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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

AnC 8 (2012), 109-123: Marek Zaborowski: Małżeństwo i rozwód w Kościele prawosławnym – aspekt prawno-kanoniczny (= Marriage and divorce in the Orthodox Church – legal and canonical aspects). (Article)

Z. deals briefly with legal issues relating to marriage in the Orthodox Church. He points out fundamental differences regarding sacramental marriage in the Latin and Orthodox Churches. His article is divided into two main parts. The first discusses the legal requirements for marriage, that is, marriage formalities and the main obstacles. The second looks at the question of divorce in the Orthodox Church: its form and circumstances. Through his analysis of these issues he demonstrates the differences and similarities between marriage-related legislation in both Christian Churches.

AnC 8 (2012), 141-160: Beata Fober: Nierozerwalność małżeństwa w luterańskim porządku prawnym ze szczególnym uwględnieniem prawodawstwa Kościoła Ewangelicko-Augsburgskiego w Rzeczpospolitej Polskiej (= Indissolubility of marriage in the Lutheran legal order with focus on legislation of the Evangelical Church of the Augsburg Confession in Poland). (Article)

F. sets out the Lutheran point of view on the indissolubility of marriage in the light of works of theologians and lawyers. She looks more closely at the fact that the Evangelical Church of the Augsburg Confession in Poland allows divorce, and attempts to help understand the position from a Catholic perspective.

Ap LXXXIV 1 (2011), 91-113: Luis M. Bombín: Decidere *per criteri*: il Giudizio in *Common Law.* (Article)

B. differentiates between civil law, prevalent in continental Europe, and common law, which is followed by most countries with a historical connection to the United Kingdom. He takes as his premise the role of the judge: in civil law, he or she determines the general norm which is applicable in a particular situation, whereas in common law the judge has a much more prominent role in the creation of law, particularly through the setting of precedents by the Supreme Court (formerly the House of Lords) and the Court of Appeal. B. examines the role of statute law, statutory interpretation and equity, before concluding that the differences between common law and civil law are becoming more imperceptible, partly due to the UK's membership of the European Union.

ELJ XIII 3/11, 351-352: Mark Hill: Twelfth Colloquium of Anglican and

Roman Catholic Canon Lawyers. (Conference)

The Twelfth Colloquium of Anglican and Roman Catholic Canon Lawyers took place from 3 to 6 March 2011, at the Pontifical Gregorian University in Rome. The Colloquium fell in two parts, the first of which was an exchange of views on the Apostolic Constitution *Anglicanorum Coetibus*, including a discussion on the concept of "Anglican Patrimony". The discussions were attended by representatives of the Pontifical Council for Christian Unity. The second phase was the presentation of papers on particular practical aspects of ecumenism at a dynamic, grass-roots level.

ELJ XIV 3/12, 400-407: Christopher Hill: Ecclesiological and Canonical Observations on *The Principles of Canon Law Common to the Churches of the Anglican Communion*. (Article)

A small working group of the Ecclesiastical Law Society convened by H., its President and Anglican Bishop of Guildford, examined the recent publication resulting from the work of the Anglican Legal Advisers Network. This document attempted to distill 100 principles which, in the view of those advisers, can be deduced from the canons of all Anglican Churches. Both the 100 principles contained in the document, and the methodology used to arrive at them, were subject to scrutiny. In general, the working group commended the work, while highlighting some inevitable questions, implications and indications for further work needed. The *Principles* document was seen in the broad tradition of Western canon law – attempting to discover and develop an Anglican *ius commune* through the process of attempting a *Concordia discordantium canonum* within the Anglican context. It will also serve as a useful tool for comparative canon law.

Proc CLSA 2010, 175-188: Patricia M. Dugan: Advocacy: Civil and Canon Law Issues. (Lecture)

D. considers some civil law issues that differ notably in canon law, including character testimony, expert testimony, statutes of limitations/prescription, jurisprudence/case law, the confrontation and jury clauses of the US Sixth Amendment, hearsay, and moral certitude.

Compilations

FCan VI/2 (2011), 175-194; VII/1 (2012), 119-144: José Oliveira Branquinho: Jurisprudência dos Tribunais Superiores (2008-2009). (Compilation)

Gathered together in this two-part compilation are summaries of several Portuguese court decisions from 2008 and 2009, dealing with canon law,

concordat law and Portuguese law, and at times their intersection, especially in relation to religious freedom; as well as disputes concerning the *Misericórdias* (see *Canon Law Abstracts*, nos. 106, p. 53; 107, p. 52); patrimonial law affecting the Catholic Church; matrimonial law (the competent forum and review of decisions); inheritance law; and employment law in relation to a teaching contract at the Portuguese Catholic University.

IC 52 (2012), 737-774: José Ignacio Rubio López: Crónica anual de Derecho eclesiástico en los Estados Unidos (2011-2012). (Report)

R.L. provides details of the 2011-2012 United States judicial year in respect of cases involving religious freedom and other ecclesiastical law issues. He then turns his attention to government interventions and legislative initiatives. He finishes with a list of the most interesting books, articles and symposia on these topics during the period in question, and a short section on other relevant news items.

Jean LeBlanc: Dictionnaire biographique des évêques catholiques du Canada. (Book)

This is the second edition of a biographical dictionary, first published in 2002, of Catholic bishops in Canada from 1658 to 2012. The first part of the book (pp. 11-211) provides a chronology of the establishment of ecclesiastical circumscriptions in Canada; a list of the dioceses and other episcopal jurisdictions in Canada and the bishops who have served in each one, with corresponding dates; and details of the Holy See's representatives in Canada, with relevant biographies. The second part (pp. 213-1140) contains the biographies of all Canadian bishops past and present, including the special cases mentioned in appendix I of Part III (see next sentence). The third part (pp. 1141-1287) contains six appendices: I: special cases (bishops of Canadian nationality or origin abroad; foreign bishops having lived or worked in Canada before or during their episcopate; and cases of refusal of the episcopate, or of presence on a *terna*); II: titular sees; III: bishops of the regular clergy; IV: types of Canadian episcopate (under the French and English regimes); V: episcopal mottos; VI: addenda (recent episcopal appointments). (For bibliographical details see below, Books Received.)

Ecclesiology

ELJ XIV 2/12, 164-194: Robert Ombres: Canon Law and Theology. (Article)

The relation of religious law to theology is basic to any faith community. O. examines the relation of canon law to theology through Papal allocutions to the judges and other members of the Roman Rota. There are significant British links

to the Rota before and after the Reformation. The 2009 allocution by Benedict XVI is the focus for considering the theological and normative authority of such allocutions. Pius XII has been one of the few canonists to become Pope in modern times, and the co-ordinated set of allocutions from 1945 to 1949 given by him to the Rota is therefore taken as the focus for reflecting on the nature and functions of canon law today. This involves the consideration of both theology and law, including secular law. The ecclesiological character of canon law emerges as central.

ELT 9-10 (2010-2011), 9-19: Joseph Kallarangatt: An Ecclesiology of Communion from the Eastern and Ecumenical Perspectives. (Article)

K. presents the dimensions of the communion ecclesiology rediscovered by the Second Vatican Council. Attempting to view a particular individual Church as "the Church" is against the spirit of the Council. K. states that all the Churches, whether Eastern or Western, are of equal dignity so that none of them is superior to the other by reason of rite. This equality is to be upheld by all. All Churches should naturally have the right to equal opportunities in evangelization and pastoral care. Each individual Church is wholly the Church but not the whole Church. A Church becomes a full Church only when it is in communion with the ecumenical Christian communion and with the centre of that communion, the Church of Rome.

Ecumenism and interreligious dialogue

AnC 8 (2012), 69-80: Piotr Kroczek: Czy można rozdzielić prymat nauczania od prymatu jurysdykcji? Perspektywa ekumeniczna (= Is it possible to separate the primacy of jurisdiction from the primacy of teaching? Ecumenical perspective). (Lecture)

See below, canon 331.

Comm 44 (2012), 121-125: A. Palmieri: Articulus explanans quaestionem primariam de primatu ex cuius exitu pendet totus dialogus theologicus inter Ecclesiam Catholicam et Ecclesiam Orthodoxam, a Rev.do Andrea Palmieri conscriptus. (Article)

P. reports on the continuing dialogue with the Orthodox on the role of primacy in the Church during the first millennium. Discussions in Vienna in 2010 had not reached the stage where it was possible to issue an agreed document. Work continued in 2011 and had resolved some but not all the outstanding questions

ELJ XIV 2/12, 195-234: Norman Doe: Juridical Ecumenism. (Article)

The ecumenical movement seeks to achieve Christian unity through greater visible communion between the separated (or divided) institutional Churches of Christianity worldwide. The practice of ecumenism and ecumenical theology have developed principally at the doctrinal and theological levels. The juridical instruments of Churches have not thus far played a central role in ecumenical discourse – they are occasionally seen as the "missing link" in ecumenism. D. examines for the first time, in a wide comparative compass, the treatment of ecumenism in the juridical instruments of separated Christian traditions and their institutional Churches worldwide. He proposes that these instruments should have a more prominent place in ecumenical practice and theology in so far as they tell us much about the scope of both the commitment of Churches to and their participation in the ecumenical enterprise. Juridical instruments define what ecclesial communion is possible and what is not, either enabling or restricting the development of greater visible communion between separated Churches in the quest for Christian unity. As such, this "juridical ecumenism" offers both a theoretical and a practical framework for the global transformation of ecumenism to complement but not replace the current dominance of the doctrinal and theological focus in contemporary ecumenical method and practice.

ELT 9-10 (2010-2011), 86-110: Mathew Kochupurackal: Sharing Spiritual Activities and Resources between the Catholic Church and the Non-Catholic Churches. (Article)

Ecumenical principles find their concrete application in sharing spiritual activities and resources between Catholics and non-Catholics. This sharing may range from simple collaboration to sacramental sharing. In the first part of the article K. describes in general terms the areas of sharing between Catholics and non-Catholics, with reference to the CCEO and the Ecumenical Directory. In the second part he situates the theme in the context of Kerala. He deals with ecumenical relations between the Catholic Church on the one side and the Malankara Syrian Orthodox Church, the Malankara Orthodox Syrian Church and the Assyrian Church of the East on the other. He analyses various agreements that the Catholic Church has entered into with the non-Catholic Churches, such as the Agreement on Inter-Church Marriages and the Agreement on Sharing of Sacred Places.

Family issues

Markus Graulich – Jesu Pudumai Doss (eds.): Minori e Famiglia. Quali Diritti? (Book)

This book contains the proceedings of a conference on the rights of minors and

the family, held at the Pontifical Salesian University, Rome, in 2008. The topics dealt with were education and human rights (Vito Orlando); the relationship between the rights of children and those of the family (antinomy or integration?) (Gianni Ballarani); the relationship between the family and educational institutions (Gabriele Quinzi); the rights of minors in the Church's legislation (Jesu Pudumai Doss); minors in the canonical process (Giorgio De Giorgi); tribunals for minors (Bruno Acciarri): gender identity and recent challenges to the concept of family (Laura Palazzani); the family and the threat of "new human rights" (Markus Graulich). (For bibliographical details see below, Books Received.)

General introductions to canon law

Anne Bamberg: Introduction au droit canonique. Principes généraux et méthodes de travail. (Book)

This book is intended as an aid to those who are called to study and apply canon law, including those who work directly in the service of the Church, as well as students and researchers in theology, law and canon law. The book aims to explain and make use of the working methods and instruments that allow an understanding of the general principles governing the law of the Catholic Church. It is divided into three parts, dealing respectively with the history and foundations of canon law, general norms, and functions, obligations and rights. At the end of the course readers interested in canon law will be in a position to read and understand the canons, and to apply these methods in such a way as to facilitate deeper reflection, suitable for dealing with the various problems that arise, and for capturing the spirit of the legislator and being open to new lines of enquiry. The book addresses some of the more commonly asked questions: What are the laws in force and how does one identify their source?; How long has canon law been codified?; Are there other ecclesiastical laws?; What is meant by particular law or proper law?; May one freely interpret ecclesiastical laws?; What is the relationship with the teaching of the magisterium?; What is an ecclesiastical office?; What protections exist for the laity working in the service of the Church? In addition, the book offers advice and suggestions for further research. (For bibliographical details see below, Books Received.)

Law reform

BEF LXXXVIII 889/12, 89-204: D. Flores: Letter and Spirit: Recent Developments in Canon Law. (Address)

Drawing on Papal pronouncements from the past thirty years, F. considers the manner in which canon caw can rest on firm theological foundations while

responding to the changing circumstances of the reality of the people of God. Such continual updating of canon law will involve abrogating norms which have become antiquated, modifying those needing correction, interpreting those which seem doubtful, and filling *lacunae legis*. The criteria for this updating will always include the divine and human nature of *ius ecclesiae*, authentic Church teaching, the fundamental rights of the person, and the centrality in law of the Christian person in the Church. The supreme legislator will be assisted by the various dicasteries of the Roman Curia in this task of updating canon law. The published address concludes with a list of official publications from 2005 to 2012 which have legal effect.

ELJ XIV 1/12, 43-81: Stephen Slack: Synodical Government and the Legislative Process. (Article)

S. is Registrar and Chief Legal Adviser to the Church of England General Synod. He reviews the exercise of the legislative function of the General Synod of the Church of England over the last 25 years. Beginning with a summary of the principles of synodical government in the Church of England, he goes on to describe the establishment of the Synod, its composition and its functions. The different forms of legal provision available to the Synod in the exercise of its legislative function are then considered, followed by an account of the impact of the Human Rights Act, the procedures applicable to the conduct of legislative business and the role of Parliament in the legislative process. After an assessment of the general pattern of synodical legislation over the last 25 years, S. reviews the main areas of legislative change during that period. He ends with an assessment of possible areas for future legislative activity.

ELJ XIV 2/12, 235-255: John Rees: Covenant and Communion. (Article)

R. considers some of the controversies that have troubled the Anglican Communion during the past 25 years, and some of the approaches that the Churches and central Instruments of the Communion have used to maintain communion in the face of threatened division. In particular, he looks in detail at the terms of the proposed Anglican Covenant, its provenance and its legal significance. He points out the usefulness of the Covenant as a mechanism for resolving disputes between the Churches of the Communion, but questions the assumption that its adoption as, in effect, a contract between the Churches would of itself turn the Communion into a “two-tier” body, or change in a fundamental way the nature of the relationships between the Churches. Finally, he notes that communion between the Churches of the Anglican Communion, with or without the Covenant, consists (as it always has done) in a wide range of relationships at very many different levels, far beyond the central structures of the Communion as they have developed during the last 150 years.

IE XXIV 2/12, 381-400: George Nedungatt: The Eastern Code on the Apostolate of Religious needs Revision. (Article)

Whereas there is currently a project to revise the penal law of the CIC/83, there is no such corresponding project for the CCEO, in which penal legislation has perhaps benefited from hindsight. However, the latter Code is defective in another area, namely the legislation on religious. The almost complete lack of norms regarding the apostolate of religious as well as defective legislation on the formation of religious in title XII has already proved to be a source of practical problems. N. illustrates these defects and proposes a *schema* for a partial revision of the CCEO in these areas. Such a revision of both Codes can forestall the risk of a narrow concentration on the defects of one Code creating the impression that all was well with the other Code. In the light of the principle *Ecclesia semper reformanda*, it would seem proper that each of the "two lungs" of the Church were attended to on the fiftieth anniversary of the Second Vatican Council.

Proc CLSA 2010, 41-49: James Weisberger: The Renewal of Canon Law in the Spirit of a Church of Communion. (Lecture)

W. considers the role of the laity, beginning by relating some of the key ideas from Vatican II and then by looking at the actual ministries undertaken by lay people in the parishes of his diocese. He highlights the need for seminary formation to produce priests ready to work with an empowered laity and warns about the dangers of clericalism and the difficulties that can be faced by priests from other cultural backgrounds. He concludes by hoping that any reform of the Code can better implement a theology of communion in juridical concepts.

Legal theory

AkK 180 (2011), 370-388: Christoph Ohly: *Ius communionis*: Zur Aktualität eines sakramental-rechtlichen Schlüsselbegriffs. (Article)

The juridical-sacramental key concept of *communio* is, since Vatican II, part and parcel of the theological underpinning of the life and mission of the Church. The idea was taken up early on in German-speaking canon law circles and exhaustively debated in extensive studies. A consequence of this work has been to demonstrate Church law as *ius communionis*, which itself opens up a wide array of current questions. In this article, O., in an appreciation of the achievements of Prof. Dr Winfried Aymans, traces the essential elements of a canonical theology of *communio*, and with this in mind, surveys two developments by way of example in Catholic and ecumenical spheres.

AkK 180 (2011), 529-533: Burkhard Josef Berkmann: Die administrative

Funktion im Kirchenrecht. Ein Rückblick auf den XIV. Kongress der Consociatio Internationalis Studio Iuris Canonici Promovendo vom 14. bis 18. September 2011 in Warschau (Polen). (Article)

The 2011 Congress of the *Consociatio Internationalis Studio Iuris Canonici Promovendo* dealt with the administrative function in canon law, which is not regulated systematically or coherently in the CIC/83. The main themes were: historical and theological principles, the exercise of the *potestas administrativa,* its forms and supervision, and also its relationship with civil administrative law.

Ap LXXXIV 1 (2011), 199-243: Antonio Iaccarino: La teoria della giustizia di John Rawls. (Article)

I. examines *A Theory of Justice* (1971), the most important work of John Rawls, a leading American jurist and a principal exponent of the neo-contractual vision of law, whose work still dominates the philosophical debates about the moral underpinning of liberal democracy. I. looks at the role of justice, and Rawls's attempts to redefine the notion of the social contract in terms of primary social goods.

ELJ XIV 1/12, 5-19: Eric Kemp (†): The Spirit of the Canon Law and its Application in England. (Article)

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

ELJ XIV 1/12, 20-42: Charles George: The Ecclesiastical Common Law: A Quarter-century Retrospective. (Article)

G. holds the offices of Dean of the Arches and Auditor of the Chancery Court of York (*Officialis* of the Provincial Courts of Canterbury and York respectively) and President of Doctors' Commons. He reviews developments in ecclesiastical case law (interpreted widely) over the 25 years since the *Ecclesiastical Law Journal* was founded, focusing on four areas, in each of which, in the author's view, there have been significant developments: freedom of religion; the constitution of the Church of England; the protection of listed buildings; liturgy, ritual and doctrine. He notes the role of the Journal in reporting consistory court decisions and thus ensuring greater consistency of decision-making. He concludes by mentioning some of the leading cases in various other areas of ecclesiastical law.

ELJ XIV 3/12, 400-407: Christopher Hill: Ecclesiological and Canonical Observations on *The Principles of Canon Law Common to the Churches of the Anglican Communion*. (Article)

See above, General Subjects (*Comparative law*)

IE XXIV 2/12, 349-358: Wojciech Góralski: La canonistica polacca oggi. (Article)

G. describes the evolution of Polish studies on canon law from the promulgation of the CIC/83 up to the present. He points out how the study of canon law has increased in universities and seminaries. He also deals with the main areas of academic research in canon law in Poland.

IE XXIV 3/12, 521-586: Gaetano Lo Castro and "Il mistero del Diritto". (Tribute)

Collected here are several speeches made in honour of Professor Gaetano Lo Castro on the occasion of the publication of the third and final volume of his work *Il mistero del Diritto* (Torino, vol. 1, 1997; vol. II, 2011; vol. III, 2012). After an introduction from Luis Navarro, there are contributions by Salvatore Berlingò, Rinaldo Bertolino, Carlos José Errázuriz M., and Fabio Vecchi.

J 72 (2012), 4-30: Raymond Leo Burke: The New Evangelization and Canon Law. (Lecture)

B. begins by presenting the idea of the "new evangelization" in the teaching of John Paul II, Paul VI, and Benedict XVI. He considers the state of canon law in the Church, describing the disdain in which it was held in the 1980s as a result of a misinterpretation of Vatican II, with much harmful effect. He concludes by highlighting the role of canon law in the new evangelization: first as the foundation for right relationships in the Church; next by relooking at the sources of canon law in Scripture and Tradition; then by overcoming formalism and avoiding the use of canon law for personal agendas; and finally by highlighting the necessary primacy of liturgical law.

LJ 169 (2012), 157-171: Frank Cranmer: Church Law and the Nuttiness Coefficient. (Article)

The Scots systematic theologian Ian Henderson asserted in the 1960s that Churches with doctrinal prescriptions that appeared to conflict with generally recognized moral obligations ran the risk of alienating non-churchgoers. In so doing he raised the more general issue of how we should respond when a moral duty appears to conflict with a positive one. C. suggests that Henderson's conclusion still remains valid and that Church legislators should be careful to distinguish the things that are essential to their faith from those that are merely

transitory or administratively convenient.

Proc CLSA 2010, 1-20: Juan Ignacio Arrieta: The Stability and Dynamism of the Canonical Juridical System. (Lecture)

A. begins by highlighting that the canonical order is founded on the hierarchical and sacramental structure willed by Christ for his Church, and that attacks on canon law generally deny the relationship between the visible and invisible aspects of the Church. At the same time canon law has an amazing capacity to adapt to different historical needs, something A. demonstrates with various examples. These two elements, the stable and the dynamic – the substantial and the normative, as A. calls them – come together in concrete canonical norms, which must be just and must preserve the priority of divine law. *Omnium in Mentem* is an example of an attempt to adjust the actual laws to better match the underlying teaching of the Church. A. concludes by warning against legal positivism and highlights that it could be inadvertently encouraged by the way we study each canon individually rather than considering underlying principles.

Proc CLSA 2010, 21-40: Juan Ignacio Arrieta: Stabilité et dynamisme du système juridique canonique. (Lecture)

French original of the above lecture.

RTL 43 (2012), 195-224: Louis-Léon Christians: Crises et mutations du droit de l'Église catholique dans les sociétés européennes sécularisées. (Article)

C. asks how the major tendencies in the evolution of canon law over the last 50 years or so can contribute to a multidisciplinary analysis of the changes within the Catholic Church itself. Is it possible to discern certain links or clues as to a connection between the evolution of canon law and the changes in the Church in the secularized societies of North-West Europe, or even in the malfunction of the former and the weakening and collapse of the latter? He aims to show how a triple crisis of legitimacy, effectiveness and legality of canon law brings to light the evolution of the Catholic Church and the issues involved in a new relationship between responsibility and authenticity.

Methodology in canonical research

REDC 69 (2012), 631-684: Carlos Larrainzar: Métodos para la edición de fuentes manuscritas y modernas. (Lecture)

L. considers the methods used by editors and researchers of canonical sources,

concentrating on the impetus and guidelines given since 1955 by the Institute of Medieval Canon Law for avoiding global and general interpretations but rather researching the sources with proper scientific rigour. These initial guidelines have been refined and modified over the intervening years where experience has shown this to be necessary. Three types of citation are considered, depending on whether they are quoting bibliography, original sources or references within those sources. Nevertheless, bearing in mind that each manuscript is unique in time and place, formal guidelines cannot simply be rigidly applied since reference to the context of the document is a valuable indication of its importance or relevance to the researcher; this can also help avoid the anachronistic interpretation of documents from quite different periods. A new horizon which is only now beginning to open up is the digitalization of many original sources. In the end any serious textual criticism of original documents can only be based on a genuinely scientific presentation of the sources. In three appendices L. provides a Spanish translation of Kuttner's original 1955 *Guidelines*, a list of the most common bibliographical abbreviations and a list of abbreviations of the ancient manuscripts of the *Decretum Gratiani*.

Relations between Church and State

Ap LXXXIV 2 (2011), 647-678: Marcello Volpe: Stato laico e libertà religiosa: questioni attuali e nuove frontiere. (Article)

V. looks at Church-State relationships through the prism of the Italian Constitution which recognizes that both Church and State are independent and sovereign in their own spheres. He goes on to examine questions concerning freedom of worship, religious freedom and secularism.

CLSN 169 (2012), 99-105: Gordon Read: A recent High Court judgement concerning the employment status of clergy and liability on the part of a diocesan bishop. (Comment)

On 8 November 2011 Mr Justice Macduff gave a decision in the High Court of Justice, Queen's Bench Division, concerning the employment status of Catholic clergy and the liability of a diocesan bishop in their regard. The judgement is of considerable significance in that it is the first decision by a UK court concerning a Catholic priest. The decision was a preliminary one on the issue of the vicarious liability of the diocese. The substance of the allegations concerning a deceased priest of Portsmouth Diocese will be adjudicated at a later date. The alleged incidents occurred in the 1970s and the High Court therefore had to adjudicate the matter in accordance with canon law then in force, i.e. the CIC/17 and subsequent amendments in the wake of Vatican II. It did not take into account changed arrangements for the financial support of clergy in the CIC/83 or at diocesan level, or the clarifying note issued by the Pontifical Council for Legislative Texts in

2004. The diocese appealed against the Court's decision that it was vicariously liable (see following entry).

CLSN 172 (2012), 121-125: Gordon Read: Decision of the Appeal Court in the Portsmouth case. (Comment)

See preceding entry. The appeal by the diocese to the Court of Appeal (Civil Division) was heard on 17 May 2012; the decision dated 12 July 2012 dismisses the appeal by a majority of two to one. Although there was clearly no contract of service between the priest and the diocese, the relationship was held by the court to be "akin" to employment, a situation to which the law on vicarious liability could be extended. There may be a further appeal to the Supreme Court.

Comm 44 (2012), 54-63: Secretaria Status: Ratihabitio necnon adhesio a Sancta Sede data tribus conventionibus Organizationis Nationum Unitarum (ONU) respicientibus: commercium illicitum medicamentorum stupefactivorum; pecuniae largitiorem pro terrorismo; criminales consociationes internationales. (Documents)

Printed are the texts of various letters of ratification and annexes whereby the Holy See adheres to three conventions with the United Nations concerning the drugs trade, the financing of terrorism and international criminal associations.

Comm 44 (2012), 79-86: Secretaria Status: Conventio inter Sanctam Sedem et Sloveniae Rempublicam circa quasdam quaestiones iuridicas. (Document)

The text in Italian and Slovene of an agreement between the Holy See and the Republic of Slovenia regulating various legal issues, primarily safeguarding the legal status and freedom of the Catholic Church and its institutions. It appears to be identical but for the omission of a heading to that already published in Comm 43 (2011), 327-334 (see *Canon Law Abstracts*, no. 109, p. 18).

Comm 44 (2012), 87-95: Secretaria Status: Conventio de principiis et dispositionibus respicientibus relationem inter Sanctam Sedem et Rempublican Mozambicanam. (Document)

This is the text of a convention between the Holy See and the Republic of Mozambique. Although prepared in both Italian and Portuguese only the former is printed.

Comm 44 (2012), 96-105: Secretaria Status: Conventio inter Sanctam Sedem

et Nigromontium. (Document)

This is the text of a convention between the Holy See and Montenegro. The text is published in parallel columns, Italian and Montenegrin.

Comm 44 (2012), 133-134: Status Civitatis Vaticanae: Lex N. CLXVI, die 24 mensis aprilis 2012 promulgata, qua Decretum N. CLIX Status Civitatis Vaticanae, die 25 mensis ianuarii 2012 latum, confirmatur. (Document)

This law modifies that introduced in 2010 to combat money laundering and the financing of terrorism (see *Canon Law Abstracts*, nos. 108, pp. 20-21; 109, pp. 17, 57).

Comm 44 (2012), 135-183: Status Civitatis Vaticanae: Decretum N. CLIX, die 25 ianuarii 2012 a Praeside Gubernatoratus Status Civitatis Vaticanae latum, quo mutationes ac integrationes in legem N. CXXVII, die 30 mensis decembris 2010 Motu Proprio datam, ad praecavendas et impediendas activitates illegales in rebus finantiariis ac monetariis promulgantur. (Document)

This is the text of the regulations introduced to combat money laundering and the financing of terrorism (see preceding entry).

EA 47 (2012), 553-582: Manuel Fernández del Riesgo: Religión, democracia y laicidad. (Article)

Religion is a constant element in the life of individuals and peoples. But there is a recent phenomenon of socio-cultural and political detachment from society and States, from authority and control. Therefore religion has to recover its place in society. That requires avoiding two different versions of fundamentalism, religious and secular. Religion has a privileged place in a democratic society as one of the institutions able to give sense and a moral impetus to society.

EE 87 (2012), 759-771: Carlos Corral Salvador: La garantía de la enseñanza de la religión en los Estados concordatarios de Europa. (Article)

The teaching of religion in State schools by teachers appointed by the corresponding religious denomination is exclusive neither to Spain nor to the Catholic Church. It takes place in many European States, Germanic (Germany, Austria), Latin (Spain, Italy, Malta, Portugal), Baltic (Estonia, Latvia, Lithuania, Poland) and Danubian (Czech Republic, Slovakia, Hungary, Croatia and Slovenia).

EE 87 (2012), 773-790: José Luis Sánchez-Girón Renedo: Anotaciones históricas sobre la incidencia de la legislación canónica matrimonial en el Derecho español. (Lecture)

This lecture addresses the question of the varying degrees of correspondence between canon law and Spanish civil law in the area of marriage, from the time of the 1870 Spanish Civil Law on Marriage up to the time of the accords between the Church and the Spanish State in 1979.

EE 87 (2012), 791-838: Rafael Rodríguez Chacón: Eficacia civil de las resoluciones canónicas en Derecho concordatorio comparado. (Lecture)

To complement the lecture referred to in the preceding entry, this lecture focuses on the recognition currently given in the European Union to sentences and other decisions of the Church. R.C.'s starting point is the situation as it existed in Spain immediately prior to the Spanish accord of 3 January 1979, and he goes on to look at various concordats and accords during the pontificates of Pope John Paul II (Spain, Italy, Malta, Poland, Croatia, Lithuania, Slovakia, Portugal) and Benedict XVI (Andorra, Brazil, Mozambique), before attempting to classify the different clauses in the concordats relating to the recognition of the civil efficacy of canonical sentences. He also makes reference to the unexpected problems resulting from a 2003 regulation of the European Union which aims at the "free circulation" within the European Union of decisions on nullity of marriage, divorce and separation. R.C. ends his lecture with some final reflections, in which he wonders whether agreements with the State on the civil efficacy of canonical marriage and ecclesiastical decisions is really the way forward, although he accepts that experience shows the Church to be very wise.

ELJ XIII 3/11, 260-273: Bob Morris: The Future of 'High' Establishment. (Article)

M. is Honorary Research Fellow in the Constitution Unit at University College, London. His article contends that the present form of Church establishment in England represents no more than the eroded residue of the original confessional State. The presence of non-Christian religions and the significant decline in Christian belief and observance call into question the validity of the remaining elements of establishment, though not necessarily a national mission. M. argues that, rather than wait passively on events that themselves may – carelessly – force uncomfortable outcomes, it would be better for the Church of England itself to consider its future policy and practice as a national Church, should it wish to retain that role. Apparently declining to consider any unforced change, the Church shows a tendency to aimless drifting that makes it rudderless and vulnerable. Some examples of where it might constitutionally take initiatives are discussed. However, the position and behaviour of bishops in the House of Lords exemplifies a tendency to hold on, however untenably, to what it has, without thinking through

the implications of the politics of its situation. Now that the Church is, in practice, in charge of its own destiny, it should face up to the responsibility that its changed status implies.

ELJ XIII 3/11, 352-353: Will Adam: Come High, Come Low: Establishment and the Public Role of the Church of England in the Twentieth Century. (Conference)

The Ecclesiastical Law Society's biennial conference was held in Leeds in April 2011. The conference looked at "high" establishment, with papers by Bob Morris and Roger Trigg. It also examined aspects of "low" establishment, with papers by Jan Ainsworth and Paul Barber on the extent to which Anglican and Catholic schools and their providers are embedded in the State-maintained system at a local level. The conference heard from the Chaplains General of the Army and the Prison Service, and the Chaplain of St James Hospital, Leeds. The Conference was rounded off by the Dean of St Paul's reflecting on his previous role as *ex officio* legislator in the Tynwald as Bishop of Sodor and Man.

ELJ XIV 3/12, 327-354: John Witte: The Study of Law and Religion in the United States: An Interim Report. (Article)

See below, General Subjects (*Religious freedom*)

ELJ XIV 3/12, 371-399: Julian Rivers: The Secularisation of the British Constitution. (Article)

In recent years, the relationship between law and religion has been subject to increased scholarly interest. In part this is the result of new laws protecting religious liberty and non-discrimination, and it may be that overall levels of litigation have increased as well. In all this activity, there are signs that the relationship between law and religion is changing. While unable to address every matter of detail, R. seeks to identify the underlying themes and trends. He starts by suggesting that the constitutional settlement achieved by the end of the nineteenth century has often been overlooked, religion only appearing in the guise of inadequately theorized commitments to individual liberty and equality. He then considers the role of multiculturalism in promoting recent legal changes. However, the new commitment to multiculturalism cannot explain a number of features of the law: the minimal impact of the Human Rights Act 1998, the uncertain effect of equality legislation, an apparent rise in litigation in established areas of law and religion, and some striking cases in which acts have been found to be unlawful in surprising ways. In contrast, R. proposes a new secularization thesis. The law is coming to treat religions as merely recreational and trivial. This has the effect of reducing the significance of religion as a matter of conscience, as a legal system and as a context for public service. As a way of managing the ever-

deepening forms of religious diversity present within the United Kingdom, such a secularization strategy is implausible.

FCan VII/1 (2012), 25-56: W. Hilgeman – G. Corbellini: Il diritto del lavoro nello Stato della Città del Vaticano e l'Ufficio del Lavoro della Sede Apostolica. (Article)

The authors examine Vatican employment law, the set of rules governing relations between employers and employees in the Vatican City State and the Holy See, and the Labour Office of the Apostolic See with its various functions. They also examine the legal status of workers and the nature of work rendered to the Holy See. Vatican labour law is of particular importance in Vatican legislation as it is directly connected with the Church's social teaching and pontifical Magisterium. It is a particular system of guarantees which is carried into effect not only by norms but also through structures and institutions. These aspects contribute to a better implementation of the law and are thus necessary for its interpretation and proper application.

IC 52 (2012), 465-480: Wojciech Góralski: La tutela del matrimonio e della familia nel concordato polaco del 1993. (Article)

The concordat between the Holy See and the Polish Republic of 28 July 1993 deals with various matters relating to marriage and the family – key issues for both Church and State. The guarantees provided by arts. 10 and 11, which are aimed at protecting these institutions, relate to marriage preparation, the civil effects of canonical marriage, competence for judging matrimonial causes (ecclesiastical tribunals for canonical marriages, State tribunals for civil effects), and cooperation between Church and State with a view to protecting marriage and the family. The most original point in this regard is that the civil effects of canonical marriage are presented as being dependent on the express will of the contracting parties.

IC 52 (2012), 521-550: Antonio Quirós Fons: Antecedentes a los Acuerdos entre la Santa Sede y la República de Croacia. (Article)

The purpose of this article is to establish the justification for the factual foundations of the accords between the Holy See and the Republic of Croatia, which recognize the unique role of the Catholic Church in the education of the Croatian people, and specifically its historical and current role in the social, cultural and educational spheres. By means of a chronological overview of events and testimonies – from the Christianization of the Croatian people to independence, via the history of various royal families, the period of political dependence on Austria and the two Yugoslavias – it is possible to recognize the norms and agreements that constitute the historical-juridical antecedents of the

accords signed in 1996 and 1998.

IC 52 (2012), 551-608: Arturo Calvo Espiga: La naturaleza jurídica de la obra religiosa con dimensión histórico-artística y su incidencia en el ordenamiento. (Article)

The spread of cultural consumerism, which may be symptomatic of a gradual and general decline in educational standards, has prompted much of legal thinking to favour the "cultural" dimension of religious art over its religious dimension as such. C.E. looks at religious art and its juridical nature in Roman law, and the religious and juridical nature of artistic creation, dealing with such matters as artists' rights and the social perception of artistic production in different historical periods, in order to establish the essential legal elements of religious artwork as such.

IC 52 (2012), 609-664: Antonio Vázquez del Rey Villanueva: Régimen fiscal de los bienes inmuebles de la Iglesia y, en particular, de los lugares de culto. (Article)

Places of worship have traditionally benefited from a tax regime designed to ensure that the tax liability of immovable property does not deprive the Church of its assets. Determining which tax system should be applied is complex because a number of legal provisions of different kinds need to be taken into account, a situation that in its turn gives rise to a degree of legal uncertainty. A key provision in this regard is the 1979 Agreement on Economic Affairs between Spain and the Holy See (as well as the cooperation agreements established with other legally recognized religious confessions), which lists a core set of tax benefits which the State cannot unilaterally alter. In Spain the tax system governing non-profit bodies also applies to places of worship.

IE XXIV 3/12, 719-744: Corte Suprema degli Stati Uniti d'America: sentenza *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al.*, 11 gennaio 2012 (con *nota* di Iñigo Martínez-Echevarría, *La discriminazione religiosa fondata sulle leggi antidiscriminazione: un rischio giuridico ormai globale*) (Court judgement and comment)

The United States courts have long upheld a "ministerial exception" to the application of employment discrimination laws, on the ground that to require a religious confession to accept or retain an undesired minister would be tantamount to depriving the confession of control over the selection of its ministers, contrary to the Religion Clauses contained in the First Amendment to the United States Constitution. In the present case the Supreme Court extended the ministerial exception to an employee whose religious duties for her Church consumed only

45 minutes of each workday, the rest of her day being devoted to teaching secular subjects. The Equal Employment Opportunity Commission contended that the ministerial exception should be limited to those employees who perform exclusively religious functions. The Supreme Court rejected this argument, holding that the employee in this case, whose title of minister involved a significant degree of religious training, in fact regarded herself as a minister of the Church and held herself out as such not only by accepting the formal call to religious service according to the Church's terms, but also in other ways such as claiming a special housing allowance which was only available to employees "in the exercise of their ministry". In his comment, M.-E. considers the implications of the judgement, drawing attention to the risks arising when institutions of religious inspiration are obliged by the civil authorities to act in ways contrary to their inspiration.

LJ 169 (2012), 172-188: David McIlroy: Secular law: is it at all possible? (Article)

The question "is secular law possible?" is a provocative one in 21st-century Britain, a country where most people still identify themselves as Christians but are ambivalent at best about the intervention of Churches in politics. However, in order to address this question it is important to understand the different meanings which might be given to "secular". Whilst a total separation of religion and politics is not only impossible but dangerous, Christian doctrine has been a key contributor to the idea of secular law itself.

LJ 169 (2012), 246-249: Helen Hall: The Catholic Welfare Society and others v. the Institute of the Brothers of the Christian Schools (2012). (Comment)

The De La Salle Institute ("the Institute") is an unincorporated association of Catholic lay brothers whose mission and purpose is the provision of Christian education to boys. The case concerned whether the Institute could be vicariously liable for sexual abuse committed by brothers whilst working in a school owned and managed by a series of legal entities, which latterly were emanations of the Roman Catholic Diocese of Middlesbrough ("the Middlesbrough Defendants"). The Middlesbrough Defendants employed the brother teachers under secular employment contracts, and it was not disputed that they were vicariously liable for sexual abuse perpetrated by their employees. The issue before the Supreme Court was an appeal by the Middlesbrough Defendants against a finding by the first instance judge, confirmed by the Court of Appeal, that the Institute was not also liable for abuse committed by its members. The Supreme Court unanimously allowed the appeal. The only substantial judgement was given by Lord Phillips, who found that although the relationship between the tortfeasor brothers and the Institute was not one of employment, it had all of the essential features required to render it akin to employment for the purposes of vicarious liability. It was

acknowledged that the relationship between the brothers and the Institute differed from employment in that the brothers were bound not by contract, but by their vows; and also that the Institute did not pay the brothers (in fact the reverse took place: the brothers entered into deeds under which they were obliged to transfer all of their earnings to the Institute). However Lord Phillips held that these differences were not material, and in fact rendered the relationship between the brothers and the Institute closer than that of an employer and its employees. It was the relationship between the Institute and the abusers that placed the abusive brothers in a position to live alongside vulnerable boys, having close contact with them by caring for their educational and religious needs. This was not a borderline case, but one in which it was only fair, just and reasonable by reason of the satisfaction of the relevant criteria that the Institute and the Middlesbrough Defendants should share vicarious liability.

PS XLVII 142 (2012), 919-956: Hyacinth He: Canonical Issues in Pope Benedict XVI's *Letter to the Catholic Church in China* (2007): Review, Analysis and Commentary – Part One. (Article)

Pope Benedict XVI's Letter to the bishops, priests, consecrated persons and lay faithful of the Catholic Church in the People's Republic of China, issued in 2007, is primarily theological and pastoral in nature. However, it also contains some important canonical issues, such as the (Chinese) State control over bishops and the so-called Bishops' Conference; the issue of the independence of the Catholic Church in China from political power; the appointment and ordination of bishops; the formation of clergy, religious and lay faithful; the work of evangelization; religious freedom and the continuous search for "dialogue" with the government; the impending review of ecclesiastical circumscriptions and provinces; and the abolition of the extraordinary faculties or privileges conceded to date to the Church in China. H. systematically analyses these issues vis-à-vis the provisions of the CIC/83 and the current situation in China. He aims to offer valuable insights to help resolve the conflicts between the two polarized sides confronting the Catholic Church – the so-called "open" and "underground" communities – as well as pointing out some key elements to uncover hidden aspects of the Letter and thus contribute to a better understanding of it.

REDC 69 (2012), 757-779: Silvia Meseguer Velasco: El principio de cooperación y las donaciones a las confesiones religiosas. (Article)

M.V. looks at the issue of donations and contributions made to religious or confessional groups, with particular reference to Spain and Spanish civil law. As well as with the Catholic Church, arrangements also exist with the Evangelical Churches and the Jewish and Islamic communities. The article concentrates on the Catholic Church. M.V. considers the obligation of the faithful to contribute to the support of the Church in enabling it to carry out its mission. She compares the

situation of the Church in Spain with that of the USA, especially in regard to tax-deductible contributions. She gives particular attention to the present Spanish law which regulates donations to religious and charitable bodies, under the headings of different modalities for making donations and contributions, fiscal incentives, and procedures for registering tax-deductible donations. The faithful need to be encouraged to take on a true sense of co-responsibility for the support of the Church, and from the Church's side there must be more transparency and professionalism in the administering of its funds.

REDC 69 (2012), 883-912: Juzgado de 1ª Instancia Nº 001 Barbastro. Auto 437/2010. Texto en español y comentario (Federico R. Aznar Gil). (Sentence and comment)

This sentence, delivered by a Spanish civil court on 31 May 2010, marks the final stage of a long and tortuous process which began not long after the new diocese of Barbastro-Monzón was established in 1995 incorporating a number of parishes previously belonging to the diocese of Lérida. The question at issue was the ownership of over 100 artistic and cultural goods originally belonging to the parishes now in the new diocese but which had been held in the diocesan museum of the diocese of Lérida. Barbastro-Monzón now claimed ownership, a claim disputed tenaciously by Lérida. The matter eventually found its way to the Signatura Apostolica which decreed in April 2007 that the goods in question belonged to the diocese of Barbastro-Monzón. [For a fuller version of this marathon, see *Canon Law Abstracts,* nos. 102, p. 129; 103, p. 133; see also no. 107, pp. 4-5]. Since Lérida was showing no signs of returning the goods, Barbastro-Monzón sought redress in the civil courts by requesting an *exsequatur* whereby the civil authorities would enforce the decision of the Signatura. It is with this issue that the present sentence deals. The court points out that according to the Agreements of 1979 between the Spanish State and the Holy See the only ecclesiastical decisions eligible for an *exsequatur* and subsequent recognition for civil effects concern marriage cases. Furthermore, the 1979 Agreements recognize the Church's competence in executing the decisions of its own courts in the ecclesiastical sphere. Therefore, the request for an *exsequatur* from the civil court was rejected.

Religious freedom

Comm 44 (2012), 13-19: Pope Benedict XVI: Allocutio Summi Pontificis ad Legatos cum publica auctoritate apud Sanctam Sedem coram admissos, vota auguralia occasione novi anni praestantes die 9 mensis ianuarii 2012 prolata. (Address)

In his New Year address to the Diplomatic Corps the Pope speaks first of the troubles in the Middle East, but then develops the theme of religious liberty and

its importance.

Comm 44 (2012), 20-22: Pope Benedict XVI: Allocutio ad quosdam Episcopos Civitatum Foederatorum Americae Septentrionalis Limina Apostolorum visitantes die 19 mensis ianuarii 2012 habita. (Address)

In his address to a group of bishops from the USA on their *ad limina* visit, the Pope takes religious freedom as his theme and in particular the role of the Church's witness in the public square in counter-balancing an extreme individualism.

ELJ XIII 3/11, 274-286: Roger Trigg: Religion in the Public Forum. (Article)

T. is Academic Director of the Centre for the Study of Religion in Public Life at Kellogg College, Oxford. He asks whether the State must be neutral to all religious and philosophical positions. He argues that that is an impossibility and that the most basic principles of our democratic society, such as our belief in the importance of individual freedom and equality, are Christian in origin and need their Christian roots. He discusses the relevance of recent judgements in the European Court of Human Rights and in English courts. In particular, he takes exception to views of religious belief that see it as subjective, irrational and arbitrary. He argues that religion needs to take its place in the public arena, and that the national recognition of the Church of England through establishment is an important means to that end.

ELJ XIII 3/11, 298-332: Eoin Daly: Competing Concepts of Religious Freedom Through the Lens of Religious Product Authentication Laws. (Article)

Religious product authentication laws, predicated on conceptions of doctrinal authenticity, run the risk of curtailing the religious freedom of dissenting adherents engaged in non-orthodox forms of the regulated practice. They may also entail discrimination between, or even the "establishment" of, competing doctrinal viewpoints within religions. This raises important constitutional and theoretical questions surrounding the conceptual necessity, to religious freedom, of State neutrality in religious controversies. Comparative Church–State jurisprudence reveals strikingly different approaches to the question of the compatibility of religious product authentication laws with constitutional guarantees of religious freedom and State neutrality. The religion clauses of the United States Constitution preclude regulatory schemes incorporating doctrinal concepts of authenticity, whereas a failed constitutional challenge in Ireland (to a law regulating the sale of Mass cards in Ireland) rejected the contention that such laws denied constitutional guarantees of religious freedom and non-discrimination on religious grounds. D. argues that these contrasting approaches to the

constitutionality of religious product authentication laws illustrate a deeper conflict surrounding the very concept of religious freedom. In particular, this comparative constitutional jurisprudence crystallizes broader normative debates surrounding the competing claims of recognition and neutrality with regard to religion.

ELJ XIV 2/12, 256-271: Nicholas Bratza: The 'Precious Asset': Freedom of Religion Under the European Convention on Human Rights. (Article)

The European Court of Human Rights has stated that article 9 of the European Convention on Human Rights (ECHR) in its religious dimension is not only one of the most vital elements that go to make up the identity of believers and their conception of life but also a precious asset for atheists, agnostics, sceptics and the unconcerned. In the past 20 years, the Court has been called upon to address the scope and content of article 9 in a variety of key cases, involving matters as diverse as proselytism, the grant and refusal of registration of religious bodies, the refusal of authorizations for places of worship and prohibitions on the wearing of religious dress or symbols in public places. The Court's case law has not been without its critics, some complaining that the Court has interpreted Article 9 too narrowly and has given too little weight to the freedom to manifest one's religion in teaching, practice and observance. Others, in contrast, have criticized what they see as the excessive weight given to religion when in conflict with other ECHR rights, notably that of freedom of expression. Still others have charged the Court with failing to interpret article 9 in such a way as to realize its full potential by not engaging with what is meant by the word 'religion'. B., who is President of the European Court of Human Rights, considers some of these criticisms, and the need for the Court to strike a balance between the effective protection of individual rights and the need to respect very different constitutional traditions among the contracting States.

ELJ XIV 3/12, 327-354: John Witte: The Study of Law and Religion in the United States: An Interim Report. (Article)

The study of law and religion has exploded around the world. W. prepared this article in celebration of the silver jubilee of the Ecclesiastical Law Society. He traces the development of law and religion study in the United States. Despite its long tradition of strict separation of Church and State, and despite its long allegiance to legal positivism and intellectual secularization, the United States has emerged as a world leader of the new interdisciplinary field of law and religion. Hundreds of American scholars, from different confessions and professions, are now at work in this field, and two dozen major research centres and journals have been established at American law schools. After canvassing some of the main themes and trends in American law and religion scholarship today, W. concludes with a brief reflection on some of the main challenges before Christian scholars

who work in the field of ecclesiastical law.

ELJ XIV 3/12, 355-370: Silvio Ferrari: Law and Religion in a Secular World: A European Perspective. (Article)

F. examines two interpretations of the process of secularization that can be traced back through European legal and political thought, and a more recent trend that challenges both of them. It does this through the prism of the public sphere, because in today's Europe one of the most debated issues is the place and role of religion in this sphere, understood as the space where decisions concerning questions of general interest are discussed. F. concludes, first, that the paradigm through which relations between the secular and the religious have been interpreted is shifting and, second, that this change is going to have an impact on the notion of religious freedom and, consequently, on the recognized position of religions in the public sphere.

FCan VII/1 (2012), 57-78: Pedro María Reyes-Vizcaíno: La Declaración *Dignitatis Humanae* ante la doctrina tradicional de la Iglesia. (Article)

The Vatican II Declaration *Dignitatis Humanae* introduced the doctrine of religious freedom into the Catholic Church in a clear way. This doctrine has long been assumed in civil law. Nevertheless the Church's teaching does not set out from a position of neutrality as regards religion, but rather the obligation of all to seek the truth and adhere to it. The doctrine of religious freedom was not introduced peacefully, but was criticized by several people, including the French archbishop Marcel Lefebvre. This gave rise to a debate culminating in an interesting exchange of letters between Archbishop Lefebvre and Cardinal Ratzinger, which is discussed in this article.

IC 52 (2012), 685-734: Grégor Puppinck: El caso *Lautsi contro Italia*. (Article)

The case of *Lautsi* v. *Italy* (see *Canon Law Abstracts*, no. 109, p. 20), more commonly known as the crucifix case, is of considerable importance, not only from a political or juridical standpoint but also from the religious perspective. No previous case, in the history of the European Court of Human Rights or the Council of Europe, had been the object of so much attention and aroused such extensive public debate. This debate on the lawfulness of the presence of the symbol of Christ in Italian schools is highly representative of Western Europe's crisis of cultural and religious identity. 21 signatory States to the European Convention on Human Rights lined up alongside Italy to reaffirm the legitimacy of Christianity in European society and its identity; and this is what the Tribunal ultimately took into account in recognizing in substance that, in countries of Christian tradition, Christianity possesses a specific social legitimacy which distinguishes it from other philosophical and religious beliefs. Since Italy is a

country of Christian tradition, the Christian symbol can lawfully be given a predominant visible presence in society. P., who took part in the defence of the crucifix before the Grand Chamber, comments in detail on the case.

ELJ XIII 3/11, 287-297: Paolo Ronchi: Crucifixes, Margin of Appreciation and Consensus: The Grand Chamber Ruling in *Lautsi v Italy*. (Article)

In March 2011, the Grand Chamber of the European Court of Human Rights reversed the decision of the Court's Second Section in *Lautsi v Italy* (see preceding entry). The case clearly demonstrates how controversial the use of religious symbols in the public environment has become. R. sets out the complicated framework of the case, assesses the judgement and concludes that the Grand Chamber's decision is unfortunate and, in many respects, objectionable. He shows that this decision has implications regarding the malleable nature of the doctrines of the margin of appreciation and consensus, as well as the development of Strasbourg's application of double standards in its case law regarding the public display of religious symbols.

LJ 169 (2012), 224-245: Amy Codling: A Critical Legal Pluralist Analysis of *R. (on the application of Begum)* v. *Headteacher and Governors of Denbigh High School*. (Article)

C. revisits the leading case on the accommodation of religious dress in England. The case was concerned with whether a student's alleged exclusion from school for wearing a *jilbab* (a long coat-like garment which covers the whole body, except the hands and face) infringed her right to manifest her religion under article 9 of the European Convention on Human Rights (ECHR). The House of Lords held that there had been no infringement of the student's right protected under article 9 (1) and, if there had been such an infringement, this was justified under article 9 (2) as the headteacher and governors had developed a uniform policy with the legitimate aim of enabling social cohesion in a multi-cultural and multi-faith school. C. considers several criticisms and alternative approaches developed by doctrinal scholars, and offers a critical legal pluralist perspective as one way to ensure that, in religious dress claims, English courts privilege the account of religious believers for the purposes of article 9 of the ECHR.

SC 46 (2012), 319-340: Kurt Martens: *Patere legem quam ipse fecisti?* Procedures and Protection of Rights in the Church and its Relevance for Religious Liberty. (Article)

The Church has sometimes been accused of not protecting the rights of the faithful, while on the other hand, State and supranational jurisprudence has felt responsible for protecting such rights in evaluating ecclesiastical procedures on the basis of the principles of State law. The time appears to have come for a return

to the principles of Vatican II and for elaborating a new basis for relations between Church and State, founded on the old legal maxim requiring one to respect the law one has created. That implies, among other things, that the right to religious freedom imposes an obligation on the State: an obligation not only to profess religious freedom but also to create the circumstances that will allow effective religious freedom.

Teaching of canon law

RDC 61/1 (2011), 9-20: Jean Werckmeister (†): Histoire de l'enseignement du droit canonique. (Article)

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

RDC 61/1 (2011), 21-42: Libero Gerosa: Le droit canonique, une discipline théologique? (Article)

Has canon law drifted away from its theological foundations because of "jus naturalism"? More often than not, the juridical method gets lost in an exegesis of the Code's regulations, at the expense of its apologetic justification. However, some schools see the salvation of canon law in its de-theologization. G. asks whether we might be at risk of forgetting its two principal sources: communion and faith. While it is not a question of discarding the juridical method, he says that one should be careful not to forget that canon law is above all an interpretation of the divine Mystery. Along with Scripture and Tradition, it is the third side of the triangle described by John-Paul II in his address at the official presentation of the CIC/83.

RDC 61/1 (2011), 43-56: Elsa Forey: Le droit canonique, une discipline juridique? (Article)

Canon law does not constitute a juridical system akin to positive law; French law only acknowledges its scientific value under the guise of non-religious vocabulary. It is thus considered as a sort of foreign law that requires experts. How is the State judge to distinguish between what pertains to the spiritual and the temporal spheres, given that the boundaries between the two are often blurred? There is a major risk to the Church's autonomy when a civil court enters into the spiritual realm. Common sense perhaps lies in the present compromise, since canon law and civil law pursue different objectives, and cannot be interpreted in analogous fashion.

RDC 61/1 (2011), 57-80: Gianfranco Ghirlanda: L'enseignement du droit

canonique dans les universités et facultés pontificales ecclésiastiques. (Article)

Since Vatican II, the texts issued by the Magisterium have constantly reiterated that canon law is part of the Church's Mystery, and that in this respect it is a necessary element in the formation of future priests. The successive reforms, notably the decree *Novo Codice* (2002), have aimed to focus canonical teaching on its theological origins, and to offer better training to future members of ecclesiastical tribunals and diocesan curias. Reform is not brought about without pain, and there are the challenges of financial constraints and the increasing workload of priests. However, the reforms are above all an opportunity to recall that canon law is a "dogmatic law", and hence has to be interpreted in the light of the Gospel and always be based upon theological reflection.

RDC 61/1 (2011), 81-95: Rik Torfs: L'enseignement du droit canonique en Europe. (Article)

T. asks whether we should worry about the number of canon law faculties across Europe, where literary production is sometimes scarce. Is the canonist a theologian or a jurist? He argues that these are issues for the Magisterium as much as for the specialist, especially in view of canon law's exposure to globalization, and its corollary, scepticism, which places more importance on hard sciences. Post-Vatican II canon law seeks its place in the 21st century: while the University is undergoing reform, canon law is itself in a process of evolution, as new methods of interpretation emerge. It is to be hoped that these are not merely illusory.

RDC 61/1 (2011), 97-105: John P. Beal: L'enseignement du droit canonique en Amérique du Nord. (Article)

In North America, there are only two faculties in which canon law is taught. Seminaries, on the other hand, do not seem very enthusiastic about the idea of adding canon law to their teaching programmes. In general the number of students, especially those on doctoral courses, is going down, partly on account of the increased length of these studies. Where there is most interest is in the area of the sacraments, especially marriage. Future ministers are looking for practical assistance in their relations with their parishioners; hence the focus is on pastoral matters rather than on interpretation. There is also the impact of American juridical realism, according to which the judge bases himself on the facts to the point of adapting the law to fit the facts; American canon law is not immune to these influences.

RDC 61/1 (2011), 107-129: Marc Aoun: L'enseignement du droit canonique dans une université publique en France. (Article)

Canon law has been taught in Strasbourg since 1702. Its development is linked to the turbulent history of Alsace, from the time of the French Revolution to the more recent wars. The university's Canon Law Institute, founded in 1920, is the fruit of the innovative decision to link positive canon law with the history of law and ecclesiastical institutions. Since the 1970s, teaching programmes have diversified in the wake of the Second Vatican Council and the promulgation of the CIC/83. Lectures at the Canon Law Institute are in conformity with the academic requirements particular to this kind of teaching: both those laid down by the university itself, and those established in the current canonical regulations, especially the decree *Novo Codice.*

RDC 61/1 (2011), 131-155: Marco Ventura: Un droit canonique critique? Origines, déclin et perspectives de l'école laïque italienne. (Article)

The history of canon law in Italy bears the mark of the strained Church-State relationship. The Italian canonical school could not avoid secularization and confrontation with 19th century positivism. Canon law studies owe their comeback to the improved relationship between Mussolini's government and the Church, which led to the 1929 Lateran agreements. This was to be followed by a kind of doctrinal anarchy; and in the ensuing struggle for an autonomous canon law, V. argues that it was to be the Italian "laicist" school of canon law that would show the way, offering new solutions in the wake of Vatican II.

RDC 61/1 (2011), 157-169: Edoardo Dieni (†): De l'épistémologie à l'ontologie du droit canonique. (Article)

D. asks how the various sources of canon law – Scripture, Tradition, practical knowledge, Magisterium, faith, and reason – can be combined. Canon law is grounded upon the experience of life of the faithful and upon a methodical juridical abstraction. However, this very abstraction leads to metaphorical interpretations. Hence the difficulty of classifying canon law, because of its twin background: on the one hand, a secular science (law), and on the other, a sacred science (faith). As a science it is subject to critical analysis; as a product of Tradition, its interpretation is subject to hierarchical authority. D. asks whether canon law should be "secularized" in order to gain the status of a science, or whether it should become more autonomous to preserve its characteristic ontology.

HISTORICAL SUBJECTS

1st millennium

AkK 180 (2011), 389-445: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Historische Nachbetrachtungen. (Article)

In a survey of Church history, R. focuses on the dismissal of bishops at different times, and discusses its significance for the development of ecclesiastical constitutional and procedural law. These results are subsequently considered with a view to drawing out the lessons of history.

Classical period

AkK 180 (2011), 389-445: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Historische Nachbetrachtungen. (Article)

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

FC 13-14 (2010-2011), 7-70: José Miguel Viejo-Ximénez: Las *novellae* del Decreto de Graciano. (Article)

Western canonical tradition of the first millennium knew the *novellae constitutiones* of Justinian in the abbreviated Latin version drawn up by Julian in Constantinople for the teaching of law. Pontifical documents, canons of councils, canonical collections and ecclesiastical writers considered the fragments of the *Epitome Iuliani* as genuine laws, variously referred to as *lex iustiniana*, *lex Novellarum*, or *Novellarum constitutio*. V.-X. studies the relationship between Justinian's *novellae* and the *Decretum Gratiani*. He first looks at the origin of those chapters in the *Epitome Iuliani* which are recognizable in the *Decretum Gratiani*; then at the *novellae* appearing in the *Decretum* that do not coincide with the *Epitome*; and finally at the *authenticae* in the *Decretum*, that is, the summaries of the *novellae* produced by the glossators. Although these topics do not exhaust the Western canonical tradition of Justinian's *novellae*, they serve to identify the principal moments and modes of reception of this normative material into the discipline of the Latin Church. At the same time they throw light on the reception and use of the new constitutions of Justinian on the part of glossators and decretists in Bologna, before the *glossa ordinaria* of Johannes Teutonicus and the *magna glossa* of Accursius.

IE XXIV 2/12, 325-348: Geraldina Boni: La canonizzazione dei santi combattenti nella storia della Chiesa: linee ricostruttive di una ricerca. (Article)

The expression "military saints" or "warrior saints" seems to be a contradiction in terms: can we achieve holiness by making use of weapons and through a "job" involving the killing of human beings? Can we still share the positions of the

Catholic doctrine on just war? B. addresses this issue in the light of history, analysed through an examination of the cult of the warrior saints and with attention paid to the juridical aspects. She looks in particular at the military Passions of the martyred soldiers in the Roman Empire, the warrior saints in late Antiquity and the early Middle Ages, the holy kings killed in feuds and venerated as actors in a *passio*, the holy bishops *defensores civitatis*, the holy wars and the crusaders in the Holy Land and the *Reconquista*, the spiritual attention of soldiers and the heroic witness of chaplains in the two World Wars. In the light of this historical journey, some of the fundamental achievements of Vatican II such as the dignity of the *christifidelis* and of lay people, and the universal call to holiness, acquire greater clarity and meaning.

IE XXIV 2/12, 359-380: Gloria M. Morán: La canonística medieval y su contribución al desarrollo del pensamiento constitucional contemporáneo. (Article)

M. analyses the contribution of medieval canon law to the development of the legal bases of contemporary constitutional thinking, in three areas: 1. the origin and development of the principle of sovereignty, starting out from the notions of *jurisdictio* and *potestas*; here she deals with Papal sovereignty and its limits, with reference to the doctrine of *plenitudo potestatis*; 2. the relationship between individual and collegiate power, with reference to the legal abstractions of *universitas* and *persona representata*; 3. their contribution to the consensus theory of power and the doctrinal development of the concept of *congregatio fidelium*.

RDC 61/1 (2011), 9-20: Jean Werckmeister (†): Histoire de l'enseignement du droit canonique. (Article)

The history of the teaching of canon law is necessarily bound up with the history of thought and research into canon law. Both converge in what one could call the history of canonical science. It is difficult to describe the teaching of canon law before the second millennium, since canonical teaching only flourished with the growth of canonical science itself in the High and Late Middle Ages. Canonical law became systematized from the 16th century on, and the basis of the teaching of canon law evolved accordingly.

Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, 129 (2012) 64-148: John A. Alesandro: *Una Caro* and the Consummation of Marriage in the *Decretum Gratiani*. (Article)

In the *Decretum Gratiani* physical consummation is given an essential role in the formation of Christian marriage. The *Decretum* relies on the biblical image of "one flesh" (*una caro, unum corpus*) to support this theory and to explain the ensuing marital rights and obligations. *Una caro* describes principally the abiding reality of the marital relationship, but it also provides the rationale for marriage's

attributes: the bilateralism required of the spouses (the mutuality of the *debitum coniugale* and the departure to enter religious life), indissolubility and its violation by divorce, sacramental symbolism and the negative effect of sequential bigamy, fidelity and the contradiction of adultery, affinity and the transfer of spiritual relationship. By systematically examining and interpreting Gratian's arguments and sources, this article illustrates the cohesiveness of the *Decretum*'s theory on marriage and how the biblical image of *una caro* is used to support it.

Manuel J. Peláez – Antonio Sánchez-Bayón (eds.): Diccionario de Canonistas y Eclesiasticistas Europeos y Americanos (I). (Book)

This dictionary comes about as a response to the lack of attention paid, within canon law and ecclesiastical law, to canonists and ecclesiasticists. Of much greater concern have been canonical institutions, but not the individuals who over the course of centuries have constructed the different canon laws. The dictionary also includes historians whose work has centred to a substantial degree on canon law or ecclesiastical institutions in the medieval or modern era. Thanks to the participation of more than thirty academics from Europe and America, a total of 1369 entries have been compiled, ranging from the year 1000 to the present. This first volume (of three) concentrates on Spain; the remaining volumes will include other European countries and America. Each entry consists of biographical and bibliographical details, and where applicable a summary of the principal canonical contributions of the individual concerned in the fields of canon law or ecclesiastical institutions. (For bibliographical details see below, Books Received.)

16th-19th centuries

AkK 180 (2011), 389-445: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Historische Nachbetrachtungen. (Article)

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

Ap LXXXIV 2 (2011), 581-606: Edward N. Peters: Retrospectives on Benedict XIV's Constitution *Sacramentum Poenitentiae*. (Article)

See below, canon 1387.

ELJ XIV 1/12, 5-19: Eric Kemp (†): The Spirit of the Canon Law and its Application in England. (Article)

K. (the late Anglican Bishop of Chichester) was a canonist in the Church of

England when such practice had yet to become fashionable once more. He was instrumental in the formation of the Ecclesiastical Law Society and served as its President from the creation of the Society until his death on the eve of Advent Sunday in 2009. He was a member of the *Ecclesiastical Law Journal*'s Editorial Advisory Board from 1987 until 2002. In celebration of the Journal's Silver Jubilee and in recognition of its first President's contribution to its establishment and subsequent flourishing, K.'s article from its first edition is reproduced, lightly updated and annotated. K. gives a brief history of the canon law of the Western Church, followed by an account of the way in which the law was adjusted in practice to local circumstances. In particular he gives an account of the institutions of dispensation and custom. The two predominant forces in the development of canon law are the growth of variety by custom and attempts at reform seeking greater uniformity. This dynamic can be illustrated by movements such as Gallicanism, the Old Catholic Movement, Ultramontanism and Codification. The separation of the English and Irish Provinces from the rest of the Western Church was an act of State, followed by a doctrinal upheaval not settled until 1662. The canon law, however, continued, largely unchanged, until the 18th and 19th centuries. K. concludes by giving an account of the continuing role of custom in the canon law of the Church of England, particularly in relation to the liturgy, and how far its legitimate role has at times been hampered by an excessive uniformity.

IC 52 (2012), 425-464: Eloy Tejero: La secularización del matrimonio y de la familia en la doctrina del siglo XVI y su incorrecta comprensión en la Antigüedad. (Article)

In the light of the initial secularization of marriage provoked by Luther's opposition to the established doctrinal tradition of his time, a number of 16th century Catholic theologians asserted the Scriptural basis of the sacrament, while another school of thought held in part the view that the religious dimension of marriage and the family was an exclusively Christian phenomenon. Before Christ, marriage and the home were personal communities of worship; in Christ, their fundamental meaning encompasses recognition of God the Father and God the Son, and living in the Holy Spirit. Thus, the house of God, in which Christ is the Son, gives a new religious meaning to the Christian home, which is the key to the social acceptance of Christianity and to the understanding of the Church as the house of God.

LJ 169 (2012), 189-209: Stephen Allison: Stair, Natural Law and Scotland. (Article)

Viscount Stair was one of Scotland's greatest lawyers. He was a committed Christian and his Christian faith influenced all of his life. He led a distinguished public career, consistently standing up for his principles, but he is better remembered for his seminal work, the *Institutions of the Law of Scotland*. (1681).

Within the *Institutions* Stair sets out for the first time to explain the entire private law of Scotland in a rational and systematic fashion, based on natural law. Stair's theory of natural law is, in the words of Alasdair McIntyre, "pervasively and ineliminably theological", and serves as the best evidence that Scots private law is fundamentally based on the strongest Christian principles.

QDE 25 (2012), 260-280: Davide Salvatori: La riserva di alcuni delitti alla Congregazione per la dottrina della fede e la nozione di *delicta graviora*. (Article)

S. traces the history of the penal competence of the Congregation for the Doctrine of the Faith (CDF) from its beginnings under Paul III in 1542, through the reforms of Sixtus V, Pius X and Paul VI up to the dispositions of *Pastor Bonus* and *Sacramentorum Sanctitatis Tutela*; he examines both the expansion of the matters reserved and the way the reservation operated. He concludes with reflections on the way that *delicta graviora* harm the life and witness of the Church as the basis of their reservation to the CDF.

RDC 61/1 (2011), 9-20: Jean Werckmeister (†): Histoire de l'enseignement du droit canonique. (Article)

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

REDC 69 (2012), 685-737: Beatriz García Fueyo: La *restitutio natalium* romana, procedente de las dispensas canónicas obtenidas por Alonso Antonio de San Martín entre 1658 y 1675. (Article)

The illegitimate son of King Philip IV of Spain had already received the necessary dispensations due to his illegitimate status to allow him to receive minor and major orders, including the priesthood (*sed sine cura animarum*) and pontifical dispensations for various ecclesiastical benefices. When he was appointed as bishop of Oviedo a further Papal dispensation was required. G.F.'s article shows the development and connection between the ancient Roman institution of *restitutio natalium* (conceding to freed slaves the status of free citizens) and the canonical one of dispensation from illegitimacy. Her article is accompanied by copious and extensive footnotes, mostly from 15th and 16th century canonists on the nature and origin of the dispensation *super defectu natalium*.

Thomas Duve: Información bibliográfica para el estudio del Derecho Canónico Indiano. (Book)

This book represents a first attempt to construct a database of the vast range of academic publications on the implementation of canon law from the time of the

arrival of the Spanish and Portuguese in America up to the period of independence. Accompanying the book is a CD-ROM to allow an electronic search of the database. (For bibliographical details see below, Books Received.)

Manuel J. Peláez – Antonio Sánchez-Bayón (eds.): Diccionario de Canonistas y Eclesiasticistas Europeos y Americanos (I). (Book)

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

20th century

AkK 180 (2011), 389-445: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Historische Nachbetrachtungen. (Article)

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

Manuel J. Peláez – Antonio Sánchez-Bayón (eds.): Diccionario de Canonistas y Eclesiasticistas Europeos y Americanos (I). (Book)

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

Second Vatican Council and revision of the CIC

Comm 44 (2012), 184-185: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Litterae N. 477/66 quibus adnexae "Quaestiones aggrediendae de iure poenali" a relatore paratae transmittuntur ad Consultores. (Document)

In this letter, dated 6 June 1966, Fr Raymond Bidagor, S.J., sets out nine basic questions that need to be addressed at the outset of considering a revised penal law.

Comm 44 (2012), 186-238: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Vota Consultorum. (Report)

This is the response of the Consultors to the above nine questions, with a second paper from Fr Huizing addressing a number of more specific issues concerning particular canons of the CIC/17.

Comm 44 (2012), 239-254: Ex Actis Pontificiae Commissionis Codici Iuris

Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Relatio praevia. (Report)

This is the report of the Relator on suggested reforms of canons 2195-2240 of the CIC/17 addressing general matters concerning delicts and penalties, dated 30 September 1966.

Comm 44 (2012), 255-264: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Relatio Sessionis. (Report)

This is the report of the first meeting of the study group 28-30 November 1966, which tackles the points raised by the Relator in his preliminary report (see preceding entry).

Comm 44 (2012), 265-317: Ex Actis Pontificae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Coetus Studiorum "De laicis, de bonis temporalibus, de beneficiis ecclesiasticis et de officiis ecclesiasticis" (Sessio II). (Report)

The body text describes this as the fourth rather than the second session, 9-18 May 1977. It covered primarily juridical persons and the acquisition and administration of temporal goods.

CODE OF CANONS OF THE EASTERN CHURCHES

General

ELT 9-10 (2010-2011), 20-21: Natale Loda: Prospects for the New Evangelization of Syro-Malabar Major Archiepiscopal Church. (Article)

L. speaks about the need of adopting suitable means for the evangelization that is to be taken up by the Syro-Malabar Church. He proposes certain practical and workable steps to be followed in the coordination of missionary activities in India.

ELT 9-10 (2010-2011), 86-110: Mathew Kochupurackal: Sharing Spiritual Activities and Resources between the Catholic Church and the Non-Catholic Churches. (Article)

See above, General Subjects (*Ecumenism and interreligious dialogue*).

ELT 9-10 (2010-2011), 173-191: Mathew Kochupurackal: Particular Law of the Syro-Malabar Church: An Evaluation of the Present Stage. (Article)

K. provides a brief history of the codification of the particular laws of the Syro-Malabar Church after it was raised to the status of a major archiepiscopal church on 16 December 1992. He gives a list of the particular laws that have been promulgated and published through a volume of Synodal News in 2003. He centres his study on three groups of laws: 1. the major amendments effected from time to time to the existing single volume of particular laws published in 2003; 2. particular laws enacted after the publication of the single volume of particular laws; and 3. particular laws yet to be enacted, that is, proposals regarding areas in which particular laws are possible and even necessary.

SC 46 (2012), 489-510: Jobe Abbass: Canonical Studies: Making the Case for a Course on Conflict of Laws. (Article)

The increased mobility of people in today's society that has made the world a global village is a phenomenon that has not escaped the faithful of the Catholic Church. Like the faithful in the West, Eastern Catholics are now moving in greater numbers beyond the traditional territories of their Churches *sui iuris*. Just as competing laws among nations vie for application in cases involving persons from various countries, so too there are different laws among Churches which seek application in cases involving the faithful of the 23 Churches *sui iuris* that are Catholic. From the many areas where apparently conflicting laws of the two Codes are called into play in interecclesial matters, this article examines only the

area of religious law and, in particular, the case of an Eastern faithful who is granted an indult of accommodation from the Holy See, according to the CCEO canons 451 and 517 §2, to enter the novitiate of a Latin religious institute. While both Codes' regulation of religious life must be taken into account *ex natura rei*, sometimes the applicable laws on a particular issue are quite different. A. looks at five of these differences between the Eastern and Latin Codes and asks which law would apply to resolve the apparent conflict in this interecclesial case. For some time, civil law has systematically studied this subject-matter in the field called "conflict of laws" or "private international law". A.'s aim is to invite the same kind of scientific study in canon law and to encourage the establishment of at least an optional course of the same name "conflict of laws" at canon law faculties.

CCEO 1

SC 46 (2012), 293-318: Jobe Abbass: The Explanatory Note Regarding CCEO Canon 1: A Commentary. (Article)

On 8 December 2011, the Pontifical Council for Legislative Texts published an official Explanatory Note concerning the interpretation to be given to canon 1 of the CCEO. Prior to the publication of the Explanatory Note, there had been disagreement among canonical writers regarding the exact meaning to be applied to *expresse*. A minority of authors argued that, by way of the term *expresse*, the legislator only intended the canons of the Eastern Code to apply to the Latin Church when it is explicitly named. However, consistent with a classical rule of interpretation, according to which whatever is expressly (*expresse*) established in law can be indicated either explicitly or implicitly, a majority of writers maintained that canons of the Eastern Code could also regard or oblige the Latin Church implicitly by way of the use of the expression "Church *sui iuris*", which could refer to the Latin as well as the Eastern Catholic Churches *sui iuris*. By essentially accepting the majority view, the Pontifical Council's Explanatory Note constitutes a significant decision that will certainly affect canonical interpretation for years to come. Given the importance of the Explanatory Note, which was published only in Italian, an English translation is offered here of the entire text. The original Italian version and a French translation are given in an appendix to the article. (See also *Canon Law Abstracts*, no. 109, p. 30.)

CCEO 167

FC 13-14 (2010-2011), 71-84: Federico Marti: The Legislative Power of the Council of Hierarchs in the Metropolitan Church *sui iuris*. (Article)

The metropolitan Church *sui iuris* is one of the ecclesiastical structures established in the Eastern Code, but nowadays its ecclesiological nature and canonical structure are not fully understood by scholars. Difficulties arise even in ascertaining who is the superior authority in this type of Church *sui iuris*, whether

the metropolitan or the council of hierarchs. The metropolitan Church *sui iuris* is recognized as having power and autonomy by which its legislative body, the council of hierarchs, may issue valid and binding legislation for the whole metropolis. This legislative power applies to the council of hierarchs not only when the Code expressly grants it, but also in all cases where the Code makes reference to the particular law of a Church *sui iuris*. M. looks at the extent and limits of the council of hierarchs' legislative power, suggesting new criteria of interpretation to determine the council's legislative competence, and dwelling in particular on the difficulty in applying *recognitio* to its legislative acts. The question of the extent of the legislative competence of the council of hierarchs remains far from being resolved, but M. offers this study in the hope that it will assist in addressing the matter with new energy.

CCEO 245-251

ELT 9-10 (2010-2011), 111-123: Mathew John Puthenparambil: The Office of Protosyncellus. (Article)

The office of the protosyncellus is the highest office in an eparchy after that of the eparchial bishop. The protosyncellus is the pre-eminent official of the eparchial curia. P. explains the origin and appointment of the protosyncellus, the qualifications needed for the office, the place of the protosyncellus among the clergy, the powers of the protosyncellus, the ways in which the office may be lost, and the appointment of the auxiliary or coadjutor bishop as protosyncellus.

CCEO 280

FC 13-14 (2010-2011), 227-267: Saturino da Costa Gomes: La parrocchia personale: origine, sviluppo e attualità di una figura canonica. (Lecture)

See below, CIC canon 518.

CCEO 399-409

Comm 44 (2012), 265-317: Ex Actis Pontificae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Coetus Studiorum "De laicis, de bonis temporalibus, de beneficiis ecclesiasticis et de officiis ecclesiasticis" (Sessio II). (Report)

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

CCEO 410

ELT 9-10 (2010-2011), 27-41: Mathew Kochupurackal: Eparchial Bishops

and the Religious. (Article)

K. explains the state of being a religious and the office of the local hierarch in the light of the prescriptions of the CCEO. He then analyses in detail the activities of the religious subject to the authority of the local hierarch. He highlights the possible areas of tension and collision between the local hierarch and the religious, and proposes certain practical measures to resolve them to a great extent. He makes certain observations on the subject in the context of the Syro-Malabar Church.

CCEO 426

ELT 9-10 (2010-2011), 124-172: Saly Kurumbath: Canonical Basis of Statutes and Constitutions of Religious Institutes according to CCEO and CIC. (Article)

K. examines the juridical nature of the statutes and constitutions of religious institutes in the present law system of the Church. She explains the content, function, purpose and autonomy of the statutes and their evangelical and theological principles. She states that the current legislation of the Church grants religious institutes ample freedom to preserve and promote their patrimony and charism through their statutes and constitutions. The principles of subsidiarity and collegiality are very important in this realm. They demand greater responsibility on the part of the religious institute to formulate the statutes and constitutions as the authentic expression of their charism. She looks at both the CCEO and CIC in studying this theme.

CCEO 572

IE XXIV 2/12, 381-400: George Nedungatt: The Eastern Code on the Apostolate of Religious needs Revision. (Article)

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

CCEO 802

ELT 9-10 (2010-2011), 42-85: Sajan George Thengumpally: Marriages of Unbaptized Persons: Misapprehensions and the Right Approach of the Church. (Article)

T. examines how the Catholic Church views marriages of persons who are not baptized. He situates the study in the changing milieu of the present world. Interecclesial and interreligious marriages are on the increase on account of human mobility and the intermingling of different cultures. The laws of the Catholic Church bind only those who are baptized in the Catholic Church or

received into it. But the Church needs to intervene in certain cases. One of the non-baptized parties may have obtained a civil decree of divorce and may now wish to receive baptism and marry a Catholic. T. asks whether this decree of civil divorce may be taken as a certificate of that party's free state for the fresh marriage. He answers that it cannot, if the decree is issued on a ground contrary to a principle of divine law. He proposes that in order to prove the free state of the person, there should be a formal nullity process or dissolution of the previous non-sacramental marriage. On the other hand, if the decree is a civil declaration of the nullity of the marriage it may be possible for it to be recognized by the Church. T. describes the two possibilities for granting the cessation of a non-sacramental marriage bond: the granting of a dissolution of the marriage (including the application of the Pauline privilege, the Petrine privilege, and dissolution of non-consummated marriages of the non-baptized), and the declaration of the nullity of the marriage after a judicial procedure. In describing the latter procedure K. refers to *Dignitas Connubii*, art. 4, which deals with the procedural and substantive laws for analysing the validity of marriages of the non-baptized (this provision resolves a *lacuna legis* in the CIC/83 and CCEO.)

CCEO 853-862

ELT 9-10 (2010-2011), 42-85: Sajan George Thengumpally: Marriages of Unbaptized Persons: Misapprehensions and the Right Approach of the Church. (Article)

See above, CCEO canon 802.

CCEO 916

Comm 44 (2012), 36-37: Pontificium Consilium de Legum Textibus: Litterae ad Conferentiam episcopalem Civitatum Foederatorum Americae Septentrionalis missae quibus pastores christifidelium Ecclesiarum orientalium ibi commorantium designantur. (Document)

The Pontifical Council for Legislative Texts has become aware that in some places in the USA pastors for Eastern-rite Catholics are still being designated in the manner prescribed in a letter from the Congregation for Oriental Churches dated 30 May 1955, which presumed that unless a pastor had been designated for Eastern-rite Churches by their own hierarch a member of the Eastern Churches would be a subject of the Latin-rite pastor. However, where there is no pastor of the faithful's own Church, the CCEO requires the eparchial bishop to designate a pastor from another Church *sui iuris* to care for them. In the absence of this, clearly the faithful can freely attend and receive the sacraments in any other Church *sui iuris*, but in this case the pastor of the parish cannot be considered the proper pastor.

CCEO 936-978

Comm 44 (2012), 265-317: Ex Actis Pontificae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Coetus Studiorum "De laicis, de bonis temporalibus, de beneficiis ecclesiasticis et de officiis ecclesiasticis" (Sessio II). (Report)

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

CCEO 984

ELT 9-10 (2010-2011), 27-41: Mathew Kochupurackal: Eparchial Bishops and the Religious. (Article)

See above, CCEO canon 410.

CCEO 1368

Proc CLSA 2010, 142-174: William L. Daniel: The Notion of Moral Certitude with Particular Application to the Acts Mentioned in Canon 1682 §2 (CCEO, c. 1368 §2). (Lecture)

See below, CIC canon 1608.

CCEO 1459

Comm 44 (2012), 116-117: Congregatio pro Doctrina Fidei: Declaratio Congregationis pro Doctrina Fidei quoad statum canonicum monachorum basilianorum Episcopos Greco-catholicos se profitentium, qui in pago cui nomen est "Pidhirtsi", leopolitanae provinciae Ucrainae occidentalis commorantur. (Document)

By this declaration the Congregation for the Doctrine of the Faith clarifies the position of a group of dissident Ukrainian who claim to have been ordained bishops. Not only are they excommunicated but the Congregation does not recognize the validity of their episcopal orders, nor that of any holy orders conferred by them. The group are completely outside the communion of the Catholic Church.

CODE OF CANON LAW

BOOK I: GENERAL NORMS

16-17

FCan VII/1 (2012), 83-90: Bento XVI: *A Interpretação da Lei Canónica*, Discurso ao Tribunal da Rota Romana, 21/01/12. (Address and comment)

The Portuguese text is given of Pope Benedict XVI's address to the Roman Rota of 21 January 2012 (see *Canon Law Abstracts*, no. 109, p. 42), accompanied by a short comment by Miguel Falcão. The Pope underlines a primary aspect of the judicial ministry, that of interpreting canon law with a view to its application. This interpretation and application take place within the faith of the Church. He points out two ways which are opposed to the proper interpretation of canon law. One is to give absolute value to ecclesiastical laws, reducing canon law merely to canonical laws: the error of "legalism". The opposite error is that of making ecclesiastical laws completely relative, under the pretext of following pastoral criteria to resolve specific problems, with the risk of arbitrariness: the error of "pastoralism". The Pope proposes a middle way, that of understanding canonical laws within the community of the Church.

17

Comm 44 (2012), 23-26: Pope Benedict XVI: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos die 21 mensis ianuarii 2012 prolata. (Address)

Starting from the Year of Faith, in his address to the Rota the Pope takes the theme of how the law of belief must shape the law of action. This is the context for the interpretation of the meaning of laws. The complex reality of the Church is the soil from which canon law grows. This is particularly true for the understanding of the act constituting marriage or the reception of holy orders. The Rota has an essential role in ensuring unity of hermeneutic.

17

IE XXIV 3/12, 701-718: Benedetto XVI: Disocorso all Rota Romana, 21 gennaio 2012 (con *nota* di Eduardo Baura, *La realtà disciplinata quale criterio interpretativo giuridico della legge*). (Address and comment)

See preceding entries. The Italian text of the Pope's address to the Rota of 21 January 2012 is followed by a comment in which B. examines the concept of juridical interpretation and the conception of laws; the relationship between the reality to which laws apply and the text of the laws themselves; and the interpretation of laws – in particular matrimonial laws – "*in Ecclesia*".

18

PCF XII1 (2011), 209-245: Roy Remo: Sacramental Laws Containing an Exception from the Law. (Article)

See below, canon 841.

19

Patricia M. Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See below, canons 1055-1165.

35-93

Ap LXXXIV 2 (2011), 633-646: Patrick Valdrini: La decisione di governo nella Chiesa. *Rationabilitas* e *iustitia* dell'Atto amministrativo singolare. (Article)

V. discusses the singular administrative act, and the exercise of executive power in the Church in a particular given circumstance from the point of view that the act, as a decision on the part of someone with the ability to decide, needs to be executed reasonably and justly, and not just because there is the need to decide something. He hopes that there will be a development at the general and specific level of procedures for placing singular administrative acts to ensure that they guarantee the justice of the decision which has been taken and respect the rights of all involved.

97

Markus Graulich – Jesu Pudumai Doss (eds.): Minori e Famiglia. Quali Diritti? (Book)

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

114

Comm 44 (2012), 44-53: Secretaria Status: Rescriptum ex audientia Ss.mi quo Fundatio cui nomen est "Fondazione Scienza e Fede – STOQ" instituitur. (Document)

See below, canon 360.

121-123

J 72 (2012), 164-177: Robert W. Oliver: Temporal Goods and the Suppression/Merger of Parishes. (Article)

O. looks at the law on temporal goods as applied to changes in parishes. He considers first the canonical concept of the parish and then what happens financially when parishes are joined, divided, or suppressed, or when churches are reduced to secular use. He concludes by looking at the practical issues involved in the transfer and alienation of temporal goods.

140-141

AnC 8 (2012), 99-108: Ginter Dzierżon: Wykonywanie władzy delegowanej kilku lub wielu osobom (kan. 140-141 KPK) (= Exercising power delegated to one or several persons (can. 140-141 CIC)). (Article)

D. carries out a detailed examination of canons 140 and 141 of the CIC/83 which concern power delegated to one or several persons. He points out that the provisions contained in these canons are supposed to guarantee the "collision-free" performance of one's duties. He shows that the dispositions concerning power delegated *in solidum* and consecutively (canons 140 §1 and 141) are not of an invalidating nature, and he believes that what the legislator tried to avoid by using such legislative techniques was the invalidity of actions taken by other delegated persons. On the other hand, the directives included in canon 140 §2 concerning collegial delegation are of an invalidating nature. This results, however, not from the content of the canon but rather from the nature of things, since a collegial act is substantially not the sum of acts of individual people but a new act.

144

PCF XII1 (2011), 209-245: Roy Remo: Sacramental Laws Containing an Exception from the Law. (Article)

See below, canon 841.

BOOK II, PART I: CHRIST'S FAITHFUL

207

EE 87 (2012), 717-731: Teodoro Bahíllo Ruiz: El religioso presbítero, una forma peculiar de vida en la Iglesia. Condición jurídica y problemáticas inherentes. (Article)

When priestly vocation and religious vocation converge in the same person, they give rise to a particular way of life and a particular manner of being a priest in the Church. Participation in the same sacrament and shared responsibility in the same mission (to sanctify, teach and guide) does not justify treating religious and secular priests as identical. The specificity of the religious life results in a proper juridical status for the religious priest which cannot be identified with that of the secular priest. On the one hand, the religious status of the religious priest brings about a specific pastoral ministry "to the universal Church in the local Church". On the other hand, his priestly status leads to a particular way of being religious: to collaborate with the bishop, as a member of the diocesan family and part of the one *presbyterium*. To keep the religious and priestly dimensions in dynamic unity means achieving a difficult balance which is not without its problems. Canon law, though not dealing explicitly with the religious priest, offers sufficient elements to configure this specific way of ecclesial life. It makes provision for certain issues – formation, incardination, specific duties, apostolate – and fixes the limits of the autonomy and dependence on the diocesan bishop, offering a juridical framework for tackling the most problematic issue: the recognition of the religious priest's role in the diocesan Church.

211

ADC 1 Supl. 1 (diciembre 2012), 15-69: Juan Damián Gandía Barber: El derecho de los fieles a la Palabra de Dios y el deber del anuncio del Evangelio. (Article)

See below, canon 213.

213

ADC 1 Supl. 1 (diciembre 2012), 15-69: Juan Damián Gandía Barber: El derecho de los fieles a la Palabra de Dios y el deber del anuncio del Evangelio. (Article)

G.B. presents the relationship between the right of every baptized person to the abundant reception of the Word of God (canon 213) and the duty and right to evangelize which pertains to the Church as a whole (canon 747), and to each of its members (canon 211). He examines the Church's constitutional and juridical right and duty to announce the Gospel as commanded by Christ, a command which applies to each of the Christian faithful by virtue of their having received baptism. This duty and right is enforceable in respect of certain specific faithful, especially the legitimate pastors of the Church by virtue of their reception of the sacrament of orders. It is a duty and right with extrinsic and intrinsic limits, and one which needs to be protected.

215

RMDC 18 (2012), 429-441: Benedicto XVI: Motu Proprio sobre el Servicio de la Caridad. (Document and comment)

The Spanish text is given of the *motu proprio Intima Ecclesiae natura*, dated 11 November 2012, by which Pope Benedict affirmed the right of the faithful to associate and to institute organisms on behalf of the poor and those who suffer, as well as to establish foundations to finance specific charitable initiatives, The document is accompanied by a comment from Luis de Jesús Hernández M.

220

Proc CLSA 2010, 83-114: Phillip J. Brown: Confidential Communications and the Law. (Lecture)

B. considers the canonical and civil law aspects of confidential communications, that is, “religiously based oral communications made in pastoral settings”. This involves looking at the notion and categories of such communications – confession, spiritual direction, testimony in ecclesiastical courts, etc. – and their bases in moral theology, canon law and civil law.

222

IE XXIV 2/12, 303-322: Diego Zalbidea: Corresponsabilidad (stewardship) y derecho canónico. (Article)

See below, canon 1261.

222

REDC 69 (2012), 757-779: Silvia Meseguer Velasco: El principio de cooperación y las donaciones a las confesiones religiosas. (Article)

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

222

RMDC 18 (2012), 429-441: Benedicto XVI: Motu Proprio sobre el Servicio de la Caridad. (Document and comment)

See above, canon 215.

224-231

Proc CLSA 2010, 41-49: James Weisberger: The Renewal of Canon Law in the Spirit of a Church of Communion. (Lecture)

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

226

PCF XII1 (2011), 279-288: Alvin L. Linao: The Deferral of Baptism of Children of Unmarried Couples. (Article)

See below, canons 867-868.

241

ACR LXXXIX 1/12, 63-68: Paul A. McGavin: A Closer Look at Discernment on Homosexuality and the Priesthood. (Article)

This "closer look" embraces the *Instruction Concerning the Criteria for the Discernment of Vocations with Regard to Persons with Homosexual Tendencies with a View to their Admission to the Seminary and to Holy Orders* issued by the Congregation for Catholic Education on 4 November 2005, and remarks made by Pope Benedict XVI in his interview with journalist Peter Seewald in 2010. McG. considers the 2005 instruction ill-advised in placing psychological pressure on candidates to disclose their inner dispositions (and to disclose internal forum matter).

241

Vid 74 4/10, 47-54: G. Cucchi – Hans Zoliner: Psychology's Contribution to Priestly Formation. (Article)

This is a summary of and comment on the Congregation for Catholic Education's document *Orientations for Using Psychology in Admitting to and Forming Candidates for the Priesthood,* 29 June 2008. The authors comment on the document in the light of the documents of the Second Vatican Council, particularly *Optatum Totius* and *Presbyterorum Ordinis,* as well as Pope Paul VI's *Sacerdotalis Coelibatus* of 1967. They provide a positive view of the impact of psychology in priestly formation, as well as other aspects of Christian anthropology.

265-272

SC 46 (2012), 375-400: Luis Navarro: Clergy and New Ecclesial Movements.

Juridical Issues. (Article)

See below, canon 302.

277

CLSN 167 (2011), 5-18: Francis Morrisey: Violations of Canon 277 (With an Adult). (Article)

M. considers canon 277 and its component parts, dealing with the basic legal obligations of clergy relative to sexual behaviour. Noting the existence and scope of three distinct but related notions of chastity, continence and celibacy, M. observes that the scope of the canon is quite extensive and contains no exceptions. He then discusses the canonical responses to violations of this canon, and outlines a possible diocesan policy for priests and religious ministering in the diocese in relation to the requirements of the canon.

281

CLSN 169 (2012), 28-43: Patrick Lagges: Remuneration and Sustenance of Priests in Sexual Abuse Cases. (Article)

See below, canon 384.

290

CLSN 172 (2012), 36-42: Victor G. D'Souza: Priest After Sex Change Surgery: Male to Female? (Article)

See below, canons 1040-1049.

290-293

IE XXIV 3/12, 609-622: Luis Navarro: La dimissione dallo stato clericale in via amministrativa. (Article)

The CIC/83 does not legislate for *ex officio* dismissal from the clerical state. However the *motu proprio Sacramentorum Sanctitatis Tutela*, and the special faculties granted to the Congregation for the Clergy and the Congregation for the Evangelization of Peoples, do include this possibility. An analysis of these norms leads N. to underline some guiding principles and some characteristic traits of these procedures: the exceptional character of this path for dismissal from the clerical state, and the strict obligation to respect the requirements of justice in using administrative procedures *ex officio*. Due space is dedicated to the

relationship between dismissal *ex officio* and the dispensation from celibacy and from the other obligations related to sacred orders, as well as to the role of the Roman Pontiff in these procedures. In conclusion N. studies the case of a declaration of the loss of the clerical state due to abandonment of ministry for five consecutive years.

290-293

Mario Medina Balam – Luis de Jesús Hernández Mercado (eds.): La dimisión del estado clerical y su normativa canónica más reciente. (Book)

This book contains the proceedings of a conference held at the Universidad Pontificia de México on 27-29 September 2011, and offers a study on the different reasons for dismissal from the clerical state and how this is handled in the Church, as well as an analysis of the documents which contain the current canonical dispositions for carrying out the appropriate procedures. The topics dealt with were the new faculties from the Congregation for Clergy on dismissal from the clerical state (Mario Medina Balam); dismissal from the clerical state by means of a rescript from the Holy See (Nikolaus Schöch); dismissal from the clerical state as a lawfully imposed sanction (Nikolaus Schöch); modifications to the *motu proprio Sacramentorum Sanctitatis Tutela* (Francisco J. Ramos); guarantees for a just application of penalties (Miguel López Dávalos); the role of the Ordinary in canonical penal processes (Nikolaus Schöch); the precautionary measures provided for in canon 1722 and their application (Mario Medina Balam); the expulsion of clerics from institutes of consecrated life and societies of apostolic life (Nikolaus Schöch); the juridical situation of priests after the loss of the clerical state (Jorge Luis Roque Pérez); causes for the declaration of nullity of sacred ordination (Jesús Gaona Moreno); administrative implications of the loss of the clerical state (Gerardo Ángeles Pérez); readmission to the exercise of the ordained ministry and/or the clerical state (Luis de Jesús Hernández Mercado). The book also contains an appendix with the Spanish text of the main documents. (For bibliographical details see below, Books Received.)

294

ACR LXXXIX 2/12, 221-232: John Flader: *Opus Dei* in the Church. (Article)

This article is not primarily canonical, but it does contain a succinct explanation of the prelature's juridical history and status.

295

FCan VII/1 (2012), 107-118: Miguel Falcão: A incardinação do clero na Prelatura do Opus Dei. (Communication)

This communication was presented at a panel discussion during a conference in Fatima, Portugal, in 2010, dealing with the manner in which the question of incardinating clergy in the "new ecclesial realities" that emerged in the 20th century was gradually resolved. In the case of Opus Dei, F. shows how it evolved from the time of its foundation in 1928 until its erection as a personal prelature in 1982, passing through the various solutions adopted for the incardination of the priests needed for the pastoral care of its members. He also refers to the situation of priests incardinated in a diocese who are linked to Opus Dei for spiritual direction.

298

Per 101 (2012), 7-65: Gianfranco Ghirlanda: Movimenti ecclesiali e istituti di vita consacrata nella Chiesa e nella società di oggi. (Article)

G. considers whether the current ecclesial movements that have flourished in the Church since Vatican II are going to supplant the mission proper to institutes of consecrated life, both religious and secular, and whether the mission proper to those institutes will be absorbed into that of these new forms of ecclesial life. He begins by considering first of all the ecclesial movements as a phenomenon that has existed within the Church for many centuries: at different moments of its history, the Church has witnessed the movement of the Spirit stirring up men and women who sought to respond to the critical situations that had arisen. In this light, G. considers the origins of monasticism in the Church, the rise of the mendicant orders, and later developments in religious life, as well as the emergence and eventual approval of secular institutes. He offers a comprehensive presentation of the essential theological elements of consecrated life within the Church, in the light of the Code of Canon Law and the Apostolic Exhortation *Vita Consecrata*, before examining some recently emerged expressions of consecrated life that he would view – along with De Paolis – as "new forms of institutes" rather than "new forms of consecrated life". G. observes that, historically speaking, new forms of Gospel life in the Church have not supplanted those that previously existed, but rather have become integrated into the life of the Church, bringing with them the renewal the Church needed at that time, and stimulating renewal in what was already being done. Finally, G. teases out some fundamental distinctions between the profession of the evangelical counsels in an institute of consecrated life and the commitment to those counsels that constitutes a characteristic of the current ecclesial movements. A fundamental criterion for the discernment of the authentic ecclesial dimension of any of these movements is an examination of how it views itself in relation to the Church, especially the particular Church, and what kind of complementary relationships it seeks to establish. At the end, G. believes that the freshness of these movements is in their opening to all categories of people within the Church of the values of communion, service and solidarity, something that also serves to stimulate a renewal of their own vocation and mission among the institutes of consecrated life.

302

SC 46 (2012), 375-400: Luis Navarro: Clergy and New Ecclesial Movements. Juridical Issues. (Article)

N. discusses the fundamental elements deriving from sacred ordination and the main characteristics of new ecclesial movements and new communities. He addresses the situation of priests who share the charism of a new ecclesial movement: 1. secular and religious clerics who encounter an ecclesial movement as ordained faithful; 2. secular clerics and religious who have discovered their vocation in an ecclesial movement and who would like to maintain ties with it; 3. clergy who belong to the movement and want to dedicate their ministry to its service. He identifies solutions that have been used in recent decades, problems related to the different solutions, and the possibility of incardination within ecclesial movements. He proposes clerical associations (canon 302) as a new possibility for incardination in ecclesial movements.

311

REDC 69 (2012), 585-612: José Carlos Bermejo: Reorganización de hospitales, centros asistenciales y pastoral de la salud. (Lecture)

See below, canon 675.

312

Comm 44 (2012), 72-78: Secretaria Status: Decretum Generale quo statutum institutionis cui nomen est *Caritas Internationalis* renovator. (Document)

Pope John Paul II granted public juridical personality to *Caritas Internationalis* on 16 September 2004. This decree seeks to strengthen and emphasize the link between the organization and the pastors of the Church by placing it under the supervision and control of the Pontifical Council *Cor Unum*. A stronger role is also given to the Secretariat of State.

312

Comm 44 (2012), 129-132: O. Neves De Almeida: Articulus explanans decretum quo statutum institutionis cui nomen est *Caritas Internationalis* renovatur, a Rev.do Osvaldo Neves De Almeida conscriptus. (Article)

Caritas Internationalis has existed for 61 years. The author outlines its history since its suggestion by Pope Pius XII, and the process involved in updating its juridical framework.

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

331

AnC 8 (2012), 5-21: Péter Erdö: Władza Biskupa Rzymu. Ujęcie historyczno-prawne (= The power of the Roman Pontiff. Legal and historical perspective). (Lecture)

The Pope's primacy is one of the most important issues of Catholic theology and canon law. It is the foundation of the hierarchical structure of the Church. E. presents the complexity of the problem in the light of the CIC/83 and the CCEO, as well as other normative sources. (See also *Canon Law Abstracts*, no. 109, p. 56.)

331

AnC 8 (2012), 69-80: Piotr Kroczek: Czy można rozdzielić prymat nauczania od prymatu jurysdykcji? Perspektywa ekumeniczna (= Is it possible to separate the primacy of jurisdiction from the primacy of teaching? Ecumenical perspective). (Lecture)

The question of Papal primacy is one of the most delicate issues between Catholics and Protestants. K. discusses the possibility of a separation of the primacy of jurisdiction from the primacy of teaching. His method of reasoning follows that used by St Thomas Aquinas: first the arguments in favour, then those against. The arguments are from Catholic theology, Lutheran theology, and philosophy. The answer is given from the ecumenical perspective.

332

AnC 8 (2012), 47-68: Piotr Majer: Wybór Biskupa Rzymskiego w perspektywie jednośi Kościoła (= The election of the Roman Pontiff in the perspective of the unity of the Church). (Lecture)

M. comments on some elements of the procedure for electing the Pope which underline the unity of the believing community. It is a unity in the sense of a participation by the whole Church in the election process, and also in that the election brings about a special strengthening of the Pope to fulfil the ministry of

unity of Christ's Church. The elements in question are the entrusting of the election of the Bishop of Rome to the cardinals of the Holy Roman Church; a majority of votes necessary for a valid election, and a spiritual dimension of a conclave, as well as a calling directed to all the faithful to take part in this special act.

333

CLSN 171 (2012), 7-16: The Findings and Prospects of the Apostolic Visitation of Ireland. (Document and comment)

This document offers an overall synthesis indicating the results and the future prospects highlighted by the apostolic visitation to certain dioceses, seminaries and religious institutes in Ireland. Detailing how the visitation was carried out, the document goes on to outline the observations made by the Holy See. These include the attention and care that has been shown by bishops and religious superiors to the victims of past abuse; meetings with abuse victims also enabled the visitators to understand better the various aspects of the problem of the sexual abuse of minors that took place in Ireland. Further observations are made which include a number of recommendations for the formation of seminarians and guidelines for major superiors of religious institutes. The report is accompanied by a comment from Mgr John Hadley.

336

AnC 8 (2012), 35-45: Krzysztof Nitkiewicz: Prymat papieski a zakres autonomii zebrań biskupów (= Papal primacy and the autonomy of groupings of bishops). (Lecture)

N. aims to present the various forms of groupings of bishops and the levels of their autonomy in relation to the primacy of the Pope. He concludes that the supreme, full, immediate and universal power of the Pope in the Church is not limited but rather strengthened by the power of the bishops gathered together.

351

Comm 44 (2012), 27-29: Pope Benedict XVI: Allocutio Summi Pontificis occasione Consistorii publici novis Cardinalibus creandis die 18 mensis februarii 2012 habita. (Address)

In his address to the new cardinals the Pope speaks of the favour sought by James and John and the contrast between dominion and service, egoism and altruism, possession and gift, self-interest and generosity. For a cardinal Jesus must be the model.

351

Comm 44 (2012), 126-128: V. Marini: Articulus explanans mutationes in ritum Consistorii cum Benedicti XVI approbatione introductas, a Rev.do Vidone Marini conscriptus. (Article)

M. explains the rationale for changes in the way that the consistory for new cardinals is conducted. The cardinalate is not a sacrament and so it has been taken out of the context of a Mass.

360

Comm 44 (2012), 9-12: Pope Paul VI: Instructio *Secreta continere* de secreto pontificio stricte servando die 4 mensis februarii 1974 lata. (Document)

This is a re-publication of the 1974 Instruction concerning the pontifical secret. It describes what is covered by this level of secrecy, those who are bound by it, the nature of the obligation and procedure to be followed should the obligation be broken.

360

Comm 44 (2012), 33-35: Pope Benedict XVI: Allocutio Summi Pontificis ad communitatem Pontificiae Academiae Ecclesiasticae coram admissos die 11 mensis iunii 2012 habita. (Address)

Addressing students for the Papal diplomatic service the Pope speaks of the importance of fidelity to God and to the Pope in assisting him to carry out his call to encourage the brethren.

360

Comm 44 (2012), 44-53: Secretaria Status: Rescriptum ex audientia Ss.mi quo Fundatio cui nomen est "Fondazione Scienza e Fede – STOQ" instituitur. (Document)

Since 2003 the Pontifical Council for Culture has supported a project entitled "Science, Theology and the Ontological Question". To provide greater security this is now set up as a separate foundation based in the Vatican City.

360

Comm 44 (2012), 64-71: Secretaria Status: Ordinatio Praefecturae Rerum Oeconomicarum Sanctae Sedis. (Document)

This is the text of the regulations governing the Prefecture for Economic Affairs of the Holy See, describing its function, structure and procedure.

360

QDE 25 (2012), 260-280: Davide Salvatori: La riserva di alcuni delitti alla Congregazione per la dottrina della fede e la nozione di *delicta graviora*. (Article)

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

360

RMDC 18 (2012), 419-428: Benedictus XVI: Litterae Apostolicae Motu Proprio Datae *Lingua Latina*. (Document)

By this *motu proprio* of 10 November 2012, Pope Benedict instituted the Pontifical Academy for Latin, to promote greater knowledge and more competent use of the Latin tongue, both in the ecclesial context and in the wider world of culture. The Latin and Spanish texts are given both of the *motu proprio* and of the statutes of the new Pontifical Academy, approved *ad experimentum* for 5 years.

372

ACR LXXXIX 3/12, 360-263: Decree of Erection of the Personal Ordinariate of Our Lady of the Southern Cross; Decree appointing the First Ordinary of the Personal Ordinariate of Our Lady of the Southern Cross. (Documents)

In the wake of the Apostolic Constitution *Anglicanorum Coetibus*, documentation from the offices of the Congregation for the Doctrine of the Faith dated 15 June 2012 established this personal ordinariate within the territory of the Episcopal Conference of Australia and appointed Very Reverend Harry Entwistle the first Ordinary.

372

ACR LXXXIX 4/12, 468-480: Military Ordinariate of Australia: Approval of the Statutes. (Documents)

On 19 March 2012, the Congregation for Bishops approved new statutes for the Military Ordinariate of Australia. Published here are the decree of approval in Latin from the Congregation and an English translation of it, as well as the actual statutes. These statutes replace the original statutes of 1988 (ACR LXV, 4/88,

472-478), and the amendments to them of 1993 (ACR LXX, 1/93, 102-105).

372

Comm 44 (2012), 113-115: Congregatio pro Doctrina Fidei: Decretum erectionis Ordinariatus Personalis Cathedrae Sancti Petri. (Document)

By this decree the Congregation for the Doctrine of the Faith erected the Personal Ordinariate of the Chair of St Peter, in accordance with the Apostolic Constitution *Anglicanorum Coetibus* of 4 November 2009 for those from an Anglican background in the United States.

372

Comm 44 (2012), 118-120: Congregatio pro Doctrina Fidei: Decretum Ordinariatus Personalis qui appellatur "Our Lady of the Southern Cross". (Document)

By this decree the Congregation for the Doctrine of the Faith erected the Personal Ordinariate of Our Lady of the Southern Cross, in accordance with the Apostolic Constitution *Anglicanorum Coetibus* of 4 November 2009 for those from an Anglican background in Australia.

372

IC 52 (2012), 481-520: Antonio Viana: Ordinariatos y prelaturas personales. Aspectos de un diálogo doctrinal. (Article)

The Apostolic Constitution *Anglicanorum Coetibus* on personal ordinariates for former Anglicans has prompted interest not only because of its implications for ecumenism but also because of the canonical issues it involves. In this article V. undertakes a systematic study of the relationship between the structure of a personal ordinariate and that of a personal prelature. He highlights a number of key aspects in this regard, mentioning some new developments, and making proposals for further doctrinal dialogue following the CIC/83.

372

Proc CLSA 2010, 217-227: William H. Stetson: A History of the Pastoral Provision (1980-2010). (Lecture)

S. explains the history and canonical journey of the pastoral provision, the US structure for former Anglicans.

377

AnC 8 (2012), 23-33: Celestino Migliore: Rola Kościoła partykularnego w procedurze mianowania biskupów przez papieża (= The role of the particular Church in the procedure for Papal appointments of bishops). (Lecture)

The appointment of bishops is very important for the Church, and at the same time is a very delicate matter. M. describes the role of the particular Church in the procedure. He presents past and present practices, as well as the legal foundations of the process.

383

Comm 44 (2012), 36-37: Pontificium Consilium de Legum Textibus: Litterae ad Conferentiam episcopalem Civitatum Foederatorum Americae Septentrionalis missae quibus pastores christifidelium Ecclesiarum orientalium ibi commorantium designantur. (Document)

See above, CCEO canon 916.

384

CLSN 169 (2012), 28-43: Patrick Lagges: Remuneration and Sustenance of Priests in Sexual Abuse Cases. (Article)

L. considers canonical obligations towards diocesan priests of the Latin Church who are alleged to have been involved in sexual misconduct with a minor. Giving a historical overview of the support given to clerics from apostolic times through to the Council of Trent, he then focuses on the particular situation in the United States, before looking at the relevant canons in the CIC/17 and CIC/83. He concludes that there is a need for particular law which clearly spells out what the remuneration will be for a priest who can no longer serve in active ministry.

384

QDE 25 (2012), 281-315: Marino Mosconi: I principali doveri del vescovo davanti alla notizia di un delitto "più grave" commesso contra la morale o nella celebrazione dei sacramenti. (Article)

See below, canon 1717.

396-398

FC 13-14 (2010-2011), 141-159: Géza Kuminetz: Considerazioni sulla visita pastorale del vescovo. (Article)

K. explains the purpose and the different types of pastoral visitation, before looking specifically at the episcopal visitation in canons 396-398. This visitation is both a right of the bishop and also a personal obligation, pertaining to the power of governance. The bishop should visit the diocese once a year, but is obliged to do so at least every five years. On that basis he presents a five-yearly report to the Apostolic See on the state of the diocese, during the *ad limina* visit. That this corresponds to reality is extremely important for finding and applying the correct strategies for governing the Church world-wide. The episcopal visitation is an action of governance combined with a paternal aspect and with dialogue, which is a way for the bishop to present himself to the ecclesial community, but at the same time it is an occasion of grace for the local community. The circumstances of the pastoral visitation help the bishop in making decisions – not only on an administrative and individual level, but also juridical decisions, especially the creation of partial laws, the approval of juridical customs and the formulation of the content of instructions. Although the visitation is of a predominantly "governmental" nature, implicitly it includes the tasks of sanctifying and teaching.

439

AnC 8 (2012), 35-45: Krzysztof Nitkiewicz: Prymat papieski a zakres autonomii zebrań biskupów (= Papal primacy and the autonomy of groupings of bishops). (Lecture)

See above, canon 336.

447

AnC 8 (2012), 35-45: Krzysztof Nitkiewicz: Prymat papieski a zakres autonomii zebrań biskupów (= Papal primacy and the autonomy of groupings of bishops). (Lecture)

See above, canon 336.

463

REDC 69 (2012), 505-529: Raúl Berzosa Martínez: La vida de especial consagración y la sinodalidad en la iglesia particular. (Lecture)

B.M's theme is the importance of the integration of communities of consecrated life into the work and mission of the local Church, specifically in the celebration of diocesan synods. He spends some time on what he calls the synodical nature of

the Church, understood as the exercise of the episcopal mission, a Eucharistic assembly expressing communion among all the faithful of that particular Church for the task of mission, and a privileged means for the renewal and application of the Church's magisterium, particularly the teaching of Vatican II and the missionary spirit of the new evangelization. After looking at the pre- and post-conciliar history of synods he goes on to examine the place of the consecrated life in the synodical nature of the Church. He underlines the essentially Trinitarian nature of Vatican II's ecclesiology and how it applies most clearly to the consecrated life. The particular diocesan Church and consecrated life are mutually complementary, one as the sacramental structure of the Church, the other as its charismatic dimension. The gift and charism of consecrated life cannot be regarded as something extrinsic to episcopal ministry; both are to be seen in their common function in relation to the ecclesial mission and communion of all the faithful.

486-491

IE XXIV 2/12, 483-491: Supremo Tribunale della Segnatura Apostolica: Decretum generale exsecutorium *Saepe saepius* de actis iudicialibus conservandis, 13 agosto 2011 (con *commento* di A. Perlasca). (Document and comment)

The Latin text is given of the Apostolic Signatura's decree of 13 August 2011 dealing with situations in which serious difficulties arise in preserving the judicial acts of marriage cases (see *Canon Law Abstracts*, no. 109, p. 132). In his comment, P, looks at the background to the decree, the competence of the Signatura, the nature of the decree itself (a general executory decree, not an instruction), the areas of application of the decree, the meaning of serious difficulties in preserving acts, competence for issuing norms concerning the destruction of acts in each tribunal, and the conditions in which such destruction may take place.

486-491

SC 46 (2012), 471-487: William Daniel: The Preservation of Judicial Acts from Causes of the Nullity of Marriage. (Article)

See preceding entry. Inasmuch as the Signatura's norms deal with a very practical matter, D. considers them to be most welcome especially among ministers of ecclesiastical tribunals. He presents the text of the general administrative decree containing the norms (both the official text and an English translation) before offering a comment on the decree.

492

QDE 25 (2012), 390-399: Mauro Rivella: Consigliare nella Chiesa in ambito economico. (Article)

See below, canon 1280.

492

QDE 25 (2012), 400-436: Matteo Visioli: Lo status giuridico del consigliere per gli affari economici. (Article)

See below, canon 1280.

502

CLSN 167 (2011), 51-98: John Hadley: The College of Consultors. (Article)

H. poses the question as to whether the dioceses of England and Wales have validly constituted colleges of consultors, whether they know what their role is, and whether they are effective. He looks at the CIC/17 and CIC/83, the latter in the context of the Second Vatican Council. Among his conclusions is that such colleges may not have a sharp enough idea of their essential function and therefore may be unable to insist on carrying it out.

508

FC 13-14 (2010-2011), 85-99: Frank Elias: The Penitentiary. (Article)

In dealing with the role of the canon penitentiary, E. looks at who and what a penitentiary is, the question of remission of *latae sententiae* censures, the competent authority for remitting such censures, the competence of the diocesan penitentiary, censures reserved to the Apostolic Penitentiary, the penitentiary's role as judge, and doubts arising from the Norms *de delictis gravioribus*, which reserve certain delicts to the Apostolic See in the external forum, although in some of these cases there is no corresponding reservation to the Apostolic See in the internal forum.

515

CLSN 170 (212), 19-28: Congregation for the Clergy: Decree on the Diocese of Cleveland's Closure of Churches. (Document and comment)

See below, canon 1222.

515

FC 13-14 (2010-2011), 197-213: Jean-Claude Périsset: La paroisse aujourd'hui – Problématique canonique actuelle, en particulier en Europe centrale. (Lecture)

In order that the parish may carry out its vocation and mission correctly, and hence for the priest who is its "proper pastor" (canons 515 §1 and 519) and for those who assist him in carrying out his office (canon 519), it is important to understand its canonical structure. P. therefore studies what a parish is in canon law, what the proper pastor is and the principal areas of his pastoral care, and the three forms of cooperation in his task: that of priests deacons and laity "in accordance with the law" (canon 519); that of priests who jointly share the task of proper pastor, where a parish or parishes are entrusted to several priests *in solidum* (canon 517 §1); and that of deacons and/or lay persons who share in the exercise of pastoral care in the parish (canon 517 §2). P. also offers some reflections in relation to parishes in Central and Eastern Europe, concerning the restructuring of the parish network, and the relationship between parishes and ecclesial movements.

515

FC 13-14 (2010-2011), 215-225: Szabolcs Anzelm Szuromi: The Parish and its possible relation to the Institutes of Consecrated Life and Societies of Apostolic Life, as well as to the communities of Spiritual Movements. (Lecture)

S. looks at the canonical situation of parishes proper to institutes of consecrated life and societies of apostolic life; parishes entrusted to an institute of consecrated life; and the activity of institutes of consecrated life and communities of spiritual movements within the parish. One of the characteristics of the parish priest's service is the integration of the various spiritual tendencies and communities among the faithful into the daily life of the entire parish community. The parish priest, whether he is diocesan, religious, or belonging to another spiritual movement, has to take care of the entire community entrusted to his care, as their proper pastor. This pastoral work may be enriched by a particular spirituality, if the priest is a religious or is bound to a spiritual community. Nevertheless, if the members of institutes of consecrated life and societies of apostolic life, or of communities of spiritual movements, have their own public church endowed with parish rights, or if on the basis of a contract with the diocese their confreres administer pastoral services in a diocesan parish, then they must observe those obligations and rights which issue from the canonical regulated status of the parish and pastor.

515

J 72 (2012), 164-177: Robert W. Oliver: Temporal Goods and the Suppression/Merger of Parishes. (Article)

See above, canons 121-123.

515

Proc CLSA 2010, 205-208: Joseph A. Galante: Creating Vibrant and Dynamic Parishes. (Lecture)

G. explains his diocesan pastoral planning programme and the various conclusions that were arrived at after consultation.

517

FC 13-14 (2010-2011), 197-213: Jean-Claude Périsset: La paroisse aujourd'hui – Problématique canonique actuelle, en particulier en Europe centrale. (Lecture)

See above, canon 515.

518

FC 13-14 (2010-2011), 227-267: Saturino da Costa Gomes: La parrocchia personale: origine, sviluppo e attualità di una figura canonica. (Lecture)

This article offers some reflections on the personal parish, the need for which is due in large part nowadays to the phenomenon of social mobility. After a brief historical survey of the development of the personal parish from the time of the Fourth Lateran Council (1215) up to the present, consideration is given to the principles of organization and the structure of the personal parish. The final section of the article is dedicated to "new realities and new personal parishes", and examines university parishes, personal parishes for former Anglicans in accordance with the Apostolic Constitution *Anglicanorum Coetibus*, personal liturgical rite parishes, parishes for migrants, assistant parish priests of personal parishes, and the pastoral care of military personnel in accordance with the Apostolic Constitution *Spirituali Militum Curae*.

519

FC 13-14 (2010-2011), 197-213: Jean-Claude Périsset: La paroisse aujourd'hui – Problématique canonique actuelle, en particulier en Europe

centrale. (Lecture)

See above, canon 515.

520

FC 13-14 (2010-2011), 215-225: Szabolcs Anzelm Szuromi: The Parish and its possible relation to the Institutes of Consecrated Life and Societies of Apostolic Life, as well as to the communities of Spiritual Movements. (Lecture)

See above, canon 515.

537

QDE 25 (2012), 390-399: Mauro Rivella: Consigliare nella Chiesa in ambito economico. (Article)

See below, canon 1280.

537

QDE 25 (2012), 437-447: Gianni Trevisan: L'aiuto al parroco da parte del consiglio per gli affari economici. (Article)

T. surveys the increasing complexity of the financial and material aspects of the duties of the parish priest, with special reference to the contemporary Italian context. He looks at the conciliar teaching on the parish priest's administrative responsibilities, and the pointers to co-responsibility these contain. From these bases, he suggests that the parish finance council, rather than being a merely consultative body, could be the best means for assisting the parish priest in the discharge of all his administrative duties.

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

573

Per 101 (2012), 7-65: Gianfranco Ghirlanda: Movimenti ecclesiali e istituti di vita consacrata nella Chiesa e nella società di oggi. (Article)

See above, canon 298.

573

REDC 69 (2012), 505-529: Raúl Berzosa Martínez: La vida de especial consagración y la sinodalidad en la iglesia particular. (Lecture)

See above, canon 463.

576

REDC 69 (2012), 857-882: Decreto de la Congregación para los Institutos de Vida Consagrada y Sociedades de Vida Apostólica de 2 de abril de 2012 acerca de la creación de un Instituto secular a partir de otro ya preexistente. Texto y comentario (Raúl Román Sánchez). (Document and comment)

This decree of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life was the second and final one (for the moment) in resolving a dispute between the Cardinal Archbishop of Madrid and a member of the secular institute *Los Cruzados de María*. The nub of the matter was the decision of the archbishop to divide the institute and establish a new one from members discontented with the way in which *Los Cruzados de María* was developing. The Congregation decreed in 2010 that there were no grave and proportionate causes for such a division and gave conditions and guidelines to be followed if the archbishop wished to establish a new secular institute in his diocese. This he did in May 2011, drawing up constitutions and naming it *La Cruzada de la Inmaculada*. A second successful appeal was lodged. In its decree the Congregation makes clear that any new institute must have its own unique and special charism; the proposed new institute was almost identical to the original in its spiritual patrimony. The proposed new name was, if not quite identical to the original, so close to it that confusion and misunderstanding about the separate identities of the two institutes was inevitable; a new and clearly distinct name would have to be used. R.S. comments on the failure of the archbishop to observe the canonical norms for the creation of a new institute or the conditions and guidelines indicated to him by the Congregation.

578

ELT 9-10 (2010-2011), 124-172: Saly Kurumbath: Canonical Basis of Statutes and Constitutions of Religious Institutes according to CCEO and CIC. (Article)

See above, CCEO canon 426.

579

REDC 69 (2012), 857-882: Decreto de la Congregación para los Institutos de Vida Consagrada y Sociedades de Vida Apostólica de 2 de abril de 2012 acerca de la creación de un Instituto secular a partir de otro ya preexistente. Texto y comentario (Raúl Román Sánchez). (Document and comment)

See above, canon 576.

582

REDC 69 (2012), 573-583: Manuel A. Tamargo: Reestructuración de Organismos mediante una Confederación. (Lecture)

T. describes the process and reasons which led three of the six provinces of the Claretian Missionaries in Spain to form a new province as a single confederation, a process lasting in all six years. Since the three provinces retained their autonomy, any common initiative or enterprise required a consensus which was not always easily achieved. There were initial but ungrounded fears of absorption of the two much smaller provinces by the third which had well over 50% of the total members. The need for an increased number of joint meetings and the travel distances involved caused some practical difficulties. However, after five years of existence the new provincial structure has proved to be successful in furthering the missionary and pastoral work undertaken, and 90% of its members now identify themselves with the new province rather than with their former original province.

583-587

REDC 69 (2012), 531-543: Vicente Jiménez Zamora: Principios para una «adecuada reorganización» de la Vida Consagrada. (Lecture)

J.Z.'s article is based on Vatican II's call for a fitting and suitable renewal of consecrated life, inspired not by the need for *ad hoc* changes or modifications but by true spiritual and evangelical values. He also sees this renewal in the context of Pope Benedict XVI's call for a new evangelization, always respecting the great diversity of charisms and forms inherent in the consecrated life. The starting point of all renewal of consecrated life must be Christ himself, while remaining faithful to the original and foundational charism of each institute and sharing fully in the life of the Church in accordance with the possibilities and unique charism of each. Any renewal or reorganization of consecrated life will also be directed towards the spiritual and human good of its members and a deepening of their theological and spiritual formation.

587

ELT 9-10 (2010-2011), 124-172: Saly Kurumbath: Canonical Basis of Statutes and Constitutions of Religious Institutes according to CCEO and CIC. (Article)

See above, CCEO canon 426.

590-593

REDC 69 (2012), 847-856: Decreto de la Congregación para los Institutos de Vida Consagrada y Sociedades de Vida Apostólica de 8 de setiembre de 2012, sobre el Asistente Religioso de las Federaciones y Asociaciones de Monasterios de Monjas. Texto en español y comentario (Luis García Matamoro). (Document and comment)

This decree of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life concerns the role of the religious assistant in his oversight of federations and associations of monasteries of nuns. This figure was created by Pius XII in 1950 as a representative of the Holy See to oversee and advise these federations or associations in maintaining the true spirit and charism of their order. He is not a superior but an adviser and minister and his relationship is with the federation as such through its superior and not with individual monasteries which maintain their autonomy under the oversight of the local ordinary or religious superior. He is to submit an annual report to the Holy See and a fuller account every fourth year.

595

REDC 69 (2012), 531-543: Vicente Jiménez Zamora: Principios para una «adecuada reorganización» de la Vida Consagrada. (Lecture)

See above, canons 583-587.

604

Vid 75 9/11, 651-668: R. Nameeta: Ordo Virginum: Order of Consecrated Virgins. (Article)

N., herself a consecrated virgin, traces briefly the history of the order of consecrated virgins from the early centuries of the life of the Church, through a period of several centuries when it was rarely used, to its reawakening in the years leading up to the Second Vatican Council, the Decree *Consecrationis Virginum* (Congregation for Divine Worship, 31 May 1970) and the promulgation of the CIC/83. The order of consecrated virgins is related to, but distinguished from,

religious life, and its charisms and distinctive spirituality are expounded.

616

REDC 69 (2012), 613-628: Luis García Matamoro: Supresión, unión y fusión de monasterios. Aspectos jurídicos y pastorales. (Lecture)

G.M.'s subject is the suppression, union and mergers of monasteries (his references are always to monasteries of nuns). He deals with the theme under the following headings: forms of suppression; the legitimate authority for the suppression; its juridical effects; the juridical personality of the monastery; its temporal goods; the members of the suppressed monastery; mergers of monasteries; criteria and procedure for suppression or fusion.

617-640

EE 87 (2012), 661-696: Marcelo Gidi Thumala: Participación y representatividad de los religiosos en el gobierno del propio Instituto. Reflexión a los cincuenta años del Concilio Vaticano II. (Article)

Acts of governance are an instrument of unity and communion in the care of the charism and patrimony of the religious institute on behalf of all its members. Religious life continues to be for the Church an "anticipation" of the Holy Spirit. As a charismatic event it is characterized by the way in which, in view of the permanent challenges of evangelization, it offers new inspirations which have materialized in new institutions. Through ingenuity and adaptation, but without diminishing the personal authority of the superior, there now exist new forms of governance in religious institutions. G.T. deals with Book II, Part III, Section I, Title II, Chapter II of the CIC/83, which deals with "Governance of Institutes"; and shows how, in religious institutes, while respecting the necessary and irreplaceable principle of the personal authority of superiors, the various chapters, councils, committees, assemblies and other participatory bodies continue along the path of renewal to which Vatican II invited them.

646

REDC 69 (2012), 545-572: Luis María García Domínguez: La formación común a distintas Provincias o Institutos en la perspectiva de los formadores. (Lecture)

G.M. examines the experience of religious institutes of a shared and common formation both between different provinces of the same institute and also between distinct and different institutes. His perspective is that of the people engaged in providing that formation, with whom he has had extensive dialogue and research. On the positive side such enterprises, with their pooling of resources and

personnel, facilitate an improved quality of formation. In the shared formation between different religious institutes the diversity and uniqueness of each institute's charism is brought to the fore, while the often international nature of these centres of formation opens the minds of the participants to the universal and intercultural character of consecrated life. Apart from logistical and curricular problems, difficulties can arise over language and cultural differences, over differing formational perspectives, and with young people not yet fully prepared or mature enough for that particular stage of formation. Elements which contribute to a successful shared and common religious formation include the support and cooperation between the governance structures of the different provinces or institutes, the ensuring of the quality both of the formational programmes and those who impart them, and the avoidance of sending young people unprepared for or unable to cope with the demands (intellectual, linguistic, cultural, etc.) required of them. This last requires a careful admissions policy for entry to consecrated life and a sound initial stage of formation.

665

Ang 89 (2012), 7335-747: Robert Ombres: Canon Law and Pastoral Care: the Situation of Runaway Religious. (Article)

The complex and demanding situation of "runaway religious" – those who are unlawfully absent – calls for the combined application of canon law and pastoral care. Each would be incomplete without the other. Superiors are to listen willingly to their subjects, without prejudice, however, to their authority to decide and to command. They are to be solicitous in caring for and visiting the sick, to chide the restless, console the fainthearted and be patient with everyone. Unlawfully absent religious must consider carefully the demands of their freely-made profession, and the impact of their action not just on themselves. The unlawful situation has to be ended for the good of all.

675

REDC 69 (2012), 585-612: José Carlos Bermejo: Reorganización de hospitales, centros asistenciales y pastoral de la salud. (Lecture)

B. uses a "medical" terminology (diagnosis, pathogens, pathologies, disorders, prognosis) as he assesses the present and future problems facing those religious institutions in Spain running hospitals, social assistance centres and other similar enterprises. In a society increasingly removed from the values of the Gospel, the witness of religious in these contexts can serve a therapeutic function for humanity. However, he examines various challenges facing these religious institutes as they face their own declining numbers, their understanding of their religious vocation as somehow tied to particular works, and the moral and ethical issues raised in modern medicine. Fidelity to the religious vocation must go hand

in hand with a willingness to adapt and change and with a new creativity and discernment. It is possible that some particular forms of religious life may disappear but the evangelical charism and witness of caring for the needs of the sick and dying will always endure.

694-700

Mario Medina Balam – Luis de Jesús Hernández Mercado (eds.): La dimisión del estado clerical y su normativa canónica más reciente. (Book)

See above, canons 290-293.

697

Proc CLSA 2010, 228-248: Marlene Weisenbeck: A Renaissance of Creative Fidelity in a Time of Retrieval and Reconnoitering. (Lecture)

W. looks at the apostolic visitation to the United States women religious through the lens of the call to creative fidelity found in *Vita Consecrata*, no. 37. She explains the idea of visitations in general and then gives some of the background to this visitation. She also explains the concurrent doctrinal assessment of the Leadership Conference of Women Religious. She concludes with a copy of the decree of appointment of the visitator and with the statement of the Prefect of the Congregation.

708-709

CLSN 171 (2012), 17-36: Cardinal William Levada: Doctrinal Assessment of the Leadership Conference of Women Religious. (Document and comment)

In 2008 the then Prefect of the Congregation for the Doctrine of the Faith (CDF), Cardinal William Levada, communicated to the Leadership Conference of Women Religious (LCWR) that three main areas of concern had motivated the CDF to undertake a doctrinal assessment. These areas of concern were: 1. theological errors in addresses at LCWR Assemblies; 2. policies of corporate dissent indicating positions taken that were not in agreement with the Church's teaching; and 3. a prevalence of radical feminist themes in some presentations sponsored by the LCWR that appeared to be incompatible with the Catholic faith. The document discusses the principal findings of the assessment, and gives details concerning the mandate for the implementation of change. One aspect of this is the appointment of an archbishop delegate whose work will include a revision of the statutes of LCWR, reviewing plans, programmes and publications, and giving approval for speakers at major events. The document is accompanied by a comment from Sr Rachel Harrington.

710

ACR LXXXIX 2/12, 133-146: David Ranson: From Secular Institute to Ecclesial Movement: Conjunctions of the Sacred and Secular in the Twentieth Century. (Article)

While not primarily canonical, this article suggests that new ecclesial movements have shifted the boundaries envisaged by mid-20th century canonical legislation for secular institutes.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747

ADC 1 Supl. 1 (diciembre 2012), 15-69: Juan Damián Gandía Barber: El derecho de los fieles a la Palabra de Dios y el deber del anuncio del Evangelio. (Article)

See above, canon 213.

747

PCF XII1 (2011), 289-294: Erwin A. Balagapo: Canonical and Juridical Aspects of Catholic Education. (Article)

With Catholic parochial education in crisis in the USA, and closure of elementary and middle schools becoming a yearly ritual in several States, the future of Catholic education, says B., is grim. In other jurisdictions, Catholic education is under threat, with some government policies aimed at reducing control of the Catholic Church especially in primary education, ostensibly to offer parents greater choice so as to reflect the cultural and religious mix in society generally. Against this background, B. refers to canon 747, which together with related canons, provides the theological foundation on which Catholic education is based, and the consequent obligation and right of the Church to provide it, as part of its evangelizing mission, as well as the right and obligation of the Christian faithful to avail themselves of it. He deals with Catholic schools and the role of the Church in establishing and directing those schools with the cooperation and collaboration of the Catholic faithful. He highlights the right of the local Ordinary to supervise and inspect Catholic schools within his territory, including schools established and directed by religious institutes (canon 806). B. examines canon 779, which describes catechetical formation as another aspect of Catholic education, and one which should be taken seriously by bishops and by conferences of bishops, in accordance with the Directory *Ad Normam Decreti.*

747

Markus Graulich – Jesu Pudumai Doss (eds.): Vino nuovi in otri vecchi? Sfide Pastorali e Giuridiche della Nuova Evangelizzazione. (Book)

This book was compiled in preparation for the 2012 ordinary general assembly of the synod of bishops on the new evangelization. It contains contributions from Luca Bressan, whose general introduction is intended to guide the reader to a better understanding of the subject as it matured during the process of preparation for the assembly; Cardinal Paul Josef Cordes on the roots of the new evangelization, with particular reference to movements in the Church as agents of evangelization; Carmelo Torciva on the theological-pastoral aspects of the new evangelization; Antonino Romano on its anthropological catechetical aspects; Jerome Vallabaraj on the role of catechesis in the new evangelization in the world and Church of today; Cardinal Raymond Leo Burke on evangelization from a juridical-canonical perspective; Jesu Pudumai Doss on the concept of the new evangelization and the juridical-pastoral challenges it presents; Markus Graulich on the world of juridical culture as a forum for the new evangelization; Thomas Menamparampil on evangelization in Asia in a context of secularization and fundamentalism; Fernando Bascope on the new evangelization in the Latin American context; Aimable Musoni on the new evangelization in the African context; Manlio Sodi on the new evangelization and education in the liturgy; Cardinal Gianfranco Ravasi on the new evangelization and aesthetics; and Carlo Nanni on the new evangelization and education. (For bibliographical details see below, Books Received.)

751

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

See below, canon 1395.

751

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

See below, canon 1395.

751

SC 46 (2012), 355-373: Jean Pelletier: Le phénomène des abandons de

l'Église par apostasie et par schisme. (Article)

After reviewing the most common ways by which the Catholic faithful may choose to leave the Catholic Church, P. examines more closely what is meant, from the canonical point of view, by the terms "apostasy" and "schism". He recalls the criteria, established by the Pontifical Council for Legislative Texts, which must be present in order to conclude that a person had abandoned the Church by a formal act. Next, he considers the consequences of leaving the Church by a formal act in light of the *motu proprio Omnium in Mentem*, including penal sanctions prohibiting such persons from receiving the sacraments and sacramentals. He also considers various factors which may prompt a person to abandon the faith, such as the very doctrine of the Church, the rise of atheism, agnosticism, and secularism; the increase in proselytizing sects; and sexual abuse of minors by Church officials. He ends on the positive note of identifying the many who, having left the Church, now seek to be restored to its full communion.

754

Comm 44 (2012), 106-112: Congregatio pro Doctrina Fidei: Normae quoad proceduram in discernendis opinabilibus apparitionibus necnon revelationibus datae. (Document)

See below, canon 1186.

755

Comm 44 (2012), 121-125: A. Palmieri: Articulus explanans quaestionem primariam de primatu ex cuius exitu pendet totus dialogus theologicus inter Ecclesiam Catholicam et Ecclesiam Orthodoxam, a Rev.do Andrea Palmieri conscriptus. (Article)

See above, General Subjects (*Ecumenism and interreligious dialogue*).

762-767

J 72 (2012), 240-269: John Chrysostom Kozlowski: The Laity and Liturgical Preaching: What are the Necessary Theological and Canonical Requirements? (Article)

K. begins by examining in detail the history of lay preaching from the CIC/17 to the present day. He then offers a theological-canonical analysis of clerical preaching and lay preaching.

773-780

ADC 1 Supl. 1 (diciembre 2012), 71-99: Jaime González Argente: Algunos retos de la catequesis y de la educación católica en el Derecho Eclesial. (Article)

Catechesis is one of the primary ways of exercising the ministry of the Word. Catechesis has its own characteristics that define its identity (nature and purpose) as an ecclesial action corresponding to all the faithful according to their canonical condition, for which various means (catechism and supplementary material) are to be used. The CIC/83 and the CCEO are quite sober in their provisions and do not descend to detail. Specific provisions are to be issued at a lower level, taking into account local problems and circumstances. Turning to the question of education, G.A. points out that education in schools is an objective or commitment that is difficult to implement, and constitutes a stimulus and challenge for whoever takes on the task. Such challenges in the field of ecclesial law lead to a consideration of the significance of the Church's right to have its own schools in which its members (ecclesiastical authority, parents, teachers and students) take on their obligations and responsibilities and exercise their rights in such a way that the educational community may be, and may be recognized, as a Catholic school in both its formal and its substantive aspects.

781-792

AkK 180 (2011), 446-465: Johann Hirnsperger: Der Katechist – ein neues Amt in der katholischen Kirche Österreichs. (Article)

H. deals with the office of Catechist established by the Austrian bishops. The new office aims to guide immigrants whose first language is not German through the catechumenate.

793

SC 46 (2012), 401-469: Julio Alberto Lagos: Parental Education Rights in Canada: Canon and Civil Law Approaches to Homeschooling. (Article)

L. addresses the parental right to provide education for their offspring, and upon this foundation he considers "homeschooling", particularly in Canada. He examines documents of international law and the CIC/83 to discern better the foundation of parental rights concerning children's education. He explains that the Code envisions homeschooling as one means to allow parents to educate their children. Homeschooling is presented as a viable alternative to obligatory institutionalized education. He also analyses the juridical aspects of homeschooling in North America, both English-speaking and French-speaking, including a contrast between parental rights and State rights. He identifies provincial laws in Canada and judicial decisions concerning the practice of

homeschooling.

793-806

ADC 1 Supl. 1 (diciembre 2012), 71-99: Jaime González Argente: Algunos retos de la catequesis y de la educación católica en el Derecho Eclesial. (Article)

See above, canons 773-780.

795

SC 46 (2012), 401-469: Julio Alberto Lagos: Parental Education Rights in Canada: Canon and Civil Law Approaches to Homeschooling. (Article)

See above, canon 793.

797

SC 46 (2012), 401-469: Julio Alberto Lagos: Parental Education Rights in Canada: Canon and Civil Law Approaches to Homeschooling. (Article)

See above, canon 793.

807

AnC 8 (2012), 83-98: Jan Dyduch: Uniwersytet Papieski Jana Pawła II w Krakowie w ustawodawstwie państwa polskiego (= The Pontifical University of John Paul II in Cracow in Polish law). (Article)

On 9 April 2009 Pope Benedict XVI erected the Pontifical University of John Paul II in Cracow. The next step was to introduce that university – both the fact of its existence and its activity – into Polish law. The required procedure was followed in both chambers of the Polish parliament in cooperation with the Polish government. The special financial law was enacted by the lower house, the *Sejm* (380 members of the chamber were in favour, out of 412 voting), and by the upper house, the Senate (86 members of the chamber were in favour, out of 87 voting). The law in question recognized the Pope's decision and introduced the name of the academic institution – the Pontifical University of John Paul II in Cracow – into the Polish legal system, and granted the university funds from the public finances according to the same regulations as apply to public universities in Poland.

812

Comm 44 (2012), 30-32: Pope Benedict XVI: Allocutio ad quosdam Episcopos Civitatum Foederatorum Americae Septentrionalis Limina Apostolorum visitantes die 5 mensis maii 2012 prolata. (Address)

In his address to a group of bishops from the USA on their *ad limina* visit the Pope speaks of progress made in the area of catechetics but comments that much remains to be done in reaffirming the distinctive identity of Catholic colleges and universities, particularly in the area of compliance with the mandate required of those teaching theological disciplines.

822

ADC 1 Supl. 1 (diciembre 2012), 101-125: Isabel Rodríguez Estremera: Regulación jurídica de los medios de comunicación ante las controversias. El papel de la Iglesia en estos casos. (Article)

R.E. considers the current legal framework concerning disputes arising in the field of the media and its relationship with the right to information. After setting out the background, she deals with freedom of expression and the right to communicate information, the potential conflicts between this latter right and the right to one's good name, the right to freedom of thought and its limits, and the judicial remedies provided by the law for protecting against the overextension of the right to information which could end up violating the right to one's reputation and good name. She then considers what role the Church can play in this context. She proposes the need for a strategy, involving clear and concrete principles of action that will enable the Church to adopt a positive approach and make full use of the possibilities offered by the media.

822

ADC 1 Supl. 1 (diciembre 2012), 127-130: Luis Agudo Crespo: Respuesta de la Iglesia a la cultura de la controversia. (Article)

A.C. presents proposals as to how the Church should act in the culture of controversy which pervades the media. This involves designing a strategy to create a healthy atmosphere within the media; having clear guidelines for discerning when to enter into the fray and when to hold back; and how to formulate responses in the face of controversy, overcoming the temptation to speak only to one's own people.

823

EE 87 (2012), 733-738: Rufino Callejo de Paz: Nota acerca de la competencia

de la autoridad eclesiástica en la censura y reprobación de escritos. (Article)

Prior censorship and disapproval of writings in accordance with canon 823 §2 is the responsibility of certain ecclesiastical authorities. C. de P. considers that the prevailing competence is that of the author's local Ordinary. Except in special cases the role of the episcopal conference and particular council is that of providing assistance and guidance for local Ordinaries.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

838

Proc CLSA 2010, 209-216: James P. Moroney: The *Missale Romanum, Editio Typica Tertia*: Organic Continuity and Growth. (Lecture)

M. talks about organic continuity in the liturgy and applies this to the third edition of the Roman Missal and especially the faculty to permit Holy Communion under both kinds and liturgical translation.

841

PCF XII1 (2011), 209-245: Roy Remo: Sacramental Laws Containing an Exception from the Law. (Article)

The *salus animarium*, salvation of souls (canon 1752), is the supreme law of the Church and the basic condition for the application of all the other norms. Accordingly, each norm of the Code, while honouring its own specific purpose, underpins this supreme law. So it is no surprise that in extraordinary situations, such as danger of death or common error, exceptions are made to the law in the interest of the salvation of souls. R. cautions that such exceptions are not licences that could lead to abuse of the sacraments or violation of sacramental laws. In order to provide a guide for correct understanding and interpretation of these exceptions, R. organizes his paper under three major headings: 1. canon 18 (exceptions and extraordinary provisions and their interpretation); 2. sacramental laws characterized by the law as extraordinary (danger of death, grave reasons, pastoral reasons, reasonable cause, cases of doubt, and cases of error); 3. sacramental laws that allow exceptions and alternatives. He subdivides these headings into sacraments in general and sacraments in particular, and analyses the laws pertaining to each sacrament that allow exceptions or alternatives in extraordinary situations.

842

Per 101 (2012), 67-102: Luigi Sabbarese: L'Eucaristia nella successione dei sacramenti dell'iniziazione cristiana. (Article)

Full initiation into the Church involves the reception of three sacraments: baptism, Eucharist and confirmation. In this article, S. explores the place of the Eucharist in the succession of these sacraments of initiation. Within the article, he notes the divergent practice of the Latin Church and the Churches of the East; he notes the divergent practice even within the Latin Church of some particular Churches in which the order of reception of these sacraments has been varied, highlighting the difference in particular between the rites of initiation of children and that of adults. Of particular interest, in the Latin Church, is the requirement of prior sacramental confession before receiving first Communion – something introduced into the Code by Pope John Paul at the final stage of the revision process. From his consideration, it is clear that reception of the Eucharist lies at the heart of Christian initiation: it is not simply a phase of a process, or a rite of passage – it is truly, theologically, a source of initiation itself into the life of grace and into the Church, even though liturgically it is received after baptism.

844

Per 100 (2011), 805-838: Janusz Kowal: "Communicatio in sacris" nei matrimoni inter-religiosi. (Paper)

K., the Dean of the Canon Law Faculty of the Pontifical Gregorian University, gave this presentation during the Solemn Academic Event at the University on 10 March 2011. The reality of inter-confessional marriages and families constitutes the focus for his reflections on some of the possibilities and limits of *communicatio in sacris* as envisaged by the current canonical norms. K. looks at how particular legislation has sought to confront the pastoral challenge constituted by the reality of inter-confessional marriages: in sharing in the sacraments, in recognizing the baptism of other communities and the function of the godparent, in the general norms concerning mixed marriages themselves, and in sharing other kinds of spiritual activity.

844

Proc CLSA 2010, 249-266: Myriam Wijlens: Interchurch Marriages and Pastoral Care in Sickness: A Canonical Consideration. (Lecture)

W. considers the ministry to the sick in the context of interchurch marriages. She highlights historical developments in the field and then comments on the current norms and their application.

BOOK IV, PART I, TITLE I: BAPTISM

865

IE XXIV 3/12, 589-608: Massimo del Pozzo: La richiesta del battesimo in situazioni contrarie alla dignità del matrimonio. (Article)

Del P. examines the question of admitting to baptism those living in situations contrary to the dignity of marriage (cohabitation or invalid civil marriage) in the light of constant canonical practice and recent magisterial teaching. The objective contradiction between the personal condition of the one seeking baptism and the spousal love of Christ compromises the truth and value of the sacramental sign. In effect, the right to baptism is intrinsically conditioned by the fact that it is directed toward salvation. In these situations only authentic repentance (externally proven) will make it possible to pursue Christian initiation. In reality, the impediment to receiving this sacrament does not lie in the judgement of the Church, but in the free decision of the person about his life. The dignity of the sacrament and the requirement of personal conversion are a reason, therefore, for delaying the conferral of the sacrament in the absence of real consistency between the life of the individual and the sacramental sign.

867-868

PCF XII1 (2011), 279-288: Alvin L. Linao: The Deferral of Baptism of Children of Unmarried Couples. (Article)

It has been the Church's constant position that children or infants, even though they have not reached the age of discernment, and are as yet unable to profess their personal faith, should not be deprived of baptism. The authentic teachings of the Church on this matter together with guidelines and some precise norms for the administration of the sacrament are contained in the *Rite of Baptism for Children* (1969), the *Instruction of Infant Baptism* (1980), and the CIC/83. Vatican II conciliar and post-conciliar documents highlight the rights and responsibilities of parents regarding the baptism and the Christian education of their children. It is, therefore, the Catholic Church's expectation that, after baptism, a child will be raised in the faith of that Church, by the parents who requested baptism in the first place. Many couples now live as husband and wife but without sacramental marriage. When such couples present their child for baptism, some pastors insist that the baptism be deferred until the couple marry, citing pastoral reasons and

Church discipline. In the context of the pastoral dilemma thus generated, L. sets out the authentic teaching and practice of the Church and offers some recommendations on how best to deal with these situations: 1. the fact that the Catholic parents are not married in the Church is not a basis of deferring the baptism of their child; 2. deferral of baptism should not be used as a means of forcing parents to fulfil their moral and religious obligations; 3. when Catholic parents request that their child be baptized, the logical presumption is that they have the desire to provide a Catholic upbringing for the child and they should not be required to marry as a necessary condition for baptism. L. cautions that deferral of baptism can only be for the reasons given in the law, and the unmarried state of parents is not such a reason. He does, of course, state that when there is absolutely no well-founded hope that the child will be educated in the faith, then baptism may be deferred. To avoid unnecessary tension and controversy, L. suggests that a particular law to regulate the process of deferral of baptism should be established in every diocese.

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

908

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

See below, canon 1395.

908

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

See below, canon 1395.

915

CLSN 167 (2011), 101-112: James A. Coriden: Divorced and Remarried

Catholics: Conscience is Still Decisive. (Article)

C. seeks to defend the access to the sacraments of penance and the Eucharist by divorced and remarried Catholics under certain circumstances. He looks at the pastoral approach termed the "good conscience solution" or "internal forum solution", which is presented as an exercise of moral discernment rather than one of canonical judgement. As such, he argues that it represents an exception to the general policy of exclusion from the sacraments, and one which is based on the primacy of conscience and the virtue of *epikeia.*

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

983

CLSN 168 (2011), 49-72: Adrienne Connaghan: The Seal of Confession: Issues of the Civil Law. (Article)

C. explores the historical development of the seal of confession, the interaction between Church and State, and the issue of the legal privilege of clergy-penitent communications as it has developed according to English common law principles and statutory law. She briefly considers aspects of the law in the USA, New Zealand and Australia, and concludes that the question of privileged communication regarding the seal of confession varies in both common law and legislative contexts.

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

1004

Proc CLSA 2010, 249-266: Myriam Wijlens: Interchurch Marriages and Pastoral Care in Sickness: A Canonical Consideration. (Lecture)

See above, canon 844.

BOOK IV, PART I, TITLE VI: ORDERS

1008-1009

FCan VII/1 (2012), 91-98: Bento XVI: Carta Apostólica sob forma de 'motu proprio' *Omnium in mentem* do Sumo Pontífice Bento XVI sobre algumas modificações do CDC; Francesco Coccopalmerio: Os motivos das modificações. (Document and comment)

The *motu proprio Omnium in Mentem* introduces two changes into the current law: it clarifies the canonical consequences of the teaching on the diaconal ministry in *Lumen Gentium*, no. 29, which states that in the case of deacons the imposition of hands is "not unto the priesthood, but unto a ministry of service"; it also revokes the exceptions to the application of canon law in the case of those who had left the Catholic Church by a formal act. In his comment, C. states that the changes to canons 1008 and 1009 are for theological reasons, following the change introduced into the *Catechism of the Catholic Church* in 1998, which clarified that the capacity to act in the name of Christ, Head of the Church, pertains to bishops and priests but not to deacons; while pastoral and juridical reasons are behind the changes to canons 1086 §1, 1117 and 1124, which contained an exception to canon 11 of the CIC concerning the application of canonical laws to the baptized in the Catholic Church. The negative practical outcome of that exception has led the legislator to revoke it. (See also *Canon Law Abstracts*, nos. 104, p. 104; 105, pp. 94-95; 106, pp. 82-83, 93-95, 108-109; 107, pp. 78-79; 108, pp. 94-95, 104; 109, pp. 86, 94-95.)

1013

IE XXIV 2/12, 401-420: Bruno Fabio Pighin: Le ordinazioni episcopali senza mandato pontificio e le loro conseguenze canoniche. (Article)

See below, canon 1382.

1031-1032

FCan VII/1 (2012), 7-24: Manuel de Pinho Ferreira: Presbiterado e especificidade do diácono permanente. (Article)

The situation of permanent deacons in the Latin Church is governed by a *corpus* of documents issued by the supreme authority of the Church: *Lumen Gentium*, no. 29; the *motu proprio Sacrum Diaconatus Ordinem* (18 June 1967); the *motu proprio Ad Pascendum* (15 August 1972); the current Code; and the *motu proprio Omnium in Mentem* (26 October 2009). Amid the relative lack of reflection on the permanent diaconate prior to Vatican II, an exception was Charles Journet, who defended its sacramentality on the basis of the gesture of the imposition of hands, in support of which he invoked the authority of Cajetan. However, he did not read Cajetan accurately, since for Cajetan the mere imposition of hands was not enough to constitute the sacramentality of the deacon's ministry. This article investigates the theological and juridical nature of the diaconate on the basis of *Lumen Gentium*, no. 29, read from various theological and canonical perspectives, and attempts to show how the legislative documents mentioned above can help in this research.

1040-1049

CLSN 172 (2012), 36-42: Victor G. D'Souza: Priest After Sex Change Surgery: Male to Female? (Article)

Beginning with an examination of what drives a person to change one's biological sex, D'S. then explores why a priest might undergo sex change surgery. Given that ordination never becomes invalid if it has been validly received, he notes that a priest undergoing this surgery neither loses his clerical status automatically, nor can he be dismissed under the present norms stated in the Code. He discusses the possibility of persuading the priest to request dispensation from the obligations of the clerical state, or of seeking that this be imposed even without the priest's request, if it serves the common good and the welfare of the priest. (See also *Canon Law Abstracts*, no. 108, p. 96.)

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

ACR LXXXIX 4/12, 444-457: Thérèse Buck: *Gaudium et Spes* and Marriage: A Conjugal Covenant. (Article)

B. explores the factors that led to Vatican II's teaching that marriage is a *foedus*, rather than the *contractus* of the 1917 Code, with the resulting theology of a communion of persons.

1055

AnC 8 (2012), 125-140: Andrzej Wójcik: Rozum i wiara a małżeństwo. Znaczenie ścisłej tożsamości pomiędzy węzłem małżeńskim a jego wymiarem sakramentalnym w małżeństwie ochrzczonych (kan. 1055 §2) (= Reason, faith and marriage. The meaning of the identity between the marital bond and its sacramental dimension in the marriage of two baptized persons (can. 1055 §2)). (Article)

W. discusses the meaning of the canonical and theological principle of the identity between marriage bond and sacrament in the case of two baptized persons. First he presents a historical and contemporary tendency to draw an artificial borderline between human nature along with its requirements, and positive law for which those requirements should be one of the sources. Next he shows in what way the dissociative tendency leads to a separation of the domain of reason from the domain of faith, which converge at the point where nature demands obedience from reason. Then he demonstrates the impact of the dissociation on the understanding of the relationship between the natural and the sacramental aspects of marriage. In this context he discusses the specific nature of the sacrament of matrimony as compared with the other six sacraments and the character of the matrimonial consent in the perspective of its object, that is, sacramental marriage. Specifically, he focuses on the idea of indirectness in the "cause-effect" relation between the matrimonial consent and the sacramental dimension of marriage. In the concluding part of the article he tackles the criticism aimed at such an understanding of indirectness – referred to as an "anti-personalist sacramental automatism" – which appears to belittle the significance of the influence of faith on the efficacy of the matrimonial consent. In doing so he makes use of the ideas formulated by John Paul II in his theology of the body, and strives to show the close relationship between a "sacramental" dimension of natural marriage and the sacramental dimension of Christian marriage. This, in turn, enables him to show the relationship between reason and faith and to formulate a brief pastoral conclusion.

1055

CLSN 170 (2012), 33-63: Tim Brennan: Marriage among the Aborigines of Australia and Roman Catholic Marriage. (Article)

B. explores the work of Bishop Francis X. Gsell to the Tiwi tribe in the early 20th century, giving a historical background to this one of the estimated 500 Aboriginal tribes in Australia. He considers the concept of kinship and the cultural meaning of marriage and contract, concluding in Part 1 of his discussion that the political and economic dimension of marriage took precedence over any emphasis on an exclusive sexual commitment between the parties. Part 2 considers the idea of Catholic marriage, and Part 3 looks at Tiwi marriage from a Catholic perspective. What emerges in the discussion are the values that underlie the particular culture examined, and the challenges posed to canon law and pastoral practice so that the place of the Tiwi in the Church can be respected.

1055

PCF XII1 (2011), 169-188: Augustine Mendonça: The Relationship between Canon Law and Pastoral Care: A Brief Analysis of Benedict XVI's 2011 Allocution to the Roman Rota. (Article)

See below, canons 1066-1072.

1055-1165

Per 100 (2011), 427-838: Matrimonio e famiglia in una società multireligiosa e multiculturale. (Symposium)

These entire two fascicles of *Periodica* – nos. 3 & 4 of vol. 100 – are devoted to the Acts of an Academic Day, and a Solemn Academic Event organized by the Canon Law Faculty of the Pontifical Gregorian University on 10 March 2011. The theme of the day was "Marriage and the family in a multi-religious and multicultural society". In all there are 25 contributions to the Academic Day and 5 to the Solemn Academic Event. The contributions to the Academic Day come from every one of the faculties and institutes of studies that make up the Gregorian University. The result is a compendium of a wide variety of views and experiences of marriage and the family in today's world.

1055-1165

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

This book contains the proceedings of a conference held at the Pontifical

University of the Holy Cross, Rome, on 20-24 September 2010. The central theme of the conference was matrimonial law, with special emphasis on the pastoral essence of marriage and the family. The topics dealt with were the unity of jurisprudence and the role of the Roman Rota (Antoni Stankiewicz); the meaning and essential content of the *bonum coniugum* (Carlos José Errázuriz M.); the possible reform of canon 1095 (Pedro Juan Viladrich); alcoholism, drug dependence and incapacity to consent (Paolo Bianchi); deceit in recent Rotal jurisprudence (Giuseppe Sciacca); the deontology of the ministers of ecclesiastical tribunals in causes of nullity of marriage (Carlos Manuel Morán Bustos); the influence of the *lex propria* of the Signatura on causes of marriage nullity (Massimo del Pozzo); the problem of "sluggishness" in causes of nullity of marriage (Joaquín Llobell); reverential fear in Rotal jurisprudence (Nikolaus Schöch); questions concerning the form of marriage, "invalid convalidation" and the extent of its force after the *motu proprio Omnium in Mentem* (Miguel Ángel Ortiz); the exclusion of the *bonum fidei* in recent Rotal jurisprudence (Héctor Franceschi F.); and a round-table discussion on timeliness and truth in causes of nullity of marriage. (For bibliographical details see below, Books Received.)

1056

FC 13-14 (2010-2011), 161-174: Angela Patrizia Tavani: Secolarizazzione della società e nullità matrimoniale. (Article)

T. offers some reflections on a number of issues in which there are growing discrepancies between civil and canonical legislation in the area of matrimonial nullity, owing to the increasing secularization of society. She looks in particular at the civil effects of marriage and the principle of indissolubility; exclusion of sacramental dignity; exclusion of marital fidelity; exclusion of the *bonum prolis*; the presumption in canon 1101 §1; and relative or relational incapacity. She finishes with some considerations on the importance of marriage preparation.

1057

CLSN 167 (2011), 40-50: Anthony Malone: Cultural Change and Marital Jurisprudence. (Article)

M. examines what is meant by the terms "culture" and "cultures" and explains how cultures change. He then illustrates the influence that cultures have on people's understanding of marriage. In an age when personal autonomy and self-fulfilment are held in high regard and where individualism and relativism have become normative for behaviour, he suggests that this can result in radical error affecting the will to marry and in giving genuine consent to marriage.

1057

RMDC 18 (2012), 277-311: Rogelio Ayala Partida: Parámetros antropológicos y psicológicos del consentimiento matrimonial. (Article)

A.P. analyses the importance of investigating personal and family history in processes of matrimonial nullity, as elements having a bearing on the validity of matrimonial consent, from an understanding of the person in his anthropological and psychological aspects. Man is a being with the capacity of self-knowledge, in pursuit of happiness. The decision to enter into marriage is an act of the will which involves not only a moment but the person's whole life: his self-awareness, his family history, his life experiences, his degree of maturity, and his deepest motivation towards happiness. Ecclesiastical tribunals, when investigating the family surroundings in which the parties grew up, should consider the person as such, with a more personalized approach, directing their questions towards the deepest motivations that led the parties to marriage: human formation in the different stages of their life; the social, sexual and spiritual maturity acquired; the vision they have of themselves and of marriage as a choice in life which will lead them to happiness in the conjugal partnership. Failure on the part of the tribunals to draw up questionnaires going deeply into these matters will lead to unhelpful general and repetitive questions concerning the parties' family environment.

1063-1071

Per 100 (2011), 477-501: Linda Ghisoni: La prevenzione della nullità del matrimonio nella preparazione immediata alle nozze. (Paper)

This was G.'s presentation at the Academic Day organized by the Canon Law Faculty of the Pontifical Gregorian University, in Rome, on 10 March 2011. The study was inspired by frequent comments made by parties in the course of instructing marriage nullity cases that they did not take seriously their preparation for marriage. G. offers some practical juridical reflections to help bring more to the fore the juridical dimensions of marriage preparation. She focuses in particular on pre-marriage courses and some particular aspects that need to be confronted openly and competently (disparity of cult, mixed marriages, the consummation of marriage, marriage after a declaration of nullity, the marriage of non-believers, psychological capacity for marriage, procreation within canonical marriage, etc.). Attention is also given to the documents that are necessary for a lawful celebration of the sacrament, the pre-nuptial enquiry (which should never be reduced to a mere formality), the marriage banns, and the granting of the necessary dispensations and permissions. Of immense value at all times are the informal encounters between the parish priest and the parties. G.'s fundamental thesis in this presentation is that careful preparation will help prevent the nullity of marriages.

1066-1067

IC 52 (2012), 667-684: Discurso de Benedicto XVI a los miembros del Tribunal de la Rota Romana, 22.1.2011; Juan Ignacio Bañares: La preparación al matrimonio. Comentario al discurso de Benedicto XVI al Sagrado Tribunal de la Rota Romana de 2011. (Text and comment)

The Spanish text is given of Pope Benedict XVI's 2011 address to the Roman Rota (see *Canon Law Abstracts*, no. 109, p. 91). In the accompanying comment, B. looks at the continuity in Benedict XVI's addresses to the Rota; the particular theme of the 2011 address, that of marriage preparation; the central point of the address, that there is only one marriage and one right to marriage; the purposes of marriage preparation and the means to carry it out; prenuptial pastoral care and the prevention of marriage nullities; and some advice to tribunals in order to avoid abuses.

1066-1072

PCF XII1 (2011), 169-188: Augustine Mendonça: The Relationship between Canon Law and Pastoral Care: A Brief Analysis of Benedict XVI's 2011 Allocution to the Roman Rota. (Article)

In his allocution of January 2008, Pope Benedict XVI described addresses to the Roman Rota as a ready guide for the work of all Church tribunals, since they authoritatively teach the essential aspects of the reality of marriage. M. highlights two important points in this statement: the Papal allocutions contain "authoritative" teaching on substantive and procedural issues related to marriage nullity, and they are a "ready guide" to those involved in tribunal work. They contain a wealth of doctrinal wisdom and clear procedural directions on many issues facing tribunal personnel. In the case of the present allocution, that of January 2011, M. presents a brief and direct non-critical analysis, under five important themes: 1. the pastoral nature of ecclesial law, with particular reference to preparation for marriage; 2. marriage preparation, which is both canonical and pastoral in nature; 3. pre-marriage examination to ensure that nothing impedes the valid and licit celebration of the wedding; 4. effective marriage preparation programmes, presented by persons who have some knowledge of the practical aspects of canon law on marriage; 5. the need for uniform interpretation of ecclesial law, as it applies to the two grounds of nullity addressed in this allocution, namely, consensual incapacity and exclusion of the good of the spouses.

1077

CLSN 170 (2012), 64-107: Augustine Mendonça: Juridical and Pastoral Aspects of a Judicial *Vetitum*. (Article)

M. considers three concrete scenarios which raise serious juridical and pastoral questions about the need to impose a *vetitum* under certain circumstances on a particular person against contracting a first or a new marriage. He then considers the need to lift any *vetitum* placed on certain persons because of evidence of psychological incapacity or mental disposition which substantially vitiates matrimonial consent. He concludes his study by giving some pastoral reflections on the *vetitum,* noting that it is meant to contribute to the personal, spiritual and social well-being of the persons affected by it.

1084

SC 46 (2012), 511-523: Roman Rota: Relative Psychic Impotence, Exclusion of the Good of the Sacrament, and Lack of Use of Reason. Sentence *coram* Boccafola, 27 February 1989 (Rome). (Sentence)

See below, canon 1095 1º.

1085

ELT 9-10 (2010-2011), 42-85: Sajan George Thengumpally: Marriages of Unbaptized Persons: Misapprehensions and the Right Approach of the Church. (Article)

See above, CCEO canon 802.

1086

AkK 180 (2011), 514-528: Stephan Haering: Die Richtlinien der Polnischen Bischofskonferenz zum Abfall von der katholischen Kirche durch formalen Akt aus dem Jahr 2008. (Article)

H. presents the procedures and practices enacted by the Polish bishops' conference in 2008 to deal with formal acts of defection from the Church. A German translation of the Norms is given.

1086

FCan VII/1 (2012), 91-98: Bento XVI: Carta Apostólica sob forma de 'motu proprio' *Omnium in mentem* do Sumo Pontífice Bento XVI sobre algumas modificações do CDC; Francesco Coccopalmerio: Os motivos das modificações. (Document and comment)

See above, canons 1008-1009.

1086

Proc CLSA 2010, 189-204: Fredrick C. Easton: Canonical Form of Marriage Throughout the Centuries: Seeing Pope Benedict XVI's Motu Proprio *Omnium in Mentem* in Context. (Lecture)

E. begins with a history of canonical form and the idea of formal defection up to Benedict's reforms. He concludes with some practical impact of the changes.

1095

ADC 1 (abril 2012), 77-93: Michela Profita: L'incidenza della depressione nel consenso matrimoniale ai sensi del can. 1095. (Article)

Interest in the psychopathology of depressions has grown over the last decade, as it has a damaging effect on the basis of canonical marriage: the capacity of each partner to form a project of common life aimed at achieving an authentic spousal relationship. Through a specific method based on an anthropo-phenomenological approach, this article provides a summary of the main content of P.'s book *"L'incidenza della depressione nel consenso matrimoniale ai sensi del can. 1095: profili medico-legali e probatori" (= The effect of depression on marital consent according to canon 1095: medical-legal and evidential aspects).* The book involves a study of the ontology of depression and its psychopathology, allowing us to see it as a condition spread over a *continuum,* from sadness to psychosis, that gives rise to a continuous spectrum rather than a list of depressive disorders. This perspective is useful when applied to Rotal jurisprudence. It is clear that depression is a pathology which, in its different aspects, becomes a relevant psychic cause under canon 1095 1º, 2º and 3º. Depression can affect the person in a vertical and a horizontal way, and can simultaneously undermine all the functions of the mind and their mutual connections and interactions, rather than simply interfering with the cognitive, volitional or affective faculties. P. pays a good deal of attention to the evidential detection of the depressive disorder. Forensic tests are of vital importance as they are one of the most suitable ways of probing the capacity for full encounter with the other, to discover the human obstacles to achieving perfect mutual self-giving, and to reveal melancholy as a pathology of intersubjectivity and of interpersonal experience.

1095

CLSN 168 (2011), 73-103: Sean O. Sheridan: Incapacity and Simulation: Mutually Exclusive Grounds or Key Juridical Facts Underlying Conforming Sentences? (Article)

S. considers the application of equivalent conformity to the canonical grounds of incapacity and simulation, two grounds that have traditionally been held to be mutually exclusive. Giving an overview of canons 1095 and 1101, and

considering the judgements of relevant cases, he concludes that the equivalent or substantial conformity of sentences can be a welcome and time-saving resolution of cases.

1095

CLSN 168 (2011), 104-122: John P. Beal: From Theory to Practice: Finding Equivalent Conformity Between Sentences Decided on Force and Fear and Lack of Due Discretion or Simulation. (Article)

The possibility of declaring two sentences substantially or equivalently conforming, even though they found for the invalidity of the marriage on quite different grounds, first emerged in the practice of the Roman Rota. As B. shows in examining select Rotal decisions, grave fear can be seen as an autonomous cause of the nullity of the marriage, as a motive for simulating, or as a factor contributing to a grave lack of discretion. While jurists may argue about which of these assessments is the most accurate, they can agree that the marriage itself was certainly invalid. This declaration of equivalent conformity spares arguments over the appropriate ground of nullity.

1095

CLSN 169 (2012), 50-72: Aidan McGrath: Moral Certainty and Cases of Nullity in Canon 1095: Some Reflections. (Article)

McG. uses a few articles from the Instruction *Dignitas Connubii* to reflect on the attainment of moral certainty in cases of nullity based on canon 1095. He examines this by considering 1. the attention given to the concept of moral certainty in article 247; 2. some indications from *Dignitas Connubii* on how moral certainty might be attained in cases based on the incapacities listed in canon 1095; and 3. some practical consequences for judges and other officers of the tribunal.

1095

PCF XII1 (2011), 169-188: Augustine Mendonça: The Relationship between Canon Law and Pastoral Care: A Brief Analysis of Benedict XVI's 2011 Allocution to the Roman Rota. (Article)

See above, canons 1066-1072.

1095

REDC 69 (2012), 781-832: José Mª Muñoz de Juana: Consentimiento

matrimonial y sentido de la realidad en los trastornos psicológicos. (Article)

M.J., a judge of the Archdiocesan Tribunal of Madrid, presents the case for unifying the three separate headings of canon 1095 into one single one, such as "the psychological inability to contract marriage" or "the personal inability to contract marriage due to causes of a psychic nature". He underlines the unitary nature of the human psyche and the inseparability of the sensory, intellectual, critical and volitional faculties in the process of decision-making. His tightly argued case draws extensively on the psychological, psychiatric and neurological sciences and on classical and modern philosophical anthropology. He maintains that the present canon is a consequence of an overly contractualist and intellectualist understanding of marriage consent rather than being guided by the personalist approach advocated by Vatican II. It is a person's distorted understanding of reality, relationships and self, on account of some level of psychological disorder, which may render him or her incapable of a valid marriage consent. He believes the unification of this particular canon would simplify and facilitate the work of judges in dealing with these cases.

1095

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

1095 1°

SC 46 (2012), 511-523: Roman Rota: Relative Psychic Impotence, Exclusion of the Good of the Sacrament, and Lack of Use of Reason. Sentence *coram* Boccafola, 27 February 1989 (Rome). (Sentence)

This is a sentence of the Roman Rota addressing three causes of marital nullity: relative psychic impotence, exclusion of the good of the sacrament, and the lack of the use of reason. An affirmative finding was reached only on the third ground, that is, canon 1095 1°. The decision concludes: "There is proof of nullity of marriage only on the ground of defect of consent, that is to say, due to insanity [*amentia*] of the man, who is prohibited from contracting a new marriage without consulting this Apostolic Tribunal." (See also below, canon 1684.)

1095 2º-3º

BEF LXXXVII 882/11, 103-110: H. E. Bacareza: Does Homosexuality Validate or Invalidate Your Marriage? What Does Rotal Jurisprudence Say? (Case study)

Given here is the judgement of the Manila Appellate Tribunal on a case presented to it on appeal, adding the further ground that the respondent was homosexual. The court found the marriage to have been null "on the ground of homosexuality on the part of the wife respondent". The law section quoted extensively from a Rotal judge, Monsignor Cormac Burke.

1095 2°-3°

CLSN 167 (2011), 19-39: Klaus Lüdicke: A Theory of *Bonum Coniugum*. (Lecture)

In a lecture given in honour of James Provost, L. considers a theory of the *bonum coniugum*, looking at approaches to its meaning and content, and the juridical notion. He then discusses *bonum coniugum* in relation to nullity cases on grounds of simulation and canon 1095.

1095 2°-3°

CLSN 168 (2011): 6-29: Mary Tarver: The Effects of Pornography on Marital Consent. (Article)

Access to pornography has been made much easier because of its ready availability on the internet. This is reflected in the numbers of those admitting to accessing such websites. The rise in addiction to pornography has affected relationships, and the number of marriages failing because of this has risen dramatically. Having defined terms such as "pornography" and "addiction", T. looks at levels of addiction, and neurophysiological and societal effects. She then examines how addiction to pornography affects marital relationships and undermines the ability to give consent to marriage as it is understood by the Church. (See also *Canon Law Abstracts*, no. 106, p. 98.)

1095 2°-3°

CLSN 171 (2012), 67-82: Victoria Vondenberger: Anorexia and Bulimia: Effects on Marital Consent. (Lecture)

The disorders of anorexia and bulimia which affect women more than men can have an effect on the giving of genuine consent in a marriage. Having outlined the effects of these disorders, V. discusses some Rotal decisions relating to cases involving a grave lack of due discretion and psychic incapacity. She concludes that whether these disorders are grounds for nullity depends on the severity of the disease and its effects on a particular person. It is also important for tribunal officials to be aware that, for some sufferers, marriage may be impossible.

1095 2º-3º

RMDC 18 (2012), 393-415: Decisio R.P. Egidio Turnaturi: Sentencia definitiva del 5 de abril de 2001. (Sentence)

This decision considers the effect of alcohol dependence – or at least, a significant problem of alcohol consumption – on matrimonial consent. The respondent male in this case was a heavy drinker before and after the wedding, and even though drink was not the cause of immaturity it was an indicator of a deeper troubled spirit. In reality the respondent was affected both by narcissistic personality disorder and by avoidant personality disorder. Expert evidence found him incapable of establishing and continuing an intimate and interpersonal community of life since he was capable only of appreciating marriage in its material aspect, that is, the idea that by providing materially for his wife and children he had fulfilled the requirements of a deep and comprehensive relationship. There was found to be significant immaturity in his personality structure causing lack of due discretionary judgement, for which reason the marriage was declared null, and a *vetitum* was imposed by the Rota forbidding him to enter into a new marriage without the consent of the local Ordinary.

1095 2º-3º

Héctor Franceschi – Miguel A. Ortiz (eds.): Discrezione di giudizio e capacità di assumere: la formulazione del canone 1095. (Book)

This book contains the proceedings of a conference held at the Pontifical University of the Holy Cross, Rome, on 26-27 April 2012. The central theme of the conference was the fundamental question concerning the structure of canon 1095, that is, its division into three numbers, with special reference to the relationship between discretion of judgement and the capacity to assume. The topics dealt with were consensual capacity in recent pontifical Magisterium (Miguel A. Ortiz); consensual capacity from an anthropological perspective (Antonio Malo); consensual capacity from the perspective of psychology and psychiatry (Emilio Mordini); consensual capacity in the history of canon law (Nicolás Álvarez de las Asturias); the structure of canon 1095 in the light of the evolution of doctrine and jurisprudence from the 1960s to the present (Paolo Bianchi); the meaning of discretion of judgement in canon 1095 2º (Juan Ignacio Bañares); the meaning of capacity to assume in canon 1095 3º (Antoni Stankiewicz); the problem of incapacity to assume as an autonomous ground of nullity (Carlos José Errázuriz); the structure of canon 1095 and relative incapacity (Héctor Franceschi). (For bibliographical details see below, Books Received.)

1095 3º

EE 87 (2012), 839-866: Rota Romana: Sentencia definitiva de nulidad de matrimonio, *coram* Verginelli, sent. 159/2010; Carmen García Peña:

Antecedencia y gravedad de la «causa de naturaleza psíquica» del canon 1095, 3º en supuestos de homosexualidad. Consideraciones en torno a la sentencia rotal c. Verginelli de 26 de noviembre de 2010. (Sentence and comment)

After four years of courtship the female petitioner and male respondent married in 1988 and had children. However there was tension in the relationship because of the respondent's frequent absences from the family home, and above all because of the discovery of his homosexual behaviour, which led the petitioner in 1998 to seek and obtain a divorce. In 2003 she requested a declaration of nullity based on the incapacity of both parties to assume the essential obligations of marriage. The first instance tribunal issued a negative sentence on both grounds; on appeal the second instance tribunal gave an affirmative verdict based on incapacity in the respondent only. On the basis of expert reports the Rota considered that the respondent lacked the capacity to assume the essential obligations of marriage because of the anomaly of homosexuality which was found to be latent at the time of the wedding and which undermined the exclusivity of the matrimonial contract with a person of a different sex, and above all fidelity, as well as other conjugal duties such as the good of the spouses. In her comment on the sentence G.P. looks at the contribution of this particular sentence to Rotal jurisprudence on latent homosexuality and bisexuality, especially bearing in mind that the homosexuality in this case did not manifest itself until several years after the wedding. While drawing attention to the positive features of the sentence, she also points out aspects which she considers could have been dealt with better.

1095 3°

FC 13-14 (2010-2011), 161-174: Angela Patrizia Tavani: Secolarizazzione della società e nullità matrimoniale. (Article)

See above, canon 1056.

1098

CLSN 169 (2012), 73-98: John Beal: Determining Error: Hot New Ground or Recycled Old Ground? (Lecture)

B. begins his paper by noting the cultural mood regarding the permanence and indissolubility of marriage and how this has resulted in a greater acceptability of divorce, and then examines the concept of total simulation and of error, examining some Rotal sentences in detail. He notes that the primary obstacle for North American tribunals in using partial simulation and error as grounds for nullity is the difficulty in securing proof of a party's deeply rooted errors about the indissolubility of marriage. He concludes that he is baffled by several aspects of Rotal decisions on the way in which facts are assessed, evidence evaluated, and

conclusions reached. (See also *Canon Law Abstracts*, no. 109, p. 100.)

1098

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

1099

CLSN 167 (2011), 40-50: Anthony Malone: Cultural Change and Marital Jurisprudence. (Article)

See above, canon 1057.

1099

FC 13-14 (2010-2011), 161-174: Angela Patrizia Tavani: Secolarizazzione della società e nullità matrimoniale. (Article)

See above, canon 1056.

1101

CLSN 167 (2011), 19-39: Klaus Lüdicke: A Theory of *Bonum Coniugum*. (Lecture)

See above, canon 1095 2º-3º.

1101

CLSN 168 (2011), 73-103: Sean O. Sheridan: Incapacity and Simulation: Mutually Exclusive Grounds or Key Juridical Facts Underlying Conforming Sentences? (Article)

See above, canon 1095.

1101

CLSN 169 (2012), 73-98: John Beal: Determining Error: Hot New Ground or Recycled Old Ground? (Lecture)

See above, canon 1098.

1101

FC 13-14 (2010-2011), 161-174: Angela Patrizia Tavani: Secolarizazzione della società e nullità matrimoniale. (Article)

See above, canon 1056.

1101

PCF XII1 (2011), 169-188: Augustine Mendonça: The Relationship between Canon Law and Pastoral Care: A Brief Analysis of Benedict XVI's 2011 Allocution to the Roman Rota. (Article)

See above, canons 1066-1072.

1101

SC 46 (2012), 511-523: Roman Rota: Relative Psychic Impotence, Exclusion of the Good of the Sacrament, and Lack of Use of Reason. Sentence *coram* Boccafola, 27 February 1989 (Rome). (Sentence)

See above, canon 1095 1º.

1103

CLSN 168 (2011), 104-122: John P. Beal: From Theory to Practice: Finding Equivalent Conformity Between Sentences Decided on Force and Fear and Lack of Due Discretion or Simulation. (Article)

See above, canon 1095.

1103

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

1117

AkK 180 (2011), 514-528: Stephan Haering: Die Richtlinien der Polnischen

Bischofskonferenz zum Abfall von der katholischen Kirche durch formalen Akt aus dem Jahr 2008. (Article)

See above, canon 1086.

1117

FCan VII/1 (2012), 91-98: Bento XVI: Carta Apostólica sob forma de 'motu proprio' *Omnium in mentem* do Sumo Pontífice Bento XVI sobre algumas modificações do CDC; Francesco Coccopalmerio: Os motivos das modificações. (Document and comment)

See above, canons 1008-1009.

1117

Proc CLSA 2010, 189-204: Fredrick C. Easton: Canonical Form of Marriage Throughout the Centuries: Seeing Pope Benedict XVI's Motu Proprio *Omnium in Mentem* in Context. (Lecture)

See above, canon 1086.

1124

AkK 180 (2011), 514-528: Stephan Haering: Die Richtlinien der Polnischen Bischofskonferenz zum Abfall von der katholischen Kirche durch formalen Akt aus dem Jahr 2008. (Article)

See above, canon 1086.

1124

FCan VII/1 (2012), 91-98: Bento XVI: Carta Apostólica sob forma de 'motu proprio' *Omnium in mentem* do Sumo Pontífice Bento XVI sobre algumas modificações do CDC; Francesco Coccopalmerio: Os motivos das modificações. (Document and comment)

See above, canons 1008-1009.

1124

Proc CLSA 2010, 189-204: Fredrick C. Easton: Canonical Form of Marriage Throughout the Centuries: Seeing Pope Benedict XVI's Motu Proprio

***Omnium in Mentem* in Context.** (Lecture)

See above, canon 1086.

1124-1129

Per 100 (2011), 779-803: Maria Elena Campagnola: I matrimoni interconfessionali. (Paper)

This paper was presented by C. during the Solemn Academic Event in the Pontifical Gregorian University on 10 March 2011. After considering the general norms of the Code concerning mixed marriages and marriages involving disparity of cult, she examines a series of situations in which a Catholic party marries someone not in communion with the Catholic Church: marriage with someone from the Orthodox Churches, marriage with someone from one of the Christian communities of the West, marriage with a Jew, a Muslim, a Buddhist or a Hindu. In each case, C. points out what the party from each faith community would normally expect in the celebration of the marriage. It is clear that the faithful adherence of a non-Christian party to his or her own faith might render a marriage with a Catholic party impossible. It is for this reason that the Church has the institution of the dispensation from disparity of cult and the *cautiones*. In addition, the Church may also have to take into account the rights accorded to children of such inter-confessional marriages by the State.

1141

Proc CLSA 2010, 50-82: John A. Alesandro: The Canon Law of Marriage: Ever Old, Ever New. (Lecture)

A. begins by setting out his view that much of what we think about marriage is a canonical construct rather than the result of theological reflection on revelation. These juridical formulations are by definition finite and historically conditioned. He offers an in-depth example of this by considering the question of the absolute indissolubility of sacramental marriage: this he does by looking at indissolubility, sacramentality (in the Code revision, the International Theological Commission, the synod of bishops, and *Familiaris Consortio*), and consummation (the historical background, stages of formation of the marriage bond, and justiciability). To finish, he offers some comments on procedural law, and in his conclusion lists various canons that he feels should be revised in terms of substantive and procedural marriage law.

1141-1150

ELT 9-10 (2010-2011), 42-85: Sajan George Thengumpally: Marriages of Unbaptized Persons: Misapprehensions and the Right Approach of the

Church. (Article)

See above, CCEO canon 802.

1142

IE XXIV 2/12, 457-481: Benedetto XVI: Motu proprio *Quaerit semper*, 30 agosto 2011 (con *nota* di J. Llobell, *La competenza e la procedura per la dispensa "super quolibet matrimonio non consummato" nel m.p. "Quaerit semper"*). (Documents and comment)

See below, canons 1697-1712.

1160

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

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

1176-1184

ADC 1 (abril 2012), 37-73: Juan Damián Gandía Barber: Las exequias eclesiásticas en los tanatorios. (Article)

Canon 1177 specifies the "church" in which the funeral of a deceased member of the faithful should be celebrated. As the use of mortuaries becomes more widespread, funeral rites have started to be performed systematically in some of these. G.B. analyses whether the faithful have the right to the celebration of a funeral in such places, and looks at related canonical aspects such as whether it is advisable to bless those places within the mortuary that are intended for worship and their conversion into sacred places, their legal nature, the altar, the tabernacle, the record to be entered in the register of deaths, the offerings made on the occasion of the funeral, the question of who is responsible for the pastoral care of the faithful, and the number of Masses that a priest can celebrate a day.

1186

Comm 44 (2012), 106-112: Congregatio pro Doctrina Fidei: Normae quoad proceduram in discernendis opinabilibus apparitionibus necnon revelationibus datae. (Document)

The Congregation for the Doctrine of the Faith considers it opportune to reissue the Instruction on the discernment of claimed apparitions and revelations dated 25 February 1978. The text of the norms (Latin) is prefaced by an introduction from Cardinal Levada (Italian).

BOOK IV, PART III: SACRED PLACES AND TIMES

1205-1243

ADC 1 (abril 2012), 37-73: Juan Damián Gandía Barber: Las exequias eclesiásticas en los tanatorios. (Article)

See above, canons 1176-1184.

1215

FC 13-14 (2010-2011), 175-193: Péter Erdö: I presupposti giuridici della costruzione delle chiese: il permesso del vescovo. (Article)

The theological basis for the need of episcopal permission for the construction of churches is to be found in the very office of the bishop: his episcopal ordination and his appointment as diocesan bishop. His role is to direct the whole of the liturgical activity within the particular Church entrusted to him. He is the one who convokes the Eucharistic assembly. He determines the specific place of the liturgical celebration, and within certain limits can issue norms on this matter. From the third century onwards, Christians had not only places specifically assigned for the liturgical assembly, but also churches built for that purpose. In late antiquity it became clear that the liturgy and order of the community required episcopal control prior to the construction of churches; this principle has been repeated and developed down through the ages, and is enshrined in canon 1215 of the present Code. At the Council of Trent, and later in the 19th and 20th centuries, the nature of the liturgical celebration as a public ecclesial (official) function became clearer: hence it becomes clear that the order, development, place, time and circumstances of the liturgy, and in particular the Eucharistic celebration, do

not depend solely on the taste or ideas of private individuals or groups.

1221

IE XXIV 2/12, 493-498: Conferenza Episcopale Italiana, Consiglio Permanente: Nota *L'accesso nelle chiese*, 31 gennaio 2012 (con *nota* di M. Rivella). (Document and comment)

The text is given of a document issued by the Italian Bishops' Conference reaffirming the principle that places of worship in Italy should continue to allow free access to all who wish to enter them, whether to pray, remain in silence, or admire the works of art within them. The churches are to ask tourists to observe certain rules regarding dress, conduct, and above all silence, so as to facilitate an atmosphere of prayer. If there are great numbers of tourists the churches may restrict access, but access should always be possible for those who wish to enter to pray. Entrance tickets may only be issued for tourist visits to certain parts of the church complex (crypt, treasury, independent baptistery, bell-tower, etc.) which are clearly distinct from the main church building. The document is accompanied by a comment from Mauro Rivella.

1222

CLSN 170 (212), 19-28: Congregation for the Clergy: Decree on the Diocese of Cleveland's Closure of Churches. (Document and comment)

On 1 March 2012 the Congregation for the Clergy issued a batch of decrees relating to 13 churches whose closure had been decreed by the bishop of Cleveland, Ohio. An example is given of that relating to the church of St Patrick, West Park, Cleveland. The first 17 sections describe the procedure followed by successive bishops of Cleveland in evaluating and deciding the future of a number of parish churches within the diocese. Sections 18 to 19 describe the nature of hierarchical recourse. Sections 20 to 22 set out the reasons for procedural concern on the part of the Congregation and its decision. The decision was to uphold the recourse not only *de procedendo* but also *de decernendo* with regard not only to the suppression of the parish but also to the closure of the church and its reduction to secular use. The parties are informed of their right of recourse in the Supreme Tribunal of the Apostolic Signatura, but meanwhile the bishop of Cleveland is enjoined, somewhat enigmatically, to "enact the implications of this decree". Effectively this means that St Patrick's remains open and must be treated as a separate parish and the church building made available for public worship. A comment is supplied by Gordon Read.

1249-1253

FCan VII/1 (2012), 99-105: Pedro María Reyes-Vizcaíno: Que obrigação têm os fiéis católicos de guardar a abstinência e jejuar? (Article)

From ancient times the Catholic Church has specified fasting and abstinence as a way of fulfilling the Lord's command to do penance. In its current form, abstinence obliges from the age of 14 years, and fasting from 18 to 59. Episcopal conferences are to issue specific provisions according to the circumstances of each country. In themselves, these are ecclesiastical norms and therefore allow of dispensation, but in any case the obligation to do penance remains. The norms on penitential observance issued by the Portuguese episcopal conference are given as an appendix to the article.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254

IE XXIV 2/12, 293-302: Mauro Rivella: Buon governo e corresponsabilità. (Article)

R. presents two documents, one from the United States Catholic Conference of Bishops, the other from the Italian Bishops' Conference. The first, *Stewardship. A Disciple's Response* (1992), deals with the topic in a wide perspective, identifying stewardship with being a disciple of Christ. The Italian document, *Sovvenire alle necessità della Chiesa. Corresponsabilità e partecipazione dei fedeli* (1998) was conceived at the time when the system of ecclesiastical benefices finally came to an end. It reproposes the vision of the first Christian community, according to a "very specific idea of Church", in line with the teaching of Vatican II. It is still necessary to identify concrete ways for these ideal values to have an effective impact on the life of the ecclesial community, involving the Christian faithful in collecting the resources needed to run the Church.

1257

AkK 180 (2011), 534-536: Helmuth Pree: CASE. Corresponsabilità, Amministrazione e Sostegno Economico della Chiesa. (Article)

The article provides information on the "CASE" working group, formed in November 2011 to deal on a European level with current problems relating to the canon law of the Church's patrimony. (See following entry.)

1257

IE XXIV 2/12, 277-292: Jesús Miñambres: La "stewardship" (corresponsabilità) nella gestione dei beni temporali della Chiesa. (Article)

In 1992 the bishops of the United States proposed that the idea of stewardship be applied to the Church. Although the practical manner of its implementation may not be easily imported into countries outside the United States, the study of the notion of stewardship may open up new perspectives for academic research in the European context. For this purpose a new research group by the name of “CASE” has been set up to study stewardship in Europe. M. presents some of the lines of research into stewardship in relation to canon law in general, and patrimonial canon law in particular.

1260

CLSN 172 (2012), 58-81: John Renken: The Acquisition of Diocesan Revenue by a Diocesan Bishop. (Article)

R. considers the means identified in canon law whereby the diocesan bishop generates revenue from the faithful for the proper purposes of the diocese with which he has been entrusted. Sources of revenue in the CIC/17 and CIC/83 – including those that are new to the CIC/83 – are identified and considered. (See also *Canon Law Abstracts*, no. 103, p. 122.)

1260-1267

REDC 69 (2012), 757-779: Silvia Meseguer Velasco: El principio de cooperación y las donaciones a las confesiones religiosas. (Article)

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

1261

IE XXIV 2/12, 303-322: Diego Zalbidea: Corresponsabilidad (stewardship) y derecho canónico. (Article)

Co-responsibility (stewardship) in the mission of the Church has a material aspect, reflected in the financial support of its activities on the part of the faithful. This financial support should be integrated into the overall response of the faithful to their vocation. For this reason, the CIC/83 establishes some measures aimed at achieving this co-responsibility. The notion of administration, professional management and transparency are three pivotal aspects of these provisions. This is to ensure that the scarce resources of the Church are used for her proper purposes. The credibility of professional and transparent management is a good way of achieving the faithful’s co-responsibility in the Church’s mission. Z. offers two examples; the World Youth Day in Madrid, and the creation of a Financial Information Authority for the Holy See and the Vatican.

1267

J 72 (2012), 76-108: Ronny E. Jenkins: Gifts, Donations and Donor Intent in the Canon Law of the Catholic Church. (Article)

See below, canons 1299-1302.

1273-1289

J 72 (2012), 109-129: John P. Beal: Ordinary, Extraordinary and Something in Between: Administration of the Temporal Goods of Dioceses and Parishes. (Article)

B. begins by clarifying terminology about administration and alienation, and then considers the various categories of ordinary administration, ordinary administration of greater importance, extraordinary administration, and extraordinary administration of greater importance. He finishes by looking at practical applications of these categories.

1280

QDE 25 (2012), 390-399: Mauro Rivella: Consigliare nella Chiesa in ambito economico. (Article)

R. begins by reflecting on the principle of co-responsibility and participation, and relates this to the obligations to have economic and financial advice, as laid down by canons 1280, 492 and 537. The basic idea is to ensure that the administration of goods is not exclusively in the hands of one person; this both promotes good administration and gives reality to the principle of co-responsibility. The latter finds expression in the obligation of consent (an effective veto) and promotes helpful advice about direction. The involvement of the laity in this area promotes conciliar teaching on their apostolate.

1280

QDE 25 (2012), 400-436: Matteo Visioli: Lo status giuridico del consigliere per gli affari economici. (Article)

V. identifies membership of a finance committee as an authentic lay ministry which involves cooperation in the governing function of the Church. The Church prefers that this ministry be exercised in a collegial form: the finance committee. The necessary qualities of the finance counsellor are examined, with a particular look at the specific situation of the diocesan finance committee. In this context detailed examination is given to the problem posed by divorced Catholics who have entered a civil marriage; V. offers the view that they can nonetheless serve on

a finance committee. Several other questions are addressed more briefly: V. argues that being a counsellor involves being nominated to an ecclesiastical office, and that this has implications for any possible dismissal. He argues that a counsellor has some rights of access to existing documentation, but does not strictly have a right of vigilance (which only belongs to an administrator of goods).

1281-1288

J 72 (2012), 53-75: Thomas J. Green: The Players in the Church's Temporal Goods World. (Article)

G. begins by considering the bishop's governance over temporal goods. He then looks at the idea of consultation in the life of the Church. He goes on to examine in detail various diocesan structures for financial administration: the diocesan finance council; the council of priests; the college of consultors; the diocesan pastoral council; and the diocesan treasurer. G. continues by looking at the parish financial structures: the parish priest, the parish finance council, the parish pastoral council, and the parish treasurer.

1291-1295

J 72 (2012), 164-177: Robert W. Oliver: Temporal Goods and the Suppression/Merger of Parishes. (Article)

See above, canons 121-123.

1299-1302

J 72 (2012), 76-108: Ronny E. Jenkins: Gifts, Donations and Donor Intent in the Canon Law of the Catholic Church. (Article)

J. compares canon law and US civil law on the idea of "gifts". He looks at the legal elements of gifts (transfer of interest, gratuity and *animus donandi*), and the canon law of gifts (nature of gifts, gift capacity, donor intent, and conformity with civil law). He then develops the issue of donor intent in more detail. Finally he looks at specific areas relevant to donor intent: the merger, division, and suppression of juridical persons; last wills and testaments; offerings held in trust; pious foundations; Mass stipends; and the vindication of donors' rights.

1299-1310

J 72 (2012), 130-163: Sean O. Sheridan: Endowments and Pious Wills: To Rebuild the Church. (Article)

S. considers the law relating to endowments and wills. He begins by examining the terminology involved in the appropriate canons, and then looks at the administrative aspects involved, including the intention of the donor and the role of the Ordinary, and the possibility of alterations to pious wills.

1303

Comm 44 (2012), 44-53: Secretaria Status: Rescriptum ex audientia Ss.mi quo Fundatio cui nomen est "Fondazione Scienza e Fede – STOQ" instituitur. (Document)

See above, canon 360.

BOOK VI: SANCTIONS IN THE CHURCH

1311-1399

Comm 44 (2012), 184-185: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Litterae N. 477/66 quibus adnexae "Quaestiones aggrediendae de iure poenali" a relatore paratae transmittuntur ad Consultores. (Document)

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

1311-1399

Comm 44 (2012), 186-238: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Vota Consultorum. (Report)

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

1311-1399

Comm 44 (2012), 239-254: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Relatio praevia. (Report)

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

1311-1399

Comm 44 (2012), 255-264: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" Sessio I: Relatio Sessionis. (Report)

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

1311-1399

SC 46 (2012), 341-354: William Richardson: An Appalling Vista? The Future of Judicial Penal Trials in the Latin Code. (Article)

The Church has an obligation to proclaim and defend the fundamental human rights of man, particularly in her own administration of justice. R. examines the draft revision to Book VI of 1983 Code, as proposed by the Pontifical Council for Legislative Texts in 2011. He highlights a movement in favour of prosecuting canonical crimes using extrajudicial procedures at the expense of judicial penal trials, even when perpetual penalties are to be imposed. He questions whether the Church and people accused of canonical crimes are best served by such changes.

1320

CLSN 172 (2012), 43-57: Hyacinth Heyousun: The Competence of a Diocesan Bishop over Religious in Penal Matters. (Article)

Noting that there is hardly any reference in the CIC/83 to penal matters in respect of diocesan bishops and members of religious institutes, H. explores questions such as whether a bishop can impose penal sanctions on religious, suppress them, or expel them from his diocese. Referring to specific canons, H. constructs an initial list of rights that diocesan bishops have over religious within his diocese, and explores procedural steps that would have to be taken in any imposition of sanctions. He concludes that diocesan bishops can impose or declare censures in particular instances, and give canonical warnings, impose penances, and enforce corrections on individuals or communities. (See also *Canon Law Abstracts*, no. 103, p. 126.)

1336

QDE 25 (2012), 356-368: Egidio Miragoli: La "pena giusta" nei casi di *delicta graviora*. (Article)

See below, canon 1341.

1341

QDE 25 (2012), 356-368: Egidio Miragoli: La "pena giusta" nei casi di *delicta graviora*. (Article)

M. sets out the context of recent difficulties in the application of penal law and reaffirms the threefold aim of such penalties. Asking what a just penalty might be in the case of the *delicta graviora* he reviews the expiatory penalties listed in canon 1336 and examines how each could be used in these situations. He then looks at the possibilities raised by the alternative approaches of canon 1344 (especially penances), and concludes with a sideways glance at the questions of conversion and psychological therapy.

1342

QDE 25 (2012), 316-355: Desiderio Vajani: La procedura canonica a livello diocesano nel caso dei *delicta graviora*. (Article and formulary)

See below, canon 1717.

1344

QDE 25 (2012), 356-368: Egidio Miragoli: La "pena giusta" nei casi di *delicta graviora*. (Article)

See above, canon 1341.

1354

CLSN 172 (2012), 8-29: Edward Peters: Remission of Lefebvrite Excommunications. (Article)

See below, canon 1382.

1357

Per 101 (2012), 159-198: Roberto Aspe: El 'caso urgente' para la remisión de las censuras en la normativa canónica actual. Estudio histórico-canónico y aplicación práctica del can. 1357 del Código de Derecho Canónico. (Article)

In this article, A. explores the remission of censures as presented in canon 1357, focusing particularly on the "hard case" situations, in which it is difficult for the penitent to remain in a state of grave sin for the time necessary to approach the competent authority. He begins with a historical and canonical study of the concept and practice of the remission of censures in the Church, leading up to

canon 2254 of the CIC/17. Then he proceeds to see how the principles are applied within the text of canon 1357 of the CIC/83, focusing in particular on the responsibilities of the confessor who finds himself faced with a penitent under censure.

1362

Per 101 (2012), 103-158: Damián G. Astigueta: Delitti imprescrittibili nella Chiesa? (Article)

The existence in canon law of the institution of prescription by which the possibility of a criminal action is extinguished after the passage of a certain period of time has been criticized frequently in relation to those crimes involving the sexual abuse of minors. In the light of such criticism, A. examines the historical origins, as well as the rationale behind prescription, moving on to a consideration of prescription in the perspective of human rights. In asking the question whether or not certain crimes should be subject to prescription in canon law, A. points out that three distinct aspects need to be kept in mind at all times: the damage done to the victims and their right to vindicate themselves within the canonical forum, the need for the competent authority to act with responsibility in the administration of justice and the application of the law, and the necessity of making provision for dealing with such crimes in the future by way of legislating. In the end, while acknowledging that there is no simple or single answer to the problems raised by the question of prescription and the extinction of criminal action, he wonders if it might be possible to return to the concept of "*tempus utile*" found in the CIC/17: this meant that the time for calculating the possibility of criminal action begins when the crime is notified to the competent authority.

1364

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

See below, canon 1395.

1364

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

See below, canon 1395.

1364

SC 46 (2012), 355-373: Jean Pelletier: Le phénomène des abandons de l'Église par apostasie et par schisme. (Article)

See above, canon 751.

1367

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

See below, canon 1395.

1367

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

See below, canon 1395.

1374

J 72 (2012), 31-52: Ronny E. Jenkins: Ecclesiastical Law and the *Year of Faith*: Principles for Reflection and Application. (Article)

J. considers the principles of the new evangelization and how these apply to the revision of Book VI, with special application to the prohibition on freemasonry.

1378-1379

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

See below, canon 1395.

1378-1379

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

See below, canon 1395.

1382

CLSN 172 (2012), 8-29: Edward Peters: Remission of Lefebvrite Excommunications. (Article)

P. examines the lifting of the excommunications that had been declared in 1988 against four priests who had received illicit episcopal consecration from Archbishop Marcel Lefebvre. He discusses the canonical chronology of the case and the reasons given for the excommunication of the bishops and the subsequent remission. He distinguishes between what the Pope *did* in relation to this issue and how he *explained* what he did. (See also *Canon Law Abstracts*, no. 108, p. 123.)

1382

IE XXIV 2/12, 401-420: Bruno Fabio Pighin: Le ordinazioni episcopali senza mandato pontificio e le loro conseguenze canoniche. (Article)

Bishops ordained without a pontifical mandate cause serious harm to the Church. P. addresses the canonical aspects of the ordination without pontifical mandate of Chinese bishops, those involved in extreme traditionalism, and other similar cases. The requirement of a Papal mandate was imposed quite recently, as is clear from the sources of canon 1013. Even the crime established in canon 1382 and its severe penalty are recent. The conduct in question relates to the unlawfulness of the consecration, not to its invalidity, although there are three situations in which the ordination may in fact be invalid. The communication *latae sententiae* reserved to the Apostolic See for this crime does not fall within the category of *delicta graviora*. Those guilty of the offence of taking part in an episcopal ordination without a pontifical mandate include not only the consecrating and consecrated bishops, but also those co-consecrating.

1387

Ap LXXXIV 2 (2011), 581-606: Edward N. Peters: Retrospectives on Benedict XIV's Constitution *Sacramentum Poenitentiae*. (Article)

P. looks at Benedict XIV's Apostolic Constitution *Sacramentum Poenitentiae*, which occupies a pivotal place in the development of canonical legislation concerning solicitation and other sins and offences connected with the sacrament of penance. He looks at the person of Benedict XIV and the Constitution itself, which influenced both the Pio-Benedictine and the current Code. He concludes by providing a translation of *Sacramentum Poenitentiae*, which he believes is an important resource for all involved in canonical governance.

1387-1388

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

See below, canon 1395.

1387-1388

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

See below, canon 1395.

1395

AkK 180 (2011), 466-513: Wilhelm Rees: Zur Novellierung des kirchlichen Strafrechts im Blick auf sexuellen Missbrauch einer minderjährigen Person durch Kleriker und andere schwerwiegendere Straftaten gegen die Sitten. Gesamtkirchliches Recht und Maßnahmen enizelner Bischofskonferenzen. (Article)

Since the beginning of the present millennium, the theme of "sexual abuse of minors by clerics in the Roman Catholic Church" has been a topic for public discussion. This has given rise to the uncovering of many cases of sexual abuse, and to an amendment of the relevant penal sanctions in the CIC/83 and CCEO, as well as to detailed guidelines from individual episcopal conferences, including those of Germany and Austria. R. examines these changes to the law in the light of the historical development of the statutory offence. They demonstrate the Church's interest in the penalty for this offence, with particular attention to the victim.

1395

Ap LXXXIV 1 (2011), 7-9: Guida alla comprensione delle Procedure di base della Congregazione per la Dottrina della Fede riguardo alle accuse di abusi sessuali. (Document)

This unsigned guide, available in English on the Holy See website, is a brief introductory guide for laypeople and those without canonical knowledge to the procedures to be followed when an allegation of sexual abuse is made, and also a good point of departure for those who may find themselves involved with such a procedure.

1395

Ap LXXXIV 1 (2011), 10-16: Charles J. Scicluna: The Procedure and praxis of the Congregation for the Doctrine of the Faith regarding *graviora Delicta*. (Comment)

S., the Promoter of Justice in the Congregation for the Doctrine of the Faith (CDF), gives an account of the CDF's procedures, praxis and jurisprudence concerning the *graviora delicta*, in which he describes the various *graviora delicta* and the options available to the CDF if the result of the preliminary investigation is credible.

1395

Ap LXXXIV 1 (2011), 337-381: Varuvel G. Dhas: Modifiche introdotte nelle norme riguardanti i *graviora delicta*. (Article)

D. examines the modifications in the substantive and the procedural norms of *Sacramentorum Sanctitatis Tutela* (30 April 2001) which have been made by both John Paul II and Benedict XVI, and the new text of the norms *de gravioribus delictis* approved by Benedict XVI on 21 May 2010. In terms of substantive norms, he examines those who are subject to the norms, and the nature of the offences against the faith (schism, heresy and apostasy), the Blessed Eucharist, the sacrament of penance, the sacrament of orders and offences *contra mores*, in which category he looks at the inclusion of those adults who habitually have imperfect use of reason, and the use by a cleric of pornographic images of a child under the ages of 14. He expands upon the norms regarding prescription – all criminal actions relative to offences reserved to the Congregation for the Doctrine of the Faith (CDF) are extinguished by prescription after 20 years; in the case of an offence concerning a minor, prescription begins when the person concerned has completed his 18th year. In terms of procedural norms, D. examines the dispensations from a doctorate and the priesthood required of certain officials, the role of the CDF in the preliminary investigation, the faculty of sanation of the acts in the case of violation of merely procedural laws, the possibility of imposing restrictions during the preliminary investigation, the administrative penal process, the presentation of cases to the Roman Pontiff for *dimissio ex officio et in poenam* and hierarchical recourse. He concludes by commenting that, unlike some previous norms concerning *graviora delicta*, the 2010 revision was published as widely and made as easily accessible as possible and, while noting that the document does not refer at all to cooperation by ecclesiastical authorities with the statutory authorities, he comments that a good Christian is a good citizen, and so does not need to wait for the outcome of a canonical process before reporting the allegation to the civil authorities.

1395

CLSN 169 (2012), 15-21: Gordon Read: The Diocesan Bishop as Pastor in the Context of Child Abuse Cases. (Article)

How is the diocesan bishop to exercise his role as pastor towards the people and priests of his diocese? R. reflects on this question by reflecting on the post-synodal Exhortation *Pastores Gregis* of 2003, together with the Vatican Response to the Cloyne Report (2011), and a statement by Cardinal O'Malley, Archbishop of Boston (also 2011), explaining his motivation for publishing the names of clergy abused of sexually abusing a child.

1395

CLSN 170 (2012), 4-18: John Hadley: Comments on the Murphy Report. (Comment)

H. comments on this report dealing with cases of child sexual abuse in the archdiocese of Dublin between 1975 and 2004. His observations cover three broad areas: difficulties with canon and civil law in the years covered by the report, practical consequences of those legal difficulties, and implications for the present and the future.

1395

CLSN 171 (2012), 37-47: Paul Robbins: Review of 'The Presumption of Innocence in Canonical Trials of Clerics Accused of Child Sexual Abuse' by William Richardson. (Bibliographical review)

R. provides a detailed comment on Richardson's book which is written from the point of view of the cleric accused of child sexual abuse. Examining and commenting on each chapter, he concludes that this is a useful contribution to the debate, and a springboard for further work.

1395

CLSN 171 (2012), 49-66: 'Towards Healing and Renewal': Symposium for Catholic Bishops and Religious Superiors on the Sexual Abuse of Minors. (Symposium papers)

This collection of papers from a symposium which took place in February 2012 at the Pontifical Gregorian University in Rome deals with a variety of issues. Cardinal Levada outlines five general considerations arising from the recent crisis, including the need for support for victims and cooperation with civil authority. Marie Collins, a victim, outlines her experiences, while Sheila Hollins offers a

framework from her experience as a psychiatrist. Other papers deal with examples of best practice, how to respond effectively to child sexual abusers, and preventing the abuse of vulnerable adults.

1395

J 72 (2012), 178-239: Mark L. Bartchak: Child Pornography and the Grave Delict of an Offence Against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor. (Article)

B. begins by considering the idea of pornography in the CIC/17, the CIC/83, and the 2010 *Normae de gravioribus delictis*. He then considers the definition of a minor over recent canonical history. He looks in detail at the different ways of acquiring, possessing, and distributing pornographic images. He then examines imputability and some additional issues that arise such as the preliminary investigation, the assessment of the proofs, and the imposition of an appropriate penalty. He concludes by offering some issues for further consideration such as the age of minority and the publication of jurisprudence.

1398

ADC 1 (abril 2012), 119-138: María José Redondo Andrés: El aborto provocado: especial referencia en el ordenamiento canónico. (Article)

The Church has always regarded abortion as a crime. The State on the other hand (the author is focusing on Spain in particular) has varied its position, and perhaps as a result of political rather than juridical considerations has come to regard abortion no longer as a crime but rather as an exclusive right of the woman. This new approach on the part of the State could lead to an erroneous understanding on the part of some of the faithful. Hence R.A.'s objective is to show that abortion is not only a sinful action, but is one of the most serious crimes. In dealing with regulation of abortion by the State, she looks at precedents and the current legislation. As regards the Church's legislation she considers abortion as both a sin and a crime, and studies its treatment in the CIC/17 and the CIC/83. She concludes, in the words of *Evangelium Vitae*, no. 95, that what is urgently called for is "a general mobilization of consciences and a united ethical effort to activate a great campaign in support of life."

BOOK VII: PROCESSES

1400-1731

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

1408

REDC 69 (2012), 835-845: Sentencia del Tribunal Supremo de la Signatura Apostólica, de 21 de mayo de 2011, acerca de la violación de la Ley en una causa penal. Texto en español y comentario (Federico R. Aznar Gil). (Document and comment)

This penal action, taken by the bishop of Cuenca against a priest, the retired president of the *Lumen Dei* Union, centres on the competent forum in which to pursue such a case. The accused had appealed against the decision of the bishop to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, but the Congregation had made no response to his appeal, effectively rejecting it (cf. canon 57 §2) and upholding the original decision. The accused then brought an action before the Apostolic Signatura. The sentence points out that the normal competent fora for penal processes relate to the domicile or quasi-domicile of the accused, the place where the delict was committed, or the Ordinary of the accused. None of these could be invoked in this case and the Signatura upheld the appeal, making clear that it was not for the Signatura itself to enter into the matter of the alleged actions of the accused or their gravity. The question of the competent forum precedes the commencement of any process. A.G. in his comment points out the importance of a careful observance of procedural norms, especially in penal cases.

1425-1426

FC 13-14 (2010-2011), 101-140: Julio García Martín: Gli atti giuridici della discussione, della redazione e dell'approvazione della sentenza da parte del tribunale collegiale diocesano (cann. 1609-1610). (Article)

See below, canons 1609-1610.

1432

ADC 1 (abril 2012), 111-118: Jaime González Argente: La argumentación razonable y los principios de la antropología cristiana de la pericia en el ministerio de defensa del vínculo. (Article)

The defender of the bond has a specific mission in the dynamics of the process as

a true party to the proceedings. His mission is to propose and demonstrate all that can reasonably be adduced against the nullity, but in causes concerning the incapacities described in canon 1095 he has a special responsibility to examine the anthropological principles underlying the expert evidence. This is not a mission exclusive to this ministry and requires acquiring knowledge of philosophical and theological anthropology as well as the language and methodology of the sciences of psychology and psychiatry.

1443-1444

Ap LXXXIV 2 (2011), 564-580: Matteo Nacci: Le novità del motu proprio *Quaerit semper* e gli insegnamenti della storia sulla missione della Rota Romana. (Article)

See below, canons 1708-1712.

1445

RMDC 18 (2012), 223-276: Marco Antonio Hernández H.: Consideraciones a partir de algunas decisiones de la Signatura Apostólica, adoptadas con posterioridad a la promulgación del Código de Derecho Canónico vigente. (Article)

See below, canons 1732-1739.

1445

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

1446

Ap LXXXIV 2 (2011), 607-632: Michele Riondino: La “Mediazione” come decisione condivisa. (Article)

Taking as his point of departure the origin and development of the concept of “mediation”, R. looks at mediation in the context of family law and youth justice, before examining the use of mediation in canon law with particular regard to its deployment in the ambit of penal law.

1452

Ap LXXXIV 2 (2011), 505-534: Manuel Jesús Arroba Conde: Conoscenza e giudizio nella Chiesa. (Article)

See below, canon 1526.

1475

IE XXIV 2/12, 483-491: Supremo Tribunale della Segnatura Apostolica: Decretum generale exsecutorium *Saepe saepius* de actis iudicialibus conservandis, 13 agosto 2011 (con *commento* di A. Perlasca). (Document and comment)

See above, canons 486-491.

1475

SC 46 (2012), 471-487: William Daniel: The Preservation of Judicial Acts from Causes of the Nullity of Marriage. (Article)

See above, canons 486-491.

1478

Markus Graulich – Jesu Pudumai Doss (eds.): Minori e Famiglia. Quali Diritti? (Book)

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

1490

QDE 25 (2012), 451-494: Davide Salvatori: Il rapporto con le parti e i testi (consulenza e interrogatori giudiziali): aspetti normativi, deontologici e disciplinari. (Article)

See below, canons 1549-1571.

1501-1506

CLSN 172 (2012), 82-102: Augustine Mendonça: Admission/Rejection of a Nullity Libellus. (Article)

Examining the necessity of the *libellus*, its form and content, M. considers the

process of admission or rejection, and discusses the remedies if it is rejected. (See also *Canon Law Abstracts*, no. 108, p. 136.)

1526

Ap LXXXIV 2 (2011), 505-534: Manuel Jesús Arroba Conde: Conoscenza e giudizio nella Chiesa. (Article)

This article concerns the quest for truth, which is the aim of all canonical processes. A.C. begins by looking at the concept of truth in a post-modern world which largely denies the concept of "objective truth". He examines the role of evidential rules in the canonical process before looking at the presuppositions and characteristics of the canonical sentence.

1526-1586

ADC 1 (abril 2012), 11-36: Manuel Jesús Arroba Conde: Relación entre las pruebas y la comprobación de la verdad en el proceso canónico. (Article)

A.C. analyses the proofs in the judicial process as the instruments for reaching a decision in accordance with the truth, the ultimate goal of the process. He makes clear the need for judicial decisions to conform to the law and to be based on an authentic verification of the facts, so as to achieve the standards expected of the Church as witness of the truth. His aim is to show that there is no reason for distrusting canon law, since none of its solemnities are of an anti-epistemic nature, nor do they impede the achieving of a correct decision corresponding to the true facts. He starts by setting out the theological importance of truth in ecclesial life, and goes on to analyse the concept of truth from its alethic perspective (the truth or falsehood of the statements describing it are determined by their correspondence or otherwise to reality). He then sets out some of the concepts in the canonical evidential system (*favor veritatis*: absolute truth, relative truth, objective truth and procedural truth), before analysing the means of proof: the rules for its proposal, acceptance, acquisition and evaluation. Finally he examines three conclusions concerning the conditions which should characterize a judicial decision at the level demanded by the Church's mission.

1527

QDE 25 (2012), 369-379: Adolfo Zambon: L'uso del computer durante l'istruttoria. (Article)

Z. begins by asserting that the collection of the proofs during the instruction requires both speed and completeness, and that the use of computers risks obtaining speed at too high a price. He highlights the difficulty of being certain about identity, and the risk that someone may not be properly cited and so

deprived of the right of defence. More positively, he discusses some of the uses of word processing packages to help in the preparation of a process, in the recording of witnesses' statements and in the production of judicial decrees and sentences (reflecting also on the prudence of the use of .pdf files). He concludes with comments on the storage of tribunal data, looking both at changes in computer programmes and at questions of security and privacy.

1530

Ap LXXXIV 2 (2011), 505-534: Manuel Jesús Arroba Conde: Conoscenza e giudizio nella Chiesa. (Article)

See above, canon 1526.

1549-1571

QDE 25 (2012), 451-494: Davide Salvatori: Il rapporto con le parti e i testi (consulenza e interrogatori giudiziali): aspetti normativi, deontologici e disciplinari. (Article)

Dignitas Connubii requires that every tribunal provide an advice service for those who wish to enquire about the possibility of petitioning for a declaration of nullity. S. considers this role in detail, examining who may exercise it, how it works in detail and how it helps the process to proceed. He goes on to examine the judicial examination, looking in detail at who may be present at this examination and how they exercise their role, and then examines the various phases of the examination: describing preliminary, central and concluding phases. The article reflects throughout not merely on the technical legal aspects of the institutions it describes, but also on the ethical responsibilities of those involved.

1585

Ap LXXXIV 2 (2011), 505-534: Manuel Jesús Arroba Conde: Conoscenza e giudizio nella Chiesa. (Article)

See above, canon 1526.

1608

Ap LXXXIV 1 (2011), 27-88: Paolo Gherri: Decidere e giudicare nella Chiesa. (Article)

This article is the *instrumentorum laboris* for a study day held in the Pontifical Lateran University in March 2011; in it, G. looks at the words "decision" and

“judgement” from a philosophical and legal perspective.

1608

Proc CLSA 2010, 142-174: William L. Daniel: The Notion of Moral Certitude with Particular Application to the Acts Mentioned in Canon 1682 §2 (CCEO, c. 1368 §2). (Lecture)

D. explains the history of moral certitude and the current understanding of the concept, its source *ex actis et probatis*, and the manner of attaining it. He notes the challenge to the necessity of moral certitude found in the 1960s, especially in North America. He then applies the notion of moral certitude to the issue of the confirmation (or not) of the first instance decision by the second instance tribunal. The second instance judges must have moral certitude that the first instance decision was correct before they can confirm the decision. He provides examples from Rotal jurisprudence of defects in the first instance decision/acts which impede the achieving of moral certitude by the second instance judges.

1609

CLSN 168 (2011), 30-48; also **CLSN 172 (2012), 103-120: William Daniel: The Dissenting Conclusion of the Judge.** (Article)

D. considers how a dissenting judge on a tribunal might continue to seek the cause of truth. Considering the means of so-called judicial dissent which has been introduced into the canonical system, D. looks at issues of secrecy, the sending of a dissenting conclusion to a superior tribunal, and examples of such dissenting conclusions. He concludes that judges should be keenly aware of their right to insist that their conclusions are sent to a superior tribunal when the appropriate conditions are in place.

1609-1610

FC 13-14 (2010-2011), 101-140: Julio García Martín: Gli atti giuridici della discussione, della redazione e dell’approvazione della sentenza da parte del tribunale collegiale diocesano (cann. 1609-1610). (Article)

The steps leading up to the definitive sentence are specifically regulated in canons 1609 and 1610 of the CIC/83, although little attention has been paid in canonical literature to the juridical act of approval of the sentence on the part of the collegiate tribunal. Accordingly G.M. carries out a detailed examination of the background to these canons and their evolution in the process of the revision of the Code. He then looks at the detail of the constitution and convoking of the college of judges; the college’s discussion and deliberation; the drafting of the sentence; and the approval of the sentence by each of the judges, by means of a

vote.

1612

Ap LXXXIV 1 (2011), 115-147: Giordano Caberletti: La motivazione nella Sentenza canonica. (Article)

C. argues that the principles of substantive and procedural law are quasi-crystallized in the motivating force for sentences, that the quality of a tribunal depends on its sentences and that the quality of its sentences depends on the solidity – or otherwise – of the reasoning underlying the sentences. Having defined the sentence and its qualities and looked at the rationality of the sentence, C. reminds the reader that a sentence must have an expositive part, *in iure* and *in facto*, followed by the dispositive part, which is based on the expositive part. The part *in iure* presents the relevant law together with teachings from the Magisterium and jurisprudence; the judge must not judge *de legibus sed secundum leges*, applying the law in the concrete circumstances of the particular case; the part *in facto* presents the evidence which has enabled the judge to reach his decision.

1659

Ap LXXXIV 2 (2011), 607-632: Marcello Riondino: La "Mediazione" come decisione condivisa. (Article)

See above, canon 1446.

1671-1691

Proc CLSA 2010, 115-126: Paul D. Counce: *Dignitas Connubii*: Five Years Later. (Lecture)

C. surveys various American, Canadian, and British Isles tribunals about their reception and use of *Dignitas Connubii* (DC). Every tribunal has used it in training its staff and has added DC references to the various decrees and forms. Some tribunals have changed their decrees and letters so as to conform better with DC and some have had to make major changes to their practices. Most of the tribunals have had to make various smaller but important changes to individual aspects of their activities, and C. mentions these in detail.

1671-1691

Patricia M Dugan – Luis Navarro: Matrimonial Law and Canonical

Procedure. A Continuing Education Course. (Book)

See above, canons 1055-1165.

1671-1707

CLSN 168 (2011), 133-139: Peter Kravos: British and Irish Tribunal Statistics 2010. (Statistics)

Tables showing the numbers of 1. ordinary trials in first instance; 2. documentary trials in first instance; 3. ordinary trials in second instance; 4. separation of spouses, "ratified and non-consummated" and "presumed death of spouse" cases; 5. costs of cases; in tribunals in Britain and Ireland in 2010.

1676

FCan VII/1 (2012), 79-81: Elisa Araújo: Reconciliação Conjugal (Parte II): comentários aos cc. 1676 e 1695 CIC. (Commentary)

The CIC/83 says that in a request for a declaration of nullity of marriage (canon 1676) or for a judicial process for the dissolution of marriage (canon 1695) the judge, before accepting the case, should consider the possibility of reconciliation, prudently assessing whether there is way of overcoming the marital crisis. Sometimes the application of this norm is limited to the prudent assessment of the judge without extending to an attempt at reconciliation. Obviously the authority cannot impose or force such a reconciliation. The judge should establish a dialogue with the couple, applying pastoral means. (See *Canon Law Abstracts*, no. 109, pp. 137-138.)

1682

Proc CLSA 2010, 142-174: William L. Daniel: The Notion of Moral Certitude with Particular Application to the Acts Mentioned in Canon 1682 §2 (CCEO, c. 1368 §2). (Lecture)

See above, canon 1608.

1683

IE XXIV 3/12, 625-642: Tribunale Apostolico della Rota Romana: *Reg. Apuli seu Brundusina-Ostunen*. Nullità del matrimonio. Ammissione di un nuovo capo. Decreto, 31 ottobre 2011. Jaeger, *Ponente* (con *nota* di Massimo del Pozzo, *La discrezionalità nell'ammissione di un nuovo capo di nullità in*

***appello*).** (Sentence and comment)

The appellate tribunal has discretionary power to admit or not admit a new ground of nullity of marriage as at first instance, in accordance with canon 1683. The non-admittance of the new ground does not prejudice the right of the party to present an action based on the new ground to the competent first instance tribunal. Even where the new ground has *fumus boni iuris*, the appeal judge can refuse to admit it as at first instance if it is going to involve an entirely new and different instruction from the previous trial (in this particular case the initial ground was exclusion of marriage or at least of the *bonum prolis* on the part of the male respondent; the new ground was lack of discretion of judgement on the part of the female petitioner). "Judicial economy" can argue against the advisability of accepting the new ground, especially at the level of the Rota, in order to avoid unduly protracting the initial action.

1684

SC 46 (2012), 525-526: Roman Rota, Removal of a *Vetitum*. Decree *coram* Boccafola, 6 April 1992 (Rome). (Document)

This is a decree of the Roman Rota concerning the removal of a *vetitum* imposed by the Rota on a petitioner due to his psychological pathology. An expert report had stated: "He certainly gives the outward appearance of a pathological liar, but we would be mistaken if we were to classify him under such a heading of psycho-pathology. While it is true that the liar strives to achieve some advantage, it is also true that the pathological liar has a remarkable coherence in telling his story ... The patient in effect tells many lies ... but he is not only incoherent in his story, but he is likewise indifferent to the hapless ending toward which his crazy ideas are headed." Given the pathology, the Rota concluded that it continued to influence the petitioner, so it refused to lift the *vetitum*.

1684

SC 46 (2012), 527-530: Roman Rota, Removal of a Vetitum. Decree *coram* Funghini, 20 July 1994 (Rome). (Document)

This is a decree of the Roman Rota concerning the lifting of a *vetitum* imposed by the same Apostolic Tribunal upon a petitioner whose marriage had been declared null on account of psychic causes (see above, canon 1095 1º). Having examined the petitioner, the decree concludes: "The *vetitum* imposed on the man against entering into a new marriage by the Rotal sentence of 27 February 1989 is to be lifted in the case, on condition, however, that before allowing him to marry again, the competent Ordinary of the place talk with the woman and receive, under oath, a declaration from both parties that they would accept all the obligations of a

Catholic marriage."

1695

FCan VII/1 (2012), 79-81: Elisa Araújo: Reconciliação Conjugal (Parte II): comentários aos cc. 1676 e 1695 CIC. (Commentary)

See above, canon 1676.

1697-1706

ADC 1 (abril 2012), 97-110: María Elena Olmos Ortega: Novedades significativas en la ordenación de la Curia Romana del motu proprio *Quaerit semper*. (Document and comment)

See below, canons 1708-1712.

1697-1706

Ap LXXXIV 2 (2011), 564-580: Matteo Nacci: Le novità del motu proprio *Quaerit semper* e gli insegnamenti della storia sulla missione della Rota Romana. (Article)

See below, canons 1708-1712.

1697-1712

IE XXIV 2/12, 457-481: Benedetto XVI: Motu proprio *Quaerit semper*, 30 agosto 2011 (con *nota* di J. Llobell, *La competenza e la procedura per la dispensa "super quolibet matrimonio non consummato" nel m.p. "Quaerit semper"*). (Documents and comment)

The Italian text is given of the *motu proprio Quaerit Semper* by which responsibility for processing dispensations from ratified and non-consummated marriages and cases of declaration of nullity of sacred ordination is transferred from the Congregation for Divine Worship and the Discipline of the Sacraments to an administrative office within the Roman Rota. Also given is the explanation of the *motu proprio* by the then Dean of the Roman Rota, Bishop Antoni Stankiewicz (see *Canon Law Abstracts*, nos. 108, p. 142; 109, pp. 106, 139-141). In his comment, L. points out that in fact the Rota and the new administrative office form two separate entities, the new office by law having the Dean of the Rota as its moderator; the rest of its personnel are autonomous, although it uses the Rota's premises. *Quaerit Semper* has abrogated arts. 67-68 of the Apostolic Constitution *Pastor Bonus* by placing their content in two new paragraphs added

to art. 126. The Congregation for Divine Worship still retains various competences in respect of matrimonial processes: cases concerning the separation of spouses, presumed death of a spouse, etc. L. proposes that the dissolution of non-consummated marriages should be subsidiary to the declaration of nullity of marriage, as is the case at the Roman Rota.

1708-1712

ADC 1 (abril 2012), 97-110: María Elena Olmos Ortega: Novedades significativas en la ordenación de la Curia Romana del motu proprio *Quaerit semper*. (Document and comment)

See preceding entry. O.O. comments on the foundation and need for the transfer of responsibility for processing dispensations from ratified and non-consummated marriages and cases of declaration of nullity of sacred ordination to the new administrative office within the Roman Rota; the manner of promulgation of the *motu proprio* and its coming into force; the nature and composition of the new office; and the new office's competences. She hopes that detailed provisions concerning everything to do with the members who form part of the new office, and the procedures they are to follow for processing dissolutions for non-consummation and nullities of sacred ordination, will be issued as soon as possible. The Latin and Spanish texts of the document are given in parallel columns.

1708-1712

Ap LXXXIV 2 (2011), 564-580: Matteo Nacci: Le novità del motu proprio *Quaerit semper* e gli insegnamenti della storia sulla missione della Rota Romana. (Article)

N. looks at the *motu proprio Quaerit Semper*, which transferred certain responsibilities of the Congregation for Divine Worship and Discipline of the Sacraments to the Roman Rota. He concludes by praising the decision of Paul VI to permit lay judges, male and female, arguing that it has helped to speed up canonical processes, and argues that lay judges should be able to preside in collegial tribunals and act as sole judges, at least in certain circumstances.

1713-1716

Ap LXXXIV 1 (2011), 311-333: Matteo Nacci: Decidere *per ragioni*: l'Arbitratio. Profili storico-giuridici. (Article)

N. looks at the history and praxis of arbitration. He traces its origins from Roman law to today, showing how arbitration is extra-judicial but never extra-legal. He looks at its application in civil law, particularly economics, and in canon law,

particularly administrative controversies. He points out that 1 *Cor* 6:1-8 exhorts Christians to resolve difficulties by arbitration rather than by a court case, and sees a reflection of this in canon 1446 §3. He comments that two weaknesses in the current provision are that arbitration is optional and that its purposes are not well-defined. While it is important to avoid conflict wherever possible, this should not be at the expense of objective and subjective justice.

1717

QDE 25 (2012), 281-315: Marino Mosconi: I principali doveri del vescovo davanti alla notizia di un delitto "più grave" commesso contra la morale o nella celebrazione dei sacramenti. (Article)

M. offers an overview of the bishop's duties in cases where an accusation is made against a priest alleging that he has committed one of the *graviora delicta*. He begins by pointing out that the bishop's first duty is to know the present law, both universal and particular. He treats first the assessment of competence (with consideration of the position of religious), then looks at how information might reach the bishop and what he should do in response to it. The preliminary inquiry is examined in detail, along with the need to communicate with the Congregation for the Doctrine of the Faith. M. then examines relationships with civil authorities from both theoretical and practical perspectives, within a framework based on collaboration with respect for proper spheres of autonomy. He concludes by identifying four duties of the bishop in this area: vigilance, the willingness to listen, launching the correct procedure, and reaching a formal decision. He then considers the extent to which these duties can be enforced, and by whom.

1717

QDE 25 (2012), 316-355: Desiderio Vajani: La procedura canonica a livello diocesano nel caso dei *delicta graviora*. (Article and formulary)

V. offers a practical guide to the canonical steps that need to be taken from the reception of information alleging that one of the *delicta graviora* has been committed through the preliminary investigation to the reference to the Congregation for the Doctrine of the Faith (CDF). He then treats of the steps that need to be taken when the CDF instructs the local Ordinary to launch an administrative penal process, and offers guidance about how to formulate the penal decree which would conclude the process. V. concludes with suggestions about interdiocesan cooperation to overcome any shortage of qualified personnel. The article includes a formulary of examples for each stage of the process.

1720

QDE 25 (2012), 316-355: Desiderio Vajani: La procedura canonica a livello diocesano nel caso dei *delicta graviora*. (Article and formulary)

See above, canon 1717.

1722

Mario Medina Balam – Luis de Jesús Hernández Mercado (eds.): La dimisión del estado clerical y su normativa canónica más reciente. (Book)

See above, canons 290-293.

1732-1739

RMDC 18 (2012), 223-276: Marco Antonio Hernández H.: Consideraciones a partir de algunas decisiones de la Signatura Apostólica, adoptadas con posterioridad a la promulgación del Código de Derecho Canónico vigente. (Article)

H. looks at aspects of the post-1983 jurisprudence of the Apostolic Signatura in relation to administrative recourses: the right of recourse; the object of the recourse; the subject of the recourse; motives for recourse; the procedure for hierarchical recourse; the procedure for resolution of the recourse; possible decisions in resolving the recourse; the procedure for hierarchical recourse before dicasteries of the Roman Curia.

EXCHANGE PERIODICALS

- Angelicum
- Annales Canonici
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Anuario de Derecho Canónico
- Apollinaris
- Archiv für katholisches Kirchenrecht
- Boletin Eclesiastico de Filipinas
- Bogoslovni vestnik
- Claretianum
- Commentarium pro Religiosis et Missionariis
- Communicationes
- De Processibus Matrimonialibus
- Ephemerides Iuris Canonici
- 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
- Proceedings of the Canon Law Society of America
- Quaderni dello Studio Rotale
- 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

ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

ACR	Australasian Catholic Record, New South Wales – V. Rev. Ian B. Waters, Melbourne.
ADC	Anuario de Derecho Canónico, Valencia – Abstracts supplied by publisher.
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.
BEF	Boletin Eclesiastico de Filipinas, Manila – Rev. Mgr. J. Hadley, Leicester.
CLSN	Canon Law Society of Great Britain and Ireland Newsletter, London – Dr Helen Costigane, London.
Comm	Communicationes, Rome – Rev. Mgr. Gordon Read, Colchester.
EA	Estudio Agustiniano, Valladolid – Abstract supplied by publisher.
EE	Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher.
ELJ	Ecclesiastical Law Journal, London – Paul Barber (London).
ELT	Eastern Legal Thought, Kerala – Abstracts supplied by publisher.
FC	Folia Canonica, Budapest – Editor.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
IC	Ius Canonicum, Pamplona – Abstracts supplied by publisher.

IE	Ius Ecclesiae, Pisa-Rome – Abstracts supplied by publisher.
J	The Jurist, Washington – Rev. Paul Gargaro, Clydebank.
LJ	Law and Justice, Worcester – Abstracts supplied by publisher.
PCF	Philippine Canonical Forum, Manila – Sr Mary Lyons RSM, Galway.
Per	Periodica, Rome – Rev. Aidan McGrath OFM, Rome.
Proc CLSA	Proceedings of the Canon Law Society of America – Rev. Paul Gargaro, Clydebank.
PS	Philippiniana Sacra, Manila – Abstract supplied by publisher.
QDE	Quaderni di Diritto Ecclesiale, Milan – Rev. Luke Beckett, Ampleforth, York.
RDC	Revue de Droit Canonique, Strasbourg – Abstracts supplied by publisher.
REDC	Revista Española de Derecho Canónico, Salamanca – V. Rev. John McGee, Girvan, Ayrshire.
RMDC	Revista Mexicana de Derecho Canónico, Pontifical University of Mexico – Editor.
RTL	Revue théologique de Louvain – Abstract supplied by publisher.
SC	Studia Canonica, Ottawa – Rev. Mgr. John Renken, Ottawa.
Vid	Vidyajyoti, Delhi – Rev. Mgr. J. Hadley, Leicester.
–	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Vienna – Abstract supplied by publisher.

BOOKS RECEIVED

- Anne Bamberg: *Introduction au droit canonique. Principes généraux et méthodes de travail*, Ellipses, Paris, 2013, 132pp., ISBN 978-2-7298-7684-5 [see above, General Subjects (*General introductions to canon law*)]
- Patricia M Dugan – Luis Navarro: *Matrimonial Law and Canonical Procedure. A Continuing Education Course*, Wilson & Lafleur (Gratianus series), Montreal, 2013, xvi + 462pp., ISBN 978-2-89689-054-5 [see above, canons 1055-1165]
- Thomas Duve: *Información bibliográfica para el estudio del Derecho Canónico Indiano*, Pontificia Universidad Católica Argentina, Buenos Aires, 2012, 213pp., ISBN 978-987-656-203-4 [see above, Historical Subjects (*16th-19th centuries*)]
- Héctor Franceschi – Miguel A. Ortiz (eds.): *Discrezione di giudizio e capacità di assumere: la formulazione del canone 1095*, Giuffrè, Milan, 2013, xii + 262pp., ISBN 88-14-17550-0 [see above, canon 1095 2º-3º]
- Markus Graulich – Jesu Pudumai Doss (eds.): *Minori e Famiglia. Quali Diritti?*, Libreria Ateneo Salesiano, Rome, 2012, 141pp., ISBN

978-88-213-0816-1 [see above, General Subjects (*Family issues*)]

- Markus Graulich – Jesu Pudumai Doss (eds.): *Vino nuovi in otri vecchi? Sfide Pastorali e Giuridiche della Nuova Evangelizzazione*, Libreria Editrice Vaticana, 2013, 390pp., ISBN 978-88-209-8950-7 [see above, canon 747]
- Jean LeBlanc: *Dictionnaire biographique des évêques catholiques du Canada*, Wilson & Lafleur (Gratianus series), 2nd edition, Montreal, 2012, xxi + 1298pp., ISBN 978-2-89689-006-4 [see above, General Subjects (*Compilations*)]
- Mario Medina Balam – Luis de Jesús Hernández Mercado (eds.): *La dimisión del estado clerical y su normativa canónica más reciente*, Universidad Pontificia de México, 2012, 368pp., ISBN 978-607-7837-11-4 [see above, canons 290-293]
- Manuel J. Peláez – Antonio Sánchez-Bayón (eds.): *Diccionario de Canonistas y Eclesiasticistas Europeos y Americanos* (I), Editorial Académica Española / AV Akademikerverlag, Saarbrücken, 2012, 547pp., ISBN 978-3-8454-9179-0 [see above, Historical Subjects (*Classical period*)]