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

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GENERAL SUBJECTS

Comparative law

ELJ XI 1/09, 4-35: Ingrid Slaughter: The Dioceses, Pastoral and Mission Measure 2007. (Article)

S., a former legal adviser to the Church of England's General Synod, gives an overview of that Church's *Dioceses, Pastoral and Mission Measure 2007*. It is the longest and widest-ranging piece of legislation to come before the General Synod since the early 1980s, and focuses on the twin themes of mission and ministry. It was as the result of a Review Group whose remit was "to ensure flexible and cost effective procedures which fully meet changing pastoral and mission needs". The Measure extends to areas of the life and legislation of the Church of England as diverse as the Church's provincial and diocesan structure, the delegation of episcopal functions, diocesan administration, and the processes for making changes to local church organization and closing churches for regular public worship. The Measure also establishes a single central Church source of information and advice on church buildings. Finally, it lays down the legal framework for new "bishops' mission orders", which are intended to provide endorsement, supervision and support for a wide and growing variety of new mission initiatives, but without undermining the traditional parochial structures.

ELJ XI 1/09, 51-64: Adelaide Madera: Juridical Bonds of Marriage for Jewish and Islamic Women. (Article)

M. examines the condition of women in both Israel and Islamic countries, specifically their freedom to leave a marriage, and compares respective models. She analyzes the peculiar relationship between secular and religious law in Israel and Islamic countries before studying the nature of marriage as a contract in these legal systems, comparing a totally private approach and a mixed, public–private approach. M. then analyzes the possibilities of dissolution of marriage in such legal systems, identifying some aspects of gender disparity. Finally she discusses some juridical tools offered in these legal contexts, which are intended to rebalance the exercise of a woman's freedom to leave a marital relationship and its conditions.

ELJ XI 1/09, 72-75: John Witte Jr: The Legal Challenges of Religious Polygamy in the USA. (Article)

W. looks at the history of challenges, largely by Mormons, to the criminal law against polygamy in the United States on the basis of religious liberty. In four cases, from 1879 to 1890, the United States Supreme Court firmly rejected such a claim, and threatened to dissolve the Mormon Church if they persisted. A more recent case has demonstrated that this law remains good. W. analyzes the reasons behind the Supreme Court's decisions, which fell under three broad headings: 1) historical – the common law has always defined marriage as monogamous, and to change those rules "would be a return to barbarism"; 2) prudential – religious liberty can never become a licence to violate general criminal laws "lest chaos ensue"; and 3) sociological – monogamous marriage "is the cornerstone of civilization", and it cannot be moved without upending our whole culture.

ELJ XI 2/09, 131-153: Bernard Jackson: 'Transformative Accommodation' and Religious Law. (Article)

In February 2008 Dr Rowan Williams, the Anglican Archbishop of Canterbury, gave a lecture on *Civil and Religious Law in England*. In the lecture Williams stressed the need for both the State and religious communities to contemplate internal change. J. examines this concept of "transformative accommodation". The lecture caught the headlines and proved controversial. Williams made no substantive proposals on jurisdictional issues; this proved the focus of subsequent public comment. J. suggests that jurisdictional issues cannot be avoided, despite the diplomatic interest in doing so, as may be seen from a reading of the January 2008 European Islamic *Charter of Values*. He suggests that missing from the debate thus far is consideration of the (necessarily theological) criteria for accommodation within religious communities. J., who is a Professor of Jewish Studies, provides a preliminary discussion of such criteria from the viewpoint of Jewish law. First, he provides an outline of some published research on religious marriage in Judaism and Christianity as a case study. He then sketches the jurisdictional situation in the modern State of Israel, before considering the possibilities for transformative accommodation in English law, in the light of the preceding analysis. A brief conclusion indicates some questions that the analysis might pose for Christianity.

ELJ XI 3/09, 266-283: Charles Mynors: Ecclesiastical Buildings: Constraints and Opportunities. (Article)

See below, canon 1276.

RDC 57 1/07, 19-28: Alexandru Gabriel Gherasim: Droits et statuts dans l'Église orthodoxe. (Article)

The ecclesiastical-institutional principle is the fundamental principle that governs the organization of the Orthodox Church. We see the expression of this principle in worship and liturgy; it is clarified in canonical legislation as the organic substance of the religious components of life and the Church. Consequently, the ecclesiastical-institutional principle, through the intermediary of canon law, allows theology and the Church to connect with the earthly world. Thus emerges a canon law of a human-divine character that blends the norms of both divine and ecclesiastical institution.

RDC 57 1/07, 29-43: Norman Doe: Aspects de la réglementation de l'Église d'Angleterre. (Article)

The sources of the legislation that governs the Church of England are varied. Some are of State origin, others canonical, and still others extralegal. The Church and the State are so intertwined that it is often difficult to distinguish between the real origins of these diverse regulations. Divine law has a place as the superior provenance of the law of the Church, but its role is not very developed in the Church of England.

RDC 57 1/07, 69-89: Bernard Botiveau: Le droit islamique, de la religion à la norme sociale. (Article)

In societies where Islam is the dominant religion, social standards and legal culture are in part connected to religion. It would be vain to search for a substantive legal system that worked for all Muslim countries. But it is possible to find a common legal philosophy which guides jurists and politicians in the legal process.

RDC 57 1/07, 91-147: Lionel Panafit: La Halakha comme problématique de la connaissance. (Article)

The Hebraic law, or *halakha*, is incomplete: it does not appear as a self-contained compilation. Since the end of Jewish political autonomy there has been no institutional form of power, but rather a system of scholarship centred on Biblical analysis. The law is not strictly defined, but is always understood as a dialectic. Such is indicated in the word *halakha* itself, which means "walking".

RDC 57 1/07, 173-222: Sylvain Mazars: Fondements et evolution du droit hindou. (Article)

Like all legal systems, Hindu law has been evolving from antiquity to the present. Vedic Hindu law and modern Hindu law are not one and the same. Accordingly, we can say that Hindu law has multiple sources: at its core *dharma* and *Veda*, that is, the ideals of life and behaviour; but also the influence of English jurisprudence as Hindu law has developed into a legislative system.

REDC 65/165 (2008), 591-660: Ricardo Daniel Medina: Los delitos sexuales con menores de los clérigos en el Derecho penal argentino. (Article)

D.M.'s subject is sexual offences against minors, especially perpetrated by clerics, as formulated in the Argentinian Penal Code. He provides a full analysis delineating the different types of sexual offences against minors, the criteria of culpability, use of violence, aggravating circumstances, the distinction between sexual abuse and carnal knowledge, and the involvement of a minister of religion. On this last point he provides a comparison from the relevant sections of the Penal Codes of Spain and a number of Central and South American Republics. The second and longer section of his article compares the different approaches taken by Argentinian law and canon law under such headings as the age of consent, sexual immaturity, deceit and error, the corruption of minors, homosexual acts, pornography involving minors, exhibition of obscene material and penal charges. He concludes that, with the norms of *Sacramentorum Sanctitatis Tutela* now in place, canon law has a broader and wider scope than the civil codes examined here.

Compilations

FCan IV/1-2 (2009), 177-203: Manuel Saturino Gomes - José Eduardo Franco: Instituições católicas: termos ou conceitos. (Glossary)

A glossary (in Portuguese) of terms and concepts of Catholic institutions, taken mostly from canon law, Church tradition, and the life of the institutions themselves.

REDC 66/166 (2009), 417-440: Federico R. Aznar Gil: Boletín de Legislación Canónica Particular española 2008. (Compilation)

A.G. provides listings of particular legislation issued during 2008 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.

José Antonio Araña (ed.): Libertà religiosa e reciprocità. (Book)

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

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See below, canons 1311-1363.

Ecclesiology

Ap LXXXII 1-2 (2009), 227-264: Paolo Gherri: Corresponsabilità e Diritto: il Diritto amministrativo. (Conference presentation)

G. offers his understanding of the elements that underlie ecclesial administrative law as part of his contribution to the Fourth Interdisciplinary Canonical Day held at the Lateran University, 3-4 March 2009. Working from the mission of the Church, namely to proclaim the Gospel of Jesus Christ, and the insight flowing from the vision of the Church as the People of God, he develops his study of the elements of co-responsibility and the juridical character of the Church before giving more detailed attention to the administrative process in use in the Church.

Comm 41 (2009), 242-243: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Ecclesiae unitatem* quo structura Pontificiae Commissionis "Ecclesia Dei" renovatur et ad hodiernas necessitates accommodatur. (Document)

The Commission *Ecclesia Dei* was set up in 1988 after the unauthorized consecration of bishops by Archbishop Lefebvre, for the benefit of those who were attached to the pre-conciliar liturgical forms but wished to remain in full communion. This document revises the structure of the Commission in view of the changed circumstances after the *motu proprio Summorum Pontificum*, placing it directly under the presidency of the Prefect of the Congregation for the Doctrine of the Faith.

Comm 41 (2009), 326-327: L'Osservatore Romano: Articulus explanans Motum Proprium *Ecclesiae unitatem* a Summo Pontifice die 2 mensis iulii 2009 datum. (Article)

This unsigned article explains the motivation and significance of the restructuring of the Pontifical Commission *Ecclesia Dei* and its being placed under the auspices of the Congregation for the Doctrine of the Faith.

FCan IV/1-2 (2009), 39-50: António Marcelino: Comunhão e corresponsabilidade na Igreja. (Article)

The theme of communion and co-responsibility in the Church has been approached from many angles since Vatican II. Here the emeritus Bishop of Aveiro (Portugal) looks at communion, mission, participation and *diaconia*, centred on the mystery of the Church and linked with the life of Catholics and the Christian presence in the world.

Ladislas Örsy: Receiving the Council. Theological and Canonical Insights and Debates. (Book)

Bearing in mind that Vatican II was the conclusion of one era and the opening of another, Ö. insists on the need for continuing creative insights – the thinking anew of our perceptions of some challenging aspects of reform – and critical debates. Creative insights, he says, emerge within the crucible of the debating community – "the *sensus fidei* at work". (For bibliographical details see below, Books Received.)

Ecumenism and interreligious dialogue

Comm 41 (2009), 328-329: Vincent Nichols - Rowan Williams: Declaratio coniuncte facta ab Archiepiscopo Vestmonasteriensi et Archiepiscopo Cantuariensi "Una conseguenza del dialogo ecumenico". (Document)

See below, canon 372.

ELJ XI 3/09, 284-324: A Decade of Ecumenical Dialogue on Canon Law. (Report)

The Colloquium of Anglican and Roman Catholic Canon Lawyers has been in existence for ten years. To mark this anniversary, the current members approved

this magisterial review of its proceedings over the past decades (reports of which have periodically been abstracted in this publication). The report contains a summary of the conclusions of the colloquium on each of the topics considered over the ten years. Several sets of the proceedings have been published in their own right. The themes have been wide and far-reaching: the sources and forms of law, its subject matter and scope, the purposes of law in the Church and its relationship to theology. Specific topics have included property, clergy discipline, initiation and membership, authority, ordination and ministry, and marriage. There is an examination of some of the juridical similarities and differences in these areas and more generally. Finally the report reflects on some possibilities for the future development of the Colloquium.

FC 11 (2008), 7-35: Péter Erdö: Rigidità ed elasticità delle strutture normative nel dialogo ecumenico (Elementi istituzionali nel CIC aperti per un dialogo ecumenico). (Conference presentation)

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

José Antonio Araña (ed.): Libertà religiosa e reciprocità. (Book)

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

Family issues

Ang 86 (2009), 951-966: Jude Chua Soo Meng: Regulating "Marriage": Public Education and the Design of Terms in Social Policies. (Article)

M. considers civil definitions of marriage and tries to offer reasons, from a public policy viewpoint, for supporting marriage as a union of heterosexuals rather than homosexuals.

Comm 35 (2003), 214-223: Congregatio pro Doctrina Fidei: Considerazioni circa i progetti di riconoscimento legale delle unioni tra persone omosessuali. (Note)

The Congregation for the Doctrine of the Faith produced this note to explore the issues involved in legislative proposals in various countries to recognize unions between homosexuals. It looks first at general principles and then the implications for Catholic politicians faced with such proposed legislation. They

are bound to oppose it, and if they cannot prevent or abrogate such legislation to do what they can to limit its harmful effects on public morality.

EE 84 (2009), 757-778: José Luis Santos Diez: Los otros matrimonios: unión de hecho, matrimonio homosexual y matrimonio de conveniencia. Planteamiento jurídico en el ordenamiento español. (Article)

The sociological increase in the number of different ways of establishing the family in Spain apart from canonical marriage (*de facto* unions, homosexual partnerships, etc.) offers the opportunity to specify their precise legal situation and the consideration they merit from the point of view of canonical norms.

INT 15 1/09, 61-74: Stephan Nacke: Bedingungen geligender Europäisierung katholischer Familieninteressenvertretung. (Article)

The European Union, originally planned as an economic unit, is moving towards "social integration". An incidental consequence of this is that the family is becoming more and more affected by political decisions, usually indirectly. The position is challenging for Catholic family values, and N. looks at how best these can be represented and what organizational steps could be taken towards this end, in this very complex situation.

Human rights

Comm 35 (2003), 26-30: Pope John Paul II: Ex *Lectione Magistrali* habita occasione collationis Laureae H.C. in iure civili italico ("Giurisprudenza") ab Universitate cui nomen est "La Sapienza". (Address)

The Pope addresses graduates at a degree ceremony in the Sapienza University, Rome. The human person is the foundation of social life. It is in the transcendental dimension of human life that one finds the source of human dignity and inviolable rights. These fundamental rights need to be expressed in juridical norms as well as in universal declarations.

Comm 41 (2009), 38-40: Pope Benedict XVI: Allocutio Summi Pontificis ad eos qui die 4 mensis maii 2009 in decimoquinto Conventu Plenario in Pontificia Academia Scientiarum partem habuerunt. (Address)

The Pope addresses participants in the 15th Plenary Meeting of the Pontifical Academy of Sciences on the theme of human rights. While human rights are not

strictly truths of faith, they are confirmed by faith, and form an ethos at least aspired to by most human beings. They are an expression of the natural law, which is a participation in the eternal law of God. A particular issue today is the contrast between equal attribution of rights and unequal access to them.

IE XXI 1/09, 189-207: Benedetto XVI: Discorso all'Assemblea Generale delle Nazioni Unite (New York), nel 60° anniversario della Dichiarazione Universale dei Diritti dell'Uomo, 18 aprile 2008 (con *nota* di J.-P. Schouppe, *Il futuro del sistema dei diritti umani*). (Address and commentary)

This is the Italian text of the address of Pope Benedict XVI to the General Assembly of the United Nations on 18 April 2008, dealing principally with human rights (for further details see *Canon Law Abstracts*, no. 102, pp. 10, 25-26). In his commentary S. highlights the points which he considers to be of greatest interest from the juridical point of view. He first looks at the role and responsibility of the United Nations regarding the promotion of the common good, and then examines the question of the foundations of human rights. In relation to the stress which the Pope places on the natural right to religious freedom, S. looks at the concepts of "open" ("positive") secularity and "closed" ("negative") secularity (*laicità*).

LJ 163/09, 142-153: Christopher Dwyer: How Far Can Religion Affect Employment? (Article)

The Employment Equality (Religion or Belief) Regulations 2003 have generated a substantial amount of UK case law. D. reviews the case law and also considers the impact of article 9 of the European Convention on Human Rights. He concludes by offering some thoughts on points which have emerged.

Jesu Pudumai Doss: «Rendete a ciascuno ciò che gli è dovuto». (Article in **Manlio Sodi (ed.): *Sui sentieri di Paolo. La sfida dell'educazione tra fede e cultura,* pp. 113-153**)

After presenting Paul as "the man of three cultures" (Hebrew, Greco-Roman, Christian), this article looks at human rights in Paul, grouping them into personal rights (the right to life, development and education; religious freedom; matrimonial and family life); social and civil rights (equality; liberty; freedom of expression; the right to one's good name; the right to citizenship and rights of citizenship); patrimonial rights (the right to property; the right to work and to a just wage; the right to rest and leisure); and procedural rights. The concluding

considerations focus on the influence of Paul's culture and faith in defining the various rights. (For bibliographical details see below, Books Received.)

Legal theory

Ap LXXXII 1-2 (2009), 179-199: Antonio Iaccarino: Responsabilità e istituzionalità in prospettiva filosofica. (Conference presentation)

I. offered this study at the Fourth Interdisciplinary Canonical Day held at the Lateran University, 3-4 March 2009, seeking to explore in a preliminary way the philosophical elements underlying some of the principal elements chosen for discussion.

Ap LXXXII 1-2 (2009), 447-466: Michele Riondino: Giustizia riparativa e mediazione minorile. (Article)

R. reviews the modern development of restorative justice through mediation, with particular application to juveniles and at national and international levels.

Comm 35 (2003), 3-5: Pope John Paul II: Allocutio ad eos qui die 24 ianuarii in Die Academico *Vent'anni di esperienza canonica* partem habuerunt. (Allocution)

Addressing a gathering to mark the 20th anniversary of the promulgation of the CIC/83, the Pope emphasizes the importance of keeping in mind the theological basis of canon law and avoiding a reductionist hermeneutic.

ELJ XI 3/09, 248-265: John Witte Jr: A Demonstrative Theory of Natural Law: Johannes Althusius and the Rise of Calvinist Jurisprudence. (Article)

Early modern Calvinists produced a rich tradition of natural law and natural rights thought that shaped the law and politics of Protestant lands. W. examines the work and legacy of German-born Calvinist jurist Johannes Althusius, who produced one of the most original Calvinist natural law theories at the turn of the 17th century. Althusius argued for the natural qualities of a number of basic legal norms and practices by demonstrating their near-universal embrace by classical and Biblical, Catholic and Protestant, theological and legal communities alike. On this foundation, he developed a complex theory of public, private, penal and procedural rights and duties for his day, to be embraced by everyone, particularly those who were slaughtering one other in

religious wars, persecutions and inquisitions. Althusius' theory of natural law and natural rights was Calvinist in inspiration but universal in aspiration, and it anticipated the political formulations of a number of later Western writers, including Locke, Rousseau and Madison.

FC 11 (2008), 159-182: Géza Kuminetz: Das Wesen und die Bestimmung der Autorität und der Macht katholisch betrachtet. (Article)

K. examines the origin and nature of authority and power, and the contribution of the Catholic Church in clarifying the existence and determination of authority and power.

FCan IV/1-2 (2009), 171-174: José da Cruz Policarpo: "A visão bíblica da justiça": homilia na Missa de abertura do ano judiciário. (Homily)

The Cardinal Patriarch of Lisbon, in a homily given at the opening of the judicial year on 27 January 2009, speaks of the Biblical vision of justice, which contains certain aspects that are hard to transpose to the application of law as understood in contemporary democratic societies. He develops a number of ideas concerning justice for the human person and justice for God, and the ways in which the Biblical dimension can call into question human conceptions of justice.

IC XLIX 98/09, 549-565: Javier Canosa: La eficacia del Derecho divino en la justicia administrativa en la Iglesia. (Conference presentation)

In order to study the impact of divine law on canonical administrative law it is helpful to study the decisions of the Second Section of the Apostolic Signatura, which judges whether a canonical administrative act contravenes ecclesial law, be it divine law (natural or positive) or ecclesiastical law. In assessing whether divine law has been infringed, the jurisprudence dealing with those aspects of the process which derive from divine natural law (such as the right of defence) acquires special importance. C. also examines a number of decisions of the Signatura dealing with other aspects of divine natural and positive law. He ends by stating that the publication of the Signatura's decisions should be seen as a service towards achieving the necessary harmonization of divine and human law in the Church's legal system.

IE XXI 1/09, 35-47: Gaetano Lo Castro: Basi antropologiche del Diritto Canonico. (Article)

Lo C. introduces his work as consisting of an outline of R. Sohm's teaching on the nature of the Church and the spiritual purity of the Christian message with respect to relations of justice. Even if Sohm's approach has been exhaustively criticized, Lo C. judges it necessary to repeat this criticism until such time as the widespread present-day "positivist" conception of law is overcome. Hence he sets out the foundation and justification of law, law as juridical experience, and the knowledge of law and justice. At this point, he states that it would not be possible to imagine the Church without man and without man's essential need of justice, which is what law is there to serve. With Sohm's method in mind, he attempts an anthropological and theological reconstruction of the origin of the juridical experience of the Church, and of the continuity and innovation of Christ's message among the first Christians. In particular, he looks at the question of St Paul and the Law, and briefly mentions how the early Christian community came into contact with the greatness of the law of the Roman Empire.

LJ 163/09, 110-126: David McIlroy: The Theology of Law of Norman Anderson. (Article)

Professor Sir Norman Anderson (1908-1994) was a missionary in the Middle East, and a successful academic, rising to become Professor of Oriental Laws in the University of London, Director of the Institute of Advanced Legal Studies, and the first Chairman of the Church of England's House of Laity in the General Synod. His theology was developed over many years, and McI. looks at its main strands in the light of both Anderson's published and unpublished writings. Anderson's work ranged over a very wide area, covering themes such as law and grace, law and love, natural law, morality, law and freedom, and the role of government. The article covers all of these and concludes by looking at Anderson's views on law and social justice, one area where McI. finds that his thought might have been more fully developed.

RDC 57 1/07, 7-18: Rik Torfs: Les principes fondamentaux du droit canonique catholique. (Article)

What are the fundamental principles of Catholic canon law? In 1967 the Commission for the Revision of the Code of Canon Law presented a list of ten guiding principles for a new canon law. In reality there is some discrepancy between these official guiding ideas and the real fundamental principles, which

enter the system in a nuanced way. For example, canon law proclaims itself to be independent of civil law, but comes to be influenced by it more and more.

REDC 65/165 (2008), 455-492: José San José Prisco: La tradición central de occidente. Una propuesta necesaria. (Lecture)

The background to this lecture is the rapidly increasing relativism so predominant in the Western developed world. After distinguishing juridical positivism from the natural law, it deals with the relationship between law and morality, analyzing the liberal view (that moral laws are unjustifiable since they violate personal autonomy), the communitarian view (that laws are justified only insofar as they contribute to social cohesion) and what he calls the "central tradition of the West" which views law as the expression of natural law and having binding force insofar as it accurately and fairly reflects the ethical principles of natural law. Although this tradition of the West is increasingly under attack, it alone is ultimately able to safeguard the law against manipulation by the power of the State or by party and economic interests. The natural law transcends these narrow interests and fulfils both a unifying and a universalizing function, since it provides a common content and foundation for any particular system of law. Without it we are left with no objective criteria to distinguish good law from bad.

RTL 40 (2009), 360-381: Alphonse Borras: Rôle et signification du droit canonique dans la pastorale. (Article)

Faced with a possible conflict between pastoral action and the norms of canon law, B. proposes some elements for reflection on law in the Church. He asks about the authority of canon law in the Catholic Church in the context of the crisis of cultural heritage. He then presents the major characteristics of this law, and its role in the promotion of communion – communion which organizes itself into a society. The pastoral practice of law involves taking into account the ecclesial situation in which canonical norms are read, interpreted and applied. This raises the question of the hermeneutics of law in the light of Vatican II, the latter interpreting the former and not vice versa. This at any rate raises the question of the reception of canonical laws by the Church as a whole. The more a norm has been reflected upon and prepared by the Church as a whole, the more chance it will have of being received and applied.

SO XXXVI (2008), 153-163: Jaime Díaz Pieiga: El Derecho Canónico al servicio de la comunión. (Lecture)

D.P. explains that the deepest constitutive element of the Church is her invisible communion, the work of the Holy Spirit. The human sociological-aspect of communion is made visible and institutionalized as the communion of the faithful, hierarchical communion and communion between the Churches. Such communion demands the most perfect justice possible, which cannot be achieved except through law. Law permanently renews the structure of ecclesial communion, and its *raison d'être* is that of serving the Church as communion. This service consists of making communion possible, while contributing to the Church's pastoral fruitfulness. In order for the Church's pastoral activity to develop properly and to be truly evangelizing and sanctifying, the constitutive bonds of ecclesial communion need to be respected. Canon law does not "force" communion but regulates its structure and life, since it is born of the mystery of the Church which is communion. Canonical norms are a concrete and practical reflection of what faithful generosity to ecclesial communion demands.

Carlos José Errázuriz M.: Justice in the Church. A Fundamental Theory of Canon Law. (Book)

This book is dedicated above all to the central question of fundamental theory of canon law, that is, the existence and nature of what is juridical in the Church of Jesus Christ. The title of the work makes explicit reference to justice, since the book is based on the conviction that "the juridical" and "justice" are essentially inseparable, and that only by starting from a realistic and personalist conception of "what is just" is it possible to understand and implement ecclesial law. However, it must be remembered that the goal is to determine what is just "in the Church". Thus E. considers the supernatural character of intraecclesial relations of justice, with specific reference to the spiritual goods of the Church, especially the Word of God and the sacraments. In doing so he takes account of both the liberty of the faithful and the hierarchical structure of the Church. The book is divided into two parts. The first part presents a *status quaestionis* on the relationship between the juridical and the Church, which comprises not only the problem of antijuridicism and the Catholic response in its classic form (chapter I), but also the debate taking place in the light of the doctrinal trends emerging from the Second Vatican Council, which continue to seek fresh expression (chapter II). Building on these foundations, the second part proposes to offer a global approach to canon law from the point of view of what is just in the Church. E. first of all gives an overall panoramic view, making reference to the two complementary perspectives of Church as communion and Church as sacrament of salvation (chapter III). In the last two chapters he analyzes the structural components of what is just in the Church, namely the subjects of the

relations of justice in the Church (the human person, the hierarchy, various institutional subjects, and especially the Church itself as a institution) and the objects of those relations of justice (the spiritual or salvific goods of the Church considered as juridical goods within the Church) (chapter IV); and the dynamics of the configuration, achievement and knowledge of what is just in the Church (chapter V). (For bibliographical details see below, Books Received.)

Relations between Church and State

AA XV (2008), 249-204: Javier Fronza: Laicidad positiva: ¿Ciencia canónica o sociología de la religión? (Article)

F. considers the implications of the "*laïcité positive*" spoken about by President Sarkozy of France in his acceptance speech at the conferral upon him of the title of Honorary Canon of the Lateran Basilica in December 3007, and Pope Benedict XVI's reference elsewhere to a "healthy secularity/*laïcité*". F. examines various aspects of the French President's address and concludes that the principle of freedom of religion, because it inheres in the very essence of human nature, is pre-existent to and pre-dates the principle of *laïcité*. This latter is the State's way of recognizing, guaranteeing and promoting, by way of positive law and as a social factor, the religious phenomenon at the heart of human society, manifested in a plurality of religious expressions and experiences, not simply individual and private but collective and public. The State respects them as a social reality in the wider web of social relations, but without intervening or interfering in the internal expression of belief or practice. It cannot ignore such an important reality in the communal life of its citizens and would be equally at fault in adopting an explicitly confessional approach or an atheistic or agnostic one.

AkK 177 (2008), 353-393: Winfried Becker: Das Reichskonkordat von 1933 und die Entpolitisierung der deutschen Katholiken. Verhandlungen, Motive, Interpretationen. (Article)

To provide a better understanding of the *Reichskonkordat* of 1933 in its contemporary context, B. explains the genesis of the two articles of the concordat that differentiate it from the preliminary work done during the Weimar Republic: the article concerning the ban on political activity by clerics, and the article on Catholic organizations, whose continued existence was guaranteed only so long as they engaged in purely religious activity. B.'s study is based on newly-published sources, alongside material that has already been widely available. He presents and in part reinterprets the divergent motives of

the contracting parties, each very different from the other. In the light of international and party-political factors, as well as the history of the impact of the concordat and its interpretation from the very moment of its being signed, he explains the paradox of an ecclesiastical contract to guarantee fundamental freedoms in a totalitarian State.

AkK 177 (2008), 394-410: Stefan Korioth: Konkordate und Kirchenverträge im System des deutschen Staatskirchenrechts. (Article)

K. investigates the background to contractual law between Church and State in a constitutional State which claims the right to make the final decisions in questions of the legal status of religious organizations, while also guaranteeing and offering protection for the Church's freedom of action. He affirms the legitimacy of agreements between religious organizations and the State, and enumerates the functions of such contracts nowadays. These include the safeguarding of constitutional guarantees; consolidation of cooperation between the State and religious organizations; support for Church activities; and the impositions placed on the Church and religious communities by the State. In the 21st century agreements between the Church and State will be not only acceptable but also desirable. They connect the secular powers with the ecclesiastical authorities, and ensure continuity in the changing world of civil law.

AkK 177 (2008), 411-446: Peter M. Huber: Konkordate und Kirchenverträge unter Europäisierungsdruck? (Article)

European Union law is not blind to the role of the Churches, but it accepts that role only within certain limits. This creates a pressure of Europeanization which also affects agreements between Church and State. Consequently there is a need to amend such agreements, not on fundamental issues, but on details such as university chairs which the State provides outside religious faculties, the content of studies, or the so-called political clause. The reason for Europeanization seems to lie less with developments within the Churches themselves than with the different role which nation States play under the conditions of the multi-level system of the European Union.

AkK 177 (2008), 447-463: Bernhard Vogel: Zum Beispiel Thüringen. Das Verhältnis von Kirchen und Staat nach der Wiedervereinigung. (Article)

V., who served as Premier of the Free State of Thuringia, Germany, from 1992 to 2003, describes from a personal point of view the development of Thuringian Church-State law after German reunification.

AkK 177 (2008), 464-478: Jean-Claude Périsset: Die aktuelle Konkordatspolitik des Heiligen Stuhles. (Article)

The usefulness of concordats with the Holy See is far from being exhausted, as had been thought years ago when it was felt they would become obsolete because of the States' recognition of freedom of conscience and of religion either privately or in community. In this area there has been as much work done since Vatican II as in the years between 1801 and 1965. The reason lies in the emergence of new States in the post-colonial era and in the fall of the Communist regimes. Therefore concordats are a good mirror for the Church in contemporary society, as was proposed in the Pastoral Constitution *Gaudium et Spes*. As set out in the Council's documents, concordats deal with the mission of the Church in her three main tasks: *martyria*, *leiturgia* and *diaconia*

AkK 177 (2008), 479-501: Axel Frhr. von Campenhausen: Die niedersächsischen Kirchenverträge als Eckpunkte der Vertragsentwicklung. (Article)

Von C. looks at developments in Church-State relations in Germany especially after the end of the Second World War. An agreement with five Lutheran Churches in Lower Saxony gave expression to a new amicability in Church-State dealings, and paved the way for agreements with new regions following the peaceful revolution of 1989.

AkK 177 (2008), 524-529: Herbert Kalb: Die Anerkennung von Kirchen und Religionsgemeinschaften in Österreich. Weitere Entwicklungen. (Article)

This article offers an up-to-date overview of recent developments in Austrian Church-State law and sets out some ongoing problems and considerations.

Ap LXXXII 1-2 (2009), 25-30: Sancta Sedis: Conventio inter Apostolicam Sedem et Rempublicam Albaniae. (Document)

Text in parallel columns in Italian and Albanian of the agreement between the Holy See and the Republic of Albania dated 3 December 2007.

Comm 35 (2003), 31-41: Conventio inter Sanctam Sedem et Lettoniae rem publicam. (Document)

This is the text (in English) of the concordat agreed between the Holy See and the Republic of Latvia on 8 November 2000, replacing that signed in 1922.

Comm 41 (2009) 24-26: Pope Benedict XVI: Allocutio Summi Pontificis ad eos qui partem habuerunt in Conventu Studii, occasione LXXX anniversarii Status Civitatis Vaticanae fundationis a Pontificia Commissione de Statu Civitatis Vaticani promoto, die 14 februarii 2009 habita. (Address)

The Pope addresses a gathering to mark the 80th anniversary of the foundation of the Vatican City State on the theme of "a small territory for a great mission". The State has proved a useful tool in the mission of the Church and of the Pope.

Comm 41 (2009), 52-58: Secretaria Status: Allocutio Secretarii Status, occasione Actus celebrationis anniversarii Status Civitatis Vaticanae, die 12 mensis ianuarii 2009 habita. (Address)

The Secretary of State marks the 80th anniversary of the Vatican City State by explaining Pius XI's motivation and intentions in accepting the Lateran Pact. He contrasts the options available to the Holy See in the First and Second World Wars and the difference made by the guaranteed independent territory of the Vatican State. He also comments on the many changes in those 80 years and the new Fundamental Law promulgated by John Paul II in 2002.

Comm 41 (2009), 59: Secretaria Status: Processus verbalis conventus inter Italiam et Sanctam Sedem habiti ad notificandos naturae tributariae actus. (Document)

This is a written note of conversations between Italy and the Holy See concerning the handling of mutual communications.

Comm 41 (2009), 60-62: Secretaria Status: Protocollum ad exsecutioni mandandos articulos 4 et 8 Conventionis doganalis inter Statum Civitatis Vaticanae et Italiam statutae. (Document)

This protocol covers new arrangements under the customs agreement between Italy and the Vatican.

Comm 41 (2009), 63-67: Secretaria Status: Relatio Commissionis paritheticae inter Statum Civitatis Vaticanae et Italiam initae ad solvendas quasdam difficultates indolis interpretativae praeceptivarum dispositionum derivationis concordatariae. (Report)

The Commission established to tackle difficulties of interpretation or application of the concordat between the Holy See and Italy reports on discussion of the issue of the status of cardinals under the concordat as "Princes of the Blood" and the question of how evidence should be taken if a cardinal is to be a witness in court proceedings.

Comm 41 (2009), 68-85: Secretaria Status: Conventio inter Sanctam Sedem et Regionem (Land) Sleswiciam-Holsatiam. (Document)

This is the text of the concordat between the Holy See and the German *Land* of Schleswig-Holstein agreed on 12 January 2009.

Comm 41 (2009), 86-91: Secretaria Status: Conventio inter Sanctam Sedem et Rem Publicam Galliae quoad titulos academicos. (Document)

This is the text of a concordat agreement between the Holy See and France concerning the mutual recognition of academic titles following the Lisbon Agreement of 11 April 1997.

Comm 41 (2009), 288-289: Secretaria Status: Conventio inter Sanctam Sedem et Rem Publicam Foederalem Austriae quoad res patrimoniales. (Document)

This short document updates certain aspects of the concordat between the Holy See and Austria concerning temporal goods of the Church.

Comm 41 (2009), 290-299: Secretaria Status: Conventio inter Sanctam Sedem et Rem Publicam Foederativam Brasiliae. (Document)

This is the text of a concordat between the Holy See and Brazil agreed on 13 November 2008.

Comm 41 (2009), 342-349: Status Civitatis Vaticanae: Conventio de re nummaria inter Unionem Europaeam et Statum Civitatis Vaticanae. (Document)

This convention regulates currency arrangements between the Vatican City State and the European Union and follows the agreement of 29 December 2000 which replaced the previous bilateral agreement between the Vatican and Italy. It allows for the Vatican to issue a defined amount of currency denominated in Euros each year.

EE 84 (2009), 593-628: Rafael Mª. Sanz de Diego: Tres preguntas acerca de la Iglesia en la II República española. (Article)

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

EE 84 (2009), 757-778: José Luis Santos Diez: Los otros matrimonios: unión de hecho, matrimonio homosexual y matrimonio de conveniencia. Planteamiento jurídico en el ordenamiento español. (Article)

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

EE 84 (2009), 819-828: Carlos Corral Salvador: Acuerdo General entre la Santa Sede y Brasil (13 de noviembre de 2008). (Commentary)

C.S. comments on the recent concordat between the Holy See and the Federal Republic of Brazil. The agreement can be set within the framework of the Brazilian Constitution, and C.S. points out its two principal characteristics: the recognition and protection of human rights, especially the right to religious freedom; and the non-confessional nature of the State. C.S. then looks briefly at the current status of the Holy See's concordat agreements around the world; and at the principles which have inspired and guided the Brazilian agreement in particular.

FCan IV/1-2 (2009), 51-60: Tomaz Silva Nunes: Questões relacionadas com o ensino da Educação Moral e Religiosa Católica. (Conference presentation)

S.N. begins by setting out some of the innovative aspects of the 2004 concordat between the Holy See and the Portuguese Republic, focusing on the area of School Religious Teaching (SRT). He presents the content of article 19 on Moral and Religious Catholic Education (MRCE) and compares it with its counterpart in the 1940 concordat. He argues that since the directives of that article had already been established in the specific legislation concerning MRCE, the coming into effect of a new concordat does not mean the revocation of such legislation. Rather, it means an increased need for continuing dialogue between the Episcopal Commission for Christian Education and the Ministry of Education, with a view to the improvement of MRCE in schools. He lists the main questions for dialogue and negotiation. In conclusion, he presents proposals for dialogue, institutional cooperation and research regarding SRT in the European context.

FCan IV/1-2 (2009), 103-116: Alejandro Torres Gutiérrez: Relaciones Iglesia-Estado en España. (Article)

The history of Spain was deeply influenced by the Catholic Church. Traditionally, Church and State had a close relationship, with the exception of the Constitution of 1931 during the Second Spanish Republic. After this unsuccessful attempt at separation, the 1953 concordat confirmed the close cooperation between Church and State. The promulgation of the Spanish Constitution in 1978 gave rise to a new model of relationship between the State and religious confessions in Spain, abandoning the traditional model. The new model, at least from a theoretical perspective, is characterized by the neutrality of the State. T.G. analyzes the current status of Church-State relations in Spain.

IC XLIX 98/09, 347-372: Joaquín Calvo-Álvarez: Desarrollo del Derecho concordatorio después del CIC de 1983. (Conference presentation)

Speaking at a conference on Legislation and Reforms in Church Law 1983-2007 held at the University of Navarre on 5-6 November 2008, C.-A. refers to the new approaches of canon law to concordats since Vatican II. He highlights certain concordats of special importance, their purpose, and the conciliar principles which inspire them. Several concordats contain direct references to the CIC/83; in some cases the State expressly recognizes the juridical personality of territorial and personal ecclesiastical circumscriptions. C.-A. analyzes the principle of equality or parity in concordats, and goes on to mention some of the more significant issues they address. These may provide

possible solutions both for older and for more recent problems in Church-State relations.

IC XLIX 98/09, 469-507: Francisca Pérez-Madrid - Josep Mª Castellà: La enseñanza de la religión católica en Andorra: la constitucionalidad del acuerdo del Principado de Andorra y la Santa Sede. (Article)

This article analyzes the question of constitutionality raised by the 2008 Accord between Andorra and the Holy See. The legitimacy of article XI.3 of the Accord, which established that Catholic education must be offered at all educational institutions in Andorra, was challenged before the Constitutional Court on the grounds of the religious freedom of the students and parents, the freedom of education of secular educational institutions, and the non-denominational nature of the State. The Court resolved the issue by affirming the constitutionality of article XI.3, but ruled that schools whose mission statement was in direct opposition to religious education were exempted from applying it.

IC XLIX 98/09, 567-601: José Manual Murgoitio: Alcance de la oferta educativa en una entidad confesional. La escuela católica. (Conference presentation)

Integral human formation and participation in the Church's mission are the principles which configure the educational aims and purposes of the Catholic school. In the civil sphere there two principles take on the form of a mission statement. However, lack of precision surrounding such mission statement can result in a threat to the educational aims and activities of the Catholic school. M. looks at some specific problems arising in the Spanish context.

IC XLIX 98/09, 617-651: José Landete: Las fuentes del Derecho Vaticano. Comentario legislativo de la nueva Ley XXI de Fuentes de Derecho, de 1 de octubre de 2008. (Document and commentary)

In a Law dated 1 October 2008 Pope Benedict XVI specified the principal sources of law for the Vatican City State. In his commentary on the document, L. refers to the origins of Vatican Law, and the reasons for the promulgation of this new Law. He analyzes the formal aspects of the text, and the general and specific questions which it addresses. He includes a comparative table of the new Law and its 1929 predecessor.

IE XXI 1/09, 13-34: Carlo Cardia: Libertà religiosa e autonomia confessionale. (Article)

C. deals with international norms and religious freedom in Europe, as well as the institutional autonomy of religious confessions. He first gives a summary of the condition of religious freedom during the last two centuries, and of the circumstances following the collapse of totalitarianism and the decline of *giurisdizionalismo* in Church-State relations. He points out that there can exist a benevolent *sui generis* protectionism not founded on the supremacy of the Protestant Churches but on the privileged joint condition of Catholics and Protestants who have discovered that alliance with the State is a helpful instrument for avoiding conflicts of a religious nature. Such protectionism involves the Church being accorded a status similar to that given to German civil corporations. C. looks into the public finances of Churches and their impact on the freedom and confessional autonomy of the faithful. He states that he is not proposing to examine Church-State relations from a separatist point of view, but rather that, particularly in financial matters, there is an entirely legitimate need for control on the part of the State.

IE XXI 1/09, 227-242: Benedetto XVI: Motu Proprio, Legge n. LXXI sulle fonti del diritto, 1 ottobre 2008 (con *nota* di J.I. Arrieta, *La nuova legge vaticana sulle fonti del diritto*). (Document and commentary)

The Italian text is given of the *motu proprio* Law no. XXI, promulgated by the Supreme Pontiff on 1 October 2008, and consisting of 12 articles dealing with the following matters: the principal sources of law for the State of the Vatican City; the publication, entry into force and conservation of laws; the reception of Italian legislation into Vatican City law; civil and penal norms; procedures for civil and penal cases; the powers of the judge in civil and penal matters; the responsibilities of parents in ensuring the education of their children; administrative norms; and details of when the present Law comes into force (1 January 2009). In his commentary, A. mentions that this Law entirely replaces Law no. XI promulgated by Pius XI on 7 June 1929, the day on which the Lateran Pacts were ratified. He explains the context of the new Law, and points out that, unlike its 1929 predecessor, this Law no longer refers to the "*Codex Iuris Canonici* and Apostolic Constitutions" as its principal source, but rather to the canonical legal order in general. A. then deals with supplementary sources of law and reception into Vatican City law of certain Italian juridical norms. Finally he stresses the particular interest of the new legislation in relation to the powers of the judges.

IE XXI 1/09, 243-274: Stato della Città del Vaticano. Corte di Cassazione. Penale. Delega di giurisdizione. Sentenza, 21 maggio 2008. S.E.R. Agostino Card. Vallini, Presidente (e relatore) (con *nota* di D. Di Giorgio, *L'equilibrio nel giudicare. Riflessione in tema di giurisdizione penale ed obbligo di motivazione in occasione di una recente sentenza della Cassazione vaticana*). (Sentence and commentary)

This is the sentence of the *Corte di Cassazione* of the State of the Vatican City dated 21 May 2008, which rejects an appeal against a decision of the Court of Appeal of the State of the Vatican City of 19 December 2007. The Court of Appeal had upheld the decision of the first instance tribunal which had found the defendant – a native of Rome with Italian citizenship and domiciled in the Vatican City – guilty of aggravated fraud. In his commentary, Di. G. deals first with the sources of law in the legal system of the Vatican City, and the law applicable to this particular case. He then analyzes the sentence given by the *Corte di Cassazione*, dwelling in particular on the obligation of the Court to provide reasons for its decisions, and the relationship between the Vatican City and the Republic of Italy in matters of penal law and the concept of a "refugee", which means more than simply being, as the defendant was in this case, on Italian soil but without any evidence of a desire to withdraw himself from Vatican jurisdiction.

IE XXI 2/09, 375-391: Vicente Prieto: Asistencia religiosa de las Fuerzas armadas en Colombia. (Article)

On 13 October 1949, Pope Pius XII established the Vicariate for the Armed Forces in the Republic of Colombia, with the Archbishop of Bogotá being the Army Vicar as of right. The creation of this new institution was in accordance with the principle contained in successive concordats between Colombia and the Holy See, whereby the Church had full freedom to erect ecclesiastical circumscriptions. By a decree of 25 March 1985, the Sacred Congregation for Bishops separated the office of Vicar from the person of the Archbishop of Bogotá, and established a Bishop of the Armed Forces who would be a member of the Colombian Conference of Bishops. In 1989, in application of the Apostolic Constitution *Spirituali Militum Curae*, the Statutes of the Military Bishopric of Colombia were approved. P. looks at the civil and canonical aspects of the negotiations that followed a Court process challenging the constitutionality of the concordat under the 1991 Colombian Constitution. He pays special attention to the legislation after 1991 and the relations between the Army Bishop and the Ministry of Defence, with special study of the praxis followed for the care of religious minorities.

RDC 57 1/07, 45-68: Bernard Reymond: Les relations Église/États en perspective protestante. (Article)

Protestantism is far from presenting a unified face. Church-State relations differ from one denomination to another. This can be illustrated through three major Protestant denominations: one Lutheran, one Reformed, and one radical. The demographic situation also has a strong influence on Church-State relations. The importance of history must also be noted in understanding the evolution of this issue.

RDC 57 1/07, 149-172: Jean-Michel Halit: Les relations religions/États d'après les doctrines bouddhistes. (Article)

The ancient and recent history of Buddhism shows that its relationship with the State oscillated between fusion and incomprehension. In general, the Buddhist tradition always strove to integrate itself into the legal, political, and cultural landscape of a country, while firmly preserving its independence and identity.

José Antonio Araña (ed.): Libertà religiosa e reciprocità. (Book)

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

Religious freedom

EE 84 (2009), 663-699: Lourdes Ruano Espina: La libertad de conciencia y el obligado sometimiento a la ley. Reacciones y respuestas ante la pretensión del Estado de formar la conciencia moral de los menores: el controvertido caso de la Educación para la Ciudadanía. (Article)

See below, canon 226.

ELJ XI 2/09, 181-193: Santiago Cañamares Arribas: Religious Symbols in Spain: A Legal Perspective. (Article)

C.A. analyzes recent Spanish jurisprudence on the use of religious symbols in a variety of contexts. He identifies immigration as one of the main reasons for a significant number of conflicts regarding the use of religious symbols. In this regard, the fundamental rights and freedoms enshrined in the Spanish Constitution are expected to play a very important role as a criterion to solve these tensions. However, a more accurate response is provided by case law,

where the variety of circumstances that surround each situation of conflict can be taken into account to reach the best solution.

FCan IV/1-2 (2009), 237-254: Evaldo Xavier Gomes: A liberdade de religião e o cristianismo. (Article)

One of the universally recognized fundamental rights is that of religious freedom. The modern conception of this right is rooted in the Christian world. The advent of Christianity meant significant changes in the existing concept of religious belief, and also a new way of viewing relations between religion and the State. The social, religious and political impact of Christianity can be seen particularly in relation to the defence of religious freedom. Over the centuries, at different times and in different contexts, there have been various manifestations of the Christian perspective on religious freedom. In the Bible, the Church Fathers, the Protestant Reformers, and finally the Second Vatican Council, this right was always defended as one of the corollaries of the Christian faith. Here G. deals with the influence of Christianity on the development of the current discipline of religious freedom, from a Biblical, Patristic, Catholic and Protestant perspective. He pays special attention to the Church in Latin America, analyzing the contribution of the Latin-American Episcopal Conference.

FCan IV/1-2 (2009), 271-274: André Folque: Portugal a caminho da liberdade religiosa. (Conference presentation)

Speaking at the International Conference on Legal Aspects of Religious Freedom, held in Ljubljana, Slovenia, in September 2008, F. refers to recent developments in religious freedom in Portugal in the light of a new Law of Religious Freedom (2001). He also identifies certain contemporary dangers to religious freedom even in democratic countries ruled by a Constitution and law: on the one hand, the temptation to fix a definitive concept of religion, and on the other, the confusion that exists between guaranteeing Church-State separation and allowing religious expression in public places.

IC XLIX 98/09, 509-548: Rafael Palomino: Libertad religiosa y libertad de expresión. (Article)

In recent years there have been serious conflicts between freedom of speech and freedom of religion. P. examines these conflicts from a legal perspective, examining the concept of defamation of religion and its legal implications, and analyzing the concept of hate speech as a legitimate limitation on freedom of

speech. He provides a summary of the jurisprudence of the European Court of Human Rights on this topic, and looks at the protection which Spanish law offers in respect of religious sentiments.

IE XXI 1/09, 13-34: Carlo Cardia: Libertà religiosa e autonomia confessionale. (Article)

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

REDC 66/166 (2009), 325-351: Mª. Rosa García Vilardell: La libertad de creencias del menor y las potestades educativas paternas: la cuestión del derecho de los padres a la formación religiosa y moral de sus hijos. (Article)

G.V. analyzes one aspect of the now universally accepted rights of the child in the context of parental rights, that of parental rights in the religious and moral upbringing and formation of the child. Freedom of belief and freedom in the formation of one's conscience pertain to the child as well as the adult, but until the child has achieved sufficient capacity of judgement a certain right and duty of protection and guidance belong to parents or guardians. This article examines the right of parents to choose, in accordance with their own beliefs and convictions, the religious and moral formation their child should receive. G.V. places her subject in the context of the Spanish Constitution, Spanish educational law and that country's Civil Code which are examined in detail. In the end the parental right is a guarantee of protection against educational indoctrination by public or State authorities but it is not a right for parents to impose on their children any kind of ideological model; rather it is based on a right of oversight and guidance that allows them to facilitate their children's moral and religious development until they are of an age to judge and evaluate for themselves. In other words the right of the child comes first and the parents' rights in this field will become more limited as the child matures and develops.

José Antonio Araña (ed.): Libertà religiosa e reciprocità. (Book)

In his 1985 address to the Diplomatic Corps accredited to the Holy See, Pope John Paul II spoke of the need for reciprocity, or equality of treatment, in the area of religious freedom, and of the surprise and frustration experienced by Christians who, while respecting the freedom of believers of other religions, find themselves forbidden to practise their own faith in countries where those believers have made their faith the religion of the State. These reflections of the Pope formed the basis of a conference organized by the Pontifical University of

the Holy Cross in Rome in April 2009, the proceedings of which are contained in this book.

The principal papers were delivered by Cardinal Jean-Louis Tauran, President of the Pontifical Council for Interreligious Dialogue, on the concept of reciprocity in recent Magisterium (pp. 3-13); Francesco D'Agostino of the Roma Tor Vergata University on the philosophical aspects of religious freedom and reciprocity (pp. 15-30); José T. Martín de Agar of the Pontifical University of the Holy Cross on the relationship between religious freedom and reciprocity (pp. 31-52); Maurice Borrmans of the Pontifical Institute for Arabic and Islamic Studies on theoretical and practical aspects of religious freedom in Muslim countries (pp. 53-77); Cardinal Péter Erdö on reciprocity between different Catholic Churches *sui iuris* and between Christian confessions (pp. 79-98); Carlo Cardia of the Roma Tre University on the "corporate" understanding of religious freedom as embodied in the Treaty of Westphalia, and the risk of falling back into a worldwide corporate approach as a result of the crisis of universal rights (pp. 99-118); Vincenzo Buonomo of the Pontifical Lateran University on reciprocity, religious freedom and the protection of human rights at the international level (pp. 119-148); and Jumana Trad of the Centre of Middle Eastern Studies of the Fundación Promoción Social de la Cultura, Madrid, on the Lebanese model of freedom and reciprocity (pp. 149-172). There are other communications from Diego Aboi Rubio on reciprocity in relation to places of worship (pp. 175-191); Santiago de Apellániz on religious freedom in the letters of St Ambrose (pp. 193-210); Paola Bernardini on the "juridical" principle of reciprocity (pp. 212-220); María Blanco on religious freedom and secularism (*laicità*) (pp. 221-239); Maria Elena Campagnola on reciprocity in relation to mixed marriages (pp. 241-255); Maricruz Díaz de Terán Velasco on tolerance, truth and freedom (pp. 257-269); María Aparecida Ferrari on respect for freedom and toleration of evil (pp. 271-281); Mattia F. Ferrero on intolerance and discrimination against Christians in Western society (pp. 283-294); Antonio Guerrieri on the relationship between mosques and non-Islamic places of worship (pp. 295-312); Antonio Ingoglia on religious freedom under the concordat between Brazil and the Holy See (pp. 313-326; see also the commentary by Carlos Corral Salvador in EE 84 (2009), pp. 819-828: cf. General Subjects (*Relations between Church and State*), above); Michele Madonna on the sacred character of the Eternal City and the case of the Roman mosque (pp. 327-338); Francisca Pérez-Madrid on the social action carried out by confessional organizations on behalf of immigrants in Spain (pp. 339-358); Stefano Rossano on the role of religions and religious freedom in the European Union (pp. 359-374); Stefano Testa Bappenheim on religious freedom in China after the 2007 Letter of Benedict XVI (pp. 375-387); and Fabio Vecchi on the link between reciprocity and Western law (pp. 389-406). The book finishes with two round-table discussions (pp. 407-427) and an index of authors. (For bibliographical details see below, Books Received.)

Social issues

Comm 36 (2004), 5-11: Pope John Paul II: Excerptum ex Nuntio pro celebratione diei mundialis pacis: *Un impegno sempre attuale: educare alla pace.* (Message)

In this excerpt from his message for the World Day for Peace 2004 Pope John Paul II focuses on the role of international law in fostering peace and the need for a profound renewal of international order.

Comm 36 (2004), 15-19: Pope John Paul II: Allocutio ad legatos nationum coram admissos 12 ianuarii 2004 habita. (Allocution)

In his annual address to the diplomatic corps Pope John Paul II speaks of peace as always under threat, and the contribution which the world faiths and religions have to make towards building peace.

FCan IV/1-2 (2009), 25-38: Card. José Saraiva Martins: *Caritas in veritate*, l'Enciclica sociale di Benedetto XVI. (Commentary)

Benedict XVI's third Encyclical, *Caritas in Veritate*, is analyzed by the emeritus Prefect of the Congregation for the Causes of Saints. His article is structured as follows: the context of the Encyclical; its fundamental option: man in the beginning, middle and end; the economy's need for ethics: the ethics of charity, the charity of truth; the Pope of ecology; having a heart regarding the created world; conclusion.

LJ 163/09, 127-141: Isabel Zurita Martín: British and Spanish Legislation on Abortion: A Brief Comparative Overview. (Article)

This comparative study considers current Spanish legislation on abortion and proposals for change. It then looks at British legislation and concludes with a brief comparison.

REDC 66/166 (2009), 211-274: Lourdes Ruano Espina: Las sentencias del Tribunal Supremo de 11 de febrero de 2009 sobre Objeción de conciencia a Educación para la ciudadanía. (Article)

Education for Citizenship, an obligatory subject introduced into the Spanish educational system in 2006, has raised a furious reaction in many sections of

Spanish society, not so much at its introduction but at some of its content and the part which the government had in its creation and configuration. For many it is based on certain ideological and anthropological presuppositions not shared by large segments of the wider society. Its obligatory and controversial nature has raised claims that the law is unconstitutional, as the Constitution excludes from the educational system the diffusion of values not contained in the Constitution itself or forming an indispensable corollary. Many (some 52,000) declarations of conscientious objection have been made to various local, public and educational authorities, the vast majority of which have been turned down. The issue was eventually brought to Spain's Supreme Court which gave judgement on 11 February 2009. R.E. examines in some detail the findings of the court (which did not support the claims of the objectors), its argumentation, and its underlying juridical suppositions. Despite its findings R.E. believes that the judgement is not definitive and there are still possibilities for further action.

REDC 66/166 (2009), 275-292: Santiago Cañamares Arribas: El control jurisdiccional de la autonomía de la Iglesia católica en la designación de los profesores de religión. (Article)

One area of tension in the Spanish educational system at present is that of defining the extent and limitations of religious authorities' autonomy in the choice of those to be teachers of the Catholic religion in public State schools. The Church's right to propose candidates – or refuse to do so – is recognized but must be done "in accordance with law", and the only allowable criterion is the candidate's Catholic religious, doctrinal and moral suitability for such a post. A particular problem arises when the Church's approval is withdrawn from a teacher already in post. C.A.'s article examines this issue in the light of Spanish educational law and various court cases involving unfair dismissal. What is important is that the Church must be able to prove – not just assert – the teacher's unsuitability based purely on religious and moral grounds, which are the only grounds it can allege.

REDC 66/166 (2009), 293-324: R. Román Sánchez: Reforma de la separación y divorcio en España: algunos aspectos sustantivos y procesales. (Article)

Sweeping reforms of Spanish marriage and family legislation in 2005 which, among other changes, allowed unilateral and automatic divorce after three months from the celebration of marriage, have had harmful effects not only on many people's understanding of marriage but also on practical issues following inevitably from divorce, such as mediation, the custody and guardianship of children, the payment of alimony, and child support. Unlike previous

legislation, no cause is required to justify the divorce, thereby removing even any semblance of a contract between the parties. The legislation affects all marriages, civil or religious. R.S considers the issue in the light of the conflicting criteria which courts have used in settling these matters and the confusion and insecurity arising. The 2005 legislation, aimed at widening to the very extreme the permissibility of divorce, did not consider or provide for its practical consequences.

HISTORICAL SUBJECTS

First millennium

Ang 86 (2009), 921-929: Szabolcs Anzelm Szuromi: Biblical Sources in the Medieval Canonical Collections (9th-12th centuries). (Article)

S. shows that the norms of canon law were presented through Sacred Scripture, either directly or through the commentaries of the Church Fathers and the Popes. The use of Scripture in canon law was also encouraged by the Irish penitential books and the *Glossa Ordinaria*.

Comm 41 (2009), 266-268: Pope Benedict XVI: Nuntius Benedicti XVI ad Suam Sanctitatem Bartholomaeum I, Patriarcham oecumenicum, occasione festivitatis Sancti Andreae missus. (Document)

This is the text of the greeting sent to the Ecumenical Patriarch on the occasion of the Feast of St Andrew, 25 November 2009. In it the Pope welcomes the work of the Joint International Commission for Theological Dialogue, which met in Cyprus in October, and which explored the role of the Bishop of Rome during the first millennium.

ELJ XI 1/09, 36-50: Kenyon Homfray: Sir Edward Coke Gets It Wrong? A Brief History of Consecration. (Article)

See below, canons 1205-1243.

FC 11 (2008), 7-35: Péter Erdö: Rigidità ed elasticità delle strutture normative nel dialogo ecumenico (Elementi istituzionali nel CIC aperti per un dialogo ecumenico). (Conference presentation)

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

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

See below, canon 333.

FC 11 (2008), 97-124: George D. Gallaro: *Oikonomia* and Marriage Dissolution in the Christian East. (Article)

G. describes "economy" (*oikonomia*) as a more flexible and less rigid application of theological principles. It is used as an act of condescending tolerance by those who have power "to bind and to loose" as they seek the salvation of souls. He looks in particular at the application of economy to marriage and matrimonial indissolubility in the Christian East during the first millennium. He reaches the following conclusions: indissolubility is considered by the Church's common tradition as a constitutive element of marriage; the Church has never admitted the possibility of the marriage being dissolved by the will of the contracting parties; the breaking of the marriage bond was always considered an evil act subject to ecclesiastical penalties and public penances; only adultery and a very few similar grave cases were initially considered as possible causes for the dissolution of a marriage; spouses who separated by mutual consent and who contracted a new marriage were never readmitted to the Eucharistic Banquet (unless they ceased the adulterous union); the Church acknowledged non-sacramental marriages (celebrated without the liturgical rite), which were considered a necessary condition to receive the sacrament; once the marriage was dissolved by a criminal act, the Church strongly recommended the separated partners to practise continence; in the case of a recognized difficulty, economy was applied by tolerating a new union for the innocent party, while the guilty party was refused Holy Communion for many years; the second marriage of divorced was never considered sacramental but was only tolerated, provided there was no other impediment; no canonical norms were ever defined to approve the application of economy, which was simply a discretionary practice from time immemorial; economy was never applied to Christian faithful over the age of 60; only under the Emperor Justinian (†565) were there laws dealing with this matter (abolition of marriage by mutual consent and the list of causes for divorce); the Sixth Ecumenical Council addressed the subject but only to reaffirm the criminal act of those responsible for divorcing and to apply the canonical penalty; in practice economy was applied everywhere in the Christian East, although every case was reserved to the discretion of the local bishop who would verify the circumstances; from the Edict of the Emperor Constantine to the present time this has been the uninterrupted practice in the Christian Churches of the East.

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See below, canon 1055.

Classical period

AA XV (2008), 265-278: Mathias Schmoekel: La tortura y la prueba en *ius commune* (enfoque en el s. XIII). (Article)

In his consideration of the use of torture in the *ius commune*, S. looks at its use in Roman law and in the Germanic legal tradition. In both, torture was permitted, although constraints were put on its use, and confessions obtained in this way were always suspect and did not have the same weight as genuinely voluntary confessions. Since the time of Constantine, when bishops were given some competences in the area of the administration of community law, the Church's law was greatly influenced by Roman law, and although torture was regarded as second-best as a procedural method for arriving at the truth it was never condemned or abolished. In the evolving nation-States in the early medieval period Roman law was mediated to them through the Church's canon law. Torture was not used on its own to elicit a forced confession but only when other factors were already pointing towards the culpability of the defendant and the admission of his guilt would clearly settle the matter. Torture only began to fall into disuse as awareness grew of the overriding importance of the physical integrity of the individual over the public interest. In fact the prohibition of torture can only be maintained when the individual is given a value and priority in his own right over and against the general interest of society. Its prohibition has no firm foundation in arguments about the cruelty of the State or the unreliability of its results, as evidenced by the ease with which even some Western developed societies can still justify treatment of suspects in ways which can merit nothing else but the name of torture.

Ang 86 (2009), 921-929: Szabolcs Anzelm Szuromi: Biblical Sources in the Medieval Canonical Collections (9th-12th centuries). (Article)

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

ELJ XI 1/09, 36-50: Kenyon Homfray: Sir Edward Coke Gets It Wrong? A Brief History of Consecration. (Article)

See below, canons 1205-1243.

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

See below, canon 333.

IE XXI 1/09, 132-154: José Miguel Viejo-Ximénez: «Costuras» y «descosidos» en la versión divulgada del Decreto de Graciano. (Article)

Speaking at the 13th International Congress of Medieval Canon Law, V.-X. explains that the "vulgate" version of the *Decretum Gratiani* – that is, the version circulating from the second half of the 12th century – is a "patchwork" of old and new, the new pieces being sewn into the original document. Generally, these new segments are not placed on top of the old ones; strictly speaking they are not "patches" because there were no rips or tears in need of repair. The work was creative, some of the new pieces being sewn in alongside others. Scissors were also used. Some pieces were cut and reshaped to make room for others. Critical analysis of the texts has tried to pinpoint the sewing and stitching of the Roman edition and the edition of Emil Friedberg that are to be found in manuscripts from the second half of the 12th century. In this article V.-X. adds numerous footnote references to the oral text of his presentation, which gives examples of four specific additions to the *Decretum*.

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See below, canon 1055.

16th-19th centuries

ADR 4 (2009-10), 281-304: Anne Bamberg: *Soglia versus Portalis:* la naissance du droit public ecclésiastique comme réfutation romaine aux articles organiques français. (Article)

When the French government drafted the *Articles organiques* in application of the concordat of 1801, the Catholic authorities who had not been consulted formulated their protests (consisting of a consistorial allocution of Pope Pius VII and a timid and moderate letter from Cardinal Caprara), in answer to which the jurist-politician Portalis delivered a lengthy discourse – the *Rapport du 5^{e} jour complémentaire an XI* – in which he pointed out that the *Articles* in question did not introduce any new law since they were based on principles that had always governed the Church in France. It took another 20 years for the Roman objections to be synthesized in the 100 *Thèses de droit public ecclésiastique* attributed to the Cardinal canonist Giovanni Soglia. These theses provided an outline which allowed the Church, on the basis of the notion of the *societas perfecta*, to defend her liberty, and were to form the foundation for the teaching of the *ius publicum ecclesiasticum* which was then coming into being.

Communio XXXVI 3/09, 447-474: T. Storck: Is Usury Still a Sin? (Article)

S. explains the historical background to the most recent relatively complete Papal treatment of the subject of usury, namely Benedict XIV's Encyclical of 1745 *Vix pervenit.* Usury was widely condemned by classical Greek and Roman writers, as well as in the Scriptures, Fathers and Church Councils. Fundamental was the Roman Law concept of *mutuum.* Items that could be weighed, measured or numbered, and restored in kind, e.g. grain, were to be paid back without interest because the risk lay entirely with the borrower. These were distinguished from objects that would be borrowed and returned, e.g. a house, where a charge could be made for depreciation. These principles are reflected in Leo the Great's Decretal *Ut nobis gratulationem* and a statement attributed to St John Chrysostom and incorporated by Gratian, *Ejiciens*. The argumentation was accepted by Aquinas, and various Councils imposed severe penalties for usury. Various ways were found around this but the principle remained intact and was later to be included in the CIC/17 (canon 1543). However, from 1835 the Holy See gave grudging recognition to the possibility of extrinsic entitlements. People argue that the Church's teaching has changed, but careful study shows that the principle still stands. All that can be said is that the Church has come to tolerate the charging of interest at a moderate rate in order to prevent graver ills. Charging excessive rates of interest is still a sin against justice even if it is not formally forbidden in canon or civil law, and Christians should work towards the suppression of usury as a social goal.

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

See below, canon 333.

FCan IV/1-2 (2009), 301-344: Fabio Vecchi: Un carteggio di Monsignor Fabrizio Caracciolo sulle controversie giurisdizionali tra il tribunale della collettoria ed il conservatore degli ordini militari di Portogallo. (Article)

In the early 17th century the fragile relationship between regalism and the loyalty of the Portuguese sovereign to the Papacy reached new heights of tension. Jurisdictional conflicts arose between the Church and the sovereign State over the question of vacant patrimony. Through its "collectors" – functionaries of the Holy See invested with jurisdictional powers and bureaucratic control functions – the Church of Rome demanded respect for the medieval privileges of forum which it had been granted by the Crown. But times had changed. Interdicts now proved ineffectual, and diplomacy gradually

took over the ever more complex task of protecting the Church's ancient immunities and powers.

REDC 65/165 (2008), 419-453: José Antonio Calvo Gómez: La desarticulación pontificia de un cabildo de clérigos regulares de San Agustín en 1514. (Article)

This article deals with the Papal dismantling and dispersal of a community of Augustinian Canons Regular in Santa María de Burgohondo in the diocese of Ávila in 1514. The Bull of Leo X was responding to an earlier request by the abbot Juan de Ávila y Arias for a revision of the statutes of the collegiate community, with a view to the increase of divine worship for the temporal and spiritual good of the church. The Papal Bull gives permission for the revision of the statutes (the original statutes are no longer extant) in order to adapt to changed circumstances. However the result of this revision seems to have been a breakdown in the traditional life of the community, whose members were now allowed to live in their own houses rather than within the precincts of the collegiate foundation and no longer had meals together in the common refectory. C.G. provides the Latin text of Leo X's Bull and a series of contemporary letters and documents relating to the revision of the statutes.

REDC 66/166 (2009), 11-23: Francisco Cantelar Rodríguez: El oficio litúrgico de San José y de San Roque: Himnos y lecturas en un impreso navarro de 1525. (Article)

St Joseph seldom appears in the lists of saints included in medieval sanctorals, and the name of St Roch is totally absent. Therefore the little leaflet produced in Pamplona in 1525 for the celebration of the Liturgy of the Hours for these two saints is something of a liturgical curiosity. C.R. provides the full Latin text of the only copy still in existence.

REDC 66/166 (2009), 25-111: Justo García Sánchez: Aspectos histórico-jurídicos de algunas relaciones académicas hispano-portuguesas durante el s. XVI. (Article)

This lengthy article considers the relationship between Spanish and Portuguese universities and other seats of learning in the 16th century. G.S. presents the fruits of his research in various archives in Spain and Italy. He concentrates his study on figures who were important and influential in the course of that century in academic, political and social life, such as Héctor Rodríguez, Juan de Mogrovejo, and Juan Gutiérrez in the academic and canonical field, as well as

Cardinal Francisco Pacheco, a close confidant of and ambassador for Philip II, in the political arena. He also shows how student fraternities were created by men who kept in touch with one other by correspondence after their student days were over and they had dispersed throughout Europe.

SC 43 (2009), 47-80: William L. Daniel: The Historical Development of the Power of Governance Enjoyed by the Supreme Tribunal of the Apostolic Signatura. (Article)

See below, canon 1445.

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See below, canon 1055.

1917 Code

Communio XXXVI 3/09, 447-474: T. Storck: Is Usury Still a Sin? (Article)

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

IC XLIX 98/09, 373-412: José Bernal: Aspectos del Derecho penal canónico. Antes y después del CIC de 1983. (Article)

See below, canons 1311-1399.

IE XXI 2/09, 297-310: Cristian Begus: Limitazione temporale delle fondazioni non autonome. (Article)

See below, canon 1303.

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See below, canon 1055.

20th century

AA XV (2008), 231-248: Carlos Baccioli: La aplicación de las normas canónicas en la pastoral de los "fieles no practicantes". (Article)

Only a small percentage of Catholics participate on any regular basis in the worship and sacramental life of the Church. With this as his starting point B. considers the general crisis of religious and moral values in contemporary society, as more and more people live by purely subjective and relativist moral standards in a society increasingly influenced by an organized secularist and atheistic campaign. The result is the rejection of the Church by many as a source of authoritative teaching, especially in the field of sexual and family morality, leading to the total abandonment of the Church and all institutional religion, or the movement to groups and sects with less demanding standards more in keeping with the prevailing individualistic and consumer-orientated outlook of modern society. As the aim of all pastoral activity is the salvation of souls, B. argues for the application of canonical norms in the context of genuine charity towards non-practising members of the Church by creating loving and welcoming communities which reflect its true nature as the family of God, wishing to draw the lapsed back to itself rather than drive them further away by setting rigid demands and conditions. The Church has a treasure of great value and beauty to set before all people but one which can only be recognized and accepted when it is offered in a Gospel spirit of generosity and openness.

EE 84 (2009), 593-628: Rafael Mª. Sanz de Diego: Tres preguntas acerca de la Iglesia en la II República española. (Article)

Recent studies and documents allow the author to address three questions concerning the relationship between the Church and the 2nd Spanish Republic: 1. How much truth was there in the famous saying of Azaña that "Spain is no longer Catholic"? 2. During this period, did the Spanish Church seek concord or confrontation? 3. In view of what happened in 1936 after the Republican years, was peace possible?

FC 11 (2008), 125-134: Emmanuel Tawil: Eglise catholique, Saint-Siège et Etat de la Cité du Vatican: une, deux ou trois personnes juridiques de droit international? (Article)

See below, canon 113.

SC 43 (2009), 47-80: William L. Daniel: The Historical Development of the Power of Governance Enjoyed by the Supreme Tribunal of the Apostolic Signatura. (Article)

See below, canon 1445.

Second Vatican Council and revision of the CIC

Comm 35 (2003), 60-82: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio I). (Report)

Report of the discussion (25-29 October 1971) of the reform of canon law on sacred places and times (CIC/17 canons 1161-1202). Consideration of general norms was postponed, and this session studied churches, oratories and chapels; it concludes with draft canons.

Comm 35 (2003), 83-109: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio II). (Report)

Report of the session (20-24 March 1972) at which the Code Commission considered the canons on ecclesiastical burials, cemeteries and funerals (CIC/17 canons 1203-1242). Draft canons conclude.

Comm 35 (2003), 110-139: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio III). (Report)

Report of the session of the Code Commission (16-20 October 1972) which considered the preliminary canons on sacred places and those on sacred times (CIC/17 canons 1154-1160 and 1243-1254) plus a new section on sanctuaries. Draft canons follow.

Comm 35 (2003), 224-250: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio IV). (Report)

This session of the Code Commission (12-16 February 1973) considered the revision of the law on sanctuaries and divine worship in general (CIC/17 canons

1255-1321). The session looked first in some detail at the proposed canons on sanctuaries, then the general norms on divine worship, remitting considerable sections to liturgical law, and finally vows. The draft canons conclude.

Comm 35 (2003), 251-269: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Schema Canonum "De Locis et de Temporibus Sacris deque Cultu Divino". (Document)

The text of the draft canons that formed the *schema* on Sacred Places and Times and Divine Worship.

Comm 35 (2003), 270-296: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" – Series Altera (Sessio I). (Report)

The Code Commission now takes a second look at the draft Code on sacred places and times in the light of the consultation process (1-6 October 1979). It looked first at general observations and the systematic ordering of the sections, then in detail at observations on the canons concerning sacred places, churches, oratories and chapels, and sanctuaries.

Comm 36 (2004), 183-235: Synthesis generalis laboris Pontificiae Commissionis Codici Iuris Canonici Recognoscendo. (Report)

This report sets out in a systematic way the work of the Code Commission with reference to the texts so far published in *Communicationes.* It starts with an overview of the whole process from 1963 to 1983 and of the membership of both the Commission and the study groups. It then takes the Code, section by section, setting out the dates and giving a brief description of the ground covered, in each session of the study groups. It also indicates those sessions for which the text has yet to be published.

Comm 36 (2004), 236-249: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio I). (Report)

Report of the discussion of the reform of canon law on temporal goods (23-27 January 1967). This session looked at general norms and began to look at acquisition (CIC/17 canons 1495-1503); it closes with draft canons.

Comm 36 (2004), 250-276: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio II). (Report)

This session (5-10 June 1967) revisited the work done at the previous session and then moved on to pious wills and foundations (CIC/17 canons 1513-1518 and 1544-1551), closing with draft canons.

Comm 36 (2004), 277-305: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio III). (Report)

In this session (20-24 November 1967) the Commission revisited a number of questions concerning pious foundations, and then moved on to the administration of ecclesiastical goods, in particular the role of the Holy See and the administration of supradiocesan goods. Draft canons on pious foundations follow.

Comm 36 (2004), 306-333: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio IV). (Report)

After further study of the principal canons on the administration of temporal goods, this session (19-24 February 1968) moves on to look at the remainder of the canons in this section (CIC/17 canons 1525-1534), and closes with draft canons for the whole section.

Comm 37 (2005), 116-138: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio V). (Report)

In this session (13-17 May 1968) the Code Commission revisited two canons on the duties of administrators (CIC/17 canons 1523 §2 and 1527 §2), and then went on to consider those on contracts (CIC/17 canons 1529-1534). The text of the proposed canons follows.

Comm 37 (2005), 186-202: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VI). (Report)

The Code Commission in its session 20-25 January 1969 resumes its study of contracts (CIC/17 canons 1535-1543), and identifies topics for further consideration, in particular the benefice system and the establishment of various funds. Draft canons conclude this session.

Comm 37 (2005), 203-222: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VII). (Report)

In its session 26-31 May 1969 the Code Commission picked up the questions previously identified for further consideration: the distinction between public and private juridical persons; at what point goods should be regarded as ecclesiastical (CIC/17 canon 1498); which funds needed to be governed by the patrimonial law of the Church. Time prevented the discussion of the remaining topics but it was agreed that it was not appropriate to make a list of the entities that needed a stable patrimony in order to be constituted properly; and that benefices, where they survived, should be treated as an exception rather than included in the revised Code.

Comm 37 (2005), 223-255: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VIII). (Report)

At the session held 15-19 December 1969 the Commission considered how the revised Code should regulate the goods of private juridical persons and the general layout of this Book of the Code (CIC/17 canons 1496-1544). The draft canons for the whole section follow.

Comm 37 (2005), 256-283: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio IX). (Report)

At this session (1970) the Commission concentrated on the best way to set out the revised canons on temporal goods. A revised *schema* concludes.

Comm 37 (2005), 284-303: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Schema Canonum "De Iure Patrimoniali Ecclesiae". (Document)

This is the final draft text of the revised canons on temporal goods.

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

See below, canon 333.

IC XLIX 98/09, 373-412: José Bernal: Aspectos del Derecho penal canónico. Antes y después del CIC de 1983. (Article)

See below, canons 1311-1399.

REDC 66-166 (2009), 143-209: Xoan Xosé Fernández Fernández: La laboriosa regulación canónica sobre el magisterio: itinerario de su codificación y reforma posterior. (Article)

See below, canons 749-754.

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See below, canon 1055.

CODE OF CANONS OF THE EASTERN CHURCHES

General

FC 11 (2008), 7-35: Péter Erdö: Rigidità ed elasticità delle strutture normative nel dialogo ecumenico (Elementi istituzionali nel CIC aperti per un dialogo ecumenico). (Conference presentation)

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

FC 11 (2008), 265-322: Eastern Canon Law Bibliography.

This is a list, compiled by Péter Szabó, of a total of 818 works on Eastern canon law, arranged under the following headings: general works; philosophy and theology of canon law; "tradition", "holy canons", "divine law"; history of canon law; methodology, teaching and science history of canon law; Eastern canonists, bio-bibliography; sources and collections of canon law; "codification" (theory and history); particular law, subsidiarity; unity and "pluriformity"; Church union, uniatism, Latinization; ecclesiology/Vatican II; Church and State, ecclesiastical law; followed by the individual titles of the CCEO itself. There are final sections on six "particular themes": Patriarch of the West; synodality; salvation and religions; Eucharist; diaspora; bishop/episcopé.

FCan IV/1-2 (2009), 117-154: Hugo Cavalcante: Respirar com dois pulmões: o CCEO. (Article)

C. aims to achieve the desire expressed by the Second Vatican Council (Decree *Orientalium Ecclesiarum*) and the Roman Pontiffs (Leo XIII: the Encyclical *Orientalium Dignitas*, 1894; and John Paul II: the Apostolic Letter *Orientale*

Lumen, 1995) which is to make known, loved and respected the liturgical, theological, spiritual and disciplinary heritage of the Eastern Churches, giving us the opportunity to breathe with the "two lungs" of Eastern and Western Christianity. Those in the Latin-rite Church are invited to become familiar with Eastern rites and the CCEO so that they can become promoters and defenders of the rights of the Eastern Catholics and help them live and pray according to their authentic traditions. To neglect to do so would be to create obstacles to the rights of Eastern believers; and lack of knowledge could lead inadvertently to the loss, in the Catholic Church, of the riches of Eastern Christianity.

Historical

FC 11 (2008), 97-124: George D. Gallaro: *Oikonomia* and Marriage Dissolution in the Christian East. (Article)

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

SC 43 (2009), 183-217: Douglas M. LeClair: The Diaconate in the Ukrainian Catholic Church in Canada. (Article)

This study is a historical-canonical analysis of the role of Ukrainian Catholic deacons in both the common law of the Eastern Catholic Churches and the particular laws of the Ukrainian Catholic Church, especially in Canada. Unlike the law of the Latin Church before Vatican II, the laws of the Eastern Catholic Churches did not prohibit the ordination of permanent deacons. Nevertheless, there were no permanent deacons in the Ukrainian Catholic Church in Canada until after the Council, in large part because the faithful had been entrusted to the pastoral care of Latin bishops or to priests educated in Latin seminaries who had no experience of the permanent diaconate. In 1967 the bishops of the Ukrainian Catholic Church in Canada decreed the introduction of the permanent diaconate, and in 1968 established norms for their formation. These norms are still in effect, although in need of updating.

CCEO 7-26

FCan IV/1-2 (2009), 213-229: Dominique le Tourneau: Pour une véritable protection des devoirs et des droits fondamenteaux dans l'Église. (Article)

See below, CIC canons 204-231.

CCEO 44

QDE 22 (2009), 258-274: Gianluca Marchetti: Il diritto peculiare per l'elezione del Romano Pontifice. (Article)

See below, CIC canon 332.

CCEO 192-193

Comm 36 (2004), 33-38: Pontificium Consilium de Legum Textibus: Elementi per configurare l'ambito di responsibilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero. (Note)

See below, CIC canons 265-289.

CCEO 357-398

Comm 36 (2004), 33-38: Pontificium Consilium de Legum Textibus: Elementi per configurare l'ambito di responsibilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero. (Note)

See below, CIC canons 265-289.

CCEO 399-409

FCan IV/1-2 (2009), 213-229: Dominique le Tourneau: Pour une véritable protection des devoirs et des droits fondamenteaux dans l'Église. (Article)

See below, CIC canons 204-231.

CCEO 489-491

ETJ 13 (2009), 146-166: Jose Ammaikunnel: Exclaustration: A Comparative Study. (Article)

See below, CIC canons 686-687.

CCEO 548

ETJ 13 (2009), 146-166: Jose Ammaikunnel: Exclaustration: A Comparative Study. (Article)

See below, CIC canons 686-687.

CCEO 671

Comm 35 (2003), 17-22: Pope John Paul II: Ex Litteris Apostolicis *Ecclesia de Eucharistia*. (Apostolic Letter)

See below, CIC canons 915-916.

CCEO 675

Ap LXXXII 1-2 (2009), 31: Congregatio pro Doctrina Fidei: Responsa ad proposita dubia de validitate Baptismatis. (Reply)

See below, CIC canon 850.

CCEO 677

FC 11 (2008), 241-255: Péter Szabó: La validità del battesimo amministrato da un pagano nelle discipline delle Chiese orientali. (Conference presentation)

Although Catholic doctrine recognizes the validity of baptism administered by a non-Christian, this is not so in the Orthodox discipline. The law of the Eastern Catholic Churches – as though searching for a sort of *via media* – seems to follow a path diverging in some respects from the Latin discipline. A 1996 liturgical Instruction issued by the Congregation for the Oriental Churches hints at the desirability of bringing the present law closer to the ancient Eastern sources. S. highlights two fundamental questions: whether the Eastern discipline on the extraordinary minister of baptism can follow a vision which differs, at least in part, from that of the Church of Rome; and if so, what limits there would be to such divergence, and for what reasons. He proceeds to give a summary of the ancient sources, before setting out the *ius vigens* and its interpretation, and the power of the Church over the "extraordinary minister".

CCEO 702

Comm 35 (2003), 17-22: Pope John Paul II: Ex Litteris Apostolicis *Ecclesia de Eucharistia*. (Apostolic Letter)

See below, CIC canons 915-916.

CCEO 711

Comm 35 (2003), 17-22: Pope John Paul II: Ex Litteris Apostolicis *Ecclesia de Eucharistia*. (Apostolic Letter)

See below, CIC canons 915-916.

CCEO 776

FC 11 (2008), 135-157: George D. Gallaro - Dimitri Salachas: The *ritus sacer* of the Sacrament of Marriage in the Byzantine Churches. (Article)

See below, CCEO canon 828.

CCEO 776-866

REDC 65/165 (2008), 537-562: María Cruz Musoles Cubedo: Criterios pastorales y jurídicos aplicables a los católicos orientales en España, especialmente en materia matrimonial. (Article)

M.C. comments on the greatly increased rate of immigration into Western European countries with its considerable social, cultural and religious consequences. Her particular area of interest concerns those members of the Eastern Catholic Churches now resident in predominantly Latin-rite countries such as Spain. She gives an overview of the historical events and developments which have led to the present situation with the existence of 22 Eastern Catholic Churches governed by the CCEO and their own particular laws and traditions. In her final section she comments on the situation of Latin-rite tribunals dealing with the marriage nullity cases of Eastern Catholics. As far as substantive or constitutive marriage law is concerned the CCEO will be applied but the process to be followed will be that of the procedural law of the Latin Church.

CCEO 828

FC 11 (2008), 135-157: George D. Gallaro - Dimitri Salachas: The *ritus sacer* of the Sacrament of Marriage in the Byzantine Churches. (Article)

The Christian East emphasizes the sacramental mystery in marriage, while the Latin Church seems to stress the contractual nature. In the East, the minister of the sacrament of matrimony is the priest (bishop or presbyter) together with the spouses; in the West, the spouses themselves are the ministers, while the priest fulfils the role of a qualified witness. The priestly/sacerdotal blessing constitutes the essential act in the formation of the matrimonial bond in the East, and the role of the priest is strictly sacramental. The priest does not simply fulfil a ritual gesture when he blesses the spouses, but by invoking the Holy Spirit, he is truly the minister of the mystery of God that is brought about in matrimony. The presence of the Church's ordained minister visibly expresses the fact that marriage is an ecclesial reality and introduces one into an ecclesial order. If canonically the role of the Church's minister is to be a qualified witness, theologically it is much more. While from one perspective it is the couple that are seen as being the ministers of the sacrament of marriage, from another the priest imparting the nuptial blessing (*ritus sacer*) may be regarded as the minister. With these conditions, it is understandable why a deacon or a Christian layperson in the East cannot take the place of the priest, as is possible under present Latin discipline. Valid matrimony between baptized persons, celebrated by the priest with a sacred rite, is a true sacramental mystery and, as such, is considered fully complete. The rites and symbols of matrimony in the Byzantine Church, as well as the other Eastern traditions, illustrate in a clear theological way how great is this *mystêrion* of matrimony, inasmuch as the nuptial union of a Christian man and a Christian woman is compared to the *mystêrion* of the nuptial union between Christ and the Church. The Second Vatican Council has stated that Eastern theology and Western theology are complementary and that it is hardly surprising if sometimes one tradition has come nearer to a fuller appreciation of some aspects of a mystery of revelation than the other, or has expressed them better.

CCEO 854

QDE 22 (2009), 7-19: Elena Lucia Bolchi: Attenzioni giuridico-pastorali relative all'avvio della procedura per lo scioglimento del matrimonio *in favorem fidei* da parte del Romano Pontifice. (Article)

See below, CIC canon 1142.

CCEO 854

QDE 22 (2009), 20-37: Matteo Visioli: La delega della potestà nello scioglimento del matrimonio non sacramentale. Ipotesi dottrinali. (Article)

See below, CIC canon 1142.

CCEO 868-876

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

See below, CIC canon 1176.

CCEO 1057

Ap LXXXII 1-2 (2009), 287-330: Waldery Hilgeman: Le Cause di beatificazione e canonizzazione e l'Istruzione *Sanctorum mater.* (Article)

See below, CIC canon 1403.

CCEO 1384

QDE 22 (2009), 38-54: Bassiano Uggé: Scioglimento del matrimonio non sacramentale: questione terminologica. (Article)

See below, CIC canon 1142.

CCEO 1441

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

See below, CIC canon 1176.

CODE OF CANON LAW
BOOK I: GENERAL NORMS

4

Comm 37 (2005), 8-10: Pope Benedict XVI: Motu Proprio Summi Pontificis Benedicti XVI quoad Basilicam Sancti Pauli extra Moenia et eius Complexum extraterritorialem. (Document)

See below, canon 370.

4

Comm 37 (2005), 149-150: Pope Benedict XVI: Litterae Apostolicae *Motu Proprio* datae de Basilicis Sancti Francisci et Sanctae Mariae Angelorum quibus novae normae decernuntur. (Document)

See below, canon 370.

19

Per 98 (2009), 275-319 and 463-483: Velasio De Paolis: La giurisprudenza del Tribunale della Rota Romana e i tribunali locali. (Article)

The jurisprudence of the Apostolic Tribunal of the Roman Rota has a particular role to play in relation to the activity of local tribunals. In the first part of his study, De P. considers the role of the Roman Rota in developing a jurisprudence that will provide assistance and guidance to local tribunals. The reality is that there exists in the Church a crisis in the matter of the unity of jurisprudence: local tribunals have evolved a varied jurisprudence, especially in relation to some very complex grounds of nullity, such as those based on canon 1095. These variations have arisen as a result of several different factors, yet the Roman Rota is expected to provide some kind of harmony and principles of unity. De P. highlights some of the problems inherent in certain understandings of that role before considering the nature of jurisprudence itself and the proper role of the Rota as outlined in *Pastor Bonus*, no. 126. In the second part, De P. concentrates on the attention given to the role of Rotal jurisprudence in the annual Papal allocution to the Rota. He focuses particularly on the allocution of Benedict XVI of 27 January 2008 where the role of Rotal jurisprudence in relation to local tribunals is addressed directly.

113

FC 11 (2008), 125-134: Emmanuel Tawil: Eglise catholique, Saint-Siège et Etat de la Cité du Vatican: une, deux ou trois personnes juridiques de droit international? (Article)

The juridical personality of the Holy See is generally admitted by contemporary international lawyers. This question is distinct from that of the recognition of the international personality of the Vatican City State, and of the Catholic Church. T. studies each of these in turn and concludes that there is no doubt as to the international personality of the Holy See and Vatican City State. The recognition of the international personality of the Church, however, is not clear, although it cannot be excluded in an absolute and definitive manner. Even if such personality is not recognized in relation to the Catholic Church, local Churches are bound by the rights and duties specified in the concordats; and so long as they maintain diplomatic relations with the Holy See, States must necessarily take into account the Church's hierarchical constitution, in a relationship of partnership not only with the See of Peter as the universal government of the Church, but also with the entire Church and each of the local Churches, in particular those situated within their territory.

114

Comm 41 (2009), 7-11: Pope Benedict XVI: Litterae Apostolicae Motu Proprio datae circa Operam Panis Pauperum. (Document)

In 1993 the Apostolic Constitution *Memorias Sanctorum* had given formal recognition to the charitable work carried out at the basilica of St Antony of Padua. This document now revises article XIV with regard to a specific area of activity, "The Work of Bread for the Poor". This is regulated by eleven articles that follow.

115

IE XXI 2/09, 333-345: Jesús Miñambres: Fondazioni pie e figure affini. (Round table intervention)

See below, canon 1303.

129

J 69 (2009), 84-115: Henk Witte: The Local Bishop and Lay Pastoral Workers: A Newly Created Function in the Church and its Impact on Episcopal Collegiality. (Article)

W. deals with two questions: (i) the contribution of local bishops in clarifying the theological status of lay pastoral workers in the post-Vatican II period: how they defined their function, position, and tasks in relation to the position and tasks of ordained ministers in the pastoral mission of the Church; (ii) how the introduction of lay pastoral workers affected collegial cooperation among the bishops, and influenced internal relations within the episcopal conference and its relationship with the Holy See. W. addresses these two questions by tracing their development in the Dutch episcopal conference following Vatican II. He begins with a brief historical overview of the Catholic Church and its episcopate in the Netherlands. He traces the emergence of lay pastoral workers and analyzes the principal statements of the Dutch bishops, noting two significant events: the 1980 Pastoral Synod and the 1999 Policy Note *Collaborating in Pastoral work by the Dutch Bishops' Conference*. He examines both in detail. He draws three conclusions from his investigation into the contributions of the Dutch bishops to the clarification of the status and role of lay pastoral workers. This process of clarification challenged the local bishops and the episcopal conference to exercise leadership and eventually attain a growing consensus, which reduced the misunderstanding between the Dutch bishops and the Holy See, but which also led to alienation between several bishops and their flocks.

135

FC 11 (2008), 37-76: Julio García Martín - Nicola Gallucci: La potestà dei giudici e dei tribunali e il suo esercizio secondo il can. 135, §3. (Article)

Canon 135 §1 determines three functions of the power of government or jurisdiction in the Church: legislative, executive and judicial. In respect of the judicial power, canon 135 §3 establishes that it is possessed by judges and judicial colleges; it is to be exercised in the manner prescribed by law; and it cannot be delegated except for the performance of acts preparatory to some decree or judgement. This paragraph of the canon is new with the CIC/83, and specifies the holders of judicial power, the manner of its exercise subject to the law, and its non-delegability. The distinction between judicial power and acts preparatory to a decree or judgement seems to indicate that the judges and tribunals enjoy two functions of the power of government: one judicial and the other executive. In developing this consideration the authors look at judicial power in the CIC/17; the revision of the Code and the drafting of canon 135 §3; the powers of judges and tribunals in the CIC/83; the manner of exercising judicial power; and preparatory acts in the penal process.

BOOK II, PART I: CHRIST'S FAITHFUL

204-231

FCan IV/1-2 (2009), 213-229: Dominique le Tourneau: Pour une véritable protection des devoirs et des droits fondamenteaux dans l'Église. (Article)

Le T. looks briefly at the fundamental duties and rights of the faithful *in Ecclesia* before examining the question of which of these rights require protection. He considers that the current norms, whether forming part of the Code or external to it, are inadequate for ensuring the satisfactory protection of fundamental rights, and the remedies that are called for are those which were rejected at the time of the CIC/83, namely the promulgation of a fundamental law and the creation of lower administrative tribunals.

208-223

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See below, canons 1311-1363.

212

Comm 36 (2004), 12-14: Pope John Paul II: Allocutio Summi Pontificis ad eos qui die 10 ianuarii 2004 in Conventu Plenario Congregationis pro Clericis partem habuerunt. (Allocution)

Pope John Paul II speaks to the plenary meeting of the Congregation for the Clergy on two themes, the need for a balance between the roles of laity and diocesan Ordinary and parish priest, and the pastoral work of shrines.

220

Comm 41 (2009), 300: Secretaria Status: Declaratio spectans at tuendam imaginem Papae. (Document)

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220

FCan IV/1-2 (2009), 231-236: Juan José García Faílde: Cuando no es posible, por ser prueba ilícita, una pericial psiquiátrica o psicológica. (Article)

See below, canon 1527.

224-231

Ap LXXXII 1-2 (2009), 153-177: Agostino Montan: Responsabilità ecclesiale, corresponsabilità e rappresentanza. (Conference presentation)

A presentation given at the opening of the Fourth Interdisciplinary Canonical Day held at the Lateran University, 3-4 March 2009. M. develops his study following three lines of approach: first he conducts a rapid survey of the origin and use of the terms set out in the title of his presentation; next he establishes the doctrine upon which the three terms are based; finally he notes some of the lights and shades he has noted in some institutes involved with the development of these three factors, and discusses future prospects. He gives special attention to particular councils, episcopal conferences and the role of the laity. He concludes with a reflection on the ecclesial dimension of the Accord of 1984 between the Holy See and the State of Italy.

226

EE 84 (2009), 663-699: Lourdes Ruano Espina: La libertad de conciencia y el obligado sometimiento a la ley. Reacciones y respuestas ante la pretensión del Estado de formar la conciencia moral de los menores: el controvertido caso de la Educación para la Ciudadanía. (Article)

Since education constitutes a right and duty which the State should offer free of charge, it is the State's responsibility to guarantee that everyone receives it, at least at the basic level. However, the new subject of Education for Citizenship has been drawn up by the Spanish government in such a way as to serve as a tool for a far-reaching ideological and cultural project imposing common ethical values derived from positive law which go beyond constitutional values and human rights. A conflict arises between obligatory compliance with the law and the necessary defence and protection of the fundamental rights of ideological and religious freedom, as well as freedom of conscience, and the right of parents to decide how their children should be educated morally in accordance with their own convictions, as limits to the educational action of the public authorities.

226

REDC 66/166 (2009), 211-274: Lourdes Ruano Espina: Las sentencias del Tribunal Supremo de 11 de febrero de 2009 sobre Objeción de conciencia a Educación para la ciudadanía. (Article)

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

226

REDC 66/166 (2009), 325-351: Mª. Rosa García Vilardell: La libertad de creencias del menor y las potestades educativas paternas: la cuestión del derecho de los padres a la formación religiosa y moral de sus hijos. (Article)

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

227

IE XXI 1/09, 189-207: Benedetto XVI: Discorso all'Assemblea Generale delle Nazioni Unite (New York), nel 60° anniversario della Dichiarazione Universale dei Diritti del'Uomo, 18 aprile 2008 (con *nota* di J.-P. Schouppe, *Il futuro del sistema dei diritti umani*). (Address and commentary)

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

228

AA XV (2008), 149-202; also **PCF XI (2009), 113-167; Per 98 (2009), 365-398, 517-564; RMDC 14 (2008), 357-417: Roman A. Melnyk: Pontifical Legation to the United Nations.** (Article)

See below, canons 362-367.

229

IE XXI 1/09, 209-226: Congregazione per l'Educazione Cattolica: Istruzione sugli Istituti Superiori di Scienze Religiose, 28 giugno 2008 (con *nota* di N. Galantino: *Una premessa alla lettura dell'Istruzione sugli Istituti Superiori di Scienze Religiose*). (Document and commentary)

See below, canon 821.

229

QDE 22 (2009), 340-359: Eugenio Zanetti: Formazione cristiana e formazione teologica per i fedeli laici. (Article)

See below, canon 821.

229

QDE 22 (2009), 360-384: Matteo Visioli: L'Istruzione sugli Istituti Superiori di Scienze Religiose e lo studio teologico dei laici. (Article)

See below, canon 821.

229

QDE 22 (2009), 385-398: Giuliano Brugnotto: Le scuole diocesane di formazione teologica ovvero gli istituti non-accademici per la formazione dei laici. (Article)

B. traces the development in the 20th century of the initiatives for the theological education of the laity with particular emphasis on the Italian scene. He notes the insufficiency of these courses for those training for the priesthood but insists there is a strong case for the awarding of diplomas in theological culture by the various well-established institutes which are dedicated to these enterprises.

231

Comm 41 (2009), 275-287: Secretaria Status: Rescriptum ex Audientia Ss.mi quo approbatur Textus unicus ad familiarum necessitatibus et sustentationi providendum. (Document)

This rescript replaces previous legislation concerning social welfare arrangements for the dependents of those employed in the service of the Holy See or the Governorate of the Vatican City State.

234-235

REDC 65/165 (2008), 685-701: Congregación para la Educación Católica: Orientaciones para el uso de las competencias de la psicología en la admisión y en la formación de candidatos al sacerdocio. (Document and commentary)

This is the Spanish text of the document from the Congregation for Catholic Education on the use of psychology in the admission and formation of candidates for the priesthood issued on 29 June 2008. There follows a brief commentary by José San José Prisco who remarks on the long process which eventually gave birth to this document (it began in 1995), the sensitivity of the issues involved, including the right balance between the privacy of the individual and the good of the wider community, and the relationship between psychology, theology and spirituality. The necessary foundation for a fruitful priestly ministry is surely the development of a well-balanced and mature human person, yet this cannot be separated from the person's spiritual and religious formation. The input of psychology is undoubtedly of value but it is not the only factor to consider concerning the suitability of candidates for the priesthood.

239-240

IE XXI 1/09, 111-132: Giacomo Incitti: La direzione spirituale nella formazione dei chierici. Problematiche canonistiche. (Article)

See below, canons 244-246.

241

Comm 37 (2005), 180-185: Congregatio de Institutione Catholica: Instructio circa criteria discernendi quoad vocationem personas quae tendentias homosexuales praesentant in ordinem ad eas admittendas ad seminarium et ad ordines sacros. (Document)

See below, canon 1029.

244-246

IE XXI 1/09, 111-132: Giacomo Incitti: La direzione spirituale nella formazione dei chierici. Problematiche canonistiche. (Article)

During the preparation of the Code a request was made that the formation of priests be looked at as a topic in its own right, but the norms in this regard were

not properly developed. Post-conciliar legislation has provided more specific guidance regarding the different areas of formation (human, spiritual, intellectual and pastoral). I. looks at the 1917 legislation and compares it to canons 244-245 of the CIC/83, which deal above all with spiritual formation. These canons contain many useful elements in relation to the training of future priests; and I. examines in particular the purpose of spiritual formation. He then turns his attention to the various aspects of spiritual direction in seminaries. Canon 239 §2 refers to a *spiritus director*, and in order to obtain a better understanding of this expression, he studies the discipline of the Council of Trent, some 19th century documents, and the CIC/17. He then looks at the *sacerdos ab Episcopo deputatus*, and at some of the problems connected with personal freedom of choice in the question of one's director, including confidentiality and the role of the spiritual director in discerning the suitability of the candidate for ordination. Canon 246 §4 refers to a *moderator vitae spiritualis*, and I. highlights certain difficulties regarding the interpretation of the specific identity of this *moderator*, and the role he plays in the formation of the seminarian. Canon 240 deals with the confessor, and I. points out how the Code offers very wide protection to the freedom of the seminarian to choose a confessor from inside or outside the seminary.

265-289

Comm 36 (2004), 33-38: Pontificium Consilium de Legum Textibus: Elementi per configurare l'ambito di responsibilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero. (Note)

To explain the responsibility of diocesan bishops towards priests incardinated and working in their dioceses this Note from the Pontifical Council for Legislative Texts dated 12 February 2004 sets out ecclesiological premises. The relationship of priest to bishop is one of hierarchical subordination, not employee to employer. In consequence the bishop cannot be held responsible juridically for transgression against canonical norms by priests unless he took no interest in providing the means required by canon law, or knowingly failed to take action to remedy the situation.

278

REDC 66/166 (2009), 355-359: Decreto de la Congregación del Clero de 22 de mayo de 2008 sobre las facultades para incardinar clérigos en la Hermandad de Sacerdotes Operarios Diocesanos del Corazón de Jesús. (Document and commentary)

By this document the *Hermandad de Sacerdotes Operarios Diocesanos del Corazón de Jesús*, formerly categorized as a secular institute, is now erected as a clerical association, with the right to incardinate priests. J. San José Prisco's commentary briefly outlines some of the history of the changing juridical status of this Spanish priestly association since its foundation in the late 19th century.

279

LS 33 (2008), 221-235: John Hadley: Priesthood *in persona Christi*. The Substance of Things Hoped for. (Article)

H. reflects on the sacramentality of the priesthood and, in particular, the sign-value of the person of the priest acting *in persona Christi*. Conclusions are drawn regarding the reasons why all priests should embrace ongoing formation, and the need for the ongoing formation of the presbyterium to be considered as a fifth "focus" for ongoing priestly formation, alongside the four foci (personal, intellectual, spiritual, pastoral) identified in *Pastores Dabo Vobis*.

292

Comm 41 (2009), 338-341: Bolletino della Sala Stampa della Santa Sede: Nuntius de Emmanuelis Milingo dimissione e statu clericali (lingua italica una cum versione anglica). (Document)

Through this Notification the Holy See announces that the former Archbishop Emmanuel Milingo has been dismissed from the clerical state for continued contumacy despite previous penalties of suspension and then excommunication. This does not relieve him of the obligation of celibacy. The excommunication and non-recognition of those consecrated by him and subsequent ordinations is reiterated. The text is given in both Italian and English.

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

332

QDE 22 (2009), 228-257: Marino Mosconi: L'elezione del Romano Pontifice come espressione del suo ufficio di «perpetuo e visibile principio e fondamento dell'unità sia dei Vescovi sia della moltitudine dei fedeli». (Article)

After a historical survey of the emergence of the college of cardinals as the body charged with the election of the Pope – the successor of St Peter and Bishop of Rome – M. explores the way in which the development of this body expresses the collegial character of the seat of authority in the Church. He concludes his study with reflections on future possible developments in the election of the Supreme Pontiff with special attention to ecumenical considerations.

332

QDE 22 (2009), 258-274: Gianluca Marchetti: Il diritto peculiare per l'elezione del Romano Pontifice. (Article)

M. notes that six out of the seven Popes of the 20th century issued legislation concerning the election to the Papal office (the exception being Pope John Paul I). After a rapid review of the legislation governing the election of the Pope with detailed reference to *Universi Dominici Gregis* issued by John Paul II, M. demonstrates his thesis that the dispositions of the Papal legislation regarding the election of a new Pope should be described as special or distinctive (*peculiare*).

332

QDE 22 (2009), 283-291: Gianni Trevisan: Osservare il segreto secondo la constituzione *Universi Dominici Gregis.* (Article)

T. examines the legislation contained in the Constitution *Universi Dominici Gregis* requiring secrecy on the part of the cardinals who comprise the body of electors together with other non-voting cardinals who may be present at the conclave and the officials and others who are required to give assistance. He notes the developing challenges to secrecy arising from modern electronic means of communication, and concludes his brief study by affirming that the

essential reason for preserving secrecy is to ensure the freedom of the electors in casting their votes for reasons of conscience alone.

333

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

Holy Scripture and Tradition, the sacraments, the evangelizing mission, and the other forms of sanctification are so fundamental to the Church that they determine her work and action, and the bonds that link her members. Thus the Catholic Church, as a visible unity, appears in an institutionally-organized form. In order to preserve this unity and to promote the Church's particular aims, canonical forms have been devised from Apostolic times onward. Since its norms directly or indirectly promote the sanctification of the individual, canon law may be considered as "sacred law" (*ius sacrum*). If contrasted with the norms regulating the common life of the human community (*ius civile*), it may be called in a broad sense divine law (*ius divinum*). The content of this law was crystallized first in the customary law concerning the administration of the sacraments and the proclamation of the Gospel, and later in written form. Thus one of the fundamental characteristics of canonical material – independent of the time it came into being – is its sacramentality. In this article, S. looks at the notion of apostolic authority; authority and sacramentality in the writings of the Patristic authors; the influence of such writings on the ecclesiological standpoint of 11th and 12th century canonical collections; authority and sacramentality in the light of the documents of the last three Ecumenical Councils (Trent, Vatican I, and Vatican II); the Church's sacramental structure; and the unity of the liturgy. The system of canonical norms as *ius sacrum* holds together the integral working of the Church as the Mystical Body of Christ, at the same time as it promotes the sanctification of her members.

335

Ap LXXXII 1-2 (2009), 411-422: Giuseppe Sciacca: La Costituzione apostolica *Universi Dominici Gregis*. Alcune considerazioni. (Article)

S. offers comments on the *motu proprio* issued by Pope Benedict XVI on 11 June 2007 which clarified some of the provisions of the Apostolic Constitution *Universi Dominici Gregis*, which Pope John Paul II promulgated on 22 February 1996 and which set out provisions for the action to be taken when the Holy See becomes vacant. S. takes particular note of the total revision of article 75 of *Universi Dominici Gregis* and the role of the Substitute of the Secretary of

State *sede vacante*, together with the oversight of various liturgical provisions affecting the Conclave.

335

QDE 22 (2009), 275-282: Davide Salvatori: La cessazione dell'ufficio del Romano Pontifice. (Article)

The Apostolic Constitution *Universi Dominici Gregis* sets out the action to be taken when the Pope dies or resigns. S. studies the law on these events detailing the duties laid on various senior officials of the Holy See to ensure that uncertainty is reduced to a minimum in a matter of singular importance to the Church. He indicates that he does not intend to consider the speculations raised by theologians and canonists referring to other causes of the Roman Pontiff ceasing from office (heresy, madness, etc.).

346

FCan IV/1-2 (2009), 157-163: Manuel Saturino Gomes: Assembleia Especial do Sínodo dos Bispos: comentário ao canon 346 §3. (Commentary)

S.G. explains the nature of the special synodal assembly of the synod of bishops, on the basis of the documentary sources which gave rise to and regulate the synod of bishops. Taking into consideration the most recent special assembly (for Africa, October 2009), and the convoking of a new assembly for the Catholic Churches of the Middle East, S.G. offers an analysis of its place in the life of the Church.

360-361

Comm 41 (2009), 244-259: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Vent'anni orsono* quibus approbatur novum Statutum Officii Laboris Sedis Apostolicae (ULSA). (Document)

On 1 January 1989 Pope John Paul II set up the Labour Office of the Holy See to safeguard the dignity and employment rights of those working for the Holy See (*motu proprio Nel primo anniversario*). The Statute was approved by the *motu proprio La sollecitudine* of 1994. This Letter establishes a new Statute in the light of changing circumstances. The text of the Statute follows the Letter.

360-361

SC 43 (2009), 47-80: William L. Daniel: The Historical Development of the Power of Governance Enjoyed by the Supreme Tribunal of the Apostolic Signatura. (Article)

See below, canon 1445.

362-367

AA XV (2008), 149-202; also **PCF XI (2009), 113-167; Per 98 (2009), 365-398, 517-564; RMDC 14 (2008), 357-417: Roman A. Melnyk: Pontifical Legation to the United Nations.** (Article)

Since its establishment in the post-World War II period, Papal legates have been involved in diplomatic missions and representations at the United Nations both in its headquarters in New York and in its centres in other cities of the world. Their work is focused on the promotion of the spiritual mission of the Church, which distinguishes them from the other State-mandated diplomats at the UN. In 2004 the UN General Assembly formally approved and expanded the parameters of the Holy See's Permanent Observer Mission, increasing the Holy See's capacity to fulfil its spiritual mission by participating in debates, make interventions and replies, and co-sponsor draft resolutions. The involvement of the laity in its work has increased since Vatican II, but mostly at secondary and consultative levels. M. points out that canon law (canon 228) allows for the involvement of lay persons in those offices and tasks for which the law makes provision, and that there is no requirement *per se* that all Papal representatives should be clerics.

370

Comm 37 (2005), 8-10: Pope Benedict XVI: Motu Proprio Summi Pontificis Benedicti XVI quoad Basilicam Sancti Pauli extra Moenia et eius Complexum extraterritorialem. (Document)

With this *motu proprio* dated 31May 2005 Pope Benedict brings the administration of St Paul's Basilica outside the walls of Rome into line with that of the other patriarchal basilicas, suppressing the legislation of 1933 and 1962 on this point. Henceforth the abbot will be responsible only for the internal life of the monastic community, and ordinary power over the whole territory will belong to the Cardinal Vicar of Rome.

370

Comm 37 (2005), 149-150: Pope Benedict XVI: Litterae Apostolicae *Motu Proprio* datae de Basilicis Sancti Francisci et Sanctae Mariae Angelorum quibus novae normae decernuntur. (Document)

By this *motu proprio* dated 9 November 2005 Pope Benedict removes the special status granted by Pope Paul VI to the basilicas of St Francis and S. Maria degli Angeli at Assisi, placing the friars under the ordinary authority of the local bishop with regard to their pastoral ministry, and provides for a cardinal to act as his legate to encourage good relationships between the basilicas and the Holy See.

372

Comm 41 (2009), 231-241: Pope Benedict XVI: Constitutio Apostolica *Anglicanorum coetibus* qua instituuntur aliqui ordinariatus personales ad recipiendos Anglicanos qui in plenam communionem cum Ecclesia Catholica convenient (lingua anglica una cum versione italica). (Document)

By virtue of this Apostolic Constitution dated 4 November 2009 Pope Benedict XVI provides for the establishment of personal ordinariates for groups of Anglicans wishing to enter into full communion with the Catholic Church. They are to be erected by the Congregation for the Doctrine of the Faith within the confines of particular conferences of bishops and are juridically comparable to a diocese. They will be subject to the CDF as well as other dicasteries and also to complementary norms. The power of the Ordinary is to be ordinary but vicarious. The Constitution sets out parameters for membership and the structures of the ordinariates.

372

Comm 41 (2009), 301-312: Congregatio pro Doctrina Fidei: Normae complementares quoad Constitutionem Apostolicam *Anglicanorum coetibus.* (Document)

This document contains the norms that spell out in more detail the application of the Apostolic Constitution providing for personal ordinariates for Anglicans wishing to enter into full communion. The text is in English.

372

Comm 41 (2009), 328-329: Vincent Nichols - Rowan Williams: Declaratio coniuncte facta ab Archiepiscopo Vestmonasteriensi et Archiepiscopo Cantuariensi "Una conseguenza del dialogo ecumenico". (Document)

In this joint declaration the Archbishops of Westminster and Canterbury respond to the Apostolic Constitution *Anglicanorum coetibus* and explain how this fits with ecumenical discussions and progress.

372

Comm 41 (2009), 330-333: Congregatio pro Doctrina Fidei: Notatio qua Congregatio pro Doctrina Fidei de ordinariatibus personalibus ad recipiendos Anglicanos, qui in plenam communionem cum Ecclesia Catholica convenient, edocet. (Document)

This document introduces the Apostolic Constitution *Anglicanorum coetibus*, explaining its intentions and setting it in its historical context.

372

SCL V (2009), 13-18: Pope Benedict XVI: Apostolic Constitution *Anglicanorum coetibus* Providing for Personal Ordinariates for Anglicans Entering into Full Communion with the Catholic Church. (Document)

See preceding entries.

372

SCL V (2009), 19-25: Congregation for the Doctrine of the Faith: Complementary Norms for the Apostolic Constitution *Anglicanorum coetibus.* (Norms)

See preceding entries.

375

Comm 35 (2003), 152-196: Pope John Paul II: Ex Adhortatione Apostolica post-synodali *Pastores Gregis*. (Exhortation)

This document comprises lengthy excerpts from the Exhortation *Pastores Gregis* following the 10th Synod of Bishops. It includes the foliwng sections:

Introduction; The Mystery and Ministry of the Bishop (nos. 6-10); The Pastoral Governance of the Bishop (nos. 42-54); In the Communion of the Churches (nos. 55-65).

375

J 69 (2009), 31-58: Peter De Mey: The Bishop's Participation in the Threefold *Munera*: Comparing the Appeal to the Pattern of the *Tria Munera* at Vatican II and in the Ecumenical Dialogues. (Article)

Through a re-reading of *Lumen Gentium*, nos. 25-27, *Christus Dominus*, nos. 11-21, and a study of a number of agreed statements emanating from bilateral and multilateral dialogues in which the Roman Catholic Church officially takes part, M. examines the participation of the bishop in the *tria munera*, the threefold office of Christ as teacher, liturgical presider, and pastor in the local Church. He investigates whether the pattern of the *tria munera* has been incorporated into the ecumenical dialogue to reflect on the ministry of the People of God and of those exercising *episkope* in the Church. The article consists of two parts, each with three sections. The first part examines the bishop's participation in the *tria munera* according to Vatican II, beginning with a historical overview of the concept of the *tria munera* as it is developed in Vatican II documents. This is followed by a study of the notion of the participation of all the People of God in the *tria munera* of Christ according to Vatican II. All this in stark contrast to pre-conciliar Roman Catholic theology, which considered that only the ordained participated in the threefold office of Christ. M. then examines the *tria munera* of the bishop as presented in *Lumen Gentium*, nos. 25-27. The second part is entitled "The Use of the Pattern of the *Tria Munera* in the Ecumenical Dialogues." In the three sections of this part, M. traces and identifies the contrasting emphases in the pattern of the *tria munera* as used in the Ecumenical Dialogues, namely, the Ecumenical Dialogue with Faith and Order, the Anglo-Roman Catholic Dialogue, and the Orthodox-Roman Catholic Dialogue.

375-411

Comm 36 (2004), 43-98: Congregatio pro Episcopis: Excerptum ex *Directorio pro ministerio pastorali Episcoporum.* (Document)

This substantial excerpt from the Directory for the Pastoral Ministry of Bishops, published by the Vatican in 2004, contains parts of three chapters of the document: chapter II, 2, on episcopal cooperation with supradiocesan organs of collaboration; chapter IV, 2, on the power of the bishop in the context of the

particular Church; and chapter VII on the role of governance of the diocesan bishop.

381

IE XXI 1/09, 65-84: Supremo Tribunale della Segnatura Apostolica. *Iurium*. Decreto definitivo (O. - Congregatio pro Clericis). Mussinghoff, *Ponente* (con *nota* di J. Miñambres, *La configurazione giuridica dei consigli pastorali nelle diocesi tedesche*). (Sentence and commentary)

See below, canons 511-514.

383

Comm 36 (2004), 155-166: Pontificium Consilium de Spirituali Migrantium atque Itinerantium Cura: Excerptum ex Instructione *Erga Migrantes caritas Christi.* (Document)

This Instruction concerning the pastoral care of migrants was published on 3 May 2004. The excerpt printed here comprises the norms contained therein in 22 articles. These cover lay support, the roles of chaplains and missionaries, religious, ecclesiastical authorities both at diocesan level and that of the conference of bishops, and finally that of the Pontifical Council.

384

Comm 36 (2004), 33-38: Pontificium Consilium de Legum Textibus: Elementi per configurare l'ambito di responsibilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero. (Note)

See above, canons 265-289.

384-385

Comm 36 (2004), 175-178: Pope John Paul II: Allocutio ad quosdam Episcopos Civitatum Foederatarum Americae Septentrionalis Limina Apostolorum visitantes. (Allocution)

Pope John Paul II speaks to a group of North American bishops on strengthening the unity of the priesthood as a primary and essential task of the bishop and the need to foster priestly vocations.

391

IC XLIX 98/09, 413-466: María Elena Olmos: El Derecho particular posterior al CIC de 1983 en España. (Article)

In application of the principle of subsidiarity, the CIC/83 has opened the doors to a development of the particular law of the Church which, in Spain, has been abundant and varied. O. sets out in the first place the matters which have been the object of particular legislation, distinguishing those proper to the episcopal conference, those proper to diocesan bishops, and those that are shared. She then carries out a more specific study of particular law in Spain: first, that emanating from the episcopal conference since the coming into force of the CIC/83; and then a selection from among the more recent legislation of the dioceses and groupings of particular Churches. She ends with some proposals for the future, including the idea of a database of particular legislation in force.

392

AA XV (2008), 109-147: Marcelo Gidi: El gobierno pastoral del obispo diocesano como moderador del ministerio de la Palabra en la iglesia particular. (Article)

See below, canon 756.

400

Comm 35 (2003), 11-16: Pope John Paul II: Allocutio Summi pontificis ad quosdam Brasiliae Episcopos Limina Apostolorum visitantes 7 februarii 2003. (Allocution)

In the course of his address to a group of Brazilian bishops on their *ad limina* visit the Pope warns of the dangers that can arise from a multiplication of groups and pastoral organisms of excess bureaucracy, and from the bishops spending too much time away from their dioceses attending meetings.

400

Comm 35 (2003), 23-25: Pope John Paul II: Ex Allocutione ad Episcopos Ecclesiae sui iuris Syro-Malabarensis Sacra Limina visitantes 13 maii 2003. (Allocution)

The Pope alludes to difficulties and disagreements over the renewal of the Syro-Malabar Liturgy, and encourages the bishops to work together in harmony and to overcome fears and misunderstandings between Eastern and Latin Catholics.

400

Comm 35 (2003), 149-151: Pope John Paul II: Allocutio ad quosdam Philippinae Episcopos Limina Apostolorum visitantes. (Allocution)

The Pope notes flourishing devotional life in the Philippines, but also contradictions in Filipino society. A well-formed laity presupposes a well-formed clergy. He also stresses the need for clergy to avoid seeing the priesthood as a profession or career with celibacy as just a long-standing ideal.

402

Ap LXXXII 1-2 (2009), 33-73: Congregatio pro Episcopis: Il Vescovo emerito (aprile/2008). (Document)

Text in Italian of a handbook for retired bishops with some other related documents attached as appendices.

445

IC XLIX 98/09, 413-466: María Elena Olmos: El Derecho particular posterior al CIC de 1983 en España. (Article)

See above, canon 391.

455

IC XLIX 98/09, 413-466: María Elena Olmos: El Derecho particular posterior al CIC de 1983 en España. (Article)

See above, canon 391.

460-468

J 69 (2009), 59-83: Catherine E. Clifford: The Local Church and its Bishop in Ecumenical Perspective. (Article)

C. introduces her study with a brief outline of the ministry of the local bishop in the light of the Dogmatic Constitution on the Church *Lumen Gentium*, the Decree on the Pastoral Office of the Bishop *Christus Dominus*, and the Constitution on the Sacred Liturgy *Sacrosanctum Concilium*. Then she explores the personal, collegial, and communal dimensions of the episcopal ministry and how it fits into the Orthodox-Catholic dialogue, the Anglican-Catholic dialogue,

and the Lutheran-Catholic dialogue. She examines the ecumenical significance of the bishop in the local Church in theology and practice as this finds expression in multilateral conversations with *Faith and Order*, and *The Joint Working Group*. A study produced by the latter, entitled *The Church: Local and Universal*, noted that Orthodox, Catholic, and Anglican Churches shared the conviction that the office of bishop is an essential element in the structure of the local Church, conceived of as a Eucharistic assembly, and organized according to the diocesan structure. This contrasts with the Reformation Churches and the Free Churches which are organized according to a variety of institutional models with greater emphasis on the parish or congregation, and which in general do not define the local Church with reference to the office of bishop. C. concludes with some suggestions for the ongoing renewal of the episcopal ministry in its personal, collegial, and communal dimensions in the local Church. She also offers suggestions for ecumenical collaboration at local level. Only such collaboration will develop authentic, Spirit-inspired communion in the universal Church.

473

IE XXI 1/09, 65-84: Supremo Tribunale della Segnatura Apostolica. *Iurium*. Decreto definitivo (O. - Congregatio pro Clericis). Mussinghoff, *Ponente* (con *nota* di J. Miñambres, *La configurazione giuridica dei consigli pastorali nelle diocesi tedesche*). (Sentence and commentary)

See below, canons 511-514.

511-514

IE XXI 1/09, 65-84: Supremo Tribunale della Segnatura Apostolica. *Iurium*. Decreto definitivo (O. - Congregatio pro Clericis). Mussinghoff, *Ponente* (con *nota* di J. Miñambres, *La configurazione giuridica dei consigli pastorali nelle diocesi tedesche*). (Sentence and commentary)

By a decree dated 15 November 2005, a diocesan bishop in Germany a) suppressed with immediate effect the councils of vicars forane within the diocese, as well as the council known as the *Diözesanrat der Katholiken*; b) established the diocesan pastoral council and the diocesan committee for the coordination of the apostolate of the laity (*Diözesankomitee*); c) promulgated new statutes for parish pastoral councils, for vicariates forane, for the diocesan pastoral council (cf. canons 511-514), and, by way of example, for the committee for the coordination of the apostolate of the laity (*Müsterstatut für das Diözesankomitee*). O. was a member both of a parish council and of the *Diözesanrat* until the time of its suppression, and in accordance with canon

1734 he requested the revocation of all the decisions contained within the bishop's decree. Having received no reply, on 5 January 2006 he had recourse against this administrative silence to the Congregation for Bishops. On 23 January 2006, the Congregation for Bishops transmitted the recourse to the Congregation for Clergy, which by a decree of 10 March 2006 rejected the recourse and confirmed the bishop's decree. O. then initiated an action before the Apostolic Signatura. On 9 February 2007 the Congress of the Signatura issued a decree refusing to admit the case for the consideration of the Judges as lacking all foundation. A recourse against this decree was examined by the Signatura, which after examining the issues involved decided on 14 November 2007 that the decree of the Congress of 9 February 2007 was not to be amended. In his commentary, M. points out how, during Vatican II's reflections on the pastoral role of the bishop and the apostolate of lay people and their cooperation in the exercise of the power of jurisdiction, the possibility had been raised of establishing various different organs of co-responsibility. M. analyzes the decree of the Congress of the Signatura dated 9 February 2007 in the light of *Pastor Bonus*, articles 123 and 125, as well as canons 511-514, 381, and 473. He examines the norms applicable to pastoral councils in German dioceses and the collaboration of lay persons in the pastoral government of the dioceses, as well as the nature of pastoral councils within the diocesan structures and the "organizing" power of the bishop in his own diocese.

511-515

J 69 (2009), 59-83: Catherine E. Clifford: The Local Church and its Bishop in Ecumenical Perspective. (Article)

See above, canons 460-468.

516

SC 43 (2009), 47-26: John A. Renken: The Quasi-Parish: A Definite Community of the Christian Faithful in a Particular Church. (Article)

The legislation of the CIC/17 permitted the erection of quasi-parishes only in missionary territory. The CIC/83, however, permits the establishment of quasi-parishes in every particular Church. This article traces the development of canon 516 §1 on the quasi-parish, and compares the quasi-parish to the parish, which is the ordinary structure for pastoral care within a particular Church. R. identifies fundamental similarities and differences between quasi-parishes and parishes. He concludes that a quasi-parish is a public juridic person; that the diocesan bishop is to hear the presbyteral council before erecting, modifying, or suppressing a quasi-parish; and that the *quasi-parochus* has the same *munera*

and stability in office as a *parochus*. He also identifies the circumstances – extrinsic and intrinsic – which may or may not occasion the establishment of a quasi-parish rather than a parish. R. concludes that the quasi-parish is an option, albeit not a preferred option, to be considered by diocesan bishops as they modify communities within the particular Churches in the midst of changing social circumstances.

532

AkK 177 (2008), 502-523: Helmuth Pree: Genehmigungspflichten in der pfarrlichen Vermögensverwaltung. Eine universalrechtliche Perspektive. (Article)

P. looks at the possibility of simplifying or reducing the procedures necessary for approval when administering the goods of a parish. In German dioceses the procedures for obtaining administrative approval can be exceedingly complex.

536

IE XXI 1/09, 65-84: Supremo Tribunale della Segnatura Apostolica. *Iurium*. Decreto definitivo (O. - Congregatio pro Clericis). Mussinghoff, *Ponente* (con *nota* di J. Miñambres, *La configurazione giuridica dei consigli pastorali nelle diocesi tedesche*). (Sentence and commentary)

See above, canons 511-514.

536

J 69 (2009), 59-83: Catherine E. Clifford: The Local Church and its Bishop in Ecumenical Perspective. (Article)

See above, canons 460-468.

564-572

Comm 36 (2004), 155-166: Pontificium Consilium de Spirituali Migrantium atque Itinerantium Cura: Excerptum ex Instructione *Erga Migrantes caritas Christi.* (Document)

See above, canon 383.

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

576

Comm 41 (2009), 315-316: Congregatio pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae: Declaratio Card. Praefecti Congregationis pro Institutis vitae consecratae et Societatibus vitae apostolicae respiciens visitationem apostolicam ad instituta vitae religiosae mulierum in USA. (Statement)

The Prefect of the Congregation for Institutes of Consecrated Life explains the rationale for the visitation of women religious in USA announced in January 2009 and indicates how the second phase of this enquiry will unfold.

590

Ap LXXXII 1-2 (2009), 75-116: Congregatio pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae: Instructio: *Il servizio dell'autorità e l'obbedienza.* (Document)

See below, canon 601.

592

Ap LXXXII 1-2 (2009), 117-121; also **Comm 41 (2009), 97-101: Congregatio pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae: Epistula: *La Sede Apostolica.*** (Document)

Letter of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, issued at Pentecost 2008, asking that the report indicated by CIC/83, canon 592 §1, should be made by the superior general at the conclusion of the general chapter of each Institute. A set of headings setting out the style of the report is appended.

601

Ap LXXXII 1-2 (2009), 75-116: Congregatio pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae: Instructio: *Il servizio dell'autorità e l'obbedienza*. (Document)

After establishing a spiritual foundation on the obedience of Jesus to His heavenly Father, the document notes its debt to the plenary meeting of the Congregation for Institutes of Consecrated Life and Apostolic Life on 28-30 September 2005. It insists that all earthly authority is to be regarded as a service offering the opportunity for the exercise of obedience as an essential element in the consecrated life that under the guidance of the Spirit is essential for unity. In the second part of the document attention is given to authority and obedience in the context of fraternal living. The document was approved on 5 May 2008 by Pope Benedict who directed that it be published.

601

IC XLIX 98/09, 653-673: María Areitio: Aspectos jurídicos de la Instrucción *El servicio de la autoridad y la obediencia*. (Commentary)

A. comments on the 2008 Instruction issued by the Congregation for Institutes of Consecrated Life and Apostolic Life *The Service of Authority and Obedience*, looking first at the general characteristics and purpose of the document before examining in more detail the concepts of obedience of the superior, spirit of service, and pastoral care (cf. no. 14 of the Instruction). She then deals with the role of authority in relation to the growth of the community (no. 20), difficult obedience (no 26), and objections of conscience (no. 27).

605

IC XLIX 98/09, 603-614: Anne Bamberg: Protección de los votos y nuevas realidades eclesiales. (Article)

See below, canons 1191-1198.

605

QDE 22 (2009), 97-106: Alberto Gildoni: Nuove forme di vita consecrata. La *Società di Cristo Signore*. (Article)

G. traces the origins and foundation of a new form of consecrated life *Société du Christ Seigneur* founded in Montreal, Canada, and given pontifical approval

on 11 February 1993. He takes note of the elements that distinguish this institute from other forms of consecrated life listed in the Code.

607

IC XLIX 98/09, 603-614: Anne Bamberg: Protección de los votos y nuevas realidades eclesiales. (Article)

See below, canons 1191-1198.

617-619

Ap LXXXII 1-2 (2009), 75-116: Congregatio pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae: Instructio: *Il servizio dell'autorità e l'obbedienza*. (Document)

See above, canon 601.

617-619

IC XLIX 98/09, 653-673: María Areitio: Aspectos jurídicos de la Instrucción *El servicio de la autoridad y la obediencia*. (Commentary)

See above, canon 601.

631

Ap LXXXII 1-2 (2009), 75-116: Congregatio pro Institutis Vitae Consecratae et Societatibus Vitae Apostolicae: Instructio: *Il servizio dell'autorità e l'obbedienza*. (Document)

See above, canon 601.

631

IC XLIX 98/09, 653-673: María Areitio: Aspectos jurídicos de la Instrucción *El servicio de la autoridad y la obediencia*. (Commentary)

See above, canon 601.

634

QDE 22 (2009), 118-129: Alberto Perlasca: La capacità patrimoniale degli istituti religiosi. (Article)

Having reminded the reader of the provisions of the CIC/83, canon 634, P. explores the various elements that are to be noted in considering the right of ownership and administration of material goods by religious institutes. He highlights the need of each institute properly to apply its particular law as is required by the general law of the Church.

636

QDE 22 (2009), 130-140: Silvia Recchi: L'economo degli istituti religiosi. (Article)

From the directions in canon 636 each religious institute is obliged to establish the office of *economus* or bursar for the institute as a whole and for each province or section governed by a major superior, distinct from the office of superior but subject to the direction of the respective superior. The constitutions of each institute will establish the detailed provision for the office of *economus*, and can extend also to local communities a financial administration separate from but under the supervision of the local superior. R. studies the appointment of the *economus*, and the distinction between the office of *economus* and that of the superior. A further part of the study is devoted to noting the competence of *economus*, and the relationship between the *economus* and the financial council. R. also gives some attention to the *economus* at provincial and local level. The study is concluded with some brief observations on the *economus* in playing a part in sustaining the particular charism of the institute.

638

QDE 22 (2009), 141-154: Alberto Perlasca: Commento a un canone. Alienazioni e altri atti potenzialmente pregiudizievoli nei monasteri *sui iuris* e negli istituti religiosi di diritto diocesano (can. 638 §4). (Commentary)

P. gives detailed attention to the subject of alienations and other potentially prejudicial acts in autonomous monasteries and religious institutes of diocesan right. He then extends his study to the letter of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life issued on 21 December 2004, explaining the custom of the Congregation to seek the opinion of the Ordinary of the place in cases of alienation even if this is not required by the Code in respect of institutes of consecrated of pontifical right. He holds that this action

does not infringe the independence of such institutes. The text of the letter is shown as an appendix to his article.

662-672

IC XLIX 98/09, 653-673: María Areitio: Aspectos jurídicos de la Instrucción *El servicio de la autoridad y la obediencia*. (Commentary)

See above, canon 601.

665

ETJ 13 (2009), 146-166: Jose Ammaikunnel: Exclaustration: A Comparative Study. (Article)

See below, canons 686-687.

668

EE 84 (2009), 729-755: Miguel Campo Ibáñez: Pobreza religiosa y derechos de autor. Una aproximación al problemático encuentro entre el Derecho canónico y la legislación civil española. (Article)

In Spanish law, religious of the Catholic Church, by the mere fact of being authors of a literary, artistic or scientific work, are regarded like any other citizen as being holders of a wide array of rights. Canon 668 §3 of the CIC/83 considers the production of a literary, artistic or scientific work to be the fruit of one's own labours, and title both to the work itself and to the royalties it produces passes to the Institute. The two legal orders are therefore guided by differing sets of logic which affect the same persons – religious – and the same object – authors' rights – in different ways.

678

Comm 37 (2005), 149-150: Pope Benedict XVI: Litterae Apostolicae *Motu Proprio* datae de Basilicis Sancti Francisci et Sanctae Mariae Angelorum quibus novae normae decernuntur. (Document)

See above, canon 370.

682

QDE 22 (2009), 399-409: Davide Salvatori: Commento a un canone. La rimozione *ad nutum* del religioso da un ufficio ecclesiastico (can. 682 §2). (Commentary)

S. traces the development from the dispositions of the CIC/17 in the matter of a religious being entrusted with a diocesan office, to the post- Vatican II legal arrangements for a religious to take up such a duty. He finds that the new legislation properly corresponds to the correct understanding of the roles of the diocesan bishop and the religious superior.

682

QDE 22 (2009), 410-424: Supremo Tribunale della Segnatura Apostolica: Sentenza *coram* Davino – 21 giugno 1997. La rimozione di un parroco religioso. (Sentence and commentary)

A religious who was properly presented by his superior and appointed by the diocesan bishop was removed by his superior from the duty of parish priest under the *ad nutum* provision of canon 682 §2. A hierarchical recourse was entered to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, which indicated on 12 April 1996 that there were no grounds for the intervention of the Congregation. However an appeal was presented to the Apostolic Signatura on 24 April 1996, which on 31 January 1997 admitted the case for consideration. The Signatura decided on 21 June 1997 that there had been no violation of the law by the Congregation for Institutes of Consecrated Life *in procedendo* or *in decernendo*. The text of the Signatura's proceedings in Latin and Italian is given together with a concluding note by Davide Salvatori.

686-687

ETJ 13 (2009), 146-166: Jose Ammaikunnel: Exclaustration: A Comparative Study. (Article)

In modern times many individual religious find it difficult, for a variety of reasons, to live in their community. One of the possibilities offered by the CIC/83 is that of exclaustration, which refers to a religious temporarily not living common life within the religious community, but rather living outside the house of the institute, by the permission or order of the competent superior. During the period of exclaustration some of the rights and duties of the religious are suspended. In this article A. explains the notion of exclaustration; the different types of exclaustration; the competent authorities to grant it; its cause

and duration; and the rights and duties of the exclaustrated member and of the institute. He also compares the positions of the CIC/83 and the CCEO.

710-730

QDE 21 (2008), 115-129: Davide Salvatori: La riflessione magisteriale sugli istituti secolari. (Article)

Through a synthetic reading of the magisterial documents from Pius XII to Benedict XVI, S. aims to provide a better understanding of the specific characteristics of secular institutes and secularity. The documents which had the most significant influence were the Apostolic Constitution *Provida Mater Ecclesia* (1947) and the *motu proprio Primo Feliciter* (1948). These documents provided the foundational characteristics of the juridical-ecclesiological profile of the secular institute, secularity, and its apostolic dimension. The conciliar decree *Perfectae Caritatis*, no. 11, contained the only paragraph in the Council to deal with secular institutes. The teaching of Paul VI focuses on the first half of no. 11 in which he develops the thought of Pius XII and fills out the juridical-ecclesiological profile of secular institutes. The teaching of John Paul II is a commentary on the second half of no. 11 focusing on the formation of secular institutes. Benedict XVI addresses the subject of secular institutes in an allocution to mark the 60th anniversary of *Provida Mater Ecclesia* in which he synthesizes the nature of the secular institute around the mystery of the Incarnation.

710-730

QDE 21 (2008) 130-165: Fabio Marini: La seconda legislazione sugli istituti secolari. La corrispondenza del Codice vigente con i codici fondamentali propri. (Article)

The first legislation concerning secular institutes was contained in the appendix of the Apostolic Constitution *Provida Mater Ecclesia* and remained in force until it was replaced by canons 710-730 of the CIC/83. This article explores the changes that appear in the current legislation with ample reference to particular laws of specific secular institutes. M. offers a brief analysis of the work of the commissions set up to revise the Code, and their understanding of the nature of secular institutes. The *iter* clearly referred to consecration as the reference point for secular institutes: members are consecrated and they assume evangelical counsels. However, the revision did not offer any clear solutions to the problems to which this gave rise: the nature of the bonds professed and the ecclesial status of members of institutes. Partially different was the work of the

revision of the canons. They focus on defining the type of institute, which passed almost unchanged through the various phases of the revision.

The canons adopted by the current Code not only respect the identity of individual secular institutes, but, without emphasizing the differences, also offer a means for a general understanding of their nature, purpose, apostolate and organizational structure. Referring to examples of Italian secular institutes, M. examines the different kinds of secular institutes with reference to their own proper legislation. The analysis is limited to the first six canons (710-715) because they reflect more on the constitutive elements of consecration and secularity. The other canons (716-730) regard the organizational aspect and therefore the more internal aspect of the institute. M. concludes that although the current legislation offers the possibility of defining what is "secularity", and the juridical guarantees for its development and defence, it cannot be said that a perfect correlation between the juridical sphere and the theological and sociological spheres has yet been achieved. There is still more clarity required in the difference between secular institutes, religious institutes, and societies of apostolic life. This would be a great help to the charismatic discernment of founders as well as the ecclesiastical authorities that erect them.

731

IC XLIX 98/09, 603-614: Anne Bamberg: Protección de los votos y nuevas realidades eclesiales. (Article)

See below, canons 1191-1198.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747

ELJ XI 2/09, 169-180: Peter Smith: Engaging with the State for the Common Good: Some Reflections on the Role of the Church. (Lecture)

S., Archbishop of Cardiff, gave the Seventh Lyndwood Lecture at Cathedral Hall in Westminster. Canon law establishes the right of the Church to proclaim the Gospel and expound it, and to proclaim moral principles especially when this is required by fundamental rights or for the salvation of souls (canon 747). While for centuries this was taken for granted, society and culture have undergone rapid and extensive changes, especially over the last 40 years. From what was once a Christian society and culture, we have moved to a multicultural and secular society, and have seen the rise of "ideological secularism". The place of religion and religious values in the public forum is being questioned, and an aggressive secularism seeks to reduce religion and its practice to the private sphere. However, a healthy secularity should recognize both the autonomy of the State from control by the Church and also the right of the Church to proclaim its teaching and comment on social issues for the common good of humanity. This right is recognized in the 1948 Universal Declaration of Human Rights and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. From the Church's point of view this right was recognized for all religions in the Second Vatican Council's *Declaration on Religious Liberty*. S. concludes that we must defend that right because the Church exists not for its own sake but for the sake of humanity.

747

LJ 163/09, 103-109: Helen Costigane: Catholic Education in England: What is to be Taught? (Article)

See below, canons 793-806.

749-754

REDC 66-166 (2009), 143-209: Xoan Xosé Fernández Fernández: La laboriosa regulación canónica sobre el magisterio: itinerario de su codificación y reforma posterior. (Article)

John Paul II's *motu proprio Ad Tuendam Fidem* (1998) was the first modification to the CIC/83 and its subject concerned certain aspects of the canonical regulation of the teaching office or Magisterium of the Church. It was

only the latest in a long series of documents, going back some 150 years, dealing with the same subject. F.F.'s article looks at this long history with an examination of the place of the Magisterium in the CIC/17, the work of the Pontifical Commission for the Revision of the Code, and its importance in the CIC/83. The main part of the article deals with the *motu proprio* under consideration. He includes three appendices from the deliberations on this matter from the preparatory *coetus* on the *Lex Ecclesiae Fundamentalis* and the *coetus de Magisterio ecclesiastico* and *de munere docendi*.

750-752

IC XLIX 98/09, 373-412: José Bernal: Aspectos del Derecho penal canónico. Antes y después del CIC de 1983. (Article)

See below, canons 1311-1399.

750-753

FC 11 (2008), 185-206: Agostino Montan: «Formule teologiche»: Variabilità e limiti nella dottrina e diritto sacramentale. (Conference presentation)

It has generally been the custom to treat the Church's *munus docendi* separately from the *munus regendi*, and to distinguish both of these from the *munus sanctificandi*. Examining more deeply the nature of the Church, Vatican II required a reconsideration of the nature of the three offices (*munera*) of teaching, sanctifying and governing. The three offices are interrelated. The sacrament of order lies at the origin of the episcopal power in its totality, in its triple function. Hence the power of governing should be seen in relation to the Church as a mystery of communion and sacrament of salvation, and to the sacrament of order. The Church's Tradition is living and takes on numerous forms in particular traditions. Its inexhaustible richness is seen in a plurality of doctrines, symbols, rites, disciplines and institutions. Tradition also reveals its own fruitfulness through its inculturation in the local Churches. Such multiple traditions are orthodox insofar as they bear witness to and transmit the universal apostolic Tradition. Tradition in the Church cannot suffer any essential corruption. The task of law is to facilitate the organic development of the ecclesial society. In the light of these considerations M. studies some particular issues: the theological formulas for the profession of faith (cf. canons 750-753); sacramental law, especially in relation to the sacraments of initiation (cf. canon 842); the question of women and sacred ministry (cf. canon 1024); and the diaconate as a permanent grade of the sacrament of order (cf. canons 1008-1009).

756

AA XV (2008), 109-147: Marcelo Gidi: El gobierno pastoral del obispo diocesano como moderador del ministerio de la Palabra en la iglesia particular. (Article)

Canon 756 §2 refers to bishops as "moderators of the entire ministry of the word in their Churches". Given the widespread misunderstanding in a modern entrepreneurial and industrial society of the Church as the equivalent of a multinational company with local branch managers and administrators, how is the term "moderator" to be understood? The Church's nature is, of course, primarily and essentially theological and salvific, not social or organizational, and can best be expressed by the term *communio*, reflecting the unity existing between Christ and the faithful and the unity of service among the faithful themselves and with their pastors and teachers. This *communio* belongs not only to the inner nature of the Church but is also inherent in its external structure and institutions organized under the competent authorities, thus facilitating the participation of all the faithful in its mission. The local Church is not simply a division of the universal Church but is a communion in its own right, in which the Church of Christ is fully realized through its participation in the mission of the universal Church. The bishop's authority, therefore, is not to be understood in purely juridical or administrative terms but rather as an authority of service based on the theological, Christological and pastoral power received at episcopal ordination and exercised in such a way as to recognize and encourage the faithful in the use of their gifts and charisms in the common task of the Church. A key area of the bishop's service and authority is the proclamation of the Gospel, achieved by him not in isolation but with the collaboration of others, both clerical and lay. His duty as chief pastor is to coordinate and regulate within his diocese the ministry of the Word, and this is not primarily an administrative task but a sacramental and ministerial responsibility. Therefore the task of the bishop as "moderator of the ministry of the word" is one of pastoral governance as he is the instrument and point of encounter for the *communio* of all the faithful.

759

J 69 (2009), 84-115: Henk Witte: The Local Bishop and Lay Pastoral Workers: A Newly Created Function in the Church and its Impact on Episcopal Collegiality. (Article)

See above, canon 129.

766-767

J 69 (2009), 84-115: Henk Witte: The Local Bishop and Lay Pastoral Workers: A Newly Created Function in the Church and its Impact on Episcopal Collegiality. (Article)

See above, canon 129.

767

N XLVI 9-10/09, 573-576: S. Hünsler: L'omelia nella celebrazione della Santa Messa, riservata al Vescovo e sacerdote o, con qualche restrizione, al diacono. (Article)

Bishops and priests exercise their ministry in the person of Christ the Head. Vatican II considered the Liturgies of Word and Eucharist as an integrated whole. This includes the homily at Mass. For a non-ordained person to preach the homily at Mass would fracture this. Deacons are permitted to preach subject to certain restrictions because they participate in the sacrament of Holy Orders, although they do not act in the person of Christ as Head.

781

Ap LXXXII 1-2 (2009), 7-23: Congregatio pro Doctrina Fidei: Nota doctrinalis de quibusdam rationibus evangelizationis. (Document)

Text in Latin of the Congregation for the Doctrine of the Faith's Note, approved by Pope Benedict on 6 October 2007 and published on 3 December 2007, on elements to be kept in mind when promoting evangelization.

793

Comm 41 (2009), 317-325: Congregatio de Institutione Catholica: Epistula circularis ad praesides Conferentiarum episcopalium de religione docenda in scholis. (Document)

This circular letter addresses a number of issues: the role of the school in the Catholic formation of new generations; the nature and identity of a Catholic school; the teaching of religion in school; freedom of education and religion; and Catholic education.

793-806

LJ 163/09, 103-109: Helen Costigane: Catholic Education in England: What is to be Taught? (Article)

C. considers the role of the bishop with regard to what is taught in Catholic schools in England and Wales. She looks at the history of religious education in State schools and then moves on to consider the relevant canon law provisions. Finally she examines the debate on the *Fit for Mission* document issued by the Bishop of Lancaster, Patrick O'Donoghue, and the issue of proselytism or evangelization.

804-805

REDC 66/166 (2009), 275-292: Santiago Cañamares Arribas: El control jurisdiccional de la autonomía de la Iglesia católica en la designación de los profesores de religión. (Article)

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

807

Comm 41 (2009), 12-19: Pope Benedict XVI: Chirographum quo institutio AVEPRO (Procuratio Sanctae Sedis ad aestimandam et promovendam Qualitatem Studiorum Universitatum et Facultatum Ecclesiasticarum) conditur. (Document)

At the request of the Congregation for Catholic Education, the Pope establishes by this chirograph an agency to inspect and promote the quality of education provided in Catholic Universities and Faculties and grants it public juridical status, as well as juridical personality in the civil law of the Vatican City State. The chirograph is followed by the statutes of the agency.

821

IE XXI 1/09, 209-226: Congregazione per l'Educazione Cattolica, Istruzione sugli Istituti Superiori di Scienze Religiose, 28 giugno 2008 (con *nota* di N. Galantino: *Una premessa alla lettura dell'Istruzione sugli Istituti Superiori di Scienze Religiose*). (Document and commentary)

This is the Italian text of the Instruction of the Congregation for Catholic Education entitled *Reform of Higher Institutes of Religious Sciences* (28 June 2008). It deals with the aims and structure of such Institutes, and the procedure to be followed for establishing them. The brief commentary on the document

provided by N. Galantino includes the information that of the 114 Higher Institutes of Religious Sciences established by the Congregation for Catholic Education, 75 are in Italy, 29 in Spain, and the others in Brazil, Chile, Croatia, Latvia, Mexico, Mozambique, Portugal, Ukraine and Uruguay.

821

QDE 22 (2009), 340-359: Eugenio Zanetti: Formazione cristiana e formazione teologica per i fedeli laici. (Article)

Z. uses the canons at the beginning of Book II of the CIC/83 to indicate the desire of the Vatican II Fathers that attention be given to the theological formation and education of laity and clergy and brought into the law of the Church. The general calling of all the faithful to execute the command of Christ that His Gospel be preached to all, demands a sufficient education of the lay faithful, to respond to the changing circumstances of human society in itself and in the context of the growing body of knowledge of the creation given by God to the human race. Z. notes three levels of education that should be included in the Church's programme of education and formation that will not be simply functional in its purpose but conduce to the general mission of the Church and the personal needs of the laity.

821

QDE 22 (2009), 360-384: Matteo Visioli: L'Istruzione sugli Istituti Superiori di Scienze Religiose e lo studio teologico dei laici. (Article)

On 28 June 2008 the Congregation for Catholic Education issued an Instruction regulating the establishment and conduct of Higher Institutes of Religious Sciences. V. traces the developments in the post-Vatican II period responding to the Council's vision of an intellectually better-equipped laity to respond to the now more fully explored dimensions of the laity's duty to declare the Gospel in the process of evangelization. V. agrees with the policy of the Congregation to leave to the initiative of the local bishops' conference the precise shaping of the systems for the theological education of the laity. He reviews the experience in Italy of the progress made in this regard.

821

REDC 65/165 (2008), 664-683: Congregación para la Educación Católica: Instrucción sobre los Institutos Superiores de Ciencias Religiosas. (Document and commentary)

This is the Spanish text of the Instruction on Higher Institutes of Religious Sciences from the Congregation for Catholic Education issued on 28 June 2008, with a following commentary from José San José Prisco. He notes that all such Institutes must now be organically linked to an ecclesiastical Faculty of Theology which will assume academic oversight of it. A possible problem for some Institutes could be the insistence on a certain minimum number of full-time teaching staff (five) and of ordinary students (i.e. studying for a degree: 75). The norms come into effect for the 2009-2010 academic session.

833

REDC 66-166 (2009), 143-209: Xoan Xosé Fernández Fernández: La laboriosa regulación canónica sobre el magisterio: itinerario de su codificación y reforma posterior. (Article)

See above, canons 749-754.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

834

FC 11 (2008), 207-228: Michael Carragher: Intention of the Minister as Substantive Element of Baptism. (Conference presentation)

See below, canon 861.

834-848

Comm 35 (2003), 224-250: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio IV). (Report)

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

834-848

Comm 35 (2003), 251-269: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Schema Canonum "De Locis et de Temporibus Sacris deque Cultu Divino". (Document)

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

834-848

Comm 35 (2003), 270-296: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" – Series Altera (Sessio I). (Report)

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

838

ACR LXXXVI 3/09, 257-276: John Hill: Can Restorationism Succeed? (Article)

See below, canon 899.

838

Ap LXXXII 1-2 (2009), 423-445: Agostino Montan: Benedictus XVI, Litterae apostolicae motu proprio datae de usu extraordinario antiquae formae Ritus romani: *Summorum Pontificum*. Annotazioni canoniche. (Commentary)

See below, canon 899.

838

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

See above, canon 333.

838

N XLVI 3-4/09, 70-169: Congregatio de Cultu Divino et Disciplina Sacramentorum: L'Adunanza "Plenaria" della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. (Report)

This report on the Plenary meeting of the Congregation for Divine Worship and the Discipline of the Sacraments, which took place in Rome 10-13 March 2009, comprises a number of items: the introduction by Cardinal Llovera (pp. 70-73); the report of the Secretary, Archbishop Ranjith (pp. 74-129); a position paper on Eucharistic Adoration by Cardinal Ouellet (pp. 130-149: see below, canons 941-944); the concluding homily (pp. 150-152); the addresses of the Prefect (pp. 153-154 & 155-157); and the discourse of Pope Benedict XVI (Italian pp. 158-161; English pp. 162-165; Spanish pp. 166-169). The report of the Secretary outlines the structure of the Congregation and reviews its activity since the previous Plenary in 2005, in particular documents and books published, and continuing issues or areas of study. These include revisions or new editions of various liturgical books, such as a supplement to the Liturgy of the Hours, the Calendar, non-Roman Latin Rites (Ambrosian); also the placing of the sign of peace, Sunday celebrations in the absence of a priest, problems over validity of baptism, the role of pastoral assistants, the divorced and remarried, and the large number of diaconal ordinations in San Cristobal de las Casas. In the area of non-consummation cases mention is made of issues concerning artificial insemination, contraception and the meaning of "in a human way".

838

N XLVI 5-6/09, 308-320: I. Grigis: A proposito del ricordo del Vescovo nella Preghiera Eucaristica. (Article)

G. studies the variations in the text of no. 149 of the General Instruction of the Roman Missal in the 2002 and 2008 editions of the Missal. The former required a bishop celebrant in another diocese to mention first himself, then the bishop of the place. The latter reverses this order. G. explains the ecclesiological principle involved. He also explains why the 2008 edition omits the possibility of praying for other bishops who are not auxiliaries.

842

FC 11 (2008), 185-206: Agostino Montan: «Formule teologiche»: Variabilità e limiti nella dottrina e diritto sacramentale. (Conference presentation)

See above, canons 750-753.

844

Comm 35 (2003), 17-22: Pope John Paul II: Ex Litteris Apostolicis *Ecclesia de Eucharistia*. (Apostolic Letter)

See below, canons 915-916.

BOOK IV, PART I, TITLE I: BAPTISM

849

FC 11 (2008), 207-228: Michael Carragher: Intention of the Minister as Substantive Element of Baptism. (Conference presentation)

See below, canon 861.

850

Ap LXXXII 1-2 (2009), 31: Congregatio pro Doctrina Fidei: Responsa ad proposita dubia de validitate Baptismatis. (Reply)

A negative response was given to the question whether the use of the formula "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" was valid; furthermore those who were baptized with these formulas should be baptized absolutely.

861

FC 11 (2008), 207-228: Michael Carragher: Intention of the Minister as Substantive Element of Baptism. (Conference presentation)

On the basis of the teachings of St Thomas Aquinas, C. examines the following questions: What is a sacrament, and what is the sacrament of baptism? What is meant by intention? What are the requirements of the ordinary minister, clerical or lay? He also examines what St Thomas has to say about "other-worldly" ministers (angels, devils) and exceptional ministers (evil persons, pagans, heretics, unbelievers), and numerous other questions regarding what the minister may or may not do.

861

FC 11 (2008), 241-255: Péter Szabó: La validità del battesimo amministrato da un pagano nelle discipline delle Chiese orientali. (Conference presentation)

See above, CCEO canon 677.

861

J 69 (2009), 84-115: Henk Witte: The Local Bishop and Lay Pastoral Workers: A Newly Created Function in the Church and its Impact on Episcopal Collegiality. (Article)

See above, canon 129.

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

897

N XLVI 9-10/09, 499-538: Congregatio de Cultu Divino et Disciplina Sacramentorum: Compendium Eucharisticum. (Documentation)

On 25 March 2009 the Congregation for Divine Worship and the Discipline of the Sacraments published a *Eucharistic Compendium*. This falls into three parts: doctrine and theology; major liturgical texts; a collection of devotional prayers connected with the celebration of Mass and Eucharistic adoration. Printed here are selected texts from the first part.

897-944

Comm 36 (2004), 99-154: Congregatio de Cultu Divino et Disciplina Sacramentorum: Instructio *Redemptionis sacramentum* de quibusdam observandis et vitandis circa Sanctissimam Eucharistiam. (Document)

This Instruction approved on 25 March 2004 seeks to tackle various liturgical abuses. The first chapter sets out the respective roles in moderating the liturgy of the Apostolic See, the diocesan bishop, the episcopal conference, the priest and the deacon. The second speaks of lay participation. The third chapter looks in detail at the correct celebration of Mass. Chapter Four considers the dispositions required to receive Communion and the manner of its administration. The fifth chapter considers a miscellany including sacred vessels and vestments. Chapter Six covers the reservation and worship of the Eucharist. Chapter Seven considers the use of extraordinary ministers. The final chapter looks at remedies for abuses.

899

ACR LXXXVI 3/09, 257-276: John Hill: Can Restorationism Succeed? (Article)

In the light of disagreements about the meaning of some teachings of the Second Vatican Council, H. summarizes what conciliar and post-conciliar documents have stated about reservation of the Blessed Sacrament, the eastward position, and liturgical translation, noting subtle and less-than-subtle changes. The underlying question is whether restorationism – turning back the clock – is ever wise or successful.

899

Ap LXXXII 1-2 (2009), 423-445: Agostino Montan: Benedictus XVI, Litterae apostolicae motu proprio datae de usu extraordinario antiquae formae Ritus romani: *Summorum Pontificum*. Annotazioni canoniche. (Commentary)

On 7 July 2007 the Pope issued a *motu proprio Summorum Pontificum* extending and redefining the use of the Roman rite in use prior to 1970, now to be known as the Extraordinary Rite of the Roman Liturgy, while the current rite is to be called Ordinary. M. discusses whether the missal of St Pius V was ever abrogated; the juridical value of the *motu proprio*; and the competence of the diocesan bishop. He then offers a detailed reflection on each article of *Summorum Pontificum*.

899

Comm 41 (2009), 92-93; also **N XLVI 5-6/09, 242-243: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsa ad Dubia Proposita.** (Reply)

It is not permitted for the celebrant at Mass to receive Communion alone after communicating the people, nor for him to distribute Communion first and then all receive simultaneously. It is not a question of human dignity but expressing his role as presiding minister acting in the person of Christ.

899

Comm 41 (2009), 313; also **N XLVI 3-4/09, 170: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsa ad Dubia Proposita.** (Reply)

This reply gives a negative answer to the question whether, at a priest's jubilee, a bishop may simply concelebrate, relinquishing the role of presiding to the jubilarian. Theologically the bishop must always preside, even if he does so in choir dress and presides over the Liturgy of the Word and gives the final blessing but does not concelebrate. This is provided in the *Caeremoniale Episcoporum,* no. 18.

899

Comm 41 (2009), 314; also **N XLVI 3-4/09, 171: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsa ad Dubia Proposita.** (Reply)

The practice of a number of concelebrants elevating chalices at the doxology of the Eucharistic Prayer is reprobated. The purpose of this elevation is not to show the consecrated elements to the people but to express the giving of glory to God. Only the celebrant, with the assistance of a deacon for the chalice, should do this.

899-933

REDC 65/165 (2008), 493-515: José María Díaz Moreno: Lectura canónico-pastoral del sínodo de los obispos sobre la Eucaristía (3 de octubre de 2005 – 22 de febrero de 2007). (Article)

D.M. deals with some canonical aspects which emerged from the Synod of Bishops (2005-2007). The *lineamenta* mention some of the influences affecting many people's attitude to the Eucharist today, such as theories and opinions contrary to the doctrine of transubstantiation and the Real Presence, a loss of the sense of the sacred and a lessening of the practice of Eucharistic adoration. The document also comments on the lack of proportion between the numbers receiving Communion as against those availing themselves of the Sacrament of Reconciliation. Other issues include the importance of Sundays as the Lord´s Day, celebration in the absence of a priest, the place of the laity in Eucharistic celebrations, the age for First Communion and the order of the Sacraments of Christian Initiation. All of these subjects touch on canonical issues which M.D. briefly comments on. His main canonical considerations, however, are to do with those in irregular marriage situations and their relationship to the Eucharist. A number of the bishops suggested that this question needs to be reconsidered from a more pastoral point of view, especially given the complex and widely differing cases which arise. The final message of the Synod, however, simply expresses sympathy with those who find themselves in such situations, emphasizes that they are not excluded from the life of the Church, and encourages them to participate as far as is possible in the Eucharist. In the final part of his article D.M. considers some comments made in 1997 by the then Cardinal Ratzinger on the sacramental status of the marriage of two baptized but non-believing persons, in which he claimed some level of faith had to be part of the sacrament. However in 2005 as Pope Benedict XVI he limits his earlier answer by admitting it is not clear that lack of faith can be a ground of marriage nullity, but adding that the matter must be studied in greater depth.

908

Comm 35 (2003), 17-22: Pope John Paul II: Ex Litteris Apostolicis *Ecclesia de Eucharistia*. (Apostolic Letter)

See below, canons 915-916.

908

IC XLIX 98/09, 373-412: José Bernal: Aspectos del Derecho penal canónico. Antes y después del CIC de 1983. (Article)

See below, canons 1311-1399.

912-923

Comm 37 (2005), 154-174: Julián Herranz: Allocutio Em.mi Praesidis apud Universitatem Catholicam Murcensem Sancti Antonii occasione Congressus Eucharistici Universitarii habita: *La Eucaristía en el ordenamiento jurídico de la Iglesia.* (Address)

Cardinal Herranz addresses a Eucharistic Congress at the Catholic University of St Anthony, Murcia, on the subject of the Eucharist in the law of the Church. His two main themes are the Eucharist as an inestimable gift and right of the faithful, and limits on the right to receive the Eucharist. In the latter he focuses on: lack of right disposition; children under age or those mentally infirm; denial of the Eucharist; those married only civilly or divorced and remarried; baptized non-Catholics.

915-916

Comm 35 (2003), 17-22: Pope John Paul II: Ex Litteris Apostolicis *Ecclesia de Eucharistia*. (Apostolic Letter)

Two excerpts from the Pope's Letter on the Eucharist, chapter 4, focus on the relationship between the sacraments of Penance and the Eucharist and the question of intercommunion.

927

IC XLIX 98/09, 373-412: José Bernal: Aspectos del Derecho penal canónico. Antes y después del CIC de 1983. (Article)

See below, canons 1311-1399.

934

ACR LXXXVI 3/09, 257-276: John Hill: Can Restorationism Succeed? (Article)

See above, canon 899.

934-944

Comm 35 (2003), 224-250: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio IV). (Report)

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

941-944

N XLVI 3-4/09, 130-149: M. Ouellet: Ponenza dell'Em.mo Card. Marc Ouellet, Arcivescovo di Quebec. (Paper)

In his paper given to the Plenary meeting of the Congregation for Divine Worship in March 2009 O. gives an outline of the historical development of Eucharistic adoration, and then moves on to study its theological significance. It is a participation in the adoration of Christ; it is at the heart of what is meant by "remembrance"; and it is a prolonging of the Eucharistic celebration.

941-944

N XLVI 3-4/09, 172-179: U. Lang: L'Adorazione dell'Eucaristia nei Padri della Chiesa. (Article)

While Eucharistic adoration in the modern sense was not known in the Patristic period, a lively sense of adoration before the Lord can be found in the writings of the Fathers. Examples of this are found in genuflection and in the insistence on standing for prayer on Sundays and during Eastertide. L. then looks at

several Patristic texts that express the Real Presence of Christ in the Eucharist and the reverence to be shown.

941-944

N XLVI 3-4/09, 180-192: G. Ferraro: Adorazione ed Eucaristia. (Article)

Eucharistic adoration was the theme of the 2009 Plenary meeting of the Congregation for Divine Worship. Starting with the Pope's address, F. looks at several other places where Popes have spoken on this subject, and then at places in the Scriptures which speak of adoration of God and of Christ, and also of Jesus' perfect adoration of the Father.

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

995

Comm 41 (2009), 38-40: Pope Benedict XVI: Allocutio Summi Pontificis ad eos qui die 16 mensis martii 2009 in Conventu Plenario Congregationis pro Clericis partem habuerunt. (Address)

The Pope sets out to those attending the Plenary session of the Congregation for the Clergy his reasons for proclaiming a Year of the Priest from 19 June 2009, the Solemnity of the Sacred Heart, to the same Solemnity in 2010.

995

Comm 41 (2009), 102-103: Paenitentiaria Apostolica: Decretum quo plenaria conceditur Indulgentia christifidelibus qui, occasione "VI Mundialis Familiarum Congressus" Mexicopolim peregrine confluxerint, vel ad eosdem spiritales fines pariter ac peregrine in familia oraverint. (Document)

The Apostolic Penitentiary grants a plenary indulgence to participants in the Sixth World Congress of Families meeting in Mexico City and those praying with them at home.

995

Comm 41 (2009) 104-108; also **N XLVI 5-6/09, 245-247: Paenitentiaria Apostolica: Decretum: Dono Sacrarum Indulgentiarum ditantur peculiaria spiritalia incepta per Sacerdotalem Annum, in honorem Sancti Ioannis Mariae Vianney indictum, peragenda.** (Decree)

This decree grants various indulgences for the "Year of the Priest" beginning on 19 June 2009, some specifically for priests, others for all the faithful.

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

1003

Comm 37 (2005), 175-179: Congregatio pro Doctrina Fidei: Adnotatio de Ministro Sacramenti Unctionis Infirmorum. (Note)

This note dated 11 February 2005 restates as a doctrine to be held definitively that only priests, not deacons or laity, can anoint the sick, and any attempt on the part of the latter to do so constitutes simulation of the sacrament. The note is accompanied by an explanatory letter and comment.

BOOK IV, PART I, TITLE VI: ORDERS

1008

LS 33 (2008), 221-235: John Hadley: Priesthood *in persona Christi*. The Substance of Things Hoped for. (Article)

See above, canon 279.

1008-1009

Comm 41 (2009), 260-265: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Omnium in mentem* quibus aliquae normae in Codice iuris canonici immutantur (lingua latina una cum versione italica). (Document)

This document makes significant but unrelated changes to the Code of Canon Law. Articles I and II make it clear that those ordained as deacons share in the ministry of service of Christ, but not in his role of Headship (canons 1008 and 1009). The second change removes the exemptions in the CIC/83 for those who have formally defected from the Catholic Faith, with regard to the impediment of disparity of cult and the obligation of the canonical form of marriage.

1008-1009

Comm 41 (2009), 334-337: Francesco Coccopalmerio: Articulus, explanans Motum Proprium *Omnium in mentem* a Summo Pontifice die 16 mensis decembris 2009 datum, ab Exc.mo D. Francisco Coccopalmerio, Praeside Pontificii Consilii de Legum Textibus, conscriptus. (Article)

See previous entry. C. explains the background to and the significance of the *motu proprio* amending the canons concerned. The first change reflects an amendment to the *Catechism of the Catholic Church* in order to make it clear that deacons do not act in the person of Christ as head, but rather in a ministry of service. The CCEO had not adopted this phraseology in the equivalent canons and so did not need any changes. The second change arose out of the difficulties experienced in trying to apply these canons and had been subject to study since 1997, and followed the clarification given by the Pontifical Council for Legislative Texts on 13 March 2006.

1008-1009

FC 11 (2008), 185-206: Agostino Montan: «Formule teologiche»: Variabilità e limiti nella dottrina e diritto sacramentale. (Conference presentation)

See above, canons 750-753.

1013

REDC 66/166 (2009), 113-141: Federico R. Aznar Gil: La remisión de la excomunión *latae sententiae* declarada a cuatro obispos de la Fraternidad Sacerdotal de San Pío X: análisis canónico y repercusiones. (Article)

See below, canons 1354-1363.

1013

REDC 66/166 (2009), 367-377: Documentos sobre la remisión de la excomunión de los Obispos consagrados por Mons. Lefebvre. (Documents)

See below, canons 1354-1363.

1024

FC 11 (2008), 185-206: Agostino Montan: «Formule teologiche»: Variabilità e limiti nella dottrina e diritto sacramentale. (Conference presentation)

See above, canons 750-753.

1029

Comm 37 (2005), 180-185: Congregatio de Institutione Catholica: Instructio circa criteria discernendi quoad vocationem personas quae tendentias homosexuales praesentant in ordinem ad eas admittendas ad seminarium et ad ordines sacros. (Document)

This Instruction dated 4 November 2005, in considering the criteria to be applied to the admission to seminary or holy orders of persons presenting homosexual tendencies, reflects first on the requirement for affective maturity and spiritual fatherhood. Tradition is clear that homosexual acts are sinful. However persons with homosexual tendencies are to be treated with respect and

delicacy. Still, those with profoundly-rooted tendencies, those upholding "gay culture", or practising homosexuals, cannot be admitted to seminaries or holy orders. Any transitory tendencies must have been overcome for at least three years prior to ordination to the diaconate. The document then offers advice on discernment, and emphasizes the responsibility of the bishop for this.

1041

SC 43 (2009), 81-87: James A. Coriden: Does a Vasectomy Constitute an Irregularity to the Sacrament of Orders? Another Answer to the Question. (Article)

This is a response to an article with the same title-question written by Brian Dunn in *Studia Canonica* in 2004 (see *Canon Law Abstracts*, no. 95, pp. 78-79). Although the response faults the presentation made by Dunn of the moral teaching on contraceptive vasectomy, the critique focuses especially on the canonical meaning of mutilation in the CIC/17 and CIC/83. C. concludes that Dunn's evidence does not support his canonical conclusion that a vasectomy is a mutilation in the sense of the irregularity for orders of canon 1041 5°. (See also the following entry.)

1041

SC 43 (2009), 89-95: Brian J. Dunn: Does a Vasectomy Constitute an Irregularity to the Sacrament of Orders? A Response to James A. Coriden's Critique. (Article)

In an article published in *Studia Canonica* in 2004, D. had concluded that a vasectomy is included in the meaning of the term "mutilation" of canon 1041 5° of the CIC/83. He now offers this response to James Coriden's critique of his conclusion (see preceding entry). Through an analysis of canon 17, he shows that, when a term has a "doubtful and obscure" meaning, the interpreter must have recourse to parallel places, to the purpose and circumstances of the law, and to the mind of the legislator. He concludes that vasectomy does fall within the *canonical* meaning of mutilation and, when performed with full knowledge and deliberate consent, can constitute the irregularity of canon 1041 5°.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

EE 84 (2009), 757-778: José Luis Santos Diez: Los otros matrimonios: unión de hecho, matrimonio homosexual y matrimonio de conveniencia. Planteamiento jurídico en el ordenamiento español. (Article)

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

1055

FC 11 (2008), 135-157: George D. Gallaro - Dimitri Salachas: The *ritus sacer* of the Sacrament of Marriage in the Byzantine Churches. (Article)

See above, CCEO canon 828.

1055

FC 11 (2008), 229-240: Myriam Tinti: La rilevanza del battesimo per la sacramentalità del matrimonio. (Conference presentation)

T. studies the question of the inseparability between the natural contract of marriage and the sacrament, and examines why it is that if a person intends in an effective manner to contract valid marriage, then *ipso facto* he or she has the complete necessary intention to bring about the sacramental sign, which is none other than the same natural contract elevated by Christ to the level of a sacrament. She looks at Rotal jurisprudence on sacramentality in relation to simulation (canon 1101 §2) and error of law (canon 1099). The clearly-established principle is that even though baptized parties may have lost their faith, nevertheless if they have the correct intention in contracting marriage as a natural contract, they validly contract marriage as a sacrament since, by the institution of Christ, the sacramental effects are produced independently of the will of the minister. As regards a possible conflict between the two intentions – that of not producing the sacrament and that of contracting marriage – the validity of the marriage and the existence of the sacrament will depend on which intention prevails. From the psychological point of view, the person can make a distinction: to want the contract, and by a positive act of the will to exclude the sacramental dignity, just as a person may exclude indissolubility or fidelity and so cause the marriage to be null through simulation. The same principles apply in the case of error regarding sacramentality.

1055

FCan IV/1-2 (2009), 79-102: Carmen Peña García: La exclusion del *bonum prolis*. (Article)

See below, canon 1101.

1055

IE XXI 1/09, 49-61: Antoni Stankiewicz: Il diritto matrimoniale canonico nel momento presente: valutazione e prospettive. (Article)

The global spread by the media of doctrines attacking traditional marriage certainly constitutes a serious destabilizing factor within the postmodern cultural process. However, while pointing out the even greater danger represented by the growing pluralization of matrimonial and paramatrimonial unions, S. rejects pessimism regarding the ability of marriage, which is an "institution of natural right" deeply intrinsic to the being of man and woman, to withstand the onslaught. After pointing out the different crises that have threatened the institution of marriage throughout the whole of human history, he looks at developments in Roman law around the time of Augustus, making reference in this context to what St Paul writes in the letter to the Romans, and in the same sense to the *Catechism of the Catholic Church*, nos. 1606-1607 ("Marriage under the regime of sin"). In a separate section he deals with the effect of the crisis of the institution of marriage on judicial interpretation of matrimonial canon law; and in the final part, he considers the present situation and prospects for the future.

1055

INT 14 1/08, 70-86: Augustine Kallely: Loving in the Assisted Marriage: An Analysis of the Concept of Love in Contemporary Marriage Practices of Kerala Christians in South India. (Article)

There is a perception of marriage as being divided into arranged marriages and love marriages; each has its benefits and drawbacks. K. examines a form of marriage emerging among the Kerala Christians in South India which he describes as "assisted marriage". Here, the man or woman wishing to marry seeks the guidance of family, but has a say in the choice of spouse. K. examines the characteristics of these marriages, and looks at them in the context of love of different kinds. He concludes that such a union can in a particular way offer the same benefits as a love marriage.

1055

INT 14 2/08, 170-180: Andrea Palmieri: The Second Marriage Service in the Orthodox Church. (Article)

In order to understand what is involved in the possibility of a second marriage in the Greek Churches P. looks at the marriage service used, which is different from that of a first marriage, and analyzes the meaning of each element. He then discusses some of the theological issues involved. He puts forward the view that, by offering the possibility of a second union, the Orthodox Church is not lowering the ideal, but wishes to extend to the person the opportunity to continue to seek the ideal, even though he or she has not achieved this before because of personal failures.

1055

INT 14 2/08, 242-249: Roy Dorey: Tensions in Present-Day Marriage: Living out Marriage within Prevailing Culture. (Essay)

Marriage in the United Kingdom is a vulnerable institution. Acknowledging this, D. looks at the different approaches to marriage of the Church of England, the Catholic Church and the Non-Conformist Churches. He then identifies four elements of present-day culture which can negatively inform the person's attitude to and experience of marriage. They are: emphasis on the individual, which can lead to competition rather than partnership in the marriage; the stress on family as a private arrangement, which can lead to isolation and a lack of support; rejection of long-term commitment, combined with the notion of a "disposable" society, which favours short-term unions; and sexuality as a commodity, which puts the relationship of marriage at a distance. People change over the years and the pressures on a couple are for them to grow apart rather than together. D. suggests that the Church is well placed to support and assist the couple as the marriage progresses.

1055

INT 15 1/09, 76-87: Caroline J. Simon: Redemptive Engagement with Cultural Conceptions of Sexuality. (Essay)

S. summarizes six views of sexuality current in today's culture; two of these are Christian, the other four secular. She describes the Procreative View as the official attitude of the Catholic Church; while the Covenantal View is that mainly articulated by the Protestant community. The four secular positions are the Plain Sex View, the Romantic View, the Power View and the Expressive View. S. describes and contrasts what is meant by each. She concludes that all

six are value-laden; we may also, without being aware, hold more than one view. She suggests therefore that three ingredients are necessary, namely, self-reflection, judiciousness, and honest dialogue, if we are to seek redemptive engagement with cultural conceptions of sexuality.

1055

SC 43 (2009), 243-260: Apostolic Tribunal of the Roman Rota: Exclusion of the *Bonum Coniugum* and Incapacity to Assume the Essential Obligations of Marriage: Decision *coram* Monier, 27 October 2006. (Sentence)

See below, canon 1101.

1055

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

God's plan for man and woman, created in his image and likeness, finds its maximum expression in the command to go forth and multiply. The creation of man and woman involves the vocation to fatherhood and motherhood – the sources of life within them, that are a sort of pre-sacrament, a sign of the living presence of God in the midst of creation. This vocation, inseparable from the creation of the human being, has a permanent presence throughout the Church's theological and canonical Tradition. The procreation and upbringing of children is therefore an essential and fundamental reality in the life of each person. Not everyone will exercise paternity or maternity in an effective manner, but no one can escape from the fact of having been procreated and brought up. This study contains a canonical investigation into the sacrament of marriage, and aims in particular to identify the essential content of the *bonum prolis*. It looks at the elements relative to the procreation and upbringing of children which – if the marriage is to be valid and acquire all its salvific and juridical effects – cannot be lacking from the will of the parties at the moment of their exchanging matrimonial consent. It consists of two main parts. Part I deals with the *bonum prolis* in canonical Tradition (Apostolic and Patristic Tradition in the 1st-9th centuries; the canonical reform of the 12th and 13th centuries; doctrine, Magisterium and legislation up to 1917; the CIC/17 and the years prior to Vatican II; and the period from Vatican II to the CIC/83). Part II looks at the essence of the *bonum prolis* (*bonum prolis* as an essential element and end of marriage; elements of the essential content of the *bonum prolis*; exclusion of *bonum prolis* as a cause of nullity). (For bibliographical details see below, Books Received.)

1057

Ap LXXXII 1-2 (2009), 391-409: Piero Antonio Bonnet: Il consenso matrimoniale. A proposito di un libro recente. (Bibliographical review)

While praising the dedication and insights of A. D'Auria in his book *Il consenso matrimoniale. Doctrina e Giurisprudenza canonica* (Rome, 2007) B. offers a critical review of the work indicating points in which he is not able to agree with the author.

1057

IE XXI 2/09, 478-493: Benedetto XVI: Discorso a la Rota Romana, 29 gennaio 2009, (con *nota* di M. A. Ortiz: *Capacità consensuale ed essenza del matrimonio*). (Document and commentary)

See below, canon 1095 2º-3º.

1060

Comm 36 (2004), 20-23: Pope John Paul II: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos 29 ianuarii 2004 habita. (Allocution)

In his Rotal address for 2004 Pope John Paul II speaks of the favour of the law enjoyed by marriage in the light of some voices that prefer to speak of favour of the person, or of subjective truth, or of liberty. It is not simply a protection of the status quo but of objective truth. The annulment process must never be seen as just a pastoral instrument. It is about uncovering the truth.

1061

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See above, canon 1055.

1086

Comm 41 (2009), 260-265: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Omnium in mentem* quibus aliquae normae in Codice iuris canonici immutantur (lingua latina una cum versione italica). (Document)

See above, canons 1008-1009.

1086

Comm 41 (2009), 334-337: Francesco Coccopalmerio: Articulus, explanans Motum Proprium *Omnium in mentem* a Summo Pontifice die 16 mensis decembris 2009 datum, ab Exc.mo D. Francisco Coccopalmerio, Praeside Pontificii Consilii de Legum Textibus, conscriptus. (Article)

See above, canons 1008-1009.

1086

REDC 65/165 (2008), 703-725: Tribunal Supremo, Jurisdicción Contencioso-Administrativa: Sentencia de 19 setiembre de 2008 sobre cancelación de datos en los Libros de Bautismo. (Document and commentary)

Given here is the text of a decision of the Spanish Supreme Court of 19 September 2008. The point at issue was the request by a person who had defected from the Catholic Church by a formal act that the record of his baptism be erased from the appropriate parish baptismal register under the rights given by Spain's Data Protection legislation. The diocese in question (the Archdiocese of Valencia) had declined to accede to this request, arguing that the baptismal registers of the Church are purely the recording of a historical fact and not a register of Catholic members, nor are they to be regarded as databases as they are not drawn up in any ordered way (such as alphabetically or by date of birth) and for this reason prove difficult to consult for any specific person's baptism. The case eventually found its way to the Supreme Court for it to decide the issue, which it did by upholding the arguments put forward by the Archdiocese of Valencia. An increasing number of such requests for erasure of data from baptismal registers has been coming to dioceses in Spain and to the courts. This decision overturned a number of earlier contrary decisions by lower courts and has clarified the present legal position.

1088

EE 84 (2009), 701-728: Teodoro Bahíllo Ruiz: Profesión del consejo de castidad mediante votos y otros sagrados vínculos. A propósito del alcance del *impedimentum voti* del canon 1088. (Article)

Assumption of the evangelical counsel of chastity, by means of a vow or any other sacred bond, involves the renunciation of the exercise of the right to marriage. It is this almost absolute incompatibility between the matrimonial state and the vow of chastity that forms the deepest basis of the *impedimentum voti* of canon 1088. Although the present legislation has overcome the

discriminations and ambiguities of the past by suppressing the centuries-old distinction between simple and solemn vows, it has not considered it opportune to extend this invalidating effect as regards marriage to other forms of assuming chastity in a public, stable and definitive manner: in particular the forms adopted by members of secular institutes, hermits, and consecrated virgins. B.R. concludes that the invalidating effect attributed to the public perpetual vow of chastity in a religious institute depends not on any intrinsic quality of the vow (its totality or its public nature) but on extrinsic factors and reasons, especially the desire of the legislator to protect and safeguard the most institutional of all forms of consecration, the religious life, and to avoid corruptions, interferences, scandals and contradictions.

1095

QDE 22 (2009), 425-445: Paolo Bianchi: L'incapacità psichica al matrimonio: punti fermi e problemi aperti. (Conference presentation)

This is part of the text from a presentation made by B. to the officials of the Regional Ecclesiastical Tribunal of Puglia on 6 March 2004. B. introduces his work by listing those elements related to canon 1095 that are in his judgement of common acceptance. He then turns his attention to other matters that have given cause for debate among those working in the Church's tribunals. He offers reflections on the understanding of the *bonum coniugum*; on whether the incapacity mentioned in canon 1095 is to be understood as relative or absolute; and on the correct use of experts in matrimonial cases.

1095 2º

REDC 66/166 (2009), 399-415: Tribunal Rotae Romanae, c. R.P.D. Ioseph M. Serrano Ruiz, ponente. Nullitatis matrimonii ob gravem defectum discretionis iudicii. (Sentence)

The Rota had overturned the affirmative first instance decision given on the ground of simulation and introduced a new ground of nullity (grave lack of discretion), which received an affirmative decision. The present decision (the text is in Latin) concerns the second instance consideration of that ground. Serrano's *in iure* section deals with depression, the principal area of attention in the case. The symptoms of this condition are extremely varied and can cover very different states and circumstances, none of which in themselves need necessarily indicate a state of depression, with the result that it can be very difficult to specify clearly under exactly which category it should be classified. Nevertheless when all or many of these symptoms come together in one person there can be little doubt of the existence of what Serrano refers to as *depressio*

dissimulata (hidden or disguised depression). The question may then arise as to whether the condition vitiates the act of consent through grave lack of discretion or whether it renders the person incapable of assuming the essential obligations of marriage. In this case the court upheld the first instance decision on grave lack of discretion.

1095 2º

Hugo Adrián von Ustinov: La Rota Romana: fuente del canon 1095, 2º. (Book)

The text of canon 1095, which did not exist in the pre-1983 legislation, gathered together and formulated in suitable terms the contributions made by doctrine and jurisprudence over the preceding decades. The three parts of the canon have subsequently been enriched by means of renewed Rotal jurisprudence and decisive interventions on the part of the Supreme Legislator, principally (although not exclusively) in his Addresses to the Rota at the start of the judicial year. In this book von U. studies the jurisprudential sources of canon 1095 2º with a view to obtaining a better understanding of the initial intention of the Legislator. He identifies the various paths leading to the definitive text of the present law, and by contrast the paths which had to be abandoned as possibly leading to conclusions at variance with a true Christian anthropology. The book contains an introductory section dealing with valid consent in matrimonial canon law, and the juridical structure of canonical marriage; Chapter I, which looks at the concept of discretion of judgement in pre-1983 Rotal sentences; Part II, dealing with the evolution of jurisprudence around the nucleus of discretion of judgement and the presumptions which affect it; and an epilogue which examines whether it is possible to measure the "gravity" of lack of discretion of judgement, and also dealing with the orientations of post-1983 Rotal jurisprudence, and the integral examination of evidence on the part of the tribunal. (For bibliographical details see below, Books Received.)

1095 2º-3º

AA XV (2008), 9-50: Federico Aznar Gil: La inmadurez psicológica y el consentimiento matrimonial en la jurisprudencia rotal. (Article)

A.G. first sets the scene with an overview of the increasing phenomenon in modern society of a psychological immaturity among many young people who continue to live in a kind of post-adolescence sometimes well into their thirties, marked by a total concentration on self, an inability to establish long-term commitments, frequent and transitory short-term relationships, a constant search for pleasure, and the consequent inability to deny oneself. He then sets out to

examine how Rotal jurisprudence has dealt with this kind of affective and emotional immaturity with regard to marriage consent. The concept of psychological immaturity is not a canonical one and is not easy to define clearly and succinctly, as it can show itself in many different ways and have many varying causes. However, as marriage is the natural right of every normal person it cannot be lightly denied to anyone without adequate contrary proof, and although the limitations and imperfections of human nature are always present this does not mean a person is incapable of valid marriage consent. Psycho-affective immaturity is not in itself a canonical ground of nullity, and only comes into play if it causes a grave lack of discretion or an inability to assume the essential obligations of marriage. The difficulty is to determine the level of maturity required in each case in order to elicit valid consent, remembering that what is required is the canonical level of maturity for marriage, not a full and complete maturity free of any flaws or imperfections. In the canonical process, given the lack of any defining criterion of immaturity, the judge must ensure that his legitimate subjective discretion in assessing the case is not purely arbitrary, nor can he rely exclusively on psychological reports or tests but must rather situate them in the wider context of the person's background, upbringing and subsequent behaviour and attitudes as seen in the evidence before him. Nevertheless the input of psychologists and psychiatrists is necessary in all cases relating to canon 1095 unless documents already in the *acta* contain such psychological information, or the circumstances themselves overwhelmingly prove the case. The psychologists consulted must not only be well versed in their subject, professionally competent and reliable, but must also have a genuine Christian anthropology and understanding of human nature. A.G. provides in an appendix a listing of pertinent Rotal decisions upon which he has drawn in the course of his article.

1095 2º-3º

AA XV (2008), 77-107: Alejandro W. Bunge: Guía doctrinal para presentar y resolver causas de nulidad matrimonial por el canon 1095 §§ 2 y 3. (Article)

B. provides a historical and doctrinal background to the developments leading to the present canon 1095 2° and 3° and its interpretation, referring particularly to the works of certain canonists (Pompedda, Stankiewicz, García Faílde, Zuanazzi, Amati). He emphasizes that all the headings of this canon refer specifically to the absence of that natural ability of most human beings to contract marriage. This can happen through various disturbances of the mind which impede the positing of the truly human act necessary to give marriage consent (2°) or the inability due to psychological causes to carry out its essential obligations (3°). In both cases we are dealing with a much more radical

condition than any simple marriage impediment. Lack of discretion of judgement is the juridical expression of that psychological inability to give true consent, whether those psychological causes constitute a true mental illness or not. Such causes can affect either the intellect or the will or both, and indeed intellect and will always interact together in the decision-making process. The lack of internal freedom and affective or emotional immaturity do not constitute separate canonical grounds of nullity but are only considered insofar as they bring about the inability to give valid marriage consent. As for inability to assume the obligations of marriage, this cannot arise from a simple incompatibility of personalities (sometimes referred to as "relative inability") unless this is due to a psychological disorder in one or other of the parties. Whoever is unable to give valid marriage consent because of a grave lack of discretion is also unable to assume the essential obligations of marriage, being unable to posit the human act necessary to do so.

1095 2º-3º

EE 84 (2009), 829-847: Tribunal Eclesiástico del Obispado de Albacete: ante el Ilmo. Sr. D. Jesús Rodríguez Torrente. (Sentence)

The female petitioner became engaged to the respondent one month after first meeting him. It was her first experience of engagement. The respondent displayed great enthusiasm and overwhelming generosity. After a year and a half they married. The decision seemed the right one: they were both of age, professionally established, and deeply in love. However, two months before the wedding the respondent had started to behave and act in a strange way towards the petitioner, which at the time was put down to pre-wedding nerves. Within three months the marriage had fallen apart without anyone understanding why. What was clear was that from a state of irresistible love for the petitioner, the respondent had passed to one of complete indifference towards her, as though she did not exist. A declaration of nullity was requested on the grounds of grave lack of discretion of judgement on the part of both spouses, and inability on the part of the respondent to assume the essential obligations of marriage. The marriage was declared invalid on all these grounds. A short commentary by the *ponens* is attached to the case.

1095 2º-3º

EE 84 (2009), 849-867: Tribunal Diocesano de Málaga: ante el Ilmo. Sr. D. José Manuel Ferrary Ojeda. (Sentence)

The parties married in 1999 after 7 years of engagement. The male respondent during that time appeared to be a cheerful and amusing character, and did not

display the grave problems which were later to affect the marriage. Only after the wedding did he become cold and distant. Since this problem persisted both parties sought the help of a psychologist, but the husband later stopped seeing the expert. The female petitioner then fell into a state of depression, and furthermore started to suspect the respondent of infidelity. Conjugal life together lasted about six months. In 2007 the petitioner requested a declaration of nullity. The grounds were fixed as: grave lack of discretion on the part of both spouses; incapacity to assume the essential obligations of marriage on the part of both spouses; exclusion of the essential properties of marriage on the part of the respondent; deceitful error suffered by the petitioner. The tribunal gave an affirmative decision on the grounds of grave lack of discretion of judgement in both parties, and exclusion of the essential properties of marriage by the respondent; and a negative decision on the grounds of incapacity to assume in both parties, and error. A short commentary attached to the case deals with the use of presumptions when direct proofs are inconclusive.

1095 2º-3º

IE XXI 2/09, 478-493: Benedetto XVI: Discorso a la Rota Romana, 29 gennaio 2009, (con *nota* di M. A. Ortiz: *Capacità consensuale ed essenza del matrimonio*). (Document and commentary)

The Italian text is given of the Pope's 2009 address to the Rota. In his commentary, O. points out that in previous addresses Pope Benedict had been examining aspects of the judicial power of the Church. In this latest address, the Pope looks at a matter that concerns the pastors and all the faithful, that of protecting the ecclesial community from what Pope John Paul II described as "the scandal of seeing the value of Christian marriage being destroyed in practice by the exaggerated and almost automatic multiplication of declarations of nullity ... on the pretext of some immaturity or psychic weakness". O. goes on to deal with psychic capacity and the essence of marriage.

1095 3°

Comm 41 (2009), 20-23: Pope Benedict XVI: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos 29 mensis ianuarii 2009 habita. (Address)

In his 2009 address to the Rota Pope Benedict XVI notes that 20 years have passed since Pope John Paul II spoke about the question of psychological incapacity for marriage (1987 and 1988), and asks how far these teachings have been received by tribunals. He recalls the principles set out at that time and the

references to this question in article 209 of *Dignitas Connubii.* He warns against understanding capacity in terms of an overly-idealized idea of self-fulfilment.

1095 3º

FCan IV/1-2 (2009), 167-170: Bento XVI: Discurso ao tribunal da Rota Romana na inauguração do ano judiciário. (Address)

For his annual address to the members of the Roman Rota on 29 January 2009, Pope Benedict XVI chose the topic of declarations of matrimonial nullity for psychic incapacity, an innovation in the CIC/83. More than 20 years previously Pope John Paul II had specified the criteria for the correct interpretation of canon 1095. For true incapacity there needs to be a serious form of psychic anomaly which substantially affects the capacity to understand or will; this was subsequently taken up by *Dignitas Connubii*, as the present Pope explains. Benedict XVI also wanted to stress the natural capacity for marriage which in principle every man and woman has, thus opposing the "humanist" anthropological currents of opinion which would make psychic capacity dependent on factors that do not correspond to the essential elements of the conjugal bond. According to the Pope, the capacity for marriage must be linked to the essence of marriage, that is, in the words of Vatican II, "the intimate partnership of married life and love … established by the Creator and qualified by his laws" (*Gaudium et Spes*, no. 48). (See also *Canon Law Abstracts*, no. 103, p. 109.)

1095 3º

QDE 22 (2009), 65-84: Paolo Bianchi: Alla ricerca degli obblighi essenziali del matrimonio rimasti inevasi: can. 1095, 3º. (Article)

B. reports on his attempts to arrive at a list of the "essential obligations of marriage" referred to in canon 1095 3º. He concludes that no exhaustive list can be found in the CIC/83 or in other Church documents. With this as his point of departure he examines the acknowledged headings of nullity that provide the materials for developing claims for nullity under canon 1095 3º. He includes in his review the heading of *bonum coniugum* and develops links between this heading and other more traditional ones. He completes his study by reviewing the findings of some cases at the Rota and in his own tribunals. He remains troubled by what he sees as the vagueness of this canon.

1095 3º

REDC 65/165 (2008), 727-740: Tribunal del Arzobispado de Madrid: Sentencia sobre nulidad de matrimonio, 30 de junio de 2008, ponente, D. José Luis Sánchez-Girón Renedo. (Sentence)

After a year-long courtship free of any problems the male petitioner married the respondent. He was Spanish, she was Colombian and was living in Spain illegally, having already had two children in Colombia from a previous union. Some months after the wedding she returned to Colombia, and brought the children back with her to Spain. It was from this time that the marital relationship began to experience serious tensions and continued to deteriorate over the next few years until the respondent left the marital home with her children. The grounds of nullity were the respondent's inability to assume and fulfil the essential obligations of marriage due to her alleged lesbianism, and *error dolosus* perpetrated by her upon the petitioner. The tribunal's decision was negative on both grounds. Although unsubstantiated allegations had been made about the respondent's having a "girlfriend" in Colombia no evidence was brought forward to prove it. The fact that she had already been in a heterosexual relationship in her own country and had had two children, and that she was now living with another man in Spain and had had a child by him would hardly indicate she was a lesbian. This being so, neither could she have induced the petitioner into error about a quality she did not possess. Although she did gain residency rights in Spain by marrying him, he was well aware of this before the marriage so no deceit was involved even on this point.

1095 3º

REDC 66/166 (2009), 379-398: Discurso de Benedicto XVI a los Ilustres jueces, oficiales y colaboradores del Tribunal de la Rota, 29 de enero de 2009. (Document and commentary)

The text of Pope Benedict's allocution to the Roman Rota is given, in both Italian and its Spanish translation, in which he emphasizes the requirements for a declaration of nullity on the ground of inability to assume and fulfil the essential obligations of marriage, given that so many cases are granted on this ground based on so-called psychological immaturity. The commentary (by F. Aznar Gil) attempts to explain the great increase in the number of these cases due to prevailing social attitudes not only to what marriage itself is, but also to the whole field of interpersonal relationships. Many young people are accustomed to superficial, transitory and fast-changing relationships based on pleasure or consumerism, with little or no family support or socially accepted norms, and they cannot help but bring these attitudes to their understanding of marriage. The commentary quotes from the 2008 document from the

Congregation for Catholic Education concerning the formation of candidates for the priesthood (see above, canons 234-235) which speaks of similar problems in that area and says that candidates who cannot face realistically their "areas of grave immaturity" should be stopped from proceeding to the priesthood. All too many people entering marriage have failed to reach that level of maturity required to allow them to make a full and genuine commitment to a stable and lifelong union. This goes some way to explaining the increase in the number of cases granted under canon 1095 3º.

1095 3°

SC 43 (2009), 243-260: Apostolic Tribunal of the Roman Rota: Exclusion of the *Bonum Coniugum* and Incapacity to Assume the Essential Obligations of Marriage: Decision *coram* Monier, 27 October 2006. (Sentence)

See below, canon 1101.

1095 3°

SCL V (2009), 7-12: Pope Benedict XVI: Allocution to the Members of the Tribunal of the Roman Rota. (Address)

English text of the Pope's 2009 Rotal address. See above.

1097-1098

QDE 21 (2008) 184-205: Massimo Mingardi: L'errore di fatto, spontaneo e doloso (cann. 1097 e 1098). (Article)

M. contrasts the current legislation with that of the CIC/17, and distinguishes between what these specific canons state about error and what the CIC/83 states about error in juridical acts in general. While canons 125 §2 and 126 allow an act completed through error to be rescinded, this cannot be applied to marriage which is both intrinsically and extrinsically indissoluble. Examining closely the content of canon 1098, the conditions in which the invalidity of the marriage is foreseen because of deceit are seen to be so restrictive that it can be concluded that in the area of marriage, deceit is not a ground of nullity except in the most exceptional cases. The definition of error received from doctrine and jurisprudence is restated and described. After an analysis of the foundational premises of the nature and mechanics of error – in general, and in the specific field of the canonical dimensions of marriage – the individual hypotheses of nullity outlined in the two canons are examined. Canon 1097 §1 applies canon 126 in that the parties constitute the essential material of the contract. Canonical

doctrine confirms the understanding of the person applicable in this canon to be a specific physical human person excluding any wider interpretation to include personality or other qualities. In canon 1097 §2, the Legislator confirms the general principle excluding antecedent error: error about the quality of a person does not invalidate marriage, even if the erring party would not have gone ahead with the marriage if he or she had known the truth. The development of this canon, which adopted the third rule of St Alphonsus Liguori, is outlined. Rotal jurisprudence has listed qualities that fall within the scope of this error.

Canon 1098 is an innovation in the CIC/83. With the underlining of the intrinsic seriousness of the objective quality of the deceit, the canon confirms that primacy must be given to the quality itself over the fact of the deceit. A further innovation, according to M., is that the Legislator has given accidental error the power to invalidate marriage albeit within strict parameters. It is important to note that deceit in itself does not invalidate marriage by natural law: this is a significant point as it determines the ambit of the canon's application.

Proving the invalidity of a marriage on the basis of these grounds is difficult. Firstly, the two grounds are exceptions to general principles. Secondly, each and every one of the elements under which the invalidity of the ground is established must be proved. M. lists six points which need to be verified according to canon 1097 §2, and seven for canon 1098.

1098

REDC 65/165 (2008), 727-740: Tribunal del Arzobispado de Madrid: Sentencia sobre nulidad de matrimonio, 30 de junio de 2008, ponente, D. José Luis Sánchez-Girón Renedo. (Sentence)

See above, canon 1095 3º.

1099

Comm 35 (2003), 6-10: Pope John Paul II: Allocutio ad Auditores, Administros, Advocatosque Rotae Romanae coram admissos. (Allocution)

In his 2003 address to the Roman Rota the Pope moves from his consideration of the natural dimensions of marriage in previous years to the relationship between the marriage of the baptized and the mystery of God. Distancing from God implies a dehumanizing of family relationships. Vatican II emphasized the importance of the sacrament in marriage in helping couples to achieve holiness of life. The fidelity of God makes human fidelity possible. The first duty of a judge is to see whether convalidation of an invalid marriage might be possible. The importance attached to the sacrament means that the Church does not refuse

to marry those who are well disposed even if imperfectly prepared for the sacramental life, something that must not be forgotten when exclusion of sacramentality or error on this point is alleged.

1099

FC 11 (2008), 229-240: Myriam Tinti: La rilevanza del battesimo per la sacramentalità del matrimonio. (Conference presentation)

See above, canon 1055.

1099

QDE 21 (2008) 206-220: Mauro Rivella: Sacramentalità del matrimonio: esclusione (can. 1101) ed errore (can. 1099). (Article)

See below, canon 1101.

1101

Comm 35 (2003), 6-10: Pope John Paul II: Allocutio ad Auditores, Administros, Advocatosque Rotae Romanae coram admissos. (Allocution)

See above, canon 1099.

1101

FC 11 (2008), 229-240: Myriam Tinti: La rilevanza del battesimo per la sacramentalità del matrimonio. (Conference presentation)

See above, canon 1055.

1101

FCan IV/1-2 (2009), 79-102: Carmen Peña García: La exclusion del *bonum prolis*. (Article)

P.G. studies simulation of consent by exclusion of the *bonum prolis*, and the implications and problems arising from the need for a positive act of the will for simulation to exist, as well as the implications of the ordering of marriage to the procreation and upbringing of children. She raises questions such as the canonical evaluation of the absence of any pre-marriage reflection about

children; temporary exclusion (*exclusio ad tempus*) and conditional exclusion (*exclusio ad libitum*) of children; and the perpetual exclusion of children when such exclusion is claimed to be for more serious reasons. Finally she offers some reflections regarding proof of exclusion.

1101

QDE 21 (2008) 206-220: Mauro Rivella: Sacramentalità del matrimonio: esclusione (can. 1101) ed errore (can. 1099). (Article)

Two documents of the International Theological Commission (1977), the Apostolic Exhortation *Familiaris Consortio*, no. 68, and two Papal allocutions (2001 and 2003), confirm canonical doctrine and jurisprudence that the sacramental dimension of marriage is not an extra good or essential property above and beyond the goods and essential properties of marriage as identified from natural law. The sacramentality of marriage is excluded if marriage itself is excluded by a positive act of the will (total simulation). Error regarding sacramentality must be more than simple error, the erroneous judgement about the nature and characteristics of marriage. It must be pervasive, that is, it must be to will marriage only as the party incorrectly understands it. It is unlikely that an error concerning the sacramental dignity of marriage would lead to a real exclusion of the sacramentality of marriage since someone who does not believe cannot be induced to reject something which does not exist for them and does not have real consequences, like unity and permanence. While the absence of personal faith is not a ground for invalidity, it would have a probative value in determining the exclusion of sacramentality.

1101

QDE 22 (2009), 164-185: Adolfo Zambon: L'esclusione della fedeltà. (Conference presentation)

This is the text of a presentation given by Z., judicial vicar of the diocese of Vincenza, at Perugia during the Residential Course of Applied Canon Law, 26-29 August 2008. After reviewing the circumstances that are indicative of simulation, Z. develops a consideration of the relationship in canonical terms between unity and fidelity in order to indicate the defect in matrimonial consent that is indicated by the exclusion of the *bonum fidei* as a cause of nullity. He investigates the foundation of the duty of fidelity in marriage, and then derives from Rotal jurisprudence examples of deficiencies in this duty. Z. briefly reviews some widely-encountered experiences in tribunals of homosexuality, artificial insemination and adultery. He concludes his study by considering the proofs of these sad matters.

1101

SC 43 (2009), 219-421: Vancouver Tribunal: De Non-Existentia Matrimonii. Causa incidentalis: an Invalid Marriage of Two Unbaptized: Decision *coram* López-Gallo, 9 July 2009. (Decree)

Two Vietnamese Buddhists married in Vietnam. The male petitioner had become a Canadian citizen; he was persuaded by his mother to marry the respondent, whose mother was a childhood friend of the respondent's mother, in order that the respondent could come to Canada. Under Canadian immigration laws, a marriage contracted with the sole intention of helping a person to enter into the country as a spouse is fraud, is not legal, and could have punitive repercussions because it was contracted in bad faith. *Dignitas Connubii* establishes: "Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by two unbaptized persons … the question of the nullity of the marriage is decided, without prejudice to divine law, according to the law by which the parties were bound at the time of the marriage" (article 4 §2, 2º). After a study of all the evidence presented, it was proved that the marriage in question was not legally contracted, but was an act fraudulently undertaken for the sole purpose of acquiring permanent resident status in Canada for the respondent. This *simulacrum* is explicitly prohibited by the Immigration and Refugee Protection Act (IRPA). Hence the judge's decree declared that the marriage in question did not and does not enjoy the privilege of legitimacy.

1101

SC 43 (2009), 243-260: Apostolic Tribunal of the Roman Rota: Exclusion of the *Bonum Coniugum* and Incapacity to Assume the Essential Obligations of Marriage: Decision *coram* Monier, 27 October 2006. (Sentence)

This case involves two Catholics who married on 4 January 1992 and separated in August 1994 on account of the male respondent's behaviour. The petitioner filed her case before the regional ecclesiastical tribunal a few months later; the grounds of nullity were total simulation (exclusion of the communion of the whole of life) on the part of the respondent and, subordinately, deceit perpetrated by the respondent. A negative decision was given on both grounds in the first instance; the appellate court gave an affirmative decision only on the respondent's simulation. At the Rota, the grounds were set to be: "Whether there is proof of nullity of marriage in the case due to total simulation on the part of the man, and subordinately, due to exclusion of the good of the spouses on the part of the same man and, as if in first instance, due to the man's incapacity to assume conjugal duties." The law section addresses total and partial simulation, with focus on exclusion of the good of the spouses, and incapacity to assume essential marital obligations. The Rota rendered an

affirmative decision on exclusion of the *bonum coniugum* and placed a *vetitum* on the respondent. The decision adds, "Because this sentence, which pronounced for the first time the declaration of nullity of marriage on the ground of exclusion of the good of the spouses on the part of the man respondent, must be transmitted to the *Turnus* of appeal (c. 1682 §1), it cannot be executed, that is, the parties do not have the right to enter into a new marriage (c. 1684 §1)."

1101

Carlos A. Cerezuela García: El contenido esencial del *bonum prolis*. Estudio histórico-jurídico de Doctrina y Jurisprudencia. (Book)

See above, canon 1055.

1101-1102

IE XXI 1/09, 85-108: Tribunale Apostolico della Rota Romana: *Reg. Siculi seu Panormitana.* Nullità del matrimonio. Sentenza definitiva, 3 marzo 2006. Sciacca, *Ponente* (con *nota* di F. Pappadia: *Sulla distinzione fra i capi di esclusione del "bonum sacramenti" e "condicio resolutiva de futuro contra matrimonii substantiam" nella giurisprudenza della Rota Romana*). (Sentence and commentary)

The first instance tribunal had given a negative verdict to a petition claiming nullity on the ground of exclusion of the *bonum sacramenti* on the part of the male petitioner. He was a pharmacist, 43 years old, who had obtained an affirmative nullity verdict in respect of a previous marriage. The female respondent was of similar age and social condition to those of the petitioner, and a teacher by profession. After 17 years together, she left the marital home and never returned. Three years after the negative first instance verdict, the petitioner appealed to the Rota, and on the advice of his advocate added a new ground: that of condition concerning the respondent's capacity to conceive. There were no children of the marriage although the respondent had been pregnant, and after suffering a miscarriage she repeatedly sought medical help despite the lack of interest on the part of the petitioner. The Rota did not find in the *acta* the practical separation that would have been expected following the non-fulfilment of the condition; and there was no evidence of simulation, or any circumstances to back up the petitioner's claim. The verdict was *non constat* on each heading. In his commentary P. mentions that the appeal from this sentence (*coram* Erlebach, 14 December 2006) has already been dealt with in a previous issue of *Ius Ecclesiae* (see *Canon Law Abstracts*, no. 101, p. 109, where the question was whether there could be conformity of two sentences *pro vinculo*).

Here P. considers a number of points highlighting the relationship and distinction between the two headings of *exclusio indissolubilitatis* and *condicio resolutiva de futuro (de prole habenda)*.

1102

QDE 22 (2009), 207-223: Massimo Mingardi: Il matrimonio contratto sotto condizione (can. 1102). Alcune riflessioni introduttive. (Conference presentation)

M. compares the dispositions in the CIC/17 with those of the CIC/83 concerning matrimonial consent given with a condition attached. He notes that this heading of nullity appears only rarely in the Italian tribunals for which he has the statistics.

1103

QDE 21 (2008) 167-183 Davide Salvatori: Il timore che invalida il matrimonio. (Article)

This is a foundational and synthetic article on the invalidity of marriage contracted because of fear. It examines the key aspects of the doctrine and jurisprudence of the material prior to and after the promulgation of the CIC/83, with reference to some problematic areas. After distinguishing force from fear, S. gives the juridical profile of fear, explaining the relationship between canon 1103 and canon 125. Fear does not render the act involuntary. The will is coerced but it is not dealing with a force that cannot be resisted. The act produced by fear is not willed as the object but is the means or way of escape. In other words if the fear or danger were not present the act would not have taken place. Unlike the CIC/17 canon 1087 §1, where the nullity was justified in relation to the quality of the fear, in the current legislation the nullity is rooted in the principle that all Christ's faithful have the right to freedom from any kind of grave fear in choosing a state of life (canon 219). Exploring the subtle relationship between external and interior fear, S. points out that the correct application of interior fear must not be confused with the ground of nullity in canon 1095 2º. The change in the wording between canon 1087 §1 of the CIC/17 and canon 1103 of the CIC/83 has not brought about any substantial change in the meaning or application of the canon; therefore nullities of marriages contracted under the old Code can be dealt with by the new Code. It is fundamental to recall that the reason of invalidity is changed: it is no longer based on the injustice, but rather on the lack of freedom.

1108

Comm 35 (2003), 197-210: Pontificium Consilium de Legum Textibus: Adnotatio circa validitatem matrimoniorum civilium quae in Cazastania sub communistarum regimine celebratae sunt. (Note)

A bishop in Kazakhstan brought some complex situations before the Council concerning marriages under Communism before 1991: where unbaptized parties had married civilly and both had been subsequently baptized in the Orthodox Church; where only one had been subsequently baptized; where neither had been baptized and one party, after divorce, had attempted marriage with a Catholic or Orthodox; civil marriages between Orthodox where it had not been possible to obtain a priest. The Council studies first the civil legislation on marriage and divorce since 1920, and then sets out principles which must be applied to the consideration of such cases. The note then answers each of these questions in turn. Nullity cases must be processed according to canon law. The only situation in which one could envisage accepting an Orthodox declaration of nullity would be where the basis for this was the lack of observance of the form prescribed by that Church.

1108

FC 11 (2008), 135-157: George D. Gallaro - Dimitri Salachas: The *ritus sacer* of the Sacrament of Marriage in the Byzantine Churches. (Article)

See above, CCEO canon 828.

1111-1112

FC 11 (2008), 135-157: George D. Gallaro - Dimitri Salachas: The *ritus sacer* of the Sacrament of Marriage in the Byzantine Churches. (Article)

See above, CCEO canon 828.

1112

J 69 (2009), 84-115: Henk Witte: The Local Bishop and Lay Pastoral Workers: A Newly Created Function in the Church and its Impact on Episcopal Collegiality. (Article)

See above, canon 129.

1117

Comm 41 (2009), 260-265: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Omnium in mentem* quibus aliquae normae in Codice iuris canonici immutantur (lingua latina una cum versione italica). (Document)

See above, canons 1008-1009.

1117

Comm 41 (2009), 334-337: Francesco Coccopalmerio: Articulus, explanans Motum Proprium *Omnium in mentem* a Summo Pontifice die 16 mensis decembris 2009 datum, ab Exc.mo D. Francisco Coccopalmerio, Praeside Pontificii Consilii de Legum Textibus, conscriptus. (Article)

See above, canons 1008-1009.

1117

REDC 65/165 (2008), 703-725: Tribunal Supremo, Jurisdicción Contencioso-Administrativa: Sentencia de 19 setiembre de 2008 sobre cancelación de datos en los Libros de Bautismo. (Document and commentary)

See above, canon 1086.

1119

SC 43 (2009), 97-139: John M. Huels: The Significance of the 1991 *Ordo Celebrandi Matrimonium* for the Canon Law of Marriage. (Article)

Some important new laws governing the preparation and celebration of marriage were introduced in the second edition of the *Rituel du mariage* – the *editio typica altera* of the *Ordo Celebrandi Matrimonium* (OCM) which was published in Latin in 1991 and in French in 2005. In addition to introducing a new rite of marriage celebrated before a lay assistant (not in the French edition), the 1991 second edition of the OCM marks a major expansion of the liturgical laws over those of the *editio typica* of 1969. While some of these repeat laws found in the previous edition and in the CIC/83, many others are new and, in sum, represent a significant addition to the *ius vigens* on marriage. The focus of this study is on the disciplinary norms that are new to the 1991 OCM, excluding the rubrics guiding the performance of the four rites at the time of their actual celebration. The first part of the study examines the disciplinary norms governing each of the four distinct rites of marriage. The second part considers

other new disciplinary norms common to all four rites pertaining to both the preparation for marriage and its liturgical celebration. Among H.'s conclusions is that the mind of the legislator has evolved on the nature of the act of assistance at marriage by a lay person. Such assistance should not be considered as an exception to the canonical form, as stated in canon 1108 §1, but has exactly the same juridic nature and effects as the act of assistance by a cleric.

1124

Comm 41 (2009), 260-265: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Omnium in mentem* quibus aliquae normae in Codice iuris canonici immutantur (lingua latina una cum versione italica). (Document)

See above, canons 1008-1009.

1124

Comm 41 (2009), 334-337: Francesco Coccopalmerio: Articulus, explanans Motum Proprium *Omnium in mentem* a Summo Pontifice die 16 mensis decembris 2009 datum,. (Article)

See above, canons 1008-1009.

1124

REDC 65/165 (2008), 703-725: Tribunal Supremo, Jurisdicción Contencioso-Administrativa: Sentencia de 19 setiembre de 2008 sobre cancelación de datos en los Libros de Bautismo. (Document and commentary)

See above, canon 1086.

1124-1129

José Antonio Araña (ed.): Libertà religiosa e reciprocità. (Book)

See above, General Subjects (*Religious freedom*), especially the paper by Maria Elena Campagnola (pp. 241-255).

1136

EE 84 (2009), 663-699: Lourdes Ruano Espina: La libertad de conciencia y el obligado sometimiento a la ley. Reacciones y respuestas ante la pretensión del Estado de formar la conciencia moral de los menores: el controvertido caso de la Educación para la Ciudadanía. (Article)

See above, canon 226.

1141

SC 43 (2009), 161-181: Wojciech Kowal: Quelques remarques sur la discipline de la dissolution de mariages en faveur de la foi. (Article)

Although the publication of reflections on the dissolution of marriage in favour of the faith has diminished over the past years, there seems to be some indication of renewed interest in the theological and canonical principles underlying the present discipline. K. draws on canonists' experience in applying the new norms, *Potestas Ecclesiae*, approved by Pope John Paul II on 16 February 2001. The article addresses briefly the main doctrinal principles concerning the dissolution of the marriage bond in favour of the faith, together with an overview of the instruction process conducted at the diocesan level.

1142

QDE 22 (2009), 7-19: Elena Lucia Bolchi: Attenzioni giuridico-pastorali relative all'avvio della procedura per lo scioglimento del matrimonio *in favorem fidei* da parte del Romano Pontifice. (Article)

B. surveys the legislative and theological roots underlying the Norms issued by the Congregation for the Doctrine of the Faith on 30 April 2001 on the dissolution of some marriages. Attention is also given to the consequences of a dissolution in regard to further nuptials.

1142

QDE 22 (2009), 20-37: Matteo Visioli: La delega della potestà nello scioglimento del matrimonio non sacramentale. Ipotesi dottrinali. (Article)

V. explores the nature of the *potestas sacra* in the Church. He finds that it is in its base always *potestas vicaria* in that it is power received from Christ which can be described as *potestas propria* in that it is necessary for the accomplishing of the Church's mission. With these notions established, V. turns his attention to the sacred power possessed by the Roman Pontiff concerning marriage,

including that between the non-baptized. Granted that the power of the Pope in regard to these marriages is required for the mission of the Church, V. asks if this power can be delegated to others to exercise. He responds in the affirmative concluding his study noting the advantages and disadvantages of the exercise of such delegated powers.

1142

QDE 22 (2009), 38-54: Bassiano Uggé: Scioglimento del matrimonio non sacramentale: questione terminologica. (Article)

U. sets out the developments in the legislation of the 20th century on the dissolution of non-sacramental marriages by the Supreme Pontiff, culminating in the *Normae de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei* issued by the Congregation for the Doctrine of the Faith in 2001. U. gives a detailed analysis of the elements associated with the dissolution of the marriage bond. In conclusion he recommends that reference be made to the Church's capacity to dissolve marriages that are not *ratum et consummatum* in terms of the dissolution of marriage *in favorem fidei*.

1150

SC 43 (2009), 161-181: Wojciech Kowal: Quelques remarques sur la discipline de la dissolution de mariages en faveur de la foi. (Article)

See above, canon 1141.

1156-1165

REDC 65/165 (2008), 563-590: Piero Pellegrino: La convalida del matrimonio canonico. (Article)

Among the options available for the solution of the problem of an invalid marriage is that of convalidation, which is the theme of P.'s article. He analyzes the conditions required in the CIC/17 for both convalidation and *sanatio in radice* which the CIC/83 has made its own. The final section deals in more depth with *sanatio in radice*.

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

1166-1253

Comm 35 (2003), 251-269: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Schema Canonum "De Locis et de Temporibus Sacris deque Cultu Divino". (Document)

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

1176

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

B. offers some notes on the law – Portuguese legislation, the CIC/83 and the CCEO – regarding funerals. What characterizes the law of the Church is its profound respect for the deceased and their mortal remains, based on a Paschal understanding of death. B. looks at the law insofar as it concerns places and manners of burial, penal laws concerning holy places, and the conduct of funerals.

1176-1185

Comm 35 (2003), 83-109: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio II). (Report)

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

1186

N XLVI 5-6/09, 244: Congregatio de Cultu Divino et Disciplina Sacramentorum: Responsa ad Dubia Proposita. (Reply)

This reply concerns the designation of patron saints. Following the Instructions *Calendaria Particularia* of 23 June 1970 and *De Patronis Constituendis* of 19 March 1973, only one patron may be designated unless two or more are linked in a common celebration in the Calendar, e.g. Sts Cyril and Methodius. The Congregation rarely and reluctantly gives permission for a secondary patron out

of respect for historical circumstances. Neither divine persons nor *beati* may be chosen as patrons.

1186-1204

Comm 35 (2003), 224-250: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio IV). (Report)

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

1191-1198

IC XLIX 98/09, 603-614: Anne Bamberg: Protección de los votos y nuevas realidades eclesiales. (Article)

After analyzing the meaning of "vow" in the CIC/83, B. points out how lack of clarity in terminology can be a source of confusion. It is important to exercise special vigilance as regards the protection of persons and their vows. In the case of doubt over the juridical classification of vows, and even in the event of disputes, the ecclesiastical authority, bearing in mind the nature of a vow as an act of divine worship, should listen and offer assistance in the first place to those persons who have made vows and who may have been victims of manipulation.

BOOK IV, PART III: SACRED PLACES AND TIMES

1205

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

See above, canon 1176.

1205-1213

Comm 35 (2003), 110-139: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio III). (Report)

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

1205-1234

Comm 35 (2003), 270-296: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" – Series Altera (Sessio I). (Report)

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

1205-1243

ELJ XI 1/09, 36-50: Kenyon Homfray: Sir Edward Coke Gets It Wrong? A Brief History of Consecration. (Article)

H. looks at the canonical concept of consecration of buildings in the canon law of the Church of England. He finds that in many modern reference works of ecclesiastical law, the *Institutes* of the common lawyer Sir Edward Coke are given as the authority for the consecration of buildings as places of public worship. Coke's work in turn relies on Scriptural precedent. However, H. examines more canonically-based English and Irish sources and finds that ample legal precedent can be found in the Legatine Constitutions of Otho (1236) and Othobon (1268), as well as practice of consecration in the first millennium. Henry de Bracton's *De Legibus et Consuetudinibus Angliae* from about the same time in turn points towards Justinian and Gaius. H. concludes

that the current canon law of consecration has its origin in pre-Christian Roman law.

1205-1243

ELJ XI 2/09, 194-197: Alexander McGregor: The Legal Effect of Consecration of Land 'Not Belonging to the Church of England'. (Article)

In January 2009, the ELJ published an article by K. Homfray concerned with the historical origins of a legal concept of consecration (see preceding entry). McG. finds a single (though admittedly not central) statement somewhat surprising: "[i]n England, consecration does not appear to have any recognised legal effect on any land or building not belonging to the Church of England". H. may have intended the expression "belonging to the Church of England" as meaning no more than "affiliated to" the Church of England or something similar. If that is all that was meant, then the statement could be accepted as more or less correct: consecration for worship according to the rites of, for example, the Catholic Church would not have any effect in English law. But the words "belonging to" would naturally tend to imply *ownership* of the land or building in question by the Church of England, in which case some qualification is needed. McG. therefore, attempts to set out, briefly, the extent to which consecration is recognized, and has effect, in English law.

1210-1211

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

See above, canon 1176.

1214-1239

Comm 35 (2003), 60-82: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio I). (Report)

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

1230-1234

Comm 35 (2003), 110-139: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio III). (Report)

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

1230-1234

Comm 36 (2004), 12-14: Pope John Paul II: Allocutio Summi Pontificis ad eos qui die 10 ianuarii 2004 in Conventu Plenario Congregationis pro Clericis partem habuerunt. (Allocution)

See above, canon 212.

1240-1242

Comm 35 (2003), 83-109: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio II). (Report)

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

1240-1243

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

See above, canon 1176.

1244-1253

Comm 35 (2003), 110-139: Ex actis Pontificae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Locis et temporibus Sacris" (Sessio III). (Report)

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

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254-1255

Comm 37 (2005), 203-222: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VII). (Report)

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

1254-1259

Comm 36 (2004), 236-249: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio I). (Report)

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

1254-1259

Comm 36 (2004), 250-276: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio II). (Report)

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

1254-1310

Comm 36 (2004), 24-32: Pontificium Consilium de Legum Textibus: La funzione dell'autorità ecclesiastica sui beni ecclesiastici. (Note)

The Pontifical Council for Legislative Texts seeks to explain the role of ecclesiastical authority in relation to ecclesiastical goods. Ecclesiastical goods belong to the juridical person that has legitimately acquired them, but are subject to forms of administrative control. The role of the diocesan bishop is one of oversight and vigilance. It is much greater when the juridical person is public rather than private. When canon 1273 speaks of the role of the Roman Pontiff as supreme administrator, this does not imply that he is the proprietor of all the goods of the Church but refers to his primacy of governance. The latter is

invoked by the Code in certain circumstances, e.g. in the reduction of Mass obligations, or alienation involving sums over the level set by the bishops' conference.

1254-1310

Comm 37 (2005), 223-255: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VIII). (Report)

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

1254-1310

Comm 37 (2005), 256-283: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio IX). (Report)

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

1254-1310

Comm 37 (2005), 284-303: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Schema Canonum "De Iure Patrimoniali Ecclesiae". (Document)

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

1263

QDE 22 (2009), 55-64: Alberto Perlasca: L'interpretazione autentica delle leggi ecclesiali. Tributo moderato ordinario e straordinario (can.1263). (Article)

P. reminds us of the difficulties encountered in the interpretation of CIC/83 canon 1263 even after the authentic interpretation given on 24 January 1989 by the then Pontifical Council for the Interpretation of Legislative Texts. The first part of the canon is reasonably clear but the second part needs some further consideration. P. divides the study of the second part under four headings and develops his responses accordingly.

1273-1289

Comm 36 (2004), 277-305: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio III). (Report)

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

1273-1289

Comm 36 (2004), 306-333: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio IV). (Report)

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

1273-1298

AkK 177 (2008), 502-523: Helmuth Pree: Genehmigungspflichten in der pfarrlichen Vermögensverwaltung. Eine universalrechtliche Perspektive. (Article)

See above, canon 532.

1274-1275

Comm 37 (2005), 203-222: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VII). (Report)

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

1276

ELJ XI 3/09, 266-283 Charles Mynors: Ecclesiastical Buildings: Constraints and Opportunities. (Article)

M., chancellor of the Anglican diocese of Worcester, takes a look at the canonical systems available for the control of works to churches, and considers the arguments for and against the "ecclesiastical exemption" which most of the

major churches enjoy from the secular system of listed building control in England. The exemption is based on the principle that ecclesiastical buildings are subject to internal controls by requiring a faculty of the Ordinary before any work can be undertaken. M. therefore moves on to examine the canonical principles underlying the exercise of the faculty jurisdiction in relation to works to churches, both those that are listed and others, and relates this to the most recent policy guidance from the secular agency English Heritage.

1284

Comm 37 (2005), 116-138: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio V). (Report)

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

1285-1298

Comm 37 (2005), 186-202: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio VI). (Report)

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

1289-1298

Comm 37 (2005), 116-138: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio V). (Report)

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

1299-1310

Comm 36 (2004), 236-249: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio I). (Report)

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

1299-1310

Comm 36 (2004), 250-276: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio II). (Report)

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

1299-1310

Comm 36 (2004), 277-305: Ex actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus studiorum "De Bonis Ecclesiae Temporalibus" (Sessio III). (Report)

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

1303

IE XXI 2/09, 297-310: Cristian Begus: Limitazione temporale delle fondazioni non autonome. (Article)

Given its nature, if a juridical act is not properly related to time, its effects cannot find a place in the temporal dimension, and thus they become irrelevant for the law. One of the innovations of major importance regarding autonomous pious foundations is that, unlike what was established in the CIC/17, the CIC/83 makes it impossible to constitute *perpetual* non-autonomous pious foundations. B. studies the function of the "term" – the *spatium temporis* between the initial and final moment of a period of time – and its various modes as a limit to the *diuturnum tempus* of these foundations. He then considers the discipline concerning the temporal extension of foundations that were established under the CIC/17.

1303

IE XXI 2/09, 311-331: Francesco Falchi: Accetazione delle fondazioni pie non autonome: aspetti giuridici. (Lecture)

Those who by natural law and canon law are free to dispose of their goods, may leave them for pious causes. F. studies here the two aspects, acceptance and possible refusal, of these offerings as indicated under the title "pious dispositions in general and pious foundations" of the CIC/83. He looks at the notion of a non-autonomous pious foundation, and then focuses specifically on

acceptance, considering the realm of competence of particular law in this regard, and the requirements for acceptance. He then dedicates a section to the question of responsibility in the case of both refusal and acceptance, before finishing with some concluding observations.

1303

IE XXI 2/09, 333-345: Jesús Miñambres: Fondazioni pie e figure affini. (Round table intervention)

This is an intervention at a round table on church financing through non-autonomous foundations and similar figures, which took place at the Pontifical University of the Holy Cross, Rome, on 22 January 2009. The CIC/83 admits the possibility of channelling the income from one or more productive goods towards the financing of ecclesiastical works of piety, apostolate or charity. M. deals here with the juridical acts that allow this possibility in some of those cases. Among these options are the establishment of a new juridical subject, whether of a "corporate" nature (*universitas personarum*) or having a "real" basis (*universitas rerum*) as envisaged in canon 115. After briefly clarifying the use of terms commonly used in financial matters, M. studies the classical canonical foundations, especially those of canon 1303, and describes various other juridical figures which have the same purpose.

BOOK VI: SANCTIONS IN THE CHURCH

1311-1363

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

This work came about in response to an invitation from Archbishop Francesco Coccopalmerio, President of the Pontifical Council for Legislative Texts, to submit suggestions for possible revisions of canon law. The book contains the proceedings of a symposium held at the Pontifical University of the Holy Cross, Rome, in March 2009, which focused on penal law, based on the experience of canonists working with judicial penal processes and envisioning the future. The following are the principal contributions: Patricia M. Dugan, *The Need to Know vs. Confidentiality: Do Pontifical Secret and the Clamoring of the Media Deny Canonical Rights?* (pp. 9-31); Rev. John J. Foley, *Preliminary Investigation: Considerations and Options* (pp. 33-54); Sr Victoria Vondenberger, *Balancing Rights: Role of the Promoter of Justice* (pp. 55-82); Rev. David L. Deibel, *Canon 1341: Pastoral Principles Within the Penal Process* (pp. 83-115); Rev. Paul F. Robinson, *Collection and Evaluation of Proofs* (pp. 117-159); Rev. Patrick R. Lagges, *Resolution of Cases by Rescript, Penal Precept, or Decree* (pp. 161-194); Rev. Prof. Luis Navarro, *A General Canonical Backgrounder for Interpreting the USCCB "Essential Norms" in the Context of the Evolution of Canonical Penal Law* (pp. 195-238). Biographies of those who took part in the symposium and in the production of the proceedings are given at the end of the book. (For bibliographical details see below, Books Received.)

1311-1399

IC XLIX 98/09, 373-412: José Bernal: Aspectos del Derecho penal canónico. Antes y después del CIC de 1983. (Article)

The reform of penal canon law, whose fruit is Book VI of the CIC/83, has seen a reduction in the area subject to coercion; a strengthening of recourse to charity and equity in applying the law; an attempt to harmonize defence of the common good with the safeguarding of subjective rights; and the introduction of measures to ensure a greater distribution of coercive power among central and local governments. The principal legislative innovations since the CIC/83 have been to do with the acceptance of the different forms of Magisterium (*motu proprio Ad Tuendam Fidem*); and issues relating to the *delicta graviora* and competence for them (*motu proprio Sacramentorum Sanctitatis Tutela*). The crisis which the Church has been undergoing recently should lead to a greater

awareness of the role of penal canon law in the protection and defence of the common good.

1331

Comm 35 (2003), 56-59: Congregatio pro Doctrina Fidei: Decretum contra recursum quarundam excommunicatarum mulierum. (Document)

On 29 June 2002 one Romulo Braschi, founder of a schismatic group, attempted the priestly ordination of a number of women. Following a canonical warning, the Congregation for the Doctrine of the Faith issued a decree of excommunication on 5 August 2002. These women sought recourse against this measure. This was considered by the Ordinary Session of the Congregation, which decreed that the recourse could not be admitted. It was not a *latae sententiae* penalty, but a penalty imposed for a particularly grave action after due warning, aggravated by its schismatic and doctrinal nature. This decree was approved by the Pope *in forma specifica* on 20 December 2002.

1336

IE XXI 2/09, 367-374: Edward N. Peters: Ecclesiastical Office as Punishment for Crime: Toward the Abrogation of Canon 1336 §1, 4º. (Article)

P. proposes the abrogation of the expiatory penalty of "penal transfer to another office" in canon 1336 §1, 4º on two grounds: first, because the conferral of an ecclesiastical office as a "punishment" is an affront to the dignity of an office; and second, because the values which the penal transfer might seek to serve are adequately protected by other canons. He explains his proposal by considering the importance of an ecclesiastical office in general, and by distinguishing penal deprivation of office from penal transfer to another office. He then looks at some of the difficulties involved in attempting to apply canon 1336 §1, 4º, before explaining how the limited good that can be achieved by penal transfer can be achieved in other ways.

1341

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See above, canons 1311-1363.

1347

Comm 35 (2003), 56-59: Congregatio pro Doctrina Fidei: Decretum contra recursum quarundam excommunicatarum mulierum. (Document)

See above, canon 1331.

1354

Comm 41 (2009), 27-37: Pope Benedict XVI: Litterae Summi Pontificis Benedicti XVI ad Episcopos Ecclesiae Catholicae quoad remissionem poenae excommunicationis concessam quattuor Episcopis ab Archiepiscopo Lefebvre consecratis. (Document)

This is the text of the letter addressed by the Pope to the bishops of the Catholic Church setting out the reasons for lifting the excommunications incurred by those ordained bishop by Archbishop Lefebvre. The text is given in Italian (pp. 27-31) and German (pp. 32-37).

1354

Comm 41 (2009), 50-51: Secretaria Status: Animadversio Secretariae Status quoad remissionem poenae excommunicationis quattuor Praesulum Fraternitatis Sacerdotalis Sancti Pii X. (Document)

The Secretariat of State explains the significance of the lifting of the excommunications on the four bishops of the Society of St Pius X. It affects them individually but does not change the canonical status of the Society, and the four bishops continue to lack a canonical role or ministry within the Church. Future recognition of the Society would depend on acceptance of Vatican II and post-conciliar Magisterium. The Holocaust-denying position of Bishop Williamson is strongly denounced.

1354

Comm 41 (2009), 94-96: Congregatio pro Episcopis: Decretum quo poena excommunicationis *latae sententiae* Episcopis Fraternitatis Sacerdotalis Sancti Pii X irrogatae remittitur. (Document)

This is the text of the decree whereby the penalty incurred by the four bishops of the Society of St Pius X, ordained by Archbishop Lefebvre, is remitted.

1354-1363

REDC 66/166 (2009), 113-141: Federico R. Aznar Gil: La remisión de la excomunión *latae sententiae* declarada a cuatro obispos de la Fraternidad Sacerdotal de San Pío X: análisis canónico y repercusiones. (Article)

The illicit ordination of bishops is nothing new in the history of the Church. A.G. in this context considers the ordination by Archbishop Marcel Lefebvre of four bishops in 1988, the declaration of excommunication *latae sententiae*, and its lifting in January 2009; and he takes the opportunity to analyze some of its canonical implications. He firstly examines what the CIC/17 had to say about episcopal ordination carried out without Papal mandate, and the 1951 decree of the Holy Office whereby even those ordaining and ordained under great fear (as was the case in some Communist countries at the time) suffered excommunication *latae sententiae*, reserved *specialissimo modo* to the Apostolic See. Further illicit ordinations elicited a decree in 1976 from the Congregation for the Doctrine of the Faith indicating among other things that, prescinding from the question of the validity of such ordinations, the Church did not and would not recognize them and that the canonical status of those so ordained remained exactly what it had been before. A Notification was issued in 1983 following further illicit ordinations, reiterating the penalties incurred. Although there may be some theological discussion concerning the validity or otherwise of such ordinations, there can be no doubt canonically that they are valid. The CIC/83 could have established the invalidity of ordinations performed outside the hierarchical communion of the Church, but did not do so. A.G. goes on to consider the different stages of the Lefebvre case, including the excommunication of 1988, the *motu proprio Ecclesia Dei* and the lifting of the excommunications in 2009. This last was done in order to facilitate dialogue but no recognition has been given to the Society of Pius X, nor can any of those bishops exercise legitimately any ministry or canonical function in the Church.

1354-1363

REDC 66/166 (2009), 367-377: Documentos sobre la remisión de la excomunión de los Obispos consagrados por Mons. Lefebvre: 1. Congregación para los Obispos: Decreto de 21 de enero de 2009; 2. Secretaría de Estado: Nota de 4 de febrero de 2009; 3. Benedicto XVI: Carta a los Obispos de la Iglesia Católica sobre la remisión de la excomunión de los cuatro Obispos consagrados por el Arzobispo Lefebvre, 10 de marzo de 2009. (Documents)

The text is given of three documents connected with the lifting of the excommunication of the four bishops ordained by Archbishop Lefebvre: the

Decree of the Congregation for Bishops, the Note from the Secretariat of State, and Pope Benedict's letter to the Bishops of the Catholic Church.

1364

Comm 35 (2003), 56-59: Congregatio pro Doctrina Fidei: Decretum contra recursum quarundam excommunicatarum mulierum. (Document)

See above, canon 1331.

1364

Comm 41 (2009), 338-341: Bolletino della Sala Stampa della Santa Sede: Nuntius de Emmanuelis Milingo dimissione e statu clericali (lingua italica una cum versione anglica). (Document)

See above, canon 292.

1376

FCan IV/1-2 (2009), 61-78: José Branquinho: Dignidade na morte. Direito funerário: algumas notas. (Article)

See above, canon 1176.

1379

Comm 37 (2005), 175-179: Congregatio pro Doctrina Fidei: Adnotatio de Ministro Sacramenti Unctionis Infirmorum. (Note)

See above, canon 1003.

1382

Comm 41 (2009), 27-37: Pope Benedict XVI: Litterae Summi Pontificis Benedicti XVI ad Episcopos Ecclesiae Catholicae quoad remissionem poenae excommunicationis concessam quattuor Episcopis ab Archiepiscopo Lefebvre consecratis. (Document)

See above, canon 1354.

1382

Comm 41 (2009), 50-51: Secretaria Status: Animadversio Secretariae Status quoad remissionem poenae excommunicationis quattuor Praesulum Fraternitatis Sacerdotalis Sancti Pii X. (Document)

See above, canon 1354.

1382

Comm 41 (2009), 94-96: Congregatio pro Episcopis: Decretum quo poena excommunicationis *latae sententiae* Episcopis Fraternitatis Sacerdotalis Sancti Pii X irrogatae remittitur. (Document)

See above, canon 1354.

1382

REDC 66/166 (2009), 113-141: Federico R. Aznar Gil: La remisión de la excomunión *latae sententiae* declarada a cuatro obispos de la Fraternidad Sacerdotal de San Pío X: análisis canónico y repercusiones. (Article)

See above, canons 1354-1363.

1382

REDC 66/166 (2009), 367-377: Documentos sobre la remisión de la excomunión de los Obispos consagrados por Mons. Lefebvre. (Documents)

See above, canons 1354-1363.

1395

SC 43 (2009), 5-25: Kurt Martens: L'Église et la justice belge dans les affaires de mœurs. (Article)

The Church has been confronted with the problem of sexual abuse of minors by clerics and other pastoral agents. While the Church has procedures in place to deal with allegations of such sexual abuse, there is also the civil aspect of these cases. M. has studied this civil aspect in a specific country, Belgium. The first point of attention is the problem of civil liability in a Continental legal tradition. How can the principles of the Civil Code be applied to canonical relations? M. analyzes a couple of Belgian court cases on precisely this liability aspect. In a

second part of the contribution, he looks at several conferences of bishops and the responses they have given to handle allegations of sexual abuse by pastoral agents; commissions to handle complaints (Belgium); the *Essential Norms* (USA); and the screening of candidates for ordination. M. sees three difficulties: the use of civil law concepts for internal canonical relations; the problem of privacy; and the possibility or danger of setting up a parallel justice system.

1395

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See above, canons 1311-1363.

1396

SC 43 (2009), 141-159: John J. M. Foster: The Violation of the Obligation of Residence: An Examination of Canon 1396 in the 1983 Code of Canon Law. (Article)

Because the Christian faithful have a right to pastoral service, the Church obliges certain officeholders to reside in a specific place. This article examines the notion of residence and briefly traces the development of the obligation of residence in ecclesiastical law. Attention is given to those offices and dignities that oblige residence for their incumbents in both the CIC/17 and the CIC/83. After examining canon 2381 of the CIC/17, F. studies the various elements of canon 1396 of the CIC/83, which prescribes a preceptive, indeterminate penalty for one who gravely violates the obligation of residence. Finally, issues concerning the penal process as related to the violation of canon 1396 are addressed.

BOOK VII: PROCESSES

1403

AA XV (2008), 51-76: José Bonet Alcón: Comentario a la Instrucción *Sanctorum Mater*. (Commentary)

The first part of B.A.'s commentary on the Instruction *Sanctorum Mater* of 17 May 2007 on causes of canonization is taken up with a synopsis of the main divisions and structure of the document: causes of beatification and canonization; preliminary phase; instruction of the cause; documentary proofs; witnesses; conclusion of the instruction process; final session; concluding acts. An appendix deals with the mortal remains and relics of the Servant of God. B.A. remarks on the disproportion between the relative brevity of the law on this matter (the Apostolic Constitution *Divinus Perfectionis Magister* and *Normae Servandae*, both of 1983) and the length of the present document (165 articles and 95 footnotes), indicating perhaps a certain insufficiency in the former. Although, on account of its nature as an Instruction, it does not modify the existing law, it does use such phrases as "it is advised", "it is recommended", and the like. The Instruction applies to both Latin and Oriental Churches, and its main characteristic is the requirement of a careful adherence to the formalities of the process as a guarantee of its seriousness. B.A. proceeds to give a more detailed commentary on each aspect of the procedures, and then raises some practical questions on the effect of this document on the instruction of causes of beatification or canonization already under way: should they have to carry out new and supplementary instruction to fulfil these new requirements, or are the prescriptions of the *Normae Servandae* sufficient? There can be no doubt, however, that *Sanctorum Mater* provides a clear and detailed procedure for all future causes.

1403

Ap LXXXII 1-2 (2009), 287-330: Waldery Hilgeman: Le Cause di beatificazione e canonizzazione e l'Istruzione *Sanctorum mater.* (Article)

H. in the first part of this study gives a very condensed history of the process of canonization in the Church. The second part is devoted to a detailed study of the Instruction *Sanctorum Mater,* approved by the Pope as from 17 May 2007. H. reminds us that 25 years have passed since the publication of the Apostolic Constitution *Divinus Perfectionis Magister* and the *Normae Servandae*: hence there has been time for any lacunae on the legislation to be identified.

1419-1437

FC 11 (2008), 37-76: Julio García Martín - Nicola Gallucci: La potestà dei giudici e dei tribunali e il suo esercizio secondo il can. 135, §3. (Article)

See above, canon 135.

1425

Ap LXXXII 1-2 (2009), 265-285: Claudia Izzi: Corresponsabilità e Tribunali collegiali. (Conference presentation)

This is a paper presented at the Fourth Interdisciplinary Canonical Day held at the Lateran University, 3-4 March 2009. I. draws attention to the double responsibility of the ecclesiastical judge, on the one hand deriving from the judge's membership of the People of God, and on the other from the official duty arising from the appointment to this office in the Church. Further considerations are developed from the corporate character of the tribunal in passing some judgements.

1428

QDE 22 (2009), 292-305: Tiziano Vanzetto: Devono durare anni le cause di nullità matrimoniale? Suggerimenti e proposte per un processo più celere. IV. La fase istruttoria e l'uditore. (Article)

T., who is the judicial vicar for the Regional Tribunal of Triveneto, reminds his readers of the possibility of appointing auditors for the instruction of marriage cases who do not possess academic qualifications for that duty but who can be duly approved by the bishop if found to be suitable for selection for individual cases by the judicial vicar. He considers the choice of suitable persons for this duty and their formation and preparation, together with their constitution and designation to a specific case. He then gives details of the practice in his own tribunal. He attaches as an appendix copies of three pro formas used by his tribunal.

1430

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See above, canons 1311-1363.

1432

FCan IV/1-2 (2009), 205-212: Jair Ferreira Pena: O Defensor do Vínculo – II. (Article)

From the time of the Instruction *Provida Mater* in 1936 to the promulgation of the CIC/83, including the rich Magisterial teaching of Pius XII, there were significant developments regarding the defender of the bond, whose main importance is in the canonical matrimonial process. His mission is to defend and support the existence of the conjugal bond, not in an absolute manner, but subordinate to the purpose of the process, which is the seeking and establishing of the objective truth. Hence he has rights and duties which need to be acted on without delay: he should inquire into, set out and clarify all that needs to be put forward in favour of the bond, and it is precisely in this that his cooperation in the common good consists. He must carry out his functions diligently, not in a summary or superficial way; he must have experience of life and maturity of judgement. He must act in the awareness that he is not called upon to defend at all costs a thesis that has been imposed on him, but is at the service of the already-existing truth. (For the first part of this article, see *Canon Law Abstracts*, no. 103, p. 138.)

1432

IE XXI 2/09, 349-366: Carmen Peña García: Defensores del vínculo y patronos de las partes en las causas de nulidad matrimonial: consideraciones sobre el principio de igualdad de partes públicas y privadas en el proceso. (Article)

In canonical matrimonial nullity processes, the party or parties seeking a declaration of nullity must stand in an adversarial position to the party or parties – public or private – who defend its validity. This principle of duality that corresponds to every contentious process is complemented by the principle of equality of the parties which, within the inevitable differences arising from the fact of being either petitioner or respondent, demands that both have the same possibilities of taking part in the process as well as the right to equal treatment and equal opportunity of defence of their respective positions. With particular reference to *Dignitas Connubii*, P.G. studies these two principles as they apply to advocates and defenders of the bond. She underlines the novelty of *Dignitas Connubii*, article 119 §2, which refers to the advisability of the presiding judge hearing the defender of the bond before admitting or rejecting the *libellus*.

1432-1436

REDC 65/165 (2008), 517-536: Carmen Peña García: Actuación del defensor del vínculo en el proceso de nulidad matrimonial. Consideraciones sobre su función a la luz de la regulación codicial y de la Instrucción *Dignitas Connubii*. (Article)

P.G. examines the role of the defender of the bond in the marriage nullity process in the light of the innovations introduced by *Dignitas Connubii* which modify various norms in the CIC/83. One such innovation is the statement on the advisability of the presiding judge hearing the defender of the bond before admitting or rejecting the *libellus*, a practice which would change the status of the defender into a kind of assessor with the judge. The defender, of course, once the *libellus* is accepted, will be active and diligent regarding any possible irregularities or lack of proper procedure and may also appeal against the *contestatio litis*. He may assist at the interrogatories, have access to the *acta* before publication, and examine the documents presented by the parties. P.G. points out that this last is rather difficult in practice and could result in a weakening of the defence of the bond, especially in cases where both parties are in agreement in seeking a declaration of nullity. She comments on the defender's part in preparing questions to be put to the parties and witnesses, and in obtaining the names and addresses of the witnesses that he wishes to be interviewed. All this must be done with a clear awareness that he is defending the bond of marriage as a public figure in the process and not as advocate for the respondent who is contesting a possible declaration of nullity. According to P.G. the stipulation in *Dignitas Connubii* (article 56 §4) that the defender should examine the questions to be put to the experts in canon 1095 cases accords him a role which is proper only to the judge (canon 1577). In making his observations *pro vinculo* the defender, acting *ex officio*, will make all reasonable arguments for the case against nullity, but if he can find no such arguments he will remit the case to the justice of the court; he must never argue in favour of nullity. P.G. ends with some observations on the role of the defender at the appeal stage of the canonical process.

1444

Comm 41 (2009), 49: Secretaria Status: Rescriptum ex Audientia Sanctissimi quoad facultates extraordinarias "de vigilantia" collatas Decano Rotae Romanae. (Document)

This rescript grants competence to the Dean of the Rota to exercise vigilance over the administration of justice within the Rota and also to ensure that the auditors, promoters of justice and defenders of the bond carry out their responsibilities in a diligent manner.

1444

IE XXI 2/09, 495-503: Tribunale della Rota Romana: Dichiarazione del Collegio sulla *nova causae propositio*, 27 febbraio 2009 (con *nota* di J. Llobell, *Il ricorso contra el diniego del "novum causae examen" da parte della Rota Romana: la "dichiarazione" del Collegio Rotale del 27 febbraio 2009*. (Declaration and commentary)

See below, canon 1644.

1445

AA XV (2008), 303-227: Nikolaus Schöch: Presentazione della *Lex Propria* del Supremo Tribunale della Segnatura Apostolica. (Article)

S. provides an overview of the *motu proprio* Apostolic Letter *Antiqua Ordinatione* of 21 June 2008, itself a revision of the *Normae Speciales* of Paul VI (1968), dealing with the Signatura Apostolica. He examines the history, sources and criteria of this revision, the constitution and ministers of the Tribunal, its competences, its judicial and contentious-administrative processes, and its task of vigilance for the proper administration of justice in the tribunals of the Church.

1445

Ap LXXXII 1-2 (2009), 123-145: Benedictus PP XVI: Litterae apostolicae Motu Proprio datae: Supremi Tribunalis Signaturae Apostolicae lex propria promulgatur. (Document)

Article 125 of the Apostolic Constitution *Pastor Bonus* declares that the Apostolic Signatura has its own proper law. This was approved on 21 June 2008, and the Latin text is given here. It comprises 122 articles.

1445

IC XLIX 98/09, 549-565: Javier Canosa: La eficacia del Derecho divino en la justicia administrativa en la Iglesia. (Conference presentation)

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

1445

IE XXI 1/09, 65-84: Supremo Tribunale della Segnatura Apostolica. *Iurium*. Decreto definitivo (O. - Congregatio pro Clericis). Mussinghoff, *Ponente* (con *nota* di J. Miñambres, *La configurazione giuridica dei consigli pastorali nelle diocesi tedesche*). (Sentence and commentary)

See above, canons 511-514.

1445

IE XXI 2/09, 441-477: Benedetto XVI: Litterae Apostolicae *Antiqua ordinatione* motu proprio datae quibus Supremi Tribunalis Signaturae Apostolicae *lex propria* promulgatur, 21 giugno 2008 (con *nota* di J. Llobell, *La nuova "lex propria" della Segnatura Apostolica e i principi del proceso canonico*.) (Document and commentary)

The Latin text is given of the *lex propria* governing the Supreme Tribunal of the Apostolic Signatura. It is divided into six titles with varying numbers of chapters, and consisting of a total of 122 articles. In his commentary, L. deals with the relationship between procedural principles and the natural law; the search for a peaceful resolution to controversies; judicial independence; the judicial power of the Secretary of the Signatura; judges who are not cardinals or bishops; the right to have the causes decided "within a reasonable time"; the setting out of reasons for decisions; and the right to a double grade of jurisdiction (of which the appeal is the typical expression).

1445

SC 43 (2009), 47-80: William L. Daniel: The Historical Development of the Power of Governance Enjoyed by the Supreme Tribunal of the Apostolic Signatura. (Article)

The dicasteries of the Roman Curia each participate in the *munus regendi* of the Supreme Pontiff, and each of these is worthy of study. The history of the Apostolic Signatura displays an intimate participation in Papal governance and a diversity of powers. In the period of the 13th-19th centuries, the seminal form of this dicastery developed from a group of Papal notaries (*referendarii*), to a twofold office (the *Signatura gratiae et commissionum*), to two distinct dicasteries (the *Signatura gratiae* and the *Signatura iustitiae*), which assisted the Pope in exercising what are currently known as the judicial and administrative powers of governance, and even enjoying these powers themselves. The *Signatura gratiae* fell into desuetude in the late 19th century and was formally suppressed in 1908. At that time, a new, sole Signatura was

created: the Supreme Tribunal of the Apostolic Signatura. Throughout the 20th century, with minimal interruption, it would continue to enjoy judicial and administrative power, the expression of which would develop with new legislation and the pontifical grant of faculties. In the final section, D. explores and examines the Apostolic Signatura's power in the *ius vigens*, giving a listing and analysis of the juridic acts of power which its officials are legally capable of placing.

1446

EE 84 (2009), 795-808: Pedro Garín Urionabarrenechea: Breves reflexiones acerca del canon 1676 del CIC/83. (Article)

See below, canon 1676.

1446

EE 84 (2009), 809-817: Santiago Miranzo de Mateo: Nulidad matrimonial y mediación familiar. (Article)

This study begins with some notes on family conflict and mediation, and on the historical development of mediation as a means of resolving conflicts; it goes on to look at the figure of the mediator and the role he may be called on to play before, during and after the canonical nullity process.

1446

Per 98 (2009), 321-364 and 485-515: G. Paolo Montini: È necessario assicurare il carattere pastorale dei tribunali ecclesiastici. (Presentation)

In this presentation to the 2008 Gregorian Colloquium held in Brescia, M. focuses on the attention that has been given to maintaining the fundamentally pastoral character of ecclesiastical tribunals. He does this by considering the question first of all in the context of some observations made in the course of the 11th Ordinary Assembly of the Synod of Bishops in 2005 and the post-Synodal Apostolic Exhortation *Sacramentum Caritatis.* Subsequently, he reflects on the same theme in the light of various Papal allocutions to the Roman Rota, notably those of Pius XII (1942 and 1944), Paul VI (1973), John Paul II (1981, 1987, 1990, 1994, 2002, 2004 and 2005), and Benedict XVI (2007). In the third part of the presentation, M. confronts directly the meaning of the term "pastoral" in the context of the marriage nullity process, responding to several thought-provoking suggestions, laying to rest a few widespread

fallacies, and offering some practical advice to those engaged in the work of marriage tribunals.

1446-1457

Ap LXXXII 1-2 (2009), 201-225: Manuel Jesús Arroba Conde: Corresponsabilità e Diritto processuale canonico. (Article)

A.C. takes care to quote from a large number of writers on the theme of the sources and justification of the processes available in the life of the Church, paying particular attention to some of the dispositions in *Dignitas Connubii*. He extends the scope of his study beyond the responsibilities sustained by the judge in any process to include the preparation of personnel who serve the tribunals.

1453

EE 84 (2009), 779-793: Cristina Guzmán Pérez: Los procesos matrimoniales en los tribunales eclesiásticos españoles. Reflexiones sobre las estadísticas de la Iglesia en España. (Article)

See below, canons 1671-1691.

1501-1505

FCan IV/1-2 (2009), 255-269: Pedro María Reyes Vizcaíno: Cuestiones morales en torno a la demanda de nulidad matrimonial. (Article)

To present a petition for nullity is not in itself an indifferent act, from a moral point of view. For it to be a morally lawful act, it must be credible, and matrimonial convalidation must be either impossible or inadvisable. It is not only the parties themselves who are faced with morally important questions: the diocesan bishop, the lawyers, the judges, the promoter of justice, the defender of the bond, the witnesses and the experts all have to take into consideration the moral importance of their decisions, bearing in mind the purpose of the trial, which is bring to light the truth in a particular case.

1526

Per 98 (2009), 235-273 and 399-461: Piero Antonio Bonnet: Le prove nel giudizio ecclesiale. (Article)

In this lengthy study, B. reflects on the role of proofs within the judicial process. He begins by reflecting on the relationship between truth and

judgement, pointing out that, in the words of Pope John Paul II to the Rota in 1980, the judicial acts of any case must be the source of truth. The judgement, as a decision, is the fruit of a process in which the truth is sought, a process whose constitutive elements help to make this truth accessible to the judge. As a key element in this process, proofs first of all help the judge to know the reality of something and, secondarily, persuade the judge towards making a decision about the truth of what has been asserted. B. devotes the major part of this study to the norms concerning proofs found in the Instruction *Dignitas Connubii*. He believes that these strengthen the correct juridical formalism that is one of the ultimate guarantors of truth in the judicial process. By way of an Appendix to footnote 91, B. provides a comparative analysis of the articles of *Dignitas Connubii* dealing with proofs and the relevant canons of the CIC/83. In this analysis, he indicates how the text of the Instruction has adapted and adjusted the norms of the CIC/83 to the process for the investigation and declaration of nullity of marriage.

1526-1586

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See above, canons 1311-1363.

1527

FCan IV/1-2 (2009), 231-236: Juan José García Faílde: Cuando no es posible, por ser prueba ilícita, una pericial psiquiátrica o psicológica. (Article)

In most canonical causes use is made of psychiatric and psychological examinations, which usually have great influence on the sentence. G.F., after setting out the current canonical norms on this matter, assesses the different procedures adopted to explore the inner world of the parties to be examined, in the light of the fundamental criterion for their moral lawfulness, that of the dignity of the human person.

1539

QDE 22 (2009), 90-96: Alessandro Giraudo: Devono durare anni le cause di nullità matrimoniale? Suggerimenti e proposte per un processo più celere. III. L'uso delle e-mail nel processo di nullità matrimoniale. (Article)

After a brief technical discussion of ordinary e-mails and the certified type, G. considers the use of e-mails as an ordinary means of communication, employed

in the formal acts of a tribunal, as an element in proofs. With some reservations he concludes that the use of e-mail by a tribunal may contribute effectively to reducing the time taken to bring cases to a conclusion.

1539

QDE 22 (2009), 186-206: Paolo Bianchi: Le cartelle cliniche nelle cause di nullità matrimoniale. (Conference presentation)

B. reviews the experience of a number of Italian ecclesiastical tribunals in seeking assistance in obtaining clinical reports that could form part of the evidence in marriage cases from Italian State organizations under the provisions of concordat arrangements. Special attention needs to be paid to the problem presented by requirements of privacy that have been the object of recent State legislation.

1608

Comm 37 (2005), 5-7: Pope John Paul II: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos 29 ianuarii 2005. (Allocution)

See below, canons 1671-1691.

1617

FC 11 (2008), 37-76: Julio García Martín - Nicola Gallucci: La potestà dei giudici e dei tribunali e il suo esercizio secondo il can. 135, §3. (Article)

See above, canon 135.

1644

IE XXI 2/09, 495-503: Tribunale della Rota Romana: Dichiarazione del Collegio sulla *nova causae propositio*, 27 febbraio 2009 (con *nota* di J. Llobell, *Il ricorso contra el diniego del "novum causae examen" da parte della Rota Romana: la "dichiarazione" del Collegio Rotale del 27 febbraio 2009*. (Declaration and commentary)

A Declaration from the College of the Roman Rota of 27 February 2009 seems to have modified the Rota's position regarding recourse against refusal by the Rota of a new examination of the cause. The Rota accepts that only the Apostolic Signatura may judge on the rejection of the new examination by the

Rota, which is absolutely incompetent to judge such rejection at appeal level. L. looks at developments in this matter from the time of the Rota's *lex propria* of 29 June 1908 up to this latesst Declaration.

1649

EE 84 (2009), 779-793: Cristina Guzmán Pérez: Los procesos matrimoniales en los tribunales eclesiásticos españoles. Reflexiones sobre las estadísticas de la Iglesia en España. (Article)

See below, canons 1671-1691.

1671-1691

Comm 37 (2005), 5-7: Pope John Paul II: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos 29 ianuarii 2005. (Allocution)

In his address to the Rota for 2005 Pope John Paul II warns that even in the canonical field there is a danger that personal or collective interests can lead to falsehood in the hope of gaining a successful outcome. This can also result from a supposed pastoral need to declare failed marriages null. Love of truth is at the heart of the role of a judge. For the same reason it is important not to take a positivist approach to canon law or detach it from its foundation in doctrine.

1671-1691

Comm 37 (2005), 11-92: Pontificium Consilum de Legum Textibus: *Dignitas Connubii.* Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii. (Document)

This is the full Latin text of the Instruction *Dignitas Connubii* issued to assist diocesan and interdiocesan tribunals in handling marriage nullity cases. The introduction sets out the history of the Instruction, and then 308 articles in fifteen titles spell out the meaning of the norms contained in the CIC/83. The titles are as follows: the competent forum; tribunals; the discipline to be observed in tribunals; the parties in a case; the introduction of the case; the ceasing of an instance; proofs; incidental causes; publication of the acts, the conclusion and discussion; the pronouncements of the judge; the transmission to the tribunal of appeal; challenging the sentence; the documentary process; the recording of nullity of marriage and what must precede a new celebration of marriage; expenses and legal aid.

1671-1691

Comm 37 (2005), 93-106: Various: Sermones habiti occasione praesentationis Instructionis *Dignitas connubii.* (Addresses)

Included are the texts of five addresses given on the occasion of the presentation of the Instruction *Dignitas Connubii.* Cardinal Herranz explains the nature and purpose of the Instruction. Archbishop Amato of the Congregation for the Doctrine of the Faith reflects on the nature of the matrimonial process as a service to truth and to the conscience of the faithful. Archbishop Sorrentino of the Congregation for Divine Worship and the Discipline of the Sacraments offers an outline of the theological and sacramental basis of the document. Archbishop De Paolis of the Apostolic Signatura comments on the state of matrimonial causes today in the light of statistics. Bishop Stankiewicz, Dean of the Rota, refers briefly to the concept of moral certainty, the probative value of the declarations of the parties, and double conformity.

1671-1691

EE 84 (2009), 779-793: Cristina Guzmán Pérez: Los procesos matrimoniales en los tribunales eclesiásticos españoles. Reflexiones sobre las estadísticas de la Iglesia en España. (Article)

To provide a better understanding of the functioning of the ecclesiastical tribunals, G.P. offers some reflections on statistical data published by the Spanish Episcopal Conference in 2007, covering the years 2001-2005. She analyzes the most significant data, including the number of cases introduced, the number of decisions declaring the nullity of marriage, the principal grounds of nullity, and the cost and duration of the cases.

1676

EE 84 (2009), 795-808: Pedro Garín Urionabarrenechea: Breves reflexiones acerca del canon 1676 del CIC/83. (Article)

Before accepting a case of nullity, the judge should try to persuade the spouses to validate their marriage and resume conjugal life. In this study G.U. analyzes the context, meaning and purpose of canon 1676, comparing it with previous legislation, and also with article 65 of *Dignitas Connubii*, the second and third paragraphs of which he regards as enriching and illuminating in this context.

1676

FCan IV/1-2 (2009), 255-269: Pedro María Reyes Vizcaíno: Cuestiones morales en torno a la demanda de nulidad matrimonial. (Article)

See above, canons 1501-1505.

1677

QDE 22 (2009), 292-305: Tiziano Vanzetto: Devono durare anni le cause di nullità matrimoniale? Suggerimenti e proposte per un processo più celere. IV. La fase istruttoria e l'uditore. (Article)

See above, canon 1428.

1681

Comm 37 (2005), 107-112: Pontificium Consilium de Legum Textibus: Nota Explicativa: Responsum ad tres quaestiones propositas circa clausulam "de consensus partium" can. 1681 CIC. (Note)

The Pontifical Council for Legislative Texts replies to three questions: 1. whether, when non-consummation is suspected, the suspension of the instruction of the nullity process requires the consent of both parties for validity; 2. if so, whether after notification of either party silence can be understood as consent; 3. how to proceed if the respondent has been declared absent from the process. The answers are: 1. although necessary for the process it is not required for the validity of the act; 2. affirmative; 3. the assent of the respondent for suspension of the process and the seeking of a dispensation *super rato* must always be sought.

1682

QDE 22 (2009), 318-224: G. Paolo Montini: L'appello in una causa di nullità matrimoniale. (Conference presentation)

M. offers his opinion that the English-speaking section of the Church had employed pressure to remove the discipline of two conforming sentences for nullity before the parties would be free to embark upon second nuptials. He cites the arrangements of the chapters in *Dignitas Connubii* as proof of the resistance to the authorities' determination to retain the requirement of conforming sentences. M., who is promoter of justice at the Apostolic Signatura, sets out the procedure in initiating and progressing with the *de jure* appeal after an affirmative decision. He notes that whether the longer or shorter

process is chosen to deal with the appeal, all three judges at second instance must have the acts in the case made available to them before deciding that the case requires further instruction or could be dealt with according to the short process. Similarly the defender of the bond at second instance and the parties to the case either directly or through their legal representatives must be kept properly informed as the case develops.

1684-1685

QDE 22 (2009), 306-317: Tiziano Vanzetto: Il divieto di passare a nuove nozze. (Conference presentation)

V. briefly reviews the practice of the Rota of imposing a *vetitum*, in five selected cases by way of introduction to his theme. He reminds his readers that article 151 of *Dignitas Connubii* adds more precise dispositions to the existing law as contained in canons 1684 and 1685 of the CIC/83. He then considers the reasons for the law and the criteria for the imposing of *vetita* in matrimonial cases, although he notes that a *vetitum* that has not been observed or properly considered does not of itself invalidate a subsequent marriage. He holds to the view that a *vetitum* may be imposed that is not specifically related to the heading under which nullity was granted. A short bibliography is attached at the end of the article.

1717-1719

Patricia M. Dugan (ed.): Towards Future Developments in Penal Law: U.S. Theory and Practice. (Book)

See above, canons 1311-1363.

1752

FC 11 (2008), 77-95: Szabolcs Anzelm Szuromi: Authority and Sacramentality in the Catholic Church. (Article)

See above, canon 333.

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

AA	Anuario Argentino de Derecho Canónico, Buenos Aires – V. Rev. John McGee, Girvan, Ayrshire.
ACR	Australasian Catholic Record, New South Wales – V. Rev. Ian B. Waters, Melbourne.
ADR	Annuaire Droit et Religions, Aix-Marseille – Prof. Anne Bamberg, Strasbourg.
AkK	Archiv für katholisches Kirchenrecht, Paderborn – Abstracts supplied by publisher.
Ang	Angelicum, Rome – Rev. Paul Gargaro, Clydebank, Glasgow.
Ap	Apollinaris, Rome – Bishop John Jukes OFM Conv, Huntly, Aberdeenshire.
Comm	Communicationes, Rome – Rev. Mgr. Gordon Read, Colchester, Essex.
–	Communio, Milan – Rev. Mgr. Gordon Read, Colchester, Essex.
EE	Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher.
ELJ	Ecclesiastical Law Journal, London – Paul Barber (London).
ETJ	Ephrem's Theological Journal, Satna, India – Editor.
FC	Folia Canonica, Budapest – Editor.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
IC	Ius Canonicum, Pamplona – Abstracts supplied by publisher.
IE	Ius Ecclesiae, Pisa-Rome – Rev. Joseph D. Gabiola, London.
INT	Intams, Belgium – Mrs Margaret Foster, Lancaster.
J	The Jurist, Washington – Sr Mary Lyons RSM, Galway.
LJ	Law and Justice, Worcester – Abstracts supplied by publisher.
LS	Louvain Studies, Louvain – Abstracts supplied by publisher.
N	Notitiae, Rome – Rev. Mgr. Gordon Read, Colchester.
Per	Periodica, Rome – Rev. Aidan. McGrath OFM, Rome.
QDE	Quaderni di Diritto Ecclesiale, Milan – Rev. Michael Mullaney, Dublin / Bishop John Jukes OFM Conv, Huntly, Aberdeenshire.
RDC	Revue de Droit Canonique, Strasbourg – Abstracts supplied by publisher.
REDC	Revista Española de Derecho Canónico, Salamanca – V. Rev. John McGee, Girvan, Ayrshire.
RTL	Revue théologique de Louvain, Louvain-la-Neuve – Abstracts supplied by publisher.
SC	Studia Canonica, Ottawa – Rev. Mgr. John Renken, Ottawa.
SCL	Studies in Church Law, Bangalore – Rev. Mgr. Gordon Read, Colchester.
SO	Studium Ovetense, Oviedo – Editor.

BOOKS RECEIVED

- José Antonio ARAÑA (ed.): *Libertà religiosa e reciprocità*, Giuffrè, Milan, 2009, xviii + 433pp., ISBN 88-14-14646-2 [see above, General Subjects (*Religious freedom*)]
- Carlos A. CEREZUELA GARCÍA: *El contenido esencial del "bonum prolis". Estudio histórico-jurídico de Doctrina y Jurisprudencia*, Editrice Pontificia Gregoriana, Rome, 2009, 360pp., ISBN 978-88-7839-147-5 [see above, canon 1055]
- Jesu Pudumai DOSS: *Rendete a ciascuno ciò che gli è dovuto*, in Manlio SODI (ed*.): Sui sentieri di Paolo. La sfida dell'educazione tra fede e cultura,* Libreria Ateneo Salesiano, Rome, 2009, 338pp., ISBN 978-88-213-0718-8 [see above, General Subjects (*Human rights*)]
- Patricia M. DUGAN (ed.): *Towards Future Developments in Penal Law: U.S. Theory and Practice*, Wilson & Lafleur Ltée (Gratianus series), Montreal, 2010, xii + 245pp., ISBN 978-2-89127-935-2 [see above, canons 1311-1363]
- Carlos José ERRÁZURIZ M.: *Justice in the Church. A Fundamental Theory of Canon Law*, Wilson & Lafleur Ltée (Gratianus series), Montreal, 2009, xxi + 332pp., ISBN 978-2-89127-918-5 [see above, General Subjects (*Legal theory*)]
- Ladislas ÖRSY: *Receiving the Council. Theological and Canonical Insights and Debates*, Michael Glazier, Minnesota, 2009, xiv + 161pp., ISBN 978-0-8146-5377-7 [see above, General Subjects (*Ecclesiology*)]
- Hugo Adrián VON USTINOV: *La Rota Romana: fuente del canon 1095, 2º,* Segret & Asociados, Buenos Aires, 2008, 303pp., ISBN 978-987-96228-3-4 [see above, canon 1095 2º]