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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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Comparative law

Ang 86 (2009), 459-470: Andrea Scasso: Diritto di appartenenza e autodeterminazione della confessione religiosa: un caso di giustizia endoassociativa nella Congregazione dei Testimoni di Geova. (Article)

S. describes a case involving a man excommunicated by the Jehovah's Witnesses and his attempts to have the penalty annulled by the civil courts, which eventually upheld the excommunication. The courts highlighted the basic requirements which religions must uphold in exercising their penal-disciplinary powers over members.

IC XLIX 97/09, 37-65: Pablo Gefaell: El Derecho oriental desde la promulgación del CIC y del CCEO. (Lecture)

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

Proc CLSA 2008, 355-382: Phillip Brown: The Right of Defense in Canon Law (and "Due Process" in American Civil Law). (Preliminary Study)

B. compares canon law and civil law in the matter of the right of defence and the natural law basis for this right in both systems. This is developed mostly in the context of criminal trials. B. also discusses how far the right of defence includes the right to be tried so as to be found innocent rather than be left untried.

Proc CLSA 2008, 383-451: Phillip Brown: Prescription and Statutes of Limitation. (Study)

B. compares American civil/criminal law and canon law notions of prescription and the statute of limitations. He considers it in the contexts of gaining and losing rights and of property, and provides a short history of the concepts. He also highlights the role of prescription in the American child abuse cases.

RDC 56 1-2/06, 63-78: Marc Aoun: Délits et peines dans le *Nomocanon* copte d'Ibn al Assâl (13^{e} siècle). (Article)

The penal law of the "separated" Oriental Churches differs notably from that of the Latin Church. The *Nomocanon* of Ibn al Assâl still enjoys authority in the Egyptian Coptic Church today, even though in practice it is the Egyptian penal code that is applied.

RDC 56 1-2/06, 223-239: Richard Puza: Faut-il distinguer le droit pénal et le droit disciplinaire dans l'Église? L'exemple de l'Allemagne. (Article)

Universal canon law does not clearly distinguish between penal law in the proper sense and disciplinary sanctions. It is left to the particular Churches to organize the latter. In Germany, the rights and duties of various Church workers are well defined. Clerics, "Church functionaries", professors of theology in State universities, teachers of religion, pastoral assistants and the like, are subject to a variety of canonical and/or State regulations. Specific disciplinary procedures exist to address and punish dereliction of duty within these different categories.

RDC 56 1-2/06, 241-266: Eugène Vassaux: Les sanctions dans les droits ecclésiaux et les disciplines protestantes. (Article)

Protestants of the 21st century, strongly attached to freedom, do not understand the existence of ecclesiastical penal law. However, the different Protestant communities do not all share the same attitude. Lutherans initially rejected all canon law, but later on, in the 20th century, they developed a vast disciplinary corpus. Calvinism, going in the opposite direction, elaborated a plan of ecclesiastical penal law in the 16th century which is hardly applied nowadays. Evangelical Protestantism tries to hold on to its "Disciplines", based on the Bible. Today, the majority of Protestant communities no longer attribute religious value to their internal laws, which have only an organizational relevance, on a par with business regulations.

RDC 56 1-2/06, 267-280: Eugène Vassaux: Le traitement des conflits et les sanctions dans les institutions protestantes. (Article)

As indicated in the preceding entry, Protestant penal law is not very developed. At times, this leads to dysfunctions: for example, procedures that do not respect generally-accepted rules of law. Nowadays conflicts in Protestant communities are dealt with by means of arbitration, mediation, and conciliation, rather than by recourse to resorting to punishments. This evolution corresponds to an old tradition which started with the Mennonites and Quakers, and which has spread since the 19th century.

RDC 56 1-2/06, 281-322: Gregorios Papathomas: Les sanctions dans la tradition canonique de l'Église orthodoxe. (Article)

P. asks how to reconcile ontological love with canonical punitive sanctions. The Orthodox Church considers that the sources of canons rest on theological and ontological conditions that differ from those of State law. P. describes the Orthodox penal system, as well as the system of appeal, in particular the right of

appeal to the Ecumenical Patriarch of Constantinople.

RDC 56 1-2/06, 323-344: Bernard Paperon: Les sanctions dans le droit talmudique. (Article)

Talmudic law has had a long and complex evolution, from the time of the *Michna* (2nd century) up to the "code" currently in use, the *Choulhan 'Aroukh* (16th century). Certain offences concern commandments of Biblical origin; others are rules enacted by rabbis. The punishments range from monetary fines to the death penalty (which has not, however, been applied for two millennia).

RDC 56 1-2/06, 345-366: Franck Fregosi: Les sanctions dans la législation islamique classique. (Article)

The Muslim legal order is not exclusively religious, but encompasses a certain number of principles and tendencies whose inspiration is clearly religious. Islamic law is in fact a composite juridical reality. Given the situation prevailing in modern societies, it is irrefutable that, on a number of points, the punishments enumerated by Islamic law are anachronistic. The difficulty is to know the basis on which any evolution could be envisaged.

RDC 56 1-2/06, 367-383: Dominique Trotignon: «S'exclure», «trébucher», «être relevé»: fautes et sanctions selon le discipline des moines bouddhistes. (Article)The *Vinaya*, the first volume of the Buddhist canon which sets down the rules of community life, establishes sanctions in the case of failure to observe its rules. However, the suitability of the term "sanction" can be questioned, especially if it is used in the sense of "punishment", given the vocabulary used in Buddhism and the spirit in which that religion envisages the application of its rules to life.

Compilations

Ap LXXXI 1-2 (2008), 277-319: Domingo Andrés Gutiérrez - Paolo Gherri: Elenco dei Canoni del C.I.C. '83 citati nella Revista (1983-2007). (Compilation)

The authors have surveyed the issues of *Apollinaris* 1983-2007 and listed here all the references to the individual Latin Code mentioned in the publication over the past 25 years. They also list those canons to which there has been no reference.

Ap LXXXI 1-2 (2008), 321-497: Domingo Andrés Gutiérrez: Tesi di dottorato in Utroque Iure, in Diritto canonico e in Diritto civile pubblicamente difese

ed approvate dall'Institutum Utriusque Iuris della P.U.L nei 25 anni di vigore del C.I.C. (1983-2007). (Compilation)

A.G. lists 1,475 doctoral theses presented and approved by the Lateran University in civil law, canon law and *utrumque ius* in the period 1983 to 2007. The title of each thesis is shown together with details of the author and supervisor of each work. To the list of theses is added a list of the canons in both Codes linked to each thesis and an alphabetically-arranged list of the supervisors.

IC XLIX 97/09, 215-255: Jorge Otaduy: Crónica de Jurisprudencia 2008. Derecho Eclesiástico Español. (Compilation)

O. presents a review of eleven decisions of the European Court of Human Rights in 2008 involving religious matters. Five of these are concerned with article 9 of the European Convention (freedom of thought, conscience and religion); four of them deal with article 10 of the Convention (freedom of expression); one, involving a case of adoption of a child by a homosexual person, centres on article 8 (personal and family privacy); and one, involving a Lutheran cleric who objected to a change of pastoral assignment, has to do with article 6 (the right to a fair trial). O. then looks at a variety of cases coming before the Spanish courts, involving issues of data protection, education, the teaching of religion, religious symbols, social security for priests and religious, marriage, State recognition of Church institutions, hospital chaplains, tax exemptions, criminal liability of religious organizations, and limitations on the right to religious freedom.

IC XLIX 97/09, 257-264: Jorge Otaduy: Crónica de Legislación 2008. Derecho Eclesiástico Español. (Compilation)

O. presents a review of legislation from 2008 involving issues of Spanish ecclesiastical law: teaching, finance, data protection, historical patrimony, and the competences of certain bodies within the State Administration in respect of religious matters.

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

S. presents a review of the main canonical contributions of Pope Benedict XVI and the Roman Curia during 2008, including the Pope's address to the Roman Rota dealing with the value of Rotal jurisprudence within the overall administration of justice in the Church (26 January 2008: see below, canons 1443-1444); various decrees of erection of ecclesiastical circumscriptions; a *rescriptum ex audientia* dealing with the discernment of vocations of persons with homosexual tendencies (8 April 2008: see below, canon 241); and the decision to

grant Fernando Lugo, President of Paraguay, the loss of the clerical state (communicated on 30 July 2008: see below, canons 290-292). The review then goes on to mention the more significant documents and activities of the Roman Curia in 2008, including the Holy Father's approval *ad quinquennium* of the Regulations for the Apostolic Camera (dated 3 March 2007 but made public in 2008) and the addition to the Regulations of the Roman Curia of articles 49*bis* and 91*bis*, dealing with personnel on missions outside their normal place of work (1 March 2008); the Congregation for the Doctrine of the Faith's reply concerning the validity of two formulas for conferring baptism (29 February 2008: see below, canons 849-850); the same Congregation's general decree regarding the delict of attempting the sacred ordination of a woman (19 December 2007, published in *L'Osservatore Romano* on 29 May 2008: see below, canon 1378); and the Congregation's rejection of the recourse presented by the lay board of directors of St Stanislaus Kostka Corporation, St Louis, Missouri, against a decree of excommunication issued by the then Archbishop of St Louis (15 May 2008: see below, canon 751); the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life's Instruction *The Service of Authority and Obedience* (11 May 2008: see below, canons 617-619); the same Congregation's decree of appointment of a Papal commissioner for Lumen Dei, a private association of the faithful (15 May 2008: see below, canon 318); the Congregation for Divine Worship's approval of the new Ambrosian lectionary (20 March 2008) and the announcement during the Synod of Bishops (5-26 October 2008) of the Pope's approval of three alternative formulas for the dismissal *Ite*, *missa est*; the Congregation for the Causes of Saints' Instruction *Sanctorum Mater* on the diocesan and eparchial instruction of causes of saints (18 February 2008: see below, canon 1403); the Congregation for Bishops' resolution of the long-running dispute between the dioceses of Lérida and Barbastro-Monzón over the return of 113 items of historical and artistic value to parishes now integrated into the diocese of Barbastro-Monzón (agreement signed on 30 June 2008: see below, canon 1400); the Congregation for Catholic Education's *Guidelines for the use of psychology in the admission and formation of candidates for the priesthood* (29 June 2008: see below, canon 241) and its Instruction on the Reform of the Higher Institutes of Religious Sciences (28 June 2008: see below, canon 821). S. then dedicates sections to the activity of the Apostolic Penitentiary; the Apostolic Signatura (including the granting to the Signatura of a proper law on 21 June 2008: see below, canon 1445); the Pontifical Council for Legislative Texts (notably the organization of a conference to mark the 25th anniversary of the Code of Canon Law, 24-25 January 2008); the Pontifical Council for the Laity (the definitive approval of the Statute of the Neo-Catechumenal Way, and the approval of two other apostolic movements); the Pontifical Commission *Ecclesia Dei* (a Letter to the Priestly Fraternity of St Pius X setting out the conditions for a possible return of the Fraternity to full communion with the Church: 4 June 2008); the diplomatic activity of the Holy See during 2008; and documentation issued by the Spanish Episcopal Conference.

REDC 65 (2008), 275-296: Federico R. Aznar Gil: Boletín de legislación canónica particular española del año 2007. (Compilation)

A.G. provides listings of particular legislation issued during 2007 by the dioceses of Spain. His division follows the order of the Books of the Code. He gives the name of the diocese, title and date of the legislation and its page reference in the appropriate diocesan publication.

Ecumenism and interreligious dialogue

LS 33 (2008) 3-178: Ecumenism and interreligious dialogue. (Articles)

This issue of LS is dedicated to questions of ecumenism and interreligious dialogue. Gabriel Flynn (pp. 6-29) examines the psychology of ecumenism proposed by the Second Vatican Council and the World Council of Churches. Paul D. Murray (pp. 30-45) introduces the key principles, convictions and assumptions at issue in "receptive ecumenism" and describes the projects currently under way that seek to test and model its potential. Kallistos Ware (pp. 46-53) explores the meaning of "receptive ecumenism" from an Orthodox perspective. He argues that giving and receiving, teaching and learning, are mutually interdependent. Paul S. Fiddes (pp. 54-73) continues the theme of "receptive ecumenism" by asking what Baptists might learn and receive from other Churches on the themes of tradition, episcopacy, baptism and universality. Theodor Dieter (pp. 74-86) reflects on a notable accomplishment of the ecumenical movement in the 20th century, the Joint Declaration on the Doctrine of Justification by the Lutheran World Federation and the Roman Catholic Church in 1999. Mary Tanner (pp. 87-98) traces the use of the concept of *koinonia* in the work of the Faith and Order Commission of the World Council of Churches. Joseph Famerée (pp. 99-116) considers the contribution of the Franco-Swiss *Groupe des Dombes* to the ecumenical movement. Brendan Leahy (pp. 117-135) assesses the Seattle Statement *Mary, Grace and Hope in Christ* (2004), published by the Anglican-Roman Catholic International Commission. Dermot A. Lane (pp. 136-158) considers the role of pneumatology in ecumenism and interreligious dialogue. Terrence Merrigan (pp. 159-178) continues the theme of ecumenism and interreligious dialogue which he asserts is the foremost challenge for the Churches at the dawn of the 21st century.

Paul Hayward (ed.): Studies on the Prelature of Opus Dei. On the twenty-fifth anniversary of the Apostolic Constitution "Ut sit" / Jean-Pierre Schouppe (ed.): Études sur la prelature de l'Opus Dei. À l'occasion du vingt-cinquième anniversaire de la constitution apostolique "Ut sit". (Book)

See below, canons 294-297, especially the presentation by Ocáriz (pp. 121-139 of

the English edition; pp. 129-148 of the French edition).

Human rights

AkK 177 (2008), 96-130: Herbert Kalb: Kultusgesetzbegung *quo vadis*: Die Anerkennung von Kirchen und Religionsgemeinschaften in Österreich. (Article)

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

Law reform

EE 83 (2008), 605-630: Rufino Callejo de Paz: Una regulación confusa y sugerencias *de iure condendo*. Anotaciones sobre los cánones 1071, §1.4; 1086; 1117 y 1124. (Article)

See below, canon 1071.

Legal theory

Ang 86 (2009), 375-398: Stephanie Gregoire: Punishment: Aquinas and the Classic Debate. (Article)

G. attempts to demonstrate Aquinas' position in the "classic debate" between the two theories of punishment – retributivist (punishing the evil done) and utilitarian (preventing future evil). Aquinas states that the evil done (*culpa*) must be part of the definition of punishment: thus he is not a true utilitarian. However, he believes that the person punished need not have actually committed the offence (a slave can be punished for an offence of his master): thus he is not a true retributivist either. Aquinas has a mixed theory of his own. The Church too holds to a mixed theory.

Ang 86 (2009), 399-410: Jan Śliwa: L'Autorità ecclesiastica come competenza e potestà sugli Istituti di Vita Consacrata e le Società di Vita Apostolica nella normativa del Codice di Diritto Canonico. (Article)

See below, canons 573-746.

Ap LXXXI 1-2 (2008), 603-640: Arturo Cattaneo - Paolo Gherri: La

Canonistica a 25 anni dal CIC: impostazione, metodo e prospettive. (Article)

This is a historical and philosophical study arising from reflections of two authors on the origins of the CIC/83 and the theological/canonical influences that helped to formulate the new law of the Church. To this is added an attempt to forecast the future development of the law of the Church.

Ap LXXXI 3-4 (2008), 671-718: Paolo Gherri: Norme e regole nella vita e nel Diritto. (Lecture)

The Lateran University held its third Interdisciplinary Day on 5 March 2008. This is the text in Italian of the introductory Presentation to the day given by G. in which he outlines the challenge presented in seeking for the origins of the ethical or moral obligations that are encapsulated in canon law.

Ap LXXXI 3-4 (2008), 719-738: Vincenzo Buonomo: Norme e Regole nel Diritto Internazionale. (Lecture)

B. undertakes to clarify the use and significance of terms *norme* (norms) and *regole* (rules) in international law as his contribution to the Third Interdisciplinary Day at the Lateran University on 5 March 2008.

Ap LXXXI 3-4 (2008), 797-834: Antonio Iaccarino: L'Ermeneutica di Luigi Pareyson e un ripensamento del Diritto in chiave ontologico. (Article)

I. gives a presentation of some of the principal themes of the Italian philosopher Luigi Pareyson (1918-1991) and then briefly traces the significance of his thought to law.

Ap LXXXI 3-4 (2008), 995-1010: Paolo Gherri: Bilancio canonistico della Terza Giornata Canonistica Interdisciplinare su: norme e regole nella vita e nel Diritto. (Report)

G. reports on the findings of the third Interdisciplinary Day held at the Lateran University on 5 March 2008.

Comm 32 (2000), 9-11: Pope John Paul II: Ex Allocutione Summi Pontificis ad "Associazione Nazionale dei Magistrati" 31 martii 2000. (Address)

Excerpt from Pope John Paul II's address to Italian civil magistrates given on 31 March 2000. There cannot be peace between human beings without justice. It is

not sufficient to have an effective legal structure. It needs to be anchored in the common good and universal moral principles. The role of the magistrate is to unveil the truth hidden in concrete cases. The freedom and independence guaranteed to magistrates must be exercised in accordance with values rooted in human nature and must not succumb to pressures for a quick result from the mass media.

Comm 32 (2000), 155-158: Pope John Paul II: Ex Allocutione ad "Assemblea dei Parliamentari del Mondo" die 4 novembris 2000. (Address)

Pope John Paul II speaks to a group of parliamentarians from all over the world on politics as the use of legitimate power to achieve the common good of society. In particular he focuses on the need for positive law to be in harmony with natural law.

Comm 34 (2002), 25-45: Julián Herranz: Allocutio Exc.mi Praesidis apud Universitatem Catholicam Mediolanensem "*Il Diritto Canonico, Perché?*" habita. (Address)

The President of the Pontifical Council for Legislative Texts seeks to justify canon law to an audience at the Catholic University of Milan, given a hostility to law that characterized the time when the CIC/83 was promulgated. He sets out to examine the nature of attacks on the role of law in the Church, referring in a summary way to the influence of Vatican II on the process of renewal, and finally the importance of the question "Why?". To illustrate the latter he looks at two questions: firstly the Primacy of Peter and collegiality; and then the recent scandals in the priesthood and their impact on the life of the Church.

IC XLIX 97/09, 13-35: Orazio Condorelli: La situación actual de la ciencia canónica. (Lecture)

Speaking at a conference organized by the Faculty of Canon Law of the University of Navarre to mark the 25th anniversary of the promulgation of the Code of Canon Law, C. examines certain aspects which characterize the situation of canonical science today. First, he concludes that canon law is an essential element in the life of the Church; thus from a methodological standpoint it is incorrect to regard Church law as undergoing a "crisis" at its very foundations. He then sets out the current situation regarding the teaching of canon law in some European countries (Germany, France, Spain and Italy). Finally he provides an outline of the role of the history of canon law in relation to canonical science.

IC XLIX 97/09, 149-194: Javier Otaduy: La *ratio* en las fuentes normativas

del Derecho canónico. (Lecture)

At a conference held in Venice in September 2008, O. examines the role of *ratio* – reason – in relation to law. In the pre-Christian tradition *ratio* was the primordial source of law. Significant exponents of that tradition were Plato in the Greek world and Cicero in the Latin. In the ancient Christian tradition the most influential formulations came from Tertullian; and it was received into canon law through Isidore of Seville. At the time of the decretalists, *ratio* was understood to be the final cause of each norm, and was always invoked for the interpretation of law. Suárez notably circumscribed the application of *ratio* for the purposes of interpretation. The paradigm of juridical *ratio* has oscillated between Thomas Aquinas' view and that of Suárez. But it has always served to introduce into the sources of law the values of truth, adaptation, consistency and correction. In the 20th century *ratio* has played a significant role in methodological discussions about canon law. It is important to stress the role of "veritative" *ratio* (transcendent reason, open to truth) and not simply "functional" *ratio* (pragmatic reason, involving logical and methodical analysis of data) for the understanding of canon law.

IC XLIX 97/09, 195-212: Eduardo Molano: Derecho divino y Derecho constitucional canónico. (Lecture)

To be able to talk nowadays of a constitutional canon law which prevails over the rest of the canonical legal order, one has to consider its relationship with divine law. Constitutional canon law needs to be conceived as a set of principles of divine law which are intrinsic to the mystery of the Church and form part of the fundamental structure of the Church, together with those fundamental norms which flow from them.

IE XX 3/08, 513-535: Francesco Gentile: Le tre stanze della filosofia del diritto. (Article)

G. introduces his study on the philosophy of law with the premise that, as a discipline for the training of jurists, it arose in the 18th century to counterbalance the scientism pervading the study of law and also as an antidote to the materialism that was spreading into juridical experience. Today, he adds, it acquires importance in view of its exposure to a type of formal positivism leading to nihilism. He sees this subject as standing on three pillars which he calls "legal geometry", "juridical dialectic" and "theodicy", referring to its legality, justice, and justification respectively.

PCF XI (2009), 21-77: Danilo R. Flores: Natural Moral Law and the Code of

Canon Law. (Article)

F. shows how the natural moral law underpins and profoundly influences the general legal principles of the CIC/83 and its canonical institutions. In the first section of the article he identifies the essential relationship that binds canon law and the natural moral law. Then he deals with the primary sources of canon law and the sources of cognition of canon law. In a long second section he notes that very few canons mention the natural law directly, while all the rest only refer to it indirectly. He proposes a brief overview of these canons to lead the reader to a general awareness of the relevance and importance of natural law in the canonical norms and traditions of the Church. CIC/83 canons 6, 22, 24 §1, 26, 125 §1, 1259, 1299, 1290, 197, 199 are discussed in that order. In section three, F. discusses marriage and the natural law under the following headings: marriage as an institution of natural law; marriage as a "contract" of natural law; marriage as an institution of divine law. Then he deals with the natural right to marry and the various impediments. This is followed by a look at the obligations and rights of the faithful, canonical equity, and a brief summary. (See also *Canon Law Abstracts*, no. 102, p. 15.)

Per 98 (2009), 81-105: Ottavio de Bertolis: Ordinamento giuridico, diritti soggettivi e libertà individuali. (Article)

De B. considers the very meaning of "juridical order", "subjective rights" and "individual freedoms". He studies some of the presuppositions that help to structure our understanding of the juridical order, pointing out that the canonical juridical order, shaped as it is by means of divine and natural law – which pre-exist any human legislator – as well as by positive law, is much less closed in on itself than are many civil juridical orders. Within the canonical juridical order, the primary source of the primacy of the human person lies in the fact that divine law is in force immediately, without the intervention of any human legislator; the juridical subjectivity of the human person is guaranteed immediately by God. It is this understanding that leads to the eminently pastoral nature of canon law and allows the ecclesiastical judge, on occasions, to act outside the immediate positivist framework of the law. De B. gives as an example the manner in which the judges before the CIC/83 were able to make use of the insights gained from modern psychological sciences, an activity that led to the formulation of the grounds of nullity found in canon 1095.

RDC 56 1-2/06, 127-138: René Heyer: Les justifications de la peine. (Article)

Punishment is a lawfully inflicted evil. But can we respond to evil with evil? Is there a justification for punishment? Kant based punishment on the ideas of law and justice: it is a reminder of the law. This justification is criticized by Hegel and Marx as too abstract. Other more concrete justifications have been explored since

the end of the 18th century: the defence of society, the need to set an example, the re-education of the offender. Debates over justifications for punishment are necessary and reveal the state of society.

RfR 68 1/09, 93-98: Elizabeth McDonough: The Role of Law in the Church. (Article)

McD. sets out an explanation of the role of ecclesial law. "Law in the Church attempts to embody norms of action which are reasonable and 'do-able'… (it) truly acknowledges a genuine *lex vivendi* as accurately manifesting the collective, ongoing good actions of the faithful in an unique and acceptable manner." She points out that law is only one aspect of the Church, even though it is universal and necessary; the supreme law is the *salus animarum*, as the last canon of the Code states.

Cardinal Zenon Grocholewski: Refleksje na temat prawa. Prawo naturalne – Filozofia prawa. (Book)

This book contains the Polish translation of the content of two other books by G., *La legge naturale nella dottrina della Chiesa* (see *Canon Law Abstracts*, no. 102, p. 16) and *La filosofia del diritto di Giovanni Paolo II* (see *Canon Law Abstracts*, nos. 88, p. 13 and 89, p. 8). (For bibliographical details see below, Books Received.)

Javier Hervada: What is Law? The Modern Response of Juridical Realism. (Book)

This book is an introduction to law from the perspective of classical juridical realism. Although it is a perspective as old as the Roman jurists, at the beginning of the 14th century it was practically replaced by subjectivism, and then by normativism, which is still the dominant perspective today. For this reason, returning to juridical realism is an attempt at renewing and modernizing the juridical science. In this sense this book is a synthetic and propaedeutic exposition of classical juridical realism – a method that is different from the usual way of learning law. After a presentation by the editor and an introduction by the translator, William L. Daniel, the book deals with topics such as the art of law, justice, rights (of natural law and positive law), legislation, law in society, laws and the human person, natural law and positive law, and a short concluding section on canon law. (For bibliographical details see below, Books Received.)

Relations between Church and State

AkK 177 (2008), 40-55: Balázs Schanda: Stabilität und Anpassungsbedarf im ungarischen Staatskirchenrecht. (Article)

Since 1990 a new system of Church-State law has emerged in Hungary. Hungarian Church-State law is characterized by its discontinuity, a benevolent neutrality of the State and a strict institutional separation between Church and State. Beyond the legal settlement of Church-State relations, government policies have endeavoured to avoid conflicts with religious communities. In recent years conflicts of a political and financial nature have become more frequent, and some aspects of new legislation seem to lack sensitivity for religious freedom and the special needs of religious communities. Despite such negative tendencies, much of recent legislation and jurisprudence fits the well-established principles of Church-State law, which have stood the test of time. These could similarly provide workable solutions for new challenges as well.

AkK 177 (2008), 96-130: Herbert Kalb: Kultusgesetzbegung *quo vadis*: Die Anerkennung von Kirchen und Religionsgemeinschaften in Österreich. (Article)

A pivotal concept in Austrian religious law is the "recognized" Church or religious society with standing in civil law, which acts as a point of reference for many provisions of Austrian law. K. examines the development of the "law of recognition", whose privileges and discriminations were intensified when the law was amended to involve a two-stage process. This "discrimination-report" was confirmed by the decision of the European Court of Human Rights (First Section) in the case of *Religionsgemeinschaft der Zeugen Jehova and Others v. Austria* on 31 July 2008. As a result, the "law of recognition" will have to be reordered on the basis of the constitutional guarantees laid down in article 9 of the European Convention on Human Rights.

Ap LXXXI 1-2 (2008), 15-26: Sancta Sedes: Conventio inter Apostolicam Sedem et Bosniam et Herzegoviam. (Document)

Text in the original language of English, of the Basic Agreement between the Holy See and Bosnia and Herzegovina, 19 April 2006, and the Additional Protocol of 29 September 2006. These instruments were confirmed in the Vatican on 25 October 2007 and came into immediate effect from that date.

Ap LXXXI 1-2 (2008), 77-82: Sancta Sedes: Conventio inter Apostolicam Sedem et liberum Civitatem Bavariae. (Document)

Text in German and Italian of the Protocol additional to the Concordat between

the Holy See and Bavaria dated 29 March 1924.

Comm 33 (2001), 3-8: Pope John Paul II: Nova lex fundamentalis Civitatis Vaticanae. (Document)

This is the text of the basic law for the Vatican City State, approved on 26 November 2000 and entering into effect on 22 February 2001. It replaces completely that issued on 7 June 1929, and abrogates any subsequent norms not in conformity with it.

EE 83 (2008), 663-677: José Luis Santos Díez: Personalidad jurídica de la Iglesia ante los Estados. (Article)

One proof of the attention paid by civil authorities to religion is the recognition of Churches which is found in many civil codes. S.D. reflects on the juridical identity of Churches, and the conditions required for recognition by the State. He devotes special attention to the Holy See, as a juridical person in international law.

FCan III/2 (2008), 87-102: Paola Maia: Fiscalidade na Concordata – art. 26º. (Article)

Article 26 of the 2004 Concordat between the Holy See and the Portuguese Republic introduced innovations at the fiscal level, imposing taxes on situations and juridical persons that were previously exempt. M. looks at the effect of these changes on canonical juridical persons.

IE XX 3/08, 647-656: Segreteria di Stato: Accordo tra la Santa Sede ed il Principato di Andorra, 17 marzo 2008 (con *nota* di Jorge Robinat). (Document and commentary)

This is the text of the agreement of 17 March 2008 between the Holy See and the Principality of Andorra, the first part of which refers to the juridical figure of the Bishop of Urgell, the second to the status of the Catholic Church in Andorra. The document then sets out provisions on canonical marriage; the teaching of religion; the economic status of the Catholic Church in Andorra; and common provisions. In his commentary, R. gives a brief historical summary of the relations between kings and bishops around the area of Andorra, beginning with the Arab invasion of the Iberian peninsula which reached the Pyrenees early in the 8th century. From 1278 the Bishop of Urgell and the French Head of State enjoyed joint absolute sovereignty over Andorra, an arrangement which lasted until 1993, since which time they have continued to be Heads of the Andorran State under the name of co-

princes, albeit now with the limitations proper to a modern constitutional State.

IE XX 3/08, 657-672: Svizzera: Tribunale federale. Sentenza, 16 novembre 2007 (con *nota* di Gabriela Eisenring, *Cambiamento di giurisprudenza del Tribunale federale svizzero in merito alla questione dell'uscita parziale dalla Chiesa cattolica*). (Sentence and commentary)

This is the text in German of a decision of the Swiss Federal Tribunal, 16 November 2007, dealing with the question of the possibility of partial exit or withdrawal from the Catholic Church – that is, whether withdrawal from an ecclesiastical *comune* and the cantonal Church implies at the same time formal separation from the Catholic Church. Previously the tribunal had held that partial exit from an ecclesiastical *comune* and the cantonal Church necessarily indicated willingness to separate formally from the Catholic Church (see *Canon Law Abstracts*, no. 95, pp. 106-107). This latest decision represents a change in the tribunal's jurisprudence. E. presents an ample commentary (in Italian) on the decision, setting out the implications for the Church-State relationship in Switzerland. She also offers an Italian translation of part of the sentence.

LJ 162 (2009), 4-17: Frank Cranmer - Javier García Oliva: Church-State Relationships: An Overview. (Article)

There is considerable variation in the pattern of relationships between religious communities and the secular authorities. This article offers a fourfold typology of such relationships: Erastianism (where the secular authorities exercise supremacy over religion: historically a common model in Europe); theocracy (where the secular authorities are subordinate to the religious: the *de facto* situation in Geneva during Calvin's ascendancy); cooperationist or hybrid systems (where the secular authorities allow religious organizations freedom to operate as voluntary associations, sometimes also giving a measure of direct or indirect financial support to some of their social and educational activities, or treating them on the same basis as charities or not-for-profit foundations); and separation (where the secular authorities regard the practice of religion as a matter beyond their purview). The reality is, however, that in the real world many countries exhibit what can best be described as mixed systems, with elements of more than one of the four types. Moreover, any attempt to construct a typology must be approached with caution, since the result may be influenced by the socio-religious standpoint of the observer.

LJ 162 (2009), 18-35: Jonathan Chaplin: The Place of Religious Arguments for Law Reform in a 'Secular State'. (Article)

There is a perception that the legislative process in Western European countries

has undergone a process of secularization. However, C. argues that faith-based legislative action is still appropriate in a secular State, but it is necessary to be clear what is meant by secular. Where the State has the characteristics of impartial and justificatory secularism then faith-based legislative action is appropriate not only at the level of civil society but also at the level of political society. Faiths may seek to influence legislation not only at the level of public debate (civil society) but also at the level of political influence. Thus it is permissible to appeal to religious faiths in seeking to effect changes in the law.

LJ 162 (2009), 36-46: Frank Cranmer: Religion, Human Rights and the Council of Europe: A Note. (Article)

The European Court of Human Rights is one of four organs of the Council of Europe, alongside the Council of Ministers, the Parliamentary Assembly and the Venice Commission, all of which have a role in the operation of the Convention on Human Rights and all of which have been concerned with questions of religious manifestation and its wider effects on society. There are, however, wider, unresolved questions as to the relationship between the Court and the judicial systems of the member States.

LJ 162 (2009), 47-61: W. Cole Durham, Jr. - Robert T. Smith: Religion and the State in the United States at the Turn of the Twenty-First Century. (Article)

This article considers the background to the First Amendment to the US Constitution, which provides that Congress shall make no law respecting an establishment of religion or protecting the free exercise thereof, and then moves on to look at its judicial interpretation from the 1990s onwards. It focuses on the implications of the 1990 decision in *Employment Division, Department of Human Resources of Oregon v. Smith* where the Supreme Court jettisoned the "compelling State interest" test. It is argued, through a detailed analysis of decisions of State courts, that the effect of that decision has not, on the whole, been to weaken the protection given to religious belief by the Constitution.

LJ 162 (2009), 62-78: Carmen Asiaín Periera: Law and Religion in Latin America. General Aspects of Law and Current Concerns. (Article)

A.P. begins with an overview of Latin America's common history and reality from colonization to independence, and comments on the general characteristics of the Church-State relationship since independence. She highlights some of the novelties introduced by legislation in the developing area of Law and Religion, and describes the processes of reformation and updating which have been taking place in recent years. Specific areas she examines include the civil effects of

religious marriage; education and religious instruction; the financing of religious bodies; spiritual assistance to persons in communities; conscientious objection; religion in the public sphere; and religious holidays.

REDC 65 (2008), 175-208: José Luis Martín Delpón: El régimen jurídico del Servicio de Asistencia religiosa de las Fuerzas Armadas. (Article)

M.D.'s article deals with the provision of religious and pastoral care in the Spanish armed forces. Spain being a non-confessional State, its Constitution guarantees freedom of religion and equality of all religions before the law. Accordingly the provision of religious care for members of the armed forces covers both the Catholic religion and other religions and faiths. However, the undeniable demographic preponderance of Catholics in Spanish society explains the existence of the ecclesiastical institution of the Bishopric of the Forces and its long historical tradition in the Spanish military. M.D. traces some of that history and then examines from the point of view of Spanish civil law the structures, personnel, administration, duties and rights of its members.

REDC 65 (2008), 223-241: Pedro Mendonça Correia: Apontamento sobre o artigo 16 da Concordato de 18 de maio de 2004 entre a Santa Sé e Portugal. (Article)

The 2004 Concordat between the Holy See and Portugal replaced the earlier 1940 Concordat, adapting it to changed circumstances both in Church and State. Although Portugal ceased to be a confessionally Catholic country in 1911, its civil law recognizes the validity of canonical marriage for civil effects and purposes. M.C.'s article deals with how canonical decisions on the validity of marriage (as well as dissolution of the bond) become effective in Portuguese civil law. The necessary conditions include the verification and authentication by the Apostolic Signatura of the Portuguese ecclesiastical sentence and the competence of the tribunal in question to judge the case, as well as a guarantee that the rights of the parties have been upheld. Once these requirements have been verified by the Portuguese civil authority the decision is recorded in the civil marriage register.

REDC 65 (2008), 243-271: José Joaquim Almeida Lopes: Garantías dos bens patrimoniais da Igreja Católica em Portugal. (Article)

The Concordat of 2004 between the Holy See and Portugal in its article 24 corresponds to article 7 of the 1940 Concordat with some slight additions and alterations. A.L. leads the reader through those articles corresponding to the guarantees given to the Catholic Church concerning ecclesiastical goods, giving a detailed commentary on the implications, conditions and requirements of each.

Religious freedom

LJ 162 (2009), 47-61: W. Cole Durham, Jr. - Robert T. Smith: Religion and the State in the United States at the Turn of the Twenty-First Century. (Article)

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

LJ 162 (2009), 62-78: Carmen Asiaín Periera: Law and Religion in Latin America. General Aspects of Law and Current Concerns. (Article)

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

REDC 65 (2008), 127-138: María J. Roca: El principio de reciprocidad y las relaciones internacionales de la Santa Sede. (Article)

The question of whether, in international law, the Holy See has the right to ask sovereign governments of Muslim countries to respect the religious freedom of their Christian minorities leads R. to examine the principle of reciprocity and the international relations of the Holy See. The Vienna Convention of 1961, to which the Holy See is a signatory, established the principle of reciprocity in diplomatic relations. The diplomacy of the Holy See certainly has some special characteristics since it is concerned not only with temporal matters but with ethical and religious ones as well, and also has direct links with the local Catholic hierarchies. However, as regards the initial question of religious freedom it must be said that the reciprocity under consideration refers specifically to diplomatic missions and not to the citizens of the States in question. Moreover, the Holy See lacks even diplomatic representation in many Muslim countries. The principle of cooperation and mutual concession, not reciprocity, can provide the only basis for bilateral and multilateral agreements; this can be seen, for example, in those jurisdictions which recognize the civil effects of canonical marriage where no reciprocity is or can be offered. R. concludes that the safeguarding of the rights of Christian minorities in Muslim countries must be based on the recognition of the universal nature of human rights and not on the principle of reciprocity.

REDC 65 (2008), 139-173: Irene María Briones Martínez: El impacto de la inmigración religiosa en la sociedad y en la jurisprudencia de los Estados Unidos de América. (Article)

B.M. starts with a consideration of the great diversity of religious groupings in both the history and contemporary society of the USA, a diversity which has now enabled many to detach themselves from any organized religion but still continue to have a generally religious or spiritual approach to life. The First Amendment to

the Constitution established a total separation between the State and religion, although this is not as absolute as it might initially seem. Although the long-established religious groupings (mainly Catholic, Protestant and Jewish) generally enjoy true freedom of religion, this is not always the case with more recent arrivals on the religious scene (often closely connected with immigrant ethnic groups) or with members of the New Religious Movements. B.M. goes on to consider two problematic areas in the sometimes tense relationship between government control and the exercise of freedom of religion, namely, public (that is, State) schools and family litigation. The courts in deciding parental custody after marital breakdown must often consider opposing arguments, based on rival claims of the parents' right to bring up their children in the religion of their choice. The "best interest of the child" has become the guiding principle in these cases but its practical application is often not easy to discern, and quite contrasting court decisions can easily be found. In the course of her article B.M. quotes from numerous court cases to illustrate her analysis. She ends by saying that Europe too can learn from the experience of the USA in its attempt to deal equitably with its increasing religious diversity.

REDC 65 (2008), 209-222: José Manuel Murgoitio: Libertad de conciencia y obligatoriedad de la clase de religión en el seno de la escuela católica. (Article)

The background to M.'s article is the attempt by some to subvert the ethos of Catholic schools in Spain by claiming freedom of conscience in an effort to make religious education a purely voluntary subject. The Spanish Constitution guarantees both the right to religious freedom (and hence the right of the Church to maintain its own schools) and the right to freedom of conscience. Is there a contradiction between the exercise of both rights? M. argues that the Constitution, the Agreement between the Spanish government and the Holy See, subsequent Spanish legislation, and decisions of Spain's Constitutional Court, all uphold the Church's right to establish its own schools as an expression of the legally-recognized autonomy of all confessional groupings. Freedom of conscience refers to the freedom to make one's own personal moral and religious decisions and to be able to act in accordance with them. Consequently parents who have freedom of choice as to the school to which they send their children and who disagree with the Catholic ethos of a particular school are free to choose another (non-confessional) State school which better suits their religious or ideological views. Even within the Catholic school the obligatory subject of religious education does not compel the pupil to accept Catholic teaching or practice. It is not catechesis; the pupil's right to disagree and follow his or her own conscience is always respected.

Social issues

Ap LXXXI 3-4 (2008), 869-922: Reginaldo Pizzorni: *Eros* ed *Agape* – giustizia e carità nell'Enciclica "*Deus caritas est*" di Benedetto XVI. (Article)

Employing the insights of a number of philosophers P. explores the basis for the development by Pope Benedict XVI of the roots of charity or love in the Encyclical *Deus Caritas Est.*

Comm 34 (2002), 19-22: Pope John Paul II: Ex Allocutione ad eos qui in Assemblea Generali Academiae Pontificiae pro Vita partem habuerunt. (Address)

In this excerpt from an address to the Pontifical Academy for Life the Pope speaks of the dignity of the human person as the foundation for the right to life.

FCan III/2 (2008), 45-65: Rita Lobo Xavier: Direito português e concepção cristã sobre matrimónio e família. (Lecture)

L.X., speaking at the 6th meeting on matrimonial causes promoted by the Portuguese Association of Canonists, presents an overall view of Portuguese law on marriage and the family, comparing it to the Christian view on the same matters. She examines the constitutional concept of family and marriage, and concludes that the Portuguese Constitution treats these as being in some way "pre-positive" realities, recognizing them as institutionally guaranteed and unable to lose their character in the institutional context. She also looks at legislation below the constitutional level dealing with civil, social, fiscal and criminal matters, paying particular attention to the regulations on marriage and *de facto* unions, as well as the regulations on family relationships, above all in relation to the mutual rights and duties of parents and children and to births resulting from the use of medically-assisted procreative techniques. Finally she focuses on the modification of matrimonial relationships, and dissolution through divorce. Her conclusion is that Portuguese law is heavily influenced by social relativism and that it calls into question the essential elements of the Christian concept of marriage and the family, failing to give importance to the family founded on marriage and open to children.

SC 42 (2008), 141-180: H. Albert Hubbard: Conversations on Abortion and Related Matters Arising from a Consideration of *Dobson v. Dobson*. (Article)

See below, canon 1398.

SC 42 (2008), 383-392: Jean Paul Betengné: Église et Sport: Quelle

Pertinence? (Article)

The world of sport an ever-increasing role in modern culture, especially in Africa. This phenomenon challenges the Church in a unique way to promote an area of pastoral activity which is especially adapted to the world of sport. Pope Jean Paul II promoted this activity when he established within the Pontifical Council for the Laity a new section called *Church and Sport*. This pontifical initiative must be developed within the particular Churches with various innovative pastoral activities. In this article, B. seeks to echo the importance of the theme of sport as an educational factor which the Church can utilize to promote Christian education. In addition, he presents the sport milieu as suitable for the apostolate, especially for the necessary and important apostolic involvement of the laity.

HISTORICAL SUBJECTS

First millennium

AkK 177 (2008), 3-14: Szabolcs Anzelm Szuromi: An important canonical bond in the ecumenical endeavour between the Eastern and Latin churches: the *Canones Apostolici*. (Article)

The *Canones Apostolici*, or *85 Apostolic Canons*, is a fundamental disciplinary collection which was compiled towards the end of the 4th century. This material was derived from a 4th century collection, the *Constitutiones Apostolicae*, and other 4th century councils. The original language of the text of the *Canones Apostolici* was Old Greek, and 50 of the 85 canons had been translated into Latin by Dionysius Exiguus. These basic rules continually served as direct or indirect foundations of compulsory canon law in the Eastern and Western Churches. Among the Eastern canon law collections, the *Syntagma Canonum* is the one which first used the material of the *Canones Apostolici*, but we can find this material even at the beginning of the *Pedalion*, which is still in force for the Orthodox Churches. In the Western Church, it was Dionysius Exiguus who organized a universal canonical collection, employing the most developed juridical methodology around the end of the 5th century and the very beginning of the 6th century. The opening canons of this new collection were the first 50 canons of the *Canones Apostolici*. Through the Dionysian translation, the clear-cut concept of the *Canones Apostolici* was built into the Western ecclesiastical disciplinary tradition, not only in the short term but also extending into the distant future (cf. *Decretum Burchardi Wormatiensis, Collectio Canonum Anselmi Lucensis, Decretum Gratiani*), including the CIC/17 and CIC/83. The *Canones Apostolici*, as a unique record of Patristic ecclesiastical discipline, is not only a witness of a certain epoch of Church history, but has also been an important and

strong bond in the ecumenical endeavour between the Eastern and Latin Churches of the 21st century.

FCan III/2 (2008), 67-78: Józef Wroceński: Le presbyterium et son rôle dans la vie de l'Église particulière. (Article)

See below, canons 495-502.

IC XLIX 97/09, 149-194: Javier Otaduy: La *ratio* en las fuentes normativas del Derecho canónico. (Lecture)

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

RDC 56 1-2/06, 7-32: Marcel Metzger: Une Église peut-elle excommunier? Le témoignage de la Bible et de l'Église primitive. (Article)

M. argues that the cultural context of the Bible was one of coercive societies. Jesus established a new order in which the gathering of dispersed children was more important than damnation. The Apostles restarted this mission of gathering; however, this did not prevent divisions from arising, leading to the exclusion of certain members of the community. Different tendencies developed, and there was a conflict between rigorism and mercy. This last example is expressed in writings such as the *Didascalia* or the Apostolic Constitutions. Mercy was put into practice by the establishment of new penitential institutions aimed at dealing with situations arising out of the persecutions. These institutions took the place of judicial institutions.

RDC 56 1-2/06, 33-62: Jean Werckmeister: Le privilège du for et la compétence judiciaire de l'Église catholique. (Article)

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

REDC 65 (2008), 57-107: Myriam Cortés Diéguez: La interpretación de las leyes en el Derecho romano, en el Derecho civil y en el Derecho canónico: consideraciones sobre sus principios y doctrinas. (Article)

After an introduction on the need and importance of interpreting the law, specifically canon law given its unique nature and purpose, C.D. goes on to consider interpretation in Roman, civil and canon law. The very beginnings of Roman law are to be found in the interpretation of the *mores maiorum*, the customs of the ancients, delivered by the *iurisprudentes*. This led to a slow and

limited expansion of the ancient law to some contemporary circumstances, usually by analogy. With the coming of the Republic and then the expansion of the Empire, new legislation was greatly increased, which in turn greatly enhanced the relevance and importance of the *iurisprudentes*. As well as the continuing use of analogy, increasing use was made of discerning the purpose of a given law and from that standpoint deciding its application to specific circumstances; in fact the purpose (*sententia, ratio, mens*) of the law was regarded as more important than the *verba legis*. The work of the *iurisprudentes* was, in effect, that of law-making, but in the late Empire and Byzantine periods the Emperor became the sole and exclusive law-maker and interpreter. The interpretative understanding of contemporary civil law can be intentionalist (discerning the intention or purpose of the law-giver's will), linguistic (finding the meaning of the words contained in the law itself) or axiological (the law being seen as the expression of pre-existing objective values). The methodology of interpretation can be based on one or any of the following: grammatical or literal examination of the *verba legis*; teleological, based on the purpose of the law; historical, through the examination of the law's origins and precedents; or systematic, considering a specific law in the context of the whole body of law. Interpretation can be declaratory (interpretation in the strict sense), analogous (to cover legal *lacunae*) or extensive (extending the law to matters not expressly covered but seen as belonging to the spirit of the law). In the last part of her article C.D. discusses the interpretation of canon law and two contending approaches: the subjective approach, which seeks to discern the will of the legislator (the traditional and still the majority view) and the so-called objective approach which holds that a law, once promulgated, acquires a "will" of its own, the interpreter's task being to discover that "will" in changing and evolving circumstances. But might this not be a distortion, and certainly an expansion, rather than an interpretation of the law? For C.D. genuine interpretation is the search for the will of the legislator manifested in the letter of the law.

TS 70 3/09, 600-621: George E. Demacopoulos: Gregory the Great and the Sixth Century Dispute over the Ecumenical Title. (Article)

John IV, Patriarch of Constantinople from 582 to 595, was using the title "Ecumenical Patriarch". This usage was a matter of great concern to Pope Gregory I as it seemed to be a claim to universal jurisdiction in the Church. D. discusses various interpretations of the title, some of which need not be seen as claims to universal supremacy. However, there was no doubt Gregory was seeing it as such. Without initially resorting to claims of Papal supremacy, he attacked the use on the grounds that it infringed the independent authority of individual bishops in the Church. But as the controversy continued, Gregory began to base his position on the Petrine origins of the See of Rome.

Classical period

Ang 86 (2009), 411-428; also **REDC 65 (2008), 37-56: Ciro Tammaro: Osservazioni critiche circa la giurisdizione penale inquisitoria nel diritto canonico medievale e le innovazioni sull'istituto previste dal Concilio di Vienne (1311-1312).** (Article)

The Catholic Church was so embedded in the social, political and institutional life of medieval Europe that any challenge to its teaching or authority was seen as undermining the whole of society. Heresy, therefore, was not a purely ecclesiastical matter. It is in this context that the Inquisition finds its origins. T. goes on to examine various aspects of the inquisitorial system, with special attention given to *Multorum Querela* and *Nolentes Splendorem* of the Council of Vienne (1311). He examines the requirements, functions and juridical status of the judge in his leading and active role in inquisitorial jurisdiction, a jurisdiction which had its source in Papal mandate, thereby giving the judge an analogous, though delegated, personal and universal power. As the result of some subsequent abuse of this power the consent of the local bishop was required before a definitive judgement could be delivered. Because of the very wide remit of the inquisitors their task had to be supported by a range of subordinate officials (commissioners, chancellors and notaries, among others). Unlike a bishop whose jurisdiction covered all people in his diocese regardless of religion, the inquisitors' much wider territorial jurisdiction covered only baptized Catholics and was limited to offences against the purity and orthodoxy of Catholic teaching.

FCan III/2 (2008), 135-147: Miguel Falcão: Direito natural e relevância do erro no matrimónio, segundo S. Tomás de Aquino. (Lecture)

Speaking at the XIII International Congress of Canon Law, organized by the *Consociatio Internationalis Studio Iuris Canonici Promovendo* in Venice (17-21 September 2008), F. examines St Thomas Aquinas' statement that "by natural law, error makes the marriage null" ("*error de iure naturali habet quod evacuet matrimonium*": *S. Th., Suppl.*, q. 51, a. 1). St Thomas himself explained that only error regarding the person or error regarding the servile condition of the other party would nullify the marriage, since it affected consent in what was essential to marriage – the uniting of two persons (man and woman), and the mutual power of each spouse over the body of the other for the purposes of conjugal union. F. studies St Thomas' concept of natural law and finds that he understood it to embrace not only what was immutable at all times for all mankind as corresponding to human nature, but also whatever was similar to it to a greater or lesser degree. He concludes that when St Thomas states that in the two cases of error it is by natural law that the marriage is null, he does not mean that this is an immutable norm, but that it is in accordance with the nature of things. In the case of error regarding the person, this is easy for everyone to accept; in the case of error regarding servile condition, its importance was confirmed by ecclesiastical

laws.

FT 19 (2008), 303-314: Szabolcs Anzelm Szuromi: Outlines of the Medieval Concordatory Law between 1122 and 1418. (Article)

A concordat is an agreement signed by two sovereign authorities (religious and secular), and not by two States. It deals with rights and responsibilities arising out of the functioning of the Church in a particular State. During the Gregorian reform of the 11th century, the Roman Church attempted to provide an official answer to many of the questions that had arisen during the previous two centuries. The most important of these concerned the primacy and authority of the Roman Pontiff. The separation of ecclesiastical and civil competences, and the clarification of their relationship, were set in their proper light by the diplomatic and legislative activity of Pope Gregory VII (1073-1085). Gregory's successors – Urban II (1088-1099), Paschal II (1099-1118), Gelasius II (1118-1119) and Callixtus II (1119-1124) – continued to defend the position of the Roman Pontiff and the Church against the secular ruler on the basis of their "sacred power". The "investiture struggle" ended theoretically with the Concordat of Worms between Callixtus II and the Emperor Henry V (23 September 1122). The 13th and 14th centuries are the age of Papal universalism, and a time of development of international diplomacy under the influence of the Papal legates. S. looks at the diplomatic activity of Popes Innocent III (1198-1216), Honorius III (1216-1227), Gregory IX (1227-1241), Clement IV (1265-1268), Gregory X (1271-1276), Nicholas IV (1288-1292) and Boniface VIII (1294-1303). The feature of the bilateral agreements reached during this period is that the Roman Pontiff is the one who represents the Holy See as the supreme authority of the Church. The documents do not include the entire field of diplomatic relations, but regulate in general the independent status of the Church. They also defend the territorial independence of the Papal States. Later, in the 15th century, we start to see a new kind of concordat, established not by the Roman Pontiff himself but by the general council (including the Pope as its head). Thus the Council of Constance (1414-1418) made four concordat agreements: with the Kingdom of Spain, the Kingdom of France, the German-Roman Empire, and England. These countries gave recognition to the Pope and the enforcement of Catholic doctrine and discipline in their own territories, and guaranteed the free activity of the Church.

IC XLIX 97/09, 149-194: Javier Otaduy: La *ratio* en las fuentes normativas del Derecho canónico. (Lecture)

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

IE XX 3/08, 539-565: Tribunale della Rota Romana: *Reg. Latii seu Praenestina*, Nullità del matrimonio. Preliminare *De conformitate*

***sententiarum*. Decreto, 23 febbraio 2006 - Boccafola, *Ponente* (con *nota* di Francesco Pappadia, *Alcune note in tema di sviluppi storici dell'istituto della conformità sostanziale delle sentenze*).** (Sentence and commentary)

See below, canon 1641.

QSR 18 (2008), 103-113: Antoni Stankiewicz: Il Tribunale Apostolico della Rota Romana. (Article)

See below, canons 1443-1444.

RDC 56 1-2/06, 33-62: Jean Werckmeister: Le privilège du for et la compétence judiciaire de l'Église catholique. (Article)

There are two opposing traditions to be found in the history of the Church. The mainstream asserts the *privilegium fori*, which is the exclusive competence of the Church tribunals to judge "ecclesiastical persons" and "spiritual matters". The second and lesser tradition holds Christians to be citizens like everyone else, subject to civil laws. The Decree of Gratian is the only canonical collection that cites, according to the dialectic method, these two traditions. Since the Second Vatican Council, the Church has renounced the *privilegium fori* for persons, but always demands exclusive competence for "spiritual matters". Marriage is still a very current example of the opposing claims between the State and the Catholic Church.

RDC 56 1-2/06, 63-78: Marc Aoun: Délits et peines dans le *Nomocanon* copte d'Ibn al Assâl (13e siècle). (Article)

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

RDC 56 1-2/06, 79-96: Laurent Kondratuk: Les délits et les peines dans le droit canonique du 16e siècle. (Article)

The canonists of the 16th century, like the civil law specialists, divided crimes into two categories. The first category encompassed crimes of divine *lese-majesté*. The other category encompassed crimes against man. The *Institutions* of Lancellotti are representative of the situation of penal canon law in the 16th century. However, at the moment when royal power was being affirmed and moral theology was developing, penal canon law, finding itself somewhere between State penal law and the practice of Confession, began to lose its importance.

REDC 65 (2008), 13-35: Francisco Cantelar Rodríguez - Francisco Xavier Buide del Real: Unos *statuta synodalia* de Guadix de 1474 que son Constituciones Episcopales de Cádiz de 1474. (Article)

The title of this article reveals its principal claim, namely, that the so-called *Statuta Synodalia* of the diocese of Guadix are in fact Episcopal Constitutions of the diocese of Cádiz. The confusion over the originating diocese is due to the similarity of the Latinized form of the names (*Gadicensis* and *Guadicensis*); and their description as *Statuta Synodalia* is an error canonized in C. Eubel's *Hierarchia Catholici Medii Aevis* (1960). The authors of this article have examined the original document in the Vatican Archives, and the main body of the article provides a critical edition of the same, the text being in medieval Spanish.**REDC 65 (2008), 57-107: Myriam Cortés Diéguez: La interpretación de las leyes en el Derecho romano, en el Derecho civil y en el Derecho canónico: consideraciones sobre sus principios y doctrinas.** (Article)

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

SC 42 (2008), 347-365: Szabolcs Anzelm Szuromi: Some 12th Century Textual Witnesses of the Family of the Ivonian *Panormia*. (Article)

The formation or developing process of the Ivonian work (*Decretum, Panormia, Tripartita*) is an emblematic example for the proper textual history of medieval canonical collections before the late 12th century, and especially before 1234. Recent studies concerning pre-Gratian canon law collections show well how the earlier meaning of "canonical collection" differs from its classical meaning. Ivo's concept was related to his intention to present the entire canon law of the Church, since this presentation would promote the work and activity of the ecclesiastical institutions, particularly the care of souls and salvation as a final goal. This endeavour to apply the entirety of canon law could happen in various ways, and fundamentally it had a strong link to the peculiarities of the concrete ecclesiastical institutions. The narrowly paleographical and codicological analysis of St. Petersburg, Ermit. lat. 25 and Bibliotheca Apostolica Vaticana, Barb. lat. 502 supports sufficiently the view that, concerning the text of Ivo's work, it is better to use the term "textual families". (See also *Canon Law Abstracts*, no. 102, pp. 32-33.)

16th-19th centuries

FCan III/2 (2008), 129-133: Jair Ferreira Pena: O Defensor do Vínculo – I. (Article)

See below, canon 1432.

REDC 65 (2008), 109-126: Giannamaria Caserta: L'ufficio della *defensio sacramenti* nella legislazione processuale canonica previgente e la conseguente natura *accusatoria* del giudizio di nullità matrimoniale. (Article)

See below, canon 1432.

Philippe Hallein: Le défenseur du lien dans les causes de nullité de mariage. (Book)

See below, canons 1432-1436.

1917 Code

AkK 177 (2008), 73-95: Thomas A. Amann: Kanonistische Präzisierung der „Seelsorge". (Article)

See below, canons 515-552.

EE 83 (2008), 679-697: Estanislao Olivares D'Angelo: Nulidad del matrimonio por ausencia de verdadero consentimiento matrimonial. (Article)

See below, canons 1095-1107.

IE XX 3/08, 569-591: Benedict Ejeh: The principle of suitability in the provision of ecclesiastical offices in the 1983 Code of Canon Law. (Article)

See below, canons 145-183.

Philippe Hallein: Le défenseur du lien dans les causes de nullité de mariage. (Book)

See below, canons 1432-1436.

20th century

Ang 86 (2009), 429-458: Miroslav Adam: L'organizzazione delle circoscrizioni ecclesiastiche latine in Slovacchia nella evoluzione storico-giuridica. (Article)

A. provides a brief juridical history of the Church in Slovakia (and Hungary, in so far as modern Slovakia was part of the Kingdom of Hungary) over the past thousand years. He then provides more detailed studies of the organization of the Church in Slovakia after World War I and during and after World War II, before finishing with the most recent developments.

Roman A. Melnyk: Vatican Diplomacy at the United Nations. A History of Catholic Global Engagement. (Doctoral thesis)

See below, canons 362-367.

Second Vatican Council and revision of the CIC

AkK 177 (2008), 73-95: Thomas A. Amann: Kanonistische Präzisierung der „Seelsorge". (Article)

See below, canons 515-552.

Ap LXXXI 3-4 (2008), 739-759: Angelo D'Auria: Il Libro IV del Codice di Diritto canonico. (Article)

See below, canons 834-1253.

Ap LXXXI 3-4 (2008), 923-971: Juan Damián Gandía Barber: El Derecho sacramental a los veinticinco años de la promulgación del CIC. (Article)

See below, canons 840-1054.

Comm 32 (2000), 26-83: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Sacramentis" (Sessio X). (Report)

Report of the discussion on the proposed canons on the sacraments in the session 23-28 October 1972. The draft canons covered are: sacraments in general (1-7); baptism (8-39); confirmation (40-60); penance (128-179), with an *excursus* on general absolution; anointing of the sick (180-188); orders (208-235). Two

appendices give the agreed texts of the canons on baptism and confirmation.

Comm 32 (2000), 84-148: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Sacramentis" (Sessio XI). (Report)

Report of the discussion on the proposed canons on the sacraments in the session 29 January-2 February 1973. The draft canons covered are: orders (192-244) with revised draft text; sacraments in general (1-8); penance (131-136); anointing of the sick (183-190). Four appendices give the agreed texts of the canons on sacraments in general, penance, anointing and orders.

Comm 32 (2000), 175-227: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio I). (Report)

Report of the discussion of the reform of canon law on marriage in the session 24-29 October 1966 (CIC/17 canons 1012-1034), concluding with the initial draft of the revised canons.

Comm 32 (2000), 228-252: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio II). (Report)

Report of the discussion of the reform of canon law on marriage in the session 3-8 April 1967. This includes a further review of CIC/17 canons 1013 and 1031 and those on matrimonial impediments (CIC/17 canons 1035-1051), followed by an initial draft of the revised canons on impediments.

Comm 32 (2000), 253-285: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio III). (Report)

Report of the discussion of the reform of canon law on marriage in the session 13-17 November 1967 (CIC/17 canons 1052-1080 on matrimonial impediments). This is followed by an initial draft of the revised canons on these impediments.

Comm 33 (2001), 32-61: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio IV). (Report)

Report of the discussions on the revision of canon law on marriage in the session 25-30 March 1968. After reviewing the question of those subject to impediments, the study group looked at the norms on matrimonial consent (CIC/17 canons 1081-1082). Revised texts of the canons on those subject to impediments and of CIC/17 canons 1081-1082 conclude.

Comm 33 (2001), 62-81: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio V). (Report)

Report of the discussions on the revision of canon law on marriage in the session 1-6 July 1968. This session examined ignorance, error and deceit (CIC/17 canons 1082-1085) with particular attention to the question of deceit.

Comm 33 (2001), 82-108: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio VI). (Report)

Report of the discussions on the revision of canon law on marriage in the session 11-16 November 1968. There is extensive discussion of a number of issues concerning deceit, error as to the nature of marriage, and simulation. Revised texts of CIC/17 canons 1083-1086 §1 conclude.

Comm 33 (2001), 109-132: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio VII). (Report)

Report of the discussions on the revision of canon law on marriage in the session 14-19 November 1969 (CIC/17 canons 1086 §2-1091). Most of the time was given to the consideration of simulation, the distinction between a right and its use, the understanding of *consortium vitae*, the implications of *Humanae Vitae*, and whether exclusion of the right to cohabitation could invalidate consent. Marriage by proxy and through interpreters was also considered. Revised versions of CIC/17 canons 1086 §2-1090 conclude.

Comm 33 (2001), 190-202: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio VIII). (Report)

Report of the discussion on the reform of canon law on marriage in the session 10-13 November 1969 on the invalidating effect of "force and fear", CIC/17

canon 1087.

Comm 33 (2001), 203-225: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio IX). (Report)

Very detailed report of the discussion on the reform of canon law on marriage in the session 16-21 February 1970: the impediment of impotence and the nature of its invalidating effect, CIC/17 canon 1068.

Comm 33 (2001), 226-249: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio X). (Report)

Report of the discussion on the reform of canon law on marriage in the session 11-16 May 1970: psychic capacity and discretion of judgement, CIC/17 canon 1081; further discussion on impotence, CIC/17 canon 1068.

Comm 33 (2001), 250-278: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XI). (Report)

Report of the discussion on the reform of canon law on marriage in the session 9-14 November 1970: the canonical form of marriage, CIC/17 canons 1094-1098, with draft canons.

Comm 34 (2002), 61-82: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XII). (Report)

Report of the discussion on the reform of canon law on marriage in the session 8-13 February 1971. The group resumed consideration of the canonical form of marriage, requirements for assistance, and the applicability of the extraordinary form, before moving on to those bound to the canonical form (CIC/17 canons 1098-1099). Draft canons conclude.

Comm 34 (2002), 82-118: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XIII). (Report)

Report of discussion on the reform of the law on marriage in the session 24-29

May 1971. This session looks at the recording and notification of marriage and marriage of conscience (CIC/17 canons 1103-1106), with a revised ordering of the draft canons. This is followed by a discussion of mixed marriages and the preparations for marriage (CIC/17 canons 1061-1071), the time and place for marriage (CIC/17 canons 1108-1109), the effects of marriage (CIC/17 canons 1110-1113) and the text of the draft canons.

Comm 34 (2002), 119-145: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XIV). (Report)

In this session held 13-18 December 1971 the Commission examines the consummation of marriage and its consequences (CIC/17 canons 1114-1119), namely the nature of consummation and whether or not to retain the distinction between legitimacy and illegitimacy of children, and dissolution of non-consummated marriages. The proposed *schema* follows.

Comm 34 (2002), 201-229: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XV). (Report)

This session 22-27 May 1972 considered the revision of the law on the separation of spouses (CIC/17 canons 1118-1127), and closes with draft canons.

Comm 34 (2002), 230-262: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XVI). (Report)

In this session held 6-11 November 1972 the Commission gave further consideration to the separation of spouses and also to convalidation (CIC/17 canons 1127-1137), and closes with draft canons.

Comm 34 (2002), 263-280: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XVII). (Report)

This session 22-26 January 1973 concludes the study on marriage with convalidation and second marriages (CIC/17 canons 1134, 1138-1140 and 1142-1143) and also the question of legal adoption as an impediment (CIC/17 canon 1080). The draft canons follow.

IC XLIX 97/09, 125-145: Javier Canosa: Presente y futuro de la justicia administrativa en la Iglesia. (Lecture)

See below, canon 1445.

RDC 56 1-2/06, 97-126: Guido Cooman: Privilegium et independentia fori abolenda sint? Histoire doctrinale du privilège et de l'indépendance du for entre le Concile Vatican II et le Code de 1983. (Article)

The Second Vatican Council declared that it renounced all civil privileges. This was put into effect, not without arguments, at the time of the revision of the Spanish Concordat. The archives of Mgr Onclin allow the study of the revision of the Code. They show that the consultants were, in the majority, in favour of maintaining the *privilegium fori*. In the end, the *privilegium fori ratione personae* disappeared from the CIC/83; but the Church's claim to exclusive competence over "cases which refer to matters which are spiritual or linked with the spiritual" remains (canon 1401). The wishes of the Vatican II were thus not entirely followed.

S 71 (2009), 79-110: David Albornoz: La nozione di personalità morale della Chiesa cattolica nel Codice di Diritto Canonico (1917-1983). Seconda parte: Codice del 1983. (Article)

See below, canon 113.

Paul Hayward (ed.): Studies on the Prelature of Opus Dei. On the twenty-fifth anniversary of the Apostolic Constitution "Ut sit" / Jean-Pierre Schouppe (ed.): Études sur la prelature de l'Opus Dei. À l'occasion du vingt-cinquième anniversaire de la constitution apostolique "Ut sit". (Book)

See below, canons 294-297, especially the presentations by Herranz (pp. 23-37 of the English edition; pp. 25-40 of the French edition) and Gómez-Iglesias (pp. 173-186 of the English edition; pp. 183-196 of the French edition).

Roman A. Melnyk: Vatican Diplomacy at the United Nations. A History of Catholic Global Engagement. (Doctoral thesis)

See below, canons 362-367.

CODE OF CANONS OF THE EASTERN CHURCHES

General

Comm 33 (2001), 145-147: Pope John Paul II: Allocutio ad eos qui in Symposio "Ius Ecclesiarum – vehiculum Caritatis" in honorem decimi anniversarii Codicis Canonum Ecclesiarum Orientalium partem habuerunt. (Address)

The Pope gives thanks for greater rapprochement with Eastern Orthodox Churches and sees the tenth anniversary of the promulgation of the Oriental Code as an important step on the road to reconciliation and a recognition of the diversity of the Church's patrimony. (For further details of the symposium *Ius Ecclesiarum – vehiculum Caritatis*, held on 19-23 November 2001, see *Canon Law Abstracts*, no. 94, pp. 14-15.)

Comm 33 (2001), 154-161: Julián Herranz: Oratio Exc.mi Praesidis in contextu Symposii "Ius ecclesiarum – Vehiculum Caritatis". (Address)

The President of the Pontifical Council for Legislative Texts speaks on the occasion of the tenth anniversary of the Eastern Code of the guiding principles of the reform with its emphasis on autonomy and continuity in tradition. He comments in particular on fidelity to the Eastern disciplinary tradition; the *diaspora* and relations between Churches; interpretation and application of the norms; and ecumenism.

IC XLIX 97/09, 37-65: Pablo Gefaell: El Derecho oriental desde la promulgación del CIC y del CCEO. (Lecture)

Speaking at a conference organized by the Faculty of Canon Law of the University of Navarre to mark the 25th anniversary of the promulgation of the Code of Canon Law, G. states that the promulgation of the CCEO in 1990 has led to reflection on the relationship between the two secondary legal systems that exist within the one primary juridical order of the Church. Moreover, the presence of Eastern Christian immigrants in the West requires suitable pastoral and canonical responses on the part of the Latin Church. G. examines the principal documents on Eastern Churches published since the promulgation of the CIC/83, and offers a panoramic view of authors and congresses primarily dedicated to Eastern canon law since that time. He compares some of the provisions of the Eastern and Latin Codes, and provides details of the Eastern hierarchical organization. Finally he deals with some points connected with the pastoral care of Eastern Catholics living outside the territory of their Churches; and a number of

issues to do with relations with the Orthodox.

CCEO 27-38

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See below, CIC canons 515-552.

CCEO 28

Ap LXXXI 3-4 (2008), 1021-1034: Matteo Nacci: Il concetto di "*ritus*" nel *Codex Canonum Ecclesiarum Orientalium.* (Article)

N. conducts an exegesis of CCEO canon 28, paying particular attention to paragraph two of this canon where the originating rites of the Eastern Churches are listed.

CCEO 404

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See below, CIC canon 821.

CCEO 413

SC 42 (2008), 293-318: Jobe Abbass: The Patriarch and Religious Institutes of Pontifical Right. (Article)

Within the territory of the same Church where the patriarch validly exercises his power, religious institutes of pontifical right are directly subject to the Holy See (CCEO canon 413). However, the law does provide the patriarch with authority over religious institutes of pontifical right in specific circumstances (CCEO canons 413; 418 §2) within the patriarchal territory. This reflects the legislator's application of the principle of subsidiarity, one of the principles for the revision of the Eastern legislation. This article examines eight scenarios where the CCEO gives the patriarch certain powers in regard to the governance of Eastern religious institutes of pontifical right. Also included in this study are the four Eastern major archiepiscopal Churches (CCEO canon 152). A. demonstrates that the legislator has either maintained or broadened the patriarch's power with regard to pontifical religious institutes. The scenarios examined are: 1. the promotion of religious to an office outside the religious institute (CCEO canon 431 §1); 2. alienation of ecclesiastical goods (CCEO canon 1306); 3. erection of a parish in the church of a

monastery, or appointing monks as pastors (CCEO canon 480); 4. indult of departure for temporarily professed monks (CCEO canon 496 §2); 5. dismissal of temporarily professed monks (CCEO canon 499); 6. hierarchical recourse against a decree of dismissal (CCEO canon 501 §3); 7. transfer to another religious institute (CCEO canon 544 §1); 8. granting the indult to leave a congregation (CCEO canon 549 §2, 1).

CCEO 584-666

Davide Cito - Fernando Puig (eds.): Parola di Dio e missione della Chiesa. Aspetti giuridici. (Book)

See below, CIC canons 747-833.

CCEO 657

Ap LXXXI 1-2 (2008), 7-14: Pontificium Concilium de Legum Textibus: La "recognitio" nei documenti della Santa Sede. (Document)

See below, CIC canon 446.

CCEO 666

AkK 177 (2008), 28-39: Elmar Güthoff: Der Schutz des geistigen Eigentums im CCEO. (Article)

Although the Church was and is confronted with questions of copyright in many different ways, the CIC/17 and CIC/83 do not contain any norms for the protection of spiritual property. A norm for copyright first appears in canon law in canon 666 of the CCEO. Canon 666 §1 protects the personal and patrimonial elements of the Church's spiritual property. Canon 666 §2 presumes that copyright exists for official texts. According to canon 666 §3 local laws should be enacted to establish suitable protection for spiritual property, in accordance with the civil laws concerning the rights of authors.

CCEO 677-888

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See below, CIC canons 515-552.

CCEO 733

Gregory J. Zubacz: The Seal of Confession and Canadian Law. (Book)

See below, CIC canon 983.

CCEO 781

QDE 21 (2008), 227-243: Lorenzo Lorusso: Il diritto matrimoniale proprio dei fedeli ortodossi nella *Dignitas connubii*. (Article)

See below, CIC canon 1085.

CCEO 781

QDE 21 (2008), 256-265; Paolo Bianchi: Dichiarazione di stato libero rilasciate da autorità ecclesiali ortodosse. Una recente dichiarazione del Supremo Tribunale della Segnatura Apostolica. (Article)

See below, CIC canon 1085.

CCEO 802

QDE 21 (2008), 256-265; Paolo Bianchi: Dichiarazione di stato libero rilasciate da autorità ecclesiali ortodosse. Una recente dichiarazione del Supremo Tribunale della Segnatura Apostolica. (Article)

See below, CIC canon 1085.

CCEO 818

QSR 18 (2008), 191-204: Paolo Cianconi: Il concetto della gravità delle malattie mentali. (Article)

See below, CIC canon 1095.

CCEO 826

EE 83 (2008), 679-697: Estanislao Olivares D'Angelo: Nulidad del matrimonio por ausencia de verdadero consentimiento matrimonial. (Article)

See below, CIC canons 1095-1107.

CCEO 1013

Ap LXXXI 3-4 (2008), 973-991: Andriy Tanasiychuk: Le offerte in occasione della celebrazione della divina Liturgia, dei Sacramenti, dei Sacramentali e di qualsiasi altra celebrazione liturgica nel CCEO. (Article)

In this study T. develops at much greater scope than indicated by the title the provisions of the CCEO in pastoral matters. He initiates his review of the Oriental Churches' legislation on parishes, parish priests, quasi-parishes, chaplains, and sacred ministers. He then reviews the legislation concerning offerings and matters to do with the celebration of the Divine Liturgy.

CCEO 1057

Ap LXXXI 1-2 (2008), 159-204: Congregatio de Causis Sanctorum: Instructio *Sanctorum Mater*. (Document)

See below, CIC canon 1403.

CCEO 1057

IE XX 3/08, 593-611: José Luis Gutiérrez: Note di commento all'Istruzione «Sanctorum Mater» della Congregazione delle cause dei Santi. (Article)

See below, CIC canon 1403.

CCEO 1059-1069

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali. (Article)

L. argues that the Roman Rota does not have ordinary competence for causes of the patriarchal and major archiepiscopal Churches within the confines of their own territories, and in this respect the CCEO overrules article 128 of *Pastor Bonus*. He gives details of the organization of the Eastern Church tribunals in the CCEO (first instance tribunals, appeal tribunals, tribunals of third and higher instance), before setting out the arguments in favour of the absolute incompetence of the Rota in cases where the patriarchal and major archiepiscopal tribunals are competent, within their territorial boundaries. He then presents, and rebuts, the reasons put forward by some authorities in favour of the Rota's concurrent competence in such cases; and he analyzes the Rota's own understanding of this issue as evidenced by a number of its decisions. As regards the Rota's competence in respect of the civil effects of matrimonial sentences in countries such as the Lebanon, Syria, Jordan, Israel, Iraq, etc., where there is no concept of a "civil" marriage (cf. CCEO canons 1358 and 1378 §3, corresponding to CIC/83 canons

1672 and 1692 §3), the question is very complicated, but L. suggests that competence in such cases may need to be restricted to those tribunals which have a better knowledge of the social circumstances and civil legislation of the country concerned. All in all, L. concludes, it would be helpful to have authoritative clarification of these matters in order to dispel doubts.

CCEO 1093

Ap LXXXI 3-4 (2008), 761-796: Paola Buselli Modin: L'Uditore secondo la *Dignitas Connubii*: come esercita la sua potestà giudiziale? (Article)

See below, CIC canon 1428.

CCEO 1265

Patrick Hubert: De Praesumptionibus Iurisprudentiae. (Book)

See below, CIC canon 1586.

CCEO 1315-1316

QSR 18 (2008), 211: Romanae Rotae Tribunalis Decanus: Decretum: Inter-eparchialis Maronitarum: nullitatis matrimonii; separationis; custodiae filiorum. Praeliminaris: nullitatis et confirmationis sententiae. (Document)

Decree of the Dean of the Roman Rota dated 18 June 2007, declaring that an appeal and plaint of nullity against a sentence of the Inter-eparchial Tribunal of the Maronites should be treated as having been abandoned.

CCEO 1317

QSR 18 (2008), 209: Romanae Rotae Tribunalis Decanus: Decretum: Inter-eparchialis Graecorum Melkitarum: nullitatis matrimonii: custodiae et iuris visitationis filiorum minorum. Praeliminaris: confirmationis sententiae. (Document)

Decree of the Dean of the Roman Rota dated 30 April 2007, accepting the renunciation of an appeal and complaint of nullity against a decree of the Appeal Tribunal of the Greek-Melkites.

CCEO 1358

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana

nelle cause delle Chiese cattoliche orientali. (Article)

See above, CCEO canons 1059-1069.

CCEO 1378

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali. (Article)

See above, CCEO canons 1059-1069.

CCEO 1423

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See below, CIC canon 1378.

CCEO 1443

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See below, CIC canon 1378.

CCEO 1456

Gregory J. Zubacz: The Seal of Confession and Canadian Law. (Book)

See below, CIC canon 983.

CCEO 1502-1503

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali. (Article)

See above, CCEO canons 1059-1069.

CCEO 1542

AkK 177 (2008), 15-27: Helmuth Pree: Diritto consuetudinario – un modo per creare uffici di laici? (Article)

See below, CIC canon 199.

CODE OF CANON LAW
BOOK I: GENERAL NORMS

2

SC 42 (2008), 119-140: Edward Foley: *Musicam Sacram* Revisited: Anchor to the Past or Path to the Future? (Article)

The Instruction *Musicam Sacram* was promulgated by the Sacred Congregation of Rites in 1967. F. suggests that it is useful to revisit this Instruction 40 years later because it is the only major juridical document on music issued by the Holy See after Vatican II and is still considered by some individuals to be the official guide for music in the *Novus Ordo* of Paul VI. F. indicates certain difficulties with this position since the *Novus Ordo* did not yet exist in its entirety when the Instruction was promulgated and thus the document is more accurately understood as a commentary on the *Ordo Missae* (a modified form of the Tridentine Rite) in effect at that time. F. examines the historical context of the Instruction, suggests a proper interpretation, and explores the various literary forms that are operative in the text. He suggests that the theological statements and principles of Vatican II`s Constitution on the Sacred Liturgy continue to have value while the juridical norms have been mainly either abrogated or derogated by later legislation. He concludes that this document should continue to be employed in addressing the role of music in worship.

9

RDC 56 1-2/06, 185-199: Rik Torfs; La rétroactivité des peines canoniques. (Article)

See below, canon 1313.

16-19

REDC 65 (2008), 57-107: Myriam Cortés Diéguez: La interpretación de las leyes en el Derecho romano, en el Derecho civil y en el Derecho canónico: consideraciones sobre sus principios y doctrinas. (Article)

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

23-28

AkK 177 (2008), 15-27: Helmuth Pree: Diritto consuetudinario – un modo per creare uffici di laici? (Article)

See below, canon 199.

30

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See below, canon 1378.

34

Philippe Hallein: Le défenseur du lien dans les causes de nullité de mariage. (Book)

See below, canons 1432-1436.

85-93

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See below, canons 515-552.

111-112

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See below, canons 515-552.

113

EE 83 (2008), 663-677: José Luis Santos Díez: Personalidad jurídica de la Iglesia ante los Estados. (Article)

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

113

S 71 (2009), 79-110: David Albornoz: La nozione di personalità morale della Chiesa cattolica nel Codice di Diritto Canonico (1917-1983). Seconda parte: Codice del 1983. (Article)

Following on from his article dealing with the moral personality of the Church as dealt with in the CIC/17 (see *Canon Law Abstracts*, no. 102, p. 37), A. now turns his attention to the way in which the notion is accepted in the CIC/83. He presents the doctrinal reflections of some authors in the period following the CIC/17, and makes reference to certain new elements and the crisis of *ius publicum ecclesiasticum* in the period of the revision of the Code. He examines the preparatory *schemata* of canon 113 §1 published in *Communicationes*, as well as the proposed *Lex Ecclesiae Fundamentalis*; to this end he was able to consult the personal archive of Cardinal Rosalio José Castillo Lara, Secretary of the Commission for the Revision of the Code of Canon Law from 1975 to 1982. Finally he analyzes the final version of the norm as it appears in the CIC/83, in an attempt to discern the elements of continuity and discontinuity with respect to the corresponding norm in the CIC/17.

124-144

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See below, canons 515-552.

145

AkK 177 (2008), 15-27: Helmuth Pree: Diritto consuetudinario – un modo per creare uffici di laici? (Article)

See below, canon 199.

145

AkK 177 (2008), 56-72: Christoph Ohly: Officium ecclesiasticum. Ein rechssprachlicher Vorschlag. (Article)

O. highlights the ambiguity in the legal vocabulary of the canons dealing with ministries in the Church, and demonstrates this by reference to the sections of the Code on the Ministry of the Divine Word (canons 756-780) and the Sacraments (canons 840-1165). He proposes a solution whereby the official legal terms *officium*, *munus*, and *ministerium* are linked to a new concept of *servitium*, while also being distinguished from one another, for the sake of greater clarity.

145-183

IE XX 3/08, 569-591: Benedict Ejeh: The principle of suitability in the provision of ecclesiastical offices in the 1983 Code of Canon Law. (Article)

To describe the concept in canon 145 the legislator uses the term *officium*, qualified more precisely with *ecclesiasticum* to distinguish it from other types of offices in the CIC/83. E. compares the meanings of *officium* in the CIC/17 and the CIC/83. The 1983 legislation emphasizes the person's integral suitability for the exercise of the responsibilities and rights of the office. E. summarizes the elements of suitability under the following headings: fundamental qualifications; communion with the Church; moral suitability; maturity; appropriate knowledge; freedom from censures, irregularities and impediments. He then provides an analysis of the concept of suitability in relation to the various kinds of canonical provision in canons 157-183.

197-199

Proc CLSA 2008, 383-451: Phillip Brown: Prescription and Statutes of Limitation. (Study)

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

199

AkK 177 (2008), 15-27: Helmuth Pree: Diritto consuetudinario – un modo per creare uffici di laici? (Article)

P. asks whether lay ministries – understood in the objective sense – can be established in accordance with ecclesiastical custom and practice (as opposed to adverse possession). He first attempts to clarify how the concept of lay ministry is to be understood in the light of the CIC/83. Of great importance is the difference between ecclesiastical offices reserved to clerics by virtue of *ius mere ecclesiasticum*, and those reserved to them by virtue of *ius divinum*. Drawing principally on canon 199, 6º (cf. CCEO canon 1542, 6º), the possibility of establishing lay ministries is affirmed, by extra-legal as well as counter-legal means, assuming the general requirements are met for the emergence of custom and practice, which P. analyzes in detail. The Interdicasterial Instruction *Ecclesia de Mysterio* (1997) on the collaboration of the laity in the ministry of priest revoked any existing usages contrary to this norm, but without forbidding such uses from arising in the future.

BOOK II, PART I: CHRIST'S FAITHFUL

204

Ap LXXXI 1-2 (2008), 209-214: Congregatio pro Doctrina Fidei: Responsa ad quaestiones de aliquibus sententiis ad doctrinam de Ecclesia pertinentibus. (Document)

Approved by Pope Benedict on 29 June 2007, this is the text in Latin clarifying five matters of ecclesiological doctrine stated in the Second Vatican Council and subsequent documents of the Magisterium. The Congregation asserts the continuity of the teaching of the Second Vatican Council on the Church with that of the past; the correct understanding of the term *subsistit* and the reason for its use rather than *est*; the application in the documents of the Second Vatican Council and subsequent documents of the Magisterium of the term *Ecclesia* to the Eastern Churches not in full communion with the Catholic Church, while withholding this title from the ecclesial communities arising from the Reformation of the 16th century.

204-293

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See below, canons 515-552.

208

ACR LXXXVI 2/09, 145-160: K. Davis - B. Lucas: The Australian Catholic Bishops Conference and the Participation of Women in the Catholic Church – Ten Years On. (Article)

In 1999, the Australian Catholic Bishops Conference (ACBC) received a report on its research project *The Participation of Women in the Catholic Church*. On the tenth anniversary, D. (Director of the Office for the Participation of Women) and L. (General Secretary of ACBC) revisited the decision to undertake the research. In the light of Vatican II, the CIC/83 and the contemporary understanding of women in society, ACBC in 1996 launched a study project to collect data to determine the ways in which women participate in the Catholic Church in Australia; the assistance offered to women for this participation; the barriers to participation; and ways in which participation can be increased. D. and L. then summarized the results, in a substantial monograph entitled *Woman and Man – One in Christ Jesus*, and the 2000 Social Justice Statement containing 9 decisions of national significance and 31 proposals for implementation at diocesan level. They then considered some resulting initiatives established, namely positives such as the Commission for Australian Catholic Women, and the Young Catholic Women's Interfaith Fellowship. They note individual experiences, and expectations of women as regards leadership and decision-making, noting that some are negative and unreal, such as the agenda for the ordination of women.

Finally D. and L. comment on the future. They note that the Holy See stresses the need to avoid gender equivalence, not gender equality. They then reflect on the need to clarify the differentiation of clerical and lay ministry; that collaboration of laypersons with clerics does not mean substitution; and they note facts such as the consideration by the 2008 Synod of Bishops of women being instituted in the ministry of lector, and women being "leaders" in the governance of public juridical persons.

208

Norbert Lüdecke: Mehr Geschlecht als Recht? Zur Stellung der Frau nach Lehre und Recht der römisch-katholischen Kirche. (Article in **Sigrid Eder - Irmtraud Fischer, Hg: *Theologie im kulturelle Dialog*, 16, pp. 183-216**)

L. examines the status and rights of women in the Church, bearing in mind the equal dignity of all the baptized and the distinction of the roles of men and women which in fact exists.

220

QSR 18 (2008), 212: Romanae Rotae Tribunalis Decanus: Decretum: Salten. in Uruguay. Diffamationis et damnorum. (Document)

See below, canon 1405.

220

QSR 18 (2008), 213-214: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Severi. Diffamationis et refectionis damnorum. (Document)

See below, canon 1405.

220

QSR 18 (2008), 218-219: Romanae Rotae Tribunalis Decanus: Decretum: Premislien. Latinorum. Diffamationis. (Document)

See below, canon 1405.

221

PCF XI (2009), 169-192: Benjamin Pantas: The Canonical Procedure for Doctrinal Examination vis-à-vis the Local Legislation of the Catholic

Bishops' Conference of the Philippines. (Article)

See below, canon 823.

221

Proc CLSA 2008, 355-382: Phillip Brown: The Right of Defense in Canon Law (and "Due Process" in American Civil Law). (Preliminary Study)

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

226

FT 19 (2008), 353-381: Lóránd Ujházi: Il diritto naturale dei genitori di educare i loro figli ed il dovere dei cattolici di assicurare una crescita spirituale cattolica. (Article)

See below, canons 793-806.

230

Comm 33 (2001), 166-168: Congregatio de Cultu Divino et Disciplina Sacramentorum: responsum ad dubium propositum: utrum Episcopus dioecesanus sacerdotes eiusdem dioecesis obligatione adstringere possit ad admittendas mulieres vel puellas in servitium altaris necne. (Reply)

The Council clarifies the authentic interpretation of canon 230 §2 given on 15 March 1994. The diocesan bishop can permit the admission of female altar servers, but not require their use by priests of the diocese.

232-264

QDE 21 (2008), 340-374: Andrea Migliavacca: La formazione in seminario: magistero universale e dei vescovi italiani dal Consilio alla nuova *ratio* per i seminari in Italia. (Article)

M. traces the documentation concerning seminaries in the Church issued by the Holy See, and by the Italian bishops for Italy, from the Second Vatican Council until the promulgation by the Italian bishops of the *Orientamenti e norme* on 4 November 2006. The Holy See had given its *recognitio* to this document on 8 September 2006. The influence of Pope John Paul II is underlined with special note being taken of his Apostolic Exhortation *Pastores Dabo Vobis* (25 March 1992). M. sets out in some detail the work of the Italian bishops in producing significant documents for the formation of candidates to the priesthood that led up

to the publication of the *Orientamenti*.

232-264

QDE 21 (2008), 375-396: Giuliano Brugnotto: «Una profonda sinergia». Responsabilità e compiti nella comunità ecclesiale del seminario maggiore. (Article)

B. gives detailed consideration to documents noting the requirement in the CIC/83 at canon 242 of a *Ratio institutionis sacerdotalis* for each country, drawn up by the bishops and offered to the Holy See for *recognitio.* This duty has been met by the Italian bishops in a series of documents culminating in the issue of *Orientamenti e norme* on 4 November 2006. B. notes that the diocesan bishop should be in some manner a member of the community of the seminary, and then continues with comments on the various offices required in the seminary for the spiritual and intellectual formation of the seminarians, insisting on the need for unity of purpose in all who fill these roles.

239-240

QDE 21 (2008), 398-421: Giangiacomo Sarzi Sartori: La direzione spirituale nel cammino formativo dei candidati al presbiterato. (Article)

S., having noted the rather different approaches of the CIC/17 and CIC/83 to the place of spiritual direction in the seminary training for candidates to the priesthood, reflects on the provisions of the document of the Italian bishops *Orientamenti e norme* of 4 November 2006 in its reference to the position and duties of the spiritual director. The Papal Exhortation *Pastores Dabo Vobis* is a significant source for his conclusions. He finds that after a period of comparative neglect, spiritual direction is seen to be of great importance for the formation of candidates to the priesthood.

240-241

QDE 21 (2008), 422-435: Alberto Perlasca: L'utilizzazione della psicologia secondo il documento *La formazione dei presbiteri nella Chiesa italiana.* (Article)

P. notes, in the documents of the Italian bishops prior to the publication of *Orientamenti e norme* of 4 November 2006, the very few references to the use of behavioural sciences in seminaries. Taking account of the dispositions in the latest episcopal document he makes a detailed examination of their juridical consequences, with particular attention to the element of privacy or confidentiality (*intimità*) that must be observed with regard to seminarians' affairs.

241

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). In a *rescriptum ex audientia* dated 8 April 2008 the Pope clarified that the Instruction of the Congregation for Catholic Education on the criteria for the discernment of vocations with regard to persons with homosexual tendencies (4 November 2005) applies to all houses of formation for the priesthood, including those dependent on the Congregation for the Oriental Churches, the Congregation for the Evangelization of Peoples, and the Congregation for Institutes of Consecrated life and Societies of Apostolic Life.

241

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). On 29 June 2008 the Congregation for Catholic Education issued a document entitled *Guidelines for the use of psychology in the admission and formation of candidates for the priesthood*, which deals with the contribution which psychology can make to vocational discernment and the formation of the candidate to the priesthood. In some cases recourse to experts can help evaluate the candidate's human dispositions for responding to the divine call; it can also provide extra assistance for the candidate's human growth. The document also mentions the great benefit to the Church and the candidate when serious problems that could be an obstacle to the vocational path are identified at the outset: "excessive affective dependency; disproportionate aggression; insufficient capacity for being faithful to obligations taken on; insufficient capacity for establishing serene relations of openness, trust and fraternal collaboration, as well as collaboration with authority; a sexual identity that is confused or not yet well defined." At later stages of formation too, a visit to the psychologist may be useful. The *Guidelines* also recall the Church's right and duty to verify the suitability of the candidate for sacred orders. In this context, in the event of doubt on the part of the competent superior, there is the possibility of referring the candidate to a specialist, but this can only be with the candidate's prior, explicit, informed and free consent, while respecting his right to privacy and his good name. The document also dedicates a section to relations between those responsible for formation and the psychologist, distinguishing between the external and internal forum.

242

Per 98 (2009), 1-32: James J. Conn: Reflections on some recent norms on priestly formation. (Article)

C. offers some reflections on norms for priestly formation, considering particularly their adaptability and their provisions for ensuring the human maturity and moral integrity of the candidates involved. He begins with a consideration of the universal norms in place – canon 242 and the *Ratio Fundamentalis institutionis sacerdotalis* of 1985. Along with this, he considers the influence of the post-Synodal Apostolic Exhortation *Pastores Dabo Vobis* of 1992. These documents have helped to shape the priestly formation programmes developed at national level. C. examines and offers some critical comments on the programmes elaborated by the Bishops' Conferences of Scotland (2005), Ireland (2006), and the United States (2006).

244-258

SC 42 (2008), 437-471: Michael Nobel: Academic Aspects of Priestly Formation in the 1983 Code of Canon Law. (Article)

The CIC/83 identifies basic principles concerning priestly formation in canons 244-258. This study examines the legislative changes since the CIC/17 by offering observations on various aspects of priestly formation, especially in distinguishing what is essential for academic formation. Only a few norms address the promotion of the candidates of mature years, the majority being focused on young men who intend to enter the priesthood. Academic formation takes place either in the major seminary itself or at a university/college/faculty. The legislator offers in the Code only a framework for priestly formation. Further details concerning the six-year programme of studies can be found in the *Ratio fundamentalis institutionis sacerdotalis*, a *ratio nationalis*, and a *ratio localis*. The goal of priestly formation is a suitable theoretical and practical education and formation of future clergy.

277

QSR 18 (2008), 218-219: Romanae Rotae Tribunalis Decanus: Decretum: Premislien. Latinorum. Diffamationis. (Document)

See below, canon 1405.

281

Comm 32 (2000), 162-167: Pontificium Consilium de Legum Textibus: Decretum de recursu super congruentia inter legem particularem et normam codicialem. (Document)

This decree from the Pontifical Council for Legislative Texts deals with a query concerning the policy of taking into account the full or part pension entitlement of a priest when making payments from the Priests' Remuneration Fund. Canon 281 establishes a general right. Canon 1274 speaks in the specific context of clergy

rendering a service to the diocese, leaving much open to local law. The remuneration in question is not a stipend in the sense of commutative justice. Possible sources are: ecclesiastical entities for which the priest exercises full or part time ministry; other entities providing a stipend or pension; and the diocesan institute or fund. The role of the diocesan institute or fund is to supplement the other sources to ensure that an appropriate level of support is provided. Where this system is in place it is not permitted for an individual cleric to refuse, or not request, payment due from one of these sources. This is quite different from income arising from personal sources or savings which cannot be taken into account. The *Guidelines* in question must be considered diocesan norms and as long as they have been properly established or approved by the bishop and published, are binding.

283

Comm 33 (2001), 24-30: Congregatio pro Gentium Evangelizatione: Istruzione sull'invio e la permanenza all'estero dei sacerdoti del clero diocesano dei territori di missione. (Instruction)

The phenomenon of diocesan priests on loan for missionary activity has evolved from the second half of the 19th century onwards. Today many priests come to Europe and North America for various reasons and often are persuaded not to return home, sometimes with the consent of their own bishop, sometimes in direct disobedience. The purpose of the Instruction is to address these issues. Proper formation is needed, and those destined for further studies overseas must be selected carefully. This should not be seen as a remedy for personal problems. Care is also needed in the selection of those chosen to act as chaplains for their own ethnic groups among emigrants. Priests forced to leave their own country also need special care, but the true situation of each one must be clarified. Ten norms follow as an application of canon 283 §1, focusing on priests sent for further studies and those dwelling overseas for the pastoral care of migrants. In the case of refugees a sympathetic bishop must refer to the Congregation before assigning a pastoral office. The Instruction was approved on 24 April 2001.

285

FCan III/2 (2008), 81-86: Elisa Araújo: Comentário ao cânon 287 §2: a proibição dos ministros sagrados em participar activamente em partidos políticos: o caso de Fernando Lugo, Presidente do Paraguai. (Comment)

See below, canon 287.

285

PCF XI (2009), 251-258: Jaime B. Achacoso: The Ban on Priests From Public Office. (Article)

This article was motivated by a recent election in the Philippines when a priest ran for public office despite stern and repeated warnings from his archbishop not to do so, and was elected as governor of his province. Initially, this caused a furore in ecclesiastical circles, but the main problem was how to answer the questions raised by the concerned faithful: 1. was the priest right to run for office?; 2. is it correct to say that it is all right for him to assume public office, since he is on leave from his priestly ministries?; 3. after he has completed his term of office, may he return to active ministry as a priest? A. examines the issue purely from the canonical standpoint, and under four headings. He looks first at the phenomenon of priests in public office in the light of the CIC/17, the mind of the Holy See, and the prevailing political atmosphere. The second point deals with the canonical prohibition on the active participation of clerics in political life. Underpinning A.'s discussion of this point are the principles enunciated in the *Directory on the Ministry and Life of Priests* (1994) and canon 287 of the CIC/83. The third point deals with the canonical prohibition on clerics' assuming public office. Here A. examines canons 285 §§3-4, 286, and 287 §2, and also canons 1311, 1392, and 1399, which deal with penal sanctions. In his fourth point, A. considers the foundation of the prohibition on assuming public office as it affects the identity and mission of the cleric. Two general principles can be identified in canons 285 §§1-2. These indicate that clerics must abstain from everything that is not suitable to their proper state, and avoid what is alien to the clerical state. A. concludes his discussion with an explanation of the case in question, in which the archbishop, in accordance with the norms of canons 1399 and 1333 §1, had imposed a penalty of suspension on the priest who ran for office. A. corrects the misconception among the faithful who think the priest is on leave from his ministry, when, in fact, he is suspended and may not return to ecclesiastical ministry unless and until the archbishop lifts the suspension.

287

FCan III/2 (2008), 81-86: Elisa Araújo: Comentário ao cânon 287 §2: a proibição dos ministros sagrados em participar activamente em partidos políticos: o caso de Fernando Lugo, Presidente do Paraguai. (Comment)

The case of Fernando Lugo, President of Paraguay and former bishop, is an interesting example of canons 285 §3 and 287 §2. Clerics are forbidden to assume public office if this involves sharing in the exercise of civil power. Moreover, they are not to play an active role in political parties unless this is required to promote the common good. The Holy See initially rejected Emeritus Bishop Lugo's request. Later some facts changed and the Holy See granted him the loss of the clerical state and the rights inherent therein; it also dispensed him from the religious vows made to the Society of the Divine Word, the obligation of celibacy,

and the other duties proper to the clerical state.

287

PCF XI (2009), 251-258: Jaime B. Achacoso: The Ban on Priests From Public Office. (Article)

See above, canon 285.

290-292

FCan III/2 (2008), 81-86: Elisa Araújo: Comentário ao cânon 287 §2: a proibição dos ministros sagrados em participar activamente em partidos políticos: o caso de Fernando Lugo, Presidente do Paraguai. (Comment)

See above, canon 287.

290-292

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). On 30 July 2008 Archbishop Orlando Antonini, the then Apostolic Nuncio to Paraguay, communicated Pope Benedict's decision to grant the loss of the clerical state to Fernando Lugo, President of Paraguay. On 20 January 2007 Fernando Lugo had received the suspension indicated in canon 1333 §1 as a result of his entry into politics and his decision to present himself as a candidate for the Presidency of the Republic. The day after his election as President he asked forgiveness of the Catholic Church and in particular of Benedict XVI, for the sorrow he had caused through his disobedience to the canon laws. By this decision Fernando Lugo loses the obligations and rights proper to his former clerical state, although this does not include a dispensation from celibacy (cf. canon 291).

294-297

Paul Hayward (ed.): Studies on the Prelature of Opus Dei. On the twenty-fifth anniversary of the Apostolic Constitution "Ut sit". (Book)

The personal prelature of Opus Dei was established on 28 November 1982 and solemnly inaugurated on 19 March 1983. To mark the 25th anniversary of those events, a Study Day was held at the Pontifical University of the Holy Cross on 10 March 2008. This book contains the proceedings of the conference. Bishop Javier Echevarría, Prelate of Opus Dei (pp. 3-22) describes the juridical configuration

which St Josemaría Escrivá, founder of Opus Dei, foresaw for the organization, setting out its defining characteristics, the configurations during the founder's lifetime, and the steps taken in the 1960s and 1970s towards a definitive juridical solution. Cardinal Julián Herranz (pp. 23-37) deals with the preparatory work for the Apostolic Constitution *Ut sit* by which the prelature was established; this work was carried out simultaneously and in harmony with the work of revision of the CIC/83, which was promulgated two months before the formal promulgation of *Ut sit*. Prof. Eduardo Baura (pp. 39-75) examines the principles of the development of the Church's organization, the pastoral phenomenon of Opus Dei, some of the substantive features of Opus Dei, and the Priestly Society of the Holy Cross, a clerical association "intrinsically united to the prelature". Prof. Giuseppe Dalla Torre (pp. 77-97) describes the different ways in which the prelature has gained civil recognition in countries around the world. Prof. Paul O'Callaghan (pp. 99-120) studies the nature, mission and structure of the Church generally, and how Opus Dei's mission and structure fit into the Church's mission. Mgr. Fernando Ocáriz, vicar general of the prelature (pp. 121-139), talks of the mission of the prelature and apostolate *ad fidem*; the common characteristics of the different types of apostolate *ad fidem*; the distinction between apostolate with non-Christians and apostolate with Christian non-Catholics; and the prelature's participation in ecumenical activity. Cardinal Camillo Ruini (pp. 141-151) reflects on the service which the prelature offers the dioceses, and how the special mission of the prelature converges with the evangelizing effort of each particular Church, both through the lives of the individual faithful and at the institutional level. Prof. Carlos José Errázuriz (pp. 155-172) sets forth a realist understanding of the juridical concept of personal prelature, and the ecclesial reality of Opus Dei as a personal prelature. Prof. Valentín Gómez-Iglesias (pp. 173-186) gives details of a proposal in the early 1960s for Opus Dei to be a personal prelature. Prof. Javier Canosa (pp. 187-198) describes the ceremony of execution of the Apostolic Constitution *Ut sit* on 19 March 1983 and its juridical significance. Prof. Joaquín Llobell (pp. 199-218) deals with the question of the competence of personal prelatures in causes of canonization. (For bibliographical details see below, Books Received.)

294-297

Jean-Pierre Schouppe (ed.): Études sur la prelature de l'Opus Dei. À l'occasion du vingt-cinquième anniversaire de la constitution apostolique "Ut sit". (Book)

French edition of the book described in the preceding entry. (For bibliographical details see below, Books Received.)

303

Ang 86 (2009), 625-668: Tomasz Wytrwał: The Legal Relation of the

Dominican Family to The Order of Preachers. (Article)

W. presents an overview of recent discussions at Dominican general chapters about the relationship between the Order of Preachers (the clerical religious institute) and the Dominican Family (all those bodies sharing the spiritual inspiration of St Dominic). He criticizes attempts to eliminate the differences between the two and encourages cooperation in the apostolate rather than unification of structures.

318

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). On 14 May 2008 the Prefect of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life informed Fr Damien Zavala that his temporary appointment as superior general of the Lumen Dei Union had come to an end, and that retired Archbishop Fernando Sebastián was to be named Papal commissioner. The decree of appointment, dated 15 May 2008, sets out the commissioner's powers and faculties – measures foreseen by canon 318, and taken in response to the crisis seriously threatening the internal unity of Lumen Dei. After Fr Zavala's request for revocation of the appointment of Archbishop Sebastián was rejected by the Congregation, he lodged a recourse before the Apostolic Signatura, which immediately pointed out that such recourse did not suspend the act of appointment. On 5 December 2008 the Secretary of State, by express mandate of the Holy Father, sent a Letter to all members of Lumen Dei confirming all the decisions taken by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, requiring the members to accept those decisions, and asking them to manifest in writing their desire to continue living their vocation according to the constitutions of Lumen Dei.

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

330

RTL 40 (2009), 236-247: Joseph Famerée: Communion ecclésiale, conciliarité et autorité. (Article)

F. presents the contents of the Ravenna document (13 October 2007) entitled *Ecclesiological and Canonical Consequences of the Sacramental Nature of the Church. Ecclesial Communion, Conciliarity and Authority*, which constitutes the latest agreement of the Joint International Commission for Theological Dialogue between the Roman Catholic Church and the Orthodox Church. He then gives an

evaluation of this text which proposes the ecclesiological foundations for a common reflection on the primacy of the Bishop of Rome.

333

TS 70 3/09, 600-621: George E. Demacopoulos: Gregory the Great and the Sixth Century Dispute over the Ecumenical Title. (Article)

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

342-348

Ap LXXXI 1-2 (2008), 23-45: Secretaria Status: Rescriptum ex audientia: Ordo Synodi Episcoporum opportune recognoscitur atque variationibus augetur. (Document)

Text in Latin of the revised *Ordo* for the Synod of Bishops given at the Vatican on 29 September 2006.

362-367

Roman A. Melnyk: Vatican Diplomacy at the United Nations. A History of Catholic Global Engagement. (Doctoral thesis)

M. looks at the history of the gradual involvement of the representatives of the Holy See and the corresponding development of their legal status in the international organization of the United Nations, the canonical determination of the office of Papal legate to the UN, the role and function of Papal representatives to the UN, and the present and future contribution of Papal legates to the work of the UN in the service of humanity. The first chapter studies the international status of the Holy See from 1870-1929; the development of pre-UN international structures from 1939-1945; the participation of the Holy See in the early stages of development of the UN's agencies and international bodies; and its involvement with the first UN Specialized Agencies, such as the Food and Agriculture Organization, the World Food Programme, the International Fund for Agricultural Development, and UNESCO. The second chapter examines the legal status of the Permanent Observer and the Mission of the Holy See at the UN; the development of the canons of the CIC/83 in the process of the revision of the Code and the reform of the Roman Curia; the important characteristics of the post of Papal legate as an ecclesiastical office; and the presence of laity in the context of pontifical representation. The third chapter studies the range of involvement of the Holy See in the UN, and in its agencies and related bodies throughout the world. The fourth chapter focuses on the work of the Permanent Observer of the Holy See in the context of the mission of the Church, as expressed in canon 747 §2; current diplomatic directions of the activity of Permanent Observers; and present-

day challenges before the UN, including the defence of peace and human rights, and conflict resolution. Suggestions are also made regarding a possible expansion of the role and function of Papal legates, especially in application of their leadership and mediation skills in the light of the transformative and internal reform process currently under way in the UN and in the world diplomatic community. (For bibliographical details see below, Books Received.)

371-372

Comm 34 (2002), 11-12: Pope John Paul II: Epistula: Venerabili Fratri Licinio Rangel dilectisque Filiis Unionis Sancti Ioannis Mariae Vianney Camposinae in Brasilia. (Document)

Pope John Paul II welcomes into communion Bishop Licinio Rangel and the members of the union of St John Vianney in Campos, Brazil, and promises a legislative document that will erect for them an apostolic administration. The Letter is dated 25 December 2001.

371-372

Comm 34 (2002), 57-60: Congregatio pro Episcopis: Decretum de Administratione Apostolica personali "Sancti Ioannis Mariae Vianney" condenda. (Document)

This decree erects the pious union of St John Vianney, based in Campos, Brazil, now restored to full communion, as a personal apostolic administration with the faculty to administer all the sacraments and liturgical rites according to the liturgical discipline in force under Pope John XXIII. The power of the Ordinary is personal, ordinary and cumulative with that of the bishop of Campos. The decree sets out the powers granted to the apostolic administration and the basis for membership.

375

Comm 33 (2001), 151-154: Julián Herranz: Oratio Exc.mi Praesidis in coetu Synodi Episcoporum. (Address)

The President of the Pontifical Council for Legislative Texts, addressing the X Ordinary General Assembly of the Synod of Bishops (8 October 2001), deals with two topics contained in the *Instrumentum Laboris* for the assembly (whose theme was "The Bishop: Servant of the Gospel of Jesus Christ for the Hope of the World"): justice as doing God's will and the call to spread the Gospel (nos. 35 & 43), and justice in governing (no. 118).

392

SC 42 (2008), 473-502: Peter Artner: Disciplinary Measures Outside Book VI of the 1983 *CIC*. (Article)

Book VI of the CIC/83, *De sanctionibus*, establishes various canonical delicts and sanctions. In addition, there may be other consequences outside of Book VI which are incurred because of those delicts or sanctions. A. calls these consequences "disciplinary" because they are not sanctions in the strict sense. Even when there is a remission or non-application of a penalty, there may remain some effects which are beyond the power of the authority that applied (or did not apply) the penal sanction(s). These disciplinary consequences are concerned not so much with the reform of the person who committed the delict as with the protection of the ecclesial community. A proper comprehension of penal law includes a knowledge of these disciplinary consequences. This article is an examination of the relevant disciplinary norms in the CIC/83, with some references to the CCEO.

446

Ap LXXXI 1-2 (2008), 7-14: Pontificium Concilium de Legum Textibus: La "recognitio" nei documenti della Santa Sede. (Document)

In an explanatory note of 28 April 2006 issued in response to some enquiries, the Pontifical Council for Legislative Texts declared what is the right understanding to be given to the term *recognitio* when it is employed in documents of the Holy See responding to matters that under the law have had to be submitted to it. It is an act *sui generis* of the Holy See intended to safeguard juridical accuracy and ensure communion within the Church. It is not to be confused with approval or authorization; it is not a *nihil obstat*.

451

ACR LXXXIV 4/07, 479-480: Amendments to the Statutes of the Australian Catholic Bishops Conference. (Notice)

A decree of the Australian Catholic Bishops Conference approved some minor amendments to the Statutes of the Conference (published in ACR LXXVIII, 471-480; cf. *Canon Law Abstracts*, no. 88, p. 36). The notice advises of this, and states that the full text of the Statutes is published on the website www.acbc.catholic.org.au. It also states that the amendments took effect on 25 April 2007, although standard canonical opinion would suggest that the amendments to the Statutes became effective on 1 December 2007. The decree of *recognitio* from the Congregation of Bishops (25 April 2007) is attached to the notice.

455-456

Ap LXXXI 1-2 (2008), 7-14: Pontificium Concilium de Legum Testibus: La "recognitio" nei documenti della Santa Sede. (Document)

See above, canon 446.

482-491

Assemblée des chanceliers et chancelières du Québec: Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église catholique. (Book)

Ecclesial archives and their conservation are currently arousing a good deal of interest in Quebec. The Assembly of Quebec Chancellors has put together this book which consists of two main parts. Part I deals with ecclesial, diocesan and parish archives as part of the archival patrimony of the Catholic Church, and looks into their origins, and the canonical manner of conserving them wisely and professionally. Part II sets out the revised version of the *Guide de gestion et de mise en valeur des archives paroissales* prepared by the Assembly of Quebec Chancellors and published by the Assembly of Quebec Catholic Bishops in 1999. (For bibliographical details see below, Books Received.)

491

SC 42 (2008), 319-330: Pierre Hurtubise: Le devoir de mémoire. Pourquoi il faut assurer dès maintenant l'avenir de nos archives religieuses. (Article)

In Canada, as elsewhere, there is emerging the problem of the survival of numerous ecclesiastical and religious archives due to the fact that a number of entities such as works, associations, religious institutes, parishes and even dioceses have either disappeared or are in the process of disappearing. From this situation arises the urgency to protect these archives so that this memory is not lost, a loss which neither the Church nor society can permit to happen. Otherwise there may be a collective or institutional amnesia. H. notes that here there is both a "legal" and "moral" duty from which one cannot escape. There exists guidance in the Code of Canon Law and ecclesiastical directives, especially in an important Circular Letter from the Pontifical Commission for the Cultural Heritage of the Church (1997). H. suggests, among various solutions to the current problems threatening archives, their regrouping, and he gives details of some successful examples in Canada and elsewhere. The moment has arrived to act, he says, and to act quickly.

495-502

FCan III/2 (2008), 67-78: Józef Wroceński: Le presbyterium et son rôle dans la vie de l'Église particulière. (Article)

Vatican II's teaching on the episcopacy considered as the fulness of the priesthood led to a discussion of the position and role of the priest. Although priests do not constitute a structure modelled on that of the College of Bishops, together with their bishop they form a similar community within the particular Church, collaborating within the bond of communion with the shepherd of that Church and the other priests. The bishop and priests have *in solidum* the pastoral care of the particular Church. This finds expression in the council of priests, a group of priests representing the *presbyterium* and forming a sort of "bishop's senate", whose function in the particular Church resembles that of the synod for the universal Church. However, this institution does not exclude other possible forms of collective activity on the part of priests. The teaching of Vatican II is of great significance, but at the same time involves a number of ambiguities and open questions, especially in relation to collegiality within the particular Church, the nature and function of the *presbyterium*, and the nature of the vote of the council of priests. W. considers that bishops and priests should find inspiration in the model of the *presbyterium* that existed in the early Church.

515-552

AkK 177 (2008), 73-95: Thomas A. Amann: Kanonistische Präzisierung der „Seelsorge". (Article)

A. analyzes the concept and nature of pastoral care in the Church, in the light of canonical tradition as summarized in the CIC/17 and also the teaching of Vatican II. In view of its internal and external characteristics, pastoral care is defined as a fundamental part of the Church's mission, involving the ministries of proclamation, healing and leadership. A. pays special attention to the role of the parish priest, describing his many and varied tasks in the area of pastoral care.

515-552

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

This is the fourth edition since the promulgation of the CIC/83 of *The Pastoral Companion*, a reference, commentary and textbook on canon law intended for Catholic clergy and lay ministers and those preparing for ministries in the Catholic Church. It consists of 16 chapters, dealing with fundamental laws and general norms (the faithful; physical persons; the power of governance; dispensations); baptism (fundamental norms; adult initiation; infant baptism; offices and ministries; time and place of celebration; emergency baptism; proof and recording of baptism); confirmation (general norms; subjects of confirmation; minister and

sponsor; proof and recording; reception of a baptized Christian into full communion); the Eucharist (ministries; preaching; participation; different forms of celebration; rites and ceremonies; frequency, time and place of celebration; Mass intentions and offerings; reservation and veneration of the Eucharist; Communion outside Mass); penance (celebration of the sacrament; roles and ministries; remission of censures; remission of the penalty for abortion); anointing of the sick (celebration of the sacrament; roles and ministries; recipient of anointing); holy orders (candidates; celebration of ordination; incardination and excardination; obligations and rights of clergy; loss of the clerical state); preparation for marriage (jurisdiction over marriage; catechetical and spiritual preparation; mixed marriages); impediments to marriage (in general and in particular); matrimonial consent (its nature; defective consent; manifestation of consent); the celebration of marriage (canonical form; liturgical celebration and recording); dissolution, declaration of invalidity and convalidation of marriage (simple convalidation and radical sanation); other acts of divine worship (sacramentals; liturgy of the hours; funeral rites); sacred places and sacred times; ecumenism and the liturgy (baptism and confirmation; Eucharist, penance, anointing of the sick; liturgies of marriage; other acts of divine worship); parish administration (pastors; other parish ministries; financial administration). There are three appendices on the profession of faith and oath of fidelity; consultative and legislative offices and bodies of the universal Church and the Churches *sui iuris*; and the principal dicasteries of the Roman Curia. (For bibliographical details see below, Books Received.)

519

PCF XI (2009), 239-249: Gary Nel S. Formoso: Pastoral Care of Migrants: Problems and Challenges. (Article)

See below, canon 568.

528-529

Comm 33 (2001), 141-144: Pope John Paul II: Allocutio ad eos qui Conventu Plenario Congregationis pro Clericis partem habuerunt. (Address)

The Pope reflects on the theme of the Plenary meeting of the Congregation for the Clergy – the priest as pastor and leader of the parish community – focusing in particular on the importance of the Eucharist, the proclamation of God's Word, and the leadership role of a pastor.

535

Assemblée des chanceliers et chancelières du Québec: Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église

catholique. (Book)

See above, canons 482-491.

538

FCan III/2 (2008), 149-164: Enrique Pérez Pujol: Como proceder na remoção do pároco para o bem das almas. (Article)

A priest who reaches the age of 75 is not strictly obliged to offer his resignation under canon 538 §3. However, weakness stemming from advanced age or illness may cause pastoral work to be hindered. The *bonum animarum* demands that the flock be given a parish priest, while maintaining all due respect for that elderly man who after a long life of service to the Church now finds his energies diminished through no fault of his own. This article attempts to explain the way chosen by the Supreme Legislator to act for the good of souls, the supreme law of the Church, in such situations, without forgetting that the elderly parish priest is also one of those souls whose good is sought. In these cases it will always be necessary to temper the harshness of the law with *aequitas canonica*.

568

PCF XI (2009), 239-249: Gary Nel S. Formoso: Pastoral Care of Migrants: Problems and Challenges. (Article)

The pastoral care of migrants is an increasingly complex and urgent issue for both Church and State. Two factors contribute to this complexity. First, pastoral care is a duty incumbent on the bishop and is shared by pastors and chaplains, who are directly assigned to a particular group. Secondly it involves not just a full sacramental service and the provision of a Eucharistic celebration on Sundays, but also the evangelization and faith formation of the migrant group concerned. F. defines the various forms of migration. These include regular/irregular migrants; voluntary/forced migrants; other kinds of migrants, which may include asylum-seekers, displaced people, stateless people, people who have been trafficked (mainly women and children), and foreign students. Inherent in these categories are many disparate factors: variety of race, colour, culture, language, religious beliefs, as well as various levels of receptivity to pastoral care. F. looks briefly at the most recent statistics, noting that in the case of the Philippines there are 8.2 million Filipinos, more or less equally divided between men and women, deployed in 180 countries. He discusses the problems and the challenges which migration presents to the Church. To highlight the Church's concern for migrants, he traces its various responses from as early as 1888, when Pope Leo XIII in his Letter *Quam Aerumnosa* commended to the bishops of the USA European immigrants, who were suffering even more, both physically and spiritually, in their adopted country. He looks briefly at other documents treating the issue of

migration: the Apostolic Constitution *Exsul Familia* (1952); the *motu proprio Pastoralis Migratorum Cura* (1969); the *motu proprio Apostolicae Caritatis* (1970); and the Instruction *Erga Migrantes Caritas Christi* (2004). The CIC/83 and CCEO stress the desirability and obligation of arranging specific pastoral care for migrants, whether this includes the establishment of personal parishes, provision of missions, the constitution of Churches *sui iuris,* or even the creation of specific pastoral figures such as episcopal vicars and chaplains. F. concludes his study with some observations on the implications of migration for the institutions of marriage and the family, particularly for women and children. He ends with a reminder from *Leviticus* 19 to "treat the alien who resides with you no differently than the natives born among you".

569

FCan III/2 (2008), 165-176: Hugo da Silva Cavalcante: O Ordinariato Militar ou Castrense. (Article)

In response to the desire of the Fathers of the Second Vatican Council, the Supreme Legislator issued the Apostolic Constitution *Spirituali Militum Curae* (1986) as a law to govern military ordinariates. These ecclesiastical circumscriptions consist of sacred ministers who act as chaplains to the armed forces, and the lay faithful who belong to those forces. The Council spoke of the urgent need to create such circumscriptions as a way of helping bring the Church and the message of salvation closer to those who, as citizens of the People of God, render this specific service to the State. Apart from *Spirituali Militum Curae*, military ordinariates are also governed by their own Statutes, and by agreements, concordats, conventions and pacts signed between the Holy See and governments. Currently there are 35 ordinariates entrusted to the pastoral care of a bishop, whose jurisdiction is cumulative alongside that of the diocesan bishop.

569

REDC 65 (2008), 175-208: El régimen jurídico del Servicio de Asistencia religiosa de las Fuerzas Armadas. (Article)

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

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

573

IC XLIX 97/09, 101-123: Juan González Ayesta: Líneas maestras de la normativa del CIC 83 sobre la vida consagrada y algunas cuestiones actuales en esta materia. (Lecture)

Speaking at a conference organized by the Faculty of Canon Law of the University of Navarre to mark the 25th anniversary of the promulgation of the Code of Canon Law, G.A. attempts to evaluate the experience of consecrated life since 1983 and to point out prospects, problems, areas requiring further reflection, and open questions. He begins by setting out the key principles governing the current legislation on institutes of consecrated life in Part III of Book II. He then tackles certain issues of current interest, including the question of members of institutes of consecrated life who are also linked to ecclesial movements; the collaboration of the laity in religious institutes; and above all the "new forms" of religious life (canon 605).

573-746

Ang 86 (2009), 399-410: Jan Śliwa: L'Autorità ecclesiastica come competenza e potestà sugli Istituti di Vita Consacrata e le Società di Vita Apostolica nella normativa del Codice di Diritto Canonico. (Article)

Ś. begins with an extended general discussion of the concept of authority in the Church. He then discusses the different roles of the Supreme Pontiff and the bishop/local ordinary in the oversight of institutes of consecrated life and societies of apostolic life of both pontifical right and diocesan right.

578

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados. (Article)

A.G. looks at the three key concepts of traditions, constitutions and incorporation in religious institutes, secular institutes, and societies of apostolic life – concepts which though fundamental have not been examined in any depth. These three concepts constitute the "patrimony" of institutes of consecrated life and societies of apostolic life ("patrimony" being a fourth concept, rich in meaning but again relatively unexplored, and not defined in the Code). Of the three, constitutions are undoubtedly the "queen", because incorporation only exists in accordance with the constitutions; and it is in the constitutions that the oldest, most genuine and most stable traditions need to converge. Nevertheless, traditions and constitutions also exist because it was the incorporated faithful who kept them or wrote them.

581

Ang 86 (2009), 625-668: Tomasz Wytrwał: The Legal Relation of the Dominican Family to The Order of Preachers. (Article)

See above, canon 303.

587-588

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados. (Article)

See above, canon 578.

589

Ap LXXXI 3-4 (2008), 835-867: Mukena Katayi: Autorité-pouvoir dans les Instituts de vie consacrée de Droit diocésain en Afrique subsaharienne. (Article)

K. traces the sources of authority in sub-Saharan Africa. He asserts that the authority is found in the chiefs or elders who express the link with the ancestors, and from this comes the political and administrative organization of society. From these roots modern African society has experienced poor government, political instability and violent conflicts. K. draws out some of the consequences for the understanding and exercise of authority in religious institutes of diocesan right in sub-Saharan Africa.

589-591

PCF XI (2009), 259-269: Javier González: From Diocesan to Pontifical Right: The Shifting of a Religious Institute. (Article)

A religious congregation founded in 1980, approved as a congregation of diocesan right in 1993, has grown numerically to 280 members in 2008, and has spread to seven countries in four continents. Encouraged by this development, and convinced of the attendant advantages, the congregation wishes to seek pontifical right status. They want to know what the requirements and procedures are. G. identifies three questions: 1. what is the rationale for this shifting?; 2. what are the requirements for it?; 3. what are the procedures for the shifting process? After explaining diocesan and pontifical right, G. addresses each question in detail, identifying the spiritual and physical requirements, and following with the procedural steps. He concludes with some personal remarks and concerns. His concern has to do with the possible reluctance, even refusal, of diocesan bishops

to approve a congregation's request for a change of status. He proposes, as a possible solution, that it might be convenient to have a universal norm prescribing that all religious institutes of diocesan right, once they have achieved spiritual and physical readiness, "should become of pontifical right as a natural growth process, and not as something that can be discretionarily taken or left." (See also *Canon Law Abstracts*, no 102, p. 68.)

599

QDE 21 (2008), 266-272: Silvia Recchi: Commento a un canone. Il consiglio evangelico della castità (can. 599). (Commentary)

R. notes that for the first time in the general legislation of the Church the content of the evangelical counsel of chastity is explored. The theological, spiritual and juridical dimensions of canon 599 are given close consideration, concluding with some reflections on consecrated chastity in the life of the Church.

600

QDE 21 (2008), 436-443: Silvia Recchi: Il consiglio evangelico della povertà. (Commentary)

R. notes that the vows of religion are rooted in the act of faith that wishes to give a response to the Most Blessed Trinity. Each institute with its particular law is intent on imitating the poverty of Christ. R. explores some juridical considerations arising from the vow, and notes the need of each institute to have regard to the socio-economic circumstances in which the religious community exercises its role.

605

IC XLIX 97/09, 101-123: Juan González Ayesta: Líneas maestras de la normativa del CIC 83 sobre la vida consagrada y algunas cuestiones actuales en esta materia. (Lecture)

See above, canon 573.

609-610

EE 83 (2008), 547-573: Teodoro Bahíllo Ruiz: Las relaciones entre Obispos y Religiosos en la Iglesia: realidad y perspectivas a los XXX años del *Mutuae Relationes*. (Article)

Relations between bishops and religious have known periods of smooth

collaboration, but also times of stress and misunderstanding. The 30th anniversary of the Instruction *Mutuae Relationes* is a suitable moment for reviewing this topic. After a brief presentation of some of the most characteristic features of the document, B.R. analyzes its most relevant contents from a dual point of view: what has been achieved so far, and the challenges and difficulties to be overcome in order to achieve a better relationship. Relations between bishops and religious become closer and more complex in three particular situations: the opening and closing of houses; the entrusting of responsibility or a position to a member of an institute or community; and abuses in the way a religious exercises his mission. Depending on the degree of sensitivity, knowledge and dialogue, these situations are opportunities either for fruitful encounter, or for terrible strain.

616

EE 83 (2008), 547-573: Teodoro Bahíllo Ruiz: Las relaciones entre Obispos y Religiosos en la Iglesia: realidad y perspectivas a los XXX años del *Mutuae Relationes*. (Article)

See above, canons 609-610.

617-619

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). The Instruction *The Service of Authority and Obedience*, issued by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life on 11 May 2008, recalls some of the Code's provisions relating to the exercise of authority: the superior is the first one called to be obedient to the law of God, the law of the Church, the Pope and the proper law of the institute; the authority of the religious superior should be characterized by a spirit of service; in the religious community authority is essentially pastoral; superiors should have particular solicitude for the personal needs of the members, visiting the sick, chiding the restless, consoling the fainthearted, etc. Those in authority should create a favourable atmosphere for sharing and co-responsibility. The Instruction also deals with possible conscientious objection to the directives given by those in authority. Such objection is only admissible in the case of an order manifestly contrary to the laws of God or the constitutions of the institute, or involving a serious and certain evil.

654

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código

latino: tres conceptos claves y complejos bastante inexplorados. (Article)

See above, canon 578.

678

EE 83 (2008), 547-573: Teodoro Bahíllo Ruiz: Las relaciones entre Obispos y Religiosos en la Iglesia: realidad y perspectivas a los XXX años del *Mutuae Relationes*. (Article)

See above, canons 609-610.

681

EE 83 (2008), 547-573: Teodoro Bahíllo Ruiz: Las relaciones entre Obispos y Religiosos en la Iglesia: realidad y perspectivas a los XXX años del *Mutuae Relationes*. (Article)

See above, canons 609-610.

683

EE 83 (2008), 547-573: Teodoro Bahíllo Ruiz: Las relaciones entre Obispos y Religiosos en la Iglesia: realidad y perspectivas a los XXX años del *Mutuae Relationes*. (Article)

See above, canons 609-610.

684-685

QDE 21 (2008), 299-310: Alfredo Rava: Il passaggio da un istituto religioso a un altro. (Article)

R. gives a rapid survey of the history of legislation governing the transfer by a religious from one institute to another as an introduction to a more detailed consideration of the current law in the CIC/83. He reminds his readers of the need to take account of the particular legislation of the institutes involved.

723

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados. (Article)

See above, canon 578.

732

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados. (Article)

See above, canon 578.

734

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados. (Article)

See above, canon 578.

737

FCan III/2 (2008), 23-43: Domingo Andrés Gutiérrez: Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados. (Article)

See above, canon 578.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747

SC 42 (2008), 59-85: Noël Simard: La bioéthique et le droit canonique. (Article)

Contemporary bioethics is confronted with a wide variety of serious challenges. Specialists in theological and religious disciplines are increasingly involved in the bioethical debate. S. asks: Are there specific challenges posed to canon law in these discussions? Since the Church is an important provider of health care, it is surprising that there are not at least some general provisions in the Code. One

response is that the Code provides for order and discipline in the Church. The Church provides norms and guidance for medicine and healthcare in other documents of the Magisterium. S. suggests that it is inevitable that various bioethical questions will enter into the field of canonical reflection. Several major challenges which the biomedical sciences pose to both ethics and canon law are identified. S. analyzes several major scenarios and suggests how canon law can contribute to these discussions by drawing upon its rich history and helping to construct a response to these problems in the life of the faithful. He also suggests that such participation in the debate is part of the mission of canon law itself, especially in assisting the faithful to achieve their salvation.

747

Roman A. Melnyk: Vatican Diplomacy at the United Nations. A History of Catholic Global Engagement. (Doctoral thesis)

See above, canons 362-367.

747-748

REDC 65 (2008), 297-314: Congregación para la Doctrina de la Fe. Nota doctrinal acerca de algunos aspectos de la evangelización (3 diciembre 2007). Texto y comentario (José San José Prisco). (Document and commentary)

Given here is the full text of the *Doctrinal Note on Some Aspects of Evangelization* issued by the Congregation for the Doctrine of the Faith on 3 December 2007. It is followed by a short commentary in which, among other things, the author links the document to canons 747 and 748 on the Church's obligation to preach the Gospel to all people, and the duty of all to seek the truth concerning God and his Church.

747-833

Davide Cito - Fernando Puig (eds.): Parola di Dio e missione della Chiesa. Aspetti giuridici. (Book)

This book contains the proceedings of a conference "The Word of God in the Life and Mission of the Church" (Faculty of Canon Law of the Pontifical University of the Holy Cross, 10-11 April 2008), and includes the following contributions: Carlos José Errázuriz on juridical and theological methodology in the study of the *munus docendi Ecclesiae* (pp. 3-26); Paul O'Callaghan on the juridical and anthropological implications of the communication of the Word of God (pp. 27-57); Luis Gahona Fraga on the connection between Revelation and the Church's power of Magisterium, in the light of Pope John Paul II's Apostolic Letter *Ad Tuendam Fidem* (18 May 1998) (pp. 59-100); Fernando Puig on the

juridical aspects of the *munus docendi* at the very origins of the Church's existence (pp. 101-132); Angela Maria Punzi Nicolò on the family dimension of the *munus docendi* (pp. 133-152); José A. Fuentes on the need of the minister in the preaching of the Church's mission (pp. 153-191); James J. Conn on the application of the Apostolic Constitution *Ex Corde Ecclesiae* (15 August 1990) for the United States (pp. 193-214); Davide Cito on the different types of Catholic schools (pp. 215-235); Brian E. Ferme on questions concerning the safeguarding of the integrity of the faith, including the roles of the Roman Pontiff and the Congregation for the Doctrine of the Faith (pp. 237- 265); Diego Contreras on certain aspects of religious information in the media (pp. 267-284); José Antonio Araña on the *munus docendi* and freedom of education (pp. 287-299); Ismael Barros on preaching by lay persons (pp. 301-313); Maria Elena Campagnola on the transmission of faith within the family (pp. 315-328); Massimo del Pozzo on the Word of God and liturgical law (pp. 329-351); Marcelo Gidi on the diocesan bishop as moderator of the entire ministry of the Word within his diocese (cf. canon 756 §2) (pp. 353-366); Stefano Testa Bappenheim on the degree to which the provisions of the German Constitution in respect of formation and education in the Catholic religion are in harmony with canon 804 of the CIC/83 (pp. 367-384); and Fabio Vecchi on the *sensus fidei* of the believer in relation to the proclamation of the Word, in the context of the present-day crisis of faith and culture (pp. 385-402). (For bibliographical details see below, Books Received.)

749

SC 42 (2008), 141-180: H. Albert Hubbard: Conversations on Abortion and Related Matters Arising from a Consideration of *Dobson v. Dobson*. (Article)

See below, canon 1398.

751

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). On 15 December 2005 the Archbishop of St Louis, Missouri, Raymond Burke, declared the excommunication of the members of the Board of Directors of St Stanislaus Kostka Corporation because of their persistence in schism, after they had ignored warnings against hiring a suspended priest to celebrate sacraments and sacramentals in their church. In 2006 the board and the priest in question presented a recourse before the Congregation for the Doctrine of the Faith, which in a letter of 15 May 2008 upheld the Archbishop's decree.

756-780

AkK 177 (2008), 56-72: Christoph Ohly: Officium ecclesiasticum. Ein rechssprachlicher Vorschlag. (Article)

See above, canon 145.

766

QDE 21 (2008), 274-286; Alberto Perlasca: Il decreto generale della Conferenza Episcopale Austriaca sulla predicazione dei laici nelle chiese e negli oratori. (Commentary)

This study is a comment and analysis of the decree issued by the episcopal conference of Austria and given a *recognitio* by the Congregation for Bishops on 27 May 2002. P. reviews the canonical legislation concerning preaching, noting the reservation of the homily to ordained ministers and commenting on the provisions laid down by the Austrian bishops identifying the circumstances when other preaching and instruction can be imparted by a lay person.

793-806

FT 19 (2008), 353-381: Lóránd Ujházi: Il diritto naturale dei genitori di educare i loro figli ed il dovere dei cattolici di assicurare una crescita spirituale cattolica. (Article)

The Church maintains that parents are the primary educators of their children – a duty which is not only juridical but also moral. Catholic parents have a duty to look after not only the physical and human development of their children but also their spiritual, Christian development. As civil legislation begins to favour other forms of cohabitation (*de facto* unions), the Church teaches that it is only the family established through marriage that provides a suitable setting for education, from both the natural and supernatural points of view. But it is also true that all the members of the community have a share in the mission and transmission of the faith and should help the primary educators in their own mission. The Church is a hierarchically-organized community. The Pope and the central organisms of the Holy See have a universal responsibility to help in, and at times control, the Catholic education of children. Local Churches also have this twin role of organizing and controlling. The organizational role does not go against the freedom or natural rights of the parents, but helps them understand and carry out their mission more effectively. Nor does the controlling function clash with freedom of education, but rather aims at defending the children who have the right to receive the Catholic faith in its totality. Children have the right to receive a Catholic education within the family and also in Catholic teaching institutions, and cannot be content simply with a "formally Catholic" education. In dealing with these topics U. also examines the question of penal sanctions for Catholic

parents who have their children baptized or brought up in a non-Catholic or non-Christian community, explaining the pastoral purpose of such penalties and their relationship to the *salus animarum.*

807-814

ACR LXXXIV 4/07, 472-478: The Application of the Apostolic Constitution *Ex Corde Ecclesiae* in Australia. (Document)

This is the publication of the particular norms for Australia, required by the Apostolic Constitution of Pope John Paul II *Ex Corde Ecclesiae* of 15 August 1990. With the document is the decree of *recognitio* from the Congregation for Bishops (13 April 2007). These norms became effective in Australia on 1 December 2007.

821

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). The Congregation for Catholic Education's Instruction of 28 June 2008 on the Reform of the Higher Institutes of Religious Sciences introduces a period of five years (instead of the previous four) for higher studies: a first cycle of three years for a degree in religious sciences, and a second cycle of two years for a licence. The document also deals with such issues as the minimum number of teachers and students in each institute, and the competences and tasks of the academic authorities.

823

Ap LXXXI 1-2 (2008), 59-76: Congregatio pro Doctrina Fidei: Notificatio: De operibus P. Jon Sobrino S.J. (Document)

Text in Spanish of the examination by the Congregation for the Doctrine of the Faith of two works by Fr Jon Sobrino S.J., *Jesucristo liberador. Lectura histórico-teológica de Jesús de Nazaret* (Madrid, 1991) and *La fe en Jesucristo. Ensayo desde las víctimas* (San Salvador, 1999). The Congregation found substantial deficiencies in these works, leading it to issue this Notification dated 26 November 2006, which is intended to assist those in authority to take appropriate action.

823

PCF XI (2009), 169-192: Benjamin Pantas: The Canonical Procedure for

Doctrinal Examination vis-à-vis the Local Legislation of the Catholic Bishops' Conference of the Philippines. (Article)

While freedom of expression is a fundamental and inalienable right, its exercise is neither absolute nor arbitrary. Accordingly, Church authority must intervene to ensure that the People of God will not be misled or confused by writings which are contrary to or which attack the doctrinal heritage of the Church. P. presents the normative procedures followed in the evaluation of doctrinal controversies; examines and evaluates the merits and flaws of these procedures; offers some recommendations or observations to be taken into account; discusses briefly the doctrinal examination procedures of Pope Benedict XIV and those of the Congregation for the Doctrine of the Faith (CDF) which replaced them in 1971; explains the evolution and development of the competent ecclesiastical forum which has the authority to examine doctrines and controversies, i.e., the CDF; analyzes the doctrinal examination procedures enacted by the Catholic Bishops' Conference of the Philippines; and evaluates the strengths and weaknesses of these procedures. P.'s study leads to two basic conclusions: 1. the doctrinal examination procedures are essential for the CDF to fulfil its responsibility of safeguarding the doctrines of faith and morals of the Catholic world; 2. the present doctrinal examination procedures (1997) are pastoral in orientation as they strive to safeguard the integrity of faith and at the same time respect the rights of the authors.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

834

AkK 177 (2008), 131-143: Manlio Mallia: Kirche und Urheberrecht in Italien. (Article)

The Church regards church music as a priceless treasure which stands out from other art forms, and which must be sustained and cared for with the greatest diligence. Church music, which is an integral part of the liturgical celebration for which it is composed, is closely linked with both liturgy and Christian spirituality. New compositions of liturgical music were encouraged and supported by the Second Vatican Council. Church authorities have shown special appreciation for contemporary church music, although in Spain and Italy such music has not developed with as much variety as can be found in the countries of northern and central Europe. One important reason for this is the lack of any method of paying royalties for liturgical music, and the failure to recognize the composer's copyright. The method in German-speaking countries of paying a flat-rate fee could serve as a model for the regulation of copyright in relation to church music in southern European countries.

834

AkK 177 (2008), 144-164: Christian Kröber: Kirche und Urheberrecht in Deutschland. (Article)

K. deals with the position of the Church regarding copyright, legal structures surrounding the Church's spiritual property, and the legal status of music in the liturgy. He demonstrates that, in balancing the interests of the composer and the general public, the rights attaching to spiritual property may indeed be restricted. However, the privileging of the public must come to an end when the composers' material interests are disproportionately disadvantaged. K. considers the conflict which arose over new laws of copyright after the end of World War II, particularly in relation to the payment of fees for liturgical music; he also evaluates the judgement of the Federal Constitutional Court.

834-1253

Ap LXXXI 3-4 (2008), 739-759: Angelo D'Auria: Il Libro IV del Codice di Diritto canonico. (Article)

D'A. reminds us of the historic decision taken by Pope John XXIII to bring the CIC/17 up to date. This is followed by a brief review of the process of revision emphasizing the reordering of the topics included in the eventual publication of the CIC/83. D'A. then surveys a number of the major interventions that have followed the promulgation of the new Code, especially those concerned with Book IV. He concludes his study with a short bibliography.

835

FT 19 (2008), 353-381: Lóránd Ujházi: Il diritto naturale dei genitori di educare i loro figli ed il dovere dei cattolici di assicurare una crescita spirituale cattolica. (Article)

See above, canons 793-806.

838

Ap LXXXI 1-2 (2008), 7-14: Pontificium Concilium de Legum Textibus: La "recognitio" nei documenti della Santa Sede. (Document)

See above, canon 446.

838

Ap LXXXI 1-2 (2008), 47-49: Congregatio de Cultu Divino et Disciplina

Sacramentorum: Litterae circulares: De congrua versione formulae consecrationis in linguis vernaculis. (Document)

The text is given of a Circular Letter in Italian, dated 17 October 2006, drawing the attention of episcopal conferences to the question of the accurate translation of the Latin *pro multis* in some modern language versions of the consecratory prayer in the canon of the Mass. The Holy See requires fidelity to the principles set out in *Liturgiam Authenticam* for translation of Latin in the liturgy of the Church. If the translation currently in use requires amendment there must be a period of catechesis of the faithful before making the change.

838

Ap LXXXI 1-2 (2008), 215-223: Benedictus PP. XVI: Litterae apostolicae motu proprio datae de usu extraordinario antiquae formae Ritus Romani *Summorum Pontificum*. (Document)

Text in Latin of the *motu proprio* allowing the celebration of the Mass according to the text approved by Pope John XXIII in 1962 which is now to be known as the Extraordinary Form of the Mass. The Missal approved by Paul VI in 1970 and which is now in the third edition continues as the text to be known as the Ordinary Form of the Mass which is to remain in general use. The text of the *motu proprio* is followed by a copy in Italian of the Pope's Letter to the Bishops of the World setting out the Holy Father's hope of sustaining unity in the Church as a consequence of his decision.

838

Comm 32 (2000), 171-174: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsa ad quaestiones de nova Institutione Generali Missalis Romani. (Replies)

The first reply, in Latin. clarifies that article 299 of the General Instruction of the Roman Missal does not exclude the celebrant facing the apse, or liturgical East, when celebrating Mass (25 September 2000). The second, in English, clarifies that articles 43, 160-162 and 244 do not preclude the faithful from genuflecting before receiving Holy Communion, and that articles 314-315 do not give preference for a separate chapel for reservation of the Blessed Sacrament, but rather leave this to the judgement of the diocesan bishop (7 November 2000).

838

IC XLIX 97/09, 67-99: José A. Fuentes: El Derecho litúrgico posterior al Código de 1983. Veinticinco años de disposiciones normativas. (Lecture)

F. considers the most important norms on liturgy since 1983, identifying four main areas: 1. the definition of fundamental ecclesial goods in relation to Baptism, Order, Penance and the Eucharist; 2. the limits of the fundamental rights of the faithful in relation to the sacraments; 3. liturgical variations, adaptations and translations, as well as the competence of bishops, episcopal conferences and the Holy See; 4. the involvement of the laity in ministries close to those carried out by clerics, and the need to proclaim, limit and define the competences corresponding to clergy and laity. He also examines the dispositions on the use of the Roman liturgy prior to the Second Vatican Council. At the end of his study he provides a list of all the main normative and magisterial documents affecting liturgy and the sacraments issued between 1983 and 2008 by John Paul II, Benedict XVI, and the Dicasteries of the Roman Curia.

838

SC 42 (2008), 119-140: Edward Foley: *Musicam Sacram* Revisited: Anchor to the Past or Path to the Future? (Article)

See above, canon 2.

838

SC 42 (2008), 331-345: Edward N. Peters: The Ordination of Men Bereft of Speech and the Celebration of Sacraments in Sign Language. (Article)

See below, canon 928.

BOOK IV, PART I: THE SACRAMENTS

840-848

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

840-1054

Ap LXXXI 3-4 (2008), 923-971: Juan Damián Gandía Barber: El Derecho

sacramental a los veinticinco años de la promulgación del CIC. (Article)

With a brief introduction reminding us of the initiative of Pope John XXIII in calling the Second Vatican Council and directing that a revision of the Code of Canon Law be undertaken, G.B. lists and surveys the development of legislation on the sacraments individually (excepting matrimony) in the 25 years since the promulgation of the CIC/83. He also includes in his study considerations on some of the other matters relating to the work of sanctification of the People of God such as the permanent diaconate and extraordinary ministers of Holy Communion.

840-1165

AkK 177 (2008), 56-72: Christoph Ohly: Officium ecclesiasticum. Ein rechssprachlicher Vorschlag. (Article)

See above, canon 145.

844

ACR LXXXIV 3/07, 289-304: B. Daly: The Stance of the Catholic Church on Sharing the Eucharist with Baptised non-Catholics such as Anglicans and Presbyterians. (Article)

In response to the frequent questions of whether non-Catholics can receive the Eucharist on special occasions, D. presents a clear exposition of the Catholic Church's current stance expressed in its theology and law. The positions before and since the Second Vatican Council are examined, with careful analysis of the current canons, the Ecumenical Directories, and recent Papal magisterial teaching. D. concludes that the consistent Catholic position is the essential link between ecclesial and Eucharistic communion. The Church only allows sharing the Eucharist with individual baptized non-Catholics to meet a grave and pressing need for the sake of eternal salvation, and not to bring about intercommunion or to support the domestic church (the family).

846

ACR LXXXIV 3/07, 267-278: A. Cooper: Catholics Using Cranmer. (Article)

In 1979, a group of Anglican converts petitioned the Holy See, professing unfeigned total allegiance, and offering the Anglican patrimony in so far as this was compatible with, acceptable to and an enhancement of Catholic teaching and worship. In 1980, the Congregation for the Doctrine of the Faith responded positively to a proposal that, although these converts were reconciled as individuals, pastoral provision should be made for the identity of the group, including certain elements of the Anglican liturgy. In 2006, seven parishes or

congregations in the United States were using these provisions. C. observes that the publicizing of the provisions was low-key, suggesting an intent to avoid offending the Anglican Church or denting decades of ecumenical talks. He overviews the Book of Divine Worship and the Particular Calendar, and compares the current texts with those of the 1549 and 1553 Books of Common Prayer. C. observes that Cranmer's language was dignified and not pompous, his clear expression never trivial, and his devotion not sentimental. He notes the significance of Catholic officialdom being willing and able to implement a genuine diversity within the Roman Rite. He finishes, "However we might describe it, Cranmer has come back into some form of visible communion with the successor of St Peter." [Editor's note: this article predates the Apostolic Constitution *Anglicanorum Coetibus* of 4 November 2009, which provides for personal ordinariates for Anglicans wishing to enter into full communion with the Catholic Church, and grants the faculty to celebrate the Holy Eucharist and other sacraments, the Liturgy of the Hours and other liturgical celebrations according to the liturgical books proper to the Anglican tradition.]

BOOK IV, PART I, TITLE I: BAPTISM

849

Comm 33 (2001), 162: Congregatio pro Doctrina Fidei: Responsum ad propositum dubium de validitate Baptismatis apud communitatem "The Church of Jesus Christ of Latter-day Saints". (Reply)

Baptisms conferred by the Church of Jesus Christ of Latter-day Saints or Mormons are declared invalid. (See also *Canon Law Abstracts*, no. 88, p. 58.)

849-850

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). On 29 February 2008 the Congregation for the Doctrine of the Faith's reply concerning the validity of two formulas for baptism was made known (the reply when published in *Acta Apostolicae Sedis* bore the date 1 February 2008). Two questions were addressed: whether the baptism conferred with the formulas "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", is valid; and whether the persons baptized with those formulas have to be baptized *in forma absoluta*. The answer to the first question was *Negative*; and to the second, *Affirmative*. An explanatory note signed by Mgr Antonio Miralles clarified that the

doubt did not concern the English words as such, but rather the formulas in themselves, which could also be expressed in other languages. Variations to the baptismal formula, using non-Biblical designations of the divine Persons arise from feminist theology which in its desire to avoid "chauvinist" titles ends up undermining faith in the Trinity. Cardinal Urbano Navarrete also issued a commentary on the Congregation's reply, clarifying that those who have been baptized with the formulas in question have in reality not been baptized and must be treated for canonical and pastoral purposes according to the same juridical criteria as those whom the Code of Canon Law places in the general category of "non-baptized".

849-850

REDC 65 (2008), 331-333: Congregación para la Doctrina de la Fe. Respuestas a preguntas sobre la validez del Bautismo (1 febrero 2008). Texto y comentario (José San José Prisco). (Document and commentary)

The text is given of the reply of the Congregation for the Doctrine of the Faith to a query concerning the administration of baptism "in the name of the Creator, and of the Redeemer (or Liberator), and of the Sanctifier (or Sustainer)". Such a baptism is invalid, and the true Trinitarian formula must be used in the absolute (not conditional) form for those persons so "baptized". SJP in his commentary notes the custom adopted in parts of the USA and some other English-speaking countries of using the cited formulas (already approved by some Protestant Churches) in order to avoid what is considered sexist language. He emphasizes the serious consequences for those "baptized" in this way for the subsequent reception of other sacraments, which in turn would be invalid, since true and valid baptism is an essential requirement for their reception.

849-878

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

873-874

SC 42 (2008), 205-217: Jean Trudeau: Les parrains: note canonique sur un problème pastoral dans canons 873 et 874, §2 du CIC. (Article)

Some of the canonical norms for baptismal "sponsors" are very specific, and have occasioned disagreements between parents and priests, deacons, pastoral ministers, and chancellors. In this article, T. reviews the previous and current legislation in order to understand the rationale of canons 873 and 874 §2. Canon

873 requires only one sponsor but also allows both a male and female sponsor. Not infrequently parents present two sponsors of the same gender, and one of them is admitted as a "witness". This article examines the provisions of canons 873 and 874 §2 in the light of the CIC/17, the Council of Trent, and the evolution of the CIC/83. It is proposed that canon 873 no longer has a *raison d'être*. This canon is based on spiritual affinity arising from baptism and its accompanying impediment for marriage, established in the previous legislation. Both reasons no longer exist in the CIC/83. However, canon 873 continues to be the *ius vigens* until this legislation is abolished. T. also argues, concerning canon 874 §2, that a baptized Catholic cannot be admitted as a witness.

BOOK IV, PART I, TITLE II: THE SACRAMENT OF CONFIRMATION

879-896

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

889-891

Comm 32 (2000), 12-14: Congregatio de Cultu Divino et Disciplina Sacramentorum: Litterae Congregationis de recursu ut puellam ob maturitatem suam et profectum fidei ad sacramentum confirmationis admittitur. (Document)

The Letter, in English, instructs a diocesan bishop to admit an eleven-year-old child to the sacrament of confirmation, since she has been shown to possess the qualities required. Pastoral judgement may be applied in discerning whether the criteria established by law are fulfilled, not to extend those requirements. Complementary legislation may establish a higher age as the norm, but this is to be interpreted in accord with the general norm of law. The right of those properly disposed to receive the sacraments is more fundamental than elements set in local legislation such as age.

895

Assemblée des chanceliers et chancelières du Québec: Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église catholique. (Book)

See above, canons 482-491.

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

897-958

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

899

SC 42 (2008), 87-118: Brian Dunn: Liturgical and Canonical Challenges Associated with the New General Instruction of the Roman Missal. (Article)

Various documents related to the Eucharist were issued within the last decade, including a post-synodal Apostolic Exhortation, five Apostolic Letters, an Encyclical, two Instructions and a preparatory document associated with the 2008 Eucharistic Congress in Quebec. Most importantly, there was also published the third edition of the *Missale Romanum* and the revised General Instruction of the Roman Missal. This article focuses on this revised General Instruction and the subsequent liturgical and canonical challenges. Fundamental to these challenges is a proper appreciation of the juridical authority of this document and the executive authority of other Instructions. Four categories of the Instruction are explored: its publication, content, interpretation and implementation, especially in Canada. D. concludes that the Instruction challenges the faithful to embrace a new vision of the liturgy.

908

Comm 33 (2001), 139-140, 163-167: Pope John Paul II: Litterae Apostolicae Motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur die 18 maii 2001; and **Congregatio pro Doctrina Fidei: Epistula de delictis gravioribus reservatis Congregationi pro Doctrina Fidei.** (Documents)

See below, canon 1362.

915

Comm 32 (2000), 159-162: Pontificium Consilium de Legum Textibus: Dichiarazione. (Declaration)

Despite the teaching of the Catechism of the Catholic Church and the 1994 Letter of the Congregation for the Doctrine of the Faith, some still argue that canon 915 cannot be applied to the divorced and remarried because the minister cannot make a judgement about the internal disposition of the communicant. The Council declares that this is a matter of divine law and doctrine. One cannot use respect for the letter of the law to empty it of all meaning. Objectively there is grave sin. Obstinate perseverance can be verified objectively. Clearly one should avoid public refusal of Holy Communion by explaining the Church's teaching in advance to those concerned. It is for the priest in charge of the community to discern and give instructions to other ministers. However, no ecclesiastical authority can dispense from the requirement of canon 915 or issue contradictory norms.

927

Comm 33 (2001), 139-140, 163-167: Pope John Paul II: Litterae Apostolicae Motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur die 18 maii 2001; and **Congregatio pro Doctrina Fidei: Epistula de delictis gravioribus reservatis Congregationi pro Doctrina Fidei.** (Documents)

See below, canon 1362.

927

EE 83 (2008), 631-662; also **Per 98 (2009), 33-80: Damián Astigueta: La intención del ministro y la consagración sacrílega.** (Article)

In an article published in 2005 (*Consagración sacrílega: ¿pecado o delito?* in *Iustitia in caritate. Miscellanea di studi in onore di Velasio de Paolis*, Vatican City, 2005, p. 481, note 1), A. considered the scenario of the sacrilegious consecration of the Eucharistic species outside of the Mass, offering the opinion that the action condemned in the canon referred to a valid consecration in which there was present the Body and Blood of Christ. In this article, he returns to the same theme, to consider in more depth the question of the validity of such an action. He does so by reflecting within a twofold framework: one theological, in which he considers the concept of sacrament – both in history, and in contemporary terms; the other canonical, in which he considers the text of canon 927 as well as the provisions of *Sacramentorum Sanctitatis Tutela* of 30 April 2001. Focusing on the intention of the delinquent priest, A. teases out the juridical consequences that would follow if the Church decided – as an act of power – not to accept the validity of "apparently sacramental" actions whose authors do not truly wish to do what the Church does.

928

SC 42 (2008), 331-345: Edward N. Peters: The Ordination of Men Bereft of Speech and the Celebration of Sacraments in Sign Language. (Article)

The recent appearance of deaf clergy occasions the re-examination of several questions, including whether "mutism" is an obstacle to holy orders and, more fundamentally, whether sacraments can be validly celebrated solely in sign language. Considerable scholarly opinion opposes the ordination of men bereft of speech and rejects attempts to celebrate sacraments without spoken words. This article draws on recent advancements in the understanding of visual-gestural languages to demonstrate that signed proclamation of sacramental form meets all of the sense and expression requirements which earlier authors assumed only auditory-oral languages could satisfy, and upholds the liceity of ordaining men who use sign language as their primary, or only, pastoral language.

934

Comm 33 (2001), 30-31: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsum ad dubium propositum de SS.mo Sanguine Christi post Communionem forte remanente. (Reply)

The Precious Blood is not to be reserved after the distribution of Holy Communion, but consumed, unless exceptionally and for a short period in order to take Communion to a sick person unable to receive the host. It is not to be disposed of by pouring away even into a sacrarium. This would be a grave abuse and subject to the penalties indicated in canon 1367.

938

Comm 32 (2000), 171-174: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsa ad quaestiones de nova Institutione Generali Missalis Romani. (Replies)

See above, canon 838.

960

Comm 33 (2001), 16-20: Pope John Paul II: Allocutio ad eos qui in Cursu de foro interno Paenitentiariae Apostolicae partem habuerunt 31 martii 2001. (Address)

The Pope addresses participants in a course on the internal forum provided by the Apostolic Penitentiary. He focuses on the importance of individual confession and the strict limits placed on the use of general absolution. It involves a personal act

of faith and encounter with the Lord. In the same way the priest is acting in the person of Christ and in the name of the Church so that it is not the place to proffer personal opinions.

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

959-991

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

961

Comm 34 (2002), 3-10: Pope John Paul II: Litterae Apostolicae Motu Proprio datae quibus de sacramenti paenitentiae celebratione quaedam rationes explicantur *(Misericordia Dei)*. (Document)

Pope John Paul II restates the discipline that general absolution without individual confession of sins is something exceptional, and sets out more precisely what is required for the conditions where this may be done to be verified, both in terms of "grave necessity" and the length of time involved. Any norms that the episcopal conference may wish to introduce in this regard must be referred to the Congregation for Divine Worship in accordance with canon 455 §2. The *motu proprio* is dated 7 April 2002.

983

Gregory J. Zubacz: The Seal of Confession and Canadian Law. (Book)

Z. examines the question of whether communications between priest and penitent are protected from disclosure in Canada. He considers how civil courts have resolved the conflicts between society's need to know the truth and the fundamental human need for personal privacy in the context of confidential religious communications. He examines the relevant theology, history, canon law, and civil law, since the four are inextricably intertwined, and the lines between these disciplinary perspectives often overlap. The seven main chapters of the book are dedicated to 1. a historical and theoretical conspectus (Scriptural basis; the Patristic era; canonical developments prior to the Fourth Lateran Council; the Fourth Lateran Council and subsequent issues; the seal of confession in the Eastern Catholic Churches; the theoretical basis of the seal of confession); 2. the

seal of confession in canon law (the provisions of the CIC/83 and the CCEO); 3. the English Reformation and the priest-penitent privilege (the doctrine of privilege; English law and jurisprudence before and after the Reformation); 4. English jurisprudence following the restoration of the monarchy (from 1660 to 1865, when the issue of the priest-penitent privilege came to a head in England; and from 1865 to the present); 5. jurisprudence in common law jurisdictions (Ireland, USA, Australia and New Zealand); 6. the Canadian landscape prior to the 1991 case of *R. v. Gruenke* (the Canadian legislative framework; jurisprudence related to the priest-penitent privilege); and 7. confidential religious communications and Canadian law after *Gruenke*. Canadian law and jurisprudence on the seal now appear to occupy a position somewhere between English law, which has disallowed the seal, and American and Irish law, which uphold the seal. (For bibliographical details see below, Books Received.)

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

998-1007

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

BOOK IV, PART I, TITLE VI: ORDERS

1008-1054

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

1025

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, canon 241.

1029

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, canon 241.

1041

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, canon 241.

1043

QSR 18 (2008), 216-217: Romanae Rotae Tribunalis Decanus: Decretum: Lausannen. Geneven. et Friburgen. Impedimentorum ad diaconatum (Document)

A woman requested that the judicial vicar of the diocese conduct an investigation into the suitability of a certain candidate for ordination to the diaconate and priesthood. The judicial vicar replied that no investigation could be commenced without details of allegations and proofs. The woman submitted a recourse to the Roman Rota against the judicial vicar's reply. In this decree dated 4 August 2007 the Dean of the Rota explains that the duty on the faithful to reveal, before ordination, such impediments as they may know about in no way gives rise to a right on the part of the faithful to demand that the tribunal commence an investigation. The objects of an ecclesiastical trial are to pursue or vindicate the rights of physical or juridical persons or to declare juridical facts, and to impose or declare penalties in relation to offences (canon 1400 §1). The woman's recourse was therefore rejected as falling outside these objects.

1051-1052

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, canon 241.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

Comm 33 (2001), 9-15: Pope John Paul II: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos die 1 februarii 2001. (Address)

In his 2001 address to the Roman Rota Pope John Paul II picks up themes on which he spoke in 1991 and 1999, namely that the partnership of marriage is of its nature ordered to the good of the spouses and the procreation and upbringing of children. It is not simply any union between human beings according to a number of cultural models. It requires the mutual self-giving of the couple and is intrinsically present in masculinity and femininity. The essential properties are likewise intrinsic. The marital union is not based solely on extrinsic factors such as shared interests or physical attraction. It is because it is an intrinsic part of human nature that each person has a natural capacity for marriage.

1055

EE 83 (2008), 679-697: Estanislao Olivares D'Angelo: Nulidad del matrimonio por ausencia de verdadero consentimiento matrimonial. (Article)

See below, canons 1095-1107.

1055

FCan III/2 (2008), 45-65: Rita Lobo Xavier: Direito português e concepção cristã sobre matrimónio e família. (Lecture)

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

1055

PCF XI (2009), 193-216: Roy Macatangay: The Juridical Value of the *Bonum Coniugum*. (Article)

Drawing on several Rotal sentences and the writings of canonists and theologians, M. presents a detailed analysis of the *bonum coniugum* as he endeavours to identify its juridical significance in canonical jurisprudence. He highlights the necessity to determine its canonical classification so that we may reach a better understanding of the extent to which it may be applied as a ground of nullity in marriage cases. In order to avoid confusion in establishing the juridical value of the *bonum coniugum*, he distinguishes between an end, a property, and an essential element. In the second part of his study, M. discusses the exclusion of the *bonum coniugum* as an autonomous ground of nullity. Total and partial simulation are discussed. The third part of the study deals with the *bonum coniugum* within

the parameters of canon 1095 §§2 and 3. In the fourth part, M. selects excerpts from Rotal sentences which indicate the divergence of opinions regarding the juridical and canonical significance of the *bonum coniugum*. M. concludes that the continuing dialogue between canonists concerning the place of the *bonum coniugum* in the canonical tradition will, in time, provide a better understanding of its precise juridical significance.

1055-1072

Comm 32 (2000), 175-227: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio I). (Report)

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

1055-1094

Comm 32 (2000), 228-252: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio II). (Report)

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

1055-1165

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

1056

Comm 32 (2000), 3-8: Pope John Paul II: Allocutio Summi Pontificis ad Iudices, Administros Advocatosque Rotae Romanae coram admissos die 21 ianuarii 2000. (Address)

The text of Pope John Paul II's address to the Roman Rota on 21 January 2000. The Pope reflects on the true significance of conjugal love. This is not simply an abstraction or a fine phrase but a proclamation of the newness of Christianity making marriage a sacrament. Spouses are called to bear witness to the Lord's will that marriage be indissoluble, a truth which today's society finds difficult. Canonical tradition requires a positive act of will for an essential property of marriage to be excluded in a way that renders marriage null. However, error concerning indissolubility can render consent invalid in exceptional

circumstances. The Pope goes on to reject suggestions that Papal authority to dissolve unconsummated marriages could be extended to consummated sacramental marriages.

1056

Comm 34 (2002), 13-18: Pope John Paul II: Allocutio Summi Pontificis ad Auditores, Administros, Advocatosque Rotae Romanae coram admissos die 28 ianuarii 2002. (Address)

The text of Pope John Paul II's address to the Roman Rota on 28 January 2002, dealing with the question of the indissolubility of marriage in the face of a growing mentality of acceptance of divorce. The role of law in matrimonial crises is not simply to seek a solution in conscience for the marital problems of the faithful. Each just sentence, whether or not in favour of nullity, contributes to the culture of indissolubility. Indissolubility is a public value, not just a private choice.

1057

Comm 33 (2001), 32-61: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio IV). (Report)

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

1057

EE 83 (2008), 679-697: Estanislao Olivares D'Angelo: Nulidad del matrimonio por ausencia de verdadero consentimiento matrimonial. (Article)

See below, canons 1095-1107.

1057

FCan III/2 (2008), 113-128: Juan José García Faílde: Fisiologia e patologia do acto livre. (Article)

G.F. studies the physiology and pathology of the free act from the perspective of matrimonial consent. This is made up of two free acts of will: that of the man and that of the woman, who give themselves and mutually accept each other in order to form a specific marriage between themselves. G.F. follows Scholastic philosophy since it inspires the canonical legislation on the matter, but complements it with findings from scientific psychology and psychiatry. The free act is a product of free will, with the intervention of the understanding, the senses,

the brain and other components.

1059

RDC 56 1-2/06, 33-62: Jean Werckmeister: Le privilège du for et la compétence judiciaire de l'Église catholique. (Article)

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

1060

SC 42 (2008), 181-203: Wojciech Kowal: The Presumption of the Validity of Marriage. (Article)

The presumption of the *favor iuris* of marriage is a fundamental and indispensable element in understanding the marriage nullity trial. This article examines one specific dimension of this discussion: the importance of taking into account the general logical structure of argumentation in marriage nullity cases in order to arrive at a proper understanding of canon 1060. K. first explores the pastoral and canonical justification of the presumption of the validity of marriage. Secondly, he presents a justification for this presumption through the principles of elementary logic. Thirdly, certain philosophical presuppositions behind contemporary challenges to the presumption of the validity of marriage are examined, especially in the light of recent Papal allocutions to the Roman Rota. K. concludes that a reversal of the presumption of the validity of marriage is untenable in the light of the logic of argumentation.

1071

EE 83 (2008), 605-630: Rufino Callejo de Paz: Una regulación confusa y sugerencias *de iure condendo*. Anotaciones sobre los cánones 1071, §1.4; 1086; 1117 y 1124. (Article)

The situation of Catholics who have abandoned their faith or the Church is dealt with in the CIC/83 by means of two different formulas: notorious rejection of the faith (canon 1071 §1, 4º); and defection by a formal act (canons 1086, 1117 and 1124). From the doctrinal and practical juridical-pastoral viewpoint the problems arising from the application of these formulas are many and varied. After setting out the principal views of canonical authors on this matter, the article goes on to suggest ways in which the two formulas could be unified and the law improved. [Editor's note: this article predates the *motu proprio Omnium in Mentem* of 26 October 2009 by which the relevant formulas in canons 1086, 1117 and 1124 are eliminated.]

1073

Comm 33 (2001), 32-61: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio IV). (Report)

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

1073-1094

Comm 32 (2000), 253-285: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio III). (Report)

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

1084

Comm 33 (2001), 203-225: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio IX). (Report)

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

1084

Comm 33 (2001), 226-249: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio X). (Report)

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

1085

QDE 21 (2008), 227-243: Lorenzo Lorusso: Il diritto matrimoniale proprio dei fedeli ortodossi nella *Dignitas connubii*. (Article)

L. surveys the development of canonical legislation from the CIC/17 onward in respect of proving freedom to marry a Catholic when the proposed Oriental partner is already tied to a previous marriage. He reminds the reader of the rather fuller legislation to be found in the CCEO as compared with the Latin CIC/83; this legislation being carried forward into the Instruction *Dignitas Connubii* (25 January 2005) at articles 2 and 4 §1. He suggests that the legislation provided in the CCEO and *Dignitas Connubii* offers the key to resolving claims for proof of freedom that for the Latin rite are found in CIC/83 canon 1059. He reviews the

requirements for the celebration of marriage in a number of Orthodox Churches but notes the problem for the Catholic Church arising from the Orthodox practice of unions subsequent to the first sacramental marriage.

1085

QDE 21 (2008), 256-265; Paolo Bianchi: Dichiarazioni di stato libero rilasciate da autorità ecclesiali ortodosse. Una recente dichiarazione del Supremo Tribunale della Segnatura Apostolica. (Article)

B. recalls the circumstances that led to the Signatura issuing a Declaration on 20 October 2006 arising from questions in Romania in establishing freedom to marry a Catholic on the part of an Orthodox person who had been previously married. B. points out that the Signatura took care to consult with the Congregation for the Doctrine of the Faith, the Congregation for Divine Worship and the Discipline of the Sacraments, and the Pontifical Council for Legislative Texts, before issuing this Declaration which is specifically directed to Romania. The Signatura is acting under the provisions of *Pastor Bonus* to oversee the exercise of justice in the Catholic Church. The Signatura notes: 1. Orthodox marriages celebrated according to the norms of the Orthodox Church are to be held as valid; 2. to undertake a further marriage in the Catholic Church a simple declaration of freedom from the Orthodox Church in respect of those already married is not sufficient to establish freedom to marry; 3. a decision from a Catholic tribunal is required to establish freedom to marry in the Catholic Church. B. notes the ecumenical issues involved and the significance of the Declaration for jurisdictions other than that of Romania.

1086

Ap LXXXI 1-2 (2008), 51-53: Pontificium Consilium de Legum Textibus: Litterae circulares: Procedimiento en los casos de abandono formal de la Iglesia. (Document)

The text is given of a response dated 13 December 2006 to an enquiry (origin not given) arising from the Circular Letter of the Pontifical Council for Legislative Texts of 13 March 2006 concerning formal resignation from membership of the Church.

1086

EE 83 (2008), 605-630: Rufino Callejo de Paz: Una regulación confusa y sugerencias *de iure condendo*. Anotaciones sobre los cánones 1071, §1.4; 1086; 1117 y 1124. (Article)

See above, canon 1071.

1095

Comm 33 (2001), 226-249: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio X). (Report)

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

1095

PCF XI (2009), 7-11: Pope Benedict XVI: Address to the Members of the Tribunal of the Roman Rota. (Address)

In this address to the members of the Tribunal of the Roman Rota given on 29 January 2009, Pope Benedict XVI recalls the 1987 and 1988 addresses of Pope John Paul II, and wonders whether and to what extent these interventions have been applied in ecclesiastical tribunals. He points out that they provide the basic criteria for a rigorous procedure to examine the psychiatric and psychological evidence and for the judicial definition of the causes. He also calls the attention of lawyers to the need to treat marriage cases with the care and depth required by the "ministry of truth and charity that are proper to the Roman Rota." He points out the distinctions between psychic maturity and canonical maturity; incapacity and difficulty; the canonical dimensions of normality and the clinical dimension; and the minimum capacity sufficient for valid consent and the idealized capacity of full maturity. He also draws attention to the involvement of the intellect and the will in the formation of consent. He advocates the service of experts in order to ascertain the existence of a real incapacity in the understanding of canon 1680 and *Dignitas Connubii*, article 203 §1.

1095

QSR 18 (2008), 191-204: Paolo Cianconi: Il concetto della gravità delle malattie mentali. (Article)

In relation to causes of consensual incapacity, the term "gravity" can be understood in different ways. "Intrinsic gravity" refers to the psychic anomaly in itself; "extrinsic gravity" refers to its effects on the person's psychic faculties or on the psychic processes involved in forming and manifesting matrimonial consent or assuming matrimonial obligations. In the psychological and psychiatric sphere an anomaly would not be considered grave simply because the person was unable to marry; "gravity" would depend on other factors within the existential totality or global functioning of the individual. C., a specialist in psychiatry and an expert witness before the Roman Rota, highlights a number of misunderstandings

that can arise in interpreting the psychiatric concept of gravity within the canonical sphere. The problem often arises because it is not clear to the expert what exactly he is being asked to provide. He needs to be aware that the judge is asking whether, in view of all that the specialist has been able to gather and ascertain, the anomaly is one which, all things considered (etiology, prognosis, phenomenology), is such as to produce a grave effect on the marriage which is being entered into. C. suggests some specific questions which could be put to the expert to help him grasp the complexity of what he is being asked.

1095 2º-3º

PCF XI (2009), 193-216: Roy Macatangay: The Juridical Value of the *Bonum Coniugum*. (Article)

See above, canon 1055.

1095 3º

REDC 65 (2008), 371-386: Tribunal de la Rota (Madrid). Decreto ratificatorio de la sentencia declaratoria de nulidad de matrimonio (Juez Mons. Carlos M. Morán Bustos). Incapacidad para asumir las obligaciones esenciales del matrimonio. Trastorno asocial de la personalidad (psicopatía). (Sentence)

This affirmative decree of ratification at second instance confirms the first instance decision in favour of nullity on the ground of the male respondent's inability to assume the essential obligations of marriage. He was the only son of an infirm and drunkard father and an over-protective and mollycoddling mother. From adolescence he showed himself to be prone to sporadic violence, unpredictable and attention-seeking behaviour, a fondness for alcohol and so-called recreational drugs, and an inability to hold down any regular employment. These signs were evident during the four-year courtship, but the petitioner, who was anxious to escape from an over-strict family ruled by a rigid and authoritarian father, overlooked them and proceeded to marry. In his *in iure* section M.B., after dealing with the general requirements demanded by canon 1095 3º, fixes his attention on examining the nature and effects of the asocial personality or impulse-control disorder in which the sufferer is driven to act against the "norm" (the accepted social conduct of his community), his conduct being marked by conflictive relationships, an inability to adhere to an established ethical code, and a tendency which leads almost inevitably to delinquent or criminal behaviour. Such people suffer from a great rigidity of personality, are inflexible and unable to adapt to changing circumstances, devoid of any sense of guilt or responsibility for their actions and outbursts of violence, intensely egocentric and narcissistic, manipulative and vengeful and lacking in any normal sense of empathy. In this particular case, even though the respondent declined to participate in the canonical

process, the evidence of the petitioner and witnesses and the report of the psychologist after examining the acts of the case provided clear proof of the respondent's inability to assume and fulfil the essential obligations of marriage because of causes of a psychic nature.

1095-1107

EE 83 (2008), 679-697: Estanislao Olivares D'Angelo: Nulidad del matrimonio por ausencia de verdadero consentimiento matrimonial. (Article)

The concept of matrimonial consent in the CIC/83 includes more elements than in the CIC/17, which defined matrimonial consent as "an act of the will by which each party gives and accepts a perpetual and exclusive right over the body, for acts which are of themselves suitable for the generation of children" (CIC/17 canon 1081 §2). Hence it is necessary to reflect on the causes of nullity by reason of defect of consent in the present Code, and to ascertain whether it includes all the causes of nullity of matrimonial consent which flow from the new concept which it proposes. To this end the article examines defects of consent through error, condition, force and fear, ignorance, and simulation.

1096

Comm 33 (2001), 32-61: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio IV). (Report)

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

1096-1100

Comm 33 (2001), 62-81: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio V). (Report)

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

1097

FCan III/2 (2008), 135-147: Miguel Falcão: Direito natural e relevância do erro no matrimónio, segundo S. Tomás de Aquino. (Lecture)

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

1097-1101

Comm 33 (2001), 82-108: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio VI). (Report)

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

1099

Comm 32 (2000), 3-8: Pope John Paul II: Allocutio Summi Pontificis ad Iudices, Administros Advocatosque Rotae Romanae coram admissos die 21 ianuarii 2000. (Address)

See above, canon 1056.

1101

Comm 32 (2000), 3-8: Pope John Paul II: Allocutio Summi Pontificis ad Iudices, Administros Advocatosque Rotae Romanae coram admissos die 21 ianuarii 2000. (Address)

See above, canon 1056.

1101

EE 83 (2008), 699-707: Carmen Peña García: *Bonum prolis* e *ius connubii*: cuestiones abiertas. (Article)

P.G. considers whether it is accurate to declare the nullity of a marriage in situations in which the exclusion of offspring is the result of serious moral causes. She pays special attention to the case of women who marry at the age of 45-50, or who have some medical condition that makes it dangerous for them to become pregnant.

1101

PCF XI (2009), 193-216: Roy Macatangay: The Juridical Value of the *Bonum Coniugum*. (Article)

See above, canon 1055.

1101

SC 42 (2008), 502-523: Apostolic Tribunal of the Roman Rota: Decision *coram* Ferreira Pena, 9 June 2006 (Portugal). (Sentence, translated by Augustine Mendonça)

The male Catholic petitioner, twice widowed, entered into a third marriage with the Catholic respondent who was younger by more than 40 years. Very soon after the marriage, the respondent had a change of feeling towards her husband, even withdrawing from conjugal life. Three years after the marriage, the petitioner accused the marriage of nullity on four grounds based upon canon 1101 §2: exclusion of marriage itself, exclusion of the conjugal act, exclusion of the right/duty of procreation, and exclusion of the right/duty to establish, preserve and develop the intimate community of life and love. The respondent challenged the petition. A negative sentence was decreed with respect to all the cited grounds. The advocate for the petitioner appealed to the second instance tribunal. Without any supplementary instruction, the decision of first instance was overturned. The case was then appealed by the petitioner to the Roman Rota, where the doubt was formulated whether there was proof of nullity due to exclusion of marriage itself or, if not, due to the exclusion of the good of offspring and of the spouses on the part of the woman respondent in accord with canon 1101 §2.

The *in iure* section of the Rotal decision reflects on consent and simulation of consent, noting that nullity cannot be declared on the ground of both the will to exclude marriage and the exclusion of some element of the same marriage. If marriage is excluded, it is not necessary to consider the exclusion of some element of marriage. The sentence then reflects on the good of offspring, noting the Rotal distinction of the *exclusion of the right* and the *exclusion of the exercise/use of the right*. The former invalidates consent, unlike the latter. The sentence notes that true exclusion involves a positive act of the will, whether explicit or implicit. Similarly, there is discussion of both direct and indirect proof of simulation. A proven lack of genuine conjugal love in a partner can constitute an argument for the exclusion of the good of procreation as well as the good of the spouses. After rehearsing the testimony of various witnesses, it was clear there was no conjugal life between the parties, no communication and no natural intimacy. The *turnus* also viewed it as evident that the respondent excluded at least the good of offspring and of the spouses, although an act of the will did not always appear explicitly. All elements and indications of simulation on the part of the respondent were verified. The auditors of the *turnus* decided affirmatively only on the ground of exclusion of the good of offspring and of the *bonum coniugum* on the part of the woman respondent in accordance with canon 1101 §2.

1101

SC 42 (2008), 525-540: Apostolic Tribunal of the Roman Rota: Decision *coram* Arokiaraj, 13 March 2008 (Slovak Republic). (Sentence, translated by Augustine Mendonça)

After 20 years of married life, a civil divorce was decreed at the request of the wife on the ground of repeated infidelity on the part of the husband. The husband petitioned the local first instance tribunal on the grounds of exclusion of the good of the sacrament and the *bonum coniugum* on the part of the respondent. A negative decision was delivered by the tribunal. The petitioner appealed to the Roman Rota, and the formula of doubt was determined: "Whether there is proof of nullity of marriage in the case because of the exclusion of the good of the sacrament and of the spouses on the part of the respondent." The *in iure* section presents a jurisprudential overview on total simulation (exclusion of intention of conjugal partnership) and partial simulation (exclusion of some essential element or property of marriage). The auditors noted that to pronounce nullity, there should be proof of the exclusion by a positive act of the will, whether implicit or explicit. The second part of the *in iure* section reflects on the *bonum coniugum*, with a substantial reference to observations by the Dean of the Rota, A. Stankiewicz, and the jurisprudence of the Rota itself. The circumstances which are "antecedent, concomitant and subsequent to the marriage itself must be carefully weighed", which may confirm the hypothesis of simulation. The Rota considered that the action of nullity introduced by the petitioner lacked any foundation; he speculated that because his wife was an atheist, she must have intended a dissoluble marriage as that is what atheists intend. It was recognized that the wife, previously thought to be non-baptized, may perhaps have received baptism during the marriage. It was ascertained that the respondent entered marriage with the understanding that marriage was indissoluble. Witnesses testified that they were unaware of any problems regarding indissolubility. There was no direct proof of such exclusion. Also, there were various circumstances which argued against any form of simulation. There were no arguments during the engagement period, and the *cautiones* were provided by both parties including also the observance of indissolubility. Upon further examination, the petitioner admitted the existence of marital difficulties other than the exclusion of some essential element of consent on the part of the respondent. The auditors concluded that the petition for nullity must be rejected under the alleged ground. An alternative possibility to secure freedom of his status was identified: dissolution of the marriage in favour of the faith, since the respondent may not have been baptized at the time of marriage. It remained to be examined, however, whether the petitioner "was exclusively or predominantly the culpable cause" of the marital breakdown. The case was decided in the negative with no proof of exclusion of the goods of the sacrament or good of the spouses on the part of the respondent.

1101-1106

Comm 33 (2001), 109-132: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio VII). (Report)

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

1103

Comm 33 (2001), 190-202: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio VIII). (Report)

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

1104

Ap LXXXI 3-4 (2008), 1011-1020: Guido Lagomarsino: Il silenzio di un nubente nel Matrimonio religioso-concordatario. (Article)

L. explores the giving of consent as essential in constituting a marriage and then asks the question whether silence in the act of getting married produces any legal effect.

1108

Comm 34 (2002), 61-82: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XII). (Report)

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

1108-1116

Comm 33 (2001), 250-278: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XI). (Report)

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

1114

QDE 21 (2008), 244-255: G. Paolo Montini: Come si accerta lo stato libero di un ortodosso sposato civilmente. (Article)

M. traces the rather complex development of the law concerning the establishing of the *status liber* of a couple planning to marry before the Church when one at least of the prospective Orthodox spouses has already contracted a civil marriage only. He notes four phases from before 1970 to 3 January 2007, when the Signatura in an individual decision indicated that the question of freedom to marry is to be dealt with by the local Ordinary or by the parish priest having consulted the Ordinary. A Latin copy (with Italian translation) of the Signatura's decision is

provided as an appendix.

1116

SC 42 (2008), 367-382: William Woestman: Extraordinary Canonical Form of Marriage When a Qualified Witness Cannot Be Present Without a Grave Inconvenience. (Article)

There can exist situations when the ordinary canonical form cannot be observed without grave inconvenience because the couple cannot approach a qualified priest or deacon. Canon 1116 established the requirements for the extraordinary canonical form, i.e., the exchange of consent before witnesses alone. This is possible *in mortis periculo* or where the necessary conditions are present outside the danger of death and it is foreseen that the situation will continue for a month and a competent person cannot be present or approached without grave inconvenience. When these circumstances are present, the couple possess the right to enter into a valid and licit marriage before witnesses only. No dispensation to employ the extraordinary form is needed; nor is it necessary to seek permission from an ecclesiastical authority. Such marriages are to be entered in the marriage register. W. recommends that the faithful be instructed about the extraordinary form. The article concludes with a formula for the declaration of a couple who will enter marriage via the extraordinary form.

1116-1117

Comm 34 (2002), 61-82: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XII). (Report)

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

1117

EE 83 (2008), 605-630: Rufino Callejo de Paz: Una regulación confusa y sugerencias *de iure condendo*. Anotaciones sobre los cánones 1071, §1.4; 1086; 1117 y 1124. (Article)

See above, canon 1071.

1120

Ap LXXXI 1-2 (2008), 7-14: Pontificium Concilium de Legum Textibus: La "recognitio" nei documenti della Santa Sede. (Document)

See above, canon 446.

1122-1140

Comm 34 (2002), 82-118: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XIII). (Report)

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

1124

EE 83 (2008), 605-630: Rufino Callejo de Paz: Una regulación confusa y sugerencias *de iure condendo*. Anotaciones sobre los cánones 1071, §1.4; 1086; 1117 y 1124. (Article)

See above, canon 1071.

1136

FT 19 (2008), 353-381: Lóránd Ujházi: Il diritto naturale dei genitori di educare i loro figli ed il dovere dei cattolici di assicurare una crescita spirituale cattolica. (Article)

See above, canons 793-806.

1137-1141

Comm 34 (2002), 119-145: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XIV). (Report)

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

1141-1150

Comm 34 (2002), 201-229: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XV). (Report)

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

1151-1165

Comm 34 (2002), 230-262: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XVI). (Report)

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

1156-1158

SC 42 (2008), 227-245: Canadian Tribunal Appeal: Decision *coram* McCormack, 15 April 2008. (Sentence)

The case involves the ground of invalid convalidation. The appeal tribunal considered whether the first instance affirmative decision could be ratified without delay or whether to admit it to ordinary examination in second instance. The parties were the male Catholic petitioner and the non-Catholic female respondent. The marriage was attempted before a non-Catholic minister and lasted fifteen years. The first instance tribunal formulated the doubt whether the lack of renewal of consent in the validation of the marriage on the part of the respondent rendered the marriage null. The appeal tribunal's sentence reflects on convalidation, civil unions, and the judicial process. The tribunal considered whether the generic doubt of "invalid convalidation" was properly formulated, whether the canonical assessment of a civil union was clear and whether the act of the will required for the canonical celebration of marriage was properly understood and correctly evaluated. The judges concluded that further study was warranted and that the case should be admitted to an ordinary examination. The tribunal then proceeded with the ordinary examination, formulating the doubt as to whether the sentence in first instance should be confirmed, or reformed, either in whole or in part. The tribunal reflected on marriage outside the canonical form, simulation of consent, the pursuit of an end which is either alien or extrinsic to marriage, the motivation of the respondent, and simple error. The tribunal concluded that the act of renewal of consent by the respondent was free, and that she understood that by it she was to be joined to a partner in marriage as understood by the Church. The judges were morally certain that the respondent consented to marriage celebrated in the canonical form. The judgement was in the *negative.*

1156-1165

Comm 34 (2002), 263-280: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Matrimonio" (Sessio XVII). (Report)

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

1160

SC 42 (2008), 227-245: Canadian Tribunal Appeal: Decision *coram* McCormack, 15 April 2008. (Sentence)

See above, canons 1156-1158.

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

1166-1204

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

1176

ICST 10 (2008), 25-56: David William V. Antonio: The Revised Order of Funerals: Theological and Pastoral Orientations. (Article)

A. examines the 1969 ritual for burials *Ordo Exsequiarum*, issued by the Sacred Congregation for Divine Worship in response to the Second Vatican Council's call for a revision of liturgical books. He investigates the *Praenotanda*, euchological texts (prayer-formulas), Scriptural texts, symbols and symbolic actions in the ritual, and concludes that it achieves its two primary purposes: namely, to bring out the Paschal character of the funeral liturgy more clearly, and to afford due respect to different cultures. The fearful imageries of the afterlife have been reduced or omitted in order to underline or create a more optimistic view. Pastorally the ritual allows ample room for adaptation, and recognizes the ministry and responsibility of the whole Christian community with regard to the liturgy and in helping the bereaved family and friends in coping with grief.

1182

Assemblée des chanceliers et chancelières du Québec: Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église catholique. (Book)

See above, canons 482-491.

BOOK IV, PART III: SACRED PLACES AND TIMES

1205-1253

John Huels: The Pastoral Companion. A Canon Law Handbook for Catholic Ministry. (Book)

See above, canons 515-552.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1260

PCF XI (2009), 79-112: John A. Renken: The Acquisition of Diocesan Revenue by the Diocesan Bishop. (Article)

To fulfil its mission in the world, the Church needs temporal goods. R. identifies and discusses the various means recognized in canon law whereby a diocesan bishop generates revenue from the faithful for the proper purposes of the diocese entrusted to him (canon 1260). He contrasts the provisions of the CIC/83 with those of the CIC/17. For instance, three sources of diocesan revenue in the CIC/17 have been suppressed in the CIC/83: the *cathedraticum*, the charitable subsidy, and the foundation tax (CIC/17 canons 1504-1506). R. then discusses the sources of diocesan revenue common to the CIC/17 and the CIC/83: the diocesan seminary tax, tribunal fees, and extinction of public juridical persons subject to the diocesan bishop (CIC/83 canons 264; 1649; 123; CIC/17 canons 1356; 1908-1916; 1501). Finally, there is a detailed discussion of the three new sources of diocesan revenue introduced in the CIC/83, none of which have direct precedents in the CIC/17: ordinary and extraordinary diocesan taxes, special collections for diocesan projects, and structures for restricted diocesan funds (CIC/83 canons 1263; 1266; 1274).

1263

Comm 32 (2000), 15-23: Pontificium Consilium de Legum Textibus: Decretum de recursu super congruentia inter legem particularem et normam codicialem. (Document)

A number of major religious superiors had recourse to the Pontifical Council for Legislative Texts over the decree of an archbishop reorganizing various aspects of finance within the diocese. The archbishop had made no distinctions with regard to parishes united *pleno iure* with religious institutes, or exempt and non-exempt institutes in the case of taxation. They also asked whether a level of 10%, regardless of debts or expenses, corresponded to the moderate tax mentioned in

canon 1263. In its reply the Council notes the reply of 25 June 1979 concerning the power of a diocesan bishop to dissolve such a union between parish and institute, and that of 20 May 1989 on the exemption of religious-run schools from diocesan taxation. The decree was that the archbishop's legislation conformed to canon 1263, but unclear wording had led to doubts. He should specify "public juridical persons subject to the archbishop". However, another element, taxation of Masses, did not conform to universal law since Mass offerings were given to physical persons. The decree is dated 8 February 2000.

1268

Proc CLSA 2008, 383-451: Phillip Brown: Prescription and Statutes of Limitation. (Study)

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

1274

Comm 32 (2000), 162-167: Pontificium Consilium de Legum Textibus: Decretum de recursu super congruentia inter legem particularem et normam codicialem. (Document)

See above, canon 281.

1276

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

Recently the media has reported numerous findings of financial malfeasance involving Church personnel. Some persons suggest that financial malfeasance may be the Church's next great scandal. R. studies the Church's penal discipline on financial malfeasance. After reviewing the CIC/83's norms on temporal goods and the penal process, he identifies eight delicts which may involve financial malfeasance. All these delicts require *ferendae sententiae* penalties, and can be punished only by indeterminate penalties which cannot be perpetual (canon 1349); therefore, unable to be imposed are the expiatory penalties of privation of office (canon 1336 §1, 2) or dismissal from the clerical state (canon 1336 §1, 5). R. recalls that financial malfeasance may be the occasion for administrative removal from office, and identifies internal controls which may prevent financial malfeasance. He also considers the possibility of the establishment of particular penal law to prevent financial malfeasance and punish offenders.

1283-1284

Comm 33 (2001), 168-189: Pontificia Commissio de Bonis Culturalibus Ecclesiae: Ex "Lettera circolare sulla funzione dei musei ecclesiastici". (Document)

Excerpts are printed of the Circular Letter of 15 August 2001 on the pastoral function of ecclesiastical museums, concentrating on the importance of the historical and artistic patrimony of the Church, the legislative background, the role of conservation, the pastoral role of preserving the memory of the community, different types of museums and artefacts, and their establishment and management.

1283-1284

Assemblée des chanceliers et chancelières du Québec: Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église catholique. (Book)

See above, canons 482-491.

1306

Assemblée des chanceliers et chancelières du Québec: Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église catholique. (Book)

See above, canons 482-491.

BOOK VI: SANCTIONS IN THE CHURCH

1311

RDC 56 1-2/06, 127-138: René Heyer: Les justifications de la peine. (Article)

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

1311-1399

RDC 56 1-2/06, 139-161: Alphonse Borras: Un droit pénal en panne? Sens et incidence du droit pénal canonique. (Article)

The penitential aspect of canonical penal law makes it an original legal system, one that distinguishes itself from secular law. Canonical punishment takes the form of aggravated penance. However, canonical penal law has few applications in the lives of local Churches in the West. The Church does not have the means to punish the faithful, since the surrounding society is no longer a Christian one. Only clerics, religious or non-religious with ecclesiastical responsibilities are affected. Is it not necessary, B. asks, to recreate a truly penitential law, alongside disciplinary law?

1311-1399

RDC 56 1-2/06, 163-183: Jean-Luc Hiebel: Pastorale et droit canonique penal. (Article)

A study of the works on canonical penal law published during the past few decades shows that this law has posed a problem since the 1960s. H. claims that the CIC/83 has produced a complex, poorly-known penal law, although its penitential aspect would have much to offer State legal systems. The canonical penal law of the new Code is essentially pastoral. More precisely, penal law is an instrument of the bishop's pastoral power.

1313

RDC 56 1-2/06, 185-199: Rik Torfs; La rétroactivité des peines canoniques. (Article)

The idea of the non-retroactivity of laws existed in Roman law. It reappeared in canon law with the Decretals of Gregory IX (1234), before being declared in the civil legal systems of the 18th century. In penal law, a law can be retroactive if it favours the offender. It is however possible for the authorities to get round the principle of non-retroactivity of penal laws by making use of the penal precept. T. says that the laws in this area are rather feeble, and that the legislator and those who hold authority are better protected than the law itself.

1320

PCF XI (2009), 217-237: Hyacinth Heyousun: The Competence of the Diocesan Bishop over the Religious in Penal Matters. (Article)

While the CIC/83 speaks extensively of the competence of the diocesan bishop over religious in general matters, it hardly refers to penal matters, and then only to emphasize the distinct competence of diocesan bishops and religious superiors in this area. In addition very little exists by way of study or commentary on the subject. Against this background, H. notes two important factors that must be taken into consideration in relation to the rights of diocesan bishops over

religious. The first is the norm of canon 1320 which provides that "in all matters in which they come under the authority of the local Ordinary, religious can be constrained with penalties." Here the legislator implicitly refers to all canonical provisions establishing sanctions and the procedures for their application, especially those of Books VI and VII, and where applicable, the disciplinary canons regulating religious institutes (canons 607-709). The second factor is the distinction between institutes of pontifical and diocesan right which will determine the scope of the diocesan bishop's competence with regard to the religious in question. H. then identifies an initial list of rights which the diocesan bishop has over religious in penal matters. These include the imposition and declaration of censures; the acceptance and prohibition of residence in the diocese; removal from office; deprivation of power, office, etc; dismissal from the institute; the issuing of warnings; and the imposition of penances. The rights listed also carry some corresponding obligations to take action in those matters. In the second section of his article H. deals with the general responsibilities of the diocesan bishop towards religious in his diocese: these include the preservation and safeguarding of the autonomy of each institute; respect for those religious who are subject to him; and concern for exclaustrated religious, especially in the case of religious clerics. H. outlines the diocesan bishop's responsibilities in the context of the penal process, with particular emphasis on his obligation to follow due process in a manner that ensures that the rights of all concerned are protected. In a third section, H. deals with the procedural steps to be followed in penal matters together with all the factors that must be taken into consideration in the process.

1333

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, canons 290-292.

1333

PCF XI (2009), 251-258: Jaime B. Achacoso: The Ban on Priests From Public Office. (Article)

See above, canon 285.

1349

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1362

Comm 33 (2001), 139-140, 163-167: Pope John Paul II: Litterae Apostolicae Motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur die 18 maii 2001; and **Congregatio pro Doctrina Fidei: Epistula de delictis gravioribus reservatis Congregationi pro Doctrina Fidei.** (Documents)

Given here are the texts of Pope John Paul II's Apostolic Letter whereby certain grave delicts against faith and morals are reserved to the Congregation for the Doctrine of the Faith (the norms are not included), and the same Congregation's Letter which sets out those more serious offences reserved to the judgement of the Congregation by the Holy See, and the manner in which accusations of such offences are to be handled.

1362

Proc CLSA 2008, 383-451: Phillip Brown: Prescription and Statutes of Limitation. (Study)

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

1362

RDC 56 1-2/06, 201-221: Kurt Martens: Les délits les plus graves réservés à la Congregation pour la doctrine de la foi. (Article)

By the *motu proprio Sacramentorum Sanctitatis Tutela*, Pope John Paul II promulgated the norms for the more serious offences reserved to the Congregation for the Doctrine of the Faith. A letter from the same Congregation clarifies certain points. However, M. complains that the norms themselves are secret and that the Congregation obtained virtually total freedom to exempt itself from the relevant procedures, which causes problems regarding the right of defence.

1364

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, canon 751.

1365

Comm 33 (2001), 139-140, 163-167: Pope John Paul II: Litterae Apostolicae Motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur die 18 maii 2001; and **Congregatio pro Doctrina Fidei: Epistula de delictis gravioribus reservatis Congregationi pro Doctrina Fidei.** (Documents)

See above, canon 1362.

1366

FT 19 (2008), 353-381: Lóránd Ujházi: Il diritto naturale dei genitori di educare i loro figli ed il dovere dei cattolici di assicurare una crescita spirituale cattolica. (Article)

See above, canons 793-806.

1367

Comm 33 (2001), 30-31: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsum ad dubium propositum de SS.mo Sanguine Christi post Communionem forte remanente. (Reply)

See above, canon 934.

1367

Comm 33 (2001), 139-140, 163-167: Pope John Paul II: Litterae Apostolicae Motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur die 18 maii 2001; and **Congregatio pro Doctrina Fidei: Epistula de delictis gravioribus reservatis Congregationi pro Doctrina Fidei.** (Documents)

See above, canon 1362.

1375

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1377

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1378

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*). The Congregation for the Doctrine of the Faith, in virtue of a special faculty given by the Supreme Authority (cf. canon 30), in its Ordinary Session of 19 December 2007 decreed that both the one who attempts to confer a sacred order on a woman, and the woman who attempts to receive a sacred order, incur an excommunication *latae sententiae* reserved to the Apostolic See. Within the sphere of the Eastern Churches the penalty is that of major excommunication (cf. CCEO canons 1443 and 1423).

1378

REDC 65 (2008), 315-329: Congregación para la Doctrina de la Fe. El delito de la atentada ordenación de mujeres. Decreto General (19 diciembre 2007). Texto y comentario (F. Aznar Gil). (Document and commentary)

There is first presented the short Latin text and Spanish translation of the General Decree of the Congregation for the Doctrine of the Faith on the attempted ordination of a woman to sacred orders. In his commentary A.G. uses as his starting point the term "attempted" ordination and goes on to examine canon 1378 §2 on the sanctions against those who, having no power to do so, attempt to celebrate the sacraments. He points out that the CIC/83 uses the word *attentat* where the CIC/17 had *simulat*, a logical change since simulation infers that the person has the power to perform the action in question but does not intend to do so, even though carrying out the external appearances. Scripture, tradition and the ordinary and universal Magisterium of the Church have consistently upheld the reservation of ordination to the priesthood to men alone, a teaching reiterated in recent times by Paul VI and John Paul II. The attempted ordination of a group of women in 2002 led to the intervention of the Congregation for the Doctrine of the Faith and excommunication *ferendae sententiae*. This latest General Decree of the same Congregation reinforces the constant teaching of the Church on the issue and the corresponding penal sanction now of excommunication *latae sententiae*.

1380

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1385-1386

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1387-1388

Comm 33 (2001), 139-140, 163-167: Pope John Paul II: Litterae Apostolicae Motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur die 18 maii 2001; and **Congregatio pro Doctrina Fidei: Epistula de delictis gravioribus reservatis Congregationi pro Doctrina Fidei.** (Documents)

See above, canon 1362.

1388

Gregory J. Zubacz: The Seal of Confession and Canadian Law. (Book)

See above, canon 983.

1389

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1390

QSR 18 (2008), 212: Romanae Rotae Tribunalis Decanus: Decretum: Salten. in Uruguay. Diffamationis et damnorum. (Document)

See below, canon 1405.

1390

QSR 18 (2008), 213-214: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Severi. Diffamationis et refectionis damnorum. (Document)

See below, canon 1405.

1390

QSR 18 (2008), 218-219: Romanae Rotae Tribunalis Decanus: Decretum: Premislien. Latinorum. Diffamationis. (Document)

See below, canon 1405.

1391

SC 42 (2008), 5-57: John Renken: Penal Law and Financial Malfeasance. (Article)

See above, canon 1276.

1397

Ap LXXXI 1-2 (2008), 225-226: Congregatio pro Doctrina Fidei: Responsa ad quaestiones ab Episcopali Conferentia Foederatorum Americae Statuum propositas circa cibum et potum artificialiter praebenda. (Document)

Given here is a copy of the response, approved by Pope Benedict XVI on 1 August 2007, to two questions put by the USA hierarchy on the care of those in a vegetative state. To the question whether there is a moral obligation to supply nourishment and liquids even in the case where these can only be received by the sick person with great physical *incommodum*: Response: *Affirmative*. A further question as to whether food and drink could be withheld in a case in which by judgement of a suitably qualified medical person it was morally certain that the sick individual would never regain consciousness and recover: Response: *Negative*.

1398

SC 42 (2008), 141-180: H. Albert Hubbard: Conversations on Abortion and Related Matters Arising from a Consideration of *Dobson v. Dobson*. (Article)

These "*Conversations*" began as a lament over the persistent devaluation of unborn children by the Supreme Court of Canada following the 1988 *R. v. Morgentaler* case, which effectively removed all statutory restrictions on abortion

in Canada. The case of *Dobson v. Dobson* (1999) exemplifies this devaluing tendency. However, since the underlying pro-choice agenda was one with which H.'s medical protagonist sympathized, the discourse turned to a consideration of abortion. H. responded to the other party's various arguments in support of "the right to choose" and sought to persuade him that a person's conscience formed in the light of principle is the touchstone of morality. As the discourse progressed the view of H.'s interlocutor narrowed; in the end, he agreed that the principles of self-defence and necessity were the only credible justifications for abortion that could be advanced in a secular society – a view that would dramatically curtail its availability if generally accepted.

BOOK VII: PROCESSES

1400

REDC 65 (2008), 335-370: Tribunal de la Rota Romana. Decreto, 13 de mayo de 2008. Texto y comentario. (F. Aznar Gil). (Document and commentary)

This decree of the Roman Rota is intended to be the last act in a long-running conflict which began in 1995 between two Spanish dioceses (Lérida and Barbastro-Monzón) over ecclesiastical goods of historical and artistic value belonging to two parishes which found themselves in the other diocese after a redrawing of diocesan boundaries. The original diocese (Lérida) was attempting to claim ownership. [An account of the earlier *iter* of this case can be found in REDC 64 (2007), 747-800: see *Canon Law Abstracts*, no. 102, p. 129.] A final decision had been given in April 2007 by the Signatura Apostolica in favour of Barbastro-Monzón. However, Lérida then appealed to the Rota to set aside that decision. The Rota's decree points out that it is not competent in the case and that the competent tribunal, in accordance with canon 1419 §2, is the tribunal of appeal of either of the two dioceses (Lérida had claimed that the two possible appeal tribunals were prejudiced against it). Since the case had been initiated by an administrative act and had followed the administrative process, the judicial forum had no competence to decide the issue, and consequently Lérida's *libellus* could not be admitted. In 2008 the diocese of Lérida finally accepted the decisions of the Church's tribunals and acknowledged the diocese of Barbastro-Monzón's right of ownership.

1400

IC XLIX 97/09, 265-288: Joaquín Sedano: Crónica de Derecho Canónico del año 2008. (Compilation)

See above, General Subjects (*Compilations*); see also the details in the preceding entry. After the diocese of Lérida had accepted the decision that the goods should be returned, it conveyed the content of the agreement to the corresponding civil

body, which however replied that the agreement would not take immediate effect. The mayor of Lérida also stated that it was not possible to return the goods. At the end of 2008 these had not yet been returned.

1400

QSR 18 (2008), 216-217: Romanae Rotae Tribunalis Decanus: Decretum: Lausannen. Geneven. et Friburgen. Impedimentorum ad diaconatum (Document)

See above, canon 1043.

1400

QSR 18 (2008), 218-219: Romanae Rotae Tribunalis Decanus: Decretum: Premislien. Latinorum. Diffamationis. (Document)

See below, canon 1405.

1401

RDC 56 1-2/06, 33-62: Jean Werckmeister: Le privilège du for et la compétence judiciaire de l'Église catholique. (Article)

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

1401

RDC 56 1-2/06, 97-126: Guido Cooman: Privilegium et independentia fori abolenda sint? Histoire doctrinale du privilège et de l'indépendance du for entre le Concile Vatican II et le Code de 1983. (Article)

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

1403

Ap LXXXI 1-2 (2008), 159-204: Congregatio de Causis Sanctorum: Instructio *Sanctorum Mater*. (Document)

The text in Italian of the Instruction dated 17 May 2007 in which the Congregation for the Causes of Saints sets out in detail the process to be instituted in a diocese or eparchy when the question is raised as to whether a deceased member of the Church should be formally acknowledged as having led a life of heroic virtue, thus leading to being presented to the Pope for beatification and

canonization. To this Instruction are attached norms concerning the *recognitio canonica* about the mortal remains of an individual. The Instruction clarifies the details set out in the Apostolic Constitution *Divinus perfectionis Magister*, 25 January 1983 and the subsequent *Normae* published by the Congregation on 7 February 1983.

1403

IE XX 3/08, 593-611: José Luis Gutiérrez: Note di commento all'Istruzione «Sanctorum Mater» della Congregazione delle cause dei Santi. (Article)

Sanctorum Mater is a document technically classified as an "Instruction" and therefore aimed at setting out the provisions of the law and developing and determining how it is be applied. The current law on the diocesan or eparchial instruction of causes of canonization is to be found in the Apostolic Constitution *Divinus perfectionis Magister* of 25 January 1983, and the *Normae servandae* of 7 February 1983. G. specifies the reasons behind and purposes of the document, and comments on the parts of the Instruction which he considers to be of greatest current interest, either because they contain reminders of norms that are not accurately observed, or because they put forward suggestions or advice meriting particular attention. He focuses on the introductory petition; the officials who take part in the process; the theological censors and the so-called "historical commission" (experts in history and archives); the examination of witnesses; and the acts that conclude the process. He finishes with some thoughts on the role of the postulator.

1403

Paul Hayward (ed.): Studies on the Prelature of Opus Dei. On the twenty-fifth anniversary of the Apostolic Constitution "Ut sit" / Jean-Pierre Schouppe (ed.): Études sur la prelature de l'Opus Dei. À l'occasion du vingt-cinquième anniversaire de la constitution apostolique "Ut sit". (Book)

See above, canons 294-297, especially the presentation by Llobell (pp. 199-218 of the English edition; pp. 211-233 of the French edition).

1405

QSR 18 (2008), 207-208: Romanae Rotae Tribunalis Decanus: Decretum: Veronen. Poenalis. (Document)

The diocesan bishop agreed to the transfer of a parish church to a Lutheran group. Two members of a committee specially established to oppose the transfer wrote to the Roman Rota claiming that the bishop's action constituted a violation of canons 1211 (desecration of a sacred place), 1220 §1 (discordance with the sacred

character of the church) and 1239 §1 (secular usage of an altar), and calling for a penalty to be imposed under canon 1376. In this decree dated 26 April 2007, the Dean of the Rota rejects the claim as exceeding the jurisdiction of the Rota, since penal cases involving bishops can be judged only by the Roman Pontiff (canon 1405 §1, 3º). The possibility remains of contesting the decision according to the hierarchical recourse procedure (canon 1737).

1405

QSR 18 (2008), 212: Romanae Rotae Tribunalis Decanus: Decretum: Salten. in Uruguay. Diffamationis et damnorum. (Document)

A priest presented a petition to the Rota accusing his bishop of having defamed him (canon 1390 §2) by publicizing details of a penal procedure against the priest which should have remained secret (cf. canon 220). The priest also claimed compensation, and restoration to the pastoral office from which he had been suspended. The petition was rejected (5 July 2007) since penal cases involving bishops are reserved to the Roman Pontiff (canon 1405 §1, 3º). The action for compensation was also rejected as being strictly connected to the penal action.

1405

QSR 18 (2008), 213-214: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Severi. Diffamationis et refectionis damnorum. (Document)

A priest presented a petition to the Rota claiming that his bishop had defamed him by divulging details of the priest's alleged paedophile tendencies. The priest claimed that his right to his good name had been violated (canon 220) and that the bishop had committed an abuse of ecclesiastical power (canon 1389). In pointing out that the Rota was incompetent to deal with penal claims involving bishops (canon 1405 §1, 3º), the Dean also confirmed that the action for compensation should be rejected as being strictly connected to the penal action. The decree is dated 21 July 2007.

1405

QSR 18 (2008), 215: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Hippolyti. Refectionis damnorum. (Document)

The administrator of the goods of a collegiate chapter submitted a petition to the Rota claiming compensation against the diocesan finance office, for damage caused by the finance office in the course of administering part of the chapter's property. The decree issued by the Dean of the Rota on 1 August 2007 explains that the Rota can judge at first instance only those cases that are specified in canon 1405 §3, or cases which the Pope reserves to himself and entrusts to the Rota

(canon 1444 §2). Where a case concerns the rights or temporal goods of a juridical person represented by the bishop, it is to be heard at first instance by the appeal tribunal (canons 1419 §2; 1438), and not by the Rota (1405 §3, 1º).

1405

QSR 18 (2008), 218-219: Romanae Rotae Tribunalis Decanus: Decretum: Premislien. Latinorum. Diffamationis. (Document)

The female petitioner submitted a complaint to the Roman Rota against a decree issued by an archbishop whereby the penal remedy of a canonical warning was imposed on a priest who had refused to accept a transfer to another location, or to obey an order to break off his relationship with a married woman which was causing scandal (cf. canon 277 §2). The archbishop's decree did not identify the woman in question, but the petitioner nevertheless approached the first instance tribunal claiming that her right to a good reputation had been violated. The first instance tribunal rejected her claim on the grounds that her name had not been mentioned in the decree, and in any event what had been said about the woman in question was not defamatory. The petitioner presented a recourse to the appeal tribunal, which rejected the recourse on the ground of the tribunal's absolute incompetence to judge the matter in question. The matter was referred by the petitioner to the Roman Rota, and the decree issued by the Dean of the Rota on 9 August 2007 explained that a dispute arising out of an administrative act should be referred to the hierarchical superior in accordance with canon 1737, once the author of the act had been asked to revoke or amend it (canon 1734), but not to a judicial tribunal. Furthermore, the violation of a person's good name constituted an offence (canon 1390 §2), and penal causes involving bishops are reserved to the Roman Pontiff (canon 1405 §1, 3º). Hence the petitioner's claim was to be rejected.

1405

REDC 65 (2008), 335-370: Tribunal de la Rota Romana. Decreto, 13 de mayo de 2008. Texto y comentario. (F. Aznar Gil). (Document and commentary)

See above, canon 1400.

1419

QSR 18 (2008), 215: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Hippolyti. Refectionis damnorum. (Document)

See above, canon 1405.

1419

REDC 65 (2008), 335-370: Tribunal de la Rota Romana. Decreto, 13 de mayo de 2008. Texto y comentario. (F. Aznar Gil). (Document and commentary)

See above, canon 1400.

1425

PCF XI (2009), 271-279: Augustine Mendonça: Irremediable Nullity of a Decree Issued by a First Instance Tribunal. (Article)

See below, canon 1620 7°.

1428

Ap LXXXI 3-4 (2008), 761-796: Paola Buselli Modin: L'Uditore secondo la *Dignitas Connubii*: come esercita la sua potestà giudiziale? (Article)

B.M. gives detailed consideration to the office of auditor appointed under the provisions of CIC/83 canon 1428 and CCEO canon 1093, showing how those appointed form part of the judicial process. She also offers comments on the quality required in gathering evidence that is of service to the trial judges.

1432

FCan III/2 (2008), 129-133: Jair Ferreira Pena: O Defensor do Vínculo – I. (Article)

The defender of the bond's active participation in matrimonial nullity processes gives rise to debate, since there are those who see him as a rigid defender of abstract principles unsuited to reality, and others who want him to have an even more active role in the process. In this first part of his study, F.P. looks at the historical development of the role of the defender of the bond, from the time of its institution by Pope Benedict XIV in 1741.

1432

REDC 65 (2008), 109-126: Giannamaria Caserta: L'ufficio della *defensio sacramenti* nella legislazione processuale canonica previgente e la conseguente natura *accusatoria* del giudizio di nullità matrimoniale. (Article)

G.'s theme is the origin and development of the office of the *defensor vinculi*. On account of certain judicial abuses at the time, Benedict XIV in his Apostolic Constitution *Dei Miseratione* (1741) instituted what was then called the office of

the *matrimoniorum defensor*. The *defensor*'s full participation was necessary for the validity of the process, and his duty was to defend forcefully and unambiguously (*strenue et pro viribus*) the validity of the marriage, with no concession to contrary arguments and with the obligation to take the case to appeal at every possible instance. The CIC/17 also placed great emphasis on the function of the *defensor vinculi* in line with the earlier tradition; in practical terms he really became the *advocatus matrimonii*. An important development occurred with the Instruction *Provida Mater* of 1936 which, while reaffirming the position and importance of the *defensor vinculi*, spoke about his role in the process as contributing to the establishment of the objective truth of the validity or otherwise of the marriage rather than defence of its validity at any cost, even in the face of compelling arguments to the contrary. The allocutions of Pius XII to the Roman Rota in 1942 and 1944 regarding moral certainty once again emphasized that the aim of the whole canonical process and of those participating in it was simply the search for the truth.

1432-1436

Philippe Hallein: Le défenseur du lien dans les causes de nullité de mariage. (Book)

In the matrimonial process the Church has always wanted to protect the bond between the spouses, and requires that any declaration of nullity be based on a serious procedure, aimed at arriving at a decision that corresponds to reality and avoids errors concerning the indissolubility of marriage. To this end Pope Benedict XIV, in 1741, created the office of defender of the bond. The first part of this work traces the history and evolution of the office up to the Instruction *Dignitas Connubii* (2005). The second part concentrates on the Instruction itself, describing its genesis, objectives and juridical nature. The third part presents a synoptic study of the canons of the CIC/83 and the articles of *Dignitas Connubii* which deal with the defender of the bond. A careful examination of the archives of the three preparatory commissions involved in the drafting of the Instruction enables H. to offer an overall vision of the changes introduced with regard to the corresponding canons in the CIC/83. H.'s main objective is to determine the extent to which *Dignitas Connubii* answers the Pope's request to offer those involved in matrimonial processes a *vade-mecum* which provides the indissolubility of the marriage bond with better protection.

1438

QSR 18 (2008), 215: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Hippolyti. Refectionis damnorum. (Document)

See above, canon 1405.

1440

REDC 65 (2008), 335-370: Tribunal de la Rota Romana. Decreto, 13 de mayo de 2008. Texto y comentario. (F. Aznar Gil). (Document and commentary)

See above, canon 1400.

1441

QSR 18 (2008), 220-221: Romanae Rotae Tribunalis Decanus: Decretum: coram R.P.D. Roberto M. Sable, Ponente. Salutiarum. Nullitatis matrimonii. (Document)

A Rotal *turnus* of three members requested the Dean to increase their number to five, in accordance with canon 1441 which provides: "The tribunal of second instance is to be constituted in the same way as the tribunal of first instance." The first instance tribunal in this case had consisted of five judges. In this decree dated 10 November 2007, the Dean of the Rota explains that the *way* in which a tribunal is constituted is a different concept from that of the *number* of judges, since a tribunal consists not only of judges, but also of other officials. The CIC/83, and article 30 §4 of *Dignitas Connubii*, represent a change from the CIC/17, where canon 1596 had required the second instance tribunal to have at least as many judges as the first instance tribunal. But in any event, the Rota is governed by its own proper law, which among other things deals with the way the tribunal is to be constituted and the number of judges; even under the CIC/17, it was already accepted that canon 1596 did not apply to the Rota. Hence the request from the *turnus* was rejected.

1443-1444

FCan III/2 (2008), 105-110: Bento XVI: O valor da jurisprudência romana. (Address and commentary)

The Portuguese text of Pope Benedict's address to the Roman Rota on 26 January 2008 is followed by a short commentary by Miguel Falcão. The Pope wished to emphasize the importance of the Rota's mission and the value of its jurisprudence in the overall context of the administration of justice in the Church. It is to be recalled that the Tribunal of the Roman Rota was re-established by Pope Pius X precisely 100 years previously, on 29 June 1908.

1443-1444

QSR 18 (2008), 11-14: L'Allocuzione di Sua Santità Benedetto XVI al Tribunale della Rota Romana. (Address)

See preceding entry.

1443-1444

QSR 18 (2008), 7-9: Antoni Stankiewicz: L'indirizzo d'omaggio del Decano S.E. Mons Antoni Stankiewicz a Sua Santità Benedetto XVI. (Address)

In this address at the start of the judicial year on 26 January 2008, the Dean of the Roman Rota refers to the centenary of the reconstitution of the Rota by Pius X in 1908 and sets out the historical background to that event. He also provides some statistics regarding the Rota's activity from 1908-2007, and reflects on the *salus animarum* as the rule for the exercise of judicial power in the Church.

1443-1444

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali. (Article)

See above, CCEO canons 1059-1069.

1443-1444

QSR 18 (2008), 59-95: Relazione sull'attività della Rota Romana nell'anno giudiziario 2007. (Report)

Section I of this 2007 Report on the activity of the Roman Rota contains statistical data on the Rotal College and Rotal personnel; together with details of causes pending; petitions received; sentences and decrees issued; free legal aid granted; visits to the Rota by cultural groups and episcopal conferences; publications; and the *Studio Rotale*. Section II provides a summary of 2007 Rotal jurisprudence relating to consensual incapacity; defect and lack of consent (total simulation; partial simulation [exclusion of *bonum sacramenti*, exclusion of *bonum prolis*, exclusion of *bonum fidei*, exclusion of *bonum coniugum*, exclusion of sacramental dignity]; error regarding a quality directly and principally intended; deceit; condition; force and grave fear); the form of marriage; and causes dealt with under canon 1682 §2 (decrees of confirmation; decrees admitting to ordinary examination). Section III summarizes 2007 Rotal jurisprudence relating to procedural matters (acceptance of the petition; recourse against rejection of the petition; admission of new grounds of nullity; requisites of a delegate judge; admissibility of recourse; abandonment of appeal; plaint of nullity; conformity of sentences; new examination of the cause; miscellaneous decrees). Section IV gives details of decrees issued by the Dean of the Rota. Section V contains a detailed breakdown of the data relating to causes examined during the year, including types of cause; instances at which causes were dealt with; countries/ continents/languages of origin; types of decision and decrees; object and nature of

causes; month-by-month breakdown of Rotal activity; and a statistical comparison with previous years.

1443-1444

QSR 18 (2008), 97: Secretaria Status: Rescriptum ex audientia Sanctissimi (2008). Facoltà straordinarie del Decano della Rota Romana «de vigilantia». (Document)

This rescript dated 2 October 2008 confirms that the Holy Father, on 2 August 2008, granted the Dean of the Roman Rota the faculties of overseeing the correct administration of justice in the Rota itself and of ensuring that the judges, promoters of justice and defenders of the bond carry out their tasks diligently.

1443-1444

QSR 18 (2008), 103-113: Antoni Stankiewicz: Il Tribunale Apostolico della Rota Romana. (Article)

The Dean of the Rota sets out the historical reasons justifying the description of the Roman Rota as an "Apostolic Tribunal", and examines the meaning of "apostolicity" and the Rota's participation in the *unitatis ministerium*, from which arise the three fundamental duties referred to in article 126 of *Pastor Bonus*: safeguarding rights within the Church, fostering unity of jurisprudence, and providing assistance to lower tribunals by virtue of its own decisions.

1443-1444

QSR 18 (2008), 115-130: Francesco Coccopalmerio: La Rota Romana e l'interpretazione della legge. (Article)

C. looks at the role of the judge as the interpreter of the law, whose duty it is to seek the will of the legislator in a particular case. Within the exercise of that function, the Rota has contributed to the progress of canon law. Rotal jurisprudence has authoritative status since it emanates from an Apostolic Tribunal acting in the name and by mandate of the Successor of Peter. In 1983 Pope John Paul II stated: "While respecting a healthy pluralism that reflects the Church's universality, the function of the jurisprudence of the Rota is indeed that of leading towards a more convergent unity and substantial uniformity in safeguarding the essential contents of canonical marriage"; and in *Pastor Bonus*, the Pope explicitly entrusted to the Rota the task of *consulere unitati iurisprudentiae* (article 126). C. also mentions the role of the Pontifical Council for Legislative Texts in relation to the unity of jurisprudence.

1443-1444

QSR 18 (2008), 131-165: Velasio De Paolis: La giurisprudenza del Tribunale della Rota Romana. (Article)

De P. examines the factors which have led to a reassessment of the role of the Roman Rota in fostering unity of jurisprudence. After reflecting on the concept and role of jurisprudence, he analyzes the Rota's specific role regarding the task of unifying the Church's jurisprudence – a role which has been highlighted in several Papal addresses to the Rota by Pius XII, John XIII, Paul VI and John Paul II, and especially in the 2008 address of Benedict XVI. On the basis of this latter address, De P. discusses the value of pontifical Magisterium (and specifically of Papal addresses) in this matter; and the importance of Rotal jurisprudence both in itself and in relation to lower tribunals.

1443-1444

QSR 18 (2008), 167-190: Giorgia Mattei: Portata ed effetti della connotazione della Rota Romana quale Tribunale Apostolico. (Article)

M. examines the meaning and the more important consequences of the designation of the Roman Rota as an Apostolic Tribunal. Even if the adjective "Apostolic" is not used by the CIC/83 or *Pastor Bonus* in this connection, there are many reasons why it is suitably applied to the Rota. The significance and importance of the apostolicity of the Rota derive essentially from its participation in the judicial ministry of the Pope, exercised in the name and on behalf of the Supreme Pontiff for the good of the whole Church and each of the particular Churches. The description of the Roman Rota as an Apostolic Tribunal is reflected in the power it exercises; the competences attributed to it; its *Lex propria*; its constitution and composition; its judicial procedure; and the way in which it is recognized as being a guide and point of reference for lower tribunals.

1443-1444

QSR 18 (2008), 210: Romanae Rotae Tribunalis Decanus: Decretum: coram R.P.D. Roberto M. Sable, Ponente. Duluthen. Nullitatis matrimonii. (Document)

On 13 January 2000 a Rotal *turnus* issued an interlocutory sentence declaring that a second instance sentence given by the Sao Paulo Metropolitan Tribunal on 28 July 1994 was irremediably null. At the same time it requested the Dean of the Rota to reserve the case to the Rota so that it could be judged by that tribunal at second instance. In this decree dated 3 May 2007 the Dean of the Rota states that once the nullity of the second instance sentence had been declared, the case was already legitimately lodged with the Rota, and so the question of reservation to the

Rota was inapplicable. Hence the *ponens* should proceed with the case.

1444

QSR 18 (2008), 215: Romanae Rotae Tribunalis Decanus: Decretum: Sancti Hippolyti. Refectionis damnorum. (Document)

See above, canon 1405.

1445

AkK 177 (2008), 174-200: Benedictus PP. XVI: Litterae Apostolicae motu proprio datae quibus Supremi Tribunalis Signaturae Apostolicae lex propria promulgatur. (Document)

Latin text of the *motu proprio Antiqua Ordinatione* (21 June 2008) by which the Apostolic Signatura is given a *Lex propria*.

1445

IC XLIX 97/09, 125-145: Javier Canosa: Presente y futuro de la justicia administrativa en la Iglesia. (Lecture)

At a conference organized by the Faculty of Canon Law of the University of Navarre to mark the 25th anniversary of the promulgation of the Code of Canon Law, C. deals with the question of administrative justice in the Church, which developed as a result of the reflections of the Second Vatican Council on the rights of the faithful. Its first phase consisted in the establishment, in June 1967, of the second section of the Apostolic Signatura as a contentious-administrative tribunal. Subsequently it found expression in the CIC/83 and the CCEO. The evolution of administrative justice has been given further impulse, 25 years after the promulgation of the CIC/83, by the promulgation of the *Lex propria* of the Apostolic Signatura (21 June 2008). There is reason to hope that the Signatura's jurisprudence will start to be published systematically. If so, it can be a useful instrument in the carrying out of the Church's function of governance, apart from the contribution it will make to the improvement of administrative justice.

1454

Philippe Hallein: Le défenseur du lien dans les causes de nullité de mariage. (Book)

See above, canons 1432-1436.

1485

SC 42 (2008), 219-226: Diocese of Cleveland, Court of Second Instance: Decision *coram* Yanus, 7 July 2006. (Sentence)

The two spouses, both Roman Catholic, convalidated their marriage in 1985 and filed for divorce in 2005. The male petitioner approached the tribunal of Antioch, alleging that the marriage was invalid on the basis of inability to assume the essential obligations of marriage on the part of the petitioner and/or the respondent. The first instance tribunal decided in the negative in January 2006. The petitioner appealed against the first instance decision to the tribunal of the diocese of Cleveland, and a new procurator-advocate was appointed. The second instance tribunal was notified by the judicial vicar of Antioch that the respondent desired to appeal against the decision of the first instance tribunal directly to the Holy See, but she eventually withdrew it. The procurator-advocate argued for the appeal of the first instance decision and lodged a plaint of nullity against it. The second instance tribunal considered whether the plaint of nullity should be resolved together with the principal cause of nullity decided in the negative by the first instance tribunal, or if it should be resolved before proceeding with the principal cause. It decided to handle the plaint of nullity first and established the grounds to determine whether the first instance definitive sentence was irremediably null on account of 1. the failure of the procurator-advocate of each party to obtain a specific mandate to renounce a judicial action in accordance with canon 1485; and 2. the denial of the right of defence, since the acts of the case and the definitive sentence were not published to the parties. The law section reflects on the right of defence and the argument addressed. The argument identified six issues arising from the adjudication of the case. The tribunal concluded that the right of defence of both parties was gravely compromised in the first instance tribunal. The judges resolved the question of the nullity of the first instance sentence *negatively* in that there was no proof of nullity of the first instance sentence on the ground of the procurator-advocates' failure to obtain a specific mandate to renounce a judicial action, and *affirmatively* in that there was proof of nullity in the same sentence because of the denial of the right of defence.

1584

Patrick Hubert: De Praesumptionibus Iurisprudentiae. (Book)

See below, canon 1586.

1586

Patrick Hubert: De Praesumptionibus Iurisprudentiae. (Book)

Article 216 §2 of *Dignitas Connubii* states that the judge is not to make presumptions which are contrary to those developed in the jurisprudence of the

Roman Rota. H. examines how such presumptions develop, and the reasons why they need to be taken into account by lower tribunals. He first looks at the concept of *praesumptio hominis*, studying how human presumptions first made their way into the law, and carries out a logical analysis of canons 1584 and 1586. He then looks at the relationship between human presumptions and the canonical system of proofs. Next he studies the jurisprudence of the Roman Rota during the period 1989-1998, and the relationship between *praesumptio iurisprudentiae* and *praesumptio hominis*, before turning to the question of how Rotal presumptions are to be applied in subordinate tribunals. (For bibliographical details see below, Books Received.)

1614-1615

SC 42 (2008), 393-436: William Daniel: The Publication of the Definitive Sentence. (Article)

The pre-eminent authoritative judicial response in the canonical system is the "definitive sentence" (*sententia definitiva*). By means of this sentence, the judge presents the problem, highlights the relevant norms and jurisprudence, and formulates a conclusion. In the *ius vigens*, both parties possess the right to a full disclosure of the sentence. The publication of the sentence is the ordinary means of respecting this right. D. observes that publication of the sentence can be considered from various perspectives such as rights, obligations, or juridical effects. These various perspectives are examined in the light of the right of defence. The article is divided into three principal sections: 1. an overview of the canonical tradition governing the publication of the sentence; 2. an investigation of the *ius vigens*; and 3. a synthesis of the pertinent jurisprudence regarding the publication of the sentence and the various *modi* of publication.

1620 6°-7°

SC 42 (2008), 219-226: Diocese of Cleveland, Court of Second Instance: Decision *coram* Yanus, 7 July 2006. (Sentence)

See above, canon 1485.

1620 7°

PCF XI (2009), 271-279: Augustine Mendonça: Irremediable Nullity of a Decree Issued by a First Instance Tribunal. (Article)

A first instance collegiate tribunal gave an affirmative decision on the ground of grave defect of discretion of judgement on the part of the petitioner. This decision was ratified by decree of the second instance tribunal. Then it emerged that the respondent had not received any citation or communication from either tribunal

because the petitioner had deliberately given the wrong address. Learning of the decision, the respondent complained to the first instance tribunal of the petitioner's deception. The defender of the bond of first instance lodged a plaint of irremediable nullity against the sentence of that tribunal. A substitute *ponens* declared the first instance sentence and the subsequent ratification irremediably null on the ground of the petitioner's violation of the respondent's right of defence (canon 1620 7°; *Dignitas Connubii*, article 270 7°). The first instance tribunal conducted a supplementary instruction of the case and gave a negative decision. The petitioner lodged a plaint of nullity with the appeal tribunal, claiming that the respondent was aware of the process. The appeal tribunal affirmed that this was not so. The petitioner's advocate lodged a plaint of nullity against the first instance negative decision on the ground of absolute incompetence of the judges. The appeal tribunal dismissed the plaint with a negative decision. The advocate then lodged another plaint, this time against the decree declaring the two original sentences irremediably null, on the ground that the decision was rendered by a sole substitute judge. The appeal tribunal again ruled negatively. The question arises: was everything in this case done in accordance with the law? Was there anything radically wrong in what the first and second instance tribunals did after the respondent alerted the tribunal to the fact that the petitioner had manipulated the process? M. examines some of the juridical and procedural principles involved. These include 1. the consequences of *res iudicata*; 2. the plaint of nullity against a sentence; 3. the consequences of using an illegitimate number of judges. He sums up his conclusions as follows: 1. the defender of the bond at first instance lacked the legitimacy to present the plaint of nullity to that tribunal directly; the first instance tribunal was absolutely incompetent to judge the plaint of nullity against the first two definitive decisions; 2. only the appeal tribunal or the Roman Rota was competent to deal with the plaints lodged against the decisions; 3. the decree of the sole judge declaring the two preceding definitive decisions irremediably null was itself remediably null in accordance with the norm of canon 1622 1° (*Dignitas Connubii*, article 272 1°).

1620 7º

Proc CLSA 2008, 355-382: Phillip Brown: The Right of Defense in Canon Law (and "Due Process" in American Civil Law). (Preliminary Study)

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

1622

PCF XI (2009), 271-279: Augustine Mendonça: Irremediable Nullity of a Decree Issued by a First Instance Tribunal. (Article)

See above, canon 1620 7°.

1641

IE XX 3/08, 539-565: Tribunale della Rota Romana: *Reg. Latii seu Praenestina*, Nullità del matrimonio. Preliminare *De conformitate sententiarum*. Decreto, 23 febbraio 2006 - Boccafola, *Ponente* (con *nota* di Francesco Pappadia, *Alcune note in tema di sviluppi storici dell'istituto della conformità sostanziale delle sentenze*). (Sentence and commentary)

This Rotal decision confirms the substantial conformity of two sentences, one given by the Lazio Regional Tribunal in 1995, the other by the Rota *coram* Caberletti in 2003, in successive grades of judgement. At first instance the marriage was declared null on the grounds of deceit on the part of the male respondent, and error *in qualitate personae directe et principaliter intenta* on the part of the female petitioner. At second instance, after the respondent appealed to the Roman Rota, the Rota admitted the case to ordinary examination and formulated the doubt on five headings, three of which were admitted for the first time *tamquam in prima instantia*; on 10 April 2003 it gave a *constat* decision on only one of the five grounds, that of exclusion of the *bonum sacramenti* on the part of the petitioner. The case was transmitted *ex officio* to a separate Rotal *turnus*, *coram* Boccafola, which issued a preliminary decree confirming, in accordance with *Dignitatis Connubii*, article 291, the substantial conformity of the first instance decision and the 2003 Rotal decision. Although the grounds (error *in qualitate personae directe et principaliter intenta* and exclusion of the *bonum sacramenti*) bore different names, they were founded on the same *factum iuridicum*. In his commentary P. studies the *in iure* section of the sentence, and undertakes a detailed history of the development of conformity of sentences, from the *Decretum Gratiani* up to the CIC/83.

1671

QDE 21 (2008), 256-265; Paolo Bianchi: Dichiarazioni di stato libero rilasciate da autorità ecclesiali ortodosse. Una recente dichiarazione del Supremo Tribunale della Segnatura Apostolica. (Article)

See above, canon 1085.

1671-1691

Philippe Hallein: Le défenseur du lien dans les causes de nullité de mariage. (Book)

See above, canons 1432-1436.

1672

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali. (Article)

See above, CCEO canons 1059-1069.

1680

PCF XI (2009), 7-11: Pope Benedict XVI: Address to the Members of the Tribunal of the Roman Rota. (Address)

See above, canon 1095.

1682

QSR 18 (2008), 59-95: Relazione sull'attività della Rota Romana nell'anno giudiziario 2007. (Report)

See above, canons 1443-1444.

1692

QSR 18 (2008), 15-57: Joaquín Llobell: La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali. (Article)

See above, CCEO canons 1059-1069.

1708-1712

Comm 34 (2002), 46-56: Congregatio de Cultu Divino et Disciplina Sacramentorum: Decretum quo *Regulae Servandae* ad nullitatem sacrae Ordinationis declarandam foras dantur. (Document)

Acting on the powers given under article 68 of *Pastor Bonus*, the Congregation for Divine Worship issues new norms on the processing of requests for a declaration of the nullity of holy orders to replace those issued on 9 June 1931. The norms were approved on 25 September 2001 and came into effect on 16 October of the same year. The text of the decree is followed by the norms in 31 articles. The first part covers the process at diocesan level, the second the procedure within the dicastery.

1717

Per 98 (2009), 195-233: Damián G. Astigueta: L'investigazione previa: alcune

problematiche. (Article)

For a very long period of time, the canonical penal process had been little used because pastors preferred to resolve difficult situations in a more pastoral manner. However, in the wake of the emergence of many more serious crimes, this process is now being used as the appropriate means to safeguard the well-being of God's people. In this article, A. devotes his attention to the *investigatio praevia*, examining the relevant canons carefully and in the light of some more recent commentaries. The role of this prior investigation is to see whether or not the "suspicion" that arises out of the complaint can be shown to have a foundation that should be examined judicially. It is also clear from the canons that this investigation cannot and must not be used as a sort of preliminary trial of the issue.

1732-1739

Ap LXXXI 3-4 (2008), 1035-1042: Paolo Gherri: Compendio di Diritto amministrativo canonico. Note ad una proposta teoretica. (Bibliographical review)

This is a review by G. of the translation into Italian from the Spanish of the *Compendio de derecho administrativo canónico* edited by EUNSA (Pamplona) in 2001.

1737

QSR 18 (2008), 207-208: Romanae Rotae Tribunalis Decanus: Decretum: Veronen. Poenalis. (Document)

See above, canon 1405.

1737

QSR 18 (2008), 218-219: Romanae Rotae Tribunalis Decanus: Decretum: Premislien. Latinorum. Diffamationis. (Document)

See above, canon 1405.

1740-1747

QDE 21 (2008), 287-298: Luigi Barolo: La costituzione di un curatore nel procedimento di rimozione di un parroco affetto da infermità mentale. (Article)

B. reminds us that canons 1740-1747 set out the procedure for the removal of a parish priest who is *infirmae mentis* or *minus firmae mentis.* This procedure, while placed in the seventh Book of the Code on processes, is not in fact a true and proper judicial process but nonetheless makes provision for the safeguarding of the rights of the individual affected by the bishop's decision to remove him from office. However if the parish priest rejects the bishop's proposal, then apart from the protection in the Code given by the obligation for validity on the bishop to consult two parish priests from those chosen by the council of priests, B. holds that in certain cases involving those who are *minus firmae mentis* the appointment of a curator has much to recommend it even though such an appointment is not indicated in the Code.

1740-1752

FCan III/2 (2008), 149-164: Enrique Pérez Pujol: Como proceder na remoção do pároco para o bem das almas. (Article)

See above, canon 538.

1752

QSR 18 (2008), 7-9: Antoni Stankiewicz: L'indirizzo d'omaggio del Decano S.E. Mons Antoni Stankiewicz a Sua Santità Benedetto XVI. (Address)

See above, canons 1443-1444.

1752

SC 42 (2008), 59-85: Noël Simard: La bioéthique et le droit canonique. (Article)

See above, canon 747.

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
- Quaderni dello Studio Rotale
- Review for Religious
- Revista Española de Derecho Canónico
- Revue Théologique de Louvain
- Revue de Droit Canonique

- Salesianum
- Studia Canonica
- Studies in Church Law
- Studium Generale Marcianum
- Studium Ovetense
- Teología y Vida
- Theologische-praktische Quartalschrift
- Theologica Xaveriana
- Vida Religiosa
- Vidyajyoti

LIST OF ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

ACR	Australasian Catholic Record, New South Wales – V. Rev. I. B. Waters, Melbourne.
AkK	Archiv für katholisches Kirchenrecht, Paderborn – Abstracts supplied by publisher.
Ang	Angelicum, Rome – Rev. P. Gargaro, Clydebank, Glasgow.
Ap	Apollinaris, Rome – Bishop J. Jukes OFM Conv, Huntly, Aberdeenshire.
Comm	Communicationes, Rome – Rev. Mgr. G. Read, Colchester, Essex.
EE	Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
FT	Folia Theologica, Budapest – Editor.
IC	Ius Canonicum, Pamplona – Abstracts supplied by publisher.
ICST	Immaculate Conception School of Theology Journal, Vigan City, Philippines – Editor.
IE	Ius Ecclesiae, Pisa-Rome – Rev. J. D. Gabiola, London.
LJ	Law and Justice, Worcester – Abstracts supplied by publisher.
LS	Louvain Studies, Louvain – Abstracts supplied by publisher.
PCF	Philippine Canonical Forum, Manila. Sr Mary Lyons RSM, Galway.
Per	Periodica, Rome – Rev. A. McGrath OFM, Rome.
Proc CLSA	Proceedings of the Canon Law Society of America – Rev. P. Gargaro, Clydebank, Glasgow.
QDE	Quaderni di Diritto Ecclesiale, Milan – Bishop J. Jukes OFM Conv, Huntly, Aberdeenshire.

QSR	Quaderni dello Studio Rotale, Vatican City – Editor.
RDC	Revue de Droit Canonique, Strasbourg – Abstracts supplied by publisher.
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.
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.
TS	Theological Studies, Woodstock – Canon D. Fogarty, Bognor Regis, West Sussex.

BOOKS RECEIVED

- Assemblée des chanceliers et chancelières du Québec: *Les archives ecclésiales, diocésaines et paroissiales. Patrimoine archivistique de l'Église catholique* (Gratianus series), Wilson & Lafleur Ltée, Montreal, 2009, xii + 101pp., ISBN 978-2-89127-917-8 [see above, canons 482-491]
- Davide Cito – Fernando Puig (eds.): *Parola di Dio e missione della Chiesa. Aspetti giuridici*, Giuffrè, Milan, 2009, xiii + 402pp., ISBN 88-14-14398-6 [see above, canons 747-833]
- Zenon Grocholewski: *Refleksje na temat prawa. Prawo naturalne – Filozofia prawa*, Homo Dei, Krakow, 2009, 101pp., ISBN 978-83-60998-31-1 [see above, General Subjects (*Legal theory*)]
- Philippe Hallein: *Le défenseur du lien dans les causes de nullité de mariage*, Pontificia Università Gregoriana, Rome, 2009, 723pp., ISBN 978-88-7839-146-8 [see above, canons 1432-1436]
- Paul Hayward (ed.): *Studies on the Prelature of Opus Dei. On the twenty-fifth anniversary of the Apostolic Constitution "Ut sit"* (Gratianus series), Wilson & Lafleur Ltée, Montreal, 2009, x + 227pp., ISBN 978-2-89127-887-4 [see above, canons 294-297]
- Javier Hervada: *What is Law? The Modern Response of Juridical Realism* (Gratianus series), Wilson & Lafleur Ltée, Montreal, 2009, xviii + 175pp., ISBN 978-2-89127-910-9 [see above, General Subjects (*Legal theory*)]
- Patrick Hubert: *De Praesumptionibus Iurisprudentiae*, Pontificia Università Gregoriana, Rome, 2009, 316pp., ISBN 978-88-7839-144-4 [see above, canon 1586]
- John Huels: *The Pastoral Companion. A Canon Law Handbook for Catholic Ministry* (4th updated edition) (Gratianus series), Wilson & Lafleur Ltée, Montreal, 2009, xviii + 476pp., ISBN 978-2-89127-891-1 [see above, canons 515-552]

- Roman A. Melnyk: *Vatican Diplomacy at the United Nations. A History of Catholic Global Engagement*, Edwin Mellen, Lampeter, 2009, vi + 269pp., ISBN-13: 978-0-7734-3881-1; ISBN-10: 0-7734-3881-5 [see above, canons 362-367]
- Jean-Pierre Schouppe (ed.): *Études sur la prelature de l'Opus Dei. À l'occasion du vingt-cinquième anniversaire de la constitution apostolique "Ut sit"* (Gratianus series), Wilson & Lafleur Ltée, Montreal, 2009, xv + 243pp., ISBN 978-2-89127-889-8 [see above, canons 294-297]
- Gregory J. Zubacz: *The Seal of Confession and Canadian Law* (Gratianus series), Wilson & Lafleur Ltée, Montreal, 2009, xxv + 242pp., ISBN 978-2-89127-888-9 [see above, canon 983]