

(63) « Ad statutam superius formam [canonicam celebrationis matrimonii] servandam tenentur: [...] 2° [Omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi], si cum acatholicis, sive baptizatis sive non baptizatis, etiam post obtentam dispensationem ab impedimento mixtae religionis vel disparitatis cultus, matrimonium contrahant » (*Crebrae allatae*, c. 90, § 1, 2°).

(64) « Ad praecavenda matrimonia invalida, quando catholici orientales cum acatholicis orientalibus baptizatis matrimonium ineunt, et ad consulendum nuptia-

n.b. 1. This is not a dispensation from all form, there is still the *ad validitatem* requirement of the « sacred rite », i.e., the blessing by a priest; those who go to an Orthodox priest without asking for permission are acting unlawfully, but validly;
2. Canon 834, § 2, of the 1990 Eastern Code does not modify the norm (65).

c) 1967: The provision was extended to Latin Catholics who wish to marry Eastern non-Catholics before an Eastern non Catholic priest (66);

n.b. 1. The same conditions apply: permission, sacred rite, etc.;
2. Canon 1127, § 1, of the 1983 Latin Code does not modify the norm.

Regarding dispensation from the Catholic canonical form, Eastern Catholic hierarchs had this power from *Crescens matrimoniorum* when it is a question of an Eastern Catholic marrying an Eastern non-Catholic. Until the 1990 Eastern Code, the Eastern Catholic hierarchs could not, as a matter of general law, dispense from the canonical form in the case of an Eastern Catholic and a Protestant or an unbaptized (67). The 1990 Eastern Code has

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rum firmitati et sanctitati nec non domesticae paci, Sancta Synodus statuit formam canonicam celebrationis pro his matrimoniis obligare tantum ad liceitatem; ad validitatem sufficere praesentiam ministri sacri, servatis aliis de iure servandis » (*Orientalium Ecclesiarum*, 18).

(65) « If, however, a Catholic party enrolled in a certain eastern Catholic autonomous church celebrates a marriage with one who belongs to an eastern non-Catholic church, the form for the celebration of marriage prescribed by law is to be observed only for liceity; for validity, however, the blessing of a priest is required, while observing the other requirements of law » (« Si vero pars catholica alicui Ecclesiae orientali sui iuris ascripta matrimonium celebrat cum parte, quae Ecclesiam orientalem acatholicam pertinet, forma celebrationis matrimonii iure praescripta servanda est tantum ad liceitatem; ad validitatem autem requiritur benedictio sacerdotis servatis aliis de iure servandis »).

(66) « [...] quando catholici sive orientales sive latini matrimonia contrahunt cum fidelibus orientalibus non catholicis, formam canonicam celebrationis pro his matrimoniis obligare tantum ad liceitatem; ad validitatem sufficere praesentiam ministri sacri, servatis aliis de iure servandis » (Sacred Congregation for the Oriental Church, Decree *Crescens matrimoniorum*, 22 February 1967, in *AAS*, 59 (1967), p. 166).

(67) Pospishil and Faris (*The New Latin Code of Canon Law and Eastern Catholics*, p. 33) argue that since *Pastorale munus* (30 November 1963, not in force

restricted the power of the Eastern Catholic hierarchs, at least on the face of it; indeed, the dispensation from canonical form is now reserved to the Apostolic See and to the patriarchs (68). What will probably happen, in fact, is that the patriarchs will delegate the power to dispense to their eparchial bishops.

3.2.4. *Canon 72 of the Council « in Trullo ».* — There is no space here to go into a treatise as to how the Catholic authors viewed this canon over the centuries, especially after *Crebrae allatae* came out. However, we think it is appropriate to give what seems to be the latest views on this question.

What does the canon say: « An orthodox man is not permitted to marry an heretical woman, nor an orthodox woman to be joined to an heretical man. But if anything of this kind appears to have been done by any, we require them to consider the marriage null, and that the marriage be dissolved » (69). The contemporary question, therefore, is, *Are the marriages of Eastern non-Catholics and baptized Protestants invalid because of c. 72?*

Here are a certain number of principles and facts that we put before you, as part of the background to be used when making a judgement on a mixed marriage of that sort after a request has been received by a party who wishes to marry a Catholic:

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for Latins since the 1983 Latin Code, but still in force for the Eastern hierarchs until 1 October 1991) says that since bishops may dispense from the canonical form in the case of radical sanation (i.e., after the exchange of consent), it follows that the bishops could dispense from the canonical form in the simpler case of dispensation before exchange of consent. We do not agree with that position. While it is true, generally, that *plus semper in se continet quod est minus* (Reg. 35, R.J. in VI°), there has to be a similarity of situations and we fail to grasp how analogy could be used here. In any case, in matters of marriage, where the legislator is very detailed and leaves as little as possible to chance, if the legislator had wanted to give bishops the faculty to dispense from canonical form, he would have spelled it out. Furthermore, *Pastorale munus* is a very detailed listing of 40 faculties and not primarily a text in literary style; the legislator — if we remember how the document was conceived and born — listed exactly what he wanted to give and not more.

(68) « Dispensation from the form prescribed by law is reserved to the Apostolic See or the patriarch, who will not grant it unless for a most grave reason » (« Dispensatio a forma celebrationis matrimonii iure praescripta reservatur Sedi Apostolicae vel Patriarchae, qui eam ne concedat nisi gravissima de causa » [c. 835]).

(69) PERCIVAL, *The Seven Ecumenical Councils*, p. 397.

a) The Second Vatican Council's Decree, *Unitatis redintegratio*, 21 November 1964, recognized the jurisdiction of the Orthodox hierarchs (this, of course, did put to pasture many of the opinions expressed on c. 72 up until Vatican II by Catholic authors) ([70]).

b) On 7 December 1965, Pope Paul VI and Ecumenical Patriarch Athenagoras I quashed the mutual excommunications of 24 July 1054: this was not just a symbolic gesture but a truly canonical act which changed the relationship of the two Churches; undoubtedly, the two Churches are not in a canonical *de iure* state of excommunication any more but just in a purely *de facto* state of non-communion, which is different conceptually and in practice ([71]).

c) Canon 72 of the Council *in Trullo* has never been formally abrogated by the Orthodox; however, most Orthodox Churches, over the centuries, have accepted through oikonomia to recognize the validity of mixed marriages between Orthodox and Protestants *if blessed by a priest*; if need be, *verification should be done — if reliable written documentation is not available on the discipline of a specific Orthodox Church — by consulting an appropriate authority of or expert on that Church* as to the status of c. 72: is it still considered operative or not? The case under review would be the one of a Protestant-Orthodox marriage blessed by an Orthodox priest; the presumption is, of course, that it is recognized as valid by that Orthodox Church, since a priest of that Church blessed it, but this may need to be checked, depending on circumstances, to see if the Orthodox priest acted within the canon law of his Church. There is also the case of a Protestant-Orthodox marriage blessed by a Protestant minister; the validity would hinge, of course, on the opinion of the Orthodox Church in question on the orders of the Protestant minister; in most cases, the opinion of the Orthodox

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([70]) « [...] Sacra Synodus [...] declarat Ecclesias Orientis [...] facultatem habere se secundum proprias disciplinas regendi » (no. 16).

([71]) The quashing of the mutual excommunications is witnessed by a set of three documents, all dated 7 December 1965: 1. The Common Declaration of Paul VI and Athenagoras 1, *Pénétrés de reconnaissance*, which explains the rationale and significance of the quashing (*AAS*, 58 (1966), p. 20-21); 2. The Apostolic Letter of Paul VI *Ambulate in dilectione* quashing the excommunication of July 1054 declared by the papal legate, Cardinal Humbertus (*AAS*, 58 (1966), p. 40-41); 3. The *Tomos* of the Ecumenical Patriarch Athenagoras I and his synod quashing the excommunication of 24 July 1054 declared by Ecumenical Patriarch Michael Cerularius and his synod (*Enchiridion Vaticanum*, 2 (1963-1967), no. 500, p. 510-513).

Churches is the same as the one of the Catholic Church: these orders are not valid and, therefore, the minister, not being a « sacred minister » cannot give the proper blessing. Other nuances could be made here, but this will suffice, for the time being.

d) Three recent studies should be read on the subject: the first one is a 1 July 1972 decision of the Apostolic Signatura on a Protestant-Russian Orthodox marriage case from Chicago, but reviewing the discipline of a number of Orthodox Churches ([72]); the second one is a 23 November 1974 decision, also of the Apostolic Signatura, on an Armenian Apostolic-United Methodist marriage case from Cleveland ([73]); the third one is a doctoral dissertation in canon law by J.J. Myers ([74]).

4. *Conclusion.*

This short study could have been much longer, by adding, for example, sections on chrismation with holy myron and on the jurisdiction of tribunals. But space was of the essence.

We think, however, that the main point of the paper is to help Latins be more sensitive to Eastern tradition and the efforts by many Eastern Catholic hierarchs and other faithful to bring Eastern Catholic discipline even more in line with traditional Orthodox discipline than it is now. It has been said that the 1990 Eastern Code is more Oriental than the 4 *motu proprio* of 1949-1957 are, and that is certainly true; but the *Codex canonum Ecclesiarum orientalium* certainly cannot be considered as impossible to be improved upon in this regard.

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([72]) *Apollinaris*, 46 (1973), p. 255-277; *Canon Law Digest*, 8 (1973-1977), p. 3-29; *Periodica*, 62 (1973), p. 11-38.

([73]) *Canon Law Digest*, 8 (1973-1977), p. 40-53.

([74]) *The Trullan Controversy: Implications for the Status of the Orthodox Churches in Roman Catholic Canon Law*, Canon Law Studies, no. 491, Washington, DC, The Catholic University of America; Ann Arbor, MI, Xerox University Microfilms, 1977.