

## *Ius Proprium ac Nativum*: Brief Reflections on the Historical Evolution of the Sources of Canon Law

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The purpose of this brief study, intended specifically for the reader who wants to begin to comprehend canon law, is to outline the historical evolution of Church law and its juridical sources that have unfolded in over two millennia. History helps us to better understand that the uniqueness of the canonical legal system, willed by the divine Founder, expressed itself in a firm resolution in favor of law; a law which for the Church represents a means and not an end, i.e., the attainment of its objective for which it is competent: the *salus aeterna animarum*. In this socio-historical excursus, one is able to appreciate the unparalleled and the specificity of the canonical system and its sources.

**Keywords:** canon law, sources of law, *Corpus iuris canonici*, Council of Trent, Code of Canon Law, juridical culture

### **The Historiography on the History of the Sources of Canon Law: Background**

The Church as a primary judicial legal system, from its origins has authored its own native law (*ius proprium ac nativum*) and independent *vis-à-vis* other judicial systems. As already indicated, the purpose of this brief essay is to individualize the main stages that have marked the juridical experience of the Church, in addition to underline the more relevant sources of canon law in order to comprehend the development of the *Societas Christi*.

Historiography, in this respect, is acclimated in utilizing criteria of diverse and varied time periods. In fact, some scholars sustain that the historical development of canon law can be subdivided into four major periods:

- The so-called *ius antiquum*, corresponding to the sources of the first millennium of the Church;
- The *ius novum*, corresponding to the time encompassing the works of Gratian the monk up to the Council of Trent (1545-1563);
- The *ius novissimum*, the historical period characterized by a canon law which was influenced by the specific tenets of the Conciliar Fathers in response to Lutheran theories;
- The *ius codificatum*, or rather the period of the great codifications of Church law. This time span stems from the promulgation of the first Code of Canon Law for the Latin Church by Benedict XVI in 1917, up to 1983, when it was abrogated in favor of the current Code introduced by John Paul II, and up to the promulgation of the *Codex Canonum Ecclesiarum Orientalium* in 1990.<sup>1</sup>

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<sup>1</sup> A. M. Stickler, *Historia iuris canonici latini. Institutiones Academicæ*, vol. 1, 3 ed., Roma, 1985, pp. 6-7; B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, Roma, 1998, pp. 29-30; P. Erdö, *Storia delle Fonti del Diritto Canonico*, Venezia, 2008, pp. 14-16.

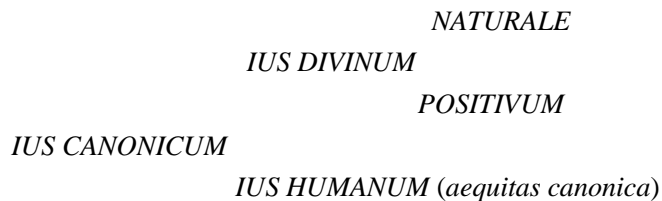
Other authors, however, highlight the historical evolution of Church law through its canon law systems, as well as its exercised influence<sup>2</sup> or on crucial turning points in time:

- The genesis and first stages of canon law during the first millennium of the Church;
- The definitive systemization of canon law during the so-called enlightenment of classical canon law;
- The codification of canon law.<sup>3</sup>

### Comprehension on the Notion of “Source” in Canon Law

Before analyzing the historical periods which have characterized the evolved law in the Church, it is necessary to clarify some concepts, which in the eyes of jurists in training can be misleading. Specifically speaking, as seen in the Introduction, reference is made to the notion of source of canon law. What is meant by “source of law” in the judicial canonical system? The concept can be deceptive because in lectures of constitutional law one rightly learns that the juridical sources of civil legal systems are all produced by man—particularly from politics—having constitutional norms at its vertex.

Such reasoning does not apply to the juridical canonical system within which the highly ranked sources are amenable to norms of divine law (*Ius divinum*) and inferable from Sacred Scripture and Sacred Tradition. From these, and without any contradiction, derive the norms stemming from legislative ecclesiastical bodies (*Ius humanum*). Let us try to exemplify this discourse through a graph chart which was offered to me when I was a student at the Faculty of Law at the University of Florence from the law-historian Paolo Grossi, present-day President of the Constitutional Court of the Italian Republic.



From the diagram above, one can observe that the two great partitions of canon law are divine law (*Ius divinum*) and human law (*Ius humanum*). Divine law can be qualified as a sort of “Constitutional Law of the Church,” in which God himself is the legislator and in turn manifests himself in divine natural law (*Ius divinum naturale*) and in divine positive law (*Ius divinum positivum*). The former is a non-codified law, inscribed by heart in the heart of man, e.g., man knowing not to kill other men; the latter, instead, is written law (*ius scriptum*). Divine positive law is the fruition of divine Revelation and finds its main source in Sacred Scripture, in Tradition and, based on the tenet of infallibility of the Pontifical Magisterium, in the Roman Pontiff (cfr. can. 749, § 1, CIC, 1983<sup>4</sup>; can. 595, § 1, CCEO<sup>5</sup>).

<sup>2</sup> E. Sastre Santos, *Storia dei Sistemi di Diritto Canonico*, Roma, 2011.

<sup>3</sup> P. Grossi, *L'Ordine giuridico medievale*, 6 ed., Bari, 2011, pp. 109-123, 203-222; P. Grossi, *L'Europa del diritto*, 7 ed., Bari, 2011, pp. 33-36, 55-56, 213-216; M. Nacci, *L'evoluzione storica del diritto canonico e delle sue fonti giuridiche*, in M. J. Arroba Conde (ed.), *Manuale di diritto canonico*, Città del Vaticano, 2014, pp. 29-42; M. J. Arroba Conde & M. Riondino, *Introduzione al diritto canonico*, Milano, 2015, pp. 1-15.

<sup>4</sup> *Codex Iuris Canonici*, 1983, can. 749, § 1: *Infallibilitate in magisterio, vi muneris sui gaudet Summus Pontifex quando ut supremus omnium christifidelium Pastor et Doctor, cuius est fratres suos in fide confirmare, doctrinam de fide vel de moribus tenendam definitivo actu proclamat.*

<sup>5</sup> *Codex Canonum Ecclesiarum Orientalium*, 1990, can. 595, § 1: *Infallibilitate in magisterio vi muneris sui gaudet Romanus Pontifex, si ut supremus omnium christifidelium Pastor et Doctor, cuius est fratres suos in fide confirmare, doctrinam de fide vel de moribus tenendam definitivo actu proclamat.*

Human law (*Ius humanum*), however, is compiled by the Church and is characterized by equity (*aequitas canonica*).<sup>6</sup> In fact, while divine canon law is immutable and unchangeable, canon law is distinguished for its flexibility in the sense that the general juridical rule is to be shaped and adapted to the single-subjective situation in order to attain the eternal salvation of souls (*salus aeterna animarum*), which is the ultimate goal of the Church.<sup>7</sup>

All this being said, the apprehension of the sources of the juridical canonical system brings to attention that there exist two main typologies of juridical sources:

- *genetic sources*, qualified as social factors brought into existence by law, e.g., the legislator, and for the composition of customary norms, the community;
- *epistemological sources*, understood as scientific realization which allows us to know what is contained in the norm.

Within these last type of sources, the primary ones are distinguished, yet again, as those which take us directly to the context of the norm, e.g., canons, laws, decrees, constitutions, apostolic letters, *motu proprio*s, etc.; the secondary ones permit us to grasp the context of norms in an indirect manner through documents which provide recent events, e.g., procedural acts, administrative documents, etc.<sup>8</sup>

The fountain of canon law, inscribed for the most part in unitary works called “collections,” can be subdivided according to the multiple criteria. In reference to the legislator, we may find divine law collections (juridical norms found in Sacred Scripture) and collections of ecclesiastical law (decrees, conciliar canons, Nomo-canons, concordats). On the basis of degree of extension of norms, we have collections of specific laws, universal or mixed, whether or not we consider the territorial aspect or rather general and special collections, or whether we consider the personal nature of things. On the basis of the criteria of the so-called historical genuineness, we come upon authentic and false collections, either as a result of the context or its author.

In reference to the *modus operandi* of the author of canonical sources, the chronological collections—those which present the sources as a temporal criteria—can be set apart from the systematic ones, which instead follow a composition according to matter. Collections in relation to juridical authority are known by their private assembling, despite not being promulgated by ecclesiastical authority. There are also authentic collections, which are promulgated or approved and those such as, *usu receptae*, which are private but transposed from the administrative and/or judicial praxis. Finally, according to a criterion of historical periodization, it is possible to individualize the stages of canon law:

- The period that precedes Gratian (1st to 12th centuries);
- The period of classical canon law (1140-1563);
- The period of the post-Tridentine period of canon law (1563-1869);
- The period of the great codifications of law in the Latin Church (1917 and 1983) and Oriental Churches (1990).<sup>9</sup>

<sup>6</sup> P. G. Caron, *Aequitas romana, misericordia patristica ed epicheia aristotelica nella dottrina dell'aequitas canonica. Dalle origini all'età aurea*, Milano 1969; P. Grossi, *Aequitas canonica*, in *Quaderni fiorentini per la storia del pensiero giuridico moderno*, XXVII (1998), pp. 379-396; R. Coppola, *Epicheia ed aequitas canonica: contenuti e caratteri differenziali*, in Aa.Vv., *Studi in onore di Piero Bellini*, I. Soveria Mannelli, 1999, pp. 253-276; G. Brugnotto, *L'aequitas canonica. Studio e analisi del concetto negli scritti di Entico da Susa (Cardinal Ostiense)*, Roma, 1999.

<sup>7</sup> P. Grossi, *L'Europa del diritto*, p. 35.

<sup>8</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 25-26.

<sup>9</sup> A. M. Stickler, *Historia iuris canonici latini. Institutiones Academicæ*, pp. 4-8; B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 26-30.

### The First Millennium: Authoring and Stratification of the Canon Law Sources

Having covered the fundamental specifics on the sources of law within the canonical legal system, we are now able to retrace the chronological stages of the historical development of Church law (*ius Ecclesiae*). From the time of the first Christian communities the striking characteristic is the Church's firm and assertive choice in favor of law. What does this sort of expression mean? The Church, from its very beginning, even when it was considered as *ocietas illicita* by the Roman Empire, has always wished to bring forth its own law which confers upon itself an absolute typicality and uniqueness; a law congenial to the very essence of the Church—a juridical system possessing a goal which is diverse from any other—the salvation of souls (*salus aeterna animarum*). In this way, even the will to generate law does not exclusively respond to the demand of creating a juridical norm in order to safeguard public order, as it happens with the civil systems. Instead, it is a pondered selection for an anthropological system which gives it a retrospective vision of attaining eternal salvation, and not a mere temporal end.<sup>10</sup>

During the first millennium, the authoring of law by the Church was able to develop itself in a somewhat constant manner thanks to some historical events highlighting the so-called Christian liberty. We first refer to the Edict of Licinius and Constantine of 313 A.D.,<sup>11</sup> which granted all subjects of the Roman Empire the freedom to publicly profess his/her own religion, abrogating in time the persecutions of Christians. Secondly, the Council of Nicea of 325 A.D.,<sup>12</sup> when the Christian faith was declared and substantially remained unchanged up to the present-day. Finally, and very notably, the Edict *Cunctos populos* of 380 A.D., in which the Emperor Theodosius I proclaimed Christianity as the official religion of the Empire.<sup>13</sup> After these important events we witness a permeation, at least during the initial stages, between Roman law and the birth of canon law. From a certain perspective, the latter transposed the juridical categories of Roman law and utilized the composition of its own law. In a permeating manner, the civil legislative authorities of the Roman world produced laws that were successively recuperated from canon law, e.g., the *Codex Theodosianus*, promulgated in 438 A.D., by the Emperor Theodosius II, as well as the *Corpus Iuris Civilis*, promulgated between 528 and 533 A.D., by the Byzantine Emperor Justinian.

Another fact that must be emphasized is that in the first centuries canon law was a prevalent customary law (*ius consuetudinarium*) that based itself on juridical and behavioral norms which the Christian community

<sup>10</sup> P. Grossi, *L'Europa del diritto*, pp. 33-34.

<sup>11</sup> E. dal Covolo, *Chiesa. Società. Politica. Aree di laicità nel cristianesimo delle origini*, Roma, 1994, pp. 17-30; E. dal Covolo, *Il capovolgimento dei rapporti tra la Chiesa e l'Impero*, in E. dal Covolo & R. Uglione, *Chiesa e Impero da Augusto a Giustiniano*, Roma, 2001, pp. 199-208; G. Bonamente, *La svolta costantiniana*, in E. dal Covolo-R. Uglione, *Chiesa e Impero. Da Augusto a Giustiniano*, pp. 145-170; G. Rinaldi, *Ridurre a minoranza. Riflessione su alcuni percorsi dei pagani nell'impero dei cristiani*, in A. Zambarbieri & G. Otranto, *Cristianesimo e Democrazia*, Bari, 2011, pp. 135-147; E. dal Covolo, *Eziologia storico-religiosa della cosiddetta "svolta costantiniana"*, in *Salesianum*, 75 (2013), pp. 537-546; M. Nacci, *Il concetto di "libertà religiosa" all'indomani dell'editto di Licinio e Costantino: brevi considerazioni storico-giuridiche*, in *Revista General de Derecho Romano*, 24 (2015), pp. 1-12.

<sup>12</sup> J. Quasten, *Patrologia*, II, *Dal Concilio di Nicea a quello di Calcedonia*, translated by Nello Beghin, Genova, 1969; C. Moreschini & E. Norelli, *Storia della letteratura cristiana antica greca e latina*, II, *Dal Concilio di Nicea agli inizi del Medioevo*, Brescia, 1996; Institutum Patristicum Augustinianum, *Patrologia. I Padri latini (secoli IV-V)*, Genova, 1999; G. Jossa, *Il cristianesimo antico. Dalle origini al Concilio di Nicea*, Roma, 2012.

<sup>13</sup> Regarding the Edict *Cunctos populos* which discusses the imperial legislative activity and the functions of the court, cf. L. De Giovanni, *Imperatori, corti, attività legislativa nella tarda antichità*, in Centro Italiano di Studi sull'Alto Medioevo, *Le corti nell'Alto Medioevo, Atti delle Settimane di Studio (Spoleto, 24-29 aprile 2014)*, Spoleto, 2015, pp. 357-384.

orally handed down (*ius non scriptum*). And, in order to render it substantially binding, it maintained that they were directly received from the Apostles, in other words from Christ himself. Known as the pseudo-Apostolic Collections, they outlined the development of canon law sources, especially during the first three centuries. Some of these sources are the *Didaché*, the *Traditio apostolica*, the *Didascalia apostolorum*, the *Canones apostolici*, the *Canones ecclesiastici Sanctorum Apostolorum* and the *Testamentum Domini nostri Iesu Christi*.<sup>14</sup>

With the barbaric invasions of the 5<sup>th</sup> century and the consequential fall of the Roman Empire in the West in 476 A.D., the unity of the Empire was split and the conquering peoples found themselves in a situation to not only cohabitate with the conquered Roman people but with the local church, which from the 4th century (specifically after 313 A.D.), was consolidating its own structure. The cultural and social differences among the conquerors (the Huns, Visigoths, and Burgundians), which were more apparent in the Roman world, as well as other juridical differences among the Roman-barbarian kingdoms, consequently led to a barbarization of Roman law, i.e., embedding itself in the so-called Roman-barbarian laws (*Lex Romana Wisigothorum*, *Lex Romana Burgundionum*, *Edictum Theodorici*).<sup>15</sup> German law, however, not only established a “vulgarization” of Roman law but it also notably influenced the framework of the Church (one calls to mind, for example the *Eigenkirche* phenomenon) and the composition of its juridical sources.<sup>16</sup>

The canon law collections of this period (6th to 8th centuries) are classified by a geographic particularism and are subdivided according to the geographical location in which they come to light (the Byzantine, African, Italian, Spanish Visigoth, Merovingian Gaul and Island collections, as well as the penitential books).<sup>17</sup> Each one of them influenced by the respective barbaric kingdom, and in a particular way, by the rapport each kingdom was able to establish with the local church. From here we move from some well-produced collections of canon law in the Visigoth Kingdom of Toledo, e.g., the *Collectio Hispana*. It was singled out at during conversion of the King Reccared I in 589, onto a quasi-total absence of canonical sources in the African territory due to the Vandal persecutions and of the successive Byzantine economic-territorial exploitation.

Some specific and important sources of law during this period are the Penitential Books, such as the *Paenitentiale Columbani*, the *Paenitentiale Cummeani* and the *Paenitentiale Bedae*. Independently of the novelty begotten by the *paenitentia taxata* system—the substitution of public penances, already in crisis in the Latin Church due to its rigidity and its problems in applying it with the imposition of a private penance by the confessor onto the penitent—these sources of law have a great cultural value.<sup>18</sup> This is because before a coeval laicized law, the confessor was only acquainted with the pecuniary composition as the sole advancement in respect to the discord and rarely interested himself as to the intention, which was the principal characteristic of Penitential Books. These norms, despite their ingenuity for which at times a sin was punished with a qualitative and quantitative sanction were very different for its time and place (fasts, praying in the cold at the heart of the night, only being able to consume water or punitive foods); they represent and interest “alternative model” in

<sup>14</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 45-46; P. Erdö, *Storia delle Fonti del Diritto Canonico*, 17-30; C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, Bologna, 2011, pp. 39-40.

<sup>15</sup> P. Erdö, *Storia delle Fonti del Diritto Canonico*, pp. 41-42.

<sup>16</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 77-78; C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, pp. 72-77.

<sup>17</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 79-105; P. Erdö, *Storia delle Fonti del Diritto Canonico*, pp. 44-60.

<sup>18</sup> J. Gaudemet, *Storia del diritto canonico. Ecclesia et Civitas*, Cinisello Balsamo (Milano), 1998, pp. 307-309; P. Erdö, *Storia delle Fonti del Diritto Canonico*, pp. 60-69.

regard to the other civil juridical systems.<sup>19</sup>

The evolution of canon law in the first millennium has its own important phase in the Carolingian Reform. When Pope Leo III crowned Charlemagne on 25 December 800, the event, to a certain point revived the Roman Empire. The Holy Roman Empire, as it was called, would see the roles of the emperor and of the Pope reciprocally assist themselves in order to create a universal canon law. The collections during this period are an expression of this union between the imperial and spiritual authorities, and quite often the emperor would dedicate them to the pope, as with the *Collectio Dionysio-Hadriana* of 774.<sup>20</sup> Two important sources emanate from the Carolingian Reform, the Capitularies (*Capitularia*) and the so-called False Collections.

The Capitularies, e.g., the *Capitularia Ansegisii* of 827, are collections of juridical norms that stem from a mixed legislative body, composed by noble laymen and clerics, contain canon law norms (*Capitularia ecclesiastica*) and civil law (*Capitularia mundana*). The False Collections from the Carolingian epoch, unlike the aforementioned Pseudo-Apostolic Collections, are an accumulation of canonical rules in which the author creates a true and proper falsification, such as interpolation, which consists in the manumission of established steps in an authentic document. They were determined by their promulgation from an ecclesiastical authority with legislative power who in turn assured the validity of canonical norms by such an act.<sup>21</sup>

The last period which marks the first millennium in respect to the fountain of the canonical juridical system was the Imperial Reform, strictly speaking the Gregorian Reform of the Church. The expression Imperial Reform refers to an historical period (mid-11th c.) in which the emperor, specifically Henry III (1039-1056), had in mind to control the Church.<sup>22</sup> From a point of view, this project in provoked a contrary effect in the authoring of canon law sources because the successive collections, above all beginning with Gregory VII (from which this reform takes its name and concludes at the Concordat of Worms of 1122), had as a goal to express the autonomy of the Church from the emperor and to underline the Church's absolute liberty (*libertas Ecclesiae*) before the power of the laity.<sup>23</sup> The canonical collections of this period are an instrument of the Reform, e.g., *Dictatus Papae* of 1075, and seek to bring a moralization of the clergy, impede the emperor in naming bishops and lastly to realize the notion of a theocratic pontificate, i.e., the pontiff's absolute authority to better guarantee an ecclesiastical reorganization in the strictest centralistic sense.<sup>24</sup>

### From the "Systematization" of the *Magister Gratianus* to the Council of Trent

During the first millennium, as we have briefly observed, the Church generated countless juridical sources demonstrating its great vivacity in the canonical legal system but at the same time it left a multiplication of norms that were quite often in contradiction with each another. Towards the end of the 11th century, we notice some attempts on the part of canonists to harmonize this discordance, among those being Ivo of Chartres, Alger of Liège and Peter Abelard.

The Bishop of Chartres took on the inharmonious canons in the Prologue of his *Panormia* (1094-1096), in

<sup>19</sup> L. Musselli, *Storia del diritto canonico. Introduzione alla storia del diritto e delle istituzioni ecclesiali*, 2 ed., Torino, 2007, pp. 30-32.

<sup>20</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 120-125; P. Erdö, *Storia delle Fonti del Diritto Canonico*, pp. 76-78.

<sup>21</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 130-143.

<sup>22</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 147-153; C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, pp. 87-88.

<sup>23</sup> C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, pp. 89-101.

<sup>24</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 166-169.

which he outlines the fundamental principles in reconciling contradictions with the presupposition that the normative texts can be different from one another but not necessarily in opposition (*diversi, sed non adversi*).<sup>25</sup> The canon lawyer of Liège, however, building on the style of application exposed by Ivo, indicates in his *De misericordia et iustitia* (1095-1121), the criteria to utilize to harmonize the discordant canons: the distinction between *iustitia* (law in the strictest sense) and *misericordia* (dispensation). Alger quite often also compliments the juridical rules with brief handwritten comments. In this manner, it is possible to single out the method that would later be attributed to Gratian. In any case, we first find in the Belgian canonist such traits: the distinction, i.e., between juridical norm inserted in the text (*auctoritas*) and the author's comment (*dictum*).<sup>26</sup> Finally, Peter Abelard in his *Sic et Non* (1115-1117), consolidates the rules for integration of contrasting texts. This eventually becomes the manual for jurists to resolve practical issues.<sup>27</sup>

If the beginning of the second millennium is characterized with some attempts to harmonize the disparity of juridical canonical norms, the successive one is classified as the millennium that aimed towards a true and proper systematization of canon law sources, specifically the pontifical decrees. These decrees, which substituted the conciliar canons of the first centuries, were arranged in a temporal arch marked as the epoch of classical canon law,<sup>28</sup> or rather as the formation of the *Corpus iuris canonici*.<sup>29</sup> The value of accomplishing such an organic task is undoubtedly attributed to the Gratian the monk and to his work the *Concordia discordantium canonum*, also called the *Decretum Gratiani*. This would include the second version of his doctrinal work, which can be chronologically placed circa 1140.<sup>30</sup>

The medieval Europe in which Gratian lived and worked in is characterized, in a certain sense, a society in which there was fragmentary and partial knowledge of Roman law embedded in the so-called Roman-Barbaric laws. These laws would be scientifically studied only by Irnerius (1050-1125).<sup>31</sup> Prior, any sort of intellectual instruction occurred in a monastery. When there was a shift of this unto the urban centers, which was the prerogative of the noble families, the bourgeois class which worked in the cities also requested such training, as well as the merchants who would in time make its mark medieval society of the second millennium.

In this socio-cultural and scientific climate, Gratian takes on the task of harmonizing, or better yet bringing concordance to the contrasting canonical norms (the canons). The title of his *Concordia discordantium canonum* literally means a concordance of incoherent canons; his second version is divided into three parts. What must be looked at is his method, for which, as already indicated in the title, the author does not just merely gather sources of law but freely establishes some juridical questions to which he then resolves with the assistance of sources (*auctoritates*) and of some of his personal comments (*dicta*).<sup>32</sup> The importance of Gratian's *Decretum* is not to verify so much the operative method, which method is already found in the works of Alger. Rather, it is the diffusion of his work that becomes a manual of study in the most prestigious university centers, such as Bologna, Paris, Oxford and Cologne, nay the inception of scientific and academic study, the school of Decrees, which was also one of the major objects of study of Gratian.

<sup>25</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, pp. 184-189; P. Erdő, *Storia delle Fonti del Diritto Canonico*, pp. 98-100.

<sup>26</sup> P. Erdő, *Storia delle Fonti del Diritto Canonico*, pp. 101-102.

<sup>27</sup> *Ivi*, pp. 102-103.

<sup>28</sup> P. Grossi, *L'Europa del diritto*, pp. 55-56.

<sup>29</sup> B. E. Ferme, *Introduzione alla storia delle Fonti del Diritto canonico*, p. 29.

<sup>30</sup> P. Erdő, *Storia delle Fonti del Diritto Canonico*, pp. 106-108.

<sup>31</sup> A. Cavanna, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico*, I. Milano, 1982, pp. 112-114.

<sup>32</sup> *Ivi*, pp. 108-109.

Other than the studied works of Gratian and those of the Decretists, the legislative activity of the Roman Pontiffs, via their decrees, becomes present and thereby generates a flowering of canonical collections constituted by the pontifical decrees, such as the *Collectio Parisiensis secunda* (1179) and the *Quinque compilationes antiquae*, a set of five canonical works contained in pontifical decrees. Together with Gratian's *Decretum*, between 1187 and 1226, they become the subject matter of primary interest in Italian and other European universities.<sup>33</sup> Despite certain doubts, these endeavors provoked few difficulties from a logistic point of view since the praxis to find the solution to practical judicial issues was the consultation of Gratian's *Concordia* or one of the decrees.

Because of this, Pope Gregory IX (1227-1241) requested St. Raymond of Peñafort (1175-1275), to draft a new collection of pontifical decrees which contained all of canon law; it was promulgated in 1234 as the *Liber extra* or *Collectio decretalium Gregorii IX*. Given evidence of the strict bond between the pontifical legislative activity and the academic world, the aforementioned collections were sent to the most significant universities in Italy and Europe. In order to avoid the strenuous practice of consulting the *Decretum Gratiani*, as well as the *Quinque compilationes antiquae*, the Pope established in his decree of promulgation that *Liber extra* would be official (every law would attain the rank of a pontifical law by its promulgation), universal (every norm, even those originating from local law, once inserted into the collection would have the merit as a universal law), unified (one norm cannot derogate another merely because it has chronological precedence) and exclusive (for the sole use of this collection, other than the *Decretum Gratiani*, which is for the study of canon law).<sup>34</sup>

The Pontifical decrees, after Gregory IX, continued to flourish right through the pontificates of Innocent IV, Gregory X and Nicholas III. However, the first one to confront the need in assembling the great number of declared decrees after 1234, was Boniface VIII (1294-1301), for which he commissioned William of Madagoto Berangarius Fredoli and Richard Petronius of Siena. The result was the *Liber sextus*, which he promulgated in 1298. Just as it was with Gregory IX, Pope Boniface sent the *Liber*, which was official, universal unified and exclusive to the most notable universities.<sup>35</sup> Later on, with the same intention, Pope Clement (1305-1314), disposed a compilation of a new set of decrees, the *Clementinae*, which were promulgated by his successor John Giovanni XXII in 1317. The particularity of this composition consists in the fact that, unlike the others, such as the *Liber extra* and the *Liber sextus*, the *Clementinae* were not regarded exclusive. The reason is because the Pope did not wish to abrogate the numerous documents, specifically, those which highlighted the primacy of the papacy, such as the Papal Bull (Bull—a pontifical decree stemming from the tern *bull*) *Unam Sanctam* of 1302; he also did not insert it into his collection.<sup>36</sup>

Aside Gratian's *Decretum*, the *Liber extra* of Gregory IX, the *Liber sextus* of Boniface VIII, the two private collections of John XXII, the *Extravagantes Iohannis XXII* and *Extravagantes communes* are part of the juridical monument of canonical sources of the classical era. Moving onto the 16th century, the first edition of the *Corpus iuris canonici* comes into play between 1500 and 1503, as a result of the efforts of the canon lawyer Jean Chappuis.<sup>37</sup> The term *corpus*, part for the title, indicates that it was to be used for the entire universal Church, as observed in the later Pontifical Roman edition of 1582. However, from the Lyon edition of 1671, the

<sup>33</sup> A. Cavanna, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico*, pp. 78-94.

<sup>34</sup> P. Erdö, *Storia delle Fonti del Diritto Canonico*, pp. 120-123.

<sup>35</sup> *Ivi*, pp. 125-126.

<sup>36</sup> *Ivi*, pp. 126-127.

<sup>37</sup> Ae. Friedberg (ed.), *Corpus Iuris canonici*, Graz, 1959; P. Erdö, *Storia delle Fonti del Diritto Canonico*, pp. 127-128.

formulation *corpus iuris canonici* was employed solely for technical reasons, so as to indicate the gathering of canonical collections which contained the *Decretum Gratiani*, *Liber extra*, *Liber sextus*, *Clementinae*, *Extravagantes Iohannis XXII* and *Extravagantes communes*.<sup>38</sup>

During the Council of Trent (1545-1563), which was the Church's response to the Protestant Reformation,<sup>39</sup> there was a substantial change in the elaboration of canon law.<sup>40</sup> Hence, a new historical period begins which develops itself within a temporal arch—from the conclusion of the Council itself up to the initial stages of the process of codification of law of the amenable Church. Many historians sustain that the period extends until the First Vatican Council (1869-1870).<sup>41</sup> The Tridentine ordinances, in order to support a tutelage and a diffusion of a clear orthodox Catholicism, affirmed a centralized power of the papacy and in the Roman Curia; the latter through an increment of legislative activity of its dicasteries, in as much as Congregations, Offices and Tribunals. Consequently, it led to the composition of other canonical collections.<sup>42</sup> The most important ones of this period were the gathering of the *Bullari*: the *Magnum Bullarium Romanum* (1733-1762),<sup>43</sup> and documents of the Roman Curia, such as the *Index librorum prohibitorum*, *Decreta authentica Congregationis Sacrorum Rituum*, *Sacrae Romanae Rotae decisiones recentiores* and *Decisiones Supremi Tribunalis Signaturae Iustitiae*.<sup>44</sup>

### **The Church's Choice of the Code as "Instrument": The *Codex Iuris Canonici* (1917 and 1983) and the *Codex Canonum Ecclesiarum Orientalium* (1990)**

During Vatican Council I, the necessity of restructuring juridical sources, which were multiplied after the Council of Trent, such as the conciliar decrees pontifical acts and documents of the Roman Curia became more apparent. Some in the ecclesiastical circles limited themselves to requesting a revision of the *corpus iuris canonici* at least a new uniformed collection that could be more easily consulted. Others saw the need to remedy the situation with the drafting of a code that would be brief, clear, systematic and complete, as the *Code civil des Français* of 1804 and the Austrian *Allgemeines Bürgerliches Gesetzbuch* of 1811.<sup>45</sup>

<sup>38</sup> P. Erdő, *Storia delle Fonti del Diritto Canonico*, p. 129.

<sup>39</sup> Regarding Protestant Reformation, cf. E. G. Léonard, *Histoire générale du Protestantisme*, 3 volumes, Paris, 1961-1964; P. Tillich, *L'era protestante*, Torino, 1972; F. Mussnug, *Lutero e la riforma protestante*, Firenze, 2003; D. K. McKim, *The Cambridge Companion to Martin Luther*, Cambridge, 2003; R. H. Bainton, *Lutero e la riforma protestante*, Milano, 2011; M. Nacci, *Chiesa e Stato dalla potestà contesa alla sana cooperatio. Un profilo storico-giuridico*, Città del Vaticano, 2015, pp. 14-15.

<sup>40</sup> Regarding the Council of Trent and Tridentine law, cf. H. Jedin, *Geschichte des Konzils von Trient*, 5 volumes, Freiburg, 1957-1977; G. Alberigo (ed.), *Conciliorum Oecumenicorum Decreta*, Bologna, 1973, pp. 657-799; A. Fliche & V. Martin (ed.), *Storia della Chiesa*, XVII, *La Chiesa all'epoca del Concilio di Trento (1545-1563)*, Torino, 1981; G. Le Bras & J. Gaudemet (ed.), *Histoire du droit et des institutions de l'Église en Occident*, XIV, *L'époque de la Réforme et du Concile de Trente*, Paris, 1989; M. Venard, *Il Concilio Lateranense V e il Tridentino*, in G. Alberigo (ed.), *Storia dei Concili Ecumenici*, Brescia, 1990, pp. 321-368; J. Gaudemet, *Storia del diritto canonico. Ecclesia et Civitas*, Cinisello Balsamo, 1998, pp. 711-716; A. Prosperi, *Il Concilio di Trento: una introduzione storica*, Torino, 2001; P. Prodi, *Il paradigma tridentino: un'epoca della storia della Chiesa*, Brescia, 2010; J. W. O'Malley, *Trento: il racconto del Concilio*, translated by Stefano Galli, Milano, 2013; M. Nacci, *Chiesa e Stato dalla potestà contesa alla sana cooperatio. Un profilo storico-giuridico*, pp. 16-18; M. Nacci, *Le relazioni Chiesa-Mondo dal Concilio di Trento al Concilio Vaticano II*, in *Vergentis. Revista de investigación de la Cátedra Internacional conjunta Inocencio III*, 1 (2015) n. 1, pp. 271-287.

<sup>41</sup> A. M. Stickler, *Historia iuris canonici latini. Institutiones Academicæ*, pp. 277-370; P. Erdő, *Storia delle Fonti del Diritto Canonico*, pp. 137-149; C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, pp. 163-230.

<sup>42</sup> P. Grossi, *Scritti canonistici*, Milano, 2013, p. 213.

<sup>43</sup> P. Erdő, *Storia delle Fonti del Diritto Canonico*, p. 142.

<sup>44</sup> A. M. Stickler, *Historia iuris canonici latini. Institutiones Academicæ*, pp. 318-370.

<sup>45</sup> P. Grossi, *L'Europa del diritto*, pp. 135-148. Cfr. A. Cavanna, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico*, II, Milano, 2005.

The suspension of the Council with the Apostolic Letter *Postquam Dei munere* of 20 October 1870, and the urgent political problems, specifically the “Roman Question” that constrained the Holy See—the attack by the Italian military against the Pontifical States of 20 September 1870, in order to achieve full-Italian unity by means of the breach at Porta Pia, Rome—coerced the acceptance that a code be drawn.<sup>46</sup>

In any case, the undeniable historical fact is that the ecumenical ordinances brought the issue of codifying Church law to the attention of the scholars of the time. Some enthusiastically proceeded with this project displaying a great feasibility in their private attempts of codification (Colomiatti, Pezzani, De Luise). Yet others expressed the difficulty in carrying on with a codification of Church law, raising doubts as to its utility and necessity.<sup>47</sup>

The doctrinal position of the Roman Curia at the time, under the guidance of Cardinal Gennari, pushed for a reform of law which modeled the European code. On the other side of the fence, those under the leadership of Cardinal Rampolla had proposed a modernization of the *Corpus iuris canonici*.<sup>48</sup> Nevertheless, amidst the open doctrinal and curial dispute, Pius X, with his Motu Proprio *Arduum Sane munus* of 19 March 1904, decided that a code would better suit the reform of canon law. The *Codex iuris canonici*, willed, pondered and pursued upon during the preparatory phases of Pius X was, however, promulgated by his successor Benedict XV with the Apostolic Constitution *Providentissima Mater Ecclesia* of 27 May 1917;<sup>49</sup> it had full effect of law on the 19<sup>th</sup> of May the following year.<sup>50</sup>

The *Codex iuris canonici* was formed in five books (*Normae generales, De personis, De rebus, De processibus, De delictis et poenis*) and it came into existence as an authentic via its declared constitution. In other words, through its pontifical promulgation it became universal and exclusive, i.e., the norms were applied to every subject of the Latin Church and all normative and customary dispositions contrary to the Code were abrogated. In regard to the exclusivity, it must be understood that the Code, as will be seen later below, according to canon 6, did not repeal the preceding codification, such as those touching the discipline of the Oriental Catholic Church (can. 1),<sup>51</sup> the liturgical disciplines (can. 2)<sup>52</sup> and the conventions of the Apostolic

<sup>46</sup> M. Nacci, *I rapporti Stato Italiano-Chiesa Cattolica nei Patti Lateranensi del 1929: analisi storico-giuridica*, in *Prawo Canoniczne*, 58 (2015) n. 2, pp. 97-113.

<sup>47</sup> C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, pp. 259-262.

<sup>48</sup> C. Fantappiè, *Chiesa romana e modernità giuridica*, II, Milano, 2008, p. 675.

<sup>49</sup> Benedictus PP. XV, *Codex Iuris canonici Pii X Pontificis Maximi, iussu digestus Benedicti Papae XV auctoritate promulgatus*, in AAS, IX (1917), pp. 11-456.

<sup>50</sup> M. Nacci, *San Pio X e il diritto canonico: la “cultura giuridica” della codificazione del diritto della Chiesa*, in *Ephemerides iuris canonici*, 54 (2014) n. 1, pp. 87-101. Cf. G. Feliciani, *Il Concilio Vaticano I e la codificazione del diritto canonico*, Milano, 1982; G. Romanato, *Pio X. La vita di Papa Sarto*, Milano, 1992; G. Feliciani, *Il cardinal Gasparri e la codificazione del diritto canonico*, in M. Tedeschi, *Studi in onore di Gaetano Catalano*, II, Soveria Mannelli, 1998, pp. 563-579; A. Cattaneo, *L'eredità giuridica di San Pio X*, Venezia, 2006; C. Fantappiè, *Chiesa romana e modernità giuridica*, II, 639-689; P. Gherri, *Codificazione canonica tra tecnica e sistema*, in *Eastern Canon Law*, 2 (2013), pp. 19-130; C. Minelli, *Pio X e l'avvio del processo di codificazione*, in *Stato, Chiesa e pluralismo confessionale. Rivista telematica*, 33 (2013), pp. 1-38; P. Grossi, *Valore e limiti della codificazione del diritto (con qualche annotazione sulla scelta codicistica del legislatore canonico)*, in P. Grossi, *Scritti canonistici*, pp. 247-263; M. Nacci, *Chiesa e Stato dalla potestà contesa alla sana cooperatio. Un profilo storico-giuridico*, pp. 129-133.

<sup>51</sup> *Codex Iuris Canonici*, 1917, can. 1: *Licet in Codice iuris canonici Ecclesiae quoque Orientalis disciplina saepe referatur, ipsa tamen una respicit Latinam Ecclesiam, neque Orientalem obligat, nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem afficiunt.*

<sup>52</sup> *Codex Iuris Canonici*, 1917, can. 2: *Codex, plerumque, nihil decernit de ritibus et caerimoniis quas liturgici libri, ab Ecclesia Latina probati, servandas praecipiunt in celebratione sacrosancti Missae sacrificii, in administratione Sacramentorum et Sacramentalium aliisque sacris peragendis. Quare omnes liturgicae leges vim suam retinent nisi earum aliqua in codice expresse corrigatur.*

see with other nations (can. 3).<sup>53, 54</sup>

The most meaningful factor of the Code of Canon Law, setting itself apart from any other European code, was its responsive approach in being an “instrument” to assist man in achieving his final goal—the salvation of souls. This can be seen, for example in the second paragraph of can. 2214,<sup>55</sup> which distanced itself from any type of legalism and formalism, which is typical of state codified laws. The canon, in fact, brings us to the pastoral notion of canon law, and that is the *salus aeterna animarum*.<sup>56</sup> Furthermore, absorbing the preceding juridical experience, the Code brought forth a strong openness in respect to the pre-Code process. It demonstrated itself as a valid example, the only one of its kind, of juridical culture. In what way did it do this? It did so by recognizing, as seen for example in can. 6,<sup>57</sup> the importance of the preceding juridical tradition, i.e., the so-called ancient law (*ius vetus*), manifesting the canonical legislator with a higher sensibility *vis-à-vis* the state system, which eliminated in a general way the pre-existing juridical patrimony with its state codification.<sup>58</sup>

Yet, in case of a lacuna in the law (*lacuna legis*), can. 20 foresaw the possibility of utilizing not only extensive and analogical modes of interpretation but even the general principles of law, the jurisprudence and practice of the Roman Curia and the common and constant opinion of learned scholars.<sup>59</sup> This canon even outlined the absolute typicality of canonical codification; it is a code that sought to be formed with acute norms, general and abstract but is reticent of general principles because they cannot secure the uniqueness of the subject of the legal system, or rather the search of the *christifidelis* of eternal life. We see that these general tenets must constantly be measured with a canonical source which at the same time became its own lifeblood: canonical equity (*aequitas canonica*). This comprises the means to bear witness the specificity and its role in the field of juridical science. It is a precious font of law and heir of the medieval *common law* (*ius commune*).<sup>60</sup>

<sup>53</sup> *Codex Iuris Canonici*, 1917, can. 3: *Codicis canones initas ab Apostolica Sede cum variis Nationibus conventiones nullatenus abrogant aut iis aliquid obrogant; eae idcirco perinde ac in praesens vigere pergent, contrariis huius Codicis praescriptis minime obstantibus.*

<sup>54</sup> C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, p. 269.

<sup>55</sup> *Codex Iuris Canonici*, 1917, can. 2214, § 2: *Prae oculis autem habeatur monitum Conc. Trid., sess XIII, de ref., cap. 1: Meminerint Episcopi alique Ordinarii se pastores non percussores esse, atque ita praeesse sibi subditis oportere, ut non in eis dominantur, sed illos tanquam filios et fratres diligant elaborantque ut hortando et monendo ab illicitis deterreant, ne, ubi delinquerint, debitis eos poenis coercere cogantur; quos tamen si quid per humanam fragilitatem peccare contigerit, illa Apostoli est ab eis servanda praeceptio ut illos arguant, obsecrent, increpent in omni bonitate et patientia, cum saepe plus erga corrigendos agat benevolentia quam austeritas, plus exhortatio quam comminatio, plus caritas quam potestas; sin autem ob delicti gravitatem virga opus erit, tunc cum mansuetudine rigor, cum misericordia iudicium, cum lenitate severitas adhibenda est, ut sine asperitate disciplina, populis salutaris ac necessaria, conservetur et qui correcti fuerint, emendentur aut, si resipiscere noluerint, ceteri, salubri in eos animadversionis exemplo, a vitiis deterreantur.*

<sup>56</sup> P. Grossi, *Scritti canonistici*, p. 250.

<sup>57</sup> *Codex Iuris Canonici*, 1917, can. 6: *Codex vigentem huc usque disciplinam plerumque retinet, licet opportunas immutationes afferat. Itaque: 1° Leges quaelibet, sive universales sive particulares, praescriptis huius Codicis oppositae, abrogantur nisi de particularibus legibus aliud expresse caveatur; 2° Canones qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos auctores interpretationibus, sunt aestimandi; 3° Canones qui ex parte tantum cum veteri iure congruunt, qua congruunt, ex iure antiquo aestimandi sunt; qua discrepant, sunt ex sua ipsorum sententia diiudicandi; 4° In dubio num aliquod canonum praescriptum cum veteri iure discrepet, a veteri iure non est recedendum; 5° Quod ad poenas attinet, quarum in Codice nulla fit mentio, spirituales sint vel temporales, medicinales vel, ut vocant, vindicativae, latae vel ferendae sententiae, eat tanquam abrogatae habeantur; 6° Si qua ex ceteris disciplinaribus legibus, quae usque adhuc viguerunt, nec explicite nec implicite in Codice contineatur, ea vim omnem amisisse dicenda est, nisi in probatis liturgicis libris reperiatur, aut lex sit iuris divini sive positivi sive naturalis.*

<sup>58</sup> P. Grossi, *Scritti canonistici*, p. 251.

<sup>59</sup> *Codex Iuris Canonici*, 1917, can. 20: *Si certa de re desit expressum praescriptum legis sive generalis sive particularis, norma sumenda est, nisi agatur de poenis applicandis, a legibus latis in similibus; a generalibus iuris principiis cum aequitate canonica servatis; a stylo et praxi Curiae Romanae, a communi constantique sententia doctorum.*

<sup>60</sup> P. Grossi, *L'Europa del diritto*, p. 216.

The Pius-Benedictine Code became the object of revision by Pope John XXIII. This came about during a discourse he gave in 1959, when he announced the desire to convoke an ecumenical council—Vatican Council II (1962-1965). The main feature of the new Code consists in having gathered and included in its seven books (*De normis generalibus, De christifidelibus, De Ecclesiae munere docendi, De Ecclesiae munere sanctificandi, De bonis Ecclesiae temporalibus, De sanctionibus in Ecclesia, De processibus*), the ecclesiological teachings that emerged during the Council, among which are for example, the notion of the Church as the People of God, the bond between the Universal and Local Churches, the abolition of the position of superiority of the Latin rite over the other rites (*praestantia*), the strengthening of the bishops' position (rebalancing the relationship between papal primacy and the collegiality of bishops) and the affirmation of the principle of religious liberty.<sup>61</sup> After sixty-six years of the Pius-Benedictine being in force, the new Code was promulgated by John Paul II on 25 January 1983, with the Apostolic Constitution *Sacrae Disciplinae Leges*; it had full effect of law on the 17th of November of the same year.<sup>62</sup>

The Code of Canon Law of 1983, as indeed that of 1917, applies only to the Latin Church. At this point, let us see the brief and major stages that brought about the formation of a unified code for the Catholic Oriental Churches.<sup>63</sup> The codification process of the Eastern oriental law finds its points of origin even prior to what most texts indicate (Vatican Council I, 1869-1870). In fact, the year before the Council, on the occasion of the 6th Congress of the *Preparatory Commission of the Missions* and of the *Oriental Churches to the Council*, some consulting members expressed the need that the Eastern Church be endowed with an authoritative code of canon law, unified and in harmony with the current events of time and place. At this gathering, two other prodromal factors come into play in the Oriental codification process: the appointment by Pius IX to the Benedictine Pitra in 1858, to collect canons and Eastern sources into a complete and organic work (*Iuris ecclesiastici graecorum historia et monumenta*, 1864-1868) and the manifestation of the pope's will when he erected the Congregation of the Propagation of the Faith for the affairs of the Oriental Rite in 1862; its task was the reorganizing the Eastern canon law.<sup>64</sup>

In 1929 Pius XI, after having consulted the hierarchical members of the Oriental Church, he instituted a Commission of Cardinals for the preparatory studies in order to realize an Eastern canonical codification. In 1935, he transformed the Commission into the Pontifical Commission for the Drafting an Oriental Code of Canon Law. The Commission worked with promptness on the drafts up to 1944, with a completed a text containing 2666 canons; this became the object of a complex Plenary Assembly held on 21 January 1948. The codification efforts succeeded with another result, the partial promulgation of the canons regarding:

- Matrimony (Motu Proprio *Crebrae allatae sunt* of 22 February 1949);
- Procedural law (Motu proprio *Sollicitudinem nostram* of 6 January 1950);
- The religious, ecclesiastical goods and the significance of words (Motu proprio *Postquam Apostolicis*

<sup>61</sup> C. Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa*, pp. 286-294; M. Nacci, *Chiesa e Stato dalla potestà contesa alla sana cooperatio. Un profilo storico-giuridico*, pp. 152-155.

<sup>62</sup> Ioannes Paulus PP. II, *Codex Iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, in AAS, LXXV (1983), pp. 1-317.

<sup>63</sup> D. Salachas, *Istituzioni di diritto canonico delle Chiese cattoliche orientali*, Bologna, 1993, pp. 45-54. Cf. M. Brogi, *Codificazione del diritto comune delle Chiese Orientali cattoliche*, in *Revista Española de Derecho canónico*, 45 (1988), pp. 10-15; E. Corecco & L. Gerosa, *Il diritto della Chiesa*, Milano, 1995, pp. 47-50; D. Salachas & L. Sabbarese, *Codificazione latina e orientale e canoni preliminari*, Roma, 2003; I. Žužek, *Appunti sulla storia della codificazione canonica orientale*, in Y. Lahzi Gaid (ed.), *the Eastern Code: Text and Resources*, Roma, 2007, pp. 31-71.

<sup>64</sup> M. Nacci, *Chiesa romana, Chiese orientali e Modernità giuridica nella prima codificazione orientale*, in *Anuario de Derecho Canónico*, 3 (2014), pp. 285-293.

*Litteris* of 9 February 1952);

- The (different) Eastern rites and person (Motu proprio *Cleri sanctitati* of 2 June 1957).

The difficulties in the aforementioned codification process, which in part derived from the diversity in rites and from another the necessity to safeguard their unity, were overcome at Vatican Council II, specifically thanks to the Decree *Orientalium Ecclesiarum* of 21 November 1964. It offered the guidelines for the renewal and revival of the Eastern traditions, avoiding at that time, as Salachas affirms, a “Latinization”. In 1972, Pope Paul VI created the Pontifical Commission for the Revision of the Oriental Code of Canon Law, thereby substituting the one created by Pope Pius XI in 1935. The Commission, bearing in mind the happenings which emerged during the Council in respect to the Oriental Churches, approved some directives to be used in revising the Oriental Code during the Plenary Assembly held from 18-23 November 1974.

According to these ordinances, there was to be a single code for all of the Catholic Eastern Churches: An authentic Eastern token, which was to possess an undeniable juridical nature and at the same time a pastoral character. Finally, it was to have a more ample space to a subsidiary notion so as to better understand the valor of a particular rite. After half of a century, the Code of Canon Law of Oriental Churches (*Codex Canonum Ecclesiarum Orientalium*) was composed with titles, such as the ancient Byzantine canonical collections, instead of books like the Code of Canon Law for the Latin Church. Modeled in line with the (Vatican II) conciliar tenets, it was promulgated by John Paul II on 18 October 1990 with the Apostolic Constitution *Sacri Canones*; it achieved full effect of law on 1 October 1991.

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