

# Remarks on the Latin of the *Codex Canonum Ecclesiarum Orientalium*\*

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Introduction: the linguistic study of the sources of canon law

The language of the canonical sources of the Western Church from Late Antiquity up to the 20th century has almost exclusively been Latin. However, this Latin differs from the language of literary

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sources in several respects. At the time of its formation, canonical Latin, as an integral part of the particular language variety of the Christians, can be seen as a group language (sociolect), containing a great number of elements of Vulgar Latin, but it is also a technical or special language (“funciolect”),<sup>1</sup> differing again – as does the language of Roman law – from the Latinity of ancient literary works. Though its feature as a group language disappeared due to the Christianisation of the Roman Empire, ecclesiastical legal language remained separated from general language as well as from the special language of secular law. Since the sources of canon law are produced by the authority, i.e. by the legislative power, of the Church, their language is, from the Middle Ages onwards, to be studied as a subsystem of the official use of Latin within the Church.

The general and systematic study of Ecclesiastical or Church Latin (*Kirchenlatein, latino ecclesiastico / della Chiesa* etc.) as an independent variety of the Latin language has not yet been undertaken. Scholarly attention so far has rather focused on three categories related to it, namely the (group) language of the Christians (“Christian Latin”), the language of the Bible translations (“Biblical Latin”) and the language of liturgical texts (“Liturgical Latin”).<sup>2</sup> Out of these it is only

- 1 The study of special languages as a branch of applied linguistics has seen an enormous development in the last 50 years. For a short introduction, see TH. ROELCKE, *Fachsprachen* (Grundlagen der Germanistik 37), Berlin 1999; for a comprehensive view of the state of contemporary studies, see the monumental work of Lothar HOFFMANN – Hartwig KALVERKÄMPER – Herbert E. WIEGAND (Hrsgg./eds.), *Fachsprachen. Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft / Languages for special purposes. An international handbook of special language and terminology research* (Handbücher zur Sprach- und Kommunikationswissenschaft 14), I–II, Berlin–New York 1998–1999.
- 2 This is well borne out by the chapters of the latest general work on the subject as well as by their proportions: Enrico DAL COVOLO – Manlio SODI (cur.), *Il latino e i cristiani. Un bilancio all’inizio del terzo millennio* (Monumenta, studia,

the last one which, as the practice of the sanctifying office of the Church, falls within the narrower limits of the concept “official ecclesiastical use of language”, which comprises besides liturgy the much less studied areas of the use of Latin in the functions of teaching, governance and communication. Within these four areas Canonical Latin is especially peculiar to texts produced in the activities of the office of governance, namely in legislation, in public administration and in the administration of justice. These three functions of the exercising of Church power differ from one another only from a juridical point of view, as their texts use basically the same Latin legal special language. All this constitutes the broader framework in which the Latin of the *Codex canonum Ecclesiarum orientaliuum* (= CCEO) is to be studied.

On the other hand, the area at the intersection of general Latin, legal special Latin and official Church Latin has undergone several historical changes. The differences between Ancient, Medieval and Modern Latin, manifested in the discrepancies of the elements making up the linguistic system (phonology, morphology, syntax) as well as in those of vocabulary and style, are apparent in Canonical Latin too. In order, therefore, to study the sources of canon law from a linguistic point of view, apart from canonical works containing statements on special language, it is also necessary to make a very extensive use of linguistic specialised literature.

The existing literature on official Church Latin, including Canonical Latin, is rather poor, and the topic has not even received its own bibliographical treatment.<sup>3</sup> The language of secular (especially

instrumenta liturgica 17), Città del Vaticano 2002. An overall linguistic study of Ecclesiastical Latin has not been undertaken up to the present day (the work of Richard J. O'BRIEN, *A descriptive grammar of ecclesiastical Latin, based on modern structural analysis* [Georgetown University Latin series], Chicago 1965, contrary to its misleading title, is a description of Classical Latin).

3 Cf. John GILCHRIST, *Canon law, Medieval Latin. An introduction and biblio-*

Roman) law has lately been studied more intensively, but such investigations usually remain within the time limits of Antiquity.<sup>4</sup> Fortunately, however, there is a good deal of literature on Medieval Latin, furnishing several observations valid for legal sources as well.<sup>5</sup> The research of the so-called Neolatin (humanistic and later Latin) started quite recently, so its results can at present be utilised only to a lesser degree.<sup>6</sup>

graphical guide, ed. by Frank A. C. MANTELLO – Arthur G. RIGG, Washington, D.C. 1996, 253: “Otherwise there is no developed body of literature on the language of canon law.” The only monographic work, intended by its title to be a comprehensive one, Emilio SPRINGHETTI, *Latinitas fontium iuris canonici* (Pontificium Institutum Altioris Latinitatis: Bibliotheca «Veterum sapientia» A 7), Romae 1968, is of rather uneven proportions and content, and is even heavily outdated in its linguistic approach; among recent ones, Hans-Jürgen BECKER, *Die Bedeutung der lateinischen Sprache für die Verfassung und das Recht der römischen Kirche*, Sprache – Recht – Geschichte. Rechtshistorisches Kolloquium 5.–9. Juni 1990 Christian-Albrechts-Universität zu Kiel, hrsg. von Jörn ECKERT – Hans HATTENHAUER (Motive – Texte – Materialien 58), Heidelberg 1991, 25–36 offers an interesting collection of historical and sociolinguistic reflections, while Stephan HAERING, “Lateinische Sprache und kanonisches Recht”, in *Seminarium* 43 (2003) 237–256, after discussing some fundamental questions, is chiefly devoted to the teaching of Latin in the Catholic Church.

- 4 A good overview of special language studies with bibliography is given by Cesidio DE MEO, *Lingue tecniche del latino* (Testi e manuali per l’insegnamento del latino 16), Bologna 1983<sup>2</sup>, 67–131. For different approaches of legal Latin, see e.g. Sandro SCHIPANI (cur.), *Atti del Convegno Internazionale «Il latino del diritto»* (Perugia 8–10 ottobre 1992), Roma 1994; Orazio BIANCO – Sebastiano TAFARO (cur.), *Il linguaggio dei giuristi romani. Atti del Convegno internazionale di studi, Lecce, 5–6 dicembre 1994* (Numero speciale di «Studi di filologia e letteratura» 5 [1999]), Galatina 2000.
- 5 The most recent comprehensive work in this field is Peter STOTZ, *Handbuch zur lateinischen Sprache des Mittelalters* (Handbuch der Altertumswissenschaft II 5), I–V, München 1996–2004.
- 6 For an overview, see Jozef IJSEWIJN – Dirk SACRÉ, *Companion to Neo-Latin studies*, I–II, Leuven 1990–1998<sup>2</sup>, II 377–422.

I. The linguistic study of the Latin of the CCEO

I.I *The place of the CCEO in the 20<sup>th</sup> century codification of canon law*

I.I.I *The modern law codes of the Catholic Church*

The CCEO is the last in a series of law codes which the Catholic Church issued in order to codify universal canon law. The result of the first codification, the Code of the Latin Church, called *Codex iuris canonici* (= *CIC*), was promulgated in 1917, and was replaced in 1983 by a code of the same name, but of a significantly different content.<sup>7</sup> In accord with the tradition of Western canon law, the language of both Codes is Latin. The Code produced for the Eastern Churches, the so-called *Codex iuris canonici orientalis* (= *CICO*), never took effect in its entirety, since only a part of it was promulgated, between 1949 and 1957, by Pope Pius XII in four *motu proprio*s, with the text of the canons incorporated in these, without any independent and uniform title, but, similarly to the *CIC*, in Latin<sup>8</sup> (later, as the first step of the revision of the *CICO*, the unpromulgated texts were also published, lacking, of course, every normative force<sup>9</sup>). This partial codification was superseded in 1990 by a uniform code, the CCEO,<sup>10</sup> in which the

7 For a more detailed description with further literature, see Péter ERDŐ, *Die Quellen des Kirchenrechts. Eine geschichtliche Einführung* (Adnotationes in ius canonicum 23), Frankfurt a. M.–Berlin–Bern 2002, 151–158.

8 For a short account of the codification process and its result, see ERDŐ, *Die Quellen des Kirchenrechts* (nt. 7), 158–159; for more details, see e.g. [Acace COUSSA], *Codificazione canonica orientale*, Oriente cattolico. Cenni storici e statistiche, Città del Vaticano 1962, 35–61.

9 For an overview, see the article by Ivan ŽUŽEK in the official organ of the Eastern codifying Commission: “Les textes non publiés du «Code de droit canon oriental»”, in *Nuntia* 1 (1975) 23–31. A list of the accessibility of the texts published in fascicles 2–4 and 6–9 of the *Nuntia* is given in 9 (1979) 91 and 26 (1988) 84–87.

10 For a short account of the codification process and its result, see ERDŐ, *Die Quellen des Kirchenrechts* (nt. 7), 159–160; for more details, see e.g. John D. FARRIS, *The Eastern Catholic Churches: Constitution and Governance*, New York 1992, 67–106.

use of Latin, similarly to the earlier examples, was retained.<sup>11</sup> The exact sources of the various provisions of these four Codes, manifested in the textual correspondences and discrepancies of the canons pertaining to the same subjects, can be most easily determined from the special editions published and annotated by the respective Pontifical Commissions that produced them.<sup>12</sup>

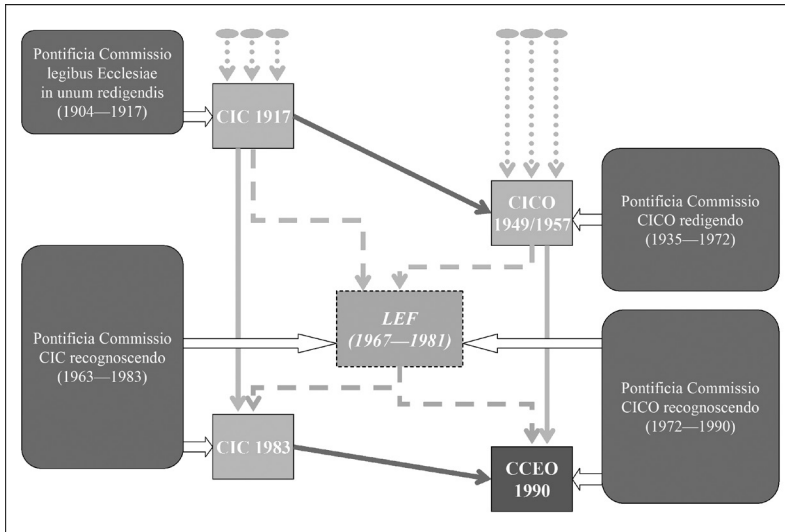
Besides the two CICs, the CICO and the CCEO, there is a fifth legal work drafted in the second part of the 20th century, which, however, was not promulgated at all. The project of a universal fundamental law valid for all members of the Catholic Church, called *Lex Ecclesiae fundamentalis* (= *LEF*), was commissioned by Pope Paul VI and was being prepared parallel to the revision of the CIC and the CICO.<sup>13</sup> The text of the *LEF*, after Pope John Paul II forebore from

- 11 The use of Latin as the language of codification in the framework of the western tradition of Church discipline was self-evident, while it provoked some opposition during the codification of Eastern canon law on both occasions. The sociolinguistic question of language selection, to our regret, falls outside the limited scope of the present study; on the *CCEO*, see Péter ERDŐ, “War die Kodifikation des katholischen Ostkirchenrechts eine Latinisierung?”, in *Folia theologica* 11 (2000) 45–54, here 52.
- 12 *CIC* of 1917: *Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione, fontium annotatione et indice analytico-alphabetico ab E.mo Petro Card. Gasparri auctus*, Typis Polyglottis Vaticanis 1974 (the annotations of sources and the index are in fact the work of the Hungarian canonist Jusztinián SERÉDI). – Out of the material of the *CICO*, the texts of Pius XII’s four *motu proprio*s with annotations of sources appeared separately in 1957 published by the Vatican Polyglott Press. – *CIC* of 1983: Pontificia Commissio «Codici iuris canonici» Authentice Interpretando, *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Città del Vaticano 1989. – *CCEO*: Pontificium Consilium de Legum Textibus Interpretandis, *Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Città del Vaticano 1995.
- 13 The text of the *LEF* was between 1967 and 1981 subjected to no less than 8 revisions. Out of these, the last schema which was officially printed is *Schema*

promulgating it, was partly incorporated into the new Codes by the two codifying Commissions.<sup>14</sup>

1.1.2 The “textual tradition” of the CCEO in the process of codification

The complete “textual tradition” of the CCEO, i.e. the way of development which the texts serving as basis for each provisions underwent in course of the 20th century codification process of canon law, is shown in the following figure:



*Legis Ecclesiae fundamentalis. Textus emendatus cum relatione de ipso Schemate deque emendationibus receptis*, Typis Polyglottis Vaticanis 1971. For its linguistic analysis with detailed terminological indices, see Franco GIUSBERTI, *La «Lex Ecclesiae fundamentalis»: un’analisi del suo linguaggio teologico, in rapporto a quello della «Lumen gentium»*, Legge e Vangelo. Discussioni su una legge fondamentale per la Chiesa (Testi e ricerche di scienze religiose 8), Brescia 1972, 341–481.

14 For a comparative analysis of *LEX* canons occurring in the *CIC* and the *CCEO*, see Ivan ŽUŽEK, “La «Lex Ecclesiae fundamentalis» et les deux codes”, in *L’année canonique* 40 (1998) 19–48.

As can be seen in the figure, the textual relations of the CCEO to the other Codes or projects mentioned above is much more complicated than suggested at first by the fact of the revision of the CICO. The material of the CCEO is not only derived directly from the CICO produced originally for the Eastern Churches and from the LEF intended for the Universal Church, but also comes from the Latin CIC of 1983, just as its forerunner, the CICO has its textual basis not only in the ancient and more recent sources of Eastern catholic canon law (indicated on the figure by small ellipses and dotted lines), but contains substantial parts literally borrowed from the 1917 Latin Code which served as its main example. In a study of the Latin of the CCEO, one should thus always consider the whole process of codification, for in various passages of its most recent work there is a detectable, sometimes even combined, impact of the different Codes produced at the earlier stages.

The gigantic work of the textual comparison of the 1546 canons of the CCEO with those of the other three Codes has recently been done by canonical scholarship.<sup>15</sup> Based on these findings, the relationship of the text of the new Eastern canons to those of the two CICs and of the CICO can be described in five possible ways. Thus the equivalent of a given CCEO canon can be found either (1) in all of the other Codes (the most probable common source in such cases is the CIC of 1917); or (2) only in the 1917 CIC (for this hypothetical case there is no example, as the canons of 1917 are always transmitted to the CCEO through one of the intermediate Codes); or (3) only in the CICO (this is the direct source, the indirect ones being those former particular or universal laws from which it is derived); or (4) only in the CIC of 1983 (mostly new legislation, analogous to that of the Latin

15 Carl G. FÜRST, *Canones-Synopse zum "Codex iuris canonici" und "Codex canonum Ecclesiarum orientalium"*, Freiburg i. Br.–Basel–Wien 1992; Joachim BUDIN – GERD LUDWIG, *Synopsis "Corporis iuris canonici". Vergleichender Normenregister der vier Gesetzbücher des katholischen Rechts*, Regensburg 2001.



Church required by the II Vatican Council); or (5) in none of the other Codes (new passages written by the codificators of the CCEO especially for the Eastern Catholic Churches).

It is to be noted that the edition indicating the sources of the CCEO, similarly to that of the CICO, omits all references to the CIC (case (4) in the above list) in spite of the abundant material correspondence, avoiding, as it were, to give the impression as if Latin law could be a formal source of Eastern law.<sup>16</sup> On the other hand, it often lists a number of references, pertaining especially to the Eastern Churches, which, besides their identical content as to legal regulation, did not in fact serve as a textual source for the wording of the actual passages.<sup>17</sup> In studying the Latin of the CCEO, we should, therefore, make a conceptual distinction between formal (juridical) sources and material (textual) sources. As the annotated editions contain only the former ones, if the two categories do not coincide, the latter ones cannot but be determined, in every single instance, by a detailed philological analysis.

16 Cf. ERDŐ, *War die Kodifikation des katholischen Ostkirchenrechts eine Latini-sierung?* (nt. 11), 49. In spite of this tendentious behaviour on part of the legislator, it is generally agreed in the literature that a not negligible part of the two Eastern Codes was taken from the respective *CICs* in identical or improved formulation. For all this, on the *CICO* see Alexander SZENTIRMAI, “The legal language of the new canon law of the Oriental Churches”, in *The Jurist* 22 (1962) 39–70, especially 41; on the *CCEO* see George NEDUNGATT, *Ancient Law in CCEO. The Interpretation of Canon 2 CCEO*, in *Ius canonicum in Oriente et Occidente*. Festschrift für Carl G. Fürst zum 70. Geburtstag, hrsg. von Hartmut ZAPP – Andreas WEISS – Stefan KORTA (Adnotationes in ius canonicum 25), Frankfurt a. M.–Berlin–Bern 2003, 87–115, here 97. 110–111.

17 The material of the sacred canons, as NEDUNGATT, *Ancient Law in CCEO* (nt. 16), 106 asserts, is in no single instance adopted by the *CCEO* in original textual form.

*1.2 The types of the sources of the CCEO*

The sources of the whole material of the CCEO can be divided into three groups: former (1) Eastern and (2) Latin Church discipline as well as (3) the modern teaching and discipline of the Universal Church. As we have seen, works belonging to group (2) are formally not regarded by the legislator to be the source of Eastern canon law, but should nevertheless be taken into consideration from a material point of view.

(1) The distribution of the texts making up the tradition of Eastern catholic Church discipline with respect to their language of production is as follows: (a) canonical collections (Antiquity): first in Greek, then translated into different national languages;<sup>18</sup> (b) the sources of Roman law received in canon law (Antiquity): primarily in Latin; (c) particular legislation of the Eastern Catholic Churches (Antiquity, Middle Ages and the Modern Era): chiefly in the respective national languages; (d) documents issued for Eastern catholics by the Apostolic See (Antiquity, Middle Ages and the Modern Era): in Latin; and (e) Eastern canon law as codified in the CICO (Modern Era): in Latin.

(2) The tradition of Latin Church discipline exerted a material influence, both direct and indirect, on the text of the CCEO only through the material of codified law, i.e. the Latin text of the Codes of 1917 and 1983.

(3) The modern universal teaching and discipline of the Church is contained (a) in the documents of the II Vatican Council published in Latin as well as (b) in the pronouncements of the Apostolic See issued also mainly in Latin.

It can be seen even from this short typology how heterogeneous a material of sources it was that the two Pontifical Commissions codi-

18 This source material, according to the calculations of Sunny Th. KOKKARAVAYIL, is the basis of 53.14% of the new Eastern canons (cc. 822); see NEDUNGATT, *Ancient Law in CCEO* (nt. 16), 107.

fying Eastern canon law had to elaborate into a single code, in which they were assisted by the fact that the overwhelming majority of these texts was either originally composed in Latin or was available in Latin translation as well.

### 1.3 *The existing literature on the Latin of the CCEO*

The scarce literature on the Latin of canonical sources is devoted in great part to the works of the 20th century codification process, and especially to the two Latin Codes. Among lexicographic tools to the CCEO there exist only an index<sup>19</sup> and a short Latin–Arabic glossary.<sup>20</sup> Since there is no special dictionary to the 1983 CIC either,<sup>21</sup> RUDOLF KÖSTLER’s classical lexicon, comprising all the vocabulary of the 1917 CIC, remains indispensable.<sup>22</sup> Of studies on the language of the CCEO there is but one: a short article giving only a list of the textual differences of canons on marriage law of the two present Codes (CIC cc. 1055–1165 and CCEO cc. 776–866) following the order of grammar, but with no treatment of the aspects of official language use and without a synchronic and diachronic linguistic analysis.<sup>23</sup> As in the case of dictionaries, the comprehensive linguistic and terminological investigation of the text of the CIC and

19 Ivan ŽUŽEK, *Index analyticus «Codicis canonum Ecclesiarum orientalium»* (Kanonika 2), Roma 1992.

20 Vincentio MISTRIH, “Lexique latin–arabe, arabe–latin du droit canon des Églises orientales catholiques avec présentation des travaux de la commission chargée de la traduction”, in *Studia orientalia christiana collectanea* 38 (1997) 5–144.

21 There are, on the other hand, two indices to the vocabulary of this Code: Xaverius OCHOA, *Index verborum ac locutionum «Codicis iuris canonici»*, Roma 1984<sup>2</sup>; Hartmut ZAPP, *Codex iuris canonici. Lemmata. Stichwortverzeichnis*, Freiburg i. Br. 1986.

22 Rudolf KÖSTLER, *Wörterbuch zum “Codex iuris canonici”*, München 1927–1929.

23 Jesús BOGARÍN DÍAZ, “El latín del CCEO (Resultados de una comparación con el CIC)”, in *Ius canonicum* 42 (2002) 161–193.

the CCEO has not yet been undertaken by anyone, so the almost seven decades old monograph by KLAUS MÖRSDORF on the legal special language of the 1917 CIC is still fundamental in this respect.<sup>24</sup> Besides these, there are finally certain publications on canon law which include some relevant *obiter dicta* on the Latinity of the CCEO as well.<sup>25</sup>

As an investigation of the Latin of the CCEO that would cover the complete source material of its canons and would consider its all linguistic substrates could only be achieved in a monograph greatly surpassing even that of MÖRSDORF, in the following we confine ourselves to the description and critical evaluation of the main linguistic features of the Code, arising from the objectives specifically set out during the work of codification.

2. The principles followed during the coordination of the text of the CCEO

For the revision of the Eastern Code, Pope Paul VI established in 1972 a new Pontifical Commission (*Pontificia Commissio «Codici iuris canonici orientalis» Recognoscendo*), among the leaders of which it was its pro-secretary (from 1977 on secretary), P. IVAN ŽUŽEK SI, a Slovenian born professor of the Pontifical Oriental Institute, who had the greatest influence on the effective work. The first schemas of the new Code were prepared by the 9 study groups of the Commission according to the guidelines adopted in March 1974. These guidelines formulate in the first place the fundamental requirements of content

24 Klaus MÖRSDORF, *Die Rechtssprache des "Codex iuris canonici". Eine kritische Untersuchung* (Veröffentlichungen der Görres-Gesellschaft zur Pflege der Wissenschaft im katholischen Deutschland, Sektion für Rechts- und Staatswissenschaften 74), Paderborn 1937 (= 1967).

25 E.g. Pablo GEFAELL, "La presentazione del Codice orientale", in *Ius Ecclesiae* 3 (1991) 344–355, here 352–353 (a general description); George NEDUNGATT, "The Teaching Function of the Church in Oriental Canon Law", in *Studia canonica* 23 (1989) 39–60, here 59–60.

regarding the nature and the individual parts of the Code, but remain silent on the formal (and, thus, linguistic) aspects of the drafting.<sup>26</sup>

The study groups formed according to topics produced 8 schemas in total, which, on the basis of the opinions received, were subjected to a re-examination (*denua recognitio*). It was only afterwards that the standardisation of the individual schemas, i.e. the coordination, harmonisation of the text of the entire Code, could take place. To this end, the presidency of the Commission created in 1984 a study group of seven persons, called *Coetus de Coordinatione*, which worked almost uninterruptedly until 1988.<sup>27</sup> The two most influential members of this Coordinating Group were the Slovenian (pro-)secretary of the codifying Commission, IVAN ŽUŽEK, and the Austrian born jurist CARL GEROLD FÜRST, professor at the University of Freiburg in Germany and consultant to the codifying Commission.<sup>28</sup>

26 For their text, see “Principi direttivi per la revisione del «Codice di diritto orientale»”, in *Nuntia* 3 (1976) 3–10.

27 On the work of the *Coetus de Coordinatione* the first overview is by Jobe ABBASS, *Coordinating the new Eastern Code*, in *Ius canonicum in Oriente et Occidente* (nt. 16), 19–36; see also Ivan ŽUŽEK, “Der Beitrag von Carl Gerold Fürst zur Revision des «Codex iuris canonici orientalis». Festrede, gehalten anlässlich der Überreichung der Festschrift zu seinem 70. Geburtstag, Universität Freiburg, 7. Februar 2003”, in *Folia canonica* 5 (2002) 211–230, here 222–227. There is something of a contradiction between the data of ABBASS, 20<sup>4</sup> and ŽUŽEK, 224: according to the former, the study group was composed of the vice-president of the Commission and 5 consultants, including the secretary (6 persons altogether), while the latter speaks of 3 consultants and 2 further experts, besides the vice-president and the secretary (7 persons altogether).

28 That FÜRST and the University of Freiburg had a lion’s share in shaping the final text of the *CCEO* is well attested by the special acknowledgment with which Pope John Paul II singled them out on the occasion of the promulgation of the Code, see his Address *Memori animo*, 25 October 1990, AAS 83 (1991) 486–493, here 490. Of the cooperation between FÜRST and ŽUŽEK a detailed account is given in the latter’s paper mentioned in nt. 27. The work of coordination in 1988 was carried out only by them and the vice-president (the so-called

The work performed by the Coetus de Coordinatione is shortly, but aptly summarised in the Preface to the promulgated Code: “This group was to see to the internal cohesion and unity of the Code, to reconcile discrepancies and ambiguities, to ensure, as far as possible, that juridical terms had a univocal meaning, to remove elements that were repetitious or less appropriate, to provide consistency in spelling and punctuation.”<sup>29</sup> These objectives show the central place of linguistic shaping in this phase of the codification process. This sort of work was coordinated first of all by FÜRST, who was assisted, as an expert in Latin, by NORBERT KILWING, lecturer of Hebrew, Greek and Latin at the Theological Faculty of the University of Freiburg.<sup>30</sup> German influence was so strong that the presidency of the Commission decided to entrust the typesetting of the 1986 version of the text (*Schema*

Coetus Minor), see ŽUŽEK, 226; ABBASS, *Coordinating the new Eastern Code* (nt. 27), 22.

- 29 *CCEO*, Praefatio, AAS 82 (1990) 1059: “Huius coetus fuit Codicis internam cohaerentiam et unitatem curare, discrepantias atque ambiguitates evitare, terminos iuridicos quatenus fieri poterat ad univocam significationem reducere, repetita minusque congrua tollere atque orthographiae necnon interpunctionis constanti usui providere.” The above English translation is from *Code of canons of the Eastern Churches. Latin–English edition. Translation prepared under the auspices of the Canon Law Society of America*, Washington, D.C. 1992, xxxiii. Cf. also ABBASS, *Coordinating the new Eastern Code* (nt. 27), 21–22; ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 27), 223–225 (with the text of the letter inviting FÜRST into the group).
- 30 ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 27), 226–227. As a matter of fact, there is no discernible trace of KILWING’s theoretical achievements in the field of either general linguistics or the studies of Latin language and literature (I have been unable to find any publication by him in the last 50 volumes of *Lanné philologique*), so it can hardly be contested that his professional recognition is dwarfed by the authority which FÜRST had already enjoyed among the scholars of canon law. The fact that his opinions, unaccounted for in his own publications, exerted nonetheless a decisive influence on the shaping of the Latin of the *CCEO* is rather explained by his close personal relations with FÜRST.

«*Codicis iuris canonici orientalis*») to a press in Freiburg, whereas its printing took place in Italy (in Grottaferrata).<sup>31</sup>

The Coordinating Group summarised the principles of linguistic standardisation and provided some explanations for it in a separate document,<sup>32</sup> to which later two alphabetical lists were added containing the general and special vocabulary to be standardised.<sup>33</sup> The work was greatly facilitated by computerised data processing, used for the first time in the history of the codifications of canon law.<sup>34</sup>

## *2.1 Principles of general language*

### *2.1.1 Description of the principles*

(1) As to orthography, the Coordinating Group adopted the following rules. (a) The spelling of Latin words is to conform to the practice of the *Thesaurus linguae Latinae* (= *ThLL*);<sup>35</sup> the changes mostly affect the assimilation of prefixes (this can be well studied in the alphabetical lists<sup>36</sup>). (b) The use of capitals is to conform basically to the practice of the CIC, so the names of all higher Church offices down to the syncellus and of the special corporate organs of Eastern law, if

31 ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 28), 225.

32 “Criteri e traccia di lavoro del «Coetus de coordinatione»”, in *Nuntia* 21 (1985) 66–79. Its first draft was written by FÜRST, see ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 28), 225.

33 “Elenco alfabetico delle modifiche ortografiche e terminologiche (aprile 1984 – giugno 1986)”, in *Nuntia* 27 (1988) 13–20; “Elenco alfabetico delle prese di posizione più significative riguardanti la terminologia giuridica”, in *Nuntia* 27 (1988) 28–36.

34 ABBASS, *Coordinating the new Eastern Code* (nt. 27), 36; cf. *Nuntia* 21 (1985) 85.

35 “Criteri e traccia di lavoro” (nt. 32), 70.

36 First of all in case of the prefix *ad*, see “Criteri e traccia di lavoro” (nt. 32), 77; “Elenco alfabetico delle modifiche ortografiche e terminologiche” (nt. 33), 13.

entitled to issue laws or administrative decrees, is to be capitalised.<sup>37</sup> (c) In punctuation, as there is no internationally agreed practice in this regard, the system used in Central Europe is to be followed (its rules are even briefly summarised).<sup>38</sup> (d) Though not mentioned in the principles, typographic elevations (*typographische Auszeichnungen*) also belong here, first of all quotation marks and italics, the use of which is to be avoided.<sup>39</sup>

(2) While the principles are equally silent on the standardisation of vocabulary and morphology, the two word lists show a clear tendency of replacing late antique and medieval forms of Canonical Latin with their Classical Latin counterparts.<sup>40</sup>

(3) In the domain of syntax, special attention is given to the uniform and consistent use of moods. According to this, indicative is to be used instead of subjunctive in relative and conditional clauses (i.e. after *qui*, *si* and *nisi*)<sup>41</sup> as well as in temporal clauses introduced by the conjunctions *antequam*, *quatenus* and *quoties*.<sup>42</sup> Not mentioned in the principles, though belonging to syntax, is the standardisation and classicisation of the use of government and conjunctions.

### 2.1.2 Evaluation of the principles

Generally. The formulation of the principles is a great step forward with respect to the methodology of earlier codifications; their content and structure, however, is not yet complete and refined enough: they state their objectives of general and special language

37 “Criteri e traccia di lavoro” (nt. 32), 69–70.

38 “Criteri e traccia di lavoro” (nt. 32), 68–69.

39 “Elenco alfabetico delle modifiche ortografiche e terminologiche” (nt. 33), 15. 20.

40 “Criteri e traccia di lavoro” (nt. 32), 77–79 (list of words); “Elenco alfabetico delle modifiche ortografiche e terminologiche” (nt. 33), 13–20; “Elenco alfabetico delle prese di posizione” (nt. 33) 28–36.

41 “Criteri e traccia di lavoro” (nt. 32), 70–72.

42 ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 27), 227.



miscellaneous, and several important aspects appear only implicitly in the lists of changes. In spite of thorough grounding for special language use, there is, unfortunately, a lacking awareness of general language (linguistics), e.g. the members of the Coordinating Group do not state as a matter of principle which historically existing variety of the Latin language they intend to adopt. From their silence it can be inferred that they basically adhere to Canonical Latin, while the imposition of the phonetic norm laid down in the ThLL and of the morphologic norm codified in modern descriptive grammars points to the direction of such classicising tendencies which are not in full accord with the linguistic traditions of the Latin of canon law.<sup>43</sup> This conflict, regrettably, remains unaddressed in the principles.

Specifically. The standardisation of orthography and punctuation is an extremely welcome achievement, serving indeed as an excellent example for a long overdue reform of other fields of official ecclesiastical Latinity as well. Although the classical norm adopted as a basis for orthography<sup>44</sup> may appear a little unfamiliar to some

43 The parallel life of these two traditions within ecclesiastical practice has been problematic and full of tensions since the Renaissance, see Zoltán RIHMER, *Klasszicizmus és purizmus a XX. század közepének egyházi latin nyelvében* [Classicism and purism in the Ecclesiastical Latin of the mid-20th century] (paper read at the 6<sup>th</sup> Hungarian Conference on the Studies of Antiquity, 27–29 May 2004, Faculty of Philosophy, ELTE University, Budapest], in course of publication).

44 The assimilative spelling of Latin compounds was chiefly propagated in antiquity by the grammarians, while everyday practice, as attested by epigraphic and manuscript evidence, seems to depart from these, cf. STOTZ, *Handbuch* (nt. 5), III 328–329 (§ 285). In texts written in Late Antiquity consistent dissimilation is an almost general phenomenon, which is gradually reversed during the Middle Ages when, under vernacular influence, assimilation takes the lead (for antecedents in Vulgar Latin, see Veikko VÄÄNÄNEN, *Introducción al latín vulgar* [Biblioteca universitaria Gredos, I: Manuales 4], Madrid 1988<sup>3</sup>, 118–120 [nt. 113]). In the official ecclesiastical use of Latin there is some sort of a linguistic norm, slowly developing from the age of the Renaissance, concerning the

people, yet it would have been hardly possible to find a more suitable common denominator in the past history of Latin. On the other hand, as it is a modern linguistic model that provided a basis for the standardisation of punctuation, its adoption should have been perhaps more thoroughly justified. In our judgement, however, this solution, i.e. the rejection of a punctuation based on rhetoric (peculiar to the Romance languages) and the introduction of a punctuation based on syntax (equally followed in German and in Hungarian) is in a particularly fortunate agreement with the very structure of the Latin language, as demonstrated by longer textual witnesses surviving from the Classical Age.<sup>45</sup> The elimination of typographical elevations is a regrettable regression in this process, perhaps traceable to the demand for extreme (sometimes even mistaken) classicisation. The changes in morphology are likewise fortunate, if the objective was to bring Canonical Latin closer to the classical norm most wide-spread and taught in contemporary schools. In selecting variants of vocabulary special languages admit of relatively less freedom, so the elimination of such discrepancies can only be beneficial to a law code. Syntactical changes are in a great part due to a similar standardisation made on

distribution of assimilated and dissimilated prefixes, which is equally reflected in the text of the two *CICs* and the *CICO* as well as of the other documents of the Apostolic See. It is this practice that the *CCEO* renounces, returning to the consistent adherence to the rules of assimilation prescribed in the ancient (classical) grammars. See also BOGARÍN DÍAZ, “El latín del *CCEO*” (nt. 23), 191.

- 45 E.g. the laws in epigraphic form, the *Res gestae Divi Augusti* or the *Laudatio Murdiae* and *Thuriae*, see Rudolf W. MÜLLER, *Rhetorische und syntaktische Interpunktion. Untersuchungen zur Pausenbezeichnung im antiken Latein* (Diss.), Tübingen 1964; E. Otha WINGO, *Latin punctuation in the Classical Age* (Ianua linguarum, Series practica 133), The Hague–Paris 1972 (BOGARÍN DÍAZ, *El latín del CCEO* [nt. 23], 192 is incorrect in denying the existence of punctuation in ancient Rome). On later developments, see Malcolm B. PARKES, *Pause and effect. An introduction to the history of punctuation in the West*, Berkeley–Los Angeles 1993.

the basis of existing choices and thus unobjectionable from a linguistic point of view, whereas another part of them represent a serious interference in the system of Latin grammar. The modification of the rules of subjunctive use is, in our opinion, the most important as well as the most problematic feature of the Latin of the CCEO, which will, therefore, be studied more carefully below, in section **V 3 a**.

## *2.2 Principles of special language*

### *2.2.1 Description of the principles*

Since Canonical Latin has no orthography and grammar of its own, i.e. in which it would differ from other varieties of literary Latin,<sup>46</sup> the principles of special language governing the Latin of the CCEO apply only to the content and use of **v o c a b u l a r y**.

(1) The first aspect of the special language standardisation of the Eastern Code is the **c o r r e c t i o n** of **c e r t a i n** **t e c h n i c a l** **t e r m s** of the Latin law. This means that certain terms of the Latin law do not figure at all (because of the Eastern nature of the Code), while others are replaced by different words with the same meaning (stylistics), and others are employed according to their meaning in a consistent and uniform way (terminology).<sup>47</sup>

(2) The principles of content governing the codification result in the **r e t e n t i o n** of **e x i s t i n g**, or, in case of necessity, the **i n t r o d u c t i o n** of **n e w** **t e c h n i c a l** **t e r m s** **p r o p e r** to East-

46 Canonical Latin has, of course, its own peculiar orthographic and grammatical features (cf. below, nt. 95), but these always come from a certain historical period of the Latin language, or even from a particular register of it. On the other hand, the overwhelming majority of its vocabulary is of inner formation, i.e. created separately and independently from general everyday language.

47 “Criteri e traccia di lavoro” (nt. 32), 72–77 (with detailed discussions on terminology); “Elenco alfabetico delle modifiche ortografiche e terminologiche” (nt. 33), 13–20 (only a list); “Elenco alfabetico delle prese di posizione” (nt. 33) 28–36 (with short reasoning at occasions).

ern law. This fell primarily within the competence of the individual study groups.

(3) It was, on the other hand, the specific task of the Coordinating Group to standardise the actual forms in which the old and new technical terms are to be used, i.e. to determine linguistically set phrases for the technical terms consisting of more than one word.<sup>48</sup>

(4) Not belonging closely to standardisation of special language, yet to be mentioned here is the uniform use of those synonyms of general language which cannot be regarded as lexical variants, i.e. the elimination of stylistic variants.<sup>49</sup>

### 2.2.2 *Evaluation of the principles*

There is but one critical observation that can be raised regarding the above principles: namely that their explicit formulation, except for the standardisation of terminology, is lacking, so that they can only be inferred mainly from the material included in the lists of changes. As far as their content is concerned, the principles meet perfectly the demands of modern techniques of legislative drafting, or even those of legal special language itself.<sup>50</sup> The role played here by the members of the Coordinating Group, familiar (also) with secular law, is not only extremely fortunate, but is definitely exemplary for the codified Latin law and, what is more, for the entire universal legislation of the Catholic Church.<sup>51</sup>

48 “Criteri e traccia di lavoro” (nt. 32), 72.

49 “Criteri e traccia di lavoro” (nt. 32), 77–79 (list of words); “Elenco alfabetico delle modifiche ortografiche e terminologiche” (nt. 33), 13–20; “Elenco alfabetico delle prese di posizione” (nt. 33) 28–36.

50 For a similar approach in Antiquity, see Quintilian’s remark (*Institutio oratoria* 5, 14, 34): *iuris consulti, quorum summus circa verborum proprietatem labor est...*

51 FÜRST and his colleagues not only understood what codification as a means of legal technique meant, but took all the steps logically following from this,

3. The realisation of the coordinating principles:  
some features of the Latin of the CCEO

The Coordinating Group carried out the above principles in the text of the schema of the Code with great consistency and effectiveness, so that the Latin of the CCEO is fundamentally uniform in observing the classical linguistic norm. In what follows, therefore, while providing illustration for the main changes, we shall point out especially those features which represent either a departure from the principles or make us aware of the problems of their realisation.

3.1 Features of general language

3.1.1 Orthography

a) Classical orthography is generally adhered to throughout the Code, only in a few instances can the opposite be observed. E.g. *ae* instead of *oe* is found in the following words: *coelum* (c. 373) and *coelestis* (c. 410; c. 481; the CIC has *coelum*, but *caelestis*), whereas the classical form is present in *caelebs* (c. 253, § 1; c. 374) and in *caelibatus* (c. 373; cc. 396–397; the CIC has *caelibatus* 4 times and *coelibatus* once). Though the *oe* spelling of some words originally containing *ae* is a characteristic of Canonical Latin traceable back to late antique antecedents,<sup>52</sup> this phenomenon unique in the CCEO is better ex-

down to the lowest level of special language standardisation. For a short exposition of the problem, see Zoltán RIHMÉR, “A szentszéki dokumentumok műfajainak tipológiája és terminológiája (I. rész)” [Typology and terminology of the document genres of the Apostolic See (Part I)], in *Kánonjog* 6 (2004) 27–74, here 36<sup>44</sup>. For historical and theoretical aspects, see also Péter SZABÓ, *A CCEO mint a keleti egyházak első „Kódexe” (?)*. *Megjegyzések néhány keleti kollekció jogtechnikai arculatához* [The CCEO as the First “Code” of the Eastern Churches (?). Remarks on the Legal Technical Aspect of some Eastern Collections], *Dum spiro, doceo*. Ünnepi kiadvány Huszti V. 85. születésnapjára, szerk. Béla SZABÓ – Pál SÁRY (Ünnepi tanulmányok 6), Miskolc 2000, 293–311.

52 Cf. STOTZ, *Handbuch* (nt. 5), III 85 (§ 62).

plained by the (false) Greek etymology of the word *coelum*<sup>53</sup> and its consequently (yet only supposedly) more Eastern flavour.

b) P u n c t u a t i o n, in spite of its principles strictly based on syntax, here and there appears to be inappropriate, or even misleading.

(1) Sometimes there is a c o m m a m i s s i n g: (a) at clause boundaries, e.g. c. 150, § 2; c. 585, § 4; (b) before conjunctions and intensifying particles, e.g. *necnon* (passim); *praesertim* (c. 140; c. 617; c. 905); *immo* (c. 830, § 3); *tamen* (c. 828, c. 1); and (c) in the participle constructions “ablativus absolutus” (c. 348, § 2) and “participium coniunctum” (c. 904, § 2).<sup>54</sup> Examples under (a) and (b) can probably be explained by the influence of punctuation practices of some modern languages, the reasons, however, for cases under (c) are the violation or, on the contrary, too rigid application of an essentially sound principle.<sup>55</sup>

(2) The use of u n n e c e s s a r y c o m m a s is evidently the result of the lack of due linguistic reflectedness, e.g. *Episcopi<sub>2</sub> quem prae ceteris dignum et idoneum coram Domino censent<sub>2</sub> eligant* (c. 183, § 1). Here a comma would only be meaningful if the object *eum* (expanded by the clause) were also present before it, but now it impedes the

53 Alois WALDE – Johann B. HOFMANN, *Lateinisches etymologisches Wörterbuch* (Indogermanische Bibliothek, II: Wörterbücher), I–II, Heidelberg 1965<sup>4</sup>, I 131, s.v. 2. *caelum*.

54 For further examples, see BOGARÍN DÍAZ, “El latín del CCEO” (nt. 23), 167–168.

55 “Criteri e traccia di lavoro” (nt. 32), 69: “l’ablativo assoluto e il participio congiuntivo (da evitarsi se possibile) si devono separare con delle virgole solo se contengono più di due parole.” Indeed, constructions with non-finite verbs are as equal elements of clauses as are other parts of speech constructed otherwise, and are, therefore, justly lacking commas on both sides (BOGARÍN DÍAZ, “El latín del CCEO” [nt. 23], 192 is incorrect in excluding here the influence of modern languages), yet occasionally they may well appear in contexts in which, in order to avoid misunderstanding, it is absolutely necessary to set them off with commas regardless of their length.

continuous reading of the sentence, creating the awkward impression as if the relative pronoun *quem* referred to *Episcopi*. The cause of this problem is that in Latin, contrary to several modern languages, it is much more freely possible to omit a referring particle from the main clause, the bearing of which on punctuation was, however, not studied by the editors of the CCEO, who instead applied mechanically the main rule known to them from their mother tongue. Another example: *sive<sub>2</sub> quatenus manifestat personalitatem illius, sive<sub>2</sub> quatenus fons est iurium patrimonialium* (c. 666, § 1). The use of commas before the two *quatenus*-clauses makes them appear as embedded subordinate clauses, impeding thus to realise that it is precisely these clauses that the double conjunction *sive – sive* refers to. The problem here, again, is the insensitivity to the linguistic phenomena upon which punctuation is based; for conjunctions and particles must stand without commas not only when they refer to words and phrases (e.g. *sive/etiam\_ Episcopus eparchialis*), but also when they express syntactic relations between entire clauses (e.g. *sive\_ quod pater fecit, sive\_ quod filius*, but cf. *sive\_ id<sub>2</sub> quod pater fecit, sive\_ id<sub>2</sub> quod filius*).

### 3.1.2 Vocabulary and morphology

a) In neologisms one can e.g. observe the modification of the *CIC* substrates: *praevidentia socialis* (*CIC* c. 231, § 2; c. 1274, § 2) → *praecaevitia socialis* (*CCEO* c. 192, § 5; c. 390, § 2; c. 409, § 2; c. 1021, § 2; c. 1410). Completely new words not found in the *CIC* were probably coined by the codifying study groups; they can be either of Greek origin, as e.g. *irenismus* (c. 905),<sup>56</sup> or of inner formation, e.g. *ultimatim* (c. 178).<sup>57</sup>

<sup>56</sup> The extensive use of the ending *-ismus* was general in Medieval Latin, see STOTZ, *Handbuch* (nt. 5), II 306–307 (§ 58.1–4).

<sup>57</sup> For ancient and medieval examples, see STOTZ, *Handbuch* (nt. 5), II 376 (§ 99.3).

b) The forms of certain pronouns and numerals differ from the classical norm. The marked dissimilative tendency attested in the changes *iis* → *eis*, *iisdem* → *eisdem* and *ii* → *ei* (passim) is a peculiarity of Preclassical Latin.<sup>58</sup> The singular use of the pronoun *singuli*, as e.g. in *singulum scrutinium* (c. 107, § 1; c. 166, § 1), is similarly non-classical.<sup>59</sup>

c) In the declension there are also a few non-classical forms. The genitive of words of Greek origin is likewise formed in a Greek manner, e.g. *haereseos* (c. 762, § 1, n. 2; cf. CIC c. 1041, n. 2), *exegeseos* (c. 350, § 2), *catecheseos* (c. 617; c. 625).<sup>60</sup> The genitive plural of the word *ius*, instead of the classical form *iurum* known from the sources of ancient Roman law, is the form *iurium* generally established in canon law (both in the CIC and in the CCEO).<sup>61</sup>

d) Conjugation, on the other hand, is especially characterised by the elimination of non-classical (archaic and later) forms. Such phenomenon is e.g. the change of the 2nd imperative to the indica-

58 Instead of *ei* and *eis* common in Old Latin, the most frequent forms in Classical Latin are those with the *i*-, see Raphael KÜHNER – Friedrich HOLZWEISSIG, *Ausführliche Grammatik der lateinischen Sprache. I: Elementar-, Formen- und Wortlehre*, Hannover 1914<sup>2</sup>, 590–591 (§ 133, 2); Manu LEUMANN, *Lateinische Grammatik. I: Lateinische Laut- und Formenlehre* (Handbuch der Altertumswissenschaft II 2, 1), München 1977<sup>[6]</sup>, 467 (§ 371, α–β).

59 According to KÜHNER–HOLZWEISSIG, *Elementar-, Formen- und Wortlehre* (nt. 58), 645 (§ 150, 4), *singulus* occurs only in pre- and postclassical texts. Here the two Latin Codes adhere to the classical norm (for the 1917 CIC, see KÖSTLER, *Wörterbuch zum CIC* [nt. 22], 330 b).

60 In Classical Latin such words normally end in *-is*, see LEUMANN, *Lateinische Laut- und Formenlehre* (nt. 58), 458 (§ 365, 3). The Greek ending *-eos*, appearing primarily in the prose of the imperial age (cf. KÜHNER–HOLZWEISSIG, *Elementar-, Formen- und Wortlehre* [nt. 58], 363 [§ 79, 3]), becomes quite frequent in Medieval Latin, see STOTZ, *Handbuch* (nt. 5), III 90 (§ 40.6). In the two CICs the genitive of the words *haeresis* and *catechesis* in every case adheres to the classical norm.

61 This phenomenon has also a medieval origin, see STOTZ, *Handbuch* (nt. 5), III 86 (§ 38.3).



tive: *esto* → *est* (e.g. c. 361, § 2; cf. CIC c. 262).<sup>62</sup> The perfect of the auxiliary in compound passive forms is always replaced by the imperfect (often with a concomitant change to the indicative): *fuertit statuta* → *est statuta* (e.g. c. 1489, § 1; cf. CIC c. 8, § 1).<sup>63</sup>

### 3.1.3 Syntax

a) Less important or less general problems are the following

(1) Incorrect usage of enclitic particles: *magistrorum in sua quisque scientia vere peritorum* (c. 340, § 1), where the word *quisque* should also have been inflected (in this case put in the genitive). There is an error of word order in the clause *ius recipiendi spectat quoque ad parochum* (c. 898, § 3), for the enclitic particle *quoque*, at least in Classical Latin, is always to follow the word it refers to<sup>64</sup> (thus the correct order is: *ad parochum quoque spectat*). In Modern Latin, however, it is the enclitic nature that prevails, so what authors only care about is that *quoque* should be placed after the first item of a (predicative or attributive) construction.<sup>65</sup>

62 The 2nd (or “future”) imperative is one of the characteristics of the Latin of the laws of imperial Rome, see DE MEO, *Lingue tecniche del latino* (nt. 4), 102–103.

63 The regular use of the perfect of *esse* in such passive forms is a medieval practice traceable to Late Antiquity, cf. STOTZ, *Handbuch* (nt. 5), III 328–329 (§ 64). For the same in Vulgar Latin, see VÄÄNÄNEN, *Introducción* (nt. 44), 226—228 (n. 298).

64 Johann B. HOFMANN – Anton SZANTYR, *Lateinische Grammatik. II: Lateinische Syntax und Stilistik. Mit dem allgemeinen Teil der lateinischen Grammatik* (Handbuch der Altertumswissenschaft II 2, 2), München 1965, 485 (§ 258); Raphael KÜHNER – Carl STEGMANN, *Ausführliche Grammatik der lateinischen Sprache. II: Satzlehre*, hrsg. von Andreas THIERFELDER, I–II, Hannover 1976<sup>5</sup>, II 53–54 (§ 159, 3, Anm. 3) and 637.

65 Cf. Johann PH. KREBS – Joseph H. SCHMALZ, *Antibarbarus der lateinischen Sprache. Nebst einem kurzen Abriß der Geschichte der lateinischen Sprache und Vorbemerkungen über reine Latinität*, I–II, Basel 1886–1888<sup>6</sup>, II 426. The phenomenon occurs passim in the 1917 *CIC* (e.g. already in c. 1: *Ecclesiae quoque*

(2) Incorrect government is found in the following constructions: *alumni cultura generali callentes* (c. 347; correctly: c. 289, § 2): *callere* normally governs the accusative;<sup>66</sup> *catholicitas in meliorem lucem ponatur* (c. 604): in such cases Classical Latin uses the ablative after in;<sup>67</sup> *scrutatores assumi possunt inter presbyteros et diaconos* (c. 71, § 1): as it is about the election of the tellers out of, not in(to), a group of people, the correct government of *assumi* is *ab / ex / de* + ablative.<sup>68</sup>

(3) Incorrect is the mood in the following consecutive clause: *monasterium Patriarchiae subiectum est ita, ut ipse solus eadem iura et obligationes habet ac Episcopus eparchialis* (c. 486, § 2). In such cases subjunctive is to be used even according to the Commission's principles.<sup>69</sup>

b) Among the syntactic phenomena of the CCEO there are, however, some more serious problems.

(1) Nouns denoting abstract concepts and functioning as agents are put in Classical Latin in the pure ablative,<sup>70</sup> whereas the Code, following a medieval tradition, often uses “*ablativus auctoris*” together with the preposition *a(b)*, e.g. *a iure collatus* (c. 224, § 3); *a traditione statutus* (c. 708).

*orientalis disciplina*), whereas in the 1983 *CIC* the word *quoque* is used mainly in adherence to the classical norm.

66 Cf. *ThLL* III, 1906/12, 16637–69, s.v. *calleo* II B. For the type *callere in* + ablative, some postclassical examples are given by KREBS–SCHMALZ, *Antibarbarus* (nt. 65), I 227.

67 Cf. *ThLL* VII 2, 2, 1970/79, 1909<sub>75–77</sub>, s.v. *lux* Caput I, I A 1 b a.

68 Cf. *ThLL* II, 1900/06, 932<sub>46–50</sub>, s.v. *adsumere* II, where the accusative is found exclusively with complements answering to the question ‘to where?’.

69 Cf. “Criteri e traccia di lavoro” (nt. 32), 72: “nelle frasi [...] consecutive si continua usare il congiuntivo secondo le regole della sintassi latina.”

70 Cf. “Elenco alfabetico delle modifiche ortografiche e terminologiche” (nt. 33), 17: “iure, tt [= termine tecnico – Z.R.] (sostituisce «a iure», «in iure» e equivalenti).”

(2) On the other hand, a somewhat doctrinaire classicising tendency is reflected in the reinterpretation of the double conjunctions peculiar to the language of canon law: *ita ut* → *ita, ut* (39 instances), or *ita* [verb], *ut* → [verb] *ita, ut* (4 instances). Here we cannot speak of modernisation, because the moving of the referring particle of the main clause (*ita*) to the subordinate clause as well as its (semantic and/or morphologic) adhesion to the conjunction already present there (*ut*) is found in several modern languages (e.g. Eng. *so that*, Germ. *so daß*, Hung. *úgyhogy*).

(3) An extremely striking phenomenon is the moving of enclitic conjunctions from the second place of the clause to the end of the first noun phrase, e.g. *celebratio verbi Dei vero opportune foveatur* (c. 607), or *nulla auctoritas inferior a u t e m nova impedimenta dirimentia statuere potest* (c. 792).<sup>71</sup> These changes are not aimed at a direct modification of Latin conjunction use, but occur as secondary consequences of some principles of special language (for details see below, section **V 3 b**).

(4) The most general grammatical feature of the Latin of the CCEO is the use of the indicative instead of the subjunctive in conditional and temporal clauses, based on the principle described above (under (3) in section **III 1 a**). Typical examples for this modernising tendency are as follows: *si casus ferat* → *fert*; *nisi aliter iure caveatur* → *cavetur*; *qui consulto omiserit* → *omisit*.<sup>72</sup> For an individual example: *Infans [...], qui in eo versatur vitae discrimine, ut prudenter praevideatur moriturus, antequam usum rationis at t i n g i t, licite baptizatur* (c. 681, § 4).<sup>73</sup>

71 Cf. “Criteri e traccia di lavoro” (nt. 32), 70.

72 As estimated in “Criteri e traccia di lavoro” (nt. 32), 71, there are altogether more than 3000 occurrences.

73 In this case the above modification, motivated by the principles, cannot even be deemed modernisation, since *attingere* expresses an irreal condition even from a modern point of view: it is hardly probable for the infant to reach the

### 3.2 Features of special language

#### 3.2.1 Correction of certain technical terms of the Latin law

(1) The omission of the characteristically Latin juridical institutes of the CIC (e.g. *poenae latae sententiae*) cannot be interpreted in the framework of linguistic tendencies.

(2) On the other hand, the substitution of the terms of the Latin law with other ones reveals some underlying linguistic intentions. Changes like *depositio* → *testimonium*, *honorarium* → *remuneratio*, *coniugium* → *matrimonium* restore classical technical terms, whereas the change *tabularium* → *archivum* reflects modernisation in special language. A new Eastern terminology becomes apparent in changes of the type *fidelis* → *christifidelis* and *incardinatio* → *ascriptio*, while the correction *matrimonium contrahere* → *matrimonium celebrare* explicitates an ancient Eastern concept, more of a theological-liturgical than of a legal nature.<sup>74</sup>

(3) Since in the principles as well as in the literature on the CCEO great emphasis is laid on the consistent and uniform use of the already extant terminology of the Latin law (e.g. *officium*, or *sodalis / membrum*), we can dispense with its analysis here.

#### 3.2.2 Use of technical terms proper to Eastern law

(1) Retention of earlier terms of the Eastern tradition. Instead of concepts of Latin constitutional law the CCEO uses their Eastern counterparts, e.g. *dioecesis* – *eparchia*; *Ordinarius* – *Hierarcha*;

use of reason, if he is surely to die before it. In such cases even modern languages would use conditional, e.g. Hungarian (*mielőtt eljutna* ‘before he would reach’) or French (*avant que* + subjonctif). The rendering of *attingit* with the indicative in the German or English translation of the CCEO can rather be attributed to the slavish adherence to the mood system of the Latin original than to the rules of grammar proper to these languages.

<sup>74</sup> Cf. BOGARÍN DÍAZ, “El latín del CCEO” (nt. 23), 190.

*Vicarius episcopalis* – *Syncellus*; *vicarius foraneus* – *protopresbyter*.<sup>75</sup> In place of Latin liturgical expressions of medieval origin the Eastern Code preserves the vocabulary of ancient patristic language: *missa* (*sacrificium*) – *Divina Liturgia*; *divinum officium* – *laudes divinae*.

(2) Examples for new terms introduced without antecedents are found mainly in the field of constitutional law and of the law of the religious: *Conventus Hierarcharum plurium Ecclesiarum sui iuris* (the *sedes materiae* is c. 322); *Societas vitae communis ad instar religiosorum* (the *sedes materiae* is cc. 554–562).

### 3.2.3 Standardisation of technical terms as set phrases

The use of technical terms consisting of more than one word is determined in the Latin canonical tradition rather by stylistic considerations. Putting these aside, the CCEO uses every such term with the same word order, in which attributes normally follow the word they belong to,<sup>76</sup> and can precede it only in some

75 For the different notional content of the elements of the pairs *Episcopus* – *Episcopus eparchialis*, or *Hierarcha* – *Hierarcha loci*, see ABBASS, *Coordinating the new Eastern Code* (nt. 27), 26–28.

76 According to KÜHNER–STEGMANN, *Satzlehre* (nt. 64), II 605–611 (§ 246, 7–9), the basic rule in Classical Latin, traceable to Indoeuropean word order, is the preceding of adjectival and numeral attributes, which admits of several exceptions. Demonstrative pronouns and possessive attributes formed of nouns normally precede, possessive pronouns follow the head of the phrase. In the language of ancient Roman law, on the other hand, there is an interesting duality: in the expressions inherited from archaic official language, i.e. from the texts of the sources of law of the republican period, the attribute always follows its noun (e.g. *praetor peregrinus*, *opus novum*, *dolus malus*), while in the language of jurists and, later on, of imperial constitutions we frequently find the opposite order (e.g. *ad exhibendum actio*, *in integrum restitutio*, *bona fides*), see Wilhelm KALB, *Das Juristenlatein. Versuch einer Charakteristik auf Grundlage der Digesten*, Nürnberg 1888<sup>2</sup> (= Aalen 1984), 46–47 and *Wegweiser in die römische Rechtssprache für Absolventen des Humanistischen Gymnasiums mit Übersetzungsbeispielen aus dem Gebiete des römischen Rechts*, Leipzig 1912

exceptional, previously defined cases. To illustrate this with an example from constitutional law: *auctoritas competens ecclesiastica* and *auctoritas superior*, but at the meeting of the two types: *superior auctoritas administrativa*. The longest set phrase of a technical term is from marriage law: *forma celebrationis matrimonii iure praescripta* (c. 796, § 1; c. 810, § 1, n. 3; c. 827; cc. 834–835; c. 845, § 1; c. 846, § 3; c. 847; c. 848, § 1; c. 852; c. 859, § 2; c. 1372, §§ 1–2).

### 3.2.4 Elimination of stylistic variants

(1) In order to strengthen the juridical nature of the Code, the Coordinating Group replaced those words of a group of synonyms which it felt to be stylistically marked with their unmarked, neutral counterparts among particles (e.g. *haud* / *non* → *non*; *insimul* / *simul* → *simul*), verbs (e.g. *nequit* / *non potest* → *non potest*;<sup>77</sup> *(ne)fas est* / *(non) licet* → *(non) licet*), as well as nouns (e.g. *proles* / *liberi* / *filii* → *filiū*) and pronouns (e.g. *ipsemet* / *ipse* → *ipse*).

(2) Prepositions and types of government used parallel to, or instead of, different classical forms in the special language of (canon) law from Late Antiquity onwards were abandoned or confined to their classical use by the editors of the CCEO, e.g. *in quantum* / *quatenus* → *quatenus*; *iuxta* / *secundum* → *secundum*; *quoad* / *circa* → *circa*; or *dispensare super* / *in* / *ab* + ablative → *dispensare ab* + ablative.<sup>78</sup>

(= Aalen 1984), 9–11. BOGARÍN DÍAZ, “El latín del CCEO” (nt. 23), 191 also refers to the fact that the order “noun – attribute” became common only in Late Latin; see VÄÄNÄNEN, *Introducción* (nt. 44), 262 (n. 356).

77 According to BOGARÍN DÍAZ, “El latín del CCEO” (nt. 23), 190, the “periphrastic” *non possum* is a more modern, whereas the contracted *nequeo* is a more archaic form, but this can hardly be proved. It is better, therefore, to use the current categories “stylistically unmarked” and “marked”.

78 The preposition *super* with the meaning of *de* is not quite typical of Classical Latin; into legal language it was introduced by Q. Cervidius Scaevola, see

## General conclusions

I. In the linguistic coordination of the text of the CCEO one can detect basically three different tendencies, which run parallel or complementary to one another.

a) **Standardisation** or, rather, **formalisation** (pursuing mainly classical linguistic ideals). This process, on the one hand, is a logical result of the adoption of codification as a means of legal technique and a natural consequence of the use of modern legal special language; while, on the other hand, it is averse to historical attitude, thrusting into the background the principle of being based on the sources (*Quellenmäßigkeit*). Since these two concepts cannot be maintained at the same time, the Church is bound to decide which one is to be preferred. This decision had been taken irrevocably in the beginning of the 20th century by Pope Pius X, and was carried out in the hitherto most perfect way in the end of the same century by the editors of the CCEO.<sup>79</sup>

b) **Simplification** (pursuing classical linguistic ideals in both grammar and style). This process was necessitated by the inherent principles of modern legal special language, which do not pay regard to linguistic richness or aesthetic quality. Again, it is two contrary concepts that oppose each other here; and the role played by legislation in modern societies requires the absolute priority of the former one.<sup>80</sup>

Wilhelm KALB, *Roms Juristen, nach ihrer Sprache dargestellt*, Leipzig 1890, 105. In Canonical Latin it occurs frequently from the earliest times (for the 1917 *CIC*, see KÖSTLER, *Wörterbuch zum CIC* [nt. 22], 343 a, s.v. *super* II b), and is not entirely removed from the *CCEO* either (cf. c. 183, § 3; c. 1203; c. 1214; c. 1233, § 2; c. 1318, § 3).

<sup>79</sup> Cf. what is written above, in nt. 51, as well as the literature cited therein.

<sup>80</sup> Cf. GEFAELL, “La presentazione del Codice orientale” (nt. 25), 352–353: “il ruolo della lingua ufficiale di promulgazione del codice doveva servire ad uno scopo strumentale, sempre al servizio dei principi rettori della funzione legislativa.

c) *Modernisation* (pursuing contemporary, not Latin, linguistic ideals). Similarly to the previous ones, this process also works against another aspect: at the expense of the grammatical system of Latin (or, if you like, the spirit of the Latin language). Indeed this system underwent, during the long history of Latin, several transformations and changes, but the core of its rules, firmly established in the Classical Age and slightly expanded in the Middle Ages, has remained more or less intact. Therefore, any unnecessary or excessive interference to that is considerably disquieting.

2. The coordination of the CCEO has brought about, from a linguistic point of view, the following outstanding achievements:

a) In general language, the most warmly welcome phenomena are the uniform *punctuation* based on syntactical principles, which departs positively from the less consistent, rhetorical punctuation of the Latin documents produced in the Roman Curia, as well as the due and adequate *neologisms*, surmounting the obstacles generated by classicistic (sometimes even puristic) lexicological preferences which dominated curial usage for one and a half centuries.

b) In special language, particularly valuable characteristics of the CCEO are its nearly perfect *conceptual precision and consistency* as well as the presentation of *millennial juridical institutes* in a modern, refined form.

3. The above linguistic study has, however, pointed out some *disquieting phenomena* of standardisation as well. Setting aside minor problems, e.g. rigidity in applying the rules of punctuation or changes occasionally contrary to the principles, we should

Tali principi sostanziali non andavano, di conseguenza, sacrificati a favore della semplice bellezza dello strumento. [...] In definitiva, si volle subordinare gli aspetti puramente stilistici, di eleganza e varietà linguistica, agli scopi prettamente giuridici e legislativi che spettavano alla commissione.” A little more reserved is BOGARÍN DÍAZ, “El latín del CCEO” (nt. 23), 193.



like here to deal in more detail with the excessive interference to the grammar of Ancient (Classical) Latin chosen as a basis for standardisation. The same was also noticed by the members of the codifying Commission, when, regarding the Latinity of the last schema, they expressed grievances at the elimination of the subjunctive and at the misplacement of enclitic conjunctions. The special study group established to assess the reflections<sup>81</sup> refused these criticisms with the statement: “Regarding the Latin [of the schema], an attempt has been made to use a grammatically correct as well as a juridically uniform, clear and simple style which is readily accessible even to those whose language is very distant from the syntactic structure of Latin.”<sup>82</sup> In light of this reply it is worth examining the two most striking linguistic modifications which affect not simply spelling, vocabulary or style,<sup>83</sup> but the very grammatical structure of the Latin language. We are fully aware that what follows is bound to arise objections on the part of those whose work is going to be examined, yet we are convinced that a linguistic analysis of linguistic phenomena cannot be simply discarded by appealing to the “spirit” of codification.

81 The “Coetus de Expensione Observationum”, which held its sessions in September 1987 and January 1988, was composed of the vice-president, the secretary and 7 consultants of the a codifying Commission, including also Carl G. FÜRST, see ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 27), 228.

82 “Le osservazioni dei membri della Commissione allo «Schema Codicis iuris canonici orientalis» e le risposte del «Coetus de expensione observationum»”, in *Nuntia* 28 (1989) 11: “Circa la lingua latina si è cercato di usare uno stile grammaticalmente corretto e giuridicamente uniforme, chiaro, semplice e di facile accesso anche a coloro la cui lingua è molto distante dalla struttura sintattica di quella latina.”

83 For different approaches of the concept of style in Latin, see the fundamental work of Wolfram Ax, *Probleme des Sprachstils als Gegenstand der lateinischen Philologie* (Beiträge zur Altertumswissenschaft 1), Hildesheim 1976.

a) The elimination of the subjunctive from certain clauses is founded on three main reasons. The first reason seems to be a grammatical one. The Coordinating Group (= FÜRST)<sup>84</sup> asserts that Latin conditional clauses fall into three types as containing (1) real, (2) potential and (3) irreal conditions, which correspond respectively to the indicative, to the simple present and present perfect of the subjunctive as well as to the imperfect and pluperfect of the subjunctive. According to FÜRST, type (3) is completely alien to the language of law, while type (2) is less fitting for the juridical nature of the future Eastern Code, so there is only one type left, that of real circumstances, for which the “rules of Latin syntax” prescribe the use of the indicative.<sup>85</sup> It is, however, to be admitted that this clear-cut system in its chemically pure form exists only in school grammars.<sup>86</sup> By “real” and “potential” the Romans meant something slightly different from what is in the minds of speakers of modern languages:<sup>87</sup> they

84 Though, according to ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 28), 226, this proposal came from KILWING, it was soon totally adopted by FÜRST. As it was the latter who drafted the document “Criteri e traccia di lavoro” (see above, nt. 32), in criticising the views and opinions contained in it – in a slight contrast to codification techniques – I shall refer to him explicitly by name.

85 “Criteri e traccia di lavoro” (nt. 32), 71–72.

86 Cf. e.g. Leonard R. PALMER, *The Latin language*, London 1954, 331: “Plautus’ usage fluctuates even in one and the same sentence (e.g. *compellarem, ni metuam*), and even classical usage is not so consistent as the school grammars suggest [...]” For more details, see the complicated system described by KÜHNER–STEGMANN, *Satzlehre* (nt. 64), II 387–410 (§ 212–215) with its several deviations and exceptions (especially § 215, 3).

87 Cf. the acute observation of the *doyen* of Hungarian classical philology, Prof. István BORZSÁK, in his book on the spirit of Latin (*A latin nyelv szelleme* [Parthenon-tanulmányok 3], Budapest 1942, 38): “How often Latin uses the subjunctive, where we feel to deal with a simple declaration of fact!” Conditionals are dealt with in a rather extensive literature of both modern linguistics (syntax) and philosophy (logic), which adopts several other approaches besides, or instead of, the categories “real”, “potential” and “irreal” of traditional (Latin) grammars.

found it entirely natural for legal texts to be in the conditional, and for these conditionals to be in the subjunctive.<sup>88</sup> In his mother tongue or, rather, within its legal special language FÜRST draws a different line between “real” and “potential”, and wants this to be consistently reflected in the Latin text of a code edited by him.<sup>89</sup> But to justify this he appeals in vain to modern linguistics, in which grammatical rules are not postulated *a priori*, but deduced *a posteriori* from the existing phenomena of a studied language (and not of another).

The second reason, which is in fact behind the false grammatical justification (although contrary to it), is the need of linguistic

For an overview, see e.g. V. PRODLESSKAYA, *Conditional Constructions*, Language typology and language universals. An international handbook / Sprachtypologie und sprachliche Universalien. Ein internationales Handbuch / La typologie des langues et les universaux linguistiques. Manuel international, ed. by / hrsg. von / éd. par Martin HASPELMATH – Ekkehard KÖNIG – Wulf OESTERREICHER – Wolfgang RAIBLE (Handbücher zur Sprach- und Kommunikationswissenschaft 20), I–II, Berlin–New York 2001, [II] 998–1110 and William G. LYCAN, *Real Conditionals*, Oxford 2001, both with detailed bibliography. For English, see also Barbara DANCYGER, *Conditionals and Prediction. Time, Knowledge and Causation in Conditional Constructions* (Cambridge studies in linguistics 87), Cambridge 1998, especially 31. 37.

88 KALB, *Wegweiser in die römische Rechtssprache* (nt. 76), 70–71 and *Spezialgrammatik zur selbständigen Erlernung der römischen Sprache für lateinlose Jünger des Rechts. Mit Übersetzungsbeispielen aus dem Gebiete des römischen Rechts*, Leipzig 1910, 276, where it is emphasised that such subjunctives are to be translated into German with the indicative.

89 Cf. “Criteri e traccia di lavoro” (nt. 32), 71: “conveniva privilegiare, compatibilmente con le regole e le esigenze della sintassi latina, il modo indicativo, cioè il modo della realtà, in quanto in un codice è opportuno che siano suscettibili di considerazione soprattutto fatti e circostanze che realmente si verificano. [...] con la decisione di privilegiare il modo indicativo si conferirebbe una maggiore concretezza alla norma canonica del futuro codice per le Chiese orientali e si creerebbe una più stretta aderenza ed intima consonanza del suo linguaggio giuridico con lo spirito e la lettera delle legislazioni moderne [emphasis added – Z.R.]”

modernisation: “the study group, [...] in the hope of rendering the legal texts of the Code really perspicuous and adapted to the modern world, has decided that conditionals introduced by ‘si’, ‘nisi’ etc. are to be considered as referring to real facts and consequently, save a few exceptions, to be in the indicative.”<sup>90</sup> In spite of the above references to Latin grammar, this quotation makes it undoubtful that FÜRST created a new rule, in which he was motivated by factors lying outside the domain of the Latin language.

The third reason, the already seen principle of better intelligibility, provides some explanation for the introduction of an extralinguistic factor.<sup>91</sup> For the correct interpretation of the traditional subjunctives in certain clauses has never caused serious troubles either in earlier sources of canon law or in the texts of the two Latin Codes – perhaps because scholars of canon law may also be familiar with Latin, the number one language of this law. In order to assume that in the case of scholars of Eastern canon law – “whose language is very distant from the syntactic structure of Latin” – the same does not hold, there should have been extensive research done on the use of moods in clauses of languages currently in use in the Eastern Catholic Churches, an investigation that definitely did not take place. The Central European members of the Coordinating Group simply presumed that their Eastern colleagues would not be able to interpret correctly such subjunctives, and thus decided to adjust to them the Latin language itself. They only forgot to ask those who were concerned, with the result that the Latin of the CCEO reflects more of

<sup>90</sup> “Criteri e traccia di lavoro” (nt. 32), 72.

<sup>91</sup> The intelligibility of legislative texts is a much treated issue in recent literature on legislative drafting and legal language. For an overview of the fundamental questions, see e.g. the contributions of Ulrike HASS-ZUMKEHR, Barbara WIENERS-HORST, Werner HAUCK and Ulrich KARPEN: *Podiumsdiskussion: Kann man Gesetze verständlich machen?*, Sprache und Recht, hrsg. von Ulrike HASS-ZUMKEHR (Institut für Deutsche Sprache: Jahrbuch 2001), Berlin–New York 2002, 366–392.

the mood system of FÜRST's and KILWING's mother tongue than that of any of the languages of the East. So the aims and their theoretical justifications seem to be quite far away from the ways and outcome of their realisation – and all this, regrettably, at the expense of the Eastern Churches. For a code intended to be Eastern in its content exhibits now, by its most peculiar and general linguistic feature, to all its readers familiar with Latin a noticeably northern (e.g. German) character, explicitly alien to the common Mediterranean (e.g. Latin) way of thinking.

b) A similarly German-like extremism is sensible in the dogma of “inseparability of components of technical terms”, which excludes the possibility of inserting conjunctions. It is interesting to see how this syntactic rule newly introduced into Latin reflects, again, the structure of the German language, which does not allow for certain conjunctions also occurring in other than front position (e.g. *aber, jedoch*) to be inserted in the middle of phrases.<sup>92</sup> In the reasoning of the Coordinating Group (namely that the unity of the terms should be preserved) there is, again, a pseudo-problem: for those familiar with Latin the identification of compound technical terms as such is not problematic, even if there is a conjunc-

92 According to this rule, the adversative conjunctions in German (and in Hungarian) corresponding to Latin *autem, vero* and *tamen* come not after the first word of the clause, but after the first complete phrase, and can thus be placed even at the end of the entire clause, which is absolutely contrary to the rules of Latin syntax (see e.g. *Duden IV. Grammatik der deutschen Gegenwartssprache*, Mannheim–Leipzig–Wien–Zürich 1998<sup>6</sup>, 830 [n. 1413]; on word order in German sentences in general, cf. *ibid.* 817–829). Although there are conjunctions in Classical Latin taking an obligatory second place, while occurring sometimes in the first place as well (e.g. *igitur*), yet later varieties of Latin are rather characterised by the opposite process, i.e. by the moving to the second place of conjunctions that used to take the first place (e.g. *etenim, namque*). Examples for conjunctions being moved to the third or fourth place in a clause are extremely rare in Latin prose.

tion splitting the words of the phrase; while those lacking (sufficient) knowledge of Latin are equally not helped in identifying the phrase as a technical term by the moving of the conjunction to its end. It happened in innumerable occasions during the history of Latin that a conjunction was inserted into a compound technical term,<sup>93</sup> yet this never led to the evanescence of its technical character, neither did it serve as an obstacle to the comprehension of its precise meaning among those familiar with Latin. One is reminded here of the well-known maxim of the republican jurist Q. Mucius Scaevola (D. 32, 24 i.f.): *Ius civile vigilantibus scriptum est*.

Conjunction use or, more specifically, the actual position of conjunctions in a sentence is, similarly to the use of moods, an integral part of the grammatical rules of a language. Sentences generated in breach of these rules are linguistically ungrammatical, i.e. they are not considered well-formed utterances (in technical literature this is indicated by an \* asterisk preceding the text). It is therefore highly questionable whether a transformation of word order that would generate ungrammatical sentences in every modern language can, in a Latin legal text, be regarded as unobjectionable only on grounds that the competence of lacking native speakers is being supplied by the authority of the ecclesiastical legislator. The canonical principle of *supplet Ecclesia* is hardly valid in grammar.

4. On the basis of what has been said we can conclude that the text of the CCEO is the result of conscious and basically

93 Some antique and medieval examples, this time only from legal Latin: *rem vero publicam nostri maiores certe melioribus temperaverunt et institutis et legibus* (Cicero *Tusc.* 1, 1, 2); *mancipi vero res sunt* etc. (Gaius *Inst.* 2, 22); *in operis autem novi nuntiatione possessorem adversarium facimus* (Ulpianus *Ad ed.* 22 in D. 39, 1, 1, 6); *Tonsura vero clerici de manu abbatis suscipi potest* (Gratianus in D. 69 pr.); *Semestre autem tempus non a tempore vacationis praebendarum* etc. (Innocent III in X. 3, 8, 5).

successful language planning.<sup>94</sup> However, the disquieting phenomena draw our attention to the fact that such language planning is not adequately reflected from a scholarly point of view. This contradiction was felt by the members of the codifying Commission when they raised some objections on the Latin of the schema. But there remains the question how the reasoning for the rejection of their criticism, i.e. the aim of making the Latin language “structurally more accessible” to those who are less familiar with it, may be qualified from a theoretical (linguistic) and a practical (juridical) point of view.

a) From the position of linguistic science it is at once apparent that the reply quoted above contains a severe contradiction, since the syntactic structure (“struttura sintattica”) of a language forms such an inherent part of its linguistic system that it cannot be *bona fide* modified without serious consequences, especially when adapted to the needs of speakers of other languages having a different linguistic system. Such modifications exceed the limits of selecting between the stylistic variants offered in a linguistic system (“usare uno stile”), and affect the linguistic system as such. Those propounding the above view confuse two different domains of the linguistic system, not realising that their modifications, considered stylistic, already point to the formation of a new variety of the Latin language different from every other one that has so far existed.<sup>95</sup>

94 For the concept, see the earlier monograph by VALTER TAULI, *Introduction to a Theory of Language Planning* (Acta Universitatis Upsalensis, Studia philologiae Scandinavicae Upsaliensia 6), Uppsala 1968; for a more recent account, see Florian COULMAS, *Sprache und Staat. Studien zur Sprachplanung* (Sammlung Götschen 2501), Berlin–New York 1985. Developed in the works of scholars such as Einar HAUGEN or Joshua A. FISHMAN, language planning by now has established itself as an autonomous branch of sociolinguistics having its own periodicals, e.g. *Current issues in language planning* (from 2000, also available online from the website of the publisher Multilingual Matters).

95 With regard to this, it is justly pointed out by NEDUNGATT, *The Teaching Func-*

b) *Legal science* is a basically conservative one, changing its language and its concepts only in the utmost necessity, especially when keeping up with the development of the real world. Such a great progress was, in the beginning of the 20th century, the codification of canon law, which brought about a formal repeal of a great deal of former legislation. A radical material break with the past, however, was never intended by the Church, which explicitly enacted that codified law was to be assessed in the light of former canonical tradition.<sup>96</sup> But this is only possible if there is a minimal continuity, in both general and special language, between what is ancient and modern, ensuring thus the applicability of the interpreting texts to the interpreted ones. The replacing of the subjunctive with the indicative was, e.g., totally unmotivated, except by the model of certain contemporary languages, whereas this modification represents a significant departure from the traditions of Canonical Latin, still preserved in the CIC of 1983. This was clearly understood by ŽUŽEK, who initially opposed the change, until he was persuaded by the arguments advanced by FÜRST and KILWING.<sup>97</sup> Yet the tradition thus broken is not proper only to

*tion of the Church in Oriental Canon Law* (nt. 25), 59 that the language of the new (schema of the) Eastern Code is a curious “Eastern Latin”, which has not only its own punctuation and orthography, but also its own grammar. It follows, then, that the members of the Coordinating Group failed, at least in this respect, to meet the requirement addressed to them upon their appointment, namely that the Code should be unobjectionable from the point of view of its Latinity (“inacceptibile [...] dal punto di vista [...] della lingua latina”, as quoted by ŽUŽEK, “Der Beitrag von C. G. Fürst” [nt. 27], 223<sup>3</sup>).

96 Cf. 1917 *CIC* c. 6, n. 2–3; 1983 *CIC* c. 6, § 2; *CCEO* c. 2.

97 Cf. ŽUŽEK, “Der Beitrag von C. G. Fürst” (nt. 27), 227: “Für diese Änderung mußte man auch mich überzeugen. Tatsächlich hatte ich in dieser Sache einen „harten Kopf“, vor allem weil es mir bei allen Schwierigkeiten beim stacheligen *Weg* des orientalischen Codex nicht der Mühe wert schien, noch weitere Schwierigkeiten dadurch zu schaffen, daß man sich von der traditionellen Sprache der Kanonisten und des Neo-*CIC* der lateinischen Kirche entfernte [emphasis added – Z.R.]”



Canonical Latin, but reaches back as far as the very first period of Roman law. For in republican laws, just as in edicts of the magistrates, in imperial constitutions and in writings of the jurists, one can find a fairly established use of the same “coniunctivus potentialis” in conditional clauses.<sup>98</sup> The German-speaking editors of the CCEO thus seem to have deprived the linguistic form of the Code of something they were striving to preserve as much as possible in its content: a tradition of a particular legal special language continuously present in the Latin of the law for two and a half thousand years.<sup>99</sup>

5. The impressive volume of the *Codex canonum Ecclesiarum orientalium* is not only the latest law code of the Catholic Church, but also the most lengthy work of contemporary Neolatin literature, so its study should be duly concerned with linguistic aspects besides the juridical ones. Present day scholars of canon law and Latin linguistics still owe us a modern special lexicon to both the general and the special language of the CIC and the CCEO as well as a monographic

98 The origins and the development of the mood system of Latin conditional clauses is a rather complicated issue. A reasonable account of potential subjunctives as occurring in legal texts is lacking even in such comprehensive works as e.g. Hermann MENGE, *Lehrbuch der lateinischen Syntax und Semantik*, völlig neu bearb. von Thorsten BURKARD – Markus SCHAUER, Darmstadt 2000. Earlier stages are addressed in two recent studies (see Heinrich HETTRICH, *Lateinische Konditionalsätze in sprachvergleichender Sicht*, Latein und Indogermanisch. Akten des Kolloquiums der Indogermanischen Gesellschaft, Salzburg, 23.–26. September 1986, hrsg. von Oswald PANAGL – Thomas KRISCH [Innsbrucker Beiträge zur Sprachwissenschaft 64], Innsbruck 1992, 263–284, especially 274–278 and Gualtiero CALBOLI, *Zu den lateinischen Bedingungssätzen*, Akten des VIII. internationalen Kolloquiums zur lateinischen Linguistik, hrsg. von Alfred BAMMERSBERGER – Friedrich HEBERLEIN, Heidelberg 1996, 282–295, especially 290–294), while postclassical and later usage, infiltrating into both secular and canon law, remains unexplored.

99 This tradition is emphasised nowadays, e.g. by HAERING, “Lateinische Sprache und kanonisches Recht” (nt. 3), 244, as one of the advantages of Latin as the special language of canon law.

treatment of the terminology of the two Codes. Within the limited scope of this study, we have attempted to provide such efforts with a theoretical, scholarly grounding. In conclusion, we should like to add a general observation to the specific findings described above, one which implies that for the linguistic shortcomings of the codification it is not the codifiers who are to be blamed in the first place – for the Catholic Church has always lacked, and is apparently lacking even now, a consciously formed, official language strategy or language policy,<sup>100</sup> the need of which, however, is self-evident in a community comprising more than a sixth of the population of the earth.

According to an anecdote of medieval origin, King Sigismund of Luxemburg in the Council of Constance once used the word *schisma* in the masculine gender. When the cardinal bishop of Piacenza reminded him of his grammatical error, Sigismund replied: *Ego sum rex Romanus et supra grammaticos*. The cardinal did not acquiesce in it, and retorted: *Nec Caesar* (in other version: *Caesar non supra grammaticos*).<sup>101</sup>

100 For a recent account of the concept, see Klaus BOCHMANN, *Theorie und Methoden der Sprachpolitik und ihre Analyse*, in *Sprachpolitik in der Romania. Zur Geschichte sprachpolitischen Denkens und Handelns von der Französischen Revolution bis zur Gegenwart*, hrsg. von Klaus BOCHMANN, Berlin–New York 1993, 3–58. The study of language policy is a multicoloured branch of sociolinguistics interwoven with other topics such as language standardisation, authority in language or linguistic purism. On its contemporary state in Europe, see Ingeborg OHNHEISER – Manfred KIENPOINTER – Helmut KALB (Hrsgg.), *Sprachen in Europa. Sprachsituation und Sprachpolitik in europäischen Ländern* (Innsbrucker Beiträge zu Kulturwissenschaft 52), Innsbruck 1999. Particularly instructive from an ecclesiastical point of view are the works dealing with international organisations or the European Union, see e.g. Florian COULMAS (ed.), *A Language Policy for the European Community. Prospects and Quandaries*, Berlin–New York 1991. On the role of Latin in this respect, see Fritz STURM, “Lingua Latina fundamentum et salus Europae” [the text itself is in German], in *The European Legal Forum* 2 (2002) 313–320.

101 The oldest source of the story, the life of Sigismund by Iohannes CUSPINIANUS

1400 years earlier the legally trained Roman grammarian M. Pomponius Marcellus<sup>102</sup> refused, with an even greater self-consciousness, the arguments advanced by the famous jurist Ateius Capito in defence of a grammatical error of the emperor Tiberius: “Capito lies; for you, Caesar, can confer citizenship upon men, but not upon a word.”<sup>103</sup> Legislators and other jurists of the past thus appear to have had a prompt will-

(*De Caesaribus atque imperatoribus Romanis opus insigne*, s.l. [Argentorati] 1540, DCI = Basileae s.a. [1561], 497), has the following version: “Passim autem id de eo scribitur, cum in Concilio Constantiensi, lapsu forte linguae, aliqui deserterat ac facundus multarumque linguarum peritus, a grammaticae regulis deerasset scismaque masculino, non neutro genere, ut grammatici docent, protulisset, esse tum a Placentino correptum Cardinale. Cui mox ex tempore dixit: «Placentine, Placentine, si omnibus placeres, minime nobis places, qui minoris nos auctoritatis quam Priscianum grammaticum, quem offendisse me asseris, existimas.»” The words *Ego sum rex Romanus et supra grammaticos* missing from this account were, according to Kurt BÖTTCHER – Karl H. BERGER – Kurt KROLOP – Christa ZIMMERMANN, *Geflügelte Worte. Zitate, Sentenzen und Begriffe in ihrem geschichtlichen Zusammenhang*, Leipzig 1985<sup>4</sup>, 170 (n. 1037/1038), put in the mouth of Sigismund by Wolfgang MENZEL (*Geschichte der Deutschen*, 1837, chapter 325). For that particular part of the anecdote which became a common saying, i.e. *Nec Caesar supra grammaticos*, I was unable to identify any specific textual source.

<sup>102</sup> The form *Marcellus* found in all manuscripts and earlier editions is now amended to *Porcellus* by Robert A. KASTER in C. Suetonius Tranquillus, *De grammaticis et rhetoribus*. Edited with a translation, introduction, and commentary by R. A. K., Oxford 1995, 24 (for a short reasoning, see 222 [ad 22, 1]). In lack of sufficient external evidence, however, the original form cannot be recovered any more, and even KASTER admits that “the slip may be Suet.’s rather than the later scribe’s”.

<sup>103</sup> Suetonius, *De grammaticis* 22, 2 (ed. KASTER [int. 102], 26): *Hic idem, cum ex oratione Tiberi verbum reprehendisset, affirmante Ateio Capitone et esse illud Latinum, et, si non esset, futurum certe iam inde: «Mentitur» inquit «Capito; tu enim, Caesar, civitatem dare potes hominibus, verbo non potes.»* The same account of the story is given by the Greek historian Cassius Dio in his *Historia Romana* 57, 17, 1–3. For a commentary, see KASTER, 226–227 (cf. also XXXVI and XLV–XLVI).

ingness of asserting themselves as superior to the laws of the language. But language, just as law, has its own guardians,<sup>104</sup> who at times do not tolerate this, and even dare to say: *Nec Princeps supra grammaticos*.

If the Catholic Church agreed to undertake a conscious and scholarly reflection upon the use of Latin, her own official tongue, contradictions would probably cease between the law of the legislator and the law of the language, and the latter could much better serve the former and its perennial end: the salvation of souls.

<sup>104</sup> Cf. Robert A. KASTER, *Guardians of Language: The Grammarian and Society in Late Antiquity* (The transformation of the classical heritage 11), Berkeley–Los Angeles–London 1988. The ancient tradition of prescriptive approach once dominating the field of language studies is now generally considered to be outside the boundaries of modern linguistics. Yet questions of correctness and usage can and should be addressed even within the scope of a modern (scientific?) paradigm (e.g. as sociolinguistic or cultural issues), and thus the above examples of Placentinus and Marcellus, though taken from earlier ages, are still valid in assessing typical phenomena of contemporary practice as well.