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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*

**AkK 178 (2009), 532-541: Adrian Loretan: Menschenrechte in einer religiösen Verfassung? Zum Buch „Frauen in der iranischen Verfassungsordnung”.** (Essay)

L. provides a detailed discussion of a dissertation by Parinas Parhisi on the legal status of women in Iranian constitutional law.

**Ap LXXXIII 1 (2010), 223-245: Luciano Eusebi: Responsabilità morale e giuridica del governo ecclesiale. Il ruolo dei Vescovi in rapporto ai fatti illeciti dei chierici nel Diritto canonico e nel Diritto italiano.** (Article)

See below, canon 384.

**ELJ XII 1/10, 53-70: Garth Blake: Ministerial Duty and Professional Discipline in the Anglican Church of Australia.** (Article)

B. considers the question whether ministry in the Anglican Church of Australia is a profession as well as a vocation. After considering the context of child sexual abuse in the Church, and the contemporary practice of ministry, he examines whether it exhibits the four commonly recognized sociological marks of a profession: 1. specialized knowledge and skills; 2. service of fundamental human needs; 3. commitment to the other’s best interest; and 4. structures for accountability.

**ELJ XII 1/10, 71-73: Julian Rivers: How Not To Change Patriarch: A Comment on *Dean v Burne*.** (Comment)

When Theseus returned from Crete, his ship was long preserved in Athens. Over time, individual planks rotted and were replaced, until eventually all the planks had been renewed. Was the Athenian ship still the original one of Theseus? The problem that vexed Greek philosophers can be made more acute if one imagines that the rotten planks had been preserved, restored and eventually reconstructed into another ship. Which is now Theseus’ ship? This was the problem facing Blackburne J in the High Court in the case of *Dean v Burne*, which involved a dispute between two rival groups of Russian Orthodox

in London over the ownership of a Cathedral and adjacent church property. In effect, he decided that the ship of new planks is still the original one.

**IC 51 (2011), 161-205: Ana Mª Vega Gutiérrez: El derecho a cambiar de religión: consecuencias jurídicas de la pertenencia y disidencia religiosa en el derecho comparado.** (Article)

At present there are several threats to religious freedom, stemming from religious fundamentalism, secularism or atheism. Many such attacks involve the political instrumentalization of religion in the name of the cultural and/or religious identity of a nation or group, whose effect is to undermine personal freedom so as to reshape identity in a different way. The sometimes conflicting definitions of religious affiliation and dissidence articulated in religious, national and international legal systems may compromise full legal recognition of such a personal act. A comparative analysis of a number of State laws reflecting varying degrees of secularization reveals differences with respect to the civil or criminal effects pursuant to change or abandonment of religious affiliation, as well as the possible risk to social harmony and cohesion that may result.

**Ius I 1-2/2010, 9-39: Jobe Abbass: The Eastern Code: A Resource for the Revision of the Latin Code.** (Paper)

See below, General Subjects (*Law reform*).

**Ius I 1-2/2010, 84-117: Pablo Gefaell: Major Contributions of CCEO During the Past 20 Years.** (Article)

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

**LJ 166/11, 37-51: Jerold Waltman: Employment Policy in the United States and the United Kingdom.** (Article)

W. compares how much discretion Churches enjoy when hiring and releasing staff in the United States and the United Kingdom. Two theoretical models underpin public policy in this area. One stresses the need for all institutions in society to adhere to liberal norms, while the other places the emphasis on the autonomy of Churches. The two countries exhibit some similarities, but it is the differences that stand out, largely because the UK leans toward the former model and the US the latter. In both, Churches have enormous latitude in

choosing clergy; even so, American Churches are more legally insulated from State regulation than their British counterparts. Turning to non-religious workers and people whose jobs have important but not exclusively religious dimensions, the contrasts are stark. The UK allows Churches much less flexibility. The reasons, W. argues, lie in the differing legal regimes in the two nations, the greater religious diversity and intensity found in the US, and the fact that sexual orientation is not a prohibited category in the US.

**REDC 67 (2010), 773-825: Lourdes Miguel Sáez: Estudio comparado de la prueba pericial en el ordenamiento jurídico civil y canónico.** (Article)

This is a comparative study concerning the question of expert evidence in civil and canonical law. In this area both legal systems display common features on account of the common legacy of Roman law. The encounter of the *Corpus Iuris Civilis* of Roman law with the *ius commune* of canonical law marked a parallel source and development. While it is true that both are now fully defined and separate systems, each with its own area of competence and configuration, they do nevertheless share that common core which provided the basis for their recognition as legal systems. The evidence of expert witnesses plays an increasingly important part in both civil and canonical cases, and in her article MS compares the part such evidence plays, with special reference to Spanish civil law and canon law as reflected in the norms of *Dignitas Connubii*.

***Compilations***

**Comm 42 (2010), 239-279: Pontificium Consilium de Legum Textibus: Congressus Studii de Themate *Il Codice delle Chiese Orientali. La storia, le legislazioni particolari, le prospettive ecumeniche.*** (Report)

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

**IC 51 (2011), 331-361: Jorge Otaduy: Crónica de Jurisprudencia 2010. Derecho eclesiástico español.** (Compilation)

O. presents a review of decisions in the Spanish courts in 2010 concerning Education for Citizenship and sexual education in Spanish schools; the rights of religion teachers; the rejection of a measure requiring express agreement from parents that their children be taught religion in schools; the use of religious symbols in schools; various taxation issues; religious freedom; further civil legal developments in the long-running dispute over possession and ownership

of goods proceeding from the diocese of Barbastro-Monzón and currently held in the diocesan museum of Lérida (see *Canon Law Abstracts*, no. 103, p. 133); conscientious objection (blood transfusion); registration of religious bodies; unauthorized charging of fees for school activities; property rights (action by a diocese to prevent unauthorized building on its land); requirements for the promotion of a military chaplain to the rank of colonel; the rejection of a claim that the use of bells constituted “acoustic contamination”; crimes against freedom of conscience, religious sentiment and respect for the dead (malicious destruction of tombs, etc.); recognition of an association of the faithful; and anti-Semitism. O. also provides details of twelve cases involving religious matters which came before the European Court of Human Rights in 2010; several of these are concerned with article 9 of the European Convention (freedom of thought, conscience and religion); others involve article 8 (privacy and family life), article 3 (torture) and article 14 (discrimination).

**IC 51 (2011), 363-372: Jorge Otaduy: Crónica de Legislación 2010. Derecho eclesiástico español.** (Compilation)

O. presents a review of legislation from 2010 involving issues of Spanish ecclesiastical law: State administrative bodies with competence in religious affairs; religious ministers and social security; financial and taxation matters; civil recognition of ecclesiastical qualifications; participation in religious ceremonies; projects for religious pluralism; and the prohibition of religious discrimination.

**IC 51 (2011), 373-396: Joaquín Sedano: Crónica de Derecho Canónico del año 2010.** (Compilation)

S. presents a review of the main canonical contributions of Pope Benedict XVI and the Roman Curia during 2010, including the Pope’s annual address to the Roman Rota (29 January 2010: see below, canon 1400); various decrees of erection and reorganization of ecclesiastical circumscriptions; the appointment of a pontifical delegate for the Legionaries of Christ; the *motu proprio Ubicumque et Semper* establishing the Pontifical Council for Promoting the New Evangelization (see below, canons 781-792); and the erection of the feminine religious institute *Iesu Communio* (8 December 2010). The review goes on to mention the more significant documents and activities of the Roman Curia in 2010, including various actions taken by the Secretariat of State in relation to the Legion of Christ; the creation of a committee answerable to the Congregation for the Doctrine of the Faith (CDF) to investigate the purported apparitions of Our Lady in Medjugorje (Bosnia-Herzegovina) from 1981 onwards (17 March 2010); the publication in *Acta Apostolicae Sedis* of the new

norms on the more serious delicts reserved to the CDF (21 May 2010: see below, canon 1395; see also *Canon Law Abstracts*, no. 106, p. 125); the announcement that in January 2011 the first personal Ordinariate would be erected (19 November 2010: see below, canon 372); the CDF's circular letter to the episcopal conferences on the doctrinal and canonical situation of the association *Opus Angelorum (Engelwerk)* (document dated 2 October 2010; made public on 4 November 2010: see below, canon 677); the widening of faculties granted to the Congregation for the Evangelization of Peoples (see below, canons 290-292); the *de facto* assumption (in anticipation of a still-unpublished *motu proprio*) by the Roman Rota of the judicial competences formerly held by the Congregation for Divine Worship in respect of nullity of ordination and dispensation from a ratified and non-consummated marriage; a conference organized by the Pontifical Council for Legislative Texts to commemorate the 20th anniversary of the CCEO (8-9 October 2010); the approval by the United States Conference of Catholic Bishops, following encouragement from the Pontifical Council for Promoting Christian Unity, of a Common Agreement on Mutual Recognition of Baptism with four reformed ecclesial communities (Presbyterian Church-USA, Reformed Church in North America, Christian Reformed Church in North America, and the United Church of Christ) (16 November 2010: the communities in question still need to sign the agreement); and the approval by the Pontifical Council for the Laity of an international association of faithful *Nuovi Orizzonti* (8 December 2010). The final sections of the review are dedicated to the diplomatic activity of the Holy See during 2010; and documentation issued by the Spanish Episcopal Conference.

**REDC 68 (2011), 467-484: Federico R. Aznar Gil: Boletín de legislación canónica particular española, 2010.** (Compilation)

A.G. provides listings of particular legislation issued during 2010 by the different 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.

## *Ecclesiology*

**AkK 178 (2009), 542-544: Papst Benedikt XVI: Apostolisches Schreiben „Motu Proprio" *Ecclesiae unitatem* bezüglich der Päpstlichen Kommission *Ecclesia Dei* vom 2. Juli 2009.** (Document)

Given here is the German text of the *motu proprio Ecclesiae Unitatem* of 2 July 2009 by which the Commission *Ecclesia Dei* now comes under the Congregation for the Doctrine of the Faith (see *Canon Law Abstracts*, nos. 105, p. 124; 106, pp. 5-6).

**IC 51 (2011), 29-41: José Ramón Villar: El sacerdocio ministerial al servicio del sacerdocio común de los fieles.** (Lecture)

The Second Vatican Council's reflection on the Church as the People of God involved a shift from an image of the Church seen above all as an institution embodied in the hierarchy, whose prerogative was the mission of the Church as such, to a conception of the People of God in which all are radically united through a shared vocation and mission, which each individual carries out according to his or her place and role. The ministerial priesthood and the common priesthood differ in essence, and not in degree. Both are original to and constitutive of the Church. There is a reciprocal relationship between them: the substantive priority of the common priesthood, the functional priority of the ministerial priesthood. The "organic cooperation" between them is the dynamic-missionary reflection of the fact of their being ordered one to the other. The mission of the Church is "organic": that is, it comprises the combined activity of lay faithful and ministers, carried out from their various structural positions within the Church.

**IC 51 (2011), 105-136: Nicolás Álvarez de las Asturias: Derecho canónico y codificación: Alcance y límites de la asunción de una técnica.** (Article)

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

***Ecumenism and interreligious dialogue***

**ELJ XIII 1/11, 4-14: Nicholas Sagovsky: The Contribution of Canon Law to Anglican-Roman Catholic Ecumenism.** (Article)

S. is Canon Theologian of Westminster Abbey. Amongst the subjects discussed by the theologians of the Anglican-Roman Catholic International Commission (ARCIC), canon law has been conspicuously absent. The ecclesiology of *koinonia*, which is central to the work of ARCIC, has been of the greatest importance in "re-imagining" the Church and so promoting ecumenism. It has faced received canon law with new questions: to what extent can canon law facilitate those structures and practices which undergird the ecumenical initiatives promoted by *koinonia* ecclesiology? Already, canon law provides for shared institutions and chaplaincies to institutions. Test areas for future ecumenical convergence include the reception of a member of one tradition by the other, ethics and suitability for ministry. The proposed Anglican covenant presents a challenge to the canon law of member Churches within the Anglican Communion and may present a model for future ecumenical convergence. The work of canon lawyers in developing this and other new models for ecumenism is indispensable to a deeper and more extensive *koinonia* amongst the Churches.

**ELJ XIII 1/11, 15-25: Brendan Leahy: The Role of Canon Law in the Ecumenical Venture: a Roman Catholic Perspective.** (Article)

One of the main goals of the Second Vatican Council (the 50th anniversary of whose opening will be celebrated in 2012) was the unity of all Christians. Not least among its achievements was the fact that it launched the Catholic Church into the Ecumenical Movement and also paved the way for a global revision of the Church's Code of Canon Law. L., Professor of Systematic Theology at St Patrick's College, Maynooth, reflects from a Catholic perspective on aspects to do with canon law and ecumenism. He does so in the light of the Council's teaching and reception. Conciliar hermeneutics and questions left open at the Council are considered. In conclusion, L. suggests that greater attention to the Church's charismatic principle and missionary mandate underlined at the Council offers wide scope for continuing exploration among Anglican and Catholic canonists in the cause of unity.

***Family issues***

**AnC 5/2009, 125-148: Michał Jóźwik: Uczestnictwo rodziny w życiu i misji Kościoła i w rozwoju społeczeństwa (= The Participation of the Family in**

**the Life and the Mission of the Church and the Development of Society).** (Article)

The Christian family, by the strength of baptism and the grace of the sacrament of matrimony, becomes part of the mystery of the Church and a sharer in the Church's saving mission. In this way, it becomes not only a *saved* but also a *saving* community (cf. *Familiaris Consortio* [FC], 49). Since the Second Vatican Council, the family has been referred to, following Saint John Chrysostom, as the "domestic Church" (*Lumen Gentium*, 11), "the Church in miniature" (FC, 49), and "the domestic sanctuary of the Church" (*Apostolicam Actuositatem* [AA], 11). Thus, the family is not only the object of the Church's mission; it is also the subject of the Church, and acts by participating in the prophetic, priestly, and royal mission of Jesus Christ and His Church (FC, 50). By the will of God the Creator, who created the marriage union, the family is the first and vital cell of society (AA, 11; FC, 42). It constitutes the foundation of every community because it secures biological existence and spiritual growth for it. The family is a perfect environment for the humanization and personalization of society, and thus can protect society against anonymity, mass culture, and dehumanization, which lead to various ways of escapism from society: alcoholism, drug addiction, and terrorism (FC, 43). The responsibility of the family towards society is not limited to caring for its own members. The family as a whole should also respond to the needs of society, and especially those of other families.

### *Human rights*

**Comm 42 (2010), 219-220: Pope Benedict XVI: Allocutio Summi Pontificis ad sodales coetus qui Italice appellatur "Assemblea Parlamentare del Consiglio d'Europa", die 8 mensis septembris 2010 habita.** (Address)

The Pope addresses European parliamentarians on the subject of human rights and how it is important that rights and values should have a rational basis common to all peoples if they are to provide a solid ground for supranational institutions. The Church does not impede this search but invites people to seek a supernatural basis for human dignity. The text is in English.

**Comm 42 (2010), 287-293: Secretaria Status: Interventus Card. Tharcisii Bertone adstantibus Statuum vel Gubernorum moderatoribus ad OSCE pertinentibus die 1 mensis decembris 2010 in civitate Astana, Cazastania habitus.** (Address)

Cardinal Bertone addressed the various heads of government gathered in Kazakhstan at an inter-governmental conference of the Organization for Security and Cooperation in Europe on the subject of human rights, and in particular progress on the ten points agreed in the Helsinki Accord.

**Comm 42 (2010), 376-380: Status Civitatis Vaticanae: Interventus Secretarii Generalis Gubernatoratus Status Civitatis Vaticanae in 79° Conventu Generali pertinente ad "INTERPOL" (publicae securitatis custodia internationalis), in civitate Dohar quatariensi, die 8 mensis novembris 2010 habitus.** (Address)

The address of the Vatican City representative is partly in English and partly in French. Criminal behaviour is part of human experience just as the conflict of good and evil is part of human history, and from the point of view of the Church, of God's saving plan. He emphasizes the importance of respecting ethical imperatives and in particular the rights to life and to religious freedom.

**ELJ XII 2/10, 180-201: Gideon Cohen: Article 9 of the European Convention on Human Rights and Protected Goods.** (Article)

Article 9 of the European Convention on Human Rights protects manifestations of religion or conscience from interference under article 9 (1) except insofar as such interferences can be justified under article 9 (2). C. asks when article 9 will protect believers who are forced to choose between religious observance and pursuit of secular "goods" and offers some conclusions about how the protection of believers from forced choices compares with the protection of manifestations of religious belief. He also considers whether cases where believers are asked to choose between religious obligations and protected goods raise particular issues under article 9 (2). Finally, he applies the conclusions he reaches to an illustrative hypothetical example. His objective is to demonstrate the potential reach of 9 (1), and to explore the article 9 (2) analysis specific to protected-good cases.

**LJ 166/11, 5-27: Frank Cranmer: An Irishwoman's Right to Choose?** (Article)

In both Northern Ireland and the Republic the law relating to abortion is exceedingly restrictive, at least in part because of the innate conservatism of Irish society on both sides of the border. C. traces the evolution of the law in both jurisdictions and discusses the latest developments as highlighted by two recent cases: one in the High Court of Northern Ireland and the other before the Grand Chamber of the European Court of Human Rights.

**LJ 166/11, 28-36: Mark Campbell: Conscientious Objection in Medicine: Various Myths.** (Article)

Conscientious objection in the medical context – the idea that a doctor, nurse or other healthcare worker might refuse to perform or participate in a particular practice or procedure – has turned out to be a controversial subject. The purpose of C.'s article is to consider three myths about conscientious objection in medicine. Firstly, given the connection with abortion, the debate about conscientious objection in medicine can come to be seen largely as a debate about abortion by proxy. Secondly, there is the view that conscientious objection is necessarily a zero-sum game in a contest of rights, with the doctor's right to conscience pitted against the patient's right to access to medical services. Thirdly, it might be said that to accommodate conscientious objection is to prioritize the religious over the secular. Challenging these kinds of myths is an important step in developing a proper account of conscientious objection to guide appropriate legal, regulatory and institutional responses.

***Law reform***

**IE XXII 3/10, 611-626: Pedro-Juan Viladrich: ¿Es necesaria una reforma del canon 1095?** (Article)

Nearly 30 years after the promulgation of the CIC/83, the debate on the interpretation of the three paragraphs of canon 1095 continues in a more and more specialized form. While admitting that this task is difficult and that, so far, there is no agreement as to the principal hermeneutical principle of interpretation, V. recommends a reform of the current wording of canon 1095. He considers that to treat the three paragraphs of canon 1095 as corresponding to different degrees of gravity of psychic pathology is confusing. He proposes the conjugal union itself as the safest source for interpreting and applying incapacity of consent; and he discusses the difficulties involved in the notions of

"assuming" and "being capable of" the bond. He sets out the importance of the "antecedent" element in such cases; and finally, he analyses the principle "*da mihi facta, dabo tibi ius*" with reference to the truly juridical facts presented to the tribunals.

**Ius I 1-2/2010, 9-39: Jobe Abbass: The Eastern Code: A Resource for the Revision of the Latin Code.** (Paper)

The two Codes of Law in the Catholic Church together with *Pastor Bonus* should be seen as one Body of Canon Law. There is a certain complementarity that enables the CCEO to be used to throw light on matters left unclear in the CIC/83 by virtue of canons 17 and 19, or which could be used to revise the text of the CIC/83 in due course. A. looks first at three examples of the former: anointing of the sick (CCEO canon 740; CIC/83 canon 1006); the competent authority in cases of illegitimate alienations (CCEO canon 1040; CIC/83 canon 1296); particular law for pious foundations (CCEO canon 1048 §3; CIC/83 canon 1304 §2). He looks then at three cases where the later text of CCEO might substitute for that in CIC/83: the beginning and end of an instance (CCEO canon 1194 5°; CIC/83 canon 1517); admission of non-Catholics to institutes (CCEO canons 448, 450 1°; CIC/83 canons 597 §1, 643 §1); deciding conflicts of competence (CCEO canon 1083; CIC/83 canon 1416). Finally he gives three examples where Eastern canons might usefully be added to the Latin Code: provision of ecclesiastical offices within six months (CCEO canon 941); prescription for contentious actions after five years (CCEO canon 1151); arbitration procedure (CCEO canons 1168-1184). He concludes with an appendix listing those places in the CIC/83 where Pius XII's *motu proprio Sollicitudinem Nostram* is given as a source. This paper was given at the joint convention of the Canadian and US Canon Law Societies at Buffalo in 2010. (See also *Canon Law Abstracts*, no. 106, pp. 11-12.)

**REDC 67 (2010), 741-771: Carmen Peña García: Derecho a una justicia eclesial rápida: sugerencias *de iure condendo* para agilizar los procesos canónicos de nulidad matrimonial.** (Article)

See below, canons 1671-1691.

## *Legal theory*

**AA XVI (2009-2010), 9-36: Eduardo Baura: Perfiles jurídicos del arte de legislar en la Iglesia.** (Article)

The legislator's task is to establish the right ordering of society directed towards the common good. This is achieved not by the mechanical application of some form of technique but by a genuine "art" which in the Church is not simply legal and juridical but also forms part of its pastoral, sanctifying and teaching mission. The legislator must bear in mind these dimensions when deciding whether and how to legislate, and consider too the nature of the community for which he is legislating. The codification of the Church's law occurred only with the 1917 Code of Canon Law and any codification can run the risk of freezing the development and evolution of its norms in answer to changing realities. Codified universal law can also lead to the withering away of particular legislation, and therefore prudence must be shown as to what can rightly be considered the common good. In this context B. points out the difference between legislation as *lex*, and law considered as *ius*; the former is for the good ordering of society, while *ius* is to give to each what is his due. The art of the legislator, therefore, belongs to the "political" sphere (in its broad sense of the ordering of the *polis*) rather than the strictly juridical. B. goes on to comment on Gratian's description of law (taken originally from Isidore of Seville) as honest, just, possible, in accordance with nature and the customs of the land, fitting for time and place, useful, necessary and for the common good.

**AnC 5/2009, 161-177: Piotr Kroczek: The Theological Foundations of the Reception of Canon Law.** (Article)

After examining the different meanings of the term "reception of law" and the background or environment of reception (seen as a process of interaction between law and people), K. focuses on the theological foundations of the process of reception of law in the Church. From the point of view of those receiving the law, key elements are baptism, faith, conscience, *communio*, and the *sensus fidei*. From the legislator's perspective two significant features are emphasized: the legislator as head, and the legislator as servant. From the perspective of the law itself, the theological foundations of reception include the source and the purpose of the law. K. then briefly describes the stages of the reception of law, before concluding that the reception of law in the Church is a unique process with features unknown to a State law theory.

**Ap LXXXIII 2 (2010), 459-496: Elena Di Bernardo: Il ruolo della Logica nel contesto probatorio dell'accertamento dei fatti nel processo canonico.** (Article)

Di B. examines the role of logic in the context of ascertaining facts in the canonical process, looking at the epistemological questions concerning the search for truth.

**Ap LXXXIII 2 (2010), 551-570: Matteo Nacci: Le consuetudini religiose.** (Article)

N. looks at the contribution which the history of law can make in a context of religious freedom and cultural pluralism through the prism of religious customs. He sees *ius* as being an aspiration to justice, custom as one of the juridical phenomena which demonstrate the difference between a sense of justice and abstract juridical commands. Customs can be an important element of common public order in a society. Custom is an important source of canon law, and is also present in other legal systems, both civil and religious. In the new world of globalization, religious traditions can help sustain both religious freedom and cultural pluralism; *laicitas* can regulate religious pluralism on the basis of respect for all religious traditions, and the interaction between different religious cultures can permit each person to live his own faith authentically.

***Relations between Church and State***

**AA XVI (2009-2010), 421-426: Acordo entre a República Federativa do Brasil e a Santa Sé relativo ao estatuto jurídico da Igreja Católica no Brasil.** (Document)

Portuguese text of the Agreement between Brazil and the Holy See, signed on 13 November 2008 in the Vatican by Pope Benedict XVI and President Lula da Silva.

**AA XVI (2009-2010), 427-440: Octavio Lo Prete: El Acuerdo Brasil-Santa Sede del 13 de noviembre de 2008: nota sobre el fruto de una relación madura.** (Commentary)

L.P. provides a Spanish translation of the Agreement mentioned above between Brazil and the Holy See. In his commentary he gives some historical background to the present Agreement and notes the positive and favourable reception it received in the Brazilian parliament. It has enabled previous legal

dispositions, partial agreements, understandings and customs to be consolidated in one single legal framework, respecting both the *laïcité* of the Brazilian State and the recognition of the Catholic Church's position and rights in society.

**AA XVI (2009-2010), 441-453: Hugo Adrián von Ustinov: El Acuerdo entre la República Federativa del Brasil y la Santa Sede del 13 de noviembre de 2008.** (Commentary)

In his commentary on the Agreement between Brazil and the Holy See, U. underlines some important aspects, such as the recognition of its juridical personality in virtue of its nature as subject of international public law; the recognition, given certain requirements, of the juridical effects of canonical marriage and the decisions of ecclesiastical tribunals; and the right of parents to have religious education for their children in State schools. The Agreement also guarantees the right of secrecy covering any information gained by a priest in the exercise of his pastoral ministry (not simply in the context of sacramental confession), a significant recognition in the light of some contrary pressures in various other countries in recent years.

**AkK 178 (2009), 483-516: Bernd Dennemarck: Staatsleistungen an die Domkapitel in Bayern.** (Article)

Payments by the State to the Bavarian cathedral chapters have their historical roots in the secularization of 1803. The Bavarian Concordat of 1817 stipulated that, as compensation for the loss of Church property, members of cathedral chapters would receive financial sustenance and be provided with furnished living and working accommodation. Until such time as this service by the State was fulfilled by the transfer of property, transitional arrangements were agreed, which did not however involve the cancellation of the original agreements. These commitments remained each time the political and constitutional relationships changed; in each case they were updated and confirmed. Since the federal government has not until now complied with the constitutional mandate for a foundational law, a comprehensive discharge of its responsibilities for payments to the Church could not take place. However, through bilateral contracts, it has been possible to disentangle the complex interplay of Church and civil responsibilities. Most recently, in the agreements of 1 January 2010, the State's obligation to make available specific living and working accommodation to capitulars has been finally fulfilled. This counts as a partial discharge of the State's obligations in this area.

**AkK 178 (2009), 517-531: Joachim Eder: Standort des Kanonischen Rechts im Kirchlichen Arbeitsrecht.** (Article)

See below, CIC canon 1286.

**Ap LXXXIII 1 (2010), 43-84: Waldery Hilgeman: La nuova Legge sulle Fonti del Diritto dello Stato della Città del Vaticano. Prime note ed osservazioni.** (Commentary)

H. discusses the new law on the sources of law of the Vatican City State, promulgated by Benedict XVI on 1 October 2008, which places canonical order as the "first normative source" and point of reference for understanding the law of that State. He discusses the reasons for the updating of the law, and the composition and activity of the Commission responsible for the revision. He then comments on the text of the new law and discusses aspects of continuity with the preceding law.

**Comm 42 (2010), 321-332: Secretaria Status: Conventio inter Apostolicam Sedem et Bosniae ac Herzegoviniae Rempublicam circa assistentiam religiosam fidelibus catholicis, commilitonibus virium armatarum, praebendam.** (Document)

This agreement regulates chaplaincy arrangements for Catholics serving in the armed forces of Bosnia-Herzegovina. The text is printed first in Serbo-Croat (both Latin and Cyrillic scripts) and then in Italian.

**Comm 42 (2010), 360-366: Grégor Puppinck: L'Europa e il crocifisso. Un'alleanza contro il secolarismo.** (Article)

This article, originally published in *L'Osservatore Romano* on 22 July 2010, comments on the sentence of the European Court of Human Rights concerning the display of crucifixes in State schools, the religious identity of society and the influence of secularism.

**ELJ XII 1/10, 33-52: Eithne D'Auria: Alienation of Temporal Goods in Roman Catholic Canon Law: A Potential for Conflict.** (Article)

Alienation of Church property is governed by both canon law and civil law, which may give rise to conflict. D'A. addresses issues surrounding the Catholic canonical requirements for alienation including the need to consult experts.

Failure to consult may give rise to concerns over the validity of the diocesan bishop's permission to alienate and, in turn, the lawfulness of the sale. This is not merely academic. Churches in the United States find themselves in the position where ownership of temporal goods is of increasing interest to the civil courts in the pursuit of compensation for successful litigants in the current wave of abuse cases.

**ELJ XII 1/10, 17-32: Per Hansson: Clerical Misconduct in the Church of Sweden 2000–2004.** (Article)

The Church of Sweden, being the national Lutheran Church, was disestablished in 2000 and former State obligations were transferred to the Church. Major changes were effected in the oversight of the clergy and all complaints were thereafter to be handled by the Church itself. H. considers empirical data concerning those complaints and makes an evaluative comparison with the previous system.

**ELJ XIII 1/11, 39-56: Nicholas Roberts: The Historical Background to the Marriage (Wales) Act 2010.** (Article)

The Marriage (Wales) Act 2010 illustrates that a disestablished Church will always occupy an intermediate position between an established Church and one which has never been established: the Church in Wales needed an Act to reform its marriage law, whereas paradoxically the Church of England legislated for itself by Measure. R. outlines how the provisions on marriage evolved during the passage of the disestablishment legislation; accepts the validity of contemporaneous arguments based on inconsistency; and outlines previous occasions when the marriage laws of England and of Wales have fallen out of step. He concludes by accepting that the continued establishment of the marriage law in Wales is inconsistent, but that any change is likely to depend on a wholesale reform of marriage law.

**ELJ XII 2/10, 224-228: Paul Barber: State Schools and Religious Authority: Where to Draw the Line?** (Comment)

B. comments on the UK Supreme Court's 5-4 majority decision against the Governing Body of the Jews' Free School on the basis of direct race discrimination. B. also examines two recent cases decided by the Schools Adjudicator relating to Catholic schools. All of these cases touched on the question of the appropriate division between Church and State.

**IE XXII 3/10, 673-694: Jean-Pierre Schouppe: Le traitement des plaintes pour abus sexuels dans le cadre des relations pastorales en Belgique. L'«Opération calice» et ses conséquences.** (Article)

After describing the heavy-handed "Operation Chalice" police raids on Catholic institutions in Belgium on 24 June 2010, S. studies the Statutes and the work of the Church Commission for dealing with complaints of sexual abuse up to that date, and also the final report of the Commission issued in September 2010. Bishops and major superiors envisaged the establishment of a *Centre* to take charge of the affairs of the now-dissolved Commission, but the Belgian Advocates General rejected the idea of working together with a private body; instead, the government itself launched the idea of a special parliamentary commission to investigate allegations of this nature. The handling of complaints within the Church was therefore left to each diocese or religious institute. S. ends his article with a series of reflections on relations between the Church and State in Belgium.

**IE XXII 3/10, 695-705: Emmanuel Tawil: Lo sviluppo della laicità francese.** (Article)

The use of the term *laïcité* in contemporary France can only be understood in the light of the history of relations between the Church and the State. In 1870, after the fall of the Second French Empire, a Republic was proclaimed, but the French people had elected an Assembly, the large majority of whom were in favour of the restoration of the monarchy. However there was a division between the Catholic traditionalists who had rejected the Revolution in 1789 and the liberals who had supported the Revolution, over which monarch to choose; and after several years of inconclusive debate they eventually settled for a conservative Catholic Republic, as a temporary measure on the way to choosing a King. In 1877 and 1879 the Republicans won the elections to both legislative chambers, with an anticlerical agenda. Up to this time the term *laïcité* had been used in ecclesiastical contexts and not had anticlerical connotations, but the situation changed very rapidly, By 1879 it had come to refer to "deconfessionalization", with the ultimate aim of separation between Church and State. T. provides an account of the development of *laïcité* in this sense and of the notion of religious freedom starting with the Law of Separation of 1905. Further deterioration in Church-State relations occurred after the Constitutions of 1946 and 1958 which declared France to be a *République laïque* – although the term was understood by each side in its own way. In the 1970s a new "positive *laïcité*" was proposed, in view of which the State would seek dialogue with the great religions of France with the aim of facilitating their daily existence. T. concludes that, although "the dialogue is not new, what is new is to recognize the existence of dialogue".

**REDC 67 (2010), 889-904: Jaime Bonet Navarro: La relación canónica e internacional de la Soberana Orden de Malta con la Santa Sede.** (Article)

The Sovereign Order of Malta enjoys a dual juridical personality both as a religious Order within the Church, and as a subject of international law since it is recognized in that forum as an independent entity; it is governed therefore by both canon law and international law. After considering the history and development of the Order, B.N. examines the sources of the Order's own laws and helps to put in context its dual legal relationship to the Holy See. He goes on to analyse some of the peculiar characteristics of the Order, such as its maintaining of diplomatic relationships and its signing of international treaties. An important decision delivered by a special tribunal established by Pius XII in 1951 clarified its intra-ecclesial relationship to the Holy See, namely, that it was primarily a religious Order engaged in charitable and humanitarian activities and was to be governed in these areas by canon law, yet recognizing certain prerogatives it possessed on account of its recognition in international law. In other words, it has its own peculiar and unique international configuration but remains first and foremost a religious Order subject to the norms of canon law.

**REDC 67 (2010), 851-887: José Miguel Viejo-Ximénez: Los Concordatos de Pío XII a Pablo VI (1939-1978): 1. Panorama general.** (Article)

This is the first part of a study which examines the background and development of Concordat theory and practice as it reacted to very different political and social changes between 1939 and 1978. V.-X. highlights the gradual abandonment by the Church of the *ius publicum ecclesiasticum* ecclesiology, the international acceptance of the Holy See's spiritual sovereignty and recognition of its international personality, as well as the assimilation of the Concordat structure to international treaties by virtue of the principle *pacta sunt servanda*.

**REDC 68 (2011), 205-258: José Miguel Viejo-Ximénez: Los Concordatos de Pío XII a Pablo VI (1939-1978): 2. Soluciones y tendencias.** (Article)

The history of concordats has evolved and developed over time, and the basic elements of form, subjects and content were established in the second and third decades of the 20th century. However, in the post-World War II period expectations were changing, as were Church-State relations, and concordats were being increasingly assimilated to international treaties. After Vatican II the new emphasis on religious freedom and human rights, and the separation of Church and State, changed the Church's expectations with regard to concordats. Since the 1970s they have proved to be a useful instrument in solving concrete

Church-State problems, in many cases tying the implementation of concordat law to existing canon law. This however has a negative side too, since in some countries obsolete and outdated ecclesiastical institutions have been perpetuated by their incorporation into earlier concordat law and by the application of the principle *pacta sunt servanda*.

**REDC 68 (2011), 373-395: Pedro Mendonça Correia: A assistência espiritual e religiosa da Igreja Católica nas unidades de saúde de Portugal.** (Article)

M.C. examines the present legislation in Portugal governing the provision of spiritual and religious assistance by the Catholic Church in that nation's health centres. As well as natural law, international law (especially the concordat of 2004) and common law, he looks at various Portuguese laws passed from 1968 to 2009 dealing with this subject. He explains in particular the legal status of Catholic chaplains to these institutions, their connection to the health centre, their hierarchical superiors, the faculties and rights they enjoy, the training and formation they receive, and their remuneration.

**REDC 68 (2011), 437-453: Ley sobre ciudadanía, residencia y acceso al Estado de la Ciudad del Vaticano, 22 de febrero de 2011. Texto original en italiano y comentario (Myriam Cortés Diéguez).** (Document and commentary)

The original Italian text is given of the 2011 Vatican City State law on citizenship, residence and access to its territory, followed by a commentary by M. Cortés Diéguez in which she gives a historical background to the evolution of the Papal States from the 19th century *Risorgimento* to the present day.

***Religious freedom***

**AkK 179 (2010), 126-140: Libero Gerosa: Kanonistische Hermeneutik und Schutz der Menschenrechte. Eine Auseinandersetzung mit wichtigen Folgen für das Staatskirchenrecht.** (Review)

This is a critical review of *Religonen im Kontext der Menschenrechte* (Zurich, 2010), in which Adrian Loretan, a canon lawyer based in Lucerne, presents a collection of his studies on the theme of religious freedom as a human right. Dealing with a selection of problems relating to academic canon law, as well as laws concerning ecclesiastical offices and ordination, G. develops (and answers

negatively) the question of whether the concept of human rights necessitates a reinterpretation of or changes to ecclesiastical norms.

**EE 86 (2011), 329-341: Rafael Díaz-Salazar: El laicismo en España: corrientes internas y tendencias ideológicas.** (Article)

In the last years of the 20th century "laicism" made a strong reappearance in democratic Spain. D.-S. analyses and presents its ideological background and the different forms it takes: ontological laicism, inclusive laicism, open laicism.

**EE 86 (2011), 343-358: María Dolores Peralta Ortiz: La educación en un estado laico y en una sociedad pluralista.** (Article)

From the time of the establishment of the modern liberal States, education has been one of the most debated and controversial topics in the social and political arena. Knowledge of and reflection on the key aspects involved, together with an overview of the historical developments in the Western context over the last two centuries, can help towards a better understanding of this complex reality. With this in mind P.O. analyses the questions of rights in education; freedoms and the public dimension of education and the role of the State; and finally, the religious dimension as a component of the educational process in current-day society.

**EE 86 (2011), 359-411: Rafael M.ª Sanz de Diego: Los partidos confesionales españoles. Historia y valoración.** (Article)

During the 19th century there was widespread discussion as to whether or not to create Catholic political parties in Spain. This article explains what is meant by a confessional party, and then looks at the seven different models that have existed in Spain. It sets out the position of the Church as regards such parties, prior to and after Vatican II; the various declarations of the Spanish hierarchy; and the declarations of Popes John Paul II and Benedict XVI.

**EE 86 (2011), 413-438: Lluís Martínez-Sistach: La libertad religiosa. Relaciones Iglesia-Estado.** (Article)

The topic of Church-State relations needs to be placed within the framework of religious freedom, as a fundamental right of the human person. M.S. studies the most recent questions – laicism, the use of religious symbols in public places, possible reform of the law on religious freedom – in the light of the teaching of

Vatican II on freedom of conscience (*Dignitatis Humanae*, 13) and with reference to the Spanish legal order.

**ELJ XII 1/10, 3-16: Andrew Hambler: A No-Win Situation for Public Officials with Faith Convictions.** (Article)

H. considers two recent high-profile employment cases to investigate the peculiar dilemma faced by certain public officials who are called upon to implement public policy in situations where their consciences are made uneasy on account of their faith-based convictions. Such officials face, among other options, the dilemma of choosing between an appeal to rational objections, based on "public reasons" that are non-religious in character, or citing their own faith-based conscientious objections. In *McClintock v Department of Constitutional Affairs*, by initially basing his objections on a form of public reason, McClintock arguably muddied the waters for his subsequent unsuccessful claim of religious discrimination. In *Ladele v Islington Borough Council*, however, the appeal to conscience alone also failed, as religious convictions were "trumped" by the superior claims of particular policy objectives. H. thus concludes that the "religious" public official may, ultimately, have nowhere to turn except either to silence conscience and acquiesce, or to exercise that "minimum" employment right under the European Court of Human Rights case law – the right to resign.

**ELJ XII 2/10, 131-151: Peter Cumper and Tom Lewis: Last Rites and Human Rights: Funeral Pyres and Religious Freedom in the United Kingdom.** (Article)

C. and L. consider the litigation in *Ghai v Newcastle City Council* in which the legality of open-air funeral pyres in England under the Cremation Act 1902, and under the right to freedom of religion and belief in article 9 of the European Convention on Human Rights, was considered. Ultimately the Court of Appeal held that open-air funeral pyres within a walled enclosure were not unlawful. But at first instance the Administrative Court, which had assumed that domestic law prohibited such pyres, held that such a ban would not breach article 9 since it was legitimate to prevent causing offence to the majority of the population. It is the approach of the Administrative Court to article 9 (which was not considered by the Court of Appeal) that forms the basis of the authors' critical analysis. In particular they argue that the Administrative Court undervalued the right to freedom of religion and belief, as against the need to prevent offence to others, and adopted a stance which was overly deferential to Government and Parliament.

**ELJ XII 3/10, 266-279: Ian Leigh: New Trends in Religious Liberty and the European Court of Human Rights.** (Article)

L. analyses recent trends in the jurisprudence of the European Court of Human Rights concerned with the right to freedom of thought, belief and religion (article 9, European Convention on Human Rights) and the right of parents to respect by the State for their religious and philosophical views in the education of their children (article 2, protocol 1). These developments include notable decisions concerned with protection from religious persecution in Georgia, with religious education in Norway and Turkey and with the display of crucifixes in State schools in Italy. It is apparent that the European Convention religious liberty jurisprudence increasingly stresses the role of the State as a neutral protector of religious freedom. For individuals religious freedom is now also recognized to include not only the right to manifest their religious belief but also freedom from having to declare their religious affiliation. As the religious liberty jurisprudence comes of age, other significant developments, for example in relation to conscientious objection to military service, can be anticipated.

**ELJ XIII 1/11, 26-38: Christopher McCrudden: Religion, Human Rights, Equality and the Public Sphere.** (Article)

McC. distinguishes three different conceptions of the relationship between religion and the public sphere. The reconciliation of these different aspects of freedom of religion can be seen to give rise to considerable difficulties in practice, and the legal and political systems of several Western European countries are struggling to cope. Four recurring issues that arise in this context are identified and considered: what is a "religion" and what are "religious" beliefs and practices for the purposes of the protection of "freedom of religion", together with the closely related issue of who decides these questions; what justification there is for a provision guaranteeing freedom of religion at all; which manifestations of religious association are so unacceptable as to take the association outside the protection of freedom of religion altogether; and what weight should be given to freedom of religion when this freedom stands opposed to other values. McC. argues that the scope and meaning of human rights in this context is anything but settled and that this gives an opportunity to those who support a role for religion in public life to intervene.

**ELJ XIII 2/11, 146-156: Andrew Hambler: Establishing Sincerity in Religion and Belief Claims: A Question of Consistency.** (Article)

H. argues that individual sincerity has become the most significant determinant of whether or not a religious or philosophical belief is to be recognized as such

for the purposes of accessing putative legal protections for individuals. However, a clear test of individual sincerity has not been fully articulated by the courts in the UK or indeed elsewhere. In this context, the possibility of developing a test based in large part on consistency of individual behaviour is considered by H., and some objections noted. He concludes that such a test is both useful and desirable in principle, and should be developed; however, it must be applied with great care in order to remain inclusive of those who may be driven to apparent inconsistency by fear or as a result of other factors.

**ELJ XIII 2/11, 157-181: Russell Sandberg: The Right to Discriminate.** (Article)

The first decade of the 21st century has witnessed a number of controversies surrounding the interaction between law and religion in the United Kingdom. In particular, tensions have emerged between laws protecting religious freedom and those which prohibit discrimination on grounds of sexual orientation. Parliament has repeatedly examined the scope and ambit of exceptions afforded to religious groups which allow them to discriminate on grounds of sexual orientation when specific conditions are met. These exceptions have reportedly led to tensions within both the Blair and Brown cabinets and rebukes from the Vatican and the European Commission, criticizing the exceptions for being too narrow and too broad respectively. The exceptions have also been challenged by way of judicial review, have been applied or commented upon in a number of high-profile cases and have attracted comment in the print and broadcast media. A number of employees have brought claims asserting that new legal requirements promoting equality on grounds of sexual orientation are incompatible with their religious beliefs. S. seeks to explore the legal changes that have occurred in the first decade of the 21st century affecting religion and sexual orientation with particular reference to how courts and tribunals have dealt with clashes between the two. It discusses the extent to which English law allows religious groups and individuals to follow their own beliefs regarding human sexuality.

**IC 51 (2011), 161-205: Ana Mª Vega Gutiérrez: El derecho a cambiar de religión: consecuencias jurídicas de la pertenencia y disidencia religiosa en el derecho comparado.** (Article)

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

**REDC 68 (2011), 315-337: Mª José Parejo Guzmán: Hacia el pleno ejercicio de la libertad religiosa en el Estado español.** (Article)

In Spain, and in other countries with a similar social and cultural environment, great changes have taken place in past decades regarding the presence and expression of religion in public and civic life, giving rise in many cases to tension and conflict with civil legislation. A correct application of the principle of *laïcité*, which governs public life in so many countries, does not mean the expunging of all religious expression from the public forum, still less a campaign against any single religion, but rather a respect extended to all citizens in the exercise of their freedom of religion where the State will be neutral, neither discriminating against religious expression nor favouring any particular manifestation of religion. P.G. in the last part of her article then looks at the situation in Spain as it has developed in recent years.

# HISTORICAL SUBJECTS

## *1st millennium*

**AnC 5/2009, 7-26: Józef Wroceński: Instytucja metropolii w dziejach Kościoła. Aspekt historyczno-prawny ( = An Ecclesiastical Province in the History of the Church. The History and Law aspect).** (Article)

The development of the institution of the ecclesiastical province has been gradual and unequal in the Christian world. Ecclesiastical provinces played a major role in relations between bishops and civil authorities. They also helped to coordinate cooperation in the pastoral field among neighbouring dioceses. All these processes were taking place under the vigilance and power of the metropolitans and also through the summoning of provincial councils. W. sets out the context of the origin and development of the institution of the ecclesiastical province in social and State circumstances. He also shows how the institution in question developed in the Church law. It can be said that the arguments for creating ecclesiastical provinces today are the same as they were in past years and that they will very likely be the same in the future.

## *Classical period*

**AkK 179 (2010), 20-36: Szabolcs Anzelm Szuromi: Some Canonical Manuscripts in the Collection of the National Library of St Petersburg.** (Article)

The Medieval Latin collection of the National Library of St Petersburg has some remarkable manuscripts from the 7th-14th centuries. Since 1795, during the Napoleonic War, volumes were transferred by the Russian Army. In this article S. summarizes some noteworthy features of the *Ermit. lat. 11* and *Ms. Q. v. II. 5* manuscripts in particular. The *Ermit. lat. 11* manuscript is a late 11th or early 12th century textual exemplar of the *Collectio Hibernensis*. Adequate comparison of these two different manuscripts is impossible using the same principles. One of them contains a broad, fundamental, pre-Gregorian canon law collection (*Coll. Hibernensis*), and the other is an exemplar of a prominent canonical auxiliary handbook (*Summa Pisana*) that primarily affects the consistent observance of penitential discipline. Looking for some common peculiarity of these two different canonical sources, it is to be noted that both codices had a significant influence on the daily public ecclesiastical activity of a religious community (i.e. Norbertine, Benedictine: see *Canon Law Abstracts*,

no. 105, pp. 20-21). These results corroborate the view that research in manuscripts that contain canon law collections can give new impetus to the clear overview of the general canonical knowledge of the 10th-11th centuries.

**IE XXII 3/10,709-723: Nicolás Álvarez de las Asturias: Il ruolo di Ivo de Chartres nella storia del diritto canonico.** (Bibliographical review)

Commenting on a book by Christof Rolker, *Canon Law and the Letters of Ivo of Chartres* (Cambridge, 2010), A. points out that there has been a tendency to reduce the role of Ivo of Chartres to that of being an eminent predecessor to Gratian, and asks what his real contribution to canon law was, and what is its true significance. Canon law is in all probability the oldest law still in force, and is fundamental for a proper understanding of the society it regulates (the Church). In recent decades the Church has engaged in ecumenical dialogue aimed at recovering the unity lost in the course of her history. In this context an analysis of what took place during the 11th century is of vital importance and can shed light on the present. A. concludes that Rolker's work substantially changes the way we view Ivo of Chartres and the period of history in which he operated.

**REDC 67 (2010), 549-579: Carlos Larrainzar: La Glosa Tradicional a la Bula «Rex Pacificus» de 1234.** (Article)

The Bull *Rex Pacificus* of Gregory IX in 1234 went beyond its original intention of clarifying various legal uncertainties, by affirming the legislative power of the medieval Church which was closely connected to the ecclesiology supporting and justifying the institutional structure which had developed in preceding times. L. looks at this document in the light of the glosses which accompanied it in its publication in the official *editio romana* of 1580-1582. In an appendix he includes the Latin text of these glosses and an index of the sources which had been included with them.

***16th-19th centuries***

**AA XVI (2009-2010), 245-268: Javier Fronza: Inspiraciones constitucionales con respecto al factor religioso en la Argentina (en torno al bicentenario patrio).** (Article)

F.'s article, written in the context of the bicentenary of Argentina's Independence, considers some of the contending ideas and attitudes in the early

years concerning the relationship between the State and religion. He concentrates on the period of the first government of Juan Manuel de Rosas (1829-1832) and the differing approaches between federalists and integrationists (*unitarios*).

**AA XVI (2009-2010), 269-277: Fernando J. González: Apuntes liminares de derecho canónico indiano.** (Article)

This brief article focuses on the canon law as it existed and was applied in the old Spanish dominions of South America (*Las Indias*). It had two main sources: the law of the State as mediated through the *patronato*, and properly called ecclesiastical law. These sources are widely dispersed in many and varying kinds of texts, and G. provides a list of some of the more important ones dating from the 16th to the 18th century.

**AkK 178 (2009), 483-516: Bernd Dennemarck: Staatsleistungen an die Domkapitel in Bayern.** (Article)

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

**AnC 5/2009, 149-160: Robert Kantor: Sankcje karne nakładane na świeckich w oficjalacie foralnym w Tarnowie w latach 1656-1781 (= The Penal Sanctions Inflicted upon Lay Persons in the Tribunal in Tarnow, 1656-1781).** (Article)

In the 12th century there appeared in Poland a new institution called the "officership". Shortly afterwards, outside the capital of the dioceses, provincial officers came into being. A provincial officership existed in the town of Tarnow from 1542-1781, when Tarnow belonged to the diocese of Krakow. K. gives a brief history of the beginnings of the provincial officership in Tarnow and lists the specific penal sanctions. In the first place there was public penance and beating. Secondly the provincial officer imposed fines; finally, the offenders had to ask for pardon. The provincial officer also had at his disposal certain preventative measures such as warnings and orders.

**Ang 88 (2011), 263-298: Fabio Vecchi: L'Interdetto del 1617 su Lisbona del Collettore Ottavio Accoromboni. Ultimi sussulti della fiscalità pontificia esterna a fronte del "diritto naturale" maiestatico.** (Article)

On 27 June 1617 Bishop Ottavio Accoromboni, Apostolic Collector in Portugal, issued an interdict against the government of Lisbon in response to its repeated violations of ecclesiastical immunity. V. provides a detailed account of the background to this event, and examines the significance of the continuing use of this ecclesiastical censure in 17th century Portugal.

**ELJ XIII 2/11, 132-145: Richard Helmholz: University Education and English Ecclesiastical Lawyers 1400–1650.** (Article)

Most recent historians have expressed a negative opinion of the quality of legal education at the English universities between 1400 and 1650. The academic study of law at Oxford and Cambridge, they have stated, was easy, antiquated and impractical. The curriculum had not changed from the form it assumed in the 13th century, and it did little to prepare students for their careers. H., giving the Eighth Lyndwood Lecture, challenges that opinion by examining the inner nature of the *ius commune*, the law that was applied in the courts of the Church, and also by examining some of the works of practice compiled by English civilians during the period. Those works show that the negative opinion rests in part upon a misunderstanding of the nature of legal practice during earlier centuries. In fact, concentration on the texts of the Roman and canon laws, as old-fashioned as it seems to us, was well suited for the tasks advocates and judges would face once they left the academy. It also provided the stimulus needed for advance in the law of the Church itself; their legal education made available to potential advocates and judges skills that would permit a sophisticated application of the *ius commune*, one better suited to their times. H. provides evidence of how this happened.

**IC 51 (2011), 137-160: Hernán Corral Talciani: *Qui tacet consentire videtur*. La importancia de una antigua regla canónica en el juicio contra Tomás Moro.** (Article)

C.T. focuses on the legal adage invoked by Thomas More in his own defence against one of the charges contained in the indictment that brought him to trial. Although different accounts have been offered regarding the adage cited by More, a review of the sources for the trial suggest that the claim was indeed made. A study of the history of the maxim reveals that it originated in canon law, and was rendered canonical in the *Liber Sextus* of the Decretals by Dino da Mugello, who generalized a number of precedents contained in the Digest and

reflected in ecclesiastical practice. The rule was later adopted in medieval civil law and English common law. Thus different versions of the process may be regarded as correct even though they refer to different sources of the adage. More's invocation of the maxim was not merely a rhetorical strategy, but a threefold juridical response. The claim made on the basis of the adage was effective: the charge of treason based on mere silence was not pursued by the accusers.

**LJ 166/11, 52-67: David Pocklington: The Continuing Relevance of Doctors' Commons.** (Article)

P. analyses the factors contributing to the rise to prominence of Doctors' Commons, its success over a period of political uncertainty, and its subsequent loss of influence. He argues that its early success was the result of a fortuitous combination of circumstances during the Reformation, which was consolidated by the continued support of subsequent monarchs, the Civilians' international expertise in related areas, and several associated monopolies and positions of influence. Whilst its demise is generally attributed to the loss of its testamentary and marriage activities in the late 1850s, it was long accepted that financial viability lay with its work in the admiralty jurisdiction, which also secured a substantial degree of influence. Although members of Doctors' Commons were active in a number of areas, it is the loss of a focus for scholarship in canon law that has been the greatest impact of its demise. The past decade has witnessed a growing requirement for professionals with expertise in this area and the experience of Doctors' Commons suggests a model with which future "canon lawyers" can address the new challenges.

**REDC 67 (2010), 581-676: Justo García Sánchez: El lucro cesante en una sentencia salmantina de 1553, confirmada en Valladolid el año 1556.** (Article)

This article considers the Roman law institution of *lucrum cessans* and its reception into Spanish law by an examination of two sentences delivered in Salamanca and Valladolid in 1553 and 1556 respectively. The case concerned a confectioner who agreed to act as agent on behalf of a gentleman wishing to obtain the dissolution of the betrothal he had entered into, so that he could marry another woman. This work required the confectioner to live far away from his business. His plea to be recompensed for lost income was upheld by both courts on the principle of *lucrum cessans*. G.S. in an appendix provides the text of both sentences in the Spanish of the day.

**REDC 68 (2011), 113-203: Miguel Anxo Pena González: Conflictos en las independencias hispanoamericanas: las excomuniones de los insurgentes de La Paz y su validez canónica.** (Article)

This long article concerns validity of the excommunications pronounced in 1809 by the bishop of La Paz against the rebels in what was to become the struggle for Bolivian independence from Spain. P.G. examines the documents of the period, both those from the royalist side and from the insurrectionists. Canon law prior to its codification in 1917 was a complex matter in any case, and the fact that in the Spanish dominions the bishop also wielded, to some extent at least, civil power as well as strictly ecclesiastical jurisdiction, compounds the situation even more. The conclusion reached by the investigator in this case is that the first excommunication of 27 September 1809 was canonically valid, but subsequent excommunications were not. However, Church and State were so closely intertwined at the time that it is not always easy to know whether ecclesiastical or civil power was being invoked. The author provides in an appendix extensive texts of the documentation alluded to in his article.

### *1917 Code*

**AA XVI (2009-2010), 185-225: Carlos Salinas Araneda: Los obispos de la provincia eclesiástica de Buenos Aires y la codificación del derecho canónico de 1917.** (Article)

S.A.'s theme is the contribution of the bishops of the ecclesiastical province of Buenos Aires to the preparatory consultations for the production of the CIC/17. He gives a historical background, describes the main protagonists, and outlines their principal suggestions. These included, among others, a request to keep in mind the conclusions of the Plenary Council of Latin America, held in Rome in 1899; a clarification of the relationship between bishops and the cathedral chapter of canons; the suggestion that they should be replaced by a council of three priests; a reduction in the degrees of kinship constituting an impediment to marriage; the validity of marriage celebrated before any parish priest or his delegate; the request to recognize the validity of the marriages of non-Catholics who convert to Catholicism without the need for convalidation; and the celebration of mixed marriages even if it was known that the couple had celebrated or would subsequently celebrate a marriage service before a non-Catholic minister. The author could find no further contributions from any of the other Argentine bishops of the period. An appendix includes a copy of the letter to Cardinal Merry del Val with the full text of the *postulata*.

**IC 51 (2011), 105-136: Nicolás Álvarez de las Asturias: Derecho canónico y codificación: Alcance y límites de la asunción de una técnica.** (Article)

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

**PS XLVI 136 (2011), 3-29: Isaias Antonio D. Tiongco: La Naturaleza de la Potestad en los Institutos Religiosos a la luz de las Codificaciones de 1917 y de 1983.** (Article)

See below, canon 596.

***20th century***

**IC 51 (2011), 11-25: Eloy Tejero: *In memoriam* del Prof. Dr. José Orlandis (1918-2010).** (Article)

José Orlandis was the first director of the school of canon law in the *Estudio General de Navarra* and later the first dean of the same institute when it became a faculty of the University of Navarre (see *Canon Law Abstracts*, no. 106, p. 30). T. recalls O.'s life and his academic research and output, especially in the areas of history of law and history of the Church, as well as spiritual literature and works on the theology of history.

***Second Vatican Council and revision of the CIC***

**Comm 42 (2010), 381-388: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Quintum canonum Schema de Procedura Administrativa a relatore paratum post Consultorum Sessionem diebus 4-6 mensis Novembris 1971 habitam.** (Report)

This text of the 5th schema on administrative procedure represents the views expressed in the session held 4-6 November 1971. The introduction lists a number of small changes. The text of 26 canons follows.

**Comm 42 (2010), 389-395: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura**

**Administrativa": Commercium epistularum cum Secretaria Status quoad iuris redigendum Schema "De Procedura Administrativa".** (Report)

This is an exchange of letters between the Pontifical Commission and the Secretariat of State. The latter gives general approval for the schema but attaches a number of observations and reservations. These include a concern that what is proposed seems overly complex and lengthy regarding suggestions that deacons or lay people may be judges at second instance, and that contrary to the previous draft there is no mention of abuse of power as a possible cause.

**Comm 42 (2010), 396-402: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Schema canonum de procedura administrativa.** (Report)

This is the reserved text of the schema on administrative procedure as printed by the Vatican Press in 1972 and carries the date 10 November 1971.

**Comm 42 (2010), 403-411: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Brevis relatio de animadversionibus quae factae sunt ad schema de procedura administrativa.** (Report)

The schema was circulated to the Cardinal members of the Commission, other dicasteries, and episcopal conferences, on 20 April 1972. This report summarizes the comments contained in the 64 replies received to date. There are some general comments and the observations on each of the draft canons in order.

**Comm 42 (2010), 412-436: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Specialis Commissio Pontificia Coetus Studii "De Procedura Administrativa". Sessio III – Series Altera – diebus 5-7 mensis februarii 1973 habita.** (Report)

The purpose of this select group of consultors was to review the comments received on the schema as circulated and to polish the text. The first two sessions considered general questions. The remainder studied in detail the text canon by canon.

**EE 86 (2011), 103-132: Víctor Marín Navarro: El Concilio Vaticano II (1962-1965) y la normativa sobre arte sagrado. Precedentes e influencia.** (Article)

Studies on the regulation of contemporary Christian art have focused mainly on the teaching of Vatican II. However, during the pontificate of Pius XII (1939-1958) precedents for the Council's teaching may be found in the writings of Eugenio Pacelli himself, episcopal documents, and the work of various members of the ecclesiastical hierarchy such as Romano Guardini, Joseph Frings, Giacomo Lercaro and Giovanni Montini (later Paul VI). By means of this article M.N. wishes to broaden the horizons of those researching into the artistic regulations of Vatican II, stressing the historical significance of these precedents for an overall understanding of the Council.

**IC 51 (2011), 105-136: Nicolás Álvarez de las Asturias: Derecho canónico y codificación: Alcance y límites de la asunción de una técnica.** (Article)

The existing canon law is profoundly marked by a codification technique adopted with the promulgation of the CIC/17. Á. highlights the distinctive nature of the first canonical codification as compared with the codification of secular legal systems, and explores in detail the causes (both legal and ecclesiological) and consequences of this first canonical codification. He then analyses the second, current, canonical codification in the light of the new juridical and ecclesiological context of the final third of the 20th century, so as to establish its exact meaning and practical usefulness. Finally, he addresses the place of canon law in the broader context of the development of the Western legal tradition. Thus, the overall purpose is to set out the positive and negative conditioning factors of a legal technique that cannot be considered as neutral.

## CODE OF CANONS OF THE EASTERN CHURCHES

### *General*

**AA XVI (2009-2010), 161-183: Dimitrios Salachas: Lo status giuridico-pastorale degli orientali cattolici en emigrazione.** (Article)

S.'s article deals with the effects of the emigration of large numbers of Eastern-rite Catholics to Latin-rite countries. These Catholics enjoy an equal dignity with their Latin-rite brethren, and the right to celebrate their own liturgical rites and be governed by their own disciplinary norms. Their pastoral care should be a priority and can be entrusted to a Latin-rite bishop if there is no local bishop of Eastern rite; the Eastern hierarch, however, still enjoys a *ius vigilantiae* over his own faithful. S.'s final section considers the relationship between Eastern- and Latin-rite Catholics in the celebration of the sacraments, especially marriage.

**AA XVI (2009-2010), 279-296: Fernando Hugo Rodríguez: Una aproximación a la tradición armenia.** (Article)

R.'s brief article looks at the origins, history and present situation of the Armenian Church and its tradition. He gives a schematic account of the Catholic Armenian Church in present-day Argentina, with observations on its liturgy, celebration of the sacraments of initiation and some other liturgical notes.

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

P. presents an overview of the Eastern Catholic Churches with particular attention to their presence in Germany, selecting certain questions in their canon law that are of relevance to the diaspora: bi-ritual faculties; observance of feast days and days of penance; baptism; marriage preparation and the blessing of marriage; chrismation with holy myron; the Eucharist; anointing of the sick.

**Comm 42 (2010), 239-279: Pontificium Consilium de Legum Textibus: Congressus Studii de Themate *Il Codice delle Chiese Orientali. La storia, le legislazioni particolari, le prospettive ecumeniche.*** (Report)

This report presents a number of elements from the conference held in the Vatican on 8-9 October 2010 to mark the 20th anniversary of the promulgation of the Eastern Code. It comprises the addresses given by Pope Benedict XVI and the President of the Pontifical Council for Legislative Texts, four introductory presentations, and finally a short description of the history of each of the Eastern Churches *sui iuris* (pp. 270-279). Archbishop Coccopalmerio spoke on the general theme of the conference, the importance of the CCEO and the particular law of the Eastern Churches, as well as the role of the Council in this regard (pp. 240-249). Cardinal Sandri spoke on twenty years' experience of applying the CCEO (pp. 250-256). Cardinal Koch spoke on the impact of the CCEO on ecumenical dialogue (pp. 257-263). Fr Kuchera spoke in English on the teaching of Eastern canon law (pp. 264-269).

**Ius I 1-2/2010, 9-39: Jobe Abbass: The Eastern Code: A Resource for the Revision of the Latin Code.** (Paper)

See above, General Subjects (*Law reform*).

**Ius I 1-2/2010, 84-117: Pablo Gefaell: Major Contributions of CCEO During the Past 20 Years.** (Article)

This article was originally published in *Ius Canonicum* XLIX (2009), 37-65, as *El Derecho oriental desde la promulgación del CIC y del CCEO* (see *Canon Law Abstracts*, no. 103, pp. 39-40). G. begins with an extensive review of recent Oriental canonists and their published contributions, and documentation relating to the codification process. He then looks at the interrelationship between the two Codes and the applications of CIC/83 canons 17 and 19. Finally he selects a number of points for direct comparison: canonical norms; private juridical persons; ascription; marriage law; penal law; procedural law; relationship with the Orthodox.

***Historical***

**Ap LXXXIII 1 (2010), 85-167: Natale Loda: Il contributo dell'Istituto *Utriusque Iuris* della Pontificia Università Lateranense alla codificazione orientale. Le figure di Arcadio Larraone e di Acacio Coussa. (Article)**

L. deals with the specific contribution of the Lateranum's *Institutum Utriusque Iuris* to the development of the CCEO, setting it in the context of the development of the Eastern Code and the Institute's role as a faculty of canon law.

**Comm 42 (2010), 437-438: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Animadversio explicativa praevia quaod Coetum de laicis, de bonis temporalibus, de beneficiis ecclesiasticis et de officiis ecclesiasticis.** (Note)

This is an editorial note explaining why *Communicationes* is interrupting its presentation of the work on general norms contained in previous issues. The different groups worked simultaneously and there was an overlap in material. The subsequent work on general norms presupposes some of that contributed by the work of the group now to be reported.

**Comm 42 (2010), 439-458: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Coetus Studiorum "De laicis, de bonis temporalibus, de beneficiis ecclesiasticis et de officiis ecclesiasticis" (Sessio I).** (Report)

This group met 21-26 October 1974 to review the law on lay people, temporal goods, benefices and ecclesiastical offices. These issues are discussed in a general way in this first session in order to establish the order of work for subsequent sessions. Two appendices contain a summary programme of the meeting and the breaking up of the work to be done into sections, derived in part from the work done by the previous commission in 1945-1946.

## CCEO 7

**Ius I 1-2/2010, 59-83: Cherian Thunduparampil: Rights and Obligations of the Laity in the Mission of the Church.** (Paper)

This paper was given at the National Seminar on Eastern Code at Bangalore in 2010. T. reflects in a general way on the status of the faithful and laity in

particular, the terms "laity", "offices", "functions", "ministries", "Christian faithful" and the source of lay ministry or apostolate. He then highlights the various rights and obligations that follow from these principles.

### CCEO 39-40

**Ius I 1-2/2010, 118-143: Astrid Kaptijn: Ordinariates for the Eastern Catholic Faithful Lacking Their Own Hierarchy.** (Article)

The *Annuario Pontificio* lists a number Ordinariates established by the Holy See to meet the needs of Eastern faithful outside of their historic territories. K. explores the history of this kind of provision, primarily in Europe and Latin America, beginning with provision of an apostolic administration for Armenian Catholics living in Romania in 1930, although there are precedents for the care of Ruthenians in Canada dating from 1912. In general care is entrusted to a Latin-rite Bishop, usually a metropolitan. Sometimes this is for one Eastern community, sometimes for a number of different communities. However, the structure is not uniform. In some cases jurisdiction is cumulative, in others exclusive. K. focuses in a particular way on the situation in France.

### CCEO 50

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See below, CIC canon 337.

### CCEO 140-145

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See below, CIC canon 337.

## CCEO 152

**Ius I 1-2/2010, 186-199: George Thomas Kochuvilayil: The Juridical Figure of Catholicos in the Syro-Malankara Major Archiepiscopal Church.** (Article)

On 2 February 2005 Pope John Paul II raised the Syro-Malankara Catholic Church to the rank of a major archiepiscopal Church. The customary term used in Churches of the Antiochean tradition for the head of this Church is *catholicos*. In this article K. explains the evolution of this juridical and canonical figure in the Syro-Malankara Church and compares the evolution of the titles "patriarch", "major archbishop" and "maphrian". He argues that the authority of the *catholicos* is the same as that of a patriarch, and explains his rights and privileges.

## CCEO 235-242

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See below, CIC canon 337.

## CCEO 252-261

**ETJ 15 (2011), 55-64: Mathew John Puthenparambil: The Office of the Chancellor.** (Article)

The office of chancellor is one of the mandatory offices in every eparchy. An eparchial chancellor must be a priest or deacon, whereas in the Latin Church the chancellor may be a lay person. The primary function of the chancellor is to maintain the curial records. P. looks at the origins of the office; the appointment of the chancellor; the possibility of a vice-chancellor; the qualifications of the chancellor; the responsibilities of the chancellor; the chancellor and vice-chancellor as notaries; the general and secret archives and the documents to be kept therein; and the removal of the chancellor from office.

## CCEO 264-275

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See below, CIC canon 337.

### CCEO 637

**Ius I 1-2/2010, 40-58: George Nedungatt: Religious Education in Canon Law.** (Article)

See below, CIC canon 793-806.

### CCEO 674

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 677

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 695-696

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 700-701

**Guillaume Derville: Eucharistic Concelebration: From Symbol to Reality.** (Book)

See below, CIC canon 902.

### CCEO 707

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 713

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 728

**SCL VI (2010), 429-436: Victor G. D'Souza: Absolution of the Sin of Abortion and Remission of the *latae sententiae* Excommunication: Latin and Eastern Code at Crossroads?** (Article)

See below, CIC canon 1398.

### CCEO 739

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 776

**Ap LXXXIII 2 (2010), 419-458: Piero Antonio Bonnet: Il "*bonum coniugum*" come corresponsabilità degli sposi.** (Article)

See below, CIC canon 1055.

### CCEO 784

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 825

**Ius I 1-2/2010, 144-185: Jose Marattil: Reverential Fear and Marriage Nullity with Special Reference to the Indian Culture.** (Article)

See below, CIC canon 1103.

### CCEO 825

**SCL VI (2010), 171-208: Jose Marattil: Reverential Fear as a Ground of Marriage Nullity in the Indian Cultural Context.** (Article)

See below, CIC canon 1103.

### CCEO 883

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 916

**AkK 178 (2009), 396-426: Helmuth Pree: Eine Kirche in vielen Völkern, Sprachen und Riten.** (Article)

See above, CCEO (*General*).

### CCEO 1059-1063

**QSR 20 (2010), 153-187: Hanna Alwan: L'evoluzione storico-giuridico della competenza della Rota Romana circa le cause delle Chiese orientali.** (Article)

A. provides a brief history of the Roman Rota, and the development of its competence for dealing with judicial controversies from the Eastern Churches from the time of its reorganization in 1908. He looks at the law which the Rota applied to Eastern causes prior to the common codification (the four *motu proprio* documents issued by Pius XII between 1949 and 1957), and the changes which those documents introduced; the reforms brought about by the 1967 Apostolic Constitution *Regimini Ecclesiae Universae*; the proper *Norms* of the Rota approved in 1969; the *Corpus Iuris Canonici* of the Catholic Church (the CIC/83, the Apostolic Constitution *Pastor Bonus*, and the CCEO), and the 1994 *Norms* of the Roman Rota. The remainder of the article is dedicated to conflicts of competence at appeal grade between the Rota and the patriarchal tribunals within their respective territories. A. concludes that if the Roman Rota is the ordinary tribunal of the Roman Pontiff, he cannot be so only for the Latin Church, but for the Eastern Churches also. The CCEO ratifies the judicial competence of the Rota over the Eastern faithful as the tribunal of "the supreme judge for the entire Catholic world" (CCEO, canon 1059 §1).

### CCEO 1146-1147

**QSR 20 (2010), 189-208: Graziano Mioli: Qualche riflessione sulle sanzioni disciplinari a carico degli avvocati e sulle autorità competenti ad irrogarle.** (Article)

See below, CIC canons 1488-1489.

### CCEO 1359

**SCL VI (2010), 437-444: Augustine Mendonça: To Which Tribunal May a Non-Catholic Present His Petition for Declaration of Nullity of His Marriage with a Catholic?** (Article)

See below, CIC canon 1673.

## CODE OF CANON LAW
## BOOK I: GENERAL NORMS

### 19

**IE XXII 3/10, 591-610**; also **QSR 20 (2010), 135-152: Antoni Stankiewicz: L'unità della giurisprudenza e il ruolo della Rota Romana.** (Article)

After an introduction highlighting the importance given to Rotal jurisprudence by Popes Pius XI and Pius XII during the currency of the CIC/17, S. explains the various meanings of the Latin term *iurisprudentia* in civil and canonical law, before identifying more precisely the concept of ecclesial jurisprudence and the special importance of the decisions of the Roman Rota. Given the perplexity caused in some canonical realms by the term *unitas* as used by *Pastor Bonus* (article 126), he studies canon 17 and recalls John Paul II's words to the members of the Tribunal in 1983: "the function of the jurisprudence of the Rota is indeed that of leading toward more convergent unity and substantial uniformity in safeguarding the essential contents of canonical marriage, which the spouses, the ministers of the sacrament, celebrate in adherence to the depth and wealth of the mystery, in reciprocal profession of faith before God". "Unity" of jurisprudence means more than simple "harmony": rather, it refers to the "horizontal" dimension of jurisprudence, namely the set of conforming decisions that have a notable role in filling possible *lacunae legis*. S. goes on to deal with the functional role of the Rota in relation to the unity of jurisprudence, and the extent to which the Apostolic Signatura shares in this task. The main unifying factors of jurisprudence can be considered to include: the internal unity of Rotal jurisprudence; appeals and recourses to the Rota from lower tribunals; a study of the *rationes decidendi* of Rotal sentences; the official publication of *Decisiones seu Sententiae* (1909-2001) and *Decreta* (1983-1998); the possible future publication via the internet of sentences and decrees; and the publication of reviews of jurisprudence in the yearly *L'Attività della Santa Sede* as well as in QSR itself.

### 23-28

**Ap LXXXIII 2 (2010), 551-570: Matteo Nacci: Le consuetudini religiose.** (Article)

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

## 76-84

**Ap LXXXIII 1 (2010), 31-40: Romanae Rotae Tribunal: Sententia definitiva: *Iurium* (*coram* Sciacca), 14-3-2008.** (Sentence)

See below, canon 1400.

## 79

**REDC 67 (2010), 935-944: Congregación para el Clero: Revocación de privilegios pontificios otorgados en 1526 a una cofradía sobre la administración de los bienes de un santuario (21 de abril de 2009 y 6 de mayo de 2009).** (Document and commentary by Federico R. Aznar Gil)

A.G. provides the historical background to this decision to revoke the privilege given in the 16th century to a Spanish confraternity allowing it the administration of the goods and income from a particular devotional church. No problems were recorded over the centuries until, in 1976, the confraternity wanted to sell some land. The bishop of the day ruled that he would permit the sale for the benefit of the church in question only, but not for the benefit of the confraternity. This marked the beginning of a clear deterioration in the relationship between the confraternity and the diocese. Various attempts were made over the years to find a solution. The present document closes the issue; the privilege of administration of the devotional church is revoked by Papal decision and is to be administered in future in accordance with current canonical law.

## 110

**AkK 178 (2009), 459-482: Martin Rehak: Gleichgeschlechtliche Partnerschaften im kirchlichen Matrikelwesen.** (Article)

See below, canon 535.

## 144

**Per 99 (2010), 583-626: Roberto Aspe: La suplencia de la facultad para confesar (can. 144 §2).** (Article)

According to canon 966, in addition to the power of orders, the valid absolution of sins requires that the priest has the faculty to exercise that power in respect of the faithful whose confessions he hears. In this study, A. explores some of the issues related to those situations in which a priest without this faculty might lawfully hear confessions and impart absolution. He considers the origins and

development of the concept and norm of supplied jurisdiction, now formulated in canon 144. Addressing the contents of the canon, he reflects on the nature of “common error” and “positive doubt”, before going on to examine the lawful use of supplied jurisdiction with reference to confession, the penalty for the unlawful use of such jurisdiction (cf. canon 1378 §2 2°), and three situations in which the Church never supplies jurisdiction.

## 144

**SCL VI (2010), 415-428: Augustine Mendonça: How Elastic is the Principle of *Ecclesia Supplet*?** (Article)

Many priests have a lax view that in any pastoral need the Church supplies the necessary jurisdiction on the basis of common error. Ecclesiastical norms are intended to promote the common good of the Church both individually and collectively. M. outlines the ecclesial dimension of matrimonial consent and the requirement of canonical form. A priest assisting at marriage as a qualified witness does not place an act of true jurisdiction but does exercise a public function in the name of the Church. However, the norms concerning delegation, etc., apply to the faculty to assist at marriage. Common error requires a factual basis leading to the error. It is intended to protect the community from the harm that would arise from a series of invalid acts. The error must be on the part not just of a few individuals but of the faithful of that place. This does not imply that the error must in fact be present in many people but that there is a cause that would lead to this. There must be some basis leading people to presume that a priest has the necessary faculties, e.g. a regular supply, not just ignorance as to the need for it.

## 199 2º

**REDC 67 (2010), 935-944: Congregación para el Clero: Revocación de privilegios pontificios otorgados en 1526 a una cofradía sobre la administración de los bienes de un santuario (21 de abril de 2009 y 6 de mayo de 2009).** (Document and commentary by Federico R. Aznar Gil)

See above, canon 79.

## BOOK II, PART I: CHRIST'S FAITHFUL

### 204

**Ap LXXXIII 1 (2010), 169-198: Martin Segú Girona: Os conceitos de "*Pove de Deus*" e "*christifidelis*" contidos na Constitução dogmática "*Lumen Gentium*".** (Article)

S.G. argues that the use of the terms *Populus Dei* and *Christifideles* reflects a theological development rather than just a semantic reordering of the Code from persons, things and processes; he does so by undertaking a careful analysis of the concept of the "People of God" and illustrating how Book II reflects and synthesizes the ecclesiology of *Lumen Gentium*. He goes on to discuss the *tria munera* and how they are exercised individually and communally.

### 204

**Ius I 1-2/2010, 59-83: Cherian Thunduparampil: Rights and Obligations of the Laity in the Mission of the Church.** (Paper)

See above, CCEO canon 7.

### 221

**Ap LXXXIII 1 (2010), 31-40: Romanae Rotae Tribunal: Sententia definitiva: *Iurium* (*coram* Sciacca), 14-3-2008.** (Sentence)

See below, canon 1400.

### 221

**Dionysiana IV/1 (2010), 254-268: Anne Bamberg: Réflexions autour du droit au procès dans l'Église catholique de rite latin.** (Article)

B. reflects on the protection of the right to make use of judicial and hierarchical or administrative procedures (canon 221 §1). She contrasts the existing law with the reality of cases in which this right is denied through delaying tactics or by urging out-of-court settlements which in the end prove unjust.

## 223

**Comm 42 (2010), 280-281: Pontificium Consilium de Legum Textibus: Nota de applicanda norma de qua in can. 223 §2 CIC.** (Document)

The Council examines the question whether it is legitimate to use canon 223 §2 as a way of taking precautionary measures or imposing discipline on a cleric. This provision derives from Vatican II's Declaration *Dignitatis Humanae*, no. 7, via the draft of the *Lex Ecclesiae Fundamentalis.* The discussion of this norm and the prevalent usage of the verb *moderari* shows that this is understood to mean to regulate by means of general norms. Canon 223 §2 cannot be invoked to limit rights in individual cases. To take such action requires other procedures with specific protections and procedural guarantees. The purpose was precisely to safeguard the rights and liberty of the faithful, so that any such legislative measures must respect the limits set by divine law or the legislation of a higher authority. The document is dated 8 December 2010.

## 226

**AnC 5/2009, 125-148: Michał Jóźwik: Uczestnictwo rodziny w życiu i misji Kościoła i w rozwoju społeczeństwa (= The Participation of the Family in the Life and the Mission of the Church and the Development of Society).** (Article)

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

## 231

**Comm 42 (2010), 297-318: Secretaria Status: Statutum et ordinationes Fundi Assistentiae Sanitariae (FAS).** (Statutes)

This is the text of statutes of the Health Fund set up for both active and retired staff of the Roman Curia and Vatican City State, clergy, religious and lay, to take effect on 1 August 2010. It sets out the aims and purpose of the fund, its financing, structure and administration. The statutes are followed by more detailed regulations.

## 232-264

**Comm 42 (2010), 233-236: Pope Benedict XVI: Epistula Summi Pontificis ad seminaristas die 18 mensis octobris 2010 missa.** (Document)

In a letter of encouragement addressed to seminarians the Pope reflects on his own calling and the role of the seminary in formation. It is a community on a

journey towards priesthood – a community of disciples. Priests do not become so by themselves. He considers the role of the sacraments, prayer, popular piety and study, as well as human development and maturity in a society that is very different from when he began his formation.

### 235-264

**REDC 67 (2010), 677-730: José Mª Sánchez de Lamadrid: Orientaciones para un proyecto formativo para el seminario mayor.** (Article)

S. de L. first examines the general aims, criteria and means for the development of a formation plan for candidates for the priesthood in major seminaries. Each episcopal conference will draw up its own plan according to the circumstances and needs of its dioceses, and the author looks at some aspects of the plan established by the Spanish Episcopal Conference.

### 265-272

**AA XVI (2009-2010), 91-119: Ariel David Busso: La distribución de los clérigos en la Iglesia. Planteo de la cuestión y normativa vigente en la Iglesia latina.** (Article)

Despite the title of this article, its theme is not so much the distribution of clergy but rather a consideration of the history and present norms concerning incardination. B. sketches the historical development of incardination from apostolic times to the post-Vatican II era, and explains the need for incardination and the various ways it can be effected for different types of cleric in accordance with the present norms, as well as the conditions required for excardination and the competent authority to deal with the whole process in the particular Church. He ends with some reflections on those diocesan clergy who live outwith their diocese of origin.

### 290

**AkK 178 (2009), 369-395: Stephan Haering: Verlust des klerikalen Standes. Neue Rechtsentwicklungen durch päpstliche Sondervollmachten der Kongregation für des Klerus.** (Article)

On 30 January 2009 Pope Benedict XVI gave new powers to the Congregation for the Clergy with regard to the dismissal of priests from the clerical state. These powers were made known to the Ordinaries of the Catholic Church in a Circular Letter from the Congregation dated 18 April 2009. H. examines the new powers individually, classifies them within the structures of canon law and

analyses their significance for the rectification of certain situations that are intolerable for the Church. The question of legal protection for delinquent priests or priests who have given up their office is also dealt with. (See also *Canon Law Abstracts*, nos. 105, pp. 46-47; 106, pp. 51-52.)

## 290

**IC 51 (2011), 69-101: Davide Cito: La pérdida del estado clerical *ex officio* ante las actuales urgencias pastorales.** (Lecture)

After tracing the chronological development of the relevant legislation in this area, C. sets out the current discipline regarding dismissal *ex officio* from the clerical state, as contained in the *motu proprio Sacramentorum Sanctitatis Tutela* and the special Faculty granted by Pope Benedict XVI in 2008 and 2009 to the Congregations for the Evangelization of Peoples and for the Clergy. The procedure for such dismissal is an administrative sanction and is exercised directly by the Roman Pontiff. It is, therefore, particularly effective insofar as it is without appeal. For this reason, control mechanisms were designed in order to guarantee moral certainty regarding the facts, and sufficient exercise of the right of defence on the part of the accused cleric. C. also highlights the problems that arise from this procedure insofar as it adds to the discipline of the Code and on some points derogates from it.

## 290

**REDC 67 (2010), 923-933: Congregación para el Clero: Carta a los Ordinarios sobre la aplicación de las facultades especiales concedidas a la Congregación para el Clero por el Sumo Pontífice el 30 de enero de 2010 (17 de mayo de 2010). Texto en castellano y comentario de Federico R. Aznar Gil.** (Document and commentary)

See below, canons 1394-1395.

## 290-292

**IC 51 (2011), 373-396: Joaquín Sedano: Crónica de Derecho Canónico del año 2010.** (Compilation)

See above, General Subjects (*Compilations*). The review contains a section referring to news of the following dispositions of the Roman Pontiff concerning the Congregation for the Evangelization of Peoples (CEP). In 1997 Pope John Paul II granted the CEP the special faculty of submitting directly to the Roman Pontiff, via an administrative process, requests for the penalty of dismissal from

the clerical state, with a dispensation from clerical obligations including celibacy, in the case of clerics in mission territories who lived in concubinage or committed other serious offences against the sixth Commandment (canon 1395 §§1-2) and showed no sign of repentance and no intention of requesting a dispensation from the obligations arising from sacred orders. In view of difficulties in applying these measures Pope Benedict XVI extended the faculties: to all mission territories regardless of whether or not there is an ecclesiastical tribunal within the territory; to cases involving members of missionary societies of apostolic life of pontifical right dependent on the CEP; to cases involving members of institutes of consecrated life and societies of apostolic life, whether of pontifical or diocesan right, in situations in which the superiors did not react in an effective manner; to cases of clergy attempting marriage and who after a warning do not repent but remain in that irregular and scandalous situation; and to cases of deacons who cause scandal in the area of morality and who are judged by the bishop to be unfit for promotion to the presbyterate.

With the aim of speeding up procedures and avoiding possible scandal the CEP was granted the faculty of examining and submitting directly to the Roman Pontiff all requests for dispensation from clerical obligations presented by clerics in mission territories and those belonging to missionary societies of apostolic life dependent on the CEP, and those belonging to institutes of consecrated life of diocesan right whose principal house was in a mission territory.

The particular political, social and ecclesiastical situation of China has led the Holy Father to grant the following faculties to the CEP in respect of mainland China: competence for all questions related to the discipline of clergy and consecrated persons, except the *graviora delicta* reserved to the Congregation for the Doctrine of the Faith; examination of the dissolution of ratified and non-consummated marriages and of non-sacramental marriages (Petrine privilege) in order to submit them directly to the Roman Pontiff for a decision; the competence formerly held by the Apostolic Signatura to declare, in exceptional cases, the nullity of a marriage by administrative procedure, without needing to submit the matter to the Roman Pontiff for information or judgement.

Finally, the CEP has been granted the faculty of punishing external infringements of a divine or canon law (canon 1399) by direct action or confirming the decisions of the Ordinaries, when the latter have so requested in view of the special gravity of the violation or the urgent need to avoid objective scandal. It is also possible for the CEP to establish perpetual penalties in this manner, overriding the prescriptions of canons 1317, 1342 §2 and 1349, subject to the approval of the Roman Pontiff *in forma specifica*.

## 305

**SCL VI (2010), 129-170: Michael-Andreas Nobel: The Responsibility of a Diocesan Bishop towards Diocesan Associations.** (Article)

The number of diocesan associations has grown greatly in recent years, particularly with new movements seeking some canonical status. However the Code does not offer a precise definition of the term "association". N. explores first the right of association and then the development of different forms of association (public/private) in the 1917 and 1983 Codes. He looks at what is involved in recognizing an association of the faithful and the different levels of responsibility towards purely *de facto* associations, private and public associations.

## 312-320

**REDC 68 (2011), 455-465: Conferencia Episcopal Portuguesa. Decreto general para las Misericordias. Texto en español y comentario. (Federico R. Aznar Gil).** (Document and commentary)

This documentation concerns a controversy over the exact canonical status of a Portuguese association of the faithful known as *Misericórdias*. The *Misericórdias* were founded in 1498 by Queen Leonor (Eleanor) of Portugal as a charitable foundation for the exercise of the works of mercy, with their own designated chaplains, and for public worship in their churches and chapels. They went from strength to strength over the centuries, were influential in social and public life through their work for the poor, and acquired considerable property and wealth. With the promulgation of the CIC/83 and the need for their status to be defined more clearly, the Portuguese Episcopal Conference in 1989 categorized them as a public association of the faithful. This was resisted, and when the bishop of the Algarve applied the dispositions of that declaration to the *Misericórdias* in his diocese, recourse was made in 1991 to the Pontifical Council for the Laity, which found in favour of the bishop. Further recourse was made in 1993 to the Apostolic Signatura, which also found in the bishop's favour. The documentation provides the general decree of 2009 of the Portuguese Episcopal Conference, which delineates clearly the canonical status and the corresponding rights and obligations of the *Misericórdias*, and the *recognitio* from the Congregation for Bishops. A.G.'s commentary provides the historical background and the canonical considerations surrounding the controversy. (See also *Canon Law Abstracts*, no. 106, p. 53.)

**313**

**Comm 42 (2010), 354-356: Congregatio pro Doctrina Fidei: Epistula circularis respiciens *Ordinem Angelorum* ad praesides Conferentiarum episcopalium missa.** (Document)

See below, canon 677.

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

## 331

**AkK 179 (2010), 3-19: Matthias Pulte: Von *Summorum Pontificum* bis *Anglicanorum coetibus*. Gesetzgebungstendenzen im Pontifikat Benedikts XVI.** (Article)

From early in his pontificate, publications have ascribed to Benedict XVI strongly conservative positions in teaching and discipline as well as a leaning towards traditionalism. Is that actually the case? The legislation of a pontificate may offer an indication of the tendencies and the outlook of a Pope and of the Roman Curia gathered round him. With this as his starting point P. investigates the focus of the present Pope's legislative activity. The result makes clear a sympathetic accommodation of traditionalist communities. It is equally clear, and beyond question, that the legislation is compatible with Vatican II.

## 332

**AnC 5/2009, 179-195: Piotr Majer: Nowelizacja prawa o wyborze papieża dokonana przez Benedykta XVI ( = Benedict XVI's Amendments to the Law on the Election of a Pope).** (Article)

M. provides a brief commentary on the *motu proprio Constitutione Apostolica* promulgated by Pope Benedict XVI on 11 June 2007, by which it is provided that for the valid election of the Roman Pontiff, a two-thirds majority of all the Cardinal electors present in the conclave will be required, thus restoring the traditional qualified majority required for Papal elections since the 12th century. The Pope has thereby suppressed the provision in John Paul II's Apostolic Constitution *Universi Dominici Gregis* of 22 February 1996 which allowed an absolute majority, if after a series of more than thirty votes no candidate had obtained a two-thirds majority. This change was not only seen as a break with a centuries-old canonical tradition, but also aroused fears of inopportune electoral manipulations (e.g. some Cardinals blocking the vote and holding out until the absolute majority stage of the process, so as to get their candidate appointed), which could also be dangerous for the future peaceful exercise of the Primatial office. This latest amendment aims to guarantee the broadest possible consensus in the appointment of the new Bishop of Rome.

### 337

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

The renewed and deepened ecclesiology of Vatican II also concerns the exercise of ecclesial power. Its essential form is synodality. It appears as collegiality in the strict sense (*effectus collegialis*) and in the broad sense (*affectus collegialis*). Synodality is expressed through the consultative ecclesial bodies, as well as the particular and diocesan synods. These have been renewed by post-conciliar legislation and often have a pastoral profile.

### 342-348

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See above, canon 337.

### 360

**SCL VI (2010), 17-22: Pope Benedict XVI: Apostolic Letter Issued Motu Proprio *Ubicumque et semper* Establishing the Pontifical Council for Promoting the New Evangelization.** (Document)

See below, canons 781-792.

### 362-367

**REDC 67 (2010), 889-904: Jaime Bonet Navarro: La relación canónica e internacional de la Soberana Orden de Malta con la Santa Sede.** (Article)

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

### 371-372

**Ius I 1-2/2010, 118-143: Astrid Kaptijn: Ordinariates for the Eastern Catholic Faithful Lacking Their Own Hierarchy.** (Article)

See above, CCEO canons 39-40.

## 372

**AA XVI (2009-2010), 467-487: Gianfranco Ghirlanda: Situazione attuale della Comunione Anglicana e riposte della Santa Sede alle richieste rivoltele.** (Lecture)

This is the text of a lecture given by G. in the Faculty of Canon Law of the Catholic University of Argentina on 29 September 2010 in which he provides some historical and ecclesiological background to the establishment of a personal Ordinariate for those members of the Anglican communion who wish to enter into full communion with the Catholic Church. He comments on what is meant by the "Anglican patrimony", the nature of personal Ordinariates and the specific objective of this particular one.

## 372

**ELJ XII 2/10, 202-208: Christopher Hill: What is the Personal Ordinariate? Canonical and Liturgical Observations.** (Comment)

H., Anglican Bishop of Guildford and former ecumenical adviser to the Archbishop of Canterbury, offers a number of observations on *Anglicanorum Coetibus*.

## 372

**ELJ XII 3/10, 304-323: Norman Doe: The Apostolic Constitution *Anglicanorum Coetibus*: An Anglican Juridical Perspective.** (Article)

The Apostolic Constitution *Anglicanorum Coetibus* represents the latest, and in D.'s view perhaps one of the most controversial, developments in Anglican and Roman Catholic relations. The Apostolic Constitution is the juridical means by which Anglicans dissatisfied with recent initiatives in the Anglican Communion may enter as groups into full communion with Rome. It provides for the erection of Ordinariates, a category equivalent to dioceses but one which is not elaborated in the CIC/83. D. describes responses to the Apostolic Constitution, from the hostile to the welcoming, evaluates the provisions of the Apostolic Constitution, particularly those which effect integration of the faithful into the Latin Church and those which allow for the continuation of elements of their former traditions, and evaluates the ways in which the laws of Anglican Churches may be employed either to hinder or to help the departure of those seeking entry to an Ordinariate.

**372**

**Ius I 1-2/2010, 204-209: Pope Benedict XVI: Apostolic Constitution *Anglicanorum Coetibus.* (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 (CDF) 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. (See also *Canon Law Abstracts*, nos. 104, pp. 67-68; 105, pp. 56-58; 106, pp. 55-57.)

**372**

**Ius I 1-2/2010, 210-216: Congregation for the Doctrine of the Faith: Complementary Norms for the Apostolic Constitution *Anglicanorum Coetibus* Jurisdiction of the Holy See.** (Document)

See preceding entry. 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**

**AkK 178 (2009), 550-560: Papst Benedikt XVI: Apostolische Konstitution *Anglicanorum coetibus* vom 4. November 2009; Kongregation für die Glaubenslehre: Ergänzende Normen.** (Documents)

German text of the Apostolic Constitution and Complementary Norms.

**374**

**AkK 179 (2010), 37-69: Heribert Hallermann: Neue Formen der „Gemeindeleitung"? Kanonistische Reflexionen zu neueren Entwicklungen in einzelnen Diözesen.** (Article)

See below, canon 519.

### 375

**Comm 42 (2010), 221-223: Pope Benedict XVI: Allocutio Summi Pontificis occasione Congressus Episcoporum novorum, a Congregatione pro Episcopis parati, die 13 mensis septembris 2010 habita.** (Address)

The Pope addresses a gathering of recently-ordained bishops on the responsibilities of their office. This must be seen not in terms of efficiency and efficacy but rather by starting from its ontological foundation. He focuses on the spousal imagery symbolized by the ring of office.

### 383

**Comm 42 (2010), 224-226: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Nordeste 5" Brasiliae, Limina Apostolorum visitantes, die mensis octobris 2010 habita.** (Address)

The Pope divides up his subject matter as he addresses several groups of Brazilian bishops on their *ad limina* visit. He speaks here on the subject of promoting the Church's social teaching and the importance of working for a just society.

### 383

**Comm 42 (2010), 230-232: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Centro Oeste" Brasiliae, Limina Apostolorum visitantes, die 15 mensis novembris 2010 habita.** (Address)

The Pope speaks to this group of Brazilian bishops on the occasion of the anniversary of the proclamation of the Republic of Brazil with the identity of the Brazilian people as his theme. The national conference of bishops has been a reference point for sixty years. He emphasizes the need for harmony and a correct balance between a bishop's responsibility for his own diocese and more widely at national level.

### 384

**Ap LXXXIII 1 (2010), 223-245: Luciano Eusebi: Responsabilità morale e giuridica del governo ecclesiale. Il ruolo dei Vescovi in rapporto ai fatti illeciti dei chierici nel Diritto canonico e nel Diritto italiano.** (Article)

E. deals with the role of the bishops and the Italian legal system in the face of alleged offences committed by clerics. He examines the requirements to charge someone with neglect of duty or failure to prevent a crime, before looking at the

responsibility of the bishop for the unlawful conduct of clerics in his diocese on the basis of the CIC/83 and the explanatory note published by the Pontifical Council for Legislative Texts on 12 February 2004, and its relationship with the Italian penal code.

### 385

**Comm 42 (2010), 227-229: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Sul 2" Brasiliae, Limina Apostolorum visitantes, die 5 mensis novembris 2010 habita.** (Address)

The Pope addresses this group of bishops on the importance of fostering the consecrated life. While the ageing profile of institutes in some parts of the world leads some to question whether this way of life can still attract young people, there are many new forms springing up. The consecrated life as such will never be lacking in the Church or die out.

### 386

**Comm 42 (2010), 224-226: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Nordeste 5" Brasiliae, Limina Apostolorum visitantes, die mensis octobris 2010 habita.** (Address)

See above, canon 383.

### 386

**Comm 42 (2010), 230-232: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Centro Oeste" Brasiliae, Limina Apostolorum visitantes, die 15 mensis novembris 2010 habita.** (Address)

See above, canon 383.

### 392

**Ap LXXXIII 1 (2010), 223-245: Luciano Eusebi: Responsabilità morale e giuridica del governo ecclesiale. Il ruolo dei Vescovi in rapporto ai fatti illeciti dei chierici nel Diritto canonico e nel Diritto italiano.** (Article)

See above, canon 384.

## 394

**Comm 42 (2010), 224-226: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Nordeste 5" Brasiliae, Limina Apostolorum visitantes, die mensis octobris 2010 habita.** (Address)

See above, canon 383.

## 431-432

**AnC 5/2009, 7-26: Józef Wroceński: Instytucja metropolii w dzicjach Kościoła. Aspekt historyczno-prawny ( = An Ecclesiastical Province in the History of the Church. The History and Law aspect).** (Article)

See above, Historical Subjects (*1st millennium*).

## 431-446

**AnC 5/2009, 27-44: Tadeusz Pieronek: Metropolita i metropolia w posoborowej praktyce Kościoła katolickiego w Polsce (= An Ecclesiastical Province and a Metropolitan in the Practice of the Catholic Church in Poland after the Council).** (Article)

Ecclesiastical provinces are essential as administrative and territorial units of the Church. Dioceses included in ecclesiastical province are able, by common effort, to make law and set up pastoral practice. The precursor of such ideas after Vatican II was the metropolitan of Krakow, Cardinal Karol Wojtyła. In his ecclesiastical province, he created an atmosphere of mutual cooperation between bishops and was the first to summon a provincial council in Poland. He also, as Pope, in place of five ecclesiastical provinces set up as many as fifteen. During Plenary Council II (1991-1998), the ecclesiastical provinces were to prepare the final version of the documents. In spite of difficulties they accomplished their tasks. So far only the metropolitan of Szczecin-Kamieńsk announced in June 2009 a metropolitan council. Other ecclesiastical provinces do not show any interest in making use of their pastoral and legislative possibilities.

### 431-446

**AnC 5/2009, 59-77: Tomasz Rozkrut: Pierwszy Synod Prowincji Krakowskiej. Autonomia diecezji i tożsamość metropolii (= The First Synod of an Ecclesiastical Province in Krakow. Autonomy and Identity of an Ecclesiastical Province).** (Article)

R. seeks to give a response to the question of the role of the provincial council in the life of the Church today, and especially in the life of the ecclesiastical province. The motive for this reflection springs from the 25th anniversary of the end of the provincial council of Krakow (1983). The article begins by looking at the role of the provincial council in the Church's life, especially since Vatican II. It then sets out the theological-juridical nature of the particular Church which forms part of the ecclesiastical province. The next part deals with the preparation of the council (under the guidance of Cardinal Wojtyła, up to 16 October 1978) and the work and contribution of the First Council of the Metropolitan Area of Krakow (the book of the council is called *Communio et communicatio*). Finally there is brief summary of the role of the provincial council in the ecclesiastical province of Krakow, which currently, following the reform of the Polish Church in 1992, consists of an archdiocese and three dioceses. R. stresses the importance of the correct application of the entire synodal *iter.*

### 442-446

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See above, canon 337.

### 447

**Comm 42 (2010), 230-232: Pope Benedict XVI: Allocutio ad quosdam Episcopos regionis "Centro Oeste" Brasiliae, Limina Apostolorum visitantes, die 15 mensis novembris 2010 habita.** (Address)

See above, canon 383.

### 460-468

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See above, canon 337.

### 482-491

**ETJ 15 (2011), 55-64: Mathew John Puthenparambil: The Office of the Chancellor.** (Article)

See above, CCEO canons 252-261.

### 495-514

**AnC 5/2009, 45-57: Jan Dyduch: Synodalność jako forma uczestnictwa we władzy kościelnej (= Synodal Cooperation as a Form of Participation in the Power of the Church).** (Article)

See above, canon 337.

### 519

**AkK 179 (2010), 37-69: Heribert Hallermann: Neue Formen der „Gemeindeleitung"? Kanonistische Reflexionen zu neueren Entwicklungen in einzelnen Diözesen.** (Article)

The present situation of many dioceses in Western Europe or in the US is marked by an experience of deficit: insufficient priests, finances and also believers. At the same time, local church communities are developing a missionary pastoral outlook. Against this background, the traditional system of – often small – parishes seems to be in need of reform. This is being done in a variety of ways, of which two, from the dioceses of Hildesheim and Milan, are presented in this article as examples. In Hildesheim existing parishes are being abolished and amalgamated into new and larger parishes. In the archdiocese of Milan parishes continue in existence, while jointly developing pastoral projects aimed at forming a pastoral area (*comunità pastorale*). It is noticeable in both examples that fundamental theological and canonical concepts, such as the common priesthood of all believers, or the role of the parish priest in parish care, are being neglected. In particular, the various new management structures call for further inquiry by canon law.

**535**

**AkK 178 (2009), 459-482: Martin Rehak: Gleichgeschlechtliche Partnerschaften im kirchlichen Matrikelwesen.** (Article)

R. discusses whether and in what manner registered civil partnerships are to be noted in the parish registers. He examines in particular the situation in which a child of one of the partners is adopted. He also comments on the relevant German law of adoption.

**535**

**REDC 67 (2010), 975-984: Conferencia Episcopal Española: Orientaciones acerca de los Libros Sacramentales Parroquiales (23 de abril de 2010). Texto y comentario de José San José Prisco.** (Document and commentary)

This document from the Spanish Episcopal Conference offers practical guidelines concerning the careful and faithful keeping of parish sacramental registers. It includes a warning against digitalizing these records as the documents would then be considered by Spanish civil law as files of personal data, subject to whatever norms of control and oversight the State authorities might establish. Data held on paper such as sacramental registers are considered to be historical documents and are not currently subject to the same strict legislation.

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

## 573-606

**REDC 68 (2011), 259-282: Jesús Sanz Montes: La vida consagrada en la Iglesia: aproximación teológica, canónica y carismática.** (Article)

Consecrated life must be seen not as an isolated or independent reality but as integrated into the wider life of the Church, reflected in a deeper theological understanding of the ecclesiological and Christological aspects of the lives of those called to pursue the religious life, rather than the more traditional approach from a purely spiritual or juridical point of view. S.M. reflects on these different perspectives as reflected in the canons of the CIC/17 and those of the present Code. He considers the charism brought by the founder to any religious foundation and the discernment required of the Church and its bishops in its recognition and facilitation.

## 573-730

**AkK 179 (2010), 70-85: Dominicus M. Meier: Die Dynamik der Krise – Ordensstrukturen in Veränderung.** (Lecture)

Institutes of consecrated life in Europe are facing great challenges, in common with the Christian Churches. Members' opportunities for personal development are few; Church institutions are suffering from a crisis of trust and of credibility; orders' financial security and leadership structures seem to be beyond their grasp. Starting with the concept of crisis, M. analyses and evaluates the various canonical developments and attempts at a solution in communities, with a view to reframing the area of reference in terms of crisis management for someone acting as a consultant to the religious orders. The "dynamic of crisis" may consist of talking together more than across each other, of building stronger national and diocesan communications structures and even of taking the risk to work together to plan for the future.

## 590-593

**Comm 42 (2010), 294-296: Secretaria Status: Decretum quoad modum fungendi munere delegati pontificii ad Legionarios Christi.** (Decree)

On 16 June 2010 Pope Benedict XVI nominated Archbishop de Paolis as delegate with special powers to govern the Legionaries of Christ, to bring about

a profound renewal and revision of their constitution and prepare for an extraordinary General Chapter. This decree spells out the remit of the delegate and the authority given to him. It is dated 9 July 2010.

## 590-593

**REDC 67 (2010), 1003-1025: Benedicto XVI: Textos de la Santa Sede sobre los Legionarios de Cristo. Texto en castellano y comentario de Myriam Cortés Diéguez.** (Documents and commentary)

See preceding entry. Included here are the Spanish translations of the following documents: letter of Benedict XVI appointing Mgr. Velasio de Paolis as his delegate concerning the Legionaries of Christ (16 June 2010); letter of Mgr. de Paolis to the Legionaries of Christ (10 July 2010); decree concerning the modalities for the fulfilment of the office of Pontifical Delegate to the Congregation of the Legionaries of Christ (9 July 2010); homily delivered by Mgr. de Paolis to the Legionaries of Christ (10 July 2010); letter of Mgr. de Paolis to the Legionaries of Christ (19 October 2010).

## 596

**PS XLVI 136 (2011), 3-29: Isaias Antonio D. Tiongco: La Naturaleza de la Potestad en los Institutos Religiosos a la luz de las Codificaciones de 1917 y de 1983.** (Article)

In the CIC/17 the power governing the life of religious institutes was called dominative power. In the CIC/83 the use of this term was deliberately avoided. This has opened up the debate over the nature of dominative power, as distinct from the power of jurisdiction held by clerical religious superiors of pontifical right. According to canon 596 §1, superiors and chapters of institutes have the power over their members which is defined in universal law and the constitutions. If this is not dominative power, what is it, and why has the legislator not used the term which appeared in the previous Code? Examining more deeply the nature of power in the CIC/17 (canon 501) and the CIC/83 (canon 596), especially in the light of learned commentaries on these legal texts, T. points out that the CIC/17 called this power “dominative” while at the same time it gave power of jurisdiction only to “exempt” clerical institutes. The CIC/83 by contrast does not classify it (leaving this task to later theological-canonical reflection) but on the other hand it gives power of jurisdiction not only to exempt institutes, but to all clerical religious institutes of pontifical right. T. dedicates the first part of his article to examining the canonical scope of canon 501 of the CIC/17; in the second part, he describes the nature of the

power within the ambit of consecrated life, as reflected in the wording of the CIC/83 and the most recent canonical doctrine.

### 628

**Per 99 (2010), 527-555: Rose McDermott: The service of authority and obedience: the canonical visitation of major superiors – canon 628 §§1, 3.** (Article)

The apostolic visitation of women religious in the United States and the controversy it created overshadowed the publication of the Instruction *The Service of Authority and Obedience* in May 2008 by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. Drawing on this Instruction, McD. examines the canonical institution of visitation by major superiors within religious institutes, highlighting not only the legal framework of the institution but emphasizing particularly how visitation can be a real source for growth and encouragement within the institute if undertaken with due care and attention.

### 643

**SCL VI (2010), 403-414: Victor G. D'Souza: Admission of Married Catholics into Religious Institutes.** (Article)

A broken marriage and civil divorce do not necessarily mean that a person is unsuited to religious life. A period of discernment is necessary, and it may be helpful to join a lay association connected with a religious community. Where someone in this situation does want to join a religious community the pre-novitiate period (postulancy) provides time for mature discernment. The Holy See can grant a dispensation from the impediment arising from marriage (cf. canon 643 §1 2º). However, the bond is no longer dissolved automatically by solemn profession in the case of an unconsummated marriage, as was the case before 1917 or by virtue of canon 1119 of the CIC/17. The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life requires a petition from the candidate, a *curriculum vitae*, a brief report on the conjugal life and the reason for its termination, information about any children, attestation that the spouse consents to the desire to enter religious life and renounces in perpetuity the right to communion of life, a notarized separation agreement, documentation relating to the marriage including a canonical separation, a recommendation from the local Ordinary or parish priest, and a letter from the major religious superior setting out the procedures followed. The Congregation does not regard a civil divorce as sufficient and insists on canonical separation. It will also want to be satisfied that all moral and civil obligations are met, and if the candidate is

male it will make clear that he is inadmissible to orders except for the permanent diaconate. Where a Catholic has entered a purely civil union the above does not apply, but caution is still needed and the superiors need to be satisfied on the question of obligations and suitability.

## 677

**Comm 42 (2010), 354-356: Congregatio pro Doctrina Fidei: Epistula circularis respiciens *Ordinem Angelorum* ad praesides Conferentiarum episcopalium missa.** (Document)

The Association *Opus Angelorum (Engelwerk)* is a public association connected with the Canons Regular of the Holy Cross in accordance with canon 303. Various problems had arisen concerning the orthodoxy of its teaching in relation to devotion to the angels, and these had been addressed by a Letter from the Pope on 24 September 1983 and a Decree of the Congregation for the Doctrine of the Faith (CDF) on 6 June 1992, which had entrusted the work of bringing the association into line with authentic doctrine to a delegate. This work had now been accomplished and there were no longer difficulties in regard to accepting the association into a diocese. However, in this Circular Letter the CDF draws attention to the fact that a small number of dissident members or priests expelled from the Canons were presenting themselves as the true *Opus Angelorum*, and ordinaries are asked to exercise vigilance in this regard.

## 677

**Per 99 (2010), 557-582: Yuji Sugawara: Le opere degli istituti religiosi – la crisi e la prospettiva.** (Article)

In this study, S. touches on the delicate subject of the apostolic works of religious institutes that are now facing a crisis of ageing members and diminishing numbers. He highlights several canonical elements to be taken into consideration when seeking a way forward: e.g. fidelity to the charism of the institute, communion with the laity, involvement in the particular Church, and the necessity of the observance of canonical legislation concerning the administration and alienation of ecclesiastical goods. In the end, he acknowledges that harmonizing the demands of the charism of the institute and the proper management and administration of temporal goods cannot be achieved in purely juridical terms. Nevertheless, the canonical elements he identifies cannot be omitted from the resolution of any particular situation.

### 694

**SCL VI (2010), 445-452: Victor G. D'Souza: Automatic Dismissal of the Religious from the Religious Institute on the Ground of Marriage.** (Article)

An exclaustrated woman religious married an unbaptized man civilly and then in church, with a dispensation from the impediment of disparity of cult but not from the impediment of a perpetual vow of chastity. Canon 694 §1 2° provides for automatic dismissal for religious bound by a public perpetual vow of chastity who attempt marriage. Provided the act is as described then dismissal occurs by virtue of the law itself. Once this has happened the effect is that the vows and corresponding duties cease (canon 701). The role of the superior is simply to make the obligatory declaration that this has happened, following the procedure required. A person in this situation is under *latae sententiae* interdict (canon 1394 §2); but a subsequent marriage with a dispensation from the impediment of disparity of cult would be valid as the dispensation from religious vows is no longer needed, as the vows have ceased. Since the other party is unbaptized and the marriage is not sacramental, it is not prohibited by the interdict and therefore it is also lawful. If the spouse had been baptized the interdict would need to be lifted first for it to be lawful. However, this would not apply to religious subject to the CCEO since this does not provide for the cessation of the bonds and obligations arising from profession as a consequence of automatic dismissal.

### 695

**PS XLVI 136 (2011), 63-84: Mayong Andreas Acin – Isaias Tiongco: The Nature of Delict in Canon 1321: Its Implications on the Dismissal Process of Religious in Cases of Sexual Misconduct. Part II.** (Article)

See below, canon 1321.

### 695

**REDC 67 (2010), 827-850: Federico R. Aznar Gil: Abusos sexuales a menores cometidos por clérigos y religiosos.** (Article)

See below, canons 1394-1395.

# BOOK III: THE TEACHING OFFICE OF THE CHURCH

## 747-755

**AA XVI (2009-2010), 297-310: Hugo Adrián von Ustinov: Magisterio, disenso y objeción de conciencia.** (Article)

In considering possible dissent or conscientious objection to the teaching of the Magisterium on particularly controverted points of moral or social teaching, U. examines the final three clauses of the current profession of faith. He concludes that given that the Magisterium is a service of truth and charity for the salvation of souls and enjoys divine assistance, the possibility of dissent or objection in conscience from the faithful must remain more than problematic.

## 761

**REDC 68 (2011), 429-436: Mensaje del Santo Padre Benedicto XVI para la XLV Jornada mundial de las comunicaciones sociales, 24 de enero de 2011. Texto en español y comentario (Myriam Cortés Diéguez).** (Address and commentary)

Given here is Pope Benedict XVI's message for World Communications Day (2011) and commentary by M. Cortés Diéguez. The document concentrates on the need to use all the recent developments in digital and information technology in the Church's mission of proclaiming the Gospel.

## 781-792

**SCL VI (2010), 17-22: Pope Benedict XVI: Apostolic Letter Issued Motu Proprio *Ubicumque et semper* Establishing the Pontifical Council for Promoting the New Evangelization.** (Document)

By this *motu proprio* dated 21 September 2010 the Pope establishes a new Dicastery, the Pontifical Council for Promoting the New Evangelization, with the aim of reflecting and finding the proper and adequate means to bring the message of the Gospel to so many of the already baptized who no longer have any sense of belonging to the Christian community. He sets out the rationale, drawing upon the Apostolic Exhortation *Christifideles Laici*, and then in four articles sets out the purpose of the Pontifical Council and its primary tasks with a basic structure in accordance with *Pastor Bonus* and the General Regulations of the Roman Curia. The text is in English.

## 781-792

**IC 50 (2010), 237-254: Benedicto XVI: Motu proprio *Ubicumque et Semper*, 21.IX.2010; Antonio Viana: Anotaciones sobre el Consejo Pontificio para la Nueva Evangelización.** (Document and commentary)

Spanish text of the *motu proprio*, with commentary.

## 781-792

**REDC 67 (2010), 965-973: Benedicto XVI: Carta Apostólica en forma de *motu proprio* «Ubicumque et Semper», con la que se instituye un Consejo Pontificio para la Promoción de la Nueva Evangelización (21 de septiembre de 2010). Texto en castellano y comentario de José San José Prisco.** (Document and commentary)

Spanish text of the *motu proprio*, with commentary.

## 781-792

**Comm 42 (2010), 209-218: Pope Benedict XVI: Litterae Apostolicae "Motu Proprio" datae *Ubicumque et semper* quibus "Pontificium Consilium de nova evangelizatione promovenda" constituitur (lingua latina una cum versione italica).** (Document)

As above but text in Latin and Italian.

## 781-792

**IE XXII 3/10,765-772: Benedetto XVI: Lettera apostolica in forma di motu proprio *Ubicumque et semper* con la quale si istituisce il Pontificio Consiglio per la Promozione della Nuova Evangelizzazione, 21 settembre 2010 (con *nota* di Fernando Puig).** (Document and commentary)

Italian text of the *motu proprio*, with commentary.

## 790

**Roberto Sartor: Le convenzioni tra il vescovo diocesano e il superiore di un istituto missionario a norma del can. 790 §1, 2º del CIC.** (Book)

Religious institutes have contributed greatly to the work of evangelization in mission territories. Their relationship with the local ecclesiastical authority has

been one of collaboration, but also at times one of conflict, on account of the different competences and authority over the individual missionary religious. In the past, this relationship has been governed by a system of “commission” or of “mandate”. The Second Vatican Council inspired the new ecclesiastical discipline, which safeguards both the prerogatives of the bishop and the identity and autonomy of the institute. This book deals with canon 790 §1 2º of the CIC which provides for agreements between these two missionary agents. The praxis followed by the Congregation of the Missionary Oblates of Mary Immaculate (OMI) is a concrete example. The six main chapters of the book deal with 1. the historical aspect, from the foundation of the Congregation *de Propaganda Fide* (1622) to the pontificate of Gregory XVI (1831-1846); 2. legislation and discipline from Gregory XVI to the 1929 Instruction *Quum huic*; 3. Vatican II and post-conciliar Magisterium; 4. no. 32 of the conciliar Decree *Ad Gentes*, and the 1969 Instruction *Relationes in territoriis*; 5. the current law; 6. the praxis of the OMI. An Appendix provides some examples of contracts between various OMI provinces and the relevant dioceses. (For bibliographical details see below, Books Received.)

## 793-806

**Ius I 1-2/2010, 40-58: George Nedungatt: Religious Education in Canon Law.** (Article)

N. analyses religious education in the context of the concordat system; the respective places of teaching of religion and catechesis; catechesis and commitment to Christ; and the implications of religious pluralism and a secular model of education. An integral education requires a transcending religious dimension. Progress in science and technical advancement alone do not suffice. This a slightly modified version of an article published in *Iure Orientalia* VI (2009), 190-206.

## 796-806

**REDC 67 (2010), 907-921: Congregación para la Educación Católica: Carta vaticana sobre la enseñanza de la religión en la escuela (5 de mayo de 2009). Texto en castellano y comentario de José San José Prisco.** (Document and commentary)

The Spanish translation is given of the circular letter to the presidents of episcopal conferences on the teaching of religion in schools. Although this document does not add anything essentially new to the Church’s teaching in recent years it does put the case strongly for the recognition by the State of the right to a confessional religious formation in schools. It argues that even in State

or non-Catholic schools it should be the diocesan bishop or episcopal conference that should oversee the content of what is being taught about the Catholic faith where this is being done.

### 807-821

**AkK 178 (2009), 427-458: Heribert Hallermann: Die theologische Promotion an Katholisch-Theologischen Fakultäten in Deutschland unter den Bedingungen des Bologna-Prozesses.** (Article)

The 6th Circular Letter of the Congregation for Catholic Education, dated 30 March 2009, has caused questions and concern within the Catholic theological faculties of German public universities, as to whether it will still be possible, within the framework of the Bologna process, to commence a doctorate immediately after the degree of *Magister Theologiae* without having to do a licentiate first. H. discusses the relevant guidelines of Church law for universities, and arrives at the conclusion that neither the correct interpretation of *Sapientia Christiana* nor the requirements of the Bologna process are compulsory reasons to differ from the approved practice applied since 7 July 1932. (See also *Canon Law Abstracts*, nos. 96, p. 64; 97, p. 55; 98, p. 59; 100, p. 81; 101, p. 58.)

### 812

**AkK 179 (2010), 145: Dekret der Kongregation für das katholische Bildungswesen (für die Seminare und Studieneinrichtungen) zum *Nihil obstat* vom. 25. März 2010.** (Document)

This decree of the Congregation for Catholic Education, dated 25 March 2010, approves for an experimental period of five years the Norms of the German Bishops' Conference which set out the conditions for obtaining the *nihil obstat* for the appointment of teachers of Catholic theology in State universities.

### 812

**AkK 179 (2010), 146-152: Normen zur Erteilung des *Nihil obstat* bei der Berufung von Professoren der Katholischen Theologie an den staatlichen Universitäten im Bereich der Deutschen Bischofskonferenz.** (Document)

See preceding entry. The German text of the approved Norms is given.

**833**

**AnC 5/2009, 101-123: Jerzy Adamczyk: „Wyznanie wiary” i „przysięga wierności” w świetle obowiązujących przepisów (= “Profession of Faith” and “Oath of Fidelity” in the Light of Present Norms).** (Article)

A. examines the history of and the present regulations governing the profession of faith and oath of fidelity which are a prerequisite to the reception of a wide range of ministries in the Church.

# BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

## 835

**IC 51 (2011), 43-67: Tomás Rincón-Pérez: El sacramento del Orden y el sacerdocio ministerial a la luz del M.P. *Omnium in mentem*.** (Lecture)

See below, canons 1008-1009.

## 838

**N XLVII 3-4/10, 146-156: Antonio Cañizares: On the New English-Language Missal Translation.** (Interview)

C., Cardinal Prefect of the Congregation for Divine Worship and the Discipline of the Sacraments, emphasizes the need for living catechesis on the Eucharist and the role that a faithful translation has to play in this. It expresses at the level of words what *Redemptionis Sacramentum* sought to express at the level of liturgical practice and the art of celebration.

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

## 902

**Guillaume Derville: Eucharistic Concelebration: From Symbol to Reality.** (Book)

Until the Second Vatican Council, Eucharistic concelebration was rarely used in the Latin Church. *Sacrosanctum Concilium* extended its practice, which some texts and a certain usage have made common. In order for concelebration to manifest unity of the sacrifice, unity of the priesthood and unity of the Church, some conditions should be respected, always taking into account that what is essential is the Eucharist being celebrated, which actualizes the sacrifice of the Cross and of the Paschal Mystery as a whole. Facile abuses may weaken the personal relationship of the priesthood with Christ, as well as demystifying a practice whose truth and beauty perhaps demand moderation more in keeping with a fitting interpretation of the Council. Almost half a century after *Sacrosanctum Concilium*, D. suggests that the time has come to re-examine concelebration after the impulse given by John Paul II in his Encyclical *Ecclesia de Eucharistia* (2003) and his Apostolic Letter *Mane Nobiscum Domine* (2004) on the occasion of the year of the Eucharist (October 2004 to October 2005), an impetus which was confirmed by the 2005 Synod of Bishops and the subsequent post-synodal Apostolic Exhortation of Benedict XVI, *Sacramentum Caritatis* (2007). D. looks at the history of concelebration before the Second Vatican Council, and the conciliar and post-conciliar texts on the subject. He then considers the unity of the priesthood and its manifestation, and the personal configuration of the priest with Christ. (For bibliographical details see below, Books Received.)

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

### 960-991

**Per 100 (2011), 1-63: Andrea D'Auria: I doveri e i diritti del fedele rispetto alla confessione.** (Article)

Taking as his starting point the fundamental duty of every Christian to lead a holy life, outlined in canon 210, and the corresponding right to be assisted in achieving this end by their pastors through the word of God and the sacraments, as indicated in canon 213, D'A. examines the duties and the rights of the faithful in the matter of confession. Before offering his concluding observations, in thirteen clearly distinct headings, he analyses a series of obligations, duties, rights and possibilities contained in the canons concerning the celebration of the sacrament of Penance.

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

## 998-1007

**AnC 5/2009, 213-230: Marek Zaborowski: Sakrament namaszczenia chorych w aspekcie prawno-historycznym ( = Anointing of the Sick: Legal and Historical Aspects).** (Article)

The redemptive suffering of Christ is part of the Paschal mystery. Without an understanding of the theology of suffering, the theology of the sacrament of Anointing of the Sick is not fully understood. This sacrament facilitates the encounter with Christ. Even through the structure of the ceremony and the texts of the prayers, the patient is encouraged to join his or her sufferings to those of Christ. Following the Second Vatican Council the liturgy of the *Ordo Unctionis Infirmorum* was standardized; and the provisions of the CIC/83 make clear that the sacrament of anointing of the sick is one of the signs of the Church’s concern for those affected by illness, suffering or old age.

# BOOK IV, PART I, TITLE VI: ORDERS

## 1008

**N XLVII 7-8/10, 359-382: Giuseppe Ferraro: I "tria munera" del sacerdote nell'insegnamento di Benedetto XVI.** (Article)

F. draws together the Pope's teaching on the three roles of teaching, sanctifying and governing entrusted to those ordained as priests, delivered on various occasions during the course of the Year of the Priesthood, and comments on two diverse approaches to priesthood: the social-functional and the sacramental-ontological.

## 1008-1009

**SCL VI (2010), 13-16**; also **Ius I 1-2/2010, 200-203: Pope Benedict XVI: Apostolic Letter Issued Motu Proprio *Omnium in mentem* On Several Amendments to the Code of Canon Law.** (Document)

The text is given of the *motu proprio* dated 26 October 2009 whereby a) the role of deacons in serving the People of God in the ministries of the liturgy, the Word and charity is clarified; and b) exemptions from canon law for those who have "formally defected from the Church" are revoked, and those concerned are bound by these new provisions from the date of their coming into force following promulgation in *Acta Apostolicae Sedis.* These concern the impediment of disparity of cult and permission for mixed marriage, and the obligation to the canonical form of marriage. The wording in canons 1008, 1009, 1086 §1, 1117 and 1124 is amended in order to reflect these changes.

## 1008-1009

**AkK 178 (2009), 544-550: Benedikt XVI: Apostolisches Schreiben „Motu Proprio" *Omnium in mentem*, mit dem einige Normen des Codex des kanonischen Rechts geändert werden, vom 26. Oktober 2009; Päpstlicher Rat für die Gesetzetexte, Kommentar zum Motu Proprio *Omnium in mentem* vom 16. Dezember 2009.** (Document and commentary)

The German text is given of the *motu proprio Omnium in Mentem* and of the accompanying explanation given by the President of the Pontifical Council for Legislative Texts (see *Canon Law Abstracts*, no. 104, p. 104).

### 1008-1009

**IC 51 (2011), 43-67: Tomás Rincón-Pérez: El sacramento del Orden y el sacerdocio ministerial a la luz del M.P. *Omnium in mentem*.** (Lecture)

R.-P. explores the reasons that prompted Pope Benedict XVI to modify the literal meaning of canon 1008 in a significant way, and to append a new paragraph to canon 1009. The Pontiff's intent is to shed new light on the theological-canonical dimension of the unity and diversity of the sacrament of holy Orders so as to situate diaconal ordination and priestly ordination within the Christological and ecclesiological framework proper to each. R.-P. devotes special attention to the theological status of diaconal ordination as reflected in the teaching of the Magisterium and in the revised canons themselves.

# BOOK IV, PART I, TITLE VII: MARRIAGE

## 1055

**AA XVI (2009-2010), 37-58: José Bonet Alcón: La sacramentalidad del matrimonio.** (Article)

Marriage as a sacrament occupies a special position among the other sacraments, in that it is a previously existing natural reality which in itself (as distinct from the inherent symbolism of the other sacraments), in its own very nature, has been raised to the supernatural level. B.A. points out that although marriage was regarded as a sacred reality from the early days of the Church, it was numbered among the seven sacraments only in the 12th century. The sacrament, of course, can only exist between baptized spouses but can be administered as a sacramental even to the non-baptized, as happens, by permission of the Holy See, in the university chapel of the Jesuit university in Tokyo (an average of 800 such marriages a year). The Code contains references other than canon 1055, both direct and indirect, concerning the sacred and sacramental nature of marriage (marriage preparation, dispensations for disparity of cult and from canonical form, education of children in the faith). B.A. dedicates the last part of his article to the sacramentals and blessings connected with marriage and family life, and to the projection of married sacramental life onto the wider social life of the community. Sacramental marriage effects a union between the eternal and the temporal.

## 1055

**Ang 88 (2011), 301-310: José María Serrano Ruiz: Il carattere personale del matrimonio. Verso una più precisa identificazione del patto coniugale.** (Lecture)

S.R. reflects on the personal nature of marriage and on some of the inadequacies of canonical legislation as regards the expression of this reality.

## 1055

**Ap LXXXIII 1 (2010), 201-221: Francesco Catozella: Personalismo e Diritto matrimoniale canonico. Verso un’adeguata antropologia giuridica del Matrimonio.** (Article)

C. proposes a systematic analysis of the relationship between the philosophical concept of personalism and the canon law of marriage. He proposes an “authentic personalism” which has a unitary concept of the person, capable of

integrating the psychic and spiritual, and recognizes the essential capacity of man to transcend himself, the unique value and inalienable dignity of every person, and that it is the conscience's role to recognize an objective natural law rather than to create an autonomous moral norm. He goes on to discuss the nature of law and argues that personalism and the canon law of marriage must avoid the two extremes of "personalist but not juridical" marriage and "juridical but not personalist" marriage, concluding that indissolubility provides the framework which guards against these two extremes.

### 1055

**Ap LXXXIII 2 (2010), 419-458: Piero Antonio Bonnet: Il "*bonum coniugum*" come corresponsabilità degli sposi.** (Article)

B. examines both the CIC/83 and the CCEO to understand that the *ordinatio ad bonum coniugum* does not constitute an element of the essence of marriage, but is an essential property. Marriage in the biblical tradition is the institutionalization of a total human relationship.

### 1055

**IE XXII 3/10, 573-589: Carlos José Errázuriz M: Il senso e il contenuto essenziale del *bonum coniugum*.** (Article)

E. suggests that the ground of exclusion of the *bonum coniugum* as a cause of matrimonial nullity is problematic not only with regard to its application but above all in what concerns its configuration. No universally accepted conceptual clarification has yet been reached by the Rota; and the post-conciliar experience shows how real the risk is of falling into a "hermeneutic of discontinuity and rupture". The required discernment calls for caution in attributing to the conciliar documents certain positions on juridical matters which in fact the Council never intended to deal with. E. underlines at length the relationship established between the concepts of the Council on the *bonum coniugum*. He analyses the sense and the essential content of the *bonum coniugum*, studying some fundamental convictions concerning marriage and its proper understanding, followed by a concluding evaluation of the specific characteristics of the exclusion of the *bonum coniugum*.

### 1055

**REDC 68 (2011), 11-26: Juan Ignacio Bañares Parera: Vínculo conyugal y complementariedad de mujer y varón.** (Conference presentation)

B.P.'s theme is male and female complementarity as expressed within the bond of marriage. Sexuality is an integral and essential element in the unity of body and spirit which constitutes the human person. Yet in classical metaphysical terms human sexuality cannot be described as the essence or substance of the human being; in Aristotelian terminology it is a *proprium* or ἴδιον, i.e. not the essence of a thing, but a characteristic that is only found in that thing. Male sexuality alone or female sexuality alone, therefore, cannot exhaust the richness of what it means to be human; there is an essential complementarity based on the fundamental human structure directed towards communion and communication. It is above all in marriage, in terms of the bond, the *vinculum*, that this complementarity is expressed and realized, a relationship stronger even than blood ties since it is a free and voluntary mutual giving of self to the other: one does not simply "have" a spouse, one "is" a spouse. In philosophical terms, the *vinculum* is the formal principle of the essence of marriage, while the union and complementarity of man and woman is the material principle, the marriage *in facto esse*.

### 1058

**QSR 20 (2010), 13-41: Héctor Franceschi: Lo *ius connubii* come criterio interpretativo delle norme riguardanti la nullità del matrimonio. Alcune considerazioni sulla giurisprudenza della Rota Romana.** (Article)

F. looks at the *ius connubii* as the foundation of the current canonical matrimonial system and as a guide for the Church's pastoral activity. The *ius connubii* constitutes a fundamental right of the person, the content of which is not determined by the law, the pastors or the ecclesial community, but by the nature of marriage itself and, in the case of the baptized, by its sacramental-vocational dimension. F. studies its anthropological foundations, and the principles for interpreting (strictly) the limitations on the *ius connubii*. He goes on to set out a number of proposals in the light of Rotal jurisprudence, concluding that the matrimonial system must always keep in mind this fundamental right to marriage, so as to ensure true justice in deciding particular cases. Thus the *ius connubii* appears as a foundation and as a criterion for interpreting and applying the canonical matrimonial system, as well as an innovating force whenever the experience of applying matrimonial law reveals some specific defect which merits a better juridical formalization of some aspect of the reality of marriage.

### 1061

**Piero Amenta: Administrative Procedures in Canonical Marriage Cases: History, Legislation and Praxis.** (Book)

See below, canons 1141-1155.

### 1063

**REDC 68 (2011), 419-428: Discurso del Santo Padre Benedicto XVI a los miembros del Tribunal de la Rota Romana en la inauguración del año judicial, 22 de enero de 2011. Texto en español y comentario (Federico R. Aznar Gil).** (Address and commentary)

This is the Spanish text of Pope Benedict's address to the Roman Rota on 22 January 2011, followed by a commentary by F. Aznar Gil. Its main theme is the need for an adequate preparation and formation of those intending to celebrate marriage. This should involve not simply a purely general pastoral approach but also a more focused canonical dimension in order that the couple fully understand the juridical requirements and consequences of their decision to marry. A secondary theme concerns marriage nullity cases invoking the grounds of exclusion of the *bonum coniugum*; by its very nature this can only be a truly rare and exceptional occurrence.

### 1071 §1 2º

**AkK 179 (2010), 86-107: Christoph Ohly: Kirchliche Eheschließung ohne Staat. Erwägungen zur aktuellen Gesetzeslage.** (Article)

See below, canon 1108.

### 1086

**AnC 5/2009, 197-212: Tomasz Rakoczy: Małżeństwo dla lepszych i gorszych katolików ( = Marriage for Better and Worse Catholics).** (Article)

[In an article written prior to the *motu proprio Omnium in Mentem* of 26 October 2009] R. expresses concern over the law as it then stood in relation to marriages of Catholics who had formally abandoned the faith.

### 1086

**AkK 178 (2009), 544-550: Benedikt XVI: Apostolisches Schreiben „Motu Proprio" *Omnium in mentem*, mit dem einige Normen des Codex des kanonischen Rechts geändert werden, vom 26. Oktober 2009; Päpstlicher Rat für die Gesetzetexte, Kommentar zum Motu Proprio *Omnium in mentem* vom 16. Dezember 2009.** (Document and commentary)

See above, canons 1008-1009.

### 1086

**SCL VI (2010), 13-16**; also **Ius I 1-2/2010, 200-203: Pope Benedict XVI: Apostolic Letter Issued Motu Proprio *Omnium in mentem* On Several Amendments to the Code of Canon Law.** (Document)

See above, canons 1008-1009.

### 1090

**Per 100 (2011), 65-129: Edward N. Peters: On the impugnation of a marriage by a promoter of justice on the basis of *crimen*.** (Article)

The death of Terri Schindler Schiavo due to the removal of life-saving measures on the direction of her husband, Michael, was widely publicized. P. examines the details of the case, especially Michael's subsequent marriage in the Catholic Church, first of all in the light of canon 1090 which sets out the current legal requirements for the impediment of *crimen*, and then in the light of canon 1674 and the right of the promoter of justice to impugn the validity of a marriage "when the nullity of the marriage has already been made public, and the marriage cannot be validated or it is not expedient to do so". P. concludes, on the basis of information widely available in the public domain, that the subsequent marriage of Michael Schiavo is invalid, and that the promoter of justice of the diocese in which the second marriage was celebrated has a duty to impugn the validity of that same marriage.

### 1095

**IE XXII 3/10, 611-626: Pedro-Juan Viladrich: ¿Es necesaria una reforma del canon 1095?** (Article)

See above, General Subjects (*Law reform*).

## 1095

**QSR 20 (2010), 99-109: Raymond Leo Burke: L'importanza pastorale del concetto canonico della capacità psichica per il consenso matrimoniale.** (Article)

B. examines the pastoral importance of the canonical concept of psychic incapacity for matrimonial consent in the Second Vatican Council's teaching on marriage. The Council presents marriage above all as a vocation, a calling from God, thanks to which the spouses receive "their own special gift among the people of God" (*Lumen Gentium*, 11). B. then sets out the conciliar teaching on developments in the psychological sciences. After analysing canon 1095 he concludes that this new norm in canon law faithfully interprets the teaching of the Council on marriage, and responds to the true pastoral needs of those called to the matrimonial vocation. However, it is that same conciliar teaching that provides the ultimate key for understanding the intention of the Legislator in introducing the law in question. As regards the attention to be paid to the findings of psychologists and psychiatrists concerning the marriage vocation, the proper instrument – a true Christian anthropology – needs to be used so that psychological categories may be properly related to theological and canonical categories.

## 1095 2°

**SCL VI (2010), 335-364: Apostolic Tribunal of the Roman Rota: Defect of Internal Freedom (c. 1095, 2°). Decision *coram* Stankiewicz, 28 June 2001 (Arecibo, Puerto Rico).** (Sentence)

In his law section S. asks whether lack of internal freedom can be considered an autonomous ground of nullity. Such internal lack of freedom can be located within each of the three sections of canon 1095 but needs to be habitual rather than a momentary crisis of internal freedom. Navarrete argued that it should be considered an autonomous ground on the basis that there can by psychic disturbances that affect the will leaving the intellectual faculty unaffected. However, if this were so it would need to be based on canon 1057 rather than canon 1095 2°. S. argues that in jurisprudence the understanding of "discretionary judgement" is wider than simply the intellectual aspect and includes the volitional aspect too, so that decisions concerning lack of internal freedom have in fact been given under this heading. A defect in either faculty impedes the operation of the other. Such limitations on freedom must be serious, and S. outlines a number of possible psychological causes and the need for appropriate psychological expertise in evaluating them. The decision was negative.

### 1095 2º-3º

**REDC 67 (2010), 1027-1059: Sentencia del Tribunal Metropolitano del Arzobispado de Mérida-Badajoz (2009). Nulidad de matrimonio por incapacidad de asumir las cargas del matrimonio.** (Sentence)

This case concerned an excessively parentally-dependent male respondent, who had already been persuaded by his mother to end an earlier long-term relationship as she disapproved of his choice. She also disapproved of the present petitioner, and several wedding dates had been postponed because of her objections. The courtship lasted four years with no problems between the two parties, and married life lasted thirteen years. For the first three years the respondent was unemployed and spent most of his time at his parents' home. When he became employed he spent his spare time in his own room with his computer and took little or no interest in the life of the family and his children. The alleged grounds of nullity were his grave lack of discretion and his inability to assume the essential obligations of marriage. The *in iure* section deals especially with dependent personality disorder and affective or emotional immaturity. A positive decision was returned on the second ground only, that of inability to assume the essential obligations of marriage.

### 1095 2º-3º

**QSR 20 (2010), 209-229: Luigi Janiri – Annamaria Di Gioia: Immaturità psico-affettiva e nullità matrimoniale: considerazioni psicologiche, inquadramento psicopatologico e argomentazioni psichiatrico-forensi.** (Article)

This article examines psychoaffective immaturity and incapacity to love, starting with an analysis of the concepts of person and personality, before looking at the psychopathologies of personality; interpersonality as the root of all reciprocity and otherness; psychoaffective relational immaturity; and matrimonial psychopathology, from the formation of the marital bond to the distortion of the matrimonial relationship. It then goes on to study the question of proof of psychoaffective immaturity, especially in the areas of dependent personality disorder and narcissistic personality disorder. It concludes with a consideration that, while the evolution of civilization has placed the emphasis on individual freedom and autonomy, the other side of the coin is that it has ended up undermining the importance of the "other". Hence it very often happens that time spent on another is regarded as unimportant, and that life as a couple is relegated to the service of the individual.

### 1095 3º

**REDC 67 (2010), 1061-1088: Sentencia del Tribunal Interdiocesano de Sevilla (Sección instructora de Cádiz-Ceuta 2009). Nulidad de matrimonio por incapacidad de asumir las obligaciones esenciales del matrimonio por causa de naturaleza psíquica.** (Sentence)

The male petitioner belonged to a practising Catholic family and was active in various religious and parish activities. The respondent's main interests were horse riding, shooting and hunting. The courtship lasted ten years, the respondent being reluctant to consider marriage; she would have preferred that they simply live together. In the marriage the petitioner found that the only way to be able to spend time with his wife was to accompany her and become involved in her equine and hunting pursuits. He would also have liked to start a family but she would not entertain the possibility as the care of children would interfere with her other interests; she promised to have an abortion if she ever did become pregnant. After a serious fall from a horse, the petitioner tried to prevail on her to cut down her riding and hunting pursuits, but to no avail. The couple obtained a legal separation and were divorced some time later. The alleged grounds of nullity were the respondent's partial simulation *contra bonum prolis* and her inability to assume the essential obligations of marriage; she refused to have any dealings with the Tribunal. The evidence of witnesses and the psychologist's report based on the *acta* clearly indicated certain deeply ingrained personality traits of egocentrism, aggressiveness, and emotional and affective immaturity; a positive decision was returned on the grounds of inability alone.

### 1095 3°

**SCL VI (2010), 365-382: Apostolic Tribunal of the Roman Rota: Incapacity to Assume due to Affective Immaturity. Decision *coram* Bottone, 15 January 2008 (Italy).** (Sentence)

The law section is quite short but considers how a sufficient degree of affective maturity may lead to an incapacity to fulfil the obligations of marriage without necessarily depriving the person of due discretion of judgement. This must be measured in terms of those obligations that are constitutive of marriage rather than those required for its perfection. The decision was affirmative. The scenario was that of a depressed young woman seeking to escape from a domineering and despotic father only to find that her husband also treated her like a servant.

### 1101

**AA XVI (2009-2010), 325-350: José Bonet Alcón: Decreto de confirmación de sentencia del tribunal eclesiástico nacional.** (Sentence)

This second instance decree of confirmation of sentence by the national ecclesiastical tribunal of Argentina presents a detailed examination of the grounds of total and partial simulation (under each heading of exclusion of offspring, fidelity, and indissolubility). As the petitioner in this case is now in a third marriage, the *ponens* also presents an excursus on the proper way in which the alleged nullity of successive marriages should be dealt with; only if the nullity of the first can be established, may a tribunal proceed to examine the possible nullity of the second, and so on consecutively for each marriage. The decree confirms the first instance sentence on the grounds of exclusion of indissolubility by both parties and exclusion of fidelity on the part of the petitioner.

### 1101

**AA XVI (2009-2010), 351-260: Alejandro W. Bunge: Comentario al decreto de confirmación de sentencia del tribunal eclesiástico nacional del 8/05/2007.** (Article)

B.'s commentary on the decree of confirmation mentioned above gives an outline of the circumstances of the case, a consideration of each of the grounds contained in it, and an examination of a declaration of nullity in the case of multiple successive marriages.

### 1101

**IC 51 (2011), 207-234: Montserrat Gas Aixendri: La exclusión del *bonum fidei* y su prueba. Doctrina y jurisprudencia.** (Article)

The jurisprudence of the Roman Rota on the exclusion of fidelity has evolved in recent times, a development which is largely due to a more refined understanding of the nature of conjugal self-giving. Both doctrine and jurisprudence now concede that the exclusion of fidelity is a type of partial simulation, whereby fidelity is seen as an integral part of the property of unity or as an essential element of marriage. In order to apply this ground of nullity correctly, it needs to be borne in mind that simulation requires a positive act of the will to exclude, and that the object of exclusion is fidelity understood as exclusivity in conjugal self-giving. Given the need to rely on assumptions in this regard, and the fact that the simulating party often fails to take part in the

process, the relevant proofs may be difficult to come by. The focus of G.A.'s study is practical, emphasizing the jurisprudence in relation to this issue.

### 1101

**IE XXII 3/10, 573-589: Carlos José Errázuriz M: Il senso e il contenuto essenziale del *bonum coniugum*.** (Article)

See above, canon 1055.

### 1101

**REDC 67 (2010), 731-740: Giannamaria Caserta: Alcuni rilievi sul valore probatorio dell'infedeltà nelle cause di nullità del matrimonio per esclusione del *bonum fidei*.** (Article)

C. examines the relevance of infidelity as a possible element in the evidence for the exclusion of the *bonum fidei* in marriage nullity cases. She looks at the part which infidelity as an element of proof has played in canonical doctrine and jurisprudence in some particularly relevant Rotal decisions. The issue takes on special importance in a society where for many people the idea of lifelong sexual fidelity is a totally alien concept and where what is at play, more than individual acts of infidelity, is the overall mindset and attitude of the alleged simulator.

### 1103

**SCL VI (2010), 171-208: Jose Marattil: Reverential Fear as a Ground of Marriage Nullity in the Indian Cultural Context.** (Article)

Neither the CIC/83 nor the CCEO speaks specifically of "reverential fear" but its significance is accepted in jurisprudence. M. examines first the general doctrinal and jurisprudential aspects of fear. The three essential elements, gravity, externality and unavoidability, must be understood in the context of the special relationship that exists between a contracting party and parent, superior, or significant other. This fear can be relative and inflicted unintentionally. It is not required that the individual actually be compelled to marry a particular person. On the other hand it is more than simply acquiescing in the wishes of parents out of respect for them. Proofs can be indirect, e.g. aversion, postponing or minimizing the ceremony, short duration of marriage or refusal of children; or direct, in terms of the nature of the parent/child relationship in the particular case and why it should be seen as coercive. The final section considers how this should be applied in the Indian cultural context which highly values parental

authority. Parents take decisions for adult children and see arranging a suitable marriage as part of their responsibility. Children are expected to accept the wishes of their parents. Today there is much greater freedom but this has changed very little with regard to a daughter's freedom of choice in regard to marriage. Filial respect creates a sense of gratitude and indebtedness and leads to deference where opposition to a proposed marriage may not be expressed. Similar considerations can apply to significant others if parents are deceased, e.g. religious superiors, guardians or senior family members. Despite legal prohibition the dowry system is now more important than ever and prevails in all communities. Age is also a significant factor. Younger children cannot marry before their older siblings, though there may be exceptions for boys. In judging such cases the court needs to be aware of these cultural factors.

## 1103

**Ius I 1-2/2010, 144-185: Jose Marattil: Reverential Fear and Marriage Nullity with Special Reference to the Indian Culture.** (Article)

This article is substantially the same as that mentioned in the previous entry. However, there are some minor differences in text, both in the introduction and by way of an extra section on caste and arranged marriages in India. In this text priority in citation is given to the texts from CCEO rather than CIC.

## 1108

**AkK 179 (2010), 86-107: Christoph Ohly: Kirchliche Eheschließung ohne Staat. Erwägungen zur aktuellen Gesetzeslage.** (Article)

O. examines the question of marriage in a church without a preceding civil marriage, in view of the renewed German "Law of Civil Status" of 1 January 2009. Taking into account legal-historical developments, the European legal situation, and data from German dioceses for the first two years since the new law came into effect, O. stresses the need to introduce alternative forms of marriage ceremony, from the perspective of canon law.

### 1117

**AkK 178 (2009), 544-550: Benedikt XVI: Apostolisches Schreiben „Motu Proprio" *Omnium in mentem*, mit dem einige Normen des Codex des kanonischen Rechts geändert werden, vom 26. Oktober 2009; Päpstlicher Rat für die Gesetzetexte, Kommentar zum Motu Proprio *Omnium in mentem* vom 16. Dezember 2009.** (Document and commentary)

See above, canons 1008-1009.

### 1117

**AnC 5/2009, 197-212: Tomasz Rakoczy: Małżeństwo dla lepszych i gorszych katolików ( = Marriage for Better and Worse Catholics).** (Article)

See above, canon 1086.

### 1117

**SCL VI (2010), 13-16**; also **Ius I 1-2/2010, 200-203: Pope Benedict XVI: Apostolic Letter Issued Motu Proprio *Omnium in mentem* On Several Amendments to the Code of Canon Law.** (Document)

See above, canons 1008-1009.

### 1124

**AkK 178 (2009), 544-550: Benedikt XVI: Apostolisches Schreiben „Motu Proprio" *Omnium in mentem*, mit dem einige Normen des Codex des kanonischen Rechts geändert werden, vom 26. Oktober 2009; Päpstlicher Rat für die Gesetzetexte, Kommentar zum Motu Proprio *Omnium in mentem* vom 16. Dezember 2009.** (Document and commentary)

See above, canons 1008-1009.

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See above, canon 1086.

### 1124

**SCL VI (2010), 13-16**; also **Ius I 1-2/2010, 200-203: Pope Benedict XVI: Apostolic Letter Issued Motu Proprio *Omnium in mentem* On Several Amendments to the Code of Canon Law.** (Document)

See above, canons 1008-1009.

### 1136

**AnC 5/2009, 125-148: Michał Jóźwik: Uczestnictwo rodziny w życiu i misji Kościoła i w rozwoju społeczeństwa (= The Participation of the Family in the Life and the Mission of the Church and the Development of Society).** (Article)

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

### 1141-1155

**Piero Amenta: Administrative Procedures in Canonical Marriage Cases: History, Legislation and Praxis.** (Book)

A. deals with administrative procedures related to the dissolution of a non-sacramental marriage bond *in favorem fidei* and the dissolution of a ratified but unconsummated sacramental marriage. In such cases the marriage bond is dissolved by pontifical authority through an administrative process: it is a grace or indult granted for the good of souls. Chapter I deals with the indissolubility of the bond and the significance of consummation in the development of the Church's doctrine from the beginning to the present (Biblical and Patristic evidence, and the evolution of the norms of canon law). Part II looks at the current legislation on administrative procedures for the dissolution of the bond (CIC/83, legislation *extra Codicem*, and the practice of the Roman Curia), focusing on the relation between the principle of indissolubility and ecclesial practice in the dissolution of the bond; the sacramental bond and the natural bond in relation to the *matrimonium ratum*; the specific norms relating to the procedures for the dissolution of the bond *in favorem fidei*, and those governing procedures for the dissolution of the bond in cases of non-consummation. Part III concentrates on causes of separation without the dissolution of the conjugal bond, as well as the process for the presumed death of a spouse. (For bibliographical details see below, Books Received.)

### 1141-1155

**Anne Bamberg: Procédures matrimoniales en droit canonique.** (Book)

See below, canons 1400-1707.

### 1142-1150

**IC 51 (2011), 373-396: Joaquín Sedano: Crónica de Derecho Canónico del año 2010.** (Compilation)

See above, canons 290-292.

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

### 1186

**N XLVII 5-6/10, 243-267: Roberto Fusco: Il Patrocinio dei Santi.** (Article)

F. explores the origin of the custom of giving a church a saint's name and the concept of peoples and nations having a heavenly protector. The first Papal document to legislate in this area is a Decree of Urban VIII dated 23 March 1630 placing this area under the Sacred Congregation for Rites. This excluded the choice of *beati* as patrons. F. then reviews subsequent developments, in particular the revised rubrics of 1961 and the Instruction *Calendaria Particularia* of 24 June 1970. The Sacred Congregation for Divine Worship issued a new set of norms *De Patronis Constituendis* on 19 February 1973. The author concludes with a list of patron saints customarily venerated as such in the countries of Europe, and studies the documents by which Pope John Paul II designated several patron saints for Europe as a whole.

## BOOK IV, PART III: SACRED PLACES AND TIMES

### 1216

**EE 86 (2011), 103-132: Víctor Marín Navarro: El Concilio Vaticano II (1962-1965) y la normativa sobre arte sagrado. Precedentes e influencia.** (Article)

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

### 1243

**AkK 179 (2010), 117-125: Erwin Gatz: Zur Ernennung des Rektors des Campo Santo Teutonico bei St. Peter in Rom.** (Article)

This article highlights the historical and canonical background to the appointment of the rector of the German cemetery in the Vatican City, the Campo Santo Teutonico.

# BOOK V: THE TEMPORAL GOODS OF THE CHURCH

### 1254-1310

**SCL VI (2010), 27-50: Francis G. Morrisey: Challenges for the Administration of Temporal Goods in the Light of Changing Circumstances.** (Article)

M. looks first at a number of general issues. Today temporal goods need to be understood more widely to include less tangible assets such as good reputation or an apostolate. Efforts to protect various funds civilly can have the consequence of lessening apparent control – should such moves be considered a form of alienation? He notes the protection offered by the involvement of finance committees and consultors as well as outside auditors. M. discusses joint administration of goods – works sponsored jointly with religious institutes, and inter-diocesan funds – and safeguards such as separate incorporation for individual funds or works. He addresses a number of specific issues: Mass offerings; priests' pension funds; new associations of the faithful; fund raising by "Catholic" groups; diocesan donations; incardinated priests on leave of absence; use of parish funds to cover personal debts; funds held by a diocese on behalf of a parish; diocesan finance and administration policies; social justice. He concludes by identifying areas where the law needs improvements, e.g. the lack of penalties applying to misappropriation of funds.

### 1272

**REDC 67 (2010), 985-1002: Conferencia Episcopal Portuguesa: Decreto general sobre extinción de beneficios (13 de octubre de 2008). Texto en portugués y comentario de Federico R. Aznar Gil.** (Document and commentary)

This decree of the Portuguese Episcopal Conference applies the norms of canon 1272 concerning the modification and eventual disappearance of the benefice system. A.G.'s commentary looks briefly at the historical background, and then examines how both the Spanish and Portuguese Episcopal Conferences have dealt with the issue.

### 1274

**REDC 68 (2011), 339-372: Ricardo J. da Silva Cardoso: Projecto para um sistema autónomo de sustentaçao do clero da Diocese de Lamego.** (Article)

S.D.'s theme deals with the setting up in the diocese of Lamego (Portugal) of a central fund for the equitable upkeep and sustenance of the diocesan clergy. It is a small rural diocese with limited financial resources and with some notable inequalities of income between different parishes. The project aims to pool the traditional contributions made by each family in the parish for the upkeep of their priest into a fund to be administered at diocesan level to ensure a fairer distribution of means among the priests of the diocese. S.D provides the text of a draft constitution for this foundation and a table of the projected income expected from each parish in the diocese.

### 1286

**AkK 178 (2009), 517-531: Joachim Eder: Standort des Kanonischen Rechts im Kirchlichen Arbeitsrecht.** (Article)

In Church employment law, the legislative competence of the diocesan bishop over all ecclesiastical institutions is of central importance with regard to civil law relating to the Church. In canon law the questions which arise in this area are controversial, and their answers play a role in establishing the status of canon law in Church employment law in Germany. E. discusses the topic on the basis of two Church employment tribunal decisions, a decision of a special tribunal acting under Papal delegation, and a decision of the Pontifical Council for Legislative Texts. He offers a possible solution.

### 1290-1298

**ELJ XII 1/10, 33-52: Eithne D'Auria: Alienation of Temporal Goods in Roman Catholic Canon Law: A Potential for Conflict.** (Article)

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

# BOOK VI: SANCTIONS IN THE CHURCH

### 1311-1399

**SCL VI (2010), 117-128: Juan Ignacio Arrieta: Cardinal Ratzinger's Influence on the Revision of Canonical Penal Law System.** (Article)

A. explains that the Pontifical Council for Legislative Texts will shortly be distributing for consultation a draft document containing suggestions for the revision of Book VI of the Code of Canon Law, a task entrusted to it by Pope Benedict XVI on 28 September 2007. This Book was the one that benefited least from the "fluidity" experienced in the wake of Vatican II, a period when a certain hostility to juridical norms developed. He explains the contribution to the debate made by Cardinal Ratzinger, beginning with concerns raised in 1988 about priests who were seeking dispensations as a result of scandalous behaviour and the subsequent dialogue with the Pontifical Council.

### 1311-1399

**Comm 42 (2010), 367-375: Articulus explanans influxum Cardinalis Ratzinger in recognoscendum systema poenale canonicum ab Exc.mo D. Ioanne Ignatio Arrieta, Secretario Pontificii Consilii de Legum Textibus, conscriptus.** (Article)

See preceding entry. This is the full text as published in *La Civiltà Cattolica* on 4 December 2010 rather than the shortened version that appeared two days earlier in *L'Osservatore Romano* outlining Cardinal Ratzinger's involvement in a proposed reform of the penal section of the Code from 1988 onwards.

### 1311-1399

**AkK 179 (2010), 108-116: Juan Ignacio Arrieta: Kardinal Ratzinger und die Revision der kirchlichen Strafrechtsordnung. Drei bisher nicht veröffentlichte Schreiben von 1988.** (Article)

German version of the article mentioned in the preceding entries.

### 1321

**PS XLVI 136 (2011), 63-84: Mayong Andreas Acin – Isaias Tiongco: The Nature of Delict in Canon 1321: Its Implications on the Dismissal Process of Religious in Cases of Sexual Misconduct. Part II.** (Article)

This paper investigates the delicts of religious involving sexual conduct – the nature of the delict, its relationship to the sixth commandment, the dismissal processes, the preliminary investigation and determination procedures and the effects. It also maintains that the issue of dismissal of religious in such cases is complicated, and difficult to analyse. Hence, it must be closely examined, must involve the duties and rights of various key people and must be handled with utmost sensitivity, integrity and fairness. (See also *Canon Law Abstracts*, no. 106, p. 119.)

### 1342

**IC 51 (2011), 69-101: Davide Cito: La pérdida del estado clerical *ex officio* ante las actuales urgencias pastorales.** (Lecture)

See above, canon 290.

### 1362

**REDC 67 (2010), 827-850: Federico R. Aznar Gil: Abusos sexuales a menores cometidos por clérigos y religiosos.** (Article)

See below, canons 1394-1395.

### 1382

**Comm 42 (2010), 319-320: Secretaria Status: Nuntium in aula Sanctae Sedis diurnariis edocendis habitum quoad ordinationem episcopalem in civitate Chengde, sita in Provincia Hebei Sinarum continentalium peractam.** (Document)

This is the text of the statement made at a news conference on 24 November 2010 concerning the unlawful consecration of a new bishop for Chengde in China without Papal mandate. The text is in English.

### 1394-1395

**REDC 67 (2010), 827-850: Federico R. Aznar Gil: Abusos sexuales a menores cometidos por clérigos y religiosos.** (Article)

A.G. uses the occasion of Benedict XVI's letter to the Catholics of Ireland after the revelation of extensive clerical sexual abuse scandals to explain current canonical legislation on this crime. It concerns all actions of a cleric or religious against the sixth Commandment with anyone under the age of 18. He deals with certain modifications of the Code as well as other special procedures which can lead to the imposition of penalties, including expulsion from the clerical state *ex officio et in poenam* even without the need for a judicial process for those who have committed these crimes. He points out that dioceses must establish adequate norms or protocols for the prevention of, intervention in and reparation for such crimes. A policy of transparency, information and cooperation with the civil authorities should also be put in place.

### 1394-1395

**REDC 67 (2010), 953-964: Benedicto XVI: Carta pastoral a los católicos de Irlanda (19 de marzo de 1020). Texto en castellano.** (Document and commentary)

Given here is the Spanish translation of Benedict XVI's pastoral letter to the Catholics of Ireland following the spate of clerical sexual abuse crimes in that country. For a commentary see the preceding entry.

### 1394-1395

**REDC 67 (2010), 923-933: Congregación para el Clero: Carta a los Ordinarios sobre la aplicación de las facultades especiales concedidas a la Congregación para el Clero por el Sumo Pontífice el 30 de enero de 2010 (17 de mayo de 2010). Texto en castellano y comentario de Federico R. Aznar Gil.** (Document and commentary)

Given here is the document granting special faculties to the Congregation for the Clergy concerning the presentation by the Congregation to the Holy Father of cases of dismissal from the clerical state of those clerics who have attempted marriage and continue to live in an irregular and scandalous manner, or of those who in other ways have caused scandal by gravely violating divine or canonical law (canon 1399). These cases are to be presented to the Holy Father in specific form for his decision. The documentation and procedures required for this process are included together with a short commentary by A.G.

### 1394-1395

**IC 51 (2011), 69-101: Davide Cito: La pérdida del estado clerical *ex officio* ante las actuales urgencias pastorales.** (Lecture)

See above, canon 290.

### 1395

**AA XVI (2009-2010), 121-160: Ricardo Daniel Medina: Algunas consideraciones acerca de las modificaciones a las normas de los delitos más graves.** (Article)

M.'s article deals mainly with one aspect of the revised *Normae de gravioribus delictis* of the Congregation for the Doctrine of the Faith of 21 May 2010 (see *Canon Law Abstracts*, no. 106, p. 125.) After a listing and brief consideration of the other delicts mentioned, he concentrates his reflections on crimes against the sixth commandment committed by clerics against minors below the age of eighteen. As regards the downloading of pornography, he queries why the document limits the crime to images involving minors under the age of fourteen, given the Church's interest in protecting all minors from such exploitation and the fact that even many civil legislations do not limit the crime in this way. His detailed consideration of the principal characteristics of the norms covers the preliminary investigation, the modifications on prescription concerning penal action, the dispensation for tribunal members involved in these cases from the need to be a priest or be in possession of a doctorate in canon law, the Congregation's faculty to sanate the violation of procedural law in lower tribunals and to dispense if necessary from judicial procedure. These last two faculties lessen to some degree the guarantees of impartiality and justice, may weaken the right of defence, and can only be seen as truly exceptional occurrences. In a final section M. considers the implications of a possible dismissal from the clerical state without a judicial process and regardless of the wishes of the cleric. A theme recurrent in the article is the danger of violation of the right of defence and the lack of tribunal personnel at local level sufficiently qualified to deal with these penal cases. (See also the following entries.)

### 1395

**SCL VI (2010), 23-26: Congregation for the Doctrine of the Faith: A Brief Introduction to the Modifications Made in the *Normae de gravioribus delictis*, reserved to the Congregation for the Doctrine of the Faith.** (Document)

See preceding entry. Cardinal Levada sets out in summary form the variations in the text of the Norms approved by Pope Benedict XVI on 21 May 2010. The first seven are procedural faculties. The remainder extend or clarify the offences reserved to the Congregation for the Doctrine of the Faith.

### 1395

**SCL VI (2010), 51-116: John A. Renken: *Normae de gravioribus delictis*: 2010 Revised Version. Text and Commentary.** (Document and commentary)

R. outlines the reasons for the revised norms and then provides the text in English of the norms both substantive and procedural with a detailed article-by-article commentary. The Latin text is provided in the form of footnotes.

### 1395

**Comm 42 (2010), 333-344: Congregatio pro Doctrina Fidei: Normarum mutationes introductae in M. P. *Sacramentorum sanctitatis tutela.*** (Document)

See preceding entries.

### 1395

**Comm 42 (2010), 345: Congregatio pro Doctrina Fidei: Litterae ad Episcopos Ecclesiae catholicae at ad alios ordinarios et hierarchas quorum interest quoad mutationes introductas in Litteras Apostolicas "Motu Proprio" datas *Sacramentorum sanctitatis tutela.*** (Document)

See preceding entries. In a brief letter the Prefect of the Congregation for the Doctrine of the Faith sets out the reasons for a revised text of the *motu proprio*.

### 1395

**Comm 42 (2010), 346-348: Congregatio pro Doctrina Fidei: Synthesis mutationum introductarum in M. P. *Normae de gravioribus delictis* reservatis Congregationi pro Doctrina Fidei.** (Document)

See preceding entries. In this note the Congregation for the Doctrine of the Faith sets out the actual changes made to the text of the norms covering the more grave offences reserved to it. The first seven relate to the procedural norms. The remaining ten clarify or in some way modify the offences set out therein and allow the immediate adoption of the precautionary measures envisaged in canon 1722.

### 1395

**Comm 42 (2010), 349-353: Congregatio pro Doctrina Fidei: Introductio historica ad normas Motu proprio datas *Sacramentorum sanctitatis tutela.*** (Article)

See preceding entries. In this short article the Congregation for the Doctrine of the Faith explains the origin of the current legislation in the Apostolic Constitution *Sacramentorum Poenitentiae* of Benedict XIV in 1740 and the Instruction *Crimen Sollicitationis* of 1922. This was reprinted in slightly revised form in 1962 with a view to its distribution to the bishops gathered at Vatican II. However, this did not happen. Only a few copies were sent out as needed. In view of the rising number of reported offences indults were granted to the USA and Ireland to raise the age at which prescription began. Finally new norms were prepared and issued in 2001.

### 1395

**Comm 42 (2010), 357-359: Ex Ephemeride *L'Osservatore Romano*: Articulus explanans recognitionem normarum "de gravioribus delictis" a Congregatione pro doctrina Fidei die 15 mensis iulii 2010 latarum.** (Article)

This short, unattributed, article introduces the changes made in the norms concerning more serious offences reserved to the Congregation for the Doctrine of the Faith.

### 1395

**IE XXII 3/10, 773-799: Congregazione per la Dottrina della Fede: Modifiche introdotte nella Lettera Apostolica motu proprio data**

***Sacramentorum sanctitatis tutela*, 21 maggio 2010 (con *nota* di Davide Cito).** (Documents and commentary)

See preceding entries. C. notes that the changes were published on the Holy See's website on 15 July 2010 – prior to the appearance of the corresponding printed volume of *Acta Apostolicae Sedis* – which represents a significant development in the manner of acting of the Congregation for the Doctrine of the Faith, hitherto known rather for its reserve, especially because of the delicate nature of the matters it has had to deal with. C. points out how Pope Benedict XVI has initiated spiritual, pastoral and juridical activity to help the Church to develop a new sensitivity towards the problem of sexual abuse, while at the same time offering criteria to guide the actions of Pastors. C. analyses both the substantial and the procedural aspects of the modified norms, and concludes with the consideration that they cannot be adequately understood without bearing in mind the incidence of abuse of minors in recent years as well as the tenacious efforts of the Holy Father to provide instruments to safeguard the victims of such abuse.

### 1395

**REDC 68 (2011), 399-418: Congregación para la Doctrina de la Fe (21 de mayo de 2010). Carta a los Obispos de la Iglesia Católica y a los demás Ordinarios y Jerarcas interesados acerca de las modificaciones introducidas en la Carta Apostólica, dada *motu proprio, Sacramentorum sanctitatis tutela*. Breve relación sobre los cambios introducidos en las *Normae de gravioribus delictis* reservados a la Congregación para la Doctrina de la Fe. Normas sustanciales y procesales; introducción histórica.** (Documentation)

Spanish text of the *Normae de gravioribus delictis*, followed by a brief historical introduction to the *motu proprio Sacramentorum Sanctitatis Tutela* from the Congregation for the Doctrine of the Faith; & see following entry.

### 1395

**REDC 68 (2011), 283-313: Federico R. Aznar Gil: Los *graviora delicta* reservados a la Congregación para la Doctrina de la Fe. Texto modificado (2010).** (Commentary)

A.G. analyses the *Normae de gravioribus delictis* of 21 May 2010 issued by the Congregation for the Doctrine of the Faith introducing certain modifications to the *motu proprio Sacramentorum Sanctitatis Tutela* (2001). The experience gained in the intervening decade between the two documents had shown up

certain limitations and weaknesses in the original *motu propro*, especially as regards the punishment of crimes against the sixth commandment committed by a cleric with a minor. After giving a historical background A.G. comments on each of the fifteen *delicta* enumerated in the document, the extension of prescription for criminal activity to twenty years, the procedure to be followed, including use of the administrative process for the dismissal of a cleric from the clerical state, and other faculties granted to the Congregation for the Clergy in 2009. The overall intention of the document is to integrate and coordinate a series of modifications and special faculties introduced since the publication of the original *motu proprio* of John Paul II, some of which effect important changes in penal law.

## 1395

**PS XLVI 136 (2011), 63-84: Mayong Andreas Acin – Isaias Tiongco: The Nature of Delict in Canon 1321: Its Implications on the Dismissal Process of Religious in Cases of Sexual Misconduct. Part II.** (Article)

See above, canon 1321.

## 1398

**REDC 67 (2010), 945-951: Congregación para la Doctrina de la Fe: Aclaración sobre el aborto procurado (11 de julio de 2009). Texto en castellano y comentario de Federico R. Aznar Gil.** (Document and commentary)

In the wake of a particularly widely publicized abortion performed in Brazil on a ten-year-old child pregnant with twins as a result of sexual abuse, and the consequent misinterpreted and manipulated use of a statement made by the President of the Pontifical Academy for Life, and in the face of much genuine confusion even among many Catholics over what the present teaching of the Church was on this issue, because of the manipulation of this statement, the Congregation for the Doctrine of the Faith issued the present document as a clarification of the Church’s constant and unchanging teaching on abortion and the sacredness of all human life.

## 1398

**SCL VI (2010), 429-436: Victor G. D'Souza: Absolution of the Sin of Abortion and Remission of the *latae sententiae* Excommunication: Latin and Eastern Code at Crossroads?** (Article)

This article examines the interplay of the two Codes in the context of mixed Latin- and Eastern-rite faithful and clergy. The Latin Code establishes a *latae sententiae* excommunication for abortion, whereas in the Eastern Code the penalty must be imposed; moreover absolution from the sin is reserved to the eparchial bishop. In the Latin Code absolution from the excommunication but not the sin is reserved to the Ordinary. Although not explicitly stated in the Eastern Code, Eastern Catholics like Latin Catholics may approach the confessor of their choice, whether Latin or Eastern. It follows that a Latin priest for whom absolution from the sin is not reserved can absolve the penitent who has not incurred an automatic penalty. An Eastern priest who does not have the faculty would absolve a Latin penitent invalidly. Even if he had the faculty, absolution would be unlawful (but valid) since the censure forbids reception of the sacrament. For lawfulness he would need to follow the procedure set out in CIC/83 canon 1357. However, one needs to remember that common error could apply and that the reservation of a censure loses its force in danger of death.

## 1399

**IC 51 (2011), 373-396: Joaquín Sedano: Crónica de Derecho Canónico del año 2010.** (Compilation)

See above, canons 290-292.

## 1399

**IC 51 (2011), 69-101: Davide Cito: La pérdida del estado clerical *ex officio* ante las actuales urgencias pastorales.** (Lecture)

See above, canon 290.

## 1399

**REDC 67 (2010), 923-933: Congregación para el Clero: Carta a los Ordinarios sobre la aplicación de las facultades especiales concedidas a la Congregación para el Clero por el Sumo Pontífice el 30 de enero de 2010 (17 de mayo de 2010). Texto en castellano y comentario de Federico R. Aznar Gil.** (Document and commentary)

See above, canons 1394-1395.

# BOOK VII: PROCESSES

## 1400

**Ap LXXXIII 1 (2010), 31-40: Romanae Rotae Tribunal: Sententia definitiva: *Iurium* (*coram* Sciacca), 14-3-2008.** (Sentence)

The case involved a dispute over the right to carry, during an annual Holy Week procession in a certain parish, a representation of Christ being scourged at the Pillar. The privilege had been granted in perpetuity in 1799 to a number of "citizens" who had been involved in the reconstruction of the parish church after it was destroyed in an earthquake, and to their heirs; and it was extended in 1988 to such members of Confraternity of the Blessed Sacrament as were resident in the parish. In 1994 the bishop, in answer to a request from the parish priest, replied that the parish priest had the faculty to extend the possibility of carrying the statue to other members of the parish. The "citizens" – who did not actually reside in the parish and who were excluded by the parish priest from carrying the statue – considered that their rights had been thereby violated; however, the petition which they submitted to the diocesan tribunal was rejected on the grounds that they lacked legal standing for such an action. This decision was confirmed by a decree of the metropolitan tribunal. One of the petitioners, Rev. X., refused to accept the decision and submitted a claim for *restitutio in integrum* to the Rota, which the Rota initially rejected. Rev. X appealed to the next *turnus* of the Rota, which accepted that Rev. X did in fact have legal standing. The Rota therefore considered firstly whether the "citizens" still had the right to take charge of organizing the annual procession and the carrying of the representation of Christ; and secondly whether Rev. X was entitled to damages for the violation of his right. After analysing the nature of a "privilege" in canon law, the Rota decided that the "citizens" did enjoy the right to organize the procession and carry the representation of Christ, but that Rev. X was not entitled to compensation. In a short comment on the case, M. J. Arroba Conde says that the sentence illustrates how the function of safeguarding the rights of the faithful, which *Pastor Bonus* assigns to the Roman Rota, can extend to controversies arising out of a decision of a bishop which impinges upon some right, despite the apparently administrative nature of the decision (cf. canon 1400 §2). In such cases a judicial action is possible.

## 1400

**Comm 42 (2010), 381-388: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Quintum canonum Schema de Procedura Administrativa**

**a relatore paratum post Consultorum Sessionem diebus 4-6 mensis Novembris 1971 habitam.** (Report)

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

**1400**

**Comm 42 (2010), 389-395: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Commercium epistularum cum Secretaria Status quoad iuris redigendum Schema "De Procedura Administrativa".** (Report)

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

**1400**

**Comm 42 (2010), 396-402: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Schema canonum de procedura administrativa.** (Report)

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

**1400**

**Comm 42 (2010), 403-411: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Brevis relatio de animadversionibus quae factae sunt ad schema de procedura administrativa.** (Report)

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

### 1400

**Comm 42 (2010), 412-436: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Specialis Commissio Pontificia Coetus Studii "De Procedura Administrativa". Sessio III – Series Altera – diebus 5-7 mensis februarii 1973 habita.** (Report)

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

### 1400

**SCL VI (2010), 7-12: Pope Benedict XVI: Allocution to the Members of the Roman Rota.** (Address)

In his Rotal Allocution for 2010 Pope Benedict XVI takes as his theme the administration of justice as the exercise of a virtue concerned with giving to God and neighbour what is their due. It is devalued when seen as a technical exercise at the service of subjective interests. The process and sentence are bound fundamentally to this principle. This involves not only prudence but also courage when the way of injustice seems easier. Within this framework love is also important – a realization that those presenting themselves experience problems and suffering. Justice and love are not separable alternatives. Love without justice is self-contradictory. To see the nullity process as merely a way to facilitate reception of the sacraments without regard to the truth of their canonical situation would be a grave lack of justice and of love. These concerns apply not only to the practical activity of judging but also the theoretical framework for such judgements whereby the indissolubility of the bond can be undermined.

### 1400

**AkK 179 (2010), 141-145: Ansprache von Papst Benedikt XVI. an die Mitglieder der Römischen Rota zur feierlichen Eröffnung des Gerichtsjahres vom 29. Januar 2010.** (Address)

German text of the Pope's address to the Rota (see preceding entry).

## 1400-1707

**Anne Bamberg: Procédures matrimoniales en droit canonique.** (Book)

In Part I of this book B. provides details of the Church's judicial organization, the composition of tribunals, the parties to a canonical process, the main features of a canonical sentence, and a brief description of the less common matrimonial procedures (non-consummation, separation of the spouses, presumed death of a spouse, and dissolution of a non-sacramental bond). Part II is dedicated to the development of a marriage nullity process, with separate chapters devoted to the introduction of the process, the instruction of the case, the discussion and sentence, and the end of the process (including appeals, conformity of sentences, and execution of the sentence). Indices are provided of references to canons of the CIC/83 and articles of *Dignitas Connubii* and *Pastor Bonus* which appear throughout the book. (For bibliographical details see below, Books Received.)

## 1400-1752

**QSR 20 (2010), 111-130: Paolo Moneta: Gli studi di diritto processuale in onore di Antoni Stankiewicz.** (Review)

To mark the 75th birthday of the Dean of the Rota, Bishop Antoni Stankiewicz, a collection of 55 essays from learned canonists on topics of procedural law were assembled to form two volumes (III and IV) which were added to another two volumes (I and II) entirely dedicated to matrimonial law, the whole four-volume work being published under the title *«Iustitia et iudicium». Studi di diritto matrimoniale e processuale canonico in onore de Antoni Stankiewicz*, J. Kowal – J. Llobell (eds.), Libreria Editrice Vaticana, 2010. In this review M. focuses on the essays on procedural law, which dwell on a wide range of aspects of this area of canon law. After some essays of a more general nature, which also contain historical material, there are many contributions dedicated to the matrimonial nullity process, viewed both in its static and its dynamic aspects. Attention is then paid to the numerous special processes in canon law, including matrimonial processes (dissolution *super rato* and separation of the spouses), penal processes, administrative procedures and causes of canonization, as well as labour-related disputes and processes before the Tribunal of the Vatican City State.

### 1405

**QSR 20 (2010), 231-242: Decreti del Decano della Rota Romana.** (Documents)

The text is given of several decrees of the Dean of the Roman Rota issued during 2009, including the following cases in which the *libellus* submitted to the Rota was rejected on account of the Rota's lack of competence: 1. a petitioner requested a declaration of nullity of his marriage, but had never previously introduced the cause at first instance; nor did the case fall within those reserved to the Rota by canon 1405 §3 (2 July 2009); 2. a group of former university students asked for their former chaplain's reinstatement to the religious institute from which he had been dismissed (10 July 2009); 3. a petitioner asked to reintroduce a cause at first instance in which the trial had previously been abated on account of the petitioner's extended inactivity: the case did not fall within those reserved to the Rota by canon 1405 §3, nor were there pressing reasons for the Rota to reserve the case to itself for judgement, as it could more usefully be dealt with by the original tribunal (6 November 2009); 4. a priest submitted a claim for damages for alleged crimes and violations of procedural law on the part of the judicial vicar: the Dean of the Rota decreed that the matter should be referred to the diocesan bishop (20 November 2009); 5. a priest accused the Cardinal of Vienna, several bishops, and various other persons, of words and actions against the teaching of the Catholic Church on the defence of human life and other matters: the case fell outside the Rota's competence, as it is for the Roman Pontiff alone to judge Cardinals (canon 1405 §1, 2º) and bishops in penal cases (canon 1405 §1, 3º), and the Rota may only judge at first instance dioceses and other ecclesiastical persons which have no superior other than the Roman Pontiff (canon 1405 §3, 3º) and not other physical ecclesiastical persons or lay faithful (16 December 2009). One other decree accepted that the Rota, on account of special circumstances, could reserve to itself a first instance case from the Greek Melkite Church (6 August 2009).

### 1430-1431

**AA XVI (2009-2010), 229-244: Hugo H. Capello: El promotor de justicia en el proceso penal canónico.** (Article)

C.'s study of the role and function of the promoter of justice deals first of all with the penal process as the wider frame of reference in which he is going to examine the promoter's duties and obligations. He analyses his part in the preliminary investigation (canons 1717-1719), the process itself (canons 1720-1728) and the action for damages (canons 1729-1731). He considers the juridical character of the promoter of justice and the notion of the public good, and concludes with a look at some of his more important duties and obligations.

### 1438-1441

**AnC 5/2009, 79-99: Ryszard Sztychmiler: Trybunał metropolitalny II instancji (= The Metropolitan Tribunal of Second Instance).** (Article)

S. states that the main task of canon law is to help believers to gain salvation by protecting their rights. That is also the responsibility of the tribunals of the Church. They are fulfilling their vocation mainly by declaring annulments. This article is concerned with the metropolitan tribunal of second instance. It starts by describing the tribunal and goes on to deal with the general manner of functioning of second instance tribunals. S. then looks in more detail at appeals, recourses, new grounds of nullity of marriage, the examination of witnesses, the collection of evidence, and other aspects. His conclusion is that canon law imposes high standards on the second instance tribunals. Their supervision is a very important duty of the metropolitan.

### 1439

**ACR LXXXVIII 1/11, 116-126: Australian Catholic Bishops Conference & New Zealand Catholic Bishops Conference: Decree of Establishment of Tribunals of Second Instance in Australia and New Zealand.** (Documents)

In 1953, the Holy See replaced diocesan tribunals in Australia with provincial (regional) tribunals, and these five provincial tribunals were directed to appeal to each another in a round-robin system for second instance. As the appeal system proved unsatisfactory, in 1974, with the approbation of the Holy See, a national tribunal of appeal was established by the Australian Catholic Bishops Conference; and the New Zealand Catholic Bishops Conference received permission for its provincial regional tribunal to use the Australian Second Instance Tribunal as its second instance tribunal. The system functioned most successfully until the early 1990s, when the Apostolic Signatura raised objections that the Tribunal of Appeal was formed from the most experienced and qualified personnel of the six provincial tribunals. It eventually insisted that the National Second Instance Tribunal be suppressed. The objection was that complete separation of personnel was not observed in hierarchically-related tribunals, despite the strictly-observed convention that no personnel at the Appeal Tribunal were ever assigned to cases that originated in their own first instance tribunals. In Australia, there are 28 Latin Church dioceses grouped into five ecclesiastical provinces. New Zealand is a single province of six dioceses. As the provinces comprise varying numbers of dioceses (Sydney – 11; Adelaide – 3), the old round-robin system would be unworkable, so a system was devised where cases are assigned in second instance to other tribunals based on a strict protocol number system. Given here, together with the actual Decree of Establishment dated 12 May 2010, are the decree of *recognitio* from the

Signatura (13 July 2010), an English translation of the Signatura's decree, and the Decree of Publication of the Decree of Establishment effective 1 March 2011.

### 1442-1444

**QSR 20 (2010), 153-187: Hanna Alwan: L'evoluzione storico-giuridico della competenza della Rota Romana circa le cause delle Chiese orientali.** (Article)

See above, CCEO canons 1059-1063.

### 1443-1444

**AA XVI (2009-2010), 361-418: Fernando Moreno Diehl: Introducción a la lectura de los decretos del tribunal de la Rota Romana del año 1993, publicados en el 2005, en el tomo XI, bajo el título de Decreta.** (Article)

This long article gives the background to and commentary on each of the 39 decrees of the Rota for the year 1993, published in 2005 (40 others were issued but not published). M.D. divides them under the following headings: validity of first instance sentence; validity of both first and second instance sentences; validity of decree of confirmation; nullity of first instance sentence; nullity of first instance sentence and decree of confirmation; nullity of both first and second instance sentences; remediable nullity of second instance sentence; conformity of sentences; admission to ordinary examination in a new instance; refusal to admit to a new instance; refusal to admit a new presentation of the case; admission to a new presentation of the case; competence of the Rota in revoking free legal aid; the jurisdiction of a particular Rotal *turnus*; the right of appeal; confirmation of abatement of the case; confirmation of rejection of the *libellus*; confirmation of out-of-court settlement; granting of a pension; prescription of penal action. M.D. offers his article as a demonstration of the diligent and varied work undertaken by the Rota and as an aid to anyone wishing to locate or study any particular type of decree contained in the volume in question.

### 1443-1444

**QSR 20 (2010), 43-82: Relazione sull'attività della Rota Romana nell'anno giudiziario 2009.** (Report)

Section I of this 2009 Report on the activity of the Roman Rota contains statistical data on the Rotal College and Rotal personnel, together with details of

causes pending; petitions received and cases finalized; sentences and decrees issued; free legal aid granted; visits to the Rota by tribunal workers, lawyers and other groups from several countries; publications; and the activity and composition of the *Studio Rotale*. Section II provides a summary of 2009 Rotal jurisprudence relating to matrimonial impediments (copulative impotence); consensual incapacity; defects of consent (total simulation; partial simulation; error concerning the person; error concerning a quality directly and principally intended; deceit; error determining the will; condition; force and grave fear); separation of the spouses; causes involving disputed rights (in one case, the right to a procession in Holy Week; in another, the right to damages for alleged defamation); and causes dealt with under canon 1682 §2 (decrees of confirmation; decrees admitting the case to ordinary examination). Section III summarizes 2009 Rotal jurisprudence relating to procedural matters (acceptance or rejection of the petition; admission of new grounds; admissibility of appeal; plaint of nullity; conformity of sentences; new examination of the cause; miscellaneous decrees). Section IV gives details of decrees issued by the Dean of the Rota. Section V contains a detailed breakdown of the data relating to causes examined during the year.

### 1443-1444

**QSR 20 (2010), 93-98: Velasio de Paolis: Il giudice e l'uomo.** (Conference presentation)

As part of a tribute to the Dean of the Rota, Bishop Antoni Stankiewicz, on the occasion of his 75th birthday, de P. talks of the human dimension of the judge: in particular, the judge's culture, impartiality, love for justice and truth, and respect for the grandeur and dignity of the human person. He mentions the inspiration which Cardinal Jullien provided for Bishop Stankiewicz, and sets out some aspects of the personality and formation of Bishop Stankiewicz himself.

### 1443-1444

**QSR 20 (2010), 231-242: Decreti del Decano della Rota Romana.** (Documents)

See above, canon 1405.

### 1445

**Comm 42 (2010), 381-388: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura**

**Administrativa": Quintum canonum Schema de Procedura Administrativa a relatore paratum post Consultorum Sessionem diebus 4-6 mensis Novembris 1971 habitam.** (Report)

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

### 1445

**Comm 42 (2010), 389-395: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Commercium epistularum cum Secretaria Status quoad iuris redigendum Schema "De Procedura Administrativa".** (Report)

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

### 1445

**Comm 42 (2010), 396-402: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Schema canonum de procedura administrativa.** (Report)

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

### 1445

**Comm 42 (2010), 403-411: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Brevis relatio de animadversionibus quae factae sunt ad schema de procedura administrativa.** (Report)

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

### 1445

**Comm 42 (2010), 412-436: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Specialis Commissio Pontificia Coetus Studii "De Procedura Administrativa". Sessio III – Series Altera – diebus 5-7 mensis februarii 1973 habita.** (Report)

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

### 1445

**IE XXII 3/10, 629-631: Supremo Tribunale della Signatura Apostolica: Prot. n. 42902/09 CG. Nullità del matrimonio. Ricorso contro la reiezione del *novum examen* da parte della Rota Romana. Decreto del Prefetto in Congresso, 11 settembre 2009.** (Decree)

See below, canon 1644.

### 1445

**IE XXII 3/10, 633-647: Supremo Tribunale della Signatura Apostolica: Prot. n. 38982/06 CG. Nullità del matrimonio. Ricorso contro la reiezione del *novum examen* da parte della Rota Romana. Decreto del Prefetto in Congresso, 25 settembre 2009 (con *nota* di Massimo del Pozzo e Federico Marti, *Il giusto rigore della Segnatura nella reiezione del ricorso contro il diniego del nuove esame della Rota*).** (Decree and commentary)

See below, canon 1644.

### 1453

**REDC 67 (2010), 741-771: Carmen Peña García: Derecho a una justicia eclesial rápida: sugerencias *de iure condendo* para agilizar los procesos canónicos de nulidad matrimonial.** (Article)

See below, canons 1671-1691.

### 1481

**REDC 68 (2011), 85-110: Carmen Peña García: El *ius postulandi* de las partes: ¿actuación del actor por sí mismo o asistido de abogado?** (Conference presentation)

In marriage nullity cases the parties retain the right to act before the court unassisted by an advocate unless the judge considers necessary the services of a procurator, who will actually represent the party before the court, or of an advocate, who will provide professional and technical advice and support. P.G.'s presentation examines the pros and cons connected with the parties' decision to act with or without an advocate. There are important advantages in having an advocate who can be present at the examination of the other party, witnesses and experts, and who has a right to view the as yet unpublished *acta* and documents, even those held secret. The unaided party does not have such rights and can therefore be at an obvious disadvantage in making the case or defending his rights. The principle of equality of the parties, upheld both in the CIC/83 and in *Dignitas Connubii*, is much better guaranteed when both parties can rely on the service of an advocate. As the function of advocates can be crucial to the outcome of a case, it is necessary that they be well versed in marriage law and the nullity process; canon 1483 requires that the advocate be "a doctor in canon law, or otherwise well qualified". Despite the option for a party to decide to stand before the court unaided, the *ius postulandi* is undoubtedly best served with the help of an advocate.

### 1488-1489

**QSR 20 (2010), 189-208: Graziano Mioli: Qualche riflessione sulle sanzioni disciplinari a carico degli avvocati e sulle autorità competenti ad irrogarle.** (Article)

M. analyses the current law on disciplinary sanctions to be applied to advocates and on the authority competent to impose them. The principal sanctions are warnings, fines, suspensions, and removal from the register of advocates, as well as "other suitable penalties" (canon 1489), which may include penances, unpaid work for a certain period, etc. For advocates in the diocesan tribunals the competent authority is the bishop in charge of the tribunal (canon 1488 §1; canon 1146 §1 of the CCEO refers to "the authority to whom the tribunal is immediately subject"). For advocates in interdiocesan tribunals the competent authority is the *coetus* of bishops (episcopal conference, if at second instance) or the bishop designated by them (canon 1423 §1; cf. CCEO canons 1067 §4, 1068 §3). For advocates in diocesan and interdiocesan tribunals dealing with marriage nullity cases, *Dignitas Connubii*, article 111 §2, specifies the bishop moderator or *coetus* of bishops. For Rotal advocates, the Rotal College or

Apostolic Signatura have competence; the Signatura also has competence for advocates of the Roman Curia. Removal from the *munus* of advocate to the Holy See is the exclusive competence of the Cardinal Secretary of State, after hearing the Commission responsible for the register of advocates of the Roman Curia. M. also deals with other particular situations that may arise. He feels that this is an area of law which could benefit from a more unified and systematic treatment.

### 1505-1506

**AA XVI (2009-2010), 59-90: Alejandro W. Bunge: El escrito de demanda en las causas de nulidad matrimonial (a propósito de su rechazo *in limine*).** (Article)

Although the title of B.'s article focuses on the initial rejection of the petition, his detailed analysis deals with all the other aspects surrounding its presentation and consideration. After pointing out the exceptional nature of any rejection of a petition, on account of its refusal to allow the petitioner's request for the safeguarding of his rights even to enter the judicial process, B. considers the gravity of such a decision and explains the norms covering the necessary conditions regarding the content, form and other requisites for a properly presented petition; this should reduce to a minimum the number of possible rejections. He then goes on to analyse the reasons and motives which would permit such rejections, the formal requirements of competence on the part of the tribunal, and the content of the petition itself (*fumus boni iuris*). He outlines the situations and conditions which not only allow but demand the rejection of the petition by the tribunal and the means open to the petitioner for recourse against such a decision. He ends by reminding us that the rejection of a petition should always be a truly rare occurrence.

### 1526-1586

**Ap LXXXIII 2 (2010), 459-496: Elena Di Bernardo: Il ruolo della Logica nel contesto probatorio dell'accertamento dei fatti nel processo canonico.** (Article)

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

### 1598

**REDC 68 (2011), 27-84: Rafael Rodríguez Chacón: La publicación de las actuaciones. Intervención de las partes y los abogados.** (Conference presentation)

R.C.'s presentation has as its theme the publication of the *acta* in the marriage nullity process. He has a special focus on the right of defence as enshrined in canon 1598, noting that the wording in parts of *Dignitas Connubii* (articles 229-236) can lead to problems of interpretation of this most basic of rights. He casts a critical eye over various articles of this Instruction which seem to undermine that right and the relationship of trust which should exist between advocate and client. He carefully analyses the faculties given to the parties and their advocates to examine the *acta* and obtain copies of the same, and the possibility of withholding some part of the *acta*, bearing in mind that properly these are rights of the party alone and only derivatively of their advocate. He looks closely at the implications of the right of defence for the irremediable nullity of a sentence.

### 1598

**SCL VI (2010), 389-396: Apostolic Tribunal of the Roman Rota: Irremediable Nullity of a Sentence due to Violation of the Right of Defence. Decree *coram* Arokiaraj, 28 May 2010 (India).** (Decree)

See below, canon 1620 7º.

### 1608

**IE XXII 3/10, 651-671: Tomás J. Aliste Santos: Relevancia del concepto canónico de "certeza moral" para la motivación judicial de la "quaestio facti" en el proceso civil.** (Article)

A.S. explains why the canonical concept of moral certainty, connected as it is with the search for truth – *adaequatio intellectus et rei*, in Thomistic terms – has much to offer secular legal systems, whether these be of civil law or common law tradition.

## 1608

**SCL VI (2010), 209-268: William L. Daniel: The Notion of Moral Certitude in Canonical Tradition and in the Dynamism of the Judicial Process.** (Article)

D. begins with an extensive bibliography on this question as he investigates the development of the concept of moral certainty from Roman law through to the teaching of Pius XII and John Paul II and the CIC/83. He then considers its juridical nature, object and scope. Moral certitude is not simply the judge's personal conviction but must be based on objective data contained in the acts and proofs of the case. However it has a subjective element in the free evaluation of the proofs. This understanding has implications for the whole process: for the defender of the bond, the promoter of justice and advocates, as well as the judge. D. concludes by showing how it also applies in different ways to every stage of the instruction of a case, including the decision and appeal.

## 1620 7°

**SCL VI (2010), 389-396: Apostolic Tribunal of the Roman Rota: Irremediable Nullity of a Sentence due to Violation of the Right of Defence. Decree *coram* Arokiaraj, 28 May 2010 (India).** (Decree)

The second instance sentence is declared null on the grounds that the petitioner was not allowed to inspect additional material introduced at the appeal stage. The *ponens* had not considered that it added anything significant and so had not ordered publication of the acts. A second element, lack of a joinder of the issue at second instance, was held not to be invalidating.

## 1620 7°

**SCL VI (2010), 397-401: Apostolic Tribunal of the Roman Rota: Irremediable Nullity of a Sentence due to a Violation of the Right of Defence. Decree *coram* Monier, 27 November 2009 (Madras-Mylapore, India).** (Decree)

An affirmative first instance decision was given a negative decision at second instance without any supplementary instruction and without being remitted to an ordinary examination. The appeal court acted in contempt of the law, neither citing the parties nor agreeing the issue, thus denying both parties, but in particular the petitioner, the right of defence.

### 1644

**IE XXII 3/10, 629-631: Supremo Tribunale della Signatura Apostolica: Prot. n. 42902/09 CG. Nullità del matrimonio. Ricorso contro la reiezione del *novum examen* da parte della Rota Romana. Decreto del Prefetto in Congresso, 11 settembre 2009.** (Decree)

After a negative double sentence regarding nullity of marriage, a new examination of the cause was requested from the Rota, and was rejected *in limine* by the *ponens* on 5 November 2008. On 14 July 2009, invoking canon 1445 §1, 2º of the CIC/83 and article 33 3º of the *lex propria* of the Apostolic Signatura, the petitioner made recourse to the Signatura. On 11 September 2009, the Prefect issued a decree stating that in the particular case there was no recourse under article 122 2º of *Pastor Bonus* (applicable in cases where the Rota has denied a new examination of the cause), as the recourse had not first been addressed to the corresponding Rotal *turnus*, and in any event was out of time. However, the petitioner could still challenge the decision of the *ponens* of 5 November 2008 before the corresponding Rotal *turnus*.

### 1644

**IE XXII 3/10, 633-647: Supremo Tribunale della Signatura Apostolica: Prot. n. 38982/06 CG. Nullità del matrimonio. Ricorso contro la reiezione del *novum examen* da parte della Rota Romana. Decreto del Prefetto in Congresso, 25 settembre 2009 (con *nota* di Massimo del Pozzo e Federico Marti, *Il giusto rigore della Segnatura nella reiezione del ricorso contro il diniego del nuove esame della Rota*).** (Decree and commentary)

After a double affirmative sentence for exclusion of the *bonum prolis* on the part of the male petitioner, the female respondent had recourse to the Roman Rota to obtain a new examination of the case. The request was rejected by the Rota on 6 October 2005, and the respondent presented a recourse to the Apostolic Signatura, together with some new arguments. The Signatura's decree of 25 September 2009, dismissing criticisms of the manner in which the case was dealt with at the two grades of judgment, confirmed that the Rota's rejection of the request for a new examination was well founded. The additional arguments brought by the petitioner could not be considered either *grave* or *new*. The commentary on this decree, which also takes into account the decree referred to in the preceding entry, points out that these decisions shed light on the application of the recent *lex propria* of the Signatura and provide criteria and indications that are useful for all who are involved in tribunals. The authors look at the procedural aspects in the light of a Declaration of the Rotal College on 27 February 2009 regarding the Signatura's competence in relation to the rejection by the Rota of a *nova causae propositio*. They then evaluate the

conditions for granting a *nova causae propositio*; concluding that the Signatura's praxis safeguards against the possibility of laxness or instrumentalization of the use of this means of challenging a sentence.

### 1671

**Per 99 (2010), 627-679: G. Paolo Montini: Il matrimonio tra acattolici di fronte al giudice ecclesiastico. Alcune note sull'article 3 §2 dell'istruzione *Dignitas Connubii*.** (Article)

According to article 3 §2 of the Instruction *Dignitas Connubii*, "an ecclesiastical judge hears only those causes of the nullity of marriage of non-Catholics, whether baptized or unbaptized, in which it is necessary to establish the free state of at least one party before the Catholic Church, without prejudice to article 114". In this presentation to the 45th annual Colloquium of Canon Law organized by the Canon Law Faculty of the Pontifical Gregorian University, M. explores many of the issues raised by this provision of law. He examines the history of the elaboration of the text; he considers the context of the paragraph, relating it to article 3 §1 and to article 4, as well as teasing out the implications for the marriages of baptized non-Catholics and those of the non-baptized. M. shows that, faced with a request by such parties, an ecclesiastical judge or tribunal does not have the liberty of refusing to deal with the case. He illustrates this point by referring to several decrees of the Apostolic Signatura both before and after the promulgation of the Instruction. M. goes on to consider the precise significance of the major terms contained in article 3 §2 in an effort to present a correct understanding of the scope and purpose of the norm.

### 1671-1691

**REDC 67 (2010), 741-771: Carmen Peña García: Derecho a una justicia eclesial rápida: sugerencias *de iure condendo* para agilizar los procesos canónicos de nulidad matrimonial.** (Article)

This article poses the question of how adequate is present procedural law in the marriage nullity process for the expeditious and prompt processing of cases. While justice must always be safeguarded and the right of defence respected, P.G. offers a total of twenty suggestions which, she maintains, without altering in any substantial way the current procedural norms, could lead to a more flexible treatment and timely conclusion of many such cases.

### 1673

**SCL VI (2010), 437-444: Augustine Mendonça: To Which Tribunal May a Non-Catholic Present His Petition for Declaration of Nullity of His Marriage with a Catholic?** (Article)

Suppose a baptized Protestant marries an Eastern Catholic and then divorces. He can approach the tribunal of the Eastern eparchy of the place of contract or domicile of the respondent, and also the Latin tribunal of his own domicile with permission from the judicial vicar of the eparchy of the respondent's domicile, but could he approach the Latin tribunal of the place of contract, or another territorially co-extensive Eastern eparchy? Because the Eastern eparchy of the place of contract has exclusive jurisdiction in this case the Latin tribunal would be absolutely incompetent. The question of domicile of the respondent would depend on the facts and whether the respondent lived within a Latin diocese or Eastern eparchy. The forum of the domicile of the petitioner would require the fulfilment of the usual conditions, but the petitioner could choose either the Latin or the Eastern tribunal. The same would be true for the forum of proofs. Any tribunal would have to follow its own procedural law, but the substantive law applying to the parties.

### 1674

**AA XVI (2009-2010), 311-322: Mónica Mercedes Villamil: El actor y el convenido en la Instrucción *Dignitas Connubii*.** (Article)

V.'s theme concerns the place of the petitioner and respondent in the marriage nullity process as found in *Dignitas Connubii*. She considers who may impugn the validity of a marriage (the spouses, obviously, whether baptized or not, but also a third party for a grave reason after the death of one of the spouses). She examines the consequences of the absence from the process of one of the parties and the possibility of a joint petition for nullity by both spouses.

### 1674

**Per 99 (2010), 627-679: G. Paolo Montini: Il matrimonio tra acattolici di fronte al giudice ecclesiastico. Alcune note sull'article 3 §2 dell'istruzione *Dignitas Connubii*.** (Article)

See above, canon 1671.

## 1674

**Per 100 (2011), 65-129: Edward N. Peters: On the impugnation of a marriage by a promoter of justice on the basis of *crimen*.** (Article)

See above, canon 1090.

## 1682

**SCL VI (2010), 397-401: Apostolic Tribunal of the Roman Rota: Irremediable Nullity of a Sentence due to a Violation of the Right of Defence. Decree *coram* Monier, 27 November 2009 (Madras-Mylapore, India).** (Decree)

See above, canon 1620 7º.

## 1684

**SCL VI (2010), 269-334: Augustine Mendonça: Juridical and Pastoral Aspect of a Judicial *Vetitum.*** (Article)

M. considers the following subjects: the notion and nature of a *vetitum*; the imposition and removal of a *vetitum*; Rotal jurisprudence on both the imposition and lifting of a *vetitum*; pastoral reflections on the *vetitum.* In his view a veto imposed or lifted by a diocesan bishop is an administrative act and can be challenged administratively, whereas that imposed or lifted by a judge is a judicial act and can be challenged only in a judicial way. However the execution of this is an administrative act using executive power. *Dignitas Connubii*, article 251, now provides more definite guidance on its use. A *vetitum* imposed at first instance cannot be considered definitive until confirmed by a second conforming sentence. Where it is imposed in a case of simulation or deceit the person competent to lift it is always the Ordinary of the place where the marriage is to be celebrated. M. then examines Rotal jurisprudence on both the imposition and lifting of a *vetitum*. Underlying both acts is a concern for the salvation of souls and the good of the spouses, in particular the proposed new spouse. From a pastoral point of view it allows for suitable preparation to enable the person concerned to enter a valid marriage.

### 1684

**SCL VI (2010), 383-388: Apostolic Tribunal of the Roman Rota: Removal of a *Vetitum*. Decree *coram* Bottone, 20 January 2009 (Italy).** (Decree)

This decree lifts the *vetitum* imposed on the woman in the case adjudicated on 15 January 2008 before the same *ponens* and given an affirmative decision on the ground of inability to assume. The psychological report leading to the lifting of the *vetitum* was prepared by the same expert who had assisted in the instruction of the case and attested to growth in maturity and new behaviour patterns.

### 1692-1707

**Piero Amenta: Administrative Procedures in Canonical Marriage Cases: History, Legislation and Praxis.** (Book)

See above, canons 1141-1155.

### 1717

**PS XLVI 136 (2011), 63-84: Mayong Andreas Acin – Isaias Tiongco: The Nature of Delict in Canon 1321: Its Implications on the Dismissal Process of Religious in Cases of Sexual Misconduct. Part II.** (Article)

See above, canon 1321.

### 1720

**IC 51 (2011), 69-101: Davide Cito: La pérdida del estado clerical *ex officio* ante las actuales urgencias pastorales.** (Lecture)

See above, canon 290.

### 1722

**Comm 42 (2010), 346-348: Congregatio pro Doctrina Fidei: Synthesis mutationum introductarum in M. P. *Normae de gravioribus delictis* reservatis Congregationi pro Doctrina Fidei.** (Document)

See above, canon 1395.

**1732-1752**

**Comm 42 (2010), 381-388: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Quintum canonum Schema de Procedura Administrativa a relatore paratum post Consultorum Sessionem diebus 4-6 mensis Novembris 1971 habitam.** (Report)

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

**1732-1752**

**Comm 42 (2010), 389-395: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Commercium epistularum cum Secretaria Status quoad iuris redigendum Schema "De Procedura Administrativa".** (Report)

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

**1732-1752**

**Comm 42 (2010), 396-402: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Schema canonum de procedura administrativa.** (Report)

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

**1732-1752**

**Comm 42 (2010), 403-411: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Brevis relatio de animadversionibus quae factae sunt ad schema de procedura administrativa.** (Report)

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

## 1732-1752

**Comm 42 (2010), 412-436: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Procedura Administrativa": Specialis Commissio Pontificia Coetus Studii "De Procedura Administrativa". Sessio III – Series Altera – diebus 5-7 mensis februarii 1973 habita.** (Report)

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

## EXCHANGE PERIODICALS

- African Ecclesial Review
- Angelicum
- Annales Canonici
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Apollinaris
- Archiv für katholisches Kirchenrecht
- Boletin Eclesiastico de Filipinas
- Bogoslovni vestnik
- 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
- Iustitia: Dharmaram Journal of Canon Law
- 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
- Revista Mexicana de Derecho Canónico
- Revue Théologique de Louvain
- Revue de Droit Canonique
- Salesianum
- Studia Canonica
- Studies in Church Law
- Studium Generale Marcianum
- Studium Ovetense
- Teología y Vida
- Theologische-praktische Quartalschrift
- Theologica Xaveriana
- Vida Religiosa
- Vidyajyoti

## LIST OF ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

| | |
|---|---|
| AA | Anuario Argentino de Derecho Canónico, Buenos Aires – V. Rev. John McGee, Girvan, Ayrshire. |
| ACR | Australasian Catholic Record, New South Wales – V. Rev. Ian B. Waters, Melbourne. |
| AkK | Archiv für katholisches Kirchenrecht, Paderborn – Abstracts supplied by publisher. |
| AnC | Annales Canonici, Krakow – Abstracts supplied by publisher. |
| Ang | Angelicum, Rome – Editor. |
| Ap | Apollinaris, Rome – Rev. Andrew Cole, Nottingham. |
| Comm | Communicationes, Rome – Rev. Mgr. Gordon Read, Colchester, Essex. |
| Dionysiana | Dionysiana Review, Constantza, Romania – Anne Bamberg, Strasbourg. |
| EE | Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher. |
| ELJ | Ecclesiastical Law Journal, London – Paul Barber (London). |
| ETJ | Ephrem's Theological Journal, Satna, India – Editor. |
| IC | Ius Canonicum, Pamplona – Abstracts supplied by publisher. |
| IE | Ius Ecclesiae, Pisa-Rome – Rev. Joseph D. Gabiola, London. |
| Ius | Iustitia: Dharmaram Journal of Canon Law – Rev. Mgr. Gordon Read, Colchester, Essex. |
| LJ | Law and Justice, Worcester – Abstracts supplied by publisher. |
| N | Notitiae, Rome – Rev. Mgr. Gordon Read, Colchester. |
| Per | Periodica, Rome – Rev. Aidan McGrath OFM, Rome. |
| PS | Philippiniana Sacra, Manila – Abstracts supplied by publisher. |
| QSR | Quaderni dello Studio Rotale, Vatican City – Editor. |
| REDC | Revista Española de Derecho Canónico, Salamanca – V. Rev. John McGee, Girvan, Ayrshire. |
| SCL | Studies in Church Law, Bangalore – Rev. Mgr. Gordon Read, Colchester. |

## BOOKS RECEIVED

- Piero AMENTA: *Administrative Procedures in Canonical Marriage Cases: History, Legislation and Praxis*, Wilson & Lafleur (Gratianus series), Montreal, 2011, xxiii + 258pp., ISBN 978-2-89127-981-9 [see above, canons 1141-1155]
- Anne BAMBERG: *Procédures matrimoniales en droit canonique*, Ellipses, Paris, 2011, 128pp., ISBN 978-2-7298-6566-5 [see above, canons 1400-1707]
- Guillaume DERVILLE: *Eucharistic Concelebration: From Symbol to Reality*, Wilson & Lafleur (Gratianus series), Montreal, 2011, xii + 106pp., ISBN 978-2-89689-009-5 [see above, canon 902]
- Roberto SARTOR: *Le convenzioni tra il vescovo diocesano e il superiore di un istituto missionario a norma del can. 790 §1, 2º del CIC*, Pontificia Università Gregoriana, Rome, 2011, 377pp., ISBN 978-88-7839-205-2 [see above, canon 790]