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Every effort is made to report the views of authors objectively and accurately, without attempting to comment on them. Since, however, our contributors are fully engaged in their own work, it is impossible to exclude all danger of inaccuracy or misinterpretation. If any of our readers discover any inaccuracies, we hope they will point them out to the editor.

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REDC 64 (2007), 199-228: Benedetta Ubertazzi: Capacidad y estatuto de la persona en el Derecho internacional privado. (Conference presentation)

This presentation was given at the Congress of Civil Law of Castilla and León, held in Valladolid, 6-7 April 2006, on Housing, Economy and the Law. Given the ease of modern travel, the recent phenomenon of mass immigration, and the effects of tourism and globalization, the issue of statutes governing persons in private international law has taken on a new importance and is the subject of U.'s study. She examines the different and related criteria adopted by Agreements of Private International Law (nationality, domicile, habitual residence); criteria adopted by States governed by civil law, those governed by common law, and multi-legislative States; and attempts at harmonization, especially by the Hague Convention of 1955 and the *Institut de droit international* (1987). A final consideration is given to the criteria adopted by Italian international law. The article is accompanied by very extensive footnotes and sources.

Compilations

IC XLVIII 95/08, 279-309: Jorge Otaduy: Crónica de Jurisprudencia 2007. Derecho Eclesiástico Español. (Compilation)

O. presents a review of several decisions in 2007 of the European Court of Human Rights, six of these declaring violations of article 9 of the European Convention, which deals with freedom of thought, conscience and religion. Two

other cases concern violations of article 2 of the first additional Protocol, which deals with the right of parents to ensure that their children's education is in accordance with their own religious and philosophical convictions. Another two cases deal with allegations of religious discrimination through the application of other Convention articles: article 10, which recognizes freedom of expression, and article 8, which recognizes the right to personal and family privacy. O. then looks at a variety of cases coming before the Spanish courts, involving issues of Spanish ecclesiastical law.

IC XLVIII 95/08, 311-318: Jorge Otaduy: Crónica de Legislación 2007. Derecho Eclesiástico Español. (Compilation)

O. presents a review of legislation from 2007 involving issues of Spanish ecclesiastical law, particularly religious education, social security for ministers of worship, finance, pastoral care of members of the armed forces, and the protection of animals in relation to their sacrifice or slaughter.

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

S. presents a review of the main canonical contributions of Pope Benedict XVI and the Roman Curia during 2007. These include the Pope's address to the Roman Rota (27 January 2007), dealing with the "truth of marriage" from the juridical perspective, without neglecting its anthropological and salvific aspects (see below, canons 1055-1057); the post-synodal Apostolic Exhortation *Sacramentum Caritatis* (22 February 2007: see below, canons 899-900); the Letter to the Catholic Church in China (27 May 2007: see below, General Subjects (*Relations between Church and State*); the *motu proprio* amending the procedures for Papal elections (27 June 2007: see below, canon 332); and the *motu proprio Summorum Pontificum* by which the Pope introduced new norms on the use of the Roman liturgy prior to the 1970 reform (7 July 2007: see also *Canon Law Abstracts*, no. 100, p. 83). Details are also given of various ecclesiastical circumscriptions established by the Pope in 2007; the pontifical approval of the "Franciscans of Mary" (an institution present in 78 dioceses in 22 countries, with 10,000 lay members as well as seminarists and priests); and the proclamation of the special Jubilee Year to the Apostle St Paul, from 28 June 2008 to 29 June 2009. The review then goes on to mention the more significant documents and activities of the Roman Curia in 2007, including the Congregation for the Doctrine of the Faith's Notification on the works of Father Jon Sobrino SJ (published on 14 March 2007, though dated 26 November 2006), together with an explanatory Note making clear the Church's interest in the poor, the procedure for examining doctrinal teachings, and its application to

this particular case; the same Congregation's decree of excommunication of the Community of the Lady of All Nations or "Army of Mary" (11 July 2007: see below, canon 1364); the Congregation for Bishops' suspension of Bishop Lugo Méndez, (20 January 2007: see below, canon 1333); and the Congregation for the Causes of Saints' Instruction *Sanctorum Mater* on the instruction of causes of the saints at diocesan or eparchial level (17 May 2007, though not officially presented until 18 February 2008: see below, canon 1403). S. then dedicates sections to the activity of the Apostolic Tribunals and Pontifical Councils, including the Joint Declaration signed by the Catholic Church and a number of other Churches and ecclesial communities mutually acknowledging the validity of baptism (29 April 2007: see below, canon 849), and the Declaration of the Joint International Commission for the Theological Dialogue between the Roman Catholic Church and the Orthodox Church on ecclesial communion, conciliarity and authority (13 October 2007: see below, canons 330-331). There are also sections dealing with the diplomatic activity of the Holy See during 2007; and documentation issued by the Spanish Episcopal Conference.

REDC 64 (2007), 379-403: Federico R. Aznar Gil: Boletín de legislación canónica particular española, 2006. (Compilation)

A.G. provides listings of particular legislation issued during 2006 by the dioceses of Spain. His division follows the order of the Books of the Code. He gives the name of the diocese, title and date of the legislation and its page references in the appropriate diocesan gazette or publication.

Victor G. D'Souza (ed.): In the Service of Truth and Justice. Festschrift in Honour of Prof. Augustine Mendonça. (Book)

The studies contained in this collection are:

1. Walter Vogels, *A Summary of the Law: "Love God…" (Dt 6:5) – "Love your neighbour…" (Lv 19:18)* (pp. 43-67), explaining these two commandments in their original Biblical context;

2. John M. Huels, *The Efficacy of Delegation Without Notification or Acceptance* (pp. 69-108): see below, canon 137;

3. Anne Asselin, *Consultation in the Parish: A Needless Burden, A Necessary Evil, or a Worthwhile Opportunity?* (pp. 109-138): see below, canons 536-537;

4. Francis G. Morrisey, *The Role of General Chapters in Religious Institutes* (pp. 139-166): see below, canons 631-633;

5. Lynda Robitaille, *Defective Validations Revisited* (pp. 167-190): see below, canons 1156-1160;

6. Brendan Daly, *Celibacy: An Ecclesiastical Imposition or Identification with Jesus Christ?* (pp. 191-214): see below, canon 277;

7. Brian Dunn, *The Practical Application of the Canons on Irregularities and Impediments to the Reception of Orders* (pp. 215-247): see below, canons 1041-1042;

8. Wojciech Kowal, *The Presumption of the Validity of Marriage* (pp. 249-274): see below, canon 1060;

9. Anthony J. Malone, *The Role and Function of the Auditor: Historical Antecedents and Legislation* (pp. 275-298): see below, canon 1428;

10. Frederick C. Easton, *The Judge and the Advocate: Keeping the Boundaries* (pp. 299-321): see below, canon 1452;

11. Patrick R. Lagges, *The Pastoral Work of Judges According to Paul VI, the Code of Canon Law, and "Dignitas Connubii"* (pp. 323-346): see below, canon 1446;

12. Roland Jacques, *The Canonical Form of Marriage Revisited: Did the Decree "Ne Temere" Outlast Its Usefulness?* (pp. 347-364): see below, canon 1108;

13. Elizabeth Cotter, *Canon 631 and the Juridic Act* (pp. 365-388): see below, canon 631;

14. Valerian M. Menezes, *Singular Acts of Executive Power: An Examination of Title IV of Book I of the 1983 Code* (pp. 389-424): see below, canons 35-93;

15. Myriam Wijlens, *"Sensus fidelium" – Authority: Protecting and Promoting the Ecclesiology of Vatican II with the Assistance of Institutions?* (pp. 425-448): see below, General Subjects (*Ecclesiology*);

16. William H. Woestman, *"Summorum Pontificum" and Ecclesial Unity* (pp. 449-465): see below, canon 838;

17. Victor George D'Souza, *General Principles Governing the Administration of Temporal Goods of the Church* (pp. 467-498): see below, canons 1254-1310.

(For bibliographical details see below, Books Received.)

Ecclesiology

CLSN 154/08: 23-54: John Alesandro: The Code of Canon Law: Past, Present and Future. (Conference presentation)

A. gave this paper to the Canon Law Society of America in October 2007. He was a member of the group that advised the Cardinals at their meeting on the final draft of the Code in 1982. The paper traces the relationship between the Vatican Councils and their respective Codes of Canon Law. It traces a quarter-century of changes in the Church and raises the question of the current Code's workability. The need for penalties in the Church is discussed, as are certain inconsistencies in the Code reflecting a difference of doctrinal and theological models of the Church: inconsistencies reflected in current tribunal practice. A short comment from Gordon Read is given at the end of the paper.

Jean-Pierre Schouppe (ed.): Vingt-cinq ans après le Code. Le droit canon en Belgique. (Book)

To mark the twenty-fifth anniversary of the 1983 Code, the group of French-speaking canonists of Belgium (GCF) compiled a series of articles dealing with the principal aspects of the Code, and themes of particular interest to Belgian dioceses. After a Preface from Cardinal Godfried Danneels on charity and justice in the Church (pp. 7-12), and a Foreword from the editor, Jean-Pierre Schouppe, secretary of the GCF (pp. 13-18), there is a theological appreciation of the Code by Noëlle Hausmann (pp. 19-32), followed by more specifically canonical articles by Jean-Pierre Schouppe on Belgian legislation complementary to the Code (pp. 33-58); Luc de Maere on the possibility of a Concordat for Belgium (pp. 59-73); Alphonse Borras on "pastoral units" in Belgium (pp. 75-97), and canonical penal law (pp. 219-238); Louis-Léon Christians on the new figure of parochial assistants worked out between the Catholic Church and the Belgian Ministry of Justice (pp. 99-117), and specific provisions for cases of clerical sexual abuse (pp. 239-255); Benoît Malvaux on institutes of consecrated life (pp. 119-144); Jean-Pierre Schouppe and Patrick de Pooter on canonical patrimonial law (pp. 145-171); Georges Rouel on marriage and its judicial protection in Pope John Paul II's addresses to the Roman Rota (pp. 173-194); Jean-Pierre Lorette on interdiocesan tribunals and nullity processes (pp. 195-217); and Kurt Martens on administrative procedures and hierarchical recourse (pp. 257-279). (For bibliographical details see below, Books Received).

Myriam Wijlens: *Sensus fidelium* – Authority: Protecting and Promoting the Ecclesiology of Vatican II with the Assistance of Institutions? (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 425-448**)

See above, General Subjects (*Compilations*). W. addresses the question of how the theology of Vatican II regarding the *sensus fidelium* and authority is protected and promoted with the help of canonical norms, so that the community of the faithful can live in accordance with that teaching.

Ecumenism and interreligious dialogue

Ap LXXIX 3-4 (2006), 275-278 : Ioannes Paulus PP. II – Bartholomaios I: Declaratio Communis. (Document)

Text in Italian of the joint declaration of Pope John Paul II and the Orthodox Patriarch (29 June 2004) continuing the process initiated by Pope Paul VI and the Orthodox Patriarch Athenagoras I of building towards unity.

Ap LXXX 3-4 (2007), 589-602: Péter Erdö: Dimensioni giuridico-canoniche del dialogo tra ebrei e cristiani di fronte alle sfide comuni attuali. (Article)

E. briefly traces the development in the Church of law and morals. He examines the sources of this development reminding us of its Biblical origins. In conclusion he points to the Jewish roots of a number of morality issues.

IE XIX 3/07, 773-791: Supremo Tribunale della Segnatura Apostolica: *Declaratio* sull'ammissione dei fedeli della Chiesa ortodossa romena alla celebrazione di un nuovo matrimonio nella Chiesa cattolica, 20 ottobre 2006 (con nota di P. Gefaell, *La giurisdizione delle Chiese Ortodosse per giudicare sulla validità del matrimonio dei loro fedeli*). (Document and commentary)

See below, canon 1085.

REDC 64 (2007), 171-198: María Elena Olmos Ortega: El matrimonio entre cristianos y musulmanes. (Conference presentation)

This presentation was given by O.O. at the XVIII Symposium of Procedural and Matrimonial Canon Law held in Valladolid, 3-7 September 2006. She examines from both the civil and confessional viewpoints some of the issues arising in the

context of marriages between Christians and Muslims, given the quite different understandings of marriage and its consequences. After noting the civil juridical framework (in Spain) and the canonical requirements for such marriages, she looks at the necessary preparation for both a civil and religious celebration of marriage and its civil registration. The last part of the study analyzes problems likely to arise in such marriages and offers some juridical solutions. A final suggestion is made for the creation and development of the figure of some kind of cultural mediator who could help prospective spouses understand better each other's background and values.

Legal theory

Ang 85 (2008) 341-362: Andrea Errera: Aristotele, i *Topica* e la scienza giuridica medievale. (Article)

See below, Historical Subjects (*Classical period*).

Ang 85 (2008) 363-390: Sebastiano Paciolla: La *consonantia canonum* e la *solutio contrariorum*. Alle origini della *scientia* del diritto canonico. (Article)

See below, Historical Subjects (*Classical period*).

Ang 85 (2008), 627-648: Wojciech Giertych: The Definition of Moral Law. (Conference Presentation – Academic Act for the 70th Birthday of Prof. Edward Kacyński OP)

G., looking at Aquinas's definition of moral law, considers primarily the full meaning of *rationis ordinatio*. This key term in the definition can have three possible meanings: "a command of the legislator", "the harmonious ordering of reality", or "the reasoning of the recipient of legislation". After considering these three possibilities G. concludes that Aquinas meant the third option – that the *ratio* in question was that of the recipient and not the legislator. The *ordinatio* ties the *ratio* of the recipient to the common good. These considerations of the moral law can be applied by analogy to canon law. G. emphasizes that law is *rationis* and not *voluntatis*: it is not an expression of the will, although many modern scholars (including the neo-Scholastics) forget this under the influence of nominalism and voluntarism. G. also highlights the fact that the moral law does not create obligations but rather recognizes pre-existent obligations.

Ap LXXIX 3-4 (2006), 653-678: Elena Di Bernardo: Il rapporto giuridico processuale nella prospettazione del Chiovenda e nell'elaborazione giuridica di Francesco Roberti. (Conference presentation)

This is the text of a paper delivered at the Lateran Pontifical University on 27 February 2006 as part of the commemoration of Cardinal Francesco Saverio Roberti. Di.B. presents the theory of G. Chiovenda at the beginning of the 20th century on the nature and organization of the civil judicial process in Italy. Cardinal Roberti, a student of Chiovenda, developed his own approach to the ecclesiastical juridical process. Di.B. contrasts the two approaches.

Ap LXXX 1-2 (2007), 333-380: Paolo Gherri: Teologia del Diritto canonico: identità, missione e statuto epistemologico. (Article)

G. presents his article in two parts. The first part is occupied with an exploration of the terminology employed in speaking of the "theology of law" and that used with reference to the "theology of canon law". G. traces the history of the emergence of these terms and the schools from which they originated. In the second part of the study the origins, purpose and relation to other disciplines of the theology of canon law is explored together with the epistemological challenges inherent in this new discipline.

Ap LXXX 3-4 (2007), 603-639: Anthony B. Chibuzor Chiegboka: The fundamentals of canonical jurisprudence. (Article)

See below, canons 1444-1445.

Ap LXXX 3-4 (2007), 641-685: Paolo Gherri: Diritto canonico, Antropologia e Personalismo. (Conference presentation)

This is the text of a presentation made by G. at the Second Interdisciplinary Day held at the Lateran University on 6-7 March 2007. G. explores the opinions and insights of various authors and documents of Vatican II, writing from anthropological and personalistic perspectives that allow a further understanding of the nature and theological foundations of canon law.

Ap LXXX 3-4 (2007), 713-773: Paola Buselli Mondin: Il Personalismo cristiano di Giovanni Paolo II: quale significato giuridico? (Conference presentation)

This is the text of a presentation made by B.M. at the Second Interdisciplinary Day held at the Lateran University on 6-7 March 2007. She draws attention to the personalistic approach found in the philosophical writings of Cardinal Wojtyła. This is the logical antecedent to the magisterial teaching of Pope John Paul II. She then proceeds to trace the influence of this approach on the Pope's interventions in the development of law in the Church with special note of the consequences with respect to marriage.

Ap LXXX 3-4 (2007), 803-822: Cristian Begus: Ricezione ed istituzionalizzazione del Personalismo nella Giurisprudenza canonica. (Conference presentation)

This is the text of a presentation made by B. at the Second Interdisciplinary Day held at the Lateran University on 6-7 March 2007. After a general survey of the formative elements in the construction of a juridical system, B. examines the relevant factors in the construction of the canonical dispositions for the existence and operation of Church legislation, tribunals and jurisprudence, noting the differences from the systems operating under the civil law of a number of countries.

Ap LXXX 3-4 (2007), 823-848: Elena Di Bernardo: Il Personalismo nella teoria e nella prassi di Roberti. Limiti e prospettive. (Conference presentation)

See below, Historical Subjects (*20th century*).

CLSN 154/08, 12-18: Allocution of the Holy Father to the Roman Rota, 26 January 2008. (Address and commentary)

See below, canon 1444.

CLSN 154/08: 19-22: Holy Father's Address to the Study Congress of the Pontifical Council for Legislative Texts. (Address)

On 25 January 2008, the day before his annual address to the Roman Rota, the Holy Father addressed the Study Congress organized by the Pontifical Council

for Legislative Texts to mark the twenty-fifth anniversary of the promulgation of the new Code of Canon Law. The aim of Church law is to enable the Church properly to exercise its mission, the salvation of souls. In this context the Pope raises the essentially "provisional" character of Church law. All of this is to enable the faithful to adhere to Christ.

IC XLVIII 95/08, 91-116: Eduardo Molano: El derecho constitucional y la estructura de la Iglesia. (Article)

Taking as his starting point a book by Sandro Gherro published in 2006, *Diritto canonico*, M. sets out his own understanding of constitutional canon law. In his opinion there are two ways of understanding the relationship between constitutional canon law and the nature of the Church. One is to consider constitutional law as including that part of the juridical constitution of the Church which corresponds to its fundamental structure, which is in substance divine law. As a result, the principles and norms that govern it are to be regarded as constitutional, and have primacy over other canonical norms. The other way of understanding constitutional canon law is to consider it as including all norms that regulate the organizational structure of the Church, even though some of these may be merely ecclesiastical laws. These two ways need to be clarified because of the different juridical consequences flowing from them. M.'s view is that the first understanding is the correct one.

IE XIX 2/07, 495-498: Benedict XVI: Discorso ai participanti al Congresso Internazionale sulla legge morale naturale promosso dalla Pontificia Università Lateranense, 12 febbraio 2007 (con *nota* di M. del Pozzo, *Un invito a decodificare il messaggio fondamentale dell'essere*). (Address and commentary)

In this opening address at a Congress held at the Lateran University on 12 February 2007 the Pope points out that the method that permits us to know ever more deeply the rational structures of matter makes us ever less capable of perceiving the source of this rationality – creative Being – and the ethical message contained in being, which is the *natural law*. He emphasizes the urgency of reflecting upon the theme of natural law and rediscovering its truth which is common to all men. Commenting on the address, del P. acknowledges that any commentary runs the risk of distorting the simplicity and immediacy of the Pope's own words, but nevertheless suggests three possible levels of reading the address: its *presuppositions* (the metaphysical concept of nature), its *content* (the truth common to all humans) and its *end* (respect for the fundamental rights of the person). He proposes certain key considerations for following the

juridical thought of the Pope, and for reaching a deeper understanding of classical natural law.

Ariel David Busso: El derecho natural y la prudencia jurídica. (Book)

B.'s work is divided into nine chapters: 1. the philosophy and science of law; 2. the relationship of philosophy of law to other similar matters (jurisprudence, theoretical philosophy, psychology, moral philosophy, sociology); 3. a discussion of the notion of law; 4. the four causes of law (formal, material, efficient, final); 5. the concept of natural law; 6. the relationship of natural law to positive law; 7. theories denying natural law; 8. modern natural law theories; 9. the relationship between law and morality. (For bibliographical details see below, Books Received.)

Relations between Church and State

AkK 176 1/07, 77-101: Adrian Loretan: Das Verhältnis von Kirche und Staat in der Schweiz in der aktuellen Diskussion um die öffentlich-rechtliche Anerkennung weiterer Religionsgemeinschaften. (Article)

In Switzerland the recognition in civil law of a religious confession is a source of tension between the denomination, the canton and the individual member of the religion. The right of self-government for publicly and legally recognized churches is not guaranteed by the federal constitution. This leads to a dual structure: a Catholic Church drawn up on canonical lines and a corporation determined by the State's ecclesiastical law. Besides the churches, the Jewish communities are also publicly and legally recognized. Islamic organizations, on the other hand, remain unacknowledged, even though in 2000 they formed 4.3% of the population. Pluralistic societies confront Church and State with new questions. In this dialogue on religious law the theory of canon law should in future play a decisive role.

AkK 176 1/07, 102-153: Stefan Korioth / Kai Engelbrecht: Erwerb und Verlust des Körperschaftsstatus von Orden und ordensähnlichen Gemeinschaften nach bayerischem Landesrecht. Zur Verfassungsmäßigkeit des Art. 26a KirchStG. (Article)

The Bavarian legislature has withdrawn the status of public corporation from religious orders. This article concludes that the reasons for such withdrawal are partly unconstitutional. Withdrawal on the grounds of excessive indebtedness

can be justified in the light of the religious communities' right of self-determination and freedom of religion, whereas withdrawal on the grounds of doubts about their loyalty to the legal order is not justifiable in the light of freedom of religion.

Ap LXXIX 3-4 (2006), 225-243: Conventio inter Apostolicam Sedem et Foederatam Civitatem Brandeburgi. (Document)

Text in German and Italian of the Convention dated 12 November 2003 between the Holy See and Brandenburg.

Ap LXXIX 3-4 (2006), 245-261: Conventio inter Apostolicam Sedem et Liberam Hanseaticam Civitatem Bremae. (Document)

Text in German and Italian of the Convention dated 21 November 2003 between the Holy See and the city of Bremen.

IC XLVIII 95/08, 117-140: Jorge Otaduy: Iglesia católica y Ley española de protección de datos: falsos conflictos. (Article)

Commenting on a recent conflict between the Archdioceses of Valencia and Madrid and the Spanish Data Protection Agency, involving the Agency's requirement that a marginal note be placed in the baptismal registering the case of a declaration of apostasy, O. expresses the view that the conflict need not have arisen, as the solution is in accordance with the guidelines established by the Spanish Bishops' Conference. However, care should be taken to distinguish between what relates to the legal aspects of formally abandoning the Church in the exercise of the right of religious liberty, and the protection of privacy under Spanish data protection legislation.

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). On 27 May 2007 Pope Benedict issued a Letter "to the Bishops, Priests, Consecrated Persons and Lay Faithful of the Catholic Church in the People's Republic of China". The first part of the Letter is dedicated to ecclesiological questions, especially the foundations of the Church's unity and the role of the Pope. The second part contains a number of pastoral and juridical guidelines. Since the 1990s, bishops and priests had been approaching the Congregation for the Evangelization of Peoples and the

Secretariat of State for specific guidance as to how to act in the face of certain ecclesial difficulties. The Holy See had given answers to these questions, but it became necessary to review the entire situation and set out directives for future pastoral conduct. This is the reason for the Letter, which revokes all faculties that were previously granted in order to address particular pastoral necessities emerging in truly difficult times. One of the main problems dealt with in the Letter is that of State interference in the appointment of bishops. The Pope states that when the Roman Pontiff issues the apostolic mandate for the ordination of a bishop, he "exercises his supreme spiritual authority: this authority and this intervention remain within the strictly religious sphere. It is not, therefore, a question of a political authority, unduly asserting itself in the internal affairs of a State and offending against its sovereignty." The Pope greatly desires that an accord be reached with the State regarding the choice of candidates for the episcopate, the publication of the appointment of bishops, and the recognition of new bishops by the State. The response to the Letter by the Chinese authorities continues to be ambiguous. Following the Letter, the Holy See communicated its approval of the appointment of the new coadjutor bishop of the diocese of Guizhou and the new Archbishop of Beijing.

IE XIX 2/07, 387-408: José Ignacio Alonso Pérez: Per una rilettura del significato istituzionale delle fabbricerie nell'ordinamento giuridico italiano. (Article)

Under the term *fabbricerie* the Italian State includes the various bodies and institutions involved in the administration of Church goods and the maintenance of Church buildings. A.P. explains how Church-State relations have evolved in this regard, highlighting the institutional significance of the *fabbricerie* in State legislation.

IE XIX 3/07, 711-725: Arturo Cattaneo: La potestà sui beni ecclesiastici. A proposito di uno studio storico-giuridico su di una questione decisiva per la libertà della Chiesa. (Bibliographical note)

See below, canons 1279-1282.

Religious freedom

IC XLVIII 95/08, 183-226: José Ignacio Rubio: La defensa y promoción de la libertad religiosa por la Administración norteamericana (2000-2007). Parte I: U.S. Department of Justice (USDOJ). (Article)

In 2007 the United States Department of Justice (USDOJ) embarked on a new initiative to protect religious liberty: the "First Freedom Project". USDOJ is responsible for enforcing a wide range of civil rights statutes designed to protect religious freedom and to counter religious discrimination, and R. sets out several aspects of its work.

IC XLVIII 95/08, 279-309: Jorge Otaduy: Crónica de Jurisprudencia 2007. Derecho Eclesiástico Español. (Compilation)

See above, General Subjects (*Compilations*).

RTL 39 (2008), 161-176: Louis-Léon Christians: La religion dans la jurisprudence européenne des droits de l'homme. (Article)

Nowadays religions are frequently invited to participate in the promotion of human rights around the world. In this new framework, religions are progressively required to prove their own credibility and their loyalty to a relatively homogeneous "human rights doctrine". However, any attempt to analyze these new religious responsibilities in the modern world without examining the ways in which "religion" is understood by the "human rights doctrines" themselves would lack objectivity. This juridical approach is useful not only for an internal analysis of the world of law, but also as a juridical contribution to a broader understanding of the interdisciplinary aspect of religious studies.

Social issues

Ap LXXIX 3-4 (2006), 365-374: Congregatio Pro Doctrina Fidei: Epistula, 31.05.2004, de mutuis relationibus inter viros et mulieres. (Document)

This is a letter written "to the Bishops of the Catholic Church on the collaboration between men and women in the Church and the World". After a survey of the modern phenomenon of feminism the letter draws upon the

Biblical sources to demonstrate the complementarity of the two sexes in the life of the Church and of secular society.

IC XLVIII 95/08, 311-318: Jorge Otaduy: Crónica de Legislación 2007. Derecho Eclesiástico Español. (Compilation)

See above, General Subjects (*Compilations*).

REDC 63 (2006), 791-826: Ricardo M. Mata y Martín: Modificaciones jurídico-penales de la Ley Orgánica 1/2004 de medidas de protección integral contra la violencia de género. (Article)

M.M. examines some of the modifications introduced into the Spanish penal code by the passing of the Organic Law 1/2004 of 28 December 2004 relating to violence against women. This law introduced norms establishing a body of specific penal sanctions for such crimes, thereby reforming elements of the present penal code.

HISTORICAL SUBJECTS

Classical period

AkK 176 1/07, 26-45: Peter Landau: Die Internationalität der Bologneser Kanonistik in der ersten Hälfte des 13. Jahrhunderts. (Article)

L. deals with the biographies of the Bolognese canonists in the hundred years from 1150 to 1250. We know of a large number of teachers of canon law during this time, whose names were identified for the first time at the end of the 13th century. From this it can be seen that whereas during the second half of the 12th century nearly all the Bolognese canonists were born in Italy, in the first half of the 13th century the majority of Bolognese canonists came from other parts of Europe, such as England, Spain, Portugal, Germany and Hungary. During this later period Italian canonists were already a small minority among the Bolognese professors. The main reason for this preponderance of foreign teachers was their concentration on new decretal law – the foreigners were more decretalists than decretists. Between 1200 and 1250 the faculty in Bologna had an incomparable international composition of teachers in canon law; this could not be preserved after 1250 because of the foundation of universities in other European countries.

Ang 85 (2008) 321-340: Miroslav Adam: Le disposizioni dei Romani Pontefici del periodo medioevale rispetto ai cristiani orientali in Ungheria. (Article)

A. discusses the history of Eastern Christians in medieval Hungary, positioned between Rome and Constantinople. There was a process of Latinization, especially after the fall of Constantinople. The local clergy were opposed to the unification efforts of the Council of Florence, believing in the superiority of Latin over Byzantine culture.

Ang 85 (2008) 341-362: Andrea Errera: Aristotele, i *Topica* e la scienza giuridica medievale. (Article)

Epistemology was radically changed by the discovery of Aristotle's *Organon* in 12th-century medieval Europe – persons in all fields of study adopted a new method of research and determination, the syllogism. Like the other sciences, law too benefited from this and improved its own scientific tools for applying

the principles and practices of Roman law to newly-considered problems in a reliable way.

Ang 85 (2008) 363-390: Sebastiano Paciolla: La *consonantia canonum* e la *solutio contrariorum*. Alle origini della *scientia* del diritto canonico. (Article)

P. describes two medieval methods of harmonizing conflicting sources. The synthesis of Gratian was based on the techniques of exegesis of Scripture and the Church Fathers, especially the work of Ivo of Chartres and Peter Abelard. Ivo sought to reconcile opposites (*consonantia canonum*); Abelard tried to solve contradictions by rules favouring one source over another (*solutio contrariorum*). These three authors played a pivotal role in the development of the theory of interpretation.

FT 18 (2007), 261-270: Szabolcs Anzelm Szuromi: Peculiarities of the conception of "sacred power" and its exercise between 1073 and 1303. (Conference presentation)

The primary goal of the Gregorian reform, which is linked particularly to the person of Gregory VII (1073-1085), was to clarify confusing ideas concerning the competence of the secular authority and the ecclesiastical power, and to further the independence of the intrinsic sacred power of the Church from the secular authority. S. traces how the Gregorian reform was continued by succeeding Popes up to the time of Boniface VIII (1294-1303), whose Bull *Unam Sanctam* (1303) set out the theory of the "two swords", signifying the spiritual and secular powers. According to this theory both swords were received by the Pope, and the secular one was then given to the monarch by the liturgy of anointing, by which he received sacred power to promote earthly peace.

IC XLVIII 95/08, 227-245: Ciro Tammaro: L'atto introduttivo (denuntiatio) e la fase preliminare del processo penale canonico in epoca basso-medievale: rilievi storico-giuridici. (Article)

T. summarizes the more important parts of the introductory phase of the canonical penal process – accusatorial and inquisitorial – during the medieval era. In the first stage, both the episcopal courts and the secular judiciaries acted according to the Roman principle of the *accusatio*. The penal action started with an accusation of the offence by a citizen, who would be required to prove the alleged facts before a judge. The second stage corresponded to the inquisitorial procedure in which the magistrate could carry out a secret investigation into the

alleged offences, thus allowing the trial to commence, for the sake of defending the public good. On the part of the Church, at the origin and theological foundation of the *accusatio* are to be found the so-called *denuntiatio evangelica* and the *charitativa admonitio*. As precautionary measures parallel to the *denuntiatio*, there also existed preventative imprisonment and the precautionary confiscation of the goods of the accused with the executive help of the secular power.

IE XIX 2/07, 309-331: Raffaele Balbi: Il criterio del *vir constans* nella teoria canonistica della *coactio* come vizio del consenso matrimoniale dalla decretistica classica al *Liber Extra* di Gregorio IX. (Article)

At quite an early date medieval canonical thinking sought criteria for evaluating violent actions and identifying those that forced a person far from the path he would normally follow. B. looks at those situations in which violent actions constitute a real threat producing effects that determine the will of the *patiens*. He limits his historical search to the period dating from the classical decrees up to the time of the *Liber Extra* of Gregory IX. He first studies the gravity of the various types of coercion (*coactio*) in the *Decretum Gratiani,* analyzing the figure of the *vir constans* in Gratian and certain of the *Decretales*. He examines those coercive events that are likely to upset the *vir constans*, and looks in particular at the approach adopted by Bernard of Pavia and the early decretalists. Modern approaches to this canonical matter are divided between interpretations that focus on either the objective or subjective *gravitas* of the coercion. The *Summae* of Tancredi and Raymond of Penyafort in particular are considered.

IE XIX 2/07, 369-383: Sczabolcs Anzelm Szuromi: Some Observations on the Textual-Development of the *Tripartita*. (A Comparative Analysis of Paris, Biblothèque Nationale lat. 3858 with other Ivonian Manuscripts). (Article)

Recent studies of pre-Gratian canon law collections show how the earlier meaning of "canonical collection" differs from its classical meaning. The comparative textual-analysis of the Ivonian *Tripartita*'s manuscripts can be helpful to understand this development. S. first gives a description of the Paris Bibliothèque Nationale (BN) manuscript lat. 3858, and then studies manuscripts BN lat. 4282 and BN lat. 13656. After comparing these documents he develops at some length a study of Anselm of Lucca's *Collectio B* and its similarity to the other Ivonian works.

L 49 (2008) 121-139: Miguel Anxo Pena González: Derecho natural y ley natural en las Indias. La propuesta de Vitoria. (Article)

P.G. discusses the concept of natural law, with special reference to the School of Salamanca. He focuses on the views of Francisco de Vitoria regarding the rights of "Indians" in the lands of the Spanish colonization of the Americas, whom Vitoria saw as bearers of natural rights, with self-dominion (and therefore not slaves by nature): an argument which clashed with that of those who interpreted "dominion" in a merely juridical manner to mean the right to possess and govern. Vitoria's views, following in the Scholastic tradition, were to form the basis of what would later be accepted by all: the unique value of each human person. Natural rights were founded on human nature, and not on the nature of the outside world. These views were to be greatly influential in subsequent controversies over the Spanish Conquest, so much so that Vitoria has been called the "Father of International Law".

REDC 63 (2006), 553-604: Franciso Cantelar Rodríguez: Fiestas y diversiones en los Sínodos medievales. (Article)

C.R. bases his article on the eight published volumes (so far!) of the medieval Spanish Synods in a critical edition of the *Synodicum hispanum*, covering Synods celebrated in Spain and Portugal between the IV Lateran Council (1215) until the end of the Council of Trent (1563). Subjects discussed include the celebration of feast days and their excessive multiplication, with the subsequent encouragement of idleness, and the central importance of the celebration of Mass and religious services on these occasions and on Sundays, with the threat of fines for those who fail to attend their own parish church. Regulations for excommunication are given; one problem was the reluctance of local parish priests to proclaim publicly the excommunication of rich and influential figures on whom they might depend in civil and economic matters. The Sign of Peace was another source of problems; the rite involved the priest or server going through the church offering the *pax* (probably a paten or some other holy object) to be kissed or reverenced – but to whom should it be offered first, and what was the order of precedence? This rite of peace caused altercations and fights; even two deaths are recorded. The second part of the article deals with civil or secular feasts, the problems arising in wedding and funeral banquets and the prohibition on eating with Jews. Regulations also covered bullfights (not to be held in church grounds or cemeteries, no clerics to participate) and hunting (forbidden to clerics; the hunting of wolves was encouraged). The article provides a window on some aspects of medieval Church and civil life in the Iberian peninsula.

REDC 64 (2007), 259-279: Carlos Larráinzar: Las "Introducciones" del siglo XII al Decreto de Gratiano. (Article)

This study considers two introductions to the *Decretum Gratiani* which appear in some 12th-century manuscripts, namely *In prima parte agitur* (= IPA) and *Hoc opus inscribitur* (= HOI). L. provides a description of the manuscript traditions of each, and the stages of editing through which the work passed until its eventual compilation in the *Decretum vulgatum* from 1150. The IPA would appear to be part of the internal process of the editing of the work rather than later additions, thereby rendering necessary a revision of Jacqueline Rambaud's conclusions. L. includes in two appendices a critical edition of HOI, never before published, and a partial edition of IPA.

REDC 64 (2007), 309-328: José Miguel Viejo Ximénez: *Accusatio in scriptis semper fieri debet.* A propósito del método de trabajo de y sobre "Graciano". (Article)

The doctrinal variants and the process of incorporation of Justinian texts demonstrate that the *Concordia discordantium canonum* was composed and developed in a context of teaching. The analysis of C. 2 q. 8 shows that these kinds of variants are not identical in all codices, nor were they all passed on in the subsequent manuscript tradition. The (re)discovery of the manuscripts Aa, Bc, P, Sg, has enabled great progress to be made in research concerning "Gratian". There still remains work to be done to establish the value of each of the codices and to determine their relationships and connections in order to explain the overall literary formation of the *Decretum*.

Evaldo Xavier Gomes – Patrick McMahon – Simon Nolan – Vincenzo Mosca (eds.): The Carmelite Rule (1207-2007). Proceedings of the Lisieux Conference. (Book)

See below, canon 603.

16th-19th centuries

Ang 85 (2008) 135-162: Marcelo Santos das Neves: A Tolerância numa perspectiva católica. (Article)

See below, canons 747-748.

Ap LXXIX 3-4 (2006), 679-718: Daniela Tarantino: Un canonista calabrese del Seicento: Carlo Pellegrino e la sua Praxis vicariorum. (Article)

T. surveys the life of Carlo Pellegrino (1614-1678), setting out his academic career and his progress in 1673 to be Bishop of Avellino. Particular attention is given to Pellegrino's work *Praxis vicariorum* which was widely diffused in Italy in the 17th and 18th centuries.

CLSN 154/08, 65-75: Derek Vidler: The Use of the Sarum and Tridentine Rites in England before and after Trent. (Article)

V. has researched into the use of the Sarum (Salisbury) Rite in England and the introduction of the so-called Tridentine Rite. The Decree of Pius V (1570) was not binding on those Rites that could count on a use of more than two hundred years, which the Sarum Rite could claim. V. examines the history of the Rites of Mass and the Breviary before and after the Reformation. "The so-called Tridentine Rite came to have its place in England only after the old Marian priests had died out and the memory of the Sarum Rite had become dimmed."

IE XIX 2/07, 347-368: Giovanni Minnucci: Alberico Gentili: un protestante alle prese con il *Corpus Iuris Canonici.* (Article)

Recent research shows how in the last years of his life the Protestant jurist Alberico Gentili, generally regarded as one of the staunchest defenders of the *mos italicus iura docendi*, substantially modified his critical opinions concerning juridical humanism, and entered deep into historical, philological and grammatical speculation. M. studies Alberico's writings on the *Corpus iuris canonici*, especially those focusing on the *auctoritas* of the lay and ecclesiastical texts preserved in the *Decretum Gratiani* and that of the texts of the Fathers of the Church, the *dicta* of Gratian and the *paleae*. M. also examines Alberico's reflections on the *Liber Extra* of Gregory IX. In later life Alberico wrote to teach his son Roberto the history and value of the *Corpus iuris canonici*, and demonstrated his conviction that, while making use of the instruments and techniques proper to his "science", it is not possible to ignore history and philology when attempting to illustrate and interpret the sources of law.

IE XIX 3/07, 711-725: Arturo Cattaneo: La potestà sui beni ecclesiastici. A proposito di uno studio storico-giuridico su di una questione decisiva per la libertà della Chiesa. (Bibliographical note)

See below, canons 1279-1282.

REDC 64 (2007), 9-130: Justo García Sánchez: Anotaciones a la vida de Juan de Orozco, legista salmantino del siglo XVI. (Article)

Juan de Orozco (†1559) was one of the leading Salamanca jurists of his day. He had been a student at that same university at the feet of such masters as Martín de Azpilcueta and Antonio Gómez, and exercised his talents in due course as professor himself. The high quality of his work is evident in his *Ad responsa prudentum commentarii*. He was chosen as Auditor of the Royal Chancery in Valladolid. This article considers his academic activity and offers a synthetic overview of his works. Of particular interest is his sentence on the betrothal of Juan Vázquez de Molina and Antonia del Águila in 1548, providing an interesting insight into the teaching and understanding of marriage in the school of Salamanca at that time. It is of more than passing interest that two of the main arguments in this sentence deal with what we would now call the discretion of judgment and psychological maturity necessary for valid marriage consent. The text of the sentence (in 16th-century Spanish) is provided in one of three appendices, the others being a draft of the plan of studies in the Faculty of Law at Salamanca (1550) and a paper presented by Orozco in 1553 concerning the reform of some aspects of the *cathedra* of law in the university.

Nelson C. Dellaferrera: Procesos Canónicos: Catálogo (1688-1888): Archivo del Arzobispado de Córdoba. (Book)

This book consists of a collection of a total of 2374 archive records of canonical processes in the archdiocese of Córdoba, Argentina, during the period 1688-1888. They are grouped into causes relating to betrothals (nos. 1-110), matrimonial causes (nos. 111-2204), and criminal causes (nos. 2205-2374). Those that relate to betrothals, which cover the period 1702-1888, are of special interest for the knowledge of customs and the keeping of promises of marriage, and help highlight the differences between canon law and the law of the Spanish Crown. The causes concerning divorce and matrimonial nullity cover the entire period from 1688 to 1888, the latter date being the year in which the Law of Civil Marriage was passed and divorce cases started to become the jurisdiction of the secular authority. During that period, perpetual "divorce" (separation) was granted only in cases where adultery was proved; in all other cases it was granted for a fixed period, but if the offending party could or would not, after

prayers and penances and such corrections as were imposed by the judge, be converted but continued to make life intolerable for the other party, then the divorce could be made indefinite. Penal cases, which cover the period 1699-1871, concern, *inter alia*, violation of ecclesiastical immunity; clerics physically punishing or otherwise harming their faithful; non-fulfilment of the requirement of residence; negligence in the performance of parish duties; removal of parish priests from office; disobedience and lack of respect by quarrelsome clerics; and clerics who by their conduct harmed secular justice. (For bibliographical details see below, Books Received.)

1917 Code

IE XIX 2/07, 333-346: Giorgio Feliciani: La consuetudine nella codificazione del 1917. (Article)

F. tries to reconstruct the debate during Pius X's pontificate between the proponents of strengthening custom as a source of canon law and those in favour of its abolition. He then studies the place of custom in a canonical codification, and offers some thoughts regarding its establishment and validity in the present law of the Church. Within the study he outlines the guidance offered by the episcopate, and the various theses put forward by the consultors presided over by Cardinal Gasparri.

John M. Huels: The Efficacy of Delegation Without Notification or Acceptance. (Article in **Victor G. D'Souza (ed.):** ***In the Service of Truth and Justice*****, pp. 69-108**)

See below, canon 137.

20th century

Ap LXXX 3-4 (2007), 823-848: Elena Di Bernardo: Il Personalismo nella teoria e nella prassi di Roberti. Limiti e prospettive. (Conference presentation)

This is the text of a presentation made by Di B. at the Second Interdisciplinary Day held at the Lateran University on 6-7 March 2007. Cardinal Francis Roberti, 1899-1977, was a distinguished jurist and Rotal judge who became Prefect of the Apostolic Signatura (1959-1969). From an examination of causes

heard before Roberti, Di B. seeks to show indications of a personalistic evolution in his judgments.

Second Vatican Council and revision of the CIC

AkK 176 1/07, 177-183: Polykarp F. Zakar: Bemerkungen zur Typologie der Institute des geweihten Lebens. (Article)

Z. describes the attempts during and after the Second Vatican Council to establish a classification of religious institutes.

Proc CLSA 2005, 1-20: Ladislas Örsy: Law for Life, *Sacrae Disciplinae Leges*: Forty years after the Council. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), Ö. compares the corpus of canon law in the Code of 1983 with the achievement of Vatican II and its consequences. He asks how far our structures and laws measure up to the vision of the Council.

Proc CLSA 2005, 21-76: Thomas J. Green: *Lex Fundamentalis*: The Law Within. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), G. reflects on the history of the drafting of the *Lex Fundamentalis*, the key theological and canonical issues during its drafting, the involvement of the CLSA in the project, and issues which arise in the relationship of theology and canon law such as collegiality.

CODE OF CANONS OF THE EASTERN CHURCHES

Ang 85 (2008), 19-50: Philippe Toxé: Quelques critères de cohérence de la production des normes canoniques. (Article)

See below, canon 135.

Ang 85 (2008) 213-238: Lorenzo Lorusso: La sacra ordinazione nella legislazione codiciale: peculiarità del CCEO. (Article)

L. first considers, in a general way, the "Initial Texts" – the first version of the Eastern Code on Holy Orders – and then a 1978 Schema, comparing it to the Initial Texts. In the main body of the article L. reviews the canons concerning Holy Orders in the CCEO, highlighting the specific characteristics of the Eastern norms, especially considering that the Eastern Churches, above all those that are Patriarchal, have a different juridical structure from Latin particular churches.

Ap LXXIX 3-4 (2006), 411-476: Pontificium Consilium de Spirituali Migrantium atque Itinerantorum cura: Instructio, 3.05.2004, Erga Migrantes Caritas Christi. (Document)

See below, canon 529.

Ap LXXIX 3-4 (2006), 477-478: Pontificium Consilium de Spirituali Migrantium atque Itinerantorum cura: Epistula, 3.12.2005. (Document)

See below, canon 529.

Ap LXXIX 3-4 (2006), 479-480: Secretaria Status: Rescriptum ex audientia, 4.09.2006, De reordinatione competentiae aliquorum Dicasterium. (Document)

See below, canon 360.

Ap LXXX 1-2 (2007), 241-332: Natale Loda: Il canone 1401 CCEO quale *ianua* dell'ordinamento penale canonico ed il superamento del modello retribuzionistico. Semantica e valutazione delle fonti. (Article)

L. contrasts the approaches to the penal discipline of the Church in the Oriental Churches' Code and the Latin Code. This is done by giving an extensive survey of the historical sources in the Councils and Fathers of the principles underlying the Oriental formulation of penal discipline. L. finds that the Oriental formulation of canon 1401 CCEO is a more satisfactory expression of the Church's intent in the constitution and employment of canonical sanctions.

Ap LXXX 1-2 (2007), 381-540: Dimitrios Salachas: Sussidio e proposte per l'elaborazione del diritto particolare delle Chiese Orientali *sui iuris.* (Article)

S. completes his suggestions (see Ap LXXVIII 3-4 (2005), 679-735; *Canon Law Abstracts*, no. 100, p. 29) to aid Oriental Churches *sui iuris* in meeting the task laid on them by the Apostolic Constitution *Sacri Canones* of 18 October 1990 which promulgated the Oriental Code, to confect their own particular completing legislation. In conclusion S. notes that there are still a number of Oriental Churches *sui iuris* that have yet to complete their particular law.

FT 18 (2007), 71-81: István Ivancsó: L'histoire de la confirmation dans l'Église grecque catholique. (Article)

For a long time the celebration of confirmation in the Greek Catholic Church in Hungary followed the same rite as was used throughout the whole Byzantine Church, using the ancient Slavic language for its liturgy. This rite involved the celebration of confirmation immediately following baptism. At the start of the 20th century there arose the pressing need to celebrate confirmation individually, i.e. separately from baptism, principally on account of the fact that many Greek Catholics had moved to areas in which there were no Greek Catholic priests, with the result that their children were baptized by Latin-rite priests who did not administer confirmation immediately afterwards. Hence an individual confirmation ceremony became necessary. This was no simple matter to resolve, and it was not until 1964 that a Hungarian-language version of this ceremony was finally introduced.

IE XIX 2/07, 409-429: Anne Bamberg: L'administrateur apostolique. Réalités complexes et vocabulaire flottant. Questions autour du droit canonique. (Article)

See below, canon 371.

IE XIX 2/07, 445-456: Péter Szabó: Competenza governativa e fisionomia degli organi sinodali. L'integrità della potestà episcopale nel sistema degli organi sinodali di carattere permanente. (Article)

See below, canons 445-459.

Proc CLSA 2005, 163-176: Francis J. Marini: The Establishment of New Eastern Jurisdictions in the West. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), M. explains how large communities of Eastern-rite Catholics have arisen in the West. He describes the canonical and practical steps by which Rome has made provision for them by establishing jurisdictions and hierarchies.

REDC 63 (2006), 655-722: Alejandro Cortés Diéguez: El matrimonio mixto en la Iglesia latina y en las Iglesias orientales católicas y ortodoxas. Aspectos teológicos y canónicos. (Article)

C.D.'s subject is marriage between a member of the Latin-rite Catholic Church and a member of any of the Eastern-rite Catholic Churches or of the Orthodox Churches. Although some of the definitely negative attitudes from both sides towards such marriages have considerably lessened since Vatican II and the growth of the ecumenical movement, nevertheless there still exist certain reservations on the matter among these Churches. In comparing the legislation of the 1983 Code of Canon Law with the Code of the Canons of the Eastern Churches there is a notable contrast between the homogeneity of the Latin rite's juridical tradition and the diversity of Eastern-rite traditions (Alexandrian, Antiochene, Byzantine, Armenian, Chaldean or Syrian Oriental). One clear difference is the more spiritual, sacramental and mystical dimension of Christian marriage among the Eastern Churches as against the more contractual character of the Latin-rite legislation. C.D. examines other canonical differences and theological emphases, especially the *sui iuris* and autonomous status of the Eastern Churches. The last part of the article deals with marriage as understood and celebrated in the Eastern Orthodox Churches, including the slightly

different view of the sacramentality of marriage and the tolerance of second marriages in some circumstances.

Jobe Abbass: The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes. (Book)

See below, canons 573-746.

Luis Okulik (ed.): Le Chiese *sui iuris*. Criteri di individuazione e delimitazione. (Book)

This publication contains the proceedings of a conference held in Košice, Slovakia, on 6-7 March 2004. The following papers were given:

1. Pablo Gefaell, *Le Chiese "sui iuris": "Ecclesiofania" o no?* (pp. 7-26), in which G. deals with universal ecclesiology, Eucharistic ecclesiology, and ecclesiology of communion; the definition of a Church *sui iuris*; the sociological criterion for determining a community of the faithful; the question of whether a Church *sui iuris* is an "image" of the Catholic Church; the distinction between a Church *sui iuris* and episcopal conferences; and how Churches *sui iuris* fit into the general framework of ecclesiastical organization;

2. Sunny Kokkaravalayil, *The Guideline "Riti e Chiese Particolari" Applied in CCEO. History and Appraisal* (pp. 27-40), looking at the ten Guidelines for the revision of the Eastern Code approved in 1974 by the Pontifical Commission for the Revision of the Code of Eastern Canon Law; the delimitation of *ritus* and the nomenclature of Eastern Catholic Churches; and the hierarchical structure of the Eastern Catholic Churches;

3. Jobe Abbass, *Subsidiarity and the Eastern Code* (pp. 41-65), dealing with various aspects of the question of autonomy in the exercise of the executive power of governance (the patriarchal/eparchial finance officer; administrative fees and sacramental offerings; the collection of alms; administrators initiating or contesting civil litigation; alienations within the territories of patriarchal Churches; rentals within the territories of patriarchal Churches; particular norms for administrators; other obligations established in pious foundations); applying subsidiarity through particular law *expressly* (imposing taxes on physical persons; setting administrative fees and sacramental offerings; special eparchial funds; instructions for administering ecclesiastical goods; exceeding the limits of ordinary administration; particular norms for administrators; prerequisites for alienation; alienations in patriarchal Churches; erecting and accepting pious foundations); applying subsidiarity through particular law *by omission* (tithing; the patriarch and the administration of goods/exacting assistance; the bishops'

cathedraticum; the general rule in CCEO canon 1023 and particular law; the patriarch and administration during a vacant eparchial see; just price and use of proceeds of alienation; rentals and other special types of alienation);

4. Peter Szabó, *Autonomia disciplinare come carattere del fenomeno dell' "Ecclesia sui iuris": ambito e funzioni* (pp. 67-96), dealing with the competence of the legislator under the CCEO; legislation *sui iuris*, including its scope and limits; disciplinary autonomy.

5. Cyril Vasil', *Etnicità delle Chiese "sui iuris" e l'"Annuario Pontificio"* (pp. 97-108), looking at the ethnic identification of the Eastern Churches;

6. Natale Loda, *Delimitazione territoriale della Chiesa sui iuris: ragioni e questioni attuali* (pp. 109-130), looking at the concepts of universal Church, particular Church and Church *sui iuris*; the relationship between territoriality and personality; the territorial delimitation of Churches *sui iuris* as a criterion of identification; the reasons for the territorial delimitation of Churches *sui iuris*; possible new territorial and personal models (whether preserving the current territorial boundaries of the Churches *sui iuris*, or extending them without limitation, or extending them according to pastoral needs);

7. Lorenzo Lorusso, *Case religiose di rito diverso: problematiche e norme canoniche* (pp. 131-161), dealing with religious institutes and adscription to another Church *sui iuris*; the establishment of a religious house; admission into an institute of another Church *sui iuris*; requisites for admission to the novitiate; transfer to an institute of another Church *sui iuris*; dispensations reserved to the Apostolic See; collaboration between the hierarchy of the different Churches *sui iuris*;

8. Elmar Güthoff, *Cattolicità vissuta tramite l'introduzione di un rito orientale nella diocesi: possibilità e limiti giuridici* (pp. 163-169), dealing with situations in which members of a Church *sui iuris* live in a territory in which there is no hierarchy of their own Church, and setting out the applicable law, the concerns of the Latin local ordinary, and possible ways forward;

9. Paolo La Terra, *È possible una "forma vitae spiritualis" secondo un rito diverso?* (pp. 171-180), which looks at canon 214 of the 1983 Code and analyzes what is meant by the phrase "their own form of spiritual life" in relation to both Latin and Eastern rites and traditions, and the questions raised by modern-day sensitivities;

10. Michael J. Kuchera, *The Church of Pittsburgh and its Relations with the Eparchy of Mukačevo in an Historical and Juridical Context* (pp. 181-191), dealing from a Ruthenian Catholic American perspective with the relationship between the Byzantine Metropolitan Church *sui iuris* of Pittsburgh (an eparchy elevated to a metropolitan see by Paul VI in 1969) and the Greek eparchy of

Mukačevo (canonically recognized as a diocese by Clement XIV in 1771 and today constituting a Church *sui iuris* directly under the authority of the Holy See), setting out aspects of their shared history, culture, religion and rite, and focusing in particular on the juridical relationship between them in the historical setting of the 1890s, specifically in the context of the topic of clerical celibacy;

11. Ignazio Ceffalia, *La Chiesa italo-albanese, Chiesa "sui iuris"?* (pp. 193-208), which looks at the historical development of the Italian-Albanian Church – consisting of the eparchies of Lungro (Calabria) and Piana degli Albanesi (Sicily) and the monastery of Grottaferrata – prior to and following the Council of Trent; its current juridical status, which is unsatisfactory as it cannot be considered a Church *sui iuris* in the full sense; and possible solutions to the problem;

12. Luis Okulik, *Configurazione canonica delle Chiese orientali senza gerarchia* (pp. 209-228), which analyzes the canonical configuration of Eastern Catholic Churches which do not have their own hierarchy, or whose ecclesiastical organization is virtually non-existent: the Greek-Catholic Albanian Church, the Greek-Catholic Georgian Church, the Greek-Catholic Russian Church, and the Greek-Catholic Byelorussian Church.

BOOK I: GENERAL NORMS

2

IE XIX 3/07, 589-608: Massimo del Pozzo: Dal diritto liturgico alla dimensione giuridica delle cose sacre: una proposta di metodo, di contenuto e di comunicazione interdisciplinare. (Article)

A course recently begun in a Roman ecclesiastical university focuses on juridical aspects of the Church's liturgy, and in this context P. quotes the first line from the programme for that subject, which talks of studying "the dimension of justice inherent in the Church's liturgy". P. looks at the notion of liturgical law before and after the Second Vatican Council; and goes on to identify the material object of liturgy, and to consider the liturgy in its dimension as *res sacra iusta*. Although he sees his effort more as a brief outline than as a full exposition of the topic, he ends the summary of his conclusions by relying on the authority of a master liturgist, Martimort, who spoke of a true "right (of the Christian people) to receive the richness of the Church's prayer".

16

Ap LXXX 3-4 (2007), 803-822: Cristian Begus: Ricezione ed istituzionalizzazione del Personalismo nella Giurisprudenza canonica. (Conference presentation)

See above, General Subjects (*Legal theory*).

16

IE XIX 2/07: 511-524: Pontificio Consiglio per i Testi Legislativi: Nota "La natura giuridica e l'estensione della «recognitio» della Santa Sede", 28 aprile 2006 (con *nota* di J. Miñambres, *La natura giuridica della "recognitio" da parte della Santa Sede e il valore delle "note" del Pontificio Consiglio per i testi legislativi*). (Document and commentary)

The text is given in Italian of the "Note" issued by the Pontifical Council for Legislative Texts in response to questions regarding the juridical nature and scope of the *recognitio* of the Holy See required for the promulgation of acts and decrees of particular councils (canon 446), general decrees of episcopal conferences (canon 455), the publication of acts and decrees of plenary meetings of episcopal conferences (canon 456), translations of liturgical books (canon 838 §3; CCEO, canon 657 §1), and rites of marriage drawn up by the episcopal conference (canon 1120). The Note is divided into three parts. The

first part contains a summary of the documents of the Holy See that contain dispositions on the matter, including the two Codes in force, the 1998 *motu proprio Apostolos Suos*, certain documents of the Pontifical Council itself, the 2004 Directory *Apostolorum Successores*, and the 2001 Instruction *Liturgiam Authenticam*. The second part brings together the opinions of a number of learned authors on the question of *recognitio*; while the third part deals with the scope of *recognitio* and the manner in which it is to be applied. In his comment, M. examines the juridical value of the Note in the light of articles 154 and 155 of the Apostolic Constitution *Pastor Bonus*, asking whether they constitute a new way of publishing interpretations *per modum legis.* He considers that the content of such documents is to be considered as an "authoritative-doctrinal opinion", but suggests that the matter perhaps needs to be clarified by a norm on the competences of the Pontifical Council.

17-18

IE XIX 3/07, 627-655: Tribunale della Rota Romana. *Panormitana*. Nullità del matrimonio. Preliminare: eccezione di lite finita. Decreto, 14 dicembre 2006. Erlebach, *Ponente* (con *nota* di G. Varricchio, *Problemi interpretativi ed applicativi della "conformità equivalente"*). (Sentence and commentary)

See below, canons 1641-1644.

19

Ap LXXIX 3-4 (2006), 621-652: Antonio Iaccarino: L'equità come schema interpretativo dell'esperienza giuridica. Dal Diritto romano un rimedio ai problemi della complessità del reale. (Article)

I. examines the use of equity in Roman law, Greek philosophy and other sources so as to arrive at a proper understanding and application of the concept to legal activity in the real world.

19

ITS 44 (2007), 417-440: Victor George D'Souza: "The Good of the Spouses" (*Bonum Coniugum*): Trends in Matrimonial Jurisprudence of the Roman Rota. (Article)

See below, canon 1095 2º-3º.

19

RfR 67 2/08, 209-214: Elizabeth McDonough: The *Lacuna* Canon. (Article)

When there is no specific applicable law to address a particular case, the Code provides canon 19. M. explains that the four legal sources to be used to fill a gap are: 1. laws issued in similar matters; 2. the general principles of law applied with canonical equity; 3. the jurisprudence and practice of the Roman Curia; and 4. the common and constant opinion of learned persons. In her article she develops the first two of these sources, known as suppletory law.

23-28

CLSN 154/08, 65-75: Derek Vidler: The Use of the Sarum and Tridentine Rites in England before and after Trent. (Article)

See above, Historical Subjects (*16th-19th centuries*).

23-28

IE XIX 2/07, 333-346: Giorgio Feliciani: La consuetudine nella codificazione del 1917. (Article)

See above, Historical Subjects (*1917 Code*).

35-93

Valerian M. Menezes: Singular Acts of Executive Power: An Examination of Title IV of Book I of the 1983 Code. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 389-424**)

See above, General Subjects (*Compilations*). M. provides a systematic commentary on Book I, Title IV of the 1983 Code (canons 35-93), dealing with common norms, singular decrees, singular precepts, rescripts, privileges, dispensations, permissions, faculties and indults.

110

IE XIX 2/07, 431-443: Antonio Ingoglia: Sui titoli nobiliari e sul diritto dei figli "adottivi" a succedervi nell'ordinamento della Chiesa. (Article)

Unlike many modern Republics, on account of the hierarchical character of its structure, the Church has continued to recognize the juridical value of titles of personal or hereditary nobility granted by the ecclesiastical authority. The

canonical order also acknowledges titles conferred by Catholic monarchs by pontifical delegation. In this context, the author studies a number of issues with regard to the transmission of titles to adoptive children in accordance with canon 110. Not all the rights flowing from natural filiation are extendable to adoption.

130

REDC 63 (2006), 605-654: Roberto Serres López de Guereñu: El respeto de la distinción entre fuero interno y externo en la formación sacerdotal. (Article)

See below, canon 240.

135

Ang 85 (2008), 19-50: Philippe Toxé: Quelques critères de cohérence de la production des normes canoniques. (Article)

T. offers a review of the different authorities in the Church, both Latin and Oriental, which have competence for producing canonical norms. He highlights the complementarity of particular law and universal law as assured by the *recognitio* and the *approbatio*. He also discusses some aspects of the executive and legislative sources for norms, and highlights that the nature of documents, especially Vatican ones, is not always clear simply from the title (Instruction, Decree, etc.) given them by their authors.

137

John M. Huels: The Efficacy of Delegation Without Notification or Acceptance. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 69-108**)

See above, General Subjects (*Compilations*). H. examines whether, to act validly, it suffices that a delegate simply have the faculty, or whether he must also be at least notified of the delegation, if not also accept it. After an extensive study of the doctrine and law before the 1983 Code and of the current law, H. concludes that notification and acceptance are not necessary for validity.

144

JM 13 (19) 2008, 125-144: Jan Krajczyński: Uzupełnienie uprawnienia do asystowania przy zawarciu małżeństwa (= Supplying the faculty to assist at marriage). (Article)

K. deals with the supplying of the faculty to assist at canonical marriage, as dealt with in canons 144 §§1-2 and 1111 §1. He studies its nature, those to whom it applies, and the circumstances in which it applies.

BOOK II, PART I: CHRIST'S FAITHFUL

214

Luis Okulik (ed.): Le Chiese *sui iuris*. Criteri di individuazione e delimitazione. (Book)

See above, Code of Canons of the Easter Churches, in particular the paper by Paolo La Terra, *È possible una "forma vitae spiritualis" secondo un rito diverso?*

215-216

CLSN 154/08, 114: Pontifical Council for the Laity: Ecclesial Movements in the Church. (Document)

The Pontifical Council for the Laity recently published a list of ecclesial movements which have been granted juridical recognition and whose statutes have been approved. There are sixteen movements in all. The same Council is continuing to examine requests for canonical recognition from an additional sixteen groups.

221

Ang 85 (2008) 267-287: Giuseppe Dalla Torre: Qualche considerazioni sul principio di legalità nel diritto penale canonico. (Article)

The principle *nullum crimen, nulla poena, sine praevia lege poenali* has always constituted a difficulty for canon law. In the present legislation an apparent conflict arises between canon 221 §3 and canon 1399. Contrary to the present consensus in canonical science, D.T. endeavours to show that the principle is an essential component of natural law and so must be integrated into canon law in an appropriate way. A comparison between secular and canon law shows that this principle differs only in its formal adoption into positive law. The article makes reference to a recent penal case heard in the Vatican City courts where parallels were drawn between the principle and canonical legislation.

221

JM 13 (19) 2008, 99-110: Grzegorz Leszczyński: Prawo do obrony w przemówieniach Jana Pawła II do Roty Rzymskiej (= The right of defence in John Paul II's Addresses to the Rota). (Article)

L. comments on Pope John Paul II's 1989 address to the Rota, dealing with the right of defence in matrimonial processes. The Pope took up the same theme in several other addresses when speaking of justice and truth, in particular the truth of the marriage of the parties. L. analyzes the more important considerations relating to the right of defence and its repercussions on tribunal practice.

222

IC XLVIII 95/08, 13-23: Mauro Rivella: Financiación de la Iglesia. El modelo italiano. (Article)

See below, canon 1261.

222

IC XLVIII 95/08, 25-68: Fernando Giménez Barriocanal: Financiación eclesial: situación actual y perspectivas de futuro. (Article)

See below, canon 1261.

222

IC XLVIII 95/08, 69-87: Antonio Vázquez del Rey Villanueva: El sistema tributario y la financiación de la Iglesia en España. (Article)

See below, canon 1261.

223

IE XIX 3/07, 611-625: Supremo Tribunale della Segnatura Apostolica: Revoca delle facoltà. Sentenza definitiva, 28 aprile 2007. Grocholewski, Ponente (con *nota* di D. Cito). (Sentence and commentary)

See below, canon 1336.

225

Ap LXXIX 3-4 (2006), 351-364: Congregatio Pro Doctrina Fidei: Nota doctrinalis 24.11.2002, de christifidelium rationibus in publicis negotiis gerendis. (Document)

The preamble to this doctrinal note of 24 November 2002 states that having consulted the Pontifical Council for the Laity the Congregation for the Doctrine of the Faith concludes that the time is now opportune for the publication of this reflection on the Catholic position on certain matters that will concern Catholics involved in politics. The note is addressed to the Bishops of the Church and in a special way to Catholic politicians. The note does not intend to give an exhaustive treatment of Catholic teaching on political and social issues but affirms the need to maintain awareness of the ethical dimensions often present in politics and to act accordingly.

225

CLSN 154/08, 114: Pontifical Council for the Laity: Ecclesial Movements in the Church. (Document)

See above, canons 215-216.

226

JM 13 (19) 2008, 163-178: Grzegorz Jędrejek: Uczucia religijne a regulacja stosunków między małżonkami oraz między rodzicami i dziećmi (= The role of religious feelings concerning the regulation of relations between spouses and between parents and children). (Article)

J. states that "religious feelings" should be distinguished from "freedom of conscience and belief" which belongs to the sphere of personal rights. The view that religious feelings are also personal rights, albeit of a subordinate nature, must be rejected. The violation of religious feelings may be admitted as a reason for the breakdown of a marriage. When examining such violations, the subjective aspects should be taken into account. Parents are allowed to violate the personal rights of children in connection with religion when they are exercising their own rights deriving from parental authority or their right to bring their children up in a manner consistent with their own convictions. The unlawfulness of such actions is excluded because the parents are acting in compliance with the law.

232-264

Ang 85 (2008), 51-66: Giacomo Incitti: Il vescovo ed il Rettore nel seminario. Una lettura della normativa canonica. (Article)

This study examines various circumstances in seminary life in which the respective roles of the bishop and of the rector and the staff converge – admission to seminary; the stages of formation; pastoral training; and admission to holy orders. I. argues for a better differentiation in roles. He also argues that the norms need to recognize better the role of the seminary staff rather than concentrating solely on the rector. He suggests that as lay ministries lectorate and acolytate should have been conferred prior to admission to seminary and candidacy should be celebrated immediately prior to diaconate since it requires the authorities to recognize someone's suitability for Orders, something to be determined after a long period in seminary and not after a couple of years. Finally, the rector's role is to judge a candidate against the qualities required, not the suitability of the candidate for Orders, which is the bishop's responsibility. There is a need for updating and changing some aspects of the current norms.

240

REDC 63 (2006), 605-654: Roberto Serres López de Guereñu: El respeto de la distinción entre fuero interno y externo en la formación sacerdotal. (Article)

S.L.G. considers the relationship between the internal forum (the area of conscience and inner spiritual life) and the external forum as it bears on the formation of those preparing for the priesthood. Canon 240 §2 specifically forbids the intervention of both confessors and spiritual directors in discussions to decide whether a seminarian should be put forward or held back from sacred orders. After analyzing how the issue is dealt with in the *Ratio Fundamentalis Institutionis Sacerdotalis* of 1985 and its later application by the Spanish Episcopal Conference, S.L.G. examines in more detail how a person's conscience and inner privacy is to be safeguarded and respected, and applies this to the specific area of priestly formation, concentrating on the freedom of the seminarian to choose his own spiritual director and confessor from among priests considered suitable by his bishop. The confessor is obviously bound by the seal of confession, but the spiritual director is also bound to secrecy and confidentiality. The limitations on the intervention into the internal forum by superiors are clear: in extra-sacramental matters, although it may be of great help in the discernment process for a seminarian to speak of his spiritual life and development to his rector, this can only come about on the absolutely free and spontaneous initiative of the seminarian; in sacramental matters the rector or

superior is explicitly forbidden to hear his subjects' confessions unless a student directly request that he do so. The overall aim is to achieve a proper balance between the Church's responsibility in the discernment of suitable candidates for ordination and the individual's right to respect for his conscience and personal spiritual life.

241

Ap LXXIX 3-4 (2006), 403-409: Congregatiio de Institutione Catholica: Instructio, 4.11.2005, circa criteria ad vocationes discernendas eorum qui inclinantur ad homosexualitatem, intuitu eorundem admissione ad Seminarium et ad Ordines Sacros. (Document)

Advice offered to bishops, major superiors and others responsible for formation, such as spiritual directors and confessors, with respect to candidates for sacred orders on the problem presented by homosexual tendencies in such candidates.

241

PD 1451 5/08, 221-231: Anne Bamberg: Former des prêtres Sourds. (Article)

See below, canon 1029.

244-245

REDC 63 (2006), 767-790: José San José Prisco: Los fundamentos de la formación sacerdotal. Una reflexión desde las asambleas del Sínodo de Obispos. (Article)

S.J.P. examines the three Synods of Bishops (1967, 1971 and 1990) which dealt with questions relating to priestly formation, and gives some historical background and an outline of the main themes of each Synod. While the importance of a genuine spiritual and interior life of prayer and sacraments is always kept in mind, for the priest is called to be in a special way a reflection of Christ the Good Shepherd, an increasing emphasis is also put on the necessary human formation and development of a fully rounded human personality, especially in the emotional, affective and sexual areas of life which lead to a mature and well-balanced pastoral minister of Word and Sacrament.

256

Ang 85 (2008) 67-102: Michael Carragher: The Training of Ministers and Preaching: Canon 256 §1. (Article)

According to canon 256 §1 seminarians are to be especially instructed in catechetics and homiletics. C. sets out the necessary requirements, highlighting the spiritual and theological formation. He also refers to the counsel of St Augustine on preaching, according to whom the preacher must speak so as to instruct, please, and convince.

265-272

IC XLVIII 95/08, 247-276: Luis Navarro: La incardinación de los clérigos de los movimientos eclesiales. (Article)

The incardination of clerics in new ecclesial movements is not directly provided for in canonical legislation. With a view to obtaining a better understanding of the situation of clerics in these movements, N. analyzes the statutory norms of a number of international movements. He concludes that these norms are very close in content to incardination, and this gives rise to certain problems. To make progress and find solutions that are more in keeping with the demands of the ministry, the dignity of the clergy and the needs of the movements, N. sets out the fundamental guiding principles of incardination, and studies their content and significance for the institution in which incardination takes place. From this it becomes clear that the institution in question needs to have a certain ecclesial maturity to be able to incardinate, and that this faculty can be granted on a case-by-case basis by the ecclesiastical authority, whose decision requires great governmental prudence.

277

Brendan Daly: Celibacy: An Ecclesiastical Imposition or Identification with Jesus Christ? (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 191-214**)

See above, General Subjects (*Compilations*). D. looks at the historical development of clerical celibacy, the formation of canon 277 of the 1983 Code, and the teaching contained in the Apostolic Exhortations *Pastores Dabo Vobis* of John Paul II (1992) and *Sacramentum Caritatis* of Benedict XVI (2007). He reaches the conclusion that just as Christ did not marry, and was totally committed to his mission, so "the Church requires that those to be ordained priest have discerned a vocation to celibacy, before they are ordained and act in

his name. Their celibacy expresses their complete and total identification with Christ and their commitment to continuing his mission".

294-297

AkK 176 1/07, 62-76: Philipp Ernst Gudenus: Die Personalprälatur als kirchliche Zirkumskription personaler Natur. (Article)

Personal prelatures may be erected by the Pope in order to carry out supradiocesan pastoral tasks. They are structured like a particular Church, without in fact being one. A prelate, supported by a *presbyterium* consisting of secular clerics, is the shepherd of a personally circumscribed *coetus fidelium*. Statutes, which are issued by the Holy See for each individual prelature, may provide that the laity place themselves under the jurisdiction of the prelature. In this case, a prelature does not become an association, but still forms part of the hierarchical structure of the Church. The work of the prelatures enriches the dioceses where they are active, and does not interfere with the authority of the bishop, who is the sole shepherd of the *portio populi Dei* entrusted to him.

294-297

IC XLVIII 95/08, 141-182: Antonio Viana: Pasado y futuro de las prelaturas personales. (Article)

V. points out the progress that has been made over the last twenty-five years in the understanding of the personal prelature as an institution, and comments on canonical literature dealing with older and more recent historical precedents for the prelature. He also looks at the development of other personal hierarchical structures since 1983, including military ordinariates and the personal apostolic administration. Finally he offers some reflections on the possible future development of personal prelatures, suggesting that these might be a suitable structure for the pastoral care of immigrants and social minorities such as gypsies.

BOOK II, PART II: THE HIERARCHICAL CONSTITUTION OF THE CHURCH

330-331

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). The Joint International Commission for the Theological Dialogue between the Roman Catholic Church and the Orthodox Church, meeting for the first time in six years at Ravenna in October 2007, issued a joint declaration entitled "Ecclesiological and Canonical Consequences of the Sacramental Nature of the Church", bearing the date 13 October 2007. The most important statement in the document is that both Catholic and Orthodox "agree that Rome, as the Church that 'presides in love' according to phrase of St Ignatius of Antioch, occupied the first place in the *taxis* (the order among the local Churches) and the bishop of Rome was therefore the *protos* (the first) among the patriarchs." This statement is nuanced by the affirmation that while the primacy at universal level is accepted by both East and West, "there are differences of understanding with regard to the manner in which it is to be exercised, and also with regard to its scriptural and theological foundations." The sour note was that the Russian Orthodox Church walked out of the meeting in protest at the presence of members of the autonomous Church of Estonia, which was created by the Patriarch of Constantinople in 1996 but is not recognized by Moscow.

332

Ap LXXIX 3-4 (2006), 483-619: Pier Virginio Aimone: Le modalità procedurali dell'elezione del vescovo romano nel secondo millennio. (Article)

A. studies the sequence of Papal documents from the time of Pope Nicholas II (1059), *In nomine Domini*, to *Universi Dominici Gregis* of Pope John Paul II (1996). The study shows the development of the procedures that have led to the present dispositions for the election of the Pope. A substantial bibliography is attached.

332

Ap LXXX 1-2 (2007), 237-238: S.S. Benedictus PP. XVI: Motu Proprio De aliquibus mutationibus in normis de electione romani pontificis. (Document)

Pope Benedict on 11 June 2007 decreed some changes to the voting procedures in paragraph 75 of the Apostolic Constitution *Universi Dominici Gregis* to resolve the lack of outcome in earlier votations to elect a new Pope.

332

Ap LXXX 3-4 (2007), 857-862: Pier Virginio Aimone: Ripristino assoluto della maggioranza qualificata nell'elezione del Romano Pontifice. (Article)

A. offers a brief comment on the *motu proprio De aliquibus mutationibus* issued by Benedict XVI on 11 June 2007, which modified a minor part of the procedure set out in the Apostolic Constitution *Universi Dominici Gregis* of 22 February 1996 for the election of the Bishop of Rome.

332

FT 18 (2007), 5-16: Josef Ammer: Das Motu Proprio Papst Benedikts XVI. zur Änderung des Papstwahlgesetzes «Universi Dominici Gregis». (Article)

A. studies the significance of the changes in the procedures for Papal elections introduced by Pope Benedict XVI's *motu proprio* of 11 June 2007.

332

IE XIX 3/07, 757-762: Benedetto XVI: Lettera Apostolica *Motu Proprio* data su alcuni cambiamenti nelle norme per l'elezione del Romano Pontifice, 11 giugno 2007 (con *nota* di J. Miñambres, *Nuove determinazioni sulle capacità decisionali del collegio di Cardinali riunito in conclave*). (Document and commentary)

The text is given in Latin of the document amending the provision in no. 75 of *Universi Dominici Gregis* concerning the procedure when balloting does not result in an election. The electors no longer have the right to choose the manner of proceeding in such a situation; furthermore, a majority of two-thirds of the Cardinals present is needed for a valid result. M. studies several aspects of the new norm.

334

Ap LXXIX 3-4 (2006), 279-300: Ioannes Paulus PP. II: Litterae Apostolicae "Motu Proprio" datae, 21.03.2005, quibus lex promulgatur de Sanctae Sedis tabulariis. (Document)

Text in Italian of the new law concerning the archives of the Holy See and organizations associated with it.

334

Ap LXXIX 3-4 (2006), 301-339: Secretaria Status: Rescriptum ex audientia SS.MI 15.03.2004 de bienniis supputandis. (Document)

Norms setting out conditions of seniority and pensions of officials and employees of the Holy See.

334

Ap LXXIX 3-4 (2006), 341-343: Secretaria Status: Decretum 8.05.2004, de passis seu contractis damnis. (Document)

Norms modifying existing dispositions for payments to be made to personnel in the service of the Holy See who have suffered by reason of accident or illness.

342-348

AkK 176 1/07, 154-176: Markus Graulich: Die Neufassung des *Ordo Synodi Episcoporum*. (Article)

G. gives an account of the new Order of the Synod of Bishops of September 2006. In particular he deals with changes as compared to earlier regulations.

342-348

IE XIX 3/07, 659-669: Juan Ignacio Arrieta: Il regolamento del Sinodo. Novità e prospettive. (Article)

On 29 September 2006 Pope Benedict XVI approved the new *Ordo Synodi Episcoporum*, replacing the one which had been promulgated late in 1966 and slightly modified in subsequent years. The new document substantially maintains both the structure and formulation of most of the 1966 articles. The text introduces modifications only to improve technical precision and juridical expression so as to make the insertion of the norms in the context of the

canonical order more logical and coherent. A. shows how from the juridical perspective the Synod is confirmed as a consultative institute directly under the authority of the Roman Pontiff. He then studies the procedural modifications and those concerning the composition of the Synod, and offers a number of considerations as to how the Synod has evolved. In the ecumenical context, A. thinks of the instrumental possibilities offered by this institute for those Churches that are not yet in communion with Rome and that lack the historical experience of the Roman Curia.

360

Ap LXXIX 3-4 (2006), 479-480: Secretaria Status: Rescriptum ex audientia, 4.09.2006, De reordinatione competentiae aliquorum Dicasteriorum. (Document)

This is the text of a document reassigning the responsibility of the Holy See's Congregations for the establishment, change and provision of pastors for both Latin and Eastern dioceses in parts of Europe and the former USSR.

362-367

IE XIX 3/07, 671-687: Vincenzo Buonomo: Brevi annotazioni sulla diplomazia multilaterale della Santa Sede. (Address)

This is the text of an extensive address given by B. on 22 February 2007 at the presentation of two publications, one on Apostolic Nunciatures from 1800 to 1956, the other on Papal Representation and Representatives during the second half of the 20th century.

371

IE XIX 2/07, 409-429: Anne Bamberg: L'administrateur apostolique. Réalités complexes et vocabulaire flottant. Questions autour du droit canonique. (Article)

B. studies the figure of the apostolic administrator in the Latin and Eastern Codes and the different approaches which these adopt, focusing as they do on the aspects of "administration" and "administrator" respectively. Another difference lies in the fact that the Eastern Code states that the appointment of an apostolic administrator can take place whether the see is occupied or vacant. This was in fact allowed for in the 1917 Latin Code but was dropped from the 1983 Code – although the Directory for the Pastoral Ministry of Bishops *Apostolorum Successores* (22 February 2004), in its point 73, does state

(without reference to any particular source or canon) that the Holy See may in particular circumstances take the extraordinary action of appointing an apostolic administrator to a diocese that has its own bishop. In the second section of her article, B. considers in detail the political or ecumenical reasons that may lead the supreme authority to opt for the present canonical configuration. In this context she underlines the importance of justice, the good of the Church and the good of souls. Finally, she examines a practical case of a letter of appointment establishing the relevant rights, duties and privileges.

377

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Relations between Church and State*), on the Pope's Letter to Chinese Catholics.

391

REDC 64 (2007), 379-403: Federico R. Aznar Gil: Boletín de legislación canónica particular española, 2006. (Compilation)

See above, General Subjects (*Compilations*).

437

CLSN 154/08, 115-116: Ian Waters: "The Pallium: A Brief Guide to Its History and Significance": Gerard Skinner, Oxford: Family Publications 2007. (Review)

S. has written a comprehensive work which deals with the description, origin, manufacture, spiritual significance, conferral and use of the pallium. W. seeks to correct a few canonical inaccuracies, but commends the book to all interested in canon law and the history of liturgy and ecclesiastical vestments.

445-459

IE XIX 2/07, 445-456: Péter Szabó: Competenza governativa e fisionomia degli organi sinodali. L'integrità della potestà episcopale nel sistema degli organi sinodali di carattere permanente. (Article)

Vatican II and the codifications of 1983 and 1990 brought about the institutional consolidation of certain intermediate-level synodal organisms. Specifically it

achieved this by transforming episcopal conferences and Eastern synods into *permanent* institutions (cf. *Christus Dominus*, no. 38; CIC, canons 447, 451; CCEO, canons 113, 171). In the case of the Eastern synods this transformation preserved the synods' traditional general legislative competence, whereas in the case of episcopal conferences it was considered that such competence was incompatible with the permanence of the institution. That such incompatibility is not considered to exist in the Eastern synods is partly due to the reduced number of their members.

446

IE XIX 2/07: 511-524: Pontificio Consiglio per i Testi Legislativi: Nota "La natura giuridica e l'estensione della «recognitio» della Santa Sede", 28 aprile 2006 (con *nota* di J. Miñambres, *La natura giuridica della "recognitio" da parte della Santa Sede e il valore delle "note" del Pontificio Consiglio per i testi legislativi*). (Document and commentary)

See above, canon 16.

455-456

IE XIX 2/07: 511-524: Pontificio Consiglio per i Testi Legislativi: Nota "La natura giuridica e l'estensione della «recognitio» della Santa Sede", 28 aprile 2006 (con *nota* di J. Miñambres, *La natura giuridica della "recognitio" da parte della Santa Sede e il valore delle "note" del Pontificio Consiglio per i testi legislativi*). (Document and commentary)

See above, canon 16.

487

CpR LXXXVIII 1-3/07, 295-317: Robert Geisinger: Procuring and Archiving Documents in the Practice of Religious Law Internal to an Institute: A Procurator General's Perspective. (Article)

G. presents the standard practices and legal guidelines for the collection and conservation of documentation and records in a religious institute. Records covering apostolates and juridical persons (particularly in matters such as ownership), as well as specific members, each need to be handled in different ways. Since there are no canons dealing exclusively with the records of a religious institute, the canonical parameters for record-keeping must be determined by analogy with other documentation. Personnel files require basic respect for confidentiality, and G. reviews the reserved character and special

nature of the "secret archives" of a religious institute. The author takes special cases arising from canon 487 §2, and studies the interplay of the need for confidentiality and the right to access. Contemporary technology is changing the very nature of canonical documentation and archival organization: "paper trails" are ever more difficult to discover and maintain. While noting the blessings that much modern technology brings, G. clearly points out the dangers of the shift from "e-governance to virtual governance".

487

RfR 67 1/08, 94-99: Elizabeth McDonough: Personal Records of Community Members. (Article)

M. states that no canons concerning archives appear among the canons on religious institutes as such, but those dealing with diocesan archives may be used. Her article outlines the rights of access to personal files, the means of access and the system of keeping or discarding material.

529

Ap LXXIX 3-4 (2006), 411-476: Pontificium Consilium de Spirituali Migrantium atque Itinerantorum cura: Instructio, 3.05.2004, Erga Migrantes Caritas Christi. (Document)

Text in Italian of the Instruction issued with Papal approval by the Pontifical Council for the Pastoral Care of Migrants and Travellers. The instruction recites the modern history of the Church's response to the growth of migration, explores and analyzes the challenges presented by inculturation, and makes recommendations to diocesan bishops and episcopal conferences.

529

Ap LXXIX 3-4 (2006), 477-478: Pontificium Consilium de Spirituali Migrantium atque Itinerantorum cura: Epistula, 3.12.2005. (Document)

A letter to diocesan bishops and rectors of seminaries reminding them of the need to ensure that candidates to the priesthood and permanent diaconate are prepared to exercise pastoral care in respect of migrants.

536-537

Anne Asselin: Consultation in the Parish: A Needless Burden, A Necessary Evil, or a Worthwhile Opportunity? (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 109-138**)

See above, General Subjects (*Compilations*). A. looks at the nature of consultation, and the role of parish pastoral councils and parish finance councils. She then offers suggestions for more effective consultation.

568

Ap LXXIX 3-4 (2006), 411-476: Pontificium Consilium de Spirituali Migrantium atque Itinerantorum cura: Instructio, 3.05.2004, Erga Migrantes Caritas Christi. (Document)

See above, canon 529.

568

Ap LXXIX 3-4 (2006), 477-478: Pontificium Consilium de Spirituali Migrantium atque Itinerantorum cura: Epistula, 3.12.2005. (Document)

See above, canon 529.

BOOK II, PART III: INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE

573

Ang 85 (2008) 103-113: Jan Śliwa: La funzione stabilizzante della Chiesa nel processo di nascita degli IVC – CIC can. 573. (Article)

This article first sets out the different types of institutes of consecrated life existing in the Church. Consecrated life is defined in canon 573 §1, and Ś. comments on the eight theological elements that he sees in this paragraph; he then comments on §2 which provides the canonical elements to complement the theological. These canonical elements allow the competent authorities in the Church to have a stabilizing influence on newly-founded institutes of consecrated life (and the new forms of consecrated life: cf. canon 605) and to judge the authenticity of their charisms, before juridically finding them a place in the structure of the Church.

573-709

CpR LXXXVIII 1-3/07, 221-294: Ángel Pardilla: I religiosi dopo il Concilio: Dati statistici (1965-2005). (Article)

A presentation of the statistical data (number of members, priests and houses) of 205 individual religious institutes and societies of apostolic life of pontifical life for men in 1965 and 2005, organized according to the order and divisions in *Annuario Pontificio*. Summary figures are presented in a balance sheet and graph, showing figures at five-year intervals. In total, there was a 34.8% decline in membership over the forty-year period; the largest decline (59.1%) was shown by lay religious congregations, while the smallest decline (24.6%) was shown by clerical religious congregations. While most institutes showed a decline over the period, almost every institute showed a substantial increase in the number of houses, suggesting a pattern of significantly smaller religious communities.

573-746

Jobe Abbass: The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes. (Book)

In promulgating the Eastern Code in 1990, Pope John Paul II emphasized the need for comparative studies of the Eastern and Latin Codes in all faculties of canon law. Because the CCEO and the CIC are integral parts of one body of

canon law in the Catholic Church, the Pope considered such studies essential if the programmes of studies undertaken at these faculties were to correspond fully with the academic degrees they confer. To date, however, relatively little has been done in this regard. This book, which attempts to respond to this need, is a comparative commentary of the Eastern and Latin norms that govern the consecrated life. The gift of the consecrated life is celebrated at the heart of the Catholic Church, both in the East and the West. While the universal Church draws strength from one and the same gift, its laws promulgated to govern the consecrated life in the Eastern and Latin Catholic Churches are by no means the same. A. therefore aims to highlight differences regarding the norms on consecrated life in the Eastern and Latin Codes. His commentary follows the outline of the Eastern Code and presents the Eastern canons in comparative tables with the parallel Latin norms which, though not often identical, contain substantially similar elements. Appendix I to the comparative commentary provides an index of canons cited. Appendix II contains two tables of corresponding canons (CCEO-CIC; CIC-CCEO) that indicate the canons compared. In cases where Latin norms remain significantly different and are effectively unique to the CIC, an effort is made to incorporate them at the most appropriate point in the comparative analysis so that all the Latin canons are considered in the commentary. (For bibliographical details see below, Books Received.)

603

CpR LXXXVIII 1-3/07, 7-220: Domingo Andrés Gutiérrez: Gli eremiti del canone 603. Commentario teologico-giuridico al Codice. Dossier attuale. (Article)

After a brief introduction, A.G. presents the complete texts of official sources, a selection of commentaries, and magisterial pronouncements on canon 603 regarding hermits. The author sees seven theological values underlying the canon: separation from the world, continuous prayer, penitence, silence, praise, salvation of the world, and devotion of one's life; these are matched by seven canonical parameters: hierarchical approval, consecrated life, evangelical counsels, vows, public profession, "one's own life project", and episcopal guidance.

603

Evaldo Xavier Gomes – Patrick McMahon – Simon Nolan – Vincenzo Mosca (eds.): The Carmelite Rule (1207-2007). Proceedings of the Lisieux Conference. (Book)

At the invitation of the Institutum Carmelitanum, scholars from around the world gathered in Lisieux in July 2005 to study the *formula vitae* which St Albert of Jerusalem bestowed on the Latin Hermits of Mount Carmel eight centuries ago. Representing a variety of disciplines – Biblical scholars, historians, dogmatic theologians, professors of spirituality and mysticism, canonists, liturgists, textual scholars, anthropologists – they examined the text and context of Albert's work in an effort to gain a better understanding of its profound depths and bring out its rich meanings to modern Carmelites, religious and lay alike. They approached the Rule from four perspectives: 1. the unique historical context of the Latin Hermits where the European phenomenon of lay hermits was influenced by both the rich traditions of Eastern Christianity and the confrontational energy of Crusader Palestine; 2. careful and thorough analyses of the text from the Biblical, linguistic, theological, structural and canonical perspectives; 3. a survey of the various commentaries on the Rule that have been written over the centuries and contributed to the living understanding of this text by generations of Carmelite men and women; 4. an investigation of the text as a living and prophetic message for the present and future of Carmelite religious and laity in our globalizing world even as it has been a guide for all Carmelites though these first eight centuries of its existence. (For bibliographical details see below, Books Received.)

605

Ang 85 (2008) 103-113: Jan Śliwa: La funzione stabilizzante della Chiesa nel processo di nascita degli IVC – CIC can. 573. (Article)

See above, canon 573.

607

AkK 176 1/07, 177-183: Polykarp F. Zakar: Bemerkungen zur Typologie der Institute des geweihten Lebens. (Article)

See above, Historical Subjects (*Second Vatican Council and revision of the CIC*).

631

Elizabeth Cotter: Canon 631 and the Juridic Act. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 365-388**)

See above, General Subjects (*Compilations*). C. investigates whether the acts of a general chapter are acts of the power of governance, and analyzes the key elements for a valid juridical act. She then applies these considerations specifically to canon 631: the five functions listed in §1 (protecting the spiritual patrimony, fostering appropriate renewal, the canonical election of the supreme Moderator, dealing with more important matters, and issuing norms); the "act of composing the chapter" in §2; and the acts placed by provinces, local communities and individuals mentioned in §3.

631-633

Francis G. Morrisey: The Role of General Chapters in Religious Institutes. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 139-166**)

See above, General Subjects (*Compilations*). M. comments on the three canons in the 1983 Code dealing with chapters (canons 631-633), illustrating from his own personal experience how the general points listed in these canons can be applied in practice, and addressing some particular issues related to the Chapter Directory.

634-640

Ang 85 (2008) 239-266: Velasio De Paolis: La rilevanza dell'economia nella vita religiosa. (Article)

It is an undisputable fact that economic matters are important in the life of individuals and communities, even for religious. In today's society economic matters are becoming ever more pervasive and complex. Religious communities are called to operate in a secularized society and must frequently deal with secular legal systems which cannot always be easily harmonized with the canonical regime which governs the institutes. Starting from these situations De P. offers a number of reflections concerning economic questions. He starts by developing some general themes on temporal goods and then deals with the specific responsibility of superiors, financial administrators, and councils. He concludes with some general principles governing the administration of ecclesiastical goods.

634-640

Jean-Pierre Schouppe: Elementi di diritto patrimoniale canonico. (Book)

See below, canons 1254-1310.

666

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See below, canons 822-832.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See below, canons 822-832.

747-748

Ang 85 (2008) 135-162: Marcelo Santos das Neves: A Tolerância numa perspectiva católica. (Article)

This article deals with the idea of "tolerance" as developed in the light of Bartolomé de las Casas's defence of American Indians. It then goes on to reflect on a non-violent method of evangelization since a true act of faith requires true freedom of choice.

750

CLSN 154/08, 61-64: Gordon Read: Receiving Communion Worthily. (Article)

See below, canon 916.

761

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See below, canons 822-832.

772

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See below, canons 822-832.

779

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See below, canons 822-832.

804

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See below, canons 822-832.

807-821

AkK 176 1/07, 46-61: Alfred E. Hierold: Von Bologna bis Bergen. Die Theologie im so genannten Bologna-Prozess. (Article)

H. reports on the origin and progress of the so-called Bologna Process, from the *Magna Charta Universitatum* (1988) up to the Conference of European Ministers for Education in Bergen (2005). In the second part of the article he gives an account of the work done by the Congregation for Catholic Education and by its Commission for the implementation of this process, as well as the efforts undertaken by the German Bishops' Conference and the Katholisch-Theologischer Fakultätentag for the reform of the study of Catholic theology.

822-832

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

This article begins with a brief history of the Church's interaction with social communications, concentrating on *Inter Mirifica*. S. then considers the treatment of social communication in the current Code, not just in Title IV (canons 822-832) but also in other sections as well (canons 666, 747, 761, 772, 779, 804, and 1063). While the 1917 Code dealt with the mass media in a negative way, that of 1983 presents the media with a positive role in proclaiming the Gospel. Preaching, instruction, and catechesis can all benefit from the mass media. S., in the third part, considers the questions that still need to be faced, pointing out that the current norms lack any reference to "Media

Offices", "World Days of Social Communications", the broadcasting of Mass, or freedom of information. He looks at the role of the internet in the service of the Church, not only for evangelization but also for the diplomatic work of the Holy See, promoting peace and human rights.

823

Ap LXXIX 3-4 (2006), 345-349: Secretaria Status – Congregatio Pro Doctrina Fidei: Nota, 1.07.2001, de Sacerdotis Antonii Rosmini scriptis. (Document)

The writings of A. Rosmini were examined in the 19th century and gave rise to the Holy Office decree *Post obitum* (14 December 1887) containing 40 propositions expressing concern about conclusions that could be drawn from Rosmini's writings. This note takes account of modern developments that allow a rather different response.

823

Ap LXXIX 3-4 (2006), 365-374: Congregatio Pro Doctrina Fidei: Notificatio 13.12.2004, de opere "Jesus, Symbol of God" a patre Rogerio Haight S.J. edito. (Document)

Text of the exchanges between the Congregation for the Doctrine of the Faith and Fr Roger Haight SJ, former President of the Catholic Theological Society of America, over the latter's book *Jesus, Symbol of God*. Fr Haight is prohibited from teaching Catholic theology.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

838

Ap LXXIX 3-4 (2006), 263-273: Ioannes Paulus PP. II: Chirographum, 22 November 2003: C exeunte anno a Motu proprio "Tra le sollecitudine" foras dato. (Document)

Letter in Italian of Pope John Paul marking the centenary of St Pius X's *motu proprio* on sacred music in the Liturgy.

838

IE XIX 2/07: 511-524: Pontificio Consiglio per i Testi Legislativi: Nota "La natura giuridica e l'estensione della «recognitio» della Santa Sede", 28 aprile 2006 (con *nota* di J. Miñambres, *La natura giuridica della "recognitio" da parte della Santa Sede e il valore delle "note" del Pontificio Consiglio per i testi legislativi*). (Document and commentary)

See above, canon 16.

838

IE XIX 3/07, 689-707: Antonio Sánchez-Gil: Gli innovativi profili canonici del Motu Proprio *Summorum Pontificum* sull'uso della Liturgia romana anteriore alla riforma del 1970. (Comment)

By means of the *motu proprio Summorum Pontificum* Pope Benedict XVI has brought up to date the norms established by John Paul II in 1984 and 1988, and in so doing has widened the possibilities of celebrating Holy Mass and the other sacramental actions according to the liturgical books preceding the post-Conciliar reform. S.G. aims to illustrate the specifically canonical features of the *motu proprio* for the benefit of specialists in the field of canon law and liturgy. He considers the letter of 7 July 2007 addressed to all the bishops in which the Pope presents the document and anticipates the fears that it might cause. Using terminology that is innovative as well as traditional, the Pope presents both Missals as expressions – one ordinary, the other extraordinary – of the *lex orandi* of the Church of the Roman rite. S.G. then uses juridical-canonical arguments to set out the plausibility of the solution brought about. (The Latin text of the document is given on pp. 762-767 of this issue of IE, and the Italian text of the letter of 7 July 2007 on pp. 769-772.)

838

William H. Woestman: *Summorum Pontificum* and Ecclesial Unity. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 449-465**)

See above, General Subjects (*Compilations*). W. sets out the background to Benedict XVI's 2007 *motu proprio Summorum Pontificum* on the use of the liturgical books of the Latin Church in force prior to 1970, and clarifies a number of misconceptions surrounding it. He stresses the duty of ecclesial consciousness and ecclesial communion – the aim of the document being precisely to bring about the unity of the Christian faithful.

BOOK IV, PART I, TITLE I: BAPTISM

849

CLSN 154/08, 55-60: Gordon Read: Infants Who Die without Baptism. (Article)

R. reviews the document from the International Theological Commission *The Hope of Salvation for Infants Who Die Without Being Baptized* and sets it in the context of the Church's teaching throughout the ages. Contrary to what has been believed, the theory of "limbo" was never part of the doctrine of the Church. "The conclusion of this study is that there are theological and liturgical reasons to hope that infants who die without baptism may be saved and brought into eternal happiness even if there is not an explicit teaching on this question found in Revelation. However none of the considerations proposed in this text to motivate a new approach to the question may be used to negate the necessity of baptism, nor to delay the conferral of the sacrament. Rather, there are reasons to hope that God will save these infants precisely because it was not possible to do for them that which would have been most desirable – to baptize them in the faith of the Church and incorporate them visibly into the Body of Christ."

849

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). Following an initiative of the Pontifical Council for Promoting Christian Unity, a joint declaration was signed at Magdeburg Cathedral on 29 April 2007, whereby the following Churches mutually recognized the validity of baptism: the Roman Catholic Church, the Ethiopian Orthodox Church in Germany, the Council of Anglican Episcopal Churches in Germany, the Armenian Apostolic Orthodox Church in Germany, the Evangelical Old-Reformed Church in Lower Saxony, the European Continental Province of the Moravian Church, the Evangelical Church in Germany, the Evangelical Methodist Church, the Catholic Diocese of the Old Catholics in Germany, the Orthodox Church in Germany, and the Independent Evangelical Lutheran Church.

BOOK IV, PART I, TITLE III: THE BLESSED EUCHARIST

899

IE XIX 3/07, 689-707: Antonio Sánchez-Gil: Gli innovativi profili canonici del Motu Proprio *Summorum Pontificum* sull'uso della Liturgia romana anteriore alla riforma del 1970. (Comment)

See above, canon 838.

899

William H. Woestman: *Summorum Pontificum* and Ecclesial Unity. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 449-465**)

See above, canon 838.

899-900

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). S. looks at the canonical aspects of Pope Benedict's post-synodal Apostolic Exhortation *Sacramentum Caritatis* (22 February 2007). The document reaffirms the need for the ministerial priesthood for the celebration of the Mass, and sets out important pastoral considerations to be borne in mind in relation to divorced and remarried Catholics, who can be encouraged to participate in the life of the community in different ways: taking part in the Mass without receiving Communion, listening to the Word of God, Eucharistic adoration, prayer, spiritual direction with a priest, carrying out works of charity and penance and the education of children. In another part of the document the Pope entrusts the competent dicasteries with the study of possible changes in the rites of peace and dismissal, and cautions against large-scale concelebrations, which are exceptional and should be limited to extraordinary situations. The Pope also encourages the use of the Latin language – especially in celebrations taking place during international gatherings – and Gregorian chant.

915-916

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, canons 899-900.

916

CLSN 154/08, 61-64: Gordon Read: Receiving Communion Worthily. (Article)

R. reviews and comments on the United States Conference of Catholic Bishops' teaching document *Happy Are Those Who Are Called to His Supper: On Preparing to Receive Christ Worthily in the Eucharist*, published on 14 November 2006. The document deals with the teaching of the Church on Holy Communion – transubstantiation – and the significance of being united with Christ through reception of Holy Communion. The Bishops address the question of voluntary abstention from the sacrament in the case of consciousness of grave sin, and where reception of Holy Communion is to be refused publicly, with particular reference to legislators who obstinately defy Church teaching.

928

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, canons 899-900.

BOOK IV, PART I, TITLE IV:
THE SACRAMENT OF PENANCE

961-963

ACR LXXXV 2/08, 131-147: Ian Waters: General absolution – Where are We At? (Article)

After reviewing 20th-century universal legislation and local legislation in Australia and New Zealand on the sacrament of Penance, W. considers the present local situation and the requirements of the *motu proprio Misericordia Dei*. He raises matters he considers not satisfactorily addressed by the present legislation: general absolution for those not conscious of grave sin; moral (compared with physical) impossibility to confess; situations where it is imprudent to hear confessions; and the prioritizing of confession to the possible neglect of contrition and satisfaction. W. also refers to the radical change of the celebration of the sacrament from public, ecclesial and for serious sin in the first centuries to frequent and private in the second millennium. After considering various current scenarios, and suggesting a possible decree to be enacted by the Australian Catholic Bishops' Conference (as required by *Misericordia Dei*), he concludes that at present general absolution is never permitted simply because of the existence of a crowd, but only if the diocesan bishop judges that without general absolution penitents would be deprived of the sacrament of Penance, or of Holy Communion, for a long time.

984-985

REDC 63 (2006), 605-654: Roberto Serres López de Guereñu: El respeto de la distinción entre fuero interno y externo en la formación sacerdotal. (Article)

See above, canon 240.

BOOK IV, PART I, TITLE VI: ORDERS

1012

CLSN 154/08, 76-82: Gordon Read: Excommunication of Members of the Army of Mary. (Article)

See below, canon 1364.

1029

PD 1451 5/08, 221-231: Anne Bamberg: Former des prêtres Sourds. (Article)

B. presents the life of three deaf priests – Mgr Agustin Yanes Valer, Fr. Thomas Coughlin and Fr. Cyril Axelrod – and speaks in favour of the priestly formation of deaf men. Since deafness is not an irregularity affecting the reception of orders the candidates should not be too hastily refused in seminaries. Formation and programmes ought to be adapted to the specific cultural situation of the seminarians. The article can be downloaded on the website "*Transversalités – Autour de la langue des signes et de la culture sourde*": http://umb-ressources.u-strasbg.fr/courses/DEAF/. (There is also an autobiography of the deaf-blind Fr. Cyril Axelrod: *And the Journey Begins*, Coleford, Gloucestershire, Douglas McLean, 2005, for which B. has provided a review in *Revue des sciences religieuses*, 83, 2008, pp. 433-434.)

1040

PD 1451 5/08, 221-231: Anne Bamberg: Former des prêtres Sourds. (Article)

See above, canon 1029.

1041

CLSN 154/08, 76-82: Gordon Read: Excommunication of Members of the Army of Mary. (Article)

See below, canon 1364.

1041

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See below, canon 1364.

1041-1042

Brian Dunn: The Practical Application of the Canons on Irregularities and Impediments to the Reception of Orders. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 215-247**)

See above, General Subjects (*Compilations*). D. takes as his starting point a 1997 Circular Letter from the Congregation for Divine Worship and the Discipline of the Sacraments on the scrutinies regarding the suitability of candidates for orders, and goes on to provide a detailed analysis of the irregularities and impediments in canons 1041 and 1042.

1044

CLSN 154/08, 76-82: Gordon Read: Excommunication of Members of the Army of Mary. (Article)

See below, canon 1364.

1044

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See below, canon 1364.

1051-1052

PD 1451 5/08, 221-231: Anne Bamberg: Former des prêtres Sourds. (Article)

See above, canon 1029.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

Ang 85 (2008) 179-199 (also **REDC 63 (2006), 725-745**)**: Ciro Tammaro: Il contratto matrimoniale quale meccanismo giuridico di attuazione storica del sacramento: la visione di S. Tommaso.** (Article)

In this study T. has his starting point in the contractual nature of marriage but centres his attention on the sacramentality of marriage (canon 1055 §2), especially in light of the teaching of St Thomas Aquinas. He considers the role of matrimonial consent as the efficient cause of the sacrament, and juridically examines the structure of the marriage contract in both civil and canon law. While the contract is made at the time of consent (*matrimonium in fieri*) the sacramental nature of marriage continues throughout the years (*matrimonium in facto esse*). It has sometimes been asserted that faith is required for a valid celebration of the sacrament of matrimony, yet in fact a valid celebration of the sacrament simply requires that the spouses wish to effect properly and correctly the marriage contract. That action on the natural human level transcends itself and is open to the supernatural and divine in the gift of sacramental grace. So while the sacrament of marriage is by definition an action of Christ and his Church it is at the same time the action of the couple in their matrimonial consent. The marriage contract is thus seen as being formally bilateral (man – wife) but substantially trilateral (man – wife – Christ), and T. examines the juridical and canonical consequences that flow from this.

1055

Ap LXXIX 3-4 (2006), 365-374: Congregatio Pro Doctrina Fidei: Nota 3.06.2003, de contubernalibus eiusdem sexus quoad iuridica consectaria contubernii. (Document)

This note of 3 June 2003 sets out the understanding of the Catholic Church of the moral and social issues that indicate the prohibition by the natural law in regard to same-sex unions.

1055

Ap LXXX 1-2 (2007), 541-560: Michele Riondino: Valori coniugali nel matrimonio civile e *bonum coniugum* nel matrimonio canonico. (Article)

R. compares the "conjugal values" (*valori coniugali*) of article 143 of the Italian civil law with the *bonum coniugum* of the Code of Canon Law, canon 1055.

1055

INT 13 2/07, 149-159: Christopher C. Roberts: A Theologically Premised Theory of Sexual Difference: Augustine, Barth, and Contemporary Revisionists. (Article)

There is a movement amongst some present-day theologians to find a rationale for same-sex marriages. R. here discusses the Christian theological tradition of sexual difference, and its implications. He concludes that, in their arguments, the revisionists have not yet sufficiently taken this into account; with regard to the ends of marriage there is also emphasis placed on that of partnership at the expense of that of children.

1055

INT 13 2/07, 203-219: Karlijn Demasure: Familles recomposées: une perspective de théologie pratique. (Article)

A growing phenomenon in society is the emergence of the new family, particularly in the wake of divorce. D. here takes a look at the expectations of the step-family and the realities of their situation. He argues for a new ethical framework which would allow for pastoral help; such guidance would emphasize Christian family values, responsible parenthood and the building up of a sound relationship between the couple.

1055

INT 13 2/07, 221-232: Petri Assenga: The African Family as a Model for the Church. (Article)

A. discusses the family as Church in the light of *Lumen Gentium* and *Familiaris Consortio*. He looks particularly at the model of the "extended family" inherent in African ancestral tradition, which looks outward to the care and accommodation of others.

1055

ITS 44 (2007), 417-440: Victor George D'Souza: "The Good of the Spouses" (*Bonum Coniugum*): Trends in Matrimonial Jurisprudence of the Roman Rota. (Article)

See below, canon 1095 2º-3º.

1055

REDC 63 (2006), 899-907: Tribunal de la Archidiócesis de Madrid: nulidad de matrimonio (exclusión de la sacramentalidad y de la indisolubilidad), *coram* Roberto Serres López de Guereñu, 10 de abril de 2007. (Sentence)

The male respondent was openly and vehemently against all religions and against the Catholic Church in particular. His attitude was totally scornful and contemptuous of all things religious. He did, however, want to marry the petitioner who insisted that she would be married in no other way than in church. Canonical marriage was duly celebrated with the very minimum of ceremony and attendance. Problems arose within a fortnight of the wedding and the marriage ended after a short number of years, during which time the respondent's forceful anti-religious sentiments continued. The grounds in the case are his exclusion of the sacramentality of marriage and of indissolubility. Lack of faith, lack of interest or of knowledge of the sacramental nature of marriage does not invalidate. The desire between baptized persons to contract a valid marriage contains the implicit intention of obeying the will of God and therefore includes its sacramentality; sincerely wanting to marry implicitly includes, for the baptized, all that pertains to Christian marriage. However, if a person's contrary will and intention is so strong that his rejection of the sacramental nature of marriage overrides his purely matrimonial intention and takes precedence over it, then he contracts invalidly. In this case the evidence was more than sufficient to prove that this was so and a positive decision was returned on his exclusion of sacramentality alone.

1055-1057

IE XIX 2/07, 483-494: Benedict XVI: Discorso alla Rota Romana, 27 gennaio 2007 (con *nota* di F. Puig, *Sulla verità e l'intrinseca natura giuridica del matrimonio*). (Address and commentary)

The texts are given in Italian of the annual address of the Holy Father to the Roman Rota and the speech of Mgr Antoni Stankiewicz, Dean of the Rota, on the occasion of the opening of the judicial year on 27 January 2007. Commenting on the Pope's address, P. underlines the closeness of the relationship between the *truth* and the *juridical dimension* of marriage. This relationship is dealt with by the Pope at two levels: a more general level, regarding the Church; and a more particular level, regarding those to whom the address is directed. With respect to the first level the Pope says that "all the activity of the Church and of the faithful, in the context of the family, must be based on this *truth about marriage and its intrinsic juridical dimension*." He proposes it not just as a theory but as something embedded in reality. With regard to the judges and those who are involved in matrimonial processes, he

expresses the same idea in other words: "in causes of the nullity of marriage, the legal truth presupposes the 'truth of the marriage' itself." This "service to truth in justice" is not simply gratuitous praise of the judges or the rhetoric of ecclesiastical teaching; what is at stake here is a key element of civilization.

1055-1057

JM 13 (19) 2008, 91-98: Wojciech Góralski: Wymiar prawny małżeństwa przemówienia papieża Benedykta xvi do roty rzymskiej z 27 stycznia 2007 roku (= The juridical dimension of marriage in the light of the Address of Pope Benedict XVI to the Roman Rota on 27 January 2007). (Commentary)

G. comments on Pope Benedict XVI's 2007 address to the Rota, dealing with the juridical dimension of marriage in the context of today's crisis in the understanding of marriage, even among many of the Church's faithful. The Pope recalls that the anthropological and salvific truth of marriage, including in its juridical aspect, was already present in Sacred Scripture. The essential juridical nature of marriage is to be found in the bond established by the Creator between the spouses, which for them represents a demand of justice and love from which – for their own good and that of all – they cannot withdraw without contradicting what God himself has wrought in them.

1057

Ang 85 (2008) 163-178: Bruno Caglioti: Consenso matrimoniale e amore sponsale nella dottrina di S. Tommaso. (Article)

In the light of the short duration of many marriages today, both civil and religious, we can ask ourselves whether marriage is an unpredictable adventure or whether we can identify an element that is indispensable for the marital relationship and which will constitute a point of stability. In the doctrine of St Thomas Aquinas that element is "love", an internal force at the root of all human action that becomes a basis and reference point for the permanent stability of the conjugal union. "Love" is not a physical attraction or passing sentiment but a unitive power that involves the whole person in the couple's inter-relationship. This "love" is present from the couple's first encounter and remains a constant source for reciprocal affection and respect. For St Thomas marriage is the greatest union of hearts and bodies, of souls and bodies.

1057

Ang 85 (2008) 179-199 (also **REDC 63 (2006), 725-745**)**: Ciro Tammaro: Il contratto matrimoniale quale meccanismo giuridico di attuazione storica del sacramento: la visione di S. Tommaso.** (Article)

See above, canon 1055.

1057

IE XIX 3/07, 567-588: Giuseppe Versaldi: L'uomo debole a la capacità per autodonarsi: quale capacità per il matrimonio. (Lecture)

In this paper given at the III Refresher Course in Canonical Matrimonial and Procedural Law held at the University of the Holy Cross, Rome, in September 2007, V. attempts to find the proper balance between the vocation of man and woman to mutual love which requires the capacity for self-giving, and human weakness which also expresses itself in this area. He looks into the anthropological aspects and the contribution of the human sciences, before considering the capacity for marriage. He relies on the teaching of *Deus Caritas Est* to distinguish between the various aspects of love, in particular the difference between self-love and self-giving. The Christian – *homo lapsus et redemptus* – retains a tendency to evil in self-giving, but the sacramental grace he receives makes him capable of loving with faithful mutual self-giving. V. stresses that the diversity of empirical methods of the sciences that are used in seeking a definition of "normality" introduces a difficulty in judging, and he has recourse to several of John Paul's addresses to the Rota on the matter.

1057

Proc CLSA 2005, 197-209: Jorge L. Roque: Egoism in Marriage Jurisprudence. (Seminar paper)

See below, canon 1095 2º-3º.

1057

REDC 63 (2006), 899-907: Tribunal de la Archidiócesis de Madrid: nulidad de matrimonio (exclusión de la sacramentalidad y de la indisolubilidad), ***coram*** **Roberto Serres López de Guereñu, 10 de abril de 2007.** (Sentence)

See above, canon 1055.

1058

REDC 64 (2007), 281-307: Juan Ignacio Bañares: Mentalidad divorcista e indisolubilidad del matrimonio. (Conference presentation)

This is B.'s paper delivered at the XVIII Symposium of Procedural and Matrimonial Canon Law held in Valladolid, 3-7 September 2006. Divorce mentality has not only spread through modern secular societies but has also affected some sectors of the Catholic Church. With this in view B. first of all presents an overview of the "dissolubilist" culture regarding marriage, followed by an examination of its true nature and structure and the ways in which the act of will in consent to marry can be affected by the prevalent views of society. Nevertheless, he emphasizes how strong is the *ius connubii* in this context and how the naturally sufficient act of will to marry can be related to possible causes of nullity. He ends with proposals regarding some grounds of nullity (defect of form, lack of delegation, dispensable impediments, some defects of consent) which, although occasioning a formal declaration of nullity, could also be seen as undermining the *ius connubii* and the naturally sufficient matrimonial act of will and which might be solved by a simple *sanatio* or convalidation. He urges that in both Church and society steps be taken to regain an understanding of marriage as a good of the person, the family and society.

1058

Proc CLSA 2005, 225-230: Kenneth K. Schwanger: Fulfillment of the cautions and prohibitions in the preparation for marriage of those in the RCIA: An examination of the nature and use of the *vetita* in tribunal practice with an eye toward practical pastoral implications. (Seminar paper)

See below, canon 1684.

1060

Wojciech Kowal: The Presumption of the Validity of Marriage. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 249-274**)

See above, General Subjects (*Compilations*). K. sets out the pastoral, canonical and logical justification for the *favor iuris* in canon 1060, and the philosophical presuppositions behind challenges to this presumption.

1063

Ang 85 (2008) 115-134: Andrea Scasso: La Chiesa e gli strumenti di comunicazione sociale. Sviluppi e prospettive nel 25º anniversario della promulgazione del Codice di Diritto Canonico. (Article)

See above, canons 822-832.

1063

INT 13 2/07, 161-176: Michael G. Lawler: A Marital Catechumenate: A Proposal. (Article)

Over the last thirty years the Rite of Christian Initiation for Adults (RCIA) has become well established and has proved successful in preparing those who are on a faith journey. L. refers to the Baptismal Catechumenate enshrined in the RCIA. Accepting that cohabitation is a reality, L. suggests that there should be a parallel Marital Catechumenate for those committed couples who intend to marry but have chosen first to cohabit. This programme would have the same four, ordered stages as the RCIA, but the goal would be to educate and support the couple, over time, in their understanding of Christian marriage, and enable them to focus on the issues of married life rather than the wedding.

1065

JM 13 (19) 2008, 145-162: Jerzy Adamczyk: Obowiązek przyjęcia sakramentu bierzmowania przez nupturientów (kan. 1065 §1) (= The reception of the sacrament of confirmation before marriage). (Article)

A. studies the requirement in canon 1065 §1 that Catholics who have not been confirmed before marriage should receive the sacrament if this can be done without grave inconvenience.

1085

IE XIX 3/07, 773-791: Supremo Tribunale della Segnatura Apostolica: *Declaratio* sull'ammissione dei fedeli della Chiesa ortodossa romena alla celebrazione di un nuovo matrimonio nella Chiesa cattolica, 20 ottobre 2006 (con nota di P. Gefaell, *La giurisdizione delle Chiese Ortodosse per giudicare sulla validità del matrimonio dei loro fedeli*). (Document and commentary)

The Latin text is given of the Declaration given by the Signatura on 20 October 2006 concerning the admission of faithful of the Romanian Orthodox Church to

a new marriage in the Catholic Church. The document contradicts the practice of some Catholic tribunals in Romania which, for the celebration of a new marriage in the Catholic Church, considered the Orthodox declaration of condition of freedom to be sufficient. It establishes that the Orthodox party is not considered to be free until a Catholic ecclesiastical tribunal has declared the nullity of that party's marriage by means of an executive decision. The declaration does not explain why the Romanian Orthodox decision cannot be considered sufficient, and this is the reason behind G.'s detailed study. As part of the article he examines the recognition by the Catholic Church of the canonicity of Orthodox laws, as well as the Council's teaching regarding the jurisdiction of the Orthodox Churches.

1086

Ap LXXX 1-2 (2007), 197-199: Pontifical Council for Legislative Texts: Circular letter to Presidents of Episcopal Conferences on *Actus formalis defectionis ab Ecclesia Catholica.* (Document)

Text in Italian (without date) of the letter sent to the Presidents of Episcopal Conferences in various languages, on the correct interpretation of the phrase "by formal act defected". The official date of this letter is 13 March 2006.

1086

INT 13 2/07, 191-201: Soosai Ariokasarny: Challenges and Opportunities of Interreligious Dialogue in Interfaith Marriages: An Asian Perspective. (Article)

Interfaith marriages are increasing in Asia as elsewhere. A. looks at the questions raised by marriages between Catholics and non-Christians in the context of a multi-religious, multi-cultural Asia. He argues that religion should unify, not divide, and the response should be fruitful dialogue, promoted by the Church, which would strengthen the marriage, and further 21st century evangelization.

1095

Ang 85 (2008) 201-212: Corrado Dastoli: Identificazione proiettiva e collusione: paradigmi dell'incapacità matrimoniale di coppia. (Article)

Is the matrimonial incapacity of canons 1095 1º, 2º and 3º absolute or relative to a specific spouse? D. begins by considering what it is that forms the personal identity of each spouse, and then the influence of the relationship on this – it can

help its growth, substitute for growth or defend against growth. As a result marriage incapacity can be relative to a specific relationship because of the effect which that relationship has on those involved in it.

1095

IE XIX 3/07, 545-566: Paolo Bianchi: Disturbi di personalità e capacità matrimoniale. (Lecture)

In this paper given at the III Refresher Course in Canonical Matrimonial and Procedural Law held at the University of the Holy Cross, Rome, in September 2007, B. describes "personality" as the "person [man's ontological structure] in act", while "person" could be considered as "personality in potency". He looks at the general definition of personality disorder in DSM and the various types of mental disturbance which DSM lists, and asks whether personality disorders are psychiatric illnesses. He then studies the importance from the canonical standpoint of these disorders in relation to matrimonial capacity, and more particularly the categories of incapacity mentioned in canon 1095. There is abundant Rotal jurisprudence on the topic, but B. considers that from the point of view of the clinical anomaly and the effect it produces of nullity of marriage, this jurisprudence presents one particular difficulty: that of identifying the "essential obligation" against which the personality disorder operates, especially in regard to canon 1095 3º.

1095

Pierantonio Pavanello: Il can. 1095 nell'istruzione *Dignitas Connubii*. (Article in **Juan Ignacio Arrieta (ed.): L'istruzione *Dignitas Connubii* nella dinamica delle cause matrimoniali, pp. 59-69**)

See below, canons 1671-1691.

1095 2º

REDC 64 (2007), 505-522: c. Reyes Calvo: Tribunal del Obispado de Salamanca, 1 de diciembre de 1997: nulidad de matrimonio (defecto de discreción de juicio y exclusión de la indisolubilidad). (Sentence)

See below, canon 1101.

1095 2º-3º

Ap LXXIX 3-4 (2006), 801-812: Salvatore Pesce: Riflessioni circa le patologie fisiche che incidono sulla capacità di assumere le obbligazioni essenziali del matrimonio. (Article)

P. studies some Rotal decisions that lead him to suggest that it is possible to conclude that from the presence of a venereal disease in one of the parties there can result a neurosis that renders the individual incapable of undertaking the obligations of the married state.

1095 2º-3º

ITS 44 (2007), 417-440: Victor George D'Souza: "The Good of the Spouses" (*Bonum Coniugum*): Trends in Matrimonial Jurisprudence of the Roman Rota. (Article)

D'S. explains the importance of Rotal jurisprudence as a criterion of interpretation under canon 19, and the guidance given by Papal allocutions, which while not constituting "authentic interpretations" nevertheless represent the interpretation and teaching of the supreme legislator and provide direction for the judges. In relation to canon 1095, Pope John Paul II made it clear that he intended the canon to be worded in a generic way in order to allow jurisprudence to work out further clarifications. As for the debate in the Rota on the *bonum coniugum* – whether it belongs to the essence of marriage or is an end of marriage – what is important is that in the mind of the legislator and the consolidated Rotal jurisprudence it is not the *bonum coniugum per se* but the ordination (*ordinatio*) of the conjugal covenant to the *bonum coniugum* that constitutes the essential element of the conjugal partnership, just as it is not the good of children/offspring (*bonum prolis*) *per se* but the ordination of the marital covenant (act of consent) to acts *per se* apt for the procreation and education of children that is the essence (essential element) of marriage. The jurisprudence is converging on the sources of invalidity of marriage due to the exclusion of the *bonum coniugum*. The exclusion can result either from an incapacity to assume the essential obligations of the *bonum coniugum* because of causes of a psychic nature, or from a deliberate act of the will to exclude the *bonum coniugum* from the content of the object of consent. The presence of these sources is to be proved, however, with the juridical criteria proper to each ground. D'S. hopes for another Papal allocution to provide further clarification.

1095 2º-3º

Proc CLSA 2005, 197-209: Jorge L. Roque: Egoism in Marriage Jurisprudence. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), given in Spanish, R. looks at the concept of egoism in the light of the Church's doctrine and jurisprudence.

1095 2º-3º

Proc CLSA 2005, 211-223: Kenneth W. Schmidt: Trauma and Marital Consent. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), S. describes the Trauma Model and its long-lasting effects. He looks at how this may affect people's ability to give true consent to marriage.

1095 2º-3º

REDC 64 (2007), 414-438: c. Malaquías Zayas Cuerpo: Tribunal de la Archidiócesis de Barcelona, 28 de mayo de 1992, nulidad de matrimonio (falta de libertad interna e incapacidad para asumir las obligaciones). (Sentence)

The male petitioner's father died when he was five years old, leaving him alone with a very distressed and immensely possessive mother. The respondent had been sexually abused at the ages of seven and twelve by an uncle, and from her early teens had been having sexual relations with a number of older men. She saw in the petitioner, however, a solution to her problems, given his social and financial status, and assiduously courted and flattered him but continued her relationships with other men. He decided he could not marry her but was content to continue to cohabit and this intention was widely known among his friends. In the end, however, she persuaded him to marry her. The alleged grounds of nullity were inability to assume the obligations of marriage in one or both parties and the petitioner's lack of internal freedom. In his *in iure* section Z.C. emphasizes that the lack of internal freedom must go far beyond a mere conditioning of consent in order to produce a true inability to assume. He also examines the relationship between lack of internal freedom and lack of discretion and points out that the existence of the former does not always indicate the presence of the latter. He quotes extensively from a number of Rotal sentences and from the Spanish canonist Panizo Orallo. His examination of the evidence is meticulous and detailed. A positive decision was returned

only on the grounds of the petitioner's lack of internal freedom, based on his being overwhelmed and carried along by the respondent's demonstrations of love and admiration for him which he knew he could not return in a genuine marital and conjugal relationship. The psychiatric reports could not provide sufficient basis to prove either party's inability to assume the obligations of marriage for "causes of a psychological nature".

1095 2º-3º

REDC 64 (2007), 439-454: c. Alfonso López Benito: Tribunal de la Archidiócesis de Valencia, 10 de junio de 1995, nulidad de matrimonio (defecto de discreción de juicio e incapacidad para asumir las obligaciones). (Sentence)

The courtship was dedicated to the pursuit of diversion and entertainment, which included frequent sexual relations. When the respondent became pregnant her parents insisted she either marry or leave the family home. The petitioner did not want to marry, nor did he want the petitioner to have an abortion or to be thrown out of her home. He felt the only solution was marriage, but even so he told the parish priest, only a fortnight before the wedding, that he was calling it off. In the event it went ahead, but married life lasted barely a month. The alleged grounds of nullity were the petitioner's grave lack of discretion, lack of internal freedom and inability to assume the essential obligations of marriage. L.B.'s *in iure* section deals especially with the level of maturity needed to contract valid marriage as far as the necessary degree of internal freedom is concerned. He provides some suggestions in six points which he believes sum up clearly and fully the necessary conditions required to enable a judgment to be given that a person is truly suffering from a lack of internal freedom. The decision was affirmative on all alleged grounds.

1095 2º-3º

REDC 64 (2007), 455-485: c. José Antonio Fuentes Caballero: Tribunal de la Diócesis de Coria-Cáceres, 28 de mayo de 2002: nulidad de matrimonio (defecto de discreción de juicio, falta de libertad interna e incapacidad para asumir las obligaciones). (Sentence)

The marriage took place after an unplanned premarital pregnancy but the court found no evidence of pressure to marry in the female petitioner or any defect of consent on her part. The respondent, however, was shown to be a childish and immature individual, a case of arrested development and emotional immaturity; he was irresponsible and unreliable in his relationship with the petitioner and in his work, a womanizer before, during and after the marriage, a heavy drinker,

aggressive and violent. Although the psychiatric reports made clear that his condition did not merit the description of pathological, it was clear to the court that it was morally impossible for him to assume the obligations of marriage in any real or responsible way. In his *in iure* section F.C. emphasizes the distinction between what psychology understands as maturity (the full, integral and optimum development of the human personality) and the canonical understanding of maturity in this context, namely the minimum required for marriage consent. He also deals with emotional or affective immaturity due to arrested development, quoting extensively from, among others, García Faílde, the emeritus Dean of the Rota of the Apostolic Nunciature (Madrid). The court's decision was affirmative on the respondent's grave lack of discretion and inability to assume the essential obligations of marriage.

1095 3º

JM 13 (19) 2008, 29-41: Remigiusz Sobański: Prawda jako entelechia procesu o nieważność małżeństwa w świetle przemówień Piusa XII do Roty Rzymskiej (= Truth as the form (entelechy) of the process of matrimonial nullity, explained by careful reference to the Addresses of Pius XII to the Roman Rota). (Article)

See below, canon 1608.

1095 3º

JM 13 (19) 2008, 179-191: Wojciech Góralski: Niezgodnosć charakterów stron a *incapacitas assumendi* (kan. 1095, n. 3 KPK) na przykładzie wyroku Roty Rzymskiej c. Burke z 18 lipca 1997 roku (= Incompatibility of characters and *incapacitas assumendi* (can. 1095, n. 3) in the sentence of the Roman Rota c. Burke 18 July 1997). (Commentary)

The case concerns a marriage celebrated on 31 December 1983 in Singapore. The spouses' life together soon became unhappy on account of their different characters. On 29 September 1985 the husband approached the Singapore ecclesiastical tribunal to request a declaration of nullity. On 16 February 1987 the tribunal gave an affirmative sentence on the ground of the radical incompatibility of the spouses' characters. The case was heard at second instance by the Roman Rota, where on 5 March 1991 the *turnus coram* Colagiovanni gave a negative decision. The petitioner appealed to the next *turnus* (*coram* Burke), which on 18 July 1997 confirmed the decision of the previous *turnus*. G. comments on that decision, in which a clear distinction is drawn between incompatibility of characters and incapacity to assume the essential obligations of marriage. The different characters of the man and the

woman did not remove their capacity to give and accept conjugal rights and duties.

1095 3º

REDC 63 (2006), 885-897: Tribunal de la Rota de la Nunciatura Apostólica: nulidad de matrimonio (incapacidad para asumir las obligaciones esenciales del matrimonio), *coram* Santiago Panizo Orallo, 15 de abril de 1999. (Sentence)

The problem in this marriage was that the respondent suffered from phymosis which initially prevented its consummation. The frustration engendered by this situation led to tensions and a distancing between husband and wife. Eventually the respondent subjected himself to a surgical procedure which rectified his condition and the marriage was then consummated. Nevertheless married life came to an end when the couple separated some three years after the wedding. The female petitioner requested a declaration of nullity on the grounds of the respondent's inability to assume and fulfil the essential obligations of marriage. A negative decision was given at first instance. This second instance sentence explains the characteristics of the genital deformation known as phymosis – a purely physiological condition which can be rectified fairly simply – and explores the possibility of its originating any abnormal psychological consequences. The male respondent did not participate in the case, his whereabouts being unknown, and neither the testimonies of the petitioner and witnesses, nor the psychiatric report, based solely on the acts of the case, provided moral certainty to prove the respondent's inability to assume the obligations of marriage because of causes of a psychological nature. The negative decision of first instance was upheld.

1095 3º

REDC 63 (2006), 927-939: Tribunal de la Diócesis de Orihuela-Alicante: nulidad de matrimonio (incapacidad para asumir las obligaciones, error doloso y exclusión de la fidelidad), *coram* Joaquín Martínez Valls, 7 de octubre de 1997. (Sentence)

The marriage took place after a few months of courtship when the female petitioner found she was pregnant. Within weeks of the wedding she discovered the respondent was a serious drug addict, injecting heroin three times a day. His parents and friends were well aware of his drug dependency but had concealed this fact from the petitioner. The relationship quickly deteriorated and the marriage was over in a few months. The grounds in the case are inability to assume the essential obligations of marriage, deceit and exclusion of fidelity, all

on the part of the respondent. Although he refused to take part in the canonical process the witnesses testify clearly and in detail to his long-standing drug addiction and habits. No psychiatric report was commissioned as the court considered, in accordance with canon 1680, that such a report was unnecessary in this case. The *in iure* section deals especially with the issue of inability to assume arising from drug addiction. The decision was positive on the grounds of deceit and the respondent's inability to assume the essential obligations of marriage.

1095 3º

REDC 63 (2006), 941-1093: Tribunal de la Diócesis de Plasencia: nulidad de matrimonio (incapacidad para asumir las obligaciones, error en cualidad, error doloso y miedo grave), *coram* Juan Agustín Sendén Blázquez, 28 de marzo de 2003. (Sentence)

The couple married very young when after a few months of courtship the petitioner fell pregnant. Her parents insisted she marry or leave the family home. However the main interest in this case is the personality and character of the respondent who was already showing signs of odd behaviour before the marriage. Shortly after the wedding it transpired that he was an epileptic and was excused the normal obligatory period of military service; he was also a virtual alcoholic even at his early age, drinking to excess almost every night. These facts were hidden from the petitioner by both the respondent and his parents, who were well aware of his condition. Common life was practically impossible for the couple because of the respondent's physical and verbal aggression. He was soon also diagnosed as schizophrenic and urgently hospitalized on a number of occasions in psychiatric institutions. The grounds alleged are the respondent's inability to assume the essential obligations of marriage, error of quality and reverential fear in the petitioner, and deceit. The sentence is extremely long (152 pages), both in the *in iure* section where the *ponens* in a most methodical and detailed way deals with epilepsy, schizophrenia, histrionic personality disorder and alcoholism and their respective effects on the ability to assume the obligations of marriage, and also in the examination of the evidence, undertaken in the same meticulous and detailed manner. The decision was positive on all the alleged grounds.

1095 3º

REDC 64 (2007), 487-503: c. José Joaquín Almeida Lopes: Tribunal de la Diócesis de Oporto, 15 de enero de 2001, nulidad de matrimonio (incapacidad para asumir las obligaciones y error doloso). (Sentence)

After a short period of time the marriage came to an end on account of the male respondent's reluctance to engage in the sexual and intimate aspects of married life. His homosexual orientation became known some time afterwards. The alleged grounds of nullity were *error dolosus* on the part of the petitioner and the respondent's inability to assume the essential obligations of marriage. The first ground was dropped for lack of sufficient evidence. A.L.'s *in iure* section deals principally with the impact of homosexuality on the partnership of life in marriage, and it was on this ground that nullity was declared. (The text of this sentence is in Portuguese).

1097

CLSN 154/08, 89-111: Augustine Mendonça: Recent Rotal Jurisprudence on the Ground of Deceit. (Article)

See below, canon 1098.

1097

REDC 63 (2006), 827-882: Juan Agustín Sendén Blázquez: El error sobre la persona y sus cualidades en la jurisprudencia. (Article)

S.B. begins with a discussion about the difference (if any) between the *error redundans* of the 1917 Code and the error concerning a "quality directly and principally intended" of the present Code (canon 1097 §2). In his consideration of §1 of this canon, although he shows himself to be sympathetic to the wider concept of "person" as including those moral, spiritual and social qualities which identify a particular individual, he acknowledges that this concept has been roundly rejected by Rotal jurisprudence and provides extracts from and a commentary on relevant Rotal decisions. Although *error redundans* has disappeared from the present Code the concept still appears in jurisprudence, especially when dealing with marriages celebrated before 1983, where a particular quality is identified with the very substance of the person, determining his or her individual identity; error in such a case would invalidate consent as error of person. Concerning canon 1097 §2, S.B. first considers which types of qualities could be included in this category before examining the meaning of "principally and directly intended", quoting many examples of Rotal jurisprudence which help to elucidate the matter. Habitual, interpretative

and hypothetical intentionality cannot invalidate, but implicit intention can do so. In a final section he deals with what exactly has to be proved and how proof can be achieved. Extensive extracts are provided from many Rotal sentences on each of the areas under consideration.

1097

REDC 63 (2006), 941-1093: Tribunal de la Diócesis de Plasencia: nulidad de matrimonio (incapacidad para asumir las obligaciones, error en cualidad, error doloso y miedo grave), *coram* Juan Agustín Sendén Blázquez, 28 de marzo de 2003. (Sentence)

See above, canon 1095 3º.

1098

CLSN 154/08, 89-111: Augustine Mendonça: Recent Rotal Jurisprudence on the Ground of Deceit. (Article)

M. explores the nature of canon 1098 as distinct from canon 1097 §2 through a simple descriptive analysis of five sentences chosen for their unique features. Given here are summaries of the five sentences.

1. Decision *coram* Pompedda, 26 July 1996 (Piazza Armerina, Italy)

The marriage took place in 1991 and common life lasted about a year. The end of the marriage was brought about by the husband learning that his wife had suffered from a serious disease, thalassemia, prior to marriage. The first instance decision in the regional tribunal of Siculo was affirmative on the grounds of deceit perpetrated by the wife. The wife appealed against this decision to the Rota. The husband petitioner repeatedly stated that he was deceived by the respondent and her family who concealed the real condition of her health. The *ponens* found that it was not some generic or frivolous quality but a serious one. It was so important to the petitioner that it was impossible to sustain the "partnership of the whole of life". The present decision by Pompedda is relatively brief in its *in iure* section, but M. highlights some consolidating jurisprudential principles on the ground of deceit. Pompedda reaffirms in passing that the canon is non-retroactive.

2. Decision *coram* Serrano, 25 October 1996 (Prague, Czech Republic)

The male petitioner and the respondent met by chance and immediately began to date. Within a few months of their first meeting, the respondent announced that she was pregnant. Therefore the petitioner agreed to marry her under certain conditions: that she really was expecting his child and that she would be

baptized before marriage. The respondent agreed to these conditions, and they married on 26 April 1973. Despite the birth of three children, the marriage turned unhappy particularly when the petitioner was informed that the respondent was not pregnant before the marriage and was not sincere in embracing the Catholic faith. The petitioner approached the tribunal of Prague to declare his marriage invalid on the grounds of deceit perpetrated by the respondent, and error of quality of the person. The tribunal pronounced an affirmative decision on both grounds. This decision was overturned by the appeal tribunal of Olomouc. The petitioner appealed to the Rota. Serrano states that deceit was clearly proven, but he acknowledges that because the marriage was celebrated under the regime of the 1917 Code, it could not be treated under the new norm if the question of retroactivity is considered. The respondent had deliberately feigned pregnancy in order to extract the petitioner's consent. There is no difference in situations of this kind between deceit and error except in the intention of the deceiver. Although the *turnus* was not going to declare this marriage invalid on the grounds of deceit, the same proofs that were used to prove the existence of deceit were sufficient to prove error of quality directly and principally intended.

3. Decision *coram* Faltin, 30 October 1996 (Prague, Czech Republic)

The male petitioner and the respondent met by chance in 1975 at a night club and began an amorous friendship which included occasional sexual intimacy. Four months later the respondent suddenly declared to the man that she was pregnant, but showed no doctor's report as proof. She demanded that they marry immediately because of her condition. But two weeks before the wedding, when everything was ready, her mother unexpectedly announced that the respondent had suffered a miscarriage. Once again no medical report backed this up, and the respondent said nothing to the petitioner. These were the circumstances in which the marriage was celebrated on 19 September 1975. Married life was unhappy because of neglect by the petitioner. Things got worse when the respondent confessed that she had never been pregnant at all. The petitioner immediately left the marriage and secured a divorce. He petitioned the interdiocesan tribunal of Prague for a declaration of nullity on the ground of error redounding to the quality of the person. His first application was unsuccessful; he then introduced a second petition where the doubt was formulated as follows: "whether there is proof of invalidity because of error concerning a quality of the person caused by deceit." This received an affirmative judgment at first instance, which was overturned on appeal. The petitioner appealed to the Rota. In his sentence, Faltin provides a detailed explanation of the norm of canon 1097 §2 on error of quality and of canon 1098 on deceit. The *turnus* found the case difficult to deal with, because of the prior knowledge the petitioner had received about the respondent's pregnancy, implying that the petitioner knew already prior to his exchanging consent that

the respondent was no longer pregnant, and that he had information concerning the quality directly and principally intended. The *turnus* pointed out that the case does not involve deceit as provided for in the norm of canon 1098, nor a simple error giving rise to the contract, nor ignorance, much less condition, but error caused by deceit. The *turnus* linked error to deceit in order to justify the application of the ground of deceit to a marriage celebrated before the coming into effect of the new Code of Canon Law. The facts demonstrated that the petitioner pursued the respondent not with a true love but rather an erotic attraction. The respondent deliberately induced the man into error with the intention of winning his hand. The objective truth was hidden from the petitioner until after the wedding. The Rota found in favour of the petitioner.

4. Decision *coram* Defilippi, 4 December 1997 (Medellin, Columbia)

The male respondent and female petitioner married on 7 January 1989 after a four-year engagement period. The petitioner had grown up in a very devout Catholic family and lived out her faith in her daily life. The respondent came from a Catholic family but some members of the family had already joined an Evangelical denomination. He seems to have professed the Catholic faith at the time of the wedding. Common life after the wedding was disrupted within a few months by the behaviour of respondent who suddenly abandoned the Catholic faith and declared his allegiance to the other denomination, to which he tried to convert the petitioner. When she found that she had been deceived as to the respondent's allegiance she broke up the marriage and returned to her parents. Following the separation, she petitioned the regional ecclesiastical tribunal of Medellin alleging invalidity on the ground of deceit mentioned in canon 1098. The first instance tribunal gave an affirmative decision, which was overturned at the national appeal tribunal of Columbia. The petitioner appealed to the Rota. In his sentence, Defilippi provides a synthesis of the juridical principles presupposed in canon 1098 and their application to concrete cases. Most of the principles contained in his sentence are now regarded as consolidated jurisprudence. In this particular case the crucial question was whether or not the respondent misled the petitioner on the matter of his Catholic faith. The respondent in fact denied deceiving the petitioner. The second instance tribunal noted that the respondent was a Catholic at the time of the marriage and adhered to the Evangelical denomination ten months after the wedding, so no deceit was perpetrated at the time of consent. The Rotal *turnus* found that the respondent truly feigned to be a Catholic in order to marry the petitioner, knowing that she would not marry someone who did not share her Catholic faith. Defilippi notes "in view of this deeply rooted intention of the woman perhaps the present case could have been appropriately considered under the prescript of canon 1097 §2, that is to say, the petitioner might have regarded the firm adhesion of the man to the Catholic as a quality 'directly and principally' intended." The conclusion of the sentence explains it all: "In other words, the petitioner has confirmed

through her behaviour that she had been intolerably deceived by the respondent who, in order to marry her, feigned his firm adherence to the Catholic faith while already diligently desiring in his heart adherence to the Protestant community of his mother."

5. Decision *coram* Faltin, 3 June 1998 (Kielce, Poland)

The male petitioner and the respondent married on 24 April 1982. Difficulties arose within the marriage, brought on by the petitioner's discovery that the respondent was sterile, a fact which he claimed the respondent already knew before celebrating the marriage. He felt that he was deceived by the respondent as he was very desirous of having children of the marriage. The partnership of conjugal life became intolerable, ending in divorce. He petitioned the ecclesiastical tribunal of Kielce for a declaration of invalidity on the ground of "error of quality of his wife". The negative first instance decision was overturned by the appeal tribunal. The cause was transmitted to the Rota which gave an affirmative decision at third instance. The *turnus* described this case as "a very subtle and complex" one: firstly, because of uncertainty about the distinction between error caused by deceit and error of quality directly and principally intended; and secondly, because there was a conflict in the evidence. According to the petitioner, "my wife was sterile and she had known this fact prior to contracting marriage with me", which indicates that this is a matter of error caused by deceit in accordance with the norm of canon 1098. According to the respondent, "I had no doubt about my sterility before marriage", which suggests that this would be a case of error concerning the quality of a person directly and principally intended according to the norm of canon 1097 §2. The outcome of the case depended on the credibility of the petitioner as against that of the respondent. The Rota concluded that "it is clearly demonstrated from the acts and proofs, that the woman's capacity to bear children was the prevalent although not the sole cause of contracting marriage. Therefore when the capacity to bear children, the prevalent motive for contracting marriage, is directly and principally, although implicitly, intended, in the absence of this quality in the respondent woman (it does not matter whether it was due to error caused by deceit, or due to error concerning the quality of the person directly and principally intended by the petitioner) the marriage in question must be declared invalid".

1098

REDC 63 (2006), 927-939: Tribunal de la Diócesis de Orihuela-Alicante: nulidad de matrimonio (incapacidad para asumir las obligaciones, error doloso y exclusión de la fidelidad), *coram* Joaquín Martínez Valls, 7 de octubre de 1997. (Sentence)

See above, canon 1095 3º.

1098

REDC 63 (2006), 941-1093: Tribunal de la Diócesis de Plasencia: nulidad de matrimonio (incapacidad para asumir las obligaciones, error en cualidad, error doloso y miedo grave), *coram* Juan Agustín Sendén Blázquez, 28 de marzo de 2003. (Sentence)

See above, canon 1095 3º.

1101

REDC 63 (2006), 899-907: Tribunal de la Archidiócesis de Madrid: nulidad de matrimonio (exclusión de la sacramentalidad y de la indisolubilidad), *coram* Roberto Serres López de Guereñu, 10 de abril de 2007. (Sentence)

See above, canon 1055.

1101

REDC 63 (2006), 927-939: Tribunal de la Diócesis de Orihuela-Alicante: nulidad de matrimonio (incapacidad para asumir las obligaciones, error doloso y exclusión de la fidelidad), *coram* Joaquín Martínez Valls, 7 de octubre de 1997. (Sentence)

See above, canon 1095 3º.

1101

REDC 64 (2007), 505-522: c. Reyes Calvo: Tribunal del Obispado de Salamanca, 1 de diciembre de 1997: nulidad de matrimonio (defecto de discreción de juicio y exclusión de la indisolubilidad). (Sentence)

The female respondent's understanding of marriage was that it lasts only as long as love lasts between the couple. Moreover, she maintained a relationship with another man both before and during the marriage. Married life ended when the

petitioner became aware of her infidelity. The alleged grounds of nullity were grave lack of discretion in the respondent and exclusion of indissolubility in both parties. R.C.'s *in iure* section examines the effect of error on the act of will. In this case the erroneous understanding of the true nature of marriage as far as indissolubility was concerned was so ingrained in the respondent that it was applied by her act of will when giving consent to her marriage with the petitioner. The decision was affirmative on her grave lack of discretion and exclusion of indissolubility.

1101

Lynda Robitaille: Defective Validations Revisited. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 167-190**)

See below, canons 1156-1160.

1101-1102

IE XIX 3/07, 627-655: Tribunale della Rota Romana. *Panormitana*. Nullità del matrimonio. Preliminare: eccezione di lite finita. Decreto, 14 dicembre 2006. Erlebach, *Ponente* (con *nota* di G. Varricchio, *Problemi interpretativi ed applicativi della "conformità equivalente"*). (Sentence and commentary)

See below, canons 1641-1644.

1103

IE XIX 2/07, 309-331: Raffaele Balbi: Il criterio del *vir constans* nella teoria canonistica della *coactio* come vizio del consenso matrimoniale dalla decretistica classica al *Liber Extra* di Gregorio IX. (Article)

See above, Historical Subjects (*Classical period*).

1103

REDC 63 (2006), 941-1093: Tribunal de la Diócesis de Plasencia: nulidad de matrimonio (incapacidad para asumir las obligaciones, error en cualidad, error doloso y miedo grave), *coram* Juan Agustín Sendén Blázquez, 28 de marzo de 2003. (Sentence)

See above, canon 1095 3º.

1108

REDC 63 (2006), 909-925: Tribunal de la Archidiócesis de Mérida-Badajoz: nulidad de matrimonio (incapacidad para asumir las obligaciones, error en cualidad, exclusion de la prole, ausencia del consentimiento, ausencia de delegación, falta de presencia activa del oficiante), ***coram*** **Adrián González Martín, 2 de mayo de 2002.** (Sentence)

A truly unusual case! The original grounds were the male respondent's inability to assume the essential obligations of marriage, error of quality on the part of the petitioner and exclusion of children by one or both parties. After subsequent advice the petitioner requested the following grounds to be included: lack of external expression of consent (canon 1104 §2), lack of delegation (canon 1111), lack of the active presence of an officiating minister (canon 1108 §2). The interest of the case is mostly in the last of these grounds. The officiating priest was suffering at the time from a brain tumour (of which he later died) which was affecting his character and personality, his behaviour, memory and speech. The impression of those attending the wedding was that he did not know what he was doing or saying; his homily was interminable and totally incoherent and the grotesque nature of the whole event led the couple to wonder as they left the church whether they had really been married at all. The positive decision was given only on the grounds that the officiating priest was not in control of his actions nor had full use of reason at the time of the wedding. The purely material realization of the required actions (and even this was doubtful in this case) does not constitute a genuinely human act. Through no fault of his own the priest was unable to provide the active presence demanded of his status as officiating minister, that is, the *testis qualificatus*.

1108

Roland Jacques: The Canonical Form of Marriage Revisited: Did the Decree ***Ne Temere*** **Outlast Its Usefulness?** (Article in **Victor G. D'Souza (ed.):** ***In the Service of Truth and Justice*****, pp. 347-364**)

See above, General Subjects (*Compilations*). J. highlights the problems which the requirement of canonical form poses as a result of social changes, especially in relation to undocumented migrants and those who marry only in the form of the local custom. He sets out a series of suggestions which may help provide a solution.

1111

JM 13 (19) 2008, 125-144: Jan Krajczyński: Uzupełnienie uprawnienia do asystowania przy zawarciu małżeństwa (= Supplying the faculty to assist at marriage). (Article)

See above, canon 144.

1117

Ap LXXX 1-2 (2007), 197-199: Pontifical Council for Legislative Texts: Circular letter to Presidents of Episcopal Conferences on *Actus formalis defectionis ab Ecclesia Catholica*. (Document)

See above, canon 1086.

1120

IE XIX 2/07: 511-524: Pontificio Consiglio per i Testi Legislativi: Nota "La natura giuridica e l'estensione della «recognitio» della Santa Sede", 28 aprile 2006 (con *nota* di J. Miñambres, *La natura giuridica della "recognitio" da parte della Santa Sede e il valore delle "note" del Pontificio Consiglio per i testi legislativi*). (Document and commentary)

See above, canon 16.

1124

Ap LXXX 1-2 (2007), 197-199: Pontifical Council for Legislative Texts: Circular letter to Presidents of Episcopal Conferences on *Actus formalis defectionis ab Ecclesia Catholica*. (Document)

See above, canon 1086.

1127

REDC 63 (2006), 655-722: Alejandro Cortés Diéguez: El matrimonio mixto en la Iglesia latina y en las Iglesias orientales católicas y ortodoxas. Aspectos teológicos y canónicos. (Article)

See above, Code of Canons of the Eastern Churches.

1141-1150

Proc CLSA 2005, 123-162: John J. Kennedy: The Dissolution of Marriage in Favor of the Faith: New Norms invite a new look at our practice. (Seminar paper)

K. is an official of the Congregation for the Doctrine of the Faith. In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), he introduces the 2001 Norms and the Congregation and its working, as well as the concept of *favor fidei*. He gives a very full account of how such cases ought to be instructed and how they are processed in Rome.

1141-1150

REDC 64 (2007), 220-257: Dolores García Hervás: La disolución del matrimonio a favor de la fe. (Conference presentation)

This study was delivered at the XVIII Symposium of Procedural and Matrimonial Canon Law held in Valladolid, 3-7 September 2006. G.H. begins by underlining the exceptional nature of dissolution of the bond of marriage *in favorem fidei* in the context of the doctrine of indissolubility of any marriage *ratum et consummatum*. She examines the Scriptural basis as found in 1 Cor 7:12-15, the sole patristic use of this text to uphold the dissolution of marriage (found only in the so-called Ambrosiaster), and the *Decretum Gratiani*. It was the Decretals *Quanto* and *Gaudemus* of Innocent III which provided guidelines and limits for the dissolution of marriage in certain circumstances, thus setting the framework for subsequent canonical discipline. Some further development took place in the 16th century with the discovery of new pagan peoples and customs in the Americas. The *Codex* of 1917 codified the canonical practice then in force, indicating that dissolution *in favorem fidei* was only applicable in marriages between two non-baptized persons, one of whom had now received baptism. Under Pius XI and Pius XII this privilege was extended to some cases of marriage between a baptized and non-baptized couple, and to the marriages of the non-baptized even when neither party subsequently received baptism. The Instruction *Ut Notum* of Paul VI (1973) regulated the requirements for the dissolution of those marriages which fell outside the conditions for the so-called Pauline Privilege. G.H. has had access to the unpublished *acta* of the Preparatory Commission for the reform of the Code and detects in the discussions on the matter of dissolution *in favorem fidei* a notable confusion, not only concerning doctrine but also canonical practice, a situation she still sees reflected in the Norms of 2001. Rather than dissolution *in favorem fidei* the practice could more accurately be described as *in salutem animarum*. In the final analysis the only clear doctrinal basis G.H. can find for dissolution of

marriage *in favorem fidei* is the actual use of Papal power in this regard over the centuries.

1156-1160

Lynda Robitaille: Defective Validations Revisited. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 167-190**)

See above, General Subjects (*Compilations*). R. comments on some recent developments in the understanding of nullity of consent exchanged at the time of a convalidation, in cases where the first exchange of consent lacked the necessary canonical form. This involves a discussion of whether the first consent was "invalid" or "non-existent", the different interpretations having serious repercussions in relation to total simulation. R. sets out a series of consequences and practical considerations for tribunal practice.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254

IE XIX 2/07, 387-408: José Ignacio Alonso Pérez: Per una rilettura del significato istituzionale delle fabbricerie nell'ordinamento giuridico italiano. (Article)

See above, General Subjects (*Relations between Church and State*).

1254-1310

Victor George D'Souza: General Principles Governing the Administration of Temporal Goods of the Church. (Article in **Victor G. D'Souza (ed.):** ***In the Service of Truth and Justice*****, pp. 467-498**)

See above, General Subjects (*Compilations*). D'S. discusses the right to temporal goods, the concept of ecclesiastical goods, the notion of administration, and the principles relating to the management of goods: subordination of goods to ecclesial purposes; just acquisition; accountability and supervision; respect for the donor's intention; consultation, participation and cooperation; unity of governance and administration; objectivity and neutrality; subsidiarity; just remuneration and social justice; respect for secular legislation; spiritual and ascetical aspects; communion and charity.

1254-1310

Jean-Pierre Schouppe: Elementi di diritto patrimoniale canonico. (Book)

This is the second edition of S.'s commentary on Book V of the Code. It is divided into the following chapters: 1. Vatican II and canonical legislation on temporal goods; 2. constitutive principles of canonical patrimonial law; 3. classification of goods; 4. juridical ways of acquiring temporal goods; 5. Church finances; 6. administration and alienation of ecclesiastical goods; 7. economic structure of the diocese and the parish; 8. administration of goods in institutes of consecrated life and societies of apostolic life. (For bibliographical details see below, Books Received.)

1261

IC XLVIII 95/08, 13-23: Mauro Rivella: Financiación de la Iglesia. El modelo italiano. (Article)

After the revision in 1984 of the Lateran Pacts, a system for financing the Church was introduced which basically involves each contributor determining the destination of 8 per mille of his or her income tax. The possible beneficiaries are the Catholic Church, five other religious confessions which have agreements with the Italian State, or the State itself. All the money which the Church receives is to be used for divine worship, support of the clergy, and charitable works. A yearly financial report is also required. Together with this system of financing, tax benefits also apply in respect of donations freely offered by the faithful for the support of the clergy. This system of financing assures the Church of the means necessary for her normal operation.

1261

IC XLVIII 95/08, 25-68: Fernando Giménez Barriocanal: Financiación eclesial: situación actual y perspectivas de futuro. (Article)

On the basis of agreements between the Church and State in Spain, as well as unilateral regulations issued by the State, G.B. sets out the current situation regarding the financing of Church institutions in Spain. As from 2007 the amount to be paid to the Church depends exclusively on the will of those citizens who declare that a fixed proportion of their income tax (0.7%) should be given to the Church. The article explains the mechanisms whereby the funds are distributed.

1261

IC XLVIII 95/08, 69-87: Antonio Vázquez del Rey Villanueva: El sistema tributario y la financiación de la Iglesia en España. (Article)

This article looks at changes in tax law affecting the Catholic Church in Spain from the time of the 1979 Accord on Economic Affairs up to recent changes in the Spanish public financial model. Certain benefits previously granted to the Church have had to be adapted under the new tax system; account has also had to be taken of European Community Law which was not a consideration at the time of the 1979 Accord.

1279-1282

IE XIX 3/07, 711-725: Arturo Cattaneo: La potestà sui beni ecclesiastici. A proposito di uno studio storico-giuridico su di una questione decisiva per la libertà della Chiesa. (Bibliographical note)

C. studies the research presented in a book by Martin Grichting recently published in Switzerland dealing with the question of ecclesiastical goods. In that country such goods are under the power not of the bishops and parish priests but rather of cantonal Churches and parish councils created by the State, which operate independently of the ecclesiastical hierarchy. C. looks at the historical evolution of this matter from the 5th to the 17th centuries. Then, from the time of the French Revolution onwards, he looks at the differences arising in different political regimes: in particular, Austria, France, Italy, Germany, the United States, and Switzerland itself. A description of the Swiss situation is not easy because each one of the twenty-six cantons has its own independent ecclesiastical law. In his book Grichting shows how the Church has managed to adhere to the prescriptions of canons 1279 to 1282.

BOOK VI: SANCTIONS IN THE CHURCH

1311-1312

Proc CLSA 2005, 95-122: Ronny E. Jenkins: Jurisprudence in Penal Cases: Select Themes from the Judicial Doctrine of the Tribunal of the Roman Rota. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), J. notes that there is little published Rotal jurisprudence for penal cases. He looks at the right of the Church to impose penalties, the nature of ecclesiastical crimes, punishments and penal remedies, and prescription. He then looks at the procedure in penal cases.

1331-1332

CLSN 154/08, 61-64: Gordon Read: Receiving Communion Worthily. (Article)

See above, canon 916.

1333

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). On 20 January 2007 the Congregation for Bishops suspended emeritus bishop Fernando Lugo Méndez of San Pedro, Paraguay, prohibiting him from exercising the power of order and governance and from all rights and functions inherent in the episcopal office. He had requested a return to the lay state in order to enable him to present himself as a presidential candidate for Paraguay, whose Constitution forbids ministers of any religion from being President or Vice-President. The Holy See had refused his request, and warned him not to accept the presidential candidacy. However, Bishop Lugo made public his intention of entering into politics, for which reason the censure was imposed. He is still required to observe the duties inherent in the clerical state, even though he is suspended from the exercise of the sacred ministry. (See also *Canon Law Abstracts*, no. 99. p. 100.)

1336

IE XIX 3/07, 611-625: Supremo Tribunale della Segnatura Apostolica: Revoca delle facoltà. Sentenza definitiva, 28 aprile 2007. Grocholewski, Ponente (con *nota* di D. Cito). (Sentence and commentary)

The revocation of ministerial faculties does not necessarily take the form of a penal sanction according to canon 1336 §1, 2º-3º; it can be dealt with by means of a disciplinary administrative process. In 2003, following an allegation of an improper relationship on the part of Rev. N., his bishop called him to a meeting attended also by the chancellor and vice-chancellor, and N. agreed to and accepted the revoking of his faculties by the bishop in order to "prevent scandal". The decision was confirmed by a letter of 19 August 2003. On 29 September 2004, N. asked for a mitigation of the decision. This was rejected by the bishop on the grounds that he wanted "to safeguard the whole Diocese and to avoid any possible lawsuit". N. unsuccessfully sought a revocation of this decision in accordance with canon 1734, and thereafter had recourse to the Congregation for the Clergy. The Congregation considered that the decision of 19 August 2003 constituted an unlawful imposition of a penalty, and by a decree of 22 June 2005 ordered the bishop to revoke it. The bishop in his turn asked the Congregation, on 19 October 2005, to revoke or amend their decree, as the case was not a penal one. "If I erred procedurally," he said, "I regret this. I am willing to correct procedural matters, but not at the expense of causing another scandal." The Congregation confirmed its earlier decision. The matter went before the Apostolic Signatura, which examined whether the Congregation for the Clergy's decision of 22 June 2005 involved a violation of law *in procedendo vel in decernendo*. The Signatura reached the conclusion that the Congregation had erred *in decernendo* as it had considered the bishop's decision to be a penal rather than a non-penal administrative act. In the course of its judgment the Signatura also considered the applicability or otherwise of Norm 9 of the 2005 Essential Norms, and canon 223 of the Code. The first of those provisions gives the diocesan bishop "the executive power of governance through an administrative act, to remove a cleric from office, to remove or restrict his faculties, and to limit the exercise of priestly ministry"; while canon 223 was invoked as authorizing an ecclesiastical superior "to restrict the use of certain rights in order to protect the common good". The Signatura decided that neither of these provisions could be invoked in the present case, as the danger of their being applied arbitrarily was not sufficiently removed.

1364

CLSN 154/08, 76-82: Gordon Read: Excommunication of Members of the Army of Mary. (Article)

It was reported that on 11 July 2007 the Congregation for the Doctrine of the Faith had declared the excommunication of those who subscribed to the doctrines of the Community of the Lady of All Nations – The Army of Mary. Following a recourse from a decree of the Archbishop of Quebec the Vatican appointed a mediator whose intercession proved ineffective because of the intransigence of the Army. The difficulties with the Army involved the suggestion that its founder, Marie-Paule Giguère, was a living reincarnation of the Blessed Virgin Mary (a question of heresy) and the purported ordination by one of the priests of the association of other members to holy orders (a question of schism). A copy of the declaration by the Congregation for the Doctrine of the Faith is printed, as well as background material.

1364

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). On 11 July 2007 the Congregation for the Doctrine of the Faith issued a decree declaring the excommunication *latae sententiae* of the members of the Community of the Lady of All Nations, more commonly known as the "Army of Mary". The Canadian Bishops' Conference had already in 2001 published a doctrinal note stating that the teachings of the Army of Mary were contrary to the doctrines of the Catholic Church. A subsequent warning by the Archbishop of Quebec as Papal delegate was ignored. On 3 June 2007 many of the members took part in an invalid ordination ceremony of six priests and deacons, at which a priest member officiated. The decree establishes the invalidity of the ordinations and the excommunication *latae sententiae* of the officiating priest (canon 1364), as well as his irregularity for the exercise of sacred orders (canons 1041 6º and 1044 §1, 3º), the excommunication *latae sententiae* of the supposedly ordained persons for the crime of schism (canon 1364), and that of all the members who, ignoring the Archbishop of Quebec's warnings, took part in schismatic activities and remain members of the movement. The decree also states that those who consciously and deliberately embrace the movement's teachings incur *latae sententiae* excommunication for heresy (canon 1364).

1384

CLSN 154/08, 76-82: Gordon Read: Excommunication of Members of the Army of Mary. (Article)

See above, canon 1364.

1395

Ap LXXIX 3-4 (2006), 719-732: Suchiecki Zbigniew: La tutela penale dei minori presso la Congregazione per la Dottrina della Fede riguardo ai *delicta graviora*. (Article)

Z. reminds us of the responsibility assigned to the Congregation for the Doctrine of the Faith in the post-Vatican II legislation in matters of faith and morals. The publication of the *motu proprio Sacramentorum Sanctitatis Tutela*, 30 April 2001, followed by the Congregation's letter *De delictis gravioribus*, 18 May 2001, established the procedures to be observed by Ordinaries in the cases listed. Z. gives detailed attention to the cases of accusation of sexual abuse of minors by clerics. These cases require referral to the Congregation.

1395

Proc CLSA 2005, 231-240: Daniel J. Ward: Sexual Abuse and Exploitation: Canon and Civil Law Issues concerning Religious. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), W. points out that there is uncertainty as to how far the Charter and Essential Norms apply to religious. There can be issues between bishops and religious superiors. W. covers these points and looks at the canonical, civil law and criminal law implications of allegations of sexual abuse.

1399

Ang 85 (2008) 267-287: Giuseppe Dalla Torre: Qualche considerazione sul principio di legalità nel diritto penale canonico. (Article)

See above, canon 221.

BOOK VII: PROCESSES

1403

IC XLVIII 95/08, 319-337: Joaquín Sedano: Crónica de Derecho Canónico del año 2007. (Compilation)

See above, General Subjects (*Compilations*). On 17 May 2007 the Congregation for the Causes of Saints published an Instruction *Sanctorum Mater* on the instruction of causes of the saints at diocesan or eparchial level; the official presentation of the document taking place on 18 February 2008. The Instruction incorporates the dispositions on the rite of beatification given by Benedict XVI in September 2005, and is intended to help ensure that the current norms on diocesan instruction – the Apostolic Constitution *Divinus Perfectionis Magister* of 25 January 1983 – are carefully adhered to. The Instruction asks the diocesan bishop to exercise caution and accuracy in relation to the proof of the reputation for sanctity or martyrdom which is a fundamental requirement for the diocesan process to be able to commence. Postulators are reminded of the need for objectivity and integrity in the collection of proofs, and the obligation to make clear any discoveries that contradict the reputation for sanctity.

1428

Anthony J. Malone: The Role and Function of the Auditor: Historical Antecedents and Legislation. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 275-298**)

See above, General Subjects (*Compilations*). M. looks at developments in the meaning of the term "auditor" throughout history, especially from the 1917 Code to the present day.

1430-1437

Ang 85 (2008) 301-319: Francisco J. Ramos: Il Difensore del Vincolo (can. 1430-1437; *Dignitas Connubii*, art. 53-60). (Article)

R. starts with a brief historical presentation of the office of the defender of the bond and also of the linked office of the promoter of justice. He then studies the norms currently in force, following the structure of *Dignitas Connubii* which deals with the defender of the bond more precisely and systematically than the Code. He highlights the points where *Dignitas Connubii* follows the Code and where it differs or goes beyond the Code. The differences reflect the existence of ever more numerous interdiocesan tribunals and provide greater consistency.

Amongst these new norms is the requirement that each tribunal have a defender as well as norms determining more precisely his rights and duties.

1432

JM 13 (19) 2008, 79-90: Wojciech Góralski: Urząd obrońcy węzła małżeńskiego w świetle przemówień papieży do Roty Rzymskiej z lat 1939-2007 (= The office of the matrimonial defender of the bond in the light of the Addresses of the Popes to the Roman Rota in the years 1939-2007). (Article)

G. comments on the Papal addresses to the Rota that deal with the defender of the bond in marriage cases. Of special importance are the addresses of Pius XII in 1944 and John Paul II in 1982 and 1988.

1444

CLSN 154/08, 12-18: Allocution of the Holy Father to the Roman Rota, 26 January 2008. (Address and commentary)

The Holy Father as usual addressed the judges and other officials and members of the Roman Rota. An essential point he makes about the decisions of the Roman Rota is that they do not form a "binding precedent" as presentations of the law. The Pope reminds his audience that the rationale of the Church is not the need for good order, nor even for distributive justice, but the need for communion. He examines this in the context of the Rota but also in the Church's tribunals throughout the world. J. Hadley examines the address.

1444

JM 13 (19) 2008, 43-78: Wojciech Góralski: Rola i znaczenie oraz zadania Roty Rzymskiej w świetle przemówień papieskich wygloszonych do tego trybunału w latach 1939-2007 (= The role, value and task of the Roman Rota in the light of the Addresses of the Roman Pontiffs to the same Tribunal in the years 1939-2007). (Article)

G. sets out the role, value and responsibilities of the Roman Rota as they appear in the addresses to the Rota given by Pius XII, John XXIII, Paul VI, John Paul II and Benedict XVI. Each of these aspects is important in the field of administration of justice in the Church.

1444-1445

Ap LXXX 3-4 (2007), 603-639: Anthony B. Chibuzor Chiegboka: The fundamentals of canonical jurisprudence. (Article)

C. writing in English, after a brief introduction to the term "jurisprudence" gives detailed attention to the presence and operation of tribunals in the Church, with particular reference to those that serve the Holy See. While noting that the element of "precedent" that is found in many legal systems of common law origin does not apply to Church tribunals, nonetheless the decisions of the Roman tribunals set a standard for other tribunals.

1445

REDC 64 (2007), 339-377: Velasio de Paolis: Amministrazione della giustizia e situazione dei Tribunali Ecclesiastici. (Conference presentation)

This study was delivered at the XVIII Symposium of Procedural and Matrimonial Canon Law held in Valladolid, 3-7 September 2006, and presents an analysis of the administration of justice in the principal tribunals of the Catholic Church. It is the Apostolic Signatura which has the overall responsibility for overseeing the right and proper administration of justice, and it is from this perspective that de P. considers its competences and relationship to the other branches of ecclesiastical justice, beginning with the judicial function of the Signatura in regard to formal appeals against Rotal decisions. After examining the competence of the so-called *sectio altera* of the Signatura in contentious-administrative issues, he dedicates the greater part of his study to its function as ultimate guardian of the administration of true justice in the Church and its duty of vigilance over the jurisprudence of local tribunals. A final section deals with some of the special faculties reserved to the Signatura.

1446

Ap LXXIX 3-4 (2006), 765-800: Michele Riondino: Profili comparatistici della mediazione familiare in Europa. (Article)

R., having recalled the duty laid by the Code on judges to seek reconciliation between the parties to a nullity claim, surveys the development in the past four decades of the establishing of systems and institutions for family mediation in a number of European countries. While praising these initiatives he indicates how much more needs to be done to meet a widespread need.

1446

Patrick R. Lagges: The Pastoral Work of Judges According to Paul VI, the Code of Canon Law, and *Dignitas Connubii*. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 323-346**)

See above, General Subjects (*Compilations*). L. demonstrates how the Popes have stressed that law is of assistance to the charisms of the Church and hence contributes to the pastoral ministry of the Church; and goes on to highlight the canons of the 1983 Code that allow the bishops certain discretionary authority in establishing a tribunal, and the judge considerable discretionary authority in deciding matters concerning the parties, the gathering of proofs and the decision-making process. *Dignitas Connubii* contains further innovations that serve the pastoral nature of tribunal processes (civility between the parties, civility in the court, and greater availability of tribunal services).

1452

Frederick C. Easton: The Judge and the Advocate: Keeping the Boundaries. (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 299-321**)

See above, General Subjects (*Compilations*). E. makes clear that in marriage nullity proceedings there are three protagonists: judge, petitioner and defender of the bond, who are involved in a dialectic for the purposes of reaching the truth about the nullity or otherwise of the marriage, and thus need to be equal and independent. Although the judge has certain faculties and duties to supply for the absence of expertise on the part of the petitioner and respondent, there is the danger that he may go too far and act like the advocate. Hence it is of great importance that canonical expertise in the form of advocates be available to the principal parties.

1481-1490

Proc CLSA 2005, 77-93: Diane L. Barr: Advocacy and Professional Ethics for Canonists. (Seminar paper)

In recent years the involvement of advocates has much increased. In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), B. describes the qualifications and role of the canonical advocate and looks at the ethical demands on advocates and their obligations to the truth and their clients. She goes on to discuss how advocates can be educated in their ethical responsibilities and the consequences when they are at fault.

1490

Frederick C. Easton: The Judge and the Advocate: Keeping the Boundaries. (Article in **Victor G. D'Souza (ed.):** ***In the Service of Truth and Justice*****, pp. 299-321**)

See above, canon 1452.

1501

Ap LXXIX 3-4 (2006), 733-763: Paola Buselli Mondini: L'interesse ad agire per l'ammissione del libello nelle cause di nullità matrimoniale. (Article)

B.M. explores, through the legislation of the 20th century, the requirement in the law of the Church that no matrimonial case can be introduced except *ab eo cuius interest* (by a person whose interest is involved). Care is taken to note the change of attitude – resulting from the teaching of the Second Vatican Council on marriage and now expressed in the new Codes and *Dignitas Connubii* – over who has the capacity to question the validity of a marriage.

1505

REDC 64 (2007), 131-168: Joaquín Llobell Tuset: La conformidad equivalente de dos decisiones en las causas de nulidad del matrimonio. Ulteriores Consideraciones. (Conference presentation)

See below, canon 1641.

1505

REDC 64 (2007), 407-414: c. Panizo Orallo: Tribunal de la Rota de la Nunciatura Apostólica, nulidad de matrimonio (incidente procesal de competencia del tribunal de primera instancia), 29 de mayo de 1998, decreto definitivo. (Sentence)

See below, canon 1673.

1508

JM 13 (19) 2008, 111-123: Grzegorz Leszczyński: Gwarancje prawa do obrony w świetle instrukcji *Dignitas Connubii* (= Protection of the right of defence in the light of the Instruction *Dignitas Connubii*). (Article)

See below, canon 1598.

1526-1586

Proc CLSA 2005, 177-196: Charles G. Renati: Conducting Canonical Investigations and Interviews. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), R. explains what constitutes evidence and how it should be gathered by investigation and interview. He describes the canonical procedure for taking evidence and gives much practical advice.

1536

Ap LXXX 3-4 (2007), 687-712: Manuel Jesús Arroba Conde: La dichiarazione delle parti come valorizzazione della dimensione personalista del Processo matrimoniale canonico. (Conference presentation)

This is the text of a presentation made by A.C. at the Second Interdisciplinary Day held at the Lateran University on 6-7 March 2007. Dealing with the probative value of the declarations of the parties, he presents his conviction that the changes in the Church's approach to the conduct of matrimonial cases is inspired by the influence of personalism in modern philosophy.

1598

JM 13 (19) 2008, 111-123: Grzegorz Leszczyński: Gwarancje prawa do obrony w świetle instrukcji *Dignitas Connubii* (= Protection of the right of defence in the light of the Instruction *Dignitas Connubii*). (Article)

The right of defence in matrimonial nullity processes seems to be one of the fundamental themes in canonical procedural law. This is so because thanks to the guarantees prescribed by law the matrimonial process becomes an instrument for attaining the objective truth. The right of defence guaranteed to the parties leads to the development of the truth and consequently to a just sentence. This right applies in a special way to the citation, the notification of the joinder of the issue, the possibility of presenting proofs, and the publication of the acts and the sentence. L. looks not only at the norms in the Instruction *Dignitas Connubii*, but also the different opinions expressed by authors on this particular topic.

1608

JM 13 (19) 2008, 29-41: Remigiusz Sobański: Prawda jako entelechia procesu o nieważność małżeństwa w świetle przemówień Piusa XII do Roty Rzymskiej (= Truth as the form (entelechy) of the process of matrimonial

nullity, explained by careful reference to the Addresses of Pius XII to the Roman Rota). (Article)

In giving his decision the judge resolves the question in dispute and seeks and declares the truth of the matter at issue. The decretists already recognized and disputed the problem of material and formal truth. Pius XII stated that all those involved in the process – judges, parties, advocates, defenders of the bond – should act in unity of purpose by seeking to discover the truth. Of particular importance is his address of 1 October 1942, dealing with moral certainty in sentences in causes of matrimonial nullity: there is only one material truth, and therefore there can be only one moral certainty. The question arises of the nature of the truth in question. The truth declared in matrimonial processes is often the objective truth concerning the objective state of the party, i.e. concerning the causes of psychic nullity, error, simulation, etc. The problem increases in view of the disposition of canon 1095 3º. There is a tension between the right to enter into marriage, and the condition required by its very nature for entering into marriage. For example, if it is alleged that a marriage is null on account of affective immaturity, what exactly is meant by affective immaturity, and what are the criteria which allow a judgment to be made on the objective truth? At the end of the article reference is made to Benedict XVI's 2007 address to the Rota.

1614

JM 13 (19) 2008, 111-123: Grzegorz Leszczyński: Gwarancje prawa do obrony w świetle instrukcji *Dignitas Connubii* (= Protection of the right of defence in the light of the Instruction *Dignitas Connubii*). (Article)

See above, canon 1598.

1620 7º

JM 13 (19) 2008, 99-110: Grzegorz Leszczyński: Prawo do obrony w przemówieniach Jana Pawła II do Roty Rzymskiej (= The right of defence in John Paul II's Addresses to the Rota). (Article)

See above, canon 221.

1620 7º

JM 13 (19) 2008, 111-123: Grzegorz Leszczyński: Gwarancje prawa do obrony w świetle instrukcji *Dignitas Connubii* (= Protection of the right of defence in the light of the Instruction *Dignitas Connubii*). (Article)

See above, canon 1598.

1628-1640

FT 18 (2007), 147-170: Markus Müller: Die Berufung im kanonischen Prozessrecht. (Article)

M. looks at the appeal in canonical processes, dealing first with the notion of appeal, before giving a detailed analysis of the procedural requirements, He then goes on to look at the special features of appeals in matrimonial nullity and penal cases.

1629

REDC 64 (2007), 407-414: c. Panizo Orallo: Tribunal de la Rota de la Nunciatura Apostólica, nulidad de matrimonio (incidente procesal de competencia del tribunal de primera instancia), 29 de mayo de 1998, decreto definitivo. (Sentence)

See below, canon 1673.

1641

REDC 64 (2007), 131-168: Joaquín Llobell Tuset: La conformidad equivalente de dos decisiones en las causas de nulidad del matrimonio. Ulteriores Consideraciones. (Conference presentation)

This study was delivered at the XVIII Symposium of Procedural and Matrimonial Canon Law held in Valladolid, 3-7 September 2006. From among the various procedural questions dealt with in the Instruction *Dignitas Connubii* L.T.'s article considers the specific issue of conformity of sentences in marriage nullity cases. He starts by distinguishing between the doctrinal aspects of marriage and the juridical-procedural means by which that doctrinal reality is declared to exist or not exist in any particular marriage. Of overriding importance is the search for truth, based on moral certainty, which makes possible the delivery of a sound judgment on the issue at hand. *Dignitas Connubii* (art. 291 §2) speaks of equivalently or substantially conforming sentences. The rest of this study is taken up with an investigation into the

difference between these two types of conformity (equivalent and substantial) and some of the procedural questions they give rise to.

1641-1644

IE XIX 3/07, 627-655: Tribunale della Rota Romana. *Panormitana*. Nullità del matrimonio. Preliminare: eccezione di lite finita. Decreto, 14 dicembre 2006. Erlebach, *Ponente* (con *nota* di G. Varricchio, *Problemi interpretativi ed applicativi della "conformità equivalente"*). (Sentence and commentary)

After a first instance verdict *pro vinculo* on the ground of exclusion of the *bonum sacramenti*, the Rota admitted "as at first instance" the petitioner's appeal on a new ground, that of condition concerning the future. The Rotal *turnus* gave a *non constat* verdict on both grounds, and the petitioner appealed against the sentence insofar as it related to the future condition. The respondent proposed an exception *litis finitae* for substantial conformity between the two grounds. In dealing with this exception, the Rota relied on art. 291 of *Dignitas Connubii* to affirm that, in the case of two conforming sentences *pro nullitate*, the legislator admits no further appeal, so as to avoid endless argument; but if instead the sentences are *pro vinculo*, equivalent conformity cannot be declared. Any such declaration would be at least uncertain, as there is a substantial difference between affirmative and negative sentences (since in the case of the former the existence of a juridical fact is ascertained, whereas with the latter there is merely a declaration that the proofs are insufficient), and the demands of equity which apply in the case of sentences *pro nullitate* (with the consequent declaration of *litis finitae*) do not apply in the same way to sentences *pro vinculo*. Furthermore the curtailing of the right of appeal must be interpreted restrictively (canon 18). In view of these considerations the exception *litis finitae* could not be admitted. Regarding the two grounds involved in this case, V. makes clear that although a condition regarding the future (canon 1102 §1) may lead to the same effects as exclusion of the *bonum sacramenti* (canon 1101 §2), they are different from one another, and require different proofs. V. goes on in his commentary to deal with various other matters arising out of the sentence.

1641-1644

Joaquín Llobell: Il concetto di *conformitas sententiarum* nell'istruzione *Dignitas Connubii* e i suoi riflessi sulla dinamica del processo. (Article in **Juan Ignacio Arrieta (ed.): L'istruzione *Dignitas Connubii* nella dinamica delle cause matrimoniali, pp. 83-119**)

See below, canons 1671-1691.

1671-1691

Ang 85 (2008) 289-300: Sebastiano Villeggiante: "L'expeditissime" e lo "ius defensionis denegatum" o conculcato. (Article)

Justice must be done not just quickly but also fairly, otherwise the right of defence is denied. The matrimonial process is designed to seek the truth so that justice is both done and seen to be done. The Church therefore should change her matrimonial processes to take them out of the influence of the parties. She should refrain from allowing arguments based only on what the parties allege and have agreed upon so as to speed up their case, which simply compromises the process. In cases of psychic incapacity experts should display more respect towards the parties and base their principles on Christian anthropology as described in the *Catechism of the Catholic Church*.

1671-1691

Ap LXXX 1-2 (2007), 191-195: Pope Benedict XVI: Discorso di Sua Santità Benedetto XVI ai Tribunale della Rota Romana in occasione dell'inaugurazione dell'anno giuidiziario. (Address)

Pope Benedict continues the custom of his predecessors of opening the judicial year with a reflective address to the officials of the Rota, 28 January 2006. The Pope insists that the search for truth in matrimonial matters is a service of love given by the Church.

1671-1691

JM 13 (19) 2008, 99-110: Grzegorz Leszczyński: Prawo do obrony w przemówieniach Jana Pawła II do Roty Rzymskiej (= The right of defence in John Paul II's Addresses to the Rota). (Article)

See above, canon 221.

1671-1691

REDC 63 (2006), 747-766: Federico Aznar Gil: La dimensión pastoral del proceso de nulidad matrimonial. Anotaciones al Discurso del Romano Pontífice al Tribunal Apostólico de la Rota Romana (28 enero 2006). (Text and commentary)

Following the Spanish translation of the text of Benedict XVI's allocution to the Roman Rota of 28 January 2006, in which the Pope emphasized that the task of ecclesiastical tribunals served a truly pastoral purpose in working to establish

the truth in cases concerning validity or otherwise in marriage cases, A.G. starts his commentary by lamenting the apparent marginalization or neglect of the tribunals of the Church (at least in Spain) in the context of national and diocesan programmes for marriage and family life. In the public mind tribunals have had a bad press, and myths and caricatures of tribunal activities abound. There can be no illusions that tribunals can solve all the problems of the increasingly greater number of those Catholics now divorced and remarried, but they can be part of a solution for at least some of those in such circumstances; this should be kept in mind by pastors dealing with cases of marriage breakdown. Tribunals show the vital importance of safeguarding the holiness and indissoluble nature of the sacrament of marriage, and provide the faithful with the opportunity to clarify their contested or uncertain marriage status within the life of the Church. The establishment of truth is the ultimate judicial and pastoral aim of all tribunal work.

1671-1691

Juan Ignacio Arrieta (ed.): L'istruzione *Dignitas Connubii* nella dinamica delle cause matrimoniali. (Book)

This book contains the Proceedings of a conference on the Instruction *Dignitas Connubii* organized in Venice by the St Pius X Institute of Canon Law (May 2005). The principal papers were the following:

1. Julián Herranz, *Natura e finalità dell'istruzione "Dignitas Connubii"?* (pp. 13-18), dealing with the nature and purpose of the Instruction, the need for the judicial process, and the good of marriage and the family;

2. Velasio De Paolis, *Il giudizio secondo verità* (pp. 19-39), setting out the essential features of both *Dignitas Connubii* and the address of Benedict XVI to the Rota in 2005; the cultural context in which the Church operates today; the responsibility and activity of the Church regarding truth, moral values, and marriage; the Papal addresses to the Rota insofar as they deal with the question of justice in the Church; certain fundamental aspects highlighted in the 2005 address and *Dignitas Connubii*; and the judge's role in the building up of the Church;

3. Manuel J. Arroba Conde, *Peculiarità dell'iter processuale nelle cause matrimoniale dopo l'istruzione "Dignitas Connubii"* (pp. 41-58), which looks at the judicial nature of the process; the balance to be sought between formalism and subjectivism; and the particular features of the main phases of the process;

4. Pierantonio Pavanello, *Il can. 1095 nell'istruzione "Dignitas Connubii"* (pp. 59-69), looking specifically at articles 56 §4, 205 §2, 116 §3, and 209 of the Instruction in relation to canon 1095;

5. Antoni Stankiewicz, *Valutazione delle prove secondo l'istruzione* (pp. 71-81), dealing with the norms on proofs, and the weight to be given to them;

6. Joaquín Llobell, *Il concetto di "conformitas sententiarum" nell'istruzione "Dignitas Connubii" e i suoi riflessi sulla dinamica del processo* (pp. 83-119), which examines the possibility of conformity of two sentences given on different grounds, the possibility of disconformity of two sentences given on the same ground; "formal" and "equivalent" conformity according to *Dignitas Connubii*; and the impact of the concept of *conformitas sententiarum* on the functioning of the process.

The volume also contains a systematic enumeration of each canon of the 1983 Code affected by the Instruction, and a brief commentary. The final section contains the texts of Pope John Paul II's 1987, 1988, 1996, 1997, 1998, 2002 and 2005 addresses to the Rota.

(For bibliographical details see below, Books Received.)

1673

REDC 64 (2007), 407-414: c. Panizo Orallo: Tribunal de la Rota de la Nunciatura Apostólica, nulidad de matrimonio (incidente procesal de competencia del tribunal de primera instancia), 29 de mayo de 1998, decreto definitivo. (Sentence)

A Spanish tribunal attempted to gain competence over a case where the greater part of the evidence was to be found within its jurisdiction. The respondent lived abroad and consent was sought from her judicial vicar in accordance with canon 1673 4º. This was denied and the president of the Spanish collegiate court refused to accept the petition. The petitioner appealed against this decision and when his appeal failed he took his case to the Tribunal of the Rota of the Apostolic Nunciature (Madrid) whose decree we are now presented with. P.O. considers the applicability of canon 1629 5º – which rules that no appeal is possible against a judgment or decree in a case in which the law requires the matter to be settled with maximum expedition (*expeditissime*) – to canon 1505 §4 concerning recourse against rejection of a petition, which recourse is to be determined *expeditissime*. However, as there may be a *dubium iuris* in the matter, the right of defence should be upheld in practice. P.O. then examines the concepts of "the greater part of the proofs" and the respondent's right to be asked by his or her judicial vicar if there is any objection. A final section on canonical equity (much trumpeted by the petitioner in this case) points out that it cannot be seen as *carte blanche* to overrule laws presumed to be just and equitable simply to facilitate one party's wish against the legitimate rights of another. The court upheld the decisions of the earlier instances.

1676

Patrick R. Lagges: The Pastoral Work of Judges According to Paul VI, The Code of Canon Law, and "Dignitas Connubii". (Article in **Victor G. D'Souza (ed.): *In the Service of Truth and Justice*, pp. 323-346**)

See above, canon 1446.

1677

JM 13 (19) 2008, 111-123: Grzegorz Leszczyński: Gwarancje prawa do obrony w świetle instrukcji *Dignitas Connubii* (= Protection of the right of defence in the light of the Instruction *Dignitas Connubii*). (Article)

See above, canon 1598.

1680

Ap LXXX 3-4 (2007), 775-802: Claudia Izzi: Personalismo cristiano e perizia psichica alla luce della recente Istruzione *Dignitas Connubii*. (Conference presentation)

This is the text of a presentation made by I. at the Second Interdisciplinary Day held at the Lateran University on 6-7 March 2007. Special attention is given to the developments in the use of experts, especially with reference to canon 1095 and *Dignitas Connubii*, article 205.

1682

FT 18 (2007), 147-170: Markus Müller: Die Berufung im kanonischen Prozessrecht. (Article)

See above, canons 1628-1640.

1684

Proc CLSA 2005, 225-230: Kenneth K. Schwanger: Fulfillment of the cautions and prohibitions in the preparation for marriage of those in the RCIA: An examination of the nature and use of the *vetita* in tribunal practice with an eye toward practical pastoral implications. (Seminar paper)

In this address to the 2005 Convention of the Canon Law Society of America (Tampa Bay, Florida), S. looks at how in practice to find a balance between a

person's right to marry and a *vetitum* imposed by a tribunal, and gives examples of possible cases.

1717-1731

Proc CLSA 2005, 95-122: Ronny E. Jenkins: Jurisprudence in Penal Cases: Select Themes from the Judicial Doctrine of the Tribunal of the Roman Rota. (Seminar paper)

See above, canons 1311-1312.

1727

FT 18 (2007), 147-170: Markus Müller: Die Berufung im kanonischen Prozessrecht. (Article)

See above, canons 1628-1640.

EXCHANGE PERIODICALS

- African Ecclesial Review
- Angelicum
- Annales Canonici
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Apollinaris
- Archiv für katholisches Kirchenrecht
- Boletin Eclesiastico de Filipinas
- Claretianum
- Commentarium pro Religiosis et Missionariis
- Communicationes
- De Processibus Matrimonialibus
- Ephrem's Theological Journal
- Estudio Agustiniano
- Estudios Eclesiásticos
- Folia Canonica
- Folia Theologica
- Forum
- Forum Canonicum
- Forum Iuridicum
- Idee
- Il Diritto Ecclesiastico
- Immaculate Conception School of Theology Journal
- Indian Theological Studies
- Intams
- Irish Theological Quarterly
- Ius Canonicum
- Ius Ecclesiae
- Journal of Sacred Scriptures
- The Jurist
- Laurentianum
- Law and Justice
- Louvain Studies
- Periodica
- Philippine Canonical Forum
- Philippiniana Sacra
- Praxis Juridique et Religion
- Proceedings of the Canon Law Society of America
- Quaderni di Diritto Ecclesiale
- Review for Religious
- Revista Española de Derecho Canónico
- Revista Mexicana de Derecho Canónico
- Revue Théologique de Louvain
- Revue de Droit Canonique
- Salesianum
- Studia Canonica
- Studies in Church Law
- Studium Generale Marcianum
- Studium Ovetense
- Teología y Vida
- Theologische-praktische Quartalschrift
- Theologica Xaveriana
- Vida Religiosa
- Vidyajyoti

LIST OF ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

ACR	Australasian Catholic Record. V. Rev. I. B. Waters (Melbourne).
AkK	Archiv für katholisches Kirchenrecht, Mainz. (Abstracts supplied by publisher.)
Ang	Angelicum, Rome. Rev. P. Gargaro (Clydebank).
Ap	Apollinaris, Rome. Bishop J. Jukes OFM Conv. (Huntly).
CLSN	Canon Law Society Newsletter, London. Rev. N. Kavanagh. (London).
CpR	Commentarium pro Religiosis, Rome. Rev. W. Becket Soule OP (Hanover, New Hampshire).
FT	Folia Theologica, Budapest. Rev. P. Hayward (London).
IC	Ius Canonicum, Pamplona. (Abstracts supplied by publisher.)
IE	Ius Ecclesiae, Pisa. Rev. J. D. Gabiola (London).
INT	Intams, Belgium. Mrs M. Foster (Lancaster).
ITS	Indian Theological Studies (Bangalore). Rev. P. Hayward (London).
JM	Jus Matrimoniale, Warsaw. (Abstracts supplied by publisher.)
L	Laurentianum, Rome. Rev. P. Hayward (London).
PD	Prêtres diocésains, Paris. Dr. Anne Bamberg (Strasbourg).
Proc CLSA	Proceedings of the Canon Law Society of America. Rev. R. Sanders (Oxford).
REDC	Revista Española de Derecho Canónico, Salamanca. V. Rev. J. A. McGee (Girvan, Ayrshire).
RfR	Review for Religious, St Louis, Missouri. Sr I. MacPherson SND (Glasgow).
RTL	Revue théologique de Louvain, Louvain-la-Neuve. (Abstracts supplied by publisher.)

BOOKS RECEIVED

- Jobe ABBASS: *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, Faculty of Canon Law, Saint Paul University, Ottawa, 2008, x + 513pp., ISBN 978-0-9810616-0-3 [see above, canons 573-746]

- Juan Ignacio ARRIETA (ed.): *L'istruzione "Dignitas Connubii" nella dinamica delle cause matrimoniali*, Marcianum, Venice, 2006, 203pp., ISBN 88-89736-14-3 [see above, canons 1671-1691]

- Ariel David BUSSO: *El derecho natural y la prudencia jurídica*, Pontificia Universidad Católica Argentina, Buenos Aires, 2008, 290pp., ISBN 978-987-620-040-0 [see above, General Subjects (*Legal theory*)]

- Nelson C. DELLAFERRERA: *Procesos Canónicos: Catálogo (1688-1888): Archivo del Arzobispado de Córdoba*, Pontificia Universidad Católica Argentina, Buenos Aires, 2007, 1007pp., ISBN 978-987-9415-24-5 [see above, Historical Subjects (*16th-19th centuries*)]

- Victor G. D'SOUZA (ed.): *In the Service of Truth and Justice. Festschrift in Honour of Prof. Augustine Mendonça*, St Peter's Pontifical Institute, Bangalore, 2008, 505pp. [see above, General Subjects (*Compilations*)]

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