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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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GENERAL SUBJECTS

Comparative law

RTL 39 (2008), 394-409: Felicia Dumas: Fonctions liturgiques et symboliques du vin dans l'orthodoxie. (Article)

As in Catholicism, wine has an extremely rich symbolism in Orthodoxy which gives rise to and supports a somewhat complex liturgical functionality. D. describes this at four contextual levels: the Eucharistic liturgies and the *litiy* (an office forming part of vespers); the sacrament of marriage; the ritual for the consecration of churches; and the offices and rituals for the dead. She studies the liturgical functions of sanctification, healing, blessing and purification of wine, which can be grouped into three principal categories, according to their underlying symbolism: the obtaining of an extraordinary ritual efficiency; the actualization of the symbolic communication characteristic of liturgical mimodrama, and the nourishment of religious sentiments among the faithful. The actualization of these liturgical functions depends strictly on the fulfilment of a certain number of essential conditions proper to religious anthropology: sacred space, sacred time, and ritual context created by communication of a symbolic kind.

Compilations

Markus Graulich (ed): Il Codice di Diritto Canonico al servizio della missione della Chiesa. (Book)

This book contains the proceedings of a conference organized on the occasion of the 25th anniversary of the Code of Canon Law by the Faculty of Canon Law of the Salesian Pontifical University, aimed at examining the impact of the new Code on the Church's life and mission, as desired by the Council Fathers. Archbishop Francesco Coccopalmerio (*Quale coscienza del diritto ecclesiale nel popolo di Dio?*, pp. 17-32) describes the meaning and role of canon law for the People of God. Canon law is not merely a set of rules, but consists of rights and duties bearing two fundamental characteristics: they form part of the very being of a person as faithful, and they are created in substance by the Lord himself; thus they are established by Christ, even though it is the ecclesial legislator who specifies their content. Cardinal Zenon Grocholewski (*L'insegnamento del diritto canonico dopo la promulgazione del Codice del 1983*, pp. 33-52), looks at the role of the teaching of canon law in the formation

of sacred ministers (see below, canons 815-821). Cardinal Walter Kasper (*Diritto canonico ed ecumenismo*, pp. 53-69) asks whether the Code reflects the Church's desire to achieve Christian unity, which was one of the guiding principles of Vatican II; in his view, the Code and subsequent legislation have not only contributed to the promotion of ecumenical undertakings among the faithful, but have also ensured that ecumenism has now become an irreversible process within the Church. Cardinal Tarcisio Bertone (*La responsabilità del Successore di Pietro per la Chiesa universale e dei Vescovi per le chiese particolari*, pp. 71-82) describes the relationship between the primacy of the Pope and the collegiality of the bishops, stressing the unity of the episcopate and the episcopal character of the primacy itself, which in its turn makes visible the unity of the college of bishops. This unity of the bishops among themselves and with the Pope is expressed not only in solemn fashion at the ecumenical council, but also during *ad limina* visits, in the synod of bishops, and in the activity of the bishop within his diocese. Monsignor Giorgio Corbellini (*Commemorazione del Card. Rosalio José Castillo Lara SDB [1922-2007]. Un ricordo familiare*, pp. 83-100) recalls the role played by Cardinal Castillo Lara in the drafting of the new Code. There is a short final section (pp. 101-103) commemorating the life of the canon law historian Cardinal Alfons Maria Stickler SDB (1910-2007), who was also involved in the revision of the Code. (For bibliographical details see below, Books Received.)

Pontificio Consiglio per i Testi Legislativi: La legge canonica nella vita della Chiesa. Indagine e prospettive nel segno del recente magistero pontificio. (Book)

The Pontifical Council for Legislative Texts (PCLT) marked the 25th anniversary of the promulgation of the Code of Canon Law by organizing a two-day conference at the Vatican on 24-25 January 2008. The proceedings of the conference are given in this book, which opens with an address given by Pope Benedict XVI (pp. 13-15) dealing with the link between canon law and the life of the Church. The Pope points out that the *ius ecclesiae* is not merely a set of norms, but an authoritative declaration by the ecclesiastical legislator of the rights and duties founded on the sacraments and therefore born of the institution of Christ himself. If in Rosmini's phrase "the human person is the essence of law", the essence of canon law is the person of the Christian in the Church. The Code also includes norms produced by the legislator for the good of the person and the entire Mystical Body. Canon law needs to have a firm theological basis, while being adaptable to changing circumstances in the historical reality of the People of God. In view of its role as the *lex libertatis* it is important that canon law be presented in such a way that it is loved and observed by all the faithful. Cardinal Tarcisio Bertone (*La legge canonica e il governo pastorale della Chiesa: il ruolo specifico del Pontificio Consiglio per i Testi Legislativi*, pp. 29-

43) explains the function of the PCLT (see below, canon 360). Cardinal Julián Herranz (*Il Codice di Diritto Canonico e il successivo sviluppo normativo*, pp. 45-59) analyzes the importance for the Church of the 1983 codification, before setting out the fundamental principles that should guide the proper development of the law, and highlighting the main normative developments since 1983. In particular he refers to the completion of the modern *Corpus Iuris Canonici*, made up of the CIC, the CCEO, and the 1988 Apostolic Constitution *Pastor Bonus* which forms a bridge between them. He also draws attention to legislation that better defines certain points of the Church's central government; legislation reflecting the Church's concern for specific pastoral needs; and laws in the sacramental sphere. Cardinal Ivan Dias (*Accettazione e operatività del diritto canonico nei territori di missione. Confronto culturale e limiti tecnici*, pp. 63-82) studies the relationship of the Code of Canon Law to particular law, especially in the context of mission territories (see below, canon 781). Cardinal Giovanni Battista Re (*Legge universale e produzione normativa a livello di Chiesa particolare, di Conferenze episcopali e di Concili particolari*, pp. 83-101) also looks at aspects of the relationship between universal and particular law (see below, canons 439-459). Cardinal Paul Josef Cordes (*Spontaneità della carità: esigenze e limiti delle strutture normative*, pp. 103-112) deals with the duties of bishops in the area of charity (see below, canon 394). Cardinal Zenon Grocholewski (*L'insegnamento del Diritto Canonico dopo la promulgazione del Codice del 1983*, pp. 113-132) looks at the role of the teaching of canon law in the formation of sacred ministers (see below, canons 815-821). Cardinal Franc Rodé (*Vita consacrata e struttura normativa. Esperienza e prospettive del rapporto tra norma generale e statuti propri*, pp. 133-146) examines the relationship between general norms and the proper statutes of institutes of consecrated life (see below, canon 587). Cardinal Péter Erdö (*Rigidità ed elasticità delle strutture normative nel dialogo ecumenico. Elementi istituzionali nel CIC aperti per un dialogo ecumenico*, pp. 147-178) reflects on the aspects of the Latin Church's codification that protect its relationship with other legal systems within the Church (those of the Eastern Catholic Churches) while allowing dialogue with other Christian communities, particularly those Eastern Churches that are not in full communion with the successor of St Peter (see below, Code of Canons of the Eastern Churches (*General*)). (For bibliographical details see below, Books Received.)

Jesu Pudumai Doss (ed.): Parola di Dio e legislazione ecclesiastica. (Book)

In anticipation of the XII Ordinary General Assembly of the Synod of Bishops on "The Word of God in the Life and Mission of the Church" (5-26 October 2008), the Professors of the Faculty of Canon Law of the Salesian Pontifical University prepared this collection of studies on the relationship between the Word of God and ecclesiastical legislation. Prof. Sabino Ardito (*Radici bibliche*

della legislazione ecclesiastica, pp. 13-24) brings together the elements for a Biblical foundation for the whole of the ecclesiastical legislation and provides a framework for the reading of the rest of the book. Prof. David Albornoz (*Parola di Dio e diritto divino*, pp. 25-44) reflects on the relationship between the Word of God as the bearer of divine law, and the norms promulgated by the ecclesial Legislator that contain divine law. He also points out that divine law develops in the historical context of a living relationship between the Gospel and contingent social realities and in the necessary discernment of the signs of the Holy Spirit in history. Prof. Jesu Pudumai Doss (*Parola di Dio: un diritto dei fedeli?*, pp. 45-69) examines certain aspects of the relationship between the Word of God and the rights of the faithful (see below, canon 213). Prof. Markus Graulich (*La Parola che si fa preghiera. Considerazioni sulla Liturgia delle ore*, pp. 71-90) deals with the Word of God in relation to the Liturgy of the Hours (see below, canons 1173-1175). Prof. María Victoria Hernández Rodríguez (*Parola di Dio e preparazione dei nubendi al matrimonio*, pp. 91-109) looks at the importance of the Word of God for marriage preparation (see below, canon 1063). In his second essay in this collection Prof. Markus Graulich (*Agli altri dico io – Non il Signore. Dal privilegio paolino allo scioglimento del matrimonio "in favorem fidei"*, pp. 111-134) looks at the Biblical foundations and the practice of the Church in relation to the dissolution of marriages in favour of the faith (see below, canons 1141-1150). Prof. María Victoria Hernández Rodríguez (*Parola di Dio e processi canonici*, pp. 135-149) also contributes a further study on the Biblical roots of some aspects of canonical processes (see below, canons 1400-1752). (For bibliographical details see below, Books Received.)

Ecclesiology

ELJ X 1/08, 3-33: Paul Colton: The Pursuit of a Canonical Definition of Membership in the Church of Ireland. (Article)

C. pursues a canonical definition of membership of the Church of Ireland. Both civil and Church laws presuppose that membership is defined; clergy rely on definitions, both formal and informal. In Ireland, freedom of religion is guaranteed and the courts are reluctant to interfere in the internal affairs of religious entities. Churches are voluntary associations, and Church members are bound, *inter se*, by the Church's internal laws as a matter of contract; this is given statutory expression in the Irish Church Act 1869. While the law of the Church of Ireland presents no unified definition of membership, the concept is utilized: strata of membership are manifest in a multiplicity of terminologies and roles. In the dynamics discerned in Church laws (not least the Preamble and Declaration and the Constitution of the Church of Ireland) a nascent definition of membership is detected. Comparison with the Anglican Communion and the

ecumenical arena exposes weaknesses in the laws of the Church of Ireland. History indicates that membership was recognized and relied on in an establishment context, but not defined. C. posits an anatomy of a canonical definition of membership that transcends such self-defining models, based on the proposition that membership is more than simply what people say they are.

ELJ X 1/08, 33-70: Colin Podmore: A Tale of Two Churches: The Ecclesiologies of The Episcopal Church and the Church of England Compared. (Article)

This article compares key aspects of the ecclesiologies of the Episcopal Church and the Church of England. First, it examines and contrasts the underlying logic of their structures and the relationships between their constituent parts (general synod/general convention, diocese, parish/congregation). Against this background, it then looks at the place of bishops in the ecclesiologies of the two Churches (in relation to clergy and parishes, diocesan synods/conventions and standing committees, and nationally). The American presiding bishop's role is contrasted with the traditional roles of primate and metropolitan. Throughout, attention is given to origins and historical development. Reference is also made to the relevant constitutional, canonical and liturgical provisions. Rapprochement between the two ecclesiologies is noted, especially with respect to the role of the laity, but P. argues that this is far from complete. Each Church's ecclesiology continues to be determined by its origins; important modifications have been made within that framework, rather than overturning it. C. hopes that his analysis will illuminate the current disputes within the Episcopal Church and the crisis within the Anglican Communion that they have prompted.

ELJ X 1/08, 70-91: Norman Doe: The Contribution of Common Principles of Canon Law to Ecclesial Communion in Anglicanism. (Article)

An important development in worldwide Anglicanism is the emergence over recent years of a project to articulate the principles of canon law common to the churches of the Anglican Communion. This project seeks to express the juridical character of Anglicanism from a global perspective, not only to underscore the many fundamental values that Anglicans share in terms of their polity, ministry, doctrine, liturgy, rites and property, going to the very roots of Anglican identity, but also as a concrete resource for other Churches in ecumenical dialogue with Anglicans. D. traces the development of the so-called *ius commune* project, and describes the methodological challenges which it faces and the process of producing a draft. He also seeks to compare the project with the juridical experiences of other international ecclesial communities, and

briefly to place the project in the context of the debate about the adoption of an Anglican Covenant, an initiative proposed by the Lambeth Commission in 2004.

SC 41 (2007), 453-471: John D. Dadosky: The *Official Church* and the *Church of Love* in Balthasar's Reading of John: An Exploration in Post-Vatican II Ecclesiology. (Article)

D. presents an exploration in post-Vatican II ecclesiology based on Hans Urs von Balthasar's reading of the two Churches in the Gospel of John. Balthasar distinguishes between the "official Church" symbolized by Peter, and the "Church of love" symbolized by John. In this article D. combines Balthasar's allegory with the notion of mediation as understood by Bernard Lonergan. In turn, this provides a context for two basic ecclesiologies inaugurated by Vatican II: communion and friendship. In addition, some implications for Mariology, the relationship between canon law and theology, and the mission of the Church to the "hidden" marginalized, are explored.

Ecumenism and interreligious dialogue

DPM 10 (2003), 25-40: Burkhard Neumann: Kirche und (Ehe-)Recht. Ökumenische Annäherungen in dem luterisch/katholischen Dialog-dokument „Kirche und Rechtfertigung". (Article)

On the basis of the 1994 report "Church and Justification" of the Lutheran-Roman Catholic Joint Commission, N. looks at a number of ecumenical issues arising from Catholic marriage law.

DPM 13 (2006), 27-35: Erzbischof Christofor (Kryštof): Die Ehe und die Familie aus Sicht der orthodoxen Kirche. (Article)

See below, canon 1055.

DPM 13 (2006), 37-55: Walter Homolka: Das jüdische Eherecht. (Article)

See below, canon 1055.

ELJ X 2/08, 357-359: Michael Hilbert: The Ninth Colloquium of Anglican and Roman Catholic Canon Lawyers. (Conference)

The Ninth Colloquium of Anglican and Roman Catholic Canon Lawyers took place from 3 to 6 April 2008, at Bishop's House, Sliema, Malta. The ten participants (five Anglican and five Roman Catholic) were, on the Anglican side, Norman Doe (Chair), Bishop Paul Colton, Mark Hill, Anthony Jeremy (all from the Centre for Law and Religion at Cardiff Law School) and Stephen Slack (Director of Legal Services at the Archbishops' Council, Church of England); and, on the Roman Catholic side, James Conn, Michael Hilbert, Aidan McGrath (all from the Faculty of Canon Law at the Pontifical Gregorian University), Robert Ombres (Procurator General of the Dominicans) and Fintan Gavin.

IC XLVIII 96/08, 601-630: Benedicto XVI: Discurso a la asamblea general de las Naciones Unidas, 18.IV.2008. (Address and commentary)

See below, General Subjects (*Religious freedom*).

Per 97 (2008), 541-595: Gianfranco Ghirlanda: Il *documento di Ravenna* della Commissione Mista Internazionale Cattolici-Ortodossi. (Article)

See below, canon 330.

VR 102 (2007), 405-510 (Cuaderno 6: entire issue): La luz de Cristo ilumina a todos. III asamblea ecuménica europea. (Report)

This issue of VR consists of a report and a series of reflections and meditations on the III European Ecumenical Assembly held at Sibiu, Romania, on 4-9 September 2007. The theme of the Assembly was "The Light of Christ Shines upon All: Hope for Renewal and Unity in Europe". Approximately 2500 delegates – Catholic, Orthodox and Protestant – attended from different European countries. The principal theme of the Assembly was divided into three areas of reflection: the light of Christ and the Church (unity, spirituality, witness); the light of Christ and Europe (Europe, religions, migration); the light of Christ and the world (creation, justice, peace).

Péter Erdö: Rigidità ed elasticità delle strutture normative nel dialogo ecumenico (Elementi istituzionali nel CIC aperti per un dialogo

ecumenico). (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 147-178)**

See below, Code of Canons of the Eastern Churches (*General*).

Human rights

EV XXXVIII (2008), 315-323: Jesús Ballesteros: Los derechos humanos en el siglo XXI: Argumentos del yusnaturalismo clásico contra la antropología del capitalismo. (Article)

On the 60th anniversary of the Universal Declaration of Human Rights, B. aims to show the validity of the idea of natural law in order to continue defending human rights today, especially in respect of their essential characteristics of universality and inalienability. This will enable the danger involved in the anthropology of capitalism to be resisted, and cultural identities to be defended. This is possible thanks to the defence of the ontological and hence unconditioned nature of human dignity, which forbids all violence and discrimination and demands equitable access to the earth's resources. It is also essential to preserve the distinction between the lawfulness of judging ideas and behaviours and the unlawfulness of judging persons.

LJ 158/07, 4-22: John Warwick Montgomery: Slavery, Human Dignity and Human Rights. (Article)

In the light of the 200th anniversary of the abolition of the slave trade in the UK, M. surveys the actual situation in various countries as opposed to the Universal Declaration of Human Rights by the UN to which virtually all countries subscribe in theory. He traces the gradual opposition to the institution of slavery, with special attention to the Christian position.

LJ 158/07, 23-29: John Francis Maxwell: The Catholic Church and Slavery. (Article)

M. surveys the gradual development of the teaching of the Catholic Church on slavery, culminating in the unequivocal condemnation of the institution by the Second Vatican Council in *Gaudium et Spes*, nos. 27 and 29. He traces the movement from mitigation of the actual conditions of slaves to the explicit condemnation of the institution over several centuries.

S 70 (2008), 629-784 (entire issue): Diritti umani. Approcci e prospettive interdisciplinari. (Articles)

In his address to the General Assembly of the United Nations on 18 April 2008, Pope Benedict XVI highlighted the fact that the Universal Declaration of Human Rights "was the outcome of a convergence of different religious and cultural traditions, all of them motivated by the common desire to place the human person at the heart of institutions, laws and the workings of society, and to consider the human person essential for the world of culture, religion and science. Human rights are increasingly being presented as the common language and the ethical substratum of international relations. At the same time, the universality, indivisibility and interdependence of human rights all serve as guarantees safeguarding human dignity. It is evident, though, that the rights recognized and expounded in the Declaration apply to everyone by virtue of the common origin of the person, who remains the high-point of God's creative design for the world and for history."

On the occasion of the 60th anniversary of the promulgation of the Universal Declaration of Human Rights, professors from all Faculties of the Salesian Pontifical University contributed to the October-December 2008 issue of S with a series of articles setting out a range of approaches and perspectives regarding human rights, their significance and application, their protection, and the education needed towards respecting them.

Prof. Cesare Bissoli (pp. 635-641) deals with the Bible as a necessary reference for the catechesis of human rights. Prof. Rafael Vicent (pp. 643-654) dwells on the social implications of the Biblical faith. Prof. Biagio Amata (pp. 655-664) points out that the Fathers of the Church can be seen as messengers and masters of *humanitas*, empathetic equality, and respect for the dignity and rights of every human being. Prof. Mauro Mantovani (pp. 665-678) presents the doctrine of the Dominican theologian Francisco de Vitoria (1485-1546) regarding the basis of human rights and *ius gentium*; based on the events that characterized the relationship between the Spanish conquerors and the peoples of the "New World", he looks at the relationship between the objective natural law and subjective human rights. Prof. Guido Gatti (pp. 679-692) deals with the relationship between human rights and morality, setting out the principles of social ethics and the impact of Christian faith. Prof. Andrea Farina (pp. 693-709) reflects on the relationship between human rights and the rights of minors, and in a special way on the historical-juridical itinerary of the recognition of such rights. Prof. David Albornoz (pp. 711-726) looks at the question of the protection of minors, especially those who are victims of sexual abuse perpetrated by clerics (see below, canon 1395). Prof. Jesu Pudumai Doss (pp. 727-749) examines how human rights have been received in the history of the Church (see below, canon 747). Prof. Guglielmo Malizia (pp. 751-759) analyzes

the activity of the Council of Europe in the field of education in human rights. Prof. Gabriele Quinzi (pp. 761-774) offers advice to parents in educating and caring for their children, in the form of a family pedagogy based on "reason" rather than "perfection". Prof. Adriano Zanacchi (pp. 775-784) analyzes the consequences of the application of consumer rights in the world of information.

VR 105 (2008), 480-486: José Cristo Rey García Paredes: ¡La declaración universal de los derechos humanos cumple 60 años! (Article)

G.P. sets out the basic principles and content of the Universal Declaration of Human Rights, and talks of the role of the Church in constantly promoting human rights, which he describes as "the rights of God in the human person".

Law reform

AkK 176 (2007), 419-432: Johann Hirnsperger: Der Pfarrvikar – Hilfsprieter oder auch künftiger Pfarrer? Überlegungen zu den cc. 545-552 CIC. (Article)

See below, canons 545-552.

DPM 13 (2006), 107-117: Ernst Freiherr von Castell: Bis zum bittern Ende? Über die Unmöglichkeit, offenkundig aussichtslose Annullierungsverfahren von Amts wegen einzustellen. (Article)

See below, canons 1517-1525.

Proc CLSA 2008, 1-27: Francis Morrisey: Twenty-Five Years of the 1983 Code: Reflections on the Past; Thoughts on the Future. (Keynote address)

M. reflects on developments since the Code was promulgated, in the Church, in society, and in canon law. He begins by looking at topics in the Code that need to be developed in practice: the basis of the Code in the baptism of the faithful and the vindication of rights and obligations; the use of penalties; the exercise of the apostolate by associations of the faithful and public juridical persons; new movements in the Church; and the restrictive interpretations of canons by the Roman Curia. M. then considers the use of complementary legislation and the difficulties felt by episcopal conferences in this area. He concludes by presenting a detailed consideration of the many canons that he believes might need updating.

Legal theory

DPM 13 (2006), 119-138: Franz Kalde - Johannes Martetschläger: (Staats-) Kirchenrechtler als Autoritäten in der österreichischen Rechtsprechung. Eine Rechtsdatenbank im Dienste der Wissenschaftsgeschichte. Hugo Schwendenwein zur Vollendung des 80. Lebensjahres. (Article)

This article studies the authority of *probati auctores* in canonical and State law in Austria, looking in particular at the views of Hugo Schwendenwein.

ELJ X 2/08, 137-160: Frank Cranmer - Tom Heffer: Necessary to Salvation? The Canon Law of the Church of England and the Interpretation of Scripture. (Article)

The canon law of the Church of England begins from the assumption that Scripture contains "all things necessary to salvation" but the law makes little attempt to lay down rules for the way in which Scripture should be interpreted. The authors attribute this reticence to the fact that, historically, adherents of the Church of England have been inclined to disagree about the nature both of ecclesiastical and of Scriptural authority; and one of the functions of the Church's canon law has therefore been to hold together a wide spectrum of theological opinions. This comprehensiveness, however, causes strains within the wider Anglican Communion and may lead to difficulties of mutual comprehension in ecumenical conversations.

ELJ X 2/08, 161-173: Evan Kuehn: Instruments of Faith and Unity in Canon Law: The Church of Nigeria Constitutional Revision of 2005. (Article)

The Anglican Church of Nigeria revised its canon law on 14 September 2005. The revision redefined the terms of inter-provincial Anglican unity from a focus on communion with the Archbishop of Canterbury to communion based explicitly upon the authority of Scripture and historic doctrinal statements. K. examines the revision as an ecclesiastical reform connected to, yet independent from, the current controversy over human sexuality. Pertinent issues of *episcope* and ecclesial communion as they are affected by the change in canon law are then examined. Finally, the ecumenical implications of the revision are discussed, with particular reference to the Anglican-Roman Catholic dialogue and the "continuing" churches of North America.

FCan III/1 (2008), 81-83: Bento XVI: Discurso por ocasião dos 25 anos do CIC (25.1.08). (Address)

Portuguese text of Pope Benedict XVI's address to the participants in the study congress on the occasion of the 25th anniversary of the promulgation of the Code of Canon Law. The Pope stresses the importance of canon law for the life of the Church.

IC XLVIII 96/08, 435-475: Juan Fornés: La doctrina canónica del siglo XX sobre el *ius divinum*. (Conference presentation)

Divine law is treated here as a set of factors which constitute the dimension of justice inherent in the *mysterium Ecclesiae*. Divine law should not be confused with its historical expression, which depends on the technical means offered by the juridical culture of each age. Divine justice is immutable and cannot be reformed, but the way in which its specific content is understood and given expression through technical-juridical means is progressive and reformable, insofar as these involve elements of human law. Divine law and human law do not constitute separate systems of law, but are integrated into the unity of the canonical legal order. The task of "authenticating" what is truly demanded by divine law pertains to the Magisterium of the Church.

IC XLVIII 96/08, 537-571: Diego Poole: Derecho, razón y pasión en la ley natural. (Article)

Created beings participate in the eternal law in two different ways: as a natural inclination imprinted in nature (the improper concept of law), and as a formal participation: a command of the created reason towards an end (the proper meaning of law, which as such only exists in rational creatures). In this second sense, human reason is a source of regulations and precepts that create law, analogously to the manner in which divine wisdom acts. The natural law properly consists in the participation of the human reason in the divine reason, and is manifested in such a way that, in like manner to divine reason and cooperating with it, human reason is able to contribute to the ordering of each thing to its end. In this work of ordering, human reason and the appetitive powers interact and are perfected by moral virtue. Human law in its turn is seen as the minimum indispensable solidarity required by natural law. In this article P. explains the manner in which human law is derived from natural law. He also demonstrates the difference between *ius gentium* and *ius naturale*. Finally he examines the religious dimension of natural law.

IC XLVIII 96/08, 601-630: Benedicto XVI: Discurso a la asamblea general de las Naciones Unidas, 18.IV.2008. (Address and commentary)

See below, General Subjects (*Religious freedom*).

IE XX 1/08, 31-54: Zenon Grocholewski: La legge naturale nella dottrina della Chiesa. (Lecture)

G. reaffirms the doctrine of the Church concerning the natural law. In the face of a world of weak metaphysical thinking, he emphasizes the strength of the natural law and explains its properties. He stresses the competence of the Magisterium in this area and sets out its most recent expressions, as well as the interventions of the Congregation for the Doctrine of the Faith regarding ethical relativism and juridical positivism. A conclusion consisting of four points and a select bibliography complete the presentation of the lecture.

IE XX 2/08, 445-456: Benedetto XVI: Discorso in occasione del XXV anniversario della Promulgazione del Codice di diritto canonico, 25 gennaio 2008 (con *nota* di Massimo del Pozzo, *Il diritto canonico come "insieme di realtà giuridiche" nella Chiesa*). (Address and commentary)

This is the Italian text of the Holy Father's address to the participants at the congress organized by the Pontifical Council for Legislative Texts to mark the 25th anniversary of the promulgation of the 1983 Code of Canon Law (see also above, General Subjects (*Compilations*)). In his commentary on the address, which deals with the nature of ecclesial law and the importance of the Church's legislation, del P. talks of the essentially "personalist" nature of Church law, and the Pope's desire to achieve qualitative consistency in canonical legislation.

Proc CLSA 2008, 53-62: Randolph Calvo: "A Bishop's Perspective on the 1983 Code of Canon Law". (Major address)

C. considers the 1983 Code from the viewpoint of a bishop. He highlights that canon law must be at the service of mission in the Church and that it must balance unity and diversity whilst encouraging collaboration and consultation in the Church. He considers how to encourage and assess accountability and transparency. He also looks at ministry and the *munera docendi / sanctificandi* in the Church today.

Proc CLSA 2008, 285-302: Myriam Wijlens: "The Newness of the Council Constitutes the Newness of the Code" (John Paul II): The Role of Vatican II in the Application of the Law. (Seminar paper)

See below, canons 511-514.

PS XLIII 128/08, 233-268: Antonio Cabezón: The Natural Moral Law in Theological Perspective. (Article)

C. offers an interpretation of St Thomas's natural moral law theory.

PS XLIII 128/08, 269-284: Fausto B. Gómez: Natural Law in Moral Theology Today. (Article)

G. looks at the historical development of the natural law theory, the natural law theory today, and new complementary approaches to natural law.

PS XLIII 128/08, 295-342: Danilo Flores: Natural Moral Law and Canon Law. (Article)

F. studies how the concept of natural law has evolved over the ages: in the ancient world, in the Roman legal tradition and Justinian's compilation, and in the middle ages; *lex naturalis* and *ius naturale* in St Thomas Aquinas; the Scholastics; the deformation of the concept of natural law; the neo-Scholastic reinterpretation of natural law; the development of the concept from Grotius's *etiam Deus non daretur* to Ratzinger's *veluti si Deus daretur*. In the second part of his article F. looks at the concept of law (its objectivity, subjectivity, and formal causality); the divine law in human nature; the divine constitutionality of natural law (as found in Sacred Scripture, the Fathers of the Church, and Gratian); natural law as the foundation of both the constitutionality of divine positive law and the constitutionality of human positive law (civil law and canon law). He concludes that the ultimate source of canon law is God, the Divine Legislator, whose will is manifested respectively in God's act of creation through the very nature of things (natural divine law) and in God's Revelation (positive divine law). As a social entity the Church has the duty to conform herself to the will of the Divine Founder, according to the teaching of the Apostles and their successors under the guidance of the Holy Spirit.

PS XLIII 128/08, 343-353: Maria Liza A. Lopez-Rosario: Natural Moral Law and Philippine Civil Law. (Article)

L.-R. looks at Philippine civil laws that uphold the natural law, and lists a number of issues that if they were to be admitted by the Philippine legal system would contradict the natural moral law.

PS XLIII 128/08, 355-364: Tamerlane R. Lana: Natural Law in Marriage and Sexuality. (Article)

See below, canon 1055.

Zenon Grocholewski: La legge naturale nella dottrina della Chiesa. (Book)

After a foreword by the editor, Luigi Cirillo, and a brief introduction by G. himself, the book begins by describing how metaphysics is underrated in modern times, and how it seems to be only the Catholic Church that is defending the universality of the natural law. But the natural law is not a merely Catholic notion: rather, it is the expression of man's innate inclination towards truth and goodness. For believers, it is made known through the created world and in the Person of the Incarnate Word. The Christian tradition has always had "allies" among non-believers, notably the Greek philosophers, and Cicero. Today it is once again necessary to find a "convergence" at the level of the natural law with other confessions, religions and cultures; but this can only come about if all concerned share and respect what the ancients termed *recta ratio*. Bearing in mind the need to reassert the truth of the natural law, G. offers a synthesis of the Church's recent Magisterium on this topic, looking especially at the Catechism of the Catholic Church, Pope John Paul II's Encyclicals *Veritatis Splendor* (the Church's "*Magna Carta*" on the natural law) and *Fides et Ratio*, in addition to other Papal teachings from Pius XII to the present. He looks specifically at the properties of the natural law (its universality, immutability, and "knowability"); the natural law and the Decalogue; the meaning of "nature"; the competence of the Magisterium in relation to the natural law; recent interventions of the Congregation for the Doctrine of the Faith; the problems of ethical relativism and legal positivism; and the role of the moral conscience. (For bibliographical details see below, Books Received.)

Relations between Church and State

AkK 176 (2007), 452-465: Burkhard Josef Berkmann: Reichskonkordat und Bayern-Konkordat im Gefüge des EU-Rechts. (Article)

B. studies the impact of European Union regulations on the Bavarian Concordat of 1924 and the Reichskonkordat of 1933 which govern relations between Church and State in Germany. Conflicts can be resolved under article 307 of the Treaty establishing the European Community, which provides that agreements concluded prior to 1958 are not affected by the Treaty.

DPM 12 (2005), 123-165: Burkhard Josef Berkmann: Die Ehe zwischen Kirchenrecht und Europarecht. (Article)

See below, canon 1055.

ELJ X 2/08, 174-190: Philip Petchey: Legal Issues for Faith Schools in England and Wales. (Article)

Schools with a religious character have always been controversial. State funding for the schools of the established Church was historically objectionable to those who dissented from that establishment. Funding for any religious school has always been objectionable to secularists, who have increased in number and influence as society has become increasingly secular. More recently, the Muslim, Hindu and other faiths of the ethnic minorities of England and Wales have begun to utilize provisions that came into being with the Christian Churches in mind. This has led to objections from those who are critical of the multicultural approach which has evolved since the Second World War as a response to extensive immigration from the New Commonwealth. P. examines whether any of the political criticism of schools with a religious character might give rise to legal challenges, now that rights under the European Convention on Human Rights are directly enforceable. In order fully to appreciate the legal arguments, it is necessary to have some understanding of the background. Accordingly, P. begins by summarizing the history of the matter before outlining the current position. An examination of the main criticisms of faith schools follows, and the paper concludes with consideration of a variety of legal arguments.

ELJ X 2/08, 222-233: Norman Doe: The First Ten Years of the Centre for Law and Religion, Cardiff University. (Report)

On 8-9 July 2007 at Brecon Cathedral, members of the Centre for Law and Religion met to review the Centre's work and plan long-term strategy ahead of the tenth anniversary of the Centre in 2008. The success of the LL.M. in Canon Law, the first degree of its type at a British university since the Reformation (set up in 1991 with the support of the Ecclesiastical Law Society), led those involved in that course and others at Cardiff Law School to recognize the need for a community of scholars dedicated to the study of law and religion. The Centre was established in the summer of 1998 to promote research and its dissemination in this field. It was established with the approval of the University and the encouragement of the Department of Religious and Theological Studies. Its activities are carried out in relation to the theory and practice of substantive law concerning religion, the focus being principally upon religious law (especially canon law) and national and international law affecting religion, with regard to their historical, theological, social, ecumenical and comparative contexts.

ELJ X 3/08, 262-282: Rowan Williams: Civil and Religious Law in England: A Religious Perspective. (Lecture)

This is the complete text of the lecture delivered by W., the Archbishop of Canterbury, at the Royal Courts of Justice on 7 February 2008, under the chairmanship of Lord Phillips of Worth Matravers, the Lord Chief Justice, as the Foundation Lecture in a series of public discussions on "Islam in English Law". The lecture seeks to tease out some of the broader issues around the rights of religious groups within a secular state, using *sharia* as an example and noting the substantial difference between "primitivist" accounts of *sharia* and those of serious jurists within Islam. The Archbishop discusses the implications of some interpretations of Western secular legal systems, which seek to remove from consideration the actual religious motivations and practices of groups in plural societies. Where the law does not take religious motivation seriously, then it fails to engage with the community in question and opens up real issues of power by the majority over the minority and thus of community cohesion. It examines whether there should be a higher level of attention to religious identity and communal rights in the practice of the law: how to manage the distinction between cultural practices and those arising from genuine religious belief; and what to do about the possibility that a supplementary jurisdiction could have the effect of reinforcing in minority communities some of the most repressive or retrograde elements in them, with particularly serious consequences for the role and liberties of women. Is a monopolistic approach to a legal system a satisfactory basis for a modern pluralistic and democratic State? Might there be

room for "overlapping jurisdictions", in which individuals can choose in certain limited areas whether to seek justice under one system or another? If we are to think intelligently about the relations between Islam and British law, we need a fair amount of "deconstruction" of crude oppositions and mythologies, whether of the nature of *sharia* or of the nature of the Enlightenment. The text of the lecture is followed by a transcript of the question and answer session which followed.

ELJ X 3/08, 283-309: Samia Bano: In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain. (Article)

This article responds to the lecture given by Dr Rowan Williams, entitled "Civil and Religious Law in England: a Religious Perspective" (see preceding entry). Dr Williams argues that the legal system in Britain must engage constructively with the religious concerns and motivations of members of the diverse communities that make up contemporary British society. B.'s analysis focuses on the argument that "Muslim communities in this country seek the freedom to live under *sharia* law", a claim that underpins the lecture and provides the framework for the Archbishop's discussion of the ability of the English legal system to accommodate Islamic principles and law, in order to become more just and equitable for faith-based communities. B. argues that his empirical analysis is not only better equipped to analyze this complex issue but also demonstrates that Muslim engagement with *sharia* (in matters of family law) is a complex process that cannot be understood in terms of *sharia* versus State law, Muslim versus non-Muslim, or those considered as insiders of communities versus outsiders. Muslim engagement with *sharia* cannot be understood merely in terms of the need for legal rights and obligations to be reformulated to make faith-based minority communities more legally and socially inclusive. It is also necessary to understand the specific ways in which such legal orders emerge in the British context and, most importantly, the rights and motivations of those members of communities who seek to use faith-based dispute resolution mechanisms – in this case, focusing particularly on Muslim women.

ELJ X 3/08, 344-347: John Witte: The Archbishop and Marital Pluralism: An American Perspective. (Article)

Dr Rowan Williams set off an international firestorm on 7 February 2008 by suggesting that some accommodation of Muslim family law was "unavoidable" in England (see preceding entries). His suggestion, though tentative, prompted more than 250 articles in the world press within a month, the vast majority

denouncing it. England will be beset by "licensed polygamy", "barbaric procedures" and "brutal violence" against women and children, his critics argued, all administered by "legally ghettoized" Muslim courts immune from civil appeal or constitutional challenge. Consider Nigeria, Pakistan and other former English colonies that have sought to balance Muslim *sharia* with the common law, other critics added. The horrific excesses of their religious courts – even calling the faithful to stone innocent rape victims for dishonouring their families – prove for W. that religious laws and State laws on the family simply cannot coexist.

FCan III/1 (2008), 153-157: Hugo de Azevedo: A objecção de consciência à transcrição do matrimónio canónico no registo civil. (Article)

De A. gives a summary of the debate which took place in the pages of *Studi Cattolici* (Milan) regarding his proposal that two Catholics may conscientiously object to the automatic registration of their marriage in the civil register, as required by the Concordat. He bases his argument on the change in the concept of marriage introduced unilaterally by the State, whereby marriage is placed on the same level as other partnerships. He is opposed by those who argue that the civil recognition of marriage is obligatory – or at least highly appropriate – in view of its public nature; and also by those who foresee serious practical difficulties arising out of that objection.

IC XLVIII 96/08, 399-413: José T. Martín de Agar: Ecclesia y polis. (Conference presentation)

Church-State relations are governed by the principle of the Church's freedom to carry out her mission of preaching the Gospel and confronting any doctrine or situation with the Gospel. It follows that what is called Christian dualism comes from the very essence of the Church, the People of God distinct from earthly kingdoms. In the history of those relations, alongside circumstantial elements there are also certain constants, one of which is that, in every era, the juridical political figure of the Church is determined not only by ecclesiology but also by the political configuration of civil society. To a large extent the Church presents herself to the world according to how the world presents itself to her. Another constant is the *ratio peccati*, upon which the Church bases her right and duty to intervene in temporal affairs. The manner, extent and consequences of such interventions vary with time, but the basis has always been the same, from Innocent III's *Novit ille* (1204) up to the present canon 1401 by which the Church claims proper and exclusive competence to judge *omnibus in quibus inest ratio peccati*. Political liberalism imposes a radical change on Church-State relations, which it requires to be guided by principles of a natural rational

order rather than those of a revealed order. By means of a laborious process these have come to be centred on service to the person and the rights inherent in the person's dignity, principally the right to religious freedom. The change of perspective involved in accepting the Church's teaching on religious freedom has not yet been assimilated by all.

IE XX 1/08, 13-30: Juan Ignacio Arrieta: Le articolazioni delle istituzioni della Chiesa e i rapporti con le istituzioni politiche. (Article)

Church and State interconnect and interact through organizations which are not symmetrical. In an attempt to identify general criteria arising from juridical experience, A. analyzes the ecclesiastical governmental institutions that generally have relations with State institutions. The sacraments fix the organizational limits which the legislator cannot cross when structuring the ecclesial society, the "logic of the sacrament" implying "the logic of the episcopate", since it is the sacrament of the episcopate that is of primary relevance here. In this context, A. studies the constitutional ecclesiastical institutions – the Holy See and the diocesan bishop – and then the intermediate episcopal organization, paying particular attention to the metropolitan and the assembly of the ecclesiastical province, the episcopal conferences of the ecclesiastical region, and the national episcopal conferences.

IE XX 1/08, 65-86: Jean-Pierre Schouppe: Rapporti giuridici tra Chiesa e comunità politiche. Profili epistemologici di una rinnovata disciplina. (Article)

After the Second Vatican Council's teaching on the Church and the autonomy of temporal affairs, it is necessary to find a discipline that goes beyond the *Ius Publicum Ecclesiasticum* which formerly guided relations between the Church and the political community. S. points out a possible methodology and epistemology for the task. In spite of the heterogeneous elements of the subject, a unitary method should be followed, and S. outlines some of the key juridical content. He studies the various issues arising out of the ecclesiastical laws that exist in some countries, as well as the diverse political institutions in society. He concludes by setting out the parameters of the proposed discipline: Christian dualism; a broadening of Church-State relations to include other political communities; a substantive reinterpretation of the relations between the Church and political communities in the light of the Second Vatican Council; the central role of religious freedom; and international law as a guarantee of fundamental rights.

IE XX 1/08, 211-225: Pontificia Commissione per lo Stato della Città del Vaticano, Legge N. LIV sulla tutela della sicurezza e della salute dei lavoratori nei luoghi di lavoro, 10 dicembre 2007 (con *nota* di G. Marrone: *Una legge che va al di là delle norme*). (Document and commentary)

This is the text of the Law of the Vatican City State of 10 December 2007 concerning the health and safety of workers, which came into force on 1 January 2008. In his commentary M. points out that, as is often the case with Vatican law, this matter could have been resolved by resorting to Italian legislation, but for several reasons the Vatican legislator preferred a completely autonomous set of norms. As the Secretary of State wrote to the President of the Labour Office of the Apostolic See, "for the Vatican staff it is not a question merely of work relationships, but a true and proper apostolic mission".

IE XX 1/08, 227-261: Stato della Città del Vaticano, Tribunale Penale: Principio di legalità. Sentenza, 5 maggio 2007. Dalla Torre, Presidente (con *nota* di D. Di Gregorio, *Il principio di legalità nel sistema delle fonti dello Stato Città del Vaticano*). (Sentence and commentary)

This is the text of a penal sentence pronounced by the Tribunal of the Vatican City State on 5 May 2007 in respect of offences committed within the Vatican City by an Italian citizen, born and resident in Rome, and defended by an advocate domiciled in the Vatican City. The accusation involves theft, threats, and possession of drugs. Di G.'s commentary focuses on the primary and supplementary sources of the Vatican's legal order, and then on the particular problems involved in the sentence itself. These revolve principally around article 23 of the Law of 7 June 1929, which allows for punishments to be imposed in cases where, although there is no law specifically covering the offence in Italian law (a supplementary source of Vatican law), nevertheless the offence contravenes religion, morality, public order or security. Di G. studies the principle of legality in penal law, and analyzes the solution adopted in this particular case.

LJ 161/08, 88-97: Norman Doe - Russell Sandberg: The Changing Criminal Law on Religion. (Article)

D. and S. consider the abolition of the law on blasphemy as a criminal offence in England and Wales and the interaction of new public order legislation and religion.

LJ 161/08, 110-120: Frank Cranmer: Government and Parliament. (Article)

C. reviews the legislative projects before the UK Parliament that touch the areas of religion. These include constitutional reform, charity law, criminal law (see preceding entry), equality diversity and social cohesion, human fertilization and embryology. He then discusses where a line is to be drawn.

Per 97 (2008), 667-691: Ottavio de Bertolis: Il libro III del *Principatus politicus* di F. Suárez: il potere del Romano Pontefice sui re temporali. (Article)

In this article, de B. considers the contents of Book III of the work of the Spanish Jesuit, Francisco Suárez (1548-1617), *Principatus politicus*. De B. analyzes both the method used by Suárez and the contents of his work. The book was composed to refute two writings by James I of England in which the king asserted that, as the principal member of the Church, he had absolute power over his subjects in all matters temporal and spiritual. Suárez concluded that such a thesis could not be sustained: temporal power indeed comes from God, but only in the sense that all things come from God; more correctly, no monarch has ever received such power directly from God, but always through the mediation of some human institution. This same principle also applies to the temporal power of the Roman Pontiff.

REDC 64 (2007), 819-844: Mercedes Vidal Gallardo: Comentarios a tres R.D. de 2007 sobre Seguridad Social de los ministros de culto. (Texts and commentary)

V.G. provides the texts of three pieces of Spanish legislation (Royal Decrees) of 2007 governing the conditions and requirements for the eligibility of ministers of religion for social security benefits and payments, and comments briefly on them.

Religious freedom

ELJ X 2/08, 197-204: Margaret Ogilvie: And Then There Was One: Freedom of Religion in Canada – the Incredible Shrinking Concept. (Article)

Defining religion for the purposes of constitutional or human rights protection is a challenge shared by UK and Canadian courts, following the enactment of the

Human Rights Act 1988 and the Canadian Charter of Rights and Freedoms 1985 respectively: neither defines what is to be protected. Canadian courts have been impressed with this task since 1982 and, unsurprisingly, the Supreme Court of Canada (SCC) has considered the content and scope of section 2(a) of the Charter, the fundamental right to freedom of conscience and religion, on a number of occasions, most recently in *Syndicat Northcrest v Amselem*. The outcome in *Amselem* is a salutary reminder that, for post-modern courts, religion can be whatever they want it to be, and, indeed, be nothing in particular, meriting protection or not at the whim of these courts. In *Amselem*, a 5-4 majority of the SCC reduced religion for Charter purposes to any beliefs which the complainant calls religion and persuades a court to be sincerely held. A court then has the discretion to decide whether to extend legal protection to those beliefs (and their allegedly offensive practice) without giving credible reasons beyond the complainant's sincere belief in them. *Amselem* may, therefore, be of considerable interest to lawyers in other jurisdictions regarding the potential lurking within ostensibly generous constitutional protections for religion ultimately to reduce religion to nonsense undeserving of legal protection.

ELJ X 2/08, 205-209: Russell Sandberg: Gods and Services: Religious Groups and Sexual Orientation Discrimination. (Article)

Exemptions for religious groups from generally applicable laws are by no means unusual, especially in the field of discrimination law. However, exemptions from laws prohibiting discrimination on grounds of sexual orientation have proved particularly controversial. The legality of exemptions in regulations prohibiting discrimination on grounds of sexual orientation in the employment sphere has been the subject of judicial review, and the scope of those exemptions has also been judicially examined. The extension to prohibit discrimination on grounds of sexual orientation in the provision of goods and services has aroused controversy, and case law on the extent of the religious exemption included in the British regulations is awaited. S. examines a recent judicial review of the corresponding Northern Ireland regulations, which were enacted prior to the British regulations.

ELJ X 3/08, 337-344: Ian Leigh: Hatred, Sexual Orientation, Free Speech and Religious Liberty. (Article)

In recent years, the clash between supporters of religious liberty and sexual orientation equality legislation has led to repeated battles both in Parliament and the courts. First came the clashes over the scope of exemptions in employment discrimination legislation for religious groups. The UK Regulations dealing

with employment discrimination on grounds of sexual orientation give a limited exception for "employment for purposes of an organized religion", which allows an employer to apply a requirement related to sexual orientation to comply with the doctrines of the religion, or to avoid conflicting with the strongly-held religious convictions of a significant number of the religion's followers. Although a legal challenge to the scope of this exception was unsuccessful, the exemption has not averted damaging findings of discrimination against the Church of England. The Bishop of Hereford was held to have discriminated unlawfully in blocking the appointment of a practising homosexual to a youth-officer post within the Church of England. The partial success of religious groups in achieving exemption was followed by defeat in the equivalent regulations dealing with discrimination in goods and services, made under the Equality Act 2006, despite the claims of Catholic adoption agencies that they would rather close than place children with same-sex couples.

IC XLVIII 96/08, 399-413: José T. Martín de Agar: Ecclesia y polis. (Conference presentation)

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

IC XLVIII 96/08, 493-536: José Ignacio Rubio: La defensa y promoción de la libertad religiosa por la Administración norteamericana (2000-2007). Parte II: United States Department of State (USDS). (Article)

Following on from his study of the measures taken by the United States Department of Justice (USDOJ) to protect religious freedom (see *Canon Law Abstracts*, no. 101, p. 15), R. now turns his attention to the international work of the United States Department of State (USDS) and its Office on International Religious Freedom, created by the International Freedom Act of 1998. He concludes that the attempts by the USDOJ and the USDS to protect religious freedom, at home and abroad respectively, reveal that both Departments consider this freedom to be the first freedom.

IC XLVIII 96/08, 601-630: Benedicto XVI: Discurso a la asamblea general de las Naciones Unidas, 18.IV.2008. (Address and commentary)

Text of the Pope's address to the United Nations during his apostolic journey to the USA in April 2008, in which he deals with the common good of the human family; the need for rules and structures that are intrinsically ordered to promote the common good; the principle of "responsibility to protect"; human dignity and the natural law; the universality, indivisibility and interdependence of

human rights as safeguards of human dignity; the promotion of human rights as the most effective strategy for eliminating inequalities between countries and social groups; justice, legality and the need to overcome a purely utilitarian perspective; the religious dimension of the human person and interreligious dialogue; the right to religious freedom as a human right; and the place and role of the Holy See in international law. There is a commentary on the address by Eduardo Molano on pp. 611-630.

IE XX 1/08, 55-64: Dominique Mamberti: La protezione del diritto di libertà religiosa nell'azione attuale della Santa Sede. (Lecture)

M. sets out the strategic priorities of pontifical diplomacy for ensuring conditions favourable to the mission of the Catholic Church and the life of faith of her members, including the free exercise of their human rights and fundamental liberties. All concordats and agreements respond to precise historical and social demands, but some common objectives can also be found: that of ensuring freedom of worship, jurisdiction and association, and that of establishing spheres of cooperation between the Church and the civil authorities, above all in the areas of education and charity. M. deals with religious freedom in the Holy See's recent dealings with the United Nations, the Organization for Security and Cooperation in Europe, and the European Union.

Social issues

FCan III/1 (2008), 105-111: António Marcelino: Divorciados recasados: problema pastoral incómodo. (Article)

The situation of remarried divorcees is a source of concern for the Church, which seeks to reach out to the faithful without renouncing the juridical norms and moral precepts which structure the life of the Church.

LJ 161/08, 75-87: Lord Phillips of Worth Matravers: Equity before the Law. (Article)

The former Lord Chief Justice of England examines the role of the two founts of English law – common law and statute law – with reference to recent equality legislation.

LJ 161/08, 98-110: Helen Costigane: Catholic Adoption Agencies and "Gay Adopters". (Article)

See below, canon 110.

Per 97 (2008), 99-130: Ottavio de Bertolis: Giustizia e giurisdizione nel mondo giuridico medioevale. (Article)

In the face of certain contemporary issues, such as artificial insemination, euthanasia, and abortion, de B. suggests that we need to consider the situation not just from a moral standpoint but also from a perspective that is properly juridical. In this article, he reflects on the relationship between justice and jurisdiction, especially in the works of St Thomas. In this way, he hopes to challenge the anti-juridical tendencies that predominate in contemporary society.

REDC 64 (2007), 673-702: José Luis Llaquet - Xavier Martínez: Los profesionales del derecho católicos ante las causas de divorcio. (Article)

Starting with John Paul II's 2002 allocution to the Rota, specifically his words regarding the involvement in divorce proceedings of Catholics in the legal profession, and given the widespread legislation on divorce in most jurisdictions and the increasing legal recognition of so-called homosexual "marriage" and *de facto* cohabitation, the authors consider the implications of the Papal allocution for those whose moral and ethical convictions are quite at variance with some of the professional legal cases they are expected to undertake. This leads to a reflection on the right to conscientious objection, its scope, and how it can be safeguarded despite practical difficulties. Separate sections are dedicated to the professional activity of Catholic judges and Catholic lawyers, with a final consideration of the work of lawyers in ecclesiastical tribunals.

REDC 64 (2007), 703-744: Carlos Martínez de Aguirre: Nuevos modelos de la familia: la respuesta legal. (Article)

The profound change over recent years in the social organization of personal, emotional and family relationships (unilateral and automatic divorce, civil partnerships, registered cohabitation, homosexual "marriage") has presented a challenge to lawmakers, not only in their attempts to regulate juridically the increasing number of family models, but more fundamentally over the question of why the law should have an interest in family matters and what purpose it has in legislating in this area. The law's response can vary from an *ad hoc* casuist

approach by the application by analogy of existing marriage laws, through the introduction of new legislation conferring on *de facto* relationships some or many of the juridical effects of marriage while maintaining juridical separation, to reducing all the variety of *ad hoc* unions to the single juridical regime of marriage. M.A. analyzes how purely individual and emotional preferences have usurped the traditional social and juridical basis of family law, a process he calls the "juridification" of *ad hoc* unions and the "dejuridification" of genuine marriage. In the second part of his article he deals in more detail with the present situation in Spanish civil law both at the national level (a 2005 law eased even more the requirements for divorce and introduced homosexual "marriage") and in the autonomous regions. His final suggestions are for the reinforcement of a genuine family model strong enough both socially and juridically to support the essential functions which only the family can fulfil.

HISTORICAL SUBJECTS

First millennium

AA XIV (2007), 217-240: Sabine Panzram: Obispos y sexualidad. Los cánones de Elvira como instrumento de disciplinamiento social. (Article)

The Council of Elvira, the first of the Hispanic councils, took place some time in the early years of the 4th century, although the earliest compilation of its canons dates from the 7th century. Pagan customs, behaviour and mores were still very much the norm of society, and the assembled bishops wished to imprint a truly distinct and Christian identity on their communities. The strictest canons, accompanied by the longest periods of excommunication (sometimes *nec in fine mortis*) are directed against idolatry and apostasy, although the Council recognized that there could be greater and lesser complicity and culpability, and sanctions could vary accordingly. As far as Christian identity was concerned a certain level of compromise had to be reached for those Christian believers who held public positions in the municipal and social life of what was still a predominantly pagan society. In the area of sexual morality, however, no deviation from the norm was allowed for – and almost half of the canons deal with this subject. Different canons cover the female community, consecrated virgins, unmarried women, wives and widows. The men are divided into clerics and laity, then further into adolescents, husbands and widowers. The discipline exercised by the bishops eventually had its desired effect in imparting a social coherence and identity to the Christian community in the ongoing historical-sociological development of society.

N XLV 3-4/08, 149-191: A. Ward: The Figure of the Deacon in the "Martyrologium Romanum". (Article)

W. begins by reflecting briefly on the restoration of the diaconate at Vatican II, noting that the Fathers have much to say on the diaconate. However in this article he sets out to investigate the holiness of life in deacons as illustrated in the Roman Martyrology. The current Martyrology lists 32 deacons. W. treats them by period: the early Church; before Constantine; the period of consolidation; the Vandal invasions of Africa; the evangelization of North-West Europe; the Moorish invasions; the Middle Ages; the persecutions of modern times. He concludes by looking briefly at several deacons elevated directly to the episcopate, and an overview of the survey.

REDC 64 (1007), 607-645: Florencio Hubeñák: El concepto de herejía en el pasaje de la Romanidad a la Cristiandad. (Article)

H. traces the origins, development and content of the term "heresy" from the beginnings of Christianity to the 4th century, in an attempt to understand it in the mindset of the time rather than anachronistically. Beginning with the occasional use of the term in the New Testament with the meaning "sect", he moves on to the *Adversus Haereses* of Irenaeus which narrowed its focus to "false teaching". This was to become the accepted meaning, and was further refined by Tertullian in his *Adversus Omnes Haereses* as "error" as opposed to the *regula fidei*, namely the truth received from the apostles and their successors, the bishops. Augustine in his *De Haeresibus* mentions 88 heresies and how to recognize and refute them. He distinguished heresy from schism, a division in a community due to divergent opinions, and considered that not any bishop or regional council could decide what was heresy but only the Apostolic See. With the legitimization of Christianity as the religion of the Empire a new political element was introduced into the understanding of heresy, seen now as disrupting the religious and ideological unity of the State, an action punishable by various penalties. The Papacy was becoming "Romanized" and requesting from the State the expulsion or exile of heretics. The Emperor Theodosius in his *Codex*, and especially in the Edict of Thessalonica (*Cunctos Populos*), forcefully condemned all heresies which did not accept the true faith proclaimed by the Council of Nicea. Theological differences had now become a juridical and imperial matter and would soon be regarded as a *crimen publicum*, with steps taken to inhibit their spread and divisive influence.

SCL IV (2008), 253-286: George Gallaro: *Oikonomia* and Marriage Dissolution in the Christian East. (Article)

Each sacrament involves a transformation of the person by the Holy Spirit. In marriage, through the Holy Spirit the couple are constituted icons reflecting the union of Christ and the Church. The purpose of marriage is to bring Man back to the pristine Adam, a more perfect image of God and assisting in the work of creation. This powerful imagery has a number of implications. The reality of union with God displaces the image, hence the prohibition on sexual intercourse on the night before receiving Communion. Equally even antecedent impotence does not void marriage since the spiritual end can still be attained. The principle of economy does not destroy dogmatic principle, but allows a flexible application, using the power to bind and loose for the salvation of souls. It is not a violation of law but an expression of God's mercy. In the early period second marriages were tolerated for the widowed, but were not allowed a religious rite; nor were they regarded as sacramental. Later a religious rite was allowed, but had a penitential character. Those who entered a non-sacramental marriage were

not expelled from the Church. The institution is similar to dispensation as developed in the West, but is exercised differently. It is not used to allow first cousins or in-laws to marry. This sets the background for the use of the principle of economy today in relation to second marriages. G. studies the development of Byzantine Law in this area in some detail, looking in particular at canon 87 of the Sixth Ecumenical Council, which condemned divorce and remarriage but allowed admission to the sacraments after a regime of penance.

Péter Erdö: Rigidità ed elasticità delle strutture normative nel dialogo ecumenico (Elementi istituzionali nel CIC aperti per un dialogo ecumenico). (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 147-178)**

See below, Code of Canons of the Eastern Churches (*General*).

Classical period

AA XIV (2007), 241-267: Mathias Schmoeckel: Requisitos de prueba, la exigencia de un mínimo de prueba y la notoriedad en el Derecho procesal medieval (siglos IX-XII). (Article)

S. considers some aspects of the history of law relating to the requirements of proof which allow a judge to reach a decision. He passes from Roman law through some elements of Frankish, Longobard and Visigothic law to deal more closely with developments from the 9th to the 12th centuries, and the influence of the Church in regulating procedures concerning proofs in order to minimize the risk of emitting unjust sentences. This direction was somewhat reversed when Pope Alexander III, in view of the difficulty of proving heresy in the campaign against the Cathars, permitted condemnation on the basis of suspicion alone, a situation which was allowed to continue in parts of Europe until the 19th century. The second part of S.'s article deals with the concept of notoriety, when the facts are deemed to be so clear, incontrovertible and widely known that a condemnation can be made without the need for any further proof, a method first used in 860 by Pope Nicholas I in a matter relating to a royal wedding. The actual term "notoriety" was first used in the *Decretum Gratiani*, and later commentators referred to it and classified it in different ways. Despite its ecclesiastical origins it remained above all an instrument of political power, so much so that S. ends his reflections with a reference to the detainees of Guantánamo Bay as a modern-day example.

ACR LXXXV 3/08, 301-309: Rosa MacGinley: Nuns and Sisters – A Question of Historical Evolution. (Article)

See below, canon 607.

DPM 10 (2003), 123-127: Heinz-Meinolf Stamm: Der Ehetraktat *In primis hominibus* aus der Schule von Laon (12. Jahrhundert). (Article)

The 12th-century School of Laon, founded by Anselm of Laon and his brother Ralph together with William of Champeaux, produced the marriage treatise *In primis hominibus*. S. comments on some recent research into this document.

DPM 13 (2006), 57-71: Peter Landau: Papst Cölestin II. und die Anfänge des kanonischen Eheprozessrechts. (Article)

L. examines the development of canonical procedural law for marriage cases from the time of Burchard of Worms (c. 1020) to the Decree of Gratian. Around the time of Gratian there were two reforms of the procedure, under Popes Innocent II (1130-1143) and Celestine II (1143-1144). L. gives detailed attention to the latter.

DPM 14 (2007), 241-255: Martin Löhnig: Arten des Irrtums im *Decretum Gratiani* und die Weiterentwicklung in der kanonistischen Doktrin. (Article)

Examining the doctrine of the *Decretum Gratiani* on the different kinds of error in contracting marriage, L. distinguishes four categories. Peter Lombard and Stephen of Tournai subsequently developed the doctrine on error. St Thomas Aquinas provided a theoretical basis for Gratian's model. The various lines of development were harmonized in the doctrine on error as expounded by St Alphonsus Liguori.

IE XX 2/08, 369-387: Szabolcs Anzelm Szuromi: Some 12th century textual witnesses of the family of the Ivonian Panormia (A Comparative Analysis of St. Petersburg, Rossiyskaya Nationalnaya Biblioteka Ermit. lat. 25 with BAV Barb. lat. 502 and other Ivonian manuscripts). (Article)

S. provides a description of the St. Petersburg, Rossiyskaya Nationalnaya Biblioteka Ermit. lat. 25 manuscript, and the manuscript Barb. lat. 502 of the Bibliotheca Apostolica Vaticana. Both manuscripts bear witness to the family of

the *Panormia.* In this article S. adds some personal impressions on the textual tradition and development of the *Panormia*.

N XLV 3-4/08, 149-191: A. Ward: The Figure of the Deacon in the "Martyrologium Romanum". (Article)

See above, Historical Subjects (*First millennium*).

Per 97 (2008), 99-130: Ottavio de Bertolis: Giustizia e giurisdizione nel mondo giuridico medioevale. (Article)

See above, General Subjects (*Social issues*).

REDC 64 (2007), 873-882: Segundo L. Pérez López: Glosa sobre una gran colección documental: el *Synodicon Hispanum*. (Article)

P.L. comments on the publication of the latest volume of the *Synodicon Hispanum* (volume VIII, BAC, Madrid, 2007). The series when completed will present critical editions of all the diocesan synods celebrated in the Iberian Peninsula from 1215 (IV Lateran Council, which first legislated for the annual celebration of diocesan synods) until 1563 (the final session of the Council of Trent, which attempted the adaptation of medieval canon law to the modern era). These centuries witnessed important developments in both Church and society, such as the Avignon Papacy, the Great Schism, conciliarism, the Renaissance and the disintegration of medieval Christianity. This volume of *Synodicon Hispanum* deals with the synods celebrated in the northern Spanish dioceses of Calahorra-Calzada and Pamplona and throws a light on the real-life aspects of many religious, social, pastoral, economic and cultural situations at the popular level which could not be easily gained from a study of the formal history of institutions and civil and ecclesiastical authorities or the intellectual and socially influential classes of society. P.L. praises this volume highly, not least for its exhaustive indices (onomastic, toponymic, thematic and systematic) which greatly facilitate the work of the researcher.

SC 41 (2007), 371-399: Brigitte Basdevant-Gaudemet: L'archidiacre et l'archiprêtre au service de la Réforme Grégorienne d'après la législation conciliaire de 1074 à 1140. (Article)

The period of the Gregorian reform from 1074 to 1140 witnessed intense conciliar activity. The Roman Pontiff attempted to initiate disciplinary reform

within dioceses by means of local councils. In order to achieve this restoration of ecclesiastical discipline, the bishops were assisted by archdeacons and archpriests. Two dimensions of the activity of the archdeacon can be identified: as a direct collaborator of the bishop (as in the early centuries) in accomplishing the reform, and also as the head of a district, which became increasingly common. The conciliar texts in the aforementioned period also make reference to the archpriest, a dignitary of lesser importance. B.-G. proposes that these conciliar canons suggest a mentality that the archdeacons and archpriests acted as intermediate powers between the bishop and the parish clergy.

Markus Graulich: Agli altri dico io – Non il Signore. Dal privilegio paolino allo scioglimento del matrimonio *in favorem fidei*. (Article in **Jesu Pudumai Doss (ed.): *Parola di Dio e legislazione ecclesiastica*, pp. 111-134**)

See below, canons 1141-1150.

16th-19th centuries

AA XIV (2007), 131-156: Juan Guillermo Durán: Las relaciones diplomáticas entre el gobierno argentino y la Santa Sede. Notas históricas sobre un posible concordato (1853-1892). (Article)

D. gives the historical background to the failed attempts to establish a concordat between the Holy See and the government of Argentina. From the earliest days of the colonial period the Spanish Crown acquired ever-increasing powers in the ecclesiastical affairs of the new territories. Powers granted initially by various Popes to the kings of Spain from 1493 to 1519 effectively gave the civil power the right to intervene and control certain areas of governance in Church life, under what came to be called the *patronato real*. These powers were extended even further and more firmly grounded juridically in 1574 when they became established no longer in the person of the king but in the Spanish Crown, thus giving rise to what was called the *vicariato regio*. A further development at the end of the 17th century was the production of a body of juridical and constitutional theory which no longer viewed the royal powers as privileges granted by the Holy See but as inherent in the condition of the king as sovereign, the so-called *regalismo*, a truly civil and not ecclesiastical institution. With independence from Spain a new situation vis-à-vis the Holy See now pertained as the newly-founded republic took over the previously royal powers. From 1854 negotiations were begun for the drawing up of a concordat, but faced difficulties over Rome's insistence, and the Argentinian government's refusal to relinquish the royal prerogatives. Various negotiations in the latter

part of the 19th century also failed and a practical *modus vivendi* was maintained until the final signing of a concordat in 1996.

ACR LXXXV 3/08, 301-309: Rosa MacGinley: Nuns and Sisters – A Question of Historical Evolution. (Article)

See below, canon 607.

AkK 176 (2007), 361-393: Reinhard Knittel: Das Project eines *Sodalitium Episcoporum* im frühen 16. Jahrhundert und die heutige Bischofssynode. (Article)

K.'s article begins with a survey of the legal-historical and ecclesiological context of plans for a modern structure of a synod of bishops, called *sodalitium episcoporum*, discussed at the time of the Fifth Lateran Council and largely unknown nowadays. K. then compares the *sodalitium episcoporum* to the composition and canonical structures of the current-day synod of bishops, paying particular attention to various aspects of the legal relationship between Pope and bishops. From this juridical and systematic comparison there arise consequences concerning the legal norms for the synod of bishops, based on the abiding principle of genuine collegiality as articulated at Vatican II.

REDC 64 (2007), 801-817: María J. Roca: Aplicación de las medidas de tolerancia religiosa en Prusia y Austria en la época ilustrada. (Article)

R. examines the idea of religious toleration as it developed and was expressed during the Enlightenment period in Prussia and Austria. She considers some of the philosophical precedents (the supremacy of reason and the individual, and the separation of moral teaching from faith), and analyzes certain specific legislative measures of religious toleration, namely Frederick II of Prussia's Rescript of 1740 and his Edict of Toleration of 1778, and in the Hapsburg territories of Austria-Hungary the Patent of Toleration of 1781. These developments were ultimately based on the growing philosophical indifference with regard to the religious phenomenon in society, which would lead to the concept of law as a purely self-enclosed system free from any connection to external axiological values.

REDC 64 (2007), 845-871: Antonio Calvo Gómez: Un discurso de Felipe III sobre el Patronato Regio de algunos monasterios e iglesias de fundación medieval (Valladolid, 1604). (Article)

C.G. provides the complete text (in 17th-century Spanish) of a document of Philip III of Spain, signed by him at Valladolid in 1604, which attempted to solve the conflict between the abbot of Santa María la Real and the bishop of Ávila regarding disputed jurisdiction over certain churches and the provision of chaplains and pastoral ministrations. The king cites various royal and pontifical documents confirming the royal patronage of these and other monastic and ecclesiastical establishments from their foundation in medieval times, and legitimating his authority to intervene as mediator in their disputes.

SC 41 (2007), 473-492: Kevin E. McKenna: Roman Intervention in the 19th Century Catholic School Controversy in the United States. (Article)

The development of the Catholic education system in the United States in the 19th century was a symbol of the growth of the Church in that country. Various controversies arose regarding the exact nature of the system of Catholic education. Episcopal leadership struggled to find an effective way to communicate the faith to the young in a society which was increasingly pluralistic. At the same time, the public school system was emerging which also sought to teach with some moral perspective. Disagreements arose among bishops as to various alternatives, and on several occasions the Holy See intervened. This article examines the conflict in the persons of two major figures: Bishop Bernard McQuaid of the Diocese of Rochester, New York, and Archbishop John Ireland of the Archdiocese of St. Paul, Minnesota. Also examined are several efforts of the Holy See to resolve these major differences, principally through the Sacred Congregation of the Propagation of the Faith, the apostolic delegate to the United States, and Leo XIII.

1917 Code

ACR LXXXV 3/08, 301-309: Rosa MacGinley: Nuns and Sisters – A Question of Historical Evolution. (Article)

See below, canon 607.

DPM 10 (2003), 99-118: Thomas A. Amann: Die Ausübung der *sacra potestas* im kirchlichen Richterkollegium. (Article)

See below, canon 129.

DPM 12 (2005), 175-250: Michael Werneke: Die Urteilsvollstreckung im kanonischen Prozessrecht. (Article)

See below, canons 1650-1655.

S 70 (2008), 423-461: David Albornoz: La nozione di personalità morale della Chiesa cattolica nel Codice di Diritto Canonico (1917-1983). Prima parte: Codice del 1917. (Article)

Canon 100 §1 of the 1917 Code says that "*Catholica Ecclesia et Apostolica Sedes moralis personae rationem habent ex ipsa ordinatione divina*": the Catholic Church and the Apostolic See have the status of a moral person by divine disposition. The same affirmation is found in canon 113 §1 of the 1983 Code. In view of the complex journey of 66 years between the two Codes, the question arises as to the foundation, content and acceptance of this norm in both Codes. A. seeks to study how the moral personality of the Church was accepted in the 1917 Code. He examines the documents that are officially cited as sources of canon 100 §1, and the outlines of the work of the Commission for revision of the Code. To this end he also consults the documents relating to the Commission for the codification of Canon Law that are to be found in the Vatican Secret Archives.

Markus Graulich: Agli altri dico io – Non il Signore. Dal privilegio paolino allo scioglimento del matrimonio *in favorem fidei*. (Article in **Jesu Pudumai Doss (ed.): *Parola di Dio e legislazione ecclesiastica*, pp. 111-134**)

See below, canons 1141-1150.

20th century

AA XIV (2007), 37-71: Roberto Bosca: El acuerdo de 1957. (Article)

B. examines the agreement made between the Holy See and the government of Argentina in 1957 for the establishment of a vicariate to provide for the spiritual and religious needs of the country's military forces. He provides a historical

overview of the Church's efforts over time and in different ways to bring its spiritual ministrations to those under arms. The agreement under review was signed in the pontificate of Pius XII when the system of *Ius Publicum Ecclesiasticum* still prevailed which, among other things, accorded the Church a privileged status in civil society, distinct from any other religion or cult, claiming not only direct power in spiritual matters but also indirect power in temporal matters, a claim not entirely unjustly seen by some as an excessively narrow confessional basis for clerical interference in civil society. B. relates the historical ups and downs in the years preceding the 1957 agreement. A wider agreement which would have provided a solution to the *patronato* problem (the government's rights in the nomination of bishops) was eventually not possible and its remit was limited to the establishment of a military vicariate. The last part of B.'s article is an examination of some of the main provisions of the agreement and their relationship to aspects of Argentinian law and practice.

N XLV 3-4/08, 149-191: A. Ward: The Figure of the Deacon in the "Martyrologium Romanum". (Article)

See above, Historical Subjects (*First millennium*).

N XLV 5-6/08, 205-216: A. Ward: The Centenary of St Pius X's *Sapienti Consilio* and of his Founding the Congregation for the Discipline of the Sacraments. (Article)

The system of Roman Congregations established by Sixtus V remained largely intact until the beginning of the 20th century. By the time of St Pius X's accession it had become clear that there was a good deal of overlap of competences, as well as a changed political situation, suggesting rationalization. On 29 June 1908 Pius X issued the Apostolic Constitution *Sapienti Consilio*, accompanied by a *Lex propria* for the *Rota* and *Signatura*, and an *Ordo* to be followed by the various Curial offices. W. studies in detail the division of responsibilities between the Sacred Congregation for Rites and the Sacred Congregation for the Discipline of the Sacraments, and the membership of the latter.

N XLV 5-6/08, 217-226: M. Barba: Gli interventi liturgici nel Pontificato di San Pio X. (Article)

Without studying them individually, B. gives a panoramic view of St Pius X's activity in the liturgical field by listing thematically 57 documents that bear in some way on this subject.

SC 41 (2007), 507-514: John A. Jillions: A Quest for Reform of the Orthodox Church: The 1923 Pan-Orthodox Congress, An Analysis and Translation of Its Acts and Decisions. (Review Essay)

See below, Code of Canons of the Eastern Churches (*Historical*).

Second Vatican Council and revision of the CIC

RJK 26 (2007), 47-69: Norbert Lüdecke: Der Codex Iuris Canonici als authentische Rezeption des Zweiten Vatikanums. Statement aus kanonisticher Sicht. (Article)

L. first looks at Vatican II, setting out the hopes it generated in terms of reform, before examining the ways in which its teachings were taken up by the 1983 Code.

Markus Graulich (ed): Il Codice di Diritto Canonico al servizio della missione della Chiesa. (Book)

See above, General Subjects (*Compilations*).

CODE OF CANONS OF THE EASTERN CHURCHES

General

Péter Erdö: Rigidità ed elasticità delle strutture normative nel dialogo ecumenico (Elementi istituzionali nel CIC aperti per un dialogo ecumenico). (Conference presentation **in Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 147-178**)

See above, General Subjects (*Compilations*). The awareness of "communion" in the Church, which goes back to the earliest times, was given special prominence in the documents of the Second Vatican Council. St Raymond of Peñafort had already identified numerous different types of communion; and in the Latin Code there are many ways of connecting with the legal systems of the Eastern Catholic Churches that are in full communion with the Catholic Church and that share in the primary and sovereign legal order of the universal Catholic Church. But there are also several ways of connecting with the law of the non-Catholic Eastern Churches. In this presentation E. identifies a number of these points of connection, especially in regard to the sources of canon law, the authority of norms, and various areas of canonical constitutional law, such as legislative power, interpretation, dispensations, the application of norms and the relationship between the Latin and Eastern Churches.

Historical

SC 41 (2007), 507-514: John A. Jillions: A Quest for Reform of the Orthodox Church: The 1923 Pan-Orthodox Congress, An Analysis and Translation of Its Acts and Decisions. (Review Essay)

This is a study and translation (from Greek) of the proceedings of a poorly-known 1923 pan-Orthodox congress in Constantinople. It involved fewer than 20 participants under the presidency of Patriarch Meletios Metaxakis (1871-1935) and met during a traumatic period for the Orthodox Churches. It set a useful precedent for jointly reassessing positions on pressing canonical issues in an ecumenically sensitive, conciliar and contextual manner. The proposal to move to the revised Julian calendar was accepted by some Churches but also became a cause of schism. Other important discussions included an ecumenical proposal for a common Easter calendar; the permitting of remarriage of widowed clergy and marriage of clergy after ordination; and consideration of the special conditions in the lands of Orthodox immigration.

SCL IV (2008), 253-286: George Gallaro: *Oikonomia* and Marriage Dissolution in the Christian East. (Article)

See above, Historical Subjects (*First millennium*).

CCEO 551-553

Per 97 (2008), 283-324: Juan Miguel Anaya Torres: La dimissione dei religiosi. Un percorso storico che mostra l'interesse pastorale della Chiesa. (Article)

See below, CIC canons 695-701.

CCEO 657

FCan III/1 (2008), 91-97: Pontifício Conselho para os Textos Legislativos: A natureza jurídica e a extensão da «*recognitio*» da Santa Sé. (Note)

See below, CIC canon 446.

CCEO 657

SCL IV (2008), 27-42: Pontifical Council for Legislative Texts: Explanatory Note: The Legal Nature and the Extension of *Recognitio* of the Holy See. (Note)

See below, CIC canon 446.

CCEO 667-895

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See below, CIC canons 834-839.

CCEO 671

Per 97 (2008), 325-378: Georges-Henri Ruyssen: Eucaristia ed ecumenismo. Evoluzione della normativa universale e confronto con alcune norme particolari. (Article)

See below, CIC canon 844.

CCEO 671

SCL IV (2008), 185-214: Paul Pallath: Sacramental Sharing According to the Second Vatican Council and Catholic Canon Law. (Article)

See below, CIC canon 844.

CCEO 776

SCL IV (2008), 253-286: George Gallaro: *Oikonomia* and Marriage Dissolution in the Christian East. (Article)

See above, Historical Subjects (*First millennium*).

CCEO 828

DPM 12 (2005), 49-67: Cyril Vasil': Der *ritus sacer* und die priesterliche Segnung – Elemente der Form der Feier der Eheschließung gemäß c. 828 CCEO: interekklesiale und ökumenische Implikationen. (Article)

Canon 828 of the CCEO requires a sacred rite and priestly blessing for the validity of marriage. V. explains the background to this canon, and highlights a number of problems to which it can give rise, as well as its implications for inter-Church relations and ecumenism.

CCEO 832

FC 10 (2007), 71-85: Andrej Saje: Lo sviluppo della forma della celebrazione del matrimonio nella Chiesa Occidentale e nella Chiesa Orientale nel caso in cui manca l'assistente competente. (Article)

See below, CIC canon 1116.

CCEO 833

SCL IV (2008), 185-214: Paul Pallath: Sacramental Sharing According to the Second Vatican Council and Catholic Canon Law. (Article)

See below, CIC canon 844.

CCEO 834

DPM 10 (2003), 55-75: Markus Walser: Die Formpflicht von Konvertiten – Schwierigkeiten in der Anwendung von c. 1117 CIC bzw. c. 834 §1 CCEO bei nicht förmlich vollzogenen Konversionen und Reversionen. (Article)

See below, CIC canon 1117.

CCEO 880

SCL IV (2008), 463-468: Jose Chiramel: Holydays of Obligation, Fast and Abstinence in Latin and Eastern Codes. (Reply)

See below, CIC canon 1244.

CCEO 1337-1342

DPM 12 (2005), 175-250: Michael Werneke: Die Urteilsvollstreckung im kanonischen Prozessrecht. (Article)

See below, CIC canons 1650-1655.

CCEO 1359

SC 41 (2007), 345-369: John Beal: When East Meets West: Tribunal Competence in Inter-Ritual Marriage Cases. (Article)

See below, CIC canon 1673.

CCEO 1443

N XLV 3-4/08, 135: Congregatio pro Doctrina Fidei: Decretum generale de delicto attentatae sacrae ordinationis mulieris. (Decree)

See below, CIC canon 1378.

CCEO 1443

SCL IV (2008), 25-26: Congregation for the Doctrine of the Faith: General Decree Regarding the Delict of Attempted Sacred Ordination of a Woman. (Decree)

See below, CIC canon 1378.

CODE OF CANON LAW
BOOK I: GENERAL NORMS

16

Tarcisio Bertone: La legge canonica e il governo pastorale della Chiesa: il ruolo specifico del Pontificio Consiglio per i Testi Legislativi. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 29-43**)

See below, canon 360.

19

RfR 67 3/08, 322-326: Elizabeth McDonough: The *Lacuna* Canon: Equity and Practice. (Article)

The first part of this article deals with the history and application of canonical equity. McD. then proceeds to discuss the third suppletory source in canon 19 which concerns the jurisprudence and practice of the Roman Curia.

19

SCL IV (2008), 11-16: Pope Benedict XVI: Allocution to the Members of the Tribunal of the Roman Rota. (Address)

In his Rotal address for 2008 the Pope marks the centenary of the restored Roman Rota by reflecting on the value of its jurisprudence to the overall administration of justice in the Church. In particular he explains why the decisions of the Rota have a juridical importance that extends beyond the individual case judged. The reasonableness of law is an innate value, and equally the criterion of unity is essential for justice. Canon 19 does not so much establish as declare the value that inheres in the decisions of a court that normally judges cases in their final instance. The Pope then applies this to matrimonial law. Law is not simply a collection of positive laws. Rotal decisions should be seen as exemplary juridical wisdom carried out with the authority of a tribunal established by the authority of the successor of Peter for the good of the whole Church.

29-34

DPM 14 (2007), 181-204: Konrad Breitsching: Erwägungen zu Rechtsnatur und Verbindlichkeit von *Dignitas Connubii*. (Article)

After some preliminary considerations on the entering into force of the Instruction *Dignitas Connubii*, B. discusses the juridical and binding nature of the document. He explains the juridical nature of general decrees and instructions, and examines the question of the binding nature of norms *contra* and *praeter legem*. He ends by expressing his wish for a clearer distinction of the juridical nature (legislative, administrative, judicial) of acts of the ecclesial authority in the praxis of the Roman Curia, and greater conformity with the laws on which they are based.

34

DPM 14 (2007), 205-215: Frans Daneels: Das Wesen des Ehenichtigkeitsverfahrens. (Article)

See below, canons 1671-1691.

34

DPM 14 (2007), 257-272: Klaus Lüdicke: Einführung in die Instruktion *Dignitas Connubii*. (Conference presentation)

See below, canons 1671-1691.

34

IC XLVIII 96/08, 631-661: José Luis Gutiérrez: La instrucción «Sanctorum Mater» de la Congregación de las Causas de los Santos. (Commentary)

See below, canon 1403.

85-93

DPM 11 (2004), 93-110: Markus Walser: Die Dispens im Eherecht. (Article)

W. deals with dispensations in marriage law: what they are, who can grant them, to what extent the power of dispensing may be delegated, reasons for granting the dispensation, and the formalities to be observed.

87

Ivan Dias: Accettazione e operatività del diritto canonico nei territori di missione. Confronto culturale e limiti tecnici. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 63-82**)

See below, canon 781.

110

ELJ X 3/08, 337-344: Ian Leigh: Hatred, Sexual Orientation, Free Speech and Religious Liberty. (Article)

See above, General Subjects (*Religious freedom*).

110

LJ 161/08, 98-110: Helen Costigane: Catholic Adoption Agencies and "Gay Adopters". (Article)

C. surveys the ongoing crisis which Catholic adoption agencies in England and Wales who receive State funding are undergoing as a result of the recent Equality Act and subsequent Sexual Orientation Regulations. The agencies face either losing all State funding or else accepting same-sex couples as potential adopters. To comply with the law has been seen as no longer acting, or entitling them to describe themselves, as specifically Catholic children's societies. The outcome of proposed action by these agencies is not yet clear.

113

S 70 (2008), 423-461: David Albornoz: La nozione di personalità morale della Chiesa cattolica nel Codice di Diritto Canonico (1917-1983). (Article)

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

127

FCan III/1 (2008), 47-70: Marek Stokłosa: Il consiglio del superiore provinciale. (Article)

See below, canon 627.

129

DPM 10 (2003), 99-118: Thomas A. Amann: Die Ausübung der *sacra potestas* im kirchlichen Richterkollegium. (Article)

A. looks at the exercise of sacred power under the 1917 Code and the new understanding of *sacra potestas* in Vatican II, examining the forms of collegiate exercise of such power in the judicial sphere.

129-144

DPM 11 (2004), 93-110: Markus Walser: Die Dispens im Eherecht. (Article)

See above, canons 85-93.

144

BEF LXXXII 6/06, 981-986: Javier González: The 'Ecclesia Supplet' Principle: Why and When is it Applied? (Consultation)

G. reviews the extent of the principle *Ecclesia supplet*, restricted to the power of governance, together with some very limited exercise of the power of order (canon 144 §2).

197-198

REDC 64 (2007), 747-800: Federico R. Aznar Gil: Consideraciones sobre la prescripción adquisitiva de bienes en el derecho canónico a propósito del litigio entre las diócesis de Barbastro-Monzón y Lérida. (Decree and commentary)

See below, canon 1268.

BOOK II, PART I: CHRIST'S FAITHFUL

204

FCan III/1 (2008), 85-90: Congregação para a Doutrina de Fé: Respostas a questões relativas a alguns aspectos da doutrina sobre a Igreja. (Document)

Portuguese text of the Congregation for the Doctrine of the Faith's reply of 29 June 2007 to certain questions on the Church's teaching (see following entry).

204

IE XX 2/08, 479-489: Congregazione per la Dottrina della Fede: Risposte a quesiti riguardanti alcuni aspetti circa la dottrina sulla Chiesa, 29 giugno 2007 (con l'articolo di commento, «L'Osservatore Romano» 11 luglio 2007). (Document and commentary)

This is the text, in Italian, of the reply from the Congregation for the Doctrine of the Faith (29 June 2007) to five questions regarding the doctrine on the Church after the Second Vatican Council; the affirmation that the Church of Christ "subsists in" the Catholic Church; and the correct use of the terms "Church" and "ecclesial community". There is an accompanying commentary which was published in the *Osservatore Romano*. (See also *Canon Law Abstracts*, no. 100, pp. 40-41.)

204

Norbert Lüdecke: Die kirchenrechtliche Relevanz der „subsistit in"-Formel. Ein kanonistischer Ökumenebaustein. (Article in **Althaus-Lüdicke-Pulte, Hrsg: *Kirchenrecht und Theologie im Leber der Kirche. Festschrift für Heinrich J. F. Reinhardt zur Vollendung seines 65. Lebensjahres*, pp. 279-309**)

L. examines the origins and meaning of the phrase *subsistit in* which appears in *Lumen Gentium*, no. 8, and is incorporated into canon 204 §2. He highlights certain difficulties of interpretation to which it gives rise, and sets out some of its ecumenical implications and the position of those who are validly baptized outside the Catholic Church.

213

Jesu Pudumai Doss: Parola di Dio: un diritto dei fedeli? (Article in **Jesu Pudumai Doss (ed.):** ***Parola di Dio e legislazione ecclesiastica*****, pp. 45-69**)

See above, General Subjects (*Compilations*). The codification of the right of the faithful to the Word of God and an analysis of the norm help to understand the subject, foundation, object and purpose of canon 213. There are also other rights that flow from the right of the faithful to the Word of God. These can be grouped under the headings of the right to the Word "proclaimed", the Word "taught", the Word "celebrated", and the Word "announced". This right is lived only "in the Church".

214

Proc CLSA 2008, 63-73: John Baldovin: Reflections on *Summorum Pontificum*. (Seminar paper)

See below, canon 899.

221

AA XIV (2007), 269-304: Hugo Adrián von Ustinov: Algunas consideraciones alrededor del canon 221. (Article)

The present Code recognizes the rights of the faithful (canon 221), a concept totally absent from the 1917 Code. Such rights are inherent in all the baptized and are not merely granted by ecclesiastical authority. U. looks at some ways in which these rights are safeguarded. The judicial oversight exercised by the Apostolic Signatura can, in theory, defend the rights of the faithful against alleged wrongs or injustices, but in practice, because of the perceived remoteness of Rome, a widespread ignorance even among canonists of the procedures by which to appeal, and the peremptory nature of the fixed time limits (which cannot be dispensed), the effectiveness of the Signatura in defending the rights of the faithful is greatly constrained. Another limitation is the lack of appeal against such administrative acts as general executory decrees or instructions. In another vein U. points out that the norms of procedural law are designed to safeguard the rights of all parties to justice, and that their disregard in the interests of so-called pastoral benevolence or convenience does injury to both justice and truth. Although the canonical system does not have the separation of powers found in modern legal civil systems, judicial independence plays a vital role and U. examines this area under the headings of the vicarious power of judges, their stability in judicial function, and incompatibility for the exercise of administrative functions. In a final section he considers the axiom

nulla poena sine lege and points out that this rule did not hold in the 1917 Code (canon 2222). Although it is now enshrined in canon 221 §3 of the present Code there still remains an apparent contradiction in canon 1399 which permits the imposition of penalties for cases not prescribed in any law, an anomaly which U. attempts to explain.

221

IE XX 1/08, 227-261: Stato della Città del Vaticano, Tribunale Penale: Principio di legalità. Sentenza, 5 maggio 2007. Dalla Torre, Presidente (con *nota* di D. Di Gregorio, *Il principio di legalità nel sistema delle fonti dello Stato Città del Vaticano*). (Sentence and commentary)

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

222

Proc CLSA 2008, 128-157: Lynn Jarrell - Daniel Ward: Catholic Identity – Ministry – Liability – Employment: Trends and Challenges for US Dioceses and Religious Institutes/Societies. (Seminar paper)

J. and W. consider the relationships between dioceses and religious institutes and between civil and canon law in the fields of ministry, Catholic identity, liability and employment. The short text is supplemented with 8 Appendices: Section V of the USCCB *Diocesan Financial Issues*; USCCB *Guidelines on the Assessment of Clergy and Religious for Assignment*; article 14 of the USCCB *Charter for the Protection of Children and Young People*; article 12 of the USCCB *Essential Norms*; USCCB *Norms on Fund-Raising*; USCCB *Norms on Leasing*; *Commentary on Norms on Fund-Raising*; *Commentary on Norms on Leasing*.

224-231

Jorge Miras: Christ's Faithful in the World. The Secular Character of the Laity. (Book)

M. asks whether it is possible to be fully Christian while being totally engaged in the realities of the world, and whether the requirements and duties of family, professional, political and social life can be harmonized with the call of all the faithful to holiness, as proclaimed by the Second Vatican Council. He offers a reflection on the Christian laity's secularity, so as to show that being in the world is not simply an accidental fact, but is rather the laity's proper way to assume the Christian vocation to sanctity and apostolate. The understanding of

the vocational meaning of ordinary life in the world appears as one of the keys to the new evangelization of the world. (For bibliographical details see below, Books Received.)

239-246

IE XX 1/08, 151-158: Jan Hendriks: La direction spirituelle dans les séminaires. (Article)

The essential content of spiritual formation leading specifically to the priesthood is well expressed in *Optatam Totius*: "Spiritual formation … should be conducted in such a way that the students may learn to live in intimate and unceasing union with God the Father through his Son Jesus Christ, in the Holy Spirit." H. states that the Code distinguishes at least three functions in the internal forum: those of spiritual director (*director spiritus*: canon 239 §2), confessor (canon 240 §1), and the freely-chosen director of the student's spiritual life (*moderator vitae spiritualis*: canon 246 §4). On the basis of the relevant canons and the *Ratio Fundamentalis* (the 1985 document *Tria iam lustra* of the Congregation for Catholic Education) he examines these three functions. Spiritual direction is indispensable for all seminarians, and this formation stays reserved and confidential in the internal forum. The spiritual director is the coordinator of the confessors and *moderatores* so as to ensure unity of criterion in the discernment of the student's vocation. Freedom in the choice of one's personal *moderator* and the strict discretion which he observes will help the seminarian truly open his heart and ensure that his conversations with his spiritual guide are fruitful.

257

PS XLIII, 128/08, 395-432: Leonardo N. Mercado: Cross-Cultural Ministry: The Case of the Filipino Priests in Canada. (Article)

This study on the Filipino priests working in Canada deals with the interaction of Canadian culture and Philippine culture in the context of ministry. M. tries to answer four questions. 1. What are the challenges that Canadian culture presents for Filipino priests practising their ministry in that country? 2. How do the Filipino priests react to those challenges? 3. What are the contributions of the Filipino priests to Canada? 4. If more Filipino priests are needed to serve the Church in Canada and other developed countries, what programmes should be followed in order to equip them adequately for the task?

274

DPM 10 (2003), 99-118: Thomas A. Amann: Die Ausübung der *sacra potestas* im kirchlichen Richterkollegium. (Article)

See above, canon 129.

287

BEF LXXXIII 3/07, 494-498: Javier González: Involvement in Politics of Associations of Christ's Faithful. (Consultation)

G. considers whether associations of Christ's faithful can be involved in politics, particularly partisan politics, and concludes that they cannot. However, that does not preclude individuals from being politically active, for they are obliged to participate; and in certain circumstances associations of Christ's faithful may also participate in politics for the common good.

293

SC 41 (2007), 493-506: Michael Martine: Readmission to the Clerical State after Voluntary Laicization. (Article)

This article is an investigation of the canonical foundation for the readmission of clerics who had voluntarily lost the clerical state, and the current praxis of the Apostolic See for these cases. M. establishes the context for this discussion with a brief overview of the canonical requirements for entrance into the clerical state and also the process itself of voluntary loss of the clerical state as dealt with in canon 290 3°. The consideration of readmission to the clerical state examines the areas of competency (in the Roman Curia), identification of the general criteria for readmission, and the various requirements and stages in the procedure itself.

294-297

IE XX 2/08, 285-297: Javier Echevarría: La configurazione giuridica dell'Opus Dei prevista da S. Josemaría. (Conference presentation)

On the 25th anniversary of the execution of the Apostolic Constitution *Ut sit* establishing Opus Dei as a personal Prelature, E. looks at the juridical path initiated on 2 October 1928 when St Josemaría Escrivá, *divina ductus inspiratione,* founded Opus Dei. He gives details of the various juridical configurations which the Founder had to adopt at different points in Opus Dei's history – without betraying the substance of the institution, and always in the

awareness that these solutions were only of a provisional nature – to enable it to obtain public recognition in the Church. E. says that the Founder, when accepting these configurations, added abundant necessary clarifications, in the expectation of a later definitive juridical "garment" which would come within the Church's general law and would be appropriate for Opus Dei's pastoral phenomenon without compromising its integrity. In the first section of his paper E. covers the defining characteristics of Opus Dei and the aspects that still needed to be determined once it had come into being. A second section deals with the juridical configurations within the lifetime of the Founder; and the final section presents the canonical steps taken during the 1960s and up to the time of his death in 1975, when the definitive solution was already being envisaged.

294-297

IE XX 2/08, 299-323: Valentín Gómez-Iglesias: San Josemaría Escrivá e la prospettiva dell'Opus Dei come Prelatura personale. (Conference presentation)

G.-I. describes the work involved in the long juridical process that led to the request made in 1979 to John Paul II to establish Opus Dei as a personal prelature. It includes a first section about the early period of the foundation. After setting out how from the beginning St Josemaría was well aware both of the future need of a juridical structure and the lack of an appropriate canonical figure for Opus Dei in the existing canon law, G.-I. considers the limitations of the juridical formulas of the period 1947-1950. He then outlines the historical and canonical elements of the search for a solution during the pontificate of John XXIII. A longer section deals with the affectionate audience granted by Paul VI to St Josemaría early in 1964, which led to further correspondence and another audience later in the same year. The Second Vatican Council promulgated documents that were eventually to provide the basis for the establishment of the personal prelature, and with that end in view a special General Congress was held in 1969 and 1970, which worked in close contact with the Secretary of State. The Founder's death in 1975 and that of Pope Paul VI in 1978 brought about a delay in the process, which was restarted in 1979 by means of a request submitted to Pope John Paul II.

294-297

IE XX 2/08, 325-343: Eduardo Baura: Finalità e significato dell'erezione della prelatura personale dell'Opus Dei. (Article)

The acceptance of a personal jurisdiction consisting of faithful who at the same time belong to a territorial circumscription can be understood only on the basis

of a view of the episcopate in which, as is reflected in *Christus Dominus*, the universal and the particular dimensions of the episcopal ministry meet. B. studies the constitutional principles of personal jurisdictions and the pastoral requirements of the universal call to holiness; and since a complete description of the personal prelature of Opus Dei would be going beyond the limits of his article, he concentrates on the structural characteristics of Opus Dei as a pastoral phenomenon. Its establishment as a personal prelature has attracted a great deal of attention, not so much on account of its being the first personal prelature, but rather because it is a pastoral phenomenon arising out of a charism. B. studies this charism and the development of the prelature's pastoral organization. In his final section, he considers some of the substantial characteristics of the prelature of Opus Dei.

298-311

Proc CLSA 2008, 237-256: Robert Oliver: Associations of the Faithful in the Communion of the Local Church. (Seminar paper)

O. offers a theological consideration of particular Churches and associations of the faithful. He then presents a history of the right of associations in canon law. With a short presentation of the canons on associations he considers the role of the bishop in regard to associations in his particular Church.

298-329

AA XIV (2007), 98-130: Marcelo Daniel Colombo: Los nuevos movimientos eclesiales en su encuadramiento canónico en la Iglesia particular. (Article)

C.'s subject is the canonical status or classification of ecclesial movements within the local Church. The great variety of such movements defies easy definition, the only possible canonical placement at present being among the much wider field of associations of the faithful (canons 298-329), although some theological-canonical principles governing the norms for institutes of consecrated life (canons 573-730) might be applied more easily. However, as most ecclesial movements wish to maintain their lay identity, canon 605, on the approval of new forms of consecrated life, might be applied. Relations with the local Church can sometimes be strained on account of some movements' elitist tendencies, and a closing-in on themselves with consequent isolation from the local parish and diocesan pastoral initiatives. Although each has its own special charism, these movements do not form a parallel Church, and therefore both hierarchical and charismatic gifts must be related in a common communion with the universal and local Church. C. concludes with considerations on the spiritual and religious formation of movement members and the incardination and

relation to the diocese of priests ordained to serve the movements. He urges that a clearer canonical and constitutional definition of movement be elaborated which would obviate their present vague and imprecise status.

298-329

Lluís Martínez Sistach: Associations of Christ's Faithful. (Book)

This is the English translation version of the fifth edition of *Las asociaciones de fieles* (see *Canon Law Abstracts,* no. 86, p. 29; no 93, p. 32; no. 97, p. 37), which includes a Foreword by Cardinal Stanisław Ryłko. (For bibliographical details see below, Books Received.)

305

BEF LXXXIII 5/07, 721-730: Javier González: Do Episcopal Conferences have Supervisory Competence over Private Associations of the Faithful? (Consultation)

Following canon 305, G. answers that episcopal conferences do not have supervisory competence over private associations of the faithful, since such competence is given to the Holy See or to the local Ordinary. However, he considers that, if the need arises, the episcopal conference may exercise such supervision if granted a mandate by the Holy See, or if every bishop within the conference agrees. The episcopal conference may also act in a more indirect manner to exercise influence over, or in extreme circumstances even prohibit or suppress, such an association.

317

BEF LXXXIII 3/07, 494-498: Javier González: Involvement in Politics of Associations of Christ's Faithful. (Consultation)

See above, canon 287.

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

330

Per 97 (2008), 541-595: Gianfranco Ghirlanda: Il *documento di Ravenna* della Commissione Mista Internazionale Cattolici-Ortodossi. (Article)

Between 8 and 14 October 2007, the 10th Plenary Session was held in Ravenna of the International Mixed Commission for Theological Dialogue between the Roman Catholic Church and the Orthodox Church. The document which resulted from the discussions and which was approved by the meeting bears the title: *Ecclesiological and canonical consequences of the sacramental nature of the Church. Ecclesial communion, conciliarity and authority*. It is known as the Ravenna Document. In this article, G. begins by recalling the previous documents that have emerged from this dialogue. He points out that these dealt with various aspects of Church life, whereas the Ravenna Document deals with a more global vision. A key element of the Ravenna Document is its attention to the conciliar or synodical dimension of ecclesial life. G. presents this dimension in general and then in relation to local, regional and universal levels of Church life. He offers a critical evaluation of the document in the light of the teaching of Vatican II, the 1983 Code, the 1990 CCEO, and subsequent interventions of the Magisterium. In his conclusion, he notes that the dialogue has now progressed to the stage where it can touch explicitly on the most obvious point of division between East and West, namely the primacy of the Bishop of Rome.

330-341

Tarcisio Bertone: La responsabilità del Successore di Pietro per la Chiesa universale e dei Vescovi per le chiese particolari. (Conference presentation in **Markus Graulich (ed): *Il Codice di Diritto Canonico al servizio della missione della Chiesa*, pp. 71-82**)

See above, General Subjects (*Compilations*).

330-572

Norbert Lüdecke: Die Rechtsgestalt der römisch-katholischen Kirche. (Article in **Klöcker-Tworuschka, Hg: *Handbuch der Religionen*, München, 16/2007, pp. 1-17**)

L. studies the composition and basis of the Church's legal structures, which are formed in part on the basis of divine law, and in part on the Church's lived experience.

332

SCL IV (2008), 143-182: K. Martens: *Pasce agnos meos, pasces oves meas:* An Analysis of the Vacancy of the Apostolic See and the Election Procedure of the Roman Pontiff. (Article)

Since St Pius X only Benedict XV and John Paul I made no changes in the procedure for the election of a new Pope. The key document is the Apostolic Constitution *Universi Dominici Gregis* of 1996, slightly modified in 2007, but this cannot be separated from three liturgical books: *Ordo Exsequiarum Romani Pontificis; Ordo Rituum Conclavis; Ordo Rituum pro Ministerii Petrini Initio Romae Episcopi.* Of these the second is the most important for this article. M. looks briefly at vacancy through resignation, and then examines in detail the historical evolution of the current procedure. He goes on to study the powers and office exercised during the vacancy of the Holy See, and the timetable and procedure for the election of a new Pope.

342-343

Vid 72 10/08, 721-723: Ecclesial Significance of the Synod of Bishops. (Editorial)

A brief presentation of the history of the synod of bishops since the end of the Second Vatican Council, and noting the importance of two changes in procedure instituted by Pope Benedict XVI.

342-348

AkK 176 (2007), 361-393: Reinhard Knittel: Das Project eines *Sodalitium Episcoporum* im frühen 16. Jahrhundert und die heutige Bischofssynode. (Article)

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

342-348

Per 97 (2008), 3-43: Gianfranco Ghirlanda: Il nuovo *Ordo Synodi Episcoporum*. (Article)

Pope Benedict XVI approved a new *Ordo* for the synod of bishops on 29 September 2006. G. presents a brief outline of the *Ordo* and offers a short history of the institution of the synod. The major part of the article is devoted to a consideration of three aspects of the collegial dimension of the episcopal ministry that are manifested in the synod: the representation of the whole

Catholic episcopate, a central ecclesial advisory body to the Roman Pontiff, and a participative body. By way of conclusion, G. highlights some innovations in the doctrinal prologue of the *Ordo*: e.g. references to the possibility of the synod preparing a document other than the usual *Propositiones*; and a broader representation of the Eastern Churches to demonstrate the fact that the synod represents the whole Catholic hierarchy in all its different expressions.

342-348

Ivan Dias: Accettazione e operatività del diritto canonico nei territori di missione. Confronto culturale e limiti tecnici. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 63-82**)

See below, canon 781.

343

Proc CLSA 2008, 28-52: Bradford Hinze: The Reception of Vatican II in Participatory Structures of the Church: Facts and Friction. (Major address)

H. begins with a general consideration of the Code as an implementation of Vatican II and especially of the idea of participation in the Church. Then he presents and assesses the various instruments of participation: the growth of parish pastoral councils; the less significant growth of diocesan pastoral councils; councils of priests and the changes in the US National Federation of Priests' Councils; changes in diocesan synods after Vatican II and their under-use in the US today; criticism of the Vatican's distinction between *affectus collegialis* (e.g. in episcopal conferences) and *effectus collegialis* (possessed only by the college of bishops) and consideration of bishops' conferences; and the development of the synod of bishops. H. then assesses how well Vatican II's teachings on participation have been put into action. To do this, he recommends listening to the "lamentations" of people in the Church today. He says that younger bishops and priests are less collaborative and that the Church is open to discussion with conservatives but not with the "reform-minded". He concludes by calling for a renewal of participatory structures so that they include more theologians and become deliberative rather than merely consultative.

360

Tarcisio Bertone: La legge canonica e il governo pastorale della Chiesa: il ruolo specifico del Pontificio Consiglio per i Testi Legislativi. (Conference

presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 29-43**)

See above, General Subjects (*Compilations*). B., Cardinal Secretary of State, describes the role of the Roman Curia as an instrument to serve the Petrine ministry, looking specifically at the activity of the Pontifical Council for Legislative Texts (PCLT). The first and most general function of the PCLT is that of assisting the Pope in his legislative activity, especially in situations in which there is a *lacuna legis* or where a law has become obsolete. A second function is that of authentic interpretation, in addition to which the PCLT issues declarations and explanatory notes. A third area of activity is that of vigilance and the correct application of law, through (i) the examination of general decrees issued by episcopal conferences; (ii) judgements as to whether particular laws and general decrees issued by particular legislators below the level of the Supreme Authority conform to the general law; and (iii) the identifying of cases of non-application or misapplication of norms.

362

LJ 158/07, 30-53: Peter Petkoff: Legal Perspectives and Religious Perspectives of Religious Rights under International Law in the Vatican Concordats (1963-2004). (Article)

P. proposes that the study of the concordats in the context of international law could be used as a starting (rather than a defining) point for exploring the ways in which the religious perspectives could be relevant for understanding the dynamics of religious rights discourse under international law.

369

Proc CLSA 2008, 102-127: John J. M. Foster: To Protect by Civilly Valid Means: Reorganization and the Canonical-Civil Restructuring of Dioceses and Parishes. (Seminar paper)

F. presents an overview of the decisions taken by the Diocese of Stockton in California to bring their civil status into line with canon law. He begins with a brief overview of the ideas of parishes and dioceses in canon law and the relationship between the two. He then describes the changes in civil incorporation. He provides an in-depth presentation of the parish statutes adopted for the diocese, and diocesan norms on parish consultative and advisory groups.

374

AkK 176 (2007), 394-418: Heribert Hallermann: Was ist eine „rechtlich selbständig bleibende Pfarrei"? Kanonistische Anmerkungen zu laufenden strukturellen Veränderungen in deutschen Diözesen. (Article)

See below, canon 515.

377

Proc CLSA 2008, 285-302: Myriam Wijlens: "The Newness of the Council Constitutes the Newness of the Code" (John Paul II): The Role of Vatican II in the Application of the Law. (Seminar paper)

See below, canons 511-514.

381

Ivan Dias: Accettazione e operatività del diritto canonico nei territori di missione. Confronto culturale e limiti tecnici. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 63-82**)

See below, canon 781.

394

Paul Josef Cordes: Spontaneità della carità: esigenze e limiti delle strutture normative. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: La legge canonica nella vita della Chiesa, pp. 103-112**)

See above, General Subjects (*Compilations*). C. begins with a historical-theological assessment of the development of the Church's charitable activity, as evidenced by the Scriptures and early Christian writings, before providing a brief summary of the principal Vatican II documents dealing with this topic. He then looks at Benedict XVI's Encyclical *Deus Caritas Est*, and suggests a number of points connected with the bishop's duties where he feels canon law could provide more specific content to canon 394.

439-459

Giovanni Battista Re: Legge universale e produzione normativa a livello di Chiesa particolare, di Conferenze episcopali e di Concili particolari.

(Conference presentation **in Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 83-101**)

See above, General Subjects (*Compilations*). R. begins by highlighting the collaboration of the episcopate in the drafting of the 1983 Code, and examines the concept of ecclesial communion and the complementary nature of universal and particular law. He then proceeds to an analysis of legislation at the level of the particular Church and the episcopal conference. These institutions need to be attentive to what is happening in the world, so as to be able to respond suitably, and thus help the Church fulfil her mission by means of norms better adapted to local situations.

446

FCan III/1 (2008), 91-97: Pontifício Conselho para os Textos Legislativos: A natureza jurídica e a extensão da «*recognitio*» da Santa Sé. (Note)

Portuguese text of the document referred to in the following entry.

446

SCL IV (2008), 27-42: Pontifical Council for Legislative Texts: Explanatory Note: The Legal Nature and the Extension of *Recognitio* of the Holy See. (Note)

The original Italian text from *Communicationes* 38 (2006), 10-17 is printed in parallel with an English translation. The Pontifical Council for Legislative Texts had written to the Secretary of State on this subject on 4 December 1997 and 25 February 1998 concerning the extent of *recognitio*; in this Note dated 28 April 2006 it offers some explanatory comments. *Recognitio* is not a generic or summary approval but rather a detailed review of the legitimacy and congruity with universal norms of the texts that bishops' conferences seek to publish or promulgate. "Review", not "authorization", is the correct translation. It allows for modification. This is demonstrated in numerous places in *Pastor Bonus* and *Apostolos Suos*. The Note goes on to study the views on this subject of a number of (unnamed) canonists. Finally it looks at the scope and method of applying the *recognitio*. It is a complex act that is a *sine qua non* for publication or promulgation.

447-459

FCan III/1 (2008), 19-46: José Ignacio Alonso Pérez: O dereito particular dos agrupamentos episcopais no Brasil. (Article)

A.P. focuses on the most important meeting of bishops in Brazil, the National Conference. The new statutes of the Conference treat it as an organism capable of promoting collective activity throughout the whole country, while not replacing the responsibility of each bishop in his own diocese. After a long process of renewal, the organization of the Conference is now similar to that of other episcopal conferences. Attempts have also been made to give more responsibility to the bishops in the conduct of the Conference, thus increasing the responsibility of the regional episcopal committees and limiting the participation of those who are not bishops. In the light of the Apostolic Letter *Apostolos Suos* A.P. analyzes the position of Ordinaries of other rites, emeritus bishops, and prelates not equivalent to bishops, within the Conference.

447-459

Proc CLSA 2008, 28-52: Bradford Hinze: The Reception of Vatican II in Participatory Structures of the Church: Facts and Friction. (Major address)

See above, canon 343.

447-459

Ivan Dias: Accettazione e operatività del diritto canonico nei territori di missione. Confronto culturale e limiti tecnici. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 63-82**)

See below, canon 781.

455-456

FCan III/1 (2008), 91-97: Pontifício Conselho para os Textos Legislativos: A natureza jurídica e a extensão da «*recognitio*» da Santa Sé. (Note)

See above, canon 446.

455-456

SCL IV (2008), 27-42: Pontifical Council for Legislative Texts: Explanatory Note: The Legal Nature and the Extension of *Recognitio* of the Holy See. (Note)

See above, canon 446.

466

Proc CLSA 2008, 28-52: Bradford Hinze: The Reception of Vatican II in Participatory Structures of the Church: Facts and Friction. (Major address)

See above, canon 343.

500

Proc CLSA 2008, 28-52: Bradford Hinze: The Reception of Vatican II in Participatory Structures of the Church: Facts and Friction. (Major address)

See above, canon 343.

502

SCL IV (2008), 455-462: Augustine Mendonça: Consultation with the Presbyteral Council Prior to the Constitution of a Parish. (Reply)

A bishop has established several personal parishes for faithful of Oriental rites after consulting the college of consultors, but not the council of priests. Since the college is drawn from the council, is consultation with the former equivalent to consultation with part of the latter? Are the decrees of the bishop valid, and, if not, can they be sanated? It was the mind of the Second Vatican Council to limit the power of the diocesan bishop, and require consultation with the council of priests before erecting, suppressing or notably altering parishes (cf. canon 515 §2). Failure to do so renders the act null (canon 127 §1). Here the bishop seems to have consulted the wrong body. While they are drawn from the council of priests, the college of consultors do not represent it, or the presbyterate as a whole. The bishop is free to consult them as well, but not instead. He cannot dispense himself from this obligation because the rights belong to the council of priests. His actions have serious consequences since the appointment of parish priests, and all their juridical acts, would be invalid. He should apply to the Holy See for sanation.

511-514

Proc CLSA 2008, 285-302: Myriam Wijlens: "The Newness of the Council Constitutes the Newness of the Code" (John Paul II): The Role of Vatican II in the Application of the Law. (Seminar paper)

W. reflects on the aspects that mark out the "newness" of the Code. She starts by considering some concrete cases. Firstly she studies the different approaches that different ecclesiologies lead bishops to adopt when dealing with diocesan pastoral councils. Secondly she considers the question of admitting Protestants to Holy Communion (canon 844), saying that the Code has moved from a "no, unless" to a "yes, provided that" approach. Finally she considers the appointment of bishops and how the nuncio is to consult the faithful about the type of bishop needed. After these concrete cases W. then examines the question of Conciliar interpretation and hermeneutics. There are three main points: the rules for interpreting previous Councils cannot be used for Vatican II; the documents cannot be limited to the final approved texts; and the documents cannot be read in isolation. W. highlights that legislation must follow theology.

514

Proc CLSA 2008, 28-52: Bradford Hinze: The Reception of Vatican II in Participatory Structures of the Church: Facts and Friction. (Major address)

See above, canon 343.

515

AkK 176 (2007), 394-418: Heribert Hallermann: Was ist eine „rechtlich selbständig bleibende Pfarrei"? Kanonistische Anmerkungen zu laufenden strukturellen Veränderungen in deutschen Diözesen. (Article)

The Conference of German Bishops held a Study Day on 12 April 2007 which addressed the restructuring processes occurring in practically all the dioceses in Germany. As an *instrumentum laboris*, the bishops developed an overview outlining the measures in place in individual dioceses. In most cases these dealt with binding cooperation between parishes, while the amalgamation of parishes was to be found in only a few cases. A key phrase is that parishes remain "legally autonomous", an indication of which is the independence of parish councils and of their administration of the goods of the parish. This analysis demonstrates that in the German dioceses the theological and canonical concept of the parish according to the 1983 Code has not been widely received. As in earlier times, the stipendiary and exclusively clerically influenced concept of

the 1917 Code predominates. The article concludes by formulating some concerns from the perspective of contemporary canon law.

515

Proc CLSA 2008, 102-127: John J. M. Foster: To Protect by Civilly Valid Means: Reorganization and the Canonical-Civil Restructuring of Dioceses and Parishes. (Seminar paper)

See above, canon 369.

515

SCL IV (2008), 455-462: Augustine Mendonça: Consultation with the Presbyteral Council Prior to the Constitution of a Parish. (Reply)

See above, canon 502.

518

SCL IV (2008), 455-462: Augustine Mendonça: Consultation with the Presbyteral Council Prior to the Constitution of a Parish. (Reply)

See above, canon 502.

524

BEF LXXXIII 2/07, 221-246: Augustine Mendonça: The Requirement of 'Hearing' the Vicar Forane Before Appointing a Parish Priest. (Consultation)

M. first of all reviews the requirements for a valid appointment of a parish priest. He then addresses specific questions. He states that the relevant vicar forane is the one in whose vicariate the parish is situated, though some commentators have mentioned the advisability of the bishop also consulting the one in whose territory the appointee is currently working. He then reviews the literature in regard to the validity of any appointment of a parish priest made without such consultation, remarking that there is no unanimity among experts on this issue. He considers the genesis of canon 524 from *Christus Dominus*, nos. 30 and 31, the development through the *motu proprio Ecclesiae Sanctae* and the Directory for the Pastoral Ministry of Bishops (1973) and various revisions of drafts of the present Code of Canon Law, up to the present formula. He concludes that such consultation is probably not required for the validity of

the appointment, though it is certainly required for lawfulness, and the bishop would be remiss in omitting it.

536

Proc CLSA 2008, 28-52: Bradford Hinze: The Reception of Vatican II in Participatory Structures of the Church: Facts and Friction. (Major address)

See above, canon 343.

536-537

Proc CLSA 2008, 102-127: John J. M. Foster: To Protect by Civilly Valid Means: Reorganization and the Canonical-Civil Restructuring of Dioceses and Parishes. (Seminar paper)

See above, canon 369.

545-552

AkK 176 (2007), 419-432: Johann Hirnsperger: Der Pfarrvikar – Hilfsprieter oder auch künftiger Pfarrer? Überlegungen zu den cc. 545-552 CIC. (Article)

Like its 1917 predecessor the 1983 Code views the parish curate simply as an ordained assistant for the parish priest in his work of pastoral care. H. puts forward the contrasting view that a further purpose of this office ought to be that of the training of a future parish priest. He recommends that appropriate provisions be inserted into the Code. The concrete arrangements for training would be worked out at local level.

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

573

Vid 71 3/07, 185-194: John Sankarathil: Consecrated Life in India: The Asset of a Model, or a Challenge to Remodel? (Article)

S. considers the challenges and changes taking place in institutes of consecrated life, and in particular the specific challenges faced by such institutes in India, where vocations are booming. He considers the responsibility of the Church in India in regard to the promotion and formation of consecrated life and priestly life.

576

Vid 71 3/07, 185-194: John Sankarathil: Consecrated Life in India: The Asset of a Model, or a Challenge to Remodel? (Article)

See above, canon 573.

587

Franc Rodé: Vita consacrata e struttura normativa. Esperienza e prospettive del rapporto tra norma generale e statuti propri. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 133-146**)

See above, General Subjects (*Compilations*). In examining the relationship between the general law and the proper statutes of institutes of consecrated life R. describes the legislative, executive, and in some sense "judicial" competence of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life in this regard (cf. *Pastor Bonus*, no. 105). While the Code deals with elements of a general nature, it is for the proper statutes to specify whatever is necessary for safeguarding the vocation and identity of each institute, as well as regulating the institute's life, internal government and apostolate. In the final part of his presentation R. looks at the question of the statutes of the new forms of consecrated life referred to in canon 605.

588

BEF LXXXIII 6/07, 867-882: Javier González: Place and Participation of Non-Ordained Members (Cooperator Brothers) in Clerical Religious Institutes. (Consultation)

G. affirms that lay members do have a place in a clerical religious institute, and reviews their canonical status. He then considers their participation in the leadership and governance of the institute.

589-591

BEF LXXXIV 6/08, 887-898: Javier González: From Diocesan to Pontifical Right: The Shifting of a Religious Institute. (Consultation)

G. sets out the stages in the formation and approval of a religious institute, culminating in its being granted the status of diocesan right, and finally that of pontifical right. He considers appropriate reasons for an institute to seek to obtain pontifical right status, the requirements for an institute to be considered to be ready for such a status, and the procedure that would have to be followed.

594-595

BEF LXXXIV 6/08, 887-898: Javier González: From Diocesan to Pontifical Right: The Shifting of a Religious Institute. (Consultation)

See above, canons 589-591.

596

Elizabeth Cotter: The General Chapter in a Religious Institute, with Particular Reference to IBVM Loreto Branch. (Book)

See below, canon 631.

598-602

Vid 71 3/07, 185-194: John Sankarathil: Consecrated Life in India: The Asset of a Model, or a Challenge to Remodel? (Article)

See above, canon 573.

605

ACR LXXXV 4/08, 456-463: David Ranson: Religious Life into the Future. (Article)

R. reflects that, just as the 13th century monastic paradigm receded in the face of the new mendicant paradigm, religious life itself will become more marginal and recede into the background in the face of the new charismatic paradigm in the Church. This is a result of the rise of lay consciousness, the understanding of the universal accessibility of the mystery of holiness, and a new charismatic consciousness. It is now possible to achieve holiness through the new ecclesial movements, and not just by resorting to religious life. R. believes that religious life will always continue to exist. However, it will be essentially consecrated celibate men and women living in community and dedicated to mission. Mission is much more likely to be through small communities living on the margins of society rather than through institutional ministries.

605

Per 97 (2008), 223-249; 386-422: Luigi Sabbarese: La questione dell'autorità e le nuove forme di vita consacrata. (Article)

In this two-part article, S. opens up the issue of authority in relation to the emerging new forms of consecrated life in the Church. He examines the question in two different movements, or from two different perspectives: a) the relationship of the new forms of consecrated life to external ecclesiastical authority; b) the internal structures of government of these same new forms of consecrated life.

605

Franc Rodé: Vita consacrata e struttura normativa. Esperienza e prospettive del rapporto tra norma generale e statuti propri. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 133-146**)

See above, canon 587.

607

ACR LXXXV 3/08, 301-309: Rosa MacGinley: Nuns and Sisters – A Question of Historical Evolution. (Article)

MacG. provides a historical overview of the evolution of religious institutes of women into the categorizations of orders of nuns with solemn vows and

congregations of sisters with simple vows. The key historical moments are examined. These include Lateran IV, Trent and Vatican II; the Counter-Reformation and French Revolution; legislation of Pius IX, Leo XIII and Pius XII, and the effects of the 1917 Code of Canon Law. MacG. also deals with specific changes to status and adaptations made by various institutes of religious women in Australia over the last two centuries.

615

IC XLVIII 96/08, 477-492: Anne Bamberg: Monasterio autónomo y vigilancia particular del Obispo diocesano. En torno a la interpretación del c. 615 del Código de Derecho Canónico. (Article)

In the case of the monasteries considered autonomous, the canonical legislator requires that there should be special vigilance by the diocesan bishop, recognizing that when there is no internal hierarchy, authority can easily slip into abuse. After considering the status of autonomous monasteries, B. presents the case of a nun separated from her monastery, excluded, rejected, and finally exclaustrated against her will, without any respect for law, equity or charity. Dramatic cases of this sort call for greater personal responsibility on the part of diocesan bishops.

617-619

VR 104 (2008), 387-389: Robert Ombres: La autoridad y la frágil condición de los religiosos. (Conference presentation)

O. offers from a juridical standpoint some considerations which those in authority need to bear in mind when they are dealing with a perpetually professed religious who is passing through a period of crisis. To be a Superior means to have received authority from God and to exercise it in a spirit of service, not refusing the duty to take decisions and give commands. Canons 618-619 set out the needs which Superiors should take into account in such situations. Apart from their personal authority, they also have the assistance of their respective councils. Canon law offers numerous possibilities for cases where religious life cannot be maintained, or is affected in its fundamental aspects. These possibilities include granting permission for absence; exclaustration (voluntary or in some cases imposed); transfer to another institute; or even expulsion. In the last-mentioned case the Code incorporates several safeguards to ensure that the rights of the person in question are truly respected. O. ends with the thought that those who exercise authority need to study each situation very carefully, as it can happen at times that it is the authority itself which is in crisis.

627

FCan III/1 (2008), 47-70: Marek Stokłosa: Il consiglio del superiore provinciale. (Article)

Religious institutes are generally divided into provinces (cf. canon 621) which serve as intermediary structures between the institute as such and individual houses. Their governance is personal, and is confided to a single superior, the provincial. According to canon 627 the provincial superior is assisted in the exercise of his office by a council, constituted according to the norms of the constitutions. The constitutions must determine, *inter alia*, the number of council members, how they are appointed, the qualifications they are required to hold, how long they are to remain in office, and how they are to exercise their function. Of its nature a council is not a governing structure with collegial power in which the provincial is simply a *primus inter pares* or a mere executor of the council's decisions. It is always the provincial superior who makes the decisions and takes responsibility for them, even though to arrive at some of them the law requires the council to express its consent or viewpoint on those matters specifically defined in general or particular law. Nevertheless, there is at times great confusion as to whether or nor the superior is a member of the council and whether he has the right to cast his own vote in cases in which general or particular law requires that he obtain the consent of the council in order to proceed.

627

VR 104 (2008), 387-389: Robert Ombres: La autoridad y la frágil condición de los religiosos. (Conference presentation)

See above, canons 617-619.

631

Elizabeth Cotter: The General Chapter in a Religious Institute, with Particular Reference to IBVM Loreto Branch. (Book)

C. examines the historical antecedents of the concept of the general chapter, the supreme authority in an institute of consecrated life. This provides the basis for an examination of the contemporary understanding of the nature of its power and authority as portrayed in the 1983 Code of Canon Law. The general chapter is analyzed in terms of its juridical status, collegial nature, participative character and representative function as well as its dynamic aspects and faith dimension. C. applies the findings to one institute of consecrated life, the Institute of the Blessed Virgin Mary Loreto Branch. This application provides

an example of the challenges inherent in working participatively and collaboratively within a hierarchical structure. Because consecrated life has an inalienable ecclesial dimension, understanding authority and power and their exercise in institutes of consecrated life has relevance for understanding authority and its exercise in other organs of authority at all levels in the Church. (For bibliographical details see below, Books Received.)

631-633

VR 104 (2008), 164-240 (Cuaderno 3: entire issue): Celebrar capítulos... ¿para qué? (Articles)

This issue of VR is dedicated to a series of reflections on the nature and purpose of the chapter, taking into account that neither ecclesial life, nor that of the immense majority of consecrated families, is what it was two decades ago: in virtually no institute is there only one language spoken; many have seen a sharp reduction in the number of their brothers or sisters in some regions and the arrival of numerous young vocations from other parts of the world; the Church now expects from the religious another kind of listening and presence in the world; relationships with the laity and other institutes have also changed. Chapters still have a place in these altered circumstances: the question is how to focus them and take them forward. In the words of Cardinal Pironio, the then Prefect of the Congregation for Religious and Secular Institutes, some 30 years ago, a chapter "is always a Paschal celebration … Every chapter should leave a sense of freshness in the Church, a good dose of Paschal optimism".

638

Per 97 (2008), 251-282: Yuji Sugawara: Amministrazione e alienazione dei beni temporali degli Istituti religiosi nel Codice (can. 638). (Article)

S. provides a comprehensive commentary on the four paragraphs of canon 638 concerning the administration and alienation of the temporal goods owned by religious institutes. He notes that there are no universally defined limits or criteria for extraordinary administration or alienation. Instead, these matters are remitted to the proper legislation of each institute. S. sees this as an example of the application of the principle of subsidiarity as well as an illustration of the rightful internal autonomy of each institute as indicated in canon 586 §1. Ultimately the proper legislation must express the fundamental witness of each institute rather than giving first place to norms for the efficient administration of goods.

655-658

BEF LXXXIV 4/08, 589-598: Javier González: Renewal of Religious Profession. (Consultation)

G. considers the duration of temporary religious profession and the conditions governing its renewal. He then considers the situation of a temporarily professed individual who is unable to renew his profession on account of difficult circumstances rendering him "out of communication" with his institute.

678

Proc CLSA 2008, 128-157: Lynn Jarrell - Daniel Ward: Catholic Identity – Ministry – Liability – Employment: Trends and Challenges for US Dioceses and Religious Institutes/Societies. (Seminar paper)

See above, canon 222.

684-704

VR 104 (2008), 387-389: Robert Ombres: La autoridad y la frágil condición de los religiosos. (Conference presentation)

See above, canons 617-619.

686-687

Per 97 (2008), 423-454: Yuji Sugawara: Esclaustrazione di un membro dall'istituto religioso (cann. 686-687). (Article)

S. offers a detailed comment on canons 686-687 dealing with the exclaustration of religious. Beginning with a review of how the issue was regulated in the 1917 Code, he proceeds to examine the current legislation. He shows how the canons distinguish between simple exclaustration (can. 686 §1), imposed exclaustration (can. 686 §3), and the exclaustration of nuns (can. 686 §2). Canon 687 lays out the principal effects of exclaustration. While this may be a cause of pain for the individual and the other members of the institute, exclaustration is not a definitive separation from the institute, although it is placed in the section of the Code dealing with separation.

690

BEF LXXXIII 3/07, 487-493: Javier González: Is Readmission to the Same Secular Institute Possible? (Consultation)

G. addresses the question of the possibility of readmission to the same secular institute, the competent authority to decide in such cases, and the conditions under which it may occur.

695-701

Per 97 (2008), 283-324: Juan Miguel Anaya Torres: La dimissione dei religiosi. Un percorso storico che mostra l'interesse pastorale della Chiesa. (Article)

Dismissal from a religious institute is not something that happens very frequently. When it occurs, it is an occasion of sadness and trauma for individual and institute alike. Dismissal may be defined as the rupture of the bonds of membership of the institute imposed on the individual as a result of his or her behaviour that is either criminal or morally reprehensible. In this article, A.T. gives a brief history of the development of the practice in canon law, presents the current norms of the Code of Canon Law and the Code of Canons of the Eastern Churches, offers a reflection on the special situation of clerical religious who are dismissed, and concludes with some statistical information and a few practical cases.

710

BEF LXXXIII 1/07, 77-80: Javier González: Is There any Difference Between a Secular Institute and a Society of Apostolic Life? (Consultation)

G. reviews the law in regard to secular institutes and societies of apostolic life to show their own specific character and the differences between them.

710-714

Vid 71 8/07, 567-589: Subhash Anand: Secular Institutes and the Asian Christian Family. (Article)

A. considers four aspects of modern life in Asia which tend towards alienation: urbanization, nuclearization, technocracy, and consumerism. He then considers the role of the secular institutes in regard to evangelical secularity, chastity, and poverty, which open the way to a rediscovery of solidarity, intimacy, authenticity, and depth.

718

QDE 20 (2007), 402-414: Fabio Marini: Gli istituti secolari: amministrazione dei beni temporali e personalità giuridica (can. 718). (Article)

M. takes canon 718 as the concrete focus to discuss the wider question of how the Church reconciles the high value of evangelical poverty with daily necessity. Firstly, he deals with the juridical personality of the secular institute. There is a clear relationship between juridical personality and the administration of goods in the Code (canon 1279 §1). It is required that economic patrimony be under a physical or juridical person, e.g. a religious institute or association. No explicit reference is made to the juridical personality of secular institutes. Canon 718 makes only a general reference to Book V of the Code which, properly speaking, concerns only public juridical persons in the Church. The question explored by M. is whether this reference is an implicit recognition of juridical personality. This opinion was confirmed by the Congregation for Religious and for Secular Institutes, in a Communication on the Code in 1983. Such a position is justified by the need to offer certainty in regard to the application of the norms; otherwise there would be a risk of leaving these institutes totally at the mercy of civil law, rendering every type of ecclesial control and protection useless. De Paolis and other canonists also support the position that secular institutes are public juridical persons in the Church. Opposed to this position is the founding legislation for secular institutes in 1947 which allowed them only to possess houses. The legislation made no provision for apostolic works, and distinguished between institutes and moral persons. Secular institutes became civil entities ecclesiastically recognized. Secular institutes and personal prelatures were not recognized in Italian civil law until 1989, when they were equated to institutes of consecrated life. This obviously has no bearing on how canon 718 is to be interpreted. Noted canonists such as Gutiérrez and Rincón Pérez do not maintain that secular institutes have juridical personality. Beyer distinguished between two institutes, those without works and those that direct them. The second are similar to religious, and the Code could have directed them to the norms concerning religious, whereas the first need only the minimum: houses for those responsible for running the institute and for sick members. The main preoccupation for Beyer is that the secular institute should not lose its secularity in the administration of goods. For this reason, in such matters, the secular institute should refer to the Holy See. In the absence of a clear reading of the universal law one must return to the law itself. The translation of *necnon* (canon 718) offers a clear equivalence between the institute's own law and common law. In the absence of certainty the canon seems to suggest that the founding texts of institutes should resolve the question. Currently four situations seem to have emerged, involving (i) institutes that have said nothing on the matter because they own no property or

goods; (ii) institutes that have houses but are owned by civil associations, the secular institute having the same civil recognition; (iii) secular institutes that refer indirectly to owning juridical personality; (iv) those that expressly state that they have juridical personality. This diversity highlights the fact that secular institutes do not have one clear way of understanding their capacity to administer goods and own property.

731

BEF LXXXIII 1/07, 77-80: Javier González: Is There any Difference Between a Secular Institute and a Society of Apostolic Life? (Consultation)

See above, canon 710.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747

LJ 158/07, 4-22: John Warwick Montgomery: Slavery, Human Dignity and Human Rights. (Article)

See above, General Subjects (*Human rights*).

747

LJ 158/07, 23-29: John Francis Maxwell: The Catholic Church and Slavery. (Article)

See above, General Subjects (*Human rights*).

747

S 70 (2008), 727-749: Jesu Pudumai Doss: Diritti umani nel Codice di Diritto Canonico. (Article)

See above, General Subjects (*Human rights*). In the face of the assertion that religions or the laws of religions have little or nothing to do with human rights, and at times contradict the ideals of the Universal Declaration of Human Rights, D. looks at the ways in which the Catholic Church has accepted human rights at the various stages of her history, particularly in the revision of the Code of Canon Law. He then looks at how human rights have been received into the Code, and the challenges facing the Church. In 1979 Pope John Paul II said to the Rota that "the task of the Church and her historical merit, which is to proclaim and defend in every place and in every age the fundamental human rights, does not exempt her but, on the contrary, obliges her to be herself a *mirror of justice (speculum iustitiae)* for the world." The first challenge is therefore the "credible" proclamation of human rights. In addition, a Church which feels the need to be present in history and to share the sorrows and joys of mankind must "hear, distinguish and interpret the many voices of our age" (*Gaudium et Spes*, no. 44) – including the language of human rights.

747-750

Norbert Lüdecke: Einmal Königstein und zurück? Die Enzyklika Humanae Vitae als ekklesiologisches Lehrstück. (Article in **Meier-Platen-Reinhardt-Sanders, Hg:** ***Rezeption des Zweiten Vatikanischen Konzils in***

***Theologie und Kirchenrecht heute. Festschrift für Klaus Lüdicke zur Vollendung seines 65. Lebensjahres*, pp. 357-412**)

L.'s article focuses on the so-called Königstein Declaration of the German bishops in response to Pope Paul VI's Encyclical *Humanae Vitae* (1968), the dissent (especially that of Hans Küng) surrounding the teaching, and the "doctrinal infrastructure" of canons 747-750.

752

N XLV 5-6/08, 230-245: G. Ferraro: Il "Credo del popolo di Dio" di Paolo VI, durevole atto liturgico e del Magistero. (Article)

F. marks the 40th anniversary of the publication of Paul VI's "Credo of the People of God" by reflecting on its ubiquity in documents of the Magisterium, and in a more complete way in the Catechism of the Catholic Church.

760

Ang 85 (2008), 791-799: Marcelo Neves - André Boccato: Comentário sobre o cânon 760 do Código de Direito Canônico. (Article)

N. and B. write that canon 760 is the climax of a crescendo created by canons 756-760: Pope, bishops, priests, religious, lay faithful… leading up to the Mystery of Christ. This highlights the fact that the ministry of the Word of all people in the Church must be both Christological and Christocentric. They base this especially on the teaching of Paul VI that the salvific message of Christ has to be at the centre of all evangelization. This ministry of the Word has four essential bases: Sacred Scripture, Tradition, Liturgy, and the Magisterium. N. and B. then relate this to the *Lineamenta* of the 2008 Synod of Bishops, highlighting that it seeks to continue carrying out the message of *Dei Verbum* and that the Revelation of the Word of God can never be separated from the Church.

781

Ivan Dias: Accettazione e operatività del diritto canonico nei territori di missione. Confronto culturale e limiti tecnici. (Conference presentation in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 63-82**)

See above, General Subjects (*Compilations*). Universal law is the primary vehicle for expressing divine law, but at the same time it should be as open as

possible to the contributions of particular law. The unity of the Church does not require normative uniformity at all costs; indeed, universal legislation should favour the process of inculturation of the faith in each place, and should not attempt to impose everywhere specific models arising out of particular experiences. The inculturation of the Gospel and the evangelization of culture are two complementary aspects in the one mission of evangelization. The Code offers a basis for the creation of a diocesan law that has a specific identity and is more attentive to the socio-cultural context of the ecclesial community whose life it regulates. D. also comments on the extensive revision of the system of faculties carried out by the 1983 Code, which now operates on the basis of reservations of power rather than the granting of special faculties, finding its vital fulcrum in canons 87 and 381 §1. Thus the diocesan bishop has all the ordinary, proper and immediate power he needs for the exercise of his ministry, except for those cases reserved to the Supreme Authority or other ecclesiastical authority. As between particular Churches and the universal Church, questions of subsidiarity arise (cf. canons 342-348 on the synod of bishops, and canons 447-459 on episcopal conferences), and D. talks of the need for a "lawful autonomy" of life and government at every level at which the *communio fidelium* operates.

793-806

AA XIV (2007), 319-341: Congregazione per la Educazione Cattolica: Educare insieme nella scuola cattolica. (Document)

This is the Italian text of the document *Educating Together in the Catholic School* issued on 8 September 2007 by the Congregation for Catholic Education.

793-806

AA XIV (2007), 343-358: José Bonet Alcón: Educar desde la Trinidad (Comentario al documento "Educar juntos en la escuela católica", de la Congregación para la Educación Católica del 8/09/07"). (Commentary)

A. comments on the document *Educating Together in the Catholic School* from the Congregation for Catholic Education under the following headings: community/communion in the mission of education; a pathway of formation for educating together; community/communion to open out to others; final reflections.

796-806

ELJ X 2/08, 174-190: Philip Petchey: Legal Issues for Faith Schools in England and Wales. (Article)

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

800

LJ 158/07, 54-64: Javier García Oliva: British Ideas for the Teaching of Religion in State Schools in Spain. (Article)

G.O. reviews the recent dispute in Spain regarding religious teaching in schools, and compares it with the teaching of religion in State schools in England and Wales.

807-814

Vid 71 10/07, 742-762: George Nedungatt: Higher Education International and the Idea of a Catholic University in India. (Article)

In view of the priority of education among the millennium development goals of the United Nations, N. evaluates higher education in India, taking into account higher education in Asia generally, and the presence of Catholic universities. He explains the Indian regulatory system for higher education, and the advantages and difficulties involved in establishing a Catholic university in India. He concludes that the establishment of such a university would be a worthwhile goal.

807-821

AkK 176 (2007), 466-482: Heribert Schmitz: Päpstliche Philosophisch-Theologische Hochschule Benedikt XVI. Heiligenkreuz. Anmerkungen zur Bezeichnung „Päpstliche Hochschule“. (Article)

By a decree of 28 January 2007 the Congregation for Catholic Education erected the Heiligenkreuz academy of philosophy and theology as a university of philosophy and theology under pontifical jurisdiction, with the right to confer the title of Master of Theology. Since then the university has described itself as a “pontifical university”. The title “pontifical” may be applied only in particular circumstances. The decree of erection itself is not such a circumstance, but the title may be granted in other ways. During his visit to the abbey of Heiligenkreuz, Pope Benedict XVI frequently referred to the university as “pontifical”. The university can therefore be considered “pontifical” as it has

subsequently been recognized as such by the Pope, thus remedying the original defect.

815

N XLV 3-4/08, 136-148: Francis Arinze: Promotion of the Sacred Liturgy in a Catholic University. (Lecture)

This lecture was given at the Catholic University of East Africa, Nairobi, on 13 March 2008. In the first part of his presentation A. focuses on the role of the Liturgy department, not only in the academic study of the typical texts, including their *praenotanda*, but also in encouraging students to realize the central role of liturgy in the life of the Church, and its foundations in the Scriptures. He then moves on to liturgical formation and inculturation, particularly in an East African context, and the place of popular devotions.

815-821

Zenon Grocholewski: L'insegnamento del diritto canonico dopo la promulgazione del Codice del 1983. (Conference presentation in **Markus Graulich (ed): *Il Codice di Diritto Canonico al servizio della missione della Chiesa*, pp. 33-52**; also in **Pontificio Consiglio per i Testi Legislativi: *La legge canonica nella vita della Chiesa*, pp. 113-132**)

See above, General Subjects (*Compilations*). Starting out from the norms on the teaching of canon law issued after 1917, G. traces the development of this teaching in its various stages, including the difficult period before and after Vatican II when the so-called Church of law was being contrasted with the so-called Church of love. Stressing the close link between the Council's teaching and the provisions of the 1983 Code he looks at the norms on the study of canon law contained in the Apostolic Constitution *Sapientia Christiana* for ecclesiastical universities and faculties, together with the reforms introduced after the Decree of the Congregation for Catholic Education *Novo Codice* (2 September 2002), aimed at creating the conditions for a profitable and genuine study of canon law.

816-817

DPM 13 (2006), 17-25: Ariel D. Busso: Besonderheiten der kirchlichen Ehejudikatur in Argentinien. (Article)

See below, canons 1419-1441.

822

AkK 176 (2007), 433-451: Jens Petersen: Medienrecht in der Katholischen Kirche. (Article)

The Catholic Church has a fundamentally open attitude towards the modern media, as is most clearly demonstrated by its self-restraint with regard to media regulation. This media-friendly position is based on the insight that in the past comparatively restrictive regulations concerning media rights, including censorship, have proved to be inadequate or inappropriate, and have conflicted with the Church's evangelizing mission. In its engagement with the media, the Church places its sacramental practices at the centre of interest, and thus the media becomes an instrument for proclaiming the faith without serving a commercial agenda. However, particular problems arise if satirical criticism of the Church is no longer concerned with airing grievances, but deliberately seeks to defame the Church in order to gain worldwide attention. Such defamations are often based on the calculation that the Pope will not defend himself against them. Voluntary self-regulation by the media, which operates prior to publication, is more effective than public intervention by bishops. Such self-regulation runs parallel to the Church's own reserve with regard to the regulation of mass media.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

834

N XLIII 11-12/07, 600-610: Francis Arinze: The Role of Liturgical Norms in the Eucharistic Celebration. (Address)

These reflections were given at the "Path to Rome International Conference" in Mexico City on 3 November 2007. A. explains the development of different liturgical families or Rites. Celebration of the Sacraments, especially the Eucharist, both manifests faith and instructs in it. This is why the Church is careful to safeguard norms and formulae. Norms serve to protect and transmit the liturgy so that it does not need to be reinvented in every age. They help preserve the vertical dimension of the Mass and foster healthy ecclesiology and unity. Failure to observe them creates confusion and factionalism, serves to obscure the faith and deprive the people of legitimate participation, and can lead to secularization and banality.

834-839

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

Given the vastness of the field the author avoids those areas covered by Chiramel in SCL III (2007) 327-349 (see *Canon Law Abstracts*, no. 100, p. 86) and seeks to cover only the preliminary canons on the sacraments, certain aspects of Eucharistic discipline not addressed by Chiramel, selected canons on penance and anointing, cemeteries and funerals, feast days and days of penance.

835

N XLV 3-4/08, 149-191: A. Ward: The Figure of the Deacon in the "Martyrologium Romanum". (Article)

See above, Historical Subjects (*First millennium*).

838

FCan III/1 (2008), 91-97: Pontifício Conselho para os Textos Legislativos: A natureza jurídica e a extensão da «*recognitio*» da Santa Sé. (Note)

See above, canon 446.

838

N XLV 3-4/08, 132-133: Congregatio de Cultu Divino et Disciplina Sacramentorum: Elementa pro catechesi tradenda circa translationem in linguas vulgares verborum "Pro Multis". (Note)

At the request of various conferences of bishops the Congregation for Divine Worship prepared this short note setting out six points explaining the reasons for revising the translation of "*pro multis*" in the formula of consecration: Christ dies for all, and is the one Saviour. There is no doubt as to the validity of the formula "for all", but neither the Roman Rite nor any other has ever used the expression "for all". "For many" is the faithful translation, whereas "for all" is rather an interpretation or explanation.

838

N XLV 5-6/08, 175-176: Congregatio de Cultu Divino et Disciplina Sacramentorum: Decretum. (Decree)

This decree makes three small changes to the Roman Missal: the wording of the prayer for the bishop when a bishop celebrates (GIRM 149); Eucharistic Prayers for Masses with children are henceforth not to be included, but published separately; additional formulae for the dismissal are to be introduced. The decree is dated 8 June 2008, and takes effect on 1 December 2008, but the first of the above may be observed immediately.

838

N XLV 5-6/08, 177-180: Congregatio de Cultu Divino et Disciplina Sacramentorum: Lettera alle Conferenze dei Vescovi sul "Nome di Dio". (Letter)

The letter spells out the rationale behind the provision of article 41 of *Liturgiam Authenticam* that the Name of God, or Tetragram, is not to be used in Liturgical texts, but rendered "Lord". This was the practice among Jews well before the time of Christ, as evidenced by the Septuagint translation, and shaped the development of Christology in the New Testament. The Congregation stipulates

that in chants and prayers during liturgical celebrations, as well as versions of Scripture used in the Liturgy, the name of God must be rendered "Lord". Where in Hebrew "Adonai" is followed by the Tetragram, it is to be rendered "Lord God".

838

N XLV 5-6/08, 181-184: Congregatio de Cultu Divino et Disciplina Sacramentorum: Letter to the Bishops' Conferences on the "Name of God". (Letter)

As above in English.

838

N XLV 5-6/08, 185-188: Congregatio de Cultu Divino et Disciplina Sacramentorum: Lettre aux Conférences des Evêques sur le "Nom de Dieu". (Letter)

As above in French.

838

N XLV 5-6/08, 189-192: Congregatio de Cultu Divino et Disciplina Sacramentorum: Carta Circular a las Conferencias de Obispos sobre el "Nombre de Dios". (Letter)

As above in Spanish.

838

N XLV 5-6/08, 193-196: Congregatio de Cultu Divino et Disciplina Sacramentorum: Carta às Conferências Episcopais sobre o "Nome de Deus". (Letter)

As above in Portuguese.

838

N XLV 5-6/08, 197-201: Congregatio de Cultu Divino et Disciplina Sacramentorum: Rundschreiben an die Bischofskonferenzen über den "Namen Gottes". (Letter)

As above in German.

838

N XLV 5-6/08, 227-229: Arthur Serratelli: The Language of the Liturgy: The Value of the New Translations. (Article)

S. offers reflections on the proposed new English-language translations of the Roman Missal in the light of *Liturgiam Authenticam* and of comments by Erasmus on the process of translation.

838

N XLV 7-8/08, 367-387: Congregatio de Cultu Divino et Disciplina Sacramentorum: Reimpressio emendata "Missalis Romani". (Report)

A number of corrections and variations have been incorporated in a new printing of the typical edition of the Roman Missal published in 2002. These are listed here.

838

SCL IV (2008), 27-42: Pontifical Council for Legislative Texts: Explanatory Note: The Legal Nature and the Extension of *Recognitio* of the Holy See. (Note)

See above, canon 446.

BOOK IV, PART I: THE SACRAMENTS

840

N XLIII 11-12/07, 600-610: Francis Arinze: The Role of Liturgical Norms in the Eucharistic Celebration. (Address)

See above, canon 834.

840

Proc CLSA 2008, 85-101: James J. Conn: Developments in Sacramental Law in the 25 Years Since the Code's Promulgation. (Seminar paper)

C. firstly considers innovations in the 1983 Code's treatment of the sacraments and the putting into effect of the Council's teachings, especially on *communicatio in sacris*. He then considers the various sacramental Authentic Interpretations and USCCB General Decrees made since 1983. He goes on to study various other official documents. He criticizes the Ecumenical Directory for trying to derogate from the Code without approval *in forma specifica*; he also considers *Ecclesiae de Mysterio*, the third GIRM, *Misericordia Dei*, *Ecclesia de Eucharistia*, *Redemptionis Sacramentum*, and the 2000 CDF decision on anointing of the sick. He examines various aspects of these documents, but especially the ongoing theme of the right of priests to concelebrate Mass. In conclusion he recommends more detailed particular law to advance universal law, and recommends more careful arrangements for communal anointing, and the effects of parishes of choice. Finally he recommends a more careful choice of types of documents rather than having legislation included in executive documents.

840-848

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See above, canons 834-839.

844

IE XX 2/08, 347-367: Carlo Fabris: Considerazioni canonistiche in tema di "*communicatio in sacris*". (Article)

The ecumenical movement has juridical aspects which cannot be disregarded. Among these, F. looks at what may be called "internal ecumenical law" – the law within each religious confession dealing with the principles and attitudes which that confession adopts in relation to ecumenical matters. In this regard F. considers in some detail the canonical norms that refer to *communicatio in sacris* as contained in canon 844. (See also below, canons 1124-1129, on marriage.)

844

Per 97 (2008), 325-378: Georges-Henri Ruyssen: Eucaristia ed ecumenismo. Evoluzione della normativa universale e confronto con alcune norme particolari. (Article)

In this lengthy and richly annotated article, R. considers the ever-present and often thorny issue of *communicatio in sacris*. He does so, not from the perspective of a *gravius delictum* but from that of current pastoral challenges. R. traces the history and origins of the contemporary question and the norms dealing with it beginning with Vatican II, and moving through the 1983 and 1990 Codes and the Ecumenical Directory of 1993. Finally, he devotes attention to efforts in some particular Churches to establish and implement norms to regulate *communicatio in sacris*.

844

Proc CLSA 2008, 285-302: Myriam Wijlens: "The Newness of the Council Constitutes the Newness of the Code" (John Paul II): The Role of Vatican II in the Application of the Law. (Seminar paper)

See above, canons 511-514.

844

SCL IV (2008), 185-214: Paul Pallath: Sacramental Sharing According to the Second Vatican Council and Catholic Canon Law. (Article)

P. looks first at the theological and ecclesiological grounds for sacramental sharing, and for the distinctions made between Churches of the East, and ecclesial communities of the West. He analyzes each section of canon 844 in

turn: general principles; Catholics seeking the sacraments of penance, Eucharist and anointing from non-Catholic ministers; administration of the same by Catholic ministers to Orthodox faithful; to Protestants; competence of diocesan bishops and local organs of collegial governance. He then considers baptism and matrimony. He argues that if Eastern non-Catholic Christians cannot have access to their own minister then a Catholic priest, Latin or Eastern, can lawfully baptize the child into the non-Catholic Church of the parents. He also argues that the same would apply to the marriage of two Orthodox, by virtue not only of the extraordinary form of marriage, but also of the explicit legislation contained in canon 833 §1 of the CCEO.

844

Walter Kasper: Diritto canonico ed ecumenismo. (Conference presentation in **Markus Graulich (ed):** ***Il Codice di Diritto Canonico al servizio della missione della Chiesa*****, pp. 53-69**)

See above, General Subjects (*Compilations*).

846

N XLIII 11-12/07, 600-610: Francis Arinze: The Role of Liturgical Norms in the Eucharistic Celebration. (Address)

See above, canon 834.

BOOK IV, PART I, TITLE I: BAPTISM

850

N XLV 3-4/08, 134: Congregatio pro Doctrina Fidei: Responsa ad proposita dubia de validitate baptismatis. (Reply)

The Congregation for the Doctrine of the Faith replies to an enquiry that the formulae "I baptize you in the name of the Creator, and of the Redeemer, and of the Sanctifier" and "I baptize you in the name of the Creator, and of the Liberator, and of the Sustainer" are invalid. Any person baptized with these formulae must be re-baptized absolutely.

850

SCL IV (2008), 17-18: Congregation for the Doctrine of the Faith: Responses to Questions on the Validity of Baptism. (Reply)

As preceding entry.

850

SCL IV (2008), 18-24: Antonio Miralles: A New 'Response' of the Congregation for the Doctrine of the Faith: Validity of Baptism. (Comment)

M. explains the significance of the response of the Congregation for the Doctrine of the Faith as to the validity of variant formulae such as "In the name of the Creator, the Redeemer and Sanctifier". Given the importance attached to the Lord's command about baptism expressed in the New Testament, the problem cannot be minimized. It would be irresponsible to play down the danger by thinking that God can remedy human failures. The Trinity must be invoked in a way that distinctly expresses the persons by their respective names. This has been the constant teaching of the Magisterium. The words are effective not simply because they are spoken, but because they express the object of faith. These variants have been introduced from a feminist perspective, but undermine our faith in the Trinity because they use aspects that are common rather than distinctive, referring to the economy of salvation. Those affected are fraudulently deprived of the grace of baptism, an injustice that must be remedied without delay.

869

N XLV 3-4/08, 134: Congregatio pro Doctrina Fidei: Responsa ad proposita dubia de validitate baptismatis. (Reply)

See above, canon 850.

869

SCL IV (2008), 17-18: Congregation for the Doctrine of the Faith: Responses to Questions on the Validity of Baptism. (Reply)

See above, canon 850.

869

SCL IV (2008), 18-24: Antonio Miralles: A New 'Response' of the Congregation for the Doctrine of the Faith: Validity of Baptism. (Comment)

See above, canon 850.

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

897-958

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See above, canons 834-839.

899

LitJ 58 (2008), 3-34: Norbert Lüdecke: Kanonistische Anmerkungen zum Motu Proprio *Summorum Pontificum*. (Article)

L. reflects on the *motu proprio* on the use of the Roman liturgy prior to the 1970 reform, examining the form in which it was presented, and its content.

899

Proc CLSA 2008, 63-73: John Baldovin: Reflections on *Summorum Pontificum*. (Seminar paper)

B. looks at liturgical reform over the centuries, and at the attitude that inspired *Summorum Pontificum*. He questions the Pope's claim that the 1962 Missal was "never abrogated". He considers the question of which formula (Paul VI or Bl. John XXIII) should be used for confirmations in the extraordinary form. B. states that bishops must make sure that priests are suitably trained in the extraordinary form before celebrating it. He concludes that bishops should not encourage the extraordinary form and encourages the search for a reverent and worshipful celebration of the ordinary form.

924

RTL 39 (2008), 394-409: Felicia Dumas: Fonctions liturgiques et symboliques du vin dans l'orthodoxie. (Article)

See above, General Subjects (*Comparative law*).

945-958

AA XIV (2007), 307-316: Alberto Perlasca: Óbolo de San Pedro (canon 1271). Misas, así llamadas, pluri-intencionales. Anotaciones. (Article)

See below, canon 1271.

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

959-997

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See above, canons 834-839.

992-997

BEF LXXXIV 5/06, 769-783: Javier González: The Gift of Indulgences. (Consultation)

G. explains the teaching of the Church in regard to indulgences, with particular reference to the Catechism of the Catholic Church, addresses some common misconceptions about them, and refers to the Enchiridion of Indulgences.

996

N XLV 5-6/08, 202-204: Paenitentiaria Apostolica: Decretum: Saeculo XX expleto postquam Sanctus Apostolus Paulus in terris ortus est speciales conceduntur Indulgentiae. (Decree)

Various indulgences are granted for one year only to mark the 2000th anniversary of the Apostle St Paul.

BOOK IV, PART I, TITLE V:
THE SACRAMENT OF ANOINTING OF THE SICK

998-1007

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See above, canons 834-839.

BOOK IV, PART I, TITLE VI: ORDERS

1018-1023

DPM 11 (2004), 111-116: Georg May: Zwei Fragen aus der Praxis zur Eheassistenz und zur Weihespendung. (Article)

See below, canon 1111.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

AA XIV (2007), 361-383: Giordano Caberletti: Bratislavien-Tyrnavien. Nullitatis matrimonii (ob exclusam matrimonii sacramentalem dignitatem). (Sentence)

See below, canon 1101.

1055

AA XIV (2007), 385-393: Víctor Enrique Pinto: Comentario a la sentencia Bratislavien-Tyrnavien. *coram* Giordano Caberletti, del 24-10-03, Prot. N. 17.602. (Commentary)

See below, canon 1101.

1055

DPM 10 (2003), 129-153: Andreas Weiß: Auswirkungen des staatlichen Lebenspartnerschaftsgesetzes auf das kirchliche Recht. (Article)

W. offers some considerations regarding same-sex unions in Germany and their impact on Church law.

1055

DPM 12 (2005), 123-165: Burkhard Josef Berkmann: Die Ehe zwischen Kirchenrecht und Europarecht. (Article)

B. examines how European marriage law – including laws on divorce, transsexual and same-sex unions – impacts on canonical marriage law. He sets out the Church's view of these issues and looks at how some of them may be dealt with by way of concordats.

1055

DPM 13 (2006), 27-35: Erzbischof Christofor (Kryštof): Die Ehe und die Familie aus Sicht der orthodoxen Kirche. (Article)

C. gives a description of marriage and the family from the Orthodox perspective.

1055

DPM 13 (2006), 37-55: Walter Homolka: Das jüdische Eherecht. (Article)

H. describes marriage from the Jewish perspective, presenting it as a sacred union bringing with it sacred duties. He studies the legal prohibitions on marriage, the different phases of marriage, and the obligations arising at each stage.

1055

DPM 13 (2006), 73-92: Matthias Pulte: Die eherechtlichen Akzente in den Ansprachen Papst Johannes Pauls II. an die Rota Romana von 1979 bis 2004. (Article)

P. studies the main legal themes (general legal principles, procedural law, and specific issues of matrimonial law) dealt with in John Paul II's addresses to the Roman Rota from 1979 to 2004, analyzing the Pope's understanding of marriage and how his teaching has influenced subsequent Rotal jurisprudence.

1055

DPM 13 (2006), 93-105: Gerda Riedl: Macht der Vertrag das Sakrament? Theologische Überlegungen zu einem heiklen Thema des kanonischen Eherechts (c. 1055 CIC). (Article)

R. asks whether it is the marriage contract that makes the sacrament, and in the context of canon 1055 examines the relationship of sacramental law to sacramental theology.

1055

IC XLVIII 96/08, 415-431: Juan Ignacio Bañares: Matrimonio, género y cultura. (Conference presentation)

B. explains what is understood by gender and gender ideology in relation to the anthropological reality of marriage in today's cultural context. According to the ideological conception in question, gender is treated as independent of one's sexual condition and derives exclusively from the will of the individual. In view of the grave consequences of this ideology, whose cultural bases B. explains, a positive response from science and society is both possible and desirable.

1055

IE XX 1/08, 125-148: Tribunale della Rota Romana: Reg. *Triveneti seu Veronen*. Nullità del matrimonio. Esclusione della dignità sacramentale. Sentenza definitiva, 10 marzo 2006. De Angelis, *Ponente* (con *nota* di M. A. Ortiz, *Volontà matrimoniale naturale e rifiuto della dignità sacramentale*). (Sentence and commentary)

This marriage followed a friendly relationship during the female respondent's studies as a foreigner in the petitioner's country. He was a baptized Catholic; she received baptism shortly prior to the marriage in 1981. By then, she was pregnant. At the time of receiving baptism and throughout married life she showed a total detachment from the Catholic faith and the sacraments. They had two children, and the marriage was a happy one at first, but over a period of ten years or so difficulties arose, and in 1994 they separated. Late in 1995, the petitioner requested a declaration of nullity on account of the respondent's exclusion of sacramental dignity; she did not cooperate. A negative verdict was given in 1998, and on appeal to the Rota, the respondent submitted a written deposition. The *species facti* section of the Rotal sentence shows that she openly admitted that she never considered baptism or marriage from any supernatural perspective; but she was also quite clear that she had married in freedom and with responsibility; she was convinced that everything would be happy, and she had not excluded any of the goods of marriage: "About indissolubility I had no reservations, nor about faithfulness." The decision *coram* Stankiewicz was *non constat*. In his commentary on the sentence, O. points out that there are only a few Rotal decisions on exclusion of sacramental dignity, despite its interest in canonical doctrine nowadays. He considers recent Magisterium on the relationship between the natural and the sacramental dimensions of marriage, and analyzes some canonical opinions on this exclusion as an autonomous ground of nullity or as a type of total simulation. A good number of canonists are referred to, together with the addresses of John Paul II. O. presents some words from *Familiaris Consortio*, no. 68, as a conclusion: "the decision to

commit by their irrevocable conjugal consent their whole lives in indissoluble love and unconditional fidelity, really involves, even if not in a fully conscious way, an attitude of profound obedience to the will of God, an attitude which cannot exist without God's grace."

1055

Per 97 (2008), 507-540: Sententia definitiva, *coram* Stankiewicz: Nullitas Matrimonii ob exclusam matrimonii sacramentalitatem. (Sentence)

See below, canon 1101.

1055

Per 97 (2008), 597-665: Aidan McGrath: Exclusion of the *bonum coniugum*: some reflections on emerging Rotal jurisprudence from a first and second instance perspective. (Article)

See below, canon 1101.

1055

PS XLIII 128/08, 355-364: Tamerlane R. Lana: Natural Law in Marriage and Sexuality. (Article)

Biological and physical processes and other natural inclinations play an intrinsic role in the ability of reason to grasp the precepts of the natural law. This conclusion is based on the Church's consistent affirmation of the nature of the human person, the unity of body and spirit that recognizes that these natural inclinations of the human person are integral in living an authentically human life. In the case of married couples the human experiences brought forth by these natural inclinations and biological processes are necessary in experiencing fruitful and enriching married life.

1055

SC 41 (2007), 441-452: Cormac Burke: Challenges to Matrimonial Jurisprudence Posed by the 1983 Code. (Article)

See below, canon 1095.

1055-1056

DPM 11 (2004), 117-124: Peter Stockmann: Die Ansprache Papst Johannes Pauls II. vom 30. Januar 2003 vor der Römischen Rota. (Commentary)

S. comments on Pope John Paul II's address to the Roman Rota of 30 January 2003, dealing with the sacramentality of marriage and marital fidelity.

1055-1056

DPM 11 (2004), 141-145: Ansprache des Papstes an die Römische Rota zur Eröffnung des Gerichtsjahres 2003. (Document)

The text is given in German of Pope John Paul II's address to the Roman Rota of 30 January 2003, in which he states that in marriage "the human and the divine are interwoven in a wonderful way".

1055-1165

DPM 12 (2005), 29-47: Ulrich Rhode: Die Ziele des kanonischen Ehe- und Eheprozessrechts. (Article)

R. sets out the primary goals of canonical laws on marriage and marriage processes, which include freedom in choosing one's way of life and one's spouse, protection of other relationships, stability of marriage, promotion of the faith, protection of the spouses' well-being and of the children, and the well-being of the Church community.

1056

DPM 10 (2003), 119-122: Heribert Heinemann: Ansprache Papst Johannes Paul II. vom 28. Januar 2002 vor der Römischen Rota. (Commentary)

H. comments on Pope John Paul II's 2002 address to the Roman Rota, dealing with the unity and indissolubility of marriage and the need to avoid giving in to the divorce mentality.

1057

SC 41 (2007), 441-452: Cormac Burke: Challenges to Matrimonial Jurisprudence Posed by the 1983 Code. (Article)

See below, canon 1095.

1059

DPM 10 (2003), 13-24: David A. Jaeger: Der Personalstatus der zivilen Rechstprechung der kirchlichen Gerichte in Israel. (Article)

J. deals with the recognition which the State of Israel gives religious courts in respect of marriage cases and other matters, explaining the background to this situation and looking to possible future developments.

1060

DPM 11 (2004), 45-60: Jürgen Cleve: Die Außenwahrnehmung und Außenwirkung des Ehenichtigkeitsverfahrens – Ein Forschungsbericht. (Article)

C. looks at the external effects of marriage nullity proceedings, with special reference to Church employment law, and the extent to which a new partnership or civil marriage after divorce can be taken into account in such a context.

1060

DPM 12 (2005), 167-173, 251-254: Peter Stockmann: Die Ansprache Papst Johannes Pauls II. vom 29. Januar 2004 vor der Römischen Rota. (Commentary)

S. comments on Pope John Paul II's address to the Roman Rota on 29 January 2004, dealing with the *favor iuris* which marriage enjoys. The text of the address is given in German on pp. 251-254.

1063

María Victoria Hernández Rodríguez: Parola di Dio e preparazione dei nubendi al matrimonio. (Article in **Jesu Pudumai Doss (ed.): *Parola di Dio e legislazione ecclesiastica*, pp. 91-109**)

See above, General Subjects (*Compilations*). This article examines the Biblical and doctrinal roots of canonical legislation in respect of the first step towards matrimonial life: the preparation of the future spouses. The family catechesis suggested by the canonical norms aims to promote a positive and correct vision of marriage in the light of the Word of God, and contributes to the formation of Christian families who stand out for the way they live the Gospel values in a social and cultural context which constantly calls into question the meaning and role of the family.

1063-1070

QDE 20 (2007), 415-435: Giordano Caberletti: La collaborazione tra pastori d'anime e tribunali ecclesiastici in relazione alle cause di nullità matrimoniali. (Article)

C. highlights the pastoral dimension of ecclesiastical law and in particular the ecclesiastical judge in recent Papal allocutions and documents of the Italian Episcopal Conference. He affirms that canonical justice is pastoral justice in that the purpose of ecclesiastical tribunals is to bring peace and serenity to the consciences of those who make use of their services. In the pastoral ministry to families and in particular to couples it is the role of parish priests to explain what is the object of matrimonial consent and ensure that they are adequately prepared for marriage; it is the role of the ecclesiastical judge to evaluate whether the content of the object of consent, at least in its essential elements, has been understood and willed, and that the couple were able to assume the essential obligations. If an ecclesiastical process is to achieve its aim for the good of souls, there must be collaboration between those who prepare couples for marriage and the ecclesiastical judge, so that the ecclesiastical process can arrive at the truth about the validity of the marriage. In a small number of cases, those preparing couples have sent helpful warnings, but other information which could have a determining effect on the validity or not of a marriage could be offered by pastors to ecclesiastical judges. C. believes that a careful pastoral preparation for marriage could prevent an invalid consent. Citing a Decree and Directory issued by the Italian Episcopal Conference, he outlines the instruments, attitudes and actions of a pastor and the methods to be used in preparing a couple for marriage. The Decree offers some directions on how to deal with complex situations: those who present themselves for marriage at a very young age; those who are civilly prevented from celebrating marriage because of mental infirmity; those who show signs of psychic immaturity or symptoms of neurotic tendencies; non-believers or those who have abandoned the faith; those who have lived with their partner for a long time or have previously been married civilly; or when the pastor discovers something that might seriously disturb the married life of the couple (drug addiction, homosexuality, etc). The opinion and evidence of the priest who prepared the couple for marriage carries significant weight for an ecclesiastical judge. The priest is not bound by any obligations of secrecy in disclosing this information to the ecclesiastical judge as it is the competence of the ecclesiastical tribunal to know everything with regard to the truth of a marriage. The priest can ask that his evidence not be disclosed to the parties. For moral, ecclesiological and sacramental reasons, the ultimate judgement of the validity of the marriage cannot be left to the consciences of the couple.

1067

Per 97 (2008), 45-46: Acta Tribunalium Sanctae Sedis. Supremum Signaturae Apostolicae Tribunal. Quaesitum: Responsio in re particulari de investigatione praevia ad matrimonium celebrandum. (Response)

On 3 January 2007, the Supreme Tribunal of the Apostolic Signatura issued a response concerning the most appropriate manner of establishing the free status of Orthodox Christians who entered marriage without a sacred rite. The response indicates that the ordinary pre-nuptial enquiry is sufficient to establish such freedom. In cases of doubt as to whether the marriage could not have been celebrated without the sacred rite except with grave inconvenience, or as to whether the party was actually baptized Orthodox, or any other doubt, the matter is to be referred to the competent ecclesiastical tribunal.

1067

Per 97 (2008), 47-98: G. Paolo Montini: La procedura di investigazione prematrimoniale è idonea alla comprovazione dello stato libero di fedeli ortodossi che hanno attentato il matrimonio civile. (Presentation)

In this presentation to the 40th Gregorian Colloquium at Brescia in June 2007, M. offers a commentary to the response of the Apostolic Signatura of 3 January 2007 (see preceding entry). His study opens with a consideration of the canonical implications for Catholics and then for the Orthodox who enter marriage civilly. He gives a brief history of how the Holy See dealt with the question of the civilly married Orthodox and then presents the substance of the response. Effectively, this response means that, except in cases where there is unresolved doubt, the law now treats on an equal footing the quest to establish the free status of Catholics and Orthodox who entered a civil marriage.

1067

REDC 64 (2007), 561-605: M. Elena Olmos Ortega: Sentido del expediente matrimonial canónico en la sociedad de hoy. (Article)

This article deals with the subject of the pre-nuptial enquiry and the need for it to be undertaken in a serious and conscientious manner by the parish priest whose responsibility it is. Used properly it can contribute greatly to marriage preparation and the prevention of invalid or fraudulent marriages. The Spanish judicial system accepts the Church's autonomy regarding canonical marriage and recognizes its civil effects, so even more care and diligence is required. Since there is no one single model of pre-nuptial enquiry applicable to the universal Church, each diocese or episcopal conference is to draw up its own in

accordance with local conditions and needs. O.O. considers the examination of the parties, the personal data and documents required, the verification of identity, domicile and marital status, and the existence of possible impediments. A separate section deals with the examination of the witnesses and the questions to be put to them concerning their knowledge of the parties, their suitability for marriage and any unusual circumstances. The footnotes contain references to and quotations from pre-nuptial enquiry forms used by some Spanish dioceses. Another section examines the problem of fraudulent marriages, often involving foreigners whose real intentions are simply to benefit from the civil juridical consequences of marriage such as residency or citizenship. Given its nature the pre-nuptial enquiry file is a confidential document and the parties can have access only to those documents which of their nature can be considered public. A final section considers how helpful a conscientiously undertaken pre-nuptial enquiry can be in the event of a request for a declaration of nullity or dissolution of the bond.

1083-1094

DPM 11 (2004), 93-110: Markus Walser: Die Dispens im Eherecht. (Article)

See above, canons 85-93.

1086

DPM 13 (2006), 147-171: Andreas Weiß: Der sog. Kirchenaustritt in Deutschland – stets ein *actus formalis defectionis ab Ecclesia catholica*? Neue Klärungen in einer alten Frage. (Article)

W. examines the circular letter of the Pontifical Council for Legislative Texts of 13 March 2006 concerning the formal act of defection from the Catholic faith. He studies the legal nature of the document, its content, and the reaction to it on the part of the German Bishops' Conference, particularly in relation to situations in which a member of the faithful withdraws tax support from the Catholic Church. He then considers the consequences for marriage law.

1086

DPM 14 (2007), 107-151: Karl-Heinz Selge: *Consensus solus* versus ekklesiale Einbindung der Eheschließung? (Article)

See below, canon 1117.

1086

SC 41 (2007), 515-549: John M. Huels: Defection from the Catholic Church by a Formal Act and the Circular Letter of 13 March 2006. (Article)

This is a study of the meaning and implications for canon law and Church practice of the 13 March 2006 circular letter of the Pontifical Council for Legislative Texts (PCLT) on the formal act of defection from the Catholic Church. In 1999, the members of the PCLT voted unanimously to request the suppression of the clause in canons 1086 §1, 1117 and 1124 that exempts from the observance of these marriage laws a Catholic who defected from the Church by a formal act. H. maintains that it is fortunate that the legislator did not consent to the suppression, because that would have left continuing doubts and confusion regarding the validity of many marriages celebrated between the effective date of the Code (27 November 1983) and the effective date of the suppression. The circular letter of 2006 leaves no ambiguity regarding their validity. It identifies three essential elements of the formal act of defection, which are applicable retroactively because they are essentially constitutive of the formal act of defection. If any of these three essential elements were lacking, including the requirement that the act of defection be received by the competent Catholic ecclesiastical authority, the marriage is invalid if the canonical form was not observed or not dispensed, or if the impediment of disparity of cult existed and had not been dispensed. This will remain true of any marriage contracted by a Latin Catholic after the revised Code took effect, even if the exempting clause is eventually suppressed by the legislator.

1093

DPM 11 (2004), 13-22: Reinhild Ahlers: Überlegungen zum Ehehindernis der öffentlichen Ehrbarkeit. (Article)

A. examines the impediment of public propriety: in what it consists, and how it has developed since the 1917 Code. He looks at the relationship between law and morality, and the conditions for obtaining a dispensation from the impediment.

1095

Proc CLSA 2008, 74-84: Ronald Bowers: A Perspective on Tribunal Ministry: The 1960s to the Present. (Seminar paper)

See below, canons 1501-1506.

1095

SC 41 (2007), 441-452: Cormac Burke: Challenges to Matrimonial Jurisprudence Posed by the 1983 Code. (Article)

In this article B., a former auditor of the Roman Rota, reflects on the innovating and challenging dimensions of the 1983 Code. The focus is upon matrimonial jurisprudence. He offers some brief comments on canon 1095 which he believes is a largely logical development from the Rotal jurisprudence of the decades of the 1950s, 1960s and 1970s. It takes earlier grounds of *amentia* or other serious psychic disturbances and fits them into a broad juridical determination of juridical incapacity due to some grave psychic deficiency. There follow reflections on canon 1057, with its new way of expressing the object of marital consent, and canon 1055, which uses a completely new term – the *bonum coniugum* or "good of the spouses" – to describe one of the ends of marriage.

1095

SCL IV (2008), 109-142: Aidan McGrath: Assisting Judges in their Arduous Task: *Dignitas Connubii* and the Assistance It Offers in Cases Based on Canon 1095. (Article)

Dignitas Connubii (DC) pays particular attention to the handling of cases arising from canon 1095. This is a reflection not only of its statistical but also of its doctrinal importance. To set the context McG. looks briefly at the content of canon 1095 and the roles expected of the judge in DC. DC offers assistance to judges in four areas: the role of experts; the role of the defender of the bond; understanding the way in which definitive decisions are made; addressing the consequences of an affirmative decision. He explores each of these in turn and then looks at two additional areas: the appointment of a guardian *ad litem*; and the insistence of certain tribunals that some expert evidence accompany the *libellus* – a practice precluded.

1095 2º

REDC 64 (2007), 899-909: c. Sánchez-Girón Renedo, Tribunal de la Archidiócesis de Madrid, 20 de abril de 2007: nulidad de matrimonio (defecto de discreción de juicio). (Sentence)

The grave lack of discretion considered in this judgement originated in the male petitioner's dependent personality disorder. The evidence clearly describes a very malleable young man, blindly in love with a beautiful woman possessed of a powerful and dominating nature who took full advantage of his passive and submissive personality. The psychiatric report identifies the effects of this

disorder as an overriding need to hand over to another person all decision-making initiatives because of a deep cognitive insecurity about his own ability in this area, along with an emotional and affective need to find protection and support in his own perceived inadequacy. The petitioner had been unable to make any realistic practical-critical evaluation of the true nature of the marriage relationship and its obligations. He was lacking the proper and adequate development of his intellectual, volitive and affective faculties which alone could make such an evaluation possible. An affirmative decision was returned.

1095 2º

REDC 64 (2007), 911-937: c. Fuentes Caballero, Tribunal de la Diócesis de Coria-Cáceres, 29 de julio de 2002: nulidad de matrimonio (defecto de discreción de juicio, falta de libertad interna, error en la persona, error en cualidad y error doloso). (Sentence)

Of the alleged grounds of nullity (grave lack of discretion due to the absence of internal freedom, error of person, error of quality and *error dolosus*) the only one considered proven was the first. The female respondent, well educated, with a middle-class background and from a deeply religious family, found herself abandoned by a previous boyfriend who had disappeared, taking no further responsibility or interest in her or their young daughter. She had known the petitioner as a friend from earlier years and now saw in him an answer to her problem of being an unmarried single mother. He was of a lower social class and less well educated but was of a simple, obliging and conformist nature, was genuinely in love with her and was even willing to adopt her daughter. This was what she really wanted – a father for her child and an end to her condition of unmarried mother (a cause of scandal and embarrassment to her family, friends, and colleagues at the Catholic school where she taught). After six months of courtship the marriage itself lasted a bare three months. The psychiatric report revealed her emotional immaturity and how her decision-making was determined by external factors (her parents, her daughter, friends and colleagues and her work situation) which deprived her of any real critical evaluation of the true nature of the marriage relationship she was entering.

1095 2º-3º

AA XIV (2007), 9-35: Carlos Baccioli: La anorexia y la bulimia como causas psicopatológicas de nulidad matrimonial. (Article)

B. provides a clinical description of anorexia (he deals in much less detail with bulimia), mostly based on DSM-IV and other psychiatric authorities. It affects adolescent girls much more than males and can be caused by biological factors,

family tensions (especially an overbearing and dominant mother), cultural and social pressures and underlying psychological problems, most notably a phobic-obsessive-compulsive personality. One of the consequences for the true anorexic is an inability to establish proper family and social relationships owing to an overwhelming sense of isolation and a perceived lack of understanding by others. This is true also for the person's emotional and affective life in which only a superficial communication can be achieved, and is reflected in a rejection or strong distaste for any sexual contact. Moreover, it renders the anorexic mother unfit to provide adequate emotional support or even physical care for her children. The second part of B.'s article considers the juridical-canonical effects of anorexia on marriage consent by examining a Rotal sentence *coram* Stankiewicz (a sentence later declared null on the lack of adequate right of defence), the same case being presented again *coram* Funghini (first instance) and Ragni (second instance). All these sentences found for nullity; for Stankiewicz it was based on grave lack of discretion, though Funghini's and Ragni's decisions were based on inability to assume the essential obligations of marriage. In some final remarks on bulimia B. notes that this condition could also provide grounds for error of quality or deceit (canons 1097 and 1098) since, unlike anorexia, bulimia sufferers normally try to keep their condition secret and hidden from others.

1095 2º-3º

DPM 12 (2005), 105-122: Klaus Baumann: Anthropologische Prämissen der (kirchenrechtlichen) Urteilsfindung. (Article)

B. examines the interdisciplinary dialogue between theology and psychology/psychiatry with special reference to human freedom and the categories of incapacity in canon 1095 2º and 3º, and offers a series of suggestions and observations.

1095 2º-3º

FCan III/1 (2008), 113-149: Francisco López-Illana: A impossibilidade de cumprir as obrigações essenciais do matrimónio. (Bibliographical review)

This is a lengthy appraisal (in Spanish despite the Portuguese title) of a book by Professor Eloy Tejero of the University of Navarre on canon 1095 3º and the impossibility of fulfilling the essential obligations of marriage.

1095 2º-3º

REDC 64 (2007), 949-1029: c. Sendín Blázquez, Tribunal de la Diócesis de Plasencia, 20 de julio de 2004: nulidad de matrimonio (defecto de discreción de juicio e incapacidad para asumir las obligaciones). (Sentence)

This 80-page sentence considers the alleged grounds of the female respondent's grave lack of discretion and inability to assume the essential obligations of marriage caused by her severe schizophrenic paranoia. S.B. in his *in iure* section provides a detailed examination of schizophrenic psychosis, its nature and characteristics, its initial manifestations, and the progressive stages of its development until its final fully-blown expression. He follows this with an analysis of various Rotal sentences involving cases of schizophrenia, and contributions on the subject from a number of Spanish canonists (especially García Faílde). The respondent was already showing initial signs of schizophrenia during the courtship and it was mainly her pregnancy that induced the petitioner to marry her. A large part of the evidence consists of seventeen varied documents and reports from psychiatrists, mental institutions, family courts, local authorities and divorce proceedings, all clearly demonstrating her total inability to cope with reality or relate to other people, especially her husband and children, making married life totally intolerable. Although the first diagnosis of schizophrenia was made six years into the marriage it was clear that its incipient manifestations were in evidence at the time of consent. It could not be proved, however, that this condition so disturbed her deliberative and critical faculties at that time that it led to a grave lack of discretion. An affirmative decision was returned on the grounds of inability alone.

1095 3º

REDC 64 (2007), 885-898: c. Panizo Orallo, Tribunal de la Rota de la Nunciatura Apostólica, 3 de febrero de 2000: nulidad de matrimonio (incapacidad para asumir las obligaciones). (Sentence)

An affirmative decision was reached in this case on the ground of the male respondent's inability to assume the essential obligations of marriage on account of his compulsive gambling. P.O. examines various aspects of this phenomenon which is linked more often than not to an underlying personality disorder. The essential characteristic of the genuinely compulsive gambler is the subordination of all other aspects of his life to that one end. Such a condition undoubtedly disrupts married life and can even use it simply as an instrument to obtain the money required to continue the compulsion. In this case the respondent, a civil servant and tax inspector no less, was already an addicted gambler during the courtship; this was unknown to the petitioner. The testimony

from witnesses left no doubt about his gambling. He himself admitted his addiction and the psychiatric report confirmed his personality disorder.

1095 3º

REDC 64 (2007), 939-947: c. Carrodeguas Nieto, Tribunal de la Diócesis de Orihuela-Alicante, 16 de abril de 1999: nulidad de matrimonio (exclusión de la indisolubilidad e incapacidad para asumir las obligaciones). (Sentence)

Although exclusion of indissolubility is one of the alleged grounds of nullity in this case it is not considered by the *ponens* except for a few paragraphs in his *in iure* section. Nullity was declared on the ground of inability to assume the obligations of marriage in both parties. The petitioner was a priest who had left his religious community and obtained a dispensation from celibacy. He had been unhappy and unsettled in his time as a seminarian and religious, and had abandoned the religious life on account of emotional and affective problems which left him an isolated and lonely man. The respondent had had an unhappy childhood and continued to have a tense relationship with her parents and was anxious to leave the family home. Both parties, therefore, had their own reasons for seeing marriage as a solution to their difficulties. The psychiatric reports revealed deep-seated emotional and psychological problems in both the petitioner (great insecurity and anxiety, a need for constant affection) and the respondent (neurotic-depressive tendencies). Even though the marriage lasted sixteen years and the couple had four children, at no time was there any real warmth or communication in their relationship.

1097

AA XIV (2007), 9-35: Carlos Baccioli: La anorexia y la bulimia como causas psicopatológicas de nulidad matrimonial. (Article)

See above, canon 1095 2º-3º.

1097-1098

Proc CLSA 2008, 158-176: John Johnson: "...Into Something Rich and Strange". Some Changes in Rotal Jurisprudence Inspired by the 1983 Code of Canon Law. (Seminar paper)

J. analyzes some recent Rotal jurisprudence on force and fear, error of quality and *dolus*. He also considers the use of the parties' statements in evidence. On the grounds of force and fear he highlights how the removal of the requirement

for injustice has made it an easier ground to use. On the ground of error of quality he discusses the Rota's unwillingness to apply it retroactively and how this may be changing. J. concludes by considering some possible, but as yet not clearly worked out, developments in error of quality.

1098

AA XIV (2007), 9-35: Carlos Baccioli: La anorexia y la bulimia como causas psicopatológicas de nulidad matrimonial. (Article)

See above, canon 1095 2º-3º.

1098

DPM 12 (2005), 13-27: Ernst Freiherr von Castell: Der Gegenstand der absichtlichen Täuschung – eine Anfrage. (Article)

This article examines the background to and the content of canon 1098, studying the development of the concept in Rotal jurisprudence and the teachings of Vatican II.

1099

DPM 12 (2005), 69-84: Margit Weber: Muss ich wissen, was ich will? – Der willensbestimmende Irrtum und das Mindestwissen zur Ehe. (Article)

W. deals with the question of error determining the will, and the minimum degree of knowledge required for marriage. She looks into the background to canon 1099, examining the various levels of human knowledge, and factors that are to be considered relevant or irrelevant for the purposes of error.

1101

AA XIV (2007), 361-383: Giordano Caberletti: Bratislavien-Tyrnavien. Nullitatis matrimonii (ob exclusam matrimonii sacramentalem dignitatem). (Sentence)

The Catholic petitioner alleged that the respondent, who was led to believe her baptism was necessary in order to be able to marry a Catholic, had excluded the sacramentality of marriage in giving her consent. She felt she had been forced to marry in the Catholic Church by the pressure of the petitioner and his mother. However, in her deposition she makes it clear that her reluctance in the matter was based on the overbearing pressure she was being subjected to, which left

her no freedom to choose (as she wished to do) a wedding in the Protestant Evangelical Church, rather than any deep antipathy against the Catholic Church or its teaching. The marriage lasted only a year, owing in no small measure to the disruptive interference of the respondent's own mother who had strongly objected to the Catholic wedding. The initial *constat* at first instance was overturned on appeal and the case was sent to the Rota for a third instance decision. C. in his *in iure* section traces the doctrine of the inseparability of the marriage of the baptized from its sacramentality, and the question of whether exclusion of the sacramental nature of marriage is to be considered total or partial simulation. He analyzes the need for a positive act of will for any simulation, pointing out that what counts in the end is the predominant will: either the will (even though implicit) to be really and genuinely married, or the will positively to exclude the sacramental nature of marriage (which in effect would exclude marriage itself). Lack of knowledge about sacramentality or even lack of faith do not *per se* lead to exclusion; only the necessary positive act of will can achieve that. The examination of the evidence showed that the respondent had not shown any contempt or hatred for the Catholic Church or its teaching but simply resented the pressure she had been put under to have a Catholic wedding. A negative decision was returned.

1101

AA XIV (2007), 385-393: Víctor Enrique Pinto: Comentario a la sentencia Bratislavien-Tyrnavien. *coram* Giordano Caberletti, del 24-10-03, Prot. N. 17.602. (Commentary)

Most of P.'s commentary is a synthesized translation of Caberletti's sentence (see preceding entry), the original text being in Latin. In his final reflection he admires the coherence between the exposition of the doctrinal/juridical principles and their application to the particular case. The sentence proves to be a valuable study of the difficulties which can arise from the nature and consequences of baptism in the context of a marriage celebrated between two persons who are baptized but not necessarily practising or believing.

1101

Per 97 (2008), 507-540: Sententia definitiva, *coram* Stankiewicz: Nullitas Matrimonii ob exclusam matrimonii sacramentalitatem. (Sentence)

This Rotal decision deals with the case of Claudia and Paul who married in 1978 and separated in 1988. In 1993, Claudia sought a declaration of nullity on the basis of Paul's exclusion of the sacramental dignity of marriage, since he was from the extreme left of political life. The first instance affirmative decision

was appealed directly to the Roman Rota. In rendering a negative decision, the *Ponens* takes the opportunity to rehearse the doctrine and jurisprudence of the Rota concerning the sacramental dignity of marriage and its alleged exclusion, distinguishing this ground of nullity from that of error determining the will (canon 1099). S. points out that sacramental dignity is not an essential property or essential element of marriage, but a spiritual dimension of it. Its juridical relevance lies in the fact that, between the baptized, no valid marriage can exist without its being a sacrament. Thus, if someone excludes this sacramental dignity from his or her consent, then there is no marriage at all. In the circumstances of this case, there was no proof of any such intention. Rather, the first instance accepted as fact what was purely a conjecture on the part of the petitioner.

1101

Per 97 (2008), 597-665: Aidan McGrath: Exclusion of the *bonum coniugum*: some reflections on emerging Rotal jurisprudence from a first and second instance perspective. (Article)

Between 2000 and 2005, the Apostolic Tribunal of the Roman Rota issued four definitive sentences in which the question of the nullity of marriage was considered explicitly on the ground of the exclusion of the good of the spouses. According to canon 19, the apostolic tribunals have an important role to play in supplying guidance where there is a *lacuna iuris*, and recent Popes have pointed out the need for the Rota in particular to provide assistance to tribunals of lower grades. In this article, McG. examines the four sentences issued so far, three of them affirmative and one negative. From this analysis, it is clear that there is as yet no unanimity or even a widely accepted description or definition of what constitutes the juridical content of the *bonum coniugum*. Nevertheless, the fact remains that four *turni* of the Rota have considered nullity of marriage on this ground which had been advanced in the tribunals of lower instance. These sentences cannot be considered as constituting the constant and uniform jurisprudence that might provide clear guidance to the first and second instance tribunals of the Church. But they highlight the need for those same tribunals to follow the example of the Roman Rota and examine cases presented under this heading with extreme care, without falling prey to selective and distorted interpretations.

1101

SCL IV (2008), 341-360: Apostolic Tribunal of the Roman Rota: Exclusion of Indissolubility (Determining Error and Simulation): Decision *coram* McKay, 4 February 2005. (Sentence)

This case concerned a male petitioner, raised in the Episcopalian Church, but who married his spouse in the Baptist Church, where her father was pastor. He was not in love, but did want to marry. He now claims that he had accepted the Baptist position that marriage was dissoluble by the innocent party when the other commits adultery. Marriage is brought into being by an act involving the operation of both intellect and will. However, what is internally understood or willed is not always manifested externally. To prevent uncertainty the law presumes a conformity between the manifestation and intention. This can be overcome by demonstrated proofs. Consent can be vitiated by ignorance, error or simulation. A non-Catholic brought up in error concerning the Creator's plan in instituting marriage may consent to something other, shaped by personal religious or cultural errors. Baptists seem to permit divorce to an innocent party, but only as a last resort, and urge reconciliation. McK. cites Stankiewicz on how in practice error determining the will and exclusion of indissolubility are not incompatible grounds, but rather joined together. In this case the man had been brought up convinced of the indissolubility of marriage, and his involvement with the Baptist Church was only for the five months of the engagement, and there was no proximate motive for an exclusion of indissolubility. Moreover, it was the wife who left after a single act of adultery. Initially the husband wanted reconciliation. The decision was negative, overturning that at second instance.

1101

SCL IV (2008), 361-372: Apostolic Tribunal of the Roman Rota: Exclusion of Indissolubility (Decree Submitting the Case to an Ordinary Examination): decree *coram* Turnaturi, 15 February 2001. (Decree)

This case was remitted to an ordinary examination in part because of procedural irregularities that made it unclear what the grounds actually were, and more seriously because of the idiosyncratic argumentation on which the affirmative decision had been based. The case had originally been introduced under canon 1101 §2, and subordinately for lack of due discretion and inability. After a negative first instance decision the appeal court rejected all these, but at the suggestion of the defender of the bond introduced new grounds *contra bonum sacramenti* and subordinately *contra bonum prolis*, then lack of due discretion in both parties and inability in the respondent. The case thus appears as an examination of the exclusion of indissolubility adjudicated affirmatively as in first instance by the appeal court. T. expresses astonishment at the role of the

defender of the bond and the misapplication of canon 1514, as well as the argumentation which relates rather to the good of the spouses.

1101

SCL IV (2008), 373-390: Apostolic Tribunal of the Roman Rota: Exclusion of Indissolubility: Decision *coram* Turnaturi, 17 November 2005. (Sentence)

This is the definitive and negative decision in the case referred to in the preceding entry. T. explains the distinction between total and partial simulation. In the application he resumes briefly the argumentation from the previous hearing. The decision of the appeal court confuses the good of the sacrament with the absence of the good of the spouses in the man's post-nuptial behaviour. The line was that he was a workaholic and saw marriage simply as an adjunct to his career, admitting that there was insufficient evidence to prove exclusion of indissolubility.

1102

IE XX 1/08, 89-124 (also **FCan III/1 (2008), 223-247**)**: Tribunale della Rota Romana: *Reg. Siculi seu Messanen.-Liparen.-Sanctae Luciae*. Nullità del matrimonio. Condizione futura. Esclusione dell'indissolubilità. Sentenza definitiva, 23 giugno 2004. Huber, *Ponente* (con *nota* di H. Franceschi F., *La prova del consenso nella giurisprudenza recente della Rota Romana*).** (Sentence and commentary)

The relationship began when the male petitioner was sixteen and the respondent eighteen. The respondent's parents encouraged the wedding but the petitioner's parents objected, mainly because they feared, not without good reason, that the respondent's family would force the couple to stay in their family home. The petitioner obtained rented accommodation and demanded that the respondent agree that "their conjugal domicile should be fixed in a place autonomous from that of the in-laws" and that he would "agree to the wedding only on this condition". The wedding took place, but when the wife was in her sixth month of pregnancy, and after she had moved back to her parents' home and was unwilling to leave, the petitioner abandoned her, and subsequently obtained a decree of separation, and later of divorce. The Rota fixed the grounds along the lines of the two previous sentences: future condition, and exclusion of *bonum sacramenti*, both on the part of the petitioner. The sentence pays special attention to the distinction between "*condicio*" and "*praerequisitum"* or "*postulatum*". The validity of the marriage depends on whether or not a condition has been placed; while the question of whether or not the wedding is actually celebrated depends on the *prerequisite* (sometimes referred to as

"conditional purpose"). A verdict of *constat* was given on the first ground (future condition), and also on the second (exclusion of *bonum sacramenti*) as being included in the first. In his commentary F. expands on the key point of the *de iure* section, clarifying the distinction between a true condition and other related concepts: "*cause*", or the primary motive leading to the marriage; "*prerequisite*" (*postulatum*, "conditional purpose"), which directly affects the celebration rather than the consent, making the decision to celebrate the wedding depend on the existence of a specified circumstance; "*mode*" (*modus*), which involves the imposition of an additional obligation on the other party once consent is perfected (validity therefore being dependent neither on the fulfilment of this additional obligation, nor on the promise to fulfil it); and "*terminus*" or explicit intention of limiting the effect of the consent in time (whether by delaying its commencement, or by specifying the moment in which it expires: in either case the marriage would be null for exclusion rather than condition). F. also considers the question of proof of the existence of a true condition, and the elements of such proof. While emphasizing the extreme difficulty of judging cases under this heading, F. summarizes the judge's main point: nowhere do the acts of the case show that the petitioner ever revoked his will to establish the marital home elsewhere than in the respondent's parents' house; this was therefore more than simply a "conditional purpose", but was a true condition at the time of the celebration. Although he did live for some time in the respondent's parents' home, it is clear that his intention was always that the respondent should move to their own rented accommodation.

1103

Proc CLSA 2008, 158-176: John Johnson: "...Into Something Rich and Strange". Some Changes in Rotal Jurisprudence Inspired by the 1983 Code of Canon Law. (Seminar paper)

See above, canons 1097-1098.

1111

DPM 11 (2004), 111-116: Georg May: Zwei Fragen aus der Praxis zur Eheassistenz und zur Weihespendung. (Article)

M. deals with the question of the practice to be followed in two situations: when a delegation is made to a priest to assist at a particular marriage but the one making the delegation ceases in office prior to the marriage; and when a bishop grants permission for a candidate to the priesthood to be ordained but ceases in office before the ordination has taken place.

1111

DPM 12 (2005), 255-258: Päpstlicher Rat für die Gesetzestexte: Nota zu Fragen bezüglich can. 1111 §2 vom 5.2.2004. (Document)

The text is given in German of a reply from the Pontifical Council for Legislative Texts confirming that the special delegation for a specific marriage referred to in canon 1111 §2 must be expressly given and cannot be "implied" or "presumed". If the delegation is general it must always be in writing.

1116

FC 10 (2007), 71-85: Andrej Saje: Lo sviluppo della forma della celebrazione del matrimonio nella Chiesa Occidentale e nella Chiesa Orientale nel caso in cui manca l'assistente competente. (Article)

The article traces the historical stages that led to the current legislation regarding the extraordinary form of the celebration of marriage (canons 1116 CIC, 832 CCEO) and the question of the minister of marriage. S. describes the richness and diversity of the various matrimonial rites that existed during the first millennium and the position held by authors concerning the validity of marriages contracted only in the presence of witnesses. The lack of uniformity in the evaluation of the validity of marriages contracted in particular circumstances forced the legislator in 1602 to introduce a new norm according to which parties could validly enter into marriage only under certain conditions, even in cases in which the ordinary form of marriage established by the Council of Trent could not be respected (Decree *Tametsi* of 1563). S. then examines the doctrinal development regarding the validity of marriage in cases in which a person competent to assist is not available, and the way in which this norm developed over time. The decree *Ne Temere* played a decisive role in the formulation of canon 1098 of the Pio-Benedictine Code of 1917, as well as its preparatory drafts, including the authentic replies to some questions posed at the time. In the final part there is an examination of canon 1116 CIC in comparison to canon 832 CCEO. In order to clarify the identity of the person to whom the ministerial role belongs in the celebration of marriage in the Latin Church and the Oriental Church, and in what way a person may be considered to be a minister, it is necessary to distinguish accurately between the essential elements and the accessory elements, so that the celebration of the sacrament of marriage may be valid.

1117

DPM 10 (2003), 55-75: Markus Walser: Die Formpflicht von Konvertiten – Schwierigkeiten in der Anwendung von c. 1117 CIC bzw. c. 834 §1 CCEO bei nicht förmlich vollzogenen Konversionen und Reversionen. (Article)

W. studies a number of difficulties arising out of the requirement of canonical form in canon 1117 (canon 834 §1 of the CCEO), including the question of what constitutes a formal act of defecting from the Catholic Church, the position of those who have converted from Orthodoxy, and those who return to the Catholic faith.

1117

DPM 12 (2005), 259-260: Päpstlicher Rat für die Gesetzestexte: Schreiben an den Bischof von Rottenburg-Stuttgart zu can. 1117 CIC vom 3.5.2005. (Document)

Text of a letter from the Pontifical Council for Legislative Texts to the bishop of Rottenburg-Stuttgart setting out the requirements of canon 1117 regarding formal defection from the Catholic Church. (The letter is dated 3 May 2005, i.e. it is prior to the circular letter issued by the same Pontifical Council on 13 March 2006: see above, canon 1086.)

1117

DPM 13 (2006), 147-171: Andreas Weiß: Der sog. Kirchenaustritt in Deutschland – stets ein *actus formalis defectionis ab Ecclesia catholica*? Neue Klärungen in einer alten Frage. (Article)

See above, canon 1086.

1117

DPM 14 (2007), 107-151: Karl-Heinz Selge: *Consensus solus* versus ekklesiale Einbindung der Eheschließung? (Article)

In the light of the circular letter from the Pontifical Council for Legislative Texts (PCLT) dated 13 March 2006 dealing with the question of the *actus formalis defectionis ab Ecclesia*, S. looks at the obligation to observe the canonical form of marriage in respect of those persons in Germany who have declared their intention of leaving the Catholic Church. The history of matrimonial law confirms the need for the Church to have a legal framework for marriage. It is only the members of the Catholic Church who are obliged to the

canonical form of marriage. Theologically and as a last resort it would be possible to do without the legal requirements for contracting marriage (*consensus solus*) if a strict interpretation is given to canon 1117 whereby the term "Catholic" is understood as not automatically including those who have left the Catholic Church. For a marriage to be valid "by consent only" it would need to comply with the strict requirements of the PCLT's circular letter. Since the sacramental dignity of marriage is adequately protected by the circular letter, S. does not see the need for repealing the so-called defection clauses in the 1983 Code. He ends with some reflections on procedural consequences.

1117

SC 41 (2007), 515-549: John M. Huels: Defection from the Catholic Church by a Formal Act and the Circular Letter of 13 March 2006. (Article)

See above, canon 1086.

1120

FCan III/1 (2008), 91-97: Pontifício Conselho para os Textos Legislativos: A natureza jurídica e a extensão da «*recognitio*» da Santa Sé. (Note)

See above, canon 446.

1120

SCL IV (2008), 27-42: Pontifical Council for Legislative Texts: Explanatory Note: The Legal Nature and the Extension of *Recognitio* of the Holy See. (Note)

See above, canon 446.

1124

DPM 13 (2006), 147-171: Andreas Weiß: Der sog. Kirchenaustritt in Deutschland – stets ein *actus formalis defectionis ab Ecclesia catholica*? Neue Klärungen in einer alten Frage. (Article)

See above, canon 1086.

1124

DPM 14 (2007), 107-151: Karl-Heinz Selge: *Consensus solus* versus ekklesiale Einbindung der Eheschließung? (Article)

See above, canon 1117.

1124

SC 41 (2007), 515-549: John M. Huels: Defection from the Catholic Church by a Formal Act and the Circular Letter of 13 March 2006. (Article)

See above, canon 1086.

1124-1129

IE XX 2/08, 347-367: Carlo Fabris: Considerazioni canonistiche in tema di "*communicatio in sacris*". (Article)

F. looks at the canons on mixed marriages which he sees as a logical canonical application of the theological premises of *communicatio in sacris*, forming part of the patrimony of the doctrine of the Catholic Church. (See also above, canon 844.)

1141-1150

Markus Graulich: Agli altri dico io – Non il Signore. Dal privilegio paolino allo scioglimento del matrimonio *in favorem fidei*. (Article in **Jesu Pudumai Doss (ed.): *Parola di Dio e legislazione ecclesiastica*, pp. 111-134**)

See above, General Subjects (*Compilations*). Few aspects of canonical legislation have such a clear Biblical basis as the so-called Pauline privilege, a direct application of what the Apostle said to the new Christians in cases where the other spouse does not embrace the faith: if it is not possible to live together peaceably, and the non-believing spouse causes offence to the Creator, it is lawful to separate. Throughout the Church's history, these words from the First Letter to the Corinthians have encountered differing interpretations and applications in the Church's practice concerning the dissolution of the matrimonial bond when the good of the faith or the salvation of souls was at stake.

1143-1147

QDE 20 (2007), 343-349: Gianni Trevisan: Il privilegio paolino: Delineazione fondamentale del privilegio. (Article)

The Pauline privilege is rooted in the Church's doctrine that while marriages between non-baptized parties are intrinsically indissoluble, they are not extrinsically indissoluble, and can be dissolved after carefully following the requirements outlined in canons 1143-1147. The baptism on which the privilege is based does not necessarily have to be celebrated in the Catholic Church. The marriage is dissolved by the power of the Church on the occasion of the new marriage. The privilege may not be invoked by the newly-baptized party if he or she has given the non-baptized party "just cause to depart"; however, the just cause must, according to T., arise in the period after the baptism. The local Ordinary is responsible for ensuring that the interpellations required for the validity of the new marriage are completed. Another Ordinary may be approached if the marriage preparation or the celebration of the marriage will take place in another diocese. The Ordinary can delegate someone else to complete the interpellations. Because of the importance of the interpellations, no effort must be spared by the Ordinary in seeing that they are completed. The other party must be asked if he or she either intends to receive baptism, or has already done so in the meantime without the knowledge of the baptized party. The efforts of the Ordinary and the responses of the non-baptized spouse must be documented. T. addresses particular situations: the interpellation of the non-baptized party when the petitioner is still a catechumen and when there is an urgent reason to celebrate the marriage immediately after the baptism; a time limit to be placed on a prevaricating non-baptized party; the Ordinary's acceptance of the interpellation of the non-baptized spouse by the baptized spouse; dispensing of the interpellations when impossible and useless. In those cases where the non-baptized party agrees to live in peace with the baptized spouse the privilege may not be applied. If the non-baptized spouse subsequently departs without any justifiable reason the baptized party may reapply for the privilege and marry even a non-Catholic or non-baptized person, observing in such cases the relevant canonical requirements.

1143-1147

QDE 20 (2007), 378-394: Matteo Visioli: Il privilegio paolino: una deroga al principio di indissolubilità? (Article)

If natural marriage enjoys the prerogative of indissolubility, how can it be dissolved even if in very limited cases? In addressing this question V. also examines the value of the favour of the faith which allows the dissolution of a natural marriage. The common opinion of authors is that the Pauline privilege is

of divine law. The text in 1 Corinthians 7:12-16 gives rise to the question whether the separation allowed by Paul is a dissolution of marriage with the right of the Christian to remarry, or simply a ceasing of the obligation of the parties to live together. Most agree that the phrase "let him separate" implies a dissolution of the marriage. The phrase "is not enslaved" is a true freedom from the conjugal bond with the right to remarry. Tradition has also upheld this interpretation. For centuries the Church has used the Pauline text as the foundation for dissolving a natural bond where it would allow one or both parties to continue to grow in the faith, in view of the *salus animarum* which remains the supreme law. The favour of faith prevails not only over the indissolubility of the marriage but also over the favour of the law (canon 1060). The Pauline privilege takes effect by the very fact that the new marriage is contracted. The privilege is caused by the departure of the non-baptized party and the spiritual suffering caused to the baptized party. No ecclesiastical authority dissolves the marriage. In this case the ecclesiastical authority restricts itself to ascertaining and evaluating the proper conditions for applying the privilege. The authority which grants the privilege in a direct way is the canonical norm; however, indirectly it is the Roman Pontiff as universal legislator. V. also refers to two open questions: whether it is possible to hypothesize other means which in the name of the primacy of faith may involve the dissolution of marriage; and what the moral-juridical status is of the person who, while still bound to the valid and indissoluble bond of natural marriage, is preparing to contract a new marriage by virtue of the Pauline privilege. The Pauline privilege implicitly foresees the right of the baptized person to begin a new relationship, which would not normally be morally right.

1143-1147

QDE 20 (2007), 395-401: Andrea Migliavacca: Modelli e formulari per l'applicazione del privilegio paolino. (Documents)

M. provides a sample letter from the parish priest to the local Ordinary requesting the application of the privilege; a sample questionnaire for the person requesting the dissolution of the marriage; a sample questionnaire for the party who has not converted; and a sample decree authorizing the celebration of the marriage by virtue of the Pauline privilege.

1144-1146

QDE 20 (2007), 350-362: Alessandro Giraudo: La volontà della parte non battezzata: oggetto, modalità e conseguenze delle interpellazioni nel privilegio paolino (cann. 1144-1146). (Article)

In the case of the Pauline privilege the primary attention is on the non-baptized party who must declare that he or she has no intention of continuing to live with the baptized party, or at least not without offence to the Creator. This intention is verified through the procedure outlined in canons 1144-1146. The aim of the investigation is to discover if the non-baptized party has "departed" (canon 1143). Only when the non-baptized party "departs" in accordance with the Code can the Pauline privilege be applied. "Departure" is not only separation in the physical sense but also moral separation from the *communitas vitae*, which involves not only the emotional life but also the spiritual life of the couple. G. quotes distinguished canonists on what constitutes offence to the Creator. While the questioning of the non-baptized party usually takes place after baptism, G. identifies situations when it might be appropriate before the baptism takes place and also in the event of a later change of behaviour on the part of the non-baptized party. While the investigation is normally public, it can also be private, but always in the external forum and documented. The law and practice allow the investigation a wide scope for obtaining the declaration of the non-baptized party in order to protect the right of the baptized party to marry again *in favorem fidei*, preventing any non-baptized party from impeding or frustrating the right provided by the Pauline privilege. G. explores the canonical debate on the obligatory nature of the questions. While this debate is not yet resolved the current Code makes it very clear that the questions are required for the validity of the process, and a dispensation is required from the Holy See for a process without the investigation.

1147-1150

QDE 20 (2007), 363-377: Andrea Migliavacca: Privilegio paolino: alcuni casi particolari (cf. cann. 1147-1149). (Article)

The Code includes some cases which are extensions of the application of the Pauline privilege to new circumstances, particular situations which have arisen in the pastoral life of the Church over time (canons 1147-1149). The most innovative is the application of the Pauline privilege in the case where the baptized person wishes to marry a non-Catholic or even a non-baptized person. Unlike the normal application of the Pauline privilege, this extension of the privilege requires the permission of the local Ordinary because of the particular nature of the marriage and not for the actual exercise of the privilege. The Ordinary authorizes the extension of this right within the parameters of the

norms dealing with mixed marriages and dispensations from disparity of cult, that is, protecting the faith of the baptized party. Canon 1147 requires a serious reason, and examples of such are provided in the article. Canon 1148 provides for the case of the conversion of a polygamist. M. traces the evolution of this situation in magisterial writings of the Popes since the 15th century when the New World was discovered. Whereas prior to the Code of 1917 the dissolution of this kind of marriage was rooted in the exercise of the full power of the Roman Pontiff, the current legislation places it in the Pauline privilege. The requirement in the past that the baptized polygamist must marry the first wife has been mitigated. M. also deals with the renewal of consent and some questions not addressed in the Code, for example, the situation where the first wife of a polygamist is baptized. In such a case, if the non-baptized polygamist does not dismiss the other wives, the baptized first wife can exercise the Pauline privilege. Cases not foreseen by the current legislation must be referred to the Roman Pontiff. Specific questions and examples are presented by M. in exploring the extent to which the Pauline privilege can be applied. In relation to canon 1150, he examines the question of who has the faculty to investigate cases where there are doubts about the application of the Pauline privilege (examples of cases when recourse to the Holy See is necessary are given).

1151-1155

SCL IV (2008), 215-252: P. Brown: Legal Separation: A Pastoral Alternative. (Article)

B. considers the question of how pastors may give pastoral support to those whose marriages are in difficulties, particularly when there are issues of physical or psychological abuse. He argues that more use should be made of the provision of legal separation in order to provide time out for attempts at reconciliation. He then looks in detail at the legislation on the subject.

1153

FCan III/1 (2008), 73-77: Elisa Rodrigues de Araújo: A violência doméstica como causa de separação (cân. 1153). (Article)

Canon law accepts marital separation if either of the spouses repeatedly behaves in such a way as to cause physical or spiritual harm to the other spouse or the children. Church authorities can play an active role in preventing and eradicating violence within the family, and help ensure that the family does not become a place of violation of human rights.

1156-1165

BEF LXXXIV 3/08, 43 5-448: Javier González: Convalidation of Marriage. (Consultation)

G. explains the circumstances governing the validation of an invalid marriage, for any reason, and the procedures for simple validation and retroactive validation.

1156-1165

DPM 11 (2004), 61-70: Karl-Theodor Geringer: Convalidatio und Sanatio – Möglichkeiten und Grenzen. (Article)

G. examines the various ways in which marriages may be validated, and the procedures involved.

1160

Proc CLSA 2008, 193-236: Augustine Mendonça: Defective Convalidation. (Seminar paper)

M. considers the question of defective convalidation. He does this by considering the documents of a trial that was considered by various Rotal *turni* and the Signatura over the course of 16 years, before reaching a negative verdict. Investigating the particulars of these various hearings M. presents the various views on the disputed question of whether convalidation applies to marriages that lack form or only marriages that have defective form.

BOOK IV, PART II: THE OTHER ACTS OF DIVINE WORSHIP

1173-1175

Markus Graulich: La Parola che si fa preghiera. Considerazioni sulla Liturgia delle ore. (Article in **Jesu Pudumai Doss (ed.):** ***Parola di Dio e legislazione ecclesiastica*****, pp. 71-90**)

See above, General Subjects (*Compilations*). In the Liturgy of the Hours, the Word of God is present not only in the Psalms and Biblical readings; in its celebration, the Word of God becomes prayer and inspires the prayer of the whole People of God. The Second Vatican Council stressed the close connection between the Word of God and the Liturgy of the Hours, and this relationship has been more deeply examined in post-Conciliar Magisterium. The Church's legislation now presents the Liturgy of the Hours as a listening to the Word of God and at the same time praise offered to God and intercession for the salvation of the whole world.

1174

N XLV 5-6/08, 250-256: J. Hermans: La Liturgie des Heures pour Enfants. (Article)

H. reports on an initiative in the Netherlands to make the Liturgy of the Hours accessible to children, approved by both the bishops' conference and the Congregation for Divine Worship. It is intended for those aged 7-12 years; and H. sets out the principles followed and its structure.

1176-1185

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See above, canons 834-839.

1192

ACR LXXXV 3/08, 301-309: Rosa MacGinley: Nuns and Sisters – A Question of Historical Evolution. (Article)

See above, canon 607.

BOOK IV, PART III: SACRED PLACES AND TIMES

1232

BEF LXXXIV 1/08, 131-138: Javier González: Shrine Rectors: Appointment, Functions, and Obligations. (Consultation)

G. offers advice for those drafting statutes for a national shrine which is soon to be erected. He considers the appointment of the shrine rector; his pastoral and administrative functions; his relationship to the parish priest of the local parish (if the rector does not combine both offices); and the cessation of his term of office.

1240-1253

SCL IV (2008), 81-108: Thomas Green: Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study. (Article)

See above, canons 834-839.

1244

SCL IV (2008), 463-468: Jose Chiramel: Holydays of Obligation, Fast and Abstinence in Latin and Eastern Codes. (Reply)

C. sets out the days prescribed for holydays of obligation, fasting and abstinence in both Eastern and Latin Codes, with specific reference to India. The days for fasting and abstinence are specified in particular law in the East. Also, those aged seven and upwards are bound to fast, nor is there an upper age limit unless otherwise determined in particular law.

1246

N XLV 1-2/08, 63-64: Congregatio de Cultu Divino et Disciplina Sacramentorum: Decretum. (Decree)

This decree allows for the marking of the 2000th anniversary of the birth of St Paul by celebrating on the Feast of his Conversion, 25 January 2009, one Mass of the Feast in place of that for the 3rd Sunday in Ordinary Time, but using the second reading from the latter.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254

Proc CLSA 2008, 128-157: Lynn Jarrell - Daniel Ward: Catholic Identity – Ministry – Liability – Employment: Trends and Challenges for US Dioceses and Religious Institutes/Societies. (Seminar paper)

See above, canon 222.

1254-1310

SCL IV (2008), 43-82: John Renken: The Collaboration of Canon Law and Civil Law in Church Property Issues. (Article)

R. examines the interaction of canon and civil laws in the field of Church property from a United States perspective. The Church seeks harmonization and collaboration between the two systems as far as possible. R. considers specifically the following issues: observance of civil law on prescription; securing "financial institutes" in civil law; civil recognition of ownership of Church goods; observance of civil laws in general; observance of civil employment laws; involvement in civil litigation; observance of civil laws on contracts; observance of civil laws in pious wills.

1254-1310

SCL IV (2008), 447-454: John Renken: Particular Laws on Temporal Goods. (Reply)

R. answers the question as to which universal laws on temporal goods need to be complemented by local norms, listing the canons which require this, and then whether the diocesan bishop or conference of bishops can make additional particular laws. This is possible, but must follow what is prescribed in canons 391 and 455. The United States Conference of Catholic Bishops has in fact passed resolutions in this area but without establishing particular law. Their implementation therefore depends on the good will of diocesan bishops. R. then indicates several areas where such legislation might be desirable.

1254-1310

Jean-Pierre Schouppe: Droit canonique des biens. (Book)

In this manual S. provides a systematic presentation of the whole of Book V of the Code. Chapter I deals with the principles inspiring the reform of the Code in the light of Vatican II, and sets out the structure of Book V. Chapter II is dedicated to the constitutive principles of patrimonial canon law (the Church's inherent and independent right to own and administer temporal goods; the patrimonial capacity of private and public juridical persons). Chapter III sets out the different kinds of "goods" that exist in the Church; while Chapter IV deals with the ways in which goods may be acquired. Chapter V addresses the question of Church finances (voluntary offerings; collections and requests for alms; taxes; extra-ecclesial systems of Church financing, including the remuneration of Church ministers by the State). In Chapter VI S. examines the notions of administration and alienation, and the respective functions in this regard of administrators of ecclesiastical goods, the Ordinary, and the Roman Pontiff; he also studies the role of the episcopal conference, and looks at the particular case of the patrimony of the Holy See. Chapter VII contains a description of the financial structure of the diocese and the parish; and Chapter VIII focuses on the administration of goods in institutes of consecrated life and societies of apostolic life. Special attention is paid throughout the book to the civil law provisions of France, Belgium and Quebec. (For bibliographical details see below, Books Received.)

1257

QDE 20 (2007), 402-414: Fabio Marini: Gli istituti secolari: amministrazione dei beni temporali e personalità giuridica (can. 718). (Article)

See above, canon 718.

1262

AA XIV (2007), 307-316: Alberto Perlasca: Óbolo de San Pedro (canon 1271). Misas, así llamadas, pluri-intencionales. Anotaciones. (Article)

See below, canon 1271.

1262

Proc CLSA 2008, 257-284: Thomas Paprocki: Recent Developments Concerning Temporal Goods, Including Complementary USCCB Norms. (Seminar paper)

P. begins by introducing the idea of temporal goods and of complementary norms. He then comments on canons 1262 (fundraising), 1297 (leasing), 1277 (acts of more important/extraordinary administration) and 1292 (alienation) and on the USCCB complementary norms on these canons.

1265

AA XIV (2007), 307-316: Alberto Perlasca: Óbolo de San Pedro (canon 1271). Misas, así llamadas, pluri-intencionales. Anotaciones. (Article)

See below, canon 1271.

1268

REDC 64 (2007), 747-800: Federico R. Aznar Gil: Consideraciones sobre la prescripción adquisitiva de bienes en el derecho canónico a propósito del litigio entre las diócesis de Barbastro-Monzón y Lérida. (Decree and commentary)

This case refers to a long and tortuous canonical process between the Spanish dioceses of Barbastro-Monzón and Lérida. In 1995 the Congregation for Bishops decreed the separation of two parishes from the latter and their adscription to the former with all their temporal goods. The diocese of Lérida, however, refused to transfer more than 100 assorted works of art, which led to its protracted rearguard canonical attempt to retain them. A.G. gives the Latin text and Spanish translation of the final decree of the Signatura Apostolica, dated 23 April 2007, which finally brought the case to a close. The decision was that the diocese of Lérida held the goods in question under the title of deposit and not of ownership and they were to be returned to their legitimate owners, namely the two parishes concerned. In his commentary A.G. examines the presumption of deposit and especially the requirements concerning prescription for the acquisition of temporal goods. One of the interesting aspects of the case is that the diocese of Lérida was depending on Spanish civil law on prescription, an avenue and argument effectively closed to it by canons 197 and 1290: in matters for which canon law has provided, no appeal can be made to civil law. In the area under consideration civil law may regulate the use and administration of goods of important cultural value but cannot legislate for or change their ownership.

1271

AA XIV (2007), 307-316: Alberto Perlasca: Óbolo de San Pedro (canon 1271). Misas, así llamadas, pluri-intencionales. Anotaciones. (Article)

Canons 1262 and 1265 accord to episcopal conferences the regulation of collections and appeals made in their dioceses, and canon 1267 §3 stipulates that "offerings given by the faithful for a specified purpose may be used only for that purpose". In the light of these canons P. examines the norms promulgated by the Episcopal Conference of Argentina which require that 10% of all monies collected will be retained by the respective diocese for pastoral works. He wonders how this practice is compatible with respecting the will of the donors, especially in the case of the traditional Peter's Pence collection. He briefly looks at canon 1271 concerning diocesan bishops' contributions to the Holy See and holds that Peter's Pence should not be used for this purpose. A final consideration is given to so-called collective Mass stipends, a roll-up of various or many stipends in one Mass, and he summarizes the main points of the Decree of the Congregation for the Clergy (1991) on this matter.

1277

Proc CLSA 2008, 257-284: Thomas Paprocki: Recent Developments Concerning Temporal Goods, Including Complementary USCCB Norms. (Seminar paper)

See above, canon 1262.

1279

QDE 20 (2007), 402-414: Fabio Marini: Gli istituti secolari: amministrazione dei beni temporali e personalità giuridica (can. 718). (Article)

See above, canon 718.

1290

REDC 64 (2007), 747-800: Federico R. Aznar Gil: Consideraciones sobre la prescripción adquisitiva de bienes en el derecho canónico a propósito del litigio entre las diócesis de Barbastro-Monzón y Lérida. (Decree and commentary)

See above, canon 1268.

1291-1292

IC XLVIII 96/08, 573-598: Diego Zalbidea: El control de las enajenaciones en la normativa particular española. El patrimonio estable. (Article)

Z. collects together the various particular norms in force in Spain on the alienation of goods that form part of the stable patrimony (canon 1291). Most of these norms reproduce what is in the 1983 Code, and for the most part limit control to goods whose value is between the minimum and maximum sums established by the episcopal conference. Establishing suitable sums is not always straightforward, and Z. highlights two cases in which an innovative approach has been adopted, the dioceses in question fixing a concrete amount as the stable patrimony.

1292

Proc CLSA 2008, 257-284: Thomas Paprocki: Recent Developments Concerning Temporal Goods, Including Complementary USCCB Norms. (Seminar paper)

See above, canon 1262.

1292

QDE 20 (2007), 402-414: Fabio Marini: Gli istituti secolari: amministrazione dei beni temporali e personalità giuridica (can. 718). (Article)

See above, canon 718.

1297

Proc CLSA 2008, 257-284: Thomas Paprocki: Recent Developments Concerning Temporal Goods, Including Complementary USCCB Norms. (Seminar paper)

See above, canon 1262.

BOOK VI: SANCTIONS IN THE CHURCH

1321

IE XX 1/08, 227-261: Stato della Città del Vaticano, Tribunale Penale: Principio di legalità. Sentenza, 5 maggio 2007. Dalla Torre, Presidente (con *nota* di D. Di Gregorio, *Il principio di legalità nel sistema delle fonti dello Stato Città del Vaticano*). (Sentence and commentary)

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

1341

S 70 (2008), 711-726: David Albornoz: Norme e orientamenti della Chiesa cattolica dinanzi agli abusi sessuali di minori perpetrati da chierici. (Article)

See below, canon 1395.

1378

N XLV 3-4/08, 135: Congregatio pro Doctrina Fidei: Decretum generale de delicto attentatae sacrae ordinationis mulieris. (Decree)

The decree, dated 19 December 2007, issued by virtue of the special faculty granted under canon 30, is promulgated in *L'Osservatore Romano* and takes effect immediately. It establishes the penalty of excommunication *latae sententiae* and reserved to the Apostolic See (or a major excommunication equally reserved for those subject to the Eastern Code: cf. CCEO, canon 1443) for anyone attempting to confer a sacred order on a woman, or for a woman attempting to receive a sacred order.

1378

SCL IV (2008), 25-26: Congregation for the Doctrine of the Faith: General Decree Regarding the Delict of Attempted Sacred Ordination of a Woman. (Decree)

See preceding entry.

1395

AA XIV (2007), 157-216: Ricardo Daniel Medina: Abusos sexuales cometidos por clérigos y admisión al Orden Sagrado ¿un problema de homosexualidad? (Article)

M. raises the question of a possible relationship between the clerical sexual abuse of minors and the admission to Holy Orders of those with homosexual tendencies. After distinguishing paedophilia from ephebophilia he goes on to examine some of the studies of child abuse, particularly some common characteristics of clerical child abuse. A high percentage of these cases involved the sexual abuse of adolescent boys, much higher than among non-clerical child abuse, leading to the question whether homosexuality rather than paedophilia is at the root of such cases. He reviews the findings of a number of authors to indicate that the matter is considerably more complex, and not all cases of paedophilia or ephebophilia can be laid at the door of homosexuals; to do so would be to oversimplify and lead to failure to understand and deal adequately with the problem. Nevertheless there is some connection in many cases and the Church has shown in recent years a concern about the admittance of young homosexual men to seminary and Holy Orders. M. looks at some Papal discourses and Vatican documents and concludes there can be no doubt that the Church considers homosexuals as unsuitable for the reception of Holy Orders. However, the instruction on formation in institutes of consecrated life would exclude only those who have not successfully overcome their homosexual tendencies; the question then arises whether such cases indicate a true homosexual condition or a purely transitory phase. What is important is that all candidates achieve a fully-integrated and balanced sexual and affective maturity, and this can only be discerned during the course of formation by the use of professional and qualified psychological personnel, because later sexual abuse of minors will inevitably have its roots in earlier psychological problems and disorders; it is these which should be exposed and dealt with.

1395

DPM 11 (2004), 71-92: Klaus Lüdicke: Sexueller Missbrauch und kirchliches Strafrecht – eine neue Herausforderung für die kirchlichen Gerichte. (Article)

L. states that the question of sexual abuse presents a new challenge for the Church's tribunals, and he examines the elements of the offence, the penalties to be applied, and the procedural elements.

1395

S 70 (2008), 711-726: David Albornoz: Norme e orientamenti della Chiesa cattolica dinanzi agli abusi sessuali di minori perpetrati da chierici. (Article)

See above, General Subjects (*Human rights*). A. sets out the current canonical legislation regarding the sexual abuse of minors, clarifying the concepts involved and describing the procedures established by canon law for dealing with alleged offences in this regard: in particular the *notitia criminis* and the preliminary investigation under canon 1717, the involvement of the Congregation for the Doctrine of the Faith, and the precautionary measures that may be taken in order to safeguard the good of the faithful. He gives details of guidelines and criteria provided by some episcopal conferences, which clearly show the Church's sensitivity in addressing this delicate issue by means of appropriate measures to repair the scandal, repair justice, and reform the offender.

BOOK VII: PROCESSES

1400-1752

María Victoria Hernández Rodríguez: Parola di Dio e processi canonici. (Article in **Jesu Pudumai Doss (ed.):** ***Parola di Dio e legislazione ecclesiastica*****, pp. 135-149**)

See above, General Subjects (*Compilations*). The Church, a hierarchically organized society and at the same time a spiritual community, has the right and duty to restore the public order desired by God for the Church when this is upset by a violation of canon law. Contrary to the impression that might be given by the machinery of judgement and the technical-juridical principles by which it operates, Book VII of the Code in fact offers many points for consideration and reflection not only of a philosophical-juridical nature, but also in the area of theology, related to the Word of God and his message. Precisely because of its special characteristics it needs to avoid creating a dichotomy between the (necessary) technical-juridical elements and the philosophical-theological principles that underlie it, since the laws made by the Church have as their purpose the *salus animarum*, which is the primary aim of the Church and which conditions every area of ecclesial life, including the juridical-procedural aspect.

1401

IC XLVIII 96/08, 399-413: José T. Martín de Agar: Ecclesia y polis. (Conference presentation)

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

1403

IC XLVIII 96/08, 631-661: José Luis Gutiérrez: La instrucción «Sanctorum Mater» de la Congregación de las Causas de los Santos. (Commentary)

The Instruction *Sanctorum Mater*, drafted by the Congregation for the Causes of Saints and promulgated on 17 May 2007, having received Papal approval on 22 February 2007, deals with procedures for the instruction of causes of canonization at diocesan and eparchial level. G. examines the general characteristics of the document before proceeding to a commentary on its six main parts: the first part stressing the need for a true reputation of holiness before beginning a cause, and the role of the various parties in the cause; the second setting out the procedure for the preliminary phase of the cause; the third dealing with the officials who carry out the instruction of the cause (judge,

promoter of justice, notary, and technical expert in causes concerning a possible miracle); the fourth dealing with theological censors and experts in history and archives; the fifth with the obtaining of proofs from witnesses; and the sixth with the acts leading up to the closure of the diocesan procedure, the closing session and the transmission to Rome of the acts. G. goes on to explain in greater detail the function of the postulator or vice-postulator of the cause; and concludes with a section explaining the differences between beatification and canonization.

1419-1441

DPM 13 (2006), 17-25: Ariel D. Busso: Besonderheiten der kirchlichen Ehejudikatur in Argentinien. (Article)

B. gives an overview of the characteristics of the Church in Argentina, the activity of the Church tribunals, the Argentinian Canon Law Society, and the Canon Law Faculty of the Catholic University of Argentina.

1425

Proc CLSA 2008, 74-84: Ronald Bowers: A Perspective on Tribunal Ministry: The 1960s to the Present. (Seminar paper)

See below, canons 1501-1506.

1425-1426

DPM 10 (2003), 99-118: Thomas A. Amann: Die Ausübung der *sacra potestas* im kirchlichen Richterkollegium. (Article)

See above, canon 129.

1432

SCL IV (2008), 361-372: Apostolic Tribunal of the Roman Rota: Exclusion of Indissolubility (Decree Submitting the Case to an Ordinary Examination): decree *coram* Turnaturi, 15 February 2001. (Decree)

See above, canon 1101.

1443

IE XX 2/08, 457-478: Benedetto XVI: Discorso alla Rota Romana, 26 gennaio 2008 (con *Indirizzo di omaggio del Decano della Rota Romana, S.E.R. Mons. Antoni Stankiewicz, al Santo Padre in occasione dell'inizio del Nuovo Anno Giudiziario*, e con *nota* di Ombretta Fumagalli Carulli, *Verità e giustizia nella giurisprudenza ecclesiale*). (Addresses and commentary)

Given here are the texts in Italian of Pope Benedict XVI's address to the Roman Rota of 26 January 2008 at the start of the new judicial year, the words of homage addressed by the Dean of the Rota to the Holy Father on the same occasion, and a commentary by F.C. which dwells on four considerations: the role played by Rotal jurisprudence; the dialectic between the Rota and lower tribunals; the juridical value of the addresses to Rota; and the main lines along which the present pontificate is moving.

1444

DPM 10 (2003), 77-98: Martha Wegan: Kosten und Dauer der Ehenichtigkeitsverfahren an der Rota Romana. (Article)

W. carries out an analysis of the costs, procedures and the duration of marriage cases before the Roman Rota.

1444

DPM 14 (2007), 27-74: Stefan Killermann: Die Rota Romana und ihre Rechtsprechung zu Beginn des neuen Jahrtausends. (Article)

Analyzing the sentences of the Roman Rota from 2000 to the present, K. highlights a concentration of Rotal jurisprudence in the area of matrimony. The current practice of the Apostolic Signatura to entrust third instance processes to local tribunals could halt this tendency. For K. it would represent a step forward if this practice were to become more widespread as it would help unburden this Papal tribunal and allow it more effectively to carry out its function of contributing to the unifying and development of jurisprudence.

1445

Per 97 (2008), 455-505: V. de Paolis: Il contenzioso amministrativo. Via amministrativa e via giudiziale. Controllo di merito e controllo di legittimità. (Article)

De P. takes advantage of the 40th anniversary of the Apostolic Constitution *Regiminis Ecclesiae Universae* to consider the role of the Second Section of the Apostolic Signatura which that document created. After a short summary of the legislation that led to the creation of the Second Section and its current configuration, De P. considers the two major phases of the contentious-administrative process: hierarchical recourse, and judicial recourse to the Apostolic Signatura. He examines the relationship between these two stages and highlights some of the problematic contemporary issues that arise.

1447-1451

DPM 14 (2007), 75-106: Nikolaus Schöch: Befangenheitseinreden gegen eine Gerichtsperson unter Berücksichtigung der Instruktion *Dignitas Connubii*. (Article)

The exception of suspicion (*exceptio suspicionis*) against a judge or other tribunal official (also known as *recusatio*) is a legal instrument aimed at guaranteeing the necessary objectivity in judgements between parties. S. looks at the exception in the light of the novelties introduced by *Dignitas Connubii*, which gives more specific application to the provisions of the Code, based on 20 years of practical experience and in particular the praxis of the Roman Rota and the Apostolic Signatura. He lists possible grounds for the exception, distinguishing between reasons based on personal relationships with the tribunal official and those based on the procedural actions of the official. Having enumerated the tribunal officials against whom an exception of suspicion may be presented, he looks into the procedural aspects involved in filing the exception, examining it, and deciding upon it.

1453

DPM 10 (2003), 155-186: Adam Zirkel: *Quam primum – salva iustitia*. Müssen kirchliche Eheprozesse Jahre dauern? (Article)

Z. asks whether causes of nullity of marriage really need to take as long as they do to resolve. He makes a number of suggestions based around the principles that cases are to be concluded as quickly as possible, and that justice is to be safeguarded.

1453

DPM 11 (2004), 125-139: Andreas Weiß: Schnell und gut! Eine Replik auf Adam Zirkel, *Quam primum – salva iustitia*. Müssen kirchliche Eheprozesse Jahre dauern? (Article)

W. disagrees with a number of points made by Zirkel (see preceding entry), particularly in relation to the question of proofs, and he attempts to set out a broader vision of the marriage nullity process.

1481-1490

DPM 12 (2005), 85-104: Martha Wegan: Zur Bedeutung der anwaltlichen Begleitung und vor allem Beratung für die Parteien im Vorfeld und im Rahmen des kirchlichen Ehenichtigkeitsverfahrens. (Article)

W. looks at the roles of the procurator and advocate in the marriage nullity process, and details their specific duties.

1481-1490

DPM 14 (2007), 273-288: Markus Müller: Die Rechtslage zur Aufnahme in das und zur Streichung aus dem Verzeichnis der am Gericht zugelassenen Advokaten und der am Gericht tätigen Prokuratoren nach Art. 112 der Eheprozessordnung *Dignitas Connubii*. (Article)

M. looks at the juridical norms dealing with the panel of advocates admitted before the tribunal and the procurators who represent the parties in the tribunal under the Instructions *Provida Mater Ecclesia* of 15 August 1936 and *Dignitas Connubii* of 25 January 2005. After explaining the different concepts M. looks at the juridical requirements for admission to and removal from the panel. He ends with some considerations on removal from the panel as an administrative act of the tribunal.

1501-1506

Proc CLSA 2008, 74-84: Ronald Bowers: A Perspective on Tribunal Ministry: The 1960s to the Present. (Seminar paper)

B. undertakes to compare certain provisions of the 1917 Code, the American *Procedural Norms* and the 1983 Code. He discusses the ideas of competence to petition, the use of sole judges, the appellate system, inspection of acts/sentences, and the development of grounds of nullity after the Second

Vatican Council. In conclusion, he calls for the establishment of a US National Third Instance Tribunal.

1507

QDE 20 (2007), 436-442: G. Paolo Montini: La formulazione del dubbio. (Article and documents)

The formulation of the doubt is one of the most important and first steps in an annulment process and consists in fixing the grounds of nullity to which the definitive sentence must respond. The formulation of the doubt includes the petitioner's request for an annulment; it takes into consideration the respondent's reply, and the first observations of the defender of the bond. The formulation of the doubt directs the instruction of the case, which will have a precise focus for gathering evidence. The question is how to arrive at the formulation of the doubt as quickly as possible. The Instruction *Dignitas Connubii* offers a new simplified procedure whereby the presiding judge can in one decree admit the petition and cite the respondent. The citation of the respondent consists in: the information on the request submitted by the petitioner; the formula of the doubt; the time limit for the respondent to reply. The decree admitting the petition and citation is to be sent immediately to the parties and to the defender of the bond. After at least fifteen days and within 25 days of sending the decree to the parties, the presiding judge, on the basis of the responses that he has received, is to fix the formula of the doubt with a decree. Finally, this decree is to be communicated to the parties and the defender of the bond. The procedure can be further simplified if, when notifying the parties and the defender of the bond, the decree states that if there are no responses from the parties the decree itself will have the same effect as the formulation of the doubt. The simplified procedure can be considered the ordinary manner of proceeding in all cases except those in which the judge believes that it would be better to bring the parties to the tribunal for a discussion to formulate the doubt. The "more simplified" version could be used in cases where the respondent is informed of the initiation of the nullity process and can be legitimately expected not to adopt a hostile, obstructionist and dilatory position. The standard simplified version saves calling the parties into the tribunal for a discussion before the judge. The more simplified version saves a further decree of notification. M. also provides samples of the simplified and more simplified decrees.

1514

QDE 20 (2007), 436-442: G. Paolo Montini: La formulazione del dubbio. (Article and documents)

See above, canon 1507.

1514

SCL IV (2008), 361-372: Apostolic Tribunal of the Roman Rota: Exclusion of Indissolubility (Decree Submitting the Case to an Ordinary Examination): decree *coram* Turnaturi, 15 February 2001. (Decree)

See above, canon 1101.

1517-1525

DPM 13 (2006), 107-117: Ernst Freiherr von Castell: Bis zum bittern Ende? Über die Unmöglichkeit, offenkundig aussichtslose Annullierungsverfahren von Amts wegen einzustellen. (Article)

C. laments the law's inability to deal adequately with situations in which, in the course of marriage nullity proceedings, it becomes obvious that there is no purpose to be served in allowing them to continue. He proposes an amendment to *Dignitas Connubii*, article 151, which would allow the college of judges at any stage in the proceedings, after hearing the parties, to issue a decree to the effect that from the acts of the case it is clear that the petition lacks all foundation and that there are no grounds for allowing the process to continue. Recourse against the decree could be made to the appeal tribunal.

1536

Proc CLSA 2008, 158-176: John Johnson: "...Into Something Rich and Strange". Some Changes in Rotal Jurisprudence Inspired by the 1983 Code of Canon Law. (Seminar paper)

See above, canons 1097-1098.

1536

QDE 20 (2007), 415-435: Giordano Caberletti: La collaborazione tra pastori d'anime e tribunali ecclesiastici in relazione alle cause di nullità matrimoniali. (Article)

See above, canons 1063-1070.

1544-1546

REDC 64 (2007), 647-671: Raúl Ramón Sánchez: Documentos en el proceso canónico: presentación y eficacia desde su calificación. (Article)

S. considers what exactly the concept "document" covers in the context of proofs presented to a tribunal. It could best be expressed as any material representation of thought which may inform the judge of the existence or otherwise of some determined fact or event: a much wider description, therefore, than simply a written document. This should be borne in mind in the light of the rapid increase due to modern technology of the many different means of recording thought and speech. S. examines the presentation of documents in the canonical process, distinguishing between private and public documents, and analyzes what is required for an authentic document, and the wide discretion given to the judge in admitting documents to the trial. He concludes with a consideration of the concept and efficacy of documents in civil law with special reference to Spanish civil law, from which he gives some extensive quotations in footnotes. He concludes that the wide scope for the presentation of documents allows for greater quantity and quality of proof, thereby giving flexibility to the judicial process in its search for the truth.

1548

QDE 20 (2007), 415-435: Giordano Caberletti: La collaborazione tra pastori d'anime e tribunali ecclesiastici in relazione alle cause di nullità matrimoniali. (Article)

See above, canons 1063-1070.

1550

QDE 20 (2007), 415-435: Giordano Caberletti: La collaborazione tra pastori d'anime e tribunali ecclesiastici in relazione alle cause di nullità matrimoniali. (Article)

See above, canons 1063-1070.

1574-1579

Proc CLSA 2008, 177-192: Gerald Jorgensen: Navigating the Minefield of the Psychological Examination. (Seminar paper)

J. offers a guide for advocates in penal trials about the use of psychological evaluations. He first reviews some past literature on the subject and then distinguishes between therapeutic evaluations (aimed at helping the patient) and forensic evaluations (aimed at helping the court). He explains how forensic evaluators should work, and describes the various psychological tools that they use, and their advantages and limitations. He goes on to highlight the role of informed consent and counselling against certain clinical diagnoses. Finally he notes the importance placed by the Magisterium, especially since Pius XII, on avoiding illicit or immoral psychological evaluations.

1584-1586

AA XIV (2007), 73-88: Ariel David Busso: Algunas consideraciones acerca de las presunciones jurídicas. Aportes a la filosofía del derecho canónico. (Article)

Not every possible eventuality is covered by the law, nor could it be. When the law lacks the precision required in an individual case the natural principles of reason are to be applied to the known and certain facts, thus allowing a conclusion to be drawn based on human intuition and experience, and which can also be regarded as at least morally certain. B. examines the concept of presumption in canon law: a probable conjecture is made from the known facts, providing the basis from which a presumption can be made; the coalescence of a number of presumptions can lead to a morally certain conclusion which, however, not being absolute, may be overturned by contrary proof. At the start of the process there are "indications" (*indicia*) giving rise to a conjecture, ultimately leading to a presumption. Some presumptions are presumptions of law, requiring no further proof; these can be overturned only by the contesting party's provision of contrary evidence. One presumption cannot provide the foundation for subsequent presumptions; each one must be based on certain and definite facts. B. ends by calling on judges to use their prudence and experience when dealing with these matters, basing themselves not only on their canonical learning but on the wide field of human behaviour and experience.

1584-1586

SC 41 (2007), 401-440: Michelle Flood: Presumption in Canon Law and Its Application to Marriage Legislation. (Article)

The use of presumptions (*praesumptiones*) in marriage legislation is explored in this article. In the first section, F. identifies the categories of presumptions and their relationship to other canonical concepts. The second section focuses on the practical application of the theoretical norms by the Legislator in the laws on marriage. The third section connects the theoretical principles with the operation of the legislation in practical cases. F. also addresses the misapplication of presumptions in marriage cases by tribunals in North America as communicated by a decree of the Apostolic Signatura in 1995.

1598

QDE 20 (2007), 415-435: Giordano Caberletti: La collaborazione tra pastori d'anime e tribunali ecclesiastici in relazione alle cause di nullità matrimoniali. (Article)

See above, canons 1063-1070.

1598

SCL IV (2008), 391-408: Apostolic Tribunal of the Roman Rota: Violation of the Right of Defence: Decree *coram* Funghini, 11 May 1994. (Decree)

An affirmative first instance decision on grave lack of discretionary judgement was overturned on appeal. On appeal to the Rota the respondent's advocate raised an exception to the first instance decision based on the denial of the right of defence. F. considers in a detailed law section the development of canon 1598 on the publication of the acts, and the withholding of a specific act. This extends only to a specific act, and to avoid grave dangers, not to the entire file of acts or the supplementary instruction. He examines in particular how this is to be construed when the same person is appointed as both advocate and procurator. Once a procurator has been appointed, the tribunal can bypass the party and deal directly with the procurator unless the Code absolutely decrees that the party be heard or that the procurator needs a special mandate. Consequently notification of the acts to the procurator is to be considered notification to the party. This is not affected by the fact that one and the same person exercises the distinct roles of advocate and procurator. Therefore it is in accordance with both the letter and the spirit of the law if the tribunal communicates only to the procurator who is also the advocate what the law says

must be communicated to the parties and their advocate. The exception of nullity against the first instance decision is denied.

1598

SCL IV (2008), 409-436: Apostolic Tribunal of the Roman Rota: Violation of the Right of Defence: Decree *coram* Stankiewicz, 28 July 1994. (Decree)

In this case a negative first instance decision of the Tribunal of Arundel and Brighton was overturned on appeal to Southwark. On arrival at the Rota the defender of the bond noted that publication of the acts at first instance did not appear to conform to the requirements of canon 1598. Under the 1917 Code publication of the acts was not required under pain of nullity, although the sentence could still be null if the natural right of defence were in fact gravely violated. The 1983 Code is more exigent in this respect. Citing the previous decree of Funghini, S. reiterates that both the parties and their advocates have the right to see the acts. It is not an *a priori* argument that the mere fact that the opportunity to examine the acts was not given to the parties renders the sentence null, but rather *a posteriori*, if they were not able to exercise the right of defence as a result of this omission. That the advocates are allowed to inspect the acts and exercise the right of defence does not alter the fact that the right of the parties has been denied. This would be null but remediable. If the parties do not appoint advocates then the right of defence is completely denied and the sentence irremediably null. S. then considers in detail the nature of a plaint of nullity and how this should be handled. The introduction of the 1983 Code does not prevent a plaint of nullity being dealt with incidentally by the appeal court when raised as part of an appeal. In consequence the sentence of the first instance court in this case, and therefore also of the appeal court, were declared null, and the petitioner was given the option to proceed anew before the tribunal of first instance.

1611

QDE 20 (2007), 436-442: G. Paolo Montini: La formulazione del dubbio. (Article and documents)

See above, canon 1507.

1622

SCL IV (2008), 437-446: Augustine Mendonça: Irremediable Nullity of a Decree of an Appeal Tribunal. (Reply)

An appeal court treated an appeal based on allegations of bias and lack of proper examination of evidence as a plaint of nullity, and went on to declare the sentence null without informing the parties or defender of the bond. The validity of this decree has now been questioned. M. considers what should have happened in the light of canons 1620 and 1622 and articles 270 and 272 of *Dignitas Connubii.* A plaint of nullity can be brought forward in three ways: as a principal action before the judge who produced the sentence; as subordinate to an appeal before the appeal court; or incidentally when a question arises during the course of an appeal. *Dignitas Connubii* provides clear guidance on the handling of incidental questions. The scenario suggested is an implicit complaint raised incidentally. The appeal court should inform the respondent and defender of the bond at second instance of the allegation, and then consider whether to admit the incidental question. The interlocutory decision should be communicated as laid down in canons 1614-1615. In the scenario described the appeal court was not wrong to accept an implicit allegation of nullity, but its manner of proceeding led to irremediable nullity. It should now proceed in the manner prescribed.

1628

Proc CLSA 2008, 74-84: Ronald Bowers: A Perspective on Tribunal Ministry: The 1960s to the Present. (Seminar paper)

See above, canons 1501-1506.

1650-1655

DPM 12 (2005), 175-250: Michael Werneke: Die Urteilsvollstreckung im kanonischen Prozessrecht. (Article)

W. carries out a detailed examination of the norms on the execution of the judgement in canonical trials, tracing their history from the times of the early Church up to the 1917 Code, the reforms of the 1983 Code, and the corresponding provisions in the CCEO.

1671-1691

Ang 85 (2008), 765-790: Sebastiano Villeggiante: Il guidice e le parti nel processo di nullità matrimoniale in diritto canonico: problematica attuale. (Lecture)

V. writes that the process is always a dialogue between the judge and the parties, never a monologue. He develops the theme of the collaboration of the judge and the parties to ensure that the trial proceeds well. This requires an understanding of the nature of the matrimonial process, not one between the parties seeking a victory but one involving the parties and the judge in the search for the truth, a *ius publicum* not a *ius privatum*. V. also worries that the concordat with Italy, linking the civil effects with canonical annulment, has caused problems for canonical procedure, and he calls for this link to be ended. He ends by discussing various issues that can arise during the process, including questions about the content of the *libellus* or the addition of a new heading of nullity after the conclusion of the case.

1671-1691

DPM 10 (2003), 41-54: Heinrich J. F. Reinhardt: Ehenichtigkeitsverfahren und ihre Spannungen zur kirchlichen Ehepastoral. (Article)

R. states that there is a long history of tension between marriage nullity proceedings and pastoral action. He studies the opinions of various authors and the results of consultations on issues relating to marriage proceedings and marriage advisers, and offers a number of suggestions regarding possible ways forward.

1671-1691

DPM 13 (2006), 139-146; 173-175: Peter Stockmann: Die Ansprache Papst Johannes Pauls II. vom 29. Januar 2005 vor der Römischen Rota. (Commentary)

S. comments on Pope John Paul II's address to the Roman Rota on 29 January 2005, dealing with the essential relationship between canonical proceedings and the search for objective truth, and the importance of avoiding false "pastoral" solutions whereby the substantive features of the proceedings are retained but the judicial verdict is simulated. The text of the address is given in German on pp. 173-175.

1671-1691

DPM 14 (2007), 153-179; 289-292: Peter Stockmann: Die erste Ansprache von Papst Benedikt XVI. vor der Rota Romana im Spiegel seiner Ehelehre. (Article)

S. takes the first address of Pope Benedict XVI to the Roman Rota on 28 January 2006, on the occasion of the inauguration of the judicial year, as a starting point for a deeper analysis of the Pope's statements on the Church's teaching on marriage in general, and on matrimonial and procedural law in particular. He sees the address as being within the tradition of the Papal addresses to the Roman Rota, and he evaluates its canonical content, foreseeing the possibility of its opening the way for certain amendments within the realm of matrimonial and procedural law. The text of the address is given in German on pp. 289-292.

1671-1691

DPM 14 (2007), 181-204: Konrad Breitsching: Erwägungen zu Rechtsnatur und Verbindlichkeit von *Dignitas Connubii*. (Article)

See above, canons 29-34.

1671-1691

DPM 14 (2007), 205-215: Frans Daneels: Das Wesen des Ehenichtigkeitsverfahrens. (Article)

This article is a summary of a conference presentation given in September 2004 to tribunal officials from various parts of the world, dealing with the proper nature of the matrimonial nullity process. Although as a true judicial process it has as its object the declaration of a juridically relevant fact, it nevertheless has a specific nature of its own. This process does not necessarily presuppose a controversy between the parties in respect of the nullity of their marriage. For D., the Instruction *Dignitas Connubii* does not represent a revision of the law currently in force, but is above all a sure exposition of the way in which the process develops and is intended as far as possible to help speed up causes of matrimonial nullity.

1671-1691

DPM 14 (2007), 257-272: Klaus Lüdicke: Einführung in die Instruktion *Dignitas Connubii*. (Conference presentation)

In a paper delivered at the annual conference of German-speaking ecclesiastical tribunals held at Bensberg, Germany, L. provides a general introduction to the Instruction *Dignitas Connubii* of 25 January 2005, explaining the rather obscure history of its drafting and the juridical nature of the Instruction. After pointing out certain differences between the Instruction and the canons of the Code, L. refers to two address of Pope John Paul II to the Roman Rota (1987 and 1988) as the sources of certain articles in the Instruction. In conclusion he highlights two tendencies in the Instruction: one promoting the activity of the advocate, the other reassessing the right of defence.

1671-1691

ELJ X 2/08, 191-197: Helen Costigane: *Dignitas Connubii:* Greater Fairness in Declarations of Nullity? (Article)

In 1997 Sheila Rauch Kennedy published *Shattered Faith,* the story of her marriage and divorce from Congressman Joe Kennedy, a member of one of the best-known families in the United States of America. Married in 1979 in a Catholic Church, Mr Kennedy was a Catholic while Mrs Kennedy remained an Episcopalian. Twin sons were born in 1980 and baptized as Catholics, with godparents from both Christian Churches. The marriage began to unravel when Mr Kennedy was elected to Congress. Separation in 1989 was followed by divorce because of "irreconcilable differences". In 1993, Mrs Kennedy received notification from the Metropolitan Tribunal of the Archdiocese of Boston, informing her of the petition lodged by her former husband to have the marriage declared null on the grounds of lack of due discretion of judgement (though whose lack of due discretion is not made clear). Shocked, and while willing to acknowledge that the marriage had failed (evidenced in a divorce), she could not accept that it had never existed as a sacrament. C. analyzes various provisions of *Dignitas Connubii* to see whether at least some of Mrs Kennedy's objections would have been addressed by a better application of the law.

1671-1691

IE XX 2/08, 391-410: Michele de Santi: I processi di nullità matrimoniale nell'istruzione *Dignitas Connubii*. (Bibliographical review)

De S. introduces and provides a brief summary of a book containing the proceedings of a congress organized by the Faculty of Canon Law of the

University of Navarre on 24-26 October 2005, dealing with the Instruction *Dignitas Connubii* and matrimonial nullity processes.

1671-1691

SC 41 (2007), 309-343: Roch Pagé: L'instruction *Dignitas connubii*: Questions choisies. (Article)

In 1994 Pope John Paul II established an interdicasterial commission to prepare an Instruction for the procedure to be followed in marriage nullity cases. The Instruction *Dignitas Connubii* was published on January 25, 2005. Often referred to as another *Provida Mater* (1936), the new Instruction was issued to assist judges and other tribunal officers in their duties to determine the nullity of a marriage. Although the majority of the norms of *Dignitas Connubii* reproduce those found in the 1983 Code, there are certain innovations and clarifications on various procedural aspects. P. notes that this Instruction integrates the jurisprudence of the apostolic tribunals as well as the opinions of the Pontifical Council for Legislative Texts, and is thus reflective of various developments since the promulgation of the 1983 Code. The article offers reflections on the evolution of the Instruction, and specific commentary on individual topics such as the competent forum, members of the tribunal, the right of defence, introduction of a case, the use of proofs, publication of the acts, the sentence, use of the *vetitum*, and the conformity of sentences. The article concludes with the observation that the procedure for nullity cases appears less a "contentious" process than in the Code and that a similar Instruction for penal cases would be very welcome.

1673

SC 41 (2007), 345-369: John Beal: When East Meets West: Tribunal Competence in Inter-Ritual Marriage Cases. (Article)

The legislation regarding the competence of ecclesiastical tribunals in the CIC and CCEO is virtually identical, but their scope is considerably different. B. first approaches the topic of inter-ritual competency in marriage cases with a consideration of the principle "exclusive personal jurisdiction by reason of rite". But there are some exceptions to this principle where the hierarchies of various Eastern Churches are not well established. In marriage cases where one party is Latin and the other party is an Eastern Catholic, there is no explicit provision for tribunal competence, nor when the marriage being challenged is a mixed marriage or when both parties are non-Catholic. B. explores a response from the Apostolic Signatura (1989) in reply to an inquiry about competence between Latin and Eastern tribunals. There has been confusion about how to understand

this significant response, and B. offers an interpretation for a more grounded understanding of it.

1677

QDE 20 (2007), 436-442: G. Paolo Montini: La formulazione del dubbio. (Article and documents)

See above, canon 1507.

1682-1684

DPM 14 (2007), 217-240: Verena Feldhans: Die Berufung im Ehenichtigkeitsprozess. Ein Vergleich von *Codex Iuris Canonici* und *Dignitas Connubii*. (Article)

F. compares the provisions of the Code of Canon Law and the Instruction *Dignitas Connubii* in so far as they relate to the appeal in the matrimonial nullity process. She defines the appeal as a means of challenging a sentence together with the sending of the judicial acts to the higher tribunal, and goes on to compare both legal texts. In F.'s view the Instruction's detailed provisions regarding the transmission of the acts of the cause *ex officio* after the first sentence of nullity and the way it is to be dealt with by the appeal tribunal represent a re-evaluation.

1683

SCL IV (2008), 361-372: Apostolic Tribunal of the Roman Rota: Exclusion of Indissolubility (Decree Submitting the Case to an Ordinary Examination): decree *coram* Turnaturi, 15 February 2001. (Decree)

See above, canon 1101.

1684

IE XX 1/08, 159-178: Carlo Montalenti: Alcune osservazioni sull'Istruzione «Dignitas connubii» e il divieto di passare a nuove nozze imposto tramite sentenza o decreto. (Article)

Applications of the *vetitum*, used sparingly in the early part of the last century in certain decisions of the Congregation of the Sacraments, the Rota and the Roman Curia, rapidly spread to local jurisprudence. The first reference in any official norm came with *Provida Mater* (1936), although this referred simply to

the obligation to inform the Ordinary of prohibitions imposed with sentences of nullity. It is only with *Dignitas Connubii* that norms are given on the use of the judicial *vetitum* (article 251). M. looks at the creative use of the *vetitum* in the United States; he then studies its nature and the consequences of its application. On the question of the lifting of the *vetitum*, he finds that, with the exception of the Rota, the practice of tribunals is not homogeneous with regard to its being treated as a judicial or an administrative matter. M. concludes with an attempt to clarify the lack of systematic framing of article 251 of *Dignitas Connubii*, looking in particular at the extent of the *vetitum*, its procedural aspects, and competence for revoking it.

1708-1712

DPM 11 (2004), 23-43: Rüdiger Althaus: Die Feststellung der Nichtigkeit der Erteilung einer hl. Weihe vor dem Hintergrund der Neuordnung des Verwaltungsverfahrens vom 16. Oktober 2001. (Article)

A. examines the procedures for cases involving the declaration of the nullity of sacred ordination, in the light of the *Regulae servandae* of the Congregation for Divine Worship of 16 October 2001, and comments on the reasons why a sacred ordination may be invalid.

1717

S 70 (2008), 711-726: David Albornoz: Norme e orientamenti della Chiesa cattolica dinanzi agli abusi sessuali di minori perpetrati da chierici. (Article)

See above, canon 1395.

1740

BEF LXXXIII 1/07, 65-76: Augustine Mendonça: Consultation with Two Parish Priests in the Removal of a Parish Priest. (Consultation)

M. expounds the law relating to the selection of a stable group of parish priests for the purposes of consultation over the removal of a parish priest, and the bishop's selection of two of them in a given case. In particular, he addresses the problem of a diocese in which the stable group of parish priests has not been chosen by the presbyteral council, and concludes that in such circumstances the bishop would not be able to substitute another group for this purpose.

1740-1752

SCL IV (2008), 287-340: Victor D'Souza: The Procedure for the Removal and Transfer of Pastors: Balancing the Rights. (Article)

The stability of pastors (canon 522) is based on *Christus Dominus*, no. 31, where the rights of the pastor are balanced against those of the bishop to provide for the good of souls. This rationale must always be borne in mind when considering the procedural norms for removal or transfer. D'S. gives particularly detailed attention to the grounds for removal, and whether the attainment of a specified age suffices by itself. He then looks at the practicalities involved in the different stages of the process. He concludes with a much shorter section on transfer. He emphasizes that procedure alone is not enough. There must be a concern for the pastoral good of the faithful. This can be jeopardized if the process leads to polarization in a parish, or if a bishop is seen to ride roughshod over the rights of those concerned.

1742

BEF LXXXIII 1/07, 65-76: Augustine Mendonça: Consultation with Two Parish Priests in the Removal of a Parish Priest. (Consultation)

See above, canon 1740.

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

AA	Anuario Argentino de Derecho Canónico, Buenos Aires – V. Rev. J. McGee, Girvan, Ayrshire.
ACR	Australasian Catholic Record – V. Rev. I. B. Waters, Melbourne.
AkK	Archiv für katholisches Kirchenrecht, Paderborn – Abstracts supplied by publisher.
Ang	Angelicum, Rome – Rev. P. Gargaro, Clydebank.
BEF	Boletin Eclesiastico de Filipinas, Manila – Rev. Mgr. J. Hadley, Leicester.
DPM	De Processibus Matrimonialibus, Potsdam – Editor, up to issue 13 (2006); from issue 14 (2007) abstracts supplied by publisher.
ELJ	Ecclesiastical Law Journal, London – P. Barber (London).
EV	Escritos del Vedat, Torrent, Valencia – Abstracts supplied by publisher.
FC	Folia Canonica, Budapest – Rev. A. Saje, Ljubljana.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
IC	Ius Canonicum, Pamplona – Abstracts supplied by publisher.
IE	Ius Ecclesiae, Pisa – Rev. J. D. Gabiola, London.
LitJ	Liturgisches Jahrbuch, Eichstatt – Editor.
LJ	Law and Justice, Worcester – Rev. Mgr. Canon C. J. Murtagh, Liphook, Hants.
N	Notitiae, Rome – Rev. Mgr. G. Read, Colchester.
Per	Periodica, Rome – Rev. A. McGrath OFM, Dublin.
Proc CLSA	Proceedings of the Canon Law Society of America – Rev. P. Gargaro, Clydebank.
PS	Philippiniana Sacra, Manila – Editor.
QDE	Quaderni di Diritto Ecclesiale, Milan – Rev. M. Mullaney, Dublin.
REDC	Revista Española de Derecho Canónico, Salamanca – V. Rev. J. McGee, Girvan, Ayrshire.
RfR	Review for Religious, St Louis, Missouri – Sr I. MacPherson SND, Glasgow.
RJK	Rottenburger Jahrbuch für Kirchengeschichte, Stuttgart – Editor.
RTL	Revue théologique de Louvain, Louvain-la-Neuve – Abstracts supplied by publisher.
S	Salesianum, Rome – Abstracts supplied by publisher.
SC	Studia Canonica, Ottawa – Rev. P. Cogan SA, Ottawa.
SCL	Studies in Church Law, Bangalore – Rev. Mgr. G. Read, Colchester.
Vid	Vidyajyoti, Delhi – Rev. Mgr. J. Hadley, Leicester.
VR	Vida Religiosa, Madrid – Editor.

BOOKS RECEIVED

- Elizabeth COTTER: *The General Chapter in a Religious Institute, with Particular Reference to IBVM Loreto Branch*, Peter Lang, Oxford, Bern, Berlin, Brussels, Frankfurt, New York, Wien, 2008, 380pp., ISBN 978-3-03911-414-6 [see above, canon 631]

- Markus GRAULICH (ed.): *Il Codice di Diritto Canonico al servizio della missione della Chiesa* (Questioni di Diritto Canonico series), Libreria Ateneo Salesiano, Rome, 2008, 106pp., ISBN 978-88-213-0701-0 [see above, General Subjects (*Compilations*)]

- Zenon GROCHOLEWSKI: *La legge naturale nella dottrina della Chiesa* (a cura di Luigi Cirillo) (2nd ed.), Consult Editrice, Rome, 2008, 68pp., ISBN 978-88-903753-0-9 [see above, General Subjects (*Legal theory*)]

- Scott HAHN (General Editor: James Socias): *Comprendre les Écritures. Un cours complet d'introduction à la Bible* (translation of *Understanding the Scriptures* under the direction of Giles Ménard) (Gratianus series), Wilson & Lafleur Ltée, Montréal, 2008, x + 548pp., ISBN 978-2-89127-845-8

- Lluís MARTÍNEZ SISTACH: *Associations of Christ's Faithful* (Gratianus series), Wilson & Lafleur Ltée, Montréal, 2008, xix + 174pp., ISBN 978-2-89127-848-5 [see above, canons 298-329]

- Jorge MIRAS: *Christ's Faithful in the World. The Secular Character of the Laity* (Gratianus series), Wilson & Lafleur Ltée, Montréal, 2008, viii + 66pp., ISBN 978-2-89127-870-6 [see above, canons 224-231]

- PONTIFICIO CONSIGLIO PER I TESTI LEGISLATIVI: *La legge canonica nella vita della Chiesa. Indagine e prospettive nel segno del recente magistero pontificio*, Libreria Editrice Vaticana, 2008, 192pp., ISBN 978-88-2209-8138-9 [see above, General Subjects (*Compilations*)]

- Jesu PUDUMAI DOSS (ed.): *Parola di Dio e legislazione ecclesiastica* (Questioni di Diritto Canonico series), Libreria Ateneo Salesiano, Rome, 2008, 160pp., ISBN 978-88-213-0692-0 [see above, General Subjects (*Compilations*)]

- Jean-Pierre SCHOUPPE: *Droit canonique des biens* (Gratianus series), Wilson & Lafleur Ltée, Montréal, 2008, xvii + 257pp., ISBN 978-2-89127-856-0 [see above, canons 1254-1310]