François Galtier S.J. (1893–1962): His Early Contribution to the Comparative Study of the Codes

Jobe Abbass O.F.M.Conv.

Introduction

After Pope John Paul II had promulgated both the 1983 *Codex Iuris Canonici (CIC)* and the 1990 *Codex Canonum Ecclesiarum Orientalium (CCEO),* he repeatedly urged a comparative study of both Codes, which His Holiness regarded as parts of "one *Corpus Iuris Canonici*" in the universal Church.[1] This call effectively represented a

1 The initial call for comparative studies was made by John Paul II when he presented the new Eastern Code to the twenty-eighth General Congregation of the

new challenge for canonical researchers since relatively little had been done in this area and, moreover, the Eastern Catholic Churches did not have a complete, common Code until 1990. Nevertheless, these Eastern Churches had had a Code, albeit incomplete, that was comprised of four motu proprios which Pope Pius XII had promulgated from 1949–1957.[2] Two parts of this Eastern legislation, *Crebrae allatae (CA)* and *Sollicitudinem nostram (SN)*, which governed marriage and procedure respectively, had in fact been thoroughly compared to the Latin Church's 1917 *CIC*. In two very valuable volumes, Father Francisque Galtier s.j., conducted such comparative studies which, even in the context of similar studies today, can still be recommended for their painstaking detail and outstanding precision.[3]

A moral theologian, Father Galtier served the Church in Lebanon from 1941–1962. A recognized expert in many fields, he was best known as a leading authority and scholar of Eastern canon law, which he taught at the Jesuits' Université Saint-Joseph, Beirut. Soon after the promulgation of both *CA* and *SN*, Galtier worked tirelessly to produce commentaries that not only translated the Latin texts but, also, provided an exact comparison with the parallel provisions of the 1917 *CIC*.[4] His precise comparison of the corresponding norms is

Synod of Bishops on October 25, 1990 [see *Acta Apostolicae Sedis (AAS)* 83 (1991) 491. The pope repeated his call while addressing the international symposium held at the Vatican (April 19–24, 1993) to celebrate the tenth anniversary of the promulgation of the Latin Code [see *Communicationes* 25 (1993) 13–14.

2 The four motu proprios are: *Crebrae allatae,* 22. II. 1949, in *AAS* 41 (1949) 89–119; *Sollicitudinem nostram*, 6. I. 1950, in *AAS* 42 (1950) 5–120; *Postquam apostolicis (PA)*, 9. II. 1952, in *AAS* 44 (1952) 65–150; and *Cleri sanctitati (CS)*, 2. VI. 1957, in *AAS* 49 (1957) 433–603.

3 François Galtier, *Le mariage: discipline orientale et discipline occidentale (La Réforme du 2 Mai 1949)*, Beirut 1950; Idem, *Code oriental de procédure ecclésiastique*, Beirut 1951.

4 In his preface to Galtier's volume on marriage, Ignace Ziadé, Maronite Archbishop of Aleppo, wrote: "To comment on this important (marriage) legisla-

immediately evident in the first volume on marriage. Regarding the wording of the Eastern and Latin canons, he writes:

> To allow for the comparison of the parallel texts of the Eastern Code and the Western Code, the bold characters indicate in the canons the parts proper to the Eastern Code; the passages in parentheses and in italics indicate the parts proper to the Latin Code.
> To have the Eastern text, it is therefore necessary to omit in the text of the canons the words in parentheses.
> To have the Latin text, omit the passages in bold letters and do not consider the parentheses.
> The underlined words indicate different expressions used by the Eastern Code, but of the same canonical significance.[5]

One can only imagine the meticulous attention that was required, then, to produce such a systematic comparison of the Eastern and Latin canons on marriage. To take only one example from the comparative commentary, Galtier presents the parallel norms (*SN* c. 85; 1917 *CIC* c. 1094) governing the canonical form of marriage as follows:

> §1. Only those marriages are valid which are contracted **in a sacred rite** before the pastor or the local Hierarch or before a priest **who has received from one**

tion, no comprehensive work has been published to date. That called for a special competence and a very special love for our dear East. It was your great heart and your noble spirit, it was especially your patience regarding the difficulties of Eastern law that incited you to undertake such a mission. To this end, you had to take the necessary time away from your rest and sleep, since all the hours of your day are taken in teaching, your ministry and the numerous consultations that come to you unceasingly from ecclesiastical tribunals and the various curias." See Galtier, *Mariage* (nt. 3), XXI. Galtier's biographical sketch, which follows, also discloses that he suffered from chronic insomnia caused by serious wounds he suffered in World War I. Note: Unless otherwise indicated, foreign language translations are the writer's.

5 Galtier, *Mariage* (nt. 3), 10.

> **of them the power to assist at it** *(delegated by one of them)*, and before at least two witnesses according to the prescripts of the canons that follow, and saving the exceptions formulated in canons 86, 90 (*CIC. 1098, 1099).*
> **§2. To meet the requirements of §1, a rite is regarded as sacred by the intervention of a priest who assists and blesses.**[6]

Even before reading Galtier's commentary, then, it is already clear that a sacred rite is characteristic of the Eastern marriage legislation, that the wording of the Codes to describe delegation differs, and that the different Eastern expression, local hierarch, can be equated with the Latin counterpart (local ordinary). Despite the obvious merits of such a systematic approach, and perhaps because of its sheer complexity, Galtier did not adopt such a methodology in his 1951 comparative commentary on the procedural norms of the Catholic Church. There, he simply indicates, by an asterisk, each "canon of the Western Code whose wording differs from that of the Eastern Code."[7]

It is Galtier's commentary on Eastern procedural norms, *Code oriental de procédure ecclésiastique,* that becomes the focus of this paper.[8]

6 Ibid., 220. The French text reads: "§1 – Sont seuls valides les mariages qui sont contractés **dans un rite sacré** devant le curé ou le Hiérarque du lieu ou devant un prêtre **qui a reçu de l'un d'entre eux le pouvoir d'y assister** *(délégué par l'un d'entre eux)*, et devant au moins deux témoins selon les prescriptions des canons qui suivent, et sauf les exceptions formulées aux canons 86, 90 *(CIC. 1098, 1099).* **§2 – Un rite est réputé sacré, pour répondre aux exigences du §1, par l'intervention d'un prêtre qui assiste et bénisse.**"

7 Galtier, *Code oriental* (nt. 3), XXII. While the comparison is generally excellent in this regard and although the question of equating the parallel norms may often be debated, on occasion it would seem that certain 1917 *CIC* canons should have been denoted by an asterisk and others not. For example, 1917 *CIC* cc. 207*, 1619* and 1644* differ from *SN* cc. 11, 134 and 159, respectively while 1917 *CIC* cc. 1680 and 1992 are essentially the same as *SN* cc. 200 and 500.

8 Just as Galtier's commentary describes *Crebrae allatae* as *COM* (*Code oriental du mariage)*, it refers to *Sollicitudinem nostram* as *COP* (*Code oriental de Procédure)*.

Among the many reasons cited in his introduction for undertaking such a study, one practical and urgent consideration involved bringing the Latin texts within the reach and understanding of Francophone lay people, as well as clerics, who were called to apply the new Eastern procedural code. Since Lebanon's Personal Statutes recognize the competence of ecclesiastical tribunals and the legislation governing them, Galtier's annotated translation of *Sollicitudinem nostram* would undoubtedly facilitate the work of all tribunal officials and personnel.

More than an annotated translation, however, Galtier's commentary comparing the Eastern and Latin procedural norms was motivated by the same scientific objectives that generally underlie similar studies in comparative law even today. One aim was, by comparatively studying the norms and their sources, to acquire a more comprehensive knowledge of the procedural laws of the Church. In this regard, Galtier indicates that the lists of sources for the *SN* and 1917 *CIC* canons are often quite different: the former citing Roman law and Eastern synods, the latter indicating the various Decretals and the Decree of Gratian. However, he maintains that the lists of sources, far from being mutually exclusive, actually complement each other. On the one hand, Latin norms were undoubtedly influenced by Roman law; on the other, the Eastern canons, while similar to the 1917 *CIC* norms, were simply not borrowed from the Latin Church. Galtier states:

> In reality, the two lists (of sources) complete each other: to trace the history of an institution or of a disposition, it is necessary to put together the information given in the two lists. Moreover, most of the Eastern sources are not absent from the sources of the Western Code…
>
> As for the texts of Roman-Byzantine law, we cannot forget that, at first, the Church lived under Roman law and that its own law fed on it in the East as well as the West; that a number of its (Roman law's) dispositions served as models for it (the Church's law), or were adopted, modified according to the requirements of the goal being pursued, the progress of doctrine or the needs of the time…
>
> We can say, limiting ourselves to procedure, that the Eastern Church is not receiving a law that is foreign to herself; much less can one speak of borrowing from Western law. She is recovering that law, inherited from Roman law,

> which had been received from the Byzantine emperors or borrowed from their work, a law which was made for her, adapted and perfected according to the data of experience, the needs of the time and the progress of doctrine, thanks to the work of canonists and jurists throughout the world…[9]

A second objective of Galtier's commentary was to illustrate, by comparing the *SN* procedural norms to those contained in the 1917 *CIC*, that the 1949 Eastern reform had often improved upon the parallel norms contained in the 1917 Latin Code. Over the intervening thirty years, these reforms were occasioned not only by the decisions of the Roman See but, also, by the practice of ecclesiastical tribunals and the diligent work of canonists throughout the Catholic world. Galtier writes:

> These modifications regarding detail are explained by the discussions to which the wording of CIC canons gave rise; the responses of the interpretation Commission, the decisions of the Congregations have been used. The more profound changes are undoubtedly explained by the influence of two kinds of sources which the codifiers did not point to but which are easily recognized. Since 1918, thanks to the practice of nearly 1,500 ecclesiastical tribunals, thanks to the work of canonists commenting upon the text of the Code, a wealth of documentation has been gathered, a number of points have been defined and desires expressed. One can already foresee what would constitute a project for partial reform, the wording of canons modified or completed, and new provisions. It was normal that our (Eastern) Code take advantage of this work. One could equally consider models provided by numerous judicial reforms carried out during the course of the last 30 years, the progress of doctrine resulting from the efforts of jurists, notably German, French and Italian.[10]

9 Galtier, *Code oriental* (nt. 3), XII–XIV.

10 Ibid., XVI–XVII. In the same passage, Galtier argues that Vatican's 1946 *Code de procédure civil (CPC)* was the source for the *SN* canons on arbitration (*CPC* artt. 596–619; *SN* cc. 98–122) and trial before a single judge (*CPC* artt. 125 et seq., *SN* cc. 453–467). Since these canons generally had no counterparts in 1917 *CIC,* they are not treated in this comparative study. However, as Appendix II indicates, *SN* cc. 120 and 453–467 would become sources for 1983 *CIC* cc. 1716 and 1656–1668, respectively.

In a single paper regarding Galtier's *Code oriental de procédure ecclésiastique*, it is indeed difficult to enumerate all the benefits it brought to the application of procedural law and canon law in general. For many reasons, Galtier's commentary represented an early contribution to the comparative study of the Latin and Eastern Catholic Churches' legislation. Long before tables of corresponding canons were published in translations of the 1983 *CIC* and the 1990 *CCEO,* Galtier had included one that compared the procedural norms in *SN (COP)* and the 1917 *CIC*.[11] Then, by identifying a common Roman source behind the parallel Eastern and Latin canons, Galtier properly situated *Sollicitudinem nostram* in the historical line of the Church's development of procedural rules rather than viewing it as a kind of borrowed adaptation of Latin rules. As Galtier's comparative work also illustrates, S*ollicitudinem nostram* often improved upon the prior Latin text. In fact, the procedural canons in the1983 *CIC* would eventually cite *SN* norms as a source in ninety-five instances.[12]

After a brief biographical sketch of Francisque Galtier, this paper will proceed to study two questions. Part I will outline parallel procedural norms in which Galtier identified a common source in Roman-Byzantine law. Part II will examine several cases in which *SN* canons clarified or reformed the previous Latin norms whether by way of some indication from the Holy See or the learned works and commentaries of canonists and jurists alike.

11 The Table of Corresponding Canons (*COP/CIC)*, found on page 551 of Galtier's commentary, is reproduced here as Appendix I.

12 The *SN* norms cited as sources to 1983 *CIC* canons are listed in Appendix II to this paper. As opposed to the ninety-five times *SN* is listed among the *fontes* for the 1983 *CIC* canons, the other parts of the Eastern Code (1949–1957) are rarely cited. For example, *CA* c. 83; *PA* c. 303 §1, 1° and *CS* c. 11 §1 are cited as sources to 1983 *CIC* cc. 1102 §1; 111 §2 and 112 §1, respectively.

0. Father Francisque Galtier, s.j. (1893–1962):
A Biographical Sketch[13]

Born in Lyon (France). Student at the Petit Séminaire, he goes on for his philosophy to the Collège de la rue Sainte-Hélène. Jesuit in 1910, he is joined in the Company by his brothers, Fathers Joseph (1897–1969) and Jean-Marie (1905–1960), of the Province of Lyon. Called to bear arms at the end of his juniorate; twice very seriously injured, he returns to the front as soon as possible. A priest in 1925, he is designated in 1926 to be part of a small team that was to open a small Catholic seminary at Odessa, U.S.S.R. The project having failed to develop, he does a *biennium* at the Gregorian (University) in moral theology (1927–1929) under the direction of Father Arthur Vermeersch (Province of South Belgium, 1858–1936) to whom he is soon tied by mutual esteem and affection.

Professor of moral theology at the Scolasticat de Lyon Fourvière (1929–1941) and at the Catholic faculties of Lyon. Sent to Beirut (1941–1962), he fully adapts to his new surroundings and quickly becomes a master in Eastern canon law, closely following the codification, which they were working on in Rome, and publishing on the first two parts that came out, "marriage" and "procedure", works which very quickly acquired great authority. Also, episcopal chanceries, officials and lawyers incessantly called upon his services. Always ready to be of service and incapable of doing anything half-way, he welcomed all those, and they were many, who came to call upon his competencies, which widely surpassed his specialty: history, sociology, politics, applied sciences, literature, art… Other (or the same) seminarians, lay people, Jesuits, trusted his spiritual direction and, on the day after his death, an article by the first (Lebanese) President, Choucri Cardahi, in *Le Jour* gave moving witness to his faithful and understanding love. To

13 Taken from: Henri Jalabert, *Jésuites au Proche-Orient: Notices biographiques,* Beirut 1987, 289–290.

assure such a labour, in addition to his teaching, required long, sleepless nights, caused by a chronic insomnia that resulted from his war wounds.

Beginning in the early 1950's, a skin disease no longer left him any respite. Thanks to his fierce desire and aided by strong medicines, he was able to continue during those years to lead his life of community and teaching, while saying to the Brother male nurse who wanted to keep him from it: "I will feel responsible for all the mistakes regarding canonical morals that might later be made by future priests whose formation has been entrusted to me… As long as I am not relieved of it, even dying, I will have to go to class." Shaken by attacks that were true agonies, covered in sores… his mood was never affected by it. A final attack took him on March 8, 1962.

1. The Influence of Roman Law on the Procedural Norms of the Church

In his introduction to the comparative commentary on ecclesiastical procedure,[14] Galtier maintains that the relevant sources to both the 1917 *CIC* and *SN* complement each other and that, while the Latin canons may not cite Roman law sources, the latter often influenced the formulation of Latin as well as Eastern canons. He readily agreed with the axiom that, at first, the entire "Church lives under Roman law" (*Ecclesia vivit lege romana*). Although Galtier evidently does not intend an exhaustive treatment of the question, his commentary does illustrate the influence Roman law had on the development of procedural norms both in the East and the West. This part briefly outlines five such examples.

14 See note 9, above.

1.1 General Forum: Respondent's Domicile (1917 CIC c. 1561; SN c. 24)

Like 1917 *CIC* canon 1561, *SN* canon 24 states: "By reason of domicile or quasi-domicile, one can be summoned before the local Hierarch (Ordinary)." While the underlying principle, that the petitioner follow the respondent, is the same, the Latin sources only refer as far back as Gratian's Decree.[15] The Eastern sources, which point to Justinian's Digest and Code, expressed the identical rule and undoubtedly influenced Gratian's collection.[16] The Roman law sources state:

> A wife should lay claim to her dowry in the place where her husband had his home, not where the dowry agreement was drawn up; for it is not the sort of contract in which the place where the dowry agreement was made has also to be considered rather than the man to whose home the wife herself was due to go under the conditions of the marriage. (D. 5, 1, 65)[17]

> Assets are to be sold in the place where a person should make his defense, that is, where he has his domicile. (D. 42, 5, 1 and 2)[18]

> You ask that the order prescribed by law shall be transposed, and that the plaintiff shall not follow the residence of the defendant, but the defendant that of the plaintiff, for wherever the defendant has his domicile, or had it at the time the contract was made, there alone he must be sued, even though he afterwards may have changed it. (C. 3, 13, 2)[19]

15 Sources to 1917 *CIC* c. 1561 §1 – C. 14, C. III, q. 6; c. 1, C. IX, q. 2; c. 1, 17, 19, 20, X, *de foro competenti,* II, 2; c., X, *de parochiis et alienis parochianis,* III, 29; c. 11, *de rescriptis*, I, 3, in VI°; Conc. Trident., sess. VII, *de ref.,* c. 14; Benedictus XIV, const. "*Ad militantis*", 30 mart. 1742, §41; S.C. Ep. Et Reg., *Lycien.,* 13 aug. 1613.

16 Sources to *SN* c. 24 – Syn. Libanen. Maronitarum, a. 1736, pars III, cap. V, 12 – D. 5, 1, 65; 42, 5, 1 et 2; C. 3, 13, 2; 12, 1, 13.

17 Translations for Justinian's Digest are by Alan Watson in Theodor Mommsen – Paul Krueger (eds.), *The Digest of Justinian*, Philadelphia 1985. For this translation, see vol. I, 172.

18 Mommsen, *Digest* (nt. 17), vol. IV, 549.

19 Translations for Justinian's Code are taken from: *Corpus Iuris Civilis: The Civil*

> We raise women to the rank of their husbands, render them noble by birth, determine the jurisdiction to which they shall be subject, and change the places of their domicile. Moreover, if they should subsequently marry men of inferior position, they shall be deprived of their former dignity and shall follow the condition of their last husbands. (C. 12, 1, 13)[20]

More fundamentally, however, Galtier argues that the very concept of domicile, common to both the Latin and Eastern norms, is based upon Roman law. Book X, title 39, number 7 of Justinian's Code states:

> …There is no doubt that individuals have their domicile where they have placed their household goods and the greater part of their property and fortunes, and no one shall depart from thence unless something requires him to do so, and whenever he does leave the place, he is considered to be on a journey, and when he returns, to have completed it.[21]

1.2 Arbitration (1917 CIC c. 1929; SN c. 98 §1)

Regarding the arbitration of contentious matters, 1917 *CIC* canon 1929 refers both to arbitrators who reach an amicable settlement based upon equity and justice as well as to arbiters who decide a controversy according to the rules of law.[22] While describing arbitration in the latter sense, *SN* canon 98 §1 omits the concept of amicable settlement.[23] The parallel norms state:

> 1917 *CIC* canon 1929 – In order to avoid judicial contention, the parties can also enter into an agreement by which the controversy is committed to one or

Law, Samuel Parsons Scott (transl.), New York 1973. For this translation, see vol. VI, 278.

20 Scott, *Civil Law* (nt. 19), vol. VII, 241.

21 Scott, *Civil Law* (nt. 19), vol. VII, 136.

22 No sources are given for 1917 *CIC* c. 1929.

23 Sources to *SN* c. 98 §1 – Syn. Carthaginem., a. 419, can. 121, 122, 123. – D. 4, 8, 1; C. 2, 55 (56), *De receptis*.

> several judges who would, according to the norms of law, determine the matter, or [who would] treat and resolve the matter according to goodness and equity; these former are known as *arbiters*, [and the latter] are known by the name of *arbitrators*.[24]
>
> *SN* canon 98 §1 – Those who have a controversy between them can agree in writing to entrust the care of resolving it to arbiters.

According to the 1917 *CIC*,[25] Latin arbiters are to observe the norms established by the civil law of the place where the dispute is to be resolved. However, in accord with *SN* canon 107 §1, Eastern arbiters are generally to follow the rules of ecclesiastical procedure.[26] Galtier underlines this contrast to illustrate that the Eastern legislation had not simply borrowed from the 1917 *CIC* but, rather, had recovered rules for arbitration that were based upon established Roman law principles. Galtier states:

> Hence, our (Eastern) Code applies the principle of the Digest: arbitration has been brought to resemble the judgment (D. 4, 8, 1).[27] Canon law had received the Roman-Byzantine legislation on this point. Before the (1917) Code of canon law, the arbiter had to observe ecclesiastical judicial procedure. The CIC re-

24 Translations for the 1917 *CIC* canons are taken from: Edward N. Peters (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco 2001.

25 1917 *CIC* c. 1930 states: "The prescriptions of canons 1926 and 1927 are to be observed in compromise by arbitration." In turn, 1917 *CIC* c. 1926 states: "In a settlement there are to be observed the norms established by the civil law in the place in which the settlement is undertaken, unless by divine or ecclesiastical law there is some opposition, and with due regard for the prescriptions of the canons that follow."

26 *SN* c. 107 §1 states: "Unless the parties decide otherwise, the arbiters are free to choose their manner of proceeding; it should be simple and expeditious, while observing natural equity and following the laws of procedure."

27 Book 4, title 8, number 1 of Justinian's Digest states: "Arbitration resembles an action at law and is intended to end litigation." See Mommsen, *Digest* (nt. 17), vol. I, 149.

> placed it by the observance of civil legislation. Our Code adopts the provision of the former law, and, in the canons (on arbitration) that follow, a number of them correspond to those which previous canon law had adopted.[28]

1.3 Duration of a Trial (1917 CIC c. 1620; SN c. 135)

Like 1917 *CIC* canon 1620,[29] *SN* canon 135 establishes similar rules with respect to the length of ecclesiastical proceedings.[30] The parallel Latin and Eastern norms state:

> 1917 *CIC* canon 1620 – Judges and tribunals are to take care that as soon as possible, with due regard for justice, all cases are terminated, and that in first instance they not be protracted beyond two years, and in second instance not beyond one year.

> *SN* canon 135 – Judges and tribunals are take care that, with due regard for justice, all cases are to be finished as soon as possible; in the first instance, they are not to be prolonged more than two years, and on appeal not more than one year.

The similarity in the Eastern norm was not due to a simple borrowing of the Latin rule. Galtier notes that the Code of Justinian, while fixing a two-year maximum for criminal trials, had also set a three-year time limit for completing all civil cases.[31] Parenthetic refer-

28 Galtier, *Code oriental* (nt. 3), 108.

29 Sources to 1917 *CIC* c. 1620 – C. 2, X, *de sententia et re iudicata*, II, 27; c. 5, 57, 69, X, *de appellationibus, recusationibus et relationibus*, II, 28; c. 3, *de appellationibus*, II, 12, in Clem.; c. 2, *de verborum significatione*, V, 11, in Clem.; Conc. Trident, sess. XXIV, *de ref.*, c. 20; sess. XXV, *de ref.,* c. 10; S.C.C., *Faventina,* mense oct. 1585; *Conchen.*, mense dec. 1587; *Umbriaticen.*, 26 apr. 1659; *Albinganen.*, 28 nov. 1693.

30 Sources to *SN* c. 135 – Syn. Alexandrin. Coptorum, a. 1898, sect. III, cap. VI, tit. V, art. X, 1. – C. 3, 1, 12 pr.; 3, 1, 13 pr. et 1; 3, 1, 13, 8a; 9, 44, 3.

31 Galtier, *Code oriental* (nt. 3), 143–144.

ence is then made to the following Roman law sources:[32]

> A hearing should absolutely be refused to a person who divides a case which should be determined without it, and, as a privilege, desires to try before several judges what can be decided by one and the same magistrate. (C. 3, 1, 12 pr)[33]
>
> In order to prevent litigation from becoming almost perpetual and exceeding the term of human life (as Our law has already limited criminal cases to two years, and pecuniary actions more frequently occur, and are known sometimes to give rise to criminal proceedings), it seems to Us to be advisable to promulgate the present law, for the purpose of regulating such matters throughout the entire earth, so that it may not be subject to limitation by either space or time. (C. 3, 1, 13 pr) [34]

32 Although Galtier does not list C. 3, 1, 13, 1 among the Roman law references, it is one of the sources to *SN* c. 135. Specifically regarding the three-year time limit in civil cases, it states: "Therefore, We decree that all suits which are brought for the recovery of any sum of money whatsoever, or with reference to civil conditions, the rights of cities or of private individuals; the possession, ownership, or hypothecation of property, servitudes; or any other questions on account of which litigation occurs between men; with the sole exception of such cases as involve the rights of the Treasury, or the discharge of official duties, shall not, after issue has been joined, be deferred longer than the term of three years. All judges, either in this Fair City or in the provinces, whether they are invested with inferior or superior jurisdiction, or discharge the functions of magistrates, or have been appointed by Us, or by Our nobles, shall not be permitted to protract cases for a longer time than the term of three years, for no one is not aware that this provision is superior to any judicial authority, and should the parties themselves not acquiesce, no one can be found who will be bold enough to postpone a case against the consent of the judge." See Scott, *Civil Law* (nt. 19), vol. VI, 260–261. (The numbering in Scott appears as C. 3, 1, 11, 1.)

33 Scott, *Civil Law* (nt. 19), vol. VI, 260. (The numbering in Scott appears as C. 3, 1, 10 pr.)

34 Scott, *Civil Law* (nt. 19), vol. VI, 260. (The numbering in Scott appears as C. 3, 1, 11 pr.)

> All these things take place when one judge hears the case from the beginning; but if, during the course of three years, judgment has been delayed, either by the death of the judge, or by some other unavoidable accident, and one year or more remains during which it can be decided, another judge shall be appointed for that purpose. If, however, less than a year remain, then all the time lacking shall be added, in order that the newly appointed judge may not only hear, but determine the case within the full period of a year. (C. 3, 1, 13, 8a)[35]

> We decree that criminal cases shall, by all means, be terminated within two years from the time when issue was joined, nor shall this period be extended under any pretext… (C. 9, 44, 3)[36]

1.4 Actions and Exceptions (1917 CIC c. 1667; SN c. 184)

Similar to 1917 *CIC* canon 1667,[37] *SN* canon 184 establishes: "Every right is protected not only by an action, unless provisions expressly provide otherwise, but also by an exception that is always available and, by its nature, is perpetual." As the sources to *SN* canon 184 indicate,[38] the same rules were also present in Roman-Byzantine law, that would later shape the development of Catholic canon law. Galtier cites two of these sources,[39] one of which is particularly helpful.[40] Book 44, title 4, number 5.6 of Justinian's Digest states:

35 Scott, *Civil Law* (nt. 19), vol. VI, 263. (The numbering in Scott appears as C. 3, 1, 11, 8a).

36 Scott, *Civil Law* (nt. 19), vol. VII, 73.

37 Sources to 1917 *CIC* c. 1667 – S.C. Ep. Et Reg., *Lubinen*, 8 mart. 1898 – Vide etiam can. 1698, §2.

38 Sources to *SN* c. 184 – Instit. 4, 14 pr. 1 et 2; D. 44, 1, 20; 44, 4, 5.6; 50, 16, 178, 2; 50, 17, 156.

39 Galtier, *Code oriental* (nt. 3), 198–199.

40 Galtier also cites the Institutes 4. 6, which does not figure, however, among the sources to *SN* c. 184. Instituites 4. 6 states: "Again, we sometimes bring suit merely to recover property; sometimes only to recover the penalty; and sometimes to recover both." See Scott, *Civil Law* (nt. 19), vol. I, 184.

> Although an action for fraud is extinguished within a fixed period, the defense need not also be pleaded within the same period; for the latter is permanently competent, since a plaintiff, indeed, has it within his power as to when he will make use of his right, while he against whom an action is brought has not it within his power as to when he may be sued.[41]

1.5 Peremptory Citations (1917 CIC c. 1714; SN c. 236)

Like 1917 *CIC* canon 1714,[42] *SN* canon 236 establishes the peremptory nature of procedural citations.[43] It states: "Every citation is peremptory; and it need not be repeated except in the case of c. 369 (1917 *CIC* c. 1845 §2)."[44] Noting that peremptory citations had the same legal force in Roman law, Galtier parenthetically cites the Eastern norm's two sources: D. 42, 1, 53 and C. 7, 43, 8. They state:

> The contumacy of those who do not obey the person with jurisdiction is punished by the loss of their suit. 1. A person is contumacious who, when three edicts are issued or one in lieu of three, which is called peremptory, and he has been summoned in writing, does not deign to enter an appearance. 2. The penalty for contumacy does not fall on those in ill health or who plead pressing and important business. 3. People are not deemed contumacious unless they refuse to comply when they should do so, that is, when they fall within the jurisdiction of him who they refuse to obey. (D. 42, 1, 53)[45]

41 Mommsen, *Digest* (nt. 17), vol. IV, 636.

42 Sources to 1917 *CIC* c. 1714 – C. 24, X, *de officio et potestate iudicis delegati*, I, 29; c. 2, X, *de dilationibus*, II, 8; c. 6, X, *de dolo et contumacia*, II, 14; c. un., *de foro competenti,* II, 2, in Clem.; Regulae servandae in iudiciis apud S. R. Rotae Tribunal, 4 aug. 1910; § 26, 28; Regulae servandae in iudiciis apud Suprem. Signaturae Ap. Tribunal, 6 mart., 1912, art. 19.

43 Sources to *SN* c. 236 – D. 42, 1, 53; C. 7, 43, 8.

44 *SN* c. 369 (1917 *CIC* c. 1845 §2) concerns the contumacious respondent whom a judge may then threaten with ecclesiastical penalties after the citation has been repeated.

45 Mommsen, *Digest* (nt. 17), vol. IV, 542.

> It is in conformity with law that the Governor of the Province, after having observed all the legal formalities and notified the adverse party three times by means of letters, or once for all by a peremptory edict to appear as is required, if the latter perseveres in his obstinacy, to hear the allegations of the party present, or take care that his successor shall do so. Wherefore, if the other party has been summoned three times and still stubbornly refuses to appear, it will not be unreasonable for the judge to either compel him to do so, or transfer possession of the property in dispute to you, and make your adversary the plaintiff, or, having heard your defense, render his decision as the law may require. (C. 7, 43, 8)[46]

Commenting that only peremptory citations have been retained in procedural law, Galtier concludes: "As soon as it is established that a valid citation has reached its addressee, it need not be renewed. The law only imposes a new citation when the judge wishes to break the contumacy of a respondent with the threat of penalties; the penalties can only be inflicted when it has been established that the contumacious respondent has defied the second citation and the threat it contained."[47]

2. How *SN* Developed and Improved upon the Procedural Norms of the Church

Within the context of the development of the Church's procedural norms from the Roman-Byzantine era through the medieval canonical collections such as Gratian's Decree, the 1917 Pio-Benedictine legislation for the Latin Church certainly represented an important milestone. In addition, as Galtier indicates in his introduction,[48] the promulgation over thirty years later of a procedural code for the Eastern Churches was significant in that modifications made by *SN* could bring further clarity and precision to parallel procedural norms. These

46 Scott, *Civil Law* (nt. 19), vol. VI, 184–185.
47 Galtier, *Code oriental* (nt. 3), 249.
48 See note 10, above.

changes were either occasioned by interpretational doubts raised by canonists, authentically defined by the Holy See or simply suggested by later draftsmen for a more succinct formulation of the procedural canons. This section lists ten cases in which Galtier argues that *SN* improves upon the 1917 *CIC* in terms of the Church's procedural code.

2.1 Criminal Delicts (1917 CIC c. 1933 §1; SN c. 1 §3)

With reference to criminal trials, 1917 *CIC* canon 1933 §1 states: "Delicts that fall under criminal trials are public delicts." According to 1917 *CIC* canon 2197, a delict is public "if it is already divulged, or has been committed in circumstances in which one can prudently foresee that it can or ought to be easily known." As a result, most Latin commentators seemed to agree that the criminal trial could proceed if the delict were public or known and not whether or not the crime could be proven in the external forum. The Jesuit canonist, P. Vidal, was of the opinion that a criminal case had to be proven in the external forum. In his commentary on *SN* canon 1 §3, Galtier states that the Eastern norm effectively addresses this question. He explains:

> Because CIC canon 1933 simply refers to "public delicts", commentators have together adopted the first interpretation of the word "public" as given by the definition of delict in c. 2197: the fact in known. However, P. Vidal declares that it is a question of a delict that can be proven in the external forum. Our (Eastern) Code agrees with him. In fact, when it is a question of inflicting penalties, (which can be done without the intervention of the judicial apparatus), as soon as it is a question of remedying a scandal, one considers only the divulgence; the penalty will not reveal the mistake already known or on the point of being made known. In procedure, however, one cannot pursue a case if it is foreseen that the juridical proof cannot be established.[49]

SN canon 1 §3, then, establishes: "Delicts that fall under criminal trials are delicts which can be legitimately proven in the external forum."

49 Galtier, *Code oriental* (nt. 3), 4–5.

2.2 The Forum of the Contract (1917 CIC c. 1565 §1; SN c. 28 §1)

Among the many competing titles for assuming judicial competence at trials, the place where a contract has been concluded is a title that is common to the East and the West. In this regard, 1917 *CIC* canon 1565 §1 establishes: "By reason of contract, a party can be convened in the court of the Ordinary of the place wherein the contract was entered or where it is to be fulfilled." After the promulgation of the 1917 Latin norm, a doubt arose regarding whether or not the same title applied if, at the time of being cited to appear before the tribunal of the place where the contract was signed or was to be executed, the respondent had left the territory. According to the prior Latin practice, the title would not apply in such a case. By a decision, dated July 14, 1922, the *Pontificia Commissio ad Codicis Canones Authentice Interpretandos* (Interpretation Commission) authentically interpreted 1917 *CIC* canon 1565 §1 in the same sense.[50] Both these factors undoubtedly motivated draftsmen to add the clause "unless the party has left the territory" to the parallel Eastern norm. Galtier states: "The respondent can only be summoned to appear at the place of the contract if, at the time of the citation, he has not left the territory of the tribunal's jurisdiction. This clause, in accordance with the old Latin law and the response of the CIC Interpretation Commission, was introduced into the text of our (Eastern) canon."[51] *SN* canon 28 §1, then, states: "By reason of the contract, the party can be summoned to appear before the Hierarch of the place where the contract was concluded or is to be executed, unless the party has left the territory, with due regard for §2."[52]

50 See *AAS* 14 (1922) 529.

51 Galtier, *Code oriental* (nt. 3), 44.

52 *SN* c. 28 §2 (like 1917 *CIC* c. 1565 §2) foresees that, in the contract, the parties can specifically agree to settle eventual disputes in the place of the contract even if they are subsequently absent.

2.3 Those Excluded from Judging in Further Instance (1917 CIC c. 1571; SN c. 35)

To guarantee impartiality throughout the trial process, a judge who has tried a case in one instance cannot adjudicate the same case in another instance. To that end, 1917 *CIC* canon 1571 provides: "Whoever acts in a case in one grade of judgment cannot judge the same case in another grade." There were Latin commentators, however, who argued that, given the role of assessors as true advisers to the judge, the same prohibition should be extended to them as well.[53] Galtier writes: "According to Lega-Bartoccetti, what is not allowed should be extended to the assessor: who performs the function of judge or assessor at one degree of a trial cannot perform one of those two functions at another degree." Given these things, Galtier continues: "That is what our (Eastern) code specifies."[54] Indeed, *SN* canon 35 states: "Whoever acts in a case or deals with it in one grade cannot judge the same case in another grade or perform the functions of assessor."

2.4 Power Exercised by Judges (1917 CIC c. 1574 §1; SN c. 41 §1)

Within the context of defining the type of power Latin judges exercise, 1917 *CIC* canon 1574 §1 establishes: "In each diocese, presbyters of proven life and expert in canon law, even from outside the diocese, though not more than twelve, are to be chosen, so that they can take part in the judicial power delegated by the bishop in adjudicating cases; these are known by the name of *synodal judge* or *pro-synodal* , if they were constituted outside the Synod." Since tribunal judges normally have ordinary power, the clause in the Latin norm describing

53 Commenting on the role of assessors (*SN* c. 45; 1917 *CIC* c. 1575), Galtier states: "They take part in the trial as true assistants to the judge, they study the case, recognize documents, and give the judge advice on the conduct of the case, the sentence to enter." See Galtier, *Code oriental* (nt. 3), 64.

54 Galtier, *Code oriental* (nt. 3), 53.

their judicial power to be delegated proved to be rather awkward for its lack of precision. Galtier argues that the clause was omitted in the later Eastern norm to clarify the matter. He states:

> Eparchial judges constitute the tribunal which has ordinary power. The COP omits in §1 the terms which in the CIC have embarrassed commentators: "so that by reason of the power delegated by the bishop", they take part in the judgment. Roberti notes that the function of the judge presents all the required characteristics to involve ordinary jurisdiction. This ordinary jurisdiction can only be exercised when the judge is designated as a member of the collegial tribunal or as a sole judge, or when a judicial act is entrusted to him by the tribunal.[55]

Therefore, *SN* canon 41 §1 prescribes: "In each eparchy, presbyters of upright reputation and competent in canon law, belonging even to another eparchy, are to be appointed to take part in the adjudication of trials; they are called eparchial judges."

2.5 Who Directs the Process? (1917 CIC c. 1577 §2; SN c. 50 §1)

With respect to carrying out procedural acts within the context of collegial tribunals, the 1917 *CIC* and *SN* fundamentally differed in certain respects. One aspect concerned precisely which judge was to perform these procedural acts. As a general rule, 1917 *CIC* canon 1577 §2 states: "It is for the same *officialis* or *vice-officialis* to preside over and direct the process and to decide those things that are necessary for the administration of justice in the case." That this norm remained somewhat ambiguous and open to various interpretations, Galtier writes:

> The generality of this affirmation (in CIC c. 1577 §2), P. Vidal notes, seems to give the *officialis* a right to decide and place procedural acts as long as the final decision is not involved or it is a question of the sentence. If the *officialis*,

55 Galtier, *Code oriental* (nt. 3), 62.

himself, does not preside over the tribunal, does the president have the same power? And how are the rights of the one who directs the process and the rights of the tribunal to be defined? To resolve the difficulty, authors underline the importance of the procedural acts, the instructions given to the Latin Church regarding marriage cases and which attribute to one or the other the right to act or to decide. They compose lists of what falls to the college as such, and what can be done by the president alone; they distinguish the role of the *officialis* insofar as he is the head official, insofar as he is president of the tribunal, insofar as he is acting as a sole judge. It must be recognized that these proposed lists do not coincide, as P. Torquebiau notes regarding those of P. Vidal and Roberti. A number of the acts they attribute to the college are normally placed by the president.[56]

Galtier immediately adds: "The draftsmen of our Code could not ignore the problem and the difficulty." Like the Latin norms, the Eastern canons would stipulate that the tribunal is presided over by the judicial vicar or his substitute (1917 *CIC* c. 1577 §2; *SN* c. 48 §2) and that the president designate one of the judges as *ponens* (1917 *CIC* c. 1584 §1; *SN* c. 49 §1). However, according to the Eastern law, it would be the *ponens* who would be responsible for directing the process. Unique to the Eastern legislation, *SN* canon 50 §1 states: "The *ponens* directs the process and decides what is necessary for the administration of justice in the case in question."[57]

56 Galtier, *Code oriental* (nt. 3), 67–68.

57 *SN* c. 50 is a source to *CCEO* c. 1085 §2, which now states: "Other procedural acts are to be carried out by the *ponens*, unless the college has reserved certain acts to itself. Such reservation, however, is not for validity." While many *CCEO* norms more closely resemble *CIC* canons which attribute judicial acts and decisions to the president of the tribunal, *CCEO* c. 1085 §2 continues to be a significant point of difference between the two procedural codes. For more detail, see J. Abbass, *Two Codes in Comparison*, Rome 1997, 225–226.

2.6 Promoter of Justice & Defender of the Bond (1917 CIC c. 1586; SN cc. 57–62)

In a single canon describing the role of the promoter of justice and the defender of the bond, 1917 *CIC* canon 1586 states: "There shall be constituted in a diocese a promoter of justice and a defender of the bond; the former acts in cases, whether contentious in which the public good, in the judgment of the Ordinary, can be called into question, or in criminal cases; the latter acts in cases in which the bond of sacred ordination or matrimony is concerned."

On September 1, 1934, the Holy See published the *Normae S. Romanae Rotae Tribunalis* (Rotal norms), which established many norms (artt. 24–37) detailing the role and responsibilities of both the promoter of justice and the defender of the bond.[58] Upon comparison, it was clear to Galtier that the Eastern draftsmen not only relied upon the Rotal norms to develop and further define the functions of the promoter of justice and defender of the bond but, also, that the Eastern legislation even copied from them literally. He states:

> The CIC defines their role in a common canon (1586); the Eastern Code first dedicates 5 canons (57–61) to the promoter of justice, whose functions it specifies, then one canon (62) to the defender of the bond, before treating the exercise of the two offices in cc. 63–68. Thus, the Eastern Code agrees with the rules of Tribunal of the Rota, and its canons reproduce their wording.[59]

That some of the Eastern canons repeated the Rotal norms does seem evident especially when the parallel rules regarding the promoter of justice are examined. The relevant *SN* canons are given below with the corresponding Rotal norms in the footnotes for comparison.[60]

58 See *AAS* 26 (1934) 456–458.

59 Galtier, *Code oriental* (nt. 3), 76–77.

60 While the corresponding norms are substantially identical, the relevant decision regarding the public good made by the Hierarch in *SN* cc. 59 §1 and 61

SN canon 58 – §1. In criminal cases, the promoter of justice performs the role of the accuser, with a view to assuring the just punishment of delinquents.
§2. Although it is for him, *ex officio,* to advance and sustain the accusation, he must nevertheless abstain if he considers the accusation without any foundation.[61]

SN canon 59 – §1. In contentious cases, it is for the Hierarch to judge if the public good is involved or not, unless the intervention of the promoter of justice must be said to be evidently necessary, given the nature of the case, as in the cases that concern an impediment to contract a marriage, the separation of spouses, a pious foundation in what affects its existence, the right of foundation or of patronage, with a view to safeguarding the freedom of the Church, etc.
§2. If the promoter of justice has intervened in preceding instances, his intervention is presumed necessary.[62]

SN canon 60 – §1. In contentious cases, the promoter of justice assures the protection of the public good. Besides, to the extent possible and with due regard for the truth, he is to defend in a case the rights of marriage, pious foundations, of the Church that arise from it.
§2. If the case involves several grounds, only certain of which concern the public good, the promoter of justice is only to deal with the latter.[63]

is, at the level of the Roman Rota, made by the *ponens* in artt. 27 §1 and 29 §1, respectively.

61 Art. 25 of the Rotal norms stated: " §1. In causis criminalibus Promotor iustitiae gerit partes accusatoris, intendens ut delinquentes iuste puniatur. §2. Licet vero eius sit accusare et sustinere ex officio accusationem, id tamen praestare non debet, si censeat accusationem prorsus fundamento destitui." [*AAS* 26 (1934) 456–457]

62 Art. 27 of the Rotal norms stated: "§1. In causis contentiosis Ponentis est ferre iudicium de eo utrum bonum publicum in discrimen vocari possit necne, nisi interventus Promotoris iustitiae ex natura rei evidenter necessarius dicendus sit, ut in causis impedimenti ad matrimonium contrahendum, separationis inter coniuges, piae fundationis quoad eius exsistentiam, iurispatronatus propter libertatem Ecclesiae tuendam, etc. §2. Si in praecedentibus instantiis intervenerit Promotor iustitiae, huius interventus praesumitur necessarius." [*AAS* 26 (1934) 457]

63 Art. 28 of the Rotal norms stated: "§1. Promotor iustitiae in causis contentiosis

> *SN* canon 61 – In contentious cases, to defend the public good, other persons, particularly moral persons, can be admitted by the Hierarch, besides the promoter of justice and after having heard the latter.[64]

2.7 General Rule regarding Interventions (SN c. 64)

Besides recovering Eastern norms based upon Roman-Byzantine law, *SN* would improve upon the 1917 *CIC* not only by adopting new rules, like the Rotal norms, promulgated by the Holy See but, also, by formulating clear norms to simplify tribunal procedure. One such example, *SN* canon 64, that was unique to the Eastern legislation, generally identifies those cases in which a request or hearing of the parties also means hearing the promoter of justice and the defender of the bond or their request, if they intervened in the trial. *SN* canon 64 states:

> Unless it is otherwise specified:
> 1° every time that the law prescribes that the judge hear the parties or one of them, the promoter of justice and the defender of the bond are also to be heard if they intervene in the process;
> 2° every time that the request of a party is required so that the judge can make a decision, the request of the promoter of justice or the defender of the bond who intervene in the process have the same effectiveness.

Regarding *SN* canon 64, Galtier states: "This canon introduces two clear and simplifying principles."[65] Indeed, throughout the commentary, Galtier indicates many Eastern norms where, given the general

bonum publicum tuetur. Itaque, quoad fieri potest, salva rei veritate, defendit e re nata iura matrimonii, piarum fundationum, Ecclesiae. §2. Si causa plura capita complectatur, quorum nonnisi quaedam ad bonum publicum spectant, de iis tantum Promotor iustitiae curabit." [*AAS* 26 (1934) 457]

64 Art. 29 §1 of the Rotal norms stated: "In causis contentiosis, ad tuendum bonum publicum, praeter Promotorem iustitiae, admitti possunt a Ponente, eodem Promotore audito, aliae personae praesertim morales." [*AAS* 26 (1934) 457]

65 Galtier, *Code oriental* (nt. 3), 81–82.

rule in *SN* canon 64, the request or hearing of the promoter of justice and defender of the bond is not mentioned, whereas the parallel 1917 *CIC* canons further specify their involvement if they intervened in the trial. The relevant comparison is made regarding *SN* canon 309 (1917 *CIC* c. 1786); *SN* canon 353 (1917 *CIC* c. 1830 §3); *SN* canon 365 (1917 *CIC* c. 1841); *SN* canon 368 (1917 *CIC* c. 1844 §1); and *SN* canon 380 (1917 *CIC* c. 1856 §2).[66] The efficacy of *SN* canon 64 to simplify and clarify procedural norms must have proven evident since it became *CCEO* canon 1098 and, moreover, is cited as the sole source to *CIC* canon 1434.

2.8 When the Process/Instance Begins (1917 CIC cc. 1725, 5°/1732; SN cc. 247, 5°/254)

Between the beginning of the process and the commencement of the instance, the 1917 *CIC* made a distinction. On the one hand, among the many effects of the citation, canon 1725, 5° stated: "When citation has been legitimately done or the parties have come freely before the judge, the litigation gets underway; and therefore immediately the principle applies: *while litigation is pending nothing is to be innovated*." On the other hand, canon 1732 indicated that "the instance begins with the joinder of issues (*contestatio litis*)." Galtier notes that Latin commentators strained to reconcile these two statements. He states:

> The 1917 Code attributes these effects to the citation and declares that, with it, the "process began to be pending" (c. 1725, 5°). In canon 1837, it recalls that the process begins with the citation. However, in c. 1732, it affirms that the instance begins with the joinder of issues.
> It was necessary to reconcile these statements. The commentators wonder how the process, begun with the citation, only really began the joinder of issues.[67]

66 See Galtier, *Code oriental* (nt. 3), 310; 340; 351 (refers mistakenly to CIC 1801); 354, and 366.

67 Galtier, *Code oriental* (nt. 3), 256–257.

Galtier effectively argues that the Eastern draftsmen, aware of this difficulty, resolved it by holding to a single principle: the process as well as the instance begin with the notification of the citation. Indeed, *SN* canon 247, 5°, like 1917 *CIC* canon 1725, 5°, states: "When the citation has been legitimately made or the parties have freely appeared, the process begins to be pending; and immediately the principle applies: the process pending, there are to be no innovations." Then, *SN* canon 254, the counterpart to 1917 *CIC* canon 1732, was formulated to state that "the instance begins with the citation" and not with the joinder of the issues, as the prior Latin canon had stated.

2.9 Supplying for the Negligence of the Parties (1917 CIC c. 1619; SN c. 134)

To assure a judge's impartiality between the parties, the general rule in the Latin Church was that the judge did not supply for the negligence of the parties in private cases but that he could and must do so in cases affecting the public good or the salvation of souls. 1917 *CIC* canon 1619 states:

> §1. If a petitioner is able to offer evidence for himself, [but] he does not offer it, or if a respondent does not oppose [the petitioner with] those exceptions for which he is eligible, the judge shall not supply them.
> §2. But if it concerns the public good or the salvation of souls, he can and must provide them.

However, in defining an ecclesiastical judge's role, the crucial search for the truth may well require the judge to intervene and adduce evidence in either private or public cases in order to avoid a denial of justice. Galtier notes the Eastern judge's role to supply for the negligence of the parties, both in private and public cases, where the parties' ignorance or omission to produce evidence could lead to

an unjust sentence.[68] Certainly a norm more consonant with the role of an ecclesiastical tribunal to pursue the truth, *SN* canon 134 states:

> §1. Unless there is a different disposition of the law, if the petitioner does not adduce in his case the proofs that he could have produced, or if the respondent does not oppose the exceptions of which he can dispose, the judge must not supply for it, unless the negligence or bad faith of the parties, being evident, it is necessary to avoid an unjust sentence.
> §2. But if the public good or the salvation of souls is in play, he can and must supply.

2.10 Cases Excepted from General Trial Rules (1917 CIC c. 1990; SN c. 498)

As seen earlier,[69] the 1950 Eastern procedural rules also incorporated decisions of the Holy See's Interpretation Commission regarding parallel norms in the 1917 Latin Code. In relation to the special marriage process in cases of evident nullity, 1917 *CIC* canon 1990 had established a rather administrative procedure. It stated:

> When from a certain and authentic document that is susceptible to no contradiction or exception there can be proven the existence of an impediment of disparity of cult, orders, solemn vow of chastity, prior bond, consanguinity, affinity, or spiritual relationship, and it is also apparent with equal certitude that no dispensation was granted from the impediment(s), in these cases, omitting the heretofore recited formalities, the Ordinary, having cited the parties, can declare the nullity of the marriage, with, however, the intervention of the defender of the bond.

Although the norm excepted these special marriage cases from general trial rules, questions arose regarding the nature of this proce-

68 Galtier, *Code oriental* (nt. 3), 141–142. Galtier notes the same difference between the codes in *SN* c. 281 §3 (1917 *CIC* c. 1759 §3) where the judge can again supply for the negligence of the parties by calling witnesses to avoid a denial of justice in private or public cases. See ibid, 292.

69 See note 50, above.

dure and the degree of proof needed. The Interpretation Commission responded on two occasions to define the process as judicial rather than administrative and to require the existence of an impediment as well as the absence of a dispensation be proven with the same certainty.[70] Noting these difference between the Latin and Eastern norms, Galtier states:

> The COP adds to the parallel text of CIC:
> A. – that the Hierarch declare the nullity *with a sentence*;
> B. – that the absence of a dispensation must be established in the same manner as the existence of the impediment or by equivalent means; these specific details respond to the decisions of the Interpretation Commission… The 1943 response declares that the decision is of a judicial order, not administrative, and it draws the consequences from that.[71]

Having incorporated these elements, *SN* canon 498 consequently prescribes:

> When from a certain and authentic document that is susceptible to no contradiction or exception there can be proven the existence of an impediment of disparity of cult, orders, vow of chastity by major profession, bond, consanguinity, affinity, or spiritual relationship, and it is also apparent with equal certitude, *by virtue of a certain and authentic document or by another legitimate means,* that no dispensation was granted from the impediments, the local Hierarch, omitting the previously listed formalities, can, after hearing the parties and with the intervention of the defender of the bond, declare the nullity of the marriage *with a sentence*. (Emphasis added)

Conclusion

The aim of this paper has been to highlight the significant contribution of Francisque Galtier s.j., as a professor and scholar of canon law es-

70 See: *AAS* 23 (June 16, 1931) 353–354 and *AAS* (December 6, 1943) 94.
71 Galtier, *Code oriental* (nt. 3), 487.

pecially during the time of his mission in Lebanon from 1941 until 1962. Of the two commentaries Galtier produced regarding marriage and procedural law, this study examined the latter and found it outstanding in many respects. Long before comparative studies of Eastern and Latin canon law were undertaken or even contemplated, Galtier had conducted a painstaking, comparative analysis of the procedural norms of the Catholic Church. As a true forerunner in the field of comparative canon law studies, his exemplary method and analytical precision can well serve as an inspiration for canon law scholars and students today.

This inspiration refers not only to the impetus that one might derive from the dedication that obviously characterized Galtier's work but, also, the insight that his comparative commentary provided in two respects that are examined in the two parts of this study. Just as Galtier maintained that *SN* had not simply borrowed the procedural canons in 1917 *CIC* but, rather, had recovered its Roman-Byzantine sources which, in fact, were often common to the Latin norms, the same can be argued when the current procedural rules in *CIC* and *CCEO* are compared. In the examples Galtier noted, part I illustrated the ties of the Church's procedural laws to Roman law, ties that are no less valid today. That is why *CCEO* cannot simply be regarded as a copy of *CIC* but, rather, as a Code in line with the continuous development of the procedural norms of the Catholic Church.

Part II outlined many ways in which Galtier noted that *SN* had developed and improved upon the procedural canons promulgated over thirty years earlier in 1917 *CIC*. If such changes were effected during the elaboration of the 1950 Eastern legislation, then it is also most probable, at least respecting procedural norms, that *CCEO* may well have developed or improved upon the procedural norms in *CIC*. Given these questions for future canonical research, Father Galtier will be pleased that his tireless devotion to canon law will not only have formed his many students but, also, inspired future generations as well.

Appendix I

Canons of COP whose Wording Differs from that of (1917) CIC

COP	CIC	COP	CIC	COP	CIC	COP	CIC
1	1552	129	1614	283	1761	426	1899
3	1554	134	1619	305	1782	429	1902
4	1555	136	1621	309	1786	430	1903
5	199	140	1625	312	1789	431	1904
7	201	151	1636	316	1793	432	1905
9	205	155	1640	318	1795	435	1908
16	1557	156	1641	319	1796	436	1909
21	1558	157	1642	323	1800	443	1916
23	1560	159	1644	329	1806	447	1919
24	1561	163	1648	347	1824	448	1920
26	1563	166	1651	350	1827	451	1923
29	1565	167	1652	353	1830	470	1962
35	1566	168	1653	354	---	471	1963
37	1572	173	1658	365	1841	478	1971
40	1573	174	1659	368	1844	479	1972
41	1574	183	1666	373	1849	482	1975
44	388	196	1676	380	1856	486	1979
46	1576	200	1680	381	1857	487	1980
48	1577	204	1684	387	1863	489	1982
49	1584	208	1688	388	1864	491	1984
51	1578	210	1690	390	1866	496	1988
56	1585	211	1691	391	1867	497	1989
57	1586	212	1692	404	1880	498	1990
62	1586	222	1702	412	1886	499	1991
76	1596	249	1727	413	1887	501	1993
79	1599	251	1729	416	1890	508	1935
93	1607	254	1732	417	1891	511	1938
98	1929	258	1736	420	1894	522	1948
103	1931	259	1737	421	1895	529	1959
125	1610	264	1742	422	---	575	1923§3
127	1612	266	1744	423	1896		
128	1613	281	1759	424	1897		

Canons proper to COP without an Equivalent in (1917) CIC

CC	CC	CC	CC	CC
17	90	122	465	553
18	91	177	466	554
19	100	178	467	555
20	102	192	494	556
36	103	194	531	557
38	104	226	532	558
39	105	227	533	559
47	106	301	534	560
50	107	406	535	561
58	108	408	536	562
59	109	444	540	563
60	110		541	564
61	111		542	565
64	112		543	566
71	113		544	567
72	114		545	568
73	115		546	569
74	116		5446	570
85	117		548	571
86	118		549	572
87	119		550	573
88	120		551	574
89	121		552	576

453
454
455
456
457
458
459
460
461
462
463
464

Appendix II

1. *SN* Norms that are Cited among the Sources to 1983 *CIC* Canons

SN	**'83 *CIC***	***SN***	**'83 *CIC***	***SN***	'83 ***CIC***
64	1434	434 §1	1647 §1	468	1671
94, 98	1713	434 §2	1647 §2	469	1672
96, 107	1714	435–439	1649	470, 471	1698 §1
96, 99	1715	441–444	1649	470, 472	1673
120	1716	445 §1	1650 §1	471, 492	1681
134 §1	1452 §2	445 §2,1°	1650 §2	473	1676
177	1484 §2	445 §2,2°	1650 §3	474	1700
192	1499	446	1651	475	1701 §1
207	1646 §3	447	1652	476, 477	1678 §1
226	1501	448 §1	1653 §1	478	1674
404, 9°	1636	448 §2	1653 §2	479	1675
409	1633	448 §3	1653 §3	480	1697
410 §1	1634 §1	449 §1	1654 §1	482	1679
410 §2	1634 §2	449 §2	1654 §2	483–489	1680
412	1635	450 §1	1655 §1	492	1703
413 §1	1637 §1	450 §2	1655 §2	492	1705 §1
413 §3	1637 §4	450 §3	1655 §2	493	1682 §1
414	1637 §2	453–467	1656	494	1683
415 §2	1638	453	1657	495	1684 §1
416	1634 §3	454	1663 §2	496	1685
417 §1	1639 §1	456	1658	498	1686
417 §1	1640	457	1659	499	1687
429	1641	458	1660	500	1688
430	1643	459	1661 §1	501 §1	1709 §1
430	1644 §1	460	1661 §2	501 §2	1710
431 §1	1642 §1	461	1663 §1	502	1708
431 §2	1642 §2	462	1667	503	1710
432 §1	1645 §1	464	1665	504	1711
432 §2	1645 §2	464	1666	505	1709 §2
433	1646 §1	466	1668 §3	506	1712
433	1646 §2	467	1668 §1	536	1723 §1
		467	1668 §2	553, 570	1725

2. *SN* Norms Cited Alone as Sources to 1983 *CIC* Canons

SN	**1983 *CIC***
64	1434
120	1716
177	1484 §2
192	1499
226	1501
453–467	1656–1668
536	1723 §1
553, 570	1725