

# The Particular Law of the Maronite Church with a Special Focus on Territorial Restrictions<sup>1</sup>

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Summary: Introduction, Particular Law prior to the *Code of Canons of the Eastern Churches*, Particular Law Enacted by the Synod of Bishops of the Maronite Church after 1990, Legislative History, Structure, General Observations, Salient Areas of Interest, Future Prospects for Particular Law of the Maronite Church, Territorial Restrictions on the Force of Particular Law, Extraterritorial Extension of the Force of Law, Approval of the Apostolic See, Enactment by the Eparchial Bishop, Ramifications in Laws Lacking Territorial Extension, A Proposal for Greater Clarity, Conclusion.

## Introduction

The *Codex Canonum Ecclesiarum Orientalium*<sup>2</sup> (hereafter Eastern Code or *CCEO*), the body of law promulgated by Pope John Paul II on 18 October 1990, is the first complete body of *common law* for the twenty-two Eastern Catholic Churches. The Eastern Code is significantly shorter (1546 canons) than its counterpart, the *Codex Iuris*

- 1 This article is a modification of a presentation given at the 21<sup>st</sup> congress of the Society for the Law of the Eastern Churches held in Bari, Italy on 10-13 September 2013.
- 2 *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1990). English translation from *Code of Canons of the Eastern Churches, Latin-English Edition: New English Translation* (Washington, DC: CLSA, 2001) [hereafter *CCEC*]. All English translations of canons from the *CCEO* will be taken from this source unless indicated otherwise.

*Canonici*<sup>3</sup> for the Latin Church (1752 canons), despite its extensive treatment of institutions (e.g., patriarchs, major archbishops and synods of bishops) found only in the Eastern Catholic Churches. The reason for the disparity is that the Eastern Code relegates many matters to *particular law* that is to be enacted by the competent authorities of the individual Eastern Catholic Churches.<sup>4</sup>

Furthermore, in this area full attention should be given to all those things that this Code entrusts to the particular law of individual Churches *sui iuris*, which are not considered necessary to the common good of all the Eastern Churches. Our intention regarding these things is that those who enjoy legislative power in each of the Churches should take counsel as soon as possible for particular norms, keeping in mind the traditions of their own rite and the precepts of the Second Vatican Council.<sup>5</sup>

- 3 *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983).
- 4 For more on the nature of *particular law* as articulated in the *CCEO* see Kurikose Bharanikulangara, *Particular Law of the Eastern Catholic Churches*, Maronite Rite Series IV (New York: Saint Maron Publications, 1996) [hereafter Bharanikulangara, *Particular Law*]; *Idem*, “Particular Law of the Oriental Catholic Churches: An Analysis Based on *Codex Canonum Ecclesiarum Orientalium (CCEO)*,” *Journal of St. Thomas Christians* 23 (April-December 2012) 83-93; Ivan Žužek, “Qualche nota circa lo *ius particulare* nel *Codex Canonum Ecclesiarum Orientalium*,” in Ivan Žužek, *Understanding the Eastern Code*, *Kanonika* 8 (Rome: Pontificio Istituto Orientale, 1997) 354-366.
- 5 “Praeterea hac in provincia bene animadvertatur hunc quidem Codicem iuri particulari singularum Ecclesiarum sui iuris ea omnia committere, quae ad commune omnium ecclesiarum orientalium bonum non necessaria considerantur. Quibus de rebus mens Nostra est, ut qui legislativa potestate in singulis Ecclesiis sui iuris gaudent, peculiaribus normis, proprii ritus traditionibus praeculis habitis necnon Concilii Vaticani II praecceptis, quam celerrime consulant”: John Paul II, apostolic constitution *Sacri Canonibus*, 18 October 1990: *AAS* 82 (1990) 1037-1038; *CCEC*, xxiv.

The Vatican II decree on the Eastern Catholic Churches, *Orientalium Ecclesiarum*,<sup>6</sup> makes the affirmation:

Hence, it solemnly declares that the churches of both east and west enjoy the right, and are bound by duty, to govern themselves in accordance with their own particular rules, seeing that they are recommended by venerable antiquity, are more suited to the customs of their faithful and seem more suitable for assuring the good of souls.<sup>7</sup>

In consideration of this self-governing authority, the Eastern Code designates them as *Ecclesiae sui iuris*, a term defined in *CCEO* canon 27:

A community of the Christian faithful, which is joined together by a hierarchy according to the norm of law and which is expressly or tacitly recognized as *sui iuris* by the supreme authority of the Church, is called in this Code a Church *sui iuris*.<sup>8</sup>

The Maronite Church is a Church *sui iuris* and has, throughout its history, enacted laws to govern its ecclesial life. The purpose of this study is to provide an exposition of the law enacted by the synod of bishops of the Maronite Church after the 1990 promulgation of the Eastern Code. We shall begin with a brief description of Maronite particular law before 1990. A description and analysis of the salient points of the particular law of the Maronite Church enacted in 1996 and currently in force will follow. Finally, we shall examine the territorial restrictions of particular law and the canonical provisions regarding the extra-territorial extension of the force of law to legislation enacted by the synod of bishops.

6 Vatican II, decree *Orientalium Ecclesiarum*, 21 November 1964: *AAS* 57 (1965) [hereafter *OE*] 76-85. English translation in *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner (London and Washington: Sheed & Ward and Georgetown University Press, 1990) [hereafter Tanner] 2:900-907.

7 *OE* n. 5; Tanner, 902.

8 For more information about the nature of the Churches *sui iuris*, see Luis Okulik, *Le Chiese sui iuris. Criteri di individuazione e delimitazione* (Venice: Marcianum Press, 2005); Ivan Žužek, “Le *Ecclesiae sui iuris* nella revisione del diritto canonico,” in Ivan Žužek, *Understanding the Eastern Code*, *Kanonika* 8 (Rome: Pontificio Istituto Orientale, 1997) 94-109.

Particular Law prior to the Code of Canons  
of the Eastern Churches

It must be kept in mind that the 1964 conciliar affirmation of the right of the Eastern Catholic Churches to legislate for themselves and the 1990 promulgation of the *Code of Canons of the Eastern Churches* did not mark the beginning of the legislative programs of these Churches. In the case of the Maronite Church, one can identify three earlier phases:<sup>9</sup>

1. *Ancient Law until 1578* (the year of the visit of Giambattista Eliano, S.J.). Sources in this period are restricted to papal letters to the Maronite Church and two letters sent by Maronite Patriarch Simon el-Hassan to Pope Leo X in 1514 and 1515. In addition, there are two nomocanons: the *Kitâb al-Huda* ("Book of Direction"),<sup>10</sup> a collection of canons, liturgical prescriptions and short theological treatises translated by Maronite Bishop David in 1059; and a thirteenth-century adaptation of the Coptic nomocanon of 'Abul Fada'il Ibn al-'Assal.<sup>11</sup>
2. *Law from 1578-1736*. Many papal and patriarchal letters are preserved from this period. Of greater significance are five synods: Synod of Qannubin of 1580 issued ten dogmatic and disciplinary chapters proposed by Eliano, the Pontifical Delegate;<sup>12</sup> Synod of September 1596 approved the text proposed by the Pontifical Delegate, Girolamo Dandini, S.J.; the Synods of November 1596 and of 1598, convoked by Maronite Patriarch Joseph Riši, adopted disci-

9 See Acacius Coussa, *Epitome Praelectionum de Iure Ecclesiastico Orientali* (Rome: Typis Monasterii Exarchici Cryptoferratis, 1948) 1:185-187; *Dictionnaire de Droit Canonique* (Paris: Librairie Letouzey et Ané, 1957) [hereafter *DDC*] 8:cols. 811-829.

10 See Antoine Joubair, *Kitab al-Huda*, 2<sup>nd</sup> ed. (Kaslik, Lebanon: Bibliotheque de l'Université Saint-Ésprit, 1990).

11 *DDC* 8: cols. 812-816.

12 See Joseph Feghali, *Histoire du Droit de L'Église Maronite* (Paris: Letouzey et Ané, 1962) 107-204.

plines from the West that Pope Paul V obliged the successors of Riši to revoke; the Synod of 1644 marked a restoration of some of the ancient traditions.

3. *Law from 1736-1990.* Sources from this period include patriarchal letters and papal decisions. The most important source constituting a modern arrangement of particular law for the Maronite Church is the Synod of Mount Lebanon of 1736.<sup>13</sup> The approved canons were organized into four parts: (1) the faith, feasts and fasts; (2) the sacraments; (3) the hierarchy; and (4) churches, monasteries and schools. There were ten subsequent synods prior to the 1990 *Codex Canonum Ecclesiarum Orientalium*.<sup>14</sup>
4. “Synod” of 2006.<sup>15</sup> A patriarchal assembly (cf. *CCEO* canons 140-145) was celebrated 2003-2005, the acts of which were approved by the Maronite patriarch and synod of bishops in 2006.

13 *Acta et Decreta Sacrorum Conciliorum Recentiorum. Collectio Lacensis* (Freiburg im Breisgau: Herder, 1870-1890) 2:cols. 75-478. See also Elias Atallah, *Le synode libanais de 1736* (Paris, Éditions Letouzey et Ané, 2001).

14 Beqaata (1744); Machmouché (1747); Qannoubin (1755); Beqaata (1756); Synod of 1762; Ghosta (1768); Maifouq (1780), Ain-Chaqiq (1786); Bkerke (1790); Notre Dame de Louaize (1818); cf. Elias Atallah, *Le synode libanais de 1736* (Paris, Éditions Letouzey et Ané, 2001) 1:161-172. Patriarch Paul Masad convoked a synod in Bkerke on 11-13 April 1856, during which the decrees of the Synod of 1736 were abridged and amended. However, the acts were never approved by Pope Pius IX. It is not usually included in the lists of synods of the Maronite Church.

15 See *Maronite Patriarchal Synod 2003-2006* (Bkerke, 2008). From a canonical perspective, it is imprecise to refer to the assembly conducted from 2003-2005 as a “synod.” According to the *CCEO*, the term “synod” refers to an assembly of ordained bishops of a patriarchal or major archiepiscopal church (*CCEO* cc. 102-113). It is more accurate to refer to it as a “patriarchal assembly” (*conventus patriarchalis*), treated in *CCEO* cc. 140-145.

Particular Law Enacted by the Synod of Bishops of the Maronite Church after 1990<sup>16</sup>

*Legislative History*

Subsequent to the promulgation of the Eastern Code in 1990, Maronite Patriarch Cardinal Nasrallah Peter Sfeir committed the preparation of a draft of the particular law to the Episcopal Commission for Canon Law headed by Bishops Chucrallah Harb, Antoine Joubeir and Bechara Rai.<sup>17</sup>

- On 27 May 1991, the Commission presented its first draft to the patriarch and synod of bishops.
- A second draft (comprising 147 articles) was presented on 25 February 1992 to the bishops for their observations, which were received by the Commission before and after the June 1992 meeting of the synod of bishops.
- A third draft (reduced to 105 articles) was presented on 7 September 1992; Patriarch Sfeir asked that observations on this draft be submitted by December 1992. The third draft was reviewed in subsequent meetings of the synod of bishops until February 1993.
- A fourth draft (containing 109 articles) was prepared in May 1993.<sup>18</sup>

16 For further information about the particular law of the Maronite Church, see Charbel Bousamra, *The Particular Law of the Maronite Church. Analysis and Perspective* (Rome: EDUSC, 2010) [hereafter Bousamra]; Jobe Abbass, "Updating the Particular Law of the Maronite Church," in *Il Codice delle Chiese Orientali: la storia, la legislazione e le prospettive ecumeniche*, Atti del Convegno di Studio tenutosi nel XX Anniversario della Promulgazione del Codice dei Canonici delle Chiese Orientali (Rome: October 8-9, 2010), ed. Pontificio Consiglio per i Testi Legislativi (Vatican City: Libreria Editrice Vaticana, 2011) [hereafter Abbass, "Updating"], 173-193.

17 See "Le droit particulier de l'Église Maronite," *La Revue Patriarcale. Porte-Parole du Patriarcat Maronite*, Special Edition Number 15 (1996) [hereafter "Le droit particulier"] 9.

18 This 1993 draft was published in Bharanikulangara, *Particular Law*, 197-208.

- The draft of the particular law was forwarded by Patriarch Sfeir and the synod of bishops to the Congregation for the Eastern Churches.<sup>19</sup> It should be noted that the synod of bishops was not required to forward the draft of the particular law to the Congregation for the Eastern Churches since *CCEO* canon 112 §1 states: “The promulgation of laws and the publication of decisions of the synod of bishops of the patriarchal Church is the competence of the patriarch.” However, the promulgated particular law was to be forwarded to the Roman Pontiff as soon as possible according to *CCEO* canon 111 §3: “Acts regarding laws and decisions are to be sent to the Roman Pontiff as soon as possible; certain acts, or even all of them, are to be communicated to the patriarchs of the other Eastern Churches according to the judgment of the synod.”
- The particular law (containing 105 articles)<sup>20</sup> was promulgated on 4 June 1996 and published in Arabic in July 1996 in *La Revue Patriarcale*.<sup>21</sup> The letter of promulgation, signed by Maronite Patriarch Sfeir, indicates that the particular law acquired the force of law on the date of promulgation.<sup>22</sup>

See also Jobe Abbass, “A *Codex Particularis* for the Maronite Church,” *Iura Orientalia* 3 (2007) [hereafter Abbass, “Codex Particularis”] 14-36.

19 “Le droit particulier,” 9-11. It is not known whether the modified September 1992 draft (comprising 105 articles) or the May 1993 draft (comprising 109 articles—the same number as the promulgated text) was sent to the Congregation for the Eastern Churches.

20 Abbass reconciles the difference between the 109 articles of the May 1993 draft with the 105 articles of the promulgated text: Articles 22 and 23 of the 1993 draft are combined in the 1996 text; article 68 of the 1993 draft is incorporated into article 65 of the 1996 text; articles 76 and 104 of the 1993 draft are omitted. See Jobe Abbass, “Updating,” 175.

21 See *La Revue Patriarcale. Porte-Parole du Patriarcat Maronite* 15 (1996) 41-52 (in Arabic).

22 “Le droit particulier,” 7.

The 4 June 1996 letter of promulgation also indicates that certain internal statutes of institutions of the Maronite Church form an integral part of the particular law of the Maronite Church: the synod of bishops, presbyteral councils, college of eparchial consultants, finance councils, parochial *waqf* committees, parish councils, eparchial pastoral councils.<sup>23</sup>

### *Structure*

The title of the promulgated text is *The Particular Law of the Maronite Church in accordance with the Code of Canons of the Eastern Churches*<sup>24</sup> (hereafter MPL). The document is minimalistic in structure, with only 26 section heads. Generally, each article contains the reference to the relevant *CCEO* canon. The structure is as follows:

1. The election of the patriarch (articles 1-5);
2. The rights and duties of the patriarch (articles 6-8);
3. The synod of bishops of the patriarchal church (articles 9-10);
4. The patriarchal curia (article 11);
5. The election of bishops (article 12);
6. The rights and duties of eparchial bishops (articles 13-16);
7. The eparchial synod (articles 17-18);
8. The eparchial curia (articles 19-25);
9. Parishes, pastors and parochial vicars (article 26-32);
10. Exarchies and exarchs (article 33);
11. Clerics (articles 34-50);
12. Lay persons (article 51);
13. Monks and other consecrated persons (articles 52-57);
14. Associations of the lay faithful (article 58);
15. Evangelization of nations (articles 59-60);
16. Preaching of the word of God (article 61);
17. Instruments of social communication and books (article 62-63);
18. Divine worship and the sacraments (articles 64-85);
19. Sacramentals, sacred times and places and veneration of saints (articles 86-88);
20. Baptized non-Catholics coming into full communion with the Catholic Church (article 89);
21. Ecumenism (article 90);
22. Offices (article 91);
23. Recourse against administrative decrees (article 92);
24. Temporal goods of the Church (articles 93-100);
25. Trials (articles 101-104);
26. Penal sanctions (article 105).

<sup>23</sup> “Le droit particulier,” 13.

<sup>24</sup> The author is indebted to the translation provided in Bousamra, *Particular Law*, 339-354.



*General Observations*

Perhaps the greatest weakness of the current particular law of the Maronite Church is that it restricts itself to the explicit references to particular law in the Eastern Code.<sup>25</sup> In commenting on the 1993 draft, Jobe Abbass observes:

However, a *Codex particularis* formulated solely on the basic references to “particular law” in *CCEO* risks being incomplete. It is by now commonly understood that, in omitting certain laws previously in force, *CCEO* often implies by “indirect” references, as it were, that those matters are left to particular law to regulate. For all intents and purposes, the 1993 text does not appear to have considered these indirect references and, therefore, seems to fall short in terms of proposing a comprehensive code of canon law.<sup>26</sup>

*Salient Areas of Interest*

The limitations of this study do not allow for a comprehensive commentary on each article of the particular law. We shall instead comment on certain salient areas of interest. In pointing out the

25 For an index of explicit references to *ius particulare* in the *CCEO*, see Ivan Žužek in *Index Analyticus Codicis Canonum Ecclesiarum Orientalium*, Kanonika 2 (Rome: Pontificium Institutum Orientalium Studiorum, 1992) s.v. “ius particulare.”

26 Abbass, “Codex Particularis,” 15. Abbass further points out certain canons of the *CCEO* which allow for particular law to legislate (*CCEO* cc. 864 §2; 1084 §1, 4°; and 1152 §2), but observes that the particular law of the Maronite Church is silent on the matter, thereby leaving the matter to common law. See Abbass, “Codex Particularis,” 16-17. This matter has also been treated elsewhere: P. Szabó, “Ancora sulla sfera dell’autonomia”, in *Folia Canonica* 6 (2003) 157-213, esp. 176 and P. Gefaell, “La capacità legislativa delle Chiese orientali in attuazione del CCEO,” in *Il Codice delle Chiese orientali. La storia, le legislazioni particolari, le prospettive ecumeniche: Atti del convegno di studio tenutosi nel XX anniversario della promulgazione del Codice dei Canonici delle Chiese orientali, Roma 8-9 ottobre 2010*, ed. Pontificio Consiglio per i Testi Legislativi Vatican City State:Libreria Editrice Vaticana 2011) 137-155, esp. 142-143 and 146.

weaknesses, one risks giving the impression that the entire body of particular law is deficient; this is not the case. The particular law is well done, but, like all human creations, allows for improvement. Let us therefore examine a few points of interest.

MPL article 12, in reference to *CCEO* canon 182 §3,<sup>27</sup> treats the election of bishops. The second paragraph of the article<sup>28</sup> reserves the right of presentation of candidates to the patriarch. Reference is made to particular law approved by the Roman Pontiff, but no specific indication of the document is cited.<sup>29</sup> The provision effectively allows for the patriarch to veto any candidacy, simply by not presenting the name. Such a reservation of presentation is perhaps based on the presupposition that the patriarch has information that might not

27 “Unless particular law approved by the Roman Pontiff determines otherwise, the synod of bishops of the patriarchal Church is to examine the names of the candidates and draw up by secret ballot a list of the candidates. This list is to be transmitted through the patriarch to the Apostolic See to obtain the assent of the Roman Pontiff.”

28 “In accordance with the particular Law approved by the Roman Pontiff, only the patriarch has the right to propose the names of episcopal candidates to the fathers of the synod who examine the names of the candidates and then compile a list of the names by secret ballot which must be transmitted through the patriarch to the Apostolic See in order to obtain the assent of the Roman Pontiff.”

29 One might speculate that reference is being made to the 1736 Synod of Mt. Lebanon, Pars. III, Cap. IV, 15: “Ad Reverendissimum igitur D. Patriarcham solum jure praesenti spectat Metropolitanorum et requisite tamen consilio et assensu Synodi Episcoporum et Metropolitanorum, non ad alios Episcopos, multoque minus ad populum aut cujusvis ordinis saeculares potestates...” The arrangement for the designation of bishops as precisely formulated in the 1736 Synod is no longer in force since the entire process has been re-ordered in *CCEO* cc. 180-186. It would not seem appropriate to base the reservation of presentation of candidates to the patriarch on this provision in consideration of *CCEO* c. 6, 1°: “With the entry into force of the Code: 1° all common or particular laws contrary to the canons of the Code or which concern matters which are integrally reordered in this Code are abrogated;” However, the approval of the Roman Pontiff referred to in the particular law might be another source.

be available to the members of the synod. However, one must also question whether the provision of *CCEO* canon 183 §2<sup>30</sup> allows for a bishop to vote for someone who is not on the ballot.

In certain cases, the particular law seems to contain canonical imprecisions.

- MPL article 48<sup>31</sup> provides parameters for the annual vacations of clerics. In combining *CCEO* canons 386 §1 and 392, the article creates a certain imprecision in that it speaks of a month-long absence from the eparchy. One could conclude that the cleric could be absent from the parish—while remaining in the eparchy—and thereby not be considered to be on vacation. It should also be noted that the article speaks of clerics, not simply pastors (*parochi*) or presbyters. If the article intends to treat only the vacations of presbyters, it should so indicate. Replacement of the term “eparchy” with “office” would also provide greater clarity.

In certain cases, the particular law is superfluous in that it adds nothing to the common law.

- *CCEO* canon 113<sup>32</sup> requires that the synod of bishops draw up a set of statutes to regulate its operations. MPL article 10 §2<sup>33</sup>

30 “The bishops are freely to elect the one whom before all others they consider before the Lord to be worthy and suitable.”

31 “Clerics have a right to be absent from the eparchy for a period of one month for an annual vacation while [a] period exceeding this requires the permission of the eparchial bishop. Nevertheless, the cleric must coordinate with his bishop to determine the timing of the vacation and to secure his replacement in the ministry during his absence. Aside from the annual vacation, a cleric needs the permission of his bishop to be absent, even when he takes his vacation at intervals.”

32 “The synod of bishops of the patriarchal Church is to draw up its statutes in which are provided a secretary of the synod, preparatory commissions, the order of procedure as well as other means that they consider effective for the attainment of its goals.”

33 “The Synod of Bishops of the Maronite Church has its proper statutes which have been laid down by the fathers of the synod themselves.”

(without any reference to *CCEO* canon 113) indicates that the synod of bishops has its proper statutes. It should be noted that these statutes are a part of the particular law. However, it seems that MPL article 10 §2 is unnecessary.

- MPL article 30,<sup>34</sup> in delineating the councils to be constituted in a parish, adds little to the provisions of *CCEO* canon 295.<sup>35</sup>
- It is interesting that while *CCEO* canon 331 §1<sup>36</sup> provides for the possibility of particular law to allow others not called to the clerical state to be educated in the minor seminary, MPL article 36<sup>37</sup> absolutely prohibits it, while making no provisions regarding the possibility of students attending classes during the day. There is no need for the particular law in its present form.
- This is also the case in MPL article 37,<sup>38</sup> in reference to *CCEO* canon 335 §2,<sup>39</sup> which treats the representation of the juridic

34 “In the parish, there are to be appropriate councils dealing with pastoral and economic matters according to the norms laid down by the Synod of Bishops of the Maronite Church. The councils are the religious endowment administrative committee (*waqf*) and the pastoral council.”

35 “In the parish there are to be appropriate councils dealing with pastoral and financial matters, in accord with the norms of the particular law of its own Church *sui iuris*.”

36 “In the minor seminary, those who seem to show signs of a vocation to the sacred ministry are especially to be educated, so that they can more easily and clearly discern it themselves and cultivate it with dedication; in accord with the norm of particular law, others also can be educated who, even though they do not seem to be called to the clerical state, can be educated to fulfill certain ministries or apostolic works. Other institutes which, according to their statutes, serve the same purposes, even if they differ in name, are equivalent to a minor seminary.”

37 “Those who are not called to the clerical state must not be admitted, for whatever cause, to board as internal students in the seminary.”

38 “The statutes of the seminary must determine the juridical causes in which the rector of the seminary must represent it.”

39 “In all juridical matters the rector of the seminary represents it, unless particular law or the statutes of the seminary establish otherwise.”

person of the seminary; the article simply defers to the statutes of the seminary.

- *CCEO* canon 408 §2<sup>40</sup> treats the possibility of entrusting ecclesiastical functions to lay persons except in those cases that require sacred orders or are prohibited by particular law of the Church *sui iuris*. MPL article 51<sup>41</sup> indicates no parameters for such an arrangement and simply relegates the matter to the competent ecclesiastical authority.
- With regard to ecumenical initiatives, MPL article 90<sup>42</sup> essentially restates the provisions of *CCEO* canon 904 §1.<sup>43</sup> The lack of elaboration on ecumenical matters results in an absence of a clear ecumenical vision in the particular law *in vigore* in the Maronite Church.
- *CCEO* canon 937 §2<sup>44</sup> defers to the provisions of particular law regarding the implementation of decrees establishing offices.

40 “Besides those ecclesiastical functions to which lay persons are by common law admitted, they may be admitted by a competent authority to other functions, except those that require sacred orders or that are expressly forbidden to lay persons by the particular law of their own Church *sui iuris*.”

41 “Besides those ecclesiastical functions entrusted to lay persons by common law, lay persons may also be entrusted by the competent ecclesiastical authority with other services and functions originating from the sacraments of baptism and chrismation with holy myron in conformity with the directives and teachings of the Church.”

42 “The diverse undertakings of the ecumenical movement must be encouraged in conformity with the principles decreed by the Second Vatican Council and the directives of the Apostolic See and particularly among them, the *Decree on Ecumenism*.”

43 “Ecumenical initiatives are to be promoted in every Church *sui iuris* through special norms of particular law, while the Roman Apostolic See functions as the moderator of the movement for the entire Church.”

44 “The particular law of each Church *sui iuris* is to determine in greater detail how these prescripts are to be put into effect, unless provision has already been made for certain matters by common law.”

In turn, MPL article 91<sup>45</sup> in turn defers the matter to the “competent ecclesiastical authority,” without providing any specific details. Albeit an authority, e.g., eparchial bishop, has been determined, but there is still no norm regarding the creation of new offices. This is not the only example of a *lacuna legis* arising from the lack of specific provision in the particular law.<sup>46</sup>

There are certain cases in which the permission of the patriarch is required for certain acts.

- MPL article 40,<sup>47</sup> citing *CCEO* canon 365 §2,<sup>48</sup> requires the permission of the patriarch for a cleric to be ascribed to an eparchy of another Church *sui iuris*. Insofar as: (1) the power of the patriarch is restricted to the territory of the patriarchal church; (2) this particular law is of a disciplinary nature; and (3) this particular law has not been approved by the Apostolic See, it would seem to lack the force of law outside the patriarchal territory. We shall examine below the possibility of the extra-territorial extension of the law.

45 “It belongs to the competent ecclesiastical authority to apply the decrees relating to a recently created office and in the way he sees fit.”

46 This observation was made by Bousamra, *Particular Law*, 201.

47 “For the licit transfer of a cleric from our Maronite Church to an eparchy of another Church *sui iuris*, the bishop who permits the transfer must obtain permission from the Maronite patriarch.”

48 “If the particular law of the Church *sui iuris* so prescribes, it is also required for the licit transfer to an eparchy of another Church *sui iuris* that the eparchial bishop releasing the cleric obtain the consent of the authority determined by the same particular law.”

- Another example is similar. MPL article 13,<sup>49</sup> in reference to *CCEO* canon 194,<sup>50</sup> requires the eparchial bishop to “ask the patriarch to confer the order of Chorbishop or Periodeut.” The matter is disciplinary and therefore *per se* lacks the force of law outside the patriarchal territory. Since *CCEO* canon 194 refers to *ius particulare Ecclesiae sui iuris*, the eparchial bishop—as we shall see below—is not competent to enact it in his own eparchy. (If it were simply a matter of *ius particulare*, it would still be unlikely that an eparchial bishop would enact a law that would oblige him to seek permission from a superior in order to confer the orders of chorbishop or periodeut.) The eparchial bishop is not obliged in this matter to seek the permission of the patriarch in order to confer such orders. Such a lack of canonical requirement would not prevent the eparchial bishop outside the patriarchal territory from seeking the blessing prior to the ordination.

In both of these articles, one notes that the territorial restrictions relating to particular law complicates matters.

*Future Prospects for Particular Law of the Maronite Church*

It was already mentioned above that the Maronite patriarchal church celebrated a patriarchal assembly in three sessions from 2003-2005. The acts of this assembly were confirmed by Maronite Patriarch Nasrallah Peter Cardinal Sfeir and the Synod of Bishops on 11

49 “In accordance with canon 250, the eparchial bishop must ask the patriarch to confer the order of Chorbishop or Periodeutes [sic] (bardût) upon clerics subject to him who distinguished themselves in excellence and pastoral ministry, especially the vicar general during or after his charge. The patriarch must confer these orders by the imposition of hands or by delegating this to the eparchial bishop.”

50 “The eparchial bishop can confer dignities upon clerics subject to them, others excluded, in accord with the norm of the particular law of their own Churches *sui iuris*.”

June 2006.<sup>51</sup> As would be expected, the Maronite Church wanted to avail itself of the fruits of the patriarchal assembly and re-elaborate 1996 particular law. It is beyond the scope of this study to analyze the particular law that is still in draft form, but for anyone interested, an English translation of the November 2009 draft has been published and analyzed.<sup>52</sup>

### Territorial Restrictions on the Force of Particular Law

Let us now examine the territorial limitations of the law, possibilities for extraterritorial extension of the force of law, and possible ramifications of the territorial division of the particular law of a Church *sui iuris*.

A significant factor in the governance arrangements of the Eastern Catholic Churches is that territorial boundaries are applied to each Church *sui iuris*. In the cases of the patriarchal and major archiepiscopal churches, the territory of those churches is the region in which the rite of the respective church is observed and the patriarch or major archbishop has legitimately acquired the right to erect provinces, eparchies and exarchies.<sup>53</sup> The modification of territorial boundaries or the resolution of doubts regarding boundaries of the patriarchal or major archiepiscopal church is the exclusive competence of the Roman Pontiff, upon receipt of a petition presented to him by the synod

51 *Maronite Patriarchal Synod 2003-2006. Text and Recommendations* (Bkerke, 2008) 8-10.

52 See Bousamra, *Particular Law*, 360-446 (translation) and 202-316 (analysis).

53 *CCEO* c. 146 §1: "The territory of the Church over which the patriarch presides extends over those regions in which the rite proper to that Church is observed and the patriarch has a legitimately acquired right to erect provinces, eparchies, and exarchies." *CCEO* c. 152 provides that what is stated in common law for the patriarchal churches is applicable also to the major archiepiscopal churches unless indicated otherwise or it is evident from the nature of the matter.



of bishops.<sup>54</sup> In the case of the metropolitan church, it is the exclusive competence of the supreme authority of the Church to define the boundaries of this category of Churches *sui iuris*.<sup>55</sup>

The heads of the Eastern Catholic Churches exercise authority over the faithful in two ways according to the territorial boundaries of the Church *sui iuris*.

*CCEO* canon 78 §2 provides a general territorial restriction on the power of the patriarch:

The power of the patriarch is exercised validly only within the territorial boundaries of the patriarchal Church unless the nature of the matter or the common or particular law approved by the Roman Pontiff establishes otherwise.<sup>56</sup>

It is noteworthy that the term “validly” is included. Any acts of governance not covered by the exceptions indicated in canon 78 §2 are invalid. This applies also to legislative activity of the synod; un-

54 *CCEO* c. 146 §2: “If any doubt concerning the territorial boundaries of the patriarchal Church arises or if it is a question of the modification of boundaries, it is for the synod of bishops of the patriarchal Church to investigate the matter. After hearing the superior administrative authority of each Church *sui iuris* concerned, and after discussing the matter in the synod, it is up to the same synod to present a properly documented petition for the resolution of the doubt or for the modification of the boundaries to the Roman Pontiff. It is for the Roman Pontiff alone to resolve the doubt authentically or to decree a modification of the boundaries.”

55 *CCEO* c. 155 §2: “It is solely for the supreme authority of the Church to erect, modify, and suppress metropolitan Churches *sui iuris* as well as to define their territorial boundaries.”

56 See also *CCEO* c. 147: “Within the territorial boundaries of the patriarchal Church, the power of the patriarch and the synods is exercised not only over all Christian faithful who are ascribed to that Church, but also over others who do not have a local hierarch of their own Church *sui iuris* constituted in the same territory and, even if they remain ascribed in their own Church, are committed to the care of local hierarchs of that patriarchal Church with due regard for can. 916 §5.”

less common law or particular law approved by the Roman Pontiff provides otherwise, the patriarch cannot *validly* promulgate laws for faithful outside the territory of the patriarchal church.

The precise canonical arrangements are articulated for the patriarchal and archiepiscopal churches in Title 4, Chapter 8, “The Territory of a Patriarchal Church and the Power of the Patriarch and Synods Outside this Territory” (*CCEO* canons 146 – 150). The Eastern Code does not explicitly provide for extra-territorial governance for the metropolitan churches *sui iuris* or other churches *sui iuris*.

With regard to legislative activity, the “divide” between territorial and extra-territorial power is articulated in *CCEO* canon 150 §2:

Laws enacted by the synod of bishops of the patriarchal Church and promulgated by the patriarch, have the force of law everywhere in the world if they are liturgical laws. However, if they are disciplinary laws or in the case of other decisions of the synod, they have the force of law within the territorial boundaries of the patriarchal Church.

Therefore, the extent of the force of law of a synodal enactment that is promulgated by the patriarch is determined by the nature of the law itself: (1) if a law is a liturgical law, it has the force of law everywhere in the world; (2) in the case of disciplinary laws or other decisions of the synod, they have the force of law only within the territorial boundaries of the patriarchal church. The division between a liturgical law and a disciplinary law is not as self-evident as one might presume; for example, is the minimum age required for a sponsor on the occasion of baptism<sup>57</sup> a liturgical law or a disciplinary law? The response will determine the extent of the force of law of this particular law of the Maronite Church.

57 MPL art. 66 (cf. can. 685 §2): “For a person to fulfill validly the role of a sponsor, besides those things required by can. 685 §1, 3°, it is necessary that he or she be at least 18 years old and lead a life in harmony with the faith and the role to be undertaken.”

The following 13 articles are liturgical laws and, consequently, enjoy the force of law throughout the Maronite Church:

67 (right of consecrating sacred oils); 68<sup>8</sup> (age of First Communion); 69 (sacred species); 70 (obligation to receive Divine Eucharist); 71 (distribution of Divine Eucharist); 72 (place of sacrament of penance); 73 (ordination in another eparchy); 74 (interstices between ordinations); 84 (marriage by proxy); 85 (time of celebration of marriage); 86<sup>59</sup> (sacramentals); 87 (holy days of obligation); 88 (veneration of saints).

The other 92 articles of the Maronite Particular Law are of a disciplinary nature; consequently, their legal force is restricted to the territory of the patriarchal church.

*Extraterritorial Extension of the Force of Law*

While the force of disciplinary particular law is *per se* restricted to the territory of the patriarchal church, the Eastern Code provides means to extend the force of law extra-territorially:

Eparchial bishops constituted outside the territorial boundaries of the patriarchal Church, who desire to do so, can attribute the force of law to disciplinary laws and other decisions of the synod which do not exceed their competence in their own eparchies; if, however, these laws or

58 The provisions of MPL art. 68 regarding the reception of Holy Communion by children only after the age of seven years seems to be contrary to the “spirit” of *CCEO* c. 697, which indicates that “the Divine Eucharist is to be administered as soon as possible (*quam primum*) in accord with the norms of the particular law of each Church *sui iuris*.” See also Congregation for the Eastern Churches, *Instruction for Applying the Liturgical Prescriptions of the Code of Canons of the Eastern Churches*, n. 42 (Vatican City State: Libreria Editrice Vaticana, 1996).

59 MPL art. 86, in reference to *CCEO* c. 867 §2, states: “Concerning the sacramental, the norms to be applied are those prescribed by liturgical books, rituals, devotions and processions and which have received the recognition of the Supreme Authority of the Church.” In requiring the recognition of the Supreme Authority, the Maronite Particular Law requires a higher level of ecclesiastical approval than *CCEO* c. 657.

decisions are approved by the Apostolic See, they have the force of law everywhere in the world.<sup>60</sup>

*Approval of the Apostolic See*

One way to extend the force of laws enacted by the synod of bishops is for the Apostolic See to approve<sup>61</sup> them. Approval by the Apostolic See attributes the force of law to these laws everywhere in the world: *si vero hae leges vel decisiones a Sede Apostolica approbatae sunt, ubique terrarum vim iuris habent*. Approval (*approbatio*)<sup>62</sup> of synodal laws and the consequent extraterritorial extension of the authority is

60 *CCEO* c. 150 §3. The translation differs from that of the *CCEC*.

61 *Approbatio* is defined as “the giving of one’s approval, approbation” (cf. P. G. W. Glare, *Oxford Latin Dictionary* [New York: Oxford University Press, 1983] [hereafter *OLD*] s.v. “*approbatio*”).

62 There are cases in which the *CCEO* requires the approval of the supreme authority of the Church, the Roman Pontiff or the Apostolic See in order for the *ius particulare* to acquire the force of law:

- *CCEO* c. 56 requires approval by the *supreme authority* of the Church for norms regulating the power of patriarchs.
- *CCEO* c. 78 §2 provides that particular law approved by the Roman Pontiff can modify the territorial restrictions on the exercise of patriarchal power.
- *CCEO* c. 138 treats special norms governing metropolitans established outside the patriarchal territory. Such norms enacted by the synod of bishops require the approval of the Apostolic See.
- *CCEO* c. 187 §3 treats the election of bishops and allows for a possible modification of the procedure with the approval of the Roman Pontiff.
- *CCEO* c. 322 §3 requires the approval of the Roman Pontiff for the decisions of an assembly of hierarchs to have the force of law; *CCEO* c. 322 §4 requires the approval of the Apostolic See for the statutes of an assembly of hierarchs.
- *CCEO* c. 880 §3 requires the approval by the Apostolic See for particular law enacted by the synod of bishops regarding the suppression or transfer of holy days.
- *CCEO* c. 1388 prescribes that changes to the procedure for the removal or transfer of pastors requires the approval of the Apostolic See.

distinct from *recognitio*<sup>63</sup> or enactment<sup>64</sup> of particular law on the part of the Apostolic See.

How does one categorize synodal laws that are approved by the Roman Pontiff or Apostolic See? Are such laws patriarchal laws or papal laws? Because the laws were enacted by the synod of bishops

63 *Recognitio* is translated as “formal examination, inspection, review” (*OLD*, s.v. “*recognitio*”). The *CCEO* calls for the review of: certain liturgical texts by the Apostolic See in order for the texts to be considered as approved (*CCEO* c. 657 §1); statutes of an association by the competent ecclesiastical authority in order for the association to be recognized in the Church (*CCEO* c. 573 §2). One could also argue that the *receptio* of the Apostolic See of laws enacted by the council of hierarchs (*CCEO* c. 167 §2) is also essentially a *recognitio*.

In comparing the process of *approbatio* with that of *recognitio* (while not drawing a too clear-cut distinction), one might characterize *approbatio* as a positive confirmation of the legislation, while *recognitio* can be construed as a preventative measure: “*Recognitio*, en cuanto concepto, significa el examen y fallo subsiguiente de que nada relative a la fe, las costumbres o la oportunidad es merecedor de censura” (cf. Javier Otaduy, Antonio Viana, and Joaquin Sedana, eds., *Diccionario General de Derecho Canónico* [Pamplona: Universidad de Navarra, 2012] s.v. “*recognitio*”).

64 In addition to laws enacted by the supreme authority of the Church (*CCEO* c. 1492) and the common law of the Eastern Churches (*CCEO* c. 1493 §1), the *CCEO* provides that certain particular laws are enacted by the Apostolic See:

- *CCEO* cc. 29 and 30 include possibilities for alternative norms regulating ascription.
- *CCEO* c. 138 provides that the Apostolic See can enact norms regulating metropolitan sees established outside the territory of the patriarchal church.
- *CCEO* c. 572 stipulates that either particular law of the Church *sui iuris* or particular law enacted by the Apostolic See governs societies of the Apostolic life.
- *CCEO* c. 758 §3, in treating the admission of married men to sacred orders, indicates that the “particular law of each Church *sui iuris* or special norms established by the Apostolic See are to be followed in admitting married men to sacred orders.”
- *CCEO* c. 1036 §4 provides that the Apostolic See can approve or establish the highest amount regarding the alienation of goods.

and promulgated by the patriarch, it is accurate to categorize such laws as *patriarchal*. Nevertheless, the approval of the Roman Pontiff or Apostolic See radically changes the nature of the laws. One must first note that the canon describes such a law as having the force of law everywhere in the world (*ubique terrarum*). Although the law already was *in vigore* in the patriarchal territory, the approval attributes the force of law to it throughout the patriarchal church—inside and outside the territory of the patriarchal church.<sup>65</sup> Once approval of the Roman Pontiff or Apostolic See is given, the synod of bishops is no longer competent to derogate from or abrogate the law without the approval of the Roman Pontiff or Apostolic See. This arrangement is not only of a theoretical, but also of a practical concern.

*Enactment by the Eparchial Bishop*

*CCEO* canon 150 §3 also provides that eparchial bishops can, if they want, “attribute the force of law to disciplinary laws and other decisions of the synod in their own eparchies.” How does the eparchial bishop attribute the force of law to synodal legislation? Since he is subordinate to the synod, he cannot—as is the case with the Apostolic See—*approve* the synodal legislation. The only way in which the eparchial bishop can attribute the force of law to a law enacted outside his territory is to promulgate it. This conforms to *CCEO* c. 1488: “Laws are established by promulgation.” Unlike synodal law approved by the Apostolic See, the law promulgated by the eparchial

65 Some argue that the approval of the Apostolic See extends the legal force of the synodal enactment only extraterritorially but if the intention of the legislator is to provide for a consistent canonical arrangement for the patriarchal church, it would seem that approval of a synodal enactment is for the *entire* patriarchal church, that is, inside and outside the territory. It is illogical that the synod of bishops would be competent to derogate from or abrogate a law approved by the Roman Pontiff or Apostolic See even inside the patriarchal territory. The provision of *CCEO* c. 985 §2 (“An inferior legislator cannot validly issue a law contrary to higher law”) should also be kept in mind.

bishop is *eparchial law* since the eparchial bishop is the author of the legislation. Eparchial law falls under the general category of *ius particulare* and is thereby susceptible to future derogation by himself or his successors.

The provision contains a restrictive clause that generally seems to be overlooked: the eparchial bishop can attribute the force of law to those matters that do not exceed his competence (*quae eorum competentiam non excedunt*).<sup>66</sup> Inclusion of this phrase in the canon is premised on the fact that the synod of bishops enacts laws that are beyond the competence of the eparchial bishop to enact. Canon 150 §3 does not give the eparchial bishop *carte blanche* to duplicate the laws of the synod in his own eparchy; *he can attribute the force of law only to those laws that are within in his competence to legislate.*

What are the limits of competence? The Eastern Code articulates certain distinctions. Taking a *via negativa* approach, the Eastern Code defines *ius particulare* (“particular law”) as laws, legitimate customs, statutes and other norms of law, which are neither common to the entire Church nor to all the Eastern Catholic Churches.<sup>67</sup> The term *ius particulare* is a generic term that includes patriarchal, major archiepiscopal, metropolitan and eparchial laws, statutes of juridic persons and bodies, each of which is enacted according to the nature of the institution.

In addition to the generic term of *ius particulare*, the Eastern Code also employs the term *ius particulare Ecclesiae sui iuris* to designate laws enacted *at the level of the Church sui iuris*. The *ius particulare Ec-*

66 Some might presume that this phrase refers only to the fact that eparchial bishops cannot attribute force of law contrary to enactments of the Roman Pontiff or Apostolic See, implying the restrictions on married clergy. Such a presumption is unsupported.

67 CCEO c. 1493 §2. While the canon refers to “Church” and “Eastern Churches” without the qualification of “Catholic,” one can presume that the scope of the definitions are restricted to the Catholic communion (cf. CCEO c. 1).

*clesiae sui iuris* is further specified according to the hierarchical rank of the Church *sui iuris* enacting it: (1) *ius particulare Ecclesiae patriarchalis*;<sup>68</sup> (2) *ius particulare Ecclesiae Metropolitanae sui iuris*; and (3) *ius particulare in "ceteris" Ecclesiis sui iuris*.<sup>69</sup>

The Eastern Code stipulates what authority is competent to enact *ius particulare Ecclesiae sui iuris*:<sup>70</sup> the Roman Pontiff,<sup>71</sup> the supreme authority of the Church,<sup>72</sup> the Apostolic See,<sup>73</sup> the synod of bishops of the patriarchal church / major archiepiscopal church,<sup>74</sup> the council of hierarchs of the metropolitan church *sui iuris*,<sup>75</sup> and the competent authority in an "Other" Church *sui iuris*.<sup>76</sup> One must conclude that no other authority is competent to enact *ius particulare Ecclesiae sui iuris*.<sup>77</sup>

68 Note that the synodal enactments of the major archiepiscopal church fall under this category; see *CCEO* c. 152.

69 These are the distinctions drawn by Ivan Žužek in *Index Analyticus Codicis Canonum Ecclesiarum Orientalium*, Kanonika 2 (Rome: Pontificium Institutum Orientalium Studiorum, 1992) s. vv. "ius particulare," "ius particulare Ecclesiae patriarchalis," "ius particulare Ecclesiae Metropolitanae sui iuris," "ius particulare Ecclesiae sui iuris," "ius particulare in "ceteris" Ecclesiis sui iuris." See also Bharanikulangara, 28-31.

70 There appears to be an imprecision in *CCEO* c. 880 §2 ("The competence to constitute, transfer or suppress feast days and days of penance for individual Churches *sui iuris* belongs also to the authority in those churches that is competent to establish particular law. It may do so, however, only after taking into account the other Churches *sui iuris* and without prejudice to can. 40 §1"). There are many authorities competent to establish particular law; it would seem that the canon intends to restrict the authority to those competent to enact particular law on behalf of the entire Church *sui iuris*.

71 *CCEO* cc. 78 §2; 159; 182 §3.

72 *CCEO* cc. 56; 58.

73 *CCEO* cc. 29 §1; 30; 554 §2; 888 §3; 1388.

74 *CCEO* c. 110 §1.

75 *CCEO* c. 167 §1.

76 *CCEO* c. 176.

77 It is worth noting that the particular law of a Church *sui iuris* has greater



Legislation enacted by an eparchial bishop, while falling under the category of *ius particulare*, does not qualify as *ius particulare Ecclesiae sui iuris*; an eparchial bishop attempting to enact particular law falling under the category of *ius particulare Ecclesiae sui iuris* would be acting beyond his competence. This is the parameter of the phrase “which do not exceed their competence” (*quae eorum competentiam non excedunt*) as found in *CCEO* canon 150 §3.

Certain articles of the 1996 Maronite Particular Law refer to canons that speak of *ius particulare* and are therefore within the competence of the eparchial bishop to legislate:<sup>78</sup>

17 (participants in eparchial synod); 20 (term of office for eparchial finance officer); 24 (term of office of protopresbyter); 25 (role of protopresbyter); 28 (acquisition of office of pastor); 31<sup>79</sup> (preservation of older parish records); 35 (director of vocations); 36 (lay students in minor seminaries); 37 (seminary statutes); 38 (seminary moderators); 41 (annual retreat for seminarians); 42 (conduct of clerics); 44 (daily celebration of Divine Liturgy); 45 (unbecoming clerical conduct); 48<sup>80</sup> (annual vacations of clerics); 49 (clerical garb); 50 (financial support of clerics and their families); 52 (conventual chapters of monasteries with less than six members); 56 (establishment of other forms of ascetical life); 58 (private

stability than particular law of an eparchy because of the legislative authority behind it. One should also take into account that the formalities required in the enactment and promulgation of particular law of a Church *sui iuris* are more demanding.

78 Such matters are also within the competence of the synod of bishops; in consideration of the principle of subsidiarity, it is appropriate for the matter to be dealt with on the eparchial level.

79 MPL art. 31 refers to *CCEO* c. 296 §§1 and 5. The first paragraph calls for norms of particular law of the Church *sui iuris*; the fifth paragraph refers to particular law on the preservation of older parish registers.

80 In combining *CCEO* cc. 386 §1 and 392, MPL art. 48 creates an imprecision: it refers to month-long absences from the eparchy. If a cleric took his vacation within the territory of the eparchy, he would not be canonically absent. One notes that the article refers to all clerics, not just presbyters.

associations); 59 (catechumenate program); 60 (catechetical committee); 61 (homilies); 62 (clerics and social communications); 65 (place and minister of baptism); 66 (qualifications for lawfulness of sponsors); 77 (announcement of candidates for sacred orders); 78 (spiritual retreats for ordinands); 83 (proper pastor of marriage); 89 (reception of lay persons into Maronite Church); 90 (ecumenical initiatives); 97 (annual budgets and financial reports); 98 (annual reports on donations); 99 (creation of non-autonomous pious foundations); 100<sup>81</sup> (constitution or acceptance of pious foundations); 102 (communication of judicial acts); 103 (expenses for judicial causes); 105 (penal sanctions).

Some articles of the Maronite Particular Law refer to canons of the Eastern Code in which the term *ius particulare* is used without any further qualification, but *ex natura rei* such matters are beyond the legislative competence of the eparchial bishop:

1 (election of patriarch); 2 (time for the convocation of synod of bishops for patriarchal election); 3 (synod presidency during patriarchal election); 4 (election of secretary and scrutineers); 5 (requirements for election); 6 (patriarchal visitation of eparchies); 7 (ordination of bishops); 8 (obligation of patriarch to offer Divine Sacrifice for the faithful); 9 (voting rights of bishops outside territory); 10 (convocation of synod of bishops); 11 (patriarchal finance officer); 12<sup>82</sup> (election of bishops); 15<sup>83</sup> (obligation of eparchial bishop to be present in eparchy); 16 (eparchial administrator); 33 (exarchs emeriti); 46 (clerics and political activities); 53 (dispensation from temporary vows); 54 (dismissal of monk in temporary vows); 92 (recourse against patriarchal administrative decree); 101 (establishment and operation of unified permanent tribunal).

81 MPL art. 100 treats the acceptance of pious foundations and makes reference to the *Law on the Personal Statutes of Catholic Rites*. The personal statutes are beyond the scope of an eparchial bishop outside the territory of the patriarchal church.

82 MPL art. 12 §2, in treating the presentation of candidates, refers to particular law approved by the Roman Pontiff, but does not cite the specific reference.

83 MPL art. 15 refers to *CCEO* c. 204 §3, which includes the phrase “established by the particular law of his own Church *sui iuris*.”

There are also MPL articles that refer to canons calling for *ius particulare Ecclesiae sui iuris* (or a variation of this term). The articles are as follows:

13 (permission to confer orders of chorbishop and periodeut); 14<sup>84</sup> (obligation of eparchial bishop to celebrate Divine Eucharist for the intentions of the faithful); 18 (communication of acts of eparchial assembly); 19 (protosyncellus and syncellus should be celibate presbyters); 21 (eparchial finance council); 22 (presbyteral council); 23 (qualifications of protopresbyter); 24 (protopresbyter term of office); 26 (term of office of pastors); 27 (appointment of several presbyters to one parish); 29 (obligation of pastor to celebrate Divine Liturgy for intentions of faithful); 30 (parish councils); 32 (retirement of pastors); 34<sup>85</sup> (ministry of minor clerics); 39 (ascription through reception of minor orders); 40 (transfer of ascription of a cleric to another Church *sui iuris*); 43 (clerical obligation to celebrate divine office); 47<sup>86</sup> (prohibition of clerics to exercise business or trade); 51 (entrusting ecclesiastical functions to lay persons); 55 (erection of secular institutes); 57 (establishment of societies of apostolic life); 63 (intellectual property rights); 64 (permission for non-Catholic Christians to use ecclesiastical facilities); 79 (marriage preparation / betrothal); 80 (determination of freedom to marry); 81 (lawful age of marriage); 82 (promises in mixed marriage); 84 (marriage by proxy); 91 (provisions for the establishment of offices); 93 (eparchial taxes on physical persons); 94 (taxes for acts of governance); 95 (financial support of clerics); 96 (administration of ecclesiastical goods); 104 (execution of judicial sentence).

84 MPL art. 14 (cf. *CCEO* c. 198) does not have the force of law outside the territory of the patriarchal church, but the eparchial bishop is bound by the more general obligation imposed by the Eastern Code. Even if *CCEO* c. 198 referred only to *ius particulare*, it would be inappropriate for the eparchial bishop to legislate in this matter because effectively he would be binding only himself. Cf. MPL arts. 18, 21 and 22.

85 *CCEO* c. 327 defers the organization of ministries of minor clerics to particular law of the Church *sui iuris*; MPL art. 34 in turn relegates the organization of the ministries of cantor, lector and subdeacon to the eparchial bishop in collaboration with the pastor.

86 One should note that most of the deacons in my own eparchy are in violation of *CCEO* c. 385 §2.

Finally, there is *ius particulare* that requires the approval of the Roman Pontiff (cf. *CCEO* canons 182 §3 and 880 §3) or the Apostolic See (cf. *CCEO* canon 1388) in order to acquire the force of law. In the case of the particular law of the Maronite Church, one can refer to MPL art. 12 §2,<sup>87</sup> which treats the election of bishops and requires approval of the Roman Pontiff; MPL art. 87,<sup>88</sup> which treats holy days of obligation and requires the approval of the Apostolic See.

In order to appreciate the distinctions regarding the competence of an eparchial bishop to attribute the force of law to enactments of the synod of bishops, let us examine some specific issues.

87 “In accordance with the particular Law approved by the Roman Pontiff, only the patriarch has the right to propose the names of the episcopal candidates to the fathers of the synod, who examine the names of the candidates and then compile a list of the names by secret ballot which must be transmitted through the patriarch to the Apostolic See in order to obtain the assent of the Roman Pontiff.”

88 “§1. The holy days of obligation in our Church are the following: the Nativity, new years day, [sic], the Epiphany, Saint Maron, Saint Joseph, Holy Week, Good Friday, Easter Monday, Saints Peter and Paul, the Assumption of the Virgin, the Triumph of the Cross, All Saints, Immaculate Conception and the feast of the patron of the parish, except if the eparchial bishop has transferred any of these feasts to Sunday, when it does not coincide with a civil holiday.

“§2. Along with the Synod of Bishops of the Patriarchal Church, the patriarch has the right to establish, transfer or suppress them for all the Maronite Church taking into consideration, as much as possible, the situation of the other Churches and the circumstances of place and time.

“§3. Along with the Synod of Bishops of the Patriarchal Church, the patriarch also has the right to suppress or transfer to a Sunday the holy days of obligation common to the Oriental Churches with the approval of the Apostolic See.

“§4. Taking into consideration the circumstances of place, fasting is obligatory in the season of Lent and Holy Week. Abstinence is obligatory on Fridays throughout the year except the period between the feast of the Nativity and the Epiphany, between the feast of Easter and Pentecost, the week preceding the season of Lent and the Fridays that fall on a holy day of obligation.”

*CCEO* canon 284 §3, 4<sup>o89</sup> provides that a pastor is permanent in his office and is not to be appointed for a fixed period of time unless the particular law of his Church *sui iuris* permits it. Based on this provision, MPL article 26<sup>o</sup> permits a pastor to be appointed for a determined period of time.

*CCEO* canon 284 §3, 4<sup>o</sup> does not refer simply to any particular law, but to particular law *at the level of the Church sui iuris*. The eparchial bishop is not competent to enact particular law of the Church *sui iuris* and, therefore, is not competent to enact legislation that would allow for the appointment of a pastor for a determined period of time. This arrangement is appropriate; otherwise the eparchial bishop would be legislating for himself alone (cf. MPL articles 14, 18, 21 and 22).

Another example can be found in MPL article 27 §1<sup>91</sup> regarding the arrangement of entrusting a parish to several presbyters. *CCEO* canon 287 §2<sup>92</sup> provides that particular law of the Church *sui iuris* can allow for the derogation from the general provision that each parish is to have only one pastor. The eparchial bishop is not competent to enact this legislation for his own eparchy.

89 “The pastor is permanent in his office, therefore he is not to be appointed for a determined period of time unless the particular law of his Church *sui iuris* permits it.”

90 “The pastor possesses stability in his office. However, he can be named for a fixed period of time determined by the eparchial bishop in accordance with can. 284 §3.”

91 “In the same parish there must be only one pastor. However, when necessary, a parish may be entrusted to several presbyters on condition that the eparchial bishop determine in the decree of appointment the rights and obligations of the moderator and the other presbyters.”

92 “In the same parish there is to be only one pastor; however, if the particular law of the Church *sui iuris* allows it, a parish may be entrusted to several presbyters; the same particular law is to determine precisely the rights and obligations of the moderator, who directs the common action and reports on it to the eparchial bishop, and what are those of the other presbyters.”

There are cases in which the Maronite Particular Law requires confirmation of an eparchial bishop's actions by a superior authority. For example, MPL article 56,<sup>93</sup> in reference to *CCEO* canon 570,<sup>94</sup> provides that an eparchial bishop, with the consent of the presbyteral council, can establish other forms of the eremitical life, the statutes of which are to be approved by the patriarch together with the synod of bishops. Since it is a matter of simple particular law, the eparchial bishop is competent to enact it in his own eparchy; however, it is unlikely that he will oblige himself to obtain the approval of the statutes to the patriarch and synod.

Let us conclude the examples with an examination of MPL article 19,<sup>95</sup> which provides that particular law of the Church *sui iuris* can permit the appointment of a married presbyter in conformity with *CCEO* canon 247 §2.<sup>96</sup> An eparchial bishop in the United States is not competent to enact such a law for his own eparchy because it is not within his competence to enact *ius particulare Ecclesiae sui iuris*.

93 “The eparchial bishop can, with the consent of the presbyteral council, establish other forms of ascetical life which imitate the eremitical life which may or may not belong to an institute of consecrated life. Consecrated virgins and widows living in the world and having publicly professed chastity can also be accepted. The ecclesiastical authority which confirms these statutes is the patriarch with the Synod of Bishops of the Patriarchal Church.”

94 “By means of particular law, other kinds of ascetics who imitate eremitical life, whether they belong to an institute of consecrated life or not, can be constituted. Consecrated virgins and widows living apart in the world, having publicly professed chastity, can also be established.”

95 “The vicar general [sic] and the episcopal vicar [sic] must be celibate presbyters. In case of necessity, the latter may be a married priest.”

96 “The protosyncellus and the syncelli are to be celibate presbyters, unless the particular law of their Church *sui iuris* has established otherwise; if possible, they should be from the clerics ascribed to the eparchy; they are to be not less than thirty years of age, have a doctorate, licentiate or expertise in some sacred science; be commendable for sound doctrine, uprightness, prudence and practical experience.”

Further, appointment of married presbyters to office in the United States is contrary to special norms enacted by the Apostolic See.<sup>97</sup>

*Ramifications in Laws Lacking Territorial Extension*

Given the territorial restriction of patriarchal authority (cf. *CCEO* canon 78 §2), the territorial restrictions of the legal force of laws enacted by the synod of bishops (cf. *CCEO* canon 150 §2) and the possibility of the extension or non-extension of the force of law to laws enacted by the synod of bishops (cf. *CCEO* canon 150 §3), one must conclude that the Eastern Code foresees the existence of two legal systems in effect in each of the patriarchal churches. Such a dichotomy can have awkward effects.

For example, MPL article 39<sup>98</sup> significantly modifies of the general provision of *CCEO* canon 358<sup>99</sup> regarding ascription (incardination) of clerics by stating that by the reception of any of the three minor orders, i.e., cantor, lector and subdeacon, one is ascribed in the eparchy. Such an arrangement is possible at the level of *ius particulare Ecclesiae sui iuris*; it exceeds the competence of the eparchial bishop to enact such law. Therefore, lacking approval of the Apostolic See, the Maronite Church now has two systems of clerical ascription: ordination to minor orders inside the territory of the patriarchal church and ordination to the diaconate outside the territory of the patriarchal church.

Similar disparities of discipline that can be resolved only with the intervention of the Apostolic See also exist in the case of the obligation of clerics to celebrate the divine office (MPL art. 43).<sup>100</sup>

97 Sacred Congregation for the Eastern Church, decree *Qua sollerti*, 23 December 1929: *AAS* 22 (1930) 99-105

98 “By reception of any of the minor orders a seminarian is enrolled in the eparchy.”

99 “Through diaconal ordination, one is ascribed as a cleric to the eparchy for whose service he is ordained, unless in accord with the norm of particular law of his own Church *sui iuris*, he has already been ascribed to the same eparchy.”

100 MPL art. 43 (cf. *CCEO* c. 377): “Clerics in major orders must celebrate the divine office in choir or privately.”

Regarding disciplinary laws enacted by the synod of bishops and promulgated by the patriarch but lacking approval of the Apostolic See, it is to be noted that the eparchial bishop is free to promulgate a law that is identical, similar or even contrary to the disciplinary laws of the patriarchal church that do not enjoy the force of law outside the territory of the patriarchal church. Disciplinary laws enacted by the synod of bishops have a certain moral weight, but the prohibition against the enactment of legislation contrary to superior legislation is not applicable since there is no superior legislation *in vigore*.

For example, *CCEO* canon 331 §1 allows for particular law to permit students not called to the clerical state to be educated in a minor seminary; MPL article 35 prohibits such students from boarding as internal students. An eparchial bishop can enact the same particular law in his eparchy or provide otherwise according to the provisions of the common law.

Another scenario should be taken into consideration. The synod of bishops can enact particular law in a specific matter; subsequently, an eparchial bishop can, if it is within his competence, enact the same provisions in his own eparchy. If, in the future, the synod of bishops should change the law, the eparchial bishop is not obliged to modify his own eparchial law.

#### *A Proposal for Greater Clarity*

There are some who will not share the conclusions drawn in this paper. Nevertheless, the study has shown that the present system gives rise to confusion regarding the force of law of synodal enactments. Under the current provisions, the extraterritorial extension of the force of law is left to two authorities, one inferior (the eparchial bishop) and one superior (the Roman Pontiff or the Apostolic See). In the case enactment of eparchial law on the part of the eparchial bishop, there are limitations as to what he can enact or as to what he might be willing to enact. In the case of approval on the part of the Apostolic See, we have shown that the act of approval effectively impinges upon the self-governing authority of the patriarchal churches.



An *ad hoc* alternative arrangement could be that synodal enactments intended to have the force of law in all the circumscriptions the patriarchal church in the world would be submitted to the Apostolic See for a *recognitio* that would have the limited scope of assuring that the synodal law is not contrary to doctrine, the common law or customs.

### Conclusion

One analyzing the particular law of an Eastern Catholic Church must approach the task with a gentle and understanding disposition for a variety of reasons. The resources of some of the Eastern Catholic Churches are sometimes quite limited and the task of enacting particular law is quite demanding. One must also take into account that the Eastern Catholic Churches have only been truly “emancipated” in the middle of the twentieth century. Before that, they were not self-governing, but governed. Above all, for many of the Eastern Catholic Churches, this is a period of crisis: many of these churches find themselves in the midst of political upheaval and social turmoil. At such times, survival—not legislative refinements—is the priority.