

PONTIFICIO CONSIGLIO PER I TESTI LEGISLATIVI
XX ANNIVERSARIO
DELLA PROMULGAZIONE DEL CODICE DEI CANONI DELLE CHIESE ORIENTALI
18.10.1990 - 18.10.2010

CONVEGNO DI STUDIO

*Il Codice delle Chiese Orientali:
la storia, le legislazioni particolari, le prospettive ecumeniche,
Roma, 8-9 ottobre 2010*

The Teaching of Oriental Canon Law

Rev. P. MICHAEL KUCHERA, SJ

Decano della Facoltà di Diritto Canonico Orientale del Pontificio Istituto Orientale

RELAZIONE INTRODUTTIVA

Your Eminences

Most Reverend Archbishops and Bishops

Reverend Archimandrites, Monsignors and Fathers

Ambassadors and Ambassadors

All Brothers and Sisters in Christ

The teaching of oriental canon law at the Pontifical Oriental Institute in Rome from its very beginning until today is firmly situated in inspiration from Sacred Scripture, the Tradition of the Church and the Magisterium of the Catholic Church.

May I begin my brief remarks with a passage from sacred scripture, from St. Paul to the Ephesians, a passage cited in the papal document which founds the Oriental Canon Law Faculty at the Pontifical Oriental Institute.

Make every effort to preserve the unity which has the Spirit as its origin and peace as its binding force. There is but one body and one Spirit, just as there is but one hope given all of you by your call. There is one Lord, one faith, one baptism; one God and Father of all, who is over all, and works through all, and is in all. (Eph. 4: 3-6)

History:

The Pontifical Oriental Canon Law faculty at the Pontifical Oriental Institute in Piazza Santa Maria Maggiore was formally established by a decree of Paul VI on 7 July 1971. However, the teaching of Oriental Canon Law existed at the Oriental Institute since its founding by Benedict XV on 15 October 1917.

The first course offered in canon law at the Institute was in the initial academic year of 1918-1919. The course was «*Ius ecclesiasticum orientale*» offered by an Augustinian father, Father Souarn. The Institute was entrusted to the Society of Jesus in 1922 by Pius XI and immediately the renowned Jesuit canonist from the Gregorian University, Father Cappello, began teaching Oriental canon law at the Institute. In 1928 the Gregorian trained Jesuit Father Emil Herman replaced Father Cappello and remained as a professor at the Orientale until 1959. During his 31 years of teaching oriental canon law at the Oriental Institute, he spent 20 years also as rector. During this pre-ecumenical age before Vatican II he strongly encouraged relations with the Orthodox Churches. In a few words he did, to quote St. Paul again, «*Make every effort to preserve the unity which has the Spirit as its origin and peace as its binding force*». Indeed, he was the first rector at the Orientale to allow non Catholics to attend courses. Father Herman's first canonical publication at the Orientale was an important annotated study of *Cum data fuerit* (1 March 1929), which in article 12 enforced clerical celibacy among Oriental Catholics in the United States of America. From 1930 Father Herman was a consultor of the Holy Congregation for the Oriental Church and in 1935 he became a member of the Pontifical Commission for the Redaction of Canons, producing his famous *de fontibus* in 1936. The following year he became a member of the *Consulta di redazione* for the final texts of the canons. His work here, along with –the later to be cardinals– Larraona and Coussa, culminated in the *motu proprio* «*Crebrae allate sunt*», subsequently promulgated as the Oriental Catholic marriage law by Pius XII in 1949.

Of Father Herman's 102 catalogued publications, of special note are two of his publications which remain until today the standard reference works for Russian Church law sources in Latin. One of these he co-authored with his fellow Jesuit Father from the Gregorian who also taught at the Orientale, Father Wuyts. This interaction of professors with the Canon Law Faculty of the Gregorian University and the Oriental Institute, which began in 1922, exists until today. However, our formal relation, where Oriental canon law degrees were granted through the Gregorian University, was maintained only until after the Second Vatican Council «aggiornamento» which called for a more specialized treatment of material related to the Oriental Catholic Churches.

Our faculty played a very significant role in the development of the Oriental Code of Canon Law which was promulgated by John Paul II on 18 October 1990. Actually, our professors along with others directly collaborated in a very constructive way in the work of the Pontifical Commission for the Revision of the Oriental Code of Canon Law. Also many members of the pontifical commission were former students of our canon law faculty. Especially notable among the faculty was Father Ivan Žužek, S.J., who was nominated by Paul VI as Pro-Secretary of the Pontifical Commission for the Revision of the Oriental Code of Canon Law (1972-1977) and who was reconfirmed as Secretary by John Paul I and John Paul II (1978-1990). During this time he was also responsible for the publication of the thirty-one volumes of *Nuntia* (1973-1990), the official records of the meetings which produced the Oriental Code and which until today are the main means to interpret the Oriental Code.

John Paul II also nominated Father Žužek as Undersecretary of the Pontifical Council for the Interpretation of Legislative Texts (1991-1995).

The various activities undertaken by the first professors at our Institute are continued in various ways by our faculty today.

The Faculty and Students Today:

Today both our faculty and students come from the Oriental Catholic Churches, the Latin Church and the Orthodox Churches. During the 2009-2010 academic year our faculty had 103 students; with 47 in the license program and 56 in the doctoral program. The students were from 22 different countries, with 87 from the Oriental Catholic Churches, 8 from the Latin Church and 8 from different Orthodox Churches. The largest numbers were from India (33) and Ukraine (27). A similar variety may be found among our professors. This ecumenical dimension of our student body and faculty at the Pontifical Oriental Institute is in total correspondence with the initial mission given by Pius XI to the Jesuits.

The faculty is an academic body which by its very nature is geared to the development of those who will do research and become professors of canon law. Both Pius XI and John Paul II referred to our faculty as their «dependable oarsmen» («validi rematori»). Besides future professors of canon law most students go on to become judges, officials on ecclesiastical tribunals, leaders of both female and male religious groups, as well as responsible administrative and spiritual leaders of their respective Churches *sui iuris*. One such leader who is one of our graduates is His All Holiness Ecumenical Patriarch Bartholomew.

Our faculty also fulfils its mission by collaboration with other academies which are aggregates of the Pontifical Oriental Institute. This is especially true with the Institute of Oriental Canon Law in Bangalore, India, as well as with other academic institutions in Eastern Europe. There is an occasional exchange among our professors along with the organization and holding of conventions and an exchange of publications, in particular our main canon law publication, *Kanonika*.

In a few words, our purpose is to solidly form those who will form others within their own Churches. This was the express wish of the Holy Fathers from Benedict XV to Benedict XVI.

Namely, as codified in our 1985 *Statutes* the finality of our Institute in general, as well as the Oriental Canon law faculty in particular, is that:

The nature and main characteristic of our Institute in Rome is to be a seat of higher learning and advanced studies of Oriental questions. The ultimate goal of our Institute is to better know the Christian Orient, both ancient and modern, especially the actual living conditions, and to promote a mutual comprehension between western and eastern Christians, according to the spirit of Vatican II (Statutes, Art. 3).

Since the establishment of our Oriental Canon Law faculty by Paul VI and until today, our faculty has the unique nature of being the only faculty in Rome and indeed in the whole world which is accredited to confer all three different grades of academic degrees in oriental canon law: a diploma, a license and a doctorate.

Today the main task of our faculty is to expound the oriental Catholic Canon Law which is codified in the *Codex Canonum Ecclesiarum Orientalium*.

The Curriculum and Teaching of Oriental Canon Law:

Our faculty is also the only academic faculty which in its curriculum of studies offers a broad selection of courses on the sources of canon law in the various oriental traditions – such as the Byzantine, Alexandrian, Antiochean, Chaldean and Armenian –, along with the various divisions within each of these traditions. This is in addition to the material contained in the 1,546 canons of the Oriental Code. The context is both Catholic and Orthodox within the actual situations of the particular law of the various Oriental Catholic Churches. All of the teaching of the material of the Oriental Code is always in reference to the oriental traditions in their particular historical context and within their particular ecclesiastical settings. The specific Catholic context also treats the contrast and interplay which exists between the Oriental Code, the Latin Code of 1983 and the 1988 apostolic constitution *Pastor Bonus* concerning the Roman Curia.

The teaching of Oriental Canon Law in its general approach is historical, juridical, theological and ecumenical.

Since the Institute is an Institute of graduate studies, in order to be accepted into the Oriental Canon Law program each student must possess a baccalaureate degree in theology, as well as a sufficient knowledge of Latin and Italian. The theological background is the basis for the study of the traditions of the Church, especially as they are codified in the *Sacri Canones*, the ecumenical councils and the Fathers. Special emphasis is placed on the canons which codified doctrines in the first two common Codes of Canon law which issued from the Council of Chalcedon (451) and the combined Councils in Trullo (692) and Second Nicaea (787). The reason for this emphasis is that during this time there was unity in the Church, the unity which we hear of in Ephesians: *the unity which has peace as its origin and the Spirit as its binding force*.

The general approach is to treat *Ius antiquum* (313-1141) beginning in the Byzantine period from the time of Constantine I (306-337), through the Codes of Justinian (527-565), Leo VI (886-912) and the Byzantine commentators, as well as Slavic and Oriental collections. Included here also is the Western Carolingian period (742-“814”) to Gregory VII and the *Dictatus Papae* (March 1075). Following this there is a treatment of the period of *Ius Canonicum Classicum* (1140-1545) from the *Decretum* of Gratian (c. 1140), through the period of Gregory IX (1227-1241), Bonafice VIII (1294-1303) with the *Liber sextus* (1298) and *Unam Sanctam* (1302) [CCEO Cann. 1058: Romanus Pontifex a nemine iudicatur], Clement V (1305-

1314) and the *Clementinae* (1317), to John XXII (1316-1314), the *Extravagantes* and *Defensor Pacis* (1324), through the Great Schism in the West (1378, Urban VI- 1417, Martin V) to the Council of Florence (Eugene IV, 1431-1447). Following this there is a treatment of the Tridentine period (1545-1870) to Vatican I (1869-1870) culminating in the 1917 Pio-Benedictine Code of Gasparri, which in turn is the basis for the intervening Oriental Catholic Church law, promulgated between 1949 and 1957, to the present *Codex Canonum Ecclesiarum Orientalium* of 1990.

The period of Vatican I is of special importance and interest because it is here that we have the beginning of the proximate history of the current Oriental Code of Canon Law. The infallibility debate and definition from Vatican I continues to have repercussions in our own post Vatican II ecumenical age. The great Eastern Catholic figures who spoke their minds at Vatican I and ultimately accepted infallibility were: Patriarch Joseph Aūdû of the Babylonian Chaldeans, the Greco Romanian Joseph Papp-Szilàgyi and the Melkite Patriarch of Antioch, Alexandria and Jerusalem, Gregory II Joseph. In particular, during the council the Chaldean Patriarch spoke from his heart and accepted the «definizione dommatica dell'infalibilità del Romano pontefice nelle cose di fede e di morale, ...» (*Mansi* 53, col. 943), «in the things regarding faith and morals».

With respect to a Code for Oriental Catholics, already in an earlier session preparing for Vatican I, Patriarch Gregory II Joseph lamented: «la mancanza d'un ius canonico proprio, e conforme agli usi di ciascun rito, poiché i canoni antichi sono inseguibili e per conseguenza le chiese orientali in molte cose si reggono arbitrariamente» (*Mansi* 49, col. 200). Vatican II with much intervening history concluded likewise in *Orientalium Ecclesiarum*: «Ecclesias Orientis sicut et Occidentis iura pollere et officio teneri se secundum proprias disciplinas peculiare regendi» (*OE*, n. 5). This passage from *Orientalium Ecclesiarum instituta* is also the passage with which Paul VI founded the Faculty of Oriental Canon Law at the Pontifical Oriental Institute in 1971.

In a 1987 document from the Congregation for Catholic Education (*Les études sur les églises orientales*, 6.I.1987), there is a summary presentation of the constant care of the popes for the Oriental Catholic world. It quotes John Paul II that «the Church must learn to breath anew with its two lungs, that of the Orient and of the Occident» (§ 1). The observations and directives offered in this document, to all bishops, rectors of seminaries and heads of ecclesiastical faculties, stress the importance of Oriental Christian studies not only for ecumenical purposes, but also in the face of the reality of the situation where there are ever more faithful from the East who have come to the West. As stated in our *Statutes* (Art. 3), a special meeting place for this encounter between East and West is indeed the Pontifical Oriental Institute. An Institute rooted in the faith that what Christ says in the Sacred Scripture is true, passed on in the Tradition of the Church with its variety of rites, as interpreted by the living Magisterium of the Catholic Church.

Although the Oriental Code of Canon Law remains principally a work which is juridical in nature, due to the social nature of the Church founded on the authority of

jurisdiction, the main point always remains that the ultimate purpose of the Code is life with Christ in this world and in eternity. This is clearly expressed in one of the most important guidelines for the production of the Oriental Code. «Nel Codice infatti si deve trovare principalmente un complesso di legge per dirigere i cattolici nella pratica della loro vita cristiana allo scopo di raggiungere il fine della stessa vita cristiana, cioè la vita soprannaturale e quindi la vita eterna» (*Nuntia I, 1973, p. 26*).